

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF ) RESOLUTION NO. 04-3514  
OPERATING OFFICER TO ISSUE A NON-SYSTEM )  
LICENSE TO AGG ENTERPRISES, INC. FOR ) Introduced by Michael Jordan,  
DELIVERY OF SOURCE SEPARATED PRE- ) Chief Operating Officer, with the  
CONSUMER FOOD WASTE TO THE NATURE'S ) concurrence of David Bragdon,  
NEEDS FACILITY FOR COMPOSTING ) Council President

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


WHEREAS, AGG Enterprises, Inc. has applied for a non-system license to deliver source separated pre-consumer food waste to the Nature's Needs facility 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,

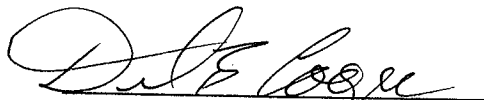
WHEREAS, the Chief Operating Officer has analyzed the application and recommended approval of the applicant's request for a non-system license with the conditions and in the form attached to this resolution as Exhibit A; now therefore,

BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to issue a non-system license to AGG Enterprises, Inc., in a form substantially similar to the license attached as Exhibit A.

ADOPTED by the Metro Council this 9<sup>th</sup> day of December, 2004.

  
David Bragdon, Council President

Approved as to Form:

  
Daniel B. Cooper, Metro Attorney



600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
TEL 503 797 1650 | FAX 503 797 1795



METRO

## METRO SOLID WASTE FACILITY NON-SYSTEM LICENSE

**Number N-114-04**

<b>LICENSEE:</b>
AGG Enterprises, Inc. 5555 N Channel Ave., Bldg 3 Portland, OR 97217
<b>CONTACT PERSON:</b>
Contact person: George Simons Phone: (503) 283-2015 Fax: (503) 283-2070 e-mail: <a href="mailto:Agenterprisesi2@qwest.net">Agenterprisesi2@qwest.net</a>
<b>MAILING ADDRESS:</b>
Carmen Gales & George Simons PO Box 17163 Portland, OR 97217

**METRO**

**Licensee's Acceptance &  
Acknowledgement of Receipt:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Licensee

\_\_\_\_\_  
Michael Jordan, Chief Operating Officer  
Print name and title

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	This license authorizes delivery to the non-system facility listed in section 3, below, of only source-separated pre-consumer vegetative food waste generated by customers of AGG within the Metro region. Delivery to the listed non-system facility of meats, fats, seafoods, and any other waste not authorized in this section is prohibited.
<b>2</b>	<b>CALENDAR YEAR TONNAGE LIMITATION</b>
	This license grants the licensee the authority to deliver for processing up to 15,000 tons per calendar year of the waste described in section 1, above.
<b>3</b>	<b>NON-SYSTEM FACILITY</b>
	<p>The licensee hereunder may deliver the waste described in section 1, above, to the following non-system facility for the purpose of processing and composting; provided that this facility has all necessary permits and authorizations required by state and other local governments to accept and process the waste described in section 1, above:</p> <p style="text-align: center;">Nature's Needs 9570 NW 307th Ave. North Plains, OR 97133</p>
<b>4</b>	<b>TERM OF LICENSE</b>
	The term of this license will commence on January 1, 2005 and expire at midnight on December 31, 2006.
<b>5</b>	<b>REPORTING OF ACCIDENTS AND CITATIONS</b>
	Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving its vehicles during the loading and transporting of solid waste authorized by this license.

<b>6</b>	<b>LOADS TO BE COVERED ON ALL SIDES</b>
	Loads of food waste delivered under authority of this license shall be covered on all sides, and such coverage shall prevent spillage of any amount of waste onto public or private property.

<b>7</b>	<b>ADDITIONAL LICENSE CONDITIONS</b>
	<p>This non-system license shall be subject to the following conditions:</p> <ul style="list-style-type: none"><li><b>(a)</b> The permissive transfer of solid waste to the Nature's Needs facility 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.</li><li><b>(b)</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:<ul style="list-style-type: none"><li><b>(i)</b> 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,</li><li><b>(ii)</b> the provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Oregon Waste Systems, or</li><li><b>(iii)</b> 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 described in section 3, above.</li></ul></li><li><b>(c)</b> 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.</li><li><b>(d)</b> No later than the fifteenth (15th) day after the end of each fiscal quarter, Licensee shall submit to Metro's Solid Waste &amp; Recycling Department a letter reporting the tonnage delivered during each month of the preceding quarter. Licensee shall make all records from which the tonnage was derived available to Metro</li></ul>

	<p>for its inspection or copying, as long as Metro provides no less than three (3) calendar days written notice of an intent to inspect documents.</p> <p>(e) Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.</p> <p>(f) This license shall terminate upon the execution of a designated facility agreement with the facility listed in Section 3.</p>
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<b>8</b>	<b>COMPLIANCE WITH LAW</b>
	<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. This license does not authorize the licensee to collect any type of solid waste or recyclable material in violation of any local franchise requirements.</p>

<b>9</b>	<b>INDEMNIFICATION</b>
	<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>

## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 04-3514 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NON-SYSTEM LICENSE TO AGG ENTERPRISES, INC. FOR DELIVERY OF SOURCE SEPARATED FOOD WASTE TO THE NATURE'S NEEDS FACILITY FOR COMPOSTING

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November 8, 2004

Prepared by: Steve Kraten

## BACKGROUND

### Description of the Resolution

Approval of Resolution No. 04-3514 will authorize the Chief Operating Officer to issue a new non-system license (NSL) to AGG Enterprises, Inc. (AGG) to annually deliver a maximum of 15,000 tons of source-separated, pre-consumer vegetative food waste, generated by its commercial customers to the Nature's Needs facility located at 9570 NW 307<sup>th</sup> Avenue in North Plains, Oregon. Because Nature's Needs is a composting facility, not a general purpose landfill, this NSL will not implicate Metro's obligations under its disposal contract, nor would Metro fees and taxes be due on such waste.

AGG is already delivering this waste to Nature's Needs. Changes to Code Chapter 5.05, Solid Waste Flow Control, approved by the Metro Council in October 2003 require putrescible source-separated recyclable materials to go to a facility designated to accept such waste. This NSL is subject to Council approval because it involves putrescible solid waste. AGG's application was made in response to a letter from Metro mailed to all generators and haulers that take source-separated, pre-consumer vegetative food waste from within the Metro region to Nature's Needs, informing them of the need to obtain non-system licenses.

## ANALYSIS/INFORMATION

### 1. Known Opposition

There is no known opposition to the proposed non-system license.

### 2. Legal Antecedents

Changes to Code Chapter 5.05, Solid Waste Flow Control, approved by the Council that became effective 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 proposed disposal site is a composting facility rather than a landfill and thus does not pose the same potential environmental risk from wastes delivered from prior users. Staff is not aware of any wastes accepted at Nature's Needs that could pose a 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;*

Nature's Needs operates under authority of an 18-month franchise granted in November 2003, by Washington County and a composting permit issued by the DEQ. The facility has been the source of odor complaints but has been in compliance with all federal, state and local requirements, rules and regulations.

The owner/operator of Nature's Needs also owns and operates East County Recycling (ECR) located at 12409 NE San Rafael Street in Portland, Oregon. ECR is a Metro-licensed materials recovery facility. ECR's compliance history includes several Notices of Noncompliance issued by Metro and the DEQ for unauthorized acceptance of putrescible and hazardous waste; receiving non-recoverable loads of dry waste and reloading it without a reload permit; and failure to maintain an adequate operating plan. Staff does not believe that ECR's compliance record is justification not to issue this NSL. ECR is working to address all such compliance issues. Nature's Needs accepts a different and more controlled waste stream. Nature's Needs has, to staff's knowledge, continued to operate in compliance with all legal requirements despite these issues arising at ECR.

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

Nature's Needs receives pre-consumer food waste on a paved tipping pad. Vegetative materials and food-contaminated cardboard are separated onto opposite sides of the pad and then re-mixed to get an optimal carbon-nitrogen ratio. After grinding, the organic material is placed into 300 foot long plastic "Ag Bags" on a large pad that was paved with the aid of a \$55,000 organics recycling grant from Metro. The food waste composts within the Ag Bags for eight to twelve weeks. During that time air is forced through the bags with electric fans and the compost is monitored for temperature and CO<sub>2</sub> levels. The bags are then opened and the compost cured for another two to three months in uncovered windrows. Paved areas are pressure washed frequently with wash water and storm water managed under a DEQ permit. These operational practices and management controls are judged by Metro, Washington County and DEQ staff to be adequate.

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

The applicant has applied to deliver 15,000 tons annually of waste that has historically been delivered for landfill disposal. Since Nature's Needs is presently the only facility within 150 miles of the Metro region authorized to compost food waste, this waste stream will likely go to disposal if the NSL is denied.

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

The waste subject to the proposed license is proposed to be delivered to a composting facility rather than disposed at a general purpose landfill. Thus, approval of the requested license does not implicate 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, AGG Enterprises, Inc., is a solid waste hauler. Since 2001, AGG has received seven written warnings and citations from Metro - six for uncovered loads and one for illegal dumping. AGG's citations and warnings for uncovered loads were all for loads of non-putrescible materials. The illegal dumping occurred when a residential drop box customer's deposit check was found to be drawn on an account with insufficient funds and the AGG driver sent to retrieve the box first tipped the contents onto the lawn, sidewalk, and street before hauling it away. Staff believes that this was an isolated incident that is not likely to recur. Staff continues to observe uncovered AGG drop boxes hauled on public roads with debris extending up above the top edges of the boxes where it can be blown off in the wind and will continue to take enforcement action when possible. However, staff does not believe that the applicant is likely to haul food waste in uncovered boxes and a provision is included in the proposed license that specifically requires loads to be covered. Staff is not aware of any other compliance issues related to public health, safety, or the environment.

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

Recovery through composting is preferred to landfill disposal. Since October 2003, Metro has used enforcement discretion regarding generators and haulers that delivered pre-consumer food waste to Nature's Needs without benefit of non-system licenses. This was deemed appropriate as no Metro fees or taxes were at stake and there were discussions under way between Metro and the operator of Nature's Needs regarding a possible designated facility agreement. However, Nature's Needs has declined to become a designated facility and so, in conformance with the Code, it is required that in-region generators or their haulers apply for non-system licenses to haul waste to that facility.

### Conclusion

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

### **3. Anticipated Effects**

The effect of Resolution No. 04-3514 will be to issue an NSL for delivery of up to 15,000 tons per calendar year of pre-consumer vegetative food waste to the Nature's Needs facility.

### **4. Budget Impacts**

The regional system fee and excise tax will not be collected on waste delivered under authority of the proposed NSL and have not been collected for such waste in the past year. Therefore, the budget impact, to the extent that it is discernable for 15,000 tons annually, has already been factored into the budget.

### **RECOMMENDED ACTION**

The Chief Operating Officer recommends approval of Resolution No. 04-3514, and issuance of an NSL substantially similar to the NSL attached to the Resolution as Exhibit A.

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