

Pumping tests proceed despite FORCE challenge

By Dianne Cornish
SPECIAL TO THE CHAMPION

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 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 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 to the cement company, 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 said Monday that the tests are underway 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 last 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 license to operate in our community," he said.

The ERT has asked for submissions from FORCE by today, followed by response submissions from St. Marys by this Wednesday and, finally, submissions from the anti-quarry group, in reply to the aggregate company's arguments, by next Friday. 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 near Campbellville, 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.

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