



*Transportation and Works Department
Solid Waste Management Branch
Fax: 905-954-4611*

February 27, 2007

Honourable Laurel C. Broten
Minister of the Environment
135 St. Clair Avenue West,
12th Floor
Toronto, ON M4V 1P5

Dear Minister:

**Re: Draft Waste Management Projects Regulation and Guidelines
EBR Registry # RA06E0018**

The Regional Municipality of York is supportive of the Ministry of the Environment's goal of improving the environmental assessment process for waste management sites. Development of a more efficient, transparent and consistent process is of benefit to everyone. To date, the Region's staff have provided comments to the Ministry regarding the need to revise the environmental assessment process, and are happy to see change. The intent of this letter is to provide comment on the Draft Waste Management Projects Regulation and its associated Guide.

The comments contained in this letter relate to five main issues:

- Approval Process & Criteria;
- Stakeholder Definition;
- Public Consultation;
- Bump-Up/Elevation Requests; and,
- Landfill Mining.

These comments reflect the views of York Region's staff and are awaiting endorsement by Regional Council at their next meeting scheduled for March 29, 2007. Should Council provide additional direction, we will advise you accordingly.

A- Environmental Assessment Act: Waste Management Projects (Draft)

Municipalities in Ontario are looking for new and innovative ways to manage the waste that remains after our diversion efforts. The definition provided for the term “thermal degradation” is very specific. York Region recommends that this definition be given in more general terms to prevent the scoping out of new and emerging technologies that may not be classified as incineration, gasification, pyrolysis or plasma arc. The revised definition could include a description such as “the process of reducing waste material by heat” and may include, but not be limited to incineration, gasification, pyrolysis or plasma-arc”.

The definition of “total waste disposal volume” included in the Draft Regulation clearly states that the volume should include daily/intermediate cover, and waste. By including daily/intermediate cover in this volume, this could encourage landfill operators to minimize the use of cover material to increase the volume of waste that can be deposited, resulting in increased litter, and vermin. Cover plays an important role in the proper operation of a landfill. York Region recommends that the Ministry identify the various types of cover applications in its definition in order to promote the proper use of cover. The appropriate application of daily/intermediate cover should be defined by the Ministry.

Clarification on a number of points within the Draft is requested. These include:

- Thermal degradation sites located at a commercial, industrial or manufacturing facility, for which the primary purpose is not waste management, processing more than 100 tonnes per day. The Regulation is clear in exempting such facilities that are processing less than 100 tonnes per day, but fails to state the process to be followed if this threshold amount is exceeded (*Section 5 (3)*). An explanation as to why these projects are viewed differently than public sector projects is required.
- Projects that are not covered in the criteria outlined in *Sections 2 and 3*; Section 2 outlines criteria for designating projects requiring a full environmental assessment, and Section 3 identifies those for environmental screening. There are, however, a number of projects that do not fall into either category, such as the establishment of a landfill with a volume of less than 40,000 cubic meters. It would appear that those projects are not designated and therefore, are not subject to the requirements under the Environmental Assessment Act. Section 5 in the draft specifically identifies projects that do not apply to the Act. York Region recommends that Section 5 be revised to include a statement identifying that the Act does not apply to those waste management projects that are not otherwise designated.
- The intent of *Sections 4(1) and 4(2), Undertakings otherwise subject to the Act*, and the exemption contained in *Section 5(1)* are unclear. Interpretation by legal experts indicate that the clause in *Section 5(1)* will provide for equal treatment between projects in the public and private sectors. York Region supports this approach but request that the Ministry confirm that this is their intent.

During the development of this Draft Regulation, the Ministry held a number of stakeholder consultation sessions. The practice of landfill mining was considered in the previous Drafts, but is no longer included in the present version. Landfill mining is a way to recapture permitted capacity and/or remediate problem sites. York Region would like to see landfill mining addressed in the Regulation. Given that many of the older active and closed landfills in Ontario are in fact unlined dumps and much of Ontario consists of groundwater based communities, it is recommended that this activity be encouraged by the Ministry of the Environment through a simplified approvals process.

The way that the Regulation is drafted is challenging to navigate. The Guide associated with the Regulation is very useful, in particular, Figure 1, Part A of the Draft Guide. A disclaimer contained in the Guide makes the information contained within the Guide an unreliable source of reference. York Region recommends that Figure 1, Part A of the Guide be incorporated into the Regulation itself, to provide a more reliable basis of reference.

B- The Draft Guide to Environmental Assessment Requirements for Waste Management Projects

York Region feels that the Guide associated with the Draft Regulation is an important document for navigating the proposed screening process. One of the main issues with the existing process is the lack of certainty regarding the outcome of the process. The proposed changes rectify some of those issues for proponents. The draft attempts to outline what is required of the proponent to move forward through the screening process, however, it fails to identify the method of evaluation to be used by the Ministry to assess study completion. York Region recommends that the Guide include a section that outlines the Ministry's methods of evaluation to establish completion or a bump up. There is a need within the proposed changes to demonstrate quantifiable "pass/fail" decision making factors that will be used by the Ministry's Directors to remove the appearance of subjectivity.

Waste diversion programs continue to be a priority in York Region. In order for the Draft Regulation to assist with continued diversion efforts, it is suggested that some level of "special approvals preference" be given to landfill projects that will receive only residual waste from communities that have met Ontario's 60% waste diversion goal.

One of the primary decision making criteria used in this screening process should be an assessment of the environmental and social impacts of the "do nothing" option. This will assist with assessing the need and purpose of the undertaking. York Region believes that emphasis should be balanced between community infrastructure needs and long term environmental protection.

B-1 Stakeholders and Consultation

York Region believes that the definition of “stakeholder” should be revised so that the opinions of a neighbour to a proposed project is recognized with more significance than the opinions of a Non-Government Organization (NGO) or individual that does not reside within the anticipated area reasonably expected to be directly impacted by the facility. A stakeholder should be defined as someone who is a directly impacted member of the community such as a local municipality, agency or aboriginal peoples. All other parties should be defined as “interested parties” and could play an advisory role to the “stakeholders” at the request of the “stakeholders”. Proponents of a project should be required to give mandatory notice of information and consultation events to those within a reasonable radius of the project.

Public consultations are viewed as an important step in the environmental assessment process. However, York Region believes the mechanisms for obtaining and incorporating the views of the general public in its decision making process need to be improved. Guidance documents from the Ministry should encourage proponents to obtain balanced input by moving beyond meetings and open houses and including methods such as public opinion surveys. The Ministry needs to recognize that the views of organizations with an interest in the environment, nearby neighbours and the general public may not be the same and trade offs may be necessary when addressing these different views. Comments must be encouraged and sought from a diverse population and not just from those with special interests. Waste management projects have the potential to benefit a large population of residents and businesses. The views of the “silent majority” are equally if not more important than that of the “vocal minority”. The lack of this balance has plagued numerous consultation processes to date and should be addressed in the guidance documents.

York Region recommends that comment periods for projects should be clearly defined and rigorously supported to promote timely receipt of written documentation and certainty. Stakeholder groups should be given the right to submit a “notice of intent to provide comment” to the proponent where warranted and reasonable extensions should be permitted on an exceptional basis only. Proponents would be responsible for outlining how extensions would be granted within the Terms of Reference.

Within the Guide associated with the Draft Regulation, the costs of mediation are stated to be subject to agreement among the participants. York Region recommends that the Regulation specify the sharing of costs on an equal basis, as a minimum, in order to avoid the potential for dispute amongst the parties prior to mediation. Proponents could offer to pay for a greater share of the costs as a goodwill gesture but this action should be left to their discretion.

B-2 Screening Criteria Checklist

York Region recognizes the screening criteria checklist as a key document in the revised environmental assessment process. The criteria checklist will establish a mechanism for proponents to identify location specific issues, and avoid wasting resources on generic studies that fail to meet the needs of the local environment and community.

Clarification on a number of points within the Draft screening criteria checklist is requested. These include:

- *Criterion 3.1-* This item relates to air quality emissions, however, the wording in this section is unclear, and requires clarification. York Region recommends that air quality should be assessed through a balance of activities, and not be limited to the negative impacts associated with the undertaking itself and the generation of emissions listed. Rather the net effects of the project should be considered. The activities required to service the proposal (i.e., transportation) and the possible impacts that can be avoided or lessened as a result of the proposed undertaking should be included.
- *Criterion 5.1-* This criteria relates to the use of resources, and specifically activities that will result in the final disposal of materials subject to diversion programs. All diversion and disposal programs result in some amount of residue requiring disposal. More appropriately, the proponent should identify the percentage of household hazardous waste, recyclables and compostables removed from the feedstock for beneficial use by the proposal, and compared to the “do nothing” option.
- *Criterion 5.3-* Proponents are asked to identify the proposal’s distance to required infrastructure. This item needs to be more comprehensive. York Region believes that the evaluation criteria should encourage a balance of distance and availability to customers, markets and other factors.

B-3 Bump Up Request and Study Completion

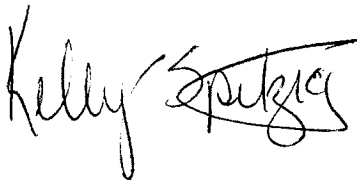
The Guide associated with this Draft Regulation states that “*following an elevation request, when the requester’s concerns have been addressed by the proponent, the requester is responsible for withdrawing the elevation request.*” York Region recommends that in this case, requesters be given a set amount of time to remove the request. This is important as it ensures that the proponent can demonstrate that they are addressing all requests and outstanding issues are not being held against a project for an unreasonable length of time. If a requester is not satisfied with the response from a proponent, the Ministry should be responsible for assessing the legitimacy of the claim, and have the authority to close the request or keep it open.

The approvals process for environmental assessments have typically been long and onerous in the past. York Region has long been requesting a timely and expedient review process by the Ministry. The draft Guide states that proponents should be realistic in their expectations in agency turnaround times for document review. York Region requests that the Ministry define a realistic time period for review. Project timelines are dependant on timely response from the Ministry, and it is necessary for the Ministry to ensure that they have the appropriate staff resources and expertise to review project documentation.

York Region recognizes that this revised process is largely proponent driven. At the conclusion of this proposed process, proponents are required to submit a notice of study completion to the Ministry. A letter acknowledging the receipt of the notice should be provided to the proponent to signify that it is agreed by the Ministry and the proponent that the screening process has been completed.

York Region would like to thank the Ministry for the opportunity to comment on these issues. For further information, please contact the undersigned at 905-830-4444 extension 5785, or kelly.spitzig@york.ca.

Sincerely,

A handwritten signature in black ink, reading "Kelly Spitzig". The signature is written in a cursive, flowing style.

Kelly Spitzig
Policy & Planning Coordinator