

October 29, 2013

BY EMAIL

Alex Blasko, Special Project Officer
Ministry of the Environment
Environmental Assessment and Approvals Branch
2 St. Clair Avenue West
Toronto, ON, M4V 1L5

Dear Mr. Blasko:

**RE: PROPOSED TERMS OF REFERENCE: WALKER ENVIRONMENTAL GROUP
PROPOSED “SOUTHWESTERN LANDFILL” (ZORRA TOWNSHIP)**

Please be advised that we are counsel for the Oxford People Against the Landfill (“OPAL”) Alliance with respect to the above-noted matter.

On behalf of OPAL, we are writing to provide the Ministry of the Environment (MOE) with legal and technical reasons why the proposed Terms of Reference (TOR) should not be approved under the *Environmental Assessment Act* (EAA).

Accordingly, please find attached three detailed reports on the proposed TOR:

- CELA’s legal analysis of the proposed TOR;
- technical analysis by Wilf Ruland, P.Geo., of the groundwater/surface water aspects of the proposed TOR; and
- technical analysis by Stephen Thorndyke, M.Eng, P.Eng, of the air quality/odour aspects of the proposed TOR.

Please be advised that hard copies of these documents will be sent by courier to you. In addition, OPAL will be submitting its additional comments on the proposed TOR to the MOE under separate cover.

(i) Legal Concerns

In the attached report, CELA compares the various components of the proposed TOR to the requirements of the EAA, MOE Codes of Practice, and well-established EA principles.

Among other things, CELA’s analysis reveals significant data gaps, questionable assumptions, unacceptable EA methodology, and an alarming lack of detail in the proposed TOR about how the direct and cumulative impacts of the enormous landfill will be identified, evaluated, and managed for EA planning purposes.

Canadian Environmental Law Association

T 416 960-2284 • F 416 960-9392 • 130 Spadina Avenue, Suite 301 Toronto, Ontario M5V 2L4 • cela.ca

CELA also notes that the sound recommendations provided by the MOE to the proponent earlier this year in relation to the draft TOR have not been satisfactorily addressed or acted upon in the proposed TOR submitted for approval under the EAA.

Accordingly, CELA concludes that the proposed TOR does not meet the legal test for approval under subsection 6(4) of the EAA:

In this case, it is our opinion that there is no reasonable basis upon which the Minister can conclude that an EA conducted in accordance with WEG's proposed TOR will be consistent with the purpose of the EAA and the public interest. To the contrary, CELA concludes that the public interest and the purpose of the EAA will be thwarted or undermined by permitting WEG to proceed with a focused EA that not only avoids key environmental planning issues (i.e. need/alternatives), but also fails to ensure that the potential (if not inevitable) environmental impacts of the massive undertaking will be fully identified and properly evaluated during the EA process. In CELA's view, the proposed TOR should be rejected accordingly (emphasis added, page 5).

(ii) Groundwater/Surface Water Concerns

In his attached report, Mr. Ruland provides a detailed critique of the inadequacy of the proposed TOR, supporting documents and draft work plans in the context of groundwater and surface water concerns.

Accordingly, Mr. Ruland's primary recommendation is that the Minister should reject the proposed TOR:

[I]t is recommended that that the Minister of the Environment should refuse to approve the Terms of Reference for the Southwestern Landfill Proposal (page 7).

Mr. Ruland summarized the main reasons for this recommendation as follows:

- The proponent (Walker) does not own the property on which they propose to site a landfill, and Walker has signed a secret agreement with the owner of the property (Carmeuse) which has unacceptable negative implications for the EA.
- The ToR does not adequately define baseline conditions for the EA.
- Walker has failed to identify the Phase 1 Lake as a feature in the environment worth considering in the EA, even though the lake is teeming with life and is in fact the most significant environmental feature on the Carmeuse property. The draft EA Workplans prepared in support of the ToR do not offer any indication that the proponent intends to assess the impacts of the proposed landfill on the adjacent Phase 1 Lake.
- The ToR and the EA Criteria fail to consider karst issues, even though it is obvious that karst enhancement of bedrock permeabilities is prevalent in the area. Despite numerous

requests for a karst investigation during the public consultations, the ToR fails to respond positively to those requests.

- There are numerous problems with the proposed EA criteria which are provided in the ToR.
- The ToR fails to spell out the benchmarks (ie. government regulations, policies, etc.) which will be used to determine whether any of the potential impacts of the landfill proposal are considered unacceptable.
- There are numerous major problems with the draft Groundwater and Surface Water Assessment Work Plan and with the draft Ecology Work Plan - both Work Plans are incomplete and lacking in critical details which are fundamental to an environmental assessment.

Each of these flaws by themselves undermine the EA and could be considered grounds for rejecting the ToR. Taken together they amount to a fatal set of flaws which cannot be allowed to pass, making rejection of the ToR the only reasonable available option regarding this undertaking (emphasis added, page 19).

(iii) Air Quality/Odour Concerns

In his attached report, Mr. Thorndyke identifies a number of gaps, oversights and deficiencies in the proposed TOR, supporting documentation, and draft work plans related to air quality/odour impacts.

Accordingly, Mr. Thorndyke concludes as follows:

I have concluded from this review of the TOR, Supporting Document and Work Plan that the information given in these documents is grossly inadequate and does not, therefore, allow a complete or accurate assessment of the methodology described by the proponent (WEG) for the proposed Environmental Assessment to be made (emphasis added, page 5).

Mr. Thorndyke goes on to provide a lengthy list of air-related topics that should have been addressed in more detail in the proposed TOR and work plans, including baseline conditions, waste source/composition, additional air quality parameters, cumulative effects, monitoring/reporting, and mitigation/contingency measures.

For the foregoing reasons, our client calls upon the Minister to refuse to approve the proposed TOR submitted by the proponent. Similarly, in light of the fundamental flaws within the proposed TOR, our client further requests the Minister to refuse to amend and approve the TOR submitted by the proponent.

Please feel free to contact the undersigned if you have any questions or comments arising from this letter or the attached submissions.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Richard D. Lindgren
Counsel

cc. Steve McSwiggan, OPAL
Suzanne Crellin, OPAL
Theresa McClenaghan, CELA