

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 04-3432
CHIEF OPERATING OFFICER TO ISSUE A NON-)
SYSTEM LICENSE TO GRAY & COMPANY FOR)
DELIVERY OF PUTRESCIBLE SOLID WASTE TO) Introduced by Michael Jordan,
THE RIVERBEND LANDFILL) Chief Operating Officer, with the
) concurrence of David Bragdon,
) Council President

WHEREAS, the Metro Code requires a non-system license of any person that delivers solid waste generated from within the Metro boundary to a non-system disposal facility; and,

WHEREAS, Gray & Company currently has a non-system license to deliver mixed solid waste, including putrescible waste, to the Riverbend Landfill, which license will expire on April 13, 2004; and,

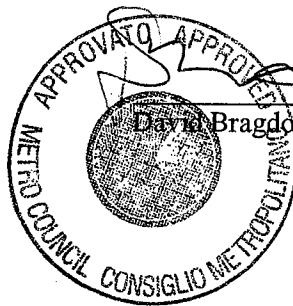
WHEREAS, Gray & Company has applied for a new non-system license under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control"; and,

WHEREAS, the application is in conformance with the requirements of Chapter 5.05 of the Code; and,

WHEREAS, the Chief Operating Officer has analyzed the application and recommended approval of the applicant's request for a non-system license with the conditions and in the form attached to this resolution as Exhibit A; now therefore,


BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to issue a non-system license to Gray & Company in a form substantially similar to the license attached as Exhibit A.

ADOPTED by the Metro Council this 25 day of Mar, 2004.



David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney



METRO

LICENSE NO. N-011-04

SOLID WASTE NON-SYSTEM LICENSE

Issued pursuant to Metro Code § 5.05.035. This license replaces license No. N-011-02.

1. Licensee:

Gray & Company
2331 23rd Ave., P.O. Box 218
Forest Grove, OR 97116

Contact person: Pete Leber, Plant Manager

Phone: (503) 357-3141
Fax: (503) 359-0719

2. Nature of Waste Covered by License:

Putrescible wastes including coconut, cherries, pineapple, and citrus products along with the residual syrups they contain, tote and barrel bags, #10 tins, and miscellaneous refuse from offices, restrooms, and the plant cafeteria.

3. Fiscal Year Tonnage Limitation:

This license grants the licensee the authority to dispose of up to 1,000 tons per fiscal year of the waste described in section 2, above. A fiscal year shall run from July 1 through June 30 of the following year.

4. Non-System Facility:

The licensee hereunder may deliver the waste described in section 2, above, to the following non-system facility:

Riverbend Landfill
13469 S.W. Highway 18
McMinnville, OR 97128

5. Term of License:

The term of this license will commence on April 14, 2004 and expire at midnight on April 13, 2006.

6. Reporting of Accidents and Citations:

Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles of its transportation carrier during the loading and transporting of solid waste on behalf of the licensee.

7. Additional License Conditions:

This non-system license shall be subject to the following conditions:

- (a) The permissive transfer of solid waste to the Riverbend Landfill 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 in the event that the Chief Operating Officer determines that:
 - (i) there has been sufficient change in any circumstances under which Metro issued this license, or in the event that Metro amends or modifies its Regional Solid Waste Management Plan in a manner that justifies modification or termination of 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, or
 - (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 2 of this license be transferred to, and disposed of at, a facility other than the facility described in section 4, above.
- (c) This license shall, in addition to subsections (b)(i) through (iii), above, be subject to amendment, modification, termination, or suspension pursuant to the Metro Code.
- (d) No later than the fifteenth (15th) day of each month, beginning with the next month following the signature date below, Licensee shall:
 - (i) submit to Metro's Solid Waste & Recycling Department a Regional System Fee and Excise Tax Report, that covers the preceding month, and
 - (ii) remit to Metro the requisite Regional System Fees and Excise Taxes in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes.
- (e) Licensee shall make all records from which (d) 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) calendar 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 named in section 4, above.

- (f) Licensee shall remit to Metro the applicable system fees and excise taxes in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and excise taxes.
- (g) Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.
- (h) This license shall terminate upon the execution of a designated facility agreement with the facility listed in Section 4.

8. 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 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.

9. 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.

Signed:

Acknowledgement & Acceptance of the
Terms and Conditions of this License:

Signature

Signature of Licensee

MICHAEL JORDAN, CHIEF OPERATING OFFICER

Print name and title

Print name and title

Date

Date

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3432 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NON-SYSTEM LICENSE TO GRAY & COMPANY FOR DELIVERY OF PUTRESCIBLE SOLID WASTE TO THE RIVERBEND LANDFILL

February 23, 2004

Prepared by: Steve Kraten

BACKGROUND

Approval of Resolution No. 04-3432 will authorize the Chief Operating Officer to renew a non-system license (NSL) issued to Gray & Company to annually deliver mixed solid waste, including putrescible waste, to the Riverbend Landfill located in McMinnville, Oregon. The application requests authority for only 1,000 tons per year. Gray & Company reported sending 549 tons of waste to the Riverbend Landfill during the last fiscal year. Such waste was largely comprised of fruit wastes, residual fruit syrups, plastic bags and large tin cans. Gray & Company is a food processing facility located in Forest Grove, Oregon (Metro District 4). The existing license will expire on April 13, 2004. Since the Riverbend Landfill is a Waste Management Facility, granting this license would not count against the ten percent of waste not obligated under Metro's disposal contract.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed license renewal.

2. Legal Antecedents

Changes to Code Chapter 5.05 approved by the Council with an emergency clause on October 9, 2003, made the issuance of NSLs for putrescible waste subject to approval by the Council rather than subject to approval by the Chief Operating Officer as was previously the case. Section 5.05.035(c) of the Metro Code provides that, when determining whether or not to approve an NSL application, the 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 Riverbend Landfill first came into use during the mid-eighties. When the Riverbend became a Subtitle D landfill in 1993, the original unlined cells were capped. Since 1993, the landfill has been filling only lined cells and operating with the required environmental controls required by the DEQ. The landfill has no known history of landfilling wastes that pose a future risk of environmental contamination.

- (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;*

The Riverbend Landfill is permitted by the Oregon Department of Environmental Quality (DEQ). The facility was issued an NON by DEQ in 1997 when an out-of-tune gas flare caused vibrations that were heard in a residential area nearby. The problem was considered to be relatively minor violation and was promptly remedied. The DEQ considers the landfill to be a well-run facility that is in compliance with federal, state and local requirements. The facility has a good compliance record with public health, safety and environmental rules and regulations.

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

The Riverbend Landfill uses operational practices and management controls that are typical of Subtitle D landfills and considered by the DEQ to be adequate for the protection of health, safety, and the environment.

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

A portion of the material to be covered by the proposed NSL consists of large tin cans and glass jars that are potentially recyclable. However, the cost of adequately cleaning sticky fruit residues from recyclable materials has been too great an obstacle to overcome. The applicant has indicated it will continue to seek recycling opportunities for these materials. The fruit waste itself is not particularly suitable for composting as it is treated with preservatives for the specific purpose of preventing decomposition. There is no reason to believe that recycling efforts would be significantly impacted by the decision regarding this NSL application.

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

The waste subject to the proposed license would be disposed at the Riverbend Landfill which is a Waste Management landfill. Such waste would be included within the 90 percent of general purpose waste obligated to Waste Management under Metro's disposal contract. Approval of the requested license will not conflict with the disposal contract or any other of Metro's 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 requested license is a renewal of the applicant's previous two-year license. During the previous three terms of its license, the applicant submitted its required Metro reports in a timely fashion. The applicant is a food processor and, according to the City of Forest Grove, has a good compliance record with local 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.*

Metro's records show that Gray & Company disposed of 549 tons of solid waste under authority of its NSL in calendar 2003. Staff is not aware of any additional factors that are relevant in making a determination regarding the application under consideration.

Conclusion

The Chief Operating Officer finds that the proposed license satisfies the requirements of Metro Code Section 5.05.035 for the requested Non-System License.

3. Anticipated Effects

The effect of Resolution No. 04-3432 will be to issue an NSL for delivery of up to 1,000 tons per fiscal year of solid waste, including putrescible waste, to the Riverbend Landfill.

4. Budget Impacts

The regional system fee and excise tax will continue to be collected on waste delivered under authority of the proposed NSL. Since the proposed NSL is a renewal, the budget impact has already been factored into budget projections and approval of the license will maintain the status quo. It does not impact Metro's obligation under the disposal contract.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 04-3432, and issuance of an NSL substantially similar to the NSL attached to the resolution as Exhibit A.