

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE)
CHIEF OPERATING OFFICER TO ISSUE A NON-) RESOLUTION NO. 08-3933
SYSTEM LICENSE TO AGG ENTERPRISES, INC.)
FOR DELIVERY OF SOURCE-SEPARATED PRE-) Introduced by Michael Jordan,
CONSUMER VEGETATIVE FOOD WASTE TO) Chief Operating Officer, with the concurrence
THE NATURE'S NEEDS FACILITY FOR) of David Bragdon, Council President
COMPOSTING)

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

WHEREAS, AGG Enterprises, Inc. has applied for a non-system license to deliver source separated, pre-consumer vegetative food waste from its customers directly to the Nature's Needs composting facility under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control";

WHEREAS, the moratorium on mixed putrescible waste non-system licenses adopted by the Council on February 2, 2006, in Ordinance No. 06-1098B (amending Metro Code Chapters 5.01 and 5.05 and the Regional Solid Waste Management Plan to impose a temporary moratorium until December 31, 2007 on certain new non-putrescible, mixed solid waste material recovery or reload facilities, and certain non-system licenses; and declaring an emergency) and extended by the Council on February 22, 2007, in Ordinance No. 07-1139 (for the purpose of amending Metro Code Chapters 5.01 and 5.05 and the Regional Solid Waste Management Plan to lift a temporary moratorium on certain new non-putrescible mixed waste material recovery or reload facilities and certain non-system licenses) and November 1, 2007, in Ordinance No. 07-1161 (for the purpose of amending Metro Code Chapters 5.01 and 5.05 to extend moratoria on applications for new solid waste transfer stations and putrescible waste non-system licenses until December 31, 2008; and declaring an emergency) does not apply to this application;

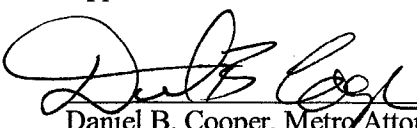
WHEREAS, the non-system license application conforms with the requirements of Chapter 5.05 of the Code; and,

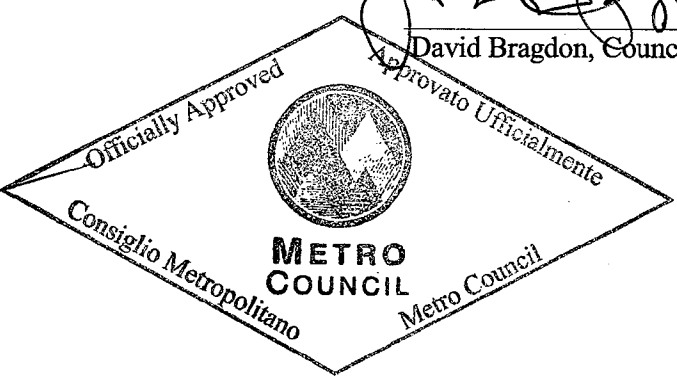
WHEREAS, the Chief Operating Officer has analyzed the application and recommended approval of the applicant's request for a non-system license with the conditions and in the form attached to this resolution as Exhibit A; now therefore,

BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to issue a non-system license to AGG Enterprises, Inc. in a form substantially similar to the license attached as Exhibit A.

ADOPTED by the Metro Council this 3rd day of April, 2008.


David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney



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METRO

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

No. N-114-08

LICENSEE:
AGG Enterprises, Inc. 5555 N Channel Ave, Bldg #3 Portland, OR 97217
CONTACT PERSON:
George Simons Phone: (503) 283-2015 Fax: (503) 283-2070 E-mail: erikaz@aggenterprises.com
MAILING ADDRESS:
AGG Enterprises, Inc. P.O. Box 17163 Portland, OR 97217

ISSUED BY METRO

Michael Jordan, Chief Operating Officer

Date



1	NATURE OF WASTE COVERED BY LICENSE
	Source-separated, pre-consumer vegetative food waste generated by customers of AGG Enterprises, Inc. within the Metro region.
2	CALENDAR YEAR TONNAGE LIMITATION
	Licensee is authorized to deliver to the non-system facility listed in Section 3 of this license up to 15,000 tons per calendar year of the waste described in Section 1 of this license.
3	NON-SYSTEM FACILITY
	<p>The Licensee hereunder may deliver the waste described in Section 1, above, only to the following non-system facility for the purpose of processing and composting:</p> <p style="padding-left: 40px;">Nature's Needs 9570 NW 307th Av. North Plains, OR 97133</p> <p>This license is issued on the condition that the non-system facility listed in this section is authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality that this non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 10 of this license.</p>
4	TERM OF LICENSE
	The term of this license will commence on April 1, 2008 and expire at midnight on December 31, 2009, unless terminated sooner under Section 10 of this license.
5	COVERED LOADS
	The Licensee shall suitable contain and cover, on all sides, all loads of source-separated pre-consumer vegetative food that are delivered under authority of this license to prevent spillage of waste while in transit to the non-system facility listed in Section 3 of this license.



6	MATERIAL MANAGEMENT
	<p>The Licensee is authorized to deliver the waste described in Section 1 of this license to the non-system facility listed in Section 3 under the following conditions:</p> <ul style="list-style-type: none">(a) The non-system facility shall accept all solid waste that is delivered under authority of this license for the sole purpose of processing and composting on site. The licensee shall not dispose of any source-separated recyclable material;(b) The non-system facility shall process and compost all solid waste that is delivered under authority of this license exclusively with the use of “Ag-Bags” or an equivalent encapsulation technology; and(c) The non-system facility shall receive, manage, process, and compost all solid waste that is delivered under authority of this license in accordance with all applicable local, state and federal laws, rules, regulations, ordinances, orders, and permits.

7	REGIONAL SYSTEM FEE AND EXCISE TAX
	<p>The Licensee shall be subject to the following conditions:</p> <ul style="list-style-type: none">(a) Source-separated, pre-consumer vegetative food waste that is delivered under authority of this license and is accepted and composted, in accordance with all applicable regulations, at the non-system facility listed in Section 3 is exempt from Regional System Fees and Excise Tax.(b) If the Licensee delivers waste under this license to the non-system facility but the material does not meet the facility’s acceptance criteria (e.g., too contaminated for processing or composting) or the non-system facility fails to process and compost the material as required as a condition of this license, the Licensee shall pay to Metro an amount equal to the Regional System Fee, as provided in Metro Code Section 5.02.045, for each ton of waste delivered to the non-system facility that is ultimately disposed of at a solid waste disposal facility.(c) If the Licensee delivers waste under this license to the non-system facility but the material does not meet the facility’s acceptance criteria (e.g., too contaminated for processing or composting) or the non-system facility fails to process and compost the material as required as a condition of this license, the Licensee shall pay to Metro an amount equal to the Excise Tax, as provided in Metro Code Section 7.01.020, for each ton of waste delivered to the non-system facility that is ultimately disposed of at a solid waste disposal facility.



8	REPORTING OF ACCIDENTS AND CITATIONS
	Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.
9	RECORD KEEPING AND REPORTING
	<p>(a) The Licensee shall keep and maintain accurate records of the amount of all solid wastes that the Licensee delivers to the non-system facility described in Section 3 of this license. The Licensee shall keep and maintain complete and accurate records of the following for all transactions with the authorized non-system facility:</p> <ul style="list-style-type: none">i. Ticket or weight slip number from the non-system facility;ii. Material category designating the type of material transferred to the non-system facility;iii. Date the load was transferred to the non-system facility;iv. Time the load was transferred to the non-system facility;v. Net weight of the load; andvi. Fee charged by the non-system facility <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall transmit the records required under Section 9(a) above, that covers the preceding month, to Metro's Solid Waste & Recycling Department in an electronic format prescribed by Metro.</p> <p>(c) Licensee shall make all records from which Section 9(a) 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 listed in Section 3, above.</p>
10	ADDITIONAL LICENSE CONDITIONS
	<p>This license shall be subject to the following conditions:</p> <p>(a) The permissive transfer of solid waste to the non-system facility, listed in Section 3, 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.</p>



	<p>(b) This license shall be subject to amendment, modification or termination by Metro's Chief Operating Officer (the "COO") in the event that the COO determines that:</p> <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; (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 listed in Section 3; or (iv) The non-system facility listed in Section 3 fails to manage the waste subject to this license in accordance with the material management requirements described in Section 6. <p>(c) This license shall, in addition to subsections (b)(i) through (iv), above, be subject to amendment, modification, termination, or suspension pursuant to the Metro Code.</p> <p>(d) Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.</p> <p>(e) This license shall terminate upon the execution of a designated facility agreement with the facility listed in Section 3</p> <p>(f) This license authorizes delivery of solid waste to the facility listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.</p>
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11	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>



12	INDEMNIFICATION
	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.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3933 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NON-SYSTEM LICENSE TO AGG ENTERPRISES, INC. FOR DELIVERY OF SOURCE-SEPARATED PRE-CONSUMER VEGETATIVE FOOD WASTE TO THE NATURE'S NEEDS FACILITY FOR COMPOSTING

March 18, 2008

Prepared by: Warren Johnson

BACKGROUND

Description of the Resolution

In December 2004, the Chief Operating Officer issued a non-system license (NSL) to AGG Enterprises, Inc. (AGG). The NSL authorized AGG to deliver a maximum of 15,000 tons per calendar year of source-separated, pre-consumer vegetative food waste to the Nature's Needs facility located at 9570 NW 307th Avenue in North Plains, Oregon. The license commenced on January 1, 2005 and expired on December 31, 2006. On February 25, 2008, AGG submitted to Metro an application for a new NSL to deliver the same type and quantity of waste to the same non-system facility.

Approval of Resolution No. 08-3933 will authorize the Chief Operating Officer to issue a new NSL to AGG to deliver a maximum of 15,000 tons of source-separated, pre-consumer vegetative food waste annually to Nature's Needs. Because Nature's Needs is a composting facility, the waste covered under this proposed NSL will not implicate Metro's obligations under its disposal contract and the waste is exempt from Metro fees and taxes.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed non-system license.

2. Legal Antecedents

Metro Code Section 5.05.035 provides that a waste hauler may transport solid waste generated within Metro to any non-system facility only by obtaining an NSL. Metro Code further provides that applications for non-system licenses for putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council. Under Metro Code Subsection 5.05.035(c), the Council shall consider the following factors when determining whether to approve an NSL application:

- (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 non-system facility identified in this proposed license is a composting facility rather than a landfill and thus does not pose the same potential environmental risk from wastes delivered from prior users. Staff is not aware of any wastes accepted at Nature's Needs that could pose a 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;*

Nature's Needs operates under authority of a franchise granted by Washington County and a composting permit issued by the Oregon Department of Environmental Quality (DEQ). The facility has been the source of odor complaints in the past but the facility is currently in compliance with its DEQ permit and County-issued franchise.

The facility's conditional use permit is currently under review by the Washington County Department of Land Use and Transportation. Washington County is working with Nature's Needs during this review process and the County's final approval of the facility's conditional use permit is pending. To staff's knowledge, Nature's Needs is currently in compliance with all other federal, state and local requirements, rules and regulations.

The owner/operator of Nature's Needs also owns and operates Pacific Land Clearing Company, Inc. (PLC) headquartered at 4044 N. Suttle Road in Portland, Oregon. PLC owns and operates three Metro-licensed solid waste facilities. PLC's compliance history includes several Notices of Violation issued by Metro and the DEQ for its mixed solid waste operations located within the Metro region. These violations, however, are not related to the activities performed at Nature's Needs. Nature's Needs accepts a different and more controlled waste stream and, to staff's knowledge, the facility operates in compliance with all legal requirements despite the issues that have occurred at the PLC facilities located within the region.

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

Nature's Needs receives pre-consumer, vegetative food waste on a paved tipping pad. The vegetative waste is then mixed with ground wood debris to get an optimal carbon-nitrogen ratio. This mixture of materials is then processed with a grinder and loaded into plastic "Ag Bags" for composting. Each Ag Bag is approximately 200 feet long and has a volume capacity of approximately 500 cubic yards. The Ag Bags are fully enclosed and are managed on an impervious surface at the site. During composting, air is forced through the bags with electric fans and the internal temperature of the compost is monitored. Once this initial process is complete, the bags are opened and the compost is allowed to cure in uncovered windrows. The entire process of composting this material takes approximately four to five months to complete. Metro, Washington County, and DEQ staff have deemed these operational practices and management controls to be adequate.

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

The waste subject to the proposed license is currently being delivered to Nature's Needs for composting rather than disposed at a general-purpose landfill. Therefore, approval of the proposed NSL is unlikely to impact the region's recycling and waste reduction efforts.

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

The waste subject to the proposed license will be delivered to a composting facility rather than disposed at a general-purpose landfill. Thus, approval of the requested license does not implicate Metro's disposal contract or any other of its 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 applicant, AGG, is a solid waste hauler. Since 2003, AGG has received seven written warnings and citations from Metro - six for uncovered loads and one for illegal dumping. AGG's citations and warnings for uncovered loads were all for loads of non-putrescible materials.

In June 2007, Metro issued a citation to AGG for illegal dumping. The citation resulted from an incident in which a substantial amount of waste fell from an uncovered AGG load while the vehicle was in transit to Metro Central Transfer Station. In this instance, the waste fell from the vehicle onto a public roadway and was subsequently cleaned up by transfer station staff. Staff believes that this was an unusual incident that is not likely to recur.

Staff does not believe that the applicant is likely to haul source-separated food waste in uncovered boxes. To address this potential concern, a provision has been included in the proposed license that specifically requires loads to be covered while in transit. Staff does not believe that AGG's compliance record with regard to Metro regulations is justification to deny this NSL.

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

On February 2, 2006, the Metro Council adopted Ordinance No. 06-1098B that amended Metro Code Section 5.05.035 to place a temporary moratorium on the acceptance of applications for certain non-system licenses, including a moratorium on non-system licenses for mixed putrescible waste. Ordinance Nos. 07-1139 and 07-1161 extended the moratorium on applications for mixed putrescible waste non-system licenses. The purpose of the moratorium is to abate further changes to the region's solid waste transfer and disposal system while the Solid Waste and Recycling Department completes the System Improvement Planning project. The use of the term "mixed putrescible waste," as used in Metro Code Section 5.05.035(h), excludes certain "putrescible" waste streams such as source-separated, pre-consumer vegetative food waste that has been separated by the waste generator for the purpose of recycling.

The solid waste subject to the proposed NSL is comprised entirely of source-separated, pre-consumer, vegetative food waste. This is a homogenous waste stream that consists of material that was source-separated for the purpose of composting. Because the waste covered by this NSL application is source-separated recyclable material and is not comprised of mixed putrescible waste intended for disposal, the material is not subject to the NSL moratorium set forth in Metro Code Section 5.05.035(h).

Conclusion

The Chief Operating Officer finds that the NSL application satisfies the requirements of Metro Code Section 5.05.035, License to Use Non-System Facility.

3. Anticipated Effects

The effect of Resolution No. 08-3933 will be to issue an NSL for delivery of up to 15,000 tons per calendar year of source-separated, pre-consumer vegetative food waste to the Nature's Needs facility.

4. Budget Impacts

The waste delivered under authority of the proposed NSL is exempt from regional system fee and excise tax. Therefore, the budget impact, to the extent that it is discernable for 15,000 tons annually, has already been factored into the budget.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 08-3933, and issuance of an NSL substantially similar to the NSL attached to the Resolution as Exhibit A.

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