



Information Update on Municipal Response to Lafarge Application to Ministry of the Environment to allow the Incineration of Waste Products in the Cement Kiln, Bath, Ontario

Q. What is the role of the Loyalist Township in this application by Lafarge?

A. Lafarge's proposed change in operation does not require any municipal approval. Council cannot mandate any condition or call a public hearing. Council can only comment in a similar fashion as members of the public in response to the Environmental Bill of Rights (EBR) Notice.

Q. What has Council done to date?

A. After receipt of the request for comments from the Ministry of the Environment in February 2004, the Council passed a resolution requesting Lafarge to hold a public meeting and such a meeting was held on March 31, 2004 in the St. John's Hall in Bath.

In May of 2004, Council advised the Ministry of the Environment that, notwithstanding the public consultation undertaken by Lafarge, they felt that a public hearing, under the provisions of the *Environmental Protection Act* was required. Furthermore, Council requested that any approval issued by the Ministry should be based on Best Available Control Technology (BAC) with appropriate emission monitoring to ensure compliance with all current standards.

In September 2004 the Ministry informed the Municipality that there were several requests from the public to have the Lafarge proposal designated by regulation under the *Environmental Assessment Act*. Private sector proposals generally are not subject to the *Environmental Assessment Act* but the Minister may designate them by regulation. The Ministry again asked the Municipality for comments.

Staff reviewed all the Ministry-supplied material, either from Lafarge or members of the public with respect to the request for an *Environmental Assessment Act* designation, and prepared a report for Council's consideration.

On November 1, 2004, Council passed a resolution and notified the Ministry in a letter dated November 9, 2004 that they did not support the request for an *Environmental Assessment Act* designation subject to 7 conditions as follows:

- a. *That the Ministry of the Environment hold a public hearing under the Environmental Protection Act to review the technical issues relating to the proposals;*
- b. *That the Ministry require the use of Best Available Control Technology (BACT) or the emission criteria for the Bath facility be established at a level equivalent to BACT;*
- c. *That the Bath facility make use of continuous air monitoring equipment, a continuous recording of inlet temperature to the Air Pollution Control Device (APCD) and that a Contingency Plan be developed, including public notification, if emission levels exceed BACT criteria.*
- d. *That the Bath facility prepare and release a user friendly annual summary report within 3 months of year-end to the Ministry of the Environment and Loyalist Township that includes vehicle traffic and air monitoring data relating to the type and the amount of waste derived fuel consumed during the previous year. The report should also document any upset conditions such as, but not limited*

to, the failure to maintain the temperature at the entrance to the Electronic Precipitator at a level below which dioxins and furans readily form, and the action taken under such conditions.

- e. That Lafarge conduct bi-annual stack testing while alternative fuels are being utilized, including for dioxins and furans, and incorporate the results in the annual summary report.*
- f. That Lafarge be required in the annual summary report to review current BACT and to comment on the adequacy of the currently installed equipment in meeting BACT.*
- g. That Lafarge develop a Fire Protection Plan for the storage of waste derived fuel acceptable to the Fire Chief for Loyalist Township.*

This resolution was based on staff's assessment that all the issues raised by members of the public could be adequately addressed if the 7 conditions were complied with, including the need for a public hearing under the *Environmental Protection Act*.

In November 2005 the Ministry of the Environment informed the Township that the Minister had decided not to designate the proposal under the *Environmental Assessment Act*. There is no indication if the Minister accepted the Townships 7 conditions in making her decision. This decision now reinstates the review process under the *Environmental Protection Act*.

To gain a better understanding of the approval process Council invited the Ministry to attend a Council meeting on February 27, 2006. Notification to interested members of the public and Lafarge was sent along with posting of Council agenda. At the meeting Council passed the following resolution:

That Council reaffirms their previous position to request a formal public hearing on the Lafarge alternative fuels application and that the conditions requested by Council be included in the Certificate of Approval should the project be approved.

Following notification that Lafarge had changed its application, in a letter to MOE dated March 16th, 2006, Council asked MOE to indicate what changes to the application would trigger the possibility of reopening the option to have the project designated for an Individual Environmental Assessment. No response has been received to date (March 23, 2006).

Q. What is the Ministry's role in the application?

- A.** After completion of a technical review to ensure compliance with all applicable regulations, standards and guidelines, the Ministry approves, approves with conditions, or rejects the applications. The Ministry obtains comments from local municipalities, members of the public or any other interested stakeholder to assist them in their review prior to making a final decision on the application.

Under the *Environmental Protection Act* (EPA) the approvals Director must determine if a mandatory hearing is required or the need to ask the Environmental Review Tribunal to hold a discretionary public hearing. The MOE Director makes the decision with respect to an EPA hearing. If a hearing is held and the Environmental Review Tribunal makes a decision the Director then implements the decision.

Q. What is the difference between the process under the Environmental Assessment Act or the approvals process under the Environmental Protection Act?

- A.** Environmental Protection Act (EPA)

The Environmental Protection Act may require a mandatory public hearing or through a Director of the Ministry, ask the Environmental Review Tribunal to conduct a discretionary hearing. Based on

information received from the Ministry the applications by Lafarge fall into the category of a discretionary hearing.

Environmental Assessment Act (EAA)

Significant public projects proposed by the provincial and municipal governments, and in a few cases, environmentally sensitive private projects are subject to an assessment of their environmental impacts or effects. Private projects (Lafarge), which would normally not be subject to the Act, may be designated by the Minister after having been asked to do so by members of the public.

If a project is required to undergo an environmental assessment, at the very least extensive environmental studies will be required to determine the project's environmental impacts and consider the need for and alternatives to the undertaking. Under the EAA the definition of environment is more expansive than under the EPA. For example, other "socio-economic" impacts would have to be considered by the proponent in an EAA (e.g. Archeological impacts would be considered as part of an EA but not an EPA approval). Some public consultation will be required and, in recent years (1995 – today) most EA's have been approved without hearings. Hearings if called by the Minister are carried out before an independent tribunal known as the Environmental Review Tribunal.

Note the Tribunal is the same as the Tribunal under the Environmental Protection Act.

What does this mean? Well in this case, if the Minister had decided to pass a regulation to designate the project, Lafarge would have consulted with members of the public, developed environmental assessment (EA) terms of reference for approval by the Minister. Lafarge then would have to prepared the Environmental Assessment and when completed present it to the Minister. The Minister can approve the EA or has the option to require a hearing and further that any such hearing can be scoped to particular issues.

Q. Will there be a change to the air-monitoring program with this application?

- A. Until such time that the Ministry issues a certificate of approval one cannot say what the final monitoring program will be.

However, a Certificate of Approval (Air) ("C of A") issued under s.9 of the Environmental Protection Act (EPA) for Lafarge's alternative fuels proposal, would include specific requirements, including source testing and continuous emission monitoring, in accordance with ministry Guideline A-7, "Combustion and Air Pollution Requirements for New Municipal Waste Incinerators (February 2004)". Guideline A-7 pertains specifically to cement kilns utilizing municipal waste as fuel.

Information received from the Ministry of the Environment summarizes the potential source testing and continuous emission monitoring as follows:

Source Testing

Lafarge has previously performed source testing on the cement kiln stack at the Bath Cement Plant. The results of two previous source tests on emissions from the kiln exhaust stack were submitted with the current application.

The following source testing requirements would be included if a C of A was issued to Lafarge for the alternative fuels proposal at the Bath Cement Plant:

In accordance with Guideline A-7, Lafarge would be required to determine compliance with the emission limits for specific contaminants through source testing. All source testing would be required to be performed in accordance with specific conditions in the C of A and the ministry's Procedure for Source Testing.

As a minimum, the following contaminants would be required for source testing, in accordance with Guideline A-7: Particulate Matter (PM), Cadmium Lead, Mercury, Dioxins and Furans, Hydrochloric Acid (HCl), Sulphur Dioxide (SO₂), Nitrogen Oxides (NO_x), Organic Matter.

Procedure for Source Testing Summary

Source testing is required on specific C of As to validate that a facility has the ability to operate in accordance with the conditions imposed by the C of A, the EPA or any other legal requirements that apply to the facility. Source testing is done under proper conditions and during maximum operating conditions. All source testing must be performed in accordance with the ministry's Procedure for Source Testing in order for the results to be considered acceptable. A copy of the standard Procedure for Source Testing included in C of As is attached below.

A proponent is responsible for conducting the source testing. The ministry is notified prior to the source-testing event so that the ministry may witness the source testing procedures and operating conditions in order to verify that source testing is conducted appropriately.

Source testing is an intensive and time consuming undertaking, [more so for some compounds (dioxins/furans, metals, etc.)]. In order to perform source-testing, access to the stack (for the sampling team and for the sampling equipment), power to run the sampling equipment, set-up and testing of the sampling equipment, etc. are all required. For a typical source testing event, the setup of the sampling equipment may take in the vicinity of 5 hours, with another 5 hours to complete the sampling and potentially additional time for recovering the samples (which varies depending on the number of sampling trains being used and the group of contaminants being targeted).

Included below is an example of the standard Procedure for Source Testing requirements that would be included in a C of A requiring source testing.

Procedure for Source Testing

1. The Company shall submit, not later than three (3) months after the commencement of operation of [the equipment to be tested], to the Manager a test protocol, including the Pre-Test Information for the Source Testing required by the Source Testing Code.
2. The Company shall finalize the test protocol in consultation with the Manager.
3. The Company shall not commence the Source Testing until the Manager has accepted the test protocol.
4. The Company shall complete the Source Testing not later than three (3) months after the Manager has accepted the test protocol.

5. The Company shall notify the District Manager and the Manager in writing of the location, date and time of any impending Source Testing required by this Certificate, at least fifteen (15) days prior to the Source Testing.

6. The Company shall submit a report on the Source Testing to the District Manager and the Manager not later than two (2) months after completing the Source Testing. The report shall be in the format described in the Source Testing Code, and shall also include, but not be limited to:

- (1) an executive summary;
- (2) records of operating conditions, and all records produced by the continuous monitoring systems; and
- (3) the results of dispersion calculations in accordance with Regulation 419/05 indicating the maximum concentrations of the Test Contaminants at the Point of Impingement;

7. The Director may not accept the results of the Source Testing if:

- (1) the Source Testing Code or the requirements of the Manager were not followed;
- (2) the Company did not notify the District Manager and the Manager of the Source Testing; or
- (3) the Company failed to provide a complete report on the Source Testing.

8. If the Director does not accept the results of the Source Testing, the Director may require re-testing.

Continuous Emission Monitoring

Prior to the alternative fuels proposal, Lafarge had operated Continuous Emission Monitors (CEMs) for the following contaminants in the kiln exhaust stack at the Bath Cement Plant: Nitrogen Oxides, Carbon Monoxide, Oxygen and Opacity.

The following continuous emission monitoring requirements would be included in a C of A issued to Lafarge for the alternative fuels proposal at the Bath Cement Plant:

The Lafarge Bath facility would be required to properly operate CEMs for the following contaminants/parameters on the kiln exhaust stream: Carbon Monoxide, residual Oxygen, Carbon Dioxide, Sulphur Oxides, Nitrogen Oxides, Opacity, exhaust flue gas volume. Lafarge has indicated that the CEMs for the listed parameters have been installed.

Q. What changes to the application would trigger the possibility of reopening the option to have the project designated for an Individual Environmental Assessment?

A. Following notification that Lafarge had changed its application, Council asked Ministry of the Environment the above question and on March 23, 2006 the attached response from the Ministry indicates that the changes do not warrant reconsideration of the decision not to designate.

March 23, 2006

Ms. Diane Pearce
Chief Administrative Officer
The Corporation of Loyalist Township
P.O. Box 70, 263 Main Street
Odessa ON K0H 2H0.

Dear Ms. Pearce:

Re: Application for Approval of a Waste Disposal Site / Lafarge Bath Plant
Combustion of Non-Hazardous Solid Industrial Waste

This is in response to your letter of March 16, 2006 in which you advised the ministry of Loyalist Council's resolution requesting a written response to two questions that arose out of a presentation by Martin Hauschild the President of Loyalist Environmental Coalition on March 13, 2006. I will also take this opportunity to answer a third question that Township staff forwarded to the ministry.

In order for the ministry to reconsider a designation request there would need to be a fundamental change to the undertaking that would alter the predicted or anticipated environmental effects. In this case, since Lafarge has not increased the types or quantities of waste that were originally proposed to be received, there would be no increase to any anticipated environmental effects. In terms of the service area, the original application from Lafarge did not contain any restriction on where the wastes could originate and in that respect the current application and proposal that is before the ministry is more restrictive. Accordingly, it is the ministry's position that there have been no changes from the original proposal which would warrant a reconsideration of the Minister's decision.

Secondly, there is no defined timeline for the Director to make a decision whether to refer the application to a discretionary hearing under Section 32, of the *Environmental Protection Act*. Such a determination will not be made until the ministry review engineers have completed their assessments of the applications including the technical reviews and have considered all public comments received through the Environmental Bill of Rights (EBR) process. I expect that this review will take at least an additional month beyond the closing of the current EBR comment period. Loyalist Township will be advised of the Director's decision as soon as a decision is made.

Ms Diane Pearce

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Township staff also forwarded a third question which requested that the ministry clarify at what point would the ministry go back and request more comments from agencies when an application has been altered. Again, the ministry would request further comment from agencies if a change were made to the application that had the potential to increase the environmental effects that could arise from those changes or if the ministry required clarification regarding the comments that had already been provided. At this point, the ministry is in receipt of the Township's position on this matter and their recommendation is being seriously considered by ministry staff.

I trust that this response answers your questions. If you have any further questions or wish to make further comments on these applications, then please feel free to contact Ian Parrott, Manager of Certificate of Approval Review Section of this branch at (416) 314-3636.

Yours sincerely,

ORIGINAL SIGNED

BY

James O'Mara

Director

Environmental Assessment and Approvals Branch

c. R. Cumming - Lafarge Canada Inc.

bc. L. Corbett - Minister's Office