Kevin C. Christenson  
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Hamilton, ON  
L8R 2K3

Dear Applicant:


In light of the interest you have expressed in the past in the role of the ECO and the Environmental Bill of Rights (EBR), I thought you might be interested in receiving the comment pertaining to your application from the Commissioner’s report and supplement.

The full version of the Annual Report and Supplement are available on our website at www.eco.on.ca. If you have comments or questions about the Annual Report, please contact us by phone at (800) 701-6454 or by e-mail at commissioner@eco.on.ca. In the meantime, thank you for your interest in the work of our office and the EBR.

Sincerely,

Peter Lapp  
Director of Operations

Enclosures  
File Number(s): 12008012
Rossland Acres Inc. They provided evidence in the form of photographs, showing that over the spring and summer of 2008 an orange-coloured liquid was seeping from the ground on the south-facing side of the site, which has been closed since 1985. They also provided test results for three sets of soil and water samples taken from the affected site over this period of time. The tests revealed levels of several contaminants above both national and provincial guidelines for both soil and water. The applicants argued that the discharges had impaired the quality of the natural environment and might have also rendered the property, plants and animals unfit for human use. They also pointed out that the site is in close proximity to a residential development and that many people walk their dogs in the area. The applicants alleged that the owner of the site was in contravention of the Environmental Protection Act (EPA) in two ways: first, by allowing the discharge of a substance into the environment that may be causing an adverse effect; and secondly, by failing to report this discharge to MOE.

Ministry Response

After reviewing the application, the ministry decided on January 3, 2009, to investigate. The investigation included further testing of samples collected from the site by the owner, testing of samples taken from Harmony Creek (which flows just south of the site) by the ministry, and meetings with the owner on the site to examine the leachate discharges and discuss remediation measures. The ministry concluded that their investigation did not indicate that the discharge was causing or could cause an adverse effect and that the owner was not in contravention of the EPA, either for allowing the discharge or for failing to report it to MOE. The ministry also stated that although no offence had been committed, it recognizes the significant concern regarding this issue and will therefore carry out the following activities: a comprehensive examination of the company’s compliance with the requirements of their provisional Certificate of Approval (C of A); surface and groundwater sampling at the site and surface sampling of Harmony Creek; and continued communication with the company to ensure that the latter takes action with respect to mitigating any risks associated with the seepage, repairing the seepage, and addressing its source.

ECO Comment

MOE has promised to report back to the applicants in three months (July 2009) with the results of these further investigations and activities. The ECO will be monitoring this case and will review the outcome of this application for our 2009/2010 reporting year.

Review of Application l2008012:

6.1.8 Alleged Contravention of Section 14 of the EPA re: Black Soot Discharges in the City of Hamilton

(Investigation Denied by MOE)

Geographic Location: Hamilton

Background/Summary of Issues

In November 2008, two applicants requested an investigation by the Ministry of the Environment (MOE) of alleged discharges (or “fallouts”) of black soot and particulate matter from three large industries in the City of Hamilton. The applicants, one of which was the City of Hamilton, allege that hundreds of the city’s residents “are experiencing a loss of enjoyment of their properties as a result of the black soot from the discharge.” The applicants allege that one or more of the three companies have contravened section 14(1) of the Environmental Protection Act (EPA) (discharging a contaminant into the natural environment that causes an adverse effect).
**Background:**
For several years, the residents of northeast Hamilton have complained that repeated fallout events (generally involving the deposition of fine black airborne particles) have caused damage to property and negatively affected their quality of life. In the mid-1990s, one survey found that almost 75 per cent of the over 400 polled residents of northeast Hamilton had experienced disruptions in lifestyle due to deposits of black sooty material. Many frustrated citizens have called on MOE to identify and prosecute the responsible local industries. Officials of the City of Hamilton have also received numerous calls and complaints about these events.

During the summer of 2006, complaints of extreme black fallout events led MOE to sample residential properties, inspect industries, and produce a report on the fallout events. Although the report was unable to definitively ascribe the incidents to any one emissions source, it did conclude that the events could be attributed to the three industries in the north end of Hamilton (i.e., ArcelorMittal Dofasco, Columbian Chemicals, and Stelco Steel). Since 2006, incidents of sooty deposits have continued to affect residents of northeast Hamilton. After analyzing dust samples from one such event in February 2007, MOE blamed Dofasco and Stelco Steel and requested that the companies submit reports on how to manage the problem.

** Alleged Contraventions of the EPA:**
Throughout 2008, Hamilton residents and media observed multiple incidents of air discharges from local industries. As evidence that the three companies named in the application were responsible for discharges, the applicants provided photographs, articles and written observations that were published in the local media and posted on community websites. The applicants asserted that local media reports indicate that discharges took place on at least 16 dates in 2008, and that these discharges have caused “adverse effects” as defined in subsection 1(1) of the EPA (e.g., impairment of the quality of the natural environment; injury or damage to property; loss of enjoyment of normal use of property; and harm or material discomfort to any person).

While they acknowledged that many of the discharges had already been reported by the companies to MOE, the applicants argued that reporting after the fact fails to address the problem. The applicants stated “[t]he failure of [MOE] to resolve this matter and to make the contraveners accountable for their actions/inaction is of serious concern to the City of Hamilton and to members of the public.” Moreover, they emphasized that “[t]his matter is one of long duration and of significant public interest and therefore, must be resolved.”

**Ministry Response**

In January 2009, MOE denied the application for review, stating “these matters are either currently under active investigation by the ministry’s Investigations and Enforcement Branch (IEB) or have been investigated by the ministry’s Hamilton District Office and closed.” MOE reasoned that conducting a second investigation while one is already underway for the same issues is a duplication of efforts, which is a permitted reason under the EBR for declining to undertake an investigation.

MOE informed the applicants that MOE’s standing operating procedure for all discharge incidents/complaints related to black soot is to identify the source, identify the impacts, and determine whether information exists to support that a violation occurred and that the incident should be referred to the IEB. MOE stated that there are currently ten active IEB investigations taking place in response to the 16 dates referenced in the application. MOE’s decision summary provides details as to the ministry’s actions for each discharge event.

In response to the discharge events and black sooty fallouts, MOE stated in its response letter to the applicants that it has also:

- Advised all three companies of the need for improvement;
- Issued a number of orders to ensure actions are taken in a timely manner to identify and solve the problems which gave rise to fallout events;
• Issued legal notices that require two of the companies to carry out full air quality and technology assessments for a number of contaminants (including particulate matter), which will lead to the development of an overall plan to reduce emissions;
• Hired three additional inspectors to increase MOE oversight of Hamilton industrial emitters;
• Implemented a 24/7 procedure to respond to fallout complaints and notifications; and
• Engaged key stakeholders and outlined mitigation plans at a City of Hamilton special council session.

The ministry stated that it will "[c]ontinue to inspect companies both proactively and reactively to ensure that companies follow through on commitments to identify problems and improve operations."

Other Information

In late January 2009, ArcelorMittal Dofasco alerted Clean Air Hamilton (a multi-stakeholder group dedicated to improving air quality in Hamilton’s community) and other local organizations that the unexplained collapse of an air pollution control duct in one of its coke plants could result in smoky, black emissions over the succeeding weeks. MOE stated that it would monitor the situation closely and consider further investigation and prosecution if the company strayed from procedures stipulated in a ministry order to minimize emissions. The company was also required to report to MOE by the end of March 2009 on why the duct failed and produce a contingency plan by May 2009 for dealing with similar failures on all its ovens.

ECO Comment

The ECO believes that MOE’s rationale for denying this investigation is valid; the ministry was already well aware of and investigating the ongoing problem of black sooty fallouts in Hamilton, as well as the 16 discharge incidents/complaints reported in the application.

Nevertheless, the ECO appreciates the extreme frustration that the City of Hamilton and its residents must have with this chronic pollution problem and we urge MOE to take the steps necessary to resolve it. For over a decade, the quality of life, and likely health, of residents of northeast Hamilton have suffered as a result of repeated fallout events. And while persistent complaints and extensive media coverage have led MOE to investigate the issue, collect and analyze fallout samples, implement a response procedure, and order companies to improve emissions, this issue still appears to be unresolved.

The ECO acknowledges that determining the source(s) of Hamilton’s black sooty fallout events is not easy. This is a complicated problem that likely involves multiple sources and confounding factors. Although the ECO recognizes the measures MOE has implemented in response to discharge events, particularly the issuance of orders and hiring of additional inspectors, and we look forward to learning the results of the IEB investigations, we believe the exceptional complexity of this long-standing problem requires the ministry to produce an exceptional solution. To monitor the sources of fallouts, the ECO encourages the ministry to consider the use of additional technologies, such as the installation of nephelometers (instruments for measuring suspended particulates) throughout Hamilton’s industrial area. Even more importantly, the ECO urges MOE to implement a comprehensive and effective abatement program to bring this inexcusable situation to an end.

For information on an application for review related to Hamilton’s air quality and black sooty fallouts, please see pages 142-146 of the ECO’s 2007/2008 Annual Report.