

July 27, 2009

Michelle Whitbread  
Senior Policy Analyst  
Ministry of the Environment  
Integrated Environmental Policy Division  
Waste Management Policy Branch  
135 St Clair Avenue West, Floor 7  
Toronto, ON M4V 1P5  
Fax: (416) 325-4437

Re: EBR # 010-6515: A Regulatory Framework for the Management of Non-Agricultural Source Materials and Regulatory Amendments Concerning Milking Centre Washwater and Anaerobic Digestion

Dear Ms Whitbread:

The proposed changes in Waste Regulation 347 and in the Nutrient Management Act to removed the Certificate of Approval permits for sewage sludges and paper sludges and other wastes on farm land is a move in the wrong direction.

Sludges are wastes and they need to be managed as waste by the Ministry of the Environment due to their dangerous and toxic compounds, the industrial and pathogenic components, and the risk they pose to the food chain, wild life, livestock, farm soil, ground water, surface water and the health of exposed individuals. The Ministry of the Environment has the role and responsibility to develop waste policies to protect the public from harmful compounds...not the Ministry of Agriculture. The Ministry of the Environment has the technical staff to understand water quality protection, regulate the newly emerging contaminant compounds that are found in sludge, and to enforce waste regulations. The Environmental Protect Act, and Certificates of Approval have been managing land application of sludges for over 30 years. The expertise and the resources and the responsibility to manage industrial wastes – including sludge compounds – lies with the Ministry of the Environment and should remain there.

Sludges may have some plant nutrients, but to shift their management over to the Nutrient Management Act – which focuses on nutrient issues – is to utterly mischaracterize industrial and municipal sludges (biosolids). We see in many jurisdictions that such biosolids can contain toxic quantities of PCBs, lead, arsenic, and other contaminants.

The rationale provided for the move to the NMA to manage sludges (NASM) is to stop regulatory duplication. If you want regulatory simplicity, add nutrient management to the Certificate of Approval, so sludge haulers have a one door requirement for approvals. Failure to listen to the public, the public health associations, and the Expert Panel:

This whole proposed move to put sludge biosolids into the NMA framework and remove the Certificates of Approval runs counter to the advice that the Ministry received from the Expert Panel on Sound-Sorb – indeed the Ministry has failed to implement the advice of

its own expert panel altogether. The Association of Public Health Associations asked for sludges to be managed by Certificates of Approval and asked for implementation of the Expert Panel recommendations. The Ministry ignores it, and has taken a few days in the hectic summer months to ask for responses to this 30 day posting on a proposal that ignores these views. It ignores the Infectious Disease Society, the Green Party, the New Democratic Party who all call for a moratorium on land application of sludges.

The organic food marketplace is growing by 10 percent per year. That means that the public is voting with their shopping cart – voting against the use of sludges in agriculture. Why continue to move sludges into the food marketplace by claiming it is a ‘normal farm practice’? It is NOT a normal farm practice. The province of Ontario has a committee to arbitrate what is and isn’t a normal farm practice. This committee was bypassed when the Province simply legislated that sludge spreading is a ‘normal farm practice’. This sleight of hand continues as the Province ignores its own experts and the Local Public Health Associations in this sludge spreading policy direction.

Inadequate Consultation:

This proposal involves complex issues that have the potential to negatively impact the environment. The thirty days allotted for public comment during July when our elected officials are on holiday is not sufficient and must be extended to ensure that the decision reflects public concerns, and the Ontario experience of sludge use.

The literature on the proposed regulatory changes is full of inaccuracy:

1. no human health problems from sludge – no see Fred Pelletier – got compensation for exposure to AgriBond paper sludge in Sault Ste Marie...and see dozens of complaints to Medical Officers of Health, including the grandchild of Enid Lipsett, where Dr Hukowitch stated that sludge exposure likely caused her repeated hospital care.
2. UN endorses sludge spreading – This is untrue  
– Sharon Johnston of OMAF said this document constitutes UN approval of sludge on farmlands...see:  
<http://www.unhabitat.org/pmss/getPage.asp?page=bookView&book=2551> . However this book has a disclaimer on the inside cover explaining “*The analysis and conclusions of this report do not necessarily reflect the views of the United Nations or its Member States, the Greater Moncton Sewerage Commission and the Editors.*”

This is one of many examples of how those who seek to promote sludge use falsify documentation. The UN has not endorsed sludge spreading as practiced in Ontario.

3. The literature on the proposed reg changes states that no soil or crop failure has resulted from sludge use – but that isn’t true either. The Ontario Ministry of Environment Phytotoxicology unit investigated a hay field in Durham Region destroyed by sludge spreading. The sludge – spread by Courtice Auto Wreckers – had a high salt content. The MOE found the sludge responsible for the crop damage.

4. the testing done on Atlantic Paper sludge found crop damage, difficulties with germination and with nitrogen deficiency in any crop that required nitrogen (ie corn, wheat, and any non legume crop).

This is just to name a few problems and misrepresentations in this consultation.

The MOE has avoided addressing the public on sludge issues, and has gone far out of their way to avoid responding to public concerns about sludge.

The City of Peterborough asked the MOE to address a public council meeting on the NASM regulations. MoE refused, and met with the councilors in private instead. Oshawa asked for NASM reg changes to be addressed in open council – but MOE again refused. Eileen Smith said it will not happen.

The Ministry position was that the public is not a stakeholder in the NASM changes and that the Ministry did not hold public meetings:

“Consultations were held with those stakeholders that would be directly impacted in terms of a regulatory responsibility to comply with the proposed changes. Public meetings were not held, as the general public would not be required to follow these sector specific requirements unless they were involved in the business of generation, receipt or land application of NASM. “ (email from Kara Wells Dec 2 2008)

The public has not had the time or education to understand the implications of this proposal. The 250 pages of regulatory changes do not make for easy summer reading, and the consultation officials have been taking their summer vacations through the consultation period.

I asked Sharon Johnson to extend the comment period on this consultation – She said ‘It ain’t gonna happen’. This is not public consultation. It is a railroad that leads away from public comment and public interest. The public is often treated with contempt.

NMA is failed legislation

We know now that the MOE hasn’t phased in farms except the big livestock farms. But now they MOE doesn’t make the farms account for their manure – if the farmer gives the manure to a neighbour – the neighbour isn’t triggered by NMA and does not need to file a Nutrient Management Plan. The Nutrient Management Plans filed with the government do not need to be accurate, or up to date. The Nutrient Management Strategies on file with the government do not need to be accurate or up to date.

Now we hear it proposed that the generators of NASM – sludges - will not be obliged to file Nutrient Management Strategies at all. What is the point of this NMA legislation? It is a swiss cheese of loopholes and gaps.

Now the proposal is to not actually trigger farms that take sewage sludge to have to have their farm triggered. So any farmer with three hundred animal units or more is triggered under the NMA to respect the NMA requirements – but a farm receiving the annualized

excrement (and industrial wastes) from thousands of urban humans – will not have their farm triggered to report under NMA. Only the ‘field’ will have NMA requirements – not the farm.

This is ludicrous. The Ministry of Environment said all farms would be phased into the NMA by 2008. But they seem to have stopped phasing in farms altogether, and the phased in farms have fewer and fewer reporting obligations. It seems that there is no (or little) enforcement of the NMA. I asked how many convictions there have been under the NMA since it came into force. I have been told “no convictions” or ‘about five convictions’. This is silly. This is not meaningful law making, not meaningful enforcement. This kind of regulatory lassitude is certainly not suitable for sludge management.

#### Phosphorus over application under NMA

Look at Phosphorus management. We were lead to believe that the NMA was going to require that nutrients (N,P,K) were going to be regulated so that the field would receive only what the crop required and not excessive nutrient that could then leach into ground water or run off into surface water. But the NMA regulations on phosphorus provide for a build up of phosphorus on farmland – presumably so that sludges can continue to be applied at high application rates. If nutrient management principals were actually in place in the Nutrient Management Act – sludge spreading would be limited to less than 4 tons per hectare due to phosphorus build up.

There needs to be an investigation as to role of the NMA in building up high levels of phosphorus on farm fields ... loading them steadily up to the maximum allowed (Olson 60). Since sewage sludge generally delivers much more phosphorus plant requirement than nitrogen requirement, the use of sludge as fertilizer generally over applies phosphorus. Ontario has jacked up the amount of phosphorus allowed to actually load up fields with phosphorus in violation of the nutrient management principals that are supposed to be at the heart of the NMA legislation.

Again – this phosphorus fiddle is not environmentally sound planning or enforcement. It certainly isn’t what is needed to protect the waters of Ontario.

#### Water Quality at risk

The Province has been backing out on its Walkerton commitment. The Source Water Protection the Walkerton Inquiry talked about meant all the water of Ontario – including rural aquifers. Now the Ontario government says only rural municipal treated water is part of ‘Source Water Protection’.

Look at the proposed regs ... The waste reg 347 held that sludge had to keep a separation distance of 300 feet from a drinking water well. Now the proposed NASM reg is as little as 15 meters (less than 50 feet). Why should rural drinking wells – which are more vulnerable than city wells – have less protection? Why should the legislation protect city dwellers’ drinking water and not be equally protective of rural drinking water quality?

There is no excuse for this inequity. We see more and more stripping away of water quality safeguards.

Not only are nutrients from sludged fields swept into watercourses and lakes - they are aided in their swift movement by agricultural tile drains. Indeed the research shows pharmaceuticals from sludge enter tile drains within minutes of land application. This means nutrients and contaminants alike are swept into surface water to gender bend the fish and amphibians, and compromise water quality. At least 80 percent of southern Ontario farms are tile drained.

Again when it comes to sludge there appears to be extra laxity....why has the government failed to publish the Site Specific Risk Assessment on the paper sludge mountain at the Oshawa Gun Club? Early test results showed ground water contamination and now the MOE has been sitting on this publicly financed report? People are drinking the groundwater in the aquifer below this sludge berm. What is in that water? Why the secrecy? Is it so you can say there are 'no public health reports showing contamination from sludge? Absence of evidence is not evidence of absence. The public paid for the risk assessment and we deserve to see it.

#### Regulatory inadequacy

We see that the sludge haulers have a bad track record of environmental compliance. Terratec (aka Azurix, American Water Services) has at least 43 convictions and has had to pay more than \$600,000 in fines related to sludge spreading.

Other companies – like Courtice Auto Wreckers (Ontario Disposal) just declare that their sludge is a 'product' and they don't need Certificates of Approval. And the MOE hasn't enforced the requirement for sludges to have a CofA even though the MOE Expert Panel told the government to require waste approvals even on the finished sludges.

It looks like the proposed regs would seek to allow not only sewage sludge and paper sludge but also compost that fails to meet the Ontario Compost Guidelines to go to farmland. This wholesale use of farmfields for waste disposal is already a huge problem, with waste haulers buying up farms to be spread with waste, to store waste, and to process waste, and as waste transfer stations (see the paper sludge mountains of Beaverton).

The government has not respected its own regulatory requirement in managing sludge. Has not investigated health complaints. Has not even compiled the health complaints related to sludge.

The Ministry has failed to make the sludge haulers provide annual reports on their sludge spreading activities....so the MOE has little idea how much sludge is actually going on farm fields. The NMA isn't enforcing provisions requiring sludge generators to report on where their sludge is going...so the MOE is in the dark about sludge use and trends.

#### Reviewing sludge policy

The public has asked several times for a policy review on sludge spreading (see Environmental Commissioners Reports). The province has refused. Now we hear that a review of sludge policies took place in 2003? Why has no one seen this policy review? Why was it not posted? What good is a secret review? The Ministry needs to listen to the complaints about sludge practices and policies in Ontario and address those allegations and complaints head on. It is time to resolve these problems, not sweep them into the Nutrient Management Act.

#### Alternatives to agricultural use of sludge

The Province has enacted the Green Energy Act which promotes biomass for energy. Sludges – both paper sludge and sewage sludge – can be used to create green renewable energy – with better emissions than the coal fired plants, and a better environmental footprint. There is no need to continue to pollute Ontario food chain lands with industrial wastes and municipal sewage sludges.

#### Conclusion:

The government should just ‘push pause’ on this move to remove the Certificate of Approval requirements on sludges (aka biosolids, NASMs).

The real issue is the overall sludge policy. The government has not addressed on going public concerns about the use of sludges on farm land. Until these concerns have been publicly investigated and addressed, the MoE should NOT pull back from its use of Certificates of Approval to manage sludged farm sites and regulation of sludge under the Environmental Protection Act.

It is time for a full review of the health, agricultural, water quality, food safety, pathogen issues associated with sludge use on farmland. Let us begin this immediately.

Sincerely.

Maureen Reilly  
Sludge Watch  
103 Avenue Rd #601  
Toronto ON  
M5R 2G9