

CHAPTER 5.05

SOLID WASTE FLOW CONTROL

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In connection with the enactment of the provisions of this Chapter 5.05 of the Metro Code (as defined below), the Council of Metro hereby finds and determines the following:

(a) Metro has limited land and resources for the disposal, transfer and recovery of resources from solid and liquid waste,

it is the responsibility of the Council to protect and judiciously utilize such limited land and resources.

(b) Metro has developed the system as a regional waste disposal and recovery system within the framework of a regional solid waste management plan in cooperation with federal, state and local agencies for the benefit of all citizens of Metro.

(c) The purposes of this chapter are to protect and preserve the health, safety and welfare of Metro's residents; to implement cooperatively with federal, state and local agencies the Regional Solid Waste Management Plan; to provide a coordinated regional disposal and resource recovery program and a solid waste management plan to benefit all citizens of Metro; to reduce the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery; and to protect the citizens of the region from liability arising from the use of a disposal site subject to federal law.

(d) Pursuant to the authority granted to Metro under ORS 268.317 and 268.360, as amended, Metro may require any person or class of persons who generate solid or liquid waste to make use of disposal, transfer or resource recovery sites or facilities of the system or disposal, transfer or resource recovery sites designated by Metro.

(e) ORS 268.317 and 268.360, as amended, also provides Metro the authority to require any person or class of persons who pickup, collect, or transport solid or liquid waste to make use of the disposal, transfer or resource recovery sites of the system or disposal, transfer or resource recovery sites or facilities designated by Metro.

(f) The provisions of this Chapter 5.05 are intended to be, and they shall constitute, the exercise by Metro of the powers and authority granted to it under ORS 268.317 and 268.360, as amended, and the regional solid waste management plan to require the persons and classes of persons specified herein who generate, pickup, collect or transport solid or liquid waste to make use of the disposal, transfer or resource recovery sites of the system or disposal, transfer or resource recovery sites or facilities designated by Metro.

(Ordinance No. 89-319; Ordinance No. 01-917, Sec. 2; and Ordinance No. 02-974, Sec. 1.)

5.05.020 Authority, Jurisdiction, and Application

(a) Metro's solid waste flow control authority is established under ORS Chapter 268 for solid waste and the Metro Charter and includes authority to regulate solid waste generated within Metro.

(b) This chapter shall govern the transportation, transfer, disposal and other processing of all solid waste generated within Metro as authorized by state law, and shall govern all waste haulers and other persons who generate solid waste within Metro or who transport, transfer, dispose or otherwise deal with or process solid waste generated within Metro; provided that notwithstanding the foregoing, this chapter does not apply to or govern the transportation, transfer or processing of, or other dealing with, non-putrescible source separated recyclable materials that are reused or recycled, or are transferred, transported or delivered to a person or facility that will reuse or recycle them.

(c) All solid waste regulation shall be subject to the authority of all other applicable laws, regulations or requirements in addition to those contained in this chapter. Nothing in this chapter is intended to abridge or alter the rights of action by the State or by a person which exist in equity, common law, or other statutes to abate pollution or to abate a nuisance. The provisions of this chapter shall be liberally construed to accomplish these purposes.

(Ordinance No. 89-319; Ordinance No. 01-917, Sec. 3; Ordinance No. 02-974, Sec. 1; and Ordinance No. 03-1019, Sec. 2.)

5.05.025 Prohibited Activities

(a) Except as otherwise provided in this chapter, it shall be unlawful for any waste hauler or other person to transport solid waste generated within Metro to, or to utilize or cause to be utilized for the disposal or other processing of any solid waste generated within the District, any solid waste facility or disposal site without an appropriate license from Metro.

(b) It shall be unlawful for any solid waste generator, hauler, contractor, or other person to state falsely, or to direct another person to state falsely, to the operator of a system facility that solid waste delivered to the facility for disposal was generated outside the District when, in fact, such solid waste was generated within the District. A solid waste

generator, hauler, or contractor shall be deemed to have directed another person to make false statements regarding the origin of solid waste under this section if the solid waste generator, hauler, or contractor knew or should have know that the person that transported the solid waste to the system facility would state falsely to the operator of a system facility that the solid waste delivered to the facility for disposal or other processing was generated outside the District when, in fact, such solid waste was generated within the District.

(Ordinance No. 01-917, Secs. 4-5; Ordinance No. 02-974, Sec. 1; and Ordinance No. 06-1104, Sec. 1.)

5.05.027 Exemptions

(a) A license is not required of any waste hauler or other person to transport solid waste generated within Metro to, or to utilize or cause to be utilized for the disposal or other processing of solid waste generated within Metro, a designated facility of the system that is in compliance with all local, state, federal and Metro regulations, including any agreement entered into between Metro and the system facility.

(b) A license is not required for a government agency to transport solid waste to the Covanta Waste-to-Energy facility located in Brooks, Oregon, for the primary purpose of destroying such wastes in order to assure public safety or for the public good. Solid waste exempt under this subsection include, but are not limited to, contraband, postage stamps, expired pharmaceuticals, and lottery tickets.

(Ordinance No. 01-917, Secs. 6-7; Ordinance No. 02-974, Sec. 1; and Ordinance No. 06-1106.)

5.05.030 Designated Facilities of the System

(a) Designated Facilities. The following described facilities constitute the designated facilities of the system, the Metro Council having found that said facilities meet the criteria set forth in Metro Code Chapter 5.05:

- (1) Disposal sites or solid waste facilities owned or operated by Metro.

- (2) Disposal sites or solid waste facilities within Metro's boundary that are subject to Metro regulatory authority under Chapter 5.01.
- (3) Disposal sites or solid waste facilities located outside Metro's boundary that the Metro Council has designated as part of the system and are authorized to accept waste generated from inside the Metro boundary as specified by and subject to:
 - (A) An agreement between Metro and the owner of the disposal site or solid waste facility; or
 - (B) A non-system license issued to the waste generator or the person transporting the waste to the disposal site or solid waste facility.

(b) The Metro Council will consider for adoption a list of designated facilities by resolution (1) every five years beginning in 2015 as set forth in Metro Code Section 5.05.033; or (2) any time there is a proposed change to the list under Metro Code Sections 5.05.031 or 5.05.032.

(c) A disposal site or solid waste facility located outside the Metro boundary may (1) apply to Metro to become a designated facility of the system; or (2) request to be removed from the list of designated facilities. The Chief Operating Officer will provide a form of application and will consider the factors set forth in Metro Code Sections 5.05.031 when determining whether to recommend to the Council addition to the designated facility list.

(Ordinance No. 14-1333; Ordinance No. 14-1334; Ordinance No. 14-1335; and Ordinance No. 14-1337.)

5.05.031 Addition to the List of Designated Facilities

The Council may add a facility to the list of designated facilities on its own motion, by recommendation of the Chief Operating Officer, or upon application by a facility under Metro Code Section 5.05.030(c). In deciding whether to add a facility to the list of designated facilities the Council shall consider:

- (1) The degree to which prior users of the facility and waste types accepted at the facility are

known and the degree to which such wastes pose a future risk of environmental contamination;

- (2) The record of regulatory compliance of the facility's owner and operator with federal, state and local requirements, including but not limited to public health, safety and environmental rules and regulations;
- (3) The adequacy of operational practices and management controls at the facility;
- (4) The expected impact on the region's recycling and waste reduction efforts;
- (5) The consistency of the designation with Metro's existing contractual arrangements;
- (6) The record of the facility regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement; and
- (7) Other benefits or detriments accruing to residents of the region from Council action in designating a facility.

(Ordinance No. 14-1337.)

5.05.032 Deletions from and Amendments to the List of Designated Facilities

(a) The Council may delete a facility from the list of designated facilities on its own motion, by recommendation of the Chief Operating Officer, or upon request by a facility under Metro Code Section 5.05.030(c). In deciding whether to delete a facility from the list of designated facilities, the Council shall consider:

- (1) Changes in facility operations, including without limitation whether the facility is not operating or whether the facility has changed the type of waste it accepts or the method for accepting the waste;
- (2) Changes in legal requirements that apply to the facility;

- (3) The facility's record of regulatory compliance, including but not limited to public health and safety and environmental rules and regulations;
- (4) Changes in ownership of the facility; and
- (5) Other benefits or detriments accruing to residents of the region from Council action to delete the facility from the list of designated facilities.

(b) Council may delete a facility from the list of designated facilities upon request by the facility under Metro Code Section 5.05.030(c) without considering the factors set forth in (a).

(c) The Chief Operating Officer may change the name or the address of a facility on the list of designated facilities without Council approval of a resolution so long as no substantive change, as set forth above in (a), has occurred.

(Ordinance No. 14-1337.)

5.05.033 Contents of Designated Facility List and Council Adoption Every Five Years

(a) The designated facility list will include (1) the name and address of the designated facilities located outside the Metro region; and (2) the name and address of Metro-owned facilities. Disposal sites or solid waste facilities within Metro's boundary that are subject to Metro regulatory authority are designated facilities of the system but will not be included on the list.

(b) In addition to any resolution adopted under Metro Code Sections 5.05.031 and 5.05.032, no later than July 2015 and every five years thereafter, the Metro Council will adopt by resolution a list of designated facilities.

(Ordinance No. 14-1337.)

5.05.034 Agreements with Designated Facilities

(a) The Chief Operating Officer is authorized to execute an agreement, or an amendment to an agreement, between Metro and

a designated facility located outside the region for any solid waste other than putrescible waste.

(b) An agreement or amendment to an agreement between Metro and a designated facility located outside the region for putrescible waste shall be subject to approval by the Metro Council before execution by the Chief Operating Officer.

(c) An agreement between Metro and a designated facility shall specify the types of wastes from within Metro boundaries that may be delivered to, or accepted at, the facility.

(d) An agreement between Metro and a designated facility shall not authorize the acceptance of non-putrescible waste, which has not yet undergone material recovery, originating or generated with Metro boundaries unless:

- (1) Such non-putrescible waste is received from a facility that has been issued a license or franchise pursuant to Chapter 5.01 authorizing such facility to perform material recovery on non-putrescible waste;
- (2) Such non-putrescible waste is received from a designated facility that has entered into an agreement with Metro authorizing it to perform material recovery on non-putrescible waste; or
- (3) The designated facility has entered into an agreement with Metro authorizing it to perform material recovery on non-putrescible waste in accordance with subsection (e) of this section.

(e) An agreement between Metro and a designated facility that authorizes the facility to accept non-putrescible waste that has not yet undergone material recovery, is not comprised of processing residual, and originated or generated within Metro boundaries shall:

- (1) Require such designated facility to perform material recovery on such waste; and
- (2) Demonstrate, in a manner that can be verified and audited, that such processing achieves material recovery substantially comparable to that required of in-region material recovery

facilities by Metro Code Section 5.01.125 by either:

- (A) Meeting such material recovery requirements for all non-putrescible waste received at the facility, whether or not from within Metro boundaries; or
 - (B) Keeping all non-putrescible waste received from within Metro boundaries segregated from other waste throughout processing, keeping processing residual from such processing segregated from other solid waste after processing, and meeting such material recovery requirements for all such non-putrescible waste.
- (3) Demonstrate, in a manner that can be verified and audited, that such facility substantially complies with:
- (A) The performance goals described in Metro Code Sections 5.01.053(i) and 5.01.073(n); and
 - (B) The performance standards, design requirements, and operating requirements applicable to licensed and franchised material recovery facilities operating within the Metro region and adopted by Metro as administrative procedures pursuant to Metro Code Section 5.01.132

(Ordinance No. 89-319; Ordinance No. 91-388, Sec. 2; Ordinance No. 92-471C, Sec. 1; Ordinance No. 93-483A, Sec. 1; Ordinance No. 01-917, Sec. 8; Ordinance No. 02-979, Sec. 1; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1019, Sec. 3; Ordinance No. 03-999; Ordinance No. 05-1081, Sec. 1; Ordinance No. 05-1083, Sec. 1; Ordinance No. 07-1138, Sec. 4; Ordinance No. 07-1147B, Sec. 10.; Ordinance No. 08-1195; Ordinance No. 08-1197A; and Ordinance No. 14-1337.)

5.05.040 License to Use Non-System Facility

A waste hauler or other person may transport solid waste generated within Metro to, or to utilize or cause to be utilized for the disposal or other processing of any solid waste generated within Metro, any non-system facility only by

obtaining a non-system license in the manner provided for in this section. Applications for non-system licenses for non-putrescible waste, special waste and cleanup material contaminated by hazardous substances shall be subject to approval or denial by the Chief Operating Officer. Applications for non-system licenses for putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council.

(Ordinance No. 14-1337.)

5.05.041 Application for License

Any waste hauler or other person desiring to obtain a non-system license shall make application to the Chief Operating Officer, which application shall be filed on forms or in the format provided by the Chief Operating Officer. Applicants may apply for a limited-duration non-system license which has a term of not more than 120 days and is not renewable. An application for any non-system license shall set forth the following information:

- (1) The name and address of the waste hauler or person making such application;
- (2) The location of the site or sites at which the solid waste proposed to be covered by the non-system license is to be generated;
- (3) The nature of the solid waste proposed to be covered by the non-system license;
- (4) The expected tonnage of the solid waste proposed to be covered by the non-system license:
 - (A) The total tonnage if the application is for a limited duration non-system license; or
 - (B) The annual tonnage if the application is for any other non-system license;
- (5) A statement of the facts and circumstances which, in the opinion of the applicant, warrant the issuance of the proposed non-system license;
- (6) The non-system facility at which the solid waste proposed to be covered by the non-system license

is proposed to be transported, disposed of or otherwise processed; and

- (7) The date the non-system license is to commence; and, for limited duration non-system licenses, the period of time the license is to remain valid not to exceed 120 days.

In addition, the Chief Operating Officer may require the applicant to provide, in writing, such additional information concerning the proposed non-system license as the Chief Operating Officer deems necessary or appropriate in order to determine whether or not to issue the proposed non-system license.

An applicant for a non-system license that authorizes the licensee to transport non-putrescible waste that has not yet undergone material recovery, is not processing residual, and originated or was generated within Metro boundaries shall provide documentation that the non-system facility is in substantial compliance with the facility performance standards, design requirements and operating requirements adopted pursuant to Metro Code Chapter 5.01 for non-putrescible waste material recovery facilities. Any applicant or licensee that is authorized or seeks to deliver non-putrescible waste to a non-system facility must demonstrate that the non-system facility will be in substantial compliance with the material recovery requirements in Metro Code Section 5.01.125.

(Ordinance No. 14-1337.)

5.05.042 License Application Fees

Every application shall be accompanied by payment of an application fee, part of which may be refunded to the applicant in the event that the application is denied, as provided in this section. The following application fees shall apply:

- (1) For an application for a limited duration non-system license, the application fee shall be two hundred fifty dollars (\$250), no part of which shall be refunded to the applicant in the event that the application is denied.
- (2) For an application for a non-system license seeking authority to deliver no more than 500 tons of solid waste per year to a non-system

facility, the application fee shall be five hundred dollars (\$500), two hundred fifty dollars (\$250) of which shall be refunded to the applicant in the event the application is denied. For an application for a change in authorization to an existing non-system license authorizing the delivery of no more than 500 tons of solid waste per year to a non-system facility, the application fee shall be two hundred fifty dollars (\$250); provided, however, that if the result of granting the application would be to give the applicant the authority to deliver more than 500 tons of solid waste per year to a non-system facility, the application fee shall be \$500, two hundred fifty dollars (\$250) of which shall be refunded to the applicant in the event the application is denied. An application for renewal of a non-system license authorizing the delivery of no more than 500 tons of solid waste per year to a non-system facility shall be one hundred dollars (\$100).

- (3) For all applications for a non-system license seeking authority to deliver more than 500 tons of solid waste per year to a non-system facility, whether they be new applications or applications for the renewal of existing licenses, the application fee shall be one thousand dollars (\$1,000), five hundred dollars (\$500) of which shall be refunded to the applicant in the event the application is denied. For an application for a change in authorization to an existing non-system license authorizing the delivery of more than 500 tons of solid waste per year to a non-system facility, the application fee shall be two hundred fifty dollars (\$250).
- (4) For an application for a non-system license seeking to deliver solid waste that is exempt from paying the Metro fees described in section 5.02.045, the application fee shall be one hundred dollars (\$100) as well as a fifty dollar (\$50) fee to either renew or amend such licenses.

(Ordinance No. 14-1337.)

5.05.043 Factors to Consider To Determine Whether to Issue License

The Chief Operating Officer or Metro Council, as applicable, shall consider the following factors to the extent relevant to determine whether or not to issue a non-system license:

- (1) The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;
- (2) The record of regulatory compliance of the non-system facility's owner and operator with federal, state and local requirements, including but not limited to public health, safety and environmental rules and regulations;
- (3) The adequacy of operational practices and management controls at the non-system facility;
- (4) The expected impact on the region's recycling and waste reduction efforts;
- (5) The consistency of issuing the license with Metro's existing contractual arrangements;
- (6) The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements, including but not limited to public health, safety and environmental rules and regulations; and
- (7) Such other factors as the Chief Operating Officer deems appropriate for purposes of making such determination.

(Ordinance No. 14-1337.)

5.05.044 Timetables To Determine Whether to Issue a License

- (1) Non-system licenses for non-putrescible waste, special waste, cleanup material contaminated by hazardous substances, or any other solid waste other than putrescible waste.
 - (A) New licenses. The Chief Operating Officer shall determine whether or not to issue the non-system license and shall inform the applicant in writing of such determination within 60 days after receipt of a new completed application, including receipt of any additional information required by the Chief Operating Officer in connection therewith.
 - (B) License renewals. An application for renewal of an existing non-system license shall be substantially similar to the existing non-system license with regard to waste type, quantity and destination. A holder of a non-system license shall submit a completed application to renew the license at least 60 days before the expiration of the existing non-system license, including receipt of any additional information required by the Chief Operating Officer in connection therewith. The Chief Operating Officer shall determine whether or not to renew the non-system license and shall inform the applicant in writing of such determination before the expiration of the existing non-system license. The Chief Operating Officer is not obligated to make a determination earlier than the expiration date of the existing license even if the renewal request is filed more than 60 days before the existing license expires.
- (2) Non-system licenses for putrescible waste. The Chief Operating Officer shall formulate and provide to the Council recommendations regarding whether or not to issue or renew a non-system license for putrescible waste. If the Chief Operating Officer recommends that the non-system license be issued or renewed, the Chief Operating

Officer shall recommend to the council specific conditions of the non-system license.

- (A) New licenses. The Council shall determine whether or not to issue the non-system license and shall direct the Chief Operating Officer to inform the applicant in writing of such determination within 120 days after receipt of a completed application for a non-system license for putrescible waste, including receipt of any additional information required by the Chief Operating Officer in connection therewith.
- (B) License renewals. An application for renewal of an existing non-system license shall be substantially similar to the existing non-system license with regard to waste type, quantity and destination. A holder of a non-system license shall submit a completed application to renew the license at least 120 days before the expiration of the existing non-system license, including receipt of any additional information required by the Chief Operating Officer in connection therewith. The Council shall determine whether or not to renew the non-system license and shall inform the applicant in writing of such determination before the expiration of the existing non-system license. The Council is not obligated to make a determination earlier than the expiration date of the existing license even if the renewal request is filed more than 120 days before the existing license expires.
- (3) At the discretion of the Chief Operating Officer or the Council, the Chief Operating Officer or Council may impose such conditions on the issuance of a new or renewed non-system license as deemed necessary or appropriate under the circumstances.

(Ordinance No. 14-1337.)

5.05.045 Issuance of Non-System License; Contents

Each non-system license shall be in writing and shall set forth the following:

- (1) The name and address of the waste hauler or other person to whom such non-system license is issued;
- (2) The nature of the solid waste to be covered by the non-system license;
- (3) The maximum total, weekly, monthly or annual quantity of solid waste to be covered by the non-system license;
- (4) The non-system facility or facilities at which or to which the solid waste covered by the non-system license is to be transported or otherwise processed;
- (5) The expiration date of the non-system license, which date shall be not more than:
 - (A) 120 days from the date of issuance for a limited-duration non-system license;
 - (B) Three years from the date of issuance for a new full-term license; and
 - (C) Two years from the date of issuance of a renewed full-term non-system license.
- (6) Any conditions imposed by the Chief Operating Officer as provided above which must be complied with by the licensee during the term of such non-system license, including but not limited to conditions that address the factors in Section 5.05.043.

(Ordinance No. 14-1337.)

5.05.046 Requirements to be met by License Holder

Each waste hauler or other person to whom a non-system license is issued shall be required to:

- (1) Maintain complete and accurate records regarding all solid waste transported, disposed of or otherwise processed pursuant to the non-system license, and make such records available to Metro or its duly designated agents for inspection, auditing and copying upon not less than three days written notice from Metro;
- (2) Report in writing to Metro, not later than the 15th day of each month, commencing the 15th day of the month following the month in which the non-system license is issued and continuing through the 15th day of the month next following the month in which the non-system license expires, the number of tons of solid waste transported, disposed or otherwise processed pursuant to such non-system license during the preceding month; and
- (3) Pay to Metro, not later than the 15th day of each month, commencing the 15th day of the month following the month in which the non-system license is issued and continuing through the 15th day of the month next following the month in which the non-system license expires, a fee equal to the Regional System Fee multiplied by the number of tons (or fractions thereof) of solid waste transported, disposed or otherwise processed pursuant to such non-system license during the preceding month.
- (4) When solid waste generated from within the Metro boundary is mixed in the same vehicle or container with solid waste generated outside the Metro boundary, the load in its entirety shall be reported to Metro by the non-system licensee as having been generated within the Metro boundary and the Regional System Fee and Excise Tax shall be paid on the entire load unless the licensee provides Metro with documentation regarding the total weight of the solid waste in the vehicle or container that was generated within the Metro boundary, or unless Metro has agreed in writing to another method of reporting.

(Ordinance No. 14-1337.)

5.05.047 Failure to Comply with License

In the event that any waste hauler or other person to whom a non-system license is issued fails to fully and promptly comply with the requirements set forth in Section 5.05.045 above or any conditions of such non-system license imposed pursuant to Section 5.05.043, then, upon discovery of such non-compliance, the Chief Operating Officer shall issue to such licensee a written notice of non-compliance briefly describing such failure. If, within 20 days following the date of such notice of non-compliance or such longer period as the Chief Operating Officer may determine to grant as provided below, the licensee fails to:

- (1) Demonstrate to the satisfaction of the Chief Operating Officer either that the licensee has at all times fully and promptly complied with the foregoing requirements and the conditions of such non-system license or that the licensee has fully corrected such non-compliance; and
- (2) Paid in full, or made arrangements satisfactory to the Chief Operating Officer for the payment in full of, all fines owing as a result of such non-compliance;

Then, and in such event such non-system license shall automatically terminate, effective as of 5:00 p.m. (local time) on such 20th day or on the last day of such longer period as the Chief Operating Officer may determine to grant as provided below. If, in the judgment of the Chief Operating Officer, such non-compliance cannot be corrected within such 20-day period but the licensee is capable of correcting it and within such 20-day period diligently commences such appropriate corrective action as shall be approved by the Chief Operating Officer, then and in such event such 20-day period shall be extended for such additional number of days as shall be specified by the Chief Operating Officer in writing, but in no event shall such the local period as so extended be more than 60 days from the date of the notice of non-compliance.

(Ordinance No. 89-319; Ordinance No. 91-388; Ordinance No. 01-917, Sec. 9; Ordinance No. 02-979, Sec. 2; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-992B, Sec. 1; Ordinance No. 03-1019, Sec. 4; Ordinance No. 06-1098B, Sec. 3; Ordinance No. 06-1105; Ordinance No. 07-1138, Sec. 5; Ordinance No. 07-1139,

Sec. 3; Ordinance No. 07-1161, Sec. 2; Ordinance No. 07-1147B, Sec. 11; and Ordinance No. 14-1337.)

5.05.050 Issuance of Required Use Orders

(a) The Chief Operating Officer may issue a required use order to any waste hauler or other person within Metro, requiring the recipient to deliver waste to a specific designated facility. In issuing a required use order, the Chief Operating Officer shall comply with the provisions of this section and Section 5.05.055.

(b) The following priorities shall govern the Chief Operating Officer in determining whether to issue required use orders:

- (1) To the extent consistent with state, Metro and local regulations, and facility 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 Chief Operating Officer to override the facility choice of a waste hauler or other person if the Chief Operating Officer finds that allowing specific haulers to exercise their choice appears likely to result in:
 - (A) The overloading or under-utilization of a specific designated facility or facilities; or
 - (B) Other system inefficiencies or negative impacts on the public health, safety or welfare specified by the Chief Operating Officer.

(c) If, after considering the priorities in subsection (b) of this section, the Chief Operating Officer determines that it is necessary to issue or amend required use order(s), the Chief Operating Officer 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 waste being disposed of by the waste hauler or other person, in relation to the capabilities of designated facilities to most appropriately process those wastes; and
- (4) Other considerations deemed relevant by the Chief Operating Officer, including but not limited to other health, safety and welfare considerations.

(Ordinance No. 89-319. Sec. 5.05.040 repealed and replaced with Ordinance No. 91-388, Sec. 3; Ordinance No. 01-917, Sec. 11; Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1337.)

5.05.055 Content of Required Use Orders; Notice

(a) Required use orders issued by the Chief Operating Officer 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 10 days from the date of the order; and a brief description of the procedure for requesting that the Chief Operating Officer reconsider issuance of the order, or specific details of the order; and

- (5) A brief description of the procedure for requesting that the Chief Operating Officer reconsider issuance of the order, or specific details of the order; and
- (6) Such other information as the Chief Operating Officer may consider necessary or appropriate.

(b) Within two days after the date of any required use order, the Chief Operating Officer 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 Chief Operating Officer 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.

(Ordinance No. 89-319; Ordinance No. 91-388, Sec. 4; and Ordinance No. 14-1337.)

5.05.060 Requests for Reconsideration

(a) Any waste hauler or other person receiving a required use order may request that the Chief Operating Officer 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 5.05.050.

(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 Chief Operating Officer within 30 days of the date of issuance of the required use order, as specified in the order.

(c) The Chief Operating Officer shall review a request for reconsideration and, within 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 Chief Operating Officer.

(d) Review by the Chief Operating Officer of a request for reconsideration is intended to be informal, and may include personal, written, or telephone contact between the waste hauler or other persons and the Chief Operating Officer or Finance and Regulatory Services staff.

(e) If the Chief Operating Officer fails to issue a timely decision, the waste hauler or other person receiving the order may appeal the decision to a hearings officer as specified in Metro Code Section 5.05.065.

(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.

(Ordinance No. 91-388, Sec. 5; Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1337.)

5.05.065 Appeals to the Hearings Officer

(a) A waste hauler or other person receiving a required use order may appeal the Chief Operating Officer's affirmance or modification of the order to a hearings officer. The hearings officer may be asked to review any matter that was relevant to issuance of the order, as specified in Metro Code Section 5.05.050.

(b) An appeal to the hearings officer shall be in writing and on a form provided by Metro. To be timely, the appeal must be received by the hearings officer within 30 days of the date

of issuance of the Chief Operating Officer's affirmed or modified order.

(c) The hearings officer shall review a request for reconsideration and, within 15 days of receipt, issue a written order affirming or modifying the decision of the Chief Operating Officer.

- (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) If a waste hauler or other person is not satisfied with the hearings officer's decision, or if the hearings 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 proceedings 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.

(e) 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.

(Ordinance No. 91-388, Sec. 5; Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1337.)

5.05.070 Solid Waste Tracking System

The Chief Operating Officer shall establish and maintain a system for tracking of solid waste generated, collected,

transported or disposed within or outside Metro for the purpose of ensuring compliance with the requirements of this chapter and to ensure equitable application of the requirements of this chapter. The Chief Operating Officer in developing the tracking system shall consider the following:

(a) Establishment of a permit or licensing system for waste haulers or persons generating, collecting, transporting or disposing of solid waste.

(b) Use of franchises.

(c) Use of personnel to monitor compliance with the requirements of this chapter.

(d) Intergovernmental agreements for exchange of information.

(e) Equipment identification.

(f) Reporting requirements by waste haulers or persons generating, transporting or disposing of solid waste.

(g) Such other criteria or methods which the Chief Operating Officer considers reasonable and appropriate.

(Ordinance No. 89-319; Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1337.)

5.05.080 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 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 Chief Operating Officer.

(1) A fine in the amount of not to exceed \$500 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 regional system fee multiplied by the number of tons (or fractions thereof) of solid waste generated within Metro transported, disposed of or otherwise processed in violation of the terms and conditions of such non-system license;
- (2) Any waste hauler or person who, without having a non-system license then in effect, transports solid waste generated within Metro to, or utilizes or causes to be utilized for the disposal or other processing of any solid waste generated within Metro, any non-system facility shall be required to pay to Metro a fine in an amount equal to the non-system license application fee that would have otherwise been required to authorize the waste disposed, plus an amount equal to the regional system fee and excise tax multiplied by the number of tons (or fractions thereof) of solid waste generated within Metro transported, recycled, disposed of or otherwise processed to or at any non-system facility; and
- (3) Any waste hauler or person who violates Metro Code Section 5.05.025(b) by falsely stating the origin of waste transported to a system facility shall be required to pay to Metro a fine in an amount equal to the regional system fee multiplied by the number of tons (or fractions thereof) of solid waste generated within the District transported to such system facility, plus the excise tax multiplied by the number of tons (or fractions thereof) of solid waste generated within the District transported to such system facility.

(c) If in the judgment of the Chief Operating 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) 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.

(Ordinance No. 89-319; Ordinance No. 91-388, Sec. 6; Ordinance No. 01-917, Sec. 12; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-992B, Sec. 2; Ordinance No. 06-1104, Sec. 2; and Ordinance No. 14-1337.)

5.05.090 Administrative Rules

Except for the system tracking pursuant to Section 5.05.070 hereof, the Chief Operating Officer is hereby authorized and empowered to make such administrative rules and regulations as the Chief Operating Officer considers proper to effectively carry out the purposes of this chapter 5.05.

(Ordinance No. 89-319; Ordinance No. 91-388, Sec. 7; Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1337.)

5.05.100 Contested Case Proceedings

Any waste hauler or other person desiring to contest any decision made by the Chief Operating Officer under this chapter 5.05 shall commence a contested case proceeding pursuant to Chapter 2.05 of the Metro Code.

(Ordinance No. 89-319; Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1337.)