SUBJECT: Woodward WWTP Certificate of Approval No. 0701-6L5PAB - Appeal to Environmental Review Tribunal (PW06138/LS06014) - (City Wide)

RECOMMENDATION:

(a) That the City Solicitor be authorized and directed to take all necessary actions to appeal Certificate of Approval No. 0701-6L5PAB for the Woodward Avenue Wastewater Treatment Plant.

(b) That the City Solicitor and General Manager of Public Works be authorized if and when they deem it appropriate, to enter into discussion 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.
EXECUTIVE SUMMARY:

On August 23, 2006, the City received Amended Certificate of Approval No. 0701-6L5PAB (the CofA) for the Woodward Wastewater Treatment Plant (WWTP). One of the terms and conditions contained in the CofA requires the City to undertake different testing and monitoring for the incoming sewage than required for the treated effluent leaving the WWTP. Water and Wastewater Division staff believe that this additional monitoring is not technically appropriate and will make it difficult for the City to compare plant performance and to also meet other regulatory monitoring requirements.

Given the short timelines for appealing the CofA to the Environmental Review Tribunal (ERT), staff have already submitted a Notice of Appeal to the ERT pending formal direction from City Council. The CofA requirements for the City will remain in effect while the appeal process is proceeding.

The purpose of this Report is to receive direction from City Council to proceed with the appeal of the CofA condition and to enter into discussions with the Ministry of the Environment (MOE) to resolve the issue, if possible, prior to any hearings of the ERT.

BACKGROUND:

As per the standard practice and requirements, the City applied to the Ministry of Environment for amendments to the CofA for the Woodward WWTP to incorporate the proposed upgrades to the effluent wash water system at the facility. The MOE agreed with the proposed upgrades and approved them by making amendments to the CofA. While amending the CofA, the MOE also changed the Term and Condition of the CofA, with respect to the Raw Sewage Monitoring requirement from Carbonaceous Biochemical Oxygen Demand (CBOD₅) to Total Biochemical Oxygen Demand (TBOD₅).

City staff were concerned with the change to the CofA and served a written notice to the MOE that the City of Hamilton requires a hearing by the Environmental Review Tribunal with respect to the CofA issued under Section 53, Ontario Water Resources Act on grounds that included the following:

- The proposed Term and Condition is not in the public interest, contrary to Section 53(4) of the Ontario Water Resources Act;
- The proposed Term and Condition is arbitrary and unreasonable;
- The proposed Term and Condition is inconsistent with similar other approvals given to the City;
- The proposed Term and Condition is not justifiable nor appropriate on technical grounds;
- The proposed Term and Condition will result in different monitoring being conducted on the influent (TBOD₅) than the effluent (CBOD₅) and thereby not allowing proper performance monitoring and evaluation of the Woodward Avenue Wastewater Treatment Plant operations; and
The proposed Term and Condition is contradictory with Ontario Ministry of Environment Procedures and Guidelines such as F-5-1 and F-5-5. The relief requested by the City is that TBOD$_5$ should be changed to CBOD$_5$ in the CofA.

**ANALYSIS/RATIONALE:**  
Historically, the City has been required to monitor CBOD$_5$ in the incoming sewage to the plant. Water and Wastewater Division staff have several concerns with the change in the CofA from CBOD$_5$ to TBOD$_5$, which include the following:

- **Performance Assessment:** The CofA requires the City to use CBOD$_5$ when monitoring the effluent from secondary treatment facilities. The use of TBOD$_5$ on the influent and CBOD$_5$ on the effluent will not allow performance monitoring and evaluation of the plant. It will provide misleading and confusing information to the operators and other stakeholders.

- **Contradiction with MOE Procedures and Guidelines:** The various procedures and guidelines of the MOE such as F5-1 and F5-5 are based on the use of CBOD$_5$ instead of TBOD$_5$. BOD$_5$ is defined as Carbonaceous Biochemical Oxygen Demand (CBOD) in F5-1 and F5-5. By using TBOD$_5$ for raw influent, as required under the CofA, it will not be possible for the City to demonstrate compliance with the primary treatment or equivalent objectives of F-5-5.

- **Laboratory Workload/Financial Implications:** Considering that the final effluent testing monitoring requirements still require CBOD$_5$, and that Plant Operations staff test for influent and effluent parameters more frequently than the minimum weekly requirement in the CofA, the laboratory workload will be greatly increased with the change. Performing both tests will require double analytical runs to include the required quality control that must be part of each batch of samples. The current TBOD$_5$ requirement on raw sewage significantly increases laboratory workload and costs without any additional benefits.

- **Technical:** Given the existing plant operational processes and analytical techniques, there will not be any significant differences in results obtained from TBOD$_5$ and CBOD$_5$ tests. The change will only result in increased workload and effort without any purposeful data.

**ALTERNATIVES FOR CONSIDERATION:**  
The City’s alternatives are:

1. To accept the change in the CofA and discontinue the City’s appeal to the ERT. This alternative will not address the concerns of staff with the Term and Condition of the CofA 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 CofA 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 focused set of concerns.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

If the CofA requirements are upheld by the ERT, there will be financial and staffing implications as a result of the change in the CofA as additional tests and monitoring will have to be carried out on the incoming wastewater to the plant. As well, there will be additional financial and staffing implications as the MOE would likely make similar changes for the other wastewater treatment plants in the City. The existing workload related to the monitoring of the incoming sewage will be significantly increased.

**POLICIES AFFECTING PROPOSAL:**

No City policies are adversely impacted by the recommendations contained in this Report.

**RELEVANT CONSULTATION:**

The affected Divisions are Water and Wastewater (Public Works) and Legal Services (City Manager’s Office).

**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
- Environmental Well-Being is enhanced. ☑ Yes ☐ No
  Allows effective monitoring of the Wastewater treatment performance
- Economic Well-Being is enhanced. ☑ Yes ☐ No
  Allows utilisation of public resources more efficiently

Does the option you are recommending create value across all three bottom lines? ☐ Yes ☑ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☐ Yes ☑ No