



**Corporate Strategic Initiatives Department**

**TO: Budget and Corporate Services Committee**

**SUBJECT: Oakville Health Protection Air Quality By-law**

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Report Number: CSI-20-10

File Number(s): 210-05-2

Report Date: August 27, 2010

Ward(s) Affected: 1  2  3  4  5  6  All

Date to Committee: September 14, 2010

Date to Council: September 27, 2010

**Recommendation:** Approve the Mayor to send a letter to the provincial Minister of the Environment supporting the recommendations by the Air Quality Task Force for the *Southwest Greater Toronto Area Oakville-Clarkson Airshed Action Plan* and add a further recommendation that the province create Airshed Management Systems to cover urban airsheds within Ontario.

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**Purpose:**

- Address goal, action or initiative in strategic plan
  - Establish new or revised policy or service standard
  - Respond to legislation
  - Respond to staff direction
  - Address other area of responsibility
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**Background:**

On February 22, 2010, Council approved the following staff direction:

***Direct the Executive Director of CSI to prepare a report related to the Health Protection and Air Quality By-law adopted by Oakville Town Council on February 1, 2010, including information on the resources required to develop the by-law and the rationale for and purpose of the by-law.***

In September 2009, the Ontario Power Authority announced that TransCanada Corporation will be constructing a 900 megawatt (MW) natural gas fired power plant in southeast Oakville adjacent to the existing Ford automotive plant.

In response to this announcement, concern was raised by local citizens and the Town of Oakville on the potential impact of the

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power plant on local air quality. A previous study completed in 2006 for the Ministry of the Environment on the Clarkson Airshed showed that local industries were found to contribute as much as 25 percent of the PM<sub>2.5</sub> (fine particulate matter) concentrations in the airshed area.

Additionally, the study found that vehicular emissions were found to be a significant source of Nitric Oxide (NO) and fine particulate matter (PM<sub>2.5</sub>). Overall, the results confirmed that, at times, especially during smog events, the [Clarkson Airshed Study](#) (CAS) area represents a 'taxed' or compromised area with respect to fine (respirable) particulate matter (PM<sub>2.5</sub>).

An "airshed" is a defined physical geographical area which is covered by a volume of air that has similar characteristics and into which air pollutants are deposited and often remain for a period of time. The Clarkson airshed is relatively small and its boundaries are artificial, encompassing Chartwell Road on the west and Mississauga Road on the east and Dundas Street East and West on the north and Lake Ontario on the south. The airshed crosses the municipal boundary between Mississauga and Oakville.

The June 24, 2010 [Action Plan for the Southwest Greater Toronto Area \(SWGTA\) Oakville-Clarkson Airshed](#) (using the same boundaries as the CAS) was completed by Dr. David Balsillie, Chair of the Air Quality Task Force, and submitted to the Minister of the Environment. Dr. Balsillie was a one person Task Force and produced more than 30 recommendations in the report.

Dr. Balsillie recommended a new Airshed Management System, including the formation of the Oakville-Clarkson Airshed Action Committee. The Ministry of the Environment would be responsible for fostering cooperation and participation among all provincial ministries and agencies which have policies and programs that affect the airshed. Regional and municipal governments, local industry and residents will also have to be at the table.

Dr. Balsillie also made recommendations related to the need to manage air quality on a cumulative basis, instead of on a case-by-case basis. The assessment of new emission sources by the Ministry of the Environment would have to take into consideration the contribution of existing emitters. No new major source of pollution should be allowed unless there is a plan to offset key air contaminants.

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It was also recommended that the Ministry of the Environment set a provincial standard for emissions of primary (fine) particulate matter (PM<sub>2.5</sub>).

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## Discussion:

### Purpose of the Oakville by-law:

In February 2010 The Town of Oakville adopted By-law 2010-035 to protect the health of its residents from the effects of fine particulate in its air and to reduce over time the levels of fine particulate matter in the ambient air of the town (*see Appendix A for a copy of the by-law*).

It regulates not only the direct emissions of fine PM, but also the emissions of 'precursor' substances which mix together in the atmosphere to create additional quantities of fine PM.

It has a **reporting requirement** that will eventually apply to most emitters of fine PM and precursor pollutants. It has an **approval requirement** that will apply to all major emitters of fine PM and precursor pollutants. The by-law requires a fee of \$25,000 to defray the administrative and peer review costs associated with **approval applications**. (*Refer to Appendix B for a Fact Sheet for Businesses.*)

### By-law rationale:

Oakville's rationale for the by-law includes:

- Fine particulate matter is airborne particles less than 2.5 microns in size.
- There is considerable scientific evidence of serious impacts to human health associated with exposure to fine PM.
- The community has expressed long-standing concerns about Oakville's air quality and its health impact, and the town is committed to addressing these concerns.
- There are presently no regulatory standards for fine PM emissions or ambient levels.
- Municipalities have authority under the *Municipal Act, 2001* to pass by-laws respecting the health, safety and well-being of persons.

The provincial Ministry of the Environment does not regulate fine particulate matter (PM<sub>2.5</sub>) and further, does not consider the cumulative impact that an additional industrial source of air emissions will have on an existing airshed during the certificate of approval review process. Oakville is concerned that an additional industrial use will add to the problems in the already

stressed Clarkson-Oakville airshed.

Since Oakville adopted its air quality by-law, the Task Force for the SWGTA Oakville-Clarkson Airshed has recommended that the Ministry of the Environment set a provincial standard for PM<sub>2.5</sub> and assess air quality on a cumulative basis as noted in the background section of this report.

**Resources – by-law development:**

Two senior staff with the Town oversaw the research and development of the by-law, including the Director of Environmental Policy and the Town Solicitor.

Three external consultants were retained to assist with research and development of the by-law:

- Rod Northey of Folgers, Rubinoff LLP Barristers & Solicitors (environmental law)
- Dr. David Pengelly (health impacts of air pollution)
- Dr. Franco DiGiovanni, Airzone One (air dispersion modelling)

The estimated budget for research, by-law development, legal costs for responding to an OMB challenge, and compilation of an eco submission to the Ontario Environmental Commissioner was approximately \$350,000.

**Resources – implementation:**

A one year contract was created by the Town to hire an air quality technician to oversee the implementation of the by-law. This position will also assume responsibility for other air quality programs, such as the Town’s anti-idling program and the collection of air monitoring data.

An additional fund of \$1 million was approved by Council to be spent on legal and consulting fees for the Town to hire consultants to respond to TransCanada’s Environmental Review Report as well as to cover resources for a court challenge.

**Municipal Authority:**

The Town of Oakville noted the following in their by-law: “Section 11(2) of the *Municipal Act, 2001*, (the Act) as amended, permits municipalities to pass by-laws respecting the health, safety and well-being of persons. Furthermore, Section 128 of the Act permits municipalities to prohibit and regulate with respect to public nuisances, including matters that, in the opinion of council, are or could become or cause public nuisances.”

TransCanada has since submitted an appeal to the Ontario Superior Court of Justice to have the by-law quashed.

## Consultation

The following staff were consulted on this report:

- Cindy Toth, Director, Environmental Policy, Town of Oakville
- Peter Steer, Environmental Health Senior Policy Analyst, Halton Region – Public Health
- Nancy Shea-Nicol, City Solicitor, City of Burlington

The report was also circulated to the Burlington Sustainable Development Committee.

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## Financial Matters:

N/A

## Environmental Matters:

**TransCanada Power Plant** TransCanada Corporation's proposed 900 MW combined cycle natural gas power plant in Oakville will be more efficient than a single cycle power plant, as it uses both a gas turbine cycle and a steam cycle to produce electricity. Instead of being released into the atmosphere, heat is recovered from the gas turbine (the first cycle) to produce steam which drives the steam turbine to produce electricity (the second cycle).

The new power plant is planned to be operational by February 2014. In a letter to Oakville residents in late 2009, the CEO of the Ontario Power Authority noted that the Oakville Generating Station "will maintain local supply reliability and reduce the need to expand the GTA transmission system, replace dirty, coal-fired generation and provide critical back-up for new renewable energy from wind and solar power which aren't available all the time."

## Power Plant Emissions

The OPA letter also included the following statements:

- "Ontario's Chief Medical Officer of Health has said there is no evidence a natural gas fired plant will negatively impact the health of area residents."
- "Oakville Generating Station's emissions of nitrogen oxides and carbon monoxide will be 80 percent stricter than what the Ontario Ministry of the Environment requires."
- "Annual emissions of nitrogen oxides, sulphur dioxide

and particulate matter will be 14,000 tonnes less than if the electricity was produced at a coal fired facility. Similarly, emissions of carbon dioxide – a greenhouse gas linked to climate change – will be reduced by 60 percent.”

According to information on [Environment Canada's website](#) natural gas contains no ash and practically no sulphur or metals, therefore, emissions of these substances from a natural gas fired power plant are virtually zero. The cleanest of the fossil fuels, natural gas still results in the release of CO<sub>2</sub> and **nitrogen oxides** when burned. In addition, particulate matter, sulphur oxides and reactive hydrocarbons (Volatile Organic Compounds) are also produced but in very small amounts compared to the combustion of other fossil fuels.

**Nitrogen Oxide & environmental/health impacts**

Nitrogen Oxide emitted during combustion quickly oxidizes to Nitrogen Dioxide (NO<sub>2</sub>) in the atmosphere. NO<sub>2</sub> can cause adverse effects on the respiratory systems of humans and animals, and damage to vegetation. When nitrate is combined with other compounds in the atmosphere, such as ammonia, it becomes a contributor to the secondary formation of fine (respirable) particulate matter (PM<sub>2.5</sub>). NO<sub>2</sub> is one of the two primary contributing pollutants, along with volatile organic compounds (VOCs), to the formation of ground level ozone. Both ozone and PM<sub>2.5</sub> are known to have harmful effects on human health and the environment, contributing to the formation of smog.

**Environmental Review Report**

Under the provincial Environmental Assessment Act, TransCanada is required to complete an environmental review report (ERR) for the proposed power plant. A draft report was circulated earlier this year and Halton Region staff provided comments. This included comments from Halton Health Department staff - 18 on air quality assessment issues and 31 related to human health and ecological risk assessment. The majority of the comments questioned the basis for statements and assumptions made in the ERR, as well as comments on air quality modelling.

The final ERR has not yet been published for public review by TransCanada at this time.

## **Air Quality in Burlington**

Based on a review of the [Air Quality in Ontario 2008 report](#) and the [Air Quality in Halton: Air Monitoring Report, March 2010 \(the Halton report\)](#), there does not appear to be a significant difference in air quality between Burlington and Oakville. Both communities are impacted by transboundary emissions emanating from the Ohio Valley (coal fired generating stations). The *Clarkson Airshed Study* (2006) estimated that more than 50 per cent of fine particulate matter in Ontario originates from the U.S. The 2010 Halton report estimates that 70 percent of fine PM in Halton originates from transboundary sources.

Burlington and Oakville are each impacted locally by emissions from the transportation sector. The 2010 Halton report estimates that almost 17 percent of fine PM and 50 percent of nitrogen dioxide is from the transportation sector.

Both communities have a range of industrial facilities which cumulatively contribute to air pollution, but generally in smaller amounts than transboundary and transportation sources, with the exception of sulphur dioxide (SO<sub>2</sub>). According to the Halton report, a reduction in the allowable sulphur content in gasoline fuel has decreased the contribution of mobile sources to ambient SO<sub>2</sub>. It is estimated that almost 70% percent of SO<sub>2</sub> emissions in Halton and across the province are from industrial sources. In 2009, there were no exceedances of either the 1-hr or 24-hr ambient air quality criteria for SO<sub>2</sub> in Milton, consistent with Burlington and Oakville (monitoring) sites from 2003 through 2006.

It should also be noted that the residential sector is also a source of air pollutants, such as particulate matter, related to the burning of fossil fuels to provide heat and operate equipment, such as lawn mowers.

## **Health Impacts**

In the 2010 Halton report, The Canadian Medical Association National Illness Cost of Air Pollution (ICAP) software estimates that:

- exposure to ground level ozone leads to more than 70 hospital admissions and eight (premature) deaths each year in Halton.
- chronic exposure to fine particulate matter leads to more than 340 deaths annually in Halton, and acute exposure to PM<sub>2.5</sub> leads to premature death and more than 1,400 emergency room visits annually in Halton.
- acute exposure to elevated nitrogen dioxide over a period of days leads to more than 35 (premature) deaths

- and 900 hospital admissions from heart and lung conditions in Halton each year.
- acute exposure to outdoor levels of sulphur dioxide lead to three premature deaths and over 70 hospital admissions each year in Halton.

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### **Communication Matters:**

N/A

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### **Conclusion:**

Air pollution can have a significant impact on the quality of life for community members, particularly for those who are considered vulnerable (small children, the elderly, and those with specific health issues).

The purpose and rationale for the Town of Oakville to adopt the Air Quality and Health Protection by-law is understandable given the lack of a provincial standard for fine PM<sub>2.5</sub> and that no consideration is given to the cumulative impact of air emissions during the approval process for new sources. However, regulating industrial and commercial air emissions is the mandate of the provincial government and requires specialized resources to oversee.

As noted in this report, air pollution in Halton originates from a number of different sources including industry and commercial operations, transportation, residential and transboundary. The Oakville Air Quality By-law may be effective in reducing industrial and commercial emissions, but would not apply to other sources. Staff will continue to monitor the implementation of the Oakville Air Quality and Health Protection By-law, including the current court challenge and report back to council as necessary.

In order to encourage cooperation from different levels of government and partner agencies to reduce overall air emissions, the City should support the recommendations of the SWGTA Oakville-Clarkson Airshed Task Force, particularly related to the development of a new proposed Airshed Management System. It is recommended that the City send a letter of support to the Minister of the Environment with an additional recommendation that the creation of a new Airshed Management System should apply to urban airsheds in the province, not just the Oakville-Clarkson Airshed.

Respectfully submitted,

Lynn Robichaud  
Sr. Sustainability Coordinator  
905-335-7600 x7931



**Appendices:**

A. Oakville Air Quality and Health Protection By-law B. Summary of By-law Requirements
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**Notifications:**  
(after Council decision)

Name	Mailing or E-mail Address

**Approvals:**

\*required

\_\_\_\_\_  
\*Department

\_\_\_\_\_  
City Treasurer

\_\_\_\_\_  
General Manager

\_\_\_\_\_  
City Manager

To be completed by the Clerks Department	
Committee Disposition & Comments	
	01-Approved 02-Not Approved 03-Amended 04-Referred 06-Received & Filed 07-Withdrawn
Council Disposition & Comments	
	01-Approved 02-Not Approved 03-Amended 04-Referred 06-Received & Filed 07-Withdrawn

## Appendix A

### THE CORPORATION OF THE TOWN OF OAKVILLE BY-LAW NUMBER 2010-035

A by-law to assess and control the health effects of major emissions of fine particulate matter in the Town of Oakville

WHEREAS s. 11(2) of the Municipal Act, 2001, as amended ("the Act"), permits municipalities to pass by-laws respecting the health, safety and well-being of persons;

WHEREAS s. 128 of the Act permits municipalities to prohibit and regulate with respect to public nuisances, including matters that, in the opinion of council, are or could become or cause public nuisances;

WHEREAS the Province of Ontario and the Government of Canada have gathered research and prepared reports on fine particulate matter and its serious harm to human health, but have not passed air regulations that focus on fine particulate matter, evaluate together ambient conditions and new emissions, assess the human and public health impacts of such conditions, or limit cumulative concentrations; and

WHEREAS The Corporation of the Town of Oakville considers it appropriate and in the public interest to prevent or reduce adverse effects to its residents and public health due to fine particulate matter in the Town of Oakville;

#### COUNCIL ENACTS AS FOLLOWS:

##### DEFINITIONS

1. In this by-law, the following definitions apply:

"affected airshed" means the airshed receiving any increase in concentrations of fine particulate matter of more than 0.2 micrograms per cubic metre, expressed as an annual average, due to a major emission;

"assessment" means a health-risk assessment of the range of public health effects, including mortality and morbidity, using:

(a) Version 3.0 of the Illness Cost of Air Pollution ("ICAP") model developed by the Canadian Medical Association; or

(b) such other health-risk methodology as the Town deems acceptable, following input from a qualified peer reviewer;

"facility" means a building, structure, equipment and other stationary items on a site or at a location that is under common operation, management, and/or control, but does not include:

(i) a site that contains less than 25 dwelling units; or,

(ii) a commercial, business or institutional site or location that is less than 0.1 ha in size;

"fine particulate matter" means airborne particulate matter that is less than or equal to 2.5 microns in aerodynamic mass median diameter ("PM2.5");

"health-risk air pollutant" means fine particulate matter and/or one or more precursor pollutants;

"major emission" means an emission from a facility into the air of a health-risk air pollutant that exceeds at least one of the following thresholds:

- (a) for directly emitted fine particulate matter, more than 300 kilograms per year;
- (b) for volatile organic compounds, more than 10,000 kilograms per year;
- (c) for nitrogen oxides (as NO<sub>2</sub> equivalent), more than 20,000 kilograms per year;
- (d) for sulphur dioxide, more than 20,000 kilograms per year; or,
- (e) for ammonia, more than 10,000 kilograms per year;

"negligible quantity of any health-risk air pollutant" means, in respect of directly emitted fine particulate matter, the emission of less than 1 kilogram of fine particulate matter in total per year, and in respect of precursor pollutants, the emission of less than 10 kilograms of any precursor pollutant in total per year;

"precursor pollutant" means a pollutant which, when emitted into the air, participates in atmospheric mixing or chemical transformation, or both, to produce fine particulate matter, including:

- (a) nitrogen oxides;
- (b) ammonia;
- (c) sulphur dioxide;
- (d) volatile organic compounds; and,
- (e) such other pollutants as are specified by the Town;

"public health effect" means the risk of an adverse impact on public health within the affected airshed, derived from chronic exposure to PM<sub>2.5</sub>;

"significant" means, in relation to the assessment of a public health effect,

- (a) an increased rate of premature non-traumatic mortality of one or more premature deaths per one hundred thousand population per annum, based on annual exposure; or
- (b) such other outcome as from time to time Council may direct;

"Town-approved atmospheric dispersion model" means an air dispersion model that has the capacity to address fine particulate matter and atmospheric chemistry and, in particular, the effects of emissions of precursor pollutants on the production of fine particulate matter in the atmosphere, and which is:

- (a) acceptable to the Town, following input from a qualified peer reviewer; or,
- (b) specified by the Town;

"volatile organic compounds" means:

- (a) the compounds designated as Item 65 on Schedule 1 to the Canadian Environmental Protection Act, 1999; or
- (b) the compounds as determined by the Town;

"Town" means The Corporation of the Town of Oakville.

## **PART I – PURPOSES**

2. The purposes of this by-law are:

- (a) to take measures, including collecting information, implementing regulatory controls and monitoring, to protect human health from fine particulate matter;

- (b) to designate specified sources of major emissions of health-risk air pollutants as public nuisances; and,
- (c) to encourage public participation in Council decision-making on major emissions of health-risk air pollutants.
- (d) to reduce over time the levels of fine particulate matter in the ambient air of the Town.

## **PART II – APPLICATION OF THE BY-LAW**

3. This by-law applies to any person who owns or operates a facility located in the Town that may emit at least one health-risk air pollutant into the air.

## **PART III - REPORTING**

4. (1) Subject to subsection (3), where a proposed or existing facility may emit at least one health-risk air pollutant into the air, its owner or operator shall advise the Town in writing forthwith of the emission source or sources, and provide the average and worst-case rates of daily and annual emissions of any emitted health-risk air pollutant facility-wide.

(2) Where a person proposes a change to a facility or its operation, and such change may change the rates referenced in subsection (1) of any emitted health-risk air pollutant, its owner or operator shall advise the Town of the change in writing forthwith.

(3) This section does not apply to an owner or operator of a facility that emits only a negligible quantity of any health-risk air pollutant.

(4) For the purposes of addressing the reporting obligation in this section, an owner or operator may, unless the Town provides otherwise, include in its submission to the Town a copy or part of a copy of any completed form with relevant information filed pursuant to the National Pollutant Release Inventory or the Ontario Toxics Reduction Act, 2009.

(5) The Town shall post on its web-site a current list of all facilities reporting under this section, their emitted rates, and whether the facility is a source of a major emission.

## **PART IV – REQUIREMENTS FOR TOWN APPROVAL**

### **Proposed Facilities**

5. (1) Where a person proposes to locate a facility in Oakville that may cause a major emission to the air, that person shall, as early as practicable during the planning for such facility and, in any event, prior to any construction of such facility, obtain a facility-specific approval of its proposed air emissions.

(2) Prior to receiving an application, the Town encourages a potential applicant to consult with the Town to receive input on whether the facility is likely to be a source of a major emission and, if so, on appropriate methods of addressing application requirements.

(3) The application shall include payment of the prescribed fee and submission of the following information:

(a) facility description: a description of the facility, including all sources of emissions that may contribute to a major emission, the average and worst-case rates of daily and annual emissions

during operations, and the operating conditions that give rise to average and worst-case emissions;

(b) evaluation: an evaluation, using a Town-approved atmospheric dispersion model, of the air concentrations across the affected airshed resulting from average and worst-case annual emissions of:

- (i) the predicted levels of fine particulate matter emitted by the proposed facility due to direct emissions and secondary formation from facility-emitted precursor pollutants;
- (ii) the existing levels of fine particulate matter in the affected airshed; and,
- (iii) (i) and (ii) combined.

(c) mapping: mapping that illustrates:

- (i) the extent of the affected airshed, considering predicted average and worst-case annual emissions of fine particulate matter due to the proposed major emission, in such formatting as deemed appropriate by the Town; and,
- (ii) within the affected airshed, the average and worst-case annual ambient concentrations of fine particulate matter, as contour plots, at one microgram per cubic metre intervals, or at such formatting as deemed appropriate by the Town;

(d) assessment: an assessment of the public health effects associated with:

- (i) the predicted levels of fine particulate matter in the affected airshed resulting from the major emission; and
- (ii) the existing levels of fine particulate matter in the affected airshed; and,

(e) appraisal: an appraisal of any measures available to the facility that would reduce risks to public health, including the costs and other implications of implementing such measures.

## **Existing Facilities**

6. (1) (a) Where a person owns or operates a facility in Oakville that causes a major emission to the air, that person shall obtain a facility-specific approval of its air emissions.

(b) Where a person owns or operates a facility in Oakville that causes a major emission to the air, and proposes a change that will increase the major emission, that person shall obtain a facility-specific approval of its air emissions, or amendment to an existing approval, before implementing any change that will cause such increase to its emissions.

(2) Prior to receiving an application, the Town encourages a potential applicant to consult with the Town to receive input on whether the facility is likely a source of a major emission and, if applicable, on appropriate methods of addressing application requirements.

(3) The application shall include payment of the prescribed fee and submission of the following information:

(a) facility description: a description of the facility, including all sources of emissions that may contribute to a major emission, the average and worst-case rates of daily and annual emissions during operations, and the operating conditions that give rise to average and worst-case emissions;

(b) evaluation: an evaluation, using a Town-approved atmospheric dispersion model, of the air concentrations within the affected airshed resulting from average and worst-case annual emissions of:

- (i) the estimated levels of fine particulate matter emitted by the existing facility due to direct emissions and secondary formation from facility-emitted precursor pollutants; and,
- (ii) the existing levels of fine particulate matter in the affected airshed;

(c) mapping: mapping that illustrates:

- (i) the extent of the affected airshed, considering estimated average and worst-case annual emissions of fine particulate matter due to the proposed major emission, in such formatting as deemed appropriate by the Town; and,
- (ii) within the affected airshed, the average and worst-case annual ambient concentrations of fine particulate matter, as contour plots, at one microgram per cubic metre intervals, or at such formatting as deemed appropriate by the Town;
- (d) assessment: an assessment of the public health effects associated with:
  - (i) the estimated levels of fine particulate matter in the affected airshed resulting from the major emission; and
  - (ii) the existing levels of fine particulate matter in the affected airshed; and,
- (e) appraisal: an appraisal of any measures available to the facility that would reduce risks to public health, including the costs and other implications of implementing such measures.

## **PART V – TOWN DECISION-MAKING PROCESS**

### **Peer Review of the Application**

7. Upon receipt of an application for approval and the prescribed fees, the Town shall identify a person with appropriate expertise to peer review the submitted application, and, subject to s. 8(2), shall carry out a two-phase peer review process within 120 days.

#### **Peer Review Phase (1): Determination Whether the Application is Complete**

8. Phase I shall involve the following process:

(1) Upon receipt of the documents submitted by the applicant, the peer reviewer shall determine whether the application is complete. Where the peer reviewer determines that the application is complete, the peer reviewer shall proceed forthwith to Phase (2) of the process.

(2) Where the peer reviewer determines that the application is not complete, the Town shall advise the applicant of this determination forthwith. Upon such determination, the application is suspended and the calculation of Town time is suspended. The suspension shall last until the applicant submits additional information to the Town, which then restarts the calculation of Town time and requires the peer reviewer to assess again whether the application is complete.

(3) If the applicant fails to obtain a determination that the application is complete within six months of submitting the application, the Town shall close the application and return all original documents to the applicant.

#### **Peer Review Phase (2): Review of the Complete Application**

9. Phase (2) shall involve the following process:

(1) Following a determination that an application is complete, the peer reviewer shall proceed to review the application and, in particular, its facility description, evaluation, mapping, assessment, and appraisal components.

(2) The peer reviewer shall, within 30 days of determining an application is complete, produce a peer review report not to exceed 10 pages, excluding appendices, which sets out, in concise, non-technical language the results of the review on items 3(a) to (e), of section 5 or 6 of this by-law.

(3) Following receipt of the peer review report, the Town staff shall forthwith examine the review and, where satisfied that the review is complete, forward the review to the applicant for comment.

(4) Upon receipt of the peer review report, the applicant shall have 30 days to provide written comment on the review to the Town. If the applicant does not return written comment within 30 days, the application shall be considered incomplete and the Town shall close the application and return all original documents to the applicant.

(5) Upon the conclusion of the 30-day applicant comment period, the Town staff shall forward any comment to the peer reviewer for any addendum review prepared forthwith, not to exceed 3 pages in length, excluding appendices, which shall be prepared by the peer reviewer within 30 days of receiving the applicant's comments. This step concludes this Phase of the process.

(6) Any failure by the Town to comply with any specified time frames in this by-law shall not eliminate the need for approval or invalidate any approval given under this by-law.

### **Council Consideration of the Application**

10. Following the completion of the peer review process, the Town shall engage in public and agency consultation on the application, using the following process:

(1) The Town shall forthwith:

(a) post a notice of public consideration of the review by the Town Council, with such notice specifying a Council meeting date no less than 30 days from the posting of notice, and with such notice posted on the Town website and in a newspaper of general circulation in the Town;

(b) post on its web-site the complete application, and the peer review report(s), and any comments by the applicant; and,

(c) circulate a request for comment to the Halton Region Health Department, and such other persons or agencies as the Town may determine are appropriate, and thereafter post received comments on its website.

(2) At the scheduled meeting, Council shall hear any delegations and consider and decide upon the application pursuant to the provisions of the Town's procedure by-law.

11. (1) At the conclusion of the Council meeting hearing the application, or as soon thereafter as Council may determine, Council shall make a decision on the application.

(2) In making a decision on the application, Council shall consider whether the major emission has a significant public health effect in the Town.

(3) In considering whether the major emission has a significant public health effect, Council shall have before it a complete application, the related peer review, any additional information provided by the applicant, any written input received from the Halton Region Health Department, and any other information received from other persons or agencies as deemed appropriate.

### **Town Decision-making on the Application: Proposed Facilities**

12. Where, in relation to an application for an approval of a proposed facility that may cause a major emission, Council has before it the required information, and all required land use approvals have been obtained for the proposed facility, Council shall make one of the following decisions, as applicable:

(a) Where, following consideration of the application, Council concludes that the major emission of the proposed facility is not likely to cause a significant public health effect in the Town, Council shall approve the application, subject to such conditions as Council may deem appropriate; or,

(b) Where, following consideration of the application, Council concludes that the major emission of the proposed facility is likely to cause a significant public health effect in the Town, Council shall:

(i) refuse to approve the application and, in such case, also decide that in its opinion the major emission of the proposed facility constitutes a public nuisance; or

(ii) approve the application on the basis that the public interest favours allowing the major emission of the proposed facility to occur, subject to such conditions as Council may deem appropriate.

### **Town Decision-making on the Application: Existing Facilities**

13. Where, in relation to an application for an approval of an existing facility which causes a major emission, Council has before it the required information, Council shall make one of the following decisions, as applicable:

(a) Where, following consideration of the application, Council concludes that the major emission of the facility is not likely to cause a significant public health effect in the Town, Council shall approve the application, subject to such conditions as Council may deem appropriate;

(b) Where, following consideration of the application, Council has before it an application that does not meet paragraph (a), but proposes an overall 25 percent reduction in health-risk air pollutants over the next five years, and the peer review agrees the proposed reduction is achievable, Council shall approve the application, and authorize a five-year approval of the facility causing the major emission, subject to such conditions as Council may deem appropriate; or,

(c) Where, following consideration of the application, Council concludes that paragraph (b) does not apply, and the major emission of the facility is likely to cause a significant public health effect in the Town, Council shall:

(i) refuse to approve the application and, in such case, also decide that in its opinion the major emission of the facility constitutes a public nuisance; or

(ii) approve the application on the basis that the public interest favours allowing the major emission of the facility to occur, subject to such conditions as Council may deem appropriate.

## **PART VI – FEES**

14. (1) The fee prescribed for applicants for approval under this by-law is \$25,000, paid by certified cheque, and payable to The Corporation of the Town of Oakville.

(2) The fee prescribed in subsection (1) includes \$5,000 for administration and \$20,000 to carry out the peer review of the application pursuant to sections 7, 8 and 9 of this by-law.



(3) Where an applicant pays the prescribed fee, but the actual cost incurred by the Town is less than this fee, the Town may return such portion of the prescribed fee as it determines appropriate.

## **PART VII – EMISSIONS MONITORING AND TOWN REPORTING**

15. Each owner or operator of a facility receiving approval under this by-law must prepare and submit to the Town, annually during the first three years following approval, and thereafter for such period as the Town determines appropriate, a report that provides average and worst-case rates of daily and annual health-risk air pollutant emissions from the facility, and such further information as Council may require.

16. Each year, based on the most current information provided under this by-law, the Town shall prepare a report on health-risk air pollutants, including the estimated total emissions, expressed in kilograms, of each health-risk air pollutant from:

- (a) all facilities causing major emissions approved under this by-law; and,
- (b) all other facilities reporting under Part III.

## **PART VIII – OFFENCES**

17. (1) Any person, being the owner or operator of a facility that is subject to this by-law, is guilty of an offence, if that person:

- (a) fails to provide the Town with emission information in accordance with Section 4 of this by-law;
- (b) fails to submit an application for approval for the facility required under Section 5 or 6 of this by-law;
- (c) operates or permits the operation of the facility without an approval required under Section 5 or 6 of this by-law;
- (d) operates or permits the operation of the facility other than in compliance with a condition of approval of a facility imposed under Section 12 or 13 of this by-law;
- (e) fails to provide a report under Section 15 of this by-law; or
- (f) provides false information to the Town under any provision of this by-law.

(2) Any person guilty of an offence is liable upon conviction to a fine of up to \$100,000 for a first offence, and \$10,000 a day for each day or part of a day that the offence continues for any subsequent offence.

## **PART IX – TOWN GUIDANCE**

18. (1) The Town may issue guidance documents to assist with the implementation and administration of this by-law.

(2) Areas of guidance may include, but are not limited to:

- (a) information to be submitted under PART III and use of equivalent reporting regimes;
- (b) exemption from PART III and examples of emissions of a negligible quantity of any health-risk air pollutant; and,
- (c) information to be submitted under PART IV, including protocols for assessment, mapping, modeling, evaluation, and appraisal.

## **PART X - TRANSITIONAL MATTERS**

19. (1) Subject to subsection (2), this by-law shall apply immediately on its passage by Council.

(2) Despite any other provision of this by-law:

(a) For any person owning or operating a facility subject to section 4 of this by-law:

(i) the Town will suspend the operation of this section for the first six months following the passage of this by-law;

(ii) after six months from the passage of this by-law, the operation of this section shall remain suspended, except for those persons who have a certificate of approval for air emissions under section 9 of the Environmental Protection Act;

(iii) the suspension set out in paragraph (a)(ii) shall be lifted after one year from the passage of this by-law, or after such further time as Council may determine.

(b) For any person owning or operating a facility subject to section 6 of this by-law:

(i) the Town will suspend the operation of this section for the first year following the passage of this by-law;

(ii) after one year from the passage of this by-law, the operation of this section shall remain suspended, except for those persons who have a certificate of approval for air emissions under section 9 of the Environmental Protection Act;

(iii) the suspension set out in paragraph (b)(ii) shall be lifted after two years from the passage of this by-law, or after such further time as Council may determine.

## **PART XI – SEVERABILITY**

20. If any section of this by-law, or parts thereof, are found by any court of law to be illegal or beyond the power of Council to enact, such section, sections, part or parts shall be deemed to be severable, and all other sections or parts shall be deemed to be separate and independent therefrom and to be enacted as such.

PASSED this 1st day of February, 2010.

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MAYOR CLERK

## APPENDIX B

### ***Town of Oakville Air Quality and Health Protection By-law – [Fact Sheet for Businesses](#)***

#### ***What is the purpose of the by-law?***

- To protect human health from airborne fine particulate matter.
- To collect information on sources of emissions of fine particulate matter.
- To regulate major emitters of fine particulate matter in absence of federal or provincial regulation.
- To designate any major emission of fine particulate matter, presenting unacceptable risks to human health, as a “public nuisance.”
- To reduce, over time, levels of fine particulate matter in the town’s ambient air.

#### ***What is fine particulate matter? Why should the town regulate it?***

- Fine particulate matter is airborne particles less than 2.5 micrometres in size. They are listed as a toxic substance by the Canadian Environmental Protection Agency.
- An abundance of scientific and government studies showing serious, fatal health effects from human inhalation of airborne fine particulate matter.
- 80 premature deaths in Oakville can be attributable to fine PM pollution every year based on annual concentration of 10 micrograms per cubic metre (ICAP)
- Right now, there are no federal or provincial regulatory standards for fine particulate matter emissions or ambient levels.

#### ***What authority does the Town have to regulate fine particulate matter?***

- The town has municipal powers outlined in the *Municipal Act, 2001* to pass by-laws about “health, safety, and well-being”, to prohibit/regulate “public nuisances” and to decide what constitutes a public nuisance.
- The town’s by-laws cannot “conflict” or frustrate the purpose of provincial law.

#### ***How does the by-law affect local businesses?***

The by-law applies to any facility located in the town that emits at least one health risk air pollutant.\*

- The by-law includes a reporting and an approval process. The reporting process requires existing or proposed owners or operators to advise the town in writing of the emission source(s), and the average and worst case rates of daily and annual emissions of any emitted health risk pollutant facility wide.
- For non-major emitters, there is no cost to submit reports to the town.
- The by-law does not apply to facilities that emit only a negligible quantity of any health risk air pollutant.

\*“Health risk air pollutant” and other terms are defined in the by-law.

**What is a major emitter? How do regulations vary for major emitters?**

- According to the by-law, a facility is considered a major emitter if its emissions exceed at least one of the thresholds for the health risk air pollutants. \*
- The town estimates that there may be 20-30 major emitters in Oakville who would be subject to a higher reporting requirement and approval process.
- For the approval process, major emitters will need to submit to the town a number of items including airshed mapping, the concentration of fine PM, as well as evaluations and assessments of the risks to human health associated with fine particulate matter emissions.
- The town approval process for major emitters involves an application fee of \$25,000 to cover the costs to the town of processing the application and, in particular, the retainer of a qualified, independent peer reviewer to review all aspects application. Guidance documents are in process.

**Will the implementation of the by-law be phased-in?**

Yes, the town will phase-in the implementation of the by-law:

1. As of February 1, 2010, the by-law applies only to **proposed "major emitters"** of fine PM and precursor pollutants, and requires that each proposed major emitter obtain town approval for the emissions;
2. After 6 months, it will apply to all existing emitters of fine PM and precursor pollutants who also have a **provincial certificate of approval** for air emissions, to provide a one-time report to the Town on emissions of fine PM and specified precursor pollutants;
3. After one year, it will apply to **all existing major emitters** of fine PM and precursor pollutants who also have a provincial certificate of approval for air emissions, and require each such emitter to obtain town approval for their emissions;
4. After not less than one year, it will apply to all existing emitters of fine PM and precursor pollutants who **do not have** a provincial certificate of approval for their air emissions, and require each to provide a one-time report to the Town on its emissions of fine PM and specified precursor pollutants; and
5. After not less than two years, it will apply to all existing major emitters of fine PM and precursor pollutants who do not have a provincial certificate of approval for air emissions, and require each such emitter to obtain Town approval for its emissions.

For supporting documentation on the Health Protection Air Quality By-law 2010-035 including staff reports, presentations and a copy of the by-law refer to the town's website or contact Cindy Toth, Director, Environmental Policy:

Website: <http://www.oakville.ca/healthairqualitybylaw.htm>

Email: [ctoth@oakville.ca](mailto:ctoth@oakville.ca)

Tel: 905.845.6601, ext 3299

\* Permitted levels are included in the by-law.