



STAFF REPORT ACTION REQUIRED

Standing Authority for City Solicitor to Recover Costs for Clean Up of City-Owned Contaminated Lands

Date:	March 19, 2007
To:	Government Management Committee
From:	City Solicitor
Wards:	All
Reference Number:	

SUMMARY

This report requests standing authority from Council to enable the City Solicitor to:

- a. enter into indemnity agreements with parties responsible for causing or contributing to contamination of City lands; or
- b. to commence litigation against parties who have caused or contributed to contamination of City lands.

Standing authority is being sought to permit the City Solicitor to act more quickly in situations where contamination is discovered on City lands and to avoid the need to seek authority from Council to commence routine litigation to collect costs incurred by the City or enter into indemnity agreements to protect the City's ability to collect costs in the future. If standing authority is granted, the City Solicitor will only be required to report to Council in situations where it is believed the cost of work done or to be done in the future in connection with a specific property or project may exceed \$500,000, or where the City is proposing to settle an action for an amount in excess of \$500,000.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Standing authority be granted to the City Solicitor, on behalf of the City and in consultation with the General Manager of the appropriate Division, to enter into indemnification agreements with people or companies who:

- a. own or owned property or substances that may have caused or contributed to harm or contamination of City-owned property;
- b. have or had charge, management or control of pollutants that are believed to or have harmed or contaminated City-owned property; or
- c. are otherwise responsible for remediating, preventing, or mitigating contamination that occurs on City-owned lands,

in order that the City may be indemnified by such parties for costs that have been or may in future be incurred by the City in taking any steps required to deal with the contamination found on City-owned property.

2. Standing authority be granted to the City Solicitor, in consultation with the General Manager of the appropriate Division, to commence legal proceedings for the purpose of recovering costs that the City has or expects to incur to deal with harm and/or contamination found on City-owned property against people or Corporations that:
 - a. own or owned property or substances that may have caused or contributed to harm or contamination of City-owned property;
 - b. have or had charge, management or control of pollutants that are believed to or have contaminated City-owned property; or
 - c. are otherwise responsible for remediating, preventing, or mitigating contamination that occurs on City-owned lands.
3. The City Solicitor be authorized to take all necessary steps to advance the City's claims, including settling any issue or the claim, where it is concluded that it is reasonable to do so, appealing any interim or final decision where warranted, and executing any documents in furtherance thereto, all in consultation with the General Manager of the appropriate Division.
4. The City Solicitor be directed to report to Council if and when the City Solicitor, in consultation with the General Manager of the appropriate Division:
 - a. reasonably believes that the cost of the work done by the City or the cost of the work that may or will be done in the future to remediate any contamination on City Lands will be in excess of \$500,000; or
 - b. recommends that an action be settled for an amount in excess of \$500,000.
5. The appropriate City officials be authorized and directed to take the necessary action to give effect hereto.

FINANCIAL IMPACT

The Recommendations will have no financial impact beyond what has already been approved in the current year's budget.

ISSUE BACKGROUND

Historically, contamination of lands within the City has taken place of which the City has had no notice or knowledge. City Staff sometimes become aware of this contamination through the re-development process, utility excavations, other excavations on sites, or as a result of other activities. Once the City is aware of this contamination, the City must take steps to protect its interests and possibly to commence legal action against the responsible party or parties.

COMMENTS

Under the Ontario *Limitations Act*, a standard limitation period of two years applies once the wronged party becomes aware of a legal wrong having been committed. Therefore, once the City becomes aware of contamination, the limitation clock starts to run (unless the contamination is continuing).

In some cases, it is not practical or desirable to require that the contamination be removed. Examples of such situations include locations where deep plumes of contaminated groundwater are detected well below the surface in City rights of way. It may be impractical to require that the right of way be closed and excavated in order to remove or address contamination that is not posing any risk.

In these circumstances, one practical step that can be taken is to obtain an indemnification agreement from those responsible for the contamination. Such an agreement would provide for compensation to the City for any costs arising as a result of the contamination in the future. These costs could include remediation (i.e. treatment or removal of the contamination) or a risk assessment (a study to evaluate any risks associated with the use to which the land is to be put in view of the contamination.) Remediation and risk assessments are both generally complex and costly to undertake. In the event that such costs were incurred in the future, the City would rely upon the indemnification agreement and could, if necessary, sue to enforce the indemnification agreement.

In other circumstances, where the responsible party is unwilling to either enter an indemnification agreement, take steps to remediate the contamination itself, or to pay for additional costs the City incurs in dealing with contamination, it may be necessary to commence legal proceedings to protect the interests of the City. These proceedings could be based on the argument that the contamination of the City lands was either a nuisance, a trespass, negligence, or breach of an environmental statute such as the Ontario *Environmental Protection Act*.

The purpose of granting standing authority to the City Solicitor in these matters is to permit the City to act more quickly in dealing with parties who are believed to have caused or contributed to contamination of City-owned lands and to eliminate the need for authority to be sought from Council in routine circumstances (where the anticipated costs associated with the contamination do not exceed \$500,000) as the City discovers contamination on property it owns with some frequency.

The recommendation that the City Solicitor report to Council if and when it becomes apparent that the estimated costs of any remediation work or the potential value of an indemnity agreement will exceed \$500,000 is intended to ensure Council is aware of financially significant agreements or actions in which the City is involved. Since, given the nature of environmental contamination, it is not always possible or practicable to accurately determine the potential costs of remediation before an action is commenced, it is proposed that the City Solicitor be required to report to Council only when sufficient information has been gathered to permit an accurate estimate of the potential environmental costs to be provided.

It is, therefore, recommended that Council grant general authority to the City Solicitor, in consultation with the General Manager of the appropriate Division, authorizing entry into indemnity agreements or commencement of actions against those responsible for the contamination of City lands to facilitate recovery by the City of costs that it has or may incur to deal with such contamination.

CONTACT

Graham Rempe, Solicitor, Tel: 416-392-2887, Fax: 416-397-1765, grempe@toronto.ca

Michele A. Wright, Solicitor, Tel: 416-397-5342, Fax: 416-397-1765, mwright4@toronto.ca

SIGNATURE

Anna Kinastowski
City Solicitor