



Authority: Item 4, Public Works Committee
Report 09-015
CM: Date December 9, 2009

Bill No. 002

CITY OF HAMILTON

BY-LAW NO. 10-002

To Amend By-law No. 04-150, a By-Law to Regulate the Discharge of any Matter into the Sanitary, Combined and Storm Sewer Systems of the City of Hamilton

WHEREAS the Council of the City of Hamilton passed and enacted By-law No. 04-150, known and referred to as the "Sewer Use By-law", which came into force on June 30, 2004;

AND WHEREAS at its meeting of December 9, 2009, the Council of the City of Hamilton did approve of Item 4 of the Public Works Committee Report 09-015 and did thereby authorize the amendments to the Sewer Use By-law contained in this By-law;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. Section 1 of By-law No. 04-150 is amended by changing the defined term "Hauled Wastewater Discharge Manifest" to "Hauled Wastewater Discharge Declaration" and by changing all other references in this By-law from "Hauled Wastewater Discharge Manifest" to "Hauled Wastewater Discharge Declaration".
2. Section 1 of By-law No. 04-150 is amended by adding the following definition after the definition of "matter" and before the definition of "NAICS":

"Municipal Law Enforcement Officer" means any person appointed by the City's Council, by the General Manager of Public Works, or under this By-law, to administer or enforce this By-law and includes a person employed by the City whose duties are to enforce this By-law, and also includes, for the purposes of exercising any power of entry under this By-law, a police officer;
3. Section 2 of By-law No. 04-150 is amended by adding the following subsection (3):

(3) The following Schedules are attached to and form part of this By-Law:

Schedule A:	Joined Sanitary-Foundation Drain Sewer Lands;
Schedule B:	intentionally deleted;
Schedule C:	City Locations and times for Discharge of Hauled Sewage and Hauled Industrial Wastes;
Schedule D:	Schedule of Fees;
Schedule E:	Best Management Practices (BMP) Plan;
Schedule F:	Industrial Sectors;
Schedule F1:	Waste Survey Report;
Schedule G:	Overstrength Discharge Agreement Form (including Appendix G);
Schedule H:	Sanitary Sewer Surcharge Agreement Form (including Appendix H);
Schedule I:	Chlorides Discharge Agreement Form (including Appendices I-A and I-B);
Schedule J:	Letter of Agreement for Compliance Program;
Schedule J-1:	Release and Indemnification Form; and
Schedule K:	Compliance Program Progress Report.

4. Section 3 of By-law No. 04-150 is deleted and replaced with the following:

SECTION 3

ADMINISTRATION AND ENFORCEMENT

- 3.(1) The General Manager of Public Works is responsible for the administration and enforcement of this By-law.
- (2) The City's Senior Director of Environment & Sustainable Infrastructure, the City's Director of Water and Wastewater Operations, the City's Manager of Compliance and Regulations, and all City employees in the Environmental Monitoring and Enforcement unit of the Environment & Sustainable Infrastructure Division of the Public Works Department of the City of Hamilton are appointed as Municipal Law Enforcement Officers for the purposes of the administration and enforcement of this By-law and the applicable sections of the Municipal Act 2001.
- (3) The General Manager of Finance and Corporate Services is responsible for billing and collecting all fees and charges described in this By-law except as otherwise provided in this By-law.
- (4) A Municipal Law Enforcement Officer may enter on land at any reasonable time to inspect the discharge of any matter into the sewage works of the City or into any

other sewage system the contents of which ultimately empty into the City's sewage works and may conduct test and take samples for this purpose.

- (5) A Municipal Law Enforcement Officer may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
 1. this By-law;
 2. any direction, requirement or order of the City made under this By-law; or
 3. an order made under section 431 of the Municipal Act, 2001 in respect of a contravention of this By-law.

- (6) For the purposes of an inspection under subsection 3(5), a Municipal Law Enforcement Officer may,
 1. require the production for inspection of documents or things relevant to the inspection;
 2. inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 3. require information in writing or otherwise as required by the Municipal Law Enforcement Officer from any person concerning a matter related to the inspection; and
 4. alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of the inspection.

- (7) A Municipal Law Enforcement Officer may undertake an inspection pursuant to an order issued by a provincial judge or justice of the peace under section 438 of the Municipal Act, 2001 where he or she has been prevented or is likely to be prevented from carrying out an inspection under subsections 3(4), 3(5) and 3(6).

- (8) If a Municipal Law Enforcement Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened this By-law or who caused or permitted the contravention, or the owner or occupier of the property on which the contravention occurred to discontinue the contravening activity.

- (9) An order under subsection 3(8) shall set out:

1. reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred; and
 2. the date and time by which there must be compliance with the order, which may be of immediate effect should the Municipal Law Enforcement Officer determine that the circumstances warrant.
- (10) If a Municipal Law Enforcement Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened this By-law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred to do the work to correct the contravention.
- (11) An order under subsection 3(10) shall set out:
1. reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred; and
 2. the work to be completed which may include but is not limited to requiring that:
 - (a) prior to performing any work, all necessary permits or other approvals be applied for and obtained;
 - (b) examinations or tests be conducted or samples be taken for the purpose of determining the cause of the contravention and the remedial measures that are necessary to correct the contravention, and that such examinations, tests or samples be supplied to the Municipal Law Enforcement Officer together with any accompanying reports required in the order;
 - (c) appropriate treatment for the discharge of non-complying effluent be provided; and
 3. the date and time by which the work must be completed, which may be of immediate effect should the Municipal Law Enforcement Officer determine that the circumstances warrant.

- (12) An order to discontinue a contravening activity made under subsection 3(9) or an order to do work made under subsection 3(11) may be served personally or by registered mail to the last known address of:
1. the owner or occupier of the property where the contravention occurred; and
 2. such other persons affected by the order as the Municipal Law Enforcement Officer making the order determines.

Service by registered mail shall be deemed to have taken place five business days after the date of mailing.

- (13) In addition to service given in accordance with subsection 3(12), an order to discontinue a contravening activity made under subsection 3(9) or an order to do work made under subsection 3(11) may be served by a Municipal Law Enforcement Officer placing a placard containing the order in a conspicuous place on the property where the contravention occurred.
- (14) Where service cannot be given in accordance with subsection 3(12), sufficient service is deemed to have taken place when given in accordance with subsection 3(13).
- (15) No person shall remove an order, notice, direction or placard posted on a property indicating that it was posted under this By-law, except a Municipal Law Enforcement Officer.
- (16) Where a time frame is set out in an order for carrying out any action, the Municipal Law Enforcement Officer may extend the time for compliance beyond the established time frame provided such extension is required and is acceptable to the Municipal Law Enforcement Officer.
- (17) Where a person does not comply with a direction or a requirement, including an order, under this By-law to do a matter or thing, the General Manager of Public Works, with such assistance by others as may be required, may carry out such direction, requirement or order at the person's expense.
- (18) The City may recover the costs of doing a matter or thing under subsection 3(17) by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes and such costs shall include an interest rate of 15 percent commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full.

- (19) The General Manager of Public Works is authorized to give immediate effect to any direction, or requirement where the costs of carrying out the direction or requirement do not exceed \$10,000 and, where the costs do exceed \$10,000, as the City's council may authorize.
- (20) The amount of the City's costs including interest to the date payment is made in full, constitutes a lien upon the land, upon the registration of a notice of lien upon the land.
5. Subsections 12(6) and (7) of By-law No.04-150 are deleted in their entirety.
6. Section 13 of By-law No. 04-150 is deleted and replaced with the following:

SECTION 13

OFFENCES

- 13.(1) Every person who contravenes any provision of this By-law is, upon conviction, guilty of an offence and is liable:
 1. on a first conviction, for each day or part of a day on which the offence occurs or continues, to a fine of not more than \$10,000; and
 2. on any subsequent conviction, for each day or part of a day on which the offence occurs or continues, to a fine of not more than \$25,000.
- (2) Despite subsection 13(1), where the person convicted is a corporation,
 1. the maximum fine in paragraph 13(1)1. is \$50,000; and
 2. the maximum fine in paragraph 13(1)2. is \$100,000.
- (3) In this By-law, subsequent conviction means a conviction for an offence, which offence occurs after the date of conviction for an earlier offence under this By-law, under Sections 13, 14 or 15 of By-law No. 247-75 or under By-law No. R89-049.
- (4) Any person who contravenes an order made under this By-law, or an officer or director of a corporation who knowingly concurs in such a contravention by the corporation, is guilty of a continuing offence and upon conviction is liable to a daily fine or penalty of a maximum of \$10,000 for each day or part of a day that the offence continues, and despite subsections 13(1) and 13(2), the total of all the daily

finer imposed for an offence is not limited by the fine amounts listed in those subsections.

- (5) Where a person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an order prohibiting the continuation or repetition of the offence by the person convicted.
7. Schedule G (Overstrength Discharge Agreement Form) of By-law No. 04-150 is amended by adding the following section 16:
 16. THIS AGREEMENT shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. Any action or proceeding relating to all matters arising out of this agreement or the discharge of sewage described in this agreement, including all tort claims, shall be brought in an Ontario court of competent jurisdiction and any such action or proceeding shall be issued at the Hamilton, Ontario office of that court and for that purpose each party irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario court at Hamilton, Ontario.
8. Schedule H (Sanitary Sewer Surcharge Agreement Form) of By-law No. 04-150 is amended by adding the following section 14:
 14. THIS AGREEMENT shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. Any action or proceeding relating to all matters arising out of this agreement, or the discharge of water that has originated from a source separate from the City potable water distribution system, as described in this agreement, including all tort claims, shall be brought in an Ontario court of competent jurisdiction and any such action or proceeding shall be issued at the Hamilton, Ontario office of that court and for that purpose each party irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario court at Hamilton, Ontario.
9. Schedule I (Chlorides Discharge Agreement Form) of By-law No. 04-150 is amended by adding the following section 15:
 15. THIS AGREEMENT shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. Any action or

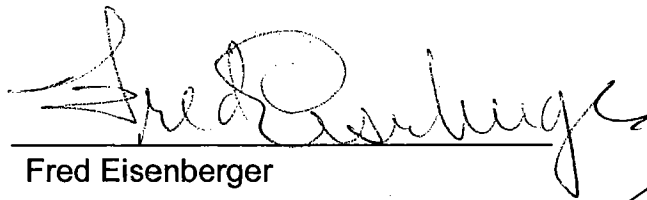
proceeding relating to all matters arising out of this agreement, or the discharge of sewage containing chlorides in excess of 5000 milligrams/litre, as described in this agreement, including all tort claims, shall be brought in an Ontario court of competent jurisdiction and any such action or proceeding shall be issued at the Hamilton, Ontario office of that court and for that purpose each party irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario court at Hamilton, Ontario.

10. Schedule J (Letter of Agreement for Compliance Program) of By-law No. 04-150 is amended by adding the following section 9:

9. The compliance program described in this Letter of Agreement, and all associated documentation, shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. Any action or proceeding relating to all matters arising out of this Letter of Agreement, or the compliance program, as described in this Letter of Agreement, including all tort claims, shall be brought in an Ontario court of competent jurisdiction and any such action or proceeding shall be issued at the Hamilton, Ontario office of that court and for that purpose each party irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario court at Hamilton, Ontario.

11. This by-law shall be deemed to have come into force on January 1, 2010.

PASSED this 11th day of January, 2010.



Fred Eisenberger
Mayor



Kevin C. Christenson
City Clerk