



March 9, 2009

Robert Ryan
Technical Specialist
Ministry of the Environment
Operations Division
Environmental Assessment and Approvals Branch
2 St. Clair Avenue West, Floor 12A
Toronto, Ontario M4V 1L5

CC: Andrew Neill, Senior Engineer, MOE
Tesfaye Gebrezghi, Supervisor, MOE
Gord Miller, Environmental Commissioner of Ontario

Dear Mr. Ryan:

**Re: St. Marys Cement - Proposal
EBR No.s 010-4892 (Bowmanville) and 010-4894 (St. Marys)**

Please find enclosed comments on behalf of Lake Ontario Waterkeeper and Gord Downie, Trustee for Lake Ontario, on the above-mentioned proposals. This comment applies to both information notices.

If you have any questions or comments, please do not hesitate to contact us at any time at (416) 861-1237.

Yours truly,

Mark Mattson
Waterkeeper and President
Lake Ontario Waterkeeper

Gord Downie
Trustee for Lake Ontario

600 Bay Street, Suite 410. Toronto, ON M5G 1M6

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EXECUTIVE SUMMARY

St. Marys Cement Inc. (Canada) [St. Marys] has applied to the Ontario Ministry of the Environment [MOE] under sections 9 and 27 of the *Environmental Protection Act* to burn “alternative fuels” at its Bowmanville plant, on the shores of Lake Ontario, and its plant on the banks of the Thames River, in the Separated City of St. Marys, 40 kilometers north of London. The proposed alternative fuels consist of paper biosolids, post-recycling residual plastics and post-composting residual plastic film.

The proposals put forward by St. Marys have the potential to significantly affect the environment. The possible environmental impacts are serious and have not been considered or scientifically examined in the proposals. Incinerating waste can produce dioxins, one of the most toxic substances for human and environmental health. Incinerating waste can also produce organic pollutants, volatile gaseous emissions, and residual substances that leach toxic heavy metals into the environment.

Unlike tests performed in laboratory settings, the proposed burns will occur in the heart of communities, where any unforeseen side effects will enter the environment and impact real people living nearby. Before the MOE can make a decision on these proposals, site specific scientific data must be collected, analyzed, and made public on the potential effects of burning these fuels.

The MOE is also legally bound to consider the Ministry’s Statement of Environmental Values (SEV) when making decisions with the potential to impact the environment. This requires the Ministry to: adopt an ecosystem approach to environmental protection and resource management; use a precautionary, science-based approach; consider the impact of its decision on future generations; consider the cumulative effects on the environment of the proposal; and make decisions in an open, consultation-based context.

There is a legal requirement for a hearing before the Environmental Review Tribunal on these proposals based on the volume of waste involved. This requirement has not yet been fulfilled. In addition to failing to initiate the required hearing, the Ministry of the Environment (MOE) has failed to provide the public participation rights as guaranteed by the *Environmental Bill of Rights*, which is an error of law.

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BACKGROUND

St. Marys has requested approval to conduct “test burns” to measure the efficiency and potential consequences of burning alternative fuels in its cement kilns. The approvals sought from the MOE would allow St. Marys to conduct one time, short-term burning at two plants (Bowmanville and St. Marys) in order to determine the cost effectiveness, energy efficiency and air emissions associated with incorporating these fuels into its regular operations. If St. Marys views the results of the tests as positive, they will be applying for approval to use the fuels permanently in these plants.

St. Marys applied for approval from the MOE on September 30 and October 1, 2008. On February 5, 2009, the MOE posted two information notices to the Environmental Registry explaining that the company has applied for temporary Certificates of Approval under Part V (including section 27), and section 9 of the *EPA*. The Temporary Certificates of Approval would allow St. Marys to substitute up to 30% of the fuel they currently use with “alternative” fuel, meaning post-recycling paper biosolids and residual plastics, and post-composting residual plastics. The company hopes to “gather site specific air quality data” during the burns.

Based on a comparison to “conventional fuels”, meaning pet-coke and coal, St. Marys claims there are environmental benefits from burning alternative fuels, including the following: creating a use for materials that would otherwise be landfilled; a reduction in the use of fossil fuels; and reduced greenhouse gas emissions.

There are significant environmental concerns associated with the proposals that have not been studied or documented in the application materials, including the potential release of dioxins, furans, organic pollutants, and heavy metals into the environment and the potential for heavy metal leachate from residual materials to enter waterways.

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THE PROPOSALS

The Bowmanville project would last for 40 days. Approximately 15 days would be spent constructing and commissioning the equipment, and collecting “baseline data”. The following 25 days would be spent burning the fuels to make cement. At Bowmanville, St. Marys wants to burn residuals from processing plants, including paper biosolids, post-recycling residual plastics and post-composting residual plastic film. Approximately 3800 tonnes of “alternative” fuel will be burned during the testing period.

The project in St. Marys would last for approximately 12 days. The first 8 days would be spent constructing and commissioning the equipment, and collecting “baseline data”. The following 4 days would be spent burning the fuels to make cement. In St. Marys, the company proposes the burning of “post-composting residual plastic film”. Approximately 250 tonnes of this fuel will be burned during the test.

Post-composting plastic residuals:

Primarily, this means the shredded and dried residue from plastic bags and sanitary paper products (like diapers) that are collected with the green bin composting waste. It would be supplied by Orgaworld, a composting facility in London, Ontario. The maximum input rate will be 5.5 tonnes per hour at Bowmanville and 4 tonnes per hour at St. Marys.

Post-recycling paper biosolids:

Paper recycling by-products that will be supplied by Atlantic Packaging, a paper mill in Whitby, Ontario. These biosolids are the residue from pulping paper during paper recycling. They are approximately 20% moisture, 40% clay, and 40% biomass. The maximum input rate will be 14.5 tonnes per hour.

Post-recycling residual material:

This would also be supplied by Atlantic Packaging in Whitby. It includes shredded plastic, film plastic, bottles, coated paper, etc. removed during the paper recycling process. The maximum input rate will be 6.5 tonnes per hour.

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COMMENTARY

Lake Ontario Waterkeeper and Gord Downie, Trustee for Lake Ontario [we], object to the granting of the Certificates of Approval to St. Marys Cement for alternative fuels tests on the following grounds, which are explained in more detail below:

- I. The legal requirement for a hearing before the Environmental Review Tribunal on these proposals has not been fulfilled.
- II. The MOE erred in law by failing to provide the public with participation rights guaranteed by the *Environmental Bill of Rights*.
- III. The potential environmental impacts of this project are serious and have not been considered or scientifically examined in the proposals.
- IV. Issuing these approvals would be inconsistent with the MOE's Statement of Environmental Values (SEV).

I. There is a legal requirement for a hearing before the Environmental Review Tribunal on these proposals.

[1] The proposals are for the use, operation, establishment, alteration, enlargement or extension of two waste disposal sites that will receive more than the equivalent of the domestic waste of 1500 persons. In 2002, each Canadian generated, on average, 383 kilograms of solid waste. According to that statistic, the domestic waste of 1500 persons would total 574500 Kg, or 574.5 tonnes per year. On a per diem basis, 1500 persons produce an average of 1.574 tonnes each day.

Statistics Canada, *The Daily* (December 2, 2005), online: Statistics Canada <www.statcan.gc.ca/daily-quotidien/051202/dq051202b-eng.htm>.

[2] St. Marys Cement has applied for certificates of approval that would allow it to burn approximately 250 tonnes of fuel at its St. Marys plant, and 3800 tonnes of fuel at its Bowmanville plant.

St. Marys Cement, "Alternative Fuels Demonstration Plan – Final Draft for Comment" (August 2008).

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[3] The proposed test burn at the St. Marys site would take place over a period of four days. The amount of domestic waste produced by 1500 persons in that time is 6.3 tonnes. The proposed test at the St. Marys site would burn a total of 250 tonnes, exceeding the domestic waste of 1500 people for the same time period by 243.7 tonnes.

Information Notice #010-4894, “Temporary Certificates of Approval for St. Marys Cement Canada Inc. to conduct an alternative fuels research project at the St. Marys Plant” (5 February 2009), online: Environmental Registry <www.ebr.gov.on.ca>.

[4] The proposed Bowmanville test burns would occur over a period of 25 days. The domestic waste produced by 1500 persons over a period of 25 days is 39.4 tonnes. The proposed test at the Bowmanville site would burn a total of 3800 tonnes, exceeding the domestic waste of 1500 people for the same time period by 3760.6 tonnes.

Information Notice # 010-4892, “Temporary Certificates of Approval for St. Marys Cement Canada Inc. to conduct an alternative fuels research project at the Bowmanville Plant” (5 February 2009). Accessed at: <www.ebr.gov.on.ca>.

Before issuing or refusing to issue these certificates of approval, the Director is required by law to ask the Environmental Review Tribunal to hold a hearing.

[5] The fuel consists of post-recycling paper biosolids and residual material, and post-composting plastic residuals, which qualifies as waste for the purposes of the *Environmental Protection Act* [EPA]. The company requires certificates of approval for waste disposal sites under Part V of the *Environmental Protection Act*.

***Environmental Protection Act*, R.S.O. 1990, c. E.19, ss. 25, 27 [EPA].
Information Notice 010-4894, *supra*.
Information Notice 010-4892, *supra*.**

[6] St. Marys Cement has applied for two certificates of approval that each exceed the amount of domestic waste produced by 1500 persons over the time period of the proposed tests. The amount of waste that would be accepted at the Bowmanville site exceeds the amount of domestic waste produced by 1500 persons in a year. Where the Director receives a certificate of approval application for the disposal of any waste that the Director ascertains is the equivalent of the domestic waste of 1500 persons or more, a hearing before the Environmental Review Tribunal is required. Therefore, these proposals must be referred to the Environmental Review Tribunal for a hearing before they can be issued or refused by the Director.

EPA, supra, s.30(1).

[7] In the alternative, if the Director were to find that the proposal does not meet the threshold of being equivalent to the domestic waste of 1500 persons, the Director may require the Tribunal to hold a hearing on the other grounds brought forth in this comment.

EPA, supra, s.32(1).

II. The Ministry of the Environment erred in law when it exempted these proposals from notice, consultation and appeal rights under the *Environmental Bill of Rights*.

The proposals are not subject to the provincial *Environmental Assessment Act*.

[8] The Ontario *Environmental Assessment Act* only applies to:

- enterprises or activities conducted by or on behalf of the provincial government, a public body or a municipality;
- major commercial or business enterprises, if designated by the regulations; and
- any other enterprise or proposal if the proponent and the Minister have signed an agreement to have the *Act* apply to the proposal.

St. Marys Cement does not qualify under Category A as the company is not a government or public body. The proposals do not qualify under B because this has not been designated in the regulations. The proposals do not qualify under Category C because St. Marys has not entered into an agreement with the government to have the *Act* apply. Therefore, the St. Marys applications to conduct test burns do not trigger the Ontario *Environmental Assessment Act*.

Environmental Assessment Act, R.S.O. 1990, c. E.18, s.3 [EAA].

Having never been subject to the Ontario *EAA*, the proposals are not exempt from section 22 of the *Environmental Bill of Rights*.

[9] According to the MOE, the St. Marys project is considered to be a “research undertaking”, and is therefore exempted by Regulation 334, made under the *Environmental Assessment Act*, from the application of Part V of the *EAA*. However, a regulation cannot exempt a project from the application of an act that never applied to project. As noted above, the St. Marys proposals are not subject to the *EAA* on the basis of the qualifying criteria in section 3 that *Act*. Regulations made under the *EAA* also do not

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apply to the proposal. Regulation 334 cannot exempt the St. Marys project from the application of the *EAA* because neither the *Act* nor the regulation applied to the project to start with.

EAA, supra, s.3.

R.R.O. 1990, Reg. 334, s.11.

[10] When the Minister is deciding whether to issue a permit for a proposal that is exempted by a regulation under the *EAA*, he need not give notice under the *EBR*. If the proposed St. Marys project were exempt by regulation from the application of Part V of the *EAA*, the public rights mandated by the *EBR* would not apply. This is the section relied on by the MOE in its determination of the process rights that apply to these proposals.

Environmental Bill of Rights, 1993, S.O. 1993, c. 28, ss. 22, 32(2) [EBR].

[11] Since the St. Marys proposals were never subject to the *EAA*, and thus cannot be exempted from the application of the *Act* by Regulation 334, section 32(2) of the *EBR* does not apply. The proposals are subject to section 22 of the *EBR* and the public has the right to participate accordingly.

EBR, supra, s. 22.

The MOE violated the Ontario *EBR* by failing to provide the rights guaranteed under that *Act*, and must not grant approval for the St. Marys project until these rights have been fulfilled.

[12] The proposals by St. Marys are Class III proposals because a hearing is required for each under section 30 of the *EPA*, per section 8 of Regulation 681/94 (see above). In the alternative, the proposals may qualify as Class II proposals because they require approval under section 27 of the *EPA*, and do not fit any of the exclusion criteria in section 5(2)(6) of Regulation 681/94.

EPA, supra, ss. 27, 30(1).

EBR, supra, ss. 5(2)(6), 8(1).

[13] The *EBR* sets out when notice must be posted for Class I, II or III proposals. The Minister must give at least 30 days notice where the decision as to whether or not to implement a Class I, II or III proposal will be made by the Minister, a Ministry staff person, or under the *Act* administered by the Minister. Notice shall include: a description of the proposal; a description of the mode and timing of public participation; information about

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how the public may review associated documents; an address where the public can send written comments and questions; and any other information prescribed by the regulations or that the Minister considers appropriate.

EBR, supra, ss. 22, 27.

[14] The MOE erred in law by failing to apply the *EBR* to the proposals submitted by St. Marys Cement. The MOE must provide the public participation rights as guaranteed by the *EBR* in regards to these proposals.

III. The potential environmental impacts of this project are serious and have not been accounted for.

[15] According to section 20 of the *EBR*, Class I, II or III proposals are those that have the potential to significantly affect the environment. The proposals put forward by St. Marys fall into this group of potentially harmful projects.

EBR, supra, s.20(2).

[16] The proposed fuels contain sulphur, arsenic, chlorine, mercury, magnesium, iron, phosphorus, lithium, strontium, uranium and a variety of other chemicals and heavy metals. The proposal package submitted by St. Marys Cement to the MOE does not include any scientific studies or related literature on the potential effects of burning plastics in a cement kiln.

Jacques Whitford, Report No. 1037300.01A, “Application for approval under section 27 of the EPA for the purpose of conducting an alternative fuels demonstration: St. Marys Cement Plant” (29 September 2008) [St. Marys Application].

Jacques Whitford, Report No. 1037300.01B, “Application for approval under section 27 of the EPA for the purpose of conducting an alternative fuels demonstration: Bowmanville Cement Plant” (29 September 2008) [Bowmanville Application].

[17] Incinerating waste can produce dioxins, one of the most toxic substances for human and environmental health. Humans exposed to dioxins may suffer from skin lesions, altered liver function, problems with the endocrine, reproductive and nervous systems, and increased cancer risk. Due to their chemical stability and ability to be absorbed by fat tissue, dioxins persist in the environment and accumulate in living beings through the food chain. When dioxins are incorporated into the food chain, they can cause cancer in animals and affect the health of humans who ingest meat, fish and milk products. In 2007

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and 2008, contamination with dioxins, furans or dioxin-like PCBS represented 91% of consumption restrictions on Lake Superior, 94% on Lake Huron, 79% in Lake St. Clair and the St. Clair and Detroit Rivers, 98% in Lake Erie, and 92% in Lake Ontario.

Gordon McKay, “Dioxin characterisation, formation and minimisation during municipal solid waste (MSW) incineration: review” (2002) 86 *Chemical Engineering Journal* 343.

S.C. Rowat “Incinerator toxic emissions: a brief summary of human health effects with a note on regulatory control” (1999) 52(5) *Medical Hypotheses* 389 [Rowat].

World Health Organization “Dioxins and their effects on human health” (2007), online: World Health Organization <www.who.int/mediacentre/factsheets/fs225/en>.

Health Canada “Dioxins and Furans” (2005), online: Health Canada <<http://www.hc-sc.gc.ca/hl-vs/iyh-vsv/environ/dioxin-eng.php#th>>.

Ontario Ministry of the Environment, “*The 2007-2008 Guide to Eating Ontario Sport Fish*” (2007), online: Ministry of the Environment <<http://www.ene.gov.on.ca/envision/guide/>>.

[18] Incinerating waste can also produce organic pollutants like polycyclic aromatics, PCBs, polychlorinated PCAs, chlorobenzenes, chlorophenols, and halogenated organic acids. In addition to the production of harmful substances during burning, residual substances left after incineration must be considered. Rather than being chemically inert, residues can contain, “high levels of leachable heavy metals and salts and can pose significant risks to human health and the environment”. Researchers have found that while some chemicals and heavy metals are partitioned into ash residues, others are released in flue gas, including volatile mercury and cadmium. Reagents like chlorides in the burned fuel can result in toxic heavy metal emissions.

Kuen-Sheng Wang, et al. “Effects of Chlorides on Emissions of Toxic Compounds in Waste Incineration: Study on Partitioning Characteristics of Heavy Metal” (1999) 38(8) *Chemosphere* 1833.

Rowat, *supra*.

[19] The Ontario Government has recognized the potential hazards associated with incinerating waste. Commenting on the incineration of municipal solid waste in 1991, the Ontario Minister of the Environment released a statement saying:

“The combustion of municipal solid waste during incineration releases a wide range of air pollutants, including dioxins, furans, volatile organic compounds, nitrogen oxides, carbon dioxide and heavy metals such as mercury, lead and cadmium. ...It is estimated

600 Bay Street, Suite 410. Toronto, ON M5G 1M6

T WORK PHONE ADMIN@WATERKEEPER.CA WWW.WATERKEEPER.CA

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that 70 per cent by weight of incinerated substances are released to the atmosphere as exhaust and suspended particles. Between one-quarter and one third by weight of the original material entering incinerators remains as bottom ash and fly ash. The disposal of this ash, particularly hazardous fly ash, is a major concern. 'Incineration is an environmental sleight of hand which gives the illusion of making waste disappear when, in fact, it reappears in different and often more hazardous forms.'

Work on Waste USA, "Municipal waste incineration banned in Ontario, Canada" (1991), online: American Health Studies <www.americanhealthstudies.org/wastenot/wn146.htm>.

[20] Before the MOE can make a decision on these proposals, scientific data must be collected, analysed, and made public on the potential effects of burning these fuels. A literature review on burning these particular materials would be helpful, but not sufficient, since the MOE is required to consider the science related to the proposed site specifically. Site specific scientific analysis would account for such questions as:

- Will the proposed burning release carcinogenic materials? If so, how might those be uptaken by the local environment and local residents?
- Will dioxins be a byproduct of the proposed burning? If so, will they enter the environment?
- What will the composition of residual material be? How will it be disposed of?
- Will the project release toxic heavy metals in any form, including as volatile gaseous emissions?
- Will the burning release any other contaminant that could threaten human and ecosystem health, including organic compounds?
- How will the emissions interact with the air currents in this particular site? For the Bowmanville plant, this includes shoreline fumigation modelling, as described in the attached expert report by Dr. Henry Cole.
- Both sites are adjacent to water: will the emissions settle out of the air, into the water? How will this affect fish, fish habitat, given the evidence that dioxins bioaccumulate in fish? How will this affect drinking water sources?

Henry S. Cole, "A Description of Lake Ontario Effects on Shoreline Emission Sources" (2008).

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[21] The proposal refers to a planned “third-party peer review process” to which St. Marys has committed. However, no details of this process are provided. In order for this to be a valid review, St. Marys must ensure that the third party reviewer is independent and free of bias or the reasonable apprehension of bias. It is also essential that such a reviewer be qualified, such that their credentials as a researcher would meet the criteria that a court applies to determine who qualifies as an expert witness.

St. Marys Application, *supra*, s.8.

[22] St. Marys has called these proposed burns “tests” because they are time-limited and data will be collected on site. However, unlike tests performed in laboratory settings, the proposed burns will occur in the heart of communities, where any unforeseen side effects will enter the environment and impact real people living nearby. Unlike a controlled study or test performed by scientists, the proposed burns will be conducted in an uncontrolled setting that was not designed for this purpose. The MOE must recognize this distinction when considering the potential impacts of the proposals.

[23] The applications describe the mechanisms in place that would allow staff to terminate the alternative fuels project should the burn negatively affect the, “operability of the kiln or cause unacceptable environmental emissions”. However, while the proposal provides details on the switch a staff person can throw to stop the burn, it does not suggest what might constitute “unacceptable environmental emissions”. If this project were to proceed, the test for when termination is required must be articulated and imposed as a condition on the approval.

St. Marys Application, *supra*, s.4.10.1.

IV. Approving the proposal would be inconsistent with the MOE’s Statement of Environmental Values (SEV).

[24] The Environmental Review Tribunal has found that decisions by the MOE on Class I, II or III proposals have the potential to significantly impact the environment, and therefore trigger Part III of the Ministry’s SEV. The St. Marys proposals considered here are Class I, II or III proposals, so the MOE’s Statement of Environmental Values (SEV) must be considered and applied to the decision-making process conducted by the Ministry regarding the St. Marys alternative fuels proposals. To apply the SEV to decision-making is a legally binding requirement on the Ministry.

***Dawber v. Ontario (Ministry of the Environment)*, [2007] O.E.R.T.D. No. 25,**

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T WORK PHONE ADMIN@WATERKEEPER.CA WWW.WATERKEEPER.CA

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28 C.E.L.R. (3d) 281 (QL) [Dawber].

***Lafarge Canada v. Ontario (Environmental Review Tribunal)*, [2008] O.J. No. 2460, 36 C.E.L.R. (3d) 191, leave to appeal to C.A. refused (26 November 2008), Toronto M36552 (Ont.C.A.) (QL) [Lafarge].**

[25] Part III of the MOE's SEV states that the Ministry adopts an ecosystem approach to environmental protection and resource management. The Ministry must use a precautionary, science-based approach, and consider the impact of its decision on future generations. The Minister must also consider the cumulative effects on the environment of the proposal, so that it is not sufficient to consider the proposal outside the context of existing pollution and other sources of degradation in the area. Part VI of the SEV provides that the Ministry will make decisions in an open, consultation-based context.

Ontario Ministry of the Environment "Statement of Environmental Values", online: Environmental Registry <www.ebr.gov.on.ca/ERS-WEB-External/content/sev.jsp?pageName=sevList&subPageName=10001> [Statement of Environmental Values].

[26] The SEV requires decisions made by the MOE to be based on science. In order to allow the MOE to make a decision on the basis of science, St. Marys should provide the review of pre-test planning documents conducted by the third-party expert before the MOE makes a decision on the proposal.

St. Marys Application, *supra*, s.8.

[27] The St. Marys proposal does not provide enough data to support a decision consistent with the SEV. Instead of analysing the potential effects on the environment and human health of burning the proposed plastics and paper biosolids, the proposal relies on comparisons to the levels of pollution emitted from the plant when conventional fuel is burned. The proposal then attempts to de-emphasize the environmental effects of burning alternative fuel on the ground that the fuel is a small source of pollutants compared to the raw materials that comprise cement.

St. Marys Application, *supra*, s.1.1.

[28] The comparisons in the St. Marys proposal are inconsistent with the SEV requirement to consider cumulative effects. In making this decision, the MOE must not compare the effects of burning the proposed alternative fuel to the burning of currently used fuel in the cement kiln. The Ministry also must avoid comparing the effect of burning the fuel to the emissions generated by the raw materials of cement. These comparisons are misleading and violate the principles of the SEV.

Statement of Environmental Values, *supra*.

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[29] The SEV requires the Ministry to make a decision based on a consideration of the cumulative impacts of the proposal. This includes a survey of historic and ongoing sources of contamination in proximity to the proposed site. One example of a proximate source of pollution that must be considered is the proposed Durham York “Energy-from-waste” garbage incinerator. Located adjacent to the Bowmanville St. Marys plant, any contamination from this project will contribute to the cumulative pollution in the area, and thus must form part of the MOE’s decision-making process.

Durham/York Residual Waste Study, online: <www.durhamyorkwaste.ca>.

[30] According to the Ministry’s SEV, “the Ministry will provide opportunities for an open and consultative process when making decisions that might significantly affect the environment”. The MOE is required to refer St. Marys’ proposals to the ERT for a hearing (see above). It is also required to provide the public full consultation rights as per the *EBR*, including the right to appeal any decision made to the ERT. The MOE has decided to post information notices on this proposal on the Environmental Registry, and allow for a 30 day comment period. However, these are mandatory measures under the *EBR*, and must be accompanied by the other rights as prescribed by that *Act*. These include the right to appeal the Ministry’s decision.

Statement of Environmental Values, *supra*.

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RECOMMENDATIONS

In light of the analysis above, Lake Ontario Waterkeeper submits the following recommendations:

1. There is a legal requirement for a hearing on this proposal before the Environmental Review Tribunal which has not been fulfilled. The Director must refer this proposal to the ERT for a hearing before making a decision.
2. The MOE erred in law by failing to provide the public with the participation rights guaranteed by the *Environmental Bill of Rights*. Before a decision can be made, the MOE must reissue the proposal to the Environmental Registry and provide a new comment period, accompanied by the public participation and third-party appeal rights guaranteed under the *EBR*.
3. The potential environmental impacts of this project are serious and have not been addressed by the proposal. Before a decision consistent with the SEV can be made, the Ministry must collect and disseminate a complete scientific review of the proposal, and the potential for cumulative impacts in the selected areas.
4. Granting the requested approvals would be inconsistent with the MOE's Statement of Environmental Values (SEV). The Ministry must meet its legal obligation by: collecting a thorough scientific review of the two affected areas; surveying and considering the potential cumulative impacts of the project; applying an ecosystem approach to the decision; and considering all other factors as enumerated in the SEV.

If approval for the test burns is granted, Lake Ontario Waterkeeper will object to the issuance of permanent licenses unless the following conditions have been fulfilled:

- I. Public participation rights have been recognized and facilitated, including right to notice, comment on the proposals and appeal the decision.**

Given the location of the plants, one in the centre of the community of St. Marys, and the other in the community of Bowmanville on the shores of Lake Ontario, the public will suffer from any negative consequences of the proposed burning where they live, play, swim and drink. The proposals merit the highest level of public involvement and consultation possible.

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II. There has been a hearing to consider the proposals before the ERT.

As explained above, the St. Marys proposals must be reviewed by the Environmental Review Tribunal due to the volume of waste involved. If St. Marys applies for long-term approvals for this burning, the volume of waste will be significantly greater. Therefore, a hearing must be held before the ERT, including full opportunities to review the scientific data and evidence.

III. Appropriate terms and conditions have been imposed in order to protect the environment and human health.

Before issuing a decision, the MOE has the authority to impose terms and conditions on a proponent to ensure that no project causes harm to humans or the environment. If St. Marys applies to burn alternative fuels on a long-term basis, the MOE must impose clear termination criteria so that the project is discontinued if there is evidence of environmental harm. Additional terms and conditions that the MOE should impose on this project will become apparent when a complete scientific review of the proposals is available.

IV. Decision-making has been consistent with the MOE's SEV.

The MOE is legally bound to apply the SEV to its decision-making process. That includes basing the decision on science, applying an ecosystems approach, and considering the proposal in terms of cumulative impacts on the site specifically. The MOE must demand that sufficient scientific data is available to its staff and to the public before a decision is rendered. The proposals must be considered through an explicit ecosystem approach, and must clearly delineate how cumulative impacts were considered.

V. Data and analysis resulting from the tests has been made publicly available, and is accessible outside the Freedom of Information process to facilitate broad public access.

The proposal submitted to the MOE by St. Marys notes that a summary of the data collected during the project will be provided to the MOE within six months of the project's completion. This summary, as well as the raw data that was collected, must also be made available to the public, outside of the Freedom of Information parameters. The third-party review guaranteed by St. Marys must also be made available. The public has an interest in reviewing this information to determine whether health and environmental effects resulted from the burning. If St. Marys intends to apply for a permanent license following a test burn, this data would be essential for independent experts to review and provide analysis of the tests.

600 Bay Street, Suite 410. Toronto, ON M5G 1M6

T WORK PHONE ADMIN@WATERKEEPER.CA WWW.WATERKEEPER.CA

PROUD MEMBER OF WATERKEEPER ALLIANCE