

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ISSUING A) ORDINANCE NO. 98-756
DESIGNATED FACILITY AGREEMENT TO USA)
WASTE SERVICES, INC., FOR THE NORTH) Introduced by : Mike Burton,
WASCO COUNTY LANDFILL) Executive Officer

WHEREAS, USA Wastes Services, Inc., with its home office at 3205 SE Minter Bridge Road, Hillsboro, Oregon 97213, owns and operates North Wasco County Landfill located in Wasco County, Oregon; and

WHEREAS, USA Waste Services, Inc., has requested designated facility status for the North Wasco County Landfill and is willing to enter into an agreement with Metro; and

WHEREAS, Based on information contained in the staff report accompanying this Ordinance, the Council has determined that it is appropriate to designate the North Wasco County Landfill for receipt of dry, non-putrescible solid waste from the District; and

WHEREAS, USA Waste Services, Inc., is willing to enter into agreement with Metro establishing the terms under which North Wasco County Landfill may receive waste from the Metro region, now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

The Council authorizes the Executive Officer to enter into the attached Designated Facility Agreement (Exhibit A) with USA Waste Services, Inc., for the North Wasco County

Landfill facility within thirty (30) days of the adoption of this Ordinance.

ADOPTED by the Metro Council this _____ day of _____, 199__.

WITHDRAWN

Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

krat\administ\dfa\wcl.ord

AGREEMENT

This Agreement is between Metro, a municipal corporation organized under ORS Chapter 268 and the 1992 Metro Charter, referred to herein as "Metro", located at 600 NE Grand Avenue, Portland, Oregon 97232-2736, and USA Waste Services, Inc., located at 3205 SE Minter Bridge Road, Hillsboro, Oregon 97213, referred to herein as "Company."

This Agreement is entered into by Metro under the authority of ORS 268.317, and Metro Code Chapter 5.05. Company enters into this Agreement in recognition of the "Designated Facility" status conferred upon North Wasco County Landfill in Wasco County, Oregon by Metro Ordinance No. 98-756.

This agreement shall replace and supercede the non-system licenses issued to Company for disposal at North Wasco County Landfill of waste generated at the Wastech and Energy Reclamation facilities in Portland, Oregon.

In exchange for the promises set forth below, the parties agree as follows:

1. Purpose and Authority. The purpose of this Agreement is to establish the terms under which Company may receive, at its North Wasco County Landfill (herein "Facility"), the types of waste specified in Section 3 of this Agreement that were generated within Metro boundaries.
2. Duration. Unless terminated sooner as specified herein, this Agreement shall remain in effect for five (5) years from the date of execution by both parties. To avoid unnecessary disruption while Metro considers possible renewal of this Agreement, if Company has not received written notice of termination from Metro on or before the five-year anniversary of this Agreement, this Agreement shall continue in effect until such notice is provided to Company.
3. Waste That May be Accepted at the Facility.
 - a. Pursuant to this Agreement, and to the extent that the Facility has legal authority to accept such waste, the Facility may accept only the following types of waste generated within Metro boundaries:
 - (1) Construction, demolition, land-clearing debris and dry commercial waste.

- (2) Non-hazardous industrial dust.
 - (3) Asbestos (special requirements for packaging and unloading would apply).
 - (4) Contaminated soil and other non-putrescible debris from clean-up of petroleum or other non-hazardous chemical spills.
 - (5) Special waste as defined in Section 5.02.015(s) of the Metro Code. In all instances, Section 5.02.015(s) shall be construed by both parties as limited to waste that requires special handling or testing prior to disposal at a Metro facility or at a landfill.
 - (6) Other waste as described in any future addendum to this Agreement and approved by the Metro Council.
- b. This Agreement shall not be construed to allow disposal at the Facility of other types of waste not listed in Section 3.a., generated within Metro boundaries.

4. Record keeping and Audits.

Company shall maintain complete and accurate records regarding all solid waste transported, treated, disposed of, or otherwise processed pursuant to this Agreement, and shall make such records available to, or send copies to, the Metro Regional Environmental Department or its duly designated agents for inspection, auditing and copying upon not less than seven days written notice from Metro. Pre-numbered tickets shall be used for all transactions, in numerical sequence, and voided or canceled tickets shall be retained.

5. Reports and Information.

- a. Company shall report in the form of electronic records encoded on 3.5" data diskettes, the following information:
- (1) Record numbers designating individual incoming loads.
 - (2) Customer account numbers.
 - (3) Date each load is received at the Facility.
 - (4) Time each load is received at the Facility.
 - (5) Net weight of each load.

- (6) Designation of each load in to one of the categories listed in Section 3.
 - (7) Whether each load originated from inside or outside the Metro boundary.
 - (8) Whether the material is used for alternative daily cover, road base, or other purposes beneficial to the maintenance of the facility.
- b. Records required under Section 5a shall be reported to Metro no later than fifteen (15) days following the end of each month, in the format prescribed by Metro. Transaction data shall be in electronic form compatible with Metro's data processing equipment.
 - c. Company shall post a sign at the scalehouse directing all customers disposing of waste generated within the Metro boundary to declare the origin of the waste. The Company shall provide a map of the Metro region to any customer that requests one.
 - d. Company shall provide to Metro copies of all permits covering the Facility of operations at the Facility. Copies of revisions to existing permits and newly issued permits shall be provided to Metro within seven (7) business days of receipt. Company shall also provide, within ten (10) business days, a copy of any official enforcement action regarding the Facility or its operation, including, but not limited to, a notice of violation or non-compliance with a statute, regulation, or permit condition.

6. Regional System Fee/Excise Tax.

- a. Company shall collect System Fees as specified in Section 5.02 of the Metro Code and Excise Taxes as specified in Section 7.01 of the Metro Code and make payment to Metro no later than fifteen (15) days after the last day of each month. Company shall use reasonable business judgment in allowing generators or transporters of waste to dispose of waste at its Facility on a credit basis, and shall use reasonable legal means to collect disposal charges, including all fees and taxes owed to Metro. If Company is unable to collect disposal charges, Company may deduct uncollectable Metro fees and taxes, when an affidavit explaining the status of the uncollectable account is provided that sufficiently documents good faith collection efforts conducted by Company. If Company receives a partial payment and the remainder of the account is uncollectable, the payment received shall be pro-rated between Company's disposal charges and Metro's fees and taxes. All amounts owing to Metro that are deemed "uncollectable" and are ultimately collected shall be remitted to Metro within thirty (30) days of receipt by Company.
- b. Excise taxes shall be due for disposal of waste at the Facility, but shall not be due for

transport to the Facility, even if Company arranges that transport.

- c. Credit terms shall be as specified in the Metro Code as now in effect, or as amended.
- d. Company shall not pay the user fees and excise taxes described in this paragraph on waste received at the Facility which:
 - (1) Is accepted without charge or fee; and
 - (2) Is intended to be used for a beneficial purpose and which is, in fact, used for a beneficial purpose.

7. Modification, Suspension, and Termination.

- a. If Company fails to fully and promptly comply with a term of condition of this Agreement, the Executive Officer shall issue to Company a written notice of noncompliance briefly describing such failure. The notice shall state that, within a period specified by the Executive Officer of at least twenty (20) days, Company must demonstrate to the satisfaction of the Executive Officer either that company has not violated a term or condition of this Agreement, that the violation has been corrected, or that Company is making diligent efforts to correct the violation and is likely to succeed in a reasonable period of time. Company shall also, within the same period, pay all fines owing as a result of noncompliance or make arrangements for payment satisfactory to the Executive Officer. Failure to comply with the notice of noncompliance shall be grounds for suspension of this Agreement by the Executive Officer, effective as of 5:00 p.m. on the last day of the compliance period specified by the Executive Officer, until such time as the Executive Officer issues a written finding to Company that the violation has been cured. The Executive Officer may extend the compliance period to a total of no more than sixty (60) days from the date of the notice of noncompliance, upon determining that Company is making good faith efforts to comply and is capable of complying within the extended compliance period.
- b. Metro's Executive Officer may suspend this Agreement without prior notice, as follows:
 - (1) As specified in subsection a. of this section;
 - (2) If necessary in the reasonable opinion of the Executive Officer to protect the public health, safety or welfare, and in the case of an emergency;
 - (3) If, due to a binding decision by an arbitrator or court of competent jurisdiction, Metro may be liable for damages for allowing waste of the quantity or type specified in this Agreement to be disposed of at Company's Facility, or Metro

may no longer allow such waste to be disposed of at Company's Facility.

- c. The Metro Council may modify, suspend or terminate this Agreement for good cause or substantial change of circumstances, upon passage of a resolution specifying the action taken and the effective date. If this Agreement is modified by Council resolution, Company shall have thirty (30) days from the date of the resolution to acknowledge the modification by signing a written instrument containing the terms of the modification. Failure of Company to acknowledge the modification within the 30-day period, unless otherwise excused by Metro's Executive Officer, shall result in suspension of the Agreement at the close of business on the 30th day, until the modification is acknowledged in writing by Company.
- d. If the Metro Council adopts a resolution to modify, suspend, or terminate this Agreement without providing Company with reasonable notice and an opportunity to be heard prior to Council action, Company shall be entitled to a contested case hearing related to the action taken, as specified in Metro Code Chapter 2.05.
- e. Nothing in this section shall be interpreted to hinder or prevent Metro from making and enforcing policy judgments related to the flow of solid waste out of Metro boundaries, regardless of the perceived or actual impact of such decisions on Company's business. A policy judgment by Metro to limit or prevent waste generated within Metro boundaries from entering the Facility shall under no circumstances be the basis for payment of compensation by Metro to Company.

8. Compliance with Law.

Company shall fully comply with the Metro Code, as amended, and with all federal, state, regional, and local laws, as amended, rules, regulations, ordinances, orders, and permits pertaining in any manner to this Agreement. 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 Agreement by reference as if specifically set forth herein. Such conditions and permits include those attached as exhibits to this Agreement, as well as any existing at the time of issuance of this Agreement and not attached, and permits or conditions issued or modified during the term of this Agreement.

9. Right of Inspection.

- a. 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 Agreement. Access to inspect is authorized:

(1) During all working hours;

- (2) At other reasonable times with notice; and
 - (3) At any time without notice when, in the reasonable opinion of the Metro Regional Environmental Management Director, such notice would defeat the purpose of the entry.
- b. Company shall cooperate with Metro investigations of waste haulers suspected of fraudulently claiming waste as having originated from outside the Metro boundary.
10. Indemnification. Company shall indemnify, defend, and hold Metro and Metro's 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, Company's performance under this Agreement.
11. Confidentiality.
- a. Metro recognizes and acknowledges the confidential and proprietary nature of the names of persons or entities generating or delivering waste to the facility and the types and quantities of waste generated or delivered by such persons or entities herein, ("confidential information"), which Company is required to submit to Metro under Section 5.a. of this Agreement. Metro recognizes that the confidential information specified herein is a "trade secret" and exempt from public disclosure under Oregon law because it is currently known only by Company, is used by Company in its business, and gives Company a business advantage over others not possessing such information. The ability of competitors of Company to obtain the confidential information specified herein is not in the public interest because it detracts from a relationship of trust that is necessary for Metro to effectively carry out its solid waste management functions. Metro hereby obligates itself in good faith not to disclose such confidential information to any person outside of Metro except as specified herein. Access to, and use of, such information shall only be as specified in this section.
 - b. At any time during and after the term of this Agreement, Metro shall not, in any manner whatsoever, either directly or indirectly, divulge, disclose, or communicate to any person, partnership, firm, association, corporation, or other entity, or to any person at Metro who does not have a reasonable need to obtain confidential information for Metro's solid waste management purposes, or use for the personal benefit of such party, the confidential information specified in this section.

Metro may, nevertheless, use such information for solid waste management purposes, including solid waste tracking and forecasting, enforcement of the Metro Code, or assistance to other jurisdictions in regulatory or other law enforcement. Metro may also use such confidential information in aggregations or summaries that may be

released to the public, so long as it is not possible to identify from such aggregations or summaries the persons or other entities generating and delivering waste to the Facility or the types and quantities of waste that such persons or other entities generate or deliver to the Facility. Metro shall notify Company within three (3) business days of Metro's receipt of a request for confidential information from a third party. If it becomes necessary for Metro to release confidential information to any person outside of Metro, Metro shall so notify Company in writing, at least fifteen (15) days prior to releasing such information.

- c. When submitting to Metro the confidential information specified herein, Company shall mark such materials as confidential. Metro shall keep all such material separate from its other records and materials, in the custody and control of the Metro Office of General Counsel, such that it will not be available to members of the public or persons at Metro who do not have a reasonable need to obtain access to the information relative to Metro's solid waste management responsibilities.
- d. If Oregon law is modified such that the confidential information referenced in this section is no longer exempt from public disclosure, or if a court of competent jurisdiction requires release of such information, Company shall no longer be required to submit such information to Metro. In such instance, upon request, Company nevertheless agrees to provide to Metro the names of specific generators or transporters, and the types and quantities of waste delivered by such persons or entities, for Metro's use in enforcing the Metro Code against such persons or entities, when Metro demonstrates a reasonable suspicion that a violation has occurred.

12. General Conditions.

- a. The power and right to regulate, in the public interest, the exercise of the privileges granted by this Agreement shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations, or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Company.
- b. Company shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Agreement.
- c. The granting of this Agreement shall not confer a property right to Company, nor vest any right or privilege in Company to receive specific quantities of solid waste during the term of this Agreement.
- d. This Agreement may not be transferred or assigned without the prior written approval of Metro. Consent to assignment or transfer shall not be unreasonably withheld.
- e. To be effective, a waiver of any term or condition, or amendment to this Agreement

must be in writing, signed by either the Executive Officer or an authorized officer of the Company, as the case may be. Waiver of a term or condition of this Agreement by either party shall neither waive nor prejudice that party's right otherwise to require performance of the same term or condition or any other term or condition.

- f. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- g. If any provision of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.
- h. This Agreement is the entire agreement between the parties. This Agreement does not allow receipt of solid waste from within the boundaries of Metro for any purpose other than disposal in accordance with this Agreement.

USA WASTE SERVICES, INC.

METRO

By: _____

By: _____

Print name and title

Print name and title

Date: _____

Date: _____

SA/GBC

s:\share\dept\regs\dfa\riverben\mwcl.dfa

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 98-756 FOR THE PURPOSE OF ISSUING A DESIGNATED FACILITY AGREEMENT TO USA WASTE SERVICES, INC., FOR NORTH WASCO COUNTY LANDFILL

Date: June 25, 1998

Presented by: Bruce Warner
Steve Kraten

Except under the authority of non-system licenses, solid waste generated within the boundaries of Metro must be disposed of at Metro designated facilities. The current list of designated facilities is set forth in section 5.05.030(a) of the Code. The Code provides for designation of additional solid waste facilities by Council based on findings contained in the staff report accompanying the ordinance designating such facility and additional information provided during the hearing of the ordinance. Ordinance 92-476 set forth the criteria to be considered in determining whether to designate additional facilities. Each of these criteria are addressed in this staff report with findings specific to the North Wasco County Landfill (NWCL):

(1): The degree to which prior users of the facility and waste types accepted at the facility are known and the degree to which such wastes pose future risk of environmental contamination.

North Wasco County Landfill is a general purpose landfill that has operated under a license agreement with Wasco County since November 1996. Prior to that time, NWCL operated under a County Franchise Agreement. Under the agreement, NWCL provides the County with monthly reports outlining the following information: tonnage of acceptable waste from within the county, tonnage of acceptable waste from outside the county, tonnage of industrial waste from within the county, tonnage of beneficial use material from within the county, tonnage of beneficial use material from outside the county, and monthly license fee payment information.

The landfill contains a substantial area of unlined cells that pre-date 1991 federal Subtitle D requirements. Other than asbestos, the DEQ is not aware of the disposal of any materials that might pose potential future risks of environmental contamination. The unlined cells are presently capped with soil, but have not yet undergone permanent closure.

The majority of waste delivered to NWCL consists of residual waste from recovery operations at East County Recycling (ECR) and material reloaded at Wastech. Both ECR and Wastech presently send waste to NWCL under the authority of non-system licenses issued by Metro. The remainder of waste delivered to the facility is municipal solid waste, primarily from Wasco, Hood River, and Skamania Counties. The landfill also receives a small amount of petroleum contaminated soils.

(2): The record of regulatory compliance of the facility's owner and operator with federal, state and local requirements.

North Wasco County Landfill is currently in compliance with its license agreement with Wasco County and has filed reports and paid appropriate license fees to Wasco County in a timely manner. According to Wasco County, NWCL has been proactive in modifying operations to reduce nuisances, most of which concerned the flow of truck traffic. NWCL has a DEQ Solid Waste Disposal Permit, and is operating in conformance with the terms and conditions of its permit. NWCL meets all Subtitle D requirements, and is regarded by the DEQ as environmentally sound.

According to a letter provided to the DEQ by USA Waste, groundwater samples taken during the first quarter of 1998 tested for antimony at a level higher than Federal Maximum Contaminant Levels. USA Waste suspects that this result is a false positive and is currently in the process of re-testing. According to Wasco County staff, the facility operator has a good history of cooperation and regulatory compliance.

(3): The record of the facility regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement.

North Wasco County Landfill is outside the jurisdiction of Metro ordinances, and has not been party to an agreement with Metro.

(4): The adequacy of operational practices and management controls at the facility.

North Wasco County Landfill is authorized by the Department of Environmental Quality to receive municipal mixed solid waste for disposal. The facility has gone through a rigorous permitting process and has demonstrated that it is in conformance with state and federal regulations. The site is equipped with groundwater monitoring wells, a leachate collection and treatment system, and landfill gas probes.

The DEQ performs inspections at irregular intervals to determine whether the landfill is being operated in accordance with the conditions of its DEQ Solid Waste Disposal Permit. There are no outstanding violations at the facility.

(5): The expected impact on the region's recycling and waste reduction efforts.

The approval of this Designated Facility Agreement is not expected to have an impact on recycling and waste reduction efforts in the region.

(6): The expected impact on Metro's revenue.

No revenue impacts are expected, since present Metro region users of the landfill are currently paying user fees to Metro under non-system licenses.

(7): The consistency of the designation with Metro's existing contractual arrangements.

Metro Designated Facility Status would supersede Energy Reclamation, Inc.'s, Wastech's and East County Recycling's need to have non-system licenses.

(8): The need for additional disposal capacity and the effect on existing designated facilities.

North Wasco County Landfill is presently accepting the majority of its waste from East County Recycling and Wastech under the authority of non-system licenses with the remainder coming from the surrounding counties. At present there appears to be adequate capacity for the region's dry waste. In the future, population growth in the Metro region may create a need for additional dry waste disposal capacity. Granting of Designated Facility status to NWCL is not expected to affect existing designated facilities.

(9): Other benefits or detriments accruing to residents of the region from Council action in designation of a facility.

Some dry waste from ERI that is currently delivered to the Hillsboro Landfill for disposal may instead go to NWCL. While the shift in truck trips will increase traffic on I-84 eastward, the increase in emissions will be marginal when compared to the existing large volume of motor vehicle emissions along the route.

The primary benefit anticipated from designation of this facility is that REM would obtain previously unavailable tonnage data. Access to this data will strengthen REM's forecasting and modeling capacities, allowing REM to better manage the regional solid waste disposal system.

EXECUTIVE OFFICER RECOMMENDATION:

The Executive Officer recommends the issuance of a Designated Facility Agreement to USA Waste Services, Inc., for the North Wasco County Landfill.

bjl

S:\share\dept\regs\dfa\nwcl.stf.doc

M E M O R A N D U M

DATE: June 3, 1999
TO: Becky Shoemaker, Council Archivist
FROM: Aaron Brondyke, Assistant to the Director of REM
RE: Disposition of Ordinance No. 98-756

This ordinance was withdrawn. While this ordinance was being prepared, USA Waste was required to divest itself of North Wasco County Landfill as a condition of its merger with Washte Management. Thus, the need for a North Wasco County Landfill DFA for USA Waste was made moot. See Ordinance No. 98-748