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SOLID WASTE MANAGEMENT BY-LAW

(See Minute No. 194 and By-law No. A-0351-2004-084.)

1. RECOMMENDATIONS

It is recommended that:

1. Regional Council, as a result of new legislation by the State of Michigan, enact the solid waste management by-law (included as part of this agenda) to ban 12 specific types of waste from disposal at the Region's transfer station in Georgina, as outlined in this report.
2. The Regional Solicitor be authorized to prepare the necessary by-law.
3. The nine local municipalities be requested to revise their respective by-laws governing the collection of solid waste to reflect the prohibition of the 12 types of waste.

2. PURPOSE

This report explains the Region's need to enact a solid waste management by-law which bans the wastes prohibited from disposal by the State of Michigan's new legislation. The by-law will allow the Region to legally require compliance and enforcement.

3. BACKGROUND

Table 1 provides a summary of the Region's solid waste disposal quantities in 2003 and 2004.

Regional staff made a presentation to the Region's Transportation and Works Committee on October 6, 2004 to explain the new legislation passed by the State of Michigan and the implications of it with respect to the Region's disposal of solid waste in Michigan landfills.

Table 1
Summary of Landfills Used by York Region

Landfill Name and Location	2003 Actual Tonnes Disposed	2004 Projected Tonnes Disposed
Onyx Arbor Hills Landfill, Michigan	99,400	120,800
Republic's Carleton Farms Landfill, Michigan	48,700	50,000
Green Lane Environmental Landfill, Southwold Township, Ontario	76,300	58,600
Total	224,400	229,400

The following sections expand on the presentation that was made to the Transportation and Works Committee.

4. ANALYSIS

4.1 New Michigan Legislation

On March 29, 2004, the Governor of Michigan signed 11 "Public Acts" that amended the Natural Resources and Environmental Protection Act (Act 451 of 1994) of the Michigan Legislature. This introduced new prohibitions on materials entering landfills in Michigan and additional regulatory measures regarding the import and disposal of solid waste into Michigan. These actions on the part of Michigan are in response to the increasing amount of solid waste entering Michigan from Ontario and other U.S. States.

The "package" of Michigan's solid waste management Public Acts was intended to come into force on October 1, 2004. As part of its new regulations, Michigan required all jurisdictions exporting waste to Michigan to submit by September 1, 2004, an Application for Certification of Equivalent Landfill Disposal Prohibitions. The intent of the Application is to require exporting jurisdictions to prohibit from disposal specific types of waste. These wastes are also prohibited from jurisdictions within Michigan. There are 12 prohibited waste types, which are as follows:

- Used deposit beverage containers.
- Whole motor vehicle tires.
- Used oil.
- Lead acid batteries.
- Yard clippings.
- Medical waste.
- Low-level radioactive waste.
- Hazardous waste.
- Liquid waste.

- Sewage.
- PCBs (Polychlorinated Biphenyls).
- Asbestos.

It is noted that Michigan has included in its legislation the recognition that despite best efforts to exclude some non-hazardous prohibited wastes, small quantities, known as “de minimis” amounts, may still be present. Michigan has specified tolerable “de minimis” quantities for used deposit beverage containers, whole motor vehicle tires and yard clippings only. There is no tolerance whatsoever for any quantities of the other nine prohibited types of waste.

4.2 Application to the Michigan Department of Environmental Quality

The Region along with the Regions of Durham and Peel and the Cities of Toronto and Owen Sound submitted their respective Applications to the Michigan Department of Environmental Quality (MDEQ) by the September 1st deadline. The Region received a response letter dated September 30, 2004 from the MDEQ. The pertinent sections from that letter are as follows:

*“Based upon our review of your application, your Certification of Equivalent Landfill Disposal Prohibitions is granted, but is limited to municipal residential waste only. **Please note that commingling with unapproved waste such as industrial, commercial, and institutional (ICI) waste or municipal residential waste from an unapproved jurisdiction is not approved.** In addition, the commingling with other unapproved wastes is not approved. Thus, ICI waste and municipal residential wastes from an unapproved jurisdiction must be segregated from the Regional Municipality of York’s municipal residential waste to meet the conditions of this approval.*

This limitation to residential waste only is based on the fact that, under existing regulations, there does not appear to be equivalent landfill disposal prohibitions for hazardous wastes, polychlorinated biphenyls (PCBs), medical waste, and low-level radioactive waste. However, Michigan exempts municipal residential households from hazardous waste and medical waste regulations. Also, while municipal residential waste is not specifically exempt from the regulations governing PCBs and low-level radioactive waste, there is no expectation that municipal residential waste would contain PCBs or low-level radioactive waste. With respect to used beverage containers, the Ontario prohibition on the disposal of used beverage containers applies to municipal residential waste only.”

Durham, Owen Sound and Peel received approvals similar to the Region’s. However, the City of Toronto received an approval for waste from both municipal residential and industrial, commercial and institutional (ICI) sources transferred through its own transfer stations. It is understood the City of Toronto received that broader approval because it owns and operates its transfer stations and because it also has a waste management by-law that restricts its ICI customers from mixing the prohibited wastes in with the disposable solid waste.

The U.S. National Solid Wastes Management Association initiated a legal challenge of the 11 Public Acts. It is understood the challenge was based on the grounds that the 11 Public Acts are contrary to the inter-state and foreign commerce laws of the U.S. Constitution. Accordingly, a U.S. court has placed a moratorium through October 31, 2004 on the MDEQ's enforcement of the above approval.

4.3 Recommended Action Regarding the Transfer Station in Georgina

The Region's transfer station in the Town of Georgina accepts solid waste from three main sources as follows:

- Municipal collection (i.e. Towns of East Gwillimbury, Georgina and Newmarket).
- Delivered by residents from throughout the Region.
- Delivered by ICI establishments from throughout the Region.

The solid waste from the above three sources gets mixed together at the transfer station. It is not possible to keep the three streams separate because the transfer station building is not large enough.

The approval that the Region received from the MDEQ, as stated above, will not allow the Region to send this commingled waste stream to Michigan landfills once the moratorium expires at the end of October, 2004. Therefore, it is recommended that the Region enact a solid waste management by-law that bans the 12 prohibited wastes from the waste streams that are delivered to the Region's transfer station in Georgina for disposal. This by-law will allow enforcement of the banned wastes. In order to have the by-law in place by November 1st, a copy of it has been included on this agenda for consideration by Regional Council.

The transfer station in Georgina has always had a separate recycling area that accepts used deposit beverage containers, whole motor vehicle tires, and yard clippings. This will continue to serve all of the customers at the transfer station.

There is also a Household Hazardous Waste (HHW) Depot at the transfer station that has always accepted HHW, used oil and lead acid batteries from residents. The HHW Depot is not licensed to receive such materials from ICI sources, so they will have to seek out private sector facilities, which most of them probably do at present.

Regional staff anticipate that if the recommended by-law is enacted then the MDEQ will grant an approval to the Region to allow it to continue exporting the commingled waste stream from the Georgina transfer station to Michigan landfills. This would be similar to the approval that Toronto has been granted for its transfer stations.

The possibility exists that the MDEQ may not grant the approval even if the Region enacts the by-law. The contingency plan in this situation would be to send all of the commingled waste from the Georgina transfer station to the Green Lane Landfill for disposal.

4.4 Miller Waste Systems' Interim Transfer Station

There is an agreement between the Region and Miller Waste Systems (Miller) for the company to provide and operate an Interim Transfer Station in the Town of Markham. This facility accepts solid waste from three main sources as follows:

- Municipal collection (i.e. Towns of Aurora, Markham, Richmond Hill and Whitchurch-Stouffville; the City of Vaughan; and the Township of King).
- Delivered by Miller's own collection vehicles from its ICI customers.
- Delivered by other ICI customers of Miller's.

The solid waste from the above three sources gets mixed together at Miller's transfer station. It is not possible to keep the three streams separate because of the configuration of the transfer station. Miller did not receive an approval from the MDEQ to send this commingled waste stream to Michigan landfills.

In order to solve this problem, Miller is considering the construction of an expansion to the transfer station tipping floor which would allow it to keep the Region's municipally-collected solid waste separate from the ICI solid waste. This initiative would be contingent upon receiving any necessary approvals from both the Ministry of the Environment and the Town of Markham.

Even if Miller proceeds with this solution, Miller would not be able to have the construction completed by the end of October, 2004. Therefore, commencing November 1st, Miller will have to carry out a new manifest procedure, developed by the MDEQ, for each and every load. The procedure essentially involves Miller signing a declaration for each load to certify that it does not contain any of the 12 prohibited waste types, beyond allowable tolerances.

In preparation for this, Miller has requested all of its ICI customers to not mix any of the prohibited types of waste in with the regular solid waste. In addition, Miller has implemented new procedures at the transfer station in order to identify and remove prohibited materials that may be delivered inadvertently.

There will be some risk to Miller in carrying out the manifest procedure from November 1st until such time it has constructed the modifications to its transfer station. If the MDEQ were to randomly conduct an audit of a certified load and the load was in violation, then it could impose a penalty on Miller for submitting false or incomplete information. The MDEQ's documentation indicates the penalty can include a fine and imprisonment.

Regional staff are working with Miller on this solution. It is intended that Regional staff will be making a presentation to Regional Council on October 21st to provide an update with respect to this matter.

4.5 Recommended Request to the Local Municipalities

The MDEQ will likely be inspecting the Region's loads of solid waste, from both transfer stations, more closely at the landfills to ensure that quantities of the 12 prohibited waste types are not exceeding allowable tolerances.

It is the opinion of Regional staff that the Region and its local municipalities should be proactive in taking actions to minimize the risk of violating Michigan's approval. Therefore, it is recommended that the nine local municipalities be requested to revise their respective by-laws governing the collection of solid waste to reflect the prohibition of the 12 types of waste.

5. FINANCIAL IMPLICATIONS

There are no financial implications associated with this report.

6. LOCAL MUNICIPAL IMPACT

As stated previously, it is recommended that the local municipalities be requested to revise their respective by-laws governing the collection of solid waste. In order for any new by-law to be effective, there must be public education, monitoring and enforcement. Accordingly, it is expected that the local municipalities will bear the costs associated with these actions.

7. CONCLUSION

The State of Michigan has passed new legislations that will restrict the Region from exporting specific types of waste for disposal in Michigan landfills. The recommendations of this report, if adopted, should mitigate the impact of these restrictions on the Region's waste management system.

The Senior Management Group has reviewed this report.

(The attachment referred to in this clause is attached to this report.)