

December 6, 2017

The Honourable Chris Ballard
Minister of the Ministry of the Environment and Climate Change
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Dear Minister Ballard:

Re: Proposed hydro-electric generating station at the Bala falls

Summary

Your Ministry staff informally permitted the operation of a water treatment system in Bala that is not compliant with the issued Environmental Compliance Approval (ECA):

- This non-compliant water treatment system was inadequate, as it overflowed for days – until the irresponsible proponent eventually stopped pumping untreated water into it.
- This resulted in an unauthorized spill of untreated water adjacent to a water body.

This is very troubling, as it appears the MOECC does not have the authority for such informal permitting of a water treatment system, nor should there be as demonstrated by the fact that this non-compliant water treatment system was inadequate and did not have the capacity required.

Furthermore, this work would be a brownfield redevelopment, yet your Ministry is not requiring proper procedures to be followed, beginning with an Environmental Site Assessment (ESA) that is compliant with the required standard.

Minister Ballard, your Ministry's mandate is to protect the environment, not to cater to an irresponsible developer that deliberately allowed an unauthorized spill to continue while they kept working as their proposed project is months behind schedule.

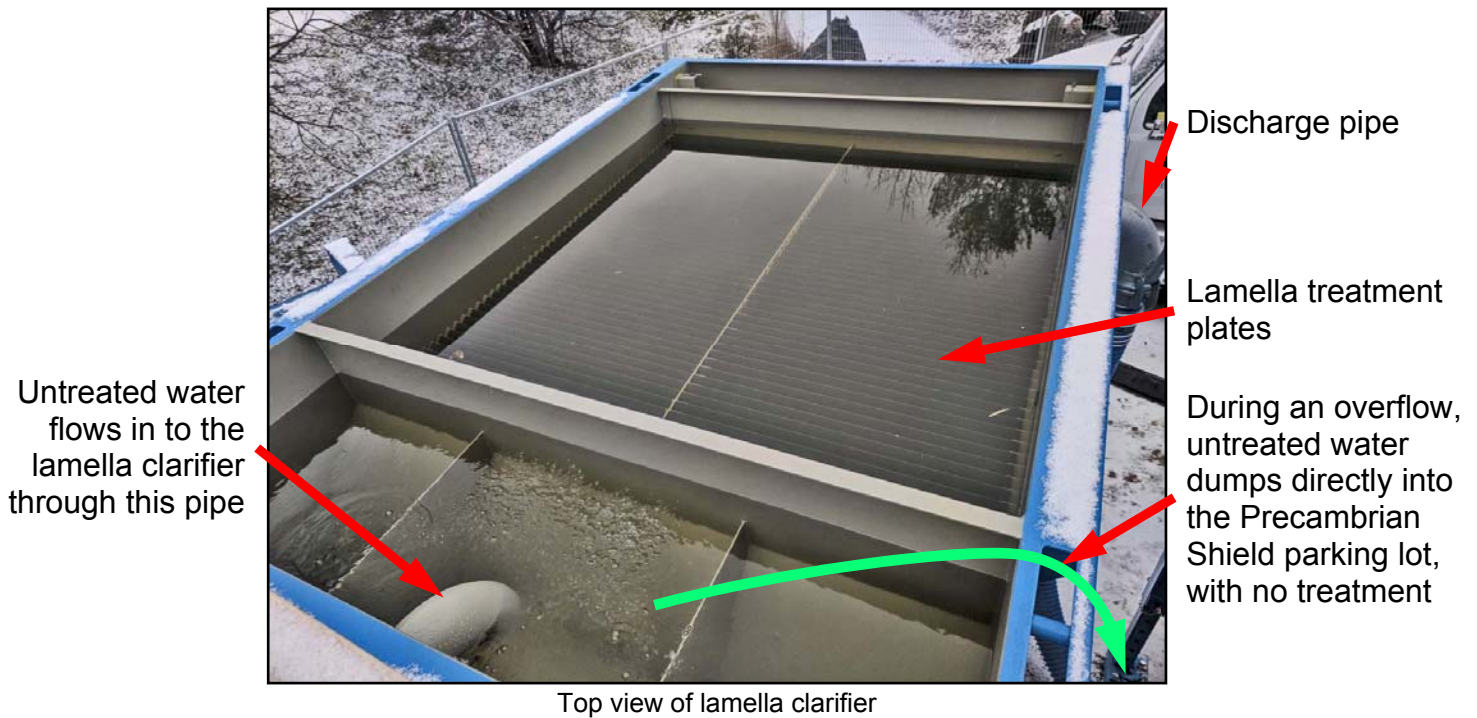
Detail

As you know, the purpose of the Environmental Protection Act: *"is to provide for the protection and conservation of the natural environment."*, and as I read the MOECC's letter to me dated December 1, 2017 (the "Letter"), I find that your Ministry is not fulfilling this mandate. For example:

- 1) Rather than requiring compliance with the issued ECA, your Ministry informally and mistakenly accepted a non-compliant water treatment system for this proposed project.
 - a) This non-compliant water treatment system was clearly inadequate, as it overflowed directly into the Precambrian Shield parking lot for days until the proponent decided to stop pumping water into it.
 - The MOECC's informal acceptance of it, outside of the Environmental Compliance Approval process, was therefore a mistake.
 - b) The Letter claims the overflow was caused by "backflow pressure", and that the non-compliant water treatment system is otherwise acceptable.

This is like saying the only problem with fighting a fire using drinking straws instead of fire hoses is the “backflow pressure”.

- The problem is the design of the non-compliant water treatment system is inadequate, and the MOECC did not identify this major flaw due to the MOECC’s informal acceptance.
- c) Any design deviation from the issued ECA should be formally assessed by the MOECC, as the initial design was and as is required by the Environmental Protection Act.
- Any design changes must be documented in the same detail as the original ECA and a new ECA issued. The new ECA must be made available to the public as is required.
- d) This was not an emergency situation.
- Therefore, the MOECC did not have the authority to allow operation of this non-compliant water treatment system.
- e) The MOECC’s Statement of Environmental Values requires an open process, which is why issued ECAs must be posted on the Environmental Registry. However, this non-compliant water treatment system is not as described in the approval posted on the Environmental Registry, so the public has no way to know anything about this inadequate and non-compliant water treatment system.
- Therefore, the MOECC has not fulfilled its obligations under the Environmental Bill of Rights. As the new ECA would describe a water treatment system significantly different from the original, it should be described in a Proposal on the Environmental Registry, so that the public could see whether the design and conditions are acceptable, and provide comment. This would contribute to ensuring the design is adequate, which has certainly not happened for the current non-compliant water treatment system.
- 2) The Letter claims: *“the overflow water was treated water, was contained on site”*. This is incorrect.
- a) As shown in the figure below, overflow water does not pass through the lamella treatment plates. Therefore, during an overflow, untreated water is directly dumped onto the Precambrian Shield parking lot, which drains to the directly adjacent Moon River.
- As this was untreated water, it was an unauthorized spill.
- b) Furthermore, the overflow water did not pass through the “Geo-absorb bag filtration system”, so the untreated water was not treated by either of the two components of the non-compliant water treatment system.
- Therefore, as the non-compliant system didn’t work, MOECC staff should not have: *“accepted the Hoelscher/Geo-absorb equipment as an approved equivalent”* as it clearly is not equivalent.
- c) The water was not contained on-site, as there was no containment boom around this non-compliant water treatment system. Furthermore, the nearby open ditch leads directly to the adjacent Moon River.
- This overflow completely bypassed the proponent’s non-compliant water treatment system. According to Section 9(3) of the proponent’s ECA, this must be reported to the MOECC, so is therefore a reportable spill.



- d) The proponent deliberately did not stop their pump, and therefore allowed the overflow of untreated water to the Precambrian Shield parking lot to continue for at least four days.
- This spill was therefore deliberate.
- 3) The Letter states: *“the dewatering system has adequate capacity”*.
- Clearly it does not, as the system overflowed for four days.
- The proponent has shown they are irresponsible as they did not shut off their pumps, so this overflow continued, with no efforts to contain the water overflowing into the Precambrian Shield parking lot.
- 4) The Letter states: *“The water from the tanks did not contain a contaminant that caused an adverse effect”*.
- The Environmental Protection Act defines that: *“contaminant’ means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an adverse effect”*.
- Clearly, an ECA for “sewage works” was required, and the ECA required a water treatment system to prevent an adverse effect due to human activity. This water treatment system was bypassed, so a contaminant was spilled.
- 5) The Letter states: *“It is not anticipated that the rainwater in the containers is contaminated from a chemical that was used in the manufacturing of the unit”*.
- Without testing of this water in the shipping containers, this is unsubstantiated conjecture.
- The Ministry has no authority to make such an assertion without laboratory test results.
- 6) The Letter states: *“the dewatering system does have a sampling location”*.
- Perhaps this is somewhere earlier in the system, but it is not of the actual discharge water as is required by the ECA. I have personally checked all sides and the length of

that discharge pipe (its connection to the non-compliant water treatment system is shown in the photograph below), and there is no access to draw water samples.

- Please let me know how and where: *“the discharge water is being sampled”*.



7) Concerning polychlorinated biphenyls (PCBs), the facts are:

a) The proponent’s own ESA stated that PCBs are: *“Contaminants of potential concern”* for this site, as the past use of this site was for a generating station. Yet the ESA did not drill exploratory boreholes downstream of the likely source of this contaminant.

b) The Canadian Standards Association’s standard Z769-00 *Phase II Environmental Site Assessment*.

- Requires that: *“a sufficient number of samples shall be collected to identify all substances of concern”*. Clearly, this has not been done.
- States that: *“In some cases, Phase II ESA is an interactive process, and more than one iteration is required”*. This is clearly the case.

The proponent’s ESA is deficient and inadequate, and does not fulfill the requirements for such documents.

c) The MOECC’s Brownfields Redevelopment web page (ontario.ca/page/brownfields-redevelopment) states: *“Brownfield properties are vacant or underutilized places where past industrial or commercial activities may have left contamination (chemical pollution) behind, including ... waterfront properties (port lands) formerly used for industrial or commercial activities”*.

Clearly, this is a waterfront brownfields site.

d) Rather than preventing the release of PCBs to the Moon River, the Letter states: *“environment ministry staff will ensure that appropriate clean up is conducted”*.

- If PCBs are buried, as the proponent’s ESA notes is the concern, the proponent’s work would release these PCBs directly to the adjacent Moon River. There is no way to “clean up” PCBs released directly to a river. The MOECC should ensure there are no PCBs before construction could continue.

The proponent's construction site would be a brownfields redevelopment, yet the MOECC has failed to require established procedures to be properly followed.

The MOECC should be protecting the environment rather than catering to a rushed developer.

Minister Ballard, your Ministry's Letter to me contains environmentally-significant factual errors, and your Ministry staff appear to be making decisions without the required authority.

I request that the MOECC require the non-compliant water treatment system to be subject to the required ECA process, and that this brownfield redevelopment follow proper procedures.

I look forward to your reply.

Sincerely,

A handwritten signature in cursive script that reads "Mitchell Shnier".

Mitchell Shnier, on behalf of SaveTheBalaFalls.com

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