

MNRF Administration & Enforcement

July 2017

Background

This Briefing Paper addresses several issues in the administration of the ARA, and specifically, the interactions the MNRF has with industry through its inspectors and the decision-making process which supports them. The points made in this Paper complement the submission that OSSGA recently made with respect to the Red Tape Challenge: Mining Sector. We look forward to having an opportunity to discuss these issues with MNRF personnel as a well-functioning Aggregate Program is a vital part of a successful aggregate industry.

Delegation of Authority for Approvals

The current Delegation of Authority, or DOA, is “bogging down” the approval process unnecessarily. Under Section 7 of the *Ministry of Natural Resources Act*, the Minister of Natural Resources may delegate aspects under her authority to other Ministry of Natural Resources and Forestry (MNRF) staff. Changes to previous authorizations of powers or duties during the most recent review of all delegations of authorities (August 15, 2011) resulted in a number of functions that were moved to a higher level. Minor site plan amendment approvals that were previously delegated to the Inspector are now delegated to the Regional Director and major amendments to site plans that were previously delegated to the District Manager are now delegated to the Regional Director. Providing consistency across MNRF district offices (the intent of this change) is positive; however, this change has resulted in significant delays in the decision-making process, and has resulted in licensees being in site plan non-compliance over relatively trivial matters.

The change in delegation, especially for minor licence condition and site plan amendments, appears to have undermined the decision-making ability of MNRF District Managers and Inspectors in the process, and led to frustration on their part. This approach is puzzling when, at the same time, the Ministry relies on the expertise of these staff to have a good understanding of the environmental impacts described in the technical reports being reviewed for applications and amendments; the ability to create enforceable conditions from technical recommendations that protect the environment and social fabric of the community; and to provide credible advice to senior MNRF staff when making decisions to issue or refuse to issue licences, permits and amendment applications.

Recommendations:

- Delegation of Authority should be re-evaluated and returned to a more appropriate decision-making level such as the District Manager level and Inspector level, for ‘major’ and ‘minor’ site plan amendments, respectively;
- Enable self-filing of minor site plan amendments and condition changes where the notification and consultation process is based on level of risk. (It is recognized that the new ARA includes provisions for self-filing of minor amendments, details of which are yet to be finalized.)

Policy Manual Updating

The Aggregate Resources Policy and Procedure (P&P) Manual was initially and essentially an internal document to guide Inspectors in an environment where decision-making was more decentralized – i.e.

at a lower level of DOA if you will. The Manual has since evolved into a very public document used by applicants and their consultants to prepare applications and amendments that are proponent driven and by the public to scrutinize the process and technical aspects of the application. The Manual needs to be re-visited with these modern-day circumstances in mind, relying on appropriate stakeholder involvement.

The P&P Manual (Procedure A.R. 2.03.00) clearly distinguishes between major and minor amendments and provides examples. *Major* amendments involve complex changes to the operational and rehabilitation of the site for which municipal planning approvals or consultation is required. If these matters trigger municipal involvement, (e.g. zoning bylaw amendment or council resolution) and favorable comments are received from the municipality, then the amendment should be allowed to be scaled down to a *minor* amendment, thus avoiding duplication of process. Minor amendments for administrative and simple operational changes not involving land use considerations and environmental/social impacts pose little or no risk and will facilitate faster decision-making.

Recommendations:

- Ensure that revisions to regulations allow for proponent-driven amendment applications;
- Post the DOA document with the Aggregates P&P Manual on the MNRF web site so that a proponent can assess the level of amendment approval required or re-visit the Manual to address the correct DOA for each process;
- Enable the Manual to be publicly available (with a 5 year review process for updates);
- Increase the transparency of the system for tracking the status of approvals within MNRF.

Late Posting of Environmental Bill of Rights (EBR) Proposal Notices by MNRF

The EBR requires the Minister of Natural Resources and Forestry to post changes to instruments to ensure the public has an opportunity to participate in the process. The approval process for posting EBR Proposal Notices must be streamlined in order to, as a matter of routine, harmonize the EBR notification process with the ARA notification and consultation process. Having a time line for official objections under one process (ARA) followed by an information posting under the EBR is problematic and confusing. The EBR posting for ARA instruments is an additional level of notification that should be linked to the ARA notification/consultation process. The EBR process should not be used as a standalone system to the ARA's public notice provisions. Such a standalone system may be appropriate for legislative instruments/approvals that do not have a dedicated process to notify/engage the public (e.g. Permits to take water (PTTW) under Water Resources Act).

Recommendations:

- Provide better training to MNRF frontline staff (Inspector and District Planner) to better direct the proponent with completing the template for an EBR Proposal Notice;
- MNRF should work with MOECC to put more emphasis on simplifying the EBR Proposal Notice template and posting procedure, so that the posting is harmonized with and directed to the notification and consultation process for the ARA;
- Consider a review of the entire EBR process when it impacts the ARA with a view to harmonizing and/or dispensing with the need for an EBR Notice under certain circumstances.