

Ministry of Environment sends a warning Letter to Tri-X indicating that their contravention of the *Environmental Management Act* could meet with a “fine not exceeding \$1 000 000 or imprisonment for not more than six months, or both.” Yet we found **no evidence that a single dollar in fines was ever laid or paid.**



Report Date: March 22, 2017

File: UA50919

Report Number: 050919

Tri-X Excavating Ltd./Tri-X Group

1107 Goldstream Avenue
Victoria BC V9B 2Y9

Dear Tri-X Excavating Ltd./Tri-X Group

Re: Warning Letter, Unauthorized Discharge, 48.419182 and -123.570093 degrees near 3701 Sooke Road, Victoria, Effluent

On March 22, 2017, Ministry of Environment, Environmental Protection Division staff conducted an inspection of your facility, located at 48.419182 and -123.570093 degrees near 3701 Sooke Road, Victoria. The inspection determined that Tri-X Excavating Ltd./Tri-X Group is out of compliance with the *Environmental Management Act*, Part 2 Prohibitions and Authorizations, Section 6(3) waste disposal. This Warning Letter lists the compliance verification information below.

By discharging waste under Environmental Management Act without a valid authorization Tri-X Excavating Ltd./Tri-X Group commits an offence under the *Environmental Management Act (EMA)*. Section 120(3) of *EMA* states as follows:

120(3) A person who contravenes any of the following commits an offence and is liable on conviction to a fine not exceeding \$1 000 000 or imprisonment for not more than 6 months, or both: (a) section 6 (2), (3) or (4) [waste disposal];...

It should also be noted that, as an alternative to prosecution of the offence referenced above, the Ministry may initiate action to impose an administrative penalty against Tri-X Excavating Ltd./Tri-X Group. The *Administrative Penalties Regulation (EMA)* (B.C. Reg. 133/2014) (APR) was brought into force in 2014. The APR describes the prescribed provisions of the *EMA* as well as that of specified regulations under which administrative penalties can be assigned. Section 12(1) of the APR states as follows:

12(1) A person who contravenes section 6 (2), (3) or (4), 7, 8, 9 (1) or (4), 11, 25 (2), 40 (1), (2), (3), (6) or (7), 48 (8), (10) or (15), 55 (1), 72 (1) or (2) or 76.2 of the Act is liable to an administrative penalty not exceeding \$75 000.

If you fail to take the necessary actions to restore compliance, you may be subject to escalating enforcement action. This Warning Letter and the alleged violations and circumstances to which it refers, will form part of the compliance history of Tri-X Excavating Ltd./Tri-X Group and will be taken into account in the event of future violations.

Finally, I request that Tri-X Excavating Ltd./Tri-X Group immediately implement the necessary changes or modifications to correct the non-compliance(s) listed above with the *Environmental Management Act*. Further, I request that Tri-X Excavating Ltd./Tri-X Group notify this office in writing by email or letter within 30 days of this letter, advising what corrective measures have been taken, and what else is being done, to prevent similar non-compliances in the future. Tri-X Excavating Ltd./Tri-X Group failed to comply with the *Environmental Management Act*, section 6(3) as outlined below.

Inspection Details:

Requirement Description:	Environmental Management Act, Environmental Management Act 6 (3): Subject to subsection (5), a person must not introduce or cause or allow to be introduced into the environment, waste produced by a prescribed activity or operation.
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Details/Findings:	The site at the listed location contains piles of refuse originating from residential, commercial, institutional, demolition, land clearing and/or construction sources that are being managed, treated, and/or discharged; the above activity falls under the prescribed activity listed in Waste Discharge Regulation Schedule 1 as Municipal Solid Waste Management. On March 17, 2017, the Metchosin Fire Department attended the site to extinguish a fire in one of the debris piles (see photos, below). In addition to the unauthorized air emissions from burning at this site, leachate and surface water run-off are typical discharges for this type of prescribed activity as precipitation on and through the wastepiles discharges into the ground or overland as unauthorized and untreated discharges.
Compliance:	Out
Actions to be taken:	Municipal Solid Waste Management requires authorization to discharge waste in order to be exempt from the Environmental Management Act (EMA) 6(3). Information on how to obtain a permit can be found here: http://www2.gov.bc.ca/gov/content/environment/waste-management/waste-d

Below are attachments related to this inspection.

If you have any questions about this letter, please contact the undersigned.

Yours truly,

Laura Hunse

Environmental Protection Officer

cc:

Attachments:	
1) Pile 1.jpg	2017-03-17 Debris Pile at Site
2) Pile 2.jpg	2017-03-17 Ignited Debris Pile
3) Pile 3.jpg	2017-03-17 Extinguishing Burning Debris Pile
4) Site Location Reference.jpg	2017-03-17 Site Location Reference

Deliver via:			
Email:	<input type="checkbox"/>	Fax:	<input type="checkbox"/>
Registered Mail:	<input checked="" type="checkbox"/>	Hand Delivery:	<input type="checkbox"/>
		Mail:	<input type="checkbox"/>

Ministry of Environment	Compliance	Mailing Address:	Telephone: 250 751 3100
	Environmental	2080-A	Facsimile: 250 751 3103
	Protection Division	Labieux Rd Nanaimo BC V9E 6J9	Website: www.gov.bc.ca/env

DISCLAIMER:
Please note that sections of the permit, regulation or code of practice referenced in this inspection record are for guidance and are not the official version. Please refer to the original permit, regulation or code of practice.

To see the most up to date version of the regulations and codes of practices please visit <http://www.bclaws.ca>

If you require a copy of the original permit, please contact the inspector noted on this inspection record or visit: <http://www2.gov.bc.ca/gov/topic.page?id=DF89089126D042FD96DF5D8C1D8B1E41&title=Publically%20Viewable%20Authorizations>

It is also important to note that this inspection record does not necessarily reflect each requirement or condition of the authorization therefore compliance is noted only for the requirements or conditions listed in the inspection record.

Metchosin Fire Department submits a **Memo** to the District of Metchosin describing “a massive open garbage burn” approx. 200’ x 40’ in size, and containing “prohibited items.” This was just one of three large garbage fires. Again, we found **no evidence in the records to show that a single fine was laid for any of the unauthorized burns of demolition waste**

...

Memorandum

FOIPPA Section 22

To: Lisa Urlacher, CAO

From: Stephanie Dunlop, Fire Chief

Date: 22/03/2017

Re: 3704 Sooke Road (Area of) – Red Gate Access Point



Further to an Open Burn complaint on November 24, 2016, in which the Metchosin Fire Department responders found a large open burn with various prohibited items burning.

We responded to the incident at 09:48 and found a massive open garbage burn. We have attached pictures and a video for reference. It had clearly been burning for quite a while. I would approximate its size at 200' X 40' based on hose lengths used to reach the far side of the burn pile.

When we arrived on scene, there was an employee on site with an excavator. He provided no information, but was able to contact [REDACTED]. Once [REDACTED] was on site he was fully cooperative and assumed full responsibility.

We proceeded to extinguish the fire. As there are no public water sources in the area, we had to shuttle water in from a Sooke Road hydrant in Langford (Slegg Lumber). Also, due to limited resources – we requested the assistance of Sooke Fire Tender 1 to assist with water shuttle.

We have attached copies of fee invoice that has been drafted for [REDACTED]. Also attached are pictures of the illegal burn and incident reports from Metchosin Fire Department firefighters on scene for your records.

Should you require any additional information please advise.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephanie Dunlop".

Stephanie Dunlop, Fire Chief
Metchosin Fire Department

The Metchosin Fire Department Memo (cont).

FOIPPA Section 22

Incident of November 24, 2016

- Arrived on scene in Engine 4 with LT. [REDACTED] driving and FF [REDACTED] in the back seat.
- Fire area was approx. 20 meters by 80 meters, with flames reaching as high as the truck at some points.
- Put on SCBA and extended the deck gun to start an initial attack.
- After emptying the truck through the deck gun, we set up the ground monitor.
- I was on air while using the ground monitor as the smoke was dense.
- After using the ground monitor, I used a 1.75-inch line to extinguish hot spots
- I worked on the left flank of the fire scene
- I went through two 45 minute bottles of air.
- What I saw burning in the fire:
 - o Insulation
 - o Siding
 - o Tree stumps/logs
 - o Drywall
 - o Furniture
 - o Appliances (washing machine, mini fridge)
 - o Aluminum baseball bat
 - o Cardboard
 - o Corrugated metal roofing/siding
 - o Stuffed animals
 - o Assorted plastics
- There were also at least 4-5 other piles about 10 feet tall which has already been burned and self extinguished.

Metchosin Fire Department submits an Invoice for expenses incurred: **also never paid.**

METCHOSIN FIRE DEPT

INVOICE



3704 Sooke Road – Red Gate Access Point
Victoria, B.C.

INVOICE # 11242016
DATE: Jan 3, 2017

FOIPPA Section 22

Bill To:



For:

SERVICES RENDERED
Nov 24, 2016

DESCRIPTION	AMOUNT
Attended an unlawful open burn at 3704 Sooke Road, Incident Begin Time: 09:48 Incident End Time: 15:22	
IN ACCORDANCE TO DISTRICT OF METCHOSIN FIRE REGULATION AND PREVENTION BYLAW 269, SECTION 28 (1) & (2):	
(2) (a): \$30 per hour for each firefighter or other person employed (5 hrs / 7 fire fighters)	\$1,050.00
(2) (b): \$300 per fire vehicle per hour (5 hrs / 4 fire apparatus)	\$6,000.00
INVOICE TOTAL	\$7,050.00

CRD Bylaw sends a letter to Tri-X about the depositing of “large volumes of demolition waste” on 3659 Sooke Road, as well as “an unattended illegal burn of demolition waste.”

FOIPPA Section 22

May 16, 2017
File No. 17/140

On behalf of the District of Metchosin

Tri-X Excavating Ltd.
Attn: [REDACTED]
1107 Goldstream Avenue
Victoria, BC V9B 2Y9

Dear Mr. [REDACTED]

RE: Land Use, Fire Regulation and Soil Deposit issues at 3704 Sooke Road (Red Gate Access) legally described as Section 38, Goldstream District, Except Plan 37686 & 50969, Exc Pt Registered Under 71924I & Exc Plan 109 R/W 305 R/W F83161 & A25593, PID 009-835-431

The District of Metchosin on March 16, 2017 received complaints regarding Tri-X Excavating depositing demolition waste on the above noted property. An investigation was conducted and large volumes of demolition waste was found to be deposited on the property. In fact on March 17, 2017 the Metchosin Fire Department attended and extinguished an unattended illegal burn of demolition waste.

This property under the Metchosin Land Use Bylaw No. 259 is currently zoned Upland (UP) Zone which clearly does not allow under its “Permitted Uses” the deposit and processing of demolition waste materials.

A review of the property in relation to attendances by the Metchosin Fire Department has also been conducted. There has been three documented attendances at this property for fires in relation to demolition material burning. The first fire occurred on November 24, 2016 @ 0948 hrs., the second on January 19, 2017 @ 2148 hrs. and the third on March 17, 2017 @ 1400 hrs. Multiple offences under the “Fire Regulation and Prevention Bylaw No. 269, 1996” have occurred, see the below list and potential prescribed fine amounts:

- November 24, 2016 @ 0948 hrs, Fail to obtain fire permit, S. 22, \$ 100
- November 24, 2016 @ 0948 hrs, Burn prohibited material, S. 26(1), \$ 100
- January 19, 2017 @ 2148 hrs, Fail to obtain fire permit, S. 22, \$ 100
- January 19, 2017 @ 2148 hrs, Burn prohibited material, S. 26(1), \$ 100
- January 19, 2017 @ 2148 hrs, Burn between 6:00 p.m. and 8:00 a.m. without special permit, S. 26(2)(a), \$100
- March 17, 2017 @ 1400 hrs, Fail to obtain fire permit, S. 22, \$ 100
- March 17, 2017 @ 1400 hrs, Burn prohibited material, S. 26(1), \$ 100

In addition Section 28 of the “Fire Regulation and Prevention Bylaw No. 269, 1996” allows the District of Metchosin to make the person liable for the fire response, be also liable for the expenses incurred by the District of Metchosin:

28. Responsibilities for Outdoor Fires

(1) Every person who sets out, starts or kindles any outdoor fire, or fails to extinguish any outdoor fires set out, started or kindled at any time of the year, whether such fire was started under a permit or not, shall be responsible for such fire. If he lets such a fire get out of control, he shall be liable for all expenses incurred by the District in controlling and extinguishing such fire, and any other fire originating from such fire, and he shall also be liable for the wages of all the persons employed in controlling and extinguishing such fire, including wages for firefighters so employed.

See the attached District of Metchosin Invoice No. 11242016 (\$7,050) in relation to costs incurred for the fire on November 24, 2016.

The District of Metchosin also has concerns with the volumes of fill material that has been observed on the property deposited to the east side of the main access road prior to the area of the demolition waste, contrary to the Soil Removal & Deposit Bylaw No. 402 (2001), which states;

Tri-X Excavating Ltd.

Attn: [REDACTED]

Bylaw File 17/140

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May 16, 2017

Prohibitions

8. No person shall do any of the following anywhere in the Municipality except in compliance with Metchosin Land Use Regulations Bylaw No. 259 and in accordance with either a valid Permit issued under this Bylaw or in accordance with at least one of the conditions for exemptions in section 9 or 10 of this Bylaw:

(3) Deposit any Soil or Compost Material.

Section 10 exemptions do not appear to apply based on the observations of the fill area in this case, and thus a permit would be required for deposits of fill in excess of 80 cu.m. in a calendar year.

The District of Metchosin based on the multiple concern with activities related to Tri-X Excavating occurring at this property is considering the issuance of the above fines in relation to offences under the "Fire Regulation and Prevention Bylaw No. 269, 1996", as well as collection of the costs incurred as listed in Invoice No. 11242016 (\$7,050). The District is also considering initiating other enforcement measures which would potentially include the concerns under the Land Use and Soil deposit Bylaws.

Accept this letter as a request that you respond within 7 days with a commitment to bring the property into compliance with the Bylaws by ceasing delivery of and removing all demolition waste from the property, secondly that you cease bringing any further deposits of fill to the property until such time that a permit is obtained.

Failure to respond within 7 days from the date of this letter will result in the District of Metchosin considering the escalation of its enforcement options against you.

Sincerely

Wilf MARQUIS
Senior Bylaw Enforcement Officer

WM:

Cc: