Metro Solid Waste Advisory Committee (SWAC)
Meeting Minutes
Meeting, May 17, 2000

Members / *Alternates
Councilor Ed Washington, Chair
Ralph Gilbert, East County Recycling (disposal sites)
David White, Oregon Refuse & Recycling Association (at-large haulers)
Steve Schwab, Sunset Garbage Collection (Clackamas County haulers)
John Lucini, SP Newsprint (recycling end users)
Merle Irvine, Willamette Resources, Inc. (disposal sites)
Tanya Schaefer, Multnomah County citizen
JoAnn Herrigel, City of Milwaukie (Clackamas County cities)
Susan Keil, City of Portland
Dave Hamilton, Norris & Stevens (business ratepayers)
Mike Misovetz, Clackamas County citizen
Glenn Zimmerman, Wood Waste Reclamation (composters)
Jeff Murray, Far West Fibers (recycling facilities)
Sarah Jo Chaplen, City of Hillsboro (Washington County cities)
Mike Leichner, Pride Disposal (Washington County haulers)
Lynne Storz, Washington County
Rick Winterhalter, Clackamas County
*Tam Driscoll, City of Gresham (East Multnomah County and cities)
Mike Miller, Gresham Sanitary Service (Multnomah County haulers)
*Dean Kampfer, Waste Management (disposal sites)
Tom Brewer, Tanasacres Nursey (business ratepayers)

Non-voting Members Present
Chris Taylor, Oregon Department of Environmental Quality
Terry Petersen, REM
Kathy Kiwala, Clark County, Washington
Doug DeVries, STS

Metro and Guests
Councilor David Bragdon
Councilor Rod Park
Leann Linson, REM
Doug Anderson, REM
Meg Lynch, REM
Tom Chaimov, REM
John Houser, Metro Council
Vince Gilbert, East County Recycling
Easton Cross, Easton Cross Consulting
Greg Nokes, The Oregonian
Doug Drennen, DCS
Steve Kraten, REM
Diana Godwin, Allied/BFI
Vicki Kolberg, REM
Tim Raphael, Celilo Group
Eric Merrill, Waste Connections
Joe Wonderlick, Merina, McCoy & Co.
Adam Winston, Waste Management, Inc.
Cherie Yasami, ASD
Ray Phelps, Ray Phelps Consultants
Bill Metzler, REM
Tom Wyatt, Allied/BFI
Michele Adams, REM
Roy Brower, REM
Chuck Geyer, REM
Bob Hillier, REM

Loreen Mills, City of Tigard
Jim Watkins, REM
Kent Inman, Columbia Resource
Tom Imdieke, City of Tigard
Dean Large, Columbia Resource

Call to Order and Announcements
There were no announcements.

Approval of the Minutes
A motion was made and seconded to approve the April 12th and April 19th minutes. The committee voted unanimously to approve both sets of minutes.

Director's Update
Mr. Petersen asked Ms. Storz to provide a brief update on the recent court case in Washington County. Ms. Storz said Washington County and the City of Beaverton were the defendants in a lawsuit brought by AGG Enterprises on violation of the Commerce Clause and violation of the Equal Protection Clause. The trial began in early March; Judge Garr M. King, U.S. District Court, issued his opinion in early April. King found that the defendants were not in violation of the Commerce clause, so local government still has the ability to regulate; King did find that the defendants' ordinances were preempted by FAAAA. (No decision was made on the Equal Protection Clause.) King issued the permanent injunction in early May. Ms. Storz offered copies of the injunction (see Attachment A).

Ms. Storz said the court's decision preempts Washington County and the City of Beaverton from regulating "the price, route or service of the plaintiff in transporting source-separated loads of recyclable materials and mixed loads containing solid waste and recyclable materials for single-generator non-residential accounts to manufacturers, recycling facilities or materials recovery facilities (but not to a transfer station or landfill)."

Mr. Petersen said that there was also a ruling May 10th on the lawsuit that Waste Connections had brought against Metro, wherein Waste Connections argued that Metro acted illegally in restricting interstate commerce by preventing the flow of waste from the Portland area to Clark County. Metro argued that Metro was not in violation of the Commerce Clause and that Waste Connections had failed to demonstrate that it had actually been harmed. Judge Donald C. Ashmanskas found that Metro was not guilty. Mr. Petersen offered copies of the ruling (see Attachment B).

In other information, Metro is hosting a Hazardous Waste Conference May 21- 26 at Edgefield Manor in Troutdale. Training for hazardous waste employees will be provided, as well as information sessions on hazardous waste topics and issues.

Chair Washington briefly commented about an article regarding Metro enhancement funds that were not spent at the facility in Forest Grove.

Transfer Station Service Plan
Mr. Anderson stated that he is asking for a recommendation from the SWAC on the concept and wording of a proposal, which would be forwarded to Council within the next month, for recommendations regarding the implementation of plans for new regional transfer stations.

Mr. Anderson said the ruling on the AGG case might have some effect on what Metro will do, with regard to the definition of Metro Regional and Local Transfer Stations (small and large transfer stations). He said the language of the permanent injunction says that if loads are hauled to a transfer station, they are not counted as property. Mr. Anderson asked the committee for a discussion about the implication of Metro proceeding forward with the regulatory scheme that labels solid waste facilities as "transfer stations," when in fact some of them may have some dry waste recovery components in them.

Mr. Anderson said the basic recommendations of the subcommittee are to:

- Change the framework of the Solid Waste Management Plan to allow Metro to consider authorizing new transfer stations.
- Require material recovery at transfer stations, which includes (a) establishing 25% recovery rate from dry waste, and (b) extending that minimum recovery rate to other solid waste facilities, including materials recovery facilities, and disallowing transfer to other facilities not under the 25% recovery umbrella.
- Require regional transfer stations to provide full service to the public, i.e., accepting all public customers, providing drop-site collection for recyclables and offer household hazardous waste collection.
- Distinguish among obligations and entry criteria for reloads, local transfer stations and regional transfer stations.
- Maintain existing recovery levels and increase efforts toward achieving state recovery goal.

Mr. Anderson said that if Council approves the above suggested language, REM staff will conduct research to allow enforcement, audit and inspection of the various types of facilities described.

Mr. Anderson asked the committee to discuss the five recommendations and vote whether it agreed or not to the concept or the draft wording of either the plan or the code.

Recommendation No. 1. Allow Metro to authorize additional transfer stations. The subcommittee concluded that the region as a whole still has enough capacity, but accessibility to transfer sites continues to be a problem. Reloads, primarily due to siting problems, are probably not a solution to the accessibility issue. Additional transfer stations would be okay if they provided a net benefit to the regional system. The commitment to materials recovery was reiterated.

Mr. Gilbert commented that Recommendation No. 1 should be moved to No. 5. Mr. White said the subcommittee suggested that if No. 1 did not go forward, the rest of the recommendations were a moot point.

Chair Washington asked for a show of hands to signify that everyone from the subcommittee is in agreement. Mr. Anderson asked if the show of hands could be deferred until all of the recommendations have been presented. Chair Washington agreed.

Recommendation No. 2. *Establish minimum recovery standards at transfer stations and materials recovery facilities.* Subcommittee members were concerned about the potential for existing MRFs to convert from recovery to disposal. Post-collection recovery in the region accounts for 10% regional recovery, the balance being source-separated or curbside recycling. The solution to the concern was to require, as an obligation of becoming a regional transfer station, 25% minimum recovery from dry waste handled by both local transfer stations and materials recovery facilities.

Mr. Vince Gilbert commented that the above language was severely limiting the admission of a "new" transfer station and allowing only an existing facility to become a regional transfer station. Mr. Anderson replied that because the accessibility problem is not being addressed by the current plan, we are saying let's take this approach, not that reloads should not or will never happen.

Mr. Anderson asked for a show of hands as to acknowledgement of the concept for Recommendation No. 2.

Mr. Ralph Gilbert recommended that language be added to the code indicating enforcement and penalties for regional facilities not meeting the 25% minimum recovery. Mr. Anderson replied that this was a consideration currently being recommended under Recommendation No. 5, the details to be planned after Council approval.

Mr. White asked if the Metro facilities were still not required to meeting the 25% minimum recovery level, because they are disposal of last resort. He continued that since all regional transfer stations would be prohibited from rejecting any load, this may become a hardship. Mr. Anderson replied that the sense of the subcommittee was that other transfer stations would be vertically integrated (with collection) and could direct poor loads to Metro transfer stations.

Mr. Leichner said he understands Metro's problems with regard to accepting any and all loads, but he believes that all facilities, including Metro facilities, should be required to meet the same criteria. He said we shouldn't grandfather in some and not others.

Mr. Vince Gilbert said Metro Central and South should be grandfathered in, with regard to requiring the same level of recovery. If not, then you have the rulemaker and the police competing with you.

Mr. Ralph Gilbert said that as long as the Metro facilities are designed to handle garbage only, then grandfather them in. If the facilities are severely modified, then apply the same requirements to them.

Mr. Irvine said that he agrees with Mr. Vince Gilbert. He could see Metro as policeman/regulator competing with other facilities for materials.

Mr. Vince Gilbert said that we should grandfather Forest Grove in, too.

Mr. Kampfer commented that Metro Central is already recycling as much as possible; Metro South recycles as much as the facility accommodates, but the facility was not designed to do that, nor was Forest Grove. Grandfathering these facilities is the only answer.

Mr. Miller commented that he has reservations about grandfathering Metro facilities with regard to the 25% minimum recovery.

Mr. White said that he believed the subcommittee made a trade-off – removing the 50,000-ton cap delivered to transfer stations in exchange for a mandatory 25% recovery of materials passing through a facility. He said the benefit to the hauler is that they will have access to a closer transfer station so they will save in travel time and fuel. He said this is one solution that covers multiple goals, which may not be perfect, but it is a start.

Mr. Petersen added that Metro's goal is to try to meet the 25% recovery level at , and certainly Central is already towards that goal. He said the recovery is already at 7% of all waste.

Chair Washington said he believes he is hearing a majority of the committee agreeing to Recommendation No. 2, but Mr. Miller and Mr. Leichner do have some concerns that need to be looked into.

Mr. White said he would be comfortable with a yes vote with regard to Recommendation No. 2, with the proviso that we review the situation in a year. If the three regional transfer stations are not meeting the 25% recovery rate at that time, we ask why and how can they change things to meet that goal.

Chair Washington said he wanted a footnote to the Council asking that we come back and visit this issue in a year and see just where Metro's transfer stations stand with regard to the 25% minimum recovery to review that it is doing what it was designed to do.

Chair Washington stated that what was on the table was a proposal that all solid waste facilities have mandatory 25% recovery rate from the dry side, with the exception that Metro South and Metro Central not be explicitly subjected to that requirement and that Forest Grove be treated as Metro facility until its franchise is up for renewal (in about 8 years). A policy statement will accompany this mandate requiring a review of this plan after one year.

The committee, by a show of hands, agreed to this policy statement.

Recommendation No.3. Require regional transfer stations to commit to providing full service to the public. If Metro authorizes a franchise to exceed the 50,000-ton-cap, that facility will take all customers, accommodate hazardous waste collection (events run by Metro) and maintain a drop site for recycling.

A show of hands by the committee affirmed agreement with this recommendation.

Recommendation No. 4. Distinguish among entry obligations and entry criteria for reloads, local transfer stations and regional transfer stations. Because Metro Code does not directly address the responsibilities of large regional transfer facilities, the subcommittee recommended that Metro be very clear that at a certain scale, a level of regulations and obligations attach to the facility. A reload (as a vehicle-to-vehicle feeder to the regional system) is basically exempt from Metro regulation. A local transfer station, is limited to 50,000 tons or fewer per year disposal, and falls within the 25% mandatory recovery requirement. These local transfer stations are not required to, but may accept waste from the public. Regional transfer stations are full-service facilities, with no limits on disposal and with full public obligations (consistent at least with Metro Central and Metro South). The rules and regulations are to be set forth precisely and clearly in the Code.

Chair Washington asked why a "local transfer station" is required to meet the 25% mandatory recovery, since it is not written in the document, is it just understood?

Mr. Anderson directed Chair Washington to the language in the agenda packet material, on page13, (c) . . ."In addition to the requirements of (a) in this subsection . . .," where you are directed to an asterisk reciting the requirement of a 25% mandatory recovery.

Mr. White observed that it looks to him as though the definitions have missed a multiple-hauler small facility, whose loads are reloaded and only go to a transfer station.

Mr. Anderson said he would try to place language in the definitions section that addresses that area. He committed staff to work with Mr. White and Tri-C to clarify the language.

With the exception of the question of whether a reload can be exempt and still have multiple haulers, SWAC agreed with Recommendation No. 4. The committee agreed.

Recommendation No. 5. Maintain existing recovery and increase new recovery. The subcommittee discussed the inclusion of oversight auditing inspection by Metro to ensure that obligations and responsibilities are being met. Language currently says if the Council passes these ordinances, Metro will work with the subcommittee to develop the necessary language for this action, pending authorization by the Council for the above four recommendations.

Mr. Anderson asked SWAC members to show their hands if that was an acceptable approach for Recommendation No. 5. SWAC agreed.

Mr. Anderson asked for a general recommendation (or motion) from the committee on the above-set of five recommendations coming from the subcommittee, incorporating the clarifications above made, as the committee just discussed them.

Mr. Winterhalter reminded the committee that we are defining transfer stations, which have a very distinct meaning potentially in the AGG permanent injunction language. REM staff needs to think through that implication, and that the subcommittee meet with regard to

Recommendation No. 4's language. This will be a parallel process with moving the recommendations.

Mr. Kampfer made a motion that the committee agree to the concept of the proposed recommendations, and the subcommittee will further define the four facility definitions as they have been discussed above. The motion was seconded by Mr. Winterhalter. The committee voted unanimously in favor of the motion.

Mr. Irvine requested that a special meeting of the SWAC be held immediately before the next Council meeting, because if the schedule for approval of the recommendations was followed, there would be no SWAC input before final approval by the Council on June 15th.

Excise tax

Councilor Park stated that based on the input that was received, some technical amendments were made to the ordinance and he and Mr. Houser would like to present them to the Committee. He said the final draft is still forthcoming, which if approved today will be moved forward through the Council process.

Mr. Houser distributed the revised ordinance (Attachment C) and a memo describing amendments to the ordinance (Attachment D).

Chair Washington asked for five minutes to allow the committee members to read the proposed amendments.

The first amendment clarifies the allocation and use of any tax overcollection as a result of the change in the excise tax. There will be a three-part element to the allocation and use procedure: (1) Set the maximum account balance not to exceed 10% of total excise tax collections for the two most recent fiscal years. The account would be structured with the same kind of potential protection to Metro's General Fund that the Rate Stabilization Account provides to the Solid Waste Tip Fee. Expenditures from the account require Council Approval. (2) Any additional overcollections would be returned, as an additional excise tax credit, to facilities with 45% recovery. The total credit to a facility could not exceed the total amount of its total tax liability. (3) If there still remains an overcollection, those additional monies will be placed in the account created under Section 5 of the ordinance.

Mr. Murray commented that the committee had recommended that overcollection monies might be used for recycling-type programs within the agency.

Councilor Park commented that the amendment described was to eliminate any possibility of creating a perceived "slush fund" by the Council. He said mandating that any remaining monies be placed into the fund closes the loop, and ensures that any further spending of the fund would be brought before the Council in a public forum.

Mr. Murray replied that he was simply making the point that the committee had made a recommendation that any extra funds be used for additional recycling activities. Mr. Houser commented that Mr. Murray may not be aware that the Council, in review of next year's funding

for the REM department, recommended additional levels of funding for various kinds of recycling and waste reduction programs. He said that among those was a recommendation to give authorization to spend up to the full currently allocated amount in the Business Recycling Business Assistance Program for additional potential grants, raising that spending authorization from $250,000 to $500,000. An additional $300,000 was included in the REM budget to fund a variety of pilot programs based on the initiatives that the organics, commercial and C&D work-groups proposed, thereby providing closer to a 100% funding level for those proposals. He said those were all taken out of existing solid waste resources, which were adequate to fund these programs. The Council also created an additional Senior Management Analyst position specifically for the purpose of working in the area of market development.

Councilor Park said if you have a "downfall", you need to have something on the General Fund side of the firewall to be able to backfill the shortfall, if it is on the solid waste side of the firewall, we can't convert those dollars into a general fund purpose without creating an excise tax first. That is why you have to have two funds on each side of the firewall in order to work within the procedures.

Mr. White said he understands the description for a) in the memo, and he also understands the need for b), but he seems to recall that SWAC had talked about an overcollection, using that as an offset against the next year's excise tax, which keeps Metro whole, but at some point, the people (customers) that are paying the "overage" in the excise tax, will get that money back. Sort of like the income tax credit, if you collect too much, you get some back.

Councilor Park said it would be a huge undertaking to try to predict how or when we will collect too much in excise tax. He said he viewed SWAC's job as being watchdogs to direct the Council to re-examine this. He believes it will take two or three years before we will need to look at it again.

There was continued discussion with regard to c) of the new amendment to the excise tax ordinance. Although SWAC basically agreed that the excess tax (if any) should stay within the purview of the "solid waste" finances, members were not in agreement with the way excess tax funds would be allocated. Among the suggestions were that excess funds should be spent to lower the next year's excise tax, used to enhance the credits returned to MRFs when they reach the upper levels of recycling, and used for additional recycling programs.

Councilor Park said he would like to be able to do all of the things the committee is suggesting, but since the future as yet is unpredictable, he is suggesting the committee try the ordinance as drafted for at least the next year and then re-evaluate the process. He would like to see where the economy is going to take it.

Mr. White said, that just for the record, it seems to him that what this ordinance fails to acknowledge the role of the generators or the haulers in achieving recovery, only the effort made by MRFs. He believes that haulers make choices every day working with their customers asking them to do some things that will reduce loads, or choosing to take a particular load to a particular facility that helps meet the goal. So when you say the excise tax is rolled into this fund and it goes into the facility, and it goes back into the fund, puts all our eggs into one basket. He stated

that he understands that it has an impact on the tip fee and it could drive the tip fee down. He said it implies that the generator is going to do a bad job, and there are a lot of generators who are trying really hard to recycle, and Mr. White knows his industry is trying really hard to recycle. You are putting on paper a policy that looks away from the efforts that others are making.

The testimony continued around the table with the same type of message.

Mr. Hamilton commented that Consumer Price Index adjustments have been mentioned on a couple of occasions and appear on the last page of the ordinance. He does not believe it is appropriate for an excise tax or any tax to have a CPI adjustment to it. He said the country has been lulled the past few years with very low single-digit increases in inflation, but he remembers a few years back (1980) when it was in the high double digits. He would prefer a set amount, say 3% every year, with a yearly or biannual review. He understands what the ordinance is trying to achieve, but disagrees with the ordinances built-in increases tied to the CPI.

Councilor Park replied that one of the reasons they are looking at the tax on a per-ton basis is to recognize that Metro is required by Charter to do certain things. And the Council is looking to stabilize the source for that particular fee, and at the same time, do as much as we can for recycling goals, so that the two are not in conflict. He said, as an example, if we stayed on a percentage basis and do all we can to recycle, we lessen the amount of money that Metro has available to accomplish its other Charter-mandated activities, thereby hurting our ability to accomplish those goals. Going to a set amount based upon the CPI, so that we wouldn't be "coming back to the pie," so to speak, would be our best course of action.

Chair Washington commented that his sense is that there are some overriding questions. The committee responded that was correct. Chair Washington suggested that a subcommittee of SWAC meet with Councilor Park, Mr. Houser, Mr. Petersen and himself within the next two to three days to discuss the concerns extensively and try to work them out.

Councilor Park commented that these philosophical differences are unlikely to be resolved in a separate meeting. He suggested that the committee work through the remainder of the recommendations and see if the group is comfortable enough with the package to move it ahead, recognizing that the transfer station part has to catch up with everything, and try to bring it all together. He said to Mr. White, with reference to the Council making a policy statement, that yes, Council is making a policy statement, but within the context of the rest of the RSWMP document. He said this is just one portion of how Council is dealing with it. He said we are trying to align our tax policy with what we are trying to accomplish so they are not in conflict. This is just a part of a greater portion of what we are trying to accomplish, and he said the real key is going to be recycling and the market development for those products.

Chair Washington requested the committee continue to go through the proposed ordinance.

Mr. Houser moved on to discuss Amendment No. 2. The current Metro Code provides an exemption for MRF facilities from collecting the Metro excise tax at the front door. The amendment would limit this exemption to only those types of facilities that would meet the

minimum qualifying standards for the excise tax credit in the proposed ordinance (facilities would have to reach a minimum dry waste recovery rate of 25% to qualify for the exemption).

Mr. Kampfer asked whether the excise tax was charged on the front or back door at a processing facility. Mr. Petersen answered that the excise tax, as he understands it, is a tax on users of solid waste facilities. He said Metro Code requires solid waste facilities to collect the tax from users on behalf of Metro; the exemption being discussed is one that is currently in place for facilities that do recovery, which are exempt from that requirement (i.e., their users are exempt). The facilities, however, become users when they take their residual to a landfill, where the excise tax is then collected. Therefore, the tax is collected on residual going out the back door.

Mr. Vince Gilbert stated that if a facility is recovering less than 25 percent, it's not a MRF, it's a transfer station.

Mr. Ralph Gilbert asked if, in the interest of moving ahead on the ordinance, SWAC members should show their hands.

Chair Washington asked SWAC members if they were comfortable with moving ahead. It was suggested that an extra SWAC meeting in the next two to three weeks would enable the excise tax issue to be more thoroughly discussed. Councilor Park and Chair Washington committed to such a special meeting of SWAC. The SWAC orientation session that had been planned to follow today's SWAC meeting will be postponed until a later date. The meeting was adjourned.

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ATTACHMENT A (SWAC 5/17/00 MIN)

FILED

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CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
PORTLAND, OREGON
BY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

A.G.G. ENTERPRISES, INC., an Oregon Corporation,

Plaintiff,

v.

WASHINGTON COUNTY, OREGON and CITY OF BEAVERTON, OREGON,

Defendants.

Civil No. 99-1097-KI

PERMANENT INJUNCTION

On April 6, 2000, this Court issued an Order and Opinion in the above-captioned matter. Consistent with this Court's opinion, the Court orders as follows:

1. On April 6, 2000, this Court filed an Opinion which declared that Chapter 8.04 of the Washington County code on Solid Waste Control and Chapter 4.08 of the City of Beaverton Ordinance on Solid Waste Control, when enforced to prohibit plaintiff A.G.G. Enterprises, Inc. from transporting source-separated loads of recyclable materials and mixed loads of solid waste and recyclable materials, are preempted by the Federal Aviation Administration Authorization Act of 1994, 49 U.S.C. § 14501(c), because they are regulating service performed by a motor carrier with respect to the transportation of property.

2. Consistent with that opinion, Washington County, Oregon is permanently enjoined from enforcing its Solid Waste Control Code to the extent of imposing

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substantive standards affecting the price, route or service of plaintiff A.G.G. Enterprises, Inc. in the transport of source-separated loads of recyclable materials and mixed loads containing solid waste and recyclable materials for single generator non-residential accounts from, in and through Washington County to manufacturers, recycling facilities or material recovery facilities, but not to a transfer station or landfill.

3. The City of Beaverton is permanently enjoined from enforcing its Solid Waste Control Ordinance to the extent of imposing substantive standards affecting the price, route or service of plaintiff A.G.G. Enterprises, Inc. in the transport of source-separated loads of recyclable materials and mixed loads containing solid waste and recyclable materials for single generator non-residential accounts from, in or through the City of Beaverton to manufacturers, recycling facilities or material recovery facilities, but not to a transfer station or landfill.

4. For purposes of this injunction, multi-family accounts such as apartment complexes or condominiums are considered to be residential accounts.

5. Pursuant to LR 54.1 and 54.4, plaintiff shall file and serve on all parties its Bill of Costs, no later than 14 days after the entry of this Judgment.

IT IS SO ORDERED.

DATED this 9th day of May, 2000.

GARR M. KING
United States District Court Judge

IN THE UNITED STATE DISTRICT COURT

FOR THE DISTRICT OF OREGON

WASTE CONNECTIONS, INC., ARROW SANITARY SERVICE, INC., COLUMBIA SANITARY SERVICE, INC., MORELAND SANITARY SERVICE, INC., and COLUMBIA RESOURCE CO., L.P.,

Plaintiffs,

v.

METROPOLITAN SERVICE DISTRICT,

Defendant.

Civil No. 99-1370-AS

FINDINGS AND RECOMMENDATION

ASHMANSKAS, Magistrate Judge:

The matters before this court are: (1) the motion (#14) of defendant Metro, a metropolitan service district, for summary judgment; and (2) the motion (#18) of plaintiffs Waste Connections, Inc., Arrow Sanitary Service, Inc., Columbia Sanitary Service, Inc., Moreland Sanitary Service, Inc., and Columbia Resource Co., L.P., for summary judgment. Plaintiffs allege Metro imposes an impermissible burden on interstate commerce by preventing the transfer of solid waste generated in the Portland, Oregon, area to Vancouver, Washington. Plaintiffs seek a declaration that Metro's controls of the flow of waste are *per se* unconstitutional.

STIPULATED FACTS

Metro is a metropolitan service district organized under Article XI, §14, of the Oregon Constitution, the 1992 Metro Charter and ORS Chapter 268. Metro's geographic boundaries are

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wholly within the State of Oregon. Waste Connections, Inc. ("Waste Connections"), is a solid waste services company with its headquarters in Roseville, California. Waste Connections collects, transfers, disposes, and recycles solid waste in 14 western states. Arrow Sanitary Services, Inc. ("Arrow"), Columbia Sanitary Service, Inc. ("Columbia"), and Moreland Sanitary Services, Inc. ("Moreland"), are wholly owned subsidiaries of Waste Connections.

These affiliated companies collect solid waste and materials to be recycled from residential, commercial, and industrial sites throughout the Portland metropolitan region, but primarily in the north and east Metro areas. Arrow and Moreland are franchised to collect residential waste by the City of Portland. Columbia is franchised to collect residential, commercial, and industrial waste by the City of Gresham. Franchises are not needed to collect commercial and industrial waste in the City of Portland.

In 1998, Arrow, Columbia, and Moreland collected approximately 20,000 tons of solid waste from within Metro's boundaries. In 1999, that volume increased to approximately 36,000 tons. Columbia Resource Co., L.P. ("CRC"), is a Washington limited partnership wholly owned by Waste Connections. CRC operates two waste transfer facilities across the Columbia River from Metro in Vancouver, Washington: West Van Materials Recovery Center ("West Van") and Central Transfer Recycling Center ("Central Transfer"). They receive, process, remove recyclable materials, and temporarily store solid waste prior to moving the waste to a final disposal site.

Over 100 private haulers provide waste collection and recycling services within Metro's boundaries. The cities and counties within Metro's boundaries license haulers, set rates, and award franchises for the collection of solid waste. Metro adopted its Solid Waste Flow Control Ordinance No. 89-319 in 1989. The Flow Control Ordinance generally requires, in simplified terms, that all persons who generate, pick up, collect, or transport solid waste within Metro's boundaries use system facilities or acquire a non-system license.

The Metro Central and Metro South transfer stations are owned by Metro and operated by BFI Waste Systems of North America, Inc., a Delaware corporation, pursuant to a contractual agreement with Metro. The solid waste delivered to Metro's transfer stations is sorted and processed

LEGAL STANDARDS

Federal Rule of Civil Procedure 56(c) authorizes summary judgment if no genuine issue exists regarding any material fact and the moving party is entitled to judgment as a matter of law. The moving party must show the absence of an issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). The moving party may discharge this burden by showing that there is an absence of evidence to support the nonmoving party's case. Id. When the moving party shows the absence of an issue of material fact, the nonmoving party must go beyond the pleadings and show that there is a genuine issue for trial. Id. at 324.

The substantive law governing a claim or defense determines whether a fact is material. T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987). Reasonable doubts concerning the existence of a factual issue should be resolved against the moving party. Id. at 630-31. The evidence is to be viewed in the light most favorable to the nonmoving party, and all justifiable inferences are to be drawn in the nonmoving party's favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). No genuine issue for trial exists, however, where the record as a whole could not lead the trier of fact to find for the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

CONTENTIONS OF THE PARTIES

Metro contends plaintiffs have failed to establish a present case or controversy appropriate for adjudication by this court, because Metro currently allows defendants to transport all the waste plaintiffs control to out-of-state processing facilities. Metro contends the ordinances in question do not discriminate against interstate commerce, which defeats plaintiffs' claims for damages and an injunction. Through their motion for partial summary judgment, plaintiffs contend Metro's Solid Waste Flow Control Ordinance is unconstitutional under the Dormant Commerce Clause of the United States Constitution.

DISCUSSION

Metro contends this matter is not ripe for judicial review because there is no showing that Metro has discriminated against interstate commerce by denying a non-system license. Plaintiffs

LEGAL STANDARDS

Federal Rule of Civil Procedure 56(c) authorizes summary judgment if no genuine issue exists regarding any material fact and the moving party is entitled to judgment as a matter of law. The moving party must show the absence of an issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). The moving party may discharge this burden by showing that there is an absence of evidence to support the nonmoving party's case. Id. When the moving party shows the absence of an issue of material fact, the nonmoving party must go beyond the pleadings and show that there is a genuine issue for trial. Id. at 324.

The substantive law governing a claim or defense determines whether a fact is material. T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987). Reasonable doubts concerning the existence of a factual issue should be resolved against the moving party. Id. at 630-31. The evidence is to be viewed in the light most favorable to the nonmoving party, and all justifiable inferences are to be drawn in the nonmoving party's favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). No genuine issue for trial exists, however, where the record as a whole could not lead the trier of fact to find for the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

CONTENTIONS OF THE PARTIES

Metro contends plaintiffs have failed to establish a present case or controversy appropriate for adjudication by this court, because Metro currently allows defendants to transport all the waste plaintiffs control to out-of-state processing facilities. Metro contends the ordinances in question do not discriminate against interstate commerce, which defeats plaintiffs' claims for damages and an injunction. Through their motion for partial summary judgment, plaintiffs contend Metro's Solid Waste Flow Control Ordinance is unconstitutional under the Dormant Commerce Clause of the United States Constitution.

DISCUSSION

Metro contends this matter is not ripe for judicial review because there is no showing that Metro has discriminated against interstate commerce by denying a non-system license. Plaintiffs

contend Metro restricts access to ninety percent of the solid waste market and discriminates against haulers that would like to haul waste across state lines to non-designated facilities, which injures plaintiffs' hauling operations. Courts may grant injunctive or declaratory relief to administrative determinations if they "arise in the context of a controversy 'ripe' for judicial resolution." Abbott Laboratories v. Gardner, 387 U.S. 136, 148, 87 S.Ct. 1507, 1515 (1967). In the twenty-year contract with Oregon Waste Systems, Metro agreed to provide a minimum of ninety percent of the total tons of acceptable waste during each calendar year to Oregon Waste Systems' disposal site. Stipulated Fact Exh. 24, p. 181. Metro entered into this contract in1988. In 1999, Metro extended the contract to the year 2014.

Defendant contends plaintiffs have failed to fully and completely exercise their administrative appeal rights under the Metro Code and Oregon state law, which also deems this matter not ripe for review. Plaintiffs contend that the non-system license is not at the center of this case; the larger issue is that defendant monopolizes ninety percent of the market. Because parties are not required to exhaust state administrative or judicial remedies prior to bringing claims pursuant to §1983, plaintiffs were not required to exhaust their administrative remedies. Patsy v. Board of Regents, 457 U.S. 496, 506-07, 102 S.Ct. 2557, 2562 (1982).

Defendant contends because plaintiffs have not suffered hardship, this case is not ripe. The case is not ripe if there is no past damage or threatened harm. Chavez v. Director of Office of Workers Compensation Programs, 961 F.2d 1409, 1414-15 (9th Cir. 1992). A constitutional challenge is justiciable unless the local government disavows an intent to enforce the statue against the plaintiff. Babbitt v. United Farm Workers Nat'l Union, 442 U.S. 289, 299, 99 S.Ct. 2301, 2309 (1979). The issue with the case at bar is the contract with Oregon Waste Systems, and how that may prevent plaintiffs from expanding their businesses; the issue is not the enforcement of a statute. Although plaintiffs contend Metro's failure to admit they will breach the contract with Oregon Waste Systems by not enforcing the ninety percent limitation raises a justiciable issue, they are incorrect. Speculation about what Metro may or may not do when faced with a legitimate request to transport waste that conflicts with their contract with Oregon Waste Systems, is not sufficient to establish a

justiciable issue warranting judicial intervention. "A case is not ripe for adjudication if it rest upon contingent future events that may nor occur as anticipated, or indeed may not occur at all." Texas v. United States, 523 U.S. 296, 300, 118 S.Ct. 1257, 1259 (1998), quoting Thomas v. Union Carbide Agric. Prods. Co., 473 U.S. 568, 580-81, 105 S.Ct. 3325, 3333 (1985). This is not a case where the court has been asked to interpret the constitutionality of a statute or plaintiffs are seeking to have a code or statute declared unenforceable. Nor is this a case where, based on past conduct, it is clear that Metro intends to enforce the ninety percent contract it has with Oregon Waste Systems. That is, there is no indication that it would be futile for plaintiffs to apply for a non-system license which exceeds the ten percent limit, if plaintiffs had the capability and the need. Plaintiffs have failed to demonstrate an injury to be redressed by the requested relief because they have previously received the permits for which they applied. Furthermore, there is no indication that plaintiffs will suffer hardship if review is withheld as they may continue with the operations of their businesses. This case is not ripe for judicial review and Metro's motion for summary judgement should be granted.

CONCLUSION

Because this controversy is not ripe for judicial resolution, the motion (#14) of Metro for summary judgment should be GRANTED and plaintiffs' motion (#18) for summary judgment should be DENIED.

DATED this 10th day of May, 2000.

DONALD C. ASHMANSKAS
United States Magistrate Judge

SCHEDULING ORDER

Objections to these Findings and Recommendation(s), if any, are due **[2 business days for docketing + 3 calendar days for mailing + 10 business days], 2000.** If no objections are filed, the Findings and Recommendation(s) will be referred to a district court judge and go under advisement on that date.

If objections are filed, the response is due no later than **[3 calendar days for mailing + 10 business days], 2000.** When the response is due or filed, whichever date is earlier, the Findings and Recommendation(s) will be referred to a district court judge and go under advisement.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 7.01 TO CONVERT THE EXCISE TAX LEVIED ON SOLID WASTE TO A TAX LEVIED UPON TONNAGE ACCEPTED AT SOLID WASTE FACILITIES AND MAKING OTHER RELATED AMENDMENTS	)))))	ORDINANCE NO. 00-857 Introduced by Council Regional Environmental Management Committee

WHEREAS, the State of Oregon has set a recycling goal for solid waste of 56 percent by the year 2005; and

WHEREAS, recycling of solid waste in the region is of the utmost importance and should be a priority in solid waste fee system; and

WHEREAS, Metro needs a stable funding source for its charter mandated responsibilities; and

WHEREAS, Metro needs to respond to recent centralization within the solid waste industry; and

WHEREAS, newer processing facilities include both wet and dry waste components; and

WHEREAS, the purpose of this ordinance is to further recycling and provide stability and predictability in the setting of solid waste fees during the Metro budget cycle; and

WHEREAS, Metro imposes an excise tax for the use of the facilities, equipment, systems, functions, services, or improvements, owned, operated, certified, licensed, franchised, or provided by Metro; and

WHEREAS, the tax is currently imposed as a percentage of the payment charged by Metro or by the operator of such solid waste facilities; and

WHEREAS, to enable Metro to fulfill it's missions, it is desirable to change the method by which the tax on solid waste is imposed from the current method using a percentage of the payment charged for disposal to a method under which the tax is imposed upon each ton of solid waste disposed at solid waste facilities; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 7.01.010 is amended to read:

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meaning indicated:

(a) "Accrual basis accounting" means revenues are recorded in the accounting period in which they are earned and become measurable whether received or not.

(b) "Cash basis accounting" means revenues are recorded when cash is received.

(c) "District facility" means any facility, equipment, system, function, service or improvement owned, operated, franchised or provided by the district. District facility includes but is not limited to all services provided for compensation by employees, officers or agents of Metro, including but not limited to the Metro Washington Park Zoo, Metro ERC facilities, all solid waste system facilities, and any other facility, equipment, system, function, service or improvement owned, operated, franchised or provided by the district.

(d) "Facility Retrieval Rate" shall have the meaning assigned thereto in Metro Code Section 5.02.015.

(e) "Installment payments" means the payment of any amount that is less than the full payment owed either by any user to the district or to an operator or by an operator to the district.

(f) "Metro ERC facility" means any facility operated or managed by the Metropolitan Exposition-Recreation Commission.

(g) "Operator" means a person other than the district who receives compensation from any source arising out of the use of a district facility. Where the operator performs his/her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his/her principal. Compliance with the provisions of this chapter by either the principal or managing agent shall be considered to be compliance by both.

(h) "Person" means any individual, firm, partnership, joint venture, association, governmental body, joint stock company, corporation, estate, trust, syndicate, or any other group or combination acting as a unit.

(i) "Payment" means the consideration charged, whether or not received by the district or an operator, for the use of a district facility, valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction.

(j) "Processing Residual shall have the meaning assigned thereto in Metro Code Section 5.02.015.

(k) "Recovery Rate" shall have the meaning assigned thereto in Metro Code Section 5.02.015.

(l) "Solid waste system facility" means all facilities defined as such pursuant to section 5.05.010 including but not limited to all designated facilities set forth in section 5.05.030 and any non-system facility as defined in section 5.05.010 that receives solid waste from within the Metro boundary whether pursuant to an authorized non-system license or otherwise.

(m) "Source Separate" or "Source Separated" or "Source Separation" means that the person who last uses recyclable material separates the recyclable material from Solid Waste.

(n) "Source-separated recyclable material" or "Source-separated recyclables" means material that has been Source Separated for the purpose of Reuse, Recycling, or Composting.

(o) "Tax" means the tax imposed in the amount established in subsection 7.01.020, and includes both the tax payable by a user and the aggregate amount of taxes due from an operator during the period for which he/she is required to report and pay the tax.

(p) "User" means any person who pays compensation for the use of a district facility or receives a product or service from a district facility subject to the payment of compensation

SECTION 2. Metro Code Section 7.01.020 is amended to read:

7.01.020 Tax Imposed

(a) For the privilege of the use of the facilities, equipment, systems, functions, services, or improvements owned, operated, certified, licensed, franchised, or provided by the district, each user except users of solid waste system facilities shall pay a tax of 7.5 percent of the payment charged by the operator or the district for such use unless a lower rate has been established as provided in subsection 7.01.020(b). ~~Each user of all solid waste system facilities shall pay an additional tax of 1.0 percent of the payment charged by the operator or the district.~~ The tax constitutes a debt owed by the user to the district which is extinguished only by payment of the tax directly to the district or by the operator to the district. The user shall pay the tax to the district or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.

(b) The council may for any period commencing no sooner than July 1 of any year and ending on June 30 of the following year establish a tax rate lower than the rate of tax provided for in subsection 7.01.020(a) or in subsections 7.01.020(c)-(e) by so providing in an ordinance adopted by the district. If the council so establishes a lower rate of tax, the executive officer shall immediately notify all operators of the new tax rate. Upon the end of the fiscal year the rate of tax shall revert to the maximum rate established in subsection 7.01.020(a) unchanged for the next year unless further action to establish a lower rate is adopted by the council as provided for herein.

(c) For the privilege of the use of the solid waste system facilities, equipment, systems, functions, services, or improvements, owned, operated, certified, licensed, franchised, or provided by the district, each user of all solid waste system facilities shall pay a tax in the amount calculated under section (e) for each ton of solid waste exclusive of source separated recyclable materials accepted at the solid waste system facilities. The tax constitutes a debt owed by the user to the district which is extinguished only by payment of the tax directly to the district or by the operator to the district. The user shall pay the tax to the district or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.

(d) For the Metro fiscal year beginning July 1, 2000, and for each year thereafter subject to Section 3 of this ordinance, the tax rate imposed and calculated under this section shall be sufficient to generate at least $5,700,000 in excise tax revenue.

(e) The excise tax rate for each ton of solid waste exclusive of source separate recyclable materials accepted at the solid waste system facilities shall be the amount that results from dividing the amount set forth in sub-section (d) by an amount that is equivalent to the sum of the solid waste tonnage generated within the district and delivered to any disposal site for disposal, exclusive of inert materials and materials accepted for and actually used for a beneficial purpose at a disposal site, during the twelve-month period ending on December 31 of each year, as further adjusted by the Executive Officer under sub-section (f). Subject to subsection 7.01.020(b), the rate so determined shall be the district's rate excise tax on solid waste during the subsequent Metro fiscal year.

(f) By June 1, 2000 and by March 1st of each year thereafter, the Executive Officer shall provide a written report to the Council stating the amount of solid waste tonnage generated within the district and delivered to any disposal site for disposal, exclusive of inert materials and materials accepted for and actually used for a beneficial purpose at a disposal site, for the twelve-month period ending the previous December 31. Based upon the tonnage amount set forth in such written report, the Executive Officer at the same time shall calculate the amount of such solid waste tonnage that would have been generated during the previous calendar year if the solid waste recovery rates

corresponding for each calendar year set forth on the following schedule had been achieved:

Year	Recovery Rate
2000	46%
2001	48%
2002	50%
2003	52%
2004	54%
2005	56%

The product of such calculation by the Executive Officer shall be used to determine the excise tax rate under sub-section (e) of this section.

(ef) A solid waste facility which is certified, licensed or franchised by Metro pursuant to Metro Code Chapter 5.01 and which attains a Facility Retrieval Rate of 10 percent or greater shall be allowed a credit against the Excise Tax otherwise due under Section 7.01.020(c) or (df) for disposal of Processing Residuals from the facility. The Facility Retrieval Rate and the Recovery Rate shall be calculated for each six-month period before the month in which the credit is claimed. The amount of such credit shall be in accordance with and no greater than as provided on the following table:

Excise Tax Credit Schedule

Recovery Rate		Excise Tax Credit
From Above	Up To & Including	
0%	20%	0%
20%	25%	4%
25%	30%	10%
30%	35%	20%
35%	40%	33%
40%	100%	45%

(fg) In lieu of taxes imposed under this section and notwithstanding section 7.01.050(a)(6), operators of solid waste facilities licensed or franchised under chapter 5.01 of this Code to deliver putrescible waste directly to the district's contract operator for disposal of putrescible waste shall pay a tax in the amount of annually calculated under Section 7.01.020(e) ~~$5.02 per ton of~~ for putrescible waste delivered directly to the district's contract operator for disposal of putrescible waste.

SECTION 3. Section 4 of this Ordinance is added to and made a part of Metro Code Chapter 7.01.

SECTION 4. Consumer Price Index Adjustment

Commencing with the Metro fiscal year beginning July 1, 2001, and each year thereafter, the amount of revenue to be generated by the taxes imposed by Section 7.01.020(c) shall be the amount of tax revenue authorized in Section 7.01.020(d) increased by a percentage equal to (a) the annualized rate of increase in the Consumer Price Index, All Items, for Portland–Vancouver (All Urban Consumers) reported for the first six months of the federal reporting year as determined by the appropriate agency of the United States Government or (b) the most nearly equivalent index as determined by the Metro Council if the index described in (a) is discontinued, or such lesser amount as the Executive Officer deems appropriate.

SECTION 5. Budgeting of Excess Revenue

Commencing with the Metro fiscal year beginning July 1, 2000, and each year thereafter, if the tax revenues collected under the tax rate imposed by Section 7.01.020 (e) exceed the amount set forth in Section 7.01.020 (c) as adjusted Section 4 of this ordinance, such additional revenue shall be placed in an account within the General Fund specifically created to receive such revenue. The budgeting or expenditure of all such funds within this account shall be subject to review and approval by the Metro Council.

ADOPTED by the Metro Council this _____ day of _____, 2000.

_____

David Bragdon, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

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ATTACHMENT D (5/17/00 MIN)

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
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METRO

To: All SWAC Members and Other Interested Parties

From: Councilor Rod Park

Re: Amendments to Proposed Ordinance No. 00-857

Date: May 16, 2000

Since its initial drafting, Ordinance No. 00-857 has been subject to extensive review and comment. It was reviewed by the SWAC at its April meeting and by the Council's REM Committee. In addition, the REM staff has reviewed the ordinance and I have personally met with various solid waste industry stakeholders to solicit their views.

As a result of this review process, I have requested that several substantive and technical amendments be drafted. A description of these amendments is attached. Council Analyst John Houser will be reviewing the nature of these amendments with the SWAC at its May 17 meeting. It is my hope that, following this discussion, the amendment language can be finalized. A revised draft will be available shortly for your review and comment.

I understand that many of you have amendment ideas that may, or may not be incorporated into the revised draft. I will be requesting that the revised draft be scheduled for a public hearing and worksession at the June 7 Council REM Committee meeting. Additional amendments could be presented in testimony at this meeting. It would be my intent that final committee action on the proposed ordinance would occur at this meeting and that the Council would consider the ordinance at its June 15 meeting.

Substantive Amendments:

1) Clarification of the Allocation and Use of Tax Overcollections

Section 5 of the original draft provides that any tax over collections be placed in a separate account within Metro's General Fund. Use of the funds in this account would require Council approval. At the April SWAC meeting, Councilor Park indicated that he would propose an amendment to limit the maximum balance in this account to a maximum of 10% of the tax amount to be collected from solid waste.

Councilor Park is now proposing an alternative three-part method for allocating any tax overcollections. The three elements include:

a) The maximum balance in this account would not exceed an amount equal to 10% of the total excise tax collections for the two most recent fiscal years. The account would thus provide the same type of protection to the General Fund that the Rate Stabilization Account provides to the Solid Waste Revenue Fund. Expenditures from the account would still require Council approval.

b) If the maximum account balance was reached, then any additional overcollections would be returned as an additional excise tax credit to those facilities that have reached the 45% recovery rate to qualify for the maximum tax credit available. These credits would become available in the fiscal year following the tax overcollection. The maximum tax credit to be received by any facility could not exceed the facility's tax liability.

c) If additional tax overcollection funds still remain, these funds would be placed in the account created by Section 5 of the ordinance.

2) Tax Collection Exemption/Qualification For Excise Tax Credit

Metro Code Section 7.01.050 currently exempts MRF facilities from collecting the Metro excise tax. The proposed amendment would limit this exemption to only those facilities that qualify for the excise tax credit as proposed in the ordinance. Facilities would have to reach a minimum dry waste recovery rate of 25% to qualify for the exemption. (See Amendment # 6.)

3) Tax Credit For Petroleum Contaminated Soil

As originally drafted, the ordinance created some uncertainty as to how, or if, the tax would be applied to petroleum contaminated soil (PCS). Because the disposal charge for such soil is considerably lower than the rates for other types of solid waste, REM staff has suggested that an 80% tax credit be applied to all disposed PCS, including soil used as beneficial cover. The tax rate would be about $1/ton.

There are two policy issues that will need to be addressed concerning this proposed amendment: 1) whether any tax credit should be provided to any PCS for which a disposal charge is collected, and 2) whether all PCS should be subject to a minimum tax.

4) Clarification Concerning Tax Applicability to Certain Waste Generated Outside of the Metro Boundary

The Metro excise tax is currently collected on waste generated outside the district, but which is processed or transferred at a facility within the district. Most of this type of waste is collected outside of the Metro boundary in Washington County, but disposed of at the Forest Grove Transfer Station.

Several persons that reviewed the proposed ordinance have questioned whether the new per ton tax would be collected on this waste. The Office of General Counsel is reviewing the ordinance and, if needed, will draft an amendment to insure that the current practice of collecting the tax on this type of waste is continued.

5) Changing the Recovery Rate Brackets For the Proposed Excise Tax Credit

This amendment would increase the recovery rate brackets in the "Excise Tax Credit Schedule" in Section 2 (f) of the original ordinance by 5%. This would bring these brackets into alignment with the brackets used for the regional system fee credit program. Thus, the minimum rate to qualify for the credit would be 25%, and the rate for which the maximum credit would be received would be 45%.

Technical Amendments

1) Implementation of CPI-Based Tax Adjustment

When the ordinance was originally drafted, it was assumed that it might become effective prior to July 1, 2000. Therefore, the first inflation-based adjustment in the tax outlined in Section 4 was scheduled to take effect on July 1, 2000. Given that the projected timing for adoption of the ordinance will now result in an effective date in early fall, it is necessary to adjust the first inflation-based adjustment to July 1, 2001.

2) Changes in the Whereas Recitals

Staff has suggested several changes in the Whereas recitals at the beginning of the ordinance. These include:

a) Recital #1—change the reference to the state recovery goals to reference the "Metro adopted" regional recovery rate of 56% in 2005
b) Recitals #2 and 6--replace the reference to "recycling" with the phase "waste reduction"
c) Recital #4—replace the word "centralization" with the word "consolidation"

3) Definitions

1) Add a new definition for the term "cleanup materials contaminated by hazardous materials." This definition would be used to describe the material, such as PCS, that would qualify for the 80% tax credit under consideration as a substantive amendment.
2) Modify the definitions of "source separate" or "source separated" and "source separated materials and "source separated recyclables" to reference existing definitions of these terms in Metro Code Chapter 5.01.

4) Clarification Concerning the Amount to Be Collected

REM staff and others have noted the need for a clarification in Section 2 related to the amount of tax to be collected. This clarification would provide that the amount calculated to be collected would be net of any excise tax credits provided under the ordinance.