

# **APPLICATION FOR LEAVE TO APPEAL TO THE ONTARIO ENVIRONMENTAL RIGHTS TRIBUNAL**

## **Name and Contact Information**

My name is Alex Rheault. My phone number is 807 224 4318. That is also my fax number with advance notice. My email address is bignorthlodge@kmts.ca.

## **ERO Number and Ministry Number**

The ERO number is 013-4986. The Ministry reference number is 6643-B9MM8A.

## **Residency**

I am a life-long year-round resident of Minaki, Ontario.

## **Interest in the Decision**

I seek leave to appeal the decision of the Ministry of the Environment, Conservation and Parks to issue Amended Environmental Compliance Approval 7133-BCPLA4 (the "ECA") to Minaki on the River ("MOTR") on March 6, 2020.

In May, 2019, I commented on the ECA when it was proposed on the Environmental Registry of Ontario. (A copy of my comment, and of two reports that accompanied it, is attached as Exhibit A.) In addition, as a resident of the small community of Minaki, and more specifically as the owner and operator of a fishing and hunting resort, I have a deep concern about the area's natural environment and specifically about the quality of the water in the Winnipeg River.

I note that I made the comment on the ERO on my own behalf and on behalf of a majority of the year-round residents of Minaki, as described in my comment letter. I submit this application in that same dual capacity.

## **Parts of the Instrument Being Challenged**

This Application challenges (1) the refusal on the part of the Ministry to require updating of water quality baseline studies for the Winnipeg River that are now over thirty years old, and (2) the refusal on the part of the Ministry to require additional

treatment of effluent from the existing sewage treatment plant before that effluent flows directly from the plant into the Winnipeg River.

### **Potential Significant Harm to the Environment**

Sewage treatment plants are heavily regulated precisely because their failure to perform can cause immediate and significant environmental harm. The risk of harm is heightened in the case of the Minaki treatment plant, where effluent from the plant flows out a short pipe directly into the Winnipeg River.

The refusal of the Ministry to follow its own rules and require updated water quality baseline studies for the Winnipeg River leaves the risk that the plant's treatment limits are inconsistent with the River's current condition, and that stricter limits and additional treatment are needed to avoid unacceptable degradation of water quality.

Furthermore, tertiary sewage treatment techniques are readily available which, if added to the Minaki plant, would further improve effluent quality in any event. The refusal of the Ministry to require additional treatment before discharge of effluent directly into the Winnipeg River results in a level of contamination of the River that could easily be avoided and that immediately and certainly worsens River water quality.

These potential and certain impacts on public water are especially significant when the Winnipeg River is the receiver. The River is a critical recreational, social, and economic resource for the community of Minaki and the entire Lake of the Woods region. It is a source of drinking water for year-round and seasonal residents. It flows approximately fifty kilometers more in Ontario, through the Wabaseemoong Independent Nation, and then enters Manitoba, where it supplies over half of the flow into Lake Winnipeg. Every regulatory opportunity to sustain its water quality must be realized.

### **No Reasonable Person Could Have Made the Ministry's Decision**

The Ministry originally issued certificates of approval for operation of the Minaki sewage treatment plant to the Four Seasons Hotel Company, then the owner of the Minaki Lodge site, in 1986 and 1988. The Ministry approved an assignment of those approvals to MOTR in 2012. In connection with the 2012 assignment, the Ministry required minor amendments regarding treatment, and reissued the

approvals in the form of an environmental compliance approval; there was no notice on the Environmental Registry.

That mere assignment of the 1986 and 1988 approvals, holding terms from the Ministry's former regulatory regime in the 1980's but now reauthorizing use of a sewage treatment plant in 2012, created a host of difficulties. The year-round resident group and I were already working at that time in close cooperation with The Minaki Conservancy (then known as the Minaki Cottagers Association) on various concerns associated with MOTR's plans for redevelopment of the Lodge site, and we began together to try to induce the Ministry to address those difficulties.

A summary of those efforts over the past seven years is attached as Exhibit B. Only a few issues remain uncorrected. The parts of the ECA that we challenge with this Application are two of them. To understand why no reasonable person could have made the Ministry's decision on them, we need some background on the treatment plant and the Ministry's policies.

Plant Location and Responsibility Agreement The Minaki plant is a private communal sewage treatment plant, serving thirty-one separate conveyable lots, as described in the May 10, 2019, report of Anthony Usher, RPP, that accompanied my comments to the ERO and that is included in Exhibit A. In the posting of its decision, the Ministry notes that MOTR has assured the Ministry that the three separate corporations that own those thirty-one lots are currently under common control, but the decision imposes no barrier to separate ownership in the future.

In addition, the Minaki plant is located in unorganized territory. That is unusual; there are only two other private communal plants in the Province located outside of municipal boundaries, and due to their age both came into existence without benefit of Ministry review and approval. (See Mr. Usher's report in Exhibit A.)

All other private communal sewage treatment plants in Ontario are located within a municipality. In those cases, the Ministry requires a responsibility agreement between the plant owner and the municipality, enhancing the environmental protection by providing for government oversight and backup of the plant's operation. There will be no responsibility agreement with a municipality or any other level of government for the Minaki plant.

The Ministry's approval of the ECA amendment does finally introduce a requirement for financial assurance from the owner, in the amount of \$91,000.

That issue was addressed in my comment letter. Under the Ministry's Guideline F-15, financial assurance is to be provided for a private communal sewage treatment plant in unorganized territory, where there is no responsibility agreement. Financial assurance is, however, a stopgap measure only. Section 4.3.3 of Guideline F-15 states:

*Financial assurance is not meant to take the place of an agreement with a municipal authority. At the time of initial approval, the Ministry will continue to require a municipality, or in an unorganized area, another governmental organization to enter into a responsibility agreement for the long-term operation and maintenance of communal sewage works and systems.*

As noted above, the Ministry's decision makes no provision for the arranging of a responsibility agreement with any level of government in the future. We are not asking for leave to appeal that omission, nor are we seeking to understand how the Ministry arrived at the \$91,000 figure (its notice of its decision provides no information). We do assert, however, that the lack of a responsibility agreement is a unique and fundamental feature of the approval of the Minaki plant for operation, and that all reasonable and available techniques to safeguard the plant's operation and improve the quality of its effluent must be employed in an attempt to compensate for that lack.

Plant Age and Disuse The original issuance of the certificates of approval in 1986 and 1988 occurred in connection with a recommissioning of the plant after it failed and blew out under operation by Four Seasons. The plant then operated for some part of each year until 1995. As of 2019, when the Ministry was making its decision, the plant was thirty-one years old, had operated for one year out of the past twenty-four, and had not operated at all for fourteen years.

#### Updated Water Quality Baseline Studies

When the discharge from a sewage treatment plant affects surface water, the Ministry requires water quality baseline studies, including assimilative capacity and dispersion. Since the fall of 2017, those studies are a threshold requirement for the Ministry's review of any treatment plant approval; without written signoff on the sufficiency of the water quality studies from technical support staff, Ministry review will not proceed. As the Burnside firm states in its report,

*We continue to be of the opinion that a significant amount of time has passed since*

*any receiving water study was completed, and therefore, an updated impact assessment is warranted. The most recent study on the assimilative capacity of the receiver was conducted in 1988. It has been our general experience that the Ministry applies the most current guidelines at the time of their review; therefore, an updated review of potential impacts to the receiver should be conducted in accordance with current MECP guidelines.*

The point is that the condition of the water in the receiver must be first known, so that the treatment techniques in the plant and the allowable limits on contaminants can be correlated to that condition. It has been thirty-one years since an evaluation of the Winnipeg River's water. No one knows the current condition of the Winnipeg River, where the effluent will flow, and whether the River's water quality demands different or additional treatment standards.

The Ministry is charged with the protection of Ontario's natural environment. Its task was to carry out that duty in review of a proposed amendment to an ECA. That ECA regulates a sewage treatment plant that is located in unorganized territory, and has no responsibility agreement. All of its effluent discharges out a short pipe directly into the Winnipeg River. Safe operation of this plant and protection of the Winnipeg River demand full compliance with the Ministry's standards and requirements. The Ministry requires current water quality impact studies for sewage treatment permits, to calibrate the treatment processes and effluent limits to current water quality. Its decision not to require those studies for the ECA violates its own guidelines. In these circumstances, with this plant, no reasonable person would continue to refuse to require updated water quality baseline studies.

Additional Treatment The basic treatment mechanism in the Minaki plant is a rotating biological contactor ("RBC"). That is the same mechanism that was in place in 1988. While it is still recognized by the Ministry as an acceptable treatment system, it is no longer common for an RBC system to stand alone. Per Burnside's report:

*We note that the majority of systems that include RBC technology appear to also include additional treatment processes such as tertiary filtration or discharge to a subsurface leaching bed for final polishing (or in some cases, both).*

The Minaki plant is again unusual in this regard, as the Burnside firm was able to find record of only two other RBC plants in the Province (both located within a municipality) with direct discharge to surface water.

Tertiary treatment after an RBC system lowers the level of contaminants in effluent and reduces the impact of the effluent on the receiver. It may be that updated water quality baseline studies of the Winnipeg River would show that tertiary treatment is mandated to meet acceptable effluent limits, as discussed above. But even if it is not mandated, it is still an available treatment that lessens environmental harm.

We repeat that the Ministry is charged with the protection of Ontario's natural environment. Its task was to carry out that duty in review of a proposed amendment to an ECA. That ECA regulates a plant is thirty-one years old, has operated for one year out of the last twenty-four and for none of the last fourteen. The plant that is also highly unusual: it is located in unorganized territory and has and will have no responsibility agreement, and it is the only plant in the Province outside of a municipality that allows effluent from an RBC system to discharge directly into surface water. The requirement imposed by the Ministry in the majority of RBC plants for additional treatment of effluent after an RBC is readily available for addition to the ECA and will reduce contamination of the Winnipeg River. In these circumstances, with this plant, no reasonable person would refuse to require additional treatment of the effluent.

### **Grounds (Facts) Used to Appeal**

The appeal will be supported by the facts regarding the Minaki plant, the ECA, and the usual standards of the Ministry, as set out in the preceding section of this Application. Those facts will in turn be supported by the reports of Anthony Usher, RPP and R.J. Burnside & Associates.

### **Outcome I'd Like to See**

I would like the Ministry to reconsider the amendment of the ECA, and to reissue it with two additional requirements that reflect current Ministry practice and that must be satisfied before the plant may restart:

one, that appropriate water quality impact studies for the Winnipeg River be completed and factored into the plant's design and effluent limits;

two, that appropriate additional treatment of the effluent be required after the operation of the RBC and before discharge into the Winnipeg River, either through additional equipment in the plant or through a leaching bed on land.