



September 13, 2021

Shareen Han
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Email: Shareen.Han@Ontario.ca

Dear Ms. Han:

Re: Comments on ERO number 019-3544 - Amendments to O.Reg. 79/15 to Further Streamline the Use of Alternative Low-Carbon Fuels (PLN 33.2.6)

The Ministry of Environment, Conservation and Parks (MECP) is proposing amendments to *Ontario Regulation 79/15: Alternative Low-Carbon Fuels* (O.Reg. 79/15) made under the *Environmental Protection Act* to make it easier for energy-intensive industries to substitute the use of fossil fuels with fuels derived from materials that would otherwise be disposed in landfills. O.Reg. 79/15 was enacted in 2015 as a streamlining measure to support manufacturers of cement, lime, iron, and steel to reduce their reliance on fossil fuels and ostensibly their greenhouse gas (GHG) emissions but has seen little uptake.

Clarington is home to the St. Marys Cement (SMC) - Bowmanville Plant, one of the only two manufacturers who have been granted an Environmental Compliance Approval (ECA) issued under O.Reg. 79/15 to date. To this end, the Municipality is familiar with the consultation and approvals process set out by the Regulation and the related concerns heard from our Council and the public. Taking into consideration our experience, the following general comments on the proposed amendments summarized in the Environmental Registry of Ontario (ERO) posting and on the implementation of O.Reg. 79/15 are provided.

Modernized ECA Process

The amendments proposed to modernize the ECA amendment process primarily relate to the consultation provisions for non-demonstration projects. These include:

- Providing proponents the option to hold the two pre-application public meetings virtually or in-person (in-person is the only option currently provided).
- Removing the pre-application consultation requirements for proponents who have previously been granted approval to use ALCFs, who would like to increase the quantity of ALCFs used or expand their list of approved ALCFs. Instead, such proposals would be subject to the Environmental Bill of Rights requirements and

posted publicly on the ERO after the application is submitted to the MECP for a minimum 30-day comment period.

The Municipality appreciates the potential benefits of virtual meetings. Our own transition to adapting to virtual platforms has enabled us to continue public outreach throughout the COVID-19 pandemic and maintain business operations. Proponents need to be aware of and responsive to the challenges of virtual meetings, including a lack of community-wide internet access and/or stable and reliable connections, which may be locally specific. Where a proponent uses a virtual approach for public meetings, they should be required to make the project information requirements set out in section 7.(3) of O.Reg. 79/15 readily available in an alternative, non-virtual format and the method for accessing the information provided in the notice of consultation required to be published both online and in print form in a local newspaper.

With respect to the proposed modification in consultation requirements from a pre-application to a post-application consultation approach (where a proponent has a previous approval for the use of ALCF), we do not support the proposed amendment to O.Reg. 79/15, as described. Our concern is based on our interpretation that the public consultation program for SMC's recent ECA amendment application could have been drastically reduced to only include posting on the ERO had this proposed amendment been enacted at the time.

The ALCF project announced by SMC in August 2019 for their Bowmanville Plant was an undertaking to expand the use of ALCFs at the site, both in quantity and in type. SMC had been granted a previous approval in 2015 by the MECP to use wood materials as an ALCF. This project was substantially different from the previous ALCF approval. The ALCF quantity increase was from 96 tonnes/day to 400 tonnes/day, a fourfold increase. In addition, it included a significantly expanded list of new ALCFs, including Agricultural Waste and a range of non-recyclable plastics, construction and demolition waste, and non-recyclable paper-fibre / wood / plastic composites. Studies to support the ECA application were extensive and highly technical. The Municipality retained expertise in air quality to provide advice and recommendations to Council in relation to SMCs proposal.

SMCs proposal meets the tests set out in the proposed amendment to O.Reg. 79/15 (i.e. previously approved to use ALCFs and seeking increased quantity and new materials). However, this 'modernized' consultation requirement would not have provided Council, Municipal Staff or interested members of the public adequate opportunity to fully understand the proposal, to understand the difference between this proposal and its requirements as compared to the requirements for other facilities thermally treating municipal solid waste, ask questions of and discuss concerns with the proponent, nor submit comments to the MECP within the allocated timeframe. A 30-day comment period following submission of the ECA amendment application would have been inadequate for such a substantial proposal given the time that was needed to seek out necessary expertise to comprehensively review and discuss with our Council the proposal and potential implications for the Municipality and the community.

While it is understood that the MECP can require additional public consultation, scaling back on the minimum mandatory requirements to eliminate the mechanism for early dialogue and the establishment of understanding and trust at this time, when the understanding of ALCFs, their use, how they are regulated, and how their potential impacts are minimized and mitigated is somewhat unknown in communities, is not supported.

Elimination of Quarterly NO_x and SO₂ Reporting

In response to the recent revocation of *Ontario Regulation 194/05: Industry Emissions – Nitrogen Oxides and Sulphur Dioxide* under the Environmental Protection Act, the quarterly NO_x and SO₂ reporting requirements set out in section 15 of O.Reg. 79/15 are proposed to be deleted. Based on the summary provided in the ERO posting, we have understood the proposed changes to be limited to the elimination of quarterly reporting only. The proposed changes would not remove the requirement for monitoring of the emissions of NO_x and SO₂ from a kiln located at a site approved to use ALCF.

Expanded Eligible Fuel Sources

Currently, O.Reg. 79/15 prohibits the use of dead animals and waste resulting from the rendering of animals or animal by-products as an ALCF. The proposed changes to the regulation would remove this waste type from the list of restricted material types, thereby authorizing proponents to apply for their use subject to following all other provincial and federal requirements for the management and disposal of dead animals.

The introduction of O.Reg. 79/15 provided a streamlined approvals process for the use of ALCF for Ontario's cement sector. Changes included the removal of the requirements for proponents to obtain a waste ECA for disposal sites. Information that would typically be clearly described by proponents in a waste ECA application for a site to manage and process waste, such as details about waste storage, do not form part of an application for ECA approval under the current legislative framework for ALCF use. The Municipality relies on the MECP to ensure that adequate provisions and practices are in place for the safe handling and storage of ALCFs and ALCF storage and use does not result in nuisance impacts, such as odour, pest or rodents. This is particularly critical where a proponent is seeking approval for the use of dead animals or dead animal parts.

The MECP recently consulted on new Guidelines to Address Odour Mixtures in Ontario. This action by the province aims to support a proactive, preventative approach to managing odour emissions and minimizing odour issues that could be of concern to local residents. The application of these new guidelines to manufacturing facilities seeking approval for the use of ALCFs, and in particular approval for the use of dead animals as an ALCF, is unclear at this time, but should be a requirement.

Additional Comments

The Municipality appreciates the MECP's efforts to review O.Reg. 79/15 and identify opportunities to further the objective to reduce the use of fossil fuels and their associated GHG emissions and address climate change. In March 2020, the Municipality joined over 400 Canadian municipalities and 1,300 local governments in 25 countries in declaring a climate emergency. Our community GHG emissions are significantly influenced by SMC, one of a limited number of facilities who have pursued the use of ALCFs through the regulation. While it is too early to realize in actual terms the impact of increased ALCF use locally, we are hopeful that an overall environmental benefit is realized. To fully realize the benefit of the legislation, we have in the past and continue to encourage the province to introduce an approach for assessing and publicly reporting on its contribution to reducing the use of fossil fuels and GHG emissions from Ontario's energy-intensive industries. Public reporting should demonstrate the GHG reductions that have been realized as a result of fossil fuel replacement with ALCFs at both the facility and province-wide levels.

Further, in addition to GHG emissions reduction, we request that air quality be a key consideration as part of a thorough and comprehensive assessment of ECA applications submitted under O.Reg. 79/15. Where ALCF is derived from or composed of municipal solid waste, we encourage a cumulative effects assessment be considered a requirement of a complete ECA application. Such an assessment was voluntarily undertaken by SMC in response to requests made by the community and we feel has been a beneficial component of demonstrating the potential impact of their proposal, not only from the perspective of their own operations, but at a broader community scale.

Comments of Council

Today at the Joint Committee, delegate Wendy Bracken addressed Committee to share her concerns in response to ERO posting 019-3544. Taking into consideration the concerns expressed by Ms. Bracken and additional information provided by Staff, the Joint Committee unanimously approved the following resolution:

That Staff be directed to forthwith file an ER comments on the potential changes to O.Reg 79/15 to:

1. Oppose reductions in monitoring and reporting, including the use of secondary and tertiary sources for testing;
2. Ensure that carbon dioxide testing is carried out at the stack; and
3. Oppose the elimination of public consultation from decisions on Alternative Low Carbon Fuels.

The resolution will be subject to final consideration and ratification by Clarington Council on Monday September 20, 2021. A notice of Council decision, including any additional comments, will be submitted to the MECP promptly following the Council meeting.

In closing

Thank you for the opportunity to submit comments on the proposed changes to O.Reg. 79/15. Should you have questions on the contents of this letter, please contact Amy Burke, Senior Planner at 905-623-3379 ext. 2423 or aburke@clarington.net.

Sincerely,



Ryan Windle, Director
Planning and Development Services
Municipality of Clarington

cc: Mayor and Members of Council
Andy Allison, CAO
Faye Langmaid, Manager of Special Projects
Amy Burke, Senior Planner
Wendy Bracken