



METRO

A G E N D A

MEETING: REGIONAL SOLID WASTE ADVISORY COMMITTEE

DATE: Wednesday, May 20, 1998

TIME: 10:00 a.m. – 12:00 noon.

PLACE: Metro Regional Center, 600 NE Grand Avenue, Portland
Room 370

- | | | |
|----------------|---|------------------------|
| 5 min. | I. Call to Order & Announcements | Morissette |
| 5 min. | *II. Approval of April Minutes | Morissette |
| 10 min. | III. REM Director's Update | Warner |
| 95 min. | *IV. Work Session on Revised Code | Warner/Anderson |
| | <i>Discussion of issues related to draft Metro Code.</i> | |
| | Action Requested: SWAC recommendations on individual issues | |
| 5 min. | V. Other Business and Adjourn | Morissette |

*** Materials for these agenda items are included with this packet.**

All times listed on this agenda are approximate. Items may not be considered in the exact order listed.

Chair: Councilor Don Morissette (797-1887) Staff: Doug Anderson (797-1788)

Committee Clerk: Connie Kinney (797-1643)

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SOLID WASTE ADVISORY COMMITTEE MEETING SUMMARY
For April 15, 1998

Members Present

Don Morissette, Chair, Metro
Bruce Broussard, MDC/USA Waste
Ralph Gilbert, East County Recycling
Lee Barrett, City of Portland
Jeff Murray, Far West Fibers/Recycling Association
Jeanne Roy, Citizen
Rick Winterhalter, Clackamas County
Loreen Mills, Washington County Cities
JoAnn Herrigel, City of Milwaukie
Susan Robinson, BFI
Merle Irvine, Waste Recovery Inc.
Lynne Storz, Washington County
Tom Miller, Washington County Haulers Assoc.
David White, ORRA/Tri-C
Garry L. Penning, Waste Management of Oregon
Gary L. Goldberg, Specialty Transportation Service

Metro

Bruce Warner	Leo Kenyon	Dennis Strachota
Dan Cooper	Aaron Brondyke	Ray Barker
Marvin Fjordbeck	Jim Watkins	
Douglas Anderson	Terry Petersen	

Guests

Ray Phelps, Pac/West	Rob Guttridge, KB Recycling
Doug Drennen, DCS	Easton Cross
Scott Bradley, USA Waste	Ray Brogan, STS
Jon Angin, MDC/USA Waste	Dick Jones, Citizen
Dean Kampfer, MDC/USA Waste	Kent Inman, American Compost & Recycling
Mike Leichner, Wash Co. Haulers Assoc.	Diana Godwin, Regional Disposal Co.

Chair Morissette brought the meeting to order.

ACTION ITEM:

Chair Morissette asked for a motion on the minutes for the SWAC meeting of 3/18/98. Mr. Penning made a motion to adopt the minutes of 3/18/98; Ms. Herrigel seconded the motion. The Committee voted unanimously to adopt the minutes.

DRAFT METRO ORDINANCE: CODE OF ETHICS

Mr. Cooper, Metro's General Counsel, said his office was working with the Council Government Affairs Committee on preparing an ordinance for Council consideration relating to ethical requirements for Metro elected officials and employees.

He explained this is an ordinance that has been introduced for Council consideration by a Council Committee. He said the Council's rules provide that either the executive officer, any individual councilor, or a council committee can introduce an ordinance for council consideration. Mr. Cooper said this ordinance has not yet had the required first reading under Metro procedure, or referred back to committee for any public hearings, and in fact has not been scheduled to come back at any particular time for possible council adoption. He said the chair, Councilor Susan McLain has asked Metro legal counsel to review the ordinance in order to spot potential issues and make recommendations for changes or fine tuning. Metro Council Chair, Jon Kvistad has asked Executive Officer Mike Burton to review the ordinance who in turn asked all the Department Directors for comments as well.

Mr. Cooper said this instrument will put in one place in the Metro Code all of the ethical requirements that apply to Metro employees and officials. He said Metro has current provisions, which repeat Oregon State law's ethical requirements for reporting financial conflicts, would create additional reporting requirements for financial disclosure forms for Metro Department Directors, and members of the MERC Commission. He said the new ordinance repeats the previous requirement setting limitations with respect to directors and officials leaving office and contracting with Metro within the first year's time.

He said some of the new provisions, which go beyond state law, will restrict certain activity by Metro Councilors and Metro employees with regards to receiving gifts from persons affected by Metro legislation. He said there is a recognition that "whistle blowing" is appropriate behavior, a prohibition against political activity in Metro buildings, or with Metro equipment and on Metro time (which is also existing State law). Mr. Cooper said there is a new provision for registration of lobbyist and an attendant \$50.00 fee, which is considerably narrower than State law in the definition of lobbyist.

Mr. Cooper said a current issue is: Defining a Metro Official for the purposes of determining whether you have to register as a lobbyist, if you "lobby" them, do you have to register as a lobbyist. He said there are three places where Metro Official is defined: in the section (Section 8,5,1) on ethical requirements (includes members of a committee); Section 4,A,8; and a definition of gift in Section 4,A,3. In effect, these sections prohibit any member of a Metro committee from accepting any gift from any individual or entity seeking legislative action.

Chair Morissette suggested that inasmuch as the SWAC committee members have shown an interest in the ethics ordinance that he appoint Mr. Warner as the key staff person to take suggestions, changes, alterations to the document. Mr. Warner asked for interested persons to

form a subcommittee to make recommendations to the document. Those interested persons included:

Jeff Murray
Bruce Broussard
David White
Lee Barrett

Mr. Warner said the subcommittee would report at a future SWAC committee those recommendations and/or changes it has suggested. Mr. Warner said he would also convey the committee's concerns appropriately. Mr. Cooper said he would readdress the SWAC when further developments are made.

DIRECTOR'S UPDATES

Mr. Warner said the Aloha Household Hazardous Waste event, which was held last weekend was a success and brought in 1,000 customers. He thanked local governments and counties for the participation. He said there will be another event held at the Multnomah Kennel Club's parking lot in Gresham on April 25th.

Mr. Warner thanked committee members for their participation in the survey that was distributed at the last SWAC meeting. He said the REM department had sent out more than 150 surveys to individuals, and interest groups around the region and received 40% return.

Mr. Warner said the REM budget has made its way through the Council's Finance Committee. He said the Clackamas County Commissioners have forwarded a request to Metro Council requesting that Metro assume responsibility for the Rossman Landfill, which was not included in the budget as a result of Finance Committee's discussions. He said they have, however asked for information in this regard and are trying to address some of Clackamas County's concerns and issues. Mr. Warner said he would report further information to SWAC as this progresses.

Mr. Warner said Council Chair had a number of questions of staff about the financial impact of the Code update. Mr. Warner said there were minor changes to the REM budget of \$200,000.

Mr. Warner said we are about ready to turn on the compressors at the St. Johns Landfill to deliver landfill gas to Ashgrove Cement. The gas is intended to power the Ashgrove Cement plant the total amount of its power needs for the kiln where they produce cement.

ACTION ITEM -- YEAR 9 WASTE REDUCTION PLAN FRAMEWORK

Ms. Erickson, Waste Reduction Senior Planner, explained that the Annual Plan for Local Governments has been in existence since 1990 helps with funding assistance for implementing waste reduction and recycling activities. She said it was originally ordered by DEQ and has now moved into a key implementation tool for the RSWMP. Ms. Erickson said local governments take the framework and use it to create their individual plans which helps the region meet RSWMP goals. This Year 9 Plan has been through two public comment sessions as well as presentation to the REM Committee on two occasions for discussion and comment. Ms. Erickson would like SWAC's recommendation to forward on to REMCom for approval. She said in this way local government coordinators can begin their planning for the next fiscal year. She said local jurisdiction's plans are due to Metro on June 1st. Ms. Erickson said she could

provide any SWAC members or interested persons with a draft form of the Plan but that it has not changed much since January when SWAC members received one with their agenda.

Ms. Roy suggested that since the Plan did not reflect an accurate portrayal of what the Metro Auditor recommended, that wording be changed. Ms. Roy said that her interpretation of what the auditor said was that REM has been calling the program a "grant program" but that it has been administered as a revenue sharing and therefore the Council should make a decision. Ms. Roy also said the auditor suggested that if you administered it as a revenue sharing, there should perhaps be less paper work, and if it was administered as a grant, then you need some performance standards. Ms. Roy explained that the Council suggested using a "competitive grant."

Ms. Erickson said Ms. Roy was correct in her reflection of what the auditor said. She said however it was REM's decision to try a competitive grant as an experiment. Ms. Erickson said the program's future and administration would be discussed in depth through the summer. She said this year would be a combination of revenue sharing and competitive grant. \$600,000 would be a revenue share and \$200,000 would be competitive grant. She said the competitive grants were focused on commercial programs and based on merit and need. Ms. Erickson said written materials will be available within the next four to six weeks discussing these issues and she will distribute to SWAC.

Ms. Roy thinks the competitive grant would be a good compromise way of doing it, but wants it to be clear that the grants are tied to the eight recommended practices in RSWMP to meet our tonnage reduction goals. Ms. Roy also suggested that Metro be diligent in reporting on annual benchmark evaluations as prescribed in the RSWMP and that they be presented to Metro Council at the same time as the Year 9 Plan is presented. Ms. Erickson replied the report has already been prepared and is in management review.

Mr. Warner said that he agreed with Ms. Roy's comments, and wanted to have real clear direction to Council on the audit in terms of what programs REM should be administering with the money.

Ms. Herrigel said that when you move towards the grant program in the region for solid waste and recycling, that allows communities to opt out and if Metro is trying to further encourage that behavior, they might want to re-evaluate their advocacy of competitive grants.

Mr. Barrett commented that on that same note, his jurisdiction, being much larger could afford to place a person in charge of writing grant proposals and could possibly dominate the competitive grant program.

Chair Morissette responded that the current staff proposal is for about 1/3rd of the resources to be in competitive grants and how did Mr. Barrett feel about that? Mr. Barrett felt the revenue sharing concept was a more appropriate approach, but a split as suggested would be okay also. He said the City of Portland has in the past allowed smaller jurisdictions a greater opportunity to access those monies. Mr. Morissette asked Ms. Herrigel her opinion of staff's proposal. Ms. Herrigel felt the proposal was acceptable, but that the competitive grant funds would be primarily concerned with commercial recycling, and Ms. Herrigel commented that it should be

noted that commercial recycling planning was still required in the revenue share portion of the plan.

Mr. Winterhalter suggested that changing the revenue share portion of the money this year would put a burden on local governments because they have already submitted their budgets based on a previous scenario. Ms. Storz seconded Mr. Winterhalter's comments and added that a major portion of the money should be in revenue sharing. Ms. Storz stressed that the region's waste reduction goals have continued to improve through cooperation between local governments and Metro and it would be difficult for most local jurisdictions to continue without Metro's assistance.

Chair Morissette asked if there was a recommendation by SWAC of the current plan as proposed?

Mr. Winterhalter said his recommendation (for this year) was that the \$600,000 be placed in revenue sharing, \$184,000 in competitive grants. Mr. Barrett seconded the motion. There were no comments and the motion was passed by SWAC. Ms. Jeanne Roy opposed.

Mr. Barrett commented that perhaps the heart of the problem as expressed by the Auditor is that we are calling it a "grant program" and it is really a revenue share program and that the name should be changed. The SWAC concurred and made it a part of the motion.

Mr. Miller suggested that Metro move up their time on the framework plan so that local governments could be advised of the monies before they concluded their budget processes.

SYSTEM FEE CREDIT ADMINISTRATIVE PROCEDURES

Mr. Warner introduced Ray Barker from REM staff to talk about the performance credits and how they will be administered. Mr. Barker said he had received a total of four different comments with regard to how the credits will be administered (materials mailed to SWAC members dated April 27, 1989).

- 1) (Applying for the System Fee Credit), would like the word "generator," changed to "hauler" because most of the time the operator is unaware of who the generator is. Staff agrees with that change.
- 2) (Specific Markets), the name of the facility/company destined to receive the outgoing load .
A comment was received, indicating that the information being requested was usually confidential. Metro is not asking for a change in the information currently requested. Metro will continue to treat all information as confidential.
- 3) Objection to being unable to receive credit if loads were taken to someplace other than a Metro designated facility. As currently written, the administrative procedures require delivery to an MDF so Metro can cross-check the tonnage records for validity.
- 4) A suggestion was made to add a further category to the list of incoming materials called "other." Staff would like to review that decision and discuss further.

Chair Morissette said before this legislation goes forward he would like to see best estimate cost impacts to both staffing and budget.

WALK-THROUGH OF REVISED CODE

Mr. Anderson referred to the materials sent to SWAC members on April 27. He said there were comments (none written) on the 10% facility retrieval rate (where a facility has to achieve at least a 10% overall rate over wet and dry waste before it is eligible for the credits on the dry side). One concern was that if it stayed in for the 1-year trial time that it would not go away and in fact might increase.

Mr. Warner added that Ms. Roy's concern was that source-separated recyclable materials could be included in the calculation of the 10%. It is her perspective that action would be detrimental to recycling goals for the region.

Mr. Anderson said that all facilities currently operating in the region now qualifies under the 10%, but the issue is are they positioned for the future?

Mr. Cross from the gallery asked if Metro was going to give regional user fee credits to mixed facilities for wet garbage? Mr. Anderson answered dry residual only.

Mr. Barrett said that in response to Mr. Cross' comment, what happens with food waste or yard debris for credits? Mr. Anderson said that any material recovered has 100% forgiveness of user fees. Mr. Barrett said that he could foresee a future where a wet load has got a lot of compostable material in it, yet wet garbage does not qualify for the credit. Mr. Anderson said at this stage the Code is not set up to deal with post-collection recovery of organics, but that it can be amended at the time we decide to go in that direction.

Mr. Anderson said he received comments with regard to what local transfer stations may receive and from whom. He said the intent is that consistent with the recommendation of SWAC, they may receive waste from any geographic area, but that it be limited to franchised and permitted haulers (not open to the public). Another concern was at what scale the breakpoint between a reload and a transfer station. He said the proposed breakpoint is 50,000 tons (waste out the back door, delivered to a landfill). Mr. Anderson said the theory is that any scale of operation beyond that figure those operators should provide services more broadly than just to collectors. He assured the committee that this did not imply that Metro would try to set hours of operation, etc., only that if you are going to do that amount of business in a corner of the region, you have a responsibility to the region to provide a broader range of services in that corner of the region.

Mr. Anderson said there was also some concern about the voluntary certificate for clean MRFS. The issue is that the new code sets up basically four categories of regulation or non-regulation: exemption, certificate (low level of regulation), license (permission to operate), franchises. He said there was concern about the voluntary certificate provision that was included because of the comments on who would monitor the residual rates when co-mingling starts up (about contamination, and breakage, etc.). Metro is very reluctant to even consider regulating a clean MRF. Some have called this a "good housekeeping seal" like the Earth-Wise program for composters. The issue is, if the facility wants to share data with us, Metro would calculate and publish a recovery rate.

Mr. Murray, representing the recycling association, commented that the industry understands the concerns and believe they are valid concerns, but would like to come up with a slightly different method of achieving Metro's goals. They are still in the discussion stages.

Mr. Warner turned everyone's attention to the last page of the agenda packet which contained a revised schedule with regard to implementation of performance based credits, adoption of revised Metro Code, newly revised licenses, franchises, etc. He then went through the items.

Chair Morissette asked the committee members if any were interested in forming a subcommittee to review the proposed code changes. The following persons volunteered: Garry Penning, Merle Irvine, Lynne Storz, Susan Robinson (BFI), David White, Tom Miller, Ralph Gilbert, Gary Goldberg (STS), Jeff Murray, Loreen Mills, and Dean Kamper. Mr. Morissette said the subcommittee meetings will be held at 3:00 p.m. April 28 and another April 29 beginning at 9:00 a.m.

Mr. Anderson then went on to discuss the newly drafted rewrite of Chapter 5.01 of the Metro Code, (copies of the draft were distributed). Mr. Anderson stated that the strikethroughs indicate language being stricken, the underlines indicate new language. Mr. Fjordbeck commented that bolded, italicized language is undergoing continuing staff review. Anything not underlined is existing language. Mr. Anderson explained that the new code will look at types of waste received at the facilities, coupled with activities you will be doing. This is different from the current code, which views one facility as doing only one type of activity. After a determination of the activities and wastes handled at a facility, an appropriate level of regulation can be determined. Mr. Anderson then discussed the differing levels of regulation that specific facilities would receive.

Mr. Barrett commented that vermiculture did not appear to be listed and asked how that was defined. Mr. Anderson said he would check on that and if it was not mentioned, it would be corrected.

Mr. Gilbert commented that chlorinated contaminated soils should be included with Petroleum Contaminated Soils (PCS).

Mr. Fjordbeck stated this draft is organized into four principal sections:

- 1-10 General Provisions
- 12-31 Applications for: licenses, franchises and certificates
- 32-35 Obligations of the three types of regulated parties; and woven into that, 16 on yard debris sections which staff proposes to weave into the revised code.
- 37-45 Administration
- 37-46 Enforcement

Mr. Fjordbeck said there are some cleanup provisions at the end. He said that Section 8 is currently entitled Certificate Requirement, but it will contain more information.

Mr. Warner said staff has provided members of the committee with a lot of information and they are looking to get comments back on specific language to deal with some of the concerns that have been expressed as quickly as possible.

Mr. Warner introduced Mr. Gary Goldberg from Specialty Transportation Services (STS) (formerly Jack Gray Transportation) who made a statement with regard to transportation of solid waste from the region to a general purpose landfill. He said that STS's legal counsel reviewed their contract with Metro and prepared a research memorandum (which was distributed). Mr. Goldberg believes that revisions to the 1995 RSWMP section dealing with the transportation of solid waste to a general purpose landfill should remain as stated in the contract between STS and Metro. That is that a licensee or franchisee of a facility should be required to use the services of Metro's designated contract carrier, STS for the transportation of the solid waste from the facility to the general purpose landfill.

Mr. Warner commented that to paraphrase what he heard is that STS believes that Metro has the authority to require franchised facilities to utilize Metro's existing transportation contract for transport of the solid waste and that Metro should. Mr. Goldberg replied that was a correct summation.

Mr. Warner asked for any comments, questions, issues, and clarifications.

Ms. Robinson said she would like a clarification with regard to the exempt facilities where it talks about reloads. She asked why there was a differentiation between a reload which transfers waste (and is exempt) versus a local transfer station. Ms. Robinson said the only difference is that a transfer station sorts material or does some activity with the material, so why the exemption for the reload?

Mr. Anderson said the facility that only reloads waste is considered an adjunct of the collection system – a vehicle-to-vehicle transfer from there to the transfer station. He said they may have a floor and may push it, but there is no breaking of loads, no material recovery, it is simply a consolidation of many trucks to one, thus it is a collection issue. He said that when a facility begins sorting material and diverting waste, this is where staff drew the line.

Ms. Robinson said she does not read the explanation that way. She suggested this issue be explored further and a better explanation be supplied.

Ms. Roy suggested the words "vehicle-to-vehicle" be inserted in the explanation and that might solve the problem.

Mr. Murray asked Mr. Goldberg if he was suggesting that material from a facility such as ERI that may send material to either Hillsboro or possibly Riverbend would have to be transported by STS? Mr. Goldberg replied that is what he was suggesting. He said that as long as it came under Metro's jurisdiction, it is STS's feeling that they are the designated hauler of that material.

Mr. Leichner asked does that mean if a transfer station is a designated facility, does my transfer station fall under that? That is the logic I am hearing from that. You said all designated facilities, correct.

Mr. Goldberg replied that was how the contract read.

Mr. Leichner asked even if he takes his dry waste to a landfill? Mr. Goldberg replied yes.

Ms. Robinson commented that she would also like to see at least a discussion of the limitation of 50,000 tons being the line where additional services are required of a facility.

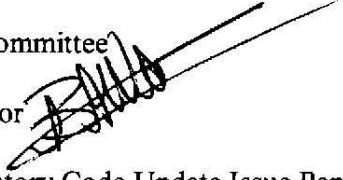
Respectfully Submitted
Connie L. Kinney, SWAC Clerk

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**METRO**

DATE: May 14, 1998

TO: Solid Waste Advisory Committee

FROM: Bruce A. Warner, Director 

RE: Agenda Item IV: Regulatory Code Update Issue Papers

BACKGROUND

The following attachments are the supporting information and work sheets for the subject agenda item. As I have briefed you previously, the attachments are issue papers on specific issues or concerns which have surfaced since you and other stakeholders began reviewing the proposed revisions to our regulatory code and other summary memos outlining the objectives of the revision. In my discussions with Metro Councilors about the proposed code update, they have indicated that many of these issues are also of interest to them.

The issue papers are meant to briefly outline the following elements for you and our policy-makers: the issue, a description of the proposed code revisions on this issue, a background discussion, concerns raised by stakeholders, identification of possible policy options, an analysis of the options, and our preliminary staff recommendation. When you review the issue papers, you will notice a section that is currently blank, entitled "**SWAC Recommendation.**" It is my hope that the SWAC will proffer a motion for each issue paper that can be discussed briefly, and then voted upon. There are 16 separate issue papers. If the SWAC takes 5 minutes for each issue, you will need about an hour and a half to get through the issues with some minor amount of time available for transition between issues and a small break.

This meeting provides the final opportunity for the SWAC to give Metro staff guidance and recommendations prior to finalizing the proposed code language for filing with the Executive Officer and Council on May 28, 1998 (a copy of the anticipated hearing and adoption schedule is also attached for your information). I have committed to the Council and SWAC to include the issue papers with the SWAC and staff recommendations in a binder that will be used by our Council during their hearings and deliberations on this important legislative item.

Many of you have seen earlier drafts of the issue papers and discussed each of them in some detail in the four work groups that have been held since the last formal SWAC

meeting. Those of you who did not attend the work groups will need to read the papers prior to the SWAC meeting, since the Chair wants to move through the discussion and recommendation decisions very quickly.

SWAC PROCESS

The attached issue papers have been arranged in logical groups to allow you to make decisions on the various issues in the context of the overall objectives or on their impact to the code revision. Those logical groups are as follows: *Facility Requirements*, *Direct-Hauling of Waste*, and *Process and Administration*. There are, obviously, other ways to organize these papers, but this way seemed to be good sort.

My expectation of how the SWAC can adopt a recommendation of each of the papers is as follows:

- 2 minutes for clarifying questions/comments
- 2 minutes for moving and seconding a motion (based upon staff recommendation, other options identified, or other SWAC suggestions)
- 1 minute for a vote

Simple—right? I know that some of the issues can be dealt with very easily and others will warrant further debate and discussion. Overall, however, I will work with the Chair to assure that we move through the issues as quickly as possible. I am sure that there will be a number of issues for which there will not be unanimous approval of a motion. If you are unclear or uncertain, a “no” or “abstention” may be appropriate. If all of us come prepared, the process should move quickly and effectively.

I want to thank all of the SWAC members and other interested parties who have taken the time to be involved in the work groups over the past several weeks. I am sure that the ordinance filed will be much improved from the earlier version, with which we began these meetings and discussions.

BW: ajb

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**Not included in packet -- will be sent out prior to meeting.*

Issue 1

Entry Requirements for Selected Facilities

Policy Objective

To provide more options and better access to transfer station services by having a geographic dispersion of local and regional transfer stations.

Description of Proposed Code Revision

The first draft of the Code revision requires a demonstration by applicants for transfer stations (local or regional) that the facility will help to achieve transportation economies within the region. The Code criteria are designed to ensure that facilities will be located at some distance from each other, in order to achieve a balanced regional accessibility to solid waste facilities. The criteria for Regional Transfer Stations are somewhat more stringent than for Local Transfer Stations.

Under the first draft of the Code revision, operators who apply for authority to haul putrescible waste directly to Columbia Ridge Landfill must further demonstrate that the direct-haul activity saves costs for the regional solid waste system. This issue is discussed in Issue Paper 2, "Direct Haul to Columbia Ridge Landfill."

Background

- The Regional Solid Waste Management Plan prohibits new transfer stations unless regional constraints on transfer services are reached. Development of "reloads" (essentially, local transfer stations in the proposed Code) is an approved Alternative Practice to address the shortfall in transfer capacity.
- The Regional Solid Waste Management Plan states that reloads and transfer stations are to be considered on a *case-by-case* basis (pages 7.25—7.27). The proposed code revision simplifies these RSWMP issues to a determination whether the proposed facility passes a basic "system cost" test (as defined in Goal 3, page 5.4).
- The goal is to help gain a geographic distribution of transfer station services—and not to have a set of rules that would allow, for example, a reload to locate across the street from a regional transfer station.

Issues Raised

1. A facility should only need to demonstrate that it produces a net benefit for ratepayers that it directly serves.
2. What cut-off will be used to determine net benefit? A dollar? A penny? This has the potential to become quite arbitrary, and will have to be decided in a political arena. Do we want that?
3. A needs test is inconsistent with Metro's stated objectives of lowering entry requirements.
4. A facility could demonstrate a net system benefit ("need") for entry, but there is no mechanism for sustaining the showing of "need" over time.

5. If Metro is going to use transport economies as a locational criterion, then haulers should be directed to use the facility—else we don't buy much with this.
6. It will be increasing difficult to demonstrate savings over time as more facilities are built. The criteria should allow a judgement on merit no matter when the application occurs. We shouldn't approve the first couple of applicants just because they are first.
7. The market does a more efficient job of determining how many facilities are needed, when, and where. The market will factor in all costs and benefits (capital costs, risk, market demand, etc.) and not just the few that can be included in a quantitative analysis.

Options Considered

Option 1: Leave the proposed Code as-is. Implement unambiguous, detailed criteria for determining entry in Administrative Procedures.

Option 2: Eliminate the "needs" analysis for local transfer stations, and reduce the analysis for regional transfer stations to a showing of consistency with the Regional Solid Waste Management Plan.

Option 3: Eliminate the "needs" analysis for both local and regional transfer stations.

Analysis

Option 1

Pro

The geographic distribution of solid waste transfer capacity remains somewhat under the control of a regional plan.

Con

The arguments favoring the thoroughness of a market approach, and the potential incompleteness and subjectivity of the "needs analysis" approach are compelling.

Option 2

Pros

- The policy objective is likely to be achieved over time.
- Addresses virtually all of the concerns that have been raised with the language of the first draft.
- Consistent with the Regional Solid Waste Management Plan

Con

Almost complete reliance on private initiative to meet demand for solid waste facilities.

Option 3

Pro

Is by far the simplest and least costly approach to administer

Con

Not fully consistent with Regional Solid Waste Management Plan, as it allows regional transfer stations to be developed without fulfilling the findings of an Alternative Practice.

SWAC Recommendation

Preliminary Staff Recommendation

Option 2.

Issue 2

Designated Facility Requirement for Regional System Fee Credits

Policy Objectives

1. To ensure Metro's access to verifiable information from disposal sites needed to calculate Regional System Fee Credits.
2. To provide assurance that disposal of wastes generated within the region are done properly.

Description of Proposed Code Revision

- The proposal would require solid waste facilities deliver their waste to Metro Designated Facilities in order to qualify for Credits.
- Facilities would still be permitted to apply for non-system licenses to dispose at other facilities but the Credits would not be available.
- The proposal would be implemented through administrative procedures.

Background

- The primary purpose of the Designated Facility system was to enable Metro to meet its "bottom lines" of satisfying fiduciary obligations to the region's ratepayers and the system's bondholders, as well as protecting the health, safety and welfare of the region's citizens.
- The system of Designated Facilities was also adopted in order to replace a difficult to administer collection of non-system licenses.

Issues Raised

1. Some stakeholders believe Metro can collect any information it needs just as well under a non-system license.
2. The requirement may limit a facility's disposal options if a disposal facility does not agree to become a designated facility.
3. Metro Designated Facility Agreements currently require Council approval that could delay a facility's eligibility for the Credits.

Options Considered

Option 1. – (Proposed administrative requirement; not part of draft Code) Require facilities receiving Regional System Fee Credits to use Designated Facilities.

Option 2. – (Proposed administrative requirement; not part of draft Code) Allow facilities to receive Regional System Fee Credits that use either Designated Facilities or dispose under a non-system license. Non-system licenses will have to include agreement by disposal facility to provide verification of disposal data to Metro.

Analysis

Option 1. – Require facilities receiving Regional System Fee Credits to use Designated Facilities.

- The intent of the proposal was not to limit disposal options, as any out-of-area facility may apply to become a Metro Designated Facility. However, as Council action is required to become a designated facility process could be complex.

Option 2. – Allow facilities using either Designated Facilities or disposing under a non-system license to receive Regional System Fee Credits.

- If disposal sites are willing to provide Metro with adequate verification about a non-system licensee's claims about disposal data, this should be sufficient for the needs of the Regional System Fee Credit system.

SWAC Recommendation

Preliminary Staff Recommendation

Staff recommends adoption of Option 2. - Revise the procedures for the Regional System Fee Credits to allow use of either Designated Facility Agreements or non-system licenses.

- *The non-system licenses must include an agreement by disposal site to provide Metro the needed information to cross-check the data and rebates.*
- *This should be examined over the next year to determine if the non-system license provisions allows Metro adequate verification.*

Issue 3

Ten Percent Eligibility Requirement

Policy Objectives

To ensure that Regional System Fee Credits are used to help preserve dry-waste materials recovery capacity in a manner that creates an incentive to recover recyclable materials.

Description of Proposed Code Revision

- Revise Chapter 5.02 to allow source-separated materials in the formula for the facility retrieval rate, which determines whether a facility is eligible for Regional System Fee credits.
- The proposed revision makes it easier to be eligible for credits.

Background

- Chapter 5.02 requires that a facility retrieval rate be at least 10% in order to be eligible for Regional System Fee credits.
- The retrieval rate is essentially a recovery rate for the entire facility, based on the recyclable materials that are recovered from solid waste at the facility, and the total amount of solid waste (wet + dry) that is accepted at the facility.
- The Regional System Fee Credits grew out of the decision to reduce the Metro tip fee, and were intended to help support and preserve MRF capacity—and do this in a manner than encourages material recovery.
- The Regional System Fee Credits were not intended to apply to or subsidize reloads or transfer stations. The 10% eligibility requirement was written under the assumption that if a facility could not meet this requirement, the primary operation of the facility is consolidation and transfer, not material recovery.
- The proposed revision (inclusion of source-separated materials) changes the retrieval rate from a facility-specific concept to a “wasteshed” concept, where operators are given credit for the whole recycling program within a franchise or market area, not just post-collection recovery.

Concerns Raised

1. A facility operator could choose to reject loads, or refuse to accept certain customers, if the operator judges that the waste could jeopardize the facility retrieval rate.
2. By focussing on the facility, the retrieval rate gives credit for post-collection recovery and not for overall waste reduction. This creates an incentive to de-emphasize source-separation and thereby enrich potentially recoverable mixed loads
3. This is a “nose under the tent”: what is to keep the retrieval rate from going up in the future?

4. The 10% calculation is more sensitive to the wet-dry mix at the facility than recovery efforts
 - An operator who may be doing an excellent job of recovering material from dry waste may nonetheless find it difficult to meet the 10% threshold if the facility handles a large proportion of wet waste. But an operator who deals primarily in dry waste may easily meet the threshold even though making only mediocre recovery efforts.
 - The 10% threshold is less likely to encourage recovery effort, than to encourage avoidance behavior or slacking off on source-separation.
 - Unfairly penalizes operators who have limited scope for affecting their incoming waste streams, such as a suburban hauler with a fixed franchise area.
 - Potentially rewards facilities that are not performing as high a level of material recovery as is possible.
5. The unintended consequences of the 10% rule actually work against achieving the policy objectives.
6. Inclusion of source-separated materials in a solid waste calculation sets a bad precedent for regulating the two in the same way.

Options Considered

Option 1. – (*Current code revision proposal*): Include source-separated materials in the calculating the eligibility threshold.

Option 2. – (*Status Quo*) Retain the code language that excludes source-separated materials from the eligibility calculation.

Option 3. – Reduce or eliminate the eligibility requirement.

Analysis

Option 1. – (*Current code revision proposal*): Include source-separated materials in the calculating the eligibility threshold.

Pros

By considering more of the total waste reduction activities in a watershed, the change reduces some of the incentive to slack off on source-separation.

Cons

None of the other issues and concerns are resolved: there is still incentive to reject loads and customers (and thereby fail to fully achieve potential system efficiencies by load consolidation); still biased against facilities located to receive a larger proportion of wet waste, etc.

Option 2. – (*Status Quo*) Retain the code language that excludes source-separated materials from the eligibility calculation.

Cons

- None of the unintended consequences are addressed.
- Unintended consequences prevent achieving the policy objective.

Option 3. – Reduce or eliminate the eligibility requirement.

Pros

The policy objective can be better met by other approaches that directly address the issues.

SWAC Recommendation

Preliminary Staff Recommendation

Staff recommends adoption of either Option 1. Adopt the proposed code as drafted to allow source-separated materials to be included in the calculation of the eligibility rate; or Option 3. – Reduce or eliminate the eligibility requirement. In either case, the need for the requirement should be reviewed over the next year.

Issue 4

Tonnage Limits for “Local Transfer Stations”

Policy Objective

To establish a threshold over which a solid waste facility should provide full services to the area of the region in which it is located.

Description of Proposed Code Revision

- The proposed code defines a “Local Transfer Station” as a licensed facility authorized to accept putrescible waste and to perform resource recovery. Limitations:
 - Accept waste from commercial haulers only (not from businesses or the public)
 - Deliver 50,000 or fewer tons per year to disposal site(s)
 - No provision of household hazardous waste disposal services
- Facilities that would operate beyond the limits prescribed for a local transfer station are required to meet the obligations required of a regional transfer station and provide a full range of services.

Background

- The current code does not distinguish between the variety of solid waste facilities that have emerged over the past several years.
 - The proposed code establishes criteria for distinguishing between solid waste facilities based on types of wastes received, activities conducted and scale of operation.
 - Obligations and limitations for specific types of facilities are also established.
- The specific authorized waste systems, activities, obligation and limitations in the proposed code for “Local Transfer Stations” are designed to distinguish these facilities from:
 - “Reloads” - facilities haulers establish to improve collection efficiencies; and
 - “Regional transfer stations” - facilities providing a full range of services including taking waste from the general public and household hazardous waste collection
- The revised code is written under the assumption that a facility over 50,000 tons effectively limits any further public or private initiative for a full-service facility in that area of the region.

A Local Transfer Station is allowed 50,000 tons “out the back door.” This means that the amount of waste that may be accepted at the facility is a function of recovery. For example, a facility that receives 40,000 tons of wet waste may accept up to 20,000 tons of dry waste—or 60,000 total tons incoming—if its dry-waste recovery rate is 50%.

Issues Raised

1. The 50,000 ton limit might prevent facilities from operating as efficiently as possible.
2. Because the limitation is on combined wet and dry waste disposal, it could create a disincentive to accept additional dry wastes for material recovery.
3. Even with the tonnage limitation, too many local transfer stations might be established when a single larger facility might have been more efficient.

Options Considered

Option 1. *(Current code revision proposal)* Local transfer stations limited to 50,000 tons per year disposal.

Option 2. Amend the proposed code revision to allow a higher tonnage limit.

Option 3. Eliminate limitation.

Analysis

Option 1. - A local transfer station 50,000 tons per year disposal will provide a significant amount increased transfer and recovery capacity. If there is need for the facility to expand beyond that point, it raises the larger question of whether there is need for a broader range of services and whether an alternative facility is best suited to provide them.

Option 2. - Any significantly higher disposal allowance for local transfer stations could prevent a public or private initiative to fulfill the wider range of service needs that a regional transfer station could provide.

Option 3. - Even more than under Option 2, local transfer stations without limitations could prevent a public or private initiative to fulfill the wider range of service needs that a regional transfer station could provide.

SWAC Recommendation

Preliminary Staff Recommendation

Option 1. Adopt the proposed code as drafted and review the tonnage throughput of all facilities on an annual basis to determine if the limitation should be adjusted.

Issue 5

Direct-Haul to Columbia Ridge Landfill

Policy Objective

To allow the solid waste system to realize transportation savings by allowing private facilities to haul putrescible solid waste directly to Columbia Ridge Landfill.

Description of Proposed Code Revision

Facility operators that accept putrescible waste would be allowed to apply for a license, and if approved, deliver such waste directly to Metro's disposal contractor at Columbia Ridge Landfill if they:

- Demonstrate that there are net savings in system cost resulting from direct haul.
- Meet performance standards established by the Executive Officer for:
 - Management of unacceptable waste (load checks, indemnification, etc.)
 - Long-haul transport (essentially current STS contract requirements.)

Background

- Several facility operators have requested that they be allowed to accept putrescible waste and deliver it directly to Metro's disposal contractor at Columbia Ridge Landfill.
- These facility operators point out that local traffic congestion has increased dramatically over the past few years. The increased travel time to Metro transfer stations raises collection costs.
- Metro has made and is planning additional modifications to its facilities to increase their operational efficiency. However, the cost reductions for haulers using Metro's transfer stations may not offset the increased costs in travel time to get to the stations.
- Current policy allows such direct-haul only from regional transfer stations, which requires many "out-of-direction"* trips and transferring of already consolidated loads into another trailer for transport to the Columbia Ridge Landfill.
- Over the past several months, REM and SWAC have worked to define the conditions and requirements under which direct haul could be allowed while still achieving the RSWMP goal of a net system benefit.

Issues Raised

1. Direct haul could result in additional transport contractors operating in the Columbia Gorge and these contractors may not operate as successfully and conscientiously as Metro's current long haul contractor.

*E.g. The waste of hauler from far east Multnomah County comes to Metro Central only to double back on the same route to get to Columbia Ridge.

2. Private facility operators may allow “unacceptable wastes” to be transported to the Columbia Ridge Landfill.
3. Metro could be sued or be in violation of its waste disposal contract should such “unacceptable wastes” be delivered to the landfill.
4. Metro’s current transport contractor, STS, alleges that our current contract would require private facility operators to utilize STS for their waste transport to the landfill.
5. Although individual facility operators may benefit from direct haul, there could be costs to regional ratepayers:
 - Investments in existing capital could be stranded or underutilized.
 - Transfer station contract savings gained at higher tonnage levels may not be realized.
6. The aggregate impact of several facilities engaged in direct-haul could be more than just the sum of the impacts of each individual facility.
 - Below the “put or pay” level at Metro Central and South (about 500,000 tons per year), transfer station operating costs begin increasing exponentially on a per ton basis. This cost would be borne by residents still using the regional facilities.
7. Long term consequences for the system could be significant and costly.
 - Metro’s ability to achieve low transfer, transport and disposal prices in future bids could be strongly affected.
 - Increasing the number of solid waste transfer stations in the region could reduce the public willingness to accept other solid waste facilities that had greater recycling or recovery potential.
8. Who is the beneficiary of solid waste system cost savings?

Options Considered

Option 1. – *(Current code revision proposal)* Allow direct-haul as a licensable activity subject to specific conditions and requirements.

- Unacceptable waste management standards (load checks, indemnification, etc.)
- Long-haul transport standards (essentially STS contract requirements.)
- Demonstrate that there are net savings in system cost resulting from direct haul.

Option 2. – *(Status quo)* Allow direct-haul only from regional transfer stations.

- This option would amend the proposed code revision to make direct-haul only available to regional transfer stations. A local transfer station would need to make application for a regional transfer station franchise.

Analysis

Option 1. – (*Current code revision proposal*) Allow direct-haul subject to specific conditions and requirements.

Pros:

- A facility passing the needs test provides a net savings for the system as a whole – an important goal of the Regional Solid Waste Management Plan.
- Reduction in truck trips on local streets to Metro Central and Metro South. Total number of transfer truck trips through the Gorge stays the same.
- Lower tonnage at Metro Central and Metro South means less wear and tear on facilities and equipment (lower renewal and replacement costs)
- Encourages private initiative.

Cons:

- Increased risk of violating disposal contract regarding unacceptable materials arriving at Columbia Ridge.
- Difficult to ensure performance of multiple transport contractors operating in Gorge.
- A local transfer station that makes the investment required to direct haul (e.g. a compactor) makes much of the investment needed to function as a regional transfer station. This could pre-empt or discourage public or private initiative to establish a regional transfer station.
- The investment required to direct-haul creates incentives to expand and spread costs over a larger tonnage base. Arguments will then be made to eliminate the 50,000 ton limit on local transfer stations in the name of efficiency.

Option 2. – Allow direct-haul only from regional transfer stations.

Pros:

- Keeps in place a successful system of managing unacceptable waste and ensuring transport contractor performance in the Gorge.
- Restricting direct-haul to regional transfer stations will reduce the incentive for local transfer stations to be established or expanded, and increase the public obligation to examine the need for additional regional transfer stations. This also ensures the public will receive services (e.g. self-haul and hazardous waste disposal) that local transfer stations are not required to provide.
- The Regional Solid Waste Management Plan calls for no new transfer stations unless improvements to existing facilities and waste reduction alternatives fail to maintain transfer station service levels. Direct-haul essentially allows the creation of new transfer stations and it has not been demonstrated that conditions the Plan sets on new transfer stations have been met.

Cons:

- Option would not allow local transfer stations even the opportunity to demonstrate the benefits to the system of their direct hauling.
- Increasing transportation costs will be included in rates charged at the can.
- There would continue to be many "out-of-direction" trips and unnecessary re-handling of consolidated loads brought to the existing transfer stations.

SWAC Recommendation

Preliminary Staff Recommendation

Option 1. Adopt the proposed code revisions that would allow private facility operators to apply for and obtain a license to haul putrescible waste directly from their facilities to the Columbia Ridge Landfill upon approval by Metro with certain conditions and standards. The option is consistent with the goals of the Regional Solid Waste Management Plan to promote reduction in system costs and encourage private initiative. Direct-haul can also contribute to other regional objectives such as reduction in congestion and vehicle miles traveled (VMT's).

Issue 6

Direct Haul – Beneficiaries of System Savings

Policy Objective

To clearly define the net system savings and beneficiaries associated with authority to directly haul waste.

Impact of Proposed Code Revision

- The proposed code revision requires applicants for direct-haul to demonstrate net system savings.
- The proposed code has no provisions requiring sharing benefits or compensating for costs between Metro and the facilities. Local governments determine how savings are shared between facility owners and local ratepayers.

Background

- The proposed code allows direct haul to Columbia Ridge Landfill when the applicant can demonstrate a net saving in system cost and agrees to comply with unacceptable waste management and long-haul transport standards.
- The adopted rate ordinance for next fiscal year reallocates a significant amount of costs from the Metro User Fee to the Regional System Fee. This reallocation has reduced the impact on the regional ratepayer from direct haul activities.
- The policy question of who should receive the net system savings of direct haul remains unanswered. (See Attachment C)

Issues Raised

1. If direct-haul imposes costs on regional ratepayers should they share in the benefits?
2. If there are net savings from direct-haul, should they be shared among regional ratepayers, local ratepayers and facility owners?
3. Can savings achieved by direct-haul be quantified for Metro, local governments and local and regional ratepayers?
4. Will local ratepayers see rate reductions to reflect the net system savings?

Options Considered

Option 1. – (*Current code revision proposal*): The proposed code is silent on sharing benefits or compensating for costs between Metro and a facility doing self-haul. (Local governments have the authority to decide how savings are shared between facility owners and local ratepayers.)

Option 2. - Amend proposed code to require direct-haul applicants to make regional ratepayers whole for costs incurred. (Local governments have the authority to decide how savings are shared with their local ratepayers.)

Analysis

Option 1

- The silence of the proposed code leaves it to the facility owner and the local jurisdiction to determine what, if any, benefit-sharing is appropriate at the local level. For example, the facility owners could be allowed to keep all of the savings as a reward for their initiative.
- While it may be feasible to demonstrate a net-system savings as a requirement for beginning direct-haul, long term arrangements for distributing costs and benefits could rapidly become complex and inefficient, consuming a significant portion of the benefits.

Option 2

- The impact on the regional ratepayer is not sufficient reason to require compensation from facilities doing direct-haul. *NOTE: This conclusion awaits completion of fiscal impact report.*
- Any sharing of benefits between facility owners and local ratepayers is a matter for local governments to determine.

SWAC Recommendation

Preliminary Staff Recommendation

Option 1. – Adopt proposed code as drafted. (Local governments have the authority to decide how any system savings will be passed on to their ratepayers. If requested, Metro can provide technical assistance and/or cost information to local governments in their rate review processes.)

Issue 7
Fiscal Impact on Metro's Solid Waste System
(not included)

Issue 8
Impact of Proposed Code on Excise Tax
(not included)

Issue 9

Direct Haul - Franchisable or Licensable Activity?

Policy Objective

To review and regulate private facilities through the most appropriate instrument and process such that:

- Solid waste facilities and activities that have a major system impact will be required to obtain a franchise.
- Solid waste facilities and activities that have lesser impacts will only be required to obtain a license or permit, spelling out limitations or obligations that protect the public.

Description of Proposed Code Revision

The proposed Code revision authorizes direct hauling* as a licensable activity.

Background

- The revised Code was written under the following assumptions
 - A *license* grants permission to operate in an area under the government's regulatory authority.
 - A *franchise* grants a privilege to a private individual or firm that is reserved for public control and administration.
- The dividing line between licensable and franchisable activities is based on:
 - Primary responsibilities as identified in RSWMP;
 - Metro's contractual flow guarantee to Columbia Ridge Landfill; and
 - Solid waste matters of "metropolitan concern"—that is, having a major system impact.

Issues Raised

1. Does direct-hauling of putrescible waste fall on the franchise side of the dividing line between licensable and franchisable activities?
2. If direct-haul is defined as a franchisable activity, will the longer approval process and potential for denial be a critical issue for facilities expected to make application?
3. Is Metro Council likely to want to reserve for itself approval authority on direct-haul applications and amend the proposed code to require it to be a franchised activity?
 - That is, disposal of putrescible waste at Columbia Ridge Landfill under Metro's contract with OWS, but delivered directly from a non-Metro facility under independently-arranged transportation.

Options Considered

Option 1. – *(Current code revision proposal)*: Direct-haul is authorized as a licensable activity.

Option 2. – Amend the proposed code revision to authorize direct-haul only under a franchise.

Analysis

Option 1

Many concerns about direct-haul are about the potential impact of new transport haulers in the Gorge. The conditions that would be set about transport of waste and handling of unacceptable materials would appear to be sufficient to address these issues.

Option 2

Under Option 1, direct haul does not have to be granted to every local transfer station making application. The license requires a demonstration of system savings. The primary difference Option 2 would make is that Metro Council would have to approve each direct haul authorization.

SWAC Recommendation

Preliminary Staff Recommendation

Option 1. Adopt revised code as proposed. Direct-haul is authorized as a licensable activity.

Issue 10

Use of Metro's Transport Contractor by Direct-Haul Facilities

Policy Objectives

1. To abide by Metro's contractual obligations for the transport of solid waste.
2. To maintain Metro's commitment to citizens and local governments about minimizing impacts from solid waste transfer trucks operating in the Columbia Gorge.

Description of Proposed Code Revision

Under the proposed code revision, facility operators applying for direct-haul to Columbia Ridge Landfill must:

- Demonstrate a net system savings
- Comply with unacceptable waste management standards and long-haul transport standards, but, are not required to employ Metro's waste transport contractor.

Background

- This issue arose in a presentation to SWAC on April 15, 1998, by Mr. Gary Goldberg of STS. He disagreed with Metro's interpretation of the transport contract. (See Attachment A.)
- Metro's Office of General Counsel has stated that Metro's current transport contract with Specialty Transportation Services, Inc. (STS) does not obligate Metro to require facilities given permission to direct-haul to use STS. (See Attachment B.)

Issues Raised

1. Additional transport contract operators will not maintain the high performance standards and record of Metro's current contract operator.
2. Requiring facilities that direct-haul to employ Metro's contractor STS could cost more than if they contracted with other transporters or even with STS on a voluntary basis.

Options Considered

Option 1a. – *(First draft of code revision)* Facilities that direct-haul are free to choose their transport contractor, which could include a contract with STS separate from Metro.

Option 1b. – *(Also consistent with first draft of code revision)* Make Metro's contract with STS available to facilities wishing to transport under it.

Option 2. – Amend proposed code revision to allow Metro to require a facility to use Metro's transport contractor when granted permission to direct-haul.

Analysis

Option 1a

- Transport guidelines developed in consultation with SWAC will help maintain Metro's commitment to minimizing the impact of hauling the region's waste through the Gorge.
- Facilities direct-hauling could still contract with STS, outside of Metro's contract, if they choose. A competitive environment could result in a lower cost than if they were required to use STS.
- In the event that Metro is shown to be obligated to require use of STS by direct-haulers, the requirement could be added as a condition to a license. (This would be allowed under the proposed code revision.)

Option 1b

- Provides flexibility of access to entire Metro contracted STS fleet of vehicles to direct-haul facilities.
- Provides regional savings including possible fuel tax savings. (However, fuel savings depend on issues with IRS that need to be explored.)

Option 2

- Maintains a successful system of managing unacceptable waste and ensuring transport contractor performance in the Gorge.
- Provides a stronger economic position from which to negotiate modifications to the contract if contract issues or disputes arise.
- Increasing the number of refuse transport firms that operate in the Gorge will make it more difficult to assure Gorge residents their environment will be protected. Staying with a single firm for transport of all regional wastes would keep the process much easier.
- Requiring use of Metro's transport contractor may not be legally defensible or binding.

SWAC Recommendation

Preliminary Staff Recommendation

Option 1a. or Option 1b. Adopt first draft of code revision.

ATTACHMENT A

SPEECH TO REGIONAL SOLID WASTE ADVISORY COMMITTEE

APRIL 15, 1998

As one of Metro's partners in the regional solid waste management system, we generally support Metro's proposed revisions to the 1995 Regional Solid Waste Management Plan. However, in the section of the proposed revisions which defines the obligations, requirements and limits of the proposed facilities, we believe that a licensee or franchisee of a facility should be required to use the services of Metro's designated contract carrier (*i.e.* STS) for the transportation of the solid waste from the facility to the general purpose landfill. We believe that such a requirement is (1) within Metro's solid waste management authority over the transfer and disposal of materials within its jurisdictional boundaries; and (2) in the public's best interest to ensure the safe and efficient transport of the solid waste from a facility within Metro's jurisdictional boundaries to any general purpose landfills.

We believe that the use of a designated contract carrier is within Metro's solid waste authority and jurisdiction. As enumerated in the revised code, Metro's solid waste management authority, includes "all solid waste generated or disposed within the jurisdictional boundaries of Metro" and also includes "all solid waste facilities located within the jurisdictional boundaries of Metro that receive, process, **transfer or dispose** of materials over which Metro has jurisdiction." The transportation of solid waste from a transfer facility to a landfill involves the transfer or disposal. Therefore, Metro has the authority over the transportation of the solid waste.

Under the revised code, Metro has established the following four levels of facilities that fall under its authority and jurisdiction: (1) exempt; (2) certificates; (3) licenses and (4) franchises. Once approved by Metro, the facilities become subject to certain general and specific obligations, requirements and limitations. One of the general obligations of all regulated parties is to "ensure the safe receipt, handling, processing, storage, **transportation** and disposal of Solid Waste." Accordingly, Metro has the

authority to regulate the manner in which owners and operators of these facilities transport the solid waste from the facilities to any general purpose landfills.

The requirement that a licensee, franchisee or direct hauler use the services of Metro's designated carrier is in the public's best interest to ensure the safe and efficient transport of the solid waste from a facility within Metro's jurisdictional boundaries to any general purpose landfills. Since the beginning of its contract with Metro in 1988, STS (formerly, Jack Gray Transport) has transported more than 5.0 million tons of solid waste along the Columbia River Gorge from the Metro Central and Metro South transfer stations to the Columbia Ridge Landfill. STS has established performance records that are virtually unprecedented in the solid waste hauling industry. During this period, there has not been one reported violation or breach under the Metro contract. According to the Annual Report and Mitigation of Truck Impacts published by Metro, STS has ranked well below the average of other trucking firms in the industry (in some instances 3 to 1 below the industry average) in every category including number of inspection violations, number of accidents and percentage of inspections resulting in vehicles out of service. STS' safety program which includes regular safety meetings, training sessions and random drug and alcohol testing exceeds all Department of Transportation requirements.

STS also has experienced managers, drivers and employees many of whom have been involved with the Metro contract since its inception. STS continues to hire the best available employees and provides them with the training necessary so that they fully understand and appreciate the Metro system.

STS utilizes equipment that has been specially equipped to ensure that the solid waste is transported in the safest, environmentally sound and most efficient manner. These equipment specifications were part of the original bid process when STS was awarded the contract in order to satisfy the concerns of Portland and the surrounding communities along the Columbia River Gorge that the solid waste would be hauled in an environmentally responsible and nuisance free manner. All of the trailers are

waterproofed with a sealed solid roof and a sealed back door to prevent any leakage along the route. At the time of the original Metro contract, the increased traffic on the highway along the Columbia River Gorge was a major concern. STS has addressed this concern by designing its equipment to reach a maximum load capacity. Thus, STS' equipment is able to haul more tonnage per load which reduces the number of trucks on the road.

These responsibilities which Metro and STS agreed to eight years ago should not be forgotten nor should Metro's commitment to the City of Portland, the communities along the route to the landfill and the people of Arlington, be ignored.

We do not believe that the requirement imposed on a licensee, franchisee or direct hauler to use a specific carrier to transport solid waste to any general purpose landfills constitutes impermissible flow control. Metro's system, as revised, provides certain incentives to solid waste haulers to keep the solid waste within Metro's jurisdictional boundaries as well as to allow, for the first time, the private ownership of transfer stations. However, once the solid waste is brought to a transfer station, whether to a Metro owned transfer station or one of the proposed licensed or franchised facilities, the solid waste is within Metro's jurisdictional boundaries, and Metro has the authority to regulate the manner in which the solid waste is transported to the landfill. As Metro has selected a particular carrier for the solid waste that is transported from its transfer stations, we do not believe that a similar requirement imposed on its licensees, franchisees or direct haulers creates a flow control issue.

Our legal counsel has prepared a research memorandum discussing several recent court decisions relating to the issue of flow control and why we do not believe that these decisions have any effect on the Metro - STS contract. The memorandum is submitted in support of the positions we have presented to you today.

Thank you.

MEMORANDUM

TO: Gary I. Goldberg
Specialty Transportation Services, Inc.

FROM: Joel R. Schaider
Genita C. Robinson

DATE: April 14, 1998

RE: Metro Contract

We understand from past conversations and correspondence that the Metro Council ("Metro") intends to license or permit new transfer stations to receive and process solid waste prior to its transportation to landfills. Under Metro's agreement with Specialty Transportation Services, Inc. ("STS"), dated August 1998, Metro awarded STS the exclusive right to haul solid waste from the transfer stations within its jurisdiction to the area landfills. STS should expect to have the exclusive right to haul solid waste from any new transfer stations to the landfills as occurred when the Metro South and Metro Central transfer stations were opened.

Metro has expressed the concern that its contract with STS, particularly as it relates to the requirement that STS transport the solid waste from the proposed local transfer stations to the landfill, may violate the Commerce Clause, U.S. CONST. art I, §8, cl. 3. The contract is consistent with the Commerce Clause and courts interpretation of that clause. First, Metro has the right to assume exclusive responsibility for the solid waste disposal at local landfills. Second, Metro may, as it has with STS, enter into an exclusive agreement with a private contractor to handle that service. Third, Metro's awarding of such an exclusive contract, as it has

with STS, does not directly affect or incidentally burden interstate commerce in a manner which violates the Constitution.

The courts and Congress have recognized that solid waste disposal is "primarily the function of state, regional, and local agencies". USA Recycling v. Town of Babylon, 66 F.3d 1272, 1293 (2d Cir. 1995), citing Resource Conservation and Recovery Act §1002(a)(4) (codified at 42 U.S.C. §6901(a)(4)(1988)). In addition, as early as 1905, the Supreme Court upheld the right of local governments to grant exclusive contracts to a single company to dispose of garbage within that locality. California Reduction Co. v. Sanitary Reduction Works, 199 U.S. 306, 26 S.Ct. 100 (1905); Gardner v. Michigan, 199 U.S. 325, 26 S.Ct. 106 (1905). In California Reduction and Gardner, the Court upheld the authority of San Francisco and Detroit to grant exclusive rights to collect and dispose of garbage within the city to single waste disposal companies. The Second Circuit, as recently as 1995, reaffirmed this right in USA Recycling, 66 F.3d at 1295. The town of Babylon, New York, rather than running its own sanitation department, hired one private company to pick up all commercial garbage and another company to operate the incinerator where that garbage was burned. The court found that the town had the right to hire private contractors to provide city services to resident. Id.

The facts of USA Recycling, California Reduction, and Gardner are analogous to the facts in this situation. Metro has exclusive control over three of the primary duties in solid waste disposal: 1) the operation of the transfer stations; 2) the transportation of the solid waste from the transfer stations to the landfills; and 3) the operation of the landfills. As a result of an open and competitive bidding process, Metro awarded STS a contract to handle the second duty. Awarding such a contract is clearly within the ambit of its authority.

Metro's awarding of an exclusive contract to STS is consistent with the Commerce Clause and the courts interpretation of that clause. USA Recycling, 66 F.3d 1272; Ben Oehrleins & Sons & Daughter, Inc. v. Hennepin County, 115 F.3d 1372 (8th Cir. 1997). The Commerce Clause provides that Congress "shall have Power ... to regulate Commerce with foreign Nations, and among the several States . . ." U.S. CONST. art. I, §8, cl. 3. Courts have interpreted this grant of power to Congress as a restriction upon the activities of state and local governments. The "dormant" Commerce Clause, or the restriction on the states which necessarily follows the license awarded to Congress, prevents local governments from enacting laws substantially burdening interstate commerce. Oklahoma Tax Comm'n v. Jefferson Lines, Inc., 115 S.Ct. 1331, 1335 (1995); Ben Oehrleins, 175 F.3d at 1383 citing CTS Corp. v. Dynamics Corp. of America, 481 U.S. 69, 87, 107 S.Ct. 1637 (1987). The contract between Metro and STS does not violate the dormant Commerce Clause because: 1) it does not discriminate against interstate commerce; and 2) the local benefits outweigh any incidental burdens imposed on interstate commerce. USA Recycling, 66 F.3d 1272; Ben Oehrleins, 115 F.3d 1372.

The contract does not directly discriminate against interstate commerce as it only regulates solid waste within the state. USA Recycling, 66 F.3d at 1283; Ben Oehrleins, 115 F.3d at 1385. The Eighth Circuit found in Ben Oehrleins that a local regulation that required all solid waste remaining in-state to be processed at county-designated transfer stations would not violate the Commerce Clause. 115 F.3d at 1385. The Second Circuit found in USA Recycling that the town could designate a single garbage hauler to pick up all commercial solid waste for transportation to local transfer stations. 66 F.3d at 1295. As is the case with the STS contract, the local statutes enforced in Ben Oehrleins and USA Recycling regulated the flow of solid waste

within the state. Regulating the transportation of solid waste from a transfer station in Oregon to a landfill also in Oregon is neither regulation of nor discrimination against interstate commerce.

The local benefits of the STS contract outweigh any incidental effects that the contract may have on interstate commerce. In Pike v. Bruce Church, Inc., the Supreme Court found that an ordinance that does not discriminate against interstate commerce is only unconstitutional if it imposes excessive burdens on interstate commerce when compared to the local benefits it confers. 397 U.S. 137, 142, 90 S.Ct. 844 (1970). The Pike balancing test looks at the interests advanced by the contract in the context of the local government's master plan, including:

- 1) ensuring that solid waste is safely received, handled, stored, and shipped;
- 2) ensuring that solid waste goes to appropriate destinations; and
- 3) complying with all applicable local (e.g. land use), state, and federal (e.g. EPA, OSHA) requirements and regulations.

"Revision of Metro Code Chapter 5.01" Version 1.0, March 25, 1998. See also, Ben Oehrleins, 115 F.3d at 1387 interpreting Pike, 397 U.S. 137, 142. Given these benefits to having a single hauler transport solid waste from the transfer stations to the landfills and the lack of any apparent incidental burden on interstate commerce, the current contract does not conflict with the Commerce Clause.

Metro has expressed concerns that the Supreme Court's holding in C&A Carbone, Inc. v. Town of Clarkstown, 511 U.S. 383, 114 S.Ct. 1677 (1994) may invalidate its contract with STS. The facts of Carbone are inapposite to this situation. In Carbone, the Supreme Court's ruling focused on the flow of waste to transfer stations rather than the flow of waste from transfer stations, the subject to the Metro-STS contract. Furthermore, the decisions in USA Recycling and Ben Oehrleins, both more recent cases, are consistent with Carbone.

Metro has granted STS the exclusive right to haul solid waste from local transfer stations to landfills. If Metro decides to permit or license any new transfer stations, STS should expect Metro to fulfill its contractual obligations by allowing only STS to haul the solid waste from those new transfer stations to any general purpose landfills.



METRO

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April 16, 1998

Joel Schaidler
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Chicago, IL 60606-7484

Re: Waste Transport Services Contract

Dear Joel:

Thank you for your recent letter regarding the views of your client, Specialty Transportation Services, concerning the Annual Waste Quantities and Flow Guarantee provisions contained in the Transport Services Agreement. Because your conclusions on that contract provision overlook its plain language, Metro must disagree with your opinion.

STS is correct that Section 8.0 of the Transport Services Agreement sets forth the Annual Waste Quantities and Flow Guarantees. That section states:

"Metro agrees to provide for transport to the Gilliam County Landfill a minimum of ninety percent (90%) of the total tons of acceptable waste which Metro delivers to any general purpose landfill during that calendar year." (emphasis added)

Thus, under the plain terms of the agreement, the 90 percent provision applies only to the solid waste tonnage which Metro itself delivers to the Columbia Ridge Landfill and not necessarily to solid wastes over which Metro might have regulatory authority but which are delivered directly to the Columbia Ridge Landfill by a facility authorized to send waste directly to a landfill.

Although the plain language of the provisions leaves little room for uncertainty, our view is also supported by the history of similar provisions in the Regional Government's disposal contract with Oregon Waste Systems. A guarantee similar to that now found in the transportation contract was found in the previous version of the disposal contract. As you may be aware, that original disposal contract language was the subject of a renegotiation, which broadened the language to make clear that wastes included within the guarantees of the disposal

contract would also include those wastes over which Metro could assert regulatory control. For the Transportation Services Agreement to be similarly interpreted, similar amendments would be required.

While Metro believes that the 90 percent clause does not cover wastes which Metro itself does not deliver to the Columbia Ridge Landfill, the Regional Government would welcome proposals from your client if STS wishes to negotiate to obtain more expansive provisions like those now contained in the Oregon Waste Systems contract. Alternatively, we understand from the presentation made on April 15, 1998, to Metro's Solid Waste Advisory Committee by your client's president, Gary Goldberg, that STS may seek amendments to the revisions now being considered to the Metro Solid Waste Regulatory Code. We understand that STS would seek amendments that would require solid waste haulers to use STS to transport solid waste if they are authorized to haul directly to the Columbia Ridge Landfill.

We look forward to reviewing either a proposal from STS to amend the provisions of the Transportation Services Agreement or any proposed language to amend the Solid Waste Regulatory Code.

Very truly yours,



Marvin D. Fjordbeck,
Senior Assistant Counsel

bc: ~~Bruce Warner~~
✓ Terry Petersen

Issue 11

Impact of the USA Waste/Waste Management Merger

Policy Objective

To manage the regional solid waste system in a manner that ensures cost-effective provision of services and attains regional and state recycling goals in light of the pending merger of two major service providers in the region

Description of Proposed Code Revision

The proposed code revisions are silent about this merger and its potential impacts to service provision and competition in the region. However, the proposed code does repeal the limited prohibition on vertical integration (which is discussed further below)

Background

Earlier this year the two of the largest solid waste firms in the United States, USA Waste and Waste Management, announced a merger. This merger and the ongoing State and Federal review of anti-trust implications of the merger are well known. Metro and local governments have been in contact and coordination with both the State and Federal Governments to ascertain the impacts to our region from this major business change. Metro's response (through any changes in our regulatory code) depend on the outcome of any agreements or orders that direct divestiture or other restrictions from either the State or Federal Departments of Justice.

The current code does prohibit a limited type of vertical integration: the ownership of interests in both collection and facilities, unless the facility is designed to serve affiliated companies only. The Metro Council has regularly granted variances to the limitation, and Metro has relied upon competition in the solid waste industry regulate prices. The intent of this code provision is to reduce or limit unfair pricing practices.

The proposed code repeals the prohibition on vertical integration. There are no new provisions that relate directly to issues of market extent (vertical integration) or market concentration (horizontal integration) in the proposed code.

Issues Raised

1. Some have suggested that the proposed code revisions be held up until the merger is finalized later this year. This would give Metro, local governments and the industry an opportunity to review the proposed code changes with a full understanding of the its implications with the merged firm's area of service being very clear.
2. This merger may result in changes to Metro's disposal contract or allow re-bidding of the entire disposal contract.

3. This merger could limit Metro's ability to procure competitive bids for the operation of our transfer stations or disposal of the region's wastes.
4. Some have expressed concern about the new firm's commitment to recycling and material recovery as a priority.
5. The proposed code may be powerless to prevent degradation of service or predatory practices that would further limit price or quality of collection and disposal services to the region's residents.

Options Considered

Option 1. - Proceed with the proposed code revision with its repeal of the limited prohibition of vertical integration and continue to work closely with the State and Federal Departments of Justice to assure that this region has adequate competition in the solid waste industry.

Option 2. - Delay the entire code revision process until Fall of 1998.

Option 3. - Delay portions of the proposed code revision until the Fall of 1998

Analysis

Option 1

The proposed code revision will not restrict Metro's authority or affect Metro's ability to make additional changes in the future. While the merger could have significant impacts, the code revision contains important improvements for the system as a whole and specific portions such as material recovery facilities.

Option 2

There do not appear to be any direct benefits that would result from a delay in the process. Facility operators who are anticipating changes would be adversely affected by a delay.

Option 3

It is not feasible to separate out what portions could or should not be delayed.

SWAC Recommendation

Preliminary Staff Recommendation

Issue 12

Metro Council and Executive Officer Responsibilities

Policy Objective

A more typical regulatory system in which Metro Council sets solid waste policies and the Executive Officer develops and administers the rules necessary to carry out those policies.

Description of Proposed Code Revision

In the first draft of the revised code:

- Council continues to issue franchises for facilities and activities of regional concern.
- For other solid waste facilities, Council defines their obligations and any limitations on their activities through the Code, and instructs the Executive Officer to develop administrative procedures to insure the obligations are met.

Background

- Issuance of regulatory instruments (permits, certificates, licenses, franchises) is typically an administrative function.
- This function is currently legislative (*i.e.*, a Council action) because the Code was written under the assumption that procurement of franchises would lead to contractual relationships analogous to the major system contracts for the transfer stations, transport and disposal of waste.
- In the first draft of the proposed Code:
 - Issuance of certificates and licenses are administrative, consistent with the assumption that these instruments simply grant permission to operate, under certain conditions and restrictions.
 - Issuance of franchises is a Council action, consistent with the assumption that this instrument grants a privilege that is reserved to the public sector.

Concerns Raised

1. If an objective of the code revision is to increase Metro's ability to respond efficiently and effectively to private sector initiatives, then allowing some franchises to be administratively approved should be considered.
2. Council may want to retain approval authority for more of the regulatory instruments.
3. An administrative approval process should still allow an opportunity for Council or members of the public to express objections or concerns about a particular facility.

Options Considered

Option 1. – *(First draft of code revision):* Franchise is a Council action and all other instruments an administrative process.

Option 2. – Amend first draft to allow all regulatory instruments, including both licenses and franchises, to be administrative processes. Council would have “call up” process for franchises similar to the procedure currently in place for unlisted contracts.

Option 3. – Amend first draft to require initial approval of a license or a franchise to require Council approval. Subsequent renewals would be an administrative process.

Analysis

Option 1. – *(First draft of code revision):* Franchise is a Council action and all other instruments an administrative process.

- Under this approach Council would have to act on a franchise – in an area where it may have established policy. In these cases, administrative approval would be more appropriate. Option 2 would provide a better approach in such cases.

Option 2. – Amend first draft to allow all regulatory instruments, including both licenses and franchises, to be administrative processes. Council would have “call up” process for franchises similar to the procedure currently in place for unlisted contracts.

- Under this approach, Council would retain the ability to act on any individual franchise where it had not set policy (e.g. a facility that burned solid waste for energy recovery). Council could also decide on a case by case basis whether it wished to review and approve any other franchise. This option appears to be the most consistent with the objective of Council setting policy and the Executive Officer implementing it.

Option 3. – Amend first draft to require initial approval of a license or a franchise to require Council approval. Subsequent renewals would be an administrative process.

- This proposed option seems to conflict with the principle that Council sets policy and the Executive Officer administers that policy. Requiring all licenses and franchises to go before Council implies that policies have not yet been set – which will be the exception rather than the rule. Option 2 (Council call-up on franchises) deals better with those hard cases where there could be a lack of clarity on policy.

SWAC Recommendation

Preliminary Staff Recommendation

Option 2. – Amend first draft to allow all regulatory instruments, including both licenses and franchises, to be administrative processes. Council would have “call up” process for franchises similar to the procedure currently in place for unlisted contracts.

Issue 13

Public Process During Review of Franchise/License Applications

Policy Objective

To provide an opportunity for public review and comment for all those interested or potentially affected by the licensing or franchising of a solid waste facility.

Description of Proposed Code Revision

The proposed code directs the establishment of administrative procedures. These administrative procedures will include a process for public review and input on issuance of any license or franchise for a solid waste facility.

Background

- The proposed code revision provides for administrative approval of solid waste licenses and franchises.
- Administrative procedures required by the code revision will provide an opportunity for public review and comment through:
 - the notification of a pending license to interested parties (e.g., public agencies, neighborhood groups, adjacent property owners);
 - scheduling of a 15-day public comment period; and
 - a written response to all written comments received.

Issues Raised

- A public process for Metro's licenses is not necessary given the opportunities for public review and comment during local land use approval and DEQ permitting process.
- A public process for licenses that contain few entry requirements might be viewed as contradictory.
- Processing of an application may be delayed. (i.e., one or two opponents to a facility could stop or slow license or franchise unnecessarily.)

Options Considered

Option 1: (proposed code revision/administrative procedure) Provide a public process of notification to interested parties, schedule a 15-day period for written comments and require a written response to those written comments.

Option 2: Coordinate with the Department of Environmental Quality to hold joint public hearings on an application for Metro's license or franchise in conjunction with DEQ's public hearing on the permit application for the same facility.

Option 3: Allow Council "call up" process to be the public input/review process. (see Issue Paper on "Metro Council and Executive Officer Responsibilities.")

Option 4: Combination of Option 1 with Option 2.

Analysis

Option 1

- Provides ample time for public to comment on administrative procedures.
- Requires written response to comments
- Requires no public meeting/hearing
- May duplicate DEQ notice/review

Option 2

- Allows public hearing on all license and franchises.
- Eliminates duplicative notices or meetings.
- Allows "one-stop shopping" for public to provide comments to DEQ and Metro.
- May create confusion on DEQ or Metro authorities and permits.

Option 3

- Allows public to have hearing if Council determines that it should hear a specific franchise or license.
- Provides opportunity for public review/input only on "hot" facilities or where Councilor(s) have individual concerns.
- Would assure Council understands facilities, their activities, and public concerns prior to license or franchise issuance.

Option 4

- Allows both written input and opportunity for public meeting/hearing.
- Assures both DEQ and Metro permits /licenses are coordinated and well understood.
- May create confusion on agency roles and responsibilities.
- One process for both agencies.

SWAC Recommendation

Preliminary Staff Recommendation

Option 4. (This, however, does not preclude adopting the "call up" option discussed under Option 3 for other reasons. See Issue paper on "Metro Council and Executive Officer Responsibilities.")

Issue 14

Annual License Fees

Policy Objective

To ensure that the cost of Metro's revised regulatory system is fairly shared between regulated facilities and the public.

Description of Proposed Code Revision

Under the proposed code, license fees would be significantly increased for some formerly franchised facilities such as MRFs (from \$500 to \$3000 per year). The fees, however, will continue to only cover a portion of the costs to administer Metro's regulatory system.

Background

- The proposed code de-emphasizes the requirements for entry into the system and puts greater emphasis on obligations to perform once in the system.
- The performance standard approach of the proposed code will require more Metro staff in the field to conduct the necessary inspections.
- The resources needed to conduct the expanded inspections should be available from reductions in resources required for applications.
- Current levels of staffing will need to be maintained to review facility records on tonnage, recovery, payment of fees, and receipt of Regional System Fee credits.

Issues Raised

1. Costs are already covered by the Regional System Fee and imposition of additional fees would be over-collecting and would need to be offset by a fee reduction.
2. License fees should more fully reflect the cost of government to oversee the facilities.
3. Increases in fees should be based on what is actually incurred for oversight of a facility.
4. There are significant public benefits received from the revised regulatory program and the public could pay more of the administrative costs through rates.
5. The increase in annual fees from \$500 to \$3000 is too great.

Options Considered

Option 1. – *(Current code revision proposal)* License fees on newly licensed facilities are increased.

Option 2. - Amend proposed code revision to keep facility license and franchise fees at their present low level.

Option 3. - Amend proposed code revision to establish a graduated fee schedule based on facility size.

Option 4. – Amend the proposed code revision to establish fee system that recovers extra costs from the facilities that produce them.

Analysis

Option 1. *(Current code revision proposal)* License fees on newly licensed facilities are increased.

- There are substantial benefits ratepayers gain from the regulatory system and the Regional System Fee is an appropriate means to cover the cost of the system since it is paid by all users of the system. Raising fees to the levels proposed is unnecessary.

Option 2 - Amend proposed code revision to keep facility license fees low (e.g. \$500).

- As discussed under Option 1, the appropriate method of collecting fees to oversee facilities is through the Regional System Fee paid by all.

Option 3. - Amend proposed code revision to establish a graduated fee schedule based on facility size.

- There is not sufficient information at this time about how regulation costs differ by facility.

Option 4. – Amend the proposed code revision to establish fee system that recovers extra costs from the facilities that produce them.

- Stakeholders have expressed support for this option and other agencies have successfully employed it.

SWAC Recommendation

Preliminary Staff Recommendation

Staff recommends adoption of Options 2 and 4 – keeping fees at present low levels but assessing extra costs on facilities that incur them.

REM will review the actual costs of administration over the next year to determine if changes in the fees should be made.

Issue 15

Voluntary Certification for “Clean” MRFs

Policy Objective

Provide a regional standard and vehicle for monitoring recovery performance and residual levels from facilities that process commingled source-separated recyclables.

Description of Proposed Code Revision

- Voluntary certification of exempt facilities such as “clean MRFs” would be allowed under the revised code.
- Metro would track and report material recovery performance (“recovery rate”) only. No regulatory action is implied or created by the voluntary certificate.

Background

- The options presented here are Metro staff’s response to local governments’ expressing a need for information enabling them to: assess the performance of commingled programs
- Some critics of commingled recycling have expressed concern over the potential for landfilling recyclable materials. The primary issue is contamination and breakage that could, through careless processing, turn recyclable materials into residual that could be legally landfilled.
- The standards for the exchange of data and calculation of recovery rates under the proposed voluntary certification of clean MRFs will be the same as the standards used between Metro and the currently franchised mixed waste MRFs. (i.e., transaction data on tons received and recovered; formula for recovery rate.)

Issues Raised

1. The cost of collecting data and calculating a recovery rate could be high for both the clean MRFs and Metro.
2. Although voluntary, the proposal could be viewed as a regulatory “foot in the door” and could hinder other cooperative relationships between Metro and exempt facilities. Holds facilities accountable for management practices by haulers. The result of this proposal may be rejection of entire loads of commingled recyclables if the operator judges the materials to be too contaminated or may otherwise jeopardize the facilities recovery rate.
3. Local governments have the authority to set standards for commingled collection by franchised and permitted haulers. This should be the preferred approach rather than moving in the direction of regulating clean MRFs. Unfairly targets clean MRFs by holding them to a higher standard than “dirty” MRFs, where it is nearly impossible to keep track of the residual from commingled recyclables, versus the residual from mixed waste.

Options Considered

Option 1. Establish a voluntary certification process but amend draft code language to set out the process in a specific code section and clarify that only non-proprietary data essential to monitoring performance will be collected.

Option 2. Amend draft code language to establish a "statement of exemption" approach.

Under this option, all clean MRFs would add to their annual DEQ recycling report a summary page that showed: (a) tons received; (b) materials recycled; (c) materials to other sites (e.g. inerts, disposed) and (d) calculated recovery rate. This summary page would be signed by a responsible party to certify the report.

Option 3. Do not create a provision for voluntary certification.

Analysis

Option 1. - This option addresses the need of local governments to have additional information regarding the performance of commingled programs.

- The option would provide the region with a vehicle for monitoring facilities that process commingled source-separated curbside recyclables, but would not regulate or intrude on their business activities.
- Limitations on data collected would be made to assure facilities that Metro was not attempting to regulate them.

Option 2. - The option could serve the same purposes as Option 1.

Option 3. - Under this option, local governments would have to rely strictly on the economic disincentive of disposal cost to ensure that commingled materials are appropriately processed.

SWAC Recommendation

Preliminary Staff Recommendation

Staff recommends adoption of either Option 1 or Option 2. In either option, Metro would work with the affected facilities and local governments to evaluate the approach that best meets their mutual needs.

Issue 16

Allowance for Contamination of Source-Separated Materials In Regional System Fee Credit Calculations

Policy Objective

To ensure allowances for contamination of source-separated materials reflect actual contamination levels and do not provide a disincentive to the adoption of new collection technologies.

Description of Proposed Code Revision

- Neither the existing code nor the proposed code revisions set an allowance level.
- The current level of 5% has been incorporated into MRF franchises as general policy.
- Under the proposed code revision, the level would be adopted through administrative procedures.

Background

- This issue was brought forward by a stakeholder at a public meeting that discussed the Code revisions.
- At a MRF, residuals from handling source-separated materials cannot practically be kept separate from residuals from the processing of mixed wastes.
- Without an adjustment, a MRFs recovery rate and Regional System Fee Credits will be lower because of the residuals.
- Under current policy, MRFs are allowed to reduce their total residual by 5% of the amount of source separated materials they process.
- The 5 percent allowance is used by local governments in their recycling programs.
- Some facility operators have indicated that some source-separated but commingled recycling collection systems may generate more than 5% residuals.

Issues Raised

1. If the current policy of granting only a 5% allowance is continued, some stakeholders are concerned this could be a disincentive for facilities to receive materials from commingled collection routes.
2. Others stakeholders hold that the existing allowance is more than adequate for current source separation programs and that new commingling technologies should meet the same standard.

Options Considered

Option 1. – (*Current code revision proposal*) Under the proposed code revision, the level would be adopted through administrative procedures. REM staff would continue to recommend that the Executive Officer set a 5% allowance level.

Option 2. – The proposed code revision would be amended to include a provision directing the Executive Officer to increase the allowance to 10%.

Analysis

Option 1. – This option allows the administrative procedures process to determine what allowance level is most appropriate. That process will be an open public process and more suitable to the resolution of what is a technical issue.

Option 2. – An important objective of the code revision is to improve the flexibility of Metro's regulatory system in accommodating changes in solid waste technologies. Adoption of this option would make the Code inflexible on a matter that depends on changing technology.

SWAC Recommendation

Preliminary Staff Recommendation

Option 1: Adopt revised code as proposed and allow the Executive Officer to set the rate at 5%.

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