

## Cover letter to FOCA President, Terry Rees (18/02/16)

Terry,

I thought that it was time that I gave you an update on the issue we brought to your attention last summer around a Hauled Sewage disposal site in the Township of Algonquin Highlands, Haliburton County.

We were very pleased by your initial response and the continued work by FOCA on all aspects of the Hauled Sewage and Field Spreading issues – updates in the FOCA newsletter have been informative.

Our continuing experience has led to a good deal of frustration, as I suppose is only to be expected.

The interventions with the MOECC by our Association and other interested parties did have some benefit in that much more restrictive conditions than usual were applied to the operation; The MOECC were, generally, very helpful and receptive.

None-the-less and in spite of reservations that were expressed by the MOECC's own technical experts, an ECA was granted on September 15th, 2015. The operator, who had been preparing the property for operations from the moment he initiated his application, began dumping septic waste within a couple of days.

At an early stage in our work on the file we were struck by the fact that our Township had excellent provisions in its' Official Plan and specific restrictive zoning within the Consolidated Zoning Bylaw which require rezoning for Waste Disposal sites and impose set-backs which differ significantly from the minimums laid-out in MOECC / EPA regulation.

We also noted that the MOECC application and approval for ECA's included clear language indicating that operators are required to comply with other regulation and Authorities.

We made a number of appeals to the MOECC to take into account the language and conditions within their process before granting an ECA, noting that the lands were not zoned for Waste Disposal and that the applicant had made no effort to comply with Municipal Regulations – in fact, had made no contact at all with the Municipality.

While the MOECC acknowledged that the intent of their regulation was that Municipal regulation was to be respected, they had no mandate to ensure compliance.

The Township made similar contacts with MOECC, with the same result.

We strongly urged the Township to take whatever action they could, including a pre-emptive demand that the applicant initiate Zoning compliance processes *before* the ECA was granted. The response was that the Municipality could take no action until an infraction had actually occurred.

Once the site was in operation and clearly in violation of the OP and CZB, official bylaw complaints were registered with the Township. We urged the Township to take enforcement action by way of a "cease and desist order" or injunction.

The township contacted the operator and "requested" that he initiate the mandatory re-zoning process with the Municipality. The operator refused to do so.

The Township commissioned legal advice and contacts between Townships' and the operators' Counsel were begun.

By Late January of this year, it had become clear that the operator would not comply, and that it was felt that an injunction or other legal action would be difficult, prohibitively expensive and, because of common (mis)interpretation of laws and regulations as well as precedents in similar cases, that the outcome was very uncertain:

While Provincial Legislation (Municipal Act and Planning Act) is quite clear that Municipalities have the authority to restrict certain land uses and activities, and make no demand that such restrictions be based on particular scientific studies or evidence, it is common for judges or tribunals, such as the OMB, to require that a Township or other complainant prove that an approval is based on faulty science for restrictive bylaws to be enforced.

This has the effect of nullifying the authority given to the Municipal level of government under Provincial Legislation.

There is no Provincial Legislation, regulation or Provincial Policy Statement, whether under the Environmental Protection Act, the Planning Act or the Municipal Act which in any way indicates that an ECA or other approval “overrides” a Municipality’s authority to control Waste Disposal within its’ boundaries. In spite of which, apparent gaps in authority, the failure of the MOECC process to include property-owner and Municipal notification and consultation or ensure applicant compliance with conditions of ECA’s, make it possible for an operation that is clearly non-compliant to continue.

Our position is that the Government of Ontario, through the MOECC, Municipal Affairs and Housing and more broadly, is responsible for creating a situation that forces affected individuals and Municipalities to undertake very costly and possibly “doomed” legal actions in order to enforce protections which are already in place and should be clearly understood and recognized within the ECA application and approvals process.

Our Reeve will be attending the annual ROMA / OGRA conference next week and has scheduled a meeting with the Minister of Environment and Climate Change to present many of the points above and to press for improvements in the process for the future. We, of course, support these efforts: nobody should ever experience what the neighbours of this site have gone through.

We recognize, however, that it will take more than the one Ministry to do the job and we have written the Premier, the Minister MOECC and the Minister MAH a letter asking for their joint intervention on this issue. I have attached the letter to this email, which you may feel free to share with other FOCA members.

We believe that concerned citizens and organizations should demand that the Government of Ontario make a firm statement on their Legislation and regulations affirming the authority of Municipal Zoning Bylaws in this and similar situations and, where applicable, to suspend Approvals and operations which are non-compliant.

We look forward to the continued support of FOCA in this matter and would greatly appreciate any further information and suggestions that will help us move forward.

Sincerely,

Andy Muirhead

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Andy Muirhead

Volunteer - President

