

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONSIDERATION OF)	RESOLUTION NO. 00-2959
DENYING A SOLID WASTE FACILITY)	
LICENSE TO S&H LOGGING, INC.)	Introduced by Mike Burton,
)	Executive Officer

WHEREAS, S&H Logging, Inc. has applied for a Yard Debris Processing Facility License under the provisions of Code chapter 5.01; and

WHEREAS, chapter 5.01 of the Code requires such applicants to obtain local land use approval or a recommendation from the local Planning Director as a required part of their applications; and

WHEREAS, Clackamas County has determined that it is a violation of County's zoning ordinance for S&H Logging, Inc. to operate a composting facility at its present location without being granted a conditional use permit; and

WHEREAS, S&H Logging, Inc. has applied to the County for a conditional use permit and the County Planning Director's Office has recommended denial of said permit; and

WHEREAS, S&H Logging, Inc. has withdrawn its application for a conditional use permit and is refusing to seek the required land use authorization; and

WHEREAS, S&H Logging has been issued a Notice of Noncompliance by the Department of Environmental Quality for operating a composting facility without the required DEQ permit or Metro license; and

WHEREAS, the Executive Officer has recommended denial of the application and has forwarded that recommendation to the Council; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:

The application of S&H Logging Inc. for a solid waste facility license to operate a yard debris composting facility is hereby denied.

ADOPTED by the Metro Council this ____ day of _____, 2000.

WITHDRAWN
David Bragdon, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

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**EXECUTIVE SUMMARY
RESOLUTION 00-2959
DENYING A SOLID WASTE FACILITY LICENSE TO
S&H LOGGING, INC.**

PROPOSED ACTION

- Deny a solid waste facility license authorizing S&H Logging to operate its existing yard debris composting facility.

WHY NECESSARY

- On March 28, 1998, S&H Logging submitted a Yard Debris Processing Facility application to Metro under the "old" Code. The application was incomplete pending a decision by Clackamas County regarding S&H's application for a conditional use permit (CUP). In May of 2000 Clackamas County's Department of Transportation and Development issued a recommendation to deny S&H's CUP, whereupon S&H withdrew its CUP application and notified the County that it believes no further authorizations are required.
- S&H is presently operating its composting facility in defiance of Clackamas County land use regulations and a DEQ order to cease composting operations. Formal action by Metro to deny S&H's application for a Yard Debris Processing Facility License is necessary to bring closure to the S&H's application process and to clear up any ambiguity with regard to S&H's status regarding its Metro authority to operate this facility.

DESCRIPTION

- S&H operates a yard debris composting facility at the corner of Stafford and Borland Roads in Clackamas County.

ISSUES/CONCERNS

- The facility is operating without the required County land use approval and without benefit of the required DEQ permit or Metro license.
- The facility has been issued a Notice of Noncompliance by the DEQ and ordered to cease operating a composting facility.
- The Stafford Tualatin Valley Community Planning Organization (CPO) issued a letter to the County that describes four outstanding issues; 1. S&H has not complied with County fire suppression requirements; 2. A neighbor who is a heart transplant patient on immuno-suppressant drugs might suffer health effects from *Aspergillus fumigatus*, a mold commonly generated by composting; 3. The facility is located at a "failing" intersection that is inadequate to accommodate even existing traffic; 4. Continued operation of the facility without the necessary authorizations.

BUDGET/FINANCIAL IMPACTS

- None

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 00-2959, FOR THE PURPOSE OF DENYING A SOLID WASTE FACILITY LICENSE TO S&H LOGGING, INC.

June 29, 2000

Presented by: Terry Petersen

BRIEF DESCRIPTION OF RESOLUTION

Approval of Resolution No. 00-2959 will deny a request by S&H Logging, Inc. (S&H) to be granted a Metro Solid Waste Facility License to operate its existing yard debris composting facility located at the corner of Stafford and Borland Rd. near I-205 in Clackamas County. Staff recommends denial of the request because S&H has:

1. failed to obtain land use approval from Clackamas County;
2. been found by Clackamas County to be operating in violation of the Clackamas County zoning ordinance;
3. withdrawn its application for a conditional use permit and is refusing to seek the required land use authorization;
4. been operating in violation of Department of Environmental Quality (DEQ) permit requirements.

EXISTING LAW

Metro Code Section 5.01.045(b) requires a Metro Solid Waste License for a person to own and operate a facility that processes or reloads yard debris. The Metro Council approves all Solid Waste Licenses [Metro Code 5.01.067(a)]. By intergovernmental agreement with the DEQ, such a license also substitutes for a DEQ compost facility permit for facilities located within the Metro region.

Section 5.01.060(c)(6) of the Code requires that an applicant for a solid waste license provide to the Executive Officer:

Proof that the applicant has received proper land use approval; or, if land use approval has not been obtained, a written recommendation of the planning director of the local governmental unit having land use jurisdiction regarding new or existing disposal sites, or alterations, expansions, improvements or changes in the method or type of disposal at new or existing disposal sites.

In this case, the applicant, S&H Logging, Inc., has not received the required land use approval from Clackamas County. On May 3, 2000, the Clackamas County Department of Transportation and Development issued a staff report in preparation for a May 10 land use hearing scheduled to consider S&H's application for a conditional use permit (CUP) to continue its composting operations. The staff report recommends denial of a Conditional Use Permit. A primary reason for this recommendation is the fact that the corner of Stafford and Borland Roads, where S&H is located is rated by the County as a

"failing" intersection i.e. it is inadequate to accommodate existing traffic. Other specific findings related to the traffic issue are:

1. The application does not include a transportation plan identifying the routes for vehicular travel to this facility consistent with County requirements. Thus, the submittal requirements of the CUP application are not all met.
2. ODOT (Oregon Department of Transportation) requires that there be at least 1320 feet between the ramp terminal intersection from I-205 to the first driveway (S&H's). However, the existing driveway to the site (from Stafford Rd.) is substantially less than this spacing standard. For this reason, ODOT recommends that the present driveway entrance from Stafford Rd. be closed with construction of a new access road to Borland Road and all access to the subject property taken from Borland Road. However, Clackamas County Traffic Engineering has determined that the intersection of Stafford Road and Borland Road is within the area affected by the proposed use irrespective of where the driveway entrance is located and has identified this as a failing intersection. The Planning Division staff recommends that the additional traffic generated by this use will further this problem. The needed intersection improvements will not be constructed within the implementation time for this Conditional Use. Therefore, the Planning Division staff cannot find this proposal is consistent with the County's Roadways Goals and Policy 9.0.

In addition to the traffic problems, which apparently cannot be remedied, the report cites several additional concerns:

1. The applicant has not demonstrated that the groundwater it is utilizing has been legally appropriated.
2. An erosion control plan has not been submitted.
3. The proposed pond shown within this drainage course will require written approval from the Oregon Division of State Lands and/or U.S. Army Corp. of Engineers.

BACKGROUND

A. History of the Facility

S&H Logging is a 24 acre facility located at the corner of Stafford and Borland Rd. near I-205 in Clackamas County. In 1983, the County conditionally approved S&H's request to operate a firewood yard. In the early 1990's, S&H began accepting yard debris from area homeowners. As the demand for firewood decreased, S&H began accepting increasingly more yard debris until it became a full-scale yard debris composting facility.

In 1987, S&H applied to the County for a modification to its 1983 approval. The modification proposed to add an office building to the existing building located on the site and was approved by the County.

In 1992, the County asked S&H to file a conditional use application relating to the composting portion of S&H's business. S&H filed such an application on December 1, 1992. The application was denied on the grounds that composting was not an allowable conditional use within an RRFF-5 zone. There followed a series of appeals during which time S&H continued to operate under a series of temporary permits, granted by the County hearings officer on the basis of findings that S&H was diligently pursuing legal issues relevant to the conditional use process. The last of these temporary permit renewals was denied in November of 1996. However, S&H continued its composting operations and the County stayed enforcement pending the outcome of changes to its zoning ordinance. In 1998, the County revised its ordinance to expressly include composting as a conditional use in the RRFF-5 zone.

S&H first submitted a Yard Debris Processing Facility License application on January 14, 1998. Upon review by Metro staff, the application was found to be inadequate. S&H re-submitted an application on March 24, 1998. The application was accepted but not deemed complete pending either the acquisition of a conditional use permit or a recommendation by the Clackamas County Planning Director. On July 23, 1998 Metro substantially revised the solid waste portion of the Metro Code.

A recommendation was issued by the County on May 3, 2000 in preparation for a scheduled May 10 hearing. The recommendation of the Clackamas County Department of Transportation and Development was for denial. However, on May 4, S&H's legal counsel notified the County that S&H was withdrawing its CUP application because it did not believe that any further approvals from Clackamas County were necessary.

On May 8, the Department of Environmental Quality issued a Notice of Noncompliance (NON) to S&H for continuing to operate without DEQ permit or Metro Yard Debris Processing Facility License (a Metro license substitutes for a DEQ permit through an intergovernmental agreement between Metro and the DEQ). The NON warned that, "Continued operation in the absence of a valid permit may result in an enforcement action, including the imposition of civil penalties."

B. Impact on the Regional Composting System

S&H accepts yard debris from the public and from commercial landscapers. It has also accepted surplus yard debris from the River Cities site, a yard debris depot that serves the curbside collection programs for the cities of West Linn, Oregon City, and Gladstone. However, West Linn's hauler now delivers its yard debris to Clackamas Compost located on Capps Road in Clackamas rather than the River Cities facility and obviated the problem of excess yard debris at the River Cities site. S&H's Metro Yard Debris Processing Facility License application estimates that it accepts 60,000 cubic yards of yard debris annually. If S&H ceases its yard debris composting operation, the yard debris

it accepts now will most likely be diverted to Grimm's Fuel in Tualatin, McFarlane's Bark in Milwaukie, and Clackamas Compost in Clackamas. The Clackamas Compost facility is also associated with S&H Logging. Though the closure of S&H's composting operation would result in increased travel times to deliver yard debris generated in some areas of west Clackamas County, the remaining licensed facilities would have sufficient capacity to absorb the tonnage presently delivered to S&H.

BUDGET IMPACT

None

OUTSTANDING QUESTIONS

In a letter dated May 10, 2000, the Stafford Tualatin Valley Community Planning Organization (CPO) issued a letter to the County that describes four outstanding issues and asks what action the County is prepared to take to address them. The issues are listed below.

1. The CPO alleges that S&H has still not complied with all the conditions set forth in its original CUP authorizing the operation of its firewood yard. The condition specifically cited as not being met is the installation of water tanks for fire suppression and the screening of such tanks with vegetation.
2. The letter expresses concern that a neighbor who is a heart transplant patient on immuno-suppressant drugs might suffer health effects from *Aspergillus fumigatus*, a mold that is commonly generated by composting operations.
3. Concern is also expressed over the traffic issues described above and cites these as outstanding zoning and code violations.
4. The continued operating of a composting facility without the necessary authorizations represents an outstanding zoning and code violation.

In addition to the concerns expressed by the CPO, Metro has received complaints from several residents of the area regarding noise and odors emanating from the S&H facility. However, an investigation of the validity of these complaints has been preempted and rendered moot by staff's recommendation to deny the application on the basis that the facility lacks proper land use approval. Metro staff have inspected the facility and found it to be operated in a professional manner and utilizing appropriate composting practices.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 00-2959, denying a Solid Waste Facility License to S&H Logging, Inc.