ABCAP workout: ‘Art of the possible’

Exactly two years ago this past week, $35-billion of Canada's asset-backed commercial paper froze up, leaving thousands of investors unable to get their money back. Many victims claim some of the investment dealers who sold the paper were aware the market was in trouble, but continued to unload the product. Following a marathon restructuring to repair the damage, the frozen ABCAP was swapped for new notes, but the new notes have been trading for less than 50¢ on the dollar. Even if they wait for the new notes to reach maturity, investors are doubtful they will recoup their losses. Whatever the outcome, they must live with the results. In agreeing to the restructuring deal they gave up their right to sue. Purdy Crawford, chairman of a committee that oversaw the workout, spoke to Financial Post reporter John Greenwood about why the restructuring was good for Canada and the only sensible alternative for investors.

Q How significant was the failure of the Canadian asset-backed commercial paper market back in August 2007?
A You mean, what would have happened but for the restructuring? What would have happened to the small investors if the whole thing had blown up? The only thing I can tell you is that the solution we arrived at, albeit far from perfect, was very good for the markets and for 99% of the investors. It's hard for me to look into a crystal ball and be sure what would have happened if there had been no restructuring.

Q So it was a success?
A I think so, yes. As I have said, it was the art of the possible.

Q Many people got into ABCAP because they thought it was liquid and short-term. But they ended up with bonds that are not liquid. As you have said, God knows what these things are going to be worth.
A As I understand it, people are beginning to understand the paper better. And it is starting to look like a healthy market might develop.

Q But the stuff is trading now at 30¢ on the dollar.
A Oh, there have been some trades up to 50¢. But a market develops over time.

Q You once said that if the restructuring didn't happen and people tried to fight it out in court, they would be in court forever and would get nothing. But is that a good reason not to fight?
A If you can hold the new bonds to maturity you have a good chance you're going to get all your money back. Whether you get 30%, 40%, 50% or 60% back, it's better to do that, if you're objective about it, and give up on the right to sue. With no restructuring, you would have to depend on recovery through a lawsuit that could go on for years and still be unsuccessful. I can understand people being annoyed about losing the right to sue, but it's part of the compromise.

Q What rankles many holders of this stuff is that some things were done by people who made and sold this product that were wrong, and yet no one has been held to account. The restructuring gives them legal immunity. Is this a problem?
A Well, we will see. I have been hearing the same reports that you're hearing, but I don't know anything about that. It wasn't our job to investigate the rights and wrongs. I assume that's what the regulators are doing and we will see what flows from that. I made sure IIROC was informed of this and they had a representative at our hearing. I kept saying to them, "We don't want to foreclose any regulatory action." If the regulators think people should be brought to account, they should pursue it aggressively.

Q Are you encouraging the authorities to do that?
A I would not like to comment on that one.

Q Is there anything about the restructuring you would have done differently?
A No, I don't think so. We got lucky at times and unlucky. I was upset as hell when we failed to put this thing together in December 2007 and March 2008, but it was a blessing in disguise because of the turmoil in credit markets. It was rather hard dealing with the federal government. They kept saying that other than moral suasion they wouldn't do anything. Ultimately, on a very limited basis, they came to the table.

Financial Post
Suit alleges Deutsche Bank knew notes were unsuitable

Continued from Page FP1

The lawsuit, filed yesterday, alleges that Deutsche Bank sold notes issued by Devonshire Trust even though it knew the investment was unsuitable for a municipal government.

According to the documents, Deutsche and DBRS were aware that the notes were more risky than they appeared.

"The defendants misrepresented that the Devonshire notes constituted a safe and secure investment" when in fact they "were a volatile, complex, unsecured investment with no real capital structure supporting them," the suit claims.

Canada's non-bank ABCP market collapsed in August 2007 after issuers were unable to roll their notes and liquidity providers declined to honour their agreements.

While ABCP trusts traditionally use the money they raise to buy car loans, credit card payments and other conventional assets, many of the players caught up in the market failure bought complex credit derivatives that ended up backfiring, triggering massive collateral calls that the trusts were unable to meet.

Deutsche Bank and DBRS both declined to comment.

As part of Ontario's manufacturing heartland, Hamilton has been badly hurt by the recession and cannot afford to take a $10-million hit on its ABCP investment.

Commercial paper markets around the world were among the first victims of the credit crunch but only in Canada did investors end up shoulder ing most of the losses.

That was because the banks that were supposed to buy up the ABCP in the event of a market failure were able to take advantage of loose wording in their liquidity agreements to ignore their obligations.

Devonshire was triple-A rated by DBRS despite the weak liquidity agreement. Hamilton claims it relied on the rating and that had DBRS taken reasonable care in formulating its conclusions, it would not have given Devonshire an investment grade rating.

Devonshire was not part of the restructuring and it collapsed after failing to meet collateral calls. Note holders, including Hamilton, National Bank of Canada and the Caisse de dépôt et placement du Québec, suffered complete loss of their investment.

Financial Post
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The OSC claims that among the disclosures Coventree failed to make was the fact that 50% of its revenues derived from structured finance transactions.

Coventree went public in November 2006, selling 3.8 million shares at $10.75.

By most accounts, it was a successful IPO, valuing the company at more than $160-million.

However, the OSC alleges that on Nov. 10, 2006, five days before the final prospectus was filed, DBRS told Coventree in an email that it was planning to take "a more restrictive approach" to approving structured finance ABCP.

Then, in early 2007, DBRS announced it was tightening up the way it rated structured ABCP, effectively stopping Coventree from manufacturing the product.

But, according to the OSC, Coventree's shareholders had no way of knowing the company had been significantly affected.

"Since Coventree had not disclosed the fact that a substantial majority of its revenues were derived from credit arbitrage transactions, the market could not appreciate the change in DBRS rating criteria resulted in a change to Coventree's business or operations without elaboration by Coventree," the regulator said.

Meanwhile, regulators are said to be close to a deal that could see a group of major Canadian banks pay more than $100-million in settlements arising from their involvement in ABCP, sources said.

National Bank is facing a penalty of $70-million, more than double the amount other banks including CIBC and Bank of Nova Scotia are being asked to pay.

Deutsche Bank, a major liquidity provider to ABCP trusts as well as a dealer, has so far declined to pay any penalties, sources said. While the settlements are high, they are a far cry from the $200-million range penalties that regulators were originally seeking.

Financial Post
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By Steve Amsel

Hamilton seeks to recover $10m investment

AND CIBC MELNIK INVESTMENT TRUST COMPANY

The suit, filed in Superior Court of the State of New Jersey, Director of Investments, alleged that Hamilton's investment fund, Hamilton Canadian Energy Trust, purchased a large number of shares in a company called Douglas Energy Trust. Hamilton's investment fund was wound up in 1997, and the new, larger fund, CIBC Hamilton Canadian Energy Trust, was established. The new fund was proposed to be distributed in units, each containing a share of the Hamilton Canadian Energy Trust's assets. The suit alleged that the new fund was designed to take advantage of the new fund's access to capital and to provide investors with a higher return on their investment. The suit also alleged that the new fund had been mismanaged, and that the new fund's management had failed to act in the best interests of the new fund's investors. The suit sought to recover the money that had been lost by the new fund's investors.
ABCP aftermath still murky, expert says

Not enough data about the assets underlying bonds

By John Greenwood

If all goes according to plan, Richard McCloskey will look into his company's bank account today and discover a pile of freshly minted bonds in place of about $20-million of ABCP that has been frozen for 17 months.

But the chairman of Baffinland Iron Mines Corp. isn't planning to break out the champagne now that the restructuring of Canada's ABCP market is officially completed.

"We made the decision a long time ago to write this stuff down," Mr. McCloskey said in an interview. "We decided that if we get anything out of [the restructuring], that's good. If not, it's gone. Now it looks like we might be getting something."

But the damage has already been done. Like many of the investors who bought ABCP before the market collapsed in August, 2007, Baffinland was left scrambling when the market froze, forced to line up new financing to keep developing its major operation, a partly built iron mine in the Northwest Territories. The most painful financing was a $20-million debt issue late last year in the depths of the credit crunch where it had to pay a hefty price to complete the deal, according to Mr. McCloskey.

His company's stock was trading north of $3 when the crisis began, but closed yesterday at 18.4.

Another victim of the ABCP debacle was Redcorp Ventures Ltd. of Vancouver, which was left holding about $91-million of frozen paper. The company, whose market value has fallen to about 10% of what it was at the start of the summer, also paid dearly to find new money.

"At a time when the mining industry was going into the gutter, the ABCP issue was a double whammy for Redcorp and a lot of other companies," said Colin Kilgour, an industry expert. "It really hurts when you get all this liquidity tied up like this."

Under the restructuring, which is set to be implemented today, holders will exchange their frozen ABCP for new long-term bonds maturing in about eight years.

More than half the paper is held by a small group of pension plans such as the Caisse de dépôt et placement du Québec who can afford to keep the notes to maturity, but other investors, including about 200 smaller companies and institutions, are not so fortunate. Many of them will likely want to exchange their restructured bonds for cash. But observers say a secondary market for the bonds is unlikely to develop any time soon.

According to Mr. Kilgour, there is still not enough information about the assets underlying the bonds to properly understand them.

"You can't sell this stuff unless people know what they're buying," he said. "If you can't get transparency, it's very difficult to attract investors."

The list of potential buyers would likely be limited to the handful of sophisticated banks that created the original ABCP and who already know what's in it, he said.

Financial Post
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Ruling clears way for ABCP restructuring

INVESTORS RELIEVED

New long-term bond to replace old paper

By John Greenwood

The largest and most complicated restructuring in Canadian history entered the home stretch yesterday after it was approved by Ontario Superior Court Judge Colin Campbell, clearing the way for investors to exchange $32-billion of frozen asset-backed commercial paper for a new long-term bond, starting next week.

The restructuring, first mapped out 17 months ago after the failure of the ABCP market, became bogged down by legal delays and complications caused by the meltdown in financial markets. The final version was only approved by the various stakeholders after Ottawa, Quebec, Ontario and Alberta agreed to provide a $3.5-billion line of credit to cover potential margin calls on complex credit derivatives underlying the frozen debt.

As part of the plan, about 1,800 individual investors will get all their money back, which will take place the week of Jan. 26 under the current timetable.

Lawyers and financial advisors who put together the plan will be paid about $200-million in fees, which will come from interest accruing on the frozen ABCP.

The lion’s share of the frozen paper is held by institutions such as the Caisse de dépôt et placement du Québec and the federal public sector pension fund manager PSP Investments, most of whom support the restructuring.

Observers predict that the new restructured notes are unlikely to benefit from a secondary market and that noteholders will end up holding them to maturity. “While no one could have predicted the scope and extent of the challenges that we’ve faced along the way, we continue to believe in the benefits of this restructuring and are pleased that we are arriving at its long-awaited and successful conclusion,” said Purdy Crawford, the head of an investor committee that oversaw the restructuring.

Financial Post
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ABCPS INTEREST TO GO TO BANK FEES

INVESTORS UPSET

BY JOHN GREENWOOD

Less than three months after the controversial restructuring of $32-billion of asset-backed commercial paper was completed, investors such as Canaccord Capital Inc. and Canadian Pacific have learned they will get little or no interest because the money is needed to pay fees to banks and others that participated in the restructuring.

The trust that issued the notes “does not have sufficient funds to pay the accrued interest,” said Blackrock Canada Ltd., the administrator.

Noteholders include more than 100 companies ranging from auto-parts giant Magna International to several Vancouver mining companies, all of which bought their ABCP before the market freeze-up in 2007 as a short-term investment.

The interest payment of about $11-million came due on Wednesday but the trust had only about 4% of that available to pay note holders.

Many have already written down the value of their ABCP by 50%, said Richard McCloskey, chairman of Baffinland Iron Mines, adding he is “not very focused” on the investment. Baffinland of Toronto bought about $20-million of ABCP before the freeze-up, now valued at about $10-million on its books.

Mr. McCloskey said he is not surprised about the missed interest payment, given the economic environment.

In a statement on April 21, the same day the interest payment came due, DBRS said that under the restructuring agreement, the interest payments are not a legal obligation and that a default will therefore not automatically

DBRS currently has an “A” rating on the top-quality restructured notes, the Class A-1 and A-2 bonds. But yesterday the rating agency said it put some of the Class A-2 notes under review for a possible downgrade because of the failure to pay interest and other problems with the trust.

By the end of last year, there were several billion dollars that had accrued in the ABCP trusts, mostly income generated the underlying assets. But a chunk of that went to pay fees to the players that put together the restructuring, including about $200-million for lawyers.

Another big drain was created by a margin-funding facility to back up the nearly $20-billion of underlying credit default swaps, financed by the government and several banks.

Blackrock blamed the shortfall partly on the decline in interest rates, which it said lowered the income generated by some of the assets underlying the restructured bonds.

“This is not pretty,” said Colin Kilgour, an independent expert advising some of the noteholders. According to Mr. Kilgour, the main problem is that the fee charged by the banks behind the funding facility is significantly higher than market rate.

He said the investor committee that negotiated the restructuring was so intent on getting the job done it ended up agreeing to an “exorbitant” fee. “The interest was supposed to be paid by Wednesday, but I don’t even know how many note holders knew that,” he said, adding that few understand how the investments work.
Lawyers, advisors bill $200M for ABCP

ASSETS STILL FROZEN

BY JOHN GREENWOOD

Canada's market for asset-backed commercial paper remains just as illiquid as it was the day it seized up nearly 17 months ago but the lawyers and financial advisors trying to rescue it have already billed noteholders for nearly $200-million.

According to documents filed in connection with the proposed $32-billion restructuring, lawyers for the investors committee, their financial advisors JP Morgan and others had been paid or submitted invoices for $199.1-million as of Dec. 8, 2008.

The lion's share of that money — $87-million — is going to JP Morgan, the New York financial advisor contracted by the investor committee to figure out how to convert the $32-billion of frozen paper into long term notes.

Meanwhile, thousands of holders of frozen ABCP, including some in financial distress, are still unable to access their investments.

Lawyers for the investor committee are expected to file a motion asking an Ontario Superior Court judge to approve an amended restructuring plan as early as today, paving the way for a court hearing by the end of the week, which is widely expected to result in a positive ruling.

The revised plan is bolstered by $4.45-billion in additional margin facility to support the leveraged credit default swaps that make up the bulk of the assets underlying the frozen ABCP.

The new cash is being provided mostly by the federal government, Ontario and Alberta, which has led some observers to call it a government bailout.

Observers say that if the court gives the green light to the workout as expected, it could be completed before Jan. 16, clearing the way for about 1,800 retail investors to get all their money back as part of a deal announced by Canaccord Capital and Credential Securities.

In a note to clients on Dec. 24, Mark Maybank, Canaccord chief operating officer, called the revised restructuring "an exceptionally important milestone in what has been a long and challenging process, but one that we have great confidence will be completed successfully."

Mr. Maybank said that under the current timetable, retail noteholders would have their money returned the week of Jan. 26.

While individuals will get their money back, the rest of the noteholders are unlikely to be so lucky.

Under the restructuring, the companies and institutions that hold the vast majority of the frozen ABCP will get new notes that they will most likely have to hold until they mature in 2016 since the market for investment products such as this is not expected to thaw.

The market for non-bank sponsored ABCP fell apart in August, 2007, after investors stopped buying and the banks that had agreed to provide emergency liquidity declined to step up. That prompted a group of major investors led by the Caisse de dépôt et placement du Québec to halt the market while they put together a rescue plan.

Critics complain that the restructuring is flawed because it relies on the same group of liquidity providing banks that refused to step up in August, 2007, triggering the market collapse.

The $4.45-billion of additional margin facility was demanded by players such as Deutsche Bank AG, Merrill Lynch & Co. and Citigroup Inc. as a condition for entering into the revised plan.

Financial Post
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Action urged by stranded ACBP investors

BY THERESA TESDECO
Chief Business Correspondent

Canadian financial regulators targeting some of the country’s largest bank-owned investment dealers in connection with the asset-backed commercial-paper crisis are seeking record settlements worth as much as $400-million on behalf of aggrieved retail investors.

Sources say about three dozen investors, representing families and individuals, who were stranded with investments worth more than $1-million each when the $32-billion ACBP market seized in August 2007, have been imploring securities regulators in Ontario and Quebec to take action against the entities that sold third-party ACBP investment products in the weeks shortly before the collapse.

According to well-placed sources, the investors each have investments ranging in value from $1.6-million to $170-million and are based mainly in British Columbia and Quebec.

They began meeting with securities watchdogs last October as the Pan-Canadian Investors Committee, chaired by Purdy Crawford, was negotiating a restructuring plan involving federal and provincial government funds that limited reimbursement to investors with less than $1-million in the commercial paper.

The Pan-Canadian agreement, which was endorsed by the Ontario Superior Court in January, provided investors with more than $1-million in ACBP with longer-term notes that trade little, if at all, because of the ensuing credit crunch.

“This is pressure from those that lost their right to sue” said a source, referring to a clause in the Crawford plan that prohibits actions “to compensate or make restitution to an aggrieved person or company.”

Last week, the Financial Post reported that Ontario and B.C. securities commissions and Quebec’s Autorité des marchés financiers, as well as the Investment Industry Regulatory Agency of Canada (IIROC), are engaged in “very sensitive” settlement talks with a number of brokerages.

Among the firms that received enforcement notices a month ago are National Bank Financial, CIBC World Markets, which is owned by Canadian Imperial Bank of Commerce, and Scotia Capital, which is owned by Bank of Nova Scotia.

See ACBP on Page FP5
Watchdogs have been examining inventories

Continued from Page FPI

Coventree, a key player in the asset-backed commercial-paper market, laid out its exposure to the troubled U.S. subprime-mortgage loans that were backing the commercial paper.

"As the US sub-prime situation unfolds, Coventree continues to monitor our holding with vigilance," stated the July memo sent by email to representatives of a number of investment dealers, among them Scotia Capital, National Bank Financial and RBC Capital Markets.

The memo sent by Judi Dalton, Coventree's former managing director of debt capital markets funding, also stated the finance firm was "committed to furnishing our investors and dealer partners with the information they need to continue to support us through market cycles. We sincerely hope that the additional transparency we provide is a differentiator which will not only add to our credibility but allow us to win the loyalty of our investors and partners."

Sources say securities regulators take the position that the Coventree memo served as an early warning of the crisis about to unfold in the ABCP market.

As a result, the watchdogs have been examining the inventories of the asset-backed commercial paper held by the banks before they received the controversial Coventree memo, and how much they were reduced after receiving the notice.

As well, the securities commissions in Ontario, Quebec and British Columbia are focused on how much the dealers were involved in creating a market in asset-backed commercial paper by buying or selling the paper after receiving the Coventree notice.

The millions of dollars in fines sought by the commissions and IIROC are based on conceptual formulas provided by the regulators that are driven by how much the broker-dealers reacted to the Coventree memo, and how their actions affected the ABCP market.

Monies derived from settlements or administrative hearings by securities regulators are not generally redistributed as compensation directly to investors.

Further complicating matters in this case is the court-approved restructuring agreement crafted by the Pan-Canadian Investors Committee, chaired by Purdy Crawford, which prohibits actions "to compensate or make restitution to an aggrieved person or company."

According to sources, industry participants argue the Coventree memo was intended to calm jitters about the subprime-mortgage crisis unfolding in the United States because there wasn't as much exposure as had been feared.

Sources say settlement discussions between the regulators and the banks are ongoing. Staff at the Ontario Securities Commission issued section 11 orders to compel the brokerages to provide information and documents.

If a settlement is not reached by the end of the summer, sources say a hearing before a panel of adjudicators could be scheduled as early as the fall.

Meanwhile, Coventree is in the process of winding down its operations, and has publicly stated it is the subject of an investigation by the OSC.

Last December, David Wilson, chairman of the OSC, told an Ontario government committeee there was a "reasonable probability" of regulatory action following a probe of the ABCP crisis.

IIROC, the self-regulatory agency for the brokerage industry, raised the issue of conflicts of interest within financial institutions in an October 2006 report that concluded there were "inadequacies" in how well broker-dealers understood the ABCP product they were selling.

Since the ABCP collapse, some investors were reimbursed through a Pan-Canadian agreement, a privately negotiated restructuring involving federal and provincial government money.

At the same time, investors with more than $1-million in the commercial paper were given longer-term notes that trade little, if at all, because of the difficulty valuing the collection of loan assets.

Financial Post
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Supreme Court closes off last avenue of appeal

BY JOHN GREENWOOD AND JIM MIDDLEMISS

Retail holders of asset-backed commercial paper are breathing sighs of relief after the Supreme Court of Canada denied a challenge to a proposed restructuring of $32-billion of frozen ABCP, clearing the way for about 1,400 individual noteholders to get their money back.

"We got pretty lucky is all I can say," said Brian Hunter, a Calgary-based oil and gas engineer who helped organize individual holders.

The lion's share of the frozen ABCP was held by companies and institutions, but a small part, $178-million, was held by about 1,800 retail investors. In connection with the restructuring, those people will get their money back, along with interest, once the deal is completed, which could happen as early as mid-October.

"I'm greatly relieved, but it's been a long road," said Wynne Miles, a retail noteholder in Victoria.

A successful workout will remove a massive problem that has been weighing on the Canadian financial system for more than a year, freeing up liquidity and boosting confidence at a time when both are in short supply. Without it, analysts say, investors would likely lose all their money and the chalice of the trusts would send shock waves through global markets.

"I am pleased that the [ABCP workout] cleared its final legal hurdle this afternoon with the Supreme Court of Canada's decision not to hear an appeal of the Ontario Court of Appeal's ruling in this matter," Finance Minister Jim Flaherty said.

Under the restructuring, the frozen ABCP will be converted into long-term notes maturing in about eight or nine years. The plan was bitterly contested by a small group of corporate noteholders, such as the drugstore

chain Jean Coutu Group Inc., which complained it would face losses.

The Supreme Court appeal was their last chance to block the plan.

"I think it's a shame that a plan that is patently flawed received judicial sanction," said Howard Shapray, a lawyer for Vancouver-based Ivanhoe Mines Ltd.

Canada's third-party ABCP market seized up in August, 2007, after investors began fleeing exposure to subprime mortgages and banks that had agreed to provide emergency liquidity declined to step up. As a result, holders were left unable to sell or redeem their notes.

Most of the paper that ended up in the hands of individuals was sold by Canaccord Capital Corp. and Credential Securities, both of whom played key roles in the deal to buy out the retail investors.

The most controversial aspect of the restructuring was a clause providing legal immunity for the banks and financial institutions that created and sold the notes, a provision that critics said would allow some players to avoid consequences for wrongdoing.

"Today's decision clears the last significant hurdle to completing our work," said Purdy Crawford, head of an investors committee overseeing the restructuring.

The complex plan calls for the participation of more than a dozen banks and financial institutions, including some that have been affected by the recent turmoil in financial markets. Observers say some of them may have incentive to back away from the deal to address their own problems.

"My question is, how motivated are some of these guys going to be to participate in this," asked Daryl Ching, an industry expert who advised some of the noteholders. "I think people should be asking if everyone is still at the table."

Another major concern is that the restructured notes may not enjoy a secondary market, owing to the lack of transparency around the complex credit derivatives underlying them.

Financial Post
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Investors challenge ABCP plan

‘Bought vote’ contrary to public policy, it says

JIM MIDDLEMISS
Behind the Bar

The Supreme Court of Canada needs to step in and overturn the $32-billion asset-backed commercial paper restructuring plan because it was premised on a “bought vote” that is contrary to public policy, argue lawyers for Ivanhoe Mines Ltd. of Vancouver.

Ivanhoe, which holds $70-million of the frozen ABCP, is one of more than a dozen companies yesterday that want to appeal last month’s Ontario Court of Appeal decision, which found that the plan to restructure the third-party ABCP market was “fair and reasonable,” even though it “distasteful.”

The appeal court approved a lower-court ruling by Justice Colin Campbell that sanctioned the plan on the fear that it would otherwise lead to widespread investor losses.

The ABCP restructuring plan, negotiated by the Pan-Canadian Investors Committee headed by lawyer Purdy Crawford, would see current paper turned into long-term notes. In exchange, all parties involved in the ABCP market, must agree to sign releases preventing third-party lawsuits.

That would deny investors the right to sue the banks and brokers that sold them the paper, even though those financial institutions are solvent and are not part of the companies being restructured under the Canadian Creditors Arrangement Act, insolvency legislation that is used in restructurings.

If the plan goes through, then a side deal would see about 1,900 retail investors holding ABCP paid 100% of the funds they are owed. The money would come from Cannacord and Credential Securities, the firms that sold retail investors the paper.

Investors holding more than $1-million in paper, mostly corporate investors, will be stuck with any losses if they are forced to sell them early in the open market.

Ivanhoe lawyer Howard Shapray, took issue with the restructuring plan, saying it confiscated his clients right to property, in this case a possible lawsuit against Bank of Montreal and HSBC Bank of Canada, which sold Ivanhoe the paper.

The releases also impinge on his client’s ability to arrive at a commercially viable settlement because there’s no incentive for them to negotiate.

He said there’s no legal rule that authorizes a court to decide that Party B cannot sue Party A for a meritorious claim because Party B and others would prefer that the court prevent Party A from doing so.

Calling such a legal principle “unthinkable,” Mr. Shapray also attacked the deal to buy the vote of retail investors, arguing that the buying of votes in an insolvency proceeding in which the minority’s rights are being confiscated is contrary to public policy.

Other lawyers have also weighed in on the appeal. James Woods, acting for a group of companies holding more than $600-million of the paper, says if the Ontario Court of Appeal ruling is allowed to stand it will create a “dichotomy in bankruptcy and insolvency law...that could lead to acute uncertainty on a national scale as to the security of commercial transaction and relationships and open the door to abuse of the CCAA mechanism designed solely for insolvent companies.”

The Supreme Court must still decide if it will grant leave to hear appeal, and the respondents, basically the firms that created the ABCP market and Mr. Crawford’s committee, have until Friday to file their legal responses.

Mr. Crawford’s committee maintains that the restructuring won’t fly without the legal releases and the opponents of the plan represent less than 1% of the ABCP market.

BOURIQUE FIRMS

Fogler Rubinoff has been busy adding bodies and building out its corporate practice by landing two boutique law firms, one featuring tax and the other environmental law.

It’s also gaining an Ottawa office in one of the deals, which brings the firm to a 90-lawyer complement.

Birchall Northey, a five-person environmental law boutique with offices in Toronto and Ottawa, has decided to move its practice to the Fogler firm as... shopping itself around earlier this Spring.

Partner Rob Northey says his firm, which includes partner Chuck Birchall, is joining forces with Fogler lawyers Jeffrey Goldenberg and Joel Farber to create a new municipal and environmental law department.

“We are looking forward to making Fogler’s depth of resources available to our existing clients and adding depth and breadth to Fogler’s environmental law expertise for its clients,” Mr. Northey says.

Mr. Birchall and associate Kristi Ross, will continue to practice in Ottawa, while Mr. Northey will move to Fogler’s Toronto office and continue with his environmental litigation practice and providing “cutting-edge advisory work on environmental assessment law.”

Mr. Northey says his boutique firm’s size “didn’t make it easy for us to expand. Lawyers are expensive and we had a hard time finding somebody good. It was a real Catch-22.”

Using a headhunter, the boutique was introduced to one law firm, but concluded it wasn’t the right fit and the headhunter then suggested the Fogler firm. Mr. Northey had once practised, at a Toronto meg-firm was wasn’t looking to go back to a similar environment. He thinks the Fogler situation presents more opportunities.

His firm used to do a lot of environmental work on behalf of proponents, companies looking to carry out projects that had an environmental impact.
City is lowballing
ABCP losses: analyst

Estimate of $14.4 million? Try $49 million

BY RACHEL DeLAZZER

A financial analyst says Hamilton is seriously underestimating its losses in the asset-backed commercial paper (ABCP) meltdown.

City finance manager Joe Rinaldo has estimated the loss at $14.4 million on an investment of $97 million, but Diane Urquhart, a Mississauga-based independent financial analyst, says that number is likely much closer to $50 million.

In its 2007 financial report, the city has allowed for a loss of $14.4 million stemming from the ABCP market. Rinaldo says that is a caution that the city hasn’t actually lost anything as the investment mess sorts itself out.

Last year, Hamilton put $97 million of its $691-million investment fund in ABCP.

The ABCP notes were a type of short-term debt security that had been considered relatively safe until demand suddenly evaporated last year due to actions in other areas of the financial market.

But last August, ABCP investments plummeted in value, mainly due to instability in the U.S. sub-prime mortgage sector and a softening of the American real estate market.

Municipalities normally invest in instruments that earn a bit less but offer greater safety. The city’s asset mix is approximately 37 per cent short-term 90-day investments (predominantly major Canadian banks) and 63 per cent long-term bonds.

The investments are primarily government and municipal bonds. City investments are all regulated by the Ontario government, so Rinaldo says Hamilton’s investments are similar to other municipalities.

In the late 1990s, the province gave municipalities permission to invest in ABCP notes because, at that time, Rinaldo said, they were triple-A rated.

A group of investors is trying to renegotiate the ABCP notes into nine-year investments. That would give some hope they would recover and minimize losses. A judge must approve that plan and it would see investors, such as Hamilton, receive its principal with interest over the course of the nine-year term.

Rinaldo says reporting an allowance amount for the possible loss is simply a requirement of financial reporting standards. He says there are no implications for the city in having the money tied up for nine years as it has bought long-term bonds before.

The ABCP represents 12 per cent of the city’s $691-million investment portfolio, so Rinaldo says the city should have no issues in terms of liquidity and it can adjust its investments accordingly. The city also has between $400 million and $500 million in cash reserves.

Urquhart believes it’s unlikely the city will recoup its full principal. She also says the city’s estimated 15 per cent loss is too low and that a more accurate estimate would be between 25 and 50 per cent. That could mean a loss as high as $49 million.

Urquhart bases that on a Superior Court valuation that pegged the loss at 51 cents on the dollar. She says other financial institutions have reported much higher writedowns.

Rinaldo says the city’s 15 per cent estimate is in line with those of most other ABCP investors.

Urquhart says that, while most investors are indeed estimating writedowns of well below 25 per cent, they’re off the mark.

“Those are others doing what Hamilton is doing, but we’re saying that’s not realistic.”

rdelazzer@thespec.com
905 526-3404
— With files from Daniel Nolan,
The Hamilton Spectator
Pact may rescue city’s $97 million

Finance chief hopeful tentative deal to restructure frozen debt holdings from crisis over asset-backed commercial paper will see full return of principal

BY ROB FAULKNER

Hamilton’s finance chief is optimistic about a tentative pact to rescue value from a controversial investment that tied up nearly $100 million in city money.

Hamilton had $97 million of its $691-million investment fund in asset-backed commercial paper (ABCP), a form of short-term securities made up of mortgages or other debt.

ABCP was thrown into limbo by a crisis surrounding investments exposed to the U.S. subprime mortgage market collapse.

Investors got some clarity from the Montreal Accord, a team of investors trying to salvage value from ABCP, with a statement over the weekend.

The team announced an agreement in principle to restructure $33 billion worth of frozen debt holdings. It’s expected that most holders of the debt-based investment will get their full principal back, by holding restructured notes with a new longer maturity date. It’s believed the restructured notes will also get a solid AAA rating.

“It will be a floating note rate, so with interest rates declining, that’s positive,” said city finance chief Joe Rinaldo, who wants to see documents from the Montreal Accord on the restructing.

He expects a floating rate for restructured ABCP to be higher than current market interest rates, so it may outperform paper pegged to the interest rate.

Essentially, the deal will see short-term ABCP exchanged for longer-term holdings. A key piece of the plan involves a $14-billion margin funding facility arranged by investors and financial institutions such as banks.

Both Rinaldo and one analyst say the banks’ involvement is a positive step.

Mississauga-based independent financial analyst Diane Urquhart said it is “positive news” banks are stepping up to cover potential losses, with the $14-billion margin funding facility.

“At the beginning of this exercise, the banks were nowhere to be seen;” she said, noting investors outside the Montreal Accord have only a statement by Bay Street lawyer Purdy Crawford to go on, not the full details.

She suspects there is a formula behind the margin loans that will see the banks assume some of the losses Crawford hints at, but what proportion is unclear. She said the formula may see banks eat 100 per cent of losses, or share it 90/10 or 80/20 with investors, for example. She said details may not come until the end of the maturity period.

But there are still questions, among them: If ABCP holders get just principal back, will they be upset to not get interest money frozen in this debt paper?

“Because the restructured notes will have a higher interest rate, if there is a loss of interest, I’m hoping it will still be close to market value,” said Rinaldo, who was unwilling to predict if the city will get all $97 million of its principal back.

Over the years, Hamilton has had 3 to 14 per cent of its investment fund in ABCP. The city was at a high point in its relative ABCP holdings as the crisis hit. The agreement in principle is expected to be voted on by note-holders in February, and the Montreal Accord expects the deal to close in March 2008.

rfaulkner@thespec.com
905-526-2468
Q: How independent is the Study Group?

A: We are 100 per cent independent from Taro and any other interest group. We are participating in the process to monitor Taro’s actions - like a watchdog - and to make sure Taro takes every step with the community present and vigilant. The minutes of the past three years of Study Group meetings will clearly show that we have opposed Taro on many issues.

The Study Group feels strongly that if a landfill goes ahead, the community must continue to be involved.

We have received some criticism from people over the fact that Taro paid for the Study Group to retain independent peer reviewers and legal advice. We see it differently. It is common practice in Ontario for corporations and governments to provide funding for community-based organizations who want to have a say in an aspect of the company's business that may affect the community. We wouldn’t have had any other way to pay for those services. And we think it was far more important to get the work done than to refuse Taro’s funding and lose the opportunity to retain independent experts. The advice we’ve received from these consultants has gone a long way in protecting our interests and yours.

Q: Does the Study Group support Taro’s landfill proposal?

A: Our job was and continues to be to participate in the environmental assessment of the landfill and negotiate compensation and benefits for the community if the landfill site is approved. We will decide whether or not we support the environmental assessment once we conclude negotiations with Taro on the terms and conditions of the landfill operations and community compensation package.

What the Study Group does not support is the way in which Taro originally chose the East Quarry as the site on which to conduct an environmental assessment. We felt there may have been other sites in the region that could have been considered that were not. Of the options Taro did consider, the East Quarry was considered by the Study Group to be the “least of all evils.”

Q: How much say will residents have if a landfill goes ahead?

A: The Study Group feels strongly that if a landfill goes ahead, the community must continue to be involved. As part of the terms and conditions agreement that we are negotiating with Taro, we have proposed a Community Liaison Committee.

It would act as an ongoing watchdog of the site for the community and provide a communication link between the community and Taro. Members would meet at least twice a year to review operating and monitoring reports and present complaints or concerns from the community. The Community Liaison Committee would continue throughout the operational life of the landfill and then as long afterwards as the community felt any need for it.

Members would include:
- four community representatives - two from within 1,500 metres of the landfill site and two from within 600 metres of the designated haul route
- two Taro representatives
- one representative each from the City of Stoney Creek, Regional Municipality of Hamilton-Wentworth and MOE.

Q: Any last words from the Study Group?

A: The establishment of a Community Trust Fund (see back page) and an ongoing Community Liaison Committee may be the most significant achievements to come out of the Study Group’s involvement in this process. We care about our city just as much as our local politicians and any other lobby group, and think our record speaks for itself in what we’ve tried to do for the city and its residents. We think we’ve represented the community well and hope we have your support to continue.

Aerial view of Taro’s proposed landfill site and public park in Upper Stoney Creek.
East Quarry in an environmentally acceptable manner provided that the site is subject to terms and conditions to ensure environmental safety. The peer review team of Taro's Study Group found that the site can be developed and operated in an environmentally safe and sound fashion subject to terms and conditions.

2. The matters identified by the majority of the Government Review Team can be addressed through terms and conditions attached to the approval.

3. The Regional Municipality is not opposed to the application, subject to certain conditions.

4. The Regional Health Department, with support from McMaster University, is of the opinion that there would be no significant health impacts from operation of the East Quarry Landfill Site.

4. Many of the concerns noted by members of the public will be addressed through terms and conditions of approval under the Environmental Assessment Act and Environmental Protection Act.

5. The Study Group which was involved from the beginning of the project is of the view that the project can proceed subject to terms and conditions.

6. While the Council of the local municipality does not support the project, there are no overriding environmental issues which cannot be adequately addressed through terms and conditions.

Dated the 15th day of July, 1996 at TORONTO.

[Signature]

Minister of Environment and Energy
135 St. Clair Avenue West
12th Floor
Toronto, Ontario
M4V 1P5

Approved by O.C. No. ________
On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

WHEREAS by Order in Council Number 1422/96, the Minister of Environment and Energy was given authority under the Environmental Assessment Act to approve an undertaking by Taro Aggregates Ltd., and

WHEREAS requirements for a hearing relative to the undertaking were received and considered, as the Order in Council correctly recites in its second paragraph.

THEREFORE, the third paragraph of the Order in Council, which erroneously states:

"WHEREAS no notices requiring a hearing have been received by the Minister of Environment and Energy;"

is hereby deleted.

Recommended
Minister of Environment and Energy

Concurred
Chair of Cabinet

Approved & Ordered AUG 14 1996

O.C./Décret 1537/96
COMMUNITY LIAISON COMMITTEE

The Company in consultation with the City shall provide for the establishment of a Community Liaison Committee (CLC) within 120 days of the issuance of this Certificate for the purpose of providing community review of the development, operation, ongoing monitoring, closure and post closure care related to the landfill site. The CLC shall act as a vehicle for communication between the Company and the community and to provide the opportunity for the CLC to make recommendations to the Company and the Ministry or any other appropriate authority on matters of concern to people affected by the Company’s operations.

The general mandate of the CLC shall be to:

a) review and provide recommendations on annual operating and monitoring reports; and

b) review and provide recommendations on complaints and complaint handling protocols and any other matters of concern to the community.

Membership on the CLC shall be available on the following basis:

a) two representatives of the Company;
b) one representative of the City of Stoney Creek;
c) one representative of the Regional Municipality of Hamilton-Wentworth;
d) one representative of the MOEE;
e) two community representatives from within 1,500 metres of the Site; and
f) two community representatives from within 500 metres of a designated haul route.

The MOEE representative shall be non-voting.

The Company shall allow the CLC to prepare Terms of Reference for the CLC. The Company shall submit a copy of the Terms of Reference for establishing the CLC to the Regional Director. Any subsequent changes to the Terms of Reference for the CLC shall be forwarded to the Regional Director. A copy of the terms of reference for the CLC shall be publicly available.

The Company shall provide a maximum of $10,000 annually for the reasonable administrative costs of establishing and operating the CLC, including the cost of meeting places, clerical services and consultants to be retained by the CLC for the purpose of reviewing reports provided by the Company. The amount of $10,000 shall be reviewed at a minimum frequency of every five years.
16. That the City of Hamilton endorse the continued operation of the TARO East Community Liaison Committee;

That the City of Hamilton petition the Minister of the Environment to enforce the current Certificate of Approval that requires Philip Services Inc. to participate in such a process. **CARRIED.**

17. **Political Oversight Committee (Motion - No copy)**

That the issue of a political oversight committee be referred to the Mayor and City Manager for further review. **CARRIED.**

**FOR THE INFORMATION OF COMMITTEE:**

Mayor Wade extended condolences to Queen Elizabeth and the Royal Family on the passing of the Queen Mother. A Book of Condolences will be available at Hamilton City Hall for signing.

a) **DECLARATIONS OF INTEREST**

None declared.

b) **ADOPTION OF MINUTES**

The Minutes of March 19, 2002 were received and adopted as presented.

c) **DELEGATION REQUESTS**

3.1 Request to address Hearings Sub-Committee by Mr. Gianni Cossa of VFT Inc. respecting impacts on neighbourhoods by commercial and industrial developments

This request was referred to the Emergency Control Group for a report back to Committee of the Whole

3.2 Request to address Hearings Sub-Committee by Mr. Elmer Fyfe respecting one-way/two way streets

This request was referred to staff.

3.3 Request to address Hearings Sub-Committee by Steve and Jeanne Grzenda respecting hockey system


April 2, 2002

The Honourable Elizabeth Witmer
Minister of the Environment
135 St. Clair Avenue West, 12th Floor
Toronto, ON M4V 1P5

Dear Minister:

I was recently contacted by Philip Services Inc. in regards to their participation on the Taro East Landfill Community Liaison Committee (CLC). As you are well aware, the operation of a CLC is a requirement of the Company's Certificate of Approval. They have contacted your Ministry to amend their C of A to disband the Committee, essentially severing all ties with the community and the local municipality.

As a member of the Committee, I want to stress the need and importance of such a committee to ensure area residents and the citizens of Greater Hamilton, remain well informed in regards to the ongoing operation of the Landfill.

I trust your Government recognizes the importance of community participation and consultation as it relates to all matters that affect local neighbourhoods and quality of life issues.

Your continued support of the current certificate of approval is absolutely essential to allow the citizens of our community an opportunity to liaise with the operator, the City of Hamilton, and the local office of the Ministry of the Environment.

City Hall, 31 Main Street West, Hamilton, Ontario, Canada L8P 4Y5
Tel. (905) 546-2716 • Res. (905) 546-2727 • Fax (905) 546-2535 • E-mail: ccollins@city.halton.on.ca
Philip's move to end community group is 'absurd': Brad Clark

By ERIC McGUIinness
Environment Reporter
The Hamilton Spectator
STONY CREEK

Philip Services Inc. wants the province to disband the Taro East Landfill Community Liaison Committee (CLC), complaining it is dysfunctional, hostile and unworkable.

The response of Stony Creek MPP and Transportation Minister Brad Clark: "In a word, absurd!"

Clark, who led a citizens' group opposed to the landfill before entering politics, says: "They (Philip) simply don't like the fact the CLC has taken its job very seriously and is doing a very good job. It's concerned and genuinely wants to eliminate any risk. It will do anything in its power to ensure the landfill is safe." He says the company is in the process of closing the landfill and says Philip's proposal was a condition of the new approval.

In a reference to Philip pulling out of its contract to run Hamilton's blue box recycling service last year, Clark says: "The company has a track record of backing away from its responsibilities. I will write to the minister warning of the need for the government to enforce the certificate of approval. To disband the committee would be counterproductive. I think we have accomplished a lot."

"It can get testy at times, but they had to know opening a landfill in an established residential community would be controversial, not just at the beginning, but for its whole life."

Philip refused to participate in the CLC's February meeting, saying it wanted time to consider its options. Then it sent lawyer Andrew Orkin to represent it at the March meeting. His presence triggered a raucous session that ended with the committee voting to suspend meetings until the Ministry of the Environment announces the new proposal to allow the

You can contact Eric McGuinness at emcguinness@hamiltonspectator.com or at 905-526-4650.
BY EMAIL and/or MAIL

July 25, 2002

Councillor Anne Bain
City Hall - 2nd Floor
71 Main Street West
Hamilton, Ontario L9P 4Y5

Councillor Chad Collins
City Hall - 2nd Floor
71 Main Street West
Hamilton, Ontario L9P 4Y5

Mr. Dave Barlow
227 First Road
Stoney Creek, Ontario L8J 1H4

Mr. Charles Eleved
915 Upper Ottawa Street
Hamilton, Ontario L8T 3V6

Mr. Geoff Carpentier
Ministry of the Environment
119 King Street, West
9th Floor, P.O. Box 2112
Hamilton, Ontario L8P 4Y7

Mr. Paul Kurulek
991 Green Mountain Road
Vinemount, Ontario L8J 3A1

Dear Ms. Bain and Messrs. Barlow, Carpentier, Collins, Eleved and Kurulek:

RE: FORMER TARO LANDFILL COMMUNITY LIAISON COMMITTEE

Further to the email to you of June 17, 2002 containing a Philip Services Corporation ("PSC") Press Release of the same date, this letter is to confirm the status of the former Taro Landfill Community Liaison Committee ("CLC").

In its Press Release of June 17, PSC indicated that it could no longer participate in the former CLC, and took immediate steps to meet the requirements of constructive and respectful Taro neighbourhood liaison through a new liaison committee involving immediate neighbours of the Taro Landfill.

The core reason the former CLC was established was liaison between PSC and the immediate neighbours of the Taro Landfill within a defined area. For the past five years, PSC funded and participated in the former CLC. In light of the formation of a new liaison entity and the absence of PSC participation at the former CLC, the former CLC is no longer required.

Various efforts were made over the past five years, and PSC acknowledges your voluntary participation. However, there were very differing views of the mandate of the
AMENDMENT TO PROVISIONAL CERTIFICATE OF APPROVAL
WASTE DISPOSAL SITE
NUMBER A181008
Notice No. 6

Philip Services Inc.
519 Parkdale Ave. North
Hamilton, Ontario
L8H 5Y6

Site Location: Taro East Quarry Landfill Site
Part of Lots 25 and 26, Concession 6
Stoney Creek City, Regional Municipality of Hamilton-Wentworth

You are hereby notified that I have amended Provisional Certificate of Approval No. A181008 issued on September 6, 1996 for a landfill site, as follows:

Condition 103 is hereby added:

(a) By September 25, 2002, the Company shall arrange with the Chair of the Environmental Review Tribunal, to appoint a representative from the Tribunal to conduct a public process which includes consultation with the local community, to develop revised Terms of Reference for a CLC. The proposed Terms of Reference shall include:

(i) A role of a CLC that is in accordance with the environmental assessment document entitled "Taro Aggregates Ltd. Proposed East Quarry Landfill Environmental Assessment" dated January 1995 and supporting documents;

(ii) Clearly defined membership and selection criteria;

(iii) Consideration of the amount of funding required for the administration of the CLC;

(iv) Development of a dispute resolution mechanism for the CLC to solve future concerns; and

(v) Development of a process for future amendment of the Terms of Reference.

(b) If the public process referred to in Condition 103(a) can not be completed by November 15, 2002, then the Company shall submit to the Director, a progress report, which provides details on the progress reached to that date and a schedule for completing the remainder of the public process.

(c) Within ten (10) days of concluding the public process, the Company shall submit, to the Director, a report written by the representative from the Tribunal which details the results of the public process referred to in Condition 103(a) and any proposed changes to the Certificate of Approval, for his consideration and shall also submit to the Director, for approval, any
(j) That the By-law will be in effect on the date of approval by the Minister of Environment.

(k) That section 7(2) of the By-law be amended as follows: "That there be a limit on all construction from 7:00 p.m. to 7:00 a.m."

(l) That where noise is isolated and known that an enforcement process be initiated.

Councillors T. Jackson and B. Morelli indicated that they wished to be recorded as OPPOSED to sub-section (g) of this item.

CARRIED

(Collins/Merulla)
That Rule 13.9 of the City's procedural by-law be invoked for this meeting of City Council to allow the introduction of a motion respecting the Taro East CLC

CARRIED

(Collins/Merulla)

That the City of Hamilton petition the Province of Ontario and the Environmental Review Tribunal to retain the current Taro East CLC under its current terms of reference.

That should a new CLC be established, Council petition the ERT to ensure continued Council Representation on the Committee.

That Council petition the ERT and MOE to ensure proper funding is provided to support the CIC's mandate

(Dianni/Mitchell)
That the following sub-section be tabled for two weeks:

That the City of Hamilton petition the Province of Ontario and the Environmental Review Tribunal to retain the current Taro East CLC under its current terms of reference.

CARRIED

The motion as amended was CARRIED

(McCarthy/Mitchell)
That Rule 13.9 of the City's procedural by-law be invoked for this meeting of City Council to allow the introduction of a motion respecting pooling of Social Services in the Halton/Niagara area

CARRIED

(McCarthy/Kelly)
That staff work with Halton Region to pursue pooling of Social Services in the Halton/Niagara area and to report back to Committee of the Whole.

CARRIED
May 3, 2004

Director, Environmental Assessment and Approvals Branch
Ontario Ministry of the Environment
2 St. Clair Ave West, Floor 12A
Toronto, Ontario
M4V 1L5

PSC Services Holdings Inc. and
PSC Industrial Services Canada Inc.
519 Parkdale Avenue North
Hamilton, Ontario
L8H 5Y6

Dear Sirs:

Re: Council Appointments to the Taro Landfill Community Liaison Committee

City Council, at its inaugural meeting held December 3, 2003, approved Council appointments for the 2003-2006 term of Council to Boards, Agencies and Advisory Committees.

Please be advised that the following Councillors have been appointed to serve on the Taro Landfill Community Liaison Committee:

<table>
<thead>
<tr>
<th>Councillor</th>
<th>Contact Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Councillor Phil Bruckler</td>
<td>(905) 546-2703</td>
</tr>
<tr>
<td>Councillor Chad Collins</td>
<td>(905) 546-2716</td>
</tr>
</tbody>
</table>

It would be appreciated if you can advise the undersigned of the expectation of a meeting schedule that can be conveyed to the Councillors, as well as the process of delivery for any agenda material.

Should you have any questions respecting this appointment, please do not hesitate to contact me.

Yours truly,

[Signature]
Rose Caterini, B. Comm., AMCT
Deputy Clerk/Manager of Legislative Services & Records

RC: sr

c.c. Councillor Bruckler
     Councillor Collins
     Geoff Carpentier, District Manager, Ontario Ministry of the Environment,
     Hamilton District Office, Ellen Fairclough Building, 9th Floor,
     119 King Street West, Hamilton, Ontario L8P 4Y7
(d) To Incorporate Certain City Land Into Various Streets by By-law (PW04130) - (Affects Wards 6, 9, 11) (Item 6.2)

As per the changes to the agenda, the Committee received Report PW04130.

(ii) Delegations:

Mr. Charles Eleveud of the Taro Landfill Community Liaison Committee, October 26, 2004, respecting policies regarding leachate and the certificate of approval for the waste facility at 52 Imperial Street. (Item 7.1).

Mr. Eleveud addressed Committee and expressed his concerns that the control over two large landfills which are contaminating City water is not in the City's hands.

He questioned whether members have been appointed to the Taro Landfill Community Liaison Committee in accordance with the landfill's Certificate of Approval.

He provided a history of the Taro Landfill and referred to media coverage which claimed that Taro contains hazardous waste. He indicated that members of the Community Liaison Committee are frustrated by their powerlessness in dealing with the operator.

On a motion the Committee received Mr. Eleveud's presentation.

The Chairman requested that Mr. Eleveud provide a copy of his presentation to the Clerk.

On a motion, the Committee directed that an update be requested from the Province.

Mr. Eleveud asked that he be kept informed of the situation and the Chairman offered to do so through his office.


Mr. John Mokrycke, Chairman of the Downtown B.I.A., addressed Committee and expressed the organization's concerns with the image of the City's Downtown.
3. City of Hamilton issues.

On April 2, 2002, Hamilton City Council discussed Agenda, Item 16.
Taro East Community Liaison Committee (motion no copy.)
a. Hamilton City Council endorses continued operation of the Taro CLC.
b. Council petitions MOE to enforce the current CofA that requires PSC to participate.
   Carried.

Taro East CLC members again petitioned City Council to enforce the current landfill’s Certificate of Approval. We received the following response from the City Clerk, dated September 26, 2002:
"Council, at its meeting held on September 25, 2002, considered your correspondence requesting the City of Hamilton to enforce the rules of the current Taro landfill Certificate of Approval."
"Please be advised that Council has referred this correspondence to the General Manager, Transportation, Operations, and Environment for a report to the Committee of the Whole."
We are still waiting. That is where it died.

When City Council was asked for the second time to endorse the present CLC and the Conditions in the Certificate of Approval, Council decided to wait for a decision by the Environmental Review Tribunal, appointed to settle the dispute between the CLC and Taro.

After many frustrating and time consuming meetings under Vice-Chair Knox Henry, we were advised that there had been a procedural error and Vice-Chair Henry recused himself and we had to start the whole process over again.

At the start of the Re-Hearing proceedings on February 25, 2004, before Vice-Chair Mr. Douglas Pearson, Mr. Douglas Hodson, Counsel for PSC Industrial Services Canada Inc. informed the new Vice-Chair that Philip Services Inc., that the Appellant for whom he had previously acted, had declared bankruptcy on December 30, 2003, and would not appear at the Hearing. He noted that the new owner of the Taro Landfill was his client, PSC Industrial Services Canada Inc. and that this Company did not want to be a party to the Hearing. He stated that PSC Industrial Services Canada Inc. considered itself bound by the existing CofA and had applied to the Director for the CofA to be issued in its own name.

Mr. Hodson also stated that he intended to apply to the Director for certain amendments to the CofA... It was his submission that the Hearing under the circumstances did not need to go ahead.

Upon an invitation from Vice-Chair David Person, no one objected to the termination of the Hearing. This ends another step in the never ending process that has tied the Taro East CLC in endless legal knots. If we may summarize the sentiment of the CLC members, it is that we feel hopeless, helpless and powerless. Is it any wonder that the Expert Panel concluded that "it was the Company's aggressive tactics that led to the climate of fear and distrust, not helped by the troubles of the parent Corporation. "Aggressive" is an understatement. The basic perception is that the Company will stop at almost nothing to run this operation without consideration for community or environment.
December 16, 2004

The Honourable Leona Dombrowsky  
Minister of the Environment  
135 St. Clair Ave W, 12th Floor  
Queen’s Park  
Toronto ON M4V 1P5

RE: Presentation by Mr. Charles Elefald Concerning the Taro East Landfill Community Liaison Committee

Dear Madam Minister:

As you may be aware the Certificate of Approval for the Taro Landfill in the City of Hamilton requires that a Community Liaison Committee be appointed.

On December 8, 2004, the Public Works, Infrastructure and Environment Committee entertained a delegation from one of the Committee members, Mr. Charles Elefald, expressing concerns about the status of the liaison committee relative to the Certificate of Approval and outstanding issues with respect to the Committee. City Council, at its meeting held on Wednesday, December 15, 2004 approved Item 3 of the Public Works Infrastructure and Environment Committee Report 04-021 as follows:

3. That a letter be forwarded to the Ministry of the Environment to enquire about the status of the membership of the Taro Landfill Community Liaison Committee and other outstanding issues with respect to the Committee.

More specifically the Ministry of the Environment issued a Certificate of Approval to Taro Aggregates with a number of conditions. One of those conditions is that Taro Aggregates, in consultation with the City of Stoney Creek (now part of the City of Hamilton), establish a Community Liaison Committee.

Following the 2003 municipal election, Council appointed Councillors Phil Bruckler and Chad Collins to the Taro East Landfill Community Liaison Committee. However Mr. Elefald advised Council that there is not presently an active liaison committee. If this is
the situation, it would appear that Taro Aggregates is not complying with their Certificate of Approval.

It would be greatly appreciated if you could have your staff investigate this situation so that the status of the Taro Landfill Community Liaison Committee can be updated and the public consultation requirements returned to the community.

Thank you for your consideration of Council's request.

Yours sincerely,

Larry D'Alanni
Mayor

Copies to: Glenn Peace, City Manager
Scott Stewart, General Manager, Public Works
Kevin Christenson, City Clerk
Beth Goodger, Director of Waste Management
Jim Harnum, Director of Water and Wastewater
Mr. Charles Eleved, Taro East Landfill Community Liaison Committee
MAR 0 4 2005

His Worship Larry Di Ianni
Mayor
City of Hamilton
71 Main Street West
Hamilton ON L8P 4Y5

Dear Mayor Di Ianni:

Thank you for your letter of December 16, 2004 with respect to the Taro Aggregates Community Liaison Committee.

Operators of the Taro East and West Landfills, PSC Industrial Services Canada Inc. established the Taro Neighbourhood Liaison Committee and met the requirements of their certificate of Approval. Included in the list of members for the committee is Councillor Bruckler who was presented with the Terms of Reference for the committee at their October 2004 meeting. Other members of the committee include Ms. Kathy Wakeman, Mr. Steve Campbell, Ms. Nancy Hackett, Mr. Wayne Jackman and Mr. Mark Loney. It should be noted that Mr. Eleveld, who brought his concerns to your Council, was a member of the former Community Liaison Committee.

With respect to your concerns about public consultation requirements, the Taro Neighbourhood Liaison Committee hosted an Open House on November 6, 2004 which was advertised twice in the Stoney Creek News. Councillor Bruckler was personally invited to attend the Open House during the Committee's October meeting.

Given this information, it would appear that the December 6, 2004 advisement to Council that there was not presently an active liaison committee was incorrect. If you require additional information about the Taro Neighbourhood Liaison Committee, we encourage you to approach Councillor Bruckler or call Mr. Wayne Jackman of PSC Industrial Services Canada Inc.
Council Direction:

At the September 25, 2006 Public Works, Infrastructure and Environment Committee meeting, direction was given to staff to prepare a chronological report respecting the Taro Community Liaison Committee.

Information:

The following is a chronological summary with respect to the key issues involving the community liaison committee for the Taro East Landfill Site, so that the Public Works, Infrastructure and Environment Committee and Council can determine what action, if any, they would like to take at this time respecting the community liaison committee.

Taro East Landfill Site Certificate of Approval

September, 1996

The establishment and operation of a community liaison committee (CLC) for the Taro East Landfill Site is a requirement of the original Certificate of Approval issued by the Ontario Ministry of the Environment (MOE) for the Taro East Landfill Site. As required by the Certificate of Approval, Terms of Reference were prepared for the CLC and submitted to the MOE. The original Certificate of Approval indicates that the CLC membership would include one voting member representing the former City of Stoney Creek and one voting member representing the former Regional Municipality of Hamilton-Wentworth.

City of Hamilton Council has been appointing two councillors as the City of Hamilton representatives on the CLC. Since the creation of the new City of Hamilton on January 1, 2001, there have been two sets of appointments. For the 2001-2003 term of Council, the City of Hamilton appointees were Councillor Collins and then Councillor Bain. For
the 2003-2006 term of Council, the appointees were Councillor Bruckler and Councillor Collins. With respect to those most recent appointments, the City Clerk’s Office sent a letter to the company and to the MOE regarding these appointments but did not receive any reply.

September, 2002 – February 25, 2004

The MOE has issued several amendments to the Taro East Landfill Certificate of Approval over the past several years, two of which involved the CLC. These two amendments were issued by the MOE in September 2002 and contained the following conditions with respect to the CLC:

1. the company shall establish a health sub-committee of the CLC to address health concerns related to the Taro East Landfill Site (condition 98).

2. within six months of the date of the amendment, the company shall submit to the Regional Director of the MOE for approval, the Terms of Reference of a health study that is to be undertaken with a focus on the community immediately adjacent to the site (condition 99).

3. by September 25, 2002, the company shall arrange with the chair of the Environmental Review Tribunal, to appoint a representative from the Tribunal to conduct a public process which includes consultation with the local community, to develop revised Terms of Reference for a CLC. The proposed revised Terms of Reference were to include, among other things, clearly defined membership and selection criteria as well as consideration of the funding required for the administration of the CLC (condition 103).

The former owner of the Taro East Landfill Site appealed those amendments to the Environmental Review Tribunal (ERT) but ultimately abandoned its appeal on February 25, 2004 due to its involvement in insolvency proceedings. The company indicated at that time that it would be making an application to the MOE to amend the Certificate of Approval instead.

It should be noted that during the ERT proceedings, the City of Hamilton held "presenter" status and based on Council direction provided in November, 2002, was maintaining the position that two voting representatives of the City of Hamilton (not staff members) remain on any new CLC that is established, and that there be proper funding of the CLC.

Further, during the ERT proceedings, the ERT did revoke two of the conditions from the Certificate of Approval, namely condition 99 which required the completion of a health study within six months of the date of the certificate of approval amendment and condition 103, which revoked the requirement that a public process be conducted by a representative of the ERT, which included consultation with the local community, to develop revised terms of reference for a community liaison committee.

As a result of the revocation of the above conditions, the only requirement contained in the two Certificate of Approval amendments which were the subject of the ERT hearing that remains outstanding is the requirement that a health subcommittee of the community liaison committee be formed (condition 98). There is no time requirement in this condition.

March 3, 2004
The company subsequently submitted an application to the MOE to further amend its Certificate of Approval, including proposed amendments to the CLC provisions. The MOE has not yet processed this application and no timelines have been set for this processing to occur. It also appears that notice of this application has not been posted on the Environmental Registry. Legal Services has specifically asked the MOE to advise it when the amendments are addressed by the MOE.

**Taro Neighbourhood Liaison Committee (TNLC)**

In the meantime, a new CLC has been established by the company called the “Taro Neighbourhood Liaison Committee” (TNLC). The company is no longer meeting with the previous CLC members. New Terms of Reference have been prepared for the TNLC and submitted to the MOE. City Council has not commented on those Terms of Reference. Those new Terms of Reference are attached as Schedule “A” to this report. For your assistance, the Terms of Reference for the original CLC are also attached as Schedule “B” to this report.

It is our understanding that the TNLC is following the new Terms of Reference attached as Schedule “A” to this report.

The new Terms of Reference do not correspond completely with the provisions of the current Certificate of Approval and appear to reflect the amendments to the Certificate of Approval requested by PSC on March 3, 2004. In particular, under the proposed new Terms of Reference, the City of Hamilton is to have one representative who would be selected by the company from a list provided by the City. There is also no reference to a MOE representative on the TNLC. Under the provisions of the current Certificate of Approval, there is to be one MOE representative who is a non-voting member.

The new Terms of Reference for the TNLC also differ from the previous Terms of Reference for the original CLC. For example, the new Terms of Reference alter the meeting structure of the committee reducing them from monthly to quarterly meetings with no reference to public notice of each meeting. There is also no specific reference to the funding of the TNLC other than in section 2 in which it states that the owner will “also cover all expenses relating to meetings and costs of participation as may be required by the Certificate of Approval” and in section 13 with a reference to the facilitation of outside experts by the company as appropriate to assist the TNLC “on an issue by issue basis”. Further, the procedure for addressing public complaints associated with the Taro East Landfill Site, as contained in the new Terms of Reference, is not as detailed as the complaint procedure set out in the previous Terms of Reference for the original CLC.

It is our understanding that the MOE has not made any specific comments on the Terms of Reference submitted for the TNLC. It is expected that these Terms of Reference would be addressed by the MOE at the time that the company’s 2004 application for the amendment of the Certificate of Approval is addressed.

**City Council Resolutions**

The following resolutions have been passed by City of Hamilton Council since 2001 regarding its position on the community liaison committee for the Taro East Landfill site:

October 30, 2001
SUBJECT: Community Liaison Committee for the Taro East Landfill Site
(LS06013/PW06129) - (City Wide) - Page 4 of 5

a) That Hamilton City Council provide a one-time operating grant to the Taro Community Liaison Committee in the amount of $18,000;

b) That the Finance and Corporate Services Department determine the source of funding, and that strong consideration be given to the Taro Royalty Fund;

c) That the Community Liaison Committee be encouraged to apply through the City's grants process for any future funding requests.

November 13, 2002

(a) That should a new CLC be established, Council petition the ERT to ensure continued Council Representation on the Committee.

(b) That Council petition the ERT and MOE to ensure proper funding is provided to support the CLC's mandate.

Note that the following sub-section was tabled for two weeks and subsequently defeated at its November 27, 2002 meeting:

That the City of Hamilton petition the Province of Ontario and the Environmental Review Tribunal to retain the current Taro East CLC under its current terms of reference.

November 27, 2002

That the City Solicitor be authorized and directed to seek the status of Presenter for the City of Hamilton at the Environmental Review Tribunal Hearing of the Appeal by Philip Services Inc. of Certificate of Approval No. A181008, as amended (ERT Case No. 02-132)

December 6, 2004

As a result of a delegation by Mr. Charles Eleweld, a member of the original Taro CLC, City Council passed the following resolution.

That a letter be forwarded to the Ministry of the Environment to enquire about the status of the membership of the Taro Landfill Community Liaison Committee and other issues with respect to the Committee.

A letter dated March 4, 2005 was subsequently received from then Minister of the Environment, Leona Dombrowsky, in which she advised, among other things, that "Operators of the Taro East and West Landfills, PSC Industrial Services Canada Inc. established the Taro Neighbourhood Liaison Committee and meet the requirements of their Certificate of Approval."

Further correspondence dated April 25, 2005 was received by Council from Mr. Eleweld with respect to the response the City received from then Minister of the Environment Leona Dombrowsky. Mr. Eleweld indicated that in his view and the view of the Taro East CLC, "the Minister's letter does not resolve the concerns we originally raised at the Public Works Committee." He then raised several questions respecting the City's position regarding the former and new community liaison committees.

Summary and Next Steps
SUBJECT: Community Liaison Committee for the Taro East Landfill Site
(LS06013/PW06129) - (City Wide) - Page 5 of 5

Therefore the position of City of Hamilton Council to date with respect to a community liaison committee for the Taro East Landfill Site can be summarized as follows:

1. That the City of Hamilton not petition the Province of Ontario and the Environmental Review Tribunal to retain the original Taro East CLC under its original terms of reference.

2. That the City of Hamilton continue to have two voting representatives (non-staff members) on any new community liaison committee that is established.

3. That proper funding be provided to support the community liaison committee's mandate.

Given the fact that the certificate of approval for the Taro East Landfill Site has not yet been amended regarding the community liaison committee, there is an opportunity to provide input to the TNLC, the owner and operator of the Taro East Landfill Site (now Newalta Services Holdings Inc. and Newalta Industrial Services Inc. respectively) and to the MOE on the proposed Terms of Reference for the TNLC for their consideration. This input may reflect or include the City Council position to date as summarized above. Should the PWIE Committee wish to provide input for consideration, a recommendation similar to the following could be approved:

*That a letter be forwarded to the Ontario Ministry of the Environment (MOE), the Taro Neighbourhood Liaison Committee (TNLC) and the owner and operator of the Taro East Landfill Site indicating the following City of Hamilton Council's comments regarding the Terms of Reference provided to the MOE for the TNLC:*

*List specific comments to be inserted.*

Until such time as the certificate of approval requirements are amended to specifically state otherwise, or City Council takes a position different from that summarized above, it appears that two voting representatives of the City of Hamilton should continue to be appointed by City Council to the community liaison committee for the Taro East Landfill Site.

Peter A. Barkwell
City Solicitor
City Manager's Office
Legal Services Division

Scott Stewart, C.E.T.
General Manager
Public Works Department

Note 7
April 1, 2005

The Honourable Leona Dombrowsky
Minister of Environment
12th Floor, 135 St. Clair Avenue West
Toronto, Ontario
M4V 1P5

Via Facsimile and Regular Mail

Dear Minister Dombrowsky:

Re: East Taro Quarry Landfill

We represent the East Taro Landfill Community Liaison Committee.

It has come to our attention that you sent a letter to the Mayor of Hamilton on March 14, 2005 regarding the status of the Taro CLC.

To our surprise, you state in your letter that the operators of the landfill here "established the Taro Neighbourhood Liaison Committee and meet the requirements of their Certificate of Approval".

There has never, to our knowledge, been a decision by the Ministry of Environment to amend the Certificate of Approval and replace the CLC whom we represent. Accordingly, there is an existent CLC whom the operators refuse to deal with or convene.

There has been no process for replacement of the CLC and the matter was in litigation for some years, without a final resolution.

Could you please advise under what instrument, authority and process the Ministry of Environment recognizes the alleged "Taro Neighbourhood Liaison Committee" and as of what date that was done? Please provide copies of the relevant documentation.

We thank you for your assistance.
February 20, 2007

Mr. Charles Eleveld
915 Upper Ottawa Street
Hamilton, Ontario
L8T 3V6

Dear Mr. Eleveld:

Thank you very much for your correspondence received on February 2, 2007 and my apologies for the tardiness of this reply.

With respect to the Taro East Landfill, I have forwarded copies of your letters to Councillor Mitchell and Councillor Clark, both of whom sit on the Taro Trust Committees.

In addition, I have enclosed a brochure about the Landfill, trusting that you will find it interesting reading. I have requested that the Councillors in question reply to your concerns and hopefully restore your faith in the present administration.

Thanks again for your time and please feel free to contact us any time about any concerns you may have.

Sincerely,

Fred Eisenberger

Fred Eisenberger

To Mayor Fred Eisenberger:

Re; Taro East Certificate of Approval

Your reply dated February 20, 2007, was received on the 22nd of February 2007. I have left telephone messages for both Councillors Mitchell and Clark and have not received a reply yet. I know that they are busy, but my concerns are extremely urgent. It is now more than 5 years that there has not been a proper community overview of the Taro East Landfill as required by Certificate of Approval No. A 181008. Every attempt to bring this to the attention of Council has been met with silence. The site http://www. tarolandfill.com/news.htm provides the following information:

"Reports to the Community Liaison Committee:
The Community Liaison Committee is responsible for reviewing and providing recommendations on the development, operation, monitoring, closure and post-closure care of the landfill site. The CLC also has a mandate to review and provide recommendations on complaints and complaint handling protocols, as well as any other matters of concern to the community. Taro reports to the CLC can be read by clicking on the date(s) below: 1999, 2000, 2001 and 2002."

I was a member of the Taro Community Liaison Committee (CLC) when the Company decided to disband the CLC, all this under the watch full eyes of the Ministry of the Environment (MOE) as well as the City of Hamilton.

If the City is willing to provide me with proof that the Taro East Community Liaison Committee had regular meetings in the community (as required) and City representatives did attend regular CLC meetings and reported to City Council the ongoing operation off the landfill than I will stand down and not bring this subject up again.

If not, I will continue bringing my concern to your attention until it is resolved.

It seems that you are also not aware that PSC Industrial Services Canada Inc. (previously Philip Services Corporation) was sold to Newalta Corporation of Alberta in 2006. This of course is another kettle of fish.

If this issue is not resolved within a reasonable time, I intend to get a legal opinion if the City is properly protecting our community environment and if City Council is aware that it may not be in compliance with the Certificate of Approval (C of A) issued in 1996 to operate the Taro Landfill, located on top of the “mountain” in Stoney Creek and is allowing leachate to be treated in the Woodward Waste Water treatment Plant that was not designed to treat Taro East or Taro West leachate.

The above concerns are serious and it is time that we deal with them now.

Sincerely

Charles Eleveld

c. Councillors Mitchell and Clark.

To Mayor Fred Eisenberger.
71 Main Street West
Hamilton. L8P 4Y5.

Re: City and Community overview of Taro East Landfill.

Dear Sir;

You may recall that I contacted your office on February 1, 2007 regarding concerns about the Taro Landfill located in the City of Hamilton that will have an impact on our environment for more than 300 years. (Expert Panel. Final Report, 2000.)

Philip Environmental in 1996 received Environment Ministry approval to operate the Taro Landfill subject to strict conditions in the Certificate of Approval (C of A) # A 181008. Despite several attempts over 5 years making presentations to 3 Mayors as well as Council members that Taro was not in compliance with several conditions.

Your response to me on February 20, 2007 indicated that you were unaware that the Taro Landfill was sold in early 2006 to Newalta Corporation of Alberta.

This is cause for concern as the change of ownership was not known until almost a year later. Let me remind you that C of A Condition # 70 reads as follows:

"The Company in consultation with the City shall provide for the establishment of a Community Liaison Committee (CLC) within 120 days of the issuance of this Certificate for the purpose of providing community review of the development, operation, ongoing monitoring, closure and post closure care related to the landfill site. The CLC shall act as a vehicle for communication between the Company and the Community and to provide the opportunity for the CLC to make recommendations to the Company and the Ministry or any appropriate authority on matters of concern to people affected by the Company’s operation”.

It now appears that no public CLC meetings open to the public have been held for more than 5 years and it seems that City council representatives did not attend many meetings.

If, there has not been a community overview of the operation of the Taro East Landfill, it is not in compliance with the Certificate of Approval (C of A) # A 181008.

Yours truly,
Charles Eleveld.

C. Councillors Clark and Mitchell
July 4, 2007

Mr. Charles Eleved
915 Upper Ottawa Street
Hamilton, Ontario
L8T 3V6

Dear Charles:

I would like to begin by thanking you for taking the time to express your concerns about the Taro East Landfill.

I have taken the liberty of faxing your letter to The Honourable Laurel C. Broten, Minister of the Environment, for her perusal and follow up.

Again, thank you.

Sincerely,

Fred Eisenberger
Mayor
July 17, 2007

Mr. Charles Eleved
915 Upper Ottawa Street
Hamilton, ON
L8T 3V6

Dear Mr. Eleved:

A copy of your letter of June 28, 2007, to the Mayor of Hamilton was forwarded to me and I’d like to take this opportunity to respond to the concerns you have raised.

The ministry monitors the operation and management (including enforcement of the Certificates of Approval) of the Newalta landfill site through routine inspections by a full-time inspector to ensure the environment and human health are protected. In 2006-2007, 30 inspections of Newalta sites in Hamilton were completed and only one non-compliance issue was identified and subsequently resolved. **As well, conditions are in place through the Certificate of Approval (CofA) to ensure that this facility operates with adequate financial assurance, contingency plans and in accordance with local Fire Code requirements to ensure environmental protection.**

In 2004, the existing Certificate of Approval (CofA) was amended under the new company name. The new Certificate of Approval for the site requires a Community Liaison Committee (CLC) comprised of residents and individuals other than city staff representing the City of Hamilton. The Newalta CLC meetings are held on a regular basis and attended by ministry staff. The CLC is responsible for reviewing and providing recommendations on the development, operation and monitoring of the landfill site. The CLC also has a mandate to review and provide recommendations on complaints and complaint handling protocols, as well as any other matters of concern to the community.

A draft terms of reference for the new CLC are being developed in consultation with the ministry and the City of Hamilton staff. It is anticipated that these draft terms of reference will eventually be incorporated into their CofA, and will likely include provisions to schedule quarterly meetings that will be open to the public, and allow for formalized public input at the new CLC meetings. The ministry will continue working with Newalta to ensure that the CLC functions effectively.
September 28, 2007

Mr. Charles Eleveld
915 Upper Ottawa St.
Hamilton, ON L8T 3V6

Dear Mr. Eleveld:

Thank you for your correspondence to the Honourable Laurel Broten, Minister of the Environment. As you may know, on Monday, September 10, 2007, the Honourable David C. Onley, Lieutenant Governor of Ontario, dissolved the 38th Legislature of the Province of Ontario. I am pleased to respond to you on behalf of the ministry.

I believe most of your concerns were previously addressed in a letter from Vince Sferrazza, Acting District Manager of the Hamilton District office dated July 17th. For that reason I will not repeat what was outlined in the aforementioned letter other than to reinforce the point that the ministry will continue to enforce the conditions of Newalta’s Certificates of Approval.

Pending a review of the new terms of reference for the Community Liaison Committee by the City of Hamilton, Newalta will be applying for amendments to their Certificate of Approval. These amendments will be posted on the Environmental Bill of Rights Registry for public comment and I look forward to your participation during that comment period.

Yours truly,

Bill Bardswick
Director
West Central Region
March 24, 2009

Mr. Charles Eleved and Mr. David Barlow
915 Upper Ottawa Street
Hamilton, ON L8T 3V6

Dear Mr. Eleved and Mr. Barlow:

Thank you for your letter dated March 10, 2009, sent to the Minister of the Environment requesting information to support your request for an investigation by the Ontario Ombudsman into the ministry's decision not to allow your Application for Investigation submitted under Part V of the Environmental Bill of Rights. The Minister has asked that I respond to you on his behalf.

To answer your questions directly:

1. Ministry officials attended some of the former Taro Community Liaison Committee meetings between May 2002 and September 2008.
2. I am unable to provide you with an exact number of meetings where the ministry's Environmental Officer attended. However, I can advise that most of the meetings between 2004 and present have been attended by at least one member of the ministry's staff. Inspection reports are available at any time for the Landfill Liaison Committee's (LLC) review; however, they are not regularly presented at committee meetings.
3. I have attached a copy of the Terms of Reference for the LLC, which is also appended as schedule “T” to the Certificate of Approval for the site.

I trust that this satisfies your request; however, should you have further questions, please contact Mark Dunn, Area Supervisor with the ministry's Hamilton District Office at (905) 521-7642.

Sincerely,

Geoffrey Knapper
District Manager
Hamilton District Office
Recorded list of Taro East CLC meetings.

<table>
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<tr>
<th>Date</th>
<th>Name</th>
<th>Location</th>
<th>City 2</th>
<th>MOE</th>
<th>Inspector</th>
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<td>Collins</td>
<td>-----</td>
<td>Hall</td>
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<td>Bain</td>
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<td>-----</td>
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Record of TNLC meetings

1. 17/07/02 Aggelonitis Gillott, Kowalyshyn
2. 24/07/02 Aggelonitis Wakeman, Kowalyshyn, Kirby
3. 21/08/02 Aggelonitis Wakeman, <italic>redacted</italic>
4. 8/10/02 Aggelonitis Wakeman, Chalmers, Gillott
5. 19/11/02 Aggelonitis Wakeman, <italic>redacted</italic>
6. 15/01/03 Aggelonitis Wakeman, <italic>redacted</italic>
7. 18/02/03 Aggelonitis Wakeman, Chalmers, Heinrichs
8. 23/04/03 No minutes
9. 19/06/03 Aggelonitis Wakeman, Heinrichs
10. 19/08/03 Aggelonitis Wakeman, Heinrichs
11. 19/11/03 Aggelonitis Wakeman, Heinrichs
12. 29/04/04 Jackman Wakeman, Heinrichs
13. 26/06/04 Jackman Wakeman, Campbell, Hackett
14. No date: No minutes
15. 22/02/05 Jovanovic Jackman Wakeman, Hackett
16. 24/05/05 Jovanovic, Alfano Hackett <italic>redacted</italic>
17. 3/10/05 Jovanovic, Alfano Wakeman Hackett
18. 5/12/05 Jovanovic, Alfano Wakeman Hackett
19. 27/02/06 Jovanovic, Alfano Wakeman Hackett
20. 29/05/06 Jovanovic, Alfano Wakeman Hackett

Recorded NSCLNLC meetings

21. 27/11/06 Jovanovic, Alfano Wakeman, Hackett
22. 20/12/06 Jovanovic, Alfano Wakeman, Hackett
23. 26/02/07 Alfano Wakeman, Hackett
24. 14/05/07 Jovanovic, Wells Wakeman, Hackett
25. 17/09/07 Jovanovic, Wells Wakeman, <italic>redacted</italic>
26. 3/12/07 Jovanovic, Wells Wakeman, Hackett
27. 3/03/08 Jovanovic, Wells Wakeman, <italic>redacted</italic>

28.2/06/08 <strong>Agenda only. No minutes</strong>. Next meeting September 8/08
8/09/08 <strong>Agenda only. No minutes</strong>

Note: 2007 Annual Report (due June 30/08) not available in Library