

October 23, 2012

For: The MOE Barrie District Office

Attention: Senior Environmental Officer Brad Allen, and Director Cindy Hood

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Cc: MPP Jim Wilson jim.wilson@pc.ola.org

Subject: Request for action due to concerns regarding potential adverse impacts concerning fill activities at the Tottenham Airfield

Good morning. My name is Carmela Marshall. I am writing because necessary action is needed by the Barrie District MOE Office with regards to activities taking place at the Tottenham Airfield in New Tecumseth (referred to hereafter as the “**Site**”). After months of researching the situation at the Site and after two and a half years of working as head researcher with a citizens group in Scugog, Lakeridge Citizens for Clean Water(LCCW), I believe, with the full support of LCCW, that there is the **potential** that contaminants contained in previously deposited and currently deposited fill materials have been discharged onto the airfield property and that this has the potential to cause an adverse effect on the environment, in particular the groundwater, and therefore has the potential to effect human health as well.

As concerned citizens and valued stakeholders, Lake Ridge Citizens for Clean Water, is formally requesting that the MOE’s Barrie District Office take action to **ensure** that **past and present** activities that are taking place on this Site with regards to fill deposition do not have the potential to adversely affect groundwater on this site and beyond.

More specifically, we respectfully request the following of the Barrie District MOE Office:

- A. We request that the **MOE confirm that a “Qualified Person”, as defined by MOE regulations, is reviewing and approving source site reports and taking responsibility for what is being deposited on Site.** It can be assumed, according to information provided in Section 1 below, that perhaps there is no Qualified Person implementing quality control at this Site. This would be unacceptable as it clear, in reviewing various MOE Orders and details regarding other large fill sites, that a QP is necessary.
- B. We request that the MOE **confirm that the past and current controls and procedures in place for the Site were and continue to be sufficient** in order to ensure fill is being managed appropriately
- C. We request that the MOE **ensure that they have collected sufficient information regarding this site in order to address the public concern regarding the potential impact to private drinking water wells.**

- D. We request that the MOE demand ***a complete summary of all the sources of the materials at the Site and the documentation that has been received regarding the same***, as well as confirmation from the MOE that all documentation is acceptable to ensure no potential adverse impacts to the sensitive groundwater resources under the Site. We note that the Site owners are not stating the sources of the fill material, despite requests from the public. We also note that the MOE has stated that they are not certain of the volume of fill that was deposited on Site; therefore it is presumed that a reconciliation of the total amount of fill imported to the soil reports received was not accomplished for this Site.
- E. We request that the MOE demand a ***comprehensive soil and groundwater monitoring program*** for the Site in order to ensure no potential adverse effects on the drinking water usage of the local aquifer.

The reasons for these requests and the circumstances on which these reasons are based are detailed below.

Before listing these reasons, the following should be stated:

I have personally been in correspondence with MOE Officer Brad Allen with regards to the Tottenham airfield and fill concerns. Mr. Allen has been very helpful with regards to answering my questions regarding MOE involvement with this site.

LCCW wishes to point out that we are well aware that the Ministry of the Environment does not regulate the movement of fill in Ontario. I understand that it is up to each individual municipality and conservation authority to make rules with regards to fill going in out and of their jurisdictions.

We note the York/Durham District MOE Office and the Peterborough MOE offices are well aware of the many issues regarding large fill sites within their boundaries and have become involved with specific large fill sites in order to fulfill their mandate which is to ensure the protection of human and ecological health.

Specifically, these other MOE offices have issued orders, done testing or requested a significant amount of documentation from proponents of these specific large fill sites in order to further the purpose of the Environmental Protection Act, which is to “provide for the protection and conservation of the natural environment.” We would also note that some of these fill sites had municipal or conservation authority permits while others did not.

Reasons that necessitate MOE involvement at the Tottenham Airfield

1. Concerns regarding the lack of a “qualified person” overseeing site operations

- a. The MOE agreed, by way of email¹ in May of this year, that they were unsure if a “Qualified Person” was overseeing the fill operation at this Site.
- b. Hellingman Communications Inc. has given out the *misleading* information that soil tests for incoming fill are “being reviewed by the MOE”.² This was determined to be false as can be illustrated by a September MOE email.³

2. Concerns regarding the quality of soil that was previously deposited at this Site by GFL (Green for Life), a soil remediation and excavation company

- a. GFL has been involved with several other fill sites which later turned up unacceptable contaminant levels when independently tested. A July 25th letter⁴ by the Peterborough MOE office to the City of Kawartha Lakes indicated that MOE testing of soils at a large fill site in Kawartha and originating from GFL, the same company that deposited soil at the Site (airfield) earlier this year, showed exceedances in certain petroleum hydrocarbons and heavy metals. Similar to actions by the Barrie District Office concerning GFL soil reports for the Site, the Peterborough office reviewed soil test reports submitted by GFL for the Kawartha site and all were found to be acceptable, according to email correspondence⁵ with this office. It was only after independent testing of the Kawartha site by the Peterborough MOE, were exceedances found. There is serious concern that soil tests reviewed by the Barrie district MOE office may also not reconcile to the actual quality of the fill from GFL that was deposited at the Site, just as in the Kawartha case.

3. Concerns regarding the absence of required permit conditions by a Regulating Authority

- a. The township is not imposing its site-alteration by-law and therefore not putting any formal regulation on the quality of fill, testing of fill or reporting procedures for any fill received on Site. This appears to be a self-regulating operation. The lack of municipal oversight, together with the lack of MOE oversight, does not instill confidence that this site is being managed in the public interest.

¹ MOE Officer Brad Allen Correspondence May 2012

² Hellingman Response September 17th

³ MOE Officer Brad Allen Correspondence September 2012

⁴ 2012.07.25 - MOE letter to City of Kawartha re soil sample results

⁵ Peterborough MOE office Correspondence

4. Concerns regarding the soil supplier, Green Soils Inc.

- a. Please find attached my letter⁶ to the Toronto District MOE office regarding significant concerns with the current outdated Certificate of Approval for Green Soils Inc., the company currently in charge of managing the fill for this Site.

5. Concerns regarding the sources of fill being deposited on the Site

- a. The MOE understands, according to an email⁷ earlier this spring, that some of the fill was coming from the Metrolinx project.
- b. Green Soils Inc., according to their website, has listed the Metrolinx excavation as one of their projects. (website link - <http://greensoils.ca/portfolio/>)
- c. In a recent report commissioned by the RCCAO, it has been indicated that “a significant portion of the excavated soils (from this excavation) could be characterized as Table 2 or Table 3 soils.”⁸ With the understanding that the “Tables” mentioned are not prescribed for large fill sites such as the Tottenham Airfield, I am certain that the Barrie MOE Office is well aware that Table 3 numbers do not have any values built into them that would protect water as a source of drinking water for people. Therefore, as Metrolinx soils were and perhaps still are accepted at this site, the quality of that soil remains a concern.
- d. The current owners PR firm is not listing the sources of the fill despite requests from the public to do so. The only comment that is given is that the soils come from the Green Soils company from “various locations”⁹. This does not provide information as to the source sites.

6. Concerns regarding lack of groundwater monitoring

- a. A portion of this site is designated as a **High Aquifer Vulnerability Area** according to the Oak Ridges Moraine Conservation Plan.
- b. The MOE has only done a “desktop” hydrogeological review of the Site.
- c. The previous and current owners have not done any hydrogeological reviews of the site nor have they installed any monitoring wells to assess potential impacts to the sensitive aquifer below their Site. It is well accepted by the professional community and can be illustrated through various MOE Orders for various large fill sites in the GTA (please refer to references in Section 8 below), that a comprehensive groundwater monitoring program is essential as “groundwater protection” should be the long-term objective of any large fill site.¹⁰

⁶ Green Soils Inc. C of A concerns

⁷ Allen, May, loc. cit.

⁸ RCCAO-JULY2012-REPORT, pg. 7

⁹ Hellingman, September, loc. cit.

¹⁰ Proposed New Operations Guideline by Terraprobe, pgs. 3 and 11

7. Concerns involving previous and current owners

- a. The current airfield owner's PR firm is giving out misleading information regarding the amount of oversight that is taking place at this site, particularly when it comes to MOE involvement. The company has presented the following as fact:
 - “the MOE has taken samples(of the soil)..and done spot testing testing..... on the Site”¹¹
 - “the MOE is currently reviewing soil test reports for the Site”¹²The above comments have been proven false by the Barrie District Office.¹³ The correct information was quite easily obtained by the MOE office. This calls into question the integrity of any statements made by the owner or his PR firm. For LCCW, the concern is that the owners are either being deliberately deceitful in order to feign more oversight than what is actually taking place, or the owners do not know the correct information and are making it up, or the owners are relying on some other person for the information and not bothering to confirm its accuracy. Regardless of the reason, it does not bode well for public confidence as to whether this Site is being managed in a responsible manner.

- b. The previous owner did not request a permit from the Township. The owner announced he was bringing in fill to renovate the runways and indicated, according to conversations with Township staff, that a permit was not required because the endeavour was under “Federal Jurisdiction”. It is important to note that a 2011 Provincial Court Decision states otherwise, “....I would nevertheless conclude that the doctrine of interjurisdictional immunity does not prevent the application of fill by-laws.”¹⁴ The owner imported **thousands** of truckloads of fill before selling the property without having completed the renovations. The public has expressed concerns as to whether renovating the runway was ever the previous **owner's true intention**. The previous owner was also shut down by the Provincial Ministry of Transportation for **not complying** with requirements listed in the MTO permit. This causes LCCW to question the company's ability to be legislatively accountable and environmentally responsible when it managed the fill for this Site.

¹¹ Hellingman Response June 20th 2012

¹² Hellingman, September loc. cit.

¹³ Allen, September, loc.cit.

¹⁴ Scugog vs. Earthworx Decision May 18 2011, Section 39

8. Concerns considering the realities of other large fill sites

The following large fill site examples illustrate significant issues with fill operations in the GTA. Although they may have no direct bearing on the fill Site in Tottenham, they provide some concrete evidence of a systemic problem in the fill industry where, contamination, poor management, lack of controls and misuse of Ministry Tables, to name a few, are key issues that come up time and time again. This evidence supports the necessity of comprehensive and conservative regulatory oversight; and as the Tottenham Airfield has none, MOE involvement is required in order to provide for the protection and conservation of the natural environment and those who are sustained by it.

a. Scugog Fill Site, Earthworx

Relevant documents: Earthworx Provincial Officers' Order, 2010

In Scugog, despite a “Qualified Person”, hired by the proponents, reviewing source site reports, the Ministry found the reports to be “inaccurate, inadequate and incomplete”¹⁵; and despite oversight by the hired QP, unacceptable levels of contamination were still found on the site as detailed in the MOE Order¹⁶. A 2011 Environmental Assessment was completed for this property which has delineated more unacceptable fill to be removed. LCCW is currently waiting to receive this document from the York Durham District MOE office. The Order Report also illustrates how proponents, even despite permit revocation will disregard regulatory authority and continue to have materials dumped on their property. LCCW, along with various regulating authorities, believes the financial compensation proponents receive for accepting fill, can play a significant role in the disregard of the law. As quoted from a Lake Simcoe Region Conservation Authority Report, “Given the competitiveness of the trucking industry, haulers are being pressured to transport fill of any nature. Less credible haulers are resorting to whatever tactics necessary to move fill, which is tarnishing the image of the credible trucking companies. For landowners, the offer of getting paid up to \$60 per triaxle load to accept fill material often clouds their judgement / awareness of the quality of material that they may be receiving.”¹⁷

¹⁵ Earthworx MOE Order 1 October 2010, pg. 6

¹⁶ Ibid, pg. 7

¹⁷ LSRCA Draft Fill Policy- May 2011

b. Clarington Fill Site, Morgan's Rd

Relevant Documents: Director's Order Morgan's Road Clarington April 2011, and Provincial Officer's Order Morgan's Road Clarington April 2011

This fill site on Morgan's Rd. was accepting before obtaining the necessary permits from the Conservation Authority, as described in a Director's Order¹⁸ regarding the same. The Provincial Officer's Order¹⁹ also indicates testing results by the MOE detailing unacceptable levels of contaminants found on site. .

c. Pickering Fill Site, Sideline 14

Relevant Documents: Pickering, Sideline 14 Geologic Report January 2011

In Pickering, a private landowner was receiving fill from excavation activities at Pier 27 in downtown Toronto. The owners of Pier 27 hired a reputable company, STANTEC, to do some work with regards to this site. The contract, signed between the two companies and detailing the work to be done, remains privileged and confidential even to the MOE. Despite soil test results from Pier 27 being submitted to the City of Pickering and indicating acceptable fill materials, every test done on the actual receiving end of the fill, revealed unacceptable levels of petroleum hydrocarbons and was indicated to be a waste, as described in a report²⁰ by Pickering's consultant, Geologic. The lack of legal requirements and protocols to test excavated dirt from Brownfields is clearly stated through correspondence with MOE staff, "Under the regulation, the Ministry does not require testing of the excavated material that has gone off of the property. The ministry does not regulate or require a record of the quality of any soil removed or where any soil excavated goes, nor does O. Reg 153 require that it be tested."²¹

d. City of Kawartha Fill Site

Relevant Documents: Peterborough Office MOE letter to the City of Kawartha

In the City of Kawartha, MOE investigation and testing of a fill site operating without a permit, revealed "exceedances" of various heavy metals and petroleum hydrocarbons, as detailed in a letter²² from the MOE to the City.

¹⁸ Director's Order Morgan's Road Clarington April 2011, pg. 6

¹⁹ Provincial Officer's Order Morgan's Road Clarington April 2011, pg. 8

²⁰ Geologic Report January 2011 Pickering fill site

²¹ MOE Brownfield Program Specialist, Correspondence, point 7.

²² 2012.07.25 - MOE letter to City of Kawartha re soil sample results

e. East Gwillimbury Fill Site

Relevant Documents: Terraprobe review of Assessment of Mount Albert fill site in East Gwillimbury

East Gwillimbury hired a consultant, Terraprobe to review a submitted assessment of the Mount Albert Pit fill site. Upon review, the Terraprobe report lists, among other things, concerns with MOE Table usage, concerns regarding sufficient testing and the need for groundwater monitoring.²³ This report illustrates the need for *proper regulatory oversight and review* of operations to mitigate the potential for adverse effects on the environment.

We understand that the potential to groundwater impairment and adverse effect on the natural environment is the Ministry's concern. Therefore we look forward to understanding if the Barrie District Office will act on our requests, at your earliest convenience. LCCW appreciates your time and attention to this matter. All referenced documents can be forwarded upon request.

Carmela Marshall
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²³ Terraprobe review of Assessment of Mount Albert fill site in East Gwillimbury, pg. 2