

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF DENYING A REQUEST) RESOLUTION NO. 14-4558
FOR A TRANSFER STATION TONNAGE LIMIT)
INCREASE AT WILLAMETTE RESOURCES,) Introduced by Chief Operating Officer Martha
INC.) Bennett in concurrence with Council
President Tom Hughes

WHEREAS, Metro Code Chapter 5.01 (Solid Waste Facility Regulation) governs the regulation of solid waste disposal sites and facilities within Metro; and

WHEREAS, Metro Ordinance No. 13-1306 amended Metro Code Section 5.01.125 to delete (d)(4), which allowed the Chief Operating Officer to authorize a tonnage increase of no more than 5% based on certain findings; and

WHEREAS, pursuant to the changes to Metro Code Section 5.01.125, the Council is required to approve any franchise tonnage increases; and

WHEREAS, in support of Ordinance No. 13-1306 staff recommended that the Council consider tonnage increase requests only where the applicant demonstrates an explicit public benefit if the request is granted; and

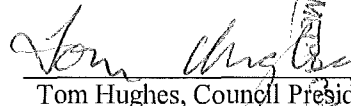
WHEREAS, Metro Ordinance No. 13-1307 extended Willamette Resources Inc.'s ("WRI") franchise through December 31, 2015 and authorized a 70,000 tonnage limit; and

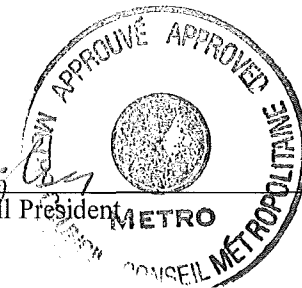
WHEREAS, on July 10, 2014, WRI submitted an application to Metro asking that Metro increase its current franchise tonnage limit by 15,000 or 55,000 tons; and

WHEREAS, WRI has not established that increasing its franchise tonnage limit will result in a public benefit; now therefore

BE IT RESOLVED that the Metro Council denies WRI's request for a tonnage increase

ADOPTED by the Metro Council this 2nd day of October 2014.


Tom Hughes, Council President



Approved as to Form:


Alison R. Kean, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 14-4558 FOR THE PURPOSE OF DENYING A REQUEST FOR A TRANSFER STATION TONNAGE LIMIT INCREASE AT WILLAMETTE RESOURCE, INC.

September 22, 2014

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Adoption of Resolution No. 14-4558 would result in the denial of a request made by Republic Waste Systems, Inc. (Republic) seeking a tonnage limit increase to its franchise at Willamette Resources, Inc. (WRI), a privately-owned transfer station located at 10295 SW Ridder Road, Wilsonville, Oregon. On July 10, 2014, the applicant requested that Metro increase WRI's current franchise tonnage limit by either 15,000 (21% increase) or 55,000 (79% increase) tons per calendar year. Staff recommends denial in accordance with the Metro Council action¹ that was adopted on August 1, 2013, which authorized a two-year term extension and established a franchise tonnage limit for WRI of 70,000 tons.

BACKGROUND

Metro's major solid waste contracts (operations,² long-haul transport and disposal) will expire at the end of 2019. In an effort to shape the future solid waste system to better attain public benefits and improved sustainability, Metro has undertaken a multi-year effort to plan for the future of the regional solid waste system known as the Solid Waste Roadmap. A major component of this effort is to take a comprehensive look at the roles, responsibilities, configuration, rates and services offered by all transfer stations in the system, including those owned by Metro (South and Central) and by private companies (Waste Management, Republic, and Pride Disposal). This project is known as the Transfer Station Configuration Project (SW Roadmap Project #5).

In August 2013, Metro Council adopted Code changes that were intended to largely maintain the current solid waste system's configuration at status quo market levels and allow decision makers, staff and stakeholders to focus their efforts on developing and evaluating long-term public goals and outcomes for the region's solid waste system. In particular, the Council extended the term of all privately-owned transfer station franchises through the end of 2015 in order to align them with the decisions resulting from the transfer station configuration project of the Solid Waste Roadmap. Council also adopted changes to the Metro Code regarding future configuration of transfer stations. In total, these changes were intended to: 1) provide interim two-year clarity for the region's solid waste system while conducting a high-level review of the solid waste transfer system through the Roadmap; 2) allow for general market continuity during the two-year period; and 3) create minimal disruption while the future course for the solid waste system is being considered by stakeholders, staff and Council.³

In addition, the above-mentioned Code changes eliminated the "regional" and "local" distinction among privately-owned transfer stations, established a temporary moratorium on new transfer station franchise applications, and eliminated administratively-issued tonnage limit increases. As a result, the Council – not Metro's Chief Operating Officer -- should determine whether to approve or deny any requested franchise tonnage cap increases during the interim two-year period. During this interim period, staff recommends that Council only consider those requests that can

¹ Metro Ordinance Nos. 13-1306 and 13-1307.

² Metro's operations contract expires in 2017 but can be extended for two additional years.

³ See staff report for Ordinance No. 13-1306 (Amending Code Chapter 5.01 Regarding Solid Waste Transfer Stations).

demonstrate sufficient new public benefit for granting the tonnage increases (e.g., demonstrable rate payer savings, more efficient routing, etc.) or could be attributed to a unique sub-regional phenomena e.g. significant population growth, large development or expanded regional boundary.

Tonnage Cap History

Tonnage caps have served many elements of the public’s interest. With the exception of the Forest Grove Transfer Station, Metro has set annual franchise tonnage caps for each of the privately-owned transfer stations since 1999. The original purpose of these tonnage caps was to responsibly manage the financial risk of transitioning between regional system fee and excise tax collection methods in 1998. Over the years, however, the stated purpose of tonnage caps evolved. For instance, tonnage caps have been used as an unofficial basis to assure economically sufficient tonnage flowed through the public facilities until the bond indebtedness was paid off in 2009. Caps were also intended, in part, to assure that locally-based transfer stations did not become large-scale solid waste transfer stations without providing the local government and community the opportunity to consider the impact and land use of such facilities. Today, and for the next two years, caps help assure there are no major disruptions to the market or solid waste system.

As a defining characteristic of a “local” transfer station, Metro established a uniform 70,000 ton annual tonnage cap at three transfer facilities. Forest Grove Transfer Station, however, was designated as a private “regional” transfer stations with no cap on tonnage. Metro Council later adopted changes to the Metro Code in 2013⁴ that eliminated the distinction between “local” and “regional” transfer stations and, for the first time established a 125,000-ton cap at the Forest Grove Transfer Station. Table 1 shows an abbreviated history of tonnage caps since 1999.

Table 1
Abbreviated History of Transfer Station Tonnage Caps

Year	Tonnage Cap	Type of Waste
1999 - 2001	50,000	Wet and Dry
2001 – 2005	62,000	Wet
2005 – 2008	65,000	Wet
2008 – 2013	70,000	Wet
2013 – 2015	70,000 ⁵	Wet

WRI has complied with its tonnage caps during the term of its current franchise. In 2008, WRI’s tonnage cap was set at 70,000 tons of putrescible waste per year which is currently authorized through the end of 2015. Non-putrescible waste, special waste, cleanup waste and waste generated from outside the Metro regional boundary is not subject to the tonnage cap.

Metro is engaged in a separate high-level policy effort to consider the role of tonnage caps in today’s system environment through the Solid Waste Roadmap planning effort. Metro is also updating the Solid Waste Community Enhancement Program to account, in part, for local impacts of these solid waste facilities and provide some assurance that local impacts from such facilities are addressed through funding local enhancement projects. In the meantime, transfer facilities must comply with their franchise tonnage caps and ensure that customers, whether their own or third party, are re-directed to the public facilities or private facilities with room under their tonnage cap. The Metro Council will have the opportunity to consider and adjust, as desired, all private facility tonnage caps when it once again considers all private transfer station franchises in 2015.

⁴ Ordinance No. 13-1306.

⁵ Forest Grove Transfer Station has a tonnage cap of 125,000 tons per year

2013 Code Adoption Process

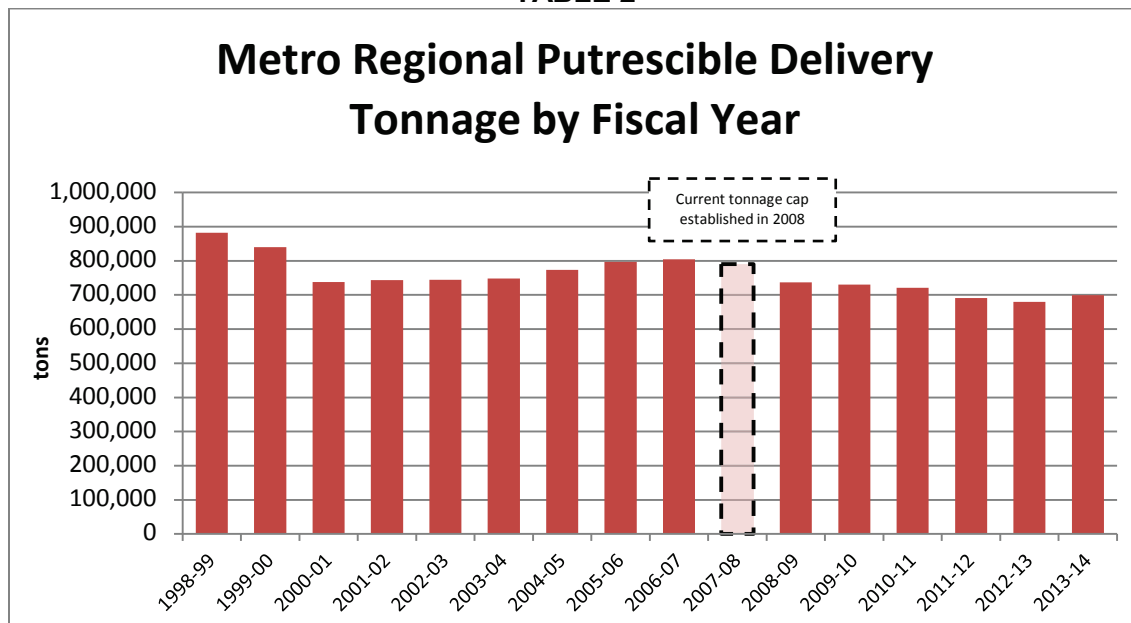
As part of the 2013 code adoption process and two-year franchise extension, Metro staff met individually with each private transfer station owner/operator in advance to discuss the plan to put the solid waste transfer system in “stasis” for two years – through the end of 2015 - while a comprehensive planning effort was undertaken. While some verbal concerns and questions were initially raised by operators, ultimately industry stakeholders did not submit any formal comments or object during the public hearing period.

Regional Solid Waste Tonnage Trends

In consideration of WRI’s request, Metro staff reviewed the latest regional solid waste data to determine whether some appreciable increase in regional solid waste tonnage has occurred. The current 70,000-ton caps were set at the start of the current franchise period in 2008. Regional tonnage has not rebounded to the levels of FY 2007-08 when caps were last set. Non-putrescible (dry) waste tonnage has increased across the region – by as much as an 8% for the first six months of 2014 compared to 2013. The dry waste, however, is not required to be counted under the tonnage limits at private facilities. Regional putrescible (wet) waste tonnage, continues to “bounce along the bottom,” apparently reflecting the ongoing effects of the recession and the economy’s slow recovery. It is not clear that wet waste tonnages are trending in an upward manner but appears to be stable with only a slight uptick – still far below the pre-recession tonnage levels. It is still unclear whether this slight increase (about a 3% increase during the first six months of 2014 compared to 2013) is a trend.

Table 2 below provides a summary of regional wet waste tonnage:

TABLE 2



WRI Tonnage Cap Increase Request

On July 10, 2014, Republic submitted an application to Metro requesting either 1) a 55,000 tonnage limit increase (to 125,000 total tons of capacity); or 2) a 15,000 tonnage limit increase (to 85,000 total tons of capacity). As part of its application, Republic raised a number of issues and questions about the purpose and usefulness of tonnage caps in today’s environment. Staff agrees that the issues raised by Republic are worthy of consideration as the role of tonnage caps – and privately-

owned facilities -- are considered within the Solid Waste Roadmap. However, Metro staff recommends that these issues be considered separately from the context of an individual and isolated regulatory decision on a limited tonnage cap increase. Rather, these questions need to be considered as part of the long-term policy and configuration of the future system.

Furthermore, Republic did not provide evidence or build a case for the specific tonnage cap increase that is the basis for its request. In particular, Republic did not demonstrate that:

1. Regional wet solid waste tonnage has increased so significantly that increased tonnage caps at its privately-owned stations was necessary to accommodate the increased growth,
2. A tonnage trend was occurring sub-regionally where Metro's available data may not provide a sufficient level of information. Something indicating that significant growth and tonnage increased on account of unique circumstances, significantly increased population or increased construction or other unusual conditions, or
3. There was a significant new public benefit or sustainability improvement that was not known when the interim tonnage caps were set in 2013, or has emerged since.

Conclusion

The Chief Operating Officer recommends adoption of Resolution No. 14-4558 which would deny a tonnage limit increase for WRI. Staff recommends this denial for the following reasons:

1. Putrescible waste tonnage has not increased significantly on a regional basis and has not yet exceeded pre-recession levels, when tonnage caps were last set. Republic did not justify an adjustment to WRI's franchise tonnage limit;
2. The applicant did not present evidence indicating that any unique or unusual circumstances exist sub-regionally near the facility that would justify an adjustment to WRI's tonnage cap;
3. The applicant did not present any new information that was not already considered in 2013 about public benefit and sustainability that would lead to increased tonnage caps at this time;
4. WRI did not offer any public comment or formally object to the current conditions of its franchise at the time of its term extension just over a year ago;
5. Currently, there is a significant surplus of regional capacity for transferring wet waste to a landfill, and an increase in tonnage caps at this time will simply shift tonnage around among facilities potentially creating potential unknown or unintended consequences;
6. Metro has already initiated a comprehensive planning effort to assess the future roles of public and privately-owned transfer stations, including consideration of the future and relevancy of tonnage limits at privately-owned facilities as part of the Solid Waste Roadmap;
7. Staff finds that consideration of the policy questions raised by the applicant are more appropriate as part of the Transfer Station Configuration Project as opposed to an individual and isolated regulatory decision;

8. Any expansion of individual solid waste facility operations, services, and traffic should be broadly considered with the accompanying impact on the local jurisdiction and community hosting the facility;
9. While this request originated with one company, individual tonnage cap decisions are likely to impact the other three privately-owned transfer stations. Pride Recycling has filed a similar application that is also under consideration by Metro Council (Resolution No. 14-4559);
10. Waste Management has not sought additional tonnage increases for either of its two transfer stations. If a tonnage increase is granted at one transfer station, then, it is likely that the other privately-owned facilities would also seek equitable increases; and
11. Finally, making individual isolated facility or regulatory decisions potentially usurps consideration of other policy options for the future solid waste system e.g. use of other disposal sites, or use of energy recovery or conversion technology options.

ANALYSIS/INFORMATION

1. Known Opposition

Republic is known to oppose the adoption of this resolution. Metro has received several letters from business organizations supporting Republic's request to increase its tonnage cap (Wilsonville, Tualatin and Lake Oswego Chambers of Commerce, and Clackamas County Business Alliance). The Mayors of Tualatin, Lake Oswego and Wilsonville, and the Chair of Clackamas County Board of Commissioners also provided letters of support for the Republic request. There is no other known opposition to the proposed ordinance.

2. Legal Antecedents

Current provisions of Metro Code Chapter 5.01. WRI's current franchise adopted on August 1, 2013 (Franchise No. F-005-08B).

3. Anticipated Effects

Denial of WRI's request will retain the status quo for the next 15 months until the end of 2015.

4. Budget Impacts

Adoption of the proposed resolution will not have an impact on the budget.

RECOMMENDED ACTION

The Chief Operating Officer recommends adoption of Resolution No. 14-4558 which would deny a franchise tonnage limit increase for WRI in 2014.