SUBJECT: Proposed Certificate of Approval Amendments - Taro East Landfill Site (LS07021/PW07142) - (City Wide)

RECOMMENDATION:

(a) That the Comments set out in Schedule “A” to Report LS07021/PW07142 regarding the amendments proposed by Newalta Industrial Services Inc. with respect to Certificate of Approval A181008 (Taro East Landfill Site) be approved;

(b) That subsection (a) of Report LS07021/PW07142 be communicated to the Ontario Ministry of the Environment and the owner and operator of the Taro East Landfill Site, outside of and/or as part of, any public consultation process.

_____________________________   ____________________
Scott Stewart, C.E.T.      Peter A. Barkwell
General Manager      City Solicitor
Public Works       Legal Services Division
EXECUTIVE SUMMARY:

Newalta Industrial Services Inc. ("Newalta") has submitted an application to the Ontario Ministry of the Environment for certain amendments to its certificate of approval for the Taro East Landfill Site ("Site").

Most of the proposed amendments relate to the terms of reference for the community liaison committee for the Site. Staff report LS06013(a)/PW06129(a) addressed the terms of reference and was considered by Public Works Committee at its meeting of October 15th and by Council at its meeting of October 24th. Both Committee and Council endorsed the final draft Community Liaison Committee Terms of Reference subject to certain amendments and understandings.

However, in addition to the terms of reference for the community liaison committee, Newalta has also applied to have certain other amendments made to the certificate of approval for the Site. These other amendments relate primarily to issues of financial assurance and a proposed Health Subcommittee of the community liaison committee. They have been reviewed by City Finance and Public Health staff and by the ad hoc working group (Mayor Eisenberger, Councillors Collins, Mitchell and Clark, Scott Stewart and Debbie Edwards) who had previously reviewed the draft Terms of Reference for the community liaison committee. The results of that review are contained in the Comments column of Schedule “A” to this report and it is being recommended that such Comments be approved and forwarded to both the Ministry of the Environment and the owner and operator of the Site.

BACKGROUND:

Newalta’s application to amend the certificate of approval for the Site requests that the following items be addressed:

1. A review of all terms and conditions in the C of A be made to ensure consistency with the new terms of reference and those required by the environmental assessment approved July 1996. As a result, Newalta is withdrawing the March 3, 2004 certificate of approval amendment application submitted by PSC, the previous owner of the Site;

2. Amendments to the financial assurance provisions of the certificate of approval; and

3. Amendments to the Health Subcommittee provisions of the certificate of approval.

A more detailed explanation of each proposed amendment is set out in the Analysis/Rationale section of this report.

We understand that these proposed amendments will also be placed on the Environmental Registry for a thirty day public consultation process. As of the time of the writing of this report, the Environmental Registry does not contain these proposed
amendments, nor any of the proposed amendments relating to the terms of reference for the community liaison committee.

**ANALYSIS/RATIONALE:**

The wording of the current certificate of approval provisions, the amendments proposed by Newalta and the Comments on each proposed amendment are set out in Schedule “A” to this report.

The main Comments can be summarized as follows:

1. The existing financial assurance provisions should be maintained to ensure that all of Newalta’s obligations under the Certificate of Approval have been secured. Since this landfill site pre-dates August 1, 1998, the financial assurance provisions contained in the Landfilling Sites regulation made under the *Environment Protection Act* do not apply and therefore the Ministry of Environment can continue to determine the amount of financial assurance required on a case by case basis. As well, it is preferred that the City continue to be consulted with regards to the submission of the financial assurance prior to submission to the Director, rather than being advised after the fact.

2. Regarding the Health Subcommittee, it is proposed that the members be appointed by the community liaison committee and not by Newalta. Further, there needs to be at least three members on the Subcommittee, including a member from the City, to minimize the opportunities for a tie vote. Thirdly, clarification is required with respect to what would be involved with any health study, should it be deemed necessary by the Subcommittee.

**ALTERNATIVES FOR CONSIDERATION:**

The Ontario Ministry of the Environment is responsible for approving the issuance of, and all amendments to, certificate of approvals under the *Environmental Protection Act*.

Therefore, the only alternative is for the City to not provide any comments on the proposed amendments. However, if this alternative is chosen, it will mean that decisions will be made without input from the City.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

There are no financial implications associated with the recommendations contained in this report.

Regarding staffing implications, the City’s Public Health Services Department has indicated that it has the staff to participate on the proposed Health Subcommittee as a resource.
The legal implications are that any amendments to the certificate of the approval for the Site which are approved by the Ministry of the Environment will be binding on Newalta and may require actions that will affect the City (e.g. consultation on financial assurance; the appointment of a City community liaison committee on the Health Subcommittee).

**POLICIES AFFECTING PROPOSAL:**

N/A

**RELEVANT CONSULTATION:**

Corporate Services Department, General Manager’s Office
Public Health Services Department, Public Health Protection Division
Ad Hoc Working Group

**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
The public are involved in the definition and development of local solutions. This is being accomplished by providing the City of Hamilton with an opportunity to comment on the proposed amendments to the certificate of approval for the Taro East Landfill Site, and by the public consultation process contemplated by the [Environmental Bill of Rights](#) through the [Environmental Registry](#).

**Environmental Well-Being is enhanced.** ☑ Yes   ☐ No
The establishment of the Health Subcommittee will allow for discussion of the effect of operations at a non-municipally owned landfill site.

**Economic Well-Being is enhanced.** ☐ Yes   ☑ No

**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
**AMENDMENTS TO CERTIFICATE OF APPROVAL A181008 PROPOSED BY NEWALTA**

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<tr>
<th>C of A Condition</th>
<th>Wording of Existing Condition</th>
<th>Proposed Amendment</th>
<th>Comments</th>
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<tbody>
<tr>
<td>All terms and conditions</td>
<td>N/A</td>
<td>A review of all terms and conditions to ensure consistency with the new terms of reference for the community liaison committee and those required by the Environmental Assessment approved July 1996. Newalta is withdrawing the March 3, 2004 certificate of approval amendment application by PSC.</td>
<td>It was anticipated that amendments would need to be made to the certificate of approval to reflect the new terms of reference for the CLC to be approved by the MOE. Regarding the Environmental Assessment of July 1996, it will be up to the MOE, as the approval authority, to determine if all of those conditions should still apply to the site.</td>
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<td>81</td>
<td>Financial assurance shall be provided to the Director by the Company in a form and manner acceptable to the Director and in an amount that is sufficient to pay for compliance with and performance of any action specified in this Certificate. The CLC and the City shall be consulted with regards to the financial assurance prior to submission to the Director.</td>
<td>Financial assurance shall be provided to the Director by the Company in a form and manner acceptable to the Director and in an amount that is sufficient to pay for compliance with and performance of any action related to the closure and post closure of the site specified in this Certificate. The City and NSCLLC shall be advised of the financial assurance approved by the Director. (changes from existing wording bolded)</td>
<td>Financial assurance needs to be sufficient to address all of the obligations under the Certificate of Approval. As this facility is within the City of Hamilton, it is preferred that the City of Hamilton be consulted in advance of financial assurance submission and not after the fact. Support existing wording remaining unchanged.</td>
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<td>88.2</td>
<td>A copy of the application and supporting documentation as described in Condition 88.1 for the review of the financial assurance shall also be provided to the CLC and the City.</td>
<td>Existing Condition 88.2 shall be deleted as it is covered by Condition 81.</td>
<td>If condition 81 remains as is, no need to delete condition 88.2.</td>
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<td>98</td>
<td>The Company shall establish a health sub-committee of the CLC to address health concerns related to the Taro East Landfill Site. The role of this health sub-committee is to interpret and communicate monitoring results, and review and recommend health protection measures and investigate health concerns related to the operation of the facility. The membership of this health subcommittee shall consist of, but is not necessarily limited to, academic researchers, the local health community and the Company’s health risk assessment experts in accordance with Section 8.3.10.2 – Health Committee of the Final Report, Taro East Landfill, Expert Panel, dated October 2000.</td>
<td>Modified to read as follows: 98.1 Upon appointment of members of the NSCLLC, the company shall also appoint members to a Health Subcommittee of the NSCLLC in accordance with Condition 98.3. 98.2 The mandate of the Health Subcommittee shall be to act as a vehicle to assist the NSCLLC in fulfilling its mandate in respect of any health related matters. 98.3 The membership of the Health Subcommittee shall be comprised of one Company member and one community member of the NSCLLC. One representative of the Ministry of Health and one representative of the local Health Department will be invited to participate. Additional members may be added as deemed necessary by the NSCLLC upon recommendation by the Health Subcommittee.</td>
<td>98.1 Support the creation of a Health Subcommittee; consistent with recommendations of the Expert Panel. Members of the Health Subcommittee should be appointed by the community liaison committee and not by the company. 98.2 No comments regarding proposed amendment. 98.3 Membership of Health Subcommittee should consist of more than two members so as to minimize opportunities for a tie vote. Suggest adding a City member of the community liaison committee to the proposed two person membership of the Health Subcommittee. Ministry of Health does not usually participate in private committees of this type. City’s Public Health Services Department has indicated that it will participate with the Health Subcommittee as a resource, but not as a voting member.</td>
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<td>99</td>
<td>Condition 99 revoked by Environmental Review Tribunal on May 21, 2003. Previously read as follows: Within 6 months of the date of this Notice, the Company shall submit to the Regional Director, for approval, the Terms of Reference of a health study that is to be undertaken with a focus on the community immediately adjacent to the site. The health study should take into account other studies being conducted in the City of Hamilton in order to assess whether there is a difference in the health status of the community living close to the landfill compared with similar populations who are not living beside the site, in accordance with Section 8.3.10.3 – Health Study of the Final Report, Taro East Landfill, Expert Panel, October 2000.</td>
<td>If deemed necessary by the Health Subcommittee, Terms of Reference shall be submitted to the Regional Director for approval, for a health study that is to be undertaken with a focus on the community immediately adjacent to the site. The health study should take into account other studies that have a link to the neighbourhood, conducted or being conducted in the City of Hamilton in order to assess whether there is a difference in the health status of the community living close to the landfill compared with similar populations who are not living beside the site.</td>
<td>Need clarification as to who is going to pay for the health study. What if there are no other relevant studies in place? Would the Subcommittee undertake a parallel study for those populations not living beside the site?</td>
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<td>103</td>
<td>Condition 103 revoked by Environmental Review Tribunal on May 21, 2003. Previous wording described that a representative of the Environmental Review Tribunal would conduct a public process to develop a revised Terms of Reference for a CLC.</td>
<td>Condition 103 be deleted.</td>
<td>No concerns. Proposed Terms of Reference for the CLC endorsed by Council at its October 24th meeting subject to certain amendments and understandings. Proposed 30 day public consultation process with the Environmental Registry.</td>
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