

Pump testing proceeds
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Published on Jul 25, 2008

A last-ditch effort to halt pumping tests at the proposed St. Marys Flamborough quarry site this week failed when the aggregate company initiated the first round of three intermittent tests on Monday.

FORCE (Friends of Rural Communities and the Environment), the citizens' group that has been fighting the quarry proposal for the past four years, filed a notice of application for leave to appeal last Friday to the Environmental Review Tribunal (ERT). The appeal was in reaction to the Ministry of Environment's decision on July 8 to grant a temporary permit to take water (PTTW) to St. Marys Cement to allow the water testing to proceed.

Lawyers for the anti-quarry group also issued a 'stand down' letter advising St. Marys officials of FORCE's legal challenge and suggesting that the tests not proceed until the ERT rules on the group's application for an interim stay.

St. Marys spokesman, John Moroz, told the Review Monday that the tests are under way and will proceed for the balance of the week because "it is our understanding that there is no appeal mechanism" open to FORCE.

"I think people found that out last week," the vice-president and general manager of St. Marys CBM Aggregates added, referring to a section of the Environmental Bill of Rights that prevents appeals when the term of a PTTW is less than a year. The St. Marys permit, granting three separate tests of six to eight days each, terminates June 30, 2009, making its term just nine days short of a year.

Moroz also noted that the MOE, the regulating body that approved the permit, "hasn't suggested anything different" with regard to regulations governing appeals.

"So we're proceeding," he said.

FORCE chair Graham Flint argued that the ERT's willingness to consider whether it has jurisdiction over hearing the group's appeal is reason enough for St. Marys to halt the testing. He said, "The ERT had the option to say, 'the permit is for less than 365 days, (so) take your marbles and go home.'"

But the Tribunal immediately responded to FORCE's leave to appeal application Friday, saying it will accept submissions from the parties involved on the issue of whether or not it has jurisdiction to consider the appeal. The jurisdictional question must be settled before the Tribunal can rule on FORCE's motion to seek a stay of the PTTW.

Flint interprets the Tribunal's response as "showing potential for an avenue of appeal." As such, he questions St. Marys' "moral authority" to proceed with the water testing.

"If St. Marys continues to take any actions to implement the PTTW, it will prejudice our legal application and continue to show that the company is failing to earn its social licence to operate in our community," he said.

The ERT has asked for submissions from FORCE by today (July 25), followed by response submissions from St. Marys by next Wednesday and finally, submissions from the anti-quarry group, in reply to the aggregate company's arguments, by Friday, August 1. Flint was unsure how soon the ERT will rule on the matter of jurisdiction.

In the meantime, the first daily meeting of technical staff overseeing the pump testing was held on the St. Marys site Monday afternoon while a small group of area residents picketed the meeting site to protest the testing. Among the picketers was Flamborough councillor Margaret McCarthy, who carried a sign saying, "Not Another Walkerton," alluding to contaminated well water that caused the deaths of 11 people in the Ontario community eight years ago.

Opponents of the proposed quarry, on the northeast corner of 11th Concession Road East and Milborough Line in Flamborough, charge that the pump testing could harm local water supplies, affecting both its quantity and quality. But St. Marys officials have consistently countered that there are safeguards in the testing to protect local water resources from negative impacts.

A resident of Stonebrook Estates, a subdivision of 31 homes at the end of the 12th Concession, questioned the safety of the testing. Nadia Hoganson, who has lived in the subdivision for the past four years, said she learned late last week from the condominium board that oversees Stonebrook that the two primary water wells serving the housing area will be taken off-line for seven days while the testing is done. During the shut-off, St. Marys is providing water to the subdivision from a regulated water plant.

"Why do we have to take steps if there is no reason for caution?" Hoganson asked. She said she believes the wells were taken off-line at the request of representatives of the condominium group because they couldn't get the assurances about water safety that they wanted from St. Marys or the MOE. The Review learned that the request came from Team Aquatic, the Sarnia-based managers of the subdivision's water system.

Company officials felt a more accurate picture of the tests' impact on the Stonebrook wells could be obtained if no one was using them during the draw down testing.

The water tests are being done to collect information about groundwater and surface water resources in the area. The information, which will be posted daily at www.flamboroughquarry.ca, will be used by the MOE and the City of Hamilton to evaluate the proposed quarry's potential impacts on local water resources.

The pumping test is being conducted on the central west area of the 158-hectare (390-acre) site. There are 82 wells on the property that will be monitored throughout the testing, as well as five private wells owned by three nearby residents.

Dennis German, a hydrogeologist with Gartner Lee Limited, hired by St. Marys to conduct the testing, said an estimated 50,000 pieces of data about groundwater and surface water will be released daily during the tests.

Following each round of testing, there will be a break of several weeks as representatives of various groups analyze the data.

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