

**'Fill operations can be very lucrative, multi-million dollar businesses,' councillors told** B y Kate Harries AWARE News Network March 19 2013

What comes out has to go somewhere – and if it's contaminated fill, it goes to whatever municipality has failed to arm itself with the appropriate bylaw protection.

That's the warning a member of a Scugog Township group brought to Simcoe County last week, pointing out that municipalities further from the GTA – where large amounts of soil are being excavated as brownfields are cleared for development – are vulnerable to a “leapfrog” effect as contractors search for cheap places to dump.

Brownfields are previous industrial or commercial properties that may be contaminated.

At stake are “the very things that sustain us as a society, our water and soil,” Carmela Marshall of the Lakeridge Citizens for Clean Water told Simcoe County councillors on March 13.

“And in terms of water it is our groundwater that is at stake. Once contaminated it is very difficult and expensive to restore, if it can be restored at all.”

Another consequence could be contamination of land considered residential or agricultural, to an industrial or commercial level, rendering the land unsuitable for its intended purpose.

In a presentation to the corporate services committee, Marshall explained that her group learned about this issue after Earthworx Industries started dumping fill into a 60-acre rehabilitated gravel pit on the Oak Ridges Moraine in May, 2010 after receiving a fill permit from Scugog Township.

She referred to a similar issue in New Tecumseth.

There, fill operations at the Volk Aerodrome have residents of a nearby subdivision up in arms. In several locations in Ontario, aerodrome owners have discovered that accepting fill can be a lucrative source of income, because their activities come under federal jurisdiction, bypassing municipal oversight.

Marshall noted that Simcoe County doesn't have jurisdiction over site-alteration bylaws, which are a local municipal responsibility.

However, her group had three recommendations for members of the corporate services committee:

1. That the committee recommend the county engage in an exercise similar to one undertaken in Durham Region, directing its lawyers to review local bylaws to identify gaps and make recommendations.

2. That the committee support a motion from King Township calling on Transport Canada to amend the Aeronautics Act to allow municipalities to protect citizens and water sources.

3. That the committee on behalf of the county appeal to the Ontario Ministry of the Environment to legislate necessary changes regarding disposal of brownfield site soils.

Marshall added that, as things stand now, the MOE does not have legal authority to provide protection.

Although the ministry regulates brownfields, it does not regulate so-called “clean-fill” dumpsites, commercial enterprises which often accept soil from brownfields, she said.

This is a jurisdictional gap leaves “a dangerous void in the protection of human and ecological health,” Marshall said.

In addition, the MOE fails to:

- Define what is “clean” or “contaminated” fill
- Require testing of material excavated from a brownfield
- Require any record to be kept of the quality of soil removed
- Require any tracking of where brownfield soils go.

Municipalities, often small ones with limited resources and expertise, have been left struggling to deal with the issue through site-alteration bylaws.

Unfortunately, in an effort to impose some sort of standards, municipalities have “borrowed” aspects of environmental legislation that were never designed for use at a fill dump site.

For instance, the minimum soil and groundwater standards that are in place for contaminated sites (“clean down to”) are now being used to allow contamination of clean sites (“pollute up to”).

This is contrary to a directive from the Canadian Council of Ministers of the Environment.

Marshall warned against uncritical acceptance of soil reports from the “qualified person” in charge of the clean fill operation. “We have found that a peer review of work done is essential when one understands the reality of some of these sites,” she told councillors.

One environment ministry order issued for a fill site in Durham Region stated that soil quality reports were “incomplete, inaccurate and inadequate.”

“It is a fact that fill operations can be very lucrative, multi-million dollar businesses,” Marshall said adding that a LSRCA (Lake Simcoe Region Conservation Authority) staff report indicated that “for landowners, the offer of getting paid up to \$60 per triaxle load to accept fill material often clouds their judgement and awareness of the quality of material that they may be receiving.”

Municipalities should demand that the province enact clear, effective regulation of brownfield fill and large-scale commercial fill dumpsites. “Brownfield sites need to be cleaned up, not just dumped somewhere else,” Marshall said.

And municipalities need to declare fill operations to be what they are – a use of land, not a mere site alteration – and address this in their zoning bylaws.

Councillors had no comment or questions after Marshall completed her 10-minute presentation. Corporate services committee chair Ken Ferguson noted a letter from New Tecumseth was on the agenda. It included a February 11 resolution from New Tecumseth Council requesting that Transport Canada revise its legislation to require all aerodrome operations to be subject to the same review and scrutiny as any other development.

The letter was received for information.