

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 18-4924 AUTHORIZING THE CHIEF OPERATING OFFICER TO EXTEND THE TERM OF THE NON-SYSTEM LICENSE TO COR TRANSFER, LLC. FOR TRANSPORT AND DISPOSAL OF PUTRESCIBLE WASTE AT THE WASCO COUNTY LANDFILL LOCATED IN WASCO COUNTY, OREGON AND UNDER CERTAIN UNUSUAL CIRCUMSTANCES TO COWLITZ COUNTY HEADQUARTERS LANDFILL LOCATED IN CASTLE ROCK, WASHINGTON

October 31, 2018

Prepared by: Warren Johnson
(503) 797-1836

If the Metro Council approves Resolution No. 18-4924, it will authorize the Chief Operating Officer (COO) to issue an amended non-system license (NSL) to COR Transfer, LLC (COR) to (1) extend the term of its NSL by one year to expire on December 31, 2019, and (2) authorize COR to transport and dispose up to 472 tons per calendar year of putrescible waste at the Wasco County Landfill (Wasco) located in Wasco County, Oregon and, under certain unusual circumstances and emergency conditions, Cowlitz County Headquarters Landfill (Cowlitz) located in Castle Rock, Washington. The proposed license carries forward the current license conditions.

COR is a locally-owned company whose parent company is City of Roses Disposal and Recycling. City of Roses owns and operates two Metro-licensed material recovery facilities located at 5726 NE 109th Ave in Portland (Metro Council District 5) and 4580 NE 138th Ave in Portland (Metro Council District 1).¹ City of Roses also operates a drop box hauling company that collects commercial non-putrescible waste within the city of Portland.

BACKGROUND

NSLs are the main vehicles by which Metro manages the flow of solid waste transported to facilities located outside the Metro regional boundary because they allow Metro to closely monitor and potentially guide waste flows to authorized facilities for a higher level of control and faster response to changing conditions. 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").² This proposed NSL covers a portion of the 13 percent of uncommitted waste not guaranteed to Waste Management under the disposal contract.

Metro has a longstanding policy of allocating its uncommitted putrescible waste tonnage to applicants that request it. Over the last several years, Metro has allocated its uncommitted tonnage to licensees based on Metro's solid waste tonnage forecast and the amount of waste that each licensee controlled during the previous 12-month period. Metro would allocate a proportional share of the uncommitted tonnage to each licensee and release it during the year. Under that methodology, each licensee initially received 85 percent of its tonnage allocation at the beginning of the calendar year and Metro would hold the remaining 15 percent in reserve

¹ Metro Solid Waste Facility License Nos. L-134-16 and L-057-18 respectively.

² Change Order No. 11 to Metro Contract No. 900607, October 1, 2018.

for potential release by the COO later if it was in the public's interest and the uncommitted tonnage was actually available as forecasted.

In 2017, COR received an initial tonnage authorization of 472 tons for the calendar year. However, the COO did not release any reserve tonnage to the licensee that year because COR did not use the NSL and did not demonstrate the need for any additional tonnage. In 2018, the COO carried forward the same 472 tonnage allocation that COR initially received in 2017 and notified the licensee that Metro did not intend to release additional tonnage to current licensees during the year unless tonnage was available and there was a demonstrated need.

Although COR has not used its NSL, it holds the license because it seeks authorization to accept and transfer putrescible waste in the future. The COO recommends that the Metro Council maintain the status quo and extend the term of COR's NSL until December 31, 2019, and carry forward the same annual tonnage authorization of 472 tons for calendar year 2019.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed license extension. Although approval of Resolution No. 18-4924 would extend COR's authorization to transport waste to two landfills, 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 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;*

Wasco and Cowlitz are well known to Metro. Wasco is owned and operated by Waste Connections, Inc., a nationally-integrated solid waste company headquartered in The Woodlands, Texas. Cowlitz is publically-owned and operated by Cowlitz County. Both landfills are permitted Subtitle D disposal sites under the Resource Conservation and Recovery Act (RCRA), which establishes national landfill standards.

The environmental risk associated with the use of this disposal site 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 Connections, Inc. owns and operates Wasco and Cowlitz County owns and operates Cowlitz. Metro staff's investigation of these entities 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;*

Wasco and Cowlitz use operational practices and management controls that are typical of RCRA Subtitle D landfills. The regulatory agencies that oversee these disposal sites consider the operational practices and controls in place at the landfills appropriate for the proper management and disposal of waste and adequate for the protection of 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 extension 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;*

As previously explained above, Metro and Waste Management are parties to a disposal contract that includes a flow guarantee. NSLs are the main vehicles by which Metro manages this contractual obligation. This proposed NSL controls a portion of the uncommitted waste not guaranteed to Waste Management under the disposal contract. Metro's contract with Waste Management expires at the end of 2019. Provisions in the NSL allow Metro to monitor compliance with its disposal contract.

- (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*

City of Roses, the parent company of COR, is currently in compliance with its Metro-issued facility licenses and NSL. It 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, and to establish an annual tonnage authorization of 472 tons per calendar year. With

the exception of the above-mentioned amendments, the proposed license carries forward the current license conditions.

3. Anticipated/Potential Effects

Approval of Resolution No. 18-4924 will authorize the COO to issue an amended NSL to COR to extend the term of the license by one year to expire on December 31, 2019. The proposed NSL would authorize COR to transport and dispose of up to 472 tons per calendar year of putrescible waste at Wasco and, under certain unusual circumstances and emergency conditions, Cowlitz.

4. Budget/Rate Impacts

The price that Metro pays for disposal at Columbia Ridge Landfill is a “declining block rate” — meaning that the more waste that is delivered to any landfill owned by Waste Management the lower the per-ton cost paid by Metro. In general, Metro’s longstanding practice of allocating the uncommitted tonnage to a non-Waste Management landfill increases the tip fee at Metro’s transfer stations more than if all of the uncommitted waste were to flow to a landfill owned by Waste Management. As previously explained, the proposed NSL covers a portion of the uncommitted waste that is not guaranteed under Metro’s disposal contract (i.e., 472 tons per year transported and disposed at Wasco or Cowlitz).

Metro’s longstanding practice of granting NSLs for the uncommitted waste has already been factored into the budget. Additionally, all of 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. 18-4924, finding that the proposed amendments to the NSL are in the public’s interest and satisfies the requirements of Metro Code Chapter 5.05. Approval of Resolution No. 18-4924 will authorize the COO to issue an amended NSL to COR as attached to the resolution as Exhibit A.

wj