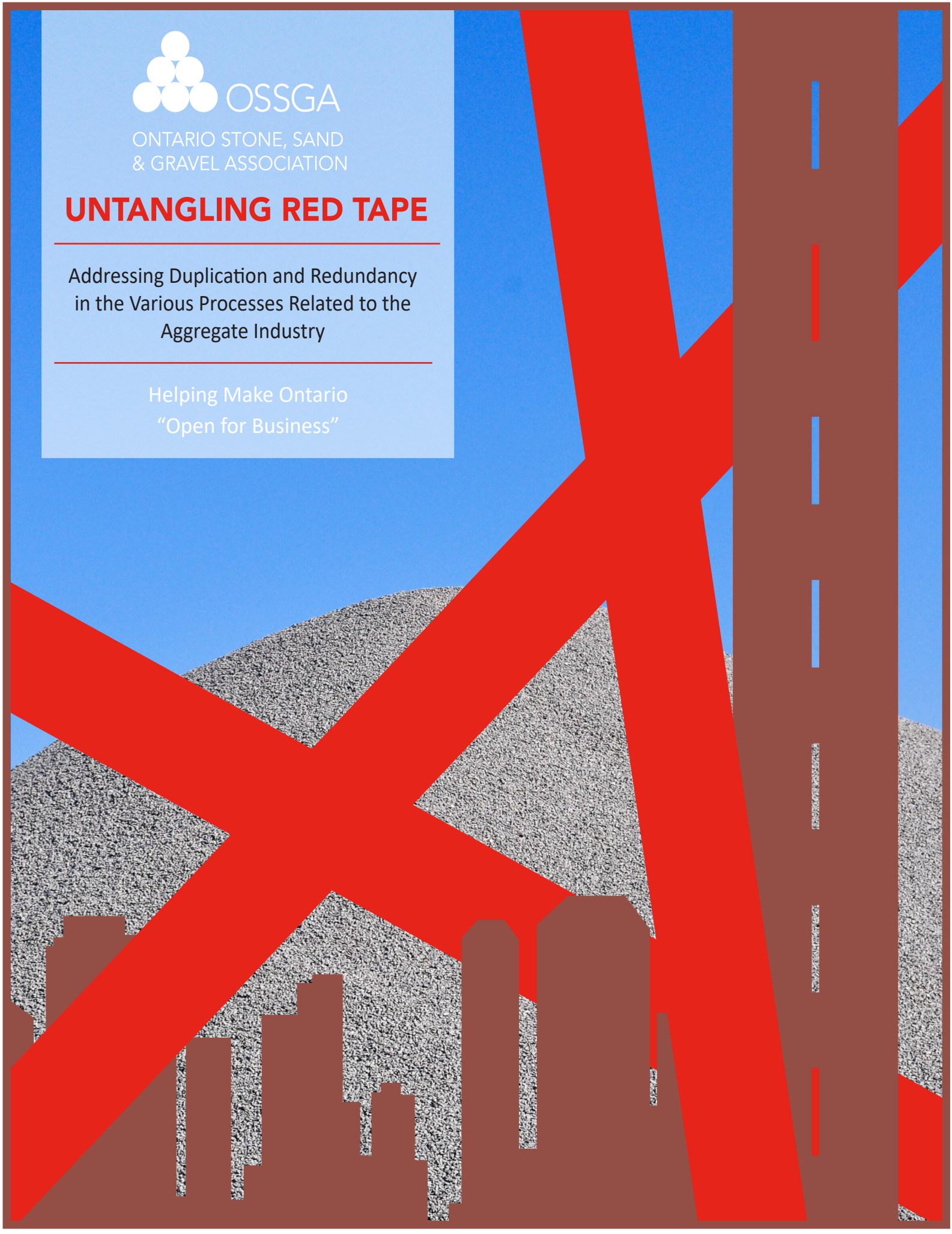
OSSGA
ONTARIO STONE, SAND
& GRAVEL ASSOCIATION
UNTANGLING RED TAPE
Addressing Duplication and Redundancy
in the Various Processes Related to the
Aggregate Industry
Helping Make Ontario
“Open for Business”

DID YOU KNOW -- #DYK

Aggregate — stone, sand and gravel — builds Ontario.

Approximately 164 million tonnes of aggregate are used in Ontario each year, contributing $1.6 billion to Ontario's GDP.

Table of Contents

Executive Summary

Over the term of the previous Ontario Provincial government, steady and incremental changes in legislation, policy and regulation led to significant duplication and redundancy in the various approval requirements and processes related to the aggregate industry. More recently, the current government announced that Ontario is "Open for Business". In its economic outlook statement, *A Plan for the People*, the government promised to "create an environment across the province that will help reduce costs for businesses, strengthen their ability to invest and grow, and stimulate job creation."

#DYK
The aggregate industry is essential to the $38-billion construction industry – supporting 357,000 jobs in Ontario.

The Ontario Stone, Sand & Gravel Association (OSSGA), applauds this new approach and is looking forward to working with the government to present its concerns about the barriers to aggregate businesses in Ontario that have been created by the increasing amount of Red Tape.

The aggregate industry is one of the most highly regulated industries in Ontario with compliance requirements included in more than 25 pieces of legislation and hundreds of regulations. These rules were intended to protect people, the natural environment, and our natural resources. OSSGA and its members are committed to the responsible extraction of this important scarce resource throughout its entire life cycle – from initial land use planning to final rehabilitation, to the increased use of recycled aggregates.

It is important to note that we are confident that significant reductions in red tape can occur without compromising the strong environmental protection inherent in Ontario legislation and policy.

Aggregate—stone, sand and gravel—builds Ontario. On average, approximately 164 million tonnes of aggregate are used in Ontario each year, contributing $1.6 billion to Ontario's GDP.

But more important than that, without it, everything stops. It's in the buildings where we live and work, and the roads and sidewalks we drive and walk on. It's used in water purification, and in the manufacturing of everything from paper and paint to chewing gum and household cleaners, not to mention the millions of tonnes the public sector itself uses for road, highway, sewer and transit construction. Demand for high-quality aggregate is growing, and new sources will be needed.

A concerted effort to reduce the Red Tape challenges outlined in this paper will promote job creation, make housing more affordable, decrease the Government's own procurement costs, and attract economic investment throughout the province.

In the aggregate industry, we believe we have moved beyond what could be described simply as regulatory burden. The regulatory framework in our industry is more like a labyrinth of red tape that has expanded from years of regulation to form an intricate web which has become a major deterrent for investment in Ontario. The overlapping involvement of multiple ministries and agencies sees new projects reviewed by MNRF, MMAH, MECP, MTO, Municipalities, Conservation Authorities, the NEC and other agencies. Untangling all of this will not be easy, but it must be done to ensure future investment in this essential industry.

That said, we need to make a start, and there are opportunities for quick wins. This submission is presented in three parts:

1. **The duplication and inefficiencies that create complexity and barriers to investment.** The province must maintain a strong position and role in the management of aggregate resources. Over the past 10 years, various agencies (MNRF, MECP, MMAH, Conservation Authorities, Municipalities, etc.) have increasingly stepped outside of their jurisdiction and broadened their role in commenting and ultimately 'approving' reports, applications and Site Plans as part of *The Aggregate Resources Act* (ARA) and *The Planning Act* application review process. The call for third-party reviewers has exacerbated this problem.

   It is not uncommon for three or four different agencies to require reports on the same topics (hydrogeology for example). Sometimes the same report is reviewed by these different agencies. At other times, new reports are required. This unwieldly process, which can stall within Provincial Ministries, within Municipalities and/or within other agencies, (or even some combination of all three), is a large contributor to the fact that some applications now take as long as 12 years to be approved.

#DYK
Several branches of government complete duplicating and redundant reviews of aggregate applications.

This wastes government resources and significantly increases the time and cost of pursuing new aggregate supply.

Primary recommendation:

Establish a single point of responsibility, at the Provincial level, for the application process and eliminate multi-Agency Review and comment on the same reports and Site Plans.

2. **Lack of service standards and consistency within Ministries.** In addition to the duplication of approvals between Ministries, approval times within individual Ministries is another source of considerable, and unnecessary delay. While the following 'quick fix' recommendations may seem obvious,

relief in these areas would expedite applications and increase efficiencies.

- Apply service standards within MNRF to site plan and licence amendments, similar to MECP's service standards for ECAs.
- Proclaim the "Permit by Rule" introduced in the 2017 *Aggregate Resources Act*, allowing for more routine approvals to be automatic upon submission.
- Stop the bottleneck at the Regional Office by returning all minor Site Plan Amendments to the District Office for immediate processing by the District Manager.
- Enhance training and consistency between levels within MNRF to empower staff to make decisions and move applications through the process.

#DYK
There is a real risk that investment dollars from large international construction companies may leave Ontario to jurisdictions more open to aggregate.

3. Problems with Implementation of existing legislation and policies.

Over the last decade or more, new and amended legislation, regulations and land-use policies have had a significant impact on when and where new aggregate applications can be submitted. For example:

- In the recent round of changes to the Provincial Plans, 48% of the available aggregate resource has been made unavailable for extraction due to changes to the rules on endangered and threatened species and other policies within the Natural Heritage System that violate/contradict provisions in the *Endangered Species Act* (ESA).
- The introduction of the Local Planning Appeal Tribunal (LPAT), to replace the Ontario Municipal Board (OMB), appears to require a whole new set of hearings in aggregate cases, increasing the time and cost to move an aggregate licence or zoning permit through the system.

Unintended consequences of these policy decisions, in addition to the increased costs, include:

- The environmental effects of trucking aggregate to job sites in the growing Greater Golden Horseshoe from further away (it is estimated that if every truck were to travel just one extra km to its job site, 2.5 million litres of additional fossil fuel would be burned every year). Consider that by 2041 there will be 18.2 million people in Ontario. To support this growth 3.84 billion tonnes of aggregate will be needed to build the roads, schools, hospitals, homes and other public buildings we all use (that's more than 100 million truck loads of aggregate).

- The diversion of investment dollars from large international construction materials companies to other jurisdictions which are more open to aggregate businesses.

Primary recommendations:

Repeal and/or amend recent policy changes within the Growth Plan that will lead to the sterilization of high-quality aggregate resources.

Repeal and/or amend the LPAT process for aggregate resource applications to allow for a singular hearing for The Planning Act and ARA combined.

Within the balance of this submission we will provide more detail on the regulatory and "red tape" challenges faced by our industry, along with recommendations for addressing these issues. An Ontario which is "Open for Business" is critical to enable aggregate producers to make the necessary contributions to the infrastructure requirements of the next several decades.

#DYK how much stone, sand and gravel we use in Ontario?

It takes 250 tonnes or 12 truck loads of aggregate to build the average house in Ontario.

91,200 tonnes or 4,560 trucks of aggregate builds you one kilometre of a subway track.w

13,000 tonnes or 650 trucks are needed to build a new school in the Province of Ontario.

51,800 tonnes or 2590 trucks are required for each kilometre of a six-lane highway.

Each of us uses an average of 14 tonnes of aggregate — per year.

1.0 Duplications and Inefficiencies

1.1 ARA Applications

Issue

Over the past 10 years, agencies have increasingly stepped outside of their jurisdiction and broadened their role in commenting and ultimately "approving" reports, applications, and Site Plans as part of the ARA and *The Planning Act* application review processes. This has caused overlap, and in some cases duplication of review, thereby increasing the time and cost for review and instilling confusion as to which agency is in charge, or has the final authority.

#DYK
It can now take as long as 12 years to have an aggregate site make its way through the licensing process in the Province of Ontario!

And after all of that time and millions of dollars of invesment, there is no guarantee that the site will be approved!

Background

To secure a new aggregate licence, an applicant must complete at least two application processes: a licence application under *The Aggregate Resources Act* (ARA), and a zoning application under *The Planning Act.* In many cases additional *Planning Act* approvals are also required (e.g., local and/or regional Official Plan Amendments).

The preparation of reports and studies is required in both scenarios. These documents are studied by various individuals and agencies who in turn provide comments with their input to the process. This process is called Agency Review.

Applications under the ARA for a licence are proponent driven, meaning that the applicant is responsible for coordinating the notification and consultation process. The ARA licence governs the operation and rehabilitation of the pit or quarry. Land use approvals are issued under *The Planning Act*, by way of zoning bylaw amendments, and where required, Official Plan amendments. These are parallel processes, with considerable duplication in technical study requirements, review and comments by numerous agencies.

Increasingly, we are seeing "review creep", where agencies are over stepping their jurisdiction. For example, Conservation Authorities, are not only reviewing technical studies, but also imposing additional requirements for further information and studies. This duplication adds exponentially to the length of time for an application to proceed through due process as well as the cost of an application. We have seen an increase in this "review creep" over the last number of years. The objective should be quality agency review to support good decision making, not quantity review which does not add to the decision-making process.

Table 1: Agency Review Duplication - Applications

	Current Probable/Required Review
	Current Possible Review
	Recommended Single Role for review

Applicants' Submission	Agency Review[1]							
Reports/Studies[2]	MNRF	Municipal (PR= Peer Review[3])	NEC	MECP	OMAFRA	MTCS	CA	DFO
Hydrology/Hydrogeology - wetlands		PR						
Hydrology – surface water discharge		PR						
Hydrogeology – wells		PR						
Natural Environment		PR						
Cultural Heritage								
Noise		PR						
Blasting		PR						
Planning & Land Use – Out of NEPA								
Planning & Land Use – In NEPA								
Agricultural Class & Rehab								
Quality & Quantity of Aggregate								
Haul Routes & Entrance Permits								
Rehabilitation								
Air Quality, Dust		PR						
Other Reports (Municipal req e.g. Built Heritage)								
Agricultural Impact		PR						
Traffic								

[1]This does not consider nor reflect independent review by the Public or First Nations, which are above and beyond Agency Review.

[2] Not all reports or studies are required in every application. The ARA Provincial Standards identifies under what circumstances studies are required. Official Plans may also identify what studies are or may be required. This table identifies all studies, to illustrate the overlap of review, when the studies are required.

[3] Peer Reviews refer to a review of the Technical Study, undertaken by a third party, paid for by the applicant.

MNRF Ministry of Natural Resources and Forestry
NEC Niagara Escarpment Commission
MECP Ministry of Environment, Conservation and Parks
OMAFRA Ontario Ministry of Agriculture, Food and Rural Affairs
MTCS Ministry of Tourism, Culture and Sport
CA Conservation Authorities
DFO Department of Fisheries and Oceans

Table 1, **Agency Review Duplication**, illustrates the duplication and overlap of Agency Review of current applications for a pit or quarry. The darkest colour indicates the agency which has legislative jurisdiction, or is most technically able to take the review role. If that agency were solely responsible for review and approval, duplication would be reduced.

It is important to note that the timelines for approval of these reports is not linear. In fact, reports can go back and forth between agencies, sometimes multiple times, over years. This can result in reports having to be redone, because the underlying data has become outdated. This unwieldly process, which can stall within Provincial Ministries, within Municipalities and/or within other agencies, (or even some combination of all three), is a large contributor to the fact that some applications now take as long as 12 years to be approved.

#DYK
There are 4.3 additional jobs created for environmental consultants, equipment manufacturers, etc. for every job created in a pit or quarry!

Management of Ontario's aggregate resources is a Provincial interest that transcends municipal boundaries and localized special interests. Lessons from the past along with current experience tells us that a strong Provincial leadership role in the management and regulation of aggregate resources is essential to maintaining close to market availability and consistent regulation.

The Agency Review process in its current form not only causes a significant waste of both time and money for aggregate producers, the government, and ultimately the public, it also significantly undermines the authority and leadership of the lead agency.

Recommendations

- Identify single Agency role (at the Provincial level), responsible for the application process, and eliminate multi-Agency Review and comment on the same reports and Site Plans.

- Establish clear policy and/or Memorandums of Understanding (MoU) between Ministries to identify responsibility for single Agency Review and approval of applications; and,

- Educate Agency staff to ensure policies and/or MoU's are understood and implemented from the top down to the District level within MNRF.

1.2 Operational Permits

Issue

Once a site is licenced under the ARA, operational permits may be required. These permits usually require ongoing monitoring and reporting. They are purposely designed to provide a nimble ability to amend permit requirements, if necessary, based on the monitoring and analysis results. Examples of these permits include the Permit to Take Water (PTTW) and the Environmental Compliance Approval (ECA).

#DYK
Using inferior quality sand and gravel means that instead of a bridge lasting 100 years, it may need to be rebuilt in 30.

Increasingly, more agencies are becoming involved with review and comment on operational permits, which adds to the time of approval, and cost. There is also an increasing overlap of the review of operational permits and requests for operational permit technical justification as part of the application process (as discussed in 1.1 above), which has led to confusion as to what level of technical information is required, and when. What was once a straightforward check and balance to ensure compliance, has become another major obstacle in operating a pit or quarry.

A lack of service standards in some Ministries/agencies, results in permits taking years, rather than months or weeks to approve – further adding to costs and project delays.

Background

In the case of natural heritage and water resources the Province has retained a review function and has ultimate authority through issuing permits. The other levels of government (e.g. Municipalities and Conservation Authorities) should not be duplicating this review and permitting function. Similarly, for noise, dust and vibration: sites must operate in accordance with MECP permits and guidelines – this should be left to the Province after the land use and licence have been approved.

However, more agencies are wanting to be involved, or are being pressured to be involved, in the review and approval process of these permits – this is another example of “review creep”. Sometimes this pressure comes from public interest groups who were against the project and are using the Environmental Bill of Rights (EBR) and permit process as another tool to delay or derail the process. Once a licence is approved, the aggregate producer should not have to justify the site’s existence every time they want to apply for, or amend an operational permit.

As an example, if a zoning application is to include a permanent ashphalt

plant, the land use application must be justified from a social and planning perspective, *not* technical. It is the ECA permit that will deal with the technical operational aspects of the asphalt plant, and it is usually applied for *after* the land use is permitted.

Table 2, **Agency Review Duplication - Operational Permits,** illustrates the duplication and overlap of Agency Review of operational permits. The darkest colour indicates the agency which has legislative jurisdiction, or is most technically able to take on the review role. If that agency were solely responsible for review and approval, duplication could be eliminated.

Table 2: Agency Review Duplication – Operational Permits

	Current Probable/required review
	Current Possible review
	Recommended single role for review

Legislation	Approval/Permits[1]	MNRF	Municipal	NEC	MECP	CA	DFO
Endangered Species Act[2]	Permit or Registration						
Ontario Water Resources Act	Permit to Take Water (PPTW)						
Ontario Water Resources Act	Environmental Compliance Approval (ECA)[3] – sewage works (i.e. water discharge)						
Environmental Protection Act	ECA – air emissions						
Environmental Protection Act	ECA – noise emissions						
Lakes and Rivers Improvement Act	Work permit (e.g. creek diversion)						
Fisheries Act	Approval Process						

[1] This does not consider nor reflect independent review by the Public or First Nations, which are above and beyond Agency Review.

[2] Currently the mandate is with MNRF, but it may be transitioning to MECP.

[3] ECA application forms require applicants to determine if there are any concerns from Indigenous communities and if Indigenous consultation activities are likely required as part of the application process.

Recommendations

- Identify single agency role responsible for the operational permit process, and eliminate multi Agency Review and comment on the same technical applications, reports and design;
- Establish clear policy and/or Memorandums of Understanding (MoU) between Ministries to identify responsibility for single Agency Review and approval of operational permits; and
- Educate agency staff to ensure policies and/or MoU's are understood and implemented from the top down to the District level.

1.3 NEC Development Control Permits

Issue

The current review and issuance of Development Control Permits, after designation to permit extraction within the NEC, is a complete duplication of the application review process.

#DYK
There are 191,000 km of two-lane equivalent roads in Ontario all built with stone, sand and gravel.

Background

Section 24 of the NEPDA requires a development permit for all development within the development control area. The NEC has discretion over the permit conditions. The difficulty is, permits are usually issued requiring compliance with the ARA Site Plan. *This directly duplicates the requirements for the ARA so that two Provincial agencies are doing the same thing.* The ARA is specifically designed to regulate aggregate operations. The NEC development permit control system is not. The MNRF has expertise and detailed policies and procedures to specifically deal with pits and quarries while the NEC does not.

This circumstance creates confusion and delays where revisions to permits, licences or Site Plans are required. Two approval authorities and duplicative processes are required where one would suffice. Not only is enforcement less effective where lead responsibilities are unclear, but this is an unwise use of government resources.

Recommendations

- Eliminate the Development Control Permit requirement under the NEP for aggregate applications.
- A bolder recommendation: Reconsider the role/requirement for the NEC.

2.0 Service Standards and Consistency

Issue

In addition to the duplication of approvals between Ministries, approval times within individual Ministries is another source of considerable, and unnecessary delay.

#DYK
5,057 government buildings, 5,000 km of railway track, 4.9 million homes and 450 waste water treatment plants use aggregate.

Background

Within MNRF, the lack of connection between the Head Office Policy Section, Regional Office and the front-line workers in the District Office has caused a measurable increase in the length of approval time for Site Plan Amendments.

Furthermore, the increase in detail required for major Site Plan Amendments for an existing licence has exceeded what is required as detailed in policy. What should be a simple Site Plan Amendment to change a sequence of extraction, for example, is taking over a year.

To compound the situation, there is no recourse for the licensee to obtain a timely response and/or approval. In some cases, applications have sat untouched for months due to staff workload and priorities, and the lack of service standards.

#DYK
That changing the location of an entrance on an aggregate site can take up to two years – even if everyone agrees it is better for the community!

Recommendations

- Apply Service Standards to Site Plan and licence amendments, similar to MECP's Service Standards for ECAs;
- Proclaim the "Permit by Rule" introduced in the 2017 ARA, allowing the more routine approvals to be automatic upon submission;
- Stop the bottleneck at the Regional Office by returning all minor Site Plan Amendments to the District Office for immediate processing by the District Manager.
- Enhance training and consistency between levels within MNRF to empower staff to make decisions and move applications through the process.

3.0 Problems with Implementation of Existing Legislation and Policy

3.1 Prohibitive Legislation

Issue

Over the last decade or more, new and amended legislation has had a greater impact on when applications can be submitted, how many hearings may be required, and therefore, how long it takes for applications to move through the process. This results in increased costs and, and risk for the investor. The issue is particularly important when you consider the amount of investment from large international construction companies, who are diverting investment to other jurisdictions which are more open to aggregate businesses which could affect future availability for the people of Ontario.

#DYK

The *Supply and Demand Study* submitted to MNRF in 2016, states that:

"While potential reserves exist in many parts of the Province there are concerns about **scarcity of certain products in close to market locations** that will lead to increased costs and environmental impacts associated with increased haul distance."

Background

The following are recent examples of legislation that have prohibited or delayed the ability to extract aggregate resources:

- Changes to *The Planning Act* have been implemented restricting Official Plan Amendments (OPA) within the first two years of a comprehensive Official Plan review. As described above, a new aggregate licence application nearly always requires land rezoning as a condition for granting the licence. This in turn typically requires an OPA. The restriction of OPAs for two years following a comprehensive OP review effectively shuts producers out for that time period.

- With the creation of the LPAT to replace the OMB, OSSGA's understanding is that aggregate applications which have traditionally been heard in a combined hearing, will now likely be required to have three sequential hearings. OSSGA has written to MMAH on this issue, but includes the problem here as another example of how changes originally designed to simplify and streamline a process, will actually have the reverse effect.

Recommendations

- Exclude aggregate resource OPAs from the two-year freeze within *The Planning Act;* and,

- Repeal and/or amend the LPAT process for aggregate resource applications to allow for a singular hearing for *The Planning Act* and ARA combined.

3.2 Prohibitive Provincial Plans

Issue

Over the last decade or more, new and amended policy continues to impact where and how much aggregate can be extracted. Increasingly, we are seeing sterilization of close to market resources, forcing pits and quarries to be located further from markets with a greater travel distance.

Background

OSSGA was told repeatedly during the review of the Provincial Plans that the aggregate sector would not be greatly affected. Instead, changes to the Plans impacted 48% of the quality reserves within the Greater Golden Horseshoe area (in addition to the 19% already impacted by previous Plans). While OSSGA has prepared another, more detailed brief on the effects of the Provincial Plan changes, the most immediate issue is outlined again here.

The 2017 Growth Plan prohibits new operations within the habitat of endangered and threatened species within the Natural Heritage System (NHS). Prohibition within this habitat undermines the *Endangered Species Act* and deters investment from the aggregate industry since new species or habitat could be identified during the approval process that prohibit the application after several years of process and millions of dollars of investment.

Prior to 2017, allowing for the replacement of these species (through an ESA permit) provided for a net overall benefit to the species while making available significant aggregate resources in a close-to-market location. The changes announced in 2017 effectively removed the ability to apply for new aggregate licences.

#DYK
There is a real risk of the GGH not having enough close-to-market aggregate to meet growth projections under current policy restrictions.

Recommendations

- Within the Growth Plan NHS, Greenbelt NHS and ORMCP Linkage Area, allow aggregate extraction within endangered and threatened species habitat subject to authorization under the *Endangered Species Act*; and,

- Review and implement recommendations outlined in OSSGA's *Securing Access to Stone, Sand & Gravel.*

3.3 Inappropriate Criteria for Listings of Threatened and Endangered Species

Issue

The designation of Threatened and Endangered species plays a critical role in both the protection of species and allowing appropriate development, while protecting those species. Unfortunately, the assessment processes that leads to these listings is not as rigorous or consistent as it should be, given the prohibitive outcomes. Species are being listed based on limited information, inappropriate survey methodology, or because of punative declines rather than rarity on the landscape. Furthermore the issue of status is often unrelated to the availability of habitat.

Background

Species should be designated "at risk" based on sound, objective science. Unfortunately, COSSARO (the Committee on the Status of Species at Risk in Ontario) tends to rely heavily on the Federal COSEWIC status reports or defers to data provided by MNRF which is often lacking or outdated. Under the COSSARO definition for Data Deficient, it states that:

> *"Data Deficient should be used for cases where the status report has fully investigated all best available information, yet that information is insufficient to: a) satisfy any criteria or assign any status, or b) resolve the wildlife species' eligibility for assessment."*

However, rather than applying the Data Deficient designation or perhaps designating a species as "special concern", (and using this as impetus to gather additional research and conduct further surveys), the precautionary principle is applied, and species are often listed as threatened/endangered based on the data currently available. For example, the recent designation of Bank Swallow is based on surveys that largely miss colonies (i.e., roadside surveys, when most colonies are either along lakeshores, rivers or in pits). This species may have withdrawn from northernmost parts of its range, but this could be entirely independent of population trends in the core of its range in the south of Ontario. The species was listed despite recent new data showing many thousands of pairs breeding along lakes Ontario and Erie.

COSSARO needs more oversight and accountability, and greater transparency in the development and application of listing criteria. Although the public is invited to observe the assessment process, stakeholders are not able to present on the socio-economic implications of a potential listing/de-listing.

The public is also not privy to the decision-making process and cannot provide comment once a species is listed to the Species at Risk in Ontario (SARO) list. This is especially critical because unlike COSEWIC (where Cabinet may review the assessment and has the option to either accept the assessment, decline the assessment, or refer the mater back to COSEWIC), once a recommendation is made by COSSARO, the Minister must update the SARO list with COSSARO's recommended designations.

The criteria should include more than the current four categories and the thresholds should be increased. This current assessment process results in the listing of species where habitat loss is not a threat to their survival. For example, under the current criteria, species (e.g. Monarch) have been assessed due to a loss of overwintering habitat in Mexico even though there is an abundance of available breeding habitat in Ontario. Species have also been listed due to threats unrelated to a loss of habitat. For example, the Butternut tree, which was reassessed and confirmed as endangered in 2017, is listed due to threats from Butternut Canker, a fungal disease. This criterion also leads to the listing of common and widespread species such as the birds Barn Swallow, Eastern Meadowlark and Bobolink.

#DYK
Different MNRF district offices have different standards and protocols for reviewing endangered species!

We understand that recent reanalysis of existing data by the Federal government may actually reverse trend information that was previously reported for some species. While farmers continue to destroy nesting birds in hay fields with impunity (despite Federal and Provincial legislation protecting the birds), other sectors such as aggregate extraction must not only protect habitat but also, where permitted, compensate for its loss. This approach is unfair and unreasonable.

There are also inconsistencies with respect to MNRF decision-making at District Offices regarding habitat protection and/or survey protocols. For example, despite the fact that bats have been listed for several years, protocols for confirming the presence/absence of endangered bats are still not consistently applied across districts.

Finally, the issue of data currency is problematic, from a practical perspective it is necessary to re-survey suitable habitat every year until development of a site proceeds. Clearly this is not a model of efficiency.

Recommendations

- Review and improve the process for the designation of threatened and endangered species;

- Better differentiate between threats related to habitat loss versus other factors such as habitat in Mexico, or pathogens;
- Acknowledge the absence of reliable data and use DD or SC more liberally given the consequences of listing a species erroneously as endangered or threatened;
- Remove declines as a criteria unless a population reaches a predetermined threshold;
- Data Deficient (DD) should be used as impetus to gather more data; and,
- When a new species is listed, the regulation should be released at the same time along with one set of clear guidance from the MNRF for application by the District Offices.

3.4 Hours of Operations

Issue

The Province is failing to exercise its jurisdiction over hours of operation of a pit or quarry. This has led to confusion, unnecessary complexity and, in some cases, inappropriate restrictions imposed by the local municipality and supported by MNRF.

Background

Since 1997, with the implementation of the Provincial Standards, applicants have been required to add hours of operation to Site Plans. Where site plans are silent on hours of operation, MNRF has directed that operators must abide by the Municipal bylaw for hours of operation but stipulates that the enforcement of the bylaw would be the responsibility of the Municipality.

There has been confusion as to when a Municipal bylaw would apply and when the Site Plan applies, particularly when the Site Plan is silent on hours of operation.

As a result, OSSGA independently obtained two separate legal interpretations, addressing the questions of whether the Municipality has the authority to regulate hours of operation through a bylaw where a Site Plan is silent on the issue, or where hours of operation are listed, but conflict with a Municipal bylaw.

The two legal opinions were in agreement, and opined that a Municipal bylaw regulating hours of operation of a pit or quarry is inoperative in areas in which the ARA applies, even if the Site Plan does not contain notes regarding hours of

operation. Municipalities do not have the jurisdiction to regulate operational matters such as hours of operation, types of equipment and tonnage limits.

Recommendations

- The Province should amend relevant legislation to clarify that a municipal bylaw regulating hours of operation of a pit or quarry is inoperative in areas where the ARA applies, even if the site plan does not contain notes regarding the hours of operation.

3.5 Access to Aggregates within Municipal Road Allowances

Issue

It is not uncommon to have two separate licensed properties on either side of a Municipal road allowance, with high quality aggregate extending between the licences and under the road allowance.

Opposition to, or stated inabilities by Municipalities or MNRF prevent access to this material. We are leaving thousands of tonnes of quality aggregate in the ground because of the red tape involved in coming to an agreement as to how to access this material.

#DYK
Leaving thousands of tonnes of quality aggregate in the ground (between two licenced sites for example) is all too common!

Background

One of the most visible examples of inappropriate aggregate resource management is in the Mosport Area. This is a concentrated area of pits within the Oak Ridges Moraine, and there are significant depths of high-quality sand and gravel reserves. Many of the licences have the ability to extract between 30 and 80 m in depth. Access to material within (and abutting within the setbacks) the Road Allowance would provide income for the Municipality, reduce operating costs and fuel expenditure, provide additional reserves without going further from market and needing to disturb new resources, and provide a viable comprehensive rehabilitation landform that ties in with surrounding lands.

We are aware of examples where access to these resources has been supported by the Municipality and MNRF. In one example, through negotiations that satisfied the Municipality and neighbours, a road was closed and relocated through a Municipal agreement. MNRF required a major Site Plan Amendment (SPA) and a licence amendment (to increase total area) to expand the licenced boundary

to include an unopened road allowance.

However, we are also aware of examples where access to these resources has been prohibited. In some cases, the road allowance is zoned to permit extraction and MNRF has insisted that even if a licence exists on either side, a new application is required for the road allowance itself.

Inconsistency across districts is particularly evident in this significant issue.

Recommendations

- MNRF has set a precedent for policy interpretation to allow both a major Site Plan Amendment and a licence amendment to access material under Road Allowances: this policy needs to be streamlined to find a common sense approach that is consistently implemented across all MNRF Districts; and,

- Establish a process where the province has the ability to step in (e.g. expropriate) to allow extraction and road re-instatement to access the provincially significant aggregate resource.

3.6 Environmental Compliance Approvals for Closed Loop Systems

Issue

Washing facilities utilizing a closed loop system design (where rinse water is collected in a settling pond to be clarified, and is then re-circulated to the wash plant to for re-use) have not historically required an Environmental Compliance Approval (ECA).

#DYK
Aggregate producers are water handlers – not water consumers.

Nearly 100% of the water used in a closed-loop wash system remains in the watershed.

Fresh, clean and purified by the sand and stone it passes through.

Although there has been no regulatory change, in 2017, the MECP changed its interpretation of exemptions to sewage work approval under *The Ontario Water Resources Act* and O.Reg 525/98 - Approval Exemptions. As a result, source ponds in aggregate sites across Ontario may now require an ECA even though they are part of a closed loop system (i.e. no discharge off-site). Producers will be required to submit detailed designs, technical reports, and potentially hydrogeological and surface water reports, and undergo an application review and public consultation process, all for internal site water management that

has no discharge off-site. This additional permitting requirement adds to the complexity and uncertainty regarding approvals for these low-risk aggregate activities. This is further complicated by inconsistent implementation across districts.

Background

Most aggregate sites that wash material have settling/wash ponds as part of a closed loop system. Water is used to rinse fine sediments from stone and gravel (i.e. washing) to produce silt free material. Washing facilities use a closed loop system design, where the rinse water is collected in a settling pond to be clarified and is then re-circulated to the source pond for re-use in the wash plant. Over 90% of the water is returned directly to the wash pond in the washing cycle.

There is no risk created by these wash ponds that requires permitting. As stated above, this new requirement simply adds to the complexity of operating a site, while providing no true value to the public.

#DYK
No chemicals are used in the production of aggregate products. It is a safe and clean industry.

Recommendation

- ECAs should not be required for wash ponds utilizing a closed loop systems for aggregate washing.

3.7 Importation of Fill

Issue

MNRF lacks the capacity to oversee the importation of fill into site licences and their current policy on the importation of fill restricts producers from conducting comprehensive rehabilitation of their sites. There is also unclear leadership and direction between MECP and MNRF regarding soil importation for rehabilitation of aggregate sites.

Background Details

Aggregate producers are legally required to rehabilitate their sites before surrendering their site licence. Through the Aggregate Resources of Ontario Provincial Standards, there are minimum rehabilitation requirements which include creating slopes (2:1 slope for quarry faces, 3:1 slope for pit faces) and establishing vegetation. Producers will often preserve the overburden and topsoil removed

before extraction for future rehabilitation. However, at many sites, the importation of soil is required to meet these minimum rehabilitation requirements.

The site plan is the primary mechanism for defining rehabilitation requirements. If it does not specify the importation of fill, the producer must apply for a major site amendment – which is a lengthy process, even though rehabilitation is a requirement under the ARA.

MNRF's current policy on the Importation of Fill for the Purpose of Rehabilitation refers to Table 1 criteria (from the MECP's "Soil Ground Water and Sediment Standards") which is not a good representation of background soils in Ontario. In fact, most soil in the province does not meet Table 1 standard. MNRF's adherence to this standard prevents producers from bringing in enough soil under their site licence to conduct comprehensive rehabilitation that is consistent with the surrounding landscape. Producers are often left with no choice but to conduct minimum rehabilitation requirements and surrender their site licence.

The MECP recently proposed new excess soil standards (which may offer some flexibility for the importation of fill into aggregate sites) with their proposed excess soil regulation. A licence or a permit issued under the ARA is recognized as an approved reuse site under the proposed excess soil regulations, however it's currently not clear whether MNRF will align their importation policy with MECPs proposed standards.

If MNRF aligns with MECP's proposed excess soil regulations, it is expected that site plans will be required to reference the new regulation. Regulations need to be updated to be consistent with this direction without the requirement for a site plan amendment.

Recommendations

- Permit by Rule should be implemented for site plans that reference MNRF's current inert fill policy to allow amendments to delete the current policy and reference the MECP BMP on Excess Soils once it comes into force.

- Aggregate Policy 6.00.03 – Importation of Inert Fill for the Purpose of Rehabilitation will need to remove the reference to Table 1 and replace it with a requirement to reference MECP proposed excess soil standards.

3.8 First Nations Consultation

Issue

The lack of clarity on what constitutes adequate consultation with First Nations communities creates uncertainty, delays and an increased risk for development opportunities for aggregate producers.

Background

The changes to the ARA in 2017 added the following clause (3.1):

> *"For greater certainty, the Minister will consider whether adequate consultation with Aboriginal communities has been carried out before exercising any power under this Act relating to licences or permits that has the potential to adversely affect established or credibly asserted Aboriginal or treaty rights."*

Unfortunately, there have been no supporting regulations, policies or guidelines developed by MNRF to provide guidance as to what adequate consultation is – a void that affects First Nations, applicants and government employees. In a number of cases, consultation has been going on for years, and applications are with MNRF for final decision. If there is not a final "sign-off" from First Nations communities, MNRF is simply not making a decision on how to proceed with these applications. This provides a void where the applicant has no appeal opportunity, and years of effort and cost sees no result. The application is essentially frozen.

In the 2017 T&P Hayes Divisional Court Decision (Hayes), a quarry licence application in the MNRF Owen Sound District was appealed by Saugeen Ojibway Nation (SON). The details provided in this decision are the best reference available as to what should be a minimum requirement for First Nation consultation. It would seem the obvious reference for MNRF to initially rely on.

In many negotiations with First Nations, there has been a request for a levy payment on a per tonne basis. OSSGA's position on this is that any renumeration has to be consistent among producers, and should be applied to all licencees and permitees so as not to create an unfair financial advantage for some operators. OSSGA believes that the tonnage licence fee is the logical instrument in which to distribute fair compensation.

Recommendations

- MNRF to establish a policy on the minimum requirements needed to demonstrate adequate consultation with First Nations that the Ministry would sign-off on to move the application forward. Initially, this could be based on the recommendations within the Hayes Decision;

- Co-ordinate consultation with Government Agencies and First Nations to establish a single review process, if all are agreeable; and,

- MNRF work towards including the First Nations as receivers of a portion of the licence and permit tonnage fee, to eliminate the requests for financial remuneration on each individual application.

#DYK
Ontario will have 18.2 million people by 2041 AND will need 3.84 billion tonnes of aggregate to build the roads, schools and infrastructure we all use.

It is vital we find a blance to meet Ontario's growing aggregate needs.

4.0 Conclusion

Within this document we have endeavoured to explain and provide examples of the complex issues that create barriers in the aggregate industry.

These obstacles are the result of years of incremental increases in regulatory burden. We recognize that many of the topics covered in this submission involve interdependencies between Ministries, agencies and levels of government, and that meaningful solutions will require discussion and cooperation.

We look forward to working with the Ontario government to removing unnecessary and redundant regulatory obstacles which slow decision-making and impede investment in aggregate production throughout the Province.

OSSGA is a not-for-profit industry association representing over 280 sand, gravel, and crushed stone producers and suppliers of valuable industry products and services. Collectively, our members supply the substantial majority of the approximately 164 million tonnes of aggregate consumed annually in the province to build and maintain Ontario's infrastructure needs. OSSGA works in partnership with government and the public to promote a safe and competitive aggregate industry contributing to the creation of strong communities in the province.

WHERE CAN I GET MORE INFORMATION?

Norm Cheesman
Executive Director
Ontario Stone, Sand & Gravel Association
T. (647 727 8774
E. ncheesman@ossga.com GravelFacts.com

OSSGA
ONTARIO STONE, SAND & GRAVEL ASSOCIATION