

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING) RESOLUTION NO. 17-4783
OFFICER TO ISSUE A NEW NON-SYSTEM LICENSE TO PACIFIC)
FOODS OF OREGON, INC. FOR TRANSPORT AND DISPOSAL OF) Introduced by Chief Operating
NON-RECOVERABLE SOLID WASTE, INCLUDING PUTRESCIBLE) Officer Martha Bennett with the
WASTE AT THE COVANTA WASTE-TO-ENERGY FACILITY) concurrence of Council President
LOCATED IN BROOKS, OREGON) Tom Hughes,

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

WHEREAS, Pacific Foods has filed a complete application seeking a non-system license to transport non-recoverable solid waste, including putrescible waste, to a non-system facility for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control;" and

WHEREAS, the solid waste authorized under the Non-System License is generated at the Pacific Foods facility located in Tualatin, Oregon, and is transported to the Covanta Waste-to-Energy Facility for disposal; and

WHEREAS, the 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

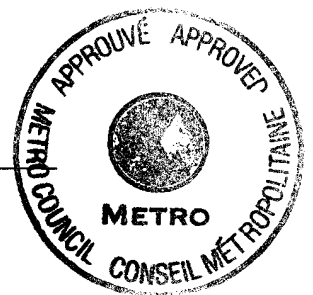
WHEREAS, the Chief Operating Officer recommends that the non-system license be issued together with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:

1. The non-system license application of Pacific Foods 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 Pacific Foods a non-system license substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this 13th day of April, 2017.


Tom Hughes, Council President



Approved as to Form:


Alison R. Kean, Metro Attorney

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1835 | FAX 503 813 7544



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

No. N-176-17

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| LICENSEE: |
| Pacific Foods of Oregon, Inc. 19480 SW 97 th Ave Tualatin, OR 97062 |
| CONTACT PERSON: |
| James Louderman Phone: (503) 692-9666 E-mail: james.louderman@pacificfoods.com |
| MAILING ADDRESS: |
| Pacific Foods of Oregon, Inc. 19480 SW 97 th Ave Tualatin, OR 97062 |

ISSUED BY METRO:

Paul Slyman,
Property & Environmental Services Director

Date



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| 1 | NATURE OF WASTE COVERED BY LICENSE |
| | Non-recoverable solid waste commingled with putrescible waste, including restroom and lunchroom waste, generated at the Pacific Foods site located at 19480 SW 97 th Avenue in Tualatin, Oregon. |
| 2 | CALENDAR YEAR TONNAGE LIMITATION |
| | The licensee is authorized to transport to the non-system facility described in Section 3 up to 1,300 tons per calendar year of the waste described in Section 1. |
| 3 | NON-SYSTEM FACILITY |
| | <p>The licensee is authorized to transport the waste described above in Section 1 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 9.</p> |
| 4 | TERM OF LICENSE |
| | The license term is from March 1, 2017 to December 31, 2019, unless terminated sooner under Section 9. |
| 5 | REPORTING OF ACCIDENTS AND CITATIONS |
| | The licensee must report to Metro any significant incidents (such as fires), accidents, and citations involving the vehicles that are used to transport the solid waste authorized by this license. |



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| 6 | RECORD KEEPING AND REPORTING |
| | <p>(a) The licensee must keep and maintain accurate records of the amount of all solid waste that the licensee transports to the non-system facility described in Section 3. These records must include the information specified in the Metro document titled, <u>Reporting Requirements and Data Standards for Metro Solid Waste Licensees, Franchisees, and Parties to Designated Facility Agreements</u>.</p> <p>(b) The licensee must perform the following no later than fifteen days following the end of each month:</p> <ul style="list-style-type: none">i. Transmit to Metro the records required under Section 6(a) above 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) The licensee must make available to Metro (or Metro’s designated agent) all records from which Sections 6(a) and 6(b) above are derived for its inspection or copying, as long as Metro provides at least three business days written notice of an intent to inspect or copy documents. The licensee must, 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 facilities named in Section 3.</p> |

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| 9 | ADDITIONAL LICENSE CONDITIONS |
| | <p>This license is subject to the following conditions:</p> <p>(a) The permissive transport of solid waste to the non-system facility, listed in Section 3, authorized by this license is subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.</p> <p>(b) The Chief Operating Officer (the “COO”) may amend or terminate this license if 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 be transferred to, and disposed of at, a facility other than the facility listed in Section 3. |



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| | <p>(c) In addition to subsections (b)(i) through (iii), Metro may amend, suspend, revoke or terminate this license pursuant to the Metro Code.</p> <p>(d) The licensee may not transfer or assign any right or interest in this license without Metro’s prior written approval.</p> <p>(e) This license will 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.</p> <p>(f) This license authorizes transport of solid waste to the facility listed in Section 3. The transport 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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| 10 | COMPLIANCE WITH LAW |
| | <p>The licensee must 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 rules 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 are deemed part of this license as if specifically set forth herein.</p> |

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| 11 | INDEMNIFICATION |
| | <p>The licensee must 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 arising out of or related in any way to the issuance or administration of this non-system license. Expenses include, but are not limited to, all attorneys’ fees, whether incurred before any litigation is commenced, during any litigation or on appeal.</p> |

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 17-4783 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NEW NON-SYSTEM LICENSE TO PACIFIC FOODS OF OREGON, INC. FOR TRANSPORT AND DISPOSAL OF NON-RECOVERABLE SOLID WASTE, INCLUDING PUTRESCIBLE WASTE AT THE COVANTA WASTE-TO-ENERGY FACILITY LOCATED IN BROOKS, OREGON

March 29, 2017

Prepared by: Hila Ritter
503-797-1862

Approval of Resolution No. 17-4783 will authorize the Chief Operating Officer (COO) to issue a new non-system license (NSL), to Pacific Foods of Oregon, Inc. (Pacific Foods). The proposed NSL will authorize Pacific Foods to transport up to 1,300 tons per calendar year of non-recoverable waste, including putrescible (wet) waste, generated at its facility located at 19480 SW 97th Ave. in Tualatin (Metro District 3) to the Covanta Waste-to-Energy facility (Covanta) located in Brooks, Oregon.

BACKGROUND

Overview

The applicant, Pacific Foods, was founded in 1987 and is a locally owned and operated food manufacturing company specializing in soups and non-dairy beverages. Pacific Foods has a robust sustainability program including a dedicated recycling staff of 4-5 full time employees and a current landfill diversion rate of approximately 85 percent. As part of these efforts, the company seeks to become a zero-waste-to-landfill company. The waste that Pacific Foods seeks to transport to Covanta includes lunch room and restroom waste, and off-specification food products contained in aseptic packaging. Pacific Foods minimizes food waste in a variety of ways. For example, certain food by-products go to their cattle farms in the Willamette Valley to be used as animal feed or bedding. Liquid off-specification product (such as broth or soy milk) is de-watered on site to recover the aseptic containers. The waste water is treated on-site and solids captured during the process are transported to Farm Power in Tillamook for anaerobic digestion. Certain products (such as off-specification pea soup) contain too much solid material to be processed through the facility's de-watering machinery. If the off-specification product is edible it is donated to the Oregon Food bank, if it is inedible and cannot be de-watered, it is disposed.

On December 16, 2016, Pacific Foods filed a complete application seeking a new NSL to transport up to 1,300 tons per calendar year of non-recoverable waste, including wet waste, generated at its facility to Covanta. The proposed license is subject to approval or denial by the Metro Council because it also authorizes the delivery of wet waste to a non-system facility.¹

¹ Metro Code Chapter 5.05

ANALYSIS/INFORMATION

A. Known Opposition

Marion County staff has recently raised concerns about Covanta's practice of accepting waste from the Metro region to the exclusion of waste generated within Marion County. The County notified Covanta of its concerns about the facility's capacity in a letter issued last fall. County staff verbally requested that Metro take Covanta's capacity into account when it considers issuing NSLs to use the facility. Metro staff sent an email on March 2nd and then a letter on March 7th to the County requesting written clarification on its concerns and seeking specific comment on the proposed NSL application. The County has not responded in writing to either of Metro's request for more information.

Although approval of this resolution would authorize Pacific Foods to transport waste to Covanta, the proposed NSL does not obligate Covanta to accept the waste. In addition, Metro may subsequently amend, suspend, or terminate the NSL should there be any change in circumstances after it is issued. Metro staff will continue to monitor the situation and work with the County to resolve any issues that may arise during the term of this license.

B. Legal Antecedents

Metro Code Chapter 5.05 prohibits any person from utilizing non-system facilities without an appropriate license from Metro. Additionally, Metro Code Section 5.05.043 provides that, when determining whether or not to approve an NSL application, the Metro Council must consider the following factors to the extent relevant to such determination.

- (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;*

Covanta primarily accepts solid waste generated in Marion County. The facility also accepts special waste and other wastes generated by companies seeking to promote alternative disposal policies or government agencies seeking to destroy certain waste for public safety or the public good such as contraband, postage stamps, expired pharmaceuticals, and lottery tickets.

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 prior 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, or used beneficially, in accordance with Oregon Department of Environmental Quality (DEQ) requirements.

- (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 holds a DEQ Solid Waste Energy Recovery Permit.² No formal enforcement actions have been taken at Covanta by DEQ in the last five years and 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 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;

Pacific Foods maintains an extensive internal recycling program and seeks to deliver only its non-recoverable waste, including wet waste, to a waste-to-energy facility instead of a landfill.

The Metro-area waste that is delivered to Covanta is considered to be disposal and does not count toward recovery in Metro's recovery rate calculation because state statute³ 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 NSL 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.

(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;

In October 2016, Pacific Foods contacted Metro to inquire about NSL requirements. Pacific Foods had been transporting waste to Covanta without appropriate authorization since October 2014. During that time period Pacific Foods transported 963.60 tons to Covanta and did not remit the fees and taxes due Metro totaling \$28,866.10. Metro invoiced Pacific Foods for the back fees and taxes rather than issue a

² Oregon DEQ permit #364

³ ORS 465A.010(4)(f)(B)

formal enforcement action for this violation of Metro Code.⁴ Pacific Foods contacted Metro to come into compliance, and agreed to cease transporting waste to Covanta until such time as they become authorized for such activity. Pacific Foods has paid all back fees and taxes owed to Metro in full.

(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. Metro transfer stations have provided this waste in the past, but have not done so since December of 2015.

The proposed license includes a 32-month term, commencing on May 1, 2017, and expiring on December 31, 2019. Metro Code Section 5.05.170(5)(B) states that a new NSL may be issued for a term of up to a three years. The proposed term will align future consideration of this NSL with other similar NSLs.

C. Anticipated Effects

The effect of Resolution No. 17-4783 will be to issue a new NSL authorizing Pacific Foods to transport up to 1,300 tons per calendar year of non-recoverable waste, including wet waste to Covanta for disposal. The proposed license will commence on May 1, 2017, and expire on December 31, 2019.

D. 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 regional system fee and excise tax will be collected on the waste transported to Covanta under authority of the proposed NSL.

RECOMMENDED ACTION

The COO finds that the proposed license satisfies the requirements of Metro Code Chapter 5.05 and recommends that the Metro Council adopt Resolution No. 17-4783. Approval of this resolution will authorize the COO to issue an NSL to Pacific Foods (attached as Exhibit A).

HR
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⁴ Metro Code Section 5.05.025