

CHAPTER 5.05

SOLID WASTE FLOW CONTROL

SECTIONS	TITLE
5.05.010	Definitions
5.05.015	Special Findings for Solid Waste Flow Control
5.05.020	Authority, Jurisdiction, and Application
5.05.025	Prohibited Activities
5.05.027	Exemptions
5.05.030	Designated Facilities of the System
5.05.035	License to Use Non-System Facility
5.05.038	Limitations on Treatment or Disposal of Petroleum Contaminated Soil (repealed Ord. 01-917 §10)
5.05.040	Issuance of Required Use Orders
5.05.050	Content of Required Use Orders; Notice
5.05.052	Requests for Reconsideration
5.05.054	Appeals to the Chief Operating Officer
5.05.060	Solid Waste Tracking System to be Developed
5.05.070	Solid Waste Flow Control Enforcement; Fines, Penalties and Damages for Violations
5.05.080	Administrative Rules
5.05.090	Contested Case Proceedings

5.05.010 Definitions

Notwithstanding anything expressed or implied in the Metro Code to the contrary, as used in this chapter 5.05, the following terms shall have the respective meanings set forth below unless the context requires otherwise:

(a) "Act" shall mean Oregon Revised Statutes Chapter 268, as amended, and other applicable provisions of the laws of the state of Oregon.

(b) "Cleanup Material Contaminated By Hazardous Substances" shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(c) "Council" shall have the meaning assigned thereto in Metro Code Section 1.01.040.

(d) "Designated facility" means one of the facilities constituting a part of the system designated from time to time pursuant to Section 5.05.030.

(e) "Director" means the Director of the Metro Regional Environmental Management Department or the Director's designee.

(f) "Disposal site" means the land and facilities determined from time to time by Metro as constituting part of the system, whether owned by Metro or another person and whether or not open to the public, used for the disposal of solid wastes, but does not include transfer stations or processing facilities.

(g) "District" shall have the meaning assigned thereto in Metro Code Section 1.01.040.

(h) "Material recovery" shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(i) "Metro Code" means the Code of Metro.

(j) "Non-putrescible waste" shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(k) "Non-system facility" means any solid waste disposal site, transfer station, processing facility, recycling drop center, resource recovery facility or other facility for the disposal, recycling or other processing of solid waste which does not constitute part of the system.

(l) "Non-system license" means a license issued pursuant to and in accordance with Metro Code Section 5.05.035.

(m) "Person" shall have the meaning assigned thereto in Metro Code Section 1.01.040.

(n) "Processing facility" shall mean a facility described in Metro Code Section 5.01.010 which has been designated by Metro as constituting part of the system.

(o) "Processing residual" shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(p) "Putrescible" shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(q) "Putrescible waste" shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(r) "Recyclable material" shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(s) "Regional Solid Waste Management Plan" means the Metro regional solid waste management plan adopted by Ordinance No. 95-624 on November 30, 1995, and as subsequently amended by the Metro Council.

(t) "Regional system fee" shall have the meaning assigned thereto in Metro Code Section 5.02.015.

(u) "Required use order" means a written order issued pursuant to Metro Code Section 5.05.040 requiring a waste hauler or other person to use a designated facility pursuant to the terms of the order.

(v) "Resource recovery facility" shall mean a facility described in Metro Code Section 5.01.010 which has been designated by Metro as constituting part of the system.

(w) "Solid waste" shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(x) "Source separated recyclable material" shall have the meaning assigned thereto in Metro Code Section 5.01.010

(y) "Special waste" shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(z) "State" shall have the meaning assigned thereto in Metro Code Section 1.01.040.

(aa) "System" shall mean any and all facilities now or hereafter designated by Metro as part of its system for the management and disposal of solid and liquid waste, including, but not limited to recycling and other volume reduction facilities, sanitary landfills, or other disposal means, resource recovery facilities (including steam production and electrical generating facilities using solid waste as fuel), recycling and transfer stations, roads, water lines, wastewater lines and treatment facilities to the extent provided or operated to carry out the provisions of the Act, and all buildings, fixtures, equipment and all property, real and personal now or hereafter owned, leased, operated or used by Metro, all for the purpose of providing for solid and liquid waste disposal; said system consists of the designated facilities described in Section 5.05.030(a) of this chapter.

(bb) "Transfer station" shall mean a facility described in Metro Code Section 5.01.010 which has been designated by Metro as constituting part of the system.

(cc) "Waste hauler" means any person engaged, in whole or part, in the collection, transportation, delivery, or disposal of solid waste generated within Metro, including any person engaged in such activities with respect to solid waste generated by such person as well as any person engaged in such activities with respect to solid waste generated by others.

(Ordinance No. 89-319. Amended by Ordinance No. 91-388, Sections 1 and 8; Ordinance No. 01-917, Sec. 1; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1019, Sec. 1; Ordinance No. 07-1147B, Sec. 9.)

5.05.015 Special Findings for Solid Waste Flow Control

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 wastes 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 wastes 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. Amended by Ordinance No. 01-917, Sec. 2; 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. Amended by Ordinance No. 01-917, Sec. 3; Ordinance No. 02-974, Sec. 1; 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. Amended by Ordinance No. 02-974, Sec. 1; 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 wastes 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 wastes exempted under this subsection include, but are not limited to, contraband, postage stamps, expired pharmaceuticals, and lottery tickets.

(Ordinance No. 01-917, Secs. 6-7. Amended by Ordinance No. 02-974, Sec. 1; 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 Section 5.05.030(b):

- (1) Metro South Station. The Metro South Station located at 2001 Washington, Oregon City, Oregon 97045.
- (2) Metro Central Station. The Metro Central Station located at 6161 N.W. 61st Avenue, Portland, Oregon 97210.
- (3) Facilities Subject to Metro Regulatory Authority. All disposal sites and solid waste facilities within Metro which are subject to Metro regulatory authority under Chapter 5.01 of the Metro Code.
- (4) Lakeside Reclamation (limited purpose landfill). The Lakeside Reclamation limited purpose landfill, Route 1, Box 849, Beaverton, Oregon 97005, subject to the terms of an agreement between Metro and the owner of Lakeside Reclamation authorizing receipt of solid waste generated within Metro only as follows:
 - (A) As specified in an agreement entered into between Metro and the owner of the Lakeside Reclamation Landfill authorizing receipt of such waste; or

- (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.
- (5) Hillsboro Landfill (limited purpose landfill). The Hillsboro Landfill, 3205 S.E. Minter Bridge Road, Hillsboro, Oregon 97123, subject to the terms of an agreement between Metro and the owner of Hillsboro Landfill authorizing receipt of solid waste generated within Metro only as follows:
- (A) As specified in an agreement entered into between Metro and the owner of the Hillsboro Landfill authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.
- (6) Columbia Ridge Landfill. The Columbia Ridge Landfill owned and operated by Waste Management Disposal Services of Oregon, Inc. (dba Oregon Waste Systems, Inc.), subject to the terms of the agreements in existence on November 14, 1989, between Metro and Oregon Waste Systems, Inc., and between Metro and Jack Gray Transport, Inc., including any subsequent amendments thereto. In addition, Columbia Ridge Landfill may accept solid waste generated within Metro:
- (A) As specified in an agreement entered into between Metro and Waste Management Disposal Services of Oregon, Inc., authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.
- (7) Roosevelt Regional Landfill. The Roosevelt Regional Landfill, located in Klickitat County, Washington. Roosevelt Regional Landfill may accept solid waste generated within Metro only as follows:

- (A) As specified in an agreement entered into between Metro and Regional Disposal Company authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.
- (8) Finley Buttes Regional Landfill. The Finley Buttes Regional Landfill, located in Morrow County, Oregon. Finley Buttes Regional Landfill may accept solid waste generated within Metro only as follows:
- (A) As specified in an agreement entered into between Metro and Finley Buttes Landfill Company authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.
- (9) Coffin Butte Landfill. The Coffin Butte Landfill, located in Benton County, Oregon, which may accept solid waste generated within Metro only as follows:
- (A) As specified in an agreement entered into between Metro and the owner of the Coffin Butte Landfill authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.
- (10) Wasco County Landfill. The Wasco County Landfill, located in The Dalles, Oregon, which may accept solid waste generated within Metro only as follows:
- (A) As specified in an agreement entered into between Metro and the owner of the Wasco County Landfill authorizing receipt of such waste; or

- (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.

- (11) Cedar Grove Composting, Inc. The Cedar Grove Composting, Inc., facilities located in Maple Valley, Washington, and Everett, Washington. Cedar Grove Composting, Inc., may accept solid waste generated within Metro only as follows:
 - (A) As specified in an agreement entered into between Metro and Cedar Grove composting, Inc., authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to Cedar Grove Composting, Inc., solid waste not specified in the agreement.

- (12) Weyerhaeuser Regional Landfill. The Weyerhaeuser Regional Landfill, located in Castle Rock, Washington, and the Weyerhaeuser Material Recovery Facility, located in Longview, Washington. The Weyerhaeuser Material Recovery Facility is hereby designated only for the purpose of accepting solid waste for transfer to the Weyerhaeuser Regional Landfill. The Weyerhaeuser Regional Landfill and the Weyerhaeuser Material Recovery Facility may accept solid waste generated within Metro only as follows:
 - (A) As specified in an agreement entered into between Metro and Weyerhaeuser, Inc., authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the Weyerhaeuser Regional Landfill or the Weyerhaeuser Material Recovery Facility solid waste not specified in the agreement.

- (13) Tualatin Valley Waste Recovery. The Tualatin Valley Recovery facility, located at 3205 SE Minter Bridge Road, Hillsboro, Oregon, authorizing receipt of solid waste generated within Metro only as follows:

- (A) As specified in an agreement entered into between Metro and the owner of the Tualatin Valley Waste Recovery facility authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid wastes not specified in the agreement.
- (14) Riverbend Landfill. Riverbend Landfill, 13469 SW Highway 18, McMinnville, Oregon, subject to the terms of an agreement between Metro and the owner of Riverbend Landfill authorizing receipt of solid waste generated within Metro only as follows:
- (A) As specified in an agreement entered into between Metro and the owner of Riverbend Landfill authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid wastes not specified in the agreement.

(b) Changes to Designated Facilities to be Made by Council. From time to time, the Council, acting pursuant to a duly enacted ordinance, may remove from the list of designated facilities any one or more of the facilities described in Metro Code Section 5.05.030(a). In addition, from time to time, the Council, acting pursuant to a duly enacted ordinance, may add to or delete a facility from the list of designated facilities. In deciding whether to designate an additional facility, or amend or delete an existing designation, 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, or amending or deleting an existing designation.

(c) The Chief Operating Officer is authorized to execute an agreement, or an amendment to an agreement, between Metro and a designated facility for Non-putrescible waste. Effective July 1, 2008, an existing designated facility authorized to receive non-putrescible waste shall notify Metro of its intent to seek an agreement to recover non-putrescible waste from the Metro region in accordance with subsection (g), or to only take processed non-putrescible waste from authorized facilities included in subsection (f). No later than December 31, 2008, the Chief Operating Officer shall modify existing agreements to ensure substantial compliance with either subsection (f) or (g) of this section as appropriate. If the Chief Operating Officer and a designated facility are not able to establish an agreement by November 1, 2008, then the Chief Operating Officer shall terminate the existing agreement following termination procedures described in the existing agreement, but no later than December 31, 2008.

(d) An agreement or amendment to an agreement between Metro and a designated facility for Putrescible waste shall be subject to approval by the Metro Council prior to execution by the Chief Operating Officer.

(e) 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.

(f) An agreement between Metro and a designated facility shall not authorize the facility to accept non-putrescible waste originating or generated within Metro boundaries after December 31, 2008, 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, in accordance with subsection (f) of this section, authorizing such designated facility to perform material recovery on non-putrescible waste; or
- (3) The facility has entered into an agreement with Metro, in accordance with subsection (f) of this section, authorizing the facility to perform material recovery on non-putrescible waste that has not yet undergone material recovery.

(g) An agreement between Metro and a designated facility that, after December 31, 2008, authorizes the facility to accept non-putrescible waste that has not yet undergone material recovery, is not comprised of processing residual, and originated or was 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 subsections 5.01.125(a) and (b) 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 5.01.067(i) (as amended by Section 1 of Metro Ordinance No. 07-1138) and 5.01.075(c) (as amended by Section 2 of Metro Ordinance No. 07-1138), 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 (as amended by Section 3 of Metro Ordinance No. 07-1138).

(Ordinance No. 89-319. Amended by 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; and Ordinance No. 08-1197A.)

5.05.035 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 5.05.035. 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.

(a) 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 5.01.132 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 after December 31, 2008, must demonstrate that the non-system facility will be in substantial compliance with the material recovery requirements in Metro Code Section 5.01.125.

(b) 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 5.01.150, the application fee shall be one hundred dollars (\$100) as well as a fifty dollar (\$50) fee to either renew or amend such licenses.

(c) Factors to Consider To Determine Whether to Issue Non-System 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 the designation 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.

(d) Timetables To Determine Whether to Issue a Non-System 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 prior to 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 prior to 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 prior to 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 prior to 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.

(e) 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 5.05.035(c).

(f) 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.

(g) Failure to Comply with Non-System 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 5.05.035(e) above or any conditions of such non-system license imposed pursuant to Section 5.05.035(c), 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.

(h) Notwithstanding any other provision in this section, and unless contrary to any other applicable law, the Chief Operating Officer shall not accept any application for a new non-system license for mixed putrescible solid waste until September 2, 2008. Neither the Chief Operating Officer nor the Metro Council shall issue a new non-system license for mixed putrescible solid waste whose term commences before January 1, 2009.

(Ordinance No. 89-319. Amended by 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.)

5.05.040 Issuance of Required Use Orders

(a) The Director 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 Director shall comply with the provisions of this section and Section 5.05.050.

(b) The following priorities shall govern the Director 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 Director to override the facility choice of a waste hauler or other person if the Director 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 Director.

(c) If, after considering the priorities in subsection (b) of this section, the Director determines that it is necessary to issue or amend required use order(s), the Director 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 Director, 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. Amended by Ordinance No. 01-917, Sec. 11; Ordinance No. 02-974, Sec. 1.)

5.05.050 Content of Required Use Orders; Notice

(a) Required use orders issued by the Director 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 Director reconsider issuance of the order, or specific details of the order; and
- (5) A brief description of the procedure for requesting that the Director reconsider issuance of the order, or specific details of the order; and
- (6) Such other information as the Director may consider necessary or appropriate.

(b) Within two days after the date of any required use order, the Director 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 Director 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. Amended by Ordinance No. 91-388, Sec. 4.)

5.05.052 Requests for Reconsideration

(a) Any waste hauler or other person receiving a required use order may request that the Director 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 5.05.040.

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

(c) The Director 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 Director 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 Director or solid waste department staff.

(e) If the Director fails to issue a timely decision, the waste hauler or other person receiving the order may appeal the decision to the Chief Operating Officer as specified in Metro Code Section 5.05.054.

(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. Amended by Ordinance No. 02-974, Sec. 1.)

5.05.054 Appeals to the Chief Operating Officer

(a) A waste hauler or other person receiving a required use order may appeal the Director's affirmance or modification of the order to the Chief Operating Officer. The Chief Operating Officer may be asked to review any matter that was relevant to issuance of the order, as specified in Metro Code Section 5.05.040.

(b) An appeal to the Chief Operating Officer shall be in writing and on a form provided by Metro. To be timely, the appeal must be received by the Chief Operating Officer within 30 days of the date of issuance of the Director's affirmed or modified order.

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

- (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) Review by the Chief Operating Officer of the Director's decision is intended to be informal, and may include personal, written, or telephone contact between the waste hauler or other person and the Chief Operating Officer.

(e) If a waste hauler or other person is not satisfied with the Chief Operating Officer's decision, or 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 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.

(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. Amended by Ordinance No. 02-974, Sec. 1.)

5.05.060 Solid Waste Tracking System to be Developed

The Chief Operating Officer shall develop and establish a system for tracking of solid waste generated, collected, transported or disposed within 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 tracking system shall be subject to other review and approval of the Council. 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. Amended by Ordinance No. 02-974, Sec. 1.)

5.05.070 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 5.05 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 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. Amended by 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.)

5.05.080 Administrative Rules

Except for the system tracking pursuant to Section 5.05.060 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. Amended by Ordinance No. 91-388, Sec. 7; Ordinance No. 02-974, Sec. 1.)

5.05.090 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. Amended by Ordinance No. 02-974, Sec. 1.)