

May 1, 2017

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Ms. Zeran:

**Re: Proposed changes to Regulation 244/97 (under the *Aggregate Resources Act*)
regarding aggregate fees and royalties**

The following is a joint submission from The Top Aggregate Producing Municipalities of Ontario (TAPMO) and the Ontario Stone, Sand & Gravel Association (OSSGA) on the proposed changes to Regulation 244/97.

Since 2012 TAPMO and OSSGA (TAPMO/OSSGA) have been working in partnership on a shared set of recommendations regarding the aggregate levy. These recommendations were, and continue to be, as follows:

1. Levy must be charged on all primary aggregate product in Ontario (licences, permits under the ARA, but also product extracted under the Mining Act in non-designated areas of Ontario).
2. Money to municipalities must be used for infrastructure only.
3. Exports out-of-province and imports into Ontario must be captured by the levy.
4. Discrepancies between the *Mining Act* and the *Aggregate Resources Act* must be resolved (this has been resolved with Bill 39 and the proposed regulations).
5. More funding for the MAAP program in TOARC be provided.
6. Increased levy MUST result in more monitoring and enforcement of the ARA.
7. Levy can no longer be directed into general revenues (OSSGA/TAPMO have historically suggested the creation of a Designated Administrative Authority (DAA) to achieve this recommendation).

While the proposed changes to Regulation 244/97 are a step in the right direction, TAPMO/OSSGA remain concerned that the majority of the seven recommendations have not yet been incorporated into the regulations. We believe these omissions will seriously undermine the government's ability to carry out its public responsibilities to appropriately monitor and enforce the Aggregate Resources Act (ARA).

TAPMO/OSSGA recognize it will take time to implement the seven asks and we understand that the government is planning to implement future levy increases. That said there are concerns that this first set of increases sets an inappropriate precedent for future changes. Namely, that

the provincial government portion of the increase is being directed into general revenues, with no assurance that these monies will be spent on supporting the ARA through MNRF.

The industry is willing to pay a higher levy, but for these funds to be a true levy, and not a tax, the monies must be dedicated to supporting the aggregates program at MNRF and municipal infrastructure.

TAPMO/OSSGA would be more supportive of the new levy structure if the proposed regulations set out a schedule for the future increases – as well as a commitment to resolving the outstanding issues. The balance of this submission outlines our recommendations on achieving such a schedule.

TAPMO/OSSGA Three-Phased Approach Solution

In preparing our joint submission – there was one area of concern that needed to be reconciled between the two groups – the implementation date of the first increase.

OSSGA and its members have a serious concern with respect to the July 1, 2017, implementation date proposed in the regulations. Changing the fee structure mid-year doesn't allow companies to account for an increase in fees on already awarded tenders for aggregates for use in road construction and other projects. Further, the introduction of a levy on permits will take time to implement to ensure a seamless transition to collecting these fees.

TAPMO members on the other hand are seeking additional funds to help pay for infrastructure as soon as possible.

In joint discussions, TAPMO/OSSGA developed a compromise solution. We are recommending that the levy increase be carried out in a three-phased process with implementation dates starting January 1, 2018 and continuing annually to January 1, 2020.

TAPMO/OSSGA Proposed Levy Increase Schedule								
	Current		Phase I		Phase II		Phase III	
			Jan. 1, 2018		Jan. 1, 2019		Jan. 1, 2020	
Local Municipalities	\$	0.060	\$	0.180	\$	0.240	\$	0.300
Tier II Municipalities	\$	0.015	\$	0.045	\$	0.073	\$	0.100
MAAP	\$	0.005	\$	0.009	\$	0.030	\$	0.050
Province	\$	0.035	\$	0.063	\$	0.037	\$	0.010
Designated A A	\$	-	\$	-	\$	0.040	\$	0.080
TOTAL Levy	\$	0.115	\$	0.297	\$	0.418	\$	0.540

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Phase I of the implementation will be more heavily weighted to the municipalities. Under this proposal the municipalities will have to wait an additional six months for a levy increase – but the amount of the increase will be greater.

One component where TAPMO and OSSGA have not reached consensus is with respect to the **timing** of the resolution of our joint recommendation #3 regarding imports/exports.

While both TAPMO and OSSGA support the need to resolve the import/export issue, OSSGA believes that Phase I should be contingent upon its resolution. TAPMO, having agreed to the January 1 implementation date, wants to ensure there is no further delay to municipalities receiving the increased levy – regardless of whether there has been a resolution to the import/export issue by January 1, 2018.

Both parties remain firm that this is an issue to be resolved. Imposing a levy on Ontario aggregate, while allowing imported product from the U.S., puts Ontario product at a disadvantage. As the levy amount increases, this problem is exacerbated. International aggregate imports should be subject to the same aggregate levy as products extracted in Ontario. To ensure a level playing field, one solution could be to require the receiving party (typically an aggregate producer or construction company) to charge the levy to the end user and remit those funds through TOARC. This would require some revisions to TOARC's mandate. To ensure that Ontario exports are competitive internationally, the levy should be reduced by the municipal portion (typically when aggregate is shipped by barge/ship).

Phases II and III will increase the levies to the levels originally recommended by TAPMO/OSSGA in 2012. These phases should be contingent on the resolution of remaining outstanding issues.

As the schedule illustrates, **Phases II and III** are more heavily weighted to increases in monies to TOARC for the MAAP program as well as monies to increase funding to MNRF for enforcement and oversight (due to the fact that the municipalities were given a proportionately higher increase in Phase I).

The above chart assumes, as per our previous recommendations, that a DAA be established to provide assurances that monies are used as a levy and not as general revenue. It is important to note that as an alternative to establishing a DAA, TAPMO/OSSGA would be satisfied with some other mechanism that provides assurance that the monies are directed to MNRF for enforcement and oversight.

Increases beyond the schedule outlined above should not be annually indexed to the Ontario Consumer Price Index. The amounts of these increases would be nominal (e.g. $\$0.54 \times 2\% = \$0.0108/\text{tonne}$). This would create a costly burden for producers to administer. However, the certainty provided by a prescribed formula would be welcome. This would allow producers to incorporate the rates into long-term contracts. It is therefore recommended that the increases be scheduled at three year intervals.

Balance of Outstanding TAPMO/OSSGA Recommendations

To be implemented prior to the execution of Phases II and III

#1 Levy must be charged on all primary products produced in Ontario. To ensure a level playing field across the Province, it is important that the levy be charged in all jurisdictions. To achieve this objective all of Ontario would need to be “designated” under the *Aggregate Resources Act* for the purposes of the levy assessment only.

#2 Money to municipalities must be used for infrastructure only. The municipal portion of the levy should be directed towards infrastructure spending. The levy has historically been a way to assist municipalities for the impact on infrastructure in the communities that host aggregate sites. As such it should be explicit that the levy money be used for municipal infrastructure projects.

#3 Exports out-of-province and imports into Ontario must be captured by the levy.

[As referenced above, OSSGA and TAPMO have differing positions on timing.]

Imposing a levy on Ontario aggregate, while allowing imported product from the U.S., puts Ontario product at a disadvantage. As the levy amount increases, this problem is exacerbated. International aggregate imports should be subject to the same aggregate levy as products extracted in Ontario. To ensure a level playing field, one solution could be to require the receiving party (typically an aggregate producer or construction company) to charge the levy to the end user and remit those funds through TOARC. This would require some revisions to TOARC’s mandate. To ensure that Ontario exports are competitive internationally, the levy should be reduced by the municipal portion (typically when aggregate is shipped by barge/ship).

#4 Discrepancies between the Mining Act and the Aggregate Resources Act must be resolved.

We are pleased to see that the proposed changes under the section “Proposed Annual Fees for Aggregate Permits” address the inequities between the Mining Act and the ARA. Since some operations which are designated under the Mining Act are producing product and competing in the market place it is important that the proposed changes remain.

#5 More funding for the MAAP program in TOARC be provided. A major component of the levy amount that should be considered is the program funding for the MAAP program at TOARC. OSSGA is a strong supporter of the work done by the MAAP program and it has been clearly stated that this program is underfunded. An increase in the levy must be accompanied by a significant increase to the MAAP program. This has been reflected in our recommendations for Phase II and III of the increases.

It has been established that with current funding levels it will take the MAAP program 100 years to complete their work on abandoned sites in the province. As such, the proposed increase is not sufficient and the MAAP program should see a greater increase in levy funding to help close this gap.

#6 Increased levy MUST result in more monitoring and enforcement of the ARA. An important way the aggregate community can build public trust with host communities is by demonstrating its compliance with ARA regulations. The industry wants to prove to the public that it exceeds

regulations. Money must be dedicated to increased monitoring and enforcement to achieve this public trust. In time, that could translate into less public outcry, fewer OMB hearings – and ultimately a balanced, environmentally and economically friendly approach to meeting the aggregate needs of all Ontarians.

#7 Levy should no longer be directed into general revenues. TAPMO/OSSGA has previously recommended that a DAA be established. This would allow the program to provide better administration of internal processes such as licence applications and site plan amendments as well as better enforcement of licensed and permitted properties. If the government would prefer not to establish a DAA, it must develop some other mechanism that provides assurance that monies are being used to support the aggregate industry through enforcement and oversight by MNRF, and not as a tax being directed into general revenues.

Conclusion

TAPMO/OSSGA appreciates the opportunity to provide its input as part of the review of aggregate fees. We hope to continue to participate in the process as it unfolds. To that end, we would be happy to discuss any of the issues raised in this letter further.

Thank you again for the consideration of our comments. Should you have any questions or concerns please do not hesitate to contact Norm Cheesman at ncheesman@ossga.com or 647-727-8774 or Dennis Lever at DLever@puslinch.ca or 226-971-2067.

Sincerely,

**ONTARIO STONE, SAND & GRAVEL
ASSOCIATION**



Norm Cheesman
Chief Executive Officer

**TOP AGGREGATE PRODUCING
MUNICIPALITIES OF ONTARIO**



Dennis Lever
Chair, Top Aggregate Producers of Ontario
Mayor, Township of Puslinch

c.c. The Hon. Kathryn McGarry, Minister, Natural Resources and Forestry
The Hon. Bill Mauro, Minister, Municipal Affairs