

March 11, 2016

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Operations Division
Environmental Approvals Access &
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Ms. Tina Dufresne, District Manager
Halton-Peel District Office, Central Region
4145 North Service Road, Suite 300
Burlington, Ontario L7L 6A3

Dear Sir/Madam:

Subject: EBR Registry Number: 012-6693
Ministry Reference Number: 1720-A59NX4
Proponent: 2120901 Ontario Limited
Instrument Type: Environmental Compliance Approval –
EPA Part II.1-sewage
Location: 5432 Bell School Line, Burlington, Ontario

I am writing on behalf of the Corporation of the City of Burlington, in response to an application for a new Environmental Compliance Approval for 2120901 Ontario Limited posted to the EBR on February 4, 2016. For the reasons that follow, the City of Burlington is requesting that the application be returned to the proponent as incomplete for the reasons as will be set out below. In the alternative, the City is requesting that the time for the submission of comments be extended for an additional 60 days beyond the current deadline of March 20, 2016 to permit adequate time for consideration of the issues by Burlington City Council, and affected residents.

Background

The City of Burlington and the Burlington Airpark Inc. have been engaged in litigation for several years arising from an illegal fill operation taking place at the Burlington Airpark. The sewage works that are the subject of the application before you drain water from the landfill at the airport that is the subject of the litigation between the City and Airpark. The Airpark is located between Appleby Line and Bell School line, north of Highway 407, all of which is located in the northern rural area of Burlington.

A fill operation on the Airpark property commenced in late 2007. The City of Burlington was never consulted about the fill operation or about any proposed expansion plans that the Airpark might have with respect to its operations. On or about March 2013, the City began receiving a significant number of complaints from new landowners in the vicinity of the Airpark. The nature of the complaints ranged from grading activities, drainage, noise, dust, traffic safety and about the possible effects of contaminants in the fill on drinking water. After having investigated these complaints, staff concluded that the Airpark was using its lands as a fill site in order to generate revenue and was not depositing fill to implement a planned and/or imminent expansion of its airport facilities.

As a result of its investigations, on May 3, 2013 the City issued an Order to Comply pursuant to its site alteration by-law by obtaining a permit for the ongoing fill operation. After the Airpark failed to comply, the City issued a Violation Notice under its by-law. Since that time, the City has been engaged in protracted litigation with the Airpark to bring the Airpark into compliance with the City's by-laws to address the off-site impacts caused by its fill operation.

Litigation Round 1

The Airpark brought a court application in July 2013 to prohibit the City from enforcing its Topsoil Preservation and Site Alteration By-law against the Airpark and the Airport. The City responded with a counter application seeking a declaration that the City's Topsoil Preservation and Site Alteration By-law 6-2003 was valid and binding upon the Airpark and to its fill activities.

In November 2013, the court dismissed Airpark's application against the City and declared that the City's Topsoil and Site Alteration By-law was valid and binding upon it. The Airpark subsequently appealed the decision to the Ontario Court of Appeal. The Court of Appeal dismissed the appeal on June 13, 2014.

Following the decision of the Court of Appeal, the City continued to press the Airpark to comply with the Order to Comply under the City's Site Alteration By-law. The City adopted a new Site Alteration By-law #64-2014 which contained materially the same provisions found in the previous by-law. The City maintained that the Order remained outstanding and it continued to be entitled to enforce it. The Airpark subsequently did file an application, however maintained that it was in relation only to a small area at the north-west corner of the Airport. This position

ignores all of the fill unlawfully deposited at the Airpark between January 1, 2008 and August 2, 2013.

Litigation Round 2

The City commenced an application to the court in April, 2015 seeking an order to remove all fill deposited on site between 2008 and 2013. In the alternative, the City seeks to have the court order the Airpark to submit a complete application for a site alteration permit pursuant to the new City's site alteration by-law. The application was heard by the court on November 10, 2015 and at the time of preparing this letter, the court has not released its decision.

Nature of Burlington's Interest

The City of Burlington has a clear and compelling interest in the application for Environmental Compliance Approval that has been submitted to the Ministry of the Environment and Climate Change and posted on the EBR. As demonstrated above, the City has been engaged in a protracted dispute with the Airpark to regulate the fill that was brought onto the site illegally in order to address the environmental impacts resulting from those actions. In particular, the City is concerned with the grading of the property, and the impacts on the drainage of the lands, all of which are related to the proposed sewage works identified in the current application for compliance.

Prior to 2008, which was the start of the fill operations, the Airpark had a storm sewer drainage system that was located generally in the vicinity of the North-South runway and the airpark buildings. These storm sewers discharged into the existing pond at the SE corner of the property and into the adjacent farm fields.

With the start of the fill operations, additional storm sewers were installed in the areas of fill. These storm sewers discharge into a regulated watercourse and also at several locations along the west property line. This has resulted in changes to the stormwater discharge regime onto adjacent properties. The change has been from the previous "sheet flow discharge" to "concentrated flow discharge". As a result, adjacent properties have been adversely impacted, as identified above in the form of complaints received by the City.

The City agrees that the MOECC Environmental Compliance Approvals were required for these storm sewer systems. In addition, Conservation Authority permits should have been applied for. It is the City's position that detailed storm sewer and stormwater design calculations should be provided for these systems. The application does not include adequate information in this regard.

Irregularities with the Present Application

City staff has had the opportunity to attend at the Halton-Peel District Office to view the materials filed by the proponent. The City submits that the application as

filed contains a number of irregularities that merit the rejection of the present application on the basis of incompleteness.

Name of Proponent

The name of the proponent making application for environmental compliance approval is 212091 Ontario Limited. The Certificate of Incorporation and the Articles of Incorporation attached to the application for that numbered company date back to 2006. Our recent corporate search of this company discloses that the numbered company was in fact amalgamated with the Burlington Airpark Inc. on January 1, 2007, forming a new company, Burlington Airpark Inc. being Ontario Corp. Number 1721779. Burlington takes the position that the application has been made by a defunct corporation which cannot have legal responsibility for the proposed works to which the application relates. The documents submitted in support of the applicant's name are neither current, nor do they provide proof of the name of a genuine applicant. Furthermore, the documents submitted do not include copies of the subsequent articles of amalgamation.

Burlington submits that the proponent's name as posted on the EBR is misleading, and a reasonable person having an interest in postings on the EBR respecting the Burlington Airpark Inc. would not have adequate notice of the application as posted in its current form.

Location(s) Related to this Instrument

The posting to the Environmental Registry identify the relevant address as 5432 Bell School Line, Burlington. Our information is that the actual address for the site is 5342 Bell School Line, in the City of Burlington. Again, any reasonable person having an interest in activities related to the Airpark would not have adequate notice that an application had been made for those lands. Also, 5342 Bell School Line is only one of three land parcels forming the Airpark lands.

Statement of the Municipality (s. 5.1)

The City notes that section 1.5 of the Application – Statement of the Municipality has been left blank. The Municipality has to indicate that it has no objection to the construction of the works in the municipality. I can assure you, that the City of Burlington, where the works are located has not been contacted and has not been consulted. Furthermore, the box has not been checked as “NA”.

Our understanding is that a municipal declaration is required from the municipality in which the sewage works are or will be located. The Ministry's own “Guide to Applying for an Environmental Compliance Approval”, identifies that this declaration, “is required to establish the municipality's general concurrence with the proposal, to ensure that the proposed works would not contravene any municipal by-laws or other requirements.” Also, the common law requires that the City be consulted in these circumstances.

Based on the background provided in this correspondence, the City of Burlington has very serious concerns about the sewage works identified in the application, and the municipality ought to have been consulted prior to the application having been made. The City takes the position that the installation of sewage works was done concurrent with the illegal infill operation that was occurring at the site, in contravention of the City's site alteration by-laws.

Burlington's Request

The City of Burlington is requesting that the application be returned to the proponent as incomplete for the reasons as presented. The application contains incomplete and inaccurate information, and has the effect of misleading any person with an interest in tracking environmental activity on the EBR. The proponent ought to correct the application, and ensure that discussions are held with the relevant municipal authorities, including the City of Burlington and Conservation Halton before an application for environmental compliance is re-submitted.

In the alternative, the City is requesting that the time for the submission of comments be extended for an additional 60 days beyond the current deadline of March 20, 2016 to permit adequate time for consideration of the issues by Burlington City Council, and affected residents.

Please note that these submissions are preliminary and deal only with the adequacy of the application and process followed to date. Should the application continue to be processed for approval, the City will submit its technical comments on the application for environmental approval.

If you require any further information, please do not hesitate to contact me.

Yours truly,



Nancy L. Shea Nicol
City Solicitor & Director of Legal Services

cc. Mr. Ian Blue, Gardiner Roberts