OSSGA Comments on Bill 39

Table Summarizing Proposed Revisions and Rationale

December 2016

#	Section of ARA	Text	OSSGA Proposed Revision	OSSGA Rationale
1.	Section 2	No proposed changes.	Add *(e) to permit recycling of aggregate in all pits and quarries.*	Currently in order for a licensee or permittee to recycle aggregate, this activity must be expressly permitted on the Site Plan. For those operators that want to start recycling, a Site Plan amendment can be a lengthy approval process. PPS identifies *"Mineral aggregate resource conservation shall be undertaken, including through the use of accessory aggregate recycling facilities within operations, wherever feasible."* This activity should be permitted without the need for further approvals.
2.	Subsection 3.1	New section*: 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.*	*For greater certainty, the Minister will consider whether ~~adequate~~ consultation with Aboriginal communities has been carried out ~~before exercising any power under this Act~~ in accordance with the regulations ~~relating to~~ where an application for a licence~~s~~ or permit~~s~~ ~~that~~ has the potential to adversely affect established or credibly asserted Aboriginal or treaty rights.*	As the term "adequate" is not defined, this terminology brings more confusion than currently exists and should be deleted from the legislation. Currently there is a timeline and list of requirements for consultation within the Provincial Standards. By addition First Nation consultation as a new legislation requirement, the Ministry needs to expand the regulations to include details on timing and a list of requirements for First Nations consultations. It is critical that there be a timing component to any regulations so that applications are maintained as proponent driven and there is a way to complete the process.
3.	Subsection 7 (2)	Subsection 7(2) of the Act is amended by: *striking out "from a pit or quarry" wherever it appears*	Do not make proposed change.	The inclusion of recycled material in the definition of aggregate annual tonnages could discourage recycling, contrary to PPS. This section could also capture other

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		and substituting in each case "from the site of a pit or quarry".		materials leaving the site that have not previously been considered in the tonnage limit (i.e. imported material used for blending and resale, imported material for plants and imported material to be processed). It appears the full impact of this change has not been understood or recognized and therefore should not be included at this time.
4.	Subsection 7(2)	Subsection 7(2) of the Act is amended by: *striking out "from a pit or quarry" wherever it appears and substituting in each case "from the site of a pit or quarry".*	If OSSGA's proposed revision for #3 is not accepted, as an alternative consider the following: *striking out "from a pit or quarry" wherever it appears and substituting in each case "from the site of a pit or quarry". This section only applies to applications for licences made after the date this section comes into force.*	If this legislative change is to occur, then it should only apply to newly licenced pits and quarries so tonnage limits and site operations can clearly reflect proposed activities on site. There currently is no appropriate mechanism to amend tonnage licences due to this legislative change.
5.	Subsection 11(6)	Repeal section and replace with: *(6) the parties to the hearing are,* *(a) the applicant;* *(b) the person who made the objection;* *(c) the Minister, if he or she notifies the Board of his or her intention to be a party; and* *(d) such other persons as are specified by the Board.*	*(6) the parties to the hearing are,* *(a) the applicant;* *(b) the person who made the objection;* *(c) the Minister, ~~if he or she notifies the Board of his or her intention to be a party~~; and* *(d) such other persons as are specified by the Board.*	The actual rewording of the legislation is confusing in that the term "party" is introduced. Experience has shown that once at the OMB, objectors have an opportunity to fall under "party" or "participant" status. Bring the term "party" into legislation raises questions as to the participant role. Bill 39 deviates from current MRNF policy and proposes that staff not attend, unless as an "objector" having party status. With increased project funding, MRNF should be attending prehearings or hearings, in order to introduce themselves as a friend to the Board, testify as to the legislation, regulations and policy, and overseeing any changes to Site Plans to ensure "enforceability".
6.	Subsection 11(8)	Add the following paragraph: *4. If all of the parties to a hearing, other than the applicant, withdraw*	*4. If all of the parties to a hearing, other than the applicant, withdraw before the commencement of the*	OSSGA supports this change and wants to ensure that it applies to objections being resolved by a mediation process as well.

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		before the commencement of the hearing, the Board may refer the application back to the Minister and the Minister shall decide whether to issue or refuse to issue the licence.	*hearing or after a mediation, the Board may refer the application back to the Minister and the Minister shall decide whether to issue or refuse to issue the licence.*	
7.	Subsection 15.1(2)	Repeal section and replace with: *(2) A licensee shall prepare a compliance report in accordance with the regulations and submit the report in the prescribed manner annually or at such other intervals as may be prescribed.*	*(2) A licensee shall prepare a compliance report in accordance with the regulations and submit the report in the prescribed manner annually. ~~or at such other intervals as may be prescribed.~~*	OSSGA continues to support annual Compliance Reporting at a minimum, to maintain accountability to the public and the local municipalities.
8.	Subsection 40.1(2)	Repeal section and replace with: *(2) A compliance report shall be prepared and submitted in accordance with the regulations annually or at such other intervals as may be prescribed.*	*(2) A compliance report shall be prepared and submitted in accordance with the regulations annually. ~~or at such other intervals as may be prescribed.~~*	OSSGA continues to support annual Compliance Reporting at a minimum, to maintain accountability to the public and the local municipalities.
9.	Subsection 62.2(1)	Add the following section: *62.2(1) if the regulations so provide, technical or specialized studies or reports that an applicant for a licence or permit or a licensee or permittee is required under this Act to prepare shall be reviewed in accordance with the regulations by persons or entities outside the ministry who have the prescribed qualifications.* *(2) persons or entitles conducting a review under this section shall report on their review to the*	*62.2(1) if the regulations so provide, technical or specialized studies or reports that an applicant for a licence or permit or a licensee or permittee is required under this Act to prepare shall be reviewed in accordance with the regulations by persons or entities outside the ministry who have the prescribed qualifications.* *(1.1) Before requiring a review under this section, the Minister shall:* *(a) Give the applicant, licensee or permittee at least 30 days notice of his or her intent to require a review under this section; and*	OSSGA submits that if the MNRF feels a third party peer review is warranted then there should be a legislated requirement for notice to and consultation with the applicant if the MNRF expects the applicant to pay for the review.

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		Minister in accordance with the regulations. *(3) In such circumstances as may be prescribed, the cost of a review conducted under this section shall be paid by the applicant, licensee or permittee, as the case may be, in accordance with the regulations.*	*(b) Give the applicant, licensee or permittee 30 days to make representations to the Minister on the need for the review, the terms of reference for the review and the cost of the review, and (c) Consider whether a peer review is required by a municipality or conservation authority in which case the Minister shall not require a review under this section.* *(2) persons or entitles conducting a review under this section shall report on their review to the Minister in accordance with the regulations.* *(3) In such circumstances as may be prescribed, the cost of a review conducted under this section shall be paid by the applicant, licensee or permittee, as the case may be, in accordance with the regulations.*	
10.	Subsection 62.4	Add the following section: *62.4 (1) Subject to subsection (2), the Minister may direct a licensee or permittee to, …*	Delete subsection 62.4.	The greatest concern OSSGA has regarding this new provision is the potential for approved licenced areas to be reduced, resulting in valuable, previously approved aggregate resources being "sterilized". This would have considerable implications on asset valuations and the ability for producers to retain investor confidence. There are adequate and appropriate safeguards already in place to properly manage sites with older approvals. Environmental permits (ECA's and PTTW) are required to be updated. Endangered species are protected, regardless of the status of the licence. Furthermore, the MNRF already has the authority to

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				amend site Plans through a process that provides a reasonable degree of protection for licensees.
11.	Subsection 62.4	Add the following section: *64.2 (1) Subject to subsection (2), the Minister may direct a licensee or permittee to,* *(a) conduct any inventory, survey, test or study that is usually required to be conducted and submitted as part of the documentation required to accompany an application for a licence or permit under this Act; and (b) submit a report on the inventory, survey, test or study to the Minister.* *(2) The Minister shall make a direction under subsection (1) only if he or she considers it necessary for the proper administration of this Act after considering, …* *…(8)Any costs or expenses incurred by the Minster under subsection (7) shall be paid by the licensee or permittee and constitute a debt due to the Crown that may be recovered by any remedy or procedure available to the Crown by law.*	If OSSGA's proposed revision for #10 is not accepted, as an alternative consider the following: *64.2 (1) Subject to subsection (2), the Minister may direct a licensee or permittee to,* *(a) conduct any inventory, survey, test or study that is usually required to be conducted and submitted as part of the documentation required to accompany an application for a licence or permit under this Act; and (b) submit a report on the inventory, survey, test or study to the Minister.* *(2) The Minister shall make a direction under subsection (1) only if there is a proven scientific basis for concern and he or she considers it necessary for the proper administration of this Act after considering, …* *…(8)Any costs or expenses incurred by the Minster under subsection (7) shall be paid by the licensee or permittee and constitute a debt due to the Crown that may be recovered by any remedy or procedure available to the Crown by law.* *(9) In no case shall the existing licenced reserves be reduced as a result of anything required to be done under subsection (1).*	It is critically important to the industry that Bill 39 protect existing resources and the ability for aggregate producers to continue with their business with certainty. The legislation must clearly protect the viability of the existing reserves.

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12.	Subsection 67(1)	Add the following clause: *(o.5) defining "recycled aggregate" for the purposes of subsection 71.1(4)*	Do not make proposed change.	See #3 above.
13.	Subsection 71.1(2)	Add the following section: *71.1(2) Every licensee or permittee of a pit or quarry shall ensure that the amount of aggregate removed from the site in any calendar year does not exceed the total amount of aggregate that the licensee or permittee is entitled under the licence or permit to excavate at the pit or quarry or remove from the site during the year in question.*	*71.1(2) Every licensee or permittee of a pit or quarry shall ensure that the amount of aggregate ~~removed~~extracted from the site in any calendar year does not exceed the total amount of aggregate that the licensee or permittee is entitled under the licence or permit to excavate at the pit or quarry ~~or remove~~ from the site during the year in question.*	See #3 above.
14.	Subsection 71.1(4)	Add the following section: *71.1(4) In subsection (2), "aggregate" includes recycled aggregate as that term is defined by regulation.*	Do not make proposed change.	See #3 above.