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PROPOSED LEGISLATIVE FRAMEWORK FOR MODERNIZING ENVIRONMENTAL APPROVALS

The Environmental Services Committee recommends the adoption of the recommendations contained in the following report dated May 19, 2010, from the Commissioner of Environmental Services.

1. RECOMMENDATIONS

It is recommended that:

1. Council endorse the attached staff comments on Environmental Bill of Rights (EBR) Registry Posting Number 010-9143 as submitted on April 1, 2010.
2. The Regional Clerk circulate this report to the local municipalities.

2. PURPOSE

The purpose of this report is to advise Council of the Ministry of the Environment's (MOE) proposed *Legislative Framework for Modernizing Environmental Approvals* and obtain Council endorsement of the submitted comments from York Region

3. BACKGROUND

The Ministry of the Environment proposes changes to the current Certificate of Approvals process

The approvals system proposed by the MOE would have two mechanisms dependant upon the type of activity for which approval is sought: the registry process or a redesigned Certificate of Approval process. Submissions for both processes would be made using an online system allowing applicants, to set up/manage an account, submit information, track status and pay fees. Information would be made publicly available, subject to the *Freedom of Information and Protection of Privacy Act*.

Activities considered for the registration process would be made by and governed through regulation. It is proposed that an electronic registry tool will guide users through the registration process.

Changes to a facility's operations may affect the registration's accuracy, requiring it be updated to reflect the change, or an activity might have to be entirely re-registered. Not making a declaration or maintaining the accuracy of a registration would be an offence.

Registrations will be subject to a range of tools to promote compliance. Non-compliance could result in an order, charges, additional requirements, or suspending a registration.

The MOE would have discretion to allow an activity to be subject to a Certificate of Approval, rather than a registration if it is in the interest of the natural environment for the activity to go through the Certificate of Approval process, or it is administratively more efficient for the activity to be part of a Certificate of Approval. The MOE may impose the requirement to apply for a Certificate of Approval or may be requested to do so by the person registering.

4. ANALYSIS AND OPTIONS

Proposed framework streamlines administration of Certificates of Approval

Staff support proposals for a single site-wide Certificate of Approval or multi-site and system-wide Certificate of Approval. The proposed framework allows facilities to make operational changes within established parameters without amending the Certificate of Approval. York Region staff have found management of multiple stand-alone Certificates of Approval and amendment documents to be onerous. For example, for some Solid Waste facilities, separate amendment documents have been issued for each minor operational or administrative change to the original Certificate of Approval such as a minor increase in capacity. As a result, facilities must maintain numerous amendments along with the original Certificates of Approval. A single Certificate of Approval document will assist in a consistent application of environmental standards and management of operating requirements.

Proposed approval system requires more clarity

It is expected that as the modernization of approvals process progresses, proposed details of this process will become clearer. Staff have noted concerns to the MOE around how the proposed approaches would be applied. For example, a site may have a number of activities – some of which could be subject to the registry process while others require a Certificate of Approval. It is not clear from the proposal how MOE will treat such circumstances.

A person with relevant technical knowledge and understanding of the facility's operations will need to attest to the accuracy, quality and completeness of each document submitted. It should be clear that a consultant would be able to act on behalf of an owner in this respect.

Registrations will be subject to a range of tools to promote compliance. Non-compliance could result in an order, charges, additional requirements, or suspending a registration. It is not clear what sort of appeal rights or mechanisms a registrant may have in relation to suspension of a registration.

In principle, staff support empowering MOE staff to refuse, suspend, or revoke a Certificate of Approval for non-compliance issues for facilities that show a chronic disregard for environmental laws. However, staff request that the MOE quantitatively define what constitutes non-compliance issues for these purposes.

Proposed MOE service guarantees are helpful step

The proposed framework anticipates that the timeframe of any service guarantee will be dependent on the type of application. Service guarantees have the potential to significantly reduce the costs of York Region infrastructure delivery projects. For example, the Duffin Creek Water Pollution Control Plant application for a Certificate of Approval (Air) is still pending having been initially submitted in August 2007. This has resulted in cost increases because the infrastructure cannot be tested or commissioned without this approval. Consequently, York Region is incurring ongoing costs to maintain contractor and consultant support on this project. Furthermore, continued delay will eventually begin to have capacity consequences at the treatment plant. Having a standard service guarantee could help to define decision and approval timelines for municipalities, giving more certainty to the process, and permitting staff to adequately plan projects. Staff support the proposed concept of service guarantees by MOE for review and processing of Certificate of Approval applications. More specific details concerning service timelines in relation to reviews as well as approvals is required to fully understand impacts to York Region.

The proposal is, at this point, a framework document and as such the details needed to evaluate how the elements proposed may be implemented are not yet available. Staff will follow development of this proposed framework and any resulting regulatory proposals that may contain more detail on the proposed processes.

5. FINANCIAL IMPLICATIONS

Staff have requested more information on cost implications

The MOE is committed to a process of continual improvement. To this end, the proposed framework suggests Certificates of Approval be based on the latest policies and standards and have requirements that are reflected equitably across all facilities in a given sector. Staff have suggested the MOE evaluate costs this process may impose on a proponent. Ideally, streamlining the environmental approvals process would reduce costs.

6. LOCAL MUNICIPAL IMPACT

Changes are being proposed to the environmental approvals system in the Province of Ontario. Any resulting positive or negative effects will apply to all activities for which approval must be sought, including those in local municipalities.

7. CONCLUSION

Staff generally support the idea of the registration process in lieu of a Certificate of Approval for certain activities. Elements of the proposed framework will streamline administration of Certificates of Approval for York Region. Staff, in principle, support the proposed changes to the Certificate of Approval framework; however, more details on these proposed changes are needed.

For more information on this report, please contact Laura McDowell, Director, Environmental Promotion and Protection at (905) 830-4444 Ext. 5077.

The Senior Management Group has reviewed this report.

(The attachment referred to in this clause is attached to this report.)



Environmental Services Department
Environmental Promotion and Protection

April 1, 2010

VIA FACSIMILE (416) 325-7962

Ms. Joy Williams
Senior Engineer
Ministry of the Environment
Environmental Programs Division
Program Planning and Implementation Branch
Modernization of Approvals
135 St. Clair Avenue West
Toronto, Ontario M4V 1P5

Dear Ms. Williams:

Re: EBR Registry Posting 010-9143 – Legislative Framework for Modernizing Environmental Approvals

The Regional Municipality of York ("York Region") staff have reviewed the discussion paper entitled "*Proposed Legislative Framework for Modernizing Environmental Approvals*", February 2010. York Region would like to provide the following comments on the proposed modifications to the Certificate of Approval (CofA) process.

Staff generally support the idea of the registration process in lieu of a CofA for certain activities and as the modernization of approvals process progresses the proposed details of this process will become clearer. At this point, York Region staff would like to note some of our concerns. It is not clear what approach would be applied to a site with a number of activities, some of which would be subject to the registry process and others that would be required to have a CofA; would a single site be able to register some activities or would all activities be subject to the more stringent CofA process? In terms of submission requirements, it should be clear that a consultant would be able to sign attesting to the accuracy, quality and completeness of documents submitted on behalf of an owner. In terms of the compliance section set out in 3F, it is not clear what sort of appeal rights or mechanisms a registrant may have in relation to suspension of a registration. Nor is it clear at this point how the eligibility criteria may be used, (e.g. does the potential registrant self-screen, does the Ministry screen, what is the expected interaction between the registrant and the Ministry during the registration process, etc.).

York Region staff support the proposal of a single site-wide CofA in place of a collection of individual approvals as outlined in Section 3A. York Region staff have found the management of

multiple stand alone CofA documents to be onerous. Combining all approvals into one document will help ensure effective CofA management.

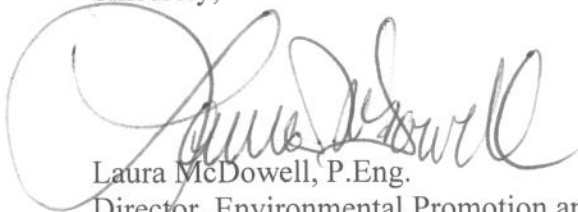
York Region staff also support the proposal of a “multi-site” and “system-wide” CofA as outlined in Section 3B. It is the position of York Region Staff that a single CofA document will assist in the consistent application of environmental standards and will streamline both the application process and the management of operating requirements.

York Region staff support the principle of “operational flexibility” as outlined in Section 3D. Amendments to an existing facility CofA has traditionally been provided as a new attachment to the existing CofA. As needs change over the life of a facility, a number of amendments are typically required. York Region staff have found the management of multiple stand alone amendment documents and the original CofA becomes onerous. Allowing facilities to make operational changes within parameters established by the Ministry of the Environment (MOE) will not only streamline the process but will also allow municipalities to more effectively manage CofA requirements. It is the position of York Region staff that any changes permitted via “operational flexibility” must be accompanied by official binding documentation which clearly indicates the operational change permitted.

In determining appropriate timelines for the proposed ‘continuous improvement’ process, staff suggest the MOE evaluate what sort of costs this process may impose on a proponent and how this additional workload may impact the proposed service guarantee.

York Region staff in principle support empowering MOE staff to refuse, suspend, or revoke a CofA for non-compliance issues for facilities that show a chronic disregard for environmental laws. While this is supported in principle, staff request that the MOE quantitatively define what constitutes a non-compliance event for these purposes. Historically, certain non-compliance events such as odour have been addressed subjectively. Quantitatively defining what constitutes a non-compliance event will help avoid unnecessary suspension or revocation of a CofA by providing an objective standard for Environmental Officers to enforce CofA requirements. In addition, we encourage MOE to consider the more extreme measures of suspension, revocation or refusal to issue CsofA apply to non-compliances which have some sort of adverse effect rather than situations of administrative non-compliance.

Sincerely,



Laura McDowell, P.Eng.
Director, Environmental Promotion and Protection