

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A) RESOLUTION NO. 13-4474
RENEWED NON-SYSTEM LICENSE JOINTLY TO WILLAMETTE)
RESOURCES, INC. AND REPUBLIC SERVICES OF CLACKAMAS) Introduced by Martha J. Bennett,
AND WASHINGTON COUNTIES FOR DELIVERY OF SOURCE-) Chief Operating Officer, with the
SEPARATED FOOD WASTE TO THE PACIFIC REGION) concurrence of Tom Hughes,
COMPOST FACILITY LOCATED NEAR CORVALLIS, OREGON) 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 facility; and

WHEREAS, Willamette Resources, Inc. ("WRI") and Republic Services of Clackamas and Washington Counties ("Republic") jointly hold Metro Solid Waste Facility Non-System License No. N-005-12(4), which expires on December 31, 2013; and

WHEREAS, WRI and Republic have filed a complete application seeking renewal of the non-system license to deliver source-separated food waste to the Pacific Region 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 WRI and Republic 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 WRI and Republic a renewed Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this 12th day of December 2013



Tom Hughes, Council President



Approved as to Form:



Alison Kean, Metro Attorney

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METRO

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

No. N-005-12(4)

LICENSEE:

Willamette Resources, Inc.
10295 SW Ridder Road
Wilsonville, OR 97070

Republic Services of Clackamas
and Washington Counties
10295 SW Ridder Road
Wilsonville, OR 97070

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Willamette Resources, Inc.
10295 SW Ridder Road
Wilsonville, OR 97070

Republic Services of Clackamas and
Washington Counties
10295 SW Ridder Road
Wilsonville, OR 97070

ISSUED BY METRO:

Scott Robinson, Deputy Chief Operating Officer

Date

1	NATURE OF WASTE COVERED BY LICENSE
	<p>(a) Source-separated, commercial food waste generated within the Metro boundary and received at Willamette Resources, Inc. in accordance with Metro Solid Waste Facility Franchise No. F-005-08C; and</p> <p>(b) Source-separated, commercial food waste that is generated within the Metro region and collected by Republic Services of Clackamas and Washington Counties.</p>
2	CALENDAR YEAR TONNAGE LIMITATION
	<p>Licensee is authorized to deliver to the non-system facility listed in Section 3 of this license up to 12,000 tons per calendar year of the waste described in Section 1 of this license.</p>
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;">Pacific Region Compost Facility 29969 Camp Adair Road Monmouth, Oregon 97361</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 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
	<p>The term of this license will commence on January 1, 2013 and expire at midnight on December 31, 2014, unless terminated sooner under Section 10 of this license.</p>

5	COVERED LOADS
	Licensee shall suitably contain and cover, on all sides, all loads of source-separated 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.

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> <p>(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</p> <p>(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.</p>

7	REGIONAL SYSTEM FEE AND EXCISE TAX
	<p>The Licensee shall be subject to the following conditions:</p> <p>(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.</p> <p>(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.</p> <p>(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</p>

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

(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:

- 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.

(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.

(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.

10	ADDITIONAL LICENSE CONDITIONS
	<p>This non-system 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 facility, listed in Section 3, authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.(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:<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; oriv. 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.(c) This license shall, in addition to subsections (b)(i) through (b)(iv), above, be subject to amendment, modification, termination, or suspension pursuant to the Metro Code.(d) 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 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.(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.

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.

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. 13-4474 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE JOINTLY TO WILLAMETTE RESOURCES, INC. AND REPUBLIC SERVICES OF CLACKAMAS AND WASHINGTON COUNTIES FOR DELIVERY OF SOURCE-SEPARATED FOOD WASTE TO THE PACIFIC REGION COMPOST FACILITY LOCATED NEAR CORVALLIS, OREGON

November 15, 2013

Prepared by: Warren Johnson
503-797-1836

Approval of Resolution No. 13-4474 will authorize the Chief Operating Officer (COO) to issue a two-year non-system license (NSL) jointly to Willamette Resources, Inc. (WRI) and Republic Services of Clackamas and Washington Counties (Republic) to annually deliver a maximum of 12,000 tons of source-separated, commercially-generated food waste ("commercial food waste") to the Pacific Region Compost Facility (PRC) located at 29969 Camp Adair Road near Corvallis, Oregon. The proposed NSL is a renewal of an existing license that is set to expire on December 31, 2013.

BACKGROUND

1. Overview

The applicant seeks to renew its NSL to transport commercial food waste generated within Metro to PRC. PRC is a non-system composting facility 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

Republic Services, Inc., (RSI) is the parent company of WRI, Republic, and PRC. RSI is a waste management company headquartered in Phoenix, Arizona. RSI is also the contract operator for the Metro South Transfer Station

In December 2011, the Metro Council granted an NSL¹ jointly to WRI and Republic² to annually deliver up to 12,000 tons of source-separated food waste to PRC. The NSL commenced on January 1, 2012, and will expire on December 31, 2013. The license authorizes the delivery of commercial food waste that is either received and reloaded at WRI or collected at the site of generation and directly-hauled by Republic. The purpose of the jointly issued NSL is to provide greater flexibility for the Licensee and improve administrative efficiency. Under the current NSL, the Licensee delivered about 7,500 tons of commercial food waste to PRC in calendar year 2012 and about 5,400 tons to the facility between January and September 2013.

On August 19, 2013, the applicant submitted an application to Metro seeking the renewal of its current NSL and requested a 5,000-ton increase in tonnage authorization (for a total of 17,000 tons per calendar

¹ Non-System License No. N-005-12(4)

² Republic Services, Inc. formerly operated under the name "Allied Waste Industries."

year). However, the applicant later withdrew its request for an increased tonnage authorization and now seeks the renewal of its license with the same currently authorized tonnage limit. The proposed license renews the existing authorization that WRI and Republic have jointly held since 2010.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed NSL.

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;*

PRC is an established yard debris and food waste composting facility that is well known to Metro staff. The facility accepts composting feedstock that consists primarily of source-separated food waste, yard debris, and wood waste.

The facility initially began accepting food waste from its affiliated haulers within the Willamette Valley (i.e., Corvallis, Albany and Salem) in November 2009. In early 2010, PRC began accepting Metro-area food waste that was delivered under authority of NSLs. In 2011, the facility began accepting commercial food waste from the Metro South Transfer Station. Prior to the end of 2009, PRC accepted only wood waste and yard debris for composting.

The potential environmental risk from the use of this non-system facility is generally presumed to be minimal because: 1) the facility is regulated and monitored by the Oregon Department of Environmental Quality (DEQ), and 2) composting feedstock, such as the type of material delivered to PRC, generally does not pose the same risk as that of others waste streams that are delivered to landfills for disposal.

- (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 the applicant, destination facility, and parent company 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;*

PRC is permitted by the DEQ. The facility manages all of the waste it receives, including commercial food waste, in accordance with the requirements of its DEQ-issued permit.

On August 7, 2013, the DEQ issued a letter to PRC notifying the facility of several concerns regarding its operating practices and procedures. The DEQ directed PRC to develop and implement a corrective action plan to: 1) meet all of the DEQ's required performance standards, 2) incorporate incoming feedstock into an active composting phase as necessary to meet the performance standards, 3) provide an adequate water distribution system throughout the site, 4) meet leachate and stormwater management requirements, 5) conduct all process monitoring parameters as specified in the facility's operating plan, and 6) ensure that prohibited wood waste is not accepted or used for composting feedstock. PRC subsequently submitted a plan to the DEQ on August 20, 2013, which outlined its proposed corrective actions and a timeline for addressing the cited concerns. The facility is presently working with the DEQ to resolve the outstanding operational issues. The DEQ has not taken any formal enforcement action at the facility or restricted its authority to accept Metro-area commercial food waste. Although the facility's action plan is still in progress, the proposed NSL allows the COO to subsequently amend, modify, or terminate the license if the COO determines that a change of authorization is necessary in the future.

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

The waste subject to the proposed NSL will be delivered to PRC 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 continue having 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, RSI currently serves as Metro's contractor for processing organic waste received at the Metro South Transfer Station – including commercial food waste.

(6) The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including, but not limited to, public health, safety and environmental rules and regulations; and

The applicant 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, Metro staff's investigation of the applicant revealed 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. PRC 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

The effect of Resolution No. 13-4474 will be to jointly authorize WRI and Republic to deliver up to 12,000 tons per calendar year of commercial food waste directly to PRC for composting. This proposed NSL is one of two organics-related action items currently under consideration by Metro Council which contributes to reducing the amount of solid waste disposed in landfills.

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 recovery of food waste, will in general increase those RSF and ET rates. Waste diversion will also affect other disposal prices (i.e., 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.

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 this case, the application under consideration is the renewal of an existing NSL with no change in tonnage. The financial impact of this NSL has already been factored into the budget.

RECOMMENDED ACTION

The COO recommends approval of Resolution No. 13-4474 finding that the license renewal satisfies the requirements of Metro Code Section 5.05.035. Thus, the COO also recommends the issuance of an NSL substantially similar to the proposed NSL attached to the resolution as Exhibit A.

WJ:bjj
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