

Litigation Arising from North Toronto Wastewater Treatment Plant Combined Sewer Overflow Tank - Implementation of Hydraulic Improvement and High Rate Treatment Project, Request for Proposal 9117-06-7403

Date: October 5, 2021

To: Infrastructure and Environment Committee

From: City Solicitor and the Chief Engineer and Executive Director, Engineering and Construction Services

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

This report is about litigation that affects the City of Toronto.

The attachment to this report contains advice or communications that are subject to solicitor-client privilege and litigation privilege.

SUMMARY

The City hired CH2M Hill Canada Limited (CH2M) to design and oversee the construction of modifications to the North Toronto Wastewater Treatment Plant Combined Sewer Overflow Tank (the "Project"). The Project was to retrofit the existing Combined Sewer Overflow at the North Toronto Treatment Plant to improve treatment and flow conveyance. The work was intended to increase the volume of water the Combined Sewer Overflow Tank could treat to reduce the frequency and the volume of untreated sewer overflow diverted to the Don River in wet weather. To date, the Combined Sewer Overflow Tank cannot be operated in accordance with its intended design.

Therefore, the City has commenced legal action against CH2M. The City claims that CH2M was negligent or breached its contract with the City in its: (a) design of the Project; and/or (b) delivery of engineering services during the Project.

The City is also currently in the process of assessing precisely what is required in terms of remedial work to improve the functionality of the North Toronto Treatment Plant Combined Sewer Overflow Tank, and the cost/time to complete the work.

Confidential Attachment 1 contains legal advice from the City Solicitor regarding the litigation.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff in Confidential Attachment 1.
2. City Council authorize the public release of the confidential recommendations contained in Confidential Attachment 1, at the discretion of the City Solicitor, but that the remainder of Confidential Attachment 1 remain confidential as it contains advice which is subject to solicitor-client and litigation privilege.

FINANCIAL IMPACT

The financial implications are discussed in Confidential Attachment 1.

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

DECISION HISTORY

The City Solicitor has not previously reported on the litigation discussed in this report.

COMMENTS

Background

Project Commencement and Completion

The North Toronto Treatment Plant intercepts and treats wastewater from the North Toronto and Leaside areas. Wastewater volumes that exceed the capacity of the North Toronto Treatment Plant are bypassed to the Ashbridges Bay Treatment Plant. Wastewater flows that exceed both the capacity of the North Toronto Treatment Plant and the bypass sewer that directs flow to Ashbridges Bay Treatment Plant are directed to the North Toronto Treatment Plant Combined Sewer Overflow storage tank, as required during particular wet weather conditions. Originally constructed in 1924, and

upgraded in 1991, the Combined Sewer Overflow storage tank treats wastewater before the flow is discharged into the Don River.

In 2003, the Wet Weather Flow Master Plan recommended that high rate treatment be utilized by the Combined Sewer Overflow tank to improve the quality of the wet weather flow discharges to the Don River by installing a polymer system to:

1. increase the capacity of the Combined Sewer Overflow Tank, and
2. improve treatment effectiveness.

Overall, the installation of the high rate treatment system was intended to reduce the flooding and water quality impacts from combined sewer overflows and stormwater discharges to improve water quality along the Lake Ontario waterfront and within the City's watercourses including the Don River.

In 2007, the City entered into two (2) contracts with CH2M. One contract was for CH2M to provide Professional Design, Engineering and Consulting Services for improvements to the North Toronto Treatment Plant Combined Sewer Overflow Tank (the "Design Contract"). The second contract was for CH2M to provide services during Construction and Post Construction (the "Construction Management Agreement"; collectively, the "Agreements"). The total value of the contracts was approximately \$1,500,000.

On July 9, 2014, the City entered into a contract with APlus General Contractors Corporation, for construction of the Project in accordance with the plans and specifications prepared by CH2M. The total cost of construction was approximately \$8,500,000.

After the modifications to the Combined Sewer Overflow Tank were constructed, the Tank did not meet the intended function and was not operable as intended. The capacity of the Combined Sewer Overflow Tank has not been sufficiently increased, and treatment effectiveness has not been improved. Moreover, additional issues have arisen as the solids management is ineffective; solids accumulate in the Tank that cannot be pumped out and additional City labour is required to manually clean the Tank.

Improvements to the Combined Sewer Overflow Tank Were Not Achieved

To date, the Combined Sewer Overflow Tank cannot be operated in accordance with its intended design or the requirements of the Agreements. Simply put, the Project did not improve the rate at which the combined sewer overflow can be treated during wet weather and, as a result, has not improved protection to the Don River or Lake Ontario as intended.

Additional engineering assessment and design work is required to assess the full Project limitations, and recommend design modifications to achieve the original flow, treatment and solids management goals. Under the direction of Engineering and Construction Services, this work has been initiated and is ongoing, so that recommendations for the construction of improvements may be made and implemented.

Litigation Commenced in February 2021

Until February 2021, the City and CH2M had agreed to suspend the running of the limitation period to permit discussions between CH2M and the City and the City's ongoing investigation of the issues. When that agreement ended, the City filed its claim against CH2M. The claim has been delivered to CH2M.

Confidential legal advice about the litigation is provided in Confidential Attachment 1.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

Michael D'Andrea, M.E.Sc., P.Eng.
Chief Engineer and Executive Director, Engineering and Construction Services

ATTACHMENTS

Confidential Attachment 1 - Confidential Instructions to Staff