

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)	ORDINANCE NO. 08-1196
CODE CHAPTER 5.05 SOLID WASTE FLOW)	
CONTROL TO ENSURE THAT ALL OF THE)	Introduced by Councilor Rod Park
REGION'S NON-PUTRESCIBLE WASTE)	
UNDERGOES MATERIAL RECOVERY)	
BEFORE DISPOSAL, AND DECLARING AN)	
EMERGENCY)	

WHEREAS, on August 16, 2007, the Metro Council adopted Ordinance No. 07-1147B, Amending Metro Code Chapters 5.01, 5.02, 5.05, and 7.01 to Ensure That All of the Region's Non-Putrescible Waste Undergoes Material Recovery Prior to Disposal, To Eliminate the Regional System Fee and Excise Tax Credit Program, and to Make Related Changes;

WHEREAS, Ordinance No. 07-1147B requires that after December 31, 2008, facilities located outside the Metro Region may accept Metro Region non-putrescible waste only if the out-of-region facility (1) receives the waste from a facility authorized by Metro to perform material recovery; or (2) performs material recovery on the non-putrescible waste to achieve substantial compliance with the performance goals and related administrative procedures applicable to facilities located in the Metro Region;

WHEREAS, Ordinance No. 07-1147B requires that any applicant who seeks to deliver non-putrescible waste to a non-system facility after December 31, 2008, must demonstrate that the non-system facility will be in substantial compliance with the material recovery requirements applicable to facilities located in the Metro Region;

WHEREAS, it was the intent of the Metro Council to provide a six-month period, beginning January 1, 2009, for facilities located in the Metro Region to meet the performance standard required by Ordinance No. 07-1147B;

WHEREAS, based on circumstances that have changed since the August 16, 2007 adoption date of Ordinance No. 07-1147B, a June 30, 2009 effective date for non-putrescible waste transported outside the Metro Region is necessary;

WHEREAS, a June 30, 2009 effective date is consistent with the intent of the Metro Council to subject all dry waste from the Metro Region to processing for material recovery and to assist the Metro Region in recovering an additional 33,000 tons of dry waste per year; and

WHEREAS, a June 30, 2009 effective date is consistent with the intent of the Metro Council to provide a six-month period for facilities located in the Metro Region to meet the performance standard; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Section 5.05.030 Designated Facilities of the System is amended as set forth in the attached Exhibit A;

2. Metro Code Section 5.05.035 License to Use Non-System Facility is amended as set forth in the attached Exhibit B; and
3. That this Ordinance being necessary for the health, safety, and welfare of the Metro area because an emergency is declared to exist and this Ordinance shall take effect immediately, pursuant to Metro Charter Section 39(1).

ADOPTED by the Metro Council this _____ day of _____ 2008.

WITHDRAWN

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

Exhibit A to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.030 Designated Facilities of the System

5.05.030 Designated Facilities of the System

(a) Designated Facilities. The following described facilities constitute the designated facilities of the system, the Metro Council having found that said facilities meet the criteria set forth in Metro Code Section 5.05.030(b):

- (1) Metro South Station. The Metro South Station located at 2001 Washington, Oregon City, Oregon 97045.
- (2) Metro Central Station. The Metro Central Station located at 6161 N.W. 61st Avenue, Portland, Oregon 97210.
- (3) Facilities Subject to Metro Regulatory Authority. All disposal sites and solid waste facilities within Metro which are subject to Metro regulatory authority under Chapter 5.01 of the Metro Code.
- (4) Lakeside Reclamation (limited purpose landfill). The Lakeside Reclamation limited purpose landfill, Route 1, Box 849, Beaverton, Oregon 97005, subject to the terms of an agreement between Metro and the owner of Lakeside Reclamation authorizing receipt of solid waste generated within Metro only as follows:
 - (A) As specified in an agreement entered into between Metro and the owner of the Lakeside Reclamation Landfill authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.

Exhibit A to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.030 Designated Facilities of the System

- (5) Hillsboro Landfill (limited purpose landfill).
The Hillsboro Landfill, 3205 S.E. Minter Bridge Road, Hillsboro, Oregon 97123, subject to the terms of an agreement between Metro and the owner of Hillsboro Landfill authorizing receipt of solid waste generated within Metro only as follows:
- (A) As specified in an agreement entered into between Metro and the owner of the Hillsboro Landfill authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.
- (6) Columbia Ridge Landfill. The Columbia Ridge Landfill owned and operated by Waste Management Disposal Services of Oregon, Inc. (dba Oregon Waste Systems, Inc.), subject to the terms of the agreements in existence on November 14, 1989, between Metro and Oregon Waste Systems, Inc., and between Metro and Jack Gray Transport, Inc., including any subsequent amendments thereto. In addition, Columbia Ridge Landfill may accept solid waste generated within Metro:
- (A) As specified in an agreement entered into between Metro and Waste Management Disposal Services of Oregon, Inc., authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.

Exhibit A to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.030 Designated Facilities of the System

- (7) Roosevelt Regional Landfill. The Roosevelt Regional Landfill, located in Klickitat County, Washington. Roosevelt Regional Landfill may accept solid waste generated within Metro only as follows:
- (A) As specified in an agreement entered into between Metro and Regional Disposal Company authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.
- (8) Finley Buttes Regional Landfill. The Finley Buttes Regional Landfill, located in Morrow County, Oregon. Finley Buttes Regional Landfill may accept solid waste generated within Metro only as follows:
- (A) As specified in an agreement entered into between Metro and Finley Buttes Landfill Company authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.
- (9) Coffin Butte Landfill. The Coffin Butte Landfill, located in Benton County, Oregon, which may accept solid waste generated within Metro only as follows:

Exhibit A to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.030 Designated Facilities of the System

- (A) As specified in an agreement entered into between Metro and the owner of the Coffin Butte Landfill authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.
- (10) Wasco County Landfill. The Wasco County Landfill, located in The Dalles, Oregon, which may accept solid waste generated within Metro only as follows:
- (A) As specified in an agreement entered into between Metro and the owner of the Wasco County Landfill authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.
- (11) Cedar Grove Composting, Inc. The Cedar Grove Composting, Inc., facilities located in Maple Valley, Washington, and Everett, Washington. Cedar Grove Composting, Inc., may accept solid waste generated within Metro only as follows:
- (A) As specified in an agreement entered into between Metro and Cedar Grove composting, Inc., authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to Cedar Grove Composting, Inc., solid waste not specified in the agreement.
- (12) Weyerhaeuser Regional Landfill. The Weyerhaeuser Regional Landfill, located in Castle Rock, Washington, and the Weyerhaeuser Material Recovery Facility, located in Longview, Washington. The Weyerhaeuser Material Recovery

Exhibit A to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.030 Designated Facilities of the System

Facility is hereby designated only for the purpose of accepting solid waste for transfer to the Weyerhaeuser Regional Landfill. The Weyerhaeuser Regional Landfill and the Weyerhaeuser Material Recovery Facility may accept solid waste generated within Metro only as follows:

- (A) As specified in an agreement entered into between Metro and Weyerhaeuser, Inc., authorizing receipt of such waste; or
- (B) Subject to a non-system license issued to a person transporting to the Weyerhaeuser Regional Landfill or the Weyerhaeuser Material Recovery Facility solid waste not specified in the agreement.

(b) Changes to Designated Facilities to be Made by Council. From time to time, the Council, acting pursuant to a duly enacted ordinance, may remove from the list of designated facilities any one or more of the facilities described in Metro Code Section 5.05.030(a). In addition, from time to time, the Council, acting pursuant to a duly enacted ordinance, may add to or delete a facility from the list of designated facilities. In deciding whether to designate an additional facility, or amend or delete an existing designation, the Council shall consider:

- (1) The degree to which prior users of the facility and waste types accepted at the facility are known and the degree to which such wastes pose a future risk of environmental contamination;
- (2) The record of regulatory compliance of the facility's owner and operator with federal, state and local requirements, including but not limited to public health, safety and environmental rules and regulations;

Exhibit A to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.030 Designated Facilities of the System

- (3) The adequacy of operational practices and management controls at the facility;
- (4) The expected impact on the region's recycling and waste reduction efforts;
- (5) The consistency of the designation with Metro's existing contractual arrangements;
- (6) The record of the facility regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement; and
- (7) Other benefits or detriments accruing to residents of the region from Council action in designating a facility, or amending or deleting an existing designation.

(c) The Chief Operating Officer is authorized to execute an agreement, or an amendment to an agreement, between Metro and a designated facility for Non-putrescible waste. Effective July 1, 2008, an existing designated facility authorized to receive non-putrescible waste shall notify Metro of its intent to seek an agreement to recover non-putrescible waste from the Metro region in accordance with subsection (g), or to only take processed non-putrescible waste from authorized facilities included in subsection (f). ~~No later than December 31, 2008,~~ ~~The~~ The Chief Operating Officer shall modify existing agreements to ensure substantial compliance with either subsection (f) or (g) of this section as appropriate. If the Chief Operating Officer and a designated facility are not able to establish an agreement by ~~November 1, 2008~~ March 1, 2009, then the Chief Operating Officer shall terminate the existing agreement following termination procedures described in the existing agreement, but no later than ~~December 31, 2008~~ June 30, 2009.

Exhibit A to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.030 Designated Facilities of the System

(d) An agreement or amendment to an agreement between Metro and a designated facility for Putrescible waste shall be subject to approval by the Metro Council prior to execution by the Chief Operating Officer.

(e) An agreement between Metro and a designated facility shall specify the types of wastes from within Metro boundaries that may be delivered to, or accepted at, the facility.

(f) An agreement between Metro and a designated facility shall not authorize the facility to accept non-putrescible waste originating or generated within Metro boundaries after ~~December 31, 2008~~June 30, 2009, unless:

- (1) Such non-putrescible waste is received from a facility that has been issued a license or franchise pursuant to Chapter 5.01 authorizing such facility to perform material recovery on non-putrescible waste;
- (2) Such non-putrescible waste is received from a designated facility that has entered into an agreement with Metro, in accordance with subsection (f) of this section, authorizing such designated facility to perform material recovery on non-putrescible waste; or
- (3) The facility has entered into an agreement with Metro, in accordance with subsection (f) of this section, authorizing the facility to perform material recovery on non-putrescible waste that has not yet undergone material recovery.

(g) An agreement between Metro and a designated facility that, after ~~December 31, 2008~~June 30, 2009, authorizes the facility to accept non-putrescible waste that has not yet

Exhibit A to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.030 Designated Facilities of the System

undergone material recovery, is not comprised of processing residual, and originated or was generated within Metro boundaries shall:

- (1) Require such designated facility to perform material recovery on such waste; and
- (2) Demonstrate, in a manner that can be verified and audited, that such processing achieves material recovery substantially comparable to that required of in-region material recovery facilities by Metro Code subsections 5.01.125(a) and (b) by either:
 - (A) Meeting such material recovery requirements for all non-putrescible waste received at the facility, whether or not from within Metro boundaries; or
 - (B) Keeping all non-putrescible waste received from within Metro boundaries segregated from other waste throughout processing, keeping processing residual from such processing segregated from other solid waste after processing, and meeting such material recovery requirements for all such non-putrescible waste.
- (3) Demonstrate, in a manner that can be verified and audited, that such facility substantially complies with (A) the performance goals described in Metro Code Sections 5.01.067(i) (as amended by Section 1 of Metro Ordinance No. 07-1138) and 5.01.075(c) (as amended by Section 2 of Metro Ordinance No. 07-1138), and (B) the performance standards, design requirements, and operating requirements applicable to licensed and

Exhibit A to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.030 Designated Facilities of the System

franchised material recovery facilities operating within the Metro region and adopted by Metro as administrative procedures pursuant to Metro Code Section 5.01.132 (as amended by Section 3 of Metro Ordinance No. 07-1138).

Exhibit B to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.035 License to Use Non-System Facility

5.05.035 License to Use Non-System Facility

A waste hauler or other person may transport solid waste generated within Metro to, or to utilize or cause to be utilized for the disposal or other processing of any solid waste generated within Metro, any non-system facility only by obtaining a non-system license in the manner provided for in this Section 5.05.035. Applications for non-system licenses for Non-putrescible waste, Special waste and Cleanup Material Contaminated By Hazardous Substances shall be subject to approval or denial by the Chief Operating Officer. Applications for non-system licenses for Putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council.

(a) Application for License. Any waste hauler or other person desiring to obtain a non-system license shall make application to the Chief Operating Officer, which application shall be filed on forms or in the format provided by the Chief Operating Officer. Applicants may apply for a limited-duration non-system license which has a term of not more than 120 days and is not renewable. An application for any non-system license shall set forth the following information:

- (1) The name and address of the waste hauler or person making such application;
- (2) The location of the site or sites at which the solid waste proposed to be covered by the non-system license is to be generated;
- (3) The nature of the solid waste proposed to be covered by the non-system license;
- (4) The expected tonnage of the solid waste proposed to be covered by the non-system license:

Exhibit B to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.035 License to Use Non-System Facility

- (A) The total tonnage if the application is for a limited duration non-system license; or
- (B) The annual tonnage if the application is for any other non-system license;
- (5) A statement of the facts and circumstances which, in the opinion of the applicant, warrant the issuance of the proposed non-system license;
- (6) The non-system facility at which the solid waste proposed to be covered by the non-system license is proposed to be transported, disposed of or otherwise processed; and
- (7) The date the non-system license is to commence; and, for limited duration non-system licenses, the period of time the license is to remain valid not to exceed 120 days.

In addition, the Chief Operating Officer may require the applicant to provide, in writing, such additional information concerning the proposed non-system license as the Chief Operating Officer deems necessary or appropriate in order to determine whether or not to issue the proposed non-system license.

An applicant for a non-system license that authorizes the licensee to transport non-putrescible waste that has not yet undergone material recovery, is not processing residual, and originated or was generated within Metro boundaries shall provide documentation that the non-system facility is in substantial compliance with the facility performance standards, design requirements and operating requirements adopted pursuant to Metro Code Chapter 5.01.132 for non-putrescible waste material recovery facilities. Any applicant or licensee that is authorized or seeks to deliver non-putrescible waste to a non-

Exhibit B to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.035 License to Use Non-System Facility

system facility after ~~December 31, 2008~~June 30, 2009, must demonstrate that the non-system facility will be in substantial compliance with the material recovery requirements in Metro Code Section 5.01.125.

(b) Every application shall be accompanied by payment of an application fee, part of which may be refunded to the applicant in the event that the application is denied, as provided in this section. The following application fees shall apply:

- (1) For an application for a limited duration non-system license, the application fee shall be two hundred fifty dollars (\$250), no part of which shall be refunded to the applicant in the event that the application is denied.
- (2) For an application for a non-system license seeking authority to deliver no more than 500 tons of solid waste per year to a non-system facility, the application fee shall be five hundred dollars (\$500), two hundred fifty dollars (\$250) of which shall be refunded to the applicant in the event the application is denied. For an application for a change in authorization to an existing non-system license authorizing the delivery of no more than 500 tons of solid waste per year to a non-system facility, the application fee shall be two hundred fifty dollars (\$250); provided, however, that if the result of granting the application would be to give the applicant the authority to deliver more than 500 tons of solid waste per year to a non-system facility, the application fee shall be \$500, two hundred fifty dollars (\$250) of which shall be refunded to the applicant in the event the application is denied. An application for renewal of a non-system license authorizing the delivery of no more than 500 tons of solid waste

Exhibit B to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.035 License to Use Non-System Facility

per year to a non-system facility shall be one hundred dollars (\$100).

- (3) For all applications for a non-system license seeking authority to deliver more than 500 tons of solid waste per year to a non-system facility, whether they be new applications or applications for the renewal of existing licenses, the application fee shall be one thousand dollars (\$1,000), five hundred dollars (\$500) of which shall be refunded to the applicant in the event the application is denied. For an application for a change in authorization to an existing non-system license authorizing the delivery of more than 500 tons of solid waste per year to a non-system facility, the application fee shall be two hundred fifty dollars (\$250).
- (4) For an application for a non-system license seeking to deliver solid waste that is exempt from paying the Metro fees described in Section 5.01.150, the application fee shall be one hundred dollars (\$100) as well as a fifty dollar (\$50) fee to either renew or amend such licenses.

(c) Factors to Consider To Determine Whether to Issue Non-System License. The Chief Operating Officer or Metro Council, as applicable, shall consider the following factors to the extent relevant to determine whether or not to issue a non-system license:

- (1) The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;
- (2) The record of regulatory compliance of the non-system facility's owner and operator with federal, state and local requirements, including

Exhibit B to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.035 License to Use Non-System Facility

but not limited to public health, safety and environmental rules and regulations;

- (3) The adequacy of operational practices and management controls at the non-system facility;
- (4) The expected impact on the region's recycling and waste reduction efforts;
- (5) The consistency of the designation with Metro's existing contractual arrangements;
- (6) The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements, including but not limited to public health, safety and environmental rules and regulations; and
- (7) Such other factors as the Chief Operating Officer deems appropriate for purposes of making such determination.

(d) Timetables To Determine Whether to Issue a Non-System License.

- (1) Non-system licenses for Non-putrescible waste, Special waste, Cleanup Material Contaminated By Hazardous Substances, or any other solid waste other than Putrescible waste.
 - (A) New licenses. The Chief Operating Officer shall determine whether or not to issue the non-system license and shall inform the applicant in writing of such determination

Exhibit B to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.035 License to Use Non-System Facility

within 60 days after receipt of a new completed application, including receipt of any additional information required by the Chief Operating Officer in connection therewith.

- (B) License renewals. An application for renewal of an existing non-system license shall be substantially similar to the existing non-system license with regard to waste type, quantity and destination. A holder of a non-system license shall submit a completed application to renew the license at least 60 days prior to the expiration of the existing non-system license, including receipt of any additional information required by the Chief Operating Officer in connection therewith. The Chief Operating Officer shall determine whether or not to renew the non-system license and shall inform the applicant in writing of such determination prior to the expiration of the existing non-system license. The Chief Operating Officer is not obligated to make a determination earlier than the expiration date of the existing license even if the renewal request is filed more than 60 days before the existing license expires.
- (2) Non-system licenses for Putrescible waste. The Chief Operating Officer shall formulate and provide to the Council recommendations regarding whether or not to issue or renew a non-system license for Putrescible waste. If the Chief Operating Officer recommends that the non-system license be issued or renewed, the Chief Operating Officer shall recommend to the council specific conditions of the non-system license.

Exhibit B to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.035 License to Use Non-System Facility

- (A) New licenses. The Council shall determine whether or not to issue the non-system license and shall direct the Chief Operating Officer to inform the applicant in writing of such determination within 120 days after receipt of a completed application for a non-system license for Putrescible waste, including receipt of any additional information required by the Chief Operating Officer in connection therewith.
- (B) License renewals. An application for renewal of an existing non-system license shall be substantially similar to the existing non-system license with regard to waste type, quantity and destination. A holder of a non-system license shall submit a completed application to renew the license at least 120 days prior to the expiration of the existing non-system license, including receipt of any additional information required by the Chief Operating Officer in connection therewith. The Council shall determine whether or not to renew the non-system license and shall inform the applicant in writing of such determination prior to the expiration of the existing non-system license. The Council is not obligated to make a determination earlier than the expiration date of the existing license even if the renewal request is filed more than 120 days before the existing license expires.
- (3) At the discretion of the Chief Operating Officer or the Council, the Chief Operating Officer or Council may impose such conditions on the issuance of a new or renewed non-system license

Exhibit B to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.035 License to Use Non-System Facility

as deemed necessary or appropriate under the circumstances.

(e) Issuance of Non-System License; Contents. Each non-system license shall be in writing and shall set forth the following:

- (1) The name and address of the waste hauler or other person to whom such non-system license is issued;
- (2) The nature of the solid waste to be covered by the non-system license;
- (3) The maximum total, weekly, monthly or annual quantity of solid waste to be covered by the non-system license;
- (4) The non-system facility or facilities at which or to which the solid waste covered by the non-system license is to be transported or otherwise processed;
- (5) The expiration date of the non-system license, which date shall be not more than:
 - (A) 120 days from the date of issuance for a limited-duration non-system license;
 - (B) Three years from the date of issuance for a new full-term license; and
 - (C) Two years from the date of issuance of a renewed full-term non-system license.
- (6) Any conditions imposed by the Chief Operating Officer as provided above which must be complied with by the licensee during the term of such non-system license, including but not limited to

Exhibit B to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.035 License to Use Non-System Facility

conditions that address the factors in Section 5.05.035(c).

(f) Requirements to be met by License Holder. Each waste hauler or other person to whom a non-system license is issued shall be required to:

- (1) Maintain complete and accurate records regarding all solid waste transported, disposed of or otherwise processed pursuant to the non-system license, and make such records available to Metro or its duly designated agents for inspection, auditing and copying upon not less than three days written notice from Metro;
- (2) Report in writing to Metro, not later than the 15th day of each month, commencing the 15th day of the month following the month in which the non-system license is issued and continuing through the 15th day of the month next following the month in which the non-system license expires, the number of tons of solid waste transported, disposed or otherwise processed pursuant to such non-system license during the preceding month; and
- (3) Pay to Metro, not later than the 15th day of each month, commencing the 15th day of the month following the month in which the non-system license is issued and continuing through the 15th day of the month next following the month in which the non-system license expires, a fee equal to the Regional System Fee multiplied by the number of tons (or fractions thereof) of solid waste transported, disposed or otherwise processed pursuant to such non-system license during the preceding month.
- (4) When solid waste generated from within the Metro boundary is mixed in the same vehicle or container with solid waste generated outside the Metro boundary, the load in its entirety shall be

Exhibit B to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.035 License to Use Non-System Facility

reported to Metro by the non-system licensee as having been generated within the Metro boundary and the Regional System Fee and Excise Tax shall be paid on the entire load unless the licensee provides Metro with documentation regarding the total weight of the solid waste in the vehicle or container that was generated within the Metro boundary, or unless Metro has agreed in writing to another method of reporting.

(g) Failure to Comply with Non-System License. In the event that any waste hauler or other person to whom a non-system license is issued fails to fully and promptly comply with the requirements set forth in Section 5.05.035(e) above or any conditions of such non-system license imposed pursuant to Section 5.05.035(c), then, upon discovery of such non-compliance, the Chief Operating Officer shall issue to such licensee a written notice of non-compliance briefly describing such failure. If, within 20 days following the date of such notice of non-compliance or such longer period as the Chief Operating Officer may determine to grant as provided below, the licensee fails to:

- (1) Demonstrate to the satisfaction of the Chief Operating Officer either that the licensee has at all times fully and promptly complied with the foregoing requirements and the conditions of such non-system license or that the licensee has fully corrected such non-compliance; and
- (2) Paid in full, or made arrangements satisfactory to the Chief Operating Officer for the payment in full of, all fines owing as a result of such non-compliance;

Then, and in such event such non-system license shall automatically terminate, effective as of 5:00 p.m. (local time) on such 20th day or on the last day of such longer period as the Chief Operating Officer may determine to grant as provided

Exhibit B to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.035 License to Use Non-System Facility

below. If, in the judgment of the Chief Operating Officer, such non-compliance cannot be corrected within such 20-day period but the licensee is capable of correcting it and within such 20-day period diligently commences such appropriate corrective action as shall be approved by the Chief Operating Officer, then and in such event such 20-day period shall be extended for such additional number of days as shall be specified by the Chief Operating Officer in writing, but in no event shall such the local period as so extended be more than 60 days from the date of the notice of non-compliance.

(h) Notwithstanding any other provision in this section, and unless contrary to any other applicable law, the Chief Operating Officer shall not accept any application for a new non-system license for mixed putrescible solid waste until September 2, 2008. Neither the Chief Operating Officer nor the Metro Council shall issue a new non-system license for mixed putrescible solid waste whose term commences before January 1, 2009.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 08-1196, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.05 SOLID WASTE FLOW CONTROL TO ENSURE THAT ALL OF THE REGION'S NON-PUTRESCIBLE WASTE UNDERGOES MATERIAL RECOVERY BEFORE DISPOSAL, AND DECLARING AN EMERGENCY.

Date: October 13, 2008

Prepared by: Jacob Brennan

BACKGROUND

On August 16, 2007, the Metro Council approved Ordinance No. 07-1147B adopting the Enhanced Dry Waste Recovery Program (EDWRP). The purpose and intent of EDWRP is to achieve higher recovery levels beginning January 1, 2009, to meet state-mandated recovery goals. By adopting Ordinance No. 08-1196, the Metro Council will amend the effective date of EDWRP for solid waste transported outside the Metro Region so that the amended effective date is consistent with the EDWRP enforcement date for solid waste facilities located inside the Metro Region.

Recent discussions have revealed ambiguity about the January 1, 2009 date. We propose this amendment to eliminate uncertainty about the effective date of EDWRP and the timing for enforcement of EDWRP's performance standard.

Specifically, Metro Code Section 5.01.125 requires that, effective January 1, 2009, a material recovery facility located inside the Metro Region shall, among other things, process non-putrescible waste to a 15% material recovery performance standard. EDWRP's ordinance recitals and staff report suggest a six-month period, beginning January 1, 2009, for these facilities to meet EDWRP's 15% material recovery performance standard. While the Metro Code does not explicitly provide a grace period on enforcement of the performance standard, Metro will not enforce the 15% material recovery performance standard on in-region facilities until July 1, 2009.

The Metro Code, however, does not contain a similar six-month grace period for facilities located outside the Metro Region to meet EDWRP's 15% material recovery performance standard. Metro does not regulate facilities located outside the Metro Region. Instead, under Metro Code Section 5.05.030, Metro enters into a designated facility agreement ("DFA") with an out-of-region facility in which the facility receives certain types of solid waste generated in the Metro Region and agrees to collect and remit Regional System Fee and Excise Tax on that waste. EDWRP amended Metro Code Sections 5.05.030 (c), (f), and (g) to require that after December 31, 2008, a DFA shall require the facility to accept processing residual or include provisions requiring material recovery to the standard applicable to in-region facilities. Because

Metro's relationship with an out-of-region facility is contractual rather than regulatory, there is no separate, later enforcement date for these facilities.

Similarly, for waste haulers that seek to transport Metro Region waste to a non-system facility located outside the Metro Region, Metro Code Section 5.05.035 (c) requires the hauler to demonstrate that the non-system facility will be in compliance with the 15% material recovery performance standard. Again, there is no separate, later enforcement date.

Adopting Ordinance No. 08-1196, which provides a June 30, 2009 EDWRP effective date for non-putrescible waste transported outside the Metro Region to designated facilities or by non-system license, will allow the Metro Council to apply EDWRP consistently to facilities located inside and outside the Metro Region.

ANALYSIS/INFORMATION

1. **Known Opposition:** Staff anticipates that neighbors of Lakeside Reclamation Landfill who have historically favored its closure may oppose any extension. The extension may generate unknown reactions from other solid waste operators who are preparing for changes made in Ordinance No. 07-1147B under Metro Code Chapters 5.01, 5.02, and 7.01. Hillsboro Landfill, Inc., which applied for a variance from the January 1, 2009 date, is not anticipated to oppose the amendment.
2. **Legal Antecedents:** ORS 268.317, Metro Code Chapters 5.01, 5.02, 5.05, 7.01 and the Metro Charter.
3. **Anticipated Effects:** The economic and environmental effects for Ordinance No. 08-1196 are anticipated to resemble effects discussed in April 26, 2007 Staff Report regarding Ordinance No. 07-1147B. These effects would be delayed by six months. Please read attached Staff Report Ordinance No. 07-1147B for additional information.
4. **Budget Impacts:** The budget impact anticipated for Ordinance No. 08-1196, resembles the budget impact detailed in April 26, 2007 Staff Report regarding Ordinance No. 07-1147B. The impact would be delayed by six months. Please read attached Staff Report Ordinance No. 07-1147B for additional information.

RECOMMENDED ACTION

Councilor Rod Park recommends that the Metro Council consider approving Ordinance 08-1196.