

## REPORT TO ENVIRONMENTAL SERVICES COMMITTEE MEETING OF WEDNESDAY, JUNE 19, 2024

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**SUBJECT**     **Biosolids Literature and Legal Review – June Update**

### **ISSUE SUMMARY**

To provide follow-up on Board direction to evaluate the Capital Regional District's (CRD) risks associated with land application of biosolids. Staff seek clarity from the Environmental Services Committee (ESC) on criteria that should be used to select an unbiased, independent research group to undertake a literature review on the human health and ecological risks of biosolids land application, and to provide the ESC with a summary of the criteria and direction that will be given to a recommended law firm to assess the legal liability of various aspects of land application.

### **BACKGROUND**

At the August 9, 2023 CRD Board meeting, staff were directed to prepare a proposal for undertaking literature and legal reviews of biosolids land application. These efforts were delayed in anticipation of the province releasing a similar literature review specific to the Organic Matter Recycling Regulation (OMRR), which likely would have answered many of the ESC's outstanding questions on the human health and ecological risk of biosolids land application. The provincial review has been delayed until at least the Fall 2024, resulting in the ESC requesting that staff reassess CRD-led reviews.

At the May 15, 2024 ESC meeting, staff brought forward a proposal to hire an academic research group to undertake the review, and a proposed Terms of Reference (Appendix A). Subsequent ESC and Board discussions have reaffirmed direction for the CRD-led reviews, with the following motions coming from the May 15 ESC and June 12, 2024 Board meetings:

- 1) *That staff be directed to continue the process of identifying suitable academic researchers to undertake an independent biosolids literature review, and report back to the Environmental Services Committee.*
- 2) *That staff be directed to report back to the Environmental Services Committee prior to proceeding with an independent unbiased legal review of:*
  - a) *the risks associated with the land application of biosolids that is compliant with the provincial regulatory framework; and*
  - b) *the risks associated if noncompliant with the provincial regulatory framework for biosolids.*

### ***Literature Review***

Staff continue to search for suitable academic reviewers for this scope. Qualifications for suitable candidates include:

- Academic tenure, which ensures independence from external influences for researchers at Canadian universities. This allows researchers to undertake research, develop conclusions and publish research consistent with their findings.

- Publishing the research in peer-reviewed journals, which ensures an open discussion in the scientific literature that guards against any bias in the research or interpretations. Peer-reviewed research ensures the studies can be repeatable, verified before being published, confirms the validity and reliability of the research, and is the basis for scientific advancement of knowledge.
- Knowledge in some or all of the fields of soil science, hydrogeomorphology, contaminant transport, environmental chemistry and toxicology and an understanding of human health and environmental risk assessment would be key to a successful literature review.
- Subject matter knowledge, including the application of science for policy development, should be critical to providing a relevant literature review for the Board's consideration.
- Absence of publicly stated positions in the matter of land application of biosolids. This criteria, as directed by the Board, aims to ensure a balanced approach to the work and mitigate public perception of bias.
- Knowledge of current and proposed regulatory frameworks in Canada and BC, currently listed as an asset but not a requirement (to avoid making the requirement list too astringent).

The process of securing a suitable reviewer in a timely matter is posing a major challenge given the type of work (which is academic in nature, where suitable candidates do not respond to the CRD's traditional work procurement methods (i.e., requests for proposals); and the time required to identify candidates, confirm interest and availability, report to the ESC (and Board), and finalize the engagement.

Staff have identified a few other qualified Canadian university researchers that may have capacity and interest to complete the work. To streamline the timeline and improve chances of securing suitable candidates, the ESC may choose to direct staff to award the scope of work to a suitable candidate, as long as the candidate fulfills the conditions noted above. Alternatively, staff can continue to reach out to those identified teams and report back to ESC and the Board seeking direction to award.

### ***Legal Review***

The ESC previously received copies of a Selected Cases on Biosolids Application to Land report (Appendix B) that suggests potential liability to the CRD in limited circumstances, though this has never been confirmed or provided to internal or external legal counsel for review or consideration. As highlighted at the October 18, 2023 ESC meeting, any legal opinion would be specific to the CRD and based on biosolids generated in the capital region, not on biosolids generally, as the facts and assumptions would need to be defined and applicable to the region's risk profile.

As such, staff recommend selection of a law firm that does not regularly perform work for the CRD but has expertise with environmental and local government matters. The scope of work is to assess:

1. The legal liability to the CRD:
  - a) If the OMRR is determined in the future to not be sufficiently protective of human health and/or the environment due to currently non-regulated chemical constituents potentially found in CRD biosolids destined for land application;
  - b) If contractors that land apply CRD biosolids in the future do so either:
    - i. in compliance with OMRR; or
    - ii. out of compliance with OMRR;

- c) If regional biosolids continue to be disposed of in the landfill;
  - d) If not all CRD biosolids are beneficially reused, as per provincial directive and federal expectations.
2. The applicability to the CRD of biosolids-related case law summarized in the Selected Cases on Biosolids Application to Land report and more recent case law in Canada;
  3. A background on regulatory offence law; the law of nuisance; the law of negligence; and other potential sources of environmental claims that may be of assistance to decision-makers on these issues.

The proposed selection process addresses the Board's concerns for independence through the nature of the lawyer-client relationship. Through this agreement, the hired firm has a duty to be an advocate for their client's interest and to provide the best information possible.

Staff have identified several potential law firms with strong reputations that meet the above criteria. If the Board approves of the selection criteria and scope of work outlined in this report, staff will approach potential law firms to determine availability and cost options and then proceed with obtaining the requested legal opinion.

## **ALTERNATIVES**

### *Alternative 1*

The Environmental Services Committee recommends to the Capital Regional District Board:

1. That staff be directed to secure a tenured professor that fulfills the qualification criteria outlined in this report, to undertake the independent literature review, as per the terms of reference previously approved for this work, with a budget not to exceed \$40,000; and
2. That staff be directed to procure a legal review in alignment with the selection criteria and scope of work presented in this report, with a budget not to exceed \$25,000.

### *Alternative 2*

That this report be referred back to staff for further consideration.

## **IMPLICATIONS**

### *Financial Implications*

The cost to complete the external literature and legal review will be covered by existing funds in the Liquid Waste Management Plan planning budget. The timeline for the tasks is expected to be three to four months from the time of procurement.

## **CONCLUSION**

The CRD Board directed staff to consider options for a fulsome review of the current science and legal liabilities associated with potential risks associated with the Short and Long-term Biosolids Management Strategy and associated plans. This work will involve procuring external experts to review the current available science and legal and regulatory framework to inform the Board's ongoing biosolids management program. The use of tenured university academics for the scientific literature review, and a law firm knowledgeable in regulatory and municipal compliance for the legal review, will achieve the objectives of independent and unbiased opinions for the Board's consideration. The work will likely take three to four months from the time of procurement.

**RECOMMENDATION**

The Environmental Services Committee recommends to the Capital Regional District Board:

1. That staff be directed to secure a tenured professor that fulfills the qualification criteria outlined in this report, to undertake the independent literature review, as per the terms of reference previously approved for this work, with a budget not to exceed \$40,000; and
2. That staff be directed to procure a legal review in alignment with the selection criteria and scope of work presented in this report, with a budget not to exceed \$25,000.

Submitted by:	Glenn Harris, Ph.D., R.P. Bio., Senior Manager, Environmental Protection
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**ATTACHMENTS**

Appendix A: Biosolids Literature Review – Terms of Reference

Appendix B: Selected Cases on Biosolids Application to Land (October 30, 2013)