SUBJECT: Ruetgers Canada Inc. (formerly VFT Canada Inc.) Wastewater Treatment Project - Request for Compliance Agreement Extension - (PW09055) - (City Wide)

RECOMMENDATION:

(a) That the General Manager of Public Works be authorized and directed to execute an extension to the existing Compliance Agreement with Ruetgers Canada Inc. which currently ends on June 30, 2009, until no later than November 30, 2010, on the condition that the company modify their work schedule based on the recommendations of the third party consultant report obtained by the City;

(b) That the City of Hamilton, Environmental Monitoring and Enforcement staff monitor effluent during and after the terms of the agreement and enforce Sewer Use By-law 04-150 if the conditions of the Compliance Agreement and Project proposal timelines are not met by Ruetgers;

(c) That the Mayor and City Clerk be authorized and directed to execute the applicable Compliance Agreement documentation, with content satisfactory to the General Manager of Public Works and in a form satisfactory to the City Solicitor.

Bryan Shynal
Acting General Manager
Public Works Department
EXECUTIVE SUMMARY:

Over the last three years the Compliance and Regulation Section of the Water and Wastewater Division have been working extremely hard, with the support of Council, towards tightening the regulations with respect to discharges going into the City's sewer system. Staff have also enacted an Enhanced Enforcement Protocol which was designed to get many long time dischargers into compliance within six months of entering a Compliance Agreement.

This process has been very successful and has seen numerous dischargers come into full compliance in the last 18 months. However, it has become evident that some companies would be unable to meet the City's new tight timelines due to the extreme complexity of some of the projects required to bring the discharges into compliance.

The purpose of this Report is to inform Council of a proposal from Ruetgers Canada Inc. ("Ruetgers") to extend their Compliance Agreement from June 30, 2009 to November, 2010. Ruetgers is in the process of designing, building, and commissioning a wastewater treatment plant for their Hamilton plant that will provide treatment of their wastewater to a level that will bring the discharge to the sanitary sewer system within compliance of the City of Hamilton’s Sewer Use By-law limits.

The goal of the extension is:

(a) To allow Ruetgers to build and commission a $4.2M wastewater treatment plant that will enable them to comply with the Sewer Use By-law 04-150 in its entirety once the plant is complete.

(b) To acknowledge Ruetgers' commitment to implement a sustainable solution to improve their environmental performance; which is in their best interest and will help to minimize the environmental contaminants entering the Hamilton Harbour via the City's infrastructure in the long term.

Staff have reviewed Ruetgers' proposal and have had it peer reviewed by a third party independent consultant and both agree that the timelines suggested are realistic.

The City could choose to take enforcement action against Ruetgers under the City’s Sewer Use By-law 04-150, if they do not meet their timeline of June 30, 2009 However, this will not change the fact that the project cannot physically be completed before November, 2010.

BACKGROUND:

The recommendations contained within this Report have City wide implications.

The City of Hamilton’s Sewer Use By-law 04-150 places limits on the concentrations of various parameters that are discharged to the sewer system. Ruetgers Canada Inc. (formerly VFT Canada Inc.) currently has two types of Sewer Discharge Agreements with the City of Hamilton for wastewater discharged from their plant.

1. An Overstrength Discharge Agreement enables the City to recover costs to treat certain parameters contained in the effluent currently discharged to the City's sanitary sewer.
2. A Compliance Agreement which expires on June 30, 2009 was implemented to allow Ruetgers to conduct phase 1 over their compliance program which included pilot testing and feasibility studies to determine treatment options available. Initial engineering designs as well as corporate approval to construct the wastewater treatment plant were also acquired during this period.

Ruetgers is seeking approval for a Compliance Agreement to commence March, 2009 and expire November, 2010 in order to accommodate phase 2 of their plan and will include the following parameters: sulphate, benzene, toluene, ethylbenzene, phenols and total PAH’s. Their current Compliance Agreement includes the same parameters with the exception of phenols. Their current Overstrength Agreement includes Phenols and as of January 1, 2010 phenols will no longer be allowed to be included in Overstrength Agreements. It is important to note that the effluent quality has not and will likely not change during the construction of the wastewater treatment plant. There has been an analysis by City staff and a determination made that to receive the wastewater of this particular concentration for the identified time period would not have a negative impact on the Woodward Avenue Wastewater Treatment Plant provided the wastewater remains in compliance with the terms of the Agreement.

Ruetgers presented Compliance and Regulations staff with phase 2 of their wastewater treatment plant project, and indicated that the facility would be completed and full compliance met by November 2010. R.E. Poisson Engineering was hired by the City to conduct a third party peer review on Ruetgers’ proposal. The peer review results were positive and the consultant recommended that the City accept the plan proposed by Ruetgers provided the work schedule is modified so that the design phase proceeds immediately, to assist in the regulatory approvals process and ensure compliance with the proposed schedule.

At the completion of this project Ruetgers will be in full compliance with the Sewer Use By-law 04-150, since they will be treating their own wastewater and discharging high quality effluent to the City’s infrastructure.

**ANALYSIS/RATIONALE:**

**Scope and Status of Ruetgers’ Wastewater Treatment Project**

**Current Situation**

- Ruetgers currently has a Compliance Agreement with the City of Hamilton regarding sewer discharges that exceed by-law limits for certain parameters (i.e. sulphates, benzene, toluene, ethylbenzene, and total PAH’s).

- This Agreement is set to expire June 30, 2009.

- Under this Agreement, and in working towards compliance, Ruetgers had engineered and gained approval to construct a wastewater treatment facility to pre-treat wastewater.

- Ruetgers is requesting the timeline to complete this facility be extended to November, 2010.
Requested Action

- As per Sewer Use By-law 04-150 and the policy of the Water and Wastewater Division, Ruetgers requires a new Compliance Agreement with the City of Hamilton until November, 2010. The current Compliance Agreement cannot be amended without difficulty due to changes in parameters and scope.

- Ruetgers’ preliminary discussions with the Water and Wastewater Division have indicated that any extension would require approval from Council.

Benefits

- Completion of an appropriate wastewater treatment facility would not only resolve the existing compliance issues with sewage discharge from Ruetgers but would also lead to possibly eliminating the need for an Overstrength Discharge Agreement for some treatable parameters.

- It will improve Ruetgers’ environmental performance which is of interest to both Ruetgers and the City of Hamilton.

- Completion of this facility will lead to Ruetgers significantly reducing atmospheric emission of naphthalene, H2S, and TRS to bring the total site into compliance with Ontario Regulation 419/05.

Business Case

- Performance Opportunity
  - Present State: Ruetgers is currently above the Sewer Use By-law limit for sulphates, benzene, toluene, ethylbenzene, and total PAH’s. The City of Hamilton’s recent decision to disallow phenol as an overstrength parameter will also place Ruetgers above the by-law limits for phenol after 2009.
  - Future State: Ruetgers’ plant effluent meets the requirements of Sewer Use By-law 04-150.

- Strategic Alignment
  - The Compliance Agreement will support continued operations of the Ruetgers plant in Hamilton.

ALTERNATIVES FOR CONSIDERATION:

Compliance and Regulations staff have identified two options available to the City of Hamilton for consideration. They are as follows:

Option 1: The “Do Nothing” Option. Leave the compliance end date, June 30, 2009 requiring the discharge from Ruetgers to meet the Sewer Use By-law 04-150. This project will be in the preliminary engineering phase only and compliance will not be possible. If Ruetgers does not have a Compliance Agreement they would likely be in a non-compliance situation and the City would be obligated to begin the process of enforcement action under the by-law.

Option 2: This is the option recommended by Compliance and Regulations staff. A new Compliance Agreement with a revised work plan to expire in November, 2010 is approved, allowing Ruetgers to proceed with commissioning a $4.2M wastewater treatment plant.
FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial Implications:
There are no additional costs to the City to accommodate Ruetgers’ request.

Annual revenue generated from the Overstrength Discharge agreement of approximately $120,000 per year will likely decrease once the program has been completed.

The City of Hamilton will continue to accept wastewater containing non-treatable parameters above Sewer Use By-law 04-150 until Ruetgers has their own treatment system commissioned. There has been an analysis by City staff and a determination made that to receive their wastewater during this time period would not have a negative impact, provided Ruetgers meet the terms of the agreement.

Staffing Implications:
N/A

Legal Implications:
Enforcement activities may be necessary during the timeline of the Agreement as well as subsequent to the termination of the Agreement to ensure the terms of the Compliance Agreement and proposed project schedule are adhered to.

POLICIES AFFECTING PROPOSAL:
The Sewer Use Enforcement protocol requires a company to meet target parameters within 6 to 9 months of entering a Compliance Agreement. Extensions beyond this require Council approval. Since 2007, 14 companies have entered into new Compliance Agreements and been given the standard timeline. Ruetgers is the third company requesting Council approval for an extension, since their scope of work is extensive, and a substantial amount of capital dollars are involved.

RELEVANT CONSULTATION:
R.E. Poisson Engineering Inc. reviewed the Ruetgers wastewater treatment plant proposal. They were asked to comment on the project scope, feasibility, timelines, and sustainability. The following comments were made:

- A completion date of November, 2010 is appropriate from a technical perspective. The proposed work schedule needs to be modified so that the Certificate of Approval (MOE) and capital approvals are concurrent. The design of the works needs to proceed immediately to fully develop, construct, and commission the wastewater treatment facility on schedule.

- The proposed treatment works encompass a range of technologies suitable for the treatment of parameters of concern and are appropriate for pre-treating discharges to a municipal sewer system.
CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced.  ☑ Yes  ☐ No
Higher quality wastewater discharges protect receiving waters for consumption and recreational purposes.

Environmental Well-Being is enhanced.  ☑ Yes  ☐ No
An increase in wastewater treatment capacity will assist in meeting Hamilton RAP targets and delisting the Hamilton Harbour.

Economic Well-Being is enhanced.  ☑ Yes  ☐ No
Employment and business/industrial growth within the City of Hamilton is sustained.

Does the option you are recommending create value across all three bottom lines?  ☑ Yes  ☐ No
The option does create value across all three bottom lines as noted above.

Do the options you are recommending make Hamilton a City of choice for high performance public servants?  ☑ Yes  ☐ No
Staff have a sense of responsibility for industrial wastewater discharge and protection of the environment.