

By Email and Facsimile

July 11, 2016

The Honourable Catherine McKenna
Minister of the Environment and Climate Change
200 Sacré-Coeur Boul., 2nd Floor
Gatineau, Quebec
K1A 0H3

Dear Minister:

Re: Halton Municipalities' Comments on the Draft Agreement To Establish a Joint Process for the Review of the Milton Logistics Hub Project under the *Canadian Environmental Assessment Act, 2012* ("CEAA")

We are writing on behalf of the Regional Municipality of Halton ("**Halton Region**" or the "**Region**") and the four lower tier municipalities within the Region, namely, the Corporation of the City of Burlington, the Corporation of the Town of Halton Hills, the Corporation of the Town of Milton, and the Corporation of the Town of Oakville (collectively with the Region, the "**Halton Municipalities**"). This letter concerns the Draft Agreement, including Appendix 1 Terms of Reference for the review panel, that will be conducting an environmental assessment ("**EA**") with respect to the above-described project.

A. BACKGROUND

CN Rail proposes to build a road-rail logistics hub, called the "Milton Logistics Hub Project" (the "**Project**"), which is designed to transfer containers between trucks and rail-cars. The Project also entails the construction of a railway yard and more than 20 km of track. The Project is located on 160 hectares of CN-owned land west of Toronto in the Town of Milton, which is within Halton Region. The Project is a "designated project" under CEAA. On July 20, 2015, your predecessor referred the environmental assessment of the Project to a review panel under section 38 of CEAA.

Proposing the Project in Halton Region has special planning significance because Halton is one of Canada's fastest growing municipalities and is subject to comprehensive municipal land use controls and standards.

Halton Region is responsible for delivering many programs and services, including regional planning and growth management, water and sanitary services, public health, social services, and a regional

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transportation network. The lower-tier municipalities also provide numerous programs and services, including local planning and zoning, building standards, fire protection, stormwater collection, local roads, transit, and business licensing.

Consistent with CEAA, and as a result of their vital interest in the Project, the Halton Municipalities seek federal-municipal consultation and cooperation on the EA of this Project. The purpose of this letter is to provide comments on and to make requests respecting the Draft Agreement for the EA.

B. POINTS OF AGREEMENT

1. The Halton Municipalities support the appointment of a member of the Canadian Transportation Agency (“**CTA**”) to the panel.
2. The Halton Municipalities also support invoking s.19(1)(j) of CEAA to require that the panel take into account (a) requirements for railway operations, and (b) the interests of the localities that will be affected by the line.

C. CONCERNS AND REQUESTS

3. The Halton Municipalities are interested in the relationship between the EA and the s.98 process addressed by the CTA under the *Canada Transportation Act* (“**CT Act**”). It is our understanding that the Joint Process will include an EA within the meaning of CEAA and, in the event that the EA results in a favourable decision statement from you, the EA will be followed by a full CTA s.98 review of the Project. In this respect, the relationship between the EA and the s.98 process resembles that taken under the former CEAA (repealed in 2012) whereby the CTA triggered an EA screening under CEAA before the CTA process and considered this EA during the s.98 process.

However, the Halton Municipalities are concerned that the Draft Agreement does not address consistently the relationship between the proposed Joint Process and the “powers, duties, and functions” exercised by the CTA under s.98 of the CT Act. Section 3.4 of Appendix 1 states that the “Review Panel” will not make any recommendations as to the reasonableness of the location of the railway line, as this will be “subsequently determined” by the CTA pursuant to s.98 of the CT Act. We acknowledge that the topic whether “the location of the railway line is reasonable” is expressly covered in s.98 of the CT Act; however, we also believe that this topic is also related to the EA topic of “alternative means of carrying out the designated project” under s.19(1)(g) of CEAA. We are therefore concerned about the impact of this exclusion on the EA.

We note, by contrast, the treatment of a second topic raised under s.98: “requirements for railway operations and services”. For this topic, s.3.2 of Appendix 1 states that you have expressly included this topic under s.19(1)(j) of CEAA and s.5.28 states that the CTA will also take this topic into consideration under its s.98 process. It therefore appears that both the EA and the s.98 processes will deal with this topic.

Similarly, both s.3.2 and s.5.28 reference comments from the “localities,” which is thus part of the CEAA EA and the s.98 process.

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Overall, we are concerned about the different treatment of the railway line location issue from other issues related to s.98 of the CT Act. We see no clear way to delineate between the reasonableness of the railway line as a CTA issue and the location of different railway lines as a CEAA “alternative means” issue.

Request: The Halton Municipalities request that you amend Appendix 1 to the Draft Agreement as follows:

- 1) Within s.3.2, add to items a. and b.:
 - c. “the reasonableness of the location of the railway line”;
- 2) Delete s.3.4.

4. The Halton Municipalities are concerned that the Draft Agreement does not support fully the approved EIS Guidelines. By letter to us dated July 20, 2015, your predecessor advised that the following three matters were added to the EIS Guidelines:
 - (i) municipal land use, including present and approved land use;
 - (ii) human safety in relation to motor vehicle safety and pedestrian/bicycle safety; and
 - (iii) human health, including potential changes in air quality, drinking water quality and noise exposure in the vicinity of the Project.

For your assistance, we have attached the July 20, 2015 from the Minister.

We believe it to be important that these aspects of the EIS Guidelines are legally reinforced by this Agreement, with specific regard to s.3.2 of Appendix 1.

Request: The Halton Municipalities request that you amend Appendix 1 to the Draft Agreement to add the following:

- 1) Within s.3.2, add to items a. and b. and proposed c. (above):
 - d. “municipal land use, including present and approved land use”;
 - e. “human safety in relation to motor vehicle safety and pedestrian/bicycle safety”;
and
 - f. “human health, including potential changes in air quality, drinking water quality, and noise exposure in the vicinity of the project”.
- 2) Within s.3.3, amend sentence two to provide that: “For greater certainty, all members of the review panel will take into account all matters required by the Minister in s.3.2, their environmental effects, and mitigation measures.”

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5. Section 1.3 of Appendix 1 restricts the components of the Project that would be subject to panel review to those components that are “within CN’s care and control”. First, this restriction is not consistent with the definition of “designated project” under CEAA. Under the CEAA definition, the term “designated project” includes “any physical activity that is incidental to” the designated activity. Second, this restriction is not consistent with CN’s initial Project Description dated March 31, 2015, which expressly referenced “New Third Party Infrastructure” required by the Project. Third, this restriction is inconsistent with the July 20, 2015 EIS Guidelines, which state that the federal EA will “focus” on (but not that they will be limited to) those components that are within CN’s care and control.

Request: The Halton Municipalities request that you amend s.1.3 of Appendix 1 to reference the CEAA definition of “designated project” and provide the review panel with legal authority over the CN Project that is consistent with CEAA and does not narrow the scope of the panel’s review of the Project.

6. The fifth paragraph of the Preamble to the Draft Agreement references your agreement with the Chair of the CTA that the proposed Joint Process will ensure an “efficient single window process” for CN, the localities that will be affected by the Project, and other review participants. The reference to a “single window” process raises concern. If this means that the CEAA EA must be completed before any other federal approvals may be addressed, so that the CEAA EA is the single window into all federal approvals, then we agree. However, if this is the meaning of single window, then we respectfully disagree that the Joint Process ensures this. CEAA ensures this through section 7.

Equally, we respectfully disagree with the suggestion in the Draft Agreement that, together, the CEAA EA and the CTA s.98 approval represent the totality of the federal process applicable to CN. It is our understanding that, in addition to the approval required by the CTA, the Project will require approval from other federal departments and boards, including the Department of Fisheries and Oceans (DFO) under the *Fisheries Act*, the Minister of Transport under the *Railway Safety Act*, and the National Energy Board under the *National Energy Board Act*. These federal approvals are independent of the Joint Process. Therefore, the agreement will not provide a single window for all federal approvals.

Lastly, we respectfully disagree with the suggestion that the federal approvals represent the totality of regulatory processes applicable to CN for this Project. Although we lack complete information on its Project from CN, our current understanding is that the Project will require many different approvals under Ontario law. These laws include approvals respecting environmental assessment, land use, and road access that are administered by the Region and local municipalities; approvals respecting activities in flood plains, watercourses and wetlands that are administered by regional conservation authorities such as Conservation Halton; and approvals governing activities affecting endangered species, water takings, water emissions, local pipelines, and noise and air emissions that are administered by the province and its boards and agencies. None of these approvals is addressed by the proposed Joint Process applicable to CN.

Request: The Halton Municipalities request that you amend the preamble to the Draft Agreement to delete reference to “single window” within the term, “efficient single window process”.

The Honourable Catherine McKenna
Minister of the Environment
Re: Proposed Milton Logistics Hub Project by CN Railway
Company



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The Halton Municipalities respectfully request that you accept and act on the foregoing requests. They would be pleased to meet with you or respond to any questions that you may have regarding these requests and this letter.

We look forward to hearing from you at your earliest convenience.

Sincerely,

Gowling WLG (Canada) LLP

A handwritten signature in black ink, appearing to read "Rodney Northey", written in a cursive style.

Rodney Northey

RVN:mh

Encl.

c. Joseph Ronzio, Panel Manager
Canadian Environmental Assessment Agency



JUL 20 2015

Mr. Rod Northey
Gowling Lafleur Henderson LLP
rodney.northey@gowlings.com

Mr. Mark Madras
Gowling Lafleur Henderson LLP
mark.madras@gowlings.com

Dear Mr. Northey and Mr. Madras:

Thank you for your correspondence of June 19 and July 3, 2015, concerning the proposed Milton Logistics Hub Project and your request that I refer the environmental assessment of the Project to a review panel.

Section 38 of CEAA 2012 requires that I consider three factors in determining whether to refer an environmental assessment to a review panel:

- whether the project may cause significant adverse environmental effects;
- the public concerns related to the potential significant environmental effects; and
- opportunities for cooperation with another jurisdiction in a joint review panel.

After careful consideration, I have referred the environmental assessment of the Project to an independent review panel. Based on currently available information, I am of the opinion that the Project may result in significant adverse environmental effects pursuant to section 5 of CEAA 2012 and that there are substantial public concerns relating to those effects.

I encourage the Town of Milton and the Region of Halton to fully participate in the review panel process, including the public hearing. Further, I invite your clients to identify potential candidates for my consideration in appointing members to the federal review panel. The Canadian Environmental Assessment Agency will be in contact with the Town of Milton and the Region of Halton in the coming weeks regarding this opportunity.

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In response to issues raised through the recent public comment period, the Environmental Impact Statement Guidelines for the Project will include additional information requirements as part of the federal environmental assessment, including requirements in relation to:

- municipal land use, including present and approved land uses;
- human safety in relation to motor vehicle safety and pedestrian/bicycle safety; and
- human health, including potential changes in air quality, drinking water quality and noise exposure in the Project vicinity.

The final Environmental Impact Statement Guidelines will be posted on the Canadian Environmental Assessment Registry Internet Site. Additional information on the environmental assessment of the Project can be found at www.ceaa-acee.gc.ca/050/details-eng.cfm?evaluation=80100.

I encourage your clients to fully participate in the review panel process. If you have any questions or concerns regarding the environmental assessment, please contact Ms. Colette Spagnuolo, Associate Director, Review Panels Division at (613) 957-0541 or at CEAA.LogisticsHub-PoleLogistique.ACEE@ceaa-acee.gc.ca.

Sincerely,

A handwritten signature in blue ink, appearing to read 'L. Aglukkaq', is positioned above the typed name of the Minister of the Environment.

The Honourable Leona Aglukkaq, P.C., M.P.
Minister of the Environment