

January 9, 2018

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Ministry of the Environment and Climate Change
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Hello Ms. O'Neill:

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

Summary

I believe the MOECC's Decision Summary reached an incorrect conclusion as there is relevant and new evidence which was not taken into account when the Environmental Compliance Approval was issued. As a result:

- There could be significant harm to the environment.
- The MOECC has not complied with the Environmental Bill of Rights.

Detail

ADM Goyette suggested I contact you for the questions concerning her Decision Summary response e-mailed to me on January 2, 2018 for the Review request of ECA 0521-9XKKZ3 which I submitted through the Environmental Commissioner of Ontario for the proposed hydro-electric generating station at the Bala falls.

Below are some of my concerns.

1) The Decision Summary states:

- *"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."*
- *"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."*

2) The Phase I historical information in the Environmental Site Assessment (ESA) noted that there was a hydro-electric generating station on the site, which is classified as a *"Potentially Contaminating Activity"* (PCA).

Also, the ESA:

- a) Shown no effort to accurately determine the extent or exact location of this potential source of contamination, even though this information is available to the public.
- b) Notes that the groundwater flow is to the west.

- 3) Official surveys from the 1920s show that the Bala #2 Generating Station was 16' x 16', which is 256 ft². The current official survey shows the area of the site proposed to be excavated is 0.08 ha, which is more than 8,000 ft².

As the source of contamination has an area of only $(256 / 8,000 \approx) 3\%$ of the site, sampling upstream of the source of likely contamination would not be "worst case" as is claimed in the MOECC's Decision Summary.

- 4) The ESA notes:

a) In Section 5: "Contaminants of potential concerns associate with the PCA include petroleum hydrocarbons and PCBs".

- That is, PCBs are a specific concern for this site due to the hydro-electric generating station previously on this site.

b) In Section 6.6 Impediments: "Other than steep slopes onsite limiting the ability to assess the soil/groundwater condition at lower elevation onsite, there were no impediments that limited access to the planned borehole locations. Boreholes were moved to accessible areas."

- As can be seen by the contour lines in the graphic in the Appendix to this letter, the "steep slopes" were the locations where the exploratory boreholes should have been drilled, as this would have been at or downstream of the source of contamination.
- As shown by graphic in the Appendix to this letter, all the exploratory boreholes were drilled upstream of the potential source of PCB contamination, so this testing would not show the PCB contamination, as this would all flow downstream and away from the exploratory boreholes.

- 5) Section 68 (1) of the Environmental Bill of Rights (EBR) can exempt the MOECC from reviewing the decision to issue the ECA, but I submit this exemption does not apply as Section 68 (2) of the EBR states:

"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."

The new evidence is that there exist official surveys showing the exact location and extent of the Bala #2 Generating Station, which would be the source of potential PCB contamination, which the ESA notes is a concern for this particular site. This new evidence is shown as the red lines on the Appendix to this letter, and this information was not sought for the ESA, so was not available to the MOECC when the decision to issue the ECA was made.

- 6) The proponent's construction activities:

a) Can only proceed so long as the ECA is valid.

b) Include blasting and excavation at the site of the potential PCB contamination, and so this work could release PCBs directly to the Moon River, which would result in significant and irreversible harm to the environment.

7) I therefore submit that:

- a) The official surveys showing the exact extent and location of the Bala #2 Generating Station is new evidence not previously considered by the MOECC.
- b) This new evidence is relevant, as all of the environmental testing was upstream of the potential source of contamination, so the proponent's ESA did not provide the environmental information required by the MOECC to make their decision on issuing the ECA. **The MOECC is therefore not complying with Section 68 (2) of the Environmental Bill of Rights.**
- c) PCBs were identified by the proponent's ESA as a potential source of contamination due to the hydro-electric generating station previously at this site.
- d) The proponent's testing for their ECA was therefore not the "worst case" scenario, **contrary to the MOECC's claim.**
- e) The ECA issued by the MOECC has enabled the proponent to begin construction work on the site. Allowing the proponent's construction work to continue could result in the release of PCBs directly to the Moon River, which would cause **significant and irreversible harm to the environment.**

8) I further submit that the ECA specifies quantities and types of particular equipment to be used to treat the industrial wastewater, and this equipment has not been installed. The ECA makes no provision for only part of the water treatment system to be installed. For example:

- a) Four settling tanks have not been installed, though they are required by the ECA.
- b) The test port for the dewatering system does not provide access to the water actually being discharged to the Moon River.
 - Rather it provides access at an earlier stage of treatment so the test results provided by the proponent are not of the actual discharge water.

The MOECC is allowing the proponent to not be compliant with their ECA, and the **MOECC has no authority to do so.**

9) Finally, I note that the Decision Summary states: *"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."*

I have been in contact with a construction worker who tells me that **on or about December 4, 2017 and December 8, 2017, approximately 20 and 40 litres (respectively) of diesel fuel was spilled into the Moon River.**

Please tell me if the contractor reported this to the MOECC's Spills Action Centre.

I therefore request that the MOECC's issuing of the ECA be reviewed, based on the new evidence that the testing was upstream of the potential source of PCB contamination.

I look forward to your response.

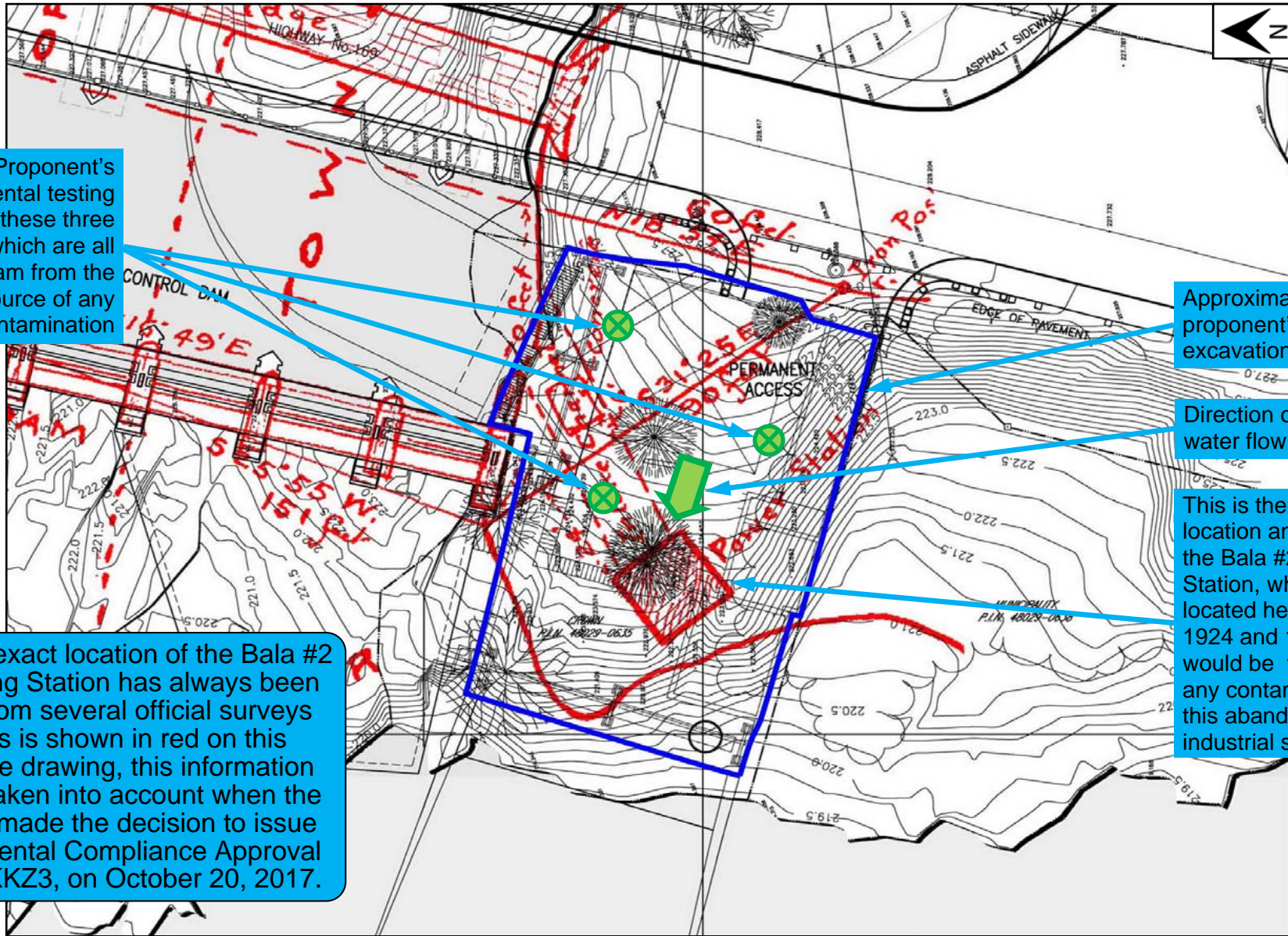
Sincerely,



Mitchell Shnier, on behalf of SaveTheBalaFalls.com

Cc: Office of the Ombudsman of Ontario, info@ombudsman.on.ca
President, Moon River Property Owners' Association, Pres@mrpoa.org

Composite drawing showing new evidence that could result in significant harm to the environment



While the exact location of the Bala #2 Generating Station has always been known from several official surveys such as is shown in red on this composite drawing, this information was not taken into account when the MOECC made the decision to issue Environmental Compliance Approval 0521-9XKKZ3, on October 20, 2017.

Red lines above are a section of official Survey, entitled: "Plan of Part of the Town of Bala", by: "W. Galbraith, O. L. Surveyor, Bracebridge, Aug 30th 1924".

Black lines above are a section of drawing entitled: "Bala GS Key Plan", sheet: 131-13550-NBC-00 from WSP, dated November 28, 2013.