

Ministry of the Environment
and Climate Change

Ministère de l'Environnement et de
l'Action en matière de changement
climatique

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Dear Counsel:

**Re: Appeal to the Minister of the Environment and Climate Change – ERT Case Nos.
16-048 and 16-052**

This is an appeal to the Minister by the Concerned Citizens of Brant (CCOB) of a decision of the Environmental Review Tribunal (ERT or the Tribunal) dated April 11, 2017. The ERT denied CCOB's request for amendments to Environmental Compliance Approval No. 1400-9VNPVY (the ECA).

The ECA that is the subject of this appeal pertains to a closed-loop aggregate washing system approved under s. 53 of the Ontario Water Resources Act (OWRA). The ECA was issued to CRH Canada Group Inc. (CRH or its division Dufferin Aggregates) on October 29, 2015 in respect of its aggregate extraction operations near Paris, Ontario (the Paris Pit).

The Paris Pit is operating pursuant to an updated license originally granted decades ago by the Ministry of Natural Resources under the Aggregate Resources Act (ARA).

In its appeal to the ERT, CCOB sought amendments to various conditions of the ECA. The County of Brant (the County) originally also appealed the ECA conditions to the ERT, but shortly before the appeal was heard, the County and Dufferin reached a settlement of the County's appeal. The settlement provided for certain amendments to the instrument. The issuing

Director endorsed most, though not all, of the proposed amendments and the County was satisfied and withdrew its appeal.

On April 11, 2017, the ERT issued the decision under appeal, ordering some revisions to the ECA conditions, but not all of the revisions sought by CCOB.

A Permit to Take Water (PTTW) is required to enable the washing system. The PTTW was issued to Dufferin at the same time as the ECA, and was also the subject of an appeal by CCOB to the ERT. In its decision, the Tribunal made some revisions to the PTTW. The PTTW is not at issue in this appeal.

The CCOB appeal to me asserts that the conditions of the ECA are not strict enough to protect local wells from contamination by the pesticide atrazine which had been sprayed on the Paris Pit site when it was still farmland; that is, prior to the quarrying operations having commenced. In sum, CCOB argues that the ERT's decision not to amend the ECA to include conditions requiring a new science risk assessment and a trigger mechanism in the contingency and pollution prevention plan was contrary to the evidence with respect to the toxicological nature of atrazine and its presence in the soil at the site. The Director, Dufferin and the County all oppose the appeal.

As noted, the PTTW is not at issue in this appeal (nor is the quarry licence under the ARA). As a result, the only instrument before me is the ECA, and the terms pursuant to which the aggregate will be washed.

After carefully considering the submissions of the parties, I am not prepared to modify the Tribunal's conclusions with respect to the ECA and I therefore confirm its decision.

Discussion

The appellant has raised a number of issues about the ECA. These include the toxicology of atrazine; the sampling for atrazine in the Soil at the Paris Pit; the sampling for atrazine in groundwater; and the aggregate washing process.

In respect of the issues raised by the appellant, the ERT concluded that the terms of the ECA were sufficient to protect the environment. The ERT is a specialized tribunal and had the benefit of hearing the testimony of the witnesses. The Tribunal sat for many days and heard from a number of scientific experts. In short, the ERT found that:

- There is no credible threat to public or private water supply from past use of pesticides at the Paris Pit site;
- There is no evidence that washing the aggregate at the site will result in concentrated atrazine in the wash fines; and
- There is no contamination pathway from the washing system's settling pond to the Telfer and Gilbert wellfields.

The ERT considered the sufficiency of the ECA's terms in light of these findings. The ERT's detailed reasons in support of its decision demonstrate that the ERT thoughtfully canvassed these issues.

In that regard, I note that the terms of the ECA require Dufferin to implement a rigorous groundwater, surface water, and sediment sampling program which requires Dufferin to analyze for a suite of parameters and compounds, including atrazine and other pesticides. This will ensure that atrazine and other parameters of concern are assessed on an on-going basis. In addition, the amended ECA requires that an annual monitoring report be provided to the Ministry of the Environment and Climate Change (MOECC) in which the collected data is interpreted and compared to applicable standards and guidelines. These annual reports are also required to be shared with the general public.

Review of the results of the monitoring program will aid MOECC in ensuring that the stringent requirements of the ECA are adhered to. Should the monitoring data reveal any exceedances, or any trends that could threaten the ongoing protection of the natural environment or human health, MOECC will take appropriate action. This action could range from placing additional requirements on Dufferin, such as increasing monitoring frequencies, to more serious action such as the issuance of orders or the use of other mandatory abatement tools.

I note that the ECA provisions do not contain an explicit 'trigger' at which some action must be taken if atrazine levels reach a certain point. In my view, setting such a trigger would be counterproductive because it would unnecessarily tie the hands of MOECC staff if staff could not take action until that level was reached. Instead, the current conditions provide flexibility for staff to respond if there are trends upward in the levels of any substances of concern, including atrazine. Appropriate measures can then be taken if necessary.

In short, the ECA contains stringent conditions which protect the environment. MOECC is tasked with ensuring compliance with these terms and, as described above, is provided by the ECA with the tools with which to do so. Further, the Director retains discretion under s. 20.13 of the EPA to amend the terms and conditions of the ECA and MOECC has a suite of compliance

and enforcement tools available at its disposal. Both voluntary and mandatory compliance approaches are outlined in the document entitled Compliance Policy: Applying Abatement and Enforcement Tools <https://www.ontario.ca/page/compliance-policy-applying-abatement-and-enforcement-tools#section-7>.

Decision

I confirm the decision of the ERT.

I thank all of the parties for taking the time to address these issues in their thoughtful written submissions.

Sincerely,

A handwritten signature in black ink that reads "Chris Ballard". The signature is written in a cursive, flowing style.

The Honourable Chris Ballard,
Minister of the Environment and Climate Change

Date: February 7, 2018