



Memo

Date: May 15, 2020
To: Marissa Madrigal, COO
From: Roy W. Brower, Director, Waste Prevention and Environmental Services
Subject: Private Transfer Station Management Administrative Rules

Attached for your signature are administrative rules for Metro Code Chapter 5.01 (Solid Waste Facility Regulation) that set forth general operating and performance requirements for all privately owned transfer stations within the Metro region. Staff recommends that the Chief Operating Officer (COO) adopt the attached rules as provided in Metro Code Chapter 5.08 which governs administrative rulemaking for the entire solid waste code.

This memo provides background information about the public outreach performed by staff in regard to these proposed rules, a summary of the public comments that were received, and the staff response to those comments.

Background

The primary purpose of the proposed administrative rules is to establish a uniform set of general operating and performance requirements for all private transfer stations within region. These proposed rules fulfill this purpose by establishing basic requirements for the entire class of facilities (transfer stations). These requirements intentionally mirror the current franchise requirements that Metro Council adopted at the end of 2019 for the privately owned transfer stations in the region. Metro retains the ability to impose additional or more stringent requirements beyond these proposed rules as necessary to address site-specific issues or concerns.

The secondary purpose of the proposed rules is to advance transfer station management of food waste beyond the status quo. The more detailed requirements for the management of food waste support implementation of Metro's Business Food Waste Requirements (AR 5.10- 4000 through 4085). While the timeline for implementing Metro's Business Food Waste Requirements has been extended by Metro Council in response to the current global health crisis, other aspects of its implementation have not changed. Consequently, the proposed food waste requirements set forth in these rules have not changed.

In adopting these rules, the COO will be continuing an effort that began more than two years ago when the COO adopted a similarly basic rules for two other classes of facilities—material recovery facilities and conversion technology facilities. Staff recommends that Metro continue to establish similarly basic administrative rules for every class of regulated facilities as resources are available. By establishing basic administrative rules for a class of regulated facilities, Metro creates a clear, uniform foundation that can incorporate additional requirements that emerge from implementation of the Regional Waste Plan.

Following through on the foundational nature of these proposed administrative rules, staff intend to develop and propose additional requirements for this class of facilities (transfer stations) as resources become available. This next phase of rulemaking will need to move beyond status quo in order to advance many of the Regional Waste Plan goals adopted by Metro Council, such as Goal 12, which requires management of "all garbage and recycling operations to reduce their nuisance, safety and environmental impacts on workers and the public."

Public Notice and Opportunity to Comment

On February 24, 2020, Metro initiated a formal administrative rule making process for these proposed administrative rules in accordance with Chapter 5.08. Metro opened a public comment period for the proposed administrative rules which began on February 24, 2020 and ended on March 25, 2020. Metro posted the public notice on Metro's website that included directions on how to submit comments. Metro received two sets of written comments during that time. Staff also held an oral hearing for the proposed rules on March 12, 2020, at the Metro Regional Center in Room 370A and received no comments at that hearing. However, no one attended the hearing.

Comments Received on Proposed Administrative Rules

Metro received two sets of written comments about the proposed rules during the public comment period. Both comments were submitted by representatives of Metro-regulated facilities: Gresham Sanitary Service Inc. and Pride Recycling Company. A summary of the written comments and staff's responses are provided below.

Comment #1: These proposed rules establish an unrealistic expectation for the removal of putrescible waste. The rules require transfer stations to transfer putrescible waste offsite within 24 hours of receipt for all days of the week and this is not feasible in all cases, such as when waste is received on a Friday and the transfer station is closed on Saturday or the landfill is closed on Saturday.

Staff Response #1: The proposed rules set forth general operating and performance requirements for all transfer stations. The proposed rule 5.01-3120.4 (Timeframes for Storage and Transfer of Waste) state that the "franchisee must remove materials from the site on the following schedule *except when an alternate schedule is described in a facility operating plan and approved in writing by Metro* [italicized emphasis added]." As currently written, these rules allow a transfer station to store putrescible waste on site for longer than 24 hours if Metro approves an alternate timeframe as part of the facility operating plan. For example, a transfer station that seeks a longer timeframe for storing waste, such as one business day, would need to submit an updated operating plan and obtain Metro's approval to extend the 24-hours timeline requirement.

Staff does not recommend any changes to the proposed rule.

Comment #2: These proposed rules establish an unrealistic expectation for the removal of mixed non-putrescible waste as the rule requires transfer stations to transfer mixed non-putrescible waste offsite within 48 hours of receipt.

Staff Response #2: As above in Staff Response #1, proposed rule 5.01-3120.4 (Timeframes for Storage and Transfer of Waste) provides transfer stations the opportunity to have an alternative schedule described in the facility operating plan and approved in writing by Metro.

Staff does not recommend any changes to the proposed rule.

Comment #3: These proposed rules establish an unrealistic expectation for the removal of source separated food waste because the rule requires transfer stations to transfer this material offsite within 24 hours of receipt.

Staff Response #3: As above in Staff Response #1, proposed rule 5.01-3120.4 (Timeframes for Storage and Transfer of Waste) provides transfer stations the opportunity to have an alternative schedule described in the facility operating plan and approved in writing by Metro.

Staff does not recommend any changes to the proposed rule.

Comment #4: The proposed rules need to more clearly define “adequate access” and “geographic proximity” so that franchisees can properly plan to provide adequate access, including to waste haulers that collect sold waste. To implement access based on geographic proximity, there needs to be a process for how to determine if waste is within the geographic proximity.

Staff Response #4: The expectations around “adequate access” and “geographic proximity” found in proposed rule 5.01-3120.25 (Waste Hauler Access) match the same requirements present in each of the current franchises for the private transfer stations that were approved by Metro Council in late 2019. Metro has a responsibility to ensure that the regional transfer system has adequate capacity to accommodate the region’s waste and that the system serves the public’s interest.

Staff does not recommend any changes to the proposed rule.

Comment #5: The proposed rules needs to more clearly define what “adequate capacity” transfer stations need to maintain so that facilities are prepared to manage source separated food waste generated in the region.

Staff Response #5: The expectations around “adequate capacity” found in proposed rule 5.01-3120.5 (Processing and Disposal) establish that a transfer station must have adequate capacity to accept commercial food waste from within the region, accommodate expected growth tonnage, and provide equitable access to customers. Currently, all of the Metro-franchised transfer stations are authorized to accept source-separated food waste, including material generated outside the region. However, a franchisee may not accept out-of-region material if it would limit the franchisee's ability to accept material generated from within the region. Staff will continue to work with facility operators to monitor and evaluate facility capacity to ensure that the regional transfer system can accommodate the region’s waste and that the system serves the public’s interest.

Staff does not recommend any changes to the proposed rule.

Comment #6: The proposed rules require a 12-hour turn-around time for notifying Metro when a facility fire, accident, emergency, or other significant incidents to Metro have occurred. However, one business day is recommended.

Staff Response#6:

This requirement, as found in proposed rule 5.01 – 3135.3 (General Recordkeeping and Reporting), matches the same requirement present in the “unusual occurrences” section in each of the current franchises for private transfer stations. The current franchises were approved by Metro Council in 2019. Additionally, staff finds that it is not unreasonable to require an operator to notify Metro with 12 hours of any accident or other incident that may impact the facility’s routine operations. It is crucial for Metro to receive timely information in order to monitor the system and take appropriate action if necessary.

Staff does not recommend any changes to the proposed rule.

Comment #7: The proposed rules require a 24-hour turn-around time for notifying Metro when a facility has received a contaminated load of source separated food waste. However, one business day is recommended.

Staff Response #7:

This requirement, as found in proposed rule 5.01-3120.14 (Load Checking) provides Metro staff with timely information that can be used to launch appropriate technical assistance. Technical assistance to businesses, haulers, transfer stations and other entities that produce and manage food waste is key to reducing contamination in loads. Staff finds that receiving information about contaminated loads within one business day is adequate to achieve the purpose of this rule.

Staff recommends revising this rule to establish a one business day timeframe.

Comment #8: Concerned that the rules authorizing Metro staff to inspect and audit documents (such as tax filings, financial statements, etc.) give Metro a business advantage and that there is potential for public disclosure of sensitive documents, including tax returns.

Staff Response #8: Metro is not a direct competitor of private transfer stations. Metro provides services for the benefit of the public like other public utilities. Metro has the authority to regulate solid waste generated or disposed within the Metro region and has determined that when it is in the public's interest to include private facilities in the solid waste system, it will do so. If Metro determined it was necessary to inspect a franchisee's books, tax returns, financial statements or other information indicated in the proposed rule 5.01-3145.5 (Inspection and Audit), Metro would use best practices to keep information confidential in accordance with the applicable confidentiality provisions in Section 13.4 of the franchise and Oregon public records law (ORS 192.501(2), (5)). Metro's right of inspection and audit in these administrative rules matches the current franchise agreements adopted by Metro Council in 2019.

Staff does not recommend any changes to the proposed rule.

RECOMMENDED ACTION

In accordance with Metro Code Chapter 5.08, staff recommends that the COO adopt Administrative Rules Nos. AR 5.01-3100 through 1045. The rules will take effect 30 days after adoption and apply

to all privately owned transfer stations within the Metro region. The proposed administrative rules are attached for your signature.

cc: Shane Abma, Office of Metro Attorney
Pam Peck, Policy and Compliance Program Director
Sabrina Gogol, Senior Solid Waste Planner

ATTACHMENT A: COPY OF COMMENTS RECEIVED
PRIDE RECYCLING COMPANY



March 17, 2020

Re: Comments on AR 5.01 – 3100 through 3145

Thank you for the opportunity to provide comments on the Administrative Rules regarding Private Transfer Station Management. Our comments are below.

- 5.01 – 3120. 4) a) “Putrescible waste must be transferred offsite within 24 hours of receipt”
 - This is unrealistic for material dropped off on Fridays. Recommended change “...within 1 business day of receipt.”
- 5.01 – 3120. 4) b) “Mixed non-putrescible waste must be transferred offsite within 48 hours of receipt.”
 - This is unrealistic for material dropped off on Fridays. Recommended change “...within 2 business days of receipt.”
- 5.01 – 3120. 4) c) “Source-separated food waste must be transferred offsite within 24 hours of receipt, including residential yard debris mixed with food waste.”
 - This is unrealistic for material dropped off on Fridays. Recommended change “...within 1 business day of receipt...”
- 5.01 – 3120. 5) a) “A franchisee required to receive source-separated food waste must maintain adequate capacity to accommodate management of food waste generated within the region.”
 - “Adequate capacity” needs to be defined. How are franchisees going to manage their facilities without an understanding of what is needed here?
- 5.01 – 3120. 14) a) “The operator must notify Metro within 24 hours of receipt of any contaminated load of source-separated food waste in a form and format specified by Metro.”
 - Recommended change: “...within 1 business day of receipt of any...”
- 5.01 – 3120. 25) “A transfer station located inside the Metro region must maintain adequate capacity to accommodate solid waste generated within the region and provide adequate access to waste haulers that collect solid waste within the geographic proximity of the facility.”
 - “Adequate access” and “geographic proximity” need to be defined in order to properly plan for this requirement.
 - A process for how to determine if waste is within the “geographic proximity” or

not needs to be established in order for this requirement to be in effect.

- 5.01 – 3140. 3) “The franchisee must report any facility fire, accident, emergency, or other significant incidents to Metro within 12 hours of its discovery...”
 - Recommended change “...within 1 business day of its discovery...”
- 5.01 – 3145. 5) b)
 - This section states that Metro has the right to inspect all books including income tax returns, financial statements, etc. Metro operates as a direct competitor for material to the private owned transfer stations while limiting the volumes we are allowed to receive with no such limit on themselves. This limits our ability to spread necessary overhead costs among a larger material base as Metro is allowing themselves to benefit from. It is inappropriate for Metro, as a direct competitor, to have any access to this financial information for any of the private transfer stations. This section also states that any of this information obtained by Metro would become public record. Again, it is inappropriate for the financial records and tax returns of a private company to be made public.

Thank you,

Kristin Leichner
Vice President
Pride Recycling Company

ATTACHMENT B: COPY OF COMMENTS RECEIVED
GRESHAM SANITARY SERVICE, INC.

From: M Miller [<mailto:matt@greshamsanitary.com>]
Sent: Friday, February 28, 2020 3:53 PM
To: SWICC
Subject: [External sender]Public comment on solid waste administrative rule 5.01

To: Metro

My comment is in regards to the Solid Waste Administrative Rules section (5.01 - 3120 4 a). Our current operating plan does not impose a "shot clock" time frame on the removal of waste. Implementation of this rule would cause an undue hardship primarily because the landfill we have contracted with is not usually open Saturday or Sunday. Unless the landfill was open both Saturday and Sunday (since we have incoming loads dumping on Saturday) this rule is simply unattainable. Even if the landfills were open for business these days, having the availability of a driver and other employees on the 6th and 7th day of operation is challenging for a small business.

With the regulation of our facility by DEQ, Metro, and the local government, and without significant violations or complaints logged (none at our facility), I believe this rule should be omitted from the administrative rules. If a more site specific operating plan was needing to address this issue, then that's where it should be addressed. Thank you.

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Matt Miller

Vice President: Gresham Sanitary Service Inc.

Cell Phone: 503.209.3932

Websites: Gresham Sanitary Service Inc. Since 1948.

Garbage, Recycling, Medical Waste