

BEFORE THE METRO COUNCIL

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| FOR THE PURPOSE OF AUTHORIZING THE CHIEF |) | RESOLUTION NO. 15-4625 |
| OPERATING OFFICER TO ISSUE A NEW NON- |) | |
| SYSTEM LICENSE TO SWAN ISLAND DAIRY FOR |) | Introduced by Martha J. Bennett, |
| DELIVERY OF NON-RECOVERABLE NON- |) | Chief Operating Officer, with the |
| PUTRESCIBLE WASTE MIXED WITH PUTRESCIBLE |) | concurrence of Tom Hughes, |
| WASTE TO THE COVANTA WASTE-TO-ENERGY |) | Council President |
| FACILITY IN MARION COUNTY, OREGON |) | |

WHEREAS, the Metro Code requires a non-system license of any person that delivers solid waste generated from within the Metro Region to a non-system disposal facility; and

WHEREAS, Swan Island Dairy has filed a complete application seeking a non-system license to deliver non-recoverable non-putrescible waste mixed with putrescible waste from its Swan Island Dairy facility to the Covanta Waste-to-Energy Facility for disposal under the provisions of Metro Code Chapter 5.05, Solid Waste Flow Control; and

WHEREAS, Metro Code Chapter 5.05 provides that applications for non-system licenses for putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council; and

WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors under the Metro Code; and

WHEREAS, the Chief Operating Officer recommends that the non-system license be issued together with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:

1. The non-system license application of Swan Island Dairy is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. The Chief Operating Officer is authorized to issue to Swan Island Dairy a Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this 7th day of May, 2015.

Tom Hughes

 Tom Hughes, Council President



Approved as to Form:

Alison R. Kean

 Alison R. Kean, Metro Attorney

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METRO

**METRO SOLID WASTE FACILITY
NON-SYSTEM LICENSE**

No. N-167-15

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| LICENSEE: |
| Swan Island Dairy 4950 N Basin Avenue Portland, OR 97217 |
| CONTACT PERSON: |
| Michael Chizum Phone: (503) 256-2210 E-mail: michael.chizum@kroger.com |
| MAILING ADDRESS: |
| Swan Island Dairy 4950 N Basin Avenue Portland, OR 97217 |

ISSUED BY METRO:

Scott Robinson, Deputy Chief Operating Officer

Date



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| 1 | NATURE OF WASTE COVERED BY LICENSE |
| | Non-recoverable non-putrescible waste mixed with putrescible waste generated at the Swan Island Dairy site located at Swan Island Dairy, 4950 N Basin Avenue, in Portland, OR. |
| 2 | CALENDAR YEAR TONNAGE LIMITATION |
| | Licensee is authorized to deliver to the non-system facility described in Section 3 of this license up to 85 tons per calendar year of the waste described in Section 1 of this license. |
| 3 | NON-SYSTEM FACILITY |
| | <p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 only to the following non-system facility:</p> <p style="text-align: center;">Covanta Waste-to-Energy Facility 4850 Brooklake Road, NE Brooks, OR 97305</p> <p>This license is issued on condition that the non-system facility named in this section is authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality that this non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7 of this license.</p> |
| 4 | TERM OF LICENSE |
| | The term of this license will commence on July 1, 2015 and expire at midnight on December 31, 2017, unless terminated sooner under Section 7 of this license. |
| 5 | REPORTING OF ACCIDENTS AND CITATIONS |
| | Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles of its transportation carrier during the loading and transporting of the solid waste on behalf of the Licensee. |



| 6 | RECORD KEEPING AND REPORTING |
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| | <p>(a) The Licensee shall keep and maintain accurate records of the amount of all waste that the Licensee delivers to the non-system facility described in Section 3 of this license. These records include the information specified in <u>Reporting Requirements and Data Standards for Metro Solid Waste Licensees, Franchisees, and Parties to Designated Facility Agreements</u>.</p> <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall:</p> <ul style="list-style-type: none">i. Transmit the records required under Section 6(a) above to Metro in an electronic format prescribed by Metro;ii. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; andiii. Remit to Metro the requisite Regional System Fees and Excise Tax in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes. <p>(c) Licensee shall make all records from which Sections 6(a) and 6(b) above are derived available to Metro (or Metro's designated agent) for its inspection or copying, as long as Metro provides no less than three (3) business days written notice of an intent to inspect or copy documents. Licensee shall, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facility named in Section 3, above.</p> |

| 7 | ADDITIONAL LICENSE CONDITIONS |
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| | <p>This license shall be subject to the following conditions:</p> <p>(a) The permissive transfer of solid waste to the non-system facility, listed in Section 3, authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.</p> <p>(b) This license shall be subject to amendment, modification, or termination by Metro's Chief Operating Officer (the "COO") in the event that the COO determines that:</p> <ul style="list-style-type: none">i. There has been sufficient change in any circumstances under which Metro issued this license;ii. The provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Oregon Waste Systems, Inc.; oriii. Metro's solid waste system or the public will benefit from, and will be better served by, an order directing that the waste described in Section 1 of this license be transferred to, and disposed of at, a facility other than the facility listed in Section 3. |



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| | <p>(c) This license shall, in addition to subsections (b)(i) through (b)(iii), above, be subject to amendment, modification, suspension, or termination pursuant to the Metro Code.</p> <p>(d) The Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.</p> <p>(e) This license shall terminate upon the execution of a designated facility agreement with the facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1 of this license.</p> <p>(f) This license authorizes the delivery of solid waste to the facility listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.</p> |
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| 8 | COMPLIANCE WITH LAW |
| | <p>Licensee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders, and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.05 whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the collection and hauling of the Licensee's solid waste by federal, state, regional or local governments or agencies having jurisdiction over solid waste generated by the Licensee shall be deemed part of this license as if specifically set forth herein.</p> |

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| 9 | INDEMNIFICATION |
| | <p>Licensee shall defend, indemnify and hold harmless Metro, its elected officials, officers, employees, agents and representatives from any and all claims, demands, damages, causes of action, or losses and expenses, or including all attorneys' fees, whether incurred before any litigation is commenced, during any litigation or on appeal, arising out of or related in any way to the issuance or administration of this non-system license or the transport and disposal of the solid waste covered by this license.</p> |

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 15-4625 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NEW NON-SYSTEM LICENSE TO SWAN ISLAND DAIRY FOR DELIVERY OF NON-RECOVERABLE NON-PUTRESCIBLE WASTE MIXED WITH PUTRESCIBLE WASTE TO THE COVANTA WASTE-TO-ENERGY FACILITY IN MARION COUNTY, OREGON

April 9, 2015

Prepared by: Bill Metzler
(503) 797-1666

Approval of Resolution No. 15-4625 will authorize the Chief Operating Officer (COO) to issue a non-system license (NSL) to Swan Island Dairy to annually deliver up to 85 tons of non-recoverable non-putrescible waste mixed with putrescible waste from its facility within the Metro region to the Covanta Waste-to-Energy Facility (Covanta) in Marion County, Oregon.

BACKGROUND

The applicant is Swan Island Dairy, a Kroger Company owned dairy plant, located at 4950 N. Basin Avenue in Portland, Oregon (Metro District 5). The facility is a dairy product processing plant.

Swan Island Dairy routinely generates miscellaneous non-recoverable non-putrescible mixed with putrescible wastes which consist primarily of non-recyclable ingredient bags, label backings, excess ingredient powders, garbage bags, plastics and non-recoverable food wastes. The facility makes efforts to reduce, reuse, and recycle waste whenever possible. For example, the facility separates out HDPE and PET plastics, cardboard, shrink wrap and wood wastes which are delivered to recycling operations. As part of these sustainability efforts, Swan Island Dairy prefers to send its non-recoverable wastes to waste-to-energy facilities instead of landfills for disposal.

On March 31, 2015, Swan Island Dairy filed a complete application seeking an NSL authorizing the delivery of up to 85 tons per calendar year of miscellaneous non-recoverable non-putrescible waste mixed with putrescible waste, generated at its facility to Covanta. The proposed license is subject to approval or denial by the Metro Council because, in addition to the non-recoverable waste, it also authorizes the delivery of putrescible waste to a non-system facility.¹

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed NSL.

2. Legal Antecedents

Section 5.05.043 of the Metro Code provides that, when determining whether or not to approve an NSL application, the Metro Council shall consider the following factors to the extent relevant to such determination.

¹ Metro Code Section 5.05.040

- (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;*

The proposed disposal site is a waste-to-energy facility rather than a landfill and thus does not pose the same potential environmental risk from waste delivered from users. Air emissions from the facility are controlled through the use of high efficiency combustion within the furnace/boiler as well as by selective non-catalytic reduction, spray dryer absorbers, fabric filter baghouses and an activated carbon injection system. The ash generated at the facility is then disposed at a monofill that is permitted by the Oregon Department of Environmental Quality (DEQ) and later processed to recover metal.

- (2) *The record of regulatory compliance of the non-system facility's owner and operator with federal, state and local requirements, including but not limited to public health, safety and environmental rules and regulations;*

Covanta is permitted by the DEQ. Metro staff received verbal confirmation from the DEQ and Marion County that Covanta is in compliance with federal, state, and local requirements. Staff has also received confirmation that Covanta has a good compliance record with respect to public health, safety and environmental rules and regulations.

- (3) *The adequacy of operational practices and management controls at the non-system facility;*

Covanta screens incoming waste for hazardous, radioactive, and other unacceptable materials and has a state-of-the-art emissions control system to minimize the risk of future environmental contamination. In addition, Covanta uses operational practices and management controls that are considered by the DEQ to be appropriate for the protection of health, safety, and the environment.

- (4) *The expected impact on the region's recycling and waste reduction efforts;*

Swan Island Dairy has a sustainability program and it seeks to deliver only its non-recyclable non-putrescible waste mixed with putrescible waste, to Covanta instead of a landfill. The Metro-area waste that is delivered to Covanta is not included in Metro's recovery rate calculation because state statute² stipulates that only those wastesheds that burn mixed solid waste for energy recovery within their wasteshed boundaries may count a portion of it towards their DEQ recovery rate calculation. Marion County is the only wasteshed within Oregon that hosts a waste-to-energy facility within its boundaries; therefore, it is the only wasteshed that is currently allowed to include a portion of the in-County waste that is delivered to Covanta in its recovery rate. Approval of the proposed license is not expected to impact the Metro region's recycling and waste reduction efforts.

- (5) *The consistency of issuing the license with Metro's existing contractual arrangements;*

Metro has a contractual obligation to deliver a minimum of 90 percent of the region's putrescible waste that is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. The waste subject to this proposed license will not be disposed at a general-purpose landfill. Thus, approval of the proposed license will not conflict with Metro's disposal contract.

In addition, Metro has a contract with Marion County for the delivery of solid waste from Metro's transfer stations to Covanta. Issuing this NSL is consistent with this existing contractual arrangement.

² ORS 465A.010(4)(f)(B)

- (6) *The record of the applicant 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*

This factor is not relevant to this application because Swan Island Dairy (the applicant) is not a solid waste facility.

- (7) *Such other factors as the Chief Operating Officer deems appropriate for purposes of making such determination.*

Covanta is the primary disposal site for solid waste generated within Marion County. At certain times during the year, in order to operate more efficiently, the facility requires more solid waste than is generated within the County. During these times, Marion County supports the Metro-authorized flow of solid waste to Covanta.

The proposed license includes a 30-month term, commencing on July 1, 2015, and expiring on December 31, 2017. Although new NSLs are typically issued for up to a three-year period (up to 36 months) to align it with other similar NSLs or renewal cycles, staff recommends that the Metro Council establish a 30-month term in this instance in order to align the license with a calendar year renewal cycle. The Metro Code stipulates that new NSLs may be issued for up to a three-year period.³

3. Anticipated Effects

The effect of Resolution No. 15-4625 will be to issue a new NSL authorizing Swan Island Dairy to deliver up to 85 tons per calendar year of miscellaneous non-putrescible non-recoverable waste mixed with putrescible waste, to Covanta. The proposed NSL would commence on July 1, 2015 and expire on December 31, 2017.

4. Budget/Rate Impacts

The waste covered under the proposed NSL will be delivered to Covanta. Covanta is not a general-purpose landfill and the proposed tonnage will not impact Metro's obligations under its disposal contract. The tonnage that Swan Island Dairy seeks to deliver to Covanta under this proposed NSL will most likely be diverted away from the Metro Central Transfer Station. This tonnage shift of 85 tons per year will have a negligible impact on the cost of disposal for Metro's customers. Furthermore, the regional system fee and excise tax will continue to be collected on the waste covered by this license.

RECOMMENDED ACTION

The COO recommends approval of Resolution No. 15-4625, finding that the license satisfies the requirements of Metro Code Section 5.05.043, and issuance of a new NSL substantially similar to the license attached to the resolution as Exhibit A.

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³ Metro Code Section 5.05.045(5)(B)