
Imperial Precast Corp. (Registry #IA04E0896)*Instrument Issued:*

In April 2009, MOE granted a C of A for air emissions (under section 9 of the *Environmental Protection Act*) to Imperial Precast Corp, a company that manufactures concrete products. The C of A provides approval for an exhaust system, a baghouse filter to control particulate matter, two storage tanks, and combustion equipment.

Leave Application:

The applicants (Georgina Beattie and others) sought leave to appeal MOE's decision to issue the C of A. The applicants argued that the C of A should include stronger requirements for pollution, noise and odour control in light of the fact that the facility is located in close proximity to a residential neighbourhood.

Leave Decision:

On July 10, 2009, the ERT denied the application for leave to appeal. The ERT found that the applicants had failed to satisfy the first part of the test for leave to appeal – i.e., to establish that no reasonable person could have made the decision to issue the C of A with the terms and conditions imposed by the Director. However, in response to the applicants' concerns regarding noise emissions from the facility, the ERT urged the MOE Director to require completion of an acoustic assessment as soon as possible.

Findlay Creek Properties Ltd. (Registry #010-4670)*Instrument Issued:*

On April 27, 2009, MOE issued a PTTW to Findlay Creek Properties Ltd. and 1374537 Ontario Ltd. The PTTW authorizes the proponents to take water from both groundwater and surface water sources at different times over a ten-year period during the construction of a new subdivision (the 'Findlay Creek Village') in the City of Ottawa.

Leave Application:

The applicants (the Greenspace Alliance of Canada's Capital and Sierra Club Canada) sought leave to appeal the MOE Director's decision to issue the PTTW on a number of grounds, including:

- The development is in a provincially significant wetland, which is prohibited by the Provincial Policy Statement, 2005, and the PTTW does not include appropriate conditions to protect the wetland from adverse effects;
- The Director's decision fails to comply with O. Reg. 387/04, the Water Taking and Transfer Regulation under the *Ontario Water Resources Act*; and
- The Director failed to consider and incorporate MOE's Statement of Environmental Values in the PTTW.

Leave Decision:

On July 29, 2009, the ERT granted the applicants leave to appeal, in part. The ERT concluded that the applicants had satisfied the first branch of the test for leave to appeal (i.e., that no reasonable person could have made the decision), but only with respect to a small number of the issues argued under the ground that the Director's decision failed to comply with O. Reg. 387/04. The ERT concluded that the applicants satisfied the second branch of the test, having provided sufficient evidence to demonstrate that the MOE Director's decision to issue the PTTW could result in significant harm to the environment.

Accordingly, the ERT granted the applicants leave to appeal only specific provisions of the PTTW. The remaining grounds raised by the applicants were not allowed as part of the appeal.

Status of Appeal:

The final decision of this appeal is pending.

Thomas Cavanagh Construction Limited (Registry #010-5806)*Instrument Issued:*

On June 9, 2009, MOE granted a PTTW to Thomas Cavanagh Construction Limited. The PTTW, which is a renewal of a previous PTTW, authorizes the taking of water for the purposes of industrial dewatering, aggregate washing and dust control at the proponent's quarry in the City of Ottawa. The PTTW authorizes the taking of a maximum of 6,480,000 litres of water per day, 365 days per year, for a period of 10 years.

Leave Application:

The applicant (Ken McRae) sought leave to appeal the entire PTTW. The applicant provided a number of documents dating back to 2001 to support his assertion that he has an interest in the PTTW, and to support his concerns that the PTTW would have a negative impact on the Provincially Significant Huntley Wetlands Complex. The applicant identified several grounds for leave to appeal, including:

- The permit holder has a long history of violating environmental protection laws;
- The permit holder has no regard for the importance of the wetland; and
- No reasonable person could have decided to issue the PTTW because MOE's Statement of Environmental Values, 2005 PTTW Manual and regulations under the *Ontario Water Resources Act* all indicate that a PTTW that would result in the destruction of a Provincially Significant Wetland should not be issued.

Leave Decision:

On August 21, 2009, the ERT denied the application for leave to appeal. The ERT concluded that the applicant met the first part of the leave to appeal test by demonstrating that there is good reason to believe that no reasonable person could have made the decision to issue the PTTW. In particular, the ERT agreed with the applicant that the permit holder's compliance history could be considered under the *EBR* section 41 test and that "a proponent's history of environmental compliance is relevant to whether the conditions in a PTTW will be complied with."

However, the ERT concluded that the applicant had failed to meet the second part of the test, namely that the MOE Director's decision to issue the PTTW could result in significant harm to the environment. The ERT found that, although the applicant asserted that the water-taking by the permit holder has resulted in significant harm to the Provincially Significant Huntley Wetlands Complex, the information supplied by the applicant was "light on supporting material that establishes the second branch of section 41 of the *EBR*" and was not sufficient to enable the ERT to assess the applicant's allegation of significant harm to the environment. As the applicant did not fully satisfy the leave to appeal test, the ERT dismissed the application.

Michael Wade Construction Co. Limited (Registry #010-5869)*Instrument Issued:*

On July 3, 2009, MOE granted a PTTW to Michael Wade Construction Co. Limited for the purposes of irrigating the proponent's golf course in the City of Quinte West, County of Hastings. The PTTW authorizes the proponent to take up to 32,750 litres of water per day from a well, plus another 250,000