

STAFF REPORT – May 19, 2011

TO: Chair and members of the Full Authority

Re: Morgans Road Application, Municipality of Clarington

Background:

The Ganaraska Region Conservation Authority (GRCA) has received an application to permit a large fill operation to continue in the Municipality of Clarington, just east of Newcastle. The site is an abandoned gravel pit with Provincially Significant Wetlands comprising approximately half of the 95 acre site. No other natural hazards or natural heritage features exist on or near the site.

A previous permit granted in June 2010 was issued for fill to be placed in areas 30 metres or more from the wetland boundary. The permit was granted based on staff's opinion that potential interference to the hydrologic function of the adjacent wetland was deemed to be acceptable.

The filling operation has garnered a substantial amount of attention from local residents, the media and both municipal and provincial politicians. Concerns stem from not only the noise, dust, and traffic the operation has generated but also the speculation that the imported material is contaminated. Residents fear that given the nature of the underlying soils, contaminants could easily leach into the underlying aquifer, contaminating nearby wells.

GRCA's regulation requires an applicant to submit "A complete description of the type of fill proposed to be placed or dumped". Although this does not specifically describe the type of soil testing required, the permit issued in 2010 did contain a condition requiring confirmation from a qualified soils engineer be provided, that the imported material met MOE Table 2 criteria. Table 2 was recommended as the appropriate criteria by the Ministry of Environment staff. While a set of sample results were provided from each source site, along with confirmation from a qualified professional, this appears to be inadequate to deal with the scale of work occurring at the site.

GRCA staff had made requests that MOE become involved in investigating the potential for this operation to be considered a waste site, however the MOE does not regulate fill, or filling activities, as it is not applicable to their legislation. Following several weeks of community opposition, media attention, and a discussion in the legislature, a Ministry Of Environment order was issued on the property. This order requires a rigorous program of testing, reporting and tracking of the fill being imported. The order also contains requirements for detailing what has been imported to date, communicating with the public and controlling dust and noise.

Given the attention this operation has generated and the ancillary impacts this type of operation can and will have, staff thought it appropriate to bring this background information to the Board for information, and to provide opportunity for the Board to provide any input members may have with the current permit. Between this meeting

and June's Full Authority meeting staff will be meeting with the applicant and their consultant(s) to determine what information will be required to deem the application complete, and what conditions staff may be recommending be placed on a permit should the application be supported.

Review of process for review of application:

1. Permit application received May 3, 2011 containing only the permit application form and no supporting documentation;
2. Within 21 days (May 24, 2011) of receipt of application staff reply to applicant regarding the completeness of the application;
3. Within 21 days of receipt of application meet with applicant's consultant(s) to discuss submission requirements and potential conditions staff will be recommending;
4. Provide a background report to the Board describing site activity to date and issues that have arisen, and provide to May meeting of Full Authority Board;
5. Provide opportunity for Board members provide input into concerns with current permit application;
6. At June Full Authority meeting staff review process of decision making for the application;
7. Prepare Staff report with recommendations for June Full Authority meeting provided submission of a complete application has occurred;
8. At June Full Authority meeting the Board will make a decision to approve a permit, approve a permit with conditions, refuse a permit, or defer a decision should information not be available to make a decision.

As was noted above, a number of questions and concerns have arisen over the past few months from members of the public, the Municipality and government agencies. The following is a number of these concerns with responses to each:

What was considered before the permit number 1089 was approved?

The GRCA considered the hydrologic impact of the proposed fill within the lands adjacent the wetland and input from MOE regarding the quality of fill being placed.

Did the GRCA consult with the MOE or MNR in their decisions?

Prior to issuing the permit, the GRCA asked the MOE what soil quality standard (Site Condition Standard Table) should be used to define acceptable fill quality for the site. The MOE district office stated that Table 2 was appropriate for this site.

Why was there not two completely separate permits issued. One to address the clean up of the original material that was dumped in 2010, and a second issued after that the completion of this clean up?

Staff were of the opinion that the removal or relocation of the original material could be addressed through the issuance of a single permit. Conditions requiring the material be further tested, and removed or relocated to acceptable areas on site if found to be clean.

What is the plan for informing interested parties of the results of the ongoing

testing?

The latest/revised MOE order requires the owner to develop a communications plan which should address these issues. While a draft of this plan has been submitted to MOE, GRCA staff have not seen it.

When the GRCA considered the hydrologic impact, was it not noted that the soil in this particular area is mainly sandy gravel and loam. The material being dumped is heavy clay, completely different characteristics. Which will have a big impact on the way water flows through our aquifers.

When the Conservation Authority reviewed the application, it considered the hydrologic effect that the fill would have on the wetland feature. Given that the wetland and its water elevation were well above the fill area, it was deemed that the permit could not be withheld based on a the potential for the fill to have hydrologic impacts on the wetland.

Is MNR not responsible for groundwater quality and designation of wetlands?

MNR is responsible for the delineation of provincially significant wetlands and their mapping was used in the permit review.

Note: The MNR is not responsible to issue Conservation Authority Act permits and does not provide comments on Conservation Authority on those permits. For permits of this type the MNR is not responsible for groundwater quality

Do GRCA staff plan to do any soil testing on this site? If not why not?

GRCA staff have requested access to the site to conduct soil testing, but have not done so up to this point. Staff will be recommending that a condition of any future permit, be that access be provided to independently sample. This testing would be limited by the budgetary restrictions of the GRCA.

What is the status of the MOE Director's Order at this time?

Certain aspects of the Director's Order have been appealed by the proponent to the Environmental Review Tribunal. Details of this appeal can only be released by the MOE.

Who is responsible for the ground water? And in your opinion is this Ministry as involved in the Morgan's Road site as they could be?

The Ministry of the Environment is responsible for groundwater and their recommendations regarding fill quality criteria was and will be considered in any permit application. The Ministry can also provide better guidance and through this guidance consistency for all parties involved in large fill operations.

Given that it took 5 months for MOE to come back with reports on the results of the soil tests. How long are you prepared to wait?

Any new permits would have requirements for more specific soil sampling requirements.

What in your opinion can townships and municipalities do to prevent this from happening in their own communities.

Communities can request that the Ministries close the gaps in legislation regarding permitting of commercial fill sites.

RECOMMENDATION:

THAT the Full Authority receive the staff report for information purposes.

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