

February 3, 2022

Report To: Travis Rob, P.Eng., Manager of Operations & Facilities

From: Craig Miller, P.Eng., Environmental Superintendent

**SUBJECT:** Update: Municipal Drinking Water Licence Appeal to MECP

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Further to the previous update submitted on December 9, 2021, please accept this update of the Town's appeal of our Municipal Drinking Water Licence (MDWL) Appeal v. the Ministry of Environment, Conservation and Parks (MECP).

On February 2, 2022, the Town received the decision from the Ontario Lands Tribunal (OLT) with respect to our appeal. The OLT decision is attached to this report. The decision was consistent with the submitted Minutes of Settlement as presented in the December 9<sup>th</sup> update report.

The OLT's decision consisted of 2 significant orders:

- 1) That the Town's appeal is granted and the MECP is to revoke Issue #3 of the MDWL and issue a new MDWL (Issue #4) without the Total Chlorine Residual (TCR) limit on the media filter backwash water.
- 2) That the Town make every reasonable effort to complete alterations to the Water Treatment Plant to be able to comply with the TCR limit prior to May 2026 when the next MDWL renewal is due. Once alterations are complete, the Town will notify the MECP and the TCR limit may be reinstated into the licence prior to the May 2026 renewal.

Administration is very satisfied with this outcome of the Town's appeal of the MDWL.

The recently approved 2022 Capital Budget for the Town of Fort Frances includes a \$50,000 line item for engineering and design works to be undertaken in the upcoming years to change the process such that the Town will be able to control the TCR in the backwash water and to perform an overall assessment of the condition of the Water Treatment Plant. Following design works, capital modifications will need to be planned and budgeted for in advance of the next MDWL issue in 2026.

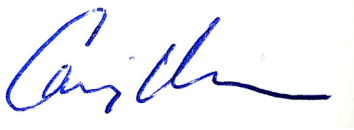
We are also hopeful that the Town will qualify for Provincial and/or Federal funding opportunities to offset engineering and capital costs that will be incurred by the Town to complete these works.

Next steps are:

- MECP will issue new MDWL (Issue #4) (2022)
- Issue RFP for engineering and design works (2022 possibly into 2023)
- Source grant funding opportunities (2022 / 2023 / 2024)
- Capital works to be included in 2023, 2024 and/or 2025 for water treatment plant modifications
- New MDWL issued in 2026

Further updates will be provided as this project continues to move forward.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Craig Miller', is written over a light yellow rectangular background.

Craig Miller, P.Eng.  
Environmental Superintendent

Attachments:

OLT Decision

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** February 02, 2022

**CASE NO(S):** OLT-21-001911  
(Formerly) 21-032

**PROCEEDING COMMENCED UNDER** section 127(1) of the *Safe Drinking Water Act*, 2002, S.O. 2002, c. 32, as amended

Appellant:	The Corporation of the Town of Fort Frances
Respondent:	Director, Ministry of the Environment, Conservation and Parks
Subject of appeal:	Appeal of conditions on a municipal drinking water licence for the Town of Fort Frances drinking water system
Reference No.:	224-101
Upper Tier:	Rainy River District
OLT Case No.:	OLT-21-001911
Legacy Case No.:	21-032
OLT Case Name:	Fort Frances (Town) v. Ontario (Environment, Conservation and Parks)

**Heard:** January 25, 2022 by video hearing

**APPEARANCES:**

**Parties**

The Corporation of the Town of  
Fort Frances

Director, Ministry of the Environment,  
Conservation and Parks

**Counsel**

Jennifer Danahy

Paul McCulloch  
Sarah Valair

**DECISION DELIVERED BY WARREN MORRIS AND ORDER OF THE TRIBUNAL**

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## INTRODUCTION

[1] On May 11, 2021, the Director, Ministry of the Environment, Conservation and Parks (the “Director”), issued Municipal Drinking Water Licence No. 224-101 (“Licence”), Issue No. 3 to the Corporation of the Town of Fort Frances (the “Town”). The Licence was a renewal of a former licence. The License became effective May 11, 2021 for a period of 5 years. The Licence contained a new provision. Specifically, Schedule C, Table 3 of the Licence limits the annual average concentration of Total Chlorine Residual (“TCR”) of Media Filter Backwash Effluent to 0.02 milligrams per litre (“mg/L”) (the “TCR Limit”).

[2] The TCR Limits in the Licence are being imposed by the Director on all licences province-wide as a new requirement as licenses come up for renewal. Some Municipal drinking water treatment systems are capable of compliance with the new TCR Limits immediately, using existing equipment. However, the Town states that the Fort Frances Drinking Water System, as built, did not contain the equipment or systems to permit compliance with the new TCR Limit.

[3] On May 11, 2021, the Town appealed the License. More specifically, the Town appealed Schedule C, Table 3 as part of s. 1.5.5 on page 12 of 20. Table 3 specifies limits on Total Suspended Solids and Total Chlorine Residual of Media Filter Backwash Effluent of 25 mg/L and 0.02 mg/L, respectively.

[4] The Town and the Director engaged in discussions regarding the Town’s inability to be in immediate compliance with the new condition in the Licence. As a result, the Town and the Director proposed to settle the appeal on the following terms as set out in a settlement letter dated January 18, 2022 from the Town’s counsel:

1. The Tribunal would order the Director to amend the Licence by removing the TCR Limit;

2. Once the Tribunal has issued its order, the Director will issue a new license, the draft of which is attached to this letter as Appendix A (the “New Licence”);
3. The Town commits in making every reasonable effort, including obtaining and/or providing appropriate funding, to complete the physical alterations to the Fort Frances Drinking Water System necessary to comply with the TCR Limit prior to May 2026 when the Town will be required to apply for and obtain a licence renewal;
4. Should the Town complete alterations to the Fort Frances Drinking Water System prior to May 2026, such that it is able to comply with the TCR Limit, the Town will inform the Director and agree that the TCR Limit may be immediately reinstated into the Licence without waiting for the May 2026 license renewal.

[5] Essentially, the Parties seek to replace the License (Issue No. 3) with a “New Licence” (Issue No. 4), which is identical in every way to the Licence except that it removes the row in Table 3 of Schedule C that makes reference to the Total Chlorine Residual of Media Filter Backwash Effluent of 0.02 mg/L. The row in Table 3 referencing Total Suspended Solids of Media Filter Backwash Effluent of 25 mg/L remains.

## ISSUES

[6] The issues to be addressed are:

- a. whether, based on the proposed settlement, all statutory requirements and the public interest are satisfied, as required under Rule 12.1 of the Tribunal’s *Rules of Practice and Practice Directions* (“Rules”); and
- b. whether the Tribunal should direct the Director to revoke the Licence and replace it the New Licence and dismiss the proceedings.

## **EVIDENCE AND SUBMISSIONS**

### **Evidence of the Director and the Town**

[7] No affidavit evidence was submitted to the Tribunal prior to the Settlement Hearing. At the Settlement Hearing, after a brief recess, the Director called Holly Worth as a witness.

[8] Ms. Worth testified that she is trained as a civil engineer and holds the position of Senior Water Engineer with the Director, having over 10 years experience dealing with water resource management/regulation in various roles with the Director and elsewhere. Ms. Worth described the mechanics of a water filtration system, particularly describing how the Town's system uses treated drinking water during the filter backwash cleaning process. Because the Town uses chlorinated drinking water during the backwash process, the discharge emitted will contain chlorine, possibly in excess of the newly imposed limit. The new TCR Limit was introduced as a precautionary measure primarily to be consistent with Federal standards for chlorine discharge. The cumulative affect of excessive chlorine discharge into the environment could impact waterways and fish habitat. At the time of issuing the Licence, Ms. Worth did not anticipate the challenges that municipalities such as the Town would face in meeting the new requirement. She testified that she understands and agrees that it will take the Town a fair bit of time to make changes to their system. Given the requirements for municipal budget approvals, redesign and implementing modifications, Ms. Worth believes that four-and-a-half years is a reasonable time frame for the Town to make the necessary changes to ensure future compliance with the TCR Limit.

[9] Ms. Worth read the letter of settlement dated January 18, 2022 submitted by the Town's counsel setting out the background and proposed settlement. She fully agrees

that the content of the letter reflects the terms of settlement reached and satisfies the Director.

[10] When asked to assess the potential risk of delaying the new TCR Limit and the Town's continued operation as is, Ms. Worth was not concerned. She explained that the Town's system has been operating without the TCR Limit since it was built in 1987 and she was not aware of any adverse effects.

### **Submissions of the Director**

[11] Paul McCulloch, counsel for the Director, confirmed the authority of the Director to regulate under the *Safe Drinking Water Act* ("SDWA"), and further that the Tribunal has similar authority of the Director pursuant to s. 132 of the *SDWA*.

[12] In addressing the public interest, Mr. McCulloch clarified that removal of the TCR Limit would have absolutely no impact on drinking water. He further explained that the TCR Limit relates to the backwash discharge, which meets the definition of "sewage" under the *Ontario Water Resources Act* ("OWRA") but would be exempt from *OWRA* by virtue of an exemption for drinking water systems under the Regulation. The backwash would be regulated under the *SDWA* as a "minor discharge". Mr. McCulloch explained that the legislation was such to eliminate the need for a municipality to apply for a license under multiple statutes.

[13] Mr. McCulloch submitted that the absence of the TCR Limit for an additional four-and-a-half years possess virtually no significant risk in the short term and only a small possible cumulative risk in the long term. He notes that the Town's system has been operating for over 30 years without any known problem. The new TCR Limit is merely precautionary and to be consistent with Federal standards. For these reasons, Mr. McCulloch submits that the settlement is consistent with the public interest.

## Submissions of the Town

[14] At the hearing, the Town did not make its own submissions but instead, relied on its letter of settlement dated January 18, 2022 and the submissions made by the Director.

## ANALYSIS AND FINDINGS

[15] The procedure to be followed by the Tribunal, where there is a proposed settlement before a hearing event, is set out in Rule 12.1 of the Tribunal's Rules. The Rule states:

12.1 The Tribunal may hold a hearing on the terms of a settlement if the parties in the proceeding agree to a settlement prior to a hearing event. The Tribunal may issue any directions to the parties necessary to ensure compliance with all statutory requirements, or to assist the Tribunal, prior to convening the settlement hearing. If all statutory requirements and the public interest are satisfied, the Tribunal may issue an order approving the settlement, with any necessary amendments.

[16] Under this Rule, if all statutory requirements and the public interest are satisfied, the Tribunal may issue an order approving a proposed settlement, with any necessary amendments. Section 132(2) of the *SDWA* provides authority for the Tribunal to exercise its discretion. It states:

- (2) The Tribunal may do any or all of the following on a hearing in relation to a reviewable decision:
1. Confirm, vary or revoke the decision.
  2. Direct the Director to take such action as the Tribunal considers necessary for the purposes of this Act.
  3. Substitute its opinion for that of the Director.

[17] In exercising its discretion regarding whether the statutory requirements and the public interest are satisfied, the Tribunal looks to the purposes of the *SDWA*. These purposes are set out in section 1 as follows:



1. The purposes of this Act are as follows:
  1. To recognize that the people of Ontario are entitled to expect their drinking water to be safe.
  2. To provide for the protection of human health and the prevention of drinking water health hazards through the control and regulation of drinking water systems and drinking water testing.

[18] Based on the uncontradicted evidence of Ms. Worth and the submissions of counsel for the Director, the Tribunal is satisfied that the settlement terms pose no risk whatsoever to drinking water and only a remote and insignificant impact on the environment. As such, the Tribunal finds that the proposed settlement satisfies the statutory requirements in the *SDWA* and is in the public interest. The Tribunal is satisfied that the Town is not able to comply with the TCR Limit, without modification to the Town drinking water system. No purpose would be served by maintaining a provision in a Licence that is incapable of technical or legal compliance. The settlement merely delays the introduction of new and more stringent standards to the renewed drinking water licence. Both parties agree that the new TCR Limit will be included in the next iteration of the licence. The parties have included provisions in their settlement to ensure that the Town takes the necessary steps to make the required changes to their drinking water system in a timely matter, and the Director is satisfied that the schedule of work is achievable.

[19] Based on the proposed settlement, the Tribunal finds that the Director's issuance of the Licence should be revoked and replaced by the New License, and the proceedings should be dismissed.

## **ORDER**

[20] The Tribunal orders that the appeal is allowed, in part, and directs the Director to revoke the Director's Licence (Issue No. 3) and replace it by issuing a new license (Issue No. 4) with the only change being the removal of a row in Table 3 of Schedule C that makes reference to the Total Chlorine Residual of Media Filter Backwash Effluent of 0.02 mg/L (TCR Limit).

[21] The Tribunal orders that the Town, as stated in the terms of settlement, make every reasonable effort, including obtaining and/or providing appropriate funding, to complete the physical alterations to the Fort Frances Drinking Water System necessary to comply with the TCR Limit prior to May 2026 when the Town will be required to apply for and obtain a licence renewal. Should the Town complete alterations to the Town's drinking water system prior to May 2026, such that it is able to comply with the TCR Limit, the Town will inform the Director and agree that the TCR Limit may be immediately reinstated into the Licence without waiting for the May 2026 license renewal.

[22] The Tribunal orders that the proceedings are dismissed.

*"Warren Morris"*

WARREN MORRIS  
MEMBER

**Ontario Land Tribunal**

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.