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PROPANE FACILITY EXPLOSION: ZONING IN QUESTION AS ANGRY RESIDENTS RETURN HOME

Mayor, regulator trade blame

Two sides point fingers over who authorized Sunrise Propane to operate so close to residential area

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Mayor David Miller and the provincial safety regulator were pointing fingers at each other yesterday over who had responsibility in authorizing a propane company to operate across the street from private residences, even though the cause of the blasts that rocked a whole Toronto neighbourhood hadn't been determined.

The regulator, the Technical Standards & Safety Authority, noted that the city was informed when Sunrise Propane applied for a licence three years ago.

But the mayor said his hands were tied by the local zoning laws and said it was up to the TSSA to ensure that the company was in compliance. "It's their job to approve a facility, the city does not do that," Mr. Miller said.

The Office of the Ontario Fire Marshal is investigating the early-morning explosion and fire that led to the evacuation of thousands of residents of a north-end neighbourhood and closed Canada's busiest highway, the 401, for most of the day.

The fire marshal had nothing public to say about the cause of the explosion or the investigation, spokeswoman Gina Pontikas said yesterday.

Angry residents, who returned home to concerns about airborne asbestos, cracked walls and ruined siding, questioned why the propane facility was allowed to be built so close to their homes.

The City of Toronto tried two decades ago to have a by-law restricting propane transfer facilities, but the industry challenged it and the city repealed its regulation after learning that a similar bylaw by the City of York had been quashed in court.

Now a merged city, Toronto remains saddled with a zoning patchwork that would result in inconsistent restrictions on where propane facilities could open, Mr. Miller said.

"Some parts of Toronto, this would be permitted, some it would not be," he said.

The city doesn't yet have a uniform zoning system because thousands of old bylaws still have to be harmonized, said deputy chief building official Jim McLaughlin.

But already back in 1991, a report by the city's land use committee pointed to the safety issues illustrated by the weekend's disaster.

"The safety of propane storage is especially significant to the City of Toronto because resident and working population densities are so high that any level of hazard is one that could affect

hundreds of persons in a single incident," the report said.

"It may be assumed that, as redevelopment in the city continues, and as the automotive propane distribution networks grow, this fundamental conflict will intensify."

However, municipal efforts to regulate the location of propane facilities ran into jurisdictional hurdles and red tape resulting from the 1998 amalgamation of Toronto and its adjacent municipalities.

Superior Propane and the Propane Gas Association of Canada Inc. successfully appealed Toronto's propane bylaw before the Ontario Municipal Board in 1999.

The previous year, the same two applicants also managed to overturn York's similar bylaw after the Court of Appeal found that the municipal bylaw was in conflict with provincial law.

The government of Ontario wanted to argue in that case that the York bylaw conflicted with its jurisdiction, but the court declined to hear from the province.

Yesterday, Mr. Miller vowed a review of the city's zoning system. He also said city lawyers will check whether bylaws on propane facilities could be permitted under the City of Toronto Act that amalgamated the municipality. "We may have new powers to do so."

Mr. Miller said the propane operator first made inquiries to the city in 2004. Zoning in the area, which dates "30 to 40 years ago," well before North York merged with Toronto, allowed such industrial use, the mayor said.

The TSSA, which reviews the proposed design and then inspects new propane facilities, received an application from Sunrise to build the Downsview plant in late 2005, said John Marshall, director of field operations for the safety regulator.

After determining in writing from the city that the company had planning authority to locate the plant on a site, the plans and construction were approved, Mr. Marshall said.

"The city wouldn't be in a position to know whether a facility has followed up with the province and achieved its licence," Mr. Miller said.

Since it went into operation, the Sunrise plant was required to file annual safety inspection reports with the TSSA, which is authorized to do spot checks to determine if the plant meets standards.

Mr. Marshall would not say whether there were complaints against the plant or whether the agency has conducted an inspection since the plant opened in 2006.

At a city hall briefing, officials said residents complained to them after the blasts that they had seen people smoking at the facility or witnessed unsafe truck traffic. Others said they saw fire bursts in the past, but Acting Chief of Toronto Fire Services Jim Shelton said these flames might come from controlled burn-offs of residual gases.

Sunrise was operating "in full compliance with the bylaws," said company lawyer Dan Ronen.

The company's application was updated in 2006, but it had been renting at its Downsview location before that, he added. "We are co-operating with the authorities and will continue to co-operate with the investigation."