Notes of Meeting
Wednesday October 4, 2006
7:00 p.m.
Port Colborne City Hall

Present:
Dan O'Hara             Co-Chair, Port Colborne
Edward Kaczmarczyk     Co-Chair, Welland
Beatrice Greenizan     Welland
Allan Labatt           Welland
Diana Wiggins          Port Colborne
Jim Larouche           City of Welland Councillor
Pat Shore              Port Colborne
Gary Bruno             Port Colborne Councillor
Heidi Brunner          Resident, Welland
Sandy White            Resident, Port Colborne

Regrets:               Bob Saracino, Regional Councillor
                        John Mastroianni, Regional Councillor

It should be noted that there was no Regional representation at this meeting and the minutes were taken by Co-Chair O'Hara.

Motion: “That the draft minutes of this meeting (October 4, 2006) be submitted to all Agenda recipients as well as all Regional Councillors.”

Moved by: Diana Wiggins
Seconded: Jim Larouche
Carried

1.0 Minutes from the Previous Meeting – September 5, 2006
As the Region presented no minutes, a motion to defer the acceptance of the minutes was made.

Motion: “To defer 1st item on the agenda.”

Moved by: Al Labatt
Seconded: Diana Wiggins
Carried

2.0 Business Arising from Previous Minutes
As there was no Regional representation present, a motion to defer this item was made.

Motion: “To defer Item 2.0 on the agenda.”

Moved by: Al Labatt
Seconded: Diana Wiggins
Carried
3.0 Odour Abatement Plan of Action

The PLC would like to proceed with the peer review of this Odour Abatement Plan of Action (OAPA), as they feel they do not have the expertise to provide feedback as to its effectiveness.

By requesting a 3rd party review of this plan the committee feels they are doing their due diligence.

It was the opinion of the PLC that by having this meeting and formally requesting this review would be in keeping with procedure protocol.

The PLC has been in contact with Ortech in regards to Regional Staff’s concerns that there may be a conflict of interest and lack of disclosure, and the PLC believes there is no such conflict and that no bias exists.

It was also noted that the Glenridge Landfill Citizen’s Committee (GLCC) has maintained their Consultant of choice throughout all of their reviews: this enables the consultant to stay familiar with the file. By staying with Ortech to conduct this review, they already have knowledge on this file, they’re experts in this field and we would simply be following the precedent set by the GLCC.

The issue was also raised that it is the PLC who decides who they feel comfortable working with and it should not be the Region who should be suggesting alternative consultants.

The PLC would also like to confirm that they were the ones who initially contacted Ortech for technical support. In this initial contact, Ortech did notify the PLC that they had bid on the Odour Assessment Program, however at the time, they had never been notified that the contract was even let by the Region and who the successful bidder was. Initially, prior to providing their quotation for the review of the RWDI report, they did confer to ensure there would be no conflict at that time.

In reviewing all of the emails over the past week, it was the feeling of the PLC that there would be no conflict in using Ortech to conduct this review. It was suggested that if the use of Ortech was proceeded with in a timely manner that the PLC appear as a delegation before Regional Council to request directly to council.

In the event that the Region does not or will not act in a timely fashion in having Ortech review the OAPA, Jim Larouche advised that he would be willing to pay for this review himself, and then seek reimbursement from the Region.

Jim Larouche asked to be excused at 8:00pm, as he had a prior commitment.
3.0 Odour Abatement Plan of Action (Cont’d)

Motion:
“After further review the PLC:

i) Believes that there is no conflict of interest in using Ortech to conduct the peer review of the OAPA;

ii) Believes that Ortech is already knowledgeable on this file by their previous work for the PLC, has the competency and experience to conduct this work, and;

iii) Requests that the Region proceed immediately, on behalf of the PLC, with this review for the sum of approximately $5,400, not to exceed $6,000, as noted in Ortech’s AFS#25511 to be expensed to the 2006 PLC Budget.”

Moved by: Bea Greenizan
Seconded: Edward Kaczmarczyk

Unanimously Carried

Motion: “That the Region proceeds with the award of the peer review to Ortech within 5 business days of receipt of the draft minutes.”

Moved by: Diana Wiggins
Seconded: Pat Shore

Carried

4.0 Other Business

It was noted that there is a requirement to have a Landfill Site Liaison Committee as part of the Certificate of Approval A120302.

In reviewing the various certificate of approval for the Elm Street Site is was noticed that some inconsistencies or possible updating should be considered. In noting these, a motion was presented to request these items be clarified.

Motion:
“ It is the request of the PLC for the following items to be addressed in the applicable Certificates of Approval (A Notice of amending an existing Certificate of Approval) to ensure consistency and relevance:

1. That the requirement of having a PLC be added to all Certificates of Approval.
2. That the requirement to have an Odour Abatement Plan of Action (OAPA) be added to all relevant Certificates of Approval.
3. Updating of the Certificate of Approval to reflect the latest version of the Operations Manual (which is believed to be October 2005 version).
4. Update the PLC Terms of Reference to require their involvement in the review of any future revisions to the Operations Manual, OAPA or similar documents affecting the operations of the Elm Street Site.”

Moved by: Allan Labatt
Seconded: Edward Kaczmarczyk

Carried
4.0 Other Business (Cont’d)

It was noted in regard to emails that were circulated earlier in the week, that it was not fair for the Region to imply that a lot of time has been spent addressing PLC members’ concerns. There has been plenty of money spent on improvements at the Elm Street site, such as the filtration system, of which we have still not been given the final figures.

A media release was presented with regard to a court case involving a composting facility in the Town of Newmarket (see attached). Much discussion took place with regard to how similar the situations with Elm Street were to this particular case.

It was suggested that improvements (at Elm Street) have taken place and are also continuing. PLC would hope, that in light of this court decision that the Region will continue to keep the current RFP process on the front burner, that a recommendation would be presented by the end of 2006, that Council will act quickly upon this recommendation and the MOE will conduct any required reviews and approvals in an expeditious manner, so that a similar situation could be avoided here.

5.0 Adjournment

Motion: To adjourn at 8:20 p.m.

Moved by: Diana Wiggins
Seconded: Bea Greenizan

Carried

Attachments:

i) Oct. 4/06 PLC Attendance Sheet (1 page)
ii) Ortech – Authorization for Services AFS#25511 (3 pages)
iii) Town of Newmarket – Media Releases “Newmarket sets municipal law precedent” & “Halton hearing concludes,…” (3 pages.)
PLC MEETING

ATTENDANCE:

NAME

Dan Chara
Pat Shore
Diana Wiggins
Heidi Brunner
AL Labatt
Gary Bruno
Bea Greenizan
Jim Carouche
Ed Kazmarchyk
Sandy White

SIGN

Pat Shore
Heidi Brunner
Jim Carouche
Ed Kazmarchyk
Sandy White

Oct 4/06
AUTHORIZATION FOR SERVICES

Date: September 12, 2006 AFS #:25511

From: ORTECH Environmental
2395 Speakman Drive
Mississauga, Ontario
L5K 1B3
Tel: (905) 822-4120, Ext. 345
Fax: (905) 855-0406
E-mail: sthorndyke@ortech.ca

ORTECH Stephen Thorndyke, M.Eng., P.Eng.
Contact: Principal, Emissions & Odour Assessment

To: Elm Street Landfill Site
Compost Site Public Liaison Comm.
5 Stanley Street
Welland, Ontario L3B 5N2
Tel: (905) 735-2152
Fax: 
E-mail: ekaczmarczyk@cogeco.ca

Company Mr. Ed Kaczmarczyk
Contact: PLC Co-Chair

Supporting Work for the Elm Street Facility Odour Management Program

In support of the Odour Management Study at the Region of Niagara Elm Street landfill/compost facility, Canadian ORTECH Environmental Inc. (ORTECH) proposes to carry out the following work program:

• peer review the Odour Abatement Plan of Action dated August 27, 2006 with regard to odour issues
• provide any comments of the plan with regard to its effectiveness for managing odours and compliance with regulatory odour objectives
• prepare a report detailing the results of the peer review and include any recommendations

Costs for the work program will be charged at a time-plus-materials basis, with a not-to-exceed amount of $6,000. Costs of about $5,400 are anticipated.

Principal ORTECH staff who will be involve in the program, and their hourly rates (including all overheads) are:

• Mr. Stephen Thorndyke .....................$180 per hour
• Ms. Anna Bokowa .........................$140 per hour

This project is governed by the ORTECH’s Terms of Agreement, which are attached to this proposal. For services rendered and materials and supplies purchased for the project, the price quoted excludes the Goods and Services Tax (GST). Any applicable GST will be added to the project costs.

By: ________________________________
(Authorized Signing Authority of Company)

Date: ________________________________

Rev.07/05
Terms of Agreement

(1) The Client agrees to pay ORTECH Environmental for its services on the basis described in the estimate. The price quoted does not include the Goods and Services Tax (GST). Invoices are payable on receipt. Any amounts (including GST) not received by ORTECH Environmental within 30 days of invoice date will bear interest thereafter until so received at the rate of 1.5% per month (18% per year) compounded annually. Interim invoices may be rendered from time to time for services in progress, any of which extend beyond 30 days.

(2) The Client will promptly provide any samples, material, equipment, information and instructions required to be supplied by it under the estimate or reasonably requested by ORTECH Environmental. If anything is not so provided ORTECH Environmental may adjust the price to reflect changes in labour and material costs.

(3) At any time or from time to time ORTECH Environmental has the right not to commence and/or continue to provide its services until payment arrangements satisfactory to ORTECH Environmental are made.

(4) Any samples, materials, supplies or equipment provided by the Client or purchased for the services will be disposed of or sent to the Client at the conclusion of the services unless ORTECH Environmental has agreed in writing to retain the samples, materials, supplies or equipment for a specified period of time. Any costs involved for disposal, storage or sending to the Client will be reimbursed by the Client in addition to the quoted price. All shipments are F.O.B. ORTECH Environmental.

Reports

(5) No report issued by ORTECH Environmental shall be published in whole or in part without ORTECH Environmental's prior written consent, except that evaluation reports which are required for presentation to regulatory bodies may be submitted in their entirety to such bodies.

(6) The Client agrees not to use, either directly or by implication, ORTECH Environmental's name for advertising or promotional purposes, raising of capital, recommending investments, or in any way that implies endorsement by ORTECH Environmental, and not to reproduce in full or in part ORTECH Environmental reports or correspondence for such purposes.

(7) Any report of ORTECH Environmental refers only to the particular samples, units, material, instrument, or other subject used and referred to in it, and is limited by the tests and/or analyses performed. Similar articles may not be of like quality, and other testing and/or analysis programs might be desirable and might give different results.
Limitations

(8) The only obligation of ORTECH Environmental and its employees is to meet normal professional standards in performing its obligations under this Agreement. Apart from such obligation there is no representation, warranty, guarantee or other obligation of ORTECH Environmental or its employees arising out of the estimate, its acceptance, the provision of services, the report or the relationship between the parties in respect of any of them. The cumulative liability of ORTECH Environmental and its employees for all types of damages incurred or suffered as a result of any breach of such obligation, howsoever arising, (including negligence) shall be limited in the aggregate to the lesser of the amount paid by the Client to ORTECH Environmental or the actual amount of the damages.

(9) Client may terminate the services upon 30 days written notice to ORTECH Environmental, and payment of all costs incurred up to that date will become due and payable. ORTECH Environmental may defer and/or terminate the services if ORTECH Environmental has serious concerns that the services or any consequence thereof would be unsafe, create a conflict of interest or a hazard, or be contrary to any law, or if the performance of the services set out in the estimate are held in abeyance or delayed by the Client for more than 4 weeks.

(10) Notwithstanding any termination of this Agreement, the rights and obligations of the parties pursuant to Clauses 1, 5, 6, 8, 14 & 15 shall survive and continue in force.

(11) Because of the nature and uncertainties of technology and research, it is recognized that the proposed services stated in the estimate may not achieve the desired results, and that in view of the limit or price stated in the estimate, the services that are actually rendered may not be sufficient to complete the services that were proposed.

(12) The time estimated for the services will be extended by any period during which ORTECH Environmental is unable to provide its services for any reason beyond its reasonable control including strikes or unavailability of suitable resources (e.g. equipment, material or personnel), or any of them being reasonably allocated to other services.

(13) ORTECH Environmental may assign this Agreement to a successor in title to all or any part of ORTECH Environmental’s business. Neither this Agreement nor any interest therein is assignable by the Client without the prior written consent of ORTECH Environmental, which shall not be unreasonably withheld.

(14) The Client shall notify ORTECH Environmental in writing if the services to be performed are in support of pending or contemplated litigation and advise ORTECH Environmental of the parties involved in such litigation prior to ORTECH Environmental commencing the services. The Client agrees that if, during or after the services, ORTECH Environmental or its employees are legally compelled to perform other work, such as the giving of evidence under a summons to witness, as a result of or in connection with the services, the Client shall pay to ORTECH Environmental a fee, on the basis of ORTECH Environmental's standard rates in effect from time to time, for everything reasonably done in connection with such work, in addition to the price or limit stated in the estimate, except to the extent such work is expressly included in the estimate.

(15) ORTECH Environmental will use reasonable efforts to keep confidential any secret or confidential information received from the Client or about the material received from the Client and resulting from ORTECH Environmental's tests and analyses (to the extent not previously known or available to ORTECH Environmental otherwise or to the public), until it becomes so known or available or ten years from the date of this estimate, whichever is earlier.

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, including the laws of Canada applicable therein. The parties hereby irrevocably attorn to the jurisdiction of the Courts of the Province of Ontario.

Rev.07/05
Newmarket sets municipal law precedent

NEWMARKET, Ontario, October 3, 2006 — On Friday, September 29, the Superior Court of Justice in Newmarket concluded that the odours emanating from Halton Recycling Ltd. (Halton) are a public nuisance and ordered the plant to close until June 28, 2007. The closure will take effect 90 days from the Court’s decision date, which means Halton’s premises will be closed on December 30, 2006 unless Halton successfully demonstrates to the Court that there is no longer a public nuisance.

“It’s our hope that the Court Order finally brings relief to the area residents and businesses that have been forced to live with the odours for years,” says Mayor Tom Taylor. “We also hope that the Order gives Halton sufficient time to address and correct the odour-causing operations once-and-for-all.”

The Order restrains Halton from operating until June 28, 2007, but permits the plant to remain open conditionally until December 29, 2006. During the next three months, Halton is required to limit the amount of organic waste accepted for processing, reduce fugitive emissions and odours, and fully implement its remedial action plan.

In his written decision, Justice Bryant stated that the emissions emanating from Halton cause an “unreasonable interference with the use and enjoyment of property and in the workplace” for those who live and work in proximity to Halton. He also held that:

1. The processing activities and fugitive emissions from Halton constitute a public nuisance
2. Halton knew that the storing and processing of organic waste caused odour emissions
3. Halton did not take necessary steps in a timely manner to eliminate the offensive odours that caused the public nuisance.

The Newmarket-Halton case is the first time an Ontario court has been asked to issue an Order under Section 433 of the Municipal Act, 2001.

“The fact that fugitive odours have been declared a public nuisance under Section 433 is groundbreaking and precedent setting,” says Susan Plamondon, Commissioner of Legal and Development Services. “It’s certainly good news for municipalities and residents that we have the authority and are empowered to take action when environmental issues affect our citizens,” she continues.

In August 2006, the Town’s legal firm Willms & Shier Environmental Lawyers LLP argued that the composting plant constitutes a public nuisance and should be closed for failing to eliminate odours. The Town’s application to close the composting plant came after more than 18 months of pressing Halton to eliminate odours from its processing plant at 395 Harry Walker Parkway.

-30-

See the attached ‘Reasons for Judgment’ for further details or contact:

Media contacts:
NEWMARKET, Ontario, September 15, 2006 — On Friday, September 1, the Town of Newmarket’s Superior Court of Justice application to close Halton Recycling Ltd. (Halton) for up to two years due to ongoing odour issues concluded after nine days of hearing. The presiding judge is still reviewing the evidence and arguments, and it is expected that it could be several weeks or months before a decision is reached and released.

“This case is the first time an Ontario court has been asked to issue an Order under Section 433 of the Municipal Act, so we didn’t expect an immediate decision. If the Town is successful in declaring the odours emanating from Halton a public nuisance, the case will be precedent setting,” says Susan Plamondon, Commissioner of Legal and Development Services.

The Town’s legal firm, Willms & Shier Environmental Lawyers LLP, argued the composting plant constitutes a public nuisance under section 433 of the Municipal Act and should be closed for up to two years for failing to mitigate odours. Halton’s lawyers disagreed stating Halton has taken adequate steps to eliminate the odours.

The Town’s application to close the composting plant came after 18 months of pressing Halton to eliminate odours from its Newmarket processing plant on Harry Walker Parkway.

“Odour issues have been an ongoing problem with Halton since the plant opened in 2004, despite Halton’s claims to the contrary. The fact of the matter is, the plant stinks and our residents have had their quality of life compromised as a result. It’s my hope that we can finally put an end to the stench by getting the plant closed down for two years,” says Mayor Tom Taylor.

Before issuing an order to close, the judge must first be satisfied that Halton’s operations constitute a public nuisance. The judge must also determine that the odours at Halton have a detrimental impact on the use and enjoyment of properties in the vicinity of the processing plant, and that Halton knew its activities caused a nuisance and failed to take adequate steps to eliminate the problem.

If Halton is declared a public nuisance, the court will then decide if and for how long the processing plant will be closed and whether any conditions should be imposed prior to the plant reopening.

Residents who detect odours from Halton are asked to report them to the Ministry of the Environment Spills Action Centre at 1-800-268-6060 and the Town of Newmarket at 905-895-5193. Residents and the media will continue to be updated as information becomes available.

-30-

Media contact:  
Crystal Moss  
Acting Manager of Corporate Communications  
Tel: 905-953-5300, ext. 2042  
E-mail: cmoss@newmarket.ca  
Web: www.newmarket.ca