



Hon. Andrea Khanjin
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Hon. Ted Arnott, MPP
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Township of Puslinch
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June 20, 2024

Hon. Matthew Rae
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VIA EMAIL:
Matthew.Rae@pc.ola.org

RE: Township of Puslinch Council formal objection to the Waste Disposal Site ECA posted as ERO number 019-8678, in accordance with the comments herein.

Hon. Andrea Khanjin,

Please be advised that Township of Puslinch Council, at its meeting held on June 12, 2024 considered the Waste Disposal Site ECA posted as ERO number 019-8678. Of significant importance is that property owner withdrew their appeal at the Ontario Land Tribunal (OLT) on May 24, 2024 in respect to Council's decision to refuse the zoning by-law amendment application seeking to legalize the hydrovac use. The withdrawal of the OLT appeal finalizes Council's decision such that the zoning is, and will remain, extractive alone and that the hydrovac operations are not permitted.

Furthermore, the MECP has advised that ECAs include conditions that do not exempt any person of any obligation to comply with any provision of any applicable statute, regulation or other legal requirement, including zoning bylaws. Given that zoning compliance is a condition of an ECA and a hydrovac use is not permitted on this site in accordance with the Township's Zoning By-law, the Township respectfully requests that the MECP refuse the Waste Disposal Site ECA application accordingly.



As noted in the Council resolution below, Puslinch Council formally objects to the Waste Disposal Site ECA posted as ERO number 019-8678, in accordance with the comments herein:

1. The property is owned by 2374868 Ontario Inc., and the hydrovac operation is operated by Conestoga Badger Inc.;
2. Both corporations are controlled by the same individual;
3. The property is split-zoned, with the northern 2/3 being a specialized Extractive Zone, and the southern 1/3 being specialized Agricultural. The extractive portion is subject to an ARA license in favour of Capital Paving (license no. 20085);
4. That operation is located on a smaller subset of the extractive zone, within the ARA licenced area;
5. Prior to the Excess Soil regulations (O.Reg. 406/19) coming into force, there was no requirement for liquid soils operations such as this to have Waste ECAs. However, it always would have required proper zoning to be in place;
6. The site also requires an Air/Noise ECA and a Sewage Works ECA, none of which are currently approved;
7. Puslinch Township Council refused the Zoning By-law amendment application seeking to permit a hydrovac operation over a year ago on March 22, 2023. The matter was appealed to the OLT but the appeal was withdrawn on May 24, 2024 thereby finalizing Council's decision such that the zoning is and will remain extractive alone and the hydrovac operations are not permitted. Township opposes the issuance of any ECA that purports to permit a use that contravenes its Zoning By-law. There is no prospect of the use being authorized as Council's decision to refuse the Zoning By-law amendment is now final
8. Badger has continued operating in direct violation of the zoning and without any ECAs (and that illegal use continues every day as confirmed by recent site inspections in May/June 2024);



9. There is no dispute that ECAs are required. The outcome of the OLT is final. The Township is unsure why the MECP would not take enforcement action where an ongoing operation that otherwise requires an ECA is bringing in liquid soil every day;
10. In addition to operating without a Waste ECA, there have been multiple reported exceedances of the Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the EPA (Table 1), including (all of these are noted by GHD, the consultant retained by 2374868 Ontario Inc. to advance the now-withdrawn rezoning application):
 - Barium, cobalt, chromium (total) and vanadium in a soil sample collected in July 23, 2020;
 - Anthracene in a soil sample collected on August 13, 2020;
 - Fluoranthene in a soil sample collected on October 8, 2020;
 - Toluene in a sample collected on October 29, 2020;
 - Lead in a sample collected on November 12, 2020;
 - Benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, fluoranthene, indeno(1,2,3-cd)pyrene, phenanthrene, and pyrene in a soil sample collected on December 3, 2020;
 - PHC F3 and PHC F4 in a soil sample collected on December 10, 2020;
 - PHC F4 in soil samples collected on January 7 and April 20, 2021;
 - Benzo(a)pyrene, fluoranthene, and indeno(1,2,3-cd)pyrene in a soil sample collected on May 20, 2021;
 - Chromium (hexavalent) in a soil sample collected on June 17, 2021;
 - PHC F2 in a soil sample collected on June 10, 2021
11. There are also several exceedances for Arsenic and Aluminum Table 2 potability standards in surface water data. The results from 2020 were presented in the GHD stormwater management plan and Hydrogeologic Impact Assessment prepared for an Industrial Sewage Works ECA;
12. Notably, the owner's consultants have represented that the liquid soils imported and dried at this site are used exclusively or almost exclusively for rehabilitation of the Capital Pit (20085); However, the Compliance Assessment Reports filed by Capital Paving in each of the last 2 years (2022, 2023) indicate that no rehabilitation occurred during those years. As such, this site is seemingly being used as a waste transfer site, with most or all dry soil presumably being shipped offsite;



13. The Rules for Soil Management and Excess Soil Quality Standards is adopted by reference in O.Reg. 406/19 made under the EPA, and administered by the MECP. The rules for storage of liquid soils in Section C1 of the Soil Rules include:
- Under Section C1 All liquid soil and process residues that are liquid shall be stored in a leakproof container on an impermeable surface in a manner sufficient to contain and prevent the material from escaping into the natural environment of the Soil Rules, there are requirement for managing liquid soils at a project area or a local waste transfer facility
 - The owner/operator are currently operating in a manner that is not compliant with this - currently, the liquid soil stockpile dewatering area is not in a leakproof container and is on a permeable sand and gravel material, not an impermeable surface. The existing infrastructure does not protect the soil and groundwater at the Site from being adversely impacted by contaminants that may be present in the liquid soil and liquid process residues.
14. Section 91 of Part X Spills of the EPA defines a “spill” as a discharge of a pollutant into the natural environment, from or out of a structure, vehicle or other container that is abnormal in quality. Considering the above, the process of depositing, draining, and drying liquid soils (a waste defined by Reg. 347 and O.Reg. 406/19) potentially containing contaminants has the potential to impact groundwater. Such releases into the natural environment necessitate notification, reporting, and appropriate responses as outlined within the EPA regulations. There is no evidence that the Applicant has reported their releases of liquid soils at the Site as spills have been found in the reports provided by the owner’s consultants as part for the now-withdrawn Zoning By-law amendment application.

A copy of Puslinch Council’s resolution from its meeting on June 12, 2024 is enclosed below for reference and consideration.

Resolution No. 2024-218: Moved by Councillor Hurst and
Seconded by Councillor Bailey

That Report ADM-2024-031 entitled Badger Daylighting ERO number 019-8678 for Waste Disposal Site ECA Application be received; and



Whereas the Zoning By-law Amendment appeal to the Ontario Land Tribunal was withdrawn by the Appellant on May 24, 2024, finalizing Council's decision such that the zoning remains extractive alone and hydrovac operations are not permitted; and

Whereas the Environmental Protection Act (EPA), Section 91 of Part X Spills, defines a "spill" as a discharge of a pollutant into the natural environment from or out of a structure, vehicle, or other container that is abnormal in quality; and

Whereas the process occurring on the subject lands of depositing, draining, and drying liquid soils (a waste defined by Reg. 347 and O.Reg. 406/19), potentially containing contaminants, has the potential to impact groundwater; and

Whereas such releases into the natural environment necessitate notification, reporting, and appropriate responses as outlined within the EPA regulations;

Therefore, Puslinch Council expects the hydrovac use to cease and the ECA application to be withdrawn. However, should the use continue, Puslinch Council requests that the Ministry of the Environment, Conservation and Parks (MECP) take steps to enforce compliance with the Environmental Protection Act, its Regulations, and the obligations therein; and

Whereas the hydrovac operations could result in a spill, as defined by the EPA, each time a truck discharges at the property;

That Puslinch Council requests that the MECP work directly with the property owner to ensure the site be rehabilitated to the satisfaction of the MECP, in accordance with the EPA, to protect adjacent landowners, the environment, and groundwater from adverse effects; and further:

That this report be forwarded directly to the Minister of the Environment, Conservation, and Parks, requesting a response, to MPP Arnott requesting his support, and to the MECP Local District Manager.

And That Puslinch Council directs Staff to formally object to the Waste Disposal Site ECA posted as ERO number 019-8678, in accordance with the comments herein.

CARRIED



As per the above resolution, please accept a copy of this correspondence for your information and consideration.

Sincerely,

Courtenay Hoytfox
Interim CAO

c:

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