

Public comment report

Attachment 2 to Staff Report for Ordinance No. 19-5023



October 17, 2019

Prepared by: Joanna Dyer
503-813-7550

Background

Adoption of Resolution No. 19-5023 will authorize the Chief Operating Officer to issue a renewed solid waste facility franchise to Pride Recycling Company for a term of five years.

On August 1, 2019, the applicant submitted to Metro a complete solid waste facility franchise application accompanied by payment of the appropriate application fee of \$500. The applicant has not requested any new authorizations, tonnage increases or changes to its current franchise provisions.

Public Notice and Opportunity to Comment

Metro posted notice and provided an opportunity for the public to review and submit comments on the renewal application. The public notice was posted on Metro's website, mailed to 131 property owners and residents within one-quarter mile of the facility and emailed to local community groups, neighborhood associations and various other parties that are generally interested in solid waste issues. The 30-day public comment period began on August 1, 2019, and closed on August 30, 2019.

Summary of written public comments on application

Metro received one comment during the public comment period. The Vice President of Pride Recycling Company submitted a written comment outlining questions and concerns about the proposed franchise language that was provided to the applicant on July 30, 2019. This was the only comment received during the public comment period.

The letter outlines 10 areas of concern, which are summarized below, and are included in full at the end of this document.

Metro response to comments:

Below is a summary of the 10 comments received from Pride Recycling. Metro's response follows each comment summary.

1. Property owner PO Box is incorrect on redline draft.

Metro Response #1 – address

The address has been corrected.

2. Tonnage allocation for the next year should be moved to October 1 so franchisees have at least three months to adequately invest and plan in the facility's operations. (Section 4.1)

Metro Response #2 – tonnage allocation timeline

Tonnage allocation is dependent on the solid waste forecast. Metro will make every effort to notify franchisees of their tonnage allocation with as much notice as is practicable, and definitely prior to January 1.

3. Regarding the term “geographic proximity”, Pride would like clarity on the definition and enforcement mechanisms. (Section 4.2)

Metro Response #3 – geographic proximity

Metro revised this section of the franchise for increased clarity and to align with tonnage allocation methodology.

4. Section 4.4 Prohibition on mixing needs further clarification.

Metro Response #4 – prohibition on mixing

Metro revised this section of the franchise for increased clarity. Any mixing of waste types must be described in an operating plan and approved in writing by Metro so that Metro can ensure waste is going to the appropriate facility and that it is tracked and reported properly (Section 7.5).

5. Pride recommends adding language to Section 4.6 to allow for disposal of recyclables with written permission from Metro and DEQ if warranted by poor recycling markets.

Metro Response #5 – disposal of recyclables

Metro revised this section to incorporate this suggestion.

6. Pride is concerned about references to the Regional Waste Plan and associated actions when the implementation plan has not been developed. (Section 5.0)

Metro Response #6 – Regional Waste Plan

Metro added Section 5.0 Regional Waste Plan as a signal to solid waste facility operators that there will be future changes to the franchise resulting from the implementation of the 2030 Regional Waste Plan. The goals and actions of the [2030 Regional Waste Plan](#) are available for review for facility operators to gain a better understanding of the types of requirements that may be included in solid waste facility authorizations in the future. The 2030 Regional Waste Plan is the vision for the Metro Region’s solid waste system and the blueprint for achieving that vision. Metro has the responsibility to ensure that all solid waste generated in the region is managed in a manner that protects public health and safety and safeguards the environment. All programs, services and facilities related to solid waste management and disposal are addressed by the plan, including waste reduction, collection, transfer and disposal. This plan is designed to address the changes and challenges we face and to provide opportunities to innovate, invest and continue our efforts to protect people and quality of life in the region.

Metro also has broad legal authority to regulate solid waste facilities generally. This authority is derived from the Oregon Constitution, Metro’s home rule Charter and explicit statutory powers.

7. Franchisees are required to follow all applicable state and local laws. Specifically calling out Oregon’s “ban the box” law is redundant.

Metro Response #7 – ban the box

Guidance for new language in the proposed franchises comes from the 2030 Regional Waste Plan that the Metro Council adopted earlier in 2019 and the Property and Environmental Services Diversity, Racial Equity and Inclusion Work Plan. The 2030 Regional Waste Plan provides direction for Metro’s regulation of the solid waste industry, including franchise provisions. By focusing on

Oregon’s “ban the box” law, proposed Section 6.16 advances progress on Metro’s goals for the solid waste system. All the goals and actions that inform future franchise amendments can be found in the 2030 Regional Waste Plan. Please note that the provision that includes “ban the box” is now located in Section 6.16 of the proposed franchise.

8. Pride is concerned with removal of language stating Metro and franchisees will make a good faith effort to arrive at consensus on the intent and language of amendments.

Metro Response #8 – agreement vs. authorization

Metro has broad legal authority to regulate solid waste facilities generally. This authority is derived from the Oregon Constitution, Metro’s home rule Charter and explicit statutory powers in ORS Chapters 268, 459 and 459A. A Metro franchise is an authorization that cannot be negotiated. It is in essence a permit to operate. A franchise authorizes a franchisee to perform certain solid waste activities that Metro deems to be a benefit to the public. While Metro is removing consensus language, Metro will continue to solicit feedback from franchisees on specific decisions, as is evidenced by meetings that took place between Metro and each franchisee to discuss proposed changes to the franchise. Metro listened to the feedback from franchisees and several changes were made based, in part, on franchisee input.

Furthermore, there are existing opportunities for franchisees to request changes to an existing or proposed franchise. Metro Code 5.01.230 outlines how a franchisee can request a change of authorization to an existing franchise. Franchisees can also provide verbal and written testimony at the public hearing when their franchise renewal is presented to the Metro Council. The Metro Council takes public testimony into consideration when deciding whether to adopt a resolution for a franchise or to recommend changes.

9. Pride sees Metro as a direct competitor for material and does not think it is appropriate for Metro to have access to their financial information which would become public record. Pride also requested clarity on what “contracts” Metro would have the right to review. (Section 13.3)

Metro Response #9 – right of inspection and audit

Metro is not a direct competitor of private transfer stations. Metro provides services for the benefit of the public like other public utilities. Metro has the authority to regulate solid waste generated or disposed within the Metro region and has determined that when it is in the public’s interest to include private facilities in the solid waste system, it will do so.

Metro’s right of inspection and audit provision is not a new requirement. If Metro determined it was necessary to inspect a franchisee’s books, tax returns, financial statements or other information indicated in this provision, Metro would use best practices to keep information confidential in accordance with the applicable confidentiality provisions in Section 13.4 of the franchise and Oregon public records law.

10. Metro has previously stated that each November a franchised facility can request additional tonnage for the next calendar year. Does that additional tonnage continue forward annually?

Metro Response #10 – additional tonnage

As described in detail in the staff report, the tonnage allocation methodology is currently in development.

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The Vice President of Pride Recycling Company submitted this letter to Metro on August 30, 2019 as part of the public comment period.



August 30, 2019

Metro
Attention: Joanna Dyer
600 NE Grand Ave
Portland, OR 97232

Re: Comments regarding Pride Recycling Company's Solid Waste Facility Franchise No. F-002-19

Thank you for the opportunity to comment on the Solid Waste Facility Franchise. All comments reference the new (redlined) numbers throughout the document. All page numbers reference the page number in the upper right hand corner of the document, not the page number of the PDF document.

- Cover sheet: Property Owner PO Box should be corrected to 1150
- Page 8, item 4.1 Tonnage allocation, 2:
 - In order to adequately invest and plan for our facility's operations, it is unreasonable to not receive our annual tonnage allocation until January 1st. We believe this date should be moved up to at least October 1st of the previous year, so we have at least 3 months to plan appropriately.
- Page 9, item 4.2 Waste hauler access, b:
 - We would like clarity regarding how "geographic proximity" is defined so we can appropriately comment on this item.
 - Regarding "geographic proximity": There needs to be more clarity provided around how the geographic proximity can be enforced. For example, we may take waste from a hauler who has work within our "geographic proximity" but they also have work outside of it. How are we to determine how many tons they are bringing us from within the boundary vs. outside of the boundary? We would need to know how many tons each hauler within our boundary potentially has within their portion of the boundary in order to enforce this as needed if we are getting close to our tonnage cap.
- Page 10, item 4.4 Prohibition on mixing, 2:
 - This area needs further clarification. For example, it is appropriate to mix yard debris and food waste if the material is going to the same facility. Or potentially mixing wet waste and dry waste residual to the landfill to maximize payloads and minimize transportation impacts.

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- Page 11, item 4.6 No disposal of recyclable materials:
 - Due to the state of recycling markets, this section should be modified to read: "...materials to disposal site, without written permission from Metro and DEQ, including..."
- Page 11, item 5 Regional Waste Plan:
 - We are concerned about the references throughout the document to the Regional Waste Plan and the potential actions associated with that plan as those actions and how the goals will be achieved have yet to be determined.
- Page 22, item 9.10 Employment Reporting Requirements:
 - While we have no issue with Oregon's "ban the box" law, we find it redundant and unnecessary that Metro require us to confirm we are following one specific state law, when we are required to follow all state laws under the franchise under item 13.1, General Obligations.
- Page 24, item 12 Amendment, Suspension, and Revocation:
 - We have concerns about removing (previously titled) sections 11.1 and 11.2 b. Removing language that allows us to have a dialogue with Metro staff and make a good faith effort to reach consensus before proposed changes are presented to council is very concerning. Removing this language allows Metro to make changes without taking into consideration our significant capital cost as well as a reasonable rate of return, could have detrimental impacts to our operations.
- Page 26, item 13.3 Right of inspection and audit, 3:
 - This section states that Metro has the right to inspect all books including income tax returns and financial statements etc. Metro operates as a direct competitor for material to the private owned transfer stations while limiting the volumes we are allowed to receive with no such limit on themselves. This limits our ability to spread necessary overhead costs among a larger material base as Metro is allowing themselves to benefit from. It is inappropriate for Metro, as a direct competitor, to have any access to this financial information for any of the private transfer stations. This section also states that any of this information obtained by Metro would become public record. Again, it is inappropriate for the financial records and tax returns of a private company to be made public.
 - Review of contracts, please provide more clarity about what "contracts" Metro would potentially have the right to review. This language is too vague as described.
- Metro has previously stated that each November a franchised facility can request additional tonnage for the next calendar year. If that additional tonnage is granted, does it continue forward annually, or only for one year? Equipment needs and operational considerations would be very difficult to provide for under only a one year short-term window.

Thank you

Kristin Leichner
Vice President
Pride Recycling Company