

Metro
Regional Environmental
Management Department

Franchise Management

August 1996

A Report by the Office of the Auditor



METRO

Alexis Dow, CPA
Metro Auditor



METRO

OFFICE OF THE AUDITOR

August 27, 1996

Mike Burton, Executive Officer	Councilor Susan McLain
Councilor Jon Kvistad, Presiding Officer	Councilor Rod Monroe
Councilor Patricia McCaig	Councilor Don Morissette
Councilor Ruth McFarland	Councilor Ed Washington

Re: Review of Regional Environmental Management Department's Franchise Management

Dear Mr. Burton and Councilors:

The accompanying report covers our review of solid waste franchise management.

Metro is responsible for managing solid waste within Metro boundaries. Although most solid waste is hauled to Metro-owned transfer stations, approximately 15% of solid waste is taken to facilities franchised by Metro. These facilities play a key role in reducing the amount of solid waste that needs to be transported and stored in the region's general purpose landfill.

Our review of solid waste franchise management was undertaken as part of Metro's overall annual auditing program. Its purpose was: to evaluate how well franchise and license provisions of Metro's Code serve its policies, identify any changes needed in the provisions to correct inconsistencies, and evaluate administration of franchises and licenses by the various Metro departments and divisions.

We identified areas for improvements, including:


- overhauling the Metro Code provisions regulating franchises and licenses for solid waste processing,
- clarifying a number of policies affecting primary functions of the solid waste system, and
- regulating Metro-authorized solid waste facilities.

Mr. Burton and Council
August 27, 1996
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The Executive Officer agrees with our recommendations and has begun implementing them. The last section of this report presents his written response.

We appreciate the cooperation and assistance provided by staff from the several departments included in this audit.

Very truly yours,

A handwritten signature in cursive script that reads "Alexis Dow". The signature is written in black ink and is positioned above the printed name.

Alexis Dow, CPA
Metro Auditor

Auditor: Leo Kenyon

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Executive Summary

Metro's Regional Environmental Management Department currently administers franchises or licenses for 21 privately owned solid waste processing facilities. These facilities receive solid waste, process it for recovery and recycling, and transfer the unusable remainder to landfills for disposal. Franchise or license applications from additional facilities are pending. As part of our annual audit plan, we reviewed Metro's solid waste franchise and license program to:

- evaluate how well the franchise and license provisions of Metro's Code serve Metro's policies and identify any changes needed in the provisions to correct existing inconsistencies, and
- evaluate the administration of franchises and licenses by the various Metro departments and divisions.

We found several areas requiring improvement. In brief, we recommend that the Executive Officer, assisted by Regional Environmental Management Department staff:

- comprehensively revise the franchise provisions of Metro's Code,
- promptly request the Council to reaffirm or modify the franchise provisions of Metro's Code relating to vertical integration of facilities, and
- strengthen the regulation system for Metro-authorized solid waste facilities and develop oversight procedures for them.

The Franchise Provisions in Metro's Code Need to be Overhauled

The franchise provisions in Metro's Code regulating solid waste processing facilities were adopted in 1981 and many of them remain unchanged. Metro officials have recognized for more than five years that the Code provisions covering these facilities need major revisions to be in line with changes that have occurred since that time. The existing Code provisions are probably sufficient for approving current applications, provided that the Council is

willing to grant variances from the provisions, but a comprehensive update is in order.

Regional Environmental Management Department staff have committed to revising the franchise provisions and have estimated the resources that may be required for a comprehensive Code revision to regulate all of the existing, proposed and potential solid waste facilities. Department staff advised us that they intend to develop such provisions while discussing a number of policy issues with the Council and affected parties. We recommended that the Executive Officer, assisted by Regional Environmental Management Department staff, ask the Council to resolve a number of policy issues; then thoroughly identify and document the Code changes needed. The Executive Officer should then present these needed changes to the Council with sufficient lead time to permit the Council to review and approve them.

**Questions
Regarding
Vertical
Integration Need
Prompt
Resolution**

A long-standing Metro policy concern has been the potential negative effects of vertical integration on the solid waste system. Vertical integration is the control by a private firm of two or more of the primary functions of a solid waste system—collection, processing, transfer, hauling, and disposal. There was a fear that one company could dominate other sectors of the solid waste industry, resulting in adverse effects on the public through higher-than-market prices, deteriorated services, or both.

The advisability of continuing such a policy has more recently been called into question. The new Regional Solid Waste Management Plan, issued in January 1996, suggests that the policy may need to be changed so as not to impede the development of mixed dry waste recycling facilities. Several Metro officials agree with this observation and question whether the reasons for the policy are still valid, and whether the provisions of the Code concerning vertically integrated facilities should be modified or eliminated. Two variances to this Code provision have been granted in the past, and several franchise applications currently under review contain requests for the same variances. There are some concerns

about granting these variances because of the potential adverse effect vertically integrated facilities may have on prices and services as well as on the solid waste system and Metro's revenues.

We recommend that the Executive Officer, assisted by Department staff, promptly present findings, conclusions and recommendations to the Council seeking a resolution to this question of whether variances to the Code provision should be continued.

**Franchise
Transfer
Provisions in the
Code Need
Clarification**

A company that owns landfills and collection and hauling companies purchased the controlling interests of a Metro-franchised material recovery facility. The franchisee continued to exist and had undergone only a change in control or ownership. According to Metro's General Counsel, the franchise between Metro and the franchisee had not been transferred or assigned; therefore the revamped company was not required to file an application for a new franchise to be reviewed and approved by the Council.

After the purchase, the revamped company still conformed to the Code provisions because it continued to receive wastes only from its own haulers, not non-affiliated ones. The company, however, became much more vertically integrated because it controlled all of the primary functions of the solid waste system. Metro's General Counsel and several Regional Environmental Management Department staff told us that it may be desirable to review any changes in ownership of a franchise in order to prevent harmful aspects of vertical integration. The General Counsel said that franchise agreements could contain requirements that a change in ownership would require Council approval.

We recommended that Metro's General Counsel, after consulting with the Council, determine whether franchise agreements should require that changes in franchisee ownership be treated as transfers under the Code and subject to the review and approval of the Council. If that

is the decision, both the franchise agreements and the Code should be clarified.

**Franchise
Oversight
Procedures Need
Revision**

Oversight of existing franchises and licenses is inconsistent. Problems include (1) insufficient levels of review, lessening assurance that franchisees and licensees are complying with requirements, and (2) inattention to administrative detail, causing some franchise agreements to lapse inadvertently and bills for franchise fees to be submitted late. Regional Environmental Management Department staff are currently considering extensive efforts to correct this problem including several field inspections and investigations of facilities each year as well as analysis of financial data and an annual audit. Department staff advised us that they do not yet have a definite program for this oversight. However, the recently appointed franchise administrator is developing an operating plan for administration of Metro's solid waste facility regulation program.

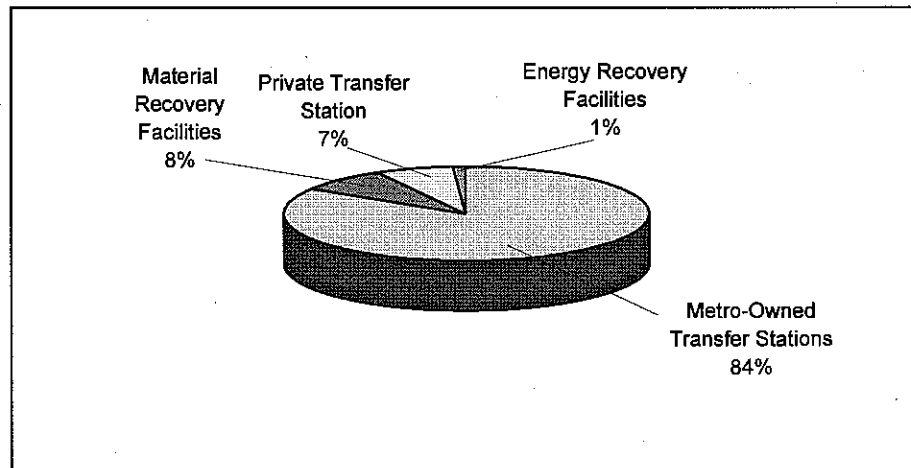
We recommend several measures that should be included in this operating plan to assure that each facility is adequately inspected. We also recommend that the responsibilities of each Metro department performing the inspections be clearly defined and documented so that changes in staff or other matters will not adversely affect coordination of the inspections.

Chapter 1

Introduction

Metro is the local government unit responsible for planning and overseeing the operation of solid waste management in the urban and suburban areas of Multnomah, Clackamas and Washington Counties. In calendar year 1995, the entire tri-county area generated slightly more than 2 million tons of waste. Slightly more than half of it was mixed solid waste¹, much of which was hauled to Metro-owned transfer stations, but a significant part was taken to franchised facilities, which were of three main types:

Chart 1-1: Disposition of Mixed Solid Waste in Calendar Year 1995



Material recovery facilities receive mixed solid waste from haulers, process it to recycle and recover usable materials, and dispose of the unusable materials by placing them in, or transporting them to, a landfill.

Private transfer station. The third transfer station in the Metro area (Forest Grove) is owned by a private company. As a transfer station, it does not recycle or recover wastes.

Energy recovery facilities recover mixed solid wastes and process them to utilize the heat content or other forms of energy derived from the material.

¹The remainder was special waste, source-separated recycling waste, and source-separated fuel/energy waste.

**Franchise and
Licensing
Responsibilities**

As of July 1996, Metro's Regional Environmental Management Department is responsible for ten active franchises and three others that have expired and are in the process of renewal. The Department is also reviewing applications for two new franchises, and a third application is expected. Appendix A lists all of the existing and expired franchises and the new applicants as of July 1996.

Also as of July 1996, Metro administers eight licenses to transport solid wastes generated inside Metro's service area to disposal, recycling, or other facilities outside Metro's solid waste system. These are called "non-system licenses." Appendix A also lists these eight non-system license holders.

All franchisees are exempt from having their rates set by Metro except for the Forest Grove transfer station². The exempt franchisees have variances that allow them to (1) more readily adjust to market changes for recycled products and (2) provide prices that encourage haulers to bring recyclable materials to their facilities. While these franchisees are exempt from collecting and remitting Metro fees on incoming waste received, they must pay all Metro charges associated with disposing of the residues as well as excise taxes where applicable. Non-system licensees also pay Metro charges, including excise taxes, on wastes hauled out of the Metro area.

The Regional Environmental Management Department formed a special franchise review team to process pending applications. The team is currently reviewing the applications, as well as existing franchise agreements, and developing procedures for authorizing and managing them. The team decided the most expeditious and fair approach was to first develop a "franchise template" which would establish a format for all current and future franchisees. The template addresses basic operational requirements and

² The forest Grove facility's rates are set by Metro. Since it is a transfer station and does not recycle or recover wastes, Metro's Code requires the transfer station to pay Metro's user fees and excise taxes, Oregon State Department of Environmental Quality fees, and local enhancement fees on wastes received from the Metro area and hauled out of the facility.

a regulatory mechanism for monitoring each franchise. The template will also address problems encountered in previous franchise agreements.

These templates have been reviewed extensively by the Regional Environmental Management Department staff, local governments, the Oregon State Department of Environmental Quality, current franchisees, franchise applicants, individual members of the Regional Environmental Management Committee and the Executive Officer's staff. The concepts were also reviewed with the Solid Waste Advisory Committee. The most recently granted franchise application was submitted and approved by the Council in June 1996 using the template format.

The Regional Environmental Management Department recognized that the increasing number and type of solid waste processing facilities called for (1) an improved regulatory system including code refinements and operating procedures, as well as (2) a strong system for regulating them once they were authorized. This report presents our assessment of the existing systems and suggestions for improving them.

**Objectives,
Scope and
Methodology**

We undertook this review in accordance with our annual audit plan. Our objective was to assess compliance with the franchise and non-system license provisions of the Metro Code, as well as compliance with the specific provisions of each franchise and non-system license. To do this, we reviewed pertinent Code sections, Metro documents and reports relating to solid waste systems, other audit reports, prior solid waste management ordinances and resolutions, excerpts from Metro's 5-year financial plan, the Regional Solid Waste Management Plan, and other miscellaneous sources of information on franchises and non-systems licenses.

We also prepared a risk assessment (Appendix B) describing what might result from deviating from the Code provisions and asked the Regional Environmental Management Department to:

- identify the individuals responsible for administering each of the pertinent Code sections,
- tell us what each of these individuals did to minimize the identified risks, and
- provide the documentation we needed to test compliance.

Using this information, we then interviewed the responsible individuals in various divisions of the Regional Environmental Management Department and Metro's Accounting Division, the Office of General Counsel as well as the Council's staff.

This audit was done in accordance with generally accepted government auditing standards. Field work took place between January and July 1996.

Chapter 2

Franchise Provisions of Metro Code Need Comprehensive Revision

In fiscal year 1991-92, Metro had scheduled an overhaul of the franchise provisions of the Metro Code. To date, this has not been done. While greatly in need of revision, the current franchise provisions of the Code are probably adequate for approving current applications, provided the Council grants the needed variances. The Council has rejected previous proposals for changing franchise provisions of the Code, finding them to be insufficiently supported or presented prematurely. These missteps, together with the substantial amount of effort needed to revise the franchise provisions, point to a need for obtaining policy guidance from the Council on a number of issues before proceeding with the necessary revisions.

Need for Code Revision Has Long Been Acknowledged

Many of the Metro Code's regulatory franchise provisions remain unchanged since they were first authorized in 1981. Since that time, however, considerable change has occurred in the region's solid waste management system, including development of new types of facilities, decidedly different funding arrangements, and substantially more private initiative than originally anticipated.

Comprehensive reviews of the franchise provisions have been recommended for years but have not been conducted. As early as 1991, Metro officials recognized that the existing Code's franchise provisions contained unclear and ambiguous language and were "in need of an overhaul." That overhaul, scheduled for fiscal year 1991-92, was not done.

In November 1994, a former Solid Waste Director reported a continued need to develop "a logically consistent franchise code that defines the relationships that Metro needs to establish with the increasing number and variety of private sector processing and disposal facilities." Other

Metro officials agreed, citing the changes Metro is proposing for franchises for material recovery facilities and organic waste demonstration facilities.

Regional Environmental Management Department staff advised us that the current solid waste industry apparently is moving toward more diverse, privately owned and operated waste handling facilities. The facilities now being proposed and operated by the private sector require a different management approach than that provided in the current Code. The staff said the new environment suggests that Metro's Code should probably reflect more of a "regulatory" approach to managing Metro's solid waste responsibilities than it does now.

Current Code Provisions Are Probably Adequate if Council Grants Variances

Metro will need to take action on several franchise applications before any comprehensive review of the Code's franchise provisions can be undertaken. One new franchise for a material recovery facility was granted in June 1996 and contained several variances to the Code. Another application being considered by the Council contains requests for identical variances. Other pending applications are also expected to request similar variances.

The Regional Environmental Management Department's material recovery facility franchise review team, as well as other Metro officials, believe the existing franchise provisions in the Code, as far as they go, are probably adequate for franchising proposed facilities. The team intends to review pending applications under the existing Code provisions and ask the Council to grant certain variances. However, the team has identified several policy issues needing resolution by the Council. These include:

- Should Metro's Code provisions prohibiting vertically integrated operating structures involving franchised facilities be eliminated or modified, and/or should Metro continue to grant variances to this provision in the Code? (This provision is discussed more fully in chapter 3).

- What is a reasonable and achievable recovery rate for material recovery facilities?

Regional Environmental Management staff believe that efforts to revise the Code should proceed simultaneously with Council discussion on these and several other policy issues discussed elsewhere in this chapter. They said some of the issues have already been addressed in the Regional Solid Waste Management Plan and in discussions with individual members of the Council who provided good direction.

**Council Has
Rejected Past
Code Revisions
as Premature or
Incomplete**

Regional Environmental Management Department staff have sometimes asked the Council to approve changes in the Code's franchise provisions before the proposed changes have been thoroughly reviewed, discussed, and approved. In those instances Department staff had not provided sufficient lead time and documentation to the Council to allow adequate deliberation of the issues.

The most recent example occurred in November 1995, when the Department submitted a proposed ordinance to the Council's Regional Environmental Management Committee. The most substantive change in this proposed ordinance authorized Metro's Executive Officer to approve "demonstration facilities" for up to 18 months of operation. Council staff who reviewed the proposal told us that it did not include sufficient information to allow the Committee to decide on the request and had not been reviewed and endorsed by appropriate advisory committees, the public, or affected processors. The Committee rejected the proposed ordinance and requested more documentation. Subsequently, the Department withdrew the request for the ordinance.

An exception—and one that was successfully completed—was a proposed change authorizing a licensing program for yard debris processors. The documentation and proposed ordinance were developed by a regional work group which included representatives from local yard debris processors, local governments, Metro, and the Oregon State Department of Environmental Quality. The proposals were

unanimously approved by Metro's Solid Waste Advisory Committee and discussed far enough in advance to permit their thorough discussion before the Council had to decide on their adoption. The Council promptly adopted the changes and they have been included in the Code.

**Policy Matters
Need
Clarification
Before Franchise
Provisions of the
Code Can Be
Successfully
Revised**

Revising the Code's franchise provisions will require considerable effort. The team currently reviewing franchise applications for material recovery facilities estimates it will take 2,000 staff hours to comprehensively revise the Code provisions.

Department staff have said they cannot successfully complete revising the Code until the Council has provided guidance on a number of policy issues affecting how the Code would be revised. We think seeking such clarification is an important first step. Besides the two issues raised above with regard to the current applications, other policy issues have been raised by the review team and other Metro officials including:

- How should Metro obtain its revenue requirements from solid waste processing facilities?
- How should Metro guarantee a sufficient flow of solid waste to ensure that its transfer stations remain viable?
- What should Metro's role be in regulating site and environmental factors in solid waste processing facilities?
- What number and type of solid waste processing facilities should be encouraged by Metro?
- Where should specific recoverable materials be directed?
- What should be the role of Metro's transfer stations in recovering solid wastes?
- Should Metro continue to allow non-system licenses when their use to transfer wastes to undesignated

facilities may significantly adversely affect Metro's transfer stations and revenues?

- Should the user fee component in Metro's fees be raised to recover revenues now being lost by Metro to undesignated landfills?
- Is the Metro Code too generous with respect to material recovery facilities, thus allowing them to divert too large a share of Metro's current revenues?
- Should Metro's franchise fees be set at levels which will reimburse the costs of approving and monitoring the franchises?

Conclusion A thorough revision of the Metro Code's franchise provisions is clearly needed. Although the current provisions can probably be used to approve the material recovery facility applications now pending, consideration of these applications represents an opportunity to improve the process. More specifically, in making recommendations to the Council about the pending franchise applications, the Regional Environmental Management Department and Metro's Executive Officer could provide a complete description and justification of the actions needed to franchise each facility. Providing sufficient lead time to the Council to study and deliberate this information is vitally important. Doing so would allow the Council a better opportunity to provide guidance on the policy issues regarding applications as well as the more comprehensive revision of the franchise provisions of the Metro Code.

Chapter 3

Metro Code Provisions Related to Vertically Integrated Franchises Should Be Reconsidered

Currently, Metro's stated policy is to avoid negative impacts from vertical integration in solid waste collection and processing.

Table 3-1: Vertical Integration in the Solid Waste System

collection	<i>Vertical integration is the control by a private firm of two or more of the primary functions of a solid waste system.</i>
↓	
processing	<i>The potential negative effects of vertical integration in this situation are above market prices and/or service deterioration.</i>
↓	
transfer and hauling	
↓	
disposal	

We understand the policy of avoiding such arrangements was intended to prevent vertically integrated companies from discriminating against competing haulers. Metro's Code contains a specific provision that prohibits franchisees who are also haulers from receiving wastes from other haulers.

In September 1994 and again in June 1996 the Council granted variances to the Code provision and approved franchises for two vertically integrated material recovery facilities. A third Metro-franchised facility became vertically integrated in the broader sense in May 1995 when a company owning a landfill and collection and hauling businesses purchased the outstanding stock of a material recovery facility. Regional Environmental Management Department staff are currently reviewing and considering several franchise renewals and new applications for material recovery facilities, some of which

may require variances to the Code provision or Council guidance on the broader vertical integration issue.

Arguments can be made both for discontinuing and for keeping the current policy and the Code provision.

Table 3-2: Vertical Integration Arguments

	<u>Allow</u>	<u>Prohibit</u>
	<ul style="list-style-type: none"> • Changes in industry have lessened the possibility that vertically integrated operators can exercise an unfair competitive advantage. • May encourage and expand recycling and recovery services. 	<ul style="list-style-type: none"> • Franchisees send more waste to their own facilities, bypassing Metro transfer stations and reducing Metro revenues as a result. • May provide vertically integrated facilities competitive advantages over those that cannot feasibly integrate.
Metro Code Restricts Some Vertically Integrated Franchise Operating Structures	<p>Subsection 5.01.120(l) of the Metro Code states that a franchisee "Shall not, either in whole or in part, own, operate, maintain, have a proprietary interest in, be financially associated with or subcontract the operation of the site to any individual, partnership or corporation involved in the business of collecting residential, commercial, industrial or demolition refuse within the district. A transfer station or processing center franchisee who only receives waste collected by the franchisee shall be exempt from this subsection."</p>	
Three Existing Operations Are Vertically Integrated	<p>Three exceptions to the Code provision already exist—two through variances granted by the Council, and one from a purchase of one company's outstanding stock by another company.</p> <ul style="list-style-type: none"> • <u>Variances granted by the Council.</u> One company applied for a franchise in July 1994 for a facility to recover and market recoverable materials from dry mixed solid wastes. The facility was to handle wastes 	

primarily from two affiliated collection/hauling companies but wanted the flexibility of receiving wastes from other unaffiliated companies. The company asked for, and was granted, a variance from the Code provision to allow it to accept materials from haulers and others not directly associated with the company. The Council granted a second company a variance to this Code provision in June 1996.

- Purchase of one company's outstanding stock by another company. The third instance of vertical integration involved a subsidiary that originally processed mixed solid wastes it received from its parent company—a degree of vertical integration specifically allowed under Subsection 5.01.120 (l) of the Code. In May 1995, a company that owns landfills and other collection and hauling companies purchased the parent company's outstanding stock. Metro's General Counsel determined that the sale was not a transfer under the provisions of Metro's Code, and therefore Regional Environmental Management Department staff did not require the franchisee (the subsidiary) to file a new franchise application for review and approval by the Council.³ The resultant company's operating structure conforms to the Code provision because it continues to receive waste only from its own haulers, not non-affiliated ones. However, the company became much more vertically integrated because it now controlled all of the primary functions of the solid waste system—collection, processing, transfer, and hauling and disposal. The General Counsel advised us that it may be desirable to have a mechanism by which Metro can review any change of ownership of a franchisee in order to determine whether vertical integration as well as other policy concerns are satisfied. He said it would be

³The General Counsel said, "It is possible for a corporate entity to be acquired, in whole or in part, by another individual or corporation pursuant to a purchase of the controlling interest in the stock of the corporation. In that case, the franchisee continues to exist and has undergone a change in control or ownership. However, the franchise between Metro and the franchisee [has] not in itself been transferred or assigned."

possible to do so by inserting a stipulation in the franchise agreement that Council approval would be needed in the case of a change of ownership.

Metro Has Been Asked to Grant More Variances to the Code Provision

Several of the applications for new or renewed material recovery facility franchises now being reviewed by the Regional Environmental Management Department involve requests for the Council to waive the Code's vertical integration franchise provision. As of July 1996, the Department had pending applications for 3 franchise renewals and 2 new franchises for material recovery facilities. An additional application (for a new franchise in Washington County) is also expected. Two of these applicants have already asked Metro for variances to the provision, and two have stated that they also will request variances.

Table 3-2: Requests for Variances to Vertical Integration Code Provision as of July 1996

	Applications	Waiver	
		Requested	Request Anticipated
Franchise renewals pending	3		1
New material recovery facilities applications pending	2	2	
Anticipated applications	<u>1</u>		<u>1</u>
Total	<u>6</u>	<u>2</u>	<u>2</u>

Source: Metro Regional Environmental Management Department staff

Concerns:

- *Will a precedent be inferred?*
- *Has a precedent been inferred by waivers already granted?*

The material recovery facility franchise review team is currently reviewing the franchise applications. The team

was concerned that a precedent may be falsely inferred by granting the two material recovery facilities waivers to the Code provision. The team said, however, that prior to entering negotiation with the companies the team will make policy recommendations to the Council, the Executive Officer and the Regional Solid Waste Advisory Committee relating to the facilities, including those relating to the vertical integration question. This has already been done in work sessions with some Councilors.

**Need for
Vertical
Integration
Policy and Code
Provision
Questioned on
Several Fronts**

The Regional Solid Waste Management Plan, issued in January 1996, suggests that, in order to expand the availability of mixed dry waste recovery services, current Code restrictions against certain vertically integrated operating structures may need to be changed. The Plan calls for a flexible solid waste system and for Metro to encourage competition when making decisions about regulating solid waste facilities in order to promote efficient and effective solid waste services. The Plan also said Metro should consider whether doing so would increase the degree of vertical integration in the regional solid waste system and whether that increase would adversely affect the public.⁴

Several Metro officials told us that the policy and the Metro Code provisions are probably no longer needed. They said that the Code provision was written to prevent large landfill owners from establishing monopolies that could give their own garbage collectors and haulers lower prices and better accommodations than were allowed independent collectors and haulers. They said that these concerns no longer seem valid because there are now a number of landfills available competing for the collecting and hauling business. This competition should prevent anyone from setting up a monopoly.

⁴According to the plan, Metro's Solid Waste Advisory Committee recommended in a June 21, 1995, meeting that the Metro Council reconsider its policy on vertical integration but made no recommendation as to what the policy should be.

Metro's General Counsel told us that in today's environment, vertical integration should probably be allowed as suggested by the Regional Solid Waste Management Plan. He said that a major Metro goal is to encourage recycling, and allowing vertical integration of the material recovery facilities should help accomplish that goal.

Metro Revenues Could Be Adversely Affected

Allowing vertical integration of franchises may diminish Metro's revenues. As these integrated businesses increase, franchisees will send increasingly more wastes to their own facilities. None of the franchisees is expected to dispose of the residue from their processing activities at Metro transfer stations. As a result, Metro's revenues from fees on solid waste disposed at Metro South and Central transfer stations may drop substantially.

In anticipation of granting additional franchises, Regional Environmental Management Department staff estimated the potential impact 4 additional facilities might have on Metro's transfer stations. This estimate included the facility franchised in June 1996, 2 others whose applications are pending, and a fourth that is anticipated. All 4 of the companies have asked or are expected to ask for variances to the Code to allow them to vertically integrate. The staff estimates for fiscal year 1999-2000 are shown in the following table.

Table 3-3: Estimated Delivered Tonnage to Metro Transfer Stations With and Without New Material Recovery Facilities in Fiscal Year 1999-2000

	Delivered Tons	Tonnage Increase/ (Decrease)
Calendar Year 1995	752,300	
Fiscal Year 1999-2000:		
without new facilities	791,000	38,700
with new facilities	734,500	(56,500)

Source: Metro Regional Environmental Management Department staff

The review team calculates that this reduction in tonnage would result in a gross revenue loss to Metro of about \$4.2 million. The estimated net loss to Metro, after deducting Metro's costs for transporting and landfilling that tonnage and adding lost excise tax revenues is expected to be approximately \$2 million, as shown in the next table.

Table 3-4: Projected Revenue Loss to Metro With Four Additional Material Recovery Facilities

Gross Revenue Loss from Tipping Fees	\$4,200,000	
Less Avoided Costs	<u>-2,600,000</u>	
Net Loss Resulting from Reduced Volume	1,600,000	± \$100,000
Lost Excise Taxes	<u>335,000</u>	± \$15,000
Total Net Revenue Loss	<u>\$1,935,000</u>	± \$115,000

Source: Metro Regional Environmental Management Department staff

Conclusion The pros and cons of changing Metro's policy and Code provisions relating to vertically integrated solid waste collections and processing facilities are legitimate concerns that need careful attention. Since two of the applications requesting variance from the Code provision are in their final phases of review, we believe the Executive Officer, assisted by Regional Environmental Management Department staff, should promptly present findings, conclusions and recommendations with respect to the vertical integration policy and Code provisions to the Council so that the Council can review and resolve the matter—both for these applications and for the larger revision of the Code. We also believe that Metro's General Counsel, after consultation with the Council, should decide whether franchise agreements should require that changes in ownership of franchisees be treated as transfers under the Code and subject to the review and approval of the Council.

Chapter 4

Franchise and License Holder Oversight Should Be Improved

A second key management tool, after an updated franchise code, is effective oversight of franchise and license holders. This oversight has been inconsistent. Among the problems are the following:

- Franchise reviews have been limited, with a number of facilities receiving little or no review at all and with insufficient coordination of review responsibilities between Metro units. Other documentation that franchisees and licensees were complying with requirements is largely absent.
- Three franchise agreements were inadvertently allowed to expire, and some franchises were not billed in a timely manner for fee payment.
- Warnings were not followed up regarding franchises exceeding the tonnage they were authorized to receive or ship, and in at least one instance, a franchise exceeded its limit.

Regional Environmental Management Department's management recently became aware of the nature and extent of these problems and is addressing their causes. Included in these efforts, Department management instructed its material recovery facilities franchise review team to identify the procedures and resources needed to oversee the solid waste facilities Metro administers. The Department is now working on this task.

Reviews of Franchises and Non-System Licenses Has Been Limited

Financial reviews of franchisees, licensees and designated facilities (landfills) often were not done. The number of franchisees, licensees and designated facilities has generally numbered close to 25 in recent years, but prior to fiscal year 1993-94, Metro's Accounting Division had been

doing only 2 to 4 audits of such facilities a year. That year, the Solid Waste Department (now Regional Environmental Management Department) asked the Accounting Division to audit each disposal site annually. The Accounting Division asked for—and received—one additional full-time employee to meet this goal. That year the Division conducted 8 audits—5 of designated facilities (landfills) and 3 of franchises (recycling and recovery facilities). Five franchises were not audited.

After fiscal year 1993-94, review coverage decreased, both in scope and number⁵.

Table 4-1: History of Oversight Reviews of Franchised and Licensed Facilities by Metro's Accounting Division

Type of Reviews Done (in descending order of scope)	Prior to	1993	1994	1995
	1993 -1994	1993 -1994 (A)	1994 -1995	1995 -1996
Audits	2 to 4	8		
Full reviews			7	6
Limited reviews				3
Internal control analysis				2
Total facilities and licenses reviewed	2 to 4	8	7	11
Facilities and licenses not reviewed	varies	5	11	13
	varies	13	18	24

^(A) Staffing increased to complete audit of all franchise and license holders annually.

⁵ Metro's Accounting Division dropped the term "audit" because it indicated a much wider and more comprehensive scope of work than was actually done. The terms "full review" and "limited review" were substituted and indicate work generally centered around an in-depth analysis of data contained in the user fee and excise tax reports. See Appendix C for an explanation of these terms.

In all, 6 of the current franchises and 3 of the non-system licenses have never received a full or limited review. These franchises and licenses are small and have not been subjected to any user fee or excise tax questions. Metro's Accounting Division staff advised us that they have concentrated on facilities that pay user fees and excise taxes, and have not actively set out to test compliance with the Code or operating requirements included in the franchises. Metro's Accounting Division staff said that they believed this latter activity is the responsibility of the Regional Environmental Management Department.

**Review
Responsibilities
Were Not Well
Coordinated**

The two primary Metro units with oversight responsibility, the Metro's Accounting Division and the Regional Environmental Management Department, have not been coordinating their reviews sufficiently. The two units have a task force which discusses review needs for franchised, licensed and designated facilities. This task force meets several times near the start of the calendar year to establish a review schedule for the year. It also meets to discuss the results of the reviews as they are completed. However, statements made by the staffs of the two units indicate that better coordination of their duties is needed. For example:

- The Accounting Division staff responsible for the reviews have not always been sure who is responsible for various duties needed to manage franchises and non-system licenses. The staff said this knowledge would be valuable in determining where to seek advice and assistance. The staff also said that the Accounting Division and Regional Environmental Management Department division managers often cannot attend the task force meetings, making it difficult to make decisions regarding the desired audit coverage and other matters.
- The Regional Environmental Management Department division manager responsible for franchise administration said he was under the impression that all franchises and licenses had been audited. He said his misimpression was an indication that coordination could

be better. Department staff have reviewed franchises on an exception basis to resolve questions that had been raised, with some of the reviews done only by telephone.

**No
Documentation
Showing
Compliance with
Code and
Franchise
Requirements**

To determine what effects might result from not reviewing all facilities, we conducted a risk assessment that examined the Regional Environmental Management Department's files for all of the active franchises and non-system licenses. We looked for documentary evidence demonstrating that Code requirements had been complied with. For most of the franchises, we could not find evidence showing that the Department had confirmed compliance with such Code requirements as:

- the amount of liability insurance coverage held by the franchisees and whether it was in force;
- whether surety bonds, when required, were in force and of the proper amount;
- whether facilities had been periodically reviewed to determine if they were practicing discriminatory pricing with customers;
- whether facilities had been periodically reviewed to assure that franchisees were providing adequate and reliable service; and
- that facilities had provided annual operating reports.

We also reviewed each file looking for documentary evidence of compliance with the franchise agreement provisions. Again, we found almost nothing showing that periodic reviews were being made by Regional Environmental Management Department staff to assure, among other things, that unallowable materials were not being accepted and that the facilities were operating in conformance with the numerous provisions of their operating plans. Furthermore, all but one of the franchised facilities had been exempted by the Council from Metro rate-setting. Although Metro did not establish rates for those franchisees, the franchisees must adhere to several

conditions including (1) limiting rate adjustments to specified monthly or quarterly intervals, (2) limiting the frequency of those adjustments, and (3) notifying Metro within 10 days prior to any rate change. We found evidence of only one franchisee providing this information and on only one occasion.

**Agreements
with Three
Franchisees
Inadvertently
Expired**

In May 1995, the Regional Environmental Management Department informed one franchised facility that its franchise had expired in 1987 and inadvertently had never been renewed. The expiration was discovered when the Department's Solid Waste Enforcement Unit found violations of the original franchise. The division manager responsible for franchise administration said a staff member neglected to renew the franchise when it expired. When it discovered the error, the Department allowed the franchisee to continue to accept and process materials allowed under the original agreement but ordered the franchisee to cease its unauthorized activities and submit a new application. The franchise has not yet been renewed because the company's application is being reviewed for authorization as one of the new material recovery facilities.

Two other franchises recently expired. One company holding a franchise which expired in January 1996 had sent the Regional Environmental Management Department a renewal application in June 1995. A Department staff member was told to renew the franchise but did not do so.

The other franchise expired in March 1996. Neither franchise has yet been renewed, but the Department has allowed the franchisees to continue to accept and process materials under the originally approved franchises. Both of these franchises are being reviewed for material recovery facility designation.

**Franchise Fees
Not Billed on
Time**

Although Metro's Code requires annual franchise fees to be paid by January 1, fees for 1996 totaling \$2,700 were not billed until February 21, 1996. Accounting Division staff told us the Regional Environmental Management Department must initiate the request to bill, and we

confirmed that the Accounting Division had not received this request until February 16.

The amount involved is relatively inconsequential. However, in our opinion, failure to bill the franchisees in a timely manner is further evidence of the Regional Environmental Management Department's inconsistency in administering the franchises.

**Franchise
Tonnage
Authorization
Ignored**

Several of the franchises and non-system licenses limit the number of tons of waste that can be taken into the facilities to be processed and/or the amount of residues that can be shipped to landfills for disposal. In 1995, the Accounting Division warned the Regional Environmental Management Department that 2 facilities that had been reviewed were very close to exceeding their tonnage authorizations and would probably exceed them in the next year. We found no evidence that the Department responded to these warnings.

In May 1996 the Department discovered that one of the facilities had indeed exceeded its authorization. Department staff also learned that the second facility, as well as two others, did not send transaction data needed by the Department to follow the origin, destination, volume and type of material. This data is necessary for the Department's enforcement, planning and forecasting activities. The staff told us that the franchise agreements did not require the companies to provide this information.

**Regional
Environmental
Management
Department Is
Addressing
Franchise
Administration
Problems**

As part of its study of how better to administer franchises and licenses, the material recovery facilities franchise review team has prepared preliminary estimates of the oversight procedures and resources that may be needed for solid waste facilities now administered, or to be administered, by Metro. For all types of facilities, the estimate totals more than 7,900 staff hours. As shown in the following table, this oversight is significant and is substantially greater than that exercised in the past.

Table 4.2: Estimated Number of Staff Hours Needed for Oversight of Franchises and Non-System Licenses

Type of facility/permit	In-house ^a	Field ^b	Financial ^c	Total	Permits	Total
Transfer Station	36	72	80	188	1	188
Reloads	36	72	75	183	4	732
Material Recovery Facilities	36	72	75	183	12	2,196
Yard Debris	36	72	0	108	18	1,944
Petroleum Contaminated Soils	8	36	50	94	3	282
Organic	36	72	80	188	4	752
Designated Facility	16	36	80	132	7	924
Non-System License	8	8	75	91	10	910
TOTAL					<u>59</u>	<u>7,928</u>

^aEstimate covers the hours necessary for review, client contact, franchise modification, monitoring compliance and occasional visits.

^bEstimate includes six inspections per year with reports, follow-up, investigations and non-compliance inspections.

^cEstimate includes monthly data input, analysis, invoicing, and annual audit.

Source: Metro Regional Environmental Management Department staff

No action on this proposal is currently planned. The material recovery facilities franchise review team told us that these are estimates only and that no definite program for administering the facilities has been defined. They said that as soon as they finish implementing the regulation system discussed in Chapter 2, they will be able to continue developing the oversight system.

The review team believes that the Regional Environmental Management Department can not only finish implementing the regulation system but can also fulfill the Department's responsibilities for maintaining the system with current staffing levels. Metro's Accounting Division may require the equivalent of one more staff member to do financial reviews because of the increase in the number of facilities.

Regional Environmental Management staff have taken one other action, but its success appears limited. After learning of the expired franchises and other problems, Department staff developed a database which was intended to contain essential information for each designated, franchised and licensed facility. The purpose of the database was to provide easy reference to the agreements with the various facilities. The database, however, did not include one non-system license and one franchise, but did include two canceled franchises. Furthermore, there were no provisions for automated "tickler files," or preliminary notifications, to warn database readers of actions needed to avoid such problems as franchise expirations.

Several Metro officials indicated that they support greater review efforts. They said franchises have been handled too casually, leaving the impression that Metro does not care how the facilities are managed. These officials suggested that each franchised facility be physically reviewed—that Metro should not rely on telephone interviews, paper reviews or desk audits for oversight. These physical reviews should be done at least annually using a team consisting of an accounting staff member, a landfill specialist, an enforcement person and possibly someone from the General Counsel's office. This team should develop a review or inspection program that delegates the tasks of its various members, thus enabling a comprehensive evaluation of each facility. The team could efficiently and effectively review the franchises if it coordinated its work and included the appropriate managers to ensure that everyone understood what needed to be done.

Conclusions We believe the Regional Environmental Management Department's proposed efforts to provide more oversight over Metro-regulated privately-owned facilities are ambitious, but necessary. We also agree with the suggestions made by other Metro officials for improved review. Oversight would be greatly improved if the Regional Environmental Management Department, assisted by other appropriate Metro departments, developed oversight programs tailored to each facility and followed a formal inspection schedule to assure that each facility is physically visited and reviewed at

appropriate intervals each year. It would also be important for a team of inspectors to clearly define the responsibilities of each Metro department in reviewing the various aspects of the franchises and reduce these agreements to writing so that changes in staff and other matters will not adversely affect coordination. A small team of knowledgeable staff should be able to complete most of the inspections quickly and efficiently.

Chapter 5

Recommendations

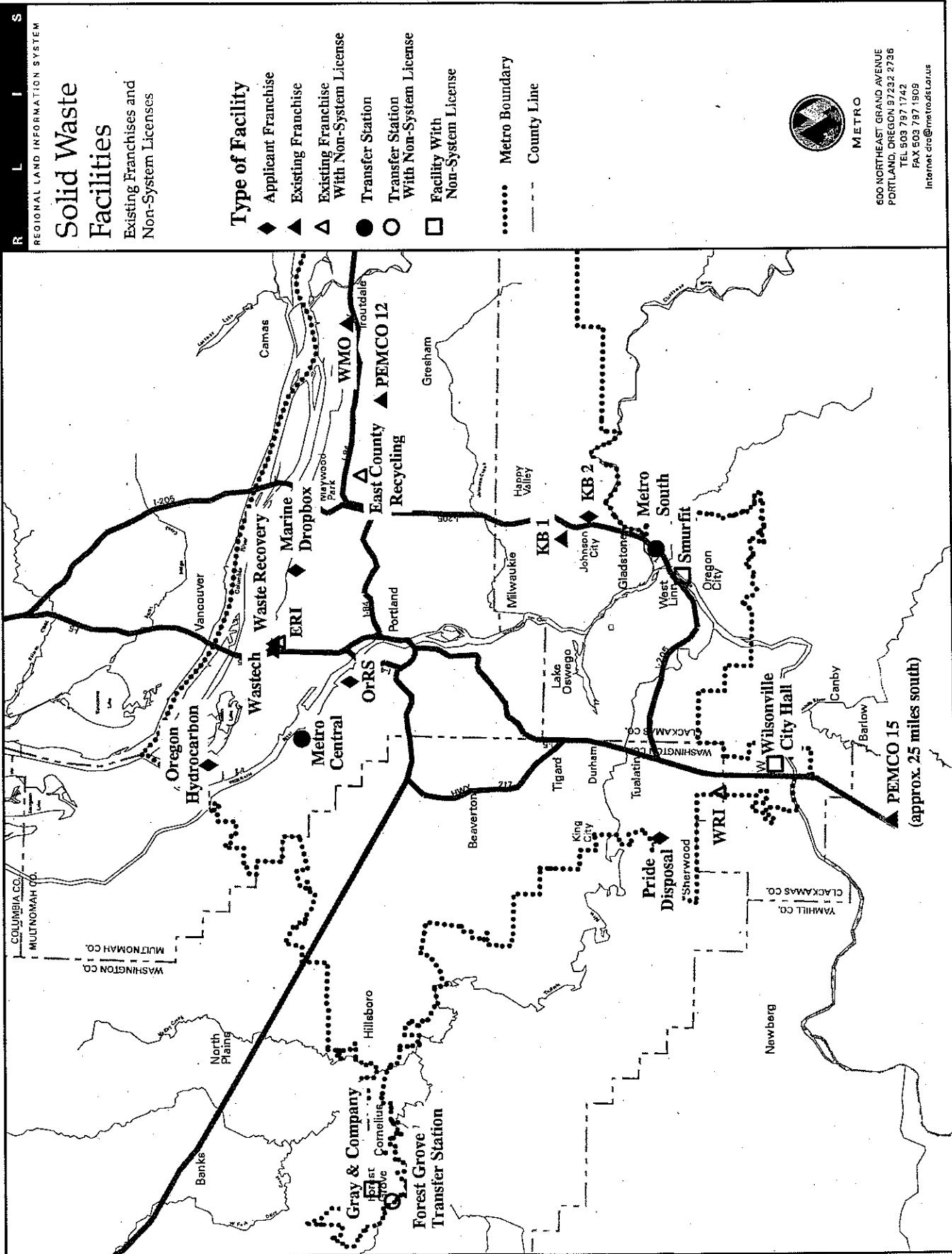
The Council, the Executive Officer, the Regional Environmental Management Department and Metro's Accounting Division should take a number of steps to provide guidance for and improved management of solid waste franchises.

- 1. Metro should comprehensively overhaul the existing franchise provisions of the Metro Code. When revising the Code, the Executive Officer and Regional Environmental Management Department staff should (1) obtain and incorporate the Council's views on the policy issues listed below, (2) consult with members of the public, pertinent governmental agencies, and other affected parties, and (3) provide the Council sufficient time and information to permit it to adopt up-to-date franchise provisions in the Code. Policy issues needing the Council's consideration include the following:**
 - a) Should Metro's official policy prohibiting "vertical integration" be eliminated or modified, and/or should Metro continue to grant variances to that section in the Code?**
 - b) What is a reasonable and achievable recovery rate for material recovery facilities?**
 - c) Should Metro continue to allow non-system licenses when their use to transfer waste to undesignated facilities may significantly adversely affect Metro's transfer stations and revenues?**
 - d) Should the user fee component of Metro's fees be raised to recover revenues Metro is now losing to undesignated landfills?**
 - e) Is the Metro Code too generous with respect to material recovery facilities; thus allowing them to**

- divert too large a share of Metro's current revenues?
- f) Should Metro's franchise fees be set at levels which will reimburse the costs of approving and monitoring the franchises?
 - g) How should Metro obtain its required revenue from solid waste processing facilities?
 - h) How should Metro guarantee a sufficient flow of solid waste to ensure that its transfer stations remain viable?
 - i) What should Metro's role be in regulating site and environmental factors in solid waste processing facilities?
 - j) What number and type of solid waste processing facilities should Metro encourage?
 - k) Where should specific recoverable materials be directed?
 - l) What should be the role of Metro's transfer stations in recovering solid wastes?
2. The Executive Officer, assisted by Regional Environmental Management Department staff, should promptly request the Council to clarify the policy contained in the Metro Code restricting relationships between franchised processors and solid waste collection and hauling companies.
3. Metro's General Counsel, after consultation with the Council, should decide whether franchise agreements should require that franchisee ownership changes be treated as transfers under the Code and subject to the Council's review and approval. If that is the decision, both the franchise agreements and the Code should be clarified.

- 4. After the Regional Environmental Management Department has developed its regulation system for Metro-authorized solid waste facilities, it should develop an oversight system for those facilities that will ensure they are thoroughly inspected at least once a year. In doing so, the Department, assisted by other Metro units as needed, should develop oversight programs tailored to each facility and should follow a formal inspection schedule to assure that each facility is physically visited and reviewed at appropriate intervals each year. The responsibilities of each Metro department in reviewing the various aspects of the franchises should be clearly defined so that changes in staff and other matters will not adversely affect coordination of the inspections.**

Appendix A



Appendix A

Status of Metro's Franchises and Non-System Licenses

(July 1996)

Franchises Currently in Effect:

Forest Grove Transfer Station
East County Recycling, Inc.
Oregon Processing and Recovery
Center (Wastech)
Oregon Hydrocarbon, Inc.
PEMCO #12
PEMCO #15
Energy Reclamation, Inc. (ERI)
Willamette Resources, Inc. (WRI)
Waste Recovery, Inc.
Waste Management of Oregon
(WMO)

Franchises Currently Being Renewed:¹

Pride Disposal Reload/Recycling,
Inc.
K.B. Recycling, Inc. #1
Marine Drop Box

Franchises—New Applications:

K.B. Recycling, Inc. #2
Oregon Recycling Systems
(OrRS)

Franchises—New Application Anticipated:

Washington County

Non-System Licenses Currently in Effect:

Energy Reclamation, Inc.²
Smurfit
East County Recycling
A. C. Trucking (Forest Grove
Transfer Station)
Pride Disposal Company
Willamette Resources, Inc.
City of Wilsonville
Gray and Company

¹These franchises have expired, but have been permitted to continue to operate under their original agreements until they are renewed as material recovery facilities.

²This license has expired and the Department anticipates that the company will not request renewal.

Appendix B

Regional Environmental Management Department's Franchise Program Risk Assessments

Code section

Code provision deviations

5.01.020

Franchisee's rates are not fair, reasonable or adequate to provide necessary public service.
Rate preferences and other discriminatory practices are permitted.

5.01.030

Persons are allowed to operate facilities without proper franchisees or exemptions.
Franchisees receive, process or dispose of solid wastes not specified in the franchise agreement.
Persons take wastes to other than franchised facilities.
Franchisees charge rates that are not approved by council or executive officer.

5.01.060

Franchisee cannot or will not get corporate security bond sufficient to clean up site if necessary.
Application for franchisee transfer to a new ownership is not preceded by a letter from the existing franchisee.
Franchisee cannot or will not obtain sufficient public liability and other insurance (\$500,000).
Franchisee ownership becomes made up of undesirable persons initially or subsequently if changes in excess of 5 percent occur.
Franchisee fails to obtain required and necessary DEQ permits and authorizations.

Code Section

Code Provision Deviations (continued)

The physical facility does not have proper ownership of the property.

The facility failed to obtain proper land use approvals.

5.01.070

Franchisee did not sign an agreement with Metro within 10 days of receipt of the order granting the franchise as required.

The corporate security bond in the necessary amount (according to Metro's guidelines) has not been obtained and/or is no longer in effect.

Proof of insurance has not been obtained and/or is no longer in effect (\$300,000).

Metro has not been named as an additional insured.

The franchisee has received rights or privileges to receive specific types or quantities of solid waste.

5.01.080

The franchise term is longer than 5 years or the site longevity, whichever is less.

5.01.090

The franchisee has leased, assigned, mortgaged, sold or otherwise transferred part or all of its franchise to another party without an application filed in accordance with 5.01.060 and the franchise has been granted.

The term of the transferred franchise is greater than the original term of the franchise.

5.01.120

The franchisee does not provide adequate and reliable service.

The franchisee discontinued service without 90 days prior written notice and written approval.

The franchisee contracted with another person to operate the site without 90 days prior written notice and written approval.

Code Section

Code Provision Deviations (continued)

The franchisee does not establish and follow procedures designed to give reasonable notice prior to refusing service to any person.

The franchisee has not maintained public liability insurance in the amount set forth in section 5.01.070.

The franchisee has not given 30-day notice to the executive officer of lapses or proposed cancellation of insurance coverage or performance bond.

The franchisee has not provided an annual operating report.

The franchisee does not submit to Metro all correspondence and data submitted to the DEQ within 2 days of submission to DEQ.

The franchisee does not have a program for reducing the amount of solid waste being accepted from members of the general public and commercial haulers other than the franchisee.

The franchisee owns, operates, maintains, has a proprietary interest in, is financially associated with, or subcontracts operations of the site to an individual, partnership, or corporation involved in the business of collecting residential, commercial, industrial, or demolition refuse within the district (not applicable if franchisee only receives waste collected by the franchisee or its affiliates.)

5.01.130

The franchisee's fees and charges were not based on tons or volume of waste received and/or shipped to landfills.

The franchisee's tonnage of waste was unweighed or weighed on unapproved scales.

Franchisee's fees and charges received in cash have not:

- been separately recorded on multi-total cash registers,
- totaled the fees and charges recorded on cash register and reconciled them with the actual cash in the register drawer,
- been deposited daily in the bank account and the bank account reconciled each month.

Franchisee's cash receipts of payments on accounts receivable have not been recorded as mail is opened and reconciled to the daily bank deposit.

Code Section

Code Provision Deviations (continued)

Franchisees fail to use pre-numbered tickets in numerical sequence to collect fees and charges levied and collected on an accounts receivable basis or:

- the numbers of the tickets have not been accounted for daily
- voided or canceled tickets have not been retained.

When the franchisee was to pay its monthly payment to Metro, the franchisee did not file with the executive officer a statement showing:

- the name and address of the franchisee,
- the district registration number,
- the month and year of each report,
- the number of truckloads received daily,
- the daily number of cars, pickups, trailers, and other small hauling vehicles,
- the total number of cubic yards/tons of solid waste received during the month, classified among compacted, non-compacted, minimum loads, and special loads,
- the detailed explanation of any adjustments made to the amount of uncollectable user fees,
- signature and title of the franchisee or its agent.

The franchisee failed to pay excise taxes and finance charges on excise taxes owing to Metro in accordance with 7.01.

Franchisee has not paid user fees, finance charges on user fees and other charges owing to Metro as specified in 5.02.055.

5.01.140

The annual franchise fee has been established, but has not been paid or has been disputed.

The franchise fee has not been imposed on the franchisee in addition to other fees, taxes and charges.

The franchisee failed to pay the franchise fee in the manner and at the time required by Metro.

Code Section

Code Provision Deviations (continued)

- 5.01.150 Franchisee that is not accomplishing materials recycling and recovery as a primary operation failed to pay user fees.
Franchisee that is not treating petroleum contaminated soils to applicable DEQ standards failed to pay user fees.
User fees are not separately stated on the records of the franchisee.
Franchisee failed to pay user fees in the form of remittance payable to Metro.
- 5.01.160 Metro does not receive periodic reports from solid waste collection services.
- 5.01.210 Franchisee capable of processing tires has not met the volume reduction standards of 5.01.210 (b) and (c).
- 5.01.220 Franchisee for a facility processing petroleum contaminated soil has not met the standards of this section.
- 5.02.055 Franchisee designated to receive waste under 5.05.030 (5) have not remitted user fees and charges other than excise taxes to Metro.
Franchisee has not remitted user fees to Metro by the 15th day of the month for waste disposed of in the preceding month.
Delinquent franchisees failed to pay finance charges 30 days after they first came due.
- 5.03.020 Franchisee did not pay the \$200 application fee for issuance of a solid waste disposal franchise
Franchisee did not pay the annual fee before January 1 of the calendar year.

Code Section

Code Provision Deviations (continued)

Franchisee did not pay the \$300 solid waste disposal franchise (\$100 per site for each franchised site that only receives waste from the franchisee or its financial affiliates).

5.05.030

Franchisee has transported solid waste generated within the district to, or utilized or caused to be utilized for the disposal or other processing of any solid waste generated within the service area, any non-system facility without a non-system license.

5.05.035

Non-system licensee did not apply for a non-system license accompanied by a non-refundable \$500 application fee.

Non-system licensee did not set forth the information needed in the non-system license application (5.05.035(a))

Non-system licensee did not pay \$500 issuance fee when granted license.

Non-system licensee did not set forth required information in license.

Non-system licensee did not meet the requirements required of the holder.

Appendix C

Explanation of Content and Scope of Reviews for Franchises and Licenses

Full Review - indicates a physical on-site visit with:

- in-depth analysis of detail data as compared to the User Fee Reports
- trending analysis
- comparison of outside reporting (i.e. DEQ)
- full review of source documentation (on site/selected months)
- full review of revenue cycle documentation (selected months)
- internal control documentation and review
- contract compliance review
- other emphasis as appropriate

Limited Review - may or may not involve an on-site visit and focuses primarily on:

- in-depth analysis of detail data as compared to the User Fee Reports
- trending analysis (limited)
- internal control documentation and review (limited)
- contract compliance review (limited)
- other emphasis as appropriate

Initial Internal Control Write-Ups -

- analysis of detail data as compared to the User Fee Reports
- internal control documentation and review including informal suggestions to facility

Source: Regional Environmental Management Department and Metro Accounting Division staff

Regional Environmental Management Division's Franchise Management

Response to the Report

**METRO**

DATE: August 23, 1996

TO: Alexis Dow, CPA, Metro Auditor

FROM: Mike Burton, Executive Officer *Mike Burton*

RE: Response to REM Department's Franchise Management Examination

Thank you for the opportunity to review and comment on your examination of the REM Department's management of its franchise function. Your findings and recommendations are stated in bold text immediately followed by my response in normal text.

1. **Metro should comprehensively overhaul the existing franchise provisions of the Metro Code. When revising the Code, the Executive Officer and Regional Environmental Management Department staff should (1) obtain and incorporate the Council's views on the policy issues listed below, (2) consult with members of the public, pertinent governmental agencies, and other affected parties, and (3) provide the Council sufficient time and information to permit it to adopt up-to-date franchise provisions in the Code. Policy issues needing the Council's consideration include the following:**
 - a) **Should Metro's official policy prohibiting "vertical integration" be eliminated or modified, and/or should Metro continue to grant variances to that section in the Code?**
 - b) **What is a reasonable and achievable recovery rate for material recovery facilities?**
 - c) **Should Metro continue to allow non-system licenses when their use to transfer waste to undesignated facilities may significantly adversely affect Metro's transfer stations and revenues?**
 - d) **Should the user fee component of Metro's fees be raised to recover revenues Metro is now losing to undesignated landfills?**
 - e) **Is the Metro Code too generous with respect to material recovery facilities; thus allowing them to divert too large a share of Metro's current revenues?**
 - f) **Should Metro's franchise fees be set at levels which will reimburse the costs of approving and monitoring the franchises?**
 - g) **How should Metro obtain its required revenue from solid waste processing facilities?**
 - h) **How should Metro guarantee a sufficient flow of solid waste to ensure that its transfer stations remain viable?**
 - i) **What should Metro's role be in regulating site and environmental factors in solid waste processing facilities?**

- j) What number and type of solid waste processing facilities should Metro encourage?**
- k) Where should specific recoverable materials be directed?**
- l) What should be the role of Metro's transfer stations in recovering solid wastes?**

We concur with your recommendation that the franchise provisions of the Code be revised. We expect to complete a draft, suitable for Council consideration by June 30, 1997.

- 2. The Executive Officer, assisted by Regional Environmental Management Department staff, should promptly request the Council to clarify the policy contained in the Metro Code restricting relationships between franchised processors and solid waste collection and hauling companies.**

We also agree with this recommendation. This recommendation will be incorporated into the Code rewrite to be presented to the Council at the end of June 1997. Since policy questions may be addressed and implemented as the Code rewriting process moves along, it is possible that this particular could be addressed early.

- 3. Metro's General Counsel, after consultation with the Council, should decide whether franchise agreements should require that franchise ownership changes be treated as transfers under the Code and subject to the Council's review and approval. If that is the decision, both the franchise agreements and the Code should be clarified.**

The REM Department, in consultation with the Office of General Counsel, will prepare and propose means to regulate changes in ownership of franchises as well as transfers of franchises as part of the Code revision proposal for Council consideration. This item will be completed at the same time as the entire Code rewrite.

- 4. After the Regional Environmental Management Department has developed its regulation system for Metro-authorized solid waste facilities, it should develop an oversight system for those facilities that will ensure they are thoroughly inspected at least once a year. In doing so, the Department, assisted by other Metro units as needed, should develop oversight programs tailored to each facility and should follow a formal inspection schedule to assure that each facility is physically visited and reviewed at appropriated intervals each year. The responsibilities of each Metro department in reviewing the various aspects of the franchises should be clearly defined so that changes in staff and other matters will not adversely affect coordination of the inspections.**

We also concur in this recommendation and expect that a working oversight plan encompassing all the above issues will be completed by October 1, 1996. Several corrective actions to strengthen Metro's management and oversight capabilities have already been initiated as the Department recognized these deficiencies several months ago.

MB:RC:gbc

cc: Dan Cooper, General Council
Jennifer Sims, Chief Financial Officer
John Houser, Council Analyst
Roosevelt Carter, REM Budget and Finance Manager



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Fax: 797-1799

Mail: Metro Auditor, 600 NE Grand Avenue, Portland, OR 97232-2736

Call: Alexis Dow, CPA, Metro Auditor, 797-1891