

ENVIRONMENTAL REVIEW TRIBUNAL

IN THE MATTER OF sections 38 to 48 of the *Environmental Bill of Rights, 1993*, S.O. 1993, c. 28 and section 20.3 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19,

AND IN THE MATTER OF an application by Alex Rheault for leave to appeal the decision of the Director, section 20.3 of the *Environmental Protection Act*, to issue Amended Environmental Compliance Approval No. 7133-BCPLA4, dated March 6, 2020, to Minaki on the River Inc., 2262608 Ontario Inc., and 2262609 Ontario Inc. for the purposes of a sewage works, located at 1 Western Avenue, Former Minaki Lodge Site, Minaki, Ontario, Unsurveyed Territory (Kenora Area Office) Unorganised Area, District of Kenora P0X 1J0, Ontario.

ALEX RHEAULT

Applicant

- and -

**DIRECTOR, MINISTRY OF THE ENVIRONMENT, CONSERVATION AND PARKS
AND MINAKI ON THE RIVER INC., 2262608 ONTARIO INC., and 2262609 ONTARIO
INC.**

Respondents

**SUBMISSIONS OF THE RESPONDENT
DIRECTOR,
MINISTRY OF THE ENVIRONMENT, CONSERVATION AND PARKS**

**Ministry of the Environment,
Conservation and Parks**
Legal Services Branch
135 St. Clair Ave. W., 10th Floor
Toronto, ON M4V 1P5

Sylvia Davis, LSUC # 38171H
Tel: (416) 540-3524
Fax: (416) 314-6579
Email: sylvia.davis@ontario.ca
Legal Counsel for the Director

I. INTRODUCTION

1. Alex Rheault (“Mr. Rheault” or the “Applicant”) seeks leave to appeal under section 38 of the *Environmental Bill of Rights, 1993*, (“*EBR*”) the decision of the Director, Ministry of the Environment, Conservation and Parks (“MECP” or the “Ministry”), to issue Environmental Compliance Approval No. 7133-BCPLA4 (the “2020 ECA”). The 2020 ECA was issued on March 6, 2020, to Minaki on the River Inc., 2262608 Ontario Inc., and 2262609 Ontario Inc. (together “Minaki”), under section section 20.3 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19 (the “*EPA*”).
2. The Director opposes this application. The Applicant does not have standing to bring this application under s. 38 of the *EBR*. He raises terms and conditions which are substantially the same as those contained in Minaki’s 2014 environmental compliance approval and issues which Minaki itself does not have to the right to appeal.
3. In the alternative, the Applicant has failed to satisfy the two-part leave test under section 41 of the *EBR*, in that he has not provided any credible evidence that the Director’s decision to issue the 2020 ECA was unreasonable or that the decision could result in significant harm to the environment.
4. The Director’s decision to issue the 2020 ECA was eminently reasonable. The 2020 ECA was issued only after pre-consultation with Ministry Water Resources Technical Support, the Ministry District Office and a thorough review by a Ministry Senior Wastewater Engineer. The contents of the 2020 ECA were determined based on the relevant factual evidence, legislation and Ministry policies.
5. The resulting 2020 ECA amended an already strong environmental compliance approval by adding further environmental protection measures. In doing so, the Director’s decision was in accordance with the ecosystem, precautionary and

science-based approaches mandated by the Ministry's Statement of Environmental Values.

6. The Applicant's claim that the 2020 ECA could result in significant harm to the environment is purely speculative.
7. As the Applicant has failed to meet the standing test and the two-part leave test under the *EBR*, the Director respectfully requests that this application for leave to appeal be dismissed.

II. THE FACTS

Background

8. The 2020 ECA is for a sewage treatment plant (the "STP") located at 1 Western Avenue, Former Minaki Lodge Site, Minaki, Ontario (the "Site").¹
9. The Site was the location of the Minaki Lodge, built in 1914, which was unfortunately consumed by fire in 2003. An existing hotel and outbuildings, including an existing sewage treatment plant, were not impacted by the fire. In 2010, Minaki purchased the Site, with the intention of constructing seasonal residential condominium units. The existing private sewage treatment plant would handle all the sewage generated at the Site.²
10. The Rotating Biological Contractor (the "RBC") sewage treatment plant on the Site was installed in 1988 and was subject to an environmental compliance approval,³ which was amended in 2012 and again in 2014 (the "2014 ECA").⁴

¹ Vaja Exhibit "I" - 2020 ECA at page 1

² Hitesh Vaja Statement at para. 7

³ Cathy Debney Statement at para 16

⁴ Hitesh Vaja Statement at para. 8

11. The STP discharges into the Little Sand Lake on the Winnipeg River (hereafter the “Winnipeg River”). The Winnipeg River is a substantial size, with a minimum recorded flow rate of no less than 18,200 Litres per second.⁵
12. The amendment in 2014 included the establishment of effluent criteria in Conditions 6 and 7 of the 2014 ECA, as recommended by Ministry Surface Water Specialist Paula Spencer. Ms. Spencer has a Master’s Degree in Aquatic Toxicology.⁶ The effluent criteria in Conditions 6 and 7 remain unaltered in the 2020 ECA with the exception that an objective for total residual chlorine has been added to Condition 6 of the 2020 ECA.⁷
13. Effluent limits for the 2014 ECA were defined by treatment performance (as set out in the Ministry Design Guidelines for Sewage Works and Ministry Guideline F-5-1). Ms. Spencer’s 2013 recommendation for effluent limits was also influenced by the substantial flowrate of the Winnipeg River, in comparison with the small amount of effluent discharge from the STP at the Site. This is explained by Ms. Spencer at paragraphs 5 and 6 of her statement:

To provide perspective, at the lowest recorded flow at White Dog Falls (1960-1994), the volume of water in the Winnipeg River, is 1,572,480,000 Litres per day compared to the maximum volume of effluent discharged from the Minaki on the River STP of 186,000 Litres per day. At lowest flow measured at the Lake of the Woods outlet (1960-2010), the volume of water in the Winnipeg River is 5,037,120,000 L per day compared to the maximum volume of effluent discharged from the Minaki on the River STP of 186,000 L per day.

Given the large dilution ratio in the Winnipeg River, the decision was made to use standardized treatment based criteria, rather than develop receiving-water based effluent criteria (in 2014). Effluent limits defined by treatment performance (as set out in the Ministry 2008 Design Guidelines for Sewage Works, and Ministry Guideline F-5-1 - Exhibits “K” and “L” respectively of Mr. Hitesh Vaja’s Statement) are common practice and were considered to be more conservative in this scenario given the

⁵ Paula Spencer Statement at para. 4

⁶ Paula Spencer Statement at paras. 1, 2 and 3; Spencer Exhibit “A” – Spencer CV

⁷ Hitesh Vaja Statement at para. 20; Vaja Exhibits “A” – 2014 ECA and “I” – 2020 ECA

significant dilution in the Winnipeg River of between 1:8,465 and 1:27,116 STP effluent to Winnipeg River flow.

14. A further comparison can be made between the maximum effluent amounts allowed to be discharged into the Winnipeg River under the 2014 ECA (and still allowed under the 2020 ECA) and the amounts allowed under the environmental compliance approvals for the City of Kenora and the Kenora Abitibi Pulp and Paper Mill (the “Abitibi Mill”). The maximum effluent discharge amounts allowed for the City and Abitibi Mill sewage treatment plants into the Winnipeg River dwarf the amount allowed under the 2014 and now 2020 ECA.⁸ Both the City of Kenora and the Abitibi Mill are/were upstream of the Minaki Site.⁹
15. In 2019, Minaki filed with the Ministry a further amendment application made pursuant to Part II.1 of the *EPA* (the “2019 Minaki Application”). It is this application that lead to the issuance of the 2020 ECA.¹⁰

Pre-Consultation with Technical Support Section Water Resources Specialist

16. As part of submitting the 2019 Minaki Application, Minaki engaged in a pre-consultation with the Ministry’s Water Resources Specialists in the Ministry Technical Support Section. Pre-consultations of this sort are encouraged by the Ministry.¹¹
17. Minaki’s proposed amendment was provided to Ministry Technical Support Section’s Todd Kondrat (Surface Water Group Leader at the time). Specifically, Minaki wished to amend the 2014 ECA to change servicing from a condominium development to a recreational vehicle park. As no change in effluent quality, quantity or location was proposed, it was determined by Mr. Kondrat that no additional reports/studies etc. were required.¹²

⁸ Cathy Debney Statement at para. 17

⁹ Cathy Debney Statement at para. 16 – please note that the Abitibi mill shut down in 2005 and ceased discharging in 2006

¹⁰ Hitesh Vaja Statement at para. 9

¹¹ Hitesh Vaja Statement at paras. 4 & 14; Cathy Debney Statement at para. 8

¹² Cathy Debney Statement at para. 8

18. Mr. Kondrat's conclusion is in keeping with Ministry policy. The Ministry does not typically require baseline studies or new assimilative capacity assessments for existing sewage treatment plants with existing environmental compliance approvals, where there is no proposed change in the effluent quality, quantity or discharge location. This approach is consistent with the Ministry Guide to Applying for an Environmental Compliance Approval.¹³

Engineering Review

19. The 2019 Minaki Application was then assigned to Senior Wastewater Engineer Mr. Hitesh Vaja, of the Ministry Approvals Services Section of the Environmental Assessment & Permissions Branch.¹⁴ Mr. Vaja has held this position with the Ministry since 1989.¹⁵ He is responsible for review of a wide range of sewage works applications for municipal, private and industrial sectors.
20. One of Mr. Vaja's job duties is reviewing applications for environmental compliance approvals for sewage works to ensure compliance with Ministry guidelines, policies, and sound engineering principles. By his own estimate he has reviewed well over 200 applications for sewage treatment plants, similar to the one at the Site.¹⁶ Mr. Vaja is familiar with the Site and sewage works located there as he was the Ministry wastewater engineer that reviewed Minaki's amendment application in 2012.¹⁷
21. The 2019 Minaki Application did not seek to physically alter the STP. There was no change in the type of raw sewage contribution (quality), the amount of sewage to be treated (quantity), or the capacity of the STP. There was also no change in the location of the treated effluent outfall. The effluent treatment criteria

¹³ Paula Spencer Statement at para. 9; Hitesh Vaja Statement at paras. 38-42; Vaja Exhibit "N" – Guide to Applying for an ECA

¹⁴ Hitesh Vaja Statement at para. 3

¹⁵ Hitesh Vaja Statement at para. 1

¹⁶ Hitesh Vaja Statement at para. 2

¹⁷ Hitesh Vaja Statement at para. 8

established in the 2014 ECA remained the same under the 2019 Minaki Application.¹⁸

22. Effluent treatment criteria are included in sewage approvals to limit the levels of potentially harmful substances in the effluent that is being discharged into a receiver (such as a river, groundwater source or some other body of water). Criteria are based on Ministry guidelines (specifically Ministry Design Guidelines for Sewage Works (2008) and Guideline F-5-1).¹⁹
23. Subsequent to submission of the 2019 Minaki Application, Minaki retained a consulting engineering firm to assess the condition of the existing sewage works including the structural integrity. The assessment/inspection was conducted in the presence of the proponent and MECP staff. No major faults were found and the sewage works was deemed capable of performing its task. Mr. Vaja reviewed the consultant's report and was satisfied that the sewage works structures were sound and capable of performing their task.²⁰
24. The 2019 Minaki Application was posted on the EBR website for a 45-day public comment period between March 28, 2019 and May 12, 2019. Four comments were received from the public during the posting period, among which were the comments submitted by the Applicant. All comments were considered in determining whether to issue the 2020 ECA.²¹
25. Mr. Vaja also considered Ministry Surface Water Group Leader Todd Kondrat's pre-consultation comments.

¹⁸ Hitesh Vaja Statement at para. 10

¹⁹ Paula Spencer Statement at para. 6; Hitesh Vaja Statement at paras. 22 & 23 and Vaja Exhibit "J" – 2013 Technical Support Section Memorandum

²⁰ Hitesh Vaja Statement at para. 36; Cathy Debney Statement at para. 9

²¹ Hitesh Vaja Statement at para. 16

26. Once Mr. Vaja had completed his review, he prepared an Engineering Assessment which summarized his findings and recommendations. Mr. Vaja recommended that the 2019 Minaki Application be approved.²²
27. Mr. Vaja also considered the Ministry Statement of Environmental Values (the “SEV”). He prepared a memorandum to the Director on the application of the SEV to the 2020 ECA.²³

New Conditions Added To 2020 ECA

28. Mr. Vaja agreed with Minaki’s request that servicing be changed from a condominium development to a recreational vehicle park. However Mr. Vaja also recommended the following new conditions be added to the 2020 ECA to further protect the environment:
 - a. A change in disinfection method
 - b. Backup power
 - c. Financial Assurance
 - d. Updating of Bypass and Overflow Conditions
 - e. Limited Operational Flexibility
 - f. Total Residual Chlorine Objective and Monitoring
 - g. Seasonal Effluent Discharge Limit²⁴

(a) Change in Disinfection Method (page 1 of the 2020 ECA)

29. Mr. Vaja determined that the disinfection method employed by the STP, while acceptable in 2012, did not adhere to current federal regulations. Specifically,

²² Vaja Exhibit F.

²³ Hitesh Vaja Statement at para. 19 and Vaja Exhibits “G” & “H”

²⁴ Hitesh Vaja Statement at para. 20

the STP employed disinfection by chlorination. However, the combination of section 5(c) of the federal Wastewater Systems Effluent Regulations (SOR/2012-139) and section 34(1) of the federal *Fisheries Act* designates the use of chlorine chemical as a deleterious substance that can lead to the potential for deposit of effluent that is acutely lethal to fish, biota and invertebrate species in the receiving watercourse.²⁵

30. Minaki addressed this concern to Mr. Vaja's satisfaction by proposing to install ultraviolet irradiation disinfection as the primary disinfection system and retaining the current chlorination system only as backup.²⁶
31. Ultraviolet irradiation is a disinfection method that uses short wavelength ultraviolet light to kill or inactivate microorganisms by destroying nucleic acids and disrupting their DNA, leaving them unable to perform vital cellular functions. In the event that the ultraviolet irradiation disinfection was to ever fail, then the 2020 ECA allows for the chlorination system to be activated in the interim to ensure continuous disinfection of the effluent prior to discharge to the receiving watercourse (the Winnipeg River).²⁷

(b) Emergency Standby Power Facilities (Schedule A)

Minaki also agreed to Mr. Vaja's request that emergency standby power facilities be put in place for the proper operation of the sewage works during a power failure. (The requirements for standby power facilities are found in the supporting documents listed in Schedule A of the 2020 ECA. The 2020 ECA requires that the STP be configured and operated in accordance with the supporting documents listed in Schedule A – see page 2 of the 2020 ECA).²⁸

²⁵ Hitesh Vaja Statement at para. 11 and Vaja Exhibits "C" & "D"

²⁶ Hitesh Vaja Statement at para. 12

²⁷ Hitesh Vaja Statement at para. 12

²⁸ Hitesh Vaja Statement at paras. 12 & 20

(c) Financial Assurance (Condition 14)

32. The other amendment required by Mr. Vaja was the inclusion of financial assurance as the new Condition 14 of the 2020 ECA. Ministry Guideline F-15, section 4.3.2, states that financial assurance is normally required for private communal sewage works in unorganized areas where there is no agreement with the Ministry of Municipal Affairs and Housing for a local government agency to take over the works in the event of a default.²⁹
33. Minaki retained a consulting engineering firm to calculate the amount of financial assurance required in accordance with Ministry Guideline F-15. The amount of \$91,000.00 was calculated and determined by the consultant, a Professional Engineer. Mr. Vaja reviewed and agreed with this calculation.³⁰ Minaki has already submitted the financial assurance to the Ministry.³¹

(d) Updating of Bypass and Overflow Conditions (Condition 5)

34. Condition 5 was updated to separate bypass and overflow issues into two separate subsections to reduce confusion. Otherwise Condition 5 remains essentially unchanged from the version in the 2014 ECA.³²

(e) Limited Operational Flexibility (Condition 15)

35. Condition 15 was added to the 2020 ECA to ensure that the STP was constructed, maintained and operated in accordance with the 2020 ECA and that any pre-approved modification will not negatively impact on the performance of the works.³³

²⁹ Hitesh Vaja Statement at para. 34; Vaja Exhibit “M” – Guideline F-15

³⁰ Hitesh Vaja Statement at para. 34

³¹ Cathy Debney Statement at para. 12

³² Hitesh Vaja Statement at para. 20; Vaja Exhibit “A” – 2014 ECA and Vaja Exhibit “I” – 2020 ECA

³³ Hitesh Vaja Statement at para. 20; Vaja Exhibit “I” – 2020 ECA at p. 24 – reason for condition 15

(f) Total Residual Chlorine Objective and Monitoring (Conditions 6 & 9)

36. Total Residual Chlorine was added as an objective to Condition 6 and as an effluent monitoring parameter in Table 4 of Condition 9. These additions are further protective measures to monitor and reduce the impact of chlorine on the receiving river.³⁴

(g) Seasonal Effluent Discharge Limit (Condition 7)

37. Condition 7, Subsection 3 was revised to make clear that the effluent is continuously disinfected only during the effluent discharge period as the site is only seasonally operated. This is a clarification rather than a substantive change from what was in the 2014 ECA.³⁵

Other Protective Conditions in the 2020 ECA

38. The new conditions introduced into the 2020 ECA bolstered what was already a very strong environmental compliance approval. In particular, the 2014 ECA had the following protective conditions which continued in the 2020 ECA:

- a. Condition 11(1) of the 2020 ECA specifically prohibits an increase in the rate of discharge from the STP to the receiver (the Winnipeg River) beyond what is already allowed under the 2020 ECA.
- b. As outlined in Condition 4, Minaki is to prepare a statement, certified by a Professional Engineer, that the works have been restarted in accordance with the 2020 ECA. A one week notification in writing prior to start-up of the operation of the sewage works is also required to be submitted by Minaki to the District Manager, so that Ministry staff can attend the start up.

³⁴ Hitesh Vaja Statement at para. 20; Vaja Exhibit "I"- 2020 ECA at p. 23 – reasons for conditions 6 & 9

³⁵ Hitesh Vaja Statement at para. 20; Vaja Exhibit "I" – 2020 ECA at p. 9

- c. The 2020 ECA stipulates that the STP must be operated by a licensed operator (see Conditions 8(1) and (5)). Minaki has assured the Ministry that it will contract Ontario Clean Water Agency (“OCWA”) to operate the STP on Minaki’s behalf. OCWA is a Crown agency of the Government of Ontario that provides operation, maintenance and management services for more than 450 water and wastewater treatment facilities in the province. OCWA operates numerous sewage treatment plants in the Province and has competent and knowledgeable staff capable of operating the STP.³⁶

Review and Issuance by Director

39. Mr. Vaja forwarded both his Engineering Assessment and memorandum on the SEV to Ministry manager and signing Director, Ms. Fariha Pannu, P. Eng. of the Ministry Environmental Permissions Branch.³⁷ Ms. Pannu holds a Master’s Degree in Civil Engineering from the University of Toronto, 2013, and a Bachelor of Science, Environmental Engineering from the University of Guelph, 1996. She was a Ministry senior wastewater engineer for many years before becoming a manager and by her estimate reviewed approximately 500 wastewater approval applications.³⁸
40. Ms. Pannu reviewed Mr. Vaja’s Engineering Assessment and the draft Environmental Compliance Approval for the 2020 ECA, and considered the Ministry SEV and Mr. Vaja’s memo on whether the proposed amendment fulfilled the requirements of the SEV. She also considered the Ministry’s 2008 Design Guidelines for Sewage Works and Ministry Guideline F-5-1, which together clarify that the normal level of sewage treatment in Ontario is secondary treatment, or

³⁶ Hitesh Vaja Statement at para. 37

³⁷ Hitesh Vaja Statement at paras. 18 & 19; Vaja Exhibit “F” – 2020 Engineering Assessment; Vaja Exhibit “H” – Vaja SEV Memo.

³⁸ Fariha Pannu Statement at paras. 1-4; Pannu Exhibit “A” – Pannu CV

its equivalent, unless individual receiving water assessment studies indicate the need for higher or “tertiary” levels of treatment.³⁹

41. For this specific application, Mr. Vaja considered secondary treatment to be appropriate, and Ms. Pannu relied on his professional judgement.⁴⁰
42. Ms. Pannu also considered the Ministry SEV and its application to the decision to issue the 2020 ECA. She determined that the 2020 ECA was in accordance with the ecosystem approach, cumulative effects, the precautionary approach and adaptive management.⁴¹
43. After reviewing all of the foregoing, Ms. Pannu was satisfied that it was reasonable to approve the 2019 Minaki Application, subject to the terms and conditions in the draft ECA. She issued the 2020 ECA on March 6, 2020.⁴²
44. The Decision Notice for the 2020 ECA was posted to the Environmental Registry on March 12, 2020.⁴³

III. THE LAW

A) Standing to Seek Leave to Appeal

45. Section 38 of the *EBR* provides that a person may apply for leave to appeal from a decision whether or not to issue certain classified instruments of which notice is required to be given under section 22, where:
 - a. that person is a resident of Ontario;
 - b. that person has an interest in the decision; and

³⁹ Fariha Pannu Statement at paras. 7 & 8

⁴⁰ Fariha Pannu Statement at para. 9

⁴¹ Fariha Pannu Statement at paras. 15-20

⁴² Fariha Pannu Statement at para. 12

⁴³ Fariha Pannu Statement at para. 13

- c. another person has a right under another Act to appeal the decision.
46. In the present case, the Applicant is seeking leave to appeal on two grounds:
- i. the Ministry “refused” to require the updating of water quality baseline studies for the Winnipeg River, which in the Applicant’s opinion are necessary to calibrate effluent limits; and
 - ii. the Ministry did not require additional tertiary filtration or discharge to a subsurface leaching bed, prior to the effluent from the STP being discharged into the Winnipeg River.
47. The 2020 ECA is a classified instrument for which notice under section 22 of the *EBR* was required. The Director does not dispute that the Applicant is a resident of Ontario and has an interest in the decision. However, the Director does dispute that another person has a right under another Act to appeal the Applicant’s first ground – that preliminary studies must occur before effluent limits can be set; or his second – that tertiary treatment is required.
48. Section 139(3)(b) of the *EPA* prohibits an appeal by a proponent of an environmental compliance approval of:
- terms and conditions in an environmental compliance approval as a result of an application under Part II.1 [of the *EPA*], if the terms and conditions are substantially the same as those contained in an approval that was previously issued and is still in effect at the time that the decision is made in respect of the application.
49. The Applicant’s first ground is essentially an attack on the effluent limits. However, the effluent limits (quality, quantity and/or location) established in the 2014 ECA remain the same in the 2020 ECA.⁴⁴ This is not something the

⁴⁴ An additional parameter (Total Residual Chlorine) was added as an objective to Condition 6. Effluent limits however, are established under Condition 7 and remain unchanged. A phrase was added to Condition 7 in the 2020 ECA to clarify that the STP is only to be run during the period April 16 to November 14 inclusive. This was also the case under the 2014 ECA (see Special Condition 1(1) of both the

proponent could challenge through an appeal under the *EPA*. It is clear from the evidence provided by Ms. Spencer, Ms. Pannu and Mr. Vaja that Ministry staff did not turn their minds to whether the effluent limits should be altered and that Minaki did not request an amendment to their effluent limits. As such, the proponent is barred from appealing the terms and conditions which establish these effluent limits.⁴⁵

50. The Applicant's second ground is also an attack on the original effluent criteria unchanged in the 2020 ECA. The STP discharge location is directly to surface water (specifically the Winnipeg River). This was so in 2014. The Applicant's consultant R.J. Burnside & Associates Limited opines that this is unusual for an RBC sewage treatment plant and recommends tertiary treatment such as filtration or discharge to a subsurface leaching bed instead.⁴⁶ This would alter the location of the effluent discharge. Altering the discharge location was not proposed in the Minaki 2019 Application, nor was it considered during the approval process by Ministry staff. Since Minaki would not be able to appeal on this ground, the Applicant has no standing to seek leave.

51. In the event that the Tribunal finds that the Applicant does have standing to appeal this decision, the Director submits in the alternative that the Applicant has failed to meet the test for leave to appeal the decision.

B) The Test for Leave to Appeal

52. Section 41 of the *EBR* provides that:

Leave to appeal a decision shall not be granted unless it appears to the appellate body that,

2014 ECA and 2020 ECA).

⁴⁵ *Hughes v Director Ministry of the Environment*, 2012 CarswellOnt 10904 (ERT) at paras. 37 & 38; *Kagawong Power Inc. v Ontario (Director, Ministry of the Environment)*, 2007 CarswellOnt 9989 (ERT) at paras. 34, 36 & 39; *Marshall v. Director (Ministry of the Environment)*, 2008 CarswellOnt 5320 (ERT) at paras. 1 & 48

⁴⁶ Burnside Report at page 2

(a) there is good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have made the decision, and

(b) the decision in respect of which an appeal is sought could result in significant harm to the environment.

53. This Tribunal has frequently cited the Divisional Court's description of the section 41 leave test ("the "Leave Test") from its 2008 decision in *Lafarge Canada Inc. v. Ontario (Environmental Review Tribunal)*. The Court held that there is a presumption against granting leave under section 41 of the *EBR*. Appeals by third parties are intended to be an exceptional remedy to challenge decisions that are "egregiously in error". The Leave Test therefore requires an applicant to meet a "stringent threshold". An applicant for leave must satisfy the Tribunal that there is a real foundation to their case, sufficient to give the applicant a right to pursue the matter through the appeal process.⁴⁷
54. When considering an application for leave to appeal, the Tribunal has declined to descend into the merits of the appeal. The focus at this stage is on evidence and argument directly relevant to the two criteria listed in section 41 of the *EBR*.⁴⁸
55. Leave to appeal must only be granted where the applicant for leave to appeal has met the stringent threshold in respect of both branches of the Leave Test.⁴⁹

⁴⁷ *Lafarge Canada Inc. v. Ontario (Environmental Review Tribunal)*, [2008] O.J. No. 3460 at paras 40, 45 [*Lafarge*]; see also *Freshway Investments Inc. v. Ontario (Ministry of Environment, Conservation and Parks)*, [2018] O.E.R.T.D. No. 66 at paras. 21-22 [*Freshway*]; and *Young v. Ontario (Ministry of the Environment and Climate Change)*, [2016] O.E.R.T.D. No. 43 at para 34-35 [*Young*]

⁴⁸ *Young*, *supra* note 47 at para 36 citing *Guelph v. Ontario (Ministry of the Environment)*, [2014] O.E.R.T.D. No. 25 at paras 16, 17.

⁴⁹ *Freshway*, *supra* note 47 at para. 88; and *Young*, *supra* note 47 at para. 88.

The First Branch of the Leave Test: The Director's Decision was Reasonable in Light of the Relevant Law and Policies

The Director followed all Relevant Laws

56. The Director's decision to issue the 2020 ECA was reasonable in light of the relevant law and policies and factual record.
57. Under the first branch of the Leave Test, the key aspect is whether an applicant has put forward a *prima facie* case showing it was unreasonable for the person to make the decision having regard for the relevant law and policies. Reasonable persons in this context are those that have regard for relevant law and policies, taking the factual record into account.⁵⁰
58. The language of reasonableness at section 41(a) of the *EBR* clearly requires deference to the decision-maker. It is not sufficient for an applicant for leave to simply assert that the Director's decision could have been different. The applicant must provide evidence demonstrating that there is good reason to believe that the decision, given relevant facts, law and policy, is outside the range of acceptable decisions a reasonable person could have made.
59. The Director's authority for issuing an environmental compliance approval for a sewage treatment plant is found under the *Ontario Water Resources Act* (the "OWRA") and the *EPA*. Section 53 of the *OWRA* prohibits any person from operating, establishing, altering, extending or replacing a new or existing sewage works except under and in accordance with an environmental compliance approval.
60. A person may apply to the Director for a sewage works environmental compliance approval under section 20.2 of the *EPA*. The Director's authority for issuing environmental compliance approvals for sewage works is set out in

⁵⁰ *Lafarge*, *supra* note 47 at para 46

section 20.3 of the *EPA*. Subsection 20.3(1)(b(i)) authorizes the Director to impose terms and conditions in the approval at his or her discretion.

61. Section 11 of the *EBR* requires that the Minister “take every reasonable step to ensure that the ministry statement of environmental values is considered whenever decisions that might significantly affect the environment are made in the ministry.”
62. In the present case both the senior review engineer Mr. Hitesh Vaja and Director Fariha Pannu carefully reviewed the proposed environmental compliance approval in light of the SEV.⁵¹
63. The Director also considered the federal *Fisheries Act* and the Wastewater Systems Effluent Regulation (SOR/2012-139) made under that Act in determining that the 2020 ECA must require installation of ultraviolet irradiation disinfection system at the STP.

The Director followed all relevant Ministry policies

64. Ms. Pannu, Ms. Spencer, Mr. Korbet and Mr. Vaja followed all relevant Ministry policies in determining the contents of the 2020 ECA, those being:
 - i. Ministry Design Guideline for Sewage Works (2008)
 - ii. Ministry Guideline F-5-1
 - iii. Ministry Guideline F-15
 - iv. Ministry Guide for Applying for an Environmental Compliance Approval
65. The Tribunal has noted in *Beattie v. Ontario (Ministry of the Environment)* that, while compliance with Ministry guidelines and regulations, in and of itself, does not necessarily determine that leave applicants have failed to meet the test under

⁵¹ Hitesh Vaja Statement at para. 19; Fariha Pannu Statement at paras. 15-20

s. 41(a) of the *EBR*, the Tribunal can infer that facilities which comply with Ministry standards will not cause adverse effects.⁵²

66. The Applicant alleges that the Director did not follow her Ministry's own rules when she failed to require updated water quality baseline studies for the Winnipeg River. This is not true. As outlined by Senior Wastewater Engineer Mr. Hitesh Vaja in his statement, the relevant policy on this issue is the Ministry Guide to Applying for an Environmental Compliance Approval (the "Guide").⁵³
67. Part 4.10.4 of the Guide does not require assessment of a receiver's assimilative capacity and existing and potential downstream use where the sewage works is pre-existing, and the application does not propose an expansion of the works. As Mr. Vaja explained at paragraph 42 of his statement, the STP at the Site has existed for many years and the 2020 ECA did not "expand" the sewage works as that word is defined in the Guide. As such, there was no requirement for assimilative capacity studies as a precursor to deciding whether to issue the 2020 ECA.
68. The Applicant argues that it was unreasonable to issue the 2020 ECA where there is no responsibility agreement in place between Minaki and a municipality. However, Mr. Vaja at paragraph 34 of his statement explained that it was not possible to have a responsibility agreement with a municipality, because the Site is located in unorganized territory. Therefore, as recommended under section 4.3.2 of Ministry Guideline F-15, Financial Assurance was included in the 2020 ECA to account for environmental risks. This does not preclude a responsibility agreement being entered into at a later day with a governmental organization in accordance with section 4.3.3 of Ministry Guideline F-15.
69. Section 132(1) of the *EPA* allows the Director to include financial assurance in an approval to ensure the Ministry has sufficient funds to carry out necessary work,

⁵² *Beattie v. Ontario (Ministry of the Environment)*, [2009] O.E.R.T.D. No. 34 at para 67

⁵³ Hitesh Vaja Statement at paras. 38-40

should the approval holder either refuse or be unable to fulfill its obligations under the approval.

70. In the present case, Minaki retained a consulting engineering firm to calculate the amount of financial assurance required in accordance with Ministry Guideline F-15. The amount of \$91,000.00 was calculated and determined by a Professional Engineer. Mr. Vaja reviewed the calculation and agreed with it.⁵⁴
71. The Applicant argues that the basic RBC mechanism of the STP is insufficient on its own and that tertiary treatment is required. However, the existing sewage treatment facilities meet the standard requirement of Ministry Guideline F-5-1, which states that the normal level of treatment in Ontario is secondary treatment.⁵⁵
72. The Applicant relies on a report by R. J. Burnside & Associates Limited (the “Burnside Report”) as evidence that the RBC is insufficient on its own to protect the environment. The Burnside Report makes the general statement 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).”⁵⁶ However, as noted by Senior Wastewater Engineer Mr. Hitesh Vaja, such generalizations are not helpful in determining whether a particular RBC system requires tertiary treatment:

Requirements for individual sewage treatment plants are all case specific, depending on whether the discharge is to groundwater or surface water, and what effluent criteria the plant has to meet. An RBC unit is capable of meeting secondary levels of treatment, and in this case, it was determined that no additional treatment was necessary for the Minaki sewage treatment plant.⁵⁷

⁵⁴ Hitesh Vaja Statement at para. 34

⁵⁵ Hitesh Vaja Statement at para. 31

⁵⁶ Burnside Report at p. 2

⁵⁷ Hitesh Vaja Statement at para. 33

73. In the present case, the STP discharges into the Winnipeg River, which has a substantial flow rate.⁵⁸ There is no evidence that the effluent criteria set out in the 2014 ECA (and which remain in the 2020 ECA), all of which was based on Ministry guidelines, is inadequate. At most, the Burnside Report suggests that it would be prudent to update assimilative capacity studies. This does not meet the burden of proof set by the Leave Test.
74. It should also be noted that the Burnside Report predates the issuance of the 2020 ECA by almost 10 months (the Burnside Report is dated May 10, 2019 and the 2020 ECA was issued on March 6, 2020). The Burnside Report therefore does not offer an opinion on the current STP.

The Sewage Treatment Plant is Structurally Sound

75. The Applicant argues that the decision to issue the 2020 ECA is unreasonable, given the age and long disuse of the STP at the Site. However, the STP was assessed by an engineering firm as part of the 2019 Minaki application process.⁵⁹ This included an assessment/inspection conducted in the presence of Ministry Senior Environmental Officer Cathy Debney. Officer Debney has inspected multiple private sewage works in her ten years with the Ministry. During the inspection of the sewage treatment plant at the Site, she observed:

a couple minor pipe joint leaks that were quickly addressed. According to my experience in inspecting these facilities, this would be considered normal wear and tear and maintenance.⁶⁰

Ms. Debney did not observe any other structural issues with the Site.

76. The consulting engineering firm prepared a report, which stated that no major faults were found in the STP. The report was reviewed by Ministry Senior Wastewater Engineer Hitesh Vaja, who was satisfied with its conclusions.⁶¹

⁵⁸ Paula Spencer Statement at paras. 4 & 5

⁵⁹ Hitesh Vaja Statement at para. 36

⁶⁰ Cathy Debney Statement at para. 9

⁶¹ Hitesh Vaja Statement at para 36

77. Condition 4 of the 2020 ECA requires Minaki to prepare a statement, certified by a Professional Engineer, that the sewage works have been restarted in accordance with the ECA. Condition 10(1) of the 2020 ECA requires that Minaki provide the District Manager with written notification one week prior to the intended start-up of the STP. This will ensure that Ministry staff will be present to observe the start up.
78. Furthermore, the 2020 ECA stipulates that the sewage treatment plant must be operated by a licensed operator (see Condition 8(5)). As noted above at paragraph 39(c) of these submissions, Minaki has promised to contract Crown agency OCWA to operate the sewage treatment plant on Minaki's behalf.⁶²
79. The Applicant has not provided any scientific evidence on any points to counter the opinion evidence of Senior Wastewater Engineer Hitesh Vaja, Surface Water Specialist Paula Spencer or Signing Director and Engineer Fariha Pannu. Mr. Vaja, Ms. Pannu are both senior professional engineers with many years of experience, having reviewed approximately 700 applications between them. Ms. Spencer is also highly experienced. In at least one prior decision the Tribunal has accorded "significant weight" to the opinion of a Ministry engineer, with a similar level of experience.⁶³ It is submitted that the Tribunal should do the same in this instance regarding the opinions of Mr. Vaja, Ms. Pannu and Ms. Spencer.
80. For the reasons above, the Applicant has failed to establish that there is good reason to believe that no reasonable person could have made the decision to issue the 2020 ECA. The Director was alive to all relevant considerations and had regard to all relevant law and policy. There is nothing in the Applicant's submissions that establishes any error in the decision, much less the stringent threshold required for an application for leave to appeal to succeed. The Director's decision to issue the 2020 ECA clearly falls within the range of acceptable outcomes. Therefore, leave to appeal should be denied.

⁶² Hitesh Vaja Statement at para 37

⁶³ *Beattie*, *supra* note 52 at para 63

The Second Branch of the Leave Test: There is No Risk of Significant Harm to the Environment

81. The second branch of the test at paragraph 41(b) requires the Applicant to prove a *prima facie* case showing that the decision, in this case the decision to issue the 2020 ECA, could cause significant harm to the environment.⁶⁴
82. The evidentiary burden is on the Applicant. If an applicant is not able to supply sufficient evidence to allow the Tribunal to assess allegations of environmental harm, this branch of the test will not be met. Merely asserting that the decision should not have been taken without further investigation into environmental impacts is not enough. The Tribunal must be satisfied, based on the evidence before it, that significant harm could result from the decision.⁶⁵
83. The Tribunal has previously determined that where there is little scientific uncertainty, the precautionary principle should be interpreted to mean that the Director may approve the activity while including measures to prevent harm or confirm the predictions.⁶⁶ The Director submits that this reasoning applies in this case. The Applicant's materials do not provide any evidence beyond the out of date Burnside Report, which opines on what it considers to be best practices, rather than providing evidence on the risk of significant harm to the environment.
84. As set out above, expert opinion evidence provided by senior ministry staff clearly demonstrates that there is very little risk that the 2020 ECA will cause any adverse impacts, let alone significant harm. This is particularly true given the

⁶⁴ *Lafarge*, *supra* note 47 at para. 47

⁶⁵ *McRae v. Ontario (Ministry of the Environment)*, [2009] O.E.R.T.D. No. 41 at paras. 27, 37 [*McRae*]; and see also *Levesque v. Ontario (Ministry of the Environment and Climate Change)*, [2015] O.E.R.T.D. No. 42 at paras. 54-58 [*Levesque*].

⁶⁶ *Concerned Citizens of Brant v. Ontario (Ministry of the Environment and Climate Change)*, [2016] O.E.R.T.D. No. 12, para. 96; and see also *Greenspace Alliance of Canada's Capital v. Ontario (Ministry of the Environment)*, [2009] O.E.R.T.D. No. 38, para. 138; and *Spellman v. Ontario (Ministry of the Environment)*, [2007] O.E.R.T.D. No. 67, para. 76.

additional protective measures included in the 2020 ECA such as an ultraviolet irradiation disinfection system and the emergency standby power facilities.

85. Furthermore, measures within the 2020 ECA ensure that the Ministry will be alerted in a timely manner should problems arise. As well, the *EPA* provides the Ministry with multiple tools to address any environmental issues.

Ministry Oversight

86. An environmental officer from the local Ministry district office has been and will continue to regularly inspect the STP on the Site.⁶⁷
87. Precautionary measures are in place in the 2020 ECA to monitor quality and quantity of effluent discharge, along with monitoring and reporting of any odour or noise issues or process upsets such as: effluent limits exceedances, treatment bypasses or plant overflows (see Conditions 5, 9, 10 and 12).
88. Conditions 5 and 10(3) of the 2020 ECA will ensure that the Ministry is alerted as soon as reasonably possible if there is a spill or exceedance of any parameter specified in Condition 7. This is on top of the notification requirements under section 92 of the *EPA*.
89. If changes are detected through the monitoring and reporting program, which may result in significant impacts to sensitive receptors, the Director has the authority under section 20.12 of the *EPA* to amend the conditions of the 2020 ECA, after it has been issued, to accommodate changing circumstances.
90. In addition, sections such as 17, 18, 157 of the *EPA* allow the Ministry to issue orders to protect the environment. Section 186 of the *EPA* authorizes the Ministry to lay charges for noncompliance with the 2020 ECA or the *EPA*.

⁶⁷ Cathy Debney Statement at para. 10

IV. CONCLUSION

91. The Applicant has failed to satisfy either branch of the stringent test under section 41 of the *EBR*. This application for leave to appeal should be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto, this 7th day of May, 2020



Sylvia Davis
Counsel for the Director

Tel: (416) 540-3524
Fax: (416) 314-6579

Email: sylvia.davis@ontario.ca

Ministry of the Environment, Conservation
and Parks
Legal Services Branch
10th Floor
135 St. Clair Avenue West
Toronto, Ontario M4V 1P5

SCHEDULE "A"

Hughes v Director Ministry of the Environment, 2012 CarswellOnt 10904 (ERT)

Kagawong Power Inc. v Ontario (Director, Ministry of the Environment), 2007 CarswellOnt 9989 (ERT)

Marshall v. Director (Ministry of the Environment), 2008 CarswellOnt 5320 (ERT)

Lafarge Canada Inc. v. Ontario (Environmental Review Tribunal), [2008] O.J. No. 3460 (Div. Ct.)

Freshway Investments Inc. v. Ontario (Ministry of Environment, Conservation and Parks), [2018] O.E.R.T.D. No. 66

Young v. Ontario (Ministry of the Environment and Climate Change), [2016] O.E.R.T.D. No. 43

Beattie v. Ontario (Ministry of the Environment), [2009] O.E.R.T.D. No. 34

McRae v. Ontario (Ministry of the Environment), [2009] O.E.R.T.D. No. 41

Levesque v. Ontario (Ministry of the Environment and Climate Change), [2015] O.E.R.T.D. No. 42

Concerned Citizens of Brant v. Ontario (Ministry of the Environment and Climate Change), [2016] O.E.R.T.D. No. 12

Greenspace Alliance of Canada's Capital v. Ontario (Ministry of the Environment), [2009] O.E.R.T.D. No. 38

Spellman v. Ontario (Ministry of the Environment), [2007] O.E.R.T.D. No. 67

SCHEDULE "B"

Environmental Bill of Rights, 1993, S.O. 1993, c. 28

Effect of statement

11 The minister shall take every reasonable step to ensure that the ministry statement of environmental values is considered whenever decisions that might significantly affect the environment are made in the ministry. 1993, c. 28, s. 11.

...

Public notice of proposals for instruments

22 (1) The minister shall do everything in his or her power to give notice to the public of a Class I, II or III proposal for an instrument under consideration in his or her ministry at least thirty days before a decision is made whether or not to implement the proposal. 1993, c. 28, s. 22 (1).

...

Right to seek leave to appeal a decision on an instrument

38 (1) Any person resident in Ontario may seek leave to appeal from a decision whether or not to implement a proposal for a Class I or II instrument of which notice is required to be given under section 22, if the following two conditions are met:

1. The person seeking leave to appeal has an interest in the decision.
2. Another person has a right under another Act to appeal from a decision whether or not to implement the proposal. 1993, c. 28, s. 38 (1).

...

Leave test

41 Leave to appeal a decision shall not be granted unless it appears to the appellate body that,

- (a) there is good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have made the decision; and
- (b) the decision in respect of which an appeal is sought could result in significant harm to the environment. 1993, c. 28, s. 41.

ENVIRONMENTAL PROTECTION ACT R.S.O. 1990, CHAPTER E.19

Remedial orders

17 Where any person causes or permits the discharge of a contaminant into the natural environment, so that land, water, property, animal life, plant life, or human health or safety is injured, damaged or endangered, or is likely to be injured, damaged or endangered, the Director may order the person to,

- (a) repair the injury or damage;
- (b) prevent the injury or damage; or
- (c) where the discharge has damaged or endangered or is likely to damage or endanger existing water supplies, provide temporary or permanent alternate water supplies. R.S.O. 1990, c. E.19, s. 17; 2005, c. 12, s. 1 (7).

...

Order by Director re preventive measures

18 (1) The Director, in the circumstances mentioned in subsection (2), by a written order may require a person who owns or owned or who has or had management or control of an undertaking or property to do any one or more of the following:

- 1. To have available at all times, or during such periods of time as are specified in the order, the equipment, material and personnel specified in the order at the locations specified in the order.
- 2. To obtain, construct and install or modify the devices, equipment and facilities specified in the order at the locations and in the manner specified in the order.
- 3. To implement procedures specified in the order.
- 4. To take all steps necessary so that procedures specified in the order will be implemented in the event that a contaminant is discharged into the natural environment from the undertaking or property.
- 5. To monitor and record the presence or discharge of a contaminant specified in the order and to report thereon to the Director.
- 6. To study and to report to the Director on,

- i. the presence or discharge of a contaminant specified in the order,
 - ii. the effects of the presence or discharge of a contaminant specified in the order,
 - iii. measures to control the presence or discharge of a contaminant specified in the order,
 - iv. the natural environment into which a contaminant specified in the order may be discharged.
7. To develop and implement plans to,
- i. reduce the amount of a contaminant that is discharged into the natural environment,
 - ii. prevent or reduce the risk of a spill of a pollutant within the meaning of Part X, or
 - iii. prevent, decrease or eliminate any adverse effects that result or may result from a spill of a pollutant within the meaning of Part X or from any other discharge of a contaminant into the natural environment, including,
 - A. plans to notify the Ministry, other public authorities and members of the public who may be affected by a discharge, and
 - B. plans to ensure that appropriate equipment, material and personnel are available to respond to a discharge.
8. To amend a plan developed under paragraph 7 or section 91.1 in the manner specified in the order. R.S.O. 1990, c. E.19, s. 18 (1); 2005, c. 12, s. 1 (8, 9).

Grounds for order

(2) The Director may make an order under this section if the Director is of the opinion, on reasonable and probable grounds, that the requirements specified in the order are necessary or advisable so as,

- (a) to prevent or reduce the risk of a discharge of a contaminant into the natural environment from the undertaking or property; or
- (b) to prevent, decrease or eliminate an adverse effect that may result from,
 - (i) the discharge of a contaminant from the undertaking, or
 - (ii) the presence or discharge of a contaminant in, on or under the property. 2005, c. 12, s. 1 (10).

...

20.2 (1) A person may apply to the Director for approval to engage in an activity mentioned in subsection 9 (1) or 27 (1) of this Act or subsection 53 (1) of the *Ontario Water Resources Act* if the activity has not been prescribed by the regulations for the purposes of subsection 20.21 (1). 2010, c. 16, Sched. 7, s. 2 (15).

...

Powers of Director

20.3 (1) After consideration of an application for approval under section 20.2 in respect of one or more activities, the Director may,

- (a) issue or refuse to issue an environmental compliance approval in respect of one or more of the activities;
- (b) if the Director issues an environmental compliance approval,
 - (i) impose terms and conditions in the approval, and
 - (ii) incorporate any environmental compliance approvals that are in effect into the new approval and revoke the approvals that have been incorporated;
- (c) amend an environmental compliance approval that is in effect and impose, alter or revoke terms and conditions or expand the scope of the approval to other activities or sites;
- (d) revoke an environmental compliance approval in whole or in part, with or without issuing a new approval; and
- (e) suspend an environmental compliance approval in whole or in part. 2010, c. 16, Sched. 7, s. 2 (15).

...

Notice of spills

92 (1) Every person having control of a pollutant that is spilled and every person who spills or causes or permits a spill of a pollutant shall forthwith notify the following persons of the spill, of the circumstances thereof, and of the action that the person has taken or intends to take with respect thereto,

- (a) the Ministry;
- (b) any municipality within the boundaries of which the spill occurred or, if the spill occurred within the boundaries of a regional municipality, the regional municipality;
- (c) where the person is not the owner of the pollutant and knows or is able to ascertain readily the identity of the owner of the pollutant, the owner of the pollutant; and

- (d) where the person is not the person having control of the pollutant and knows or is able to ascertain readily the identity of the person having control of the pollutant, the person having control of the pollutant. R.S.O. 1990, c. E.19, s. 92 (1); 2002, c. 17, Sched. F, Table; 2005, c. 12, s. 1 (15). Notice of decisions,

...

139 (1) When the Director,

- (a) refuses to give his or her approval of plans and specifications;
- (b) requires a condition precedent to the giving of his or her approval;
- (c) refuses to issue an environmental compliance approval or renewable energy approval;
- (d) refuses to renew a renewable energy approval;
- (e) suspends or revokes an environmental compliance approval or renewable energy approval; or
- (f) issues a certificate of property use,

the Director shall serve notice upon the applicant or holder, as the case may be, together with written reasons therefor, and the applicant or holder may, by written notice served upon the Director and the Tribunal within fifteen days after the service of the notice, require a hearing by the Tribunal. R.S.O. 1990, c. E.19, s. 139 (1); 2000, c. 26, Sched. F, s. 12 (12); 2001, c. 17, s. 2 (15); 2009, c. 12, Sched. G, s. 7 (1); 2010, c. 16, Sched. 7, s. 2 (50).

When Director refuses licence, permit or approval

(2) When the Director,

- (a) refuses to issue or renew or revokes or suspends a licence, permit or approval;
- (b) imposes terms and conditions in issuing an environmental compliance approval;
- (c) imposes terms and conditions in issuing or renewing a renewable energy approval, licence, permit or approval;
- (d) alters the terms and conditions in an environmental compliance approval, renewable energy approval, certificate of property use, licence or permit or approval after it is issued; or
- (e) imposes new terms and conditions in an environmental compliance approval, renewable energy approval or certificate of property use,

the Director shall serve notice together with written reasons therefor upon the applicant or the person to whom the licence, permit, approval, environmental compliance approval, renewable energy approval or certificate of property use is issued, as the case may be, and the applicant or person may, by written notice served upon the Director and the Tribunal within 15 days after the service of the notice, require a hearing by the Tribunal. 2007, c. 7, Sched. 13, s. 1; 2009, c. 12, Sched. G, s. 7 (2, 3); 2010, c. 16, Sched. 7, s. 2 (51, 52).

Exception

(3) Subsections (1) and (2) do not apply with respect to,

- (a) a decision of the Tribunal that is implemented by the Director in accordance with subsection 20.15 (6) or 33 (4); or
- (b) terms and conditions in an environmental compliance approval as a result of an application under Part II.1, if the terms and conditions are substantially the same as those contained in an approval that was previously issued and is still in effect at the time that the decision is made in respect of the application. 2010, c. 16, Sched. 7, s. 2 (53).

...

Order by provincial officer: contraventions

157 (1) A provincial officer may issue an order to any person that the provincial officer reasonably believes is contravening or has contravened,

- (a) a provision of this Act or the regulations;
- (b) a provision of an order under this Act, other than an order under section 99.1, 100.1, 150 or 182.1 or an order of a court; or

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 157 (1) (b) of the Act is amended by striking out “or 182.1” and substituting “182.1 or 182.3”. (See: 2019, c. 9, Sched. 7, s. 4)

- (c) a term or condition of an environmental compliance approval, certificate of property use, renewable energy approval, licence or permit under this Act. 1998, c. 35, s. 16; 2001, c. 17, s. 2 (33); 2005, c. 12, s. 1 (34); 2009, c. 12, Sched. G, s. 15 (1); 2009, c. 33, Sched. 15, s. 5 (3); 2010, c. 16, Sched. 7, s. 2 (60).

Contravention of s. 14

(1.1) Subsection (1) does not apply to a contravention of section 14 unless,

- (a) an order to pay an environmental penalty could be issued in respect of the contravention; or

- (b) the contravention involves a discharge that causes or is likely to cause an adverse effect. 2005, c. 12, s. 1 (35).

Information to be included in order

(2) The order shall,

- (a) specify the provision, term or condition that the provincial officer believes is being or has been contravened;
- (b) briefly describe the nature and, where applicable, the location of the contravention;
- (b.1) in the case of a contravention of section 14 for which an order to pay an environmental penalty could be issued, describe the adverse effects that were caused by or that may be caused by the contravention; and
- (c) state that a review of the order may be requested in accordance with section 157.3. 1998, c. 35, s. 16; 2005, c. 12, s. 1 (36).

What order may require

(3) The order may require the person to whom it is directed to comply with any directions set out in the order within the time specified relating to,

- (a) achieving compliance with the provision, term or condition;
- (b) preventing the continuation or repetition of the contravention;
- (c) securing, whether through locks, gates, fences, security guards or other means, any land, place or thing;
- (d) where the contravention is related to the deposit of waste, removing the waste;
- (e) where the contravention has injured, damaged or endangered animal life, plant life, human health or safety, or the natural environment or is likely to injure, damage or endanger animal life, plant life, human health or safety, or the natural environment,
 - (i) repairing the injury or damage,
 - (ii) preventing the injury or damage,
 - (iii) decreasing, eliminating or ameliorating the effects of the damage, and
 - (iv) restoring the natural environment;

- (f) where the contravention has caused damage to or endangered or is likely to cause damage to or endanger existing water supplies, providing temporary or permanent alternate water supplies;
- (g) submitting a plan for achieving compliance with the provision, term or condition, including the engagement of contractors or consultants satisfactory to a provincial officer;
- (h) submitting an application for an environmental compliance approval, renewable energy approval, licence or permit;
- (h.1) registering an activity under Part II.2;
- (i) monitoring and recording in relation to the natural environment and reporting on the monitoring and recording;
- (j) posting notice of the order; and
- (k) if the provincial officer reasonably believes that a term or condition of a renewable energy approval is being or has been contravened, doing any other thing referred to in subsection 16 (3) of the *Ontario Water Resources Act*. 1998, c. 35, s. 16; 2005, c. 12, s. 1 (37); 2009, c. 12, Sched. G, s. 15 (2, 3); 2010, c. 16, Sched. 7, s. 2 (61, 62).

...

Offences

General

186 (1) Every person who contravenes this Act or the regulations is guilty of an offence. R.S.O. 1990, c. E.19, s. 186 (1).

Exception

(1.1) Subsection (1) does not apply to a contravention of section 14 unless the contravention causes or is likely to cause an adverse effect. 2005, c. 12, s. 1 (54).

Offence re order

(2) Every person who fails to comply with an order under this Act, other than an order under section 99.1, 100.1, 150 or 182.1, is guilty of an offence. R.S.O. 1990, c. E.19, s. 186 (2); 2005, c. 12, s. 1 (55).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 186 (2) of the Act is amended by striking out “or 182.1” and substituting “182.1 or 182.3”. (See: 2019, c. 9, Sched. 7, s. 9 (1))

Offence re approval, licence or permit, etc.

(3) Every person who fails to comply with the terms and conditions of an environmental compliance approval, certificate of property use or renewable energy approval or of a licence or permit under this Act or who fails to comply with the terms of a report under section 29 is guilty of an offence. 2010, c. 16, Sched. 7, s. 2 (84).

Fisheries Act, R.S.C., 1985, c. F-14

Definitions

34 (1) The following definitions apply in this section and sections 34.1 to 42.5 deleterious substance means

(a) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water, or

(b) any water that contains a substance in such quantity or concentration, or that has been so treated, processed or changed, by heat or other means, from a natural state that it would, if added to any other water, degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water,

and without limiting the generality of the foregoing includes

(c) any substance or class of substances prescribed pursuant to paragraph (2)(a),

(d) any water that contains any substance or class of substances in a quantity or concentration that is equal to or in excess of a quantity or concentration prescribed in respect of that substance or class of substances pursuant to paragraph (2)(b), and

(e) any water that has been subjected to a treatment, process or change prescribed pursuant to paragraph (2)(c);

Wastewater Systems Effluent Regulations - SOR/2012-139

5. For the purpose of the definition deleterious substance in subsection 34(1) of the Act, the following substances or classes of substances are prescribed as deleterious substances:

...

(c) total residual chlorine;

Ontario Water Resources Act R.S.O. 1990, c. O.40

53 (1) Subject to section 47.3 of the *Environmental Protection Act*, no person shall use, operate, establish, alter, extend or replace new or existing sewage works except under and in accordance with an environmental compliance approval. 2010, c. 16, Sched. 7, s. 3 (9).