

 **Metro** | *Memo*

DATE: April 5, 2016

TO: Paul Slyman, Property and Environmental Services Director

THROUGH: Roy W. Brower, Solid Waste Compliance and Cleanup Director *RWB*

FROM: Hila Ritter, Authorization Coordinator *HR*

RE: Issuance of Renewed Solid Waste Facility License No. L-109-16 for GreenWay Recycling, LLC

Attached for your signature is renewed Solid Waste Facility License No. L-109-16 for GreenWay Recycling, LLC ("GWR"), a locally owned and operated material recovery facility located at 4135 NW St. Helens Road in Portland (Metro District 5). This memo provides background information on the applicant's request and recommends that Metro issue a renewed license to GWR with specific conditions related to the applicant's compliance history.

BACKGROUND



The applicant, GWR, is a Metro-licensed material recovery facility that primarily accepts mixed non-putrescible waste for the purpose of resource recovery. The facility also accepts source-separated materials including yard debris, wood waste and asphalt roofing shingles. The subject facility is approximately 1.5 miles from Metro Central Transfer Station. GWR has operated as a Metro-

licensed solid waste facility since 2004 and has been authorized to perform material recovery since 2007.

On October 6, 2015, Metro received an application from GWR requesting the early renewal of its existing solid waste facility license (No. L-109-12), which is set to expire on June 30, 2017. Applicants typically submit renewal applications to Metro approximately four to six months before the expiration date of their license. However, in this case, GWR submitted its renewal application early in order to obtain long-term assurance for financing to complete several site improvements.

On December 11, 2015, Metro staff met with GWR to discuss its license renewal request and the resolution of dust violations at its facility (see below for more information about the facility's compliance history). Metro agreed to consider an early renewal of the license as part of a settlement agreement as described below.

With the exception of new wood waste processing requirements and a few minor housekeeping revisions, the proposed license requirements are substantially similar to that of the facility's current license. GWR will continue its current operations with the exception of wood waste processing as further described below as part of the special conditions of the license and as mutually agreed to in a settlement agreement described below.

Under Metro Code Section 5.01.053, the proposed license renewal is to be approved or denied by the Chief Operating Officer ("COO"). On July 1, 2015, the COO delegated to the Property and Environmental Services ("PES") Director all authority under Metro Code Title V (Solid Waste). As such, the PES Director is authorized to grant this license renewal.

PUBLIC NOTICE AND OPPORTUNITY TO COMMENT

On January 4, 2016, Metro issued notice of the proposed license renewal application and provided the public with an opportunity to submit comments. Public notice was mailed to property owners within 1/8th of a mile of the facility, posted on the Metro web site, and e-mailed to a list of industry and governmental stakeholders that have a general interest in solid waste issues in the Metro region. Notice of the application was also emailed to the local Northwest Industrial Neighborhood Association and Forest Park Conservancy. The public comment period ended on February 3, 2016.

In response to the public notice, Metro received one written comment regarding the application from a neighboring business and GWR submitted a response to that comment (see attached). The commenter, Ms. Julie Kolln, manages a business located adjacent to the northern boundary of GWR¹, and she said that dust generated at GWR settles on her property and the property of her tenants. In response to the comment that Metro received, Terrell Garrett (GWR owner) explained changes in the facility's wood waste management procedures that would be implemented to address dust concerns. Specifically, he said that GWR would either build a "loadout" structure in the wood yard to contain fugitive dust emissions or cease wood grinding during the months of May-September. GWR has subsequently updated its operating plan to including these new wood waste processing conditions.

¹ Comment letter from Julie Kolln, Property Manager at Kittridge Park Associates.

Staff recommends including these wood waste processing requirements, as agreed to by GWR, as new conditions in the proposed license renewal in order to minimize off-site impacts from dust generation at the facility and as a way to address the concerns of Ms. Kolln.

COMPLIANCE HISTORY OF THE APPLICANT

Metro has issued five Notices of Violation (“NOVs”) to GWR during the term of the current license. Two of these NOVs were issued for repeat violations. These violations included: accepting prohibited waste, failure to maintain and repair building walls, and deposition of dust off-site. All of the above violations have since been resolved – with a change in operating procedures resulting from the last NOV.

Specifically, on August 12, 2015, Metro issued NOV-385-15 to GWR for failing to minimize dust generation and prevent offsite dust impacts. On September 9, 2015, GWR requested a contested case hearing to dispute the NOV. However, Metro and GWR subsequently entered into a settlement agreement to resolve the NOV on December 18, 2015. As part of the settlement, GWR agreed to cease grinding wood from May through September unless it first builds a three-sided, covered structure to manage the load-out of the material. This change in operation is included as a condition in the proposed license renewal

With respect to the applicant’s compliance status with other regulatory agencies, representatives of the Oregon Department of Environmental Quality (“DEQ”) have reported to Metro that the agency imposed a civil penalty on GWR on December 31, 2015 for dust settling off-site. GWR has contested the issuance of that penalty and the matter has yet to be resolved. DEQ has no other enforcement actions pending with GWR at this time.

City of Portland Bureau of Environmental Services (“BES”) staff have reported to Metro that GWR is in compliance with the requirements of its National Pollutant Elimination Discharge Permit which is issued by DEQ and monitored by BES.

METRO CODE RENEWAL CRITERIA

Metro Code Section 5.01.055 states that:

The Chief Operating Officer shall renew a Solid Waste Facility License unless the Chief Operating Officer determines that the proposed renewal is not in the public interest, provided that the Licensee files a completed application for renewal accompanied by payment of an application fee of three hundred dollars (\$300) not less than 120 days prior to the expiration of the License term, together with a statement of proposed material changes from its initial application for the License and any other information required by the Chief Operating Officer. The Chief Operating Officer may attach conditions or limitations to any renewed License. The Chief Operating Officer may attach conditions or limitations to any renewed License.

On October 6, 2015, GWR filed an application for renewal of its existing license and provided payment of an application fee of \$300. The license renewal application submitted by GWR included a description of its operation and the types of solid waste it accepts. GWR’s revised operating plan,

dated December 14, 2015 includes updated load processing procedures reflecting the changes to wood grinding and dust control. This revised operating plan has been approved by both DEQ and Metro.

Metro Code provides that the COO shall renew a solid waste facility license unless the COO determines that the proposed renewal is not in the public interest. GWR conducts resource recovery of materials including wood, metal and cardboard and, as such, it plays an important role in the region's solid waste recovery efforts.

The Code also stipulates that the COO may attach conditions or limitations to any renewed license. Based upon the applicant's compliance history and the terms of the settlement agreement between Metro and GWR, staff recommends that the COO renew the proposed license with the new condition as described below. This condition was mutually agreed upon by GWR and Metro on December 18, 2016 and provides ongoing incentives for the facility to maintain compliance with the terms of the license.

As described above, Section 4.8 of the proposed license includes a new condition that prohibits the licensee from grinding wood onsite from May 1 through September 30 unless the licensee performs all load-out of ground wood within a three-sided, covered structure. The licensee has agreed to this new condition.

STAFF RECOMMENDATION

Staff recommends issuing Solid Waste Facility License No. L-109-16, with the proposed standard and special conditions, in order to renew GWR's authority to accept mixed non-putrescible waste for the purpose of resource recovery. The proposed license includes conditions intended to minimize potential off-site impacts on adjacent properties. A copy of the proposed license is attached for your signature.

From: Julie Kolln
Sent: Wednesday, February 03, 2016 4:35 PM
To: Metro
From: Julie Kolln
Property Manager, Kittridge Park Associates
Date: February 1, 2016

I am writing to comment on the renewal of GreenWay Recycling solid waste facility license. I manage the building directly north of GreenWay at 4301-4309 NW Saint Helens Road. The tenants at the south end of our building have borne the brunt of the abuse of GreenWay for many years. The recycling operations negatively affect my tenants on a daily basis in several ways.

As we have documented, dust and air quality is terrible in certain conditions. My tenants routinely park their vehicles as far from GreenWay as they can possibly get in our parking lot. This isn't because they want to walk as far as possible. GreenWay employees offer to wash my tenant's cars. I reviewed the dust control procedures submitted by GreenWay with this application and they are unachievable with the current operation. On page 27 they state 'At no time will dust be allowed to leave the site.' This is a ridiculous statement. Dust leaves their site every day of the year unless there is driving rain.

There have been days that we were unable to perform work outside our building due to eye irritation from the airborne dust. The roof top HVAC units at Kittridge require twice the maintenance as like units on another building a mile away. The HVAC maintenance team directly associates this to the air quality and high dust at the Kittridge site. In addition, our windows require washing more often and we have found we need to pressure wash the building at least twice a year. This is a maintenance issue that doesn't exist at our other commercial buildings.

We have repeatedly tried to get GreenWay to address our concern to no avail. Until they are fined at a level that gets their attention, they will continue to disregard the stated operating parameters. We would like to see their application denied.

I can be reached at 503-888-2504 for any follow up you need.

Thanks,
Julie Kolln
Jay Management, Inc
2051 Bay Meadows Drive
West Linn, OR 97068
503-888-2504

From: Hila Ritter
Sent: Thursday, February 04, 2016 8:24 AM

Dear Julie Kolln,

Thank you for your comments regarding the renewal of GreenWay Recycling's solid waste facility license. Your comments will be taken into consideration during the evaluation process for this license renewal.

Please do not hesitate to contact me if you have any further questions.

Thanks,
Hila Ritter
Authorization Coordinator
Solid Waste Compliance & Cleanup

From: Hila Ritter
Sent: Thursday, February 04, 2016 8:35 AM

Good morning,

As you know, the public comment period for your solid waste license renewal ended at 5 p.m. yesterday, February 3, 2016. We received one comment regarding the dust control procedures included in your application. The principal concern is that on page 27 it says "at no time will dust be allowed to leave the site." Can you please respond, in detail, how this stated goal will be achieved?

Please do not hesitate to contact me if you have any questions.

Thanks,
Hila Ritter
Authorization Coordinator
Solid Waste Compliance & Cleanup

From: Hila Ritter
Sent: Wednesday, Feb 10, 2016 at 11:04 AM

Hello,

I sent the email below last week, and I realized that perhaps I used the incorrect email address. Please let me know the best way to contact you.

Thanks,
Hila Ritter
Authorization Coordinator
Solid Waste Compliance & Cleanup

From: Terrell Garrett

Sent: Thursday, 2/11/2016 12:50 PM

Rita:

Our goal is that of complete compliance to the rules that affect us. Those rules are a combination of the City of Portland, County, Metro, DEQ, and State as well as some Federal (most covered by DEQ).

The Metro Code relevant to your request is 5.01.053 Issuance and Contents of Licenses (i) (2) Health and Safety which states: "Facilities shall be designed and operated to preclude the creation of conditions that may degrade public health and safety including, but not limited to, litter, dust, odors, and noise."

GreenWay, Metro, and DEQ just finished discussions and negotiations which led to an overall agreement for certain site improvements to GreenWay. Specifically, GreenWay has agreed to build a "loadout" structure in its wood yard for the purpose of containing dust from hogged-fuel loading operations. In the alternative, should GreenWay not build this structure, GreenWay has agreed to not grind wood during the months of May to October annually. It is the feeling of Metro, DEQ, and GreenWay that this structure will eliminate wood dust problems on the site.

Terrell Garrett

HR:bjl
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December 18, 2015

Terrell Garrett
GreenWay Recycling, LLC
P.O. Box 4483
Portland, Oregon 97208

RE: Settlement Agreement, NOV-385-15
Solid Waste Facility License Renewal (L-109-12)

Dear Mr. Garrett:

Attached is a fully executed settlement agreement between GreenWay and Metro. We look forward to implementing the provisions of this agreement.

It is not standard practice for Metro to issue a renewal license nearly 18 months in advance of a license's expiration date. However, GreenWay has indicated that an early renewal would provide it with some long-term financial security as it seeks financing for expected facility site improvements.

As we have discussed, Metro cannot issue a renewal license without the appropriate amount of public comment as per Metro Code 5.01. Given past public comments and neighbor complaints regarding wood dust escaping GreenWay's property, Metro expects similar comments during the public comment period for the current license renewal request. We believe the provision of the agreement pertaining to wood grinding will largely address most of the concerns experienced by GreenWay's neighbors. Therefore, Metro agrees to issue a license renewal to GreenWay Recycling, barring any unforeseen circumstances or substantially changed conditions. Finally, GreenWay's amended operating plan dated December 14, 2015 that specifically indicates it will not grind wood during the months of May, June, July, August and September, is approved by Metro.

The renewal license would be issued no later than May 1, 2016, for a term beginning on July 1, 2016 and expiring on June 30, 2021. If you have any questions, contact Stephanie Rawson at 503-797-1678.

Sincerely,

Roy W. Brower
Director, Solid Waste Compliance and Cleanup

SR/RB:bjl

cc: Paul Slyman, PES Director

Shane Abma, Senior Assistant Attorney

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered into as of the last date of signature indicated below, by and between Metro, a metropolitan service district and municipal corporation of the State of Oregon, organized under Oregon Revised Statutes Chapter 268 and the Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232 ("Metro") and GreenWay Recycling, LLC ("GreenWay"), an Oregon limited liability company located at 4135 NW St. Helens Road, Portland, Oregon 97210 (collectively the "Parties").

RECITALS

- A. Metro issued a Solid Waste Facility License to GreenWay Recycling (L-109-12) on or about August 13, 2012, which expires on June 30, 2017.
- B. On August 12, 2015, Metro issued Notice of Violation No. 385-15 ("NOV-385-15") to GreenWay. Metro based the violation on a failure to "manage wood processing operations to minimize dust generation and prevent offsite dust impacts," in violation of Section 5.7 of License # L-109-12. (See NOV-385-15).
- C. On or about September 9, 2015, GreenWay requested a contested case hearing to dispute the validity of NOV-385-15.
- D. On or about October 6, 2015, GreenWay submitted a license renewal application requesting that Metro renew L-109-12.
- E. On December 11, 2015, the Parties convened, with counsel present, to discuss an informal resolution of GreenWay's regulatory issues, namely the license renewal request and the pending NOV. The Parties did not discuss any other outstanding issues between the Parties.
- F. The Parties now wish to enter into this Agreement to fully settle and compromise the regulatory disputes.

NOW, THEREFORE, in reliance on the above recitals and in consideration of the mutual promises described below, the adequacy of which the Parties hereby acknowledge, the Parties agree as follows:

1. Promises and Obligations of Each Party. The parties agree to the following promises and obligations:
 - a. GreenWay will seek approval from DEQ regarding a change to its operating plan to address dust issues. That change will, at a minimum, state that no grinding is allowed during the months of May, June, July, August and September. Grinding would be allowed during those months only if an enclosed structure is put into place for the loading of the ground wood or if another dust-control method is mutually agreed upon by Metro and GreenWay. The intent is that wood dust will not leave the property.
 - b. Metro will provide GreenWay with a "comfort letter" stating, in essence, that barring any unforeseen circumstances, Metro will issue a renewal license no later than May 1, 2016,

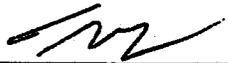
with the renewal period beginning on July 1, 2016 and ending on June 30, 2021. Metro will issue the "comfort letter" no later than Friday, December 22, 2015.

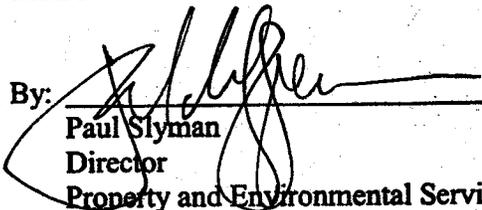
- c. Metro will publish GreenWay's updated operating plan and license renewal materials for a 30-day public comment on the later of: (1) January 4, 2016, or (2) two weeks after GreenWay provides Metro with written notice of DEQ's official approval of changes to the operating plan. Greenway agrees to respond to any public comments, received during the public comment period, in a timely fashion. Failure to respond in a timely manner could delay the issuance of GreenWay's license renewal.
 - d. Metro will make a final decision on the license renewal no later than May 1, 2016, as indicated in the "comfort letter."
 - e. Metro will make certain "housekeeping" changes to GreenWay's license as requested by GreenWay. Metro provided those housekeeping changes to GreenWay on November 3, 2015, in draft form.
 - f. Within three business days of receiving Metro's "comfort letter," GreenWay will issue a written notice to Metro withdrawing its contested case hearing request for the NOV issued on August 12, 2015. (NOV-385-15). Metro will then inform the Administrative Law Judge (ALJ) of the withdrawal.
 - g. If this Agreement is not signed by GreenWay by Friday, December 18, 2015, Metro will request a January 2016 hearing date from the ALJ and Metro will be under no further obligation to perform any other agreed upon action.
 - h. GreenWay will provide Metro with the basis of its contested case defense so that Metro can consider it as part of its upcoming Code change package.
 - i. Both parties will make good faith efforts to effectuate the agreed upon terms.
2. Metro's Use of NOV-385-15. Metro may use NOV-385-15 in any formal or informal evaluation or proceeding conducted by Metro and related to the parties.
 3. Modification and Waiver. This Agreement may not be modified unless the modification is in writing and signed by all of the Parties. No provision of this Agreement shall be considered waived by any Party unless such a waiver is made in writing signed by the Party making the waiver. Waiver of any provision of this Agreement does not affect the enforceability of any other provision of this Agreement.
 4. Attorney Fees. If any suit or action is brought to enforce or interpret this Agreement, each party is responsible for its own costs and attorney fees for any administrative hearing, trial or appeal related to any alleged breach of this Agreement.
 5. Choice of Law. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
 6. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.
 7. Entire Agreement. This Agreement is the entire agreement between the Parties.

- 8. **Voluntary Agreement.** Each Party hereby declares and represents that it fully understands the terms of this Agreement, that it has had ample opportunity to review this Agreement and solicit and receive the advice of its own legal counsel, and that it voluntarily enters into this Agreement.
- 9. **Authority to Enter Into This Agreement and Signatory Authority.** Each Party hereby declares and represents that it has the legal power, right, and authority to enter into this Agreement. The individuals signing below warrant that they have full authority to execute this Agreement on behalf of the Party for which they sign.
- 10. **Execution in Counterparts.** This Agreement may be executed in counterparts, each of which constitutes an original and all of which together are deemed a single document.

GreenWay Recycling, LLC.

Metro

By: 
Terrell Garrett
President

By: 
Paul Slyman
Director
Property and Environmental Services

Date: 12/17/15

Date: 12/18/15