

ORDINANCES & ENFORCEMENT

“It is not desirable to cultivate a respect for the law
so much as for the right.”

---Henry David Thoreau

CVSWMD Philosophy on Measures Meant to Ensure Compliance

The CVSWMD Board has long-held a two-pronged philosophy in regard to establishing and enforcing regional solid waste laws.

1. We believe that our first obligation is to educate constituents concerning our own and other (State and Federal) applicable laws, and then to uphold these laws if action consistent with these ordinances and regulations are not forthcoming. As a result of this position, the District has rarely sought court-based remedies. Lawsuits brought against non-compliant facilities, haulers and other businesses have occurred only after effort to resolve the matter through other means; the issuance of tickets to landlords and residents has not yet been necessary.
2. We prefer to believe that most people, given sufficient information, supportable data and reliable facts, will choose to act in a manner that is beneficial to the “larger good.” Given this position, it is an infrequent occurrence for our organization to legislate action. This results in our having very few ordinances to uphold.

RECOMMENDATIONS FOR ACTIONS

It is our intent to continue to hold to the tenets described above for the duration of this plan. We will place our resources primarily into undertakings designed to convince our constituents to “do the right thing.” Our specific actions will include:

- Modeling appropriate behavior in our own activities at all levels of the organization.
- Demonstrating restraint in the creation of ordinances. This will take the form of always considering other options before adopting the fewest number of laws possible to accomplish our goals. When assured that our best option for addressing an issue is legislating change, we will be direct and clear in describing the intent of the law and in ascribing remedies, fines and other penalties.
- Identifying specific constituent groups for particular issues and creating community-based education to inform the target audience about regulations, environmental and health impacts, preferred behavioral options, and both short- and long-term consequences of non-compliance.
- Basing our initial response to infractions on the assumption that the perpetrator has acted without knowledge, we will seek a remedy for the situation in a manner characterized by an educational approach and personal contact based in a spirit of mutual respect, anticipating a voluntary, cooperative end result. As part of this interaction, we will forewarn the party of the legal ramifications of continued non-compliance.
- Choosing mediation or facilitated dialogue to arrive at a resolution, whenever possible and appropriate, should a legitimate difference of opinion prove to be the root of any civil disobedience.
- Swiftly and effectively putting an end to the breach of law by bringing the full weight of our municipal rights to bear if our actions and warnings are rebuffed or ignored, or flagrant violation of our laws continues.
- Reviewing the appropriateness of our ordinances during our five-year programmatic plan development.

OVERVIEW OF CURRENT SITUATION

As of the writing of this Plan, the District is not contemplating the addition of any new ordinances. This statement is inclusive of a clear decision to refrain from adopting an Illegal Burning Ordinance on a regional level. Our rationale for this is clearly explained in the Illegal Disposal Chapter of this Plan. It does not preclude our advising or assisting a member community on drafting and adopting a local ordinance dealing with this matter.

The CVSWMD board has adopted three (3) ordinances. There are Rules and Regulations that correspond to two (2) of these - #92-01 and #94-01. Copies of any or all of these documents are available by calling or emailing the CVSWMD, according to the directions noted inside the front cover of this Plan document. These are as follows:

1. Ordinance #90-01 Commonly Referred to as our: Surcharge Ordinance
Legal Nomenclature: Ordinance Relating to the Imposition of a Solid Waste Disposal Charge

This ordinance was unanimously adopted by the board of supervisors of the Central Vermont Solid Waste Management District on January 3, 1990. Amendments to Section 1 were adopted on June 3, 1992. The board of supervisors voted on December 4, 1991 to increase the disposal charge from \$4.00 per ton to \$5.00 per ton, effective July 1, 1992, in adopting a budget for fiscal year 1993; on December 2, 1992, from \$5.00 per ton to \$7.64.00 per ton, effective July 1, 1993, in adopting a budget for fiscal year 1994; and on June 2, 1993 from \$7.64 per ton to \$8.00 per ton, effective August 3, 1993, in adopting budget revisions for fiscal year 1994; in May 1994 from \$8.00 per ton to \$12.00 per ton, effective July 1, 1994, in adopting budget revisions for fiscal year 1995; in April 2001 from \$12.00 per ton to \$16.00 per ton, effective July 1, 2001.

Brief Description of this law: This ordinance establishes a disposal charge on each ton or portion of a ton of solid waste generated in the District, and places responsibility on certain entities for the collection and payment of this charge to the CVSWMD. Fines are also defined.

2. Ordinance #92-01 Commonly Referred to as the: Flow Control Ordinance
Legal Nomenclature: Flow Control Ordinance

This ordinance was unanimously adopted by the board of supervisors of the Central Vermont Solid Waste Management District on June 3, 1992 and amended on October 6, 1993.

Brief Description of this law: Portions of this ordinance have been deemed unconstitutional by virtue of the United States Supreme Court Ruling typically referred to as the *Carbone Decision*¹ handed down in May of 1994. This decision precludes directing the flow of trash due to interstate commerce rules. Portions of the ordinance irrelevant to this landmark decision remain viable, unless changed through our ordinance #94-01. It establishes licensing requirements for haulers and self-haulers of waste materials and deals with certain aspects of hazardous waste collection and disposal.

A set of *Rules and Regulations* is established and relates specifically to this ordinance.

3. Ordinance #94-01 Commonly Referred to as the: *The Mandatory Ordinance*
Legal Nomenclature: *Waste Management and Recycling Ordinance*

This ordinance was unanimously adopted by the board of supervisors of the Central Vermont Solid Waste Management District on September 7, 1994 and amended on October 1, 1997.

Brief Description of this law: This ordinance establishes requirements for required source separation of recyclables in our region. It also re-defines aspects of hauler licensing and responsibilities, deals with inspection as related to enforcement actions, clearly defines responsibilities for various aspects of solid waste management, and establishes penalties and enforcement actions that are applicable. A set of *Rules and Regulations* is established and relates specifically to this ordinance. These primarily identify the types of materials required to be source separated and diverted from landfill in our region. Ordinance #94-01 supercedes Ordinance #92-01 wherever a conflict may exist between the two.

ISSUES AND QUESTIONS TO BE ANSWERED

The following list represents issues and questions that are expected to be addressed during the timeframe of this plan as the CVSWMD moves towards a zero waste approach to solid waste management.

- **APPLICABILITY.** **Which portions of our existing ordinances need to be amended?** District staff and legal counsel will need to review existing ordinances and recommend changes to the board as may be needed as the shift from waste diversion to resource management effectively occurs.
- **MEANINGFUL EXEMPTIONS.** **Are there any current responsibilities or obligations that should be forgiven in specific circumstances in order to support and motivate desired results?** As the board contemplates and develops new policies to encourage waste reduction and resource conservation,

¹ C&A Carbone, Inc. v. Town of Clarkstown, New York

exemptions should be discussed as a potential motivator to sustainable behavior change.

- **INCENTIVES. Are there opportunities that can be added to our current ordinances as a means of positive motivation for achieving sustainable behavioral change?** For example, should the District consider an incentive-based rate structure whereby various types of materials being diverted from disposal are eligible to pay a fee that is less than the surcharge for disposal?

NEW OBLIGATIONS. What are the new responsibilities of generators, haulers, and solid waste facilities? How are these applicable to residential, business, institutional and municipal sectors?