



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

**Licensing Issue - Organic Material Processing
Equipment, Dufferin Organics Processing Facility**

Date:	February 18, 2014
To:	Public Works & Infrastructure Committee
From:	City Solicitor
Wards:	All
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City and contains advice that is subject to solicitor-client privilege.
Reference Number:	

SUMMARY

The City intends to expand processing capacity for the City's source separated organic ("SSO") material at its Dufferin Organics Processing Facility ("DOPF"). It is, however, hindered in doing so by an unresolved disagreement between itself and the company that previously provided equipment for use at the DOPF, Canada Composting Inc. ("CCI").

The disagreement between the City and CCI is regarding the proper interpretation of the sub-licence agreement between CCI and the City (the "Sub-Licence Agreement"), and whether the terms of the Sub-Licence Agreement apply to specific SSO processing equipment currently on site.

How the Sub-Licence Agreement is to be interpreted will impact the terms of the request for proposal ("RFP") that the City wishes to issue to engage a contractor to design, build, operate, and maintain an expanded DOPF facility, and may impact the proposals submitted by potential bidders to the City.

The Confidential Attachment outlines the nature of this dispute, the confidential legal advice that the City has received with respect to these issues, and the proposed mechanisms for resolution of the issues.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Council adopt the confidential instructions to staff in Attachment 1.
2. If Council adopts the confidential instruction to staff in Attachment 1, Council direct that the instruction no longer remain confidential.
3. Council direct that the remaining information in the confidential attachment remain confidential indefinitely as it contains advice that is subject to solicitor-client privilege.

Financial Impact

A Confidential Financial Impact analysis is set out in Attachment 1.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

COMMENTS

History of the DOPF

The DOPF was constructed between approximately 1999 and 2003. It commenced operations in early 2004. CCI-TBN Toronto Inc. (“CCI-TBN”) has operated the facility since 2004 pursuant to an operating agreement with the City.

The Sub-Licence Agreement between the City and CCI, a company with an interest in CCI-TBN, was entered into in or about the time that construction of the DOPF commenced.

The DOPF is now scheduled to cease processing SSO on March 31, 2014. The facility will then be de-commissioned between April – June 2014 in preparation for mobilization by the successful RFP bidder to undertake construction and commissioning efforts necessary to expand the organic processing facility.

The decision and authority to expand the Dufferin organic processing facility to 55,000 tonnes/ year on a design, build, operate and maintain basis follows from PW6.1: SSO Public Facility Business Plan – Recommendations of the Planning Study for Expanded Public SSO Processing Capacity which was subsequently approved by Council at its meeting on June 19, 20 & 22, 2007), and funding for which was approved as part of the 2014 Capital Budget (CSW 009) approved by Council at its meeting on December 18, 2013.

Current Processing of SSO at DOPF

At present, the DOPF processes approximately 40,000 tonnes of SSO annually.

Broadly speaking, there are currently two phases to the processing of SSO at the DOPF. The first phase is called “pre-processing” and it involves the removal of plastic bags and other contaminants (garbage) in the SSO by “pulping” the SSO through the addition of water, and then removing grit (fine contaminants). In the second phase, the clean SSO pulp is placed in an anaerobic digester for an extended period of time to allow decomposition of the SSO. When the SSO is removed from the digester, it is dewatered and transported off site for aerobic composting before its ultimate use as finished compost.

Issue in Dispute Between CCI and the City

The Confidential Attachment provides legal advice regarding the issues between the City and CCI relating to the interpretation of the Sub-Licence Agreement, and the potential strategies the City may employ to resolve those issues.

The Solid Waste Management Division ("SWMS") has been consulted in the preparation of this report, and concurs with the recommendation being made by the City Solicitor.

CONTACT

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SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

Attachment 1 – Confidential Information: Licensing Issue - Organic Material Processing Equipment, Dufferin Organics Processing Facility