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**ORDER APPROVING AMENDMENTS
TO SCRAP METAL RECYCLING FACILITIES RULES**

ORDERED, that the Portland City Council, pursuant to Section 31-10 of the Portland City Code, hereby amends the Scrap Metal Recycling Facilities Rules as Promulgated by the Department of Planning and Development, as indicated on the form attached hereto.

**Amendments to Scrap Metal Recycling Facilities Rules
Promulgated by the
Department of Planning and Development
Pursuant to the
Scrap Metal Recycling Facilities Ordinance**

The following amendments to the scrap metal recycling facilities rules are promulgated pursuant to Section 31-10 of the Scrap Metal Facilities Ordinance and all terms, conditions and requirements in that ordinance are hereby incorporated by reference.

Rule #1 Baseline Testing:

- (a) An environmental waste baseline sampling plan is required which shall include the location of soil sampling and groundwater sampling locations to establish waste baseline environmental conditions at the site.
- (b) A minimum of three on-site surficial soil samples, on the upper six (6) inches and three Geoprobe-installed or conventionally-installed overburden monitoring wells are required for all sites.
- (c) The Department shall review and approve the number and location of soil samples and monitoring wells after reviewing the waste baseline exploration and sampling plan in accordance with generally accepted environmental standards and after consulting with the applicant's environmental consultant, if necessary.
- (d) Initial waste baseline evaluation of the scrap metal recycling facility requires a waste management compliance audit of the facility by a qualified professional and the results of the audit shall be submitted to the City of Portland for evaluation prior to issuance of the license for the facility.

Rule #2 Soil Testing:

- (a) Initial waste baseline testing shall consist of five on-site soil samples collected according to a sampling plan developed by a qualified environmental professional and submitted to the Department for review and approval as part of the application.
- (b) Of the five on-site samples three shall be taken from soils in the principle outdoor work areas, i.e., in which metals to be recycled are received, processed and stored. The two additional on-site samples shall be taken in areas that are down-gradient from the principal work areas and are adjacent to property boundaries at which metals to be recycled are received, processed or stored. The soil samples shall represent a composite of the upper six-inches of soil at the sampling location.
- (c) The soil samples shall be analyzed for volatile organic compounds (EPA Method 8260), semi-volatile organic compounds (EPA Method 8270), PCBs (EPA Method 8082), the eight RCRA metals (EPA Methods 3010/6010), and nickel (Ni), zinc (Zn) and copper (Cu) (EPA Method 6010) diesel-range organics (MDEP Method 4.1.25), and gasoline-range organics (MDEP Method 4.2.17).
- (d) The criteria for evaluation of soil samples shall be the Maine DEP Remedial Action Guidelines for Soils (RAGS) of May 20, 1997 (the "Remedial Action Guidelines").
- (e) The City of Portland reserves the right to request split samples of soil taken as part of the licensing procedure. The split samples taken by the City of Portland shall be analyzed by an independent laboratory in order to provide corroboration of results.

In the event that the results of waste baseline soil sampling exceed the Remedial Action Guidelines, the City may require additional sampling at the metal recycling facility or off-site and/or a plan for remediation of contaminated soils at on-site or off-site locations.

Notwithstanding any other provision of the Scrap Metal Recycling Ordinance or these Rules, in the event that a scrap metal recycling facility is located on or has relocated to an existing industrial, commercial or retail site and the baseline test results for that site exceed certain parameters that either are consistent with a use known to exist at the site prior to the scrap metal recycling facility's operation on the site, or shown to have occurred prior to the scrap metal recycling facility's operation on the site, then no remediation plan for those parameters shall be required of the owner or operator of the scrap metal recycling facility so long as the previously existing baselines or the state regulatory guidelines as incorporated, whichever are higher, are not exceeded.

If a remediation plan is implemented by an entity other than the owner or operator of the scrap metal recycling facility or voluntarily implemented by such owner or operator and the remediation lowers the previously existing baselines, the lower baselines or the state regulatory guidelines as incorporated, whichever are higher, shall be used for the purpose of future testing and remediation requirements.

For the purpose of this rule an "owner or operator" includes any prior owners or operators in which a controlling interest was held by the same individuals or legal entities, or any person or entity acting in their behalf.

Rule #3 Groundwater Testing:

- (a) Initial waste baseline testing shall consist of three on-site overburden monitoring wells installed by Geoprobe or conventional drilling methods. The location and the rationale for the location of the three monitoring wells shall be developed by a qualified environmental professional and submitted to the Department for review and approval as part of the application.
- (b) The three monitoring wells shall be located so as to monitor groundwater emanating from the principle outdoor work areas, i.e., areas in which metals to be recycled are received, processed and stored. Ten-foot well screens in the monitoring wells shall be placed so as to intersect the groundwater table. Groundwater samples shall be taken from the three monitoring wells in according with MDEP Low-Flow Groundwater Sampling Guidance, June 1996.
- (c) The water samples shall be analyzed for volatile organic compounds (EPA Method 8260), semi-volatile organic compounds (EPA Method 8270), PCBs (EPA Method 8082), the eight RCRA metals (EPA Methods 6010/7470), and nickel (Ni), zinc (Zn), copper (Cu), and antimony (Sb) (EPA Method 6010) diesel-range organics (MDEP Method 4.1.25), and gasoline-range organics (MDEP Method 4.2.17).
- (d) The criteria for evaluation of water samples shall be the Maine DHS Maximum Exposure Guidelines of January 20, 2000 ("MEGs") and the Procedural Guidelines for Establishing Action Levels and Remediation Goals for the Remediation of Oil-Contaminated Soil and Groundwater in Maine, March 13, 2000 (a/k/a "Decision Tree analysis").
- (e) The City of Portland reserves the right to request split samples of groundwater taken as part of the licensing procedure. The split samples taken by the City of Portland shall be analyzed by an independent laboratory in order to provide corroboration of results.

In the event that the waste baseline groundwater sampling exceeds the Maximum Exposure Guidelines or the guidelines of the decision tree, the City may require additional sampling at the metal recycling facility and a plan for remediation of contaminated groundwater at the on-site locations.

Notwithstanding any other provision of the Scrap Metal Recycling Ordinance or these Rules in the event that a scrap metal recycling facility is located on or has relocated to another existing industrial, commercial, or retail site and the baseline test results for that site exceed of certain parameters that either are consistent with a use known to exist at that site prior to the scrap metal recycling facility's operation on the site, or are shown to have occurred prior to the scrap metal recycling facility's operation on the site, then no remediation plan for those parameters shall be required of the owner or operator of the scrap metal recycling facility so long as the previously existing baselines or the state regulatory guidelines as incorporated, whichever are higher, are not exceeded.

If a remediation plan is implemented by an entity other than the owner or operator of the scrap metal recycling facility or voluntarily implemented by such owner or operator and the remediation lowers the previously existing baselines, the lower baselines or the state regulatory guidelines as incorporated, whichever are higher, shall be used for the purpose of future testing and remediation requirements.

For the purpose of this rule an “owner or operator” includes any prior owners or operators in which a controlling interest was held by the same individuals or legal entities, or any person or entity acting in their behalf.

Rule #4 Dismantling Motor Vehicles and Other Items Containing Waste:

The dismantling of items containing waste shall take place in a building with an impervious floor and appropriate equipment and containers to properly extract and store waste and recover any spilled or escaped waste in compliance with state and federal laws.

Upon receiving a motor vehicle, the battery shall be removed and located in such a ways as to ensure the battery’s contents will not spill onto the ground.

When any engine lubricant, transmission fluid, brake fluid and/or engine coolant is removed from a vehicle, those fluids shall be drained into watertight containers which shall be kept covered and secured by containment in a storage building designed to contain spills. Any fluids from the motor vehicle shall be stored, recycled or disposed of according to all applicable federal and state laws. No discharge of any fluids from any motor vehicle shall be permitted into or onto the ground.

Rule #5 Storage and Handling of Waste:

Waste shall be stored and handled pursuant to and in compliance with state law and applicable regulations of the Maine Department of Environmental Protection and any amendments thereto.

Hazardous substances and hazardous waste, including PCBs, solvents, and degreasers, and mercury and special wastes, including petroleum-related products shall be received, handled, processed, stored and disposed of in accordance with State of Maine Hazardous Waste Management Rules (06-096 CMR 850, Chapter 850 and 851, January 23, 2001) and Solid Waste Management Regulations (06-096 CMR Chapter 400 et seq., September 1, 1999).

Rule #6 Setback Requirement; Visual Screening and Limitation on the Height of Piles of Metal or Other Material.

In no event shall the scrap metal recycling facility be located closer than 100 feet from a public road. The setback provision shall apply to temporary or permanent storage, weighing, or processing areas for any metal or material within the scrap metal recycling facility, but shall not apply to any driveways or administrative buildings, and shall not apply to the fences or screening which may be established to keep the facility screened from ordinary view, except such fences or screening must be outside the public road right-of-way. For the purposes of the Rules, the term “from a public road” shall mean from the far side of any immediately adjacent public road.

Visual impact standards can be met through buildings, plantings, fences, berms, setbacks, or other screening, or a combination thereof; however, the screening shall in no case exceed 15 feet in height and any piles of metal or other material shall not exceed 30 feet in height except as allowed by this Rule.

(a) *Fencing.* Fences shall be so located and of sufficient height to entirely screen those portions of the metal recycling facility or any piles of material within the facility used to receive, process or store any form of metal from ordinary view. The minimum height of any fence is six feet, although the actual height must be sufficient to accomplish the complete screening from ordinary view but in no case may the height of the fence exceed 15 feet. All fences shall be well constructed and maintained. All fences shall be uniform in appearance, erected in a workmanlike manner, and constructed of sound, undamaged material.

(b) *Plantings.* Screening may be accomplished through the planting and/or maintenance of trees, shrubs, or other vegetation of sufficient height, density and depth of planting or growth to entirely screen

those portions of the metal recycling facility used to receive, process or store any form of metal from ordinary view throughout the calendar year.

(c) *Natural or man-made screening.* Screening may be accomplished by use of the following natural or man-made screens provided those portions of the scrap metal recycling facility used to receive, process or store any form of metal are entirely screened from ordinary view.

- (1) *Hills, gullies, or embankments.* Where man-made, such screens must be constructed to blend with the landscape with loaming and seeding or other treatment as may be necessary to establish a natural appearance; or
- (2) Building or other installations; or
- (3) A combination of the above.

If buildings or other installations are used, they are not subject to the 15 foot height limitation on fences or other types of screening.

For the purpose of this rule the phrase “entirely screened” shall not be interpreted to apply to piles of metal or other material that exceed 30 ft. on 5 days or less in a 30 consecutive day period unless the owner or operator applies for additional time and shows good cause for the request, or to openings used for entrances or exits to and from the facility or that are on abutting property.

Rule #7 Exemption from Specific Requirements:

The following requirements shall not apply to facilities existing on or before the effective date of this Ordinance.

- (a) Rule 6, 100' setback requirement.

Rule #8 Annual Testing Requirements

The annual testing required under Section 31-6(d) of the Scrap Metal Recycling Facilities Ordinance shall conform to the following requirements.

- (a) Groundwater samples shall be taken from the existing three on-site overburden monitoring wells on an annual basis in conformance with Rule #3(b)-(c).
- (b) For those facilities that were required to undertake a remedial action plan after the initial waste baseline sampling, annual soil sampling shall be conducted in conformance with Rule #2(b)-(c), if the department demonstrates that the remedial action plan was not implemented in accordance with its terms. Said sampling shall be limited to those areas identified in either the initial waste baseline sampling plan or through further testing previously required by the department.
- (c) After a facility can demonstrate for three consecutive years that the results of any sampling that it conducted are within the regulatory guidelines as outlined above, that facility shall be allowed to test once every three years for those substances the levels of which were below the regulatory guidelines.

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