American Iron & Metal Environment Compliance Approval (sewer)

ERO number 019-7136 / Ministry reference number 7929-CQYQWU

Concerns over the process and transparency:

The office of the City of Hamilton Ward 4 Councillor was made aware of the proposal and comment period for the above environmental compliance approval through the automatic notification from the Environmental Registry of Ontario (ERO) on June 4, 2023. No supporting material was published on the ERO for the application. On June 5, 2023, we reached out to the District Manager, Hamilton District, to ask for the supporting material so that we could make an informed comment, as per the Environmental Bill of Rights. The where and when we could review written information about the proposal indicated that we were to contact Client Services and Permissions Branch (CSPB) in Toronto to find out if materials were available, which vaguely fulfils the requirements of the Environmental Bill of Rights (27 (2)3). On June 6, 2023, the Provincial Officer for the Hamilton District advised us to submit a request to review the proposal through the CSPB; we did so on June 13, 2023. On June 15, 2023, we received a response from the Client Service Representative, of the CSPB acknowledging our request, advising us that they would ask the proponent to consent to the release of the information, and also advising us of the process for Freedom of Information (FOI) requests. We requested an update on the file on June 26, 2023, and July 7, 2023, and received a response within 24 hours of each request, letting us know that the consultant had “barred disclosure of any project document without consultation and permission from them. As such it will be necessary to have a written communication with the consultant for the purpose,” and that they were still waiting to hear back from the consultant. Through a phone call with our Provincial Officer and an e-mail to our Members of Provincial Parliament, we were advised on July 7, 2023, by the Provincial Officer that we could come in person to review the application. We reviewed the supporting documents on July 12 and 13, 2023, for a total of 2 hours and 40 minutes, under the supervision of the Provincial Officer at the Hamilton District Ministry of Environment, Conservation and Parks office. The consultation period closed on July 14, 2023 at 11:59 p.m. This did not provide us with enough time to properly review the supporting documents and to make an informed comment. Moreover, given how difficult it was for the office of a municipal councillor to review the documentation, we have serious concerns about the ability of the general public to do so as well, in accordance with the Environmental Bill of Rights.

As such, here are our comments:

Based on the application form:

* No other approval permits for the facility were indicated in the application even though the company has Environmental Compliance Approval for air. The application appears to be inaccurate or missing information.
* The applicant indicated that the ECA was not environmentally significant and therefore requested not to post to the ERO. Given that the receiver from the storm water management pond is a local watershed, we are of the belief that this is indeed environmentally significant. Is it considered environmentally significant, if so/not, why?
* The applicant indicated that they were not subject to the requirements of the Environmental Assessment Act and that no environmental assessment process, environmental screening, environmental impact analysis, or environmental study needed to be completed. Given that the ECA for sewers at this facility date back to 2017, we would like to know when would these be required or triggered? Also, should this application have included any or all of these reports?
* The applicant indicated that they did not consult the local Indigenous community because the proposed project/activity was/did not “in an open or forested area where hunting, trapping or plant gathering could occur,” “impact a water body (e.g. direct discharge) or alter access to a water body,” “impact cultural heritage or archaeological resources, or access to them,” and “Based on the online guide to applying for an environmental compliance approval, or direction provided by the ministry or another agency, are indigenous consultation activities likely required as part of this application process.” The Red Hill Creek is under the direction of the Joint Stewardship Board for the City of Hamilton and the Haudenosaunee Nation. The intermediate receiver of the effluent is the Red Hill Creek. The effluent was in exceedances of boron, copper, iron, and zinc from 2018 to 2021. As such, the Indigenous community should have been consulted, including but not limited to the Haudenosaunee, the Mississaugas of the Credit, the local urban Indigenous community, and the City of Hamilton (including its Manager of Indigenous Relations). How will the Indigenous community be properly consulted for this project and similar projects going forward?
* Could the MECP confirm the following: that the location is not in an area of control for the Niagara Escarpment Planning and Development Act, a vulnerable area under the Clean Water Act, and a drinking water threat for the local source protection area?
* Could the MECP or the applicant confirm that groundwater is not a receiver?
* What would constitute a final receiver for this project, given that the Red Hill Creek is considered the intermediate receiver and that it drains directly into Lake Ontario (Great Lake)?
* Was a hydrogeological assessment truly not required for this project, as indicated by the applicant?
* It should be noted that no documents in the “supporting documentation and technical requirements” were indicated to be “confidential / not suitable for public viewing” which seems contrary to the response given to us by the CSPB.

Additional comments based on reports by consultants:

* Could the MECP confirm the accuracy of the consultant’s assessment that the Goss traps were not necessary because the oil booms were sufficient?
* The forebay inflow is based on the 2-year storm. Given the effects of climate change on storms, is a 2-year storm model the most robust way to model the use of the storm water management ponds? Should we not plan for 100-year storms?
* We second the concerns for erosion of the berms that are not vegetated.
* Does the storm water management system, particularly its inflow, fulfil the definition of a bioswale or is it something different?

Overall comments and questions:

* We recommend regular clean-up of the storm water management ponds, at least once a year. It appeared that the ponds were not cleaned regularly, based on the consultant reports.
* We are concerned about the 90% impermeability of the site and its impact on the hydrological system.
* Given the changes in climate patterns, we recommend monitoring and sampling whenever there is a discharge of leachate contaminating the Red Hill Creek.
* We support robust effluent objectives for the ECA.
* How does effluent of boron, copper, iron, and zinc affect the local population health, biodiversity, flora and fauna in the receiver?
* Could you confirm the concentration of pollutants that were discharged into the Red Hill Creek from the current storm water management ponds system?