Implementation of the Landfill Assessment Review

November 2016
November 18th, 2016

Honourable Charles Sousa
Minister of Finance
7th Floor, Frost Building South
7 Queen’s Park Crescent
Toronto ON M7A 1Y7

Dear Minister Sousa,

Minister, I am writing to provide my Final Report on the implementation of the recommendations of the Landfill Assessment Review for the transitional period from 2017 to 2020.

In October 2016, I was engaged by the Ministry of Finance to provide advice on the implementation of certain technical transition aspects of the recommendations in the Landfill Assessment Review Report which I delivered in April 2016. My renewed mandate was to meet with key stakeholders to discuss the recommendations and findings from the report, and to provide advice related to two key transition issues:

1. definition of the new landfill property class; and
2. framework for setting tax ratios for the new class for the 2017 to 2020 tax years.

I am submitting my report earlier than its due date, as I am aware of the urgency for the Ministry to provide direction through regulations to the Municipal Property Assessment Corporation (MPAC) regarding the classification of landfills.

Sincerely,

John Wilkinson
Implementation of the Landfill Assessment Review

Background

The recommendations in this report build upon the work that was done earlier this year when I led a review of the assessment methodology to value landfills in Ontario.

In April 2016, I delivered the report on the Landfill Assessment Review, which contained my key findings and recommendations (see Appendix A for a summary).

The recommendations in that report were informed by consultations with numerous representatives from the landfill sector and the municipal sector. A list of the stakeholders who were consulted is included in that report.

The key recommendations in the report were:

- For the 2016 reassessment, to apply the historic approach to value landfills;
- For the 2020 reassessment and future years, to apply an income approach to value landfills;
- To create a new property class for landfills; and
- To exclude the value of key environmental protection features of landfills from their assessed value.

The Minister of Finance accepted the report’s recommendations in June 2016.

Fall Consultation Process

To inform my advice in this report, I held consultations with representatives from the landfill sector, including the Ontario Waste Management Association and landfill operators, and the municipal sector, including the Association of Municipalities of Ontario and municipal landfill hosts (see Appendix B for letter sent to stakeholders who participated in this round of consultations). For a full list of the stakeholders that I met with, see Appendix C.

Before proceeding to discuss my recommendations, I would like to thank all the stakeholders who participated in the consultation process and submitted their input. Their submissions were invaluable and greatly assisted me in arriving at my final recommendations.

In developing my advice, I remained cognizant that the 2017 to 2020 tax years are a transitional period until a new valuation approach is introduced. Ministry staff plan to...
conduct detailed technical consultations in advance of the 2020 reassessment, and thus, the advice and recommendations in this report are subject to refinement based on the outcome of those consultations.

It is my sincere hope that stakeholders will continue to participate in discussion and work constructively with ministry staff, particularly as work is undertaken to develop the income approach to valuation for the 2020 reassessment cycle.

**Feedback on Landfill Assessment Review Report**

During this most recent round of consultations, host agreements were brought up in several discussions. As I noted in my previous report, host agreements are private contracts and are not subject to provincial overview. While I acknowledge that host fees, just like property taxes, are another source of municipal revenue, taxes and fees are determined independently of each other. Host fees are not unique – other property owners may incur similar expenses. Therefore, I continue to view the issue of setting tax ratios for the new property class as separate and independent from host agreements.

**Definition of the New Landfill Property Class**

To inform my advice on the definition of the new class, I drew on the input I received through consultations with the landfill sector and the municipal sector. I also asked Ministry staff to consult with staff from the Municipal Property Assessment Corporation (MPAC) to confirm that my recommendations are feasible to implement. In addition, I requested that Ministry staff engage with staff from the Ministry of Environment and Climate Change (MOECC) to ensure that my recommendations and their implementation through regulation are based on a solid and comprehensive understanding of landfill operations.

Based on the input that I have received, I provide the following advice and recommendations regarding the scope and definition of the new class.

**Proposed Inclusions**

In respect of the components of a landfill to be included in the new landfill property class, subject to the proposed exclusions described below, I recommend that the class include a landfill’s waste fill area, which is comprised of cells approved by MOECC through an Environmental Compliance Approval (ECA) to receive waste. The waste fill area includes:

- cells that are actively being filled with waste;
- cells that have been approved to receive waste in the future; and
- cells that have received waste and have been closed.

In making this recommendation, a number of factors were taken into consideration.
It is important to provide an unambiguous definition of the class that can be administered by the Municipal Property Assessment Corporation (MPAC) on the basis of objective and publicly-available information. In this case, the waste fill area information is available in the ECAs issued by MOECC.

While the entire site area is subject to an ECA, and the buffer zone plays an important role in the overall operation of a typical landfill site, I recommend limiting the scope of the class to the waste fill area for two key reasons.

1. Some landfill operators may choose to have a buffer area beyond the minimum required by the ECA, while others may not. Including all of the buffer area in the new landfill property class may disadvantage or benefit (depending on relative tax ratios) landfill operators who chose to have a large buffer area.

2. In addition, there are a number of non-landfilling activities that take place within the buffer area, including farming and recycling operations, which are normally subject to their own property classification. To avoid any unintended consequences and to ensure that these non-landfilling activities are consistently classified regardless of their location (in or outside of the buffer area), I recommend limiting the scope of the class to the approved waste fill area where actual landfilling can take place, is taking place, or has taken place.

### Proposed Exclusions

I recommend the following exclusions from the new landfill property class:

1. Ancillary landfills;
2. Closed landfills; and
3. Hazardous waste facilities.

1. **Ancillary Landfills**

I recommend excluding from the new property class landfills that are ancillary to another business operation and are only permitted to accept waste generated on-site by that operation. For example, a landfill located on the site of a sawmill that is only permitted to accept wood-chip waste generated by the sawmill would be excluded from the new landfill property class.

Ancillary landfills should continue to be subject to the applicable classification associated with their main industrial or commercial operation.

The intent of my recommendation to create a new property class for landfills was not to override the well-established approach of classifying land used in connection with manufacturing or other operations. The intent was to create a class for landfills that
are in the business of receiving and depositing externally-generated waste, whether they are publicly or privately owned.

With hundreds of approved landfill sites in operation in Ontario, there may be some sites that are ambiguous. For greater clarity, the principle is to ensure that any landfill that is in direct competition with commercial landfill businesses should be taxed in the new property class.

2. Closed Landfills

My advice is to exclude from the new property class landfills that have been capped with a final cover and/or those that have reached their approved capacity as specified by the most recent ECA. Unlike landfills in operation, these sites no longer have approval to deposit any additional waste. Therefore, I propose to exclude these sites from the new class.

To provide clear direction to MPAC on the determination of a landfill’s classification, landfills with some remaining capacity that are not actively receiving waste would be included in the new class unless they have been closed in accordance with MOECC closure requirements.

3. Hazardous Waste Disposal Facilities

I also recommend excluding from the new property class facilities that accept and treat hazardous waste on-site. My recommendation is based on two key policy considerations.

Firstly, these facilities play a unique role in Ontario’s waste management ecosystem. It is indisputable that it is in the public interest for Ontario to be able to safely dispose of hazardous materials. Many businesses and industrial operations produce hazardous waste as their by-products, which cannot be safely landfilled without first neutralizing their toxicity. Hazardous waste disposal facilities utilize complex technologies that allow for the safe on-site disposal of hazardous waste after it has been treated.

Secondly, while these facilities have an ECA issued in respect of landfilling, they are not traditional landfills because the main activity taking place on site is the treatment of hazardous waste. Hazardous waste landfills are more akin to ancillary landfills because they can only deposit waste that is a by-product of their primary operation, which is the treatment of hazardous waste.

In addition, I recommend that the exclusion from assessment of environmental protection features, as recommended in my April report in relation to landfills, see Appendix A, should be extended to apply to systems associated with the treatment of hazardous waste.
Tax Ratio Framework for New Landfill Property Class

Policy Objectives

The second transitional implementation issue that I have been asked to review relates to the framework for setting tax ratios for the new landfill property class for the 2017-2020 tax years.

The key issue here is to avoid unintended consequences, such as significantly increasing the cost of doing business for landfill operators or decimating the tax base of a municipality. Thus, my goal is to recommend a balanced approach that prevents such consequences.

Therefore, the overarching objective of my advice as it relates to the tax ratio framework is to achieve a balance between flexibility for municipalities and ensuring that property tax levels do not adversely impact the economic competitiveness of the landfill sector.

I have heard from landfill operators that predictability of operating expenses in the context of a long-term business operation is of utmost importance. Additionally, they emphasized that their landfill business operations must be competitive not only within Ontario but also in the cross-border marketplace of the Great Lakes Region. I fully agree that predictability is one of the key objectives of this review. In addition to predictability, the landfill sector indicated that a stable property tax environment can accommodate, over time, modest increases in taxation.

However, having heard from the municipal sector, I strongly believe that flexibility for municipalities is just as critical as the need for stability. The local municipality is best able to balance the need for all taxpayers to pay their fair share of local taxes while taking into account the local economic impact. Local municipalities, as a level of government, are responsible for setting tax rates within a provincial framework. The Province must strike a balance between providing flexibility to municipalities and setting limits to ensure that property tax levels do not adversely impact the competitiveness of businesses that compete with those in other jurisdictions.

One final consideration in developing a proposed framework for setting tax ratios for the 2017-2020 tax years is that, as I mentioned earlier, this is a transitional period where the historic methodology will be used to value landfills as an interim measure until the income valuation approach is adopted. I have thus considered how this transitional period could be utilized as an opportunity to phase in changes that materialize once the income approach is implemented.

Double Taxation

Questions were raised by some stakeholders as to whether the definition of the new landfill property class could potentially lead to double taxation. In particular, there was a concern that the landfill tax ratio would be such that it raises the same revenue from the
waste fill area in 2017 as the revenue from the entire property in 2016. I can confirm that regardless of the definition of the new landfill class, tax ratios would be established in a manner that assures there is no double taxation.

**Starting Ratios for 2017**

I recommend that the ratios to be used in 2017 as a starting point for the new landfill class take into account the taxes paid in 2016. This means that the starting ratio for 2017 for a given municipality would be such that the level of revenue collected from the landfill class remains constant relative to 2016, effectively producing a revenue-neutral result.

By calculating a ratio that is based only on the portion of 2016 taxes that are attributable to the portion of the property in the new landfill class, double taxation would be avoided.

The portions of the landfill not included in the new landfill property class would continue to be taxed based on their appropriate classification. Any changes to their level of taxation would depend on reassessment changes and municipal tax policy decisions for other property classes, which are outside of the scope of my review.

Based on the input I received, there is general agreement from municipalities and landfill operators regarding the use of 2016 taxes as an appropriate starting point for setting ratios for the new landfill class. Furthermore, this approach would provide transparency with regards to tax policy decisions relating to the new landfill class.

The principle of transparency should also apply to the establishment of starting ratios. Importantly, the formula and inputs used in these mathematical calculations should be available to both municipalities and landfill owners.

**Flexibility for 2017-2020 Tax Years**

Having reviewed the input received from stakeholders, I recommend establishing a general approach for providing additional flexibility to municipalities, while recognizing that a more targeted approach is advisable for a small number of special cases to account for their unique circumstances.

**General Approach**

Municipalities are an accountable level of government and, as such, I believe that they should be provided with flexibility to determine tax policies based on local circumstances. However, I also believe that there should be limits on the flexibility given to municipalities in order to protect Ontario’s landfill sector and the necessary role it plays in our economy.

To provide a guideline on these limits, I propose giving municipalities tax ratio flexibility that would be restricted to a maximum increase of 5% per year during the four year transitional period from 2017 to 2020.
Based on MPAC’s current estimates, about 120 of the 130 upper and single tier municipalities that host landfills in Ontario host their own landfills (large or small). As observed in my April report, these municipalities are required to make a payment in lieu of tax (PIL) to themselves or, in the case of two-tier municipalities, they may share the PIL between tiers. In addition, lower tier and single tier municipalities that host public landfills retain the education tax portion of the PIL.

Therefore, due to these PIL implications, it is anticipated that these municipalities would use any flexibility provided to them to maintain stability in the amount of PILs levied on their landfills relative to the 2016 taxation year. In other words, these municipalities are expected to seek to maintain revenue-neutrality.

Special Cases

In addition to the general approach outlined above, there are three special cases which should be addressed separately. These involve five municipalities with unique circumstances – the Township of Southwold, the County of Elgin (the upper tier where Southwold is located), the Municipality of Chatham-Kent, the Township of Warwick, and the County of Lambton (the upper tier where Warwick is located). I recommend three distinct approaches for these municipalities.

1. Southwold/Elgin County

For the 2017-2020 tax years, the recommendation in my earlier report is to consistently apply the historic valuation approach (based on vacant industrial land values) to all landfills. The application of the historic valuation methodology is expected to result in significant reductions in current value assessment (CVA) for the two landfills that are currently assessed by MPAC based on their remaining capacity. One of these landfills is located in the Township of Southwold, in Elgin County.

As I have previously mentioned, one of my key objectives is to avoid decimating municipalities’ tax bases, which would be an unintended consequence of my recommendations.

Of note, the landfill in question, owned by the City of Toronto, pays the highest property tax of all landfills in Ontario. In 2020 the new valuation approach based on the income method will most likely lead to a lower valuation. Therefore, for Elgin County, my recommended approach is to set a starting ratio for 2017 that maintains stability in revenues at the combined upper and lower tier levels. Additionally, I recommend that no further flexibility be provided to Elgin County, so that the tax on the new landfill class cannot be increased during the transitional period until 2020.

To maintain revenue stability, it is important to note that in addition to receiving PIL payments in respect of the lower-tier portion of municipal taxes, the municipality also retains the PIL payment in respect of the education tax. In the absence of an education
tax rate increase that offsets the reduction in assessed value, I advise that the education revenue loss resulting from the reduction in assessed value be taken into account when setting the starting 2017 tax ratio for Elgin County.

I recognize that for both Southwold and Elgin County, my recommended approach would initially create unusually high tax ratios given the fact that the assessed value of the landfill currently assessed on the capacity approach will be significantly reduced due to the change in assessment methodology. While I acknowledge that such an unusually high ratio may be viewed as undesirable from a tax policy perspective, this result will only apply during the transitional period.

2. Chatham-Kent

In the case of Chatham-Kent, which hosts the other large landfill currently assessed on the capacity approach, I am aware that the landfill property is subject to property tax capping.

For properties in the capping program, a municipality can choose to increase the property tax annually by 10% of the previous year’s capped tax or by 10% of the CVA tax until the property begins to pay CVA tax. If the 2017 tax ratio for the new landfill class were set in a manner that maintained the same tax on the landfill as in the previous year, this would effectively eliminate the growth in tax revenue that the capping program would provide. This would be another unintended consequence, which I have sought to avoid.

Therefore, I recommend that, for Chatham-Kent, the ratio should be set in way that would avoid limiting tax revenue growth already available to the municipality. More specifically, for the 2017-2020 transitional period, I recommend establishing a limit of a 10% annual increase of the taxes paid in the previous year. This limit would enable Chatham-Kent to maintain a modest growth in revenue consistent with the capping option that has been historically adopted by the municipality.

3. Warwick Township/County of Lambton

The County of Lambton was a party to an assessment appeal regarding the privately owned landfill property located in the Township of Warwick.

As part of this appeal, the Assessment Review Board (ARB) issued a decision which supported the position taken by Lambton County that the licence to operate a landfill should be factored into the current value assessment of the property. It is my understanding that following the release of this decision, the parties reached a settlement in respect of the tax years under appeal (2013-2016), the terms of which are confidential and therefore could not be factored into my analysis.

Nevertheless, in recognition of the significance of Lambton County’s success in the appeal proceedings, I recommend providing the County with flexibility to adjust the tax
ratio upwards, for the 2017-2020 tax years, subject to a maximum annual limit of 20%. I believe that establishing this framework would support an opportunity for the landfill operators and the County to have meaningful conversations about the appropriate level of tax based on local circumstances.

**Additional Implementation Considerations**

**Additional Tax Policy Tools**

To complement the creation of the new landfill property class, I recommend that municipalities be provided with the same tax policy tools that would ordinarily be available for other business property classes, including graduated tax rates and tax capping.

In particular, I believe that the graduated tax rate mechanism is an important tool that could be used to mitigate tax shifts that may arise from the reassessment among different types or sizes of landfills.

**Technical Considerations for Setting the 2017 Starting Ratios**

As part of the process of reviewing and updating the assessments of landfills, MPAC has identified a number of errors and omissions that they are planning to correct, such as coding inaccuracies and new or demolished structures that had not been previously reflected in the assessments.

As a procedural matter, these corrections are captured internally at MPAC on a product known as the “maintenance roll”, which is updated to the end of 2016. These maintenance changes are reflected as the starting point for the new assessment roll that will be used for the 2017 tax year.

As a starting point in setting tax ratios for 2017, it is my recommendation that the maintenance roll be used to determine what the taxes on the portion of the landfill in the new landfill class (i.e. the waste fill area) would have been in 2016 incorporating the error corrections.

Another consideration when setting tax ratios for the 2017-2020 transitional period is that there may be unresolved assessment appeals on landfill properties for the 2016 tax year. An ARB decision may result in an increase or decrease in the taxes paid by a landfill for 2016 in respect of the portion of the property in the new landfill class. In such a case, the revised actual taxes paid in respect of the waste fill area should inform a revised 2016 reference point. Thus, during the transition period, I recommend making adjustments to the particular tax ratio calculation to ensure that the substance of any ARB decision is not circumvented and double taxation is avoided.
Summary

In summary, I recommend defining the new landfill property class as the waste fill area of a landfill, and excluding from the class closed landfills, ancillary landfills, and hazardous waste disposal facilities.

With regards to tax rates, I recommend creating a tax ratio framework that would provide flexibility to municipalities with limits to prevent significant cost increases on landfill operators.

The proposed framework would entail setting tax ratios based on 2016 taxes for municipalities as a starting point for 2017. The ministry could then provide additional tax ratio flexibility to municipalities, limiting it to a maximum increase of 5% annually, with three exceptions to account for unique circumstances.

It is important to keep in mind that I am not recommending specific increases. I am recommending tax ratio limits that represent the maximum that municipalities would be able to apply. Ultimately, municipalities will be accountable to landfill operators and other businesses in their community for decisions they make regarding the setting of tax ratios. I am confident that municipalities would be interested in the views of landfill operators and other businesses in supporting competitiveness. I believe the tax ratio framework I am recommending would support constructive discussion between landfill operators and host municipalities.

I strongly believe that my recommended approach will reflect good public policy, as it strikes a balance between flexibility for municipalities and ensuring that landfill properties are not subject to adverse impacts on their economic competitiveness.
## Appendix 1 - Summary of Landfill Assessment Review Report (April 2016)

### KEY FINDINGS

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<th>Assessment</th>
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<tr>
<td><strong>Any approach to the assessment of landfills must uphold the principles of Current Value Assessment (CVA) with aim of producing accurate values.</strong></td>
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<td><strong>Historic approach doesn’t represent current value. Income approach is most accurate approach, but not likely to be ready in time for 2016 reassessment.</strong></td>
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<th>Taxation</th>
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<td><strong>Minister should be judicious in exercising the authority to create new property classes as adds complexity.</strong></td>
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<tr>
<td><strong>However, the creation of a property class for landfills may be appropriate given the complex nature of ownership of landfills and the importance of providing municipalities with flexibility to manage the local level of taxation.</strong></td>
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<th>Other Considerations</th>
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<tr>
<td><strong>Ontario Municipal Partnership Fund (OMPF) - Impacts of landfill assessment changes on OMPF allocations should be minimal.</strong></td>
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<td><strong>Waste Diversion - Concerns about waste diversion and shipping to other jurisdictions are valid considerations. However, property tax is not consequential in the context of the overall operating costs and revenues of landfill sites.</strong></td>
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<td><strong>Host Agreements - Private agreements between landfill operators and municipalities. Fees paid under host agreements are an expense of the landfill operator. Province does not require them as part of environmental approvals.</strong></td>
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### RECOMMENDATIONS

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<th>Assessment</th>
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<td><strong>2016 Reassessment (2017-2020 tax years)</strong></td>
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<td><strong>Historic cost valuation methodology should be used for all landfills for the 2016 reassessment cycle.</strong></td>
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<td><strong>The requirement to use this methodology should be set out in a Minister’s regulation to provide certainty for all stakeholders.</strong></td>
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<p>| 2020 Reassessment (2021 and future tax years) |  |  |
| <strong>Utilize income approach based on royalty method for 2020 reassessment and future years.</strong> |  |  |
| <strong>Regulate the royalty and discount rates for consistency and certainty.</strong> |  |  |</p>
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<tr>
<th>Environmental Protection</th>
<th>• The value of two key environmental protection features - cell liners and methane gas capture equipment - should be excluded from the assessed value of landfills to recognize their greater public good.</th>
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| Taxation | Property Class | • Create a new permanent property class for landfills.  
• Would provide municipalities with the tools necessary to tailor the tax impacts locally and to deal with specific circumstances. |
| Tax Ratio | • For 2016 reassessment cycle, Province to establish a temporary Target Tax Ratio Range. To be set in Fall 2016 after MPAC prepares preliminary assessed values and MOF conducts impact analysis.  
• For 2020 reassessment cycle, Target Tax Ratio Range to be revised, and made permanent, taking into account the new income approach to valuation. |
| Implementation | Data Collection | • MPAC to work with MOF and MOECC to ensure that the most accurate and up-to-date data is used to identify and assess landfills.  
• Consideration to be given by Province to possible legislative amendments to support MPAC in data collection by strengthening deterrents for providing false or misleading data to MPAC. |
| Work Plan | • MOF to prepare a three-year work plan to ensure successful implementation in 2020 and beyond. |
Appendix 2 - Letter to Stakeholders

Ministry of Finance
Provincial-Local
Finance Division
10th Floor
777 Bay Street
Toronto ON M5G 2C8
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Fax (416) 325-7644

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October 24, 2016

Dear [name],

I am writing to provide you with an update on the implementation of the recommendations of the Landfill Assessment Review.

As you will recall, the review was led by John Wilkinson. Mr. Wilkinson submitted his report in April, and the Minister of Finance accepted his recommendations in June.

To support the implementation of these recommendations, the government has engaged Mr. Wilkinson to provide further advice related to certain technical aspects of his report.

In this second phase of his mandate, Mr. Wilkinson will be meeting with key stakeholder representatives to discuss the recommendations and findings from his initial report, and to consider implementation details related to the definition of the landfill property class and the framework for setting tax ratios for the class for the 2017 tax year. Mr. Wilkinson will be reporting back to the Minister of Finance by November 21, 2016 with his advice and recommendations on these issues.

Your contributions during the first phase of the review were appreciated, and we look forward to your continued input during this further review.

If you have any questions, please do not hesitate to contact me.

Sincerely,

[original signed by]

Allan Doheny
Assistant Deputy Minister

c. John Wilkinson
John Bauer, PricewaterhouseCoopers
Appendix 3 - List of Stakeholders that Participated in Consultations

During the most recent round of consultations, I met with the following key stakeholders, most of whom also provided written submissions:

- Ontario Waste Management Association (OWMA);

- Municipal Associations - Association of Municipalities of Ontario (AMO), Ontario Municipal Tax and Revenue Association (OMTRA) and Municipal Financial Officers Association (MFOA);

- Municipalities - County of Lambton, Township of Southwold, City of Ottawa, Municipality of Chatham-Kent;
