

A submission on Bill 39, Aggregate Resources and Mining Modernization Act, 2016, made to the Standing Committee on Justice Policy

Sue Munro, Chair
Danielle Emon, Secretary
Citizens Against Melrose Quarry (CAMQ)
February 28, 2017

Please accept this submission in response to the recent invitation by the Standing Committee on Justice Policy for submissions on *Bill 39*.

Thank you for allowing Danielle and I to speak with you. I am an RN, and Danielle is a library cataloguer. We represent Citizens Against Melrose Quarry (CAMQ), a not-for-profit organization formed in response to deep concerns about a proposal for an additional quarry immediately adjacent to the existing Long's Quarry in Tyendinaga Township, Hastings County. This is a rural community that has no municipal drinking water system, and appears to fall outside the scope of the protections established through the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), and other pieces of legislation. (McClenaghan and Lindgren) We ask the Standing Committee on Justice Policy to consider our experience.

The current Long's Quarry has been operating below the water table in Tyendinaga Township, since the mid 1990's with documented concerns from residents. (Milligan)

A 2004 proposal to amend the Hastings County official plan to allow 60 acres to be zoned for the proposed Melrose Quarry drew concerns from residents, and are documented in planning department minutes. (Hastings County. Planning, Land Division, E 9-1-1 Committee)

In April, 2011 an MNR notice for an ARA license was posted. Residents objected in writing to the township and to the county. In January, 2013 Tyendinaga Township posted a notice for a proposed zoning amendment. Copies of the proponent's consultants' reports were provided. After 9 years, residents were given 5 weeks to respond. Zoning and licensing issues are still not resolved.

Ministry of Municipal Affairs and Housing (MMAH) – a brief FOI review:

- Hastings County adopted the application for the official plan amendment (OPA) in June, 2004 and forwarded the request to MMAH without consultants' reports
- Four months later, MMAH notified Hastings County that the time frame under the Act had expired. They recommended repealing the original by-law and adopting a new one.
- The EBR consultation period for this application closed in November, 2004.
- Consultants' reports were produced by the proponent seven years later in 2011. Citizens were not informed, nor was the EBR reopened.
- The MMAH stated: "This amendment has little potential to impact Aboriginal interests." Even so, the Mohawks of the Bay of Quinte had ALREADY started research for a land claim for this location. There have been 2 other land claims in Tyendinaga.
- The OPA was passed in August, 2012 despite an outstanding MNR objection over endangered species
- The proponent told Hasting County that there would be no increase in the tonnage removed from the quarry, however in 2013 the MNRF confirmed that the second quarry could double the extraction from the area.
- Our questions: Why is there little communication between ministries and a reliance on operator's word? Did MMAH perform its duties with due diligence?

Ministry of the Environment and Climate change (MOECC) & Ministry of Natural Resources and Forestry (MNRF):

We wish to thank representatives from the MOECC and the MNRF for meeting with CAMQ last Fall to share our current concerns. We share further observations with you:

- In 2005, MOECC denied the operator's application for A Permit to Take Water (PTTW) for current Long's Quarry. The proponent continued to operate, but did not keep records – MOECC became aware of this in 2011, but no charges were laid. (Lindgren, Castrilli, and Fleming)
- In the 'one window MMAH review,' an MOE reference to the adjacent Long's Quarry, suggested they *were* aware that the operation continued to exist. Why was the quarry permitted to operate without PTTW?

- In 2012, a 2 year PTTW was approved for 4 million litres/day in spring thaw, and 1.3 million litres/day the rest of the year, a considerable jump from less than 50,000 litres/day only months before. This application was not posted on the EBR at the time.
- Requests to the MNRF for the 2004 to 2011 Long's Quarry ARA inspections only returned a 2010 inspection – mislabeled as an 'above water inspection.' How effective has past oversight been? Did the MNRF know Long's Quarry was operating from 2005 until 2011 without a PTTW?
- In 2014, the MOECC issued a one year PTTW for the Long's Quarry. The Canadian Environmental Law Association (CELA) filed a successful Leave to Appeal on our behalf. The Environmental Review Tribunal (ERT) heard the case in May, 2015.

Environmental Review Tribunal (ERT) remarks and other findings:

- This region contains one low yielding, vulnerable aquifer from which residents can draw drinking water.
- In its "Analysis and Findings," the ERT report [205] (Lindgren, Castrilli, and Fleming) questioned why 300 domestic well users and farmers within a 2 kilometer area would not trigger studies
- The nearest municipal water supply is 20 km away
- The aquifer immediately surrounding the Long's Quarry has already been largely drained
- The proposed Melrose Quarry would double the extraction footprint
- The ERT report [217] recommended that the need for a cumulative impact study be reassessed by the Director if the Melrose Quarry was approved (Lindgren, Castrilli, and Fleming)
- Citizens took financial responsibility for hydrogeological studies required to inform CELA's legal team
- Complaint records held by the proponent are not consistent with the historical record; citizens are often unable to identify the correct agency through which to lodge complaints
- Dianne Saxe, Environmental Commissioner for Ontario, reviewed this hearing and concluded: "Is this really the best way to protect and allocate groundwater?" (Saxe)

Current Status:

- The current PTTW for Long's Quarry was issued in 2015, and is valid for 5 years.
- MNRF has lifted the restriction on the endangered species, even though its status is still listed as 'threatened'
- MNRF has stated that the current ARA application will be referred to the OMB
- Peer reviews are being paid for by the municipality. To date hydrogeological concern remains a barrier. In 2013, the hydrogeological peer review concluded that it could NOT support aggregate extraction at this location. In Spring, 2014 the Hastings County Planner "opened" a sealed letter, treated it as a draft, and requested that the peer reviewer change their conclusion from 'cannot support' to 'can support' the ARA and PTTW applications, subject to specific recommendations.
- Hastings Federation of Agriculture assisted with costs for a planning review
- The quarries are situated close to a recreation centre and between the hamlets of Melrose and Blessington. The main haul route runs past an elementary school. Building permits for homes have continued to be issued in the vicinity despite the OPA application 13 years ago.
- Do one window reviews provide sufficient opportunity for the sharing of necessary information?

A review of mechanisms that might help us:

While the EBR *Statements of Environmental Values* show support for sustainable use of water, we have difficulties finding corresponding language to protect rural drinking water sources.

- Clean Water Act (CWA): places an emphasis on municipal Source Water Protection. In a letter to the Honourable Glen Murray, CELA makes reference to the Auditor General Report, of 2014 and 2016 which requests the ministry "address threats to sources of water that supply private wells and intakes." (Office of the Auditor General of Ontario) CELA calls for an expansion of the CWA regime in order to include private wells in statutory and regulatory protection schemes that currently fall through the cracks between the CWA and tools in the *Planning Act* and the *Municipal Act*.

- Aggregate Resources Act (ARA) -- Bill 39, Section 11(1) and 26(h) call for an amendment to Clause 12 (1) (e) of the ARA to include municipal drinking water sources. We respectfully request that the word ‘municipal’ be removed from these clauses, and be replaced with the phrase “drinking water sources.”

Through our experiences, we ask:

- For openness and transparency with our ministries
- For better cross-communication between ministries
- That Bill 39, and ultimately all legislation that supports the sustainable use of water, protect rural well users and not just municipal water supplies
- That MNRF consider other ministries’ non-compliance issues when assessing aggregate licences for compliance
- When assessing impacts on groundwater, consider large volume water taking AND residential water needs, coupled with research on climate change. Ask: How does pumping billions of litres of water affect a highly vulnerable, and a weak recharge environment such as the one near Blessington Creek, Tyendinaga Township? (Quinte Regional Groundwater Study. Final Report). Is this sustainable development?
- That MNRF utilize a peer review process in its decision making
- That soil study/testing be mandatory on land proposed for aggregate that is currently growing crops
- That aggregate license applications be time limited
- That funding be made available to citizens for expert advice and peer review -- particularly if the MNRF is referring the case to OMB for a decision.

Conclusion:

On [November 15, 2016](#), the Hon. Kathleen Wynne stated that “it is unacceptable that anyone in Ontario would not have clean, drinkable water.” In 2010 the United Nations recognized the human right to water. When placing a high priority on ‘close to source aggregate,’ gaps in oversight and legislation leave rural residents vulnerable, particularly with regards to drinking water. We ask that through this legislation you set the standard for addressing rural water use to ensure safe and healthy communities.

Thank you.

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November 27, 2016

Hal Leadlay
Coordinator, Ministry of Natural Resources and Forestry, Policy Division
Natural Resources Conservation Policy Branch
Resource Development Section
300 Water Street
Peterborough, ON
K9J 8M5

Re: EBR Registry Number 012-8443 –
Schedule 1 of Bill 39 – Aggregate Resources and Mining Modernization Act, 2016

Dear Mr. Leadlay,

We understand that *Bill 39, An Act to amend the Aggregate Resources Act and the Mining Act*, has passed its second reading in the provincial legislature and that comments are being requested via EBR Registry Number 012-8443. We are putting forth our comments and concerns. Leading up to this, our responses to *Blueprint for Change* were submitted on December 13, 2015 under EBR Registry No. 012-5444 in which we stated our concern about the lack of risk mitigation requirements for rural areas that are dependent on vulnerable groundwater reserves.

Citizens Against Melrose Quarry (CAMQ) is a not for profit organization formed by a large group of residents who have deep concerns about the proposal of an additional quarry (Melrose Quarry) immediately adjacent to the existing Long's Quarry in Tyendinaga Township, Hastings County. The footprint of the combined operations (with the berm removed) would encompass over 100 acres and would allow for an annual extraction of 1 million tonnes of aggregate (500,000 tonnes per quarry). The expanded operation would also require the removal of billions of litres of water from the surrounding water table to facilitate quarrying operations. These quarrying operations are positioned between two Hamlets (Blessington and Melrose) – both of which rely on groundwater from one vulnerable aquifer, and neither of which have access to municipal water supplies. This area also supports a public school, a community centre, a number of residences, small businesses and farms.

We are concerned about the strength and clarity of wording in Bill 39 in relation to groundwater. While Bill 39 (clauses 12 (1) (e) and 26(h)) proposes to add language to the legislation to “include... municipal drinking water sources” the proposed statutory changes do not include enough protection for *areas where Ontarians are completely reliant on groundwater for drinking and agricultural use*. This concern was echoed in the debates for Bill 39 by Mr. Kevin Flynn, Mr. Wayne Gates and Mr. Peter Tabuns. In debate on November 15, 2016, Laurie Scott expressed her concern about the cumulative impact of aggregate operations on water resources; and Mr. Mike Colle summed up the impact of aggregate operations on small rural communities. Finally, in other discussions about

clean water on the same day, the Honourable Kathleen Wynne states “that it is unacceptable that anyone in Ontario would not have clean, drinkable water.” We echo this concern.

People in Tyendinaga Township, Hastings County, are completely reliant on residential wells for drinking water. In the Spring of 2015, CELA (Canadian Environmental Law Association) represented citizens who were concerned that the large amount of water taking would have an adverse impact on local groundwater supplies. With a zoning request on the table for a second quarry adjacent to the first, and the nearest municipal drinking water source at 20 km away, residents continue to be concerned about long term groundwater supplies and aquifer recharge. **We respectfully request that you remove word ‘municipal’ from clauses 12(1)(e) and 26(h) in Bill 39 and use the more regionally inclusive phrase “drinking water sources.”** Finally, given the concern for water taking we believe the MNRF should forward ALL applications where hydrogeological study is required for peer review.

We are pleased with the strengthening of the Endangered Species condition. In Tyendinaga Township, the MNRF has recently lifted the restrictions for the protection of the Bobolink and Eastern Meadowlark in support of a proposed aggregate license on land that that has yet to be rezoned. Both birds have been identified as ‘threatened’ on the MNRF *Species at Risk in Ontario List* and it concerns us that MNRF objections were lifted despite the birds’ status. Rules need to be enforced, and when exceptions are made the reasons must be clearly documented.

We were pleased to see that Section 1.1.1b of *Blueprint for Change* called for “new agriculture impact studies’ to be required for all sites proposed on prime agricultural lands. While we see that section 62.4 of Bill 39 includes language for inventories, surveys, tests, etc., in a very general sense, we trust that the corresponding regulations will further accommodate *agricultural* needs for study and testing across the province – especially since the impact of aggregate extraction on *all* types of agricultural soils can be significant. At the local level, it concerns us that a local aggregate proposal is being put forth for land that is currently growing crops. Please refer to Bill 39 debates by Mr. Wayne Gates for further agricultural concerns and context.

We welcome the strengthening of consultation with First Nations. It is our understanding that The Mohawks of the Bay of Quinte are currently doing some preliminary research for a land claim that would encompass the area around the current and proposed quarries in Tyendinaga Township. It would need to be determined whether adequate consultation has indeed been carried out with this group.

Lastly, we encourage the proposed language in clause 62.2, that would require an applicant to pay for special, technical, peer reviews or studies – and would hope that the corresponding regulations provide sound language for situations where there are outstanding concerns with environmental protection, water taking and cumulative effects.

Thank you for accepting our comments,
Executive members on behalf of CAMQ,
[Sue Munro](#); [Steve McLennan](#); [Jim Bates](#); [Grant Emon](#);
[Danielle Emon](#); [John McFarlane](#); Douglas Stevenson

cc. Tyendinaga Township Council; [Darren Bonenberg](#), Aggregate Technical Specialist, MNRF

December 13, 2015

To: Katie Rosa, Aggregate Resources Officer, Ministry of Natural Resources and Forestry Policy Division,
Natural Resources Conservation Policy Branch

Re: EBR Registry No. 012-5444

Citizens Against Melrose Quarry (CAMQ) is a group of citizens who are advocating for responsible and sustainable planning, resource development, and water use in Tyendinaga Township, Hastings County. Preparation for a 2015 Environmental Review Tribunal hearing (PTTW appeal) has given our executive an ideal opportunity to observe the conflicting pressures quarrying imposes on rural Ontario municipalities that have limited groundwater supplies. We have reviewed 'A Blueprint for Change' and wish to make the following comments:

Section 1.1.1a. Page 9. This section recommends water impact assessments in order to discover any hydrologic and hydrogeologic concerns in response to aggregate extraction proposals. While this section of the Blueprint makes provision for enhanced water impact studies for municipal drinking supplies, it concerns us that there are no stated equivalent recommendations and risk mitigation requirements for rural areas -- particularly for rural residential and agricultural areas that have vulnerable groundwater reserves. It also needs to be stated that future cumulative effects analysis may require us to consider the impacts of climate change in addition to local consumption patterns on aquifer recharge.

Section 1.1.1b. Page 9. We suggest that agricultural impact studies be required for quarrying sites proposed on *all productive* agricultural land rather than on *prime* agricultural land (class 1-3) only. In reviewing soil samples, CAMQ's agricultural consultant has found that wind born dust can have a significant affect on the soil alkalinity of crops that lie in close proximity to quarrying, demonstrating that close quarrying activities can marginalize adjacent productive cropland regardless of class. Of important note: class 4 cropland growing hay for cattle can be equally susceptible to the effects of quarrying.

Section 2.1. Page 19. We suggest that work be done to extend an initiative similar to the current source water protection plan to rural communities. Rural areas with low yielding aquifers or aquifers vulnerable to contamination are at risk from quarrying activities. These areas would benefit from similar regulations or conditions to protect groundwater supplies -- especially when no close municipal water supplies exist.

Section 2.5 ae. Page 24. In addition to changing the current offence provisions, it is recommended that additional resources be made available to *monitor* quarry operators for compliance and provide increased coordination of oversight amongst various permit granting bodies, i.e., MOECC, and MNRF.

Sincerely,

S. Munro
Chair
Citizens Against Melrose Quarry (CAMQ)