



July 2, 2021

Via e-mail: mecp.landpolicy@ontario.ca

Ministry of the Environment, Conservation and Parks
Environmental Policy Branch
40 St Clair Avenue West, 10th Floor
Toronto, Ontario
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**Attention: Sanjay Coelho
Senior Policy Analyst**

RE: COMMENTS ON DRAFT LAND USE COMPATIBILITY GUIDELINE ERO NUMBER 019-2785

On behalf of Ontario's asphalt producers, the Ontario Road Builders' Association (ORBA), would like to provide the following written comments in response to the posting of a draft of the Land Use Compatibility Guideline (LUCG) on the ERO (Environmental Registry for Ontario) for public comment (ERO #019-2785).

The Ontario Road Builders' Association is proud to represent the road building sector in Ontario. Our members build the majority of provincial and municipal roads, bridges and transportation infrastructure across the province. In addition, ORBA represents all major asphalt producers across Ontario and approximately 95% of all asphalt mix facilities.

We remain concerned that elements of the draft LUCG, as currently worded, will have serious adverse effects on the continued viability of Ontario's asphalt producers, and, in turn, its world class transportation infrastructure industries. If plants are not able to comply with provincial regulations, they cannot innovate, and some may be forced to cease producing asphalt altogether, making the industry less competitive. We believe that this unintended consequence runs counter to the government's philosophy of ensuring that Ontario is open for business, especially at a time when the government is embarking on a multi-billion-dollar transportation infrastructure expansion and rehabilitation plan that will require a steady asphalt supply, and that will help reduce congestion and associated emissions, better connect our economy and improve the safety of the travelling public.

The Places to Grow Act, the Provincial Policy Statement, and the new Aggregate Resources Act currently provide a substantial regulatory framework for growth and development in the province. The proposed LUCG has the potential to add unnecessary red tape, costs, and uncertainty for businesses that build and support infrastructure and development in Ontario. ORBA strongly recommends meaningful consultation with the regulated community prior to moving ahead.

The technical comments in this letter and in the accompanying comment table have been prepared with full consultation and support from all levels of our membership, and, therefore, represent our united comments and concerns. We trust these comments will be appropriately considered and incorporated into the final LUCG. ORBA believes that these comments represent necessary and

practical improvements to the draft LUCG for both asphalt mix facilities and the Ministry of the Environment, Conservation and Parks (MECP).

The following is a list of the primary/key concerns that we would like to draw your attention to. A detailed summary of all comments on the various sections of the draft LUCG is provided in the table attached to this letter.

1. While we welcome listing the various aggregate sector operations in Table 1, the major facility names and/or descriptions are inaccurate and inconsistent. As described in the attached detailed comments, we request that these entries be revised to terms and descriptions commonly used by our sector for clarity.
2. We are very concerned with how technical standards are referenced and interpreted in Section B.2 of the LUCG. The wording in this section is inaccurate and inflammatory, and completely contrary to the MECP's messaging regarding technical standards.

Asphalt paving manufacturing facilities may register for contaminants under the Asphalt Mix Industry Standard even if they can demonstrate compliance to the standards in O. Reg. 419/05. In fact, the MECP actively encourages this. To word this section as it is goes completely against the messaging that the MECP is trying to promote in encouraging asphalt paving manufacturing facilities to register for more contaminants and the messaging they are communicating to members of the public.

Even more concerning is the inference that facilities that register to a Technical Standard may potentially cause health impacts as far out as the AOI (Area of Influence). Registration to a Technical Standard in no way signals this! The MECP would not have approved the development of Technical Standards if they were not confident that no health impacts would occur off the property for facilities which implement all of the requirements of the applicable technical standard. Proposing that sensitive land uses not be built within the AOI of a major facility (i.e., within 1000m of an asphalt paving manufacturing facility) solely on the basis that the facility has registered for one or more contaminants under a Technical Standard is alarmist, provides incorrect information to the public/planning authorities, and is in contravention of the assessments and messaging of the MECP in developing these Technical Standards.

3. The requirements for portable asphalt plants in the proposed LUCG should be consistent with the requirements of the Provincial Policy Statement which states, "...Wayside pits and quarries, portable asphalt plants and portable concrete plants used on public authority contracts shall be permitted, without the need for an official plan amendment, rezoning, or development permit under the Planning Act in all areas, except those areas of existing development or particular environmental sensitivity which have been determined to be incompatible with extraction and associated activities." - *Section 2.5.5.1 Provincial Policy Statement 2020*
4. Consideration should be given to optimizing the use of existing aggregate sites by permitting multiple uses such as asphalt plants and other ancillary uses.

Thank you for the opportunity to provide comments. Please do not hesitate to contact Andrew Hurd, Director of Policy and Stakeholder Relations, at andrew.hurd@orba.org. We are immediately available to answer any questions regarding this submission.

Sincerely,



Bryan Hocking
 Chief Executive Officer
 Ontario Road Builders' Association

Cc: ORBA Board of Directors
 Ontario Asphalt Pavement Council

COMMENTS TABLE

Section #	Description of Comment / Concern	Recommendation / Resolution
1.5	<p>Definition of Sensitive Land Uses: The clarification paragraph underneath the definition from the PPS, goes beyond the definition in Appendix G - Glossary. It allows for Planning authorities to identify other similar uses as sensitive.</p> <p>1. We would argue that the definition of sensitive land use should not include commercial, retail, offices, detention centres with closed windows, community centres, and amenity areas and outdoor spaces at major facilities etc.</p> <p>2. If the definition of sensitive land uses is not limited then there will always be sensitive uses in the AOI and frequently be sensitive land uses in the MSD (i.e., every planning application will require a land use compatibility study and frequently a demonstration of needs assessment).</p> <p>3. It is confusing and inconsistent to suggest commercial, retail, institutional, office and community centre uses can be buffers between major facilities and truly sensitive land uses (as they have historically been and as is suggested later in the LUCG), and then also consider them sensitive land uses.</p>	<p>We suggest removing commercial, retail, institutional, office, detention centres with closed windows, community centre uses, and amenity areas and outdoor spaces at major facilities from the list of potential sensitive land uses. We further recommend that the LUCG clearly states that these are not sensitive land uses.</p>
Table 1	<p>Aggregate Operations: The term Aggregate Operations is not clear. Industry uses the term Aggregate Operations to include non-metallic mineral extraction at pits and quarries, aggregate material crushing/screening, wash plant operations, asphalt manufacturing,</p>	<p>If the intent is for the term "Aggregate Operations" to apply to aggregate pits and quarries, we suggest that this entry be relabeled "Aggregate Pits and Quarries". We</p>

	<p>and concrete manufacturing. We understand the intent of this label is not to include asphalt or concrete manufacturing as these are listed separately in Table 1. The description provided in Table 1 also states "resource extraction". This term is used to describe mining in Appendix K. Mining operations are very different than aggregate extraction pits and quarries and industry would not identify mining as Aggregate Operations.</p> <p>Further, guidance in Appendix K suggests that the LUCG should not be used for mining operations.</p>	<p>welcome having pits and quarries included in Table 1 as this type of facility requires LUC studies frequently and there is often debate on which class applies.</p> <p>If the intent is to capture mining (both metallic and other non-metallic resource extraction), we suggest listing this as a separate major facility called Mining Operations.</p>
Table 1	<p>There are some aggregate industry operations (aggregate depots, stationary crushing/screening, portable crushing/screening) which are not clearly identified in Table 1. The intent may have been for them to be included under "Aggregate Operations" but they are not part of aggregate extraction operations or mining operations.</p> <p>We understand that the LUCG does not apply to temporary operations that are part of a construction project (such as a highway overpass) as outlined in Appendix K, however, these activities are often not part of construction sites, and, therefore the LUCG does apply to them.</p> <p>Aggregate depots receive various materials such as sand, stone, soil and salt, store them, and ship them to a customer. Crushing and screening of recycled concrete may occur on or near concrete/asphalt manufacturing operations, but these activities are not part of concrete/asphalt manufacturing (i.e., the crushing of recycled concrete is a material recovery activity that supplies other construction activities but is not an input to either concrete nor asphalt manufacturing). Therefore, they would not be captured/covered by asphalt or concrete manufacturing in Table 1.</p>	<p>Aggregate depots have the same characteristics as concrete manufacturing (i.e., outdoor storage, moderate probability of fugitive dust, sound occasionally audible off property), but typically on a smaller scale (i.e., fewer trucks and typically day-time hours only). As such, they should be characterized no higher than concrete manufacturing and potentially lower.</p> <p>The MECP requires a detailed Acoustic Assessment Report for ECAs of crushing/screening operations that are less than 1000m from sensitive receptors. We typically classify crushing/screening activities as Class 3 operations under Guideline D-6 due to the frequent impacts from noise and fugitive dust.</p> <p>We would request these operations be listed as major facilities in Table 1 for completeness for the aggregate sector.</p>
Table 1	<p>Asphalt Manufacturing: The major facility name and the description are inconsistent. While we appreciate that these activities are grouped together under NAICS code 32412 they are all different operations with very different characteristics. Asphalt paving manufacturing is only asphalt paving manufacturing. Coal tar paving materials from purchased coal tar is separate. Asphalt paving manufacturing facilities in Ontario do not use coal tar. Asphalt shingle manufacturing is a very different operation. For clarification, the activity of roofing has a distinctive odour which is often mistakenly attributed to asphalt paving manufacturing (yet is smells very different).</p>	<p>We strongly suggest separating asphalt paving manufacturing from all other industries and include them as an example in Table 1.</p>

	<p>1. Combining roofing manufacturing and asphalt paving manufacturing in the same listing will serve to perpetuate the confusion between these two different industries.</p> <p>2. Combining any of these operations under the label "Asphalt Manufacturing" is incorrect and confusing.</p>	
B.2	<p>Dust and Other Air Emissions: The end of the 3rd paragraph states, "However, there might still be nuisance dust effects beyond the property line [even when meeting POI limits]. Due to the potential for these effects, planning authorities should not allow sensitive land uses within the facility's MSD unless completely unavoidable."</p> <p>What does "unless completely unavoidable" mean? This is not measurable. Does this refer back to the Demonstration of Need assessment, meaning that if there is a satisfactory "need" then it is "unavoidable"?</p> <p>In section 2.5 it says planning authorities should not permit sensitive land uses within the MSD of major facilities.</p> <p>The guidance/requirement is not clear/consistent.</p>	We suggest not allowing development of sensitive land uses within the MSD of major facilities.
B.2	<p>Recommendations for Facilities Registered for Technical Standards, Site-Specific Standards or Sector Specific Regulations:</p> <p>1. The wording in this section is inconsistent and inaccurate. Facilities within the applicable sector can register for contaminants under a Technical Standard even if they can demonstrate compliance to the standards in O. Reg. 419/05. In fact, the Ministry actively encourages this. For example, an asphalt paving manufacturing facility may be unable to meet one contaminant but chooses to register for all contaminants under the Asphalt Mix Industry Standard to eliminate the need for maintaining an ESDM report and to eliminate having their air emissions regulated under two different regimes for clarity and consistency. This was the entire purpose for adding the bulk of the contaminants to this Technical Standard. To word this section, as it is, goes completely against the messaging that the Ministry is trying to promote in encouraging facilities to register for more contaminants and the messaging they are communicating to members of the public.</p> <p>2. Facilities that are unable to meet a standard under O. Reg. 419/05 and register to a Technical Standard are unable to meet that standard at the property line. This in no way signals that there are potential health impacts out as far as the AOI. In fact, the Ministry would have assessed for this as part of the development of the Technical Standard and would not have approved the Technical Standard for that contaminant if they were not confident that no</p>	We suggest that reference to Technical Standards be moved to Appendix J or we strongly suggest changing the guidance to proposing development restrictions within the MSD of facilities registered to a Technical Standard.

	<p>health impacts would occur off the property for facilities which implement all of the requirements of the technical standard. For example, an asphalt paving manufacturing facility that is unable to meet the standard for benzo(a)pyrene at the property line is typically only unable to meet the standard for a short distance beyond the property line (well under the MSD of 300m assigned this industry in Table 1. Proposing that sensitive land uses not be built within the AOI solely on the basis that the facility has registered for a Technical Standard is alarmist, provides incorrect information to the public/planning authorities, and is in contravention of the assessments and messaging of the MECP LAQ in developing these Technical Standards.</p>	
<p>App K</p>	<p>Information on Sectors Not Included in this Guideline: The first paragraph includes the statement "Additionally, this Guideline does not apply to activities associated with major facilities that do not require land use approval under the Planning Act, such as temporary aggregate, asphalt or concrete facilities associated with the construction or rehabilitation of transportation facilities." What does this mean? What is the scope of this?</p> <ol style="list-style-type: none"> 1. If this is referring to operations which are located on construction sites and are for the construction, alteration, demolition, drilling or blasting of a building or structure, then we would agree. These operations are exempt from Section 9 of the EPA so this is consistent. 2. If this referring to when a portable asphalt manufacturing plant is used for building a highway (i.e., a transportation facility), are there any restrictions on where it is located. If the facility is already located close to the project such that the portable asphalt manufacturing plant is not actually located on the construction site or next to the highway construction project, but rather at the another location, does the LUCG apply? 3. Often portable concrete manufacturing plants are not part of the construction or rehabilitation of transportation facilities directly. The portable concrete plant could be supplying concrete for constructing a building or structure. 4. Portable crushing/screening plants are typically not part of construction or rehabilitation of transportation facilities. They are used to recycle material and/or size reduce material for an asphalt manufacturing plant for example. We know from experience that these operations are subject to zoning by-laws by municipalities. 5. More guidance is needed to explain what situation(s) are not covered by the LUCG, and for the other situations. 	<p>We strongly suggest that this section be reworded to provide clarity to those companies operating portable concrete manufacturing plants, asphalt manufacturing plants, portable crushing/screening plants, stationary crushing/screening plants on which situations/major facilities are not covered by the LUCG.</p>