

**Amendment to Waste Transport and Disposal
Agreement with Republic Services Inc.**

Date:	May 20, 2009
To:	Public Works and Infrastructure Committee
From:	General Manager, Solid Waste Management Services
Wards:	All
Reference Number:	p:/2009/swms/June/005PW

SUMMARY

The purpose of this report is to seek approval to amend the Waste Transport and Disposal Agreement between the City of Toronto and Republic Services Inc., Republic Services of Canada Inc., Republic Services of Michigan I, LLC, doing business as Carleton Farms, and Republic Transportation Services of Canada, Inc. to change the Alternate Disposal Site from the Brent Run Landfill located in Genesee County, Michigan to the Sauk Trail Hills Landfill located in Wayne County Michigan.

RECOMMENDATIONS

The General Manager, Solid Waste Management Services recommends that:

City Council authorize the General Manager, Solid Waste Management Services, to enter into an amending agreement with Republic Services, Inc., Republic Services of Canada, Inc., Republic Services of Michigan I, LLC, doing business as Carleton Farms, and Republic Transportation Services of Canada, Inc. to change the Alternate Disposal Site from the Brent Run Landfill in Genesee County Michigan, to the Sauk Trail Hills Landfill in Wayne County Michigan, in a form satisfactory to the City Solicitor.

Financial Impact

There are no financial impacts as a result of this recommendation.

DECISION HISTORY

By adoption of Motion J(26), at its City Council meeting of January 31, February 1 and 2, 2006, City Council authorized execution of a Waste Transport and Disposal Agreement between the City of Toronto, and Republic Services Inc., Republic Services of Canada, Inc., Republic Services of Michigan I, LLC, doing business as Carleton Farms, and Republic Transportation Services of Canada, Inc. (Republic Services) for the transportation and disposal of the City's waste to the end of 2010.

City Council Decision Document (relevant pages from 119 to 121)

<http://www.toronto.ca/legdocs/2006/agendas/council/cc060131/cofa.pdf>

ISSUE BACKGROUND

The Waste Transport and Disposal Agreement between the City and Republic Services Inc., etc. (the "Agreement") defines a Primary Disposal Site and an Alternate Disposal Site. The Primary Disposal Site is Carleton Farms Landfill, in Sumpter Township, Wayne County, Michigan. The Alternate Disposal Site is Brent Run Landfill in Genesee County, Michigan. The purpose of the Alternate Disposal Site is to provide immediate disposal operations in the event that the Primary Disposal Site becomes unavailable.

On December 15, 2008, the City received correspondence from Republic Services Inc. advising that a merger between Republic Services Inc. and Allied Waste Industries, Inc. was completed. As a condition of approval of this merger, the United States District Court for the District of Columbia issued a final judgement requiring Republic Services Inc. and Allied Waste Industries to sell off various landfills, including the Brent Run Landfill located in Genesee County. This correspondence requested that the City amend the Waste Transport and Disposal Agreement to change the Alternate Disposal Site from Brent Run Landfill located in Genesee County, Michigan to Sauk Trail Hills Landfill located in Wayne County, Michigan.

Changing the Alternate Disposal Site will not result in any change to the current operations or service fee.

COMMENTS

Since the commencement of the Agreement, Carleton Farms Landfill has been the only disposal site Republic Services Inc. has used and Republic Services Inc. is intending to continue utilizing the Carleton Farms Landfill as the Primary Disposal Site until the Agreement ends on December 31, 2010. While the probability of needing the Alternate Disposal Site is low, staff believed it was necessary to perform due diligence on the Sauk Trail Hills Landfill to determine the risk of liability under the United States' *Comprehensive Environmental Response, Compensation and Liability Act* ("CERCLA").

Due Diligence

Solid Waste Management Services Due Diligence

Solid Waste Management Services staff have inspected the Sauk Trail Hills Landfill to review on-site operating conditions, management and issues associated with the landfill.

The Sauk Trail Hills Landfill is an operating landfill located at 5011 South Lilley Road, Canton, Wayne County, Michigan, USA. The local environment surrounding the landfill consists of Michigan Avenue to the North, a high voltage transmission line corridor to the west, a railroad right of way and a closed landfill to the South, and an Industrial Plant and land zoned General Industrial to the East.

Landfilling operations typically run from 6:00 a.m. to 6:00 p.m. Monday through Friday; and 6:00 a.m. to 12:00 p.m. on Saturdays. Solid waste is accepted only while the landfill is open. Landfilling in the active area is secured at the end of each work day, and the active face is covered with approved daily cover material.

To control litter, portable screens are employed at the active tipping face to minimize blowing debris as well as the use of various berms and fences throughout the site for litter containment, and ongoing litter pickup by on site personnel. Throughout the day, as landfilling operations progress, daily cover is placed where possible to minimize the amount of exposed waste and an operating gas recovery system which operates under a vacuum removes landfill gases from waste cells.

Surface water runoff from the landfill site is contained within on-site storm water management ponds. There is a composite liner at the base of the landfill and a working leachate collection system is in place to protect groundwater. A surface and ground water monitoring program regularly measures water quality to ensure the effectiveness of the water management systems.

To ensure that environmental controls are operational, the landfill is inspected regularly by representatives of the Wayne County Department of Environment and the Michigan Department of Environment Quality.

Solid Waste Management Services staff have reviewed the management procedures and operations at the Sauk Trail Hills Landfill and, given the design of the landfill including the environmental controls in place, believe that this landfill is suitable for receiving the City of Toronto's municipal waste.

Legal Due Diligence

As discussed in previous reports dealing with the transportation and disposal of municipal solid waste in the U.S., CERCLA, also commonly known as "Superfund", authorizes the United States Environmental Protection Agency ("USEPA") to compel persons responsible for the disposal of hazardous substances to perform clean-up action to

address releases or threatened releases of such substances. USEPA also may perform the necessary response action itself and seek reimbursement from responsible parties. Responsible parties are generally the owners of the site, the site operators and “arrangers” (often referred to as the waste “generators”) for the disposal of the waste. Because municipal solid waste is considered to contain at least a small amount of “hazardous substances”, arranging for disposal of such municipal solid waste could at least generally fall under the definition of “arranger liability”.

Liability under CERCLA is strict, meaning that it is imposed without regard to fault. The fact that the City would not be involved in the management of the disposal site, and would not be responsible for any of the environmental damage that may result from a leaking site, does not provide any defence. Conducting due diligence reviews of the site, while useful from a practical risk management standpoint, also does not provide a defence should the site become a Superfund site (one governed by CERCLA).

Liability is also joint and several if the environmental harm is “indivisible”. This means that, at most disposal sites, and particularly with those that have releases to groundwater, any one responsible party may be held liable for the entire cleanup at the site. In addition to United States federal legislation, there is also likely to be relevant state specific legislation which would incorporate liability provisions similar to those found in CERCLA.

Legal Services utilized the law firm Dean & Fulkerson, already on retainer to assist on matters relating to the Agreement, to conduct a legal analysis of the risks associated with Sauk Trail Hills Landfill and CERCLA. The legal analysis done by James O’Brien of Dean & Fulkerson included interviews with the Michigan Department of Environmental Quality (“MDEQ”) engineers assigned to Sauk Trail Hills Landfill, review of the files available at MDEQ from 2000 to the present and a review of documents provided by Republic Services Inc.

The legal analysis done by Dean & Fulkerson suggests that it is a reasonably acceptable risk to allow the Alternate Disposal Site to be changed to Sauk Trail Hills Landfill. The analysis indicates that Sauk Trail Hills Landfill is well situated and well designed to prevent a release of waste, leachate or other environmental contamination. The landfill is managed in accordance with specific, conservative, operating guidelines by a large owner (Republic Services Inc.) with a great deal of experience in operating similar landfills. The operators of Sauk Trail Hills Landfill take all necessary precautions to exclude prohibited waste from entering the landfill and follow closely what is recommended by the USEPA to minimize possible liability to the extent reasonably possible. Further the landfill is inspected weekly by representatives from the Wayne County Department of Environment and quarterly by MDEQ. Finally, the Agreement between the City and Republic Services contains an indemnity provision designed to protect the City from claims under CERCLA related to the disposal of the City’s waste.

If the City does not send any waste to the Alternate Disposal Site, Sauk Trail Hills Landfill, there is no risk of liability under CERCLA. The risk of liability under CERCLA should be low even if the Alternate Disposal Site is utilized given that Sauk Trail Hills Landfill is managed by experienced owners who follow the correct procedures and the design of the landfill cells are in accordance with Michigan requirements.

CONTACT

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SIGNATURE

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