

May 20, 2014

BY EMAIL

Michelle Whitmore, Special Project Officer
Ministry of the Environment
Environmental Approvals Branch
2 St. Clair Avenue West
Toronto, ON, M4V 1L5

Dear Ms. Whitmore:

RE: AMENDMENTS TO PROPOSED TERMS OF REFERENCE: WALKER ENVIRONMENTAL GROUP'S "SOUTHWESTERN LANDFILL" (ZORRA TOWNSHIP)

As you know, 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 the Ministry of the Environment ("MOE") regarding the amendments that the proponent has recently submitted in relation to the proposed Terms of Reference ("TOR") under the *Environmental Assessment Act* ("EAA") for the Southwestern Landfill. Please be advised that OPAL will be submitting its own additional comments to the MOE on the proposed TOR amendments, and on the proponent's inadequate consultation efforts to date.

From our legal perspective, CELA has carefully reviewed the various changes described by the proponent in the three-page amendment document submitted to the MOE in April 2014. We have also closely examined the comment disposition table (dated April 2, 2014) in which the proponent purports to address the detailed legal and technical comments submitted to the MOE by CELA in October 2013. In our view, the proponent's simplistic responses to CELA's comments are unduly argumentative, dismissive or unmeritorious, and should therefore be given little or no weight by MOE reviewers.

In summary, CELA concludes that the proposed TOR amendments are inconsequential, unpersuasive, and unresponsive to the numerous fundamental objections to the TOR raised by CELA, OPAL, other stakeholders, local municipalities and the public at large. In our opinion, the amendments do not salvage the proposed TOR, and more importantly, do not make the TOR approvable under the EAA.

Indeed, given the perfunctory nature of the proposed TOR amendments, CELA is astounded that it took the proponent three separate "time-outs" (and several months) to produce such meagre and underwhelming amendments.

Canadian Environmental Law Association

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Despite the proponent's amendments, CELA concludes that the proposed TOR remains marred by significant data gaps, questionable assumptions, unacceptable EA methodology, and an alarming lack of detail about how the direct and cumulative impacts of the massive Southwestern Landfill will be identified, evaluated, and managed for EA planning purposes.

OPAL's hydrogeological consultant, Wilf Ruland, P.Geo, has reached the same conclusions regarding the groundwater/surface water aspects of the proposed TOR amendments. For example, in the attached opinion letter, Mr. Ruland notes that the proponent provided inadequate responses to his well-founded concerns about karst hydrogeology and the description of the undertaking. Mr. Ruland further states that:

There were no other areas which I could identify WEG having made any attempt to address the 20 pages worth of detailed Peer Review comments and recommendations which I had provided through our clients.

The original TOR contained numerous major flaws and/or omissions. Each of these flaws by themselves undermine the EA and could be considered grounds for rejecting the TOR. The TOR amendment did not address the vast majority of the flaws and omissions which I had identified in my original Peer Review (which is provided as Attachment 1 below).

Taken together the major flaws and omissions 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 (page 2, emphasis added).

For the foregoing reasons, CELA maintains its previously expressed view that even if amended, the proposed TOR does not meet the legal test for approval under subsection 6(4) of the EAA. More specifically, it is our opinion that there is no reasonable basis upon which the Minister can conclude that an EA conducted in accordance with the 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 the proponent 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 large-scale undertaking will be fully identified and properly evaluated during the EA process.

CELA therefore calls upon the MOE to refuse to approve the proposed TOR despite the desperate last-gasp amendments produced 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

A handwritten signature in black ink, appearing to read 'R. Lindgren', with a long horizontal stroke extending to the right.

Richard D. Lindgren
Counsel

cc. Steve McSwiggan, OPAL
Theresa McClenaghan, CELA