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## Clean Air Bath

c/o P.O. Box 364  
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5 January 2007

**BY FAX** (416) 314-4506  
Environmental Review Tribunal  
Contact: The Secretary  
Suite 1700, P.O. Box 2382  
2300 Yonge St.  
Toronto, Ontario, M4P 1E4

### **Notice to Seek Leave to Appeal**

**EBR Registry Numbers: IA04E0464 and IA03E1902**

**Ministry Reference Number: 4336-5WVSTT and 3088-5UQTF7**

**Lafarge Canada Inc., Highway 33, P.O. Box 160, Loyalist, Ontario  
K0H 1G0**

To whom it may concern:

This is to serve written notice that Clean Air Bath seeks Leave to Appeal the decision by the Ministry of the Environment to approve Lafarge Canada Inc.'s application to discharge into the natural environment other than water (Air), and Lafarge Canada Inc.'s application for a waste disposal site.

Clean Air Bath (CAB), a local citizens' group, has expressed its concern in regard to this undertaking by commenting on the original proposal, organizing local informational meetings, and by meeting with the Environmental Assessment and Approvals Branch staff.

CAB seeks Leave to Appeal MOE's EPA section 9 approval and section 27 approval in their entirety.

Our grounds for the application for Leave to Appeal are as follows:

**No reasonable person, having regard to the relevant law and any government policies developed to guide decisions of that kind, could have made the decision:**

- At the same time as the MOE issued its decision in favour of Lafarge Canada Inc.'s alternative fuels project, the Ministry imposed a 2-year province-wide ban on the burning of tires, citing its "lack of experience monitoring the environmental performance of facilities that incinerate tires" ([www.ene.gov.on.ca/envregistry/029090er.htm](http://www.ene.gov.on.ca/envregistry/029090er.htm)).

The MOE further states that "[t]his halt will give ministry scientists and experts the opportunity to ensure the environmental performance of facilities that convert tires to energy" (Pers. comm., MOE, Peter Hargreave, 21 Dec. 2006). Permitting the practice of tire burning in Bath, while prohibiting it elsewhere in the province, is inherently contradictory and disregards the government's own policy on tire burning.

- To fulfill the purposes of the *Ontario Environmental Bill of Rights*, the Act is to provide for "increased accountability of the Government of Ontario for its environmental decision-making" (Part I, section 2, subsection 3 (b)). We believe that the public's right to government accountability and transparency for its environmental decisions has been violated. It appears that the decision to issue a Certificate of Approval for a demonstration period is the result of closed-door negotiations between the Ministry and Lafarge. When questioned on two occasions, staff at the Environmental Assessment and Approvals Branch ("Branch") indicated that neither a "sunset clause" nor a "demonstration period" was being considered (CAB to MOE, 29 Nov. 2006; Meeting between CAB and MOE on 16 Oct. 2006).

Subsequent communication received from the Branch confirmed that "[t]he applications submitted by Lafarge under s.9 and Part V of the EPA did not include a request for a demonstration period. The Ministry does not typically impose expiry dates [i.e., sunset clause] in Certificates of Approval, though we have the ability to do so. If an expiry date were to be imposed, then like any other condition of a Certificate of Approval, there must exist a solid, defensible reason for imposing a requirement" (Pers. comm. MOE, Richard Lalonde, 7 Dec. 2006). Despite these assurances on the part of the Branch that the option of a demonstration

period was not in the offing, on 31 October 2006 Lafarge spokesman Robert Cumming had publicly stated the company's plans for a 2-year demonstration period, which now finds itself manifested in the Certificate of Approval (Air) of 21 December 2006 (Kristyn Wallace, "Local environmentalists take concerns to Queen's Park and KFL&A Public Health," The Kingston Heritage).

Given the conflicting information in regard to the demonstration period discussed above, CAB has no faith that MOE will review the Bath facility's performance levels in an open and impartial fashion. A situation such as this only increases the already existing anxiety levels in the community about its possible exposure to harmful toxins.

**The decision could result in significant harm to the environment:**

- The Ministry's ban on tire burning is an admission of the potentially significant environmental impact such a practice may have. To repeat, the Ministry confirms its "lack of experience monitoring the environmental performance of facilities that incinerate tires" ([www.ene.gov.on.ca/envregistry/029090er.htm](http://www.ene.gov.on.ca/envregistry/029090er.htm)). Thus, by permitting this practice in Bath, while banning it elsewhere in the province, MOE violates the purposes of the *Ontario Environmental Bill of Rights*, that is, "to protect the right to a healthful environment" (Part I, section 2, subsection 2(c)).

**The condition of the instrument in respect of which the leave to appeal is applied for:**

CAB seeks Leave to Appeal MOE's EPA section 9 approval and section 27 approval in their entirety.

Attached to Clean Air Bath's Leave to Appeal is a signed petition by over 200 concerned residents who support this submission.

In case of questions, please contact us by e-mail ([cleanairbath@hotmail.com](mailto:cleanairbath@hotmail.com)), or by phone at (613) 352-7458.

Sincerely,

Susan Quinton  
For Clean Air Bath

CC: Environmental Commissioner  
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