



Deputation to Council
April 11, 2017

Mayor Quaiff and Members of Council,

SPB is a not for profit group made up of ordinary citizens from all walks of life, whose concern is solely water quality for County drinking / recreation/ tourism and commerce.

We are appreciative of the democratic process and doing our best to work with our elected representatives who we know share the same concerns....as well as the various regulatory bodies involved.

We are respectful of anybody's right to work and grow a commercial enterprise- that is what built this country.

But all County residents are also called as stewards of this beautiful place for the generations to follow. Our mutual concerns are much larger than Picton Terminals; but clearly as a result of their self-demonstrated capabilities, Job #1 is proper rezoning and regulatory control assurance in order to guarantee that one day the sum of recent "smaller " issues do not add up to an enormous environmental disaster to the detriment of all who are privileged to work and play in the Bay.

At the last Committee of the Whole meeting, our letter of March 20th, 2017 was on the agenda, asking Council to give serious thought to re-zoning the Picton Terminals land and to consider our lawyer, Eric Gillespie's legal opinion, which differs entirely from that of the County's solicitor, Wayne Fairbrother.

Over the past 2 years or more, many concerned County residents have stood in front of this Council and various related bodies, from the County's Economic Development committee to the Conservation Authority's

Source Water Protection committee, warning of the dangers that threaten the Picton Bay natural environment and our drinking water.

Unfortunately, the actions surrounding the Picton Terminal dock 2 weeks ago with the sinking of the barge and the closing of the Town's drinking water system is just a sample of what could happen if nothing is done. Thankfully, the reported 1100 litres of fuel on board was contained and did not leak. Such a spill of thousands of litres of oil would be disastrous to our small Picton Bay.

Much has been said about the limitations on Council's jurisdiction regarding pollution and marine traffic etc. We will have to leave that up to the Province and the Federal governments to supervise.

Where you **do** have authority is over the land use activities – in other words, the **Zoning** permissions.

We support Councillor Epstein's proposed motion that will withdraw Council's original backing of this contractor's vision to turn our small channel into a Great Lakes shipping port.

Furthermore, it seeks answers to this Zoning question and directs Staff to report back with options to move forward.

Save Picton Bay has given much thought to what constructive measures Council can take, especially in light of the fact that our lawyer, an expert in municipal and environmental law, considers Picton Terminals use of the land and dock to be illegal and contrary to the existing Zoning By-law.

Recently retired Superior Court Judge, Richard Byers, also reviewed the two competing opinions and has stated that the Picton Terminal's use of the land is, in his opinion, illegal. He went on to state that:

“if Council encouraged Picton Terminals by motion or otherwise to operate in breach of its own bylaw, its' liability insurer might take the view that was an intentional act and decline to defend a catastrophic claim. The issue would turn on whether or not council knew or should have known the obvious meaning of the bylaws.”

We believe every effort should be made to overcome these legal differences to avoid potentially costly and time consuming legal disputes.

A common understanding of legal issues will help immensely in resolving the important problems that have been cast in bold relief by the sinking and by the other problems that have emerged in relation to the Picton Terminals site.

We have been advised of a relatively quick and inexpensive option which we feel is imperative before considering any further action on Picton Terminals, given the conflicting legal opinions.

This option asks a sitting Superior Court Judge to interpret the Zoning By-law which the Picton Terminals are relying on to continue their shipping operation. In essence, we would be asking which opinion is correct.

That provision is section 97 of the *Courts of Justice Act*.
It reads:

Declaratory orders

97 The Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may make binding declarations of right, whether or not any consequential relief is or could be claimed. 1994, c. 12, s. 39; 1996, c. 25, s. 9 (17).

So, in effect, Council could ask for a binding interpretation of the Zoning By-law without asking for an injunction.

Respectfully, everyone needs to know if, in fact, Picton Terminals is contravening the existing Zoning By-law or if they are legal non-conforming.

If we are right, then the By-law needs to be enforced as extractive industrial and if a re-zoning is needed, then let them re-apply and let the Community at large express their desire as to what uses can operate on this land in in our waters.

Save Picton Bay as a group exists, not to fight this one property owner, but to promote the proper stewardship of both our drinking water reservoir and a very special place; a fresh water harbour that is unique on the Great

Lakes. Picton Terminals and their continued bulking-up of road salt which contaminates the fishery, their mishandling of petcoke and the ongoing MOECC investigations into their operations is just a wake up call.

There are many long-standing, existing threats to Picton Bay, which will be ill served by further current escalation. These are well documented, but one thing is clear. Much more study is needed. We urge this Council to consider further review of the Delhi Dump leaching into Marsh Creek and the recently revealed contamination of the Proctor Silex lands and whether or not these effluents have also entered our drinking water reservoir, Picton Bay

As much as this matter is of enormous interest to all parties in this chamber - in fact our biggest joint responsibility is to those who are notthose stewards who have gone before us - who have given us this treasure , Picton Bay, and those generations who will follow us all and who rightfully expect the same opportunity.

In our view , it is time for all parties to pull together. In the words of Martin Luther King: **"We may have come in different ships - but we are all in the same boat now"**.