

ENVIRONMENTAL REVIEW TRIBUNAL

IN THE MATTER OF Part XIII of the *Environmental Protection Act*, R.S.O. 1990, c. E.19 as amended;

-and-

IN THE MATTER OF sections 38 to 48 of the *Environmental Bill of Rights*, S.O. 1993, c. 28;

-and-

IN THE MATTER OF an appeal by the Concerned Citizens Committee of Tyendinaga and Environs against the decision of the Director, Ministry of the Environment, under section 20.3 of the *Environmental Protection Act*, R.S.O. 1990, c.E.19, as amended, to issue Amended Environmental Compliance Approval No. A371203, dated January 9, 2012, to Waste Management of Canada Corporation, for the use, operation and closure of the Richmond Landfill Site located at Lot Pt 1, 2, 3, Concession 4, Town of Greater Napanee, County of Lennox & Addington, Ontario.

NOTICE OF APPEAL

TAKE NOTICE that pursuant to sections 139, 142 and 145.2 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19 (“EPA”), and pursuant to the decision of the Environmental Review Tribunal (“Tribunal”) dated March 30, 2012 granting leave to appeal to the Concerned Citizens Committee of Tyendinaga and Environs (“the Appellant”), the Appellant hereby requires a hearing before the Tribunal in respect of the issuance by the Director, Ministry of the Environment (“MOE”), of the following Conditions in Amended Environmental Compliance Approval (“ECA”) No. A371203, dated January 9, 2012, to Waste Management of Canada Corporation (“WMCC”) under section 20.3 of the EPA:

- Condition 8.5 (environmental monitoring plan);
- Condition 9.1 (groundwater and surface water impact contingency plan);
- Condition 9.2 (leachate collection system contingency plan)
- Condition 9.5 (public notification plan);
- Condition 14.1 (semi-annual monitoring reporting); and
- Conditions 14.2 and 14.3 (annual reporting).

AND FURTHER TAKE NOTICE that the Appellant hereby appeals the above-noted Conditions in their entirety, and respectfully requests that the Tribunal grant:

1. An Order wholly revoking Conditions 8.5, 9.1, 9.2, 9.5, 14.1, 14.2 and 14.3 in ECA No. A371203;
2. An Order directing the MOE Director to substitute further and better terms and Conditions in ECA No. A371203 in relation to the subject-matter of Conditions 8.5, 9.1, 9.2, 9.5, 14.1, 14.2 and 14.3, as may be specified by the Tribunal; and
3. Such further or other Orders as the Appellant's counsel may advise and this Tribunal permit.

AND FURTHER TAKE NOTICE that the grounds for the Orders requested by the Appellant are as follows:

1. The above-noted Conditions in ECA No. A371203 are inadequate to protect the environment or public health, and they do not establish sufficiently rigorous monitoring, contingency plans, and reporting obligations in relation to the Richmond Landfill over its contaminating lifespan. In particular, the above-noted Conditions were issued without:
 - (a) the Director considering or applying the precautionary principle, ecosystem approach, cumulative effects analysis, pollution prevention, public participation, and other relevant matters mandated by the MOE's Statement of Environmental Values ("SEV") issued under the *Environmental Bill of Rights* ("EBR");
 - (b) due consideration by the Director of adequate information on the baseline conditions of the local environment, particularly the groundwater flow system at the Richmond Landfill;
 - (c) due consideration by the Director of the common law rights of landowners in the vicinity of the Richmond Landfill; and
 - (d) appropriate and effective measures to ensure the timely prevention, reduction, mitigation or monitoring of the direct, indirect and cumulative impacts which may be caused by the Richmond Landfill.
2. Allowing the current and future impacts of the Richmond Landfill to be monitored, mitigated and reported upon under these deficient Conditions in ECA No. A371203 is contrary to the public interest and inconsistent with the purposes and provisions of the EPA, EBR, Ontario Regulation 347, the MOE's Guideline B-7: *Incorporation of the Reasonable Use Concept into MOEE Groundwater Management Activities*; and the MOE's *Water Management Policies, Guidelines and Provincial Water Quality Objectives*;
3. Sections 1, 2.1, 3, 14, 20.2, 20.3, 20.6, 20.7, 20.8, 20.9, 20.13, 27, and Part XIII of the EPA, and sections 1, 2, 11, and 38 to 48 of the EBR; and

4. Such further or other grounds as the Appellant's counsel may advise and this Tribunal permit.

AND FURTHER TAKE NOTICE that the material facts that the Appellant pleads and relies upon in relation to the above-noted grounds of appeal include, but are not necessarily limited to, the following:

Background

1. The Richmond Landfill is located at Part of Lots 1, 2 and 3, Concession 4, in the Town of Greater Napanee, and is currently owned by Waste Management of Canada Corporation ("WMCC").
2. The Richmond Landfill operated from the 1950s to 2011, and it accepted millions of tonnes of solid waste over its operating life. In recent years, large quantities of petroleum-impacted soils were also accepted at the site.
3. The oldest and largest section of the Richmond Landfill does not contain a liner or a leachate underdrain system, and the landfill design at the site does not meet current regulatory standards.
4. The hydrogeological setting of the Richmond Landfill makes the local groundwater highly vulnerable to contamination due to thin overburden soils, fractured bedrock, complex flow system, limited natural attenuation, and other factors.
5. Although the Richmond Landfill is now closed, it will continue to generate landfill gases and millions of litres of leachate per year for a prolonged period of time.
6. The residential and farming properties in the vicinity of the Richmond Landfill are not serviced by a municipal drinking water system, and local residents are dependent upon groundwater as a source of drinking water.
7. On January 9, 2012, the Director issued Amended ECA No. A371201 to WMCC, despite objections from the Appellant regarding the inadequacy of the proposed environmental monitoring, contingency plans, and reporting obligations.
8. On March 30, 2012, the Tribunal granted the Appellant leave to appeal the above-noted Conditions pursuant to sections 38 to 48 of the EBR.

Ground 1(a): Failure to Consider or Apply the MOE SEV

9. In respect of Ground 1(a), the MOE SEV mandates the MOE to apply a "science-based precautionary approach in its decision-making to protect human health and the environment."

10. In relation to the Richmond Landfill, the precautionary approach required the Director to consider the closed landfill to be as hazardous as it could possibly be over its lengthy contaminating lifespan.

11. However, the Director approved the above-noted Conditions in ECA No. A371203 in the face of considerable uncertainty about environmental risks, and for the purpose of investigating whether such risks would materialize. This “wait-and-see” approach is not consistent with the precautionary principle, as entrenched in the MOE SEV.

12. Although the MOE SEV stipulates that one of the key features of an ecosystem approach is measurement of cumulative effects, the Director, when issuing Amended ECA No. A371203, did not adequately consider cumulative effects, and did not require WMCC to conduct any further cumulative effects analysis in the above-noted Conditions.

13. The MOE SEV further requires the Director to ensure meaningful public participation in environmentally significant decisions, including those relating to instruments intended to regulate landfill sites.

14. However, the above-noted Conditions in ECA No. A371203 do not make adequate provision for meaningful public participation in the future development, review, amendment or approval of environmental monitoring programs, contingency plans, or remedial measures at the Richmond Landfill.

Ground 1(b): Failure to Consider Baseline Environmental Conditions

15. In respect of Ground 1(b), the above-noted Conditions in ECA No. A371203 are inadequate to protect against potential adverse environmental and health effects because the evidentiary base upon which the Conditions were approved:

- lacked adequate baseline air, surface water, and/or groundwater quality data or information at or near the Richmond Landfill;
- lacked adequate data or information on potential human and ecological health impacts of current or future emissions from the Richmond Landfill; and
- did not address the additive, synergistic, cumulative, persistent, or bioaccumulative effects of airborne and/or waterborne contaminants from the Richmond Landfill upon the environment or public health.

Ground 1(c): Failure to Consider Common Law Rights of Landowners

16. In respect of Ground 1(c), the above-noted Conditions in ECA No. A371203 give WMCC statutory authority to undertake various monitoring, reporting, and contingency activities at the Richmond Landfill.

17. Inadequate monitoring, reporting, and contingency activities at the Richmond Landfill will fail to protect the common law rights of site neighbours against off-site impacts arising from the landfill throughout the post-closure period.

18. The Director declined to consider and weigh the common law rights of landowners in the area of the Richmond Landfill, or the potential consequences of the above-noted Conditions in ECA No. A371203 upon local landowners.

Ground 1(d): Inadequate Terms and Conditions

19. In respect of Ground 1(d), the closed Richmond Landfill is located in a risky and complex hydrogeological setting, and lacks appropriate engineered works to fully contain or treat leachate over the lengthy contaminating lifespan of the landfill.

20. Monitoring programs at the Richmond Landfill have detected landfill-related impacts upon groundwater to the north and south of the waste fill area, and the leachate plume potentially extends off-site to the south of the landfill property at the present time. Whether – or to what extent – the Richmond Landfill complies with Reasonable Use limits under MOE’s Guideline B-7 remains unknown at the present time.

21. Monitoring programs have detected landfill-related upwelling of deeper saline groundwater into the upper freshwater aquifer relied upon by private well owners in the vicinity of the Richmond Landfill.

22. Monitoring programs for surface water in the vicinity of the Richmond Landfill have detected exceedances of the MOE’s Provincial Water Quality Objectives for various leachate-related parameters.

23. There has been a lengthy and well-documented history of odour and air quality complaints regarding the Richmond Landfill, and local residents continue to experience landfill odours even though the site has now been closed.

24. Although WMCC submitted an updated environmental monitoring plan (“EMP”) for the Richmond Landfill, the MOE concedes that the EMP is inadequate and based upon insufficient technical information. Nevertheless, this EMP has been conditionally accepted in Condition 8.5 in ECA No. A371203.

25. In issuing Condition 8.5, the Director failed or refused to address a wide range of substantive deficiencies and procedural flaws in the EMP, including (but not necessarily limited to):

- the inadequate location and number of groundwater monitoring wells;
- the ongoing lack of leachate monitoring wells within the waste pile;
- the inadequate list of parameters for groundwater and surface water monitoring;

- the unacceptable proposal by WMCC to discontinue monitoring of certain wells which already display anomalous water quality results;
- the limited frequency of surface water sampling;
- the limited sampling of off-site private wells;
- the inadequate odour monitoring/abatement program;
- the lack of clear deadlines or prescriptive details for the submission of an EMP “addendum report”; and
- the failure to expressly provide meaningful opportunities for public participation in the development, review or approval of the EMP “addendum report”.

26. In issuing Condition 9.1, the Director failed or refused to address a wide range of substantive deficiencies and procedural flaws in the groundwater and surface water impact contingency plan, including (but not necessarily limited to):

- the continuing absence of a sufficiently protective and reasonably detailed contingency plan for groundwater and surface water impacts arising from the Richmond Landfill;
- the lack of clear deadlines or prescriptive details for the submission of an addendum report for this contingency plan;
- the failure to expressly include meaningful opportunities for public participation in the development, review or approval of the addendum report for this contingency plan; and
- the inclusion of incorrect data, unsound conclusions, and unwarranted assumptions within this contingency plan.

27. In issuing Condition 9.2, the Director failed or refused to address a wide range of substantive deficiencies and procedural flaws in the leachate collection system contingency plan, including (but not necessarily limited to):

- the inappropriate and unacceptable proposal by WMCC to utilize a blast-induced fracture trench as a contingency measure at the Richmond Landfill;
- the lack of clear deadlines or prescriptive details for the submission of “detailed design” information for any remedial measures implemented under this contingency plan; and

- the failure to expressly include meaningful opportunities for public participation in the development, review or approval of the “detailed design” information for any remedial measures implemented under this contingency plan.

28. In issuing Condition 9.5, the Director failed or refused to address a wide range of substantive deficiencies and procedural flaws in the public notification plan for contingency plans, including (but not necessarily limited to):

- the undue delay of another year in preparing the public notification plan;
- the failure to include any prescriptive details or objectives for the public notification plan;
- the failure to include any provision for public notification of emergency situations, spills, or upset conditions at the Richmond Landfill; and
- the failure to expressly include meaningful opportunities for public participation in the development, review or approval of the public notification plan.

29. In issuing Conditions 14.1, 14.2 and 14.3, the Director failed or refused to address a wide range of substantive deficiencies in semi-annual monitoring reporting and annual reporting, including (but not necessarily limited to):

- the lack of appropriate and reasonably detailed mapping of site features, geological structures, leachate plume, and other key matters;
- the lack of leachate quality information, particularly from the unlined portion of the Richmond Landfill;
- the lack of information on the nature and extent of leachate mounding at the Richmond Landfill;
- the lack of information on the amount of leachate which is leaking into the underlying groundwater flow system at the Richmond Landfill;
- the lack of information on the presence/absence of karst features; and
- the lack of information on the upwelling of saline groundwater at the Richmond Landfill.

Ground 2: Inconsistency with MOE’s Environmental Statutes and Policy

30. In respect of Ground 2, the Appellant pleads and relies upon the material facts set out in the foregoing paragraphs.

31. Since the Tribunal, in its leave-to-appeal decision dated March 30, 2012, has lifted the automatic stay imposed by section 42 of the EBR, the Appellant will not be seeking a stay of the above-noted Conditions in ECA No. A371203 pending the disposition of this Appeal.

DATED at Toronto, this 13th day of April, 2012.



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