

CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: December 4, 2012	
SUBJECT/REPORT NO: Outstanding Business List Item H - Ministry of the Environment Environmental Compliance Approvals Process (Previously Certificate of Approvals Process) (PED12246)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Paul Mallard (905) 546-2424 Ext. 4281 Heather Travis (905) 546-2424 Ext. 4168
SIGNATURE:	

RECOMMENDATION:

- (a) That Planning staff be authorized to prepare and submit comments, on behalf of the City of Hamilton with concurrence from the respective Ward Councillor, to the Ministry of Environment, on applications for an Amendment to an Environmental Compliance Approval for Waste, as set out in Report PED12246.
- (b) That the issue respecting the Certificate of Approvals Process be removed from the Outstanding Business List.

EXECUTIVE SUMMARY

At its meeting of September 7, 2011, Planning Committee received a presentation from Ministry of Environment (MOE) staff respecting the Certificate of Approvals (COA) process. The Committee expressed concerns about the time lines associated with the application process, and asked that City staff work with MOE staff on issues that have

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been stumbling blocks in the past. The Committee also indicated the need to develop a strong working relationship with the MOE.

The Committee received the presentation and directed staff to meet with MOE staff to discuss experienced deficiencies in the COA process and report back to Planning Committee. This Report is in response to Committee's direction, and summarizes the outcomes of meetings with MOE staff.

Alternatives for Consideration - See Page 5.

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: N/A.

Staffing: N/A.

Legal: N/A.

HISTORICAL BACKGROUND (Chronology of events)

What is an Environmental Compliance Approval?

An "Environmental Compliance Approval" (ECA), 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. An Environmental Compliance Approval was formerly known as a Certificate of Approval.

Each ECA 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 ECA 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.

The City of Hamilton is not the approval authority for ECA applications, but is requested to submit comments on applications to the MOE. The MOE considers the City's comments in making a decision on applications.

POLICY IMPLICATIONS

- N/A.

RELEVANT CONSULTATION

- Ministry of Environment staff.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

Generally, the operational issues that the City faces when responding to requests for comments from the MOE on ECA applications can be categorized into the following three (3) areas:

- Timing;
- Information; and,
- Issuance/Conditions of Approval.

Timing:

The MOE provides the City with 6 weeks from the date of notice to provide comments on ECA applications. Although there is no legislated time frame, the 6 weeks is tied to the Environmental Registry (EBR) posting.

With respect to process, the MOE forwards all notices to the City Clerk who, in turn, then redirects them to the Planning and Economic Development Department. This usually takes about 1 to 2 weeks. As the City's internal process requires the preparation and submission of a Report to the Planning Committee, it is not possible to meet the 6-week time frame, especially given the Committee's report cycle. Planning staff is aware of at least one instance in which an approval was issued by MOE prior to the City submitting comments.

In response to the concern, MOE staff has agreed to carbon copy all notices to a 'point of contact' in the Planning Division (i.e. Manager of Development Planning, Heritage and Design), in addition to the City Clerk, with the aim of expediting the process.

Also, MOE staff made a distinction between 'new' applications and 'amendments'. For new applications, MOE has advised that such applications are typically not approved within 3 months. Accordingly, Ministry staff can accommodate extension requests, provided City staff identify when the comments will be available. For reference purposes, subsequent to MOE staff attendance at the Planning Committee meeting in

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September 2011, City staff has received 3 applications for which staff requested extensions, all of which were granted, and no decisions were made by MOE prior to receipt of the City's comments.

With respect to applications for an amendment, MOE generally provides approvals within 3 months. City staff advised MOE staff that the proposed changes to the existing ECA are not always clearly understood, either in the request for comments or on the EBR. In this regard, MOE staff has committed to look at providing better information in the notice letter by identifying what the current approval is for and what the amendment is for.

Information:

City staff expressed concern that we do not receive adequate supporting information (e.g. Operations Manual, application form, site plan, etc.) when a request for comments is received. The City receives only a 1-page letter from the MOE, which provides very limited information regarding the ECA application and the proposed site operation (see Appendix "A" - sample notice). In this regard, the information posted on the EBR is more detailed than the letter to the City. As a result, City staff must contact the applicant directly and request this additional information. This, in turn, causes further delays in meeting the commenting deadline.

Furthermore, because City staff has to contact the applicant to receive additional information, which is required to fully evaluate the application, staff does not have any assurance that all of the information submitted in support of the application to the MOE has also been provided to staff.

MOE staff describes the process as paper based and proponent driven. In this regard, they did advise that they are moving towards establishing an on-line application process, which will address the City's concern respecting lack of information. However, this new process is currently under development, and not anticipated to be effective until 2014.

Also, the City has in the past received information from an applicant which contained incorrect zoning information. MOE staff has advised that there is no requirement in their process for the applicant to obtain a Zoning Verification from the municipality. In this regard, it was agreed that City staff would confirm zoning compliance upon receipt of notice and advise MOE staff of any zoning issues.

Issuance/Conditions of Approval:

Occasionally, the City has recommended conditions of approval for ECA applications which have not been applied by the MOE. Examples include limiting the source of waste to Ontario/Canada and, provision of Emergency Response Plans and accessibility thereof. MOE staff advised that requested conditions were evaluated against their mandate, scope of approvals, and whether it could be defended under appeal by the applicant.

City staff also expressed concern that MOE does not forward the draft ECA for review prior to issuance of the final ECA, nor do they consistently provide a copy of the final ECA to the City. Initially, MOE staff advised there was no system in place for one-off requests by municipalities. However, if requested, the MOE staff contact would send City staff the draft ECA and, during the interim, they will look at their process respecting the provision of a copy of the final ECA to the City.

ALTERNATIVES FOR CONSIDERATION:

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Subsequent to MOE staff's presentation on the ECA process to Planning Committee in September 2011, City staff has not been experiencing the identified issues/concerns on an on-going basis. To date, MOE and City staff have been working on issues that have been stumbling blocks in the past.

Option 1:

Based on discussions with MOE staff respecting 'timing' for submission of City comments, it is understood the 6 week time line for ECA 'amendment' applications is more critical than for 'new' applications. In order to expedite the submission of City comments in these instances, it would be advantageous to authorize staff to prepare and submit comments, with the concurrence of the respective Ward Councillor, rather than taking a Report forward to Planning Committee. Since conditions of approval are already in place for the ECA, comments would be focused on the aspects of the revised operation(s). Given the respective Ward Councillor's and City staff's experience with the existing operation, this alternative would avoid the time delay in having to prepare and schedule a Report for a Planning Committee meeting. A copy of the final comments submitted to the MOE would be forwarded to all members of Planning Committee for information.

This is the preferred option, as set out under the Recommendation section of the Report.

Option 2:

Similar to Option 1, Committee could authorize staff to prepare and submit comments, in consultation with the respective Ward Councillor, on all ECA applications. This has merit, in that over time, staff has developed a standard list of conditions which could be augmented by specific concerns raised by the Ward Councillor or City staff. Implementation of this option could be for a trial period (e.g. 1 year) subject to review and a final decision by Committee. As with Option 1, a copy of the final comments submitted to the MOE would be forwarded to all members of Committee for information. This option is recommended by staff as a pilot. However, we wanted to ‘gauge’ discussion at Planning Committee first, on the principle of this new staff authorization suggested in 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”: MOE Notice of Application - Request for Comments

:PM
Attach. (1)

Ministry of the Environment
Operations Division
Floor 12A
2 St Clair Ave W
Toronto ON M4V 1L5
Fax: (416)314-8452
Telephone: (416) 314-1792

Ministère de l'Environnement
Division des Opérations
Étage 12A
2 av St Clair O
Toronto ON M4V 1L5
Télécopieur : (416)314-8452
Téléphone : (416) 314-1792



July 11, 2012

Rose Caterini, Clerk
City of Hamilton
City Hall, 71 Main Street West, 1st Floor
Hamilton, Ontario
L8P 4Y5

Dear Madam:

**Re: Application for Approval of Waste Disposal Sites
Amendment to Expand Waste Processing Facility
Hamilton City
MOE Reference Number 0402-8W2LF2**

The Ministry of the Environment has received an application from Mida International Inc. seeking an amendment to Approval Number No. 8902-8HKNP for a Waste Disposal Site (transfer and processing) located at 565 Arvin Avenue, Lot 16, Concession 1, Hamilton, Ontario. The application, if approved, will permit an increase in the total amount of waste and processed materials stored at the site from 890 tonnes to 1100 tonnes at any time.

Additional details relating to the application can be found at the Environmental Bill of Rights Environmental Registry at <http://www.ebr.gov.on.ca/ERS-WEB-External/>.

It is requested that the City of Hamilton make comments with respect to the application including a confirmation of whether the property is appropriately zoned for the proposed use. Please ensure the report is signed and dated by the Commissioner of Planning or the Commissioner of Works, or their respective equivalent. Please respond to the attention of *T. Gebrezghi, P. Eng., Supervisor/Part V Director, Waste Approvals, Environmental Approvals Branch, Ministry of the Environment* at the above address within six weeks of the date of this letter. If no response is received by this date, we will assume that you have no objections to the issuance of the Certificate of Approval.

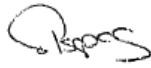
Should you require further details of the site's operation, including copies of the Site Plan drawings that were included with the application, please contact Grahaem Capaldi, Environmental Reporting Systems Limited at 705-728-2457.

As you are aware, the Director has the discretion under Section 32, Part V of the Environmental Protection Act (EPA) to hold a public hearing regarding applications for waste disposal facilities. Municipalities or affected members of the public have the right to request that the Director consider calling a hearing with respect to any application submitted under Part V of the EPA. Any submissions in this regard must be accompanied by valid reasons and supporting technical justification.

Please make reference to the file number 0402-8W2LF2 and indicate "Municipal Comments" in the subject line of all related correspondence.

If you have any questions regarding the above, please contact me at the above phone number.

Yours truly,



Vivian Tsapas
Application Assessment Officer

- c: District Manager, MOE Hamilton - District
- Randy Canacevic, P. Eng., Mida International Inc.
- Grahaem Capaldi, Environmental Reporting Systems Limited

OFFICE OF THE CITY CLERK	
JUL 16 2012	
REC'D BY: <i>RL</i>	DATE
REF'D TO: <i>P. De Julio</i>	DATE
REF'D TO:	DATE
REF'D TO:	DATE
ACTION:	