

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF SUSPENDING)	RESOLUTION NO. 15-4666
PROVISIONS IN THE METRO CODE, TITLE V,)	
RELATED TO THE ENHANCED DRY WASTE)	Introduced by Chief Operating Officer Martha
RECOVERY PROGRAM PERTAINING TO)	Bennett in concurrence with Council
WOOD WASTE)	President Tom Hughes

WHEREAS, in Ordinance No. 07-1147B, the Metro Council adopted code provisions to support the Enhanced Dry Waste Recovery Program (“EDWRP”), which requires, among other things, processing of non-putrescible waste generated in the Metro region to recover wood; and

WHEREAS, the Council adopted EDWRP to assist the region to attain its state-mandated recovery goal by recovering additional reusable and recoverable non-putrescible waste generated by the building industry; and

WHEREAS, Metro Code Section 5.01.125(c) requires a Metro solid waste licensee or franchisee to process non-putrescible waste accepted at the facility to recover certain materials, including wood, to a specific standard and to conduct sampling on the processing residual; and

WHEREAS, Metro Code Section 5.05.034(d) and (e) require that an agreement between Metro and a designated facility of the system shall not authorize acceptance of non-putrescible waste generated in the Metro region that has not undergone material recovery processing unless the facility agrees to process the waste; and

WHEREAS, Metro Code Section 5.05.041 requires, among other things, that an applicant for a non-system license, or a licensee that seeks to deliver unprocessed non-putrescible waste outside the Metro region, must demonstrate that the non-system facility is in substantial compliance with the material recovery provisions of Metro Code Section 5.01.125; and

WHEREAS, Metro Code Section 5.09.040(g) stipulates that no person shall deliver non-putrescible solid waste generated within Metro that has not undergone material recovery, or direct another person to deliver such solid waste, to any facility other than a Metro-authorized material recovery facility; and

WHEREAS, in Resolution No. 07-3802, the Metro Council directed staff to ensure that the contract operators of Metro Central and South transfer stations meet or exceed EDWRP’s recovery performance and reporting standards; and


WHEREAS, the wood market used by many generators and solid waste facilities in the Metro region has changed after the enactment of EDWRP due largely to the indefinite closure of the WestRock/SP paper mill located in Newberg, Oregon, effective November 15, 2015; and

WHEREAS, compliance with EDWRP under current conditions is not practical; now therefore,

BE IT RESOLVED that the Metro Council:

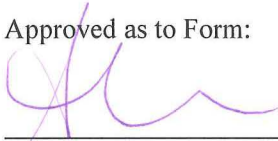
1. Suspends certain provisions of the Metro Code related to EDWRP and the recovery of wood waste, including Metro Code Sections 5.01.125(c); 5.05.034(d) & (e); portions of 5.05.041; and 5.09.040(g) as it relates to wood; and
2. Authorizes the Chief Operating Officer to inform facilities outside the region that Metro will not enforce any provision of a designated facility agreement that prohibits the facility from accepting unprocessed wood waste for disposal or that requires the facility to recover wood waste; and
3. Directs the Chief Operating Officer to introduce a resolution to reinstate the suspended code provisions once the wood waste market conditions change.

ADOPTED by the Metro Council this 12th day of November 2015.



Tom Hughes, Council President

Approved as to Form:



Alison R. Kean, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 15-4666 FOR THE PURPOSE OF SUSPENDING PROVISIONS OF METRO CODE, TITLE V, RELATED TO THE ENHANCED DRY WASTE RECOVERY PROGRAM PERTAINING TO WOOD WASTE

October 30, 2015

Prepared by: Roy Brower
503-797-1657

Adoption of Resolution No. 15-4666 will temporarily suspend portions of Metro Code Chapters 5.01 (Solid Waste Facility Regulation), 5.05 (Solid Waste Flow Control), and 5.09 (Illegal Disposal) that pertain to Metro's Enhanced Dry Waste Recovery Program (EDWRP) as it relates to wood waste. The proposed suspension responds to the significant disruption in the region's primary wood recovery outlets and provides temporary regulatory relief to wood waste generators, solid waste facilities processing wood waste, and disposal sites by allowing land disposal of certain source-separated wood waste previously destined for energy recovery. However, adoption of this proposed resolution would not change the current EDWRP requirement for all mixed non-putrescible (dry) waste to be processed at an authorized material recovery facility prior to disposal.

BACKGROUND

In August 2015, Georgia-based WestRock Co. purchased the SP Fiber Technologies paper mill located in Newberg. On October 15, WestRock announced that it would indefinitely cease operations at the Newberg mill on November 15. Since that time, the company has severely restricted the acceptance of urban wood waste derived fuel from the Metro-area and elsewhere. It is not yet clear when or whether the mill will open again.

The Newberg mill had served as a long-term reliable market for the region's paper recyclables and the primary market for the region's recovered urban wood waste - which is burned as hogged fuel at the mill for the production of steam and electricity. While the closure was not totally unexpected, the suddenness and timing was a surprise even to the mill's management team, and it significantly impacts our region's waste reduction efforts and solid waste operations.

In 2014, the mill received about 88 percent (127,000 tons) of the Metro area's recovered wood waste from material recovery facilities (MRFs). Additionally, the mill served as a fairly proximate outlet for the most-difficult-to-recycle types of urban wood, including painted, treated, and manufactured wood waste. There are also two other paper mills located in Washington (Longview and Camas) that have capacity to accept some additional amount of urban wood waste for use as fuel, but those facilities will accept only very "clean" urban wood. The shutdown of the Newberg mill has foreclosed the region's only outlet for much of the painted, treated and manufactured wood waste. The region's urban wood waste generators and processors, including Metro's own public transfer stations, are entering into a market transition period that will require significant modifications to processing and operating procedures in order to recover only the cleanest wood from the region's dry waste stream.

Metro and EDWRP

Representatives of the solid waste industry have expressed concern that Metro's current EDWRP requirements will create undue hardships for generators, processors and solid waste facility operators during this challenging transition period for urban wood waste recovery. Metro Code Title V (Solid Waste) establishes two primary EDWRP requirements that have served the region very well since 2009: 1) all mixed dry waste must be delivered to a Metro-authorized MRF that will separate the waste into

marketable components,¹ and 2) all MRFs must ensure that their processing residual contains no more than 15-percent of wood, metal and cardboard.² Violation of either of these requirements could result in a Metro enforcement action.

Currently, one of the primary materials targeted for recovery by post-collection MRFs is wood waste. The recent market disruption for this material creates uncertainty and risk for industry participants at all levels. Therefore, the following provisions associated with EDWRP present some challenges under the current market conditions:

- **Disposal of Recyclable Material.** Metro Code prohibits the disposal of source-separated recyclable materials generated or received by solid waste facilities. In other words, a MRF that separates incoming loads of mixed dry waste into its various individual marketable components (wood, metal, plastic, gypsum, roofing, cardboard, etc.), must not dispose the source-separated and recovered components. However, with the recent disruption in the urban wood markets, it is no longer reasonable to expect certain types of wood to be recovered because the closure of the WestRock mill in Newberg eliminates the major outlet for this wood. The Oregon Department of Environmental Quality (DEQ) has taken the position that source-separated wood waste that was intended for energy recovery is not prohibited from disposal as provided in OAR 340-090-0090(2). Metro staff supports this position and, upon adoption of this resolution, Metro would also allow this type of wood waste to be disposed as allowed by the DEQ. (Any disposal would continue to be subject to payment of Metro's Regional System Fee and Excise Tax.)
- **Material Recovery Residual Standard.** Metro-authorized processing facilities (both MRFs and transfer stations) are required to perform material recovery on all mixed dry waste received at the facility such that the remaining residual contains no more than 15-percent of wood, metal, and cardboard. Upon adoption of this resolution, Metro would suspend enforcement of the 15-percent requirement as it pertains to the wood component in the processing residual. This means that such facilities will no longer be required to separate wood from mixed loads prior to disposal until this standard is again reinstated. However, loads of mixed dry waste received by facilities must still be processed to remove metal and cardboard as required under EDWRP. Anecdotally, staff understands that there may currently be some market capacity for very clean wood at the two other paper mills located in Longview and Camas, Washington – as such staff will continue to encourage facilities to recover clean urban wood while Metro evaluates the region's alternative wood recovery and recycling options. Staff will also encourage Metro-regulated facilities to post signage and otherwise inform their customers that the wood received at those facilities may not be recovered or recycled.
- **Direct Delivery and Disposal of Wood Waste at Landfills.** Currently, Metro Code³ prohibits the disposal of unprocessed dry waste, including loads of wood waste. Staff recognizes that land disposal may be the only reasonable alternative available for the temporary management of urban wood waste under the current market conditions. Staff recommends that the Metro Council suspend certain provisions of the Code to allow such unprocessed, source-separated wood loads to be delivered directly to a disposal site in the interim while staff evaluates the region's alternative recovery and recycling options.

¹ Metro Code Section 5.09.040(g).

² Metro Code Section 5.01.125(c)(1)

³ Metro Code Section 5.05.034(d) and (e).

DEQ Guidance

Metro requested guidance from DEQ on the conditions under which source-separated wood waste in the region could be disposed. In summary, DEQ provided the following guidance:

- The ban on disposal of source-separated recyclables does not apply to wood waste intended for energy recovery. The wood waste separated for the purpose of being used as hogged fuel at the WestRock/SP mill is not subject to the state's prohibition and may be disposed.
- However, if source-separated wood waste is collected for recycling, as defined in Oregon Administrative Rules (OAR) below, then it may not be delivered to disposal.

DEQ's rationale for this finding is as follows:

OAR 340-090-0090(2) requires:

In addition to the provisions set forth in ORS 459A.080, no person shall dispose of source-separated recyclable material which has been collected or received from the generator by any method other than reuse or recycling except for used oil and wood waste which may be collected and burned for energy recovery.

OAR 340-090-0010(30) defines "recycling" as:

[A]ny process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.

OAR 340-090-0010(12) defines "energy recovery" as:

[R]ecovery in which all or part of the solid waste material are processed to use the heat content, or other forms of energy, of or from the material.

DEQ has indicated to Metro that it will continue to encourage the recovery of scrap and urban wood where markets exist for the use and reuse of that material. DEQ also recommends separation of clean wood scrap from contaminated, painted, or treated wood waste and recommends recycling of clean, untreated wood where markets exist. Disposal may be the best (or only) option for contaminated, painted or treated wood.

Metro Resolution No. 15-4666

The proposed resolution is offered as a way to provide clarity, certainty and regulatory relief during a temporary period of transition in the urban wood market. Adoption of this resolution would result in the following:

1. *Suspend portions of the Metro Code pertaining to EDWRP.* Adoption of this resolution would suspend portions of the Metro Code related to wood recovery under EDWRP. Specifically, the following provisions would be suspended:
 - a. **Metro Code Section 5.01.125(c).** These are requirements for licensed and franchised facilities to 1) process dry waste to meet the EDWRP residual standard, and 2) require facilities to take quarterly sampling of processing residual and report results to Metro. This section also provides details on violations, enforcement and remedies related to non-compliance with this section. Suspension of this provision would not reinstate Metro's former method for calculating and demonstrating recovery as described Section 5.01.125(b) by recovering 25 percent by weight from all waste received at a facility.

Adoption of this resolution would suspend the requirement to segregate wood from mixed dry waste loads and removes the wood waste component from determining EDWRP compliance during residual sampling events. The Chief Operating Officer (COO) will provide additional guidance to operators on the implementation details.

- b. **Metro Code Section 5.05.034(d) and (e).** These are requirements placed on facilities located outside the Metro regional boundary that prohibit the acceptance of unprocessed dry waste for disposal through a designated facility agreement.

Adoption of this resolution would suspend this requirement for designated facilities, primarily landfills, located outside the region and allow disposal sites to accept unprocessed, source-separated wood waste loads normally destined for energy recovery for disposal provided that the disposal site collects and remits Metro's fees and taxes for the waste. The COO will provide additional guidance to operators on the implementation details.

- c. **Metro Code Section 5.05.041.** In the last paragraph of this section, applicants seeking non-system licenses must demonstrate that mixed dry waste loads, when delivered to a facility located outside the region, are being delivered to a facility that meets the same standards in Section 5.01.125 for facilities located inside the region. This standard will be difficult or impossible to meet given the current market conditions for wood.

Adoption of this resolution would suspend this particular application requirement and allow applicants to seek non-system licenses to deliver unprocessed, source-separated wood waste normally destined for energy recovery directly to disposal sites. The COO will provide operators with additional guidance on the implementation details.

- d. **Metro Code Section 5.09.040(g).** This provision requires all mixed dry waste to be delivered to a Metro-authorized recovery facility. Adoption of this resolution would suspend this provision as it relates to loads of unprocessed, source-separated wood waste. The COO will provide additional guidance to operators on the implementation details.

- 2. *Inform industry of EDWRP suspension.* Adoption of the proposed resolution would direct the COO to notify all of Metro's designated facilities (located inside and outside of the regional boundary) of the Metro Council action and inform those operators of the suspended portions of EDWRP as specified above. The COO will provide additional guidance to operators on the implementation details.
- 3. *Reinstatement of EDWRP requirement.* The COO is directed to introduce a resolution to reinstate the suspended code provisions once the wood waste market conditions change. The COO will continue to monitor the region's wood markets and report back periodically to the Council if a significant change in the region's wood recovery options occurs that would merit reinstatement of the proposed suspended provisions.

ANALYSIS / INFORMATION

1. Known Opposition

Metro provided industry, local governments and other stakeholders with information on October 23, 2015 that provided some guidance on management of wood waste loads, including information provided to Metro by DEQ. Metro spoke with numerous stakeholders by phone or in-person to discuss solutions to the challenges presented by the wood market situation. Metro staff also met and discussed the market situation with local government solid waste directors on October 22, 2015.

There is no known or anticipated opposition to the proposed resolution. On October 30, 2015, Metro staff provided copies of the proposed resolution and draft staff report to all designated facilities located inside and outside the boundary. Copies were also provided to staff of local governments involved in solid waste work, DEQ and other stakeholders generally interested in solid waste issues. Comments were solicited to provide assurance that temporary suspension of these Code provisions during this transitional period was prudent and reasonable and did not create any unanticipated hardships. Current feedback indicates that this proposal is relevant, timely and helpful to industry.

2. Legal Antecedents

ORS Chapter 268 (Solid Waste); Metro Charter; Metro Code Title V (Solid Waste Facility Regulation).

3. Anticipated Effects

Approval of Resolution No. 15-4666 will temporally suspend certain provisions related to EDWRP requirements provided in Metro Code Sections 5.01.125(c), 5.05.034(d), 5.05.034(e), and portions of 5.05.041; and 05.09.040(g) as it relates to wood. This suspension will result in more urban wood waste being disposed, especially the painted, treated, contaminated and manufactured wood. This increased disposal will have some negative impact on the regions overall recovery rate. It should also result in the separation of cleaner wood for use as a fuel in energy recovery and existing or newly emerging recycling markets.

4. Budget Impacts

Upon adoption, it is anticipated that some additional quantity of wood waste will be disposed at landfills rather than burned for energy recovery at the WestRock/SP mill in Newberg. Wood waste that is used for hogged fuel, such as that previously delivered to the mill has not been subject to Metro's regional system fee (\$18.39/ton) or excise tax (\$11.48/ton). If that wood waste is now delivered to a disposal site, it will be subject to Metro's full fee and tax rate (\$29.87/ton).

Assuming that half of the Metro region's wood waste that had been sent to the WestRock/SP mill in 2014 will now be delivered to disposal for the next eight months through the end of the fiscal year (mid-November through June 30, 2016), Metro may collect up to an additional \$650,000 in regional system fees and \$400,000 in excise taxes. These revenues would be factored into the next budget cycle (FY16-17) and considered for future rate and budget setting.

Recommended Action:

The COO recommends adoption of Resolution No. 15-4666.