



# TOWNSHIP OF WARWICK

*"A Community in Action"*

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February 21, 2022

## Via Electronic Mail and Courier

Kathleen O'Neil, Director and  
Cindy Batista, Special Project Officer  
Environmental Assessment Branch  
Ontario Ministry of Environment, Conservation and Parks  
135 St. Clair Ave. West,  
Toronto, ON M4V1P5

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Dear Ms. O'Neil and Ms. Batista,

## RE: **SUBMISSION: TOWNSHIP OF WARWICK Terms of Reference - WM Landfill Optimization Project EA**

This letter and its attachments comprise the submission of the Township of Warwick on the proposed Terms of Reference (ToR) for the Waste Management Canada Corporation ("WM") for the WM *Twin Creek Environmental Centre (TCEC) Optimization Project* (the "**Proposed Project**") Environmental Assessment, which was submitted by WM to your Ministry for review on January 7, 2022.

The Township's submissions will address the following;

1. An introduction to the Township and its experience with the WM Twin Creek's Landfill;
2. The significance of the Minister's decision on the ToR for our Township and its residents;
3. The Township's concerns about the Public Consultation Process undertaken by WM for the proposed ToR;
4. Township Peer Review Process and its outcomes; and

## 5. Conclusions and Request to the Minister.

Also included with this letter and comprising part of the Township's submissions to the Ministry is the enclosed Township Peer Review Report on the as-submitted ToR.

**Please see Section 5 below for a summary of the Township's conclusions and request to the Minister with respect to this matter**

### **1. Introduction/Background**

The Township of Warwick is small Southwestern Ontario rural municipality, historically, culturally and economically rooted in agriculture. The Village of Watford, its main downtown area is home to the Warwick Community Centre, the Watford Community Arena and a Carnegie library, and for well over a century has been Township's main community gathering place.

For the past twelve years, the Township has been the host to the WM Twin Creeks Landfill (the "**Landfill**"), one of Canada's largest and busiest solid waste landfill facilities with an Ontario-wide service area. The landfill is located on Watford's doorstep and has become the visual gateway feature of the Town.

#### Approval Process and Current Approvals/Impact Management Measures

The Township initially opposed the original approval of the Landfill and participated extensively in the environmental assessment ("**EA**") approval process which culminated in EA approval in 2007. Following this, the Township worked hard to ensure that impact management and mitigation measures were put in place to minimize the Landfill's impact on its residents. This included extensive participation by the Township's mayor, staff and expert advisors in successful discussions with both WM and the Ministry. This led to consensus on the form and content of the environmental and planning approval requirements for the landfill as well as the negotiation of a community commitment/host municipality agreement (the "**Host Municipality Agreement**") which had been required as a condition of the 2007 EA approval (condition 12).

The approval instruments for the Landfill established planning, construction, monitoring, mitigation and operating approval requirements under the Environmental Protection Act, Ontario Water Resources Act and Planning Act. The Host Municipality Agreement provides for royalty payments and other compensation measures, intended as an off-set for community impacts. It also established an annual independent environmental auditing of landfill operations. This work is done by the Township's Technical Review Team ("**TRT**") which reports directly to Township Council. The TRT's annual report and recommendations are presented annually in draft to WM for response and then finalized by the TRT.

One other important requirement pushed for by the Township, and agreed to through Township/Ministry/WM discussions at time of the final Landfill approvals, was the establishment of a full-time Ministry of Environment inspector charged with carrying out and reporting on daily Landfill inspections. Under this agreement, WM provided funds

for the cost of the full-time inspector so that the cost was not borne by the taxpayer. The establishment of an independent full time MECP inspector was crucial to achieving community acceptance of the project. As discussed below, in 2014, this requirement was reduced to monthly inspections, over the objection of the Township. Since 2018, there have been weekly inspections and monthly reports, reduced reporting is now contemplated.

In addition, the Landfill's operation benefits from the efforts of the Landfill's Public Liaison Committee (the "**PLC**"), a robust and knowledgeable committee of community volunteers. The PLC was enshrined through a condition of the current Environmental Assessment approval. The Township makes the TRT available to the PLC with yearly presentations of the results of the TRT Annual Review.

### Township Experience with WM and Landfill Impacts

Over the past twelve years, the Township has enjoyed a relatively positive, business-like and cooperative relationship with WM. There have been disagreements on issues, but both WM and the Township have continued to work through these in a respectful way. The most effective means of resolving concerns has been through direct dialogue between WM and its experts with the Township and the TRT. Most issues have been resolved through this process and the Township is supportive of the continuation of the existing processes to address issues as they arise.

Despite these efforts, physical and social impacts of Landfill operations have been increasing in recent years. In the early years of landfill operations, under the watchful eyes of the diligent Ministry of Environment appointed inspector, WM-documented complaints were low. Documented complaints sharply increased during the 2019 and 2020 reporting periods. In addition, during this period the Township has also begun to receive complaints directly from Township residents, particularly odour, traffic, and litter. The TRT has advised the Township that these increases are likely attributable to two key factors described in the TRT 2020 annual report as follows:

- 1. The landfill is entering into more mature phases of its operations when more of its operations will, for the first time, be occurring close to, at and above grade. These conditions increase the potential for landfill impacts on residents and other landowners, and land use conflicts with nearby uses increases; and*
- 2. The recently approved increase in the permitted annual fill rate at the Landfill, from 750,000 tonnes per year to 1.4 million tonnes per year has led to a virtual doubling of the actual fill now being received at the landfill. This makes the Landfill one of the busiest, if not the busiest, landfill in the province. This translates into a substantial increase in both the volume of truck traffic to and from the site, and the intensity of potential impact-generating activities at the Landfill.*

One other factor that the Township is concerned may be impacting the effectiveness of landfill mitigation measures is the reduction in regulatory oversight. As noted above, the requirement for a full time daily MECP inspector was removed in 2014. Currently inspections occur weekly, with results provided in monthly reports, released in batches

with lengthy delays between releases. A recent MECP decision to move to quarterly reporting will delay information sharing further. The result is inspection information is out of date before it is available to the Township or PLC. The TRT advises that it relies on independent MECP inspection information to assist in its environmental auditing function. The increase in odour, litter and traffic complaints at the Landfill has coincided with reduce inspection and oversight.

### The Township's Perspective

The Township recognizes that the WM Twin Creeks Landfill is considered a significant facility with a provincial scope. It is one of Canada's largest landfills with one of its highest annual fill rates, and a province-wide service area. The Township also recognizes that the solid waste landfill capacity is in short supply in Ontario, and the need to ensure long term available capacity is a matter of significant interest to the Province. The Township also understands that while the benefits of a large landfill with a provincial service area accrue to communities across Ontario and WM shareholders, the environmental risks and impacts associated with this Landfill operations are borne locally, by the Township and its residents.

One silver lining of the increased fill-rate approval in 2017, and its corresponding increase in potential impacts, is that it has also decreased operating life of the landfill by speeding up the time needed for the Landfill to reach its approved volumetric capacity. The Landfill is expected to close in nine years. As discussed in section 2 below, the Proposed Project if approved will change this calculus.

## **2. Significance of Proposal to the Township and its Residents.**

The WM-preferred option for the "waste optimization" proposal, if approved will increase the operating life of the landfill by a minimum of fourteen years, extending potential community impacts well into the future. In addition, the nature of the preferred undertaking poses risks of new and significant impacts to our community. The proposed dramatic increase in height will make the landfill's above grade operations highly visible. The potential for increased environmental, social, and economic consequences to the Township and its residents, as well as the geophysical challenges of effectively superimposing a massive new landfill on top of existing landfill infrastructure, must be carefully explored through adequate study.

While this has not yet been studied, the Township believes that the Landfill has had some negative economic and social impacts for the Township. The Landfill is highly visible, given its prominent location at the entrance to Watford. Over the past several years, increased odour and litter incidents as well as noticeable high volumes of truck traffic to and from the Landfill have been a daily reality for Township residents. A proposal to build higher, and landfill longer, raises concerns that community impacts will worsen, for a longer duration.

In short, the stakes could not be higher for our Township. It is critically important that the ToR be thoroughly and carefully vetted to ensure a comprehensive, fair and thorough assessment process is conducted before a decision is made on this significant expansion plan.

Over the next few sections of this report, we will highlight some of the concerns that have arisen with respect to WM's proposed study plan for this assessment process.

### 3. Public Consultation

#### 3.1 WM Consultation on the ToR

The Township recognizes that the constraints imposed by the pandemic pose challenges for achieving meaningful public engagement. Even taking these constraints into consideration, however, public consultation undertaken by WM for the proposed ToR falls far below acceptable standards. The consequence is that community awareness of the Proposed Project and its potential to impact the Township and this EA decision-making process is very low.

The entire WM public consultation effort for the ToR was two "*virtual consultation and engagement events*". Each of these events amounted to on-line posting of presentation information about the draft ToR and the Proposed Project and a request for public comments. Township staff accessing the web-site found it neither user-friendly nor interactive. More importantly, no other efforts were made by WM to engage the community or obtain public comment with the exception of a Township-requested WM presentation and discussion of the ToR as a single agenda item at a quarterly meeting of the PLC.<sup>1</sup>

Here are some essential components of a standard public engagement program that were absent from the WM effort:

- Use of social media to provide access to information and dialogue
- Engagement with traditional media outlets (newspaper/radio etc.) other than limited newspaper advertising;
- Direct individual mailings to affected neighbouring properties or the community at large;
- On-line meetings or interaction opportunities;
- Opportunities for interactive web-based interfaces such as virtual landfill tours or virtual town hall meeting; and
- Meetings/direct communication with key community stakeholder groups (agricultural organizations/local businesses/local interest groups etc.) directly.

As noted above, the PLC could have been but was not used as forum for robust and

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<sup>1</sup> A second special Landfill PLC meeting to discuss the final as-submitted ToR occurred on January 7, 2022, but this was at the request of the PLC Chair.

facilitated conversation on the elements of the ToR. Instead, as noted above, the use of the PLC was limited to a WM presentation and question and answer session, provided at the request of the Township, at one of the PLC 's quarterly meetings.

This is a stark contrast to the approach taken by WM during public consultation for the original Landfill EA. In that case the old landfill's public liaison committee was given a critical role in reviewing the ToR through multiple meeting dedicated to the discussion of the contents of the draft ToR.<sup>2</sup>

There are direct consequences of this failure to engage in meaningful public consultation. First, there is a general lack of awareness among Township residents not only of the nature and significance of the Proposed Project but also of the EA decision-making process including the purpose and significance of the decision on the Terms of Reference. This lack of community awareness is evident from the public response. WM reports that it only received one comment from a member of the public from its ToR consultation process. Second, the quality of the ToR suffers from this absence of community input. Because meaningful opportunity for public input was not provided, WM did not have the benefit of public comments from affected stakeholders in the Warwick community before finalizing the Submitted ToR.

The Township is of the view that the failure to provide adequate community consultation on the draft ToR is a fundamental flaw. Approving a ToR when the consultation effort has been this poor would do a significant disservice to the residents and businesses of the Township.

To address this issue, the Township is requesting that the as-submitted ToR not be approved at this time. Instead, the Ministry should advise WM to conduct further community consultation, and consider the submissions received, prior to finalizing and resubmitting the ToR. (See section 5 below.)

### **3.2 Submissions on Proposed Consultation and Engagement Program for the EA (Submitted ToR, Section 9.2)**

The Township has reviewed section 9.2 of the Submitted ToR which describes WM's proposed public consultation program for the EA. The description provided is lacking in detail, but based on the limited information provided, the approach suffers virtually identical deficiencies to the WM public consultation approach for the draft ToR. Here are the key concerns and missing elements:

- Once again, the focus is on “*virtual consultation and engagement events*” which as noted consisted only of on-line posting of information and requests for public comment on documents. For the reasons provided above, this approach is ineffectual and far below current public consultation standards for projects of this scale.

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<sup>2</sup> See *Warwick Landfill Expansion Environment Assessment, Terms of Reference* (Canadian Waste Services Inc. October, 1999). P. 11 and Background Doc. 8)

- Section 9.2 describes holding public houses during the EA as “*likely in the form of virtual consultation and engagement events*” but provides no detail regarding those events. While the pandemic makes it hard to predict the format for these types of events, WM should be required to commit to both: (1) in-person consultation; and (2) digital consultation. With respect to the latter there should be an explicit commitment to video open house meetings and opportunities for members of the public to engage directly with experts. Without that detail, the ToR allows WM to meet public consultation requirements by reprising the minimalistic bare-bones approach that resulted in virtually no community engagement on the draft ToR.
- Section 9.2 also proposes “*meetings/tours if possible, depending on social gathering restrictions due to the pandemic*”. The Township supports WM’s proposal for site tours; however, WM proposes no alternatives if gathering restrictions don’t permit in-person tours. In the Township’s view, the ToR should commit WM to offering both on-line virtual tours and in-person tours if these can be accommodated under public health restrictions.
- Section 9.2 restricts information sharing to mail, email, newspapers and web-posting. No mention is made of utilizing social media platforms such as Twitter, Facebook and Instagram. Social media platforms are the primary or sole sources of information for some demographic groups. The failure to utilize these now-standard social media platforms poses a barrier to access to information for a large segments of public. The ToR should commit WM to sharing information and soliciting public input using social media platforms.
- The public consultation approach outlined in the Submitted ToR stands in sharp contrast to the approach taken by WM for its original EA process for the Twin Creeks Landfill. In that case the ToR included a background document (Background Document) which provided detail on the proposed public consultation process.<sup>3</sup> In addition, the ToR required that WM prepare a discussion paper setting out the details of its proposed public consultation process. This document was then itself subject to public review and finalized.<sup>4</sup>
- It is not clear from the Submitted ToR when, how often, and for what purpose consultation will be carried out during the study process. It appears that only two documents will be shared for public consultation: a draft and final version of the EA document. No commitment has been made to consultation at key stages during the consultation process. Again, this lack of detail contrasts with the approach taken in the original EA process. In that case draft versions of discussion papers addressing key stages of the EA study process were subject to public and peer review before commitments were made to the next stage of the study process. During the EA process for the 2007 EA, Public consultation was sought on the following specific topics (and draft Discussion Papers (“**DP**”): proposed public consultation (DP1); evaluation of Alternatives (DPs 2 and 3); impact assessment process (DP4);

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<sup>3</sup> *Supra*, Note 2

<sup>4</sup> See *WM Warwick Landfill Expansion EA (2005)*, Discussion Paper 1, *Proposed Public Consultation Process*.

Baseline conditions/description of the existing environment (DP 5), facilities characteristics - preferred undertaking (DP6); environmental impact assessment (DP7); preliminary design and operations (DP 8); and impact management plan (DP 9).

For each discussion paper, a draft version of the discussion paper was subject to public and agency review and also peer review by the Township Peer Review Team before being finalized by WM.

- There is one more key missing element of the Submitted EA which was an important consultation element of the Original EA process: the establishment of a dedicated public multi-stakeholder committee to review and provide comments on each key component of the EA process during the study process. In the case of the original Warwick Landfill EA, WM established the Environmental Assessment Study Group, an independently chaired committee composed of interested members of the public, public agencies representatives of the Township, County and Ministry of the Environment (as it was then called). This group reviewed and provided focussed discussion and comment on each of the nine discussion papers which provided important input to the EA study process and the content of the final EA.<sup>5</sup> A similar model was recently deployed for an environmental assessment process for the Southwest Landfill Proposal in Oxford County<sup>6</sup>;

In summary, it is the position of the Township that the proposed consultation and engagement program as set out in the Submitted ToR does not meet the standard for acceptable consultation under the EA Act and will not achieve meaningful community engagement. The proposed program, like the consultation carried out for the draft ToR, does not approach the level of consultation implemented for the original EA for the Twin Creeks Landfill.

It is the Township's view that WM should be required to prepare a detailed consultation program for the EA study process in a revised ToR and subject this document to public and agency comments including Township review prior to resubmission of the ToR. At minimum this consultation program should include the following commitments:

- Both virtual and in-person open houses which allows for information sharing between community members and experts, with WM experts/project team members available to answer questions and receive information;
- Both virtual, and public health restrictions permitting, in-person tours of the landfill to allow members of the public to become familiar with landfill operations;
- Use of social media to share information and obtain comments at discrete stages in the EA study process;

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<sup>5</sup> Ibid, Discussion Paper 1, p. 3

<sup>6</sup> The proponent established the Community Liaison Committee, multi-stakeholder tasked with reviewing and discussing information and draft documents at discrete stages in the study process.



- Public consultation opportunities, and expert peer review, at the following stages:
  - a. Draft Report on existing/baseline conditions
  - b. Draft assessment of alternative methods
  - c. Development of Impact Management Plan; and
  - d. Draft assessment of preferred alternative.
- An EA study group, modelled after the EASG deployed by WM for the EA Process for the original EA Expansion Project with representation by the members of the PLC/community as well as representatives of relevant public agencies to review and provide input at each of the above stages.

## **4. Township Peer Review of the Submitted ToR**

### **4.1 Peer Review Process**

In August 2022, the Township reached agreement with WM and executed a memorandum of understanding for a WM-funded peer review as part of the EA approval process for the Proposed Project. This agreement is constant with and implements WM's obligations under the current Host Municipality Agreement with the Township.

The Township peer review team (the "**PRT**") for the ToR is an eleven-disciple panel of independent experts tasked with reviewing both the proposed ToR for the Proposed Project and the EA study process itself. A list of the members and areas of expertise of the PRT is provided as Appendix 1 to the enclosed report, *Township of Warwick Peer Review, Terms of Reference – Proposed TECE Optimization Project EA*. ("**Township Peer Review Report**").

The peer review was carried out in two stages: (1) a comprehensive review of a draft version of the Submitted ToR together with draft versions of Supporting Documents 1 -3 and preparation of a draft Peer Review Report which was provided to WM for review and response in September 2021; and (2) a second review of the Submitted ToR commenced following the public release of the Submitted ToR in January 2022. Both peer reviews were overseen by a sub-committee formed by Township Council comprised of Mayor Jackie Rombouts, Deputy Mayor Jerry Westgate, Township Chief Administrative Officer Amanda Gubbels and Township Treasurer Trevor Jarett, and both were received, reviewed and approved for public release by Township Council.

Specific steps undertaken to complete the peer review process are outline in section 1 of the enclosed Township Peer Review Report which forms part of these submissions.

### **4.2 Review of Draft ToR**

The Draft Township Peer Review report provided seven general areas of deficiency in the draft ToR and associated recommendations for improvements, together with 149 discipline- specific recommended changes. Attached to the Draft report was a tracking table to be used for WM responses to specific PRT recommendations.

On November 3, 2021, WM provided to the Township a revised version of the PRT Recommendation Tracking Sheet which included WM responses to PRT recommendation in the second column to the Recommendation Tracking Table (“**WM Tracking Table Responses**”).

On January 7, 2022, the Township received notice of the filing of the Submitted TRT. The Public Consultation Record submitted to MECP with the Submitted ToR included WM Tracking Table Responses.

The Township then directed the TRT to commence a second phase of the peer review to update the PRT’s finding, and recommendations based on WM’s revised version of the ToR which was now available for review.

#### **4.3 Review of Submitted ToR**

The Township then directed the TRT to commence a second phase of the peer review to update the PRT’s findings and recommendations based on WM’s revised version of the ToR which was now available for review.

The PRT has now completed a review of the Submitted ToR and supporting documents including the WM Tracking Table Responses. This report and its attachments present the outcome of this peer review and are summarized below.

Peer review has identified seven keys of areas of significant deficiencies that need to be addressed:

- 1) The Submitted ToR has not adequately explained how interrelated components of the environment will be assessed;
- 2) A balanced consideration of the alternatives to the undertaking has not been presented in the ToR;
- 3) Insufficient rationale and detail has been presented to explain the decisions taken by WM with respect to (1) the proposed scale of the expansion or (2) how the four selected alternative methods were identified;
- 4) There is a lack of adequate detail in the description of the Do-nothing alternative and how it will be assessed;
- 5) The ToR does not include a commitment to review of the 2007 EA and subsequent impacts studies. In the PRT’s opinion, failure to review and consider this information in the EA process would represent a missed opportunity to confirm that EA commitments and requirements have been implemented, assess their effectiveness in the context of the existing environment, and ensure improved mitigation and monitoring measures are considered in the context of the EA study process.

- 6) In general study areas are reduced from the 2007 EA. The 2007 EA study areas should be applied, or a clear technical reason should be provided on a discipline specific basis for reducing these study areas.
- 7) The following studies or components of studies, required for a full assessment, are missing from the Submitted ToR: (1) geotechnical impacts of the vertical expansion on the function of existing Landfill infrastructure; (2) a study of gull/vectors drawn to the Landfill including the potential impacts on aircraft interaction; (3) missing components to the ecological assessment; (4) full social, and economic impact, assessments; and (5) specific missing components to the Human Health Risk Assessment

**Appendix 3** to the Township PRT Report provides a tracking table that documents the WM responses to the TRT key recommendations and the PRT's final comments and recommendations based on those responses. Similarly **Appendix 4** provides a final tracking table.

In addition to these outstanding general recommendations, 79 of the 149 PRT discipline- specific recommendations remain unaddressed or only partially addressed.

For a full understanding of remaining PRT outstanding issues and recommendations, together with the technical/planning rationale for these recommendations, it is requested that the Ministry review the full Township PRT Report which forms part of these submissions.

In response to this outcome, the Township is respectfully requesting that an opportunity be provided for expert discussions between the Township's Peer Review Team and WM's project team bridge the gap between the Township PRT and WM's project team. These expert discussions could coincide with the Township- requested additional community consultation on the ToR.

## **5. Conclusions and Request to the Minister**

The Minister's decision on the Terms of Reference for the proposed WM Landfill Optimization Project EA has critical consequences for the future of the Township. The proposal, if approved as currently proposed, would represent a significant increase to the physical and visual scale of the Landfill and duration of the landfill's operating life and associated impacts. The stakes for our community are very high.

The absence of adequate public consultation resulting in lack of local awareness has undermined the quality of the as-submitted ToR by depriving the document of community input, and the community itself of a meaningful say in the proposed EA study process. An independent Township peer review has identified significant deficiencies in the ToR itself.

For these reasons, the Township is respectfully requesting that the Minister not approve the as-submitted ToR but instead provide direction to WM to conduct additional community consultation and facilitate meetings between the Township peer review team

and the WM Project team to narrow and or resolve outstanding issues. Our specific request to the Minister is set out below.

### **Township Request to the Minister**

It is respectfully requested that the Minister not approve ToR as submitted but instead direct WM to take the following actions prior to any resubmission of the ToR:



1. Conduct further community consultation prior to finalizing ToR;
2. Participate in expert discussions with the PRT to resolve outstanding recommendations set out in the Township PRT Report;
3. Amend Section 9 of the as-submitted ToR (Consultation and Engagement) to incorporate, at minimum, the following consultation activities
  - a. Both virtual and in-person open houses which allows for information sharing between community members and experts, with WM experts/project team members available to answer questions and receive information;
  - b. One or more in-person tour, and on-line virtual tours, of the Landfill to allow members of the public to become familiar with landfill operations;
  - c. Use of social media to share information and obtain comments at discrete stages in the EA study process;
  - d. Provide public consultation opportunities, and expert peer review, at the following stages
    - Draft Report on existing/baseline conditions
    - Draft assessment of alternative methods
    - Development of Impact Management Plan
    - Draft assessment of preferred alternative; and
  - e. Establishment of an EA study group, modelled after the EASG deployed by WM for the EA Process for the original EA Expansion Project with representation by the members of the PLC/community as well as representatives of relevant public agencies to review and provide input at each of the above stages.

Alternatively, it is requested that the Minister refer outstanding matters set out in these submissions related to the ToR for mediation pursuant to section 6(5) of the EA Act.

**All of which is Respectfully Submitted**

The Township of Warwick

Per:

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|---|---|
| <br>Jackie Rombouts, Mayor | <br>Amanda Gubbels, Chief Administrative Officer |
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Enclosure:

*Township of Warwick Peer Review Team Report: Terms of Reference, WM Landfill Optimization Project EA (February 22, 2022)*

cc: Wayne Jenken, WM  
WM Twin Creeks Landfill Public Liaison Committee  
Monte McNaughton, MPP, Lambton, Kent Middlesex