

This is Exhibit "16"
Referred to in the Affidavit
of Robert McCullough
Sworn before me this 11
day of August, 2009

Susan Ryan

A Commissioner, etc.



GRAHAM WILSON & GREEN
BARRISTERS & SOLICITORS • NOTARIES • MEDIATORS

August 10, 2009

VIA FAX ONLY 416-325-9188
& FIRST CLASS MAIL

Mr. Colin Bhattacharjee
Adjudicator
Information and Privacy Commissioner of Ontario
Tribunal Services Dept.
2 Bloor St. east
Suite 1400
Toronto, Ont.
M4W 1A8

**Re: Continuation of Inquiry
Order MO-2416
Appeal MA07-365
Our File g15553**

Dear Mr. Bhattacharjee:

This is in reply to your letter of July 28, 2009 to Warden Tony Guergis. We are counsel to the County of Simcoe.

We further acknowledge your office's letter (Mr. Higgins) responding to our request for an extension in order to obtain the directions of Council. That request was denied, so we must make it clear that the points being made in this letter are without Council instruction, and specifically the representations that you have asked for as to Council's "position" on the three items below are, at this time, to be considered only what would be the advice or recommendation of staff and legal counsel.

We have previously written to you and provided our opinion with respect to the prior issue and that is, whether or not the "MODFLOW" computer model was in fact a County record. You made your adjudication on that point and although we respectfully disagree with your conclusion, we did follow your Order and made the request of Jagger Hims for the data. In a letter that they sent to us on June 26, 2009, they refused to provide the material to the County.

Prior to dealing with the substance of your July 28th letter, we feel we must respond to your reference to the offence section of the Municipal Freedom of Information and

190 Cundles Rd. E. at St. Vincent Street, Suite 107, Barrie, Ontario L4M 4S5
(705) 737-1811 Fax (705) 737-5390 e-mail: gwg@gwg.on.ca

E. Marshall Green* - Thomas S. Wilson - Paul A. Rabinovitch* - George G. Cameron - Mary E. Vallee - Robert L. Bigioni - Tracy S. Arkell†
Shari D. Elliott - Andrew Tymoszewicz - Thomas C. Tsakopoulos - Sharon C. Wynn - Julia M. Evans - Robyn C. Carlson - Alexa Wilson
Doug MacLeod (Counsel in Labour and Employment matters)

* Certified by the Law Society of Upper Canada as a Specialist in Civil Litigation * Certified by the Law Society of Upper Canada as a Specialist in Real Estate Law
† Tracy Arkell Professional Corporation

Protection of Privacy Act. We note your comment that you are not alleging any offence nor are you conducting an investigation and for that reason, all the more, we query your reference to that section and the "aiding and abetting" section of the Provincial Offences Act. If you have any evidence of such obstruction, or if an allegation of that kind has been made by anyone, we respectfully ask you to share it with us so that we can respond.

Dealing with the substance of your continuing inquiry and dealing with your items in order, we advise the following:

1. We have no particular "position" with respect to Jagger Hims refusal to answer our request for their computer model. As we have previously indicated, this model is not part of the records kept at the County, nor is it part of the "project" that was to be delivered to the County. In the past we have never asked our consultants for this kind of information. We understand that the Ministry of the Environment likewise does not obtain it. The MODFLOW calibration model was not part of the "deliverables" under the County's contract with Jagger Hims. We also understand that it is not part of the "custom in the trade" that these computer models are delivered to the client.
2. We are unaware of any basis upon which the County could take legal action against the engineering firm in order to obtain the records. With respect to your quote from "The Canadian Law of Architecture and Engineering", we understand this to refer to the "product" that the County contracted from Jagger Hims, being their report. We agree that this is a "record" and have used it for our purposes, specifically to report to the Ministry of the Environment. We have also distributed many copies to other organizations and individuals. However, to extend the principle to maintain that the details of their own computer program also belongs to us we feel is beyond our legal rights under the contract that we have with the engineering firm. We feel that we would lose any legal proceedings taken against Jagger Hims. This is particularly so since, as we set out above, we have been advised that the position taken by Jagger Hims reflects the custom in the trade with respect to engineers creating this kind of material.
3. We are somewhat mystified by the "additional actions" that you feel we might be able to take "to encourage or compel" the engineer to provide the computer model. We can only imagine that what you are referring to is some form of threat to cancel the contract or seek other consultants. At best, we think that this would be very damaging from a commercial point of view and endanger our relationship with other consultants. At the worst, this appears to be some form of blackmail that could leave us open to proceedings brought by Jagger Hims.

We would like to point out an important fact which does not appear to have been made known to your Office. Following the filing by Mr. Ogden of this

request, the Ministry of the Environment offered to bring the parties (Mr. Ogden, the Community Monitoring Committee ("CMC"), the County and the Ministry) together in a "facilitation". The Ministry paid for the CMC to hire a hydrogeologist of their choice to attend. Mr. Jagger of the engineering firm attended with two of his computer modellers. Mr. Ogden attended at least one of the sessions. Mr. Millar, a member of the CMC and vocal opponent of the site, represented the CMC. The CMC chose Mr. Kerry Rowe, the hydrogeologist who had previously completed a peer review for the CMC of certain of the Jagger Hims reports filed for the Site's Certificate of Approval. The first two days were spent in demonstrations of the model and explanations by Mr. Jagger as to how he came up with his results. The Ministry also went through and explained the stages of their approval process. Day three was spent in reviewing different "scenarios" that Mr. Rowe proposed should be run on Mr. Jagger's model. The County spent well over a hundred thousand dollars to make Mr. Jagger and his team available for this process.

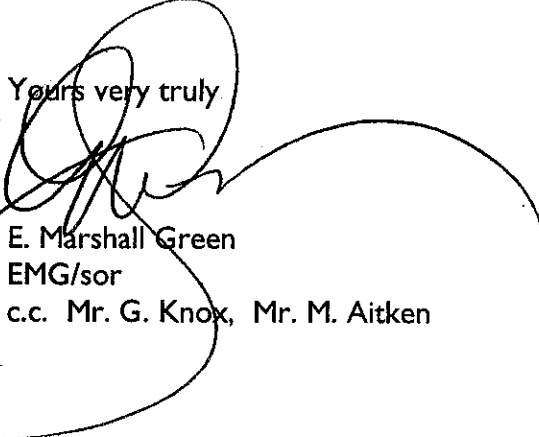
On September 28th, 2008, Mr. Rowe wrote a letter to the Ministry in which he stated:

"In summary, the MODFLOW model appears to have been well constructed and for the cases examined in the Supplemental Hydrogeological Report and the additional scenarios run at my request, the predicted average water levels in the confined aquifer beneath the area of the site approved for landfilling are high enough to provide inward gradients with an operating leachate collection system"

Finally, we are concerned that your position, and that of Mr. Higgins in refusing our extension request, appear to be influenced by your view of the environmental merits of the landfill. There has been no adjudicative process by your Office on that subject, nor, respectfully, is it within your regulatory ambit, as we understand it. We remind you that the landfill has been the subject of an exhaustive review and approval process by the Ministry of the Environment and the Joint Board, and, of course, that the Ministry has most recently hosted the facilitation mentioned above to address the concerns of the site opponents concerning the hydrogeological assessment of the site.

We trust that the above answers the three major points in your letter. We also hope that we have made our position clear and hope that you are sympathetic to it.

Yours very truly



E. Marshall Green
EMG/sor
c.c. Mr. G. Knox, Mr. M. Aitken