



**METRO**

**Agenda**

MEETING: METRO COUNCIL WORK SESSION  
DATE: October 7, 2008  
DAY: Tuesday  
TIME: 1:00 PM  
PLACE: Metro Council Chamber

**CALL TO ORDER AND ROLL CALL**

- 1:00 PM**      **1.      ADMINISTRATIVE/CHIEF OPERATING OFFICER  
COMMUNICATIONS**
- 1:15 PM**      **2.      VARIANCE PROCESS AND VARIANCE REQUESTS AT  
LAKESIDE AND HILLSBORO LANDFILLS**
- 2:00 PM**      **3.      BREAK**
- 2:05 PM**      **5.      COUNCIL BRIEFINGS/COMMUNICATION**

Brower

**ADJOURN**

**VARIANCE PROCESS AND  
VARIANCE REQUESTS AT  
LAKESIDE AND HILLSBORO  
LANDFILLS**

Metro Council Work Session  
Tuesday, October 7, 2008  
Metro Council Chamber

# METRO COUNCIL

## Work Session Worksheet

Presentation Date: 10-7-2008

Time: 2:00PM

Length: 45 minutes

Presentation Title: Landfill Variance Decisions

Department: Finance and Administration Services

Presenters: Scott Robinson & Roy Brower

### ISSUE & BACKGROUND

The purpose today's briefing is to provide Council with:

1. a review of the variance decision process;
2. a review of the events leading to two variance requests; and
3. an overview of the staff recommendation for two variance requests.

Variance requests trigger a process that allows Council to consider situations where specific Code requirements can not be met by a regulated person. The Code, in Chapter 5.01.110, establishes a two-part test for variances:

1. the purpose and intent of a particular requirement can be achieved without compliance; and
2. a particular requirement is inappropriate because of conditions beyond the control of an applicant or when compliance would be considered extremely burdensome or highly impractical, due to special physical conditions or causes.

Council may grant a variance if it finds a requesting party meets both parts of the test.

Hillsboro Landfill and Lakeside Landfill have both requested a variance from meeting the Enhanced Dry Waste Recovery Program (EDWRP) recovery requirements (i.e. both landfills have requested to continue taking unprocessed dry waste) from January 1, 2009 until July 1, 2009 – a six-month time variance. The purpose and intent of EDWRP is, starting January 1, 2009, to achieve higher recovery in the region by requiring all dry waste go to material recovery facilities (MRFs) rather than disposal at landfills. This diversion of dry waste from landfills to MRFs is estimated to achieve an additional 33,000 tons of new recovery each year. This new recovered tonnage would come primarily from the dry waste currently being disposed of at Hillsboro and Lakeside landfills.

On August 17, 2007, Council adopted EDWRP with an effective date of January 1, 2009. Council intended for new dry waste recovery to begin in 2009 in order to meet the state-mandated 64% regional recovery goal while also recognizing the need for a six-month period to provide time for facilities to meet the 15% performance standard. EDWRP also requires all Metro-designated landfills to certify whether they intend to remain designated facilities or not. Effective July 1, 2008, designated facilities must certify their intent to meet the EDWRP recovery requirements (i.e. either only take processing residual from MRFs or become a MRF). By November 1, 2008, new designated facility agreements are required to be in place. If Metro and a designated facility are unable to establish an agreement by November 1, then Metro shall terminate the existing agreement by December 31, 2008.

Hillsboro Landfill certified its intent to comply with EDWRP by constructing a building in which to conduct dry waste recovery (Tualatin Valley Waste Recovery). Hillsboro Landfill also requested a variance until from January 1, 2009 until July 1, 2009 to fully comply with EDWRP. Lakeside Landfill provided a certification of intent but indicated it was not willing to recover dry waste or only dispose of dry waste residual received from other MRFs. Lakeside also requested a variance that would allow it to continue taking dry waste from January 1, 2009 until it closed under its DEQ permit on July 1, 2009.

### **OPTIONS AVAILABLE**

Staff has reviewed the two variance requests against the variance tests and plans to file a staff report with a COO recommendation on October 9. Council is scheduled to consider the variance requests at its October 23 meeting. At the meeting, Council may also consider the comments offered by the applicants and the public in its decision. Council can consider approval, denial or approval with conditions of the two variance requests.

### **IMPLICATIONS AND SUGGESTIONS**

Preliminary staff recommendations on the variance requests are as follows:

- ❑ **Hillsboro Landfill variance request.** Staff recommends finding Waste Management meets both parts of the variance test related to EDWRP on January 1, 2009. Metro Council should grant a variance until July 1, 2009 to allow Waste Management to complete construction of its new MRF building. Council may wish to consider placing conditions on Waste Management to conduct some minimal level of processing on dry waste from January until July (or whenever the MRF building is completed.)<sup>1</sup>
- ❑ **Lakeside Landfill variance request.** Staff recommends finding Lakeside does not meet either of the variance tests related to EDWRP on January 1, 2009 and, based on its certification of intent, does not intend to do so.

Please see the attached chart with a more detailed summary of the staff findings and preliminary recommendation on the variance requests.

### **QUESTION(S) PRESENTED FOR CONSIDERATION**

Does Council need any clarification about the process or direction?

**LEGISLATION WOULD BE REQUIRED FOR COUNCIL ACTION  Yes  No**  
**DRAFT IS ATTACHED  Yes  No**

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<sup>1</sup> Staff also recommends monthly reporting on construction progress at Tualatin Valley Waste Recovery and that Waste Management is in compliance with EDWRP on July 1, 2009.

**Preliminary Staff Recommendations for the Variance Requests  
Submitted by Hillsboro Landfill and Lakeside Reclamation Landfill**

October 7, 2008

Hillsboro Landfill Variance	Lakeside Landfill Variance
<p><b>Meets Part 1 of variance test.</b></p> <p>Waste Management will meet the purpose and intent of EDWRP on January 1, 2009:</p> <ul style="list-style-type: none"> <li>✓ A new 68,000 Square foot material recovery facility (MRF) is being constructed (Tualatin Valley Waste Recovery).</li> <li>✓ Will meet Metro MRF standards when complete.</li> <li>✓ LEED Certified – exceeds Metro standards.</li> <li>✓ Increased new recovery of Metro area dry waste (20,000 to 48,000 tons of new recovery per year).</li> <li>✓ Helps meet EDWRP goal of 33,000 tons per year of new recovery from waste currently being disposed at landfills.</li> </ul> <p><b>Meets Part 2 of variance test.</b></p> <p>Applicant has provided evidence that compliance with EDWRP on January 1, 2009 is:</p> <ul style="list-style-type: none"> <li>▪ Inappropriate due to conditions beyond the Hillsboro Landfill’s control.</li> <li>▪ But not due to any special <i>physical</i> conditions or causes.</li> </ul> <p><b>Possible Conditions of Approval in Designated Facility Agreement:</b></p> <ul style="list-style-type: none"> <li>▪ Require regular monthly progress reports on MRF construction.</li> <li>▪ Beginning Jan. 1, 2009, conduct a minimum level of processing on dry waste loads until MRF is operational.</li> <li>▪ Starting July 1, 2009, will meet EDWRP including no disposal of unprocessed dry waste from Metro region at the Hillsboro Landfill.</li> </ul>	<p><b>Does not meet Part 1 of variance test.</b></p> <p>Lakeside will not meet the purpose and intent of EDWRP on January 1, 2009.</p> <ul style="list-style-type: none"> <li>✓ No proposed MRF.</li> <li>✓ Will not accept processing residual only.</li> <li>✓ No new recovery.</li> <li>✓ Proposes only continued disposal of recoverable materials at landfill.</li> </ul> <p><b>Does not meet Part 2 of variance test.</b></p> <p>Applicant has not provided convincing evidence that compliance with EDWRP on January 1, 2009 is:</p> <ul style="list-style-type: none"> <li>▪ Inappropriate due to conditions beyond Lakeside Landfill’s control, <u>or</u></li> <li>▪ Due to special <i>physical</i> conditions or causes rendering compliance with EDWRP is extremely burdensome or highly impractical.</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Recommend <u>approval</u> of variance request with conditions.</b></li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Recommend <u>denial</u> of variance request.</b></li> </ul>