

ENVIRONMENTAL REVIEW TRIBUNAL

IN THE MATTER OF sections 38 to 48 of the *Environmental Bill of Rights*, S.O. 1993, c. 28 and section 34 of the *Ontario Water Resources Act*, R.S.O. 1990, C.O. 40;

AND IN THE MATTER OF an application by Friends of Rural Communities and the Environment, pursuant to section 38 of the *Environmental Bill of Rights*, S.O. 1993, c. 28 for leave to appeal the decision of the Director, Ministry of the Environment, pursuant to section 34 of the *Ontario Water Resources Act*, to issue Permit to Take Water 8461-7CFLG5, dated July 8, 2008, to St. Marys Cement Inc. (Canada) authorizing pumping tests at bedrock well TW14 located at Lot 3, Concession 11, East Flamborough, Hamilton, with EBR Registry Number: IA06E1293.

APPLICATION FOR LEAVE TO APPEAL OF FRIENDS OF RURAL COMMUNITIES AND THE ENVIRONMENT

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Friends of Rural Communities
and the Environment

TO: Environmental Commissioner Of Ontario

1075 Bay Street
Suite 605, 6th Floor
Toronto, ON M5S 2B1
Fax: 416.325.3370

AND TO: The Director, Section 34

Ontario Water Resources Act
Ontario Ministry of the Environment
119 King Street West
12th Floor
Hamilton, ON L8P 4Y7
Tel: (905) 521-7640
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AND TO: St. Marys Cement Inc. (Canada)

55 Industrial Street
4th Floor
Toronto, Ontario
M4G 3W9

Attn: John Moroz, Vice-President and General Manager, CMB Aggregates

Tel: (416) 696-4411
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AND TO: The Secretary

Environmental Review Tribunal
655 Bay Street, Suite 1500
Toronto, ON
M5G 1E5

APPLICATION

1. Friends of Rural Communities and the Environment ("FORCE") makes this application to the Environmental Review Tribunal (the "Tribunal") for:

- (a) an Order granting FORCE leave to appeal the decision of the Director, Ministry of the Environment, pursuant to section 34 of the *Ontario Water Resources Act*, to issue to St. Marys Cement Inc. (Canada) Permit to Take Water 8461-7CFLG5, dated July 8, 2008 (the "PTTW"); and
- (b) an Order for a stay of the PTTW until such time as the Tribunal determines whether FORCE should be granted leave to appeal the PTTW.


2. The grounds for this application are that:

- (a) it appears that there is good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have issued the PTTW;
- (b) it appears that the decision to issue the PTTW could result in significant harm to the environment; and
- (c) if the PTTW is not stayed, St. Marys could begin to conduct its water taking activities, which will have the effect of rendering moot FORCE's right to seek leave to appeal pursuant to the *Environmental Bill of Rights*.


3. FORCE will file all of the material supporting this application for leave to appeal prior to the expiry of the fifteenth day after the PTTW was posted on the Environmental Registry. Pursuant to the Rules of Practice of the Environmental Review Tribunal dated November 15, 2007, FORCE will arrange through the assigned Case Manager on an urgent basis a teleconference call with the Chair or her designates and all Parties to seek directions with respect to the form and content for a motion seeking a stay of the PTTW.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

July 18, 2008



David Crocker, Davis LLP



Liliane Gingras, Davis LLP

Solicitors for the Applicant,
Friends of Rural Communities
and the Environment