

**CAPITAL REGIONAL DISTRICT
COMPOSTING FACILITY REGULATION
BYLAW NO. 2736**

ENFORCEMENT POLICY AND PROCEDURE

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Solid Waste Division

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**CAPITAL REGIONAL DISTRICT COMPOSTING FACILITIES REGULATION
BYLAW NO. 2736**

ENFORCEMENT POLICY AND PROCEDURE

1. INTRODUCTION

The Capital Regional District (CRD) has adopted a regulatory bylaw, providing the opportunity for the establishment of private composting facilities in the Capital Region. The components of the regulatory framework include:

- amending the CRD's Solid Waste Management Plan (SWMP); and
- preparing CRD Composting Facilities Regulation Bylaw 2736 to regulate the operation of composting facilities in the Capital Region.

The amendment to the SWMP is required to enable the CRD to use the enabling legislation of Section 25 (3) of the *Environmental Management Act* to license composting facilities in the Capital Region.

The purpose for regulating compost facilities is to meet the following CRD objectives:

- that composting operations do not contaminate ground or surface water, generate unacceptable levels of odour, vectors, litter or dust
- that the public be protected from composting operations which violate the requirements of their licence

The purpose of any compliance policy is to ensure that persons who are subject to the CRD regulations comply with the requirements set out in licences and bylaws of the CRD. Every effort should be made to encourage timely, voluntary compliance with regulatory requirements. It is expected that there will be good communication between CRD staff and persons who operate composting facilities.

As a general principle, more serious violations will result in more serious enforcement action being taken. In extreme circumstances, it may be necessary for the CRD to act quickly and decisively for the purpose of protecting public health and safety and the environment.

2. GUIDING PRINCIPLES

The responses specified in this policy are scaled to the severity and frequency of non-compliance events. Solid Waste staff will make reasonable efforts to resolve issues of non-compliance through cooperative measures, such as increased communication, education and monitoring, and apply enforcement action in a manner that is reasonable, fair, consistent and impartial. This policy identifies the enforcement issues and the tools available to address those issues.

Solid Waste staff will be guided by the following:

- use of a consistent approach in regulating composting facility operators
- recognition of different degrees of severity and staff identify priority enforcement issues
- identification of staff members responsible for escalating action
- addressing of enforcement issues in a timely manner
- information is provided by the CRD to composting facility operators regarding their status

This policy is not to be interpreted as creating any duty on the part of any officer or employee of the CRD to any third party, nor to prevent the CRD and its officers and employees from taking whatever enforcement action the CRD considers appropriate in the particular circumstances.

3. ENFORCEMENT ISSUES

An enforcement issue will arise when an operator has been found to be in violation of the bylaw. Incidents of non-compliance are likely to arise in the following areas:

- odour management
- leachate management
- vector, litter and dust management
- post-closure restoration
- failure to obtain a licence
- failure to renew licence
- failure to renew or lapse in letter of credit and/or bond
- failure to comply with the licence requirements
- failure to comply with municipal, Provincial or Federal enactments or regulations

4. CLASSIFICATION OF OFFENCES

Every non-compliance situation will be assessed in its own context to determine the appropriate enforcement response. All available tools may be used as appropriate to achieve compliance. The more serious the effect or potential effect, the greater the priority of the compliance response. For example, court action leading to a maximum penalty is more likely to be sought in the event of a significant adverse impact on human health and safety and the environment.

Adverse Effect or Potential for Adverse Effect

The following criteria will be considered:

The degree to which the contravention:

- has *actually* impacted human health, safety and well-being
- has *actually* impacted the environment
- *poses a risk* to human health, safety and well-being
- *poses a risk* to the environment

Sensitivity

The following criteria will be considered:

- the magnitude of the contravention
- history of non-compliance or complaints
- whether the contravention was intentional, accidental or negligent
- the efforts that the operator has made to comply
- whether the operator has been cooperative with the CRD and the host municipality in seeking compliance
- the extent to which the operator has shown due diligence

The terms "minor violations" and "major violations" are administrative classifications that will be used by CRD officers to describe the nature of unsatisfactory performance. These terms apply to all composting facility operators.

In some cases, facts may come to light that alter the way in which CRD officers view a particular contravention.

4.1 Minor Violations

Examples of minor violations:

- failure to maintain a clean and sanitary site
- failure to manage litter and garbage

Repeated events or multiple instances of a minor violation may be classified and enforced as a major violation. Furthermore, as all violations of the bylaw will be addressed on an individual basis, a minor violation may be enforced to the highest level due to the severity of the violation.

4.2 Major Violations

Examples of major violations include failure to:

- obtain a licence
- manage odour
- manage vectors
- properly manage leachate
- renew licence
- pay annual fee
- apply for licence amendment prior to making site changes
- correct measures and failure to follow written plan of action
- attend to closure or post-closure restoration issues
- renew or lapse in letter of credit and/or bond
- comply with municipal, Provincial or Federal enactments and regulations
- comply with the storage limit specified in the licence (capacity/volume and/or time)
- comply with the allowable material specified in the licence

Major violations will usually be expected to have a significant impact on the composting facility site, the receiving environment, or public health and safety. Escalated enforcement action is required for all major violations. The appropriate remedy will generally depend on its severity and the significance of the impact.

5. ENFORCEMENT TOOLS

5.1 Inspections

A regular inspection protocol for licenced facilities will be implemented to encourage operators to comply with the terms and conditions of the bylaw and to ensure regular communication between the CRD and the composting facility operator. It is the CRD's intention to work with the operator to resolve operational issues. Upon initial approval of a licence, site inspections will take place on a monthly basis for the first four months. If, at the end of the first four months, the operator is found to be consistently compliant with the bylaw, site inspections will then take place on a quarterly basis. In the event of non-compliance, the CRD may resume regular monthly inspections until the site is no longer in contravention of the bylaw or has been without violation for four months. Records will be kept of all site inspections and will be used in assessing enforcement action if necessary.

At a regular inspection of licenced facilities, an inspector will check that operators of:

Class 1 and Class 2 composting facilities:

- receive and blend, grind, mix, compost and store all compostable material on an impermeable surface or in-vessel
- do not receive any materials other than those set out in the licence
- do not discharge leachate into the environment
- do not create nuisance odours
- do not exceed storage limits
- maintain a clean and tidy site

Class 3 composting facilities:

- receive, blend, grind, mix and compost all restricted organic matter in-vessel
- cure restricted organic matter compost in-vessel or on an impermeable surface
- do not receive any materials other than those set out in the licence
- do not discharge leachate into the environment
- do not create nuisance odours
- do not exceed storage limits
- maintain a clean and tidy site

Class 1, 2 and 3 composting facilities:

- maintain the facility in a clean, sanitary, quiet and orderly manner at all times and in compliance with all applicable local, Provincial and Federal regulations
- do not receive any materials other than those set out in the licence
- do not permit the escape of any nuisance odour which is detectable at the site boundary on which the composting facility is situated
- do not discharge or permit the discharge of leachate to the environment
- do not deposit or permit the deposit of litter, garbage or other materials at the site or adjacent to the site
- do not exceed storage limits

It is acknowledged that no system of inspections will always be able to catch all violations, and the CRD is not intending by its system of inspections to make any representations to that effect to any other person.

Inspection of non-licenced operations will be based on complaint by residents or host municipality/electoral area staff.

5.2 Investigation

An investigation is intended to determine whether an alleged or apparent situation or instance of non-compliance is, in fact, a contravention of the bylaw, based on the evidence gathered during the course of the investigation. The strength of the evidence indicates what further actions may be appropriate, such as issuing a verbal warning, a written warning or a violation ticket. Complaints from the public will be routed as outlined in Appendix B.

5.3 Verbal Warning

Verbal warning involves providing verbal direction to the operator to rectify contraventions of the bylaw.

5.4 Written Warning

Written warning involves sending a notice by registered mail to an operator indicating that the operator has contravened the regulation. The notice advises the operator to comply with the regulation or risk legal action. It also provides the operator and the CRD with official documentation of the offence. Written notice requires the same standard of proof as legal action by way of injunction.

5.5 Violation Tickets

A Municipal Ticket Information (MTI) violation ticket imposes an immediate monetary penalty for contravening the regulation. It is normally reserved for less serious incidents of non-compliance. Ticketable offence provisions are specified in the Violation Ticket Administration and Fine Regulation of the *Offence Act*. This regulation designates specific offences, maximum fines up to \$1,000 and the enforcement officials who can issue tickets. A violation ticket is a legal notice that invokes the power of the court.

Operators of Class 1 composting facilities will be required to be licenced if the operator of the facility is convicted of an offence under the bylaw.

5.6 Prosecution

Long form prosecution through the courts is to be considered when the available evidence indicates a substantial likelihood of conviction and when other compliance options are inappropriate or ineffective. Fines may be greater than \$1,000 allowed for an MTI.

5.7 Injunctions

The CRD can seek to enforce Bylaw No. 2736 by way of application to the court for injunctive relief pursuant to its authority under the *Local Government Act* by applying to the court to restrain a breach of its bylaws. The Province would have to initiate court action to enforce a breach of the Organic Matter Recycling Regulation (OMRR) by injunction.

Injunctions are court orders issued by the Supreme Court directing a person to do, or not do, a specific act. Injunctions should be used where there is an immediate serious problem or continued ignoring of the bylaw by the operator. Use of injunctions may be appropriate for major violations.

This power provides greater incentive for compliance than the power to levy a series of small fines, which may be written off as the price of doing business. However, the *Environmental Management Act* does provide the option of fines.

There are three different ways in which a matter may be brought before the civil courts:

5.7.1 Extreme Cases - In the most extreme cases, it is possible to make an application to the court for an order "ex parte" without notice to the other side for an

immediate interim order that someone cease a certain activity. This can only be done in urgent circumstances where harm to the public or the environment can be demonstrated. In such circumstances, an order may be obtained on the same day or the following day. The order will almost invariably contain a provision allowing the defendant to apply to the court on two days' notice to have the order set aside. This allows for the court to hear argument from the other side.

In most circumstances, however, an application to the court for injunctive relief requires at least two days clear notice to the defendant where a legal action has already been commenced. Two "clear" days usually means, in practical terms, four or five calendar days.

Where an action has not been commenced, the required notice periods are somewhat longer, although there is provision in the Supreme Court rules for making an application to shorten the length of time required for notice. Again, this requires circumstances where there is urgency and a real threat to the public.

The overriding principle which guides the courts is that both parties must be heard before a judicial decision is made.

- 5.7.2 No Pressing Harm - In situations where the violation does not create any pressing harm to the public or the environment, and where there are legal issues in question and some doubt as to the position of the CRD as plaintiff or the credibility of witnesses is an issue, the matter may have to be set down for a trial. The trial process is extremely lengthy and expensive.
- 5.7.3 In between, there are circumstances where the preparation and notice period for an application for an interlocutory judgement, pending trial, takes several weeks or a month or two. These are situations where the CRD's position is usually quite clear cut, where the evidence can be easily gathered and placed into affidavit form and where the defendant is also interested in a speedy and less expensive determination of the position of the parties.

Before proceeding to legal action in an unresolved dispute with respect to a violation or alleged violation of this bylaw, the solid waste manager or designate may ask the parties to agree to a third party dispute resolution, which can be convened quickly and at minimal expense compared to recourse at the courts.

6. ESCALATING ENFORCEMENT ACTION

This policy defines a stepped approach to escalating enforcement actions. A flow chart of this path is provided in Charts 1 and 2. It is expected that enforcement action will escalate at each step along this path.

It should be noted that this pathway will be followed for all normal unsatisfactory performance issues. There are some instances, such as more serious cases of repeated or deliberate non-compliance, negligence, infrastructure damage or environmental damage, where legal action, cost recovery or licence suspension or cancellation may be initiated, regardless of the step that the composting facility operator is at on this path.

Nothing in the above is to be considered as preventing the CRD from taking whatever enforcement measures it considers appropriate in any particular case.

The criterion for repeat occurrences within one year refers to one calendar year from the date of the first occurrence. At each step of escalating enforcement action, an investigation of the alleged violation will take place prior to the enforcement action.

6.1 Step One

- first minor violation

Step One is intended to alert CRD officers and the composting facility operator to a single minor violation. At this stage, the officer will have a discussion with the composting facility operator and attempt to determine if there is an obvious explanation for the occurrence, which can be readily addressed. A verbal warning is the primary enforcement tool that the officer may use at this step.

6.2 Step Two

One or more of the following:

- second minor violation same type within one year
- two minor violations different type within one year
- first major violation

For Licenced Facilities (Chart 1)

In addition to notifying the composting facility operator of this occurrence, the officer will send the composting facility operator a registered letter notifying him/her of the occurrence.

For Non-licenced Facilities (Chart 2)

An MTI will be issued and, if the facility operator is convicted of the offence, the facility operator must apply and obtain a licence. All subsequent steps of enforcement will apply.

If the facility operator is not convicted of an offence under this bylaw for five (5) consecutive years after obtaining the licence, then that facility operator will not be required to renew the recycler licence and the facility will revert to a non-licenced facility.

6.3 Step Three

One or more of the following:

- third minor violation same type within one year
- three minor violations different type within one year
- second major violation within one year

In addition to the increased communication outlined under Step Two, the officer may use suspension of a licence or prosecution as an enforcement tool at this step. Consideration may be given to drawing upon the Letter of Credit or bond where appropriate.

6.4 Step Four

Any or one of the following:

- fourth minor violation same type within one year
- four minor violations different type within one year
- third major violation within one year

A significant escalation in enforcement occurs at this step. The occurrence of a Step Four incident must be discussed initially with the solid waste manager. In all cases, the composting facility operator will be notified by registered letter of the seriousness of this occurrence. Except in cases where a telephone discussion and letter can resolve the issue to the satisfaction of the CRD, a meeting will be arranged to discuss possible remedial measures. The officer will confirm the commitments and requirements of the composting facility operator in a follow-up letter.

In addition to the enforcement procedures outlined under Step Three, the officer may cancel the licence.

6.5 Step Five

Any or one of the following:

- fifth minor violation same type within one year
- five minor violations different type within one year
- fourth major violation within one year

At this point, CRD staff will recommend legal action to use one of the options in Sections 5.6 or 5.7 of this policy.

7. APPEAL PROCESS

As per Section 10 of the bylaw, a person affected by a decision of the solid waste manager under this bylaw, may appeal the decision to the general manager by advising the general manager in writing of the order or requirement being appealed from and setting out the reason for the appeal and attaching any relevant documents.

The written notice of appeal must be delivered to the general manager within thirty (30) days of the decision being appealed.

The general manager may confirm, reverse or vary the decision under appeal and make any decision that the general manager considers appropriate.

An appeal does not operate as a stay or suspend the operation of the decision being reviewed unless the general manager orders otherwise.

8. DEFINITIONS

The following is an excerpt of definitions which form part of the Composting Facility Regulation Bylaw No. 2736.

"bylaw enforcement officer" means the chief bylaw enforcement officer or a bylaw enforcement officer or an assistant bylaw enforcement officer of the CRD.

"Class 1 composting facility" means a facility composting general organic matter on an impermeable surface or in-vessel.

"Class 2 composting facility" means a facility composting biosolids with general organic matter on an impermeable surface or in-vessel.

"Class 3 composting facility" means a facility composting restricted organic matter, general organic matter or biosolids with general organic matter in-vessel.

"Class 1 recycler licence" means a licence to operate a Class 1 composting facility.

"Class 2 recycler licence" means a licence to operate a Class 2 composting facility.

"Class 3 recycler licence" means a licence to operate a Class 3 composting facility.

"CRD" means the Capital Regional District.

"general manager" means the general manager, or his or her deputy, of the CRD Environmental Services department.

"solid waste manager" means the manager of solid waste, or his or her deputy, appointed by the general manager.

"solid waste officer" means an officer appointed by the general manager.

CHART 1

FLOW CHART OF ESCALATING ENFORCEMENT ACTION LICENCED FACILITIES

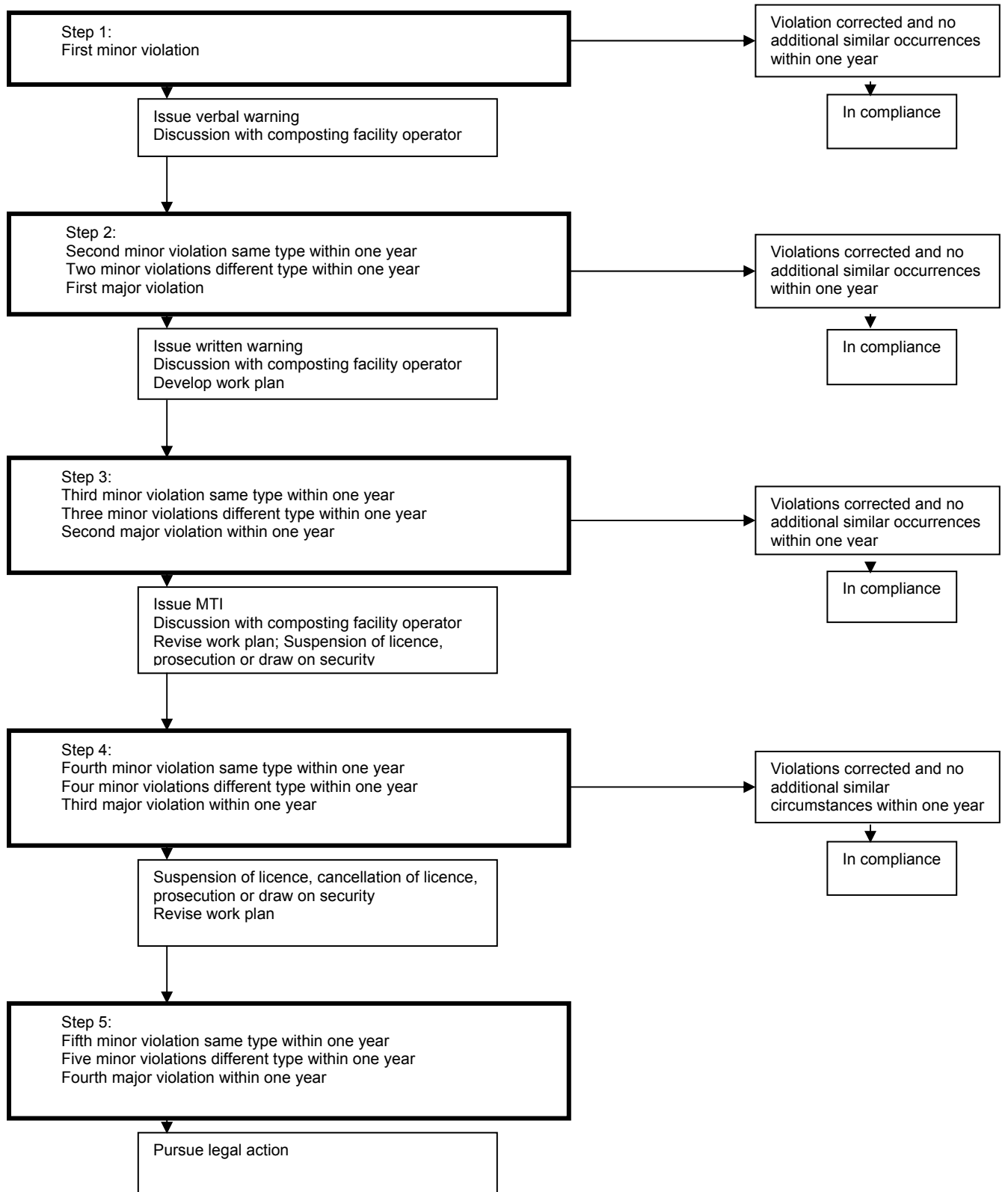
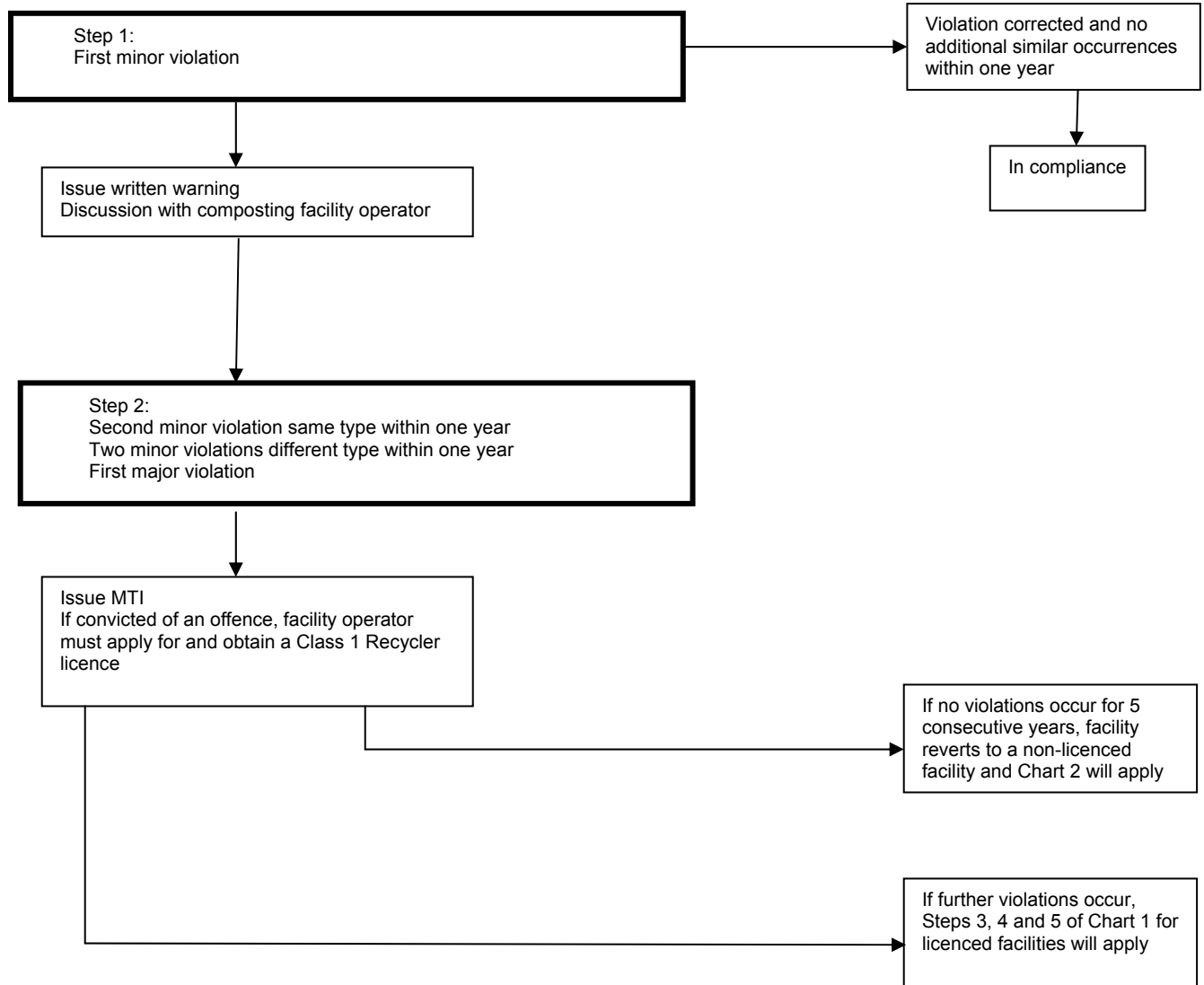


CHART 2

FLOW CHART OF ESCALATING ENFORCEMENT ACTION NON-LICENCED FACILITIES



APPENDIX A

CAPITAL REGIONAL DISTRICT COMPOSTING FACILITY
REGULATION BYLAW NO. 2736

COMPLAINT FORM

ID #: _____
(assigned by CRD Communications Clerk)

PART I (please print)

Date Received: _____ Time Received: _____ a.m. p.m.

Received by: _____ In Person Telephone Mail/Fax

Complainant's Name: _____

Address: _____

Phone Number: (home) _____ (work) _____

Type of complaint: Odour Leachate Vector Litter Dust Noise
 Land Use Other (please describe) _____

Location of facility where it originated: _____

When it was first noticed: _____ Was operator notified? Yes No

Duration: _____ Frequency: _____

Weather conditions: _____

Time: _____ a.m. p.m. IMMEDIATE ATTENTION REQUIRED? Yes No

PART II (please print)

Facility: Name: _____

Address: _____

Operator Licence No.: _____

Name of Licensee: _____

Investigator Name: _____ Position: _____

Date Investigated: _____

Action Taken: _____
(continue on separate sheet if necessary)

Recommendations: _____
(continue on separate sheet if necessary)

Investigator's Signature _____ Date _____ Solid Waste Manager's Signature _____ Date _____

Distribution: Original (Main File) Copies (CRD Communications Clerk, Solid Waste Manager, Solid Waste Assistant Manager, Composting Facility Operator, Licensee)

APPENDIX B

CAPITAL REGIONAL DISTRICT COMPOSTING FACILITY REGULATION BYLAW NO. 2736

COMPLAINT PROCEDURE

HOST MUNICIPALITY

Staff Member Receiving Complaint

- Advise complainant to telephone CRD at (250) 474-3351, 8:30 a.m. – 4:30 p.m., Monday to Friday, and leave a message outside of work hours.

CAPITAL REGIONAL DISTRICT

CRD Bylaw

- If receiving complaint directly from complainant, obtain all necessary information and complete Part I of the Complaint Form.
- Give each complaint an identification number and enter into database.
- Forward copy of complaint to the Assistant Manager, Solid Waste.
- Keep information on file regarding all complaints for both the host municipality and the CRD.

Investigator of Complaint (CRD Bylaw)

- Complete Part II of the Complaint Form.
- All complaints and enforcement issues will be directed to Bylaw Enforcement office at (250) 474-3351 or 1-800-665-7899.
- For all complaints, Bylaw No. 2736 Enforcement Policy and Procedure, Complaint Form, Appendix A, will be completed and forwarded to senior bylaw officer.
- A bylaw officer will investigate each incident/complaint, within a reasonable response time. The response time goal will be to respond within five (5) working days (less time for major incidents such as leachate discharge).
- Bylaw No. 2736 Enforcement Policy and Procedure, Record of Non-Compliance form (Appendix C) and Inspection Report (Appendix D) and are to be used by the investigating bylaw officer.
- Bylaw Enforcement to forward copies of appendices A, C and D forms to assistant manager, Solid Waste division.
- Solid Waste staff and Bylaw Enforcement staff will discuss or meet (when required) to review the findings, agree on a response and an appropriate course of action.
- Bylaw Enforcement will notify the complainant, either verbally or in writing, of findings and proposed course of action.
- Bylaw Enforcement will notify the operator, in writing, of the finding and the remedial action that is required, including completion dates.
- An operator's failure to comply would initiate the enforcement steps outlined in the Enforcement Policy and Procedures for Bylaw 2736.
- Copies of all correspondence, documentation, etc. will be forwarded to the assistant manager, Solid Waste division.
- Fax the completed forms to the CRD communications clerk at 360-3079 for filing and faxing to host municipality.

APPENDIX C

CAPITAL REGIONAL DISTRICT COMPOSTING FACILITY
REGULATION BYLAW NO. 2736

RECORD OF NON-COMPLIANCE

PART I – FACILITY INFORMATION

FACILITY: Name: _____
Address: _____
Operator Licence No.: _____
Name of Licensee: _____

PART II – INVESTIGATOR INFORMATION

INVESTIGATOR: Name: _____
Position: _____
Date Investigated: _____

PART III – VIOLATION INFORMATION

TYPE: Odour Leachate Vector Litter Dust
Noise Land Use Other (please describe) _____

VIOLATION: Minor Major

OCCURRENCE: 1st 2nd 3rd 4th 5th

DETAILS: _____

ENFORCEMENT ACTION: Verbal Warning Written Warning MTI
Draw on Line of Credit/Bond Suspend Licence Cancel Licence
Recommend Legal Action

Investigator's Signature _____ Date _____ Solid Waste Manager's Signature _____ Date _____

Distribution: Original (Main File) Copies (CRD Communications Clerk, Solid Waste Manager, Assistant Manager Solid Waste, Composting Facility Operator, Licensee)

APPENDIX D

CAPITAL REGIONAL DISTRICT COMPOSTING FACILITY
REGULATION BYLAW NO. 2736

INSPECTION REPORT

PART I – FACILITY INFORMATION

FACILITY: Name: _____
Address: _____
Operator Licence No.: _____
Name of Licensee: _____

PART II – INSPECTOR INFORMATION

INVESTIGATOR: Name: _____
Position: _____
Date Inspected: _____

PART III – INSPECTION INFORMATION

Odour Comments: _____
Leachate Comments: _____
Vector Comments: _____
Litter Comments: _____
Dust Comments: _____
Noise Comments: _____
Land Use Comments: _____
Other Comments: _____

RECOMMENDATIONS: _____

Inspector's Signature

Date

Solid Waste Manager's Signature

Date

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