

March 15, 2024

Ministry of Environment, Conservation and Parks  
Client Services and Permissions Branch  
135 St. Clair Avenue West, 1<sup>st</sup> Floor  
Toronto ON M4V 1P5

**Re: York1 Environmental Waste Solutions Ltd. as general partner for and on behalf of  
York1 Environmental Waste Solutions LP  
ERO number: 019-8205  
Ministry Reference Number: 2082-CYEJP2  
ECA: A020401  
Property: 29831 Irish School Road**

We are legal counsel to John Lamer (“**Client**”) and have been retained to provide comments on the proposed application for an amendment to Environmental Compliance Approval (“**ECA**”) No. A020401 (the “**Proposal**” or “**Amended ECA**”) by York1 Environmental Waste Solutions Ltd. as general partner for and on behalf of York1 Environmental Waste Solutions LP (collectively referred to as “**York1**”). Our Client is a member of the community and owns property abutting the property subject to York1’s Proposal.

We have reviewed the information posted on the Environmental Registry Ontario (the “**ERO**”) and have significant concerns with the Proposal and its impacts on the natural and social environment, the lack of appropriate studies and investigation, and failure to meet the applicable regulatory requirements. In addition, based on the information provided there is a real risk identified of adverse effects to the natural and social environment. Such impacts include but are not limited to increased air emissions; contamination of private wells used for potable area; noise impacts on the surrounding sensitive receptors; contamination of Molly’s Creek; off-site leachate migration; among other impacts.

### **THE PROPOSED AMENDMENT MUST BE DENIED**

The Ministry of Environment, Conservation and Parks (the “**MECP**”) cannot approve the Amended ECA absent all of the required studies and information being submitted for review and approval by York1 in support of its Proposal.

The MECP does not have the jurisdiction to approve the Amended ECA as currently submitted by York1. The Proposal fails to comply with the requirements of O.Reg. 232/98:

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Landfilling Sites stating that absent the required information being submitted, which York 1 has failed to comply with, an increase in the total waste disposal volume “**shall not**” be permitted. The MECP is prohibited by the regulatory requirements in the circumstances from approving the Amended ECA.

We also note that the proposed landfill is **not** an expansion of an existing site and instead tantamount and appropriate reviewed as the siting of a new landfill. As a result, the siting of a new landfill is appropriately subject to an individual environmental assessment requirement.

The increase in the amount of waste to be received from 75 tonnes to 6,000 tonnes is not appropriately characterized as an expansion. Again, an increase of this magnitude in the amount of waste to be accepted is clearly a proposal for a new landfill and must be treated as such.

Also, notwithstanding the comments above, the Proposal is premature until such time as York1 can confirm that its proposed operations and uses at the Property comply with the Municipality’s Comprehensive Zoning By-law provisions and the required studies submitted by York 1.

**We respectfully request that the MECP, for the reasons set out in this submission, that the MECP exercise its authority to refuse and deny York 1’s request for the Amended ECA.**

## **YORK 1 PROPOSED LANDFILL**

York1 purchased the property municipally identified as 29831 Irish School Road, Dresden, Ontario being 87.8 acres in size on December 15, 2022 (the “**Property**”). The Property is the location of a former tile yard and dormant landfill that is situated between the Dresden town limits and Chatham-Kent along the border of Lambton County and is approximately 1km from the Dresden community.

It appears that York1, through a separate company purchased 2 additional properties located along Irish School Road and abutting the Property that is subject to this Amended ECA proposal. These lands are described as follows:

- The approximately 19.4 ha (47.9 acre) farm located immediately to the north of the Property situated at 29831 Irish School Road and purchased by York 1 on October 26, 2023;
- The approximately 38.6 ha (95.4 acre) farm located immediately to the south of the Property situated at 29831 Irish School Road on October 20, 2023.

This proposal before the MECP under MECP reference number 2082-CYEJP2 is to amend ECA A021304 that was issued under the provisions of the *Environmental Protection Act*, 1971.

York1's proposal appears to be for the construction of a Regenerative Recycling Facility for construction waste and soil on the property located at 29831 Irish School Road, Dresden, Ontario (the "Property") which is currently the site of a dormant landfill (listed as closed in the MECP records).

The history of the Property is that Dresden Tile Yard sold the land to the former Town of Dresden (now amalgamated with Chatham-Kent) in or around 1979. The Town received a landfill license in or around November 1980 to dump its fly ash from the Town's garbage incineration operations. The license confirmed that 95% of the landfill materials would be the fly ash. Prior to amalgamation the Town sold the lands to a number company for the purposes of recycling wood from the site and landfilling some other specified waste. This permitted 75 tonnes of waste per day to be brought to the Property. It is this approval that York1 is seeking to amend.

It appears that York1 is now seeking to expand what is appropriately classified as a dormant facility and identified on the MECP's landfill registry as a dormant landfill (ECA No. A02136) and as being Closed.

York1 is proposing to operate the facility 24 hours a day, seven days a week. York1 is proposing the construction of a 1.62 million square metre landfill site and regenerative recycling facility including the construction of a 21,000 square foot building for the sorting and storing of construction waste. This Proposal results in up to 700 trucks entering the site on a daily basis. This is a material change from the operations conducted at the former landfill that accepted 75 tonnes of waste a day.

Further York1 appears to be bifurcating its approvals process which is inappropriate and is purchasing several additional properties in the area. Due to these purchases, York 1's site area at this location has a total area of 93.5 hectares (231.1 acres). The bifurcation of the approvals being sought as described below as Application 1 and Application 2 fails to appropriately address the cumulative effects of the Proposal.

## **EXISTING ECA A021304**

The existing ECA A021304 was issued under the provisions of the *Environmental Protection Act*, 1971 on November 20, 1980. That ECA provided for the operation of an 8-hectare landfilling site situated within a total area of 35 hectares. The ECA at that time permitted for the disposal of 5% commercial waste and 95% other waste limited to incinerator ash. The ECA at that time also limited the amount of waste to 75 tonnes per day and its operation restricted to the hours of 7am and 9am.

York1 is proposing to increase the amount of waste brought to the Property to facilitate 6,000 tonnes of waste per day representing an increase in the amount of permitted waste at the facility to more than 5,925 tonnes of waste on a daily basis. This increase represents a significant increase in the amount of waste being brought to the Property and such increase is appropriately subject to the requirements of, and scrutiny and review under, the individual environmental assessment process.

The first proposed Amended to the ECA for Waste Storage, Transfer, and Processing ECA No. A020401 (1998) subject to this ERO number 019-8205 (“**Application 1**”) seeks to:

- Increase the facility size from 0.8 ha to 25 ha.
- Raise daily receiving rate from 75 tonnes to 6000 tonnes.
- Include 3000 tonnes of construction waste, 3000 tonnes of soil, and 1000 tonnes for off-site disposal.
- Indoor storage of 1800 tonnes and outdoor storage of 3000 tonnes of materials.
- Outdoor storage of 30,000 tonnes of unprocessed soils.
- Process additional waste types: blue box material, organics, Asbestos-containing material, tires, soil, and soil-like material.
- Permit 24/7 operations.
- Install buildings and equipment for permitted uses.

## **BIFURCATION OF MECP REVIEW**

There is also another application before the MECP as it relates to York1’s proposed operations on the Property. This second application (“**Application 2**”) being ERO number 019-8313 seeks to amend ECA A021304 (1980) to permit the following :

- Waste capacity: 1,620,000 m<sup>3</sup>.
- Fill limit: 8 ha (20 acres).
- Max fill rate: 365,000 tonnes/year (avg. 1000 tonnes/day).
- Acceptable waste types: Non-hazardous industrial, commercial, institutional, and municipal demolition/construction waste; Non-hazardous contaminated soil.
- Operating hours: 7:00am - 7:00pm, 7 days a week.

York1 is intentionally bifurcating its permit applications submitted to the MECP in an attempt to avoid consideration and analysis of the cumulative and environmental effects of its Proposal for the Property. The two (2) amendments being requested by York1 are not, and should not, be addressed as an amendment to the outdated ECA and instead all of the landfilling and ancillary activities proposed at the Property should be appropriately subject to an individual environmental assessment.

## MUNICIPALITY OF CHATHAM KENT

The Municipality is taking the position that the proposed landfill, waste transfer and processing site are not permitted uses on the Property by the Municipality's Comprehensive Zoning By-law. The Property is currently zoned "Extractive Industrial – 365" or "M2-365" with the permitted uses being agricultural (no structures), asphalt and concrete batching, buildings and structures related to the permitted uses, open storage, pits and quarries, processing of extracted materials from the site, and storage of asphalt and concrete for crushing. Any application for an amendment to the existing ECA is premature until such a time it is confirmed that the proposed uses are permitted on the Property.

Further the Municipality appears to be strongly opposed to the proposed Amended ECA being pursued by York1 for several reasons including but not limited to the non-compliance with the Municipality's Comprehensive Zoning By-law. Our Client reiterates this concern.

## EXPANDED FACILITY VS. NEW LANDFILL OPERATIONS

York1 is not proposing an expansion to an existing facility and any approvals, permits, and/or authorizations should not be processed as an expansion. York1 is proposing a new landfill operation on the Property and as a result appropriately subject to the requirements of a full environmental assessment.

## CONCERNS WITH YORK1'S APPLICATION 1

In addition to the concerns set out above, our Client has the following additional concerns with any *ad hoc* amendments to the existing ECA as proposed by York1's Application 1.

York1 has failed to address the potential risks of leachate migrating off-site to the surrounding area, the potential detrimental impacts to Molly's Creek, risk of contamination of the private potable water wells located in the vicinity of the Property.

Until such time as York1 completes a fulsome hydrological assessment of the Property to confirm no adverse effect the approval of the proposed Amended ECA is premature at best. Alternatively, if it cannot be demonstrate through the hydrogeological assessment that any adverse effects associated with the risk of leachate and methane migration under the existing conditions the proposed Amended ECA must not be approved.

What is more concerning is the lack of information addressing and reviewing the hydrogeological conditions in the area. Specifically, our Client has the following concerns and issues with the Proposal:

- Lack of a full hydrogeological assessment on the Property and review of the existing conditions as assessment of the potential impacts as a result of the Proposal;

- Failure to assess concerns with hydraulic conductivity of the Property and the risks of surface water moving through the aquifer lawyer to the bedrock area resulting in significant environmental risks. For example, the well records for the York1 monitoring wells situated on the Property confirms the existence of both a layer of yellow and blue clay. There is no grey clay identified on York1's well records indicating that oxidation has occurred (due to the existence of yellow and blue clay). The oxidation means that water has permeated through these two layers. In other words, the clay layer is not "tight" in the area which is required for a landfill facility. The Property simply does not have suitable conditions including the lack of an appropriate clay base to accommodate the Proposal;
- Lack of assessment of the impacts of the water well depth on the Property by York1 being on average only 40-45 ft in depth confirms the existence of an extremely shallow contact aquifer. Taking into consider the shallow contact aquifer and existing woodlot located around Molly's creek on both sides, there is a real and serious risk that water / leachate will migrate off-site through the root holes and various fractures into Molly Creek to the Sydenham River resulting in significant adverse effects;
- Failure to review and address the Provincial hydrogeological information on the Property confirming the existing high levels of naturally occurring dissolved gases in the groundwater. The Property currently has high levels of naturally occurring dissolved methane appearing to confirm the presence of micro fracturing networks in the underlying Kettle Point Black Shale bedrock again giving rise to serious adverse environmental effects from York1's Proposal.

The preparation of both geological and hydrological assessments are required under the provisions of Ontario Regulation 232/98 ("**O.Reg. 232/98**"). However, despite this requirement York1 has failed to submit the necessary studies in support of its proposed Amended ECA.

## **FAILURE TO COMPLY WITH THE APPLICABLE REGULATORY REQUIREMENTS**

The proposed amendments to the ECA must be refused by the MECP as York1 has failed to comply with the regulatory requirements and submit all of the necessary studies in support of its Proposal to increase the total waste disposal volume for the Property. This is assuming that the Property is appropriately classified as an existing landfill site which our Client submits it is not. It is clear that the Property is appropriately classified as a dormant / Closed landfill and any proposed increase represents a "new" landfilling operation and must be treated as such.

At a minimum if the MECP classify the Property as an existing landfill site, which our Client disagrees, York1 must meet its obligations as set out in O.Reg. 232/98. Specifically, sections 6, 8, 9, 10, 11 and 12 as set out O.Reg. 232/98 prohibits any increase in the

total waste disposal volume of an existing landfill site unless the appropriate reports have been submitted. In this case, the written reports have not been submitted and the MECP must refuse the increased volume being proposed by York1.

York1 does not appear to have submitted a hydrogeological assessment; geotechnical assessment; an assessment of the potential subsurface migration of landfill gas from the Property and mitigation measures in addition to the other requirements; leachate disposal; leachate contingency plans; ground water protection; surface water assessment; all of which are required to be submitted by O.Reg. 232/98.

## WELL RECORDS AND PRIVATE WELLS

The existing private well records in the area consistently identify the yellow and blue clay layers as discussed above in the reports submitted to the MECP (see attachments).

There is a monitoring well nest installed by York1 on the Property in close proximity to the two private wells situated near the entrance to the landfill from Highway 21 (“**York1 Monitoring Well Nest**”). The York1 Monitoring Well Nest consists of two wells one drilled at approximately 20ft and the other at a depth of 40ft to 47ft. Upon review of the approximately eighteen (18) well records provided by York1 none of them identified the existence of any yellow or blue clay. You will note that the private well records however clearly observe and record the yellow and blue clay layers.

The York1 monitoring well records are not representative of, nor do they accurately reflect, current conditions of the Property. Further details and sampling data is required to reconcile this apparent discrepancy.

There are also a significant number of homes in close proximity to the Property relying on private well water as their source of drinking water. There is a real and significant risk, taking into account the existing site conditions, that the operation of the proposed activities at the Property will impact drinking water in the area.

## OTHER ISSUES

In addition to the above there are a significant number of other deficiencies and concerns identified with York1’s proposed Amended ECA again confirming that the MECP must refuse the Proposal. These deficiencies and concerns include but are not limited to York1’s:

- Failure to complete a noise impact assessment including confirmation that York1’s proposed operation will not impact the sensitive receptors in the area;
- Noticeable lack of contingency plans for a variety of circumstances including the risk of surface water contamination;

- Appropriate air emission controls to mitigate the increased impacts on the surrounding community to be put in place;
- Identification of any contaminants existing on the Property including but not limited to asbestos;
- Need for a proper traffic study to address the increased trucks generated to the Property and mitigation of impacts on the surrounding community;
- Assessment of any air quality impacts from the increased trucks and heavy equipment operations on the surrounding community; and,
- Review of any impacts on the natural environment, species at risk and their habitat.

## SUMMARY

For these reasons among others the MECP appears to have no alternative but to refuse York1's Proposal and specifically any amendment to the ECA.

We respectfully request that the MECP require York1 to complete and submit for review and comment: the required studies in support of its Proposal; a cumulative effects assessment; any applications required under the *Planning Act* to permit the proposed use; ensure appropriate mitigation measures are being approved; and complete an individual environmental assessment.

The MECP in the circumstance has no alternative but to require that York1 complete an individual environmental assessment for its proposed landfilling operations on the Property.

Yours very truly,

Siskinds LLP



e-signature

Per:

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