

**EBR Application for Review of an
Environmental Compliance Approval for Sewage Works at
Swift River Energy Limited's Hydroelectric Generating Station**

Decision Summary

EBRO File No.: 17EBR014.R

Issue: The Ministry of the Environment and Climate Change (ministry) has received an Application for Review, pursuant to the *Environmental Bill of Rights, 1993* (EBR), of Environmental Compliance Approval (ECA) No. 0521-9XKKZ3 issued to Swift River Energy Limited operating as Swift River Limited Partnership (SREL).

Preliminary Review Decision:

ECA No. 0521-9XKKZ3 was issued by the ministry within the past five years and therefore the ministry was required to consider section 68 of the EBR as part of its consideration of this Application for Review. After careful consideration of the information contained in the Application for Review, relevant information available to the ministry, and the requirements of the EBR, the ministry has determined that the public interest does not warrant a review of matters raised in the Application for Review.

In the ministry's view, the decision to issue ECA No. 0521-9XKKZ3 was made in a manner that was consistent with the intent and purpose of Part II of the EBR. In addition, the ministry has determined that there does not appear to be evidence that should have been taken into account when the ECA decision was made, or that a failure to review the decision to issue the ECA could result in significant harm to the environment.

This decision summary documents the rationale for the ministry's decision and outlines how the matters set out in section 68 of the EBR were considered.

Background:

Summary of the Request

The applicants requested a review of ECA No. 0521-9XKKZ3 issued to SREL for approval of sewage works for the following general reasons:

1. the proposed settling tanks are allegedly composed of repurposed shipping containers and the manufacturer's insecticidal wood treatment, may be introduced into the Moon River;
2. potential historical contamination from the historic Bala #2 generating station could be introduced into the Moon River, as part of construction activities;
3. potential equipment and pipe leaking could introduce contaminants into the Moon River;
and,

4. monitoring requirements may not be sufficient if additional contamination is identified that was not accounted for at the time the ECA was issued.

EA Background

- SREL's North Bala Small Hydro Project was subject to the Electricity Projects Regulation (O. Reg. 116/01) under the *Environmental Assessment Act* (EAA). Section 4 of O. Reg. 116/01 indicates that undertakings designated under the Regulation are exempt from Part II of the EAA (Individual Environmental Assessment requirements) provided that the undertaking is carried out in accordance with the Environmental Screening Process described in O. Reg. 116/01.
- SREL proceeded to plan its project in accordance with the Environmental Screening Process set out in O. Reg. 116/01. In accordance with this process, members of the public had opportunities to raise outstanding concerns about the undertaking to the ministry. Ultimately, all Elevation Requests, and Appeals to the Minister of the Environment and Climate Change were denied, and an Individual Environmental Assessment was not required.
- SREL then submitted an addendum to the Screening Report as a result of changes to the specific location for their project. Members of the public again had opportunities to raise outstanding concerns about the undertaking to the ministry. Ultimately, all post-Addendum Elevation Requests, and post-Addendum Appeals to the Minister of the Environment and Climate Change were denied, and again an Individual Environmental Assessment was not required.

ECA Background

- On October 15, 2014, the ministry received SREL's ECA application proposing temporary stormwater and groundwater seepage management system for use during construction and permanent equipment to service the station during operation.
- On May 30, 2016, an Instrument Proposal Notice (EBR Number 012-7735) was posted to the Environmental Registry. The notice indicated that it would be posted for a 45 day public review and comment period. The posting was subsequently revised to indicate that the initial posting was made in error and that the proposal for an instrument was exempt from posting on the Environmental Registry, as the overall project went through the Environmental Assessment process. It was also clarified that leave to appeal rights do not apply.
- The revision to the posting was made because under subsection 32(2) of the EBR, the requirement for the ministry to post public notice of proposals for instruments does not apply in instances where the ministry's decision to issue an instrument is considered a step towards implementing an undertaking or project that has been exempted by a regulation under the EAA.
- The exemption from the public notice requirement notwithstanding, the ministry identified in the revised posting that it would receive comments from the public until

July 14, 2016, and considered the comments it received as part of its review of the ECA application

- The ECA was issued on October 20, 2017 and the corresponding Instrument Decision Notice was posted to the Environmental Registry on the same date.
- The Instrument Decision Notice outlined how the ministry considered all concerns raised in the comments received, which included:
 - Concerns related to location of settling tank in a nearby park (Margaret Burges Park);
 - Concerns related to location of settling tanks in the Moon River;
 - Concerns related to possible removal of a cofferdam on a 24-hours' notice at the request of the Ministry of Natural Resources and Forestry (MNR), to avoid flooding;
 - Concerns related to potential damage to the District Municipality of Muskoka's highway bridge during construction;
 - Concerns related to higher than normal flows seeping into the construction site; and
 - Concerns related to public safety.
- The ECA contains a number of protective conditions, including effluent discharge limits, monitoring and reporting requirements and best management practices, which are intended to reduce the potential impacts to the environment from the operation of the approved works.

Review of Concerns

1. Settling Tank Construction

- The ministry has confirmed that it is no longer SREL's intention to use repurposed shipping containers as the settling tanks specified in the ECA and that SREL is instead currently using a proprietary dewatering system manufactured by Hoelscher Dewatering Inc.
- The ministry is satisfied that the Hoelscher system implemented by SREL meets the equipment specifications set out in the ECA.
- The effluent treated by the Hoelscher dewatering system will be tested and monitored as required by conditions in the ECA, and SREL is responsible for compliance with the ECA's effluent limits.

2. Potential Historical Contamination

- In 2013, SREL conducted a geotechnical investigation and Phase I & II Environmental Site Assessments (ESA).
- Soils and groundwater were sampled at three locations on the site under an assumed "worst case" scenario, based on Phase I historical information regarding the most likely areas of potential environmental concern.

- Soil and groundwater samples were submitted for analysis of selected heavy metals, BTEX, petroleum hydrocarbons, VOCs and PCBs, and no exceedance of *Table 7: Generic Site Condition Standards for Shallow Soils in a Non-Potable Ground Water Condition* or *Table 9: Generic Site Condition Standards for Use within 30 m of a Water Body in a Non-Potable Groundwater Condition* of O. Reg 153/04 were found, with the exception of one groundwater sample showing an elevated zinc concentration.
 - Groundwater was retested in October 2016 and zinc was not detected.
 - Although reference is made to the Brownfields Regulation (O. Reg 153/04 under the EPA) in the ESA conducted in 2013, the regulation does not currently impose requirements on SREL's site as the land use is not changing from a less sensitive (i.e. industrial) to more sensitive land use (i.e. residential).
- The ministry was aware of the ESA conducted by SREL in 2013 and the retesting conducted in 2016. There is no other evidence of historical contamination of the site.
- The ministry has imposed sediment and erosion control measures in the ECA to help ensure SREL mitigates potential impacts to the watercourse which could arise during the construction phase.

3. Spill and Leaking Concerns

- All equipment used at the site, is kept behind water filtration barriers with approved biodegradable lubricants, and only the working end of the equipment is permitted in the water.
- Water from the site is pumped across the Moon River through a pressure pipe that is composed of high density polyethylene, insulated against impact and freezing.
- Water then passes through the approved water filtration system and is discharged from the approved, publically visible discharge point.
- The ECA contains several operating and maintenance conditions, one of which requires SREL to prepare an operations manual. This manual must include:
 - operating procedures for routine operation;
 - inspection programs, including frequency of inspection;
 - repair and maintenance programs, including the frequency of repair and maintenance for the Works;
 - contingency plans and procedures for dealing with potential spill;
 - complaint procedures for receiving and responding to public complaints; and
 - a spill response/prevention plan.
- The ministry remains satisfied that the operating and maintenance conditions imposed in the ECA are sufficient to help ensure that SREL maintains and operates the works in a manner that is protective of the environment.
- The ministry will continue to monitor the site and ensure that the operating and maintenance conditions imposed in the ECA are met. The ministry will ensure that if there are any spills or upsets, SREL will address the occurrence in a manner that is satisfactory to the ministry and protective of the natural environment.

4. Monitoring Requirements

- During its technical review of the ECA application, the ministry identified appropriate effluent monitoring parameters.
- Monitoring conditions imposed during the construction phase in ECA No. 0521-9XKKZ3 include, but are not limited to:
 - daily Total Suspended Solids (TSS) monitoring;
 - daily Turbidity monitoring;
 - daily pH & Temperature monitoring; and
 - visual inspection of effluent to ensure effluent does not contain oil or any other substance in amounts sufficient to create a visible film, sheen, or foam.
- The ministry is satisfied that the monitoring conditions are appropriate, but maintains the ability to modify the effluent monitoring parameters and sampling frequency, if deemed necessary.
- The Application for Review cites the ESA conducted for SREL in 2013 as evidence suggesting additional monitoring requirements are required. The ESA conducted for SREL in 2013 and the groundwater resampling results conducted in 2016 were considered by the ministry during its technical review of the ECA application. As such, evidence has not been presented which was not known and accounted for at the time the decision sought to be reviewed was made.

Outcome of Preliminary Review

Pursuant to s.67 (1) of the EBR, the minister shall consider Applications for Review in a preliminary way to determine whether the public interest warrants a review of matters raised in the Application. For the purposes of determining if the public interest warrants a review, the ministry was required in this instance to consider s. 68 of the EBR, which states:

68. (1) For the purposes of subsection 67 (1), a minister shall not determine that the public interest warrants a review of a decision made during the five years preceding the date of the application for review if the decision was made in a manner that the minister considers consistent with the intent and purpose of Part II.

(2) Subsection (1) does not apply where it appears to the minister that,

(a) there is social, economic, scientific or other evidence that failure to review the decision could result in significant harm to the environment; and

(b) the evidence was not taken into account when the decision sought to be reviewed was made.

In the ministry's view, the decision to issue ECA No. 0521-9XKKZ3 was made in a manner that was consistent with the intent and purpose of Part II of the EBR. In addition, the ministry has determined that there does not appear to be evidence that:

- should have been taken into account when the ECA decision was made; and,

- a failure to review the decision to issue the ECA could result in significant harm to the environment.

Therefore, the ministry has determined that a review of the ECA is not warranted.

Conclusion

After careful consideration of the information available and the requirements of the EBR, the ministry has determined that the public interest does not warrant a review of matters raised in this Application for Review. SREL's North Bala Small Hydro Project will continue to be subject to the conditions of its EA and ECA, and any other relevant permits or approvals.