

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF ) RESOLUTION NO. 18-4931  
OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM )  
LICENSE TO EATON PORTLAND POWER CENTER FOR ) Introduced by Chief Operating  
TRANSPORT AND DISPOSAL OF NON-RECOVERABLE SOLID ) Officer Martha Bennett in  
WASTE, INCLUDING PUTRESCIBLE WASTE AT THE ) concurrence of Council President  
COVANTA WASTE-TO-ENERGY FACILITY LOCATED IN ) Tom Hughes  
BROOKS, 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, Eaton Portland Power Center ("Eaton") holds Metro Solid Waste Facility Non-System License No. N-171-16, which expires on December 31, 2018; and

WHEREAS, Eaton has filed a complete application seeking renewal of the non-system license to transport non-recoverable solid waste, including putrescible 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 an application for a non-system license to transport putrescible waste and that Metro Council has authority to approve or deny the application; 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 renewed 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 Eaton 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 Eaton a non-system license substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this 21<sup>st</sup> day of November, 2018.

  
\_\_\_\_\_  
Tom Hughes, Council President

Approved as to Form:

  
\_\_\_\_\_  
Nathan A. S. Sykes, Metro Attorney



600 NE Grand Ave.  
Portland, OR 97232-2736  
oregonmetro.gov

## METRO SOLID WASTE FACILITY NON-SYSTEM LICENSE

### No. N-170-19

<b>LICENSEE:</b>
Eaton Portland Power Center 26850 SW Kinsman Rd. Wilsonville, OR 97070
<b>CONTACT PERSON:</b>
Jamie Bergstrom Phone: (402) 609-4707 E-mail: <a href="mailto:jamiebergstrom@eaton.com">jamiebergstrom@eaton.com</a>
<b>MAILING ADDRESS:</b>
Eaton Portland Power Center 26850 SW Kinsman Rd. Wilsonville, OR 97070

**ISSUED BY METRO:**

\_\_\_\_\_  
Martha J. Bennett, Metro Chief Operating Officer

\_\_\_\_\_  
Date

<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Non-recoverable, non-putrescible waste commingled with putrescible waste generated at the Eaton Portland Power Center site located at 26850 SW Kinsman Rd. in Wilsonville, Oregon.
<b>2</b>	<b>CALENDAR YEAR TONNAGE LIMITATION</b>
	Licensee is authorized to transport to the non-system facility described in Section 3 up to 50 tons per calendar year of the waste described in Section 1 of this license.
<b>3</b>	<b>NON-SYSTEM FACILITY</b>
	The Licensee is authorized to transport the waste described above in Section 1 only to the following non-system facility:  <div style="text-align: center;">                     Covanta Waste-to-Energy Facility                      4850 Brooklake Road, NE                      Brooks, OR 97305                 </div> 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 revoke this license pursuant to Section 7 of this license.
<b>4</b>	<b>TERM OF LICENSE</b>
	The term of this license will commence on January 1, 2019 and expire at midnight on December 31, 2020, unless terminated sooner under Section 7 of this license.
<b>5</b>	<b>REPORTING OF ACCIDENTS AND CITATIONS</b>
	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	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 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 15th day of each month, beginning with the first month following the commencement date of this license, Licensee must:</p> <ul style="list-style-type: none"> <li>i. Transmit to Metro in the electronic format prescribed by Metro the records required under Section 6(a) above;</li> <li>ii. Submit to Metro a Regional System Fee and Excise Tax Report, that applied to the preceding month; and</li> <li>iii. 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.</li> </ul> <p>(c) Licensee must 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. In addition, the Licensee must 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.</p> <p>(d) If the licensee fails to submit the records or payments to Metro by the timeline set forth in Section 6 of this license, each day by which the licensee exceeds the due date may constitute a separate violation subject to a penalty of up to \$500 per violation.</p>

7	ADDITIONAL LICENSE CONDITIONS
	<p>This license is 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 will 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 is subject to amendment, modification, or revocation by Metro’s Chief Operating Officer (the “COO”) in the event that the COO determines that:</p> <ul style="list-style-type: none"> <li>i. There has been sufficient change in any circumstances under which Metro issued this license;</li> <li>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.; or</li> </ul>

	<p>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 of this license be transferred to, and disposed of at, a facility other than the facility listed in Section 3.</p> <p>(c) This license is, in addition to subsections (b)(i) through (b)(iii), above, subject to amendment, modification, or revocation pursuant to the Metro Code.</p> <p>(d) The Licensee may 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 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 of this license.</p> <p>(f) This license authorizes the transport of putrescible waste to the facility listed in Section 3 of this license. 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 authorized by Metro in writing.</p> <p>(g) The COO may require the Licensee to redirect the waste covered by this non-system license to Metro Central Transfer Station or Metro South Transfer Station. Metro will provide the Licensee with at least 24 hours written notice of any redirection requirement. The notice will include the date and time that the redirection will take effect.</p> <p>(h) If the Licensee exceeds the calendar year limitation set forth in Section 2, each ton or portion thereof by which the Licensee exceeds the limitation constitutes a separate violation subject to a penalty of up to \$500.</p>
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<b>8</b>	<b>COMPLIANCE WITH LAW</b>
	<p>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 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 putrescible waste by federal, state, regional or local governments or agencies having jurisdiction over the waste generated by the Licensee will be deemed part of this license as if specifically set forth herein.</p>

<b>9</b>	<b>INDEMNIFICATION</b>
	<p>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 or the transport and disposal of the solid waste covered by this license. Expenses include, but are not limited to all attorneys’ fees, whether incurred before any litigation is commenced,</p>

	during any litigation or on appeal.
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## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 18-4931 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO EATON PORTLAND POWER CENTER FOR TRANSPORT AND DISPOSAL OF NON-RECOVERABLE SOLID WASTE, INCLUDING PUTRESCIBLE WASTE AT THE COVANTA WASTE-TO-ENERGY FACILITY LOCATED IN BROOKS, OREGON.

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November 1, 2018

Prepared by: Will Ennis  
503-797-1667

Approval of Resolution No. 18-4931 will authorize the Chief Operating Officer (COO) to issue a renewed non-system license (NSL), to Eaton Portland Power Center (Eaton). The proposed NSL will authorize Eaton to transport up to 50 tons per calendar year of non-recoverable waste, including putrescible waste, generated at its facility within the Metro region to the Covanta Waste-to-Energy facility (Covanta) located in Brooks, OR. The proposed NSL is a renewal of an existing NSL that is set to expire on December 31, 2018.<sup>1</sup>

## BACKGROUND

The applicant, Eaton, is a power management company that designs and manufactures customized electrical power equipment at its facility located in Wilsonville at 26850 SW Kinsman Road (Metro District 3). Eaton specializes in custom product configurations such as motor control centers, low/medium voltage assemblies, medium voltage control, and medium voltage systems. The company routinely generates miscellaneous non-recoverable waste at its facility such as office, restroom, and lunchroom wastes.

Eaton's parent corporation encourages its manufacturing sites to achieve zero waste-to-landfill as part of its waste management program as a means to reduce the release of greenhouse gases associated with landfills. The company seeks the proposed NSL to further its internal initiative to reduce landfill disposal.

In July 2016 Eaton was issued a new NSL authorizing the transport of up to 40 tons per calendar year of non-recoverable waste, including putrescible waste, generated at its facility within the Metro region to Covanta. The NSL is set to expire on December 31, 2018. In 2017, Eaton transported approximately 19 tons of waste to Covanta under the NSL and transported 23 tons between January 1 and September 30, 2018.

On September 7, 2018, Eaton filed a complete application seeking a new NSL to transport up to 50 tons per calendar year of non-recoverable waste, including putrescible waste, generated at its facility to Covanta. This is an increase of ten tons annually of its current tonnage authorization of 40 tons. The proposed license is subject to approval or denial by the Metro Council because, in addition to non-putrescible waste, it also authorizes the delivery of putrescible waste to a non-system facility.<sup>2</sup>

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<sup>1</sup> Metro Solid Waste Facility Non-System License No. N-170-16

<sup>2</sup> Metro Code Section 5.05.110(c)

## ANALYSIS/INFORMATION

### 1. Known Opposition

There is no known opposition to the proposed renewed license.

### 2. Legal Antecedents

Metro Code Section 5.05.110 prohibits any person from utilizing non-system facilities 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 will consider the following factors to the extent relevant to determine whether to issue a non-system license:

- (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 delivered to a disposal facility permitted by the Oregon Department of Environmental Quality (DEQ).

- (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 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 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;*

Eaton maintains an extensive internal recycling program and seeks to deliver only its non-recoverable waste, including putrescible 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 statute<sup>3</sup> 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 proposed non-system license's effect with Metro's existing contractual arrangements;*

Until the end of 2019 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 applicant's record of 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;*

In October 2018, Eaton was issued a Notice of Violation<sup>4</sup> for failure to remit the required Metro Regional System Fee and Excise Tax payments in a timely manner. During the period of the current NSL, Eaton was late in remitting fee and tax payments 12 of the 15 times that they were due for waste disposed at Covanta. A condition has been added to the proposed NSL that subjects Eaton to a civil penalty for each day by which the reporting timeline is exceeded. Staff will continue to monitor this matter. Other than this issue, the applicant generally has a good record of compliance with regard to Metro regulations.

*(7) Any other factors as the Chief Operating Officer deems 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 but has expressed concerns about capacity to accept new customers.

### **3. Anticipated Effects**

The effect of Resolution No. 18-4931 will be to issue a renewed NSL authorizing Eaton to transport up to 50 tons per calendar year of non-recoverable waste, including putrescible waste to Covanta for disposal. The proposed license will commence on January 1, 2019, and expire on December 31, 2020.

### **4. Budget/Rate Impacts**

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<sup>3</sup> ORS 465A.010(4)(f)(B)

<sup>4</sup> Notice of Violation No. NOV-403-18

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

#### **RECOMMENDED ACTION**

The COO recommends approval of Resolution No. 18-4931, finding that the proposed license satisfies the requirements of Metro Code Chapter 5.05, and issuance of an NSL substantially similar to the NSL attached to the resolution as Exhibit A.

WE