

**Environmental Review Tribunal**  
Tribunal de l'environnement



**ISSUE DATE:** March 01, 2021

**CASE NO(S):**

20-033

**PROCEEDING COMMENCED UNDER** section 139(2)(b) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended

Appellant: Darling International Canada Inc.  
Respondent: Director, Ministry of the Environment, Conservation and Parks  
Subject of appeal: Conditions on an amended environmental compliance approval for the processing of Animal By-products in the Rothsay Moorefield Plant  
Reference No.: 5238-BSVRHU  
Property Address/Description: 8406 Wellington County Road #7  
Municipality: Mapleton Township  
Upper Tier: County of Wellington  
ERT Case No.: 20-033  
ERT Case Name: Darling International Canada Inc. v. Ontario (Environment, Conservation and Parks)

**APPEARANCES:**

**Parties**

**Counsel**

Darling International Canada Inc.

M. McAree, A. Srivastava and L. Wortsman

Director, Ministry of the Environment, Conservation and Parks

N. Harris, A. Landre, and E. Chan (student-at-law)

**HEARD:**  
**ADJUDICATOR(S):**

February 19, 2021 by video hearing  
Hugh S. Wilkins, Member

**DECISION**

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[1] Darling International Canada Inc. (“Appellant”) appealed specific conditions imposed under Amended Environmental Compliance Approval No. 5238-BSVRHU (“ECA”) issued by the Director, Ministry of the Environment, Conservation and Parks (“MECP”) on October 2, 2020. The ECA relates to the Appellant’s Rothsay Moorefield Plant (“Facility”) located in the Township of Mapleton. The Facility is an animal by-product collection, processing and feed ingredient manufacturing plant. A main focus of the appeal is regarding the use of odour unit limits in the ECA.

[2] At a Pre-hearing Conference (“PHC”), held on February 19, 2021, the Tribunal addressed requests for Presenter status, approved the withdrawal of the appeal in part, directed the Director to amend the ECA, and ordered next steps in the proceeding.

### **Requests for Status**

[3] The Ontario Waste Management Association, the Wellington Federation of Agriculture, and the Township of Mapleton each requested Presenter status in the proceeding. Each stated that it, or its constituents, would be impacted by the outcome of the proceeding and has a genuine interest in the subject matter of the hearing. Each also agreed to limit the scope of its evidence and submissions at the hearing to the impacts to the natural environment resulting from the Tribunal’s decision. This includes evidence and submissions on the application of odour units and the limitations of that approach. Neither of the Parties objected to the granting of Presenter status to these entities with these limitations on the scope of their evidence and submissions. The Tribunal finds that each of these entities will be directly or substantially affected by the hearing or its outcomes, has a genuine interest in the subject matter of the hearing, and will likely make a relevant contribution to the Tribunal’s understanding of the issues in the proceeding. The Tribunal granted each of them Presenter status on this basis.

### **Proposed Partial Settlement of the Appeal**

[4] In its Notice of Appeal, the Appellant appealed the imposition of terms and conditions in the ECA relating to specific performance conditions, source testing,

notification of complaints, district notification, and the creation and operation of a Public Liaison Committee. Prior to the PHC, on February 12, 2021, the Parties notified the Tribunal that they had reached a proposed settlement with respect to several of these issues.

[5] At the PHC, the Director described the amendments to the ECA proposed in the partial settlement. The Director stated that the proposed amendments to the ECA:

- clarify the timing of updates to the Facility's odour management plan in the ECA (Condition 1.4);
- address the content and timing requirements for the Appellant to notify the Director and the Public Liaison Committee regarding odour and/or noise complaints received by the Appellant and regarding notification to the Director of the occurrence of particulate matter deposits resulting from the operation of the Facility's cooling towers (Condition 6);
- clarify the required content of notifications to the MECP's District Manager on the replacement of biological oxidation system media (Condition 9); and,
- amend provisions regarding the objectives of the Public Liaison Committee, the Committee's terms of reference, the sharing of information with the Committee, membership of the Committee, and appointment of its co-chairs (Condition 10).

[6] The proposed settlement envisions the withdrawal of the appeal with respect to these provisions and a direction from the Tribunal for the Director to make the above-mentioned revisions to the ECA. The remainder of the appeal would remain live.

[7] Under Rule 198 of the Tribunal's *Rules of Practice and Practice Directions* ("Rules"), an appellant who proposes to withdraw an appeal must notify the Tribunal, other Parties, Participants and Presenters. At the PHC, the Tribunal provided an

opportunity for the Presenters to object to the proposed partial settlement and partial withdrawal of the appeal. None objected.

[8] Rule 201 requires the Tribunal to consider whether a proposed withdrawal of an appeal (or part thereof) as part of a settlement agreement not objected to by any Party that alters the decision under appeal is consistent with the purpose and provisions of the relevant legislation and whether it is in the public interest. The Tribunal has the discretion either to continue with the proceeding or to dismiss it. In the present case, the relevant legislation is the *Environmental Protection Act*. The purpose of the Act is to provide for the protection and conservation of the natural environment. The relevant provisions of the Act include those set out in its Part II.1.

[9] At the PHC, Rudolph Wan and Amy Shaw provided oral fact evidence in support of the proposed settlement. Mr. Wan is the MECP Director who signed the ECA. Ms. Shaw is the MECP's District Manager for the area in which the Facility is located. Mr. Wan stated that the proposed changes to Condition 1.4 clarify the requirements in the ECA and are administrative in nature. He said they are not substantive. He said they are consistent with the purpose and provisions of the *Environmental Protection Act* and are in the public interest. Ms. Shaw stated that the proposed changes to Conditions 6, 9 and 10 also aim to clarify and improve the ECA's requirements. She stated that the proposed wording regarding the Public Liaison Committee is consistent with wording used in environmental compliance approvals for similar situations elsewhere. She stated that the proposed changes to Conditions 6, 9 and 10 are consistent with the purpose and provisions of the *Environmental Protection Act* and are in the public interest.

[10] The Tribunal found that the proposed amendments to the ECA are consistent with the purpose and provisions of the *Environmental Protection Act* and are in the public interest. It finds that the proposed amendments provide for greater clarity regarding the Appellant's obligations under the ECA and will ensure effective environmental protection regarding odour, noise and other emissions from the Facility. The Tribunal finds that the resolution of these issues will facilitate a more efficient and focused hearing regarding the

main matters in dispute between the Parties and the proposed amendments are in the public interest.

[11] The Tribunal approves the proposed amendments to the ECA and directs the Director to amend the ECA accordingly.

### **Settlement Discussion Opportunities**

[12] The Appellant stated that it intends to make a settlement proposal to the Director regarding the remaining issues in the appeal within the next couple of weeks. It requested that the Parties be provided time to pursue settlement discussions. The Director supported this proposal and the Tribunal agreed to schedule a further PHC for late April 2021. The Tribunal urged the Parties to work together to settle the appeal and stated that if the Parties are interested in requesting Tribunal-assisted mediation, this could be a route to be pursued.

### **Other Procedural Matters**

[13] The Tribunal scheduled a further PHC to be held on April 30, 2021. The Tribunal stated that if the Parties reach a settlement, they are to contact the Tribunal's Case Coordinator and request that the April PHC be converted into a settlement hearing. If a settlement hearing is held, the Tribunal directs that the Parties file with the Tribunal supporting materials regarding the proposed settlement by April 28, 2021. If there is no settlement, but the Parties agree to pursue mediation, the timing of the mediation may be addressed at the April PHC. If, prior to the April PHC, the Parties find that there is no prospect for settlement, the Tribunal expects the Parties to be prepared for the Tribunal to set hearing dates at the April PHC.

[14] In the Appellant's Notice of Appeal, the Appellant pleads that it will bring a motion for a stay. The Appellant has informed the Tribunal that its motion for a stay has not been necessary to this point. The Tribunal acknowledges that the Appellant has reserved its right to later bring a motion for a stay relating to the outstanding grounds of appeal.

**ORDER**

[15] The Tribunal orders that the Ontario Waste Management Association, Wellington Federation of Agriculture, and the Township of Mapleton are Presenters in this proceeding. The scope of their evidence and submissions will be limited to the impacts to the natural environment resulting from the Tribunal's decision. This includes evidence and submissions on the application of odour units and the limitations of that approach.

[16] The Tribunal accepts the withdrawal of the appeal as it relates to Conditions 1.4, 6, 9 and 10 of the ECA and it directs the Director to amend the ECA accordingly as set out in Appendix 1 to this Order and Decision.

[17] The remaining grounds of appeal set out in the Appellant's Notice of Appeal remain live.

[18] The Tribunal orders that a further PHC will be held by video hearing on **Friday, April 30, 2021** commencing at **10 a.m.**, details of which will be provided by the Tribunal's Case Coordinator.

[19] There will be no further notice.

[20] This Member is not seized.

*Presenter Status Granted  
Withdrawal of Appeal Allowed in Part  
Amendments to ECA Directed  
PHC Continuation Scheduled*

*“Hugh S. Wilkins”*

HUGH S. WILKINS  
MEMBER

Appendix 1 – Proposed Amendments to Conditions 1.4, 6.1, 6.2, 9.1 and 10 of the ECA

If there is an attachment referred to in this document,  
please visit [www.olt.gov.on.ca](http://www.olt.gov.on.ca) to view the attachment in PDF format.

**Environmental Review Tribunal**

A constituent tribunal of Ontario Land Tribunals

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**Appendix 1****PROPOSED AMENDMENTS TO CONDITIONS 1.4, 6.1, 6.2, 9.1 AND 10 FOR THE PURPOSE OF SETTLEMENT OF CERTAIN GROUNDS OF APPEAL****1. PERFORMANCE CONDITIONS**

4. The Company shall:
  - a. update and revise the Odour Management Plan:
    - i. within three (3) months of the implementation of any proposed modifications that may impact odour emissions;
    - ii. following each annual Source Testing, to record the results and review, evaluate and update accordingly; and
    - iii. if directed or agreed to in writing by the District Manager.
  - b. maintain the updated Odour Management Plan at the Facility and make it available to Ministry staff upon request; and
  - c. submit an electronic copy of the updated Odour Management Plan to the District Manager annually no later than March 31 of each calendar year, or as otherwise directed by the District Manager.

**6. NOTIFICATION OF COMPLAINTS**

1. The Company shall notify the District Manager in writing, of each odour and/or noise complaint received by the Company within two (2) business days, in the format used by the Company as detailed in the Company's Public Complaint Form. A redacted summary of the odour and/or noise complaints received by the Company during the previous three months shall be provided to the PLC on a quarterly basis.
2. The Company shall notify the Ministry within two (2) business days from when the occurrence of particulate matter deposits resulting from the operation of the Cooling Towers becomes known to the Company.

**9. DISTRICT NOTIFICATION**

1. Prior to the replacement of biological oxidation system media, the Company shall notify the District Manager in writing at least thirty (30) days prior to the intended media replacement date. District Manager notification must include:
  - a. the cell which is undergoing the media replacement;

- b. the type of media being replaced and the type of media it is being replaced with;
- c. the estimated date(s) that the media replacement is taking place; and
- d. measures to minimize the emission of odour during and following media replacement.

## 10. PUBLIC LIAISON COMMITTEE

1. The Company shall use its best efforts to establish and maintain a PLC for the Facility. The objectives of the PLC include:

- a. keeping the community informed about the operations of the Facility in relation to their impact on the community;
- b. keeping the Company informed of any community concerns about the operations of the Facility;
- c. serving as a forum for the Company to disseminate, review and exchange information relevant to the operation of the Facility as it may relate to the community.

2. The Company shall,

- a. in consultation with the PLC, develop Terms of Reference for the PLC that describe how the PLC will operate and carry out its functions. The Terms of Reference shall include a process for resolving disagreements that may develop between the PLC and the Company. Any changes to the Terms of Reference for the PLC shall be made in consultation with the PLC;
- b. in consultation with the PLC, determine the appropriate meeting frequency and review it on an annual basis;
- c. share with the PLC reasonable information about the Facility and Company relating to the impact of the operation of the Facility on the community for the purpose of the PLC carrying out its objectives; and
- d. invite the following to participate in the PLC:
  - i. the Company;
  - ii. all home/business owners within 1,000 metres of the Facility; and
  - ii. Guelph District Office of the Ministry as an optional member.

3. The Company's Plant Manager or designate and a member of the PLC from the community shall be appointed co-chairs of the PLC. The appointment of the community member co-chair shall be reviewed on a yearly basis.

4. The Company, with approval from the Director and District Manager, may dispense with the PLC if, after a period of time and after giving sufficient notice, there is no interest from the public in continuing with the PLC. The need for a PLC shall be reviewed by the Company on a yearly basis.