
TO: Paul Thorkelsson **DATE:** July 2, 2015
FROM: Larry Gardner **MEETING:** RSWAC, July 9, 2015
Manager, Solid Waste **FILE:** 0360-20-RSWAC
SUBJECT: Authorities Provided to Regional Districts Through an approved SWMP - RSWAC

PURPOSE

The purpose of this report is to provide the Regional Solid Waste Advisory Committee (RSWAC) an overview of the authorities that may be granted by the province to a Regional District through Ministerial approval of a Solid Waste Management Plan (SWMP).

BACKGROUND

A SWMP is an instrument of the *Environmental Management Act* and, from an “authorities” perspective, it serves to:¹

1. Provide an exemption to gaining another type of authorization (e.g. Permit) for discharges to the environment. This exemption applies to both public and private facilities named in a SWMP. Also, it can apply to a specific facility (e.g. specific landfill), to a class of sites (e.g. multiple landfills), or a future contemplated facility.
2. Not require the assent of electors for adopting a bylaw for implementing a waste management plan (e.g. borrowing).
3. Provide Regional Districts additional powers to manage municipal solid waste.

Item 3 above, additional powers available to Regional Districts to manage municipal solid waste, is the subject of this report.

DISCUSSION

Regional Districts can only act where they have explicit authority delegated by the province. The *Environmental Management Act* sets out a number of additional authorities that Regional Districts may avail themselves of to manage solid waste or recyclables. These additional authorities allow:

- 1) The imposition of fees on persons that use a waste hauler or generate municipal solid waste. Fees may be based on the quantity, type or composition of the waste. Also, the fees may be varied by class of person, business, operation or by the waste.
- 2) Requiring waste haulers to act as agents of the Regional District to maintain records and collect and remit fees, and, set compensation payable for this service.

¹ *Environmental Management Act*, Part 3

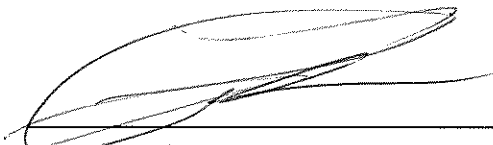
- 3) The regulation of:
- a. the types, quality or quantities of municipal solid waste or recyclable material that may be brought onto or removed from a site;
 - b. discarding or burning of municipal solid waste or recyclable material;
 - c. the transport of municipal solid waste or recyclable material within or through the area covered by the Waste Management Plan;
 - d. requiring the owner or operator of a site or a hauler to hold a recycler license, a waste stream management license or a hauler license, or comply with a code of practice;
 - e. establishing different prohibitions, conditions, requirements and exemptions for different classes of persons, sites, operations, activities, municipal solid wastes or recyclable materials;

The first step to gaining the regulatory authorities is to have the intention stated in the SWMP along with a statement that consultation will be carried out with those affected. Enactment of these authorities is through bylaw which requires prior approval of the Minister of the Environment.


Of the available additional authorities, the current RDN SWMP (2004) only includes waste stream licensing described in 3(d) above. The specific licensing provisions were enacted by Bylaw No. 1386 (Appendix 1) which was approved by the Minister of the Environment on April 6, 2005. The goal of the waste stream licensing system is to ensure proper management of privately operated facilities by specifying operating requirements so as to protect the environment, to ensure that regional and municipal facilities and private facilities operate to equivalent standards, and to achieve the objectives of the SWMP.

SUMMARY/CONCLUSIONS

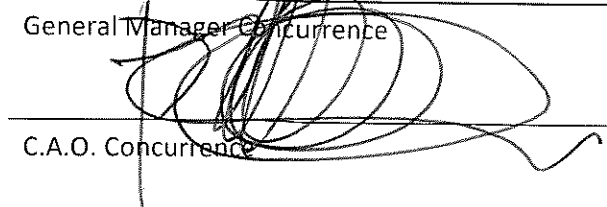
Through a SWMP, Regional Districts can access additional authorities to manage municipal solid waste and recyclables. The RDN is updating 2004 SWMP and may want to revisit the existing authority the province has granted with respect to waste stream licensing. Furthermore, other available authorities that might aid in managing waste and achieving the goals of the SWMP should be considered.



Report Writer



General Manager Concurrence



C.A.O. Concurrence

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REGIONAL DISTRICT OF NANAIMO

BYLAW NO. 1386

(consolidated for convenience to include up to 1386.01)

A BYLAW OF THE REGIONAL DISTRICT OF NANAIMO TO REGULATE THE MANAGEMENT OF MUNICIPAL SOLID WASTE AND RECYCLABLE MATERIAL

WHEREAS:

- A. The Regional District of Nanaimo and the Province of British Columbia are jointly committed to the regulation and management of municipal solid waste and recyclable material within the district so as to encourage waste reduction and recycling and ensure that residual materials are disposed of in a manner consistent with the Solid Waste Management Plan approved by the Minister of Water, Land and Air Protection;
- B. The Regional District of Nanaimo is authorized pursuant to the *Environmental Management Act* to regulate with respect to municipal solid waste and recyclable material;
- C. The Regional District of Nanaimo is operating under a Solid Waste Management Plan which defines a regulatory system for the management of all privately operated municipal solid waste and recyclable material operations. The goal of the regulatory system is to ensure proper management of privately operated facilities by specifying operating requirements so as to protect the environment, to ensure that regional and municipal facilities and private facilities operate to equivalent standards, and to achieve the objectives of the Solid Waste Management Plan.

NOW THEREFORE the board of the Regional District of Nanaimo in open meeting duly assembled enacts as follows:

ARTICLE 1

1. INTERPRETATION

- 1.1 **Definitions.** In this bylaw, terms defined in the *Environmental Management Act* shall have the meaning set out therein for the purpose of this bylaw unless otherwise defined in this bylaw. In this bylaw:

“**biosolids**” means stabilized municipal sewage sludge resulting from a municipal waste water treatment process or septage treatment process which has been sufficiently treated to reduce pathogen densities and vector attraction to allow the sludge to be beneficially recycled in accordance with the requirements of the Province of BC Organic Matter Recycling Regulation.

“**board**” means the Regional board of the Regional District of Nanaimo.

“**charitable organization**” is an organization as defined in the *Income Tax Act* (Canada) as a registered charity.

“**composting facility**” means a facility that processes organic matter that may include biosolids to produce compost.

“**depot**” means an operation, facility or retail premises, or an association of operations, facilities or retail premises, identified by or operating under or in fulfillment of a *Environmental Management Act* Stewardship Program.

“**district**” means the Regional District of Nanaimo.

“**Environmental Management Act**” means the Province of BC *Environmental Management Act*, SBC 2004 c.30, as amended or replaced and any successor legislation and any regulations thereunder.

“**facility license**” means a waste stream management license or a recycler license issued by the district.

“**General Manager**” means a person appointed to the position of General Manager of the Regional District of Nanaimo.

“**leachate**” means:

- a) effluent originating from municipal solid waste and/or recyclable material being received, processed, composted, cured or stored at a facility,
- b) effluent originating from municipal solid waste and/or recyclable material being stored, or
- c) precipitation, storm water, equipment wash water or other water which has come into contact with, or mixed with, municipal solid waste and/or recyclable material being received, processed, composted, cured or stored.

“**licensee**” means the owner or operator to whom a valid and subsisting facility license has been issued.

“**litter**” means loose refuse deposited, discarded or stored in an open place other than in a container.

“**non-profit organization**” is an organization as defined in the *Income Tax Act* (Canada) as a non-profit organization.

“**odour**” means smells which are ill-smelling, unpleasant, disgusting, offensive, nauseous or obnoxious as reported to and considered as such by the General Manager.

“**process**” or “**processing**” means sorting, baling, repackaging, grinding, crushing or any other management activity that requires hauled recyclable material or municipal solid waste to be unloaded from the delivery vehicle.

“**qualified professional**” means a person who:

- a) is registered in British Columbia with his or her appropriate professional association, acts under that professional association's code of ethics, and is subject to disciplinary action by that professional association, and
- b) through suitable education, experience, accreditation and knowledge may be reasonably relied

on to provide advice within his or her area of expertise as it relates to this bylaw.

“**recycle**” or any variation thereof, means any process by which municipal solid waste or recyclable material is transformed into new products or a feedstock to manufacture or process products that meet internationally or other approved specifications and standards using current available technology.

“**reprocessing**” means conversion of recyclable materials or municipal solid waste into a form suitable for transportation or manufacture into new products.

“**resale**” refers to selling of a material that has been purchased but not processed.

“**residue**” or “**residual**” means the portion of municipal solid waste or recyclable material that remains unusable after the manager of the municipal solid waste or recyclable material has no further use for it.

“**runoff**” means any rainwater, leachate, or other liquid which drains over land from any part of a facility.

“**sludge**” means an unstabilized, semi-solid by product of wastewater treatment.

“**Solid Waste Management Plan**” means the district’s Solid Waste Management Plan, as amended from time to time.

“**store**” and “**storage**” means to keep on land or water, whether or not open to the air, covered, in a structure or container.

“**transfer station**” means any land and related improvements or buildings and related improvements at which municipal solid waste from collection vehicles is received, compacted, or rearranged for subsequent transport.

“**vector**” means a carrier organism that is capable of transmitting a pathogen from one facility, waste source, product or organism to another facility, waste source, product or organism.

1.2 Schedules. The schedules listed below and annexed hereto, shall be deemed to be an integral part of this bylaw,

- Schedule “A” - Exemptions from Licensing Requirements
- Schedule “B” - Plan Facilities (Public)
- Schedule “C” - Fees – Facilities
- Schedule “D” - Publishing and Billboard Posting Requirements

1.3 No Conflict with Municipal Requirements. The requirements under this bylaw are distinct and separate from the requirements of a municipality. For greater clarity, municipalities may impose further restrictions or require further conditions than those imposed under this bylaw by the district.

- 1.4 Compliance with Other Laws.** Nothing in this bylaw, including, *inter alia*, a license, excuses any person from complying with all other applicable enactments.
- 1.5 Purpose of Bylaw.** This bylaw is enacted for the purposes of regulating waste management facilities within the regional district in the general public interest. It is not contemplated nor intended, nor does the purpose of this bylaw extend:
- (1) to the protection of any person from economic loss;
 - (2) to the assumption by the regional district or any employee of any responsibility for ensuring the compliance by a facility operator, his or her representatives or any employees, retained by him or her, with the requirements of this bylaw or any other applicable codes, enactments or standards;
 - (3) to providing to any person a warranty with respect to any facility for which a License is issued under this bylaw;
 - (4) to providing to any person a warranty that a facility operation is in compliance with this bylaw or any other applicable enactment.
- 1.6 Licensees to Comply.** Neither the issuance of a license under this bylaw nor the acceptance or review of plans or specifications or supporting documents, nor any inspections made by or on behalf of the regional district shall in any way relieve the owner, operator or licensee from full and sole responsibility to operate in accordance with this bylaw and all other applicable enactments, codes and standards.

ARTICLE 2

2 FACILITIES REQUIRING FACILITY LICENSES

- 2.1 Prohibition.** Subject to Section 2.2, no person or organization shall own or operate within the area of the Regional District of Nanaimo a site, facility or premises where municipal solid waste or recyclable material is managed unless that person holds with respect thereto and strictly complies with a valid and subsisting facility license.
- 2.2 Exclusions.** Notwithstanding Section 2.1, no facility license is required for:
- a) facilities owned and operated by the district or its member municipalities,
 - b) those facilities set out in Schedules “A” and “B” to this bylaw,
 - c) a facility or operation that is registered under and that is fully in compliance with a code of practice under Article 5,
 - d) those facilities otherwise exempted under this bylaw.

- 2.3 **Type of Facility License.** Type I facility licenses are required for all facilities except any facility which is owned or operated by a charitable organization or non-profit organization which requires a Type II facility license.

ARTICLE 3

3 FACILITY LICENSE APPLICATION

- 3.1 **Form of Application.** A facility license application under this bylaw shall be filed at the district's office in the form prescribed by the district. Applications must be accompanied by:
- a) the application fee specified in Schedule "C",
 - b) a written statement from the owner (if other than the applicant) of the property on which the facility is located or is to be located acknowledging and approving of the proposed use of the property,
 - c) a written statement from the senior manager of the land use planning department of the municipality or electoral area in which the facility is located or is to be located stating that the applied for use is a permitted use under the municipality's or district's zoning bylaws or under Section 911 of the *Local Government Act*, and
 - d) a proposed operating plan for the facility as provided in Section 9.1.
- 3.2 **Procedure on Application for all Facilities.** The following application requirements must be met by all operations requiring a facility license:
- a) The applicant must publish, not more than 30 days from the date of submission of the application, at the applicant's expense, a notice that has been reviewed and approved by the General Manager, in a local newspaper that is distributed at least weekly in the area where the facility is located or proposed to be located, in accordance with Section 1 of Schedule "D", and within 30 days after the date of publication provide to the General Manager a copy of the full page tear sheet as proof of publication.
 - b) The applicant must post a clearly legible copy of the details of application as described in Schedule "D", protected from the weather, to the satisfaction of the General Manager, in a conspicuous place at all entrances to the land fronting on a public road on which the facility is located or proposed to be located within 15 days after the date of the application and keep the copy posted for a period of not less than 30 days.
 - c) The General Manager may give written notice of an application to any person that the General Manager considers may be affected by the application or full details of the application to any authority the General Manager deems necessary to assist with regulatory requirements.

- d) Persons who consider themselves adversely affected by the granting of a facility license, may within 45 days of the date of the first posting, publishing, service or display required by this bylaw, notify the General Manager in writing setting out the reasons why they consider themselves adversely affected, and the General Manager will provide a copy of the written reasons submitted by the persons who consider themselves adversely affected to the applicant and allow the applicant to respond.
 - e) The General Manager may take into consideration any information received after the 45-day period prescribed by Subsection 3.2(d) if the General Manager has not made a decision on the facility license within that time period.
- 3.3 Adequate Notice.** Despite Subsection 3.2, if, in the opinion of the General Manager, any method of giving notice set out in Subsection 3.2 is not adequate or practical, the General Manager may, within 30 days of receipt of the application, require an applicant to give notice of the application by another method that is, in the opinion of the General Manager, more effective.
- 3.4 Evaluation of a Facility License Application.** The General Manager will consider the following matters with respect to the facility proposed in the application:
- a) the potential risk posed to the environment and/or public health,
 - b) the protection of the environment,
 - c) comments from the host municipality relating to compliance with the local zoning or other bylaws that may affect a facility design and/or operating plan,
 - d) comments from persons who consider themselves adversely affected,
 - e) information received as a result of the fulfillment of the requirements set out in Sections 3.2 and 3.3,
 - f) compliance with the Solid Waste Management Plan,
 - g) any operating plan submitted to the General Manager under Article 9, and
 - h) compliance by the applicant with the requirements to pay fees and report as required under this bylaw.
- 3.5 Issuance of a Facility License.** After receipt of a facility license application and completion of requirements in this Article 3 to the satisfaction of the General Manager, the General Manager may issue a facility license on such terms and conditions set out in Section 4.1 and 4.2 as the General Manager considers necessary to protect the environment and to achieve the objectives of this bylaw and the Solid Waste Management Plan.

ARTICLE 4

4 FACILITY OPERATING REQUIREMENTS

4.1 **Operating Conditions for Facilities.** All owners and operators of facilities that are required under this bylaw to obtain a facility license must comply with the following operating conditions:

- a) install and maintain locking gates on all access roads into the facility to prevent unauthorized access and ensure that the gates are locked at all times when the facility is unattended,
- b) construct access roads to and through the facility from suitable material satisfactory to the General Manager and capable of providing all weather access for all emergency vehicles,
- c) install and maintain, as required by the General Manager, barriers to limit access to the facility except by the access roads (in the form of fencing, trees, shrubbery, natural features or other barriers),
- d) ensure that at all times the facility has telephone service or other functioning communication equipment with which to immediately summon fire, police or other emergency service personnel in the event of an emergency,
- e) prevent the escape of litter, mud or debris from the facility site to adjoining roads or adjacent lands,
- f) prevent the escape of any leachate from the facility to a surface not covered by an impermeable barrier and not equipped with a leachate containment system,
- g) ensure that an employee is present at all times that the facility is open for business or accepting municipal solid waste or recyclable material,
- h) inspect every load received before mixing with any other loads,
- i) maintain a record of all rejected loads including date, time, type of material, hauler's name, generator's name and vehicle license number,
- j) ensure that any municipal solid waste or recyclable material that is removed from the facility is taken to a site or facility that complies with all applicable provincial, state or federal regulations and with zoning and any other applicable enactments and hold any license, permit or approval required by the local government(s) of the jurisdiction in which the facility is located and be able to produce documentary evidence confirming the above,
- k) ensure that there is no burning of municipal solid waste or recyclable material at the facility, and take all precautionary measures possible required by the General Manager to reduce the potential risk of ignition of such materials,
- l) produce and comply with an operating plan acceptable to the General Manager under Article 9,
- m) require the licensee to provide and maintain security in such amount and in a form satisfactory to the General Manager under Section 8.1,

- n) ensure access to, and provide and maintain necessary related works associated with an adequate water supply or other suitable fire suppressant on site for extinguishing fires on site, and
- o) if there is a fire, immediately notify the local fire department and the General Manager and take all measures necessary to extinguish the fire.

4.2 Terms and Conditions for Facility Licenses. In addition to and without limiting the requirements set out in Section 4.1 or otherwise, where sufficient cause exists, as determined by the General Manager, the General Manager may do the following in a facility license:

- a) specify, prohibit, or restrict the type, quality, or quantity of municipal solid waste or recyclable material that may be brought onto or removed from a facility,
- b) require the licensee to contain the municipal solid waste or recyclable material within a height or heights and spatial area or areas specified by the General Manager,
- c) require the licensee, at its sole cost, to submit to the General Manager a quantity survey or a land survey of the municipal solid waste or recyclable material at the facility, prepared by a British Columbia Land Surveyor,
- d) require the licensee to recover, for the purpose of recycling, any recyclable materials which are subject to material bans imposed by bylaw or by resolution of the district,
- e) require the licensee to construct, install, repair, alter, remove, or maintain works, and provide plans and specifications prepared by a registered professional engineer (or any other qualified professional as appropriate and recognized as such by the General Manager) prior to the commencement of any construction, installation, repair, alteration, removal or maintenance of such works,
- f) require the licensee to submit plans, procedures, and specifications prepared by a registered professional engineer (or any other qualified professional as appropriate and recognized as such by the General Manager), for or relating to the handling of spills, fires, floods, earthquakes, and other emergencies at the facility,
- g) require the licensee to provide and maintain risk insurance in such amount and in a form satisfactory to the General Manager under Section 8.12,
- h) require the licensee, at such times and in such manner as is acceptable to the General Manager, to measure, record, and submit information to the General Manager relating to:
 - (i) the type, quality, and quantity of municipal solid waste and recyclable material brought onto and removed from the facility,
 - (ii) the handling of municipal solid waste and recyclable material at the facility,
 - (iii) the quantity and characteristics of leachate, runoff, and odour generated by the facility,

- (iv) the characteristics of the surface water, groundwater and soil at the facility to assess for existing degradation or contamination,
- (v) the characteristics of surface water and groundwater in the surrounding area which may be affected by leachate or other runoff from the facility,
- (vi) the condition of roads and public utilities located at or adjacent to the facility insofar as the condition of the roads and public utilities affects or are affected by the operation of the facility,
- (vii) slope stability, settlement, and erosion at the facility, and
- (viii) the operation and maintenance of equipment and works at the facility, including leachate collection and treatment systems, runoff, water management systems, and air quality and air quality control systems,
- i) require that any or all of the information required in Subsection 4.2 (h) be prepared by a registered professional engineer (or any other qualified professional as appropriate and recognized as such by the General Manager), and
- j) provide for implementing terms and conditions of a facility license in phases or provide for varying dates for compliance with the terms and conditions of a facility license.

ARTICLE 5

5 CODES OF PRACTICE

- 5.1 Establishment of Codes of Practice.** The board may, from time to time, establish codes of practice setting out different prohibitions, regulations, conditions, requirements, exemptions, and rates or levels of fees for different classes of persons, facilities, operations, activities, trades, businesses, municipal solid waste, or recyclable material for the purpose of prohibiting, regulating, or controlling the handling of municipal solid waste and recyclable material. Codes of practice will be established by way of adoption of a code of practice as an amendment to this bylaw.
- 5.2 Conditions of a Code of Practice.** A code of practice may set such terms and conditions and specify such requirements as the district considers advisable and, without limiting in any way the generality of the foregoing, the district may in a code of practice:
- a) require that facilities or operations, to be as specified by the district, register with the district in order to qualify under a code of practice,
 - b) include any of the requirements set out in Article 4, and
 - c) require security in an amount and form and subject to conditions set out in Article 8, or as defined in the code of practice itself.

- 5.3 **Registration Fee.** An application to register under a code of practice under this bylaw must be filed at the district's office in the prescribed form accompanied by the applicable registration fee set out in column 2 of Schedule "C" to this bylaw.

ARTICLE 6

6 ILLEGAL DUMPING

6.1 **Definitions.** In this article:

"responsible person" means one or more of the following:

- a) a person who generated municipal solid waste or recyclable material that has been delivered, deposited, stored, or abandoned, and/or
 - b) a person who hauled municipal solid waste or recyclable material that has been delivered, deposited, stored, or abandoned, and/or
 - c) a person who had or has charge or control of the land or buildings on which municipal solid waste or recyclable material has been deposited, stored, or abandoned or to which municipal solid waste or recyclable material has been delivered.
- 6.2 **Prohibition.** No responsible person shall deliver, deposit, store, or abandon, cause or allow to be delivered, deposited, stored or abandoned, municipal solid waste or recyclable material on or within any lands or improvements except a facility that holds a valid and subsisting facility license within the area of the Regional District of Nanaimo unless the municipal solid waste or recyclable material:
- a) is placed in a receptacle for scheduled curbside collection by a hauler or a local government, or
 - b) is taken to a facility outside the boundaries of the Regional District of Nanaimo that complies with all applicable enactments, including without limitation, land use bylaws.
- 6.3 **Liability for Illegal Dumping.** In addition to any other penalty imposed under this bylaw, the General Manager may require, by written notice, a responsible person to remove to a licensed facility any municipal solid waste or recyclable material that has been deposited in contravention of Section 6.2. Such removal shall be at the responsible person's cost. If a responsible person fails to remove the municipal solid waste or recyclable material within the time period specified in the notice, the General Manager may cause the municipal solid waste or recyclable material to be disposed at a licensed facility, and the responsible person shall pay all of the costs associated with the disposal.
- 6.4 **Proof of Compliance** The General Manager may require a responsible person who wishes to manage municipal solid waste or recyclable material in accordance with paragraph 6.2 b) to provide to the district documents evidencing that the facility complies with the enactments referred to in that paragraph.

ARTICLE 7

7 AMENDMENTS

7.1 **Amendment of a Facility License.** The General Manager may amend the terms and conditions of a facility license either in whole or in part:

- a) on its own initiative where it considers necessary due to changes in the facility's practices, or
- b) on application in writing by a licensee,
- c) on its own initiative where it considers necessary due to changes external to the operations of the facility

7.2 **Major and Minor Amendment.** For the purposes of this article:

- a) **“major amendment”** to a facility license means any amendment which is not a minor amendment, and
- b) **“minor amendment”** to a facility license means:
 - (i) a change of ownership, control, or name,
 - (ii) a change of legal address or mailing address,
 - (iii) a change to the hours of operation,
 - (iv) a decrease in the authorized quantity of municipal solid waste or recyclable material, accepted or stored,
 - (v) an increase in the authorized quantity of municipal solid waste or recyclable material accepted or stored that does not exceed 10% of the authorized quantity specified in the license first received by the facility,
 - (vi) a change in the authorized quantity of municipal solid waste or recyclable material accepted or stored such that, in the opinion of the General Manager, the change has or will have less impact on the environment,
 - (vii) a change in a requirement to record and submit information, or
 - (viii) a change to the works, method of treatment, or any other condition in a facility license such that, in the opinion of the General Manager, the change has or will have less impact on the environment.

7.3 **Procedure on Amendment Application.**

- a) For all applications for major amendments, the provisions set out in Sections 3.1 to 3.5 shall apply subject to necessary modification as deemed appropriate by the General Manager.
- b) For all applications for minor amendments, the General Manager may, at his discretion, require that any of the provisions set out in Sections 3.1 to 3.5 also apply, subject to

necessary modification as considered appropriate by the General Manager.

ARTICLE 8

8 SECURITY AND RISK INSURANCE

8.1 Requirement for Security. The General Manager, as a precondition to issuing a facility license, or as a term or condition of a facility license or by written notice at any time prior to or after the issuance of the facility license, requires an owner, operator or licensee of a facility to provide and maintain security in an amount and form satisfactory to the General Manager and for such period as may be required, to ensure:

- a) compliance with this bylaw or a facility license, and
- b) that sufficient funding is available for facility operations and maintenance, remediation of the facility, facility closure, and post-closure monitoring of the facility, in accordance with the terms and conditions of the license.

8.2 Form of Security. The security held by the district under Section 8.1 may be in the following form, provided that the particular form of security is satisfactory to the district, acting reasonably:

- a) cash,
- b) certified cheque,
- c) an irrevocable standby letter of credit issued by a Canadian Schedule I chartered bank.

8.3 Amount of Security. The security held by the district under Section 8.1 in respect of a facility shall be in such amounts as may be reasonably satisfactory to the General Manager and be based primarily on the maximum tonnage of pre-processed material allowed at the facility at one time, multiplied by the current per tonne cost to haul and dispose of the material. This shall be done for each material type allowed at the facility. Calculations for material types that may result in a positive value shall also be shown when determining the amount of security required, but these values cannot be used to offset the total security required. In addition, the security may, without limitation, vary depending on any or all of the following:

- a) the type of facility,
- b) the type of operations and maintenance activities performed or to be performed at the facility,
- c) the anticipated or actual activities required for closure and post-closure monitoring of the facility,

- d) the types of discharges that could have the potential to result from the operation, remediation, closure, and post-closure monitoring of the facility, including, without limitation, leachate, storm water, odours, dust, litter, and erosion, and the cost of installing, operating, repairing, and maintaining works that may be required to control such discharges at the facility,
- e) the geotechnical and other physical characteristics of the facility site,
- f) possible administrative or contingency fees for site clean-up activities coordinated by the General Manager, and
- g) such other factors as the General Manager may reasonably determine.

Without limiting the generality of the foregoing, the General Manager may, in an amendment to a facility license under Section 7.1, amend the amount of security required under Section 8.1 for the facility.

8.4 Conditions for Drawing on Security. Where a licensee, owner or operator defaults under this bylaw or a facility license, the General Manager may, by written notice to the licensee, require the default to be remedied within a period specified by the district and if the default is not remedied within the specified time, the district may draw down in whole or in part on the security for purposes as described in Section 8.5.

8.5 Use of Security. The security drawn down by the district, under Section 8.4, may be used to ensure compliance with the provisions of this bylaw and the facility license, including without limitation funding for the following:

- a) the handling of municipal solid waste, recyclable material, or any other materials at the facility,
- b) the carrying out of operations and maintenance activities at the facility in compliance with an operating plan accepted by the General Manager under Section 9.3,
- c) the control, abatement or prevention of leachate or contaminants escaping from the facility,
- d) the expenses incurred by the district, including legal expenses, in
 - (i) carrying out or causing to be carried out any of the activities described in this section, and
 - (ii) complying with any laws or enactments of the federal, provincial or any local government, including the district.

8.6 Additional Conditions for Drawing on Security. Notwithstanding Section 8.4, the district shall be entitled to draw down, in whole or in part, on any security it holds under Section 8.1, where:

- a) such security is not renewed, replaced, or extended at least 30 days in advance of its scheduled expiry date, or
- b) the General Manager is satisfied on reasonable grounds that the value and utility of the security may otherwise be compromised.

In this event, the district shall hold and deal with the proceeds thereof as security in the same manner as the district is entitled to hold and deal with the original security.

- 8.7 Replenishment of Security.** If the district draws down in whole or in part on the security under this article, the owner, operator or licensee of a facility must replenish the security drawn down within 30 days if required to do so in writing by the General Manager and the provisions of this article, with the necessary changes, shall apply to such replenished security.
- 8.8 Survival.** Notwithstanding any suspension, cancellation, expiration, or other termination of a facility license, all owners, operators, or licensees of a facility shall continue to be bound by the requirements in a facility license to provide and maintain security, which requirements shall survive any such suspension, cancellation, expiration, or other termination until otherwise notified by the General Manager.
- 8.9 Return of Security.** Provided the owner, operator or licensee of a facility is in full compliance with this bylaw and a facility license, the district may return to the owner, operator or licensee of a facility the security held by it:
- (a) upon completion, to the reasonable satisfaction of the General Manager, of all activities required for the closure or post-closure of the facility,
 - (b) upon receipt by the district of substitute or replacement security satisfactory to the General Manager, or
 - (c) where the General Manager otherwise deems expedient.
- 8.10 Unclaimed Security.** If after making reasonable efforts the district is unable to effect return of the security under Section 8.9, title of the security shall vest absolutely in the district after the fifth anniversary of the initial attempt to return the security.
- 8.11 Interest on Cash Security.** If the security or any portion thereof provided under Section 8.1 is in the form of cash, the interest earned thereon at the rate referred to below will be added to and form part of the principle amount of the security, and may be used under Section 8.4. Any portion of the principle amount of the security and accrued interest not utilized will be returned pursuant to Section 8.9. The interest rate for the security will be the prime rate charged by the Canadian Imperial Bank of Commerce for Canadian dollar loans, from time to time, less two percentage points.
- 8.12 Security in the Form of Insurance.** Notwithstanding Section 8.2, the General Manager may require that an owner, operator, or licensee obtain environmental risk insurance from an insurance broker approved by the General Manager, that covers risks associated with such events as floods, earthquakes, toxic spills, fires, leachate breakouts, and water, sewer, and gas pipe breaks.

ARTICLE 9

9 OPERATING PLANS

9.1 Operating Plan Requirements. Every person who submits an application for a facility license under Section 3.1 must include with the application a proposed operating plan for the facility described in the application. Proposed operating plans must provide full and complete details on all of the following:

- a) the site and location of all works within the facility,
- b) the types, quantity, and quality of municipal solid waste and recyclable material that will be managed within the facility,
- c) the methods for handling municipal solid waste and recyclable material within the facility,
- d) the measures that will be taken to protect the environment, the site, and the lands adjacent to the facility,
- e) a monitoring program to assess the measures in paragraph (d) above,
- f) the methods for complying with regional disposal bans and recycling requirements,
- g) the methods for dust, odour, vector, mud, and litter control and prevention,
- h) the methods for handling any waste delivered to the facility which is not authorized by the license,
- i) the procedures for weigh scale operation at the facility, or other site where municipal solid waste and recyclable material is weighed for acceptance at the facility or removal from the facility,
- j) the frequency and method of facility inspection to be carried out by facility staff,
- k) measures to protect the site and adjacent lands in case of fire, seismic disturbance, or flood,
- l) the methods for containment and treatment of runoff at the facility and the prevention of runoff from the facility to adjacent lands,
- m) the actions that will be taken if ground or surface water becomes contaminated as a result of operations at the facility, and
- n) any other matter specified by the General Manager regarding the management of municipal solid waste and recyclable material at the facility.

9.2 Professional Engineering Involvement. The General Manager, at his sole discretion may require any or all of the information required in Subsections 9.1 (a) through (n) inclusive to be prepared by a registered professional engineer (or any other qualified professional as appropriate and recognized as such by the district).

9.3 Review and Acceptance of Operating Plans. The General Manager will review all proposed

operating plans submitted under Section 9.1, and may require amendments.

- 9.4 Further Amendments to Operating Plans.** Following the acceptance of an operating plan under Section 9.3, the General Manager may require the terms, conditions or other aspects of the operating plan to be amended:
- a) on the General Manager's own initiative where the General Manager considers it necessary and after consultation with the licensee, or
 - b) on request in writing by the licensee, subject to approval by the General Manager.

ARTICLE 10

10 FEES AND MONTHLY STATEMENTS

- 10.1 Application Fees.** Every person who requires an amendment as described in Section 7.1 (a) or applies for a facility license or any amendment as described in Section 7.1 (b) shall pay to the district, on application or commencement of amendment process, for a facility set out in column 1 of Schedule "C" to this bylaw, the corresponding license application fee or amendment application fee as set out in columns 2, 3 or 4, respectively, as applicable. An application fee will not be refunded if a license is not issued or amended.
- 10.2 Payment of Security.** Applications for a facility license for facilities not established prior to enactment of the bylaw must provide the amount of security required under Section 8.2 with the submission of the application. For a facility license for facilities existing at the time of enactment of the bylaw, up to 50% of the amount of security may be deferred for a period of one year from the date of submission of the application.
- 10.3 Annual Administration Fee.** Every licensee shall pay to the district upon the date of issuance of a facility license and thereafter annually on the anniversary date of the issuance of the license, the annual administration fee set out in column 5 of Schedule "C". The district will provide to all licensees annual invoices setting out the annual administration fee due and payable in accordance with Schedule "C".
- 10.4 Monthly Statement.** Unless requested at greater frequency by the General Manager, every licensee shall deliver to the district, a monthly (twelve times per year) written statement signed by an officer or a principal of the owner or operator of the facility setting out either the amount or quantity in metric tonnes of all municipal solid waste and recyclable materials received, shipped from, and the maximum net tonnage on site at any one time during the month at the facility as measured in the delivery vehicle. The statement shall be delivered monthly to the district within 21 days after the last day of the previous month.
- 10.5 District Invoices.** All invoices rendered by the district shall be due and payable 30 days from the date of the invoice. Late payments will accrue interest computed at the rate of one and one quarter percent (1.25%) per month on the outstanding balance, calculated and compounded monthly, from the date such amounts become due and payable until the date they are paid in full.
- 10.6 Records.** Every licensee must make and maintain for a period of seven years from the date when they were made, accurate records, books of account, copies of the monthly statements referred to in

Section 10.4, and copies of all electronic and hard copy information and data upon which those statements were prepared (for the purposes of this article called "records"). The records must identify either:

- a) the amount or quantity in metric tonnes (or cubic metres) of municipal solid waste and recyclable materials received, shipped from, and the maximum net tonnage on site at any one time during the month at the facility, or
- b) the number of container and vehicle loads and the size or capacity of the containers and vehicles carrying municipal solid waste received, shipped from, and the maximum net tonnage on site at any one time during the month at the facility.

10.7 Inspection and Copying of Records. The General Manager may inspect, make copies and take away such copies of any records referred to in Section 10.6 maintained by and for any person who is required to provide a monthly statement under Section 10.4 during normal hours of business, at any business premises where the records are maintained. The General Manager may take with them to the business premises such other persons and equipment as may be necessary.

10.8 Proof of Identity. An employee or agent of the district inspecting records under Section 10.7 must, when requested, provide proof of identity to any person present at the location where the records are maintained.

10.9 Audit. A person who is required to provide a monthly statement under Section 10.4, if requested in writing by the General Manager, shall at that person's expense provide to the General Manager within 45 days of such request, an audited statement of the total amount of fees payable under Sections 10.1, 10.2, and 10.3, for a specified period of time. This statement must be prepared by a Chartered Accountant or Certified General Accountant in accordance with Generally Accepted Auditing Principles.

ARTICLE 11

11 DUTY TO REPORT

11.1 Discharge of Waste at Facility. Where, out of the normal course of events, there occurs at a facility a discharge of waste to the environment or a serious and imminent danger thereof by reason of any condition, and where any damage or danger to land, water or air may reasonably be expected to result therefrom, any person who at any material time:

- (a) owns the waste or has the charge, management or control of the waste, or
- (b) causes or contributes to the discharge or danger of discharge

shall verbally report such occurrence to the General Manager as soon as practicably possible and shall report such occurrence to the General Manager in writing within 48 hours.

11.2 Deviation from Normal Operating Practices. Where, during the normal course of operations, there occurs at a facility a situation or combination of events that is a deviation from the approved operating practices as set out by the terms and conditions set out in the license, operating plan, code of practice, or this bylaw, the facility operator shall verbally report such occurrence to the

General Manager as soon as practicably possible and shall report such occurrence to the General Manager in writing within 48 hours.

11.3 Duty to take all Reasonable Measures. A person who is referred to in Section 11.1 shall, as soon as possible in the circumstances, take all reasonable measures consistent with safety, protection of the environment, and compliance with the terms and conditions of the license, operating plan, code of practice, or this bylaw, and thereby counteract, mitigate or remedy any adverse effects that result or may reasonably be expected to result from the occurrences referred to in Section 11.1 or 11.2.

11.4 Compliance. Compliance with Article 11 and Article 12 of this bylaw does not signify compliance with any other requirements found within the bylaw. The district retains the right to pursue any actions available to remedy non-compliance with any other section of this bylaw, notwithstanding compliance with Article 11 and Article 12.

ARTICLE 12

12 INVESTIGATION, INSPECTION AND RECORDS

12.1 Powers of the District. The powers of the district under this article may be exercised in relation to any site, facility, or premises which is, or which the General Manager upon reasonable grounds believes to be, among those described in Article 2.1 of this bylaw, and any site, facility, or premises associated therewith.

12.2 Residential Structures. Nothing in this section authorizes the entry of any structure used primarily as a residence, or any residential accommodation in any other structure.

12.3 Investigation. A bylaw enforcement officer or other employee or agent of the regional district may at any reasonable time enter any facility, site or premises and investigate any works, process or activity that is related to, used for or capable of being used for the production or handling of municipal solid waste or recyclable material.

12.4 Additional Powers. The powers of a district under Section 12.3 include the following powers:

- a) to examine, take away and make copies of records relating to:
 - (i) the causing or the potential to cause pollution by municipal solid waste or recyclable material,
 - (ii) the production and managing of municipal solid waste or recyclable material,
 - (iii) the characteristics of the municipal solid waste or recyclable material produced or managed, and
 - (iv) a potential contravention,
- b) to carry out inspections, observations, measurements, tests and sampling and to otherwise ascertain whether the terms of this bylaw or a facility license have been or are being complied with and take away samples of leachate, runoff, groundwater, soil, articles, substances,

municipal solid waste or recyclable material as they consider appropriate.

- 12.5 Return of Documents.** Where the district has taken away original records from a facility, site or premises under Subsection 12.4(a), the district, upon written request from the owner or operator of the facility, will return copies of the records to the owner or operator within 24 hours of the inspection or if that is not possible, as soon thereafter as is practicable.
- 12.6 Assistance.** The employee or representative of the district may take with him or her onto any facility, site, or premises such other persons and equipment as may be necessary to carry out the actions authorized in Section 12.4.
- 12.7 Identification.** The employee or representative of the district shall, forthwith upon arrival at a facility, site, or premises, provide proof of identity to a person present at the facility, site, or premises.
- 12.8 Records.** Notwithstanding Sections 2.2, 4.1, and 10.4, the General Manager may require the owner or operator of a facility, site, or premises at which municipal solid waste or recyclable material is managed to keep records of volumes, weights, types, amounts, quantities, and composition of municipal solid waste or recyclable material originating from within the Regional District of Nanaimo that is brought onto or removed from the facility, site, or premises and to submit, on request annually, the records to the district.

ARTICLE 13

13 SUSPENSION AND CANCELLATION

- 13.1 Suspension and Cancellation of Facility Licenses.** Without limiting any other provision of this bylaw, the General Manager, after giving notice to a licensee, may suspend for any period or cancel a facility license in whole or in part where the following has occurred or is occurring:
- a) the licensee fails to comply with any term, condition, or requirement of the facility license or any provision of this bylaw,
 - b) the licensee has made a material misstatement or material misrepresentation in the application for the facility license,
 - c) the licensee has failed to:
 - (i) provide the monthly statement of quantities in accordance with Section 10.4, or
 - (ii) make payment of fees in accordance with Article 10,
 - d) the licensee does not exercise any rights under the facility license for a period of 3 years,
 - e) the facility license is no longer necessary by reason of a code of practice under this bylaw,
 - f) the licensee is an individual who has died,
 - g) the licensee is a corporation that is struck off the register or is dissolved under its incorporating enactment,

- h) the licensee is a partnership that is dissolved,
 - i) the licensee requests that the facility license be cancelled, or
 - j) the land and related improvements or buildings and related improvements licensed under this bylaw are no longer a facility.
- 13.2 Notice.** A notice served under Section 13.1 must state the time at and the date on which the suspension or cancellation is to take effect.
- 13.3 Suspended or Cancelled License Not Valid.** A facility license that is suspended or cancelled is not a valid and subsisting license. Notwithstanding the foregoing, the provisions in a facility license relating to security continue to survive as set out in Section 8.5.

ARTICLE 14

14 OFFENCES AND PENALTIES

- 14.1 Offence.** Any person who contravenes a provision of this bylaw, a facility license, an order, a code of practice, or a requirement made or imposed under this bylaw commits an offence and is liable to a fine not exceeding \$200,000.
- 14.2 Separate Offences.** Where there is contravention that continues for more than one day, each day or part of a day on which the contravention occurs is a separate offence.
- 14.3 Offences by Employees, Officers, Directors or Agents.** If a corporation commits an offence under this bylaw, an employee, officer, director, or agent of the corporation who authorized, permitted or acquiesces in the offence commits the offence even though the corporation is convicted.
- 14.4 Remedies Cumulative.** The rights and remedies available to the district under this bylaw shall be cumulative and not alternative and shall be in addition to and not a limitation of any other rights and remedies that would otherwise be available to the district at law.

ARTICLE 15

15 APPEALS

- 15.1 Appeals to Board.** An applicant or licensee affected by a decision of the General Manager under Section 3.5, 4.2, 7.1, 8.1, 8.3 or 8.12 to this bylaw may appeal the decision to the board by advising the board in writing of the order or requirement being appealed from and setting out the reason for the appeal and attaching any relevant documents.
- 15.2 Time Limit for Commencing Appeal.** The written notice of appeal under Section 15.1 must be delivered to the board within 30 days of the decision from which the appeal is made.
- 15.3 Review by the Board.** The matter will be reviewed by the board pursuant to Section 15.4.
- 15.4 Power of the Board.** Upon considering the matter under appeal, the board may:
- a) confirm, reverse or vary the decision under appeal, and
 - b) make any decision that the board considers appropriate.
- 15.5 Appeal Does Not Operate as Stay.** An appeal under this section does not operate as a stay or suspend the operation of the decision being reviewed unless the board orders otherwise.

ARTICLE 16

16 GENERAL

- 16.1 Notification of Change in Control.** A licensee shall notify the district in writing of a change in ownership or control of the license within 10 days after such a change.
- 16.2 Delivery of Notices.** Any notice required to be given to an owner or operator of a facility or a licensee shall be deemed to have been delivered if such notice is delivered personally to an owner or operator of a facility or a licensee or is mailed by double registered mail to the registered or records office of an owner or operator of a facility or a licensee or to the address for service set out in a license. If delivery of a notice is unable to be effected by double registered mail then delivery may be affected by any of the following:
- a) personal delivery to the registered or records office of an owner or operator of a facility or a licensee,
 - b) personal delivery to a director, officer, liquidator, trustee in bankruptcy or receiver manager of an owner or operator of a facility or a licensee,
 - c) personal delivery to an adult individual at the facility who appears to be an employee of an owner or operator of a facility or a licensee or appears to be in control of the facility, and
 - d) posting on the door or gate of the facility, when no one is present at the facility or the facility appears to be abandoned.
- 16.3 No Transfer or Assignment.** A transfer or assignment of a facility license is without effect

without the prior written approval of the General Manager. Approval will be given if all license requirements are being fulfilled and no license or license amendment fees are owed to the district.

16.4 Headings. The headings in this bylaw are for convenience only and shall not limit, enlarge or affect the scope of any of the provisions in this bylaw.

16.5 Severability. If any portion of this bylaw is deemed *ultra vires*, illegal, invalid or unenforceable in any way in whole or in part by any court of competent jurisdiction, such decision shall not invalidate or void the remainder of this bylaw. The parts so held to be *ultra vires*, illegal, invalid or unenforceable shall be deemed to have been stricken from this bylaw with the same force and effect as if such parts had never been included in this bylaw or revised and reduced in scope so as to be valid and enforceable.

ARTICLE 17

17 TITLE

This bylaw may be cited for all purposes as the “Regional District of Nanaimo Waste Stream Management Licensing Bylaw No. 1386, 2004”.

Read three times the 10th day of August, 2004.

Received approval from the Ministry of Water, Land and Air Protection this 6th day of April, 2005.

Adopted this 26th day of April, 2005.

Chairperson

Deputy Administrator

SCHEDULE "A"

EXEMPTIONS FROM LICENSING REQUIREMENTS

For greater certainty and without limiting the generality of Section 2.1 of the bylaw, the following facilities, or any portion of a facility managing recyclable material or municipal solid waste in accordance with the following specifications, shall be exempt from the licensing requirements under Section 2.1:

1. any facility which accepts exclusively asphalt and concrete for the purposes of reprocessing, resale and reuse;
2. any retail food, grocery, beverage or drug establishment that accepts recyclable products on a return-to-retail basis;
3. any depot operating under or in fulfillment of the *Environmental Management Act* Beverage Container Stewardship Program Regulation, 1997; and
4. any facility operating under or in fulfillment of a *Environmental Management Act* Stewardship Program.

A facility that manages recyclable material or municipal solid waste in accordance with the above and also manages recyclable material or municipal solid waste in a manner not specified above will be required to be licensed within the provisions of this bylaw for the portion(s) of the operation not specified as exemptions in this Schedule A.

SCHEDULE "B"

PLAN FACILITIES (PUBLIC)

FACILITY	LOCATION
Regional District of Nanaimo Landfill	1105 Cedar Rd, Nanaimo
RDN Church Road Transfer Station	860 Church Rd, Parksville

SCHEDULE "C"

FEES - FACILITIES

The fees payable to the district by owners or operators of facilities under this bylaw shall be as follows:

1. Application, Amendment, Annual Administration and Other Fees

Column 1	Column 2 License Application Fee	Column 3 Major Amendment Application Fee	Column 4 Minor Amendment Application Fee	Column 5 Annual Administration Fee
Facility license Type I	\$1,000	\$500	\$100	\$500
Facility license Type II	\$100	\$100	\$50	\$100
Code of Practice Registration	\$100	-	-	\$100

SCHEDULE "D"

PUBLISHING AND BILLBOARD POSTING REQUIREMENTS

1. Publishing Notice Details for all Applications

A published notice in a newspaper must:

- (i) be at least 8 centimetres in width,
- (ii) be at least 100 square centimetres in area,
- (iii) be entitled "FACILITY LICENSE APPLICATION NOTICE" in a minimum type size of 12 points,
- (iv) have the text of the license application in a minimum type size of 8 points,
- (v) include the civic address of the proposed facility,
- (vi) include the name of the owner of the land on which the facility is proposed to be located,
- (vii) include the full name and address of the operator of the proposed facility,
- (viii) include a complete description of the activity to be carried out and the types and quantities of municipal solid waste or recyclable material to be managed at the facility, and
- (ix) include such other information as the General Manager considers necessary.