

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A) RESOLUTION NO. 13-4475
RENEWED NON-SYSTEM LICENSE TO NEW EARTH FARM)
FOR DELIVERY OF SOURCE-SEPARATED FOOD WASTE TO) Introduced by Martha J. Bennett,
ITS PROCESSING FACILITY LOCATED IN WASHINGTON) Chief Operating Officer, with the
COUNTY, OREGON) 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 facility; and

WHEREAS, New Earth Farm holds Metro Solid Waste Facility Non-System License No. N-137-12, which expires on December 31, 2013; and

WHEREAS, New Earth Farm has filed a complete application seeking renewal of the non-system license to deliver source-separated food waste to its own 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 applications and considered the relevant factors under the Metro Code; and

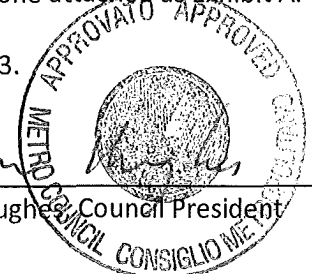
WHEREAS, the Chief Operating Officer recommends that Metro issue a non-system license to New Earth Farm with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:

1. The non-system license application of New Earth Farm 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 New Earth Farm 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-137-14

LICENSEE:
New Earth Farm 11000 NW Jackson Quarry Road Hillsboro, OR 97124
CONTACT PERSON:
Scott Olsen Phone: (503) 913-2641 E-Mail: scott@newearthfarm.net
MAILING ADDRESS:
11000 NW Jackson Quarry Road Hillsboro, OR 97124

ISSUED BY METRO:

Scott Robinson,
Deputy Chief Operating Officer

Date

1	NATURE OF WASTE COVERED BY LICENSE
	Source-separated food waste that is generated by businesses and schools within the Metro boundary and collected by New Earth Farm.
2	CALENDAR YEAR TONNAGE LIMITATION
	<p>(a) Licensee is authorized to deliver to the non-system facility listed in Section 3 of this license up to 264 tons per calendar year of the waste described in Section 1 of this license.</p> <p>(b) Notwithstanding subsection (a) above, the COO may amend this license to decrease the calendar year tonnage limitation based on:</p> <ul style="list-style-type: none">(i) A permit issued by DEQ that authorizes a calendar year tonnage limitation lower than that authorized in subsection (a) above; and(ii) The Licensee's compliance with the terms 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 land application at an agronomic rate allowed by DEQ:</p> <p style="text-align: center;">New Earth Farm 11000 NW Jackson Quarry Road Hillsboro, OR 97124</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 DEQ 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 January 1, 2014 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 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 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 and process 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 processed, 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 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 criteria (for example, the material is too contaminated for processing) or the non-system facility fails to process and compost the material as required as</p>

	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.
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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; 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 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> <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) In addition to the amendments by the COO authorized by Section 2 of this license, this license shall be subject to amendment, modification, or termination by the COO in the event that the COO determines that:<ul style="list-style-type: none">i. There has been sufficient change in any circumstances under which Metro issued this license;ii. The provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, Inc.;iii. Metro's solid waste system or the public will benefit from, and will be better served by, an order directing that the waste described in Section 1 of this license be transferred to, and disposed of at, a facility other than the 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;v. The non-system facility listed in Section 3 generates malodors that are detectable off-site; orvi. The non-system facility listed in Section 3 fails to meet the specific criteria for qualification as an agricultural operation as established by Washington County.(c) This license shall, in addition to subsections (b)(i) through (b)(vi), 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 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. 13-4475 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO NEW EARTH FARM FOR DELIVERY OF SOURCE-SEPARATED FOOD WASTE TO ITS PROCESSING FACILITY LOCATED IN WASHINGTON COUNTY, OREGON

November 15, 2013

Prepared by: Will Ennis
(503) 797-1667

Approval of Resolution No. 13-4475 will authorize the Chief Operating Officer (COO) to issue a renewed non-system license (NSL) to New Earth Farm (NEF) to annually deliver a maximum of 264 tons of source-separated food waste to its processing facility located at 11000 NW Jackson Quarry Road in Hillsboro, 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 authorization to renew its NSL to transport source-separated food waste generated by businesses and schools within the Metro region to its own 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

NEF, which is owned and operated by Scott Olsen, is comprised of a 16-acre farmed plot that is part of a larger, 24-acre site. Produce grown at NEF is sold to the public, area restaurants and business cafeterias. Post-consumer vegetative food waste generated at commercial facilities, in addition to some meat and dairy waste, is then returned to NEF for processing.

NEF uses the bokashi method to process the food waste. Bokashi is an in-vessel anaerobic fermentation process and converts the majority of food waste delivered to the facility into liquid and solid soil amendments. The liquid component resulting from the process is land applied at NEF and neighboring farms. The remaining solid materials are tilled into the soil at NEF. The facility processes a smaller amount of food waste using vermicomposting and black soldier fly larvae. Solids from these processes are also used at NEF.

In October 2012, the Metro Council granted the applicant an NSL (No. N-137-12) to annually deliver a maximum of 264 tons of source-separated food waste to NEF. The license will expire on December 31, 2013. On August 23, 2013, NEF submitted to Metro an application requesting that Metro renew its existing NSL with a tonnage authorization of 264 tons per calendar year – the same amount in its current authorization.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to NEF hauling food waste to its own facility. To address potential odor issues at the facility, the proposed renewed NSL stipulates that the COO may amend, modify, or terminate the license as necessary if Metro determines that NEF generates malodors that are detectable off-site based on findings or actions taken by either Washington 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;*

Metro staff has visited NEF and is aware of how feedstocks are managed at the facility. Since NEF accepts only limited amounts food waste for processing, the waste does not pose the same potential environmental risk as waste being delivered for landfill disposal. There is no known evidence of any other wastes currently being accepted at NEF 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;*

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. DEQ reports that the agency has not taken enforcement action against the NEF or received complaints regarding the facility's operation. Washington County also reports that no enforcement actions have been taken against NEF nor has the County received complaints about the facility's operation.

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

Metro and DEQ consider the operational practices and management controls in place at NEF to be adequate and consistent with other food waste processing facilities. Waste accepted at NEF is delivered in sealed containers and the majority of processing at NEF takes place in-vessel. NEF has provided Metro with a copy of its Odor Minimization Plan required by Washington County. NEF has obtained a DEQ compost facility registration permit for its processing operation. In 2012 Washington County

determined that NEF qualifies as an agricultural operation and is not required to obtain a County-issued franchise.

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

The waste subject to the proposed NSL will be delivered to NEF for the purpose of composting¹ 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, renewal 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;*

The renewal of the proposed license 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*

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 year. 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.*

NEF will provide processing capacity for the region that supports Metro's goal of diverting organics away from disposal and into recovery outlets and is providing an innovative approach to processing organics (the bokashi method).

3. Anticipated Effects

The effect of Resolution No. 13-4475 will be to authorize NEF to deliver up to 264 tons per calendar year of source-separated food waste to its own facility for processing. This proposed NSL is one of two organics-related action items currently under consideration by Metro Council which contributes to a 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 processing 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

¹ NEF uses the bokashi method to process the food waste. Bokashi is an in-vessel anaerobic fermentation process and converts the majority of food waste delivered to the facility into liquid and solid soil amendments.

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.

Granting this non-system license would have no material fiscal impact on Metro because the *maximum* amount of food waste authorized under this license is negligible. Furthermore, the historical diversion has already been factored into Metro's rates and budget – which further reduces any fiscal impact of granting this license.

RECOMMENDED ACTION

The COO recommends approval of Resolution No. 13-4475 finding that the license application satisfies the requirements of Metro Code Section 5.05.035, and issuance of a renewed NSL substantially similar to the proposed NSL attached to the resolution as Exhibit A.

WE/bjl
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