

McAsphalt Breaks Law— Gets Slap On Wrist from MOE

Since 2011, Environment Hamilton has been tracking the establishment of McAsphalt Industry's newest facility at Pier 24 on Hamilton Port Authority land. McAsphalt is one of Canada's largest asphalt product companies.

In **June of 2011**, we submitted comments on the company's application for a provincial air permit, asking that the Ministry of Environment (MOE) ensure that the operation would not lead to any odour or air pollution impacts. By **May of 2012**, we began to notice a regular stream of tanker trucks rolling in and out of the facility—an odd thing as we knew the company had not yet received approval from the (MOE) for its air permit. In **July of 2012**, EH Executive Director Lynda Lukasik went on a tour of the city's Windermere Basin wetland project—located immediately west of the McAsphalt facility. While there, she got a close up look at a tanker truck under the loading rack at the facility. She asked staff at the site whether the McAsphalt plant was now operating. They told her that they believed it was, as there were many trucks coming and going. She was also told that, “..when the wind blows this way it really stinks”.

Lukasik sent an email to Geoffrey Knapper, Manager of the Hamilton District Office of the MOE, to express concerns that the plant appeared to be operating without an air permit. Knapper told her that the facility was 'partially operating' and, further, that MOE had 'dropped the ball' because the company had applied the year before for a permit but MOE had not yet granted it. He added that MOE was not concerned about environmental impacts from the plant because it was a brand new, state of the art facility.

Within days of her conversation with Mr. Knapper, Lukasik was contacted by the Senior Air Engineer from MOE's Approvals Branch who was reviewing the company's air permit application. She quickly learned that there was a disconnect between the Approvals Branch & the Hamilton District Office where this facility's permit was concerned. She asked whether a decision on the air permit was coming soon, and the engineer indicated that she still required more information and that a decision had not yet been made regarding whether to grant the permit or not.

In **late August of 2012** EH used its rights under the Ontario Environmental Bill of Rights to submit an Application for Investigation, alleging McAsphalt was in violation of the provincial *Environmental Protect Act* for operating without an air permit. MOE ultimately agreed to undertake the investigation. In the interim, it issued a Provincial Officer's Order requiring McAsphalt to cease operations at the plant on December 15th of 2012— citing a violation of Section 9(1) of the Environmental Protection Act—the section that requires industries discharging contaminants to air get an air permit.

The final outcome of the investigation was disappointing, to say the least. It was clear in the details of MOE's investigation, that it was aware of activity at the facility as far back as June of 2012.

EH is now wondering why the MOE did not take action sooner, given that the order it issued confirmed it agreed with EH that the company was violating the law. Further, EH is concerned that, even though an order was issued, it was a meaningless order, imposing only a minor slap on the wrist to the company because it was issued at a point when the company's operations had ceased for the season, not to mention the fact that the air permit was granted the day before the order was issued.

EH intends to continue to raise questions about this situation. Our concerns are centered on these key points:

- *MOE's handling of this case raises concerns about effective protection of human health and the environment.*
- *MOE's need to address its inability to review and issue decisions on environmental permits in a timely manner. To suggest that MOE 'dropping the ball' on a permit makes it OK for a facility to break the law is unacceptable—and puts the environment at potential risk.*
- *A facility that begins operating before its permit is in place compromises the public's rights under the Environmental Bill of Rights to comment on and potentially appeal an environmental permit.*

- *Allowing a facility to operate without an air permit creates an unlevel playing field—especially for the industries that wait for their permits before starting operations.*

For more information on the McAsphalt case, visit our website where you will find our Application for Investigation and the MOE's response to that application.

