

CRD SEWAGE TREATMENT

Biosolids Centre:

- The CRD's Liquid Waste Management Plan (LWMP) was approved by the Minister of Environment in August 2010.
- As part of the approved LWMP, Hartland Landfill was approved as the location for a sludge treatment plant. This is entirely consistent with the LWMP.

If asked about amendment to SWMP:

- Moving forward, the CRD's Solid Waste Management Plan requires a minor technical amendment to bring the plan into alignment with the Liquid Waste Management Plan – this is currently in process.

Wastewater Treatment Facility:

- The CRD has to be in compliance with federal regulations by 2020 - so any extensions or alternate proposals would have to include the federal government.
- The Province has no plans to intervene at this time.
- We have the authority to step in if necessary...
- But our preference is that CRD and Esquimalt solve this at the local level.

Background:

- On October 17, the CRD announced Hartland Landfill as the final site for the biosolids centre to treat leftover sludge as part of the CRD's sewage treatment project (Seatterra Project).
- Hartland was the approved location outlined in the CRD's Liquid Waste Management Plan (LWMP) approved by the Minister of Environment in August 2010
- The Solid Waste Management Plan (SWMP) will require a minor technical amendment to authorize the landfill for this use but it is seen as a technicality since Hartland has already been approved in the LWMP. This amendment is currently in process.
- Residents living near Hartland may vocalize their concerns about this facility being built in their "backyard".
- There is also concern around the need of an 18 km pipe to transport leftover sludge from a wastewater treatment plant, currently proposed for McLoughlin Point in Esquimalt.
- On July 15th, Esquimalt council voted against the rezoning of McLoughlin Point for construction of a wastewater treatment plant.
- The rezoning of this location was part of the CRD's Liquid Waste Management Plan (LWMP) which was approved by the Minister of Environment in August 2010.
- The approved plan states treatment is to be in place by December 31, 2016.
- The CRD has to be in compliance with federal standards for wastewater treatment by end of 2020.
- The CRD is asking the Minister to use the Environmental Management Act to override the council's decision so the plan can go ahead as scheduled.
- On June 14th, lawyers for the CRD sent a letter to Ministry counsel saying they expect MoE support in any conflict with Esquimalt zoning bylaws in accordance with their interpretation of the Environmental Management Act.
- According to the Environmental Management Act, an approved waste management plan takes precedence over a municipal zoning bylaw.
- However, during the election campaign, the official position was the Province would not intervene and any issues should be resolved through the dispute resolution process contained within the Community Charter (which falls under MCSCD).
- The Minister of Community, Sport and Cultural Development can trigger this dispute resolution process if the local governments agree; the Minister would then decide if it would be a mediation or arbitration.

- Going forward, MoE's role will be to provide regulatory oversight of the design and operation of the treatment facilities and administration of the LWMP; MCSCD is responsible for infrastructure funding provided by the Province.

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CRD SEWAGE TREATMENT: RE-ZONING

- This is a local government issue and I expect the CRD and Esquimalt Council to work together to meet the requirements for sewage treatment in the region.
- The Province has no plans to intervene with regard to Esquimalt's recent bylaw affecting zoning at McLoughlin Point.
- How locally elected municipal officials in this region achieve consensus on sewage treatment logistics is not something for the provincial government to dictate.
- Even if the Province were willing to intervene, the facts at this time do not provide a strong basis for intervention using the provisions of the Environmental Management Act.
- The Ministry of Environment has also received a request from the CRD to amend its liquid waste management plan so that it aligns with the funding agreement; Ministry of Environment is taking the necessary time to review this request.
- Regardless of the provincial deadline, the CRD has to be in compliance with federal regulations by 2020 – any request for an extension will not impact this deadline.

If asked about funding deadlines:

- Currently our agreement with the CRD specifies that funding is payable on completion of the project – no later than end of March 2019.
- If there are changes to the project deadline, the Province would need to assess the implications that might have on funding.

Background:

- On April 9, 2014 the CRD requested the Province to either overrule Esquimalt's zoning bylaw concerning McLoughlin Point, which would allow the Seaterra sewage project to proceed, or provide the CRD with new direction on how to move forward.
- The Province has consistently stated this is a local government issue and the Minister of Environment issued a statement on May 27 reiterating this position.
- On April 7, 2014, Esquimalt council unanimously voted against rezoning and voted to amend the zoning bylaw so a sewage treatment facility would not be allowed at McLoughlin Point; the council previously voted against the rezoning in July 2013.
- The CRD previously asked the Minister of Environment to use the Environmental Management Act to override council's July 2013 decision. Lawyers for the CRD indicated they expected MoE support in accordance with their interpretation of the EMA.
- After a thorough review of this specific situation, there is some question as to whether the EMA provides the Province with the authority necessary, to step in and order the rezoning of McLoughlin Point.
- If the issue cannot be solved at a local level, both CRD and Esquimalt could jointly request the Province assist through a dispute resolution process. The Province would consider the request, including if the process would be a mediation or arbitration
- The CRD's Liquid Waste Management Plan (LWMP) was approved by the Minister of Environment in August 2010 and states treatment is to be in place by December 31, 2016. The approved LWMP included the rezoning of McLoughlin Point for construction of a wastewater treatment plant.
- The CRD has to be in compliance with federal standards for wastewater treatment by end of 2020.
- On February 11, 2014, the CRD submitted a request for an amendment to its LWMP to align the project completion date with the existing funding agreement completion date (March 31, 2019).
- On February 12, 2014, Colwood asked the CRD to amend the LWMP to allow Colwood to build its own small-scale tertiary treatment plant by 2016. This was accepted by the CRD in March with a number of conditions – once conditions are met, CRD will consider submitting an amendment for MoE consideration.
- Going forward, MoE's role will be to provide regulatory oversight of the design and operation of the treatment facilities and administration of the LWMP; MCSCD is responsible for infrastructure funding provided by the Province.

Funding:

- The Provincial contribution of \$248 million is one-third of the 2010 cost estimate of \$743 million and meets the Provincial public commitment for funding of 1/3 of the best, lowest-cost solution (subject to Private Public Partnership - PPP - consideration) made at UBCM Convention 2006 and in the 2007 Throne Speech.
- Provincial funding will support the two PPP components of the project – the wastewater treatment plant and the biosolids/energy centre. Payment in fiscal 2018/19 ensures full risk transfer for successful construction and performance of the facilities. It also aligns with the Province's fiscal plan.
- At the present time, the provincial funding agreement requires the CRD to complete the entire project by the end of March, 2019. If, at some point, the CRD requests an extension to the funding deadline, the Contribution Agreement would need to be modified.

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CRD SEWAGE TREATMENT

- We have received letters from the Governor of Washington State as well as the US Senate and Congress and recognize their concerns around Victoria's sewage treatment.
- The Capital Regional District has to deliver on its requirements for sewage treatment – this is not up for debate.
- I have said all along this is a local government issue and I expect the parties involved to work together to meet the requirements for sewage treatment in the region.
- The Province has no plans to intervene around the rezoning of McLoughlin Point for wastewater treatment.
- How locally elected municipal officials in this region achieve consensus on sewage treatment logistics is not something for the provincial government to dictate.
- My ministry has also received a request from the CRD to amend their liquid waste management plan so that it aligns with the funding agreement; we are reviewing this request.
- Regardless of the provincial deadline, the CRD has to be in compliance with federal regulations by 2020 – any request for an extension will not impact this deadline.
- Staff will continue working with the CRD to help them achieve compliance with secondary sewage requirements.

Background:

- On June 13, 2014, six members of Washington's State Congress along with two Senators sent the Premier (with a cc to the Prime Minister) a letter calling on Victoria to stop dumping sewage into the Strait of Juan de Fuca. This followed a June 10th letter from the Governor of Washington State who raised the same concerns.
- On June 13, 2014, Minister Polak met with the Mayor of Victoria as well as Westshore mayors to discuss possible options going forward.
- On May 27, 2014, Minister Polak issued a statement reiterating the Province's position that the dispute over the location of a sewage treatment plant is an issue for local government to solve.
- On April 9, 2014 the CRD requested the Province either overrule Esquimalt's zoning bylaw around McLoughlin Point, which would allow the Seatera sewage project to proceed, or provide the CRD with new direction on how to move forward.
- On April 7, 2014, Esquimalt council unanimously voted against rezoning and voted to amend the zoning bylaw so a sewage treatment facility would not be allowed at McLoughlin Point; the council previously voted against the rezoning in July 2013.
- The CRD previously asked the Minister to use the Environmental Management Act to override council's July 2013 decision. Lawyers for the CRD indicated they expected MoE support in accordance with their interpretation of the EMA. After a thorough review of this specific situation, there is some question as to whether EMA provides the Province with the authority necessary, to step in and order the rezoning of McLoughlin Point.
- The CRD's Liquid Waste Management Plan (LWMP) was approved by the Minister of Environment in August 2010 and states treatment is to be in place by December 31, 2016. The approved LWMP included the rezoning of McLoughlin Point for construction of a wastewater treatment plant.
- The CRD has to be in compliance with federal standards for wastewater treatment by end of 2020.
- On February 11, 2014, the CRD requested an amendment to their LWMP to align the project completion date with the existing funding agreement completion date.
- On February 12, 2014, Colwood asked the CRD to amend the LWMP to allow them to build their own small-scale tertiary treatment plant by 2016. This was approved by the CRD in March with a number of conditions – once these are met, CRD can submit an amendment for MoE consideration.
- Going forward, MoE's role will be to provide regulatory oversight of the design and operation of the treatment facilities and administration of the LWMP; MCSCD is responsible for infrastructure funding provided by the Province.

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QUESTIONS AND ANSWERS

CRD Sewage
Ministry of Environment
May 2014

1. What happens if the CRD and Esquimalt can't resolve this dispute?

- Failure of the CRD to implement secondary treatment before the established deadlines would make the CRD and its member municipalities non-compliant and subject to compliance action by both Federal and Provincial regulators.
 - Treatment by 2020 remains a federal requirement. Continued failure to resolve the dispute may place federal and provincial funding at risk.
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2. It was the Province that ordered the CRD to come up with a plan for sewage treatment. Esquimalt and the CRD have reached an impasse and both have asked you for direction – so why are you doing nothing, while costs and uncertainty escalate for the region?

- I have said all along the details of how the CRD complies with the federal and provincial direction is a local government issue. These are locally elected officials who are accountable to their taxpayers, and they need to make this decision.
- There is a deadline from both the Province and the federal government in place requiring sewage treatment, and local governments need to do what it takes to meet these dates or risk losing funding.

3. Did you consider overriding Esquimalt's decision? Does the Province have authority to step in and order the rezoning of McLoughlin Point for wastewater treatment?

- First and foremost, I firmly believe this is a local government issue and I urge the parties to continue working towards a solution.
- That said, after a thorough review of this specific situation, there is some question as to whether our legislation provides the Province with the authority necessary, to step in and order the rezoning of McLoughlin Point.
- Again, that is really a moot point for this specific situation because we strongly believe the CRD has the ability and the responsibility to find a resolution.

4. Has the Province ever overruled local zoning authority in B.C. before?

- The Province's preference is to not interfere with local government decisions especially where local elected officials have been given authority over a specific issue.
- This section of the Environmental Management Act has rarely been used which is why careful consideration was given in this instance to see if it was even a viable option – which it's not.

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QUESTIONS AND ANSWERS

5. **Are you concerned with Esquimalt's actions that this may set a precedent where local governments can simply refuse to comply with a provincial directive?**
- We expect any local government to find solutions in order to comply with provincial requirements to protect human health and the environment. This includes the CRD.
 - The Ministry will review the Environmental Management Act to ensure appropriate authorities are in place so necessary infrastructure projects proceed. This could include recommending amendments to the act
6. **What will happen if the CRD does not achieve compliance with its Liquid Waste Management Plan (LWMP)? Are there fines/penalties?**
- There are provisions for compliance and enforcement actions under the *Environmental Management Act*, but the first choice is always to have governments work together to seek resolutions.
 - Enforcement actions could include fines up to \$1 million or other administrative penalties.
7. **The approved LWMP identifies McLoughlin Point as the location for a treatment plant but Esquimalt Council has reversed the decision to rezone it for wastewater treatment – what are the next steps for the Province in this regard?**
- The approved plan includes a strategy for CRD to meet provincial and federal regulatory standards and a schedule requiring treatment by 2016. It is now up to the CRD and its member municipalities to deliver on the commitments in the plan
 - The Ministry stands by the need for treatment.
8. **Are there other locations, other than McLoughlin Point, where sewage treatment would be viable? What about Colwood seeing as they want to build their own sewage treatment plant?**
- Ultimately this is for the CRD to work out with their member municipalities and why I'm urging them to come up with a local solution.
 - The Liquid Waste Management Plan approved by the ministry identified McLoughlin Point as the treatment site and I understand extensive research and consultation went into that decision.
 - The CRD can submit an amendment to the plan identifying another site which the Province will then rule on.
9. **Can the CRD ask for an extension of its deadline?**

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QUESTIONS AND ANSWERS

- There is currently a request from the CRD to extend the deadline in the Core Area Liquid Waste Management Plan from 2016 to 2018. This request is under consideration.
- The CRD must also be in compliance with federal regulations by 2020 and any request for a provincial extension will not impact this deadline.

10. Could the province not facilitate some form of dispute resolution?

- The Province maintains its position that the CRD and Esquimalt need to work together to solve this dispute.
- If the CRD and Esquimalt cannot resolve the situation through further discussion, both parties could jointly request the Province provide assistance through a dispute resolution process.
- Generally speaking, this would require both parties to agree to participate in dispute resolution. If both parties agree to this process the Province would consider the request, including if the process would be a mediation or arbitration.

11. Could the CRD lose provincial funding for the project if it can't meet the deadline? How about federal funding?

- At the present time, the provincial funding agreement requires the CRD to complete the entire project by the end of March, 2019. If, at some point, the CRD requests an extension to the funding deadline, the Contribution Agreement would need to be modified.
- In potentially modifying the agreement, the Province would need to re-consider the implications of the funding on our budget, and this consideration opens up a potential risk that the funding arrangement could be modified.
- Our understanding is that the federal government is in a similar position regarding potential changes to their contribution agreements with the CRD.

12. Doesn't the CRD need have to apply for a transitional authorization (TA) from the federal government by July?

- Yes, according to federal regulations municipalities with facilities not meeting minimum effluent standards must apply for a "transitional authorization to deposit" by June 30th.
- It is our understanding the CRD is in the process of getting their application completed within this timeline.
- The authorization is designed to allow continued discharging, as long as the effluent quality is not degraded, until the agreed upon timelines is reached (2020 in this instance).
- The application includes submitting a plan which outlines the following:
 - Plan for implementing modifications
 - Schedule for implementation
 - Latitude/Longitude of final discharge point

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QUESTIONS AND ANSWERS

- The federal regulations allow for changes in a submitted plan (i.e. location of treatment facility) provided the timelines are still met.

ADVICE TO MINISTER

CONFIDENTIAL ISSUES NOTE

Ministry: Environment

Date: July 16, 2013

Minister Responsible: Mary Polak

CRD Sewage Treatment Plant

ADVICE AND RECOMMENDED RESPONSE:

- **The CRD has to be in compliance with federal regulations by 2020 - so any extensions or alternate proposals would have to include the federal government.**
- **The Province has no plans to intervene at this time.**
- **We have the authority to step in if necessary...**
- **But our preference is that CRD and Esquimalt solve this at the local level.**

KEY FACTS REGARDING THE ISSUE:

- On July 15th, Esquimalt council voted against the rezoning of McLoughlin Point for construction of a wastewater treatment plant.
- The rezoning of this location was part of the CRD's Liquid Waste Management Plan (LWMP) which was approved by the Minister of Environment in August 2010.
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