

THE CORPORATION OF THE TOWN OF LINCOLN

BY-LAW NO. 92-78

A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE THE CORPORATION OF THE TOWN OF LINCOLN, THE CORPORATION OF THE TOWN OF GRIMSBY, THE CORPORATION OF THE CITY OF NIAGARA FALLS, THE CORPORATION OF THE TOWN OF NIAGARA ON THE LAKE, THE CORPORATION OF THE TOWN OF PELHAM, THE CORPORATION OF THE CITY OF PORT COLBORNE, THE CORPORATION OF THE CITY OF THOROLD, THE CORPORATION OF THE TWP. OF WAINFLEET AND THE CORPORATION OF THE CITY OF WELLAND TO ESTABLISH A JOINT MUNICIPAL RECYCLING BOARD.

WHEREAS:

1. Paragraph 5 of Section 207 of the Municipal Act, R.S.O. 1990, Chapter M.45 provides in part that By-laws may be passed by the Councils of all Municipalities for entering into agreement with one or more Municipalities to provide for the joint management and operation of garbage collection and disposal systems or other municipal systems or services and for the establishment of a joint board of management thereof.
2. Paragraph 89 of Section 210 of the Municipal Act, R.S.O. 1990, Chapter M.45 provides that By-laws may be passed by the Councils of Local Municipalities for the establishment and maintenance of a system for the collections, removal and disposal of garbage and other refuse.

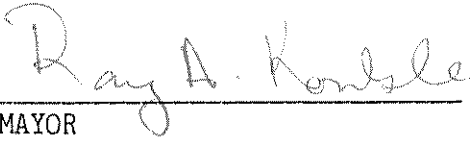
NOW THEREFORE, THE COUNCIL OF THE CORPORATION OF THE TOWN OF LINCOLN ENACTS AS FOLLOWS:

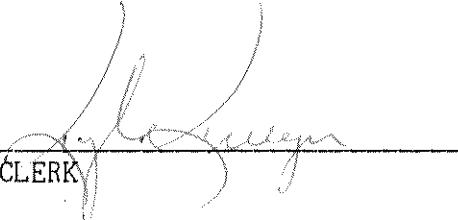
1. That, the Mayor and Clerk be and they are authorized and directed to execute the agreement affixed hereto and marked Schedule "A" and forming part of this By-law, being an agreement to establish a joint recycling management board known as the Niagara Municipal Recycling Board and the Clerk is authorized and directed to affix the Corporate seal thereto.
2. That, this By-law shall not take effect until approved by the Ontario Municipal Board pursuant to the requirements of the Ontario Municipal Board Act.

READ a FIRST time this 8th day of September, 1992.

READ a SECOND time this 8th day of September, 1992.

READ a THIRD time and FINALLY PASSED this 8th day of September, 1992.


MAYOR


CLERK

BETWEEN:

THE CORPORATION OF THE TOWN OF GRIMSBY

(Hereinafter referred to as "Grimsby")

OF THE FIRST PART

- and -

THE CORPORATION OF THE TOWN OF LINCOLN

(Hereinafter referred to as "Lincoln")

OF THE SECOND PART

- and -

THE CORPORATION OF THE CITY OF NIAGARA FALLS

(Hereinafter referred to as "Niagara Falls")

OF THE THIRD PART

- and -

THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE

(Hereinafter referred to as "Niagara-on-the-Lake")

OF THE FOURTH PART

- and -

THE CORPORATION OF THE TOWN OF PELHAM

(Hereinafter referred to as "Pelham")

OF THE FIFTH PART

- and -

THE CORPORATION OF THE CITY OF PORT COLBORNE

(Hereinafter referred to as "Port Colborne")

OF THE SIXTH PART

- and -

THE CORPORATION OF THE CITY OF THOROLD

(Hereinafter referred to as "Thorold")

OF THE SEVENTH PART

- and -

THE CORPORATION OF THE TOWNSHIP OF WAINFLEET

(Hereinafter referred to as "Wainfleet")

OF THE EIGHTH PART

- and -

THE CORPORATION OF THE CITY OF WELLAND

(Hereinafter referred to as "Welland")

OF THE NINTH PART

(The foregoing parties sometimes being referred to hereinafter, individually as a "Municipality", and collectively, as the "Municipalities")

WHEREAS Section 207, paragraph 5 of the Municipal Act, R.S.O. 1990, Chapter M.45, as amended, provides that By-laws may be passed by the councils of all municipalities for the agreement between Municipalities for the joint management and operation of garbage collection and disposal systems, or other municipal systems or services, and for the establishment of a joint Board of Management thereof;

AND WHEREAS Section 210, paragraph 89, of the Municipal Act, provides that By-laws may be passed by the councils of local municipalities for the establishment and maintenance of a system for the collection, removal and disposal of garbage and other refuse;

AND WHEREAS the municipalities hereto have established recycling programs in each of their municipalities and wish to establish a joint recycling program in order to continue recycling within their communities as a viable program to divert materials from landfill sites in part through the reduction, re-use, and recycling of waste;

AND WHEREAS recycling programs revenues, arising from the sale of recyclable material and government grants may be insufficient to allow the program to operate, the parties hereto have agreed to a formula to apportion any operating deficit amongst the parties to this agreement;

AND WHEREAS Section 207, paragraph 9, of the Municipal Act provides that in any agreement that may be lawfully made with another Municipality that any dispute arising out of such agreement may be determined by the Municipal Board as sole arbitrator;

AND WHEREAS this agreement sets forth the terms and conditions of the agreement between the parties pertaining to the establishment and maintenance of a recycling program;

AND WHEREAS the Municipal Council of each of the parties hereto has passed a by-law authorizing the execution of this Agreement;

AND WHEREAS this Agreement results from advice received from the Ministry of the Environment for the Province of Ontario that the parties hereto will receive subsidies from the Ministry for the collection and processing of recyclable waste in the following percentages, expressed as a percentage of the operating costs, for the fiscal years of the Ministry of the Environment: 1992 - 1993 - 50%; 1993 - 1994 - 40%; 1994 - 1995 - 33%; 1995 - 1996 - 33%; 1996 - 1997 - 33%;

NOW THEREFORE in consideration of mutual covenants contained herein, made jointly and severally by each and every party hereto to each and every of the other parties hereto and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by each of the parties hereto) the parties hereto agree as follows:

1. TERM

- 1.1 This agreement shall come into force and effect, upon the date hereof, and shall be for a term of five (5) years.
- 1.2 Following the term described in paragraph 1.1 above this Agreement shall be automatically renewed by the parties from month to month unless otherwise terminated by the parties in the manner hereinafter provided for.

2. RECYCLING MANAGEMENT BOARD

- 2.1 The municipalities hereto hereby establish a joint recycling management board known as the "Niagara Municipal Recycling Board" (hereinafter referred to as the "Board") which shall be responsible for implementing, operation, managing and promoting the recycling program in an orderly and proper fashion in accord with the terms of this Agreement.
- 2.2 The Board shall be composed of nine (9) members, each of whom shall be elected municipal official from the following Municipalities:
- (i) one member appointed by Grimsby;
 - (ii) one member appointed by Lincoln;
 - (iii) one member appointed by Niagara Falls;
 - (iv) one member appointed by Niagara-on-the-Lake;
 - (v) one member appointed by Pelham;
 - (vi) one member appointed by Port Colborne;

- (vii) one member appointed by Thorold;
- (viii) one member appointed by Wainfleet;
- (ix) one member appointed by Welland.

2.3 Each member shall be appointed for a term to coincide with the term of the elected Councils of the municipalities hereto. Any member of the Board may be removed or replaced at any time by the respective municipality on whose behalf of the member was appointed.

2.4 The Board shall appoint, annually, from its members, a chairperson and a vice-chairperson. The chairperson and the vice-chairperson shall serve for a term of one (1) year from the date of their election, provided that any officer may be re-elected to serve for a subsequent term.

2.5 The Board shall meet at least two (2) times a year and otherwise at the call of the chairperson or any two (2) members of the Board.

2.6 Five (5) of the Board members shall constitute a quorum of the Board and all matters (except as provided herein to the contrary) shall be decided by the affirmative vote of at least five (5) of the members. All decisions of the Board shall be subject to ratification and approval by the Councils of all Municipalities which are parties to this agreement.

2.7 The Board shall meet not less than every six (6) months, in order to properly manage those matters which have been delegated to it by the terms of this agreement.

3. POWERS AND RESPONSIBILITIES OF THE BOARD

3.1 The Board, on behalf of all of the parties to this agreement, shall generally manage and operate the recycling program and without limiting the generality of the foregoing, shall have the following powers and responsibilities:

- (a) to promote and encourage recycling and other waste management activities as approved by the Board from time to time;
- (b) to maintain reasonable records and statistics concerning all aspects of the recycling program so as to permit each of the parties hereto to assess the recycling program, including records of the total tonnage of recyclable material collected as a whole and the total tonnage collected from each municipality;

- (c) to keep minutes of its meetings, which minutes shall be circulated in a timely fashion to the Clerk of each of the parties hereto, for distribution to members of the Council of each of the parties hereto. Further, the Board shall take such further steps as the Board considers necessary or as the Councils of the parties hereto shall jointly direct, in order to ensure that the said Councils are fully informed of the actions being taken by the Board;
- (d) to negotiate contracts or agreements necessary or advisable including without limitation, contracts for the collection, disposal, processing, sorting/or sale of materials and lease and/or purchase arrangements of land, buildings, equipment, machinery etc. with public bodies, private companies and/or individuals, which contracts or agreements shall be subject to approval by the councils of each of the municipalities;
- (e) to prepare and approve an annual budget setting out, inter alia, the estimated operating and capital costs, applicable grants, subsidies and other revenues and establishing the proportionate contribution for each of the municipalities hereto. The budget as approved by the Board shall be submitted to the Clerk of each of the municipalities hereto. The budget shall require the ratification and approval of each of the Municipalities;
- (f) to provide annually, prior to February 28th, a detailed accounting of the recycling program's expenditures during the immediate preceding calendar year to each of the municipalities hereto and all such expenditures shall be audited in accordance with the requirements of the Municipal Act;
- (g) to obtain the approval of the municipalities hereto for any capital costs not contained in an approved budget prior to incurring such costs;
- (h) to collect from each of the municipalities hereto such party's proportionate share of the capital and operating expenses as provided for in this Agreement;
- (i) to pay such monies as are properly due and owing out of monies received by the Board for the recycling program;
- (j) to consult with the Ministry of the Environment concerning the implementation and ongoing operation of the recycling program;
- (k) to arrange for such insurance, legal and accounting services as may be necessary or advisable for the proper management and operation of the recycling program;
- (l) to specify the types and quality of waste materials to be processed in the recycling program;

- (m) to make all appropriate applications for any and all grants, subsidies or other monies which may be available on behalf of the municipalities and receive and account for all grants, subsidies and other monies received;
- (n) to set fees for the costs of operating and/or managing the recycling program and to amend such fees from time to time;
- (o) to monitor on a continuing basis the recycling program and to liaise with any recycling contractor(s) to ensure the requirements of the program and the parties hereto are being met;
- (p) to make applications to, and liaise with, appropriate government agencies;
- (q) to do such other things as may be necessary to carry out an effective recycling program.

4. REVIEW AND LIAISON COMMITTEE

- 4.1 The municipalities agree to establish a Review and Liaison Committee. The Review and Liaison Committee shall oversee the operation of the recycling program and report to the Board. The Review and Liaison Committee shall be comprised of a least one staff member from each municipality.

5. RECYCLING PROGRAM

- 5.1 The Municipalities agree that they shall jointly provide a facility for the processing of recyclable wastes. This facility may be provided by means of a contract with a contractor or through an operation jointly established by the Municipalities. The term "recycling program" shall mean the operation of the processing facility together with such additional recycling programs as the Board may from time to time institute in accordance with the provisions of this agreement.
- 5.2 The municipalities agree that they shall direct all basic recyclable waste to the facility, contemplated by this agreement, for the processing of recyclable wastes. Without limiting the generality of the foregoing, the Municipalities shall direct, to the facility for the processing of recyclable wastes contemplated by this agreement, all basic recyclable waste which is collected by the Municipalities, their servants, agents and contractors, provided that the facility for the processing of recyclable waste is capable of processing the type of waste which has been collected.

For the purpose of this agreement, the term "basic recyclable waste" shall mean newspaper, glass, steel and aluminum cans, PET containers, fine paper, telephone directories, corrugated cardboard and glossy magazines and which, without restricting the generality of the foregoing, shall include old newspaper, mixed pop, food and PET containers and mixed cullet.

- 5.3 Each Municipality shall establish and maintain a system for the collection of basic recyclable waste, which waste shall be delivered to the facility for the processing of recyclable wastes contemplated by this agreement.

6. PARTICIPATION IN THE RECYCLING PROGRAM AND THE APPORTIONMENT OF COSTS

- 6.1 "Proportionate share of a municipality", in this paragraph, means that fraction which has as its numerator the total tonnage of recyclable material received from a municipality as recorded by the Board, and has as its denominator the total tonnage of recyclable material received from all of the municipalities.

- 6.2 Each municipality shall pay to the Board the rate per tonne of recyclable material collected as established by the Board and such payments shall be paid monthly.

- 6.3 Each municipality shall pay its proportionate share of all costs incurred pursuant to this Agreement by the Board with respect to the operation of the recycling program and the administration of the Board in accordance with the authorizations and terms contained in this agreement.

- 6.4 Should any Municipality object to its contribution as provided for herein, it will nonetheless promptly pay any such contribution in accordance with the terms of this Agreement reserving its right to dispute the amount subsequently in accordance with the dispute resolution provisions hereto.

- 6.5 Each municipality hereto acknowledges that it may be required from time to time to provide its share of the gross capital and operating costs in order to properly fund the recycling program prior to the receipt of any subsidies, grants or other revenues.

- 6.6 All subsidies received from the Province of Ontario or from OMMRI or from any other source shall be applied to those costs, incurred pursuant to the provisions of this agreement, for which the subsidy is provided. Credit for such subsidy shall be apportioned in accordance with paragraph 6.1 hereof.
- 6.7 All applications for subsidies with respect to those recycling services provided to all of the parties hereto in accordance with the provisions of this agreement shall be made by the Board of Management on behalf of the municipalities.
- 6.8 Applications for subsidy for recycling services in accordance with paragraph 8 of this agreement shall be made by the individual municipality providing such service.
- 6.9 Any dispute between the municipalities with respect to the proportionate contribution to capital and operating expenses as described in this paragraph, which the municipalities are unable or unwilling to resolve, shall be resolved in accordance with the dispute resolution provisions hereto.
- 6.10 Notwithstanding anything contained in paragraph 5 above, the municipalities hereto may, by unanimous agreement, at any time, determine a different basis of apportionment of costs from that set out in paragraph 6.1.

7. OPERATING DEFICIT AND CAPITAL EXPENDITURES

- 7.1 The annual operating deficit for the recycling program (which is defined as the amount of monies needed to obtain the financial break-even point after all revenues, provincial subsidies and monies from other sources have been applied to the operating expenses) and capital expenditures shall be apportioned between and paid by the municipalities hereto in accordance with the proportionate share set out in paragraph 6.1 hereto.
- 7.2 The Board shall invoice each of the municipalities hereto quarterly for their respective share of the estimated capital expenditures and operating deficit, if any, for the preceding six (6) month period.
- 7.3 Any net operating profit for the term of this Agreement shall be credited to the municipalities in the same proportion as set out in paragraph 6.1 hereto.

7.4 Each of the municipalities hereto agrees to pay to the Board all monies owing by such party within thirty (30) days of the date of the invoice or demand for payment. Interest at the rate of 2% per month shall be payable to the Board on all sums of money payable to the Board by any party hereto (which sums are not paid within thirty (30) days of the date of the invoice or demand for payment, calculated from the date of such invoice or demand for payment.

8. OWNERSHIP OF PROPERTY

8.1 The parties hereto acknowledge and agree that title to any land, buildings, equipment, machinery or other chattels or any interest therein acquired by the Board for the recycling program shall be taken jointly in the name of the parties to this agreement. Any lands, buildings, equipment, machinery or other chattels or any interest therein acquired as aforesaid shall not be sold, transferred, disposed of, mortgaged, pledged or otherwise dealt with without the consent of all of the parties hereto.

8.2 The parties hereto acknowledge that this agreement is entered into in contemplation that a separate agreement shall be entered into by the parties hereto and Niagara Recycling which agreement shall provide for the acquisition of equipment, machinery and other chattels financed through the operation of the recycling program and the provision of Government grants. The ownership of all equipment, machinery or other chattels so acquired shall be governed by the provisions of this paragraph.

9. THE PROVISION OF RECYCLING SERVICES NOT CONTAINED IN THE RECYCLING PROGRAM

9.1 The parties hereto acknowledge and agree that the parties hereto may, upon their own behalf, institute and provide recycling services which are not contained within the recycling program as approved by the Board of Management in accordance with the terms and conditions of this agreement. Any party proposing to implement recycling services not so contained within the recycling program of the Board of Management, prior to issuing any call for tenders, entering into any contract or providing any services, shall first seek the advice of the Board of Management.

10. ADMINISTRATION

10.1 The Corporation of the City of City of Niagara Falls shall provide all municipal staff and services necessary for the administration of this contract and for the Administration of any contract which the parties hereto may jointly enter into with any other party, with respect to the provision of recycling services.

10.2 The costs incurred in the provision of employees and services in accordance with this paragraph shall be apportioned between the parties hereto in accordance with the formula contained in paragraph 6.1.

11. TERMINATION

11.1 The term described in paragraph 1.1 hereof shall only be terminated upon the unanimous agreement of all of the municipalities hereto.

11.2 Upon the termination of this Agreement the value of all assets and liabilities shall be apportioned between the municipalities in accordance with the proportionate basis set out in paragraph 6.1 to this agreement.

11.3 In the event that the municipalities are unable or unwilling to agree with respect to the apportionment of any asset or liability, or all of them, the provisions hereinafter contained with respect to the resolution of disputes shall apply.

12. WITHDRAWAL

12.1 No party shall withdraw from this Agreement during the term described in paragraph 1.1 hereof.

12.2 Following the completion of the term described in paragraph 1.1 any municipality may withdraw from this Agreement upon thirty (30) days written notice.

12.3 Upon the withdrawal of a municipality its proportionate share of assets and liabilities shall be determined in accordance with the proportionate basis set out in paragraph 6.1 and in the event that the municipalities are unable or unwilling to agree with respect to the apportionment of any asset or liability, or all of them, the provisions hereinafter contained with respect to the resolution of disputes shall apply.

13. RESOLUTION OF DISPUTES

13.1 Where a disagreement or dispute arises between two or more parties to this agreement with respect to the interpretation, construction, meaning or effect of this Agreement which the parties are unable or unwilling to resolve, such disagreement or dispute shall be submitted to the Ontario Municipal Board which shall act as sole arbitrator pursuant to the provisions of the Municipal Act, R.S.O. 1990, Chapter M.45, Section 207, paragraph 9.

13.2 Each of the parties hereto shall be a party to any such arbitration brought before the Ontario Municipal Board pursuant to the provisions of this Agreement.

13.3 The provisions of the Ontario Municipal Board Act, R.S.O. 1990, Chapter O.28 and regulations passed thereunder shall, with necessary modifications, apply to the proceedings brought under this paragraph.

13.4 Each decision of the Ontario Municipal Board with respect to matters placed before it for resolution pursuant to this paragraph shall be final and binding upon all of the parties hereto.

14. NOTICE

14.1 Any notice which is permitted or required pursuant to the provisions of this Agreement shall be in writing and shall be served personally or by registered mail upon the Municipal Clerk or each of the parties hereto at the addresses hereinafter set forth:

*The Corporation of the
Town of Grimsby
P. O. Box 159
160 Livingston Avenue
Grimsby, Ontario
L3M 4G3
Attention: Town Clerk*

*The Corporation of the
Town of Lincoln
Town Hall
P. O. Box 1030
4800 South Service Road
Beamsville, Ontario
L0R 1B1
Attention: Town Clerk*

*The Corporation of the
City of Niagara Falls
City Hall
P. O. Box 1023
4310 Queen Street
Niagara Falls, Ontario
L2E 6X5
Attention: City Clerk*

*The Corporation of the
Town of Niagara-on-the-Lake
P. O. Box 100
Virgil, Ontario
LOS 1T0
Attention: Town Clerk*

*The Corporation of the
Town of Pelham
P. O. Box 400
20 Pelham Town Square
Fonthill, Ontario
LOS 1E0
Attention: Town Clerk*

*The Corporation of the
City of Port Colborne
City Hall
239 King Street
Port Colborne, Ontario
L3K 4G8
Attention: City Clerk*

*The Corporation of the
City of Thorold
City Hall
P. O. Box 1044
Thorold, Ontario
L2V 4A7
Attention: City Clerk*

*The Corporation of the
Township of Wainfleet
P. O. Box 38
Wainfleet, Ontario
LOS 1V0
Attention: Township Clerk*

*The Corporation of the
City of Welland
City Hall
411 East Main Street
Welland, Ontario
L3B 3X4
Attention: City Clerk*

14.2 Where notice is served by registered mail the notice shall be effective on the fifth day after the document is mailed.

15. INDEMNIFICATION

15.1 The parties hereto agree, jointly, to indemnify and save harmless the Board and its members as constituted from time to time from and against all actions, causes of actions, losses, damages, suits, judgments, awards, orders, claims and demands whatsoever and from all costs to which the Board and/or its members may be put in defending or settling any such actions, causes of actions, suits, claims, or demands which may arise directly or indirectly by reason of as a consequence of or in any way related to the Board and/or any of its members action properly in the manner authorized by this Agreement with respect to the recycling program.

16. GENERAL PROVISIONS

16.1 This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior understanding and communications between the parties. This Agreement may be modified or amended only by the written agreement signed by all of the parties hereto. This Agreement will enure to the benefit of and be binding upon the parties and their respective successors and assigns.

16.2 The Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts shall constitute one and the same instrument. This Agreement shall be deemed to have come into force and take effect once each party has signed its respective counterpart and delivered an originally signed copy of same to the Clerk for the Corporation of the City of Niagara Falls .

16.3 This Agreement shall be subject to and is conditional upon the approval of the Ontario Municipal Board pursuant to Section 65 of the Ontario Municipal Board Act, R.S.O., 1990, chap. O.28.

