

Lyon's Creek East Public Meeting Update No. 6

May, 2008

In June, 2007 a Public Meeting was held at the Cooks Mills Hall to inform the community about the findings of recent studies which were undertaken to assess areas of suspected sediment contamination in Lyon's Creek East. In addition, options for managing the sediments were presented for input and comment. This work is being performed by a multi-agency team for the Niagara River Remedial Action Plan (RAP).

As a result of citizens expressing concern for more information on background information, study findings, impact assessment, and the decision making process for a final remedial management option, a Community Liaison Committee (CLC) was formed in September, 2007. The CLC provides an opportunity for concerned individuals, group representatives and/or community representatives to discuss their concerns relative to the sediment study process. CLC meetings have been held at 7:00 p.m. on the fourth Tuesday of the month.

A CLC meeting was held Tuesday April 22, 2008 where Ian Barrett, Aquatic Habitat Biologist with the Niagara Peninsula Conservation Authority (NPCA) made a presentation *Background to Environmental Legislation Applicable to Remediation Works in Lyon's Creek*. Sections of Lyon's Creek East are identified as Provincially Significant Wetlands (PSWs). The following is a summary of Mr. Barrett's presentation.

There are 18 pieces of Provincial and Federal legislation that apply to works in and around water in Ontario. Five key pieces of legislation were discussed. (1) *Conservation Authorities Act*. This Act was originally created in 1946 in response to erosion and flooding issues. It was amended in 2002 and one of the sections requires the permission of the Conservation Authority for straightening, changing, diverting or interfering with the existing channel of a river, creek or stream or for changing or interfering in any way with a wetland.

(2) *Ontario Regulation 155/06 which is the NPCA Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses*. Generally, the NPCA does not permit any development or site alteration to PSWs but some undefined restricted uses are permitted. Land use or alterations from a restricted use, must maintain the ecological function and integrity of the wetland.

(3) *Fisheries Act*. This Act is administered by Fisheries and Oceans Canada (DFO) in partnership with the NPCA. Any project likely to result in a major impact must be approved by DFO. A key section of the *Fisheries Act* is that no person shall carry on any work that results in harmful alteration, disruption or destruction of fish habitat. A guiding principal of the Act is that there is no net loss of the productive capacity of fish habitat. If alterations are authorized that result in no net loss of the productive capacity then any work must be able to rehabilitate the productive capacity of fish habitats including the beneficial restoration of water quality.

(4) *The Species at Risk Act*. This Act is administered by the DFO and became law in 2002 and its purpose is to prevent wildlife species from being extirpated (extinct in Ontario), endangered or threatened as a result of human activity and to manage species of special concern to prevent them from becoming endangered or threatened. One key aspect is that no one shall damage or destroy the residence or any part of the critical habitat of one or more individuals of a wildlife species that is listed as endangered, threatened or extirpated. The Lake Chubsucker is a *Threatened Species* and the PSW within Lyon's Creek East contains the last remaining population in Niagara. The flow augmentation from the Welland Ship Canal is thought to provide suitable water clarity to maintain preferable habitat conditions.

(5) *Endangered Species Act*. This Act is administered by the Ministry of Natural Resources (MNR) and an updated *Endangered Species Act* comes into force on June 30, 2008 and is intended to compliment the *Species at Risk Act*. The new Act directly protects all those species designated as *Extirpated*, *Endangered* or *Threatened* found on a list of approximately 200 plants, fish, amphibians, reptiles and animals for *Species at Risk in Ontario* (www.ontla.on.ca/bills/bills-files/38_Parliament/Session2/b184.pdf). The Lake Chubsucker is on Schedule 4 of *Species to be Listed as Threatened*.

Mr. Barrett's presentation along with previous presentations are available on-line on the NPCA's Lyon's Creek East Contaminated Sediment Management Strategy web site. The html is www.conservation-niagara.on.ca.

The Federal Government through Environment Canada made a funding announcement for both Lyon's Creek East and West on April 23, 2008. The Honourable Rob Nicholson, P.C., Q.C., Member of Parliament for Niagara Falls, Minister of Justice and Attorney General of Canada, Dean Allison, Member of Parliament for Niagara West-Glanbrook, and Rick Dykstra, Member of Parliament for St. Catharines made the announcement and the following is the backgrounder information:

Cleaning up the Niagara River- Part of the Government of Canada's Action Plan on Clean Water

"With an investment of up to \$2.9 million, our Government is taking real action to clean up a severely contaminated site within the Great Lakes - Niagara River. Through this commitment, the Government of Canada is addressing the principal sediment challenge facing the Niagara River Area of Concern, the remediation of contaminated sediment in a tributary of the Niagara River, Lyons Creek.

The Niagara River is the major waterway interconnecting Lake Erie and Lake Ontario. Flowing north from Lake Erie, the Niagara River flows for a distance of 58 kilometres to Lake Ontario. Extending along the entire length of the Canadian side of the Niagara River, including Niagara Falls and the Welland River Watershed, the Niagara River accounts for 83% of the water flowing into Lake Ontario, and therefore significantly influences Lake Ontario's water quality and fish productivity.

Assessments of Lyons Creek identify elevated concentrations of PCBs (Polychlorinated Biphenyls), arsenic and zinc in sediment and stream banks of Lyons Creek West, and PCBs in Lyons Creek East. Human Health Risk Assessments concluded negligible risks due to skin exposure to PCBs and to fish consumption for Lyons Creek East. Risk to human health from arsenic-contaminated sediment along Lyons Creek West was eliminated when the local industry remediated the site in 2007. Ecological Risk Assessment studies for Lyons Creek East and West confirmed the need for sediment management.

The Government of Canada is consulting the local public on the management options. We expect that local stakeholders will lead the next phase of the project which is to select and implement the preferred management option(s) of these areas. Potential options for Lyons Creek West and Lyons Creek East could include excavation and/or infilling, possible restoration of wetlands or monitored natural recovery. We expect to begin clean-up project in 2009 and complete it by 2012.

Areas of Concern are severely degraded geographic areas within the Great Lakes Basin. Restoring environmental quality is a priority due to their impact on local and basin-wide ecosystem health. In August 2007, the governments of Canada and Ontario announced the 2007 Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem. The Agreement focuses on cleaning up the remaining 15 Canadian Areas of Concern in the Great Lakes. The Niagara River Area of Concern clean up is part of the Government of Canada's Action Plan for Clean Water and its goal of ensuring that all Canadians have access to clean, safe and healthy water."

For further information on this announcement, please contact:

Eric Richer, Press Secretary Office of the Minister of the Environment (819) 997-1441 or

<http://www.ec.gc.ca/default.asp?lang=En&n=714D9AAE-1&news=D86CBAB6-9670-4066-AF97-CC7A1A2588DF&printversion=true>

Future CLC Meetings

A total of five CLC meetings have been held at the NPCA's offices in Welland from September, 2007 to April, 2008. Presentations on health risk, ecological risk, wetland characterization and potential sediment remedial techniques for Lyon's Creek East are available online at NPCA's Lyon's Creek East Contaminated Sediment Management Strategy web site. The html is www.conservation-niagara.on.ca.

Attendance at these CLC meetings has been low, averaging three to four people. As a result, we will be postponing future meetings until the Fall of 2008. Over the summer, the information on Lyon's Creek East will be made available through this monthly newsletter and the above referenced web site. For further information please contact David Slaine, Project Coordinator at 905-646-7931 or via email at dslaine@terradynamics.com.