

## MEMORANDUM

TO: Board of Commissioners  
FROM: Jeannine McCrumb, Compliance Specialist  
DATE: February 18, 2020  
RE: Draft Solid Waste Management Ordinance (SWMO) amendments for review

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Following are summaries of proposed amendments to the SWMO. Referenced pages are attached (additions have been double-underlined and deletions ~~struck~~). Staff is requesting Board consideration of changes and permission to solicit public comment.

- Page 13, Section 4.4; Page 15, Section 4.7 – Amending language to allow administrative approval of license applications.
- Page 15, Section 4.6 H.3) – Amending language to clarify which haulers are subject to unit-based pricing/rates and amending due date for submittal of that information concurrent with Hauler License application process.
- Page 25, Section 11.1; Page 26 Sections 11.2 and 11.3 – Amending upper limit of civil penalty to \$800.00 as is permissible under state statute (24 V.S.A. § 2297a).

### **Board Action Requested**

Be It Resolved that the Board of Commissioners authorizes Compliance staff to initiate a public comment process seeking input on proposed changes to the Solid Waste Management Ordinance as summarized in the memo dated February 18, 2020.

- C. Transfer/Disposal Facility License. A Transfer/Disposal Facility License shall be required for any Person, other than 1) Self-Haulers, 2) Drop-Off Facilities, 3) Vermont State certified categorical Disposal Facilities, and 4) Mobile Solid Waste Collection Operations, to accept, receive, or allow the acceptance or receipt in the District of any Solid Waste destined for Disposal.
- D. Scale License. A Scale License shall be required for any Scale used to document the delivery, Transport, or shipment of Solid Waste generated or delivered within the District and destined for Disposal.

4.2. Validity of License. Each License shall be valid for a period not to exceed one year and the License shall expire annually on July 1. Persons meeting the applicable requirements may apply for and hold more than one License.

4.3. License Fees. The fees for Licenses required under this Ordinance shall be determined by the Board of Commissioners. The District and any member municipality of the District are exempt from the License fees for the Management of Solid Waste generated in their municipal operations, utilizing their own facilities, vehicles, or approved employees' vehicles.

4.4. Licensing Process. The General Manager will establish the requirements for each type of License. A Person seeking a License shall obtain a License application from the District ~~office.~~ License applications may be obtained in person during normal business hours at the District's office ~~or,~~ may be requested by mail, ~~may be downloaded from the District's website, or may be completed electronically -on the District's website.~~ The Applicant shall complete the License application ~~under oath~~ and shall provide the License application, together with all supporting materials requested in the License application, to the District. ~~Member municipalities may renew Hauler's Licenses by way of e-mail, facsimile, or telephone.~~

Within thirty (30) days of receipt of a completed License application, the ~~Executive Board District~~ shall make a determination on the License application, and the District shall thereafter notify the Applicant in writing whether the License application is ~~1) accepted, 2) conditionally accepted subject to the Applicant's fulfillment of any number of conditions and/or requirements, or 3) denied and the reason(s) for denial~~ accepted or denied. If denied, the reason for denial will be included in the notification. If the ~~Executive Board District~~ denies a License application, the Applicant may request a hearing before the ~~Board of Commissioners~~ Executive Board for a new determination of whether the License application shall be accepted or denied. If a request is not so filed, the ~~Executive Board's District's~~ determination shall be deemed final.

**Commented [JM1]:** My understanding is conditional approval was a means to have the Board approve prior to receipt of all materials. This will no longer be necessary.

4.5. Temporary Hauler's Vehicle Permit. The General Manager or his or her designee may issue a Temporary Hauler's Vehicle Permit to: 1) a Hauler who has submitted a completed Hauler's License Application and is waiting for approval of such license or 2) a licensed Hauler for short-term use of a rented or borrowed vehicle. Temporary Hauler's Vehicle Permits will be issued for up to thirty (30) days. The General Manager may extend the validity of the Temporary Hauler's Vehicle Permit for up to an additional thirty (30) days. A Temporary Hauler's Vehicle Permit is non-transferable and shall be void after the date stated on the Permit.

by weight of municipal Solid Waste destined for Disposal that is delivered by residents to their Facility. Facilities shall charge per unit of municipal Solid Waste destined for Disposal and shall charge the same fee per each additional equal unit of Solid Waste destined for Disposal. Fees for collection of residential Mandatory Recyclables shall be combined in the fees charged for Solid Waste destined for Disposal. Facilities may charge Self-Haulers for Mandatory Recyclables delivered without Solid Waste destined for Disposal.

- 3) Filing of Pricing System. ~~Commencing May 1, 2015, and As part of the license application process on or before May 1 of each year thereafter, as a condition of a Hauler's License, Haulers offering residential service shall submit evidence that their residential unit-based pricing schedule meets the requirements for unit-based pricing. Unit-based rates must be in effect by July 1, 2015.~~

4.7. Designation in Hauler's License. Each Hauler's License shall designate the allowable destinations for all Solid Waste that is collected, transferred, or transported under the License. The ~~Executive Board~~District reserves the right to modify any and all Licenses previously issued upon notice to the holder of such applicable License that it may not dispose of Solid Waste at a Facility if the District finds that such Facility has failed to operate in compliance with all material laws, regulations, and permits applicable to such Facility or the operator of such Facility has been found to have engaged in Unlawful Conduct.

4.8. Commercial Hauler Requirements. Commercial Haulers must abide by the following requirements:

- A. Every vehicle used by the Commercial Hauler or on the Commercial Hauler's behalf in the collection, Transfer, Transport, or Disposal of Solid Waste shall be prominently labeled with an identification number provided by the District. For each such vehicle, the District shall provide to the Hauler two decals bearing the CSWD Hauler's License number for that vehicle. The decals shall be affixed to the front doors on the right and left sides of the vehicle or at such other locations on the vehicle as the District may designate. The Commercial Hauler shall maintain the decals in a clean and legible condition. Failure to label a vehicle or maintain such decals as set forth in this Section shall constitute Unlawful Conduct.
- B. Commercial Haulers shall pay in full all bills due the District within such period of time as the District Board of Commissioners, by resolution, policy, or rule, may designate. After the expiration of such period, payment from any Commercial Hauler with unpaid bills remaining shall be due immediately upon billing and shall be paid in cash or by certified check. The District may revoke the License of Commercial Haulers with overdue bills. Late bills will be charged interest up to the rate of one and one-half percent (1.5%) per month, compounded monthly.

this Ordinance or any other ordinance or regulations adopted by the District, the District shall attempt to limit any inspection to no more than one hour.

10.3. False Statements and Failure to File Data. Any Person filing or causing to be filed, making or causing to be made, or giving or causing to be given any certificate, affidavit, representation, information, testimony, or statement, which is willfully false or willfully omits to state material facts, or any Person willfully failing to file data that the District, by rule or otherwise, may require shall have committed Unlawful Conduct.

10.4. Diversion Reporting Requirement. A Person in the District that directly ships any Solid Waste, including Recyclables and Compostables, that exceeds an aggregate amount of two (2) tons annually, to Facilities that do not hold a District License shall report to the District the material type, quantity, and destination for all materials shipped for each calendar year. The required data shall be submitted annually by March 1 of the following year.

#### ARTICLE XI PENALTIES

11.1. Penalties for Unlawful Conduct. Any Person who engages in any Unlawful Conduct shall be subject to a civil penalty of not more than ~~Five-Eight~~ Hundred Dollars (~~\$500800~~) for each violation or, if lower, the maximum amount allowed by law. Each instance of Unlawful Conduct shall be a separate violation. In the event of other Unlawful Conduct which is deemed “continuing”, the Person who engages in such conduct shall be subject to a civil penalty of not more than ~~Five-Eight~~ Hundred Dollars (~~\$500800~~), plus not more than One Hundred Dollars (\$100) for each succeeding day, or, if lower, the maximum amounts allowed by law. All penalties for Unlawful Conduct under this Ordinance shall be paid to the District.

**Commented [JM2]:** I have upped the \$500 amount to \$800 per 24 V.S.A. § 2297a. The \$100 per day has not changed.

In addition, the District may direct any Person subject to this Ordinance to abate hazards or nuisances created as a result of the Unlawful Conduct or, if such Unlawful Conduct was found to have caused contamination or damage to any land or property, to restore such land or property to the condition existing before the Unlawful Conduct.

In determining the amount of civil penalty to be ordered, the District shall consider the following:

- A. The degree of actual or potential impact on public health, safety, welfare, and the environment resulting from the violation.
- B. Whether the Person has cured the violation.
- C. The presence of mitigating circumstances.
- D. Whether the Person knew or had reason to know the violation existed.
- E. The Person's record of compliance.

- F. The economic benefit gained from the violation.
- G. The deterrent effect of the penalty.
- H. The costs of enforcement.
- I. The length of time the violation existed.

11.2. Penalties for Disposal at Unlawful Facilities. Any Person who Manages Solid Waste or arranges for the Management of Solid Waste generated within the District at an uncertified Facility or at a Facility which that Person knows or, with reasonable diligence, should know is operating in a manner that does not comply with applicable laws, rules, regulations, and permit conditions, or otherwise contrary to the requirements of this Ordinance or any other ordinance or regulations adopted by the District, shall have committed Unlawful Conduct and shall be subject to a civil penalty of not more than ~~Five-Eight~~ Hundred Dollars (~~\$500800~~) per violation or, if lower, the maximum amount allowed by law. Each day that the violation continues shall constitute a separate violation of this Ordinance.

11.3. Penalties for Non-Payment of Solid Waste Management Fee. Any Person who Manages Solid Waste generated within the District and destined for Disposal without paying the Solid Waste Management Fee shall have committed Unlawful Conduct and shall be subject to a civil penalty of not more than ~~Five-Eight~~ Hundred Dollars (~~\$500800~~) per violation or, if lower, the maximum amount allowed by law. Each day that the violation continues shall constitute a separate violation of this Ordinance.

11.4. Assessments and Penalties for Late Payments. Any Person who fails to pay a fee imposed by this Ordinance on the date prescribed for payment shall be subject to any or all of the following assessments and penalties:

- A. A one-time assessment equal to two and one-half percent (2.5%) of the unpaid balance of any fee.
- B. Interest on the unpaid balance of any fee, accruing at an annual rate of eighteen percent (18%), or, if lower, the maximum rate allowed by law, and charged monthly.
- C. A requirement that all future payments be made only in cash or with certified funds.

11.5. Determination of Solid Waste Management Fee. If any Person required to pay a Solid Waste Management Fee under this Ordinance fails to cause a vehicle to be weighed as required by this Ordinance or any other ordinance or regulations adopted by the District, fails to provide the District with documentation of any such weighing as so required, or submits any information that is incorrect or insufficient, the amount of the Solid Waste Management Fee due shall be determined by the District's General Manager from any information available. If necessary, such