

# Review of March 28th, 2014 letter from MOE to GFL regarding 13471 Lakeridge Road

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## **Background**

The property at 13471 Lakeridge Road in Scugog Township in Durham Region received fill in 2010 and 2011 on the basis of a site alteration permit to Earthworx Industries from the Township of Scugog. The site is in a Countryside Area in the Oak Ridges Moraine with a designation of High Aquifer Vulnerability under the ORMCP. Homes on neighbouring properties are on groundwater wells. Subsequent environmental site assessments ordered by the MOE found soil contaminated above Table 3 for non-potable groundwater areas. On January 18, 2013, GFL Environmental (the source of much of the fill deposited) submitted to MOE a workplan for remedial excavation of soils above Table 3 and for a groundwater monitoring program. The results of groundwater monitoring were submitted to MOE in September of 2013. D.L. Services produced the various reports for GFL.

An MOE hydrogeologist reported to MOE York/Durham in a letter April 1, 2014 on the D.L. Services/GFL groundwater monitoring report supporting its conclusions (without indicating what the conclusions were) and suggesting that GFL do quarterly groundwater monitoring and annual reporting.

The March 28, 2014 letter from MOE to GFL suggests that the proposed workplan be implemented or a risk assessment be carried out.

## **Table 3 Soils**

We would appreciate the MOE's assessment that indicates that leaving Table 3 soils on site in this highly vulnerable groundwater area, whose boundaries are metres from private wells, is of no concern.

We would appreciate clarity regarding meeting the requirements of the EPA with regards to the disposal of waste at a non-licensed site. Soils with concentration of contaminants above Table 3 standards were deposited at this site and we believe this is a contravention of the EPA and the waste regulation. We would like to understand if the MOE deems soils above Table 3 to be inert fill (and therefore exempt from the waste regulation) and if so, the rationale for doing so.

We refer the Minister to excerpts in the following three documents.

## 1) The 2013 Terrapex Report to the City of Burlington regarding MOEs comments re: Inert fill and Table Usage

The entire report provides a good example of the widespread understanding in industry regarding MOE Table usage. A few key excerpts are listed below, however, it is hoped the Minister reviews the entire Terrapex Report.

“Based on these definitions of “waste” and “waste disposal site”, it is Terrapex’s suggestion that, by the letter of the law and contrary to the MOE’s statement that “*Exceedance of soil standards found in the Brownfields regulation is not sufficient to deem soil to be a waste*”, exceedances of the Table 1 standards are indeed sufficient to characterize at least some of the soil as waste.”...

“With respect to the MOE’s comment that “*...it is not correct to refer to the Airpark as an unlicensed waste disposal site simply on the basis that it has accepted soil*”, Terrapex suggests that it is indeed correct to refer to the Airpark as an unlicensed waste disposal facility on the basis that it has accepted CONTAMINATED soil. Based on this analysis it is apparent that contaminated soils, exceeding even the least stringent standards considered (Table 3), have been placed at the Airpark site. No evidence has been provided to suggest that these contaminated soils do not represent the potential for an adverse effect at the site. Placement of contaminated soils also contradicts the general spirit of the MOE mandate preventing intentional degradation of the environmental quality of a property.”

## 2) The MOE’s Guide to conducting a Phase 2 Environmental Site Assessment June 2011 (PIBS 8486e)

### “3.1.2 Potable versus non-potable ground water

Refer to sections 35 to 37 and paragraph 19(2)1 of Schedule A of the Regulation

“In all cases when determining applicable site condition standards, it is necessary to consider whether standards based on potable or non-potable ground water conditions are the applicable site condition standards for the property. *Non-potable ground water site condition standards may be used if all of the following circumstances exist:*

- *the property, and all other properties located, in whole or in part, within 250 m of the boundaries of the property are supplied by a municipal drinking water system and have no wells*

...

*A municipality cannot override the requirement to use potable site condition standards if:*

- *the property, and all other properties located, in whole or in part within 250 m of the boundaries of the property are not supplied by a municipal drinking water system and have wells;*

### **3) The Green Soils Compliance Approval December 2012**

From the Definitions Section..

“Contaminated soil” means soil that contains one or more parameters at a concentration that exceeds the Table 3: Full Depth Generic Site Condition Standards in a Non-Potable Ground Water Condition, for fine or coarse-textured soil, as applicable, as listed in the Ministry publication "Soil, Ground Water and Sediment Standards for Use Under part XV.1 of the Environmental Protection Act", as amended.

"Non-contaminated soil" means soil that has been tested and confirmed to meet the Table 3: Full Depth Generic Site Condition Standards in a Non-Potable Ground Water Condition, for fine or coarse-textured soil, as applicable, as listed in the Ministry publication "Soil, Ground Water and Sediment Standards for Use Under part XV.1 of the Environmental Protection Act", as amended.

We also point out the following excerpt from an email from the Standards Development Branch in 2011,

“Table 3 numbers do not have any values built into them that would protect water as a source of drinking water for people, and therefore they should not be used in cases where there is potential for human consumption (or agricultural use) of the groundwater.”

### **Groundwater Monitoring**

We were told that we would receive a copy of the Groundwater Monitoring results once the MOE assessed them. We have still not received the following report and are requesting it now again.

“Groundwater Monitoring Report, 13471 Lakeridge Road, Scugog, Ontario” dated September 19, 2013, prepared by D.L. Services Inc.

### **Recipient of the MOE letter**

We believe it is inappropriate and sets a dangerous precedent that the owners of the property are not being directly contacted regarding the MOE’s suggestions. We would like to understand if Earthworx, the owners of the property and the recipients of three Provincial Officer’s Orders and one Director’s Order and an MOE Tribunal case, all with reference to the Lakeridge property, are now no longer accountable or responsible for this property? We believe the owners should be responsible for the contamination at this site and not a company that states it will clean up the site so long as it can fill it. This is the same company by the MOE’s own admission from which the majority of the fill at this now contaminated site came from in the first place.

While we believe the Township of Scugog must bear some of the responsibility for this site as it did initially allow for Table 3 soils to be dumped, we believe the MOE must act as there has been a contravention of the EPA with regards to the deposition of waste at a non-licensed facility. The MOE should be doing more than making suggestions to a company that does not own the site and that is alleged to have dumped contaminated soil in several other sites in southern Ontario. The company, GFL, is also currently charged for dumping contaminated soil in Peterborough County.

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2014-05-21