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July 23, 2013

Mr. Scott Stewart
General Manager, Development and Infrastructure Division
City of Burlington
426 Brant Street
Burlington, ON L7R 3Z6
E-mail: scott.stewart@burlington.ca

Dear Mr. Stewart:

Thank you for your letter dated July 12, 2013 to the Ministry of the Environment with regard to the Burlington Executive Airpark Imported Fill Quality, Review of Environmental Records.

The City of Burlington (City) has indicated in the letter that the Burlington Executive Airpark (Airpark) is not in compliance with legislation enforced by the Ministry of the Environment (the ministry). The City requests that the ministry "issue a stop work order" on the existing filling activities at the site and order testing of the groundwater, wells and any other testing deemed appropriate. Also, the City indicates that the Airpark is operating an unlicensed landfill site.

In addition, the City letter included a July 11, 2013 written review from Terrapex Environmental Ltd. (Terrapex) of some of the available environmental testing reports of fill materials received at the Airpark and the opinion Terrapex provided to the City on jurisdictional issues.

For ease of reference, the ministry is providing our response under topic titles.

Ministry Legislation

The City has indicated that the Airpark is not operating in compliance with Ontario's Brownfields Regulation (O.Reg.153/04) and General - Waste Management Regulation (O. Reg. 347) made pursuant to the Environmental Protection Act (EPA).

The Brownfields regulation is intended for the redevelopment of brownfields, for example, when a property's use is changing from a "less sensitive" to a "more sensitive" land use. In this case, the airport has been in operation since the 1960s and there is no proposal to change it to a more sensitive land use. As such, the Brownfields regulation does not apply and a Record of Site Condition is not required for this property.

With respect to O. Reg. 347 (General - Waste Management), Terrapex has provided the City with an interpretation that the fill brought to the Airpark is considered a waste and that the deposit of this fill at the Airpark site has resulted in the establishment of an unlicensed waste disposal site. Terrapex indicates that the fill is classified as a waste because sample results exceed the Table 1 standards.

The Table 1 Standards represent the background concentrations of metals and other substances in typical Ontario soils not affected by industry or other sources of contamination. Exceedance of soil standards found in the Brownfields regulation is not sufficient to deem soil to be a waste. It is not appropriate to use the brownfield standards to determine whether soil is waste. Further, it is not correct to refer to the Airpark as an unlicensed waste disposal site simply on the basis that it has accepted soil.

Stop Order

With respect to the City's request that the ministry take immediate action such as issuing a "stop work order" to the Airpark, note that municipalities such as the City of Burlington, along with Conservation Authorities, have the authority to develop by-laws and issue permits for fill placement. We encourage the City to use its authority to ensure that fill brought onto the site is of an acceptable quality.

Excess Soil Management

With regard to controlling the quality of excess soil, municipalities have the authority to develop by-laws and issue permits for fill placement and to enforce compliance. The ministry has developed a proposed guidance document – "Soil Management – A Guide for Best Management Practices," that provides guidance to stakeholders, including municipalities, to consider when issuing these permits or establishing by-laws for managing excess soil. We have encouraged the City of Burlington to incorporate these best practices when issuing permits and approvals to anyone involved in soil management activities. The ministry has also previously met with staff at the City and discussed the best management practices guide that is available on the ministry's EBR website at <http://www.ebr.gov.on>.

Next steps

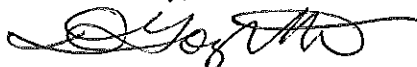
The ministry met with the owners of the Airpark and their legal counsel on July 19, 2013 to obtain additional information about the quality and quantity of fill being placed at the site, the measures taken by the owner to ensure the fill was acceptable and to obtain any environmental reports the owner may have commissioned.

The Airpark has agreed to submit a plan shortly to the ministry for a ground water investigation to assess whether the fill operations may have caused any off-site impacts. The Airpark will implement the plan upon receiving ministry concurrence. Upon completion of the work the ministry would be pleased to meet with the City to discuss the findings of the investigation. If there is reason to believe that the filling activities may result in offsite impacts, the ministry will take action, as necessary, to ensure the protection of the natural environment.

I trust concerns the City has on this issue have been clarified.

Please contact me at 416-326-1825 if you have any questions.

Yours truly,



Dolly Goyette
Director, Central Region
Ministry of the Environment

cc: Alison Rodrigues, Ministry of the Environment
Norm Rankin, Ministry of the Environment