

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A) RESOLUTION NO. 11-4299
RENEWED NON-SYSTEM LICENSE TO ARROW SANITARY)
SERVICE, INC. FOR DELIVERY OF PUTRESCIBLE WASTE TO) Introduced by Martha J. Bennett,
THE WEST VAN MATERIALS RECOVERY CENTER AND THE) Chief Operating Officer, with the
CENTRAL TRANSFER AND RECYCLING CENTER) concurrence of Tom 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, Arrow Sanitary Service, Inc. ("Arrow") holds Metro Solid Waste Facility Non-System License No. N-029-11A, which expires on December 31, 2011; and

WHEREAS, Arrow has filed a complete application seeking renewal of the non-system license to deliver putrescible waste to the West Van Materials Recovery Center and the Central Transfer and Recycling Center for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control;" and

WHEREAS, Metro Code Chapter 5.05 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:

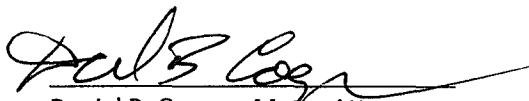
1. The non-system license renewal application of Arrow is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. The Chief Operating Officer is authorized to issue to Arrow a renewed Solid Waste Facility Non-System License substantially similar to the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

ADOPTED by the Metro Council this 8 day of DEC 2011.


Tom Hughes, Council President



Approved as to Form:


Daniel B. Cooper, Metro Attorney

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1835 | FAX 503 813 7544



METRO

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

No. N-029-12

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

ISSUED BY METRO:

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 Arrow Sanitary Service, Inc.
2	CALENDAR YEAR TONNAGE LIMITATION
	<p>(a) Licensee is authorized to deliver to the non-system facilities described in Section 3 of this license up to 25,465 tons per calendar year of the waste described in Section 1.</p> <p>(b) By no later than November 2, 2012, Metro's Chief Operating Officer ("COO") may release additional reserve tonnage and amend this license to adjust the calendar year tonnage limitation as established by Metro Council and described in the staff report to Resolution No. 11-4299.</p>
3	NON-SYSTEM FACILITIES
	<p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 to the following non-system facilities:</p> <p style="padding-left: 40px;">West Van Materials Recovery Center 6601 NW Old Lower River Road Vancouver, WA 98660</p> <p style="padding-left: 40px;">Central Transfer and Recycling Center 11034 NE 117th Avenue Vancouver, WA 98661</p> <p>This license is issued on condition that the non-system facilities named in this section are authorized to accept the type of waste described in Section 1. If Metro receives notice from Clark County or other appropriate regulatory authority that these non-system facilities are not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7 of this license.</p>
4	TERM OF LICENSE
	The term of this license will commence on January 1, 2012 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 facilities described in Section 3 of this license. The Licensee shall keep and maintain complete and accurate records of the following for all transactions with the authorized non-system facilities:</p> <ul style="list-style-type: none">i. Ticket or weight slip number from the non-system facility;ii. Material category designating the type of material transferred to the non-system facility;iii. Date the load was transferred to the non-system facility;iv. Time the load was transferred to the non-system facility;v. Net weight of the load; andvi. Fee charged by the non-system facility <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall:</p> <ul style="list-style-type: none">i. Transmit the records required under Section 6(a) above to Metro in an electronic format prescribed by Metro;ii. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; andiii. Remit to Metro the requisite Regional System Fees and Excise Tax in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes. <p>(c) Licensee shall make all records from which Sections 6(a) and 6(b) above are derived available to Metro (or Metro's designated agent) for its inspection or copying, as long as Metro provides no less than three (3) business days written notice of an intent to inspect or copy documents. Licensee shall, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facilities named in Section 3, above.</p> <p>(d) Metro may require the Licensee to report the information required by this Section on a weekly or daily basis.</p>



7	ADDITIONAL LICENSE CONDITIONS
	<p>This license shall be subject to the following conditions:</p> <ul style="list-style-type: none">(a) The permissive transfer of solid waste to the non-system facilities, listed in Section 3, authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.(b) In addition to the amendments by the COO authorized by Section 2 of this license, this license shall be subject to amendment, modification, or termination by the COO in the event that the COO determines that:<ul style="list-style-type: none">i. There has been sufficient change in any circumstances under which Metro issued this license;ii. The provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, Inc.;iii. Metro's solid waste system or the public will benefit from, and will be better served by, an order directing that the waste described in Section 1 of this license be transferred to, and disposed of at, a facility other than the facilities listed in Section 3; oriv. There has been sufficient change in the amount of tonnage available for allocation during the term of the license. In the event that additional tonnage becomes available for allocation, the COO may amend Section 2(a) of this license to increase the calendar year tonnage limitation by up to five percent in addition to the reserve tonnage amount described in Section 2(b).(c) This license shall, in addition to subsections (b)(i) through (b)(iv), above, be subject to amendment, modification, suspension, or termination pursuant to the Metro Code.(d) The Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.(e) This license shall terminate upon the execution of designated facility agreements with the facilities listed in Section 3 that authorizes the facilities to accept the waste described in Section 1 of this license.(f) This license authorizes the delivery of solid waste to the facilities listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.(g) The COO may direct the Licensee's waste flow under this non-system license to Metro Central Transfer Station or Metro South Transfer Station with a minimum of 24 hours written notice. Any redirection of the waste



	<p>flow by the COO is effective immediately.</p> <p>(h) If the Licensee exceeds the calendar year limitation set forth in Section 2 of this license, each ton or portion thereof by which the Licensee exceeds the limitation constitutes a separate violation subject to a penalty of up to \$500. For every ton by which the licensee violates the annual tonnage limitation, Metro will assess a base penalty of \$50. This \$50 base penalty can only be contested upon issuance of this license and will be assessed in addition to any penalty calculated by Metro in the normal course of its enforcement action.</p>
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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. 11-4299 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO ARROW SANITARY SERVICE, INC. FOR DELIVERY OF PUTRESCIBLE WASTE TO THE WEST VAN MATERIALS RECOVERY CENTER AND THE CENTRAL TRANSFER AND RECYCLING CENTER

November 9, 2011

Prepared by: Warren Johnson

Approval of Resolution No. 11-4299 will authorize the Chief Operating Officer (COO) to issue a one-year non-system license (NSL), substantially similar to the proposed license attached to this resolution as Exhibit A, to Arrow Sanitary Service, Inc. (Arrow). The NSL will authorize the delivery of up to 25,465 tons of putrescible waste to either the West Van Materials Recovery Center (WVAN) or the Central Transfer and Recycling Center (CTRC), located in Clark County, Washington, during calendar year 2012. The applicant (Arrow), the destination facilities (WVAN and CTRC), as well as the ultimate disposal site (Finley Buttes Landfill) are all owned by Waste Connections, Inc. (WCI), a waste management company headquartered in Folsom, California.

1. INTRODUCTION

A. Background

(1) Overview

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver a minimum of 90 percent of the region's putrescible waste, which is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. NSLs allow Metro to closely monitor and potentially guide waste flows to authorized facilities in order to comply with the contract. This approach provides for a high level of control and fast response to changing conditions. Resolution No. 11-4299 would grant an NSL to Arrow to deliver Metro-area putrescible waste to facilities owned by WCI located in Clark County, Washington. That is, this NSL controls a portion of the 10 percent of uncommitted waste not guaranteed to Waste Management under Metro's disposal contract. Metro Council is scheduled to consider four such NSL resolutions controlling the uncommitted 10 percent. In addition to this action for Arrow, the Council is scheduled to consider resolutions for American Sanitary Service, Inc. (Res. No. 11-4298), Crown Point Refuse, Inc. (Res. No. 11-4300), and Willamette Resources, Inc. (Res. No. 11-4301) at its meeting on December 8, 2011.

In November 2010, the Metro Council granted one-year NSLs to each of the above referenced licensees. The Council approved a maximum tonnage allocation for the calendar year which, summed across all licenses, did not exceed 9.5 percent of the total forecasted tonnage subject to the flow guarantee based on Metro's tonnage forecast for 2011. Upon issuance of the NSLs, each licensee immediately received 85 percent of its portion of the total tonnage allocation as an upfront annual limit. The remaining amount was held in reserve for the COO to "release" as available by November 2, 2011. On October 7, 2011, the COO released additional tonnage to each of the licensees, reflecting the revised, downward tonnage forecast. Table 1 illustrates the initial and adjusted annual tonnage authorizations for each licensee in 2011.

Table 1: Summary of Annual Tonnage Authorizations for existing NSLs in 2011

Licensee	Licensee's Portion of Allocable Tonnage for 2011 (Percent)	Initial Tonnage Authorization for 2011	Additional Tonnage Released in October 2011	Total Adjusted Tonnage Authorization for 2011
American Sanitary Service, Inc. NSL No. N-020-11A	6.0	3,799	516	4,315
Arrow Sanitary Service, Inc. NSL No. N-029-11A	42.4	26,710	3,627	30,337
Crown Point Refuse, Inc. NSL No. N-108-11A	0.3	202	27	229
Willamette Resources, Inc. NSL No. N-005-11(3)A	51.3	32,343	4,392	36,735
TOTAL	100	63,054	8,562	71,616

As discussed in the “Budget/Rate Impact” section of this staff report, the current policy of allocating the uncommitted tonnage increases Metro’s tip fee by \$0.78 per ton. At current throughput levels, Metro’s transfer station customers will pay approximately \$370,000 more for disposal in calendar year 2012 than if 100 percent of the waste were delivered to a landfill owned by Waste Management. Last year, staff assumed these NSLs would be renewed and incorporated their effects into the January – June 2012 portion of the FY 2011-12 solid waste rates and budget. The financial impact of granting the proposed NSLs will be factored into the July – December 2012 portion of the FY 2012-13 solid waste rates and budget.

(2) Design of the 2012 NSLs

For the 2012 renewal period, staff is proposing the same approach for evaluating the applications and determining the annual tonnage authorizations that was used for 2011. In particular, staff recommends that the Metro Council again grant one-year NSLs allocating 9.5 percent of the available forecasted tonnage to those applicants that have applied to renew their existing licenses. The limitation for each NSL will be based on a share of the tonnage that is projected to be available for allocation in 2012. The available tonnage is based on Metro’s preliminary tonnage forecast completed in October 2011. This same forecast was used in the five-year financial outlook prepared for Council; and when finalized will be used to develop the FY 2012-13 budget and solid waste rates.

If the Metro Council allocates the full 9.5 percent as proposed, then, based on the current Code requirement to consider the impact of Metro’s contractual obligations when granting NSLs, staff would recommend that the Council not allow tonnage limit increases under these licenses, except as described in this report. Furthermore, should Metro receive new applications for these types of NSLs during 2012, it would be difficult for the Council to adopt findings approving such NSLs unless additional solid waste tonnage becomes available during the year (e.g., a significant economic upturn, a new diversion program that substantially under-performs on expectations, or a current license-holder no longer using its entire tonnage allocation).

In the proposed NSLs for 2012, each licensee will initially receive 85 percent of its portion of the total tonnage allocation as an upfront annual tonnage limit. The remaining 15 percent would then be held in reserve for the COO to potentially release, as available, by no later than November 2, 2012. The COO

may adjust the licensee’s annual tonnage limit as necessary as described in this report without seeking further Council action. Metro would enforce the annual tonnage limit stipulated in the license.

(3) Tonnage Allocation Methodology

The tonnage allocations are based on Metro’s preliminary forecast of future waste that is subject to the flow guarantee under its disposal contract with Waste Management, and the share of such waste that each licensee controlled in the most recent 12-month period (October 2010 through September 2011). The details of the allocation are as follows:

- *Total Tonnage.* Metro projects that 750,690 tons will be subject to the flow guarantee in calendar year 2012. The amount of new food waste diversion expected in 2012 (20,510 tons) is accounted for in this forecast. These numbers are derived from Metro’s latest econometric forecasting model of the solid waste system. This model is used for all of Metro’s major decisions involving solid waste tonnage including planning, budgeting, rate setting and revenue projections. The allocation numbers are based on the projections completed in October 2011 for the five-year budget planning outlook for all of Metro.
- *Reservation Tonnage.* Metro reserves a portion of the total tonnage to meet its contractual obligations under the disposal contract. For these allocations, Metro reserved 90.5 percent, which is comprised of the 90 percent flow guarantee plus a management allowance of 0.5 percent for the tonnage that would flow during a 2.6 week cycle should the redirection of the waste have to be implemented. The 2.6 weeks is comprised of a 2-week reporting lag, plus four days for notification and redirection logistics.
- *Allocable Tonnage.* 71,316 tons comprise the 9.5 percent of the total tonnage (750,690 tons) that are not reserved and therefore initially available to allocate among the applicants.
- *Licensee’s Portion.* Each licensee is allocated a share of the 71,316 tons in the same proportion as the tonnage subject to the flow guarantee that the licensee controlled (as measured by actual deliveries to all solid waste facilities) during the most recent 12-month period, October 2010 through September 2011. Table 2 illustrates the amount of solid waste that each licensee delivered to all solid waste facilities during the above referenced period.

Table 2: Amount of Solid Waste that Licensees Delivered to All Solid Waste Facilities (October 2010 through September 2011)

Licensee	Tons	Percent
American Sanitary Service, Inc.	4,098	3.8
Arrow Sanitary Service, Inc.	44,951	42.0
Crown Point Refuse, Inc.	324	0.3
Willamette Resources, Inc.	57,631	53.9
TOTAL	107,004	100

Table 3 illustrates the proposed 2012 authorizations for each licensee based upon its share of the allocable tonnage. For Arrow, the share was 42 percent, leading to the initial recommended license authorization of up to 25,465 tons in 2012.

Table 3: Comparison of Proposed 2012 Allocations by NSL Applicant

Licensee	Initial Annual Tonnage Authorization (85%)	Tonnage Reserve for 2012 (15%)	Total Tonnage Allocation for 2012
American Sanitary Service, Inc. Res. No. 11-4298	2,321	410	2,731
Arrow Sanitary Service, Inc. Res. No. 11-4299	25,465	4,494	29,959
Crown Point Refuse, Inc. Res. No. 11-4300	184	32	216
Willamette Resources, Inc. Res. No. 11-4301	32,649	5,761	38,410
TOTAL	60,619	10,697	71,316

B. The Applicant

Arrow is a solid waste hauler that is franchised to collect solid waste within the cities of Portland, Gresham, and unincorporated Clackamas County. The applicant has been a holder of NSLs since 2000.

The term of Arrow’s existing NSL No. N-029-11A commenced on January 1, 2011 and is set to expire on December 31, 2011. The calendar year tonnage limitation that Metro initially established for the NSL (26,710 tons) was based on Metro’s forecast, issued October 2010, of the waste that was subject to its disposal contract with Waste Management. However, based on tonnage information through August 2011, the COO subsequently amended Arrow’s NSL to release an additional 3,627 tons, resulting in a total adjusted tonnage authorization of 30,337 tons for 2011. Table 1 illustrates Arrow’s initial and adjusted annual tonnage authorizations for 2011.

On September 1, 2011, Arrow submitted an NSL application requesting that Metro renew its NSL in 2012 with a tonnage authorization of 45,000 tons. However, under the proposed NSL, Arrow would receive an initial tonnage authorization of 25,465 tons for use in 2012 with the potential for additional tonnage to be released by the COO as explained in Section 1C of this report.

C. Special Provisions of the NSL for Managing Risk

The proposed license includes five conditions that are intended to further minimize Metro’s risk of noncompliance with its disposal contract by providing Metro with additional controls for monitoring and managing the flow guarantee against fluctuating waste tonnage in the system. All five conditions were carried forward from the existing license and are included in all of the proposed NSLs for all licensees identified in Section 1A(1) of this report. These conditions are unique to the NSLs that control the 10 percent of putrescible waste that is not committed under Metro’s disposal contract.

(1) Calendar Year Tonnage Authorization

The proposed NSL authorizes the COO to release additional tonnage to the licensee if available during the term of the license.

Section 2 of the proposed NSL authorizes Arrow to initially deliver up to 25,465 tons of putrescible waste to WVAN and CTTC during calendar year 2012. Effective January 1, 2012, this annual tonnage limit is available for use throughout the term of the license. The license also stipulates that, by no later than November 2, 2012, the COO may release reserved tonnage and increase the licensee's limit by up to an additional 15 percent (4,494 tons) as available. If the COO were to release the full reserve amount provided under this proposed license, then Arrow's annual tonnage limit would be increased up to a total of 29,959 tons. This condition allows the COO to adjust the annual tonnage authorization as necessary to meet Metro's contractual obligations and allows the maximum use of the licensee's available tonnage. By adopting this resolution, the Metro Council authorizes the COO to release the reserve tonnage as described above.

(2) Tonnage Authorization Growth Allowance

Should economic conditions improve during the upcoming calendar year such that solid waste tonnage increases significantly above the level that was forecasted by Metro, the proposed NSL includes a provision to allow for additional tonnage allocation when a clear public benefit can be demonstrated.

Section 7 of the proposed NSL stipulates that in addition to the 15 percent reserve tonnage allocation described above, the COO may increase the annual tonnage authorization of the licensee by up to an additional five percent of its total tonnage allocation (1,498 tons) if such tonnage is available during the term of the license. If the COO were to grant the maximum growth allowance and release the licensee's full reserve amount (as described above), then Arrow's initial annual tonnage limit could be increased up to a total of 20 percent (i.e., maximum tonnage authorization of 31,457 tons). The COO's decision whether to grant such a growth allowance will be based on Metro's actual experience with flows of waste that are subject to the flow guarantee during 2012. The COO will also consider whether there is a sufficient public benefit by granting more tonnage. This means that through the combination of the reserve tonnage and growth allowance conditions described above, the COO is authorized to increase the annual tonnage limit of the proposed license by up to 20 percent without seeking further Council action. Any tonnage increases greater than 20 percent (i.e., the combined growth allowance and reserve tonnage amounts) would require Council approval. By adopting this resolution, the Metro Council authorizes the COO to determine and allocate a growth allowance as described above.

(3) Term of License

The proposed NSL has a one-year term due to continuing economic uncertainty and other factors that could reduce the amount of tonnage available for the upcoming year. (The term of a standard NSL renewal is generally two years). Section 4 of the proposed NSL stipulates that the license commences on January 1, 2012, and terminates on December 31, 2012.

(4) Redirection of Waste Flow

In the event of further declines in system-wide putrescible waste, the proposed NSL authorizes the COO to immediately redirect the licensee's waste to Metro Central or South Transfer Stations if necessary to prevent a violation of the disposal contract flow guarantee.

Section 7 of the proposed NSL stipulates that the COO may redirect the licensee's waste flow with a minimum of 24 hours written notice. By adopting this resolution, the Metro Council authorizes the COO to redirect the licensee's waste, as described above, if necessary to comply with the disposal contract flow guarantee.

(5) Weekly and Daily Reporting Requirement

The proposed NSL allows the COO to require the licensee to report tonnage information to Metro on a weekly or daily basis if necessary. (NSLs generally specify that required information must be transmitted to Metro on a monthly basis).

Section 6 of the proposed NSL stipulates that the COO may determine when more frequent reporting is necessary. By adopting this resolution, the Metro Council authorizes the COO to immediately implement more frequent reporting requirements as needed.

D. Special Provision of the NSL Unique to Arrow

As in 2011, the proposed NSL carries forward the condition that, based on the licensee's past compliance record, for every ton by which the licensee violates the annual tonnage authorization stipulated in the license, Metro will assess a base penalty of \$50 for each ton in excess of the tonnage limit. This \$50 base penalty would be assessed, in addition to any penalty calculated by Metro, as part of an enforcement action. Furthermore, Arrow's opportunity to contest such a minimum penalty is only available at the time that Resolution No. 11-4299 is adopted and the license is issued.

This provision was enacted after Arrow exceeded its NSL tonnage authorization on two occasions in 2009. Although Arrow has remained in compliance with its NSLs since that time, staff recommends that this condition be carried forward to manage potential risk due to Arrow's previous compliance record with regard to NSL tonnage limit violations. This proposed condition provides ongoing incentive for Arrow to maintain compliance with its NSL authorization in the future. A fuller discussion of the licensee's compliance record is provided in Section 2B(6) of this report.

By adopting this resolution, if Arrow exceeds its annual tonnage limit, it is immediately subject to a \$50 per ton penalty and does not have further opportunity to contest such an action by Metro. Metro also retains its right to pursue additional penalties, subject to due process, of up to \$450 per ton for such tonnage limit violations, and as informed by circumstances related to the violation.

2. ANALYSIS/INFORMATION

A. Known Opposition

There is no known opposition to the proposed license renewal.

B. Legal Antecedents

Metro Code Section 5.05.025 prohibits any person from utilizing non-system facilities without an appropriate license from Metro. Additionally, Code Section 5.05.035(c) provides that, when determining whether or not to approve an NSL application, the Metro Council shall consider the following factors to the extent relevant to such determination.

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

The applicant (Arrow) is well known to Metro regulatory staff and is owned by a major, national integrated solid waste company. The environmental risks from the use of the non-system facilities are minimal as both the transfer stations and landfill destinations are fully regulated by the appropriate local and state authorities.

- (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;*

Metro staff's investigation of WCI revealed a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

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

WVAN and CTRC use operational practices and management controls that are typical of transfer stations and that Metro considers adequate for the protection of health and the environment. In addition, the Finley Buttes Landfill uses operational practices and management controls that are typical of Subtitle D landfills. Staff at DEQ, the landfill's regulator, consider the operational practices and management controls in place at the landfill to be appropriate for the protection of health and the environment.

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

The proposed license covers putrescible solid waste, which currently has limited recovery potential. The one-year duration of the license puts no long-term constraint or commitment on the waste should recovery alternatives emerge for the region. 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;*

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver a minimum of 90 percent of the region's putrescible waste, which is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. This proposed NSL controls a portion of the 10 percent of uncommitted waste not guaranteed to Waste Management under the disposal contract. This proposed NSL renewal is one of four similar licenses that will expire at the end of 2012. Provisions in the

NSL allow Metro to monitor compliance with its disposal contract, as was covered in Section 1A of this report.

- (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;*

Since 2009, Arrow has violated the tonnage authorizations stipulated in its licenses on two occasions as described below:

Arrow exceeded its NSL tonnage limitation for the first half of calendar year 2009 by 3,269.16 tons. Metro issued a Notice of Violation (NOV) to Arrow for exceeding its tonnage authorization, imposing a penalty of \$36,891.74. In addition to the imposition of a penalty, Metro reduced Arrow's third quarter tonnage authorization by 3,269 tons. Arrow contested the penalty and the matter was brought to a hearing. The Hearings Officer subsequently found in favor of Metro.

Arrow again exceeded its NSL tonnage authorization for the third quarter of calendar year 2009 by 4,819.34 tons. Metro issued an NOV to Arrow for exceeding its tonnage authorization, imposing a penalty of \$36,851.86. Metro reduced Arrow's fourth quarter tonnage authorization by the amount that it was estimated to exceed its limit through the end of the calendar year. Arrow and Metro then agreed to settle both matters of the 2009 tonnage limit violations for the sum of \$44,500 which was approved by Council. WCI, as part of the settlement, indicated its intent to remain in compliance with future tonnage authorizations established by Metro. Arrow has since paid the settlement amount and remained in compliance with its tonnage authorizations since that time.

The applicant is currently in compliance with its Metro-issued NSL. However, as discussed in Section 1C of this report, in consideration of the applicant's past compliance record, staff recommends that a special condition be added to the proposed license in order for Metro to take sufficient and appropriate enforcement actions to manage the potential risk of Arrow exceeding its NSL tonnage authorization in the future.

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, Arrow 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.*

This criterion was examined above in Sections 1A and 1C of this report.

C. Anticipated/Potential Effects

This proposed NSL is one of many action items currently under consideration by Metro which is affected by potential declines in the amount of solid waste subject to the flow guarantee. Some decisions could have the effect of shrinking the pool of waste available for allocation. The forecast of waste subject to

the flow guarantee, which is the basis for the NSL tonnage authorizations in 2012, incorporates the best available information as of this writing.

D. Budget/Rate Impacts

The price that Metro pays for disposal at Columbia Ridge Landfill is a “declining block rate” — meaning that the more waste that is delivered to any landfill owned by Waste Management, the lower the per-ton cost paid by Metro. Based on projected tonnage and contract prices, allocating the uncommitted 71,316 tons to non-Waste Management landfills increases the Metro tip fee by \$0.78 per ton. At current throughput of approximately 450,000 tons per year, Metro customers will pay approximately \$370,000 more for disposal than if all of the uncommitted waste were to flow to Waste Management landfills. This is a conservative estimate, as it is based on the assumption that none of these tons would have been handled directly through Metro transfer stations. Had that been the case there would be additional fiscal impacts from loss of transaction revenue and higher per-ton revenue required to cover fixed costs. The practice of issuing these types of NSLs and absorbing these fiscal impacts has been occurring under the Council’s direction for the past 11 years.

The Metro Regional System Fee and Excise Tax will continue to be collected on all waste delivered under authority of the proposed NSL. The application under consideration is the renewal of an existing NSL (No. N-029-11A). Therefore, the financial impact has already been factored into the budget.

3. RECOMMENDED ACTION

Based on the information provided above and the analysis provided in this report, the COO recommends that the Metro Council adopt Resolution No. 11-4299. Approval of this resolution will authorize the COO to issue an NSL to Arrow subject to the requirements listed in Metro Code Chapter 5.05; and further subject to special conditions which are incorporated into the proposed NSL attached to this resolution as Exhibit A.

WJ:bjl
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