

Feb. 24, 2022

Integrated Aggregate Operations Section
Ministry of Natural Resources and Forestry
Submitted electronically via ERO portal

Re: ERO 019-4801 Proposed regulatory changes for the beneficial reuse of excess soil at pits and quarries in Ontario

Ministry of Northern Development, Mines, Natural Resources and Forestry proposes to rescind Policy ARA 6.00.03, Importation of Inert Fill for the Purpose of Rehabilitation, and harmonize practices with those of the Environmental Protection Act, O.Reg. 406/19 in order to facilitate rehabilitation at authorized pits and quarries under the Aggregate Resources Act. Public comment has been invited.

Green Durham Association (GDA), a not-for-profit charitable organization, has for many years worked closely with partners such as municipalities, private landowners and conservation authorities to add to conservation land holdings, the creation of trail and natural heritage linkages connecting conservation lands and communities, and the stewardship of these lands. We have worked closely with these partners to develop a conservation and trail plan for the south Uxbridge area. GDA is dedicated to protecting the forests, farmlands and natural areas which lie northeast of Toronto in Uxbridge, North Pickering and adjacent Greenbelt lands.

The southern Moraine portion of Uxbridge is studded with about 30 pits, many of which have operated for over 30- 40 years and are close to depletion. We are interested in what happens to these pits once extraction ceases, particularly in how to make aggregate pit rehabilitation and end-use more in tune with surrounding areas. The proposed legislation for beneficial re-use of excess soils tightens up soil standards covering fill importation for rehabilitation purposes, making them more consistent with soil quality standards under Ontario's Environmental Protection Act. But we have deep concerns about what has been proposed on the Environmental Registry. We believe this legislation has little to do with rehabilitation of aggregate pits, is about profit-making and is a step backwards for environmental protections to safeguard our communities and water.

Uxbridge Council passed a commercial fill bylaw in 2010 under impression that the Township could have control over fill import in the township. However, given the tremendous revenue opportunities aggregate pit owners can receive from fill import, it's hard to see why virtually every pit owner whose rehabilitation plan included the import of little if any fill, won't now seek Ministry approval to change their rehab plan to bring in massive amounts of fill. Section 66 (1) of the ARA quoted below states that Municipal fill permits and site alteration permits are "inoperative" as long as the pit or quarry is under license with the ARA. So, if the Ministry

approves a change to the Pit Rehabilitation Plan there seems absolutely nothing a municipality can do about it:

66 (1) *This Act, the regulations and the provisions of licenses and permits and site plans apply despite any municipal by-law, official plan or development agreement and, to the extent that a municipal by-law, official plan or development agreement deals with the same subject-matter as this Act, the regulations or the provisions of a licence or permit or a site plan, the by-law, official plan or development agreement is inoperative. 1999, c. 12, Sched. N, s. 1 (4); 2019, c. 14, Sched. 15, s. 17.*

We agree that rehabilitation under the ARA licence is both a necessary and positive thing; it restores the lands to uses in keeping with the nearby landscape, as intended by the ARA. Ideally this rehabilitation takes place progressively, during excavation rather than upon completion of extraction, so that the site is rehabilitated as quickly as possible, and using local soil which has been retained for this purpose. We agree that in order to rehabilitate lands used for aggregate extraction the importation of fill may at times be warranted. But this should be the exception, not the rule. Importing soils from other locations introduces more risk – to soil fertility, to water through alterations in quality and surface flow, to ecological integrity through the introduction of non-native species and contaminants, and to human health.

The nearby community lives with the expectation that disruption caused by aggregate extraction will eventually cease and the pit will be rehabilitated to a use outlined in the pit license and in harmony with the surrounding areas. The proposed legislation indicates that the Ministry can approve a plan that will allow the pit owner to bring in huge amounts of fill, with continued truck traffic, noise and other impacts adversely affecting residents, air quality, roads, and the environment, over what could be further decades. Importation of fill extends the time that disruption occurs. Not every aggregate site is appropriate to accept fill because of the characteristics of the neighbourhoods.

The proposed regulation makes it easier to use pits for fill. As indicated above, there are a few proposed changes that may better control the quality of fill imported. However, the proposal tells us that for existing pit owners authorized to import fill, rules will be added, to enable them ... *“to make specified changes to their site plan without the need for ministry review”*. We are told further that applicants on existing sites will, *“Complete consultation as directed by the ministry if requesting to make a significant change such as, to the rehabilitation plan and/or change the amount of fill (i.e. (that is) quantity) approved for importation on the site plan.”* As the specified changes are not included in this proposed regulation, it is not possible to review and comment on them. “Complete consultation” with a ministry which in our experience is woefully understaffed gives us no confidence that this will deter the import of excessive amounts of fill. Allowing operators to self-file an amendment essentially turns responsibility for oversight to private interests.

We are also told that, *“For applications proposing to fill-to-grade, potential impacts to the community from the fill operation and prolonged life of the site will be considered.”* We find this comment very discouraging, since it clearly states, that as long as the operator doesn't quite fill to grade, potential impacts to the community from fill such as continuing truck traffic for many years beyond what would have been the case had original rehabilitation plans been followed **are not even worthy of consideration**. Frankly it's hard not consider that a slap in the face to

residents who are now told they will be affected many years into the future, and to the municipalities responsible for protecting their interests.

The regulatory impact statement “**The anticipated environmental, social and economic consequences of the proposal are expected to be neutral to positive,**” is equally upsetting. One of the “**anticipated outcomes**” stated is “**Increased flexibility for aggregate site approval holders to plan for and undertake rehabilitation in a cost-effective manner and creates opportunities for diverse post-extraction land forms and land uses.**” These highlighted statements are very revealing. They clearly indicate that the Province wishes to see gravel pits on the Moraine and elsewhere as desirable locations to import fill. The comments also indicate they appear to have very little concern with local environmental and social impacts, or the ability of local government to have any influence. Instead they highlight the favorable outcome of their proposed approach, that pit owners will be able to make more money, undertake rehabilitation in a cost effective manner, and be given an edge in evolving into the new and profitable business of importing fill, while also creating for the business owner other opportunities for post extraction land uses.

The soil being imported will not be clean natural soil (Table 1), but Table 2 which contains some contaminants, but is considered suitable for most rural uses. This labeling begins by examining the past uses on the lands where fill originated and includes further study of what may only be a small thimbleful of soil from truckloads arriving at the fill site. Also, as the science evolves, significant changes have been made to raise the acceptance standards. Soil classification is far from precise, and one can question whether such soil should be considered suitable in a Moraine pit, especially if it is in an area classified as ‘High Aquifer Vulnerability’, and/or the soil isn’t really needed for rehabilitation but is simply to generate money. This proposed legislation moves the practice of dumping of excess soils into uncharted environmental territory. Has there been any controlled scientific study of the impact of dumping potentially contaminated excess soils in pits and quarries? Is this practice a risk worth taking?

Our interpretation of recent Provincial and Ministry actions, and the current changes to the legislation being considered here leads us to conclude that unless there are very significant changes and additions to this legislation, changes to rehabilitation plans will be made in most pits across the Moraine calling for massive amounts of fill, and this will become the new rehabilitation norm. To avoid this outcome, we urge the following changes in the proposed regulation:

1 The proposed legislation should provide for an exemption to ARA Sec 66 to allow Municipal bylaws to enforce approval and standards on fill import, while a license is in force, and particularly when it affects pit rehabilitation plans.

It is appropriate that the Province, and not municipalities, have control over aggregates. This is a resource which needs to be located close to market and is rightly considered a provincial priority. For the Ministry and the aggregate companies to have exclusive power to control importation of fill, however, when such importation is pursued largely to **generate revenue** and is really not necessary for rehabilitation, is very different. Unlike aggregates, there are many places to deposit fill which are reasonably close to source.

Given the impacts of fill importation on a community, and with little relationship to real rehabilitation needs, decisions on fill importation should be a local decision and not the decision of a distant and under-staffed ministry. Importation of fill to a depleted aggregate pit extends the time that community disruption occurs. Not every aggregate site is appropriate to accept fill because of the characteristics of the neighbourhood. Oversight and enforcement is better handled by municipal by-law officers who have far more knowledge of the local situation, rather than by distant and overworked Ministry officials.

It is important to have consistency in dealing equitably with fill import matters throughout the municipality rather than having dual approaches, depending on whether fill import is **inside** pits, or **outside** pits. Currently if the Municipality were to conclude, after looking at various possible site locations and the related environmental and community impact of these locations including the related truck haul routes, that the best locations were outside any pit, or in a pit that had yet to consider fill import, another pit owner where the municipality would not want fill import, could as things stand now, get approval from the Ministry to import fill regardless of all the on the ground implications, and municipal and community preference. The Province should not support such a dual approach, and one in which the Township, having the most knowledge, has little or no control.

2 The proposed legislation states that, “For existing license holders authorized to import fill to facilitate rehabilitation, add rules in regulation, that when followed, would enable approval holders to make specific changes to their site plan without the need for ministry review (i.e. (that is), self - filed amendment”). Our recommendation in 1 above, if followed, would effectively eliminate this proposed change. If that recommendation is not followed, we strenuously object. NDMNRF Management, Regulation, and Control should continue and not be diluted by passing some of NDMNRF’s responsibilities over to private interests.

3 If recommendation 1 above is not approved, the legislation should make it clear that the Ministry discourages revisions to existing pit rehabilitation plans which bring in significantly more fill than the original plan called for, and if requested, indicate the ministry will only grant approval after giving careful consideration to the potential prolonged impacts on the community and the environment and after obtaining municipal approval. In support of our recommendation that municipal approval be obtained we note that Section 36 of the Oak Ridges Moraine Conservation Plan (ORMCP) states “Municipalities and the mineral aggregate industry are encouraged to work together to develop and implement comprehensive rehabilitation plans...”. Involving the municipality in decisions to change existing rehabilitation plans enabling the significant import of fill at least makes this proposed legislation consistent with ORMCP requirements that they be involved.

Given recommendation 1 above is approved and the Ministry is no longer the final decision maker, it would still be helpful for the Ministry to also indicate that it will continue to assess proposed changes to rehabilitation plans, take into consideration the issues noted above, and make their assessment known to the local municipality as an extra layer of oversight.

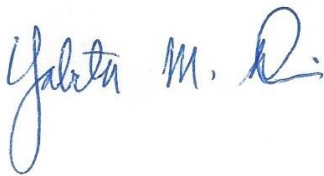
4 We support the thoughtful analysis and recommendations of the Ontario Soil Regulation Task Force (OSRTF), and their conclusion that there is no justification for placing soil into groundwater. The proposed regulation should be changed to eliminate any such possibility regardless of how stringent the limits and control might be.

5 After providing for an exemption to ARA Sec 66 to enable the creation of Municipal bylaws as proposed in Recommendation 1 above, these by laws should enable the Township to include tipping fees per tonne to not only cover municipal oversight, but also road maintenance related to fill import.

6 There is no mention of the Oak Ridges Moraine Conservation Plan and the special considerations which should be applied to pits which are on the Moraine. We urge the Ministry to uphold the Oak Ridges Moraine Conservation Plan, not weaken it. By passing laws which support the modification of existing rehabilitation plans to enable very significant fill import, the Province, which gave us the Moraine Plan to protect this land form, is instead now proposing action that will exacerbate environmental and social impacts. When the Moraine plan was introduced, a promise that was regularly repeated until very recently was that aggregate pits were to be progressively rehabilitated, with final rehabilitation soon after resource extraction was completed. Instead, the Ministry is now allowing rehabilitation plans to be changed to permit significant fill import and associated truck traffic which will occur for many years into the future, with little or no ability for local municipalities to mitigate for local impacts. The Province appears to have decided that pits on the Moraine, including the many in Uxbridge, should no longer be rehabilitated as was promised in the original license, and to citizens and municipalities when the license was approved.

6 We urge at least a 60-day further extension to this ERO posting. We believe there are many municipalities, community groups, and others who are unaware of these proposed changes and their implications. These groups are entitled to an opportunity to fully consider the implications of giving the many pit owners across the Moraine and beyond relatively free rein to change their rehabilitation plans to enable fill import, with little/no ability for the Municipality or its citizens, to influence matters, or mount any effective resistance.

Yours truly,



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