

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER) RESOLUTION NO. 08-3981
TO ISSUE A RENEWED NON-SYSTEM LICENSE TO)
NEWBERG GARBAGE SERVICE, INC. FOR) Introduced by Michael Jordan,
DELIVERY OF PUTRESCIBLE WASTE TO THE) Chief Operating Officer, with the
NEWBERG TRANSFER AND RECYCLING CENTER) concurrence of David Bragdon,
FOR THE PURPOSE OF TRANSFER TO THE) Council President
RIVERBEND LANDFILL FOR DISPOSAL

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, Newberg Garbage Service, Inc. ("NGS") holds Metro Solid Waste Facility Non-System License No. N-113-08, which expires on December 31, 2008; and

WHEREAS, NGS has filed a completed application seeking renewal of the non-system license to deliver putrescible waste to the Newberg Transfer and Recycling Center for the purpose of transfer to the Riverbend Landfill for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control"; and

WHEREAS, the Metro Code Chapter 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

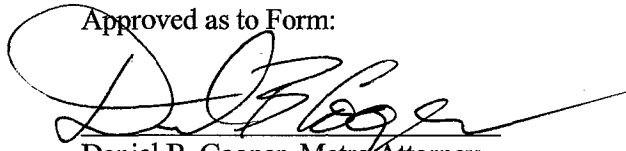
WHEREAS, the Chief Operating Officer recommends that the non-system license be renewed together with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

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

ADOPTED by the Metro Council this 4th day of December, 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-113-09

LICENSEE:
Newberg Garbage Service, Inc. 2904 Wynooski Road Newberg, OR 97132
CONTACT PERSON:
Merlin LaJoie Phone: (503) 538-1388 Fax: (503) 538-1383 E-mail: newberggarbage@hotmail.com
MAILING ADDRESS:
Newberg Garbage Service, Inc. P.O. Box 1000 Newberg, OR 97132

ISSUED BY METRO:

Michael Jordan, Chief Operating Officer

Date



1	NATURE OF WASTE COVERED BY LICENSE
	Putrescible solid waste that is generated by residential and commercial customers within the Metro region and collected by Newberg Garbage Service, Inc.
2	CALENDAR YEAR TONNAGE LIMITATION
	Licensee is authorized to deliver to the non-system facility listed in Section 3 of this license up to 160 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 transfer to the Riverbend Landfill for disposal:</p> <p style="text-align: center;">Newberg Transfer & Recycling Center 2904 Wynooski Road Newberg, OR 97132</p> <p>This license is issued on condition that the non-system facility and disposal site named in this section are authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality or local regulatory authority that the non-system facility or disposal site are not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7 of this license.</p>
4	TERM OF LICENSE
	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.
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 waste, described above in Section 1, that it delivers to the non-system facility described in Section 3 of this license. The Licensee shall keep and report such records in a manner that is approved by Metro.</p> <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. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month;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; andiii. Report, by e-mail, the tonnage for the preceding month to both Metro (submitted to Janet Tolopka at e-mail address janet.tolopka@oregonmetro.gov) and the Riverbend Landfill (Licensee shall contact the Landfill for the correct name and e-mail address), so that the amount of such tonnage can be incorporated into the formula for proper calculation of Metro's disposal rate under its contract with Oregon Waste Systems, Inc. Failure to provide this information accurately, consistently, and in a timely manner may result in the termination of this license. <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> <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;



	<ul style="list-style-type: none"> ii. The provisions of this license are actually or potentially in conflict with any provision in Metro’s disposal contract with Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, Inc.; 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. <p>(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.</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 that authorizes the facility to accept the waste described in Section 1 of this license.</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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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 as if specifically set forth herein.</p>

9	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. 08-3981 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO NEWBERG GARBAGE SERVICE, INC. FOR DELIVERY OF PUTRESCIBLE WASTE TO THE NEWBERG TRANSFER AND RECYCLING CENTER FOR THE PURPOSE OF TRANSFER TO THE RIVERBEND LANDFILL FOR DISPOSAL

November 14, 2008

Prepared by: Warren Johnson

BACKGROUND

On November 20, 2008, the Metro Council will be considering the adoption of Ordinance No. 08-1197 for the purpose of amending Metro Code Chapter 5.05 to include Riverbend Landfill (RLF) on the list of designated facilities. In addition, the Yamhill County planning commission will be holding a public hearing on a proposed expansion of the RLF on that same date. The outcomes of the above referenced meetings were not known at the time this staff report was prepared but will likely inform the decision on this resolution. This report was filed with the Metro Council prior to November 20, 2008.

Description of the Resolution

In July 2008, Newberg Garbage Service, Inc. (NGS) was granted a six-month non-system license (NSL) to deliver a maximum of 160 tons of residential and commercial solid waste, including putrescible waste, collected from routes located inside the Metro region to the Newberg Transfer and Recycling Center (NTRC), an affiliated facility co-located with NGS. The license commenced on July 1, 2008 and will expire on December 31, 2008. The Metro Council granted NGS a six-month NSL in order to place its term 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. The applicant delivered 123 tons of solid waste to the NTRC under authority of this existing NSL during calendar year 2007. On August 26, 2008, NGS submitted to Metro an application to renew this NSL.

Approval of Resolution No. 08-3981 will authorize the Chief Operating Officer to issue a renewed NSL to NGS to deliver a maximum of 160 tons per calendar year of putrescible waste to the NTRC for the purpose of transfer to the RLF for disposal. The RLF is a Waste Management, Inc. facility and thus granting the proposed NSL does not implicate Metro's obligations under its disposal contract.

The proposed NSL is a renewal of an existing license. The NSL moratorium set forth in Metro Code Section 5.05.035(h) does not apply.

ANALYSIS/INFORMATION

1. Known Opposition

Although the waste subject to the proposed NSL will be delivered to the NTRC, ultimate disposal of such waste will be at the RLF. There is known public opposition to allowing waste generated from within the Metro region to be delivered to RLF. In particular, RLF has applied to Yamhill County for a permit to expand the landfill by 87 acres. Waste Management, Inc. indicates that such an expansion would extend the useful life of the landfill from the current six years to 20 – 30 more years. Metro staff is aware that the owner of a property bordering the landfill is a leading opponent of the expansion and is seeking to mobilize others to oppose the landfill expansion by organizing under the title of the "Stop the Dump

Expansion Committee.” The Metro Council decision on Ordinance No. 08-1197, to amend Metro Code Chapter 5.05 to include RLF on the list of designated facilities, will inform the decision on this resolution.

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 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 transfer station rather than a landfill and thus does not pose the same potential environmental risk from wastes delivered from prior users. NTRC began operations in 1985. The site was previously a filbert orchard. Staff is not aware of any wastes accepted at NTRC that could pose a risk of environmental contamination.

Ultimate disposal of the waste covered under the proposed NSL will be at the RLF. The RLF first came into use during the mid-eighties. When RLF 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 environmental controls required by the Oregon Department of Environmental Quality (DEQ). The landfill deliberately accepted asbestos containing materials earlier in its operation but has not done so for the past ten years. In 2006, RLF inadvertently accepted and landfilled a load of bagged subflooring and tile containing asbestos in violation of its DEQ permit. Other than that, Metro staff has not found any evidence that the landfill has accepted waste that it was not permitted by DEQ to accept. It appears that the future risk of environmental contamination is likely to be minimal, provided that the synthetic liner system remains intact, leachate is collected and properly treated, groundwater is monitored for contamination migration, and the DEQ is diligent in its oversight of the facility.

- (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;*

NTRC is regulated by both the DEQ and Yamhill County and NGS is regulated by the City of Sherwood. To staff’s knowledge, NGS and NTRC have good compliance records with all applicable requirements and there are no pending enforcement actions associated with either operation.

The RLF is permitted by the DEQ. Metro staff has received confirmation that the DEQ considers the RLF to be a well-run facility that is in compliance with federal and state requirements. In the past five years RLF has received one notice of non-compliance from the DEQ for elevated levels of suspended solids in stormwater discharge.

The RLF is also reported to have a good compliance record with local (Yamhill County and the City of McMinnville) public health, safety and environmental rules and regulations. Property owners neighboring RLF have alleged to Metro that certain portions of the landfill are currently in violation of Yamhill County’s flood plain elevation requirements. However, Yamhill County has neither confirmed this allegation nor notified Metro of any pending compliance issues with regard to the RLF. A fuller discussion of the compliance record related to the RLF is provided in the staff report associated with Ordinance No. 08-1197.

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

Metro and DEQ staff considers the operational practices and management controls in place at NTRC to be adequate and consistent with other similar facilities.

The RLF 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. In addition, the landfill has a 14-acre poplar plantation irrigated with leachate from the landfill. The uptake potential of the trees is estimated to exceed the amount of leachate. The landfill captures methane gas that is presently flared off. However, Waste Management, Inc. plans to install generators that will utilize landfill gas to supply electric power to the McMinnville PUD grid. Electricity generated in this manner is considered to be “green power.”

There has been an issue with litter blowing from the landfill into trees that border the neighboring property. The landfill has recently installed a taller litter fence in order to mitigate this problem. The landfill also mistakenly sank a ground water monitoring well on the neighbor’s property but has offered to mitigate that situation.

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

The applicant has applied to deliver 160 tons annually of putrescible waste from its residential and commercial collection routes within the City of Sherwood to NTRC. The proposed license covers only putrescible waste, which has little recovery or recycling potential.

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

The waste subject to the proposed license will be delivered to NTRC for the purpose of transfer to the RLF for disposal. The RLF is a Waste Management, Inc. facility. Thus, under Metro’s existing disposal agreement that has been in force since 1999, waste delivered under the proposed license is included as waste delivered to Metro’s contract operator for purposes of Metro’s disposal contract. Approval of the requested license will not conflict with 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 operates both a waste hauling company, which has previously operated entirely outside the Metro boundary, and an out-of-region transfer station. The applicant has a good record regarding compliance with Metro regulations.

The applicant is regulated by both the DEQ and Yamhill County (for the transfer station) and by the City of Sherwood (for the hauling company). To staff’s knowledge, the applicant has a good compliance record with all applicable federal, state, and local requirements.

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

The majority of the applicant's hauling accounts lie outside the Metro region. In order to route its trucks efficiently, its trucks must cross the Metro jurisdictional boundary and co-mingle in-Metro waste with out-of-Metro waste. In order to determine the appropriate fees and taxes owed to Metro, NGS and Metro have mutually agreed to an estimation method whereby the NGS multiplies the number of in-Metro cans and carts by the average weight of the same size containers as determined by quarterly weight studies used to allocate disposal costs between other jurisdictions where NGS operates. Staff finds this to be a reasonable and verifiable procedure.

In addition, the NSL moratorium set forth in Metro Code Section 5.05.035(h) does not apply to the renewal of this existing license.

3. Anticipated Effects

The effect of Resolution No. 08-3981 will be to issue a two-year NSL to NGS to deliver up to 160 tons per calendar year of putrescible waste to the NTRC for the purpose of transfer to the RLF for disposal.

4. Budget Impacts

The regional system fee and excise tax will continue to be collected on in-Metro waste delivered to NTRC under authority of the proposed NSL. The application under consideration is the renewal of an existing NSL (No. N-113-08). Therefore, the financial impact has already been factored into the budget.

As stipulated in the existing NSL, the proposed license requires the licensee to send a monthly e-mail to both Metro and RLF to report the amount of in-Metro tonnage delivered to the landfill during the previous month. This monthly report is required so that the amount of such tonnage can be incorporated into the formula for proper calculation of Metro's disposal rate under its contract with Oregon Waste Systems, Inc. This license requirement is intended to assist the landfill distinguish the difference between the in-Metro tonnage it receives from the licensee (via the NTRC) from that of the out-of-Metro waste it receives from the same facility.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 08-3981, finding that the proposed license satisfies the requirements of Metro Code Section 5.05.035, and renewal of an NSL substantially similar to the proposed NSL attached to the resolution as Exhibit A.

WJ:bjl
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