

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO) ORDINANCE NO. 99-827
CODE CHAPTER 5.01 TO AUHORIZE METRO)
INSPECTION OF EXEMPT SOLID WASTE) Introduced by Mike Burton,
FACILITIES TO VERIFY THAT OPERATIONS) Executive Officer
ARE BEING CONDUCTED IN A MANNER)
THAT QUALIFIES AS EXEMPT AND)
DECLARING AN EMERGENCY)

WHEREAS, Section 5.01.040 of the Metro Code exempts certain facilities from all provisions of Code chapter 5.01, including section 5.01.135(d) that allows for Metro inspection of exempt facilities; and

WHEREAS, it is necessary that Metro have authority to inspect exempt facilities to verify that the operations being conducted qualify as exempt activities; and

WHEREAS, The ordinance was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 5.01.040 is amended to read:

5.01.040 Exemptions

(a) In furtherance of the purposes set forth in this chapter, the Metro Council declares that all the provisions of this chapter except 5.01.135(d) shall not apply to:

- (1) Municipal or industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge;
- (2) Disposal Sites, Transfer Stations, or Solid Waste Facilities owned or operated by the District.
- (3) Facilities that exclusively receive non-Putrescible Source-Separated Recyclable Materials
- (4) Facilities that exclusively receive, process, transfer or dispose of Inert Wastes;

- (5) The following operations, which do not constitute yard debris facilities:
- (A) Persons who generate and maintain residential compost piles for residential garden or landscaping purposes.
 - (B) Residences, parks, community gardens and homeowner associations.
 - (C) Universities, schools, hospitals, golf courses, industrial parks, and other similar facilities, if the landscape waste or yard debris was generated from the facility's own activities, the product remains on the facility grounds, and the product is not offered for off-site sale or use.
 - (D) Operations or facilities that chip or grind wood wastes (e.g. untreated lumber, wood pallets), unless such chipped materials are composted at the site following chipping or grinding.
- (6) Temporary transfer stations or processing centers established and operated by a government for 60 days or less to temporarily receive, store or process Solid Waste if the District finds an emergency situation exists.
- (7) Reload facilities that deliver: (A) any Putrescible Waste accepted at the facility to a Transfer Station owned, operated, Licensed or Franchised by the District; and (B) all other Solid Waste accepted at the facility except Inert Wastes to a Metro Designated Facility authorized to accept said Solid Waste, or to another facility or Disposal Site under authority of a Metro Non-System License issued pursuant to chapter 5.05.
- (8) Persons who own or operate a mobile facility that processes Petroleum Contaminated Soil at the site of origin and retains any treated Petroleum Contaminated Soil on the site of origin.

(b) Notwithstanding section 5.01.040(a)(2) of this chapter, the District shall comply with section 5.01.150, User Fees.

(Ordinance No. 81-111, Sec. 5. Amended by Ordinance No. 82-136, Sec. 1; Ordinance No. 91-422B, Sec. 2; Ordinance No. 95-621A, Sec. 4; Ordinance No. 98-762C, Sec. 7.)

SECTION 2. Metro Code Section 5.01.135(d) is amended to read:

(d) Nothing in this section precludes Metro from inspecting a certified or exempted operation to verify that the operation is being conducted in a manner that qualifies as a certified or exempted Activity or from taking any appropriate enforcement action. The Executive Officer shall be permitted access to the premises of a certified or exempted facility at all reasonable times during working hours with or without notice or at such other times with 24 hours notice to assure compliance with the Code.

SECTION 3. This Ordinance being necessary for the public health, safety, and welfare of the Metro area, an emergency is hereby declared to exist. This ordinance shall take effect on November 1, 1999

ADOPTED by the Metro Council this ____ day of _____, 1999.

Rod Monroe, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 99-827, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.01 TO AUTHORIZE METRO INSPECTIONS OF REGULATION-EXEMPT SOLID WASTE FACILITIES TO VERIFY THAT OPERATIONS ARE BEING CONDUCTED IN A MANNER THAT QUALIFIES AS EXEMPT AND DECLARING AN EMERGENCY.

Date: October 06, 1999

Presented by: Terry Petersen,
Leann Linson

PROPOSED ACTION

Adopt Ordinance No. 99-827

The Metro Executive Officer recommends adoption of Ordinance No. 99-827, authorizing Metro inspection of all solid waste facilities within the Metro boundary.

FACTUAL BACKGROUND AND ANALYSIS

In order to effectively maintain the integrity of the solid waste regulatory system, Metro must have clear authority to perform inspections of all solid waste facilities within the Metro boundary, regardless of whether or not they are exempt from other provisions of Metro Code chapter 5.01. Such authority is necessary to verify that facilities claiming to perform only regulation-exempt activities are actually doing so. Section 5.01.135(d) of the Code appears to have anticipated the need to inspect facilities that claim to be exempt but may not truly meet the requirements for an exemption. The section states:

Nothing in this section precludes Metro from inspecting a certified or exempted operation to verify that the operation is being conducted in a manner that qualifies as a certified or exempted Activity or from taking any appropriate enforcement action.

However, section 5.01.040 of the Code states that the provisions of the chapter, presumably including section 5.01.135(d) quoted above, shall not apply to exempt facilities. The Code thus appears to be self-contradictory with respect to Metro's authority to inspect exempt facilities. The proposed ordinance amends the Code to exempt the facility types listed under section 5.01.040 from all provisions of the chapter 5.01 except section 5.01.135(d). It also amends section 5.01.135(d) itself to make clear that inspections can be made at reasonable times during working hours without notice and at other times with 24 hours notice.

FISCAL IMPACT

There is no direct fiscal impact. However, the proposed ordinance will enhance Metro's ability to monitor and enforce compliance with the regulatory and flow control chapters

of the Code. Any indirect fiscal impacts resulting from increased compliance with the Code will be positive to Metro.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 99-827.

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BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO) ORDINANCE NO. 99-827
CODE CHAPTER 5.01 TO CLARIFY METRO'S)
AUTHORITY TO INSPECT FACILITIES) Introduced by Mike Burton,
OTHERWISE EXEMPT FROM SOLID WASTE) Executive Officer
FACILITY REGULATION)

WHEREAS, Section 5.01.040 of the Metro Code exempts certain facilities from the provisions of Code chapter 5.01, but section 5.01.135(d) allows for Metro inspection of exempt facilities to verify that operations are being conducted in a manner that qualifies as exempt; and

WHEREAS, Sections 5.01.040 and 5.01.135(d) appear to be in conflict, it is necessary to clarify Metro's authority to conduct inspection at facilities that are otherwise exempt; and

WHEREAS, it is necessary that Metro have authority to inspect exempt facilities to verify that the operations being conducted at such facilities qualify as exempt under Code Section 5.01.040; and

WHEREAS, The ordinance was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 5.01.010 is amended to read:

GENERAL PROVISIONS

5.01.010 Definitions

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meaning indicated:

(a) "Activity" means a primary operation or function that is performed in a Solid Waste Facility or at a Disposal Site, including but not limited to Resource

Recovery, Composting, Energy Recovery, and other types of Processing; Recycling; Transfer; incineration; and disposal of Solid Waste; but excluding operations or functions such as Segregation that serve to support the primary Activity.

(b) "Agronomic application rate" has the meaning provided in OAR 340-93-030(4)

(c) "Certificate" means the permission given by the Executive Officer to operate certain solid waste Activities

(d) "Code" means the Metro Code.

(e) "Compost" means the stabilized product of composting.

(f) "Composting" means the controlled biological decomposition of organic material.

(g) "Composting Facility" means a site or facility which utilizes organic material to produce a useful product through the process of composting.

(h) "Council" means the Metro council.

(i) "DEQ" means the Department of Environmental Quality of the State of Oregon.

(j) "Direct haul" means the delivery of Putrescible Waste from a Solid Waste Facility directly to Metro's contract operator for disposal of Putrescible Waste. Direct Haul is an Activity under this chapter.

(k) "Disposal site" means the land and facilities used for the disposal of Solid Wastes whether or not open to the public, but does not include transfer stations or processing facilities.

(l) "District" has the same meaning as in Code section 1.01.040.

(m) "Energy recovery" means a type of Resource Recovery that is limited to methods in which all or a part of Solid Waste materials are processed to use the heat content, or other forms of energy, of or from the material.

(n) "Executive officer" means the Metro Executive Officer or the Executive Officer's designee.

(o) Exempt Facility means a facility that is not required to have a Metro Certificate, License, or Franchise in order to operate.

~~(p)~~ ~~(o)~~ "Franchise" means the grant of authority or privilege given by the Council to operate a Disposal Site, a Transfer Station or a Resource Recovery facility.

~~(pq)~~ "Franchisee" means the person to whom a Franchise is granted by the Council under this chapter.

~~(qr)~~ "Franchise fee" means the fee charged by the district to the Franchisee for the administration of the Franchise.

~~(rs)~~ "Hazardous waste" has the meaning provided in ORS 466.005.

~~(st)~~ "Household hazardous waste" means any discarded, useless or unwanted chemical, material, substance or product that is or may be hazardous or toxic to the public or the environment and is commonly used in or around households and is generated by the household. "Household hazardous waste" may include but is not limited to some cleaners, solvents, pesticides, and automotive and paint products.

~~(tu)~~ "Inert" means containing only constituents that are biologically and chemically inactive and that, when exposed to biodegradation and/or leaching, will not adversely impact the waters of the state or public health.

~~(uv)~~ "License" means the permission given by the Council or Executive Officer to operate a Solid Waste Facility not exempted or requiring a Certificate or Franchise under this chapter that Transfers, and Processes Solid Waste, and may perform other authorized Activities.

~~(vw)~~ "Licensee" means the person to whom a License is granted by the Council or Executive Officer under this chapter.

~~(wx)~~ "Material recovery" means a type of Resource Recovery that is limited to mechanical methods of obtaining from Solid Waste materials which still have useful physical or chemical properties and can be reused, recycled, or composted for some purpose. Material Recovery includes obtaining from Solid Waste materials used in the preparation of fuel, but excludes the extraction of heat content or other forms of energy from the material.

~~(xy)~~ "Metro Designated Facility" means a facility in the system of transfer stations, Metro Franchised facilities and landfills authorized under chapter 5.05 of this Title to accept waste generated in the area within the jurisdiction of Metro.

~~(yz)~~ "Non-putrescible waste" means any Waste that contains trivial amounts of Putrescible materials. This category includes construction, demolition debris, and land clearing debris; but excludes Source-Separated Recyclable Material whether or not sorted into individual material categories by the generator.

(zaa) "Person" has the same meaning as in Code section 1.01.040.

(aabb) "Petroleum contaminated soil" means soil into which hydrocarbons, including gasoline, diesel fuel, bunker oil or other petroleum products have been released. Soil that is contaminated with petroleum products but also contaminated with a hazardous waste as defined in ORS 466.005, or a radioactive waste as defined in ORS 469.300, is not included in the term.

(bbcc) "Process," "Processing" or "Processed" means a method or system of altering the form, condition or content of Wastes, including but not limited to composting, vermiprocessing and other controlled methods of biological decomposition; classifying; separating; shredding, milling, pulverizing, or hydropulping; but excluding incineration or mechanical volume reduction techniques such as baling and compaction.

(eedd) "Processing facility" means a place or piece of equipment where or by which Solid Wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerators, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

(deee) "Processing residual" means the Solid Waste destined for disposal which remains after Resource Recovery has taken place.

(eeff) "Putrescible" means rapidly decomposable by microorganisms, which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies.

(ffgg) "Putrescible waste" means Waste containing Putrescible material.

(gghh) "Rate" means the amount approved by the district and charged by the Franchisee, excluding the user fee and franchise fee.

(hhii) "Recyclable material" means material that still has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and that can be reused, recycled, or composted for the same or other purpose(s).

(ijjj) "Recycling" means any process by which Waste materials are transformed into new products in such a manner that the original products may lose their identity.

(jjkk) "Recycling drop center" means a facility that receives and temporarily stores multiple source separated recyclable materials, including but not limited to glass, scrap paper, corrugated paper, newspaper, tin cans, aluminum, plastic and oil, which materials will be transported or sold to third parties for reuse or resale.

(~~kkll~~) "Regional Solid Waste Management Plan" means the Regional Solid Waste Management Plan adopted as a functional plan by Council and approved by DEQ.

(~~llmm~~) "Reload" or "Reload facility" means a facility that performs Transfer only.

(~~mmnn~~) "Resource recovery " means a process by which useful material or energy resources are obtained from Solid Waste.

(~~nooo~~) "Reuse" means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

(~~oopp~~) "Segregation" means the removal of prohibited wastes, unauthorized wastes, bulky material (such as but not limited to white goods and metals) incidental to the Transfer of Solid Waste. Segregation does not include Resource Recovery or other Processing of Solid Waste. The sole intent of segregation is not to separate Useful Material from the Solid Waste but to remove prohibited, unauthorized waste or bulky materials that could be hard to handle by either the facility personnel or operation equipment.

(~~ppqq~~) "Solid waste" means all Putrescible and Non-Putrescible Wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid and semi-Solid Wastes, dead animals, infectious waste as defined in ORS 459.386, petroleum-contaminated soils and other wastes; but the term does not include:

- (1) Hazardous wastes as defined in ORS 466.005;
- (2) Radioactive wastes as defined in ORS 469.300;
- (3) Materials used for fertilizer, soil conditioning, humus restoration, or for other productive purposes or which are salvageable for these purposes and are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, provided the materials are used at or below agronomic application rates; or
- (4) Explosives.

(~~qqrr~~) "Solid waste facility" means the land and buildings at which Solid Waste is received for Transfer, Resource Recovery, and/or Processing but excludes disposal.

(~~rrss~~) "Source Separate" or "Source Separated" or "Source Separation" means that the person who last uses recyclable material separates the recyclable material from Solid Waste.

(sstt) "Source-separated recyclable material" or "Source-separated recyclables" means material that has been Source Separated for the purpose of Reuse, Recycling, or Composting. This term includes Recyclable Materials that are Source Separated by material type (i.e., source-sorted) and Recyclable Materials that are mixed together in one container (i.e., commingled).

(ttuu) "System cost" means the sum of the dollar amounts expended for collection, hauling, processing, transfer and disposal of all Solid Waste generated within the District.

(uuuvv) "Transfer" means the Activity of receiving Solid Waste for purposes of transferring the Solid Waste from one vehicle or container to another vehicle or container for transport. Transfer may include segregation, temporary storage, consolidation of Solid Waste from more than one vehicle, and compaction, but does not include Resource Recovery or other Processing of Solid Waste.

(vvww) "Transfer station" means a fixed or mobile facilities including but not limited to drop boxes and gondola cars normally used as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collection route and a processing facility or a disposal site. This definition does not include solid waste collection vehicles.

(wwxx) "Useful material" means material that still has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and which, when separated from Solid Waste, is suitable for use in the same or other purpose(s). Type of Useful Materials are: material that can be Reused; Recyclable Material; organic material(s) suitable for controlled biological decomposition such as for making Compost; material used in the preparation of fuel; material intended to be used, and which is in fact used, for construction or land reclamation such as Inert material for fill; and material intended to be used, and which is in fact used, productively in the operation of landfills such as roadbeds or alternative daily cover.

(xxyy) "User fee" means a user fee established by the district under ORS 268.515.

(yyzz) "Vermiprocessing" means a controlled method or system of biological Processing that utilizes worms to consume and digest organic materials, and that produces worm castings for productive uses.

(zzaaa) "Waste" means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose.

(aaabb) "Yard debris" means vegetative and woody material generated from residential property or from commercial landscaping activities. "Yard debris" includes landscape waste, grass clippings, leaves, hedge trimmings, stumps and other vegetative waste having similar properties, but does not include demolition debris, painted or treated wood.

(bbbccc) "Yard debris facility" means a yard debris processing facility or a yard debris reload facility.

(eeddd) "Yard debris reload facility" means an operation or facility that receives yard debris for temporary storage, awaiting transport to a processing facility.

(Ordinance No. 81-111, Sec. 2. Amended by Ordinance No. 91-422B, Sec. 1; Ordinance No. 95-621A, Sec. 2; Ordinance No. 98-762C, Sec. 1.)

SECTION 2. Metro Code Section 5.01.040 is amended to read:

5.01.040 Exemptions Facilities

(a) In furtherance of the purposes set forth in this chapter, the Metro Council declares the provisions of ~~this chapter~~ Metro Code Section 5.01.045 shall not apply to:

- (1) Municipal or industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge;
- (2) Disposal Sites, Transfer Stations, or Solid Waste Facilities owned or operated by the District.
- (3) Facilities that exclusively receive non-Putrescible Source-Separated Recyclable Materials
- (4) Facilities that exclusively receive, process, transfer or dispose of Inert Wastes;
- (5) The following operations, which do not constitute yard debris facilities:
 - (A) Persons who generate and maintain residential compost piles for residential garden or landscaping purposes.
 - (B) Residences, parks, community gardens and homeowner associations.
 - (C) Universities, schools, hospitals, golf courses, industrial parks, and other similar facilities, if the landscape waste or yard debris was generated from the facility's own activities, the product remains on the facility grounds, and the product is not offered for off-site sale or use.
 - (D) Operations or facilities that chip or grind wood wastes (e.g. untreated lumber, wood pallets), unless such chipped

materials are composted at the site following chipping or grinding.

- (6) Temporary transfer stations or processing centers established and operated by a government for 60 days or less to temporarily receive, store or process Solid Waste if the District finds an emergency situation exists.
- (7) Reload facilities that deliver: (A) any Putrescible Waste accepted at the facility to a Transfer Station owned, operated, Licensed or Franchised by the District; and (B) all other Solid Waste accepted at the facility except Inert Wastes to a Metro Designated Facility authorized to accept said Solid Waste, or to another facility or Disposal Site under authority of a Metro Non-System License issued pursuant to chapter 5.05.
- (8) Persons who own or operate a mobile facility that processes Petroleum Contaminated Soil at the site of origin and retains any treated Petroleum Contaminated Soil on the site of origin.

(b) Notwithstanding section 5.01.040(a)(2) of this chapter, the District shall comply with section 5.01.150, User Fees.

(Ordinance No. 81-111, Sec. 5. Amended by Ordinance No. 82-136, Sec. 1; Ordinance No. 91-422B, Sec. 2; Ordinance No. 95-621A, Sec. 4; Ordinance No. 98-762C, Sec. 7.)

SECTION 3. Metro Code Section 5.01.120 is amended to read:

5.01.120 General Obligations of ~~All Regulated Parties~~ Solid Waste Facilities

All ~~Persons~~ Solid Waste Facilities regulated by this chapter shall:

(a) Allow the Executive Officer to have reasonable access to the premises for purposes of inspection and audit to determine compliance with this chapter, the Code, the Certificate, License or Franchise agreement, and the performance standards and administrative procedures adopted pursuant to section 5.01.132 of this chapter.

(b) Ensure that Solid Waste transferred from the facility goes to the appropriate destination under section 5.01.132(a) of this chapter, under Metro Code chapter 5.05, and under applicable local, state and federal laws, rules, regulations, ordinances, orders and permits;

(c) Maintain during the term of the License or Franchise the types of insurance in the amounts specified in the License or Franchise Agreement or such other amounts as may be required by state law for public contracts and shall give 30 days

written notice to the Executive Officer of any lapse or proposed cancellation of insurance coverage or performance bond.

(d) Shall indemnify the District, the Council, the Executive Officer, and any of their employees or agents and save them harmless from any and all loss, damage, claim, expense including attorney's fees, or liability related to or arising out of the Certificate holder's, Licensee's or Franchisee's performance of or failure to perform any of its obligations under the Certificate, License, Franchise or this chapter.

(e) Shall have no recourse whatsoever against the District or its officials, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of the Certificate, License or Franchise or because of the enforcement of the Certificate, License or Franchise or in the event the Certificate, License or Franchise or any part thereof is determined to be invalid.

(Ordinance No. 81-111, Sec. 13. Amended by Ordinance No. 98-762C, Sec. 28.)

SECTION 4. Metro Code Section 5.01.130 is amended to read:

5.01.135 Executive Officer's Inspections and Audits of Exempt Facilities and Regulated Solid Waste Facilities

(a) The Executive Officer shall be authorized to make such inspection or audit as the Executive Officer deems appropriate, and shall be permitted access to the premises of a ~~Licensed or Franchised facility~~ Regulated Solid Waste Facilities and facilities exempted under Code Section 5.01.040. Inspections or audits shall be made at ~~all~~ any reasonable times during business hours with or without notice or at such other times with 24 hours notice, ~~after the Franchise or License is granted~~ Inspections and audits shall be made for the purpose of to assure ~~assuring~~ compliance with this chapter, the Code, Franchise or License agreement, and administrative procedures and performance standards adopted pursuant to section 5.01.132 of this chapter and to verify that Exempt Facilities qualify as exempt under Code Section 5.01.040.

(b) Inspections or audits authorized under subsection (a) of this section shall occur regularly and as determined necessary by the Executive Officer. Results of each inspection shall be reported on a standard form specified by the Executive Officer.

(c) The Executive Officer shall have access to and may examine during such inspections or audits any records pertinent in the opinion of the Executive Officer to the License or Franchise, including but not limited to the books, papers, records, equipment, blueprints, operation and maintenance records and logs and operating rules and procedures of the Licensee or Franchisee.

(d) Nothing in this section precludes Metro from inspecting a certified or ~~exempted operation~~ Exempt Facilities to verify that the operation is being conducted in a

manner that qualifies as a certified or exempted Activity or from taking any appropriate enforcement action.

(e) Any violations discovered by the inspection or audit shall be subject to the penalties provided in section 5.01.200.

(Ordinance No. 98-762C, Secs. 36-37.)

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