



CITY OF HAMILTON

CITY MANAGER'S OFFICE
Legal Services Division

and

PUBLIC WORKS DEPARTMENT
Transportation, Energy and Facilities Division

TO: Chair and Members Public Works Committee	WARD(S) AFFECTED: WARD 7
COMMITTEE DATE: February 6, 2012	
SUBJECT/REPORT NO: Appeal of Technical Standards and Safety Authority Order - Truck Wash at Rymal Road Operations Yard (LS12003/PW12010) - (Ward 7)	
SUBMITTED BY: Peter A. Barkwell City Solicitor City Manager's Office Gerry Davis, CMA General Manager Public Works Department	PREPARED BY: Deborah A. Edwards Extension 2628 Tom Briatico Extension 7042
SIGNATURE:	

RECOMMENDATION

- (a) That the City Solicitor be authorized and directed to take all necessary steps to appeal the Inspector Order and any fees invoices issued against the City of Hamilton under the *Technical Standards and Safety Act, 2000* and regulations thereunder, as described in Report LS12003/PW12010.
- (b) That the City Solicitor and General Manager of Public Works be authorized, if and when they deem appropriate, to enter into discussions with the Technical Standards and Safety Authority and with any other relevant persons to attempt to

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resolve the issues related to the Inspector Order and any fees invoice issued, and to inform City Council on the outcome of such resolution.

EXECUTIVE SUMMARY

Pursuant to the *Technical Standards and Safety Act, 2000* (“TSS Act”) and the boiler/pressure vessel regulation thereunder, an Inspector Order has been issued against the City of Hamilton with respect to the truck wash installed at the Rymal Road Operations Yard under Contract C13-57-09. It is expected that a fees invoice will be issued shortly.

In this situation, it is City staff's position that the Inspector Order should have been issued against the City's contractor, Corporate Construction Inc., or the manufacturer of the pressure system in question, Hotario Manufacturing Inc. carrying on business as Hotsy Cleaning Systems (“Hotsy Cleaning Systems”).

Therefore, City staff have appealed the Inspector Order and intend to appeal any fees invoice issued by the Technical Standards and Safety Authority (“TSSA”) and related to the order. This report is to request authorization to continue and proceed with these appeals. It is also to request authorization to enter into discussions to attempt to resolve the issues related to the Inspector Order and any fees invoice issued.

Alternatives for Consideration - See Page 4

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: The amount of the fees invoice is not yet known as it has not yet been received.

Staffing: There are sufficient legal resources in-house to handle the appeals of the Inspector Order and fees invoice.

Legal: The Inspector Order remains in effect despite the City's appeal. While the issuance of an Inspector Order and fees invoice is not the same as being found guilty of an offence under the TSS Act, failure to comply with an order or requirement of an inspector is an offence under the TSS Act. It does not appear that the City has received this type of TSSA Inspector Order in the past. By proceeding with these appeals, it is hoped that future similar orders and fees invoices against the City can be avoided.

After the TSSA Director has issued his decision on the City's appeals, the affected persons may appeal the decision to the Divisional Court. Should the TSSA Director issue a decision that is not favourable to the City, a further staff report will be provided to Committee and Council on that issue. It should be noted that a notice of appeal is required to be filed with the court within 30 days after receiving notice of the Director's decision.

HISTORICAL BACKGROUND

Under Contract C13-57-09 (Truck Wash Addition to Existing Pre-Engineered Storage Building at the Rymal Road Operations Yard), the City's contractor, Corporate Construction Inc., was required to obtain a pressure system that was to be manufactured and installed by Hotsy Cleaning Systems and to ensure that such system was registered and approved by the Technical Standards and Safety Authority.

While the pressure system has been fully installed for some time, it had not yet been placed into service as Corporate Construction Inc. had not provided the City of Hamilton with proof of any required registrations and approvals by the TSSA.

At Corporate Construction Inc.'s request after the pressure system was already installed, the TSSA inspected the system. The system was found by the TSSA to be deficient as its design had not been registered with the TSSA and tested in accordance with the applicable code of construction.

An Inspector Order was issued by the TSSA Inspector against the City of Hamilton stating that the City shall not place the system into service until the final design registration has been inspected by a TSSA boiler/pressure vessel inspector and testing in accordance with the applicable code of construction.

The Inspector Order was stated to be under section 4(1) of Ontario Regulation 220/01 which states, in part, "no person shall manufacture a boiler, pressure vessel, fitting or piping for use in Ontario unless its design is registered with the director." The City of Hamilton is clearly not the type of person contemplated under this section. Neither Corporate Construction Inc. nor Hotsy Cleaning Systems were named in the Inspector Order. To the City's knowledge no other Inspector Order has been issued with respect to this matter.

It should be noted that a recent meeting was held with TSSA representatives and City staff are optimistic that a resolution of the TSSA's concerns will be achieved soon. However, as there was no indication at the meeting that the TSSA will be withdrawing its Inspector Order or will not be issuing a fees invoice, this report is being submitted to Committee and Council for direction.

POLICY IMPLICATIONS

There are no corporate policies which may be affected by the recommendation contained in this report.

RELEVANT CONSULTATION

Technical Standards and Safety Authority
Corporate Construction Inc.
Hotsy Cleaning Systems

ANALYSIS / RATIONALE FOR RECOMMENDATION

It is City staff's position that the concerns of the TSSA should be directed against the City's contractor and/or the manufacturer of the pressure system and therefore have appealed the Inspector Order and intend to appeal any fees invoice received.

ALTERNATIVES FOR CONSIDERATION

The alternative available to the City of Hamilton is to withdraw the appeals and pay any fees invoice issued. This alternative is not being recommended as it would result in the City of Hamilton being in receipt of an Inspector Order and fees invoice where it is not the City's actions which have resulted in the Inspector Order being issued.

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

Financial Sustainability

Allows for public resources to be utilized more efficiently on this City contract.

APPENDICES / SCHEDULES

None.