

ENVIRONMENTAL REVIEW TRIBUNAL

In the matter of an appeal by the Corporation of the United Counties of Leeds and Grenville for a Hearing before the Environmental Review Tribunal pursuant to section 139(1)(e) of the *Environmental Protection Act*, R.S.O. 1990, c.E.19 as amended, in relation to the November 9, 2017 Decision of the Director, Ministry of the Environment and Climate Change, to suspend Conditions 10 and 11 in Environmental Compliance Approval No. A420009, dated June 24, 1998, regarding the construction and operation of a waste disposal site (landfill) located at Lots 14 and 15, Concession 4, Township of Edwardsburgh/Cardinal, United Counties of Leeds and Grenville

**AFFIDAVIT OF MARCUS KYLE JOHNSTON
(Sworn October 14, 2018)**

I, **MARCUS KYLE JOHNSTON**, of the Township of Edwardsburgh/Cardinal, in the United Counties of Leeds and Grenville, **MAKE OATH AND SAY:**

1. I am a resident of the Township of Edwardsburgh/Cardinal, and I currently serve as the Chair of the Citizens Against the ED19 Dump (“CAD”). I have made numerous visits to observe and photograph the ED19 Landfill property from adjacent lands along the outside perimeter of the site, and I participated in a site tour of ED19 Landfill property in September 2018. As such, I have knowledge of the matters hereinafter deposed to in this affidavit, except for those matters that are stated to be on information and belief, in which case I have set out the source of the information and verily believe it to be true.

2. CAD is a federally incorporated not-for-profit environmental organization formed by local residents in the Township of Edwardsburgh Cardinal, in the United Counties of Leeds and Grenville (“the Counties”), who live near or beside the ED19 Landfill site or its intended haul routes, or who are otherwise concerned about the potential impacts of the landfill if constructed.

3. As a community-based group, CAD has been extensively involved in local organization, public outreach, advocacy and media activities in relation to various matters related to the ED19 Landfill, its current statutory approvals, and its prospective sale to a private waste company.

4. Pursuant to Part IV of the *Environmental Bill of Rights* (“EBR”), CAD filed an Application for Review of the unused 1998 Environmental Compliance Approval (“ECA”) for the ED19 Landfill.

5. The Ministry of the Environment, Conservation and Parks (“MECP”) has determined that CAD’s requested review of the ECA will be undertaken in conjunction with another EBR Application for Review received by the MECP, and anticipates that the MECP’s internal review process will be completed by May 31, 2019. A copy of the MECP’s letter to CAD dated March 6, 2018 regarding the EBR review is attached to the Agreed Statement of Facts at Tab P.

6. The MECP’s letter attached as Tab P does not indicate whether (or how) CAD will be able to participate in the MECP’s internal review of the ECA, and does not explain whether (or how) CAD will be able to provide information, data or evidence to

inform the outcome of the review of the ECA. However, CAD recognizes that the EBR review (or its eventual outcome) will not be heard or decided by the Tribunal in this proceeding.

7. CAD has also applied for Ministerial reconsideration of the unused 1998 *Environmental Assessment Act* (“EAA”) approval of the ED19 Landfill pursuant to section 11.4 of the EAA. This reconsideration request remains outstanding at the present time, but again CAD recognizes that this reconsideration request will not be heard or decided by the Tribunal in this proceeding. A copy of CAD’s reconsideration request is attached to the Agreed Statement of Facts at Tab I.

8. CAD has retained two experts (hydrogeologist Wilf Ruland and ecologist Kim Logan) to independently review and report upon various matters relating to the ED19 Landfill property, the EAA approval, the ECA, and the proposed settlement that has been reached between the MECP and the Counties. Both of these experts have tendered affidavits and reports for the Tribunal’s consideration during the forthcoming settlement hearing, and I defer to their opinion evidence on the technical or scientific issues in dispute between the parties.

9. In light of the findings, conclusions and recommendations of Mr. Ruland and Ms. Logan, and based on CAD’s own understanding and observations of current site conditions at the ED19 Landfill property and its vicinity, CAD strongly believes that the EAA approval and the ECA should be revoked. CAD has consistently advanced this position through its reconsideration request under section 11.4 of the EAA and the EBR

Application for Review of the ECA, and CAD maintains this position in this proceeding before the Tribunal in relation to the ECA.

10. Despite having the ability under the *Environmental Protection Act* (“EPA”) to revoke the ECA, the Director initially elected in November 2017 to suspend two key conditions in the ECA. However, in accordance with the proposed settlement executed between the MECP and the Counties, the Director now proposes to withdraw the suspension order and amend the ECA by adding a new Condition 9.1 that was privately negotiated between the MECP and the Counties.

11. Although CAD is a party in this proceeding, CAD was not invited to participate in the settlement discussions that were held between the MECP and the Counties in relation to the ECA and the disposition of the Counties’ appeal. Instead, the proposed settlement was presented to CAD after it had already been negotiated, drafted and executed by the other two parties.

12. Because CAD was wholly excluded from the settlement discussions, CAD is not surprised that the other parties’ proposed ECA amendment does not adequately reflect or effectively address CAD’s numerous concerns about the ED19 Landfill and the 1998 ECA. In light of these outstanding concerns, CAD is opposed to the proposed settlement now being advanced to the Tribunal by the MECP.

13. For example, proposed Condition 9.1 requires certain workplans, studies and reports to be prepared by the Counties and reviewed by the MECP, but the Condition makes no provision for CAD, its members, other stakeholders or the public at large to

review and comment upon these documents. CAD's position is that our organization, and all other persons who may be interested in or potentially affected by the construction of the ED19 Landfill, should have a fair and timely opportunity to access and review the documents to be produced by the Counties, and to otherwise meaningfully participate in the MECP's decision-making process outlined in Condition 9.1.

14. Similarly, while the current ECA requires the establishment of a Landfill Liaison Committee ("LLC"), I am informed by CAD members who initially served on the LLC, and I verily believe, that the LLC has become defunct and has not held any meetings in recent years. CAD's position is that the LLC should be reconstituted as soon as possible, and that it should be expressly entitled to review and comment upon the documents to be produced by the Counties under Condition 9.1.

15. During my September 2018 site visit to the ED19 Landfill property, I observed forested areas, wildlife habitat, a thriving heronry, wetland areas and several surface water bodies on the property which were significantly larger than 1 hectare in size. A copy of a photograph taken by a CAD member of the heronry is attached to this affidavit as Exhibit A, and I confirm that this photograph fairly and accurately depicts the heronry that is currently present on the ED19 Landfill property.

16. I am informed by CAD members who are long-term residents of the area, and I verily believe, that the surface water bodies have been in existence on the ED19 Landfill property for over 15 years, and that some residents have launched motorized boats, hunted ducks, and caught fish (e.g. mud pout or catfish) in the water bodies located on the ED19 Landfill property.

17. This information about the nature, extent and usage of surface water bodies on the ED19 Landfill property was conveyed by CAD in a 2018 letter to the Minister as a follow-up to CAD's request for reconsideration of the EAA approval. The photographs attached to the letter were taken by me and another CAD member, and I can confirm that the photographs fairly and accurately depict surface water bodies on the ED19 Landfill property in 2017. A copy of CAD's letter to the Minister dated February 14, 2018 is attached as Exhibit B to this affidavit.

18. To date, however, CAD has received no response from the Minister or MECP staff about this information about surface water bodies, or about the current status of CAD's reconsideration request under the EAA.

19. To address CAD's concerns about the shortcomings in the proposed settlement between the MECP and the Counties, CAD has prepared a comprehensive set of recommended amendments to the ECA. A copy of CAD's proposed ECA amendments is attached to this affidavit as Exhibit C.

20. CAD's suggested ECA amendments in Exhibit C have been previously provided to the MECP and the Counties, but CAD has received no response from these two parties to date.

21. As noted above, and for the reasons outlined in the affidavits of Mr. Ruland and Ms. Logan filed in this proceeding, CAD's conclusion is that the ECA should be revoked rather than amended in the narrow manner proposed by the MECP and the Counties.

22. Accordingly, CAD's position is that the Tribunal should reject the proposed settlement, and should instead order the continuation of the hearing to adjudicate the Counties' appeal, and to determine whether the Tribunal should order the Director to take such further or other steps under the EPA as may be appropriate to safeguard the natural environment and the public interest.

23. In the alternative, in the event that the Tribunal agrees with the MECP and the Counties that the ECA should be amended as a result of the settlement hearing, then CAD's position is that a number of substantive and procedural improvements are needed in the ECA (as reflected in Exhibit C attached hereto) which go far beyond the modest Condition 9.1 that is being jointly proposed by the MECP and the Counties.

24. I swear this affidavit in relation to the Tribunal's settlement hearing to be held on November 6 and 7, 2018, and for no other or improper purpose.

SWORN BEFORE ME in the Village of)
Spencerville, in the United Counties of Leeds and)
Grenville, on this 14th day of October, 2018)

) _____
) Marcus Kyle Johnston

A Commissioner for Taking Affidavits, etc.