

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING THE) RESOLUTION NO. 10-4125
HEARINGS OFFICER'S PROPOSED ORDER)
REGARDING METRO'S NOTICE OF)
VIOLATIONS NOV-225B-09 and NOV-225C-09) Introduced by Chief Operating Officer
ISSUED TO GREENWAY RECYCLING, LLC,) Michael J. Jordan, with the concurrence of
AND AUTHORIZING THE CHIEF OPERATING) Council President David Bragdon
OFFICER TO ISSUE A FINAL ORDER)

WHEREAS, on September 2, 2009 and on September 10, 2009, the Director of the Metro Finance and Regulatory Services Department ("Director") issued the attached Notices of Violation Nos. Nov-225B-09 and NOV-225C-09 (Exhibits A1 and A2) to GreenWay Recycling, LLC ("GWR"), and

WHEREAS, NOV-225B-09 stated that the Director had found that from August 25, 2009 to August 26, 2009, GWR violated its Solid Waste Facility License No. L-109-07B; and

WHEREAS, NOV-225C-09 stated that the Director had found that on September 1, 2009, GWR violated its Solid Waste Facility License No. L-109-07B; and

WHEREAS, included with NOV-225B-09 was a contested case notice providing GWR with an opportunity to have a hearing regarding the NOV; and

WHEREAS, included with NOV-225C-09 was a contested case notice providing GWR with an opportunity to have a hearing regarding the NOV; and

WHEREAS, GWR submitted a timely request for a contested case hearing; and

WHEREAS, pursuant to Metro Code 2.05.035(a) on December 11, 2009, a hearing on the matters was held before Metro Hearings Officer Carl D. Cox, and the record, attached as Exhibit B, was submitted to the Hearings Officer; and

WHEREAS, pursuant to Metro Code 2.05.035(a), on January 8, 2010, the Hearings Officer issued a proposed order (attached as Exhibit C) requiring GWR to pay to Metro \$1,500 civil penalty for violation of its Solid Waste Facility License as listed in NOV-225B-09, and requiring GWR to pay to Metro \$1,000 civil penalty for violation of its Solid Waste Facility License as listed in NOV-225C-09; and

WHEREAS, in accordance with Metro Code Section 2.05.035(b), the Chief Operating Officer mailed a copy of the proposed order to GWR and informed Metro and DWS of the deadline for filing written exceptions to the proposed order; and

WHEREAS, neither Metro nor GWR filed exceptions to the proposed order;

WHEREAS, the Chief Operating Officer has reviewed the proposed order and recommends that the Council authorize the Chief Operating Officer to issue the proposed order as a final order in substantially the form as that attached as Exhibit D to this resolution; and

WHEREAS, Metro Code 2.05.045(b) provides that the Metro Council shall (1) adopt the Hearings Officer's proposed order; (2) revise or replace the findings of fact or conclusions of law in the order; or (3) remand the matter to the Hearings Officer; and

WHEREAS, in accordance with Metro Code Section 2.05.035, the Metro Council has been provided with a copy of the record in this matter for its review as it considers this resolution; and

WHEREAS, the Council has considered the proposed order, the record in this matter, and the exhibit attached to this resolution; now therefore

BE IT RESOLVED that the Metro Council adopts the proposed order issued by Hearings Officer Carl Cox as provided in Exhibit C to this resolution, and authorizes the Chief Operating Officer to issue a final order substantially similar to Exhibit D to this resolution.

ADOPTED by the Metro Council this 25 day of February 2010.

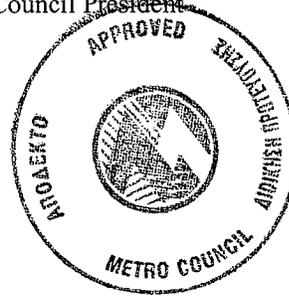


David Bragdon, Council President

Approved as to Form:



Daniel B. Cooper, Metro Attorney





Metro | *People places. Open spaces.*

**NOTICE OF VIOLATIONS and
IMPOSITION OF CIVIL PENALTY No. NOV-225B-09**

To: Terrell Garrett, Registered Agent
GreenWay Recycling, LLC
PO Box 4483
Portland, OR 97208

Facility: GreenWay Recycling ("GWR")
4135 NW St. Helens Road
Portland, OR 97210

Operating Instrument: Solid Waste Facility License No. L-109-07B

Date(s) of Violation(s): August 25 and 26, 2009

License Violation No. 1: License Section 3.0 stipulates that: *All grinding of [yard debris, land clearing debris, untreated wood, painted wood, and preservative-treated wood] must occur on an impervious surface (e.g., asphalt or concrete) and inside a roofed building that is enclosed on at least three sides.*

Metro conducted an inspection of GWR on August 26, 2009, in response to complaints of a significant dust event at the facility on the previous day, August 25, 2009. Through discussions with GWR's operator, the inspector verified that GWR had conducted wood grinding operations on August 25. GWR was also grinding wood at the time of the August 26 inspection, even though the building surrounding the grinder was not yet adequately enclosed on at least three sides, as required by Section 3.0 of its License. GWR was therefore operating in violation of Section 3.0 of its License on both August 25 and 26, 2009.

License Violation No. 2: License Section 5.7 stipulates that: *The Licensee shall operate the facility in a manner that minimizes and mitigates the generation of dust, airborne debris and litter, and shall prevent its migration beyond property boundaries.*

The Metro inspector verified that, on August 25, 2009 GWR operated in a manner that allowed dust to migrate beyond the property boundaries where it settled on neighboring properties, in violation of Section 5.7 of the License. The inspector's findings are documented in inspection notes and photographs (enclosed with this Notice).

Additional Information: Effective July 1, 2009, GWR's license was modified to authorize grinding of materials only within a building. Metro previously issued the following Notices of Violation to GWR for violating this license restriction:

- NOV-225-09 for violations on July 9 and 14, 2009.
- NOV-225A-09 for violations on August 7, 10, and 11, 2009.

Civil Penalties: ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500). This amount includes penalties of \$500 for each of the two violations of License Section 3.0 (grinding wood on August 25 and 26) and the single violation of License Section 5.7 (dust allowed to migrate beyond the property boundaries on August 25) described above. An invoice for the penalties is included with this Notice. Subsequent violations will be subject to additional penalties of up to \$500 per day.

9/2/09
Date

Margo Norton
Margo Norton
Finance and Regulatory Services Director

CONTESTED CASE NOTICE

Under Metro Code Chapter 2.05, you have the right to request a contested case hearing regarding this Notice of Violation. You must make this request in writing and ensure that Metro receives the request within 30 days of the date this Notice was mailed. You may retain legal counsel to represent you at the hearing. Article IX, Section 14 of the Oregon Constitution, the Metro Charter, ORS Chapter 268, and Metro Code Chapter 2.05 and 5.01 provide Metro's authority and jurisdiction for the hearing.

Attachments

cc: Roy Brower, Solid Waste Compliance and Cleanup Manager
Steve Kraten, Solid Waste Enforcement Coordinator
Warren Johnson, Solid Waste Compliance Supervisor
Duane Altig, Solid Waste Facility Inspector
Michelle Bellia, Assistant Metro Attorney
Stephanie Rawson, DEQ
Bruce Walker, City of Portland

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing NOTICE OF VIOLATION including CONTESTED CASE NOTICE on the following:

Terrell Garrett, Registered Agent
GreenWay Recycling, LLC
PO Box 4483
Portland, OR 97208

On September 2, 2009, said individuals were served with a complete and correct copy thereof via regular mail and certified mail, return receipt requested, contained in a sealed envelope, with postage prepaid, and deposited in the U.S. Post Office at Portland, Oregon.



Roy W. Brower
Solid Waste Compliance and Cleanup Manager

INVOICE

Please Remit To:

Metro
Accounts Receivable
600 NE Grand Avenue
Portland OR 97232-2736



Page: 1
Invoice No: REM-01072
Invoice Date: 09/02/2009
Customer Number: REM1134
Payment Terms: Net 30
Due Date: 10/02/2009

Bill To:

Greenway Recycling LLC
Terell Garrett
PO Box 4483
Portland OR 97208-4483

AMOUNT DUE: 1,500.00 USD

Amount Remitted



For billing questions, please call 503-797-1634

Line	Adj	Identifier	Description	Quantity	Unit Amt	Net Amount
1			NOV-225B-09 Violation	3.00	500.00	1,500.00
SUBTOTAL:						1,500.00
TOTAL AMOUNT DUE :						1,500.00

STANDARD

Original

Inspection Information			
Facility Name:	<u>GreenWay Recycling, LLC (GWR)</u>	Date of Inspection:	<u>August 26, 2009</u>
Metro License Number:	<u>L-109-07B</u>	Time of Inspection:	<u>8:40 to 9:50 PM</u>
Address:	<u>4135 NW St. Helens Road</u>	Weather:	<u>60° F, dry, clear, breeze.</u>
	<u>Portland, OR 97210</u>	Site Photographs taken:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Phone:	<u>(503) 283-8880</u>	Samples Collected:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Inspector(s)	<u>Duane Altig</u>	If yes, material type:	<u>N/A</u>
Licensee Rep(s):	<u>Terrell Garrett</u>		

This visit to the GreenWay Recycling, LLC ("GWR") site was conducted in response to a complaint that was received on August 25, 2009, via e-mail (attached), from Fred Van Domelen. Mr. Van Domelen is owner of the property located to the north of the GreenWay property. During this site visit the wind was out of the NE and steady at times (~0 to 5mph).

The complaint stated, in part, that two of his tenants had complained about a "dust cloud" coming over the top of the building and covering their vehicles with dust.

I approached the complainant's site via NW St Helens Road. I parked in front of Electri – Pac, one of the tenants in this small complex, and introduced myself to the owner Bill Plasker. I informed Mr. Plasker the reason for my visit and if he could please describe for me what he observed the previous day. He stated that he and his son, Tim Plasker, had observed a large cloud of dust coming from the greenway site at approximately noon on the 25th and that it had covered everything in the area with dust. I was showed two vehicles that had been parked on site during this episode. I photographed the vehicles and noted that both had indeed showed signs of having a fibrous material dusted on them. I was informed that the building did not seem to be helping and that the dust was just blowing over the top. It was also mentioned that it seemed to be worse. I informed Mr. Plasker that Metro was still observing the performance of the building and that until the roll-up door on the east end was installed a final determination of its performance would not be made. Mr. Plasker was also concerned with the constituents of the dust and stated that he had heard that the material being ground up was from an old school demolition. He added that he feared the wood dust contained asbestos. I informed him that the Oregon DEQ maintained record of all the demolition work done throughout the state and that all contractors are required to test certain materials before commencing with the demolition. If contaminates are found the material is disposed of at an appropriate landfill instead of being brought to a facility like GreenWay. I informed him that he should contact the DEQ for additional information on this subject.

I asked Mr. Plasker if he knew who also might have observed the dust cloud yesterday and he informed me that Jim Collins with the Custom Cabinets shop had also seen the cloud. I spoke with Mr. Collins who also stated that he had seen a huge cloud of wood dust come from the GreenWay site at around noon on the 25th. He stated that it looked like a bomb had gone off. He added that the building seems to have caused the dust to float just past him and impact further down and that Electri – Pac seemed to have gotten the worst of it yesterday. I thanked both complainants for their time and left to observe the active grinding operations at the GreenWay site.

I took position on the north side of the GreenWay property and observed the active grinding of wood wastes. I observed the use of the watering truck upon my arrival and noted that all interior roads and paths appeared to be sufficiently wet down.

I took photographs of both ends of the wood grinding building and observed the grinding operations from several different vantage points. I noted that small amounts of dust did push out the west end of the building at times but nothing as described by the complainants. As I was observing the activities I was met by Terrell Garrett. I asked Mr. Garrett about the status of the Roll-Up door and he stated that the door had been fully paid for and that he was awaiting the delivery and installation. He added that he thinks that it will be installed within the next 10 days. We also discussed possible additional modification to the conveyor system to help keep dust down.

I informed him of the complaint and if he knew what activity could have caused the dust cloud that was observed. He stated that at that time one of his employees was moving around the old woody material that was to be ground for hog fuel and that this material was very dry and dusty. The worker would give the area a blast from the fire hose which is what caused the dust to raise in large plumes. He stated that he would discuss this with his workers and that it would not occur again. I thank him for his time.

I did not inspect any other areas of the operation while I was on site.

I left the site

End of inspection notes

GWR.26AUG09.dka.p01
Visual of impact from wind
blown debris



GWR.26AUG09.dka.p02
Visual of impact from wind
blown debris



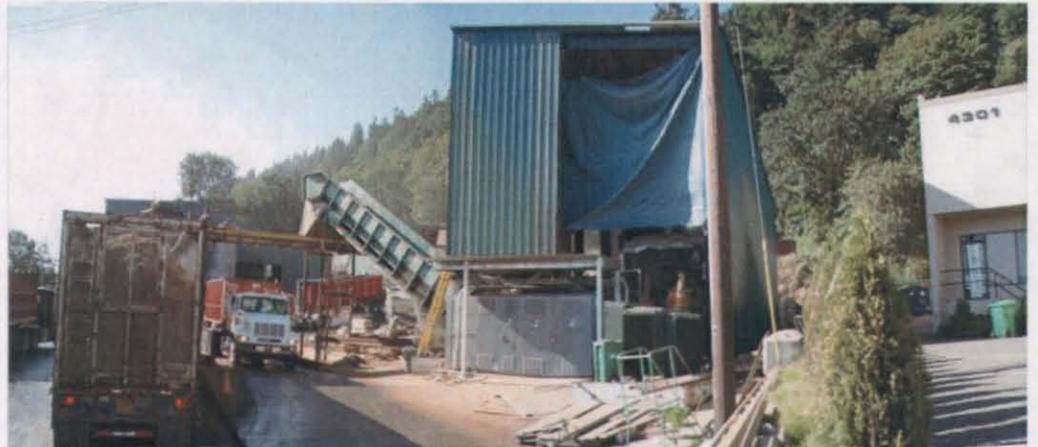
GWR.26AUG09.dka.p03
Visual of the north side of the
wood grinding building facing
west. Active grinding was
taking place.



GWR.26AUG09.dka.p04
Visual of the west side of the
wood grinding building facing
south. Active grinding was
taking place.



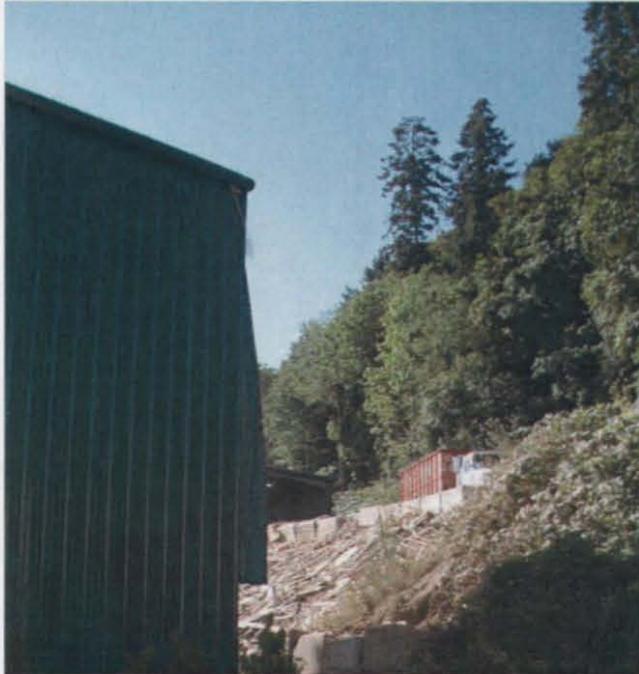
GWR.26AUG09.dka.p05
Visual of the east side of the
wood grinding building.
Active grinding was
taking place.



GWR.26AUG09.dka.p06
Visual of the east side of the
wood grinding building.
Active grinding was
taking place.

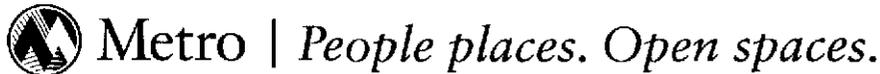


GWR.26AUG09.dka.p07
Additional view of the west side
of the wood grinding building.



GWR.26AUG09.dka.p08
Additional view of the west side
of the wood grinding building.
Observed a demo load being
tipped on upper deck.
30 foot tipper.





**NOTICE OF VIOLATIONS and
IMPOSITION OF CIVIL PENALTY No. NOV-225C-09**

To: Terrell Garrett, Registered Agent
GreenWay Recycling, LLC
PO Box 4483
Portland, OR 97208

Facility: GreenWay Recycling ("GWR")
4135 NW St. Helens Road
Portland, OR 97210

Operating Instrument: Solid Waste Facility License No. L-109-07B

Date(s) of Violation(s): September 1, 2009

License Violation No. 1: License Section 3.0 stipulates that: *All grinding of [yard debris, land clearing debris, untreated wood, painted wood, and preservative-treated wood] must occur on an impervious surface (e.g., asphalt or concrete) and inside a roofed building that is enclosed on at least three sides.*

Metro, along with staff from the Department of Environmental Quality, conducted a joint inspection of GWR on September 1, 2009. GWR was grinding wood at the time of the inspection, even though the building surrounding the grinder was not yet adequately enclosed on at least three sides, as required by Section 3.0 of its License. GWR was therefore operating in violation of Section 3.0 of its License.

License Violation No. 2: License Section 5.7 stipulates that: *The Licensee shall operate the facility in a manner that minimizes and mitigates the generation of dust, airborne debris and litter, and shall prevent its migration beyond property boundaries.*

During the inspection, the Metro inspector observed thick plumes of dust arising high in the air from the wood processing operation. The inspector's findings are documented in inspection notes and photographs (enclosed with this Notice). GWR was therefore operating in violation of Section 5.7 of its License. Subsequent to the inspection, a complaint about dust from GWR was received at Metro.

License Violation No. 3:

License Section 3.4 stipulates that: All mixed non-putrescible waste tipping, storage, sorting and reloading activities must occur on an impervious surface (e.g. asphalt or concrete) and inside a roofed building that is enclosed on at least three sides. Unusually large vehicles (i.e., 30-foot tippers) may tip wastes outside, provided the tipped wastes are moved under cover prior to processing, within 12 hours of receipt, or by the end of the business day, whichever is earlier.

During the September 1, 2009 inspection, the inspector found the operator to be utilizing the wood grinders infeed conveyor as a picking line, though the building is not yet fully enclosed on three sides. This is a violation of License Section 3.4.

Additional Information:

Effective July 1, 2009, GWR's license was modified to authorize grinding of materials only within a building. Metro previously issued the following Notices of Violation to GWR for violating this license restriction:

- NOV-225-09 for violations on July 9 and 14, 2009.
- NOV-225A-09 for violations on August 7, 10, and 11, 2009.
- NOV-225B-09 for Violations on August 25 and 26, 2009.

Civil Penalties:

ONE THOUSAND DOLLARS (\$1,000). This amount includes penalties of \$500 for Violation No. 1 (grinding wood) and the Violation No. 2 (dust allowed to migrate beyond the property boundaries) described above. An invoice for the penalties is included with this Notice. No penalties have been imposed for the violations of License Section 3.4 as these are first time violations subject to an opportunity to cure. Subsequent violations will be **subject to penalties of up to \$500 per day per violation.**

**Opportunity to Cure
Violation No. 3:**

Pursuant to Metro Code Section 5.01.200(b), GWR will be afforded an opportunity to cure violation No. 3 without the imposition of a monetary penalty. Metro will consider the violation cured provided that, beginning immediately, GWR:

- Allows the tipping of waste only on impermeable surfaces; and
- Sorts waste only within buildings enclosed on at least three sides.

These violations will be deemed cured when GWR achieves compliance and remains in compliance for 60 consecutive days. The 60-day period is to begin upon verification by Metro that

GWR is back in compliance. Should GWR be found out of compliance prior to the elapse of the 60 day period, the 60-day period will re-start from the first day that an inspector verifies that GWR is back in compliance again.

9/10/09
Date

Margo Norton
Margo Norton
Finance and Regulatory Services Director

CONTESTED CASE NOTICE

Under Metro Code Chapter 2.05, you have the right to request a contested case hearing regarding this Notice of Violation. You must make this request in writing and ensure that Metro receives the request within 30 days of the date this Notice was mailed. You may retain legal counsel to represent you at the hearing. Article IX, Section 14 of the Oregon Constitution, the Metro Charter, ORS Chapter 268, and Metro Code Chapter 2.05 and 5.01 provide Metro's authority and jurisdiction for the hearing.

Attachments

cc: Roy Brower, Solid Waste Compliance and Cleanup Manager
Steve Kraten, Solid Waste Enforcement Coordinator
Warren Johnson, Solid Waste Compliance Supervisor
Duane Altig, Solid Waste Facility Inspector
Michelle Bellia, Assistant Metro Attorney
Stephanie Rawson, DEQ
Bruce Walker, City of Portland

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing NOTICE OF VIOLATION including CONTESTED CASE NOTICE on the following:

Terrell Garrett, Registered Agent
GreenWay Recycling, LLC
PO Box 4483
Portland, OR 97208

On September 10, 2009, said individuals were served with a complete and correct copy thereof via regular mail and certified mail, return receipt requested, contained in a sealed envelope, with postage prepaid, and deposited in the U.S. Post Office at Portland, Oregon.

Roy W. Brower
Roy W. Brower
Solid Waste Compliance and Cleanup Manager

INVOICE

Please Remit To:

Metro
Accounts Receivable
600 NE Grand Avenue
Portland OR 97232-2736



Page: 1
Invoice No: REM-01073
Invoice Date: 09/09/2009
Customer Number: REM1134
Payment Terms: Net 30
Due Date: 10/09/2009

Bill To:

Greenway Recycling LLC
Terell Garrett
PO Box 4483
Portland OR 97208-4483

AMOUNT DUE: 1,000.00 USD

Amount Remitted



For billing questions, please call 503-797-1634

Line	Adj	Identifier	Description	Quantity	Unit Amt	Net Amount
		NCV-225C-09				
1			Violation Charges	2.00	500.00	1,000.00
SUBTOTAL:						1,000.00
TOTAL AMOUNT DUE :						1,000.00

STANDARD

Original

 Metro | Dry Waste Processing Residual Sampling

Inspection Information											
Facility Name:	GreenWay Recycling, LLC	Date of Inspection:	September 1, 2009								
Address:	4135 NW St. Helens Road Portland, OR 97210	Time of Inspection:	1:50-3:30								
Phone:	503.283.8880	Weather:	71° F, overcast								
Inspector(s)	Will Ennis	Site Photographs taken:	<table border="1"> <tr> <td><input checked="" type="checkbox"/></td> <td>Yes</td> <td><input type="checkbox"/></td> <td>No</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Yes</td> <td><input checked="" type="checkbox"/></td> <td>No</td> </tr> </table>	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No								
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No								
Facility Rep(s):	Terrell Garrett	Samples Collected:									
		If yes, material type:									

This inspection of GreenWay Recycling (“GWR”) was conducted jointly with employees of the Oregon Department of Environmental Quality (“DEQ”). I met Stephanie Rawson (DEQ) and Jim Broad (DEQ) at the subject site. Ms. Rawson and Mr. Broad were present to investigate off-site impacts created by dust and other airborne contaminants generated at GWR. At the time of our arrival the facility was processing wood through a grinder located in a partially enclosed structure on the west end of the site (see photograph #3). I observed dust plumes generated by the loading of wood onto an in-feed conveyor at the south end of the wood processing building (see photographs #1 & #2).

We entered the site and met with Terrell Garrett (GWR). Together we observed the wood processing operation. Mr. Garrett directed our attention to an out-feed conveyor which he said would be enclosed to prevent the generation of airborne dust (see photographs #4 & #5). He stated that he had temporarily shut off a conveyor used to direct fines onto the out-feed conveyor (see photograph #7). Mr. Garrett then had the building’s sole mister turned off so that we could evaluate the effectiveness of the mister. He stated that he had ordered a second mister for the building and planned to purchase and install an oscillating sprinkler to reduce the generation of dust created when loading wood onto the in-feed conveyor (see photograph #6). I observed a GWR employee wet the wood waste stockpile with water. This appeared to decrease the amount of dust generated when the material was loaded onto the in-feed conveyor.

Mr. Broad encouraged Mr. Garrett to install the additional mister and oscillating sprinkler. He further suggested that Mr. Garrett install a screen along the property line from the southwest corner of the wood processing building to the upper level of the site to reduce off-site dust impacts. Mr. Broad stated that Mr. Garrett needed to continue to address sources of dust generation as they are detected. He stated that DEQ could require that GWR obtain an Air Contaminant Discharge Permit if the facility failed to adequately address dust issues at the site.

Upon closer inspection I noted that the material being processed at the wood building was demolition debris and contained waste other than wood (see photographs #9 - #12 & #16). Mr. Garrett stated that the debris was from the demolition of Camp Withycombe in Clackamas. He stated that the debris is delivered in end-dump vehicles and tipped outside of the wood processing building. He said that the facility is conducting a

negative sort of the debris to remove non-wood waste from the material before the wood is processed through a grinder. He indicated that the facility can recover a higher percentage of the wood by processing in this manner.

Mr. Garrett stated that the non-wood waste that is segregated from the debris is delivered to the material recovery building located on the upper level of the site. I observed sorters processing the debris to remove non-wood waste (see photograph #8). I observed the non-wood waste delivered to the material recovery building located on the upper level of the site (see photographs #13 & #14). I noted that a waste conveyor exiting the upper material recovery building was partially uncovered at this time (see photograph #15).

Mr. Broad, Ms. Rawson and Mr. Garrett continued to discuss facility operations. They encouraged Mr. Garrett to continue to monitor the operation for dust and to take steps to mitigate dust generation. I told Mr. Garrett that I would discuss the facility's current processing of demolition debris with Metro staff. I did not generate an inspection summary for this inspection. I did not provide the operator with copies of the photographs taken during this inspection.

End of inspection notes by Will Ennis

M:\rem\regaff\staff\ennis\FACILITIES\GreenWay\Inspections 2009\GREE.01SEP09.WE.IN.docx

GreenWay Recycling

1. GreenWay Recycling: View of wood processing building during operation. (WE)



2. GreenWay Recycling: View of wood processing building during operation. (WE)



3. GreenWay Recycling: View of wood processing building. (WE)



4. GreenWay Recycling: Out-feed conveyor on wood processing building. Operator stated that the conveyor will be enclosed. (WE)



5. GreenWay Recycling: Out-feed conveyor on wood processing building. Operator stated that the conveyor will be enclosed. (WE)



6. GreenWay Recycling: Loading demolition debris onto in-feed conveyor. (WE)



GreenWay Recycling

7. GreenWay Recycling: Fines generated by wood processing operation. (WE)



8. GreenWay Recycling: Residual material from demolition debris processed over wood line. (WE)



9. GreenWay Recycling: Demolition debris staged near the wood processing building. (WE)



GreenWay Recycling

10. GreenWay Recycling: Demolition debris staged near the wood processing building. (WE)



11. GreenWay Recycling: South end of wood processing building. (WE)



12. GreenWay Recycling: Demolition debris staged near wood processing building. (WE)



GreenWay Recycling

13. GreenWay Recycling: Processing residual from wood operation being transported to upper level of site. (WE)



14. GreenWay Recycling: Processing residual from wood operation being transported to upper level of site. (WE)



15. GreenWay Recycling: Uncovered mixed dry waste conveyor. (WE)



GreenWay Recycling

16. GreenWay Recycling: View of wood processing building and demolition debris. (WE)



1
2
3 IN THE MATTER OF THE CONTESTED CASE HEARING OF
4

5 GREENWAY RECYCLING, LLC.) NOV-225B-09 and
6 Appellant,) NOV-225C-09
7)
8 v.) RESPONDENT METRO'S HEARING
9) MEMORANDUM
10 METRO,) Hearings Officer: Carl D. Cox, Esq.
11 Respondent,) Hearing Date: November 4, 2009
12) 9:30 a.m.
13) Location: Metro
14) 600 NE Grand Avenue
15) Portland, OR 97232-2736
16) Room 501

16 Respondent Metro respectfully submits this pre-hearing memorandum. The Hearings Officer should
17 uphold the \$1,000.00 penalty imposed on GreenWay Recycling, LLC in Metro Notice of Violation
18 No. NOV-225B-09 and the \$500.00 penalty imposed on GreenWay Recycling, LLC in Metro Notice
19 of Violation No. NOV-225C-09.

20 **I. Stipulation of Facts**

21 The parties agree to the following stipulations:

- 22 1. NOV-225B-09 imposed penalties for two incidents of grinding wood in an inadequately
23 enclosed building and one incident of creating off-site dust impacts. NOV-225C-09 imposed
24 penalties for one incident of grinding wood in an inadequately enclosed building and one
25 incident of creating off-site dust impacts. Only the alleged violations for grinding wood in an
26 inadequately enclosed building will be contested.
27 2. The facts are the same for both cases and, with agreement of the Hearings Officer, the two
28 cases will be consolidated.

29 **II. The Hearings Officer should uphold Metro's**
30 **imposition of penalties for grinding wood under conditions**
31 **that violated GreenWay Recycling's license**

32 GreenWay Recycling's license prohibits wood grinding other than within a building
33 enclosed on at least three sides. GreenWay Recycling contends that Metro failed to define

1 "enclosed" as it applied to the required wood grinding building and that a tarp affixed to one end
2 of the building sufficed to meet the requirement of enclosing that side. The tarp sagged in such a
3 manner as to produce a large gap and failed to prevent dust from drifting off site. Metro will
4 present evidence to establish that the tarp, proved ineffective for the purpose of containing dust
5 within the wood grinding building and did not reasonably meet the definition or intent of the
6 enclosure requirement. Therefore, the Hearings Officer should uphold Metro's imposition of the
7 penalties imposed by NOV-225B-09 and NOV-225C-09.

8
9 Dated this 9th day of October 2009

10
11 METRO

12
13 

14 Roy W. Brower
15 Solid Waste Compliance & Cleanup Manager
16
17
18
19
20
21

1 CERTIFICATE OF SERVICE

2
3 I hereby certify that I served the foregoing **RESPONDENT METRO'S PREHEARING**
4 **MEMORANDUM** on the following:

5
6 Terrell Garrett
7 Greenway Recycling LLC
8 PO Box 4483
9 Portland, OR 97208

10 Carl D. Cox Hearings Officer
11 Attorney at Law
12 14845 SW Murray Scholls Drive, #110
13 Beaverton, OR 97007

14 by the following method or methods as indicated:

- 15 By **e-mailing** to said person(s) a true copy thereof.
- 16 By **mailing** to said person(s) a true copy thereof, said copy placed in a sealed envelope,
17 postage prepaid and addressed to said person(s) at the last known address for said person(s)
18 as shown above, and deposited in the post office at Portland, Oregon, on the date set forth
19 above.
- 20 By causing a true copy thereof to be **hand delivered** to said person(s) at the last known
21 address for said person(s) as shown above, on the date set forth above.
- 22 By mailing via **certified mail, return receipt requested**, to said person(s) a true copy
23 thereof, said copy placed in a sealed envelope, postage prepaid and addressed to said
24 person(s) at the last known address for said person(s) as shown above, and deposited
25 in the post office at Portland, Oregon, on the date set forth above.
- 26 By **facsimile** to said person(s) a true copy thereof at the facsimile number shown above,
27 which is the last known facsimile number for said person(s) on the date set forth above.
28 A copy of the confirmation report is attached hereto.

29
30
31 DATED this 9th day of October 2009.

32 METRO


Barbara Leslie
Solid Waste Compliance and Cleanup Program Assistant

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IN THE MATTER OF THE CONTESTED CASE HEARING OF

GREENWAY RECYCLING, LLC.)	NOV-225B-09 and
	)	NOV-225C-09
Appellant,)	
)	
v.	)	RESPONDENT METRO'S WITNESS AND
	)	EXHIBIT LIST
METRO,)	
)	
Respondent,	)	Hearings Officer: Carl D. Cox, Esq.
	)	Hearing Date: November 4, 2009
	)	9:30 a.m.
)	
	)	Location: Metro
	)	600 NE Grand Avenue
	)	Portland, OR 97232-2736
	)	Room 501

Respondent Metro may offer the following witnesses and exhibits at the hearing of the above-captioned matters:

I. Witnesses

Steve Kraten. Mr. Kraten, Solid Waste Enforcement Coordinator will provide testimony related to the issuance of Notices of Violation to GreenWay Recycling.

Warren Johnson. Mr. Johnson, Solid Waste Compliance Supervisor, will provide testimony related to wood grinding restrictions contained in GreenWay Recycling's Solid Waste Facility License.

1 Duane Altig. Mr. Altig, Solid Waste Facility Inspector, will provide testimony related to
2 GreenWay Recycling's use of a tarp to partially cover one side of its wood grinding
3 building.

4 Will Ennis. Mr. Ennis, Solid Waste Facility Inspector, will provide testimony related to
5 GreenWay Recycling's use of a tarp to partially cover one side of its wood grinding
6 building.

7
8 **II. Exhibits**

9
10 **Description of Exhibits**

- 11
12 1. April 15 letter from Margo Norton to Terrell Garrett.
13 2. July 1, 2009 letter from Margo Norton to Terrell Garrett.
14 3. Solid Waste Facility License No. L-109-07B.
15 4. Notice of Violation No. NOV-225B-09.
16 5. August 26, 2009 Inspection Notes.
17 6. Notice of Violation No. NOV-225C-09.
18 7. September 1, 2009 Inspection Notes.
19 8. Supplemental photograph of tarp taken August 26, 2009.
20 9. Supplemental photograph of tarp taken September 1, 2009.
21 10. September 23, 2009 letter from Terrell Garrett to Roy Brower Requesting a Contested
22 Case Hearing.

23
24 Dated this 9th day of October 2009

25
26 METRO

27
28 
29 _____
30 Roy W. Brower
31 Solid Waste Compliance & Cleanup Manager

600 NE Grand Ave.
Portland, OR 97232-2736
503-797-1700
503-797-1804 TDD
503-797-1797 fax

www.oregonmetro.gov



Metro | *People places. Open spaces.*

April 15, 2009

Terrell Garrett
GreenWay Recycling, LLC
PO Box 4483
Portland, OR 97208

RE: July 1, 2009 deadline to abate wood dust violations

Dear Mr. Garrett:

On January 8, 2009, Metro approved GreenWay Recycling's ("GWR") wood dust abatement plan. The plan was submitted in response to Notice of Violation ("NOV") number NOV-198D-08. This NOV was the latest in a series of violation notices resulting from wood dust violations associated with GWR's wood waste processing operations. NOV-198D-08 imposed penalties of \$1,500 (\$500 for each of the last three times wood dust was verified to have drifted off-site). Metro agreed to suspend those penalties subject to the full implementation of GWR's abatement plan. Metro's approval of GWR's abatement plan stipulated that:

Both the continued suspension of the civil penalties imposed for Notice of Violation Number NOV-198D-08 and the continuation of GreenWay's authority to continue receiving and processing wood waste are conditioned on the timely submission of progress reports and the timely achievement of milestone targets.

Though there were several milestone targets specified in the plan, the most critical of the targets is the July 1, 2009 deadline for the building enclosing the wood processing operation and the associated outfeed system to be completed and operational.¹

Metro is aware that GWR's ability to move this project forward has been hampered by the current economic downturn. However, Metro cannot allow these violations to continue. If the new building and outfeed system are not in place and operational by July 1, 2009, then GWR's penalties will become payable and, until such time as the dust suppression measures specified in the abatement plan are completed, GWR should cease all tipping and grinding of wood waste except for wood that it may tip and process within the currently existing processing building.

If, by July 1, 2009, GWR fails to either complete its building and outfeed system or cease tipping and processing wood outside of a building, then its license may be modified so as to rescind its authorization to process wood waste.

Sincerely,

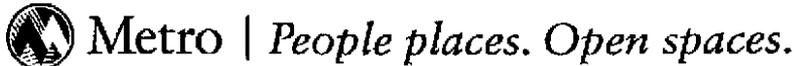
Margo Norton
Finance and Administrative Services Director

SK/MN:bjl
cc: Roy Brower, Solid Waste Compliance & Cleanup Manager
Steve Kraten, Solid Waste Enforcement Coordinator
Warren Johnson, Solid Waste Compliance Supervisor
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¹ "System" means the wood waste building, chain-drag conveyor, and chip load-out bin with dust suppressive measures. "Complete and operational" means that construction of all parts of the system is finished and all parts of the system are functional such that the tipping and grinding of wood waste, and the conveyance and loading of hogged fuel are all working in concert so as to prevent off-site dust impacts.

600 NE Grand Ave.
 Portland, OR 97232-2736
 503-797-1700
 503-797-1804 TDD
 503-797-1797 fax

www.oregonmetro.gov



July 1, 2009

Terrell Garrett, Registered Agent
 GreenWay Recycling, LLC
 PO Box 4483
 Portland, OR 97208

RE: Failure to abate NOV-198D-08 by July 1, 2009

Dear Mr. Garrett:

GreenWay Recycling, LLC. ("GWR") previously received the following series of Notices of Violation ("NOVs") for dust violations relating to its wood processing activities:

NOV-198-08	March 3, 2008
NOV-198A-08	March 25, 2008
NOV-198B-08	June 19, 2008
NOV-198C-08	June 30, 2008
NOV-198D-08	November 24, 2008

The last NOV in this series, NOV-198D-08, imposed three penalties of \$500 each (\$1,500 in total) for dust events that occurred on September 9, 26, and 29, 2008. The penalties were suspended subject to GWR abating the violations by fulfilling a set of conditions set forth in GWR's Metro-approved abatement plan. The most significant of these conditions was to complete the construction of a building to enclose the wood processing operations by July 1, 2009. An associated enclosed wood chip outfeed system was also to be completed by that date. GWR has failed to meet these conditions.

GWR's previously suspended penalties for dust violations are hereby reinstated. An invoice for \$1,500 is enclosed with this letter. Additionally, GWR's License has been modified to require the grinding of all types of wood wastes to occur only within a building enclosed on at least three sides. The new License has been issued as License No. L-109-07B. A copy of the modified License is enclosed. A redline version is also included. Please note that the provisions of the modified License are already in effect and all incidents of wood waste being processed outside of a building after July 1, 2009 will be subject to penalties of up to \$500 per day. Dust violations will additionally be subject to penalties of up to \$500 per incident.

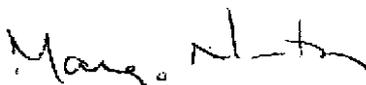
Additionally, on June 29, 2009, Metro received your e-mailed request for a 30-day extension to comply with your wood dust abatement plan. The key elements of the plan are construction of a building to enclose the wood grinding operation and completion of an enclosed wood chip outfeed system to convey the chips from the grinder to a hopper for truck loading. Your letter stated that the steel for the building is scheduled for delivery on July 23 and construction will be completed by July 30. A one-week construction schedule for the building seems unrealistic and your request contains no information about completion of the proposed outfeed conveyor, which is a key part of the system.

The original plan you sent to Steve Kraten on December 15, 2008 projected that, in a worst case situation, the building would be completed by the third week of February and that the chip outfeed system would be completed by the end of May. In order to account for unexpected delays and to provide a more realistic schedule, Metro stretched out the timetable for your plan, allowing you until July 1, 2009 for completion of the building and outfeed system. Your request for a further extension is denied.

Under Metro Code Chapter 2.05, you have the right to request a contested case hearing regarding the changes contained in Solid Waste Facility License No. L-109-07B or my decision regarding your June 29 request. In order to do so, you must make this request in writing and ensure that Metro receives the request within 30 days of the date this letter was delivered. Any such request should be directed to the attention of Steve Kraten at Metro. You may retain legal counsel to represent you at the hearing. Article IX, Section 14 of the Oregon Constitution, the Metro Charter, ORS Chapter 268, and Metro Code Chapters 2.05 and 5.01 provide Metro's authority and jurisdiction for the hearing.

If you have questions regarding any of these matters, please contact Steve Kraten at (503) 797-1678.

Sincerely,



Margo Norton
Finance and Regulatory Services Director

SK/MN:bjt

cc: Roy Brower, Solid Waste Compliance and Cleanup Manager
Steve Kraten, Solid Waste Enforcement Coordinator
Warren Johnson, Solid Waste Compliance Supervisor
Duane Altig, Solid Waste Facility Inspector
Mike Kortenhof, DEQ

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INVOICE

Please Remit To:

Metro
 Accounts Receivable
 600 NE Grand Avenue
 Portland OR 97232-2736



Page: 1
 Invoice No: REM-01023
 Invoice Date: 07/01/2009
 Customer Number: REM1134
 Payment Terms: Net 30
 Due Date: 07/31/2009

Bill To:

Greenway Recycling LLC
 Accounts Payable
 PO Box 4483
 Portland OR 97208-4483

AMOUNT DUE: 1,500.00 USD

Amount Remitted



For billing questions, please call 503-797-1744

Line	Adj	Identifier	Description	Quantity	Unit Amt	Net Amount
Attention: Terrell Garrett						
NOV-1980-08						
1			Penalties	1.00	500.00	1,500.00
SUBTOTAL:						1,500.00
TOTAL AMOUNT DUE :						1,500.00

STANDARD

Original

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
 TEL 503 797 1700 | FAX 503 797 1797



METRO

**SOLID WASTE FACILITY LICENSE
 No. L-109-07B**

LICENSEE:	FACILITY NAME AND LOCATION:
GreenWay Recycling, LLC P.O. Box 4483 Portland, OR 97208 Tel. (503) 283-8880 Fax. (503) 283-8881 Email: greenwayrecycling@comcast.net	GreenWay Recycling, LLC 4135 NW St. Helens Road Portland, OR 97210 Tel. (503) 283-8880 Fax. (503) 283-8881 Email: greenwayrecycling@comcast.net
OPERATOR:	PROPERTY OWNER:
GreenWay Recycling, LLC P.O. Box 4483 Portland, OR 97208 Tel. (503) 283-8880 Fax. (503) 283-8881 Email: greenwayrecycling@comcast.net	GreenWay Property, LLC P.O. Box 4483 Portland, OR 97208 Tel. (503) 283-8880 Fax. (503) 283-8881

This license replaces and supercedes the provisions of Metro Solid Waste Facility License No. L-109-07A. Metro grants this license to the Licensee named above. The Licensee is authorized to operate and maintain a solid waste facility and to accept the solid waste and perform the activities authorized by and subject to the conditions stated in this license.

ISSUED BY METRO:


 Scott Robinson, Deputy Chief Operating Officer

July 1, 2009
 Date



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1.0		ISSUANCE
1.1	Licensee	GreenWay Recycling, LLC 4135 NW St. Helens Road Portland, OR 97210 Tel: (503) 283-8880 Fax: (503) 283-8881 Email: greenwayrecycling@comcast.net
1.2	Contact	Terrell Garrett
1.3	License number	When referring to this license, please cite: Metro Solid Waste Facility License Number L-109-07B.
1.4	Term	The term commences on March 1, 2009 and shall remain in force until August 31, 2012, unless modified, suspended, or revoked under the provisions of Section 11.0 of this license.
1.5	Renewal	The Licensee may apply for a license renewal, provided that the Licensee files a completed application for renewal accompanied by payment of the required application fee not less than 120 days prior to the expiration of the license term and as provided in Metro Code sections 5.01.060, 5.01.067 and 5.01.087.
1.6	Facility name and mailing address	GreenWay Recycling, LLC P.O. Box 4483 Portland, OR 97208
1.7	Operator	GreenWay Recycling, LLC 4135 NW St. Helens Road Portland, OR 97208 Tel: (503) 283-8880 Fax: (503) 283-8881
1.8	Facility legal description	Tax Lots: 191N1EOL, Section 19, Township1N, Range1E, City of Portland, Multnomah County, State of Oregon
1.9	Property owner	GreenWay Property, LLC P.O. Box 4483 Portland, OR 97208 Tel: (503) 283-8880 Fax: (503) 283-8881
1.10	Permission to operate	Member owners of GreenWay Recycling, LLC, the property owners, submitted a signed consent form with the application.



2.0		CONDITIONS AND DISCLAIMERS
2.1	Guarantees	This license shall not vest any right or privilege in the Licensee to receive specific quantities of solid waste at the direction of Metro during the term of the license.
2.2	Non-exclusive license	This license shall not in any way limit Metro from granting other solid waste licenses within Metro's boundaries.
2.3	Property rights	This license does not convey any property rights in either real or personal property.
2.4	No recourse	The Licensee shall have no recourse whatsoever against Metro or 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 Metro determines that the license or any part thereof is invalid.
2.5	Indemnity	The Licensee agrees to indemnify, hold harmless, and defend Metro, its elected officials, employees, or agents from and against 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	Binding nature	This license is binding on the Licensee. The Licensee is liable for all acts and omissions of the Licensee's contractors and agents.
2.7	Waivers	To be effective, a waiver of any terms or conditions of this license must be in writing and signed by the Metro Chief Operating Officer.
2.8	Effect of waiver	Waiver of a term or condition of this license shall not waive nor prejudice Metro's right otherwise to require subsequent performance of the same term or condition or any other term or condition.
2.9	Choice of law	The license shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
2.10	Enforceability	If a court of competent jurisdiction determines that any provision of this license is invalid, illegal or unenforceable in any respect, the validity of the remaining provisions contained in this license shall not be affected.



2.11	License not a waiver	This license does not relieve any owner, operator, or the Licensee from the obligation to obtain all required permits, licenses, or other clearances and to comply with all orders, laws, regulations, reports or other requirements of other regulatory agencies.
2.12	License not limiting	This license does not limit the power of a federal, state, or local agency to enforce any provision of law relating to the facility.
2.13	Definitions	Unless otherwise specified, all other terms are as defined in Metro Code Chapter 5.01.

3.0	AUTHORIZATIONS	
3.1	Purpose	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.
3.2	General conditions on acceptable materials	The Licensee is authorized to accept at the facility only the solid wastes described in Section 3.0 of this license. The Director may authorize the Licensee to accept solid wastes not otherwise described in Section 3.0, provided that the acceptance of such wastes would not require a Metro Solid Waste Facility Franchise under Metro Code chapter 5.01. The Licensee shall seek authorization under Metro Code chapter 5.01.095 and any change of authorization shall be included as an amendment to this license as provided in Section 11.1. The Licensee is prohibited from knowingly receiving any solid waste not authorized in this section.
3.3	General conditions on activities	The Licensee is authorized to perform at the facility only those waste-related activities that are described in Section 3.0 of this license.
3.4	Acceptance and management of mixed non-putrescible solid waste	<ol style="list-style-type: none"> 1. The Licensee is authorized to accept loads of mixed non-putrescible solid wastes for the purpose of conducting material recovery. 2. All mixed non-putrescible waste tipping, storage, sorting and reloading activities must occur on an impervious surface (e.g. asphalt or concrete) and inside a roofed building that is enclosed on at least three sides. Unusually large vehicles (i.e., 30-foot tippers) may tip



		<p>wastes outside, provided the tipped wastes are moved under cover prior to processing, within 12 hours of receipt, or by the end of the business day, whichever is earlier.</p> <p>3. The Licensee shall keep all mixed non-putrescible solid waste physically separated from and not mixed or commingled with source-separated recyclable materials, including wood waste, yard debris and other recyclables.</p>
3.5	Material recovery required	<p>1. The Licensee shall perform material recovery on mixed non-putrescible wastes. The Licensee shall ensure that the facility is designed and operated to assure materials are recovered in a timely manner and to protect the quality of non-putrescible waste that has not yet undergone material recovery. The Licensee must perform recovery at no less than the minimum level stipulated in Metro Code Chapter 5.01.</p> <p>2. The Licensee shall take quarterly samples of processing residual that are statistically valid and representative of the facility's residual. Each sample required by this section shall weigh at least 300 pounds.</p>
3.6	Management of processing residual from material recovery	<p>1. The Licensee shall store all non-putrescible waste processing residual on a concrete or asphalt surface within a covered building or alternatively, inside water-tight covered or tarped containers or within covered or tarped transport trailers.</p> <p>2. The Licensee shall keep all non-putrescible waste processing residual physically separated from and not mixed or commingled with source-separated recyclable materials, including wood waste, yard debris and other recyclables.</p>
3.7	Acceptance and processing of yard debris	<p>1. The Licensee is authorized to accept source-separated yard debris that has not reached a state of decomposition sufficient to produce malodors detectable beyond the boundaries of the facility.</p> <p>2. The Licensee may accept yard debris only for grinding and reloading to authorized composting facilities, paper production facilities, or to facilities with industrial boilers for use as hogged fuel.</p> <p>3. All grinding of yard debris must occur on an impervious surface (e.g. asphalt or concrete) and inside a roofed building that is enclosed on at least three sides.</p>



3.8	Acceptance and processing of land clearing debris	<ol style="list-style-type: none">1. The Licensee is authorized to accept land clearing debris (e.g. brush and stumps).2. Land clearing debris may be accepted for grinding and reloading to authorized composting facilities, paper production facilities, or to facilities with industrial boilers for use as hogged fuel.3. All grinding of land clearing debris must occur on an impervious surface (e.g. asphalt or concrete) and inside a roofed building that is enclosed on at least three sides.
3.9	Acceptance and processing of clean untreated wood	<ol style="list-style-type: none">1. The Licensee is authorized to accept for grinding and reloading, source-separated, untreated and unpainted "clean" wood waste (e.g. untreated lumber and wood pallets).2. The Licensee may accept clean wood waste only for grinding, screening, and reloading to authorized composting facilities, paper production facilities, or facilities with industrial boilers for use as hogged fuel.3. All grinding of untreated wood must occur on an impervious surface (e.g. asphalt or concrete) and inside a roofed building that is enclosed on at least three sides.
3.10	Acceptance and processing of painted wood	<ol style="list-style-type: none">1. The Licensee is authorized to accept painted wood waste only for the production of hogged fuel.2. The Licensee shall keep painted wood waste separate from yard debris and untreated wood waste destined for composting or mulch. The Licensee shall not use or incorporate painted wood as mulch, animal bedding, or compost feedstock.3. All grinding of painted wood must occur on an impervious surface (e.g. asphalt or concrete) and inside a roofed building that is enclosed on at least three sides.
3.11	Acceptance and management of preservative-treated wood	<ol style="list-style-type: none">1. The Licensee is authorized to accept incidental quantities of preservative-treated wood waste, other than creosote-treated wood waste, that may be present in loads comprised predominantly of clean or painted wood waste.2. The Licensee shall not incorporate preservative-treated wood waste, such as wood treated with Pentachlorophenol (PCP or "penta") and Copper Chromium Arsenic (CCA), into mulch, animal bedding, or compost feedstock.3. All grinding of preservative-treated wood must occur on



		an impervious surface (e.g. asphalt or concrete) and inside a roofed building that is enclosed on at least three sides.
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4.0 LIMITATIONS AND PROHIBITIONS		
4.1	Purpose	This section of the license describes limitations and prohibitions on the wastes handled at the facility and activities performed at the facility.
4.2	Prohibited waste	The Licensee is prohibited from receiving, processing, reloading 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: non-putrescible waste other than that specifically allowed in Section 3.0 of this license, putrescible waste, special wastes as defined in chapter 5.02 of the Metro Code, creosote-treated wood waste, materials contaminated with or containing friable asbestos; lead acid batteries; liquid waste for disposal; vehicles; infectious, biological or pathological waste; radioactive waste; hazardous waste; any waste prohibited by the DEQ.
4.3	Prohibition on mixing	The Licensee shall not mix any source-separated recyclable materials, source-separated yard debris or wood wastes brought to the facility with any other solid wastes.
4.4	Prohibition of size reduction on non-putrescible waste	The Licensee shall not crush, grind or otherwise reduce the size of non-putrescible waste except when such size reduction constitutes a specific step in the facility's material recovery operations, reload operations, or processing residual consolidation or loading operations, and such size reduction is described and approved by Metro in an operating plan.
4.5	No disposal of recyclable materials; other potential disposal bans	The Licensee shall not dispose of source-separated recyclable materials by landfilling or incineration. The Licensee also shall not dispose, by landfilling or incineration, any other wastes identified in an ordinance adopted by the Metro Council during the term of this license.
4.6	Composting prohibited	The Licensee shall not keep yard debris on site long enough for more than negligible biological decomposition to begin.



4.7	Limits not exclusive	This License shall not 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.
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5.0	OPERATING CONDITIONS	
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5.1	Purpose and general performance goals	This section of the license describes criteria and standards for the operation of the facility. The Licensee shall meet the following general performance goals: <ul style="list-style-type: none">a) Environment. The Licensee shall design and operate the facility to preclude the creation of undue threats to the environment including, but not limited to, stormwater or groundwater contamination, air pollution, and improper acceptance and management of hazardous waste asbestos and other prohibited wastes.b) Health and safety. The Licensee shall design and operate the facility to preclude the creation of conditions that may degrade public health and safety including, but not limited to, fires, vectors, pathogens and airborne debris.c) Nuisances. The Licensee shall design and operate the facility to preclude the creation of nuisance conditions including, but not limited to, litter, dust, odors, and noise.
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5.2	Qualified operator	<ol style="list-style-type: none">1. The Licensee shall, during all hours of operation, provide an operating staff employed by the facility, and qualified and competent to carry out the functions required by this license and to otherwise ensure compliance with Metro Code Chapter 5.01.2. Facility personnel, as relevant to their job duties and responsibilities, shall be familiar with the relevant provisions of this license and the relevant procedures contained within the facility's operating plan (see Section 6.0).3. A qualified operator must be an employee of the facility with training and authority to reject prohibited waste that is discovered during load checks and to properly manage prohibited waste that is inadvertently received.
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5.3	Fire prevention	The Licensee 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.
5.4	Adequate vehicle accommodation	The Licensee shall: <ol style="list-style-type: none">1. Provide access roads of sufficient capacity to adequately accommodate all on-site vehicular traffic. Access roads shall be maintained to allow the orderly egress and ingress of vehicular traffic when the facility is in operation, including during inclement weather.2. Take reasonable steps to notify and remind persons delivering solid waste to the facility that vehicles shall not park or queue on public streets or roads except under emergency conditions or as provided by local traffic ordinances.3. Post signs to inform customers not to queue on public roadways.4. Provide adequate off-street parking and queuing for vehicles, including adequate space for on-site tarping and untarping of loads.
5.5	Managing prohibited wastes	<ol style="list-style-type: none">1. The Licensee shall not accept prohibited waste, including but not limited to putrescible waste, hazardous waste and friable asbestos-containing material. The Licensee must reject prohibited waste upon discovery and shall properly manage and dispose of prohibited waste when inadvertently received.2. The Licensee shall implement a load-checking program to prevent the acceptance of waste that is prohibited by the license. This program must include at a minimum:<ol style="list-style-type: none">a) Visual inspection. As each load is tipped, a qualified operator shall visibly inspect the load to prevent the acceptance of waste that is prohibited by the license.b) Containment area. A secured or isolated containment area for the storage of prohibited wastes that are inadvertently received. Containment areas shall be covered and enclosed to prevent leaking and contamination.c) Record maintenance. Records of the training of personnel in the recognition, proper handling, and disposition of prohibited waste shall be maintained in the operating record and be available for review by



		<p>Metro.</p> <p>3. Upon discovery, the Licensee shall remove all prohibited or unauthorized wastes or manage the waste in accordance with DEQ requirements and procedures established in the operating plan (see Section 6.7 of this license). All such wastes the Licensees inadvertently receives shall be removed from the site and transported to an appropriate destination within 90 days of receipt, unless required to be removed earlier by the DEQ or local government.</p>
5.6	Storage and exterior stockpiles	<p>The Licensee shall:</p> <ol style="list-style-type: none">1. Manage, contain, and remove at sufficient frequency stored materials and solid wastes to avoid creating nuisance conditions, vector or bird attraction or harborage, or safety hazards;2. Maintain storage areas in an orderly manner and keep the areas free of litter;3. Position exterior stockpiles within footprints identified on the facility site plan or operating plan;4. Not stockpile materials for longer than 180 days (6 months). Metro may grant exceptions provided the facility has received written authority to store materials for longer periods of time based on a demonstrated need and the materials will be used productively and provided that such stockpiles will not create nuisances, health, safety or environmental problems;5. Not store mixed non-putrescible waste or processing residual on-site unless it is on an impervious surface (i.e., asphalt or concrete) within a covered building or alternatively, inside water-tight covered or tarped containers or within covered or tarped transport trailer; and6. Keep all non-putrescible waste processing residual physically separated from, and not mixed or commingled at any time with, source-separated recyclable or recovered materials, including wood waste, yard debris and other recyclables.
5.7	Dust, airborne debris and litter	<p>The Licensee shall operate the facility in a manner that minimizes and mitigates the generation of dust, airborne debris and litter, and shall prevent its migration beyond property boundaries. The Licensee shall:</p> <ol style="list-style-type: none">a) Take reasonable steps, including signage, to notify



		<p>and remind persons delivering solid waste to the facility that all loads must be suitably secured to prevent any material from blowing off the load during transit.</p> <ul style="list-style-type: none">b) Maintain and operate all vehicles and devices transferring or transporting solid waste from the facility to prevent leaking, spilling or blowing of solid waste on-site or while in transit.c) Maintain and operate all access roads and receiving, processing (including grinding), storage, and reload areas in such a manner as to minimize dust and debris generated on-site and prevent such dust and debris from blowing or settling off-site.d) Keep all areas within the site and all vehicle access roads within ¼ mile of the site free of litter and debris generated directly or indirectly as a result of the facility's operation.e) Ensure that all mixed non-putrescible waste tipping, storage, sorting and reloading activities occur on an impervious surface (e.g. asphalt or concrete) and inside a roofed building that is enclosed on at least three sides. Unusually large vehicles (i.e., 30-foot tippers) may tip wastes outside, provided the tipped wastes are moved under cover prior to processing within 12-hours of receipt.f) Ensure that mixed non-putrescible waste and processing residual is stored only on an impervious (asphalt or concrete) surface within a covered building or alternatively, inside water tight covered or tarped containers or within covered or tarped transport trailers.g) Maintain on-site facility access roads to prevent or control dust and to prevent or control the tracking of mud off-site.h) Provide access to the facility for the purpose of uncovered load enforcement. During all times that solid waste or recyclable materials are being accepted, authorized representatives of Metro, including law enforcement personnel on contract to Metro, shall be permitted access to the premises of the facility for the purpose of making contact with individuals they have observed transporting uncovered loads of solid waste or recyclable materials on a public road right-of-way in violation of
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		section 5.09.040 of the Metro Code.
5.8	Odor	<ol style="list-style-type: none">1. The Licensee shall operate the facility in a manner that prevents the generation of odors that are detectable off-site.2. The Licensee shall establish and follow procedures in the operating plan for minimizing odor at the facility (see Section 6.8 of this license).
5.9	Vectors (e.g. birds, rodents, insects)	<ol style="list-style-type: none">1. The Licensee shall operate the facility in a manner that is not conducive to the harborage of rodents, birds, insects, or other vectors capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.2. If vectors are present or detected at the facility, the Licensee shall implement vector control measures.
5.10	Noise	The Licensee shall operate the facility in a manner that prevents the creation of noise sufficient to cause adverse off-site impacts and to the extent necessary to meet applicable regulatory standards and land-use regulations.
5.11	Water contaminated by solid waste and solid waste leachate	<p>The Licensee shall operate the facility consistent with an approved DEQ stormwater management plan (or equivalent), and shall:</p> <ol style="list-style-type: none">a) Operate and maintain the facility to prevent contact of solid wastes with storm water runoff and precipitation;b) Dispose of or treat water contaminated by solid waste generated onsite in a manner complying with local, state, and federal laws and regulations; andc) Ensure that all mixed non-putrescible waste tipping, storing, sorting and reloading activities occur on an impervious surface (e.g. asphalt or concrete) and inside a roofed building that is enclosed on at least three sides. Unusually large vehicles (i.e., 30-foot tippers) may tip wastes outside, provided the tipped wastes are moved under cover prior to processing within 12-hours of receipt or by the end of the business day whichever is earlier.
5.12	Access control	<ol style="list-style-type: none">1. The Licensee shall control access to the facility as necessary to prevent unauthorized entry and dumping.2. The Licensee shall maintain a gate or other suitable barrier at potential vehicular access points to prevent



		unauthorized access to the site when an attendant is not on duty.
5.13	Signage	<p>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, and legible from off-site during all hours and shall contain at least the following information:</p> <ul style="list-style-type: none">a) Name of the facilityb) Address of the facility;c) Emergency telephone number for the facility;d) Operating hours during which the facility is open for the receipt of authorized waste;e) Fees and charges;f) Metro's name and telephone number (503) 234-3000;g) A list of authorized and prohibited wastes;h) Vehicle / traffic flow information or diagram;i) Covered load requirements; andj) Directions not to queue on public roadways.
5.14	Nuisance complaints	<ol style="list-style-type: none">1. The Licensee shall respond to all nuisance complaints in timely manner (including, but not limited to, blowing debris, fugitive dust or odors, noise, traffic, and vectors), and shall keep a record of such complaints and any action taken to respond to the complaints, including actions to remedy the conditions that caused the complaint.2. If the facility receives a complaint, the Licensee shall:<ul style="list-style-type: none">a) Attempt to respond to that complaint within one business day, or sooner as circumstances may require, and retain documentation of its attempts (whether successful or unsuccessful); andb) Log all such complaints as provided by the recordkeeping and reporting standards (section 6.11). Each log entry shall be retained for one year and shall be available for inspection by Metro.
5.15	Access to license document	<p>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.</p>



6.0 OPERATING PLAN	
6.1	Purpose This section lists the requirements associated with preparing and implementing a facility operating plan, and lists the procedures that must be included in the required facility operating plan.
6.2	Plan compliance The Licensee must operate the facility in accordance with an operating plan approved by Metro's Solid Waste Compliance and Cleanup Division Manager (the "Manager"). The operating plan must include sufficient detail to demonstrate that the facility will be operated in compliance with this license. The operating plan may be amended from time to time, subject to approval by the Manager.
6.3	Plan maintenance The Licensee shall submit an updated operating plan to the Manager by July 20, 2009 as provided in Section 6.0 of this license. The Licensee must revise the operating plan as necessary to keep it current with facility conditions, procedures, and requirements. The Licensee must submit revisions of the operating plan to the Manager for written approval prior to implementation.
6.4	Access to operating plan The Licensee shall maintain a copy of the operating plan on the facility premises and in a location where facility personnel and Metro representatives have ready access to it.
6.5	Procedures for inspecting loads The operating plan shall establish: a) Procedures for inspecting incoming loads for the presence of prohibited or unauthorized wastes; b) A set of objective criteria for accepting and rejecting loads; and c) An asbestos testing protocol for all material that appears as if it may contain friable asbestos.
6.6	Procedures for processing and storage of loads The operating plan shall establish procedures for: a) Processing authorized solid wastes; b) Reloading and transfer of authorized solid wastes; c) Managing stockpiles to ensure that they remain within the authorized volumes and pile heights; d) Storing authorized solid wastes; and



		e) Minimizing storage times and avoiding delay in processing of authorized solid wastes.
6.7	Procedures for managing prohibited wastes	The operating plan shall establish procedures for managing, reloading, and transporting to appropriate facilities or disposal sites each of the prohibited or unauthorized wastes if they are discovered at the facility. In addition, the operating plan shall establish procedures and methods for notifying generators not to place hazardous wastes or other prohibited wastes in drop boxes or other collection containers destined for the facility.
6.8	Procedures for odor prevention	The operating plan shall establish procedures for preventing all objectionable odors generated at the facility from being detected off the premises of the facility. The plan must include: <ul style="list-style-type: none">a) A management plan that will be used to monitor and manage all odors of any derivation including malodorous loads delivered to the facility; andb) 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.
6.9	Procedures for dust prevention	The operating plan shall establish procedures for preventing dust from blowing off the premises of the facility. The plan must include: <ul style="list-style-type: none">a) A management plan that will be used to monitor and manage dust of any derivation; andb) Procedures for receiving and recording dust complaints, immediately investigating any dust complaints to determine the cause of dust emissions, and remedying promptly any dust problem at the facility.
6.10	Procedures for emergencies	The operating plan shall establish procedures to be followed in case of fire or other emergency.
6.11	Procedures for nuisance complaints	1. For every nuisance complaint (e.g. odor, dust, vibrations, litter) received, the Licensee shall record: <ul style="list-style-type: none">a) The nature of the complaint;b) The date the complaint was received;c) The name, address and telephone number of the



		<p>person or persons making the complaint; and</p> <p>d) Any actions taken by the operator in response to the complaint (whether successful or unsuccessful).</p> <p>2. The Licensee shall make records of such information available to Metro upon request. The Licensee shall retain each complaint record for a period of not less than one year.</p>
6.12	Closure protocol	The Licensee shall establish protocol for closure and restoration of the site in the event of a long-term cessation of operations as provided in Metro Code Section 5.01.060.
6.13	Financial assurance	The Licensee shall maintain financial assurance in an amount adequate for the cost of the facility's closure and in a form approved by Metro for the term of this license, as provided in Metro Code Section 5.01.060.

7.0	FEES AND RATE SETTING	
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.
7.3	Rates not regulated	The tipping fees and other rates charged at the facility are exempt from rate regulation by Metro.
7.4	Metro fee imposed on disposal	The Licensee is liable for payment of the Metro Regional System Fee and excise taxes on any solid wastes delivered to a disposal site, unless these solid wastes are exempted by Metro Code Chapter 5.01.

8.0	RECORD KEEPING AND REPORTING	
8.1	Purpose	This section of the license describes record keeping and reporting requirements. The Licensee shall effectively monitor facility operation and maintain accurate records of the information described in this section.
8.2	Reporting requirements	1. For all solid waste and materials the Licensee is authorized to receive under Section 3.0 of this license,



		<p>including all non-putrescible waste, source-separated recyclables, inert materials, and yard debris, the Licensee shall keep and maintain accurate records of the amount of such materials the Licensee receives, recovers, recycles, reloads, and disposes.</p> <p>2. The Licensee shall keep and maintain complete and accurate records of the following for all transactions:</p> <ul style="list-style-type: none">a) Ticket Number (should be the same as the ticket number on the weight slips);b) Account Number or Business Name: Incoming hauler account number on all incoming transactions and outgoing destination account number on all outgoing transactions. For incoming cash commercial customers, incoming hauler business name for all incoming commercial cash transactions;c) Material Category: Code designating the following types of material (more detail, such as differentiating yard debris, is acceptable): (1) incoming source-separated recyclable materials by type; (2) incoming mixed dry waste; (3) outgoing recyclable materials by type; (4) outgoing mixed dry waste;d) Origin: Code designating the following origin of material: (1) from inside Metro boundaries; (2) from within Multnomah, Clackamas and Washington Counties but outside Metro boundaries; and (3) from out-of-state:<ul style="list-style-type: none">i. Any load containing any amount of waste from within the Metro region shall be reported as if the entire load was generated from inside the Metro region.ii. If the Licensee elects to report all loads delivered to the facility as being generated from inside the Metro region, then the Licensee is not required to designate the origin of loads in (d)(2) and (3) above;e) Date the load was received at, transferred within, or transmitted from the facility;f) Time the load was received at, transferred within, or transmitted from the facility;g) Indicate whether Licensee accepted or rejected the load;h) Net weight of the load; and
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		i) The fee charged to the generator of the load.
8.3	Record transmittals	Licensee shall transmit to Metro records required under Section 8.0 no later than fifteen days following the end of each month in electronic format prescribed by Metro.
8.4	Hauler account number listing	Within 5 business days of Metro's request, Licensee shall provide Metro with a computer listing that cross references the incoming hauler account Number with the hauling company's name and address.
8.5	Transactions based on scale weights	Except for minimum fee transactions for small, light-weight loads, the Licensee shall record each transaction electronically based on actual and accurate scale weights using the Licensee's on-site scales.
8.6	DEQ submittals	The Licensee shall provide Metro with copies of all correspondence, exhibits, or documents submitted to the DEQ relating to the terms or conditions of the DEQ solid waste permit or this license within two business days of providing such information to DEQ.
8.7	Copies of enforcement actions provided to Metro	The Licensee shall send to Metro, upon receipt, copies of any notice of violation or non-compliance, citation, or any other similar enforcement actions issued to the Licensee by any federal, state, or local government other than Metro, and related to the operation of the facility.
8.8	Unusual occurrences	<ol style="list-style-type: none">1. The Licensee shall keep and maintain accurate records of any unusual occurrences (such as fires or any other significant disruption) encountered during operation, and methods used to resolve problems arising from these events, including details of all incidents that required implementing emergency procedures.2. If a breakdown of the Licensee's equipment occurs that will substantially impact the ability of the facility to remain in compliance, or create off-site impacts, the Licensee shall notify Metro within 24-hours.3. The Licensee shall report any facility fires, accidents, emergencies, and other significant incidents to Metro at (503) 234-3000 within 12 hours of the discovery of their occurrence.
8.9	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 ownership or control of (1) the license, (2) the facility property, or (3) change the name and



		address of the operator.
8.10	Material recovery reporting	The Licensee shall provide the results of its quarterly sampling of processing residual, as provided in Section 3.5 of this license, to Metro as a component of its monthly report no later than fifteen days following the end of the each quarter in a format prescribed by Metro.

9.0 INSURANCE REQUIREMENTS		
9.1	Purpose	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.
9.2	General liability	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.
9.3	Automobile	The Licensee shall carry automobile bodily injury and property damage liability insurance.
9.4	Coverage	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.
9.5	Additional insureds	Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS .
9.6	Worker's Compensation Insurance	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. The Licensee shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If the Licensee has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached in lieu of the certificate showing current Workers' Compensation.
9.7	Notification	The Licensee shall give at least 30 days written notice to the Director of any lapse or proposed cancellation of insurance coverage.



10.0 ENFORCEMENT		
10.1	Generally	Enforcement of this license shall be as specified in Metro Code.
10.2	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.
10.3	No Enforcement Limitations	This license shall not 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.
10.4	Fines	Each violation of a license condition shall be punishable by fines as established in Metro Code Chapter 5.01. Each day a violation continues constitutes a separate violation.

11.0 AMENDMENT, MODIFICATION, SUSPENSION, AND REVOCATION		
11.1	Amendment	At any time during the term of the license, either the Chief Operating Officer or the Licensee may propose amendments to this license. The Chief Operating Officer has the authority to approve or deny any such amendments provided that the activities authorized in the amended license do not require a Metro Solid Waste Facility Franchise under Metro Code Chapter 5.01. When applicable, the Licensee shall comply with Metro Code chapter 5.01.095. No amendment pursuant to this section shall be effective unless in writing and executed by the Chief Operating Officer.
11.2	Modification, suspension or revocation by Metro	The Chief Operating 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:



		<ul style="list-style-type: none"> 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) Significant change in the character of solid waste 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.
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12.0 GENERAL OBLIGATIONS		
12.1	Compliance with law	<p>The 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. 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.</p>
12.2	Indemnification	<p>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</p>



		involving subcontractors.
12.3	Deliver waste to appropriate destinations	The Licensee shall ensure that solid waste transferred from the 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;
12.4	Right of inspection and audit	<ol style="list-style-type: none">1. Authorized representatives of Metro may take photographs, collect samples of materials, and perform such inspection or audit as the Chief Operating Officer deems appropriate, and shall be permitted access to the premises of the facility at all reasonable times during business hours with or without notice or at such other times upon giving reasonable advance notice (not less than 24 hours). Metro inspection reports, including site photographs, are public records subject to disclosure under Oregon Public Records Law. Subject to the confidentiality provisions in Section 12.5 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, maps, plans, income tax returns, financial statements, contracts, and other similar written materials of Licensee that are directly related to the operation of the Facility.2. The Licensee shall permit access to the facility premises to authorized representatives of Metro, including personnel on contract to Metro, at all reasonable times during business hours with or without notice to determine whether the Licensee meets the minimum level of recovery as provided in Section 3.5 of this license. The Licensee shall provide:<ol style="list-style-type: none">a) Access to all areas where it generates, manages, stores, and reloads processing residual, including without limitation to transfer vehicles;b) Access to facility personnel and equipment to collect, segregate, contain, and weigh individual samples of processing residual; andc) A safe, covered location away from working areas and vehicle traffic where authorized representatives of Metro may conduct an analysis of the Licensee's processing residual.
12.5	Confidential information	The Licensee may identify as confidential any reports, books, records, maps, plans, income tax returns, financial statements, contracts and other similar written materials of



		<p>the Licensee that are directly related to the operation of the facility and that are submitted to or reviewed by Metro. The Licensee shall prominently mark any information that 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 of a request for disclosure of information identified by Licensee as confidential, Metro shall provide Licensee written notice of the request. The 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. The Licensee shall pay any costs incurred by Metro as a result of Metro's efforts to remove or redact any such confidential information from documents that Metro produces in response to a public records request. This Section 12.0 shall not 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</p>
12.6	Compliance by agents	<p>The Licensee shall be responsible for ensuring that its agents and contractors operate in compliance with this license.</p>

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600 NE Grand Ave.
 Portland, OR 97232-2736
 Tel (503) 797-1835
 FAX (503) 813-7544

www.oregonmetro.go



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**NOTICE OF VIOLATIONS and
 IMPOSITION OF CIVIL PENALTY No. NOV-225B-09**

To: Terrell Garrett, Registered Agent
 GreenWay Recycling, LLC
 PO Box 4483
 Portland, OR 97208

Facility: GreenWay Recycling ("GWR")
 4135 NW St. Helens Road
 Portland, OR 97210

Operating Instrument: Solid Waste Facility License No. L-109-07B

Date(s) of Violation(s): August 25 and 26, 2009

License Violation No. 1: License Section 3.0 stipulates that: *All grinding of [yard debris, land clearing debris, untreated wood, painted wood, and preservative-treated wood] must occur on an impervious surface (e.g., asphalt or concrete) and inside a roofed building that is enclosed on at least three sides.*

Metro conducted an inspection of GWR on August 26, 2009, in response to complaints of a significant dust event at the facility on the previous day, August 25, 2009. Through discussions with GWR's operator, the inspector verified that GWR had conducted wood grinding operations on August 25. GWR was also grinding wood at the time of the August 26 inspection, even though the building surrounding the grinder was not yet adequately enclosed on at least three sides, as required by Section 3.0 of its License. GWR was therefore operating in violation of Section 3.0 of its License on both August 25 and 26, 2009.

License Violation No. 2: License Section 5.7 stipulates that: *The Licensee shall operate the facility in a manner that minimizes and mitigates the generation of dust, airborne debris and litter, and shall prevent its migration beyond property boundaries.*

The Metro inspector verified that, on August 25, 2009 GWR operated in a manner that allowed dust to migrate beyond the property boundaries where it settled on neighboring properties, in violation of Section 5.7 of the License. The inspector's findings are documented in inspection notes and photographs (enclosed with this Notice).

Additional Information: Effective July 1, 2009, GWR's license was modified to authorize grinding of materials only within a building. Metro previously issued the following Notices of Violation to GWR for violating this license restriction:

- NOV-225-09 for violations on July 9 and 14, 2009.
- NOV-225A-09 for violations on August 7, 10, and 11, 2009.

Civil Penalties: ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500). This amount includes penalties of \$500 for each of the two violations of License Section 3.0 (grinding wood on August 25 and 26) and the single violation of License Section 5.7 (dust allowed to migrate beyond the property boundaries on August 25) described above. An invoice for the penalties is included with this Notice. Subsequent violations will be subject to additional penalties of up to \$500 per day.

9/2/09
Date

Margo Norton
Margo Norton
Finance and Regulatory Services Director

CONTESTED CASE NOTICE

Under Metro Code Chapter 2.05, you have the right to request a contested case hearing regarding this Notice of Violation. You must make this request in writing and ensure that Metro receives the request within 30 days of the date this Notice was mailed. You may retain legal counsel to represent you at the hearing. Article IX, Section 14 of the Oregon Constitution, the Metro Charter, ORS Chapter 268, and Metro Code Chapter 2.05 and 5.01 provide Metro's authority and jurisdiction for the hearing.

Attachments

cc: Roy Brower, Solid Waste Compliance and Cleanup Manager
Steve Kraten, Solid Waste Enforcement Coordinator
Warren Johnson, Solid Waste Compliance Supervisor
Duane Altig, Solid Waste Facility Inspector
Michelle Bellia, Assistant Metro Attorney
Stephanie Rawson, DEQ
Bruce Walker, City of Portland

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing NOTICE OF VIOLATION including CONTESTED CASE NOTICE on the following:

Terrell Garrett, Registered Agent
GreenWay Recycling, LLC
PO Box 4483
Portland, OR 97208

On September 2, 2009, said individuals were served with a complete and correct copy thereof via regular mail and certified mail, return receipt requested, contained in a sealed envelope, with postage prepaid, and deposited in the U.S. Post Office at Portland, Oregon.



Roy W. Brower
Solid Waste Compliance and Cleanup Manager

SK//MN:bjl
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Queue

INVOICE



Please Remit To:

Metro
 Accounts Receivable
 600 NE Grand Avenue
 Portland OR 97232-2736

Page: 1
 Invoice No: REM-01072
 Invoice Date: 09/02/2009
 Customer Number: REM1134
 Payment Terms: Net 30
 Due Date: 10/02/2009

Bill To:

Greenway Recycling LLC
 Terrell Garrett
 PO Box 4483
 Portland OR 97208-4483

AMOUNT DUE: 1,500.00 USD

Amount Remitted



For billing questions, please call 503-797-1634

Line	Adj	Identifier	Description	Quantity	Unit Amt	Net Amount
1			NOV-2258-09 Violation	3.00	500.00	1,500.00
SUBTOTAL:						1,500.00
TOTAL AMOUNT DUE :						1,500.00

STANDARD

Original

Facility Name:	<u>GreenWay Recycling, LLC (GWR)</u>	Date of Inspection:	<u>August 26, 2009</u>
Metro License Number:	<u>L-109-07B</u>	Time of Inspection:	<u>8:40 to 9:50 PM</u>
Address:	<u>4135 NW St. Helens Road</u> <u>Portland, OR 97210</u>	Weather:	<u>60° F, dry, clear, breeze.</u>
Phone:	<u>(503) 283-8880</u>	Site Photographs taken:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Inspector(s):	<u>Duane Altig</u>	Samples Collected:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Licensee Rep(s):	<u>Terrell Garrett</u>	If yes, material type:	<u>N/A</u>

This visit to the GreenWay Recycling, LLC ("GWR") site was conducted in response to a complaint that was received on August 25, 2009, via e-mail (attached), from Fred Van Domelen. Mr. Van Domelen is owner of the property located to the north of the GreenWay property. During this site visit the wind was out of the NE and steady at times (~0 to 5mph).

The complaint stated, in part, that two of his tenants had complained about a "dust cloud" coming over the top of the building and covering their vehicles with dust.

I approached the complainant's site via NW St Helens Road. I parked in front of Electri – Pac, one of the tenants in this small complex, and introduced myself to the owner Bill Plasker. I informed Mr. Plasker the reason for my visit and if he could please describe for me what he observed the previous day. He stated that he and his son, Tim Plasker, had observed a large cloud of dust coming from the greenway site at approximately noon on the 25th and that it had covered everything in the area with dust. I was showed two vehicles that had been parked on site during this episode. I photographed the vehicles and noted that both had indeed showed signs of having a fibrous material dusted on them. I was informed that the building did not seem to be helping and that the dust was just blowing over the top. It was also mentioned that it seemed to be worse. I informed Mr. Plasker that Metro was still observing the performance of the building and that until the roll-up door on the east end was installed a final determination of its performance would not be made. Mr. Plasker was also concerned with the constituents of the dust and stated that he had heard that the material being ground up was from an old school demolition. He added that he feared the wood dust contained asbestos. I informed him that the Oregon DEQ maintained record of all the demolition work done throughout the state and that all contractors are required to test certain materials before commencing with the demolition. If contaminates are found the material is disposed of at an appropriate landfill instead of being brought to a facility like GreenWay. I informed him that he should contact the DEQ for additional information on this subject.

I asked Mr. Plasker if he knew who also might have observed the dust cloud yesterday and he informed me that Jim Collins with the Custom Cabinets shop had also seen the cloud. I spoke with Mr. Collins who also stated that he had seen a huge cloud of wood dust come from the GreenWay site at around noon on the 25th. He stated that it looked like a bomb had gone off. He added that the building seems to have caused the dust to float just past him and impact further down and that Electri – Pac seemed to have gotten the worst of it yesterday. I thanked both complainants for their time and left to observe the active grinding operations at the GreenWay site.

I took position on the north side of the GreenWay property and observed the active grinding of wood wastes. I observed the use of the watering truck upon my arrival and noted that all interior roads and paths appeared to be sufficiently wet down.

I took photographs of both ends of the wood grinding building and observed the grinding operations from several different vantage points. I noted that small amounts of dust did push out the west end of the building at times but nothing as described by the complainants. As I was observing the activities I was met by Terrell Garrett. I asked Mr. Garrett about the status of the Roll-Up door and he stated that the door had been fully paid for and that he was awaiting the delivery and installation. He added that he thinks that it will be installed within the next 10 days. We also discussed possible additional modification to the conveyor system to help keep dust down.

I informed him of the complaint and if he knew what activity could have caused the dust cloud that was observed. He stated that at that time one of his employees was moving around the old woody material that was to be ground for hog fuel and that this material was very dry and dusty. The worker would give the area a blast from the fire hose which is what caused the dust to raise in large plumes. He stated that he would discuss this with his workers and that it would not occur again. I thank him for his time.

I did not inspect any other areas of the operation while I was on site.

I left the site

End of inspection notes

GWR.26AUG09.dka.p01
Visual of impact from wind
blown debris



GWR.26AUG09.dka.p02
Visual of impact from wind
blown debris



GWR.26AUG09.dka.p03
Visual of the north side of the
wood grinding building facing
west. Active grinding was
taking place.



GWR.26AUG09.dka.p04
Visual of the west side of the
wood grinding building facing
south. Active grinding was
taking place.



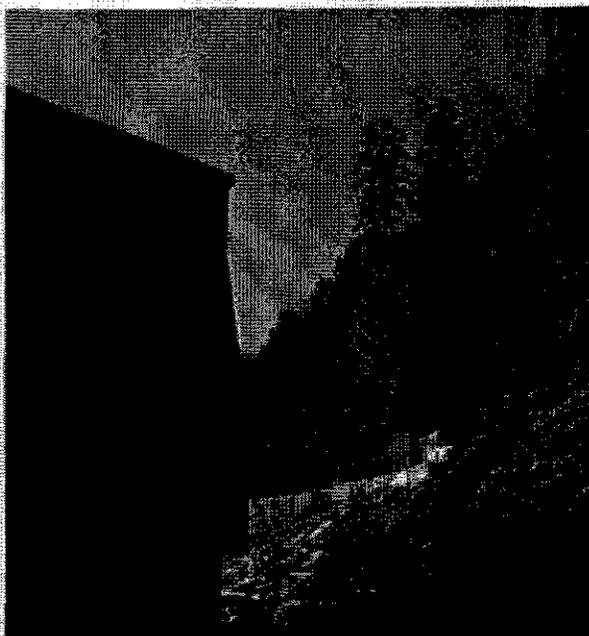
GWR.26AUG09.dka.p05
Visual of the east side of the
wood grinding building.
Active grinding was
taking place.



GWR.26AUG09.dka.p06
Visual of the east side of the
wood grinding building.
Active grinding was
taking place.



GWR.26AUG09.dka.p07
Additional view of the west side
of the wood grinding building.



GWR.26AUG09.dka.p08
Additional view of the west side
of the wood grinding building.
Observed a demo load being
tipped on upper deck.
30 foot tipper.



Inspection Information							
Facility Name:	<u>GreenWay Recycling, LLC (GWR)</u>	Date of Inspection:	<u>August 26, 2009</u>				
Metro License Number:	<u>L-109-07B</u>	Time of Inspection:	<u>8:40 to 9:50 PM</u>				
Address:	<u>4135 NW St. Helens Road</u>	Weather:	<u>60° F, dry, clear, breeze.</u>				
	<u>Portland, OR 97210</u>	Site Photographs taken:	<table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; text-align: center;"><input checked="" type="checkbox"/></td><td style="width: 40px;">Yes</td><td style="width: 20px; text-align: center;"><input type="checkbox"/></td><td style="width: 40px;">No</td></tr></table>	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No				
Phone:	<u>(503) 283-8880</u>	Samples Collected:	<table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; text-align: center;"><input type="checkbox"/></td><td style="width: 40px;">Yes</td><td style="width: 20px; text-align: center;"><input checked="" type="checkbox"/></td><td style="width: 40px;">No</td></tr></table>	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No				
Inspector(s):	<u>Duane Altig</u>	If yes, material type:	<u>N/A</u>				
Licensee Rep(s):	<u>Terrell Garrett</u>						

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Visual of impact from wind
blown debris



GWR.26AUG09.dka.p02
Visual of impact from wind
blown debris



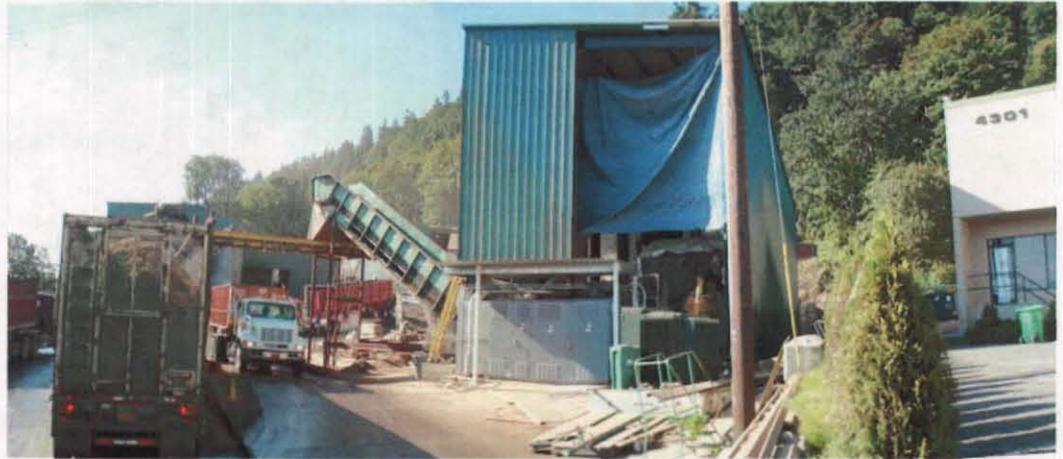
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wood grinding building facing
west. Active grinding was
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GWR.26AUG09.dka.p04
Visual of the west side of the
wood grinding building facing
south. Active grinding was
taking place.



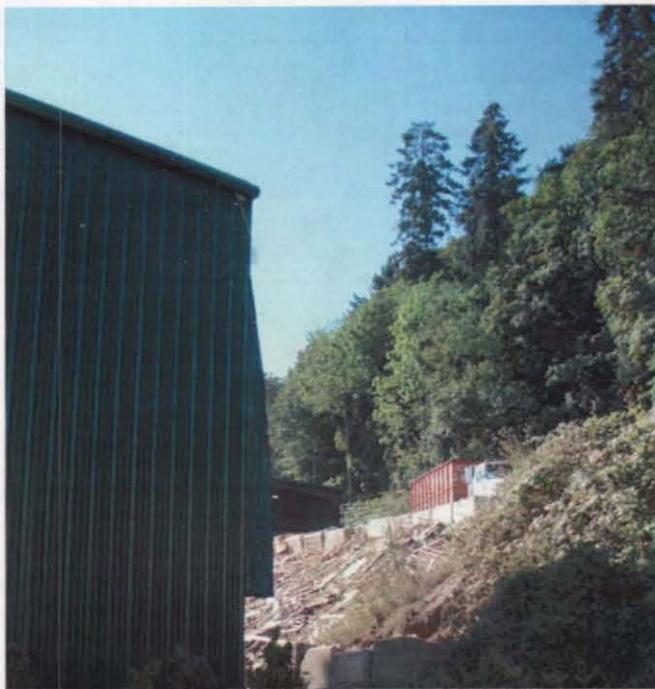
GWR.26AUG09.dka.p05
Visual of the east side of the
wood grinding building.
Active grinding was
taking place.



GWR.26AUG09.dka.p06
Visual of the east side of the
wood grinding building.
Active grinding was
taking place.

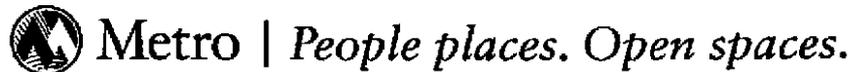


GWR.26AUG09.dka.p07
Additional view of the west side
of the wood grinding building.



GWR.26AUG09.dka.p08
Additional view of the west side
of the wood grinding building.
Observed a demo load being
tipped on upper deck.
30 foot tipper.



**NOTICE OF VIOLATIONS and
IMPOSITION OF CIVIL PENALTY No. NOV-225C-09**

To: Terrell Garrett, Registered Agent
GreenWay Recycling, LLC
PO Box 4483
Portland, OR 97208

Facility: GreenWay Recycling ("GWR")
4135 NW St. Helens Road
Portland, OR 97210

Operating Instrument: Solid Waste Facility License No. L-109-07B

Date(s) of Violation(s): September 1, 2009

License Violation No. 1: License Section 3.0 stipulates that: *All grinding of [yard debris, land clearing debris, untreated wood, painted wood, and preservative-treated wood] must occur on an impervious surface (e.g., asphalt or concrete) and inside a roofed building that is enclosed on at least three sides.*

Metro, along with staff from the Department of Environmental Quality, conducted a joint inspection of GWR on September 1, 2009. GWR was grinding wood at the time of the inspection, even though the building surrounding the grinder was not yet adequately enclosed on at least three sides, as required by Section 3.0 of its License. GWR was therefore operating in violation of Section 3.0 of its License.

License Violation No. 2: License Section 5.7 stipulates that: *The Licensee shall operate the facility in a manner that minimizes and mitigates the generation of dust, airborne debris and litter, and shall prevent its migration beyond property boundaries.*

During the inspection, the Metro inspector observed thick plumes of dust arising high in the air from the wood processing operation. The inspector's findings are documented in inspection notes and photographs (enclosed with this Notice). GWR was therefore operating in violation of Section 5.7 of its License. Subsequent to the inspection, a complaint about dust from GWR was received at Metro.

License Violation No. 3:

License Section 3.4 stipulates that: All mixed non-putrescible waste tipping, storage, sorting and reloading activities must occur on an impervious surface (e.g. asphalt or concrete) and inside a roofed building that is enclosed on at least three sides. Unusually large vehicles (i.e., 30-foot tippers) may tip wastes outside, provided the tipped wastes are moved under cover prior to processing, within 12 hours of receipt, or by the end of the business day, whichever is earlier.

During the September 1, 2009 inspection, the inspector found the operator to be utilizing the wood grinders infeed conveyor as a picking line, though the building is not yet fully enclosed on three sides. This is a violation of License Section 3.4.

Additional Information:

Effective July 1, 2009, GWR's license was modified to authorize grinding of materials only within a building. Metro previously issued the following Notices of Violation to GWR for violating this license restriction:

- NOV-225-09 for violations on July 9 and 14, 2009.
- NOV-225A-09 for violations on August 7, 10, and 11, 2009.
- NOV-225B-09 for Violations on August 25 and 26, 2009.

Civil Penalties:

ONE THOUSAND DOLLARS (\$1,000). This amount includes penalties of \$500 for Violation No. 1 (grinding wood) and the Violation No. 2 (dust allowed to migrate beyond the property boundaries) described above. An invoice for the penalties is included with this Notice. No penalties have been imposed for the violations of License Section 3.4 as these are first time violations subject to an opportunity to cure. Subsequent violations will be subject to penalties of up to \$500 per day per violation.

**Opportunity to Cure
Violation No. 3:**

Pursuant to Metro Code Section 5.01.200(b), GWR will be afforded an opportunity to cure violation No. 3 without the imposition of a monetary penalty. Metro will consider the violation cured provided that, beginning immediately, GWR:

- Allows the tipping of waste only on impermeable surfaces; and
- Sorts waste only within buildings enclosed on at least three sides.

These violations will be deemed cured when GWR achieves compliance and remains in compliance for 60 consecutive days. The 60-day period is to begin upon verification by Metro that

GWR is back in compliance. Should GWR be found out of compliance prior to the elapse of the 60 day period, the 60-day period will re-start from the first day that an inspector verifies that GWR is back in compliance again.

9/10/09
Date

Margo Norton
Margo Norton
Finance and Regulatory Services Director

CONTESTED CASE NOTICE

Under Metro Code Chapter 2.05, you have the right to request a contested case hearing regarding this Notice of Violation. You must make this request in writing and ensure that Metro receives the request within 30 days of the date this Notice was mailed. You may retain legal counsel to represent you at the hearing. Article IX, Section 14 of the Oregon Constitution, the Metro Charter, ORS Chapter 268, and Metro Code Chapter 2.05 and 5.01 provide Metro's authority and jurisdiction for the hearing.

Attachments

cc: Roy Brower, Solid Waste Compliance and Cleanup Manager
Steve Kraten, Solid Waste Enforcement Coordinator
Warren Johnson, Solid Waste Compliance Supervisor
Duane Altig, Solid Waste Facility Inspector
Michelle Bellia, Assistant Metro Attorney
Stephanie Rawson, DEQ
Bruce Walker, City of Portland

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing NOTICE OF VIOLATION including CONTESTED CASE NOTICE on the following:

Terrell Garrett, Registered Agent
GreenWay Recycling, LLC
PO Box 4483
Portland, OR 97208

On September 10, 2009, said individuals were served with a complete and correct copy thereof via regular mail and certified mail, return receipt requested, contained in a sealed envelope, with postage prepaid, and deposited in the U.S. Post Office at Portland, Oregon.

Roy W. Brower
Roy W. Brower
Solid Waste Compliance and Cleanup Manager

INVOICE

Please Remit To:

Metro
 Accounts Receivable
 600 NE Grand Avenue
 Portland OR 97232-2736



Page: 1
 Invoice No: REM-01073
 Invoice Date: 09/09/2009
 Customer Number: REM1134
 Payment Terms: Net 30
 Due Date: 10/09/2009

Bill To:

Greenway Recycling LLC
 Terrell Garrett
 PO Box 4483
 Portland OR 97208-4483

AMOUNT DUE: 1,000.00 USD

Amount Remitted



For billing questions, please call 503-797-1634

Line	Adj	Identifier	Description	Quantity	Unit Amt	Net Amount
		NCV-225C-09				
1			Violation Charges	2.00	500.00	1,000.00
SUBTOTAL:						1,000.00
TOTAL AMOUNT DUE :						1,000.00

STANDARD

Original

 Metro | Dry Waste Processing Residual Sampling

Inspection Information											
Facility Name:	<u>GreenWay Recycling, LLC</u>	Date of Inspection:	<u>September 1, 2009</u>								
Address:	<u>4135 NW St. Helens Road</u> <u>Portland, OR 97210</u>	Time of Inspection:	<u>1:50-3:30</u>								
Phone:	<u>503.283.8880</u>	Weather:	<u>71° F, overcast</u>								
Inspector(s)	<u>Will Ennis</u>	Site Photographs taken:	<table border="1"> <tr> <td><input checked="" type="checkbox"/></td> <td>Yes</td> <td><input type="checkbox"/></td> <td>No</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Yes</td> <td><input checked="" type="checkbox"/></td> <td>No</td> </tr> </table>	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No								
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No								
Facility Rep(s):	<u>Terrell Garrett</u>	Samples Collected:									
		If yes, material type:									

This inspection of GreenWay Recycling (“GWR”) was conducted jointly with employees of the Oregon Department of Environmental Quality (“DEQ”). I met Stephanie Rawson (DEQ) and Jim Broad (DEQ) at the subject site. Ms. Rawson and Mr. Broad were present to investigate off-site impacts created by dust and other airborne contaminants generated at GWR. At the time of our arrival the facility was processing wood through a grinder located in a partially enclosed structure on the west end of the site (see photograph #3). I observed dust plumes generated by the loading of wood onto an in-feed conveyor at the south end of the wood processing building (see photographs #1 & #2).

We entered the site and met with Terrell Garrett (GWR). Together we observed the wood processing operation. Mr. Garrett directed our attention to an out-feed conveyor which he said would be enclosed to prevent the generation of airborne dust (see photographs #4 & #5). He stated that he had temporarily shut off a conveyor used to direct fines onto the out-feed conveyor (see photograph #7). Mr. Garrett then had the building’s sole mister turned off so that we could evaluate the effectiveness of the mister. He stated that he had ordered a second mister for the building and planned to purchase and install an oscillating sprinkler to reduce the generation of dust created when loading wood onto the in-feed conveyor (see photograph #6). I observed a GWR employee wet the wood waste stockpile with water. This appeared to decrease the amount of dust generated when the material was loaded onto the in-feed conveyor.

Mr. Broad encouraged Mr. Garrett to install the additional mister and oscillating sprinkler. He further suggested that Mr. Garrett install a screen along the property line from the southwest corner of the wood processing building to the upper level of the site to reduce off-site dust impacts. Mr. Broad stated that Mr. Garrett needed to continue to address sources of dust generation as they are detected. He stated that DEQ could require that GWR obtain an Air Contaminant Discharge Permit if the facility failed to adequately address dust issues at the site.

Upon closer inspection I noted that the material being processed at the wood building was demolition debris and contained waste other than wood (see photographs #9 - #12 & #16). Mr. Garrett stated that the debris was from the demolition of Camp Withycombe in Clackamas. He stated that the debris is delivered in end-dump vehicles and tipped outside of the wood processing building. He said that the facility is conducting a

negative sort of the debris to remove non-wood waste from the material before the wood is processed through a grinder. He indicated that the facility can recover a higher percentage of the wood by processing in this manner.

Mr. Garrett stated that the non-wood waste that is segregated from the debris is delivered to the material recovery building located on the upper level of the site. I observed sorters processing the debris to remove non-wood waste (see photograph #8). I observed the non-wood waste delivered to the material recovery building located on the upper level of the site (see photographs #13 & #14). I noted that a waste conveyor exiting the upper material recovery building was partially uncovered at this time (see photograph #15).

Mr. Broad, Ms. Rawson and Mr. Garrett continued to discuss facility operations. They encouraged Mr. Garrett to continue to monitor the operation for dust and to take steps to mitigate dust generation. I told Mr. Garrett that I would discuss the facility's current processing of demolition debris with Metro staff. I did not generate an inspection summary for this inspection. I did not provide the operator with copies of the photographs taken during this inspection.

End of inspection notes by Will Ennis

M:\rem\regaff\staff\ennis\FACILITIES\GreenWay\Inspections 2009\GREE.01SEP09.WE.IN.docx

GreenWay Recycling

1. GreenWay Recycling: View of wood processing building during operation. (WE)



2. GreenWay Recycling: View of wood processing building during operation. (WE)



3. GreenWay Recycling: View of wood processing building. (WE)



GreenWay Recycling

4. GreenWay Recycling: Out-feed conveyor on wood processing building. Operator stated that the conveyor will be enclosed. (WE)



5. GreenWay Recycling: Out-feed conveyor on wood processing building. Operator stated that the conveyor will be enclosed. (WE)



6. GreenWay Recycling: Loading demolition debris onto in-feed conveyor. (WE)



GreenWay Recycling

7. GreenWay Recycling: Fines generated by wood processing operation. (WE)



8. GreenWay Recycling: Residual material from demolition debris processed over wood line. (WE)



9. GreenWay Recycling: Demolition debris staged near the wood processing building.



GreenWay Recycling

10. GreenWay Recycling: Demolition debris staged near the wood processing building. (WE)



11. GreenWay Recycling: South end of wood processing building. (WE)



12. GreenWay Recycling: Demolition debris staged near wood processing building. (WE)

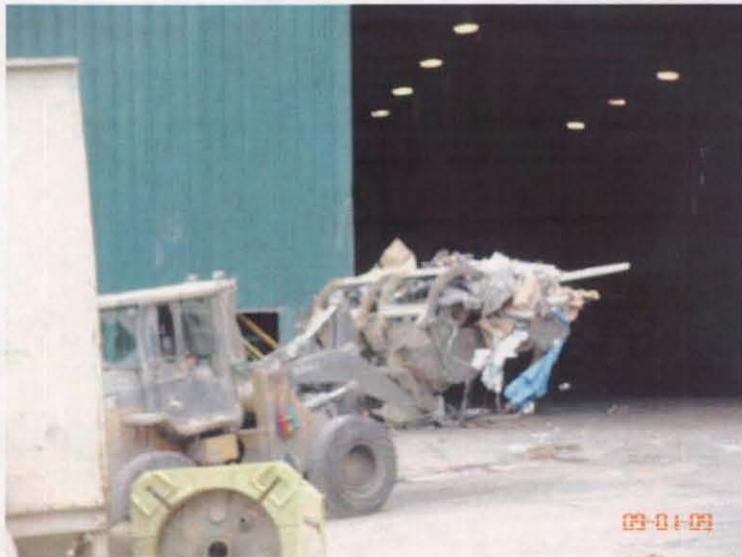


GreenWay Recycling

13. GreenWay Recycling: Processing residual from wood operation being transported to upper level of site. (WE)



14. GreenWay Recycling: Processing residual from wood operation being transported to upper level of site. (WE)



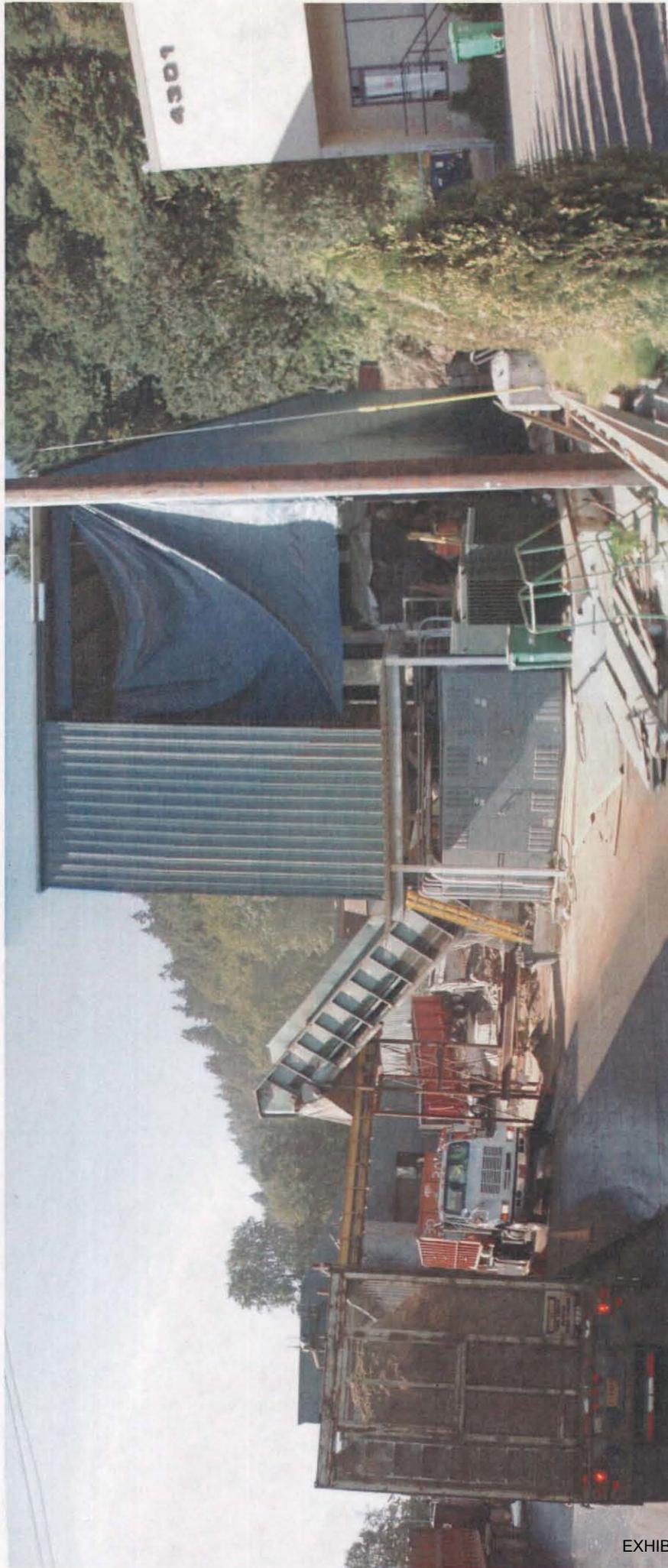
15. GreenWay Recycling: Uncovered mixed dry waste conveyor. (WE)



16. GreenWay Recycling: View of wood processing building and demolition debris. (WE)



AUG. 26, 2009





SEPT. 1, 2009

TERRELL GARRETT
GREENWAY RECYCLING, LLC
P.O. BOX 4483
PORTLAND, OR 97208-4483
(503) 793-9238
23 September 2009

METRO
09 SEP 24 AM 10:50

Mr. Roy Brower
Regulatory Affairs
Metro
600 NE Grand Ave.
Portland, OR 97232

Dear Mr. Brower:

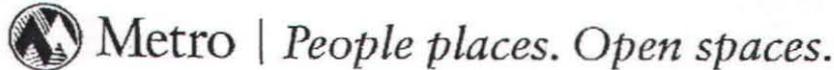
GreenWay requests a Contested Case Hearing on NOV-225B-09 and NOV 225C-09. The specific items contested are: Violation No. 1 on 225B and Violation No. 1 and No. 3 on 225C.

It is GreenWay's position that Metro has inadequately defined a three sided building and that the walls in existence at the time of the alleged infractions did comprise a total of three sides.

Sincerely,



Terrell Garrett
Managing Member



**NOTICE OF VIOLATIONS and
IMPOSITION OF CIVIL PENALTY No. NOV-225B-09**

To: Terrell Garrett, Registered Agent
GreenWay Recycling, LLC
PO Box 4483
Portland, OR 97208

Facility: GreenWay Recycling ("GWR")
4135 NW St. Helens Road
Portland, OR 97210

Operating Instrument: Solid Waste Facility License No. L-109-07B

Date(s) of Violation(s): August 25 and 26, 2009

License Violation No. 1: License Section 3.0 stipulates that: *All grinding of [yard debris, land clearing debris, untreated wood, painted wood, and preservative-treated wood] must occur on an impervious surface (e.g., asphalt or concrete) and inside a roofed building that is enclosed on at least three sides.*

Metro conducted an inspection of GWR on August 26, 2009, in response to complaints of a significant dust event at the facility on the previous day, August 25, 2009. Through discussions with GWR's operator, the inspector verified that GWR had conducted wood grinding operations on August 25. GWR was also grinding wood at the time of the August 26 inspection, even though the building surrounding the grinder was not yet adequately enclosed on at least three sides, as required by Section 3.0 of its License. GWR was therefore operating in violation of Section 3.0 of its License on both August 25 and 26, 2009.

License Violation No. 2: License Section 5.7 stipulates that: *The Licensee shall operate the facility in a manner that minimizes and mitigates the generation of dust, airborne debris and litter, and shall prevent its migration beyond property boundaries.*

The Metro inspector verified that, on August 25, 2009 GWR operated in a manner that allowed dust to migrate beyond the property boundaries where it settled on neighboring properties, in violation of Section 5.7 of the License. The inspector's findings are documented in inspection notes and photographs (enclosed with this Notice).

RECEIVED

JAN 11 2010

OFFICE OF METRO ATTORNEY

IN THE MATTER OF THE CONTESTED CASE HEARING OF

GREENWAY RECYCLING, LLC,

Case No:

Appellant

NOV-225B-09 and
NOV-225C-09

v.

METRO,

Respondent

PROPOSED FINAL ORDER

I. STATEMENT OF THE CASE

Appellant GreenWay Recycling, LLC, ("Appellant" or "GreenWay") requested a hearing to contest two notices of violation issued to GreenWay by Respondent Metropolitan Service District ("Respondent" or "Metro"). A Hearings Officer held the requested contested case hearing on December 11, 2009 at approximately 9:30 am at Metro's offices located at 600 NE Grand Ave., Portland, Oregon. Terrell Garrett, Managing Member of GreenWay Recycling, LLC, appeared on behalf of Appellant. Steve Kraten, Solid Waste Enforcement Coordinator for Metro, appeared on behalf of Respondent. The hearings officer did not receive any written or oral ex parte communication on a fact in issue during the pendency of the proceedings, and made a statement to that effect on the record, together with a description of the hearing procedure. All witnesses providing testimony provided an oath or affirmation concerning the truthfulness of their testimony. Metro made an audio recording of the hearing. Metro maintains the record of the proceedings.

II. EVIDENTIARY MATTERS

Appellant provided witness testimony and oral argument by Mr. Garrett, in support of GreenWay's request to vacate the civil penalties issued by Metro. Respondent provided a hearing memorandum, witness and exhibit list, Exhibits 1-10, witness testimony and oral argument by Mr. Kraten, supporting witness testimony by Warren Johnson, Metro Solid Waste Compliance Supervisor, supporting witness testimony by Duane Altig, Metro Solid Waste and Facility Inspector, and supporting witness testimony by Will Ennis, Metro Solid Waste and Facility Inspector, in support of its request to uphold the fines assessed by Metro.

At the hearing, Respondent provided larger, color copies of several photographs submitted in Respondent's Exhibits. Mr. Garrett made an unspecified objection to the color copies, pointing out that the photographs caught the sunlight in a manner that highlighted the dust in the air. The hearing officer noted that the makers of these photographic records (Mr. Altig and Mr. Ennis) were available at the hearing as witnesses and Mr. Garrett had a reasonable opportunity to question the photographs. The hearing officer determined the offered copies of the photographs in Respondent's

exhibits relevant and material to the proceedings. For these reasons, the hearing officer admitted these photographs into the record.¹

III. ISSUES PRESENTED

1. Whether GreenWay violated its license on August 25, 2009 and August 26, 2009 by conducting wood grinding operations in a building that was not yet adequately enclosed on at least three sides, as required by its license.
2. Whether GreenWay violated its license on August 25, 2009 by permitting dust generated by its wood grinding operations to migrate beyond the property boundaries.
3. Whether GreenWay violated its license on September 1, 2009 by conducting wood grinding operations in a building that was not yet adequately enclosed on at least three sides, as required by its license.
4. Whether GreenWay violated its license on September 1, 2009 by permitting dust generated by its wood grinding operations to migrate beyond the property boundaries.

IV. STIPULATIONS AND FINDINGS OF FACT

The parties agree to the following stipulations:

1. NOV-225B-09 imposed penalties for two incidents of grinding wood in an inadequately enclosed building and one incident of creating off-site dust impacts. NOV-225C-09 imposed penalties for one incident of grinding wood in an inadequately enclosed building and on incident of creating off-site dust impacts.

Additional Findings of Fact:

2. Appellant GreenWay is a local wood processing operation with a license from Metro authorizing it to accept certain solid waste, and conduct certain waste-related activities, including conducting material recovery on mixed non-putrescible waste. The license prohibits GreenWay from permitting dust from its' on-site operations to blow off the premises of the facilities. Following several violations with respect to dust created on-site blowing off the premises, Metro revised GreenWay's license pursuant to a dust abatement plan. GreenWay's revised license requires it to conduct its wood grinding operation within a building enclosed on at least three sides. Metro agreed to suspend certain civil penalties resulting from the wood dust violations subject to GreenWay implementing the abatement plan. Among other things, GreenWay's license required it to: "Ensure that all mixed non-putrescible waste tipping, storage,

¹ Metro Code Section 2.05.030(b) provides that: "Irrelevant, immaterial or unduly repetitious evidence shall be excluded." Metro Code Section 2.05.030(c) provides that: "All offered evidence, not objected to, will be received by the hearings officer subject to his/her power to exclude irrelevant, immaterial or unduly repetitious matter."

sorting and reloading activities occur on an impervious surface (e.g. asphalt or concrete) and inside a roofed building that is enclosed on at least three sides." Metro issued the revised license on July 1, 2009, with an agreed upon timeline for construction of the required building. (Exhibits 1, 2, 3)

3. Mr. Duane Altig, Metro Solid Waste and Facility Inspector, conducted an August 26, 2009 inspection of the GreenWay recycling facility in response to complaints of a significant dust event at the facility on the previous day. Mr. Altig reported that GreenWay had conducted wood grinding operations at its facility on August 25, 2009, although he also noted and reported that the required three-sided building was not yet complete. Mr. Altig interviewed witnesses to the dust event, and took several photographs showing wind-blown dust and debris on vehicles parked on an adjacent property, and showing the building housing the wood grinding operation. The photographs show a large, roofed building with two completed sides, one open side partially covered with a tarp, and a second open side. Mr. Altig reported that he spoke with Mr. Garrett on-site, and that Mr. Garrett expected delivery of a steel roll-up door intended for one side of the building, within the next ten days. Mr. Altig discussed with Mr. Garrett the complaint concerning dust blowing off the premises. Metro issued a notice of violation (NOV-225B-09) to GreenWay imposing a civil penalty of \$1,500. This amount included a civil penalty of \$500 for grinding wood on August 25, 2009 and August 26, 2009 in violation of the license (without a completed three-sided building) and a civil penalty of \$500 for allowing dust to migrate beyond the property boundaries on August 25, 2009. (Exhibits 4 and 5)
4. Mr. Will Ennis, Metro Solid Waste and Facility Inspector, conducted a September 1, 2009 site inspection of the GreenWay recycling facility. Mr. Ennis reported meeting with Mr. Garrett on-site, and observing the GreenWay wood processing operation. Mr. Ennis reported observing thick plumes of dust arising high in the air from the wood processing operation. Metro later received a complaint about the dust generated by GreenWay that day. Mr. Ennis took several photographs of the facility, showing various parts of the recycling operation, showing the building housing the wood grinding operation, and showing dust that is discharging high into the air. The photographs show that the building housing the wood grinding operation continues to have just two complete walls, and a tarp for a wall on one side, with the tarp blowing to the side and dust blowing through. The photographs show that the remaining side of the building is also open. Metro issued a notice of violation (NOV-225C-09) to GreenWay imposing a civil penalty of \$1,000. This amount included a civil penalty of \$500 for grinding wood on September 1, 2009 in violation of the license (without a completed three-sided building) and a civil penalty of \$500 for allowing dust to migrate beyond the property boundaries on September 1, 2009. (Exhibits 6, 7, 8, and 9)
5. Mr. Steve Kraten, Solid Waste Enforcement Coordinator for Metro, testified that there is a history of violations with respect to GreenWay permitting dust generated by its wood processing and recycling operation to migrate outside the

boundaries of its property. Mr. Kraten testified that Metro has worked with GreenWay to develop and implement a dust abatement plan to prevent these blowing dust violations from continuing. This plan included construction of a three-sided building to house GreenWay's wood grinding operation, in the same manner required of other similarly situated recycling operations licensed by Metro. Mr. Kraten testified that there were several delays in GreenWay completing construction of the building, and most of the agreed-upon construction milestones were not met. Mr. Kraten testified that he personally delivered the reissued solid waste facility license to Mr. Garrett and explained the provision for civil penalties of \$500 per day. Mr. Kraten testified that Mr. Garrett informed him that the cost of shutting down the recycling operation exceeded the \$500 per day penalty. Mr. Kraten testified that the building housing the GreenWay wood grinding operation had only two sides on the August 25, August 26, and September 1, 2009 dates cited in Metro's notice of violations. Mr. Kraten noted that one end of the building had a loose tarp in the opening, and the other end had a tarp instead of a roll-up door. Mr. Kraten testified that on September 24, 2009 GreenWay installed the roll-up door on the building housing its wood grinding operation, and there have been no more dust violations. (Testimony Mr. Kraten)

6. Mr. Garrett pointed out that some of the photographs submitted by Metro have the sun in the background, photographing the wood grinding operation in a manner that lights up the dust in the air, and makes it appear that there is more dust. Mr. Garrett testified that GreenWay ordered and paid for the roll-up garage door needed to complete the building housing its wood grinding operations, but there were delays from financing difficulties. Mr. Garrett agrees that the building was not completed by the agreed-upon deadlines, but asserts that GreenWay was moving forward with the abatement plan. Mr. Garrett points out that the license Metro issued to GreenWay does not define a three-sided building, and asserts that similarly situated recycling operations licensed by Metro are permitted to use "U-shaped" walls, some are permitted "L-shaped" walls, and some are allowed to operate with only a roof. Mr. Garrett points out that the building constructed by GreenWay to house its wood grinding operation has two very long walls, and that these two long walls are the equivalent in linear footage of three walls.
7. Mr. Kraten disputed that similarly situated recycling operations licensed by Metro are operating with less than a three-walled, roofed enclosure. Mr. Kraten agrees that one recycling operation, East Coast, is allowed to operate in a different manner, but points out that this is a variation approved by the Metro Council, and that East Coast's operation takes place down in a pit and is not similarly situated to GreenWay's operation.

V. CONCLUSIONS OF LAW

The evidence presented is reliable, probative, and substantial evidence upon which to base a determination in this matter. The burden of presenting evidence to

support a fact or position rests on the proponent of the fact or position. Respondent Metro must prove the validity of the civil penalties imposed on Appellant by a preponderance of the substantial evidence in the whole record.²

Section 3.0 of the Solid Waste Facility License Metro issued to GreenWay requires that: "All grinding of [yard debris, land clearing debris, untreated wood, painted wood, and preservative-treated wood] must occur on an impervious surface (e.g., asphalt or concrete) and inside a roofed building that is enclosed on at least three sides." Metro required GreenWay to construct and utilize the three-sided building to house its wood grinding operation as part of a dust abatement plan, to prevent dust from GreenWay's wood grinding from blowing beyond the boundaries of GreenWay's property. There were certain delays in completing installation of a roll-up door as one side of the building, and GreenWay used a tarp to partially cover this side of the building until the roll-up door was delivered and installed September 24, 2009. The reports and photographs by Mr. Altig and Mr. Ennis from their respective August 26 and September 1, 2009 on-site inspections of the GreenWay wood grinding operation show dust blowing through the tarp and into the air, in a manner the completed building was designed to prevent as part of the dust abatement. Mr. Garrett's contention is that the building GreenWay constructed has two very long walls, and the linear footage involved is equivalent to a three-sided building. Mr. Garrett also contends that the term "three-sided" as required by the license issued by Metro is not clear. However, a two-sided building, with tarps at the open ends, is not the same as a three-sided building. Rather, the plain meaning of "three-sided" is that there are three attached sides, making an enclosure that dust will not blow through. The testimony by Mr. Kraten that the dust violations ceased following the September 24, 2009 installation of the roll-up door in place of the tarp corroborates this plain meaning interpretation of "three-sided."

The photographs taken by Mr. Altig show that the blowing dust from GreenWay's wood grinding operations that took place on August 25 and August 26 migrated beyond the boundaries of GreenWay's property, and settled on vehicles on adjacent properties. The September 1, 2009 photographs taken by Mr. Ennis likewise show the blowing dust from GreenWay's wood grinding operation rising high into the air, consistent with the subsequent complaint received by Metro concerning dust from GreenWay.

I conclude based on the preponderance of the substantial evidence presented that GreenWay violated its license on August 25, 2009, August 26, 2009, and September 1, 2009 by conducting wood grinding operations in a building that was not yet adequately enclosed on at least three sides, as required by its license. I conclude based on the preponderance of the substantial evidence presented that GreenWay violated its license on August 25, 2009 and September 1, 2009 by permitting dust generated by its wood grinding operations to migrate beyond the property boundaries.

² Metro Code Section 2.05.030.

VI. PROPOSED ORDER

1. Metro's action in issuing NOV-225B-09 assessing a \$1,500 civil penalty against GreenWay for violating its Solid Waste Facility License is upheld.
2. Metro's action in issuing NOV-225C-09 assessing a \$1,000 civil penalty against GreenWay for violating its Solid Waste Facility License is upheld.

Respectfully Submitted:



Carl D. Cox, Esq.
Hearings Officer

DATED: 01/08/10

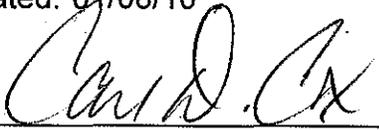
CERTIFICATE OF SERVICE

I, Carl D. Cox, certify that on this day I submitted the original PROPOSED FINAL ORDER, together with the record compiled in the hearing, to the Metro Council, Attn: Michelle Bellia at 600 Northeast Grand Avenue, Portland, Oregon 97232-2736, and sent an original copy of the foregoing PROPOSED FINAL ORDER by US Mail, first class postage pre-paid, in a properly addressed and sealed envelope, to the following person(s) at the address shown, and via electronic transmission to the following person(s) at the address shown:

Metro
Michelle Bellia, Esq.
600 Northeast Grand Avenue
Portland, Oregon 97232-2736
michelle.bellia@oregonmetro.gov

Terrell Garrett
GreenWay Recycling, LLC
P.O. Box 4483
Portland, OR 97208

Dated: 01/08/10



Carl D. Cox, Esq.



BEFORE THE METRO REGIONAL GOVERNMENT

In The Matter of Notice of Violations and
Imposition of Civil Penalty NOV-225B-09 and
NOV-225C-09

FINAL ORDER

Issued to

GREENWAY RECYCLING, LLC,

Respondent

STATEMENT OF THE CASE

Appellant GreenWay Recycling, LLC, (“Appellant” or “GreenWay”) requested a hearing to contest two notices of violation issued to GreenWay by Respondent Metropolitan Service District (“Respondent” or “Metro”). A Hearings Officer held the requested contested case hearing on December 11, 2009 at approximately 9:30 am at Metro’s offices located at 600 NE Grand Ave., Portland, Oregon. Terrell Garrett, Managing Member of GreenWay Recycling, LLC, appeared on behalf of Appellant. Steve Kraten, Solid Waste Enforcement Coordinator for Metro, appeared on behalf of Respondent. The hearings officer did not receive any written or oral ex parte communication on a fact in issue during the pendency of the proceedings, and made a statement to that effect on the record, together with a description of the hearing procedure. All witnesses providing testimony provided an oath or affirmation concerning the truthfulness of their testimony. Metro made an audio recording of the hearing. Metro maintains the record of the proceedings.

///

1 **EVIDENTIARY MATTERS**

2 Appellant provided witness testimony and oral argument by Mr. Garrett, in support of
3 GreenWay’s request to vacate the civil penalties issued by Metro. Respondent provided a
4 hearing memorandum, witness and exhibit list, Exhibits 1-10, witness testimony and oral
5 argument by Mr. Kraten, supporting witness testimony by Warren Johnson, Metro Solid Waste
6 Compliance Supervisor, supporting witness testimony by Duane Altig, Metro Solid Waste and
7 Facility Inspector, and supporting witness testimony by Will Ennis, Metro Solid Waste and
8 Facility Inspector, in support of its request to uphold the fines assessed by Metro.
9

10 At the hearing, Respondent provided larger, color copies of several photographs submitted
11 in Respondent’s Exhibits. Mr. Garrett made an unspecified objection to the color copies, pointing
12 out that the photographs caught the sunlight in a manner that highlighted the dust in the air. The
13 hearing officer noted that the makers of these photographic records (Mr. Altig and Mr. Ennis)
14 were available at the hearing as witnesses and Mr. Garrett had a reasonable opportunity to
15 question the photographs. The hearing officer determined the offered copies of the photographs
16 in Respondent’s exhibits relevant and material to the proceedings. For these reasons, the hearing
17 officer admitted these photographs into the record.¹
18

19 **ISSUES PRESENTED**

- 20 1. Whether GreenWay violated its license on August 25, 2009 and August 26, 2009 by
21 conducting wood grinding operations in a building that was not yet adequately enclosed on
22 at least three sides, as required by its license.
23
24

25 _____
26 ¹ Metro Code Section 2.05.030(b) provides that: “Irrelevant, immaterial or unduly repetitious evidence shall be excluded.” Metro Code Section 2.05.030(c) provides that: “All offered evidence, not objected to, will be received by the hearings officer subject to his/her power to exclude irrelevant, immaterial or unduly repetitious matter.”

- 1 2. Whether GreenWay violated its license on August 25, 2009 by permitting dust generated
2 by its wood grinding operations to migrate beyond the property boundaries.
- 3 3. Whether GreenWay violated its license on September 1, 2009 by conducting wood
4 grinding operations in a building that was not yet adequately enclosed on at least three
5 sides, as required by its license.
- 6 4. Whether GreenWay violated its license on September 1, 2009 by permitting dust generated
7 by its wood grinding operations to migrate beyond the property boundaries.
8

9 **STIPULATIONS AND FINDINGS OF FACT**

10 The parties agree to the following stipulations:

- 11 1. NOV-225B-09 imposed penalties for two incidents of grinding wood in an inadequately
12 enclosed building and one incident of creating off-site dust impacts. NOV-225C-09
13 imposed penalties for one incident of grinding wood in an inadequately enclosed building
14 and on incident of creating off-site dust impacts.
15

16 Additional Findings of Fact:

- 17 2. Appellant GreenWay is a local wood processing operation with a license from Metro
18 authorizing it to accept certain solid waste, and conduct certain waste-related activities,
19 including conducting material recovery on mixed non-putrescible waste. The license
20 prohibits GreenWay from permitting dust from its' on-site operations to blow off the
21 premises of the facilities. Following several violations with respect to dust created on-site
22 blowing off the premises, Metro revised GreenWay's license pursuant to a dust abatement
23 plan. GreenWay's revised license requires it to conduct its wood grinding operation within
24 a building enclosed on at least three sides. Metro agreed to suspend certain civil penalties
25 resulting from the wood dust violations subject to GreenWay implementing the abatement
26

1 plan. Among other things, GreenWay's license required it to: "Ensure that all mixed non-
2 putrescible waste tipping, storage, sorting and reloading activities occur on an impervious
3 surface (e.g. asphalt or concrete) and inside a roofed building that is enclosed on at least
4 three sides." Metro issued the revised license on July 1, 2009, with an agreed upon
5 timeline for construction of the required building. (Exhibits 1, 2, 3)

- 6 3. Mr. Duane Altig, Metro Solid Waste and Facility Inspector, conducted an August 26, 2009
7 inspection of the GreenWay recycling facility in response to complaints of a significant
8 dust event at the facility on the previous day. Mr. Altig reported that GreenWay had
9 conducted wood grinding operations at its facility on August 25, 2009, although he also
10 noted and reported that the required three-sided building was not yet complete. Mr. Altig
11 interviewed witnesses to the dust event, and took several photographs showing wind-blown
12 dust and debris on vehicles parked on an adjacent property, and showing the building
13 housing the wood grinding operation. The photographs show a large, roofed building with
14 two completed sides, one open side partially covered with a tarp, and a second open side.
15 Mr. Altig reported that he spoke with Mr. Garrett on-site, and that Mr. Garrett expected
16 delivery of a steel roll-up door intended for one side of the building, within the next ten
17 days. Mr. Altig discussed with Mr. Garrett the complaint concerning dust blowing off the
18 premises. Metro issued a notice of violation (NOV-225B-09) to GreenWay imposing a
19 civil penalty of \$1,500. This amount included a civil penalty of \$500 for grinding wood on
20 August 25, 2009 and August 26, 2009 in violation of the license (without a completed
21 three-sided building) and a civil penalty of \$500 for allowing dust to migrate beyond the
22 property boundaries on August 25, 2009. (Exhibits 4 and 5)
23
24
25
26

1 4. Mr. Will Ennis, Metro Solid Waste and Facility Inspector, conducted a September 1, 2009
2 site inspection of the GreenWay recycling facility. Mr. Ennis reported meeting with Mr.
3 Garrett on-site, and observing the GreenWay wood processing operation. Mr. Ennis
4 reported observing thick plumes of dust arising high in the air from the wood processing
5 operation. Metro later received a complaint about the dust generated by GreenWay that
6 day. Mr. Ennis took several photographs of the facility, showing various parts of the
7 recycling operation, showing the building housing the wood grinding operation, and
8 showing dust that is discharging high into the air. The photographs show that the building
9 housing the wood grinding operation continues to have just two complete walls, and a tarp
10 for a wall on one side, with the tarp blowing to the side and dust blowing through. The
11 photographs show that the remaining side of the building is also open. Metro issued a
12 notice of violation (NOV-225C-09) to GreenWay imposing a civil penalty of \$1,000. This
13 amount included a civil penalty of \$500 for grinding wood on September 1, 2009 in
14 violation of the license (without a completed three-sided building) and a civil penalty of
15 \$500 for allowing dust to migrate beyond the property boundaries on September 1, 2009.
16 (Exhibits 6, 7, 8, and 9)

19 5. Mr. Steve Kraten, Solid Waste Enforcement Coordinator for Metro, testified that there is a
20 history of violations with respect to GreenWay permitting dust generated by its wood
21 processing and recycling operation to migrate outside the boundaries of its property. Mr.
22 Kraten testified that Metro has worked with GreenWay to develop and implement a dust
23 abatement plan to prevent these blowing dust violations from continuing. This plan
24 included construction of a three-sided building to house GreenWay's wood grinding
25 operation, in the same manner required of other similarly situated recycling operations
26

1 licensed by Metro. Mr. Kraten testified that there were several delays in GreenWay
2 completing construction of the building, and most of the agreed-upon construction
3 milestones were not met. Mr. Kraten testified that he personally delivered the reissued
4 solid waste facility license to Mr. Garrett and explained the provision for civil penalties of
5 \$500 per day. Mr. Kraten testified that Mr. Garrett informed him that the cost of shutting
6 down the recycling operation exceeded the \$500 per day penalty. Mr. Kraten testified that
7 the building housing the GreenWay wood grinding operation had only two sides on the
8 August 25, August 26, and September 1, 2009 dates cited in Metro's notice of violations.
9 Mr. Kraten noted that one end of the building had a loose tarp in the opening, and the other
10 end had a tarp instead of a roll-up door. Mr. Kraten testified that on September 24, 2009
11 GreenWay installed the roll-up door on the building housing its wood grinding operation,
12 and there have been no more dust violations. (Testimony Mr. Kraten)

- 14 6. Mr. Garrett pointed out that some of the photographs submitted by Metro have the sun in
15 the background, photographing the wood grinding operation in a manner that lights up the
16 dust in the air, and makes it appear that there is more dust. Mr. Garrett testified that
17 GreenWay ordered and paid for the roll-up garage door needed to complete the building
18 housing its wood grinding operations, but there were delays from financing difficulties.
19 Mr. Garrett agrees that the building was not completed by the agreed-upon deadlines, but
20 asserts that GreenWay was moving forward with the abatement plan. Mr. Garrett points
21 out that the license Metro issued to GreenWay does not define a three-sided building, and
22 asserts that similarly situated recycling operations licensed by Metro are permitted to use
23 "U-shaped" walls, some are permitted "L-shaped" walls, and some are allowed to operate
24 with only a roof. Mr. Garrett points out that the building constructed by GreenWay to
25
26

1 house its wood grinding operation has two very long walls, and that these two long walls
2 are the equivalent in linear footage of three walls.

3 7. Mr. Kraten disputed that similarly situated recycling operations licensed by Metro are
4 operating with less than a three-walled, roofed enclosure. Mr. Kraten agrees that one
5 recycling operation, East Coast, is allowed to operate in a different manner, but points out
6 that this is a variation approved by the Metro Council, and that East Coast's operation takes
7 place down in a pit and is not similarly situated to GreenWay's operation.
8

9 **CONCLUSIONS OF LAW**

10 The evidence presented is reliable, probative, and substantial evidence upon which to
11 base a determination in this matter. The burden of presenting evidence to support a fact or
12 position rests on the proponent of the fact or position. Respondent Metro must prove the validity
13 of the civil penalties imposed on Appellant by a preponderance of the substantial evidence in the
14 whole record.²
15

16 Section 3.0 of the Solid Waste Facility License Metro issued to GreenWay requires that:
17 "All grinding of [yard debris, land clearing debris, untreated wood, painted wood, and
18 preservative-treated wood] must occur on an impervious surface (e.g., asphalt or concrete) and
19 inside a roofed building that is enclosed on at least three sides." Metro required GreenWay to
20 construct and utilize the three-sided building to house its wood grinding operation as part of a
21 dust abatement plan, to prevent dust from GreenWay's wood grinding from blowing beyond the
22 boundaries of GreenWay's property. There were certain delays in completing installation of a
23 roll-up door as one side of the building, and GreenWay used a tarp to partially cover this side of
24 the building until the roll-up door was delivered and installed September 24, 2009. The reports
25

26 _____
² Metro Code Section 2.05.030.

1 and photographs by Mr. Altig and Mr. Ennis from their respective August 26 and September 1,
2 2009 on-site inspections of the GreenWay wood grinding operation show dust blowing through
3 the tarp and into the air, in a manner the completed building was designed to prevent as part of
4 the dust abatement. Mr. Garrett's contention is that the building GreenWay constructed has two
5 very long walls, and the linear footage involved is equivalent to a three-sided building. Mr.
6 Garrett also contends that the term "three-sided" as required by the license issued by Metro is not
7 clear. However, a two-sided building, with tarps at the open ends, is not the same as a three-
8 sided building. Rather, the plain meaning of "three-sided" is that there are three attached sides,
9 making an enclosure that dust will not blow through. The testimony by Mr. Kraten that the dust
10 violations ceased following the September 24, 2009 installation of the roll-up door in place of the
11 tarp corroborates this plain meaning interpretation of "three-sided."
12

13 The photographs taken by Mr. Altig show that the blowing dust from GreenWay's wood
14 grinding operations that took place on August 25 and August 26 migrated beyond the boundaries
15 of GreenWay's property, and settled on vehicles on adjacent properties. The September 1, 2009
16 photographs taken by Mr. Ennis likewise show the blowing dust from GreenWay's wood
17 grinding operation rising high into the air, consistent with the subsequent complaint received by
18 Metro concerning dust from GreenWay.
19

20 Based on the preponderance of the substantial evidence presented that GreenWay
21 violated its license on August 25, 2009, August 26, 2009, and September 1, 2009 by conducting
22 wood grinding operations in a building that was not yet adequately enclosed on at least three
23 sides, as required by its license. I conclude based on the preponderance of the substantial
24 evidence presented that GreenWay violated its license on August 25, 2009 and September 1,
25
26

1 2009 by permitting dust generated by its wood grinding operations to migrate beyond the
2 property boundaries.

3 **ORDER**

4 1. Metro's action in issuing NOV-225B-09 assessing a \$1,500 civil penalty against
5 GreenWay for violating its Solid Waste Facility License is upheld.

6 2. Metro's action in issuing NOV-225C-09 assessing a \$1,000 civil penalty against
7 GreenWay for violating its Solid Waste Facility License is upheld.
8

9 METRO REGIONAL GOVERNMENT

10
11 Dated: February 25, 2010

12 Michael Jordan
13 Chief Operating Officer

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing RESOLUTION NO. 10-4125 with Exhibits A1, A2, B,

C and D to the following:

Terrell Garrett
GreenWay Recycling, LLC
PO Box 4483
Portland, OR 97208

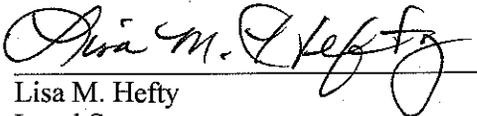
Carl D. Cox
Attorney at Law
14845 SW Murray Scholls Drive, #110
Beaverton, OR 97007

Hearings Officer
E-Mail Address: cd.cox@verizon.net

Michelle A. Bellia, Senior Attorney
Metro
600 NE Grand Avenue
Portland, OR 97232-2736

Attorney for Respondent Metro
E-Mail Address:
michelle.bellia@oregonmetro.gov

by mailing via first class mail to those persons a true and correct copy thereof, certified by me as such,
placed in a sealed envelope addressed to them at the addresses set forth, and deposited in the United
States Post Office at Portland, Oregon, on February 12, 2010, with the postage prepaid.



Lisa M. Hefty
Legal Secretary