



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

July 5, 2011

BY FAX & EMAIL

The Hon. John Wilkinson
Minister of the Environment
Ferguson Block
77 Wellesley Street West, 11th Floor
Toronto, ON M7A 2T5

Dear Minister:

**RE: ETHANOL FACILITY PROPOSED BY FARMTECH ENERGY CORPORATION
(OSHAWA WATERFRONT)**

Please be advised that we are counsel for Friends of Second Marsh, which is an incorporated non-profit organization that has worked for over 35 years to protect, sustain and promote the Second Marsh in Oshawa, Ontario.

The Second Marsh has been designated by the Ontario government as a provincially significant wetland and an Area of Natural and Scientific Interest (ANSI), and it consists of various mutually supportive habitats. These include marsh, swamp, barrier beach, open grasslands, riparian zone, and mixed tree-shrub-grassland zones. These habitats nurture a rich diversity in wildlife species, including 361 vascular plant species and 254 bird species (including several species at risk).

We have been instructed by our client to bring to your attention some alarming recent developments regarding the proposal by FarmTech Energy Corporation (FarmTech) to build and operate a large-scale ethanol refinery immediately beside the Second Marsh. This facility is to be located upon 12.3 hectares of land currently owned by the Oshawa Harbour Commission (OHC).

Background

In 2008, FarmTech applied to your Ministry for a certificate of approval under section 9 of the *Environmental Protection Act* (EPA), and public notice was duly provided on the EBR Registry (see Registry Notice 010-4338). In particular, the proponent sought EPA approval for the following equipment and activities: four (4) baghouses; two (2) flares; one (1) cooling tower; product loadout; one (1) dried distillers grain with soluble dryer system with thermal oxidizer; one (1) emergency water pump; two (2) scrubbers; seven (7) storage tanks; five (5) vented tanks; one (1) wetcake pad; and fugitive components.

The EBR Registry Notice further stated that the facility's emissions into the atmosphere will include: particulate matter; products of combustion such as carbon monoxide, sulphur dioxide and nitrogen oxides; volatile organic compounds such as acetaldehyde, acrolein and benzene; odour; and noise.

In response to this EBR posting, our client and numerous other stakeholders filed detailed submissions which identified serious deficiencies in the proponent's supporting documentation. Ultimately, this section 9 application was withdrawn by FarmTech. The EBR Registry Notice (last amended in September 2009) currently states that:

The application has been withdrawn by the proponent. The company has been working on addressing all of the deficiencies related to the original application and have indicated their intent to submit a new complete application in the future (emphasis added).

CEAA Screening Report

However, recent documentation prepared under the *Canadian Environmental Assessment Act* (CEAA) suggests that FarmTech does not intend to re-apply for any approvals under the EPA or any other provincial statute. In particular, the Screening Report (June 2011) prepared under CEAA for federal authorities includes the following claims:

However, FarmTech withdrew its applications to the Province on the basis that provincial legislation does not apply to the proposed parcel of federal land and, therefore, FarmTech had no legal obligation to apply for provincial Certificates of Approval. The OHC, which is an agent of the federal crown that owns the land, is also of this opinion...

Although FarmTech will not be applying for provincial Certificates of Approval, FarmTech reported that the provincial MOE had reviewed all of its previously submitted documents and it understood that the MOE was generally satisfied with the documentation submitted...

[T]he OHC will take on the responsibility of monitoring environmental effects and adherence to standards generally equivalent to those of provincial law, during the construction, operation and decommissioning of the facility (page 8).

It is our understanding that a copy of the CEAA Screening Report has been circulated to the MOE for comment during the current public review period, which expires on July 28, 2011.

Request by Friends of Second Marsh

Our client hereby strongly requests that you take all necessary steps to ensure that your Ministry files an appropriate and timely response to the CEAA Screening Report. In particular, we would respectfully suggest that the MOE response should:

- reiterate FarmTech's legal obligation to apply for and receive provincial approvals for any plant, structure, equipment, apparatus, mechanism or thing that may discharge contaminants into the natural environment;
- correct the inaccurate statement that the MOE was "satisfied" with the EPA documentation previously submitted by FarmTech; and
- emphasize that it is the MOE – not the OHC – that is responsible for ensuring compliance with provincial environmental laws, regulations and standards.

At your earliest convenience, can you please advise us in writing whether your Ministry will: (i) file a response to the CEAA Screening Report; and (ii) convey the foregoing bullet points in its response?

We look forward to your reply to this urgent request. Please feel free to contact the undersigned if you have any questions or comments about this matter. If requested, we would be pleased to meet with you and/or Ministry staff to further discuss this matter.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Richard D. Lindgren
Counsel

cc. Doris Dumais, MOE EA & Approvals Branch
Gord Miller, Environmental Commissioner of Ontario
Brian Brasier, FSM