

Municipality of Chatham-Kent

Development Services

Planning Services

Information Report

To: Mayor and Members of Council

From: Ryan Jacques, MCIP, RPP
Director, Planning Services

Date: May 27, 2024

Subject: Summary of Submissions to the Environmental Registry of Ontario regarding York1 Environmental Waste Solutions Ltd.'s proposed landfill and waste transfer and processing facility at 29831 Irish School Road, Municipality of Chatham-Kent

This report is for the information of Council.

Background

On January 29, 2024, the Municipality of Chatham-Kent received initial notice from the Ministry of Environment, Conservation and Parks (MECP) requesting comments to an Environmental Registry of Ontario (ERO) posting on a proposal by York1 Environmental Solutions Ltd. (York1) to establish a waste processing, storage and transfer station (Waste Processing Proposal) located at 29831 Irish School Road, just north of Dresden.

After this, the Municipality received a second notice from MECP on February 26, 2024, requesting comments to an ERO posting on a proposal by York1 to establish a 1.6 million cubic metre non-hazardous solid waste landfill (Waste Landfill Proposal) to be located at the same location.

At its February 26, 2024 meeting, Council passed the following resolution with respect to the Waste Landfill Proposal and the related Waste Processing Proposal:

Whereas York1 Waste Solutions is proposing a waste processing, storage and transfer facility, a landfill, and potential composting facility, at 29831 Irish School Road;

And Whereas the proposed facility is in close proximity to Dresden, and has the potential for serious impacts to Dresden, nearby properties, natural features, infrastructure, and the environment;

Now therefore, given the scale and nature of this proposal, the significant

municipal concern for community, environment and infrastructure impacts, Chatham-Kent Council is opposed in principle to the application, and calls on the Province to reject the applications for a waste processing, storage and transfer and landfilling facility currently open for public comments;

And that if the Province is not prepared to reject the application, Chatham-Kent Council calls on the Minister to designate the project for a full EA process to remove any doubt that the EA study process is required for the application;

And Council requests the Mayor author a letter to the Minister of Environment, Conservation and Parks outlining the community concerns and Council's opposition to these proposals;

And Council authorizes and directs administration to retain such technical experts as may be required to advance concerns through the Ministry consultation process.

On March 26, 2024, the Municipality received a third letter from MECP requesting comments on an ERO posting regarding a proposed regulation to designate the proposal by York1 to establish new solid waste landfill together with a waste transfer, storage and processing operation on lands known municipally as 29831 Irish School Road under the *Environmental Assessment Act*, RSO 1990, c. E.18, as amended (EA Act).

Based on Council's direction, the firm of Garrod Pickfield LLP, Environmental, Municipal and Planning Law was retained by the Municipality as technical experts to assist with the completion of the three submissions to the ERO postings.

The three submissions have now been completed by the Municipality and are as follows:

- March 15, 2024, submission which sets out the Municipality's preliminary comments on environmental compliance approval (ECA) application seeking approval of the waste processing/storage/transfer station component of the York1 Waste Facility proposal, MECP Reference Number 2082-CYEJP2 (**Appendix 1**).
- April 9, 2024, submission which sets out the Municipality's preliminary comments on ECA application seeking approval of the landfill component of the York1 Waste Facility proposal, MECP Reference Number 8126-CYMRCN (**Appendix 2**).
- May 9, 2024, submission which sets out the Municipality's comments on the Notice of Regulation Proposal – Proposed designation under the Environmental Assessment Act - York1 Environmental Waste Solutions Ltd proposed landfill and waste transfer and processing facility (**Appendix 3**).

Comments

Based on Council's February 26, 2024, resolution, each of the Municipality's submissions reiterate that the Municipality is opposed in principle to the Waste Landfill Proposal, and its related Waste Processing Proposal and includes a copy of the February 29, 2024, letter from Mayor Canniff directed to the Honourable Andrea Khanjin, Ontario Minister of Environment, Conservation and Parks, to communicate this position to the Minister. Furthermore, each submission includes a section outlining the rationale for requiring a full environmental assessment study process be completed pursuant to the requirements of the EA Act.

To summarize, the following is breakdown of the contents of the Municipality's third and final May 8, 2024 submission:

1. Background information on the Subject Property, including its locational context and historical and current and land use activities (section 1).
2. An overview of the Municipality's understanding of the nature and scope of the York1 Waste Facility Proposal (section 2).
3. The potential for the Landfill Proposal to impose significant physical, social, and economic environmental impacts on the Municipality including community and municipal infrastructure impacts (section 3).
4. The almost complete absence of constructive public and municipal information sharing consultation to date, and the need to establish a systematic community and public agency engagement process for the proposal (section 4).
5. The lack of adequate and credible information on the Landfill Proposal, or the related Waste Processing Proposal, and its potential impacts (section 5).
6. The Municipality's rationale for why a full environmental assessment under Ontario's EA Act is required for the Landfill Proposal, and the related Waste Processing Proposal (section 6).
7. Specific comments on the proposed designation regulation (section 7).
8. Conclusion and Request to the Ministry of Environment, Conservation and Parks (section 8).

Comments on Proposed Designation Regulation (contained in section 7 of the May 8, 2024 Submission)

"The Municipal team that is reviewing the York1 Waste Processing Proposal has reviewed the proposed description of the activities that are to be designated as a project subject to Part II.3 of the Act as requiring a comprehensive environmental assessment.

We would respectfully request that the description be slightly modified to remove the reference to “(r)establishing landfill operations” and ““(r)establishment and expansion of a waste transfer and processing station at the approved site”. The proposed changes to the wording, shown in tracked changes, are as follows:

- *Construction and operation of landfill facility* ~~Re-establishing landfill operation, including construction of a new landfill cell, within the approved site with a theoretical approved capacity of 1,620,000 cubic metres to landfill non-hazardous solid waste including construction and demolition waste and excess soil that are not reusable.~~
- ~~Reestablishment and expansion of~~ *Construction and operation of a waste transfer and processing station at the approved site* for receiving, storing, and processing up to 6,000 tonnes per day of solid, non-hazardous waste, including blue box waste, construction and demolition waste, tires, asbestos, excess soil, and organic waste.
- In accordance with section 3(3) of the Act, the project would include any enterprise or activity ancillary to the project.

These changes are requested for the following reasons. The reference to previous landfill and waste processing approval is both unnecessary and misleading. This wording leaves the impression that the York1 Landfill and Waste processing facility are similar in scope and nature to previous uses at the subject site and are simply a continuation and expansion of an existing use. This is not the case. As discussed above, the previous landfill proposal is a small facility approved decades ago, with little study. Both the York1 Landfill and Waste processing facility are fundamentally different in nature to the small local facilities that previously received approvals. The previous small-scale landfill and waste processing activities have been discontinued and the site is inactive. The site has never served as a waste transfer station.

In summary, the reference in the regulation to reestablishing landfilling and waste transfer station activities is both unnecessary and misleading. The above requested changes to the description of the activities to be designated are therefore requested for clarity and accuracy.”

Conclusion and Request to the Ministry (contained in Section 8 of the May 8, 2024 Submission)

“In summary, for the reasons set out in this letter, the Municipality fully supports commitment of the Honourable Honourable Andrea Khanjin, Ontario Minister of the Environment, Conservation and Parks, to designate the York1 Waste Facility Proposal, comprising a proposed solid waste landfill, waste processing, storage and transfer station, for a comprehensive environmental assessment pursuant to Part 11.3 of the EA Act. The Municipality is requesting specific changes to the wording of the description of

the activities to be designated in the proposed designating regulation for clarity and accuracy. The Municipality intends to participate fully in the comprehensive environmental assessment process, as required under Part 11.3 of the EA Act, and looks forward to the issuance of the designating regulation by the Province”

What is a full individual environmental assessment?

The following MECP website provides a good overview on the steps in an Environmental Assessment (EA): [Preparing Environmental Assessments](#)

In short, the EA Act sets out a planning and decision-making process so that potential environmental effects are considered before a project begins. Individual environmental assessments are prepared for large-scale, complex projects with the potential for significant environmental effects and require MECP approval. The EA process includes: the consideration of alternatives, the assessment of environmental effects, and the development of mitigation plans to reduce any potential effects on the environment. Generally, an EA process will normally assess potential effects on the following aspects in a holistic manner, however, the specific items to be studied must be identified on project basis through a Terms of Reference at the onset that must be approved by the MECP:

- Natural Environment – potential impacts to groundwater, surface water, aquatic resources, species at risk, the atmosphere and climate change.
- Socio-Economic Environment – potential social effects such as odour, noise, visual, dust, litter, agriculture, and the general economy.
- Cultural Environment – potential impacts on cultural and archaeology resources.
- Built Environment – potential impacts on surrounding land uses, transportation networks, haul routes and traffic.

The following are the general steps in an Environmental Assessment:

Step 1: Develop and Submit a Terms of Reference

- The Terms of Reference serves as a framework for the preparation and review of an EA and outlines how a proponent will develop and evaluate alternative methods of implementing the proposal.
- A Proponent must:
 - submit a Notice of Commencement to the Director, Environmental Assessment Branch
 - submit a Terms of Reference summary form
 - consult with the public, Indigenous communities and government agencies
 - document the consultation process and submit to the ministry with your Terms of Reference
 - outline the plan for preparing and evaluating the EA
- Prepare and submit the Terms of Reference document including:

- the name and address of the proponent
- how the EA will be prepared
- purpose of the study or undertaking
- description of and rationale for the undertaking and for alternatives
- description of the existing environment and potential effects of the undertaking
- assessment and evaluation
- commitments and monitoring
- consultation plan for the EA
- flexibility to accommodate new circumstances
- other approvals required
- MECPs Role:
 - consults with the public, Indigenous communities and government agencies
 - coordinates a technical review of the Terms of Reference document
 - makes a recommendation to the Minister who decides whether or not to approve the Terms of Reference within 12 weeks from the date of submission to the ministry
- The proponent has an opportunity to take a "time out" to amend the Terms of Reference
- The Minister can refer a matter to mediation before making a decision or the proponent can begin the mediation process. The Minister can't send a Terms of Reference to a hearing.

Step 2: Prepare an Environmental Assessment

- A Proponent must:
 - submit a Notice of Commencement to the Director, Environmental Assessment Branch
 - prepare the environmental assessment document once the Terms of Reference is approved
 - the environmental assessment document includes:
 - record of consultation
 - a monitoring framework that will be carried out if the undertaking is approved
 - a list of commitments
 - actions to prevent, reduce and manage environmental effects
 - environmental effects that may be caused
 - a review and evaluation of alternatives considered
 - results of the planning and decision-making process
 - the purpose of the project and a description of the undertaking
 - consult the public, Indigenous communities and government agencies
 - There are no limits on how much time a proponent can take to prepare the environmental assessment document.

Step 3: Submit an Environmental Assessment

- A Proponent must:
 - submit an EA summary form
 - submit the EA document to the Director, Environmental Assessment Branch for review and decision by the MECP.

Step 4: Public and Government Review

- MECP coordinates public and government review of the document submitted.
- MECP consults with:
 - government experts
 - Indigenous communities
 - the public
 - any other interested party
- The public has 7 weeks to comment.
- Any time during the EA process, the proponent or any other interested persons can ask for mediation.

Step 5: MECP Review

- Includes:
 - a review of all public, Indigenous community and government agency comments
 - the proponent's response to the comments
 - a discussion on whether the proponent is in compliance with the approved terms of reference
 - how the proponent has met the requirements of the EA Act
- MECP has 5 weeks to write and publish the Ministry Review.

Step 6: Public Consultation on the MECP Review

- The public, government agencies, Indigenous communities or any other interested party has 5 weeks to provide comments to the MECP
- During this time, anyone, including the proponent can:
 - provide written comments to the Ministry of the Environment, Conservation and Parks to identify any outstanding issues with suggestions for how they might be resolved
 - request a hearing.

Step 7: Minister's Decision

- The EA must be approved by the Minister of the Environment, Conservation and Parks and Cabinet before the project can proceed.
- Once public comment is finished on the Ministry Review, the Minister has 13 weeks to make a decision.

- The Minister may:
 - refer it to mediation
 - refer it to the Environmental Review Tribunal for a hearing
 - make a decision to approve, approve with conditions, or refuse.

Step 8: Implement the Project and Monitor Compliance

- After the project has been approved, the proponent will need to gather other approvals as needed.
- These could include requirements found in the:
 - *Environmental Protection Act*
 - *Planning Act*
 - *Ontario Water Resources Act*
 - *Species at Risk Act*
- When the proponent has received all approvals, construction can begin. The proponent must report on how they have complied with commitments in the EA and the conditions of the approval.

Land Use approvals under the Planning Act

In its March 15 and April 9 ERO submissions to the MECP, Chatham-Kent provided comment on the land use planning implications related to the Official Plan and Zoning By-law. Attached (Attachment 3 in both submissions) was a letter delivered by Chatham-Kent to York1 dated March 15, 2024. The letter set out Chatham-Kent's position regarding the issue of 'legal non-conforming use' and the process to pursue approvals from Chatham-Kent under the Planning Act.

The letter confirmed that land uses are regulated by municipal zoning by-laws passed pursuant to the Planning Act. Under the present zoning, waste processing, storage, transfer and landfilling are not permitted uses at 29831 Irish School Road. Therefore, land use planning approvals are required before the proposed uses described in the ECA applications filed with the MECP can be established on the property.

These approvals include both an amendment to the Chatham-Kent Zoning By-law and, potentially, an amendment to the Chatham-Kent Official Plan. York1 was advised that it should initiate pre-submission consultation with Chatham-Kent with respect to the required Planning Act approvals if it wishes to proceed.

No further communication on this issue has taken place between Chatham-Kent and York1 since delivery of the March 15 letter.

Council Term Priorities

This report supports the following Council Term Priorities:

			
Deliver Excellent Service	Promote Safety & Well-Being	Grow Our Community	Ensure Environmental Sustainability

Consultation

No consultation was required for the preparation of this report.

Communication

After every submission was completed, the Municipality sent out a media release to advise the public that the submission was available. On March 15, 2024, a dedicated [Let's Talk Page](#) was created where each submission was posted and the page also contains other relevant information and answers to some frequently asked questions.

Diversity, Equity, Inclusion and Justice (DEIJ)

This report does not have implications related to diversity, equity, inclusion or justice.

Financial Implications

At the time of writing, \$37,000 had been spent on external technical experts to assist with the Municipality's written submissions to the Province.

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Attachments:

Appendix 1 – March 15, 2024, Chatham-Kent ERO Submission to the MECP

Appendix 2 – April 9, 2024, Chatham-Kent ERO Submission to the MECP

Appendix 3 – May 9, 2024, Chatham-Kent ERO Submission to the MECP