

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING A) ORDINANCE NO. 98-783
FRANCHISE TO WASTE MANAGEMENT OF OREGON)
FOR THE PURPOSE OF OPERATING A SOLID) Introduced by Mike Burton,
WASTE FACILITY AUTHORIZED TO RECEIVE) Executive Officer
PUTRESCIBLE WASTES, DELIVER THEM DIRECTLY)
TO METRO'S CONTRACT DISPOSAL OPERATOR,)
AND TO CONDUCT OTHER ACTIVITIES.)

WHEREAS, Metro Code Section 5.01.045(c)(4) stipulates that a Metro Solid Waste Franchise is required for any person owning or controlling a facility from which putrescible solid waste is delivered directly to Metro's contract operator for the disposal of putrescible waste; and

WHEREAS, Waste Management of Oregon currently holds Metro Solid Waste Facility License Number L-001-96 to operate Recycle America Material Recovery Facility, a solid waste facility authorized to receive wastes including nonputrescible wastes but specifically excluding putrescible wastes; and

WHEREAS, Waste Management of Oregon has applied for authorization to receive putrescible wastes and to deliver them directly to Metro's contract operator for the disposal of putrescible waste subject to the requirements of Metro Code including Section 5.01.127 governing the activity of direct-haul; and

WHEREAS, Waste Management of Oregon has applied for authorization to receive source-separated organic materials and to deliver them to approved composting sites; and

WHEREAS, Waste Management of Oregon has participated in a pre-application conference as required by Metro Code Section 5.01.055; and

WHEREAS, Waste Management of Oregon has filed a franchise application pursuant to Metro Code Section 5.01.060 authorization to receive putrescible wastes and to directly deliver them to Metro's contract operator for the disposal of putrescible waste; and

WHEREAS, Waste Management of Oregon has provided the information required in the application in the form specified by the Executive Officer; and

WHEREAS, Waste Management of Oregon has requested a variance from a part of the performance standard for direct hauling of putrescible waste listed in Metro Code Section 5.01.0127(c)(3); and

WHEREAS, The Executive Officer has reviewed and investigated the application of Waste Management of Oregon as required by Metro Code Sections 5.01.070(a)—(b); and

WHEREAS, The Executive Officer has formulated recommendations on the criteria listed in Metro Code Section 5.01.070(c); and

WHEREAS, The Executive Officer has recommended that the franchise be granted together with specific conditions, and has forwarded those recommendations and conditions to the Council as required by Metro Code Section 5.01.070(d); and

WHEREAS, The Executive Officer has reviewed and investigated the application for a variance from direct-haul performance standards, has recommended that the variance be denied, and has forwarded that recommendation to the Council as required by Metro Code Sections 5.01.110(a) and 5.01.110(b); and

WHEREAS, The Council finds that:

(1) All procedures for application and review pursuant to Metro Code Chapter 5.01 have been followed properly; and

(2) Granting the franchise will be consistent with the Regional Solid Waste Management Plan; and

(3) Granting the franchise will result in lower net system costs; and

(4) Granting the franchise will be unlikely to unreasonably adversely affect the health, safety and welfare of the District's residents; and

(5) Granting the franchise will be unlikely to unreasonably adversely affect nearby residents, property owners or the existing character or expected future development of the surrounding neighborhood; and

(6) The applicant has demonstrated the strong likelihood that it will comply with all the requirements and standards of Metro Code Chapter 5.01; the administrative procedures and performance standards adopted pursuant to Metro Code Section 5.01.132; and all other applicable local, state, federal laws and rules, regulations, ordinances, orders or permits pertaining in any manner to the franchise; and


(7) The applicant has not met the burden of proof showing that the purpose and intent of performance standard for direct hauling of putrescible waste listed in Metro Code Section 5.01.0127(c)(3) can be achieved without compliance; and

(8) It is necessary that this ordinance take effect immediately pursuant to Sections 39(1) of the Metro Charter, as the nuisance impacts from solid waste facilities adversely affect the health, safety and welfare of the public; and a purpose of the franchise is to protect the health, safety and welfare of the public; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. A franchise is granted to Waste Management of Oregon to own and operate a solid waste facility as described in Exhibit "A" to this Ordinance, "Solid Waste Facility Franchise," subject to the terms, conditions, and limitations contained therein.
2. A variance from the performance standards of Metro Code Section 5.01.0127(c)(3) is denied.
3. The Executive Officer is authorized to issue the Solid Waste Facility Franchise, attached as Exhibit "A" to this Ordinance, to Waste Management of Oregon.
4. Within 60 days of issuance of the Solid Waste Facility Franchise, Waste Management of Oregon shall provide financial assurance in the form of a performance bond or corporate assurance in the amount of \$25,000 for the cost of an orderly and environmentally safe closure at any time during the active life of the facility.
5. An emergency having been declared for the reasons stated above, this Ordinance shall take effect immediately, pursuant to Section 39(1) of the 1992 Metro Charter.

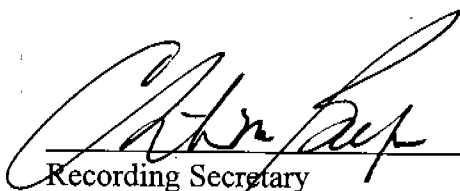
ADOPTED by the Metro Council this 24th day of November 1998.




Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:



Recording Secretary



Daniel B. Cooper, General Counsel

SOLID WASTE FACILITY FRANCHISE

Number F-001-98

Issued by

Metro

600 NE Grand Avenue

Portland, OR 97232

Telephone: (503) 797-1650

Issued in accordance with the provisions of Metro Code Chapter 5.01

FRANCHISEE: Waste Management of Oregon 869 NW Eastwind Drive Troutdale, Oregon 97060 (503) 667-5264 FAX (503) 667-6237	FACILITY NAME AND LOCATION: Recycle America 869 NW Eastwind Drive Troutdale, Oregon 97060
OPERATOR: Waste Management of Oregon 869 NW Eastwind Drive Troutdale, Oregon 97060 (503) 667-5264 FAX (503) 667-6237	PROPERTY OWNER: TDK Corp. P.O. Box 566 Troutdale, Oregon 97060 (503) 666-2896

This franchise is granted to the franchisee named above and is not transferable. Subject to the conditions stated in this franchise document, the franchisee is authorized to operate and maintain a solid waste facility, and to accept the solid wastes and perform the activities authorized herein.

Franchise begins: December 31, 1998

Expiration: December 31, 2003

Signed:

Acceptance & Acknowledgement of Receipt:

Signature

Signature of Franchisee

Mike Burton, Metro Executive Officer

Print name and title

Print name and title

Date

Date



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1.0 ISSUANCE

- 1.1 Franchisee** Waste Management of Oregon, Inc.
869 NW Eastwind Drive
Troutdale, OR 97060 (503) 667-5264
- 1.2 Contact** Garry L. Penning, District Manager
- 1.3 Franchise Number** When referring to this franchise, please cite:
Metro Solid Waste Facility Franchise Number F-001-98
- 1.4 Term** Franchise effective: December 31, 1998
Franchise expires: December 31, 2003
- 1.5 Facility name and mailing address** Recycle America
869 NW Eastwind Drive
Troutdale, OR 97060 (503) 667-5264
- 1.6 Operator** Waste Management of Oregon, Inc.
869 NW Eastwind Drive
Troutdale, OR 97060 (503) 667-5264
- 1.7 Facility legal description** Charles Fezett Donation Land Claim lying within Section 27,
Township 1N, Range 3E, Willamette Meridian
Multnomah County, State of Oregon
- 1.8 Facility owner** TDK Corp.
P.O. Box 566
Troutdale, OR 97060 (503) 666-2896
- 1.9 Permission to operate** Franchisee warrants that it has obtained the property owner's
consent to operate the facility as specified in this franchise.



2.0 CONDITIONS AND DISCLAIMERS

- 2.1 **Guarantees** The granting of this franchise shall not vest any right or privilege in the franchisee to receive specific quantities of solid waste at the direction of Metro during the term of the franchise.
- 2.2 **Non-exclusive franchise** The granting of this franchise shall not in any way limit Metro from granting other solid waste franchises within the District.
- 2.3 **Property rights** The granting of this franchise does not convey any property rights in either real or personal property, nor does it authorize any injury to private property or invasion of property rights.
- 2.4 **No recourse** The franchisee shall have no recourse whatsoever against the District or its officials, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of this franchise or because of the enforcement of the franchise or in the event the franchise or any part thereof is determined to be invalid.
- 2.5 **Release of liability** Metro, its elected officials, employees, or agents do not sustain any liability on account of the granting of this franchise or on account of the construction, maintenance, or operation of the facility pursuant to this franchise.
- 2.6 **Binding nature** The conditions of this franchise are binding on the franchisee. The franchisee is liable for all acts and omissions of the franchisee's contractors and agents.
- 2.7 **Waivers** To be effective, a waiver of any terms or conditions of this Franchise must be in writing and signed by the Metro Executive Officer.
- 2.8 **Effect of waiver** Waiver of a term or condition of this Franchise shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.
- 2.9 **Choice of law** The Franchise shall be construed, applied and enforced in accordance with the laws of the State of Oregon.
- 2.10 **Enforceability** If any provision of this Franchise is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any



respect, the validity of the remaining provisions contained in this Franchise shall not be affected.

- 2.11 Franchise not a waiver** Nothing in this franchise shall be construed as relieving any owner, operator, or franchisee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports or other requirements of other regulatory agencies.
- 2.12 Franchise not limiting** Nothing in this franchise is intended to limit the power of a federal, state, or local agency to enforce any provision of law relating to the solid waste facility that it is authorized or required to enforce or administer.
- 2.13 Inadvertent composting** Nothing in this franchise is intended to authorize or establish standards or otherwise approve of inadvertent composting resulting from the storage of organic materials.
- 2.14 Definitions** Unless otherwise specified, all other terms are as defined in Metro Code Chapter 5.01.

3.0 AUTHORIZATIONS

- 3.1 Purpose** This section of the franchise describes the wastes that the franchisee is authorized to accept at the facility, and the activities the franchisee is authorized to perform at the facility.
- 3.2 General conditions on solid wastes** The franchisee is authorized to accept at the facility only the solid wastes described in this section. The franchisee is prohibited from knowingly receiving any solid waste not authorized in this section.
- 3.3 General conditions on activities** The franchisee is authorized to perform at the facility only those activities that are described in this section.
- 3.4 Putrescible waste** The franchisee is authorized to accept putrescible waste for the purpose of delivering said putrescible waste to a disposal site authorized by this franchise; or for the purpose of transfer to a solid waste facility or disposal site designated by Metro Code Chapter 5.05 to accept putrescible waste.



- 3.5 Non-putrescible waste** The franchisee is authorized to accept "dry" non-putrescible solid wastes such as waste generated by non-residential generators and waste generated at construction and demolition sites, for the purpose of material recovery.
- 3.6 Source-separated recyclables** The franchisee is authorized to accept source-separated recyclable materials for purposes of sorting, classifying, consolidating, baling, temporary storage, transfer and other similar functions related to preparing these materials for marketing.
- 3.7 Inert materials** The franchisee is authorized to accept inert materials for purposes of classifying, consolidating, transfer, and other similar functions related to preparing these materials for useful purposes.
- 3.8 Source-separated yard debris** The franchisee is authorized to accept source-separated yard debris for transfer to a yard debris facility, a DEQ-permitted composting facility or other DEQ-permitted processing facility. The franchisee shall keep source-separated yard debris separate from other solid waste at the facility and shall provide records showing that source-separated yard debris is delivered to a composting or processing facility, and not disposed of.
- 3.9 Source-separated organic materials** The franchisee is authorized to accept organic materials for the purpose of transfer to a DEQ-permitted composting facility or other DEQ-permitted processing facility. Organic materials may be accepted only if they (a) have been separated from other solid waste by the generator prior to delivery to the facility, and (b) are suitable for controlled biological decomposition such as for making compost. The franchisee shall keep source-separated organic material separate from other solid waste at the facility and shall provide records showing that the source-separated organic materials are delivered to a composting or processing facility, and not disposed of.
- 3.10 Contaminated soils** The franchisee is authorized to accept contaminated soil for transfer to a DEQ permitted disposal site that is authorized to accept contaminated soil.
- 3.11 Special wastes and other wastes** The franchisee is authorized to accept various special wastes for transfer as authorized by DEQ Disposal Site Permit Number 459 including but not limited to filter cake, zircon sand and other sandblasting media, dewatered industrial sludge residue, waste from pollution control devices, charcoal air/water filters, ceramic castings, metal shavings, and refractory brick and other wastes



with similar characteristics; and other wastes such as street sweepings, catch basin residue, and similar clean-up wastes.

- 3.12 Direct haul** The franchisee is authorized to deliver putrescible waste directly from the facility to Metro's contract operator for disposal of putrescible waste, subject to any conditions, limitations or performance standards specified in this franchise document, in Metro Code or in administrative procedures adopted pursuant to Metro Code Chapter 5.01.
- 3.13 Incidental recovery** The franchisee is authorized to perform "low-level" material recovery on putrescible waste, provided that these material recovery efforts are incidental to the activity of transferring the putrescible waste, and are limited to the gleaning of easily-extractable recyclable or reusable materials from the waste.
- 3.14 Deliveries not limited** This franchise does not limit the quantity of authorized solid wastes or other materials that may be accepted at the facility.

4.0 LIMITATIONS AND PROHIBITIONS

- 4.1 Purpose** This section of the franchise describes limitations and prohibitions on the wastes handled at the facility and activities performed at the facility.
- 4.2 Limit on disposal** The franchisee shall dispose of no more than 50,000 tons of putrescible waste and processing residual, as a combined total, within each calendar year.
- 4.3 Prohibited waste** The franchisee shall not knowingly accept or retain any material amounts of the following types of wastes: materials contaminated with or containing friable asbestos; lead acid batteries; liquid waste for disposal; vehicles; infectious, biological or pathological waste; radioactive waste; hazardous waste; or any waste prohibited by the franchisee's DEQ Disposal Site Permit.
- 4.4 Material recovery required** The franchisee shall perform material recovery on "dry" non-putrescible wastes such as waste generated by non-residential generators and waste generated at construction and demolition sites, or deliver said "dry" non-putrescible wastes to a solid waste facility whose primary purpose is to recover useful materials from solid waste.



- 4.5 Prohibition on mixing** The franchisee shall not mix any source-separated recyclable materials, yard debris or organic materials brought to the facility with any other solid wastes. Recyclable materials recovered at the facility may be combined with source-separated recyclable materials for transfer to markets, processors, or another solid waste facility that prepares such materials for reuse or recycling.
- 4.6 No disposal of recyclable materials** Source-separated recyclable materials, yard debris or organic materials accepted at the facility may not be disposed of by landfilling or incineration.
- 4.7 Origin of putrescible waste** The franchisee shall accept putrescible waste that originates within the Metro boundary only from persons who are franchised or permitted by a local government unit to collect and haul putrescible waste.
- 4.8 Limits not exclusive** Nothing in this section of the franchise shall be construed to limit, restrict, curtail, or abrogate any limitation or prohibition contained elsewhere in this franchise document, in Metro Code, or in any federal, state, regional or local government law, rule, regulation, ordinance, order or permit.

5.0 OPERATING CONDITIONS

- 5.1 Purpose** This section of the franchise describes criteria and standards for the operation of the facility.
- 5.2 Qualified Operator** The franchisee shall provide an operating staff qualified to carry out the functions required by this franchise and to otherwise ensure compliance with Metro Code Chapter 5.01.
- 5.3 Enclosed operations** All handling, processing, compaction or other forms of managing putrescible wastes shall occur inside facility buildings.
- 5.4 Operating plan** The franchisee shall establish and follow procedures for accepting, managing and processing loads of solid waste received at the facility. Such procedures must be in writing and in a location where facility personnel and the Executive Officer can readily reference them. The franchisee may, from time to time, modify such procedures. The procedures shall include at least the following:



- a. Methods of notifying generators not to place hazardous wastes or other prohibited wastes in drop boxes or other collection containers destined for the facility;
- b. Methods of inspecting incoming loads for the presence of prohibited or unauthorized waste;
- c. Methods for managing and transporting for disposal at an authorized disposal site each of the prohibited or unauthorized wastes if they are discovered at the facility;
- d. Objective criteria for accepting or rejecting loads.

- 5.5 Managing prohibited wastes** Upon discovery, all prohibited or unauthorized wastes shall be removed or managed in accordance with procedures established in the Operating Plan.
- 5.6 Managing authorized wastes** All authorized solid wastes received at the facility must, within 24-hours from receipt, be either (a) processed, (b) appropriately stored, or (c) properly disposed of.
- 5.7 Storage** Stored materials and solid wastes shall be suitably contained and removed at sufficient frequency to avoid creating nuisance conditions or safety hazards. Storage areas must be maintained in an orderly manner and kept free of litter.
- 5.8 Litter and airborne debris** The franchisee shall operate the facility in a manner that is not conducive to the generation of litter and airborne debris. The franchisee shall:
- a. Take reasonable steps to notify and remind persons delivering solid waste to the facility that all loads must be suitably secured to prevent any material from blowing off the load during transit.
 - b. Construct, maintain, and operate all vehicles and devices transferring or transporting solid waste from the facility to prevent leaking, spilling or blowing of solid waste on-site or while in transit.
 - c. Keep all areas within the site and all vehicle access roads within $\frac{1}{4}$ mile of the site free of litter and debris.
- 5.9 Odor** The franchisee shall operate the facility in a manner that is not conducive to the generation of odors. The franchisee shall:
- a. Clean the areas and equipment that come into contact with solid waste on a regular basis.
 - b. Establish and follow procedures for minimizing odor at the facility. Such procedures must be in writing and in a location



where facility personnel and Metro inspectors can readily reference them. The franchisee may modify such procedures from time to time. The procedures shall include at least the following: (1) methods that will be used to minimize, manage, and monitor all odors of any derivation including malodorous loads received at the facility, (2) procedures for receiving and recording odor complaints, and (3) procedures for immediately investigating any odor complaints in order to determine the cause of odor emissions, and promptly remedying any odor problem at the facility.

- 5.10 Vectors** The franchisee shall operate the facility in a manner that is not conducive to infestation of rodents, insects, or other animals capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.
- 5.11 Noise** The franchisee shall operate the facility in a manner that controls the creation of excessive noise to the extent necessary to meet applicable regulatory standards and land-use regulations.
- 5.12 Water quality** The franchisee shall:
- a. Operate and maintain the facility to prevent contact of solid wastes with stormwater runoff and precipitation.
 - b. Dispose of contaminated water and sanitary sewage generated onsite in a manner complying with local, state, and federal laws and regulations.
- 5.13 Public Access** Public access to the facility shall be controlled as necessary to prevent unauthorized entry and dumping.
- 5.14 Signage** The franchisee shall post signs at all public entrances to the facility, and in conformity with local government signage regulations. These signs shall be easily and readily visible, legible, and shall contain at least the following information:
- a. Name of the facility
 - b. Address of the facility;
 - c. Emergency telephone number for the facility;
 - d. Operating hours during which the facility is open for the receipt of authorized waste;
 - e. Fees and charges;
 - f. Metro's name and telephone number 797-1650; and
 - g. A list of all authorized and prohibited wastes.



- 5.15 Complaints** The franchisee shall respond to all written complaints on nuisances (including, but not limited to, blowing debris, fugitive dust or odors, noise, traffic, and vectors). If franchisee receives a complaint, franchisee shall:
- a. Attempt to respond to that complaint within one business day, or sooner as circumstances may require, and retain documentation of unsuccessful attempts; and
 - b. Log all such complaints by name, date, time and nature of complaint. Each log entry shall be retained for one year and shall be available for inspection by Metro.
- 5.16 Access to franchise document** The franchisee shall maintain a copy of this Metro Solid Waste Facility Franchise on the facility's premises, and in a location where facility personnel and Metro representatives have ready access to it.

6.0 PERFORMANCE STANDARDS FOR DIRECT HAULING

- 6.1 Purpose** This section of the franchise describes the standards with which the franchisee must comply for putrescible waste that is delivered directly from the facility to Metro's contract operator for disposal of putrescible waste.
- 6.2 Compliance with Arlington regulations** All solid waste transported through the city limits of Arlington, Oregon, shall be subject to any routing, timing, parking or other operational requirements established by the city of Arlington.
- 6.3 Compliance with other regulations** All equipment shall fulfill all federal, state, and local regulations. In addition, the use of exhaust brakes shall be prohibited altogether.
- 6.4 Transport in sealed containers** All solid waste shall be transported in completely sealed containers with leak-proof design considered wind-, water-, and odor-tight, and shall be capable of withstanding arduous, heavy-duty, repetitive service associated with the long-haul transport of solid waste. Containers using tarps or flip-tops are prohibited. Any spillage from the transport vehicles is prohibited.
- 6.5 Average payloads** The average weight of solid waste payloads transported during each calendar month shall be no less than 25 tons.



- 6.6 Limits on staging areas** Any staging areas used shall be located in areas outside or excluded from the Columbia River Gorge National Scenic Area (NSA).
- 6.7 Limits on stopping points** All transport vehicles shall use only designated stopping points outside the Columbia River Gorge NSA except in cases of emergency.
- 6.8 Limits on use of public facilities** Use of rest areas, turnouts, scenic vista points, and state parks shall be limited to cases of emergency.
- 6.9 Limits on hours of transport** Transportation shall not be conducted in the Columbia River Gorge NSA during the following times:
- a. 4:00 p.m. to 10:00 p.m. Friday afternoons in June, July, August, and September.
 - b. Daylight hours on Saturdays in June, July, August, and September.
 - c. All hours on Sunday in June, July, August, and September.
- 6.10 Splash and spray suppression** All solid waste shall be transported by use of vehicles utilizing splash and spray suppressant devices behind each wheel, and utilizing rain suppressant side flaps on all non-turning axles.
- 6.11 Vehicle appearance** All solid waste shall be transported by use of vehicles and equipment that shall be suitably painted and present an acceptable appearance.
- 6.12 Public meetings** A representative of the franchisee and its transportation carrier shall annually meet with the gorge communities and interested parties to receive input and discuss issues related to transportation of solid waste.
- 6.13 Reporting requirements for carrier** The franchisee shall report to Metro any accidents, citations, and vehicle inspections involving vehicles of their transportation carrier during the transporting of solid waste on behalf of the Franchisee.
- 6.14 Meeting with Metro** A representative of the franchisee and its transportation carrier shall meet monthly with Metro to discuss operational problems, complaints and any extraordinary occurrences.



- 6.15 Other reporting requirements** The franchisee shall immediately report any violations of this section of the franchise to Metro.

7.0 FEES AND RATE SETTING

- 7.1 Purpose** This section of the franchise specifies fees payable by the franchisee, and describes rate regulation by Metro.
- 7.2 Annual fee** The franchisee shall pay an annual franchise fee, as established in Metro Code Chapter 5.01. Metro reserves the right to change the franchise fee at any time by action of the Metro Council.
- 7.3 Fines** Each violation of a franchise condition shall be punishable by fines as established in Metro Code Chapter 5.01. Each day a violation continues constitutes a separate violation. Metro reserves the right to change fines at any time by action of the Metro Council.
- 7.4 Rates not regulated** The tipping fees and other rates charged at the facility are exempt from rate regulation by Metro.
- 7.5 Metro fee imposed on disposal** The franchisee is liable for payment of the Metro Regional System Fee on any solid wastes delivered to a disposal site, unless these solid wastes are exempted by Metro Code Chapter 5.01.
- 7.6 Credit** Until the franchisee has made application for credit from Metro, and said application has been granted, the franchisee shall not transport putrescible waste directly from the facility to Metro's contract operator for disposal of putrescible waste.
- 7.7 Direct haul disposal charge** The franchisee shall remit to Metro the direct haul disposal charge as established in Metro Code Chapter 5.02 on each ton of putrescible waste that is transported directly from the facility to Metro's contract operator for disposal of putrescible waste, on the terms and conditions of the grant of credit from Metro.
- 7.8 Tax in lieu** The franchisee shall remit to Metro the "in lieu of" tax as established in Metro Code Chapter 7.01 on each ton of putrescible waste that is transported directly from the facility to Metro's contract operator for disposal of putrescible waste, on the terms and conditions of the grant of credit from Metro.



8.0 INSURANCE REQUIREMENTS

- 8.1 Purpose** The section describes the types of insurance that the franchisee shall purchase and maintain at the franchisee's expense, covering the franchisee, its employees, and agents.
- 8.2 General liability** The franchisee shall carry broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy shall be endorsed with contractual liability coverage.
- 8.3 Automobile** The franchisee shall carry automobile bodily injury and property damage liability insurance.
- 8.4 Coverage** Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
- 8.5 Additional insureds** Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS.
- 8.6 Worker's Compensation Insurance** The franchisee, its subcontractors, if any, and all employers working under this franchise, are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Franchisee shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If franchisee has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached in lieu of the certificate showing current Workers' Compensation.
- 8.7 Notification** The franchisee shall give at least 30 days written notice to the Executive Officer of any lapse or proposed cancellation of insurance coverage.



9.0 ENFORCEMENT

- 9.1 Generally** Enforcement of this franchise shall be as specified in Metro Code.
- 9.2 Authority vested in Metro** The power and right to regulate, in the public interest, the exercise of the privileges granted by this franchise shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such requirements against franchisee.
- 9.3 Inspections** The Executive Officer may make such inspection or audit as the Executive Officer deems appropriate, and shall be permitted access to the premises of the facility at all reasonable times during business hours with or without notice or at such other times with 24 hours notice to assure compliance with this franchise, Metro Code, and administrative procedures adopted pursuant to Metro Code Chapter 5.01.
- 9.4 No Enforcement Limitations** Nothing in this franchise shall be construed to limit, restrict, curtail, or abrogate any enforcement provision contained in Metro Code or administrative procedures adopted pursuant to Metro Code Chapter 5.01, nor shall this franchise be construed or interpreted so as to limit or preclude Metro from adopting ordinances that regulate the health, safety, or welfare of any person or persons within the District, notwithstanding any incidental impact that such ordinances may have upon the terms of this franchise or the franchisee's operation of the facility.

10.0 MODIFICATIONS

- 10.1 Modification** At any time during the term of the franchise, either the Executive Officer or the franchisee may propose amendments or modifications to this franchise.
- 10.2 Modification, suspension or revocation by Metro** The Executive Officer may, at any time before the expiration date, modify, suspend, or revoke this franchise in whole or in part, in accordance with Metro Code Chapter 5.01, for reasons including but not limited to:
- a. Violation of the terms or conditions of this franchise, Metro Code, or any applicable statute, rule, or standard;



- b. Changes in local, regional, state, or federal laws or regulations that should be specifically incorporated into this franchise;
- c. Failure to disclose fully all relevant facts;
- d. A significant release into the environment from the facility;
- e. Significant change in the character of solid waste received or in the operation of the facility;
- f. Any change in ownership or control, excluding transfers among subsidiaries of the franchisee or franchisee's parent corporation;
- g. A request from the local government stemming from impacts resulting from facility operations.
- h. Compliance history of the franchisee.

11.0 GENERAL OBLIGATIONS

- | | | |
|-------------|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11.1 | Compliance with law | Franchisee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this franchise, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.01 whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the operation of the facility by federal, state, regional or local governments or agencies having jurisdiction over the facility shall be deemed part of this franchise as if specifically set forth herein. Such conditions and permits include those cited within or attached as exhibits to the franchise document, as well as any existing at the time of the issuance of the franchise but not cited or attached, and permits or conditions issued or modified during the term of the franchise. |
| 11.2 | Indemnification | The franchisee shall indemnify and hold Metro, its employees, agents and elected officials harmless from any and all claims, damages, actions, losses and expenses including attorney's fees, or liability related to or arising out of or in any way connected with the franchisee's performance or failure to perform under this franchise, including patent infringement and any claims or disputes involving subcontractors. |



- 11.3 Deliver waste to appropriate destinations** The franchisee shall ensure that solid waste transferred from the facility goes to the appropriate destinations under Metro Code chapters 5.01 and 5.05, and under applicable local, state and federal laws, rules, regulations, ordinances, orders and permits;
- 11.4 Provide access** The franchisee shall allow the Executive Officer to have reasonable access to the premises for purposes of inspection and audit to determine compliance with this franchise, Metro Code, and the administrative procedures adopted pursuant to Metro Code Chapter 5.01.
- 11.5 Record-keeping and reporting.** The franchisee shall comply with the recordkeeping and reporting requirements as provided in Metro Code Chapter 5.01 and in administrative procedures adopted pursuant to Metro Code Chapter 5.01.
- 11.6 Compliance by agents** The franchisee shall be responsible for ensuring that its agents and contractors operate in compliance with this franchise.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 98-783, WHICH GRANTS A FRANCHISE TO WASTE MANAGEMENT OF OREGON FOR THE PURPOSE OF OPERATING A SOLID WASTE FACILITY AUTHORIZED TO RECEIVE PUTRESCIBLE WASTES, DELIVER THEM DIRECTLY TO METRO'S CONTRACT DISPOSAL OPERATOR, AND TO CONDUCT OTHER ACTIVITIES.

December 3, 1998

Presented by: Bruce Warner
Leann Linson

I. Summary and Recommendation

A. Effect of Passage

Approval of Ordinance No. 98-783 will grant a franchise to Waste Management of Oregon (WMO) to operate a solid waste facility, Recycle America Material Recovery Facility, in Troutdale, Oregon. The franchise: (1) authorizes WMO to accept putrescible waste at the facility; (2) authorizes delivery of putrescible waste directly to Metro's contract disposal operator¹ and specifies performance standards for transporting putrescible waste; (3) authorizes WMO to accept source-separated organic materials at the facility for transferring to a composting facility and establishes standards for managing these materials on site; (4) re-authorizes acceptance of wastes and performance of activities that are currently allowed by the Metro license for Recycle America; (5) establishes standards for managing waste on site; and (6) limits disposal of putrescible waste and processing residual to a combined total of 50,000 tons annually.

B. Executive Officer's Recommendation

The Executive Officer recommends approval of Ordinance No. 98-783 granting a franchise to Waste Management of Oregon for the Recycle America Material Recovery Facility, subject to the terms and conditions that are incorporated in the franchise document attached as Exhibit A to Ordinance No. 98-783. The Executive Officer does not recommend approval of the applicant's request for a variance from a performance standard for direct hauling of putrescible waste.

II. Background

A. Reason for the Ordinance

Metro Code Section 5.01.070 requires that the Executive Officer review applications for franchises that are filed in accordance with Metro Code Section 5.01.060. Ordinance No. 98-783 is a response to an application duly filed by Waste Management of Oregon pursuant to Metro Code Chapter 5.01.060.

B. The Applicant and the Applicant's Request

Waste Management of Oregon is the operator of a solid waste facility, Recycle America Material Recovery Facility, that is currently licensed by Metro to perform material recovery on non-putrescible waste; and to accept source-separated recyclable material, yard debris, petroleum contaminated soil, and other special and industrial wastes for reloading and transfer.

¹ Currently, Oregon Waste Systems at Columbia Ridge Landfill

In an initial inquiry to Metro staff, WMO expressed interest in receiving additional authorizations at Recycle America: (1) to accept putrescible waste, (2) to transport this putrescible waste directly to Columbia Ridge Landfill in Gilliam County, Oregon, and (3) to accept source-separated organic materials for transferring to composting facilities.

C. Metro Code Provisions Related to the Applicant's Request

Based on this information, Metro staff determined that the following requests would trigger the indicated provisions of Metro code:

- This licensee's request to accept putrescible waste and source-separated organics would be Changes of Authorizations under Metro Code §5.01.095(a)(1).
- The licensee's request for direct hauling would be a Change of Authorization under Metro Code §5.01.095(a)(2).
- Metro Code §5.01.095(a) stipulates that the licensee must apply for both types of changes pursuant to Metro Code §5.01.060.
- All prospective applicants must attend a pre-application conference as specified in Metro Code §5.01.055.

Accordingly, representatives of WMO were invited to schedule a pre-application conference when they wanted to initiate the application procedure.

III. Application Procedure

A. Pre-Application Conference

Under Metro code, the purpose of the pre-application conference is to share basic information and to inform the prospective applicant of the requirements of the application process. Specifically, the prospective applicant is asked to describe the types of waste proposed to be accepted; activities proposed to be performed; and a description of the site, facility, operation, management, and conditions under which these activities will take place. Based on the prospective applicant's representation, Metro staff will inform the prospective applicant of the code provisions that apply to his proposal, the information and burden of proof required of the applicant, evaluation criteria, and the application process and schedule.

A pre-application conference was held at Metro Regional Center with representatives from WMO, who provided the following information:

- WMO would seek authorization to:
 - Accept putrescible waste at Recycle America,
 - Haul putrescible waste directly to Columbia Ridge Landfill,
 - Accept source-separated organics for transfer to a composting site.
- WMO represented that other activities at Recycle America would be largely unaffected by these new authorizations.
- WMO proposed to accept putrescible waste only up to the amount that, when added to the dry waste processing residual, would not exceed 50,000 tons per year landfilled.
- WMO indicated that the company has the capability of delivering more than 50,000 tons of putrescible waste to Recycle America, and would consider applying for a

larger authorization if Metro later made this option available.

- WMO would request a six-month "temporary variance" from the performance standard prohibiting the use of tarps on vehicles that transport putrescible waste to Columbia Ridge Landfill. The request for the variance is based on the fact that the time lag between ordering and receiving a waste compactor is six months, and that because a compactor is needed to comply with the standard, imposing the standard is "inappropriate due to circumstances beyond the control of the applicant."
- The City of Troutdale has granted land use approval for the proposed activities, and received no dissenting testimony during the hearings on the change.
- The DEQ Disposal Site Permit has been amended to allow the proposed activities, and DEQ heard of no concerns during the public comment period for the change. The amended permit is subject to the Metro franchise.

On the basis of these representations, Metro staff conveyed the following points to the prospective applicant:

- The initial finding was verified, that the direct haul activity and proposed wastestreams are Changes of Authorization to the license, and require application pursuant to Metro Code §5.01.060.
- WMO would not have to address Metro Code §5.01.060(d) if the applicant does not request authorization to dispose of more than 50,000 tons of waste per year.
- Because direct hauling requires a franchise under Metro Code §5.01.045(c)(4), the entire application would be evaluated under the standards for issuance of franchises in Metro Code §5.01.070.
- If granted, the franchise would re-authorize all of the solid wastes and activities allowed under the current solid waste facility license.
- The application for variance would be governed by the application, evaluation and approval procedures set forth in Metro Code §5.01.110.
- Pursuant to Metro's yard debris and organic licensing program (which also implements DEQ's statewide compost licensing standards under an Intergovernmental Agreement with DEQ), the authorization to accept source-separated organics will trigger requirements to keep these materials separated from solid waste, and will require tracking and reporting to help ensure that these materials are delivered to a composting facility and not disposed of.
- In addition to the Regional System Fee, WMO will be required to pay the disposal charge and "in lieu of" tax on directly-hauled tonnage as provided for in Metro Code §5.02.030 and §7.01.020(c), respectively.

B. Application for Franchise

Subsequent to the pre-application conference, WMO submitted an Application for Franchise to the Regional Environmental Management Department at Metro. In this section of the staff report, the application package is analyzed for compliance with Metro Code §5.01.060, "Applications for Certificates, Licenses or Franchises."

1. On September 16, 1998, the REM Director, acting on behalf of the Executive Officer, accepted an application from WMO consistent with the representations made in the pre-application conference. The application was submitted in the format provided by the Executive Officer. Accordingly, the application is responsive to Metro Code §5.01.060(a) requirements.

2. The application included a description of the new activities to be performed and the wastes to be accepted—again, consistent with the representations made in the pre-application conference. Accordingly, the application is responsive to Metro Code §5.01.060(b) requirements.
3. Metro Code §5.01.060(c) lists seven attachments that must be included with the application. These are listed in the table below together with a description of the materials submitted by the applicant.

§	Code Requirement	Applicant Submitted
(1)	Proof of insurance	Certificate of insurance showing Metro as additional insured, in amounts exceeding Metro Code requirements.
(2)	Copies of DEQ permits	Duplicate copies of DEQ Disposal Site Permit #459 as amended July 23, 1998.
(3)	Copy of DEQ closure plan	None required by DEQ. Applicant submitted a closure protocol drafted for Metro.
(4)	Financial assurance for closure	None required by DEQ. Applicant committed to corporate assurance in the amount of \$25,000, which is sufficient to cover the closure protocol.
(5)	Signed consent by property owners	On file at Metro.
(6)	Proof of land use	Duplicate copies of Troutdale Certificate of Occupancy dated August 12, 1997, and Troutdale Site and Design Review Report.
(7)	Other permits	Duplicate copies of Troutdale Business License and State of Oregon Weighing Device Application.

Staff has examined the applicant's submittals and has found them to be responsive to Metro Code §5.01.060(c) requirements.

4. Metro Code §5.01.060(d) is not applicable to this applicant.
5. Metro Code §5.01.060(e) requires that a person applying for authority to direct haul must include (1) a showing that the activity is consistent with the Regional Solid Waste Management Plan, and (2) an analysis of the cost to the regional solid waste system of allowing the direct haul activity. This information (which is analyzed in the next section of the staff report) is included in the application. Accordingly, staff finds the application responsive to Metro Code §5.01.060(e).

In conclusion, the application is responsive to Metro Code §5.01.060. Accordingly, on September 22, 1998 staff determined that the applicant had complied with the application requirements for Metro franchises.

C. Issuance of Franchise

Metro Code §5.01.070 governs the evaluation and issuance of franchises. Sections (a)—(d) specify the procedures to be followed by the Executive Officer, and sections (e)—(g) specify the procedures to be followed by Metro Council. Sections (h) and (i) contain conditions that apply to all franchises.

1. Issuance of Franchise: Executive Officer's Review and Recommendation

- (a) Metro Code §5.01.070(a) requires the Executive Officer to review applications that are filed in accordance with Metro Code §5.01.060. As shown above, staff finds that the application was properly filed, responsive, and was determined to be complete on September 22, 1998. The Executive Officer's required review follows below.
- (b) Metro Code §5.01.070(b) concerns due diligence, and requires the Executive Officer to make investigation concerning the application. Because the applicant is well-known to Metro as a consequence of his status as an operator of a Metro-licensed solid waste facility and as a local subsidiary of the world's largest solid waste management company, the investigation was limited to a review of records on file at Metro, conversations with other regulators, discussions with the applicant, and a site visit. As a result of this investigation, staff finds that no violations, citations or letters of complaint of record have been issued to the applicant by Metro or any other regulatory agency or government in regard to the operation of the Recycle America facility. On the site visits, staff found a well-run operation with no observable reason to suspect impending problems or issues.
- (c) Metro Code §5.01.070(c) requires that the Executive Officer formulate recommendations regarding:
 - i. Whether the applicant is qualified;
 - ii. Whether the proposed franchise complies with the Regional Solid Waste Management Plan;
 - iii. Whether the proposed franchise meets the requirements of Metro Code §5.01.060—including analyses of Regional Solid Waste Management Plan compliance and system costs for applications that request authorization for direct haul;
 - iv. Whether or not the applicant has complied or can comply with all other applicable regulatory requirements.

Staff's analysis of these four points that lead to the Executive Officer's recommendations follow:

i. Applicant Qualifications

As described in (b) above, the Executive Officer's investigation verified that the applicant and its staff have an established record of operation. The subject facility has operated for 2 years without incurring franchise or regulatory violations. This, coupled with the applicant's experience in recycling, solid waste hauling and disposal, leads staff to conclude that the applicant is fully qualified to operate and manage the facility competently and efficiently.

ii. Compliance with the Regional Solid Waste Management Plan

The new activities sought by the applicant are outright "Recommended Practices" in the Regional Solid Waste Management Plan (Recycle America would become a "reload" in the terminology of the Plan if authorized to accept putrescible waste):

Recommended Practice # 4: Allow the siting of reload facilities for the consolidation of loads hauled to appropriate disposal facilities. [p. 7-25]

The rationale for reloads under the Plan is that they assist in maintaining service levels by reducing drive time for haulers, reducing congestion at existing facilities and adding a final opportunity to recover materials.

As an outright Recommended Practice, staff concludes that the applicant's proposal complies with the Regional Solid Waste Management Plan. The following considerations further support this finding:

- The proposed direct haul activities are allowed by the Plan.

Ordinance 98-761 was passed by Council to make it clear that allowing direct-haul of putrescible wastes to Columbia Ridge Landfill—subject to conditions and obligations required in Metro Code—is consistent with the Regional Solid Waste Management Plan. Specific code requirements include detailed standards that must be met by any long haul transport contractor.

- Operation of the facility will assist in maintaining service levels at existing Metro transfer stations.

The applicant has submitted that if the facility receives 37,500 tons per year of putrescible wastes this will divert about 26 trucks per day from Metro South. Staff believes this is a reasonable estimate of the impact and that this would make a positive contribution to alleviating congestion at Metro South.

- The facility provides an additional recovery opportunity.

Although opportunities for recovery of material from the putrescible waste stream are limited due to contamination of materials, some materials are likely to be recovered that would otherwise be landfilled. The Plan intended that reloads play this “gleaning” role.

iii. Meeting Requirements of Metro Code §5.01.060

In Section B of this Staff Report, Staff analyzed the applicant's materials pertaining to Metro Code §5.01.060(a)—(c) and found them to be responsive and adequate. In the paragraphs immediately above, staff has concluded that granting the franchise would be consistent with the Regional Solid Waste Management Plan. Thus, the requirements of Metro Code §5.01.060(e)(A) have been met. In analyzing whether the applicant has met the requirements of Metro Code §5.01.060, it remains only to examine the applicant's response to Metro Code §5.01.060(e)(B) regarding the system costs of authorizing direct haul. This analysis follows.

System Cost Analysis

Under Metro Code, the reduction of system cost is the main public purpose for approving direct haul activities. Because hauling of putrescible waste is a service already provided by Metro, as a condition of approval the applicant is required to demonstrate that he can provide this service at lower cost.

Under Metro Code, the total “system cost” is defined as the sum of the dollar amounts expended for collection, hauling, processing and transfer to dispose of the region's solid wastes. The system cost analysis is intended to identify the operating option that is least costly to the system as a whole: delivering putrescible waste to a Metro transfer station, or transporting this waste directly to Columbia Ridge by the operator.

The following table shows a cost comparison between taking consolidated loads to Metro transfer stations versus hauling them directly to Columbia Ridge. Costs for direct hauling to Columbia Ridge were calculated for top-loaded vehicles and for compacted loads. (This shows the costs with and without the requested variance, respectively.) The cost to consolidate loads and direct haul to Columbia Ridge was provided by the applicant. Metro staff reviewed the applicant's numbers and assumptions and found them reasonable. The costs for Metro transfer station operation and transportation data used in this analysis are based on the adopted FY 1998-99 budget.

System Cost Comparison for Direct Haul Authorization
(All amounts in cost per ton)

Item	Haul to Metro transfer Station	Direct Haul to Columbia Ridge	
		Top loaded	Compacted
Consolidate loads at Recycle America	\$0.97	\$1.02	\$3.34
Transport to Metro transfer station	\$8.33	NA	NA
Load at Metro transfer station for transport	\$5.72	NA	NA
Transport to Columbia Ridge	\$14.42	\$11.90	\$11.90
Total Cost per Ton	\$29.44	\$12.94	\$15.24

NOTE: The costs to collect and dispose of wastes are not shown because they do not vary among the alternatives, and therefore do not affect the system cost analysis.

This analysis shows clearly that direct hauling by this operator reduces costs. The savings on each ton of waste that is directly hauled ranges from \$14 to \$16 per ton, depending on the hauling option.

The table shows that most of the cost savings results from (1) avoiding the intra-regional haul to a Metro transfer station, and (2) lower facility costs for consolidating and transferring waste into long-haul vehicles. The savings in long-haul transport to Columbia Ridge results primarily from the location of Recycle America at the eastern edge of the region, closer to Columbia Ridge.

Summary

Staff finds that the applicant has complied with the requirements of Metro Code §5.01.060.

iv. **Compliance with Regulatory Requirements**

The applicant has obtained land use approval from the City of Troutdale, Oregon and has received an addendum to its DEQ Solid Waste Disposal Permit that allows receipt of putrescible wastes. Neither action generated any public comment.

These approvals, coupled with the fact that the facility has operated for 2 years without incurring franchise or regulatory violations, leads staff to conclude that the applicant has complied—and is highly likely to continue to comply—with all other applicable regulatory requirements.

- (d) Metro Code §5.01.070(d) requires that the Executive Officer provide Metro Council with (1) the recommendations formulated in the previous section of this staff report, (2) a recommendation on whether the franchise should be approved or denied, and (3) specific conditions on the franchise if the Executive Officer recommends approval.

On the basis of the findings in Section C of this staff report, the Executive Officer finds that:

- i. The applicant is qualified
- ii. The proposal complies with the Regional Solid Waste Management Plan
- iii. The requirements of Metro Code §5.01.060 have been met
- iv. The applicant has complied or can comply with all other applicable regulatory requirements.

Accordingly, the Executive Officer recommends that Metro Council grant a franchise to Waste Management of Oregon, subject to the requirements listed in Metro Code Chapter 5.01; and further subject to the following specific conditions:

Conditions

- That the franchise limit the disposal of putrescible waste and processing residual, as a combined total, to 50,000 tons per calendar year
- That the franchisee meet the performance standards for hauling putrescible waste directly to Metro's contract disposal operator.
- That the franchisee keep source-separated yard debris and organic material separate from other solid waste, and provide records showing that these materials are delivered to a composting or processing facility, and not disposed of.
- Allow incidental recovery of recyclable and reusable materials from putrescible waste.
- Within 60 days of obtaining the franchise, the franchisee shall provide financial assurance in the form of a performance bond or corporate assurance in the amount of \$25,000 for the cost of an orderly and environmentally safe closure at any time during the active life of the facility.

2. Issuance of Franchise: Consideration by Council

Metro Code §5.01.070(e)—(g) specify the procedures to be followed by Metro Council in granting a franchise. Metro Code does not require that the Executive Officer comment here; however, Administrative Procedures 101, Section 7.8.2 require that staff address the five criteria in Metro Code §5.01.070(f)(1)—(5) for consideration by the Council. These comments follow.

In determining whether to authorize the issuance of a franchise, the Council shall consider, but not be limited by, whether:

1. Granting the franchise is consistent with RSWMP

In examining this issue in Section C(ii) above, staff found in the affirmative.

2. Granting the franchise would reduce system costs.

In examining this issue in Section C(iii) above, staff found in the affirmative.

3. Granting the franchise would be unlikely to adversely affect health, safety and welfare.

The operator's experience and track record, together with the regulatory environment in which Recycle-America operates leads staff to conclude that it is unlikely Recycle America will adversely affect the public health, safety and welfare.

4. Granting the franchise would be unlikely to unreasonably adversely affect nearby residents, property owners or the existing character of the surrounding neighborhood.

As in the foregoing, the operator's experience and track record leads staff to conclude that it is unlikely Recycle America would unreasonably adversely impact the surrounding area.

5. The applicant is likely to comply with regulations and standards.

In examining this issue in Section C(iv) above, staff found that the applicant is very likely to comply with regulations and standards if the franchise were granted.

D. Variance

Metro Code §5.01.110(a) directs the Executive Officer to recommend to Council whether to approve or deny requests for variances from particular requirements of the code. Council may grant specific variance:

....if the Council finds that the purpose and intent of the particular License or Franchise requirement can be achieved without compliance and that compliance with the particular requirement:

(1) Is inappropriate because of conditions beyond the control of the applicant, Licensee, or Franchisee requesting the variance; or

(2) Due to special physical conditions or causes, will be rendered extremely burdensome or highly impractical.

1. Applicant Request

The applicant has requested a variance from a Metro Code requirement requiring the use of sealed transport containers and prohibiting the use of tarps in the long-haul transport of putrescible waste.² Specifically, the applicant has requested a "temporary variance" for six months during which the applicant would conduct a "pilot program" to demonstrate the acceptability of using tarps rather than sealed

² The requirement is in Metro Code §5.01.127(c)(3): All solid waste shall be transported in completely sealed containers with leak-proof design considered wind-, water-, and odor-tight, and shall be capable of withstanding arduous, heavy-duty, repetitive service associated with the long-haul transport of solid waste. Containers using tarps or flip-tops are prohibited. Any spillage from the transport vehicles is prohibited. *[Emphasis added.]*

containers. The pilot would test the ability of the tarps to meet various requirements including, but not limited to: being securely fastened to avoid wind blown litter, weather proof and inspected for tears after loading. The applicant states they would work with Metro to establish the exact requirements for the pilot program.

The applicant explains that the need for the variance is based on the assertion that compliance "is inappropriate because of conditions beyond the control of the applicant, Licensee, or Franchisee requesting the variance." The condition cited is that the lead-time for acquiring a compactor is six months after the date of order. The applicant explains that not granting the variance will delay the facility's ability to direct-haul putrescible waste by six months. As a result, local rate payers will not realize the savings from direct haul during that time. The applicant also cites a \$2.32 per ton savings by top loading rather than compacting.

2. Analysis and Executive Officer Recommendation

The applicant requests a variance from the prohibition on the use of tarped containers for long-haul transport. To make his case for the variance, the applicant argues (in part) that tarped vehicles can demonstrably meet certain performance standards such as "avoid wind blown debris," be "weather proof," and "liquid tight" [WMO application, page 36].

However, by this argument the applicant presumes that the purpose and intent of the requirement is the set of performance standards suggested by the applicant. In fact, the purpose and intent of the requirement is the prohibition of tarps. This particular requirement was written into Metro Ordinance No. 762C by Metro Council following detailed discussion on this issue. There is no ambiguity in the legislative record that Metro Council fully intended to prohibit the use of tarped containers for long-haul transport of putrescible waste.

The Executive Officer finds that, to make his case for this variance, the applicant must be able to demonstrate, in effect, that the prohibition of tarped containers can be achieved by the use of tarped containers. The Executive Officer finds that the applicant has not provided the facts to show cause why this variance should be granted. On this basis the Executive Officer recommends that Council deny the variance request.

IV. Fiscal Impact

The direct haul of putrescible wastes to Metro's disposal contractor and the resulting diversion of wastes from Metro transfer stations will reduce Metro's Solid Waste Revenue Fund's gross revenues. Much of this revenue loss will be offset by a corresponding reduction in expenditures—that is, Metro will not have to pay for transfer, transport and disposal of the wastes. The fixed costs of the Metro transfer stations, which are included in the Regional System Fee, will not decline because they are not tonnage dependent.

In its fiscal impact for Metro Ordinance No. 98-762C, which authorized the direct-haul of putrescible wastes and was adopted by the Metro Council on July 23, 1998, the Department projected the diversion of 88,400 tons in aggregate from this facility and the other two facilities whose direct-haul franchise applications are being considered at this time. The Department estimated a net loss of revenues of \$2.34 per ton *for each ton diverted*. If all three facilities receive authorization to direct haul and begin those

operations by the beginning of the 1999 calendar year, a total of 59,000 tons might be diverted from Metro transfer stations in the FY 1998-99 for net loss of revenues of \$138,000. If each facility direct hauls roughly one-third of the 59,000 tons, each facility would divert tonnage from Metro transfer stations resulting in a loss of about \$46,000 in net revenues for the Solid Waste Revenue Fund.

For FY 1999-00, the Department estimates that a total of 112,000 tons will be direct hauled to Metro's disposal contractor by the three direct-haul applicants. Assuming that Metro costs, fees, and rate structure remain unchanged in FY 1999-00, this would result in a net revenue loss of \$262,000 for Metro or about \$87,000 per facility. This loss could be reduced with an adjustment to the rate methodology.

In addition, community enhancement fees collected at the Metro transfer stations and distributed to the local communities impacted by Metro Central and Metro South (through the Metro Central Enhancement Committee and Oregon City, respectively) will be reduced. In FY 1998-99, these revenues would decline by a total of \$29,500 or about \$9,800 per facility and in FY 1999-00 by a total of \$37,300 or about \$12,500 per facility. However, if the local jurisdictions in which the direct-haul facilities are located choose to impose their own enhancement fees, then these revenues could be recovered, although shifted from the Metro Central Enhancement Committee and Oregon City to the new host communities.

The potential impact of the direct-haul franchises on Metro excise tax was mitigated through the adoption of Metro Ordinance No. 98-767 by Metro Council on August 6, 1998. This companion ordinance to the ordinance revising Metro Code Chapter 5.01, established a fixed excise tax of \$1.76 per ton for each ton delivered to Metro's disposal contractor in a lieu of an excise tax on gross receipts from putrescible wastes accepted by direct-haul facilities. This change effectively negated any loss in excise tax as result of tonnage being diverted from Metro's transfer stations.

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