

**CAPITAL REGIONAL DISTRICT
BYLAW NO. 4304**

**A BYLAW TO AMEND THE ESTABLISHING BYLAW FOR THE CORE AREA AND WESTERN
COMMUNITIES LIQUID WASTE MANAGEMENT SERVICE (BYLAW NO. 2312)**

WHEREAS:

- A. Under Bylaw No. 2312, Liquid Waste Management Core Area and Western Communities Service Establishment Bylaw No. 1, 1995, the Regional Board converted a service established by Supplementary Letters Patent, Division VII dated December 28, 1967, as amended by further Supplementary Letters Patent, for the function of acquisition, design, construction, operation, maintenance, renewal, and administration of trunk sewers and sewage disposal facilities within all member municipalities of the Regional District except the District of Sooke and the Southern Gulf Islands, and converted such service to the authority of a bylaw under the *Local Government Act*;
- B. The construction of a wastewater treatment plant on January 1, 2021 is Provincially mandated to be completed by the Capital Regional District, and such construction forms part of its liquid waste management plan pursuant to the *Environmental Management Act*;
- C. The service expansion has always contemplated the participation of the Esquimalt Nation and the Songhees Nation as partners of the service participants and has allocated treatment capacity requested by each First Nation;
- D. A surcharge will apply when a participant exceeds its allocated treatment capacity, as an incentive to reduce flows or purchase additional treatment capacity, and in transferring treatment capacity, a participant will be compensated for the costs paid and interest foregone; and
- E. The Board wishes to amend Bylaw No. 2312 to establish the agreed-upon cost sharing provisions, recognize the Capital Regional District's partnership with the Esquimalt First Nation and Songhees First Nation, formalize the cost-sharing formula applied for design capacity benefit for capital, land and operating costs, and make other amendments to modernize the establishing bylaw;

NOW THEREFORE, the Capital Regional District Board in open meeting assembled hereby enacts as follows:

- 1. Bylaw No. 2312, "Liquid Waste Management Core Area and Western Communities Service Establishment Bylaw No. 1, 1995" is hereby amended as follows:

Minor Amendments

- (a) In the preamble, replace the references to the *Local Government Act* as follows: 774.2 with 341; 796 with 332; and 801.4 with 346;
- (b) In section 4(1)(a), replacing the reference to Division 4.3 of Part 24 with Division 2 of Part 11;
- (c) In section 4(1)(b), replacing the reference to 797.2 of the *Local Government Act* with 397 of the *Local Government Act*;
- (d) In section 6, replacing the reference to 800.1(1) of the *Local Government Act* with 339(1) of the *Local Government Act*;

- (e) In section 6(b), replacing the reference to 803(1)(a) and (b) of the *Local Government Act* with 378(1)(a) and (b) of the *Local Government Act*;

Cost Sharing and Apportionment

- (f) Changing the heading of section 5 to “Cost Sharing and Apportionment” from “Apportionment”;

- (g) Replacing section 5(1) with the following:

5. (1) In this Bylaw:

- (a) “allocated treatment capacity” or “treatment capacity” means the portion of the maximum treatment capacity in ML/D of a wastewater treatment plant that is allocated to a participating area under this Bylaw as set out in Schedule “B” and Schedule “C” and as adjusted from time-to-time in accordance with this bylaw;
- (b) “annual debt and capital cost” means the principal and interest payable in each calendar year for the amortization of debenture and other debt;
- (c) “annual operating cost” includes all costs of operating, maintaining, replacing, refreshing, and administering all participating area facilities, works, and programs, excluding annual debt and capital costs;
- (d) “average annual flow” or “AAF” means the calculation obtained from measuring the total flow from October 1 of one year and September 30 of the following year;
- (e) “average dry weather flow” means the calculation obtained from measuring the total flow from June 1 to August 31 in one year and dividing that amount by the number of days in that same period.
- (f) “cost per unit of capacity” means the number derived by dividing the total annual debt and capital costs for a wastewater treatment plant in its first year of repayment by the wastewater treatment plant’s design capacity, in ML/D, as follows:
- $$\frac{\text{total annual debt and capital costs}}{\text{treatment capacity (ML/D)}}$$
- (g) “cost per unit of operating expense” means the number derived by dividing the total annual operating cost in one year by the actual measured sewage flows, in ML/D, in the same year, as follows:
- $$\frac{\text{total annual operating cost}}{\text{total actual measured sewage flows (ML/D)}}$$
- (h) “design capacity benefit” means a benefit to one or more participants that results from any new construction of, or capital additions or improvements to sewage conveyance facilities or their ancillary facilities, after December 21, 2002. To the extent that the benefit was the provision of, or the creation of conditions to allow, additional conveyance capacity, then the design capacity shall be calculated only on the extent to which each participant gained an increase in maximum allocated capacity. Where the benefit was not an increase in capacity, then the design capacity benefit shall be calculated on the existing maximum allocated capacity of each participant in the facility that was altered, added to or affected by the change;

- (i) "East Coast Interceptor Trunk" means the sewer facilities and functions located in the municipalities of Saanich, Oak Bay and Victoria, comprising all Regionally operated facilities from the Finnerty Outfall diversion works to the Ross Bay trunk sewer at Dallas Road and Cemetery Road, as particularly set out in the East Coast Interceptor Operating Agreement, dated December 1993, and shown on Drawing No. 8-S184-2, including but not limited to:
 - (i) that portion of the original Northeast Trunk Sewer from Currie Pump Station to McMicking Outfall;
 - (ii) the McMicking Outfall;
 - (iii) the Finnerty Cove diversion works and Outfall;
 - (iv) the Humber Pump Station;
 - (v) the Rutland Pump Station; and
 - (vi) the Penrhyn and Currie Lift Station and Currie and Hood Pump stations;
 - (j) "Manager" means CRD's General Manager, Integrated Water Services department, or such other individual designated by the CRD;
 - (k) "maximum allocated conveyance capacity" means that part of the maximum operating capacity of regional sewer allocated to a participating area to accommodate peak sewage flows from that participating area. When used in reference to spills, it is calculated as the peak wet weather flow in litres per second as shown in Schedule "B", as adjusted from time-to-time on transfer of capacity under this bylaw, and when used in reference to design capacity benefit calculations or the transitory clauses in section 5(2)(a) and (b) for regional sewer built before December 31, 2020, it is as shown on Drawings No. 8-S184-1 and 8-S184-2 on file in the Integrated Water Services department and forming a part of this bylaw by reference;
 - (l) "ML/D" means megalitres per day;
 - (m) "participating area facilities" means all regional sewer facilities that serve the participating areas, as set out in Schedule "A", but does not include those works owned or operated by a participant or a client of the service for a local sewer or wastewater system;
 - (n) "peak wet weather flow" means the maximum flow measured over a 24-hour period on any given day within the calendar year;
 - (o) "program" means investigations to assess the marine environment and shoreline discharges and contaminant sources and the coordination of these programs among all levels of government to enhance marine environmental quality;
 - (p) "regional sewer" means a trunk sewer, pump station, outfall, treatment plant, interceptor, sewer, sewage disposal, or other wastewater system owned or operated as part of the regional sewer system for the conveyance, measurement, treatment, control, handling and disposal of wastewater (liquids and solids).
 - (q) "Spill Regulation" includes the *Fisheries Act (Canada)* and regulations, the *Environmental Management Act (British Columbia)* and regulations, and any other enactment of a Federal or Provincial government governing the discharge of or report of a discharge of wastewater into the environment.
 - (r) "wastewater treatment plant" means, as applicable, a single treatment plant or one or more plants as then operating.
- (h) By replacing sections 5(2)(a), (b), and (c) with the following:

- (a) The annual debt and capital costs of participating area facilities constructed prior to December 31, 2002 shall be apportioned on the basis of the proportion of the maximum allocated conveyance capacity of that part of the respective facilities within a participating area and downstream from the participating area allotted to the participating area.
- (b) The annual debt and capital costs of participating area facilities constructed after December 31, 2002 shall continue to be apportioned on the basis of the design capacity benefit that each participating area derives from each particular facility constructed during that time period.
- (c) After December 31, 2020, the annual debt and capital costs of acquiring land and constructing participating area facilities shall be apportioned on the basis of design capacity based on projected flows to full wastewater treatment plant capacity using the following proportions of 70% ADWF and 30% AAF, as set out in Schedule "C" and as deemed adjusted from time-to-time by transfer of treatment capacity under this bylaw.
- (i) By inserting as section 5(2)(d), (e), and (f) the following:
- (d) Where the total flow of sewage from a participating area in a calendar year exceeds that participating area's allocated treatment capacity, and the total flow of sewage from all participating areas during that year is less than or equal to 95% of the design capacity of the wastewater treatment plant, the costs apportioned to that participating area under section 5(2)(c) shall be increased by an amount that is equal to:
- $$3 \times (\text{cost per unit of capacity} + \text{cost per unit of operating expense}) \\ \times \text{number of ML/D over allocated treatment capacity}$$
- (e) Where the total flow of sewage from a participating area in a calendar year exceeds that participating area's allocated treatment capacity, and the total flow of sewage from all participating areas during that year is greater than 95% of the design capacity of the wastewater treatment plant, the costs apportioned to that participating area under section 5(2)(c) shall be increased by an amount that is equal to:
- $$5 \times (\text{cost per unit of capacity} + \text{cost per unit of operating expense}) \\ \times \text{number of ML/D over allocated treatment capacity}$$
- (f) Where either subsection 5(2)(d) or 5(2)(e) applies, the costs apportioned to the remaining participating areas under subsection 5(2)(c) shall be reduced by an amount equivalent to that derived under the applicable formula.
- (j) By replacing section 5(3)(a)(ii) with the following:
- (a)(ii) the spill resulted from the capacity of regional sewer being exceeded, and by measurement it could be determined that flows from one or more participating areas exceeded the participating area's maximum allocated capacity or allocated treatment capacity; and
- (k) By replacing section 5(3)(b) with the following:
- (b) If more than one participating area jointly caused the spill, then the amount of the fine, damages or liability and legal costs shall be apportioned among those participating areas

determined to have caused the spill in proportion to their AAF, or where flow records indicate the percentage of overflow contribution, based on the amount of overflow contributed by each participating area.

- (l) By replacing section 5(5) with the following:

The annual operating cost for participating area facilities shall be apportioned among the participating areas, in proportion to the AAF of each participating area, as it relates to the Total AAF of all participating areas, as follows:

$$\text{Total operating costs} \times \frac{\text{AAF of Participating Area}}{\text{Total AAF}}$$

Powers

- (m) By replacing section 7(a) in its entirety with:

7(a) Acquire, design, construct, operate, maintain, renew, decommission, demolish, clean-up, restore, and administer regional sewer facilities, buildings, and works;

- (n) By amending section 7(f)(i) to read “minimizing the entry of surface, rainwater, and groundwater;”;

- (o) By inserting the following as sections 7(i), (j), and (k) as applicable:

7(i) accept, collect, convey, and treat leachate generated at Hartland Landfill;

7(j) accept, collect, convey, and treat wastewater treatment plant residuals from one or more local governments, public authorities, or persons by agreement or by way of fee and charge;

7(k) enter into an agreement with one or more First Nations, including Songhees Nation and Esquimalt Nation, on such terms as are mutually agreed, for the provision of sewage conveyance, treatment, and disposal services, where such agreements follow the cost and treatment capacity apportionment procedures as set out in this bylaw.

Negotiation, Mediation and Arbitration

- (p) By replacing section 8 in its entirety with the following:

(1) The participating areas shall make all reasonable efforts to resolve by negotiation a dispute regarding the allocation or reallocation of treatment capacity under section 9, or regarding the apportionment of capital and operating costs for the participating area facilities under subsections 5(2) or 5(5).

(2) In the event that negotiations under subsection (1) fail to resolve a matter in dispute, a Director representing a participating area affected or likely to be affected by the matter in dispute shall declare at a meeting of the Board at which it is intended to deal with any such question that he or she unwilling to accept the Board's determination with respect to the matter, and the Board shall not decide the question, but shall appoint a mediator under subsection (5) and refer the question to a mediator within 30 days.

(3) In the event that a question has not been resolved by the mediator within 90 days of the appointment of a mediator under subsection (5), the mediator shall terminate the negotiations by giving notice in writing to all affected participating areas.

(4) Following termination of the mediation under subsection (3), the matter in dispute shall be referred to an arbitrator appointed under subsection (6) by the Board as soon as reasonably practicable following the expiry of the time period referred to in subsection (3).

(5) A mediator appointed under subsection (2) shall be appointed by two-thirds vote of all the Directors of the Board present at the meeting of the Board at which the selection is made. Failing such vote, the Board shall request the assistance of a dispute resolution officer under Division 3 of Part 9 of the *Community Charter* in appointing a mediator.

(6) An arbitrator appointed under subsection (4) shall be appointed by two-thirds vote of all the Directors of the Board present at the meeting of the Board at which the selection is made. Failing such vote, the Board shall request the assistance of a dispute resolution officer under Division 3 of Part 9 of the *Community Charter* in appointing the arbitrator, from the list of persons qualified to act as arbitrators under Division 3 of Part 9 of the *Community Charter*.

(7) The arbitration shall be conducted as either a final proposal arbitration, or as a full arbitration, in accordance with Division 3 of Part 9 of the *Community Charter*. The choice of arbitration process shall be made by unanimous vote of all the Directors of the Board present at the meeting of the Board at which the choice of process is made. Failing such vote, a dispute resolution officer under Division 3 of Part 9 of the *Community Charter* may direct which process is to be used.

(8) The arbitrator's decision shall be final and binding on the Board and on all participating areas affected, unless within 60 days of the date of decision the parties come to an alternative settlement in accordance with section 290 of the *Community Charter*.

Transfer of Treatment Capacity

(q) By replacing the heading of section 9 with "Transfer of Treatment Capacity" from "Participating Area Facilities";

(r) By replacing section 9 in its entirety with the following:

9. (1) Where a participating area:

(a) uses 90% or more of its allocated treatment capacity under this Bylaw, based on either:

(i) measured flows; or

(ii) where such flows are not available, as determined by the Manager based on the best available information and sound engineering practice;

and;

(b) desires additional capacity, or in the opinion of the Manager, requires additional capacity;

then such participating area shall commence negotiations with the Regional District, who will engage with the other participating areas for the reallocation of capacity.

- (2) Allocated treatment capacity is reallocated under this section 9 on a permanent basis as the Regional District and the participating areas agree.
- (3) Allocated treatment capacity shall not be reallocated under this section 9 if the requested increase in capacity is inconsistent with the projected population growth of the sub-region of the Regional District containing the requesting participating area, as set out in the Regional District's Regional Growth Strategy.
- (4) In the event that the participating areas cannot agree on a reapportionment of the annual debt and capital costs or on arrangements for reallocation of design capacity within six months of the date of notice to the Manager or the Manager's determination under subsection (1), then a Director on the Board of the Regional District representing a participating area may, at a meeting of the Board, require that the matter be settled by mediation or arbitration in accordance with Section 8 of this Bylaw, subject to subsections (5) and (6).
- (5) The decision of the arbitrator appointed under subsection (4) may require one or more participating areas to transfer treatment capacity to another participating area, provided the transferring participating area is not expected to use more than 95% of its respective allocated treatment capacity within 10 years from the requested date of the transfer.
- (6) A participating area that permanently transfers allocated treatment capacity (the "Transferor") must be compensated by the recipient for the cumulative debt servicing and capital costs paid by the Transferor to the date of the transfer, including interest costs and interest foregone, in relation to the transferred capacity, as calculated by the Regional District.
- (7) Where additional design capacity in a wastewater treatment facility becomes available, whether through the construction of a new wastewater treatment facility or otherwise, the added design capacity shall be allocated by the Regional Board among the participating areas as follows:
 - (a) a participating area that requires additional design capacity shall submit a request in writing to the Regional District;
 - (b) all requests for additional design capacity that are received before January 1 in a calendar year shall be considered by the Regional Board at the same time for the following budget year, and additional design capacity shall be allocated based on:
 - (i) availability of additional design capacity;
 - (ii) the demonstrated need of each requesting participating area;
 - (iii) consistency of the request with the Regional District's Regional Growth Strategy;
 - (iv) the adequacy of existing or planned conveyance infrastructure; and
 - (v) the Regional District's plans for future expansion of participating area facilities, and whether the participating area's request should be deferred until new capital projects are completed.

Replace Schedules

- (s) By replacing Schedule "A" in its entirety with the Schedule "A" attached to this bylaw; and
 - (t) By replacing Schedule "B" in its entirety with the Schedule "B" attached to this bylaw.
 - (u) By addig Schedule "C" attached to the bylaw.
2. This bylaw may be cited for all purposes as "Liquid Waste Management Core Area and Western Communities Service Establishment Bylaw No. 1, 1995, Amendment Bylaw No. 3, 2020".

READ A FIRST TIME THIS	th	day of	20__
READ A SECOND TIME THIS	th	day of	20__
READ A THIRD TIME THIS	th	day of	20__
APPROVED BY PARTICIPANTS THIS	th	day of	20__
APPROVED BY THE INSPECTOR OF MUNICIPALITIES THIS	th	day of	20__
ADOPTED THIS	th	day of	20__

CHAIR

CORPORATE OFFICER