

1. What government body is your question or complaint about? (Please identify by name.)

The focus of this complaint is with the Environmental Assessment & Approvals Branch (EAAB) of the Ministry of the Environment, specifically, the Certificate of Approval Review Section of this branch.

2. Who have you dealt with in this organization with respect to your complaint?

Mr. Ian Parrott, Manager, Certificate of Approval Review Section

Mr. John Gasbarri, Senior Review Engineer

Mr. Phil Bye, Barrie District Manager

Mr. Ian Mitchell, District Engineer

3. Please summarize the matter you are complaining about and include any relevant dates.

This complaint is filed in response to the EAAB's October 20, 2006 decision granting approval to the Design & Operations Report submitted by the County of Simcoe in respect of the proposed development of County Landfill Site 41.

This proposed landfill site has a history going back over 25 years and was first rejected in 1989 following a Joint Board Hearing held under the Consolidated Hearings Act. The Joint Board found that the Environmental Assessment carried out by the proponent was "irredeemably deficient", the site selection process was "non-existent", site comparison "flawed" and "the overall process was not logical, traceable or replicable." The decision of the Joint Board was rescinded by an Order In Council (OIC) on June 14, 1990 and in the intervening 16 year period, the proponent (Simcoe County), in cooperation with the Ministry of the Environment, has been given repeated opportunity to continually "patch up" deficiencies in the proposal. Notwithstanding the many amendments, the proponent's consultant admitted in an open meeting of Municipal Council in 2004, that if the site selection were to begin anew, it would be unlikely that they would settle on Site 41 as the preferred location for the development of a landfill site. It would appear that the passage of time has done nothing to justify/validate the OIC that rescinded the Joint Board's original decision.

Events Giving Rise to This Complaint.

- i. The EAAB granted approval with only scant regard for the concerns expressed by the CMC and peer reviewers with respect to side slope stability and the base differential settlement rates on the leachate collection system. Peer reviewers concluded that based on the available information, the risk of failure (e.g. a waste slide that could result in tearing of the proposed plastic (geomembrane) liner or the escape of leachate to the surface water) was higher than would normally be accepted.
- ii. The EAAB granted approvals absent an effective plan to treat the leachate expected to be produced at Site 41. As indicated in the Design & Operations Report, the Midland Water Pollution Control Plant (MWPCP) was only capable of receiving leachate from the first cell development and only on a trial basis. The Barrie Water Pollution Control Plant,

considered an alternate, was at near capacity when last approached by the proponent in 2004 and in the interim period, the City of Barrie has increased their own leachate treatment load from that City's expanded landfill. There is overwhelming evidence that discharges of inadequately treated flows from pollution control plants are a major and chronic source of pollution for many bodies of water throughout the Province.

- iii. The EAAB has accepted an inappropriate reliance on the B7 Reasonable Use Guideline (B7 R.U.G) in approving the Design & Operations Report submitted by the proponent. The EAAB approval, which in effect supplants the Joint Board's decision requiring upward hydraulic gradients, is ultra vires. While B7 may be a relevant measure of ground water contamination prior to remedial efforts in the event of a systems failure, it cannot be substituted for the continued presence of the much heralded upward hydraulic gradient.
- iv. Prior to granting approval, the MOE failed to ensure that the proponent met the conditions of the Certificate of Approval, specifically, "undertaken to set as its primary waste management goal the reduction, recycling and reuses of potential waste and waste so that remaining waste to be landfilled is minimized." In fact the Ministry has allowed the proponent to continue to act without benefit of any waste management plan and without regard for the proposed policy statement on Waste Management Planning (EBR Registry 010-0420).
- v. The MOE failed to acknowledge their lack of expertise and they failed to engage independent experts to review the mathematical models on which site approval was predicated. In this case, the MOE has relied solely on the modeling *output* provided by the proponent's consultant and *failed to challenge the input assumptions*. Moreover, the proponent, in contravention of the Certificate of Approval, has refused to provide the CMC with the model that would enable the committee to carry out the due diligence exercise that the MOE failed to undertake. The Environmental Commissioner Of Ontario's (ECO) recent report, "Doing Less With Less", states that regulated areas of endeavour have increased, environmental issues have grown in complexity and the MOE has lost capacity in terms of finance, staffing and expertise. No model can overcome a series of bad assumptions and models of politically sensitive societal issues are easily manipulated to yield the desired outcome.
- vi. The EAAB approved the Design & Operations (D & O) plan without an understanding of the affects that climate change will have on the design and operation of the site. Site design is based upon the continued presence of an "upward hydraulic gradient", ostensibly creating a hydraulic trap to contain leachate. We have no assurance whatsoever that the upward hydraulic gradients will continue to be present throughout the contaminating life of the site (In many cases over 100 years). The peer review comments on this point are clear and unequivocal; the data provided by the proponent does not adequately address the concern and there has been a statistically significant decline in the underlying water table.
- vii. In granting approval for the development of this site, the MOE has failed to act in a manner that is consistent with the Provincial Policy Statement regarding the preservation of Ontario farmland and the protection of source drinking water. Site 41 is comprised of prime agricultural farm land (class 1 & 2) and is directly atop of a pristine groundwater flow. Trace metal amounts in these waters have been determined to be lower than those

found in ancient glacial ice. In addition, the MOE has failed to adequately consider the affects the proposal may have on area farmer's ability to draw water for irrigation purposes.

- viii. The MOE, in granting approval, has failed to recognize the legislative intent of the Adams Mine Lake Act, which is to prevent the operation, establishment, alteration, enlargement or extension of a waste disposal site where waste is deposited into a lake. The Act defines a lake as "a body of surface water that results from human activities and directly influences or is directly influenced by ground water." Absent extensive dewatering, the excavation required for cell development at Site 41 will certainly result in the creation of a "body of surface water."
- ix. The MOE and the proponent have failed to meet their respective duties to consult with the Community Monitoring Committee (CMC) on several key issues related to the proposed development. The proponent, and the MOE as the approval authority, have demonstrated a pattern of disregard for the role and responsibility that the CMC has been charged with through conditions included in the Certificate of Approval.
- x. The MOE has granted approval for the creation of another landfill site when clearly the proponent has failed to establish the need. Although when originally proposed, the need for Site 41 was characterized as urgent, and notwithstanding the proponent has not opened any additional landfill sites in the over 25 years since Site 41 was proposed, the proponent still has 9.3 years of capacity remaining in existing landfill sites with another 11.4 years of capacity under development in those same sites.

4. Summarize what steps you have taken to try and resolve your complaint including any grievance, appeals and/or requests for reconsideration you have submitted and what response you received.

On August 10, 2006, as Chair of the Community Monitoring Committee (CMC) for Site 41, I submitted a list of concerns to Mr. John Gasbarri, Senior Review Engineer, for consideration prior to the Director's decision. Those concerns, among others enumerated in response to question three (3), remain outstanding. It would appear that both the MOE and the proponent of Site 41 refuse to believe that there are any problems or potential problems inherent in the site or its design, preferring instead to believe the only problem exists with the CMC. Regrettably, the MOE has allowed their conception of the problem to shape their discourse and response.

5. If you have received a final decision on an appeal or request for review or reconsideration of your complaint, please indicate what the result was and why you feel this was unfair.

Mr. John Gasbarri, EAAB Senior Review Engineer, has provided the following in response to my appeal rights enquiry; "***It is the Ministry's position that there are no appeal rights for you or any other third party, with respect to the decision as the Leave to Appeal provisions of the EBR (Environmental Bill of Rights) don't apply given that this undertaking is exempted from section***

22 of the EBR by virtue of 32(1).” Not surprisingly, the Environmental Commissioner of Ontario (ECO), in the 2003/2004 annual report raised specific concerns with section 32 and Site 41. In this report, “EBR Rights Lost: Behind the Veil of Section 32”, the ECO concluded that public participation rights are deficient in many respects when compared to the EBR. The application of Section 32 is depriving the public of rights to request appeals, rights the EBR was intended to safeguard.

6. Describe the results or outcome which you would like to see for the matter you are complaining about.

First among the desired outcomes would be the immediate withdrawal of the approval to proceed with the development of Site 41. On balance, the disadvantages of this proposal outweigh any perceived advantage. Secondly, that the Proponent County of Simcoe be directed to complete a comprehensive waste management plan and further, any proposal shall be consistent with Provincial Policy Statements in terms of preservation of prime agricultural lands and the protection of safe and plentiful drinking water resources. In addition, any proposal must have as its first priority, waste diversion with measurable specifics.

7. If you consider the matter urgent, please explain why.

This is a matter of great urgency as the County of Simcoe has already made it clear that although it will be necessary to dewater the site prior to commencement of construction, they have no intention of seeking a Permit To Take Water (PTTW). Because of Section 32 provisions, the County will not be compelled to make an application for a PTTW. Interestingly enough, when a partial voluntary notice of the PTTW for the Adams Mine was posted to the EBR Registry, it triggered more than 23,000 comments from concerned citizens. There is every reason to believe similar levels of concern exist with respect to this proposal as well. On this point, the MOE has failed to respond to my previously expressed concerns.

The County of Simcoe has recently passed a motion to begin certain preliminary on site work and given the County’s disposition to rely on the sunk cost fallacy as justification for proceeding with development, further taxpayer expense would be spared by intervention sooner rather than later. In addition, this decision of the EAAB was made in October of 2006 and participation of the Office of the Ombudsman is time sensitive (within twelve (12) months).