

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER) RESOLUTION NO. 09-4089
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-029-09C, which expires on December 31, 2009; 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,

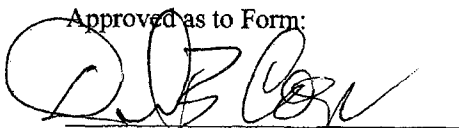
THE METRO COUNCIL ORDAINS AS FOLLOWS:

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 10 day of DEC, 2009.


David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney



Resolution No. 09-4089

WJ:bjl
S:\REM\Johnson\Facilities\Arrow\N-029-10\ARROW_NSL_Council Resolution 09-4089.docx



METRO

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

No. N-029-10

LICENSEE:	
Arrow Sanitary Service, Inc. 12820 NE Marx Street Portland, OR 97230	
CONTACT PERSON:	
Phone:	Jason Craft (503) 251-1308 Dean Large (360) 695-4858
Fax:	(503) 257-8699 (360) 695-5091
E-Mail:	jasoncr@wcnx.org deanl@wcnx.org
MAILING ADDRESS:	
Arrow Sanitary Service, Inc. 12820 NE Marx Street Portland, OR 97230	

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 Arrow Sanitary Service, Inc.
2	CALENDAR YEAR TONNAGE LIMITATION
	<p>(a) Licensee is authorized to deliver to the non-system facilities described in Section 3 of this license up to 28,518 tons per calendar year of the waste described in Section 1.</p> <p>(b) By no later than November 2, 2010, Metro's Chief Operating Officer ("COO") may release additional reserve tonnage and amend this license to adjust the calendar tonnage limitation as established by Metro Council and described in the staff report to Resolution No. 09-4089.</p>
3	NON-SYSTEM FACILITIES
	<p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 to the following non-system facilities:</p> <p style="padding-left: 40px;">West Van Materials Recovery Center 6601 NW Old Lower River Road Vancouver, WA 98660</p> <p style="padding-left: 40px;">Central Transfer and Recycling Center 11034 NE 117th 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>
4	TERM OF LICENSE
	The term of this license will commence on January 1, 2010 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 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">i. Ticket or weight slip number from the non-system facility;ii. Material category designating the type of material transferred to the non-system facility;iii. Date the load was transferred to the non-system facility;iv. Time the load was transferred to the non-system facility;v. Net weight of the load; andvi. Fee charged by the non-system facility <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall:</p> <ul style="list-style-type: none">i. Transmit the records required under Section 6(a) above to Metro in an electronic format prescribed by Metro;ii. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; andiii. Remit to Metro the requisite Regional System Fees and Excise Tax in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes. <p>(c) Licensee shall make all records from which Sections 6(a) and 6(b) above are derived available to Metro (or Metro's designated agent) for its inspection or copying, as long as Metro provides no less than three (3) business days written notice of an intent to inspect or copy documents. Licensee shall, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system 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>



7	ADDITIONAL LICENSE CONDITIONS
	<p>This license shall be subject to the following conditions:</p> <ul style="list-style-type: none">(a) The permissive transfer of solid waste to the non-system 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.(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">i. There has been sufficient change in any circumstances under which Metro issued this license;ii. The provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, Inc.;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; oriv. There has been sufficient change in the amount of tonnage available for allocation during the term of the license. In the event that additional tonnage becomes available for allocation, the COO may amend Section 2(a) of this license to increase the calendar year tonnage limitation by up to five percent in addition to the reserve tonnage amount described in Section 2(b).(c) This license shall, in addition to subsections (b)(i) through (b)(iv), above, be subject to amendment, modification, suspension, or termination pursuant to the Metro Code.(d) The Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.(e) This license shall terminate upon the execution of 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.(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.(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 with a minimum of 24 hours' written notice. Any redirection of the waste flow by the COO is effective immediately.(h) If the Licensee exceeds the calendar year limitation set forth in Section 2



	<p>of this license, each ton or portion thereof by which the Licensee exceeds the limitation constitutes a separate violation subject to a penalty of up to \$500. For every ton by which the licensee violates the annual tonnage limitation, Metro will assess a base penalty of \$50. This \$50 base penalty can only be contested upon issuance of this license and will be assessed in addition to any penalty calculated by Metro in the normal course of its enforcement action.</p>
--	---

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. 09-4089 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 13, 2009

Prepared by: Warren Johnson

On December 11, 2008, the Metro Council adopted a series of resolutions that established an approach for evaluating applications and determining tonnage authorizations for certain non-system licenses (NSLs) pertaining to putrescible waste during 2009. This approach was established to manage Metro's contractual obligations especially while regional tonnage remained low and uncertain during the current economic environment. This same general approach is recommended in 2010.

Approval of Resolution No. 09-4089 will authorize the Chief Operating Officer (COO) to issue a one-year NSL, substantially similar to the proposed license attached to this resolution as Exhibit A, to Arrow Sanitary Service, Inc. (Arrow) authorizing the delivery of up to 28,518 tons of putrescible waste to the West Van Materials Recovery Center (WVAN) and the Central Transfer and Recycling Center (CTRC) during calendar year 2010. 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. (WCI), a waste management company headquartered in Folsom, California.

1. INTRODUCTION

A. Background

(1) Overview

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver a minimum of 90 percent of the region's putrescible waste, that is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. NSLs allow Metro to closely monitor and potentially guide waste flows to authorized facilities in order to comply with the contract. This approach provides for a high level of control and fast response to changes in conditions. Resolution No. 09-4089 would grant an NSL to Arrow to deliver Metro-area putrescible waste to facilities owned by WCI located in Clark County, Washington. That is, this NSL controls a portion of the ten percent of uncommitted waste not guaranteed to Waste Management under the disposal contract. 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. (Res. No. 09-4087), Crown Point Refuse, Inc. (Res. No. 09-4088), and Willamette Resources, Inc. (Res. No. 09-4090).

In 2009, the Metro Council granted one-year NSLs to each of the above referenced licensees. Each licensee received a maximum tonnage limit for the calendar year which, summed across all licenses, did not exceed 9.5 percent of the total tonnage subject to the flow guarantee based on Metro's tonnage forecast for 2009. Upon issuance of the NSLs, each licensee immediately received 50 percent of the total tonnage authorized under the license for use during the first six months of 2009. The COO then released additional tonnage, as available, to each licensee for use during the third and fourth quarters of 2009.

As discussed in the "Budget/Rate Impact" section of this staff report, the current policy of allocating the uncommitted tonnage has a rate impact of \$0.86 on Metro's tip fee. That is, Metro's transfer station

customers will pay approximately \$534,000 more in calendar year 2010 than if 100 percent of the waste were delivered to a landfill owned by Waste Management. The financial impact of granting the proposed NSLs will be factored into the solid waste fund and rates budget.

(2) Design of the 2010 NSLs

For the 2010 renewal period, staff is proposing the same approach for evaluating the applications and determining the yearly tonnage authorizations that was used in 2009. In particular, staff recommends that the Metro Council again grant one-year NSLs for each of the four applicants authorizing a maximum yearly tonnage limitation for 2010. The limitation for each of the NSLs will be based on a share of the tonnage that is projected to be available for allocation during calendar year 2010 as described in Section 1A(3).

For 2010, Metro would again grant up to 9.5 percent of the available projected tonnage to those applicants that have applied to renew NSLs based on the latest tonnage forecast. If the Metro Council allocates the full 9.5 percent as proposed, then, based on the current Code requirement to consider the impact of Metro's contractual obligations when granting NSLs, Metro would not allow tonnage limit increases under these licenses, except as described in this report. Furthermore, Metro would not accept any new applications for these types of NSLs during 2010 unless additional tonnage becomes available (e.g., a significant economic upturn or a current license-holder no longer using its entire tonnage allocation). In the event that a current licensee no longer intends to use its allocation, the COO could reallocate the available tonnage to the remaining license-holders.

These renewed NSLs would authorize a maximum yearly tonnage limit which, in aggregate, would not exceed 9.5 percent of the total projected tonnage subject to the flow guarantee. However, unlike the quarterly allocations in 2009, the proposed NSLs for 2010 include yearly tonnage limits that are immediately available for use throughout the term of the license. Specifically, in 2010 each licensee will initially receive 85 percent of its portion of the total tonnage allocation as an upfront yearly tonnage limit. The remaining 15 percent of the licensee's portion would then be held in reserve which may be released by the COO, as available, by no later than November 2, 2010. The COO may adjust the licensee's yearly tonnage limit as necessary using the methodology described in Section 1A(3) of this report. Metro would enforce the yearly tonnage limit stipulated in the license.

Additionally, should economic conditions improve during the upcoming calendar year and tonnage increase above the level that was projected in Metro's latest forecast, the proposed NSL includes a growth allowance provision. This provision allows the COO to increase the yearly tonnage limit of the licensee by up to an additional five percent above the 15 percent tonnage amount held in reserve. This means that through the combination of the reserve tonnage and growth allowance conditions described above, the COO is authorized to increase the yearly tonnage limit of the proposed license by up to 20 percent without seeking further Council action.

The NSLs also authorize the COO to immediately redirect a licensee's waste to Metro Central or South Transfer Stations if necessary to prevent a violation of the disposal contract flow guarantee. In the case of Arrow, an additional unique condition is included in the proposed NSL, as described in Section 1C of this report, to address the applicant's compliance record with respect to its previous tonnage limit violations.

(3) Tonnage Allocation Methodology

The tonnage allocations are based on Metro's forecast of future waste that is subject to the flow guarantee under its disposal contract with Waste Management, and each licensee's share of prior waste that was

delivered to all solid waste facilities in the most recent 12-month period (October 2008 through September 2009). The details of the allocation are as follows:

- *Total Tonnage.* Metro forecasts that 809,500 tons will be subject to the flow guarantee in calendar year 2010. This number is derived from Metro’s latest 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 in November 2009 and covers the period through December 2011. Metro plans to review and update the forecast model in the first calendar quarter of 2010.
- *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.
- *Allocable Tonnage.* 77,000 tons comprise the 9.5 percent of the 809,500 tons that are not reserved and therefore initially available to allocate among the applicants. (The 77,000 tons is rounded up to the nearest hundred tons.)
- *Licensee’s Portion.* Each licensee is allocated a share of the 77,000 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 (October 2008 through September 2009). For Arrow, the share was 43.6 percent, leading to the initial recommended license authorization of up to 28,518 tons in 2010.

The following table provides a comparison of the licensees’ 2009 authorizations, the tonnage requested in their renewal applications for 2010, and the proposed 2010 authorizations.

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

Licensee	2009 Original Tonnage Authorization	2009 Adjusted Tonnage Authorization	Applicants' 2010 Tonnage Requests	Solid Waste Delivered to All Facilities (Oct. 2008—Sept. 2009)		Proposed 2010 Allocations		
				Tons	Percent	Total Tons	Yearly Tonnage Limit (85%)	Licensee’s Reserve Tonnage (15%)
American Res. No. 09-4087	4,842	4,583	5,194	5,729	5.9	4,527	3,848	679
Arrow Res. No. 09-4089	33,020	31,252	41,696	42,459	43.6	33,551	28,518	5,033
Crown Point Res. No. 09-4088	321	304	500	356	0.4	281	239	42
WRI Res. No. 09-4090	44,018	41,661	45,000	48,900	50.2	38,641	32,845	5,796
TOTAL	82,201	77,800	92,390	97,444	100	77,000	65,450	11,550

B. The Applicant

Arrow is a solid waste hauler that is franchised to collect solid waste within the cities of Portland, Gresham, and unincorporated Clackamas County. In December 2008, Metro granted Arrow a one-year NSL authorizing the delivery of putrescible waste from its collection routes located inside the Metro region to WVAN and CTRC during calendar year 2009 (33,020 tons). WVAN and CTRC, both operated by Columbia Resource Company (CRC), are located within Clark County, Washington. CRC and Arrow are owned by WCI.

The term of Arrow's existing NSL No. N-029-09C commenced on January 1, 2009 and is set to expire on December 31, 2009. The calendar year tonnage limitation that Metro initially established for the NSL (33,020 tons) was based on Metro's forecast, issued October 2008, of the waste that was subject to its disposal contract with Waste Management and Arrow's share of such waste. However, actual tonnage subject to the flow guarantee had been trending about five percent below the level that Metro projected in October 2008. In September 2009, the COO amended each of these NSLs such that the fourth quarter tonnage allocations were less than initially anticipated when these licenses were issued in December 2008. In the case of Arrow, the COO actually allocated a total of 31,252 tons of putrescible waste for 2009, based on the adjusted forecasted tonnage (1,768 tons less than originally authorized).

In addition, Arrow exceeded its NSL tonnage limits for the first-half and third quarter of the year which subsequently resulted in enforcement actions by Metro. A fuller discussion of these violations is provided in Section 2B(6) of this report.

On September 17, 2009, Arrow submitted an NSL application requesting that Metro renew its NSL in 2010 with a tonnage authorization of 41,696 tons for calendar year 2010 and 43,780 tons for 2011. This request represents an increase to the applicant's existing adjusted tonnage authorization by 10,444 additional tons in calendar year 2010 and 12,528 additional tons in 2011. While the tonnage available for allocation to Arrow, based on the past 12-month period, is more than in 2009, as explained in section 1C of this report, it is less than what was requested by Arrow.

C. Description of the Resolution

Approval of Resolution No. 09-4089 will authorize the COO to issue a renewed NSL for 2010 that is substantially similar to the proposed NSL attached to this resolution as Exhibit A. In 2010, the applicant's total tonnage allocation is 2,299 tons more than the adjusted limit currently authorized under its 2009 license. The 2010 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 in Section 2B of this report.

WCI has verbally indicated to Metro staff that it intends to honor its NSL yearly tonnage limits in 2009 and 2010. However, 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 special conditions which are incorporated into the proposed NSL attached to this resolution as Exhibit A. The conditions in the proposed license are intended to further minimize Metro's risk of noncompliance with its disposal contract by providing Metro with additional controls for monitoring and managing the flow guarantee

against the currently declining waste tonnage in the system and to address Arrow's past record of noncompliance.

The main special conditions that are included in the proposed NSL for Arrow are described below. In particular, items (1) and (2) are new conditions that are included in all of the proposed NSLs to provide the licensees with greater tonnage certainty and flexibility, while retaining timely controls for Metro to monitor the flow guarantee and address potential economic improvement and tonnage growth during the upcoming year. Items (3) through (5) describe conditions that were carried forward from the existing license and are included in all of the proposed NSLs. Item (6) is a new, unique condition for Arrow that is included in the proposed NSL specifically due to Arrow's record of NSL tonnage limit violations. A fuller discussion of these violations is provided in Section 2B(6) of this report.

(1) Calendar Year Tonnage Limitation

Section 2 of the proposed NSL authorizes Arrow to initially deliver up to 28,518 tons of putrescible waste to WVAN and CTRC during calendar year 2010. This yearly tonnage limit is immediately available for use throughout the term of the license. The license also stipulates that, by no later than November 2, 2010, the COO may release additional tonnage and increase the licensee's limit by up to an additional 15 percent (5,033 tons) as available. If the COO were to release the full reserve amount provided under this proposed license, then Arrow's yearly tonnage limit would be increased up to a total of 33,551 tons. This condition allows the COO to adjust the yearly tonnage authorization as necessary to meet Metro's contractual obligations and allows the maximum use of the licensee's available tonnage. By adopting this resolution, the Metro Council authorizes the COO to release the reserve tonnage as described above.

(2) Tonnage Authorization Growth Allowance

Section 7 of the proposed NSL stipulates that in addition to the 15 percent reserve tonnage allocation described above, the COO may increase the yearly tonnage authorization of the licensee by up to an additional five percent of its total tonnage allocation (1,677 tons) if such tonnage is available during the term of the license. If the COO were to grant the maximum growth allowance and release the licensee's full reserve amount (as described above), then Arrow's yearly tonnage limit could be increased up to a total of 20 percent (35,228 tons). The COO's decision whether to grant such a growth allowance will be based on Metro's forecast of waste that is subject to the flow guarantee under its disposal contract with Waste Management. Any tonnage increases greater than twenty percent (i.e., the combined growth allowance and reserve tonnage amounts) would require Council approval. By adopting this resolution, the Metro Council authorizes the COO to determine and allocate growth allowance as described above.

(3) Term of License

Section 4 of the proposed NSL includes a one-year term, commencing on January 1, 2010, and terminating on December 31, 2010. Although renewed NSLs can be issued for up to two-year periods, a one-year term is proposed in this instance because of the continuing economic uncertainty and other factors that could reduce the amount of tonnage available for the upcoming year.

(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. By adopting this

resolution, the Metro Council authorizes the COO to redirect the licensee's waste, as described above, if necessary to comply with the disposal contract flow guarantee.

(5) Weekly and Daily Reporting Requirement

As previously required, 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 authorizes the COO to immediately implement more frequent reporting requirements as needed.

(6) Enforcement Penalties (Unique to Arrow)

As in the 2009 NSL, the 2010 NSL stipulates that an exceedence of the license tonnage limitation constitutes a violation that is subject to an enforcement action and subject to a penalty of up to \$500 per ton (or portion thereof) over the tonnage allocation. The proposed 2010 license also includes an additional condition stipulating that, based on the licensee's compliance history, for every ton by which the licensee violates the tonnage limitation, Metro will assess a base penalty of \$50 for each ton in excess of the yearly tonnage limit. This \$50 base penalty would be assessed, in addition to any penalty calculated by Metro, as part of an enforcement action. Staff recommends this new condition due to Arrow's record of NSL tonnage limit violations. A fuller discussion of these violations is provided in Section 2B(6) of this report.

While WCI has verbally agreed to abide by the tonnage limit established for 2010, this proposed condition provides additional incentive to comply with such a limit. In fact, the proposed \$50 base penalty significantly exceeds the penalties that Metro assessed on tonnage limit violations in the recent past and should provide sufficient incentive for Arrow to maintain compliance in the future. By adopting this resolution, if Arrow were to violate the yearly tonnage limitation set forth in the proposed NSL, Arrow will be required to pay Metro a minimum penalty of \$50 per ton for each ton that it exceeds its stipulated yearly limitation. Furthermore, Arrow's opportunity to contest such a minimum penalty is only available at the time that Resolution No. 09-4089 is adopted and the license is issued. In other words, if Arrow exceeds its yearly tonnage limit, it is immediately subject to a \$50 per ton penalty and does not have further opportunity to contest such an action by Metro. Metro also retains its right to pursue additional penalties, subject to due process, of up to \$450 per ton for such tonnage cap violations, and as informed by circumstances related to the violation.

2. ANALYSIS/INFORMATION

A. Known Opposition

The applicant (WCI) may disagree with certain conditions and limitations included in the proposed license. Arrow had previously requested a contested case hearing regarding the tonnage limitation initially included in its existing NSL and the subsequent third quarter modification. However, WCI has verbally agreed to comply with the NSL tonnage limits established by Metro in 2010.

There is no known opposition from other parties regarding the granting of the proposed license or its proposed conditions.

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 also a Metro designated facility authorized to receive non-putrescible processing residual 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.

- (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 will expire at the end of 2010. Provisions in the NSL allow Metro to monitor compliance with its disposal contract, as was covered in Section 1A of this report. However, see subsection (6) below.

- (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;*

Arrow has violated the tonnage limitations stipulated in its licenses on four consecutive occasions as described below:

- Calendar Year 2007: Arrow exceeded its NSL tonnage limitation in calendar year 2007 by 3,756 tons (10.6 percent of the total tonnage). Metro issued a Notice of Violation (NOV) to Arrow for these tonnage limit violations, imposing a penalty of \$3,756. Arrow contested the penalty and the matter was brought to a hearing. The Hearings Officer subsequently found in favor of Metro. Arrow and Metro then agreed to settle the matter for the sum of \$3,200 which was approved by Council. Arrow has since paid the settlement amount.
- Calendar Year 2008: Arrow exceeded its NSL tonnage limitation in calendar year 2008 by 218 tons (0.6 percent of the total tonnage). Metro issued an NOV to Arrow for these tonnage limit violations, imposing a penalty of \$436. Arrow did not contest the NOV and it subsequently paid the full penalty amount.
- First and Second Quarter 2009: Arrow exceeded its NSL tonnage limitation for the first and second quarters of calendar year 2009 by 3,269.16 tons (19.8 percent of the total tonnage). Metro issued an NOV to Arrow for these violations, imposing a penalty of \$36,891.74. In addition to the imposition of a penalty, Metro reduced Arrow's third quarter tonnage limit by 3,269 tons. Arrow contested the penalty and the matter was brought to a hearing on September 28, 2009. On October 27, 2009, the Hearings Officer issued a proposed order that upheld Metro's penalty action on this matter. Either the proposed order or a settlement proposal will be presented to Council for consideration.
- Third Quarter: Arrow exceeded its NSL tonnage limitation for the third quarter of calendar year 2009 by 4,819.34 tons (96.7 percent of the total tonnage). Metro issued an NOV to Arrow for these violations, imposing a penalty of \$36,851.86. In advance of issuing the NOV, Metro reduced Arrow's fourth quarter tonnage limitation by an amount that it was estimated to exceed through the end of the calendar year. Arrow's response to the NOV is pending.

WCI and Metro have had an on-going legal disagreement about the flow guarantee and Metro's obligation to meet it. This disagreement has contributed, in part, to Arrow's record of noncompliance. WCI management has since indicated to Metro staff that, for the remainder of 2009 and in 2010, it will comply with its NSL tonnage limitation as established by Metro.

Based upon information provided by Arrow and the transaction data obtained by Metro from transfer stations located within the region, Arrow is currently in compliance with its fourth quarter tonnage limitation. However, as discussed in Section 1C of this report, in consideration of the applicant's past compliance record, staff recommends that a unique special condition be added to the proposed license in order for Metro to take sufficient and appropriate enforcement actions rather than the outright denial of Arrow's license renewal application.

- (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 1C of this report.

C. Anticipated/Potential Effects

This proposed NSL is one of many action items currently under consideration by Metro which is affected by potential declines in the amount of solid waste subject to the flow guarantee. Some decisions could have the effect of shrinking the pool of waste available for allocation. For instance, increased diversion from the landfill due to higher recovery or an improved organics program with the selection of a new transfer station operator could have such an impact. Decisions on these other action items have not yet been made so their potential impact on tonnage is not fully known at this point. The forecast of waste subject to the flow guarantee, which is the basis for the NSL tonnage authorizations, incorporates the best available information as of this writing.

Additionally, in 2009 staff noted that the granting of these types of NSLs had a potential financial impact on the regional solid waste system ratepayers through a “rate matching” effect. That is, Metro’s tip fee is generally matched by private solid waste facilities in the region which results in increased costs to customers of private facilities. However, it appears that this rate matching effect will not be a factor in 2010. In 2009, Metro Council decided to limit Metro’s 2010 rate increase at its transfer stations through a variety of methods (e.g., using reserve funds). Because of this decision, most privately-owned transfer stations now have tip fees above that of the current Metro rate; thus, mitigating the impact of rate matching in 2010.

D. Budget/Rate Impacts

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. Based on projected tonnage and contract prices, allocating the uncommitted 77,000 tons to non-Waste Management landfills increases the Metro tip fee by \$0.86. Metro customers will pay \$534,000 more for disposal than if all of the uncommitted waste were to flow to Waste Management landfills. The practice of issuing these types of NSLs has been occurring under the Council’s direction for the past nine years.

The Metro Regional System Fee and Excise Tax will continue to be collected on all waste delivered under authority of the proposed NSL. The application under consideration is the renewal of an existing NSL (No. N-029-09C). Therefore, the financial impact has already been factored into the budget.

3. RECOMMENDED ACTION

Based on the information provided in this report, the COO recommends approval of Resolution No. 09-4089, 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 including the special conditions that are unique to Arrow as described in Section 1C of this report.

WJ:bjl
S:\REM\johnson\Facilities\Arrow\N-029-10\Arrow 09-4089 RES Strip_11132009.docx