

CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT *Planning Division*

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: WARD 3
COMMITTEE DATE: October 18, 2011	
SUBJECT/REPORT NO: Application for Ministry of Environment Certificate of Approval for a Waste Disposal Site (Paint Recycling Facility), Ministry of Environment Reference #1780-8GANJR, 6 Hillyard Street (Hamilton) (PED11152) (Ward 3)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Joe Muto (905) 546-2424, Ext. 7859
SIGNATURE: 	

RECOMMENDATION

That the Environmental Assessment and Approvals Branch of the Ontario Ministry of Environment (MOE) be advised that should the Ministry consider approving **Application MOE-CA-11-003, Hotz Environmental Inc., Applicant**, for a new Certificate of Approval for a Waste Disposal Site, MOE Reference #1780-8GANJR, to permit a paint recycling facility on the lands located at 6 Hillyard Street (Hamilton), as shown on Appendix "A" to Report PED11152, that the City of Hamilton requests:

- (a) That, if approved, the Certificate of Approval includes the following requirements:
 - (i) That the Certificate of Approval limit the daily processing of latex paint up to 50 cubic metres per day, and a maximum of 820,000 litres of stored materials (waste and processed) at any time.
 - (ii) That the Spills Prevention and Containment Measures Plan include measures to deal with douse water or fire water in the event of a fire, to the satisfaction of the Chief Fire Official.

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- (iii) That the proponent submits any required amendments to the buildings Fire Safety Plan for approval by the Chief Fire Official. (Plan is presently undergoing final approval by HES-Fire).
- (iv) That a current copy of the Emergency Response Plan, Spills Containment and Contingency Plan, daily product inventory list, including product quantities and exact location within all facilities, along with the applicable MSDS sheets, be externally stored in a secure location (exterior lock box) on site in a manner such that all noted documents are readily available to Hamilton Emergency Services - Fire, 24 hours a day, 7 days a week, 365 days a year.
- (v) That waste accepted is limited to waste generated only from within Ontario.
- (vi) That the maximum storage amounts proposed for latex paint and/or other materials shall be submitted to Public Health Services and reviewed for best management practices in order to minimize risk of fires, spills, or other uncontrolled events.
- (vii) That excellent storage and housekeeping practices must be in place to allow ease of access by emergency personnel such as Hamilton Fire and/or other first responders.
- (viii) That a mitigation plan(s) must be implemented to address any issues dealing with fugitive dusts and/or odours, to the satisfaction of Public Health Services.
- (ix) That the proponent be required to provide financial assurance to the Ministry of Environment to cover final clean-up of the site, following the cessation of use.
- (x) That a Ministry of Environment staff person be identified to the City as the contact for all issues and complaints regarding the subject property.
- (b) That a copy of Report PED11152 be forwarded to the Environmental Assessment and Approvals Branch of the Ministry of Environment for their consideration.
- (c) That the Environmental Assessment and Approvals Branch of the Ministry of Environment be requested to forward a copy of its final decision respecting the Certificate of Approval to the Clerk, City of Hamilton.

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EXECUTIVE SUMMARY

The applicant, Hotz Environmental Services Inc., has applied to the MOE for a new Certificate of Approval for a Waste Disposal Site to permit a latex paint recycling facility on the lands at 6 Hillyard Street (Hamilton) (see Appendix "A"). This proposal is essentially the expansion and enhancement of the well established Paint Recycling Facility under Certificate of Approval (CofA) #A650089. The type of waste proposal to be received on site will be limited to latex paint from within North America. The site would receive up to 50 cubic metres of latex paint per day. A major component of the paint recycling process is currently conducted at the 239 Lottridge Street Hotz facility. That CofA (#A650089) permits a combined storage capacity of 1,170,000 million litres over both locations, with only paint recycling permitted at the Hillyard Street facility for temporary storage. In addition to the 1,170,000 million litres, the new CofA for 6 Hillyard Street will allow for a stand alone facility that will permit a maximum of 820,000 litres of waste and processed materials, which may be stored at the site at any time. The site is approximately 1.1 hectares in area, and the building has a gross floor area of 5,090 square metres. No new buildings are being proposed, and the existing building has been retrofitted to conform to the Building Code for the storage and processing operation, as well as the regulatory requirement pertaining to fire protection. The floor will also be dyked to provide a secondary containment, and there are no drains in the main area of the building (see Appendix "B").

The MOE requests affected municipalities to provide comments on new and amended Certificate of Approval applications. The MOE then makes a decision on the application, on the basis of the comments received, in addition to various technical and environmental considerations. Comments from the City of Hamilton on Certificate of Approval applications are forwarded to the MOE. Based on the comments received from an internal circulation of this application, and the analysis undertaken, this MOE application for a Certificate of Approval is considered acceptable, subject to a number of conditions being included in the Certificate, as will be further discussed below.

Alternatives for Consideration - See Page 11.

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: N/A.

Staffing: N/A.

Legal: Certificate of Approval applications are processed by the Ontario Ministry of the Environment under the authority of the Environmental Protection

Act. The City of Hamilton has been formally requested to provide comments to the Ministry on this specific application.

HISTORICAL BACKGROUND

What is a Certificate of Approval?

A “Certificate of Approval” pursuant to Part V of the Environmental Protection Act is a legally binding document, through which an individual, company, or municipality is permitted, by the Ontario Ministry of Environment, to undertake an activity related to the management of waste.

Each Certificate of Approval is drafted to address the site-specific considerations relevant to the proposal, and contains enforceable requirements that ensure environmental and health protection, compliance with legislation, and policy requirements. The Certificate of Approval stipulates the types of wastes that can be managed at the facility, and contains “conditions” that describe the manner in which the facility is to be operated. Failure to comply with any of the Certificate’s conditions constitutes a violation of the Environmental Protection Act, and is grounds for enforcement through the Provincial Offences Act.

New Official Plan Policies and Zoning Regulations Regarding Private Waste Disposal Sites

At the Economic Development and Planning Committee Meeting of June 2, 2009, Committee approved new Official Plan Policies and Zoning Regulations regarding the location of private waste disposal sites in the City of Hamilton. These new policies and regulations are based on the findings of a Planning Study of Private Waste Disposal Sites. The implementing Official Plan and Zoning By-law Amendments for each of the former municipalities were passed by Council on June 10, 2009, and the amendments permit waste transfer stations as-of-right if they are located a minimum of 300 metres from any residentially or institutionally designated lands. The subject lands are located within 300 metres of lands designated for residential or institutional purposes. However, the implementing Zoning By-law No. 09-131 recognizes prior existing uses, and thereby exempts the subject lands located at 6 Hillyard Street from this policy. Therefore, the proposal would conform to the new Official Plan policies and comply with the Zoning regulations.

These policies have also been incorporated into the City’s new Urban Hamilton Official Plan, which was adopted by Council on July 9, 2009. The Ministry of Municipal Affairs and Housing issued its decision on March 10, 2011. The Plan has been appealed and is currently before the Ontario Municipal Board (OMB).

POLICY IMPLICATIONS

Provincial Policy Statement

The application has been reviewed with respect to the Provincial Policy Statement (PPS). Staff notes that via the Certificate of Approval process, the applicant will demonstrate consistency with the sustainability of healthy, liveable, and safe communities, as outlined in Policy 1.1.1 (c) of the PPS.

Hamilton-Wentworth Official Plan

The subject property is designated as “Urban Area” in the Hamilton-Wentworth Official Plan. Policy C-3.1 outlines that a wide range of urban uses, defined through Area Municipal Official Plans and based on full municipal services, will be concentrated in the Urban Areas. More specifically, the Plan establishes a land use strategy for the “Urban Area” that consists of an evolving role of business parks as major economic generators and the diversification of traditional manufacturing areas. In this regard, the subject lands conform to this policy as the updated facility will generate additional employment which is diversified from the historical manufacturing regime.

Policy C-4.2.2.10 outlines the policies for Waste Management Facilities:

- “4.2.2.10.4 The City shall provide comments to the Ontario Ministry of the Environment concerning applications for a Certificate of Approval for a Waste Disposal site, as required under Part V of the Environmental Protection Act and/or any other applicable legislation for the approval of new waste management facilities or expansions or alterations to existing waste management facilities within the City of Hamilton.
- 4.2.2.10.5 Existing waste management facilities shall be recognized as permitted uses in the Zoning By-law.

Waste Processing Facilities and Waste Transfer Facilities

- 4.2.2.10.8 Waste processing facilities and waste transfer facilities, including expansions, shall be located a minimum of 300 metres from a Residential or Institutional designation.”

The proposed MOE Certificate of Approval application to permit a latex paint recycling facility conforms to the Hamilton-Wentworth Official Plan as the use of the subject lands as a waste processing facility is recognized as an existing use.

City of Hamilton Official Plan

The subject lands are designated “Industrial” in the City of Hamilton Official Plan. The primary uses permitted in this designation are manufacturing, processing, warehousing, and repair and servicing. Policy A.2.3.39 states that waste management facilities, including expansions, will be subject to the policies of the Regional Official Plan under Section 4.2.2.10. As noted earlier, the existing waste management facility at 6 Hillyard Street conforms in accordance with Policy C-4.2.2.10.5 above.

New Urban Hamilton Official Plan

The subject lands are designated “Employment Areas” on Schedule “E” - Urban Structure, and “Industrial Land” on Schedule “E-1” - Urban Land Use Designations in the Council adopted Urban Official Plan, approved by the Minister, and subsequently appealed to the Ontario Municipal Board. The following policies are applicable:

“5.3 Employment Area - Industrial Land Designation

The Employment Area - Industrial Land designation applies to older industrial areas of the City with a variety of industrial uses, many in older purpose-designed facilities on a variety of parcel sizes. These areas shall continue to play an important role accommodating traditional industrial uses, and those which benefit from access to the Port of Hamilton. Planning for this designation must be flexible to allow new employment uses and supporting uses through re-development and adaptation of existing structures, while ensuring that sensitive land uses are protected from noxious and incompatible impacts.

Function

- 5.3.1 The range of permitted uses allow for a wide range of employment activity, including heavy industrial uses and transitional uses on lands traditionally used for industry. The Employment Area - Industrial Land designation applies to the Bayfront, East Hamilton, Dundas, and the Glen Road/Tope Crescent Employment Areas, identified on Schedule E-1 - Urban Land Use Designations.

Permitted Uses

- 5.3.2 The following uses shall be permitted on lands designated Employment Area - Industrial Land on Schedule E-1 - Urban Land Use Designations:
- (d) Waste processing facilities and waste transfer facilities; and,

- (e) Accessory uses, such as limited retail and office.

Waste Management Facilities - General Policies

- 5.3.6.2 The City shall provide comments to the Ontario Ministry of the Environment concerning applications for a Certificate of Approval for Waste Disposal sites, as required under Part V of the Environmental Protection Act and/or any other applicable legislation for the approval of new waste management facilities or expansions or alterations to existing waste management facilities within the City of Hamilton.
- 5.3.6.3 Existing waste management facilities shall be recognized as permitted uses in the Zoning By-law.

Waste Processing Facilities and Waste Transfer Facilities

- 5.3.7 Waste processing facilities and waste transfer facilities, including expansions, shall be located a minimum of 300 metres from a sensitive land use within the Neighbourhoods, Institutional, or Commercial and Mixed-Use designations.
- 5.3.7.1 Notwithstanding Policy E.5.3.7 above, waste processing facilities and waste transfer facilities, including expansions, may be permitted within 70 metres to 300 metres of a sensitive land use within the Neighbourhoods, Institutional, or Commercial and Mixed-Use designations, subject to amendment to the Zoning By-law. In addition to the requirements of Section F.1.19 - Complete Application Requirements and Formal Consultation, the applicant shall demonstrate, through a Planning Justification Report or any other study as may be required by the City, an analysis of the following:
- (a) The appropriateness of the proposed land use in relation to surrounding land uses;
 - (b) Mitigation of potential impacts to sensitive land uses, the natural environment or cultural heritage resources located within 300 metres of the proposed waste management facility, which shall include noise, odour, vibration, dust, traffic, air quality, litter, and vermin and pest control measures; and,
 - (c) On-site wastewater and stormwater management measures.”

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As mentioned above, the subject property was recognized in the implementing Zoning By-law and considered a permitted use. As a result, the proposed MOE Certificate of Approval application to permit a latex paint recycling facility conforms to the new Urban Hamilton Official Plan.

Hamilton Zoning By-law No. 05-200 - New Industrial Zoning

On May 26, 2010, Council passed By-law No. 10-128 to incorporate Industrial Zones into Hamilton Zoning By-law No. 05-200. The decision was appealed to the Ontario Municipal Board; the Board issued their Decision and Order on June 28, 2011. The new Industrial Zoning is now in force and effect for the entire City. The subject lands are zoned Light Industrial Park (M6, 355) Zone, which specifically allows for a Waste Processing Facility for the processing of latex paint within the existing buildings on the subject lands.

RELEVANT CONSULTATION

The Public Works Department, Operations and Waste Management Division, provided the following comments:

There is no impact on the City of Hamilton's Solid Waste Management Master Plan (SWMMP) or the Waste Management System, which provides service predominantly to the residential sector. The proposal compliments the SWMMP in that it diverts household hazardous wastes from the landfills.

The Public Works Department, Traffic Engineering and Operations Division, provided the following comments:

They advise that if a change in the access to Brant Street is being proposed, that an Access Permit from the Traffic Engineering Section will be required. Details regarding the Access Permit application process can be obtained from the Traffic Engineering and Operations Division. All abandoned accesses to Brant Street must be restored with barrier curbing. They further advise that there is an access at the east end of the property that appears to no longer be used and is blocked off by fencing.

The Public Works Department, Environment and Sustainable Infrastructure Division, provides the following information:

A review of the Hotz Environmental Services Inc. application indicates that spill prevention and containment measures will be dealt with through the Certificate of Approval. They also advise that any solid and liquid waste will be appropriately dealt with following the proper Ministry of the Environment Guidelines. Contingency plans for spills on and off site, and clean up procedures, are covered under the company's Spill

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Prevention Control and Counter Measure Plan. This Plan includes the City of Hamilton (City) Spill Reporting Line (905) 540-5188, and shall continue to do so. The proposal put forth by Hotz Environmental Services Inc. is acceptable from a sewer use standpoint with the provision that wastewater discharged from this operation complies with Sewer Use By-law 04-150, as amended, and that they institute the two above-noted items as indicated.

The Health Protection Branch, Public Health Services Department, offers the following recommendations:

- “1. Maximum storage amounts proposed for latex paint and/or other materials should be reviewed for best management practices in order to minimize risk of fires, spills, or other uncontrolled events.
2. Excellent storage/housekeeping practice should be in place to allow ease of access by emergency personnel such as Hamilton Fire and/or other first responders.
3. Mitigation plans should be implemented to address any issues dealing with fugitive dusts and/or odours.
4. Determine the minimum required amount for financial assurance. This financial assurance amount should be reviewed periodically thereafter to determine if coverage is sufficient in the event that site clean-up is required.”

These are being addressed through Recommendations (a) (vi), (vii), (viii), and (ix).

Hamilton Emergency Services, Fire Prevention Division, has no objection to the issuance of the Certificate of Approval provided that the application complies with the following requirements:

- “1. Continued compliance with the Ontario Fire Code.
2. Submit any required amendments to the building's Fire Safety Plan for approval by the Chief Fire Official. (Plan is presently undergoing final approval by HES-Fire)
3. That a current copy of the Emergency Response Plan, Spills Contaminant and Contingency Plan, daily product inventory list, including product quantities and exact location within all facilities, along with the MSDS sheets, as applicable, be externally stored in a secure location (exterior lock box) on site at the front gate in a manner such that all noted documents are readily available to Hamilton

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Emergency Services - Fire at all times (24 hours a day, 7 days a week, 365 days a year)."

These are being addressed through Recommendations (a) (iii) and (iv).

Public Consultation

Public notification/consultation requirements for Certificate of Approval applications are regulated by the Environmental Protection Act, and administered by the MOE. Upon receipt of the application, the MOE normally requires the applicant to circulate an Information Notice to abutting property owners. The MOE will also post a Notice of the proposal on the Environmental Registry (website) for a 30-day comment period. The MOE posted this proposal on the Environmental Registry on May 20, 2011, requesting comments by June 19, 2011.

The MOE has been notified that the City of Hamilton would not meet the commenting deadline for this application. The MOE has informed City staff that it is standard Ministry policy to allow 6 weeks for all municipalities to provide comments on applications in order to ensure reasonable timelines are met for all reviews. The Ministry will accept comments from the City of Hamilton at any time during the course of their review. Further correspondence was sent to the Ministry advising that the Report would be on the October 18, 2011, Planning Committee agenda, and be ratified by Council on October 26, 2011. The Ministry has advised in their response on August 22, 2011, that the Certificate of Approval is currently under review and has not yet been issued, and it is likely that City comments will be received prior to the issuance of a decision on the application.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

Site Operations

Hotz Environmental Services Inc. (Hotz) has been recycling latex paint at the subject lands for over eighteen years, and has developed a unique and innovative approach to resolve the large percentage of unused paint being discarded. They currently have a Certificate of Approval from the Ministry, which allows an existing Paint Recycling Facility. The recycled paint products amount annually to over 2 million litres and are marketed to many international countries. The Hotz facility has been steadily increasing their workforce to enhance the level of productivity as a result of increased paint volumes. In the last two years, the trend has increased, and paint recycling volume is up 30% and, therefore, the need for the expansion and the current Certificate of Approval. A major component of the paint recycling process is currently conducted at

the 239 Lottridge Street Hotz facility. That CofA (#A650089) permits a combined storage capacity of 1,170,000 million litres over both locations, with only paint recycling permitted at the Hillyard Street facility for temporary storage. In addition to the 1,170,000 million litres, the new CofA for 6 Hillyard Street will allow for a stand alone facility that will permit a maximum of 820,000 litres of waste and processed materials, which may be stored at the site at any time.

The site is approximately 1.1 hectares (2.7 acres) in area (see Appendix “B”). The existing building is approximately 5,090 square metres (54,800 square feet). The building is constructed out of steel and concrete, and has been upgraded to meet building code requirements to comply with regulatory fire requirements as it pertains to the storage and processing of paint products. The floor is dyked to provide secondary containment, with no drains in the building save and except the kitchen and washroom facilities for Hotz employees.

Conditions of Approval

Based on circulation of this application to other City Departments, and the analysis undertaken, this MOE application for a Certificate of Approval is considered acceptable, subject to a number of conditions being addressed in the Certificate. Most of these recommended conditions are addressed in the Relevant Consultation section of this Report. In addition, several standard conditions of approval are also recommended, relating to financial assurances to the MOE for final site clean-up, limitation of the origin of the accepted waste, and identification of an MOE contact for all issues related to the operation (Recommendations (a) (v), (ix), and (x)).

ALTERNATIVES FOR CONSIDERATION

The City of Hamilton is not the approval authority for Certificate of Approval applications, but has been requested to submit comments on this application to the MOE. The MOE will consider the City’s comments in making a decision on the application. The following alternatives are available to the City in providing comments to the MOE.

1. Request MOE to Deny the Application

The City could request that the MOE deny the Certificate of Approval application.

2. Request MOE to Incorporate the City's Conditions

The City can request that certain conditions be included in the Certificate of Approval, if approved. The circulation of the application to City Departments did not result in any objections to the proposal. Staff has identified requirements that are to be addressed through the Certificate of Approval, as specified in the Recommendation section of this Report.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Intergovernmental Relationships

- ♦ Maintain effective relationships with other public agencies.

Growing Our Economy

- ♦ Competitive business environment.
- ♦ Supporting the expansion of an existing business.

Environmental Stewardship

- ♦ Reduce the impact of Hamilton's industrial, commercial Private and Public operations on the environment.

Healthy Community

- ♦ Complements the City's waste management and diversion initiatives.

APPENDICES / SCHEDULES

- Appendix "A": Location Map
- Appendix "B": Site Plan

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Attachs. (2)



