



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Memo

Date: June 15, 2022
To: Pam Peck, Policy and Compliance Program Director
From: Will Ennis, Senior Solid Waste Planner
Subject: Renewed Solid Waste Facility License No. L-026-22 for McFarlane's Bark, Inc.

Attached for your signature is renewed Solid Waste Facility License No. L-026-22 for McFarlane's Bark, Inc. (McFarlane's), a yard debris composting facility located at 13345 SE Johnson Road in unincorporated Clackamas County (Metro District 2). This memo provides background information on the applicant's request, a description of proposed changes to the license, and staff's recommendation to renew Metro's authorization for McFarlane's.

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

McFarlane's is a Metro-licensed yard debris composting facility that accepts and processes yard debris for composting, and wood waste for producing boiler fuel. The facility also operates a retail outlet for landscaping products. McFarlane's is a family-owned business that has operated as a Metro-licensed facility since 1998. The facility holds Metro Solid Waste Facility License No. L-026-16A which expires on June 30, 2022. The facility also holds a Solid Waste Disposal Site Permit (No. 1442) issued by the Department of Environmental Quality (DEQ) that was administratively extended when it expired on August 31, 2021, and a DEQ NPDES Stormwater Discharge Permit 1200Z that expires on June 30, 2026.



McFarlane's Bark, Inc.

On March 14, 2022, McFarlane's submitted a completed application to Metro requesting the renewal of its license. The applicant did not propose any changes to its operation or request any 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 McFarlane's license that will better align it with other Metro authorizations where appropriate. All of the proposed new and updated standard requirements will be included in all new and renewing licenses. In addition to the updates outlined below, the proposed license includes various non-substantive housekeeping changes for clarity and consistency.

Updates and additions to standard license requirements

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:

- **Acceptance of painted and treated wood** (formerly Section 3.6): Removed a section authorizing the acceptance of painted and treated wood as there are currently no viable markets for this material. This change is standard for all compost and yard debris reload facilities.
- **Prohibition on mixing** (Section 4.3): Add section prohibiting the facility from mixing source-separated recyclable material with any other waste unless approved by Metro. This section is included in other facility licenses and is proposed here to increase uniformity across licenses.
- **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 6.12): 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

On April 15, 2022, Metro issued public notice of the proposed license renewal and provided an opportunity for the public to submit comments. A description of the proposed facility and the license application was available on Metro's website. Interested parties could submit comments via an online form or leave a voicemail on a multi-language phone line. Postcards with information in six languages about the proposed license and comment period were mailed to 57 businesses, residents and owners of properties located within approximately one-quarter mile of the facility. Notice was also emailed to community based organizations and neighborhood associations located within one mile of the facility, and emailed to stakeholders with general interest in solid waste issues. The public comment period ended on May 16, 2022.

Metro received three comments during the public comment period. Two were in support of the license renewal, and the third comment opposed the license renewal but did not provide any explanation of the opposition.

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.

McFarlane's filed a license renewal application that was deemed complete on March 14, 2022, accompanied by payment of the \$300 application fee. The license renewal application included a description of its 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, 2022.

COMPLIANCE HISTORY OF THE APPLICANT

McFarlane's is currently in compliance with its Metro-issued license and it has not had any significant compliance issues with regard to Metro regulations within the last six years. Metro staff conducted 29 inspections of McFarlane's during the term of its current license, and Metro did not take any enforcement actions at the facility. In addition, Metro has not received any complaints or been notified of any concerns regarding the facility during the last six years. DEQ staff reported that McFarlane's is currently in compliance with its DEQ solid waste permit. However, DEQ Water Quality staff reports that McFarlane's failed to meet the testing and reporting requirements of its NPDES Stormwater Discharge Permit 1200Z in 2017-2018 and 2019-2020 and was issued a Notice of Civil Penalty Assessment and Order in each of those cases. This matter is now closed and DEQ considers McFarlane's to be in compliance. Clackamas County staff report that the facility is in compliance with local regulations.

Staff finds that McFarlane's plays an important role in the region's solid waste recovery efforts and it is in the public interest to renew the facility's license.

STAFF RECOMMENDATION

Staff recommends approving Solid Waste Facility License No. L-026-22 to renew McFarlane's authority to accept and process yard debris for the production of compost. If approved, the proposed license would take effect on July 1, 2022 and expire on June 30, 2027. A copy of the proposed license is attached for your signature.

Attachment