


# Memo



**Metro**

600 NE Grand Ave.  
Portland, OR 97232-2736

Date: January 23, 2018  
To: Martha Bennett, Chief Operating Officer  
From: Paul Slyman, Director - PES   
Subject: SSR/CT Facility Administrative Rules

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Attached for your signature are several new administrative rules that set forth requirements for source-separated recyclable material recovery (SSR) facilities and conversion technology (CT) facilities that are now subject to licensing requirements under Metro Code Chapter 5.01 (Solid Waste Facility Regulation). Staff recommends that the Chief Operating Officer (COO) adopt the attached rules as provided for in Metro Code Section 5.01.280. This memo provides background information about the public outreach performed by staff, a summary of the public comments that were received, and staff's responses to those comments.

On October 26, 2017, the Metro Council adopted Ordinance Nos. 17-4410 and 17-4411 which amended Metro Code to remove the regulatory exemption for facilities that receive and process source-separated recyclable materials or convert such materials into energy or fuel. As a result of that Council action, SSR and CT facilities within the region are required to obtain a Metro solid waste facility license by January 1, 2019. At the time the ordinances were adopted, staff informed Council that the implementation details would subsequently be adopted through administrative rule as described in Metro Code Section 5.01.280.

On November 3, 2017, staff posted draft administrative rules for public review and comment to implement the above-mentioned code requirements. The comment period ended on December 4, 2017. Staff also held a formal public hearing on November 14, 2017 at the Metro Regional Center.

### ***Comments Received on Draft Administrative Rules***

Metro received three written comments during the public notice period regarding the proposed SSR Administrative Rules Nos. AR 5.01-1100 through 1145. Two of those comments were relevant to the content of the SSR rules. However, the other comment was a general policy/process suggestion for Metro and was not directly related to the requirements contained in any of the proposed rules. That commenter offered suggestions related to the handling of "hard to recycle" materials. All three written comments are attached to this memo for your reference. Metro also received verbal comments during the public hearing from Dave Claugus of Pioneer Recycling. Mr. Claugus' written comments substantially duplicated the comments he provided verbally at the public hearing. Metro did not receive any comments with respect to the proposed Administrative Rules Nos. AR 5.01-2000 through 2045 that are associated with CT facilities.

This memo addresses the comments received from Mr. Claugus and Jeff Murray of Environmental Fiber Inc. This memo does not address the unrelated comments received from Christopher Ritzau. A summary of the germane comments received and staff's responses to those comments are provided below.

### **Summary of Comments and Staff's Responses**

Staff appreciates the comments and the input received from these facility operators who have participated throughout the two year engagement process that led to the adoption of the code amendments and the proposed administrative rules. Staff's responses to the comments received on Administrative Rules Nos. AR 5.01-1100 through 1145 are provided below:

1. **Comment:** The rule should provide further clarification on the nature of materials received at SSRs and the prohibition on disposal of those materials without Metro approval. Specifically, the commenters asked that the word "program" be added to the rules to distinguish between materials accepted in regulated curbside collection programs and materials that are not supposed to be placed at the curb (such as plastic bags or clam shells).

**Staff Response:** Staff revised Rule No. 5.01-1120 to clarify that the routine disposal of waste materials that are incidental to that of local government-approved program materials do not constitute source-separated recyclable materials for the purpose of the license. Examples of these materials may include certain rigid plastics, film plastics, expanded polystyrene or other materials set out "aspirationally" by customers.

2. **Comment:** The rules should provide further clarification related to outdoor storage of materials which would allow facility operators to utilize best management material handling practices to ensure safe, efficient, and effective storage practices (which may at times include outdoor storage). The general concern was that Metro was too prescriptive in how materials are to be stored on site.

**Staff Response:** Staff revised Rule No. 5.01-1120 to clarify that outdoor storage of processed source-separated recyclables is allowed so long as that storage complies with local and state fire regulations and prevents material degradation, vectors, litter, odors, fires or other conditions that that may threaten the environment, neighboring communities, or quality of the material. Metro may require the licensee to modify outdoor storage practices to avoid material degradation, nuisances, health, safety, or environmental problems.

3. **Comment:** Concerns around submitting transaction level reporting to Metro, with a suggestion to allow SSR operators to only report aggregated data as well as concern over Metro's ability to protect confidential information from disclosure. Some facility operators assert that transaction level data reporting is unnecessary for Metro's planning and oversight purposes and that Metro could not protect certain business sensitive data from public disclosure.

**Staff Response:** As a primary point of clarification, any records required to be submitted to Metro under the proposed administrative rules would be exempt from disclosure under Oregon's Public Records Law. A fuller discussion of Metro's ability to protect confidential documents is provided in staff's response to Comment No. 5 in this memo. Regarding transaction level reporting, staff recommends retaining the proposed reporting requirements as written. Staff understands that some facility operators have concerns about submitting confidential business information and transaction level reporting to Metro. However, staff finds that it is in the public interest for Metro to obtain such information because:

- (a) **Regional Planning.** Metro's planning functions must be informed with better information about the flow of recovered recyclables within the region, state, national,

and international markets. This is particularly true as Metro works on the new Regional Waste Plan and as export market conditions remain highly volatile (with the impacts of China's National Sword included). Transaction level reporting ensures that Metro planning functions are thoroughly informed about the flow of materials to facilities, and on to markets wherever they may be.

- (b) **Level Playing Field.** Metro seeks to establish a level playing field across similarly situated facilities in the region. Metro currently collects transaction level reporting from nearly 40 licensed and franchised solid waste facilities including MRFs and transfer stations (such as KB Recycling, Greenway Recycling, and Pride Recycling). SSRs currently are the only class of solid waste facilities (with the exception of yard debris reload facilities and tire processors) not reporting transaction level data to Metro. Transaction level reporting would level the playing field within the industry so that all similarly situated facilities have the same reporting obligations.
- (c) **Accuracy and quality.** This data is typically acquired via a "scale dump" from a reporting entity directly into an accounting or excel based system, which is then uploaded directly into Metro's Solid Waste Information System (SWIS). This process limits the amount of times humans need to "touch" the data, thus preserving data integrity and quality. The facility operator's proposal to aggregate data would involve significant human interaction with that data, thus increasing potential for error and eroded data quality.
- (d) **Completeness.** Transaction level reporting for all incoming and outgoing tons satisfies the accounting/auditing principal of "completeness" – allowing Metro to portray the full picture of materials flowing in and out of a facility as well as provide insight into the amount of materials stored on site. This is particularly important as the likelihood of SSRs having to dispose of some commodities (and pay fees and taxes on those disposed tons or seek suspension of fees and taxes) due to market conditions increases.
- (e) **Existing System.** SWIS is the only reporting system that Metro uses to collect data from licensees and franchisees. There is no alternative reporting system currently in place. Facility operators have proposed reporting tonnage data in aggregate form. However, SWIS is not formulated to accept this level of data aggregation. An alternative or parallel reporting system would need to be designed and implemented to accomplish this, and this would further interfere with Metro's desire to establish a level playing field across all licensed facilities for reporting purposes.

Due to the reasons listed above, staff does not support establishing a different reporting requirement for SSR or CT facilities.

4. **Comment:** Concerns related to rule language regarding protecting surface and ground waters from contamination. Some facility operators indicated that the terms of their current storm water permits with DEQ were sufficiently rigorous and that there was no need for additional regulation by Metro.

**Staff Response:** Staff revised Rule No. 5.01-1120 to make the language pertaining to water protection consistent with that of the other rules and the DEQ storm water permit provisions that apply to all such facilities.

5. **Comment:** Concerns regarding rules authorizing Metro staff to inspect and audit documents (such as tax filings, financial statements, etc.) as well as concerns over Metro protecting confidential information from disclosure. The commenters felt that this level of regulatory oversight was excessive, and had concerns that trade secrets may not be protected from disclosure by Metro.

**Staff Response:** Two facility operators have expressed concerns regarding the requirements to report certain facility transactions to Metro, even though Metro imposes similar reporting requirements on all other licensed and franchised solid waste facilities. Specifically, these operators fear that Metro will not keep the information confidential or that competitors may seek this information via a public records request. However, any records created or any data uploaded to Metro's database under the proposed administrative rules would almost certainly be exempt from disclosure under Oregon's Public Records Law as either "trade secrets" or "business records required to be submitted." See *ORS 192.501(2), (5)*. These records are exempt from disclosure unless a court finds that their disclosure is in the "public's interest" and orders disclosure. That situation is very rare for these kinds of business records.

In addition to the protections afforded by the public records laws, Metro also provides in each facility license that it will treat certain reporting records as confidential to the extent allowed by law. Under this license provision, a licensee may identify reports and other documents that the licensee considers "confidential" and Metro agrees to treat those documents as confidential unless doing so would be contrary to applicable Oregon law. Further, if someone were to make a public records request for these kinds of reports, Metro agrees to give notice of that request to the facility operator in case the operator wishes to contest the disclosure or assist Metro in redacting confidential information.

In the many years Metro has collected this type of information, staff is unaware of any successful public records request for the kinds of reporting records that are the focus of the commenters' concerns.

6. **Comment:** Concerns regarding the requirement for a facility to post its tipping fees and charges if it receives materials from the public. The commenters' concerns were based on the interpretation that Metro was seeking that all customer pricing was required to be posted by the administrative rule.

**Staff Response:** Staff considered the comments received related to the posting of tipping fees and charges and does not recommend any changes to the proposed rules as a result of that evaluation. The rules require that a facility must post its tipping fees and charges *only if it receives and charges for materials dropped off by the public*. The rule is not applicable to business-to-business transaction pricing.

7. **Comment:** Concerns regarding the requirement to notify Metro of a transfer of ownership and how that requirement could interfere with an existing SSR's ability to sell its business to a potential buyer.

**Staff Response:** Staff finds that the proposed requirement does not inhibit a facility operator's ability to sell or transfer ownership of its business. The proposed rule requires that the operator must simply notify Metro of any ownership changes within 10 business days of the transaction. Metro does not require pre-approval of such ownership changes.

Staff does not propose changes to this rule. This is a standard requirement in all of Metro's solid waste authorizations and staff finds that there is no reason to exclude this class of solid waste facilities from the same requirement.

**RECOMMENDED ACTION**

In accordance with Metro Code Section 5.01.280, staff recommends that the COO adopt Administrative Rules Nos. AR 5.01-1100 through 1145 and AR 5.01-2000 through 2045 as attached. The rules will take effect March 1, 2018 and apply to all SSR and CT facilities operating under the terms of a solid waste license. Signature pages for both sets of rules are attached.

cc: Shane Abma, Office of Metro Attorney  
Roy Brower, SWICC Program Director