

Environmental
Commissioner
of Ontario



Commissaire à
l'environnement
de l'Ontario

Gord Miller, B.Sc., M.Sc.
Commissioner

Gord Miller, B.Sc., M.Sc.
Commissaire

July 8, 2003

Mr. Gary Nichols
Nichols Gravel Limited
Box 172
Delhi ON
N4B 2W9

Dear Mr. Nichols:

**RE: Nichols Gravel Limited, File #A2003012
Notice of Appeal under the *Environmental Protection Act* - Date of Placement on the
Environmental Registry in Accordance with s. 47 of the *EBR***

On July 4, 2003, the Environmental Commissioner of Ontario (ECO) received a copy of your Notice of Appeal concerning the Permit to take Water No. 03-P-2244 issued by the Ministry of the Environment.

In accordance with the ECO's duty pursuant to section 47(3) of the *Environmental Bill of Rights, 1993* to place notice of instrument appeals on the Environmental Registry, notice of this appeal was placed on the Registry on July 8, 2003. Please find enclosed a copy of the Notice of Appeal - Registry Number IA02E0939.

If you have any questions regarding this letter please do not hesitate to contact me at 416-325-3378, or you may wish to contact Peter Lapp, Executive Assistant, at 416-325-3369.

Yours truly,

Bev Edwards
Policy & Decision Analyst

Attachment

1075 Bay Street, Suite 605
Toronto, Ontario, M5S 2B1
Tel: (416) 325-3377
Fax: (416) 325-3370
1-800-701-6454



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EBR Registry Number: IA02E0939

Ministry Reference Number: 23021096

Type of Posting: Instrument

Status of Posting: Appeal

Ministry: Environment

Type of Appeal: Applicant Appeal

Date Proposal Loaded: 2002/08/09

Comment Period: 30 day(s)

Written submissions were permitted between August 09, 2002 and September 08, 2002.

Date Decision Loaded: 2003/06/26

Date Appeal Application was received by the Environmental Commissioner: 2003/07/04

Date Applicant Appeal Notice was placed on the Registry by the Environmental Commissioner:
2003/07/08

NOTICE OF AN APPEAL OF A DECISION FOR AN INSTRUMENT:

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Application for Appeal Initiated by:

Nichols Gravel Limited ("appellant")

Decision under Appeal:

The appellant is appealing all of the terms and conditions of the Permit to take Water No. 03-P-2244 issued by the Director.

Grounds for Appeal:

The Appellant considers the permit to be unlawful and invalid for the following reasons:

- a. The permit is not a "renewal"; it is a "new" permit.
- b. The 24 "pre dewatering conditions" do not comply with the conditions as approved by OMB Decision/Order 1194. The Ministry of the Environment has no authority to change conditions imposed by the OMB.
- c. The pre-conditions prevent any water taking until all conditions are met and approved by MOE. This is a contravention of the Aggregate Resources Act Prescribed Conditions (e.g., for mitigation of dust) which cannot be changed or altered even by the Minister or the OMB.

For information on hearing dates and locations, please contact the Appellate Body listed under Contacts.

Contacts:

Environmental Review Tribunal

ESR Registry Number: 1702L055 Type of Posting: Instrument Status: Appeal Page 2 of 4 56
Contact: The Secretary
2300 Yonge St., 12th Floor, P.O. Box 2382, Toronto, Ontario, M4P 1E4
PHONE: (416) 314-3300 FAX: (416) 314-3299

Peter Lapp, Executive Assistant
Environmental Commissioner of Ontario
1075 Bay Street, Suite 605, Toronto, Ontario M5S 2B1
PHONE: (416) 325-3377 FAX: (416) 325-3370

INFORMATION ABOUT THE DECISION FOR WHICH THE APPLICATION WAS RECEIVED:

Instrument Type:

OWRA s. 34 - Permit to take water

Instrument Holder: (Proponent)

Nichols Gravel Limited P.O. Box 172, Delhi, Ontario, N4B2W9

Location of Activity:

P.O. Box 172, Delhi, Ontario, N4B 2W9

Nanticoke

County/District/Region: Regional Municipality Of Haldimand-Norfolk

Other Activity Location Identifiers:

Lots 10,11, 12, Concession 12 Former Walpole Twp, City of Nanticoke, Haldimand County

Description:

The proponent has asked that the Ministry of Environment and Energy review their application for the following:

Permit: New

Source: Pond

Purpose: Industrial (aggregate extraction)

Period of Taking: Fifty (50) years

Amount of water to be taken (maximum): 700 Igpm (3,182 Lpm), 420,000 Igpd (1,909,320 Lpd) 280 days per year.

Location: Lots 10-12 Concessio 12, Former Walpole Twp., City of Nanticoke, Haldimand County

Proposal Decision:

The Permit has been issued with conditions

This permit was issued on June 12, 2003 and is valid annually between March 15 and December 15 until March 31, 2008.

Number of Comments Received: 32

Effect of the Comments on the Decision of the Ministry:

Comments received were reviewed and where appropriate were considered in the ministry's decision whether or not to proceed with this proposal. In this case, comments were consistent with concerns within the ministry and as a result terms and conditions were added.

These conditions do not represent all conditions imposed on the instrument holder but rather those that are directly in line with comments received.

32 individual comments/letters were received through the EBR posting. All 32 letters submitted were not in favor of the PTTW application submitted by Nichols Gravel Limited. The majority of the comments/concerns made by these individuals were similar in nature and are summarized as follows:

1. Mr. Nichols has proceeded to quarry the site before any of the Ontario Municipal Board's (OMB) 52 points, issued on April 16th 2001, have been addressed.
2. Historical interference problems have occurred in the past through similar operations with respect to both water quality and quantity. In 1972, a number of private wells and a spring fed pond went dry and/or experienced adverse water quality impacts due to quarrying activities that occurred within the Bertie Formation.
3. The requested rate of 700 IGPM was much higher than the 39 IGPM that was proposed by Nichols Gravel Limited during the OMB hearing.
4. The potential for future interference problems with the areas water supply. There are a number of individuals in the area that rely on the groundwater supply for private domestic use as well as for agricultural purposes and therefore, a consistent supply of good quality groundwater is a major concern.
5. Nichols Gravel Limited was noted to be operating the quarry without a quarry license.
6. The applicant has not complied with a number of recommendations put forth by the MOE that should have been completed prior to the submission of an application for a long-term PTTW.
7. A number of concerns revolved around the inadequacies of the hydrogeologic model and unsatisfactory hydrogeological report prepared by the consultants on behalf of Nichols Gravel Limited.
8. The Harrop Drainage System is maintained by a number of area residents and there is concern that by discharging large amounts of water into this drain by Nichols Gravel Limited will adversely impact the system. Concerns with respect to the flooding of fields, the effects on the natural habitat in the area and the potential for erosion of the drainage system were noted.

Other additional comments/concerns raised include:

- a) The potential impact on a residence natural gas well.
- b) No communication with the surrounding landowners or anyone else as to the current operations of the quarry has occurred by Nichols Gravel Limited in some time.

The majority of the above noted comments/concerns were addressed in a number of Special Conditions attached to the approved PTTW. A number of the attached Special Conditions are required to be completed and submitted to the Director prior to taking water under the approved permit. Furthermore, the maximum approved rate was lowered to 240 IGPM (over a 10-hour day) to more appropriately reflect what was presented at the OMB public hearing.

A number of the 52 points put forth by the OMB that did not relate to water quality and quantity, in point 1) above, were not addressed as they were beyond the scope of this review. Furthermore, points 5) and a) above were also beyond the scope of this review.

Jennifer Volpato B.Sc., M.Eng.
Hydrogeologist

Additional material in support of this notice is available by clicking the following hyperlink(s):

http://www.ene.gov.on.ca/envision/env_reg/er/documents/pttw/2003/IA02E0939.pdf

Other Pertinent Information:

This application to comply with OMB decision Order #1194 and Aggregate Act prescribed condition Cat. 2 Class "A" licence, page 9, section 3.0, Sub. 3.2 and OMB Conditions of Approval, attachment "2", pages 1-2 and for intermittent dewatering of surface water and storm events which may occur and the possible projected need to wash aggregate as required.

Issuing Authority:

Director
West Central Regional Office
12th Floor, 119 King St. West
Hamilton, Ontario, L8N 3Z9
PHONE: (905) 521-7640 FAX: (905) 521-7820

AS THE APPLICATION IS CONSIDERED, THIS INFORMATION WILL BE UPDATED BY THE ENVIRONMENTAL COMMISSIONER OF ONTARIO.