

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 ("PM_{2.5}");

"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 NO₂ 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_{2.5};

"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.

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- (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.

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- (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

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- 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,

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- (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

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- (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;

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- (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.

MAYOR

CLERK