

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)
CODE CHAPTER 5.00 TO ADD CERTAIN)
DEFINITIONS) ORDINANCE NO. 17-1410
) Introduced by Chief Operating Officer Martha
) Bennett in concurrence with Council
) President Tom Hughes

WHEREAS, the Metro Solid Waste Code is set forth in Title V of the Metro Code; and

WHEREAS, Metro Solid Waste Code Chapter 5.00 contains the definitions for Title V of the Metro Code; and

WHEREAS, Metro has previously exempted from regulation those material recovery facilities that exclusively receive non-putrescible source-separated recyclable materials that are collected through a curbside residential or commercial collection program; and

WHEREAS, via companion Ordinance No. 17-1411, Metro Council adopted code amendments that require source-separated material recovery facilities to obtain a license, while explicitly exempting those facilities that receive and process a single type of non-putrescible recyclable material; and

WHEREAS, the Code changes adopted in Ordinance No. 17-1411 require that new definitions defining a “conversion technology facility” and “specific material recycler” be added to Metro Code Section 5.00.010; and

WHEREAS, staff engaged in extensive public outreach regarding these proposed Code definitions, including presentations to the Solid Waste Alternatives Advisory Committee (SWAAC) on multiple occasions and a 60-day public comment period that closed on July 14, 2017; and

WHEREAS, on August 9, 2017, staff presented to SWAAC both the public’s comments and staff’s responses to those comments, whereupon SWAAC recommended presenting the proposed Code changes to the Metro Council for consideration; and

WHEREAS, the Metro Council finds that adding these new definitions to Metro Code Section 5.00.010 is necessary to implement the amendments made by Ordinance No. 17-1411; now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Section 5.00.010 is amended to add the new terms and definitions as set forth in the attached Exhibit A.

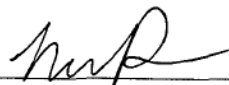
ADOPTED by the Metro Council this 26 day of October 2017.



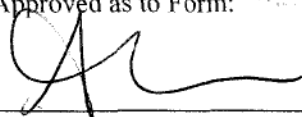
Tom Hughes, Council President



Attest:



Nellie Papsdorf, Recording Secretary

Approved as to Form:


Alison R. Kean, Metro Attorney

CHAPTER 5.00

SOLID WASTE DEFINITIONS

5.00.010 Definitions

Conversion technology facility means a facility that uses primarily chemical or thermal processes other than melting (changing from solid to liquid through heating without changing chemical composition) to produce fuels, chemicals, or other useful products from solid waste. These chemical or thermal processes include, but are not limited to, distillation, gasification, hydrolysis, pyrolysis, thermal depolymerization, transesterification and animal rendering, but do not include direct combustion, composting, anaerobic digestion, melting, or mechanical recycling. Mills that primarily use mechanical recycling or melting to recycle materials back into similar materials are not considered to be conversion technology facilities, even if they use some chemical or thermal processes in the recycling process.

Specific material recycler means a facility that processes a single type of non-putrescible recyclable material that holds intrinsic value in established reuse or recycling markets. These materials include, but are not limited to, scrap metal, plastic, paper, or other similar commodities. This term does not include a facility that processes commingled source-separated recyclables collected through curbside residential or commercial collection programs.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 17-1410 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.00 TO ADD CERTAIN DEFINITIONS

September 22, 2017

Prepared by: Dan Blue
503-797-1863

Adoption of Ordinance No. 17-1410 will amend Metro Code Chapter 5.00 (Solid Waste Definitions) to add new terms and definitions for “conversion technology facility” and “specific material recycler.” The purpose of these proposed definitions is to provide greater clarity in how Metro authorizes and implements its licensing requirements at solid waste facilities.

This ordinance is a companion to Ordinance No. 17-1411 which proposes related amendments to Metro Code Chapter 5.01 (Solid Waste Facility Regulation) to establish licensing requirements for certain facilities that receive and process source-separated recyclable materials. The Metro Council will consider both of these ordinances collectively at its meetings on October 5 and October 26, 2017.

BACKGROUND

In an effort to shape the future solid waste system to better attain public benefits and improve sustainability, Metro has undertaken a major planning effort (known as the Solid Waste Roadmap) to set the future direction of the region’s solid waste system for the next several years. Concurrently with this effort, staff seeks to provide a more consistent, transparent, and equitable regulatory framework for the regional solid waste system. Metro will further support this effort by developing the Regional Solid Waste Management Plan during 2017 and 2018.

In August 2015, Metro staff proposed a wide range of changes to Metro’s solid waste code (Metro Code Title V). Metro received feedback from the public requesting a more thorough and transparent process for considering the proposed code changes. In October 2015, Metro Council directed staff to implement an improved and more rigorous process for developing and soliciting feedback on proposed changes to Metro’s solid waste code. As directed by Metro Council, staff implemented a thorough public engagement process for soliciting input on the proposed code changes.

Because Metro is the agency tasked with planning, management, and oversight of the region’s solid waste system, it has an obligation to the public to ensure the waste intended for reuse, recycling and other purposes is handled properly and sent to appropriate markets and that all other waste is safely managed and disposed.

Metro Code currently exempts from licensing certain material recovery and conversion technology facilities that exclusively receive non-putrescible source-separated recyclable

materials that are collected through a curbside residential or commercial collection program. However, collection methods, material composition, and market conditions for source-separated recyclable materials have changed significantly since Metro initially established that regulatory exemption. These significant changes over the years have resulted in greater potential for material degradation at recovery facilities and adverse impacts on neighboring communities.

In December 2015, Metro's Solid Waste Alternatives Advisory Committee (SWAAC) commissioned a subcommittee to consider whether material recovery and conversion technology facilities that receive source-separated recyclable materials should be subject to Metro's licensing and inspection requirements similar to that of other solid waste facilities. Also, if so, the subcommittee was with charged identifying which licensing requirements were appropriate for such material recovery and conversion technology facilities.

The 15-member subcommittee, comprised of industry, local government, nonprofit, and general public representatives, held a series of meetings throughout 2016 and recommended that Metro establish regulatory requirements for certain material recovery and conversion technology facilities that receive and process source-separated recyclable materials. The subcommittee's recommendation was subsequently endorsed by SWAAC. The proposed code amendments described in this ordinance, as well as the companion Ordinance No. 17-1411, reflect SWAAC and the subcommittee's recommendations.

On May 10, 2017, SWAAC recommended that Metro solicit input from the public on the proposed changes and open a 60-day review and comment period. A formal public comment period was open from May 12 through July 14, 2017. The comments received and staff's response to those comments is provided as Attachment 1.

Staff presented the comments received and responses to those comments to SWAAC at its meeting on August 9, 2017. Staff then reviewed the proposed code changes with Metro Council at its work session meeting on September 19 and Council directed staff to bring the proposed code changes forward for formal consideration.

PUBLIC OUTREACH AND ENGAGEMENT:

As directed by Metro Council in October 2015, staff conducted extensive public outreach and solicited input on the proposed changes to Chapter 5.00. The public outreach for the proposed code changes included:

1. SWAAC review and SWAAC Subcommittee review :
 - (a) December 2015 – SWAAC commissioned a 15-member subcommittee to consider regulation of material recovery and conversion technology facilities. The subcommittee held seven meetings (between January and October 2016) and

recommended that Metro establish authorization requirements for material recovery and conversion technology facilities.

- (b) October 2016 – SWAAC endorsed the subcommittee’s recommendations.
 - (c) May 2017- SWAAC endorsed staff’s draft code changes and the opening of a 60- public review period.
 - (d) August 2017– SWAAC reviewed the public comments received by Metro, staff’s responses, and proposed revisions. SWAAC endorsed presenting the final proposal to Metro Council.
2. Public review and comment period:
- (a) Metro opened a 60-day public review and comment period from May 15 through July 14, 2017.
 - (b) Metro also held two public workshops on May 31 and June 13, 2017 to review the proposal and answer questions.
 - (c) Metro received three written comments related to the proposed code changes (see Attachment 1).
 - (d) Staff prepared a detailed response to the written comments received during the public review period (see Attachment 1).
3. Other outreach:
- (a) Metro established a dedicated web page that was used to post the proposed code change information and related documents at <http://www.oregonmetro.gov/regional-leadership/metro-advisory-committees/solid-waste-alternatives-advisory-committee/material>
 - (b) Staff sent routine status updates and other correspondence to interested parties via email.

PROPOSED AMENDMENTS TO CHAPTER 5.00

If adopted, this ordinance would add two new terms and definitions to Metro Code Section 5.00.010 as shown in Exhibit A. These proposed definitions are necessary to clarify which types of material recovery and conversion technology facilities will be subject to Metro licensing requirements under proposed companion Ordinance No. 17-1411. The Chief Operating Officer recommends adding the following terms to Metro Code Section 5.00.010:

- 1) **Conversion technology facility** – Add this new term to clearly define what constitutes conversion technology for purposes of Metro Code. The proposed term uses the same definition of *conversion technology* as defined by the state.¹
- 2) **Specific material recycler** Add this new term in order to clarify which types of facilities are exempt from licensing requirements as proposed under companion Ordinance No. 17-1411.

¹ Oregon Administrative Rules (OAR) 340-093-0030 (28)

ANALYSIS / INFORMATION

1. Known Opposition

One operator of a material recovery facility within the region is known to oppose the proposed code amendments and licensing requirements for material recovery facilities that receive and process source-separated recyclable material (see Attachment 1). A representative of the facility operator participated on the SWAAC subcommittee which considered this issue and the operator also had the opportunity to provide further input throughout the subsequent public engagement process.

The SWAAC subcommittee and SWAAC subsequently endorsed the proposed code amendments to establish additional regulatory oversight for material recovery and conversion technology facilities that receive and process source-separated recyclable materials.

2. Legal Antecedents

Any change to the Metro Code requires a legislative action of the Metro Council. Metro Code Section 2.01.070 states that the legislative action of Metro shall be by ordinance.

3. Anticipated Effects

Approval of this ordinance would amend Metro Code Section 5.00.010 to add two new defined terms as provided in Exhibit A. The new definitions would take effect 90 days after adoption. If Council also adopts companion Ordinance No. 17-1411, material recovery and conversion technology facilities that receive non-putrescible source-separated recyclable materials that are collected through a curbside residential or commercial collection program would be required to apply for and obtain a solid waste license by January 1, 2019.

4. Budget Impacts

There are no expected budget impacts associated with the adoption of this ordinance.

RECOMMENDED ACTION

The COO recommends adoption of Ordinance No. 17-1410.

Material Recovery Facility & Conversion Technology Facility Project (MRF/CT)
Compilation of Feedback Received, Metro Response, and Actions Taken
Topic: Proposed Changes to Title V, Chapters 5.00 and 5.01
August 1, 2017

On May 12 2017, Metro opened a 60-day public review and comment period to solicit input on proposed changes to Metro Code Chapters 5.00 and 5.01 related to the regulation of certain material recovery facilities (MRFs) and conversion technology (CT) facilities. The public comment period closed on July 14, 2017. At that time, Metro also posted preliminary drafts of two proposed administrative rules associated with the Code amendments for informal review and comment. If Metro Council were to adopt amendments to Metro Code, then Metro would subsequently open a formal public review and comment period for the proposed administrative rules as provided in Metro Code Section 5.01.280.

The following is a summary of the written comments that Metro received during the public comment period and Metro's responses to those comments related specifically to the proposed changes to Metro Code. All comments were received in writing by email. A copy of each comment received is also attached to this document.

All documents related to this project are located on Metro's website here:

<http://www.oregonmetro.gov/regional-leadership/metro-advisory-committees/solid-waste-alternatives-advisory-committee/material>

For questions or concerns regarding the project please contact Dan Blue at 503-797-1863 or dan.blue@oregonmetro.gov.

NOTE: Due to the length and varied nature of the comments received and for clarity, pertinent sections of the comments are italicized. Responses to those comments are in *bold and are italicized*. Copies of all comments received are attached to the end of this document.

Scott Farling (SF) representing Agilyx, by email on July 13, 2017:

Comment 1. *5.01.030 (b) should include "conversion to petrochemical products" along with reuse and recycling as accepted means of disposal for source-separated recyclable materials. (Note: 5.01.040 (b) refers back to 5.01.030 (a), (b), (d), and (f).)*

Metro Response: *This suggested change is outside the scope of the current proposed changes to 5.00 and 5.01. No change made.*

Comment 2. *5.01.040(a)(4) should include the information under the heading "Characteristics of CT Facilities Exempt from Obtaining a Metro License" from page 10 of the MRF-CT Recommendations for SWAAC Final.*

CT facilities that receive feedstocks that have already been extracted from mixed solid waste and otherwise processed to conform to prescribed specifications and largely resemble commodity feedstocks (material streams) for direct introduction into a conversion technology process may have the following characteristics:

- The facility does not accept unprocessed, mixed solid waste from collection trucks/containers, reload facilities, or other solid waste generators.
- A majority of feedstock material is used productively in conversion process.
- Feedstock specifications are prescribed to conform to the specific conversion technology industrial process requirements.

- Shredding, mixing, right-sizing or other similar treatment of already sorted and processed feedstocks typical in a manufacturing process does not constitute “processing of solid waste”.
 - The facility’s receipt and processing of the feedstock presents low potential risk to the environment, or to neighboring businesses and residential communities (e.g., odors, dust, noise, vectors, litter, fire safety etc.).
- Metro Response: The “Characteristics of CT Facilities Exempt from Obtaining a Metro License” were developed to inform the discussion and deliberation of the MRF/CT Subcommittee which led to the Subcommittee’s subsequent recommendations to Metro’s Solid Waste Alternatives Advisory Committee (SWAAC). While this language helps to clarify what types of facilities would be exempt under the proposed code changes, Metro staff does not concur that this level of specificity is needed in the Code and recommends that the proposed code language is sufficient. Metro staff will consider including this level of detail in the draft administrative rules should Council elect to modify the Code as proposed. No change made.***
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Matt Cusma, Representing Schnitzer Steel, by letter sent by email July 14, 2017:

Schnitzer Steel Industries appreciates the opportunity to submit these comments on the proposed amendments to Metro Code Chapters 5.00 and 5.01 dated May 12, 2017. The proposed amendments are the result of many months of effort by the Solid Waste Alternatives Advisory Committee’s MRF/CT Subcommittee, other stakeholders, and Metro staff. Schnitzer believes this collaborative approach and deliberate effort to involve stakeholders in the Metro Solid Waste Code revision process improved on the code revisions originally proposed in 2015. Schnitzer commends Metro on this renewed commitment to collaboration and stakeholder engagement at the outset of any discussions regarding whether changes to Metro’s Solid Waste Code are necessary and, if so, what those changes should be.

One purpose of the proposed amendments is to clarify that recyclers that receive and process non-putrescible recyclable material that holds intrinsic value in established reuse and recycling markets (e.g., scrap metal, plastic, paper, and similar commodities) will remain exempt from Metro’s solid waste license and franchise requirements. See Proposed Sec. 5.01.040(a)(5). This exemption appropriately recognizes that these types of recyclable materials are managed as valuable commodities, not waste, and present little risk of harm to human health or the environment. Much of this recyclable material never enters the solid waste stream because of its recycling value. Based on these considerations and others, Metro has long recognized facilities that process such materials as a unique type of commercial recycling facility and has exempted them from solid waste facility licensing requirements. The proposed amendments appropriately codify a specific exemption that covers these types of facilities: the “Specific Material Recycler” exemption.

Schnitzer fully supports the clarification of the Specific Material Recycler exemption, but believes the proposed language is unnecessarily narrow. As drafted, the exemption applies to: “Specific material recyclers that receive and process a single type of nonputrescible recyclable material that holds intrinsic value in established reuse and recycling markets such as scrap metal, plastic, paper, or other similar commodities.” But for recyclers that receive recyclable materials with intrinsic value and manage those materials as valuable commodities, it should not matter whether the recycler receives and processes only a single type of material. That is, eligibility for the exemption should depend on the type of material accepted by the recycler (i.e., recyclable materials that hold intrinsic value in established markets), not whether the recycler accepts more than one type of such material.

Comment 1. To address this issue, Schnitzer urges Metro to remove the phrase “a single type of” from the exemption, so that the exemption would apply to specific material recyclers that receive and process “nonputrescible recyclable materials that hold intrinsic value in established reuse and recycling markets, such as scrap metal, paper, or other similar commodities.” The phrase “a single type of” would also need to be removed from the definition of “specific material recycler,” which Metro is proposing to add to Section 5.00.010.

This limited expansion of the Specific Material Recycler exemption would be consistent with the purposes of Metro's solid waste facility regulations. See Sec. 5.01.010(a). Because Schnitzer's proposed changes would not expand or change the types of materials that would fall within the exemption, the proposed changes would not undermine Metro's ability to protect and preserve the health, safety, and welfare of its residents. See Sec. 5.01.010(a)(1). Moreover, the proposed changes would create additional incentive for facilities that receive and process recyclable materials with intrinsic value to reduce the volume of solid waste disposal. See Sec. 5.01.010(a)(4). Schnitzer would welcome the opportunity to discuss this proposed revision to the Specific Material Recycler exemption with Metro staff.

Metro Response: Use of the phrase "a single type of" is intended to distinguish between a facility that predominately receives multiple homogeneous types of source-separated recyclable materials from a facility that receives commingled source-separated recyclables from curbside commercial and residential collection programs. Staff finds that removing the phrase "a single type of" from the definition of Specific Material Recycler may cause confusion for facility operators as to which types of facilities would be exempted, and which would not. Staff has revised the proposed definition of Specific Material Recycler to include the following statement for additional clarification: "The exemption does not apply to facilities receiving commingled source-separated recyclables collected through curbside residential or commercial collection programs." Staff will also consider providing further clarification of this distinction as part of administrative rule.

As such, the proposed definition in Metro Code Section 5.00.010 has been revised to read: "Specific material recycler" means a facility that processes a single type of non-putrescible recyclable material that holds intrinsic value in established reuse or recycling markets. These materials include, but are not limited to, scrap metal, plastic, paper, or other similar commodities. The exemption does not apply to facilities receiving commingled source-separated recyclables collected through curbside residential or commercial collection programs.

Jeff Murray, Representing EFI, by letter send by email July 14, 2017:

EFI has an interest in and would be effected by the Proposed Ordinances because EFI is located within the Metro Region and receives significant volumes of Commercial Commingled Recyclables collected by EFI trucks and licensed refuse haulers from businesses located inside and outside the Metro Region. A majority of the recycling that EFI processes at its facility on Swan Island is source segregated recyclables (ie OCC, Office Paper and other various grades of recyclables separated by the generator by grade). *Competitors that only receive and process source segregated recyclables will not be subject to licensing by Metro and the requirements associated with licensing, placing EFI in a competitive disadvantage with these facilities.*

Comment 1. *EFI opposes the Proposed Ordinances because it is a dramatic change in Metro Code that violates a stated policy in the Metro RSWMP and is in violation of Oregon State Statute (ORS 459A.075).*

Metro Response: Metro has thoroughly discussed and evaluated the need for this ordinance with a stakeholder subcommittee, SWAAC, the public and Metro Council over the last two years. While EFI states its opposition to this ordinance, Metro staff finds that the proposed amendments to Metro Code are in the public interest. Metro staff has found that many in the solid waste industry, local government officials, and the public are in support of these changes. The 2008 Metro Regional Solid Waste Management Plan (RSWMP) states that certain facilities including those that exclusively handle source-separated recyclable materials "are not required to obtain authorization from Metro to operate." That statement is found in the section of the

RSWMP entitled “Current System,” which is intended to simply describe Metro’s current solid waste system. It is a factual statement and not intended to be a policy statement or a prohibition on future regulation.

The state law exemption in ORS 459A.075 is not relevant to the proposed Code change. To enjoy this exemption, the recyclable material must be “Purchased from or exchanged by the generator for fair market value for recycling or reuse.” The source-separated recyclable materials covered by the proposed Metro Code changes and administrative rules are not “purchased from or exchanged by the generator for fair market value.” Accordingly, commingled source-separated recyclables from residential and commercial curbside collection programs do not align with this exemption because the collection hauler, under the terms of a solid waste franchise or license with the local government, is providing that collection service and transporting that material to a recovery facility for further processing. There is no direct exchange or purchase from the generator for fair market value for recycling or reuse. Finally, Metro’s definition of solid waste includes source-separated recyclables. No change made.

Comment 2. Past reports by staff have downplayed the potential negative impacts of the Proposed Ordinances and we have deep concerns that licensing can place facilities, such as EFI, that handle commingled recyclables and that are located within the Metro Region at a strong disadvantage to those outside the Region.

Metro Response: Metro is responsible for and has broad regulatory authority over all solid waste within the region and, in particular, has identified concerns about potential nuisance, odor, litter and dust generated by some facilities. Metro currently issues licenses or franchises to over 30 solid waste facilities within the region to ensure that the region’s solid waste is managed appropriately and that nearby residents and business are not adversely impacted. Currently some MRFs inside the region are subject to Metro authorization while others are not. The proposed legislation would establish similar and consistent requirements for solid waste facilities performing similar functions. No change necessary.

Comment 3. The Proposed Ordinances would, through licensing, allow Metro to impose unnecessary requirements on source separated recycling facilities, including design requirements, operating requirements, performance standards and reporting of detailed, confidential account information.

Metro Response: No performance standards are being proposed at this time. Operating, design and reporting requirements are being proposed with the full and unanimous support of the MRF/CT Subcommittee and SWAAC and are contained within the draft administrative rules that accompany the proposed Code amendments. No change necessary.

Comment 4. To this point there has only been discussion related to already existing administrative rules.

Metro Response: Metro does not currently have administrative rules related to the operation or regulation of MRFs that receive source-separated recyclables (SSR). The preliminary administrative rules that staff posted for public review are proposed in draft form for information only.

Metro will not adopt an administrative rule related to regulation of SSR MRFs unless the Metro Council first adopts Code amendments that authorizes regulation of SSR MRFs. To date Metro staff has engaged with stakeholders in a variety of ways to solicit input on potential operating requirements for SSR MRFs including initiating an “informal” public comment process related to proposed administrative rules.

As part of the public engagement process, the proposed amendments to Code, and preliminary drafts of administrative rules, were provided to SWAAC, MRF/CT Subcommittee members and interested parties on May 2, 2017 and discussed at the May 10, 2017 SWAAC meeting. A stakeholder workshop was held on May 31, 2017 to discuss proposed changes to Code chapters 5.00 and 5.01 as well as draft administrative rules. A second public workshop was also held on June 12, 2017.

If the Metro Council adopts the proposed Code changes and requires that SSR MRFs obtain authorization from Metro, then Metro will subsequently open a formal public comment process and hold a public hearing for any proposed administrative rules as provided in Metro Code Chapter 5.01. No change necessary.

Comment 5. *We have two specific concerns related to the administrative rules: 1) Are there more administrative rules to come specifically related to source separated commingle facilities?*

Metro Response: *Much useful input was received on the draft administrative rules for both CT and for SSR MRFs during the two stakeholder workshops on May 31 and June 12, 2017 as well as the initial “informal” public comment period on the rules that closed July 14, 2017. If the Metro Council adopts the proposed Code amendments, then staff will revise the draft administrative rules based on the preliminary stakeholder input that has already been provided and will open another public comment period on a revised set of administrative rules as provided in Metro Code Chapter 5.01. No change necessary.*

Comment 6. *2) If there are more administrative rules, will there be a committee established to help developed these rules before Metro Council votes on the Proposed Ordinances? Without finalized Administrative Rules, we do not yet know what the full implication of licensing will mean to our business.*

Metro Response: *The proposed administrative rules that will accompany the Code amendment package will be open to a formal public review period and hearing process if the proposed Code changes are adopted by Metro Council. Adoption of any subsequent amendments or new administrative rules would be considered as provided in Metro Code Section 5.01.280. No change necessary.*

EFI may be harmed and the regional refuse / recycling system as a whole may suffer unintended consequences by the Proposed Ordinances for the following reasons:

- 1) Within the City of Portland, recycling facilities in the appropriate zones have outright use. Solid waste facilities are not allowed within some of the zones and need conditional use in the limited number of zones that they are allowed.

Comment 7. *In the event that EFI became a licensed solid waste facility, we may need conditional use to make any significant changes to our facility. This is particularly troubling if Metro were to require the changes.*

Metro Response: *Metro staff has researched this issue, which was raised and discussed in the MRF/CT Subcommittee and with city of Portland officials. Metro has not received any evidence suggesting that local land use decisions would, or have been, influenced by the issuance of a Metro solid waste license. The actual “use” of EFI’s property remains unchanged regardless of Metro’s proposed licensing requirements. Because land use regulations are based on “use” of the property, then a Metro requirement to license a facility should not automatically change any land use decisions affecting that property if the use remains the same. As indicated in the referenced “attachment A” Table 140-1 (a City of Portland planning document) “Industrial Service (Includes Recycling)” is an outright approved use. No change made.*

- 2) Currently, most of the commingled recyclables collected in the state of Oregon are received and sorted at facilities within the Metro region. In the event that Metro were to license commingle recycling facilities within the region the following may happen:

Comment 8.

- a. *Commingled recyclables collected outside the region that are currently delivered to facilities within the region may travel to facilities currently outside the region. This would raise the cost per ton to receive and sort the material that continues to be delivered to the facilities*

within the Metro region. Fewer commingle tons also raises the per ton cost to handle source segregated recyclables (separated by type), placing EFI at a competitive disadvantage on our segregated portion of our business.

- b. Commingled recyclables collected in the region may be delivered, or reloaded and delivered to facilities outside the region. There is a commingled recycling facility located in Salem, OR that may draw commingle material from the south end of the region and there are a number of facilities in the Puget Sound area that are currently running under capacity. The facilities in the Puget Sound market are much closer to the port. A few dollars difference in pricing and more stringent controls on the commingled material may be enough to send the material north to facilities owned by haulers that also provide collection service in the metro area.*
- c. Licensing of commingle recycling facilities in the Metro region may cause recyclers currently in the region to relocate outside the region.*

Metro Response: *The concerns outlined in a – c above are speculative. Metro’s intent in this Code change package is to ensure that nuisance, odor, vector, dust and litter impacts for residents and businesses located nearby MRFs and CT facilities are minimized. There is no evidence to suggest that the proposed changes to Code are likely to result in any of the impacts outlined above (comments a. – c.) for facilities that are already meeting the minimum standards proposed in the rules. No change necessary.*

Comment 9. *The result of Metro licensing facilities that handle commingled recycling may result in giving Metro and local governments less information about and control over the source separated commingled recyclables collected in the region.*

Metro Response: *This is both speculative and contrary to the expected outcome of the proposed changes. Staff believes that adoption of these changes will result in a much better understanding of the regional solid waste system and that many information gaps will be filled in that will better inform future policy choices and planning efforts. No change made.*

Metro’s Authority to Regulate Solid Waste

Comment 10. *EFI does not question Metro’s authority to regulate solid waste; however, we do not agree that source separated recycling and / or source separated commingled recycling are solid waste, therefore Metro does not have the authority to license source separated recycling facilities. The primary document that gives Metro its authority over disposal and solid waste also exempts source separated recyclables that meet specific, yet broad criteria.*

459A.075 Exemptions. *Nothing in ORS 459.005, 459.015, 459.035, 459.250, 459.992, 459.995 and 459A.005 to 459A.665 applies to recyclable material which is: (1) Source separated by the generator; and (2) Purchased from or exchanged by the generator for fair market value for recycling or reuse. [Formerly 459.192]. The source separated recycling described above is exempted from all pertinent sections of 459 and 459A.*

Metro Response: *Metro staff recommends the following passage of the Oregon Recycling Opportunity Act in 1983 as a point of reference. In 1984, the Oregon Department of Environmental Quality (DEQ) sought legal advice from the Oregon Attorney General as to whether recyclable material was still considered “solid waste” for regulatory purposes under state law. The specific question was whether facilities “that receive only source separated recyclable materials [were] now exempt by definition, from the Department’s solid waste management rules?” (See Oregon Department of Justice letter to William Dana, DEQ, dated June 21, 1984.) The Oregon Department of Justice unequivocally stated that “recyclable material” is considered “solid waste” for regulatory purposes. The Attorney General’s Office further explained:*

“The overall policy of the Act, the expressed concerns of individual legislators, and the specific language of particular sections all indicate that the Legislative Assembly intended that ‘recyclable material’ continue to be a sub-category of ‘solid waste,’ and that facilities for collecting and sorting recyclable materials continue to be regulated as ‘disposal sites.’

** * **

[I]t appears to be the intent that DEQ continue to have power to regulate materials which meet the definition of ‘solid waste,’ whether such materials are recyclable or not.”

For similar Oregon Department of Justice interpretations, see Memorandum from Assistant Attorney General Larry Edelman to DEQ, dated February 27, 1996, and Letter from Assistant Attorney General Larry Edelman to Mark Morford, dated November 4, 2002.

In addition, ORS 268.317(8) gives Metro explicit statutory authority to “Receive, accept, process, recycle, reuse and transport solid and liquid wastes.” This statute indicates that the legislature considers “recyclable materials” as a sub-category of “solid waste.” Further, the definition of “Solid Waste Management” in ORS 459.005 (25) references “recycling” from “solid waste.”

Finally, it is not entirely clear what is meant by the comment: “The primary document that gives Metro its authority over disposal and solid waste also exempts source separated recyclables that meet specific, yet broad criteria.” Metro’s sources of solid waste legal authority are its home rule Charter, the Metro Code, the RSWMP, Oregon Revised Statutes (ORS) Chapters 268, 459 and 459A.

NOTE: The state law exemption in ORS 459A.075 is not relevant to the proposed Code change. To enjoy this exemption, the recyclable material must be “Purchased from or exchanged by the generator for fair market value for recycling or reuse.” The source-separated recyclable materials covered by the proposed Metro Code changes and administrative rules are not “purchased from or exchanged by the generator for fair market value.” Accordingly, commingled source-separated recyclables from residential and commercial curbside collection programs do not align with this exemption because the collection hauler, under the terms of a solid waste franchise or license with the local government, is providing that collection service and transporting that material to a recovery facility for further processing. There is no direct exchange or purchase from the generator for fair market value for recycling or reuse. No change made.

Why Regulate Commingle Recycling Facilities?

The answers that we have been given by staff were primarily related to storage of recycling and “house-keeping”. Local regulators had concerns that certain recycling facilities were stock-piling large volumes recyclable materials outside. In a few cases, for extended period. This caused a concern that the facilities were becoming nuisances and that the material would degrade and become unmarketable. There was also a general concern related to the house-keeping at these same facilities. Before the MRF / CT Subcommittee held its last meeting, the electronics recycler in Washington County was cited by DEQ and closed its doors shortly thereafter, and a commingle facility that was of concern shuttered its business.

Comment 11. *Metro has stated in the 2008 RSWMP: “Certain facilities, such as those exclusively handling inert wastes or source-separated recyclable materials, are not required to obtain authorization from Metro to operate. However, Metro retains the authority to inspect and audit these operations to periodically confirm compliance with Metro Code.” Similar language also existed in the 1995 RSWMP. EFI asks the following questions: 1) When and how often has Metro exercised this Authority?*

Metro Response: *Metro staff have periodically visited SSR MRFs over the years to determine if they meet the exemption criteria provided in Metro Code Section 5.01.040(a)(3) i.e. exclusively accepting source-separated recyclable materials. However, under current Code requirements, such visits are typically pre-scheduled with the operator and performed for the purpose of determining whether the facility exclusively receives source-separated recyclable materials for reuse or recycling. Currently, SSR MRFs are not subject to licensing or franchising requirements and Metro does not have any authorization mechanisms in place to establish and enforce operating conditions at these types of facilities.*

Comment 12. *2) What has the response been by facilities that handle commingled recyclables when Metro has informed the facility operators that the facility is out of compliance?*

Metro Response: *As explained in Metro's response above, SSR MRFs are not subject to licensing or franchising requirements under current Metro Code. Metro does not have any authorization mechanisms in place at this time to establish and enforce operating conditions at these types of facilities. As stated earlier, Metro's intent with these proposed changes is to minimize nuisance, odor, vector, litter and dust from these operations, and to avoid material degradation due to improper handling. Given that local, national and global commodity markets ebb and flow, it is critical that periodic unannounced, random site visits are conducted to reduce undue impacts on communities.*

Comment 13. *3) Has any facility that handles source separated commingled recyclables turned down a request by Metro to enter the property or to respond in a positive manner when metro staff has recommended / requested a change to improve their operation?*

Metro Response: *As explained in Metro's response above, Metro staff have periodically visited SSR MRFs over the years to determine if they meet the exemption criteria provided in Metro Code Section 5.01.040(a)(3). Currently, such visits are typically pre-scheduled, limited in scope, and subject to approval by the operator. Metro staff has found that SSR MRF operators have generally accommodated Metro's requests to allow site access over the years. However, Metro does not have any authorization mechanisms in place to require site access or other operating conditions at these types of facilities.*

Comment 14. *Regulation of commingle facilities will have little if any positive impact on the quality of the outgoing product from commingle facilities.*

Metro Response: *Improving the quality of outgoing materials is not an objective of this proposed Code change. However, the proposed regulations will likely have a positive impact in those cases in which source-separated recyclable materials are either stored or mishandled in such a way as to lead to significant degradation of that material (as Metro staff has observed at one MRF in the region) making that material unmarketable. Additionally, the proposed regulations will likely have a positive impact on the people living and working nearby these types of facilities in that it will result in establishing operating requirements that will help minimize nuisance conditions such as litter, dust, and vectors.*

Material recovery facility (MRF) and conversion technology (CT) Subcommittee

EFI has several concerns regarding the process followed in developing the final draft recommendations. A primary concern is that the end product is no different than what was presented at the end of summer, 2015.

Comment 15. *The committee process did not address the initial concerns of the recycling community and local governments that brought about their initial support for oversight / regulation of these facilities.*

Metro Response: *The MRF/CT Subcommittee was charged with considering whether MRFs that process source-separated recyclable materials and facilities that convert waste to energy, fuel, or other products should be subject to authorization and inspection similar to other facilities and if so to identify which requirements were appropriate. The MRF/CT Subcommittee deliberated over the course of seven meetings*

with the result being unanimous support for a set of recommendations that included authorizing material recovery facilities processing source-separated recyclables and establishing operating standards for those facilities. The MRF/CT Subcommittee, SWAAC, and Metro Council were clear that the scope of the subcommittee did not include performance standards (material quality) and that consideration of performance standards should be addressed through the upcoming regional waste planning process. No change made.

Comment 16. Further, I brought forward a motion to recommend Certification of Comingle Recycling Facilities as an alternative to licensing and staff interrupted the motion and later made their own. (Attachment B)

Metro Response: The MRF/CT subcommittee did receive a copy of Mr. Murray's certification proposal, and did discuss third-party certification as well as a Metro-issued certificate, license, or franchise. Through deliberation, the subcommittee elected to focus on a broader statement recommending that such facilities be subject to a Metro "authorization." Metro Code provides for two types of facility authorizations - solid waste license or franchise. Rather than creating a third type of authorization and developing an additional apparatus in Code, staff recommended removing the current licensing exemption for this type of facility. Therefore, Metro staff recommends using a solid waste license as the form of authorization for this particular class of facility. This approach is consistent with current Code, and Metro's current regulatory oversight of the region's solid waste system.

Comment 17. Why didn't Metro staff tell members at this second meeting that their list of issues would NOT be addressed in the sub-committee?

Metro Response: The deliberation of the Subcommittee, taken in whole, addressed many of the issues included in Mr. Murray's comment letter attached to this document. Those issues not specifically addressed in the subcommittee were identified to be better suited to the upcoming regional waste planning process.

This information was clearly articulated, as mentioned in these public comments, at the Subcommittee's March 17 meeting (Meeting No. 3). The summary notes for the above-mentioned meeting are available on the Metro website at: <http://www.oregonmetro.gov/regional-leadership/metro-advisory-committees/solid-waste-alternatives-advisory-committee/material>.

Mr. Murray began his presentation indicating that it had been mentioned many times in the Subcommittee that so called "clean mrf's" and "dirty mrf's" were similar now, and that his presentation was to show that they are still very different. Mr. Murray then showed a series of slides from both types of facilities indicating that dry waste facilities and SSR MRFs were indeed different in terms of the mixes of materials they receive and the composition of materials leaving the facilities (both to markets and to landfill). Mr. Murray showed a short video from a dry waste MRF and clarified that the outgoing residuals from the two different types of facilities were quite different with far more residuals going to landfill from the dry waste facilities that what comes out of the SSR MRF's.

During the same meeting Jeff made a motion to consider Certification as an option. The motion was interrupted by staff and staff asked if they could first give their presentation.

Comment 18. Jeff was not given another opportunity to present his motion.

Metro Response: At the May 20 meeting the various available options for "authorization" of these types of facilities was discussed. The Subcommittee discussed the certification option, and coalesced around the suggested language that ultimately became the key recommendation contained in the

MRF/CT Recommendation Memo. Mr. Murray's (and EFIs) focus on the certification is acknowledged and was well-represented in Subcommittee discussions, however the rest of the MRF/CT Subcommittee seemed comfortable with the broader term "authorization" for its recommendations going forward and reliance on staff to recommend the exact type of appropriate authorization. This position is further evidenced by the thorough review, editing, and subsequent adoption of the final MRF/CT Recommendation Memo dated October 5, 2016. Finally, it is Metro staff's recommendation that licenses are the appropriate legal form of authorization for this class of facility. Metro licenses can be developed to address conditions specific to a class of facilities. A Metro-issued certificate would only be a different name for a Metro-issued authorization – and it would not be any more restrictive or expansive than a license.

Has Metro Council and / or staff discussed the possibility of:

Comment 19. *1) Building or utilizing an existing facility the purpose of sorting source separated commingled recycling collected within the Metro region?*

2) Bidding out the processing of source separated commingled recycling collected within the Metro region?

3) Flow controlling source separated commingled recycling collected within the Metro region to either a publicly or privately-owned facility?

Metro Response: *The three questions above are not relevant to the proposed changes to Metro Code Chapters 5.00 and 5.01 for which Metro has sought public comment. Metro entering into any of the activities described above would be the result of a policy decision. Policy direction comes from Metro Council. Metro Council has not directed staff to explore any of the three activities described in the questions above.*

Comment 20. *EFI requests that Metro re-instate the policy stated in Objective 4.3 of the Metro 1995 RSWMP in the RSWMP currently under development.*

Metro Response: *Thank you for this comment. It is, however, not related to the proposed changes to Metro Code. Please be sure to provide these comments through the Regional Waste Plan process. Information is available here: <http://www.oregonmetro.gov/public-projects/future-garbage-and-recycling>. No change made.*

Conclusion

In summary, EFI appreciates the opportunity to comment on the Proposed Ordinances. We request that Metro staff and Council give serious consideration to the concept of certification of source separated commingled recycling facilities. We continue to ask the question:

Comment 21. *Why does Metro need to license source separated commingled recycling facilities when they have not fully exercised their "authority to inspect and audit these operations to periodically confirm compliance with Metro Code."*

Metro Response: *While code provides "authority to inspect and audit these operations to periodically confirm compliance with Metro Code" the Code does not include sufficient details or operating requirements related to the operation of these types of facilities. The MRF/CT Subcommittee and SWAAC, have endorsed additional regulatory oversight including establishing design and operating standards as well as reporting for SSR MRFs. The proposed removal of the licensing exemption for*

this class of facilities accomplishes the recommendations of the Subcommittee and SWAAC. No change made.

Administrative Rule Process:

The comments received and responded to in this document were focused entirely on the proposed changes to Metro Code Chapters 5.00 and 5.01. When the proposed code changes were put out for public comment, Metro also posted preliminary drafts of two proposed administrative rules associated with the Code amendments for informal review and comment. Staff received comments on the draft administrative rules from the following:

- Keith Ristau, Far West Recycling
- Andy Kahut, KB Recycling
- Dave Claugus, Pioneer Recycling
- Chris McCabe, Northwest Pulp and Paper Association

If Metro Council adopts the proposed changes to Metro Code Chapters 5.00 and 5.01, Metro will subsequently adopt administrative rules as provided in Metro Code Section 5.01.280. Specifically, staff will post revised, draft administrative rules for public review and comment which will take into consideration the preliminary input that Metro received during the informal comment period that ended on July 14, 2017. At the conclusion of the next public comment period for the proposed rules, Metro staff will provide written responses to all comments received during the formal public comment period.

All project materials are located on Metro's website here: <http://www.oregonmetro.gov/regional-leadership/metro-advisory-committees/solid-waste-alternatives-advisory-committee/material>

Questions or concerns regarding the project can be directed to Dan Blue at 5023-797-1863 or dan.blue@oregonmetro.gov.