A G E N D A

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METRO

MEETING: Solid Waste Advisory Committee

DATE: January 19, 1994

DAY: Wednesday

TIME: 8:30-10:30 a.m.

PLACE: **Metro Headquarters, 600 NE Grand Avenue**
Room 370

AGENDA

1. Approval of Minutes	*Ruth McFarland*
2. Proposed amendment to the Oregon Waste Systems' Contract for disposal services at Columbia Ridge Landfill	*Bob Martin*
3. Update on waste reduction planning activities	*Debbie Gorham*
4. **SWAC Action Item: Solid Waste Revenue System**	*Doug Anderson*
Action Requested: Approval of Report to the Metro Council and Resolution on the Solid Waste Revenue System	
5. Other Business / Citizen Communications	*Ruth McFarland*
6. Adjourn	

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SOLID WASTE ADVISORY COMMITTEE (SWAC)
RATE REVIEW COMMITTEE (RRC)
FINANCIAL ASSESSMENT GROUP
Summary of Meeting of December 15, 1993

MEMBERS PRESENT
Judy Wyers, Metro Council
Ruth McFarland, Metro Council
Dave Kunz, DEQ
Jeanne Roy, Citizen
Kathy Kiwala, City of Lake Oswego
Jeff Grimm, Grimms Fuel
Steve Miesen, BFI
Susan Ziolko, Clackamas County
Delyn Kies, Washington County
Estle Harlan, OSSI, Tri-Co. Counsel
Emilie Kroen, City of Tualatin
Gary Hansen, Multnomah County
Doug Coenen, OWS
Merle Irvine, Willamette Resources
James Cozzetto, Jr., MDC
Jeff Murray, Far West Fiver
Brian Carlson, Clark County
Ralph Gilbert, ECR
Orphal Keil, City of Gresham
Bruce Broussard, Citizen
Jack Deines, Clackamas County
Susan Keil, City of Portland
Greg DiLoreto, City of Gresham

OTHERS
Dave Adams, OSU
Bob Peterson, Citizen
Ray Phelps, OWSI
Diana Godwin, Regional Disposal
Joe Cassin, Sanifill
Dennis Griesing, Soap & Detergent Assoc.
Paul Cosgrove, Gardner, Cosgrove & Gardner
Tom Zelenka, Schnitzer Steel
Harold Rodinsky, Schnitzer Steel

METRO
Terry Petersen
Jeep Reid
Scott Klag
Doug Anderson
Lauren Ettlin
Connie Kinney

Councilperson Judy Wyers brought the meeting to order in the absence of Chair Buchanan and Chair McFarland. She asked Mr. Petersen for any solid waste update items he might wish to share with the committee.

Mr. Petersen updated the Committee on the status of the Washington County Transfer Station and the plan for redirecting haulers from Metro South to Metro Central.

Ms. Ettlin briefed the committee on "Standards for Yard Debris Compost Products," which are proposed for adoption as a resolution by Council. Standards are necessary to: 1) increase the markets for yard debris compost, 2) provide greater assurance that it will cause no harm to the environment or human health and 3) accommodate increased curbside collection and other recovery programs which have resulted in a greater amount of material for composting than ever before.

Ms. Ettlin said the Yard Debris Compost Standards Committee has been working diligently since June, 1993 to develop compost standards for pH, heavy metals, pesticide residue, plant nutrients, foreign materials, salts and viable seeds. The committee is comprised of soil scientists, extension agents, yard debris processors and local government representatives.

The Metro region includes ten yard debris processors. Processors want to stabilize and increase markets for their compost products by assuring customers and potential users their products are of a consistent quality from season to season and between processors. To that end, the Yard Debris Compost Standards Committee determined what parameters of compost required standardization, set levels, and established protocol for testing compost samples. The testing program is voluntary and would be implemented twice a year by a company on contract to Metro. Costs for testing are paid by the processors. Metro would act as an independent party to compare test results to standards and determine if product meets or exceeds standards and can be designated as *Earth-Wise*. Metro would provide information on compost products designated as *Earth-Wise* through Recycling Information, articles in trade magazines and requests for information.

Jeff Grimm, Vice President for Grimms Fuel reported some facts regarding YD collection, marketing and processing. Mr. Grimm said his company had experienced an 8% decline in sales and 6% decline in materials due to weather over the past year.

Dave Adams, Professor of Horticulture has worked in Extension Services for Oregon State University over the past 20 years, providing expertise for the entire north end of the Willamette Valley. Mr. Adams said that Metro has conducted testing on YD compost for processors for the past several years and has a good understanding of what comprises YD compost in the region. Mr. Adams said he believed the proposed YD compost standards are reasonable and accurate.

Ms. Ziolko asked what sample size will be used to measure for weed seeds in YD compost?

Mr. Adams said that was yet to be worked out. Ms. Ettlin said samples taken by Metro between 1986 and 1993 (19 of them) revealed only one viable weed seed.

Ms. Roy asked if voluntary standards would be acceptable by the buyers of YD compost, i.e., nurseries?

Ms. Kiel asked if all of the processors in the region could easily meet the proposed standards or would the standards test prohibit some of the processors from complying?

Ms. Ettlin replied that the committee believed the proposed standards testing would be acceptable to processors. Tests on compost samples, although costly, would not preclude the small businessman from participating in the Earth-Wise program.

Mr. Gilbert said he noticed that the standards testing would only be conducted twice yearly and he felt this was not enough.

Ms. Ettlin commented that twice yearly was about as much as the small business man could afford because the testing proposed would cost approximately $1,000.00 each per year.

Mr. Adams commented that the proposed standards should be considered as more of a guideline; due to weather conditions, seasons, etc., the YD compost is constantly changing in the region.

Mr. Carlson, from the Clark County area said that Washington was still working on their standards. He said they currently test quarterly for the larger volume composter and asked the YD standards committee why their standards were limited to monitoring in the three counties. Mr. Carlson also questioned the use of standards for YD compost made outside the region and marketed here.

Ms. Ettlin said the charge to their committee was limited to those processors of YD compost within the Metro region. She said the committee agreed to reconvene in December, 1994 to assess any problems which might be encountered. She said this would be a test period.

There were no further questions with regard to yard debris compost and the committee progressed to discussion of the Organic Waste Conference and Workshops.

Mr. Petersen discussed criteria resulting from the two organic waste workshops. He said it was the consensus of the workshop groups that residential organic waste programs currently in place be given a chance to be effective before implementation of new programs. He said that because we currently have no programs in place for the commercial generators of organic waste there was some suggestions generated by the groups.

Ms. Kies said that we could put together a program but that without developing a market there is no guaranty that a program will work.

Ms. Kiel commented that a consortium of persons with financial help will be needed before a successful program of this type can be successful. Ms. Kiel said that the City of Portland did a similar study of organic waste from restaurants a few years ago and they concluded that a program would definitely need the assistance of the private sector.

Ms. Harlan suggested that by removing commercial organic waste from the haulers it would further impact their revenue. Ms. Harlan said you cannot fund the system from the can. She said that commercial accounts subsidize residential service.

Mr. Deines suggested "build it and we can take care of it. Siting is and remains the problem."

Ms. Kiwala said that local governments would be able to assist in that regard. She would like to see a program implemented beginning with the restaurants, etc. -- larger generators.

Mr. Petersen said the Organic Waste Conference would be held on January 12 at the Convention Center. He hoped everyone would be able to attend.

Ms. Wyers had a previous commitment and Councilor McFarland chaired the remainder of the committee meeting.

Chair McFarland said the next agenda item was continuation of assessing the revenue system. Chair McFarland said that staff had set forth their interpretation of the Staff Report to be submitted to Council in January, 1994, as set forth in the agenda packet. Chair McFarland asked for further comments.

Ms. Harlan was in agreement of using a system that does not have a negative impact on waste reduction. In referring to Page 3(b), and more specifically recommendation (4), it is her opinion that cannot happen. Ms. Harlan said it is a view of the public that if they recycle, garbage rates should decrease and if they instead increase, they will no longer have an incentive to recycle. Ms. Harlan suggests the wording ". . . to the least extent possible, have a negative impact . . ."

Chair McFarland said that unfortunately it is going to take years to educate the public. Metro has undertaken the task of education, realizing that recycling costs money. She said that when recycling becomes profitable, i.e., processing of yard debris for compost, newsprint, metals, private industry takes over. Subsidization in the form of education, marketing, etc., of these enterprises continues to make them profitable. Eventually they become comfortably profitable, and think they no longer need Metro's support.

Ms. Roy would like the wording in no. 4 to read "To investigate the development of a fee system . . " instead of "To develop . . .". Ms. Roy said that with respect to page 1, general statements, A, it is not clear what the example "solid waste system management" is. Also, pg 3, top of page, funding options, no. 3, she would like Metro to use general charges for things not related to real garbage.

Mr. Petersen commented that $17.6 million "user fee" does not include fixed cost of transfer stations.

Mr. Coenen asked if special disposal fees (ADF's) were feasible at local level? He believes that needs to be addressed.

Mr. Anderson discussed the goals the SWAC had concluded were worth pursuing at the last SWAC/RRC meeting and explained how each of them might be researched and defined each of the options.

Mr. Deines suggested that if we try to implement no. 2 under specific recommendations we are inviting a referral to the voters to be tested by the court and the tax paying public.

Ms. Kroen said she has serious concerns that if a Metro charge is billed through her jurisdiction, they would have a hard time collecting a charge not their own.

Ms. Kiel said a fee for service basis has appeal. She said that if a service is useful the region should pay for it.

Mr. Anderson said that it sounded as though "to" is problematic and therefore "thru" would be our target for collection of fees.

Ms. Kroen wanted to know why Mr. Anderson had decided on a 90% recovery rate. Ms. Kroen said that if the information is correctly assembled, there is no reason you cannot reach 100% of the jurisdiction. She said that first of all you must list every property owner, then separate by class and assess fees according to usage.

Ms. Ziolko thought that billings by haulers would be a more reliable source.

Mr. Rodinsky asked if the committee was proposing to use jurisdictions, by whatever means they have available in reaching their citizens, as a collection device for Metro fees?

Ms. Ziolko commented that those persons living outside the region boundaries and who take advantage of our transfer stations will continue to be missed if we implement this type of billing system.

Mr. Peterson said we would be able to collect from them the same way we do not, when the visit one of our facilities, they will have to pay the going fee.

Mr. DiLoreto said he was convinced this system would not work because it was in violation of Measure #5.

Ms. Harlan said billing through hauler billing systems would not work because in some jurisdictions there is as much as a 30% self haul.

Ms. Kroen said she felt it incumbent on the committee to reach a consensus on some type of system or fee and move forward with the idea, and forget for the moment that it might not pass Measure #5 standards. Ms. Kroen said she agreed that hauler billing information was no more accurate at reaching 100% of the population than was sewer or water billings.

Chair McFarland suggested the committee make its decision on a system and present their methods to in-house counsel for an opinion.

Ms. Roy said she agreed. But she was no certain on exactly what "fixed costs" the committee was talking about this fee covering.

Mr. Anderson asked the committee if they felt it was their charge to allocate those costs?

Ms. Kroen suggested that should be done by the Rate Review Committee.

Mr. Rodinsky said he was unclear as to exactly what the Committee was trying to collect fees on -- waste and recyclables?

Ms. Kroen said she felt this fee went beyond what went into the garbage can.

Chair McFarland commented that she set little "garbage" or putrescible waste on the curb, and that the haulers received no compensation for the recycling efforts they were making.

Mr. Anderson stated that a universal type fee could be assessed on the basis that hauling of garbage benefits everyone in the region.

Ms. Kies said she felt she needed to see a better level of detail on all of the options that Mr. Anderson was discussing. She also felt it was important to get a legal opinion on any generator fee to be assessed on all citizens in the jurisdiction.

Chair McFarland said the meeting would have to conclude because of the time. The next meeting will be January 19, 1994, 8:30 - 10:30 in Room 370, Metro Headquarters.

Solid Waste Revenue System Study

Report and Recommendations of the
Solid Waste Advisory Committee

January 19, 1994

Metro

Solid Waste Department
600 Northeast Grand Avenue
Portland, Oregon 97232

Metro Solid Waste Advisory Committee

VOTING MEMBERS

Metro Council
Councilor Ruth McFarland, Chair

Clackamas County
Ken Spiegle

Multnomah County
Commissioner Gary Hansen

Washington County
Delyn Kies

Clackamas County Cities
Bob Kincaid

Multnomah County Cities
Councilor Chris Boitano

Washington County Cities
Emilie Kroen

City of Portland
Susan Keil

Recycling Industry
John Drew

Solid Waste Hauling Industry
Jim Cozzetto, Jr.
Steve Schwab
Estle Harlan
Tom Miller

Solid Waste Facilities
Doug Coenen
Ralph Gilbert
Steve Miesen

Citizens
Jeanne Roy
Merle Irvine
Bruce Broussard

NON-VOTING MEMBERS:

Department of Environmental Quality
Pat Vernon

Port of Portland
Renee Dowlin

Clark County
Brian Carlson

Marion County
Jim Sears

Yamhill County
Judy Ashley

Metro Solid Waste Department
Bob Martin, Director

Metro Solid Waste Department Staff Support:
Douglas Anderson, Planning & Technical Services Division

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DRAFT Findings, Principles and Recommendations

During summer and fall 1993, the Solid Waste Advisory Committee (SWAC), its Work Group subcommittee, and Metro staff considered methods of financing the solid waste system. Options were assembled using the experience of SWAC members and staff, and from a study of the state of the practice across the nation, conducted with assistance from consultants.

Problem Statement

Metro's Solid Waste Department is facing a basic conflict between its management objectives and stable financing of the solid waste system. The system is financed almost wholly by usage charges (tip fees) on disposal, but management objectives require that the department work to reduce the amount of solid waste disposed, and increase recycling, reuse and recovery activities. However, implementation of these management objectives attack the foundation of financial viability, the disposal stream. As greater levels of waste reduction and recycling are achieved and tonnage is diverted from disposal, the revenues from that tonnage, previously collected as tip fees, are lost. This threatens the financial stability of the entire system, and results in an increasing and inequitable burden on the system's ratepayers.

General Conclusions and Recommendations

1. No one solution is going to resolve the basic problem. In order to establish adequate, stable, and equitable system financing, SWAC recommends diversification of funding methods for various programs of the department. This means that several funding options may be adopted to provide multiple financial "legs" for the system.

2. The diversity of the options and the broad classes of affected users make SWAC reluctant to eliminate options unless they are clearly impractical or infeasible. SWAC recommends that staff work further on surviving options (below) with interested and affected parties.

Financing Philosophies

In order to develop and evaluate financing options, SWAC recommends that the following philosophical approaches to solid waste system financing be adopted.

Usage Charges. Services which provide direct benefits to the customer using the services should be financed by usage charges based on the amount of service consumed. Usage charges should be set according to the cost of service.

System Benefits. Enterprises that benefit directly from activities of Metro which divert materials from the disposal stream should contribute to the funding of these activities.

Generator Charges. There are certain solid waste programs and services which benefit all residents (persons and businesses) in the region. All residents of the region should share in the cost of these programs and services.

Product Charges. Metro should employ charges on specific products that make identifiable, extraordinary burdens on the disposal system; or which may be more valuable if reused or recycled.

Linkage Principle. Funding mechanisms should be linked to services provided and/or clearly related to objectives of the solid waste management system.

Financing Options Recommended for Further Work with Interested and Affected Parties

1. Continue to make use of the tip fee as the primary funding mechanism *for waste disposal* operations, management, and administration. Work to make the tip fee more equitable and designed to work with other options, as adopted. In particular, investigate whether there is a differential cost of service by vehicle type, and whether an associated pricing system at transfer stations could be developed that reduces the incentive to opt out of the collection system.

2. A fee system (either as a surcharge or a license/franchise fee) for facilities to the extent that they benefit from Metro's integrated management of the solid waste system, but do not currently contribute to the cost of that system. These fees should be based on benefits received, should consider the facility's ability to pay, and should minimize any negative impacts on the waste reduction objectives of the region.

3. Billing generator fees *through* property tax and utility bills; and billing generator fees *to* jurisdictions and haulers.

4. Advance disposal fees and other forms of special fees for use as funding sources and management tools for elements of the solid waste system such as the Household Hazardous Waste and Illegal Dumping programs.

Other Recommendations

1. **Revenue Neutrality.** Any solution should be revenue neutral. Metro is not seeking new funding; rather it is seeking to redress inequities, establish a more stable revenue base, and satisfy the other criteria listed in Council Resolution No. 1824A. Adoption of any new financing options should be accompanied by offsetting rate changes in other revenue components, unless the new options are intended to fund newly approved or mandated programs.

2. **Phasing.** As different elements of the financing system will have differing degrees of acceptance and implementability, Metro should phase in portions of the financing system as they are ready for implementation.

3. **Public Education.** It is important to establish understanding and acceptance of the reasons for change and its effects. Accordingly, Metro should embark upon a program to communicate this project to its broader audience of customers and the public at large.

Introduction

In the 1990s, Metro's Solid Waste Department is facing a basic conflict between its management objectives and stable financing of the solid waste system. The system is financed almost wholly by usage charges on disposal, but management objectives require that the department work to reduce the amount of solid waste disposed, and increase recycling, reuse and recovery activities. These management objectives attack the foundation of financial viability, the disposal stream. Therein lies the basic source of the conflict.

Metro's solid waste revenue base has in fact been eroding over the last several years, and stands at substantial risk of further erosion. Under the current financing structure, the only feasible response to a declining revenue base is a continual rise in the per-ton disposal charge (after all appropriate cost-saving measures are taken). This response exacerbates the conflict, as rising costs drive additional solid waste from the revenue base. As a result, funding for management of the solid waste system is jeopardized, and a diminishing group of users is burdened with an increasing cost of paying for the whole system.

These trends adversely affect *Regional Solid Waste Management Plan* policies on rate stability, equity and predictability:

Stability. Under the current rate structure, tip fees can be expected to continue their rise.

Equity. There will be a rising and differential burden on regional rate payers.

Predictability. Instability gives rise to unpredictability. Inequities may force users from the system.

On July 22, 1993 Metro Council adopted Resolution No. 93-1824A which directed a reconsideration of Metro's method of funding the solid waste management system. The System Financing Study is to examine alternative methods of financing the solid waste system, and to report its findings and recommendations to the Council beginning in January 1994.

A joint meeting of the Rate Review Committee (RRC) and the Solid Waste Advisory Committee (SWAC) was held during July 1993 to consider the scope of the management system to be financed. In consideration of the Council's resolution to consider recommendations by January 1994, the RRC/SWAC moved to examine options which are within the scope of the department's current mission as approved through the FY 1993-94 budget process. SWAC reserved the privilege of documenting findings and advice for potential long-range solutions during this process. A statement of the Solid Waste Department mission statement, objective, programs, and FY 1993-94 budget and rate model is available as *Background Information for System Financing Study* (Metro, July 1993).

Background

The present study was induced by the Council's findings that the current method of financing the solid waste system contains elements of instability and inequities. These factors affect the adequacy of the revenue raised to finance the system that jeopardizes the financial viability of integrated system management. This section briefly lays out some background for these findings.

Context of the Current Situation

The original approach to system financing at Metro was to set up the Solid Waste Department as an enterprise fund with all costs of integrated waste management to be raised by a usage charge (*tip fee*) on disposal. Waste reduction, recycling, and recovery were to be encouraged by a mixture of differentiated pricing, incentives, programs, and facilities. The set of financial policies established during the 1980s was believed to be an equitable and stable means of financing the system.

By 1993 this was no longer generally perceived to be the case. The present study is a response to these new perceptions.

What conditions and assumptions have changed since the financing system was initiated to produce the change in outcome?

1. **Responses to incentives and programs did not follow exactly as expected.** The Waste Reduction Program, as updated in 1988 and adopted in 1989, anticipated that recycling goals would be met through a variety of means, principally source separation and post-collection recovery. Of these, post-collection recovery was to make the larger contribution to recycling goals. An analysis of progress (Metro, *Draft Metro Region 1993 Waste Reduction Assessment*, August 1993) reveals that the region is on track if not ahead of expectations for source-separation, but is far behind expectations for post-collection recovery. In short, source reduction and separation have accounted for a greater proportion of waste diversion than anticipated.

The significance for system financing is that source-separated recyclables never enter the waste stream, and thus are not a source of revenue for Metro. Had these materials been part of a waste stream disposed at a recovery facility, a fee could have been extracted on the front end. In other words, in the original conception, diverting waste from a disposal facility did not necessarily imply that waste would be diverted from revenue-producing facilities.

2. **Price responses to increased tip fees exceeded expectations.** It was anticipated that higher tip fees on disposal would encourage source reduction, recycling, and high grading of commercial loads for delivery to processing facilities. These responses were correctly anticipated. However, the rise in tip fees also induced a greater-than-expected "high grading" of *waste* loads, allowing haulers and generators to shift waste from Metro facilities to lower-cost alternative disposal options.

3. **Facilities not built as anticipated.** Various recovery facilities (*e.g.*, lumber depots) contemplated for Metro ownership never materialized. Sufficient recovery facilities were supplied by the private sector.

The MSW Compost Facility, was also intended to be a key element in the system of recovery facilities. Its closure has temporarily foreclosed another opportunity for post-collection recovery.

4. **Unfunded Mandates.** The Solid Waste Department has been mandated to implement various programs over the years, but has generally not received funding assistance for implementation. Examples include the Household Hazardous Waste Program, the Unilateral Order from Oregon's Environmental Quality Council to implement the Regional Waste Reduction Program, and the 1991 Oregon Recycling Act designating Metro as the waste shed for the tri-counties responsible for reaching a 40 percent recovery level by 1995.

Rate Setting Method and Rate History

In November 1988, Metro's base disposal rate was nearly tripled from $10.75 to $31.75 per ton--primarily in order to raise an initial $12 million for the St. Johns closure account. Other components of the rate were also increased, resulting in a rise in Metro's tip fee to $45.75 per ton, from $19.70 the previous year. One year later, the Rate Review Committee noted: "In previous years, Metro facilities have received a sufficient supply of waste to guarantee adequate revenue generation to meet expenses. However, in recent months, waste has been moving away from Metro facilities, becoming more price sensitive compared to past experience." [*Interim Report*, November 1989]

This finding induced a revision in Metro's rate setting method to its present form. The present method explicitly calls out variable and non-variable costs, and allocates these costs to budget components related to the beneficiaries of services provided. The non-variable costs of all programs that have a regional benefit are allocated to the **Regional User Fee** ("Tier 1") component. The Regional User Fee is a surcharge on all waste which is disposed in the region or at designated out-of-region facilities. The non-variable costs associated with Metro disposal operations are allocated to the **Metro System User Fee** ("Tier 2"). The variable operating costs of Metro transfer stations are allocated to the **Regional Transfer Charge**, and the variable costs of transportation and disposal are allocated to the **Disposal Fee**. The last three charges are assessed against waste disposed at Metro facilities only.

Calculation of these fees, using the FY 1992-93 rate model and FY 1993-94 approved budget, is shown in Table 1. The process begins with preparation of an annual budget, and development of a one-year forecast of revenue tons by facility. The Regional User Fee is calculated by dividing regional revenue tons into the Tier 1 allocation. The Metro components are calculated by dividing Metro revenue tons into each of the three Metro components. To these base rates are added Metro's excise tax, DEQ charges, and the Rehabilitation and Enhancement Fee. The Metro tip fee is the sum of the four components plus surcharges.

Experience with this rate-setting method after 1990 has suggested a number of cost reallocations among components. In general, more costs have been allocated to the Tier 1 (regional) component. Among the most significant of these are: contributions to the St. Johns closure account, recycling avoided cost, expensed capital outlays, and contributions to contingency. An analysis by independent consultants in 1993 concluded, "In general, the cost allocation process used by Metro appears reasonable and supported by analysis of the services provided which created the cost. There are a small number of specific costs whose allocation can be improved." [Black & Veatch, *Analysis of Rate Setting Practices*, July 1993]

However, a consequence of these reallocations has been a 171% rise in the Regional User Fee during a period when the Metro tip fee rose 36% (Table 2).

Table 1
Metro Solid Waste Net Expenses by Rate Component
Budgeted Amounts FY 1993-94
(FY 1992-93 Rate Model)

Rate Component	Revenue Requirements	Tonnage Base	Rate per Ton
Regional User Fee (Tier 1)*	**$17,749,139**	1,043,848	**$17.00**
Metro-Only Components	**$35,659,934**	689,185	**$51.75**
Metro User Fee (Tier 2)*	$ 6,041,276	689,185	8.78
Regional Transfer Charge	4,806,882	689,185	6.97
Disposal Charge	24,811,776	689,185	36.00
Total of Rate Components	**$53,409,073**	--- x ---	**$68.75**
Tip Fee Surcharges:			
Excise Tax			4.81
DEQ Fees			1.25
R & E Fee			.50
Tip Fee (rounded)			**$75.00**

* Non-variable cost components. In the original development of the current rate structure, all non-variable components were conceptually to be recovered through a "two-tiered" fee for fixed costs. The nomenclature of "Tier 1" for allocations to the regional component, and "Tier 2" for the Metro fixed component has remained in use.

Table 2
Rate History by Component
($ per ton)

Fiscal Year	Regional User Fee	Metro System User Fee	Regional Transfer Charge	Disposal Fee	Metro Tip Fee*
90-91	$ 7.00	$14.00	$ 7.00	$26.00	$54.00
91-92	13.00	8.50	10.50	34.75	66.75
92-93	19.00	7.00	9.00	38.25	73.25
93-94	19.00	7.00	9.00	38.25	73.25

*Includes Metro's excise tax but excludes DEQ fees and Rehabilitation and Enhancement Fee.

Due to the manner in which the Regional User Fee is levied, the incidence of the non-Metro portion of the Regional User Fee is falling on a shrinking number of users. In point of fact, a single industrial user alone stands at risk to bear approximately 15% of the $6.0 million estimated to be collected at non-Metro facilities in FY 1993-94 (Table 3)--calling into question the equity of distribution of costs and benefits under the current system.

Table 3
Metro Solid Waste Net Expenses by Rate Component
Budgeted Amounts FY 1993-94

Regional User Fee (Tier 1)*	
Metro Portion	$ 11,718,603
Non-Metro Portion	6,030,536
Subtotal	$17,749,139
Metro-Only Components	
Metro System User Fee (Tier 2)*	$ 6,041,276
Regional Transfer Charge	4,806,882
Disposal Fee	24,811,776
Subtotal	$35,659,934
Total FY 1993-94 Revenue Requirements	**$53,409,073**

* Non-variable cost components.

Performance of the Current System Under Key Evaluation Criteria

Revenue Adequacy. Historically, tip fee revenues have been sufficient to fund the entire integrated solid waste management system. As management objectives to conserve landfill space, energy, and material resources continue to move into prominence, and as system management becomes more complex and comprehensive, tip fee revenues will become less adequate to support the entire system.

Stability. Financing all requirements of integrated system management from tip fees on disposal induces a conflict between stable funding of the system and management objectives to conserve landfill space, energy, and material resources. These management objectives erode the revenue base which supports them. In utility industries, this phenomenon has come to be known as the "death spiral."

As a matter of principle, reliance on a variable revenue source for recovery of both fixed and variable costs reduces overall revenue stability. Under the current rate structure, the only feasible response to declining tonnages is a rise in the tip fee. This response exacerbates the problem, as rising costs drive more tonnage and users from the revenue base, further destabilizing the system.

Equity. Changes in Metro's revenue base have shifted the burden of payment to a narrowing group of users of the disposal system. Users who cannot significantly alter their disposal patterns are burdened with a disproportionate share of system costs.

For example, an office operation may reduce its disposal costs by taking advantage of paper recycling programs. The office's decision to recycle has the simultaneous effect of reducing its support for non-disposal programs. Other operations less able to take advantage of recycling because the system provides fewer options (*e.g.*, restaurants, industrial processors) pay relatively more for fewer services of direct benefit to them.

This same principles hold for the household sector. Consider, for example, two households identical in all respects, but living in different jurisdictions with different levels of curbside recycling programs. The household in the jurisdiction with fewer recycling options will dispose more than its counterpart, and thereby will contribute relatively more to funding non-disposal programs at Metro.

Incentives. High disposal costs provide price incentives for source reduction, recycling, and recovery. When the management of non-disposal programs is funded by disposal, there is a fundamental tradeoff between incentives and the other funding objectives of stability and equity. As an objective of non-disposal programs is reduction of the amount of waste disposed or landfilled, the success of these programs has the perverse effect of eroding its own revenue base.

The Building Blocks of a Solution

The complexity of balancing revenue adequacy with equity, stability, recycling incentives, and the other criteria for an acceptable solution means that the Solid Waste Department may rely on several financing legs in the future.

Currently, the department stands on only one "leg": tip fees on mixed waste. Disposal charges (tip fees) will continue to provide the bulk of funding for the solid waste system, but the extent to which they subsidize non-disposal elements must be reduced if equity and stability goals are to be realized.

Financing dependent on disposal fees requires that Metro somehow "capture" the waste stream that is being assessed fees. In contrats, program requirements induced by products, generators, and the provision of public goods do not require capturing a waste stream.

This section discusses these funding options--or "building blocks" of a solution--which have been examined by the SWAC, and identifies recommended and rejected options. It is organized as follows:

1. Options Which Require Capturing Waste Streams

1. Usage Charges on Mixed Waste (current system)
2. Expanded Definitions of Waste Subject to Metro Charge
   a. Surcharge (under regulatory authority)
   b. License or Franchise Enterprise Activities

2. Options Which Do Not Require Capturing Waste Streams

1. Special Disposal Fees
   a. Advance Disposal Fees
   b. Deposits
   c. Litter Fees
2. Generator Fees
3. Taxation
   a. Broad-based
   b. Niche

Options Which Require Capturing Waste Streams: 1

Usage Charges on Mixed Waste (current system)

Financing Philosophy. Services which provide direct benefits to the customer using the services should be financed by usage charges based on the amount of service consumed. Usage charges should be set according to the cost of service.

Definition

A usage charge is a fee based on the amount of services consumed. Nearly all of Metro's solid waste system is currently financed through a usage charge at Metro facilities (tip fee) and a usage surcharge (Regional User Fee) at certain non-Metro facilities. A usage charge is an appropriate *means of* recovering variable costs and certain fixed costs of service provision. It is recommended that Metro continue to make use of user charges to fund MSW disposal operations, management, and administration.

There are several bases for establishing usage charges in solid waste:

Weight-Based Charges. A per-ton tip fee is the most common form of usage charge in solid waste disposal. At present, Metro charges a flat $75 per ton of waste delivered to its facilities. Weight-based charges have the advantage of being simple, unambiguous, and easy to administer. Additionally, a price schedule could be established which varies the per-ton charge according to the size of the load delivered, and which could be designed to reflect the variable cost of service with the size of the load. An alternative approach to such a price schedule is described in "Customer Class Charges," below.

Volume-Based Charges. Similar in principle to weight-based charges, the basis for the charge is volume rather than weight. *This option is not recommended due to the considerable scope for ambiguity in application.*

Waste Class Charges. A waste class charge provides different price schedules for different types of waste. Within each class, this charge could be by weight, item, or volume depending on which is most appropriate. At present, Metro's differentiated charges for tires, household hazardous waste, source-separated recyclables, and clean loads of yard debris are examples of limited price schedules for different waste classes. Class-based usage charges can in principle be more equitable than undifferentiated charges if fees are based on the cost of disposing of different types of waste. However, implementation details such as identification and monitoring, charge backs for contaminated loads, and the administration of detailed price schedules can potentially raise the costs above those of a simpler procedure such as weight-based fees.

Customer Class Charges. A customer class charge sets up a differentiated price schedule for different types of customers. It is recommended that Metro re-examine its practice of not distinguishing between deliveries in small vehicles and deliveries in large, commercial vehicles. It is likely that station operation costs are greater for small, inefficient vehicles than for large vehicles with mechanized tip capability. *It is recommended that Metro undertake a cost-of-service study, and entertain a pricing schedule that recognizes different costs of service, if any are found.*

"Take-or-Pay" A take-or-pay concept is common in certain utility industries where variation in demand is costly. A take-or-pay approach essentially puts resources up to bid in blocks, wherein a customer commits to purchase a certain minimum at a set price, and agrees to a separate price schedule for services above the minimum. The minimum is paid regardless of use, and in return the customer is given preferential treatment--such as a discount above the spot rate for consumption above the nominated minimum, or priority allocations in times of shortage. This approach may be relevant to assist Metro in balancing its own contracts which usually contain "put-or-pay" provisions which make waste shortfalls more costly on a per-ton basis. *This option is not recommended for further study at this time.*

Options Which Require Capturing Waste Streams: 2

Expanded Definitions of "Waste" Subject to Metro User Charge

Financing Philosophy. Enterprises that benefit directly from activities of Metro which divert materials from the disposal stream should contribute to the funding of these activities.

a. Surcharge (Under Regulatory Authority)

Metro's authority enables the Solid Waste Department to regulate facilities which receive solid waste for disposal, treatment, or processing. Metro has selectively applied its authority in this area. Insofar as Metro has implemented policies and programs that have caused waste to shift to facilities that are not currently regulated, and insofar as the unregulated facilities do not share fully in the cost of Metro's programs, a charge on enterprise activities at these facilities would be an equitable means of recovering costs of programs.

A "System Management Fee," which would have been established by Metro Ordinance No. 93-485, is an example of this type of funding mechanism. The SWAC believes that such surcharges have merit, and the failure of Ordinance No. 93-485 should not discourage further study. Further study should recognize that the revenue base for the System Management Fee was perhaps too narrowly conceived, and could be extended to a broader range of enterprises that transact, process, or otherwise deal, with materials diverted or recovered from the waste stream.

b. License or Franchise Fee

A license or franchise fee is a charge for the ability to do business. This type of fee is closely related to 2.a above. It can broaden the rate base by obtaining revenues from non-disposal operations. The justification for this type of fee is that processors and other operators benefit from Metro's policies that divert valuable materials from the waste stream.

License or franchise fees can take the form of a charge for operation (rather like a business license fee), a surcharge on activity levels, or a mix of the two. Charges on activity levels can be levied on a gross or net basis. Charges on a gross basis (*e.g.*, on tons or cubic yards delivered, or a percentage of the transaction price) has the advantage of simplicity, but the disadvantage that a firm working with a marginal or new technology cannot avoid the charge unless exempted. Charges on a net basis (*e.g.*, net business income) does not necessarily disadvantage new firms (which typically have low or negative profits, especially if working with a new technology or infant markets), but increases the administrative reporting burden and may be a disincentive for efficient operation.

Options Which Do Not Require Capturing Waste Streams: 1

Product Orientation: Special Disposal Fees

Financing Philosophy. Metro should employ charges on specific products that make identifiable, extraordinary burdens on the disposal system; or which may be more valuable if reused or recycled.

Definition

Special Disposal Fees (SDFs) are a family of fees levied on specific products or classes of products. The basic idea is to build the cost of certain solid waste management programs into the product price, rather than attempting to recover these costs at the time of disposal. SDFs are price-guided incentives which can support several management objectives:

1. Encourage source reduction
2. Encourage recycling
3. Encourage use of recycled materials
4. Internalize the full waste-management cost of production and consumption
5. Provide funds for disposal of "problem" wastes or products with excessive residuals
6. Provide funds for remediation of environmental damage

A SDF is usually a charge added to the purchase price of an item at some point in the chain from manufacture to distribution. The intent is to build the full life-cycle costs to the economy and environment into the price of the product. The market price of batteries or pesticides (for example) does not account for the full cost of handling and disposal of the hazardous residual when the product is discarded. SDFs may be designed to reflect these costs in the price at the time of purchase.

SDFs may be designed to allow subsidies as well as charges. SDFs may be based, in part, on recycled content. A product using all virgin materials may be assessed the highest SDF, while products meeting a certain threshold recycled content can be exempted from the charge, or given a subsidy to encourage their use.

Three broad classes of SDFs may be identified, based on the nature of the product on which it is levied, and the management objectives of the program it is designed to fund. These are:

1. Advance Disposal Fees (ADFs)
2. Deposits
3. Litter fees

Product classes for which these SDFs are most appropriate are, respectively: (1) products with inherently harmful or excessive residuals; (2) products with a potentially valuable residual; (3) products which, due to their nature, are often improperly disposed. At Metro, SDFs may potentially provide funding for the Household Hazardous Waste Program, and Illegal Dumping and Site Cleanup Programs.

Advance disposal fees: An SDF on products with inherently harmful or excessive residuals. Consumer use of these products results in a discard that requires special handling. Examples include batteries, florescent light ballasts, automobile tires, and products with excessive packaging. ADFs are non-refundable charges designed to internalize the cost of disposal for items that present special disposal problems, to encourage reduction of use in manufacturing, and/or to provide an incentive to switch to alternative products. Some type of ADF is currently in use in 27 states. Twenty-two of these have fees on tires, while five had fees on other products. The principal local experience with an ADF was the Waste Tire Program, authorized by the Oregon State Legislature in 1987, and which ran until 1992. This program imposed a $1 fee on new tires sold in the state, with the funds used to remediate waste tire piles. In 1992, DEQ proposed to the legislature a quasi-ADF (a registration fee on businesses which retail household hazardous waste) to help fund the state household hazardous waste program. This proposal was rejected by the legislature.

ADFs are an appropriate funding mechanism for certain elements of the solid waste management system at Metro--in particular, the Household Hazardous Waste Program--because the charge itself can be a tool for the administration and objectives of the program. Preliminary investigation suggests that there is sufficient revenue potential in the region to make an ADF program feasible. However, important questions remain on key elements of program design. For example, the efficacy of regional implementation of ADFs is untested, and may distort product markets more than achieve intended goals. The appropriate level to levy the fee in the manufacturing-distribution chain is also undecided. For some goods, there are strong arguments that ADFs work best when levied on the manufacturer. However, this may place hardships on firms which produce for export or which compete locally with imports. On the other hand, levying the ADF at the point of sale places the administrative burden solely on retailers.

Deposits: An SDF on products with a potentially valuable residual. Deposits are charges designed for refund if certain procedures are followed. The most commonly implemented form of deposit is on beverage containers. The primary local example is Oregon's Bottle Bill. Deposit programs are management tools to provide an economic incentive to reuse, recycle, or otherwise "do the right thing" with the product residual. Deposits are not inherently revenue-producing--although unclaimed deposits are often used to help defray administration costs. Collection, administration, and enforcement of deposits share many characteristics with other SDFs (*e.g.*, potentially collected at the point of retail sale). Thus, deposits may be used in conjunction with other SDFs to aid in comprehensive management of special disposal and non-disposal programs.

Litter fees: An SDF on products which, due to their nature, are often improperly disposed. A litter fee is a charge on products which are commonly littered or illegally disposed. Examples include tires, mattresses, furniture, carpeting, and some appliances. At Metro, receipts from litter fees would be appropriately targeted to enforcement of legal dumping, and cleanup of illegal dump sites.

Performance of SDFs Under Key Evaluation Criteria

Revenue adequacy. SDFs are not designed for comprehensive program funding. In these cases, revenue adequacy means that the funding mechanism should provide sufficient revenues for program application above administration and collection costs.

Stability. SDFs are stability-enhancing in that they would diversify the revenue base, but are not alone sufficient to guarantee revenue stability.

Equity. Properly designed, SDFs are equitable in that they affect only voluntary transactions. To avoid regressive effects, special consideration should be given to product which are generally considered necessities, but would otherwise be candidates for imposition of an SDF. For example, Florida exempts medical containers from its advance disposal fee on plastic containers.

Incentives. As was discussed in the introduction to this section, the primary motivation for SDFs is as a market-directed management tool for source reduction, recycling, and special disposal.

Options Which Do Not Require Capturing Waste Streams: 2

Generator Orientation: Generator Fees

Financing Philosophy. There are certain solid waste programs and services which benefit all residents (persons and businesses) in the region. All residents of the region should share in the cost of these programs and services.

Definition

A concept which shall be termed "Generator Fee" is a type of general charge recommended for further study. Generator fees are fixed charges to generators of solid waste. They are not necessarily tied to direct consumption of services, but are designed to cover certain costs of an integrated solid waste management system. Generator fees are justified by the costs of infrastructure, planning, mandated actions, and public health which are induced by residence or business activity in the region. Accordingly, generator fees may appropriately recover non-variable costs which must be incurred regardless of the level of usage by the generator. In this manner, generator fees act in the same way as customer (or connection) charges as used by most utilities.

Performance of Generator Fees Under Key Evaluation Criteria

Revenue adequacy. A simplified example of a generator fee system is shown in Table 4. The table illustrates the effect of recovering the total FY 1993-94 Regional User Fee allocation of $17,749,139 through generator fees. Currently this revenue is collected with the $19 per ton surcharge on all regional disposal. For simplicity, the table shows allocations between only two sectors: households and businesses. No customer classes are identified within these the household sector. Implicitly, businesses are classified only by the number of employees. Thus, the numbers should be viewed as very broad averages for illustrative purposes only.

If 30 percent of the $17 million were collected from households, and 70 percent from businesses (row H; roughly corresponding to their respective contributions to the waste stream by weight), the annual generator fee would be $12 ($1 per month) per household, and $21 ($1.75 per month) per employee, gross of administration costs. Under a revenue neutral design, none of the Tier 1 costs would be collected through the tip fee, which would drop by $19 to $57, reflecting the cost of disposal services only.

Based on the size of these numbers, it is reasonable to conclude that some or all non-variable costs could feasibly be recovered through a generator fee system. Under a revenue neutral design, there would be no net change in regional remittances to Metro at the time of conversion to a generator fee system.

Stability. The principal advantage of generator fees is their stability under changing conditions, as compared with financing non-variable costs through the tip fee. A simple illustration is shown in Table 5. In the table, generators with three characteristics are illustrated: those with disposal rates of 20, 24.3, and 30 pounds per household per week. Based on budgeted FY 1993-94 revenue requirements and tonnage assumptions, the Regional User Fee currently accounts for $12 of each household's average annual disposal cost, as illustrated in the middle row of the first block of Table 5.

The rows above and below the middle row show the effect of changes in generators' disposal rates on the revenue stream. Changes in disposal of 4 to 6 pounds per week translate into changes of 17.7 to 23.5 percent in the average annual remittance to Metro. (Although the table illustrates these changes over space, the same conclusions hold if these changes occur over time.)

The effect of using generator fees to recover non-variable costs is illustrated in the second and third blocks of the table. A revenue-neutral generator fee would average $12 per household per year. As an offset, the Regional User Fee would go to zero and tip fees would drop by $19 per ton.

The second block shows results of billing the generator fee through haulers having an average coverage rate of 85 percent of generators. The third block shows results of billing jurisdictions having an average coverage rate of 90 percent. A glance at the last column reveals that under a hauler billing system, the sensitivity to changes in disposal rates is considerably less for both jurisdiction billings and hauler billings than under the current system. The decreased sensitivity to such changes indicates that revenues will be more stable to changing conditions than the current system. (This finding assumes that generators are less likely to opt out of the system than to reduce disposal.)

Table 4

Illustration of Generator Fee

1. Generator Fee
All Non-Variable Costs Covered by a Mix of Household and Business Charges

Row	Annual Charge per Household	Revenue from Households	% Revenue from Households	Annual Charge per Employee	Revenue from Employment	% Revenue from Employment	Total Receipts
A	$39.89	$17,749,139	100.0%	$0.00	$0	0.0%	$17,749,139
B	35.90	15,974,225	90.0%	2.95	1,774,914	10.0%	17,749,139
C	31.91	14,199,311	80.0%	5.91	3,549,828	20.0%	17,749,139
D	27.92	12,424,397	70.0%	8.86	5,324,742	30.0%	17,749,139
E	23.93	10,649,483	60.0%	11.81	7,099,656	40.0%	17,749,139
F	19.94	8,874,570	50.0%	14.77	8,874,570	50.0%	17,749,139
G	15.95	7,099,656	40.0%	17.72	10,649,483	60.0%	17,749,139
H	11.97	5,324,742	30.0%	20.67	12,424,397	70.0%	17,749,139
I	7.98	3,549,828	20.0%	23.63	14,199,311	80.0%	17,749,139
J	3.99	1,774,914	10.0%	26.58	15,974,225	90.0%	17,749,139
K	0.00	0	0.0%	29.53	17,749,139	100.0%	17,749,139

2. Usage Charge
Tipping Fee Covers Variable Costs Only

$0.00	+ Regional Charge
$51.74	+ Operation, Transport, Disposal
$51.74	= Base tipping fee
$5.37	+ Surcharges (excise tax, DEQ fees, R&E fee)
$57.00	= Metro Tipping Fee (rounded)

Assumptions and Comments

Rate basis

445,000	households in Metro district
601,000	wage & salary employees in Metro district
1,043,848	revenue tons tipped in the Region
689,185	revenue tons tipped at Metro facilities

Revenue requirements (FY 1993-94)

$17,749,139	fixed portion of budget subject to customer charge
$0	fixed portion of budget covered by usage charge
$35,659,934	variable portion of budget

Comments

- Annual charges reflect the average fee per household or employee
- In practice, customer classes would be designed to address equity issues
- Revenue requirements do not reflect additional administration costs

Table 5

Comparison of Generator Fees and the Regional User Fee

Effects of Different Disposal and Coverage Rates

Illustrated for Single Family Generators

Area	Conditions						Annual Remittance to Metro								% Change from mid generation
	Generator	Disposal	Coverage Rate		Units Covered by		Average per Generator				Total for Area				
	Units	(lbs/week)	Generator	Collection	Gen.Fee	Collection	Gen.Fee	RUF*	Disposal	Total	Gen.Fee	RUF*	Disposal	Total	
Illustration of Current System (No Generator Fee; Regional User Fee=$19 per ton)															
A	1,000	20.0	na	85%	na	850	na	$9.88	$29.12	$39.00	na	$8,398	$24,752	$33,150	-17.7%
B	1,000	24.3	na	85%	na	850	na	$12.00	$35.37	$47.37	na	$10,200	$30,063	$40,263	0.0%
C	1,000	30.0	na	85%	na	850	na	$14.82	$43.68	$58.50	na	$12,597	$37,128	$49,725	23.5%
														$123,138	
Illustration of Hauler Billing (Generator Fee=$12 per household per year; no Regional User Fee)															
A	1,000	20.0	85%	85%	850	850	$12.00	$0.00	$29.12	$41.12	$10,200	$0	$24,752	$34,952	-13.2%
B	1,000	24.3	85%	85%	850	850	$12.00	$0.00	$35.37	$47.37	$10,200	$0	$30,063	$40,263	0.0%
C	1,000	30.0	85%	85%	850	850	$12.00	$0.00	$43.68	$55.68	$10,200	$0	$37,128	$47,328	17.5%
														$122,543	
Illustration of Jurisdiction Billing (Generator Fee=$12 per household per year; no Regional User Fee)															
A	1,000	20.0	90%	85%	900	850	$12.00	$0.00	$29.12	$41.12	$10,800	$0	$24,752	$35,552	-13.0%
B	1,000	24.3	90%	85%	900	850	$12.00	$0.00	$35.37	$47.37	$10,800	$0	$30,063	$40,863	0.0%
C	1,000	30.0	90%	85%	900	850	$12.00	$0.00	$43.68	$55.68	$10,800	$0	$37,128	$47,928	17.3%
														$124,343	

Note: Metro disposal fees total $56 per ton for all options.

*** RUF= Regional User Fee**

Equity. There are two basic equity issues with generator fees: (1) on what basis are total revenue requirements allocated to broad sectors (e.g., households, businesses); (2) within each sector, how to define and identify customer classes so that fees may be linked to benefits received.

In the solid waste field, the first issue is far from resolved. In its review of the current state of the practice, Metro staff found that very few agencies have successfully implemented generator fees on non-residential generators. A major concern is quantifying and agreeing on the benefits and burdens of integrated solid waste management on non-residential generators. Agencies that have implemented non-residential generator fees have been successful only because the fee is so small that it imposes little financial burden and is more expensive for businesses to appeal than to pay. Small fees, however, return few revenues and may not justify the administrative cost.

The solution to the second issue is to tailor fee schedules to customer classes having similar generation characteristics. Residential generators are commonly identified by housing unit type (single, multifamily, mobile home) and/or parcel size. Commercial generators are often grouped by industry classification or building type. Within generator classes, fees can be flat, such as a charge per address or account; levied on the basis of imputed activity levels such as the size of the building or parcel; or based on actual activity levels, such as the number of employees, gross or net receipts. Each of these designs has different implications for administration cost. A generator fee can be designed as a connection charge wherein payers into the system receive benefits not available to non-payers, such as a lower disposal charge.

Incentives. Generator fees may work against incentives to reduce, reuse, and recycle because they are fixed charges which do not vary with use of the disposal system. Thus, the design and use of generator fees must take into account the tradeoffs between revenue stability and recycling incentives.

Implementation

A key issue in implementation of generator fees is the mechanism by which generators are reached for assessment, billing, collection, and enforcement. If third parties are involved in this process, the billing can be "through" --in which the third party is simply a collection vehicle; or "to"--in which the third party incurs an aggregate generator fee on behalf of its clients. In the latter case, the fees should be designed to enable the third party to pass charges on to generators in its client base. The method of implementation is sufficiently significant for this study that it defines several sub-options:

Dedicated Billing System. As no system currently exists in the region that is specifically designed to bill all solid waste generators, this option would require setting up a completely new billing system. Depending on the size of the generator fee, the start-up and administration costs could easily overwhelm receipts. The main advantage is that this option can in principle reach all generators, with customer classes defined and maintained appropriate for solid waste charges. The main disadvantage is the potential cost of the system and weak authority for collection of delinquencies. *This option is not recommended for further study at this time.*

Through the Property Tax Bill. Metro probably has authority to implement this option (see Attachment B: Legal Issues), but would have a large public relations job in educating and reminding the public that the generator fee is not a new tax, but that the tax bill is only a collection mechanism. This option limits the designation of customer classes to data which is available through the property tax rolls--most reliably, the address of the owner and the value of the property. This has implications for equitable design. Equity issues are further compounded for multiple tenant addresses and rented property in which the generator may not be billed directly, and the property owner has limited scope to pass on the charge. Advantages: this option can in principle reach all generators and is less costly than an entirely new system. Disadvantages include the limited scope for equitable rate design, public relations issues, and weak authority for collection of delinquencies.

Through Utility Billings. Many of the arguments under the property tax collection mechanism above hold for this option. Utility companies have indicated they will oppose a new charge which customers may perceive as an increase in rates. If billing is through selected utilities (*e.g.*, power but not gas), then the affected utility will be concerned about loss of market share based on the customer's conception of a rate increase. If billing is made through all utilities, there would be significant additional administrative costs to avoid double billing of addresses with multiple service (*e.g.*, power and gas). Advantages: this option can reach a large number of generators and is less costly than an entirely new system. Disadvantages include the limited scope for equitable rate design, potential distortion of private utility markets, and weak authority for collection of delinquencies.

Bill To or Through Jurisdictions. Under these options, Metro works with local jurisdictions to bill generators within each jurisdiction. Each jurisdiction has the ability to reach its residents by the most efficient means available. Advantages: this option can reach a large number of generators and keeps solid waste charges within the agencies which have regulatory authority. Disadvantages include coordination issues between Metro as the agency which calculates assessments, while different agencies are involved in billing and collection. As above, the "through" option has weak authority for collection of delinquencies.

Staff did some preliminary investigations of water and sewer utility systems as a means of billing generator fees. The choice of these utilities was based on near-universality of service, and the fact that they currently have account billing systems in place. The summary findings are: coverage of generators is 90 to 95 percent for water, and 80 to 90 percent for sewers. Water districts generally recognize single family accounts, but identification of customer classes for other solid waste generators is problematic. Furthermore, information available on non-residential accounts is not generally relevant to solid waste generation. Coordination would be required among more than 20 water districts. Similar comments hold for sewer districts, except that coordination would be required among only 5 or 6 agencies. Staff emphasizes that these are preliminary findings and should not forestall further investigation.

Bill To or Through Haulers. Under these options, haulers would include the generator fee in their regular billings. This option has the advantage of being simple and direct: a customer charge for solid waste shows up on a garbage collection bill, consistent with the way consumers are used to being charged for utilities. Unlike the other options above, however, this option does not in principle reach all generators, but only those that subscribe to collection services. Conceptually, these customers can at present be "reached" through the standard tip fee for disposal of commercial loads. The revenue base is not necessarily broadened; and if rate redesign causes some garbage bills to go up under a two-part fee approach, the recipients of those bills may opt out of the collection system, affecting the hauler, the franchising jurisdiction, and Metro. Advantages: this option is direct and understandable. Disadvantages include limited scope for reaching generators and price-induced risk to the revenue base.

Staff did some preliminary investigations of haulers and franchising authorities as a means of billing generator fees. The summary findings are: coverage of residential generators is 80 to 90 percent, and 85 to 90 percent for non-residential. Haulers can generally recognize single family accounts, but the only universal data on customer class is (1) whether the account is residential or commercial, and (2) the size, type, and number of containers at the account. There is a large disparity in haulers' data-based ability to discern customer classes which are appropriate for generator fees. A bill for generator fees to haulers will be counted as a cost by franchising jurisdictions, and would be incorporated in the rate structure during the normal rate-setting process. (The amount of the generator fee in the rate would be offset by a reduction in disposal costs under a *revenue-neutral program* design.) Thus, the ability to control the generator fee as a fixed, customer charge is an important administrative issue.

Options Which Do Not Require Capturing Waste Streams: 3

"Public Good" Orientation: Taxation

Under a tax-based system, some or all costs of programs are supported by general fund revenues which are raised by taxation. Taxation is justified by the "public good" aspect of service provision.

Broad-Based Taxes. These are taxes that have wide incidence. Examples include property, income, payroll, and sales taxes. *These options are not recommended* for the following reasons: the weak or non-existent link between revenue sources and uses for solid waste management; extremely difficult to satisfy key evaluation criteria such as waste reduction incentives; the Metro charter requires a vote of the people to implement broad-based taxes, and this option is currently under study by the agency as a long-term solution to financing general government.

Niche Taxes. These are taxes which have narrow incidence. No specific recommendations are made with regard to niche taxes. This concept should be held in reserve for further study if other approaches prove infeasible.

Attachment A

Metro Ordinance No. 1824A

Certified A True Copy of the Original Thereof
Paulette Allen
Clerk of the Council

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ESTABLISHING A PROCESS FOR EVALUATION OF METRO'S SOLID WASTE FEES, CONSIDERATION AND REVIEW OF A NEW RATE STRUCTURE FOR FY94-95, AND COMPLETION OF CHAPTER 11 (RATES) OF THE REGIONAL SOLID WASTE MANAGEMENT PLAN	RESOLUTION NO. 93-1824A Introduced by Rena Cusma Executive Officer

WHEREAS, Policy 11.0 of the Regional Solid Waste Management Plan (adopted by Ordinance No. 88-266B) states: "The solid waste system shall be developed to achieve stable, equitable and predictable solid waste system costs and rates," and

WHEREAS, Chapter 5.02 of the Metro Code establishes a rate system that is based on per-ton fees for solid waste delivered to designated transfer stations and landfills for disposal; and

WHEREAS, These per-ton fees generate tonnage-dependent revenues that must pay all solid waste costs, regardless of whether those costs are dependent or independent of tonnage; and

WHEREAS, Despite the region's expected population growth, tonnage delivered to designated transfer stations and landfills will decline if regional waste reduction and recycling goals are met; and

WHEREAS, Continuing to pay for all costs of managing and operating the solid waste system entirely through fees assessed on a per-ton basis at transfer stations and landfills will likely lead to ever increasing per-ton rates that are unstable and inequitable and therefore inconsistent with Policy 11.0; and

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

BE IT RESOLVED, that

1. The Metro Council shall consider and review a new rate structure for FY 94-95 based on a comprehensive review to be completed by January, 1994.

2. The Solid Waste Advisory Committee will review rate alternatives and make recommendations to the Council Solid Waste Committee on a monthly basis for discussion of policy implications. These recommendations will included:

   A. Short-term modifications feasible for rates to be adopted for FY 94-95.

   B. Long-term modifications that would make Metro's rates more consistent with adopted or proposed policies but which require additional work before implementation.

   C. Any other changes in the region's solid waste collection and disposal system that are needed in order to implement short- or long-term recommendations.

3. The Rate Review Committee will consider the recommendations of the Solid Waste Advisory Committee when developing solid waste rates for FY 94-95.

4. Chapter 11 of the Regional Solid Waste Management Plan dealing with solid waste rates will be completed and submitted to the Council for review and adoption by March, 1994.

5. Alternatives to be considered as part of this process will include but are not limited to the following:

A. Broaden the Rate Base. Rates are levied over a broader tonnage base than that which arrives at designated transfer stations and landfills for disposal.

B. Rate Restructuring. Rates are restructured so as to cover tonnage-independent costs with tonnage-independent revenues; and tonnage-dependent costs are covered with per-ton tip fees related to the true costs of handling various waste streams.

C. Diversify the Revenue Base. Fund some solid waste functions from sources other than system-specific user charges (*e.g.* taxes).

6. Criteria used to evaluate alternatives will include the following:

A. Consistency. Consistency with Metro's agency-wide planning policies and objectives, including but not limited to the Solid Waste Management Plan, and the economic opportunity and related objectives of Regional Urban Growth Goals and Objectives (RUGGO).

B. Revenue Adequacy. The generation of sufficient revenues to fund the costs of the solid waste system.

C. Equity. Charges to users of the waste disposal system are directly related to disposal services received. Charges to residents of the Metro service district who may not be direct users of the disposal system should be related to other benefits received.

D. Economic Impacts. The economic effects on the various types of rate payers, including the cost of living on residential waste generators and the cost of doing business on non-residential generators, as well as the economic effect on others in the region.

E. Waste Reduction. The rate structure provides incentives to encourage waste reduction, reuse and recycling.

F. Affordability. The ability of those paying for the program to bear the costs that they are determined to be responsible for.

G. Implementation. The relative cost and effort of implementing and administering the rates. Ensure that the rates can be verified and enforced.

H. Credit Rating Impacts. The effect of the rate structure on Metro's credit rating.

I. Authority to Implement. The legal ability of Metro to implement the rate structure; the relative ease or difficulty of obtaining the authority if such authority is not already held; and the changes needed to Metro Code to implement the new rate structure.

J. Reliability. The extent to which anticipated revenues are stable and unlikely to deviate from financial plan expectations.

K. Predictability. Metro rate adjustments will occur in a predictable and orderly manner such that local governments, haulers, and rate payers will be able to perform effective business planning.

ADOPTED by the Metro Council this 22nd day of July, 1993.

Judy Wyers

Judy Wyers, Presiding Officer

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Attachment B

Memorandum from Todd Sadlo on Legal Issues Relating to Long-Term Financing of Solid Waste Management Activities

M E M O R A N D U M

METRO

Date: July 15, 1993

To: Terry Petersen, Planning and Technical Services

From: Todd Sadlo, Senior Assistant Counsel

Regarding: LONG-TERM FINANCING OF SOLID WASTE MANAGEMENT ACTIVITIES

By memo dated May 10, 1993, you asked several questions regarding Metro's authority to assess solid waste fees. I have attached your memo for the convenience of the reviewer. This memo first discusses Metro's solid waste management authority in general terms, and then answers your particular questions.

Metro's General Authority, Express and Implied

Metro's authority is derived from the 1992 Metro Charter and Oregon statutes. An amendment to the Oregon Constitution in November of 1990 gave the electors of a metropolitan service district the authority to adopt a charter.[1] The Constitution states that under a charter, Metro's officers shall "exercise all the powers and perform all the duties, as granted to, imposed upon or distributed among district officers by the Constitution or laws of this state, by the district charter or by its authority."[2] Both the Oregon Constitution and state statute therefore contemplate that an adopted charter is a grant of authority independent from authority granted to Metro by way of Oregon statutes.

The Metro Charter emphasized basic principles regarding Metro's authority that are also contained in the Oregon Constitution and Oregon statutes. The Charter states that:

> "Metro has jurisdiction over matters of metropolitan concern. Matters of metropolitan concern include the powers granted to and duties imposed on Metro by current and future state law and those matters the council by ordinance determines to be of metropolitan concern. The council shall specify by ordinance the extent to which Metro exercises jurisdiction over matters of metropolitan concern."[3]

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[1]Or. Const., Art. XI, sec. 14.

[2]Id., subsec. (2). The legislature subsequently adopted ORS 268.710(2), containing the same statement of the authority of Metro Officers.

[3]1992 Metro Charter, sec. 4.

The Charter also states that:

> "When carrying out the functions authorized or assumed under this charter: (1) Metro has all powers that the laws of the United States and this state now or in the future could allow Metro just as if this charter specifically set out each of those powers, (2) the powers specified in this charter are not exclusive, (3) any specification of power in this charter is not intended to limit authority, and (4) the powers specified in this charter shall be construed liberally."[4]

Metro therefore derives broad express authority from the Charter and from Oregon statutes.[5]

It has been customary to refer to the general power and authority of a government to make and enforce laws as the "police power." The "police power" has been described as "the power to make all laws which in contemplation of the Constitution promote the public welfare."[6] "The police power embraces the whole sum of inherent sovereign power which the state possesses, and, within constitutional limitations, may exercise for the promotion of the order, safety, health, morals, and general welfare of society* * * *"[7] The term "police power," however, is no longer in general use in Oregon courts.[8] The concept is being

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[4]1992 Metro Charter, sec. 9.

[5]ORS chapter 268 includes the following general grants of authority:

- ORS 268.300(1): "A district shall constitute a municipal corporation of this state, and a public body, corporate and politic, exercising public power. It shall have full power to carry out the objectives of its formation* * * *

- ORS 268.360(1): "For purposes of its authorized functions a district may exercise police power and in so doing adopt such ordinances as a majority of the members of its council considers necessary for the proper functioning of the district."

[6]Christian v. LaForge, 194 Or. 450, 242 P.2d 797, 801 (1952), quoting State v. Redmon, 134 Wis. 89, 105, 114 N.W. 137, 14 L.R.A., N.S., 229, 126 Am.St.Rep. 1003, 15 Ann.Cas. 408.

[7]Id.

[8]See Linde, "Without Due Process," 49 Or.L.Rev. 125, 147 (1970). " 'Police power' terminology* * *ought to be completely abandoned, shunned in opinions, proscribed from briefs, and blue-penciled whenever it creeps into sight."

supplanted by the view that the state has complete ("plenary") legislative and administrative authority that is limited only as specified in the state or federal constitution.[9]

Metro's authority is not plenary, but is either granted by statutes or by home rule provisions of the State Constitution.[10] It is clear from the Metro Charter and statutory references above that Metro has been granted very broad general authority to carry out its designated functions, in any manner that Metro deems appropriate. This interpretation is consistent with the modern view of the extent of implied local government authority, set forth in Burt v. Blumenauer:

> "In recent times, the judicial demand for explicit expressions of authority and recognition of only attendant authorities 'necessarily implied' by those expressed has given way to an interpretation that local governments have broad powers subject only to constitutional or preemptive statutory prohibitions."[11]

Metro's authority to take whatever steps it deems appropriate to carry out its designated functions is therefore only limited to the extent that it is expressly or impliedly preempted from acting by its Charter, by statute, or by the state or federal constitution.[12]

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[9]Burt v. Blumenauer, 299 Or. 55, 696 P.2d 168, 171 (1985). City of Hillsboro v. Purcell, 306 Or. 547, 761 P.2d 510, 512 (1988). Eckles v. State of Oregon, 306 Or. 380, 760 P.2d 846, 858 (1988).

[10]Linde, supra, at 152.

[11]Burt v. Blumenauer, supra, at 172. The early view of municipal authority, known as "Dillon's rule," was that: "a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the power expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation,--not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied." (Footnote omitted, emphasis in original.) 1 Dillon, Municipal Corporations, §237, at 448-50 (5th ed. 1911), cited in Burt v. Blumenauer, supra, at 171 (1985). See also Pioneer Real Estate Company v. City of Portland, 119 Or. 1, 247 P. 319 (1926). Colby v. City of Seaside, 80 Or. 73, 156 P. 569 (1916). Naylor v. McColloch, 54 Or. 305, 103 P. 68 (1909).

[12]See also, City of Beaverton v. International Association of Fire Fighters, Local 1660, 20 Or. App. 293, 531 P.2d 730, 733 (1975): "General grants of power contained in a city charter are sufficient to grant powers not specifically mentioned in the charter, particularly where the charter contains language saying that it is to be liberally construed."

Metro's Authority over Solid Waste Management

Metro's authority over solid waste is also derived from the Charter and Oregon statutes. Section 6 of the Charter ("Other Assigned Functions"), states simply that "Metro is authorized to exercise the following functions: (1) Acquisition, development, maintenance and operation of: * * *(c) facilities for the disposal of solid and liquid wastes,* * *(2) Disposal of solid and liquid wastes; * * *and (5) Any other function required by state law* * * *"

State statute requires Metro to implement solid waste reduction programs in the region.[13] Metro is also required to report its progress in implementing its solid waste reduction program to the Environmental Quality Commission every two years.[14]

ORS chapter 268 includes an extensive list of Metro powers related to solid and liquid waste disposal, many of which Metro is currently exercising. ORS 268.030 states that "(3) Subject to the limitations of state law, the district may provide: (a) Metropolitan aspects of sewerage, solid and liquid waste disposal* * *" and local aspects of those public services transferred to the district by agreement.

ORS 268.317(1) gives Metro the authority to "Build, construct, acquire, lease, improve, operate and maintain landfills, transfer facilities, resource recovery facilities and other improvements, facilities or equipment necessary or desirable for the solid and liquid waste disposal system of the district* * * *" Metro can also require both generators and haulers of solid or liquid waste "* * *to make use of the disposal, transfer or resource recovery sites or facilities of the district or disposal, transfer or resource recovery sites or facilities designated by the district."[15] Furthermore, by statute Metro can:

> "Regulate, license, franchise and certify disposal, transfer and resource recovery sites or facilities; establish, maintain and amend rates charged by disposal, transfer and resource recovery sites or facilities; establish and collect license or franchise fees; and otherwise control and regulate the establishment and operation of all public or private disposal, transfer and resource recovery sites or facilities located within the district."[16]

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[13]ORS 459.340.

[14]ORS 459.345.

[15]ORS 268.317(3),(4).

[16]ORS 268.317.

Metro has also been given, and has exercised, authority to establish the Regional Solid Waste Management Plan (RSWMP) as a functional plan.[17] The premise of the RSWMP is that solid waste management is an activity of metropolitan significance, requiring regional planning and control.[18] ORS 459.095 further establishes Metro's position of authority in regional solid waste management by stating that:

> "(1) No ordinance, order, regulation or contract affecting solid or liquid waste disposal, resource recovery or solid waste management shall be adopted by a local government unit if such ordinance, order, regulation or contract conflicts with* * *a solid waste management plan or program adopted by a metropolitan service district and approved by the department (of Environmental Quality) or any ordinances or regulations adopted pursuant to such plan or program."

As a general conclusion, Metro has been granted extensive express authority to manage solid waste in the metropolitan area. By charter, statute and current judicial interpretations, Metro also has broad implicit authority to take action to carry out its designated functions in any manner that is not expressly foreclosed by its charter, or preempted by state or federal constitutions or statutes. Any analysis of Metro authority must begin with recognition of Metro's broad authority over regional solid waste management.

Metro Charter Provisions Related to Financing

The Charter grants to Metro general authority to raise revenue through taxes and fees[19], and also places limits on that authority. Metro's taxing authority is limited in two ways. First,

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[17]ORS 268.390: "A district council shall:

(1) Define and apply a planning procedure which identifies and designates areas and activities having significant impact upon the orderly and responsible development of the metropolitan area, including, but not limited to, impact on:

(a) Air quality;
(b) Water quality; and
(c) Transportation.

(2) Prepare and adopt functional plans for those areas designated under subsection (1) of this section to control metropolitan area impact on air and water quality, transportation and other aspects of metropolitan area development the council may identify."

[18]Id. See also, Regional Solid Waste Management Plan, Section 1, and ORS 459.017(b), which gives Metro and other local governments "primary responsibility for planning for solid waste management." The RSWMP serves as both a functional plan for land use planning coordination purposes, and as a DEQ approved solid waste management plan for purposes of ORS 459.095.

[19]1992 Metro Charter, sec. 9, 10.

Metro must seek voter approval of "broadly based taxes of general applicability on the personal income, business income, payroll, property, or sales of goods or services of all, or a number of classes of, persons or entities in the region* * *"[20] Taxes not included in this limitation may be imposed without voter approval. However, Metro may only spend $12,500,000 (in 1993, and as adjusted annually in conformance with a Consumer Price Index) of revenue from taxes imposed without voter approval.[21]

Metro has authority to fund all or part of the solid waste system through tax revenues, subject to the above limitations.[22] Currently, the system is funded entirely through user fees, which are subject to a separate limitation, in Section 15, as follows:

> "* * *charges for the provision of goods or services by Metro may not exceed the costs of providing the goods or services. These costs include, but are not limited to, costs of personal services, materials, capital outlay, debt service, operating expenses, overhead expenses, and capital and operational reserves attributable to the good or service."

This limitation is discussed in more detail below.

<u>User Fees v. Taxes</u>

In several of your questions, you seek to know how to distinguish a fee from a tax. Metro Charter Section 11 states:

> "For purposes of sections 11, 13 and 14 of this charter, 'taxes' do not include any user charge, service fee, franchise fee, charge for the issuance of any franchise, license, permit or approval, or any benefit assessment against property."

For the purpose of the Charter therefore, neither voter approval nor consultation with a "tax study committee" is required for imposition of fees of the type listed, and such fees are not subject to expenditure limits contained in Section 14.

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[20] Id., sec. 11.

[21] Id., sec. 14. The excise tax is the only tax currently imposed by Metro that is subject to the expenditure limitation. Metro must also consult with a "tax study committee" before imposing any new taxes without voter approval. Id., sec. 13.

[22] Solid waste expenditures in fiscal year 1993-94 are budgeted at approximately $53 million.

The Charter's distinction between fees and taxes conforms to Oregon judicial doctrine. In most Oregon cases the court attempted to determine whether a given 'fee,' 'assessment' or 'tax' was subject to state constitutional strictures related to uniformity of taxation.[23] For instance, in Sproul v. State Tax Commission[24], the Oregon Supreme Court considered whether a one cent per acre assessment against lands in eastern Oregon for a fire suppression fund was an unconstitutional "tax." In a detailed analysis, the Court concluded that the one cent levy was a valid exercise of the state's "police power," not an invalid exercise of its "taxing power."[25]

In reaching its conclusion, the court in Sproul emphasized that the purpose of the levy was not to raise general revenue, but to fund a specific activity to promote public welfare.[26] The Court reasoned that the state could unquestionably use its "police power" to establish a regulatory system to prevent fires, and could likewise levy funds to "manage in a proprietary capacity" the same activities over which it has regulatory authority.[27] According to Sproul, an 'assessment,' 'levy' or 'license fee' is not a 'tax' if it is to fund a specific regulatory program over which the state has legitimate regulatory authority and is not for the purpose of raising general revenue.[28]

The Metro Charter is also consistent with the definition of a "tax" that was added to the Oregon Constitution through Ballot Measure 5 in 1990 for property tax limitation purposes.[29] The Ballot Measure 5 definition becomes relevant when the "tax," "fee" or

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[23] Or. Const, Art. I, sec. 32, Art. IX, sec. 1.

[24] 234 Or. 579, 383 P.2d 754 (1963).

[25] Id. at 755.

[26] Id. at 758.

[27] Id. at 758, 759.

[28] Id. at 758, 760. In Dennehy v. Department of Revenue, 305 Or. 595, 756 P.2d 13, 18 (1988), the Oregon Supreme Court cited Sproul approvingly, "leaving aside the 'police power' label." See also, Automobile Club of Oregon v. State of Oregon, 314 Or. 479, 840 P.2d 674, 678 (1992).

[29] Or. Const., Art. XI, sec. 11b states, in relevant part: "* * *(b) A 'tax' is any charge imposed by a governmental unit upon property or upon a property owner as a direct consequence of ownership of that property except incurred charges and assessments for local improvements* * *" "Incurred charges" is also defined, but is not relevant to this analysis; See Roseburg School District v. City of Roseburg, 1993 Or. LEXIS 56 (May 21, 1993).

"charge" is arguably "imposed" on property or a property owner, "as a direct consequence of ownership" of the property.[30]

In Roseburg School District v. City of Roseburg[31], the Oregon Supreme Court emphasized that a "fee for service" is not "imposed upon property or upon property owners as a direct consequence of property ownership"[32]; it is imposed on the user of the service, who might not be the property owner.[33] The court in Roseburg School District made clear that service fees are not property taxes, even if they relate closely to property ownership and are difficult to avoid.

The Ballot Measure 5 definition of "tax" will be relevant to Metro solid waste revenue collection only if Metro devises a revenue collection system that is imposed directly on generators. In that instance, care should be taken to ensure that a charge is imposed only as a consequence of participation in Metro's solid waste management system through the generation, recycling or disposal of solid waste.[34]

Answers to Specific Questions

Topic #1. Service and User Fees

1. In your first specific question, you ask how the limitations on user charges in Section 15 of the Charter (cited above, p. 6) might be interpreted. In light of the analysis presented above, it is not reasonable to interpret this provision in a manner that limits Metro's authority to manage and finance a regional solid waste disposal system, or to provide regional solid waste planning and waste reduction programs. With regard to solid waste, the

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[30]Id.

[31]Supra, fn. 29.

[32]Roseburg School District v. City of Roseburg, supra at 12 (emphasis added).

[33]Id. at 9. Roseburg involved a "storm drain fee" that was added to the bill for drinking water services. When premises are improved, those premises are presumed to generate storm water runoff, and the "persons having the right to occupy the property" (who may or may not own the property) are presumed responsible to pay the storm water runoff fee. Id. at 2-3.

[34]The city of Roseburg allowed persons to seek a reduction or elimination of the fee by demonstrating that the service is not being used. (Id.) Although not discussed in detail in the case, presumably the property owner would need to demonstrate that the property is not generating storm water runoff entering the city's system or otherwise obtaining the benefits of the city's system.

"service" provided by Metro includes all Metro solid waste disposal, planning, management and waste reduction programs. A person generating, or hauler disposing of, waste in the region is receiving solid waste management services from Metro.

Metro Charter Section 15 simply extends to the entire agency a principle that has been applied to Metro's solid waste management program since at least 1987, when the legislature imposed a similar restriction.[35] The purpose of such a provision appears to be to ensure that a service provided by the district does not become a 'cash cow' for unrelated programs.

The minutes of the Charter Committee indicate that the Committee was not intending to in any manner limit Metro's ability to fund solid waste programs. Solid waste management was viewed by the Committee as an "enterprise" that would continue to carry its own weight through fees for service, with taxes used essentially to fund land use planning functions and general overhead.[36]

You state that Metro might consider a "two-part pricing system for solid waste disposal which levies a flat fee on all customers, regardless of usage; and a variable rate based on actual usage." You ask whether the "flat" portion of the fee could be considered a "user charge."

Yes. As discussed in more detail above, the fee will be a "user charge" as long as it is imposed on users of Metro's solid waste system and the revenue is dedicated to regional solid waste management.

2. You then ask, if the "flat" portion could be considered a "user charge, are there restrictions on the types of costs which may be used to justify it? We have in mind identifiable fixed costs such as debt service and long-term contractual obligations that must be covered regardless of tons disposed (of)."

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[35]ORS 459.335 states, in relevant part, "* * *the metropolitan service district shall use moneys collected by the district as service or user fees for solid waste disposal for activities of the metropolitan service district related to solid waste and related planning, administrative and overhead costs of the district."

[36]See "Minutes of the Charter Committee of the Metropolitan Service District." A complete set is available in the Metro Office of General Counsel.

In creating any new structure for financing the solid waste system, you should attempt as nearly as possible to develop a rational basis for the approach taken.[37] Although "the ratio between the percentage of benefit conferred and the percentage of cost paid need not be computed precisely,"[38] there should be a "substantial relation" between the imposition of the burden and the benefit received.[39] Conceptually, assessing identifiable fixed costs to a flat fee and variable costs to a variable tonnage rate seems to be a rational and legally acceptable approach.

3. You next ask, "What is our authority for imposition and collection of the 'flat' portion of a service fee? If Metro's disposal customer is a commercial hauler, can Metro collect a flat fee directly from the hauler perhaps based on the type and number of the hauler's accounts? If not, could Metro work through the franchising jurisdiction? Can Metro bill generators directly? In general, what mechanisms are available for collection of a flat fee to cover fixed costs?"

As discussed above, any of these approaches might be acceptable, subject to development of an analysis demonstrating that those receiving benefits from Metro's solid waste disposal system are paying in rough proportion to the benefit received. Some of the suggestions you have listed raise potential administrative concerns that are not addressed here. One approach that you have touched on (below) is for Metro to license haulers and to collect a portion of its solid waste management revenue through the license fee. The fee could then be proportioned upon gross-receipts, type and number of accounts, or some other measure that will spread the cost burden with relative uniformity.

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[37]In Sproul, at 762, (cited above, fn. 20), the Court cited approvingly a passage from Freund, Police Power, at 635: "It is an elementary principle of equal justice, that where the public welfare requires something to be given or done, the burden be imposed or distributed upon some rational basis, and that no individual be singled out to make a sacrifice for the community. This principle lies at the foundation of the law of taxation, and applies equally to the police power. With reference to the latter, it may be expressed by saying that to justify the imposition of a burden, there must be some connection of causation or responsibility between the person selected or the right impaired and the danger to the public welfare or the public burden which is sought to be avoided or relieved* * *"

[38]Sproul, supra at 762.

[39]Id.: " '* * *the assessment will be upheld whenever it is not patent and obvious * * *that the plan or method adopted has resulted in imposing a burden in substantial excess of the benefits* * *' " citing Austin v. Tillamook City, 121 Or. 385, 395, 254 P. 819, 822, in the context of property assessments.

If Metro chooses to develop a hauler licensing system, its scope should be limited to implementation of Metro's traditional solid waste management functions and collection of revenue for those functions. Cities and counties have been granted specific authority to franchise solid waste collection haulers, establish collection rates and assign service areas.[40] Traditional collection franchising appears to be a "local government service" as defined in the Charter.[41] As such, Metro is prohibited by the Charter from providing the same types of services without obtaining approval from the voters or from a majority of the members of the Metro Policy Advisory Committee (MPAC).[42] A license system imposed for the purpose of regulating solid waste disposal and carrying out other Metro solid waste management responsibilities *need not* conflict with local solid waste franchising, and if not, could be implemented without voter or MPAC approval.

4. In your fourth set of questions under topic #1, you request an analysis of the basis for determining whether a charge is a tax. The answers to your questions are contained under the heading "User Fees v. Taxes," above.

5. In your fifth question under topic #1, you ask: "What are the statutory limitations on Metro's authority regarding banning self-haul and mandating and enforcing universal collection?"

There are no express statutory limitations on Metro's ability to impose and enforce universal solid waste collection, and it is possible that Metro's express and implicit solid waste management authority (discussed above) includes such authority. The background provided for your question, however, does not adequately explain why elimination of self-hauling would be necessary or desirable in implementing a fee system with a flat fee component, or how universal collection would be implemented. More complete development of a rationale and approach to universal collection would help to bring legal issues related to such implementation into focus. It is, for instance, conceivable that such a system would be perceived as impinging on traditional "local government services" and require referral to the voters or MPAC.[43]

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[40]ORS 459A.085.

[41]1992 Metro Charter, Section 7(2): "* * *As used in this section, 'local government service' is a service provided to constituents by one or more cities, counties or special districts within the jurisdiction of Metro at the time a Metro ordinance on assumption of the service is first introduced* * *"

[42]Id.

[43]1992 Metro Charter, Section 7.

Topic #2. License Fees

In your second topic, you cite ORS 268.317[44] relating to Metro's flow control authority. In your first question under this topic, you ask whether Metro has authority to license haulers of solid waste. Your question is answered in the affirmative above, under topic #1, question three. You then ask whether there are any statutory limitations on what costs could be included in hauler license fees. As discussed above, the costs should be reasonably related to those necessary for proper functioning of Metro's solid waste management system, and reasonably apportioned to the benefit received.[45] As discussed above, the license fee need not be restricted to the cost of administering the license, and can include other costs related to Metro's regional solid waste management system.

Additional Question: Fees Imposed on Products at the Time of Sale

At the Solid Waste Advisory Committee meeting on June 24, 1993, a question was raised regarding Metro's authority to impose fees at the time of sale of products, presumably on items that contribute to solid waste generation in the Metro region. While it is conceivable that some form of generator charge could be established as a user fee under the Metro Charter, imposing charges at the time of sale of products raises additional questions. Section 11 of the Charter requires voter approval of "broadly based taxes of general applicability on * * *sales of goods* * *" Imposition of fees on the sale of specific items or classes of items tends to resemble a sales tax, implicating this section. Other problems include justifying the fee with regard to certain items and not others, and establishing a mechanism to collect the fee.

If the Committee determines that collection of revenue in the manner suggested is an option it might like to pursue, additional research should be conducted by this Office. Currently, this Office has strong reservations regarding the ability to collect revenue in this manner without voter approval.

Please contact me if you have further questions regarding this matter.

ds
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Attachment

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[44]Quoted in part above, at fn. 15.

[45]See ORS 459.335, quoted above, fn. 35, and general discussion above, top of page 10.