Application of Aggregate Resources Act in Haliburton Ontario

Prepared for: Environmental Haliburton! (EH!)

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December, 2007
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Foreword

This report was created for the group Environmental Haliburton! (EH!), an organization situated in Haliburton which provides a strong voice to encourage positive initiatives and oppose those initiatives that could have an adverse effect on the environment. The project was in co-ordination with U-Links as a project within a course at Trent University. The purpose of this report is to examine the Aggregate Resources Act (ARA) as it applies to Haliburton County as a newly designated area. Focus is on legislation and the role that municipalities have in the aggregate resource permit and licensing processes. It is hoped that this report will be a predecessor to further research done in this area.

Introduction

Aggregate is described as being any combination of sand, gravel or crushed stone either processed or unprocessed. Aggregate material is used in various applications including road building, residential and commercial construction. Although an essential component of these and other uses there are a number of concerns associated with these operations. Most notably, residents in close proximity to aggregate operations may experience excessive noise, dust and effects to surface and ground water. After the extraction is terminated it is necessary that the site be properly rehabilitated, restoring a site to either its original state or to a state compatible with surrounding land uses.

Recently, a number of areas in Ontario were newly designated under the ARA which has included Haliburton County (see figure 1).

The ARA has several administrative components which work together to create specific policies guiding the regulation and objectives of aggregate resources. Outlined here are the key legislative documents and ministry departments that oversee the Act and various components of aggregate resource operations.

The Aggregate Resource Act

The Aggregate Resources Act (2006) is provincial legislation that applies to all crown lands and areas designated under the Act. It outlines the management and regulation of aggregate resources of Ontario. It also requires that rehabilitation occur
where aggregate has been excavated as well as minimizing any adverse impacts of the environment due to aggregate operations.

Figure 1: The Ontario Aggregate Resources Corporation, 2006

**Provincial Policy Statement**

The *Provincial Policy Statement* (PPS) (2005) is a designation under Section 3 of the *Planning Act* which provides direction in areas of provincial interest in planning and development. Section 2.5 deals with mineral aggregate resources. The main focus is on long term use and conservation, as well as rehabilitation and extraction on prime extraction lands. The PPS is important in aggregate resource planning as it sets the tone for how municipalities should allocate and protect aggregate resources within their jurisdiction. It also defines policy on issues of environmental and heritage protection.
Ministry of Natural Resources

The Ministry of Natural Resources (MNR) is responsible for managing aggregate resources in the province and developing long term usage of this resource. The MNR is responsible for reviewing and developing policies associated with aggregate resources as well as processing all applications for licenses and permits under the ARA. Duties of the MNR also included inspecting and auditing operations as well as carrying out any enforcement of offenses. The MNR employs a number of staff who research ways to manage aggregate resources which are used to inform and educate industries, other government departments and the public.

Ministry of Transportation

The Ministry of Transportation (MTO) is responsible for the administration of aggregate operations dealing with public road construction. Wayside permits are issued in these instances and it is the MTO’s responsibility to issue and enforce those permits. On these sites the MTO conducts inspections and audits and enforces offences under the ARA.

The Aggregate Resources Trust & The Ontario Aggregate Resources Corporation

Section 6.1 of the ARA outlines the creation of the Aggregate Resource Trust and The Ontario Aggregate Resources Corporation (TOARC) (2006) as the appointed trustee. The trust enacts TOARC to comply with several responsibilities including the collection and disbursement of fees, the rehabilitation of abandoned pits and quarries or whose licenses or permits have been revoked, the collection and production of information and statistics including a summarized annual report, and providing information and education to those interested in the aggregate industry. The single shareholder of TOARC is the Ontario Stone, Sand, and Gravel Association (OSSGA). However, the TOARC board of members consists of eight individuals, four from OSSGA, and one member respectively from the Conservation Council of Ontario, the Association of Municipalities of Ontario, the aggregate industry at large, and from MNR acting as “ex officio member”.
Application of the ARA in Haliburton

Haliburton County, also called Haliburton Highlands, is a region in central Ontario consisting of four municipalities: the Township of Algonquin Highlands, the Municipality of Drysart et al., the Municipality of Highlands East and the Township of Minden Hills. The area is a mix of private and crown land and has a number of wetlands and natural areas home to a variety of flora and fauna.

As of January 1st, 2007, Haliburton County along with other areas in central and northern Ontario have been added to lands designated under the ARA. It should be noted that though the Act has always applied to crown land, there are differences in application of the ARA to private land. There are three different types of applications for aggregate operations which are described below. For any aggregate permit or license the conditions of the application are outlined in the Aggregate Resources of Ontario Provincial Standards which are specific to each of the fifteen categories of aggregate extraction.

**Aggregate Permits:** Aggregate Permits apply only to crown land and must include a site plan, technical reports, notification and consultation and must undertake a Class Environmental Assessment. Administration is carried out by the MNR and final decisions rest with them.

**Wayside Permits:** Wayside permits apply to private land but are only applicable to aggregate used for public road construction. Wayside permits are issued so that aggregates resources are easily accessible, and are close proximity to, the construction taking place. The permits are generally short term (normally 18 months) and are administered by the Ministry of Transportation. Wayside permits must include a site plan, technical reports, notification and consultation. The permits may not be issued in areas zoned and developed for residential use or in areas that are deemed to be environmentally sensitive.

**Aggregate Licenses:** Licenses apply to private land designated under the ARA and must be issued for any aggregate operation to take place. Licenses must include a site plan, technical reports, notification and consultation which includes posting under the
Environmental Bill of Rights registry. The application will also include an official plan amendment and a zoning by-law amendment.

Existing Operations: As Halliburton was previously not under the ARA there are established aggregate operations that must comply with ARA regulations. Operations are considered established if they have been in operation for at least two years. These operations have 6 months from the date the new designation has come into force to apply for a license under the ARA. In Haliburton this means operations should have registered by July 1st, 2007. These applications are not subject to the consultation and notification process or the application appeal process to the Ontario Municipal Board as outlined in the Provincial Standards. If these established operations do not apply for a license within six months they must shut down all operations. If they would like to continue at a later date they have two years to apply again or must complete the full application process. Municipalities can access information on registered aggregate operations from the various Ministry district offices.

Environment in Legislation

Under the ARA (1990), environment “means the air, land and water, or any combination or part thereof of the Province of Ontario” (Section 1.1) which is the same definition as given in the Environmental Protection Act (EPA) (1990, Section 1.1). The ARA acknowledges that operations cannot occur in areas that are environmental sensitive, however there is no definition of what a sensitive area may be and for aggregate permits it is up to the discretion of the Ministry to determine whether the environmental effects from an aggregate operation will warrant any consideration. The Planning Act (1990), in which is situated the Provincial Policy Statement (2005), does not specify a definition of the environment at all. If environmental concerns arise therefore, it is best to use legislation that gives a much more comprehensive definition on which to act. The EPA (1990) describes an “adverse effect” to the environment as the

“...impairment of the quality of the natural environment for any use that can be made of it,...injury or damage to property or to plant or animal life,...harm or material discomfort to any person,...an adverse effect on the health of any person,...impairment of the safety of any person,...rendering any property or
plant or animal life unfit for human use,…loss of enjoyment of normal use of property, and…interference with the normal conduct of business.” (Section 1.1)

This definition can be used despite Section 66.1 of the ARA (1990) which states that the Act applies despite any “municipal by-law, official plan, or development agreement [that] deals with the same subject-matter as this Act”. This section does not intend to imply that the ARA supersedes all other legislation. Matters dealing with the environment, health and safety are considered a different subject-matter and still apply to aggregate operations.

**Municipal Role in the ARA**

Municipalities play a significant role in the ARA and there are several specific rights and responsibilities outlined in the ARA (1990) as well as matters that are left to the municipality’s discretion. Municipalities must be given notification of all aggregate licenses and permits including copies of the site plan, as well as notice of any license transfers and notices of suspension if they occur. For aggregate licenses only, municipalities are responsible for full public notification of the new operation including at least one public meeting. Depending on this situation more public consultation may be needed to resolve conflicts beyond the minimum requirements.

Despite being a part of ARA regulation, it is not always clear the level of responsibility or authority municipalities on aggregate resources. Legislatively, there are some seemingly contradictory sections dealing with aggregate resources. On one hand, the ARA (1990) states that aggregates cannot be extracted where any municipal by-law prohibits use of land for aggregate use, but in the PPS (2005) it is clearly stated that reasonable aggregate use should be made available without having to demonstrate a need for it. The PPS outlines the general vision the province has for aggregate use and the responsibility of municipalities to adhere to that direction. So while the PPS states that aggregate resources should be made available, municipalities are also accountable for the protection of water resources and heritage sites; two directives which are often in opposition to each other.
One way for municipalities to outline their own direction on aggregate resources is through their official plan. The most important part of the plan, in relation to aggregates, would be to ensure that significant environment areas are protected from extraction; a clear direction in an official plan will aid in any disagreements over licenses. Municipal plans should be sure to follow regulation in accordance with the ARA but by setting certain priorities for the community it ensures that future generations will have the benefits that Halliburton County offers today.

During the application process, municipalities have different influences depending on the type of application. For aggregate licenses, all consultation and notification must go through the municipality as does the zoning and official plan amendments. It is for this reason that a comprehensive official plan will help municipalities if they wish to prevent or put additional conditions on an operation. If municipalities have contradictions with a potential operator, it is beneficial to have legislation that supports the municipality’s position. If conflicts arise after the establishment of a pit or quarry, municipalities have no authority to investigate or enforce regulations beyond offences to municipal by-laws. Any complaints received based on the content of the ARA or other provincial legislation must be dealt with by the ministry.

Influencing wayside permit applications is significantly more difficult for municipalities as the permits do not require zoning or official plan amendments. The same is also true for aggregate permits. Throughout both processes, municipalities may comment on the application and reports submitted. In truth however, it remains with the Ministry to make the final decision, and municipality concerns may or may not be taken into full consideration.

To ensure the best possible outcome of having aggregate operations, the municipalities should engage in all aspects of the application process. Proper communication to the general public is very important as dealing with potential conflicts before they arise is beneficial to all parties. It is important for municipalities to respect the rights of citizens in obtaining information and it is in the best interest of everyone to have an inclusive consultation process when dealing with public concerns. Cooperation between the public, government and industry is important if conflicts are to be resolved.
Summary and Recommendations

Introduction of ARA regulation is a good step towards improved standards and control over aggregate resources in the Haliburton area. There have been significant concerns however, over the implementation of this Act and the Environmental Commissioner of Ontario (ECO) has frequently pointed to areas which need improvement. Recently, the ECO commented on both sand and gravel policy in Ontario and specifically the ARA. The ECO pointed to a lack of enforcement, a lack of conservation and long-term planning, and a poor record of rehabilitating aggregate sites as key areas needing to be addressed (Environmental Commissioner of Ontario, 2005-2006).

In a report done May 2007, the ECO illustrated the shortcomings of having less funding and staff to carry out their responsibilities properly. In a case study done on aggregate resources the MNR was found to be lacking the capacity to carry out their responsibilities. Auditing targets are not being met and rehabilitation activates are not being properly verified.

Given the limitations of provincial legislation it is imperative the municipalities are aware of and take responsibility for the aggregate operations in their jurisdiction. To do so it is recommended that changes in official plan legislation reflect the ARA regulation and the municipal position on aggregate resources. There is the opportunity to comment on most steps of the application process and the municipalities should take advantage of this. As the municipality is representing its citizens it is important that full public participation is provided and encouraged.

The ARA is meant to bring stricter and more uniform application of regulation and monitoring for these valuable and important resources. The ability to blend varying agencies and legislation into clear and understandable guidelines will be challenging. It is recommended that future research expand on the knowledge base of aggregate resources in Haliburton and continue to update on associated legislation.
References


Environmental Commissioner of Ontario (ECO). 2007. Doing less with less: How shortfalls in budget, staffing and in-house expertise are hampering the effectiveness of MOE and MNR. A special report to the Legislative Assembly of Ontario.


