

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING) RESOLUTION NO. 18-4921
OFFICER TO AMEND THE NON-SYSTEM LICENSE TO WASTE)
MANAGEMENT OF OREGON, INC FOR TRANSPORT AND) Introduced by Chief Operating Officer
DISPOSAL OF PUTRESCIBLE WASTE FROM THE TROUTDALE) Martha Bennett in concurrence with
TRANSFER STATION TO THE COLUMBIA RIDGE LANDFILL) Council President Tom Hughes
LOCATED IN GILLIAM COUNTY, OREGON, AND COFFIN BUTTE)
LANDFILL LOCATED IN BENTON COUNTY, OREGON)
)

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, Waste Management of Oregon, Inc. (WMO), doing business as Troutdale Transfer Station, holds Metro Solid Waste Facility Non-System License No. N-001-17A, which expires on December 31, 2018; and

WHEREAS, WMO's current non-system license authorizes the transport and disposal of putrescible waste generated from within the Metro boundary at Columbia Ridge Landfill and, under certain unusual circumstances, Riverbend Landfill; and

WHEREAS, references to Riverbend Landfill should be removed from the non-system license because it is not accepting waste from the Metro region for the term of this non-system license; and

WHEREAS, Coffin Butte Landfill should be added to the non-system license to provide an alternative disposal site option for the licensee in the event that it is unable to use Columbia Ridge Landfill for disposal; and

WHEREAS, Metro Code Chapter 5.05 provides that the Chief Operating Officer will review an amendment for a non-system license for putrescible waste and that Metro Council has authority to approve or deny the amendment; and

WHEREAS, the Chief Operating Officer recommends that Metro Council approve amendment of the non-system license to extend the term through December 31, 2019, remove the use of Riverbend Landfill as a disposal site option, add Coffin Butte Landfill as a disposal site option, and otherwise carry forward specific conditions as provided in this Resolution and Exhibit A; now therefore,


BE IT RESOLVED that (1) the amendment of WMO's non-system license is approved subject to the terms, conditions, and limitations contained in this Resolution and Exhibit A, and (2) the Chief Operating Officer is authorized to issue an amended Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A which replaces and supersedes the current non-system license for WMO.

ADOPTED by the Metro Council this 15th day of November 2018.



Tom Hughes, Council President

Approved as to Form:



Nathan A. S. Sykes, Acting Metro Attorney



600 NE Grand Ave.
Portland, OR 97232-2736
oregonmetro.gov

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

No. N-001-17B

LICENSEE:
Waste Management of Oregon, Inc. dba Troutdale Transfer Station 869 NW Eastwind Drive Troutdale, OR 97060
CONTACT PERSON:
Nicholas Godfrey Phone: (971) 261-4008 E-mail: NGodfrey@wm.com
MAILING ADDRESS:
Troutdale Transfer Station 869 NW Eastwind Drive Troutdale, OR 97060

This non-system license replaces and supersedes the provisions of Metro Solid Waste Facility Non-System License No. N-001-17A.

ISSUED BY METRO:

Martha Bennett,
Chief Operating Officer

Date

1	NATURE OF WASTE COVERED BY LICENSE
	Putrescible solid waste that is generated within the Metro boundary and received at Troutdale Transfer Station in accordance with its Metro solid waste facility franchise.

2	CALENDAR YEAR TONNAGE ALLOCATION
	<ol style="list-style-type: none">1. The licensee is authorized to transport the waste described in Section 1 to the non-system facilities described in Section 3 as follows:<ol style="list-style-type: none">(a) For calendar year 2018, beginning January 1 and ending December 31, 2018, the licensee is authorized to transport up to 79,880 tons; and(b) For calendar year 2019, beginning January 1 and ending December 31, 2019, the licensee is authorized to transport up to 79,880 tons.2. This license does not increase the total tonnage that the licensee is authorized to accept under its Metro solid waste facility franchise.

3	NON-SYSTEM FACILITIES
	<ol style="list-style-type: none">(a) The licensee is authorized to transport the waste described above in Section 1 to the following non-system facilities:<ol style="list-style-type: none">i. <u>Columbia Ridge Landfill</u> located at 18177 Cedar Springs Lane in Arlington, Oregon; andii. <u>Coffin Butte Landfill</u> located at 28972 Coffin Butte Road in Corvallis, Oregon.(b) 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 Metro receives notice from the Oregon Department of Environmental Quality that these non-system facilities are not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7.(c) Metro's Chief Operating Officer (the "COO") may amend this section and any other applicable section to authorize an alternate non-system facility if the COO determines that the solid waste system or the public will benefit from, and will be better served by, transporting the waste described in this license to a facility other than those listed in this section.

4	TERM OF LICENSE
	The term of this license originally commenced on January 1, 2017 and expires on December 31, 2019, unless terminated sooner under Section 7.
5	REPORTING OF ACCIDENTS AND CITATIONS
	The licensee must report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.
6	RECORD KEEPING AND REPORTING
	<p>(a) The licensee must keep and maintain accurate records of the amount of all waste that the licensee transports to the non-system facilities described in Section 3. These records include the information specified in the Metro document titled, <u>Reporting Requirements and Data Standards for Metro Solid Waste Licensees, Franchisees, and Parties to Designated Facility Agreements</u>.</p> <p>(b) The licensee must perform the following no later than fifteen days following the end of each month:</p> <ul style="list-style-type: none">i. Transmit to Metro the records required under Section 6(a) above in an electronic format prescribed by Metro;ii. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; andiii. Remit to Metro the requisite Regional System Fees and Excise Taxes in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes. <p>(c) The licensee must make available to Metro (or Metro's designated agent) all records from which Sections 6(a) and 6(b) above are derived for its inspection or copying, as long as Metro provides at least three business days written notice of an intent to inspect or copy documents. The licensee must, 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.</p>

7	ADDITIONAL LICENSE CONDITIONS
	<p>This license is subject to the following conditions:</p> <ul style="list-style-type: none">(a) The permissive transport of solid waste to the non-system facilities, listed in Section 3, authorized by this license is subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.(b) The COO may amend or terminate this license in the event that the COO determines that:<ul style="list-style-type: none">i. There has been sufficient change in any circumstances under which Metro issued 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, Inc.;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 be transported to, and disposed of at, a facility other than the facilities listed in Section 3; oriv. There has been a change in the amount of tonnage that the licensee is authorized to accept under its Metro solid waste facility franchise. In the event that Metro amends the tonnage authorization provided in the facility's franchise, the COO may amend Section 2 of this license to match the same calendar year tonnage authorization in the franchise.(c) This license, in addition to subsections (b)(i) through (b)(iv), above, is subject to amendment, suspension, or termination pursuant to the Metro Code.(d) The licensee must not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.(e) This license will terminate upon the execution of a designated facility agreement with any of the facilities listed in Section 3 that authorizes the acceptance of the waste described in Section 1.(f) This license authorizes the transport of solid waste to the facilities listed in Section 3. Transport of waste generated from within the Metro boundary to any non-system facility other than those specified in this license is prohibited unless authorized in writing by Metro.(g) If the licensee exceeds the calendar year authorization set forth in Section 2, each ton or portion thereof by which the licensee exceeds the limitation constitutes a separate violation subject to a penalty of up to \$500.

8	COMPLIANCE WITH LAW
	<p>The licensee must 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 rules 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 is deemed part of this license as if specifically set forth herein.</p>

9	INDEMNIFICATION
	<p>The licensee must 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. 18-4921 AUTHORIZING THE CHIEF OPERATING OFFICER TO AMEND THE NON-SYSTEM LICENSE TO WASTE MANAGEMENT OF OREGON, INC FOR TRANSPORT AND DISPOSAL OF PUTRESCIBLE WASTE FROM THE TROUTDALE TRANSFER STATION TO THE COLUMBIA RIDGE LANDFILL LOCATED IN GILLIAM COUNTY, OREGON, AND COFFIN BUTTE LANDFILL LOCATED IN BENTON COUNTY, OREGON

October 31, 2018

Prepared by: Warren Johnson
(503) 797-1836

If the Metro Council approves Resolution No. 18-4921, it will authorize the Chief Operating Officer (COO) to amend the current non-system license (NSL) to Waste Management of Oregon, Inc. for Troutdale Transfer Station to (1) extend the term of the license by one year to expire on December 31, 2019, (2) remove the use of Riverbend Landfill (Riverbend) as a disposal site option, and (3) add Coffin Butte Landfill (Coffin Butte) located in Benton County, Oregon, as a disposal site option. The amended license carries forward all of the current license conditions and continues to authorize Troutdale Transfer Station to transport putrescible waste from the Metro region to the Columbia Ridge Landfill (Columbia Ridge) located in Gilliam County, Oregon.

Troutdale Transfer Station is a Metro-franchised solid waste transfer station located at 869 NW Eastwind Drive, in Troutdale (Metro Council District 1).¹ Troutdale Transfer Station, Columbia Ridge, and Riverbend are all owned and operated by Waste Management of Oregon, Inc. which is headquartered in Houston, Texas. Coffin Butte is owned and operated by Republic Services headquartered in Phoenix, Arizona.

BACKGROUND

In December 2016, the Metro Council approved an NSL that authorized Troutdale Transfer Station to transport putrescible waste to Columbia Ridge and, under certain unusual circumstances, Riverbend.² The term began on January 1, 2017, and is set to expire on December 31, 2018. Since the time that the NSL was issued, Riverbend stopped accepting putrescible waste from the Metro region due to limited disposal capacity and legal uncertainty regarding its future expansion.

At the end of January 2017, Waste Management notified Metro that it had entered into a “waste swap” agreement with Republic Services. As a result, Waste Management sought Metro’s approval to allow its current Riverbend customers to transport Metro area waste to Coffin Butte (owned by Republic Services) instead of Riverbend during the term of its waste swap agreement. The Metro Council subsequently amended a group of NSLs that authorized the use of Riverbend to remove it as a disposal site option and replace it with Coffin Butte. Troutdale Transfer Station’s NSL was not amended under that action because its NSL authorizes the use of Columbia Ridge as the primary disposal site. The current NSL authorizes the licensee to use Riverbend only under certain unusual circumstances that would otherwise prevent the use of Columbia Ridge.

Troutdale Transfer Station’s NSL also authorizes the COO to periodically adjust the license tonnage authorization if necessary to align it with its franchise tonnage allocation. The current NSL authorizes

¹ Metro Solid Waste Facility Franchise No. F-001-08H.

² Metro Resolution No. 16-4728

Troutdale Transfer Station to transport up to 79,880 tons per calendar year of Metro-area putrescible waste to either Columbia Ridge or Riverbend for disposal.

If the Metro Council approves Resolution No. 18-4921 it will authorize Troutdale Transfer Station to continue to transport waste to Columbia Ridge and authorize the use of Coffin Butte as an alternative disposal site option (instead of Riverbend).

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to issuing an NSL authorizing the transport and disposal of Metro-area waste at Columbia Ridge or Coffin Butte. Metro and Benton County staff have discussed the waste shifts from Riverbend to Coffin Butte. The County has not raised any objections to Metro area waste being disposed at Coffin Butte through 2019.

Although approval of Resolution No. 18-4921 would extend Troutdale Transfer Station's authorization to transport waste to Columbia Ridge and authorize the use of Coffin Butte, the proposed NSL does not obligate either landfill to accept Metro-area waste. Additionally, the proposed resolution does not limit Metro's ability to terminate the NSL if either landfill is unable or unwilling to accept this waste in the future.

2. Legal Antecedents

Metro Code Section 5.05.040 prohibits any person from utilizing non-system facilities without an appropriate license from Metro. Additionally, Metro Code Section 5.05.140 provides that, when determining whether or not to approve an NSL, the Metro Council will consider the following factors to the extent relevant.

- (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 disposal sites (Columbia Ridge and Coffin Butte) are well known to Metro. The disposal sites are owned and operated by major, nationally-integrated solid waste companies. Both landfills are permitted Subtitle D landfills under the Resource Conservation and Recovery Act (RCRA), which establishes national landfill standards.

The environmental risk associated with the use of these disposal sites is regulated by the appropriate local and state authorities. It has been Metro's practice to rely on the local land use authority and the state environmental agency to determine whether environmental or human health risks posed are known, reasonable and appropriate.

- (2) *The non-system facility owner's and operator's regulatory compliance record with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;*

Waste Management owns and operates Columbia Ridge and Republic Services owns and operates Coffin Butte. Metro staff's investigation of both Waste Management and Republic Services has revealed a good

record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

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

Columbia Ridge and Coffin Butte use operational practices and management controls that are typical of RCRA Subtitle D landfills. DEQ staff considers the operational practices and controls in place at these landfills appropriate for the proper management of waste disposal and adequate to protect health and the environment.

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

The proposed license authorizes the transport and disposal of putrescible solid waste, which currently has limited recovery potential. The license puts no long-term constraint on the waste if 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 proposed non-system license's effect with Metro's existing contractual arrangements;*

Metro and Waste Management are parties to a disposal contract through the end of 2019 that requires Metro to deliver 87 percent of the region's putrescible waste, that is delivered to a general purpose landfill during the calendar year, to a landfill owned by Waste Management (the "flow guarantee").³ Metro and Waste Management have agreed that the waste transported to Coffin Butte under this NSL would count toward the flow guarantee and be used in the calculation for determining Metro's disposal rate. The proposed NSL covers putrescible waste that will be transported to either Columbia Ridge (which is owned and operated by Waste Management) or Coffin Butte. Thus, approval of this NSL will not conflict with Metro's disposal contract or any other of its existing contractual arrangements.

- (6) *The applicant's record 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*

Troutdale Transfer Station is currently in compliance with its Metro-issued franchise and NSL. Troutdale Transfer Station has not had any compliance issues with regard to Metro requirements or other regulations related to public health, safety, or the environment during the term of the current license.

- (7) *Any other factor the Chief Operating Officer considers appropriate.*

The COO finds that it is in the public's interest to extend the term of the current NSL by one year in order to align it with the term of Metro's disposal contract which expires on December 31, 2019. It is also in the public's interest to remove Riverbend as a disposal site option under the license and replace it with Coffin Butte because Riverbend is no longer accepting Metro area waste due to its capacity issues. With the exception of the above-mentioned amendments, the proposed license carries forward all of the other current conditions.

³ Change Order No. 11 to Metro Contract No. 900607, October 1, 2018.

3. Anticipated Effects

Approval of Resolution No. 18-4921 will authorize the COO to issue an amended NSL to Troutdale Transfer Station to extend the term of the license by one year to expire on December 31, 2019. The proposed NSL would authorize Troutdale Transfer Station to transport up to 79,880 tons per calendar year of putrescible waste (or as otherwise authorized by the COO to align it with Troutdale Transfer Station's franchise tonnage allocation) to either Columbia Ridge or Coffin Butte for disposal.

4. Budget Impacts

As previously explained in this staff report, the waste that the licensee transports to either Columbia Ridge or Coffin Butte under this NSL will be considered as though it was delivered to a Waste Management-owned landfill for purposes of Metro's disposal contract. Therefore, the proposed one-year extension of the NSL term will not impact Metro's obligations under its disposal contract. In addition, the waste authorized under the proposed NSL will continue to be subject to Metro's regional system fee and excise tax.

RECOMMENDED ACTION

The COO recommends that the Metro Council approve Resolution No. 18-4921, finding that the proposed one-year term extension of the NSL is in the public's interest and satisfies the requirements of Metro Code Chapter 5.05. Approval of Resolution No. 18-4921 will authorize the COO to issue an amended NSL to Troutdale Transfer Station as attached to the resolution as Exhibit A.

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