

**DATE:** April 23, 2002

**TO:** Chairman and Members of the Planning and Development Committee

**FROM:** Thomas S. Mokrzycki, Commissioner of Planning and Building

**SUBJECT:** **Alternative Process to the Use of a Record of Site Condition at Operating Fuel Handling Facilities**  
**MEETING DATE: May 13, 2002**

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**ORIGIN:** Planning and Building Department

**BACKGROUND:** In response to the Ministry of the Environment (MOE) downloading its review of contaminated sites with the release of the document titled "*Guidelines for Use at Contaminated Sites in Ontario*" in 1996, City Council enacted Corporate Policy and Procedure 09-08-02, attached as Exhibit 1 which guides City staff in dealing with development applications on contaminated or potentially contaminated sites. The policy has worked well in the majority of development applications except for gas station sites. The petroleum industry has expressed a number of concerns with the process, but until now, there was no alternative process available for City staff to use when dealing with operating and permanently closed gas station sites. In response to the issue, the Technical Standards and Safety Authority (TSSA) and the Canadian Petroleum Products Institute (CPPI) has asked the City to consider an alternative process to the current City Policy and Procedure.

A committee of representatives from Transportation and Works, Corporate Services and the Planning and Building Department

have reviewed Corporate Policy 09-08-02 and the TSSA alternative process and are recommending a number of modifications to the existing policy.

**COMMENTS:**

Corporate Policy and Procedure 09-08-02 requires, as part of its development application review process, the submission of an Environmental Site Screening Questionnaire and Declaration (ESSQD) to determine if sites have the potential for contamination. If there is a potential for contamination, there is a standard procedure outlined in Policy 09-08-02 that all applicants must follow. The ESSQD is used to screen development applications and determine if additional studies are required to address the potential for contamination on-site. If contamination is present, then certain requirements must be met before a project can achieve certain milestones in the development approval process. For all remediated sites, a Record of Site Condition (RSC) must be submitted to the Ministry of the Environment (MOE).

*Petroleum Industry Concerns*

The petroleum industry has expressed concerns regarding two aspects of the City's process. First, the City's process does not take into account operating gas stations that are upgrading or expanding their facilities. Petroleum companies generally do not carry out soil testing and Phase II Environmental Site Assessments until they dig up their sites and remove storage tanks. Petroleum companies do not want to disrupt their business and dig up the site unless they have some assurance from the City that their development application is acceptable. The City's policy, however, requires the applicant to complete the soil testing and the submission of an acceptable remediation work program prior to granting approval in principle. This may lead to requests for exemptions. Rather than granting exemptions, it is proposed that the policy be amended to reflect the typical situation that gas companies face and ensure that all are treated the same rather than having to negotiate individual agreements each time.

The second issue raised by the Petroleum Industry is with "Part 6, Statement of the Owner" which forms part of the Record of Site Condition, and is required for all remediated sites to verify the condition of the site. In their words: *"Petroleum companies have continued to express concern with the signing of "Part 6, Statement of Site Owner" in the RSC because of the associated potential unknown and unlimited liability. As a result, companies have difficulty providing an RSC under circumstances, such as full depth cleanup, which is not required in the Guideline. If signed, a possibility of "liability in perpetuity" exists, in law, for landowners despite any commercial/contractual arrangements that are specified in specific property sales contracts. Owners need to be able to contract for properties to be sold "as is" without representation as to environmental condition even though a full depth cleanup has been completed and the purchaser has had an opportunity to conduct his own site assessment. Contractual terms and common law rights and obligations are essentially changed or bypassed by giving a potential claim to subsequent purchasers or occupants through the language contained in the Statement of Site Owner. By signing the RSC, a company may be forfeiting its existing common law defences. The RSC process, we believe, was never intended to alter existing common law principles with respect to the sale of land in Ontario or affect the party's ability to negotiate all the terms of sale, including the risk of residual contamination"*.

The concern of the petroleum companies is the possibility that when a petroleum company signs the RSC, they are responsible for the property in perpetuity even if contamination results from the operations of future owners. This is over and above any requirements the City intended to place on these owners. When the policy was enacted, the City only wanted assurance in writing that the site was cleaned up in accordance with the MOE Guidelines.

It is possible that the petroleum industry's concerns may be addressed in the proposed Brownfields Legislation and Regulations. However, the timing and details of both are uncertain. If the Brownfields Legislation and Regulations are enacted, the City will be reviewing its policies at that time to ensure compliance of our policies with the new legislation.

In the meantime, in response to these concerns, the Technical Standards and Safety Authority (TSSA) has proposed an alternative approach that would address the industry concerns while also ensuring that gas station upgrades also address concerns regarding the potential for contamination.

*TSSA Alternative Process to the Use of Record of Site Condition at Operating and Permanently Closed Fuel Handling Facilities*

The TSSA is a private, not-for-profit regulatory agency in Ontario under the Ministry of Consumer and Commercial Relations (MCCR). Its primary mandate is to maintain and enhance public safety. The TSSA is the sole authority responsible for the administration and enforcement of Ontario's public safety legislation - the *Technical Standards and Safety Act*. This Act came into effect on June 27, 2001 amalgamating all seven of Ontario's previous public safety acts including the *Gasoline Handling Act*. Under the terms of an Administrative Agreement, the Ministry of Consumer and Commercial Relations retains authority for Ontario's public safety legislation and is responsible for setting public safety standards and policy, overseeing service delivery and monitoring the TSSA's performance.

The TSSA has been responsible for administering the *Gasoline Handling Act* to which gas station operators have had to adhere to since 1997. Under a Memorandum of Understanding, signed by the MOE and the TSSA in 1997, the TSSA is the lead authority for environmental occurrences at operating sites. The lead is transferred to the MOE where contaminants exceed the

Ontario Drinking Water Objectives at any on-site or off-site drinking water well or where contaminants have migrated off-site. In this case, the TSSA provides assistance and support to the MOE.

Due to concerns raised by the Petroleum Industry, the TSSA in consultation with the MOE developed an alternative process that utilizes the previously described regulatory and technical strengths of the TSSA as it pertains to petroleum related facilities. Under this process, the TSSA would provide a full technical peer review of any environmental investigation and clean up reports. If the reports are deemed satisfactory, then the TSSA will issue a letter of Continued Use for operating gas stations or a Letter of Closure for closed gas stations. A copy of this letter will be sent to the owner, municipality, MOE and adjacent property owners as necessary.

If this process is implemented, it will mean that gas station sites will go through a more consistent and rigorous review process helping to ensure that the sites are suitable for the intended use. Currently, City policy requires that the Transportation and Works Department review reports to ensure they are undertaken in accordance with standard engineering practices but does not require staff to undertake a detailed technical review. Further, when the RSC's are submitted to the MOE, audits are only performed on a random basis. Typically, the RSCs are only reviewed to ensure the proper paperwork has been filed and is more of a checklist than an actual technical review of the studies and the associated data.

Legislative Framework:

The TSSA has been responsible for administering the *Gasoline Handling Act* and the *Energy Act* since 1997 under contract with the MCCR. The *Gasoline Handling Act* and other Acts have been incorporated into the *Technical Standards and Safety Act*. As part of the Act, there is a document titled *Environmental*

*Management Protocol for Operating Fuel Handling Facilities in Ontario* (GA1/99). This document, among other things, deals with the clean-up criteria for sites where there have been spills of petroleum products. With the enabling legislation under the *Technical Standards and Safety Act*, TSSA has made the MOE's clean-up criteria from the *Guidelines For Use At Contaminated Sites*, the standard that must be adhered to under the regulations associated with the Act.

To utilize this approach, Policy No. 09-08-02 will need to be amended. Under the Requirements Section, an additional bullet point should be added at the end of the section which states:

Notwithstanding the forgoing, for the continued use and redevelopment of operating fuel handling stations, proponents shall adhere to the requirements of the *Technical Standards and Safety Act* and all regulations thereunder, including all applicable standards, codes and guidelines issued under the *Technical Standards and Safety Act* or by the Technical Safety and Standards Authority and the "*TSSA Alternative Process to the Use of a Record of Site Condition at Operating and Permanently Closed Fuel Handling Facilities*".

In addition to the TSSA requirements, proponents shall also satisfy any concerns of the City that may arise during this process.

*Benefits:*

There are a number of benefits in using the alternative process including:

- it would provide a more detailed, third party, technical review of each site environmental assessment/restoration report by a TSSA environmental expert. Each environmental report will be thoroughly examined in relation to the MOE Guidelines to

document the site condition against all environmental requirements and laws;

- a "Letter of Continued Use" will be provided to the City by TSSA verifying that based on the information provided by the proponent, the property is in compliance with GA1/99 "Environmental Management Protocol for Operating Fuel Handling Facilities in Ontario";
- under this process, the MOE guidelines will have the effect of being applicable legislation as they will form part of the code under the regulations of the *Technical Safety Standards Act* for gas stations;
- this process reduces staff time and liability associated with these type of reviews. The cost of the review process would be paid by the applicants;
- this process allows for the redevelopment and upgrading of gas stations sites while ensuring that contamination concerns are identified and addressed;
- the CPPI supports the use of this process;
- the TSSA has the authority to issue an Order to Comply to gas companies if the TSSA finds contamination on the lands unacceptable, and the proponent is not willing to rectify the situation;
- all reports reviewed and found acceptable by the TSSA will become public documents. Any party intending to purchase, lease, take security interest in, or occupy the property may review the report; and
- the City will retain the right to request copies of all reports and correspondence from the gas companies.

The Petro-Canada site located at the northeast corner of Hurontario Street and Britannia Road is to be the first case using the TSSA approach. The City is processing a Site Plan Application for the redevelopment of the existing gas bar for a larger gas bar incorporating eight fuel pumps and convenience kiosk. The TSSA has worked with the City in its review to ensure that all concerns of the City have been addressed. Through this process, a contaminant management plan will be put in place that will be monitored by the City and TSSA.

If City Council supports the alternative process, staff will monitor the program for a two-year period to ensure that it is satisfactory.

**CONCLUSION:**

In conclusion, after careful consultation with various City departments involved with the review of development applications for gas stations, it was determined that it would be beneficial to utilize the "Alternative Process" as proposed by TSSA. To do this will require a revision to Corporate Policy 09-08-02 known as "*Application for Development of Contaminated or Potentially Contaminated Sites*". If this revision is approved by City Council, it will provide a consistent approval process for operating gas station sites and permanently closed sites.

**RECOMMENDATIONS:**

1. That Corporate Policy 09-08-02 known as "*Applications for Development of Contaminated or Potentially Contaminated Sites*" be amended to include the "*Technical Standards and Safety Authority Alternative Process to the Use of a Record of Site Condition at Operating and Permanently Closed Fuel Handling Facilities*" by adding to the Requirements Section, a bullet point at the end of the section which states:

“Notwithstanding the forgoing, for the continued use and



redevelopment of operating fuel handling stations, proponents shall adhere to the requirements of the *Technical Standards and Safety Act* and all regulations thereunder, including all applicable standards, codes and guidelines issued under the *Technical Standards and Safety Act* or by the Technical Safety and Standards Authority and the "*TSSA Alternative Process to the Use of a Record of Site Condition at Operating and Permanently Closed Fuel Handling Facilities*".

In addition to the TSSA requirements, proponents shall also satisfy any concerns of the City that may arise during this process."

2. That City staff monitor the TSSA Alternative Process as recommended in the report titled "*Alternative Process to the Use of a Record of Site Condition at Operating Fuel Handling Facilities*" dated April 23, 2002 from the Commissioner of Planning and Building for two years to ensure that the process addresses all concerns of the City with respect to the continued use and redevelopment of operating fuel handling stations.
3. That a copy of the report titled "*Alternative Process to the Use of a Record of Site Condition at Operating Fuel Handling Facilities*" dated April 23, 2002 from the Commissioner of Planning and Building be sent to the Canadian Petroleum Products Institute, the Ministry of the Environment, Ministry of Consumer and Commercial Relations and the Technical Standards & Safety Authority for their information.

Original Signed By: \_\_\_\_\_

Thomas S. Mokrzycki

Commissioner of Planning and Building