April 18<sup>th</sup>, 2016

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

Dear Minister Sousa,

I am writing to report to you on the Landfill Assessment Methodology Review, which I was tasked with leading as part of the PricewaterhouseCoopers (PwC) team.

Allow me to begin by sharing with you how I feel the Review process has unfolded. First, I have been impressed by the professionalism of the Provincial Local Finance Division at the Ministry of Finance. They were very helpful in ensuring that I had sufficient resources made available to me to fully understand the intricacies and inter-relatedness of the assessment issues raised. They provided the support necessary for me, as a former Minister of Revenue, to prepare this Review for your consideration as Minister of Finance. Second, the team at the Municipal Property Assessment Corporation (MPAC), where I previously served as Vice Chair, continues to remain focused on achieving workable solutions in the public interest. Third, staff at the Ministry of Municipal Affairs and Housing and the Ministry of the Environment and Climate Change, where I served as Minister, provided helpful input to support our factual investigations.

Finally, it should be noted that I believe that each and every stakeholder participated willingly and constructively. Though their views differ widely, each in their own way reaffirmed through their comprehensive and well-reasoned submissions and subsequent meetings with me that the overarching need today is to resolve this file based on the principles of good public policy, so that everyone involved can move forward.

Attached for your consideration is my report, which includes key observations from my review and a series of recommendations which aim to achieve the accurate, fair, transparent and predictable assessment of landfills, in a timely manner that reflects good public policy.

Sincerely,

John Wilkinson  
Reviewer
# Contents

Background................................................................................................................................................. 1  
Key Findings.................................................................................................................................................. 6  
Recommendations......................................................................................................................................... 9  
Appendix 1 - Letter to Stakeholders............................................................................................................. 12  
Appendix 2 - Stakeholder Submissions ......................................................................................................... 14
REPORT ON THE
LANDFILL ASSESSMENT METHODOLOGY REVIEW

Background

Introduction

The methodology to assess landfills for property tax purposes has been a complex and challenging issue that the Ministry of Finance (MOF) has been working to resolve for a number of years.

Historically, landfills were assessed on the basis of vacant industrial land values. However, the sale of two large landfills for prices well above their assessed values prompted the Municipal Property Assessment Corporation (MPAC) to develop a new assessment methodology for landfills.

MPAC implemented a new capacity-based cost approach for the two recently-sold large landfills in 2008, with the intention of implementing the same approach for all large landfills for the 2012 reassessment. MPAC’s new approach valued landfills on the basis of their remaining capacity, and would have significantly increased the assessed values of most of the large landfills.

Recognizing concerns that were expressed by stakeholders about the potential magnitude of the changes that MPAC’s proposed new methodology could produce, the Minister of Finance directed MPAC not to proceed with province-wide implementation of the new methodology, pending consultations with stakeholders.

Special Purpose Business Property Assessment Review

The assessment of landfills was subsequently included in the Special Purpose Business Property Assessment Review (the Assessment Review) led by former Parliamentary Assistant Steven Del Duca in 2013.

To support the consultation process during the Assessment Review, MOF established a Landfill Working Group. The group included representatives from the Ontario Waste Management Association (OWMA), individual private operators of large landfills, host municipalities, and municipalities that own large landfills in other jurisdictions.

The Assessment Review report recommended that MPAC’s proposed capacity-based valuation approach not be applied to additional landfills before the 2016 reassessment, and that MOF continue to consult with stakeholders and conduct further analysis to arrive at a valuation methodology in time for the 2016 reassessment.

Discussions at the Working Group meetings centered around three main valuation approaches that were brought forward by consultation participants – the historic cost
approach, the capacity-based cost approach and the income approach. These approaches are described in more detail below.

The ministry’s goal throughout the Landfills Working Group consultation process was to find consensus to establish a methodology consistent with the principles of current value assessment.

PwC Review

Recognizing that the ministry was unable to reach a consensus among stakeholders, the decision was made to engage a Reviewer who would consider the issues raised by stakeholders, review the range of options for assessing landfills, and provide advice on a recommended valuation approach for the 2016 assessment.

The Ministry of Finance has retained the services of PricewaterhouseCoopers (PwC) to conduct this review, and I am the lead Reviewer on this project.

My priority in this review is to develop recommendations that are guided by the following public policy objectives, in the context of current value assessment:

- Accuracy
- Fairness
- Transparency
- Predictability/Stability
- Timeliness and Feasibility of Implementation in 2016

In addition, a key consideration is to avoid possible unintended consequences or inconsistency with other provincial policy objectives.

My recommendations in this report are made in the context of the history of stakeholder consultations led by MOF and the need to arrive at a solution that can be implemented in time for the 2016 reassessment.

The review mandate did not include addressing legal issues that were pending before the Assessment Review Board (ARB), such as the issue of whether the value of the licence to operate a landfill should be attributed to the land (and thus reflected in the assessed value) or to the business.

To inform my recommendations, written submissions were sought from key stakeholders. (See Appendix 1 for invitation letter sent to stakeholders.) Stakeholders were asked to frame their recommendations in the context of the public policy principles outlined above, and they also had an opportunity to meet with me to discuss their input. (See Appendix 2 for list of stakeholders who provided submissions as part of this review.)
Assessment Principles

There are two components that have to be determined by MPAC for every property in Ontario:

1. Assessed Value
2. Property Classification

With respect to assessed value, in order to ensure equity among property taxpayers, it is important that any approach taken to the assessment of landfills uphold the principles of current value assessment (CVA) with the aim of producing accurate values.

Current value is defined in the Assessment Act as “the amount of money the fee simple, if unencumbered, would realize if sold at arm’s length by a willing seller to a willing buyer”.

Property classification is determined in accordance with definitions that are set out in regulation under the Assessment Act. The role of property classification is explored in further detail below.

Valuation Methodologies under Review

Throughout the discussions with MPAC and stakeholders, both during my review and during the prior Landfills Working Group, three main valuation methodologies were proposed:

1. Historic Cost Approach

   Historically, MPAC assessed landfills based on the value of nearby industrial land. The land values were derived by developing rates per acre based on land sales. The value of buildings or structures on landfill sites were derived based on their replacement cost.

   The valuation approach proposed by the Ontario Waste Management Association (OWMA) is similar to MPAC’s historic approach.

2. Cost Approach based on Capacity

   As noted above, MPAC had been planning to implement a capacity-based valuation approach to assess large landfills province-wide for the 2012 reassessment.

   This approach values a landfill primarily on the basis of a site’s remaining capacity multiplied by a fixed rate which is developed based on landfill sales.

   This approach has been used to assess two large landfill sites since 2008. (The remainder of the sites are assessed using the historic cost approach.)

   Subsequently, MPAC proposed a number of refinements to its capacity approach to better reflect market factors, such as the landfill’s location or estimated number of years before closure. However, these refinements would also add significant complexity.
3. Income Approach

The income approach is a valuation methodology that is commonly used to assess commercial, industrial and multi-residential properties, utilizing a property’s income stream as the basis for valuation.

During the landfill review, two variations of the income approach were discussed and considered:

a) **Royalty** – The Royalty methodology, favoured by Lambton County and supported by additional municipalities, applies a royalty rate to a site’s gross income over the estimated life of a landfill and discounts this to present value. The royalty rate reflects an assumed percentage of gross revenue paid by an operator to lease land for use as a landfill.

b) **Discount Cash Flow** (DCF) – The DCF methodology estimates the anticipated net operating income of a site over the estimated life of a landfill and discounts this to present value.

Both of these income methodologies result in assessed values that decline over time and require financial information as an input.

**Environmental Protection Measures**

Under the *Environmental Protection Act* (EPA), cell liners are a required component of a landfill designed to contain and direct leachate to an on-site collection system. In addition, leachate collection systems for leachate that discharges to surface water are a required component under the *Ontario Water Resources Act*.

In addition, under the EPA, a landfill site may require a gas collection system. Some elements of the gas collection systems (e.g. piping) tend to be integrated with the cell liner and leachate system.

The Landfill Working Group identified the need to review the valuation of cell liners and environmental protection measures.

**Ownership Structures and Tax Implications**

There are a variety of ownership situations for landfills.

**Private Ownership**

Privately-owned landfills pay property tax to the municipality in which they are located.
Municipal Ownership

Municipally-owned landfills may be located within their own jurisdiction or in another jurisdiction.

Municipalities that own and operate their own landfill within their own jurisdiction make a payment in lieu of property tax (PIL) to themselves (a matter of internal accounting), and in the case of a two-tier municipality they may share the PIL between tiers.

Municipally-owned landfills located in another jurisdiction make PIL payments to the municipality in which the landfill is located (or to the Province and local service boards in the case of landfills located in unincorporated territory).

Provincial Ownership

Provincially-owned landfills make PIL payments to the host municipality, or, when the landfill is located in the unincorporated territory, to a local service board.

Landfill Categories

For context, there are approximately 880 open landfill sites identified by the Ministry of Environment and Climate Change (MOECC). Of those, 850 are categorized as “small” and 31 are categorized by MOECC as “large”. The 31 large sites were the ones that MPAC was proposing to assess for the 2012 reassessment based on the capacity approach.

Of the 31 large landfills:

- seven are privately owned;
- three are owned by municipalities and hosted outside their jurisdiction; and
- 21 are owned by municipalities and hosted within their own jurisdiction.

MOECC approves the type of waste that each site can accept, total capacity, and maximum annual fill rate.

Landfill Assessment Appeals

In parallel to the consultative process, a number of appeals related to historic landfill assessments are pending before the Assessment Review Board (ARB).

Most notably, the ARB recently held a hearing to address the question of whether the market value of a licence to operate a landfill should be reflected in the assessed value of the landfill. On March 31, 2016, the ARB issued an Interim Decision in the matter of the Twin Creeks landfill site located in the County of Lambton. The ARB supported the position taken by MPAC and the municipality and concluded that “the market value of the rights associated with the Environmental Compliance Approval issued under the Environmental Protection Act should be reflected in the current value of a landfill (waste disposal site) under the Assessment Act.”
Key Findings

Below are the key findings that underpin the Recommendations in my Report.

1. **Assessment Principles – Current Value Assessment**

   As noted above, it is important that any approach taken to the assessment of landfills uphold the principles of CVA with the aim of producing accurate values.

   Based on the limited sales data that is available for landfill properties, it appears that the cost approach that has historically been used to value landfills based on vacant land sales does not reflect the true current value of a landfill as it under-estimates the value.

   To the extent that one taxpayer is under-assessed, they pay less tax and everyone else pays more, which leads to an inequitable outcome.

2. **Relationship of Assessment and Taxation**

   Prior to this Review, I believe that two inter-related but separate issues – assessment and taxation – have been conjoined. Any change to the assessment methodology immediately raised concerns about the impact on actual taxation.

   Treating these issues as one and the same is not in the public interest. After much consultation, I believe that all stakeholders agree that the public interest is best served, and the *Assessment Act* upheld, by first settling the issue of what is the most appropriate method of assessing a landfill.

3. **Assessment Methodology - Capacity and Income Approaches**

   As noted under Background, three main valuation approaches were considered during the review.

   In terms of which methodology would produce the most accurate assessments, it is my conclusion that the capacity-based cost model proposed by MPAC and the income models proposed by Lambton County both have merit in determining accurate valuations for landfills.

   However, I am of the opinion that neither of these approaches can be successfully implemented for the 2016 assessment cycle in a timely, transparent, predictable, cost-effective manner. The volume of new variables contained in these methodologies could, in my opinion, result in the 2016 assessment roll for landfills being the subject of numerous and time-consuming appeals to the Assessment Review Board (ARB). The costs for these appeals would be borne by both the property owners and by MPAC (which is ultimately funded by municipal property taxpayers).
On balance, I believe that an income approach, such as the royalty method, if applied consistently province-wide based on accurate up-to-date data, would best meet the test of good public policy, as this model is most reflective of the true current value of a landfill. Further, I believe it will lessen the likelihood and costs of appeals and minimize the risk of unintended policy consequences.

Several types of commercial and industrial properties are already assessed based on an income methodology, as this approach most closely reflects the underlying market basis upon which these properties are bought and sold.

4. Property Classification

While the Assessment Act empowers the Minister of Finance to create new property classes for tax purposes, the Minister should do so judiciously, since it adds complexity and encourages the “me too” effect from other property owners.

However, the creation of a property class for landfills may be appropriate when recognizing the complex nature of the ownership of landfills and the importance of providing municipalities with flexibility to manage the local level of taxation.

For single-tier municipally-owned landfills, the issue of taxation is primarily moot since the municipality is in effect paying itself. It becomes more complicated when a municipally-owned landfill is in a two-tier jurisdiction or a municipality is hosting a landfill for another municipality. Even greater complexity applies to privately-owned landfills, which in many cases are a significant local industry.

A dramatic decrease in landfill taxation could severely impact the fiscal viability of a municipality, particularly for smaller municipalities. On the other hand, a dramatic increase in landfill taxation could affect the profitability of a local landfill. One size obviously does not fit all. On balance, I believe 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.

If, as a result of applying a given assessment methodology, the effect on tax levels is unmanageable for landfill operators, then the tax policy tools available under the Assessment Act and Municipal Act, such as property classes, should be used to ensure a proper public policy outcome. Further, if the application of a specific assessment methodology to landfills has an unfair impact, a property class would enable municipalities to mitigate these outcomes through target tax ratios.

5. Ontario Municipal Partnership Fund (OMPF)

Some questions were raised during stakeholder discussions about the possible impact of assessment changes on the determination of funding allocations under the OMPF. My understanding is that impacts would be minimal.
In addition, where municipalities have concerns about the impacts, these could be mitigated if municipalities are provided with the flexibility to set tax ratios for landfills through a separate property class.

6. Waste Diversion

I believe that the concerns raised by some stakeholders about the possibility of property tax levels having an impact on waste diversion in Ontario and/or resulting in an increase in Ontario waste being shipped to lower cost jurisdictions are valid considerations. However, I have concluded that property taxes are not consequential in the context of the overall operating costs and revenues of landfill sites. For example, among the large private landfills for which financial information is publicly available, property tax is estimated to represent a very small proportion of gross revenue (on average less than 0.25%).

In addition, property taxation pales in comparison to more powerful market forces, such as the recent dramatic decline in the Canadian dollar versus the U.S. dollar.

Therefore, while I believe it is important that the Ontario Government continue to carefully consider the concerns raised by landfill owners in Ontario, this issue is just one of many to consider.

7. Host Agreements

Some landfill operators enter into host agreements with the local municipality. Under these agreements, landfill owners make payments to the municipality in respect of the landfill’s operation. For example, the payment may be based on a specified dollar amount per tonne of waste received by the landfill.

However, in the context of this provincial review, I recognize that the fees paid by landfill operators to host municipalities are an expense that reduces the net income of the landfill operator.

These are private agreements between the parties. The Province is not a party to them and does not require them as part of the environmental approval process.
Recommendations

Based on the key findings outlined above, and after examining the range of policy and administrative issues affecting the assessment and taxation of landfills, considering the impacts of applying the various proposed assessment methodologies, and reviewing the input from stakeholders, I have developed the following series of recommendations.

1. Data to Support Assessment

   I recommend that MPAC work with MOF and MOECC to ensure that the most accurate and up-to-date data is used to identify and assess landfills. It is my understanding that this work has already begun.

   Information gathering and data exchange work will also include the Ontario Waste Management Association and other stakeholders.

   Under the Assessment Act, MPAC has the authority to require the production of information from property owners to support the assessment of properties. It is my expectation that the landfill sector will continue to cooperate fully with the timely sharing of information that is needed and will support MPAC in its data-collection duties in order to facilitate the preparation of accurate assessed values for landfills.

   While I anticipate full cooperation in the sharing of data, I am also recommending that consideration be given to a possible legislative amendment to help support MPAC in data collection. This recommendation has broader implications beyond landfills, but I believe that it could enhance the integrity of the overall assessment system. The measures I am recommending would involve restricting property owners from appealing assessments based on the quality of data that they themselves provided to MPAC, and strengthening deterrents for providing false or misleading data to MPAC.

2. Environmental Protection

   As noted above under Background, there are two key environmental protection features in most landfill sites - cell liners and methane gas capture equipment.

   I recommend that the value of these two features of a landfill be excluded from the assessed value to recognize the greater public good of these features.

3. Valuation Methodology - 2016 Assessment Cycle (2017-2020 Tax Years)

   I recommend that the historic cost valuation methodology be used for all landfills for the 2016 assessment cycle. I further recommend that the requirement to apply this methodology be set out in regulation to provide certainty for all stakeholders.
4. Property Classification

I recommend that a new permanent property class be created for Landfills in Ontario. Achieving the goal of a consistent province-wide assessment methodology for landfills may lead to tax changes for property owners and municipalities. The creation of a separate property class for landfills would provide municipalities with the tools necessary to tailor the impacts locally and to deal with specific circumstances.

The creation of a separate property class for landfills would also provide municipalities with flexibility to ensure they receive an adequate level of revenue and that other taxpayers don’t see a disproportionate impact as a result of assessment changes for landfills.

Further work is needed to define “landfill” for the purpose of the new property class.

5. Tax Ratio - 2016 Assessment Cycle (2017-2020 Tax Years)

As part of the creation of a new property class, I recommend that a provincially mandated temporary Target Tax Ratio Range be implemented for the 2016 assessment cycle.

The Target Tax Ratio Range should be set after MPAC prepares the preliminary assessment roll later this summer and should be announced in time for implementation for the 2017 tax year.

MOF should set the Target Tax Ratio range based on detailed impact analysis and a short focused round of consultations with municipalities and property owners. I recommend that the Range be set to ensure that municipalities have the flexibility to generate a fair level of taxation from landfills.

6. Valuation Methodology - 2020 Assessment Cycle (2021 and Future Years)

For the 2020 and subsequent assessment cycles, I recommend that an income approach using a common royalty rate based on gross revenue, with a common discount rate used for net present value calculations, be developed and implemented.

After comparing all other methods, I believe my recommended approach ensures a stable, consistent and predictable valuation that is both transparent and fair in its application. Moreover, the relative simplicity of this methodology will lower costs by minimizing the amount of data that the landfill owner must provide and that MPAC must verify. Additionally, I believe it will also greatly reduce the need for costly, time consuming appeals. In my opinion, this is the best and most accurate methodology to assess landfills under the Assessment Act.

However, I recognize that a considerable amount of data will still need to be gathered and significant work done in order to implement this approach. This will include developing a royalty rate and discount rate in consultation with key stakeholders.
As noted above, towards the end of my review, the ARB ruled on the matter of the Twin Creeks landfill site. It is unknown at this time whether the decision will be appealed to the courts or what outcome might arise from the ARB’s consideration of the valuation aspects of this appeal or other matters before the Board. I offer no opinion on this matter. However, I would add the observation that one of the attributes of an income-based approach to assessing landfills is the inherent recognition that income is earned as a consequence of the landfill operator having a licence to operate the site and being in compliance with the Environmental Compliance Approval issued by MOECC. As such, my recommended approach may offer significant advantages to all concerned.

7. **Tax Ratio - 2020 Assessment Cycle (2021 and Subsequent Tax Years)**

I recommend that the Target Tax Ratio Range be revised for the 2020 assessment cycle to take into account the new income approach to valuation, and that it be made permanent on a go forward basis.

8. **Work Planning**

I recommend that the Minister direct MOF staff to prepare a three-year work plan to ensure successful implementation in 2020 and beyond.

**Appendices:**

1. Letter from MOF to Stakeholders

2. List of Stakeholders who provided Submissions
Appendix 1 - Letter to Stakeholders

January 11, 2016

Dear [name],

I am writing further to my letter of December 18, 2015 regarding the assessment of landfills.

As I indicated in my previous letter, the Ministry of Finance has selected a Reviewer who will provide recommendations with regards to an appropriate valuation methodology to assess landfills for the 2016 reassessment. Through a competitive procurement process, the Ministry has retained the services of Pricewaterhouse Coopers (PwC) for this assignment. PwC is bringing the expertise of former Ontario Cabinet Minister, John Wilkinson, to this project.

Mr. Wilkinson’s role will be to review the potential options for assessing landfills and make recommendations on an appropriate methodology for the 2016 reassessment cycle. He is expected to provide his advice to the Minister by Early Spring 2016.

As the first stage of the Reviewer’s work, he is seeking written input from interested stakeholders. To that end, we invite you to provide MPAC’s input to the Reviewer. This submission should include your recommended solution to the complex issue of how to determine the value of landfills for property tax purposes, and a clear description of how your proposal is aligned with the following policy objectives within the context of current value assessment:

- Accuracy
- Fairness
- Transparency
- Predictability/Stability
- Timeliness and Feasibility of Implementation in 2016

In addition, the recommended approach should avoid any possible unintended consequences or inconsistency with other provincial policy objectives.

You are welcome to provide any additional relevant materials or data that would help inform the recommended approach.
Please provide your written submission by **January 22, 2016** to landfillsreview@ontario.ca.

The Reviewer will consider all the written submissions received, and ministry staff will then contact you to arrange for an opportunity to discuss your submission with the Reviewer.

If you have any questions, please do not hesitate to contact Diane Ross, Director, Assessment Policy and Legislation Branch, Ministry of Finance at diane.ross@ontario.ca, or John Bauer, Director, Ontario Public Sector Practice, PwC at john.j.bauer@ca.pwc.com.

Sincerely,

*original signed by*

Allan Doheny
Assistant Deputy Minister
c. John Wilkinson
   John Bauer
   Jason Pichelli
   Diane Ross
Appendix 2 - Stakeholder Submissions

The following organizations and municipalities participated and provided written submissions to inform this review:

- County of Lambton, whose submission was supported by the Municipality of Chatham-Kent, the City of Hamilton, the Township of Southwold, the City of Stratford, and the Township of Warwick;

- Ontario Waste Management Association (OWMA);

- Municipal Property Assessment Corporation (MPAC);

- Ontario Municipal Tax and Revenue Association (OMTRA);

- Municipal Finance Officers’ Association (MFOA) and the Association of Municipalities of Ontario (AMO), who provided a joint submission; and

- Regional Public Works Commissioners of Ontario (RPWCO).