

The Cabinet
Office
Executive Council
Office

Bureau du Conseil
des ministres
Bureau du
Conseil exécutif

99 Wellesley Street West
4th Floor, Whitney Block
Toronto, Ontario
M7A 1A1

Telephone: (416) 325-7690
Fax: (416) 327-9505

99, rue Wellesley ouest
4^e étage, Edifice Whitney
Toronto (Ontario)
M7A 1A1

Téléphone : (416) 325-7690
Télécopieur : (416) 327-9505

December 1, 2006

TO: Petitioners, and
All interested parties

RE: Petition – Dufferin Aggregates
- ***Joint Board Decision***, June 8, 2005

For your information, attached please find a copy of the Order in Council and accompanying Statement of Cabinet outlining the decision of Cabinet regarding the above petition.

Yours truly,
(Signed)

Anna Valerio
Deputy Clerk
Executive Council of Ontario

Attachment

Copy: Tom Lees, Ministry of the Attorney General
Petition Counsel

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation de la personne soussignée, le lieutenant-gouverneur, sur l'avis et avec le consentement du Conseil exécutif, décrète ce qui suit :

WHEREAS a Joint Board established under the *Consolidated Hearings Act*, R.S.O. 1990, c. C.29 considered a proposal by Dufferin Aggregates, a Division of St. Lawrence Cement Inc., to proceed with an undertaking to expand its existing operation and quarry additional aggregate resource on Part of Lots 12, 13, and 14, Concession 7, in the Town of Milton and Parts of Lot 13 and 14, Concession 1, in the Town of Halton Hills, Regional Municipality of Halton;

AND WHEREAS by a decision dated June 8, 2005 the Joint Board approved the undertaking subject to a number of conditions;

AND WHEREAS Robin Denman applied to the Lieutenant Governor in Council to review the Order of the Joint Board;

AND WHEREAS the Coalition on the Niagara Escarpment and Protect our Water and Environmental Resources applied to the Lieutenant Governor in Council to review the Order of the Joint Board;

AND WHEREAS the Lieutenant Governor in Council has duly considered the applications;

AND WHEREAS under s. 13(1)(a) of the *Consolidated Hearings Act* the Lieutenant Governor in Council may vary the decision of the Joint Board;

NOW THEREFORE the decision of the Joint Board dated June 8, 2005 be varied as provided in Schedule 'A' and the decision of the Joint Board be confirmed in all other respects.

Recommended (Signed) _____ Concurred (Signed) _____
Chair, Legislation and Chair of Cabinet
Regulations Committee

Approved and Ordered Dec 1 / 2006 (signed) _____
Date Lieutenant Governor

SCHEDULE 'A'

- I. **Conditions 3, 4, 17, 19, 34, 38, 42, 43, and 45 of Appendix F (Revised Conditions of Approval (To form part of the licence)) to the Joint Board decision are varied as follows:**
 3. The licensee shall prepare and submit to the Ministry of Natural Resources, prior to commencing extraction in Phase 2, an Emergency Response Plan for grouting. This plan shall be available to the quarry operator at all times.
 4. The licensee shall undertake slug or recovery testing of the trigger wells, or another method of suitable testing, as soon as practicable after their installation to ensure that the trigger wells are hydraulically connected to the aquifer. The Ministry of Natural Resources is to be notified in advance of the commencement of the testing and documented results are to be provided to the Ministry of Natural Resources, the Region of Halton and Conservation Halton.
 - 17(a). Dufferin is to submit to the Niagara Escarpment Commission for their approval a detailed plan including a time frame regarding the filling in and the screening of the "Gap" at the main entrance within one year following the date of the issuance of Cabinet's decision to direct the Minister of Natural Resources to issue this licence. This process should welcome input from interested members of the public and interested organizations.
 - 17(b). Dufferin shall hold a public information session regarding the above detailed plan for the filling in and the screening of the "Gap" at the main entrance within six months following the date of the issuance of Cabinet's decision to direct the Minister of Natural Resources to issue this licence. The purpose of this public information session is to gather input and comments regarding the proposal from interested members of the public and interested organizations.
 19. Dufferin is to review the 8-week period set out in the Stoplight Chart with all relevant agencies and make any adjustments found necessary to the Updated Adaptive Environmental Management and Protection Plan, May 2003.
 34. Deleted.
 38. Subject to the approval by the Legislature of an expansion to the Niagara Escarpment Planning Area by amendment to Ontario Regulation 827, the Applicant shall submit an application to amend the Niagara Escarpment Plan for the inclusion and designation of the 70 hectares (approximately) of lands adjacent to the expansion area, owned by the Applicant, currently outside the Niagara Escarpment Planning Area, to maximize the natural landscape corridor in the vicinity of the expanded Mineral Resource Extraction Area.
 42. The wetland features (W7, W8, and V2) in the East extension and their associated buffer areas, which are identified in the Site Plan as a setback, shall be excluded from the extraction area in the licence to be issued by the Ministry of Natural Resources under the Aggregate Resources Act. Setbacks shall be established around the 3 wetlands to act as a buffer area between the extraction areas and the wetlands. The setbacks surrounding the wetlands shall be of no less than 15m for the W7 and W8 wetlands and no less than 25m for the V2 wetland.
- In accordance with the Site Plan, within the setbacks surrounding the wetlands, only those uses and facilities related to the water management and monitoring system and its maintenance are permitted.

43. Notwithstanding any other condition of this licence or site plan note, no extraction of wetland V2 will occur.
45. Dufferin Aggregates, in conjunction with the Ministry of Natural Resources, shall explore options for accelerating the rehabilitation schedule along the brow of the escarpment within Licence No. 5481.

The abbreviations in conditions 10-12, 14, 15(a), 18 and 44 are hereby varied so that "Region" becomes Region of Halton and "CH" becomes Conservation Halton.

II. Parts 4 and 7 of Appendix A (Niagara Escarpment Plan Revised Amendment) to the Joint Board decision are varied as follows:

Part 4

The following permitted use is added to Part 1.5, the Escarpment Rural Area, Permitted Uses:

The Escarpment Rural lands forming the setback for the Mineral Resource Extraction Areas associated with Amendment #135 to this Plan and included within the licence area approved under the *Aggregate Resources Act* may, subject to Condition 42 of Appendix F of the Joint Board Decision as amended by Cabinet, be used for berming, screening, temporary stockpiling of earthen material, accessory structures and facilities normally associated with a mineral extraction operation, and facilities and servicing for, and related to, the water management and monitoring system for the quarry extension. Extraction shall not be permitted in this area.

Part 7

Deleted.

III. Appendices B through E (The Region of Halton Official Plan Amendment No. 18; The Town of Halton Hills Official Plan Amendment No. 103; The Town of Milton Official Plan Amendment No. 16; and The Town of Milton Zoning By-Laws 98-2003 and 61-85) to the Joint Board decision are hereby amended in accordance with the decision by Cabinet in this matter.

**APPLICATIONS TO THE LIEUTENANT GOVERNOR IN COUNCIL
BY ROBIN DENMAN AND THE COALITION ON THE NIAGARA ESCARPMENT/
PROTECT OUR WATER AND ENVIRONMENTAL RESOURCES**

STATEMENT OF CABINET

Cabinet has carefully considered the submissions made by all of the parties in this matter. It has been decided to confirm the Joint Board decision, subject to certain variations, and thereby enable the expansion of the Dufferin Quarry to proceed.

The Dufferin expansion proposal is a very complex one in terms of the legislative and planning instruments involved, as well as the number of jurisdictions. The specifics of the proposed extraction are also complex, in particular, the impact mitigation scheme and rehabilitation plan. Prior to the Joint Board hearing, there were extensive agency reviews and public hearings. With respect to the hearing itself, the Joint Board sat for 82 days, heard numerous witnesses, and had over 250 exhibits filed, including several detailed studies. By way of decision dated June 8, 2005, the Joint Board approved all of the applications before it, subject to conditions.

The petitioners (and other parties) disagree with the Joint Board's conclusions and raise many grounds in support of their position. In short, the Petitioners argue that the Joint Board failed to make proper findings in fact and law, such that the decision is contrary to provincial policies, is contrary to law, and is not in the public interest.

Cabinet is mindful that it has previously considered the option of a blanket prohibition for pits and quarries on the Niagara Escarpment, but has allowed aggregate extraction to continue to be permitted within the Escarpment Rural designation. Cabinet is also mindful that each proposal for aggregate extraction on the Escarpment must be judged on its own merits.

Cabinet has reviewed the Joint Board's decision in detail and the objections to it. Cabinet is of the view that there are no instances where relevant provincial policies were not considered, and that the decision speaks to all of the issues raised in the Petitions. Similarly, there are no instances where the decision contains findings that contravene applicable laws, policies, or regulations. With respect to factual matters, there is an evidentiary basis for all of the Joint Board's conclusions. Cabinet is satisfied that there are adequate safeguards in place to protect the environment while the quarrying is ongoing, and thereafter.

While Cabinet has decided to permit the expansion to proceed and has confirmed the bulk of the Joint Board decision, Cabinet has also decided to vary some of the terms and conditions of the Joint Board decision.

With respect to wetlands, Wetland V2 has been identified as the habitat of the Jefferson Salamander. As a result, Cabinet has decided that Wetland V2 will be excluded from extraction. Cabinet has also decided that all of the wetlands (W7, W8 and V2) will be brought into the licensed area. The inclusion of the wetlands within the licence will provide greater protection than if they remained outside the licence, since lands within the licensed area are subject to the restrictions of the site plan under the *Aggregate Resources Act*.

Cabinet's decisions with respect to the treatment of the wetlands result in changes to: Parts 4 and 7 of the Niagara Escarpment Plan Amendment #135; changes to conditions 34, 42, and 43 of the Revised Conditions of Approval (Appendix F of the Joint Board decision); and consequential changes to the local planning documents. In addition, the Joint Board decided the appropriate setback areas, but the Board's conclusions on this issue are not reflected in condition 42 as issued by the Board. As a result, condition 42 is also varied to delineate the setback areas as decided by the Joint Board.

It has also been decided that conditions 3, 4, 17, 19, 38 and 45 are to be added/varied to advance rehabilitation and promote public participation and transparency, as well as to ensure clarity.

Cabinet is also mindful of the importance the Joint Board placed on the addition to the Niagara Escarpment Planning Area of approximately 70 Ha of lands, owned by Dufferin Aggregates, to augment the continuous natural corridor and provide linkages between ecologically sensitive areas. In this respect, and in recognition that Dufferin Aggregates has already made an undertaking to commit these lands to the Niagara Escarpment Planning Area, Cabinet supports the Minister of Natural Resources taking the necessary steps to have these lands added to the Niagara Escarpment Planning Area. To further assist in this regard, Condition 38 is varied to recognize that any lands to be added to the Niagara Escarpment Plan (as distinct from the Planning Area) also require a land use designation under the Plan.

In addition, conditions 10-12, 14, 15(a), 18 and 44 are varied to spell out abbreviations.