

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF ) RESOLUTION NO. 14-4563  
OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM )  
LICENSE TO ARROW SANITARY SERVICE, INC. FOR ) Introduced by Chief Operating  
DELIVERY OF PUTRESCIBLE WASTE TO THE WEST VAN ) Officer Martha Bennett in  
MATERIALS RECOVERY CENTER AND THE CENTRAL ) concurrence of Council President  
TRANSFER AND RECYCLING CENTER LOCATED IN CLARK ) Tom Hughes  
COUNTY, WASHINGTON )

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 disposal facility; and

WHEREAS, Arrow Sanitary Service, Inc. ("Arrow") holds Metro Solid Waste Facility Non-System License No. N-029-13C, which expires on December 31, 2014; and

WHEREAS, Arrow has filed a complete application seeking renewal of the non-system license to deliver putrescible waste to the West Van Materials Recovery Center and the Central Transfer and Recycling Center for disposal 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

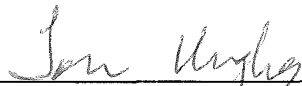
WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors under the Metro Code; and

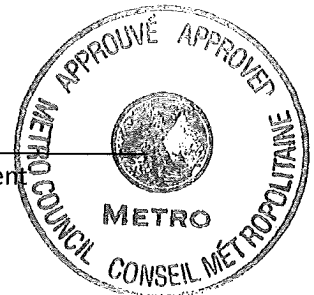
WHEREAS, the Chief Operating Officer recommends that the non-system license be renewed together with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:


1. The non-system license renewal application of Arrow 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 Arrow a renewed Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this 13th day of November 2014.

  
Tom Hughes, Council President



Approved as to Form:

  
Alison R. Kean, Metro Attorney

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
TEL 503 797 1835 | FAX 503 813 7544



METRO

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

**No. N-029-15**

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| <b>LICENSEE:</b>   |  |  |  |
| Arrow Sanitary Service, Inc.<br>12820 NE Marx Street<br>Portland, OR 97230 |  |  |  |
| <b>CONTACT PERSON:</b>   |  |  |  |
|  | Derek Ranta  | Jim Winterbottom                                 | Dean Large   |
| Phone:   | (503) 542-3425                                       | (503) 542-3425                                   | (360) 695-4858                                     |
| Fax:   | (360) 230-3979                                       | (360) 230-3979                                   | (360) 230-3979                                     |
| E-mail:  | <a href="mailto:derekr@wcnx.org">derekr@wcnx.org</a> | <a href="mailto:jimw@wcnx.org">jimw@wcnx.org</a> | <a href="mailto:deanl@wcnx.org">deanl@wcnx.org</a> |
| <b>MAILING ADDRESS:</b>  |  |  |  |
| Arrow Sanitary Service, Inc.<br>12820 NE Marx Street<br>Portland, OR 97230 |  |  |  |

**ISSUED BY METRO:**

\_\_\_\_\_  
Scott Robinson, Deputy Chief Operating Officer

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Date



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| <b>1</b> | <b>NATURE OF WASTE COVERED BY LICENSE</b>   |
|          | Putrescible solid waste that is generated by residential and commercial customers within the Metro region and collected by Arrow Sanitary Service, Inc.   |
| <b>2</b> | <b>CALENDAR YEAR TONNAGE LIMITATION</b>   |
|          | <p>The Licensee is authorized to deliver the waste described in Section 1 of this license to the non-system facilities described in Section 3 as follows:</p> <ul style="list-style-type: none"><li>(a) For the first year of the license, beginning January 1, 2015, and ending December 31, 2015, the Licensee is authorized to deliver up to 26,073 tons;</li><li>(b) By no later than November 3, 2015, Metro’s Chief Operating Officer (“COO”) may release additional reserve tonnage and amend Section 2 of this license to adjust the 2015 tonnage limitation as established by Metro Council and described in the staff report to Resolution No. 14-4563;</li><li>(c) By no later than the December 31, 2015, the COO shall establish a second-year tonnage limitation, beginning January 1, 2016, and ending December 31, 2016, and amend Section 2 of this license to include a 2016 tonnage limitation as established by Metro Council and described in the staff report to Resolution No. 14-4563; and</li><li>(d) By no later than November 3, 2016, the COO may release additional reserve tonnage and amend Section 2 of this license to adjust the 2016 tonnage limitation as established by Metro Council and described in the staff report to Resolution No. 14-4563.</li></ul> |
| <b>3</b> | <b>NON-SYSTEM FACILITIES</b>  |
|          | <p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 to the following non-system facilities:</p> <p style="padding-left: 40px;">West Van Materials Recovery Center<br/>6601 NW Old Lower River Road<br/>Vancouver, WA 98660</p> <p style="padding-left: 40px;">Central Transfer and Recycling Center<br/>11034 NE 117th Avenue<br/>Vancouver, WA 98661</p> <p>This license is issued on condition that the non-system facilities named in this section are authorized to accept the type of waste described in Section 1. If</p>   |



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|  | Metro receives notice from Clark County or other appropriate regulatory authority that these non-system facilities are not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7 of this license. |
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| <b>4</b> | <b>TERM OF LICENSE</b>   |
|          | The term of this license will commence on January 1, 2015 and expire at midnight on December 31, 2016, unless terminated sooner under Section 7 of this license. |

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| <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 vehicles transporting the solid waste authorized by this license. |

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| <b>6</b> | <b>Record Keeping and Reporting</b>   |
|          | <p>(a) The Licensee shall keep and maintain accurate records of the amount of all solid waste that the Licensee delivers to the non-system facilities described 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"><li>i. Ticket or weight slip number from the non-system facility;</li><li>ii. Material category designating the type of material transferred to the non-system facility;</li><li>iii. Date the load was transferred to the non-system facility;</li><li>iv. Time the load was transferred to the non-system facility;</li><li>v. Net weight of the load; and</li><li>vi. Fee charged by the non-system facility</li></ul> <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:</p> <ul style="list-style-type: none"><li>i. Transmit the records required under Section 6(a) above to Metro in an electronic format prescribed by Metro;</li><li>ii. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; and</li><li>iii. Remit to Metro the requisite Regional System Fees and Excise Tax in accordance with the Metro Code provisions applicable to</li></ul> |



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|  | <p>the collection, payment, and accounting of such fees and taxes.</p> <p>(c) Licensee shall make all records from which Sections 6(a) and 6(b) 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 named in Section 3, above.</p> <p>(d) Metro may require the Licensee to report the information required by this Section on a weekly or daily basis.</p> <p>(e) At least once during the first half of each calendar year and once during the second half of each year, the Licensee shall review its collection routes to determine which of its accounts are within the Metro region. Any adjustments are to be implemented in the next month’s Regional System Fee and Excise Tax Report. Reports confirming the reviews and summarizing changes shall be submitted to Metro by May 31 and November 30 of each calendar year.</p> |
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| <b>7</b> | <b>ADDITIONAL LICENSE CONDITIONS</b>   |
|          | <p>This license shall be subject to the following conditions:</p> <p>(a) The permissive transfer of solid waste to the non-system facilities, 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.</p> <p>(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:</p> <ul style="list-style-type: none"> <li>i. There has been sufficient change in any circumstances under which Metro issued this license;</li> <li>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.; or</li> <li>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 facilities listed in Section 3.</li> </ul> <p>(c) This license shall, in addition to subsections (b)(i) through (b)(iii), above, be subject to amendment, modification, suspension, or termination pursuant to the Metro Code.</p> <p>(d) The Licensee shall not transfer or assign any right or interest in this</p> |



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|  | <p>license without prior written notification to, and approval of, Metro.</p> <p>(e) This license shall terminate upon the execution of designated facility agreements with the facilities listed in Section 3 that authorizes the facilities to accept the waste described in Section 1 of this license.</p> <p>(f) This license authorizes the delivery of solid waste to the facilities 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.</p> <p>(g) The COO may direct the Licensee's waste flow under this non-system license to Metro Central Transfer Station or Metro South Transfer Station with a minimum of 24 hours written notice. Any redirection of the waste flow by the COO is effective immediately.</p> <p>(h) If the Licensee exceeds the calendar year limitation set forth in Section 2 of this license, each ton or portion thereof by which the Licensee exceeds the limitation constitutes a separate violation subject to a penalty of up to \$500.</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.</p> |

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| <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. 14-4563 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO ARROW SANITARY SERVICE, INC. FOR DELIVERY OF PUTRESCIBLE WASTE TO THE WEST VAN MATERIALS RECOVERY CENTER AND THE CENTRAL TRANSFER AND RECYCLING CENTER LOCATED IN CLARK COUNTY, WASHINGTON

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October 31, 2014

Prepared by: Warren Johnson  
503-797-1836

Approval of Resolution No. 14-4563 will authorize the Chief Operating Officer (COO) to issue a two-year non-system license (NSL), similar to the proposed license attached to this resolution as Exhibit A, to Arrow Sanitary Service, Inc. (Arrow). The NSL will authorize the delivery of up to 26,073 tons of putrescible waste to either the West Van Materials Recovery Center (West Van) or the Central Transfer and Recycling Center (Central Transfer), located in Clark County, Washington, during calendar year 2015. The NSL will also authorize the COO to annually release reserved tonnage and establish a second year tonnage authorization for 2016 using the same methodology that is described in this staff report.

The applicant (Arrow), the transfer facilities (West Van and Central Transfer), and the final disposal site (Finley Buttes Landfill) are all owned by Waste Connections, Inc., a waste management company headquartered in The Woodlands, Texas.

### 1. INTRODUCTION

#### A. Background

##### (1) Overview

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver a minimum of 90 percent of the region's putrescible waste, which is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management (also known as "the flow guarantee").<sup>1</sup> NSLs allow Metro to closely monitor and potentially guide waste flows to authorized facilities in order to comply with the disposal contract. This approach provides for a higher level of control and faster response to changing conditions – particularly with respect to Metro's longstanding policy of allocating the uncommitted tonnage.

Resolution No. 14-4563 would grant an NSL to Arrow to deliver Metro-area putrescible waste to facilities owned by Waste Connections located in Clark County, Washington. That is, this NSL controls a portion of the 10 percent of uncommitted waste not guaranteed to Waste Management under Metro's disposal contract. Metro Council is scheduled to consider three such NSL resolutions which allocate the uncommitted 10 percent. In addition to this action for Arrow, the Council is scheduled to consider resolutions for Crown Point Refuse, Inc. (Res. No. 14-4565) and Willamette Resources, Inc. (Res. No. 14-4564) at its meeting on November 13, 2014. This coordinated approach provides for a known and reasonable tonnage allocation process for all license applicants.

##### (2) Design and Performance of the 2013-2014 NSLs

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<sup>1</sup> Metro's disposal contract with Waste Management Disposal Services of Oregon, Inc. dba Oregon Waste System, Inc.

In November 2012, the Metro Council granted two-year NSLs to each of the above referenced licensees - as the Council has done for these types of NSL renewals since 2009. The Council approved a maximum tonnage allocation for the first calendar year of the license which, summed across all licenses, did not exceed 9.5 percent of the total forecasted tonnage subject to the flow guarantee based on Metro’s tonnage forecast for 2013. Upon issuance of the NSLs, each licensee immediately received 85 percent of its portion of the total 2013 tonnage allocation as an initial tonnage authorization. The remaining amount was held in reserve for the COO to “release” by November 2, 2013. On October 10, 2013, the COO amended each of the licenses and released additional first-year tonnage as originally forecasted for 2013 (see Table 1).

On November 15, 2013, the COO amended each of the licenses to establish second year tonnage authorizations for calendar year 2014 as authorized by Council.<sup>2</sup> The maximum tonnage allocation for the second year of the license was based on Metro’s tonnage forecast for 2014 and was established using the same methodology that was used for the first year of the license. Upon issuance of the amended NSLs, each licensee immediately received 85 percent of its portion of the total 2014 tonnage allocation as an initial tonnage authorization. The remaining amount was held in reserve for the COO to “release” by November 3, 2014. On October 9, 2014, the COO released additional second-year tonnage to each of the licensees as originally forecasted for 2014. Table 1 illustrates the initial and adjusted tonnage authorizations for each licensee in 2013 and 2014.

**Table 1: Summary of Tonnage Authorizations for the NSLs in 2013 and 2014**

| Licensee   | Licensee’s Portion of Allocable Tonnage (Percent) |            | Initial Tonnage Authorization |               | Additional Tonnage Released |               | Total Adjusted Tonnage Authorization |               |
|--|---|------------|-------------------------------|---------------|-----------------------------|---------------|--------------------------------------|---------------|
|  | 2013  | 2014       | 2013                          | 2014          | 2013                        | 2014          | 2013                                 | 2014          |
| American Sanitary Service, Inc.<br>NSL No. N-020-13C | 3.7   | 4.2        | 2,155                         | 2,514         | 380                         | 444           | 2,535                                | 2,958         |
| Arrow Sanitary Service, Inc.<br>NSL No. N-029-13C    | 38.0  | 38.0       | 22,088                        | 23,014        | 3,898                       | 4,061         | 25,986                               | 27,075        |
| Crown Point Refuse, Inc.<br>NSL No. N-108-13C        | 0.3   | 0.3        | 148                           | 153           | 26                          | 27            | 174                                  | 180           |
| Willamette Resources, Inc.<br>NSL No. N-005-13(3)C   | 58.0  | 57.5       | 33,688                        | 34,808        | 5,945                       | 6,142         | 39,633                               | 40,950        |
| <b>TOTAL</b>   | <b>100</b>  | <b>100</b> | <b>58,079</b>                 | <b>60,489</b> | <b>10,249</b>               | <b>10,674</b> | <b>68,328</b>                        | <b>71,163</b> |

(3) Design of the 2015-2016 NSLs

For this renewal period, staff is proposing the same approach for evaluating the applications and determining the annual tonnage authorizations that Metro has used for these types of NSLs since 2009. The proposed NSL includes conditions that provide Metro with sufficient controls for monitoring and managing the flow guarantee against fluctuating waste tonnage in the system. Therefore, staff recommends that these types of NSLs remain on a standard two-year term as is authorized under the current licenses.

Although the proposed NSLs have a two-year term, the tonnage allocations will continue to be made on an annual basis with the same reserve release feature that is used for the current licenses. Therefore, staff recommends that the Metro Council again annually allocate 9.5 percent of the available forecasted tonnage

<sup>2</sup> Resolution No. 12-4379 (American Sanitary Service, Inc.), Resolution No. 12-4378 (Arrow Sanitary Service, Inc.), Resolution No. 12-4376 (Crown Point Refuse, Inc.), and Resolution No. 12-4377 (Willamette Resources, Inc.)



to those applicants that have applied to renew their existing licenses. The limitation for each NSL will continue to be based on a share of the tonnage that is projected to be available for allocation on an annual basis during calendar years 2015 and 2016. The tonnage would be released in allotments on a calendar year basis for use by the licensee. The first-year tonnage authorization would be established at the time the license is issued and initially be available for use by the licensee on January 1, 2015. The second-year tonnage authorization would then be established by the COO and released to the licensee by January 1, 2016. The COO would establish the 2016 tonnage authorization and allocate the annual reserve tonnage based on the methodology described in this report.

The tonnage available for allocation will continue to be based on Metro's preliminary tonnage forecast completed in October of the preceding year. This is the same forecast that is used in the five-year financial outlook prepared for Council; and used to inform the budget and solid waste rates. If the Metro Council allocates the full 9.5 percent as proposed, then, based on the current Code requirement to consider the impact of Metro's contractual obligations when granting NSLs, staff would recommend that the Council not allow tonnage limit increases under these licenses, except as described in this report. Furthermore, should Metro receive new applications for these types of NSLs during either 2015 or 2016, staff would recommend that such NSLs be denied.

In the proposed NSLs, on January 1, 2015, each licensee will receive 85 percent of its portion of the total first-year tonnage allocation as an initial tonnage authorization for 2015. The remaining 15 percent for 2015 would then be held in reserve for the COO to release, as available, by no later than November 3, 2015. In December 2015, the COO would then continue the same allocation process and establish a new second-year tonnage authorization (for 2016) for each licensee without the need to seek further Council action.

#### (4) Tonnage Allocation Methodology

The tonnage allocations are based on Metro's preliminary forecast of future waste that is subject to the flow guarantee under its disposal contract with Waste Management, and the share of such waste that each licensee controlled in the most recent 12-month period. The details of the 2015 allocation are described below and are based on the amount of waste each licensee controlled during the period of September 2013 through August 2014. The COO will later determine and release the 2016 allocations using the same methodology described below based on the tonnage information that Metro receives during that corresponding 12-month period.

- *Total Tonnage.* Metro forecasts that 792,964 tons will be subject to the flow guarantee in calendar year 2015. These numbers are derived from Metro's latest econometric forecasting model of the solid waste system. This model is used for all of Metro's major decisions involving solid waste tonnage including planning, budgeting, rate setting and revenue projections. The allocation numbers are based on the projections completed in October 2014 for the five-year budget planning outlook for all of Metro.
- *Reservation Tonnage.* Metro reserves a portion of the total tonnage to meet its contractual obligations under the disposal contract. For these allocations, Metro reserved 90.5 percent, which is comprised of the 90 percent flow guarantee plus a management allowance of 0.5 percent for the tonnage that would flow during an approximate 2.5 week cycle should the redirection of the waste have to be implemented. The approximate 2.5 weeks is comprised of a 2-week reporting lag, plus about four days for notification and redirection logistics.

- *Allocable Tonnage.* 75,332 tons comprise the 9.5 percent of the total tonnage (792,964 tons) that are not reserved and therefore forecasted to be available for allocation among the applicants in calendar year 2015.
- *Licensee's Portion.* Each licensee is allocated a share of the 75,332 tons in the same proportion as the tonnage subject to the flow guarantee that the licensee controlled (as measured by actual deliveries to all solid waste facilities) during the most recent 12-month period, September 2013 through August 2014. Table 2 illustrates the amount of solid waste that each licensee delivered to solid waste facilities during the above referenced period.

**Table 2: Amount of Solid Waste that the Licensees Delivered to Solid Waste Facilities (September 2013 through August 2014)**

| Licensee                                | Tons           | Percent <sup>3</sup> |
|---|----------------|----------------------|
| Arrow Sanitary Service, Inc.            | 48,276         | 40.7                 |
| Crown Point Refuse, Inc.                | 283            | 0.2                  |
| Willamette Resources, Inc. <sup>4</sup> | 70,000         | 59.0                 |
| <b>TOTAL</b>                            | <b>118,559</b> | <b>100</b>           |

Table 3 illustrates the proposed 2015 authorizations for each licensee based upon its share of the allocable tonnage. For Arrow, the share was 40.7 percent, leading to the initial recommended license authorization of up to 26,073 tons in 2015.

**Table 3: Proposed 2015 Allocations by NSL Applicant**

| Licensee   | Initial Tonnage Authorization for 2015 (85%) | Tonnage Reserve for 2015 (15%) | Total Tonnage Allocation for 2015 |
|--|--|--------------------------------|-----------------------------------|
| Arrow Sanitary Service, Inc.<br>Res. No. 14-4563 | 26,073                                       | 4,601                          | 30,674                            |
| Crown Point Refuse, Inc.<br>Res. No. 14-4565     | 153  | 27                             | 180                               |
| Willamette Resources, Inc.<br>Res. No. 14-4564   | 37,806                                       | 6,672                          | 44,478                            |
| <b>TOTAL</b>                                     | <b>64,032</b>                                | <b>11,300</b>                  | <b>75,332</b>                     |

## **B. The Applicant**

Waste Connections currently holds two NSLs for separate hauling operations (American Sanitary Service, Inc. and Arrow). Waste Connections has since consolidated its hauling operations under Arrow and it now seeks

<sup>3</sup> Rounded to the nearest tenth

<sup>4</sup> Metro Solid Waste Facility Franchise No. F-005-08C authorizes WRI to accept up to 70,000 tons of putrescible waste generated inside the Metro region per calendar year. The franchise tonnage cap (70,000 tons) is the maximum delivery amount that is used to determine the facility's allocation percentage.

to renew a single NSL with the combined tonnage from both of the current licenses. Arrow is a solid waste hauler that is franchised to collect solid waste within the cities of Portland, Gresham, and unincorporated Clackamas County. The applicant has been a holder of NSLs since 2000.

Waste Connections' current NSLs commenced on January 1, 2013 and are set to expire on December 31, 2014. The combined second-year (2014) tonnage limitation that Metro initially established for those NSLs (25,528 tons<sup>5</sup>) was based on Metro's forecast, issued October 2013, of the waste that was subject to Metro's disposal contract with Waste Management. However, based on tonnage information through August 2014, the COO subsequently amended both of Waste Connections' NSLs to release an additional 4,504 tons,<sup>6</sup> resulting in a combined total adjusted second-year tonnage authorization of 30,033 tons<sup>7</sup> for 2014. (Table 1 illustrates the initial and adjusted tonnage authorizations for both American Sanitary Service and Arrow in 2013 and 2014.)

On July 31, 2014, Arrow submitted an NSL application requesting that Metro renew its NSL in 2015. Under the proposed NSL, Arrow would receive an initial tonnage authorization of 26,073 tons for use in 2015. The COO will subsequently release reserved tonnage and establish the licensee's second year tonnage for 2016 as explained in this report.

### **C. Special Provisions of the NSL for Managing Risk**

The proposed license includes three conditions that are intended to further minimize Metro's risk of noncompliance with its disposal contract by providing Metro with additional controls for monitoring and managing the flow guarantee against fluctuating waste tonnage in the system. The three conditions, explained below, were carried forward from the existing license and are included in all of the proposed NSLs for all licensees identified in Section 1A(1) of this report. These conditions are unique to the NSLs that control the 10 percent of putrescible waste that is not committed under Metro's disposal contract.

#### **(1) NSL Special Condition 1: Calendar Year Tonnage Authorization**

The proposed NSL establishes an initial first-year tonnage authorization for 2015 and authorizes the COO to establish a second-year tonnage authorization for 2016 using the same allocation method described in this report. In addition, the license authorizes the COO to release additional "reserved" tonnage to the licensee if available during the term of the license.

Section 2 of the proposed NSL authorizes Arrow to initially deliver up to 26,073 tons of putrescible waste to West Van and Central Transfer during calendar year 2015. Effective January 1, 2015, this tonnage limit is immediately available for use throughout the first year of the license. The license also stipulates that, by no later than November 3, 2015, the COO may release reserved tonnage and increase the licensee's limit by up to an additional 15 percent (4,601 tons) in 2015 as available. If the COO were to release the full forecasted reserve amount provided under this proposed license, then Arrow's annual tonnage limit would be increased up to a total of 30,674 tons in 2015.

Additionally, Section 2 stipulates that, by no later than December 31, 2015, the COO may amend the proposed NSL to establish an initial tonnage limit for calendar year 2016. This second-year tonnage limit would become effective January 1, 2016, and be available for use throughout 2016. Then, by no later than

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<sup>5</sup> American received an initial tonnage authorization of 2,514 tons and Arrow received 23,014 tons in 2014.

<sup>6</sup> American received an additional 444 tons and Arrow received an additional 4,061 tons in the 2014 reserve release.

<sup>7</sup> American received a final tonnage authorization of 2,985 tons and Arrow received a final authorization of 27,075 in 2014.

November 3, 2016, the COO may again release reserved tonnage and increase the licensee's 2016 limit by up to an additional 15 percent as described above.

This condition allows the COO to adjust the annual tonnage authorization as necessary to meet Metro's contractual obligations and allows the maximum use of the licensee's available tonnage. By adopting this resolution, the Metro Council authorizes the COO to establish an annual tonnage authorization for 2016 and release reserve tonnage in 2015 and 2016 as described above.

(2) NSL Special Condition 2: Redirection of Waste Flow

In the event of a decline in system-wide putrescible waste, the proposed NSL authorizes the COO to immediately redirect the licensee's waste to Metro Central or South Transfer Stations if necessary to prevent a violation of the disposal contract flow guarantee.

Section 7 of the proposed NSL stipulates that the COO may redirect the licensee's waste flow with a minimum of 24 hours written notice. By adopting this resolution, the Metro Council authorizes the COO to redirect the licensee's waste, as described above, if necessary to comply with the disposal contract flow guarantee.

(3) NSL Special Condition 3: Weekly and Daily Reporting Requirement

The proposed NSL allows the COO to require the licensee to report tonnage information to Metro on a weekly or daily basis if necessary (NSLs generally specify that required information must be transmitted to Metro on a monthly basis).

Section 6 of the proposed NSL stipulates that the COO may determine when more frequent reporting is necessary. By adopting this resolution, the Metro Council authorizes the COO to immediately implement more frequent reporting requirements as needed to ensure compliance with the disposal contract.

**D. Special Provision of the NSL Unique to Arrow**

As provided in American Sanitary Service's current license, the proposed NSL also carries forward a condition that allows the licensee to perform a semi-annual collection route audit to implement reporting adjustments (NSLs generally include scale-based reporting requirements for all transactions). The applicant has hauling accounts that lie outside the Metro region. In order to route its trucks efficiently, Arrow's trucks must cross the Metro jurisdictional boundary and co-mingle Metro area waste with out-of-Metro waste. In order to determine the appropriate fees and taxes owed to Metro, Arrow and Metro have mutually agreed to a procedure whereby Arrow performs a semi-annual review of its collection routes to determine which accounts are located within the Metro region.

Section 6 of the proposed NSL stipulates that the licensee must perform an audit of its collection routes at least twice during each calendar year and implement all necessary tonnage adjustments for reporting and the remittance of fees and taxes. Staff finds this to be a reasonable and verifiable procedure for the small amount of waste that the applicant collects from outside of the Metro region.

**2. ANALYSIS/INFORMATION**

**A. Known Opposition**

There is no known opposition to the proposed license renewal.

## **B. Legal Antecedents**

Metro Code Section 5.05.025 prohibits any person from utilizing non-system facilities without an appropriate license from Metro. Additionally, Metro Code Section 5.05.043 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;*

The applicant (Arrow), transfer facilities (West Van and Central Transfer), and disposal site (Finley Buttes Landfill) are well known to Metro regulatory staff. All of the above are owned and operated by a major, nationally integrated solid waste company. The environmental risks from the use of these non-system facilities are minimal as both the transfer stations and landfill are fully authorized and regulated 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 Waste Connections revealed a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

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

West Van and Central Transfer use operational practices and management controls that are typical of transfer stations and that Metro considers adequate for the protection of health and the environment. In addition, the Finley Buttes Landfill uses operational practices and management controls that are typical of other RCRA Subtitle D<sup>8</sup> landfills. Staff at DEQ, the landfill's regulator, consider the operational practices and management controls in place at the landfill to be appropriate for the protection of health and the environment.

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

The proposed license covers putrescible solid waste, which currently has limited recovery potential. The license puts no long-term constraint or commitment on the waste should recovery alternatives emerge for the region. Thus, approval of the proposed license renewal is not expected to impact the region's recycling and waste reduction efforts.

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

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver a minimum of 90 percent of the region's putrescible waste, which is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. This proposed NSL controls a portion of the 10 percent of

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<sup>8</sup> Subtitle D landfill standards are established nationally under the Resource Conservation and Recovery Act.

uncommitted waste not guaranteed to Waste Management under the disposal contract. This proposed NSL renewal is one of three similar licenses that will expire at the end of 2014. Provisions in the NSL allow Metro to monitor compliance with its disposal contract, as was covered in Section 1A of this report.

- (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;*

Arrow is currently in compliance with its Metro-issued NSL and has not had any significant compliance issues with regard to Metro regulations within the last two years. Additionally, Arrow has had no violations related to public health, safety or environmental regulations during the term of the existing license.

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

This criterion was examined above in Sections 1A and 1C of this report.

### **C. Anticipated/Potential Effects**

This proposed NSL is one of many action items currently under consideration by Metro which is affected by potential declines in the amount of solid waste subject to the flow guarantee. Some decisions could have the effect of shrinking the pool of waste available for allocation. The forecast of waste subject to the flow guarantee, which is the basis for the NSL tonnage authorizations in 2015, incorporates the best available information as of this writing.

### **D. Budget/Rate Impacts**

The price that Metro pays for disposal at Columbia Ridge Landfill is a “declining block rate” — meaning that the more waste that is delivered to any landfill owned by Waste Management (i.e., Columbia Ridge Landfill and Riverbend Landfill), the lower the per-ton cost paid by Metro. Based on projected tonnage and contract prices, allocating the uncommitted 75,332 tons (as proposed for 2015) to non-Waste Management landfills increases the tip fee at Metro’s transfer stations by \$1.15 per ton. At current throughput of approximately 430,000 tons per year, Metro customers will pay approximately \$538,000 more for disposal in FY 2014-15 than if all of the uncommitted waste were to flow to Waste Management landfills (with a similar financial impact expected in FY 2015-16). This is a conservative estimate, as it is based on the assumption that none of these tons would have been handled directly through Metro transfer stations. Had that been the case there would be additional fiscal impacts from loss of transaction revenue and higher per-ton revenue required to cover fixed costs. The practice of issuing these types of NSLs and absorbing these fiscal impacts has been occurring under the Council’s direction for the past 14 years.

The Metro Regional System Fee and Excise Tax will continue to be collected on all waste delivered under authority of the proposed NSL. As previously mentioned in this report, the application under consideration renews and consolidates two current authorizations<sup>9</sup> into a single license with a combined tonnage amount. Therefore, the financial impact has already been factored into the budget.

## **3. RECOMMENDED ACTION**

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<sup>9</sup> Solid Waste Facility License Nos. N-020-13C (American Sanitary) and N-029-13C (Arrow)

Based on the information provided above and the analysis provided in this report, the COO recommends that the Metro Council adopt Resolution No. 14-4563. Approval of this resolution will authorize the COO to issue an NSL to Arrow subject to the requirements listed in Metro Code Chapter 5.05; and further subject to special conditions which are incorporated into the proposed NSL attached as Exhibit A to the proposed resolution.

WJ:bjl  
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