Section 11.5.1 of the proposal is missing any language that recognizes, acknowledges, or upholds the Town of Milton, and the municipal representative's statutory duty and responsibility not to cause or permit the discharge or the theoretical possibility a discharge of contaminants, in particular sound, light, odours, or vibrations from causing adverse effects. This statutory duty is expressed in ss 9(1), 14(1), and 15(1) of the Environmental Protection Act (EPA). The necessity of such language was made plain in JJ's Hospitality v. Kal Tire, 2020 ONSC 6198 (CanLII), <https://canlii.ca/t/jb460> where, due to the City of Sault Ste. Marie's incompatible land use planning and failure to uphold their duties under ss. 9(1) and 14(1) of the EPA, JJ's were able to secure an injunction at tremendous risk, hassle, and expense. This case also highlights the abject failure of the MECP in their duties under ss. 9(1) and 14(1) of the EPA when contaminant discharges are reported, and to hold the City, operator, and landlord accountable for prima facie EPA breaches, to this day.

A perusal of Access Environment reveals a systemic failure within the Town of Milton. It is easily observed that numerous, if not every, commercial property that is adjacent to a sensitive land use is currently being used, operated, and was constructed without an environmental compliance approval.

In support of my concern, I invite review of the following:

Hill v. Herd, 2025 BCCA 173 (CanLII), <https://canlii.ca/t/kc9ql>

In this case, the court held the appellants had established, due to the Petro-Canada gas station operations, the existence of a substantial, non-trivial interference with their use and enjoyment of their property due to noise, light, and fumes, and that the interference was unreasonable in all of the circumstances.

Unlike BC, under Ontario law, this constitutes a serious breach of the EPA and the Criminal Code (122, 429, 430). 20-day civil trials are not necessary under Ontario law. All that is required is for an affected landowner to report the theoretical possibility of a contaminant discharge for the Ministry to commence abatement and enforcement proceedings.

ML Ready Mix Concrete Inc. v Ontario (Environment and Climate Change), 2015 CanLII 78962 (ON ERT), <https://canlii.ca/t/gmbxk>

The MECP Director submitted to the Tribunal, and the Tribunal confirms that compliance with NPC-300 is not sufficient, as the landowner must also obtain ECA approval for the activities as required by s. 9 of the EPA. The Director submitted that NPC-300 is a guideline to assist the Director in determining the terms and conditions for an ECA and is not a substitute for the ECA itself.

The Director submitted and the Tribunal held that the exception under s. 9(3)(f) did not apply to motor vehicle noise at facilities.

The Tribunal also held that the EPA's purpose was to minimize adverse effects, including both noise and loss of enjoyment of normal use of property.

JJ’s Hospitality v. Kal Tire, 2020 ONSC 6198 (CanLII), <https://canlii.ca/t/jb460>

The court held that a prima facie violation of the EPA has occurred when the theoretical possibility of a contaminant discharge is present and the property does not have an environmental compliance approval, activity registration, or a Director's letter. The court also held that a properly qualified export report was not required to establish the theoretical possibility, but proximity alone was sufficient.

Castonguay Blasting Ltd. v. Ontario (Environment), 2013 SCC 52 (CanLII), [2013] 3 SCR 323, <https://canlii.ca/t/g1038>

The Supreme Court of Canada held that when a contaminant is discharged, the discharger may not know the full extent of the damage caused or likely to be caused. The purpose of the reporting requirement in s. 15(1) is to ensure that it is the Ministry, and not the discharger, who decides what, if any, further steps are required. Moreover, many potential harms may be difficult to detect without the expertise and resources of the Ministry.

The Court also held that every person who discharges a contaminant or causes or permits the discharge of a contaminant into the natural environment shall forthwith notify the Ministry.

R. c. Ihejirika, 2023 QCCM 82 (CanLII), <https://canlii.ca/t/k27wk>

In paragraphs 444-449, the Justice explains the law of criminal willful mischief. Any failure of the land owners, developers, occupiers, municipalities, or the MECPs' statutory duty to discharge or cause or permit the discharge of a contaminant appears to meet the criteria made out in para 449

[449] Those who are accused of mischief may be convicted of this offence as soon as they are aware of the likely consequences of their actions, among others, by reducing by a more than trivial degree the attributes of property that are lawfully held by its owner.

These attributes of property ownership, which include enjoyment of property, are in no way impacted by NPC-300 guidelines, but God given rights protected by the Criminal Code, in particular s. 494(2), and the EPA by ss. 9(1), 14() and 15(1).

Ontario v. Kansa General Insurance Co., 1994 CanLII 626 (ON CA), <https://canlii.ca/t/6jzk>
*Leave to appeal to the Supreme Court REFUSED.

The Crown conceded that it has a statutory duty not to discharge or cause or permit the discharge of a contaminant if that contaminant causes or may cause an adverse effect, and is responsible for doing so.

D-1-3 Land Use Compatibility: Definitions
https://www.ontario.ca/page/d-1-3-land-use-compatibility-definitions

In particular, the definitions of Adverse Effect, Compatible Land Use, Contaminant, Facility, Influence Area/Potential Influence Area, Land Use Compatibility, Sensitive Land Use, Significant Impact, and Trivial Impact.

Residences or facilities where people sleep are considered to be sensitive 24 hours/day.

D-1 Land Use and Compatibility
https://www.ontario.ca/page/d-1-land-use-and-compatibility

Synopsis, Introduction (1.0), Objective (1.2), Existing Incompatible Land Uses (2.3.1), Compliance with Existing Zoning and Official Plan Designation (2.3.2), Preferred Approach (3.1), Irreconcilable Incompatibilities (3.4)

The Supreme Court has held that “the implementation of mitigation measures by the appropriate authority” referred to in Existing Incompatible Land Uses (2.3.1) is the Ministry, not the municipality, or the discharger.

In summary, it is essential for the protection of property rights, and to hold the Town of Milton accountable for any past and future incompatible land use planning or failures in their ss 9(1), 14(1) and 15(1) duties under the EPA that the amended, repealed or replaced zoning bylaw contain clear language regarding EPA compliance and duties to ensure the Policy Pillars outlined in s. 1.3 and the environmental protection aspects of the proposed plan.