BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONSIDERING THE APPLICATION OF RECYCLE AMERICA FOR A METRO REGIONAL TRANSFER STATION FRANCHISE	))))	ORDINANCE NO. 01-890 Introduced by Mike Burton, Executive Officer

WHEREAS, Recycle America has applied for a Metro Regional Transfer Station Franchise; and

WHEREAS, Recycle America's application is complete and in conformance with the requirements of chapter 5.01 of the Metro Code; and

WHEREAS, the Executive Officer finds the proposed new Regional Transfer Station to be consistent with the Regional Solid Waste Management Plan; and

WHEREAS, Metro staff has analyzed the application and recommended approval of the applicant's request for a Solid Waste Facility Franchise; 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:

1. The application of Recycle America for a Regional Transfer Station is approved.
2. The Executive Officer is authorized to enter into a new Regional Transfer Station Franchise agreement with Recycle America that shall be substantially similar to the franchise attached as Exhibit A.
3. The existing Local Transfer Station Franchise originally issued to Recycle America shall be terminated as of the effective date of the Regional Transfer Station Franchise.

ADOPTED by the Metro Council this ____ day of _______, 2001.

David Bragdon, Presiding Officer

ATTEST:

Recording Secretary

Approved as to Form:

Daniel B. Cooper, General Counsel

S:\share\B&RA\REGIONALTransferStation\RA-ord.doc
SK:bjl

SOLID WASTE FACILITY FRANCHISE

Number F-001-01

Issued by

Metro
600 NE Grand Avenue
Portland, OR 97232
Telephone: (503) 797-1650

Issued in accordance with the provisions of Metro Code Chapter 5.01

FRANCHISEE:	**FACILITY NAME AND LOCATION:**
Waste Management of Oregon Inc 7227 NE 55th Ave Portland, OR 97218 (503) 331-2221 FAX (503) 331-2219 Contact person: Adam Winston	Recycle America 869 NW Eastwind Drive Troutdale, OR 97060
PARENT COMPANY: Waste Management Holding Inc. 1001 Fannin, #4000 Houston, TX 77002 Phone: (713) 512-6200 Fax: (713) 512-6299	**PROPERTY OWNER:** TDK Corporation PO Box 566 Troutdale, OR 97060 (503) 666-2896

This Franchise is granted to the Franchisee named above and is not transferable except as provided in Metro Code. Subject to the conditions stated in this Franchise document, the Franchisee is authorized to operate and maintain a solid waste facility, and to accept the solid wastes and perform the activities authorized herein.

Signed:	Acceptance & Acknowledgement of Receipt:
______________________ Signature	______________________ Signature of Franchisee
Mike Burton, Metro Executive Officer Print name and title	______________________ Print name and title
______________________ Date	______________________ Date

TABLE OF CONTENTS

1.0 ISSUANCE

1.1	**Facility type**	Solid Waste Regional Transfer Station
1.2	**Franchisee**	Waste Management of Oregon, Inc. 7227 NE 55th Avenue Portland, OR 97218 (503) 331-2210
1.3	**Contact**	Adam Winston
1.4	**Franchise Number**	When referring to this Franchise, please cite: Metro Solid Waste Facility Franchise Number F-001-01
1.5	**Term**	This Franchise shall remain in effect for a term of five (5) years from the date of execution by both parties, unless terminated sooner under section 13.0 of this Franchise. This Franchise replaces Franchise No. F-001-99.
1.6	**Facility name and mailing address**	Recycle America 869 NW Eastwind Drive Troutdale, OR 97060 (503) 667-5264
1.7	**Parent Company**	Waste Management Holding, Inc. 1001 Fannin, #4000 Houston, TX 77002 Phone: (713) 512-6200 Fax: (713) 512-6299
1.8	**Facility legal description**	Parcel 3, Partition Plat Number 1994-139, (Account #64974-5550) Section 27, Township 1 North, Range 3 East, Willamette Meridian Multnomah County, State of Oregon
1.9	**Facility owner**	TDK Corp. PO Box 566 Troutdale, OR 97060 (503) 666-2896
1.10	**Permission to operate**	Franchisee warrants that it has obtained the property owner's consent to operate the facility as specified in this Franchise.

2.0 CONDITIONS AND DISCLAIMERS

2.1	**Guarantees**	The granting of this Franchise shall not vest any right or privilege in the Franchisee to receive specific quantities of solid waste at the direction of Metro during the term of the Franchise.
2.2	**Non-exclusive Franchise**	The granting of this Franchise shall not in any way limit Metro from granting other solid waste Franchises within the District.
2.3	**Property rights**	The granting of this Franchise does not convey any property rights in either real or personal property, nor does it authorize any injury to private property or invasion of property rights.
2.4	**No recourse**	The Franchisee 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 this Franchise or because of the enforcement of the Franchise or in the event the Franchise or any part thereof is determined to be invalid.
2.5	**Release of liability**	Metro, its elected officials, employees, or agents do not sustain any liability on account of the granting of this Franchise or on account of the construction, maintenance, or operation of the facility pursuant to this Franchise.
2.6	**Binding nature**	The conditions of this Franchise are binding on the Franchisee. The Franchisee is liable for all acts and omissions of the Franchisee's contractors and agents.
2.7	**Waivers**	To be effective, a waiver of any terms or conditions of this Franchise must be in writing and signed by the Metro Executive Officer.
2.8	**Effect of waiver**	Waiver of a term or condition of this Franchise shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.
2.9	**Choice of law**	The Franchise shall be construed, applied and enforced in accordance with the laws of the State of Oregon.
2.10	**Enforceability**	If any provision of this Franchise is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions contained in this Franchise shall not be affected.

2.11	**Franchise not a waiver**	Nothing in this Franchise shall be construed as relieving any owner, operator, or Franchisee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports or other requirements of other regulatory agencies.
2.12	**Franchise not limiting**	Nothing in this Franchise is intended to limit the power of a federal, state, or local agency to enforce any provision of law relating to the solid waste facility that it is authorized or required to enforce or administer.
2.13	**Definitions**	Unless otherwise specified, all terms are as defined in Metro Code Chapter 5.01, as amended.

3.0 AUTHORIZATIONS

3.1	**Purpose**	This Section of the Franchise describes the wastes that the Franchisee is authorized to accept at the facility, and the activities the Franchisee is authorized to perform at the facility.
3.2	**General conditions on solid wastes**	The Franchisee is authorized to accept at the facility only the solid wastes described in this Section. The Franchisee is prohibited from knowingly receiving any solid waste not authorized in this Section.
3.3	**General conditions on activities**	The Franchisee is authorized to perform at the facility only those solid waste activities that are described in this Section. The Franchisee shall also be limited by any conditions placed on it by the Department of Environmental Quality, Multnomah County, and the City of Troutdale.
3.4	**Putrescible waste**	The Franchisee is authorized to accept putrescible waste for the purpose of delivering said putrescible waste to a disposal site authorized by this Franchise; or for the purpose of transfer to a solid waste facility or disposal site designated by Metro Code Chapter 5.05 to accept putrescible waste. The Franchisee is authorized to recover materials from putrescible wastes prior to disposal.
3.5	**Non-putrescible waste**	The Franchisee is authorized to accept "dry" non-putrescible solid wastes such as "dry" waste generated by non-residential generators and waste generated at construction and demolition sites, for the purpose of material recovery or disposal if unrecoverable.

3.6	**Contaminated soils**	The franchisee is authorized to accept contaminated soil for transfer to a DEQ permitted disposal site that is authorized to accept contaminated soil.
3.7	**Special wastes and other wastes**	The franchisee is authorized to accept various special wastes for transfer as authorized by DEQ Disposal Site Permit Number 459 including but not limited to filter cake, zircon sand and other sandblasting media, dewatered industrial sludge residue, waste from pollution control devices, charcoal air/water filters, ceramic castings, metal shavings, and refractory brick and other wastes with similar characteristics; and other wastes such as street sweepings, catch basin residue, and similar clean-up wastes.
3.8	**Source-separated recyclables**	The Franchisee is authorized to accept source-separated recyclable materials for purposes of sorting, classifying, consolidating, baling, temporarily storing, transferring, and other similar functions necessary to prepare these materials for market.
3.9	**Inert materials**	The Franchisee is authorized to accept inert materials for purposes of classifying, consolidating, transferring, and other similar functions related to preparing these materials for useful purposes.
3.10	**Source-separated green feedstock**	The Franchisee is authorized to accept source-separated green feedstock for transfer to a Metro authorized solid waste composting facility or other DEQ-permitted composting facility or other DEQ-permitted processing facility. The Franchisee is authorized to grind wood waste and green feedstock for use in composting or hogged fuel.
3.11	**Direct haul**	The Franchisee is authorized to deliver putrescible waste directly from the facility to Metro's contract operator for disposal of putrescible waste, subject to any conditions, limitations or performance standards specified in this Franchise document, in Metro Code, or in administrative procedures adopted pursuant to Metro Code Chapter 5.01. Franchisee may deliver putrescible waste to disposal sites other than Metro's contract operator only as specifically authorized by a Metro Non-System License or by a Metro Designated Facility Agreement that authorizes the designated facility to accept putrescible waste.

4.0 GENERAL LIMITATIONS, PROHIBITIONS, AND REQUIREMENTS

4.1	**Purpose**	This Section of the Franchise describes limitations and prohibitions on the wastes handled at the facility and activities performed at the facility.
4.2	**Prohibited waste**	The Franchisee shall not knowingly accept or retain any material amounts of the following types of wastes: • materials contaminated with or containing friable asbestos; • lead acid batteries; • liquid waste for disposal; • vehicles; • infectious, biological or pathological waste; • radioactive waste; • hazardous waste; • hazardous substance; • any waste prohibited by the Franchisee's DEQ Disposal Site Permit. • Special wastes other than those listed in Section 3.6 of this Franchise
4.3	**Material recovery required**	The Franchisee shall recover at least 25% by weight of non-putrescible waste accepted at the facility and waste delivered by public customers, or a greater amount if required by the Metro Code. The materials recovery rate shall be calculated as specified in section 12.4 of Metro Administrative Procedure No. 101.
4.4	**Prohibition on mixing**	The Franchisee shall not mix any source-separated recyclable materials or green feedstock brought to the facility with any other solid wastes. Recyclable materials recovered at the facility may be combined with source-separated recyclable materials for transfer to markets, processors, or another solid waste facility that prepares such materials for reuse or recycling.
4.5	**No disposal of recyclable materials**	Source-separated recyclable materials may not be disposed of by landfilling or incineration.
4.6	**Acceptance of authorized waste from public and commercial customers**	The Franchisee shall accept authorized waste that originates within the Metro boundary from any person who delivers authorized waste to the facility. The facility shall be open to commercial haulers and public customers from 8:00 AM through 6:00 PM on Monday through Friday and from 9:00 AM through 5:00 PM on Saturday and Sunday.

4.7	**Free public drop-off of recyclables**	Franchisee shall accommodate the drop-off of source separated recyclable materials from the general public without charge as stipulated in Metro Administrative Procedures No. 101, Section 12.
4.8	**Separate public and commercial tipping areas**	The Franchisee shall provide separate tipping areas for commercial and public customers.
4.9	**Household hazardous waste collection**	Franchisee shall accommodate Metro-sponsored Household Hazardous Waste collection events as stipulated in Metro Administrative Procedures No. 101, Section 12.
4.9	**Limits not exclusive**	Nothing in this Section of the Franchise shall be construed to limit, restrict, curtail, or abrogate any limitation or prohibition contained elsewhere in this Franchise document, in Metro Code, or in any federal, state, regional or local government law, rule, regulation, ordinance, order or permit.

5.0 ACCEPTANCE AND DISPOSAL OF SOLID WASTES

5.1	**Purpose**	This Section of the Franchise describes the tonnage of solid wastes that may be accepted at the facility and disposed at landfills.
5.2	**No limitation on total quantity of solid waste accepted**	Except as specified in its DEQ permit and any other state and local permits, laws, rules, regulations, ordinances, and orders, the Franchisee shall not be limited as to the amount of solid waste accepted at the facility except as specified in 4.2.
5.3	**No limitation on total quantity of solid waste disposed**	The Franchisee shall not be limited as to the total amount of solid waste delivered by the facility for disposal except as specified by the DEQ, Multnomah County, and the City of Troutdale. Metro reserves the right to limit the amount of solid waste at the facility as specified in Metro Code, Administrative Procedure, or local requirement.
5.4	**Use of Metro designated disposal sites**	The Franchisee shall not be limited as to the total amount of non-putrescible solid waste delivered to Metro-designated disposal sites.

5.5	**Use of non-designated disposal sites**	Deliveries of non-putrescible solid waste to any other disposal site shall take place only under the authority of a Metro-issued non-system license.
5.6	**No limitation on deliveries of putrescible wastes**	The Franchisee shall not be limited as to the total amount of putrescible solid waste delivered to the Columbia Ridge Landfill. Deliveries of putrescible wastes to any other disposal site shall take place only under the authority of a Metro-issued non-system license.
5.7	**No limitations on acceptance of solid waste originating from outside Metro**	Nothing in this Franchise limits the Franchisee from accepting solid waste from outside the Metro boundaries so long as the Franchisee keeps accurate records of such solid waste. The Franchisee may regard out-of-district waste as Metro waste at Franchisees option.

6.0 OPERATING CONDITIONS

6.1	**Purpose**	This Section of the Franchise describes criteria and standards for the operation of the facility.
6.2	**Qualified Operator**	The Franchisee shall provide an operating staff qualified to carry out the functions required by this Franchise and to otherwise ensure compliance with Metro Code Chapter 5.01.
6.3	**Enclosed operations**	All handling, processing, compaction or other forms of managing or temporarily storing putrescible wastes shall occur inside facility buildings.
6.4	**Operating plan**	The Franchisee shall establish and follow procedures for accepting, managing and processing loads of solid waste received at the facility. Such procedures must be in writing and in a location where facility personnel and Metro staff can readily reference them. The Franchisee may, from time to time, modify such procedures provided that Metro is notified in writing of any changes. The procedures shall include at least the following: a. Methods of notifying generators not to place hazardous wastes or other prohibited wastes in drop boxes or other collection containers destined for the facility; b. Methods of inspecting incoming loads for the presence of prohibited or unauthorized waste;

c. Methods for managing and transporting for disposal at an authorized disposal site each of the prohibited or unauthorized wastes if they are discovered at the facility;

d. Objective criteria for accepting or rejecting loads.

6.5 Managing unacceptable wastes

The Franchisee shall implement a load check program and make reasonable efforts to identify all unacceptable wastes that may be present in loads of solid waste accepted at the facility. Upon discovery, all prohibited or unacceptable wastes shall be removed or managed in accordance with procedures established in the Operating Plan and the facility's DEQ permit.

6.6 Storage

Stored materials and solid wastes shall be suitably contained and removed at sufficient frequency to avoid creating nuisance conditions or safety hazards. Storage areas must be maintained in an orderly manner and kept free of litter.

6.7 Litter and airborne debris

The Franchisee shall operate the facility in a manner that is not conducive to the generation of litter and airborne debris. The Franchisee shall:

a. Take reasonable steps to notify and remind persons delivering solid waste to the facility that all loads must be suitably secured to prevent any material from blowing off the load during transit.

b. Construct, maintain, and operate all vehicles and devices transferring or transporting solid waste from the facility to prevent leaking, spilling or blowing of solid waste on-site or while in transit.

c. Keep all areas within the site and all vehicle access roads within ¼ mile of the site free of litter and debris.

d. Franchisee shall cooperate with Metro to implement the uncovered load provision of the Metro Code.

6.8 Odor

The Franchisee shall operate the facility in a manner that is not conducive to the generation of odors. The Franchisee shall:

a. Clean the areas and equipment that come into contact with solid waste on a regular basis.

b. Establish and follow procedures for minimizing odor at the facility. Such procedures must be in writing and in a location where facility personnel and Metro inspectors can readily reference them. The Franchisee may modify such procedures from time to time. The procedures shall include at least the following: (1) methods that will be used to minimize, manage, and monitor all odors of any derivation including malodorous loads received at the facility, (2) procedures for receiving and recording odor complaints, and (3) procedures for immediately investigating any odor complaints in order to determine the cause of odor emissions, and promptly remedying any odor problem at the facility.

6.9 Vectors

The Franchisee shall operate the facility in a manner that is not conducive to infestation of rodents, insects, or other animals capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.

6.10 Noise

The Franchisee shall operate the facility in a manner to prevent excessive noise to the extent necessary to meet applicable regulatory standards and land-use regulations.

6.11 Water quality

The Franchisee shall:

a. Operate and maintain the facility to prevent contact of solid wastes with stormwater runoff and precipitation.

b. Dispose of contaminated water and sanitary sewage generated onsite in a manner complying with local, state, and federal laws and regulations.

6.12 Public Access

Public access to the facility shall be controlled as necessary to prevent unauthorized entry and dumping.

6.13 Signage

The Franchisee shall post signs at all public entrances to the facility, and in conformity with local government signage regulations. These signs shall be easily and readily visible, legible, and shall contain at least the following information:

a. Name of the facility;

b. Address of the facility;

c. Emergency telephone number for the facility;

d. Operating hours during which the facility is open for the receipt of authorized waste;

e. Fees and charges;

f. Metro's name and telephone number (503) 797-1650; and

g. A list of authorized and unaccepted or prohibited wastes.

6.14 Complaints

The Franchisee shall respond to all written complaints on nuisances (including, but not limited to, blowing debris, fugitive dust or odors, noise, traffic, and vectors). If Franchisee receives a complaint, Franchisee shall:

a. Attempt to respond to that complaint within one business day, or sooner as circumstances may require, and retain documentation of unsuccessful attempts; and

b. Log all such complaints by name, date, time and nature of complaint. Each log entry shall be retained for one year and shall be available for inspection by Metro.

6.15	**Access to Franchise document**	The Franchisee shall maintain a copy of this Metro Solid Waste Facility Regional Transfer Station Franchise on the facility's premises, and in a location where facility personnel and Metro representatives have ready access to it.

7.0 FEES AND RATE SETTING

7.1	**Purpose**	This Section of the Franchise specifies fees payable by the Franchisee, and describes rate regulation by Metro.
7.2	**Annual fee**	The Franchisee shall pay an annual Franchise fee, as established in Metro Code Chapter 5.01. Metro reserves the right to change the Franchise fee at any time by action of the Metro Council.
7.3	**Fines**	Each violation of a Franchise condition shall be punishable by fines as established in Metro Code Chapter 5.01 and 2.02. Each day a violation continues constitutes a separate violation. Metro reserves the right to change fines at any time by action of the Metro Council.
7.4	**No unjust discrimination**	The Franchisee shall charge to all customers the same rate for like and contemporaneous service under substantially similar circumstances.
7.5	**Rate Setting**	Rate setting is required as a condition of this Franchise and will be implemented if the Metro Council finds that it is in the public interest as a matter of metropolitan concern. The Executive Officer will recommend that the Council implement its rate setting authority to set generally applicable rates for all regional transfer stations if the Executive Officer determines that rate setting is reasonably necessary.
7.6	**Metro regional system fee and excise tax imposed on disposal**	The Franchisee is liable for payment of the Metro Regional System Fee as provided in Metro Code Chapter 5.02. The Franchisee is liable for payment of the Metro excise tax as provided in Metro Code Chapter 7.01.

7.7 **Direct haul disposal charge**

The Franchisee shall remit to Metro the direct haul disposal charge as established in Metro Code Chapter 5.02 on each ton of putrescible waste that is transported directly from the facility to Metro's contract operator for disposal of putrescible waste, on the terms and conditions of the grant of credit from Metro and pursuant to the procedures provided in Metro Administrative Procedures No. 101, Section 10.

7.8 **Enhancement fees**

The Franchisee shall collect a community enhancement fee on each ton of solid waste delivered to the facility in accordance with Metro Code 5.06, as amended. Enhancement fees shall be remitted to Metro at least quarterly.

8.0 MINIMUM REPORTING REQUIREMENTS

8.1 **Purpose**

This Section of the Franchise specifies information that the Franchisee shall record, maintain, and report.

8.2 **Transaction data to be provided by Franchisee**

Franchisee shall effectively monitor Facility operations and shall maintain complete and accurate records of the following information for each transaction:

a. Ticket Number (should be the same as the ticket number on the weight slips);

b. Incoming customer account number;

c. Code designating the following types of material (more detail, such as differentiating yard debris, is acceptable: (1) incoming source-separated Recyclable Materials; (2) incoming mixed waste; (3) outgoing Recyclable Materials; (4) outgoing mixed waste;

d. Code designating the following origin of material: (1) public from inside District boundaries; (2) public from within Multnomah, Clackamas and Washington Counties but outside Metro boundaries; (3) public from Clark County, Washington; (4) commercial from inside District boundaries; (5) commercial from within Multnomah, Clackamas and Washington Counties but outside Metro boundaries; and (6) commercial from Clark County, Washington;

e. Date the load was received at or transmitted from the Facilities;

f. Time the load was received at or transmitted from the Facility;

g. Indicate whether Franchisee accepted or rejected the load;

h. Net weight of the load;

i. Volume of the Load (if applicable);

j The fee charged to the customer for the load.

k Additional information as specified in Metro Administrative Procedures.

8.3 Disclosure of rates The Franchisee shall keep a record of its pricing and rate structure, including discounts it provides and any credit or rebate system it uses, for solid waste accepted at the facility. The Franchisee shall transmit such information to Metro on a monthly basis as provided in Paragraph 8.4 of this Franchise.

8.4 Submission of records Records required under Paragraphs 8.2 and 8.3 of this Franchise shall be transmitted to Metro no later than fifteen (15) days following the end of each month. Records required under Paragraph 8.2 shall be transmitted in electronic form compatible with Metro's data processing equipment, in a format prescribed by Metro. A cover letter that certifies the accuracy of the data and is signed by an authorized representative of Franchisee shall accompany the data. The hard copy of the report shall be signed and certified as accurate by an authorized representative of Franchisee.

8.5 Account information On a semi-annual basis, Franchisee shall provide Metro with a computer listing that cross-references the incoming customer account numbers with customer names and addresses

8.6 Annual operating report On or before March 31 of each year, Franchisee shall file an annual calendar year operating report detailing the previous year's operation of the Facility which shall include, at Metro's option, an annual review or audit prepared in accordance with generally accepted accounting principles.

8.7 Right of inspection and audit

Authorized representatives of Metro shall be permitted to inspect information from which all required reports are derived during normal working hours upon giving reasonable advance notice (not less than 24 hours). Subject to the confidentiality provisions of this Franchise, Metro's right to inspect shall include the right to review, at an office of Franchisee located in the Portland metropolitan area, (1) all books, records, maps, plans, income tax returns, and other like materials of Franchisee that are directly related to the operation of the Facility; and (2) Franchisee's financial statements directly related to the operation of the Facility if Metro determines that such review is necessary because it has reason to believe that any financial information it has received from Franchisee is inaccurate or if Metro has implemented or is determining whether to implement its rate setting authority pursuant to Paragraph 7.5 of this Franchise. All reports required by this Section are limited to information directly attributable to the transfer station operations and transport services provided under this Franchise.

8.8 Confidential information

Franchisee may identify any information submitted to or reviewed by Metro under this Section 8.0 as confidential. Franchisee shall prominently mark any information which it claims confidential with the mark "CONFIDENTIAL" prior to submittal to or review by Metro. Metro shall treat as confidential any information so marked and will make a good faith effort not to disclose such information unless Metro's refusal to disclose such information would be contrary to applicable Oregon law, including, without limitation, ORS Chapter 192. Within five (5) days of Metro's receipt, any request for disclosure of information identified by Franchisee as confidential, Metro shall provide Franchisee written notice of the request. Franchisee shall have fifteen (15) days within which time to respond in writing to the request before Metro determines, at its sole discretion, whether to disclose any requested information. Nothing in this Paragraph 8.8 shall limit the use of any information submitted to or reviewed by Metro for regulatory purposes or in any enforcement proceeding. In addition, Metro may share any confidential information with representatives of other governmental agencies provided that, consistent with Oregon law, such representatives agree to continue to treat such information as confidential and make good faith efforts not to disclose such information.

8.9 Annual review

The Franchisee shall participate in an annual review with Metro of the Facility's performance. Within one year after the Franchise becomes effective, and each year thereafter, Metro will contact Franchisee to schedule the annual review meeting. Metro will provide at least three business weeks advance notice of this meeting. At least one business week prior to this meeting, Franchisee shall submit to Metro's Regulatory Affairs Administrator a summary, in letter format, addressing the topics listed below. The review will include assessment of:

a. Receipt or release of Hazardous Waste or Infectious Waste at the Facility; nuisance complaints as recorded in the log required under Section 8.0; changes to site equipment, hours of operation and/or staffing; and other significant changes in the Facility's operations that occurred during the previous year; and

b. Any modifications under Section 13.0 of this Franchise.

8.10 Correspondence with other agencies Franchisee shall provide the Metro Regional Environmental Management Department copies of all correspondence, exhibits or documents submitted to the DEQ relating to the terms or conditions of the DEQ solid waste permit or the Franchise, within two business days of providing such information to DEQ. In addition, Franchisee shall send to Metro, upon receipt, copies of any notice of non-compliance, citation, or enforcement order received from any local, state or federal entity with jurisdiction over the Facility.

8.11 Modification of reporting format Any periodic modification by Metro of the reporting forms themselves shall not constitute any modification of the terms of this Franchise, nor shall Metro include within the reporting forms a request for data not otherwise encompassed within this Section.

9.0 INSURANCE REQUIREMENTS

9.1 Purpose The Section describes the types of insurance that the Franchisee shall purchase and maintain at the Franchisee's expense, covering the Franchisee, its employees, and agents.

9.2 General liability The Franchisee shall carry broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy shall be endorsed with contractual liability coverage.

9.3	**Automobile**	The Franchisee shall carry automobile bodily injury and property damage liability insurance.
9.4	**Coverage**	Insurance coverage shall be a minimum of $500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than $1,000,000.
9.5	**Additional insureds**	Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS.
9.6	**Worker's Compensation Insurance**	The Franchisee, its subcontractors, if any, and all employers working under this Franchise, are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all of their subject workers. Franchisee shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Franchisee has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached in lieu of the certificate showing current Workers' Compensation.
9.7	**Financial assurance**	The Franchisee shall, throughout the life of the facility, maintain proof of financial assurance in an amount adequate to assure site clean-up. If the DEQ requires financial assurance, then the DEQ-approved financial assurance shall fulfill this requirement.
9.8	**Notification**	The Franchisee shall give at least 30 days written notice to the Executive Officer of any lapse or proposed cancellation of insurance coverage.

10.0 PERFORMANCE STANDARDS FOR DIRECT HAULING

10.1	**Purpose**	This Section of the Franchise describes the standards with which the Franchisee must comply for putrescible waste that is delivered directly from the facility to Metro's contract operator for disposal of putrescible waste.
10.2	**Compliance with Arlington regulations**	All solid waste transported through the city limits of Arlington, Oregon, shall be subject to any routing, timing, parking or other operational requirements established by the city of Arlington.
10.3	**Compliance**	All equipment shall fulfill all federal, state, and local regulations.

	with other regulations	In addition, the use of exhaust brakes shall be prohibited altogether.
10.4	**Transport in sealed containers**	All solid waste shall be transported in completely sealed containers with leak–proof design considered wind–, water–, and odor–tight, and shall be capable of withstanding arduous, heavy–duty, repetitive service associated with the long–haul transport of solid waste. Containers using tarps or flip-tops are prohibited. Any spillage from the transport vehicles is prohibited.
10.5	**Average payloads**	The average weight of solid waste payloads transported during each calendar month shall be no less than 25 tons.
10.6	**Limits on staging areas**	Any staging areas used shall be located in areas outside or excluded from the Columbia River Gorge National Scenic Area (NSA).
10.7	**Limits on stopping points**	All transport vehicles shall use only designated stopping points outside the Columbia River Gorge NSA except in cases of emergency.
10.8	**Limits on use of public facilities**	Use of rest areas, turnouts, scenic vista points, and state parks shall be limited to cases of emergency.
10.9	**Limits on hours of transport**	Transportation shall not be conducted in the Columbia River Gorge NSA during the following times: a. 4:00 p.m. to 10:00 p.m. Friday afternoons in June, July, August, and September. b. Daylight hours on Saturdays in June, July, August, and September. c. All hours on Sunday in June, July, August, and September.
10.10	**Splash and spray suppression**	All solid waste shall be transported by use of vehicles utilizing splash and spray suppressant devices behind each wheel, and utilizing rain suppressant side flaps on all non-turning axles.
10.11	**Vehicle appearance**	All solid waste shall be transported by use of vehicles and equipment that shall be suitably painted and present an acceptable appearance.
10.12	**Public meetings**	A representative of the Franchisee and its transportation carrier shall attend a meeting with the gorge communities and interested parties convened annually by Metro to receive input and discuss issues related to transportation of solid waste.

10.13	**Reporting requirements regarding carrier**	The Franchisee shall annually report to Metro any accidents, citations, and vehicle inspections involving vehicles of its transportation carrier during the transporting of solid waste on behalf of the Franchisee. Any accident resulting in injury to any person or the spillage of solid waste shall be reported to Metro as soon as possible but no later than 12 hours after its occurrence. Such accidents shall be reported to Metro's Regional Environmental Management Department at (503) 797-1650.
10.14	**Meeting with Metro**	A representative of the Franchisee and its transportation carrier shall meet with Metro when deemed necessary by the Executive Officer to discuss operational problems, complaints and any extraordinary occurrences.
10.15	**Other reporting requirements**	The Franchisee shall report any violation of this Section of the Franchise to Metro within 16 hours of its occurrence.

11.0 ENFORCEMENT

11.1	**Generally**	Enforcement of this Franchise shall be as specified in Metro Code.
11.2	**Authority vested in Metro**	The power and right to regulate, in the public interest, the exercise of the privileges granted by this Franchise shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such requirements against Franchisee.
11.3	**Inspections**	The Executive Officer may make such inspection or audit as the Executive Officer deems appropriate, and shall be permitted access to the premises of the facility at all reasonable times during business hours with or without notice or at such other times with 24 hours notice to assure compliance with this Franchise, Metro Code, and administrative procedures adopted pursuant to Metro Code Chapter 5.01.
11.4	**No Enforcement Limitations**	Nothing in this Franchise shall be construed to limit, restrict, curtail, or abrogate any enforcement provision contained in Metro Code or administrative procedures adopted pursuant to Metro Code Chapter 5.01, nor shall this Franchise be construed or interpreted so as to limit or preclude Metro from adopting ordinances that regulate the health, safety, or welfare of any person or persons

within the District, notwithstanding any incidental impact that such ordinances may have upon the terms of this Franchise or the Franchisee's operation of the facility.

12.0 GENERAL OBLIGATIONS

12.1	**Compliance with law**	Franchisee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this Franchise, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.01 whether or not those provisions have been specifically mentioned or cited herein. Such applicable laws, rules, regulations, ordinances, orders and permits include, without limitation, all laws, rules, regulations, ordinances, orders and permits adopted or made applicable during the term of this Franchise. All conditions imposed on the operation of the facility by federal, state, regional or local governments or agencies having jurisdiction over the facility shall be deemed part of this Franchise as if specifically set forth herein. Such conditions and permits include those cited within or attached as exhibits to the Franchise document, as well as any existing at the time of the issuance of the Franchise but not cited or attached, and permits or conditions issued or modified during the term of the Franchise.
12.2	**Indem-nification**	The Franchisee shall indemnify and hold Metro and its employees, agents and elected officials harmless from any and all claims, damages, actions, losses, expenses (including, without limitation, attorneys' fees), and liability related to, arising out of, or in any way connected with the Franchisee's performance or failure to perform under this Franchise, including, without limitation, any claims or liability based on patent infringement and any claims or disputes involving subcontractors.
12.3	**Deliver waste to appropriate destinations**	The Franchisee shall ensure that solid waste transferred from the facility goes to the appropriate destinations under Metro Code chapters 5.01 and 5.05, and under applicable local, state and federal laws, rules, regulations, ordinances, orders and permits;
12.4	**Provide access**	The Franchisee shall allow the Executive Officer to have reasonable access to the premises for purposes of inspection and audit to determine compliance with this Franchise, Metro Code, and the administrative procedures adopted pursuant to Metro Code

Chapter 5.01.

12.5	**Record-keeping and reporting.**	The Franchisee shall comply with the recordkeeping and reporting requirements as provided in Metro Code Chapter 5.01 and in administrative procedures adopted pursuant to Metro Code Chapter 5.01.
12.6	**Compliance by agents**	The Franchisee shall be responsible for ensuring that its agents and contractors operate in compliance with this Franchise.

13.0 MODIFICATIONS

13.1 Modification

At any time during the term of the Franchise, either the Executive Officer or the Franchisee may propose amendments or modifications to this Franchise.

13.2 Modification, suspension or revocation by Metro

The Executive Officer may, at any time before the expiration date, modify, suspend, or revoke this Franchise in whole or in part, in accordance with Metro Code Chapter 5.01, for reasons including but not limited to:

a. Violation of the terms or conditions of this Franchise, Metro Code, or any applicable statute, rule, or standard;

b. Changes in local, regional, state, or federal laws or regulations that should be specifically incorporated into this Franchise;

c. Failure to disclose fully all relevant facts;

d. A significant release into the environment from the facility;

e. Significant change in the character of solid waste received or in the operation of the facility;

f. Franchisee's failure to realize or maintain net system benefits as required by the Regional Solid Waste Management Plan;

g. Any change in ownership or control, excluding transfers among subsidiaries of the Franchisee or Franchisee's parent corporation;

h. A request from the local government stemming from impacts resulting from facility operations; or

i. The compliance history of the Franchisee.

EXECUTIVE SUMMARY
ORDINANCE NO. 01-890
FOR THE PURPOSE OF CONSIDERING THE APPLICATION OF RECYCLE AMERICA FOR A METRO REGIONAL TRANSFER STATION FRANCHISE

PROPOSED ACTION

- Approve Ordinance No. 01-890 authorizing the Recycle America facility located in Troutdale to begin operating as a regional transfer station.

WHY NECESSARY

- Recycle America has submitted a Regional Transfer Station application to Metro. Only the Metro Council can approve solid waste facility franchises [Metro Code 5.01.067(a)].

DESCRIPTION

- Recycle America presently operates as a Local Transfer Station and Materials Recovery Facility and is franchised to direct-haul waste to the Columbia Ridge Landfill. As a Regional Transfer Station, Recycle America would no longer be restricted to delivering 50,000 tons of solid waste for disposal annually. Regional Transfer Stations are required to accept public customers, provide free public drop-off of source separated recyclables, accommodate periodic household hazardous waste collection events, and achieve a 25 percent minimum material recovery rate from all non-putrescible waste received.

ISSUES/CONCERNS

- Troutdale has expressed its intent to impose a tax of $1.00 per ton of solid waste delivered to Recycle America. City representatives have also indicated that the tax would be added to the City's general fund. Troutdale has requested that Metro not collect a community enhancement fee. Metro, however, intends to collect a fifty cent per ton community enhancement fee.

- Metro reserves its authority to set rates for the industry if changes in market conditions were to result in anti-competitive pricing strategies. Staff has no evidence that anti-competitive pricing is presently a problem.

- The actual amount of transportation savings may be different from that projected by the applicant. Any savings realized by commercial users of the applicant's facility would translate into benefits to ratepayers only if they are factored into collection rates as set by local governments.

- As solid waste tonnage shifts from Metro facilities to private facilities, less revenue will be generated. As less revenue is generated, a more in depth policy review of cost cutting and revenue enhancement options must be undertaken.

FISCAL IMPACTS

- Metro will experience a revenue short fall in FY 2000/01 of approximately $540,604 if this ordinance is approved. However, this fiscal impact is due, in large part, to Metro's existing rate structure. If the rate structure is restored to the structure that prevailed two years ago, the impact to Metro will be significantly reduced even if this ordinance is approved.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 01-890, FOR THE PURPOSE OF CONSIDERING THE APPLICATION OF RECYCLE AMERICA FOR A METRO SOLID WASTE REGIONAL TRANSFER STATION FRANCHISE

February 1, 2001 Presented by: Terry Petersen

BRIEF DESCRIPTION OF ORDINANCE

Waste Management of Oregon, Inc. presently operates the Recycle America facility under Metro authorization as a local transfer station and material recovery facility. Recycle America is located in Troutdale, within Metro Council District 1 (See Attachment A for a map of the location of Recycle America and other major solid waste facilities in the Metro Region.). As a local transfer station, Recycle America is also franchised to direct-haul solid waste to Columbia Ridge Landfill and is restricted to delivering no more than 50,000 tons of solid waste annually to disposal sites. Approval of Ordinance No. 01-890 will authorize the Executive Officer to issue a Regional Transfer Station Franchise to Recycle America. The primary effect of this action would be to remove the 50,000 ton annual solid waste disposal cap while obligating Recycle America to perform additional functions required of all regional transfer stations under Metro Code Section 5.01.125(d). The new required functions are to: accept all public customers, provide free public drop-off of source separated recyclables, accommodate periodic Metro-sponsored household hazardous waste collection events, and achieve a 25 percent minimum material recovery rate.

EXISTING LAW

Metro Code Section 5.01.045(c) requires a Metro franchise for any person to operate a regional transfer station. Only the Metro Council can approve solid waste facility franchises [Metro Code 5.01.067(a)].

BACKGROUND

Recycle America's application is the second of three applications submitted to date following a recent change in Metro policy allowing consideration of additional transfer stations within the region. (See Attachment B for pictures of the facility and its current operations.) The application of Willamette Resources, Inc. is being considered by the Council at the same time as Recycle America. The Columbia Environmental application has been deemed incomplete because it lacks local land use approval and a permit from the state Department of Environmental Quality.

<u>Changes to the Regional Solid Waste Management Plan and the Metro Code</u>

Given changes in the region and in the solid waste industry since adoption of the Regional Solid Waste Management Plan, Metro determined that it was desirable to have a framework in which Council could consider the merits of expanding the existing system of three transfer stations. Ordinance No. 00-865, adopted in June 2000 provides a broader framework for Council decisions regarding new transfer stations. Under the amended Regional Solid Waste Management Plan, consideration of new privately owned transfer stations can occur only under specified circumstances. Ordinance No. 00-865 does not by itself authorize any new transfer stations. Rather, it provides a vehicle by which the private sector can apply to operate a new transfer station, and a framework in which Council can approve or deny an application. Any decision on a specific facility is to be based on Council deliberations pursuant to the application and consideration of the evaluation criteria in Metro Code Chapter 5.01, the Regional Solid Waste Management Plan (RSWMP), and Administrative Procedures.

The Metro Council also amended Metro Code chapter 5.01 by adopting Ordinance No. 00-866 in June 2000. The amendment created two distinct classifications of transfer stations: local, which are limited to less than 50,000 tons of solid waste disposed annually; and regional, which are authorized to annually dispose of 50,000 or more tons of solid waste. Regional Transfer Stations are also obligated to accept all public customers, provide free public drop-off of source separated recyclables, and accommodate periodic household hazardous waste collection events. Both local and regional transfer stations must recover at least 25 percent from mixed non-putrescible waste and self-hauled waste.

Effects of New Transfer Stations on the Solid Waste System as a Decision Criterion

The Regional Solid Waste Management Plan, adopted by the Metro Council in 1995, provides a policy to guide decisions regarding the authorization of additional transfer stations. Goal 3 of the Plan states, "The costs and benefits to the solid waste system as a whole are the basis for assessing and implementing alternative management practices." Objective 3.1 goes on to define "system cost" (defined in Metro Code Section 5.01.010 as the sum of the dollar amount expended for collection, hauling, processing, transfer and disposal) as the "primary criterion" for evaluation "rather than only considering the effects on individual parts of the system." Applying Goal 3 to the question of authorizing new transfer stations, Metro should decide in favor if the net savings are positive and there are no significant off-setting negatives, all else being equal.

The Application Process

Recycle America representatives met with Metro staff for a pre-application conference on September 18, 2000. Recycle America submitted a formal Regional Transfer Station Application on October 30, 2000. Accompanying the written application was a $500 application fee in conformance with Code Section 5.05.035(a). An initial review of the application found it to be complete although additional information was required to be submitted by the applicant to aid with the review. At a meeting held on November 15, 2000 and via letter on the same date, Recycle America was formally notified of the additional information required. The requested information was delivered to Metro on November 22, 2000. Additional information was provided by the applicant throughout the application review process.

Public Comment

Notice of Recycle America's application and an opportunity to submit written comment was provided by Metro to all Metro-area local governments, Solid Waste Advisory Committee (SWAC) members, and other interested parties. Comments were received as follows:

- City of Troutdale – Troutdale has set forth specific requirements for the construction of new turn lanes at the corner of Marine Drive and Eastwind Drive as a condition of the facility being open to the public. The City also expressed its intent to impose a tax of $1.00 per ton of solid waste delivered to Recycle America "for the purpose of offsetting impacts of the facility on the community" and has requested that Metro not collect a community enhancement fee. Troutdale has indicated its intent to collect $1.00 per ton whether or not Metro collects a community enhancement fee.

- Clark County, Washington – The County has requested that the franchise agreement, if granted, specify that the franchisee be required to report the county and state of origin of each load of solid waste accepted.

- Columbia Environmental, LLC & Oregon Recycling Systems – Columbia Environmental, which has also submitted an application to become a regional transfer station, requests that Recycle America's application be denied on grounds that it will only serve Waste Management trucks, does not adequately address waste reduction issues, and overstates system cost savings.

- East County Recycling (ECR) – ECR submitted a letter in which it questioned the basis for Metro's determination of under-served areas and asserted that commercial dry waste haulers in northeast Multnomah County are not under-served. The letter also suggests that haulers be required to utilize the most efficient equipment, deliver waste to the nearest facility, and that the minimum recovery level should be greater than 25 percent.

EVALUATION CRITERIA

Section 5.01.070(f) of the Metro Code lists five criteria that the Council must weigh in determining whether to authorize the issuance of a Franchise. The Council is not limited to considering only these five criteria. For example, Metro Council regularly considers the fiscal impact on Metro in any of its decisions, even though this is not one of the criteria in the Code.

In the following section, REM staff provides comment and analysis on each of the five criteria, plus a fiscal impact analysis. This section is intended to assist the Council in its consideration and weighing of each criteria as it deliberates over a decision on this ordinance.

(1) The applicant has demonstrated that the proposed Solid Waste Facility and authorized Activities will be consistent with the Regional Solid Waste Management Plan;

Since Recycle America is seeking authority to operate as a full service regional transfer station rather than a reload, the primary issue in determining consistency with the RSWMP is the effect of the proposed expanded activity on the existing solid waste system.

Under Metro Code, a new transfer station franchise may be authorized when a net benefit to the regional solid waste system can be demonstrated. Based on changes adopted by the Metro Council in June 2000, the RSWMP now allows for additions to the existing system of three transfer stations, as necessary, to maintain solid waste transfer and disposal service levels that provide reasonable access for residents, businesses and haulers.

The following criteria were considered in evaluating whether the Recycle America application is consistent with the RSWMP. These criteria are adopted in the RSWMP and stipulated in Section 12 of Administrative Procedure No. 101.

12.3.2.1 *The proposed facility will provide a net benefit to the regional solid waste system.*

Staff Finding: Net benefit is a function of many factors such as the potential for net system cost savings (which includes the potential effects on Metro tip fees), increases in the level of services to under-served areas, and anticipated increases in recovery. These factors are discussed individually in subsequent sections of this report and are the foundation for the Executive Officer's recommendation.

The applicant has chosen to demonstrate the net benefit criterion through a finding that the proposed facility would reduce system cost. This method of demonstrating a net benefit is allowed under the Plan and is consistent with Administrative Procedures. For the findings, see the "System Cost Overview" section of this report. Based on these cost estimates, projections of solid waste flows, and the potential for increased service and recovery, staff finds that this criterion will likely be met.

12.3.2.2 *The proposed facility will be located where it will provide more uniform access to resident, businesses, and solid waste haulers within the under-served areas.*

12.3.2.3 *The proposed facility will improve system efficiencies in those areas of the region that are under-served.*

Staff Finding: The proposed facility is located within an area identified by Metro as being under-served by existing transfer stations.[1] (See Attachment C for maps which identify under-served areas of the Metro region in 1994 and projected to 2015). Based on the criteria for demonstrating consistency with the RSWMP, it appears that transportation efficiencies would be realized by providing improved access to a regional transfer station

[1] It should be noted that these areas have been identified as under-served only for haulers of putrescible waste, but may be adequately served by existing recovery facilities for haulers of mixed dry waste.

facility, which would benefit residents, businesses and solid waste haulers, especially within these areas. Both of these criteria are met.

12.3.2.4 *The proposed facility will provide a full range of public services that serve a broad or regional market.*

Staff Finding: As a condition of the franchise, the franchisee shall accept authorized solid waste originating within the Metro boundary from any person who delivers authorized waste to the facility. The applicant has indicated that it intends to accept non-affiliated commercial haulers and public customers during the Metro-specified times of 8:00 AM – 6:00 PM Monday through Friday and 9:00 AM – 5:00 PM on Saturday and Sunday. The applicant will also maintain a free public drop-off area for source-separated recyclable materials at the facility and provide an area for periodic collection of household hazardous waste at the facility. This criterion is met.

12.3.2.5 *The proposed facility will preserve and enhance the region's material recovery capacity.*

Staff Finding: Metro Code and the proposed franchise require that the franchisee recover at least 25 percent by weight of non-putrescible waste accepted at the facility and waste delivered by public customers. The applicant has indicated that it intends to maintain a recovery rate in excess of the required 25 percent minimum while increasing the total tonnage of dry waste from which recovery takes place. However, there is no assurance that the applicant will continue to accept a substantial proportion of non-putrescible waste at the facility or that the total recovered tons at the facility will change as a result of Recycle America's intention to become a putrescible waste transfer facility. The degree to which Recycle America's recovery potential would be realized may be partly dependent on the functional relationship between the Recycle America and the Wastech materials recovery facility, located in Portland and also operated by Waste Management. It appears that Wastech will become Waste Management's primary processing center for residential and commercial source-separated recyclables and mixed waste recovery while Recycle America will primarily function as a solid waste transfer station with floor sorting of mixed dry waste. The sorting line from Recycle America has been moved to Wastech. It is unclear what effect this will have on total recovery for the two facilities combined. It is also unclear how transportation costs will be affected if recyclables generated closer to Recycle America are delivered to Wastech. This criterion would appear to be met when both Recycle America and Wastech are considered. It appears that each facility could play a more specialized and complimentary role in the processing of putrescible and recoverable wastes. However, the relationship of the two facilities was not fully discussed in the application.

(2) The applicant has demonstrated that the proposed Activity will result in lower net System Costs, if such a showing is required by section 5.01.060;

Metro Code stipulates that such a showing is required of applicants that propose to engage in direct-haul. Administrative Procedures require that the REM department generate findings regarding the effect on net system costs for all regional transfer station applications.

System Cost Overview

As part of revising the RSWMP to address the need for authorizing additional transfer station capacity in the Metro region, a planning-level analysis of the potential system impacts of two new transfer station facilities was conducted. Metro retained the firm R.W. Beck to assist with this analysis.[2] The two facilities selected for this study were Allied's WRI facility in Wilsonville and Waste Management's Recycle America facility in Troutdale (the applicant). The R.W. Beck report concluded that allowing these two facilities to operate as regional transfer stations would result in overall net system savings to the Metro region compared to the existing system in which these facilities operate as local transfer stations. The report estimated total savings for both facilities in the year 2000 of $972,000 and $1,282,000 in year 2010 (2000 dollars).[3]

The Recycle America facility is currently franchised by Metro as a local transfer station and is limited to dispose of no more than 50,000 tons of solid waste per year. In 2000, the applicant received approximately 53,327 total tons of solid waste and disposed of 49,188 tons. The applicant estimates that it will receive an additional 161,596 tons of solid waste per year if authorized to operate as a regional transfer station. This is a near quadrupling of its present throughput. The system cost analysis is based on the applicant's projected annual increase of 101,950 tons of wet waste, 43,777 tons of dry waste and 15,869 tons of self-haul, for a total of 161,596 additional tons. The estimated wet and dry tonnage is within the same order of magnitude as projected by Metro's Solid Waste Flow Simulation Model and appears to reasonably reflect the additional amount of wet and dry commercial tonnage expected to be received if a regional transfer station franchise is granted.

The additional 15,869 tons of self-haul estimated by the applicant is based directly on the projected tonnage from Metro's Solid Waste Flow Simulation Model. Metro staff has acknowledged that the confidence level for the Model to project self-haul tonnage is far less than for projecting commercial wet and dry tonnage. This is due, in part, to the different economic factors affecting the behavior of self-haul customers versus commercial customers in choosing to travel to one facility over another. The applicant has also stated that there is no authoritative method to determine the projected amount of self-haul tonnage. Therefore, based on the applicant's experience in operating the Recycle America facility, their "best guess" estimate of 15,869 tons is not unreasonable. However, the system cost analysis is based on the additional amount of wet and dry commercial tonnage expected to be received (145,727 tons) and does not include self-haul tonnage.

Administrative Procedure 101, Section 12, stipulates that the Metro Council shall consider whether the applicant for a franchise "has demonstrated that the proposed Activity will result in lower net System Costs." Metro developed a methodology for the

[2] System Impact Assessment. R.W. Beck. April 25, 2000.

[3] The system cost savings in the R.W. Beck report are not the same as the applicant's analysis primarily because of differences in projected tonnage of solid waste anticipated to be processed at Recycle America.

system cost analysis as a part of the administrative procedures for franchises. An underlying assumption of this methodology is that all costs associated with processing, transfer and disposal of solid waste are reflected in the tipping fees of either the facility losing the waste or the proposed fees of the facility receiving additional waste. Transportation cost savings are calculated separately.

System Cost Components

Metro Code defines system cost as "the sum of the dollar amounts expended for collection, hauling, processing, transfer and disposal of all Solid Waste generated within the District." Rather than re-calculate all costs for the system, the methodology outlined by Metro is intended to estimate the difference in net system cost that would result from the additional tonnage anticipated to be received if the franchise is granted. Fiscal impacts on Metro are considered under the "Metro Fiscal Impacts" section of this report and in the Appendix.

1) Using Tipping Fees as an Estimate of Transfer and Disposal Costs

As described above, a basic assumption used in the system cost analysis is that all costs to process, transfer and dispose of solid waste are included in a facility's tipping fee. The implication of this assumption is that any increase or decrease in the processing, transfer and disposal costs will be reflected in the applicant's tip fee. Therefore, if the applicant's tip fee is the same as the tip fee charged by the facility that had previously received the waste, there would be no change in this component of the system cost. However, if an applicant's tip fee increases or decreases, there would be a respective increase or decrease in the transfer and disposal component of the system cost.

The applicant's proposed tipping fees for wet and dry waste are $64.50 per ton, which is approximately $1.00 per ton more than the effective rate charged at Metro facilities. Since the proposed tipping fee at the Recycle America facility is greater than the tipping fees at the facilities that currently handle the waste, there will be an increase in the system cost for processing, transfer and disposal of approximately $149,000, as calculated by the applicant.

It should be emphasized that this estimate of a $149,000 increase in system-wide transfer and disposal costs assumes that Metro's tip fee remains at the current rate of $62.50 per ton. For a number of reasons (see attached Appendix: *Metro Fiscal Impact Assessment*), Metro's per-ton costs will increase as tonnage shifts from Metro to new regional transfer stations. One reason is that the price per ton that Metro pays its contract operator of the Metro transfer stations increases as tonnage declines. Based on the current contract price schedule, the per-ton price will increase from $6.56 to $6.64, which would translate into a cost increase of about $46,000 per year, as tonnage shifts to Recycle America.[4] Another reason is that there will be less tonnage over which to spread fixed costs. These cost increases will be covered in the short term by capitalizing on the fact that revenues currently exceed budget requirements and by drawing down Metro financial reserves.

[4] These per-ton contract prices will likely increase when the Metro operations contract is re-bid in 2003. The current prices are from bids received when Metro received significantly more tonnage than will be the case if new regional transfer stations are approved.

However, at some time in the future, when these offsetting revenues are no longer available, the Metro Council will have to consider increasing the tip fee in order to fully cover operating costs, or adopt offsetting budget reductions. At that time, the transfer and disposal cost increases that are caused by tonnage being diverted to the Recycle America transfer station will be passed on to ratepayers and this will offset system cost savings in the future.

It was noted above that as waste shifts from Metro to other transfer stations, there is less tonnage over which to spread fixed costs, and this may result in an increase of Metro's tip fee in the future. However, there is an opposite effect on the new transfer stations receiving waste. They have *more* tonnage over which to spread their fixed costs, and this should allow them to reduce their tip fee. However, staff notes that the applicant does not propose any decrease in their tip fee if this Ordinance is approved. The Council may wish to investigate further into the underlying reasons for this, as this may block some of the system savings from reaching the ratepayers.

2) Transportation Costs

For purposes of the system cost analysis, the change in transportation costs projected to be realized by waste haulers has been broken down into two components. These are "on-route" and "off-route" savings. "Off-route" savings are computed based on the difference in time it takes to take the waste from the collection route to the transfer station. "On-route" savings include all other efficiencies that accrue to haulers due to the additional route time that is gained as a result of shorter haul time to the transfer facility. The methodology used by Metro in previous planning studies to estimate transportation saving produces very conservative estimates of the savings because it does not consider the reduction in costs due to shorter haul times back to where the collection vehicles are stored at night. Recycle America, however, has included the time savings associated with the trip back to the hauler base of operations in "off-route" savings.

(a) Off-Route Transportation Costs

Off-route transportation costs are costs incurred after a truck leaves a collection route to deliver waste to a transfer or disposal facility and then returns to the next collection point or the truck storage site. Based on the system cost analysis provided by the applicant, a $618,154 off-route annual saving is projected for the first 12 months of operation. The applicant has identified new service areas and determined that travel times to Recycle America averaged approximately 14 minutes less than corresponding travels time to the nearest Metro facility. It should be noted that the applicant developed the estimate of travel time savings based on routing the trucks back to where the trucks are parked each evening. These travel times were estimated based on information provided by Metro.

(b) On-Route Transportation Cost

Waste Management, Inc., the corporate parent of Recycle America, has indicated it has already observed significant savings in on-route collection costs since the facility became a local transfer station after previously operating as a material recovery facility (MRF). The applicant indicates that these savings resulted primarily from two factors:

1) reduced off-route time allowed consolidation of routes and greater routing flexibility that has resulted in more efficient use of labor and equipment; and
2) added productive time on-route has permitted the use of larger and more efficient collection vehicles, accounting for more than half of the estimated savings.

The applicant claims collection payloads for residential routes in the area currently served by Recycle America used to be limited to about five tons due to the amount of time required to get to the disposal site. According to the applicant, using trucks with a payload capacity of greater than eight tons, it will be able to increase its payloads by 60% at an increase in cost of only 30%. The applicant, however, has not adequately explained how granting a regional transfer station franchise leads to the business decision of employing larger capacity vehicles.

The applicant estimates that the potential on-route savings are approximately 50% of the off-route savings. However, since the applicant doesn't control collection routes of non-affiliated haulers in the projected new service area, it is not possible to assure that all of these savings will be realized. The applicant did not provide other supporting data regarding estimated on-route cost savings. Metro staff's independent review indicates that the applicant's estimate of $309,000 in on-route savings may be achievable, and, therefore not an unreasonable estimate of the potential system cost savings for the first 12 months of operation.

3) Conclusion: Transportation cost savings are only realized by the ratepayers when the local rate setting authority recognizes this savings by reducing the collection rates or offsetting a proposed rate increase. Because collection rates are set by local governments, and because these rates are based on certified costs, there is a high probability that savings realized by commercial users of the applicant's facility would translate into benefits to ratepayers because local ordinances require that they be factored into collection rates set by local governments. Based on the foregoing analysis, the applicant's estimate of $927,000 reasonably reflects the potential transportation cost savings during the first 12 months of operation if this facility is franchised as a regional transfer station. By subtracting the $149,000 in additional annual disposal costs, it appears that granting a franchise to Recycle America may result in a total system cost savings of $778,000.

(3) Granting a Franchise to the applicant would be unlikely to unreasonably adversely affect the health, safety and welfare of the District's residents;

The Recycle America facility is permitted by the Department of Environmental Quality and has operated as a MRF since July 1996, and as a local transfer station since December, 1998 without adversely affecting the health, safety, or welfare of the District's residents (see Attachment B for photographs of the facility and its operation). During the time Recycle America has been in operation, Metro has never received a complaint regarding the facility. Recycle America estimates that it will receive an additional

162,000 tons of solid waste if its application is approved. The City of Troutdale has also evaluated the applicant's proposal and granted land use approval conditional on the construction of turn lanes at the corner of Marine Drive and Eastwind Drive if public self-haul customers are accepted. Based on these factors, staff has determined that granting a Franchise to the applicant would be unlikely to unreasonably adversely affect the health, safety and welfare of the District's residents.

> *(4)* ***Granting a Franchise to the applicant would be unlikely to unreasonably adversely affect nearby residents, property owners or the existing character or expected future development of the surrounding neighborhood;***

The applicant has obtained a conditional use permit from the City of Troutdale authorizing it to operate as a regional transfer station provided that it constructs specified turn lanes at the corner of Marine Drive and Eastwind Drive. The facility is located in an industrial zone. It is well screened by landscaping and has been operating as a local transfer station since December 1998 without problems. Increasing the intensity of use from a local transfer station to a regional transfer station is unlikely to unreasonably adversely affect nearby residents, property owners or the existing character or expected future development of the surrounding neighborhood.

> *(5)* ***The applicant has demonstrated the strong likelihood that it will comply with all the requirements and standards of this chapter, the administrative rules and performance standards adopted pursuant to section 5.01.132 of this chapter and other applicable local, state and federal laws, rules, regulations, ordinances, orders or permits pertaining in any manner to the proposed Franchise.***

The applicant has been in continuous compliance with all applicable regulations throughout the history of its operation. By such action the applicant has demonstrated a strong likelihood of compliance with all the types of regulations listed above.

FISCAL IMPACT

The effect of approving this Ordinance on Metro's fiscal position is discussed in this section and in the Appendix, *Fiscal Impact Assessment*. The Council is not required by Metro Code Chapter 5.01 to consider fiscal impacts in its deliberations on this Ordinance. However, the Council has historically requested that this information accompany ordinances, and the Council may choose to factor the fiscal impacts in its deliberations and weighing of the criteria that are required by Metro Code.

Consideration of the fiscal impacts take on an additional significance in the context of this Ordinance. This is because the main purpose of approving this Ordinance is to make it possible for the region to realize efficiencies and cost savings through transport efficiencies and other ancillary benefits of better accessibility. However, because Metro's fiscal position will change if this Ordinance is approved, the ability of the region to realize these system benefits depends largely on ***future*** policy choices by the Council on how to handle the fiscal impact.

Much of the negative fiscal impact is due simply to a non-traditional rate structure that Metro staff would recommend changing for other reasons during the next two years anyway. Specifically, Metro currently allocates less of the costs of regional programs (e.g., waste reduction) to the Regional System Fee, and more of these costs to the Metro transfer station tip fee, than has historically been the case. The Regional System Fee is paid by users of all facilities, while the Metro tip fee is paid only by users of the Metro transfer stations. As a result, the fiscal impact is amplified when solid waste shifts away from Metro's transfer station, because the tonnage base for recovering the costs of regional programs is reduced. If Metro's rate structure is restored to the structure that prevailed only two years ago—when virtually all of the costs of regional programs were allocated to the Regional System Fee—the fiscal impacts can be reduced significantly. This means, with a change in its rate structure, Metro can recover the negative fiscal impacts resulting from approval of this ordinance, and the region will still realize a significant net benefit.

Conclusion: There is a fiscal impact to Metro if this Ordinance is approved. However, this fiscal impact is greatly magnified by the existing rate structure. This rate structure should be analyzed for revision regardless of the Council's decision on this Ordinance. If Metro's historical rate structure is restored prior to FY 02/03, the fiscal impacts of approving this Ordinance can be neutralized through rate adjustments beginning in FY 02/03. Approval of this Ordinance will result in a significant reduction in system costs even with these minor increases in Metro rates. For this reason, the findings of the fiscal assessment do not alter staff's recommendation that this Ordinance be approved. (A more complete discussion of options is included in the Appendix: Fiscal Impact Assessment).

BUDGET IMPACT (FY 00/01)

Granting Recycle America's request for a Regional Transfer Station Franchise will have a budget impact on Metro in the current fiscal year. The effect of Recycle America's anticipated diversion of solid waste from Metro has already been factored into the proposed FY 01/02 budget. Recycle America's application is one of three transfer station franchise applications recently submitted to Metro. Willamette Resources, Inc. (WRI) and Columbia Environmental have also applied to become regional transfer stations. If other facilities are also approved as a regional transfer stations and divert additional waste from Metro's transfer stations, the budget impact would be cumulative.

Assuming that Recycle America operates as a regional transfer station for the second half the current fiscal year, Metro will have a revenue shortfall of $540,604. Because the FY 00/01 budget did not assume the proposed facility would be franchised as a regional transfer station, REM plans to use the undesignated fund balance to offset this revenue shortfall. Projections in future budgets will factor this change into the overall impact.

OUTSTANDING QUESTIONS

1.) Rate Setting

Pursuant to Metro Code, rate-setting must be established, or the authority must be reserved, in the Franchise, or else the Franchisee is exempt from rate setting. Section 7.5 of the franchise reserves this authority. This reservation begs two questions: why not establish rate setting now, and under what conditions might Metro engage in future rate-setting? These questions are addressed below:

Why not at this time?

Economic regulation usually takes the form of intervention to change the structure of a market in the public interest. For example, monopolies are widely believed to curtail production, or push prices above the level that would prevail under competition. In this case, intervention usually takes the form of breaking up the monopoly to re-establish competitive conditions. However, in other cases, monopolies can be more efficient than an open market. The most common examples are utilities, where competition can lead to duplication or congestion of pipelines and cables in the public right-of-way. Solid waste collection franchises also fall in this category. In these cases, the government often accepts the monopolistic conditions, but imposes conditions that simulate the desired outcomes of a competitive market: to control pricing and provide acceptable service/product levels.

Based on its ongoing monitoring of the solid waste system, staff finds no evidence of actual instances of anti-competitive pricing—for example, overcharging or predatory pricing in the regional solid waste disposal industry. This is likely because there are sufficient disposal options—in particular, Metro's transfer stations—to make the market work. Furthermore, Metro's tip fee puts an effective competitive ceiling on the amount any facility can charge. Accordingly, full economic regulation is not warranted at this time because there is adequate competition in the market place.

When Is Rate-Setting Warranted?

As mentioned above, rate-setting takes the form of an intervention to change the structure of a market in the public interest. As such, rate-setting would be applied industry-wide, not to individual firms.

When might rate-setting be warranted? Future discussions on this subject should consider the following framework:

Potential "Triggers"	Market condition*	Possible Response	Public interest
One firm controls a significantly larger portion of the market than any other firm.	Market dominance	Barrier against a firm's market share exceeding some maximum.	Protect against monopoly pricing.
Entire market served by one or only a few	Monopoly (single firm market) or	Barrier against a firm's market share	Protect against monopoly/oligopoly

vertically-integrated firms.	oligopoly ("few firms" market) power.	exceeding some maximum; or allow oligopoly but set rates for the industry.	pricing.
Metro is no longer the price leader.	Regional rates are effectively capped by Metro's price leadership. This effect diminishes as Metro's market presence diminishes.	Set rates for the industry; or limit market share to simulate a competitive market.	Protect against monopoly pricing.

* Assuming the market is not contestable – That is, there are high barriers to entry.

At present, none of these "trigger" conditions exist. Furthermore, Metro has no evidence of actual instances of anti-competitive activity and by most other measures the current regional disposal industry satisfies the conditions for a relatively competitive market. Accordingly, full economic regulation is not warranted at this time.

2.) <u>Intent of the City of Troutdale to Impose a Tax</u>

Troutdale has expressed its intent to impose a tax of $1.00 per ton of solid waste delivered to Recycle America regardless of whether Metro also collects a community enhancement fee. The City stated in a letter dated November 29, 2000, that this tax would be used to offset the impacts of the facility on the community. However, City representatives have also indicated to Metro that the tax would be added to the City's general fund. Troutdale has requested that Metro not collect a community enhancement fee. Metro, however, intends to collect a fifty cents per ton community enhancement fee and organize a committee to disperse these funds for mitigation projects.

EXECUTIVE OFFICER'S RECOMMENDATION

Based on the information submitted by the applicant and Metro staff's analysis of the information, there appears to be sufficient reason to approve the applicant's request. The net system cost savings are minor in the context of the total system cost for solid waste disposal in the Metro region but may be significant for a geographical area. However, improved transportation savings and providing additional services to a largely under-served area of the Metro region are primary reasons to approve the request. In addition, enhanced public access and establishment of a stable household hazardous waste location are benefits to the region.

The Executive Officer recommends that the franchise agreement contain conditions not included in previous franchises, if the ordinance is approved. These additional conditions are:

(1) the ability of Metro to modify the franchise should the net system benefit change radically;
(2) a prohibition on unjust rate discrimination;

(3) reporting to Metro of all rates, pricing structure and changes, including rebate program information on a monthly basis; and
(4) allowing Metro to set industry rates under certain conditions.

Provided these conditions are included in the franchise and in consideration of the facts set out in this staff report, the Executive Officer recommends approval of Ordinance No. 01-890, authorizing the Executive Officer to execute a Regional Transfer Station Franchise with Recycle America substantially similar to the franchise document attached as "Exhibit A" to Ordinance No. 01-890.

Appendix

Metro Fiscal Impact Assessment

The main cause of any fiscal impact to Metro is the shift of revenue bases (tons and transactions) from Metro transfer stations to the new regional transfer station. When solid waste is delivered to Recycle America, Metro loses the transaction fees and tip fees that would have been levied on that tonnage had it gone to Metro. However, Metro's costs also drop with the shift in tonnage. For example, no expenses are incurred for transfer, transport and disposal if the tons do not show up at the transfer stations. However, Metro's costs and revenues do not drop dollar-for-dollar. In fact, Metro loses revenue somewhat faster than it sheds costs when tons are shifted to private facilities. The net difference between cost reductions and revenue reductions is the fiscal impact.

If this ordinance is approved, REM staff expects approximately 125,000 tons per year to shift from Metro transfer stations to Recycle America. The shifts in revenue tonnage are documented in the following table.

Revenue Tonnage
(First full year)

Facility Ownership	Status Quo	Ordinance Approved	Change*
Metro	701,702	577,424	-124,278
Private	571,292	688,872	117,580
Total	1,272,994	1,266,296	-6,698

*tonnage shift to Recycle America

It is assumed that all tons delivered to Metro for disposal are revenue-generating tons, including recyclable materials that are ultimately recovered from solid waste. However, Metro obtains revenue from a private facility only on solid waste that is landfilled. Thus, the drop of about 6,700 in revenue tons equals the amount of material that is expected to be recovered at Recycle America and exempt from Metro fees.

As mentioned above, Metro's revenues fall faster than costs when tonnage is shifted to private facilities—in this case, Recycle America. The following table quantifies this effect ***if no other changes are made to Metro rates, the rate structure or the budget*** subsequent to approval of this ordinance.

Changes in Metro Cash Flow if the Ordinance is Approved *and* No Other Changes are Made
(First full year)

Cost Reduction	$4.5 million
Revenue Reduction	$5.6 million
Surplus (shortfall)	($1.1 million)

There are multiple causes for the differential change in costs and revenues. Each of these is described below.

1. *Delivery to an exempt facility.* Metro exempts new private facilities from fees on everything except landfilled waste. In contrast, Metro levies fees on all solid waste that is delivered for disposal to its own transfer stations (Metro Central and Metro South). This means that fees are implicitly levied on any recyclable material that is ultimately recovered at Central and South. However, Metro will forego fees on recyclable material that is recovered at Recycle America. This contributes to the fiscal effect, and is part of the 6,700 ton drop in revenue base.

2. *More material recovery.* It is expected that more material will be recovered from the waste that is shifted to Recycle America than would have been recovered at Metro Central or South. This compounds the effect described in the previous paragraph, and makes up the balance of the 6,700 ton drop in revenue base.

3. *Structure of the transfer station operations contract.* Shifts of variable costs are largely fiscally neutral. For example, it costs Metro about $14 per ton to transport waste to Columbia Ridge Landfill. This same $14 is a component of the tip fee. If waste shifts to another facility, Metro does not collect the $14. But it also does not incur the $14 cost. This tonnage shift is fiscally-neutral. However, the transfer station operations contract has a declining block rate structure. This means that the contractor's rate per-ton increases as the amount of tonnage decreases. Although this per-ton increase is small, it contributes to the phenomenon illustrated in the table above.

4. *Fixed costs.* Metro incurs certain fixed costs for operating the transfer stations (e.g. administration, renewal and replacement of equipment, scalehouse costs). By definition, fixed costs do not vary with tonnage. These costs are recovered through the transaction fee and a $2.55 per-ton component within the tip fee. The revenue from these sources is foregone when tonnage shifts from Metro transfer stations. A typical fix would be to increase the fee to recover the required costs over the smaller revenue base.

5. *Regional services in the transfer station rate base.* The loss of revenue to fund Metro's regional services is the main source of the fiscal impact noted above. This issue is similar to (4) above because the costs of Metro's regional services do not vary with tonnage. However, this fiscal impact is more fundamentally an issue about the current structure of Metro's solid waste rates than about the approval of regional transfer stations. In fact, under the current rate structure, Metro's fiscal position is quite sensitive to any shift or loss in tonnage, regardless of the cause. Under Metro's traditional rate structure, funding for regional services would be fiscally neutral with respect to tonnage shifts among disposal

facilities because it is universal (i.e. levied on waste regardless of where it is disposed).. This is not the case now. Because of the importance of this issue, and because Council may wish to examine it regardless of the decision on this Ordinance, it is discussed in more detail below.

Effect of the Rate Structure on Funding for Regional Services

Metro has two basic solid waste rates: The Metro Tip Fee and the Regional System Fee. The tip fee is levied only on the tonnage that is delivered to Metro Central and Metro South (700,000 to 750,000 tons annually), and historically was designed to recover the full cost of the transfer stations. The Regional System Fee is levied on all tonnage that is generated in the region and ultimately landfilled (1.1 to 1.3 million tons annually), and historically was designed to recover the full cost of regional services (hazardous waste, waste reduction, planning, etc.)

Under the historical rate structure, Metro's fiscal position was highly insulated from any shift in tonnage. This was because the tip fee was dominated by variable costs, while the Regional System Fee recovered fixed costs. Thus, if tons shifted from the transfer stations, Metro's revenue for transfer and disposal operations would drop, but costs also fell somewhat proportionally. But the tonnage shifts had little effect on revenues to pay for regional services because the Regional System Fee is universal—it is levied on all tonnage regardless of its disposal site.

However, at present, Metro is not operating under its traditional rate structure.
This situation emerged in FY 99/00, after the Council approved contract amendments that changed Metro's cost structure (reducing Metro's transport and disposal costs), but decided to leave the tip fee and regional system fee unchanged at $62.50 and $12.90, respectively. At present, $12.90 is not sufficient to recover all of the regional program costs, and the shortfall is made up from tip fee revenues. More specifically, users of non-Metro facilities now pay $12.90 per ton toward regional programs, but users of Metro transfer stations pay an effective rate of approximately $17. Not only is this situation inequitable (users of Metro transfers stations pay proportionally more for regional services than users of non-Metro facilities) but it makes Metro's revenues highly sensitive to shifts in tonnage.

This effect is quantified as follows. Metro collects approximately $17 toward regional programs on each ton that is delivered to Metro Central or South. When that ton shifts to any other facility, Metro collects only $12.90 on the tonnage that is left after material recovery.[5] Thus, Metro incurs a revenue loss of over $4 ($17 - $12.90 = $4.10) for every ton that shifts from Metro to non-Metro facilities, ***simply due to the rate structure***. If the Regional System Fee were the same over all tonnage—as has been the case historically—then the Regional System Fee would be about $14.75 and there would be no loss due to the shift (except for the revenue foregone on the increase in recycling and a small loss due to the fixed costs of the transfer stations).

[5] Note that the Regional System Fee is a cost to the private facilities because the fee is surcharged only on landfilled waste and can be reduced further by increasing its material recovery.

Of the $1.1 million annualized fiscal impact, attributed to approval of this Ordinance, approximately $500,000 is due to the rate structure alone, based on the shift of almost 125,000 tons from Metro transfer stations ($4/ton x 125,000 tons = $500,000).

If Metro responded to some or all of the $1.1 million fiscal impact by simply raising its rates and making no other changes to its rate structure, these higher rates would translate into real cost increases for customers who continue to use Metro transfer stations, and this would exacerbate the current inequity in the distribution of paying for regional programs. Furthermore, if private facilities matched Metro's fee increases with increases in their own tip fees, this would begin to erode the system cost savings that would be generated by approval of this ordinance.

However, because the current rate structure renders Metro sensitive to tonnage shifts or losses regardless of the reason, it is desirable that the Metro Council examine the rate structure independently of its decision on this ordinance. (Another reason to re-examine the current rate structure is to check if the Council's goal of fiscal equity is being achieved.)

Fiscal Impact on Metro's General Fund

Effective December 1, 2000 Metro's excise tax was converted from an *ad valorem* tax to a per-unit (tonnage) tax. Prior to this change, any exemption of solid waste from the tax (for example, exempting recyclable materials) constituted a reduction of the tax base, and potentially, a reduction in revenue. Under the new system, there are two important differences in the fiscal impacts:

- The general fund no longer loses revenues when recyclable materials are exempted from the tax. Instead, the excise tax rate is adjusted to raise the Council's targeted general fund revenue requirement.
- The excise tax rate is calculated by explicitly taking into account the amount of recyclable materials that are targeted in the Regional Solid Waste Management Plan (RSWMP). That is, recycling exemptions—both actual and projected—are already factored into the excise tax rate.

Accordingly, under the new excise tax, adoption of this Ordinance will have no impact on the statutory general fund requirement of $5.7 million from solid waste.

Adoption of this Ordinance may contribute to a reduction in any unanticipated revenue (that is, revenue above the $5.7 million) that is realized if regional recycling falls short of the recovery rate targets in the excise tax code. Assuming Recycle America begins operation as a regional transfer station in early 2001, this unanticipated revenue would be reduced by approximately $11,000 in FY 2000/01, and approximately $35,000 in FY 2001/02 ($4.90 excise tax rate on 6,700 tons of recycling, plus an increase in excise tax credits). In subsequent fiscal years, when the effect of Recycle America is explicitly accounted for in the calculation of the excise tax rate, the unanticipated revenue may be reduced by $5,000 to $10,000 per year.

Conclusion

There is a fiscal impact to Metro if this ordinance is approved. However, this fiscal impact is greatly magnified by the existing rate structure. This rate structure should be analyzed for revision regardless of the Council's decision on this ordinance. If Metro's historical rate structure is restored prior to FY 02/03, the fiscal impacts of approving this ordinance can be neutralized through a minor rate adjustment beginning in FY 02/03.

Approval of this ordinance will result in a significant reduction in system costs even with these minor increases in Metro rates. For this reason, the findings of the fiscal assessment do not alter staff's recommendation that Ordinance No. 00-xxx be approved.

SK:bjl
S:\share\B&RA\REGIONALTransferStation\RA-staffrpt.doc