

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A) RESOLUTION NO. 13-4440
NON-SYSTEM LICENSE TO RECOLOGY PORTLAND, INC. FOR)
DELIVERY OF RESIDENTIAL YARD DEBRIS MIXED WITH FOOD) Introduced by Martha J. Bennett,
WASTE FROM THE SUTTLE ROAD RECOVERY FACILITY TO) Chief Operating Officer, with the
RECOLOGY OREGON COMPOST, INC. - NATURE'S NEEDS) concurrence of Tom Hughes, Council
COMPOST FACILITY LOCATED IN NORTH PLAINS, OREGON) 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 facility; and

WHEREAS, Recology Portland, Inc. has filed a complete application seeking a non-system license to deliver residential yard debris mixed with food waste from the Suttle Road Recovery Facility (SRRF) to the Recology Oregon Compost, Inc. Nature's Needs Composting Facility (Nature's Needs) located in North Plains, Oregon, under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control;" and

WHEREAS, on October 21, 2011 the Chief Operating Officer issued amended Solid Waste Facility License No. L-102-11A to SRRF authorizing it to accept and reload residential yard debris mixed with food waste; and

WHEREAS, such residential yard debris mixed with food waste will be collected from the city of Portland residential curbside food waste collection program and delivered to SRRF for consolidation, reload and transport to the Nature's Needs composting facility; and

WHEREAS, the Nature's Needs composting facility is authorized by the Oregon Department of Environmental Quality and Washington County to accept yard debris and residential food waste; 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

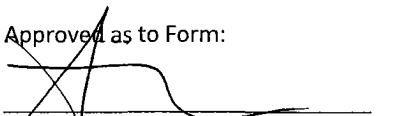
WHEREAS, the Chief Operating Officer recommends that the non-system license be issued together with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:

1. The non-system license application of Recology Portland, Inc. 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 Recology Portland, Inc. a non-system license substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this 27 day of June 2013.

Approved as to Form:


Alison Nean Campbell, Metro Attorney



Tom Hughes, Council President

EXHIBIT A TO RESOLUTION NO. 13-4440

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-102(2)-13

LICENSEE:
Recology Portland, Inc. 4044 N. Suttle Road Portland, OR 97217
CONTACT PERSON:
Larry Wilkins Phone: (503) 285-8777 E-Mail: lwilkins@recology.com
MAILING ADDRESS:
4044 N. Suttle Road Portland, OR 97217

ISSUED BY METRO:

Scott Robinson, Deputy Chief Operating Officer

Date

1	NATURE OF WASTE COVERED BY LICENSE
	Source-separated residential yard debris mixed with food waste from municipal curbside collection programs generated within the Metro boundary and received at Suttle Road Recovery Facility in accordance with Metro Solid Waste Facility License No. L-102-11A.

2	CALENDAR YEAR TONNAGE LIMITATION
	Licensee is authorized to deliver to the non-system facility listed in Section 3 of this license up to 15,000 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="padding-left: 40px;">Recology Oregon Compost, Inc.-Nature's Needs Compost Facility 9570 NW 307th Avenue North Plains, OR 97113</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 Washington County that this non-system facility is not authorized to accept such waste, Metro may immediately modify or terminate this license pursuant to Section 10 of this license.</p>

4	TERM OF LICENSE
	The term of this license will commence on July 15, 2013 and expire at midnight on December 31, 2015 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 residential yard debris mixed with food waste that are delivered under

	authority of this license to prevent spillage of waste while in transit to the non-system facility listed in Section 3.
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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 residential yard debris mixed with 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 facilities 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 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; 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 facilities 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</p>

	<p>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; 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 be subject to modification or termination by the COO upon the execution of a designated facility agreement with a 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
	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 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. 13-4440 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NON-SYSTEM LICENSE TO RECOLOGY PORTLAND, INC. FOR DELIVERY OF RESIDENTIAL YARD DEBRIS MIXED WITH FOOD WASTE FROM THE SUTTLE ROAD RECOVERY FACILITY TO RECOLOGY OREGON COMPOST, INC.-NATURE'S NEEDS COMPOSTING FACILITY LOCATED IN NORTH PLAINS, OREGON

June 10, 2013

Prepared by: Bill Metzler
(503) 797-1666

Approval of Resolution No. 13-4440 will authorize the Chief Operating Officer (COO) to issue a non-system license (NSL) to Recology Portland, Inc. (Recology), to annually deliver a maximum of 15,000 tons of source-separated residential yard debris mixed with food waste (residential food waste) from Suttle Road Recovery Facility (SRRF) located at 4044 North Suttle Road in Portland (Metro Council District 5) to Recology Oregon Compost, Inc.-Nature's Needs Composting Facility (Nature's Needs) located at 9570 NW 307th Avenue in North Plains, Oregon (outside Metro's jurisdictional boundary).

The residential food waste proposed to be delivered under authority of this NSL is currently received at Metro Central Transfer Station and delivered to Nature's Needs under a separate contract with Recology. Granting this NSL will not increase feedstock into Nature's Needs, but will provide an alternative facility for Portland area haulers to deliver feedstock by using SRRF or Metro Central.

BACKGROUND

1. Overview

The applicant seeks authorization to transport residential food waste generated within the Metro region to a non-system facility, Nature's Needs, 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 is subject to Metro Council approval because it involves putrescible waste (food waste).

2. The Applicant

Recology, Inc., headquartered at 50 California Street, 24th Floor, in San Francisco California, is the parent company that owns Recology Portland, Inc. Recology, Inc. is also the contract operator for the Metro Central Transfer Station.

Recology owns and operates three material recovery facilities in the region that are licensed by Metro. They are: 1) SRRF (a material recovery and residential food waste reload facility), 2) Foster Road Recovery Facility (a material recovery facility and residential food waste reload facility), and 3) Oregon City Recovery Facility (not currently operational). In addition, Recology, Inc. owns and operates three DEQ-approved composting facilities in Oregon: 1) NW Greenlands - Aumsville, 2) NW Greenlands - McMinnville, and 3) Nature's Needs composting facility located in North Plains.

On October 21, 2011, SRRF was issued an amended Solid Waste Facility License (L-102-11A) to accept, consolidate and reload residential yard debris mixed with food waste, primarily from the city of Portland's residential curbside collection program.

On May 17, 2013, SRRF submitted a complete application to Metro requesting authorization to transport up to 15,000 tons of residential food waste to the Nature's Needs facility for composting. Nature's Needs also receives Metro-area food waste from Metro Central Transfer Station under a separate contract with Recology, Inc.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the issuance of this specific NSL. The residential food waste subject to the proposed NSL will be delivered to Nature's Needs for composting. There is no known opposition within the Metro region for delivery of Metro-area waste to authorized composting sites located outside of the region, including Nature's Needs. However, within Washington County and the city of North Plains, there is known local public opposition to the composting of organic material, especially food waste at Nature's Needs. This is due, in large part, to malodors previously generated at the Nature's Needs facility that have been linked to large volumes of commercial food waste delivered to the facility. Washington County has prohibited the facility from accepting commercial food waste as of April 1, 2013. No commercial food waste will be delivered to Nature's Needs under authority of this proposed NSL.

As part of its authorization process for NSLs, Metro asks local host governments whether the destination facility is in compliance with local laws and whether it has any issues, concerns or objections to Metro-area waste flowing to disposal sites within their jurisdiction. Washington County is responsible for local land use decisions and local facility regulatory matters regarding Nature's Needs. The County has informed Metro that the facility currently is in compliance with local requirements and does not object to the delivery of residential food waste generated from within the Metro region. Nature's Needs is permitted to accept residential food waste and the appropriate state and local jurisdictions do not object to the facility receiving Metro-area residential food waste for composting.

2. Legal Antecedents

Metro Code Section 5.05.035 provides that a waste hauler may transport solid waste generated within Metro to any non-system facility only by obtaining an NSL. Metro Code further requires applications for NSLs for putrescible waste (such as residential food waste) to be reviewed by the COO and are subject to approval or denial by the Metro Council. Under Metro Code Subsection 5.05.035(c), the Council shall consider the following factors when determining whether to approve an NSL application:

- (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 an established yard debris and food waste composting facility rather than a landfill and thus does not pose the same potential environmental risk

from wastes delivered from prior users. Since the facility has accepted only wood waste, yard debris, and food waste for composting, staff is not aware of any other wastes accepted at Nature's Needs that could pose a risk of environmental contamination. The environmental risk from the use of this non-system facility is presumed to be minimal because the facility will be fully regulated and monitored 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;*

Based on recent communication with the DEQ and Washington County, the Nature's Needs composting facility operates in compliance with all federal, state, and local requirements, rules and regulations and is in compliance with its DEQ Composting Facility Permit No. 1445, issued on April 8, 2011 and the Washington County Franchise issued on March 25, 2013. The facility received one Warning Letter with Opportunity to Correct from the DEQ and one Notice of Non-Compliance from Washington County (both in February 2012). All areas of concern noted within the Warning Letter and Notice of Non-Compliance have been addressed to the satisfaction of each agency. According to the DEQ, a Pre-Enforcement Notice issued to Nature's Needs on November 29, 2012 is currently being resolved related to a plan review process for the leachate collection and treatment system at Nature's Needs. There are currently no pending violations related to public health, safety or environmental regulations.

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

Nature's Needs will accept and compost the residential food waste under the authority of a Washington County Land Use Compatibility Statement dated May 7, 2010, a Washington County Modified Franchise Agreement dated March 25, 2013, and under authority of a Solid Waste Disposal Site Permit: Composting Facility (No. 1445) issued by the DEQ on April 8, 2011. The DEQ permit expires on March 1, 2020. The Washington County Franchise expires on July 20, 2015.

Nature's Needs is required by Washington County and DEQ to implement measures to control and minimize odors through site design and operations. The odor control measures include processing incoming mixed food waste feedstock in a timely manner, blending of feedstocks, good housekeeping, and monitoring moisture and temperatures of composting feedstock. More importantly, the use of a forced aeration system and a biofilter system will help control and minimize odors. The system will pull air through the composting piles and direct the air to a biofilter consisting of organic material such as wood chips or compost overs. Biofilters are commonly used at composting facilities due to their success in effectively treating odors associated with composting.

It is important to note that Section 3 of the proposed NSL provides that if Metro receives notice from the DEQ or Washington County that Nature's Needs is no longer authorized to accept residential food waste, Metro can immediately terminate or modify the NSL.

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

Approval of the proposed NSL is likely to have a positive to neutral impact on the region's recycling and waste reduction efforts. According to the applicant, Nature's Needs currently has a surplus of capacity due to the recent exclusion of commercial food waste by Washington County. Utilizing Nature's Needs as a receiving facility will reduce the distance that transfer trailers need to travel in order to deliver feedstock to a permitted facility.

Currently, residential food wastes are received at Metro Central Transfer Station and delivered to Nature's Needs under a separate contract with Recology. Granting this NSL will not increase feedstock into Nature's Needs, but will provide an alternative facility for Portland area haulers to deliver feedstock by using SRRF or the Metro Central Transfer Station. SRRF currently receives residential food waste and is licensed to transfer this material to NW Greenlands Aumsville Composting Facility located in Aumsville, Oregon and The Dirt Huggers composting facility located in The Dalles, Oregon. Granting this NSL will provide SRRF with an additional alternative back-up composting capacity and potentially lessen the distances transfer trailers have to travel to deliver the feedstock to the compost facilities located in Aumsville and The Dalles.

(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 of Oregon. The waste subject to the proposed license will be delivered to a composting facility rather than disposed at a general-purpose landfill. In fact, Metro currently relies on its contractor at the Metro Central Transfer Station to deliver most of its residential food waste feedstock to Nature's Needs for composting. Thus, approval of the requested license does 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

All of the Metro-regulated Recology facilities located within the Metro boundary are currently in compliance with Metro's Code and license requirements. As a solid waste hauling company, Recology Portland, Inc. has a good record of compliance with local and state agencies responsible for public health, safety, and environmental rules and regulations.

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

Reloading residential food waste at SRRF will provide additional reload capacity for residential food waste and yard debris which benefits the region's organics recovery program.

3. Anticipated Effects

The effect of Resolution No. 13-4440 will be to issue an NSL to Recology for delivery of up to 15,000 tons per calendar year of residential food waste from SRRF to Nature's Needs.

4. Budget Impacts

The residential food waste proposed to be transported under authority of this NSL is exempt from paying the Metro Regional System Fee and Excise Tax (RSF and ET). The overall impact of the city of Portland's food waste composting program has already been factored into Metro's budget.

The residential food waste that will be delivered to SRRF in FY 2013-14 will mostly be tonnage diverted away from the Metro Central Transfer Station. This tonnage shift will cause a small increase in the per-ton cost of disposal for Metro's customers mainly because Metro's fixed operating costs will be spread over fewer tons. The impact of the tonnage shift away from Metro's transfer station to SRRF would decrease the Parks and Environmental Services budget in the future because Metro would no longer incur the cost of transferring, transporting, and composting the residential compostable materials diverted to SRRF. The impact of the diverted tons will be fully factored into the budget and rates for FY 2014-15.

RECOMMENDED ACTION

The COO recommends approval of Resolution No. 13-4440 finding that the license application 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.

BM:bjl
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