

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING METRO) ORDINANCE NO. 91-388
CODE CHAPTER 5.05, REGULATING THE)
FLOW OF SOLID WASTE ORIGINATING) Introduced by Rena Cusma,
WITHIN THE BOUNDARIES OF THE) Executive Officer
METROPOLITAN SERVICE DISTRICT)

WHEREAS, The Metropolitan Service District Code Chapter 5.05 provides a framework for issuance by Metro of Orders requiring waste haulers and other persons to use specific designated facilities; and

WHEREAS, It is necessary to provide additional details regarding the issuance of such Required Use Orders; and

WHEREAS, The issuance by Metro of Required Use Orders may soon become necessary to ensure the efficient utilization of Metro facilities; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Metro Code Section 5.01.010 is amended to read:

"5.05.010 Definitions. Notwithstanding anything expressed or implied in the Metro code [sic] to the contrary, as used in this Chapter 5.05, the following terms shall have the respective meanings set forth below unless the context requires otherwise:

"Act" shall mean Oregon Revised Statutes Chapter 268, as amended, and other applicable provisions of the laws of the State of Oregon.

"Council" shall have the meaning assigned thereto in Metro Code Section 1.01.040(a).

"Designated Facility" means one of the facilities constituting a part of the system designated from time to time pursuant to Section 5.05.030 of this Chapter 5.05, to which solid waste may be directed by a Required Use Order.

"Disposal Site" means the land and facilities determined from time to time by Metro as constituting part of the system, whether owned by Metro or another person and whether or not open to the public, used for the disposal of solid wastes, but does not include transfer stations or processing facilities.

"Director" means the Director of the Metro Department of Solid Waste or the Director's designee.

"District" shall have the meaning assigned thereto in Metro Code Section 1.01.040(b).

"Executive Officer" shall mean the duly elected or appointed, qualified and acting Executive Officer of Metro, or any officer of Metro hereafter succeeding to the powers and duties of such Executive Officer with respect to the system.

"Metro Code" means the Code of the Metropolitan Service District.

"Non-System Facility" means any solid waste disposal site, transfer station, processing facility, recycling drop center, resource recovery facility or other facility for the disposal, recycling or other processing of solid waste which does not constitute part of the system.

"Non-System License" means a license issued pursuant to and in accordance with Metro Code Section 5.05.030(d).

"Person" shall have the meaning assigned thereto in Metro Code Section 1.01.040(f).

"Processing Facility" shall mean a facility described in Metro Code Section 5.01.010(n) which has been designated by Metro as constituting part of the system.

"Regional Solid Waste Management Plan" means the Metro Regional Solid Waste Management Plan adopted by Ordinance No. 88-266B on October 27, 1988.

"Required Use Order" means a written order issued pursuant to Metro Code Section 5.04.040 requiring a waste hauler or other person to use a designated facility pursuant to the terms of the order.

"Resource Recovery Facility" shall mean a facility described in Metro Code Section 5.01.010(q) which has been designated by Metro as constituting part of the system.

"Service Area" shall mean the area within the jurisdictional boundaries of Issuer within which the system operates to provide solid and liquid waste disposal services, all as contemplated by the Act.

"Solid Waste" shall have the meaning assigned thereto in Metro Code Section 5.01.010(s).

"Source Separated Recyclable Material" shall have the meaning assigned thereto in ORS 459.005(15) and 459.005(21).

"State" shall have the meaning assigned thereto in Metro Code Section 1.01.040(g).

"System" shall mean any and all facilities now or hereafter designated by Metro as part of its system for the management and disposal of solid and liquid waste, including, but not limited to recycling and other volume reduction facilities, sanitary landfills, or other disposal means, resource recovery facilities (including steam production and electrical generating facilities using solid waste as fuel), recycling and transfer stations, roads, water lines, wastewater lines and treatment facilities to the extent provided or operated to carry out the provisions of the Act, and all buildings, fixtures, equipment and all property, real and personal now or hereafter owned, leased, operated or used by Metro, all for the purpose of providing for solid and liquid waste disposal; as of the date of enactment of this Chapter 5.05, said system consists of the initial designated facilities described in Section 5.05.030(a) of this Chapter.

"Transfer Station" shall mean a facility described in Metro Code Section 5.01.010(u) which has been designated by Metro as constituting part of the system.

"User Fee" shall have the meaning assigned thereto in Metro Code Section 5.01.010(v).

"Waste Hauler" means any person engaged, in whole or part, in the collection, transportation, delivery, or disposal of solid waste generated within the service area, including any person engaged in such activities with respect to solid waste generated by such person as well as any person engaged in such activities with respect to solid waste generated by others."

Section 2. Metro Code Section 5.05.030 is amended to read:

"5.05.030 Use of Designated Facilities.

(a) Designated Facilities. The following described facilities shall constitute the designated facilities to which Metro may direct solid waste pursuant to a Required Use Order:

(1) Metro South Station. The Metro South Station located at 2001 Washington, Oregon City, Oregon 97045.

(2) Metro-Reidel Compost Facility. The Metro-Riedel Compost Facility located at 5437 N.E. Columbia Boulevard, Portland, Oregon 97217.

(3) Metro Central Station. The Metro Central Station located at 6161 N.W. 61st Avenue, Portland, Oregon 97210.

(4) St. Johns Landfill. The St. Johns Landfill located at 9363 N. Columbia Boulevard, Portland, Oregon 97203.

(5) Franchise Facilities. All disposal sites, transfer stations, processing facilities and resource recovery facilities within the District which operate pursuant to a Metro franchise under Chapter 5.01 of the Metro Code.

(6) Lakeside Reclamation (limited purpose landfill). The Lakeside Reclamation limited purpose landfill, Route 1, Box 849, Beaverton, Oregon 97005, subject to the terms of the agreement in existence on November 14, 1989, authorizing the receipt of solid waste generated within the service area.

(7) Hillsboro Landfill (limited purpose landfill). The Hillsboro Landfill, 3205 S.E. Minter Bridge Road, Hillsboro, Oregon 97123, subject to the terms of the agreement in existence on November 14, 1989, authorizing the receipt of solid waste generated within the service area.

(8) Columbia Ridge Landfill. The Columbia Ridge Landfill owned and operated by Oregon Waste Systems, Inc. subject to the terms of the agreements in existence on November 14, 1989, between Metro and Oregon Waste Systems and between Metro and Jack Gray Transport, Inc.; provided that except as otherwise provided pursuant to a duly issued non-system license, no waste hauler or other person (other than Jack Gray Transport, Inc. as provided in the aforementioned agreement) shall be permitted to transport solid waste generated within the service area directly to, or to otherwise dispose of such solid waste at, said Columbia Ridge Landfill unless such solid waste has first been processed at another designated facility.

(b) Changes to Designated Facilities to be Made by Council. From time to time, the Council, acting pursuant to a duly enacted ordinance, may remove from the list of initial designated facilities any one or more of the facilities described in Metro Code Section 5.04.030(a). In addition, from time to time, the Council, acting pursuant to a duly enacted ordinance, may add to the list of designated facilities one or more additional facility.

(c) Use of Non-System Facilities Prohibited. Except to the extent that solid waste generated within the service area is transported, disposed of or otherwise processed in accordance with the terms and conditions of a non-system license issued

pursuant to Metro Code Section 5.05.035, no waste hauler or other person shall transport solid waste generated within the service area to, or utilize or cause to be utilized for the disposal or other processing of any solid waste generated within the service area, any non-system facility."

Section 3. Metro Code Section 5.05.040 is repealed, and the following is adopted in lieu thereof:

5.05.040 Issuance of Required Use Orders.

(a) The Director may issue a Required Use Order to any waste hauler or other person within the service area, requiring the recipient to deliver waste to a specific designated facility. In issuing a Required Use Order, the Director shall comply with the provisions of this Section and Section 5.05.050.

(b) The following priorities shall govern the Director in determining whether to issue Required Use Orders:

(1) To the extent consistent with Metro facility contractual obligations and facility limitations, waste haulers and other persons should be allowed to utilize the designated facility of their choice; and

(2) It may be necessary for the Director to override the facility choice of a waste hauler or other person if the Director finds that allowing specific haulers to exercise their choice appears likely to result in:

(A) Metro's failure to meet contractual obligations for waste deliveries;

(B) The overloading or underutilization of a specific designated facility or facilities;
or

(C) Other system inefficiencies specified by the Director.

(c) If, after considering the priorities in subsection (b) of this Section, the Director determines that it is necessary to issue or amend Required Use Order(s), the Director may do so giving due regard to the following factors:

(1) The location of the waste hauler or other person's route and/or facilities in relation to designated facilities, in terms of travel time and/or distance;

(2) The equipment being utilized by the hauler at the time of issuance of the order in relation to the

equipment handling capabilities of designated facilities;

(3) The types of wastes being disposed of by the waste hauler or other person, in relation to the capabilities of designated facilities to most appropriately process those wastes;

(4) Geographic and jurisdictional boundaries; and

(5) Other considerations deemed relevant by the Director, including but not limited to other health, safety and welfare considerations, and other equitable considerations.

NOTE: The following Section, which is proposed to be repealed by this Ordinance, is reproduced below for the convenience of the reader:

~~5.05.040--Required-Use-Orders-and-Development-of-Rules-and Procedures-for-Issuance.--Prior-to-issuing-any-required-use-order directing-solid-waste-to-a-particular-designated-facility, the rules-governing-the-issuance-of-required-use-orders-with-respect to-such-designated-facility-shall-be-approved-and-adopted-by Council-pursuant-to-a-duly-enacted-ordinance.--Such-required-use order-rules-for-each-designated-facility-shall-be-prepared-by-the Executive-Officer-and-submitted-to-Council-for-approval-and adoption-as-aforesaid.--The-required-use-order-rules-for-each designated-facility-shall-be-prepared, approved-and-adopted giving-due-regard-to-the-following-factors:~~

~~(a)--the-type-of-facility-to-which-solid-waste-is-to-be delivered;~~

~~(b)--limitations-on-the-solid-waste-quantity-or-composition at-the-facility-to-which-such-solid-waste-is-to-be-delivered;~~

~~(c)--to-the-extent-not-inconsistent-with-the-efficient-and financially-responsible-operation-of-the-system-from-Metro's standpoint, the-ease-of-access-to-the-facility, in-terms-of-time and-distance, by-the-waste-haulers-or-persons-to-be-subject-to the-required-use-order;~~

~~(d)--the-amount-of-suitable-solid-waste-estimated-to-be delivered-to-the-facility-in-the-absence-of-waste-being-directed to-the-facility;~~

~~(e)--the-ability-to-obtain-voluntary-agreement-by-waste haulers-and-persons-to-deliver-solid-waste-of-suitable composition-and-quantity-to-a-specific-facility;~~

~~(f) -- to the extent not inconsistent with the efficient, safe and financially responsible operation of the system from Metro's standpoint, the fair distribution of any inconvenience or burden on waste haulers or persons to be subject to the required use order, and~~

~~(g) -- such other reasonable and appropriate factors as the Executive Officer or Council may deem appropriate.~~

~~Following the approval and adoption of the required use order rules for a particular designated facility as provided above, required use orders with respect to such designated facility may be issued from time to time by the Executive Officer in accordance with the applicable rules as circumstances require, for the purpose of requiring delivery of solid waste to a designated facility. -- The content of such order shall be as specified in Section 5.05.050.~~

Section 4. Metro Code Section 5.05.050 is amended to read:

"5.05.050 Content of Required Use Orders; Notice.

(a) Required Use Orders issued by the Director shall set forth the following:

(1) The names of the waste haulers or persons to be subject to the Required Use Order together with their addresses or places of business and telephone numbers;

(2) The type and quantity of solid waste subject to the Required Use Order;

(3) The name and location of the designated facility that the recipient is required to use pursuant to the Order;

(4) The effective date of the required use order, which date, in the absence of an emergency, shall not be less than ten (10) days from the date of the Order; and

(5) A brief description of the procedure for requesting that the Director reconsider issuance of the Order, or specific details of the Order; and

(6) Such other information as the Director may consider necessary or appropriate.

(b) Within two (2) days after the date of any Required Use Order, the Director shall cause notice of such Required Use Order to be given as follows:

(1) by United States mail, postage prepaid, to each waste hauler and person to be subject to such Required Use Order at the last known address thereof; and

(2) by any other method deemed by the Director as necessary, and most likely, to ensure actual notice to the waste hauler or other person subject to the Order.

(c) The failure of any waste hauler or person subject to a Required Use Order to receive notice thereof shall not affect the validity of such Required Use Order nor excuse such waste hauler or person from complying with the terms thereof.

Section 5. The following Sections 5.05.052 and 5.05.054 are added to and made part of Metro Code Chapter 5.05:

"5.05.052 Requests for Reconsideration.

(a) Any waste hauler or other person receiving a Required Use Order may request that the Director reconsider issuance of the Order or specific details of the Order. The request may be premised on any matter that was relevant to issuance of the Order, as specified in Metro Code Section 5.05.040.

(b) A Request for Reconsideration must be in writing, on a form provided by Metro. To be timely, a Request for Reconsideration must be received by the Director within thirty (30) days of the date of issuance of the Required Use Order, as specified in the Order.

(c) The Director shall review a Request for Reconsideration and, within fifteen (15) days of receipt, issue a written affirmance of the original Order, or a modified Order.

(1) The affirmance or modification shall be considered timely if it is deposited in the mail within the 15-day period, with regular first class postage and addressed to the person requesting review.

(2) The affirmance or modification shall include a brief statement of the basis for the decision, and a brief statement of the procedure for requesting review of the decision by the Executive Officer.

(d) Review by the Director of a Request for Reconsideration is intended to be informal, and may include personal, written, or telephone contact between the waste hauler or other person and the Director or Solid Waste Department staff.

(e) If the Director fails to issue a timely decision, the waste hauler or other person receiving the Order may appeal the

decision to the Executive Officer as specified in Section 5.05.054.

(f) A Request for Reconsideration shall not stay the Order issued. A Required Use Order shall be effective on the date issued, and shall remain in effect until modified or revoked."

"5.05.054 Appeals to the Executive Officer.

(a) A waste hauler or other person receiving a Required Use Order may appeal the Director's affirmance or modification of the Order to the Executive Officer. The Executive Officer may be asked to review any matter that was relevant to issuance of the Order, as specified in Metro Code Section 5.05.040.

(b) An appeal to the Executive Officer shall be in writing and on a form provided by Metro. To be timely, the appeal must be received by the Executive Officer within thirty (30) days of the date of issuance of the Director's affirmed or modified Order.

(c) The Executive Officer shall review a Request for Reconsideration and, within fifteen (15) days of receipt, issue a written order affirming or modifying the decision of the Director.

(1) The affirmance or modification shall be considered timely if it is deposited in the mail within the 15-day period, with regular first class postage and addressed to the person requesting review.

(2) The affirmance or modification shall include a brief statement of the basis for the decision, and a brief statement of the process for contested case review of the decision by the Metro Council.

(d) Review by the Executive Officer of the Director's decision is intended to be informal, and may include personal, written, or telephone contact between the waste hauler or other person and the Executive Officer.

(e) If a waste hauler or other person is not satisfied with the Executive Officer's decision, or if the Executive Officer fails to issue a timely decision, the waste hauler or other person receiving the Order may appeal the decision to the Metro Council as a contested case proceeding. Review in such proceeding shall be limited to the following:

(1) Whether exceptional circumstances of the waste hauler or other person warrant revocation or modification of the Order; or

(2) Whether the Order is likely to cause extreme financial hardship to the waste hauler or other person subject to the Order, warranting revocation or modification of the Order.

(f) A Request for Reconsideration shall not stay the Order issued. A Required Use Order shall be effective on the date issued, and shall remain in effect until modified or revoked."

Section 6. Metro Code Section 5.05.070 is amended to read:

"5.05.070 Solid Waste Flow Control Enforcement; Fines, Penalties and Damages for Violations.

(a) Any waste hauler or person who violates or fails to comply with any provision of this Chapter 5.05 or who fails to comply with the terms and conditions of any non-system license or Required Use Order shall be subject to the fines and penalties set forth in this Section, which fines and penalties shall be assessed by the Executive Officer.

(1) A fine in the amount of not to exceed five hundred dollars (\$500.00) for each violation; and

(2) Such waste hauler or person shall not be extended any credit by Metro for the use of any facility constituting a part of the system until such time as all fines owing under this Chapter as a result of such violation or failure to comply have been paid in full.

(b) In addition to the foregoing fines and penalties:

(1) any waste hauler or person who fails to comply with the terms and conditions of any non-system license shall be required to pay to Metro a fine in the amount equal to the user fee multiplied by the number of tons (or fractions thereof) of solid waste generated within the service area transported, disposed of or otherwise processed in violation of the terms and conditions of such non-system license; and

(2) any waste hauler or person who, without having a non-system license then in effect, transports solid waste generated within the service area to, or utilizes or causes to be utilized for the disposal or other processing of any solid waste generated within the service area, any non-system facility shall be required to pay to Metro a fine in an amount equal to the \$500.00 non-system license application fee, plus the \$500.00 non-system license issuance fee, plus an amount equal to the user fee multiplied by the number of tons (or fractions thereof) of solid waste generated within

the service area transported, recycled, disposed of or otherwise processed to or at any non-system facility.

(c) If in the judgment of the Executive Officer such action is warranted, Metro shall commence an appropriate action in a State court of competent jurisdiction for the purpose of collecting the fines and penalties provided for above and/or enjoining any violations of the provisions of this Chapter 5.05 or any non-compliance with the terms and conditions of any non-system license or Required Use Order.

(d) Within six (6) months from the date of enactment of this Chapter, the Executive Officer shall recommend to Council a schedule of fines which impose sanctions based on the nature and extent of the violation or failure to comply.

(e) A Required Use Order may be enforced by authorized Gatehouse employees at any Metro facility, by denying facility access to a waste hauler or other person who is subject to a Required Use Order and is attempting to deliver waste to a facility not specified in the Order. This enforcement shall be in addition to the fines and penalties that may be levied pursuant to this Section."

Section 7. Metro Code Section 5.05.080 is amended to read:

"5.05.080 Administrative Rules. Except for the system tracking pursuant to Section 5.05.060 hereof, the Executive Officer is hereby authorized and empowered to make such administrative rules and regulations as the Executive Officer considers proper to effectively carry out the purposes of this Chapter 5.05."

Section 8. Renumbering. Current Sections 5.05.010A and 5.05.030A shall be renumbered 5.05.015 and 5.05.095, respectively, and all references to the previous Section numbers shall be corrected.

ADOPTED by the Council of the Metropolitan Service District
this 14th day of March, 1991.



Tanya Collier, Presiding Officer

ATTEST:



Clerk of the Council

TSS/gl 1038

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"Council" shall have the meaning assigned thereto in Metro Code Section 1.01.040(a).

"Designated Facility" means one of the facilities constituting a part of the system designated from time to time pursuant to Section 5.05.030 of this Chapter 5.05, to which solid waste may be directed by a Required Use Order.

"Disposal Site" means the land and facilities determined from time to time by Metro as constituting part of the system, whether owned by Metro or another person and whether or not open to the public, used for the disposal of solid wastes, but does not include transfer stations or processing facilities.

"Director" means the Director of the Metro Department of Solid Waste or the Director's designee.

"District" shall have the meaning assigned thereto in Metro Code Section 1.01.040(b).

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"State" shall have the meaning assigned thereto in Metro Code Section 1.01.040(g).

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"Transfer Station" shall mean a facility described in Metro Code Section 5.01.010(u) which has been designated by Metro as constituting part of the system.

"User Fee" shall have the meaning assigned thereto in Metro Code Section 5.01.010(v).

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{7} (8) Arlington Columbia Ridge Landfill. The Arlington Columbia Ridge Landfill owned and operated by Oregon Waste Systems, Inc. subject to the terms of the agreements in existence on November 14, 1989, between Metro and Oregon Waste Systems and between Metro and Jack Gray Transport, Inc, [sic]; provided that except as otherwise provided pursuant to a duly issued non-system license, no waste hauler or other person (other than Jack Gray Transport, Inc. as provided in the aforementioned agreement) shall be permitted to transport solid waste generated within the service area directly to, or to otherwise dispose of such solid waste at, said Arlington Columbia Ridge Landfill unless such solid waste has first been processed at another designated facility.

(b) Changes to Designated Facilities to be Made by Council. From time to time, the Council, acting pursuant to a duly enacted ordinance, may remove from the list of initial designated facilities any one or more of the facilities described in Metro Code Section 5.04.030(a). In addition, from time to time, the Council, acting pursuant to a duly enacted ordinance, may add to the list of designated facilities one or more additional facility.

(c) Use of Non-System Facilities Prohibited. Except to the extent that solid waste generated within the service area is transported, disposed of or otherwise processed in accordance

with the terms and conditions of a non-system license issued pursuant to Metro Code Section 5-05-030A 5.05.035, no waste hauler or other person shall transport solid waste generated within the service area to, or utilize or cause to be utilized for the disposal or other processing of any solid waste generated within the service area, any non-system facility."

Section 3. Metro Code Section 5.05.040 is repealed, and the following is adopted in lieu thereof:

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(b) The following priorities shall govern the Director in determining whether to issue Required Use Orders:

(1) To the extent consistent with Metro facility contractual obligations and facility limitations, waste haulers and other persons should be allowed to utilize the designated facility of their choice; and

(2) It may be necessary for the Director to override the facility choice of a waste hauler or other person if the Director finds that allowing specific haulers to exercise their choice appears likely to result in:

(A) Metro's failure to meet contractual obligations for waste deliveries;

(B) The overloading or underutilization of a specific designated facility or facilities;
or

(C) Other system inefficiencies specified by the Director.

(c) If, after considering the priorities in subsection (b) of this Section, the Director determines that it is necessary to issue or amend Required Use Order(s), the Director may do so giving due regard to the following factors:

(1) The location of the waste hauler or other person's route and/or facilities in relation to designated facilities, in terms of travel time and/or distance;

(2) The equipment being utilized by the hauler at the time of issuance of the order in relation to the

equipment handling capabilities of designated facilities;

(3) The types of wastes being disposed of by the waste hauler or other person, in relation to the capabilities of designated facilities to most appropriately process those wastes;

(4) Geographic and jurisdictional boundaries; and

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~~(a)--the-type-of-facility-to-which-solid-waste-is-to-be delivered;~~

~~(b)--limitations-on-the-solid-waste-quantity-or-composition at-the-facility-to-which-such-solid-waste-is-to-be-delivered;~~

~~(c)--to-the-extent-not-inconsistent-with-the-efficient-and financially-responsible-operation-of-the-system-from-Metro's standpoint, the-ease-of-access-to-the-facility, in-terms-of-time and-distance, by-the-waste-haulers-or-Persons-to-be-subject-to the-required-use-order;~~

~~(d)--the-amount-of-suitable-solid-waste-estimated-to-be delivered-to-the-facility-in-the-absence-of-waste-being-directed to-the-facility;~~

~~(e)--the-ability-to-obtain-voluntary-agreement-by-waste haulers-and-Persons-to-deliver-solid-waste-of-suitable composition-and-quantity-to-a-specific-facility;~~

~~(f) -- to the extent not inconsistent with the efficient, safe and financially responsible operation of the system from Metro's standpoint, the fair distribution of any inconvenience or burden on waste haulers or persons to be subject to the required use order; and~~

~~(g) -- such other reasonable and appropriate factors as the Executive Officer or Council may deem appropriate.~~

~~Following the approval and adoption of the required use order rules for a particular designated facility as provided above, required use orders with respect to such designated facility may be issued from time to time by the Executive Officer in accordance with the applicable rules as circumstances require, for the purpose of requiring delivery of solid waste to a designated facility. -- The content of such order shall be as specified in Section 5.05.050.~~

Section 4. Metro Code Section 5.05.050 is amended to read:

"5.05.050 Content of Required Use Orders; Notice.

(a) Required Use Orders issued by the ~~Executive Officer~~ Director shall set forth the following:

~~(a)~~ (1) The names of the waste haulers or persons to be subject to the Required Use Order together with their addresses or places of business and telephone numbers;

~~(b)~~ (2) The type and quantity of solid waste subject to the Required Use Order;

~~(c) describe the point or points for delivery of the solid waste to be subject to the required use order;~~

(3) The name and location of the designated facility that the recipient is required to use pursuant to the Order;

~~(d)~~ (4) The effective date of the required use order, which date, in the absence of an emergency, shall not be less than ten (10) days from the date of the Order; and

(5) A brief description of the procedure for requesting that the Director reconsider issuance of the Order, or specific details of the Order; and

~~(e)~~ (6) Such other information as the ~~Executive Officer~~ Director may consider necessary or appropriate.

(b) Within two (2) days after the date of any Required Use Order, the ~~Executive-Officer~~ Director shall cause notice of such Required Use Order to be given as follows:

(1) by United States mail, postage prepaid, to each waste hauler and person to be subject to such Required Use Order at the last known address thereof; and

~~(2) --by-posting-notice-of-such-required-use-order-in-a-public-place-at-the-principal-offices-of-Metro-and-at-each-designated-facility.~~

(2) By any other method deemed by the Director as necessary, and most likely, to ensure actual notice to the waste hauler or other person subject to the Order.

(c) The failure of any waste hauler or person subject to a Required Use Order to receive notice thereof shall not affect the validity of such Required Use Order nor excuse such waste hauler or person from complying with the terms thereof.

Section 5. The following Sections 5.05.052 and 5.05.054 are added to and made part of Metro Code Chapter 5.05:

"5.05.052 Requests for Reconsideration.

(a) Any waste hauler or other person receiving a Required Use Order may request that the Director reconsider issuance of the Order or specific details of the Order. The request may be premised on any matter that was relevant to issuance of the Order, as specified in Metro Code Section 5.05.040.

(b) A Request for Reconsideration must be in writing, on a form provided by Metro. To be timely, a Request for Reconsideration must be received by the Director within thirty (30) days of the date of issuance of the Required Use Order, as specified in the Order.

(c) The Director shall review a Request for Reconsideration and, within fifteen (15) days of receipt, issue a written affirmance of the original Order, or a modified Order.

(1) The affirmance or modification shall be considered timely if it is deposited in the mail within the 15-day period, with regular first class postage and addressed to the person requesting review.

(2) The affirmance or modification shall include a brief statement of the basis for the decision, and a brief statement of the procedure for requesting review of the decision by the Executive Officer.

(d) Review by the Director of a Request for Reconsideration is intended to be informal, and may include personal, written, or telephone contact between the waste hauler or other person and the Director or Solid Waste Department staff.

(e) If the Director fails to issue a timely decision, the waste hauler or other person receiving the Order may appeal the decision to the Executive Officer as specified in Section 5.05.054.

(f) A Request for Reconsideration shall not stay the Order issued. A Required Use Order shall be effective on the date issued, and shall remain in effect until modified or revoked."

"5.05.054 Appeals to the Executive Officer.

(a) A waste hauler or other person receiving a Required Use Order may appeal the Director's affirmance or modification of the Order to the Executive Officer. The Executive Officer may be asked to review any matter that was relevant to issuance of the Order, as specified in Metro Code Section 5.05.040.

(b) An appeal to the Executive Officer shall be in writing and on a form provided by Metro. To be timely, the appeal must be received by the Executive Officer within thirty (30) days of the date of issuance of the Director's affirmed or modified Order.

(c) The Executive Officer shall review a Request for Reconsideration and, within fifteen (15) days of receipt, issue a written order affirming or modifying the decision of the Director.

(1) The affirmance or modification shall be considered timely if it is deposited in the mail within the 15-day period, with regular first class postage and addressed to the person requesting review.

(2) The affirmance or modification shall include a brief statement of the basis for the decision, and a brief statement of the process for contested case review of the decision by the Metro Council.

(d) Review by the Executive Officer of the Director's decision is intended to be informal, and may include personal, written, or telephone contact between the waste hauler or other person and the Executive Officer.

(e) If a waste hauler or other person is not satisfied with the Executive Officer's decision, or if the Executive Officer fails to issue a timely decision, the waste hauler or other person receiving the Order may appeal the decision to the Metro

Council as a contested case proceeding. Review in such proceeding shall be limited to the following:

(1) Whether exceptional circumstances of the waste hauler or other person warrant revocation or modification of the Order; or

(2) Whether the Order is likely to cause extreme financial hardship to the waste hauler or other person subject to the Order, warranting revocation or modification of the Order.

(f) A Request for Reconsideration shall not stay the Order issued. A Required Use Order shall be effective on the date issued, and shall remain in effect until modified or revoked."

Section 6. Metro Code Section 5.05.070 is amended to read:

"5.05.070 Solid Waste Flow Control Enforcement; Fines, Penalties and Damages for Violations.

(a) Any waste hauler or person who violates or fails to comply with any provision of this Chapter 5.05 or who fails to comply with the terms and conditions of any non-system license or Required Use Order shall be subject to the fines and penalties set forth in this Section, which fines and penalties shall be assessed by the Executive Officer.

{a} (1) A fine in the amount of not to exceed five hundred dollars (\$500.00) for each violation; and

{b} (2) Such waste hauler or person shall not be extended any credit by Metro for the use of any facility constituting a part of the system until such time as all fines owing under this Chapter as a result of such violation or failure to comply have been paid in full.

(b) In addition to the foregoing fines and penalties:

(1) any waste hauler or person who fails to comply with the terms and conditions of any non-system license shall be required to pay to Metro a fine in the amount equal to the user fee multiplied by the number of tons (or fractions thereof) of solid waste generated within the service area transported, disposed of or otherwise processed in violation of the terms and conditions of such non-system license; and

(2) any waste hauler or person who, without having a non-system license then in effect, transports solid waste generated within the service area to, or utilizes

or causes to be utilized for the disposal or other processing of any solid waste generated within the service area, any non-system facility shall be required to pay to Metro a fine in an amount equal to the \$500.00 non-system license application fee, plus the \$500.00 non-system license issuance fee, plus an amount equal to the user fee multiplied by the number of tons (or fractions thereof) of solid waste generated within the service area transported, recycled, disposed of or otherwise processed to or at any non-system facility.

(c) If in the judgment of the Executive Officer such action is warranted, Metro shall commence an appropriate action in a State court of competent jurisdiction for the purpose of collecting the fines and penalties provided for above and/or enjoining any violations of the provisions of this Chapter 5.05 or any non-compliance with the terms and conditions of any non-system license or Required Use Order.

(d) Within six (6) months from the date of enactment of this Chapter, the Executive Officer shall recommend to Council a schedule of fines which impose sanctions based on the nature and extent of the violation or failure to comply.

(e) A Required Use Order may be enforced by authorized Gatehouse employees at any Metro facility, by denying facility access to a waste hauler or other person who is subject to a Required Use Order and is attempting to deliver waste to a facility not specified in the Order. This enforcement shall be in addition to the fines and penalties that may be levied pursuant to this Section."

Section 7. Metro Code Section 5.05.080 is amended to read:

~~"5.05.080 Administrative Rules. Except for the rules governing the issuance of required use orders which are to be prepared, approved and adopted as provided in Section 5.05.040 hereof and~~ Except for the system tracking pursuant to Section 5.05.060 hereof, the Executive Officer is hereby authorized and empowered to make such administrative rules and regulations as ~~she~~ the Executive Officer considers proper to ~~effectual~~ effectively carry out the purposes of this Chapter 5.05."

Section 8. Renumbering. Current Sections 5.05.010A and 5.05.030A shall be renumbered 5.05.015 and 5.05.095,

/////
/////

respectively, and all references to the previous Section numbers shall be corrected.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1991.

Tanya Collier, Presiding Officer

ATTEST:

Clerk of the Council

TSS/gl
1038

SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF ORDINANCE NO. 91-388, AMENDING METRO CODE
CHAPTER 5.05 RELATING TO SOLID WASTE FLOW CONTROL

Date: March 6, 1991

Presented by: Councilor McFarland

COMMITTEE RECOMMENDATION: At the March 5, 1991 meeting, the Committee voted 4-0 to recommend Council adoption of Ordinance 91-388. Voting in favor were Councilors Gardner, McFarland, McLain and Wyers. Councilor DeJardin was excused.

COMMITTEE DISCUSSION/ISSUES: Todd Sadlo, Senior Assistant Counsel, described the proposed changes to the current flow control ordinance. He said the amendment sets priorities for the Solid Waste Director to follow when issuing an order directing haulers to use a facility which the hauler would prefer not to use. He said the amendment adds language establishing a process for haulers to request reconsideration of required use orders, and also permits gatehouse employees to enforce the orders by turning vehicles away and redirecting them to the proper facility.

Councilor McLain noted that one of the standards for the Council to apply in reviewing a reconsideration request is whether exceptional circumstances warrant revocation or modification of the order. She was concerned that this language may be vague. Phil North, Senior Solid Waste Planner, responded that this language is intended to cover those circumstances for which the non-financial impacts cannot be contemplated in advance. Mr. Sadlo added that the language would not permit reconsideration under ordinary circumstances. He gave as an example the situation in which a hauler seeks reconsideration on the basis that a hauler serving a neighboring area has been directed to a different facility.

Merle Irvine, Vice President of Wastech, inquired about the potential impact of the flow control ordinance on the Metro franchise agreement with Oregon Processing and Recovery Center (OPRC). Bob Martin, Solid Waste Director, explained that Metro's only tonnage commitment is to the Riedel composter. However, he said that Metro will not direct waste coming to OPRC to go elsewhere.

Councilor McFarland indicated her view that in the event a problem arises, OPRC can point to exceptional circumstances.

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 91-388 FOR THE PURPOSE OF
AMENDING METRO CODE CHAPTER 5.05 REGULATING THE FLOW OF
SOLID WASTE ORIGINATING WITHIN THE BOUNDARIES OF THE
METROPOLITAN SERVICE DISTRICT

February 28, 1991

Presented by: Bob Martin
Roosevelt Carter

Factual Background and Analysis

In November 1989 the Metro Council adopted Ordinance No. 89-319. This ordinance is a master bond ordinance adopted for the purpose of facilitating financing of major solid waste projects. Chapter 5.05 of the Metro Code, "Solid Waste Flow Control", was adopted as Appendix A to the master bond ordinance. The flow control ordinance plays a critical role in satisfying bonding issues related to financing major solid waste projects.

At the time of passage, the flow control ordinance intentionally did not address the procedural issues related to implementation and issuance of "Required Use Orders" to direct haulers to particular facilities. The Metro Central Station and the Metro-Riedel Compost Facility were not yet under construction and significant data to assist in implementation had not yet been developed. These two facilities are now complete or near completion and the development of background data on hauling practices and preferences has been developed. Also continued development of the quarterly Solid Waste Information System (SWIS) report has contributed to the supporting data to be used in "Required Use Order" issuance.

The proposed ordinance allows the Solid Waste Director to issue Required Use Orders to waste haulers and other persons, directing them to use specified Metro facilities. The preferences of haulers are given priority, to the extent consistent with Metro contracted obligations and the efficient use of Metro facilities.

The ordinance specifies the factors the Director must consider in determining what facility a waste hauler or other person must use. Since numerous initial orders may be necessary, as well as seasonal adjustments, a procedure is established for allowing the Director to reconsider orders issued on an informal basis. The order may then be appealed to the Executive Officer, with a more limited review through Metro Council contested case proceedings.

Additionally, the current ordinance makes a technical amendment to the original flow control ordinance by adding the name of the Metro Central Station to the list of Designated Facilities and by amending the name of the Arlington Landfill to "Columbia Ridge Landfill."

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends passage of Ordinance No. 91-388.



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

April 1, 1991

John Kauffman
County Clerk
Clackamas County Courthouse
807 Main Street
Oregon City, OR 97045

Dear Mr. Kauffman:

Enclosed are true copies of the following ordinances adopted by the Metro Council. Please file these ordinances in the Metro file maintained by your County.

Executive Officer
Rena Cusma

Metro Council

Tanya Collier
Presiding Officer
District 9

Jim Gardner
Deputy Presiding
Officer
District 3

Susan McLain
District 1

Lawrence Bauer
District 2

Richard Devlin
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Ruth McFarland
District 7

Judy Wyers
District 8

Roger Buchanan
District 10

David Knowles
District 11

Sandi Hansen
District 12

1. Ordinance No. 91-377, For the Purpose of Amending Ordinance No. 88-268B Adopting the Regional Solid Waste Management Plan to Incorporate the Yard Debris Plan
2. Ordinance No. 91-381, For the Purpose of Amending Metro Code Chapter 2.02, Section 2.02.040(e), Relating to Confirmation by Council of Certain Appointments to Fill Positions
3. Ordinance No. 91-383, An Ordinance Authorizing the Issuance of Revenue Bonds and Bond Anticipation Notes of the Metropolitan Service District for the Purpose of financing the Acquisition, Renovation, Furnishing and Equipping of an Administrative Offices Building for Use in the Operations of the District; and Establishing and Determining Other Matters in Connection Therewith
4. Ordinance No. 91-384, An Ordinance Adopting a Final Order and Amending the Metro Urban Growth Boundary for Contested Case No. 90-3:Washington County
5. Ordinance No. 91-382, Amending the FY 1990-91 Budget & Appropriations Schedule to Increase the Convention Center Capital Fund Personal Services Appropriation
6. Ordinance No. 91-388, For the Purpose of Amending Metro Code Chapter 5.05, Regulating the Flow of Solid Waste Originating Within the Boundaries of the Metropolitan Service District
7. Ordinance No. 91-370A, An Ordinance Amending Ordinance No. 91-340A Revising the FY 1990-91 Budget & Appropriations Schedule for the Purpose of Adopting a Supplemental Budget and Creating the Smith and Bybee Lakes Trust Fund
8. Ordinance No. 91-387A, An Ordinance Amending Ordinance No. 90-340A Revising the FY 1990-91 Budget & Appropriations Schedule for the Purpose of Funding Initial Financing and Purchase Costs of the Hanna Property

ORDINANCE ADOPTION NOTIFICATION

March 29, 1991

Page 2

9. Ordinance No. 91-378A, For the Purpose of Amending Metro Code Chapter 2.02, Section 2.02.040(e), Relating to Confirmation by Council of Certain Appointments to Fill Positions

Sincerely,

A handwritten signature in cursive script that reads "Paulette Allen".

Paulette Allen
Clerk of the Council



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

April 1, 1991

Charles D. Cameron
County Administrator
150 N. First Avenue
Hillsboro, OR 97124

Dear Mr. Cameron:

Enclosed are true copies of the following ordinances adopted by the Metro Council. Please file these ordinances in the Metro file maintained by your County.

1. Ordinance No. 91-377, For the Purpose of Amending Ordinance No. 88-268B Adopting the Regional Solid Waste Management Plan to Incorporate the Yard Debris Plan
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Executive Officer
Rena Cusma

Metro Council

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David Knowles
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Sandi Hansen
District 12

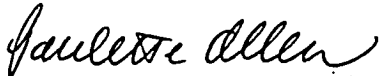
ORDINANCE ADOPTION NOTIFICATION

March 29, 1991

Page 4

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Sincerely,



Paulette Allen
Clerk of the Council



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

April 1, 1991

Jane McGarvin
Clerk of the Board
Multnomah County Courthouse
1021 S.W. Fourth Avenue
Portland, OR 97204

Dear Jane:

Enclosed are true copies of the following ordinances adopted by the Metro Council. Please file these ordinances in the Metro file maintained by your County.

Executive Officer
Rena Cusma

Metro Council

Tanya Collier
Presiding Officer
District 9

Jim Gardner
Deputy Presiding
Officer
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Susan McLain
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ORDINANCE ADOPTION NOTIFICATION
March 29, 1991
Page 6

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Sincerely,

A handwritten signature in cursive script, appearing to read "Paulette Allen".

Paulette Allen
Clerk of the Council



METRO

Memorandum

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

DATE: March 18, 1991
TO: Rena Cusma, Executive Officer
FROM: Paulette Allen, Clerk of the Council *PA*
RE: TRANSMITTAL OF ORDINANCE NOS. **91-388**, 91-370A, and 91-387

Attached for your consideration are true copies of Ordinance Nos. 91-388, 91-370A and 91-387 adopted by the Council on March 14, 1991.

If you wish to veto these ordinances, I must receive a signed and dated written veto message from you no later than 5:00 p.m., Thursday, March 21, 1991. The veto message, if submitted, will become part of the permanent record. If no veto message is received by the time and date stated above, these ordinances will be considered finally adopted.

I, *Unitha Worley*, received this memo and true copies of Ordinance Nos. 91-388, 91-370A, and 91-387 from the Clerk of the Council on March 18, 1991.

Date: *3/18/91*

ORD.MEM