

DRAFT

Background Document 6
Relevant Policies & Approvals
Requirements

Draft
Environmental Assessment
Terms of Reference

City of Toronto
Long-term Residual Waste Management Study

March 19, 2007

Table of Contents

1. Introduction.....	1
1.1 Background.....	1
1.2 Background on CEAT	2
1.3 Environmental Assessment Act (EAA)	3
1.4 Overview of Background Documentation	3
1.5 Purpose of this Background Document	4
2. Applicable Federal Legislation.....	4
2.1 The Canadian Environmental Assessment Act.....	4
2.1.1 Approval Requirements	5
2.1.2 Harmonization with the Ontario Environmental Assessment Act.....	5
2.1.3 Applicability of the Canadian Environmental Assessment Act to the Toronto Waste Management Residual Study.....	6
2.2 The Fisheries Act.....	6
2.2.1 Approval Requirements	6
2.2.2 Applicability of the Fisheries Act to the Toronto Residual Waste Management Study	7
3. Applicable Provincial Legislation	7
3.1 The Environmental Assessment Act (EAA)	7
3.1.1 Approval Requirements	8
3.1.2 Related Policies and Practices of Approval Authority	9
3.1.3 Public Consultation Requirements	10
3.1.4 Applicability of EAA to the City of Toronto Residual Waste Management Study.....	11
3.2 The Environmental Protection Act (EPA)	11
3.2.1 Approvals Requirements	12
3.2.2 Public Consultation Requirements	14
3.3 The Ontario Water Resources Act (OWRA)	15
3.3.1 Approval Requirements	15
3.3.2 Applicability of the OWRA to the City of Toronto Residual Waste Management Study.....	15
3.4 The Environmental Bill of Rights (EBR)	15
3.4.1 Approval Requirements	16
3.4.2 Application of the EBR.....	16
3.5 The Planning Act.....	16
3.6 The Provincial Policy Statement 2005.....	17
3.7 The Greenbelt Protection Act	17
3.8 The Oak Ridges Moraine Conservation Act.....	17
3.9 The Niagara Escarpment Planning and Development Act (NEPDA)	17
3.10 Places to Grow Act	18
3.11 The Draft Ontario Waste Management Projects Regulation	18
3.12 Conservation Authorities Act	19
3.13 City of Toronto Act	20
4. Applicable Municipal Approvals Requirements.....	20
5. In Closing.....	21

1. Introduction

This introduction provides an overview of waste management within the City of Toronto (the City), the Environmental Assessment Act (EA Act), the Background Documents supporting the Environmental Assessment (EA) Terms of Reference and the purpose of this particular Background Document.

1.1 Background

Since amalgamation in 1998, the City of Toronto has combined all waste management services into one harmonized program; Solid Waste Management Services (SWMS). SWMS has expanded their services to include a source separated organics program and an expanded blue box program for single and multi-family buildings. SWMS is responsible for 9 operations yards, 7 transfer stations and household hazardous waste/recycling depots, two material recovery facilities, a maintenance yard and 158 closed landfill sites.

In 2000, City Council embarked on the process to find alternative waste disposal options with the mandated closure of the Keele Valley Landfill in 2002 resulting in contracts for waste disposal in Michigan.

In 2001, the City established the “Waste Diversion Task Force 2010”, comprised of city councillors to develop a long-term strategy for waste management for the City of Toronto. The goal of this taskforce was to recommend strategies to obtain 60% diversion by 2006 and 100% diversion by 2010.

In 2002, the New and Emerging Technologies, Policies and Practices Advisory Group was formed, to review and provide advice on the adoption of new and emerging technologies, policies and practices to manage residual waste.

As of January 1, 2003, 100% of Toronto’s waste was being shipped to Michigan. A number of operational and cross-border issues have arisen with stricter security and regulatory measures being implemented with respect to prohibitions on types of material being imported and landfilled in Michigan, which has been the impetus for a “Made in Toronto” solution. This “Made in Toronto” solution would be more socially and politically acceptable, would maximize environmental protection and would foster the wise management of potential resources, such as energy-from-waste, which are currently lost by way of landfill in Michigan.

In September 2003, City Council approved a recommendation to initiate an individual EA for an integrated residual municipal solid resource management system. Based on the recommendations of the New and Emerging Technologies, Policies and Practices Advisory Group, City Council established a community council “Community Environmental Assessment Team (CEAT)” in February 2006, to guide the City’s Environmental Assessment for the management of residual waste under the Province’s Environmental Assessment Act.

In September 2006, Council approved the purchase of Green Lane Landfill in Elgin County, which would provide the City of Toronto with disposal capacity. As part of the acquisition of Green Lane, City Council resolved that the City’s previous position regarding 100% diversion

from landfill be reconsidered in the development of the Terms of Reference for the Residual Waste Study.

The purchase of the Green Lane landfill site (expected to be finalized in March 2007) would provide approximately 13 million tonnes of approved disposal capacity. This may be insufficient to provide for long-term disposal of all residual wastes over the 25-year planning period, given that there are other contractual commitments that the City of Toronto intends to honour that will consume some of this capacity. Conservation of landfill space would ensure that the City of Toronto and other municipal disposal requirements could be met over the long-term. The City of Toronto also recognizes that there are potential benefits associated with the recovery of resources from the residual waste stream.

1.2 Background on CEAT

In February 2006, Toronto City Council established a Community Environmental Assessment Team (CEAT) to participate with Staff in the preparation of the City's environmental assessment for the management of residual waste under the Ontario Environmental Assessment Act. At the Toronto City Council meeting of January 31 – February 2, 2006, Council appointed 22 Toronto citizens as members of the CEAT. The Team held its first meeting on March 2, 2006.

Based on the strategic direction provided by City Council, CEAT will, in addition to other functions and responsibilities developed during the course of the EA:

- (i) participate with staff and project consultants in the development of the Terms of Reference, the consultation plan, and the Environmental Assessment that will be prepared on behalf of the City;
- (ii) have a standing presentation to every regular meeting of Works Committee to provide for regular and direct communication with Works Committee; and
- (iii) participate, to the extent allowed by City policies, in procurement processes for project consultants.

CEAT is to be comprised of up to 25 citizens of Toronto. Membership will be for the duration of the project, including the EA Terms of Reference, the public consultation program, and the EA. For more details about membership selection criteria and CEAT mandate, see: http://www.toronto.ca/garbage/ceat/pdf/schedule_1_mandate_for_agreement_2006-02-14.pdf.

The members of CEAT have developed a set of guiding principles to help them in their work. CEAT aims to:

- integrate sustainability throughout the EA process;
 - enhance participation and community leadership;
 - actively engage stakeholders;
 - work as a team, building consensus;
 - be open and transparent in its work;
 - become well educated in waste management issues;
 - be open to new and existing ideas;
 - listen to team members and public stakeholders; and
 - participate in the various components of the EA process.
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1.3 Environmental Assessment Act (EAA)

Since the adoption of the Environmental Assessment Act (EA Act) in the 1970s, the EA process has evolved into a study or decision-making process undertaken in consultation with interested parties, that evaluates alternatives considering the potential effects on the environment, the availability of mitigative measures that address these effects, in whole or in part, and the comparison of the advantages and disadvantages of the remaining or “net” effects. The result of this process is to provide the planning rationale and support for a preferred solution.

An EA Study provides a planning approach where environmental constraints or opportunities are considered in the context of the broad environment as defined in the EA Act and potential effects are understood and addressed before development occurs.

All public sector (i.e., provincial or municipal) undertakings that have the potential for significant effects in terms of their scope are generally subject to the Act. With respect to waste management, certain types of waste management undertakings require approval under the EA Act. In general, approval under the EA Act is required for the establishment or the expansion of facilities for the final disposal of waste (i.e. landfills and incinerators). It may also be required for other facilities depending on the potential for environmental impacts.

Under the EA Act, an Environmental Assessment (EA) Terms of Reference must be prepared and submitted to the Minister of the Environment for approval before an EA Study can be undertaken.

The Ministry of the Environment has released a draft regulation under the EA Act, the *Waste Management Projects Regulations* to revise the environmental assessment process by classifying proposed waste undertakings on the basis of the waste type, the size of a prospective facility and whether a prospective facility would generate energy. The Regulations would apply to both private and public sector undertakings. The promulgation of this regulation could result in some significant changes as to how the EA Act would apply to the various technologies under consideration in the Residual Waste Study.

1.4 Overview of Background Documentation

A series of documents has been prepared to provide the necessary background and rationale in support of the EA Terms of Reference. These documents describe:

- underlying assumptions and commitments on the part of the City of Toronto with respect to completing the EA Study in accordance with the approved EA Terms of Reference;
- public and agency consultation undertaken by the City of Toronto in developing the EA Terms of Reference; and
- the manner in which that consultation influenced the document submitted to the Minister of the Environment for approval.

These documents have been provided to support the development of the EA Terms of Reference, but do not form part of the Terms that will be submitted for approval by the Minister of the Environment. The subject background documents contain information that may be referenced to obtain a better understanding of how the City of Toronto established the steps, methods and

criteria included in the EA Terms of Reference. Following is a list of the background documents prepared for the City of Toronto Residual Waste Management Study:

- Background Document 1 – *Purpose and Need for the Undertaking*
- Background Document 2 – *Identification of Alternative Technologies*
- Background Document 3 – *Evaluation of Alternatives*
- Background Document 4 – *Description of the Environment Potentially Affected*
- Background Document 5 – *Community Compensation Overview of Approaches*
- Background Document 6 – *Relevant Policies & Approvals Requirements*

1.5 Purpose of this Background Document

The purpose of this Background Document is to outline applicable legislation and approvals requirements that will form a fundamental part of the subject Environmental Assessment Study process. This document provides an outline of each level of regulatory context in the Province of Ontario (federal, provincial and municipal) and describes the approval requirements and related processes that must be followed to ensure successful compliance.

2. Applicable Federal Legislation

There are two pieces of Federal Legislation that are potentially relevant to this Study. They are the *Canadian Environmental Assessment Act* (CEAA) and the *Fisheries Act* (FA). In addition, depending on the site specific details of the preferred site(s), additional federal regulations may be triggered under CEAA. The involvement of federal departments and authorities will be determined based on site specific requirements and level of involvement coordinated by way of the Federal Coordination Regulations under CEAA (e.g., potential impact to navigable waters may require authorization under Transport Canada).

2.1 The Canadian Environmental Assessment Act

Under the Canadian Environmental Assessment Act, an Environmental Assessment must be completed where federal departments and agencies:

1. carry out the project;
2. provide financial assistance to enable a project to be carried out;
3. sell, lease, or otherwise transfer control or administration of land to enable a project to be undertaken; and/or,
4. issue an authorization to enable a project to go forward.

Depending on the nature of the project, and the significance of possible environmental effects, the type of assessment required will vary between a ‘screening’ and a ‘comprehensive study’.

Screening – A Screening involves the systematic review of potential environmental effects associated with a project and the identification of required mitigation or modifications to the project to address the potential for these effects. Assuming that there is no potential for remaining significant environmental effects, the process is complete.

Comprehensive Study – A Comprehensive Study is required for projects that are defined under the Comprehensive Study Regulations under the CEAA. These studies tend to apply to large and complex projects that may have the potential to generate significant adverse environmental effects and public concerns. A Comprehensive Study involves, in addition to the requirements of a screening, a review of alternatives to determine a preference for pursuing the project or one of its alternatives, which may include not proceeding with the project. In addition, a Comprehensive Study must consider the purpose and need for the project as well as mandatory public consultation and follow-up.

2.1.1 Approval Requirements

The CEAA assessment process generally requires that the following activities be undertaken:

- Consideration of the following factors to a level of detail that will be stipulated by the responsible federal agency or designate:
 - purpose of the project
 - environmental effects of the project and the significance of those effects;
 - comments from the public;
 - measures that are technically and economically feasible to mitigate adverse effects and residual impacts;
 - alternative means of carrying out the project;
 - the potential impact of the environment on the project;
 - current use of land for traditional resources;
 - cumulative effects;
 - the need for a follow-up or monitoring program; and,
 - impacts on renewable resources with respect to their capacity to meet present and future needs.
- Preparation of a screening report or a comprehensive study report.
- Mediation or assessment by a review panel as provided in the EAA and the preparation of a report.
- Design and implementation of a follow-up program.

2.1.2 Harmonization with the Ontario Environmental Assessment Act

If the environmental assessment concludes that a project is acceptable, then the responsible federal authority is authorized to proceed with their involvement in that project.

Based on the current Federal and/or Province of Ontario regulatory and policy environment, where waste management undertakings are subject to a federal environmental assessment, two pieces of legislation, the Canadian Environmental Assessment Act and the Provincial

Environmental Assessment Act, must be addressed by way of two separate processes. Recognizing that the potential exists for many projects Canada-wide to require EAs under two separate pieces of legislation and that there is much duplication between the processes, the Canadian Environmental Assessment Agency (CEAA) is working to establish agreements with the various Provinces to harmonize the requirements of both Acts into one process. To date, agreements have been reached in only four Provinces and one Territory – Manitoba, Saskatchewan, Alberta, British Columbia, and the Yukon.

On November 1, 2004 the federal and provincial ministers of the environment reached an “EA cooperation agreement” for projects that require approval under both the Canadian EAA and the provincial EAA. The “Canada-Ontario Agreement on Environmental Assessment Cooperation” has established the basis upon which the EAs for projects, which are subject to both pieces of legislation, can be completed more effectively. Separate approvals would still be required. The means, however, by which these approvals are administered, will be undertaken in a more fully coordinated fashion.

2.1.3 Applicability of the Canadian Environmental Assessment Act to the Toronto Waste Management Residual Study

There are a number of scenarios under which the subject Study would require approval under the Canadian Environmental Assessment Act including:

- the provision of funds from a federal program for the project;
- the sale or lease of federal land to the proponents or to the private sector for the development of the preferred alternative system(s); and/or,
- the issuance of a federal approval (e.g. approval under the Fisheries Act related to an alteration of a watercourse for construction of the preferred alternative system(s)).

The extent and specific nature of any possible compliance requirements will depend upon the characteristics of prospective alternative site(s) under consideration at the Study’s site-selection phase for the preferred alternative system(s).

2.2 The Fisheries Act

Fish habitat can be easily damaged and lost due to human activities that occur in, near or within water. For any project that could potentially alter or even destroy fish habitat (e.g., spawning grounds, nursery and rearing areas, areas of food supply or migration routes), approval by the Minister of Fisheries and Oceans (DFO) is required under the Fisheries Act.

2.2.1 Approval Requirements

Section 35 of the Fisheries Act states that *no person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat*. For project approval, specific information is required under the Fisheries Act, including:

- water body name and location;
 - detailed description of the work site;
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- creek habitat inventory by qualified fisheries biologists; and,
- measures incorporated into the design of a prospective development that would result in no net loss of fisheries habitat (this is often accomplished by way of improvements to down stream habitats).

With regard to the screening of projects for the need for approval under the Fisheries Act, arrangements exist between the local Conservation Authority and DFO. In accordance with this agreement, all projects involving potential impacts on a watercourse or a development permit from the conservation authority are also screened for the need for approval under the Fisheries Act. If Federal approval were required, then the conservation authority would work with the co-proponents to the extent they can (depending on their level of agreement with DFO) prior to the project being referred to DFO for consideration.

2.2.2 Applicability of the Fisheries Act to the Toronto Residual Waste Management Study

The need for approvals under the Fisheries Act for a waste processing facility will depend on the location of the preferred site(s) together with the proposed on-site activities. Should the site be located near an existing watercourse, or if there were any potential harmful alternation, disruption or destruction of fish habitat, approval under the Act would be required. An approval under the Fisheries Act would invoke the requirement of the Canadian Environmental Assessment Act as described in Section 2.1.

3. Applicable Provincial Legislation

The most directly applicable pieces of provincial legislation to the subject Study are: the Environmental Assessment Act (EAA); the Environmental Protection Act (EPA); the Ontario Water Resources Act (OWRA); the Environmental Bill of Rights (EBR); the Planning Act; the Green Belt Act; and the Oak Ridges Moraine Conservation Act.

3.1 The Environmental Assessment Act (EAA)

The purpose of the Environmental Assessment Act (EAA), R.S.O. 1990, c.E. 18, as quoted in the Act is the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment.

This has typically been translated into the completion of a study or decision-making process, in consultation with interested parties including the public that evaluates alternatives considering potential effects on the environment, the availability of mitigative measures that address, in whole or in part, these effects and the comparison of the advantages and disadvantages of the remaining or “net” effects. This process provides the planning rationale and support for approval under the EAA for a proposed undertaking. The EAA ensures that environmental problems or opportunities are considered in the context of the broadly defined environment (i.e., natural environment as well as the social, economic and heritage “environments”) and potential effects are understood and addressed before development occurs. The planning process required by the EAA also requires that a reasonable range of alternatives to the proposed undertaking and alternative methods of implementing the undertaking (e.g., alternative sites for the establishment of residual waste management capacity) be evaluated by the proponent.

Most major provincial or municipal undertakings are subject to the EAA and must apply to the Minister for approval in accordance with Section 5(1) of the EAA. Private sector undertakings are not subject to the EAA unless specifically designated by regulation or the Minister. Waste processing facilities for the disposal of residual wastes, such as those being considered by the City of Toronto, are the types of undertakings, which typically require EAA approval.

3.1.1 Approval Requirements

Approval under the EAA is issued by the Minister of the Environment. There are two levels of approval required:

1. An EA Terms of Reference identifying how the EA is to be conducted (Approved by the Minister of the Environment); and,
2. The EA Study completed in accordance with the approved EA Terms of Reference (Approved by the Minister of the Environment by way of an Order-in-Council from Provincial Cabinet).

Environmental Assessment Terms of Reference (EA Terms of Reference)

EA Terms of Reference are prepared by the proponent in accordance with Section 6.(1) and 6.(2) of the Act and are required to contain the following primary components:

- Identification of the Proponent (i.e., person carrying out the project or the owner having charge, management or control of the project).
- A description of the purpose of the undertaking (i.e., project) and undertaking itself (to the extent that it can be defined at the Terms of Reference step).
- A description of the alternatives to the undertaking and the alternative methods of implementing the undertaking to be evaluated during the EA.
- A description of the environment potentially affected by the proposed undertaking (to the extent it can be defined at the Terms of Reference step).
- The proposed methodology and criteria for assessing and evaluating the alternatives and selecting the preferred alternatives (to the extent it can be defined at the Terms of Reference step).
- A description of the consultation plan to be followed over the course of the EA.

Once submitted for approval, the Minister may approve, modify and approve, or reject the proposed EA Terms of Reference. Some issues may also be referred to mediation for consideration in deciding whether or not approval should be granted. In accordance with a 'deadline' regulation (Regulation 616/98) under the EAA, the timeframe for Ministerial approval of an EA Terms of Reference is to fall within a range of three to five months.

Environmental Assessment Study

The preparation of an Environmental Assessment Study must document how the EA Terms of Reference were followed and generally includes the following:

1. A description of the purpose of the undertaking;
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2. A description of and a statement of the rationale for the undertaking, the alternative methods of carrying out the undertaking, and the alternatives to the undertaking;
3. A description of the environment that will be affected or that might reasonably be expected to be affected, directly or indirectly, the effects that will be caused or that might reasonably be expected to be caused to the environment;
4. The actions necessary or that may reasonably be expected to be necessary to prevent, change, mitigate or remedy the effects upon or the effects that might reasonably be expected upon the environment, by the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking;
5. An evaluation of the advantages and disadvantages to the environment of the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking; and
6. A description of any consultation about the undertaking by the proponent and the results of the consultation.

The completed Environmental Assessment Study is submitted to the Minister of the Environment for approval and the Minister subsequently refers the EA to the Ministry's Environmental Assessment and Approvals Branch to co-ordinate comments from all Provincial agencies relevant to the project and from stakeholders responding as a result of a public notice issued when the EA is submitted. This review is released for consideration by the Minister when making a decision on whether or not to approve the EA. The Minister may approve the EA in part or in whole, approve the EA with modifications, refer certain matters to mediation or a public hearing, or reject the EA.

In accordance with Regulation 616/98 (Deadlines), the timing of a decision from the Minister on a environmental assessment can range up to 8 months without the need for mediation or a public hearing, up to 1 year if mediation is required and longer if a public hearing is required (the Minister has the discretionary power to set deadlines where public hearings are required).

3.1.2 Related Policies and Practices of Approval Authority

There are several Ministry of the Environment policies, guidelines and practices that are used by MOE staff when determining whether or not the EAA applies and that are also referenced when applying the EAA. In addition, there have been a number of precedent-setting decisions and court cases relative to the original EAA that was promulgated in the 1980's and subsequently modified in 1996 that have a bearing on how the EAA is to be followed today. This section discusses how these policies and practices may come to bear on an undertaking being contemplated by the City of Toronto Residual Waste Study.

A "Reasonable" Range of Alternatives for the EAA Approval Process

The subject of a hearing before the Ontario Superior Court of Justice, Division Court, in 2003 was a judicial review of the then Minister of the Environment's approval of an EA Terms of Reference for a landfill undertaking and in particular, the identification of a "reasonable" range of "alternatives" in accordance with provisions of the modified (1996) Environmental

Assessment Act. The subject landfill expansion proposal involved the Canadian Waste Services (CWS) Richmond Landfill Site. The Superior Court's decision, issued on June 17th, 2003, essentially deemed that the Minister's approval of the Terms of Reference was based on an incorrect interpretation of the EAA in that the Environmental Assessment, as described, would not have entailed the consideration of a sufficiently comprehensive range of alternatives to be in compliance with the EAA.

From 1997 up to the court's decision (the "Sutcliffe Decision") many proponents had utilized Sections 6(2)(c) and 6.1(3) of the EAA, which were interpreted to facilitate a more focused consideration of alternatives to only those that address the specific needs and circumstances of the proponent. In the case of CWS, substantial focusing had been proposed in the Terms of Reference for the Study due to the company's limited ability to influence the diversion of waste from disposal and due to limitations that exist for the private sector with regards to alternative properties or locations.

The "Sutcliffe Decision" was a split decision among the three judges and was appealed. On August 25, 2004 the Court of Appeal for Ontario issued its decision, which allowed the appeal thus reinstating the CWS Terms of Reference. The Court's decision reinforces the Minister's capacity to approve an EA Terms of Reference based, essentially, on its specific merits provided that she/he has performed her/his duties in a reasonable manner and that the decision to approve the respective Terms of Reference addresses the Purpose of the EAA and the protection of the public interest. Possibly the most significant outcome of the Court of Appeal's decision is the affirmation that proponents must apply a standard of "reasonableness" when developing and undertaking an EA study and considering how to address the generic EA components provided in section 6.1 (2) of the EAA.

3.1.3 Public Consultation Requirements

Under the Environmental Assessment Act, the proposed EA Terms of Reference must be prepared in consultation with the public and submitted to the MOE with a record of public consultation in order to be approved. The actual EA Study, when submitted to the MOE, must also have a description and results of any consultation about the project. Once the Environmental Assessment Study is submitted to the MOE, the Minister subsequently refers the EA to the Ministry's Environmental Assessment and Approvals Branch to coordinate comments from all relevant agencies and stakeholders.

Public Hearing Requirements

Section 9 of the EAA provides for the referral of an application under the EAA to the Province's Environmental Review Tribunal (ERT) for a decision or part of a decision. This stipulation applies to the EA study only and not to the EA Terms of Reference. In arriving at a decision, the ERT may consider the findings of a Mediator's Report, if mediation was sought to address an issue, or may hold a public hearing to consider issues. This referral is discretionary on the part of the Minister as is the setting of deadlines for the ERT report back on a decision. Generally, if a request is received for a public hearing, the matter will be referred to the ERT except where:

1. The Minister considers the request to be frivolous or vexatious;
2. The Minister considers a hearing to be unnecessary; or

3. The Minister considers that a hearing may cause undue delay in determining the application. Any decision provided back to the Minister by the ERT may be varied, substituted or returned to the ERT for a new hearing by way of an Order-in-Council from Provincial Cabinet.

3.1.4 Applicability of EAA to the City of Toronto Residual Waste Management Study

The City of Toronto Study qualifies as an undertaking that is considered significant in terms of scope and potential to impact the environment and is, therefore, subject to the Environmental Assessment Act. The Study is being planned in accordance with the requirements of the EAA. A substantial proportion of the technologies/processes being considered in the subject Study of alternative residuals management systems will require approval under the Environmental Assessment Act.

Approval is typically required under the EAA when a proposed undertaking exceeds certain values, as identified in Ministry guidelines, for a waste disposal facility. The guidelines for municipal waste processing and incineration facilities, as contained in the Ministry of Environment document titled “Guide for Applying for Approval of Waste Disposal Sites” and dated November 1999, are as follows:

Incineration	Processing
>100 tonnes per day (tpd) (refers to quantity of waste being fed into a facility for processing).	>200 tpd (refers to total quantity of residuals resulting from processing that will require disposal as residual waste).

The projected quantities of residual waste requiring processing will exceed the above-noted guideline for incineration provided it is determined that only one facility is to be implemented. The quantity of process residuals may exceed the guideline for other means of waste processing depending on the nature of the respective process. Accordingly, the need for an EEA approval is considered likely.

3.2 The Environmental Protection Act (EPA)

Unlike the EAA which considers a very broadly defined environment and which requires a planning/decision-making process which takes into account potential impacts on all aspects of the environment, the Environmental Protection Act (EPA), R.S.O. 1990, c. E.19 is more focused on the natural environment (i.e., air, land, water and biota) and the technical/scientific analysis of projects on a case by case basis with regards to environmental suitability.

There are two parts of the EPA with particular relevance to the establishment of a facility utilizing an alternative waste disposal technology currently being considered by Toronto. These are:

- Part II, which regulates emissions to the natural environment and, in particular, the air.
- Part V, which regulates the establishment and operation of all waste management facilities in the Province.

To address the requirements of the EPA and to obtain the required approval instruments, supporting technical studies and design plans must be completed to a level of detail demonstrating no “adverse effects” on the environment and to show that the applicable environmental standards and criteria will be met.

3.2.1 Approvals Requirements

Part II – Air & Noise Approvals

Section 9 of the EPA underlies the Province of Ontario’s Air & Noise approvals program and requires that a Certificate of Approval (Air and Noise) be obtained for the establishment of any operation that may emit a contaminant into the natural environment. To obtain a C of A (Air and Noise) detailed supporting documentation is required (similar to waste C of As) to be completed and provided as part of the application for a Certificate of Approval. Air approvals will be particularly important in the subject Study should a thermal processing alternative be identified as the preferred “Alternative To” the undertaking. There are two key requirements related to the receipt of a Certificate of Approval (Air) for a thermal processing facility:

- Compliance with limits based on dispersion modeling under Regulation 346 (General – Air Pollution); and
- Compliance with the requirements of MOE Guideline A-7 entitled, “Combustion and Air Pollution Control Requirements for New Municipal Waste Incinerators”, October 2002.

This latter of the two is the most recent set of air emission criteria set under the Environmental Protection Act for thermal processes.

Under Guideline A-7, limits are set on the concentrations of critical parameters in the source emissions (i.e., at the point of emission to the atmosphere or ‘end of the stack’) and are based on a combination of “Maximum Achievable Control Technology (MACT)” and “Lowest Achievable Emission Rate (LAER)” principles depending on the parameter.

Any new municipal residual waste thermal processing facility constructed and operated in Ontario must meet the A-7 requirements regarding minimum design and operating parameters, emission control systems, air emissions limits for particulate matter, acid gases, metals and dioxins/furans, and for the control, monitoring and performance testing of incineration systems.

The requirements of Guideline A-7 are in addition to those of the General Air Pollution Regulation 346 which sets limits on certain parameters at the point of impingement (i.e., normally the property line and any sensitive receptors) and that were developed solely to achieve the protection of the environment and human health (as opposed to MACT or LAER levels which in all cases are lower and more stringent).

In order to obtain a noise approval the facility must demonstrate compliance with the noise requirements, which are included in the MOE Noise Pollution Control (NPC) documents as follows:

- Publication NPC-205, “Sound Level limits for Stationary Sources in Class 1 & 2 Areas (Urban)”, October, 1995, as amended;

- Publication NPC-232, “Sound Level limits for Stationary Sources in Class 3 Areas (Rural)”, October, 1995, as amended.

Air approvals under Section 9 of the EPA will also be important in this study in regards to odours should a composting component (whether aerobic or anaerobic) be included in the preferred “Alternative to”. Regulation 419/05 sets standards for acceptable levels of airborne emissions (stack or fugitive), noise and odour. For composting facilities that would be filtering air through biofilters or other similar equipments or processes, from the compost facility prior to discharge to the environment, approval under Section 9 of the EPA is required.

Application of Ontario Guideline A-7 – Combustion and Air Pollution Control Requirements for New Municipal Waste Incinerators

Guideline A-7 (updated February 2004) addresses the concentration of pollutants in emissions from thermal processing facilities. In brief, MOE staff currently apply the requirements of Guideline A-7, as applicable, to any combustion device that burns gases, liquids or solids generated by any thermal process used for the management of solid municipal waste. As such, the thermal process would be classified as an incineration process with regard to Ministry policy.

This would apply to virtually all thermal processes including new and emerging technologies such as plasma gasification. Once in operation, an incineration or non-incineration facility would be monitored for recyclable and hazardous waste quantities and continually assessed based on a 12 month-period running average. This monitoring would be part of the performance testing program to ensure compliance with applicable laws and provisions in the respective Certificate of Approval.

Part V – Waste Management Approvals

Section 27 under Part V of the EPA requires that a Provisional Certificate of Approval be issued for the use, operation, establishment, alternation, or enlargement or extension of a waste management system or waste disposal site. This requirement applies to all waste management projects no matter its size or type. There are, however, differences in the form of required supporting documentation and the need for a public hearing under the EPA depending on the complexity of the project. The receipt of a Provisional C of A and

approval under the Environmental Protection Act requires the submission of an application for a Certificate of Approval which may be required to be supported by studies, which in the case of an alternative residual waste management facility may include:

- a Noise Impact Assessment;
- an Air Quality Impact Assessment;



Environmental Protection Act

Air Quality Impact Assessment

Health Risk Assessment

Land Use Study

Natural Environment Impact Assessment

Noise Impact Assessment

Hydrological/Hydrogeological Impact Assessment

Visual Impact Assessment

- a Natural Environment Impact Assessment;
- a Health Risk Assessment
- a Land Use Study; and
- a Visual Impact Assessment.

Most of the studies and assessments completed in Ontario to address the EPA Part V approval requirements have related to landfill sites, transfer facilities and processing sites, all of which have generally well established requirements regarding level of detail and scope of work. However, there is currently limited precedent for the establishment of thermal processing facilities.

Supporting studies should address all of these information requirements and the results of these studies must be incorporated into the development of a design and operations report and maintenance plan that addresses potential adverse effects and provides monitoring programs, contingency plans, closure plans, etc.

If the above referenced application is approved by MOE, then a Provisional Certificate of Approval will be issued under the relevant sections of the EPA, and will contain conditions of approval that must be followed to operate the subject facility.

3.2.2 Public Consultation Requirements

Section 30 of the Environmental Protection Act requires that a public hearing be held where a project involves “final disposal” of waste equivalent to or greater than the quantity generated by a population of 1,500. The incineration and landfilling of waste is identified as “final disposal” under MOE Guideline C-1 entitled “Mandatory or Discretionary Hearings on Waste Disposal Sites”, April 1994. In all other cases, the need for a hearing is at the discretion of the Director in accordance with Section 32 of the EPA.

If a project does proceed in accordance with the discretionary hearing requirements of the EPA, the triggers for a hearing as per the Director’s discretionary power are typically¹:

- The site is for the processing, storage or transfer of either liquid industrial wastes or hazardous wastes;
- The site is for the storage of waste over an extended period of time;
- A request, including reasons, is received from the council of the municipality in which the site is proposed to be located;
- A significant number of public requests are received;
- The proposed use of land is inconsistent with official plans or zoning by-laws;
- There is likely to be a significant off-site environmental impact;
- The site design or operation may require special evaluation; or

¹MOE Guideline C-1, “Mandatory or Discretionary Hearings on Waste Disposal Sites, Environmental Protection Act, RSO 1990, Sections 30 to 32 and Ontario Regulation 347 as amended by Ontario Regulation 457/93”, April 1994

- Other unanticipated factors suggest a hearing may be necessary.

Ontario Regulation 206/97 under the Environmental Protection Act states that *A waste disposal site is exempt from Sections 30 and 32 of the Environmental Protection Act if it is or forms part of an undertaking that is subject to section 5 of the Environmental Assessment Act (i.e., project is proceeding in accordance with an Individual Environmental Assessment).*

3.3 The Ontario Water Resources Act (OWRA)

The OWRA provides for the protection of Ontario's water resources considering impacts on the supply and flow of the surface and groundwater, and impacts resulting in the impairment of the resource. Once a preferred site(s) has been identified for implementation of the long-term waste disposal facility, a site-specific determination will be required to assess the need for obtaining OWRA approvals. If the facility is to discharge wastewater/leachate to a sewer, the quality and quantity of the discharge is controlled by applicable municipal sewer use by-laws, and the limitations/requirements of the receiving wastewater treatment facility.

3.3.1 Approval Requirements

Typically, approvals for waste management facilities under the OWRA involve the diversion of natural flows and drainage over a subject property and the management of storm water and sewage generated on the facility site either as a result of precipitation or activities resulting in the generation of sewage (e.g., grey water, sanitary sewage, etc.).

With regards to the diversion of overland flows, approval from the MOE Director is required under Section 52 of the OWRA and will require supporting studies and designs that demonstrate the protection of the water resource with regards to downstream users.

With regards to the management of storm water and sewage, approval from the MOE Director is required under Section 53 of the OWRA and will require supporting studies and designs that demonstrate no impairment on the receiving water resource.

3.3.2 Applicability of the OWRA to the City of Toronto Residual Waste Management Study

The need for approvals under the OWRA for an alternative residual waste management system will depend on the location of the site and proposed on-site activities that may result in the discharge of wastewater/leachate to surface or groundwater sources.

3.4 The Environmental Bill of Rights (EBR)

The Environmental Bill of Rights (EBR) gives the public the right to participate in environmentally significant decisions. For those activities subject to the EBR, the public must be given notice (through the Environmental Registry) of proposals for new policies, Acts, regulations and instruments (e.g. Provisional Certificate of Approval).

The EBR provides a mechanism to ensure the public has the opportunity to formally ask the government to review an existing policy, regulation or instrument, or to consider the need for a new policy, Act, regulation or instrument to protect the environment. This is accomplished by providing:

- The means by which residents may participate in the decision making process on environmentally significant issues;
- A means to increase the accountability of the Government of Ontario when making environmental related issues;
- A means to access the court system by residents; and,
- Protection to any employees who take action in cases of environmental harm.

3.4.1 Approval Requirements

Any application for approval under the EPA or OWRA for an alternative disposal facility will need to demonstrate that the consultation requirements of the EBR have been addressed and will be posted on the Province's Environmental Registry for review by the public. The EBR does not apply to EAA applications as the EAA has its own legislated consultation requirements (i.e., S.5.1 Obligation to Consult – *When preparing proposed terms of reference and an environmental assessment, the proponent shall consult with such persons as may be interested*).

3.4.2 Application of the EBR

The EBR gives the public the right to participate in environmentally significant decisions. For those activities subject to the EBR, the public must be given notice (through the Environmental Registry) of proposals for new policies, Acts, regulations and instruments. For applications subject to the Environmental Bill of Rights requirement for public participation in the approval process, the Application Processor would place the EBR Proposal for the application on the Environmental Registry (ER) for a minimum of 30-day public comment period. This ER notice to the public provides a summary of the proposal (application for approval), and identifies the locations where the complete application can be viewed and the end date of the public comment period. During this public comment period, the public is given the opportunity to review the application and submit comments on the proposal to the Environmental Assessment and Approvals Branch of the Ministry.

For applications subject to the public participation requirement under the EBR, the Waste Evaluator will consider, as part of the detailed technical review, any public comments received during the public comment period identified in the ER notice for the EBR Proposal.

3.5 The Planning Act

The Planning Act establishes the regulatory basis upon which land use planning in Ontario is undertaken. The province has delegated land use planning authority to the City of Toronto and the City exercises this authority through its Official Plan, Zoning By-law, site plan control and the subdivision of land processes.

The Ontario Planning Act governs land use and development throughout the province and requires that municipalities establish planning instruments such as official plans, zoning by-laws, etc. to manage land use within their jurisdictions.

To control land use province-wide, a set of Provincial Policy Statements have been established and must be addressed when developing a municipal official plan or any amendment thereof.

The Minister of Municipal Affairs and Housing may declare provincial interest and request an amendment to an official plan despite the delegation of authority to municipalities.

3.6 The Provincial Policy Statement 2005

The Provincial Policy Statement (PPS) was issued under Section 3 of the Planning Act and came into effect on March 1, 2005. It replaced the PPS that was issued on May 22, 1996 and amended on February 1, 1997. The PPS provides policy direction on matters of provincial interest related to land use planning and development in Ontario. The Policy Statement, therefore, sets the policy foundation for the regulation of development and the use of land in the province. The PPS focuses on directing growth to settlement areas and away from significant and sensitive resources and areas which may pose a risk to public health and safety. The PPS would apply to areas considered for siting facilities outside of the City of Toronto.

3.7 The Greenbelt Protection Act

The Greenbelt Protection Act, 2003, provides the legislative context for the Greenbelt Plan, which was released in February 2005. The Plan defines the limits of and articulates policies for a “greenbelt area” within the Greater Golden Horseshoe of southern Ontario. The Plan identifies where urbanization should occur so as to protect agricultural lands and ecological features within the defined planning area. The Plan, in part, establishes a “Protected Countryside” designation that is intended to enhance the special extent of protected agricultural and ecological lands currently defined within the Oak Ridges Moraine Conservation Plan (ORMCP) and the Niagara Escarpment Plan (NEP) while establishing improved linkages between these two policy areas and the surrounding major lake systems and watersheds.

3.8 The Oak Ridges Moraine Conservation Act

The Oak Ridges Moraine (ORM) Conservation Act, 2001 establishes the regulatory basis for the Oak Ridges Moraine Conservation Plan. The purpose of this Plan is to provide direction to agencies, municipalities and other stakeholders regarding land use planning and resource management initiatives within the defined ORM area. The Plan divides the ORM area into four land use designations. These are “Natural Core Areas”, “Natural Linkage Areas”, “Countryside Areas” and “Settlement Areas”. Municipal planning decisions are required to conform to the Plan, which takes precedence over municipal official plans. As a result, all affected municipal official plans are to be brought into conformity with the policies contained in the Plan.

3.9 The Niagara Escarpment Planning and Development Act (NEPDA)

The Niagara Escarpment Planning and Development Act (NEPDA) governs land use and development within the Niagara Escarpment Development area. The Act is designed to protect the unique ecological and environmental conditions along the escarpment as well as preserve the aesthetics of the area. Any development within the prescribed Niagara Escarpment Protection area will be subject to approval under the NEPDA.

3.10 Places to Grow Act

The Places to Grow Act came into effect in June 2005. This legislation provides the basis for a long-term plan (i.e. the “Growth Plan”) for urban development in Ontario. This plan will facilitate decisions on urban planning to accommodate the projected growth of populations, while promoting economic sustainability. The efficient use of infrastructure and the development of compact, sustainable communities are other long-term goals of the Growth Plan. The Plan will be implemented in coordination with municipalities further to their responsibilities under the Planning Act. The Plan also compliments the Greenbelt Plan.

3.11 The Draft Ontario Waste Management Projects Regulation

The Ministry of the Environment has released draft *Waste Management Projects Regulations* to revise the environmental assessment process by classifying proposed waste undertakings on the basis of the waste type, the size of a prospective facility and whether a prospective facility would generate energy. The Regulations would apply to both private and public sector undertakings.

Under the proposed regulations, waste projects will fall under one of three following process streams:

1. Projects having minimal environmental effects which will not require approval under the *Environmental Assessment Act*. These would include:
 - Transfer, handling and composting facilities that would process 1,000 tonnes of waste or less daily,
 - Industrial, commercial or manufacturing facilities using energy from waste in their process if using less than 100 tonnes of waste daily,
 - Landfills with less than 40,000 cubic metres of disposal capacity.
2. Projects that have predictable environmental effects that can be readily mitigated would undergo an environmental screening process. Projects in this stream would include:
 - Transfer, handling and composting facilities processing more than 1,000 tonnes of waste daily,
 - Landfills or expansions to an existing landfill with total disposal volume of between 40,000 and 100,000 cubic metres,
 - Thermal facilities with an energy-from-waste component,
 - Thermal facilities without an energy-from-waste component if disposing of 10 tonnes of waste or less per day.
3. Projects with the potential for significant environmental impacts will require an individual environmental assessment. These would include:
 - Final disposal of liquid industrial or hazardous wastes,
 - Landfills with a total waste disposal volume of more than 100,000 cubic metres.
 - Thermal facilities without an energy-from-waste component if disposing of more than 10 tonnes of waste per day.

Projects that must undergo an environmental screening process can be elevated to an individual environmental assessment, if warranted. Waste projects remain subject to all other applicable legislation including the *Environmental Protection Act*.

The MOE has proposed an environmental screening as a self-assessment process with 14 mandatory steps that require a minimum of four consultation periods. A proponent's failure to comply with the requirements outlined in the environmental screening process would be considered a contravention of the *Environmental Assessment Act*.

Some of the key steps that the proponent is required to perform in the screening process are;

- Consult on the proposed project, including plans for establishing, constructing, operating, changing, expanding or retiring the project.
- Identify the potential negative or positive environmental impacts on surface and groundwater, land, air and noise, the natural environment, resources, heritage, culture and Aboriginal communities and any socio-economic issues relevant to the project.
- Conduct studies to determine what the impacts will be, and detail what mitigation and/or monitoring measure will be required.
- Following consultation on the studies and identification of mitigation and/or monitoring measures, assess the advantages and disadvantages of the project and any concerns brought forward by stakeholders. Proponents may determine that additional studies may be needed to address concerns.
- Once the screening process is complete, an environmental screening report must be prepared and made accessible to stakeholders (agencies, public, Aboriginals, interest groups and others) for a 60-day comment period. If there are no elevation requests from stakeholders, the proponent can proceed with a statement of completion. At this point, the project may proceed subject to any other required approvals.

The Ministry of the Environment will monitor for compliance with the environmental screening process, and for commitments to mitigation made in the proponent's report.

If a project was previously subject to an individual environmental assessment, and the proponent had submitted its EA or terms of reference, the proponent can switch to the environmental screening process instead of completing the review as an individual EA, but only within the 60 days of the regulation becoming law.

The draft regulation and guide have been posted on the Ministry's website in the Environmental Bill of Rights Registry at <http://www.ebr.gov.on.ca/ERS-WEB-External> (Search EBR Registry Number RA06E0018) and can be commented on by the public until March 7, 2007. The full draft can be viewed at [http://www.ene.gov.on.ca/envision/env_reg/er/documents/2006/Draft Waste Management Projects Regulation Guide.pdf](http://www.ene.gov.on.ca/envision/env_reg/er/documents/2006/Draft_Waste_Management_Projects_Regulation_Guide.pdf).

3.12 Conservation Authorities Act

The Conservation Authorities Act, 1990 establishes the regulatory basis for the administration of Conservation Authorities within the Province of Ontario. In accordance with Section 21 (1) of the Act, for the purposes of accomplishing its objectives, an authority has power, to study and

investigate the watershed and to determine a program whereby the natural resources of the watershed may be conserved, restored, developed and managed. To this end, Toronto and Region Conservation Authority (TRCA), for example, adopted the Valley and Stream, Corridor Management Program (1994).

In addition, in accordance with Section 28(I) of the Conservation Authorities Act, subject to the approval of the Minister of Natural Resources a Conservation Authority may make regulations applicable in the area under its jurisdiction restricting and regulating the use of water in or from rivers, streams, inland lakes, ponds, wetlands and natural or artificially constructed depressions in rivers or streams, prohibiting, regulating or requiring the permission of the Authority for straightening, changing, diverting, or interfering in any way with the existing channel of a river, creek, stream, or watercourse, or for changing or interfering with a wetland; and prohibiting, regulation or requiring the permission of the authority for development if, in the opinion of the Authority, the control of flooding, erosion, dynamic beaches or pollution of the conservation of land may be affected by the development. To this end, conservation authorities have been given the ability to regulate development by way of Fill, Construction & Alteration to Waterways regulations under the Conservation Authorities Act.

3.13 City of Toronto Act

On January 1, 2007, the City of Toronto Act, 2006 (Bill 53) was proclaimed. The City now has a greater range of new powers to pass by-laws ranging from public safety to economic, social and environmental issues and has the authority to undertake economic development opportunities, make decisions about roads, housing, enforcement, and business regulation and can now delegate more decision making to committees.

Also the Planning and Conservation Land Statute Law Amendment Act, 2006 (Bill 51) came into effect on January 1, 2007, creating a more transparent and accessible land use planning process for the City and other Ontario municipalities. This legislation provides for earlier consultation and participation in the planning process, provides municipalities with more planning tools and flexibility to address their needs and facilitates a more effective appeal process.

4. Applicable Municipal Approvals Requirements

The City of Toronto has a provincially approved Official Plan. The Official Plan is the City's only statutory document outside of the City of Toronto Act. All City activities and work must conform to the Plan's policies and support its vision of providing a desirable quality of life, improved community infrastructure, a healthy environment and a strong economic foundation.

The City is also responsible for the approval of Re-Zoning and Site Plan Approval applications as well as for the issuance of building and servicing permits for new development.

5. In Closing

The City of Toronto Residual Waste Management EA Study will be affected by federal, provincial and municipal policies and regulations related to both environmental compliance and land use planning and permitting. The legislation that is most directly applicable to and, in fact, has driven the structure of the subject EA Study is the Ontario Environmental Assessment Act. This legislation, together with the more detailed, site development specific Environmental Protection Act establish, for the most part, the environmental approvals requirements and overall structure of the subject EA approvals process. In addition to these pieces of legislation, the subject EA Study will be required to closely consider and/or comply with federal environmental policies and provisions, provincial land use and resource management policies, regional planning policies and area municipal land use planning policies, provisions and construction permitting requirements.