

SECRETARIAT TRANSLATION

Friday, 5 July 2019

Submission to the Commission for Environmental Cooperation

Presented by the nongovernmental organization Memphrémagog Conservation Inc.

Purpose: To denounce the planned expansion of the Coventry, Vermont landfill, owned by Casella Waste Systems' New England Waste Service of Vermont Inc.

To whom it may concern:

The purpose of this submission to the Commission for Environmental Cooperation is to denounce the project to expand the landfill at Coventry, Vermont. The submission is being coordinated by Memphrémagog Conservation Inc., an environmental organization that has been working to protect Lake Memphremagog in Québec for over 52 years. **The submission is supported by the Honourable Denis Paradis, MP for Brome-Missisquoi.**

The Commission for Environmental Cooperation (CEC) is an international organization that supports cooperation between the three signatories of NAFTA: Canada, Mexico and the United States. It studies environmental issues of concern among these three countries. The CEC was established under the North American Agreement on Environmental Cooperation (NAAEC). The Council oversees the enforcement of NAAEC; the CEC's Secretariat is located in Montréal at 700 rue de la Gauchetière Ouest, suite 1620.

First, the submission denounces the Solid Waste Management Facility Certification OL510 SJ91-0001 that may soon be issued to New England Waste Service of Vermont Inc (NEWSVT) to expand its landfill. It is the responsibility of the District #7 Environmental Commission to ensure that the landfill expansion project will not lead to undue pollution of the neighbouring waters. However, few data are currently available on the impact of contaminants from the landfill site on water quality of Lake Memphremagog, or on the impact from any expansion. We believe that, given the ecological, recreational, and tourism importance of Lake Memphremagog and its use as a drinking water reservoir for over 175,000 residents of Québec's Eastern Townships, the application of the precautionary principle is warranted. **In accordance with this principle, Memphrémagog Conservation Inc. is against the expansion of the landfill.**¹

Moreover, new studies are required to assess the impact of the landfill and of leachate processing on the water quality of Lake Memphremagog, Lake Magog, and the Magog River. This waste liquid, discharged into the Lake Memphremagog watershed, contains numerous chemicals, including per- and polyfluoroalkyl substances (PFAS). Irreversible damage is at stake, since the lake supplies drinking water to over 175,000 people on the Canadian side of the border. **A natural disaster such as an earthquake, excessive rainfall, or a landslide in the vicinity of the Coventry, Vermont landfill and Lake Memphremagog would have a disastrous effect on water quality.**

¹ In her article "Le principe de précaution et ses critiques" (*Innovations*, 2003/2 18, pp 9–26. DOI: 10.3917/inno.018.0009. URL: <https://www.cairn.info/revue-innovations-2003-2-page-9.htm>), Catherine Larrère defines the precautionary principle as follows: "Uncertainty, given the current state of scientific and technical knowledge, should not hinder the adoption of effective and proportionate measures, at an acceptable economic cost, to mitigate the risk of serious and irreversible environmental damage. [Translated from the original French.]"

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Overview of the facts

On 12 October 2018, the Vermont Agency of Natural Resources issued a permit allowing NEWSVT to expand Vermont's only landfill site, Coventry Landfill, by 51 acres. This project will extend the site's operational life by a further 22 years.

However, this landfill is located near Lake Memphremagog, which supplies drinking water to over 175,000 Canadians, including residents of Magog and Sherbrooke.

The landfill produces significant amounts of **leachate**, commonly called "garbage juice," which is processed at the Newport Wastewater Treatment Plant and then discharged into the lake. Water quality in Lake Memphremagog, Lake Magog, and Magog River are threatened by the many chemicals that occur in leachate, including **PFAS**, which are neither analyzed by nor processed in the wastewater treatment plant. **PFAS** are dangerous chemicals, not only for the citizens of today but also for future generations who will be drinking this water daily. These numerous chemicals can cause serious health problems, including cancer.

Many citizens and environmental groups have come out in force to put a stop to this expansion, which threatens water quality. These groups, including Memphrémagog Conservation Inc., are demanding that the landfill's expansion be halted.

Enforcement of the law

Boundary Waters Treaty

Canada and the United States share a great many streams and lakes along their common border. These waters are governed by the *Boundary Waters Treaty* in order to mitigate all differences surrounding their use. The provisions of the treaty are enforced and overseen by the International Joint Commission (IJC) on Transboundary Waters.

Article IV, paragraph 2 of the Treaty states: *It is further agreed that the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other.*²

The Treaty thus includes a provision to prohibit any form of water pollution that could injure the health of the citizens of Canada and the United States. In order to comply with this article, the IJC must warn the public about problems involving water quality.

According to the CEC's *North American Environmental Law and Policy* report:

*During the last two decades, the [IJC]'s most important area of functional expansion has been water quality. The basis for the IJC's water quality functions is found in Article IV of the 1909 Treaty. [...] Although Article IV does not mention the IJC directly, the commission has been given several references, pursuant to Article IX of the treaty, which have required it to advise the governments on the application of the obligation in Article IV. Pursuant to Article VIII, the commission, when issuing orders of approval, must consider interests that may be injured, which are now recognized to include environmental interests.*³

² *International Boundary Waters Treaty Act*, R.S.C. (1985), c. I-17, Schedule I, Article IV.

³ *North American Environmental Law and Policy*, Commission for Environmental Cooperation, [online] <http://www3.cec.org/islandora/fr/item/1803-north-american-environmental-law-and-policy-volume-7-fr.pdf> (Consulted on 10 April 2019).

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Vermont Department of Environmental Conservation (DEC) and District Environmental Commission

The Vermont Department of Environmental Conservation is the entity responsible for issuing most of the State of Vermont's environmental permits. The department also plays an important role in protecting public health and the environment.

Under Vermont's *Waste Management Act*, permits issued by the Department of Environmental Conservation for the treatment of solid waste must contain the conditions and restrictions under which public health and air and water quality are protected.

Title 10: Conservation and Development;

Chapter 159: Waste Management;

Article § 6605. Solid Waste Management facility certification:

“b) Certification for a solid waste management facility, where appropriate, shall:

(6) Contain such additional conditions, requirements, and restrictions as the secretary may deem necessary to preserve and protect the public health and the air, groundwater and surface water quality. This may include, but is not limited to, requirements concerning reporting, recording, and inspections of the operation of the site.”⁴

The District Environmental Commission is in charge of issuing permits under Act 250. Lastly, under criteria 1 (B) of Vermont's *Land Use and Development Act* (Act 250), before issuing a permit, the District Environmental Commission must ensure that a landfill expansion project will not unduly increase water pollution or the discharge of toxic waste into groundwater.

However, the leachate produced by the landfill site generates numerous toxic residues, including PFAS, which are discharged into Lake Memphremagog.

Title 10: Conservation and Development,

Chapter 151: State Land Use And Development Plans,

Article § 6086. Issuance of permit; conditions and criteria:

“(a) Before granting a permit, the District Commission shall find that the subdivision or development:

(1) Will not result in undue water or air pollution. In making this determination it shall at least consider: the elevation of land above sea level; and in relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable Health and Environmental Conservation Department regulations.

(B) Waste disposal. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision will meet any applicable Health and Environmental Conservation Department regulations regarding the disposal of wastes, and will not involve the injection of waste materials or

⁴ 10 V.S.A. § 6605, <https://legislature.vermont.gov/statutes/section/10/159/06605>.

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any harmful or toxic substances into ground water or wells.”⁵

Conclusion

This letter requests the CEC to receive and follow up on this complaint, filed in the form of a submission. It furthermore asks the CEC to investigate the matter of the Coventry Landfill expansion and the enforcement of various applicable laws. It is in the public interest to ensure compliance with all environmental laws before granting the expansion permit for the Coventry Landfill.

In accordance with the precautionary principle, Memphrémagog Conservation Inc. is against the expansion of the Coventry Landfill. In order to comply with various US laws and the provisions of the *Boundary Waters Treaty*, it is vital that meaningful studies of the contemporary impact of the landfill and of the treatment of leachate discharged into Lake Memphremagog on the lake's water quality be carried out. This leachate contains **PFAS**, chemicals that are dangerous to health. Lake Memphremagog is a major source of drinking water for Canadian citizens, in particular for the residents of Magog and Sherbrooke, Québec.

⁵ 10 V.S.A. § 6086, <https://legislature.vermont.gov/statutes/section/10/151/06086>.