

COUNCIL REPORT ATTACHMENT 1

Office of the Commissioner

February 4, 2008

Mr. Leo Luong
Senior Policy Analyst
Ministry of the Environment
Integrated Environmental Planning Division
Land and Water Policy Branch
135 St. Clair Avenue West, Floor 6
Toronto, ON M4V 1P5

Dear Mr. Luong:

Re: Comments on EBR Registry Number 010-2246 Regulation under the Ontario Water Resources Act for the Protection of Lake Simcoe

The Regional Municipality of York (York Region) would like to submit the following response regarding the Ministry of the Environment's (MOE) EBR posting number 010-2246, of December 6th, 2007, on the proposal for an interim regulation governing selected point source phosphorus discharges in the Lake Simcoe Basin.

Background and Planning Context

York Region is one of Canada's fastest growing municipalities with a current population of approximately 984,000. The provincial population forecast contained in the Growth Plan for the Greater Golden Horseshoe (A Plan under the *Places to Grow Act, 2005*) identifies York Region as having a population of 1.5 million persons by the year 2031.

Approximately 69% of York Region is within the Provincial Greenbelt (GB) and the Oak Ridges Moraine Conservation Plan (ORMCP). These areas are therefore effectively excluded from accommodating additional growth. The GB/ORMCP effectively set the limits of growth for York Region and any growth must occur in the existing Urban Areas, Towns and Villages, and possibly the "Whitebelt" lands.

Lands outside of the existing designated lands and the GB/ORMCP are termed "Whitebelt" lands. York Region has only three Whitebelt areas for future development. Two of these areas are within the Lake Ontario watershed. However, the third "Whitebelt" area, as well as potential development lands already designated in the communities of Georgina, East Gwillimbury, Newmarket, Aurora and a portion of King Township are located in the Lake Simcoe watershed. These areas will likely be subject to both the proposed interim regulation and to the ultimate long-term strategy developed for Lake Simcoe. While York Region supports the direction being taken by the Province in the Lake Simcoe Basin (Basin) it must be acknowledged that to comply with the Growth Plan for the Greater Golden Horseshoe, the principle of accommodating additional growth and development in this watershed must be recognized. Furthermore, while

growth in York Region is constrained by Provincial Plans and required to comply with the proposed interim regulations, lands in Simcoe County are not so limited. Regional Council is on record on many occasions requesting the Province to apply a planning policy in Simcoe County that reflects the policies within the Greater Golden Horseshoe. York Region remains of the opinion that the same high standards required from York Region and other GTA municipalities, should be required from all watershed municipalities.

York Region currently owns and operates 5 of the 15 sewage treatment facilities in the Basin recognized in the proposed interim regulation. The total phosphorus loading from all facilities in the Basin was approximately 5.93 tonnes in 2006. Of this loading, York Region's contribution amounted to approximately 0.66 tonnes or 11% of the total contribution from sewage treatment facilities. York Region's total permitted phosphorus loading contribution is approximately 1.90 tonnes, based on existing approvals. York Region is committed to the use of enhanced technologies and practices in sewage treatment technology towards the protection of the environment, as can be seen in our current Environmental Assessment undertaking for the Keswick Water Pollution Control Plant plant expansion. However, it should be noted that such technologies and practices may have higher capital and operating costs than conventional treatment methods.

Equivalent High Standards Required for All Watershed Stakeholders

York Region recognizes that Lake Simcoe is a valuable resource and supports initiatives to protect and remediate the Lake. Through past and current projects associated with facilities within the Basin and throughout the Region, York Region has endeavoured to incorporate solutions that protect the Lake and the environment above and beyond our regulated requirements. York Region and its local municipalities have expended significant public resources to protect water quality in Lake Simcoe and its surrounding environment. These efforts have led to significant benefits that can be seen today.

When implementing phosphorus loading limits, it is important to ensure that there is fairness and equity around the Basin. Specifically, York Region recommends that data sets for historical flows, phosphorus concentrations, and phosphorus loadings for all wastewater facilities discharging to the Basin be shared among all municipalities directly affected by the proposed interim regulation. York Region requests that those facilities demonstrating poorer phosphorus removal performance be required to improve their performance to enhanced standards before facilities that have demonstrated enhanced phosphorus performance are subjected to further, more stringent phosphorus limits.

This approach would facilitate the development of an improved phosphorus removal standard across the Basin, give credit for the extensive effort and investments made by many municipalities at their facilities, and avoid appearing to reward municipal facilities which have been performing poorly in relation to phosphorus removal.

Appropriate Determination of Phosphorus Loading Limits

York Region recommends that the Region's interim phosphorus loading limit, set by the proposed regulation, be based on the current rated hydraulic capacity of each facility combined with the objective phosphorus concentrations of each facility as outlined in their respective Certificates of Approval. This approach would ensure that local area municipalities can continue to process development approval applications up to the current servicing capacity associated with the facilities, while at the same time reducing the Region's total permitted phosphorus loading contribution as intended by the MOE's proposed interim regulation. At a minimum, we request that the interim phosphorus limit be set at a level that can accommodate all draft approved plans, given that they have reached a mature status in the planning approval process and can proceed to construction in a short period of time.

York Region also recommends that the MOE credit past and ongoing reductions in phosphorus loading contributions throughout the Region when determining the Region's interim phosphorus loading limits. Specifically, we highlight:

- York Region's previously mentioned phosphorus removal performance along with our financial investment and commitment to the use of enhanced practices in sewage treatment technology in all our facilities.
- The Region's Water for Tomorrow program which reduces water consumption and effluent production.
- Approximately 2,335 existing residential units will be removed from septic systems and placed on municipal services in the Willow Beach and surrounding lakeshore areas in Georgina by 2009, to address issues regarding inadequate and failing septic facilities. This will result in a significant reduction of phosphorus loading to Lake Simcoe.
- Some local area municipalities in the Basin have commenced storm water management retrofit programs and other initiatives using their own funding as well as funding supplied by York Region to the Lake Simcoe Region Conservation Authority (LSRCA) as part of their ongoing Lake Simcoe Water Quality Improvement Program (LSQWIP). These retrofits will help to offset phosphorus loading to the Lake Simcoe Basin.

Innovative Programs are Needed to Accommodate Growth while Improving the Water Quality of the Lake

For a number of years there have been debates over the potential use of phosphorous offsets and trading (also known as P- trading) as a means of permitting additional growth, while improving Lake Simcoe water quality. The Region understands that these programs have been used successfully in other jurisdictions.

The Region encourages the consideration and development of phosphorus offsetting and trading programs as a part of the long-term strategy for Lake Simcoe. We believe that a framework should be developed to address additional point and non-point sources of phosphorus contributions to the Lake. This approach would also support subwatershed phosphorus loading targets developed in the Assimilative Capacity Study (ACS), which was a Provincial initiative. The Province is presently using these loading targets with respect to ongoing sewage treatment plant expansions and associated Certificate of

Approval negotiations in York Region. One opportunity is increased emphasis and appropriate funding levels for agricultural remediation. Programs such as Healthy Futures have worked in the past to leverage available funding and provide environmental benefits and we recommend that they be considered in the future.

Additional Clarification Required on Proposed Regulation Elements

Additional detail is needed to clarify the following statements outlined in the EBR posting:

- What is the Province's intent with reporting monthly loadings and how specifically will the 12-month rolling phosphorus limit work?
- How will the "plant's engineering design concentration for phosphorus" actually be determined? York Region suggests that "objective" concentrations set in the Certificate of Approval be applied because these "objectives" are the operational target for a facility and there is no certainty that setting a concentration below the "objective" can be consistently achieved.
- How will the MOE calculate projected plant flow and how will seasonal weather patterns across various years be incorporated into the calculation to account for phosphorus inputs from ambient sources?
- With respect to the determination of the projected plant flow, the proposed regulation states that "A *small margin* would be added to this value to accommodate any planned development requiring sewage capacity *shortly after this period*". What, specifically, is the "small margin" and what timeframe might reasonably be considered as "shortly after this period"?
- What will happen with interim phosphorus loading limits beyond the proposed expiration date of March 31st, 2009? How will these limits be incorporated within the long-term strategy? Will the limit in an existing Certificate of Approval be rolled back after March 31, 2009?
- Is the 7.5 tonne limit for point sources temporary? If so, the proposed regulation should state this fact and also state that more appropriate caps will be reinstated upon scientific analysis and remediation of the Lake and by controlling and managing other sources of phosphorus.
- York Region notes that the thrust of the proposed regulation is directed at existing municipally owned sewage treatment facilities. The proposal gives little indication regarding any preventative action that might be taken with non-municipally owned facilities. How will the MOE address inputs from privately or communally owned sewage treatment systems within the Basin?
- Can this proposed interim regulation be considered as a precursor to similar regulations affecting other waterbodies within the Province (e.g. Great Lakes, Grand River)?

Effect on Approved and Planned Growth

York Region is governed by various legislative regimes that determine the pattern and rate of growth within the Region (including the *Places to Grow Act, 2005*). In order to provide adequate servicing for the anticipated growth, York Region currently has several servicing projects, environmental assessments, and Master Planning activities on-going within the Basin. Specifically these include the Upper York Servicing System Individual Environmental Assessment and Municipal Class Environmental Assessments for the Keswick and Sutton WPCP expansions, YDSS extension to Holland Landing/Queensville/Sharon EA review and construction of the new Schomberg sewage treatment facility.

The following questions/issues need to be addressed with regards to the impact of the proposed interim regulation on York Region's current projects and initiatives:

- How will the proposed interim regulation affect the planned expansion of existing plants to meet approved growth projections?
- How will interim phosphorus loading caps affect ongoing Official Plan updates in areas that have been already designated for buildout or intensification?
- Can a local municipality continue to process development applications based on current capacity if there is the potential that the phosphorus limits may be reduced after March 31st, 2009?
- As it currently stands, the proposed interim regulation, with no phosphorus offsetting and trading regime, will limit York Region's options for the Upper York Sewage Servicing Program for wastewater servicing in the areas of Holland Landing, Queensville and Sharon as well as the "Whitebelt" lands in East Gwillimbury. How will this proposed regulation be co-ordinated with other legislation such as the *Safeguarding and Sustaining Ontario's Water* when it comes to providing wastewater alternatives for system upgrades and/or expansions?

Effect on Stormwater Management

Currently, responsibility for the design, approval, and maintenance of stormwater management systems (SWM) resides with local municipalities in the Region. In order to obtain comments on the stormwater management elements of the proposed interim regulation, York Region consulted with the 6 local municipalities in the Lake Simcoe watershed (Georgina, East Gwillimbury, Town of Aurora, Town of Newmarket, Town of Whitchurch-Stouffville, and the Township of King).

The LSRCA has required municipal SWM ponds constructed since 1995 to achieve Level 1 controls. Ponds that pre-date 1995 will pose a significant challenge as retrofits will be required to upgrade these facilities to current standards and/or provide for their maintenance on an ongoing basis. For a long-term strategy on SWM ponds to be successful, the Province must assist municipalities by funding maintenance and retrofitting.

In addition to issues relating to funding, several issues were identified specific to the governance structure of a two-tier municipal system as well as the future implications for the retrofitting of existing stormwater management systems.

Our combined questions/comments include:

- How will the link between section 53 of the *Ontario Water Resources Act* and stormwater management be dealt with in a two-tier system of municipal government?
- MOE should consider the governance structure implications on stormwater management and inflow/infiltration improvements in a two-tier system.
- Stable funding for SWM is an important consideration should SWM be considered a utility for cost recovery through taxation or rate charges. A cost-recovery mechanism should also be provided to ensure growth contributes to the costs for retrofits to existing stormwater management facilities.
- Neither the proposed interim regulation nor the long-term strategy for Lake Simcoe should link the completion or approval of environmental assessments or planning proposals to the completion of stormwater management retrofits or to studies of existing stormwater management sites, as is currently the case in the Town of Georgina. In the case of a two-tier municipal system, such a link would place an unreasonable burden on the upper and lower tier municipalities in the areas of fiscal funding, growth, infrastructure planning and capital delivery.

Consideration for Future Funding Models

York Region and the affected area municipalities also highlighted significant concerns regarding funding for activities that may be associated with the proposed interim regulation and the long-term strategy for Lake Simcoe. Specifically, the Province needs to consider a funding model to include:

- Acquisition of privately owned lands and construction costs for the purpose of the retrofits, where existing storm ponds require retrofits that involve expansions.
- Agency responsibility for monitoring and maintenance of existing and retrofit stormwater management facilities.
- Research and documentation of best management practices and standards of pond quality for existing stormwater management facilities
- Fiscal consideration for reimbursement or accounting for previous, self-initiated investment in the areas of stormwater management retrofits or sewage treatment technology.

Regional and local municipal staff would appreciate the opportunity of speaking further with Ministry staff in regard to these issues and providing more detail on our concerns.

Consultation with Stakeholders – Lake Simcoe Watershed Based Forum

York Region recommends that consultation with municipalities occur through a group process, rather than meetings held individually with each affected municipality. This approach will facilitate an understanding of how all interim limits will be defined for individual municipal wastewater facilities within the Basin and provide equity in the process of setting interim phosphorus limits. Consideration could be given to the formation of a Committee of all municipalities and regulatory agencies in the Basin to

address sewage treatment effluent and phosphorous loading allocation as a Lake Simcoe watershed based forum.

Furthermore, York Region strongly requests representation for York Region and our area municipalities on the Citizens Advisory Committee and potentially the Scientific Committee that is presently being struck to provide input into the development of the anticipated *Lake Simcoe Protection Act*.

Ability to Comment on the Draft Wording of the Proposed Interim Regulation

York Region and the local municipalities have raised a number of questions that will directly impact our municipal operations and planning. However, the EBR posting only contains principles and not the actual wording of the proposed interim regulation.

When a draft of the proposed interim regulation has been developed, York Region and its local municipalities request an opportunity to comment by a reasonable posting and comment period on the EBR. A review of the actual wording of the proposed interim regulation will enable the affected municipalities to complete a more thorough analysis.

Partnership and Commitment to Environmental Protection

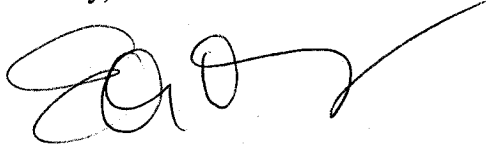
York Region commends the Province for leadership and vision in the area of environmental protection and stewardship and commits to working with the Province and other stakeholders to improve conditions in Lake Simcoe and throughout the watershed. In moving this issue forward the Region recommends that the Province recognize the implications of new phosphorous limits and stormwater management standards on approved growth, the effect on our area municipalities and their financial health, and the principles of fairness and equity for all municipally owned facilities and stakeholders within the watershed.

York Region strongly supports an appropriate framework for a phosphorus offsetting and trading program within the Basin. We believe that significant improvements are possible in the area of agriculture practice and other point/non-point sources of phosphorus contribution.

The summary of our recommendations is appended as *Attachment 1* to this letter. We look forward to the opportunity to discuss these comments with the MOE in the near future. We also request representation for the Region and our area municipalities on the Citizens Advisory Committee currently being struck by the Province to assist in consultation for the development of the *Lake Simcoe Protection Act*.

If there is any additional information or detail required, please contact Michele Maitre, Manager of Regulatory Compliance and Policy at extension 5097.

Sincerely,

A handwritten signature in black ink, appearing to read 'Erin Mahoney', with a long horizontal stroke extending to the right.

Erin Mahoney, M.Eng.
Commissioner of Environmental Services

Copy to: M. Walters , LSRCA
R. Chenier, Town of Georgina, Clerk
L. King, Town of East Gwillimbury Clerk
A. Moore, Town of Newmarket, Clerk
B. Panizza, Town of Aurora, Clerk
M. Kennedy, Town of Whitchurch-Stouffville, Clerk
C. Somerville, Township of King, Clerk
M. Maitre, York Region
B. Jeffrey, York Region
S. Love, York Region

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Attachment 1 – Summary of York Region Comments on EBR Registry Number 010-2246 Regulation under the Ontario Water Resources Act for the Protection of Lake Simcoe

Equivalent High Standards Required for All Watershed Stakeholders

- Data sets for historical flows, phosphorus concentrations, and phosphorus loadings for all wastewater facilities discharging to the Basin be shared among all municipalities directly affected by the proposed interim regulation.
- Facilities demonstrating poorer phosphorus removal performance should be required to improve their performance to enhanced standards before facilities that have demonstrated enhanced phosphorus performance are subjected to further, more stringent phosphorus limits.

Appropriate Determination of Phosphorus Loading Limits

- Interim phosphorus loading limits, set by the proposed regulation, should be based on the current rated hydraulic capacity of each facility combined with the objective phosphorus concentrations for each facility as outlined in their respective Certificates of Approval.
- At a minimum, the interim phosphorous limit should be set at a level that can accommodate all draft approved plans, given that they have reached a mature status in the planning approval process and can proceed to construction in a short period of time.
- The MOE should credit past and ongoing reductions in phosphorus loading contributions when determining interim loading limits.

Innovative Programs Needed to Accommodate Growth while Improving the Water Quality of the Lake

- Phosphorus offsetting and trading programs should be considered and developed as part of the long-term strategy for Lake Simcoe.

Additional Clarification required on proposed regulation elements

- How specifically will the 12-month rolling phosphorus limit work?
- How will the “plant’s engineering design concentration for phosphorus” actually be determined? York Region suggests that “objective” concentrations be applied, which already incorporate design concentrations with a reasonable safety factor.
- How will the MOE calculate projected plant flow and how will seasonal weather patterns across various years be incorporated into the calculation to account for phosphorus inputs from ambient sources?
- What, specifically, is the “small margin” referred to in the EBR posting and what timeframe might reasonably be considered as “shortly after this period”?
- What will happen with interim phosphorus loading limits beyond the proposed expiration date of March 31st, 2009? How will these limits be incorporated within the long-term strategy?
- Is the 7.5 tonne limit for point sources temporary?
- How will the MOE address inputs from privately or communally owned sewage treatment systems within the Lake Simcoe basin?

- Can this proposed interim regulation be considered a precursor to similar regulations affecting other Lakes within the province (Great Lakes, Grand River)?

Effect on Approved and Planned growth – clarifications

- How will the proposed interim regulation affect the planned expansion of existing plants to meet approved growth projections?
- How will interim phosphorus loading caps effect ongoing Official Plan updates in areas that have been already designated for buildout or intensification?
- Can a local municipality continue to process development applications based on current capacity if there is a potential that the P limits may be reduced after the 15 month regulation?
- How will this proposed regulation be co-ordinated with other legislation such as the *Safeguarding and Sustaining Ontario's Water Act* or the *Environmental Assessment Act* when it comes to providing wastewater alternatives for system upgrades and/or expansions?

Effect on Stormwater Management

- How will the link between section 53 of the *Ontario Water Resources Act* and stormwater management be dealt with in a two-tier system of municipal government?
- The MOE should consider the governance structure implications on stormwater management and inflow/infiltration improvements in a two-tier system.
- Stable funding for SWM is an important consideration should SWM be considered a utility for cost recovery through taxation or rate charges. A cost-recovery mechanism should also be provided to ensure growth contributes to the costs for retrofits to existing stormwater management facilities.