

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF) RESOLUTION NO. 05-3521
OPERATING OFFICER TO ISSUE A NON-SYSTEM)
LICENSE TO SAFEWAY, INC. FOR DELIVERY OF) Introduced by Michael Jordan,
SOURCE SEPARATED PRE-CONSUMER FOOD) Chief Operating Officer, with the
WASTE TO THE NATURE'S NEEDS FACILITY FOR) concurrence of David Bragdon,
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,

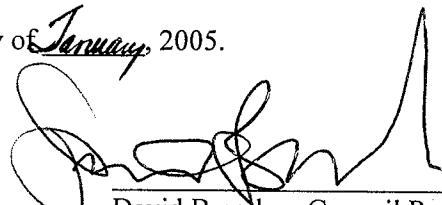
WHEREAS, Safeway, Inc. has applied for a non-system license to deliver source separated pre-consumer food waste to the Nature's Needs facility under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control"; and,

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 Safeway, Inc., in a form substantially similar to the license attached as Exhibit A.

ADOPTED by the Metro Council this 13th day of January, 2005.

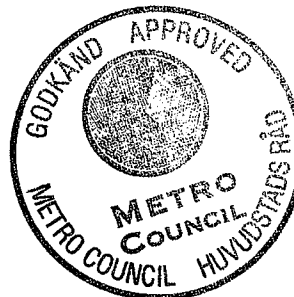


David Bragdon, Council President

Approved as to Form:



Daniel B. Cooper, Metro Attorney





METRO

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

Number N-116-04

LICENSEE:
Safeway, Inc. 16300 SE Evelyn street Clackamas, OR 97015
CONTACT PERSON:
Contact person: Greg Parks Phone: (503) 657-6282 Fax: (503) 557-4228 e-mail: Greg.Parks@safeway.com
MAILING ADDRESS:
Same as above

METRO

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

Signature

Michael Jordan, Chief Operating Officer
Print name and title

Date

Signature of Licensee

Print name and title

Date

1	NATURE OF WASTE COVERED BY LICENSE
	This license authorizes delivery to the non-system facility listed in section 3, below, of unsalable produce and baked goods generated by all Safeway Inc. facilities 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.

2	CALENDAR YEAR TONNAGE LIMITATION
	This license grants the licensee the authority to deliver for processing up to 10,000 tons per calendar year of the waste described in section 1, above. Waste covered by this non-system license that is delivered to the non-system facility listed in section 3, below, by a hauler that is also an authorized non-system licensee shall be counted against the tonnage limitation stipulated in the hauler's non-system license. Should the Licensee contract with another hauler that is not a non-system licensee or begin self-hauling, then the tonnage shall be counted against the tonnage limitation stipulated in this non-system license.

3	NON-SYSTEM FACILITY
	<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>

4	TERM OF LICENSE
	The term of this license will commence on January 1, 2005 and expire at midnight on December 31, 2006.

5	REPORTING OF ACCIDENTS AND CITATIONS
	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.

6	LOADS TO BE COVERED ON ALL SIDES
	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.

7	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 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.(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">(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 1 of this license be transferred to, and disposed of at, a facility other than the facility described in section 3, 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.

	<p>(d) No later than the fifteenth (15th) day after the end of each quarter, Licensee shall submit to Metro's Solid Waste & 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 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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8	COMPLIANCE WITH LAW
	<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>

9	INDEMNIFICATION
	<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. 05-3521 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NON-SYSTEM LICENSE TO SAFEWAY, INC. FOR DELIVERY OF SOURCE SEPARATED FOOD WASTE TO THE NATURE'S NEEDS FACILITY FOR COMPOSTING

November 23, 2004

Prepared by: Steve Kraten

BACKGROUND

Description of the Resolution

Approval of Resolution No. 05-3521 will authorize the Chief Operating Officer to issue a new non-system license (NSL) to Safeway, Inc. (Safeway) to annually deliver a maximum of 10,000 tons of source-separated, pre-consumer vegetative food waste, including baked goods, generated by Safeway's in-region stores to the Nature's Needs facility located at 9570 NW 307th 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.

Safeway has been delivering this waste to Nature's Needs for the past two years. The waste, largely produce trimmings, are generated at stores throughout the region, trucked to Safeway's distribution center in Clackamas where the material is consolidated, and then hauled to Nature's Needs. Changes to Code Chapter 5.05 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 must be approved by the Council because it involves putrescible solid waste. Safeway'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 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 proposed license will terminate with the expiration of Nature's Needs' franchise in the event that it is not renewed, but otherwise will run for a term of two years.

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. ECR has addressed these compliance issues and staff does not believe that ECR's compliance record is justification not to issue this NSL. Nature's Needs accepts a different and more controlled waste stream and is operating in compliance with all legal requirements.

- (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 CO₂ 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 10,000 tons of vegetative food waste annually. Safeway has been delivering such waste to Nature's Needs for the past two years. Prior to that the majority of this waste was ground in a disposal before entering the sewer system and a smaller amount was 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, Safeway, Inc., is not a solid waste hauler or processor and has no previous record regarding compliance with Metro. Staff is not aware of any 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.

Safeway currently has its food waste delivered to Nature's Needs by AGG, Enterprises, which is itself pursuing a non-system licensee for this purpose. Food waste delivered from Safeway to Nature's Needs by AGG will be reported by AGG under its NSL, if granted. The proposed Safeway NSL will only come into play should Safeway either choose to contract with another hauler that is not a non-system licensee or begin self-hauling.

Conclusion

The Chief Operating Officer finds that the proposed license satisfies the requirements of Metro Code Section 5.05.035 for the requested Solid Waste Facility License.

3. Anticipated Effects

The effect of Resolution No. 05-3521 will be to issue an NSL for delivery of up to 10,000 tons per fiscal year of pre-consumer vegetative food waste and baked goods 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 years. Therefore, the impact to the impact has already been factored into the budget.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 05-3521, and issuance of an NSL substantially similar to the NSL attached to the Resolution as Exhibit A.

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