

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A) RESOLUTION NO. 17-4839
RENEWED NON-SYSTEM LICENSE TO SWAN ISLAND DAIRY)
FOR TRANSPORT AND DISPOSAL OF NON-RECOVERABLE) Introduced by Martha J. Bennett,
SOLID WASTE INCLUDING PUTRESCIBLE WASTE AT THE) Chief Operating Officer, with the
COVANTA WASTE-TO-ENERGY FACILITY LOCATED IN) concurrence of Tom Hughes,
BROOKS, OREGON) Council President

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 holds Metro non-system license No. N-167-15 which expires on December 31, 2017; and

WHEREAS, Swan Island Dairy filed a complete application seeking a renewed non-system license to deliver non-recoverable solid waste including putrescible solid waste 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 the Chief Operating Officer will review applications for non-system licenses for putrescible waste and that the Metro Council will approve or deny them; and

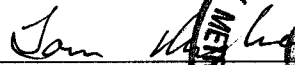
WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors under the Metro Code; and

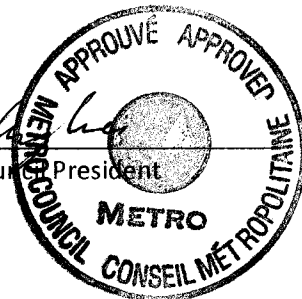
WHEREAS, the Chief Operating Officer recommends that Metro issue a renewed non-system license to Swan Island Dairy with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:

1. The non-system license renewal 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 renewed non-system license substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this 16 day of November, 2017.


Tom Hughes, Council President



Approved as to Form:



Alison R. Kean, Metro Attorney

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

No. N-167-17

LICENSEE:
Swan Island Dairy 4950 N Basin Ave Portland, OR 97217
CONTACT PERSON:
Corey Hester Phone: (503) 975-0399 E-mail: corey.hester@kroger.com
MAILING ADDRESS:
Swan Island Dairy 4950 N Basin Ave Portland, OR 97217

ISSUED BY METRO:

Paul Slyman
Property and Environmental Services Director

Date



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, Oregon.
2	CALENDAR YEAR TONNAGE ALLOCATION
	The licensee is authorized to transport to the non-system facility listed in Section 3 up to 85 tons per calendar year of the waste described in Section 1.
3	NON-SYSTEM FACILITY
	<p>The licensee 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>Metro issues this license 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 6.</p>
4	TERM OF LICENSE
	The license term commences on January 1, 2018, and expires December 31, 2019, unless terminated sooner under Section 10.
5	REPORTING OF ACCIDENTS AND CITATIONS
	The licensee must 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	MATERIAL MANAGEMENT
	<p>The licensee is authorized to deliver the waste described in Section 1 to the non-system facility listed in Section 3 under the following conditions:</p> <ul style="list-style-type: none">(a) The non-system facility must accept all solid waste that is transported under authority of this license for the sole purpose of processing and composting on-site. The licensee must not dispose of any source-separated recyclable material, except as provided in Section 7; and(b) The non-system facility must receive, manage, process, and compost all solid waste that is transported under authority of this license in accordance with all applicable local, state and federal laws, rules, regulations, ordinances, orders, and permits.

7	RECORD KEEPING AND REPORTING
	<ul style="list-style-type: none">(a) The licensee must keep and maintain accurate records of the amount of all waste that the licensee delivers to the non-system facility described in Section 3. 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>. No later than the 15th day of each month, beginning with the first month following the commencement date of this license, the licensee must transmit to Metro in an electronic format prescribed by Metro the records required that apply to the preceding month.(b) The licensee must:<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.(c) So long as Metro provides at least three business days written notice, the licensee must make all records available to Metro (or Metro's designated agent) for inspection or copying or both. The licensee must also 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.



8	ADDITIONAL LICENSE CONDITIONS
	<p>This license is subject to the following conditions:</p> <ul style="list-style-type: none">(a) The 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.(b) The COO may amend or terminate this license in the event that the COO determines that:<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.;iii. 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;iv. The non-system facility listed in Section 3 fails to manage the waste subject to this license in accordance with the material management requirements described in Section 6; orv. The non-system facility listed in Section 3 generates malodors that are detectable off-site.(c) In addition to subsections (b)(i) through (b)(v) above, this license is subject to amendment, modification, suspension, or termination pursuant to the Metro Code.(d) The licensee may not transfer or assign any right or interest in this license without Metro’s prior written approval.(e) This license is subject to modification or termination by the COO 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.(f) This license only authorizes the transport of solid waste to the facility listed in Section 3. The licensee is prohibited from transporting waste generated from within the Metro boundary to any non-system facility other than that specified in this license unless Metro authorizes such in writing.

9	COMPLIANCE WITH LAW
	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



	<p>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 are deemed part of this license as if specifically set forth herein.</p>
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10	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, 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. 17-4839 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO SWAN ISLAND DAIRY FOR TRANSPORT AND DISPOSAL OF NON-RECOVERABLE SOLID WASTE, INCLUDING PUTRESCIBLE WASTE AT THE COVANTA WASTE-TO-ENERGY FACILITY LOCATED IN BROOKS, OREGON

November 1, 2017

Prepared by: Hila Ritter
(503) 797-1862

Approval of Resolution No. 17-4839 will authorize the Chief Operating Officer (COO) to issue a renewed non-system license (NSL) Swan Island Dairy to annually transport 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. The proposed NSL is a renewal of an existing license that is set to expire on December 31, 2017.¹

BACKGROUND

Overview

The applicant seeks authorization to renew its NSL to transport non-recoverable waste generated at the Swan Island Dairy site to Covanta. Metro Code Section 5.05.040 prohibits any person from transporting solid waste to non-system facilities without an appropriate license from Metro. The proposed NSL renewal is subject to Metro Council approval because it involves putrescible waste (food waste).²

The Applicant

Swan Island Dairy is 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 wastes which consist primarily of non-recyclable ingredient bags, label backings, excess ingredient powders, garbage bags, plastics and non-recoverable food waste. 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 waste which are delivered to recycling operations. As part of these sustainability efforts, Swan Island Dairy prefers to send its non-recoverable waste to waste-to-energy facilities instead of landfills for disposal.

Swan Island Dairy has been authorized to transport non-recoverable waste to Covanta since 2015 under a Metro NSL. The current license will expire December 31, 2017. The licensee transported approximately 74 tons to Covanta in calendar year 2016, and about 45 tons through September of calendar year 2017.

On October 26, 2017, Swan Island Dairy filed a complete application seeking a renewed NSL authorizing the delivery of up to 85 tons per calendar year (the same amount in its current

¹ N-167-15

² Metro Code Section 5.05.110

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authorization), of miscellaneous non-recoverable non-putrescible waste mixed with putrescible waste, generated at its facility to Covanta.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed NSL.

2. Legal Antecedents

Metro Code Section 5.05.040 prohibits any person from utilizing a non-system facility without an appropriate license from Metro. Additionally, Metro Code Section 5.05.140 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) *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 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 non-system facility owner's and operator's regulatory compliance record with federal, state and local requirements, including but not limited to public health, safety and environmental regulations;*

Covanta holds a DEQ Solid Waste Energy Recovery Permit.³ 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 the non-system facility's operational practices and management controls;*

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;*

³ Oregon DEQ permit #364
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Swan Island Dairy has an internal recycling program and it seeks to deliver only its non-recyclable waste, including putrescible solid 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 statute⁴ 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 proposed non-system license's effect with Metro's existing contractual arrangements;*

Through 2019, Metro has a contractual agreement 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 the proposed license will not be transported to a general purpose landfill for disposal. Therefore, approval of the proposed license will not conflict with Metro's disposal contract.

- (6) *The applicant's record 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 regulations; and*

The applicant has a good record of compliance with regard to Metro regulations.

- (7) *Any other factor the Chief Operating Officer considers appropriate.*

Covanta is the primary disposal site for solid waste generated within Marion County. Marion County generally supports the Metro-authorized flow of solid waste to Covanta.

3. Anticipated Effects

The effect of Resolution No. 17-4839 will be to issue a renewed NSL to Swan Island Dairy to transport up to 85 tons per calendar year of miscellaneous non-recoverable waste, including putrescible waste, to Covanta.

4. Budget/Rate Impacts

The waste covered under the proposed NSL will be delivered to Covanta. Covanta is not a general-purpose landfill and this NSL will not impact Metro's obligations under its disposal contract. The regional system fee and excise tax will continue to be collected on Metro-area waste delivered to Covanta under the authority of the proposed NSL. The application under consideration is the renewal of an existing NSL.⁵ The financial impact of this NSL has already been factored into the budget.

⁴ ORS 465A.010(4)(f)(B)

⁵ NSL No. N-167-15

RECOMMENDED ACTION

Staff recommend that Council approve Resolution No. 17-4839 finding that the NSL application satisfies the requirements of Metro Code Chapter 5.05, and issue a renewed NSL substantially similar to the proposed NSL attached to the resolution as Exhibit A.

HR
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