



300 Dufferin Avenue
P.O. Box 5035
London, ON
N6A 4L9

London
CANADA

November 4, 2016

Environmental Review Tribunal
655 Bay Street, Suite 1500
Toronto, ON M5G 1E5

Attention: Secretary

-and-

The Director appointed for the purposes of Part II.1 of the
Environmental Protection Act
Ministry of the Environment and Climate Change
135 St. Clair Avenue West, 1st Floor
Toronto, ON M4V 1P5

RE: Appeal of Amended Environmental Compliance Approval No. 8081-9Z4H48
Issue Date: October 20, 2015

This letter constitutes Notice of Appeal and request for a hearing of the Environmental Review Tribunal by The Corporation of the City of London with respect to the inclusion of Condition 10 and the definition of "Owner" contained in the Amended Environmental Compliance Approval No. 8081-9Z4H48, issued on October 20, 2015 by Director Fariha Pannu, P.Eng., pertaining to Greenway Water Pollution Control Centre.

Condition 10 requires the following:

"10. RECEIVER IMPACT ASSESSMENT MONITORING AND REPORTING

(1) The Owner shall conduct annual monitoring of Thames River water quality (benthic invertebrates) using the BioMAP method consistent with previous BioMAP study reports (2006 to 2012) by the City of London. The monitoring shall include quantitative and qualitative sampling and taxonomic identification to the lowest practical level (species or genus). The taxonomic work shall be conducted by a qualified professional who has a minimum of ten years relevant experience or possesses genus-level certifications for Groups 2, 3 and 4 taxa issued by the SFS taxonomic certification program. River monitoring locations shall be the two established sites from previous studies, one upstream (T5) and one downstream (T6) of the sewage effluent outfall. The sampling shall take place in the autumn of each year.

The Corporation of the City of London
City Solicitor's Office
Office: 519-661-2500 Ext. 4711
Fax: 519-661-5530
nhall@london.ca

(2) The owner shall provide an annual monitoring report, consistent in format and level of detail with previous study reports, to the Southwestern Regional Office within six (6) months of the sampling period each year. A report shall include but is not limited to: details of the methods used, complete results including field measurements and species taxa list with density data and a comparative assessment of monitoring results between the two sampling locations over time.”

The Corporation of the City of London seeks removal of Condition 10, and intends to rely upon the following grounds and reasons for appeal:

1. *Environmental Protection Act*, sections 3(1), 20.2, 20.3, 139(2)(b), 142, 143, 145.2 and 145.3;
2. The Corporation of the City of London (“the City”) operates a municipal wastewater treatment plant known as Greenway Water Pollution Control Centre (“Greenway”), which has been in operation since 1901. Greenway is the central wastewater treatment plant for the City, and the largest in the municipality;
3. The City applied for an amended environmental compliance approval in order to permit alterations and extensions to the existing municipal wastewater treatment plant. The alterations and extensions will result in an 11.5% increase in Rated Capacity with no net increase of allowable total monthly loading of cBODs (Carbonaceous Biochemical Oxygen Demand), TSS (Total Suspended Solids) and TP (Total Phosphorus) to the River;
4. On October 20, 2015, Director Fariha Pannu, P.Eng, issued Amended Environmental Compliance Approval No. 8081-9Z4H48 (the “Amended ECA”), which was received by the City in electronic format via email on October 27, 2015. The official hard copy Approval was received by the City on November 2, 2015;
5. Condition 10 is a new condition which was not contained in any previous environmental compliance approval for Greenway;
6. The reason for the inclusion of Condition 10 is stated as “to enable the Ministry to evaluate the impact of waste loading discharges from the Works to Thames River for future references in minimizing environmental impact on the receiver and to protect water quality, fish and other aquatic life in the receiving water body”;
7. It was unreasonable for the Director to issue the Amended ECA containing Condition 10. The Director failed to consider other laws, policies, and monitoring programs in place and utilized by the City which are a more appropriate forum for evaluating environmental impact and protecting water quality, fish and other aquatic life in the receiving body of water (Thames River);
8. Benthic monitoring for assessment of the overall health of the Thames River does not belong in the Amended ECA as a Condition for improving the Greenway wastewater

treatment plant. River health is a dynamic and subjective criteria. It is extremely difficult to operate a wastewater treatment plant in response to short-term fluctuations;

9. The City is currently undertaking a Pollution Prevention and Control Plan (PPCP) that evaluates the City's effect on the health of the river as a whole, with the purpose being to prioritize efforts in reducing the City's impact on the River. The PPCP is the appropriate forum for monitoring programs, analysis of results, evaluation of trends and prioritization of City efforts for mitigation in relation to river health and protection of water quality, fish and other aquatic life. The MOECC is involved in the City's PPCP through the MOECC's seat on the steering committee for that plan;
10. Wastewater treatment facility effluent criteria/limits are set during the Municipal Class EA process based on environmental assessment, including the river, and in consultation with the local MOECC office. Benthic monitoring as an indicator of river health analysis should be used through this process to establish those limits, rather than imposing monitoring as an operating condition. Owners and Operators can only operate a plant based on effluent analysis and in comparison to those approved effluent limits;
11. There are multiple documented sources of potential contamination to the river distributed along both riverbanks of the Thames River. Selection of location cannot with certainty isolate for impacts due solely to the effluent from Greenway. The basic methodology, if applied solely for the assessment of Greenway effluent impacts on the River, is flawed;
12. The MOECC has the authority to issue an order on the City at any time if its actions are shown to be unduly impacting the River. There is no need to include a requirement for studies in an operating approval to provide this authority;
13. The reporting requirements and methods used by the City are comprehensive, sufficient and reasonable for the purposes of the operation of Greenway. Monitoring and Reporting is required by Conditions 9 and 11 of the Amended ECA. Additional reporting requirements pertaining to the operation of Greenway by way of Condition 10 are unnecessary, redundant and create a burden on the City's limited resources;
14. Requiring the use of BioMap is not in the public interest. The BioMap method is not applied consistently across the province, and does not have widespread acceptance within the scientific community in general. The Upper Thames River Conservation Authority ("UTRCA") has 31 benthic monitoring sites across their watershed, with 7 in London, none of which use the BioMap method. The Family Biotic Index method used by the UTRCA is consistent with the provincial standard for monitoring water quality for all Conservation Authorities across the province. In addition, the Ontario Benthos Biomonitoring Network (OBBN), which was co-founded by the MOECC and Environment Canada, has established standardized biomonitoring protocols across the Country. The use of BioMap, as included in Condition 10, is not consistent with the established OBBN protocols.

15. There are a very limited number of consultants in Ontario who undertake BioMap analysis and are qualified to the levels required by Condition 10. The City has retained separate qualified consultants to complete BioMap analysis in the same water body and the results are not consistent, leading the local MOECC office to question the results and hold up City projects. This raises questions of repeatability for the method in general, which further degrades the reliability of the data as it is trended over multiple years and decades;
16. Requiring use of the BioMap method for benthic monitoring as part of a condition of operation of a wastewater treatment plant is not consistent with protection of and conservation of the natural environment;
17. No end date is given for review, modification or cessation of the BioMap program required by Condition 10, regardless of the results. The Condition is too specific with its requirements, and at the same time too open-ended to be reasonable; and,
18. Removal of Condition 10 from the Amended ECA will not affect effluent quality or pose a risk to the environment or to the public interest.

In addition, the defined term "Owner" incorrectly identifies "The Regional Municipality of Waterloo" where it ought to name "The Corporation of the City of London".

Based upon the grounds identified above, the City seeks the following relief:

- a) a stay of Condition 10 pending hearing;
- b) revision of the definition of "Owner";
- c) removal of Condition 10 from the Amended ECA; and,
- d) such costs as the Tribunal may deem just in accordance with the Rules of Practice and Practice Directions.

Yours very truly,



Nicole D. Hall
NDH/tm