

**To:** Rep. Nancy Nathanson and Members of the Joint Revenue Committee  
**From:** Terrell Garrett, GreenWay Recycling, LLC (503) 793-9238  
**Re:** House Bill 3084  
**Date:** 21 May 2019

## **SUMMARY**

Oregon is no longer the leading recycler of dry waste/construction and demolition recycling. Our primary facilities achieve less than half the recycling rate of Recon in Texas and Zanker in California. In an effort to change this downward trend, two local facilities are considering substantial investments in these advanced material recovery technologies. This would bring Oregon back to the forefront of dry waste/construction and demolition recycling and pave the way for others to follow. Making such large investments is only possible with high recycle rates of materials such as Alternative Daily Cover (ADC). Assurance that government continue to provide a supportive investment environment is necessary to achieve the feasibility and confidence required for these investments. HB 3084 is revenue neutral, protects recycling, and encourages investment in advanced material recovery systems.

## **REVENUE NEUTRALITY**

### **State of Oregon**

In ORS 459, 459a, and OAR 340 the word "tax" is used one time only as reference to a type of business. The State of Oregon does not tax solid waste or recycled materials. ADC is a form of recycled materials. Since the State does not tax recycled materials, passage of this bill will be revenue neutral. Supervisory "fees" are charged for approved ADC material as provided for in ORS 459.235 and do not change with this legislation. This bill protects a certain type of recycling from taxation by others while being revenue neutral for the State.

### **Metro**

The Metro Charter Section 14 limits excise tax revenue Metro may collect to \$12,500,000.00 plus CPI increases from 2016 forward. Additionally, Metro Code 7.01.020 imposes a tax on solid waste in the aggregate amount of \$11,370,000.00 per year with CPI increases from 2010 forward. This amount is then divided by the tonnage projected for the next year projected to be disposed of as garbage in the landfill to yield a per ton excise tax rate. Currently that rate is \$12.41 per ton and ADC is exempt from this tax. The current limitation is approximately \$13,000,000.00 per year. Taxing additional materials only affects the per ton tax charged but has no effect on revenue as Metro is currently at its statutory revenue limitation. Therefore, HB 3084 is revenue neutral to Metro.

## **ALTERNATIVE DAILY COVER**

The EPA requires that the working or tipping face of all landfills be covered by 6" of earthen material or suitable alternative cover material each night to reduce odors, fire hazard, vectors, etc. Oregon DEQ acts in place of the EPA with respect to landfill operations and through ORS 459.017 reserves oversight of landfill operations to State pre-emption. Obviously, any material placed in a landfill is contaminated forever. The EPA recognizes that taking virgin soil and ruining it is bad policy if suitable alternatives are available, therefore the EPA and the State of Oregon support and incentivize use of alternative daily cover materials (ADC). To prove viability, proposed ADC materials are required to undergo a DEQ year-long approval process with subsequent monitoring. There are a number of materials which have been

proven suitable for ADC usage at our landfills, some specifically suitable for dry climate landfills and others best used in wet climate landfills. Most ADC materials are derived from waste products such as construction/demolition waste screenings, ground tires, and shredded automobiles and represent a subset of that waste which would otherwise end up in the landfill as garbage. DEQ approvals of these materials require that they be byproducts of a process and not manufactured. Regardless of the ADC origin, once used it is considered the same product by DEQ and no longer regulated as solid waste.

### **RECYCLING**

According to ORS 459.005, "Recycling" means any process by which solid waste materials are transformed into new products in a manner that the original products may lose their identity. The three operative words are "process", "transformed", and "product". "Process" is a series of actions or steps taken in order to achieve a particular end. "Transformed" is to change the form, appearance, or character of. "Product" is an article or substance that if manufactured or refined and marketed or sold as a commodity which is something of value.

Most forms of ADC including Material Recovery Facility screenings, auto shredder fluff, and ground tires are a byproduct of processes which subject input materials to a series of mechanical handlings, shredders, screens, air separators, hand separation, and other devices. The intent of these processes is to enable the separation of higher value materials or products from what otherwise would be disposed of in landfills as garbage. ADC is a byproduct of a larger set of processes, is used for something beneficial (the preservation of virgin soil), as a product, and is therefore recycling.

### **PRE-EMPTION**

Metro has opposed and continues to oppose HB 3084 due to its blanket legislative policy to block any and all types of State pre-emption. This policy is blind to the proposed underlying legislation and its positive attributes or shortcomings. Such a policy is simply bad governance and should be discounted as short-sighted to the potential environmental benefits ADC brings to the State of Oregon.

In ORS 459 the legislature tasked DEQ to regulate the creation and use of ADC as a recycling program to preserve virgin soil and to extend landfill life. Taxation of any portion of ADC used in the State represents discord to this policy and will negate the policy and benefits derived from it as a matter of statewide concern. To ensure success of this policy, the legislature should also require uniform adherence to the policy of incentivization of recycling through exemption from taxation and not allow local governments to create different tax policies on a matter of State concern.

### **RECOVERY RATES**

Recycling markets are in turmoil with many Oregon jurisdictions being forced to landfill as garbage curbside recycling for lack of markets and economics. Two weeks ago, the keynote presentations at the national WasteExpo convention focused on finding new markets for wood and fines (screenings); the two most difficult to recycle materials from the construction and demolition waste flow. Fines or screenings represent between ten and twenty percent of the dry waste/construction and demolition waste flow. These materials are 1" and smaller in size and more or less appear as a mix of dirt, gravel, little pieces of drywall, some small pieces of plastic, and toothpick sized pieces of wood. Captured by passing the waste flow over a 1" mesh screen, they also remove most of the dust and dirt from the

remaining flow, allowing subsequent separation processes using water or large volumes of air. In our State, approved fines can be used for ADC.

Oregon formerly led the nation in dry waste/construction/demolition recycling. Today, the national leaders are Recon in Austin, Texas and Zanker in San Jose, California who recycle 85% of the dry (non-food) waste/construction and demolition materials received. Both facilities are using a similar innovative advanced material recovery system which is unique in the United States. This system relies on upon the removal of 1" and smaller material (which is appropriate for ADC) as a prerequisite for secondary, tertiary, and quaternary machines and processes. No facility in Oregon currently uses such technology, and as the result we are experiencing the following recycle rates in the Portland area facilities. CORE has a recycle rate of 55% addressing an exclusive subset of construction/demolition waste only. Of the dry waste/construction and demolition processors, GreenWay Recycling has a recycling rate of 36%. Other private facilities receiving similar material recycle between 15% and 22%. Metro's Central facility recycles 9% and Metro South 6%. Last is Recology, which recycled 0%. These numbers are based upon data provided by Metro for the 14 months ending February, 2019.

In general, locally the higher recycling rates are experienced by facilities which have more complex recycling systems than the others. However, none of our facilities are innovative or even timely in comparison to those of Recon and Zanker. If we could invest in such innovative systems we will achieve dramatically increased recycling rates as the result.

#### **INVESTMENT HORIZON**

In order to make the large investments necessary for advanced material recovery systems it is necessary to have some level of confidence that markets will exist into the future. One of these markets is ADC. Metro's lobbyist has stated that Metro has no plans to tax ADC. However, these proclamations are in opposition to public statements made by Metro in December of 2018. Metro's stated plan is to limit the amount of ADC that is tax exempt in landfills, thus taxing the rest used, regardless of State pre-emption on operation of landfills. Additionally, we are told that later this year Metro intends to clarify what materials are eligible for tax exemption as ADC, which effectively will usurp DEQ's state pre-emption on landfill management.

The loss of tax exemptions gained through the screening capture of 1" and smaller material used as ADC will increase operation costs of an advanced material recovery system by 19%, causing such an investment to be questionable at best.

Regardless of the lobbyist' claims, it does appear that Metro has slated ADC for at least partial taxation which is in contravention to ORS 459.235 and ORS 459.015. We have made repeated requests for Metro to put their lobbyist's claims in writing without response. Combining this with Metro's opposition to this bill creates an untenable investment horizon when considering these investments.

#### **POLICY**

The State of Oregon through ORS 459.015, part (f) created a policy that "It is in the best interests of the people of Oregon to conserve resources and energy by developing an economy that encourages waste prevention and recycling." More specifically, this statute provides for a hierarchy of managing solid waste with recycling in the third position and disposal as garbage as sixth or last. Additionally, part (c) states "There is a shortage of appropriate sites for landfills in Oregon." Following this policy, ORS

459.235 incentivizes ADC usage by limiting the fees which may be charged on ADC. Speaking with Ms. Leslie Lewis, the original sponsor of ORS 459.235, it was their intent that ADC not be taxed, but only charged a small management fee in order to create the incentive for recycling.

Taxation of ADC would shift a large part of this material to disposal as garbage, shorten landfill life, and cause the ruination of virgin soil forever. Such policy would be tantamount to taxing exercise machines while removing the tax on cigarettes.