

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER	)	RESOLUTION NO. 08-3986
TO ISSUE A RENEWED NON-SYSTEM LICENSE TO	)	
ARROW SANITARY SERVICE, INC. FOR	)	Introduced by Michael Jordan,
DELIVERY OF PUTRESCIBLE WASTE TO THE	)	Chief Operating Officer, with the
WEST VAN MATERIALS RECOVERY CENTER	)	concurrence of David Bragdon,
AND THE CENTRAL TRANSFER AND RECYCLING	)	Council President
CENTER	)	

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, Arrow Sanitary Service, Inc. ("Arrow") holds Metro Solid Waste Facility Non-System License No. N-029-05, which expires on December 31, 2008; and

WHEREAS, Arrow has filed a completed application seeking renewal of the non-system license to deliver putrescible waste to the West Van Materials Recovery Center and the Central Transfer and Recycling Center 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

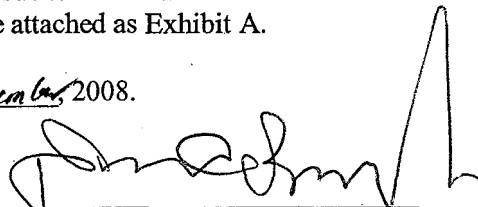
WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors under the Metro Code; and

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 Arrow 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 Arrow a renewed Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this 11<sup>th</sup> day of December, 2008.

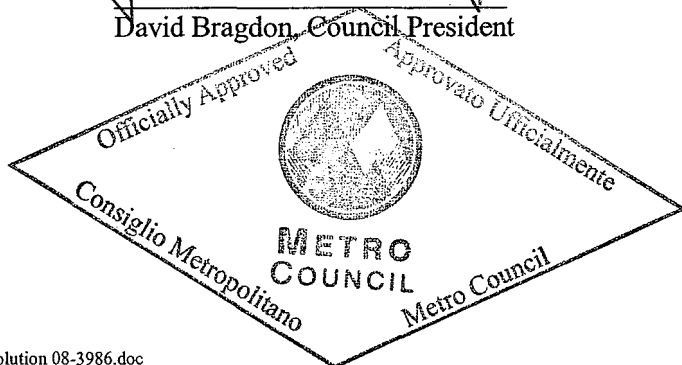


David Bragdon, Council President

Approved as to Form:



Daniel B. Cooper, Metro Attorney



Resolution No. 08-3986

WJ:bjl

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600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
TEL 503 797 1650 | FAX 503 813 7544



**METRO**

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

**No. N-029-09**

<b>LICENSEE:</b>	
Arrow Sanitary Service, Inc. 12820 NE Marx Street Portland, OR 97230	
<b>CONTACT PERSON:</b>	
Phone:	Dean Large (360) 695-4858      Jason Hudson (360) 695-4858
Fax:	(360) 695-5091      (360) 695-5091
E-Mail:	<a href="mailto:deanl@wcnx.org">deanl@wcnx.org</a> <a href="mailto:jasonh@wcnx.org">jasonh@wcnx.org</a>
<b>MAILING ADDRESS:</b>	
Arrow Sanitary Service, Inc. PO Box 61726 Vancouver, WA 98666	

**ISSUED BY METRO:**

\_\_\_\_\_  
Michael Jordan, Chief Operating Officer

\_\_\_\_\_  
Date



<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Putrescible solid waste that is generated by residential and commercial customers within the Metro region and collected by Arrow Sanitary Service, Inc.

<b>2</b>	<b>CALENDAR YEAR AND QUARTERLY TONNAGE LIMITATIONS</b>
	<p>Licensee is authorized to deliver to the non-system facilities described in Section 3 of this license up to 33,020 tons per calendar year of the waste described in Section 1 of this license as follows:</p> <ul style="list-style-type: none"><li>(a) For the first and second quarters, beginning January 1, 2009, through June 30, 2009, not more than 16,510 tons;</li><li>(b) For the third quarter, beginning July 1, 2009, through September 30, 2009, as determined by Metro's Chief Operating Officer ("COO") and included in an amendment to this non-system license issued by the COO no later than June 15, 2009; and</li><li>(c) For the fourth quarter, beginning October 1, 2009, through December 31, 2009, as determined by the COO and included in an amendment to this non-system license issued by the COO no later than September 15, 2009.</li></ul>

<b>3</b>	<b>NON-SYSTEM FACILITIES</b>
	<p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 to the following non-system facilities:</p> <p style="margin-left: 40px;">West Van Materials Recovery Center 6601 NW Old Lower River Road Vancouver, WA 98660</p> <p style="margin-left: 40px;">Central Transfer and Recycling Center 11034 NE 117<sup>th</sup> Avenue Vancouver, WA 98661</p> <p>This license is issued on condition that the non-system facilities named in this section are authorized to accept the type of waste described in Section 1. If Metro receives notice from Clark County or other appropriate regulatory authority that these non-system facilities are not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7 of this license.</p>



<b>4</b>	<b>TERM OF LICENSE</b>
	The term of this license will commence on January 1, 2009 and expire at midnight on December 31, 2009, unless terminated sooner under Section 7 of this license.
<b>5</b>	<b>REPORTING OF ACCIDENTS AND CITATIONS</b>
	Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.
<b>6</b>	<b>Record Keeping and Reporting</b>
	<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 facilities 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 facilities:</p> <ul style="list-style-type: none"><li>i. Ticket or weight slip number from the non-system facility;</li><li>ii. Material category designating the type of material transferred to the non-system facility;</li><li>iii. Date the load was transferred to the non-system facility;</li><li>iv. Time the load was transferred to the non-system facility;</li><li>v. Net weight of the load; and</li><li>vi. Fee charged by the non-system facility</li></ul> <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"><li>i. Transmit the records required under Section 6(a) above to Metro in an electronic format prescribed by Metro;</li><li>ii. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; and</li><li>iii. 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.</li></ul> <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)</p>



	<p>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 facilities named in Section 3, above.</p> <p>(d) Metro may require the Licensee to report the information required by this Section on a weekly or daily basis.</p>
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<b>7</b>	<b>ADDITIONAL LICENSE CONDITIONS</b>
	<p>This license shall be subject to the following conditions:</p> <ul style="list-style-type: none"> <li>(a) The permissive transfer of solid waste to the non-system facilities, 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.</li> <li>(b) In addition to the amendments by the COO authorized by Section 2 of this license, this license shall be subject to amendment, modification, or termination by the COO in the event that the COO determines that:       <ul style="list-style-type: none"> <li>i. There has been sufficient change in any circumstances under which Metro issued this license;</li> <li>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</li> <li>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 facilities listed in Section 3.</li> </ul> </li> <li>(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.</li> <li>(d) The Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.</li> <li>(e) This license shall terminate upon the execution of designated facility agreements with the facilities listed in Section 3 that authorizes the facilities to accept the waste described in Section 1 of this license.</li> <li>(f) This license authorizes the delivery of solid waste to the facilities 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.</li> <li>(g) The COO may direct the Licensee’s waste flow under this non-system license to Metro Central Transfer Station or Metro South Transfer Station</li> </ul>



	<p>with a minimum of 24 hours' written notice. Any redirection of the waste flow by the COO is effective immediately.</p> <p>(h) If the Licensee exceeds the calendar year or quarterly tonnage limitations set forth in Section 2 of this license, each ton by which the Licensee exceeds the limitations constitutes a separate violation subject to a penalty of up to \$500.</p>
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<b>8</b>	<b>COMPLIANCE WITH LAW</b>
	<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>

<b>9</b>	<b>INDEMNIFICATION</b>
	<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. 08-3986 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO ARROW SANITARY SERVICE, INC. FOR DELIVERY OF PUTRESCIBLE WASTE TO THE WEST VAN MATERIALS RECOVERY CENTER AND THE CENTRAL TRANSFER AND RECYCLING CENTER

November 25, 2008

Prepared by: Warren Johnson

Approval of Resolution No. 08-3986 will authorize the Chief Operating Officer (COO) to issue a one-year non-system license (NSL), substantially similar to the proposed NSL attached to this resolution as Exhibit A, to Arrow Sanitary Service, Inc. (Arrow) authorizing the delivery of up to 33,020 tons of putrescible waste to the West Van Materials Recovery Center (WVAN) and the Central Transfer and Recycling Center (CTRC) during calendar year 2009. The applicant (Arrow), the destination facilities (WVAN and CTRC), as well as the ultimate disposal site (Finley Buttes Landfill) are all owned by Waste Connections, Inc.

### 1. INTRODUCTION

#### A. Background

##### (1) Overview

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver 90 percent of the region's putrescible waste to landfills owned by Waste Management. NSLs allow Metro to monitor and guide waste flows by direct intervention with licensees. This provides for a high level of control and fast response to changes in conditions. Resolution No. 08-3986 would grant an NSL to Arrow to deliver Metro-area putrescible waste to facilities owned by Waste Connections, Inc (WCI). That is, this NSL controls a portion of the ten percent of uncommitted waste not guaranteed to Waste Management. Metro Council is scheduled to consider four such NSL resolutions controlling the uncommitted ten percent. In addition to this action for Arrow, Metro Council will consider resolutions for American Sanitary Service, Inc., Crown Point Refuse, Inc., and Willamette Resources, Inc.

Two important conditions have changed since Metro last completed a comprehensive round of issuing putrescible waste NSLs in 2005:

- Supreme Court clarifies local authority. In April 2007, the United States Supreme Court clarified local flow control authority. The Court ruled that a local government *may direct waste to its own facilities* without running afoul of the Commerce Clause.<sup>1</sup>
- Tonnage is down. The shrinking amount of tonnage in the current economic environment means that — for the first time — Metro's projection of the uncommitted ten percent is less than the tonnage that the NSL applicants have requested, in total. Accordingly, waste must be allocated among the applicants; and Metro must pay even closer attention to flows under these NSLs in the event that tonnage shrinks further.

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<sup>1</sup>United Haulers Ass'n v. Oneida-Herkimer Solid Waste Mgmt. Auth., 127 S. Ct. 1786, 1790 (2007) (upholding flow control ordinances because regulations do not discriminate against interstate commerce and any incidental burden on interstate commerce does not outweigh the benefits conferred on the citizens)

To jointly manage these two changes, Metro staff recommends that the terms and conditions of the four proposed NSLs differ from historical practice in the following ways:

- To manage the flow guarantee: (a) grant one-year (not two-year) licenses; (b) release the tonnage in allotments over the year, beginning with the first six months, followed by quarterly allotments as warranted by conditions. Details of this process are described in subsection (2) below, and in Section 1C of this staff report.
- To plan for the future. If Metro Council concurs, staff will identify and evaluate Metro's options under the new legal environment during 2009. This would include a review of the public policies, costs and benefits of allocating the uncommitted ten percent to non-Waste Management landfills. If the current policy is affirmed, then Metro would develop clear and objective procedures for reserving tonnage, allocating tonnage, and determining need and priority of allocation. These recommendations are expanded in the next section of this staff report.

(2) Response to Changed Conditions: Design of the 2009 NSLs

In recognition of the issues described above, Metro staff has applied a more detailed and better documented approach for evaluating applications and determining tonnage authorizations for NSLs. These changes are designed to help Metro manage the flow guarantee while tonnage remains low and uncertain.

Initially, during the current NSL renewal period for 2009, staff recommends that the Metro Council grant each of these four applicants a one-year NSL authorizing a maximum tonnage limit for the year. The tonnage limit for each of these proposed NSLs will be a share of the tonnage that is projected to be available for allocation during calendar year 2009. A description of the methodology used for this tonnage allocation is provided below in Section 1A(3).

For 2009, Metro would grant up to 9.5 percent of the available projected tonnage to those applicants that have applied to renew NSLs. As proposed by staff, the new NSLs would authorize a maximum tonnage which, summed across all licenses, would not exceed 9.5 percent of the total projected tonnage subject to the flow guarantee.<sup>2</sup> The tonnage would be released in allotments for use by the licensee on a half-year and quarter-year basis. The half-year tonnage limit (which is 50 percent of the total tonnage authorized under the license), would be released to the licensee on January 1, 2009. The quarter-year tonnage limits would then be released by the COO for use during the third and fourth quarters of 2009. The COO would allocate tonnage based on the methodology described in Section 1A(3) of this report.

The NSLs also authorize the COO to immediately redirect the licensee's waste to Metro Central or South Transfer Stations if necessary to prevent a violation of the flow guarantee.

In regard to the clarification of local flow control authority described in the "Overview" of this report, staff will identify and evaluate Metro's policy options around the uncommitted ten percent. If Metro Council decides the public interest is best served by continuing to allocate the uncommitted ten percent, then staff would proceed to develop clear and objective procedures for reserving tonnage, allocating tonnage, and determining need and priority of allocation.

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<sup>2</sup> If Metro Council allocates up to 9.5 percent of the available waste tonnage under these proposed NSLs, it would be unlikely that Metro would consider any requests for tonnage limit increases under these NSLs or consider any new NSL applications during 2009 based on the current Code requirement to consider the impact of Metro's contractual obligations when granting NSLs.



The question whether the public purpose is met by allocating any of the uncommitted tonnage at all is a large one. For example, CH2M HILL, in the *Metro Transfer System Ownership Study* (also known as “Disposal System Planning I” or “DSP I”), suggested that Metro should investigate whether a formal procurement of a second disposal contract for the uncommitted ten percent could result in cost reductions [and/or other public benefits, presumably]. As discussed in the “Budget Impact” of this staff report, the current policy of allocating the uncommitted tonnage has a rate impact of \$0.99 on Metro’s tip fee. That is, Metro’s transfer station customers will pay approximately \$538,000 more in FY 2009-10 than if 100 percent of the waste were delivered to a landfill owned by Waste Management. And through the “rate matching” effect (as described in “Budget Impact”), customers of private solid waste facilities would pay an additional \$502,000 — a total regional impact of \$1.04 million for disposal as a result of allocating tonnage to non-Waste Management Landfills.

### (3) Tonnage Allocation Methodology

As described above in Section 1A(2), the proposed NSLs include a maximum tonnage limit that would be released in allotments on a half-year and quarter-year basis. The half-year limit represents the amount of tonnage that the licensee may use during the first six months of the license term. The half-year limit also represents 50 percent of the maximum tonnage amount authorized for the license. The quarter-year tonnage limits will be allocated and released by the COO for use during the third and fourth quarters of the year based on Metro’s monitoring of the tonnage situation. All of these NSL tonnage limits are based on actual tonnage usage and are calculated by using the same proportions as described below.<sup>3</sup>

The tonnage allocations are based on Metro’s forecast of waste that is subject to the flow guarantee under its disposal contract with Waste Management, and each licensee’s share of such waste that was delivered to all solid waste facilities in the most recent 12-month period (November 2007 through October 2008). The details of the allocation are as follows:

- *Total Tonnage.* Metro forecasts that 865,100 tons will be subject to the flow guarantee in calendar year 2009.<sup>4</sup>
- *Reservation Tonnage.* Metro reserves a portion of the total tonnage to meet its contractual obligations under the disposal contract. For these allocations, Metro reserved 90.5 percent, which is comprised of the 90 percent flow guarantee plus a management allowance of 0.5 percent for the tonnage that would flow during a 2.6 week cycle should the redirection of the waste have to be implemented. The 2.6 weeks is comprised of a 2-week reporting lag, plus four days for notification and redirection logistics.
- *Allocatable Tonnage.* 82,200 tons comprise the 9.5 percent of the 865,100 tons that are not reserved and therefore subject to allocation among the applicants.
- *Licensee’s Portion.* Each licensee is allocated a share of the 82,200 tons in the same proportion as the tonnage subject to the flow guarantee that the licensee actually delivered to all solid waste facilities during the most recent 12-month period (November 2007 through October 2008). For Arrow, the share was 40.2 percent, leading to the recommended license authorization of no more than 33,020 tons in 2009.

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<sup>3</sup>Under the proposed management approach, the licensee will not be allowed to carry forward any unused tonnage into a subsequent allocation period.

<sup>4</sup>This number is derived from Metro’s econometric forecasting model of the solid waste system. This model is used for all of Metro’s major decisions involving solid waste tonnage including budgeting, rate setting and revenue projections. The allocation numbers are based on the most recent forecast, which was completed on October 31, 2008 and covers the period through December 2010. The Council has also based its FY 2009-10 solid waste budget assumptions on the same October 31 forecast.

As explained above, Metro forecasts that there will be 865,100 tons of waste subject to the flow guarantee and 82,200 tons available for allocation in calendar year 2009. The following table provides a comparison of the licensees' current authorizations, the tonnage requested in their renewal applications, and the proposed 2009 authorizations.

**Table 1**  
**Comparison of Solid Waste Subject to the Flow Guarantee by NSL Applicant**

Licensee	2008 Tonnage Authorization	Applicants' 2009 Requests	Solid Waste Delivered to All Facilities (Nov. 2007—Oct. 2008)		Proposed 2009 Allocations		
			Tons	Percent	Tons	Percent	First Six Months
<b>American</b> Res. No. 08-3985	6,613	9,401	6,183	5.9	4,842	5.9	2,421
<b>Arrow</b> Res. No. 08-3986	35,367	37,673	42,195	40.2	33,020	40.2	16,510
<b>Crown Point</b> Res. No. 08-3988	324	500	408	0.4	321	0.4	160
<b>WRI</b> Res. No. 08-3987	45,000	45,000	56,252	53.6	44,018	53.6	22,009
<b>TOTAL</b>	<b>87,304</b>	<b>92,574</b>	<b>105,038</b>	<b>100</b>	<b>82,201</b>	<b>100</b>	<b>41,100</b>

**B. The Applicant**

In December 2005, Arrow, a hauler collecting solid waste within the Metro boundary and franchised by the City of Portland, was granted an NSL to deliver a maximum of 35,367 tons per calendar year of solid waste, including putrescible waste, from its collection routes located inside the Metro region to the WVAN and the CTRC, both of which are operated by Columbia Resource Company (CRC) and located within Clark County, Washington. CRC and Arrow are owned by WCI, a waste company headquartered in Folsom, California.

The term of Arrow's existing NSL No. N-029-05 commenced on January 1, 2006 and was set to expire on December 31, 2007. On November 1, 2007, the Metro Council adopted Resolution No. 07-3866 for the purpose of extending the term of certain NSLs, including Arrow's NSL, to expire on December 31, 2008. The purpose of the extension was to align its expiration date with that of all the other NSLs that authorize the delivery of putrescible solid waste to non-system facilities

During calendar year 2007, the applicant delivered 39,123 tons of solid waste to WVAN and CTRC. Arrow exceeded its NSL tonnage limit by 3,756 tons during that year which subsequently resulted in an enforcement action by Metro. A fuller discussion of this violation is provided in Section 2B(6) of this report.

On August 28, 2008, Arrow submitted to Metro an application requesting that Metro renew this NSL with a tonnage authorization of 37,673 tons for calendar year 2009 and 39,557 tons for 2010. This request represents an increase to the applicant's existing tonnage authorization by 2,306 additional tons in calendar year 2009 and 4,190 additional tons in 2010.

### **C. Description of the Resolution**

Approval of Resolution No. 08-3986 will authorize the COO to issue a renewed NSL, substantially similar to the proposed NSL attached to this resolution as Exhibit A, authorizing Arrow to deliver up to 33,020 tons of putrescible waste to WVAN and CTTC during calendar year 2009. The tonnage limit stipulated in the proposed NSL is 2,347 tons less than that currently authorized under the applicant's existing license. The 2009 tonnage authorization is based on the methodology described above in Section 1A of this report.

Metro Code Section 5.05.025 prohibits any person from utilizing non-system facilities without an appropriate license from Metro. Section 5.05.035(c) of the Metro Code stipulates that the Metro Council shall consider certain factors when determining whether to issue NSLs. A description of these factors and the corresponding analysis of the renewal application are provided below in Section 2B of this report.

Based on the information provided above and the analysis provided in Section 2B, the COO recommends that the Metro Council approve an NSL renewal for Arrow subject to the requirements listed in Metro Code Chapter 5.05; and further subject to several special conditions which are incorporated into the proposed NSL attached to this resolution as Exhibit A. These special conditions are intended to minimize Metro's risk of violating its disposal contract by providing Metro with more timely controls for monitoring the flow guarantee against the currently declining waste tonnage in the system. In addition, as discussed in Section 1A of this report, these conditions will also provide Metro with an opportunity to evaluate its current ten percent allocation policy and determine whether it should continue this same policy in the future.

The main special conditions that are included in the proposed NSL are described below.

#### **(1) Calendar Year and Quarterly Tonnage Limitations**

Section 2 of the proposed NSL authorizes Arrow to deliver up to 33,020 tons of putrescible waste to WVAN and CTTC during calendar year 2009. The NSL further stipulates that the COO will allocate this tonnage to the licensee, up to the total amount authorized under the NSL, in allotments on a half-year and quarter-year basis. Under the provisions of the proposed NSL, the licensee is authorized to deliver up to 16,510 tons of putrescible waste during the first six months of the year, beginning January 1, 2009 through June 30, 2009. The COO may allocate additional waste tonnage to the licensee during the third and fourth quarter of 2009 provided that such waste is available for allocation and the allotment is within the authorized limit of the license.

The NSL also stipulates that prior to June 30, 2009, the COO will determine and allocate the licensee's quarterly tonnage allotment (for the third and fourth quarters of calendar year 2009) in an amount not to exceed the licensee's maximum tonnage authorization of 33,020 tons. The COO will base the quarterly tonnage limits using Metro's forward tonnage projection for the quarter, and the same proportion as was used to determine the licensee's annual allocation (see Table 1). This condition will enable Metro to adjust the NSL tonnage authorization, as necessary, toward the end of the year and avoid exceeding the ten percent contractual limitation.

By adopting this resolution, the Metro Council authorizes the COO to allocate and release tonnage as described above.

(2) Term of License

Section 4 of the proposed NSL includes a one-year term, commencing on January 1, 2009, and terminating on December 31, 2009. A one-year term is proposed because of the reduced amount of tonnage projected for the upcoming year. Accordingly, Metro must pay close attention to the waste flows under these NSLs in the event that tonnage shrinks further.

(3) Weekly and Daily Reporting Requirements

As required in previous NSLs, Section 6 of the proposed NSL stipulates that the licensee must maintain and report accurate records regarding the amount of waste that it delivers to the non-system facility under authority of the license. At a minimum the licensee shall transmit the required records to Metro on a monthly basis. However, the proposed NSL also stipulates that Metro may require the licensee to report such required information to Metro on a weekly or daily basis. The COO will determine when more frequent reporting is necessary.

By adopting this resolution, the Metro Council also authorizes the COO to immediately implement more frequent reporting requirements as needed.

(4) Redirection of Waste Flow

Section 7 of the proposed NSL grants the COO authority to direct the licensee to deliver its waste, as covered under the license, to either the Metro Central or South Transfer Stations. The COO may determine when such redirection of waste flow is necessary. In addition, the COO may redirect waste flow upon providing the licensee with a minimum of 24 hours' written notice and any such redirection becomes immediately effective thereafter.

By adopting this resolution, the Metro Council authorizes the COO to redirect the licensee's waste, as described above, if necessary to prevent a violation of the flow guarantee.

(5) Enforcement Clarification

Section 7 of the proposed NSL clarifies that an exceedence of the quarter-year, half-year, or full-year tonnage limitations constitutes a violation that is subject to an enforcement action as provided in the Metro Code. In addition, the proposed NSL also stipulates that each ton above the limitation constitutes a separate violation that is subject to a penalty of up to \$500.

**2. ANALYSIS/INFORMATION**

**A. Known Opposition**

In a letter to Metro dated August, 21, 2008, Anita Largent, Solid Waste Manager with the Clark County Public Works Department, raised concerns regarding traffic issues at CTRC and requested that Metro take these issues into account when considering the renewal of this NSL. In particular, Ms. Largent reported that CTRC is currently operating at its throughput capacity for vehicle traffic, which occasionally results in vehicles backing up onto 117<sup>th</sup> Avenue. She said that Clark County and the facility operator, WCI, is currently evaluating long-term options for expanding CTRC and improving traffic flow at the facility. In addition to the current physical constraints at CTRC, Ms. Largent reports that the Washington State Department of Transportation is planning to perform a roadway construction project along 117<sup>th</sup> Avenue in the year 2010. She said that the resulting project will likely exacerbate traffic congestion near CTRC

because it will restrict all vehicle access to and egress from the facility to right-turn only. Ms. Largent has stated that the Clark County Solid Waste System is capable of managing the 42,000 tons of Metro area solid waste that is currently delivered to Clark County under authority of NSLs. However, due to Clark County's concern regarding current and future traffic issues the County has recommended that Metro restrict the number of loads that the applicant may deliver to CTRC under authority of its NSL beginning in 2010.

Ms. Largent also raised the issue of roofing debris stockpiled at WVAN that had originally emanated from the Metro region. A fuller discussion of this matter is provided in Section 2B(2) of this report. Metro will continue to work with Clark County and WCI to resolve this issue.

On November 25, 2008, Metro staff met with Clark County staff to further discuss traffic and other issues at WVAN and CTRC. At that time, County staff indicated that they were not opposed to Metro granting the proposed one-year NSL to the applicant. Since this proposed NSL will be granted for the year 2009 only, any circumstances that change in the County during the upcoming year can be taken into consideration if this NSL is renewed in 2010 or later. Metro staff will continue to work with the County to resolve any issues that may arise during the term of this license.

## **B. 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 sites are transfer stations that do not pose any known potential for environmental risk from wastes delivered from prior users. After processing at the transfer stations, the waste is transported via barge to Finley Buttes Landfill, located in Morrow County, Oregon. Finley Buttes Landfill is already a Metro designated facility authorized to receive non-putrescible waste without the need for haulers to obtain an NSL. Other than that delivered via WVAN and CTRC, the Finley Buttes Landfill does not receive any other putrescible waste from the Metro region.

- (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;*

WCI reportedly has a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

Notwithstanding WCI's good compliance record, Metro and Clark County have been dealing with an ongoing issue of roofing debris stockpiled at WVAN. Beginning in January 2000 and continuing through October 2002, CRC accepted at WVAN approximately 6,148 tons of asphalt roofing material from generators within the Metro region for the purpose of recycling (i.e., energy recovery at the Tacoma Steam Plant in Washington). Of that total, approximately 3,500 tons of roofing debris is presently stockpiled at the site. CRC has not paid Metro its Regional System Fee or Excise Tax for any of that roofing material because the material was initially accepted for recycling and not subject to fees and taxes. However, CRC has been unsuccessful in locating a viable market or use of the remaining material and has subsequently received notice from Clark County that the stockpile must be removed from the site by the end of 2008. CRC has

since decided to deliver all of the remaining roofing debris to a landfill for disposal. CRC has recently requested that Metro waive the fees and taxes that are due on this material. Metro indicated that it would consider the applicant's request in the context of the roofing material it had originally accepted for valid recovery options; however, Metro has notified CRC that full fees and taxes would be due on the other portion of the material once it is delivered to a disposal site.

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

WVAN and CTRC use operational practices and management controls that are typical of transfer stations and that Metro considers adequate for the protection of health, safety, and the environment.

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

The proposed NSL covers only putrescible waste, which has little recovery or recycling potential. Thus, the waste authorized by the proposed license is not expected to impact the region's recycling and waste reduction efforts.

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

Metro has committed to deliver 90 percent of the total tons of putrescible waste that Metro delivers to general purpose landfills during the calendar year to landfills operated by Metro's waste disposal contract operator, Waste Management. This proposed NSL renewal is one of four similar licenses that expire at the end of 2008 and it allows Metro to monitor compliance with its disposal contract, as was covered in Section 1A of this report.

- (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*

Arrow exceeded its NSL tonnage limitation in calendar year 2007. In a letter dated July 25, 2007, Metro warned Arrow that it was on track to exceed its NSL limit and should take measures to prevent the exceedence. Arrow subsequently applied to Metro for an increase in its tonnage authorization but was denied due to a moratorium on granting NSLs for the delivery of putrescible waste to non-system facilities in effect at the time. The denial letter, dated September 7, 2007, again warned Arrow that it must adhere to its existing NSL limit of 35,367 tons. Despite these warnings, Arrow reported delivering a total of 39,123 tons of solid waste to WVAN and CTRC in 2007; thus, Arrow exceeded its NSL limit by 3,756 tons.

Metro issued a Notice of Violation to Arrow for the above-mentioned tonnage limit violation, imposing a penalty of \$3,756 based on one dollar for each ton in excess of the limit. In a hearing held on October 1, 2008, Arrow contested the penalty based on its assertion that Metro should have reconsidered Arrow's application or given Arrow special notice when the language of the moratorium was changed so as to allow such NSL tonnage increases. Arrow also asserted that the excess tonnage constituted a single violation for which the Metro Code prescribes a maximum penalty of \$500. In a proposed Final Order issued October 21, 2008, the Hearings Officer found in favor of Metro. Arrow then sought to negotiate a settlement with Metro and expressed its intent to file a Writ of Review if a mutually agreeable settlement could not be reached. Metro and Arrow agreed to settle this matter for the sum of \$3,200.

Arrow is currently in compliance with its NSL. With the exception of the above referenced NSL violation, Arrow has had no violations related to public health, safety or environmental regulations. Additionally, Arrow has not had any significant compliance issues regarding other Metro requirements during the term of the existing NSL.

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

This criterion was examined above in Sections 1A and 2(c) of this report.

### **C. Anticipated Effects**

Approval of Resolution No. 08-3986 will authorize the COO to issue a renewed NSL, substantially similar to the proposed NSL attached to this resolution as Exhibit A, to Arrow for the delivery of up to 33,020 tons of putrescible waste to WVAN and CTRC.

### **D. Budget Impacts**

The Metro Regional System Fee and Excise Tax will continue to be collected on waste delivered under authority of the proposed NSL. The application under consideration is the renewal of an existing NSL (No. N-029-05). Therefore, the financial impact has already been factored into the budget.

However, as discussed in the “Overview” of this report, the Metro Council may wish to re-evaluate its policy options around the uncommitted ten percent. To quantify the financial impact in part, the following is an analysis of the effects *on disposal costs only* during FY 2009-10.

- Disposal rate depends on volume. As is generally known, the price that Metro pays for disposal at Columbia Ridge Landfill is a “declining block rate” — meaning that the more waste that is delivered to any landfill owned by Waste Management, the lower the per-ton cost paid by Metro. As shown in the next paragraph, if the 82,200 uncommitted tons went to Waste Management landfills, Metro’s disposal costs would be less, and the savings would be passed on to Metro’s customers through a lower tip fee.
- Impact on Metro Customers. Based on projected FY 2009-10 tonnage and contract prices, allocating the uncommitted 82,200 tons to non-Waste Management landfills increases the Metro tip fee by \$0.99. This means that Metro customers will pay \$538,000 more for disposal than if all of the uncommitted waste were to flow to Waste Management landfills. These financial impacts are already factored into the budget. Put another way, if all four NSL resolutions are denied, the Metro tip fee would be lower by \$0.99 (all else equal) and Metro customers would thereby save about \$538,000 in disposal costs.
- Regional impact based on “rate matching.” As shown by Metro staff for the evaluation of the franchise application by Columbia Environmental Transfer Station in 2005, Metro’s tip fee is generally matched by private solid waste facilities in the region. Based on the tonnage projected to be accepted at such facilities, (and assuming full matching of the \$0.99 per ton as described above), customers of private facilities would pay an additional \$502,000 more for disposal in FY 2009-10. This increased cost to customers of private facilities, coupled with the additional \$538,000 paid by Metro’s transfer station customers, would result in a total regional impact of \$1.04 million more for disposal in FY 2009-10.

### **3. RECOMMENDED ACTION**

Based on the information provided in this report, the COO recommends approval of Resolution No. 08-3986, 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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