## STAFF REPORT

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| **Agenda Item:** | 12 | **Name:** | Mike Reed |
| **Proposed No**.: | 2015-0237 | **Date:** | August 18, 2015 |

**SUBJECT**

Proposed Ordinance 2015-0237 would make revisions to the regional solid waste system’s management framework for processing the region’s Construction and Demolition (C&D) waste.

**SUMMARY**

Construction and Demolition (C&D) waste has been managed since 1994 through contracts with two private vendors, who have been responsible for receiving, processing and disposing of such waste. While the initial intent of the system was to assure capacity to receive and dispose of such wastes, changes in conditions associated with C&D management, including the potential for increased recycling and an increase in the number of facilities qualified to handle C&D, have encouraged review of strategies for managing these materials.

Proposed Ordinance 2015-0237 would change the County’s approach to C&D materials. Instead of contracting with two private vendors, the proposed legislation and its Designated Facility Agreement would allow the County to enter into an agreement with any qualified C&D facility. Under the terms of the agreement, these designated facilities would be required to C&Dmeet specified requirements addressing operational and environmental parameters, recycling, and similar standards. The policy change that would be effectuated through Proposed Ordinance 2015-0237 is based on C&D programs in the City of Seattle, Portland Metro, and Lewis County.

Because the Designated Facility Agreement, that is included as Attachment A to the proposed ordinance, would represent a significant shift in the way the County works with qualified facilities, legal counsel has worked with the Solid Waste Division, Prosecuting Attorney’s Office, and County Risk Manager to develop proposed changes to the ordinance and agreement as transmitted. A draft (not yet final) version of a possible striking amendment that would include changes to the proposed ordinance and agreement can be found as Attachment 2 to this staff report.

**BACKGROUND**

Each year, the county processes and disposes of 180,000 tons of waste materials that result from the demolition and construction of structures and facilities in King County. Construction and Demolition waste (C&D), as this material is designated, is distinguished from the primary waste stream, in several respects: it represents a large volume of waste from a single activity type; it has historically been diverted from the county’s regional landfill; it is generally dry and stable; and significant portions of the waste stream have value as recyclables. This volume compares to over 800,000 tons of mixed municipal solid waste that is annually disposed. The diversion of C&D from the Cedar Hills Regional Landfill contributes significantly to the ability to extend the life of the landfill; a 2013 study indicated that, if the existing stream of C&D were disposed of at Cedar Hills, the closure date of the landfill could be accelerated by 26 months.

The County is contractually obligated to provide a mechanism for addressing C&D, in common with general mixed municipal solid waste tonnage. Interlocal agreements with the region’s cities include the following language:

*“Management. The County agrees to provide Solid Waste management services, as specified in this Section, for Solid Waste generated and collected within the City, except waste eliminated through Waste Prevention or waste recycling activities.”* (“Solid Waste” is specifically defined to include C&D by the agreement.)

**Construction and Demolition Waste Management Agreements--Origins**

The region currently manages C&D through contracts with two major waste disposal firms—Waste Management, Inc. (WMI) and Republic Services (Republic—previously known as Rabanco, and Allied Waste). This relationship was initially established in 1994, intended to assure a means of processing the region’s C&D stream in a way that avoided disposal at Cedar Hills.

Before 1991, C&D was disposed of in private landfills, the last of which closed in 1991, resulting in a surge of C&D entering the County’s system, through the transfer network for disposal at Cedar Hills. The Comprehensive Solid Waste Plan of the time indicated that C&D should be managed through the private sector. The County, in response to the strain to the system caused by closures of private C&D landfills, actively pursued private interests that would receive and dispose of the region’s C&D.

The resulting 1994 ten-year agreements with WMI and Rabanco (now Republic) were in response to the need to assure capacity to manage C&D volumes in a way that did not result in disposal at Cedar Hills. Both those firms are major waste collection/disposal firms, and both own landfills. To encourage their participation, language was added to county code to require C&D generators to deliver C&D to facilities operated by one of these firms.

In 2004, when those contracts were set to expire, the Code was again altered to, among other things, incentivize the vendors to increase recycling of the C&D stream. However, recycling rates remain low. In the period from 2012-2014, 29 percent of C&D stream volumes channeled through the County’s contracted vendors was recycled. The County has established goals of 70 percent recycling for all solid waste.

**Changing Management Context**

The C&D management context has significantly evolved from the conditions of 1994. The need to stimulate hesitant interest by private sector entities to accept C&D has declined. Numbers of C&D receiving facilities have initiated operations to serve Seattle and Snohomish County, and are also receiving C&D from King County’s jurisdiction, diverting volumes from King County contracted C&D vendors. Contracted vendors are interested in establishing a “level playing field” for all entities that receive C&D from the County’s jurisdiction, including these non-contracted entities. This changed environment provides an opportunity to pursue increased recycling of C&D.

In September 2014, the contracts were extended for one additional year, to allow for review of the regional strategy for managing C&D, in light of the changed management context, and increased regional recycling interest. Waste characterizations studies undertaken by the Solid Waste Division (SWD) indicate that there remain significant opportunities for substantially increasing the recycling/diversion rate from this waste stream.

As noted, a number of facilities that are not under contract with the County have been accepting C&D for recycling. Some of these facilities only accept a limited range of materials such as concrete or metal, which are highly recyclable. Others have more extensive sorting and processing operations, and accept a wider range of materials. In the absence of contracted and enforced agreements, the facilities are not constrained to meet requirements that are present in agreements with the County’s current contracted vendors.

Other local jurisdictions have taken different approaches towards managing their construction and demolition debris waste stream. Snohomish County manages C&D by directing the material flow to county-owned facilities, rather than to the private sector. Seattle acknowledges the presence in the marketplace of C&D processing/disposal facilities, and designates any such facility meeting city-defined requirements for receipt of C&D generated within the city.

**Solid Waste Division Alternatives Review**

In 2013, SWD completed a report on alternatives for managing the region’s construction and demolition debris, entitled “Construction and Demolition Waste Management Options Report.” The report outlined the strengths and weaknesses of various management strategies, and identified three options for further consideration: 1) issue new contracts to the existing contractors; 2) designate qualified facilities in the region where C&D could be delivered; and 3) direct waste C&D to the county’s Solid Waste regional system.

This report and the identified options were presented to the two advisory committees that are authorized in Code to provide advice and input to SWD. In November 2013, the Solid Waste Advisory Committee, which represents a mix of solid waste interests such as commercial haulers, environmental concerns, interested citizens and other, approved a motion that recommends the second option, “Designate Qualified Facilities”. In January 2014, The Metropolitan Solid Waste Management Advisory Committee, representing the cities which are participants in the solid waste system, approved a motion which also supported the “Designate Qualified Facilities” option.

**Designated Facilities**

The key elements in the Designated Facilities approach are:

* The presence of a complex of facilities that are capable of receiving, processing and disposing of C&D is acknowledged, and rather than channeling all the county’s C&D to two named vendors, any of these facilities that meet specified requirements can be designated to accept and process wastes.
* Strong recycling mandates are included. Facilities may not dispose of waste residuals that exceed specified recyclables content. A published list of readily-recyclable materials is developed; materials on that list may not be landfilled.
* Substantive enforcement provisions are included, to assure that only those facilities that are designated are allowed to receive county C&D, and to assure that recycling requirements are met.

**Proposed Ordinance 2015-0237**

In July 2015, the Executive transmitted Proposed Ordinance 2015-0237, which would implement the “designated facilities” approach. Key elements in the proposed legislation as transmitted include:

* The Code chapter purpose statement would be modified to emphasize that disposal facilities are to recycle C&D to the maximum extent possible.
* Code designation of the Regional Disposal Company, Waste Management, Inc., and their respective owned C&D facilities, as receiving facilities for C&D, would be stricken. Language requiring generators, handlers and collectors of C&D to deliver such waste to a designated receiving facility specified by the SWD Director, would be added.
* Language allowing recyclable C&D debris to be directed to any C&D recycling facility or recycling market in or outside of King County, would be modified to strike a requirement that nonrecyclable waste not exceed more than 10 percent of the load. Related language addressing mixed waste would be stricken.
* Language addressing violations of these requirements, referencing code enforcement authority and enforcement actions, would be added.
* The County would be able to accept C&D at County transfer stations that comply with recycling requirements in agreements with designated C&D receiving facilities, or that collect and transfer C&D to designated C&D receiving facilities.
* The Director would develop and publish on the SWD website a list of readily recyclable C&D materials banned from disposal, and would update the list based on market conditions and regional processing capacity.
* Fee language would be modified to require that the current $4.25/ton fee would be imposed on the disposal of C&D, rather than the generation of such wastes, to fund the management of the C&D program. Language requiring monthly remittance of surcharge amounts to the Division would be stricken.

**Designated Facility Agreements: Attachment A**

The Proposed Ordinance includes a proposed Designated Facility Agreement as Attachment A. Key provisions in the Designated Facility Agreement as transmitted include:

* Facility owners would accept C&D at designated facilities, with certain exceptions.
* The Owner would be precluded from accepting prohibited waste.
* All nonrecyclable C&D remaining after processing would be be required to be disposed of at landfills that meet specified standards.
* C&D materials that are listed on the “Director’s List of Readily Recyclable Construction and Demolition Materials Banned from Disposal” (“Director’s List”) would be prohibited from disposal. By January 1, 2016, waste residuals from Materials Recovery Facilities may not contain more than 10% of those materials listed in the Directors List.
* SWD would form a task force to develop enforcement procedures for compliance with the Disposal Ban at transfer stations. The agreements with C&D transfer station owners are to be amended by January 1, 2018, to include these requirements.
* Corrective actions for noncompliance with recovery requirements, including potential suspension of the authority to accept C&D, are described.
* Requirements for payment of a regulatory fee of $4.25/ton on the disposal of C&D are specified.
* Requirements for recordkeeping, documentation, inspection, indemnification, insurance, dispute resolution, termination and related provisions are included.

**ANALYSIS**

The region’s increasing interest in recycling and waste reduction has resulted in a closer look at the means by which C&D is currently managed. Several key developments have driven that effort, including ongoing challenges in achieving the desired rates of recycling under the current system; the pattern of “leakage” of C&D from the region to non-contracted processors; and an established history of alternative management approaches by other jurisdictions.

SWD, with the participation of its advisory committees, has undertaken an extensive review of the existing system and alternative management options. That review considered financial impacts, landfill impacts, recycling considerations, legal concerns, and transfer station considerations. SWD, based on this review, recommended the option to designate facilities in the area that meet specified criteria, to receive construction and demolition waste for processing, recycling and disposal.

This recommended approach is a significant restructuring of the region’s strategy for managing construction and demolition waste. It appears to be a reasonable approach, however, given the shortcomings of the existing framework in terms of recycling achievements, and the development of the market for C&D recyclables. The successful demonstration of the “designated facilities” approach by other regional jurisdictions, which allows any vendor who meets specified requirements to participate in the C&D processing market, adds a level of assurance to the proposed strategy.

Solid waste interests, including participating cities (through the Metropolitan Solid Waste Management Advisory Committee), and commercial haulers, environmentalists, interested citizens and others represented on the Solid Waste Advisory Committee, have indicated their support for this approach through motions approved by the respective advisory committees.

**POTENTIAL AMENDMENT**

Legal counsel has conducted a review of Proposed Ordinance 2015-0237, and working with the PAO, County Risk Manager and SWD staff, has made recommendations for a striking amendment that includes revisions to both the Proposed Ordinance and the Attachment, summarized below.

A preliminary draft of a potential striking amendment (with revised Agreement) is included as Attachment 2 to this staff report. A red-line copy of the Agreement showing the changes suggested by legal counsel, is included as Attachment 4. A corresponding draft of a potential title amendment, is included as Attachment 3. Staff will continue to work with legal counsel, SWD, PAO, and members of the committee to develop these amendments for potential action at a future meeting.

**Potential Striking Amendment to Proposed Ordinance 2015-0237**

* Removes the requirement that the County Council approve the final landfills to which nonrecycable C&D waste would be disposed.
* Recognizes that C&D vendors shall include both the owner of the facility as well as the operator of the facility.
* Rather than authorizing the director to ensure that vendors remain in compliance, the new language requires that the director “shall enforce” agreements with owners of designated facilities. If contractor is not in compliance, the director may suspend the contractor’s right to accept mixed C&D and nonrecyclable C&D.

Clarifies that the county can receive C&D in excess of limitations where county transfer stations comply with recycling requirements at designated facilities.

Facility owners with agreements with the county to receive C&D are required to provide information needed to verify collection and remittance of the required surcharge. Codifies that the owner is required to remit all fee amounts to the Division on a monthly basis.

**Potential Revisions to Attachment A, Designated Facility Agreement**

The attached agreement is extensively modified for technical, language, definitional and consistency reasons. Key changes include the following:

Definitions are refined for clarity and consistency with definitions in code. Definitions for “county jurisdiction”, “landfill” “residuals” and “transfer station” are added. The reference to “owner” is replaced with “permittee” throughout.

Language requiring the permittee to use best efforts to process or divert recyclable wastes, before disposal of C&D residuals, is added.

The “King County C&D MRF Waste Residual Sampling Protocol” is attached to the agreement as Exhibit B. The Permittee is responsible for remaining informed of revisions to the Protocol.

Language specifying that, after consultation, the Division may unilaterally amend the agreement to include requirements to enforce the ban on disposal of materials in the “Director’s List of Readily Recyclable Construction and Demolition Materials Banned from Disposal”, is added.

Language addressing corrective actions for noncompliance by transfer station permittees with minimization of disposal of materials on the “Director’s List”, is modified to require that, by January 1, 2018, the Division is to specify corrective actions if the Facility does not comply with requirements to minimize disposal of materials on the Director’s List.

Language on regulatory fee payment is clarified to specify its application to overall tonnage of C&D waste regardless of origin, and is expanded to provide an example of the fee calculation.

Language is added to the “Right of Inspection” section to specify that the facility may require Division personnel to be escorted by Facility personnel during an inspection.

Language on indemnification is modified to clarify and broaden indemnification protection.

Insurance requirements are revised and expanded based on recommendations from the County’s Risk Management program.

The reference to Effective Date is modified to be the last date signed by an authorized party; the agreement is to remain in effect for five years following the effective date, and is to be automatically renewed for another five years unless terminated.

Agreement suspension language is expanded to allow the Director to suspend the agreement if the permittee assigns rights or obligations to another, without prior written County consent; similar language is added to Termination provisions, allowing county agreement termination if ownership of the facility changes without county approval.

King County Superior Court is named as having exclusive jurisdiction over any legal action arising out of the agreement.

The parties are each to designate a contact person.

**ATTACHMENTS**

1. Proposed Ordinance 2015-0237 and Attachment A
2. Potential Striking Amendment and Attachment A, dated August 14, 2015
3. Potential Title Amendment
4. Red-line version of potential amendment to Attachment A
5. Fiscal Note
6. Transmittal Letter

**INVITED**

* Pat McLaughlin, Director, Solid Waste Division, Department of Natural Resources and Parks