

BEFORE THE METRO COUNCIL

RESOLUTION NO. 00-2989	)	RESOLUTION NO. 00-2989
FOR THE PURPOSE OF AFFIRMING THE	)	
IMPOSITION OF A MONETARY FINE ON	)	
WILLAMETTE RESOURCES, INC. FOR A	)	Introduced by Mike Burton,
VIOLATION OF ITS METRO SOLID WASTE	)	Executive Officer
FACILITY FRANCHISE	)	

WHEREAS, the Executive Officer issued Solid Waste Facility Franchise No. F-005-98 to Willamette Resources, Inc. (WRI) in December of 1998; and

WHEREAS, Section 4.2 of that franchise prohibits the franchisee from disposing of more than 50,000 tons of putrescible waste and processing residual within each calendar year; and

WHEREAS, WRI knowingly and intentionally disposed of more than 50,000 tons of putrescible waste and processing residual during calendar year 1999; and

WHEREAS, Code Section 5.01.200 provides for the imposition of monetary fines for violations of the terms of Metro-issued franchises; and

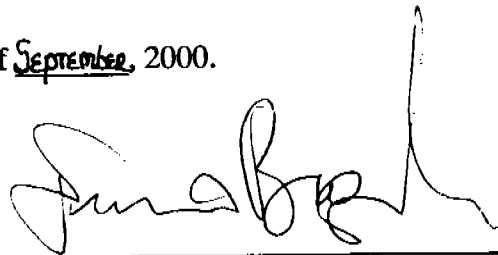
WHEREAS, a fine of \$2,219 has been imposed by the Regional Environmental Management Department on WRI for the violation of its tonnage cap; and

WHEREAS, such fine has been upheld by the Regional Hearings Officer upon a contested case hearing; now therefore,

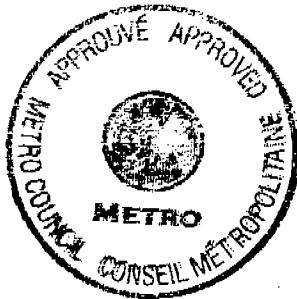
THE METRO COUNCIL RESOLVES AS FOLLOWS:

The Regional Hearings Officer's proposed order No. 00-0553 upholding the imposition upon WRI of a \$2,219 penalty for violation of the 50,000 ton annual disposal cap stipulated in Section 4.3 of its Metro Solid Waste Facility Franchise is affirmed.


ADOPTED by the Metro Council this 21<sup>st</sup> day of September, 2000.



David Bragdon, Presiding Officer



Approved as to Form:

  
Daniel B. Cooper, General Counsel

BEFORE THE HEARINGS OFFICER OF METROPOLITAN SERVICE DISTRICT  
RE: CONTESTED CASE-SOLID WASTE FACILITY FRANCHISE

In The Matter of Citation No. M 1008	)	PROPOSED ORDER
Issued to	)	
WILLAMETTE RESOURCES, INC.	)	MSD # 00-0553
Respondent	)	

**PROCEDURAL POSTURE-BACKGROUND**

On or about April 21, 2000, a Notice of Violation and Notice of Imposition of Civil Penalty, was mailed to Willamette Resources, Inc. (hereinafter WRI) by METRO Executive Officer Mike Burton. Pursuant to METRO Ordinance 203.040.

On April 28, 2000, pursuant to METRO Ordinance 5.01.180 and 5.01.200(c), Citation M1008 was issued by METRO alleging WRI, as Respondent, had violated METRO Ordinance, Chapter 5, Section 4.2 of the Solid Waste Facility Franchise by exceeding the 50,000 ton limitation by 2, 219 tons from December 13, 200 through December 31, 2000. Attached and

1 included with the Citation sent to Respondent was a "Findings of Fact" pursuant to METRO  
2 Ordinances 2.03.080 and 5.01.180.

3 On May 1, 2000 a "Contested Case Notice" was mailed first class mail, return receipt  
4 requested, to respondent pursuant to METRO Ordinance 2.03.080.

5 All of these mailings were sent to Merle Irvine, District Manager, Metro Division,  
6 WRI, 10295 S.W. Ridder Road, Wilsonville, Oregon, 97070. None of these mailings were  
7 returned.

8 On May 4, 2000, Respondent requested a Contested Case Hearing pursuant to METRO  
9 Ordinances and Oregon Statute.

10 On May 11, 2000, METRO, through Roy Brewer, Administrator of Regulatory Affairs,  
11 sent to Mr. Irvine confirmation that a Contested Case Hearing had been set for July 13, 2000,  
12 at 9:30 a.m. to be held at METRO offices located at 600 N.E. Grand Avenue, Portland, Oregon  
13 97232. The Notice was sent to WRI at the same address as stated above, and not returned.

14 On June 7, 2000, WRI, through Mr. Merle Irvine, General Manager, mailed to METRO  
15 a letter with enclosures. In the letter, Mr. Irvine waived a public Hearing in this matter, and  
16 requested that the Hearings Officer proceed based on the materials submitted by METRO and  
17 WRI. WRI waived notification of rights pursuant to METRO Ordinance 2.05.007. METRO  
18 Stipulated to this procedure, and also waived public hearing in this matter. WRI also submitted  
19 payment in the amount of \$2,219.

#### 20 **EVIDENTIARY RULINGS AND DESIGNATION OF RECORD**

21 Based on the stipulation of the parties, the following exhibits are accepted and made a  
22 part of the evidentiary record.

23 1. Letter of April 21, 2000: Finding of Violation and Notice of Imposition of  
24 Penalty (submitted by METRO).

25 /////

- 1           2.       Citation M1008, with attached Findings of Fact, dated April 28, 2000
- 2 (submitted by METRO).
- 3           3.       Contested Case Notice, with Certificate of Mailing, dated May 1, 2000
- 4 (submitted by METRO).
- 5           4.       Letter from Respondent dated May 4, 2000: Request for Contested Case
- 6 Hearing (submitted by WRI).
- 7           5.       Letter of May 11, 2000 from METRO; Contested Case Response (submitted by
- 8 METRO).
- 9           6.       Letter of June 7, 2000 from Respondent to METRO (submitted by WRI).
- 10          7.       Letter of June 7, 2000 from Respondent to Hearings Officer RE: Statement of
- 11 Mitigation (submitted by WRI).
- 12          8.       SOLID WASTE FACILITY FRANCHISE AGREEMENT (submitted by
- 13 METRO).
- 14          9.       Executive Summary, Ordinance No. 00-865 (submitted by WRI).
- 15          10.      Report on the Subcommittee Recommendations for Regional Policy Toward
- 16 Transfer Stations (submitted by WRI).
- 17          11.      Letter of June 22, 2000 from METRO in response to Respondents Statement of
- 18 Mitigation (submitted by METRO).
- 19          12.      Letter from Hearings Officer to Metro and WRI asking for additional
- 20 information.
- 21          13.      Letter from METRO dated August 4, 2000, in response to Hearings Officers
- 22 Inquiries (submitted by METRO).
- 23          14.      Letter from Respondent dated August 4, 2000, in response to Hearings Officers
- 24 Inquiries (submitted by WRI).
- 25        /////

## LEGAL ISSUES

1. Did Respondent Willamette Resources, Inc., violate section 4.2 of its Solid Waste Facility Franchise Agreement with METRO by accepting in excess of 50,000 tons of solid waste during the 1999 calendar year.
2. If there is a violation of said agreement, what is the legal penalty that may be imposed.

## APPLICABLE LAW

1. METRO Ordinance 5.01.030(b) states that:

Except as otherwise provided in this chapter, or in Metro Code chapter 5.05 it shall be unlawful...

- (b) For a recipient of a ...Franchise to receive, process or dispose of any Solid Waste not authorized under the recipient's...Franchise.

2. METRO Ordinance 5.01.180 allows the Executive Officer of METRO to investigate alleged violations of Franchise agreements, to make findings of fact regarding said violations and to impose appropriate remedies or sanctions pursuant to METRO Ordinance 5.01.200.

3. METRO Ordinance chapter 5.01.200(a) States:

Each violation of this chapter shall be punishable by a fine of not more than \$500 Each day a violation continues constitutes a separate violation.

## FINDINGS OF FACT

1. On December 31, 1998, Metro issued a Solid Waste Facility Franchise to WRI.
2. Section 4.2 of the Franchise Agreement limits WRI to disposal of 50,000 tons of solid waste within each calendar year.
3. An investigation of WRI was conducted by reviewing the records of the operations of WRI for the year 1999.

1           4.       During 1999 and early in 2000, as required under the terms of its franchise, WRI  
2 reported to Metro on the amount of tonnage that it received during the year 1999.

3           5.       From January 1, 1999 through December 12, 1999, WRI received a total of  
4 50,000 tons of solid waste at its facility.

5           6.       By December 12, the facility had reached its tonnage limitation.

6           7.       Nevertheless, on December 13 and each day thereafter until the end of the year,  
7 WRI continued to accept solid waste at its facility in excess of its tonnage limitation and in  
8 violation of its franchise.

9           8.       In total, by December 31, 2000, WRI reported to Metro that it exceeded the  
10 50,000 tonnage limit total by 2,219 tons.

11          9.       Because of the nature of the violation, WRI is unable to cure the violation.

12          10.      By letter dated April 21, 2000, Willamette Resources was notified of my findings  
13 and was further notified that penalties would be imposed pursuant to Metro Code Section  
14 5.01.200.

15          11.      The General Manager of Willamette Resources Inc. was aware that its facility was  
16 reaching its permitted limit prior to December 12<sup>th</sup>, 1999. The management made a conscious  
17 decision to continue to take solid waste at its facility, knowing it would be exceeding its  
18 permitted limit.

19          12.      WRI management based its decision to continue to receive solid waste at its  
20 facility on the following reasoning:

21           a.       If WRI refused to accept waste material from haulers, the waste would be  
22                    redirected to Metro South Transfer Station, according to WRI this would  
23                    increase costs for the citizens served by the haulers.

24           b.       WRI stated it depended on dry waste from commercial and industrial  
25                    customers to maintain the required retrieval rate and to meet market

requirements for materials retrieved from the dry waste. It also relied on the revenue received from the Metro System User Fee Credit Program.

c. WRI stated that it didn't want to close down the plant for the last eighteen days of December due to its concern that it would be a financial hardship to its employees, and they may lose its skilled work force.

d. WRI believed there was a likelihood that the 50,000 ton limitation would be removed from future Franchise Agreement, and felt it was possible that the change would occur prior to its reaching the 50,000 ton limit for 1999.

13. WRI has no history of violations, although this violation of its Franchise Agreement was intentional.

#### **ULTIMATE FINDINGS OF FACT REASONING AND CONCLUSIONS OF LAW**

1. On December 31, 1998, Metro issued a Solid Waste Facility Franchise to WRI.

2. Section 4.2 of the Franchise Agreement limits WRI to disposal of 50,000 tons of solid waste within each calendar year.

3. An investigation of WRI was conducted by reviewing the records of the operations of WRI for the year 1999.

4. During 1999 and early in 2000, as required under the terms of its franchise, WRI reported to Metro on the amount of tonnage that it received during the year 1999.

5. From January 1, 1999 through December 12, 1999, WRI received a total of 50,000 tons of solid waste at its facility.

6. By December 12, the facility had reached its tonnage limitation.

7. From December 13, 1999 until December 31, 1999, Respondent Willamette Resources, Inc., was in violation of its Franchise agreement, and thus in violation of METRO Ordinance 5.01.030(b) in that it accepted solid waste at its transfer station on a daily basis in excess of its annual allowed tonnage.



8. The acceptance of solid waste by Willamette Resources Inc. was a continuing violation of METRO Ordinance 5.01.030. Each Day, from December 13 to December 31, inclusive is a separate and distinct violation. Each violation is subject to a maximum fine of \$500.

## DISCUSSION

There is no dispute that WRI was in violation of its franchise agreement with METRO and that this violation continued for nineteen (19) days. The only real dispute between Willamette Resources Inc., and METRO is the appropriate sanction, if any, that should be imposed. WRI argues that although it intentionally and knowingly violated its franchise agreement it should receive only a de minimus civil penalty because there was no harm in its violation. METRO argues that a \$1.00 per ton penalty is a proportionate penalty for the violation.

Although not made a specific finding of fact, there is in evidence stated reasons for METRO's decision to limit local transfer stations to 50,000 tons (see exhibit 12). Although the reasoning may have changed during the discussions about amendments to the ordinance in winter of 1999 and spring of 2000, that the reasons stated in exhibit 12 are rational.

Willamette Resources, Inc. argues that only the public and its employees benefited by the violation. However, It is also clear, using common sense and logic, that Willamette Resources, Inc. must have earned a profit by accepting the extra 2,219 tons of solid waste. Therefore, there was an economic benefit to Willamette Resources Inc., as well as the other benefits admitted to by Willamette Resources Inc.

No one should complain when a company earns a profit. But where public franchises are awarded a semblance of fairness and balance in competition must be maintained for the public good. And regional concerns, which may be of little or no concern to a single franchisee must be weighed. Because of these issues, a single franchisee cannot be allowed to unilaterally


1 decide which of its contractual obligations it will honor. Importantly, Willamette resources had  
2 a remedy available if it believed it needed to take the extra solid waste, yet it chose to not  
3 utilize that process. Instead it simply decided to violate its franchise agreement.

4 Some civil penalty is appropriate for Willamette Resources Inc's intentional violation  
5 of its franchise contractual obligation. Based on WRI's fees for disposal of putrescible and  
6 non-putrescible solid waste, and taking into account the average profit margin a for profit  
7 business typically earns, a civil penalty of \$1.00 per ton for the excess solid waste accepted is  
8 not unreasonable.

### 9 ORDER

10 Based upon the above findings of fact, ultimate findings of fact, reasoning and  
11 conclusions of law, Willamette Resources, Inc. is found to be in violation of METRO  
12 Ordinance 5.01.030(b) from December 13, 1999, until December 31, 1999, each day being a  
13 separate and distinct violation, (19 separate violations) and is hereby required to pay Metro the  
14 following amount: *Two Thousand Two Hundred and Nineteen Dollars and no cents*  
15 (\$2,219.00)

16 As Willamette Resources Inc. has posted the full amount of the Civil Penalty, Said  
17 amount shall be applied as Satisfaction.

18  
19   
20 Robert J. Harris  
Hearing Officer

21 Dated: August 8, 2000.  
22  
23  
24  
25

**EXECUTIVE SUMMARY  
RESOLUTION 00-2989  
AFFIRMING THE IMPOSITION OF A MONETARY FINE ON WRI FOR  
A VIOLATION OF ITS SOLID WASTE FRANCHISE**

**PROPOSED ACTION**

- Approves the imposition of a \$2,219 fine imposed by REM and upheld by the Regional Hearings Officer following a contested case hearing.

**WHY NECESSARY**

- Metro Code Section 2.05.035 requires that, following a contested case hearing, the Hearings Officer's proposed order, including Findings of Fact and Conclusions of Law be submitted to the Council for final approval.
- WRI did not file an exception to the Hearings Officer's proposed order. However, the Council must approve the proposed order to bring closure to this enforcement action.

**DESCRIPTION**

- WRI was fined \$2,219 by the REM Department for knowingly and intentionally violating its Solid Waste Facility Franchise by disposing of more than 50,000 tons of solid waste during calendar year 1999. Following a contested case hearing, the Hearings Officer found in favor of Metro. Resolution 00-xxxx affirms the Hearings Officer's decision.

**ISSUES/CONCERNS**

- None

**BUDGET/FINANCIAL IMPACTS**

- An increase in revenue in the amount of the \$2,219 fine.

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## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 00-2989, FOR THE PURPOSE OF APPROVING THE IMPOSITION OF A MONETARY FINE ON WILLAMETTE RESOURCES, INC. FOR A VIOLATION OF ITS METRO SOLID WASTE FACILITY FRANCHISE

September 21, 2000

Presented by: Terry Petersen,  
Leann Linson

## BRIEF DESCRIPTION OF RESOLUTION

Approval of Resolution No. 00-xxxx will affirm a \$2,219 fine imposed by Metro on Willamette Resources, Inc. (WRI) for exceeding the 50,000 ton annual tonnage limitation stipulated in its Metro Solid Waste Facility Franchise during calendar year 1999. The fine amounts to one dollar for each ton disposed in excess of the 50,000 ton cap. The decision to impose such a fine was contested by WRI but upheld by Mr. Robert Harris, the Regional Hearings Officer in proposed order No. 00-0553.

## EXISTING LAW

*Metro Code Section 5.01.180 authorizes the Executive Officer to investigate an alleged franchise violation and, upon finding that a violation exists, to provide notice to the franchisee that penalties pursuant to Code Section 5.01.200 shall be imposed.*

The Executive Officer made such investigation and, based on data reported to Metro by WRI, found that WRI had violated its franchise by exceeding the 50,000 ton annual disposal cap. Metro notified WRI of the violation and of the imposition of a fine on April 21, 2000.

*Section 4.2 of Franchise No. F-005-98 issued to WRI on December 31, 1998 stipulates that; "The franchisee shall dispose of no more than 50,000 tons of putrescible waste and processing residual, as a combined total, within each calendar year."*

WRI did not dispute the fact that it disposed of 52,219 tons of solid waste during calendar year 1999.

*Metro Code Section 5.01.200 stipulates that each violation of Chapter 5.01 shall be punishable by a fine of not more than \$500. Each day a violation continues constitutes a separate violation.*

WRI continued to dispose of waste from its facility for 19 days after reaching its 50,000 ton cap. Metro imposed a fine of approximately \$117 per day. This amount is the equivalent of \$1 per ton in excess of 50,000 tons.

*Article XI, Section 14 of the Oregon Constitution, the 1992 Metro Charter, ORS Chapter 268, including ORS 268.317, Metro Code Chapter 2.05, and Metro Code § 5.05.035 sets forth the procedure for a contested case hearing.*

WRI requested a contested case hearing to present mitigating circumstances for exceeding the 50,000 ton cap. After due consideration of Metro's reasons for imposition of the fine and WRI's written explanation of the circumstances under which the tonnage cap was exceeded, the Hearings Officer ruled in favor of Metro and upheld a fine in the amount of \$2,219.

*Metro Code Section 2.05.035 stipulates that*

*Within 30 days of a hearing before a hearings officer in a contested ... the hearings officer shall prepare and submit a proposed order together with the record compiled in the hearing, to the council. The proposed order, including Findings of Fact and Conclusions of Law, shall be served upon the parties.*

The Hearings Officer prepared such an order including Findings of Fact and Conclusions of Law. They were served upon the parties and are being submitted to Council as Exhibit A to this resolution.

*...the executive officer shall mail notice to all parties of the date by which written exceptions to the proposed order must be filed... The proposed order and any exceptions received to it shall be forwarded to the council of the Metropolitan Service District for consideration at its next scheduled meeting at least two weeks after the deadline for filing exceptions.*

Such notice was mailed.

*The council may, by majority vote, decide to consider objections received following the deadline established, but must allow at least two weeks between the date the exception is filed and the date the council reviews it. Only parties may file exceptions, and exceptions may address only issues raised in the hearing. Upon approval of the council, parties who have filed written exceptions may present oral argument in support of the exceptions, and other parties shall be given the opportunity to orally rebut exceptions made. Oral argument shall be limited to the specific objections raised in the written exceptions.*

*A party may, in addition to filing written exceptions, file a written request to submit evidence that was not available or offered at the hearing provided for in Code section 2.05.025.*

WRI did not file an exception to the Hearings Officer's proposed Finding of Fact and Conclusions of Law.

## **BACKGROUND**

Metro Code Chapter 5.01 establishes 50,000 tons of annually disposed solid waste as the dividing line between a local transfer station and a regional transfer station, the latter being required to provide additional services such as accepting solid waste from the general public and providing the general public with free recycling drop-off and periodic household hazardous waste collection. In December of 1998, the Forest Grove Transfer Station suspended solid waste deliveries to the Riverbend Landfill and diverted all of its waste to Metro in order to avoid exceeding its cap for the calendar year. In December of 1999, Recycle America monitored its tonnage carefully and reduced its facility throughput in order to stay within its 50,000 ton cap. In contrast, WRI exceeded its cap by 2,219 tons.

Prior to this violation, WRI had an excellent record of compliance. For this reason, the fine imposed was only \$117 per day of violation (equivalent to just \$1 per ton in excess of the cap), far below the \$500 per day fine that the Code allows. WRI submitted a check for the full \$2,219 but contested the fine and the case was referred to a Hearings Officer. The Regional Hearings Officer, based on written testimony from the REM Department and from WRI, decided in Metro's favor. WRI acknowledged that it knowingly and deliberately exceeded the tonnage cap. However, it cited mitigating circumstances. The circumstances cited were that adherence to the 50,000 ton cap restricts efficient operation of the facility and increases costs to its customers, and that the cap is not needed. The facility operator also cited his belief that the cap would soon be removed by the Metro Council, and that closure of the facility during the latter half of December would have been a hardship on the facility's employees. The operator further stated that he intentionally chose not to go through the process of seeking a variance from the cap. The Hearings Officer found in favor of Metro.

## **BUDGET IMPACT**

The budget impact of approval of Resolution No. 00-xxxx is additional revenue in the amount of the \$2,219 fine.

## **OUTSTANDING QUESTIONS**

None

## **EXECUTIVE OFFICER'S RECOMMENDATION**

The Executive Officer recommends approval of Resolution No. 00-xxxx, affirming the Regional Hearings Officer's proposed order No. 00-0553 upholding the imposition upon WRI of a \$2,219 penalty for violation of the 50,000 ton annual disposal cap stipulated in Section 4.3 of its Metro Solid Waste Facility Franchise.