



Environment and Climate Change
Office of the Minister

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10700-40-58191

June 24, 2022

Halifax Waste-Resource Society
Atten: Scott Guthrie, Chair
P.O. Box 213
Lakeside, NS B3T 1M6
guthriesw@gmail.com

Dear Scott Guthrie:

Re: Section 137 of the *Environment Act* Appeal of APPROVAL No. 2008-065580-07 (the approval) - Municipal Solid Waste Landfill - Amendment to Enable Removal of Requirement for Front End Processing /Waste Stabilization Facility (FEP/WSF), but Require Maintenance of this Equipment for Potential Re-activation- Otter Lake landfill, Timberlea, NS.

This is in response to your appeal of the March 22, 2022, decision of Administrator Tanya Farrell, District Manager to amend the approval. You have named six grounds of appeal, that are reproduced below verbatim in bold from your Notice of Appeal Form and letter dated April 14, 2022, and a corresponding response following each one.

Ground 1:

The Progressive Conservative Caucus, on April 24, 2013, put forward Resolution 794, which was unanimously adopted by the Provincial House of Assembly. This Resolution committed a Progressive Conservative government to use its power to enforce the original Otter Lake commitments. The discontinuation of the FEP and WSF are clearly a failure to uphold the original commitments to the environment and residents of neighbouring communities.

1.a Progressive Conservative Caucus Resolution (2013)

The HWRS would remind the Minister of Resolution 794, introduced by The Progressive Conservative Caucus and passed unanimously in the House of Assembly on April 24, 2013 that reads in part: " all members of this House of Assembly direct the Minister of Environment to reject any requested changes to the Otter Lake Waste Management Facility operating permit that would remove the requirement of front end separation and waste stabilization." This unanimous Resolution, championed by a former Progressive Conservative Caucus, must be upheld. The Legislators in 2013 recognized the importance of the FEP and WSF and committed to retain their function for the benefit of the environment to the benefit of residents in the neighbouring communities. (Exhibit 1)

An Administrator evaluating the merits of an application to amend an approval, must consider the relevant factors under the *Environment Act* and regulations, standards and guidelines. This must be done fairly, based on the relevant science, technical and engineering information before the decision maker. Resolution No. 794 was made at a different time and circumstances and does not bind the decision making of myself or an Administrator acting under delegated authority.

Ground 2:

The Halifax Regional Municipality and the HWRS signed an agreement in 1999 regarding the operation of the landfill facility. The discontinued use of the FEP and WSF constitute a failure to honour the spirit and intent of that Agreement.

2.a Agreement Between HRM and HWRS (1999)

The HWRS would also bring to the Minister's attention the 1999 Agreement (contract) between Halifax Regional Municipality and HWRS which initiated the development of the Otter Lake Facility. (Exhibit 2) In this Agreement, the parties agreed that only Acceptable Waste would be permitted to enter the disposal cells (Section 2.03). Acceptable Waste is defined as "Inert, Stable, and Residual materials." (Section 1.01). Residual Materials are further defined as "means minor quantities of any material or substance the disposal of which at a solid waste landfill site is banned or prohibited by law and which, notwithstanding the reasonable and diligent efforts of the Operator to identify and remove such materials, remain in the waste that is disposed of in a Residuals Disposal Cell."(Section 1.18). We would submit that by discontinuing the use of the FEP and SWF, the Operator of the facility is in breach of the Agreement by not providing "reasonable and diligent efforts to identify and remove such materials". Along with the preceding two points, the HWRS feels that the Administrator has erred in her decision for the following reasons: As noted in the grounds below.

The Nova Scotia Department of Environment and Climate Change is not a party or signatory to the 1999 agreement. We do not have the authority to enforce the terms of a privately arranged agreement between two other parties. The Halifax Waste Resource Society is encouraged to seek legal advice concerning what options they may have under the agreement.

Ground 3:

The results of the Public Consultation conducted by Dillon Consulting indicates an extremely high level of concern from residents regarding the deactivation of the FEP. A review of the survey by Don Mills showed a problematic conflict of interest with Dillon being a consultant for the proponent and the firm that conducted and evaluated the consultation.

3.a Public Engagement Conflict of Interest

Public consultation is an accepted and often mandated process to gauge community views on issues that impact neighbourhoods. Dillon Consulting, on behalf of Halifax Regional Municipality, conducted on-line public consultation for this Amendment application and received approximately 1900 surveys from residents. It should be noted that Dillon Consulting was the same consultant that prepared the Closure Review Report on behalf of the Applicants, HRM and Mirror, a real or perceived conflict of interest. The Halifax Waste-Resource Society engaged Don Mills, a noted expert on public consultation, to review and analyze the consultation process and results (Exhibit 3).

Mr. Mills noted that this interconnected activity with Dillon Consulting was "problematic" further stating that "this conflict of interest harms the credibility of the public consultation report that they have prepared, especially in terms of their response to the significant level of dissatisfaction apparent even after the various mitigation efforts are outlined to deal with the concerns of citizens living near the facility".

Mr. Mills states that the conclusions in the Dillon report minimizes the concerns of residents regarding the proposed Amendment. According to Mr. Mills "the study results clearly indicate an extremely high overall level of concern regarding proposed deactivation of the FEP/WSF components of the Otter Lake Facility".

We maintain that the selection of Dillon Consulting to design and conduct the consultation was an error and that their interpretation of the results is not representative of community concerns and objections.

As part of the application, the HRM/Mirror was required to undertake public consultation in accordance with the NSECC Public Consultative process. The applicant followed this process to the satisfaction of the department. There is no requirement for the consultation to be undertaken by a third party or preventing Dillon Consulting from leading the consultation process. 97% of respondents raised concerns however none differed from those already raised or expressed by the Community Monitoring Committee/HWRS. The concerns raised were already known to the Department.

Ground 4:

Concerns have been raised by the residents of Beechville, through their HRM councillor, Iona Stoddart, about environmental racism regarding the removal of environmental controls at the facility.

4.a Environmental Racism

Finally, Beechville is the community nearest the landfill, and is represented by HRM councillor Iona Stoddart. In her February 16, 2022 letter to the Minister of Environment and Climate Change she raised the issue of environmental racism in the Amendment application noting: " Historically it is a Black community and we all know landfills have been allowed to operate in the past in Nova Scotia without regard to concerns of Black residents or their communities ... " (Exhibit 4)

In addition, Beechville native and Halifax Waste -Resource Society director, Alfred Jarvis, has outlined in an attached letter, (Exhibit 5), the views widely held by his community on this issue.

We recognize environmental racism exists in the province. We are working as a province to address its impacts. The department does not approve the citing of landfills rather we ensure its construction and operation adheres to the *Environment Act* and *regulations*. In this instance, we have ensured the terms and conditions in this approval will ensure this solid waste facility operates in a manner which does not impact the environment negatively.

Ground 5

The discontinued use of the Front End Processing facility (FEP) and Waste Stabilization facility will lead to increased burial of organics(putrescibles) and hazardous materials which are currently removed. This will lead to increased production of green house gases, leachate, odours and vectors which will directly impact the environment and local communities. Population increase will inevitably lead to increased waste generation and consequently increased disposal of organics and hazardous materials.

5.a Community Environmental Impact

The Otter Lake landfill was commissioned in 1999 as an advanced technology facility and provincial and municipal solid waste strategies were implemented. An integral part of the landfill was the Front-End Processing (FEP) where individual loads of residential waste were inspected and materials banned from the landfill were removed, such as organics (putrescibles) and hazardous materials. The burial of poorly sorted municipal solid waste leads to generation of methane (a greenhouse gas) and toxic leachate, both sources of noxious odour, along with vectors such as rats and scavenger birds.

The discontinued use of the FEP will lead to increased burial of organics and putrescibles, which will lead directly to increased generation of methane and leachate. The treatment of these by-products will cause increased operating costs and increased environmental risk due to a release of leachate. The loss of the FEP will result in the burial of increased amounts of Household Hazardous Waste such as used oil, waste paint and other dangerous goods with the resulting risk to the environment. These increased amounts at curbside could trigger environmental impacts in neighbourhoods. The rapid increase in the population of HRM will produce an inevitable increase in waste generation and consequently more banned materials entering the facility for burial. It is reasonable to conclude that this input will overwhelm the facility's ability to perform as originally designed.

The technical review of the application concluded that there would be no off-site impacts or increase in leachate over the designed volume of the cells and no increased risk associated with Dangerous Goods (which amount for less than 2% of the waste and includes Household Hazardous waste). There is no requirement for front-end processing or waste stabilization under provincial guidelines.

Ground 6:

The discontinued use of the FEP and WSF could and result in a lack of concern among residents about continuing to be vigilant about source separation and a resulting increase in organics, recyclables and hazardous wastes going to the facility.

6.a Impacts on Public Perception

There is also concern that the loss of the FEP will prompt Halifax Regional Municipality residents to conclude that their household waste sorting practices are no longer important or required. Through education and provincial and municipal programs, HRM has become a national leader in waste reduction. With the knowledge that disposal controls have been weakened at the Landfill, a mindset of "why bother?" could become prevalent leading to less attention to source separation. Increased organics at curbside would also lead to increased odours and vectors in residential neighbourhoods.

This ground is largely based on speculation on what residents of HRM might do if they were to become aware that the FEP and WSF were not longer required at the Otter Lake Landfill. The Otter Lake Landfill was designed prior to effective education and waste sorting programs. HRM requested the amendment because of the improved household waste sorting practices. Going forward the landfill will be required to meet certain diversion targets in order to allow the FEP/WSF to be discontinued. This should create an incentive for HRM to continue to encourage residents to properly sort and dispose of their waste.

Conclusion

For the above reasons I have decided to dismiss your appeal. The approval amendment permits the operation of the FEP/WSF component to be discontinued, contingent upon obtaining subsequent approval of a Compliance Plan. The Plan will detail how the facility will achieve its Performance Targets - compostable waste shall not exceed ten percent (10%) of total amount of municipal solid waste landfilled, by mass; and the recovery of visible white goods as well as Dangerous/Waste Dangerous Goods/Household Hazardous Wastes. Prior to the acceptance of the Compliance Plan all municipal solid waste shall be processed through the FEP, with all organic material being sent to the WSF. Presently, there are no changes in the operation of the landfill.

While certain designated materials are banned from landfills, these materials will still be received despite the extraordinary efforts by government, municipalities, organizations, private companies, and individuals to divert them for recycling. The current criteria are to insert a target level for banned materials in a landfill approval as a term and condition to improve diversion and mitigate environmental effects over and above those provided for through landfill design and operation.

Should you wish to appeal this decision pursuant to section 138 of the *Environment Act*, you must do so by filing an appeal with the Nova Scotia Supreme Court within 30 days.

Sincerely,

Honourable Timothy Halman, MLA
Minister of Environment and Climate Change