

# Memo

Date: June 24, 2020  
To: Pam Peck, Policy and Compliance Director  
From: Joanna Dyer, Senior Solid Waste Planner  
Subject: Renewed Solid Waste Facility License No. L-118-20 for Wood Waste Management, LLC

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Attached for your signature is renewed Solid Waste Facility License No. L-118-20 for Wood Waste Management, LLC (WWM), a yard debris reload facility located at 7315 NE 47<sup>th</sup> Avenue in Portland (Metro Council District 5). This memo provides background information on the applicant's request, a description of the proposed changes to the license, and staff's recommendation to renew Metro's authorization for WWM.

Under Metro Code Section 5.01.080, the proposed license is to be approved or denied by the Chief Operating Officer (COO). On March 16, 2020, the COO delegated to the Policy and Compliance Director (the Director) authority to carry out the COO's responsibilities under Metro Code Chapter 5.01 for approving or denying a solid waste facility license. As such, the Director is authorized to approve this proposed license.

## **OVERVIEW**

The applicant, WWM, is a Metro-licensed facility that accepts yard debris and land clearing debris for reloading to composting facilities; source-separated untreated wood waste for processing and reloading to facilities for use as boiler fuel; and soils and inert materials for resale.



*Aerial view of Wood Waste Management*

WWM has operated as a Metro-licensed facility since 2005. The facility currently holds Metro Solid Waste Facility License No. L-118-15A which expires on June 30, 2020. Historically, the Department of Environmental Quality (DEQ) has not required the facility to obtain a solid waste permit. However, in 2019, DEQ ordered WWM to obtain a permit due to compliance issues that were identified at the

facility. WWM has not yet submitted a permit application to DEQ and is contesting the order to do so. DEQ has since taken enforcement action and imposed penalties as described in further detail in the compliance section of this memo.

On February 21, 2020, WWM submitted an application to Metro requesting the renewal of its license. The applicant did not propose any changes in its operation or request new authorizations. As part of Metro's ongoing efforts to improve clarity and establish more uniform requirements, staff is proposing various updates and additions to the WWM license that will better align it with other Metro authorizations where appropriate. Some of these updates and additions are facility-specific and some are standard requirements that will be included in all new and renewing licenses. In addition to the updates outlined below, the proposed license includes various non-substantive housekeeping for clarity and consistency.

### **New Facility-Specific License Addition for WWM**

The proposed license includes the following new facility-specific:

- **Pile size limits** (Section 4.1): Add pile size limits that align with Oregon Fire Code. Metro has already added this requirement to Metro-licensed compost facilities and is now expanding to include facilities that are authorized to accept yard debris or wood waste.

### **Standard Requirement Updates and Additions for WWM**

Certain license requirements are standard across all licenses and franchises. This proposed license updates language in some existing standard conditions and also adds new standard conditions that will be included in all new and renewing licenses as follows:

- **General Performance Standards** (Section 5.1): Add section requiring the facility to operate in a manner that avoids undue nuisance conditions, threats to the environment, or conditions that degrade public health and safety. This section is included in other facility licenses and is proposed here to increase uniformity across licenses.
- **Employment Standard** (Section 5.16): Add a new section requiring that the licensee be in compliance with Oregon's "ban the box" law (ORS 659A.360). Oregon's "ban the box" law makes it illegal for an employer to inquire about criminal convictions before the interview stage of hiring. This advances progress on the 2030 Regional Waste Plan and the Waste Prevention and Environmental Services Diversity, Racial Equity and Inclusion Work Plan goals. This requirement was added to the franchises in 2020 and will be added to all licenses as they are renewed.
- **Closure protocol** (Section 6.11): Update closure protocol to distinguish between a short-term and long-term closure of the facility and require a licensee to notify Metro within one business day of a short-term or long-term closure. This standardizes the closure protocol across licenses and formalizes the expectation that Metro is notified of any short-term or long-term closure.
- **Reporting requirements** (Subsection 8.2.2): Add a new subsection stating that Metro may require reporting on a weekly or daily basis in the event of a significant disruption to the solid waste system. This was created in response to the COVID-19 pandemic and Metro's need for more real-time data. This subsection will be added to all relevant authorizations.
- **Changes in ownership** (Section 8.6): Update language to require notification to Metro of any change in ownership. This change will be standard across new and renewing licenses and aligns with Metro Code Chapter 5.01.
- **Certificate of insurance** (Section 9.5): Add a new section to formalize the expectation and the long-standing practice that licensees submit a certificate of insurance (CERT) to Metro. Licensees

must name Metro as an additional insured on the CERT, and also include the *additional insured endorsement* from the general liability policy as recommended by Metro's risk manager.

- **Right of inspection and audit** (Section 12.3): Update language to require access to the facility by Metro authorized personnel to perform research. This update was made to the franchises in 2020 and will be made to all licenses as they are renewed.
- **Confidential Information** (Section 12.4): Update language to reflect current state public records law which has more restrictive timelines for responding to a requestor. This update was made to the franchises in 2020 and will be made to all licenses as they are renewed.

#### **PUBLIC NOTICE AND OPPORTUNITY TO COMMENT**

Metro has a longstanding practice of providing public notice and a 30 day comment period for a license renewal application before deciding whether to approve or deny it. However, due to the COVID-19 pandemic, Metro has postponed the public notice and comment period for a series of licenses that expire June 30, 2020. Metro is committed to soliciting input from the public about these facilities and will open a public comment period later this year when our communities are better able to provide feedback.

WWM has a good record of compliance though staff is currently monitoring a compliance issue with DEQ as described in the compliance section of this memo. Metro will solicit input from the public about this facility later this year. In the interim, staff finds that it is in the public's interest to renew the license with a standard five-year term. Metro may amend the license at a later date based on new information received during the public comment period.

#### **METRO CODE LICENSE RENEWAL CRITERIA**

Metro Code Section 5.01.110 states:

*The Chief Operating Officer must approve a solid waste facility license renewal unless the Chief Operating Officer determines that the proposed license renewal is not in the public interest. The Chief Operating Officer may attach conditions to any renewed license.*

WWM filed a renewal application on February 21, 2020 accompanied by a \$300 application fee payment. The application was deemed complete on March 20, 2020. The license renewal application included a description of the facility's operation and the solid waste it accepts. The proposed license does not include any new authorizations and, if approved, will replace the current license that is set to expire on June 30, 2020.

#### **COMPLIANCE HISTORY OF THE APPLICANT**

Metro staff conducted 21 inspections of WWM between July 2015 and February 2020 and two additional off-site, non-contact inspections in March and April 2020.

Historically, DEQ has not required WWM to obtain a solid waste permit. However, in 2018, DEQ began investigating a complaint alleging that soil purchased from WWM contained high levels of lead. Concurrently, Metro was receiving conflicting information from WWM about end markets for painted and treated wood received at the facility.

In response to these compliance issues, DEQ issued a warning letter in November 2018 citing failure to provide requested documentation on how treated and untreated wood is managed on site and how these materials are used after processing. DEQ ordered the facility to obtain a solid waste facility permit. WWM did not submit a permit application and DEQ issued a pre-enforcement notice in March 2019 and

issued a civil penalty in June 2019. WWM contested the DEQ action and the matter is still pending. Metro issued a Notice of Violation without civil penalty (NOV No. 420-19) to WWM for failure to notify Metro of the enforcement action issued by DEQ.

Metro amended WWM's license in 2019 to prohibit the acceptance of painted and treated wood waste. The facility has since stopped accepting the material and has revised its Metro operating plan to reflect this change. In May 2020, WWM submitted a revised operating plan to DEQ that is currently under review. Metro will continue to monitor this matter and coordinate with DEQ to ensure that WWM complies with all applicable requirements. Metro may amend the license in the future based upon new information or requirements imposed by DEQ.

The city of Portland issued a violation notice (No. 20-136534-NC) to WWM on April 15, 2020 for noise associated with moving rock and soil materials with heavy equipment at night. Staff contacted city of Portland staff to learn the status of this violation without response.

Notwithstanding the compliance issues described above, staff recommends renewing its Metro license in this instance because WWM continues to work with DEQ to come into compliance. As mentioned before, Metro coordinates closely with DEQ and may amend the WWM license in the future based on new information or requirements imposed by DEQ. Staff finds that facilities like WWM play an important role in the region's solid waste recovery efforts and it is in the public interest to renew the facility's license at this time.

**STAFF RECOMMENDATION**

Staff recommends approving Solid Waste Facility License No. L-118-20 to renew WWM's authority to accept yard debris, land clearing debris, clean wood waste and clean fill for processing and reloading to authorized facilities. If approved, the proposed license will take effect on July 1, 2020 and expire on June 30, 2025. A copy of the proposed license is attached for your signature.