

**REGIONAL DISTRICT OF NANAIMO
REGIONAL SOLID WASTE ADVISORY COMMITTEE MEETING**

**THURSDAY, APRIL 20, 2017 5:00 PM - 7:30 PM
(RDN Board Chambers)**

A G E N D A
RDN Meetings may be recorded

CALL TO ORDER

MINUTES

2-4 Minutes of the Regional Solid Waste Advisory Committee meeting held December 1, 2016.

PRESENTATION

SWMP Consultation Update. *Staff will provide presentation.*

5-15 Dispute Resolution Process. *Staff will provide presentation.
Background information provided.*

SWMP Financial Projections Update. *Staff will provide presentation.*

DELEGATIONS

COMMUNICATIONS/CORRESPONDENCE

UNFINISHED BUSINESS

REPORTS

BUSINESS ARISING FROM DELEGATIONS/COMMUNICATIONS

NEW BUSINESS

ADJOURNMENT

Distribution:

Alec McPherson	Chair, RDN Director	Gerald Johnson	Member at Large
Bill McKay	Deputy Chair	Ellen Ross	Member at Large
Derek Haarsma	Business Representative	Amanda Ticknor	Member at Large
Jan Hastings	Non Profit Representative	Mathew Louie	Member at Large
Dean Jones	Waste Management Industry	Michael Recalma	Qualicum First Nation
Jim McTaggart-Cowan	Member at Large	Chief & Council	Nanoose First Nation
Michael Tripp	Business Representative	Chief & Council	Snuneymuxw First Nation
Stewart Young Jr.	Business Representative	Charlotte Davies	City of Nanaimo
Wally Wells	Business Representative	Cam Purdon	Town of Qualicum Beach
Craig Evans	Member at Large	Al Leuschen	Ministry of Environment
John Finnie	Member at Large	Fred Spears	District of Lantzville
Ben Geselbracht	Member at Large	Karen Muttersbach	Environment Canada
Michele Green	Member at Large	Glenn Gibson	Island Health

RDN Staff:

Larry Gardner	Manager, Solid Waste Services, RDN	Ben Routledge	Zero Waste Coordinator, RDN
Randy Alexander	GM, RCU & Solid Waste Services, RDN	Rebecca Graves	Recording Secretary, RDN
Meghan Larson	Solid Waste Planner, RDN	Sonam Bajwa	Special Projects Assistant, RDN

For information only:

Regional Board Members: CAO's: Phyllis Carlyle (RDN), Brad McRae (District of Lantzville), Debbie Comis (City of Parksville), Daniel Sailland (Town of Qualicum Beach), Tracy Samra (City of Nanaimo)

**REGIONAL DISTRICT OF NANAIMO
REGIONAL SOLID WASTE ADVISORY COMMITTEE MEETING
HELD ON THURSDAY, December 1, 2016
BOARD CHAMBERS**

Present:

Alec McPherson	Chair, RDN Director
Bill McKay	Deputy Chair, RDN Director
Jan Hastings	Non Profit Representative
Dean Jones	Waste Management Industry
Jim McTaggart-Cowan	Member at Large
Wally Wells	Business Representative
Craig Evans	Member at Large
John Finnie	Member at Large
Michael Tripp	Business Representative
Gerald Johnson	Member at Large
Ellen Ross	Member at Large
Cam Purdon	Town of Qualicum Beach
Ben Geselbracht	Member at Large
Derek Haarsma	Business Representative
Amanda Ticknor	Member at Large

Also in Attendance:

Randy Alexander	General Manager, RCU, RDN
Larry Gardner	Manager of Solid Waste, RDN
Meghan Larson	Solid Waste Planner, RDN
Ben Routledge	Zero Waste Coordinator, RDN
Shelleen Schultz	Recording Secretary, RDN

Regrets:

Chief & Council	Nanoose First Nation
Chief & Council	Snuneymuxw First Nation
Michael Recalma	Qualicum First Nation
Glenn Gibson	Island Heath
Al Leuschen	Ministry of Environment
Karen Muttersbach	Environment Canada
Fred Spears	District of Lantzville
Stewart Young Jr.	Business Representative
Michele Green	Member at Large
Charlotte Davis	City of Nanaimo
Matthew Louie	Member at Large

CALL TO ORDER

The Chairperson called the meeting to order at 5:05 PM and respectfully acknowledged the Coast Salish First Nations on whose traditional territory the meeting took place.

DELEGATES

MINUTES

MOVED J. McTaggart-Cowan, SECONDED G. Johnson, that the minutes from the meeting of the Regional Solid Waste Advisory Committee regular meeting held October 27, 2016, be adopted.

CARRIED

BUSINESS ARISING FROM THE MINUTES

UNFINISHED BUSINESS

COMMUNICATIONS/CORRESPONDENCE

RDN Solid Waste Management Stage 2 Report – VIRWIC.

MOVED G. Johnson, SECONDED J. Hastings, that the communications/correspondence from VIRWIC re. RDN Solid Waste Management Stage 2 Report be received.

CARRIED

REPORTS

Draft Stage 2 SWMP Report (M. Larson – Presentation)

M. Larson gave a presentation on the Draft Stage 2 SWMP report and requested that members read section 5.0 Long Term Residual Management. Comments, questions and/or suggestions were requested regarding the report and be received by Wednesday December 7, 2016.

Discussion highlighted the need for committee members input on a number of areas on the Draft Stage 2 SWMP report.

M. Larson reviewed the changes that occurred with the Draft SWMP were:

- Re-ordered the Strategies outlined in the report
- Updated Guiding Principles to BC Ministry of Environment Guiding Principles
- Replaced the BC Ministry Hierarchy with ZIWA Hierarchy
- Inserted “First Nations” when referring to the four First Nations Indian Reserves
- Added to Regional District (Board and Staff) roles in Solid Waste Management
 - Develops policies which promotes a level playing field within the waste management sector
- Reordered the Section 4.1 General Strategies
- Expanded Advocacy Roles in 4.2.3
- Section 4.3 addition of: Additionally, Section 4.5.2 discusses the introduction of Waste Source Regulation as an additional authority under the SWMP which would drive the requirement for all multi-family buildings to have full diversion programs in place for recyclables and organics.
- Changed the order of the Regulatory Authorities with Waste Source Regulation before Waste Haulers as Agents

Some points of discussion were:

- Reference to and for the ZWIA hierarchy & definition commitment
- Role of local, provincial and federal government to advocate for the 5 R’s
- Identify the need to develop a Solid Waste Emergency Management Plan
- Identify social enterprises’ role
- New and emerging waste management technology in Stage 3
- Funding structure in order to reach 90% diversion goal

MOVED B. McKay, SECONDED G. Johnson, that the Draft SWMP Stage 2 Report be accepted for public consultation.

CARRIED

PRESENTATION

Stage 2 SWMP Update presented in conjunction with the report.

ADDENDUM

Addendum covered under Communications/Correspondence.

NEW BUSINESS

ADJOURNMENT

MOVED J. McTaggart, SECONDED E. Ross, that the meeting be adjourned.

CARRIED

Time: 7:29 pm.

CHAIRPERSON

October 28, 2016

Mr. A.J. Downie
Regional Director- Coast Region
Ministry of Environment
2080-A Labieux Road
Nanaimo, BC V9T 6J9
VIA EMAIL: AJ.Downie@gov.bc.ca

Dear Mr. Downie:

Re: Integrated Solid Waste and Resource Management Plan Dispute Resolution Procedure

On September 29, 2016, Carol Mason and I met with Ministry of Environment staff. As part of the meeting we discussed Metro Vancouver's *Integrated Solid Waste and Resource Management Plan* (ISWRMP) implementation Dispute Resolution Procedure. The procedure was approved by the GVS&DD Board on September 23, 2016. I subsequently forwarded the approved procedure to your attention.

The purpose of this letter is to provide some background to the adopted procedure, as well as some of the legal and other constraints that have informed the development of the current Dispute Resolution Procedure. I am also writing to reassure the Ministry that the GVS&DD is open to, and indeed exploring, alternate dispute resolution procedure options, within the constraints of the *Environmental Management Act* (EMA) and the existing and approved ISWRMP and the *GVS&DD Municipal Solid Waste and Recyclable Material Regulatory Bylaw No. 181, 1996* (Bylaw 181).

The GVS&DD Board report recommending approval of a Dispute Resolution Procedure noted that consultation on a review of Bylaw 181 is expected to be initiated in 2017, and as part of that review the Dispute Resolution Procedure would be updated with the goal of aligning the Bylaw 181 appeal process and the process for resolving other disputes related to implementation of the ISWRMP.

This letter therefore sets out some of our considerations in this regard, and explores in a preliminary way what we see as some of the constraints and available options.

CURRENT BYLAWS, PLANS and POLICY

Prior to the adoption of the ISWRMP in 2011, the GVS&DD had a solid waste management plan dating back to 1995. Bylaw 181 was adopted pursuant to that plan, and approved by the Minister in 1996.

In accordance with s. 35 of the EMA, Bylaw 181 delegates a number of licensing related decisions to the Manager, but allows for an appeal of the Manager's delegated decisions to the Commissioner of the GVS&DD pursuant to s. 16 of the Bylaw.

Under Bylaw 181 (and the EMA) no other body is granted the authority to consider and issue private facility licenses in the GVS&DD. However, reviews for fairness and reasonableness of decisions of the Commissioner under Bylaw 181 may be conducted by the BC Supreme Court, whose judges have the inherent authority under the *Constitution Act 1867* and pursuant to the *Judicial Review Procedure Act*, to review, reject or replace their own decision for that of the Commissioner in relation to her regulatory authority under the EMA and Bylaw 181.

In addition to the required appeal procedure in Bylaw 181, the GVS&DD was also required pursuant to the Minister of Environment's July 2011 approval of the ISWRMP to develop a dispute resolution procedure for disputes arising from the implementation of the ISWRMP. In keeping with the above, the GVS&DD Board approved a new Dispute Resolution Procedure at its meeting of September 23, 2016.

With respect to disputes arising from delegated facility licensing decisions of the Manager under Bylaw 181, the adopted Dispute Resolution Procedure works within the existing appeal process in Bylaw 181 by providing for a suspension of the appeal process to allow for an opportunity for mediation of the license dispute. With respect to disputes that arise outside of the appeal process, the current Dispute Resolution Procedure provides for non-binding mediation, but all final regulatory or legislative decisions regarding implementation of the ISWRMP remain with the Board or a panel of the Board.

LEGAL CONTEXT OF GVS&DD DISPUTE RESOLUTION PROCEDURE

The consideration of the GVS&DD's options for developing a new appeal and dispute resolution process must take into account the legal context and authority of the GVS&DD. It must also consider the range of ISWRMP implementation decisions that may be the subject of a dispute, the types of disputes that may arise, and the standing of various affected parties to initiate a dispute resolution process or appeal.

The EMA sets out the regulatory context of the GVS&DD's authority to implement the ISWRMP. Critical provisions of the EMA in this regard include the following:

Authority to manage municipal solid waste and recyclable material in regional districts

25 (1) In this section and sections 26 [*municipal solid waste disposal fees*], 31 [*control of air contaminants in Greater Vancouver*] and 32 [*disposal of municipal solid waste in Greater Vancouver*]:

"regional district" means

(b) the Greater Vancouver Sewerage and Drainage District constituted under the *Greater Vancouver Sewerage and Drainage District Act*;

"waste stream management licence" means a licence issued by a regional district, under the authority of a bylaw made under subsection (3) (h) (i), to the owner or operator of a site that accepts and manages municipal solid waste.

(2) Despite any other Act, a person must manage municipal solid waste and recyclable material at a site in accordance with

- (a) any applicable approved waste management plan for the site,
- (b) any requirements or conditions that a director includes in an operational certificate or permit issued for the site, and
- (c) any applicable bylaw made under subsection (3) of this section or section 31 [*control of air contaminants in Greater Vancouver*] or 32 [*disposal of municipal solid waste in Greater Vancouver*].

(3) For the purpose of implementing an approved waste management plan, a regional district may make bylaws to regulate the management of municipal solid waste or recyclable material including, without limitation, bylaws regulating, prohibiting or respecting one or more of the following:

- (a) the types, quality or quantities of municipal solid waste or recyclable material that may be brought onto or removed from a site;
- (b) the discarding or abandonment of municipal solid waste or recyclable material;
- (c) the burning of any class or quantity of municipal solid waste or recyclable material;
- (d) the delivery, deposit, storage or abandonment of municipal solid waste or recyclable material at authorized or unauthorized sites;
- (e) the transport of municipal solid waste or recyclable material within or through the area covered by the waste management plan;
- (f) the operation, closure or post-closure of sites, including requirements for
 - (i) the recording and submission of information,
 - (ii) audited statements respecting the municipal solid waste or recyclable material received at and shipped from a site, and
 - (iii) the installation and maintenance of works;
- (g) respecting fees, including
 - (i) setting fees and charges that may vary according to
 - (A) the quantity, volume, composition or type of municipal solid waste or recyclable material, or
 - (B) the class of persons, sites, operations, activities, municipal solid wastes or recyclable materials, and
 - (ii) specifying the manner and timing of the payment of those fees and charges;
- (h) requiring the owner or operator of a site or a hauler to
 - (i) hold a recycler licence, a waste stream management licence or a hauler licence, or
 - (ii) comply with a code of practice;
- (i) setting the terms and conditions for issuing, suspending, amending or cancelling a licence referred to in paragraph (h);
- (j) requiring an owner or operator of a site or a licence holder to obtain insurance or provide security satisfactory to the regional district to ensure
 - (i) compliance with the bylaws, and

- (ii) that sufficient funding is available for site operations, remediation, closure and post-closure monitoring;
- (k) requiring the owner or operator of a site to contain municipal solid waste or recyclable material within specified height and area limits, and specify requirements and terms for confirming compliance with those limits;
- (l) prohibiting unauthorized persons from handling or removing municipal solid waste or recyclable material that is deposited at a site or set out for collection;
- (m) establishing different prohibitions, conditions, requirements and exemptions for different classes of persons, sites, operations, activities, municipal solid wastes or recyclable materials;
- (n) requiring an owner of municipal solid waste or recyclable material, the deposit of which has been prohibited by bylaw, to pay the cost of its disposal in a manner specified in the bylaw;

....

Delegation of powers

35 (1) For the purposes of sections 25 *[authority to manage municipal solid waste and recyclable material in regional districts]*, 26 *[municipal solid waste disposal fees]*, 32 *[disposal of municipal solid waste in Greater Vancouver]* and 33 *[disposal of municipal solid waste in other regional districts]*, a regional district may, by bylaw, delegate to an officer or employee of the regional district the power to perform the functions and duties of the regional district in bylaws made under those sections.

(2) For the purpose of sections 25 *[authority to manage municipal solid waste and recyclable material in regional district]*, 26 *[municipal solid waste disposal fees]* and 32 *[disposal of municipal solid waste in Greater Vancouver]*, the Administration Board of the Greater Vancouver Sewerage and Drainage District may, by bylaw, delegate to an officer or employee of the Greater Vancouver Regional District the power to perform the functions and duties of the Greater Vancouver Sewerage and Drainage District in bylaws made under those sections.

(3) A bylaw referred to in subsection (1) or (2) must include an appeal mechanism from a decision of the officer or employee.

Bylaw 181 was adopted by the GVS&DD pursuant to its authority under s. 25, primarily subsections (h) and (i).

More generally, implementation of the ISWRMP involves the enactment of bylaws and the making of decisions pursuant to all of the subsections of s. 25 or s. 26 of the EMA. The other main grant of authority under the EMA for the purposes of implementing the ISWRMP is granted to the Director in the issuance of operational certificates under s. 28 of the EMA. This, of course, is not an exhaustive list of the ways that the ISWRMP may be implemented, but the main sections of the EMA that provide for this implementation.

It is in this legal context that the Ministry *Guide to Solid Waste Management Planning* published on September 22, 2016, and its predecessor guides, must be read. In its most current iteration, the *Guide*

recommends that every regional district establish and consult “on a dispute resolution procedure for dealing with disputes arising during implementation of the plan,” and directs that the procedure address a broad range of disputes that might arise, including:

... an administrative decision made by the regional district in the issuance of a license, interpretation of a statement or provision in the plan, or any other matter not related to a proposed change to the actual wording of the plan or an operational certificate.

The types of decisions in which a dispute might arise under the *Guide* therefore include:

Administrative Decision in the Issuance of a License

- a. Decisions to issue or refuse a private facility license under a bylaw;
- b. Decisions to impose conditions on a license relating to any of the matters listed in s. 25 of the EMA and incorporated into a bylaw including:
 - i. the types, quality or quantities of municipal solid waste or recyclable material that may be brought onto or removed from a site;
 - ii. the burning of any class or quantity of municipal solid waste or recyclable material;
 - iii. the operation, closure or post-closure of sites,
 - iv. the installation and maintenance of works;
 - v. the amount of security required;
 - vi. requirements related to having a license as stipulated under a bylaw;
 - vii. requirements related to complying with a code of practice; and
- c. Decisions to suspend or cancel a license for breach of a bylaw or license conditions.

Interpretation of a statement or provision in the Plan

It is hard to imagine any type of implementation of the ISWRMP that could not be said to include the interpretation of a statement or provision of the ISWRMP. Obvious actions that involve the interpretation of a statement or provision of the Plan in the implementation of the Plan include:

- a. The adoption of bylaws pursuant to the EMA, including tipping, licensing, recycling and waste bans;
- b. The construction of GVS&DD facilities and infrastructure;
- c. The issuance of an operational certificate by the Director; and
- d. The development of policies and work plans based on the ISWRMP.

Any other matter not related to a proposed change to the actual wording of the plan or an operational certificate

It is not clear if this section is meant to exclude operational certificates from the scope of decisions subject to a dispute resolution process, although such decisions appear to be included in the previous category of disputes to be resolved in this way. Other than that, this section seems to emphasize that there are almost no legislative, regulatory or operational decisions, other than changing the wording of the ISWRMP itself, that are intended to be excluded from the recommended dispute resolution process.

The types of decision making that may give rise to a dispute captured by the *Guide* therefore range from legislative and regulatory, to purely operational decisions regarding the use of resources.

For each of the above types of decisions that may be disputed, the types of bodies and persons who may wish to bring such disputes include:

- Members of the public
- Neighbours of a facility licensed by the GVS&DD or issued a permit or certificate by a Director
- Advocacy groups
- Industry groups
- Individual licensees and their competitors
- Member municipalities
- Neighbouring local governments

In many cases, these groups would not have standing to legally challenge a regulatory or legislative decision made by the GVS&DD or the Ministry.

While it may be the intention of the *Guide* to give all such persons standing to require the GVS&DD to resolve their grievances with any of the above decisions that may be made in the implementation of the ISWRMP, any final dispute resolution procedure will need to be tailored to the type of decision being made, and the standing of the parties wishing to challenge it. It must also consider what other persons, in addition to the one seeking to dispute the decision, should be included in such a dispute resolution. For example, disputes regarding the issuance of a license by members of the public with a direct impact on an existing licensee should certainly include the participation of that licensee. Disputes that have far ranging legislative or regulatory impacts should likely include members of the public, member municipalities, and industry and advocacy groups, in their resolution.

Dispute resolution procedures should also be proportionate to the type and extent of the dispute, and the remedies that may be legally available.

Finally, any dispute resolution process must ultimately comply with the law, and the fundamental principle that the elected body that is authorized to legislate or regulate cannot be fettered in the exercise of their statutory discretion. Furthermore, legislative and regulatory decision making authority granted to local governments generally cannot be further delegated without specific authorization in the statute.

For example, while a licensee may not wish to pay a fee set by bylaw, and may wish to dispute the reasonableness of the amount of the enacted fee in terms of how it contributes to the goals of the ISWRMP, no private arbitrator would have the authority to resolve that dispute by directing a change in the bylaw, waiving the enacted fee, or imposing a fee that was different from that stated in the bylaw. Similarly, where an advocacy or industry group disputed whether an adopted or proposed bylaw best implemented the ISWRMP, no private arbitrator could direct or order that the bylaw be amended or changed. Legislative and regulatory powers are uniquely granted by the *Constitution* and by statute, and no entity other than those granted the authority may exercise it.

As a result, one of the key legal considerations in the development of any dispute resolution process is that the GVS&DD must ultimately be accountable for the decisions that it makes. In the absence of another body being granted the authority to make these legislative and regulatory decisions by law, the GVS&DD cannot delegate the authority granted to it under s. 25 and 26 of the EMA with respect to the content of bylaws or setting the terms and conditions of licenses to another body, and certainly not to one that is entirely independent from its Board. The one exception is provided by s. 35 of the EMA, which expressly allows the GVS&DD to delegate decision making to its staff, provided that there is an appeal mechanism provided back to the GVS&DD to make the final decision.

This does not mean that dispute resolution must always be through the courts, and many matters are successfully mediated with the involvement of trained mediators engaging with authorized decision makers. Indeed, many disputes can be resolved in this way. The key is to use the appropriate dispute resolution tools for each type of case.

BYLAW 181 and HISTORY OF APPEALS

Bylaw 181 supports the implementation of the ISWRMP through the regulation and licencing of private facilities. Bylaw 181 was originally approved by the Minister of Environment in 1996 and amended that same year. The appeal process at s. 16 of Bylaw 181 has been in place since the Bylaw was originally approved.

Under Bylaw 181, the Manager of Solid Waste is delegated the authority to issue, amend, suspend, refuse, cancel and impose conditions on private facility licenses that are subject to licensing approval pursuant to the Bylaw. These and other decisions of the Solid Waste Manager or the Deputy Solid Waste Manager may be appealed to the Commissioner pursuant to s. 16 of the Bylaw and in accordance with s. 35 of the Act.

A person who considers himself aggrieved by a decision can appeal to the Metro Vancouver Commissioner. The Commissioner can confirm, reverse or vary the decision appealed or refer the decision back to the Solid Waste Manager.

In the event a party to an appeal is not satisfied with the Commissioner's decision, the party can seek further review of the decision through a judicial review in the BC Supreme Court. A judicial review of the Commissioner's decision would determine if the party received a fair hearing of their appeal and if the decision was reasonable. Pursuant to their inherent jurisdiction and the *Judicial Review Procedure Act*, judges of the BC Supreme Court have the authority to make orders with respect to any such application, including to remit the decision back to the Commissioner with directions, or to order the issuance or refusal of a license with or without terms.

Since the approval of Bylaw 181 in 1996, 4 licensing decisions made pursuant to the Bylaw by the Manager have been appealed by the applicant to the Commissioner. The following is a brief summary of these appeals of Bylaw 181 decisions.

In 1998, Owl Terminals Ltd. appealed the suspension of their licence to the Commissioner on the grounds that it was not provided adequate notice prior to the suspension, and then later appealed

the willingness by GVS&DD to stay the suspension while the initial appeal was heard. The licence was suspended for exceeding the authorized quantities permitted at the facility. On appeal to the Commissioner, Owl Terminals' licence was reinstated, although it was later cancelled for continued non-compliance.

In 2008, Enviro-Smart Composting appealed the Manager's decision not to issue a licence to the Commissioner. The Commissioner denied the appeal on the basis that the precondition of municipal approval was not in place as required by Bylaw 181. Enviro-Smart applied for, and later obtained, a licence after upgrades were made to the facility.

In 2013, Northwest Properties Group appealed the issuance of a licence restricting or limiting the acceptable materials allowed to be received at the facility on East Kent Ave South, Vancouver. Northwest applied for material recovery facility licence, later appealing the acceptable material limitations prohibiting the receipt of mixed waste. The conclusion of the Deputy Commissioner was that the licence should be amended to permit Northwest to receive up to 20% mixed municipal solid waste in accordance with the applicant's operating plan. An updated draft license was issued, but Northwest subsequently chose to operate under license provisions that did not include the receipt of mixed municipal solid waste.

NextUse appealed the terms and conditions of a material recovery facility licence issued January 21, 2016. Specifically, NextUse appealed the licence expiry date of 15 years, the formula relating to the quantity and quality of the recyclables recovered, the limit on the facility to only accept waste from generators with a recycling program, and two other issues. The Commissioner's decision on October 7, 2016 made some of the changes sought by NextUse, but not all. The 15 year term did not change, the recovery rate formula was removed and replaced with the recovery rates consistent with the expected recovery rates indicated in NextUse's application, and the requirement to receive only waste from generators with recycling programs was removed. A copy of that decision is included in Attachment 1 for your reference to this letter.

In addition, there have been two legal challenges to Bylaw 181 in the Courts. One involved an operator refusing to pay the disposal fees required pursuant to Bylaw 181, and the other was a challenge to two private facilities licensed by the GVS&DD and brought by an industry competitor. In both cases the Bylaw was upheld.

DISPUTE RESOLUTION MECHANISMS IN PLACE ACROSS BC

Dispute resolution procedures related to solid waste management plan implementation are in place in a number of regional districts across the province. The approaches vary in design, use and applicability.

Fraser Valley Regional District

The Fraser Valley Regional District (FVRD) has a dispute resolution procedure in its SWMP as follows: First, the dispute is referred to mediation. If the dispute cannot be resolved by a mediator, the SWMP states that the matter will be referred to arbitration and the dispute will be arbitrated in accordance

with the *BC Commercial Arbitration Act*, with costs for the arbitration to be apportioned at the discretion of the arbitrator.

The process in the SWMP does not state what types of disputes will be treated in this manner, nor does it limit who may invoke this process.

However, the FVRD does not have a private facilities licensing bylaw, so the stated process has no application to regulatory decisions made under such a bylaw. Presumably, disputes regarding the content of any bylaw passed to implement the SWMP, which cannot be fettered or delegated to an adjudicator to determine, would not be subject to the dispute resolution procedure.

Therefore, the stated process would appear to apply primarily to unspecified operational decisions made by the FVRD, and implementation decisions involving the Province, to the extent the Province was prepared to accept such a process. Overall, the potential for plan implementation disputes is much lower in the FVRD than Metro Vancouver because the FVRD do not have bylaws or a licensing scheme by which they implement the SWMP.

<http://www.fvrd.ca/assets/Services/Documents/Garbage/SWMP.pdf>

Capital Regional District

The Capital Regional District (CRD) has no general dispute resolution process stated in its SWMP. The existing 1995 Plan, Amendment #5, 1995 (see link below) stipulates a conflict resolution mechanism for their Hartland landfill. The landfill is owned and operated by the CRD so the conflicts aren't licensing-related but related to operational decisions. Decisions can be appealed to the General Manager of Environmental Services Department, and then the Environment Committee.

<https://www.crd.bc.ca/docs/default-source/recycling-waste-pdf/amendments-1-5.pdf?sfvrsn=0>

The Capital Regional District also has a Composting Facility Regulation Bylaw: Bylaw 2736
<https://www.crd.bc.ca/docs/default-source/crd-document-library/bylaws/solidwastehartlandlandfillsittransferstationscompostingfacilities/2736---capital-regional-district-composting-facilities-regulation-bylaw-no-1-2004B.pdf?sfvrsn=0>

Under Bylaw 2736, any appeals of the solid waste manager's delegated decisions are considered by the CRD General Manager of Environmental Services Department. Final decisions of the CRD are then subject to judicial review (see most recently *Foundation Organics v Capital Regional District*, 2014 BCSC 85).

<https://www.canlii.org/en/bc/bcsc/doc/2014/2014bcsc85/2014bcsc85.html?resultIndex=1>

Thompson Nicola Regional District (TNRD)

The TNRD Solid Waste Management Plan includes a dispute resolution procedure. Under the procedure, disputes can be considered by an independent arbitrator.

Under the procedure, decisions of the arbitrator may be reviewed by the Plan Monitoring or Plan Implementation Committees. These committees may make recommendations to the TNRD Board. Similar to the FVRD, the TNRD does not have a private facilities licensing bylaw.

Nanaimo Regional District

The Regional District of Nanaimo has no stated dispute resolution process in its SWMP. It does have a private facilities licensing bylaw, Bylaw 1386. Under Bylaw 1386, decisions can be appealed to the Board.

<http://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiZ0OavsNvPAhVLrlQKHYYwDkMQFggcMAA&url=http%3A%2F%2Fwww.rdn.bc.ca%2Fcms%2Fwpattachments%2FwpID224atID652.pdf&usg=AFQjCNEPi5z799yXpSgswdjGfemOqVWtQ&sig2=Jtolu4Lj8TqQmslemcVZw&bvm=bv.135974163,d.cGw>

OPTIONS FOR A NEW DISPUTE RESOLUTION and BYLAW 181 APPEAL PROCESS

The GVS&DD is considering a number of possible options for replacement of the Bylaw 181 appeal process. Options that are being explored include:

- a) Keep the current process of an appeal to the Commissioner
- b) Move to an appeal panel made up of GVS&DD Directors appointed by the Board
- c) Move to an appeal panel made up of experts appointed by the Board
- d) Move to a binding arbitration process for some types of disputes

At this point, the review of these options is at an early stage. Attachment 2 provides a summary of some of the preliminary issues identified with respect to each of the above options.

CONCLUSION

The current Bylaw 181 appeal process is similar to processes in place in other regional districts with private facility licensing bylaws. In each regional district appeals are made to the Board or a delegated staff member. It is also consistent with the requirements of the *Environmental Management Act*, which requires that where a decision is sub-delegated, there must be an appeal back to the final decision maker authorized to make those decisions (the GVS&DD). Bylaw 181 has been in place for

more than 20 years, and the Bylaw 181 process has helped ensure that Metro Vancouver is one of the most successful regions in North America with respect to waste reduction and recycling.

Any new dispute resolution process in addition to or instead of the Bylaw 181 process must be responsive to the needs of those affected, and contribute to the region's ongoing success in achieving its waste diversion goals.

Metro Vancouver is planning to initiate consultation on a review of Bylaw 181 in 2017. As part of the Bylaw 181 review, the GVS&DD is committed to reviewing both its appeal process in Bylaw 181, and how that process might work within a broader dispute resolution process for the various types of disputes that may arise out of the implementation of the ISWRMP, whether they are intra-governmental, with the public, with the industry broadly, or with individual licensees.

Any such process will have to consider both the legal constraints on the GVS&DD regarding the delegation or fettering of legislative and regulatory authority, as well as the appropriateness of various dispute resolution processes to the substantially different types of dispute that may arise as a result of implementation of the ISWRMP. Ultimately, even the implementation of a dispute resolution process must also be measured in terms of its effectiveness at serving the goals of the ISWRMP.

Any new process will require consultation with stakeholders, approval by the GVS&DD Board and approval by the Minister of Environment. We look forward to working closely with you in that regard.

Yours truly,



Paul Henderson, P.Eng.
General Manager, Solid Waste Services

PH/ah

cc: Avtar Sundher, Ministry of Environment

Attachments:

1. NextUse Decision (Doc #19616305) <http://orbit.gvrd.bc.ca/orbit/lisapi.dll/properties/19616305>
2. Summary of Preliminary Considerations Regarding Appeal Process Options in Bylaw 181 (Doc # 19829768) <http://orbit.gvrd.bc.ca/orbit/lisapi.dll/properties/19829768>