

September 11, 2020

BY EMAIL

Darren Fry
Project Director, Southwestern Landfill EA
Walker Environmental
160 Carnegie Street
Ingersoll, ON N5C 4A8

Dear Mr. Fry:

**RE: COMMENTS ON DRAFT ENVIRONMENTAL ASSESSMENT: PROPOSED
SOUTHWESTERN LANDFILL**

Since 2013, the Canadian Environmental Law Association (CELA) has served as counsel for the Oxford People Against the Landfill (OPAL) Alliance with respect to the above-noted matter.

CELA has been instructed by our client to submit comments on the Draft Environmental Assessment (Draft EA) prepared by Walker Environmental (Walker) in relation to the proposed Southwestern Landfill in Zorra Township, in the County of Oxford.

Accordingly, CELA has carefully reviewed the Draft EA (dated March 2, 2020) and its technical supporting documentation, and we have compared these materials to the applicable provisions of the *Environmental Assessment Act (EAA)*, the approved (and amended) Terms of Reference (TOR), and relevant guidance documents issued by the Ministry of the Environment, Conservation and Parks (MECP) for consideration and use in the EA process.

This CELA letter should be read in conjunction with the detailed submission sent separately to Walker by OPAL, and with the attached opinion letter prepared for OPAL by Wilf Ruland, P. Geo, regarding the water-related aspects of the Draft EA.

For the following reasons, it is CELA's opinion that the Draft EA contains numerous information gaps, outstanding deficiencies and fundamental problems, including:

- the Draft EA does not contain sufficient information, at an appropriate level of detail, to accurately describe existing baseline conditions, or to identify and assess the undertaking's direct, indirect and cumulative impacts upon the environment and human health;
- the proponent's decision-making process, as reflected in the Draft EA and supporting documents, is not traceable, logical or replicable;
- the Draft EA does not fully conform with the prescriptive requirements of the approved TOR; and

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- the public consultation program during the EA process was not open, effective or transparent despite the proponent's claims to the contrary.

In our view, the central question under the *EAA* may be framed as follows: does the Draft EA satisfactorily discharge Walker's high evidentiary onus of demonstrating that the proposed Southwestern Landfill will result in the "betterment" of local residents and other Ontarians by providing for the protection, conservation and wise management of the environment (*EAA*, section 2)?

On the available evidence, CELA concludes that the answer to this threshold question is a clear and resounding "no." Accordingly, on behalf of our client, CELA submits that the proposed undertaking cannot be approved under the *EAA*, with or without conditions, on the basis of the Draft EA. CELA therefore recommends that the Draft EA should be withdrawn, and that the EA process should be discontinued or terminated forthwith by Walker.

It is beyond the scope of this letter to inventory every shortcoming that CELA has identified in the Draft EA and supporting documentation. Instead, the purpose of this letter is to highlight what CELA regards as some of the most significant problems that exist within the Draft EA materials and the EA process undertaken to date by Walker.

PART I - BACKGROUND

(a) Overview of the Proposed Mega-Landfill

Walker proposes to construct and operate the proposed Southwestern Landfill, which is to be located in Zorra Township, in the County of Oxford, in close proximity to the Town of Ingersoll and to Centreville and Beachville in the Township of South-West Oxford.

If approved, this private landfill would be one of the largest in the province, as Walker proposes to dispose of 850,000 tonnes/year¹ of solid, non-hazardous waste from an all-Ontario service area. In addition, up to 250,000 tonnes/year of cover material will also be trucked to the site, resulting in an overall total of 1,100,000 tonnes/year of incoming waste/soils.²

Projected over the anticipated 20-year lifespan of the landfill, this annual fill rate (if approved) would result in the deposit of over 17,000,000 m³ of waste/cover material at the site.³ This presumes that no further expansions will be sought by Walker as the landfill approaches its approved capacity over its operating lifespan.

Aside from the enormous scale, capacity and magnitude of the landfill, the Walker proposal is also noteworthy because of its proposed location on private property owned by a third-party, Carmeuse Lime (Canada) Ltd. (Carmeuse). In particular, Walker has apparently acquired contractual rights

¹ Draft EA, page 92.

² *Ibid.*

³ Draft EA, page 82.

to “develop environmental businesses, including a landfill” upon the Carmeuse lands, but, to our knowledge, Walker does not actually own the subject property at the present time.

In CELA’s view, this highly unusual situation raises serious questions about whether Walker can obtain an Environmental Compliance Approval under the *Environmental Protection Act* for the proposed landfill. This is because section 3 of O.Reg.232/98 requires the instrument-holder to own the lands in question:

3. The holder of an environmental compliance approval to which a landfilling site is subject must own the entire site in fee simple, unless the site is on Crown land.

Despite this regulatory requirement, the contractual relationship between Walker and Carmeuse have not been publicly disclosed to date. For example, CELA has recently requested the proponent to provide a copy of the agreement between Walker and Carmeuse, but this request was refused.

Incredibly, it appears that the section 3 requirement under O.Reg.232/98 is not even mentioned in the Draft EA, although this issue has been previously raised by CELA, OPAL and other members of the public years ago. In these circumstances, it is possible that Walker may have made conditional arrangements to acquire the subject property if the landfill receives *EAA* approval; if so, CELA submits that this key fact should have been addressed in the Draft EA, rather than be left uncertain and undisclosed.

In addition, CELA notes that Walker proposes to establish the landfill largely below-grade on an 80 hectare portion of quarry lands licensed under the *Aggregate Resources Act (ARA)* after Carmeuse has finished extracting limestone from the area.

To CELA’s knowledge, the Carmeuse quarry lands are scheduled to be remediated in accordance with the rehabilitation plan developed under the *ARA*. It is our understanding that the current plan does not envision the conversion of former quarry lands into a large-scale landfill, even as a so-called “interim use.”

(b) Land Uses and Resources in the Vicinity of the Proposed Landfill

The lands immediately surrounding the proposed landfill are largely rural in nature, but there are number of residences and farms (e.g. along Beachville Road, Road 62/North Town Line, Zorra Line 35, Cemetery Lane, etc.) in relatively close proximity to the Carmeuse lands. Virtually all of the people living in these areas rely upon domestic wells for drinking water and livestock watering purposes. The Town of Ingersoll also relies upon groundwater for its municipal water supply.

In addition, there have been continuing public concerns about ambient air quality within the local airshed due to nearby industrial land uses and major transportation corridors (i.e. Highway 401).

The southern boundary of the proposed Carmeuse site is bordered by the South Branch of the Upper Thames River. The water quality in this watercourse is currently stressed due to various anthropogenic causes.

PART II – CELA’s COMMENTS ON THE DRAFT EA

(a) Section 1: Description of the Undertaking

Section 1 of the Draft EA simply defines the undertaking as the “provision of future landfill capacity at the Carmeuse Lime (Canada) Ltd. site in Oxford County for solid, non-hazardous waste generated in the Province of Ontario.”⁴

In response, CELA notes that this peculiar definition does not quantify the proposed site capacity, specify the operating lifespan of the landfill, or to characterize (or breakdown) the various types of MSW and/or ICI wastes that Walker hopes to dispose at the facility. Even specific property identifiers (i.e. lot/concession number or municipal address) for the quarry location (or landfill footprint area) are conspicuously absent from this upfront definition of the undertaking.

In CELA’s experience, this cryptic definition of the undertaking departs from well-established EA practice in Ontario’s waste sector, particularly in situations where the proponent is proposing a new landfill of a specific size, scale, capacity and location. Accordingly, CELA submits that this ambiguous definition is inadequate and unacceptable for EA planning purposes.

(b) Section 2: Identification of the Proponent

Section 2 of the Draft EA identifies the proponent as Walker, and provides some brief contact information for the proponent’s representative in relation to this proposed undertaking. However, the fact that Carmeuse has apparently given Walker permission to construct a landfill on its property raises the issue of co-proponency (i.e. whether both companies should be described as proponents), which has not been fully addressed or adequately explained in the Draft EA.

In this regard, CELA notes that the MECP’s comments on the original proposed TOR highlighted the need for further information about the precise relationship between Walker and Carmeuse:

The relationship between Walker and Carmeuse Lime Canada (Carmeuse) is unclear from the information provided in the TOR. Additional detail should be provided to explain why Walker’s only potential site for a landfill is located on lands owned by Carmeuse.⁵

Despite this reasonable request from the MECP, the Draft EA still fails to provide adequate information on these two key points.

In addition, Section 2 of the Draft EA goes on to claim that Walker has the “knowledge, experience and capability” to carry out the EA process.⁶ In our view, the deficient content of the Draft EA (and our client’s concerns about the conduct of the EA process described below) leads CELA to the contrary conclusion about Walker’s self-proclaimed ability to conduct a proper EA in this case.

⁴ Draft EA, page 12.

⁵ Memorandum dated July 5, 2013 to Joseph Lyng from Michelle Whitmore (MOE), page 3.

⁶ Draft EA, page 14.

In short, the proponent's self-aggrandizing claim is irrelevant and has no proper place within EA documentation intended to fulfill statutory requirements under the *EAA*.

(c) Section 3: Background and Purpose Statement

In Section 3 of the Draft EA, Walker states that it completed a “business case” for proceeding with the proposed landfill, and offers a “problem statement” that asserts the Province of Ontario will “have a continuing shortfall of landfill capacity for the next several decades,” particularly in relation to ICI waste generated in “central and southwestern Ontario.”⁷ The Draft EA then provides an “opportunity statement” that contends Walker can develop new waste disposal capacity at the Oxford County site, which leads to a statement of purpose that is identical to the definition of the undertaking,⁸ as discussed above.

In response, CELA notes that if this circular reasoning represents the proponent's working hypothesis, then it has not been adequately proven within the Draft EA or the supporting documentation. In our view, the Draft EA merely reflect the proponent's high-level observations, questionable assumptions, and wishful thinking about current and future rates of waste generation and diversion in Ontario.

Moreover, even if there is a perceived shortage of landfill capacity in certain regions, there appears to be no logical or evidence-based justification for the all-Ontario service area being proposed by Walker. Accordingly, CELA views the proposed landfill as a so-called “solution” in search of a problem. This is particularly true in light of recent provincial initiatives under the *Resource Recovery and Circular Economy Act* that are aimed at enhancing diversion rates and implementing “extended producer responsibility” programs for a greater range of products and packaging.

(d) Section 4: Consistency with the Approved Amended TOR

In Section 4 of the Draft EA, Walker claims that the conduct and content of its EA process is consistent with the requirements of the approved TOR (as amended).⁹ Our client disputes this dubious claim for the reasons described throughout this letter.

Section 4 further claims that “extensive consultation” has occurred with Indigenous communities and interested members of the public during the preparation of the EA documentation.¹⁰ Suffice it to say that our client does not agree with Walker's self-serving assessment of the efficacy of its consultation program.

For example, based on OPAL's ongoing engagement in the EA process, our client has observed or experienced serious problems during Walker's consultation efforts, including: proponent refusal to produce cited documents; provision of ever-shifting and inadequate public comment periods; proponent refusal to allow OPAL's hydrogeologist to conduct a site visit; provision of inaccurate

⁷ Draft EA, page 15.

⁸ *Ibid.*

⁹ Draft EA, page 17.

¹⁰ *Ibid.* See also Draft EA, page 13.

information to the public; unilateral changes by the proponent in the operation of the Community Liaison Committee; poorly attended open houses held by Walker; and proponent failure to hold a single consultation event in the very municipality (i.e. Zorra Township) that would “host” the landfill if approved.

On the record, CELA concludes that there have been significant problems in Walker’s consultation efforts in relation to the Draft EA and the supporting documentation. In this regard, section 5.1 of the *EAA* imposes a mandatory duty upon the proponent to undertake meaningful public consultation throughout the EA process for the proposed landfill. In our opinion, this important statutory obligation has not been satisfied to date.

(e) Section 5: EA Methodology

Section 5 of the Draft EA sets out the scope and nature of the EA methodology that was “derived directly” from the approved TOR and utilized by Walker during the EA process.¹¹

In response, our client remains concerned that the former Environment Minister approved a “focused” TOR that did not require the proponent to assess whether there are environmentally preferable “alternatives to” the proposed undertaking, or whether there are safer or better sites for disposing the waste streams being targeted by Walker. On this point, the Draft EA simply reports that Walker’s internal investigations prior to the TOR approval revealed that there are no “alternatives to” the undertaking that could be reasonably assessed by the proponent in the EA.¹²

The unfortunate result of the focused TOR is that the Draft EA is largely limited to examining the environmental effects of a limited suite of “alternative methods,” such as alternative landfill footprints/designs, leachate treatment options, landfill gas management options, and different haul routes/entrance locations. On this point, our client reluctantly acknowledges that the Minister’s approval of the focused TOR cannot be revisited or revised at this late stage, although this is precisely what should have happened years ago to ensure that the Southwestern Landfill EA is sufficiently comprehensive and rigorous.

In any event, even in the context of a focused TOR, the question then becomes whether the prescribed EA methodology was properly applied in order to credibly identify, evaluate and mitigate potential environmental effects as the proponent selected the “preferred alternative” from each of the above-noted categories. On the basis of the information presented in the Draft EA, our client submits that this question should be answered in the negative.

In relation to Walker’s assessment of potential groundwater and surface water impacts, OPAL’s independent hydrogeologist has determined that there is a considerable amount of relevant information that is simply missing from the Draft EA. For example, the attached report from Mr. Ruland notes that the Draft EA has failed to estimate and assess the implications of the centuries-long contaminating lifespan of the landfill and its potential impacts upon the environment. In our

¹¹ Draft EA, page 18.

¹² *Ibid.*

view, this is an astonishing (if not fatal) omission from the Draft EA, and yet it is compounded by the proponent's failure to provide other key data and information, as discussed below.

(f) Section 6: Evaluation of Alternatives

Section 6 of the Draft EA summarizes the proponent's approach for evaluating and selecting "alternative methods" for carrying out the landfill proposal.¹³ As noted above, this evaluation is narrowly limited to certain design and operational options that may be available on the Carmeuse property, rather than an examination of a reasonable range of "alternatives to" the undertaking, or of potential alternative sites that may be suitable for landfilling purposes.

Walker's sparse "alternatives" analysis, as reflected in Section 6 of the Draft EA, prompted the proponent to adopt the following features for the proposed landfill:

- the landfill footprint will be located within the existing Southwest Quarry Area;
- the landfill will be configured as a "deep" design in a north-south orientation;
- a generic double composite liner system will be installed;
- an on-site leachate treatment system will be constructed to discharge treated effluent into the Thames River;
- landfill gas will be both flared and utilized for energy production; and
- the haul route will be from Highway 401 via County Road 6 to a new entrance on the northwest corner of the landfill footprint.¹⁴

These preferred options were then carried forward for further assessment in subsequent sections of the Draft EA. In CELA's view, however, the fundamental flaw is that Walker has failed or refused to collect and analyze the types of data and site-specific information needed to substantiate the proponent's findings, conclusions and recommendations regarding the environmental effects of these key components of the proposed undertaking.

For example, as noted in the attached report from Mr. Ruland, the Draft EA does not specify or include:

- the design hydraulic conductivity of the final cover system (which will affect precipitation run-off and infiltration rates);
- details demonstrating that the quarry dewatering system is a feasible contingency measure for leachate control;
- pumping test results and analyses that assess the large-scale permeabilities of the underlying geologic formations; and
- a surface water assessment (i.e. water quality, water balance, etc.) for the West Quarry Lake.

¹³ Draft EA, page 30.

¹⁴ Draft EA, page 77.

It is unclear to CELA whether the foregoing information was simply not gathered by the proponent, or whether it was collected but not presented in the Draft EA. In either case, the result is the same: the Draft EA is deficient.

(g) Section 7: Evaluation of the Proposed Undertaking

Section 7 of the Draft EA describes how Walker assessed the potential environmental effects of the proposed undertaking, which consists of the above-noted preferred methods. This section also provides a high-level discussion of the proposed design and operation of the landfill, although the Draft EA indicates that the “detailed” Design and Operations Report is still “in preparation” by Walker’s consultants.¹⁵ Section 7.3 of the Draft EA then purports to describe the environment that is potentially affected by the undertaking, and these baseline conditions are characterized by the proponent as representing the “do nothing” alternative.¹⁶

In response, CELA submits that Section 7 of the Draft EA, and the draft and final technical reports set out in Appendix F, inexplicably omit a large number of critically important pieces of information about existing environmental features/functions and natural resources in the vicinity of the proposed landfill.

For example, no details, discussions or data are presented in the Draft EA or supporting documentation in relation to the following matters:

- the significance of the West Quarry Lake as fish, bird, turtle or amphibian habitat;
- surface water sampling results for benthic organisms and freshwater mussels in the West Quarry Lake;
- the circumstances surrounding the flooding of the West Quarry Lake and its implications for landfilling at the Southwest Quarry Area; and
- the quality of effluent to be discharged from the leachate treatment facility into the Thames River, which may impact the local and downstream aquatic environment.

These and other significant evidentiary omissions are more fully catalogued and discussed by Mr. Ruland in his attached report. In the continuing absence of such information, CELA submits that it cannot be reasonably concluded that the Draft EA has fully and accurately described the environment that may be impacted by the undertaking.

This major deficiency, in turn, fundamentally undermines the reliability and soundness of the proponent’s analysis of “potential effects, mitigation and net effects” in Section 7.4 of the Draft EA,¹⁷ and similarly raises unresolved concerns about the claimed efficacy of the proposed “impact management plan” outlined in Section 7.5 of the Draft EA.¹⁸ Moreover, this deficiency makes it

¹⁵ Draft EA, page 100.

¹⁶ Draft EA, page 108 ff.

¹⁷ Draft EA, page 150 ff.

¹⁸ Draft EA, page 163 ff.

impossible to accept at face value Walker's analysis of the advantages/disadvantages of the proposed undertaking contained in Section 7.7 of the Draft EA.¹⁹

(h) Sections 8 and 9: Effects Monitoring, Reporting, Contingency Planning and EA Commitments

Section 8 of the Draft EA describes Walker's proposals for monitoring, reporting and contingency planning in relation to the proposed landfill,²⁰ while Section 9 identifies Walker's proposals for compliance monitoring of its EA commitments.²¹

In light of the above-noted information gaps, CELA submits that it is premature to determine whether these monitoring/reporting and contingency proposals are sufficiently comprehensive to address the full range of direct, indirect and cumulative effects that may be caused or contributed to by the undertaking.

For the same reason, CELA is unable to comment at this time on the adequacy of Walker's "EA commitments" or the proposed compliance monitoring measures.

(i) Section 10: Consultation

Section 10 of the Draft EA sets out the various activities carried out by Walker for the purposes of conducting public consultation during the EA process, as required by the *EAA* and the approved TOR.²²

Our client's main concerns about the inadequacy of public consultation are described above, as well as in Mr. Ruland's attached report and OPAL's separately filed submission to Walker, and need not be repeated here.

(j) Sections 11 and 12: Other Approvals Required and Amending the EA

Section 11 of the Draft EA briefly outlines some of the other statutory approvals that the proponent will have to obtain in order to construct and operate the proposed landfill.²³

CELA has no issues with this preliminary list, but notes that these other approvals only become necessary if the proposed Southwestern Landfill actually receives approval to proceed under the *EAA*. In our view, based on the paucity of data and the missing information in the Draft EA, approval under the *EAA* appears unlikely if the Minister's decision is based on the "merits" of this proposal.

For this reason, it is unnecessary at this time for CELA to comment on Walker's proposals in Section 12 of the Draft EA for amending the EA in the post-approval period.²⁴

¹⁹ Draft EA, page 166 ff and Appendix D.

²⁰ Draft EA, page 168 ff.

²¹ Draft EA, page 176 ff.

²² Draft EA, page 180 ff.

²³ Draft EA, page 215 ff.

²⁴ Draft EA, page 219 ff.

(k) Section 13: Ministry Statement of Environmental Values

Section 13 of the Draft EA argues that the environmental principles and commitments in the MECP's Statement of Environmental Values under the *Environmental Bill of Rights* (e.g. ecosystem approach, precautionary principle, cumulative effects analysis, pollution prevention, etc.) are satisfied by the EA work completed to date by Walker.²⁵

Given the significant omissions in the Draft EA identified above, CELA submits that Walker's argument should be given no weight or credence.

(l) Section 14: Conclusion – Final Rationale for the Proposed Undertaking

Section 14 of the Draft EA sets out the proponent's overall conclusions about the completeness of the EA documentation and the desirability of the proposed landfill.²⁶

In reply, CELA simply notes that unless and until the outstanding information gaps in the Draft EA are satisfactorily addressed, it is impossible to accept Walker's unsurprising and unsubstantiated claim that the proposed landfill "can be carried out in an environmentally safe and acceptable manner, and that on balance of the environmental advantages and disadvantages, this proposed undertaking would be consistent with the purpose" of the *EAA*.²⁷ In short, CELA submits that this proposition has not been sufficiently proven by the Draft EA and the supporting documentation prepared to date.

PART III - CONCLUSIONS

For the foregoing reasons, CELA concludes that despite the voluminous reports, studies and other documents generated by Walker and its consultants over the past several years, the resulting Draft EA is inadequate, incomplete, and unacceptable for the purposes of granting *EAA* approval for the proposed landfill.

Accordingly, CELA recommends that the draft EA should be withdrawn, and that the EA process should be discontinued or terminated forthwith by Walker. In our view, there is no compelling public interest reason to proceed with an EA for a proposed undertaking that does not appear to be approvable under the *EAA*.

This is particularly true in light of the recent amendments to the *EAA* which require landfill proponents to provide proof (i.e. municipal council resolution) demonstrating that the "host" municipality supports the proposed waste disposal site. To our knowledge, no local or upper tier municipality in the area of the proposed Southwestern Landfill has passed, or intends to pass, such a resolution.

²⁵ Draft EA, page 221 ff.

²⁶ Draft EA, page 223.

²⁷ *Ibid.*

In our opinion, it is unfortunate that the multi-year EA process to date has forced OPAL, members of the public, local municipalities and nearby First Nation communities to expend valuable time, energy and resources in responding to flawed EA documentation for an ill-conceived landfilling proposal at an inappropriate site. In these circumstances, CELA submits that winding down the EA process is long overdue.

We trust that this letter will be taken into account as Walker considers its next steps under the *EAA*. Please contact the undersigned if you require any additional information about the submissions made in this letter.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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cc. Bryan Smith, OPAL

Encl.