

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A) RESOLUTION NO. 10-4192
RENEWED NON-SYSTEM LICENSE TO GRAY & COMPANY)
FOR DELIVERY OF PUTRESCIBLE WASTE TO THE RIVERBEND) Introduced by Michael Jordan,
LANDFILL) Chief Operating Officer, with the
) concurrence of Carlotta Collette,
) Council President

WHEREAS, the Metro Code requires a non-system license of any person that delivers solid waste generated from within the Metro Region to a non-system disposal facility; and

WHEREAS, Gray & Company ("Gray") holds Metro Solid Waste Facility Non-System License No. N-011-09, which expires on December 31, 2010; and

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

WHEREAS, the Metro Code Chapter provides that applications for non-system licenses for putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council; and

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

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


THE METRO COUNCIL RESOLVES AS FOLLOWS:

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

ADOPTED by the Metro Council this 4 day of NOV, 2010.


Carlotta Collette, Council President

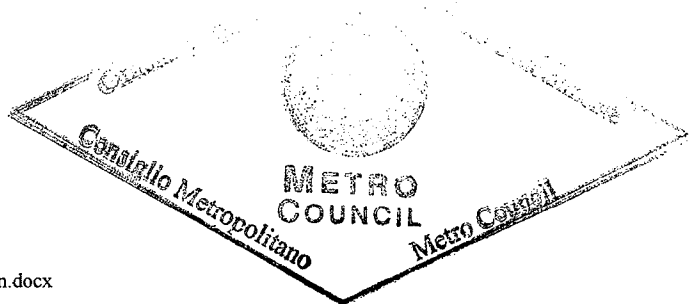
Approved as to Form:


Daniel B. Cooper, Metro Attorney

Resolution No. 10-4192

TG/WJ:bjj

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METRO

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

No. N-011-11

LICENSEE:
Gray and Company 2331 23 rd Avenue Forest Grove, OR 97116
CONTACT PERSON:
Chad Dewhurst Phone: (503) 359-7103 Fax: (503) 359-7149 E-mail: cmdewhurst@cherryman.com
MAILING ADDRESS:
Gray and Company P.O. Box 218 Forest Grove, OR 97116

ISSUED BY METRO:

Michael Jordan, Chief Operating Officer

Date



1	NATURE OF WASTE COVERED BY LICENSE
	Putrescible solid waste generated at the Gray and Company site located at 2331 23 rd Avenue in Forest Grove, Oregon.
2	CALENDAR YEAR TONNAGE LIMITATION
	Licensee is authorized to deliver to the non-system facility listed in Section 3 of this license up to 260 tons per calendar year of the waste described in Section 1 of this license.
3	NON-SYSTEM FACILITY
	<p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 to the following non-system facility:</p> <p style="text-align: center;">Riverbend Landfill 13469 SW Highway 18 McMinnville, OR 97128</p> <p>This license is issued on condition that the non-system facility named in this section is authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality or local regulatory authority that this non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7 of this license.</p>
4	TERM OF LICENSE
	The term of this license will commence on January 1, 2011 and expire at midnight on December 31, 2012, unless terminated sooner under Section 7 of this license.
5	REPORTING OF ACCIDENTS AND CITATIONS
	Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.



6	RECORD KEEPING AND REPORTING
	<p>(a) The Licensee shall keep and maintain accurate records of the amount of all solid waste that the Licensee delivers to the non-system facility described in Section 3 of this license. The Licensee shall keep and maintain complete and accurate records of the following for all transactions with the authorized non-system facility:</p> <ul style="list-style-type: none"> i. Ticket or weight slip number from the non-system facility; ii. Material category designating the type of material transferred to the non-system facility; iii. Date the load was transferred to the non-system facility; iv. Time the load was transferred to the non-system facility; v. Net weight of the load; and vi. Fee charged by the non-system facility <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall:</p> <ul style="list-style-type: none"> i. Transmit the records required under Section 6(a) above to Metro in an electronic format prescribed by Metro; ii. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; and iii. Remit to Metro the requisite Regional System Fees and Excise Tax in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes. <p>(c) Licensee shall make all records from which Sections 6(a) and 6(b) above are derived available to Metro (or Metro’s designated agent) for its inspection or copying, as long as Metro provides no less than three (3) business days written notice of an intent to inspect or copy documents. Licensee shall, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facility named in Section 3, above.</p>

7	ADDITIONAL LICENSE CONDITIONS
	<p>This license shall be subject to the following conditions:</p> <p>(a) The permissive transfer of solid waste to the non-system facility, listed in Section 3, authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.</p> <p>(b) This license shall be subject to amendment, modification or termination by Metro’s Chief Operating Officer (the “COO”) in the event that the COO determines that:</p> <ul style="list-style-type: none"> i. There has been sufficient change in any circumstances under which



	<p>Metro issued this license;</p> <ul style="list-style-type: none"> ii. The provisions of this license are actually or potentially in conflict with any provision in Metro’s disposal contract with Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, Inc.; or iii. Metro’s solid waste system or the public will benefit from, and will be better served by, an order directing that the waste described in Section 1 of this license be transferred to, and disposed of at, a facility other than the facility described in Section 3. <p>(c) This license shall, in addition to subsections (b)(i) through (iii), above, be subject to amendment, modification, termination, or suspension pursuant to the Metro Code.</p> <p>(d) Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.</p> <p>(e) This license shall terminate upon the execution of a designated facility agreement with the facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1 of this license.</p> <p>(f) This license authorizes delivery of solid waste to the facility listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.</p>
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8	COMPLIANCE WITH LAW
	<p>Licensee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders, and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.05 whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the collection and hauling of the Licensee’s solid waste by federal, state, regional or local governments or agencies having jurisdiction over solid waste generated by the Licensee shall be deemed part of this license as if specifically set forth herein.</p>

9	INDEMNIFICATION
	<p>Licensee shall defend, indemnify and hold harmless Metro, its elected officials, officers, employees, agents and representatives from any and all claims, demands, damages, causes of action, or losses and expenses, or including all attorneys’ fees, whether incurred before any litigation is commenced, during any litigation or on appeal, arising out of or related in any way to the issuance or administration of this non-system license or the transport and disposal of the solid waste covered by this license.</p>

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 10-4192 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO GRAY & COMPANY FOR DELIVERY OF PUTRESCIBLE WASTE TO THE RIVERBEND LANDFILL

October 4, 2010

Prepared by: Warren Johnson

Approval of Resolution No. 10-4192 will authorize the Chief Operating Officer (COO) to issue a two-year non-system license (NSL) to Gray & Company (Gray) to annually deliver up to 260 tons of putrescible waste from the Metro region to the Riverbend Landfill (RLF) in McMinnville, Oregon. The proposed NSL is the renewal of an existing license that is set to expire on December 31, 2010.

BACKGROUND

Gray is a food processing facility located in Forest Grove, Oregon (Metro District 4). Gray routinely generates solid waste that consists primarily of fruit wastes, residual fruit syrups, containers contaminated with food residue, and a small quantity of miscellaneous waste from the facility's offices, restrooms, and cafeteria.

On March 1, 2009, Metro and RLF entered into a designated facility agreement (Metro Contract No. 929082) which allows the landfill to accept certain types of waste from the Metro region (such as non-putrescible processing residual). Although RLF is a Metro-designated facility, an NSL is required to deliver Metro-area putrescible waste to the landfill because it is not designated, as provided in Metro Code Section 5.05.030(a) or under the agreement, to accept putrescible solid waste from the Metro region. These types of NSLs are important because they allow Metro to closely monitor and potentially guide waste flows as necessary to ensure compliance with its obligations under the disposal contract.

In December 2008, Gray was granted an NSL (No. N-011-09) to deliver a maximum of 500 tons per calendar year of putrescible waste to the RLF for disposal. The term of this NSL commenced on January 1, 2009 and is set to expire on December 31, 2010. The applicant delivered 337 tons of solid waste to RLF under authority of this existing NSL during calendar year 2009 and 183 tons between January 1 and July, 31 2010.

On September 17, 2010, Gray submitted to Metro an application requesting that Metro renew this NSL with a tonnage authorization of 260 tons per calendar year. The requested amount is 240 tons less than the tonnage authorization included in Gray's existing NSL. Gray requested the tonnage reduction because the Forest Grove facility is expected to generate less waste in the next few years due to the shifting of some production activities to out-of-state facilities.

The proposed NSL is a renewal of an existing license. The proposed license renews the existing authorization that Gray has held under NSLs since 1996.

ANALYSIS/INFORMATION

1. Known Opposition

Within Yamhill County, there is known local public opposition to the expansion of RLF. The expansion decision continues to play itself out through the county and state land use process. In the past, local opponents of landfill expansion have expressed objections to the disposal of any waste generated outside of the County that may contribute to Waste Management's need to expand capacity at the landfill.

Metro staff notified Yamhill County of the applicant's request and the County's solid waste staff indicated by letter that the landfill was in compliance with local requirements.

2. Legal Antecedents

Section 5.05.035(c) of the Metro Code provides that, when determining whether or not to approve an NSL application, the Council shall consider the following factors to the extent relevant to such determination.

- (1) *The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;*

The RLF first came into use during the mid-eighties. When RLF became a Subtitle D landfill in 1993, the original unlined cells were capped. Since 1993, the landfill has been filling only lined cells and operating with the environmental controls required by the Oregon Department of Environmental Quality (DEQ). During the term of the existing NSL, Metro staff has not found any evidence that the landfill has accepted waste that it was not permitted by DEQ to accept. It appears that the future risk of environmental contamination is likely to be minimal, provided that the synthetic liner system remains intact, leachate is collected and properly treated, groundwater is monitored for contamination migration, and the DEQ is diligent in its oversight of the facility.

- (2) *The record of regulatory compliance of the non-system facility's owner and operator with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;*

The RLF is owned and operated by Waste Management of Oregon, Inc. (WMO). The landfill is permitted by the DEQ. Metro staff received verbal confirmation from the DEQ and Yamhill County that RLF is in compliance with federal, state, and local requirements. Staff has also received confirmation that the landfill has a good compliance record with respect to public health, safety and environmental rules and regulations.

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

The RLF uses operational practices and management controls that are typical of Subtitle D landfills and considered by the DEQ to be appropriate for the protection of health, safety, and the environment.

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

The proposed license covers putrescible solid waste, which has little recovery potential. Thus, approval of the proposed license renewal is not expected to impact the region's recycling and waste reduction efforts.

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

Metro has a contractual obligation to deliver a minimum of 90 percent of the region's putrescible waste that is delivered to general purpose landfills during the calendar year, to landfills owned by WMO. The putrescible solid waste covered under the proposed NSL is to be delivered to RLF, which is owned and operated by WMO. Thus, approval of this license renewal will not conflict with Metro's disposal contract or any other of its existing contractual arrangements.

- (6) *The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations; and*

Gray is currently in compliance with its Metro-issued NSL and it has not had any compliance issues with regard to Metro regulations within the last two years. Additionally, to staff's knowledge, Gray has had no violations related to public health, safety or environmental regulations during the term of the existing license.

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

The RLF is located near one of Gray's other facilities located in Dayton, Oregon (near McMinnville). Gray routinely transports fruit to Forest Grove from its Dayton facility. The proposed NSL allows the company to backhaul its waste directly to RLF after making fruit deliveries to its Forest Grove facility. The proposed NSL is a renewal of an existing license.

3. Anticipated Effects

The effect of Resolution No. 10-4192 will be to issue a two-year NSL to Gray to deliver up to 260 tons per calendar year of putrescible waste to the RLF for disposal.

4. Budget Impacts

RLF is owned and operated by WMO and this NSL will not impact Metro's obligations under its disposal contract. The regional system fee and excise tax will continue to be collected on Metro-area waste delivered to RLF under the authority of the proposed NSL. The application under consideration is the renewal of an existing NSL (No. N-011-09). The financial impact of this NSL has already been factored into the budget.

RECOMMENDED ACTION

The COO recommends approval of Resolution No. 10-4192, finding that the license renewal satisfies the requirements of Metro Code Section 5.05.035, and issuance of an NSL substantially similar to the proposed NSL attached to the resolution as Exhibit A.

TG/WJ:bjl
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