



City of Richmond

Report to Committee

To: General Purposes Committee **Date:** April 16, 2015
From: Phyllis L. Carlyle **File:** 12-8060-01/2014-Vol
 General Manager, Community Safety 01
Re: **Soil Management in the Agricultural Land Reserve**

Staff Recommendation

That the staff report titled "Soil Management in the Agricultural Land Reserve", dated April 16, 2015, from the General Manager, Law & Community Safety, and the proposed Soil Removal and Fill Deposit Regulation Bylaw No. 8094, Amendment Bylaw No. 9002 and Notice of Bylaw Violation Dispute Adjudication bylaw No. 8122, Amendment Bylaw No. 9003 be provided to the Agricultural Advisory Committee for comment.

Phyllis L. Carlyle
 General Manager, Community Safety
 (604-276-4104)

Att.

REPORT CONCURRENCE	
ROUTED TO:	CONCURRENCE
Law	<input checked="" type="checkbox"/>
Policy Planning	<input checked="" type="checkbox"/>
REVIEWED BY STAFF REPORT / AGENDA REVIEW SUBCOMMITTEE	INITIALS:
APPROVED BY CAO 	

Staff Report

Origin

The preservation of soil on Agricultural Land Reserve (ALR) lands can be enhanced if the City has the ability to respond rapidly to emerging issues through the issuance of tickets to the owners, operators and vehicle drivers participating in a breach of the City's bylaws.

General Purposes Committee had previously considered a report recommending the implementation of an enhanced system for the management of soil on ALR lands, with the accompanying resources required to support the system. The October 7, 2013, General Purposes Committee referral was:

1. *That the staff report titled Enhanced Soil Management in the Agricultural Land Reserved (dated October 2, 2013 from the General Manager, Law & Community Safety) be referred back to staff for more examination of the possibilities, in particular:*
 - (1) *for more discussion with the ALC on the possibilities of what each of the parties can do;*
 - (2) *a general discussion on the role of the ALC;*
 - (3) *an examination of previous soil bylaws in Richmond and what now exists in terms of the substance of the soil bylaw, the enforcement provisions, as well as limitations; and*
 - (4) *the interposition of commercial landfills in the ALR, which are regulated under the Province and Metro Vancouver.*

This report supports Council's Term Goal # 8: *To demonstrate leadership in sustainability through continued implementation of the City's Sustainability Framework.*

Analysis

Recent Soil Movement Initiatives:

On January 29, 2013, the City established a Soil Watch program with 36 signs placed in the agricultural area complimented with the establishment of a dedicated phone line to address calls for service.

There are approximately 3 complaints on average per month related to soil matters in the ALR, with the majority of the calls resolved at the local government level. A typical call involves approximately 20 hours of staff time due to the requirement to contact the ALC, attend the site, interview witnesses, coordinate activities with other City departments, report preparation and monitoring the activity in instances, where the ALC has not approved the use.

Table 1 summarizes the number complaints after the implementation of the Soil Watch program which with the limited statistics available appears to be trending downwards.

Table 1

	2013	2014	2015
Soil Complaints	47	26	5
Soil Applications	6	7	2
Total	53	33	7

To date the ALC staffing levels have remained the same.

The City receives on average 7 applications annually to remove or deposit soil for farm and non-farm purposes in the ALR. Recently, the services of an agrologist have been contracted to assist with the analysis of complex soil movement applications in the ALR.

The Agricultural Land Commission

As a provincial agency, the ALC maintains the primary role for the control of soil deposit and removal activities on lands within the ALR related to farm activity. The role of the ALC is defined by provincial legislation with the accompanying regulations. The ALC’s authority includes the ability to conduct inspections, to issue stop work/cease and desist orders as well as remediation orders. The City plays a supportive role to augment the ALC in enforcement and monitoring efforts. Many of the initial complaints regarding on-site activities are received by the City. In turn the City informs the ALC of the specifics of the complaint while the Community Bylaw Department monitors the site to ensure compliance of ALC stop work orders and for the protection of City roads.

Currently, the ALC cannot delegate its decision making and enforcement powers regarding matters considered to be “farm use” under the ALC Act including soil removal and deposit associated with farm activities. The ALC cannot delegate to the City the decision as to whether an activity is a farm use or not a farm use.

City staff works with the ALC staff on a case-by-case basis. When a complaint is received by the City, City staff conduct the initial site inspection to ensure compliance with the City’s regulatory framework. In the event that the jurisdiction for the activity on a site rests with the ALC, a call is placed to the ALC. Typically, City staff and ALC staff will then arrange a joint inspection. If the matter relates to a farm use, then the ALC becomes the lead agency in ensuring that the activity complies with their policies, regulations and legislative framework. This type of cooperative inspection and enforcement activity varies in frequency but may take place on average 12 times a year. In past cases, the City and the ALC have jointly retained legal counsel to conduct the resulting prosecution.

History of Richmond’s Soil Bylaw

On November 13, 2007, in consideration of the need for local involvement to facilitate preventative action, strengthen compliance and better address community issues, the City of

Richmond passed the Soil Removal and Fill Deposit Regulation Bylaw (“Bylaw 8094”). Bylaw 8094 functions within the existing regulatory/legislative framework established for soil removal or deposit under the *Agricultural Land Commission Act* and *Agricultural Land Reserve Use, Subdivision and Procedure Regulation*.

Richmond’s Current Soil Bylaw

Soil removal and deposit on lands within Richmond’s ALR is regulated by Bylaw 8094. The City’s Community Bylaws Department responds to complaints and takes enforcement action when appropriate. The current bylaw allows bylaw enforcement officers to investigate offences, gather evidence and lay charges in Provincial Court.

Currently officers can pursue charges for permitting soil or other material to be deposited on or removed from land within the ALR without a City permit, contrary to Bylaw 8094 unless an exemption applies. As the existing enforcement is tied to the court system, the matter may remain outstanding for months and in some cases years. In addition to seeking fines through the court process, the City does have the option of seeking a court injunction in order to have the unauthorized activities cease.

The laying of charges and/or obtaining a court injunction through the Court process necessitates legal counsel to present the City’s case, and can be a lengthy and expensive process.

Bylaw 8094 provides the City with some very effective tools to deal with the majority of complaints concerning fill operations within Richmond’s ALR properties. Examples of this include addressing flooding issues on adjacent parcels of land, truck volume numbers as they are related to traffic noise, and route planning as related to neighbourhood impact.

In addition, the permit process provides for opportunities for the City to place limits and conditions on: hours of operation, impact to City resources, and the impact on ditches, roadways, and utilities. It also promotes coordination among Community Bylaws, Policy Planning, Development Applications, Environmental Sustainability, Engineering, and Transportation, Departments.

Past experience and the enforcement activities in other municipalities have shown that a ticketing system remains one of the most efficient methods to address soil bylaw contraventions. The current system would benefit from an enhancement of enforcement provisions, appreciatively every system has its limitations and no system can be designed to address every circumstance. However, a consistent enforcement approach has in many cases provided bylaw enforcement officers with the tools to dissuade the activities of violators through the issuance of tickets rather than proceeding in a more lengthy Court process. As well, tickets can be issued on the site at the time of the activity to the individuals involved. A requirement for the individual to identify themselves to the bylaw officer would assist in the investigation and enforcement of the bylaw.

Options to supplement the existing regime:

1. Establish a permitting system

The establishment of a permitting system for the movement of soil in the ALR was previously considered by Council and the Agricultural Advisory Committee. The system could be seen to add an extra layer of administration for farmers with little assistance in thwarting those who are not observant of the existing restrictions for soil movement. The cities of Delta and Surrey currently have permitting systems. Additional staff resources would be required to process applications expeditiously.

2. Issuance of tickets

Implementing a process that would permit the City to issue adjudication violation notices (tickets) for non-compliance with Bylaw 8094 is an option available to Council. Tickets could be issued to the drivers of vehicles depositing materials, the occupiers, lessees and owners. The fine per truck driver depositing fill is proposed to be \$500 per instance. The ability to repeatedly ticket illegal activity would increase the ease of daily enforcement action and gather additional evidence that would support, if necessary, the City's application for a court injunction. For example, each vehicle that enters a site could be ticketed for every load that is deposited. Should the illegal activity continue, the City could apply for a court injunction and the previously issued tickets would then form part of the significant application evidence.

The alternative to adjudication violation notices would be to pursue violations through the Provincial Court. This process can take months, while active depositing of soil or fill continues during that period unless expensive injunction proceedings are commenced. The maximum fine from the Provincial Court is limited to \$10,000 per occurrence per day.

3. Other Commercial Landfills in the ALR

At the time of writing this report the following commercial landfills, under Metro Vancouver licensing, were identified in the ALR; Enviro-Smart Organics Limited in Delta, Ecowaste in Richmond, and Baird Cattle Company Limited in Surrey.

In addition, Bailey Sanitary Landfill located in the City of Chilliwack was at one time operated on ALR land, however, the City of Chilliwack applied for and was granted an exclusion. The Bailey Sanitary Landfill holds an operational certificate by the British Columbia Ministry of Environment.

Proposed Bylaw Amendments

Soil Removal and Fill Deposit Regulation Bylaw No. 8094, Amendment Bylaw No. 9002 ("Bylaw 9002") and Notice of Bylaw Violation Dispute Adjudication Bylaw No. 8122, Amendment Bylaw No. 9003 ("Bylaw 9003") (Attachment 1 and 2), would introduce ticketing

for illegal soil removal and deposit activities permitting the City to further investigate, enforce and penalize contraventions of soil removal and deposit requirements under the City's bylaw.

Proposed Amendment Bylaw 9002 includes the following clarification and additions:

- a) A clarification that an application fee under the Bylaw 8904 is required in addition to the prescribed application fee under the *Agricultural Land Commission Act*.
- b) To assist Community Bylaw Officers in their investigative duties, an addition to the bylaw would require a driver or alleged violator to provide their name, address or valid photo identification. Currently there are no provisions in the bylaw that requires this cooperation and without this authority the ability of investigators to conduct timely soil investigations has been hampered.
- c) The offences and penalties section of Bylaw 8094 is amended to permit violation tickets to be issued for non-compliance with certain provisions in Bylaw 8094, including requirements under a permit process.


Proposed Bylaw 9003 sets out the amount of the penalties for violation tickets. Currently, the City is only able to pursue violations of Bylaw 8094 through Provincial Court prosecution, which remains a lengthy and expensive process.

Financial Impact

None

Conclusion

This report provides information on the City's regulations pertaining to soil deposit activities in the ALR. Proposed recommendations for amendments to the current Soil Removal and Fill Deposit Regulation Bylaw No. 8094 and the Notice of Bylaw Violation Dispute Adjudication Bylaw No. 8122 would introduce an ability to ticket offenders and have those tickets addressed through the adjudication program, rather than the courts. The adoption of the amendment bylaws will not only address many of the identified soil deposit concerns, but also balance the needs of the different communities of interest in the ALR lands. Staff is recommending adoption of these bylaw amendments.

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Edward Warzel
Manager, Community Bylaws
(604-247-4601)

- Att. 1: Amendment Bylaw No. 9002
- 2: Amendment Bylaw No. 9003



**Soil Removal and Fill Deposit Regulation Bylaw No. 8094,
Amendment Bylaw No. 9002**

The Council of the City of Richmond enacts as follows:

1. Soil Removal and Fill Deposit Regulation Bylaw No. 8094, as amended, is further amended:

(a) by deleting paragraph 4.1.1(a) and substituting the following:

“(a) a non-refundable application fee of Six Hundred Dollars (\$600) for the purposes of the **permit** application under this bylaw, together with the prescribed application fee under the *Agricultural Land Commission Act*.

(b) by adding the following after section 5.1.2:

“5.2 Identification

5.2.1 Upon request by the **Manager** or a **City** Bylaw Enforcement Officer:

(a) the driver or operator of a vehicle or any equipment being used for **deposit** or **removal** activity, or the person in charge of the vehicle or equipment, shall provide his or her full name and current address (including photo identification to verify this information), the full name and current address of the owner of the vehicle or equipment, the full name and current address of the person directing the **deposit** or **removal** activity, and the addresses of the **parcel** or **parcels** to or from which the **deposit** or **removal** is being transported; and

(b) a person who has allegedly contravened any provision of this bylaw shall provide his or her full name and current address and photo identification to verify this information.”

(c) by adding the following after section 7.1.1:

“7.1.2 A violation of any of the provisions identified in this bylaw shall result in liability for penalties and late payment amounts established in Schedule A of the Notice of Bylaw Violation Dispute Adjudication Bylaw No. 8122.

7.1.3 A violation of any of the provisions identified in this bylaw shall be subject to the procedures, restrictions, limits, obligations and rights established in the Notice of Bylaw Violation Dispute Adjudication Bylaw No. 8122 in accordance with the *Local Government Bylaw Notice Enforcement Act, SBC 2003, c.60.*"

2. This Bylaw is cited as **"Soil Removal and Fill Deposit Regulation Bylaw No. 8094, Amendment Bylaw No. 9002"**.

FIRST READING

SECOND READING

THIRD READING

MINISTER APPROVALS

ADOPTED

CITY OF RICHMOND
APPROVED for content by originating dept.
APPROVED for legality by Solicitor

MAYOR

CORPORATE OFFICER



**Notice of Bylaw Violation Dispute Adjudication Bylaw No. 8122,
Amendment Bylaw No. 9003**

The Council of the City of Richmond enacts as follows:

1. Notice of Bylaw Violation Dispute Adjudication Bylaw No. 8122, as amended, is further amended at Part One – Application by adding the following after section 1.1(l):

 “(n) Soil Removal and Fill Deposit Regulation Bylaw 8094, as amended,”
2. Notice of Bylaw Violation Dispute Adjudication Bylaw No. 8122, as amended, is further amended by adding to the end of the table in Schedule A of Bylaw No. 8122 the content of the table in Schedule A attached to and forming part of this bylaw.
3. This Bylaw is cited as **“Notice of Bylaw Violation Dispute Adjudication Bylaw No. 8122, Amendment Bylaw No. 9003.”**

FIRST READING

SECOND READING

THIRD READING

ADOPTED

CITY OF RICHMOND
APPROVED for content by originating Division
APPROVED for legality by Solicitor

MAYOR

CORPORATE OFFICER

SCHEDULE A to BYLAW NO. 9003

SCHEDULE A to BYLAW NO. 8122

Designated Bylaw Contraventions and Corresponding Penalties

A1 Bylaw	A2 Description of Contravention	A3 Section	A4 Compliance Agreement Available	A5 Penalty	A6 Early Payment Option	A7 Late Payment Amount	A8 Compliance Agreement Discount
			n/a	29 to 60 days	1 to 28 days	61 days or more	n/a
Soil Removal and Fill Deposit Regulation Bylaw 8094 (2007)	Soil deposit or removal without valid permit	3.1.2	No	\$ 500.00	\$ 475.00	\$ 525.00	n/a
	Not complying with term or condition of permit.	3.1.2	No	\$500.00	\$475.00	\$525.00	n/a
	Deposit or remove soil or fill between the hours of 8:00 p.m. and 7:00 a.m.	5.1.1(a)	No	\$500.00	\$ 475.00	\$ 525.00	n/a
	Deposit or remove soil or fill on a Sunday or any statutory holiday	5.1.1(b)	No	\$500.00	\$ 475.00	\$ 525.00	n/a
	Failing to properly license and insure vehicle used for hauling soil or fill	5.1.1(c)	No	\$200.00	\$175.00	\$225.00	n/a
	Failing to cover soil or fill to prevent blowing or falling from vehicle	5.1.1(d)	No	\$300.00	\$275.00	\$325.00	n/a
	Failing to repair damage to drainage, watercourse, highway or other property	5.1.1(e)	No	\$500.00	\$ 475.00	\$ 525.00	n/a

A1 Bylaw	A2 Description of Contravention	A3 Section	A4 Compliance Agreement Available	A5 Penalty	A6 Early Payment Option	A7 Late Payment Amount	A8 Compliance Agreement Discount
	Failing to keep drainage or watercourse free of soil or fill	5.1.1(f)	No	\$500.00	\$ 475.00	\$ 525.00	n/a
	Removal or deposit greater than 0.5 metre within 2.5 metre of utility pole, pipeline, structure or highway without approval	5.1.1(g)	No	\$500.00	\$475.00	\$525.00	n/a
	Removal or deposit soil or fill on highway, statutory right-of-way or easement without permission	5.1.1(h)	No	\$500.00	\$ 475.00	\$ 525.00	n/a
	Failure to remove temporary structures	5.1.1(i)	No	\$200.00	\$175.00	\$225.00	n/a
	Failure to adequately fence or protect hazards	5.1.1(j)	No	\$500.00	\$ 475.00	\$ 525.00	n/a
	Failure to protect from erosion, collapse, or run-off water or mud	5.1.1(k)	No	\$300.00	\$275.00	\$325.00	n/a
	Stockpiling soil or fill other than location in permit or causing damage or nuisance	5.1.1(l)	No	\$300.00	\$275.00	\$325.00	n/a
	Allow soil to encroach, undermine, damage or endanger adjacent property or setback area	5.1.1(m)	No	\$400.00	\$375.00	\$425.00	n/a

A1 Bylaw	A2 Description of Contravention	A3 Section	A4 Compliance Agreement Available	A5 Penalty	A6 Early Payment Option	A7 Late Payment Amount	A8 Compliance Agreement Discount
	Driver fail to provide required information	5.2.1(a)	No	\$200.00	\$175.00	\$225.00	n/a
	Person fail to provide name, address or photo identification	5.2.1(b)	No	\$200.00	\$175.00	\$225.00	n/a
	Prevent or obstruct entry by Manager	6.1.2	No	\$500.00	\$ 475.00	\$ 525.00	n/a
	Failure to comply with notice of non-compliance	6.2.1	No	\$500.00	\$ 475.00	\$ 525.00	n/a