

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE	)	RESOLUTION NO. 02-3224
EXECUTIVE OFFICER TO RENEW A METRO	)	
SOLID WASTE FACILITY LICENSE TO K.B.	)	Introduced by Mike Burton,
RECYCLING, INC., FOR THE OPERATION OF A	)	Executive Officer
MATERIAL RECOVERY FACILITY	)	

WHEREAS, the Metro Code requires a solid waste facility license of any facility that processes non-putrescible solid waste if such processing will result in processing residual of more than ten percent; and,

WHEREAS, K.B. Recycling, Inc. has applied to renew a Solid Waste Facility License under the provisions of Metro Code Chapter 5.01; and,

WHEREAS, the applicant has received land use approval from Clackamas County; and,

WHEREAS, the application is in conformance with the requirements of Chapter 5.01 of Metro Code; and,

WHEREAS, Metro staff has analyzed the application and recommended approval of the applicant's request to renew a Solid Waste Facility License; and,

WHEREAS, the resolution was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now therefore,

BE IT RESOLVED that the Executive Officer is authorized to renew a Solid Waste Facility License for material recovery to K.B. Recycling, Inc., that shall be substantially similar to the license attached as Exhibit A.

ADOPTED by the Metro Council this 3rd day of October, 2002.

  
Carl Hosticka, Presiding Officer

Approved as to Form:

  
Daniel B. Cooper, General Counsel

**METRO SOLID WASTE FACILITY LICENSE****Number L-007-02***Issued by***Metro****600 NE Grand Avenue****Portland, OR 97232****Telephone: (503) 797-1650****Issued in accordance with the provisions of Metro Code Chapter 5.01.**

<b>LICENSEE:</b>  K.B. Recycling, Inc. P.O. Box 550 Canby, OR 97013  Andy Kahut (503) 659-7004 Fax: (503) 659-2107	<b>FACILITY NAME AND LOCATION:</b>  K.B. Recycling, Inc 9602 SE Clackamas Road Clackamas, OR 97015  (503) 659-7004 Fax: (503) 659-2107
<b>FACILITY OWNER:</b>  Fred Kahut, Jerald Kahut PO Box 550 Canby, OR 97013  Phone: (503) 266-7903 Fax: (503) 263-6477 e-mail: <a href="mailto:kbrec@aol.com">kbrec@aol.com</a>	<b>PROPERTY OWNER:</b>  Fred Kahut, Jerald Kahut PO Box 550 Canby, OR 97013  Phone: (503) 266-7903 Fax: (503) 263-6477 e-mail: <a href="mailto:kbrec@aol.com">kbrec@aol.com</a>

This license is granted to the licensee named above and may not be transferred without the prior written approval of the Executive Officer. Subject to the conditions stated in this license document, the licensee is authorized to operate and maintain a material recovery facility and perform the activities authorized herein.

**METRO****Licensee's Acceptance &  
Acknowledgement of Receipt:**\_\_\_\_\_  
Signature\_\_\_\_\_  
Signature of Licensee\_\_\_\_\_  
Mike Burton, Metro Executive Officer\_\_\_\_\_  
Print name and title\_\_\_\_\_  
Date\_\_\_\_\_  
Date



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## **1.0 ISSUANCE**

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| <b>1.1</b> | <b>Licensee</b>                          | K.B. Recycling, Inc.<br>P.O. Box 550<br>Canby, OR 97013   |
| <b>1.2</b> | <b>Contact</b>                           | Andy Kahut (503) 266-7903<br>Fax: (503) 659-2107  |
| <b>1.3</b> | <b>License Number</b>                    | When referring to this license, please cite:<br>Metro Solid Waste Facility License Number L-007-02.   |
| <b>1.4</b> | <b>Term of License</b>                   | This license shall remain in force for a term of five (5) years unless modified, suspended, or revoked under the provisions of section 9.2 of this license. The term commences from the date this license is signed by Metro. |
| <b>1.5</b> | <b>Facility name and mailing address</b> | K.B. Recycling, Inc<br>9602 SE Clackamas Road<br>Clackamas, OR 97015  |
| <b>1.6</b> | <b>Operator</b>                          | Andy Kahut (503) 659-7004<br>Fax: (503) 659-2107  |
| <b>1.7</b> | <b>Facility legal description</b>        | Section 9 of Township 2S of Range 2E; Tax lot(s): 101, 200, 300, 301, 302, W.M.<br><br>Section 9 of Township 2S of Range 2E; Tax lot(s): 1701, W.M.   |
| <b>1.8</b> | <b>Property owners</b>                   | Fred Kahut, Jerald Kahut<br>(503) 266-7903  |

## **2.0 CONDITIONS AND DISCLAIMERS**

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| <b>2.1</b> | <b>Guarantees</b>            | The granting of this license shall not vest any right or privilege in the licensee to receive specific quantities of solid wastes or other materials at the direction of Metro during the term of the license. |
| <b>2.2</b> | <b>Non-exclusive license</b> | The granting of this license shall not in any way limit Metro from granting other solid waste licenses within the District.  |
| <b>2.3</b> | <b>Property rights</b>       | The granting of this license does not convey any property rights in either real or personal property, nor does it authorize any injury to  |



private property or invasion of property rights.

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| 2.4  | <b>No recourse</b>          | The licensee shall have no recourse whatsoever against Metro, its officials, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of this license or because of the enforcement of the license or in the event the license or any part thereof is determined to be invalid. |
| 2.5  | <b>Release of liability</b> | Metro, its elected officials, employees, or agents do not sustain any liability on account of the granting of this license or on account of the construction, maintenance, or operation of the facility pursuant to this license.   |
| 2.6  | <b>Binding nature</b>       | The conditions of this license are binding on the licensee. The licensee is liable for all acts and omissions of the licensee's contractors and agents.   |
| 2.7  | <b>Waivers</b>              | To be effective, a waiver of any terms or conditions of this License must be in writing and signed by the Metro Executive Officer.  |
| 2.8  | <b>Effect of waiver</b>     | Waiver of a term or condition of this license shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.  |
| 2.9  | <b>Choice of law</b>        | The license shall be construed, applied and enforced in accordance with the laws of the State of Oregon.  |
| 2.10 | <b>Enforceability</b>       | If any provision of this license is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions contained in this license shall not be affected.   |
| 2.11 | <b>License not a waiver</b> | Nothing in this license shall be construed as relieving any owner, operator, or licensee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports or other requirements of other regulatory agencies.                                   |
| 2.12 | <b>License not limiting</b> | Nothing in this license is intended to limit the power of a federal, state, or local agency to enforce any provision of law relating to the solid waste facility that it is authorized or required to enforce or administer.  |
| 2.13 | <b>Definitions</b>          | Unless otherwise specified, all other terms are as defined in Metro Code Chapter 5.01. In the event that the Metro Code is amended, the latest amended version shall apply to this license.   |



### **3.0 AUTHORIZATIONS**

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| <b>3.1</b> | <b>Purpose</b>                            | This section of the license describes the wastes that the licensee is authorized to accept at the facility, and the waste-related activities the licensee is authorized to perform at the facility.   |
| <b>3.2</b> | <b>General conditions on solid wastes</b> | The licensee is authorized to accept at the facility only the solid wastes described in this section. The licensee is prohibited from knowingly receiving any solid waste not authorized in this section, and shall not accept any other waste at the facility unless specifically authorized in writing by the Director of the Metro Regional Environmental Management Department. |
| <b>3.3</b> | <b>General conditions on activities</b>   | The licensee is authorized to perform at the facility only those waste-related activities that are described in this section.   |
| <b>3.4</b> | <b>Non-putrescible waste</b>              | The Licensee is authorized to accept "dry" non-putrescible solid wastes such as waste generated by non-residential generators and waste generated at construction and demolition sites, for the purpose of material recovery.   |
| <b>3.5</b> | <b>Source-separated recyclables</b>       | The Licensee is authorized to accept source-separated recyclable materials for purposes of sorting, classifying, consolidating, baling, temporary storage, transfer and performance of other similar functions related to preparing these materials for marketing.  |
| <b>3.6</b> | <b>Inert materials</b>                    | The Licensee is authorized to accept inert materials for purposes of classifying, consolidating, transfer, and other similar functions related to preparing these materials for useful purposes.  |
| <b>3.7</b> | <b>Deliveries not limited</b>             | This License does not limit the quantity of authorized solid wastes or other materials that may be accepted at the facility.  |

### **4.0 LIMITATIONS AND PROHIBITIONS**

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| <b>4.1</b> | <b>Purpose</b>              | This section of the license describes limitations and prohibitions on the wastes handled at the facility and waste-related activities performed at the facility. |
| <b>4.2</b> | <b>Disposal not limited</b> | The Licensee shall not be limited as to the number of tons of processing residual that may be disposed.  |



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| 4.3 | <b>Prohibited waste</b>                    | The licensee is prohibited from receiving, processing or disposing of any solid waste not authorized in this License. The licensee shall not knowingly accept or retain any material amounts of the following types of wastes: putrescible wastes, yard debris, materials contaminated with or containing friable asbestos; lead acid batteries; liquid waste for disposal; vehicles; medical waste; infectious, biological or pathological waste; radioactive waste; hazardous waste; or any waste prohibited by the Licensee's DEQ Disposal Site Permit. |
| 4.4 | <b>Material recovery required</b>          | The Licensee shall perform material recovery on "dry" non-putrescible wastes such as waste generated by non-residential generators and waste generated at construction and demolition sites, or deliver said "dry" non-putrescible wastes to a solid waste facility whose primary purpose is to recover useful materials from solid waste.   |
| 4.5 | <b>Prohibition on mixing</b>               | The Licensee shall not mix any source-separated recyclable materials brought to the facility with any other solid wastes. Recyclable materials recovered at the facility may be combined with source-separated recyclable materials for transfer to markets, processors, or another solid waste facility that prepares such materials for reuse or recycling.  |
| 4.6 | <b>No disposal of recyclable materials</b> | Source-separated recyclable materials accepted at the facility may not be disposed of by landfilling or incineration.  |
| 4.7 | <b>Limits not exclusive</b>                | Nothing in this section of the license shall be construed to limit, restrict, curtail, or abrogate any limitation or prohibition contained elsewhere in this license document, in Metro Code, or in any federal, state, regional or local government law, rule, regulation, ordinance, order or permit.  |

## **5.0 OPERATING CONDITIONS**

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| 5.1 | <b>Purpose</b>            | This section of the license describes criteria and standards for the operation of the facility.   |
| 5.2 | <b>Qualified Operator</b> | The licensee shall provide an operating staff qualified to carry out the functions required by this license and to otherwise ensure compliance with Metro Code Chapter 5.01.  |
| 5.3 | <b>Fire prevention</b>    | The operator shall provide fire prevention, protection, and control measures, including but not limited to, adequate water supply for fire suppression, and the isolation of potential heat sources and/or flammables from the processing area. |



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| 5.4  | <b>Adequate vehicle accommodation</b>    | Vehicles containing landscape waste or yard debris feedstock/waste shall not park or queue on public streets or roads except under emergency conditions. Adequate off-street parking and queuing for vehicles shall be provided.  |
| 5.5  | <b>Managing prohibited wastes</b>        | The licensee shall make reasonable efforts to identify prohibited and unauthorized wastes. Upon discovery, all prohibited or unauthorized wastes shall be removed or managed in accordance with the facility operating plan and DEQ procedures.   |
| 5.6  | <b>Storage</b>                           | Stored materials shall be removed at sufficient frequency to avoid creating nuisance conditions or safety hazards. Storage areas must be maintained in an orderly manner and kept free of litter.   |
| 5.7  | <b>Litter, dust, and airborne debris</b> | <p>The licensee shall operate the facility in a manner that is not conducive to the generation of litter and airborne debris. The licensee shall:</p> <ul style="list-style-type: none"><li>a. Take reasonable steps to notify and remind persons delivering material to the facility that all loads must be suitably secured to prevent any material from falling off the load during transit.</li><li>b. Construct, maintain, and operate all vehicles and devices transferring or transporting roofing from the facility to prevent sifting, spilling or blowing of the material on-site or while in transit.</li><li>c. Keep all areas within the site and all vehicle access roads within ¼ mile of the site free of litter and debris.</li><li>d. Take reasonable steps to suppress the generation of dust from the moving and processing of solid waste and recyclables.</li></ul> |
| 5.8  | <b>Vectors</b>                           | The licensee shall operate the facility in a manner that is not conducive to infestation of rodents, insects, or other animals capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.  |
| 5.9  | <b>Noise</b>                             | The licensee shall operate the facility in a manner that controls the creation of excessive noise to the extent necessary to meet applicable regulatory standards and land-use regulations.   |
| 5.10 | <b>Odor prevention</b>                   | The licensee shall operate the facility in a manner that prevents the generation of odors. The licensee shall establish and follow procedures for preventing odors at the facility. Specific measures an operator shall take to prevent odors include but are not limited to adherence to the contents of a required operating plan (see Section 6.0).  |
| 5.11 | <b>Water quality</b>                     | <p>The licensee shall:</p> <ul style="list-style-type: none"><li>a. Operate and maintain the facility to prevent submersion of</li></ul>  |





solid waste and recyclables in water.

- b. Dispose of contaminated water and sanitary sewage generated onsite in a manner complying with local, state, and federal laws and regulations.

- 5.12 Public Access** Public access to the facility shall be controlled as necessary to prevent unauthorized entry and dumping.
- 5.13 Signage** The licensee shall post signs at all public entrances to the facility, and in conformity with local government signage regulations. These signs shall be easily and readily visible, legible, and shall contain at least the following information:
- a. Name of the facility
  - b. Address of the facility;
  - c. Telephone number(s) of persons who can provide information about the facility in case of an emergency;
  - d. Operating hours during which the facility is open for the receipt of authorized material;
  - e. Metro's name and telephone number (503) 797-1650.
- 5.14 Complaints** The licensee shall respond to all written complaints on nuisances (including, but not limited to, blowing debris, fugitive dust or odors, noise, traffic, and vectors). If licensee receives a complaint, licensee shall:
- a. Attempt to respond to that complaint within one business day, or sooner as circumstances may require, and retain documentation of unsuccessful attempts; and
  - b. Log all such complaints by name, date, time and nature of complaint. Each log entry shall be retained for one year and shall be available for inspection by Metro.
- 5.15 Access to license document** The licensee shall maintain a copy of this Metro Solid Waste Facility License on the facility's premises, and in a location where facility personnel and Metro representatives have ready access to it.

## **6.0 OPERATING PLAN**

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- 6.1 Purpose** This section lists the procedures that must be included in the required facility operating plan. The operating plan may be amended from time to time subject to approval by Metro.
- 6.2 Access to operating plan** The licensee shall maintain a copy of the operating plan on the facility's premises and in a location where facility personnel and Metro representatives have ready access to it.



- 6.3 Procedures for inspecting loads** The operating plan shall establish:
- Procedures for inspecting incoming loads for the presence of prohibited wastes; and
  - A set of objective criteria for accepting and rejecting loads.
- 6.4 Procedures for processing loads** The operating plan shall establish procedures for:
- Processing authorized solid wastes, and
  - Storing authorized solid wastes.
- 6.5 Procedures for managing prohibited wastes** The operating plan shall establish procedures for managing and transporting to appropriate facilities any prohibited wastes discovered at the facility. The plan shall include procedures for managing:
- Hazardous wastes;
  - Special wastes; and
  - Other prohibited solid wastes.
- 6.6 Procedures for odor prevention** The operating plan shall establish procedures for preventing all odors. The plan must include:
- A management plan that will be used to monitor and manage all odors of any derivation including malodorous loads delivered to the facility; and
  - Procedures for receiving and recording odor complaints, immediately investigating any odor complaints to determine the cause of odor emissions, and remedying promptly any odor problem at the facility.
- 6.7 Procedures for noise minimization** The operating plan shall establish procedures for minimizing the volume and duration of noise produced in the course of Metro-authorized activities.
- 6.8 Procedures for emergencies** The operating plan shall establish procedures to be followed in case of fire or other emergency.
- 6.9 Closure Protocol** The operator shall establish protocol for closure and restoration of the site in the event of a long-term cessation of operations.

## **7.0 FEES AND RATE SETTING**

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- 7.1 Purpose** This section of the License specifies fees payable by the Licensee, and describes rate regulation by Metro.
- 7.2 Annual fee** The Licensee shall pay an annual License fee, as established in Metro Code Chapter 5.01. Metro reserves the right to change the License fee at any time by action of the Metro Council.



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| 7.3 | <b>Fines</b>                         | Each violation of a License condition shall be punishable by fines as established in Metro Code Chapter 5.01. If a violation is ongoing and lasts for more than one day, each day a violation continues constitutes a separate violation. Metro reserves the right to change fines at any time by action of the Metro Council. |
| 7.4 | <b>Rates not regulated</b>           | The tipping fees and other rates charged at the facility are exempt from rate regulation by Metro.   |
| 7.5 | <b>Metro fee imposed on disposal</b> | The Licensee is liable for payment of the Metro Regional System Fee on any solid wastes delivered to a disposal site, unless these solid wastes are exempted by Metro Code Chapter 5.01.   |

## **8.0 INSURANCE REQUIREMENTS**

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| 8.1 | <b>Purpose</b>                         | The section describes the types of insurance that the licensee shall purchase and maintain at the licensee's expense, covering the licensee, its employees, and agents.   |
| 8.2 | <b>General liability</b>               | The licensee shall carry broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy shall be endorsed with contractual liability coverage.  |
| 8.3 | <b>Automobile</b>                      | The licensee shall carry automobile bodily injury and property damage liability insurance.  |
| 8.4 | <b>Coverage</b>                        | Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.   |
| 8.5 | <b>Additional insureds</b>             | Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSURED.  |
| 8.6 | <b>Worker's Compensation Insurance</b> | The licensee, its subcontractors, if any, and all employers working under this license, are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Licensee shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If licensee has no employees and will perform the work without the assistance of others, a license to that effect may be attached in lieu of the license showing current Workers' Compensation. |



- 8.7      **Notification**      The licensee shall give at least 30 days written notice to the Executive Officer of any lapse or proposed cancellation of insurance coverage.

## 9.0      **ENFORCEMENT**

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- 9.1      **Generally**      Enforcement of this license shall be as specified in Metro Code and in this Section 9.0 of this license.
- 9.2      **Authority vested in Metro**      The power and right to regulate, in the public interest, the exercise of the privileges granted by this license shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such requirements against licensee.
- 9.3      **No Enforcement Limitations**      Nothing in this license shall be construed to limit, restrict, curtail, or abrogate any enforcement provision contained in Metro Code or administrative procedures adopted pursuant to Metro Code Chapter 5.01, nor shall this license be construed or interpreted so as to limit or preclude Metro from adopting ordinances that regulate the health, safety, or welfare of any person or persons within the District, notwithstanding any incidental impact that such ordinances may have upon the terms of this license or the licensee's operation of the facility.

## 10.0      **MODIFICATIONS**

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- 10.1      **Modification**      At any time during the term of the license, either the Executive Officer or the licensee may propose amendments or modifications to this license.
- 10.2      **Modification, suspension or revocation by Metro**      The Executive Officer may, at any time before the expiration date, modify, suspend, or revoke this license in whole or in part, in accordance with Metro Code Chapter 5.01, for reasons including but not limited to:
- a. Violation of the terms or conditions of this license, Metro Code, or any applicable statute, rule, or standard;
  - b. Changes in local, regional, state, or federal laws or regulations that should be specifically incorporated into this license;
  - c. Failure to disclose fully all relevant facts;
  - d. A significant release into the environment from the facility;



- e. A significant change in the character of the material received or in the operation of the facility;
- f. Any change in ownership or control, excluding transfers among subsidiaries of the licensee or licensee's parent corporation;
- g. A request from the local government stemming from impacts resulting from facility operations; and
- h. Compliance history of the licensee.

**10.3 Changes in ownership** The licensee must, in accordance with Metro Code Section 5.01.090, submit a new license application to Metro if the licensee proposes to transfer control or ownership of the license, the facility, or the name and address of the operator.

## **11.0 GENERAL OBLIGATIONS**

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**11.1 Compliance with law** 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 5.01 whether or not those provisions have been specifically mentioned or cited herein. Such applicable laws, rules, regulations, ordinances, orders and permits include, without limitation, all laws, rules, regulations, ordinances, orders and permits adopted or made applicable during the term of this Franchise. All conditions imposed on the operation of the facility by federal, state, regional or local governments or agencies having jurisdiction over the facility shall be deemed part of this license as if specifically set forth herein. Such conditions and permits include those cited within or attached as exhibits to the license document, as well as any existing at the time of the issuance of the license but not cited or attached, and permits or conditions issued or modified during the term of the license.

**11.2 Indemnification** The licensee shall indemnify and hold Metro, its employees, agents and elected officials harmless from any and all claims, damages, actions, losses and expenses including attorney's fees, or liability related to or arising out of or in any way connected with the licensee's performance or failure to perform under this license, including patent infringement and any claims or disputes involving subcontractors.

**11.3 Deliver waste to** The Licensee shall ensure that solid waste transferred from the



- appropriate destinations** facility goes to the appropriate destinations under Metro Code Chapters 5.01 and 5.05, and under applicable local, state and federal laws, rules, regulations, ordinances, orders and permits.
- 11.4 Provide access** The licensee shall allow the Executive Officer to have reasonable access to the premises for purposes of inspection and audit to determine compliance with this license, Metro Code, and the administrative procedures adopted pursuant to Metro Code Chapter 5.01 and this license.
- 11.5 Record keeping and reporting** The Licensee shall comply with the record keeping and reporting requirements as provided in Metro Code Chapter 5.01 and in administrative procedures adopted pursuant to Metro Code Chapter 5.01.
- 11.6 Right of inspection and audit** Authorized representatives of Metro may take soil and water samples and perform such inspection or audit as the Regional Environmental Management Director deems appropriate and shall be permitted access to the premises of the facility during normal working hours upon giving reasonable advance notice (not less than 24 hours). Subject to the confidentiality provisions of this license, Metro's right to inspect shall include the right to review all information from which all required reports are derived including all books, records, maps, plans, income tax returns, financial statements, contracts, and other like materials of licensee that are directly related to the operation of the Facility.
- 11.7 Confidential information** Licensee may identify any information submitted to or reviewed by Metro under this Section 11.0 as confidential. Licensee shall prominently mark any information which it claims confidential with the mark "CONFIDENTIAL" prior to submittal to or review by Metro. Metro shall treat as confidential any information so marked and will make a good faith effort not to disclose such information unless Metro's refusal to disclose such information would be contrary to applicable Oregon law, including, without limitation, ORS Chapter 192. Within five (5) days of Metro's receipt, any request for disclosure of information identified by licensee as confidential, Metro shall provide Licensee written notice of the request. Licensee shall have three (3) days within which time to respond in writing to the request before Metro determines, at its sole discretion, whether to disclose any requested information. Licensee shall be responsible to pay any costs incurred by Metro as a result of Metro's efforts to remove or redact, at the specific request of the licensee, any confidential information from documents that Metro produces in response to a public records request. Nothing in this Paragraph 11.7 shall limit the use of any information submitted to or reviewed by Metro for regulatory purposes or in any enforcement proceeding. In



addition, Metro may share any confidential information with representatives of other governmental agencies provided that, consistent with Oregon law, such representatives agree to continue to treat such information as confidential and make good faith efforts not to disclose such information.

**11.8 Compliance  
by agents**

The licensee shall be responsible for ensuring that its agents and contractors operate in compliance with this license.

## **SOLID WASTE AND RECYCLING COMMITTEE REPORT**

CONSIDERATION OF **RESOLUTION NO. 02-3224**, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO RENEW A METRO SOLID WASTE FACILITY LICENSE TO K.B. RECYCLING, INC., FOR THE OPERATION OF A MATERIAL RECOVERY FACILITY

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Date: October 3, 2002

Presented by: Councilor Atherton

**Committee Recommendation:** At its September 18 and October 2 meetings, the Solid Waste and Recycling Committee considered Resolution 02-3224 and at the October 2 meeting voted 3-0 to recommend Council adoption. Voting in favor: Councilors Monroe, McLain and Chair Atherton. Voting against: None. Absent: Councilors Bragdon and Park.

**Background:** Roy Brower, REM Regulatory Affairs Manager, presented the staff report. He explained that the proposed resolution would renew a license issued to KB Recycling in 1997 for the operation of a material recovery facility (MRF) in Clackamas County. While it had been anticipated that the facility would have opened at an earlier date, construction was just recently completed and the facility is slated to open in October 2002. The company currently operates a source-separated recycling processing near the location of the new site and these operations will be transferred to the new facility. The new facility also will accept construction demolition and dry commercial waste for processing, recycling and residue disposal. Licensing of the facility could result in the diversion of up to 28,000 tons of waste from the Metro South station.

Steve Donovan, a consultant for the applicant, presented a Power Point presentation that included photos of the site and the building. He explained that the intent of the facility was to enhance material recovery capacity in Clackamas County for both haulers and the general public. He also noted that the facility was adjacent to a rail siding that would facilitate the ability to market recovered materials and reduce VMT's related to such marketing.

Andy Kahut, representing the applicant noted that it was the intent of the facility operator to recover a minimum of 25% of the material in each load. He further indicated that residual material would be sent to the Riverbend Landfill in Yamhill County under the terms of a non-system license with Metro.

### **Committee Issues/Discussion:**

Committee discussion focused on potential differences in the provisions of the proposed license and the applicant's local conditional land use permit related to the types of material that could be accepted by the facility. Mr. Brower explained that these differences had been discovered only shortly before the committee hearing. He indicated that he had attempted to resolve the issue with Clackamas County staff, but had been unable to contact the appropriate staff prior to the committee meeting. The committee reviewed the language in question and it appeared that the language in the proposed Metro license would be more permissive than the language in the land use permit.

Given that the resolution had been placed on the September 19 Council agenda (the following day) for final action, committee members asked if the apparent difference in language could be resolved by the time of the Council meeting. Both REM and legal staff expressed doubt that the issue could be resolved that quickly. Therefore, at the suggestion of Chair Atherton, and with the concurrence of Mr. Donovan and Mr. Kahut, it was agreed that the resolution would be carried over to the October 2 meeting.



At the October 2 committee meeting, Terry Petersen, REM Director, appeared before the committee and noted that the department had received a letter from the Clackamas County Planning Director, which concluded that "it is the opinion of this office that the draft language itemized above (the proposed language in the Metro license) is in conformance with the conditions of approval that have been approved for K.B. Recycling in our file No. Z0174-96-C (the local conditional land use permit). Based on this letter, REM and OGC staff recommended that the committee could proceed with its consideration of the resolution without need to amend it to conform its language with that contained in the local permit.

**Key Public Testimony:** None

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3224 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO RENEW A METRO SOLID WASTE FACILITY LICENSE TO K.B. RECYCLING, INC., FOR THE OPERATION OF A MATERIAL RECOVERY FACILITY

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August 23, 2002

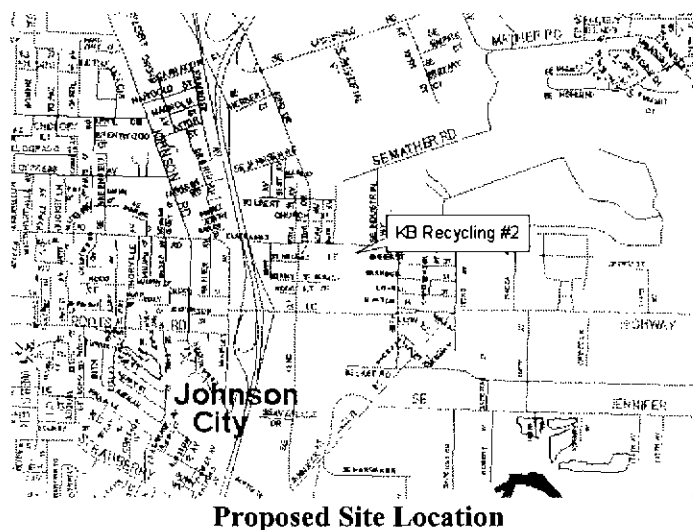
Presented by: Terry Petersen

## BACKGROUND

### Description of the Resolution

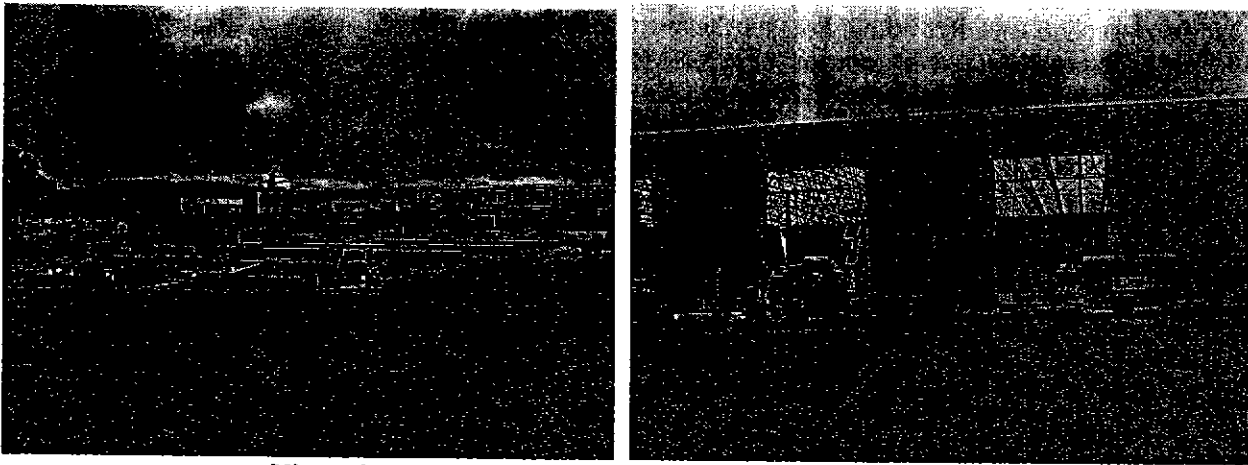
Approval of Resolution No. 02-3224 will authorize the Executive Officer to renew a Solid Waste Facility License issued to K.B. Recycling, Inc., for the operation of a new materials recovery facility located at 9602 SE Clackamas Road, Clackamas, Oregon (Metro District 2). This new facility is currently under construction and will be known as K.B. Recycling and is owned and operated by Fred and Jerald Kahut. The Kahuts currently own and operate a similar material recovery facility, also known as K.B. Recycling, located on Deer Creek Lane in unincorporated Clackamas County and have proven to be capable facility operators.

The new K.B. Recycling facility is being designed to replace the existing Deer Creek Lane facility. If this renewal is approved, the applicant anticipates to begin operating the new facility by October 2002, and will close the Deer Creek Lane facility within six months after the new facility begins operating. Renewal of this license will authorize K.B. Recycling to accept inert materials, non-putrescible waste and source-separated recyclables for the purpose of classifying, consolidating, transfer and to perform other functions related to material recovery. K.B. Recycling will not be authorized to accept source-separated yard debris under its new license. The new facility will be open to the public, non-affiliated commercial haulers, and companies that collect non-putrescible waste outside the Metro region. The new facility will have a recycling area available to the public.



## **History of the Facility**

K.B. Recycling was originally issued a solid waste facility franchise in September 1997 for its proposed new facility on Clackamas Road but it was never constructed and did not operate during the term of its license, which will expire on September 22, 2002. In October 1998, pursuant to changes in Metro Code Chapter 5.01, K.B. Recycling exchanged its franchise for a solid waste facility license (License Number L-007-97). Its current license allows K.B. Recycling to accept inert materials, non-putrescible waste, source-separated recyclables and yard debris for the purpose of material recovery and source-separated processing. On June 13, 2002, K.B. Recycling submitted a Metro solid waste facility license renewal form and the required application fee. The proposed new facility is located on a 12.18-acre site that is zoned by Clackamas County for light industrial use and complies with the applicable local land use regulations.

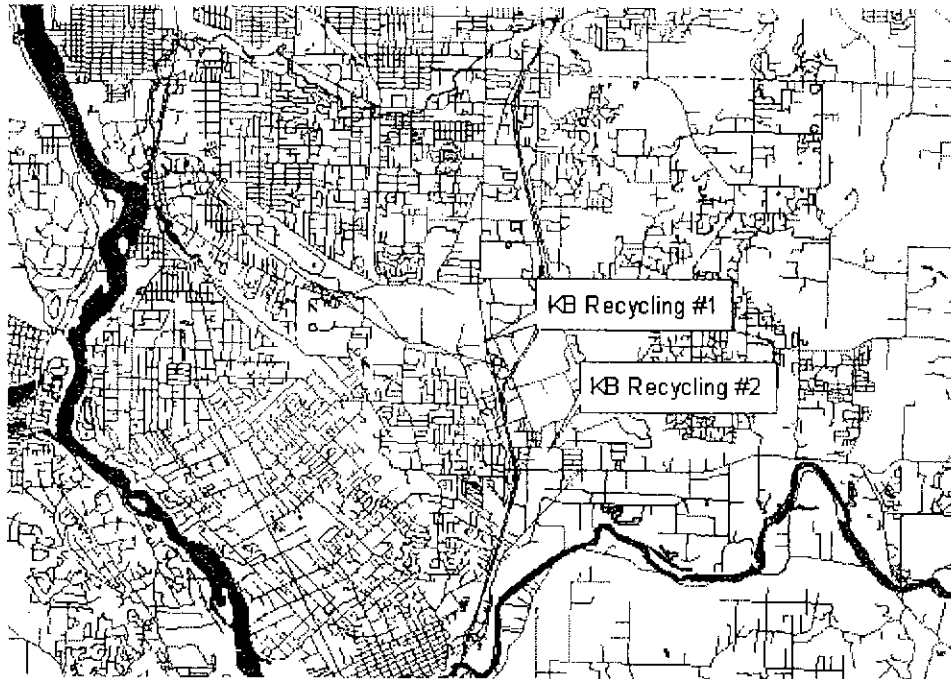


**View of the New K.B. Recycling Facility**

## **History of the Applicant**

The applicant currently owns and operates a similar material recovery facility in unincorporated Clackamas County located on 8277 Deer Creek Lane. The Deer Creek Lane facility is currently licensed to accept inert materials, non-putrescible waste, source-separated recyclables, and yard debris for the purpose of material recovery and source-separated processing. However, the Deer Creek Lane facility never made use of its authority to accept mixed non-putrescible waste and, in practice, has only accepted source-separated recyclables. The Deer Creek Lane facility is well run and has a good compliance history under the applicant's management with only two compliance incidents since it has been in operation (see Compliance History below).

In conjunction with this license renewal, the applicant also has a pending application for a non-system license (NSL) that, if approved, would authorize delivery of 25,000 tons of non-putrescible, non-hazardous residuals to the Riverbend Landfill in McMinnville, Oregon.



**Other Solid Waste Facilities Operated by the Applicant**

### **Compliance History of the Applicant**

On December 7, 1998, Metro issued K.B. Recycling, Inc., a Notice of Non-Compliance (NON) for failure to keep all areas within the site and all vehicle access roads within one-quarter-mile of the site free of litter and debris. It was observed that large volumes of newspaper, cardboard, and scrap paper was overflowing into the pavement and that the site appeared generally unsightly due to overflowing of other containment areas and uncontained litter within the site and on Deer Creek Lane adjacent to the facility. The applicant remedied these issues and has operated the facility in compliance with the Metro Code since then.

At the time this staff report was prepared, Metro was preparing to issued K.B. Recycling, Inc., a Finding of Violation and Notice of Assessment of Penalties for its Deer Creek Lane facility for delivering solid waste to the Riverbend Landfill without a Metro-issued non-system license. The applicant has since submitted a non-system license application (see History of the Applicant above) to deliver 25,000 tons of dry waste to the Riverbend Landfill.

### **ANALYSIS/INFORMATION**

#### **1. Known Opposition**

There is no known opposition to approval of the proposed resolution.

#### **2. Legal Antecedents**

Metro Code Section 5.01.087(a) provides:

*Solid Waste Facility Licenses shall be renewed unless the Executive Officer determines that the proposed renewal is not in the public interest, providing that the Licensee files a completed application for renewal*

*accompanied by payment of an application fee of three hundred dollars (\$300) not less than 60 days prior to the expiration of the license term, together with a statement of proposed material changes from its initial application for the License and any other information required by the Executive Officer. The Executive Officer may attach conditions or limitations to any renewed License.*

The applicant's current license expires on September 22, 2002. On June 13, 2002, the applicant submitted a solid waste facility license renewal form and the required application fee. On August 9, 2002, the applicant resubmitted the license renewal form describing the material changes from the initial license application and also provided an updated operating plan for the new facility. It is anticipated that under the operation of the applicant, the new K.B. Recycling facility will result in increased material recovery in the region and, therefore, renewal of this license is deemed to be in the public interest.

### **3. Anticipated Effects**

Approval of Resolution No. 02-3224 will authorize the Executive Officer to renew a Solid Waste Facility License issued to K.B. Recycling, Inc., for the operation of a new materials recovery facility that will replace an existing facility. The new facility will provide more capacity than the existing Deer Creek Lane site and is anticipated to be cleaner and a more efficient operation.

### **4. Budget Impact**

The applicant currently processes approximately 80,000 tons of source-separated recyclables at its Deer Creek Lane facility, which it will divert to its new facility if its application is approved. That change therefore will not have a significant financial impact. K.B. Recycling also anticipates that its new facility will attract approximately 28,000 tons of dry non-putrescible solid waste that is currently delivered to the Metro South transfer station. K.B. Recycling believes that it will achieve at least a 25% minimum recovery rate by processing that waste. As a result, K.B. Recycling expects to recover at least 7,000 tons (28,000 tons x 25%) of dry non-putrescible solid waste while the remaining 21,000 tons of residuals will be delivered to a Waste Management landfill.

When tonnage is diverted from Metro transfer stations, there is little impact on collection of the Regional System Fee or Metro excise tax, as these charges "follow the waste," unless recyclable materials are recovered from the waste that is diverted. In this case, Metro foregoes the fees and taxes on the recovered material, but would forego that regardless of where the recovery occurs. The impact on disposal operations is more involved, as explained below.

#### **Impact on the Solid Waste Fund**

For this license, Metro would lose the Regional System Fee of \$15 per ton on the 7,000 tons recovered at K.B. Recycling. This translates to a \$105,000 loss to the Solid Waste Fund. There would be no corresponding reductions in budgeted expenditures related to granting this license.

The economics of Metro's disposal operations are affected in a different manner than Regional System Fee collections. Because of the structure of the contracts and recovery of fixed costs in the rate, Metro's costs of disposal operations decline more slowly than revenue when tons leave the transfer stations. The resulting loss of *net operating revenue* is shown in the following table:

**Net Impact on Metro's Operations  
Revenue from the Diversion of  
28,000 Tons from Metro South to  
K.B. Recycling in FY 02-03**

Revenue loss	(\$972,850)
Costs reduced	\$584,714
Net Gain (Loss)	(\$388,136)

Adding together the Regional System Fee losses (\$105,000) and the operating losses (\$388,136), the net revenue shortfall for the Solid Waste Revenue Fund is estimated to be \$493,136 for the full 2002-03 fiscal year. The corresponding shortfall in future years should be recovered through the annual rate setting process.

**Impact on the General Fund**

For this license, Metro would lose excise tax of \$6.39 per ton on the 7,000 tons recovered at K.B. Recycling. This translates to a \$44,730 reduction in expected General Fund revenues. Of this \$44,730, \$7,000 is dedicated to the Regional Parks and Greenspaces (Parks) program. There would be no corresponding reductions in budgeted General Fund expenditures as a result of granting this license.

Outside of the \$7,000 loss to Parks, which would not be replaced in subsequent fiscal years, granting this license would have no impact on the ability of excise tax revenues in FY 02-03 to cover other budgeted general fund expenditures. However, there could be a potential \$37,730 reduction (\$44,730 minus \$7,000) in the projected ending balance in the Recycling Rate Stabilization reserve.

The per-ton excise tax rate is recalculated for each successive year to help make up for any unanticipated solid waste excise tax losses in the previous year. However, as a \$1 per ton add-on, the Parks tax is not a part of the annual rate recalculation; therefore, the unanticipated \$7,000 shortfall to Parks will reduce Parks revenue in future years unless a subsequent adjustment is made.

**Additional Budget Considerations**

The above financial analysis is based on the applicant's estimate that K.B. Recycling will achieve the minimum required recovery rate of 25%. At that rate, the facility would satisfy the regulatory recovery rate threshold, but would not be eligible for Regional System Fee and Excise Tax credits. Given that the recovery credit programs offer a significant financial incentive for recovering at or above a 30% rate, the facility operator may be motivated to achieve the higher rate where the financial impacts on Metro would be substantially higher. If K.B. Recycling achieves a recovery rate of 30%, the additional net revenue losses to Metro are estimated to be \$195,000 for the current fiscal year (\$161,500 from the Solid Waste Fund and \$33,500 in excise taxes).

### Summary of Net Revenue Impacts

<b>Fund</b>	<b>Amount</b>
Solid Waste Fund	
Regional System Fee	\$105,000
Disposal operations	\$388,136
<b>Total, Solid Waste Fund</b>	<b>\$493,136</b>
General Fund	
Parks	\$7,000
Recycling Rate Stabilization <i>(ending balance)</i>	\$37,730
<b>Total, General Waste Fund</b>	<b>\$44,730</b>
<b>Total Net Revenue Loss</b>	<b>\$537,866</b>
<i>Total impact per diverted ton</i>	<i>\$19.21</i>

### OUTSTANDING QUESTIONS

None

### EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 02-3224, granting a solid waste facility license to K.B. Recycling, Inc., that shall be substantially similar to the license document attached as "Exhibit A" to Resolution No. 02-3224.

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