

May 10, 2019

Ms. Sylvestre-Williams  
Ministry of Environment, Conservation and Parks  
Local Air Quality Permits  
40 St. Clair Avenue West, 7<sup>th</sup> Floor  
Toronto, Ontario  
M4V 1M2

*Delivered Via Email Only*

Dear Ms. Sylvestre-Williams:

**Re: New Technical Standard for Asphalt Mix Industry  
ERO No. 013 -3363**

The Canadian Environmental Law Association (“CELA”) is very concerned about the Ministry of Environment, Conservation and Parks’ (“Ministry”) proposal to establish a technical standard for the asphalt mix industry.

The emissions from asphalt mix facilities are proven to cause serious adverse health and environmental impacts. They include volatile organic compounds, PHAs, metals and other toxic contaminants. Despite the serious adverse impacts that can result from these emissions, there have been a number of instances where the Ministry has been lax in undertaking enforcement actions against these operations, even in the face numerous complaints by local residents and a lengthy period of non-compliance.

It is CELA’s position, therefore, that asphalt mix facilities should remain subject to the environmental compliance approval (ECA) process, since it provides for a rigorous review of these operations by the Ministry’s engineers and technical staff. It would also permit the Ministry to undertake preventative measures to address any site specific concerns regarding a particular facility through detailed terms and conditions in an ECA. The ECA process, unlike a technical standard, allows the Ministry to undertake an upfront assessment to ensure that asphalt mix facilities are able to comply with provincial environmental laws, prior to commencing operation in Ontario.

As the Ministry notes in ERO proposal 013-3363 there are two types of technical standards: industry standards which regulate all sources of a specified

contaminant(s) within an industry and equipment standards which address a source of contaminant but may apply to one or multiple industry sectors.

The proposed industry standard includes all reasonably anticipated contaminants discharged from an asphalt mix facility and would apply to asphalt facilities identified as part of NAICS code 324121.

We note that there is no information in the Ministry background documents in support of the proposal as to how many asphalt mix facilities are unable to meet the air standards, the extent to which this is a sector-wide problem and whether an industry standard is even warranted for all contaminants. We have requested that the Ministry provide data regarding public complaints about adverse impacts from asphalt mix facilities and whether any enforcement action was undertaken. However, to date we have not received this information.

The proposed industry standard would apply to any facility in the sector, whether or not they are able to meet the air standard. It is CELA's firm view that there is absolutely no justification to allow asphalt mix facilities that can meet the current air standards under O.Reg 419/05, with the option of complying with an industry standard. The Ministry air standards were established at levels intended to protect public health and the environment. Any exemption from compliance with Ontario's air standards should, therefore, be narrowly construed and be limited only to those facilities that are, in fact, unable to meet the air standards for technical or economical reasons. Allowing asphalt mix facilities that can readily meet the Ministry's air standards with the option of complying with an industry standard will lower environmental standards in Ontario and lead to a race to the bottom.

CELA has represented clients who have been adversely impacted by emissions from an asphalt plant before the Ontario Municipal Board. In *Miller Paving Ltd v. McNab/Braeside (Township)*, the OMB refused to allow the establishment of a permanent asphalt plant given that a previous asphalt plant operated by the company on the site, had caused serious adverse impacts to the residents. The residents also commenced civil proceedings against the owner and operator of the asphalt plant and sought damages for adverse health impacts. The Court found that the noise and odour that the residents had experienced once the asphalt plant commenced operation, was "severe" and that "[o]vernight the enjoyment of their land and residences was substantially interfered with." Accordingly, the Court awarded damages and costs. It is noteworthy that despite repeated complaints to government ministries, including MECP, no enforcement action was taken in that case.

This does not appear to be an isolated case. Last year numerous complaints by residents in a North York community regarding an asphalt mix facility received media attention. According to a *Toronto Star* article dated February 7, 2018, one resident made more than 100 official complaints about the asphalt plant to the Ministry. The article notes that the case is an “inexcusable example of lax government enforcement.” These are but a few examples of asphalt mix facilities that have caused serious adverse impacts to the environment and residents.

Given the environmental, public health and safety concerns associated with asphalt mix facilities and the numerous complaints that tend to be generated regarding these operations, CELA is of the view that the ECA process, which provides for an upfront review, is a necessary mechanism for effectively regulating this sector. Consequently for the reasons provided above, CELA remains strongly opposed to the use of a technical standard to regulate asphalt mix facilities in Ontario.

We would be pleased to meet with you to discuss this matter further.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

A handwritten signature in black ink, appearing to read 'R. Nadarajah'.

Ramani Nadarajah  
Counsel

c. David Donovan, Director of Policy, Minister's Office, MECP