

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER) RESOLUTION NO. 06-3678
TO RENEW THE NON-SYSTEM LICENSE ISSUED TO)
GRAY & COMPANY FOR DELIVERY OF) Introduced by Michael Jordan,
PUTRESCIBLE SOLID WASTE TO THE RIVERBEND) Chief Operating Officer, with the
LANDFILL) concurrence of David Bragdon,
) Council President

WHEREAS, the Metro Code requires a non-system license of any person that delivers solid waste generated from within the Metro boundary to a non-system disposal facility; and

WHEREAS, Gray & Company currently has a non-system license to deliver mixed solid waste, including putrescible waste, to the Riverbend Landfill, which license will expire on April 13, 2006; and

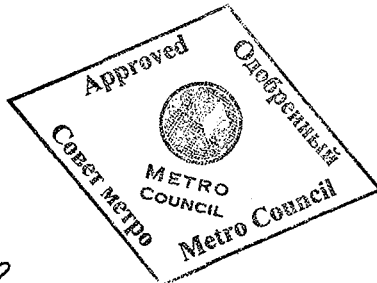
WHEREAS, Gray & Company has applied to renew its non-system license under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control"; and

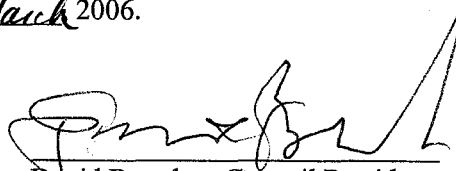
WHEREAS, the application is in conformance with the requirements of Chapter 5.05 of the Code; and

WHEREAS, the Chief Operating Officer has analyzed the application and recommended approval of the applicant's request to renew its non-system license with the conditions and in the form attached to this resolution as Exhibit A; now therefore,

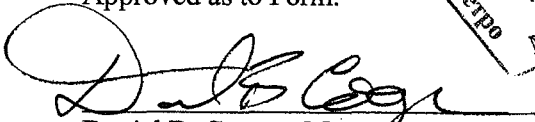
BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to renew the non-system license issued to Gray & Company in a form substantially similar to the license attached as Exhibit A.

ADOPTED by the Metro Council this 23rd day of March 2006.




David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
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METRO

**METRO SOLID WASTE FACILITY
NON-SYSTEM LICENSE**

Number N-011-06

LICENSEE:
Gray & Company 2331 – 23 rd Avenue Forest Grove, OR 97116
CONTACT PERSON:
Pete Leber, Plant Manager Phone: 503-357-3141, ext 314 Fax: 503-359-0719 e-mail: PJLeber@cherryman.com
MAILING ADDRESS:
PO Box 218 Forest Grove, OR 97116

METRO

**Licensee’s Acceptance &
Acknowledgement of Receipt:**

Signature

Michael Jordan, Chief Operating Officer
Print name and title

Date

Signature of Licensee

Print name and title

Date

1	NATURE OF WASTE COVERED BY LICENSE
	This license authorizes delivery to the non-system facility listed in section 3, below, of putrescible wastes including coconut, cherries, pineapple, and citrus products along with the residual syrups they contain, and syrup-contaminated tote and barrel bags, syrup-contaminated #10 tins, and miscellaneous refuse from offices, restrooms, and the plant cafeteria.
2	CALENDAR YEAR TONNAGE LIMITATION
	This license grants the licensee the authority to dispose of up to 1,000 tons per calendar year of the waste described in section 1, above.
3	NON-SYSTEM FACILITY
	The licensee hereunder may deliver the waste described in section 1, above, to the following non-system facility only: Riverbend Landfill 13469 SW Hwy 18 McMinnville, OR 97128
4	TERM OF LICENSE
	The term of this license will commence on April 14, 2006 and expire at midnight on December 31, 2007.
5	REPORTING OF ACCIDENTS AND CITATIONS
	Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles of its transportation carrier during the loading and transporting of solid waste on behalf of the licensee.

6	ADDITIONAL LICENSE CONDITIONS
	<p>This non-system license shall be subject to the following conditions:</p> <ul style="list-style-type: none">(a) The permissive transfer of solid waste to the Riverbend Landfill authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.(b) This license shall be subject to amendment, modification or termination by Metro's Chief Operating Officer in the event that the Chief Operating Officer determines that:<ul style="list-style-type: none">(i) there has been sufficient change in any circumstances under which Metro issued this license, or in the event that Metro amends or modifies its Regional Solid Waste Management Plan in a manner that justifies modification or termination of this license,(ii) the provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Oregon Waste Systems, or(iii) Metro's solid waste system or the public will benefit from, and will be better served by, an order directing that the waste described in section 1 of this license be transferred to, and disposed of at, a facility other than the facility described in section 3, above.(c) This license shall, in addition to subsections (b)(i) through (iii), above, be subject to amendment, modification, termination, or suspension pursuant to the Metro Code.(d) No later than the fifteenth (15th) day of each month, beginning with the next month following the signature date below, Licensee shall:<ul style="list-style-type: none">(i) submit to Metro's Solid Waste & Recycling Department a Regional System Fee and Excise Tax Report, that covers the preceding month, and(ii) remit to Metro the requisite Regional System Fees and Excise Taxes in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes.(e) Licensee shall make all records from which (d) above are derived available to Metro (or Metro's designated agent) for its inspection or copying, as long as Metro provides no less than three (3) calendar days written notice of an intent to inspect or copy documents. Licensee shall, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facility named in section 3, above.

	<p>(f) Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.</p> <p>(g) This license shall terminate upon the execution of a designated facility agreement with the facility listed in Section 3.</p> <p>(h) This license authorizes delivery of solid waste to the Riverbend Landfill. Transfer of waste generated from within the Metro boundary to any non-system disposal site other than the Riverbend Landfill is prohibited unless authorized in writing by Metro.</p>
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7	COMPLIANCE WITH LAW
	<p>Licensee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders, and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.05 whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the collection and hauling of the licensee's solid waste by federal, state, regional or local governments or agencies having jurisdiction over solid waste generated by the licensee shall be deemed part of this license as if specifically set forth herein.</p>

8	INDEMNIFICATION
	<p>Licensee shall defend, indemnify and hold harmless Metro, its elected officials, officers, employees, agents and representatives from any and all claims, demands, damages, causes of action, or losses and expenses, or including all attorneys' fees, whether incurred before any litigation is commenced, during any litigation or on appeal, arising out of or related in any way to the issuance or administration of this non-system license or the transport and disposal of the solid waste covered by this license.</p>

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 06-3678 AUTHORIZING THE CHIEF OPERATING OFFICER TO RENEW THE NON-SYSTEM LICENSE ISSUED TO GRAY & COMPANY FOR DELIVERY OF PUTRESCIBLE SOLID WASTE TO THE RIVERBEND LANDFILL

March 1, 2006

Prepared by: Steve Kraten

BACKGROUND

Approval of Resolution No. 06-3678 will authorize the Chief Operating Officer to renew a non-system license (NSL) issued to Gray & Company to annually deliver mixed solid waste, including putrescible waste, to the Riverbend Landfill located in McMinnville, Oregon. Gray & Company is a food processing facility located in Forest Grove, Oregon (Metro District 4). The application requests authority for only 1,000 tons per year. Gray & Company reported sending 546 tons of waste to the Riverbend Landfill during calendar year 2005. Such waste was largely comprised of fruit wastes, residual fruit syrups, plastic bags and large tin cans but also included a small quantity of miscellaneous waste from offices, restrooms, and the plant cafeteria. The existing license will expire on April 13, 2006. Since the Riverbend Landfill is a Waste Management Facility, granting this license would not count against the ten percent of waste not obligated under Metro's disposal contract. In order to make any future renewals of this license coincide with a calendar year, as is the case with most other NSLs, the proposed license has a term of 20-1/2 months and an expiration date of December 31, 2007.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed license renewal.

2. Legal Antecedents

The issuance of NSLs for putrescible waste are subject to approval by the Council. Section 5.05.035(c) of the Metro Code provides that, when determining whether or not to approve an NSL application, the Council shall consider the following factors to the extent relevant to such determination.

- (1) *The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;*

The Riverbend Landfill first came into use during the mid-eighties. When the Riverbend became a Subtitle D landfill in 1993, the original unlined cells were capped. Since 1993, the landfill has been filling only lined cells and operating with the required environmental controls required by the DEQ. The landfill has no known history of landfilling wastes that pose a future risk of environmental contamination.

- (2) *The record of regulatory compliance of the non-system facility's owner and operator with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;*

The Riverbend Landfill is permitted by the Oregon Department of Environmental Quality (DEQ). The DEQ considers the landfill to be a well-run facility that is in compliance with federal, state and local requirements. The facility has a good compliance record with public health, safety and environmental rules and regulations.

- (3) *The adequacy of operational practices and management controls at the non-system facility;*

The Riverbend Landfill uses operational practices and management controls that are typical of Subtitle D landfills and considered by the DEQ to be adequate for the protection of health, safety, and the environment.

- (4) *The expected impact on the region's recycling and waste reduction efforts;*

A portion of the material to be covered by the proposed NSL consists of large tin cans that are potentially recyclable. Metro staff examined the recyclability of these tins prior to the previous renewal but found the cost of adequately cleaning sticky fruit residues from recyclable materials too great an obstacle to overcome. The applicant has indicated it will continue to seek recycling opportunities for these materials and will make finding a market for the tins a key priority for the coming year. The fruit waste itself is not particularly suitable for composting as it is treated with preservatives for the specific purpose of preventing decomposition. There is no reason to believe that recycling efforts would be significantly impacted by the decision regarding this NSL application.

- (5) *The consistency of the designation with Metro's existing contractual arrangements;*

The waste subject to the proposed license would be disposed at the Riverbend Landfill, which is a Waste Management landfill. Such waste would be included within the 90 percent of general purpose waste obligated to Waste Management under Metro's disposal contract. Approval of the requested license will not conflict with the disposal contract or any other of Metro's existing contractual arrangements.

- (6) *The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations; and*

The requested license is a renewal of the applicant's previous two-year license. During the previous four terms of its license, the applicant submitted its required Metro reports in a timely fashion. The applicant is a food processor and, according to the City of Forest Grove, has a good compliance record with local public health, safety and environmental rules and regulations.

- (7) *Such other factors as the Chief Operating Officer deems appropriate for purposes of making such determination.*

A moratorium adopted by the Council on February 2, 2006, does not apply to renewal requests where the renewed license will authorize the same type and amount of solid waste to be delivered to the same non-system facility as the previous NSL. Thus, under the terms of the NSL moratorium, Metro can only renew this NSL on the same terms as the previous NSL or not renew it at all.

An additional relevant factor in making a determination regarding this application is staff's recommendation that no NSLs be renewed for any generator, hauler, or other person using the Riverbend Landfill unless there are unique management needs that can only be provided for through an NSL

authorizing the use of Riverbend Landfill. Metro staff have encouraged Waste Management to pursue designated facility status for the landfill but Waste Management has not chosen to do so. However, in this instance, the solid waste in question consists of fruit processing wastes that would normally be composted but, in this case, are treated with preservative and require disposal. Metro has managed the disposal of putrescible waste via NSLs, rather than using designated facility agreements, so an NSL is appropriate in this instance. Riverbend is the landfill nearest to the applicant's facility and the applicant has a good record of transporting this semi-liquid waste to the landfill without dripping or spilling it en route. In the opinion of staff, these factors constitute special circumstances that meet this "unique management needs" test for the fruit waste. The miscellaneous solid wastes from offices, restrooms, and the plant cafeteria that are also part of this NSL authorization, however, do not meet such a test. We nevertheless recommend that the license be renewed as those types of wastes are generated in very small quantities (less than five tons per year) and are secondary to the primary solid wastes to be disposed under this license and, as mentioned above, under the NSL moratorium now in effect the NSL can only be renewed under the same terms as the current NSL.

Conclusion

The Chief Operating Officer finds that the proposed license satisfies the requirements of Metro Code Section 5.05.035 for the requested Non-System License.

3. Anticipated Effects

The effect of Resolution No. 06-3678 will be to renew an NSL for delivery of up to 1,000 tons per fiscal year of fruit processing waste to the Riverbend Landfill.

4. Budget Impacts

The regional system fee and excise tax will continue to be collected on waste delivered under authority of the proposed NSL. Since the proposed NSL is a renewal, the budget impact has already been factored into budget projections and approval of the license will maintain the status quo. It does not impact Metro's obligation under the disposal contract.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 06-3678, and issuance of a renewed NSL substantially similar to the NSL attached to the resolution as Exhibit A.

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