



November 17, 2017

Honourable Minister Heyman
PO Box 9047 Stn Prov Govt
Victoria, BC V8W 9E2
Canada

ENV.minister@gov.bc.ca

Dear Honourable Minister Heyman,

Re: Metro Vancouver proposed *Greater Vancouver Sewerage and Drainage District Commercial Waste Hauler Licensing Bylaw No. 307, 2017*

("proposed Hauler Licensing Bylaw")

Metro Vancouver proposed amendments to *Greater Vancouver Sewerage and Drainage District Tipping Fee and Solid Waste Disposal Bylaw No. 306, 2017*

("proposed Tipping Fee Bylaw")

The Waste Management Association of BC ("**WMABC**") is comprised of over 70 independent businesses with over 3,000 employees that provide a majority of the waste and recycling services in the Province of British Columbia. For over 30 years, it has acted as a conduit and representative voice for its members in connection with, among other things, local and provincial government regulation.

As you may already be aware, the Zero Waste Committee ("**ZWC**") of the Greater Vancouver Sewerage and Drainage District ("**GVS&DD**") has very recently prepared a new Hauler Licensing Bylaw and an amending bylaw to the existing Tipping Fee Bylaw.

In particular, on November 9, 2017, the GVS&DD ZWC gave 1st, 2nd and 3rd reading to the proposed Hauler Licensing Bylaw. As required by section 34 of the *Environmental Management Act* ("**EMA**"), GVS&DD has or will be forwarding the proposed Hauler Licensing Bylaw to you ("**Minister**") for written approval.

Also on November 9, 2017, the ZWC endorsed changes to the Tipping Fee Bylaw to implement a "Generator Levy" to be made effective January 1, 2018, and directed GVS&DD staff to prepare an amending bylaw for consideration and approval by the GVS&DD Board at its November 24, 2017 meeting. According to GVS&DD's General Manager, Solid Waste Services, Paul Henderson, GVS&DD takes the position that the amending bylaw implementing the Generator Levy does not require the Minister's written approval. Therefore, unlike the proposed Hauler Licensing Bylaw, GVS&DD apparently does not intend to submit the proposed Tipping Fee Bylaw to the Minister.

Waste Management Association of BC
PO Box 3322, Station Main
Mission, BC V2V 4J5
info@wmabc.ca 604-283-5603

On behalf of our members, particularly those providing waste & recycling hauling services within the Metro Vancouver region, we request that the Minister reject the proposed Hauler Licensing Bylaw and instead direct the GVS&DD to reengage our industry and the ICI sector including multi-family dwellings (owners and stratas) and small business in meaningful dialogue to find ways to increase diversion versus flow control that only serves to give Metro the unfettered ability to increase the costs for objects other than diversion.

Inadequate Consultation

On July 13, 2017, the ZWC presented a proposed new Hauler Licensing Bylaw, a Waste Generator Levy and amendments to the existing Tipping Fee Bylaw. In respect of both the proposed Hauler Licensing Bylaw and the proposed Tipping Fee Bylaw, there has been wholly inadequate consultation, particularly given the extremely significant implications of both to the waste and recycling hauling industry, local commercial and industrial businesses and residents of multi-family buildings.

In total, ZWC provided only two webcasts and four public consultation sessions in September, which they announced in mid-August 2017 during the summer holiday period and with little advance notice, before summarily reporting on the results of that consultation to the GVS&DD Board. A number of industry participants complained of the inadequacy of the consultation only to be rebuffed with a formula response that the Association's concerns had been shared among the ZWC and would form part of the package of materials provided to the GVS&DD Board.

In addition to the inadequacy of the consultation undertaken at the conceptual level, there was no consultation with the public and industry participants regarding the language of the proposed bylaws, which was only made publicly available on November 3, 2017, when GVS&DD published the "Agenda Package" for the ZWC's November 9, 2017 meeting on its website. All that GVS&DD then offered, on three (3) business-days' notice, was the possibility of speaking to the ZWC on November 9th subject to completing and the ZWC having accepted a delegation application. As you no doubt can appreciate, a ZWC meeting is not a forum for the hearing, consideration and disposition of meaningful and substantive submissions particularly when, as in this instance, a proposed bylaw is being presented as a *fait accompli* for implementation within a short timeframe (as identified below, GVS&DD intends to implement the Generator Levy for January 1, 2018 and it needs the proposed Hauler Licensing Bylaw in place in order to enforce the Generator Levy).

It is important to note that the GVS&DD stated that the purpose of these initiatives was to increase waste diversion in the industrial, commercial and institutional sectors (ICI). Throughout the limited consultation period and repeated questioning by the industry and waste generators, the GVS&DD has failed to demonstrate how these actions will in fact increase diversion in the ICI sector.

No Authority to Unilaterally Impose Generator Levy

GVS&DD apparently takes the position that section 7B of the *Greater Vancouver Sewerage and Drainage District Act* ("**GVS&DD Act**") authorizes it to unilaterally make and impose a bylaw that:

- (a) sets a levy payable by waste generators or other persons who use the services of a waste hauler;
- (b) base the levy on the quantity and volume of waste generated by such persons;

- (c) require waste haulers to apply the levy to the fees charged for their hauling services; and
- (d) require waste haulers to act as GVS&DD's agent in recording, collecting and remitting the levy.

It is GVS&DD's apparent position that it can do this without regard to the *EMA* and without first obtaining the Minister's written approval.

As a matter of legislative policy and interpretation, and given that the proposed Hauler Licensing Bylaw purports to enforce the proposed Generator Levy, the Association believes that the GVS&DD's position is misconstrued and that the Minister should not condone that position by considering and/or approving the proposed Hauler Licensing Bylaw on a stand-alone basis.

Regarding legislative policy and interpretation, we draw your attention to section 34(1) of the *EMA*, which states that a bylaw made by a regional district under the authority of the section 26 of the *EMA* "may not be adopted without the prior written approval of the minister". Section 26 of the *EMA* empowers a regional district to enact a bylaw in relation to the collection and disposal of municipal solid waste generated within its area or within a municipality that has contracted with the regional district for the disposal of municipal solid waste from the municipality. The wording of section 26 is almost identical to the wording of section 7B of the *GVS&DD Act*, although one could say that section 26 is more comprehensive than section 7B because it refers to making a bylaw in relation to the "collection and disposal" of municipal solid waste rather than just the "disposal" of that waste.

To our understanding, sections 26 and 34 of the *EMA* were enacted after the introduction of section 7B into the *GVS&DD Act*. In order to read the two statutes in a cohesive way, the later statute (the *EMA*), which repeats and builds on the bylaw-making provisions of the earlier statute, would logically be the binding authority. This also makes sense based on the near-identical language for the making of bylaws in relation to levies payable by waste generators that must be collected and remitted by haulers and because section 34(1) of the *EMA* would be rendered ineffectual based on the GVS&DD's theory that it does not require Ministerial approval to authorize the proposed Tipping Fee Bylaw and impose the proposed Generator Levy.

We also draw to your attention to section 315(2) of the *Local Government Act* that, under the heading "Management of solid waste and recyclable material", states:

- (1) A board may, by bylaw, establish the service of the regulation, storage and management of municipal solid waste and recyclable material, including the regulation of facilities and commercial vehicles used in relation to these matters.
- (2) If a board adopts a bylaw under subsection (1), the board has and must exercise its authority in accordance with the *Environmental Management Act* and regulations under that Act.
- (3) For the purposes of this section, "municipal solid waste" and "recyclable material" have the same meaning as in the *Environmental Management Act*.

(emphasis added)

The fact that regional districts formed pursuant to the *Local Government Act* must have regard to the *EMA* gives credence to our view that GVS&DD must do likewise.

We further draw to your attention to section 34(2) of the *EMA*, which states:

... if the minister considers it necessary in the public interest, the minister may require a regional district or the Greater Vancouver Sewerage and Drainage District to amend, suspend or cancel a bylaw or part of a bylaw, or any authorization given under a bylaw made under section ... 26.

Therefore, to the extent that GVS&DD's real and actual authority to introduce the proposed Tipping Fee Bylaw is derived from and dependent on section 26 of the *EMA*, the Minister has the authority - and we are asking him to exercise that authority - to suspend or cancel the proposed Tipping Fee Bylaw until the Minister is satisfied there has been sufficient public and industry consultation and he has had a fulsome opportunity to consider the results of that consultation and to directly hear delegations and investigate the real impact of the proposed Tipping Fee Bylaw.

Generator Levy and Hauler Licensing Bylaw

We likewise ask the Minister to withhold his approval of the proposed Hauler Licensing Bylaw.

In addition to the lack of adequate public and industry consultation regarding the proposed Hauler Licensing Bylaw, it purports to enforce the proposed Generator Levy. The levy must therefore be lawfully imposed, which for the reasons set out above we submit cannot occur without the Minister's written approval. In other words, the two measures are inter-dependent: the proposed Generator Levy depends on the operative terms of the proposed Hauler Licensing Bylaw, and the Hauler Licensing Bylaw requires a lawfully imposed levy. While the validity of the proposed Generator Levy remains in issue, the proposed Hauler Licensing Bylaw should be held in abeyance.

Indeed, even Mr. Henderson, in his November 3, 2017 report to the ZWC regarding the proposed Hauler Licensing Bylaw (copy attached), recognized that the two measures must go hand-in-hand. He writes:

This report is being brought forward in parallel with the report dated November 3, 2017, titled 'Generator Levy Implementation: Tipping Fee and Solid Waste Disposal Regulation Proposed Bylaw Changes', containing proposed changes to the 2018 Tipping Fee Bylaw to implement the Generator Levy. One of the benefits of Commercial Waste Hauler Licensing is to facilitate the collection of the Generator Levy.

(emphasis added)

Even should the Minister determine that GVS&DD has the unilateral authority to implement the proposed Tipping Fee Bylaw and thus impose the proposed Generator Levy, we submit that there are other good reasons for the Minister to refuse to approve the proposed Hauler Licensing Bylaw.

Timing

The proposed Hauler Licensing Bylaw has been inexplicably rushed through the legislative process. Mr. Henderson's November 3, 2017 report to the Zero Waste Committee regarding the proposed Hauler Licensing Bylaw, recommends that the GVS&DD (i) approve the proposed Hauler Licensing Bylaw and (ii) concurrently give 1st, 2nd and 3rd reading to the proposed bylaw and immediately forward it to the Minister for approval. Mr. Henderson's report further recommends that the GVS&DD Board "write to Regional Districts around the Province requesting that they write the Minister ... in support of Metro Vancouver's Commercial Waste Hauler Licensing program."

The GVS&DD's rush to implement the proposed Hauler Licensing Bylaw is inexplicable - except as a measure that is necessary for GVS&DD to implement its scheme to impose the proposed Generator Levy as of January 1, 2018. We submit that the Minister should not condone a lack of due process by approving the proposed bylaw without first being fully satisfied in respect of the issues we have identified.

Provisions Relating to Collection of the Proposed Generator Levy

Sections 8.1 through 8.8 of the proposed Hauler Licensing Bylaw mandate what would be required of waste haulers in regards to the enforcement of the proposed Generator Levy were the Minister to approve that proposed bylaw.

As GVS&DD has been advised and well knows, what those sections require is impossible for the waste hauling industry to implement. They require individual haulers to somehow identify, by weight or volume, the amount of municipal solid waste generated by individual waste generators, apply the proposed Generator Levy on an individual basis, then collect the levy from them and remit the collected levy to GVS&DD. There is simply no practicable means of doing so.

Having failed to identify how it can directly impose and administer the collection of a Generator Levy on an individual basis, GVS&DD seeks to impose that impossible task on the private sector hauling industry. In order to do that, GVS&DD relies on its legislated authority to require waste haulers to act as its agents when collecting and remitting fees that GVS&DD imposes on persons using waste hauling services (whether that authority is derived from section 7B of the *GVS&DD Act* or the near-identical section 26 of the *EMA*). The Association submits that that authority does not go so far as to say that waste haulers must somehow independently develop and implement a waste collection system that might satisfy the requirements of a scheme that GVS&DD has not figured out how implement and knows is impossible to implement in any practicable way. Being an agent to "collect and remit" is not equivalent to being a servant of GVS&DD that can be tasked with implementing its policy objectives.

It is no answer for GVS&DD to say that maintaining a record of collected waste is not impractical since the proposed Hauler Licensing Bylaw provides that the proposed Generator Levy is only payable per "load", which is defined as "the quantity of Municipal Solid Waste that is or was contained within a single vehicle attending at a Disposal Site". This is because each "load" is made up of multiple collections from many individual waste generators, none of whom are required to or do measure the weight or volume of their waste, and which individualized measurements waste haulers cannot make for obvious reasons. There is thus no effective means for waste haulers to identify the levy payable by individual generators and to collect that levy from each of them (bearing in mind that the definition of "Generator Levy" per the proposed Tipping Fee Bylaw is a levy payable by each generator of municipal solid waste).

It is also no answer for GVS&dD to say that, if approved, the proposed Hauler Licensing Bylaw would not oblige waste haulers to impose and collect the Generator Levy from individual waste generators since GVS&DD is proposing to treat the Generator Levy as a component of the existing tipping fee for waste disposed of at GVS&DD-owned transfer stations and disposal facilities (as opposed to private sector and out-of-region facilities, in respect of which the levy must be separately accounted for and paid to GVS&DD); see Mr. Henderson's November 3, 2017 report to the ZWC entitled "Generator Levy Implementation: Tipping Fee and Solid Waste Disposal Regulation Proposed Bylaw Changes" (copy attached). Aside from implying that the only reason for imposing the proposed Generator Levy and Hauler Licensing Bylaw is to eliminate healthy private-sector competition for waste handling and disposal - since treating the Generator Levy as a component of the existing tipping fee means that GVS&DD intends to operate its facilities at an operational loss for the time being - nothing stands in the way of GVS&DD subsequently increasing the proposed Generator Levy and/or requiring waste haulers to collect the Generator Levy from individual waste generators. In fact, we expect the latter will in due course occur once GVS&DD has secured its monopoly over waste management and reinvigorates its long-held goal of constructing a second incinerator.

License Term

The WMABC also opposes section 10 of the proposed Hauler Licensing Bylaw, which limits the term of hauler licenses to no more than one (1) year, expiring on March 31 of each calendar year. Given the capital and related costs associated with the purchase, maintenance and operation of one or more waste hauling vehicles, the maximum proposed term of one year makes it impossible for waste hauling companies to plan on a multi-year basis. As a result, the proposed license term is a barrier to entry into the industry and represents an unacceptable risk/burden for existing companies.

Under the current appeal mechanism, there is an inherent unfairness and conflict of Metro regulating a market that it operates within. Putting roadblocks in front of private investment and innovative technologies is at complete odds with the objectives of the GVS&DD's own Integrated Solid Waste and Resource Management Plan that specifically states as an objective – “to increase private sector investment and remove unnecessary impediments.”

We expect that GVS&DD would point to the license renewal provisions as indicating that annual license renewals would be issued in the normal course so long as haulers were compliant with the proposed bylaw. However, the subjectivity of some of those provisions (such as whether a hauler is in "good standing" according to the Manager) does not alleviate industry concerns, particularly when considered in tandem with the broad powers proposed for the Manager to suspend or revoke a license (section 18), which are not subject to providing a hauler with notice of an alleged default, a curative period or a right to a timely appeal.

Appeal Provisions

Not only does the proposed Hauler Licensing Bylaw fail to provide a hauler with a right to a timely appeal before the Manager implements a decision to suspend or revoke a license (with all of the dramatic impact that would have on the hauler, its employees, customers, etc.), the appeal provisions in the proposed bylaw are entirely inadequate. What section 20 proposes is that all appeals related to the issuance, renewal, revocation or suspension of a license be made to the GVS&DD Commissioner. There is an inherent conflict in that proposal

since the Commissioner oversees both the policy and operational divisions of GVS&DD. The Commissioner is therefore not independent and cannot be perceived as being a neutral arbiter of any license-related dispute.

In order to ensure the fact and appearance of independence, appeals from decisions of the GVS&DD Managers, including in relation to the issuance, renewal, revocation and suspension of licenses for private sector participants in the waste management industry, must be made to an independent person or body. We understand that, to date, GVS&DD has considered but nonetheless failed or refused to implement an alternative dispute resolution procedure for the resolution of its administrative decisions. Its submission of the proposed Hauler Licensing Bylaw for approval affords the Minister the perfect opportunity to weigh in on this issue, holding the proposed bylaw in abeyance until satisfied that appropriate appeal measures are in place.

Summary

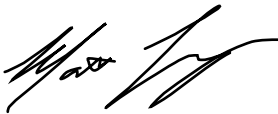
Minister, the Waste Management Association of BC believes the cumulative effect of the generator levy and hauler licensing bylaw represent:

- potential tax on businesses and residents in multi-family dwellings which is opposite of your governments goal to not cause undue economic burden on taxpayers;
- will severely impair private sector waste diversion initiatives and investment that could help Metro reach its goal without imposing a financial burden on businesses and residents of Metro Vancouver, and;
- runs contrary to the objectives and goals of the Integrated Solid Waste and Resource Management Plan not to impede private sector investment in the delivery of waste management services.

We request that you reject the proposed Hauler Licensing Bylaw and instead direct the GVS&DD to reengage our industry and the ICI sector including multi-family dwellings (owners and stratas) and small business in meaningful dialogue to find ways to increase diversion versus flow control that only serves to give Metro the unfettered ability to increase the costs for objects other than diversion.

We will make ourselves available to you and your Ministry staff for any questions you may have.

Sincerely,



Matt Torgerson
President

cc: Mark Zacharias
cc: Carol Mason
cc: GVS&DD Board