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TO:	CHAIR AND MEMBERS PLANNING & ENVIRONMENT COMMITTEE MEETING ON NOVEMBER 13, 2013
FROM:	GEORGE KOTSIFAS, P.ENG. MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES & CHIEF BUILDING OFFICIAL JOHN BRAAM, P.ENG. MANAGING DIRECTOR, ENGINEERING SERVICES & CITY ENGINEER
SUBJECT:	COMMENTS – ORGAWORLD CANADA LTD.

RECOMMENDATION

That on the recommendation of the Managing Director, Development & Compliance Services & Chief Building Official and Managing Director, Engineering Services & City Engineer, the following report **BE RECEIVED** for information.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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None available

BACKGROUND

PURPOSE:

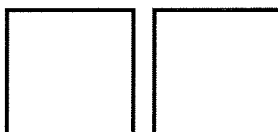
This information report has been prepared to address the August 28, 2012 Council Resolution:

- a) *The Civic Administration BE ASKED to report on the following at a public participation meeting to be held at a future meeting of the Planning and Environment Committee:*
 - i) *provide comments related to the concerns identified in the attached communication, dated August 18, 2012 from the Shaver-Brockley Coalition;*
 - ii) *provide information as to the actions that the City is able to undertake to resolve this matter;*
 - iii) *planning advice on the actions that the City is able to undertake to resolve this matter under the Planning Act;*
 - iv) *the enforcement abilities that the City is able to undertake to resolve this matter; and*
 - v) *Orgaworld BE ASKED to provide an update of their activities to resolve the residents' concerns;*

CONTEXT:

At the August 20, 2012 Planning & Environment Committee meeting Councillors White and Usher highlighted these details regarding Orgaworld from their submission:

There have been an increasing number of concerns raised by community members regarding odours emanating from the Orgaworld facility on Wellington Road South. While Orgaworld has been responsive to the community's concerns, as has the Ministry of the Environment which is responsible for monitoring the facility, members of the community remain dissatisfied with the situation and are constantly turning to the City of London, asking "what we can do to resolve their concerns".



We respectfully ask that a motion be passed to request the Civic Administration to review and report back at a future meeting of the Planning and Environment Committee regarding what steps, if any, the City of London can take to help resolve community concerns regarding the odours emanating from the Orgaworld facility on Wellington Road South.

At this meeting, residents representing the Shaver-Brockley Coalition submitted a letter (August 17, 2012) which became part of the Council Resolution (Appendix A).

Orgaworld has been operating in London since 2007. The composting facility is located at 4675 Wellington Road South, about 1.5 kilometres south of the 401 (and Wellington). Orgaworld received its Certificate of Approval (Waste Disposal Site) and Certificate of Approval (Air) from the Ministry of Environment on December 20, 2006. It also received a Certificate of Approval (Industrial Sewage Works – stormwater management facility) on December 21, 2006.

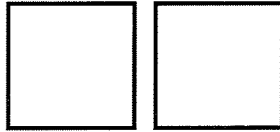
DISCUSSION

i) Provide comments related to the concerns identified in the attached communication, dated August 18, 2012 from the Shaver-Brockley Coalition

Orgaworld provided a response to Mayor and Councillors in response to the Shaver-Brockley Coalition August 17, 2012 letter (Appendix B).

City staff were asked to provide comments which are contained in the table below.

<p>The details in this column are from the Shaver-Brockley Coalition, August 17, 2012 submission: “a partial list of violations and failure on the part of Orgaworld”</p>	<p>City Staff Comment</p>
<p>“Continual excess of the allowable 1 odour unit”</p>	<p>Odour is perhaps the most difficult contaminant to control from various types of facilities since there is no well-defined regulatory or otherwise acceptable limit. Currently the odour concentration guideline (odour testing) used by MOE refers to 1 odour unit (ou)/cubic metre using a 10-minute averaging period. A concentration of 1 ou/m³ statistically infers that 50% of the population could detect the odour.</p> <p>There may be misinterpretation as to what 1 odour unit refers to as they indicate that this is occurring every day. What they are more likely referring to is an odour occurrence.</p> <p>The MOE approved procedure for odour testing is to collect samples directly from the exhaust source. The odour samples are collected into inert sample bags for transport back to a laboratory for analysis. The analysis includes a multi-person odour analysis in a controlled laboratory.</p>
<p>“At least 2000 odour complaints have been filed in 200 days”</p>	<p>Although from time to time, the City of London (staff, elected officials) will receive odour complaints directly from the public, the authority for complaint reporting, management and resolution rests with Orgaworld and the MOE.</p> <p>Orgaworld and MOE have different tracking and reporting systems for complaints from the public. Orgaworld has commented on their system and</p>



	<p>experience (Appendix B, page 3).</p> <p>Information supplied by MOE officials indicate that MOE does consider odour to be a serious issue. Because of the unique issues in the South London area, the MOE has instituted 360° approach to identify, characterize and track odours from various sources in the area. This allows the MOE to identify the source of any offending odours and deal with the company/organization appropriately. Details from MOE are contained in Appendix C.</p>
<p>“30+ charges have been laid against Orgaworld by the MOE”</p>	<p>MOE has confirmed that numerous charges have been laid against Orgaworld Canada Inc.:</p> <p>2009 – 4 charges (outcome - 4 convictions)</p> <p>2010 – 24 charges (before the courts)</p> <p>2011 – data not available from MOE</p> <p>2012 – data not available from MOE</p>
<p>“The forced voluntary shutdown”</p>	<p>It is our understanding that the shutdown occurred in consultation with MOE staff in order that a comprehensive assessment could be completed and actions implemented before ramping tonnage back up.</p>
<p>“The fact that the plant has morphed into heavy industry at a site only approved for at best light industry”</p>	<p>Details are provided in this PEC report in section iii). Planning advice on the actions that the City is able to undertake to resolve this matter under the <i>Planning Act</i>.</p>
<p>“Residents in the area have suffered through and been offended by six years of final fixes that have not been fixes at all”</p>	<p>The residents have submitted numerous emails to Ward Councillors, other elected officials and City staff. In addition to the involvement of the Councillors and City staff there have been many others involved including the MOE and Orgaworld representatives. Various meetings and actions have taken place in attempts to resolve the concerns.</p>
<p>“5 years of futile PLC, ZERO ODOUR Advisory Group (ZOAG) meeting, aborted ERT Hearings, and endless rounds of documents and meetings with officials”</p>	<p>City staff have been observers at the former PLC, ZOAG and the current PLC. Councillors Harold Usher and Sandy White are involved with the current PLC. Middlesex London Health Unit (MLHU) have been active with the PLC and ZOAG and is currently available for advice and comments, on as needed basis.</p> <p>City staff did not attend the Environmental Review Tribunal (ERT) hearing. The ERT reached its decision on April 13, 2012.</p> <p>The details of the settlement from the ERT are provided in Appendix D. This letter became part of the ERT outcome (Case No.: 09-063). Further comments on the ERT decision are also provided as details in section iv) provide information as to the actions that the City is able to undertake to resolve this matter.</p>
<p>“We have in six years seen six plant managers come and go. Engineers have been shuttled back and forth from Holland.”</p>	<p>City staff have met different Orgaworld staff and some technical experts as part of site visits and/or involvement with the PLC or ZOAG.</p>
<p>“The end product is not proving to satisfy its satisfied customers”</p>	<p>Compost product testing is a requirement under the Certificate of Approval provided by the MOE.</p> <p>City staff are aware of one incident involving a compost product from Orgaworld that did not meet MOE</p>

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	<p>guidelines. No other specific incidences have been brought to our attention from London property owners.</p> <p>MOE has confirmed that up until October 2012, there has only been one incident, that the Ministry is aware of, where the Orgaworld compost failed the criteria specified in the company's Environmental Compliance Approval (ECA). This one pile was removed and reprocessed by the company. The MOE does inspect the company's records as well as takes its own samples for verification.</p>
<p>"We believe the City has a clear right to shut Orgaworld down because of its flagrant violation of the Environmental Protection Act."</p>	<p>This matter is being addressed by the City Solicitor's Office in a confidential report.</p>
<p>"Secondly, residents have long been pointing City officials to Orgaworld's flagrant violation of the Municipal Act which protects citizens from things which would have negative social, environmental and health impact."</p>	<p>Details are provided in this PEC report in section iv) the enforcement abilities that the City is able to undertake to resolve this matter.</p> <p>This matter is being addressed by the City Solicitor's Office in a confidential report.</p>
<p>"Additionally, and related to the above, residents have begged the City to revisit the clauses of its Nuisance Bylaw."</p>	<p>Details are provided in this PEC report in section iv) the enforcement abilities that the City is able to undertake to resolve this matter</p>

ii) Provide information as to the actions that the City is able to undertake to resolve this matter

1. *Status Quo - Continued City staff involvement at community meetings (observer status), meetings with MOE and with Orgaworld*

City staff would continue with the existing level of involvement. From a PLC perspective, this means sitting as an observer; not a voting member. City staff act as a technical resource assisting with questions and comments that deal primarily with City policy and practices.

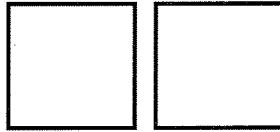
Financial Impact to the City of London – these activities are absorbed into existing workload.

2. *Increased Technical Involvement with Orgaworld Public Liaison Committee (PLC) and the Community*

This would be similar to the previous item (#1) but City staff would become more involved. This could include:

- undertaking technical research,
- review related activities in other jurisdictions,
- report submission at PLC meetings,
- increased frequency of reporting at City of London Civic Works Committee and/or Planning and Environment Committee,
- providing staff recommendations and/or Council recommendations to Orgaworld, and
- contribution of funding to community technical research.

Financial Impact to the City of London – The financial impact to the City would be tied to the specific items that have been increased. Internal research using existing staff could be absorbed assuming minimal new effort required. Technical research performed for the City and/or the community and involving technical consultants may require a budget of \$25,000 to \$50,000 per year.



3. *More detailed and active involvement with officials from the Ministry of the Environment*

This would be similar to the previous item (#2) but City staff would spend more time working closely with Ministry of the Environment rather than Orgaworld and/or the community. This could include:

- monitoring the outcome of the ERT decision and assisting with community reporting,
- undertaking collaborative technical research,
- assisting with public outreach and engagement,
- increased frequency of reporting at City of London Civic Works Committee and/or Planning and Environment Committee,
- providing staff recommendations and/or Council recommendations to MOE, and
- contribution of funding to community technical research.

Using the ERT decision as an example, additional details were requested from the MOE regarding the status of the proposal contained in the settlement letter. MOE staff have indicated that "since then, the company has voluntarily ramped down incoming tonnage after poor plant performance in June 2012. This restriction is still in effect until mitigative measures are in place. The company is currently looking into the problem."

With respect to the ERT, a number of the findings are worth highlighting and form the basis of the first bullet point above:

- "Given that there are no objections from any participant or presenter and that the Director is not fettered from taking further action to protect the environment should the need arise, the Tribunal finds that the Agreement should be accepted."
- "In light of the testimony that was heard prior to the hearing be adjourned, the Tribunal notes that disputes such as this require ongoing diligence from the Director, the regulated facility and the community. While there is a role for the Tribunal when appeals over specific issues arise, ongoing dialogue among all those involved is often the best way to address issues of this nature. Often the most durable solutions are those that arise from constructive dialogue amongst the interested parties."
- "The Tribunal also wishes to acknowledge the important contributions made by the participants and presenters during the course of the hearing in March 2010. Their testimony regarding the impacts of odour of emissions was delivered in an organized manner while also conveying the significance of the issue in the community."
- "The Tribunal was given a very clear picture of the difficulties community members have had with respect to the facility and the Director's regulatory oversight of it."
- "The Tribunal believed that OCL, the Director and the community have the basis for working together to address any future issues arising from the facility. The Tribunal urges all those involved that the facility operates in a manner that complies with all relevant environmental requirements."

The City could have a role making sure that all parties are moving forward with the outcome of ERT and reporting publicly on the progress. Currently, there does not appear to be a requirement for regular public reporting on these matters.

Financial Impact to the City of London – The financial impact to the City would be tied to the specific items that have been increased. Internal research using existing staff could be absorbed assuming minimal new effort required. Technical research performed for the City and involving technical consultants may require a budget of \$25,000 to \$50,000 per year.

4. *City of London By-law Enforcement and/or Licensing*

Details are provided in this PEC report in section iv) the enforcement abilities that the City is able to undertake to resolve this matter.

The financial impact to the City of London would be dependent on the decision of Council as to



what extent odour would be considered a nuisance. To include odour in general terms in a nuisance by-law without restrictions or conditions could certainly capture all odour emissions whether they be considered tolerable or intolerable.

The financial impact to the City London would be tied to the level of enforcement (e.g., reactive, proactive, level of Council and community reporting etc.). This could require a budget of up to \$85,000 per year plus the cost of odour measuring devices, screening and training. Some initial research indicates that odour measuring devices range in complexity and cost. For example the "Nasal Ranger" has an estimated cost of \$1500.00+, where the Gas Chromatography–Mass Spectrometry (GC-MS) device is approximately \$100,000.00+.

The requirement of licensing in general terms could result in an even greater financial impact as a broader range of inspections are foreseeable (eg. Fire, Health, Building, Enforcement).

5. Other remedies as identified by Legal Services

This matter is being addressed by the City Solicitor's Office in a confidential report.

Financial impact to the City of London – unknown at this time.

iii) Planning advice on the actions that the City is able to undertake to resolve this matter under the Planning Act

Appendix D contains a complete planning chronology of the Orgaworld site. The site has been designated in the Official Plan and zoned in the zoning by-law since at least 1980 for industrial uses. In 2004 the subject site was specifically designated and zoned for the existing uses. Official Plan Amendment No. 315 permitted;

4645 Wellington Road South *cvj) In the Light Industrial designation located at 4645 Wellington Road South, in addition to uses permitted in the Light Industrial designation, a residential and other source recycling facility including wood recycling, a waste transfer station not including hazardous waste, an in-vessel composting facility and a channel composting facility are permitted.*

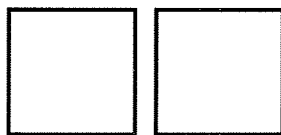
(Subsection cvj) added by OPA 315 approved on 04/04/05)

The implementing zoning by-law amendment permitted all the uses contained in the General Industrial (GI1) Zone plus;

GI1(2) a) Additional Uses:

- i) [Residential and Other Source Recycling Facility](#), provided that, in addition to the solid non-hazardous recyclable materials specifically listed in the definition of Residential and Other Recycling Facility, wood may also be collected, sorted and processed;
- ii) [Waste Transfer Station](#), provided that the management and processing of liquid and hazardous wastes shall be prohibited;
- iii) [Channel Composting Facility](#);
- iv) [In-Vessel Compositing Facility](#); and
- v) Existing twenty (20) metre roadway area giving access to and from the permitted uses.
(Z.-1-041220)

Planning staff have advised that the use conforms to the Official Plan and Zoning By-law.



vi) The enforcement abilities that the City is able to undertake to resolve this matter

In the matter of enforcement abilities Council may consider addressing odour within a Public Nuisance by-law, within a Licensing by-law, or within a by-law created to exclusively address odour.

Nuisance and Enforcement

The matter of nuisance is based on the theory that when a property owner, either via occupancy or tenancy, undertakes a use of property in a fashion that those actions associated with the use of property impact neighbouring properties. These impacts or externalities can either be positive, negative or neutral. Municipal law enforcement is primarily involved in dealing with negative externalities. Based on provincial legislative authority conferred to municipalities to address nuisance issues, numerous by-laws are currently in place and actively enforced to address nuisance issues.

Authority to Address Nuisances

The Municipal Act, 2001 authorizes a municipality to pass by-laws regulating public nuisances.

Public Nuisances

128. (1) *Without limiting sections 9, 10 and 11, a local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of council, are or could become or cause public nuisances. 2001, c. 25, s. 128 (1); 2006, c. 32, Sched. A, s. 68.*

(2) *The opinion of council under this section, if arrived at in good faith, is not subject to review by any court. 2001, c. 25, s. 128 (2).*

Section 129 of the Municipal Act, 2001 authorizes a municipality to pass by-laws to prohibit and regulate with respect to noise.

Noise, Vibration, Odour, Dust and Light

129. *Without limiting sections 9, 10 and 11, a local municipality may,*
 (a) *prohibit and regulate with respect to noise, vibration, odour, dust and outdoor illumination, including indoor lighting that can be seen outdoors; and*
 (b) *prohibit the matters described in clause (a) unless a permit is obtained from the municipality for those matters and may impose conditions for obtaining, continuing to hold and renewing the permit, including requiring the submission of plans. 2006, c. 32, Sched. A, s. 69.*

The Challenge of Regulating Odour

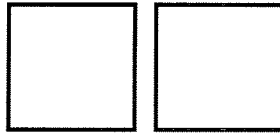
In Ontario, odour complaints are generally referred to the Ministry of the Environment. The Environment Protection Act states:

14. (1) *Subject to subsection (2) but despite any other provision of this Act or the regulations, a person shall not discharge a contaminant or cause or permit the discharge of a contaminant into the natural environment, if the discharge causes or may cause an adverse effect. 2005, c. 12, s. 1 (5).*

An adverse impact can be the loss of enjoyment of property including common activities associated with the property and the health and safety of any person directly impacted by the odour.

Although most persons can detect an odour when one is present, analytically it cannot easily be quantified as a nuisance.

A scan of Ontario municipal by-laws indicated that odour complaints are referred to Provincial authorities for enforcement purposes (i.e. Ministry of the Environment). The City of Vancouver



has directed that an odour by-law be drafted as a result of a spike in complaints from a chicken rendering plant. The by-law is expected to be released in 2013.

A review of Oakville's By-law 2010-035, a by-law to assess and control the health effects of major emissions of fine particulate matter, has been undertaken and it has been determined that this by-law provides means to measure and regulate "particulate matter" but not odour.

Licensing

Historically, municipalities were restricted to licensing businesses and only for the purposes of consumer protection, health and safety and nuisance control. The Municipal Act, 2001 now authorizes a municipality to licence a broad range of activities. As well, the definition of "licence" has been expanded to include a "permit, an approval, a registration and any other type of permission, and 'licensing' has a corresponding meaning" meaning that licensing is no longer restricted to just business licensing.

The Municipal Act confers powers to municipalities with respect to business licensing.

151. (1) Without limiting sections 9, 10 and 11, a municipality may provide for a system of licences with respect to a business and may,

- (a) prohibit the carrying on or engaging in the business without a licence;
- (b) refuse to grant a licence or to revoke or suspend a licence;
- (c) impose conditions as a requirement of obtaining, continuing to hold or renewing a licence;
- (d) impose special conditions on a business in a class that have not been imposed on all of the businesses in that class in order to obtain, continue to hold or renew a licence;
- (e) impose conditions, including special conditions, as a requirement of continuing to hold a licence at any time during the term of the licence;
- (f) license, regulate or govern real and personal property used for the business and the persons carrying it on or engaged in it; and
- (g) require a person, subject to such conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with any part of a system of licences established by the municipality.

A municipality may establish a system of fines including fines for multiple or continuing offences, escalating fines for second and subsequent offences and special fines designed to eliminate or reduce any economic advantage or gain from contravening the by-law. A municipality may also consider the use of administrative monetary penalties.

Administration is not aware of any licensed composting facilities in the province.

Licensing may only be used for the purpose of regulating or governing an activity or business. A municipality may not use licensing as method of prohibiting an activity or business.



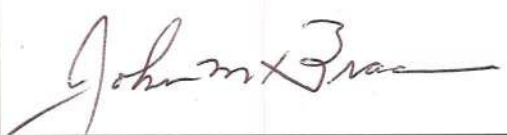

While municipalities now have broad powers with respect to licensing, section 14 of the *Municipal Act, 2001* expressly provides that a by-law, including a licensing by-law, is without effect to the extent of any conflict with a provincial or federal Act or a regulation made under such an Act or an instrument of a legislative nature, including an order, licence or approval, made or issued under a provincial or federal Act or regulation. Historically, a ground for challenging new licensing initiatives has been the existence of federal or provincial legislation or regulation.

If Council is interested in pursuing any of these options, an in depth review of the options would be necessary in order that Civic Administration be able to report back in greater detail.

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ACKNOWLEDGEMENTS

This report was prepared with assistance from Gregg Barrett, Manager, Land Use Policy; Chuck Parker, Senior Planner, Heather Chapman, Manager, Municipal Law Enforcement Services, and the City Solicitor's Office.

PREPARED BY:	PREPARED BY:
	
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- Appendix A Submission by the Shaver-Brockley Coalition, August 17, 2012
 - Appendix B Orgaworld Response to the Shaver-Brockley Coalition, September 6, 2012
 - Appendix C Details submitted by the Ministry of Environment, London District Office, October 2012
 - Appendix D Proposal to Mediate a Resolution id the ERT and Director's Order, submitted by Orgaworld to the ERT
 - Appendix E Planning and Facility Chronology – Orgaworld 4645-4695 Wellington Road South
- c Jim Barber, Manager Director, Corporate Services & City Solicitor
 John Fleming, Managing Director, Planning & City Planner
 Janice Page, Corporate Services, Legal
 Dave Munteer, Corporate Services, Legal

APPENDIX A

Submission by the Shaver-Brockley Coalition, August 17, 2012

Shaver – Brockley Summary Statement

The Shaver – Brockley Communities of South London have been in crisis for the last 6 years without intervention by the City of London.

The crisis concerns the continuing episodes of malodour from **Orgaworld London Canada**, a composting facility constructed by a Dutch firm (owned by the Shanks Group) with its location midway between the two residential communities of Brockley and Shaver. The plant was constructed in 2006 without notification of any sort or consultation of any kind with residents in the area—including the home owner whose property abuts the Orgaworld fence. **The plant continues to offend 150 homes south of the 401**, and malodour often extends as far north as the Whiteoaks subdivision, and on occasion west to Lambeth, although residents in these two areas generally have not known the origin of the odour. **These offenses have been allowed to continue unarrested by the City for 6 years.**

Bear in mind that in the earliest days of operation, when neighbours were already challenging offenses of malodour, an OCL company official announced at a public meeting that the plant would issue **zero odour**. Representatives from the liaison Canadian engineering firm of Conestoga Rovers were present at that meeting, and none retracted that promise. And for the record, the comment was also reported in the *London Free Press*. For six years our communities have participated in hundreds of hours of public liaison committee work, ERT hearing, endless rounds of meetings, many with officials at the MOE and City Hall, some with the mayor and councilors, some with the politicians in our riding, and of course Coalition members sat through hours and hours of the *Zero Odour Advisory Group* which met for a full year. All of our energy was expended with the promise of “**zero odour**.” However, at the recent PLC Meeting on July 31, 2012, all in attendance were informed in public by Dr. Greg Mariotti, Site Operations Manager for London and Ottawa Orgaworld Plants, that **there will always be odour on and off site**. So the official local narrative has changed, and this is the line in the sand for residents in the area. We are absolutely not willing to live with the nearly daily breaching—in one or the other of our neighbourhoods—of *legislated acceptable levels of odour*.

Following is a partial list of violations and failure on the part of Orgaworld:

1. **Continual excess of the allowable 1-odour unit** is being experienced nearly everyday in either Shaver or Brockley or the Treasure Island Plaza area, depending on wind direction.
2. At least **2000 odour complaints have been filed in 2000 days**, so statistics would indicate that one might multiply this number by 10 to reflect more accurately the real number of offenses. At times, the odour can penetrate up to a 3-4 kilometer radius of stink offending London citizens and hardly welcoming

travelers to London at what in reality is the *real* gateway to London: Wellington Road and the 401.

3. **30+ charges have been laid against Orgaworld by the MOE.** In our view, if anything, the MOE has been *much more than fair* in allowing OCL to try to "fix" itself into acceptable performance over the last 6 years, but surely 30 charges in that time should be more than a harbinger that this plant is a failed experiment. Residents are simply not willing to wait the years these charges would take to move through a court system. Clearly OCL will simply try to use this slow process as a tactic to keep operating while violating the community.
4. **The *forced "voluntary" shutdown* for 4 months in the summer of 2010 for "retrofitting" for the umpteenth time ended up being precursor to this summer's being the worst summer ever in the plant's short sad life in London—this admission even by local MOE officials. Clearly a forced "voluntary" shutdown without resulting amelioration—even after an additional \$5 million mis-expenditure—should trumpet not just the wild experiment this plant has been, but its absolute failure.**
5. The fact the plant has **morphed into heavy industry** at a site only approved for at best "light industry" is clear evidence of a **mislocated plant**; and we know for a fact that prior to the plant's construction local MOE officials advised against this location, but were ignored by City officials who went ahead in issuing building permits anyway. (Perhaps they regret that unwise decision now.) The former operation included burning of yard clippings, and who doesn't enjoy the smell of leaves burning in the fall? **Yard clippings are hardly human and pet feces and rotten organic waste all happily cooked in plastic bags**, even before it comes into the plant. The dissonance between the use of the former McCaig site and that by Orgaworld today is as opposite as heaven and hell.
6. Residents in the area have suffered through and been offended by **six years of final fixes that have not been fixes at all.** The catalogue has become almost laughable, were it not so serious; and the list is far too long to itemize in this summary, but it has been submitted to City officials in previous documents.
7. **5 years of futile PLC, ZERO ODOUR Advisory Group (ZOAG) meetings, aborted ERT hearing, and endless rounds of documents and meetings with officials have produced no tangible results.**
8. We have in six years seen **six plant managers come and go.** Engineers have been shuttled back and forth from Holland. Specialists in the field of composting have been parachuted in. Advisory Boards have convened. **One can't even begin to compute the person-hours and dollars expended by the local MOE, and person-hours sacrificed by residents in the area.** The one sad constant in all of this are the victim-citizens. Shaver – Brockley Coalition members, on behalf of the twin residential areas, have collaboratively attended thousands of hours of meetings and reviewed thousands of pages of material—all in vain. **The reality is that the plant still stinks.**
9. **Finally, the end product is not proving to satisfy its "satisfied" customers.** Farmers who have been in receipt of Orgaworld's "compost" have started to

realize it's not the panacea fertilizer they were promised. One reported that as the compost is absorbed into the ground, the bits of plastic and glass remaining at surface make the field a glittering spectacle after rain. Another said he would not be able to harvest a crop growing close to the ground (peas or beans, perhaps?) because other bits of debris including glass and plastic would be harvested in with the crop. But in fact would any of us want this fertilizer—produced from in part chemically saturated human waste—used to grow peas or beans or table corn we eat? Hardly “peaches and cream.” Is it the case that the composting process may kill pathogens, but chemicals—although the process may alter them, may still be in the end product? Isn't this why “organic farming” has become so desirable? (We know farmers who went “organic” with their farming, and it took them 7 years to “cleanse” their land to qualify as “organic” farmers.)

The ultimate question has to be: given Orgaworld's sad history; given the above offenses; given the plant's flagrant breaching of the 2010 post-retrofitting contract it signed with the MOE (one condition of which was “No SSO Odours”, another “only 2 noticeable odours within a 6-month time frame”); and most auspiciously, given its breaking of the law as set out in the EPA and the Municipal Act, *why do the MOE and the City let the plant go on violating the lives of innocent citizens in South London?* Something simply must be done immediately.

So where does the City of London go from here?

1. We believe the City has a clear right to shut Orgaworld down because of its flagrant violation of the Environmental Protection Act, Part II, Section 14 which forbids
 - * *impairment of the natural environment for any use that can be made of it* (No question the golfing at Westminster Trails is impaired by odour);
 - * *harm or material discomfort of any person* (we are all reacting negatively to the plant's continual malodour);
 - * *loss of enjoyment of normal use of property* (like barbequing or using back yard swimming pools.)

This is all pretty straight forward, is it not? Orgaworld is breaking the law.

2. Secondly, residents have long been pointing City officials to Orgaworld's flagrant violation of the Municipal Act which protects citizens from things which would have negative social, environmental or health impact. If any one of us had an offending fish fertilizer-making shed in our back yard, that little operation would be shut down in a flash—even after complaint by one or two neighbours. Yet the City has allowed clear violation of the one-odour unit for six years—and this after thousands of complaints impacting thousands of citizens. Council needs to have the guts to say “Enough has been too much.” And one should note that the Act according citizens the above rights is called the *Municipal Act*—not the MOE Act. It is time for the City to stop saying this is a matter for the MOE. Believe us, the local MOE has done a great deal to the moment.
3. Additionally, and related to the above, residents have begged the City to revisit the clauses of its Nuisance Bylaw. The City immediately had a knee-jerk response to the

shame Fleming Drive brought to the City because of a bizarre episode that for a few hours violated the **social order** the Municipal Act accords to citizens in the vicinity of the riot—and indeed, we wonder if even 150 homes were *directly* impacted? As we all know, in the wake of that, the City hurriedly drafted a bylaw to safe-guard against similar social disorder in the future. Yet the **very same clause** that assures citizens of **the right to *social* protection, also guarantees the rights to protection from *negative environmental or health impact***, and we believe the Nuisance Bylaw should incorporate this tri-partite protection. We are daily experiencing a negative environmental impact: our noses are offended, and we have genuine concern for the air we breathe; additionally, we have concern for our waterways. And no one can assure us unequivocally that health issues might not be a concern in the future. So we believe that **the Nuisance Bylaw should be revisited by the City.**

The Final Solution

Interestingly the City of Newmarket found a way to close a plant that offended its citizens. The City of London should have the courage to do the same. Surely the Mayor, the Councillors, the MOE, and our local politicians have no recourse but to shut the **plant down. It is a misplaced and failed experiment. The narrative must stop here.**

Submitted by the Shaver – Brockley Coalition, 2012-08-17

APPENDIX B

Orgaworld Response to the Shaver-Brockley Coalition, September 6, 2012



To: London City Council
From: Orgaworld Canada
Date: September 6, 2012

Dear Mayor and Council,

Re: Response to Shaver-Brockley Coalition

The following is in response to the August 17th submission from the "Shaver-Brockley Coalition".

Our apologies for the extensive response, but we are reacting to a considerable amount of information, and some misinformation.

We wish to reiterate at the outset that we sympathise with our neighbours in the Shaver and Brockley communities and want to work with them. We have not denied that we have had some odour issues at our facility. We do however feel that we have made significant improvements in this area. We have been open and honest with the residents through our PLC and ZOAG meetings. It should be noted that City staff and a number of London Councillors also have sat on these committees, along with representatives of the Ministry of the Environment. We have responded to requests or suggestions from the MOE to make revisions to our operations in a positive manner. Operationally the site is working as it should. We have invested millions, hired extra staff and sought out advice from independent experts and potential suppliers to address odour concerns. We have worked diligently at improving our performance and we will continue to do so until our neighbours are reasonably satisfied.

The reality is that we are a waste processing facility diverting Source Separated Organics (SSO) from Ontario Landfills in support of the provincial government's mandate to achieve a target of 60% diversion. We produce high quality compost that is shipped to farmers' fields where it is applied, rehabilitates the soil and increases crop yields from 10-15%. This compost is much sought after by the agricultural community surrounding London and all plant production is sold out. Orgaworld's compost has been inspected and endorsed by Ontario's Ministry of Agriculture, Food and Rural Affairs and by independent agronomists advising the farming community. Orgaworld's compost is truly helping to complete the food-chain circle.

As with any waste processing facility it can be expected that Orgaworld would be emitting some form of odour. After all, Orgaworld is located within a "stack industry" in an industrial park in an industrial zoned area, surrounded by other facilities which can potentially emit odour, including the City Landfill site, City MRF Site, BFI, Casco Plant, Green Valley Recycling, Try Recycling and soon-to-be Harvest Power. One could almost liken this industrial area to an Eco-Park.

We admit that there has been some disconnect surrounding the issue of "Zero Odour". We have admitted that Orgaworld has been partially responsible for this misunderstanding, and we have apologized for any representative of Orgaworld who has given the impression that we would be emitting absolutely zero odours from our plant.

We also have to recognize that odour is very subjective; what is acceptable to one individual is not acceptable to another. Unfortunately there is no such thing as a “smellometer” that can easily measure odour as you can detect noise with a decibel meter. Clearly, the subjective interpretation of odour is an issue.

Some Facts:

Plant Location	4675 Wellington Road South
Zoning & permitted uses	Compost facility
Plant size	160,000 square feet
Date of construction and expansions	Construction started October 2006 Phase 2 expansion December 2007 Phase 3 expansion June 2008 Compost Shelter October 2008 Abatement system retrofit August 2010
Cost of Plant construction	Around \$35m
Cost of odour abatement System improvements	\$5m with more investment earmarked
Number of facility Employees	16
North American head office location	150 Kent Street, London
Number of head office employees	6
Municipal taxes paid	Around \$175,000 per year.
Estimated value of goods and services purchased from London area suppliers.	In excess of \$1m/year.
Annual permitted tonnage	150,000 tonnes
SSO material permitted to receive	Food waste, paper fibers, sanitary waste (including diapers, sanitary and incontinence products), yard waste, animal waste, organic waste from food processing industry and the commercial sector.
Percentage of diapers received from residential green bin programs	Approximately 5% by weight
Sources of SSO	City of London (Green Bin Pilot Project), City of St. Thomas, City of Toronto, Region of York
Amount of high quality compost produced	Around 100,000 tonnes over the past five years
Percentage of compost sold to farmers	100% - sold out

The following is a point-by-point response to the list of issues raised by the Shaver-Brockley Coalition in their August 17, 2012 document:

1. Continual excess of the allowable 1-odour unit

We have always passed the 1-odour unit tests. The following table summaries the dates and test levels:

Date	Test Level
December 2007	0.9
June 2009	1.0
August 2011	0.5
June 2012	0.6 (to be validated by MOE)

These test results have been shared with the PLC members. The PLC members are the main members of the Shaver-Brockley Coalition so it is surprising that they would claim that we are exceeding the allowable 1-dour unit guidelines. The MOE has approved these tests and validated the test results.

A handful of residents claim concern that the stack exhaust emissions are a health hazard. Again, the company has listened to these concerns and has carried out costly testing not once but twice, to reassure residents that the emissions from the stack are innocuous. The results were reviewed by the local Health Unit and a representative from the Health Unit informed PLC members that stack emissions should not give rise to health concerns. Independent consultants have also informed the residents during public meetings that stack emissions are innocuous.

There has been some confusion as to the level of odour that would be emitted by the plant. A number of individuals have stated that zero odour is the only allowable level. Others have stated that the target is zero "intolerable" odour.

2. 2000 odour complaints have been filed in 2000 days

While there may have been 2000 odour complaints, these should be distinguished from valid odour complaints, and on top of that, an odour that is more than simply detection. An analysis of complaints has resulted in the following findings:

- a. Following the abatement system retrofit in October 2010 and up to the end of July 2012, 71% of the complaints that Orgaworld has received are coming from the same six households.
- b. One of the above six households called in multiple odour complaints when the plant was not even in operation.
- c. We have received complaints when the wind was consistently blowing in the opposite direction.
- d. City representatives have informed PLC members at a meeting that some odours being attributed to Orgaworld were in fact due to the City Landfill.
- e. We have received complaints from individuals as far away as 20 km. (demonstrating that some complaints are made about odours not discharged by Orgaworld)
- f. People have claimed they have been smelling the Orgaworld plant for the past 27 years (please note we have only been in operation for 5 years).
- g. A resident recently rated an odour as being a "10" on a scale of 1 to 10, while a Ministry official classified it as being a "2" and a light intermittent odour.

As part of our odour abatement system, biological organisms are constantly at work breaking down malodours – most of the work is done on a bed of warm, moist, wood media. This media emits what is known in the industry as a “rest odour”. Other types of biofilters used for odour abatement systems in other composting facilities as well as in other industries also emit a “rest odour”.

3. 30+ charges have been laid against Orgaworld by the MOE

30 charges have not been laid against Orgaworld for odour discharges. That implies that many different odour charges have been laid, at many times, against Orgaworld. That is not correct. Orgaworld has been charged with discharging odour in April through July, 2010, prior to the \$5 million retrofit of the odour abatement system. That time period has been divided into 16 different paragraphs in one document, for legal reasons.

4. The forced “voluntary” shutdown

The voluntary shutdown in the summer of 2010 is further evidence of Orgaworld’s co-operation with the MOE and our response to the concerns of residents. The claim that this summer was the “worst summer ever” is not substantiated by odour complaint statistics available to Orgaworld. That being said, Orgaworld did experience some technical issues this summer. It has taken some time to resolve these issues since the retrofitted system itself needed to be reviewed and assessed. We have initiated a root cause analysis and identified certain deficiencies. Results of the analysis will be presented to all stakeholders.

Orgaworld meanwhile has made significant progress and extends an open invitation to all City Council and Staff members to visit the facility at any time.

5. Morphed into heavy industry

The site was approved by both the City of London and the MOE. As recently as the July PLC meeting, a City official confirmed that the plant complies with all zoning requirements.

As for the statement, “morphed into heavy industry” the site has always received the same material. The Certificate of Approval that Orgaworld has from the MOE is very clear as to what we can, and cannot accept. This has not changed from day one. It has not morphed into anything. What the site was before Orgaworld took over is irrelevant. The City and the MOE were well aware of what we would be processing and that has never changed.

The only “morphing” we have done, was to construct an indoor compost curing and storage hall (at the request of the MOE), constructed additional composting tunnels (that were approved with the original building permit and PLC members were aware of), and increased the height of our emissions stack from 40 to 60 meters as part of our improvements to the odour abatement system.

6. Six years of final fixes that have not been fixes at all

As stated in our August 22, 2012 letter to neighbours and local businesses we thanked the community for their continued patience as we carried on with refinements and improvements to the odour abatement system. We are confident that the refinements we have made at the plant this summer have improved the odour situation. This would appear to have been confirmed by officials and neighbours that we have spoken with. There is most definitely an improvement since we invested \$5million in improvements to the odour abatement system back in 2010. Following the retrofit the facility was overhauled from an operational point of view to ensure optimum performance; thorough operational management over the last 12 months has enabled focus to be targeted on the abatement system itself.

Again, we would like to state that we will not be happy until our neighbours are reasonably happy.

7. 5 years of futile PLC and ZOAG meetings, aborted ERT hearings and endless rounds of documents and meetings with officials

We would prefer not to look at the past five years of PLC and ZOAG meetings as being futile. During that time we have been open and honest with residents. We have shared vast amounts of information, our intellectual property and we have provided updates on both successes and failures. It is thanks to these meetings that London houses one of the most advanced composting facilities.

With respect to the “aborted” ERT hearing, the hearing was not “aborted”. The Tribunal commended Orgaworld, the MOE as well as the residents for mutually agreeing to set the ERT hearings aside in an effort to resolve the issues at hand outside of the Tribunal. The Tribunal also commended how Orgaworld and the MOE conducted themselves during the hearing.

Why is the Coalition now criticizing Orgaworld for something they agreed to in the past?

8. Six plant managers

Orgaworld appreciates the hours and dedication of the PLC members. Unfortunately it would appear that these efforts have been redirected to shutting us down rather than working cooperatively on a workable solution that involves compromise on both sides.

Hiring independent experts, shuttling specialists back and forth from Holland and improving plant management should not be criticized, but recognized as further evidence that Orgaworld is committing time and money to continuously improve, optimize and is listening to our neighbours.

9. End product is not proving to satisfy its “satisfied” customers

Orgaworld’s compost is sold out. In fact Orgaworld is the only company in Ontario being so successful in selling its compost. Other companies and municipalities are asking Orgaworld to help them to sell their compost products.

In selling its compost, Orgaworld is also educating and helping farmers to understand the reasons why using compost is beneficial to their crops.

Farmers are of a considerable importance to the local area and community. It is in their interest and the interest of the community in general to do everything possible to improve soil health.

Over the last decades farmers have been using a lot of chemical fertilizers. This has significantly deteriorated soil conditions.

When farmers started to use Orgaworld’s compost they experienced significant yield growth and improvement in soil conditions.

On August 30, during a local radio talk show a representative of the coalition named a local farmer and stated that the farmer did not like our compost and would never use it again. During the show we contacted the farmer in question. He was very upset that his farm’s name was raised as being opposed to Orgaworld compost. The farmer used Orgaworld compost as part of a three year program; the program showed that it improved his yields and he will be taking more.

There have also been numerous articles in farm magazines and on television praising the quality and effectiveness of our compost.

Why do the MOE and the City let the plant go on violating the lives of innocent citizens in South London?

Orgaworld disagrees that there has been a "flagrant violation" of the EPA and Municipal Act. Detecting and categorizing odour as objectionable is a highly subjective exercise. It is very difficult to create bylaws setting reasonable and objective standards for regulating odour, which must apply equally to all businesses and residents of London.

Any odour bylaw would be very controversial as it was drafted and, if passed, would have to be equally enforced against all businesses and residents in London.

Why would the City undertake the process of drafting and passing a controversial odour bylaw when the MOE already actively regulates Orgaworld?

Orgaworld disagrees that there is a legitimate comparison between Orgaworld and Halton Recycling in Newmarket. Newmarket pursued a very complex and expensive injunction proceeding, in the courts, against Halton Recycling, in very different circumstances. The MOE is already actively engaged with Orgaworld; it is not ignoring Orgaworld. Orgaworld cooperates with the MOE and actively liaises with the community.

It cannot be forgotten that Orgaworld's composting facility is a meaningful contributor to the Province's waste diversion targets, which must, by law, be met by municipalities.

Orgaworld is an environmental industry and has committed huge resources to meet technology challenges in this developing industry and sincerely wants to satisfy the concerns of its neighbours. Orgaworld will continue to do so.

In conclusion:

As noted by Daryl Newcombe CTV Reporter during the August 29 6:00 pm news, "What smells offensive is a matter of personal opinion. That along with unfulfilled expectations is what is lingering in the air".

Mr. Newcombe has done a very good job at summarizing the situation. Until we can collectively put our past positions behind us and work cooperatively at resolving this issue there is little hope of it being resolved peacefully.

If you have any questions, or would like to arrange for a tour, please contact:

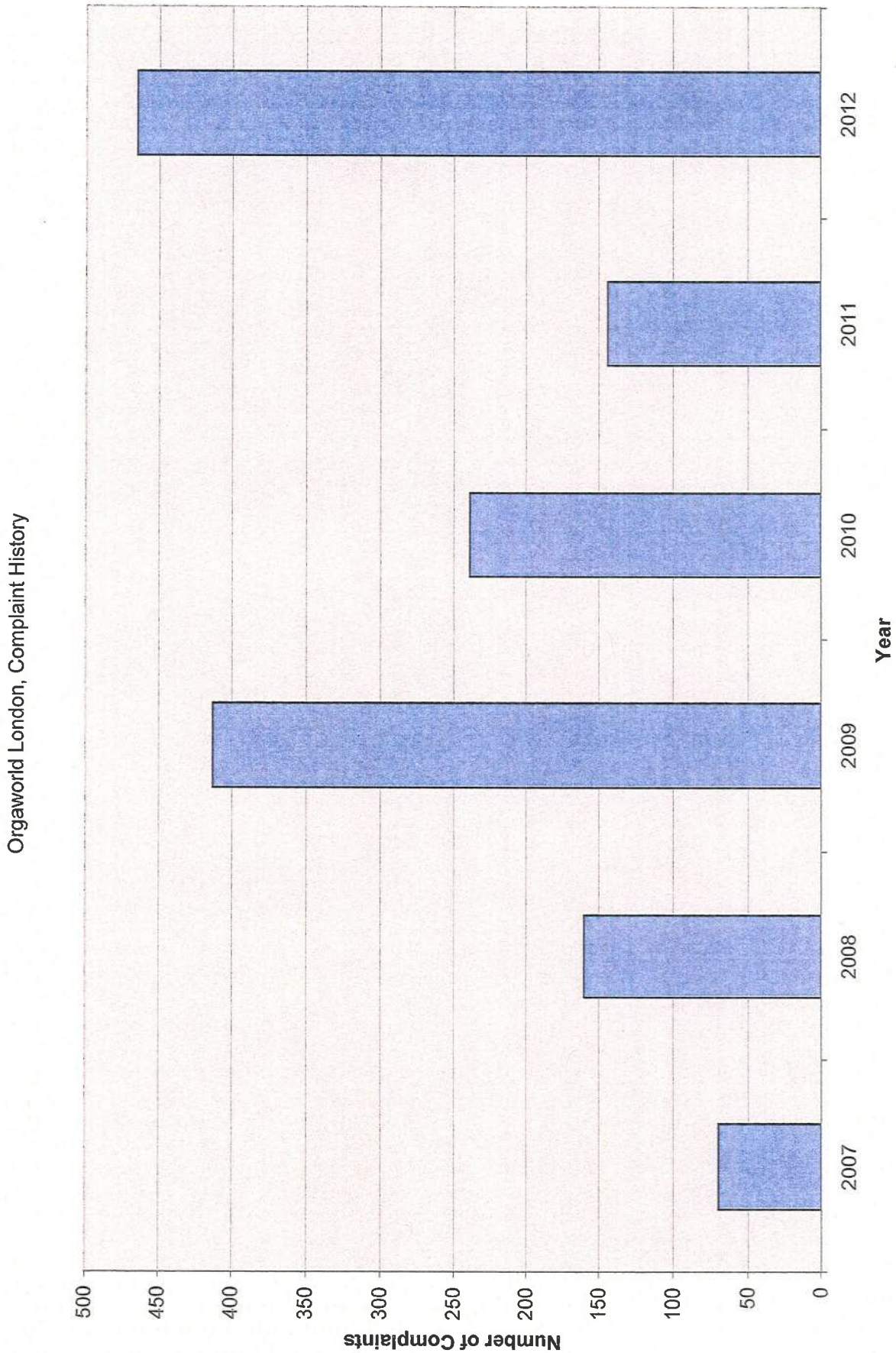
Dale Harley
Orgaworld Canada, Community Relations
Tel: 613-882-5684
Email: dale@harleyhouse.com

APPENDIX C

Details submitted by the Ministry of the Environment
London District Office, October 2012

Orgaworld London – Complaint History – Annual

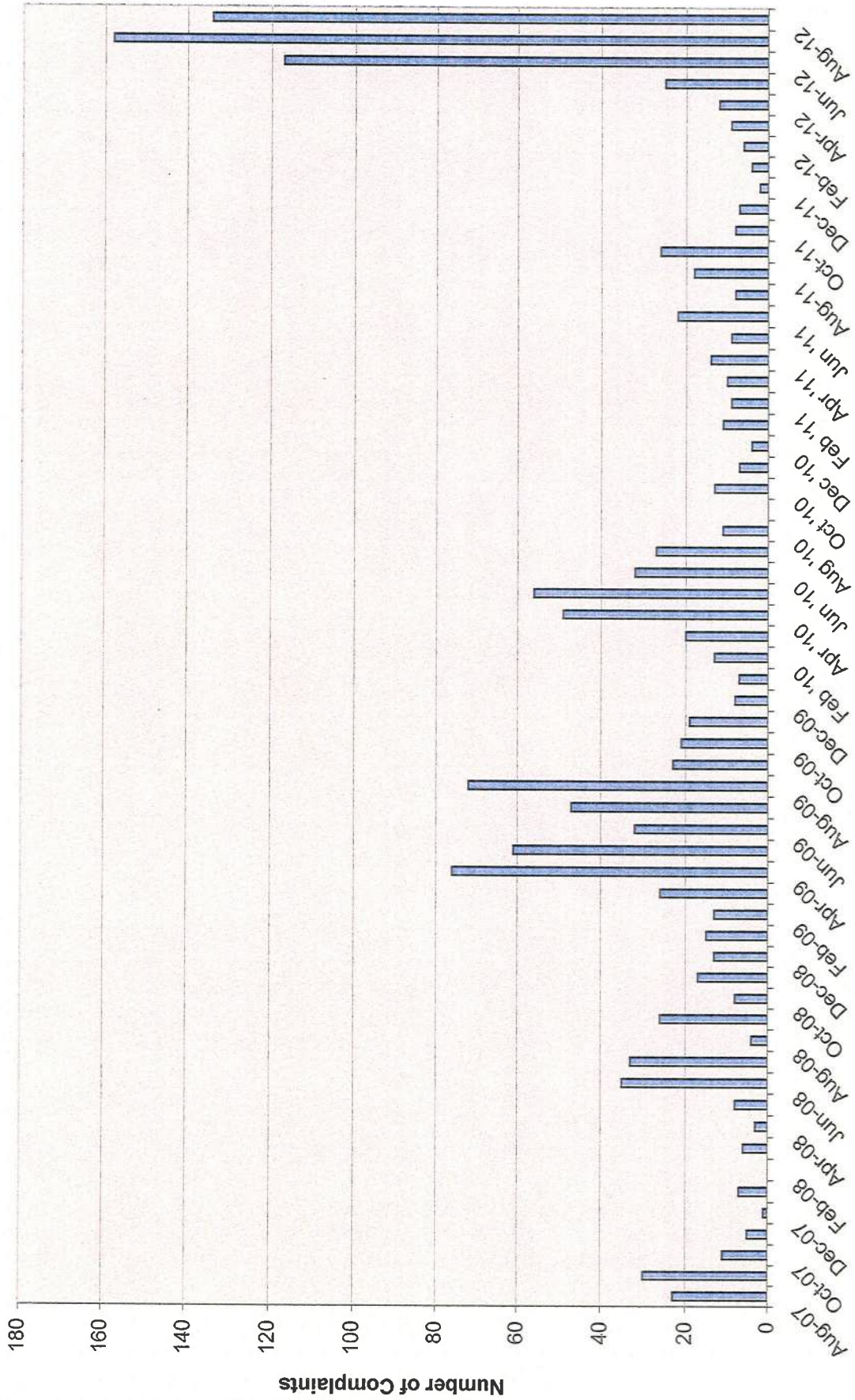
Data Compiled and Released by the Ministry of Environment



Orgaworld London – Complaint History – By Month

Data Compiled and Released by the Ministry of Environment

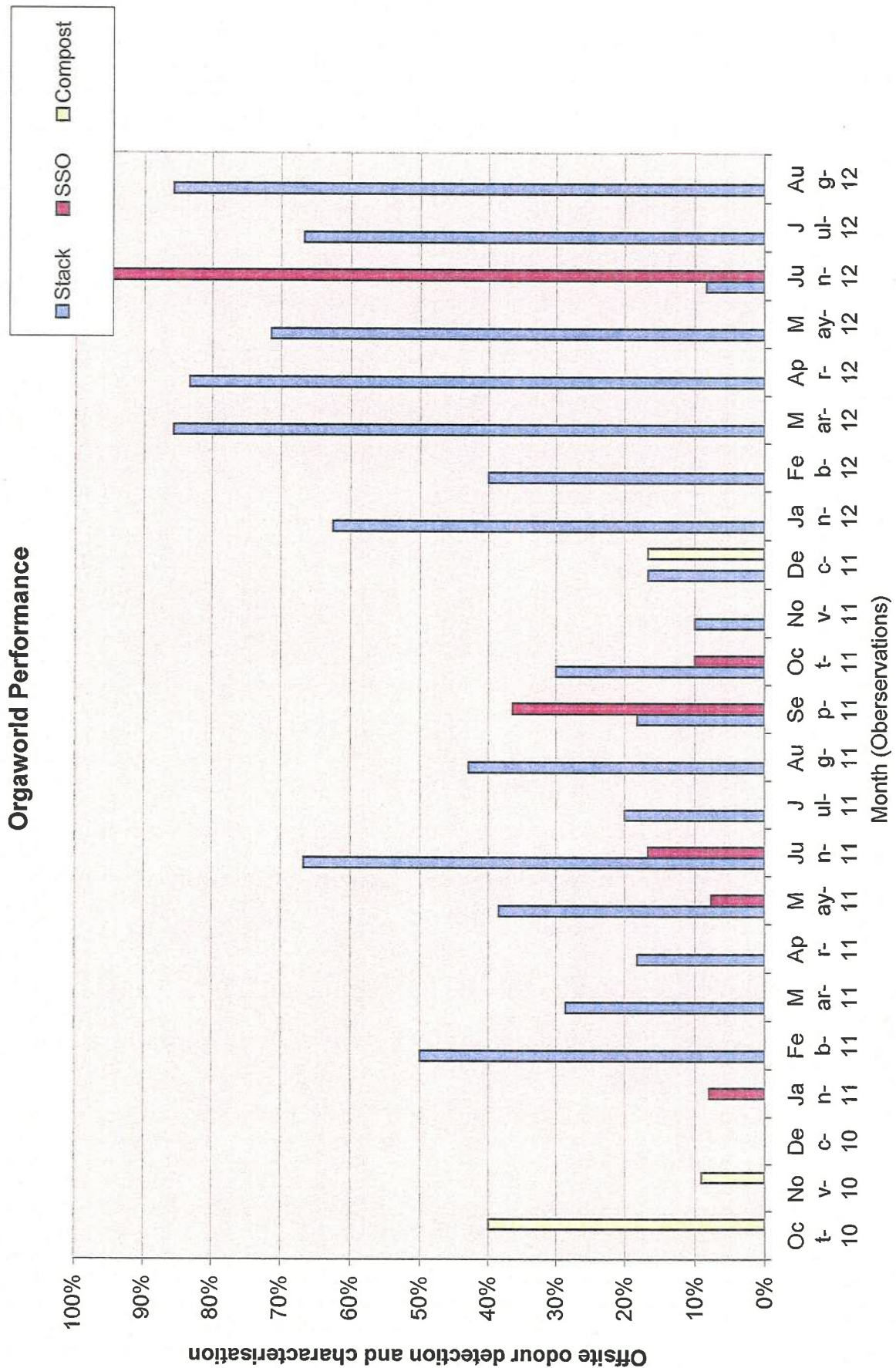
Orgaworld Complaint History



Orgaworld London – Performance – October 2010 to August 2012

Data Compiled and Released by the Ministry of Environment

Note provided by MOE - The number of complaints from Oct 2010 to April 2012 are the complaints that have been validated by either wind direction or MOE response. The complaints from May 2012 to August 2012 are total complaints which had not gone through the validation process.



APPENDIX D

Environmental Review Tribunal – Outcome (Proposal to Mediate a Resolution of the ERT and Director’s Order, submitted by Orgaworld to the ERT)



Environmental Review Tribunal

Case No.: 09-063

Orgaworld Canada Ltd. v. Director, Ministry of the Environment

In the matter of an appeal by Orgaworld Canada Ltd. filed July 13, 2009 for a Hearing before the Environmental Review Tribunal pursuant to section 140 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended; with respect to Order Number 5666-7TLH3Y issued by the Director, Ministry of the Environment, on July 3, 2009 under section 157.3 of the *Environmental Protection Act*, regarding a waste disposal site located at 4675 Wellington Road South, in the City of London, County of Middlesex, Ontario;

In the matter of a hearing held March 2-5 and 9-12, 2010 at the Second Floor Atrium, Hotel Metro, 125 Dundas Street, London, Ontario; and

In the matter of a teleconference held on March 19, 2012 at 10:00 a.m. regarding a proposed revocation of the Director’s Order and withdrawal of the appeal pursuant to Rule 201 of the Tribunal’s Rules of Practice.

Before: Jerry V. DeMarco, Associate Chair

Appearances:

Thomas J. Corbett	- Counsel for the Appellant, Orgaworld Canada Ltd.
Sylvia Davis	- Counsel for the Director, Ministry of the Environment
Debora Connor	- Participant, on her own behalf
Roma-Lynn Gillis	- Participant, on her own behalf
Brad McLellan	- Participant, on his own behalf
Bob Scott	- Participant, on his own behalf
Allan Tipping	- Participant, on his own behalf
John Pieteron	- Participant, on his own behalf
David Gillis	- Presenter, on his own behalf
Peter Firth	- Presenter, on his own behalf

- Cam Tillie - Presenter, on his own behalf
- Dave Roby - Presenter, on his own behalf
- Brian Sigmund - Presenter, on his own behalf
- Tom Yazbeck - Presenter, on his own behalf
- Larry Laporte - Presenter, on his own behalf
- Turkesh Kanber - Presenter, on his own behalf
- Bryan Haan - Presenter, on his own behalf

Dated this 13th day of **April, 2012.**

Reasons for Decision

Background:

On July 13, 2009, Orgaworld Canada Ltd. ("OCL") filed a notice of appeal with the Environmental Review Tribunal (the "Tribunal") pursuant to section 140 of the *Environmental Protection Act* ("EPA"). The appeal relates to Director's Order Number 5666-7TLH3Y issued on July 3, 2009 (the "Director's Order"), which requires OCL to complete certain work, including reducing the amount of waste entering its composting facility at 4675 Wellington Road South, London, Ontario (the "Site") and to submit a plan for incrementally increasing the amount of waste entering the Site.

On October 13, 2009, a preliminary hearing was held in London, Ontario. The Tribunal granted requests for participant status to five individuals and presenter status to three individuals. As well, hearing dates were set in March 2010.

The hearing began on March 2, 2010 in London, Ontario and proceeded for the eight scheduled hearing days as had been agreed to by the parties. The focus of the hearing was on odour issues respecting the facility, and in particular whether a reduction in the waste stream would alleviate odour problems.

OCL, the Director, six participants and nine presenters (including those additional individuals who were granted status at the main hearing itself) all participated. The addition of the large number of participants and presenters, coupled with the time needed for them to be questioned by the parties, meant that further hearing dates would be required in addition to the eight dates originally scheduled.

A number of witnesses testified for OCL and the Director, including a concurrent evidence panel of witnesses that included experts called by each party. By the eighth day of the hearing, nearly all of the participants and presenters had made their presentations, including those who made their submissions in an evening session. As well, most of the witnesses for the parties had testified. The matter was adjourned on March 12, 2010, with the expectation that additional dates would be set for the completion of the evidence and submissions. However, over the course of several teleconferences, the parties agreed to put off the setting of dates for a period of time. Following the production of a root cause analysis report, improvements to the facility and discussions amongst the parties, the resumption of the hearing was eventually set for May 22, 2012, at which time the remaining evidence and submissions were scheduled to be heard.

On February 27, 2012, the parties notified the Tribunal that they had reached a proposed agreement (the "Agreement"). The letter from OCL outlining the parties' understanding is attached as Appendix A to this decision. The Agreement involves the revocation of the Director's Order and the withdrawal of the appeal, and creates a plan that, while not binding the Director, sets out expectations for OCL's mitigation of odours from the Site. The Tribunal directed the parties to distribute the Agreement to all participants and presenters and set a deadline for the receipt of written submissions from any party, participant or presenter regarding the Agreement. Only OCL and the Director provided written submissions.

On March 19, 2012 at 10:00 a.m., a teleconference was held to consider the Agreement pursuant to Rule 201 of the Tribunal's Rules of Practice.

Relevant Rule:

Rules of Practice of the Environmental Review Tribunal

201. Where there has been a proposed withdrawal of an appeal as part of a settlement agreement not objected to by any Party that alters the decision under appeal, the Tribunal shall review the settlement agreement and consider whether the agreement is consistent with the purpose and provisions of the relevant legislation and whether the agreement is in the public interest. The Tribunal shall also consider the interests of Participants and Presenters. After consideration of the above factors, the Tribunal may decide to continue with the Hearing or issue a decision dismissing the proceeding.

Issue:

The issue is whether the Tribunal should accept the proposed settlement pursuant to Rule 201.

Discussion and analysis:

Both OCL and the Director provided detailed written submissions concerning the appropriateness of the Agreement.

OCL's submissions

OCL made written submissions to the Tribunal, which were received on March 8, 2012. The submissions indicated that OCL and the Director agreed to settle the appeal pursuant to Rule 201.

OCL submits that the Agreement furthers the stated purpose of the *EPA*, namely to provide for the protection and conservation of the natural environment (section 3(1)). OCL submits that the Agreement is in the public interest, as it aims to control odours emitted from the Site by: describing a methodology and protocol for monitoring odour performance; setting out odour performance goals for OCL; describing mitigation measures where odours are detected including changes in operations and reduction or cessation of waste reception; and providing a "ramp-up plan".

With respect to the participants and presenters, OCL submits that the Agreement takes their interests into account. This is supported by assertions that many of the participants and presenters have contributed to a continuing dialogue between the Director and OCL. In addition, the Director and participants and presenters discussed the proposed Agreement in the absence of OCL. OCL also states that a positive discussion took place upon presentation of the Agreement to community members. As such, OCL submits that the interests of the participants and presenters have been considered in the Agreement, in light of the subject matter of this particular appeal as per the Tribunal's approach summarized in *Krek v. Ontario (Ministry of the Environment)*, [2011] O.E.R.T.D. No. 9.

Director's submissions

The Director's written submissions regarding the proposed withdrawal of the appeal were received by the Tribunal on March 9, 2012, and echo the submissions of OCL. The Director maintains that the Agreement meets the test laid out in Rule 201.

The Director submits that the Agreement protects and conserves the natural environment by providing a framework that delineates measures to be used for monitoring off-Site odours, defines performance goals, and describes the approach that OCL will adopt to address and investigate any odour issues.

The Director points out that the interests of the participants and presenters would not be compromised, and that neither the complaints response process nor the Director's ability to exercise abatement and enforcement powers concerning protection of the

environment would be prevented by the Agreement or withdrawal of the Director's Order (see p. 4 of the Agreement).

March 19 teleconference

During the March 19, 2012 teleconference, the parties were represented by counsel. None of the participants and presenters participated. The parties relied on their written submissions and indicated that the absence of any participant or presenter submissions implied that there was no objection to the Agreement.

In response to a question from the Tribunal, the Parties confirmed that their agreement regarding ramping-up operations at the facility, as set out in section 4.0 of the Agreement, would continue to apply regardless of the revocation of the Director's Order.

Findings:

The Parties are to be commended for reaching a resolution of this contentious appeal. Given that there are no objections from any participant or presenter and that the Director is not fettered from taking further action to protect the environment should the need arise, the Tribunal finds that the Agreement should be accepted.

In light of the testimony that was heard prior to the hearing being adjourned, the Tribunal notes that disputes such as this require ongoing diligence from the Director, the regulated facility and the community. While there is a role for the Tribunal when appeals over specific issues arise, ongoing dialogue among all those involved is often the best way to address issues of this nature. Often the most durable solutions are those that arise from constructive dialogue amongst the interested parties.

The Tribunal wishes to add that counsel demonstrated a high degree of cooperation throughout this proceeding, both at the hearing itself and with respect to the successful negotiation of an Agreement. For example, they cooperated with the Tribunal in adjusting the hearing schedule to accommodate the presentations by the additional participants and presenters in the limited hearing time that was originally agreed to in March 2010.

In particular, the Tribunal appreciated the parties' agreement to the use of a concurrent evidence panel of expert witnesses called from both sides as a means to hear evidence in a more integrated and efficient manner. The Tribunal was able to understand the connections amongst the related areas of expert testimony, as well as the commonalities and differences among expert opinions in similar fields through the use

of the panel. As well, the Tribunal believes that the total amount of time used for the expert testimony was likely less than would have been the case had each witness testified separately. Presumably, the many members of the community in the audience also benefited from the integrated and complementary testimony that arose from this approach to the expert evidence. In the end, given that a settlement was reached, it is not necessary for the Tribunal to reach specific findings regarding the expert testimony that was provided by the concurrent evidence panel. The Tribunal is simply noting the experience gained in this proceeding so that parties are more aware of this hearing management tool, which may be used with greater frequency in situations where there is similar expertise and complementary evidence.

The Tribunal also wishes to acknowledge the important contributions made by the participants and presenters during the course of the hearing in March 2010. Their testimony regarding the impacts of the odour emissions was delivered in an organized manner while also conveying the significance of the issue in the community. The Tribunal was given a very clear picture of the difficulties community members have had with respect to the facility and the Director's regulatory oversight of it. The Tribunal believes that OCL, the Director and the community have the basis for working together to address any future issues arising from the facility. The Tribunal urges all those involved to continue to work together in a cooperative manner. It is in everyone's interest that the facility operates in a manner that complies with all relevant environmental requirements.

Decision

Pursuant to Rule 201, the Tribunal accepts the Agreement. The appeal is withdrawn and dismissed.

*Settlement Agreement Accepted
Appeal Withdrawn
Appeal Dismissed*

Jerry V. DeMarco, Associate Chair

Appendix A – Agreement

Agreement



London, 08/02/12

Dear Kanina,

Re: Proposal to Mediate a Resolution of the ERT and Director's Order

Following our recent discussions, I am forwarding this proposal.

Orgaworld does want to move forward and avoid the continuing ERT hearing. This proposal will allow Orgaworld to withdraw its appeal and the Ministry to withdraw its order while, at the same time, ensuring that Orgaworld and the Ministry have addressed expectations for future odour performance and actions in order to protect the environment and local community. This proposal would continue allowing Orgaworld and the Ministry to maintain their standpoints and views related to the ERT.

Orgaworld and the Ministry agree that the site is technically capable of operating at acceptable performance levels and that it is Orgaworld's responsibility to manage the site using its "know-how" to maintain this performance. In this proposal Orgaworld adopts performance goals suggested by the Ministry and describes specifics of the environmental management system that it will use to optimize performance to achieve these goals.

Over the last few months the facility has been operating well at 2400 tonnes per week, following further work and operational improvements that were discussed at the November PLC meeting and shared with the Ministry in other meetings.

In light of the above efforts and improved performance, Orgaworld proposes the following:

1.0 Monitoring of Odour Performance

Site performance in terms of off-site odour will be monitored using four methods.

- 1) Local community complaints
- 2) Ministry 360 tours
- 3) Company 360 tours
- 4) ECOMP (Enhanced Community Odour Monitoring Program)

ECOMP is an Orgaworld initiative and will be managed and funded by Orgaworld. The Ministry has communicated its interest in the information gathered by ECOMP in the same manner that they receive and review local community complaints. The Ministry

has further indicated to Orgaworld that the Ministry will not be bound by ECOMP data or findings and will continue to monitor odours in the community through Ministry 360 tours.

ECOMP monitoring results will be shared at regularly scheduled PLC meetings. These meetings are planned to take place every two months during the first year. After the first year, meeting frequency will be reviewed together with the PLC members.

Utilizing the services of a security firm, ECOMP tours will take place at a regular frequency which will be discussed and reviewed at the PLC meetings for community feedback. Details of the implementation of ECOMP will be discussed with the Ministry to permit consideration of Ministry expectations.

It is proposed that Orgaworld and the Ministry share their survey results on a regular basis to cross-check performance, either on a weekly or monthly basis (e.g. dissemination of odour monitoring spreadsheet).

The ECOMP will continue to operate for 12 months after the facility has been operating successfully at the existing Environmental Compliance Approval level of 150,000 tonnes/year (or approximately 2800 tonnes/week) or at a level that Orgaworld deems to have reached a plateau in incoming tonnage. Orgaworld will provide the Ministry with a written note of their plan to operate at their selected plateau level and maintain the ECOMP for 12 months from the date the plateau level being reached. If the tonnage during the 12-month period is subsequently increased, the Ministry may, based on performance, request that ECOMP operate for a further period of up to 12 months.

At the end of the 12 month period Orgaworld and the Ministry will meet and review the effectiveness of the four-method odour monitoring regime.

2.0 Odour Performance Goals

The facility will operate towards achieving or exceeding the following goals:

- Two incidents or less, in a defined 6 month period, of offensive stack odour, as identified by an Environmental Officer.
- Zero incidents of SSO odours detectable off-site from facility operations.

An "incident" is defined as one in which odour persists on a relatively continuous basis, over a short time, or one in which there are closely repeated incidents of odour over a 48-hour period, if in either case, the source of odour should have been avoided with reasonable diligence.

An "incident" excludes odour emissions caused by a discrete and planned event, such as significant maintenance or installation of equipment, provided that Orgaworld gives the Ministry and the community reasonable notice of the planned event, including a reasonable assessment of the potential severity and duration of odour emissions predicted because of the planned event.

For a planned event not to be considered an "incident", odours as described in the definition of "incident", above, must not persist for longer than a 24-hour period. If any of the above parameters are breached as identified by the Ministry or according to information collected by the company or ECOMP, the Ministry will be notified forthwith

with such notification to be accompanied by a written action plan to address the situation, including a plan to immediately address the odour emissions.

Should the Ministry believe that either of the above parameters is reached, the Ministry will notify Orgaworld forthwith so that Orgaworld can start an investigation the same day.

Orgaworld will proactively use operational data to identify and address process or operational upsets and maintenance issues that may result in offsite impacts as well as develop and adhere to standard operating plans to address issues. Upon request, Orgaworld will provide the Ministry with written documentation of remedial measures taken, and implementation timelines. Data trending shall be reviewed in conjunction with external odour performance data. Ministry review of the data shall be done in accordance with the authority provided to Provincial Officers under the *Environmental Protection Act* and disclosure of that data shall take place only in accordance with the *Freedom of Information and Protection of Privacy Act*.

Regular monitoring of operational data as well as analysis in order to pre-empt situations that can lead to offsite impact is understood to be a key to success.

Orgaworld will establish and implement a pro-active approach to notifying the public of any issues or any planned actions on site that may produce odours. The approach will be reviewed by the PLC and any valuable suggestions incorporated forthwith.

Orgaworld will establish and implement a pro-active approach to notifying the Ministry of process or operational upsets and maintenance issues that may result in offsite impacts with such notification to include proposed remedial measures and implementation timeline for those measures. Notification will take the form of emailing the District Office (to the Provincial Officer, the District Manager and Issues Project Coordinator) in addition to leaving a voice message (the Provincial Officer) or, on weekends or off-hours, notifying the Ministry's Spills Action Centre.

3.0 Mitigating Measures Upon Odour Detection

Mitigating measures will be commensurate with the severity of the detection. Orgaworld will immediately take a series of actions to investigate and address the source of odour, including, but not necessarily limited to:

- (a) Identifying if any planned maintenance was being carried out at the time (e.g. ammonia scrubber nozzle cleaning or biofilter refresh).
- (b) Review of SCADA trends for any process deviation.
- (c) Identify if any equipment failure occurred.
- (d) Discuss with staff if there was any human error involved (e.g. leaving a bay door open or poor filling of a tunnel).
- (e) Biofilter and bioscrubber visual check.
- (f) Review of any recent change(s) in operational practice.

Orgaworld will identify the cause for any "incident" and address and resolve that cause within 48 hours of identification.

The Ministry will be provided with the results of the investigation including immediate action taken and a root cause analysis. An overview that excludes any confidential information will also be shared at the following PLC meeting.

The intent is to resolve any issue within 24 hours. If it is anticipated odours will persist for longer than 24 hours, Orgaworld will, forthwith, inform the local community, the Ministry and other affected parties or stakeholders of the issue and its planned resolution.

If the event and its resolution is not clearly defined and treated, Orgaworld will consider temporary changes in operations that will assist with reduction of odour until the issue has been rectified and no further odour is detected off site. Such examples of an operational change could be: suspension of recycling of process waters; use of City water as opposed to pond water; increased sampling and testing; changes to tunnel loading regime; altering tunnel feed composition, fill height or mix ratio.

If an odour issue can only technically be resolved by reducing or ceasing incoming tonnage (e.g. a complete biofilter system failure), Orgaworld will also undertake this measure.

As mentioned previously, the site has implemented a series of operational improvements and monitoring systems to enhance processing reliability. By implementing the above monitoring and measurement, Orgaworld proposes the following ramp-up plan:

4.0 Ramp-Up Plan

Pending the withdrawal of the appeal and the Ministry order, and after communication to the PLC, the Director will issue another letter under the Ministry order permitting the facility to ramp up to an average of 2600 tonnes/week during the week of the 14th February 2012. Upon operations meeting performance goals for six weeks, Orgaworld will increase tonnage 100 tonnes every three weeks, provided their operations continue to meet performance goals to allow the facility to reach operation at capacities consistent with its Waste Environmental Compliance Approval (ECA). Some flexibility may be appropriate given systemic, on going and consistent positive performance (if approved by the Ministry).

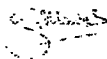
The weekly average allows for some processing flexibility of +/- 50 tonnes per week. This flexibility will allow increased servicing flexibility for our customers due to seasonal effects and will also allow the site to test systems under increased loads.

Orgaworld acknowledges that the withdrawal of the appeal and the order, if accepted by the ERT to conclude the appeal, does not in any way limit the authority of the Ministry, the Director, or any Provincial Officer to issue orders or make decisions regarding Orgaworld or any other person or entity in respect of the Site, including but not limited to orders or decisions relating to issues covered by this proposal, or limit the authority of the Ministry to lay charges under environmental legislation against Orgaworld or the right of Orgaworld to defend against such charges.

5.0 Stakeholder Communication

Orgaworld will continue to enhance its outreach with the public and key stakeholders including, but not limited to the PLC. Orgaworld will enhance its proactive efforts to ensure transparency and build trust with the local community and, collaboratively with the Ministry, will discuss and implement a communication regarding this proposal, once finalized, to key stakeholders. Orgaworld and the Ministry will advise the PLC of this proposal prior to the Director issuing a letter for ramp-up to 2600 tonnes/week.

Sincerely,



Greg Mariotti

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APPENDIX E

**Planning and Facility Chronology – Orgaworld
4645-4695 Wellington Road South**

February 27, 1980	Former Township of Westminster Official Plan approved by Council – Lands designated Fringe Perspective – Industrial
June 16, 1983	Council approves Former Town of Westminster Zoning By-law No. 2000, OMB subsequently approves May 25, 1984 – Lands zoned General Industrial Holding (M2-H)
October 1988	Lands rezoned General Industrial Exception (M2-3) by By-law No. 2000-46 to permit a recycling depot and roadway (Advance Container)
December 16, 1988	OMB decision on Advance Container zoning by-law amendment application to apply zoning and remove a holding provision and approve a site plan control agreement. The location of the facility was altered to separate from a neighbour.
June 1989	Site Plan approval application considered by Town of Westminster for a recycling depot. Green Lane begins operation shortly thereafter
December 14, 1992	Zoning by-law amendment to By-law No. 2000 on part of the property to also permit an in-vessel aerobic compost facility. Compost facility started in early 1993.
January 1, 1993	Town of Westminster annexed by the City of London
July 2, 1996	Council approves Official Plan Amendment No.88, which redesignates former Town lands and applies City of London designations – Lands designated Urban Reserve – Industrial Growth, Green Lane appeals the designation. OMB approves the rest of the amendments December 23, 1996
January 28, 1999	OMB issues order on appeal to OPA No.88. The designation was changed to Light Industrial.
July 28, 2003	City of London Review of Recycling and Composting Facilities goes to Planning Committee (OZ-6403). OPA No 296 and By-law Z-1-031144 were adopted by Council August 5, 2003. Amendments appealed by Green Lane to OMB August 28, 2003.
October 16, 2003	Official Plan and Zoning by-law amendment submitted for 4645 Wellington Road South (OZ-6574/Green Lane Environmental Group) in order to resolve appeals.
February 9, 2004	Planning Committee meeting on application (OZ-6574/Green Lane Environmental Group). Referred to a future public participation meeting.
April 5, 2004	Official Plan Amendment No. 315 and Zoning By-law in force for 4645 Wellington Road South (OZ-6574/Green Lane Environmental Group). The approved zoning was General Industrial Special Provision (h-2.h-18.GI1(2)) to permit the standard range of GI1 uses and residential and other source recycling facility, waste transfer station, channel composting facility, in-vessel composting facility and an expanded access roadway subject to holding provisions for natural heritage and archaeological assessment. The Former Town zoning was also deleted.

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| June 27, 2005 | Council approves Zoning By-law Z-1-051390 (Annexed Area Zoning By-law) which rezones former Town lands and applies City Zoning By-law Z-1 zones – Lands zoned General Industrial Special Provision (G11(2)) |
| July 24, 2006 | Council approves removal of a holding provision for archaeological assessment on the front and north portions of the property and removes the site from By-law Z-1-051390. Subject lands zoned G11(2) (H-7199/Orgaworld Canada Realty) |
| July-August 2006 | Orgaworld leases a 4.17 hectare parcel of land from Green Lane Environmental Group Limited |
| March 2-12, 2010 | Environmental Review Tribunal Hearing regarding volume of waste entering plant and odours |
| April 13, 2012 | Environmental Review Tribunal Hearing Decision accepting the agreement between parties |
| May 2, 2012 | Southwest Area Plan (SWAP) Brockley/Shaver Stakeholder Community Meeting |
| November 13, 2012 | Public Participation Meeting on Orgaworld situation at Planning and Environment Committee |