



## STAFF REPORT ACTION REQUIRED

### Recovery of Expenses for Propane Explosion Clean-Up

<b>Date:</b>	April 20, 2009
<b>To:</b>	Executive Committee
<b>From:</b>	City Solicitor
<b>Wards:</b>	All
<b>Reference Number:</b>	

#### SUMMARY

---

This report seeks to:

1. obtain authority for the City Solicitor to issue an Order under the Spills provisions of the *Environmental Protection Act* seeking recovery of clean-up costs related to the propane explosion in the Keele-Wilson area of the City; and
2. obtain authority to take any further action to recover the City's costs, where appropriate.

#### RECOMMENDATIONS

---

It is recommended that:

- (1) the City Solicitor be granted authority to pursue recovery of expenses related to the clean-up of properties affected by the propane explosion and fire in August 2008 that started at 48 and 54-62 Murray Road (the "Sunrise Site") in the City of Toronto and expenses related to the clean-up of the Sunrise Site;
- (2) such authority include the authority to issue an order under Section 100.1 of the *Environmental Protection Act*, to commence other legal action where appropriate, to discontinue or settle any legal action, to appeal any decision where warranted, to take collection proceedings to enforce judgments and orders where necessary, to write-off amounts that are uncollectible where it is appropriate to do so, or otherwise to deal with the recovery of such claims, in

consultation, where appropriate, with the head of the relevant City division, and to execute any documents in furtherance thereof; and

- (3) The appropriate City staff be authorized to take the necessary steps to implement these recommendations.

## **FINANCIAL IMPACT**

The City Solicitor is seeking authority to recover costs expended for the clean-up as set out in this report. If the City is successful, there will be a positive financial impact.

## **ISSUE BACKGROUND**

On August 10, 2008, several explosions and a fire broke out at a propane facility on the Sunrise Site. The properties comprising the Sunrise Site are owned by two separate companies who then leased the site to an entity that operated a propane facility (“Sunrise”). In addition to various City responses, the Fire Marshall and the Ministry of the Environment’s Emergency Response personnel (ERP) responded to the emergency. During a preliminary examination of the residential area, asbestos-containing material was found. A Provincial Officer with the Ministry of the Environment (MOE) issued an order under the *Environmental Protection Act* dated August 13, 2008 that among other things, required Sunrise to confirm that it had retained a qualified clean-up contractor, to carry out clean-up in the affected residential area and provide a clean-up plan.

Sunrise did not promptly reply to the MOE Order and carry out the required activities. The City Manager, who was in close communication with the MOE, determined after consultation with Legal Services that the City should undertake the clean-up of asbestos in the affected residential area.

On August 21, 2008, a second Order was issued by the MOE to Sunrise and the property owners requiring that plans be produced for site security and clean-up of the Sunrise Site. It was determined that Sunrise and the property owners were not promptly complying with the MOE order and that immediate action was necessary. A team assembled by the City then went onto the Sunrise Site, secured the site and carried out the clean-up work to the extent necessary to render the site safe. This work was done in consultation with the MOE, the Ministry of Labour and the Ontario Fire Marshall.

## **COMMENTS**

The *Environmental Protection Act* contains specific provisions related to spills, which include discharges into the natural environment from a structure or container, that are abnormal in quality or quantity in light of all the circumstances of the discharge (s.91(1)).

Municipalities are given authority, under the spills provisions of the *Environmental Protection Act*, to “do everything practicable to prevent, eliminate and ameliorate any adverse effects and to restore the natural environment” (s.100(1)). This authority comes

with a commensurate right to recover reasonable costs and expenses of such actions from the owner of the pollutant and the person having control of the pollutant. The method of collection is through an order for costs and expenses. Authority is sought to issue an order authorized under section 100.1 of the *Environmental Protection Act* against all appropriate entities and persons including Sunrise and the property owners.

The costs of the clean-up carried out by external consultants on behalf of the City totalled \$1,888,217.34. Nine hundred thousand (\$900,000.00) of that amount has been recovered from the Province of Ontario as an unconditional payment.

The proposed costs order may be challenged before the Environmental Review Tribunal on grounds that include (a) whether the person to whom the order was directed was, immediately before the discharge into the natural environment, the owner or the person having charge, management or control of the thing discharged, or the employee or agent of that person, and (b) whether any of the costs or expenses do not relate to things for which the municipality incurred costs or expenses or the costs or expenses are unreasonable having regard to what was done (s.100.1(15)).

In addition, the City could also pursue a civil action to seek to recover the costs expended. Authority is sought to pursue this as well, if appropriate.

## **CONTACT**

Grace Patterson, Solicitor, Municipal Law, Legal Services, Tel: (416)392-8368, Fax: (416)397-5624, Email: [gpatter@toronto.ca](mailto:gpatter@toronto.ca)

## **SIGNATURE**

---

Anna Kinastowski  
City Solicitor