

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A) RESOLUTION NO. 11-4307
RENEWED NON-SYSTEM LICENSE TO RECOLOGY)
PORTLAND, INC. FOR DELIVERY OF SOURCE-SEPARATED) Introduced by Martha J. Bennett,
FOOD WASTE TO THE NATURE'S NEEDS COMPOST) Chief Operating Officer, with the
FACILITY FOR COMPOSTING) 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, Recology Portland, Inc. ("RPI"), formerly known as "AGG Recology, Inc.," holds Metro Solid Waste Facility Non-System License No. N-131-10, which expires on December 31, 2011; and

WHEREAS, RPI has filed a complete application seeking renewal of the non-system license to deliver source-separated food waste to the Nature's Needs Compost Facility 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

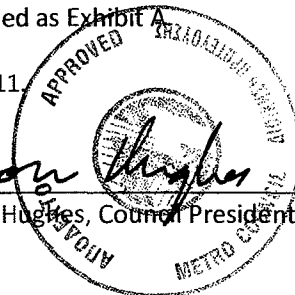
WHEREAS, the Chief Operating Officer recommends that the non-system license be renewed together with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:

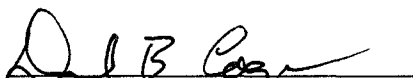
1. The non-system license renewal application of RPI is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. The Chief Operating Officer is authorized to issue to RPI a renewed Solid Waste Facility Non-System License substantially similar to the one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

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

No. N-132-12

LICENSEE:

Recology Portland, Inc.
9345 North Harborgate Street
Portland, OR 97203

CONTACT PERSON:

Blaine Polendey
Phone: (503) 283-2015
Fax: (503) 283-2070
E-Mail: bpolendey@recology.com

MAILING ADDRESS:

9345 North Harborgate Street
Portland, OR 97203

ISSUED BY METRO:

Margo Norton,
Finance and Regulatory Services Director

Date

1	NATURE OF WASTE COVERED BY LICENSE
	Source-separated food waste that is generated by commercial customers within the Metro region and collected by Recology Portland, 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 1,000 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 for the purpose of processing and composting:</p> <p style="text-align: center;">Nature's Needs 9570 NW 307th Avenue North Plains, Oregon 97133</p> <p>This license is issued on the condition that the non-system facility listed 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 from Washington County that this non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 10 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, 2013, unless terminated sooner under Section 10 of this license.

5	COVERED LOADS
	Licensee shall suitably contain and cover, on all sides, all loads of source-separated food waste that is delivered under authority of this license to prevent spillage of waste while in transit to the non-system facility listed in Section 3.

6	MATERIAL MANAGEMENT
	<p>The Licensee is authorized to deliver the waste described in Section 1 of this license to the non-system facility listed in Section 3 under the following conditions:</p> <ul style="list-style-type: none">(a) The non-system facility shall accept all solid waste that is delivered under authority of this license for the sole purpose of processing and composting on-site. The Licensee shall not dispose of any source-separated recyclable material, except as provided in Section 7; and(b) The non-system facility shall receive, manage, process, and compost all solid waste that is delivered under authority of this license in accordance with all applicable local, state and federal laws, rules, regulations, ordinances, orders, and permits.

7	REGIONAL SYSTEM FEE AND EXCISE TAX
	<p>The Licensee shall be subject to the following conditions:</p> <ul style="list-style-type: none">(a) Source-separated food waste that is delivered under authority of this license and is accepted and composted, in accordance with all applicable regulations, at the non-system facility listed in Section 3 is exempt from Regional System Fees and Excise Tax.(b) If the Licensee delivers waste under this license to the non-system facility listed in Section 3 but the material does not meet the facility's acceptance criteria (for example, the material is too contaminated for processing or composting) or the non-system facility fails to process and compost the material as required as a condition of this license, the Licensee shall pay to Metro an amount equal to the Regional System Fee, as provided in Metro Code Title V, for each ton or portion thereof of waste delivered to the non-system facility that is ultimately delivered to a disposal site.(c) If the Licensee delivers waste under this license to the non-system facility listed in Section 3 but the material does not meet the facility's acceptance criteria (for example, the material is too contaminated for processing or composting) or the non-system facility fails to process and compost the material as required as a condition of this license, the Licensee shall pay to Metro an amount equal to the Excise Tax, as provided in Metro Code Title VII, for each ton or portion thereof of waste delivered to the non-system facility that is ultimately delivered to a disposal site.

8	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.

9	RECORD KEEPING AND REPORTING
	<p>(a) The Licensee shall keep and maintain accurate records of the amount of all solid wastes that the Licensee delivers to the non-system facility listed 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 transmit the records required under Section 9(a) above, that covers the preceding month, to Metro’s Finance and Regulatory Services Department in an electronic format prescribed by Metro.</p> <p>(c) Licensee shall make all records from which Section 9(a) 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 listed above in Section 3.</p>

10	ADDITIONAL LICENSE CONDITIONS
	<p>This non-system 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</p>

	<p>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; 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 facility listed in Section 3; iv. The non-system facility listed in Section 3 fails to manage the waste subject to this license in accordance with the material management requirements described in Section 6; or v. The non-system facility listed in Section 3 generates malodors that are detectable off-site. <p>(c) This license shall, in addition to subsections (b)(i) through (b)(v), 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 only 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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11	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 Metro Code Chapter 5.05 whether or not those provisions have been specifically mentioned or cited</p>

	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.
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12	INDEMNIFICATION
	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.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 11-4307 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO RECOLOGY PORTLAND, INC. FOR DELIVERY OF SOURCE-SEPARATED FOOD WASTE TO THE NATURE'S NEEDS COMPOST FACILITY FOR COMPOSTING

November 18, 2011

Prepared by: Warren Johnson

Approval of Resolution No. 11-4307 will authorize the Chief Operating Officer (COO) to issue a two-year non-system license (NSL) to Recology Portland, Inc. (RPI) to annually deliver a maximum of 1,000 tons of commercially-generated source-separated food waste to the Nature's Needs Compost Facility (NN) located at 9570 NW 307th Avenue in North Plains, Oregon. The proposed NSL is a renewal of an existing license that is set to expire on December 31, 2011.

BACKGROUND

1. Overview

The applicant (RPI) seeks to renew its NSL to transport source-separated food waste generated within Metro to a non-system facility (NN) located outside of the region. Metro Code Section 5.05.025 prohibits any person from transporting solid waste to non-system facilities without an appropriate license from Metro. The proposed NSL renewal is subject to Metro Council approval because it involves putrescible waste (food waste).

2. The Applicant

In November 2010, the Metro Council granted RPI, formerly known as "AGG Recology, Inc.," an NSL (No. N-131-10) to annually deliver a maximum of 3,400 tons of source-separated, commercial food waste to NN. The license commenced on November 15, 2010 and will expire on December 31, 2011. The term of the license was aligned with the expiration date of a Washington County-approved food waste composting demonstration project at NN that is also set to expire on December 31, 2011. A fuller discussion of the NN's demonstration project with the County is provided below in Item 2(1) of the "Analysis/Information" section.

On September 2, 2011, RPI submitted to Metro an application requesting that Metro renew its existing NSL (No. N-131-10) with a tonnage authorization of 1,000 tons per calendar year - which represents a 2,400-ton reduction from its current authorization. The reduced limit is likely due to the applicant shifting some portion of its commercial food waste tonnage to the Metro Central Transfer Station (as opposed to delivering the material directly to NN under an NSL). Despite the reduced tonnage, the applicant's request for authorization is substantially similar to that of the existing NSL.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to RPI hauling food waste to NN. However, there has been some local opposition to NN due to a history of off-site malodors generated at the facility. The facility's odor issues have primarily occurred in the past under previous ownership and some of those previous odor events

have been traced to other businesses and agricultural activities in the area. Nevertheless, there continues to be some local concerns regarding NN's ongoing operation and its potential to create off-site malodors. In consideration of the site's history and to address potential future odor issues at the facility, the proposed NSL stipulates that the COO may amend, modify, or terminate the license as necessary if Metro determines that NN generates malodors that are detectable off-site based on findings or actions taken by either the County or the Oregon Department of Environmental Quality (DEQ). The County and DEQ have regulatory authority over the facility and may take enforcement action to control odors if necessary.

2. Legal Antecedents

Metro 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 non-system facility identified in this proposed license is well known to Metro. NN is an established yard debris and vegetative food waste composting facility rather than a landfill and thus does not pose the same potential environmental risk from wastes being delivered. Until the demonstration project began, the facility accepted only wood waste, yard debris, and vegetative waste for composting. Most of the food waste accepted at the facility during the demonstration project consisted of source-separated commercial food waste that was mixed with yard debris and wood chips at the Metro Central Transfer Station. No other wastes are currently accepted at NN that could pose a risk of environmental contamination. The environmental risk from the use of this non-system facility is minimal because the facility is fully regulated and monitored by the appropriate local and state authorities.

In July 2010, the County allowed NN to accept non-green feedstock (e.g. meats and dairy products) for composting in order to determine whether the facility can properly manage and successfully process various food wastes on an ongoing basis without creating undue off-site malodors or nuisance conditions. Most of the food waste accepted at the facility during the demonstration project consisted of source-separated commercial food waste that was mixed with yard debris and wood chips at the Metro Central Transfer Station. The above-mentioned materials were mixed together at Metro Central for the purpose of odor mitigation and optimum composting at NN. NN also received food waste that was delivered directly to the facility by local haulers. The facility is located outside the Metro boundary, in unincorporated Washington County near North Plains.

If the demonstration project is deemed to be a success and the County grants NN long-term approval to accept food waste, then the facility intends to continue its current food waste processing operations on a regular basis. The County is expected to make a final decision about the NN franchise, including a determination about the success of the demonstration project in December 2011. County staff intends to recommend to the Washington County Board of Commissioners that NN be allowed to continue its food waste composting operations. On November 10, 2011, the Washington County Solid Waste Advisory Committee unanimously recommended granting the NN franchise.

Metro and County solid waste staff have conferred and coordinated throughout NN's demonstration project and the subsequent approval process. Although this NSL will be issued prior to the County's final

decision on the demonstration project, the proposed NSL includes conditions that authorize the COO to modify or terminate the license should the County restrict or prohibit further food waste composting at NN. The County has generally been supportive of food waste feedstock being delivered to NN from the Metro region.

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

Recology, Inc., a waste management company headquartered in San Francisco, California, is the parent company of the applicant (RPI) and the destination facility (NN). Recology, Inc. is also the parent company for Recology Oregon Material Recovery, Inc. (ROMR) which is the contract operator for the Metro Central Transfer Station and the owner and operator of three Metro-licensed material recovery facilities that accept mixed non-putrescible waste: 1) Suttle Road Recovery Facility, 2) Foster Road Recovery Facility, and 3) Oregon City Recovery Facility.

In June 2010, Metro issued Notices of Violation (NOVs) to the Oregon City and Suttle Road Recovery Facilities for, respectively, failure to properly maintain required documents on site and failure to inspect loads in accordance with the Metro-approved operating plan. These matters have since been resolved and the above-mentioned facilities are currently in compliance with Metro's regulations.

NN holds a DEQ-issued solid waste permit which was issued in April 2011. The facility also holds a County franchise which was approved by the Washington County Board of Commissioners on July 10, 2010. Metro staff's investigation of NN revealed a good record of compliance with regard to local and state agencies responsible for health, safety or environmental regulations. The County and DEQ have periodically received complaints from neighboring businesses and residents regarding odors at NN. During the course of the demonstration project, the County confirmed two instances in which malodors were detected at the facility. However, the facility quickly implemented corrective action and the County did not take any enforcement action in response to the above-mentioned incidents.

Accordingly, the County and DEQ require NN to implement reasonable and practical measures to control and minimize odors through site design improvements and operational procedures. The primary odor control measures that are currently used by the facility include accepting food waste that has been pre-mixed with bulking material (such as yard debris or wood chips), processing feedstock in a timely manner, adhering to good housekeeping practices, and implementing adequate moisture and temperature monitoring procedures. The facility also uses a forced negative aeration system which pulls air through the compost piles and discharges it through a biofilter consisting of organic material such as wood chips or compost overs. A biofilter is a useful odor control measure because it functions as a media for supporting microorganisms that help convert odorous air into carbon dioxide and water. In addition to the above, NN has implemented stormwater collection system improvements and has paved a significant portion of its site in an effort to reduce malodors caused by water pooling on-site.

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

Metro, the County, and DEQ consider the operational practices and management controls in place at NN to be adequate and consistent with other similar facilities. NN manages the food waste it receives in accordance with the requirements of its County-issued franchise and DEQ-issued permit.

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

The waste subject to the proposed NSL will be delivered to NN for the purpose of composting rather than disposal. Based on the waste management hierarchy, composting is considered to be a higher and better management option than land disposal. As such, approval of the proposed NSL is likely to have a positive impact on the region's recycling and waste reduction efforts.

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

Metro is contractually obligated 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 Metro's disposal contractor, Waste Management. The waste subject to the proposed license will not be disposed at a general-purpose landfill. Approval of the proposed license will not conflict with Metro's disposal contract; however, increased diversion of organic material from disposal shrinks the amount of waste committed under the flow guarantee and the amount available for allocation to NSLs that control the remaining 10 percent.

In addition, ROMR currently serves as Metro's contractor for processing organic waste received at the Metro Central Transfer Station – including commercial food waste. The contract covering the processing of this waste is set to expire on December 31, 2011. Metro solicited proposals for a new service contract and the evaluation committee recently selected ROMR as the top-ranked firm. Negotiations on the new contract are pending.

(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

RPI is currently in compliance with its Metro-issued NSL and has not had any compliance issues with regard to Metro regulations within the last two years. Additionally, the applicant has a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

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

The proposed NSL is a renewal of an existing license with a reduced tonnage authorization. The applicant is seeking this NSL renewal in order to provide a closer alternative for the delivery of food waste collected for composting. NN is located at the edge of North Plains (unincorporated Washington County), approximately seven miles outside of the Metro boundary. NN provides important processing and composting capacity for the region that supports Metro's goal of diverting organics away from disposal and into recovery outlets.

3. Anticipated Effects

This proposed NSL is one of many organics-related action items currently under consideration by Metro and other local jurisdictions which contributes to a decline in the amount of solid waste disposed in landfills. The decisions on this and other similar items will have the effect of further shrinking the pool of waste available for allocation to certain non-system licensees by increasing the availability of non-disposal options i.e. recycling and composting.

The effect of Resolution No. 11-4307 will be to authorize RPI to deliver up to 1,000 tons per calendar year of food waste from commercial food retail or wholesale outlets in Washington County directly to NN for composting.

4. Budget/Rate Impacts

Metro's Regional System Fee and Excise Tax (RSF and ET) rates depend on the amount of waste that is disposed. Any waste that is diverted from the disposal stream, such as the composting of food waste, will in general increase those RSF and ET rates. Waste diversion will also affect other disposal prices (tip fees) at Metro transfer stations and other solid waste facilities due to fixed and capital costs, etc. being spread over less tonnage. The effects of these individual price changes will depend on facility-specific factors. However, the effect on the RSF and ET is universal across all ratepayers and waste disposed. Specifically, diversion of each 10,000 tons of food waste from disposal would result in approximately an 18¢ per ton increase in the RSF and a 12¢ increase in the ET rate – or a total increase of 30¢ per ton charged on all waste generated inside the region and ultimately disposed. (For reference, the current RSF is \$17.64 and the ET rate is \$11.80 – \$29.44 per ton total). The exact amount of this financial impact would vary from year to year depending on specific circumstances, such as Metro's annual budget, but the change would generally be in the neighborhood of 30¢ per ton.

In general, approval of any new license or change of authority in an existing license during a fiscal year will have an actual impact on Metro's revenues, but would be factored into the fee and tax rates during the next budget-and-rates cycle.

In the case of the specific NSL application under consideration, RPI has requested the renewal of its existing NSL with a reduced tonnage limit (2,400-ton reduction). As previously explained, the reduced limit is likely due to the applicant shifting some portion of its commercial food waste tonnage to Metro Central. There is no change in existing commercial food waste diversion expected as a result of the proposed NSL. The financial impact of the food waste proposed to be delivered under this NSL renewal has already been factored into the budget and rates.

RECOMMENDED ACTION

The COO recommends approval of Resolution No. 11-4307 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.

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