



The Regional Municipality of Halton

Report To:	Chair and Members of the Planning and Public Works Committee
From:	Mark G. Meneray, Commissioner of Legislative and Planning Services and Corporate Counsel
Date:	April 16, 2009
Report No. - Re:	LPS47-09 - Update on the St. Marys Cement Inc. (Canada) Flamborough Quarry Proposal (City of Hamilton)

### RECOMMENDATION

1. THAT the Regional Chair write a letter to the Minister of Natural Resources and St. Marys Cement Inc. (Canada) advising that Halton Regional Council objects to the application for a licence under the *Aggregate Resources Act* (ARA) for the proposed St. Marys Cement Inc. (Canada) Flamborough quarry for the reasons set out in Report No. LPS47-09.
2. THAT the City of Hamilton be advised that the Region objects to the application for a licence under the *Aggregate Resources Act* (ARA) for the proposed St. Marys Cement Inc. (Canada) Flamborough quarry and that Report LPS47-09 be forwarded to the City.
3. THAT Regional Council support the use of the peer-review consultants hired by the City of Hamilton Combined Aggregate Review Team (CART) to assist the Region on matters related to hydrogeology, the natural environment, noise, vibration, and dust.
4. THAT the Regional Clerk forward a copy of Report No. LPS47-09 to the members of the Combined Agency Review Team (CART), Ministry of Natural Resources, and the applicant - St. Marys Cement Inc. (Canada).

### REPORT

#### **Purpose**

Report LPS47-09 is intended to firstly, bring Regional Council up-to-date on the various *Planning Act* and *Aggregate Resources Act* (ARA) applications as submitted by St. Marys Cement Inc. (Canada) and secondly to seek Regional Council's support to advise the Ministry of Natural Resources of Halton Region's objection to the recently submitted *Aggregate Resources Act* (ARA) application.

Regional Council should also be aware that through the recently initiated ARA application process, St. Marys has engaged the formal notification process, which includes a limited (45-day)

opportunity to provide comments to the Ministry of Natural Resources (MNR) on the proposed quarry application and to include along with those comments other supporting documentation.

## **Background**

St. Marys Cement Inc. (Canada) is proposing a dolostone quarry on approximately 154 hectares (390 acres) of land on Lots 1, 2 & 3, Concession XI, City of Hamilton (formerly Township of East Flamborough) ( Attachment #1: Location Map). The quarry, referred to as the St. Marys Cement (Canada) Inc. Flamborough Quarry, is proposed to produce approximately three million tonnes of dolostone a year for the next 25 to 30 years. The properties on which these applications have been submitted are located on the west side of Milborough (Town) Line just north of Concession 11 E and immediately west of the Town of Milton and the Halton Region boundary within the City of Hamilton.

Through the City of Hamilton's preconsultation process, the City of Hamilton advised the proponent that amendments to the former Township of Flamborough Official Plan and Zoning By-law and the approval of a Class "A" Licence under the *Aggregate Resources Act* (ARA) would be required prior to commencing operations at the proposed quarry. On September 28, 2004, St. Marys applied to the City of Hamilton for an Official Plan Amendment to redesignate the subject property from a "Rural" to an "Extractive Industrial" designation and to change the zoning on the subject lands from an "A" Agricultural and a "CM" Conservation Management zone to an "EI" Extractive Industrial zone. In October 2008, a supplementary Official Plan and Zoning By-Law Amendment application was submitted by St. Marys for a 10 acre parcel of land which abuts the main property (1869 Milborough Line). The primary purpose of this additional application is to facilitate an access to the proposed quarry onto Milborough Line north of the intersection of Milborough Line and Concession 11.

*The Planning Act* applications referenced above and their supporting documentation have been under review by Halton Region (Report PPW53-07, PPW132-07, PPW155-07, PPW94-08, and PPW96-08) through our continued involvement in the Combined Aggregate Review Team process as initiated by the City of Hamilton in early 2005. Participants in the CART process include Halton Region, City of Hamilton, City of Burlington, Town of Milton, Ministry of the Environment, Niagara Escarpment Commission, and Conservation Halton.

To date, Halton Region has identified significant concerns with the proposal for a quarry in this location. Specifically, the Region has noted that there is the potential for serious impacts to the surface and groundwater resources, the natural environment, transportation infrastructure and existing traffic patterns and from the excessive noise, vibration and dust that would emanate from the proposed quarry. It is anticipated that the review of this quarry proposal including the review of the *Aggregate Resource Act* (ARA) application, may last for several years. There is still a significant amount of work that needs to be completed by the proponent before the Region would be able to offer an opinion on the suitability of the subject lands for a below the water table quarry. Further study of the hydrogeology, transportation systems (haul-route), air quality, noise and the natural environment still needs to be completed, all of which have significant Regional implications.

## Recent Events

This section of the report is structured as follows: update on the Haul Route Study, update on the Temporary Permit to Take Water, the submission of an *Aggregate Resources Act* Application, and the recommended position of the Region at this point in time on this application.

### Update on the Haul Route Study

Regional staff and the other CART members have been reviewing St. Marys initial haul route assessment for some time now. St. Marys had previously identified through their draft submission to CART in early 2008, that their preferred haul route is the one traveling through Halton Region and through the Town of Milton to the 401 at the north end of Campbellville. This route consists of an access from the proposed quarry onto Milborough Line; trucks will then travel north along Milborough Line to Campbellville Road, east along Campbellville Road to Twiss Road, north on Twiss Road to Reid Side Road, east along Reid Side Road to the Hwy 401 eastbound access which is just west of the Guelph Line. St. Marys has not identified a haul route that would utilize Regional Roads up to this point in time.

Staff at both the Region and the Town of Milton have consistently provided feedback at CART meetings and to the proponent. This feedback was in regards to concerns about the speed at which the haul route study had been moving in the absence of an appropriate amount of time for CART to complete its review of the materials submitted and also in advance of the other components of our review including, but not limited to the Hydrogeological Assessment and the Environmental Impact Assessments. To date, staff at both the Region and the Town of Milton have not received an appropriate level of justification that would demonstrate that St. Marys selection of a preferred haul route through Milton is preferable to the other alternative routes. The materials prepared to date have not been completed in a manner that consider the social, cultural and environmental impacts of the road improvements, and resultant truck traffic to the areas that would be impacted by a truck haul route. Furthermore, the methodology used in the selection of a preferred haul route was in staff's opinion inappropriate, lacked transparency and did not reflect the impacts that the haul route would have to the natural environment, community features and existing transportation systems.

While Regional and Town staff will review all the materials that are submitted by St. Marys in support of the ARA Licence application, St. Marys has identified that the Haul Route Evaluation is still not complete. Within the Summary Statement submitted in support of the ARA Licence application, all of the potential haul routes are shown and the identification of a preferred haul has not been provided. It is however believed that the preferred haul routes will encompass some or all of the roadways both to the east and west of the subject property. Given that St. Marys is projecting that 75% of the crushed stone that is proposed to be extracted from the quarry is destined for the GTA and the City of Toronto, it is reasonable to conclude that the truck operators will want the shortest route to the delivery target in order to save money on fuel and time. That would result in a significant number of trips (over 500 each way/day) through Halton Region.

In accordance with Council's direction in Report PPW94-08, staff will continue to work with the Town of Milton to assess the impacts of a haul route through the Town of Milton. Staff will

utilize current operating budget funding to jointly fund a peer review of the information provided by the proponent.

#### Update on the Ministry of the Environment Temporary Permit To Take Water

Since early 2005, Regional staff have been working with CART to establish the Terms of Reference for a Hydrological Assessment and to review the background materials submitted by St. Marys as part of their assessment of the hydrogeology of the area. The work plan for the hydrogeological assessment, as prepared by Gartner Lee Limited (dated March 2008), has been reviewed by CART, CART's peer review consultants (Jagger Hims Ltd.) and Regional staff. This work plan had not received final endorsement from CART, the City of Hamilton or Halton Region as of the date of submission of the ARA application. The objective of the discussions on the proposed work plan was to have a common understanding of the expectations of the required hydrogeological submission and to establish a basis for the technical review of this submission.

Throughout 2008, St. Marys continued to collect background data related to the hydrogeological conditions in the area and on July 8, 2008, they secured a Temporary Permit to Take Water from the Ministry of the Environment. This permit is required by St. Marys in order to further characterize the hydrogeological conditions on site and test the feasibility of the proposed groundwater recirculation system.

In late July 2008, St. Marys initiated Phase 2 of their pump testing and during the test there was a heavy rain event, which in the opinion of some experts, tainted the results of the tests. In October 2008, the Ministry of the Environment advised St. Marys that the results of the test were not being accepted and that the tests would need to be re-done. St. Marys responded back to the Ministry advising them that they are confident that their tests were completed in an appropriate manner and in accordance with established procedures. The Ministry then advised St. Marys in their October 2008 letter that St. Marys has until the permit expires in June 30, 2009 to complete the tests required through the Temporary Permit To Take Water. In March 2009, the Ministry wrote St. Marys another letter advising them that the Ministry was going to revoke their permit by March 20, 2009, if they had not completed the required retesting. St. Marys has since asked the Ministry to not revoke the permit and has requested that dialogue be initiated to see what options are available to St. Marys. The Ministry has agreed to have initial dialogue and has not revoked the permit at the time of writing this report. Staff will continue to monitor this situation and advise Council of how this matter is resolved.

#### Submission of an Aggregate Resource Act (ARA) Application

On March 3, 2009, the Ministry of Natural Resources deemed the St. Mary's *Aggregate Resources Act* (ARA) application complete. The MNR has reviewed the application and supporting documents in accordance with Provincial Standards for an application under the ARA and has found that all the required information has been submitted in accordance with provincial requirements. As a result, St. Marys has received the Province's permission to engage the 45-day notification period as identified in the ARA (Attachment #2). As part of the formal ARA notification process, St. Marys is required to provide written notification to all landowners within 120 metres of the proposed quarry, post sign(s) on the road frontage of the proposed quarry site,

and circulate the complete application package to public agencies prior to posting the required notice in a local newspaper. Once the required notice has been given, the MNR deems that the 45-day notification period has commenced. In the case of the St. Marys application, this was completed on April 3, 2009, and the 45<sup>th</sup> day falls on May 21, 2009. During the 45-day notification period identified in the ARA, a public information session must be hosted by the applicant. St. Marys and its technical consultants will host this session on April 27, 2009, from 4:00 p.m. to 9:00 p.m., at the Waterdown Legion Hall located at 79 Hamilton Street North, Waterdown, Ontario.

Also during the 45-day notification period, any person or public agency may provide the applicant and District Manager of the Ministry of Natural Resources with written notice of reasons for the objection to the issuance of the aggregate licence. After the 45-day notification period has passed, the MNR deems that there are no further objections to the ARA application. Regional staff will post information relating to the 45-day notification period on our website so that members of the community are informed on the nature of and importance of providing their thoughts on this proposal in writing to the MNR. Attachment #3 contains a description of the process under the *Aggregate Resources Act*, which is particularly important for objectors to understand, as there are key milestones that must be met. Staff will with the support of Council, lodge an objection on the basis that it is pre-mature to deal with ARA matters while technical information and planning matters remain outstanding.

It is also important to note that a licence under the *Aggregate Resources Act* (ARA) can only be issued if the appropriate zoning is in place on the lands on which the quarry is proposed. Prior to the Hamilton City Council considering a zoning by-law amendment on the proposed quarry site, the City of Hamilton Official Plan (former Township of Flamborough) must be amended.

#### Outstanding Work

To date CART has met on a some what regular basis to discuss many aspects of the technical information submitted to date by St. Marys. The study areas where the majority of the discussion has taken place to date is on the haul route study and the hydrogeological assessment.

CART members have advised St. Marys on several occasions that there are significant concerns with the way in which the haul route study had been completed. Furthermore, the study process and submissions to date including the methodology used in the selection of a preferred haul route were in staff's opinion inappropriate, lacked transparency and did not reflect the impacts that the haul route would have to the natural environment, community features and existing transportation systems. St. Marys has also identified in their ARA submission that the haul route study and all other materials associated with transportation has not been finalized. Once these studies are completed, they will be provided to the agencies for review.

For some time, CART members including the Town of Milton and the Region of Halton have voiced concerns with the lack of materials being provided to CART for review and a lack of progress made towards an agreement on the completion of the appropriate background studies for hydrogeology and the natural environment. Until March 2009 and the submission of the ARA application, CART members and St. Marys Cement had not agreed on the methodology and

structure of the Hydrogeological Study or Assessment, CART had not received an updated Environmental Impact Assessment or an assessment of the impacts that air quality, noise, dust or blasting would have on the adjacent community and natural environment. Until such time as the Region and other CART members have reviewed all of the appropriate studies including but not limited to an Air Quality Assessment, Hydrogeological Assessment, and Environmental Impact Assessment, a Transportation Impact Assessment, a Noise, Vibration and Dust Assessment, staff is not in a position to recommend support or refusal on the proposed quarry. As such, staff are of the opinion that ARA Licence application and the two Official Plan and Zoning By-law Amendment applications as submitted by St. Marys Cement Inc. (Canada) are premature.

While some areas of study have been discussed in some detail with St. Marys (example is the Haul Route Study), most have not. Several key areas of study still require detailed examination by CART members and their consultants. It is also possible that during this detailed review, additional concerns may be identified and further studies may be deemed necessary. CART members will work cooperatively and with their peer-review consultants to assess the comprehensiveness of the technical reports and will continue to evaluate the technical feasibility of the St. Marys proposal. CART has also retained third party consultants to peer review the reports submitted by St. Marys. Staff recommend that the Region utilize the peer review reports in our review of the applications (hydrogeology (Jagger Hims Limited); natural environment (Dougan and Associates); transportation (IBI Group) and noise, vibration and dust (Valcoustics Canada Limited).

Along with continuing to participate in the CART process, staff recommends that the Region lodge an (prematurity) objection to the ARA application during the limited ARA public notification period. Staff will continue to update Council on a regular basis regarding the status of this application as new information becomes available.

#### FINANCIAL/PROGRAM IMPLICATIONS

Review of the St Marys' quarry proposal continues to, for the most part, be covered using existing staff resources as well as the peer review consultants secured by the City of Hamilton for the Combined Aggregate Review Team (CART) which are paid for by St. Marys Cement Inc. (Canada). Staff are also recommending through this report that the Region rely on the professional opinions of the peer-review consultants hired by the City of Hamilton Combined Aggregate Review Team (CART) to provide advice to the Region on matters related to hydrogeology, the natural environment, noise, vibration and dust. As the fees for these consultants are currently paid for by the City of Hamilton through reimbursement by St. Marys, there is no cost to the Region.

RELATIONSHIP TO THE STRATEGIC PLAN

This report has a direct relationship to the 2009 Planning and Public Works Committee Plan Theme 2: Protect and Enhance of our Natural Environment.

Respectfully submitted,

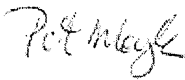


Ron Glenn  
Director, Planning Services and Chief Planning  
Official



Mark G. Meneray  
Commissioner of Legislative & Planning  
Services and Corporate Counsel

Approved by

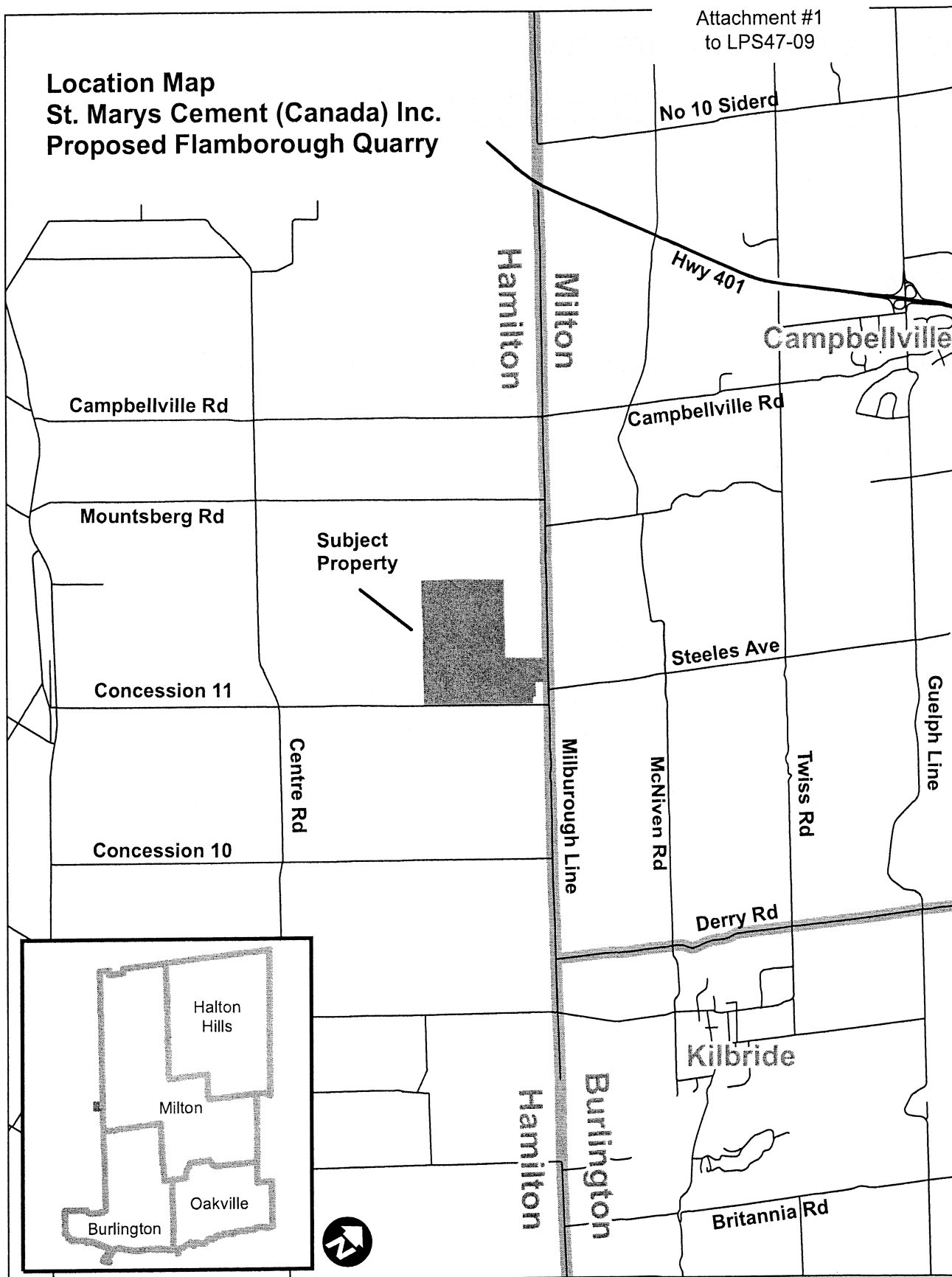


Pat Moyle  
Chief Administrative Officer

If you have any questions on the content of this report, please contact:

Ron Glenn  
Haiqing Xu  
Stirling Todd

Tel. # 7966  
Tel. # 7208  
Tel. # 7186







Attachment #2  
to LPS47-09

March 27, 2009

Sue Lathan, Regional Chair  
The Regional Municipality of Halton  
1151 Bronto Road  
Oakville, ON  
L6M 3L1

Dear Ms. Lathan,

This letter is to advise you that St. Marys Cement Inc. (Canada) has submitted an application for a Category 2, Class "A" licence, pit and quarry below the water table to the Ministry of Natural Resources for 158.13 hectares of land located in Part of Lots 1-3, Concession 11, in the Geographic Township of East Flamborough, now in the City of Hamilton. The annual tonnage limit applied for is 3,000,000 tonnes. Enclosed for your information is a copy of Form 1 (Notice of Application for a Licence) and Form 2 (Notice of Information Session) as set out in the *Aggregate Resources of Ontario Provincial Standards Version 1.0* made under the Aggregate Resources Act. We have also included a copy of Form 1 and Form 2 in French.

The Ministry of Natural Resources has determined the application package to be complete on March 3, 2009 and has given the applicant permission to continue with the public notification and consultation process described in the provincial standards. The 45 day notification period will begin on April 3, 2009.

We have established the last day for filing objections in writing with the Ministry of Natural Resources at their Guelph office **and** the applicant as May 21, 2009 based on the publication of Form #1 and Form #2 in The Hamilton Spectator, Flamborough Review and Milton Champion on April 3, 2009 and the French language paper, L'Information on April 7, 2009. Refer to the attached Form 1 for addresses to send your written submissions. Note: E-mail submissions are acceptable however they must contain the objector's complete postal mailing address where a response can be delivered. *E-mail objections which do not contain a postal address will not be considered acceptable.*

Please contact St. Marys Cement at 1-866-602-0080, if you have any questions or require any additional information. Pour obtenir des renseignements en français, composez le 905-294-8282.

Sincerely,  
HARRINGTON AND HOYLE LTD.

Original signed by  
GLENN D. HARRINGTON, OALA, FCSLA

BJ/wp  
Encls.

**Aggregate Resources Act**  
**Form 1 - Notice of Application for a Licence**

I, St. Marys Cement Inc. (Canada) 55 Industrial Street  
Name Address  
Toronto, Ontario  
Address  
M4G 3W9  
Postal Code

Hereby, give notice that application has been made for a Category 2, Class A licence  
(Category, Class A or Class B)

to excavate aggregate from a Pit and Quarry of 158.13 hectares, located in:  
(pit or quarry)

Lots or Part lot(s) Part 1-3 Concession(s) 11  
 Geographic Township East Flamborough Local Municipality City of Hamilton  
 County/Region/District \_\_\_\_\_

Application is for: ☐ an expansion to an established pit or quarry ☒ a new pit or quarry

Annual Tonnage Condition applied for is: 3,000,000 tonnes.

A detailed site plan and report(s) for the proposal may be examined at the local or county/regional municipal offices or at the district/local office of the Ministry of Natural Resources.

Any person(s) wishing to object to this application must send, in writing, their objection with reason(s) to the **Applicant** and to the district/local office of the **Ministry of Natural Resources** at the addresses below. Note: E-mail submissions are acceptable however they must contain the objector's complete postal mailing address where a response can be delivered. **E-mail objections which do not contain a postal address will not be considered acceptable.**

The Applicant: St. Marys Cement Inc. (Canada)  
55 Industrial Street Toronto, Ontario M4G 3W9 or by email to communityinfo@stmaryscbm.com  
 and

MNR: Guelph District  
1 Stone Road West, Guelph, Ontario N1G 4Y2 or by e-mail to MNRFQA@ontario.ca

The last day on which objections may be filed with the **Applicant** and **Ministry** is:

the 21 day of May, 2009.

**Note:** All information in respect to this application including written objections, the names and address of any objector(s) is available for public review for the purpose of this application under the Aggregate Resources Act. In submitting a written objection an objector consents under the Freedom of Information and Protection of Privacy Act to its disclosure for purposes of the application.

Revised 26/02/2009.

Pour renseignements en français, composer 905-294-8282.

**Aggregates Resources Act**  
**Form 2 – Notice of Public Information Session**

I, St. Marys Cement Inc. (Canada) 55 Industrial Street  
 (Name) (Address)  
Toronto, Ontario  
 (Address)  
M4G 3W9  
 (Postal Code)

Hereby, give notice that a Public Information Session will be held on:

April 27, 2009 at 4 pm – 9 pm  
 (Date) (Time)

at the Waterdown Legion Hall  
 (Location)

79 Hamilton St. North, Waterdown, Ontario L0R 2H0  
 (Address)

The purpose of the Information Session is to present, to the public, the details of the  
 application for a Category 2, Class "A" licence below water table, to excavate  
 (Category #)

aggregate from a new pit and quarry.  
 (Description)

The location of the proposed ☐ Pit or ☐ Quarry or ☒ Pit and Quarry is:

Lots or Part lot(s) 1-3 Concession(s) 11

Geographic Township East Flamborough Local Municipality City of Hamilton

County/Region/District \_\_\_\_\_

Pour renseignements en français, composer 905-294-8282.

***Aggregate Resources Act Process***

During the 45-day notification period, which commences on the day of advertising in the local newspaper, any person or agency may provide the applicant and District Manager of the Ministry of Natural Resources (MNR) with written notice of reasons for the objection to the issuance of the aggregate license. After the 45-day notification period, it will be deemed there are no further objections.

During the 45-day notification period, a public information session must be hosted by the applicant.

The applicant has two years from the date of advertising in the local paper in which to address concerns and objections raised during the 45-day notification period.

If all of the objections are resolved, the applicant must submit to MNR documentation of landowner and stakeholder contacts and agency circulation, objection letters, and all objection withdrawn letters.

If the objections are not resolved, the applicant must submit to MNR and the remaining objectors, by written notice, delivered personally or by registered mail, the following information as per Section 4.3.3 of the Provincial Standards:

- List of unresolved objections
- Documentation of attempts to resolve objections
- Applicant's recommendations for resolving objections, if any
- Notice of 20-day response period for objectors

Objectors must respond, in writing, to the applicant and MNR within 20 days of receiving the notice under Section 4.3.3 of the Provincial Standards. The objector may either restate their objection and reasons thereof, or list their recommendations for resolution. An objector should provide recommendations to resolve their concerns in their response letter. If no response is received, it will be deemed there is no longer an objection.

If the applicant does not submit the required notification and consultation documentation to MNR within 2 years of the start of the 45-day notification period, the application is considered withdrawn.

Once MNR received all information pursuant to Section 4.3.4 of the Provincial Standards, MNR has 30 days to either refer the application to the Ontario Municipal Board (OMB) for a hearing to make a recommendation to the Minister to issue or refuse the licence.

If the Minister refuses to issue the licence, the applicant may refer the applicant to a hearing.

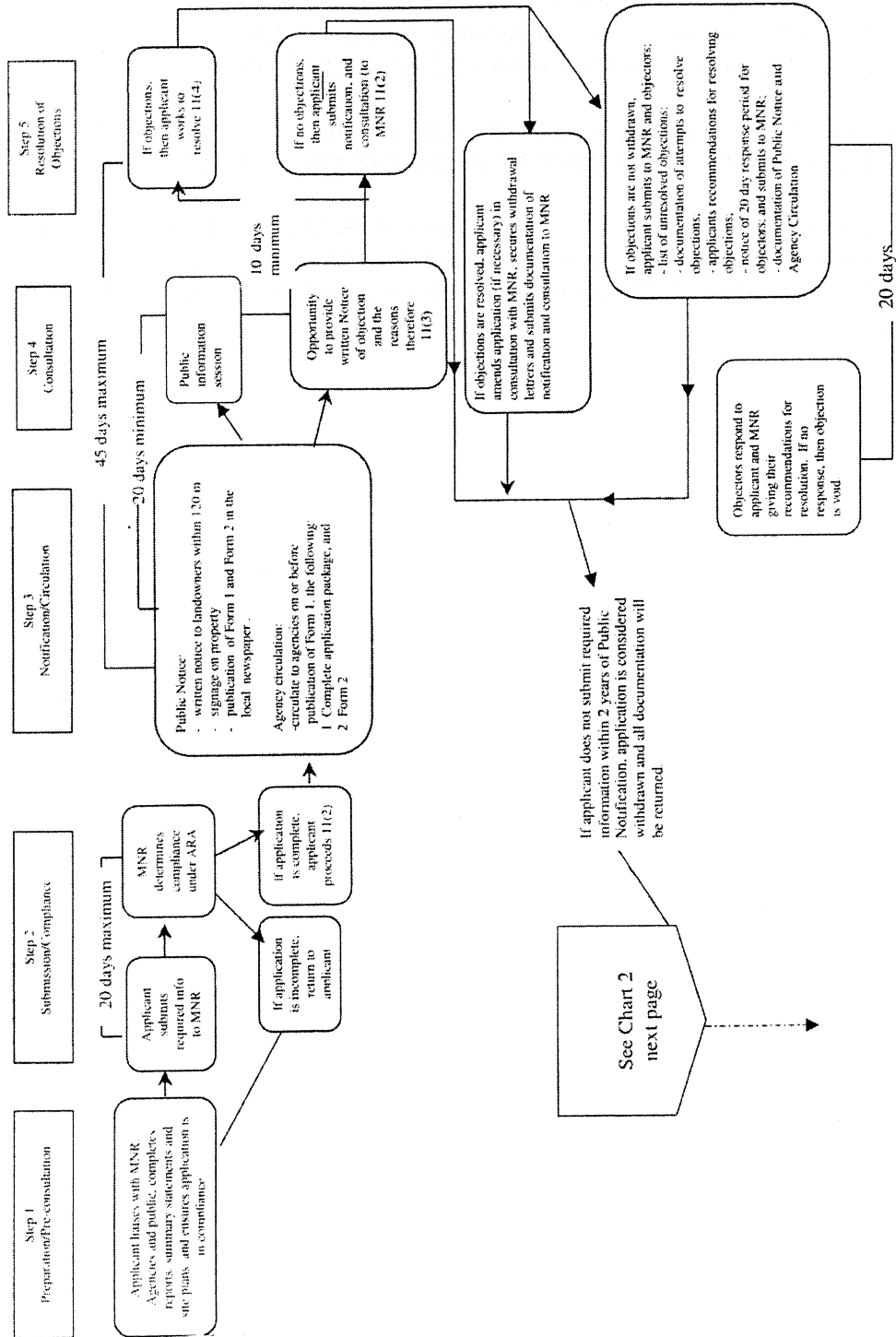
MNR will also contact the applicant and request written confirmation as to the status of any necessary zoning and/or official plan amendments under the *Planning Act* or other required approvals (e.g. Niagara Escarpment Plan amendment and development permit).

Where a decision has not been made with regards to the zoning, and the zoning has not been referred to the OMB during the ARA application process, the Aggregate Inspector should hold onto the application until the zoning has been referred to the Board.

If the zoning by-law has been appealed to the OMB during the ARA application process, the Aggregate Inspector must advise the OMB that the concurrent hearing is required.

If objections have also been received to a development permit or NEP amendment application under the *Planning Act* or the Niagara Escarpment Commission, then a concurrent (if *Planning Act* matter) or consolidated (if Niagara Escarpment Plan matter) hearing may be requested by the applicant.

# LICENCE APPLICATION PROCESS UNDER THE ARA - CATEGORIES 1 TO 8 (chart 1 of 2)



# LICENCE APPLICATION PROCESS UNDER THE ARA - CATEGORIES 1 TO 8 (chart 2 of 2)

