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Via e-mail: info@csrd.bc.ca
and via regular mail

Columbia Shuswap Regional District
PO Box 978
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Attention: Council Members

Dear Council Members:

Re: Residents on Yankee Flats Road and Salmon River Roads: Legal Issues Relating to Spa Hills and Proper Regulation of Composting in the CSRD

I write on behalf of the Residents on Yankee Flats Road and Salmon River Roads to address legal issues associated with the Spa Hills composting facility and with the proper regulation of composting in the Columbia Shuswap Regional District (“CSRD”).

As the CSRD will be aware, the Spa Hills facility has been controversial at best. The last two inspection reports from the Ministry of Environment and Climate Change Strategy (MOE) disclose a serious pattern of non-compliance. The first Non-Compliance Report from the BC Ministry of Environment and Climate Change Strategy (MOE), which was previously provided to you, detailed no less than 11 areas of non-compliance while the most recent reinspection Warning Report (copy attached) shows no less than 9 remaining areas of non-compliance including such important matters as leachate management around the compost pile, leachate being discharged directly to ground and failure to have enclosed structures within which to carry out composting operations. It is therefore not open to debate that there are significant problems at this facility.

It is my understanding that the residents whose property is in proximity to the composting facility have suffered significant reductions in their property values as a direct result of the non-compliance including the impacts of severe stenches which they had repeatedly been promised would never cross the property boundaries of the facility. These impacts are, as I understand it, causing residents to challenge their property assessments. This is of course likely to adversely

affect the tax base of the CSRD. These are tax dollars that could otherwise be used to train your waste management and bylaw enforcement staff and to address the local residents' concerns. The impacts are local, and you are the local government. There is no doubt that the CSRD has an obligation to respond to this situation.

Insofar as my clients and I can tell, the main reasons for the lack of response in the past from the CSRD include:

- 1) A misperception on the part of the CSRD that jurisdiction for composting rests solely with MOE (i.e. the province); and
- 2) A lack of guidance as to the potential solutions open to regional districts in relation to composting.

My clients are of the view that we may be able to assist the CSRD in addressing these concerns. I have therefore been instructed to write to you to share the benefit of our research and to offer to co-operate with your legal counsel to ensure that they may benefit from the research we have carried out. I will address each of the issues in writing while offering some proposed solutions from authoritative sources. This will allow you and your legal counsel an opportunity to review and assess our research.

- 1) A misperception on the part of the CSRD that jurisdiction for composting rests solely with MOE (i.e. the province);**

My clients have provided me with extensive background information regarding the history of the disputes between local residents and the Spa Hills compost facility operators as well as many of the past responses from the CSRD and its representatives. What is striking is the number of times the CSRD and its representatives have erroneously suggested that the CSRD has no jurisdiction to address the problem, and that jurisdiction lies solely with the province (MOE). This is legally incorrect.

The province has not reserved jurisdiction for itself. Indeed, the legislation clearly provides that the province has specifically delegated authority to local governments to pass bylaws relating to composting.

The key legislative provision is s. 25(3) of the *Environmental Management Act*, SBC 2003, c 53, [<https://www.canlii.org/en/bc/laws/stat/sbc-2003-c-53/latest/sbc-2003-c-53.html>] which provides:

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

25 ... (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;**
- (o) **authorizing designated persons to enter a site or inspect the contents of a vehicle for the purpose of enforcing a bylaw made under this subsection** and, for this purpose, [sections 109](#) [*entry on property*] and 111 (2) [*inspection of vehicles*] apply to a designated person as if the designated person is an officer referred to in those sections, but only in respect of municipal solid waste and recyclable material;
- (p) providing that
 - (i) **a contravention of a provision of the bylaws is an offence punishable by a fine not exceeding \$200 000,** and
 - (ii) if a corporation commits an offence under the bylaws, an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the offence commits the offence even though the corporation is convicted.

[Emphasis added]

We have deliberately included the full text of s. 25(3) so that Councillors may easily see just how broad the jurisdiction of the CSRSD is. We particularly draw your attention to the subsections we have bolded for emphasis. You will see that it is entirely within the CSRSD's jurisdiction to regulate compost facilities as part of its solid waste management program and to provide by bylaw for compliance officers to enter property to inspect. Further, there is considerable latitude to require compliance and rectification of issues of concern at the expense of the compost operator(s). Also included are provisions allowing the CSRSD to require insurance or security that

would cover ensure compliance and address remediation costs. Finally, there is an ability to set fees and penalties so that revenue is generated (that could be used to offset training and enforcement costs). In summary, the tools exist, and your potential powers are broad. We urge you to fulfill your obligations to local property owners and exercise these powers for their protection from the financial and health impacts they are suffering.

For the sake of greater clarity, it is to be noted that the definition in section 1 of the EMA specifically defines “recyclable material” to include compostable material as follows:

"recyclable material" means a product or substance that has been diverted from disposal, and satisfies at least one of the following criteria:

- (a) is **organic material** from residential, commercial or institutional sources and is **capable of being composted, or is being composted**, at a site; ... [Emphasis Added]

It is therefore abundantly clear that the EMA specifically provides regional districts with the power to pass bylaws to regulate the business of composting.

A further point to note is that s. 25(4) of the EMA provides:

- (4) Before exercising the authority under this section, a regional district must
 - (a) indicate in its waste management plan its intention to undertake consultations with affected stakeholders in accordance with section 27 (1) [*public consultation process*], and
 - (b) undertake the consultations.

This is the basis for my comment (above) that the regulation of compost would be carried out under the CSRD’s solid waste management program.

We also note that the CSRD, in its current solid waste treatment plan does regulate composting although it appears to have chosen only to regulate composting of household and yard wastes. There does not appear to be any regulation of commercial composting facilities even though these are the ones with the greatest potential local impacts to human health and the environment. There is no apparent logic to the omission of proper regulation of commercial composting facilities in the CSRD.

If the CSRD retains any remaining doubts or in any way doubts the strength and veracity of the legal position I have put forward, or if there are any doubts that this is to be done under the CSRD’s solid waste management plan then I would invite you to place this correspondence before your solicitor. I am instructed to offer to engage in verbal or written communications with your solicitor in relation to these issues should you so desire or to assist him or her to verify that the CSRD does in fact have broad jurisdiction to pass bylaws for the purpose of regulating

composting in the CSRD. I am also instructed, as discussed below, to provide examples of functional composting regimes and recommendations for the content of any proposed composting bylaws.

2) **A lack of guidance as to the potential solutions open to Regional Districts in relation to composting.**

My clients are not “anti-composting”. Indeed, they can see the potential value of composting ***if it is done right and is properly regulated.*** We therefore wish to be of assistance to the CSRD in putting proper composting bylaws in place. It should be noted that regional districts cannot provide less protection or lower standards than provincial regulations (the OMRR) but it is entirely open to regional districts to provide higher standards.

It should be noted that the OMRR, was updated in 2022. A link to the current bylaw is: <https://www.canlii.org/en/bc/laws/regu/bc-reg-18-2002/latest/bc-reg-18-2002.html>. You will see that the regulation has been amended to deal with a number of technical matters such as heavy metals that would be outside the scope of matters easily addressed by a regional district. It has not however fully addressed a number of matters of concern that are issues at the Spa Hills site and that are easily addressed by a regional district. There are therefore a number of upgrades to the OMRR that a regional district would wish to consider in order to bring a regional district’s proposed bylaw into line with modern knowledge and standards. Given the history and in light of the recent election call, it does not seem reasonable to expect the province to address the remaining deficiencies in its composting regulations in the foreseeable future. Meanwhile, the impact of existing deficiencies in the provincial regulations leave the CSRD and other regional districts dealing with financial, environmental and health impacts, increasing citizen complaints and loss of revenue. The potential for this to become a major issue in the next local election is apparent.

Fortunately, we are aware of two excellent resources which we wish to draw to your attention when considering appropriate standards and bylaws for a regional district:

- a) A publication from the University of Victoria Environmental Law Centre entitled: *Compost Regulation in British Columbia – Regulatory Overview, Best Practices and Recommendations for Law Reform* [https://www.elc.uvic.ca/wordpress/wp-content/uploads/2016/05/2013-03-05_Compost_Regulation_in_BC_FINAL.pdf]; and
- b) CRD bylaw 2736 - - A BYLAW TO REGULATE THE OPERATION OF COMPOSTING FACILITIES IN THE CAPITAL REGIONAL DISTRICT;

I will briefly comment on each of these excellent resources:

- a) A publication from the University of Victoria Environmental Law Centre entitled: *Compost Regulation in British Columbia – Regulatory Overview, Best Practices and*

Recommendations for Law Reform [https://www.elc.uvic.ca/wordpress/wp-content/uploads/2016/05/2013-03-05_Compost_Regulation_in_BC_FINAL.pdf] (the “UViC Composting Report”)

The matter of regulation of composting including provincial and local government jurisdiction was addressed in this excellent resource from the University of Victoria Environmental Law Centre. While this is a 2015 resource, it is still relevant particularly since the province has not as yet acted on all of the recommendations nor has the province acted on all of the recommendations from the various public processes it has undertaken.

Given the 2022 changes to the OMRR, we will focus on the deficiencies as they relate to areas of concern in relation to Spa Hills. As you will be aware from the MOE Non-Compliance and Warning Reports as well as from citizen complaints, the major areas of concern that local residents would like to see addressed in a composting bylaw are:

- “Expert” involvement and qualifications as well as a perception of conflict of interest if local government does not have access to its own independent experts at the expense of the proponent.
- Odour Management
- Leachate Management
- Groundwater Protection
- Covered Buildings to address the “meat bombing” experienced by local residents when scavengers pick up and spread the unprocessed or partially processed compost

The first section of the UViC Composting Report that I would refer you to is found at pages 78-80 where there is specific discussion of local government implementation of the recommendations in that Report. Specific discussion of regional districts is found at page 78 where the following passage appears:

...[R]egional district governments can impose bylaws to implement approved waste management plans and regulate the management of recyclable materials such as compost. This permits the enactment of bylaws regulating, prohibiting or respecting the handling of compost, the management of compost sites (ie. facilities), requirements that a facility operator hold a recycler licence, comply with a code of practice, or provide security or insurance, the enforcement of bylaws, and the provision of penalties.²²³ These bylaws can impose requirements that are additional to, and more stringent than, those contained in the provincial enactments like the EMA, OMRR, ALCA, providing that these bylaws are not inconsistent or in conflict with the provincial enactments.²²⁴

The UViC Composting Report then goes on to provide the example of the CRD’s composting bylaw – discussed in further detail below.

There are likely some additional examples of regional district bylaws now but the CRD bylaws are described as fairly progressive and they are discussed in detail in the UViC Composting Report so they would make an easily adaptable example for the CSRD to follow.

The UViC Composting Report also looks at 4 other jurisdictions: Alberta, Ontario, Texas and California and makes a series of recommendations based upon what has been learned from the experience in those jurisdictions. For your ease of reference I have copied some of the key recommendations and summarized some of the proposed solutions/best practices as well as indicating where there is proposed language in the UViC Composting Report or where there is language that could just be copied from the Alberta regulations complete with page references in the Report for where the language describing best practices can be found (so that you and your legal counsel can easily access the recommended language so that you can simply copy and paste with minor revisions as you deem appropriate). An overview of the major recommendations from this report (that you would wish to consider when drafting a bylaw) is as follows:

Recommendation #1

Require that facilities smaller than those with a capacity of 20,000 tonnes (annually) be required to have an environmental assessment carried out by a qualified professional. That assessment would include:

- a comprehensive design plan;
 - a composting pad with specific requirements for impermeability
 - requirements for run-on and run-off control systems;
 - air pollution control systems including specific odour control requirements
- [See p. 56–57 of attached Report for more detail]

This requirement addresses the fact (that my clients believe is demonstrated by the Spa Hills experience) that smaller facilities can have major impacts and provides the regional district with latitude to address that.

Recommendation #2

Adopt a more specific list of required design elements and technology for buildings, works, and systems within the compost facility in order to provide owners, operators, neighbours and government officials with clear guidelines that can be easily enforced. [See p. 57-58 of attached Report for more specifics]

Recommendation #3

Adopt mandatory siting criteria. In our view, one of the main reasons Spa Hills has become such a source of controversy and friction relates to siting. There is simply too much compost being processed in an area that is not environmentally suited to composting and that is not a good “fit” with surrounding residential & rural land uses. [See pages 58–59 of attached Report for further explanation]

DEFINITION OF QUALIFIED PROFESSIONAL

Recommendation #5:

Adopt a rigorous definition of “qualified professional” that clearly defines the disciplines from which a QP can be chosen, taking into account the transparency of their professional association, and required qualifications, expertise, experience, accreditation and knowledge that are more closely related to the design and operation of a compost facility and address QP liability for problems that arise from their negligent design and operation of compost facilities.

[See page 60-62 of attached Report including example of Alberta definition found at page 61.]

The 2022 OMRR regulation does, in section 1 provide a definition of a “qualified professional” and does at least require the “qualified professional” to be a member of a professional association that has disciplinary procedures. It does not however require any knowledge of which professional bodies have functional disciplinary processes that can be relied upon to enforce some degree of professionalism, nor does it specify which professional bodies would be acceptable as the Alberta example (specifying professional engineers) does.

We recommend specifying the professional body or bodies from which acceptable experts can be drawn. We also suggest specifying what type or length of experience in the area is considered necessary for a “qualified professional” as the existing definition requiring “suitable education, experience,,,” is somewhat vague. Finally, we recommend providing for the extent to which professionals will be held accountable for their negligent actions and/or opinions.

OPERATOR TRAINING & CERTIFICATION

Recommendation #6:

Adopt a certification program for compost facilities operators similar to the requirement found in the Alberta Waste Control Regulation. There should be at least one person at the facility at all times who has the required certification.

[See pages 62-63 of attached Report]

Lack of operator training is an issue of serious concern for the local residents. It is their perception that there is a lack of training in relation to the current staff and management at the facility and that this is contributing significantly to the problems at the site.

STORAGE & IMPERMEABLE SURFACES

Recommendation #7:

Require an impermeable surface in the storage facility with limited exceptions for agricultural in-field storage. To accommodate the various types of storage options, the type of impermeable surface should be defined by a minimum permeability factor, not by the type of material.

The 2022 OMRR addresses impermeable surfaces in section 26. It uses a vague definition that simply states:

“located on asphalt, concrete or another similar impermeable surface that is capable of withstanding wear and tear from normal operations and that will prevent the release of leachate into the environment.”

As you will see, this definition lists materials but does not define the minimum permeability factor. [See pages 63-64 of attached Report]

ODOUR MANAGEMENT & AIR QUALITY

Recommendation #9:

Adopt rigorous and clearly defined objectives for the protection of the environment, human health and well-being from the impact of odour. This will hold compost facilities to a specific standard of operations and ensure that they are better community neighbours.

The obligation not to cause pollution should be accompanied by an obligation not to cause “material discomfort, harm or adversely affect the well-being or health of a person”. Also consider integrating compliance with s.15 of the Public Health Act, which prohibits a person from causing a health hazard.

The 2022 OMRR addresses odour in Parts One and Two at sections 23 and 24. As is indicated in s. 24(2)(d), the odour management requirement is simply to provide a plan that will not cause pollution. We recommend an actual prohibition against causing pollution as well as using the language suggested in the Report to create a specific obligation on the part of the proponent not to “cause material discomfort, harm or adversely affect the well-being or health of a person.”

[See p. 65 of attached Report for further explanation and best practices]

Recommendation #10:

Provide for legally enforceable provisions that regulate the release of odours that can cause adverse effects.

[See pages 65-66 of attached Report for further discussion and best practices]

Recommendation #11:

Adopt an odour management plan for compost facilities of all sizes, require the mandatory implementation of the odour management plan and include specific requirements similar to those found in the Alberta regulatory scheme.

While the 2022 OMRR does provide, in section 24(2)(d) for an odour management plan that will not “cause pollution”, we are recommending that the CSRD bylaw also require the mandatory implementation of that odour management plan and consider the types of requirements found in the Alberta regulatory scheme.

[See pages 66-68 of attached Report for further explanation and examples of best practices from other jurisdictions]

Recommendation #12:

Adopt an odour complaints investigation procedure and also require an Odour Contingency Response Plan that contains specific and transparent procedures for minimizing and remedying the cause of any offensive odour.

[See pages 69-70 of attached Report for further explanation and examples of best practices from other jurisdictions]

Addressing the odour issue at this level appears justified to us given the financial and health impacts to neighbours of the odour reportedly inappropriately emanating from the Spa Hills facility and the likely financial impact on the regional district from loss of property tax revenue.

LEACHATE MANAGEMENT

Recommendation #13

Use a broad definition of “leachate” in order to capture potentially harmful effluents to the environment and human health that may arise from the full range of materials that may be present at the facility. An example of a definition from Alberta is:

“a liquid that has percolated through and drained from feedstock or compost and has extracted dissolved or suspended materials”.

The definition of “leachate” in the 2022 OMRR is found in the definitions section, section 1. It provides that “leachate” is defined as follows:

“leachate” means

- (a) effluent originating from organic matter being received, processed, composted, cured or stored at a composting facility,
- (b) effluent originating from managed organic matter being stored or applied to land, or
- (c) precipitation, storm water, equipment wash water or other water which has come into contact with, or mixed with, organic matter or managed organic matter being received, processed, composted, cured or stored;

This is not an unreasonable definition. It is however worth considering also adding, for greater clarity, the Alberta definition set out above and discussed further below. [See page 70 of attached report for further explanation and examples of best practices as well as example of potential definition]

Recommendation #14

Clearly require a leachate collection system for all facilities. The Alberta Standards refers to leachate as “process water”, which is defined as a “combination of storm water run-on, leachate, equipment wash down water and any other wastewater generated on site.” The Alberta Standards set out the required components for the management of process water that include:

- Provisions for process water, retention ponds and control of process water in the engineering maps and plans required for the Facility Design Plan and Specifications;
- Process water management procedures within the Operations Plan;
- Requirements for retention ponds; and
- Process water and retention pond sediment disposal procedures.

[See pages 70-71 of attached report for further detail and best practices].

Recommendation #15

Outline how to properly manage leachate to provide facility operators, neighbours and government officials with specific guidelines as to how the leachate is to be treated and disposed. An example given of a “best practice” is the Alberta regime that provides clear directions as to how to manage leachate.

For smaller facilities, the Alberta Code prevents the release of leachate or run-off from the composting pad to the surrounding watershed unless it meets the one of the following standards:

- the surface water background quality,
- specific guidelines published by Alberta Environmental Protection, or
- the Canadian Water Quality Guidelines published by the Canadian Council of Ministers of the Environment (CCME).

For larger facilities, the Alberta (EWMC) Approval requires that the leachate be treated at an approved wastewater treatment facility unless it can be utilized in the compost process or evaporated.

In the 2022 OMRR, the requirement for a leachate management system is found in sections 23(2)(b) and 24(2)(c). The provisions simply state that a qualified professional must provide a report that contains a leachate management plan that “stipulates how leachate generated from any and all stages of the composting process will be minimized, managed, treated or disposed;” The 2022 OMRR then goes on to address leachate management in further detail under Division 3 at s. 26 which provides:

Composting facility requirements

26 (1) In this section, "**curing area**" means an area where organic matter which has undergone the rapid initial stage of composting is further matured into a humus-like material.

(2) The receiving, storage, processing and curing areas of a composting facility must comply with all of the following:

(a) be located on asphalt, concrete or another similar impermeable surface that is capable of withstanding wear and tear from normal operations and that will prevent the release of leachate into the environment;

(b) have a roof or cover, or a prepared surface, designed to prevent

(i) the surface collection of water around the base of organic matter and compost, and

(ii) run-off water from entering the receiving, storage, processing and curing areas;

(c) have a leachate collection system designed, constructed, maintained and operated to reuse leachate, or to remove leachate, from the receiving, storage, processing and curing areas.

(3) Leachate that is not collected and reused in the composting process must not be discharged into the environment unless authorized under the Act.

(4) Despite subsections (2) and (3), an impermeable surface, roof, cover, prepared surface or leachate collection system is not necessary if a qualified professional can demonstrate through an environmental impact assessment that the environment will be protected and appropriate water quality criteria satisfied through the use of alternative leachate management processes.

(5) A director may request additional information with respect to the environmental impact assessment that the director considers necessary for the protection of human health and the environment, and may specify particular concerns, questions, standards or monitoring that the assessment must address.

[am. B.C. Regs. 321/2004, s. 19 (n); 76/2022, s. 3.]

As noted above, my clients are distrustful of “hired gun” experts. We do not believe that subsection 4 should be adopted by the CSRD. It is open to you to require the specified leachate requirements to ALL facilities and not allow a “loophole” that could allow hired gun experts to provide for alternate unproven approaches. In addition, the ability to require further information in subsection 5 should be modified to allow local government waste management staff to require similar information.

STRUCTURES WITH ROOFS TO PREVENT “MEAT BOMBING”

As noted in the previous section immediately above, the matter of roofs or covers for structures is addressed in s. 26(2)(b). It is also addressed in s 26(4) where there is provision that a roof can be disposed of if an alternative is recommended by a qualified expert. This is an issue of significant concern to my clients. We reiterate that the requirement for a roof or other impermeable cover should not be subject to change. It should be mandatory.

GROUNDWATER

Recommendation #16

Require the implementation of a groundwater monitoring program and groundwater monitoring system for all facilities, regardless of their production capacity. The parameters of this requirement should be tailored to the production capacity of the facility and the environmental sensitivity of the surrounding hydrological system to ensure that the cost of groundwater monitoring program/system is tailored to the risk of harm that the facility poses.

An example is given of best practices using the Alberta situation. For smaller facilities, the Alberta Code permits the Director to require the construction and

maintenance of a groundwater monitoring system (GWMS) depending on the type and location of the facility, the volume of feedstock, and vicinity of the water table. The requirements for the GMWS and the groundwater quality performance standards are set out in s.8 of the Alberta Code. For larger facilities, the terms and conditions attached to the Alberta (EWMC) Approval include a section on groundwater. This section requires the approval holder to operate a groundwater monitoring system (GWMS), the collection and analysis of groundwater samples, and the implementation of remediation or risk management plans based on specific standards.

The 2022 OMRR appears to address groundwater protection only in a limited way. Groundwater is mentioned in Schedule 8 at section 1(b) and 2(b) and appears to relate to application of compost to land under a land application rather than groundwater protection during the composting process. Where the OMRR does address groundwater quality is in the sections dealing with heavy metals in the Schedules. We recommend that the recommendations in the attached UVic Composting report for groundwater monitoring be reviewed and adopted. We have no comment at this time on the proposed levels of heavy metals specified for groundwater in the Schedules to the 2022 OMRR.

[See pages 72-73 of attached Report for further detail and particulars of best practices]

REPORTING

Recommendation #17

Require the registered owner or facility operator to establish and maintain a more comprehensive set of records that captures the entire extent of operations and activities that take place in the facility to provide for improved transparency and accountability between the facility, government, and community.

An example of best practices is given of the Alberta Standards which requires that the registration holder establish and maintain a number of comprehensive records including:

- Operating Record,
- Monitoring Records,
- Tonnage Report,
- Annual Report,
- Final Closure Report (upon closure)

The Alberta Standards outlines the minimum and comprehensive list of information that each record or report should contain, the length of time they should be maintained, and the frequency with which they should be provided. We wish to emphasize that a major

issue of concern in relation to Spa Hills relates to transparency, or perceived lack of transparency in relation to volumes of material received. We ask that this be a focus of the CSRD bylaw so that the neighbours will be (and feel) empowered to verify volumes. [See pages 73-74 of attached Report for additional detail and discussion of best practices]

PUBLIC AVAILABILITY OF DOCUMENTS & RECORDS

Recommendation #18

Require that all documents, reports and results relating to the design and operation of the compost facility be submitted to local government or be made available at the request of the local government, so they are available for review and comment by the municipal or regional government waste manager as well as available to the public. This will improve government's decision-making ability with respect to compost operations and the public understanding of the impact that the facility may have on their community.

The 2022 OMRR does not appear to have provided for dissemination of information to local government or the public. Transparency is crucial to reinstating public trust. We recommend that the CSRD and its waste manager consider collection of the sorts of information detailed in the attached report so that it may be made easily accessible to you and to the public. This would again assist in addressing concerns relating to apparent lack of transparency and barriers to effective enforcement.

[See page 74 of attached Report for additional explanation]

COMMUNITY INVOLVEMENT

Recommendation #20

Require a public consultation process before a facility can be constructed in a community. It is also recommended that the [bylaw] require that the facility operator engage with the community during the operation of the facility in order to manage ongoing issues and potential nuisances such as odour and noise. [See pages 75-77 of attached Report for additional explanation and examples of best practices including the Edmonton example of a Community Liaison Committee.]

- b) CRD bylaw #2736 - A BYLAW TO REGULATE THE OPERATION OF COMPOSTING FACILITIES IN THE CAPITAL REGIONAL DISTRICT

I have attached a copy of CRD Bylaw #2736. It can also be found at the following link:

<https://www.crd.bc.ca/docs/default-source/crd-document-library/bylaws/solidwastehartlandlandfillssittransferstationscompostingfacilities/2736---capital->

[regional-district-composting-facilities-regulation-bylaw-no-1-2004B.pdf](#). The CRD has also developed an enforcement policy for bylaw #2736 and a document with supporting information. These are attached and can also be found at the following links:

<https://www.crd.bc.ca/docs/default-source/recycling-waste-pdf/CompostingFacilitiesBylawEnforcementPolicy.pdf> and <https://www.crd.bc.ca/docs/default-source/recycling-waste-pdf/CompostingFacilitiesBylawSupportingInformation.pdf>

The CRD composting bylaw documents are being provided for 2 reasons. First, it demonstrates the ability of regional districts to enact bylaws regarding composting. Second, it provides a sample bylaw that the CSRD's legal counsel can use as a template for the CSRD's own bylaw. Please also note that there is a brief overview of how the CRD's bylaw operates found at pages 82-89 of the UVic Composting Report. In particular, we would point out that it is not necessary for the CSRD to create a whole new bureaucracy. It appears that composting would be under the authority of the existing waste manager and enforcement would be through the existing waste management and bylaw enforcement staff. Training would be required but that is not anticipated to involve major expense and would presumably be offset by the licensing fees collected from operators of composting facilities as well as by fines and revenue derived from property taxes on increased land values for property that is free from the current apparent odours and other impacts.

Overall, the CRD's bylaw #2736 is a fairly good example of a progressive composting bylaw. This is subject to comments found at pages 82-89 of the UVic Composting Report where it is indicated that there are a few areas in which the CRD bylaw could be improved such as specifically providing for how odours are to be monitored and detected and to what extent odours will be tolerated (see page 85). Please also note that the UVic Composting Report specifically points out, at page 78, that in the absence of reform at the provincial level, the various recommendations described in the Report and described above could be addressed by the regional district simply by amending bylaw # 2736 and/or amending the terms and conditions in the licenses issued to composting facilities. We mention this simply to highlight the fact that the CSRD has a similar ability to address the recommendations in the UVic Composting Report on its own without waiting for any further action on the part of the province.

A final issue to point out in relation to the potential use of the CRD composting bylaw as a potential template relates to scope. Section 3.3 on page 6 of the CRD composting bylaw provides that no license is required for those who operate a Class 1 composting facility (unless they have a history of non-compliance). Since Spa Hills has been a source of controversy, the CSRD will wish to ensure that its bylaw would require Spa Hills to have a recycler license. We note that the CRD bylaw has deliberately changed the definition of food waste to provide for Class A food waste (vegetable matter) vs. Class B food waste (which includes fish, poultry and other food waste). Composting of Class B food waste does require a license. We suggest that the CSRD bylaw specifically address red meat food waste (which is clearly a higher risk type of

waste) and include it within the classes of compost that require a license to commercially process.

RECOVERING EXPERT COSTS

In addition to licensing fees and insurance provisions that would provide clean-up funds, there is another suggestion we wish to offer. Particularly in the early days, expert assistance may be useful. We note that in the context of green bylaws a number of local governments have begun to provide for those applying for permits to be responsible for the cost of the local government hiring its own experts where the local government is of the view that independent expert assistance would be of assistance. We suggest that your legal counsel consider including in the composting bylaw a provision that allows the CSRD to retain its own experts at the expense of the person applying for or operating the composting facility. This would allow expert expense to lie with the composting operator rather than with the CSRD and its taxpayers while simultaneously addressing any perceived conflict of interest with experts retained and instructed by proponents. This measure would give the CSRD increased confidence in its regulation of composting facilities and help restore public confidence.

SUMMARY & CONCLUSIONS

In summary, the CSRD clearly does have jurisdiction to enact a bylaw to regulate composting within the CSRD. While the province has carried out consultations acknowledging that the current provincial regime requires updating and has addressed some amendment, it seems unlikely that there will be further action in the foreseeable future. This leaves the matter squarely in the lap of the CSRD.

Fortunately, the CRD has already enacted a fairly progressive bylaw that can be used as a template to prepare a draft bylaw. In addition, there is the UVic Composting Report that has reviewed and commented upon some of the deficiencies in the provincial composting regime and has provided recommendations including sample language or sources (such as the Alberta Code and Alberta Standards) that could easily be adopted or adapted. In other words, preparing a composting bylaw is not likely to be anywhere as daunting as it has in the past appeared.

We look forward to confirmation that the CSRD will proceed with a composting bylaw and reiterate that we are more than happy to communicate with the CSRD and its legal counsel in relation to these issues. I can be reached at the telephone number and e-mail address found on page 1 of this letter. We hope that our comments and the results of our research are of use to you and will assist in addressing the long outstanding matter of significant public concern.

Given the longstanding nature of these concerns, we ask that you respond to this letter within 30 days.

Sincerely,



Angela McCue
Barrister & Solicitor

- Attachments:
- 1) Warning letter from MOE to Spa Hills dated September 17, 2024;
 - 2) A publication from the University of Victoria Environmental Law Centre entitled: *Compost Regulation in British Columbia – Regulatory Overview, Best Practices and Recommendations for Law Reform* [https://www.elc.uvic.ca/wordpress/wp-content/uploads/2016/05/2013-03-05_Compost_Regulation_in_BC_FINAL.pdf] (the “UViC Composting Report”)];
 - 3) A copy of CRD bylaw #2736 - A BYLAW TO REGULATE THE OPERATION OF COMPOSTING FACILITIES IN THE CAPITAL REGIONAL DISTRICT [<https://www.crd.bc.ca/docs/default-source/crd-document-library/bylaws/solidwastehartlandlandfillssittransferstationscompostingfacilities/2736---capital-regional-district-composting-facilities-regulation-by-law-no-1-2004B.pdf>];
 - 4) A copy of CAPITAL REGIONAL DISTRICT COMPOSTING FACILITIES REGULATION BYLAW NO. 2736 ENFORCEMENT POLICY AND PROCEDURE [<https://www.crd.bc.ca/docs/default-source/recycling-waste-pdf/CompostingFacilitiesBylawEnforcementPolicy.pdf>];
 - 5) A copy of SUPPORTING INFORMATION FOR THE OPERATION OF COMPOSTING FACILITIES IN THE CAPITAL REGIONAL DISTRICT [<https://www.crd.bc.ca/docs/default-source/recycling-waste-pdf/CompostingFacilitiesBylawSupportingInformation.pdf>] .