



GRAHAM WILSON & GREEN

BARRISTERS & SOLICITORS • NOTARIES • MEDIATORS

November 17, 2009

VIA FACSIMILE TO: (416) 863-1938

Juli Abouchar
Willms & Shier LLP
4 King Street West, Suite 900
Toronto, ON M5H 1B6

Dear Ms. Abouchar:

**RE: IPC Order MO-2449
Appeal MA07-365
Institution File Number: A17-5520-07
County of Simcoe - Our File g15553**

We are writing to you on behalf of the Corporation of the County of Simcoe to provide a settlement agreement which has been reached between representatives of Genivar and County staff. You will be aware that County Council has instructed County staff and its solicitors to work with Genivar to reach an agreement whereby the MODFLOW Model for the North Simcoe Landfill Site could be peer reviewed, if that would satisfy the outstanding Information and Privacy Commission's Order. The enclosed agreement will be recommended by County staff to County Council at the next County Council meeting on November 24, 2009 if your client agrees that the terms of the enclosed agreement will satisfy the outstanding access request.

Your client's position is required by no later than November 23, 2009 in order to have this item included in the November 24 Council meeting. If your client does not provide his answer by November 23rd the next Council meeting at which a settlement could be presented for review is January 26, 2010.

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^o - George G. Cameron - Mary E. Vallee - Robert L. Bigioni - Tracy S. Arkell[†]
Shari D. Elliott - Andy Tymoszewicz - Doug MacLeod - Thomas C. Tsakopoulos - Sharon C. Wynn - Julia M. Evans - Alexa Wilson
John D.D. Graham (Ret.)

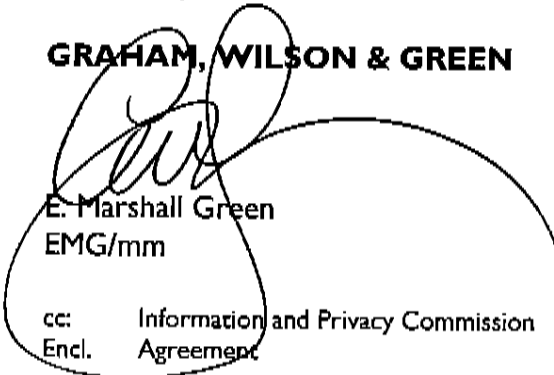
*Certified by the Law Society of Upper Canada as a Specialist in Civil Litigation ^oCertified by the Law Society of Upper Canada as a Specialist in Real Estate Law
[†]Tracy Arkell Professional Corporation

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Please be advised that a copy of this correspondence and the enclosed agreement has been provided to the Information and Privacy Commission. We look forward to your client's response. If you have any questions feel free to call.

Yours truly,

GRAHAM, WILSON & GREEN



E. Marshall Green
EMG/mm

cc: Information and Privacy Commission
Encl. Agreement

**AGREEMENT RE: CONDITIONAL ACCESS TO THE
CALIBRATED MODFLOW MODEL**

BETWEEN:

The Corporation of the County of Simcoe

("County")

- and -

GENIVAR Consultants Limited Partnership (formerly Jagger Hims Ltd)

("Jagger")

The County and Jagger have entered into this agreement, on a without prejudice basis to their respective positions that the County does not have and has never had a right to the control of the calibrated MODFLOW model ("Model") and Jagger is not legally submitted to the jurisdiction of the Information and Privacy Commission ("IPC").

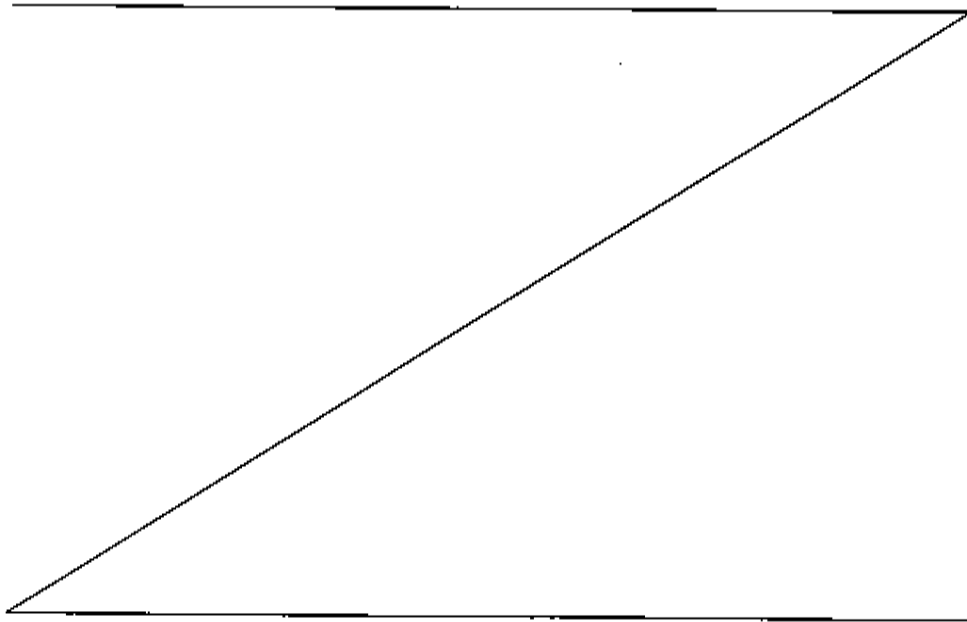
These good faith negotiations have been entered into to provide access to the Model for peer review purposes. It is understood that the County will not have, as a result of this agreement, possession or control of the Model, and that Jagger will continue to exclusively own and control the Model.

This agreement is reached to allow access to the Model on the terms and conditions set out in this agreement.

TERMS OF ACCESS TO INFORMATION:

1. Jagger will at all times maintain ownership and control of the Model.
2. Access to the Model for technical peer review will be provided exclusively by Jagger directly to one of the following independent engineers ("Approved Engineer"), to be selected by the Appellant in the IPC Appeal regarding access to the Model.
 - a) Dr. Kerry Rowe, Queen's University.
 - b) Chris Neville, S.S. Papadopolous & Associates Inc..
 - c) Paul Martin, AquaResource Inc.
3. Upon confirmation from the Appellant that the terms of this agreement will satisfy the access request, the Appellant will be given the opportunity to pick from the above list of Approved Engineers.

4. Access to the Model will be allowed to the Approved Engineer only for the purpose of conducting a peer review of the Model. A list of specific questions will be provided by both parties to form the basis of the peer review report attached as Schedule "A".
5. Jagger will provide a demonstration and explanation of the Model to the Approved Engineer upon request by the Approved Engineer.
6. The Approved Engineer shall not make any copy of the Model, except as may be required for the purpose of completing the peer review.
7. The Approved Engineer shall sign an undertaking and shall protect the integrity of the Model and return it promptly to Jagger upon completion of the peer review report. Any and all modified model files also shall be returned to Jagger and all files shall be deleted.
8. Jagger will be provided by the Approved Engineer with a copy of the draft peer review report and given an opportunity to respond before that report is finalized and made public.
9. Jagger will waive any fee for the release to the Approved Engineer of the Model based on the understanding that the rights and control of the data have not been released by the access provided.



- 10. All costs of the peer reviewer will be borne by the County.
- 11. Both parties agree that the peer review report, paid for by the County, will be a record of the County and subject to access under the *Municipal Freedom of Information and Protection of Privacy Act*.

THE PARTIES HAVE SIGNED THIS AGREEMENT ON THE DATES SET OUT BELOW.

Date: _____

The Corporation of the County of Simcoe

Per:

Tony Guergis, Warden

Glen R. Knox, County Clerk

Date: _____

**GENIVAR Consultants Limited Partnership
(formerly Jagger Hims Limited)**

Per:

Schedule "A"

PEER REVIEW QUESTIONS

1. Is the use of MODFLOW code suitable in the hydrogeological environment that is present at this site?
2. Is the conceptual model of the site appropriate and suitable, and has it been implemented correctly in MODFLOW?
3. Have the various options in MODFLOW (solvers and specific packages) been selected and implemented correctly?
4. Have calibration and sensitivity analyses been completed in an appropriate manner and in accordance with current industry standards, and have the consultants interpreted the results appropriately?
5. Are the model results sufficiently reliable for the intended purpose?
6. Is it reasonable to rely upon the model, in combination with the manual analysis of available field data, to conclude that the landfill site has been designed in compliance with current MOE engineering standards?