

Update on Environmental Assessment Act Amendments Affecting Future Residual Waste Disposal Considerations

Date: May 10, 2021

To: Infrastructure and Environment Committee

From: General Manager, Solid Waste Management Services

Wards: All

SUMMARY

Recent amendments to Ontario's *Environmental Assessment Act* have made it a requirement that proponents wishing to proceed with an undertaking to establish a new landfill site must obtain the municipal support from each local municipality with residential uses within a 3.5 kilometre radius of the boundary of any new proposed landfill.

This report provides information on the potential impacts on Ontario's remaining landfill capacity and an overview of the City of Toronto's residual waste disposal planning considerations as a result of the recent amendments. It also recommends advocating for additional clarity regarding the new municipal support requirement and establishment of a Waste Disposal Working Group consisting of large Ontario landfill owners to support the planning of future residual waste disposal infrastructure and capacity needs for the province to accommodate population growth.

RECOMMENDATIONS

The General Manager of Solid Waste Management Services recommends that:

1. City Council direct the City Manager, in consultation with the General Manager, Solid Waste Management Services, to advocate for the Government of Ontario to provide greater certainty and clarity regarding the municipal support requirement in section 6.0.1 of the *Environmental Assessment Act*.
2. City Council request that the Government of Ontario establish a Waste Disposal Working Group that includes the City of Toronto and other large Ontario landfill owners, to support the planning of future residual waste disposal infrastructure and capacity needs for the province to accommodate population growth.

FINANCIAL IMPACT

There are no financial implications resulting from this report.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting on December 16, 17, and 18, 2020, City Council adopted item EX19.10 titled "2021 Rate Supported Budgets - Solid Waste Management Services and Recommended 2021 Solid Waste Rates and Fees." Included in the budget is funding to study residual waste disposal considerations with the objective of identifying all short, medium, and long term options to manage the City of Toronto's residual waste.

The City Council Decision document can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.EX19.10>

At its meeting on July 12, 13, 14, and 15, 2016, City Council adopted item PW14.2 entitled "Final Long Term Waste Management Strategy," (*Strategy*) and adopted the recommended options and implementation plan, as presented in Attachment 1 to the report (June 2, 2016) from the General Manager, Solid Waste Management Services. The Strategy estimated that Green Lane Landfill, the City of Toronto's primary facility to manage residual waste, will be at capacity by 2040.

The City Council Decision document can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.PW14.2>

COMMENTS

Background on the *Environmental Assessment Act* amendments

In July 2020, Ontario's Ministry of the Environment, Conservation and Parks ("Ministry") introduced amendments to the *Environmental Assessment Act* as part of an emergency omnibus bill for COVID-19 economic recovery (Bill 197). Emergency bills are not subject to the minimum 30-day posting requirement under the Environmental Bill of Rights¹ that usually allows for a consultation period and therefore, no consultation on these amendments occurred.

1 Proposed *Environmental Assessment Act* Amendments bulletin, link: <https://ero.ontario.ca/notice/019-2051>

The Government of Ontario states the changes "will improve the environmental assessment process by reducing the average time in half from six (6) to three (3) years for the largest infrastructure projects."² Bill 197 received Royal Assent on July 21, 2020.

Amendments to the *Environmental Assessment Act* affecting new landfill siting – Requirement for municipal support for new landfills

A new section 6.0.1 of the *Environmental Assessment Act* requires that a proponent who wishes to proceed with an undertaking to establish a waste disposal site must now obtain municipal support from each adjacent local municipality, whereas previously, the proponent only required the support of the host municipality. The new requirement for adjacent municipal support (achieved through each respective municipality's council resolution process) is only necessary if the new landfill proposal is within 3.5 kilometres of residential uses in an area of settlement. This requirement applies to not only new landfill proposals but also to landfill proposals currently in an environmental assessment process. This requirement effectively gives each adjacent municipality "veto" power over the development of the landfill.

It is important to note that even if a landfill proponent obtains municipal support, the *Environmental Assessment Act* is not clear whether the municipality can ever rescind that support in the future and whether such a reversal would have any impact. If a reversal can occur and does have an impact, then the municipality could possibly be liable to the landfill proponent, or perhaps even the Ministry, for the reversal.

There is also a provision that states that existing regulation-making authority could be used when needed to provide exemptions from this requirement in special circumstances, for instance where there is severe landfill constraint or public health concerns. Further technical details on the amendments can be found in Attachment 1. As there is limited guidance in the new section 6.0.1 of the *Environmental Assessment Act*, this report recommends requesting further clarification on how the process is to be followed including providing further information to guide how local municipalities and communities can evaluate proposed new landfills in order to help provide more certainty in new landfill site planning process in the waste management industry.

Impacts of the "municipal support" requirement on landfill development

The Ontario Waste Management Association reports that unless new landfills are built, Ontario's landfill capacity will be exhausted by 2036 even with 27 per cent of the waste generated being disposed in the United States,³ suggesting that waste disposal will become more challenging in the coming years. This date is accelerated to 2032 if the waste being sent to the United States remains within the province. This is significant since it can take many years, and sometimes more than a decade, to obtain approval for a new landfill site plus an additional two (2) to five (5) years to construct and develop

² Proposed *Environmental Assessment Act* Amendments bulletin, link: <https://ero.ontario.ca/notice/019-2051>

³ Ontario Waste Management Association 2021 Landfill Report
Environmental Assessment Act Amendments

the site to accept the waste. Prior to the amendments to the *Environmental Assessment Act*, the length and uncertainty of the environmental assessment process for new landfills and expansions to existing landfills was not adequate to meet the projected demand for Ontario landfill capacity. While increased waste diversion remains a priority, the Ontario Waste Management Association report illustrates that existing landfill capacity in the province will be put under significant pressure in the next ten years. The report further supports the need for new landfills to be built and existing landfills to be expanded in order to meet the projected residual waste disposal needs for the province.

While the amendments to the *Environmental Assessment Act* are aimed to streamline existing environmental assessment processes for some projects, the introduction of the required adjacent municipal support and potential for future "veto" over new landfills even if past support is provided will result in increased difficulty in initiating the planning for and building of new landfills in Ontario.

Potential Considerations for the City of Toronto

Green Lane Landfill will not be directly affected by the amendments to the *Environmental Assessment Act* as it is only a requirement for new landfills. However, this could affect future disposal plans for the City of Toronto (City) as the amendments to the *Environmental Assessment Act* can have the added consequence of uncertainty, unnecessary delays, and increased costs if surrounding municipalities "veto" landfill development plans. Without additional landfill development in Ontario, municipalities will have fewer local options, other than exporting their waste out-of-province or securing residual waste disposal capacity at alternative waste disposal facilities, such as energy from waste facilities, which are also limited within the province. With added uncertainty and growing demand for landfill space the cost of existing landfill capacity is likely to increase overtime, thereby increasing the cost to the City and industry as a whole.

As noted in the 2021 Solid Waste Management Services Budget Report, staff recently initiated a residual waste disposal study with the objective of identifying all short, medium, and long term options. The results of the study are not expected until the end of 2021, after which a staff report will be considered at a City Council meeting in 2022. Recent amendments to the *Environmental Assessment Act* and its potential to limit the development of new landfills will be taken into consideration in the development of the City's long term waste disposal study.

Other municipalities' responses to the *Environmental Assessment Act* amendments

In response to the absence of public consultation and posting to the Environmental Registry on the Environment Assessment Act's change requiring new adjacent "municipal support" for landfills, several Ontario municipal councils have passed decisions opposing the new measures and have also subsequently notified the Ministry of Environment, Conservation and Parks and other Ontario municipalities of their municipal decisions.

One example is the motion that the St. Catharines City Council adopted on October 5, 2020.⁴ The St. Catharines' decision requests the Ministry of Environment, Conservation and Parks to amend Bill 197 to eliminate the "municipal support" requirement and require only the approval of the municipality hosting the landfill within its jurisdiction. In order to implement the change requested, a new bill would need to be presented to the Ontario Legislative Assembly to further amend the Environment Assessment Act.

St. Catharines' decision provided that it be circulated to the Premier of Ontario, the Minister of the Ministry of Municipal Affairs and Housing, the Association of Municipalities of Ontario, and the Ontario's Big City Mayors (including Toronto), as well as to other Ontario municipalities asking them to adopt similar measures. Several municipalities in Ontario have supported advocating to the province to amend the recent *Environmental Assessment Act* change.

The Ontario Waste Management Association has also been advocating and lobbying for other Ontario municipalities to support the City of St. Catharines' decision. The Ontario Waste Management Association, is registered as a lobbyist under the City's Lobbyist Registrar program. The City of Toronto Solid Waste Management Services Division is a current member of the Ontario Waste Management Association and also has a staff representative on their Board of Directors.

Planning a Path Forward for Ontario's Residual Waste Disposal Capacity

In order to help support the guiding principles of the Province's Made-in-Ontario Environment Plan,⁵ which places emphasis on using evidence-based support to ensure resilient communities and local solutions, this report recommends that the Government of Ontario establish a Waste Disposal Working Group (Working Group). The provincial engagement of landfill owners, operators and the waste management industry through the Working Group is needed to help convene and support discussions which can proactively plan and accommodate future waste infrastructure growth needs. Preliminary core objectives of the Working Group could include:

- Regional future planning for residual waste disposal capacity in the province including the impacts to quantities of waste being landfilled as a result of the adoption and implementation of regulations under the Resource Recovery and Circular Economy Act, 2016⁶ and particularly in connection with the Food and Organics Waste Policy Statement;⁷

4 City of St. Catharines Regular Council Minutes October 5, 2020, link: <https://stcatharines.civicweb.net/document/80085>

5 Made-in-Ontario Environment Plan, link: <https://www.ontario.ca/page/made-in-ontario-environment-plan>

6 Resource Recovery and Circular Economy Act, 2016, link: <https://www.ontario.ca/laws/statute/16r12>

7 Food and Organic Waste Policy Statement, link: <https://www.ontario.ca/page/food-and-organic-waste-policy-statement>

- Sharing of industry innovation and best practices being employed which demonstrate the remaining value of waste resources and recovery practices which can help to reduce greenhouse gas emissions (i.e. beneficial use of landfill gas); and
- Understanding industry challenges and priorities in order to ensure residual waste disposal capacity needs of the province can be met.

Next steps

Solid Waste Management Services will continue to prioritize policies and programs which support waste reduction, diversion and a circular economy of resources in order to reduce the amount of waste sent to landfill and minimize any associated environmental and social impacts within and outside our community.

Further updates resulting from the recommendations provided in this report will be provided to City Council once a response from the Government of Ontario is received. Furthermore, Solid Waste Management Services staff will continue to work with the Government of Ontario, to continue to provide data driven support for evidence-based decision making of policy and regulations.

CONTACT

Annette Synowiec, Director, Policy, Planning and Outreach, Solid Waste Management Services, Telephone: 416-392-9095, Email: Annette.Synowiec@toronto.ca

Michael Skaljin, Acting Manager, Solid Waste Policy and Planning, Policy, Planning and Outreach, Solid Waste Management Services, Telephone: 416-392-8517, Email: Michael.Skaljin@toronto.ca

SIGNATURE

Matt Keliher
General Manager
Solid Waste Management Services

ATTACHMENTS

Attachment 1 – Excerpt of Technical Details on the *Environmental Assessment Act* Amendments