

B L A C K

H E L T E R L I N E LLP

A T T O R N E Y S A N D C O U N S E L O R S A T L A W

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April 27, 2016

VIA E-MAIL ONLY TO WARREN.JOHNSON@OREGONMETRO.GOV

Metro Solid Waste Code Updates
Attn: Warren Johnson
600 N.E. Grand Ave
Portland, OR 97232

Reference: Proposed changes to Metro Code Title V, Chapter 5.01.040 to
remove exemption for certain wood waste processing
operations/facilities

Dear Mr. Warren:

I represent Mr. Jim Smith of Jim Smith Excavating and write this letter to express opposition to the proposed removal of the existing exemption in Metro Code 5.01.040(a)(5)(D) (the "Exemption"). The Exemption provides that Chapter 5.01 shall not apply to "Operations or facilities that chip or grind wood wastes, unless such wastes are processed for composting."

Jim Smith Excavating (JSE) and other similarly situated operators, including Wood Waste Management, LLC and McFarelane's Bark, Inc., manufacture "hogged fuel" from clean wood that is transported to the manufacturing facility by independent third parties. Those parties pay to drop the wood at the processing facility where it is used to manufacture hogged fuel. The fuel re-enters the stream of commerce as a new product, and is sold to independent third party facilities that are licensed to burn the hogged fuel to produce energy.

JSE has been manufacturing hogged fuel for over 20 years at its current location and has, over that time, contributed significantly to the beneficial management of would-be wood scrap by keeping it from ever entering the regional waste stream.

Metro's governing statutes recognize the beneficial nature of JSE's activities. Under ORS 268.310(1), Metro has broad authority to regulate solid and liquid wastes, subject to the requirements of ORS 459.005 to ORS 045, etc. ORS 459.007 specifically exempts certain



types of wood residue from coverage under ORS 459.005, including wood residue that is “exchanged by the generator of the wood residue for fair market value and is combusted as a fuel . . .” *ORS 459.007*. Legislative materials explain the policy behind the exemption. “Oregon law establishes a hierarchy for the management of solid waste. The first objective is to prevent the generation of waste. If that is not possible, reuse is the best option, followed by recycling, composting, and energy recovery.” *76th Oregon Legislative Assembly – 2011 Regular Session, Staff Measure Summary, Senate Committee on Rules*. ORS 459.007 “Excludes woody biomass that is combusted as a fuel by facility (sic) that has obtained a permit under ORS 468A.040 (air quality) from the definition of solid waste.” *76th Oregon Legislative Assembly, House Committee on Rules*.

The existing exemption in Metro’s code recognizes and implements the policy underlying Oregon’s approach to management of the waste stream. The existing exemption, without any interference from government, has allowed a secondary market in wood products and wood products manufacturing to develop and thrive, keeping marketable wood products out of the waste stream and putting them to secondary beneficial use.

There is simply no need change what is already working. The sole reason for the change cited in Metro’s materials is to “improve consistency”. *See page 2 of 4, Summary of Proposed Metro Code Title V Changes, February 12, 2016; See also, page 3 of 4 Comment 2(a) of Summary of Proposed Metro Code Title V Changes, February 29, 2016*. The matter appears to have been briefly discussed during the January 13, 2016 meeting SWAAC, see Item 6 on page 3, but there is no indication that the committee or anyone has considered the broader policy implications of the proposed code change to remove the Exemption. There is another mention of the issue in the meeting notes of the February 1, 2016, SWAAC/MRF/CT Subcommittee meeting notes, Item 3 on page 2, where Chair Brower notes that using wood waste to generate power does not clearly fit into Metro’s solid waste regulations, and that there are a “broader group of interests and views that should be heard, discussed and considered” so that the committee is well equipped to advise the Metro Council on the proposed changes. Staff again offered only the explanation that Metro’s code should be updated for consistency.

This letter specifically requests that the Committee not endorse or recommend the proposed removal of the Exemption, absent some compelling policy rationale. The Exemption has been in place for many years and, as a direct result, there is a robust and successful secondary market keeping wood out of the waste stream and putting it to beneficial use. Bringing these activities under Metro’s regulatory control “for the sake of consistency” is a weak rationale when the existing system is working now to achieve Oregon’s goals. As such, there is no need for the proposed change in Metro’s code to remove the Exemption. The Exemption is working.



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Thank you for your consideration of this request and please do not hesitate to contact me for additional information.

Very truly yours,



Philip J. Wuest

Jim Smith Excavating:

Jim Smith

Wood Waste Management, In.

Rick Franklin

McFarlane’s Bark, Inc.:

Dan McFarlane

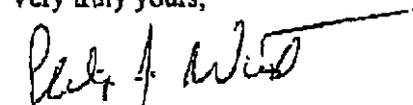
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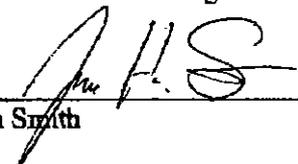
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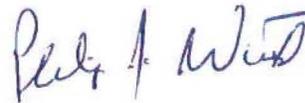
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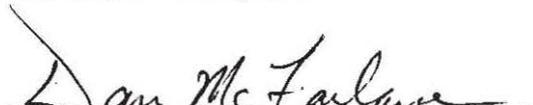
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