

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE) RESOLUTION NO. 11-4270
AN AMENDED NON-SYSTEM LICENSE FOR INCREASED)
TONNAGE AUTHORIZATION TO HOODVIEW DISPOSAL &) Introduced by Daniel Cooper,
RECYCLING, INC. FOR DELIVERY OF PUTRESCIBLE WASTE) Acting Chief Operating Officer,
TO CANBY TRANSFER & RECYCLING, INC. FOR THE) with the concurrence of Tom
PURPOSE OF TRANSFER TO THE RIVERBEND LANDFILL) Hughes, 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, Hoodview Disposal & Recycling, Inc. ("HDR") holds Metro Solid Waste Facility Non-System License No. N-118-11, which expires on December 31, 2012; and

WHEREAS, HDR has filed a completed application seeking to increase the tonnage authorization stipulated in the non-system license to deliver putrescible waste to Canby Transfer & Recycling, Inc. for the purpose of transfer 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

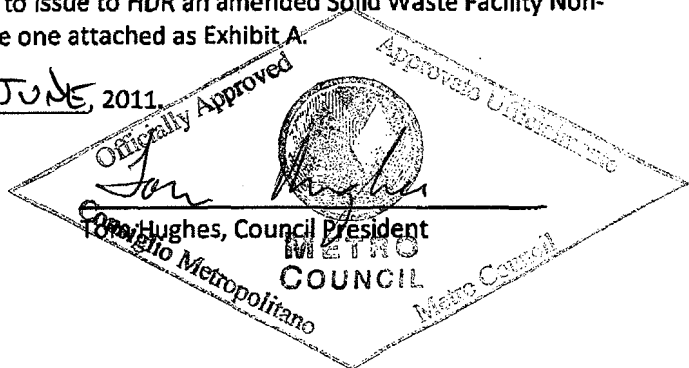
WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors under the Metro Code; and

WHEREAS, the Chief Operating Officer recommends that the non-system license be amended to increase the tonnage authorization as provided in Exhibit A to this Resolution; now therefore,


THE METRO COUNCIL RESOLVES AS FOLLOWS:

1. The non-system license application of HDR 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 HDR an amended Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this 23 day of JUNE, 2011.



Approved as to Form:


Alison Kean-Campbell, Acting Metro Attorney

Resolution No. 11-4270

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METRO

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

No. N-118-11A

LICENSEE:
Hoodview Disposal & Recycling, Inc. 1600 SE 4 th Avenue Canby, OR 97013
CONTACT PERSON:
Andy Kahut Phone: (503) 663-4778 Fax: (503) 263-6477 E-mail: akahut@kahutwasteservices.com
MAILING ADDRESS:
Hoodview Disposal & Recycling, Inc. P.O. Box 550 Canby, OR 97013

This non-system license replaces and supersedes the provisions of Metro Solid Waste Facility Non-System License No. N-118-11.

ISSUED BY METRO:

Scott Robinson, Deputy Chief Operating Officer

Date



1	NATURE OF WASTE COVERED BY LICENSE
	Putrescible solid waste that is generated by residential and commercial customers within the Metro region and collected by Hoodview Disposal & Recycling, Inc.
2	CALENDAR YEAR TONNAGE LIMITATION
	Licensee is authorized to deliver to the non-system facility listed in Section 3 of this license up to 7,600 tons per calendar year of the waste described in Section 1 of this license.
3	NON-SYSTEM FACILITY
	<p>The Licensee hereunder may deliver the waste described in Section 1, above, only to the following non-system facility for the purpose of transfer to the Riverbend Landfill for disposal:</p> <p style="text-align: center;">Canby Transfer & Recycling, Inc. 1600 SE 4th Avenue Canby, OR 97013</p> <p>This license is issued on condition that the non-system facility and disposal site named in this section are 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 the non-system facility or disposal site are not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7 of this license.</p>
4	TERM OF LICENSE
	The term of this license will commence on January 1, 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; andvi. Fee charged by the non-system facility <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall:</p> <ul style="list-style-type: none">i. Transmit the records required under Section 6(a) above to Metro in an electronic format prescribed by Metro;ii. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; andiii. Remit to Metro the requisite Regional System Fees and Excise Tax in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes. <p>(c) Licensee shall make all records from which Sections 6(a) and 6(b) above are derived available to Metro (or Metro's designated agent) for its inspection or copying, as long as Metro provides no less than three (3) business days written notice of an intent to inspect or copy documents. Licensee shall, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system 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 Metro issued this license;



	<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. 11-4270 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE AN AMENDED NON-SYSTEM LICENSE FOR INCREASED TONNAGE AUTHORIZATION TO HOODVIEW DISPOSAL & RECYCLING, INC. FOR DELIVERY OF PUTRESCIBLE WASTE TO CANBY TRANSFER & RECYCLING, INC. FOR THE PURPOSE OF TRANSFER TO THE RIVERBEND LANDFILL

June 8, 2011

Prepared by: Warren Johnson

Approval of Resolution No. 11-4270 will authorize the Chief Operating Officer (COO) to issue an amended non-system license (NSL) to Hoodview Disposal and Recycling, Inc. (HDR) for increased tonnage authorization to annually deliver up to 7,600 tons of putrescible waste from the Metro region to Canby Transfer & Recycling, Inc. (CTR) for the purpose of transfer to the Riverbend Landfill (RLF) in McMinnville, Oregon. The proposed amendment does not change any other provisions of the existing NSL which is set to expire on December 31, 2012.

BACKGROUND

Metro and RLF have 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 November 2010, HDR was granted an NSL (No. N-118-11) to deliver a maximum of 5,500 tons per calendar year of putrescible waste, collected from its routes located inside the Metro region, to CTR for the purpose of transfer to the RLF for disposal. The term of that NSL commenced on January 1, 2011 and is set to expire on December 31, 2012. In January 2011, HDR purchased Deines Brothers Sanitary Service, Inc. and expanded its collection area within Clackamas County. As a result of the acquisition, HDR has added approximately 2,100 tons of solid waste to its collection operation.

On May 19, 2011, HDR submitted to Metro a change of authorization application seeking to increase the tonnage authorization of its existing license by 2,100 tons. The proposed amended license would increase HDR's existing annual tonnage authorization from 5,500 tons up to 7,600 tons per calendar year.

ANALYSIS/INFORMATION

1. Known Opposition

Although the waste subject to the proposed NSL will be delivered to CTR, ultimate disposal of such waste will be at the RLF. 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, state land use process and legal system. 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.

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 proposed disposal site is a transfer station rather than a landfill and thus does not pose the same potential environmental risk from wastes delivered from prior users. CTR began operations in 1996 and services only affiliated hauling companies including HDR and West Linn Refuse located in the Metro region. Staff is not aware of any wastes collected by HDR accepted at CTR that could pose a risk of environmental contamination.

Ultimate disposal of the waste covered under the proposed NSL will be at the RLF. 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 applicant (HDR) and the transfer station (CTR) are both affiliated with K.B. Recycling, Inc. headquartered in Canby, Oregon. Whereas, RLF is owned and operated by Waste Management of Oregon, Inc. (WMO). The landfill and CTR are permitted by the DEQ. Metro staff has recently received verbal confirmation from the DEQ and local jurisdictions (Clackamas and Yamhill Counties respectively) that both CTR and RLF are in compliance with federal, state, and local requirements. Staff has also received confirmation that these facilities have good compliance records 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;*

Metro and DEQ staff considers the operational practices and management controls in place at CTR to be adequate and consistent with other similar facilities. In addition, 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*

The applicant owns and operates KB Recycling, Inc. (KB), a Metro-licensed material recovery facility, as well as CTR. On September 1, 2010, Metro issued a notice of violation (No. NOV-260-10) to KB and imposed a penalty of \$100 for the facility accepting a load of putrescible waste in violation of its solid waste facility license (No. L-007-07A). KB has since paid its penalty and the matter has been resolved. On February 2, 2011, Metro issued a notice of violation (No. NOV-280-11) to KB and imposed a penalty of \$50 for the lack of proper signage at the facility. KB has since paid its penalty and the matter had been resolved. The above referenced violations are associated with the applicant; however, it is not directly related to the activities performed by the applicant's hauling operations.

The applicant is currently in compliance with its Metro-issued NSL. With the exception of the above referenced violations, the applicant has not had any significant compliance issues with regard to Metro regulations within the last two years. Additionally, HDR 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 applicant is seeking the proposed NSL tonnage increase in order to create operational efficiencies that will benefit HDR's ratepayers. In particular, the applicant states that granting the requested amendment will result in savings for fuel, labor, and maintenance costs for HDR.

3. Anticipated Effects

The effect of Resolution No. 11-4270 will be to issue an amended NSL to HDR authorizing it to deliver up to 7,600 tons per calendar year of putrescible waste to CTR for the purpose of transfer to the RLF for disposal.

4. Budget/Rate Impacts

The application under consideration seeks to increase the tonnage authorization of an existing NSL (No. N-118-11) by 2,100 tons per calendar year. The waste covered under the NSL is destined for disposal at RLF which is owned and operated by WMO. As such, this proposed tonnage increase will not impact Metro's obligations under its disposal contract.

The regional system fee and excise tax will continue to be collected on the Metro-area waste delivered to CTR under the authority of the proposed NSL. However, the additional 2,100 tons of solid waste that HDR is seeking to deliver to CTR per calendar year will be diverted away from Metro South Transfer Station. This tonnage shift will cause a small increase in the cost of disposal for Metro's customers and a small reduction in FY 2011-12 Rehabilitation & Enhancement Fund revenue that would otherwise go to Oregon City.

Metro's costs change as tonnage shifts away from its transfer stations. These changes are reflected in the costs to operate the transfer stations and to transport and dispose of the waste. Generally these costs decline as tonnage shifts away, while Metro's unit (per-ton) costs increase due to fixed costs spread over fewer tons.

The tonnage shift expected in response to this amendment (about 2,100 tons *from* Metro's transfer station to CTS) would cause a decrease of approximately \$106,000 in the Parks and Environmental Services budget because Metro would no longer incur the cost of transferring, transporting, and disposing of the 2,100 tons of solid waste diverted to CTR. Since HDR applied for this amendment after the FY 2011-12 rates were adopted, the diversion is not factored into the Metro tip fee, and Metro would have to absorb the approximate \$18,800 fiscal impact during FY 2011-12. Metro could fully recover its costs with a 4¢ per ton increase in the tonnage charge component of the tip fee.

In addition to the above, revenue for the Rehabilitation & Enhancement of host communities derives from a state-authorized and Metro-implemented surcharge on all wastes accepted at certain solid waste facilities for a fee (including Metro South). The "host fee" set at the Metro South transfer station is currently 50 cents per ton and tonnage shifts away from the transfer station would reduce the Rehabilitation & Enhancement Fund by that amount. Specifically, diverting 2,100 tons of solid waste away from Metro South annually would result in the city of Oregon City receiving \$1,050 less for its Community Enhancement Program each year.

RECOMMENDED ACTION

The COO recommends approval of Resolution No. 11-4270, finding that the license amendment 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. The Deputy Chief Operating Officer has been delegated signatory responsibility for this matter.

TG/Wj:bjl
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