



July 2, 2021

**Via e-mail: sean.avery@ontario.ca**

Ministry of the Environment, Conservation and Parks  
Technical Assessment and Standards Development Branch  
40 St Clair Avenue West, 7<sup>th</sup> Floor  
Toronto, Ontario  
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**Attention: Sean Avery  
Air Pollution Control Engineer**

**RE: COMMENTS ON DRAFT GUIDELINE TO ADDRESS ODOUR MIXTURES IN ONTARIO  
ERO NUMBER 019-2768**

On behalf of Ontario's asphalt producers, the Ontario Road Builders' Association (ORBA), would like to provide the following written comments in response to the posting of a draft of the Guideline to Address Odour Mixtures in Ontario (Odour Guideline) on the ERO (Environmental Registry for Ontario) for public comment (ERO #019-2768).

The Ontario Road Builders' Association is proud to represent the road building sector in Ontario. Our members build the majority of provincial and municipal roads, bridges and transportation infrastructure across the province. In addition, ORBA represents all major asphalt producers across Ontario and approximately 95% of all asphalt mix facilities.

We remain concerned that elements of the draft Odour Guideline, as currently worded, will have serious adverse effects on the continued viability of Ontario's asphalt producers, and, in turn, its world class transportation infrastructure industries. If plants are not able to comply with provincial regulations, they cannot innovate, and some may be forced to cease producing asphalt altogether, making the industry less competitive. We believe that this unintended consequence runs counter to the government's philosophy of ensuring that Ontario is open for business, especially at a time when the government is embarking on a multi-billion-dollar transportation infrastructure expansion and rehabilitation plan that will require a steady asphalt supply, and that will help reduce congestion and associated emissions, better connect our economy and improve the safety of the travelling public.

The technical comments in this letter have been prepared with full consultation and support from all levels of our membership, and, therefore, represent our united comments and concerns. We trust these comments will be appropriately considered and incorporated into the final Odour Guideline. ORBA believes that these comments represent necessary and practical improvements to the draft Odour Guideline for both asphalt mix facilities and the Ministry of the Environment, Conservation and Parks (MECP).

The following is a list of the concerns that we would like to draw your attention to.

1. Table A lists “Asphalt Paving Manufacturing facilities (Portable)”. Although asphalt manufacturing and block manufacturing share the same NAICS code, these are two very different operations. If the intention is to capture both types of operations, then this should be split into two entries. Note, we are unaware of any portable asphalt block manufacturing facilities.
2. There is a note under Table C clarifying that asphalt paving manufacturing facilities (not portable) which are registered for Volatile Organic Compounds (VOCs) under the Asphalt Mix - Industry Standard are not included/captured by Table C, thereby having no odour requirements under the Odour Guideline. The same note should be added to asphalt paving manufacturing facilities (portable) under Table A as portable asphalt paving manufacturing facilities may also register for VOCs under the Asphalt Mix - Industry Standard.
3. The Asphalt Mix - Industry Standard was finalized on October 27, 2020. As such, the 2nd note under Table C and the last entry in Table G should be edited to remove "(proposed)".
4. We see no valid reason for stationary asphalt paving manufacturing facilities to be categorized as Tier 2 and we request that all asphalt paving manufacturing facilities (both portable and stationary) be categorized as Tier 1.

Asphalt paving manufacturing facilities have been submitting applications for Certificates of Approval and Environmental Compliance Approvals since their inception more than 40 years ago. The MECP has always had the opportunity to add odour related conditions in these permits and rarely has the MECP determined there was a need to do this. The majority of the 150+ asphalt paving manufacturing facilities in Ontario are well managed and co-exist amicably with their neighbours.

5. We understand from the Odour Guideline that facilities captured by Tier 2 (e.g., stationary asphalt paving manufacturing facilities) which meet the setback distance are still required to prepare and implement an Odour BMPP as part of an ECA application. This is inconsistent with how Tier 1 facilities (e.g., portable asphalt paving manufacturing facilities) are dealt with and it is inconsistent with the concept of setback distances. We would suggest that a facility in Tier 2 that meets the setback distance would only be required to prepare and implement an odour BMPP if the facility had validated and frequent odour complaints in the previous two years.
6. We also understand from the Odour Guideline that facilities captured by Tier 2 which do not meet the setback distance are required to prepare and implement an Odour BMPP and prepare an Odour Technology Benchmarking Report (OTBR) as part of an ECA application. We concur that the preparation and implementation of an odour BMPP is appropriate in this case. However, there should be no requirement to prepare an OTBR unless the facility had validated and frequent odour complaints in the previous two years. The preparation of an OTBR is a significant and costly exercise and should only be undertaken when properly justified.
7. With respect to the Technical Bulletin for Minimum Expectations, we are very concerned that they may not take into account site-specific situations, such that facilities could be required to implement controls or practices that are impractical, excessive and/or unnecessary. Further, based on our experience, once there are minimum expectations those expectations will form part of all ECAs for that type of facility, regardless of whether or not they are needed.

Before a Technical Bulletin for Minimum Expectations for asphalt paving manufacturing facilities is developed, ORBA strongly requests the opportunity to be involved in its development.

8. The requirement for the OTBR to be prepared following the ministry's guidance from the Guide to Requesting a Site-Specific Standard (GRSSS) is not appropriate for a nuisance impact. Requiring a facility to pre-conduct compliance level Ministry approved odour testing/modelling as part of an ECA application when they have no history of odour complaints is excessive. Further, this is made more inappropriate because the Ministry has not set a compliance limit for nuisance odour mixtures.

Ministry approved compliance testing for asphalt paving manufacturing facilities is a very expensive undertaking, requiring triplicate testing of each source. The cost is even higher for our industry because it will require the construction of enclosures around odour sources to enable testing.

9. The definition for Point of Odour Reception should be the same as the definition in the EASR Publication. This will allow our members to plan with more certainty and will promote consistency.
10. The phase in period for the Odour Guideline should be one year after the example Technical Bulletin for Minimum Expectations and OTBRs are made available to be consistent with the MECP's one-year service standard for ECA applications. This will prevent those few asphalt paving manufacturing facilities that have ECA applications in the queue or will soon have ECA applications in with the MECP from being penalized relative to their competitors whose ECA applications will not be prepared until after the Technical Bulletin for Minimum Expectations for asphalt paving manufacturing has been finalized.

Unjustifiably categorizing stationary asphalt paving manufacturing facilities as a Tier 2 industry (rather than as a Tier 1 industry) will incur significant regulatory costs that:

- a) will unintentionally provide a financial barrier for the asphalt paving manufacturing industry to compete for road construction projects, thereby inherently promoting the use of concrete for use in road construction. It is ORBA's opinion that asphalt paving has a lower overall carbon footprint than concrete, is a safer paving option, and is a more cost-effective material for most road building applications.
- b) will result in some asphalt paving manufacturing facilities closing and others choosing to avoid situations triggering ECA amendments, leading to business stagnation, lack of innovation, and dis-incentive to implement environmental and energy reduction improvements.
- c) does not promote Ontario's Open for Business policy, which aims to "cut red tape across government to help create good jobs and make it easier and cheaper to do business in Ontario."

Thank you for the opportunity to provide comments. Please don't hesitate to contact Andrew Hurd, Director Policy and Stakeholder Relations at [andrew.hurd@orba.org](mailto:andrew.hurd@orba.org). We are immediately available to answer any questions regarding this submission.

Sincerely,



Bryan Hocking  
Chief Executive Officer  
Ontario Road Builders' Association

Cc: ORBA Board of Directors  
Ontario Asphalt Pavement Council