

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO) RESOLUTION NO. 08-3984
ISSUE A RENEWED NON-SYSTEM LICENSE JOINTLY)
TO WILLAMETTE RESOURCES, INC. AND ALLIED) Introduced by Michael Jordan,
WASTE OF CLACKAMAS AND WASHINGTON) Chief Operating Officer, with the
COUNTIES FOR DELIVERY OF PUTRESCIBLE WASTE) concurrence of David Bragdon,
TO THE COVANTA WASTE-TO-ENERGY FACILITY) Council President

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

WHEREAS, Willamette Resources, Inc. (WRI) and Allied Waste of Clackamas and Washington Counties (Allied) hold a Metro Solid Waste Facility Non-System License No. N-005-07(2), which expires on June 30, 2009; and

WHEREAS, WRI and Allied have filed a completed application seeking renewal of the non-system license to deliver putrescible waste to the Covanta Waste-to-Energy Facility for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control"; and

WHEREAS, the Metro Code Section 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; and

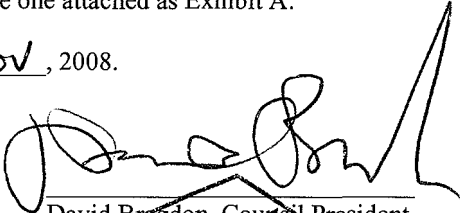
WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors under the Metro Code; and

WHEREAS, the Chief Operating Officer recommends that the non-system license be renewed together with specific conditions as provided in Exhibit A to this Ordinance; now therefore,

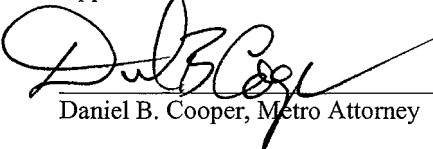
THE METRO COUNCIL ORDAINS AS FOLLOWS:

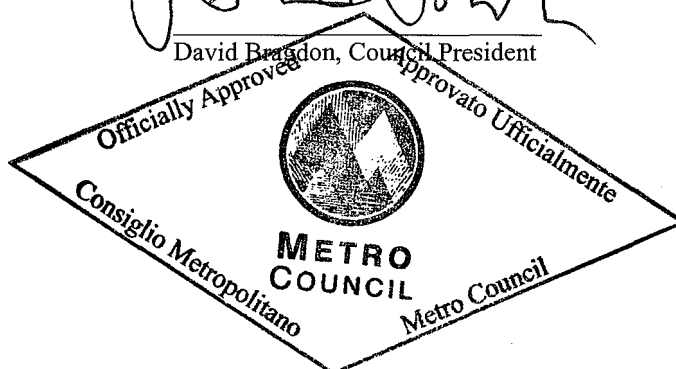
1. The non-system license renewal application of WRI and Allied is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Ordinance.
2. The Chief Operating Officer is authorized to issue to WRI and Allied a renewed Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this 6 day of Nov, 2008.


David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney



Resolution No. 08-3984

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METRO

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

No. N-005-08(2)

LICENSEE:

Willamette Resources, Inc.
10295 SW Ridder Road
Wilsonville, OR 97070

Allied Waste of Clackamas
and Washington Counties
10295 SW Ridder Road
Wilsonville, OR 97070

CONTACT PERSON:

	Todd Irvine	Ray Phelps	Frank Lonergan
Phone:	(503) 570-0625	(503) 570-0625	(503) 570-0625
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E-Mail:	todd.irvine@awin.com	ray.phelps@awin.com	frank.lonergan@awin.com

MAILING ADDRESS:

Willamette Resources, Inc.
10295 SW Ridder Road
Wilsonville, OR 97070

Allied Waste of Clackamas and
Washington Counties
10295 SW Ridder Road
Wilsonville, OR 97070

ISSUED BY METRO:

Michael Jordan, Chief Operating Officer

Date



1	NATURE OF WASTE COVERED BY LICENSE
	<p>(a) Putrescible solid waste generated within the Metro boundary and received at Willamette Resources, Inc. in accordance with Metro Solid Waste Facility Franchise No. F-005-08; and</p> <p>(b) Confidential records of customers generated within the Metro boundary and collected by Allied Waste of Clackamas and Washington Counties and delivered directly to the non-system facility described in Section 3 of this license.</p>
2	CALENDAR YEAR TONNAGE LIMITATION
	<p>Licensee is jointly authorized to deliver to the non-system facility described in Section 3 of this license up to 5,500 tons per calendar year of the waste described in Section 1 of this license.</p>
3	NON-SYSTEM FACILITY
	<p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 only to the following non-system facility:</p> <p style="padding-left: 40px;">Covanta Waste-to-Energy Facility 4850 Brooklake Road, NE Brooks, OR 97305</p> <p>This license is issued on condition that the non-system facility named 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 7 of this license.</p>
4	TERM OF LICENSE
	<p>The term of this license will commence on January 1, 2009 and expire at midnight on December 31, 2010, unless terminated sooner under Section 7 of this license.</p>



5	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.

6	RECORD KEEPING AND REPORTING
	<p>(a) The Licensee shall keep and maintain accurate records of the amount of all solid waste 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:</p> <ul style="list-style-type: none">i. Transmit the records required under Section 6(a) above to Metro in an electronic format prescribed by Metro;ii. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; andiii. Remit to Metro the requisite Regional System Fees and Excise Tax in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes. <p>(c) Licensee shall make all records from which Sections 6(a) and 6(b) 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) business 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>



7	ADDITIONAL LICENSE CONDITIONS
	<p>This license shall be subject to the following conditions:</p> <ul style="list-style-type: none">(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.(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:<ul style="list-style-type: none">i. There has been sufficient change in any circumstances under which Metro issued 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, Inc.; oriii. 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.(c) This license shall, in addition to subsections (b)(i) through (b)(iii), above, be subject to amendment, modification, suspension, or termination pursuant to the Metro Code.(d) The Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.(e) This license shall terminate upon the execution of a designated facility agreement with the facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1 of this license.(f) This license authorizes the 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.

8	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</p>



	as if specifically set forth herein.
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9	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. 08-3984 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE JOINTLY TO WILLAMETTE RESOURCES, INC. AND ALLIED WASTE OF CLACKAMAS AND WASHINGTON COUNTIES FOR DELIVERY OF PUTRESCIBLE WASTE TO THE COVANTA WASTE-TO-ENERGY FACILITY

October 17, 2008

Prepared by: Warren Johnson

BACKGROUND

Description of the Resolution

In May 2007, Willamette Resources, Inc. (WRI) and Allied Waste of Clackamas and Washington Counties (Allied) were jointly granted a non-system license (NSL) to deliver a maximum of 5,500 tons per fiscal year of solid waste, consisting primarily of putrescible waste, to the Covanta Waste-to-Energy Facility (Covanta) located in Brooks, Oregon. The license commenced on July 1, 2007 and will expire on June 30, 2009.

Although the existing NSL (No. N-005-07(2)) is set to expire in June 2009, Metro staff requested that the applicants seek the early renewal of this license. The purpose of this early renewal is to place the term of the license on a calendar year basis and align its expiration date with that of all the other NSLs that authorize the delivery of putrescible solid waste to non-system facilities. Coordinating these expiration dates will allow the Metro Council to better consider options for allocating putrescible solid waste generated inside the Metro region and to act on all non-system license renewal applications concurrently. On September 3, 2008, WRI submitted to Metro an application to renew its NSL to deliver waste to Covanta.

Approval of Resolution No. 08-3984 will authorize the Chief Operating Officer to issue a renewed NSL to WRI and Allied to jointly deliver a maximum of 5,500 tons per calendar year of putrescible solid waste and confidential records to Covanta for disposal. The requested disposal site is a waste-to-energy facility rather than a general-purpose landfill and thus granting this proposed NSL will not implicate Metro's obligations under its disposal contract.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed NSL.

2. Legal Antecedents

Section 5.05.035(c) of the Metro Code provides that, when determining whether or not to approve an NSL application, the Metro 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 proposed disposal site is a waste-to-energy facility rather than a landfill and thus does not pose the same potential environmental risk from waste delivered from prior users. A baghouse system minimizes emissions to the air and ash is disposed at a monofill that is permitted by the Oregon Department of Environmental Quality (DEQ).

- (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;*

Covanta is permitted by the DEQ. In October 2008, Metro staff received e-mail confirmation from Hu Gao, Project Manager with the DEQ's Western Region Office, and Jeff Bickford, Senior Environmental Engineer with the Marion County Public Works Department, that Covanta is in compliance with federal, state and local requirements and 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;*

Covanta screens incoming waste for hazardous, radioactive, and other unacceptable materials and has a state-of-the-art emissions control system to minimize the risk of future environmental contamination.

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

The waste subject to the proposed license is putrescible solid waste, which has little potential for recovery, and confidential records that require special management. Approval of this NSL renewal is therefore 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 not be disposed at a general-purpose landfill. Thus, approval of the proposed license will not conflict with Metro's disposal contract. In addition, Metro also has a contract with Marion County (the "County") for the delivery of solid waste from Metro's transfer stations to Covanta. Renewal of this NSL is not inconsistent with any of these 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*

Within the last five years, WRI has received one Notice of Violation for exceeding its tonnage limitation in an NSL authorizing the delivery of waste to the Coffin Butte Landfill. On August 31, 2007, Metro issued Notice of Violation No. NOV-182-07 to WRI for violating the calendar year tonnage limitation stipulated in NSL No. N-005-015(3). WRI had exceeded its 45,000-ton limitation by 342 tons. There was no penalty associated with this minor tonnage cap violation. Metro afforded WRI an opportunity to abate the violation by submitting a letter describing the additional procedures that it would implement to prevent a recurrence of the violation. WRI submitted the letter as requested and, subsequently, the violation was deemed abated.

WRI is currently in compliance with its Metro-issued NSLs and Solid Waste Facility Franchise. With the exception of the above referenced NSL violation, WRI and Allied have had no violations related to public

health, safety or environmental regulations. Additionally, WRI and Allied have not had any significant compliance issues regarding other Metro requirements in the last five years.

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

Covanta is the primary disposal site for solid waste generated within the County. At certain times of the year the facility requires more solid waste than is generated within the County in order to operate efficiently. During these times, the County supports the Metro-authorized flow of solid waste to Covanta.

The WRI currently operates under authority of Metro Solid Waste Facility Franchise No. F-005-03. On September 25, 2008, the Metro Council adopted Ordinance No. 08-1194 authorizing the Chief Operating Officer to issue a renewed Solid Waste Facility Franchise (No. F-005-08) to WRI. The renewed franchise, which becomes effective on January 1, 2009, stipulates that WRI shall not accept more than 70,000 tons of putrescible waste originating from inside the Metro region within each calendar year. The issuance of the proposed NSL authorizing the delivery of up to 5,500 tons of solid waste to Covanta does not increase the total tonnage that WRI is authorized to accept under the terms of the renewed franchise.

In addition to the above, WRI currently holds NSL No. N-005-05(3) authorizing the annual delivery of up to 45,000 tons per calendar year of solid waste to the Coffin Butte Landfill and NSL No. N-005-06 authorizing the annual delivery of up to 115,000 tons per calendar year of solid waste to the Riverbend Landfill. These two NSLs are set to expire on December 31, 2008.

The moratorium on applications for new NSLs for mixed putrescible waste does not apply to this license renewal application.

3. Anticipated Effects

The effect of Resolution No. 08-3984 will be to issue a two-year NSL authorizing WRI and Allied to jointly deliver up to 5,500 tons per calendar year of putrescible solid waste and confidential records to Covanta for disposal. This is the same tonnage limit and waste type that is authorized under the applicants' existing NSL (No. N-005-07(2)).

4. Budget Impacts

Covanta is not a general-purpose landfill. As such, this proposed NSL will not implicate Metro's obligations under its disposal contract. The application under consideration is the renewal of an existing NSL (No. N-005-07(2)). Therefore, the financial impact has already been factored into the budget.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 08-3984, finding that the proposed license satisfies the requirements of Metro Code Section 5.05.035, and issuance of an NSL substantially similar to the NSL attached to the resolution as Exhibit A.

WJ:bjl
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