

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A) RESOLUTION NO. 12-4380
RENEWED NON-SYSTEM LICENSE TO WASTE)
MANAGEMENT OF OREGON, INC. FOR DELIVERY OF)
PUTRESCIBLE WASTE FROM THE TROUTDALE TRANSFER) Introduced by Martha J. Bennett,
STATION TO THE COLUMBIA RIDGE LANDFILL LOCATED IN) Chief Operating Officer, with the
GILLIAM COUNTY, OREGON, AND UNDER CERTAIN) concurrence of Tom Hughes,
UNUSUAL CIRCUMSTANCES TO RIVERBEND LANDFILL IN) Council President
YAMHILL COUNTY, OREGON)

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, Waste Management of Oregon, Inc. ("WMO") holds Metro Solid Waste Facility Non-System License No. N-001-11A, which expires on December 31, 2012; and

WHEREAS, WMO has filed a completed application seeking renewal of the non-system license to deliver putrescible waste from the Troutdale Transfer Station to the Columbia Ridge Landfill and 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

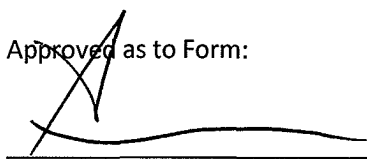
WHEREAS, the Chief Operating Officer recommends that the non-system license be renewed together with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:

1. The non-system license renewal application of WMO 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 WMO a renewed Solid Waste Facility Non-System License substantially similar to the one attached as Attachment 1.

ADOPTED by the Metro Council this 15 day of November, 2012.

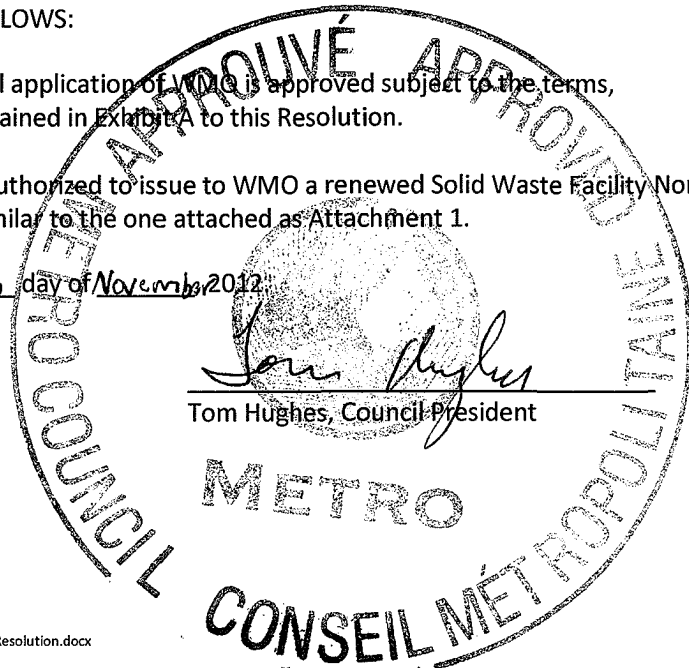
Approved as to Form:


Alison Keefe Campbell, Metro Attorney

Resolution No. 12-4380

WJ:bjl

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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 12-4380 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO WASTE MANAGEMENT OF OREGON, INC. FOR DELIVERY OF PUTRESCIBLE WASTE FROM THE TROUTDALE TRANSFER STATION TO THE COLUMBIA RIDGE LANDFILL LOCATED IN GILLIAM COUNTY, OREGON, AND UNDER CERTAIN UNUSUAL CIRCUMSTANCES TO RIVERBEND LANDFILL IN YAMHILL COUNTY, OREGON

November 6, 2012

Prepared by: Warren Johnson
503-797-1836

Approval of Resolution No. 12-4380 will authorize the Chief Operating Officer (COO) to issue a two-year non-system license (NSL) to Waste Management of Oregon, Inc. (WMO) to annually deliver up to 70,000 tons of putrescible waste from the Troutdale Transfer Station (TTS) to the Columbia Ridge Landfill (CRLF) located in Gilliam County, Oregon and under certain unusual circumstances and emergency conditions, to the Riverbend Landfill (RLF) located in Yamhill County, Oregon. The proposed NSL is the renewal of a current license that is set to expire on December 31, 2012, and it renews the existing authorization that WMO has held under licenses since 2003.

BACKGROUND

In early 2009, Metro entered into designated facility agreements with CRLF (Metro Contract No. 928982) and RLF (Metro Contract No. 929082). These agreements, which expire at the end of 2013, allow certain types of Metro-area waste (such as non-putrescible processing residual) to be delivered to these landfills without the need to obtain an NSL. However, NSLs are required in order to deliver Metro-area putrescible waste to these landfills because they are not designated to accept putrescible solid waste from the Metro region, as provided in Metro Code Section 5.05.030(a) or under the agreements. 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 WMO (also known as "*the flow guarantee*"). These types of NSLs allow Metro to closely monitor and potentially guide waste flows to authorized facilities in order to comply with the contract.

In November 2010, WMO was granted an NSL (No. N-001-11) to deliver a maximum of 70,000 tons per calendar year of putrescible waste, from the TTS, to the CRLF and RLF for disposal. The term of the NSL commenced on January 1, 2011 and expires on December 31, 2012. In June 2012, Metro amended the NSL (No. N-001-11A) to increase the annual tonnage authorization by 3,500 tons (up to 73,500 tons) for calendar year 2012. The NSL was amended in order to align its tonnage authorization with that of TTS' Solid Waste Facility Franchise No. F-001-08B (the "Franchise").

The current NSL authorizes the delivery of solid waste primarily to CRLF with an allowance to also deliver waste to RLF under certain unusual circumstances and emergency situations that would prevent the delivery of waste to CRLF, such as the closure of Interstate 84. The Licensee delivered approximately 69,351 tons of putrescible waste to CRLF under authority of this existing NSL during calendar year 2011 and approximately 53,280 tons to CRLF between January and September 2012. The Licensee did not deliver any putrescible waste to RLF in 2011, but it delivered approximately 489 tons to RLF during 2012 due to equipment maintenance and repairs at TTS.

On August 15, 2012, WMO submitted to Metro an application requesting that Metro renew this NSL with a tonnage authorization of 70,000 tons per calendar year.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the issuance of NSLs authorizing the delivery of waste to CRLF. However, within Yamhill County, there is known local public opposition to the expansion of RLF and to the disposal of any waste generated outside of Yamhill County that may contribute to WMO's need to expand capacity at the landfill. The expansion decision continues to play itself out through the county and state land use, and state solid waste permitting process. Metro staff notified Yamhill County of the applicant's request and the County's solid waste staff has reported that the landfill is in compliance with local requirements and the County does not object to solid waste being received from the Metro region. This proposed NSL limits the use of RLF to unusual circumstances and emergency situations that would otherwise prevent TTS from delivering waste to CRLF, such as the closure of Interstate 84 or the temporary breakdown of the facility's compactor.

2. 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 (WMO) is a major, national integrated solid waste company that is well known to Metro regulatory staff. The environmental risks from the use of these disposal sites are expected to be minimal as the landfills 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;*

WMO owns and operates both CRLF and RLF. Metro staff's investigation of WMO has 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;*

Both CRLF and RLF use operational practices and management controls that are typical of Subtitle D landfills. Staff at the Oregon Department of Environmental Quality (DEQ), the landfills' regulator, considers the operational practices and controls in place at these landfills to be appropriate for the proper management of waste disposal and adequate 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 license puts no long-term constraint 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;*

Metro has a 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 WMO. The proposed NSL covers putrescible waste that will be delivered to CRLF and RLF, which are 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*

On May 25, 2012, Metro issued a Notice of Violation (No. NOV-312-12) and imposed a \$50-penalty on TTS for delivering a single load (20.83 tons) of unprocessed non-putrescible waste to RLF in violation of the facility's Franchise and NSL. The subject load was disposed at RLF without processing for recovery. TTS has since paid the penalty and the matter has been resolved.

TTS is currently in compliance with its Metro-issued Franchise and NSL. With the exception of the above-mentioned violation, the applicant has not had any significant compliance issues with regard to Metro regulations within the last two years. Additionally, TTS 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 proposed NSL is a renewal of an existing license that authorizes the delivery of putrescible solid waste to CRLF and RLF. As requested by the applicant, the NSL includes a 70,000-ton limit – which is the same tonnage authorization stipulated in the Franchise. However, Section 4.3 of the Franchise stipulates that the COO may increase the facility tonnage authorization during the term of the Franchise based on a growth allowance as established in Metro Code Chapter 5.01. (For instance, the COO granted the applicant a small tonnage increase in 2012 to 73,500 tons, but the limit reverts back to 70,000 tons in 2013.)

In consideration of the above-mentioned provision of the Franchise, Section 7(d)(iv) of the proposed license also includes a similar provision which stipulates that the COO may increase the tonnage limit of the NSL as necessary to align it with that of the annual tonnage authorization in the Franchise. This proposed provision, which is carried forward from the existing NSL, would be implemented in the event that the Franchise tonnage limit is subsequently amended.

By adopting this resolution, the Metro Council authorizes the COO to increase the yearly tonnage limit of the NSL by the amount necessary to match the tonnage authorization stipulated in the Franchise

without seeking further Council action. This proposed NSL does not increase the total tonnage that TTS is authorized to accept under the terms of its Franchise.

3. Anticipated Effects

The effect of Resolution No. 12-4380 will be to issue a two-year NSL authorizing TTS to deliver up to 70,000 tons per calendar year of putrescible waste to CRLF and, under certain unusual circumstances and emergency conditions, RLF for disposal.

4. Budget Impacts

CRLF and RLF are 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 CRLF and RLF under the authority of the proposed NSL. The application under consideration is the renewal of an existing NSL (No. N-001-11A) therefore, any financial impact of this NSL to Metro has already been factored into the budget.

RECOMMENDED ACTION

The COO recommends approval of Resolution No. 12-4380, 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 staff report for this resolution as Attachment 1.

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TEL 503 797 1835 | FAX 503 813 7544



METRO

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

No. N-001-13

LICENSEE:
Waste Management of Oregon, Inc. dba Troutdale Transfer Station 869 NW Eastwind Drive Troutdale, OR 97060
CONTACT PERSON:
Doug Vermillion Phone: (503) 667-5264 Fax: (503) 667-6237 E-mail: dvermill@wm.com
MAILING ADDRESS:
Troutdale Transfer Station 869 NW Eastwind Drive Troutdale, OR 97060

ISSUED BY METRO:

Scott Robinson, Deputy Chief Operating Officer

Date



1	NATURE OF WASTE COVERED BY LICENSE
	Putrescible solid waste generated within the Metro boundary and received at Troutdale Transfer Station in accordance with Metro Solid Waste Facility Franchise No. F-001-08B.
2	CALENDAR YEAR TONNAGE LIMITATION
	Licensee is authorized to deliver to the non-system facilities described in Section 3 of this license up to 70,000 tons per calendar year of the waste described in Section 1 of this license. This license does not increase the total tonnage that the Licensee is authorized to accept under Metro Solid Waste Facility Franchise No. F-001-08B.
3	NON-SYSTEM FACILITIES
	<p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 to the following non-system facility:</p> <p style="padding-left: 40px;">Columbia Ridge Landfill 18177 Cedar Springs Lane Arlington, OR 97812</p> <p>And, during certain unusual circumstances and emergency situations as described in Section 7 of this license, the Licensee is authorized to deliver the above referenced waste to the following non-system facility:</p> <p style="padding-left: 40px;">Riverbend Landfill 13469 SW Highway 18 McMinnville, OR 97128</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 the Oregon Department of Environmental Quality 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, 2013 and expire at midnight on December 31, 2014, 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>



7	ADDITIONAL LICENSE CONDITIONS
	<p>This license shall be subject to the following conditions:</p> <ul style="list-style-type: none">(a) The Licensee is authorized to deliver putrescible waste to the Riverbend Landfill only during certain unusual circumstances and emergency situations, such as the closure of Interstate 84 or the temporary breakdown of a compactor at the Troutdale Transfer Station, which would prevent the Licensee from delivering such waste to the Columbia Ridge Landfill.(b) If the Licensee delivers putrescible waste to the Riverbend Landfill as provided above in Section 7(a), the Licensee shall:<ul style="list-style-type: none">i. Report the unusual circumstance or emergency situation to Metro within 12 hours of its discovery; andii. Notify Metro in writing if such delivery of waste to the Riverbend Landfill continues for more than three consecutive business days. The written notification required by this section shall include a detailed description of the particular circumstance resulting in such deliveries and its expected duration.(c) 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.(d) 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:<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 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 a change in the amount of tonnage that the Licensee is authorized to accept under Solid Waste Facility Franchise No. F-001-08B. In the event that the tonnage authorization provided under the franchise is increased as the result of a growth allowance, the COO may amend Section 2 of this license to increase the calendar year tonnage limitation up to the same tonnage amount stipulated in the franchise.(e) This license shall, in addition to subsections (d)(i) through (d)(iv),



	<p>above, be subject to amendment, modification, suspension, or termination pursuant to the Metro Code.</p> <ul style="list-style-type: none"> (f) The Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro. (g) This license shall terminate upon the execution of designated facility agreements with the facilities listed in Section 3 that authorizes those facilities to accept the waste described in Section 1 of this license. (h) 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 those specified in this license is prohibited unless authorized in writing by Metro. (i) 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.
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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>