

Memo

Date: November 28, 2017
To: Solid Waste Alternatives Advisory Committee (SWAAC)
From: Tim Collier, Chair – Solid Waste Fee and Tax Exemption Policy Evaluation Subcommittee
Subject: Subcommittee Fee and Tax Policy Recommendations

This memorandum outlines the recommendations of the Solid Waste Fee and Tax Exemption Policy Evaluation Subcommittee (the “subcommittee”) that was tasked with evaluating Metro’s current solid waste fee and tax exemption policies and making recommendations on whether Metro should consider any changes to those policies. These recommendations were developed after discussions at five subcommittee meetings as detailed in the meeting summary documents provided as Attachments A through E.

Subcommittee Purpose

The purpose of the subcommittee was to determine if Metro’s current solid waste fee and tax exemption policies are achieving the public benefits, goals, and objectives of the solid waste system.

Subcommittee Membership

On March 8, 2017, the Solid Waste Alternatives Advisory Committee (SWAAC) appointed the subcommittee consisting of 13 members representing industry, government, advocacy groups, and the general public. The subcommittee included the following members:

- Tim Collier, Chair (non-voting) – Metro
- Terrell Garrett - Greenway Recycling
- Mark Hope – Tire Disposal and Recycling
- Reba Crocker – City of Milwaukie
- Dave Claugus – Pioneer Recycling Services
- Vern Brown – Environmentally Conscious Recycling
- Matt Cusma – Schnitzer Steel
- Audrey O’Brien – DEQ
- Bill Carr – Waste Management
- Janice Thompson – Oregon Citizens’ Utility Board
- Jennifer Martinez – Doctoral Student, Portland State University
- Brian Heiberg – Heiberg Garbage and Recycling
- Rick Winterhalter – Clackamas County
- Koreen Lail – Siltronic Corporation

Subcommittee Meeting Schedule

The subcommittee held five, two-hour meetings that took place on the following dates:

- May 5, 2017
- June 27, 2017
- July 25, 2017
- August 31, 2017
- October 9, 2017

Metro staff prepared a written summary of each meeting that was subsequently reviewed and approved by the subcommittee (see Attachments A through E). The subcommittee also reviewed and approved this recommendations memorandum via email in November 2017.

Subcommittee Recommendations

The subcommittee predominantly agreed to submit the following recommendations to SWAAC:

1. *Maintain status quo for exempting reused and recycled materials.* The subcommittee recommended that Metro should continue its current practice of assessing fees and taxes at the time of disposal rather than when materials are processed for recovery or recycling. The subcommittee recommended that Metro should continue to allow a fee and tax exemption for a material that is reused or recycled outside of a disposal site.

Reason for this recommendation: The subcommittee recommended status quo because it determined that Metro's current practice of assessing its fees and taxes at the time of disposal generally provides a greater incentive for material recovery which helps meet the public benefits of the region's solid waste system. The subcommittee determined that eliminating the current fee and tax exemption for reused or recycled materials would dramatically impact industry and make it cost prohibitive to recycle materials. Additionally, such a change would further impact companies that participate in global markets because they don't have the same ability to pass along added costs to customers.

2. *Maintain status quo for exempting dredge spoils processed outside of the region, but Metro should further evaluate the matter and solicit input from other stakeholders.* The subcommittee recommended that Metro should further evaluate its current practice of allowing a fee and tax exemption for dredge spoils that are processed outside of the Metro region for disposal. As part of that evaluation, the subcommittee recommended that Metro should solicit input from other parties that are involved with dredging projects in the region to better understand the impacts of a potential change in policy. The subcommittee recommended that Metro should maintain its current practice in the interim while the matter is under further evaluation.

Reason for this recommendation: The subcommittee recommended status quo because it determined that it did not have enough information about this matter to support an alternative recommendation.

3. *Maintain status quo for exempting certain types of waste that are received or used at a disposal site.* The subcommittee predominately recommended that Metro should maintain its current policy of allowing a "material-based" fee and tax exemption for tire processing residual that is disposed at a landfill and a "use-based" exemption for useful materials that are used productively in the operation of a landfill. The majority of the subcommittee members supported the status quo with respect to this policy. Whereas, two members recommended that Metro should consider eliminating the exemption and instead charge a fee and tax on all waste received at a disposal site. One subcommittee member abstained from making a recommendation on this matter.

- a. Reason for the status quo recommendation: The majority of the subcommittee members recommended status quo because they determined that there was no compelling reason to justify changes in Metro's current fee and tax exemption policies with respect to certain wastes received and used at a disposal site. Additionally, these members determined that a change in status quo could potentially have unintended consequences.

- b. Reason for the change recommendation: Two subcommittee members recommended eliminating the current exemption policy for certain wastes received and used at a landfill because they determined it does not provide incentive for the highest and best use of material. Additionally, these members determined that all such material deposited at a

disposal site is considered to be “waste” regardless of use and should be subject to Metro’s fee and tax.

Background

As the agency tasked with planning and management of the region’s solid waste system, Metro has an obligation to the public to ensure that its solid waste fee and tax policies are transparent, fair, and equitable and applied in an appropriate manner to cover the costs of managing the solid waste system while encouraging increased reuse, recovery, and recycling of materials.

In managing the region’s solid waste system, Metro seeks to achieve the following benefits for the public:

- Protect people’s health
- Protect the environment
- Get good value for the public’s money
- Keep our commitment to the highest and best use of resources
- Be adaptive and responsive in managing materials
- Ensure services are available to all types of customers

In September 2015, Metro staff held a public workshop to introduce a range of proposed changes to Metro Code Title V and Chapter 7.01. These proposed changes included removing fee and tax exemptions for certain waste materials placed in a landfill. The proposed changes were revenue neutral to Metro and intended to establish predictable and transparent fee and tax determinations for all participants in the solid waste system. At that time, potentially affected parties raised a number of concerns regarding those proposed changes and the process that was used. Staff shared the feedback it received with the Metro Council at a work session in October 2015. Metro Council directed staff to implement a more rigorous process when considering potential changes to Metro Code.

At that time, Metro Council directed: 1) staff to update a previous study of Metro’s fee and tax policies that was performed by URS Corporation in 2006, and 2) SWAAC to commission a subcommittee to further discuss and evaluate Metro’s current exemption policies.

In September 2017, Metro hired Resource Recycling Systems (RRS) to update the URS 2006 study and evaluate Metro’s fee and tax exemption policies to determine if improvements can be made to better achieve the public benefits. That evaluation also included researching similar policies in other west coast jurisdictions and soliciting input from representatives of potentially affected parties in our region to better understand their views and concerns relating to Metro’s fee and tax policies.

In March 2017, SWAAC appointed a subcommittee tasked with evaluating Metro’s current solid waste fee and tax exemptions and making recommendations to SWAAC on whether any policy changes should be considered. The subcommittee began meeting in May and concluded its work in November 2017.

The subcommittee received a copy of the URS 2006 report as foundational information for its consideration. The URS 2006 report entitled, *Evaluation of Disposal Trends for Environmental Clean-up and Beneficial Use Materials*, primarily recommended that Metro establish a two-tiered rate structure and eliminate its fee and tax exemptions for waste received at a disposal site. Metro subsequently implemented a pre-approval process for reduced rate and useful materials and other reporting requirement changes, but did not make any changes to its exemption policies after that study.

The subcommittee also received a copy of the final RRS report in July 2017. The RRS 2017 report was provided to the subcommittee as foundational information for its consideration. The subcommittee also had two opportunities to ask questions and provide input into the draft report before it was finalized in July. The RRS 2017 report entitled, *Evaluation of Solid Waste Fee and Tax Policies*, primarily recommended that Metro

establish a two-tiered, material-based rate structure along with continuing the current fee and tax exemption for tire processing residual and auto shredder residual when received at a disposal site.

Current Fee and Tax Exemption Policy

Metro assesses a regional system fee and excise tax on certain types of waste at the time of disposal. The regional system fee pays the costs for all associated Metro solid waste services related to management of the entire recycling, processing and disposal system. The revenue from the fee is dedicated to Metro's regional solid waste programs and services: household hazardous waste, latex paint recovery, waste reduction planning and programs (including waste reduction education), St. Johns Landfill post-closure activities, solid waste facility regulation, and illegal dumpsite monitoring and cleanup. As with the excise tax, the fee is charged at the time of waste disposal. As of July 1, 2017, the regional system fee is \$18.12 per ton.

The excise tax is a source of revenue for Metro's general government activities including the Metro Council. Excise taxes are levied on Metro's enterprise activities (including the Oregon Convention Center, Oregon Zoo, Portland Expo Center, Metro parks, and other activities), and at the time of solid waste disposal. As of July 1, 2017, the excise tax is currently \$10.81 per ton.

Metro assesses a solid waste fee and tax on waste at the time of disposal. In general, there is a three-tiered rate structure as follows:

- A. *Full Rate.* The full fee and tax rate, which is the combined total of both rates, is assessed on most of the region's waste at the time of its disposal (such as household garbage, construction and demolition debris, etc.). This is a material-based rate that is adjusted on an annual basis. As of July 1, 2017, the full rate is \$28.93 per ton (i.e., \$18.12 fee and \$10.81 tax).
- B. *Reduced Rate.* The reduced fee and tax rate, which is currently \$3.50 per ton (i.e., \$2.50 fee and \$1.00 tax), is generally assessed on contaminated "cleanup material" at the time of its disposal (such as contaminated soils, catch basin pumping, street sweepings, etc.). This is a material-based rate that is set on an annual basis. This rate amount has not changed since it was initially established by Metro in 2000.
- C. *Exempt.* There is a fee and tax exemption (no charge) for any material that is recovered, recycled, or diverted away from disposal sites. Under certain circumstances, Metro also allows a fee and tax exemption for certain types of waste that are sent to disposal sites (such as tire processing residual and "useful material" which includes alternative daily cover and road base used at a landfill). Metro allows both material-based and use-based exemptions for certain wastes that are received at a disposal site. Currently, Metro's material-based exemption includes only tire processing waste. Whereas, Metro's use-based exemption includes a range of materials that are used at a disposal site and accepted at no disposal charge (such as auto shredder residue and shaker screen fines used as alternative daily cover).

There are three general categories of materials that currently qualify for a fee and tax exemption which include materials that are reused/recycled, dredge spoils sent to an intermediate processing facility outside of the region prior to disposal, and waste materials used at a disposal site. Waste materials may qualify for the exemption or a reduced rate based on various factors such as the generator intent, type of contaminant, or whether the waste is ultimately used at a disposal site. This can create different fee and tax rates for similar types of waste dependent on its destination and use.

Metro does not take "use" into consideration when assessing the reduced rate – rather it considers whether the waste constitutes "cleanup material" as defined in Metro Code. Cleanup material is subject to the reduced rate regardless of use (such as petroleum-contaminated soil that is used as alternative daily cover). This is different from Metro's policy of allowing a fee and tax exemption for useful material that is used productively in the operation of a landfill. As mentioned above, the useful material exemption covers a wide range of materials and uses at a disposal site. Useful material exemptions are generator and site specific and

require approval and oversight from the Oregon Department of Environmental Quality (DEQ) or its equivalent regulatory agency. These types of exemptions are linked, in part, to oversight by other government entities and are not directly regulated by Metro.

Current Reduced Rate

The reduced rate is also referred to as the “cleanup rate” because it initially applied to “cleanup materials contaminated with hazardous substances.” This type of waste is explicitly excluded from Metro’s definition on “useful material” and therefore it does not qualify for a fee and tax exemption under Metro Code. Before 2000, cleanup material was subject to the full rate at time of disposal.

In 2000, Metro established the reduced rate amount of \$3.50 per ton (\$2.50 regional system fee and \$1.00 excise tax). The amount of the reduced rate had not changed since it was established in 2000, but the manner in which it is adopted each year had changed somewhat in 2014 (at that time it had changed from a credit against the full rate to a standalone rate amount).

When the reduced rate was initially established, it applied to debris resulting from a non-recurring, environmental cleanup event (such as an oil or chemical spill). At that time, the generator or disposal site would self-determine whether the reduced rate applied to a particular waste and Metro would retroactively determine whether the waste actually qualified for the reduced rate. In 2008, Metro established a pre-approval process under its designated facility agreements. In 2016, Metro amended its definition of cleanup material to focus it more on material-based qualifying factors rather than an event-based criterion.