

**RECOMMENDATIONS forwarded from the Regular Closed Council meeting of November 14, 2016.**

19. **HARVEST POWER UPDATE**

(File Ref. No.) (REDMS No.)



**RECOMMENDATION**

- (1) *That the staff report titled “Harvest Power Permit Appeal and Update on City Actions” from the Director, Engineering and the City Solicitor dated November 10, 2016 be received for information; and*
- (2) *That an application to become a party or participant in the Harvest Power and other appellants’ appeal process be forthwith submitted to the Environmental Appeal Board.*





# City of Richmond

## Report to Council

**To:** Richmond City Council

**Date:** November 10, 2016

**From:** John Irving  
Director, Engineering

**File:** 10-6175-02-01/2016-  
Vol 01

Doug Long, City Solicitor

**Re:** Harvest Power Permit Appeal and Update on City Actions

### Staff Recommendation

1. That the staff report titled "Harvest Power Permit Appeal and Update on City Actions" from the Director, Engineering and the City Solicitor dated November 10, 2016 be received for information; and
2. That an application to become a party or a participant in the Harvest Power and others appellants' appeal process be forthwith submitted to the Environmental Appeal Board.

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<b>REPORT CONCURRENCE</b>	
<b>CONCURRENCE OF GENERAL MANAGER</b> 	
<b>REVIEWED BY STAFF REPORT / AGENDA REVIEW SUBCOMMITTEE</b>	<b>INITIALS:</b>  DW
<b>APPROVED BY CAO</b> 	

## Staff Report

### Origin

The City has taken actions to address ongoing odour issues from the Harvest Power organics recycling facility in east Richmond since November 2015. Outcomes have included: provincial changes to the Organic Matter Recycling Regulation; more public input opportunities during the permit renewal process; stringent requirements in the new permit; and, increased community awareness regarding the source of odours in Richmond and who to contact to share concerns.

This report supports Council's 2014-2018 Term Goal #6 Quality Infrastructure Networks:

*Continue diligence towards the development of infrastructure networks that are safe, sustainable, and address the challenges associated with aging systems, population growth, and environmental impact.*

*6.1. Safe and sustainable infrastructure.*

### Background

The authority regulating air quality in British Columbia resides with the Province's Ministry of Environment through the *Environmental Management Act*. The Province has delegated this authority regionally to Metro Vancouver.

Per Council's direction, letters have been sent to Metro Vancouver, Vancouver Coastal Health, the Province's Ministry of Environment and Harvest Power expressing the city's concerns and its expectation that immediate actions be undertaken to eliminate odours. Staff are also directly engaging Metro Vancouver to review the contract it holds with Harvest Power, to accelerate the implementation of actions to eliminate odours.

On September 30, 2016, Harvest Power received an Air Quality Management Permit (the Permit; GVA 1088). The Permit authorizes the discharge of air contaminants from Harvest Power's composting Facility and replaces previous permits and temporary authorizations under which the Facility has operated since 2013 under its current owners. Metro Vancouver staff advised verbally that a permit would be issued and its conditions were to be determined by Metro Vancouver staff. There was no alternative to refuse an issuance of permit.

A total of 24 individual Notices of Appeal have been received by the Environmental Appeal Board (the Board). A total of 23 Notices of Appeal were submitted by individuals or groups in the community, including one Notice of Appeal representing a group of 37 Richmond residents. These Notices of Appeal have a common theme, that of citizens who have been negatively impacted by odours presumed to be emanating from the Facility and who are concerned that the Permit does not include sufficient controls to prevent ongoing impacts. Requested measures range from changes in operations and stronger enforcement of standards, to reduction of odours, revocation of the Permit and relocation of the Facility.

Harvest Power also filed a Notice of Appeal asking the Board to issue an order to set aside the Permit, or alternatively, to send the matter back to the District Director, a role appointed by the Province, with direction to vary and strike certain parts of the Permit, primarily those parts relating

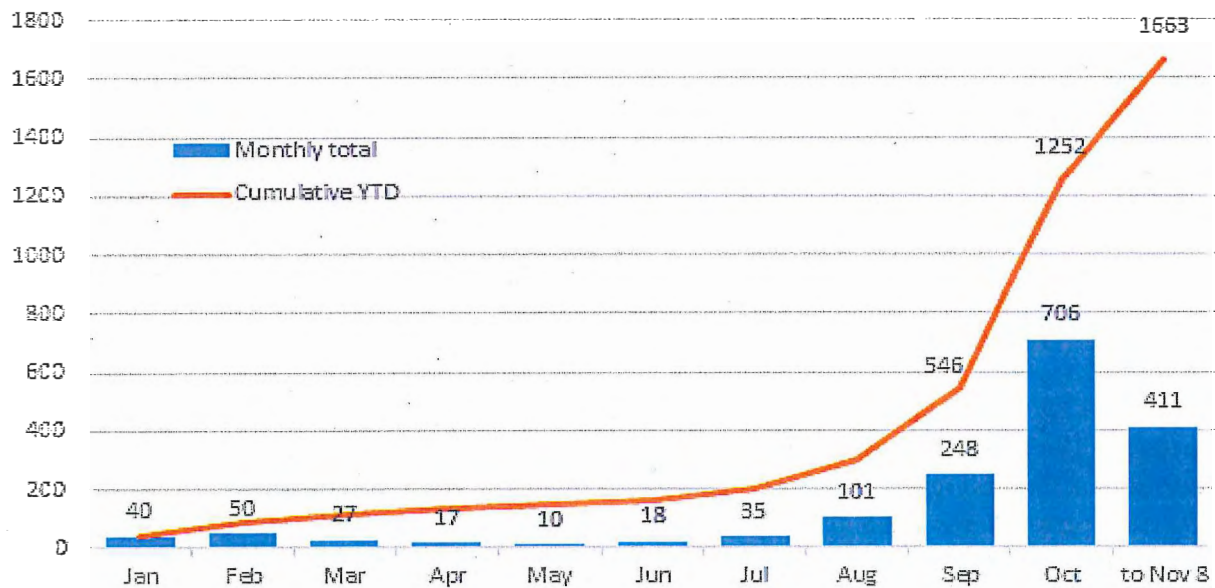
to testing of odour emissions. Harvest Power’s arguments for the Board setting aside or striking certain parts of the Permit centre around the District Director erring in issuing the Permit that adds to the various requirements for the Facility where the authorized emission volumes and rates are neither necessary nor advisable for the protection of the environment and requires testing which is unreasonable, arbitrary, vague and made without jurisdiction.

### Analysis

#### Complaints

Odour issues and complaints from citizens have persisted prior to and following the issuance of the new Permit. The total number of complaints received by Metro Vancouver from January 1, 2016 to November 8, 2016 naming Harvest Power as the suspected source of odour emissions is 1663 (see Figure 1 below). In the first 8 days of November alone, 411 complaints have been made.

Figure 1: 2016 Complaints naming Harvest Power as the suspected source of odours. (Source: Metro Vancouver)



Staff continue to receive calls from concerned residents. Callers are advised to call Metro Vancouver to share their concerns. Callers are also directed to other sources of information on the City's and Harvest Power's websites as well as actions the City has taken to resolve the issue.

Harvest Power operates on federal land under a long term lease with the Port of Vancouver. The Port of Vancouver has advised staff verbally that they have received numerous odour complaints from other Port tenants which they direct to Metro Vancouver as the body regulating air quality.

#### Metro Vancouver and City of Richmond Authorities Regarding Odours

Metro Vancouver has the ability, through Provincial authority delegated to the regional district through the *Environmental Management Act*, to "by bylaw, prohibit, regulate and otherwise control and prevent the discharge of air contaminants". While this matter is certainly complicated by the fact that environmental regulation is both a federal and provincial power and by the fact that the Harvest Power facility is located on federal land, it is likely that Metro Vancouver's ability to regulate air contaminants applies all the same. The regional district has the authority to suspend or cancel permits under their relevant bylaw for failure of an operator to comply with permit conditions.

Pursuant to the *Community Charter*, the City has the authority to regulate odours by way of a nuisance bylaw. However, the *Environmental Management Act* precludes the ability of municipalities within the regional district jurisdiction to regulate in a manner that would be inconsistent with the bylaw enacted by the regional district. Given the same, the City's regulatory authority to deal with air emissions and odours, through a nuisance bylaw or otherwise, is likely in respect to the Facility, limited by the restrictions in the *Environmental Management Act*.

#### Appeal Procedure Options

The City initially chose not to appeal the Permit. The City did not appeal the permit as it is more expedient to engage Metro Vancouver directly by asking it to work with Harvest Power to bring forth immediate solutions under its contract with Harvest Power for solid waste services. The permit contains provisions that have merit and are discussed further below. This engagement is ongoing.

The City is investigating if Harvest Power's appeal has restarted the time period for a City appeal.

#### "Party" to the Appeal and "Participant" to the Appeal

##### General

If the City cannot be an appellant, the City does have the option to apply to become a "party" or a "participant" to the appeal process. The Board's decision whether to allow the City to gain any status (party or participant) in the appeal is highly discretionary and it may be that our request is denied. Staff will continue to assess the likelihood of the Board granting to the City any status.

### Party to the Appeal

The City could apply to be a party to the Harvest Power appeal or any of the 23 other appeals. The Board sets the scope of rights of a party after submissions from Harvest Power and the other appellants. A party typically has broad rights such as being able to make oral submissions, ability to call witnesses and cross examine witnesses and thus is preferred to participant.

### Participant to the Appeal

If the Board is unwilling to grant to the City party status, it could grant the City participant status to the Harvest Power or any of the 23 other appeals. Like the rights of a party, the Board sets the scope of the rights of a participant after submission from Harvest Power and other appellants. The rights of a participant are narrower than that of a party. Participants might be limited to written submissions or might be limited in the ability to call witnesses or cross-examine witnesses.

### Time Period

Once an appeal has been launched, there is no specific deadline for an application to become a party to an appeal or a participant an appeal. However, the Board will expect that a party who wishes to be involved in the appeal to move promptly. A delay in bringing such application could be a factor in turning down the application.

At the public meeting held on November 9, 2016, Metro Vancouver advised that the Appeal could easily be 12 months from start to finish and advised that there was no option for a permit not to be issued.

While the City is in opposition to Harvest Power's appeal of the air quality permit, there are many provisions which the City would like to have preserved including the following:

- Limit / reduce volumes of organics and pile heights,
- Reduce / eliminate odours, and
- Prevent Harvest Power from continuing to accept organic material altogether if odours persist.

### Metro Vancouver's Enforcement

The City had requested that Metro Vancouver increase its enforcement of the Permit. Metro Vancouver has advised they have created a team of officers who will focus on the operations to ensure they are in compliance. Additional resources have been requested, but not yet approved, for 2017.

### Public Meetings and Engagement

Numerous activities have taken place to raise awareness of the issue and inform residents they can play a role in demanding a solution to the odour issues. Recent media articles, letters to the editor and press releases issued by the City have let residents know who to contact to share their concerns. On November 9, 2016, Harvest Power opened its regular Community Liaison Committee meeting to the public. Over 60 residents attended the event to hear more about Harvest Power's immediate and longer term actions to address odours. The senior leadership teams of Metro Vancouver, the City and Harvest Power were in attendance.

The City has requested that Metro Vancouver host its own meetings to explain the permit to concerned resident and that it revise its complaint system to be more responsive to the public's concerns. Both requests are being considered by Metro Vancouver and staff will inform Council and the community of changes when they are implemented.

### **Financial Impact**

Costs for participation in the appeal would range from \$30,000 to \$200,000 depending on the length of the appeal process and the standing granted to the City. This expenditure can be accommodated within the 2016 operating budget.

### **Conclusion**

This report highlights key actions being undertaken by the City to better inform the public about issues related to ongoing odour issues in Richmond related to Harvest Power's operations. More importantly, this report provides a summary of recent and ongoing actions underway to eliminate odour issues in Richmond.



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