SUBJECT: Glanbrook Landfill Site Certificate of Approval No. A130604 issued May 21, 2008 - Appeal to Environmental Review Tribunal (PW08085/LS08006) - (City Wide)

**RECOMMENDATION:**

(a) That the City Solicitor be authorized and directed to take all necessary actions to appeal Certificate of Approval No. A130604 issued May 21, 2008 for the Glanbrook Landfill Site, including but not limited to the application for a stay of term/conditions of said Certificate of Approval, all as described in Report PW08085/LS08006.

(b) That the City Solicitor and General Manager of Public Works be authorized if and when they deem it appropriate, to enter into discussions with the Ministry of the Environment to attempt to resolve the issues under appeal and to inform City Council on the outcome of any such resolution.

Scott Stewart, C.E.T.  
General Manager  
Public Works Department

Peter A. Barkwell  
City Solicitor  
Legal Services Division
EXECUTIVE SUMMARY:

On May 30, 2008, the City received Certificate of Approval No. A130604 (the “C of A”) for the Glanbrook Landfill Site.

There are several terms and conditions contained within this C of A that are of concern to City staff and which are more fully set out in the background section of this Report.

Given the short timelines for appealing the C of A to the Environmental Review Tribunal (“ERT”), staff have already submitted a Notice of Appeal to the ERT pending formal direction from City Council. The C of A requirements for the City will remain in effect while the appeal process is proceeding. However, as part of the appeal process, City staff are also trying to obtain a “stay” or suspension of certain terms and conditions which pose immediate operational problems or potential non-compliance issues for the City.

The purpose of this Report is to receive direction from City Council to continue to proceed with the appeal of the C of A terms/conditions, including the stay application, and to enter into discussions with the Ministry of the Environment (“MOE”) to resolve the issues, if possible, prior to any hearings of the ERT.

BACKGROUND:

The Ministry of the Environment issued a new consolidated Certificate of Approval No. A130604 on May 21, 2008 for the Glanbrook Landfill Site. This C of A was the result of a process that started back in 2005. While City staff were given opportunities to comment on drafts of the C of A, the Ministry did not address all of the City’s concerns prior to the issuance of the final C of A on May 21, 2008. The signed C of A was received by the City by mail on May 30, 2008.

City Waste Management Division staff have reviewed the issued C of A in detail and have identified those terms/conditions in the C of A that are still of concern to them. The complete list of the terms/conditions that have been appealed, and the grounds for appeal, are set out in Appendix “A” to this report.

Of those terms/conditions, seven have been identified as causing potentially immediate operational or non-compliance problems for the City. Therefore, steps are also being taken to apply for a stay or suspension of those terms/conditions until the hearing of the merits takes place. Those terms/conditions are identified with an asterisk in the list set out in Appendix “A” to this Report.
ANALYSIS/RATIONALE:

For each term and condition that is being appealed, the grounds of appeal are set out in Appendix “A” to this Report.

ALTERNATIVES FOR CONSIDERATION:

The City’s alternatives are:

1. To accept the conditions in the C of A and discontinue the City’s appeal to the ERT. This alternative will not address the concerns of staff with the Terms and Conditions of the C of A as identified in the earlier sections of this Report.

2. To continue with the appeal already filed with the ERT. This alternative will allow City staff to enter into discussions with MOE staff to try to resolve the requirements of the C of A in dispute. Such discussions may result in either no hearing taking place (as all issues will have been resolved) or a hearing will take place on a focussed set of conditions.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial and Staffing implications

If the recommendations contained in this Report are approved by Committee and Council, Waste Management Division staff will be participating in the ERT process on behalf of the City. If necessary, expert external resources will be obtained.

If certain of the C of A requirements are upheld by the ERT, there will be financial and staffing implications to the City. For example,

1. Term/Condition no. 2.1: if the C of A is not clarified to allow the City to continue to receive leaf and yard waste that is generated from outside the City of Hamilton, this will result in a loss of revenue to the City and will limit the City’s ability to receive leaf and yard waste from outside the City of Hamilton in the future.

2. Term/Condition 3.9c: if the final slope is not changed back to 1% (the design slope for the landfill site over the past 28 years) from the 5% stated in the C of A, this will result in the City having to redesign the site which in turn is estimated to result in a potential loss of landfill capacity of up to 2.5 years and a potential cost of approximately $30 million dollars in lost landfill space.

3. Term/Condition 4.9b: if the City is not permitted to apply “intermediate cover” (a new requirement under this C of A) on a phased-in basis for approximately 5 hectares on the site, this will result in a significant immediate financial cost (approximately $500,000) and will be very difficult to do immediately given other restrictions contained in the C of A, such as limits on the number of trucks allowed at the site.
Further, the C of A also has additional sampling, monitoring and reporting requirements beyond what is currently required for the site. Waste Management Division staff are reviewing the ability of current staffing levels to meet the additional requirements.

Legal Implications

If the recommendations contained in this report are approved by Committee and Council, in-house Legal Services Division staff will be representing the City in this matter.

**POLICIES AFFECTING PROPOSAL:**

No City policies are adversely impacted by the recommendations contained in this Report. The recommendations contained in this Report are consistent with recommendation #2 of the City’s Solid Waste Management Master Plan which states: *The Glanbrook landfill is a valuable resource, and the City of Hamilton must optimize the use of its disposal capacity to ensure that there is a disposal site for Hamilton’s residual materials that cannot be otherwise diverted.*

**RELEVANT CONSULTATION:**

The affected divisions are Waste Management (Public Works) and Legal Services (Corporate Services).

**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  
  - [x] No
  
  N/A

- **Environmental Well-Being is enhanced.**  
  - [x] Yes  
  - [ ] No
  
  Allows for effective management of the Glanbrook Landfill Site.

- **Economic Well-Being is enhanced.**  
  - [x] Yes  
  - [ ] No
  
  Allows utilisation of public resources more efficiently

- **Does the option you are recommending create value across all three bottom lines?**  
  - [ ] Yes  
  - [x] No
  
  N/A
Do the options you are recommending make Hamilton a City of choice for high performance public servants?

☐ Yes ☑ No

N/A
The City is appealing the terms and conditions of the Certificate of Approval, as set out below, based on the provisions contained in section 39 of the *Environmental Protection Act*. Without limiting the generality of the foregoing, the City of Hamilton appeals the following terms and conditions set out below:

<table>
<thead>
<tr>
<th>Term/Condition</th>
<th>Grounds</th>
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<tbody>
<tr>
<td>1. 1.17</td>
<td>The term/condition is ultra vires the Director under section 39 of the <em>Environmental Protection Act</em>. The term/condition consists of a disclaimer or purported statement of the law by the Director and is not a term/condition of an approval as contemplated under section 39 of the <em>Environmental Protection Act</em>. The City of Hamilton requests that the term/condition be deleted.</td>
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<tr>
<td>2. 2.1*</td>
<td>It is unclear whether this term/condition applies to leaf and yard waste that is delivered to the leaf and yard waste composting facility and composted. Term/condition is not in the public interest with respect to leaf and yard waste. Term/condition will frustrate the existing City of Hamilton contract with Haldimand County for the delivery of leaf and yard waste to this leaf and yard waste composting facility. Term/condition will prevent the City of Hamilton from assisting nearby municipalities to meet or exceed their environmental responsibilities regarding leaf and yard waste. The term/condition is also inconsistent with other similar approvals given to the City of Hamilton. The City of Hamilton requests that the term/condition be clarified such that “waste” does not include leaf and yard waste. Alternatively, the term/condition should clarify</td>
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<td>3.</td>
<td>2.4a.ii</td>
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<tr>
<td>4.</td>
<td>2.4 b.</td>
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<td>5.</td>
<td>3.9 c.*</td>
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<td><strong>SUBJECT:</strong></td>
<td>Glanbrook Landfill Site Certificate of Approval No. A130604 issued May 21, 2008 - Appeal to Environmental Review Tribunal (PW08085/LS08006) - (City Wide) – Page 8 of 13</td>
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<td>Term/condition is imposed, the City of Hamilton will not be able to achieve the capacity permitted under term/condition 2.6 of the Certificate of Approval, given the other height and waste footprint restrictions contained in the Certificate of Approval.</td>
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<td>Term/condition is ultra vires the Director under section 39 of the <em>Environmental Protection Act</em> as Ontario Regulation 232/98 (Landfilling Sites) does not apply to this pre-existing site.</td>
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<td>The term/condition is not in the public interest, as described in section 39 of the <em>Environmental Protection Act</em>.</td>
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<td>This term/condition will result in a redesign of the site, a potential loss of landfill capacity of up to 2.5 years, and a potential cost of approximately $30 million dollars in lost landfill space to the City of Hamilton.</td>
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<td>The City of Hamilton requests that the term/condition needs to be reworded to say “...within the range of 4H:1V(25%) to 100H:1V(1%).”</td>
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<td>6.</td>
<td>4.9b*</td>
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<td>Term/condition is not reasonable to the extent that it requires immediate compliance for historical areas and therefore has retroactive application and significant financial implications.</td>
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<td>Term/condition is not justifiable or feasible on technical grounds given the limitation elsewhere in the Certificate of Approval regarding the number of trucks permitted at the site.</td>
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<td>The City of Hamilton requests that the term/condition be amended to permit a phased-in approach to addressing intermediate cover for historical areas of the site.</td>
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<td>7.</td>
<td>4.19(2) Chipping of Wood For ADC</td>
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<td>Term/condition is not justifiable, appropriate nor feasible on technical grounds. The Director has not provided a justifiable, appropriate nor feasible technical explanation for this term/condition.</td>
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<td>The height of the chip wood pile should be dictated by the mobile certificate of approval that will be attached to the equipment that a contractor will bring to the site.</td>
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</table>
| 8. | 4.21* Litter Control | The term/condition is not justifiable, appropriate nor feasible on technical grounds. Term/condition is also unreasonable and potentially imposes significant unnecessary costs on the City of Hamilton. While daily litter inspections are acceptable, daily clean up is not always possible nor necessary.

Term/condition is unclear and confusing. The obligation in term/condition is stated to be that of the “Owner” while term/condition 1.1.1. states that both the “Owner” and the “Operator” shall ensure compliance with all conditions of the Certificate of Approval. Litter inspection is an Operator responsibility. Therefore there is an internal inconsistency within the Certificate of Approval that needs to be addressed.

The City of Hamilton requests that this term/condition be reworded to address the above issues. |

| 9. | 4.28(2)* | The term/condition is unreasonable. The Certificate of Approval is already out of date. The City of Hamilton currently has mobile odour neutralization equipment/units already in use in the site which are known to the Ministry of the Environment but are not reflected in the Certificate of Approval.

The term/condition is not consistent with similar other approvals given to the City.

The term/condition is not in the public interest as it does not allow the City of Hamilton or its Operator to promptly address odour complaints.

The City of Hamilton requests that the term/condition be deleted. |

| 10. | 5.1(1) and Schedules “B” and “C”* | The term/condition is out of date and does not accurately reflect the present monitoring wells at the site. In particular, the documents referenced in this term/condition do not reflect recent technical letters |
between the Ministry of the Environment and the City of Hamilton nor the 2006 Annual Monitoring Report. Further Schedules “B” and “C” are subject to change which will trigger constant amendments to the Certificate of Approval.

The term/condition is not consistent with similar other approvals given by the Ministry of the Environment.

The City of Hamilton requests that this condition be reworded to remove Schedules B and C from the C of A, as they are subject to change which would require ongoing future amendments to the C of A. If the MOE does not agree with this request, alternatively, the City of Hamilton requests that Schedules B and C be revised to reflect recent technical letters between MOE and City and the 2006 Annual Monitoring Report.

| 11. | 5.1(3) | Term/condition is unreasonable.  
Term/condition is unnecessarily administratively cumbersome.  
Term/condition is not in the public interest, contrary to Section 39 of the Environmental Protection Act.  
Term/condition is unreasonable as it does not allow the City of Hamilton to add further monitoring without amending the Certificate of Approval, where the public interest warrants such further monitoring.  
Term/condition contains two references to Condition No. 11.2 which are incorrect.  
The City of Hamilton requests that this term/condition be deleted. |
| 12. | 5.1(4) | Term/condition is unreasonable.  
Term/condition is unnecessarily administratively cumbersome.  
Term/condition is not in the public interest, contrary to Section 39 of the Environmental Protection Act.  
Term/condition is unreasonable as it does not allow the City of Hamilton to add further monitoring without amending the Certificate of Approval, where the public |
interest warrants such further monitoring.

The City of Hamilton requests that this term/condition be deleted.

| 13. 5.2* | Term/condition is unreasonable in terms of the inspections having to be conducted on a weekly basis. The City’s current practice is to inspect the groundwater monitoring wells when sampling is conducted. Previous drafts of Certificate of Approval referred to monthly and quarterly inspections and no explanation has been provided for the change to unduly onerous weekly inspections.

Term/condition is not justifiable nor appropriate on technical or financial grounds.

The reference to condition no. 1.17 should be changed to condition no. 1.16.

The City of Hamilton requests that this term/condition be reworded so that the inspections are conducted during the sampling events. |

| 14. 5.6a | The term/condition is unreasonable as the existing regulations and guidelines regarding the monitoring wells are sufficient without the imposition of additional approval requirements by the District Manager. No justifiable technical reason has been provided for this term/condition.

The City of Hamilton requests that this term/condition be deleted. |

| 15. 5.10a | Term/condition is inconsistent with introductory language to term/condition 5.10.

Term/condition is not justifiable, appropriate nor feasible on technical grounds as an investigation cannot necessarily be completed in sufficient time to allow the Owner to give the notice required by the term/condition.

The City of Hamilton requests that the words “and completion of investigative activities.” be added to the end of this term/condition. |
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<th>Term/condition is unreasonable as it does not allow for the replacement of damaged header pipes, horizontal collectors or other installations related to the landfill gas collection system. The City of Hamilton requests that the term/condition be amended to reflect the concern noted above.</th>
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<tr>
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<td>7.2</td>
<td>Term/condition is uncertain and confusing. Term/condition is not justifiable, appropriate nor feasible on technical grounds. The City of Hamilton requests that the first sentence of the term/condition be deleted and that the second sentence be reworded to state as follows: <strong>Operational methods shall ensure that any precipitation falling on fill areas with daily or intermediate cover is directed to the leachate collection system, except side slopes or top slopes with intermediate cover that is awaiting application of final cover.</strong></td>
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<td>8.3</td>
<td>Term/condition 8.3 references Items 12-15 in Schedule “A”, however, it appears that Items 13-15 do not apply to the leaf and yard waste composting facility. The City of Hamilton requests that the references to Items 13-15 of Schedule “A” be deleted.</td>
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<td>10.3</td>
<td>Term/condition is unreasonable in that it is not feasible for the City of Hamilton to comply with the new annual report requirements by June 30, 2008. There is a typographical error in the phrase “anniversary date” in the last line of the term/condition as “Anniversary date” is a defined term in the Certificate of Approval. The City of Hamilton requests that the words “by June 30th of each year” in the last line of term/condition 10.3 be deleted and replaced with the following: <strong>by June 30, 2009 and each June 30th thereafter.</strong> The words “anniversary date” should also be changed to “Anniversary date”.</td>
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</tbody>
</table>
20. | 10.4(l) | The term/condition is ultra vires the Director under Section 39 of the *Environmental Protection Act*.  
The term/condition is arbitrary and unreasonable.  
The term/condition is inconsistent with similar other approvals given to the City of Hamilton.  
The City of Hamilton requests that this term/condition be deleted.  

21. | 10.4(p) | Term/condition is unnecessary as the City of Hamilton is already required to submit an annual report to the Director on the City’s leaf and yard waste system pursuant to Ontario Regulation 101/94.  
The City of Hamilton requests that this term/condition be deleted.  

22. | All of the above | Such further and other grounds as the City of Hamilton may advise.  

* terms/conditions that are the subject of a stay application