

APPLICATION FOR REVIEW
Filed pursuant to Section 61 of the *Environmental Bill of Rights*
RE: ED-19 Landfill – Provisional Certificate of Approval No. A42009

APPLICANT NUMBER ONE

NAME: Citizens Against ED-19 Dump

ADDRESS:

CITY:

PROVINCE:

POSTAL CODE:

TELEPHONE:

I hereby declare that Citizens Against ED-19 Dump is a non-profit corporation which was federally incorporated on March 8, 2017 under the laws of Canada (Corporation Number 1013504-6), and which carries on business with its head office in Ontario.

DATE

KYLE JOHNSTON, DIRECTOR

APPLICANT NUMBER TWO

NAME:

ADDRESS:

CITY:

PROVINCE:

POSTAL CODE:

TELEPHONE:

I hereby declare that I am a resident of Ontario.

DATE

SUBJECT-MATTER OF REQUESTED REVIEW

The Applicants hereby request a Review of an **existing** instrument, namely:

Provisional Certificate of Approval No. A42009, issued in 1998 to the United Counties of Leeds and Grenville under Part V of the *Environmental Protection Act* (“EPA”) for the use and operation of a 14 hectare landfilling area upon a 66 hectare property located at Part Lots 14 and 15, Concession IV, Township of Edwardsburgh [now the Township of Edwardsburgh-Cardinal]

For the reasons set out below, the Applicants submit that it is in the public interest to immediately review and/or revoke this Provisional Certificate of Approval because it is outdated, unused, and inadequate to protect the environment and public health. A copy of the 1998 Provisional Certificate of Approval is attached below at Tab 1.

Subsection 61(1) of the *Environmental Bill of Rights* (“EBR”) provides that an Application for Review may be filed where the Applicants believe that an existing instrument “should be amended, repealed or revoked in order to protect the environment.” In this case, the Applicants submit that the Provisional Certificate of Approval should be reviewed and revoked forthwith.

REASONS FOR REQUESTED REVIEW

The Applicants’ overall position is that the Ministry of the Environment and Climate Change (“MOECC”) should expeditiously undertake and complete the requested Review in order to protect the environment and public health and safety.

More specifically, the Applicants submit that the 1998 EPA approval of the location, design, management and monitoring of the landfill:

- does not comply with current landfilling standards under the EPA;
- may create off-site surface water and groundwater contamination, and adverse impacts to the natural environment;
- may result in hazards to the health or safety of local residents; and
- is otherwise not in the public interest.

As described below, the Applicants submit that the terms and conditions in the Provisional Certificate of Approval (including the supporting documentation cross-referenced in Schedule A) are incomplete, deficient and ineffective for the purposes of addressing the foregoing concerns. Moreover, since the EPA approval has never been used for the purpose for which it was issued, and since the instrument holder now seeks to sell it to a third party for an entirely different purpose, the Applicants submit that it is

both appropriate and in the public interest to revoke the EPA approval. Accordingly, the MOECC should grant the requested Review, and should specifically consider revoking this instrument at the earliest possible opportunity.

In making this submission, the Applicants are aware that two other local residents previously filed an Application for Review of this EPA approval, and that the MOECC has recently agreed it is in the public interest to review the approval.

In particular, the MOECC has indicated that its review will be commenced once the MOECC receives an updated EA report from the proponent, and that the review process may be completed by May 31, 2019. In addition, the MOECC has recently suspended Conditions 10 and 11 of the EPA approval, pending this further review. A copy of this Notice of Suspension (dated November 9, 2017) is attached below at Tab 2. However, the Applicants understand that the proponent has recently appealed this suspension to the Environmental Review Tribunal.

In any event, it is unclear whether the forthcoming review will primarily focus on just these two conditions (and the specific documents referenced in these Conditions), or on the EPA approval in its entirety. Accordingly, the Applicants herein are seeking a comprehensive review of the entire approval, not just portions thereof.

Similarly, the Applicants have considered the grounds advanced in the previous EBR Application for Review, and note that the two residents did not provide any expert opinion evidence on the technical concerns arising from the fundamental inadequacy of the EPA approval. Therefore, the Applicants are appending copies of detailed expert reports to this Application to ensure that the key technical issues are brought to the attention of the MOECC staff who will be conducting the forthcoming review of the EPA approval.

In addition, although the MOECC has agreed to conduct the review, it is unknown what opportunities for public notice/comment (if any) may be provided by the MOECC to inform the outcome of the review process. This same concern applies to the MOECC's anticipated review of the updated EA documentation, if filed in due course by the Counties (or their successor in title). Accordingly, the Applicants are hereby filing their own Application for Review to ensure that their specific issues, evidence and perspectives are taken into account and addressed by the MOECC.

Finally, the Applicants note that the MOECC has simply suspended two conditions, rather than wholly revoking the EPA approval. Thus, the Applicants herein are specifically requesting that the review process should lead to the timely revocation (not just partial suspension) of the EPA approval, and submit that this step does not have to await the filing of additional EA documentation from the current (or future) owner of the site.

For the reasons outlined below, the Applicants submit that there is ample technical evidence and new environmental information that is currently available to warrant

revocation of the EPA approval as soon as possible, rather than waiting until an indeterminate date in 2019 or later.

1. Background

(i) Description of the Applicants

The first Applicant is the Citizens Against the ED-19 Dump (“CAD”), which is a federally incorporated non-profit organization. CAD currently has over 1,300 members, many of whom live near the ED-19 Landfill site or its intended haul routes.

The second Applicant is a resident of the Township of Edwardsburgh-Cardinal, in the United Counties of Leeds and Grenville (“the Counties”).

(ii) Approvals Chronology and Recent Developments

In the early 1990s, the Counties commenced an environmental assessment (“EA”) process which ultimately led to the January 1998 approval of the ED-19 Landfill pursuant to the *Environmental Assessment Act* (“EAA”).

This EAA approval is subject to only three “boilerplate” conditions (e.g. proponent must comply with statutory approvals; filing of the public record; financial/operational responsibilities are binding on the proponent). A copy of the EAA approval is attached below at Tab 3.

A conditional approval under Part V of the *Environmental Protection Act* (“EPA”) was subsequently issued to the Counties in June 1998 to permit the use and operation of a 14 ha landfilling area within a 66 ha property located at Part of Lots 14 and 15, Concession IV, Township of Edwardsburgh [now the Township of Edwardsburgh-Cardinal].

At the time, there was considerable public opposition to the proposed landfill within the Township. More recently, the Township council passed a resolution declaring that the Township is not a willing host for this facility. A copy of the Township resolution is attached below at Tab 4.

The Applicants are unaware of whether – or to what extent – the MOECC or the Counties adequately consulted nearby indigenous communities (e.g. Mohawks of Akwesasne) prior to the issuance of the EAA and EPA approvals.

However, the Grand Chief of the Mohawks of Akwesasne recently wrote to Minister Ballard to object to the lack of consultation by the Crown in relation to the proposed sale or use of the ED-19 Landfill property. The letter also raises concerns about potential landfill impacts on Mohawk lands and local water resources, and requests that the sale not proceed until the Crown’s consultation duty has been satisfied. A copy of the Grand Chief’s letter is attached below at Tab 5.

In any event, the Counties have effectively “sat on” the EAA and EPA approvals for nearly two decades, and ground has never been broken to develop the site as a landfill. As noted above, two conditions in the EPA approval have recently been suspended by the MOECC.

In addition, the Counties have publicly disclosed that they have entered into discussions with a private sector waste disposal company (Tomlinson Group) in order to sell the undeveloped landfill property, the adjoining 400 ha of land owned by the Counties, and the above-noted approvals. It is the Applicants’ understanding that if the sale proceeds, this private company has publicly declared its intention to import waste from generators outside the Counties to the ED-19 Landfill.

Under separate cover, the Applicant CAD has submitted a formal request to the Minister to exercise his discretion under section 11.4 of the EA Act to reconsider/revoke the issuance of the 1998 EAA approval.

The primary grounds for this request are that new information has become available, and that there have been material changes in circumstances, which call into the question the continued validity, adequacy and soundness of the EAA approval.

To date, however, no decision has been communicated by the Minister to CAD on whether reconsideration/revocation of the EAA approval will be undertaken by the MOECC. Nevertheless, irrespective of how the section 11.4 request is handled or decided by the MOECC, the Applicants submit that it is open to the MOECC to revoke the EPA approval for the reasons outlined below in this EBR Application.

Accordingly, the purpose of this Application for Review is to request the MOECC to review/revoke the Provisional Certificate of Approval issued under the EPA in 1998.

2. Basis for the Requested Review of the EPA Approval

The Applicants submit that there are two fundamental reasons why the ED-19 Landfill’s Provisional Certificate of Approval should be reviewed and/or revoked: (a) there has been no demonstrable need to establish the landfill over the past two decades; and (b) the approved site location, design, management and monitoring poses a number of serious risks to the local environment and public health.

(a) Lack of “Need” for ED-19 Landfill

As a general principle, the Applicants submit that it is not in public interest to allow a risky project to proceed if there is no demonstrable or objective need for the project. The Applicants submit that this principle fully applies to the ED-19 Landfill at the present time.

When the EA process was conducted in the 1990s, the Counties attempted to rationalize the new landfill on the basis of projected waste generation trends within local

municipalities, and the claimed shortfall in available disposal capacity. However, the passage of time has clearly demonstrated that these predictions were inaccurate if not wholly unsubstantiated. Despite the issuance of EAA and EPA approvals, the ED-19 Landfill has never been constructed, and the local waste stream has been accommodated by other waste management facilities.

In these circumstances, the Applicants submit that there is no demonstrable public need to maintain the EPA approval in order to permit the construction of the ED-19 Landfill.

In making this submission, the Applicants note that while the question of “need” has been typically addressed under the EAA,¹ it has also been found to be a relevant consideration for private waste disposal facilities seeking approvals under the EPA.²

In addition, the Applicants submit that a proponent’s claimed “need” should not be confused or conflated with a perceived business opportunity. In this case, the prospective purchaser may want to receive tipping fee revenue from operating the ED-19 Landfill, but this profit motivation should not prevail over the public interest necessity of safeguarding the environment and protecting health and safety.

The Applicants further note that the Counties’ EA documentation was predicated on addressing the alleged waste disposal capacity needed by local municipalities over a 20 year planning horizon. This two-decade timeframe has now expired, and a fresh, detailed and evidence-based examination of “need” is urgently required.

Moreover, the EPA approval fails to expressly impose a service area limit for the ED-19 Landfill. In the Applicants’ view, this glaring omission provides another reason why it is incumbent upon the MOECC to grant this Application for Review and reconsider the adequacy of the EPA approval’s terms and conditions. This is particularly true since the Applicants’ understanding is that the new prospective purchaser has indicated interest in importing waste to the ED-19 Landfill from outside the Counties.

On this latter point, the Applicants note that the current and previous mayors of the unwilling host community suggested to the Counties that if the proposed sale proceeds, then it should be subject to an express service area restriction. In a recent email, however, the Counties’ Warden recently refused to guarantee that such a condition would be imposed as a condition of purchase and sale. A copy of this email is attached below at Tab 6.

(b) Risks to the Environment and Public Health

Aside from the apparent lack of need for the ED-19 Landfill and the continuing absence of an explicit service area restriction, this Application for Review of the EPA approval is primarily based on the various environmental and public health risks associated with the approved location, design, management and monitoring of the ED-19 Landfill.

¹ *Re West Northumberland Landfill Site* (1996), 19 CELR (NS) 181 (Ont Jt. Bd.), paras. 88, 90.

² *Re Decom Medical Waste Systems Inc.*, 1986 CarswellOnt 3298 (Ont EAB), paras. 80-91.

The Applicants' main concerns (and supporting documentation) regarding such risks are summarized below, and essentially fall into three main categories: (i) surface water impacts; (ii) groundwater impacts; and (iii) natural environment impacts.

(i) Surface Water Impacts

The Applicants submit that there is new and compelling expert evidence which suggests that the use and operation of the ED-19 Landfill, even if carried out in compliance with the 1998 Provisional Certificate of Approval, may cause adverse effects upon local surface watercourses.

In particular, the Applicants refer to and rely upon a recent hydrogeological peer review carried out for the Applicant CAD by Wilf Ruland, P.Geo. This report (dated August 15, 2017) is attached below at Tab 7.

Mr. Ruland's report carefully reviews the EAA/EPA approvals and documentation (including the Design & Operations Report (Dillon 1997) referenced in Schedule A of the EPA approval), and he summarizes his professional opinion about surface water impacts as follows:

As discussed in more detail in **Section 5**, with the Counties' plan for at least 10 years of leachate management exclusively through recirculation, it is my prediction that massive mounding of leachate will be occurring at the proposed landfill.

As leachate levels rise within the proposed landfill, they will over time exceed the elevation of the surrounding ground surface at which point widespread development of leachate springs and seeps on the sideslopes of the landfill can be anticipated. The leachate leaking from the landfill will be carried into the stormwater management pond, and from there to the downstream site boundary. **Off-site contamination in excess of Provincial Water Quality Objectives will be a real concern** (page 14)...

The leachate mounding will activate leakage out of the landfill via the 2 unidentified pathways discussed previously – via underflow beneath the cut-off wall (where it would cause groundwater contamination), and via leachate seeps and springs which would either be coming out the sideslopes of the landfill or simply discharging into the surface water collection ditches inside the perimeter road (where they would cause downstream surface water contamination).

This is clearly an unacceptable situation, and one that was not foreseen in the D&O Report. The D&O Report assumes no mounding – an assumption which is not compatible with the plans to recirculate all leachate for at least 10 years...

This is particularly problematic because the surface water impact monitoring plans and contingency plans are poorly developed (as will be discussed in subsequent sections of this review), and the groundwater monitoring plans and contingency plans were not developed with the unidentified pathway of underflow beneath the cut-off wall in mind (page 17, emphasis added).

Mr. Ruland's additional water-related concerns are outlined below in the Applicants' submissions regarding groundwater impacts.

(ii) Groundwater Impacts

The Applicants submit that there is new and compelling expert evidence which suggests that the use and operation of the ED-19 Landfill, even if carried out in compliance with the 1998 Provisional Certificate of Approval, may cause adverse effects upon local groundwater resources.

In particular, the Applicants refer to and rely upon the hydrogeological peer review carried out for the Applicant CAD by Wilf Ruland, P.Geo (see Tab 6 below). Mr. Ruland's report carefully reviews the EAA/EPA approvals and documentation (including EAA/EPA Volume 3, Technical Memorandum: Geology/Hydrogeology (Dillon, 1997) referenced in Schedule A of the EPA approval), and he summarizes his professional opinion on groundwater impacts as follows:

2) The Hydrogeology Assessment is deficient in a variety of ways (as described in detail in **Section 4** of this review), including the following:

- incomplete groundwater quality testing was done;
- **there was almost no investigation and there is little understanding of the bedrock groundwater system which local residents rely upon for their well water supplies;**
- the pumping test which was done was largely useless for assessing the hydraulic characteristics of the geologic formations at the site (due to interference from a major rain event), and it was not redone;
- the significance of fractures found in the Silt/Clay Unit was downplayed;
- isotopic testing was done but the results were ignored in the report;
- **the conceptual model of the site hydrogeology is incomplete and deficient;**
- 2 significant potential pathways for environmental contamination were not identified or assessed.

Because of these and other deficiencies, the Hydrogeology Assessment does not provide the required technical foundation for the safe design and operation of a landfill.

3) The D&O Report contains numerous deficiencies in the proposed design and operations of the landfill (as described in detail in **Section 5** of this review), including the following:

a) there is no intention of putting an impermeable liner on the landfill base, to prevent downward and outward leakage of leachate;

b) the leachate collection lines will be put in 10 meter wide and 0.3 meter deep, gravel-filled collection trenches - but there is otherwise no provision for a high permeability collection layer on the landfill base;

c) for at least the first 10 years of the landfill's life, the only way leachate will be managed is by recirculating (pumping) it back into the landfill;

d) leachate generation rates have been significantly underestimated;

e) the surface water impact monitoring plans are poorly developed;

f) the surface water impact mitigation/contingency plans are poorly developed.

Because of these and other deficiencies the D&O Report does not meet today's standards in terms of providing a secure design and a solid plan for the safe operation of a landfill.

4) As set out in **Section 6** of this review, some hydrogeology-related conditions have changed to the point that the changes would significantly affect conclusions reached in the original EAA/EPA studies. **Updates to all scientific studies should be required and obtained to ensure that data collected previously are still valid, in the event that the Counties or a third party wish to pursue the operation of a landfill at this location.**

5) As set out in **Section 7** of this review, **there have been changes to the Ontario Drinking Water Quality Standards for 3 parameters [benzene, toluene and vinyl chloride] considered in the Reasonable Use Assessment for the proposed landfill. The modelling for the assessment should be redone for this reason and because of fatal flaws with the original modelling** (pages 21-22, emphasis added).

The findings, conclusions and recommendations in Mr. Ruland's report are particularly significant in light of the social, cultural and demographic changes that have occurred in the vicinity of the ED-19 Landfill property since the EPA approval was issued almost two decades ago.

For example, as noted by Mr. Ruland's report, a number of new residents have since moved into the area, all of whom are dependent upon private wells for drinking water purposes. Mr. Ruland states that the residents' increased groundwater usage from the bedrock aquifer will, in turn, increase "vertical hydraulic gradients to the aquifer" (page 19).

Mr. Ruland's concern about new residential wells has been corroborated by a recent socio-economic report prepared by the Applicant CAD to update and confirm the increased number of people now living near the ED-19 Landfill or its intended haul routes. This report is attached below at Tab 8.

In light of the foregoing findings about adverse impacts to surface water and groundwater, Mr. Ruland's report sets out his overall conclusions as follows:

6) There are numerous other problems which were found in the course of my review of the documentation for the proposed landfill. These other problems are listed in point form in **Section 8** of this review. **Taken together with the major problems outlined above the inescapable conclusion is that while the proposed landfill somehow received approval in 1998, it would certainly not be approved in its current form today. It is my professional opinion that the technical documentation which supported the MOECC's 1998 approval of the landfill was deficient and certainly does not meet today's standards.**

7) **It is my professional opinion that the construction and operation of a landfill at the proposed location in accordance with the current site documentation would pose an unacceptable threat to off-site groundwater supplies and off-site surface water resources** (page 22, emphasis added).

In light of these overall conclusions, Mr. Ruland's report provides two main recommendations:

1) Based on the findings of my review of the available hydrogeological information and evidence, it is my professional opinion that **the MOECC should revoke the Environmental Assessment Act (EAA) and Environmental Protection Act (EPA) approvals which it granted for the ED-19 site in 1998 for the technical reasons presented in this review** (emphasis added).

2) If the MOECC decides against my professional advice to allow a landfill to be operated at the proposed location on the basis of the deficient technical documentation which supported its 1998 approval of the landfill, then this should be vigorously challenged through all possible means because of the unacceptable threat that the proposed landfill poses to the natural environment (emphasis added, pages 21-22).

In the Applicants' view, Mr. Ruland's report provides extensive and well-founded technical support for the requested Review of the EPA approval.

(iii) Natural Environment Impacts

The Applicants submit that there is new and compelling expert evidence which suggests that the use and operation of the ED-19 Landfill, even if carried out in compliance with the 1998 Provisional Certificate of Approval, may cause adverse effects upon local biological resources, including species at risk and their habitat.

In particular, the Applicants refer to and rely upon an independent report prepared for the Applicant CAD by Groundwater Environment Management Services Inc. ("GEMS"). , to determine whether the natural environment work within the original EA process was complete, and whether it remains valid today in light of changed site conditions. A copy of the GEMS report (dated September 22, 2017) is attached below at Tab 9.

In summary, the GEMS report contains a number of conclusions and recommendations about current site conditions and the need to update the decades-old natural environment work reflected in the EA/EPA documentation:

Since there is designated (unevaluated) wetland within 120 meters of the site an EIA/EIS is required. This was not included as a requirement of the approved C of A. The biology component of the EA did not at the time sufficiently address that there will be no negative impacts on the natural features or function of the wetland which contains the heronry that was noted and is still present.

It is GEMS opinion that the heronry needs to be mapped and surveyed to determine the peripheral nests and denote the proper setbacks and development limits. A significant wildlife habitat assessment would also be needed to determine that the heronry is not the only SWH [Significant Wildlife Habitat] present. In accordance with the July 2017 recommendation of MNRF, locations of the previously noted species that are now considered SAR [Species at Risk] need to be mapped an updated assessment completed to ensure that there is no potential impact to endangered/threatened species/habitat (page 14).

In addition, the GEMS report identifies a lengthy list of unresolved data gaps that continue to exist to date:

The following summarizes the data gaps between the information provided for the original EA and the existing information that should be included to properly assess the current impacts of a proposed landfill within the site limits.

- Heronry mapping and survey;

- SWH [Significant Wildlife Habitat] assessment including a wetland assessment in relation to both the on site and nearby PSW [Provincially Significant Wetland];
- ELC [Ecological Land Classification] mapping and updated vegetation inventory;
- Amphibian breeding surveys in accordance with MMP;
- Turtle surveys;
- Aquatic habitat assessment in general accordance with OSAP [Ontario Stream Assessment Protocol];
- Record SAR locations; and,
- Proper discussion of impacts to heronry due to sound level increases and potential leachate impacts to vegetation and wildlife (pages 14-15).

Significantly, the GEMS report also attaches a letter dated July 17, 2017 from the Ministry of Natural Resources and Forestry (“MNR”), which confirms the potential for numerous species at risk to be present on or near the ED-19 Landfill property (see Appendix A of the GEMS report).

In the Applicants’ view, the GEMS report provides considerable biological support for the requested Review of the EPA approval.

3. MOECC Statement of Environmental Values

In determining whether the public interest warrants the requested Review, subsection 67(2)(a) of the EBR directs the Minister to consider the relevant Statement of Environmental Values (“SEV”).

In this case, the MOECC’s SEV states that the Ministry’s vision is “an Ontario with clean and safe air, land and water that contributes to healthy communities, ecological protection, and environmentally sustainable development for present and future generations.”

To achieve this vision, the SEV commits the MOECC to a number of important principles, such as:

- adopting an “ecosystem approach” to environmental protection;
- considering cumulative effects on the environment;

- adopting a “precautionary, science-based approach in its decision-making to protect human health and the environment;
- placing priority on pollution prevention and minimizing the creation of pollutants that can adversely affect the environment; and
- ensuring that planning and management for environmental protection strives for continuous improvement and effectiveness through adaptive management.

Taken together, these and other SEV commitments represent a provincial promise to the Applicants (and all other Ontarians) that the MOECC will take all necessary steps to safeguard the environment and public health and safety.

In this case, the Provisional Certificate of Approval remains outdated and incapable of fully preventing or mitigating potential harm to the environment and public health that may be caused by the construction and operation of the ED-19 Landfill. Accordingly, the Applicants submit the requested Review of the Landfill’s approval is entirely consistent (if not expressly mandated) by the MOECC’s SEV.

4. Absence of Periodic Review

In determining whether the public interest warrants the requested Review, subsection 67(2)(c) of the EBR directs the Minister to consider whether “the matters sought to be reviewed are otherwise subject to periodic review”.

At the present time, aside from using Part IV of the EBR, there is no statutory mechanism for the formal public review of the ED-19 Landfill’s Provisional Certificate of Approval. It should be further noted that this approval does not contain an expiry date, and could, in theory, sit unused in perpetuity.

Accordingly, the Applicants submit that the requested Review of the landfill’s Provisional Certificate of Approval should be undertaken because there is no other formal, open or consultative process in place that periodically reviews or revises this approval.

5. Resources Required for the Requested Review

Subsection 67(2)(f) of the EBR lists “resources required to conduct the review” as another factor to be considered by the Minister when determining if the public interest warrants a Review.

To the Applicants’ knowledge, the requested Review can be carried out by current MOECC personnel (i.e. staff at the Environmental Approvals Branch, the Kingston District Office, etc.) without the allocation of any new resources or persons. Indeed, as noted above, the MOECC has already agreed to conduct a review of the EPA approval, although the nature, scope and start date for the review remain unclear at this time.

6. Other Relevant Considerations

In determining whether the public interest warrants the requested Review, subsection 67(2)(g) of the EBR permits the Minister to take into account “any other matter that the Minister considers relevant.”

In the Applicants’ view, the following additional considerations should be taken into account regarding the need to review and revoke the ED-19 Landfill’s Provisional Certificate of Approval: (i) the protective provisions of the *Clean Water Act, 2006*; (ii) the zero waste/circular economy goals of the *Waste-Free Ontario Act* and Strategy; (iii) the enactment of the *Endangered Species Act, 2007*; and (iv) other relevant legislative and regulatory changes that have occurred since the EPA approval was issued in 1998.

(i) Clean Water Act, 2006

To date, the Ontario government has formally accepted all of the recommendations arising from the Walkerton Inquiry. For example, Commissioner O’Connor recommended that the Ministry should increase its commitment to the use of mandatory abatement, and should increase its commitment to “strict enforcement of all regulations and provisions related to the safety of drinking water”.

As described above, the landfill design and operation permitted under the ED-19 Landfill’s Provisional Certificate of Approval may result in the discharge of contaminants into local groundwater resources which serve as the sole source of drinking water for area residents.

Therefore, if the MOECC intends to continuously comply with Commissioner O’Connor’s recommendations regarding drinking water safety (including source protection), then at the very least, the landfill’s Provisional Certificate of Approval must be reviewed and revoked.

Moreover, the Applicants note that the ED-19 Landfill site and surrounding area have been designated as a “Highly Vulnerable Aquifer” and “Significant Groundwater Recharge Area” (GEMS Report, page 4). These designations did not exist in 1998 when the EPA approval was issued.

Thus, the Applicants submit that the requested Review is entirely consistent with the policies and priorities of the MOECC now aimed at protecting drinking water sources from known or suspected sources of contamination, such as landfill sites. In this regard, the Applicants note that waste disposal sites have been prescribed as drinking water threats in O.Reg. 287/07 under the *Clean Water Act, 2006*.

On this point, it is the Applicants’ understanding that there are currently no municipal drinking water systems close to the ED-19 Landfill site. However, there are a number of

domestic wells within 1.5 km of the site that should be properly mapped and surveyed for water usage (Ruland Report, page 20).

(ii) The Waste-Free Ontario Act and Strategy

Similarly, the 1998 EPA approval pre-dates the recent passage of the *Resource Recovery and Circular Economy Act, 2016* and the Waste-Free Ontario Strategy, both of which are intended to achieve “zero waste” and “circular economy” objectives. In the Applicants’ view, it is inconsistent with this provincial policy direction to allow an unused, 20 year-old landfill EPA approval to not only remain intact, but to be transferred to a private sector proponent without a fresh look at the alleged “need” or rationale for what may be considered a new landfilling undertaking, or without considering the imposition of updated requirements for on-site waste diversion activities or facilities.

(iii) Endangered Species Act, 2007

In addition, the EPA approval clearly pre-dates the enactment of the protective provisions of the *Endangered Species Act, 2007*. As noted above, there is recent information indicating the likely presence of species at risk (and their habitat) on or near the ED-19 Landfill property.

The Applicants understand that the prospective purchaser has indicated that further field work regarding species at risk may be conducted. However, to the Applicants’ knowledge, no particulars have been provided by the Tomlinson Group on the proposed methodology for this study, nor is there any mention of the need for public review/comment opportunities. Moreover, depending on the outcome of this promised field work, it is conceivable that further or better conditions under the EPA approval (or changes in the undertaking itself) may be necessary to safeguard species-at-risk and their habitat, assuming that the EAA approval is not otherwise revoked or reconsidered in accordance with our client’s request.

(iv) Other Legislative and Regulatory Changes

More generally, the Applicants submit that Ontario’s environmental requirements, regulatory standards and Reasonable Use Limits have been updated or become more stringent since the 1990s. For example, the issuance of the 1998 EPA approval pre-dates the passage of Ontario’s landfilling standards (O.Reg. 232/98) which are now in force and impose more prescriptive requirements for landfill design/operation than Regulation 347.

In addition, the EPA approval pre-dates the passage of the Ontario Drinking Water Quality Standards (“ODWQS”) under the *Safe Drinking Water Act, 2002*, which are used to derive Reasonable Use Limits for groundwater protection purposes. As noted in Mr. Ruland’s report (page 19), the 1990s “drinking water criterion” for benzene was used for

groundwater modelling in the original EA.³ However, the ODWQS for this substance has been recently (and significantly) lowered to 0.001 milligrams/litre under O.Reg. 169/03.

While the Counties' 20 year-old EAA/EPA documentation predicted that benzene concentrations will not exceed Reasonable Use Limits, the Applicants submit that it would be prudent and precautionary for the MOECC to grant the requested review in order to reassess and/or recalculate these predictions under the current ODWQS to ensure compliance with Ontario's Reasonable Use Policy B-7.

In summary, the Applicants submit there is persuasive opinion evidence in 2017 that calls into serious question the accuracy, credibility or reliability of the impact predictions (and associated monitoring, mitigation, and contingency measures) outlined in the original EAA/EPA documentation in the 1990s. Accordingly, it is both necessary and appropriate for the MOECC to closely review and/or revoke the EPA approval and its stale-dated terms and conditions at the present time.

It should also be noted that neither the EAA or EPA approvals impose any financial assurance obligations since these approvals were originally issued to a public – not a private – proponent. In the Applicants' view, given that a private proponent is now poised to purchase and use the landfill property, the existing EPA approval is inadequate since it completely lacks financial assurance requirements.

EVIDENCE SUPPORTING THE REQUESTED REVIEW

The documentary and expert opinion evidence supporting the requested Review is attached hereto as follows:

1. EPA Provisional Certificate of Approval No. A42009 dated June 24, 1998
2. MOECC Notice of Suspension dated November 9, 2017
3. EAA approval dated January 20, 1998
4. Township resolution dated February 22, 2017
5. Letter from Grand Chief of Mohawks of Akwesasne to Minister Ballard dated September 18, 2017
6. Email from Warden Jones to Kyle Johnston (CAD) dated November 7, 2017
7. Report by Wilf Ruland, P.Geo dated August 15, 2017
8. CAD socio-economic update/analysis (undated)

³ EAA/EPA Document (Vol. 3), Technical Appendix M (February 1997), pages M-80 to 82.

9. GEMS Report dated September 22, 2017