

DATE: March 13, 2012

REPORT TITLE: **MUNICIPAL HAZARDOUS OR SPECIAL WASTE AGREEMENT WITH STEWARDSHIP ONTARIO**

FROM: Dan Labrecque, Commissioner of Public Works

RECOMMENDATION

That the “New Municipal Hazardous or Special Waste Services Agreement” dated July 1, 2011 and the “Amended Agreement - New Municipal Hazardous or Special Wastes Services Agreement” dated January 27, 2012 with Stewardship Ontario by April 1, 2012, be executed;

And further, that staff continue to work individually and in collaboration with the Regional Public Works Commissioners of Ontario and Association of Municipalities of Ontario and the Municipal Waste Association on the key terms and pricing of the Stewardship Ontario Agreements.

REPORT HIGHLIGHTS

- The Region and Stewardship Ontario entered into a Shared Responsibility Agreement between July 1, 2008 to June 30, 2011 under which Peel was reimbursed for post-collection costs of Phase 1 MHSW materials.
- A Consolidated MHSW Plan came into effect on July 1, 2010 under which municipalities were to be reimbursed for collection and post collection costs for all Phase 1, 2 and 3 materials.
- Following the Eco-Fees controversy in July 2010 the Province indicated it would cover the costs for managing Phase 2 materials and municipalities would cover the cost for managing Phase 3 materials and that Stewards would remain fully responsible for Phase 1 materials.
- A MHSW Agreement for collection of Phase 1 materials (dated July 1, 2011) was drafted by Stewardship Ontario and provided to municipalities.
- Peel and other municipalities have been negotiating with Stewardship Ontario since July 2011 to address key concerns and an Amendment (dated January 27, 2012) was developed through negotiations. The Amendment does not resolve all of Peel’s concerns but the advice from the negotiating committee is that it is the best Peel can get at this time.
- Stewardship Ontario provided the Amendment on February 15, 2012 instructing municipalities that they are required to sign the Agreement and Amendment by April 1, 2012 to receive any retroactive funding from July 1, 2011 – December 31, 2011.
- Staff recommends that Peel sign the Agreement and the Amendment by April 1, 2012 in order to receive retroactive payments which amount to \$1,028,940.

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DISCUSSION

1. Background

Peel residents and eligible small businesses are able to drop off Municipal Hazardous or Special Waste (MHSW) at our Community Recycling Centres (CRCs) free of charge. This important service helps keep MHSW out of our landfills and waterways. Peel has provided this important service since 1987 starting at the Britannia Landfill and, until recently, the cost of the service, which runs about \$2.5 million per year, was covered entirely by property taxes.

As reported to Waste Management Committee and Council, the Province passed the Waste Diversion Act (WDA) in 2002 to promote reduction, reuse and recycling of waste and to provide for the development and implementation of waste diversion programs. The Act also created Waste Diversion Ontario (WDO), which was to ensure the waste diversion programs requested by the Minister were properly planned, developed and implemented.

As we've also reported in 2006, the Minister of the Environment designated MHSW as a waste for which a diversion program was to be developed. His letter to WDO set out the program requirements and requested that Stewardship Ontario be designated to act as the Industry Funding Organization for MHSW. On February 19, 2008 Phase 1 of the MHSW plan was approved and on July 1, 2008, Stewardship Ontario implemented it.

The Region and Stewardship Ontario (SO) entered into a Shared Responsibility Agreement, which was in effect from July 1, 2008 to June 30, 2011 and Peel was reimbursed for post-collection costs of the nine Phase 1 materials (that is, the cost of transporting, recycling and/or disposing of the 9 materials). Under Phase 1, Peel (and other municipalities) were still responsible for the cost of collecting Phase 1 materials (that is, the cost of operating our depots and collection events) and for the entire cost of managing Phase 2 and 3 materials.

On September 22, 2009 a Consolidated MHSW program, under which SO would be fully responsible for all Phase 1, 2 and 3 materials, was approved to be implemented on July 1, 2010. You may recall the controversy that erupted when "eco fees" were added to Phase 2 and 3 materials at retail outlets on July 1, 2010. As a result of the controversy, the Minister announced, in October 2010, that "eco fees" would no longer be charged on Phase 2 and 3 materials and that the Ministry would review the matter in more detail. After reviewing the matter, the Minister indicated that the Province would be responsible for Phase 2 materials and municipalities would be responsible for Phase 3 materials. The Minister instructed Stewardship Ontario to develop a new program plan under which stewards would be fully responsible for Phase 1 material. The Minister has yet to approve the new program plan, but, SO has in effect began implementing it.

In 2011, SO sent draft Agreements to all municipalities, to come into effect on July 1, 2011. Many municipalities, including Peel, took issue with the key terms and the fees which did not cover Peel's full costs to provide service. SO refused to negotiate non-financial terms with individual municipalities but agreed to negotiate non-financial terms with a negotiation team comprised of the Regional Public Works Commissioners of Ontario (RPWCO), Association of Municipalities of Ontario (AMO) and the Municipal Waste Association (MWA). Municipalities were told at the time that they would not be paid for services beyond July 1, 2011 until an agreement was signed but that on signing, they would be paid retroactively to July 1, 2011 at the agreed upon rates.

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Financial terms were to be negotiated directly with each Municipality, but SO simply indicated that it would not consider higher fees.

The negotiating team negotiated with SO from July 2011 to January 2012 and an amending agreement (Amendment) was received by the Region on February 15, 2012. The Amendment does not address all of the municipal concerns but the negotiating team has advised that it is the best Peel can get at this time. The original Agreement dated July 1, 2011 and the Amendment dated February 27, 2012 taken together outline the municipality's obligations under this program.

In its February 15, 2012 cover letter, SO indicated that unless the Agreement and the Amendment are signed and returned to SO by April 1, 2012 it will not process payments for any work completed since July 1, 2011. Staff asked for an extension on this deadline, but SO did not agree. Stewardship Ontario assures us that, if these documents are signed by April 1, 2012, Peel will be paid retroactively to July 1, 2011 at the rates set out in the new Agreement.

Currently Stewardship Ontario owes the Region \$1,028,940 for managing Phase 1 materials between July 1, 2011 and December 31, 2011.

Funding for 2012 Phase 1 collection and disposal (estimated at \$1.87 million) could also be jeopardized if the Agreement and Amendment are not signed by April 1, 2012.

2. Concerns with MHSW Agreement and Amendment

Waste Management staff, in conjunction with Legal Services and Purchasing staff has identified a number of concerns with the wording of the Agreement and Amendment. While these issues are not considered insurmountable, staff believes they are significant enough that Regional Council should be aware of them before Peel executes the documents.

The Agreement, as amended, prevents Peel from submitting an invoice for post-collection services at a price higher than the price in effect on December 31, 2011 without the prior written approval of SO. This means that if future tenders for post-collection services result in prices higher than those in effect on December 31, 2011 and SO does not approve the increase, Peel would end up absorbing the increase.

The Agreement, as amended, requires both parties to execute such other documents and to do such other things as are necessary to give full effect to the Agreement. This type of clause (paraphrased above) is typical of most agreements, however; the clause in this particular Agreement includes the words "exercise their vote and influence". Council should be aware that this clause could restrict Council's ability to make changes to Peel's MHSW program or alternately, could result in a breach of the Agreement if Council chooses to implement changes that didn't support the Agreement.

The Agreement, as amended, requires Peel to keep the collection fee it is paid by SO confidential, subject to any legal requirements to disclose the fee including those in the Municipal Act and the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA).

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The Agreement, as amended, requires that Peel not engage in any activity that may cause or perceive to cause harm to the SO name or the "Orange Drop" brand (Orange Drop is the brand name of the MHSW program, just as Blue Box is the name of Peel's recycling program). This is a reasonable prohibition to ensure Peel does not purposely damage the Orange Drop program, but it should not prevent Peel from engaging in meaningful discussions with WDO or the Ministry about SO performance.

The Agreement, as amended, requires Peel to operate its MHSW depots a total of 13,515 hours per year (our current hours) but only pays for 9,838 hours or approximately 73 per cent of the total. This has the effect of moving the cost of the 27 per cent of Peel's depot hours to the tax base. Staff has asked for full funding, but SO refused.

The above risks are mitigated by the termination provisions in the Agreement that allow Peel to terminate the Agreement on 90 days notice without cause.

3. Proposed Direction

Staff continues to work with SO, WDO and the Province directly and in collaboration with its municipal partners and the RPWCO / AMO / MWA to improve the language of the Agreement and to achieve 100 per cent funding.

Notwithstanding the above mentioned concerns with the Agreement, staff recommends that the Commissioner of Public Works execute the Agreement and Amendment by the April 1, 2012 deadline.

FINANCIAL IMPLICATIONS

Peel is owed \$1,028,940 from SO for managing Phase 1 materials between July 1, 2011 and December 31, 2011. If the Agreement and Amendment are executed by the April 1, 2012 deadline, Peel would receive the \$1,028,940. Staff estimates that Peel would receive a further \$1.87 million under the Agreement for 2012 (approximately \$750,000 for the operation of its depots, approximately \$20,000 for collection of MHSW at Conservation Days and approximately \$1.1 million reimbursement of post collection costs paid to transportation and processing service providers).

If the Region does not execute the Agreement and Amendment by April 1, 2012, it risks the potential loss of \$1,028,940 in retroactive payments and the potential loss of \$1.87 million of funding for 2012.

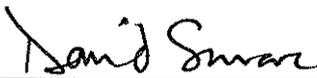
The 2012 operating budget includes \$900,000 in various MHSW cost centres of revenue for the MHSW program to reflect the uncertainties that were in place when the budget was developed. Execution of the Agreements will therefore result in a positive budget variance.

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for Dan Labrecque
Commissioner of Public Works

Approved for Submission:



D. Szwarc, Chief Administrative Officer

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