

January 23, 2013

OMB bans citizens' toxicologist from testifying at gravel hearing Decision lets aggregate company keep witnesses in blatant double-standard ruling

Ayr, Ontario—The Ontario Municipal Board (OMB) delivered a shockingly one-sided decision on Tuesday to the Concerned Residents Association of North Dumfries (CRAND). The decision deprives the group of its right to call its star scientific witness in a hearing to stop the proposed Henning pit project, a huge new gravel pit near Cambridge, Ontario.

OMB chair Jyoti Zuidema favoured Preston Sand & Gravel's objection to prohibit CRAND's toxicologist, Dr. Marie-Odile Fouchécourt, from giving evidence despite hearing that CRAND's original toxicologist quit unexpectedly two months before the hearing. CRAND's legal counsel David Donnelly secured a new toxicologist within days — and over a month before the hearing started — but that wasn't good enough for the Board.

In addition to hearing uncontroverted evidence that timely notice of the new witness was given to Preston's legal counsel, the board also heard that the aggregate company's lawyer committed numerous serious breaches of the Procedural Order himself, including the addition of two new witnesses. The OMB's response to CRAND's lawyer's plea for a level playing field was met with the statement, "two wrongs don't make a right."

"This is an outrageous double-standard — to hold us to a higher standard than well-financed corporations and their Bay Street lawyers," said Temara Brown, founder of CRAND. "CRAND was not at fault if anything did go wrong procedurally. Why can we not call our expert witness too?"

"We lost our star witness in a ruling that forced our lawyer to resign, and OMB's only response was to demand that we find a new lawyer overnight. We've invested thousands of dollars in experts and are not going to be bullied into putting up with a quick-and-dirty hearing just to stick to Preston Sand & Gravel's timetable," Brown added.

CRAND's toxicologist would have testified that the data presented by Preston Sand & Gravel's experts did not convince her that "no unacceptable health risks related to emissions from the proposed Henning pit project would be expected." Dr. Fouchécourt is an experienced toxicologist and risk assessor and reported that she "would not recommend to approve the [Henning pit] project on the basis of the current data available."

OMB case law refers to Procedural Orders as "road maps", and countless corporations and municipalities have been granted permission to add new witnesses, new witness statements and even new issues, even after new hearings have started.

"These facts give rise to a very real concern about bias on the OMB," Brown said.

The proposed Henning pit project is located within the municipality of North Dumfries and is 50 ha (120 acres) with an annual extracting capacity of 750,000 tonnes per year. North Dumfries is one of Ontario's smallest municipalities geographically, while at the same time being one of the top aggregate producers at around 4 million tonnes per year. North

Dumfries is already home to 33 existing pits, with many more on the way besides the pit Preston Sand & Gravel is proposing.

The Township of North Dumfries and Waterloo Region have both refused a call to stop the piecemeal expansion of aggregate mining in this region.

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