

Tribunal upholds St Marys PTTW decision

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By Dianne Cornish, REVIEW STAFF

The Environmental Review Tribunal (ERT) last Friday dismissed St Marys Cement's (SMC's) appeal to overturn the Ministry of the Environment's (MOE's) rejection of their Permit to Take Water application to allow them to conduct pump tests at the proposed quarry site on 11th Concession East at Milborough Line. The decision was welcomed by FORCE (Friends of Rural Communities and the Environment), a local grassroots citizen's group opposed to the quarry, but a spokesperson for the aggregate company expressed disappointment with the ruling and said the company will review its legal options.

The ruling upholds the MOE's decision to deny a PTTW to SMC last April because the ministry felt approval would contravene a Ministerial Zoning Order (MZO) placed on the proposed quarry lands by the Ministry of Municipal Affairs and Housing in April 2010. The order freezes the zoning on the property and prohibits it from being used as a quarry.

ERT vice-chair Heather Gibbs essentially ruled that the test cannot be separated from the proposed use of the land, and wrote in her findings, "A pumping test is not a 'purpose' for which the lot is intended, but a preliminary activity intended to establish the use of quarrying." She dismissed arguments by the aggregate company that the PTTW is for a pump test, not a quarry, and as such is not prohibited by the MZO.

"This decision is great news," said FORCE chair Graham Flint Tuesday. "It hammers another 'nail' in the proverbial 'coffin' for St Marys Cement's proposed Flamborough Quarry."

Flint added that "the good news" doesn't mean the fight against the quarry is over. The company has appeal rights that it can exercise and has also initiated two other actions to obtain an aggregate licence for the northeast Flamborough site.

Melanie Horton, SMC's director of land and resources, told the Review Monday that the company is disappointed with the tribunal's decision, "especially because we have a solid track record of excellence in the management of the environment in and near our projects, and felt we presented a good case at the ERT." The tribunal held the hearing last September.

Horton said the company is considering its legal options, such as an appeal, which can be filed within 30 days of the ERT's decision. The decision can be appealed to the Ontario Divisional Court or a judicial review can be requested, she said. According to Flint, ERT rules also permit the company to ask for an internal review of its decision.

The SMC spokesperson restated the company's two other actions aimed at securing an aggregate licence for the proposed Flamborough Quarry – its application for a judicial review to the Divisional Court of the Ontario Superior Court of Justice seeking an order to quash both the MZO and the province's April 2011 declaration of interest on the quarry lands and a \$275US-million NAFTA (North American Free Trade Agreement) arbitration claim, filed last summer against the Canadian government alleging that SMC has been treated unfairly by the Ontario government in the quarry licence process.

The disposition of both actions is pending.