

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF TRANSFERRING THE ) ORDINANCE NO. 99-801  
SOLID WASTE FRANCHISE FOR OPERATION )  
OF THE CITISTICS RELOAD/MATERIALS ) Introduced by Mike Burton,  
RECOVERY FACILITY FROM CITISTICS, INC. ) Executive Officer  
TO USA WASTE OF OREGON, INC. )

WHEREAS, Section 5.01.030 of the Metro Code requires a Metro franchise for any person to own and operate a solid waste processing facility, transfer station, or resource recovery facility; and

WHEREAS, Citistics, Inc. was granted a franchise by the Metro Council in August 1998; and

WHEREAS, USA Waste of Oregon, Inc. ("USAO") is acquiring the Citistics solid waste facility from Citistics, Inc.; and

WHEREAS, Citistics and USAO have jointly requested transfer of the Citistics franchise from Citistics, Inc. to USAO; and

WHEREAS, the provisions of Metro Code Section 5.01.400 require an application for transfer of this franchise to be considered under the provisions of former Metro Code Section 5.01.090; and

WHEREAS, former Metro Code Section 5.01.090 allows for the transfer of a franchise if an application has been filed in accordance with former Metro Code Section 5.01.060; and

WHEREAS, USA Waste of Oregon, Inc. has duly filed an application in accordance with former Metro Code Section 5.01.060; and

WHEREAS, the applicant has met all the requirements set forth in former Metro Code Section 5.01.060; and

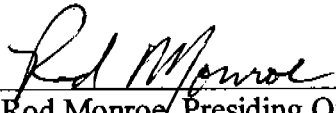
WHEREAS, former Metro Code Section 5.01.090 specifies that the Council shall not unreasonably deny an application for transfer of a franchise; and

WHEREAS, any franchise granted shall be governed by the provisions of Metro Code Chapter 5.01 as amended by Ordinance 98-762C; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The transfer of the franchise from Citistics, Inc. to USA Waste of Oregon, Inc. is approved.
2. Upon acquisition of the Citistics facility, USA Waste of Oregon, Inc. shall be granted a Solid Waste Franchise in a form substantially similar to the attached "Exhibit A."

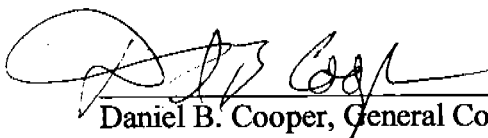
ADOPTED by the Metro Council this 6<sup>th</sup> day of May 1999.

  
Rod Monroe, Presiding Officer

ATTEST:

Approved as to Form:

  
Recording Secretary

  
Daniel B. Cooper, General Counsel

**SOLID WASTE FRANCHISE**

issued by

**METRO**

600 NE Grand Avenue

Portland, Oregon 97232-2736

(503) 797-1700

FRANCHISE NUMBER: \_\_\_\_\_  
DATE ISSUED: \_\_\_\_\_  
AMENDMENT DATE: \_\_\_\_\_ N/A \_\_\_\_\_  
EXPIRATION DATE: \_\_\_\_\_  
ISSUED TO: \_\_\_\_\_ USA WASTE OF OREGON, INC. \_\_\_\_\_  
NAME OF FACILITY: \_\_\_\_\_ TUALATIN VALLEY WASTE RECOVERY FACILITY \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ 5350 S.W. ALGER AVENUE \_\_\_\_\_  
CITY, STATE, ZIP: \_\_\_\_\_ BEAVERTON, OR 97005 \_\_\_\_\_  
LEGAL DESCRIPTION: \_\_\_\_\_ WASHINGTON COUNTY TAX LOT 400. \_\_\_\_\_  
\_\_\_\_\_ SECTION 15DB TOWNSHIP 1S RANGE 1W \_\_\_\_\_  
NAME OF OPERATOR: \_\_\_\_\_ USA WASTE OF OREGON, INC. \_\_\_\_\_  
PERSON IN CHARGE: \_\_\_\_\_ JONATHAN ANGIN \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ 5350 SW ALGER AVENUE \_\_\_\_\_  
CITY, STATE, ZIP: \_\_\_\_\_ BEAVERTON, OR 97005 \_\_\_\_\_  
TELEPHONE NUMBER: \_\_\_\_\_ (503) 671-9048 \_\_\_\_\_

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## FRANCHISE AGREEMENT

This Franchise is issued by Metro, a metropolitan service district organized under ORS chapter 268 and the 1992 Metro Charter, referred to herein as "Metro," to USA Waste of Oregon Inc. referred to herein as "Franchisee."

In recognition of the promises made by Franchisee as specified herein, Metro issues this Franchise, subject to the following terms and conditions:

### 1. DEFINITIONS

The definitions in Metro Code Section 5.01.010 shall apply to this Franchise, as well as the following definitions. Defined terms are capitalized when used. Where Metro Code, State or Federal law definitions are referenced herein, reference is to the definition as amended or replaced.

**"Authorized Waste" or "Authorized Wastes"** means those wastes defined as such in Section 5.1 and 5.2 of this Franchise.

**"Battery"** means a portable container of cells for supplying electricity. This term includes, but is not limited to, lead-acid car batteries, as well as dry cell batteries such as nickel cadmium, alkaline, and carbon zinc.

**"Business"** means a commercial enterprise or establishment licensed to do business in the state of Oregon.

**"Clean Fill"** means Inert material consisting of soil, rock, concrete, brick, building block, tile or asphalt paving, which do not contain contaminants which could adversely impact the waters of the State or public health. This term does not include Putrescible Wastes, Construction and Demolition Wastes or Industrial Solid Wastes.

**"Commercial Solid Waste" or "Commercial Waste"** means Solid Waste generated by stores, offices, including manufacturing and industry offices, restaurants, warehouses, schools, colleges, universities, hospitals, and other non-manufacturing entities, but does not include Solid Waste from manufacturing activities. Solid Waste from business, manufacturing or Processing activities in residential dwellings is also not included.

**"Commingled Recyclables"** means Source Separated recyclable materials that have not been sorted by the generator (or have been only partially sorted) into individual material categories (e.g., cardboard, newsprint, ferrous metal) according to their physical characteristics.

**“Conditionally Exempt Generator Waste”** has the meaning specified in 40 C.F.R. § 261.

**“Construction and Demolition Waste”** means Solid Waste resulting from the construction, repair, or demolition of buildings, roads and other structures, and debris from the clearing of land, but does not include clean fill when separated from other Construction and Demolition Wastes and used as fill materials or otherwise land disposed. Such waste typically consists of materials including concrete, bricks, bituminous concrete, asphalt paving, untreated or chemically treated wood, glass, masonry, roofing, siding, plaster; and soils, rock, stumps, boulders, brush and other similar material. This term does not include Industrial Solid Waste, Residential Solid Waste or Commercial Solid Waste.

**“Contaminated Soils”** means soils resulting from the clean-up of a spill that are not Hazardous Waste.

**“DEQ”** means the Oregon Department of Environmental Quality, which includes the Oregon Environmental Quality Commission.

**“Disposal Site”** has the meaning specified in ORS 459.005.

**“Dry, Non-Putrescible, Solid Waste”** means Commercial, Residential and Industrial Solid Waste, that does not contain food wastes or other Putrescible Wastes. Dry, Non-putrescible Solid Waste includes only waste that does not require disposal at a municipal solid waste landfill (also referred to as a “general purpose landfill”), as that term is defined by the Oregon Administrative Rules. This category of waste excludes Source Separated Recyclables.

**“Facility”** means the site where one or more activities that the Franchisee is authorized to conduct occur.

**“Friable Asbestos”** means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite and tremolite, but only to the extent that such materials, when dry and subjected to hand-pressure, can be crumbled, pulverized or reduced to powder.

**“General Purpose Landfill”** means any land disposal facility that is required by law, regulation, or permit to utilize a liner and leachate collection system equivalent to or more stringent than that required for municipal solid waste landfills under Subtitle D of the Resource Conservation and Recovery Act and is authorized by law to accept more than incidental quantities of Putrescible Waste.

**“Hazardous Waste”** has the meaning specified in ORS 466.005.

**“Household Hazardous Waste”** has the meaning specified in Metro Code Section 5.02.015(f).

**“Industrial Solid Waste” or “Industrial Waste” means:**

(1) Solid Waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under ORS chapters 465 and 466 or under Subtitle C of the Federal Resource Conservation and Recovery Act. Such waste may include, but is not limited to, the following wastes or wastes resulting from the following processes:

- (a) electric power generation;
- (b) fertilizer/agricultural chemicals;
- (c) food and related products and by-products;
- (d) inorganic chemicals;
- (e) iron and steel manufacturing;
- (f) leather and leather products;
- (g) nonferrous metals manufacturing/foundries;
- (h) organic chemicals;
- (i) plastics and resins manufacturing;
- (j) pulp and paper industry;
- (k) rubber and miscellaneous plastic products;
- (l) stone, glass, clay and concrete products;
- (m) textile manufacturing;
- (n) transportation equipment;
- (o) water treatment;
- (p) timber products manufacturing;

(2) This term does not include :

- (a) Putrescible Waste, or office or lunch room waste from manufacturing or industrial facilities;
- (b) Construction and Demolition Waste
- (c) Contaminated Soils

**“Inert”** means containing only constituents that are biologically and chemically inactive and that, when exposed to biodegradation and/or leaching, will not adversely impact the waters of the state or public health.

**“Infectious Medical Waste” or “Infectious Waste”** has the meaning specified in ORS 459.386(2).

**“Low Level Solid Waste Materials Recovery” or “Low Level Recovery”** means those Solid Waste Materials Recovery activities that are limited to manual sorting and low technology mechanical methods.

**“Metro Regional User Fee”** has the meaning specified in Metro Code Section 5.02.015(e).

**“Metro Transfer Station”** means the Metro South Station and the Metro Central Station.

**“Operating Procedures Plan”** means the description of the Facility activities and the procedures required as a submittal under Section 7.3.2 of this Franchise.

**“Prohibited Wastes”** has the meaning set forth in Section 5.3.1 of this Franchise.

**“Putrescible Waste”** means Solid Waste containing organic material that can be rapidly decomposed by microorganisms, and which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies.

**“Recoverable Material”** means material that still has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and that can be reused or recycled for the same or other purpose(s).

**“Recovered Material”** means Recoverable Material that has been separated from Solid Waste at the Facility.

**“Residential Solid Waste”** means the garbage, rubbish, trash, and other Solid Wastes generated by the normal activities of households, including but not limited to, food wastes, ashes, and bulky wastes, but does not include Construction and Demolition Waste. This definition applies to multifamily structures of any size.

**“Residue”** means Solid Waste, resulting from Solid Waste Materials Recovery, that is transported from a franchised Facility to a Metro Designated Facility.

**“Sludge”** means any solid or semi-Solid Waste and associated supernatant generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar characteristics and effects.

**“Solid Waste Materials Recovery”** means the activity of manually or mechanically separating materials from Solid Wastes for purposes of recycling or recovery.

**“Solid Waste Materials Recovery Facility”** means a facility franchised by Metro as a Processing and/or Resource Recovery Facility and authorized to receive specific categories of Solid Waste and to conduct one or more of the following activities: (1) Source-Separated Recyclables Processing, (2) Solid Waste Materials Recovery.

**“Solid Waste Reloading”** or **“Reloading”** means the primary activity of consolidating Solid Waste from collection vehicles into larger vehicles for transport to a Metro Designated Facility. All Solid Waste and Residue leaving the Facility must be delivered to a Metro Designated Facility or under the authority of a non-system license.

**“Source-Separate”** or **“Source Separating”** or **“Source Separation”** means



- (1) The setting aside of recyclable materials at their point of generation by the generator; or
- (2) That the person who last uses recyclable material separates the recyclable material from Solid Waste.

**“Source-Separated Recyclables”** means material that has been separated from solid waste at the source for the purpose of recycling, recovery, or reuse. This term includes recyclables that are Source-Separated by material type (*i.e.*, source-sorted) and recyclables that are mixed together in one container (*i.e.*, commingled).

**“Source-Separated Recyclables Processing”** means the activity of reloading, sorting or otherwise preparing Source-Separated Materials for transport to third parties for reuse or resale.

**“Special Waste”** has the meaning specified in Metro Code Section 5.02.015(s).

**“Unacceptable Waste Incident Tracking Form”** means the form attached to this Franchise as Attachment 1.

## **2. TERM AND APPLICABILITY OF FRANCHISE**

This Franchise is issued for a term of five years from the date of execution by the Executive Officer and following approval by the Metro Council. Renewal shall be granted in accordance with the terms of Metro Code 5.01.080(b) upon receipt of a completed renewal application.

## **3. LOCATION OF FACILITY**

The franchised Facility is located at 5350 SW Alger Ave., Beaverton, Oregon. Tax Lot 400, Section 15DB, Township 1S, Range 1W, Washington County.

## **4. OPERATOR AND OWNER OF FACILITY AND PROPERTY**

- 4.1 The owner of the Facility is USA Waste of Oregon, Inc. Franchisee shall submit to Metro any changes in ownership of the facility in excess of five percent of ownership, or any change in partnership, within 10 days of the change.
- 4.2 The owner of the property underlying the Facility is USA Waste of Oregon, Inc. Franchisee warrants that it has obtained the owner’s consent to operate the Facility as specified in the Franchise.

- 4.3 The operator of the Facility is USA Waste of Oregon Inc. Franchisee may contract with another person or entity to operate the Facility only upon 90 days prior written notice to Metro and the written approval of the Executive Officer.

## 5. AUTHORIZED AND PROHIBITED ACTIVITIES AND WASTES

- 5.1 Subject to the following conditions, Franchisee is authorized to operate and maintain a combined Transfer Station and Solid Waste Materials Recovery Facility, as limited in this section.
- 5.1.1 The Franchisee may accept only Authorized Wastes, and conduct only Authorized Activities on those wastes, at the Facility. Franchisee is prohibited from receiving, Processing or disposing of any Solid Waste not authorized in this Franchise.
- 5.1.2 Franchisee shall accept Solid Waste at the Facility only from Miller Sanitary Service, Inc. and vehicles operated by Tualatin Valley Waste Recovery Facility.
- 5.1.3 Franchisee may accept no more than 100 tons per day of all Solid Wastes authorized under Section 5.2.1 of this Franchise. There is no tonnage limit on the amount of Source Separated Recyclable materials (as authorized and further limited under Section 5.2.2 of this Franchise) that may be accepted at the Facility.
- 5.1.4 Franchisee may receive the designated amount of Solid Waste consistent with (1) applicable law, (2) the terms of this Franchise, and (3) any other applicable permits and licenses obtained from other governmental units or regulatory agencies.
- 5.1.5 The Executive Officer may authorize Franchisee to accept additional types of waste, and perform Authorized Activities on said waste, only upon written request from the Franchisee.
- 5.1.6 Except as specified below, all Solid Waste and Residue leaving the Facility must be delivered to a Metro Designated Facility:
- 5.1.6.1 All material requiring disposal at a General Purpose Landfill must be transported to a Metro transfer station.
- 5.1.6.2 Inert material and Clean Fill may be disposed at any Disposal Site authorized by DEQ to receive such material.

**5.2 Authorized Waste Types**

- 5.2.1 Franchisee is authorized to receive the following types of Solid Wastes:
  - 5.2.1.1 Dry, Non-Putrescible, Commercial and Industrial Solid Waste.
  - 5.2.1.2. Construction and Demolition Waste
  - 5.2.1.3. Residential Solid Waste and its Putrescible component.
- 5.2.2 Franchisee is authorized to receive Source-Separated Recyclable materials, excluding:
  - 5.2.2.1 Yard Debris.
  - 5.2.2.2 Used motor oil, unless said motor oil is collected as a Source-Separated material under a residential curbside collection program by hauler(s) licensed or permitted by a local governmental unit to collect residential waste and recyclables.

**5.3 Authorized Activities**

- 5.3.1 Franchisee is authorized to conduct the following activities at the Facility:
  - 5.3.1.1 Material Recovery from wastes authorized under Sections 5.2.1.1 and 5.2.1.2 of this Franchise, and in accordance with Section 7.3 of this Franchise.
  - 5.3.1.2 Low-level Material Recovery from wastes authorized under Sections 5.2.1.3 of this Franchise, and in accordance with Section 7.3 of this Franchise.
  - 5.3.1.3 Reloading of Solid Waste.
  - 5.3.1.4 Processing of Source-Separated Recyclable materials.

**5.4 Prohibited Wastes**

- 5.4.1 Franchisee shall not knowingly accept or retain any of the following types of Solid Waste, unless specifically authorized in Sections 5 or 7 of this Franchise.
  - 5.4.1.1 Materials contaminated with or containing Friable Asbestos;
  - 5.4.1.2 Batteries;
  - 5.4.1.3 Liquid waste;
  - 5.4.1.4 Oil, other than as specified in 5.2.2.2;
  - 5.4.1.5 Sludge;
  - 5.4.1.6 Vehicles;

- 5.4.1.7 Infectious Waste;
  - 5.4.1.8 Special Waste or any sub-stream of Special Waste;
  - 5.4.1.9 Hazardous Waste;
  - 5.4.1.10 Household Hazardous Waste and Hazardous Waste from Conditionally Exempt Generators;
- 5.4.2 Prohibited wastes received at the facility shall be managed in accordance with the Franchisee's DEQ Solid Waste Disposal Permit. Franchisee shall record receipt of Prohibited wastes on Metro's Unacceptable Waste Incident Tracking form (Attachment 1).

## 6. MINIMUM REPORTING REQUIREMENTS

- 6.1 Franchisee shall collect and transmit to Metro, according to the timetable in Section 6.2, accurate records of the following information:
- 6.1.1 Tons of solid waste received - monthly total
  - 6.1.2 Number of collection vehicles delivering - monthly total
  - 6.1.3 Outgoing tons of solid waste by destination for each disposal facility - monthly total.
  - 6.1.4 Receipt of any materials encompassed by Section 5.3.2 of this Franchise, utilizing Metro's Unacceptable Waste Incident Tracking Form (Attachment 1).
- 6.2 Records required under Section 6.1 shall be reported to Metro no later than fifteen (15) days following the end of each month, in a format approved by Metro. A cover letter shall accompany the data that certifies the accuracy of the data and is signed by an authorized representative of Franchisee.
- 6.3 The Franchisee shall participate in an annual review with Metro of the Facility's performance. Within one year after the Facility begins operations, and each year thereafter, Metro will contact Franchisee to schedule the annual review meeting. Metro will provide at least three business weeks advance notice of this meeting. At least one business week prior to this meeting, Franchisee shall submit to the Franchise Administrator a summary, in letter format, addressing the topics listed below. The review will include:
- 6.3.1 Receipt or release of Hazardous Waste or Infectious Waste at the Facility; nuisance complaints as recorded in the log required under Section 7.4.1.2.
  - 6.3.2 Any modifications under Section 18 of this Franchise.

- 6.3.3 Changes to site equipment, hours of operation and/or staffing, and any other significant changes in the Facility's operations that occurred during the previous year.
- 6.4 Franchisee shall retain on file for review by the Metro Regional Environmental Management Department copies of all correspondence, exhibits or documents submitted to the DEQ relating to the terms or conditions of the DEQ solid waste permit or this Franchise. In addition, Franchisee shall send to Metro, upon receipt, copies of any notice of non-compliance, citation, or enforcement order received from any local, state or federal entity with jurisdiction over the Facility.
- 6.5 Authorized representatives of Metro shall be permitted to inspect information from which all required reports are derived during normal working hours or at other reasonable times with 24-hour notice. Metro's right to inspect shall include the right to review, at an office of Franchisee located in the Portland metropolitan area, records, receipts, books, maps, plans, and other like materials of the Franchisee that are directly related to the Facility's operation.
- 6.6 Fees and charges shall be levied and collected on the basis of tons of waste received. Either a mechanical or automatic scale approved by the National Bureau of Standards and the State of Oregon may be used for weighing waste.
- 6.7 Where a fee or charge is levied and collected on an accounts receivable basis, pre-numbered tickets shall be used in numerical sequence. The numbers of the tickets shall be accounted for daily and any voided or canceled tickets shall be retained for three years. The Executive Officer may approve use of an equivalent accounting method.
- 6.8 Any periodic modification by Metro of the reporting forms themselves shall not constitute any modification of the terms of Section 6.1 of this Franchise, nor shall Metro include within the reporting forms a request for data not otherwise encompassed within Section 6.1.

## 7. OPERATIONAL REQUIREMENTS

### 7.1 General Requirements

- 7.1.1 The Franchisee shall provide an operating staff which is qualified to perform the functions required by this Franchise and to otherwise ensure compliance with the conditions of this Franchise.
- 7.1.2 A copy of this Franchise shall be displayed on the Facility's premises, and in a location where it can be readily referenced by Facility personnel.

## 7.2 General Operating and Service Requirements

- 7.2.1 If Franchisee contemplates or proposes to close the Facility permanently, Franchisee shall provide Metro with advance written notice of the proposed closure schedule and procedures.
- 7.2.2 If any significant occurrence, including but not limited to equipment malfunctions, or fire, results in a violation of any conditions of this Franchise or of the Metro Code, the Franchisee shall:
  - 7.2.2.1 Immediately act to correct the unauthorized condition or operation;
  - 7.2.2.2 Immediately notify Metro; and
  - 7.2.2.3 Prepare, and submit to Metro within 10 days, a report describing the Franchise or Metro Code violation.

## 7.3 Operating Procedures

- 7.3.1 Unless otherwise allowed by this Franchise, all Solid Waste Reloading and Low Level Recovery shall occur inside Facility buildings. Storage may occur outside, in an orderly manner, as specified in the Facility's Operating Procedures Plan.
- 7.3.2 Franchisee shall establish and follow an Operating Procedures Plan describing how Solid Waste Reloading and Low Level Recovery will be conducted at the Facility. These procedures shall demonstrate compliance with the Franchise, and shall be submitted to Metro in writing for review and approval prior to any waste being accepted at the Facility. Franchisee may from time to time, modify the Operating Procedures Plan. All proposed modifications to the Operating Procedures Plan shall be submitted to the Metro Regional Environmental Management Department for review and approval, prior to implementation. The Operating Procedures Plan shall include at least the following:
  - 7.3.2.1 Tualatin Valley Waste Recovery Facility shall notify Miller's Sanitary of its requirements that prohibited wastes not be placed in drop boxes or collection containers destined for the Facility and request Miller's Sanitary to notify its customers of said requirements;
  - 7.3.2.2 Methods of inspecting incoming loads for the presence of Prohibited, Hazardous (including Infectious Waste) or Unauthorized Waste;
  - 7.3.2.3 Methods for managing and transporting for disposal at an authorized Disposal Site each of the Prohibited Wastes listed in Section 5, if they are discovered at the Facility;
  - 7.3.2.4 Objective criteria and standards for accepting or rejecting loads.

- 7.3.2.5 Plans, procedures, and training designed to minimize and manage hazards to human health and the environment due to:
  - 7.3.2.5.1 Fires
  - 7.3.2.5.2 Explosions
  - 7.3.2.5.3 Release of hazardous substances
  - 7.3.2.5.4 Discovery of Unacceptable Waste
  - 7.3.2.5.5 Power outages
  - 7.3.2.5.6 Flooding
- 7.3.2.6 Methods describing how activities authorized under Section 5 of this Agreement will be conducted in a manner to ensure that Putrescible Wastes do not contaminate Recoverable and Recovered Materials.
- 7.3.2.7 Procedures for monitoring, investigating, recording, minimizing, and managing all odors of any derivation including malodorous loads received at the Facility.
- 7.3.2.8 Methods for addressing all other operating requirements of Section 7.
- 7.3.3 All Authorized Solid Wastes received at the Facility must, within a 24-hour period from receipt, be either (1) properly disposed or (2) appropriately stored.
- 7.3.4 Sorting and Low Level Recovery areas shall be cleaned on a regular basis, in compliance with the Operating Procedures Plan required under Section 7.3.2 of this Franchise.
- 7.3.5 All vehicles and devices transferring or transporting Solid Waste from the Facility shall be constructed, maintained, and operated to prevent leaking, spilling, or blowing of Solid Waste on-site or while in transit.
- 7.3.6 The Franchisee shall not mix any Source-Separated Recyclable materials brought to the Facility with any other Solid Wastes. Materials recovered at the Facility may be combined with Source-Separated Recyclable Materials for Processing and shipment to markets.
- 7.3.7 The Franchisee shall reuse or recycle all uncontaminated Source-Separated Recyclable Materials brought to the Facility.
- 7.3.8 Franchisee shall take reasonable steps to notify and remind drivers that all loaded trucks coming to or leaving the Facility must be covered or suitably cross-tied to prevent any material from blowing off the load during transit.

- 7.3.9 All recovered materials and Residue at the Facility must be stored in bales, drop boxes or otherwise suitably contained. Material storage areas must be maintained in an orderly manner and kept free of litter. Stored materials shall be removed at sufficient frequency to avoid creating nuisance conditions or safety hazards.
- 7.3.10 Public access to the Facility shall be controlled as necessary to prevent unauthorized entry and dumping.

#### 7.4 Nuisance Prevention and Response Requirements

- 7.4.1 Franchisee shall respond to all written complaints on environmental issues (including, but not limited to, blowing debris, fugitive dust or odors, noise, traffic, and vectors). If Franchise receives a complaint, Franchisee shall:
  - 7.4.1.1 Attempt to respond to that complaint within one business day, or sooner as circumstances may require, and retain documentation of unsuccessful attempts; and
  - 7.4.1.2 Log all such complaints by name, date, time and nature of complaint. Each log entry shall be retained for one year.
- 7.4.2 To control blowing or airborne debris, Franchisee shall:
  - 7.4.2.1 Keep all areas within the site free of litter and debris;
  - 7.4.2.2 Patrol S.W. Alger Avenue from S.W. 7th to S.W. 5th daily;
- 7.4.3 To control odor, dust and noise, the Franchisee shall install dust control and odor systems whenever excessive dust and odor occur, or at the direction of Metro. Alternative dust and odor control measures may be established by the Franchisee with Metro approval.
- 7.4.4 With respect to vector control, the Franchisee shall manage the Facility in a manner that is not conducive to infestation of rodents or insects. If rodent or insect activity becomes apparent, Franchisee shall initiate and implement supplemental vector control measures as specified in the Facility Operating Procedures Plan or as a modification to such procedures. Franchisee shall bear all the costs of these measures.

### 8. ANNUAL FRANCHISE FEES

Franchisee shall pay an annual franchise fee, as established under Metro Code Section 5.03.030. Metro reserves the right to change its franchise fees at any time, by action of the Metro Council, to reflect franchise system enforcement and oversight costs.



## 9. INSURANCE

- 9.1 Before the effective date of this Franchise, Franchisee shall purchase and maintain the following types of insurance, insuring Franchisee, its employees, and agents:
- 9.1.1 Broad form comprehensive general liability insurance covering personal injury, property damage, and personal injury with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
- 9.1.2 Automobile bodily injury and property damage liability insurance.
- 9.2 Insurance coverage shall be a minimum of \$500,000 per occurrence, \$100,000 per person, and \$50,000 property damage. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
- 9.3 Metro, its elected officials, departments, employees, and agents shall be named as Additional Insureds. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.
- 9.4 Franchisee and contractors of Franchisee, if any, and all employers working under this Franchise, are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Franchisee shall provide Metro with certification of Workers' Compensation insurance including employer's liability.

## 10. INDEMNIFICATION

Franchisee shall indemnify and hold METRO, its agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with Franchisee's performance under this Franchise, including patent infringement and any claims or disputes involving subcontractors or Subfranchisees.

## 11. SURETY BOND/CONDITIONAL LIEN

Before this Franchise shall become effective, Franchisee shall provide a surety bond or letter of credit in the amount of Twenty-Five Thousand Dollars (\$25,000), in a form acceptable to Metro, or at its option may provide a conditional lien on the franchised property in a form satisfactory to Metro.

## **12. COMPLIANCE WITH LAW**

Franchisee shall fully comply with all federal, state, regional and local laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this Franchise, including all applicable Metro Code provisions whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the operation of the Facility by federal, state or local governments or agencies having jurisdiction over the Facility are part of this Franchise by reference as if specifically set forth herein. Such conditions and permits include those attached as exhibits to this Franchise, as well as any existing at the time of issuance of this Franchise and not attached, and permits or conditions issued or modified during the term of this Franchise.

## **13. METRO ENFORCEMENT AUTHORITY**

- 13.1 Enforcement of this Franchise shall be as specified in the Metro Code.
- 13.2 Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this Franchise. Access to inspect is authorized:
- (a) During all working hours;
  - (b) At other reasonable times with 24 hours notice;
  - (c) At any time without notice when, in the opinion of the Metro Regional Environmental Management Department Director, such notice would defeat the purpose of the entry. In such instance, the Director shall provide a written statement of the purpose for the entry.
- 13.3 The power and right to regulate, in the public interest, the exercise of the privileges granted by this Franchise shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations, fees, or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Franchisee.
- 13.4 At a minimum, Metro may exercise the following oversight rights in the course of administering this Franchise: (1) perform random on-site inspections; (2) conduct an annual review of the Facility to assess compliance with operating requirements in this Franchise; (3) invoice Franchisee for any fees or penalties arising under this Franchise; (4) perform noncompliance investigations; (5) inspect and visually characterize incoming and outgoing loads for the purpose of assessing Prohibited Waste. In all instances Metro shall take reasonable steps to minimize disruptions to operations at the Facility.

- 13.5 Nothing in this Franchise shall be construed to limit, restrict, curtail, or abrogate any enforcement provision contained in the Metro Code, nor shall this Franchise be construed or interpreted so as to limit or preclude Metro from adopting ordinances that regulate the health, safety, or welfare of any individual or group of individuals within its jurisdiction, notwithstanding any incidental impact that such ordinances may have upon the terms of this Franchise or the Franchisee's operation of the Facility.

#### 14. DISPOSAL RATES AND FEES

- 14.1 In accordance with Metro Code Section 5.01.070, this Facility shall be exempt from Metro rate setting.
- 14.2 Franchisee is exempted from collecting and remitting Metro Fees on waste received at the Facility in conformance with this Agreement. Franchisee is fully responsible for paying all costs associated with disposal of residual material generated at the Facility. If Franchisee obtains authorization to dispose of residual material at a facility that has not been "Designated" by Metro, Franchisee shall remit to Metro the Tier 1 (one) User Fee on all waste disposed of at the non-designated facility.
- 14.3 Disposal of residue shall be at a designated facility under the Metro Code or under authority of a non-system license issued by Metro.

#### 15. GENERAL CONDITIONS

- 15.1 Franchisee shall be responsible to the extent practicable for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Franchise.
- 15.2 Neither the Franchisee, nor the parent company of the Franchisee, if any, nor its subsidiaries, nor any other Solid Waste facilities under its control shall knowingly accept Metro area Solid Waste at their non-designated facilities, if any, except as authorized by a non-system license issued by Metro.
- 15.3 The granting of this Franchise shall not vest any right or privilege in the Franchisee to receive specific quantities of Solid Waste during the term of the Franchise.
- 15.4 Neither this Franchise nor the Franchisee may be conveyed, transferred or assigned without the prior written approval of Metro.
- 15.5 To be effective, a waiver of any term or condition of this Franchise must be in writing and signed by the Executive Officer. Waiver of a term or condition of this Franchise

shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.

- 15.6 This Franchise shall be construed, applied, and enforced in accordance with the laws of the State of Oregon and all pertinent provisions of the Metro Code.
- 15.7 If any provision of the Franchise shall be found invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Franchise shall not be affected.

## 16. NOTICES

- 16.1 All notices required to be given to the Franchisee under this Franchise shall be delivered to:

Jonathan Angin  
Vice President, Northwest Region  
Waste Management, Inc.  
5350 SW Alger Avenue  
Beaverton, OR 97005

- 16.2 All notices required to be given to Metro under this Franchise shall be delivered to:

Metro Franchise Administrator  
Regional Environmental Management Department  
Metro  
600 N.E. Grand Avenue  
Portland, Oregon 97232-2736

- 16.3 Notices shall be in writing, effective when delivered, or if mailed, effective on the second business day after mailed, postage prepaid, to the address for the party stated in this Franchise, or to such other address as a party may specify by notice to the other.

## 17. REVOCATION

Suspension, modification or revocation of this Franchise shall be as specified herein and in the Metro Code. (See especially Sections 12 and 13 and Metro Code Chapter 5.01.)

## 18. MODIFICATION

- 18.1 At any time during the life of this Franchise, either the Executive Officer or the Franchisee may propose amendments or modifications to this Franchise. Except as

specified in the Metro Code and Section 5.1.3 of this Franchise, no amendment or modification shall be effective unless it is in writing, approved by the Metro Council, and executed by the Franchisee and the Executive Officer.

18.2 The Executive Officer shall review the Franchise annually, consistent with Section 6 of this Franchise, in order to determine whether the Franchise should be changed and whether a recommendation to that effect needs to be made to the Metro Council. While not exclusive, the following criteria and factors may be used by the Executive Officer in making a determination whether to conduct more than one review in a given year:

18.2.1 Franchisee's compliance history;

18.2.2 Changes in waste volume, waste composition, or operations at the Facility;

18.2.3 Changes in local, state, or federal laws or regulations that should be specifically incorporated into this Franchise;

18.2.4 A significant release into the environment from the Facility;

18.2.5 A significant change or changes to the approved site development plan and/or conceptual design;

18.2.6 Any change in ownership that Metro finds material or significant.

USA WASTE OF OREGON, INC.

METRO

\_\_\_\_\_  
Jonathan Angin, Vice President NW Region

\_\_\_\_\_  
Mike Burton, Metro Executive Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

SK:bjl  
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**METRO**

Regional Environmental  
Management  
600 NE Grand Ave  
Portland, OR 97232-2736  
(503) 797-1650  
Fax (503) 797-1795

# Unacceptable Waste Incident Tracking Form

Item Number: \_\_\_\_\_ Date Discovered: \_\_\_\_\_

Description of Unacceptable Waste: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Generator (if known): \_\_\_\_\_

Waste Hauler: \_\_\_\_\_

Waste was determined to be:             Hazardous             Non-Hazardous

Disposition: \_\_\_\_\_

Date Disposed: \_\_\_\_\_

cash/metro/unaccept.pm6

original = Franchise Administrator  
yellow = Franchisee  
pink = file



June 1996  
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## REGIONAL ENVIRONMENTAL MANAGEMENT COMMITTEE REPORT

CONSIDERATION OF ORDINANCE NO. 99-801, FOR THE PURPOSE OF TRANSFERRING THE SOLID WASTE FRANCHISE FOR OPERATION OF THE CITISTICS RELOAD/MATERIAL RECOVERY FACILITY FROM CITISTICS, INC., TO USA WASTE OF OREGON, INC.

-----  
Date: April 28, 1999

Presented by: Councilor McLain

**Committee Recommendation:** At its April 21 meeting, the Committee considered Ordinance No. 99-801 and voted unanimously to send the ordinance to the Council with a do pass recommendation. Voting in favor: Councilors McLain and Park and Chair Washington.

**Committee Issues/Discussion:** Terry Petersen, Acting REM Director, presented the staff report. Petersen explained that the purpose of the ordinance is to transfer the existing franchise for the Citistics facility in Beaverton from the former owner, Citistics, Inc., to USA Waste of Oregon, which recently purchased the facility.

Petersen noted that the facility has been in operation since January. He explained that, though representatives of a neighboring condominium complex had objected to the original issuance of the franchise, no complaints have been received by Metro or the city of Beaverton concerning the facility. Petersen indicated that the proposed deals only with the change of ownership and that all existing state, city and Metro requirements concerning the operation of the facility would remain in effect.

Henry Kane presented written and oral testimony in opposition to the facility. Kane expressed concern about the nature of the notice of the committee's consideration of the proposed franchise. He further claimed that Metro's complaint files related to the facility were incomplete. Kane also urged the committee to review the historic operating record of the proposed new owner at the Forest Grove Transfer Station. He noted that the operator had not addressed the concerns of the neighboring community. Kane urged the committee to at least amend the existing franchise to insure that the facility does not become another garbage transfer station. He also requested that the record be left open to allow for the submission of additional material.

The committee also noted that written testimony had been received from Megan Laidlaw from that Sequoia Park condominium facility which is adjacent to the franchised facility. Ms. Laidlaw raised concerns about potential odor, noise and environment effects from the facility. These concerns were similar to those raised at the time that the Council approved that original franchise.

Joe Cassin testified on behalf of USA Waste of Oregon. Cassin indicated the new owner do not intend to change the manner in which the facility is currently operated. He expressed a willingness to work to address neighborhood concerns, noting that a meeting has been scheduled with the Sequoia Park owners' association on May 5.

Councilor Park asked for clarification concerning the nature of governmental regulation of the facility. Steve Kraten, REM Enforcement Officer, noted that the land use and operational issues related to the facility are addressed in the conditional use permit issued by the city of Beaverton. Environmental issues are addressed by the DEQ permit that has been obtained by the facility. Kraten noted that the facility has a permitted maximum capacity of 100 tons per day and that no

more than 25% may be putrescible. The putrescible waste also is limited to household waste which is generally drier than waste from other facilities such as restaurants.

Councilor Park asked what the current operating levels are at the facility. Mr. Cassin responded that the facility processes about 30-40 tons daily.

Councilor Park asked Marv Fjordbeck, Senior Assistant Legal Counsel, that given the nature of existing state and local regulation, on what grounds could Metro deny the franchise. Fjordbeck that Metro requires an applicant to obtain all necessary land use and operational permits prior to requesting a Metro franchise. But, Fjordbeck noted that the Council retained broad discretionary authority to approve or deny a proposed franchise.

Councilor McLain noted that the facility had been through an extensive review when the franchise was originally granted and that all the proposed ordinance does is approve a change of ownership. She also praised USA Waste's prior and current dealings with Metro.



**EXECUTIVE SUMMARY  
ORDINANCE 99-801**

**ORDINANCE TO TRANSFER A SOLID WASTE FRANCHISE FOR THE  
CITISTICS FACILITY FROM CITISTICS, INC.  
TO USA WASTE OF OREGON, INC.**

**PROPOSED ACTION**

Approve a franchise transfer that will:

- Authorize USA Waste of Oregon to become the franchised operator of the Citistics facility.
- Change the name of the facility from “Citistics” to “Tualatin Valley Waste Recovery.”

**WHY NECESSARY**

- Because USA Waste of Oregon is acquiring the Citistics facility and its associated hauling company, Miller’s Sanitary Service.

**ISSUES/CONCERNS**

- When originally franchised, neighbors of the facility testified before the Council regarding concerns over potential nuisance and environmental impacts. Since the facility began operating in January 1999, no complaints have been received by the operator or by Metro.
- No changes in operating procedures are contemplated by the franchise transfer. USA Waste of Oregon intends to operate the facility in exactly the same manner as Citistics, Inc.

**BUDGET/FINANCIAL IMPACTS**

The franchise transfer is not expected to have any budget or financial impact.

IN CONSIDERATION OF ORDINANCE NO. 99-801, FOR THE PURPOSE OF TRANSFERRING THE SOLID WASTE FRANCHISE FOR OPERATION OF THE CITISTICS RELOAD/MATERIALS RECOVERY FACILITY FROM CITISTICS, INC. TO USA WASTE OF OREGON, INC.

March 18, 1999

Presented by: Bruce Warner,  
Leann Linson

## **I. Summary and Recommendation**

### **A. Effect of Passage**

Approval of Ordinance No. 99-801 will transfer a Solid Waste Franchise for operation of the Citistics facility from Citistics, Inc. to USA Waste of Oregon, Inc. (USAO) concurrent with USAO's acquisition of the facility from Citistics, Inc. The franchise authorizes the facility to accept up to 100 tons per day of solid waste, including residential waste and its putrescible components, for recovery and reloading.

### **B. Executive Officer Recommendation**

The Executive Officer recommends approval of Ordinance No. 99-801, transferring the Citistics franchise from Citistics, Inc. to USA Waste of Oregon, Inc. subject to the terms and conditions that are incorporated into the franchise document attached as "Exhibit A" to Ordinance No. 99-801.

## **II. Background**

### **A. History of the Facility**

Citistics is a reload/materials recovery facility located at 5350 SW Alger Ave. in Beaverton. On August 6, 1998, after hearing testimony from neighbors of the facility regarding concerns over potential nuisance and environmental issues, the Metro Council approved Ordinance 98-745, granting the facility a Solid Waste Franchise. The franchise agreement itself was signed on November 9, 1998. This was the last franchise to be authorized under the prior version of the Metro Code Chapter 5.01 before the adoption of the revised chapter by Ordinance No. 98-762C. The facility began operating in January 1999. If the Council approves the transfer of the franchise and the grant of the franchise to USAO, the franchise will be governed by the 1998 amendments to Chapter 5.01 of the Metro Code.

### **B. The Applicant and the Applicant's Request**

In a letter dated February 1, 1999, Garry Penning of USA Waste of Oregon, Inc. (USAO) and Tom Miller, President of Citistics, informed the REM Director that USAO was negotiating to purchase the Citistics facility. USA Waste of Oregon, Inc. is the name presently used by the new Waste Management within the state of Oregon. A formal application for transfer of the franchise was received by Metro on March 22, 1999.

## Reason for the Ordinance

Section 15.5 of the Citistics Franchise states "Neither this Franchise nor the Franchisee may be conveyed, transferred or assigned without the prior written approval of Metro." Thus, it is necessary that a proposed ordinance approving the transfer be presented to the Metro Council.

### III. Application Procedure

#### A. Metro Code Provisions Related to the Applicant's Request

##### Section 5.01.090

Section 5.01.090 of the Metro Code governs transfer of franchises. Because the Citistics franchise was originally applied for prior to adoption of the revised Code Chapter 5.01, the agreement is governed by the provisions of Chapter 5.01 as it existed prior to July 1998. Section 5.01.090 has three parts, as follows:

- (a) *A franchisee may not lease, assign, mortgage, sell or otherwise transfer, either in whole or in part, its franchise to another person unless an application therefor has been filed in accordance with section 5.01.060 and has been granted. The proposed transferee must meet the requirements of this chapter.*

On February 22, 1999, Metro received from USAO a formal franchise application. The application was determined to be in accordance with section 5.01.060. Details are presented below.

- (b) *The council shall not unreasonably deny an application for transfer of a franchise. If the council does not act on the application for transfer within 90 days after filing of a complete application, the application shall be deemed granted.*

The proposed ordinance is being presented to Council in a timely manner and well within the 90-day limit.

- (c) *The term for any transferred Franchise shall be for the remainder of the original term unless the Council establishes a different term based on the facts and circumstances at the time of transfer.*

The original franchise has an expiration date of November 9, 2003. The proposed new franchise, presented as "Exhibit A" to Ordinance No. 99-801, has the same expiration date.

Section 5.01.060

Section 5.01.060 specifies eight items to be addressed in any franchise application.

- (a) *Applications for a franchise or license or for transfer of any interest in, modification, expansion, or renewal of an existing franchise or license shall be filed on forms provided by the executive officer. Franchises and licenses are subject to approval by the council.*

As mentioned above, on February 22, 1999, Metro received from USAO a formal application for transfer of the Citistics franchise. The application was filed in the format prescribed by the Executive Officer.

- (b) *In addition to the information required on the forms, franchise applicants must submit the following to the executive officer:*
- (1) *Proof that the applicant can obtain and will be covered during the term of the franchise by a corporate surety bond guaranteeing full and faithful performance by the applicant of the duties and obligations of the franchise agreement. In determining the amount of bond to be required, the executive officer may consider the size of the site, facility or station, the population to be served, adjacent or nearby land uses, the potential danger of failure of failure of service, and any other factor material to the operation of the franchise;*

The applicant's ability to obtain the necessary corporate surety bond is evidenced by the fact that it has obtained such bonds for its other Metro area solid waste facilities.

- (2) *In the case of an application for a franchise transfer, a letter of proposed transfer from the existing franchisee;*

As mentioned above, on February 2, 1999, Tom Miller, President of Citistics and the current franchisee submitted a letter to the REM Director requesting that the Citistics franchise be transferred to USAO.

- (3) *Proof that the applicant can obtain the liability insurance required by this chapter;*

The applicant has provided proof of insurance. The liability policy presently in force covers all operations of the insured.

- (4) *If the applicant is not an individual, a list of stockholders holding more than 5 percent of a corporation or similar entity, or of the partners of a partnership. Any subsequent changes in excess of 5 percent of ownership thereof must be reported within 10 days of such changes of ownership to the executive officer;*

USA Waste of Oregon, Inc. is a wholly-owned subsidiary of Waste Management of North America, Inc.

- (5) *A duplicate copy of all applications for necessary DEQ permits and any other information required by or submitted to DEQ;*

The Citistics facility is fully permitted by the DEQ. The DEQ permit and all related information have been provided to Metro and are on file in the REM Department.

- (6) *Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the franchisee, the duration of that interest and shall read and agree to be bound by the provisions of section 5.01.180(e) of this chapter if the franchise is revoked or franchise renewal is refused;*

USAO will be acquiring the real property as well as the facility and equipment of Citistics.

- (7) *Proof that the applicant has received proper land use approval;*

The City of Beaverton has granted the Citistics facility a Conditional Use Permit (CUP). The CUP and all related information have been provided to Metro, and are on file in the REM Department.

- (8) *and such other information as the executive officer deems necessary to determine an applicant's qualifications.*

The applicant is a major solid waste company that operates other authorized facilities in the Metro Region and is well known to the REM Department. No additional information is necessary to determine the applicant's qualifications.

## **B. Analysis of Application**

It is USAO's intent to operate the facility in the same manner as originally proposed by Tom Miller and authorized by the facility's conditional use permit, DEQ permit and Metro franchise. Under USAO's ownership, the name of the facility will be changed from "Citistics" to "Tualatin Valley Waste Recovery."

## **IV. Fiscal Impact**

Ordinance No. 99-801 transfers an existing franchise to a new facility owner without any changes in authorizations. The facility will only process waste of the same type and in the same quantity as presently authorized by its existing franchise. Thus, it is anticipated that approval of Ordinance No. 99-801 will have no fiscal impact.