



STAFF REPORT ACTION REQUIRED

Authority to Appear Before the Environmental Review Tribunal in the Matter of *Region of Peel v. Director, Ministry of Environment and Climate Change*

Date:	August 31, 2015
To:	Public Works & Infrastructure Committee
From:	City Solicitor
Wards:	All
Reference Number:	006CC-AFS20729

SUMMARY

The City Solicitor seeks authority to intervene in an Environmental Review Tribunal (“ERT”) hearing on an issue that is significant to the City’s Solid Waste Management Services operations. The matter is urgent because the ERT proceedings are underway, and the City’s submissions, if permitted by the ERT, could be required at any time.

RECOMMENDATIONS

The City Solicitor recommends that City Council:

1. Authorize the City Solicitor to attend at the Environmental Review Tribunal proceedings of *Region of Peel v Director, Ministry of Environment and Climate Change* (“MOECC”), and any related court proceedings, to make submissions on the issue of the transfer of ownership of waste as provided in Section 42 of the Ontario Environmental Protection Act (“EPA”); and
2. Authorize City staff to provide such support as may be required.

Financial Impact

There are no financial implications resulting from the approval of the Recommendations in this report.

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

ISSUE BACKGROUND

The Regional Municipality of Peel (“Peel”) transferred waste to a disposal site that had an Environmental Compliance Approval (“ECA”) from MOECC to receive Peel’s waste. Subsequently, and unknown to Peel, the waste was transferred to another site that did not have an ECA. MOECC has now ordered several parties, including Peel, to clean up the second, illegal site.

Peel is appealing the MOECC order (the “Order”) to the ERT. Under Section 42 of the EPA, ownership of waste, and the liability that flows from such ownership, transfers when the waste is deposited at a site with an ECA. Peel argues that the Order attempts to “override” the Section 42 protection to which Peel is entitled by imposing liability on Peel for actions involving the waste after Peel already transferred ownership to a site with a lawful ECA.

The City relies on this same EPA protection for its own solid waste operations. Therefore, the City wants to intervene in the Peel proceeding to help the ERT clearly understand the risks and costs at stake to municipalities if the ERT upholds the current Order.

COMMENTS

Like Peel, the City of Toronto routinely delivers and transfers garbage and recyclable materials to private waste sites.

Although the City processes over half of the source separated organics that it collects or receives at its own facilities and owns and operates its own landfill, SWMS also retains the services of contractors throughout Ontario that are licensed to process and/or dispose of waste materials including, but not limited to, garbage, recyclables, organics, digester solids, yard waste, household hazardous waste and electronic waste. Under these contracts, the City deposits the waste material at the site and the contractor receives it.

SWMS undertakes a review of each site and contractually ensures that each site possesses all required regulatory approvals, including ECAs issued by the MOECC. Moreover, SWMS further requires such contractors to notify the City in advance and throughout the term of the contract regarding any regulatory orders or actions that may affect their ability to lawfully receive the waste materials.

Ordinarily, EPA Section 42 protects the City from liability the moment such waste is delivered to a site.

As provided in Section 42 of the EPA, the transfer of ownership of the waste materials immediately shifts liability for the waste material from the City to the contractor. The

City, along with Peel and other municipalities, relies on this liability waiver attaching at the moment of waste transfer so that the City can provide cost-effective and administratively feasible waste disposal and waste diversion services.

Without the protection of Section 42, the City is exposed to the risk not only of misuse by the contractor in violation of its ECA but also misuse by any third party to whom the contractor subsequently sells or otherwise transfers the received waste material (or a processed variation of it) pursuant to a separate agreement to which the City is not a party.

The MOECC Order changes the Section 42 protection.

The MOECC imposes liability on Peel even though Peel lawfully transferred the waste to the site owner and Peel had no knowledge of any subsequent activity involving the waste. Consequently, the effect of the Order would be the creation of limitless liability for Peel which sets a dangerous precedent for the City and other municipalities. This would be a dramatic shift in Ontario waste policy. It would also appear to contradict the language of the EPA. Therefore, the City is seeking permission from the ERT to intervene in the matter to ensure that the ERT properly interprets and applies Section 42.

The City's intervention will not involve significant resources.

The cost of City intervention, if permitted, would be minimal. Resources required will primarily involve both Legal Services and SWMS staff time.

This report has been prepared in consultation with the General Manager of Solid Waste Management Services.

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SIGNATURE

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