

Minister of the Environment and Climate Change

IN THE MATTER OF sections 34.1, 100 and 101 of the *Ontario Water Resources Act*, R.S.O. 1990, c.O.40 as amended;

- and -

IN THE MATTER OF Part XII of the *Environmental Protection Act*, R.S.O. 1990, c.E. 19 as amended;

- and -

IN THE MATTER OF sections 38 to 48 of the *Environmental Bill of Rights*, S.O. 1993, c.28;

- and -

IN THE MATTER OF an appeal by the Concerned Citizens of Brant of a decision dated April 11, 2017 of the Environmental Review Tribunal in respect of the above matter.

County of Brant's Reply Submissions

Date: June 23, 2017

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The County of Brant's Reply Submissions

1. On May 9, 2017, The Concerned Citizens of Brant ("CCOB") appealed to the Minister of the Environment and Climate Change ("Minister") from the decision of the Environmental Review Tribunal (the "Tribunal"), dated April 11, 2017 in Case Nos. 16-048 and 16-052.¹
2. This is the Corporation of the County of Brant's ("County" or "County of Brant") brief Reply to CCOB's appeal of the Tribunal decision.

Existing Conditions

3. The Dufferin Aggregates Paris Pit ("Paris Pit") is 249 hectares in area and is operated pursuant to a licence granted in 1974 for the extraction of aggregates. The Paris Pit is licensed under the *Aggregate Resources Act* and has all the applicable land use planning and zoning approvals. Despite being licenced for extraction, the Paris Pit has been used primarily for agricultural uses such as the growing of corn and other various cash crops.
4. A licence to extract aggregate was granted to Dufferin Aggregates in 1974 ("Dufferin"). However, extraction at the Paris Pit never occurred until approximately 2014. Prior to 2014 the property was used primarily for agricultural purposes (growing corn). The site plans approved in 1974 have always allowed for aggregate washing and settling ponds. In or around September 2014 the Ministry of Natural Resources and Forestry ("MNRF") granted permission to Dufferin to remove aggregate from the Paris Pit subject to specific conditions pending Dufferin obtaining a permit to take water ("PTTW") from the MOECC.
5. In or around the Fall of 2014, Dufferin began extraction operations at the Paris Pit. In connection with the extraction operations Dufferin sought to undertake aggregate washing operations at the Paris Pit which is the purpose of the Permit to Take Water and Environmental Compliance Approval subject to the Tribunal's decision of April 11, 2017 subject to this appeal by CCOB.

County's Involvement before the Environmental Review Tribunal

6. On October 29, 2015, the Director, for the Ministry of the Environment and Climate Change ("MOECC"), issued Permit to Take Water No. 7115-9VVLJW ("PTTW") to CRH Canada Group Inc. ("CRH", or its division Dufferin Aggregates ("Dufferin")).

¹ Tribunal decision

7. Also on October 29, 2015, the Director for the MOECC issued Environmental Compliance Approval CCOB and the County were granted leave to appeal to the Tribunal certain conditions of the Environmental Compliance Approval 1400-9VNPVY ("ECA") to CRH.
8. The PTTW and ECA relate to the proposed aggregate washing operation and sewage works (the "Works") at the Paris Pit located in the Township of South Dumfries, County of Brant.
9. The County's appeal of the PTTW related to the following conditions:
 - Condition 3.3 (whether dust suppression is in addition to maximum water taking amounts in Condition 3.4a);
 - Condition 3.4b (frequency that maximum water taking rate in Condition 3.2 may be reverted to for one month);
 - Condition 3.6 (permitted water taking for final eight years of PTTW);
 - Condition 4 generally (specific objectives for monitoring requirements); and
 - Condition 4.7 (trigger mechanism and contingency plan).
10. The County also sought leave to appeal the following conditions in the ECA:
 - Condition 4.8 (future uses of sediment for on-site rehabilitation);
 - Condition 5 (contingency and pollution prevention plan); and
 - Condition 5 (lack of a trigger mechanism in the contingency and pollution prevention plan)
11. The Tribunal in its decision dated March 31, 2016 granted leave to appeal to the County ("Leave Decision")². The aspects of the Directors' decision for which both the County and CCOB were granted leave to appeal were set out in paragraph 119 of the Leave Decision.
12. On April 16, 2016 the County filed appeals of the decision of the MOECC Directors with the Tribunal under section 100 of the *Ontario Water Resources Act* ("OWRA") and Part XII of the *Environmental Protection Act* ("EPA") respectively.

² 2016 CanLII 17291 (ON ERT)

13. The hearing was scheduled to take place over a period of sixteen days starting in December 2016 and ending in February 2017 in Paris, Ontario.

County Resolution of Concerns

14. The County attended the first day of the hearing in December 2016 to advise that it had worked with Dufferin to draft revised conditions to the PTTW and ECA that resolved the County's concerns. These revised conditions were submitted to the Tribunal. The County did not otherwise participate in the hearing.
15. The County with the agreement of Dufferin requested that the Tribunal approve the PTTW and ECA as amended by the agreed upon revised conditions. The agreed upon amendments to the conditions are set out in Appendix B to the Tribunal's decision.
16. The County, in the development of the amended conditions with Dufferin, confirmed that the revised conditions for the PTTW submitted to the Tribunal resolved all of the County's concerns raised in its appeal to the Tribunal. All of the agreed upon revisions between Dufferin and the County to the PTTW were supported by the PTTW Director as appropriate and in the public interest.
17. The County also in agreeing upon the amended conditions to the ECA worked with Dufferin to ensure that the amended conditions for the ECA as submitted to the Tribunal resolved all of the County's concerns raised in its appeal to the Tribunal. The County's proposed revisions to the ECA were supported by the ECA Director. We do note that the MOECC found some of the additional wording being proposed redundant.
18. The County in developing and agreeing to the amended conditions to the ECA and PTTW considered the information provided by its external consultants in addition to having its internal engineering team review the amendments to ensure that they protected the drinking water source for County residents and resulted in no risk to human health or the environment.

Conclusion

19. The Tribunal's decision of April 11, 2017 amended the PTTW and ECA to incorporate all of the revisions to the PTTW and ECA agreed upon by the County and Dufferin and accepted by the MOECC.
20. The County in resolving its concerns with the PTTW and ECA through the amended conditions that were accepted by the ERT considered the public interest and protection of the environment to ensure that there was no risk to human health and the environment.

Order Requested

21. The County respectfully requests an order dismissing CCOB's appeal in its entirety.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: June 23, 2017



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