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Agenda Item No: 5 BOD-10-23

Staff Report

To: Board of Directors

From: David Lembcke, Manager of Environmental Science and Monitoring; and Bill Thompson, Manager of Watershed Plans and Strategies

Date: December 15, 2023

Subject

Framework to Limit Liability for Winter Maintenance Contractors Employing Best Practices

Recommendation

That Staff Report No. 65-23-BOD regarding a framework to limit liability for winter maintenance contractors employing best practices be received; and

Further that staff be directed to circulate this report and the attached template resolution to watershed municipalities.

Purpose of this Staff Report

The purpose of this Staff Report No. 65-23-BOD is to provide the Board of Directors with a template resolution should their Councils wish to advocate for a Provincial regulatory framework that limits liability for contractors following best practices for roads maintenance. Such a framework would help address the sustainability of small business in this sector, as well as environmental concerns around chloride.

Background

At their November 2023 meeting, the Board received a presentation and staff report on the impacts of chloride, which advised that chloride concentrations in the surface waters of the Lake Simcoe watershed are above Canadian Water Quality Guidelines in many places and continue to increase due to the use of winter salt on roads and parking lots. This trend is not unique to the Lake Simcoe watershed and is mirrored in the lakes and streams across southern Ontario and the northeastern United States. Decreasing the amount of winter salt use throughout the watershed is critical to the long-term health of Lake Simcoe.

Research, including local studies on a large commercial parking lot in the Lake Simcoe watershed, has demonstrated that adopting best practices like those used in New Hampshire can reduce salt use by 40% without any increase in slips and falls. In fact, in some cases, the over-application of salt can create a slipperier surface for walking on. The most substantial barrier to reducing salt application, however, is concern over liability.

In addition to the environmental concerns over escalating chloride concentrations, there is also a business sustainability crisis in the winter maintenance industry. Many contractors are seeing insurance costs escalate substantially which, combined with the frequency of slip and fall legal settlements, is creating a significant challenge for these small businesses across the province. Many businesses have failed due to these challenges, and some property owners have been unable to find winter maintenance contractors.

Issues

The Conservation Authority believes that there is a solution within reach to reduce salt application and assist businesses in this sector, while ensuring public safety.

The Conservation Authority has been working with organizations including Landscape Ontario and other partners to share information and seek solutions to address the issue of winter salt usage. A Salt Forum held this past October, led by the Conservation Authority and Landscape Ontario, provided a platform for contractors, provincial staff, municipal staff, conservation authorities, academia, and non-governmental organizations to review lessons learned and solutions to the issue of winter road salt. There was unanimous agreement amongst participants that there are significant challenges for both water quality and business sustainability in Ontario. The solution that all participants are working towards, including contractors and property owners, is implementation of technical standards and a Regulatory framework similar to one in place in the state of New Hampshire. In New Hampshire, contractors that have been trained and certified in winter maintenance best practice and can demonstrate due diligence through appropriate record keeping have limited liability against slip and fall claims.

This unanimous agreement amongst such a diverse range of stakeholders is rare, and creating technical standards and a Provincial regulatory framework that limits liability for contractors following best practices significantly benefits each sector and ultimately the environment. It will reduce salt application on private parking lots, provide more certainty and reduce risk for insurance underwriters, thereby helping with business sustainability, while maintaining public safety. It is important to note that the framework that exists in New Hampshire is built upon the Smart About Salt Program that was created and is in use here in Ontario, and that the liability limitation has been successfully defended in the highest level of New Hampshire state courts.

Relevance to Conservation Authority Policy

This work supports strategic directions 2.1 (Knowledge of watershed health and management decisions are improved through comprehensive, leading-edge science) and 3.2 (Mutually beneficial partnerships leverage knowledge and resources for watershed health outcomes).

Impact on Conservation Authority Finances

This report has no impact to Conservation Authority finances.

Summary and Recommendations

It is therefore Recommended That Staff Report No. 65-23-BOD regarding a framework to limit liability for winter maintenance contractors employing best practices be received; and **Further that** staff be directed to circulate this report and the attached template resolution to watershed municipalities.

Pre-Submission Review

This Staff Report has been reviewed by the General Manager, Integrated Watershed Management and the Chief Administrative Officer.

Signed by:

Signed by:

Don Goodyear
General Manager, Integrated Watershed
Management

Rob Baldwin
Chief Administrative Officer

Attachment

1. Template Resolution regarding a framework to limit liability for winter maintenance contractors employing best practices

Attachment 1

Template resolution regarding a framework to limit liability for winter maintenance contractors employing best practices

Whereas: Chloride concentrations in the surface waters of the Lake Simcoe watershed are above Canadian Water Quality Guidelines in many places and continue to increase due to the use of winter salt on roads and parking lots; and

Whereas: Decreasing the amount of winter salt use throughout the watershed is critical to the long-term health of Lake Simcoe; and

Whereas: a substantial barrier to the reduction of salt application for parking lots and walkways is concern over liability; and

Whereas: businesses in the winter maintenance sector are seeing insurance and legal costs dramatically escalate to the point where many have failed, and some property owners have been unable to find winter maintenance contractors.

Therefore, be it resolved that the Council for (*municipality*) requests that the Attorney General of Ontario and the Minister of the Environment, Conservation and Parks establish technical standards and a Provincial regulatory framework that limits liability for contractors following best practices to ensure public safety, business sustainability, and environmental protection.