

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF ) RESOLUTION NO. 19-5032  
OPERATING OFFICER TO ISSUE A RENEWED NON- )  
SYSTEM LICENSE AUTHORIZING SWAN ISLAND ) Introduced by Andrew Scott,  
DAIRY TO TRANSPORT AND DISPOSE OF NON- ) Interim Chief Operating  
RECOVERABLE SOLID WASTE, INCLUDING ) Officer, with the concurrence of  
PUTRESCIBLE WASTE AT THE COVANTA WASTE- ) Lynn Peterson, Council  
TO-ENERGY FACILITY LOCATED IN BROOKS, ) President  
OREGON

WHEREAS, Metro Code Section 5.05.110 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, Swan Island Dairy holds Metro non-system license No. N-167-17 which expires on December 31, 2019; and

WHEREAS, Swan Island Dairy filed a complete application seeking a renewed non-system license to transport 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

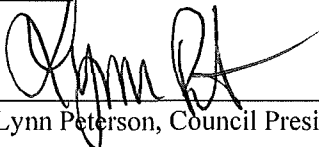
WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors set forth in Metro Code Section 5.05.140; and

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,


BE IT RESOLVED that the Metro Council:

1. Approves the non-system license renewal application of Swan Island Dairy subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. Authorizes the Chief Operating Officer 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 21<sup>st</sup> day of November 2019.

  
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Lynn Peterson, Council President

Approved as to Form:

  
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Carrie MacLaren, Metro Attorney



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

## METRO SOLID WASTE FACILITY NON-SYSTEM LICENSE

### No. N-167-20

<b>LICENSEE:</b>
Swan Island Dairy 4950 N. Basin Ave. Portland, OR 97217
<b>CONTACT PERSON:</b>
Kyle Osterhout Phone: (503) 240-5114 E-Mail: <a href="mailto:kyle.osterhout@kroger.com">kyle.osterhout@kroger.com</a>
<b>MAILING ADDRESS:</b>
Swan Island Dairy 4950 N. Basin Ave. Portland, OR 97217

**ISSUED BY METRO:**

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Roy W. Brower  
Interim Property and Environmental Services Director

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Date

<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Non-recoverable solid waste mixed with putrescible waste, including restroom and lunchroom waste, generated at the Swan Island Dairy facility located at 4950 N. Basin Ave. in Portland, Oregon.
<b>2</b>	<b>CALENDAR YEAR TONNAGE</b>
	The licensee is authorized to transport to the non-system facility listed in Section 3 up to 110 tons per calendar year of the waste described in Section 1.
<b>3</b>	<b>NON-SYSTEM FACILITY</b>
	<p>1. The licensee is authorized to transport the waste described above in Section 1 to the following non-system facility:</p> <p style="padding-left: 40px;">Covanta Waste-to-Energy Facility          4850 Brooklake Road, NE          Brooks, OR 97305</p> <p>2. This license is issued on the 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 or Marion County that this non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 9.</p>
<b>4</b>	<b>TERM OF LICENSE</b>
	January 1, 2020 to December 31, 2021, unless amended, suspended, or revoked as provided in this license.
<b>5</b>	<b>COVERED LOADS</b>
	The licensee must suitably contain and cover, on all sides, all loads of the waste described in Section 1 that are transported under authority of this license to the non-system facility listed in Section 3 to prevent spillage of waste while in transit.
<b>6</b>	<b>REPORTING OF ACCIDENTS AND CITATIONS</b>
	The licensee must report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.
<b>7</b>	<b>REGIONAL SYSTEM FEE AND EXCISE TAX</b>
	The solid waste that the licensee delivers under authority of this license to the non-system facility listed in Section 3 is subject to the regional system fee and excise tax in accordance with section 8.

<b>8</b>	<b>RECORD KEEPING AND REPORTING</b>
	<ol style="list-style-type: none"> <li>1. The licensee must keep and maintain accurate records of the amount of all waste that the licensee transports to the non-system facility described in Section 3. These records 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>.</li> <li>2. The licensee must perform the following no later than fifteen days following the end of each month:       <ol style="list-style-type: none"> <li>(a) Submit to Metro the records required under Section 8.1 above in an electronic format prescribed by Metro;</li> <li>(b) Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; and</li> <li>(c) Remit to Metro the requisite regional system fee and excise tax in accordance with this license and Metro Code provisions applicable to the collection, payment, and accounting of those fees and taxes.</li> </ol> </li> <li>3. The licensee must make available to Metro (or Metro’s designated agent) all records from which Section 8.1 and 8.2 above are derived for its inspection or copying or both, 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.</li> <li>4. Metro may require the licensee to report the information required by this section on a weekly or daily basis.</li> <li>5. If the licensee fails to submit the records or payments to Metro by the timeline set forth in Section 8 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, in accordance with Metro Code Chapter 5.05.</li> </ol>

<b>9</b>	<b>ADDITIONAL LICENSE CONDITIONS</b>
	<p>This non-system license is subject to the following conditions:</p> <ol style="list-style-type: none"> <li>1. 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.</li> <li>2. This license is subject to amendment, modification, or termination by Metro in the event that Metro determines that:       <ol style="list-style-type: none"> <li>(a) There has been sufficient change in any circumstances under which Metro issued this license; or</li> <li>(b) Metro’s solid waste system or the public will benefit from, and will be better served by, transporting the waste described in Section 1 of this license to a facility other than those listed in Section 3.</li> </ol> </li> <li>3. In addition to subsections 9.2(a) and (b) above, Metro may amend, suspend, revoke or terminate this license pursuant to the Metro Code.</li> </ol>

	<ol style="list-style-type: none"> <li>4. The licensee cannot transfer or assign any right or interest in this license without Metro’s prior written approval.</li> <li>5. This license is subject to amendment or termination by Metro upon the execution of a designated facility agreement with a facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1.</li> <li>6. This license authorizes transport of solid waste only 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.</li> <li>7. Metro may direct the licensee’s waste flow under this non-system license to Metro Central Transfer Station or Metro South Transfer Station with a minimum of 24 hours written notice. Any redirection of the waste flow by Metro is effective immediately.</li> <li>8. If the licensee exceeds the calendar year authorization 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, in accordance with Metro Code Chapter 5.05.</li> </ol>
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<b>10</b>	<b>COMPLIANCE WITH LAW</b>
	<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 Metro Code Chapter 5.05 whether or not those provisions have been specifically mentioned or cited in this license. 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.</p>

<b>11</b>	<b>INDEMNIFICATION</b>
	<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 litigation is commenced, during litigation or on appeal.</p>

IN CONSIDERATION OF RESOLUTION NO. 19-5032 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE AUTHORIZING SWAN ISLAND DAIRY TO TRANSPORT AND DISPOSE NON-RECOVERABLE SOLID WASTE, INCLUDING PUTRESCIBLE WASTE AT THE COVANTA WASTE-TO-ENERGY FACILITY LOCATED IN BROOKS, OREGON.

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Date: November 1, 2019  
Department: PES  
Meeting Date: November 21, 2019

Prepared by: Will Ennis, x1667,  
[will.ennis@oregonmetro.gov](mailto:will.ennis@oregonmetro.gov)

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### **ISSUE STATEMENT**

Swan Island Dairy is requesting renewal of its Metro Solid Waste Facility Non-System License to transport up to 110 tons per calendar year of non-recoverable solid waste, including putrescible waste, from its facility located at 4950 N. Basin Ave. in Portland to the Covanta Waste-to-Energy facility (Covanta) in Brooks, OR.

Metro Code Section 5.05.110(c) requires the Metro Council to approve or deny a non-system license (NSL) to transport putrescible waste to a disposal site.

### **ACTION REQUESTED**

Approve Resolution No. 19-5032 which will authorize the Chief Operating Officer to issue a renewed Metro Non-System Facility License to Swan Island Dairy for a term of two years.

### **IDENTIFIED POLICY OUTCOMES**

Approval of the proposed NSL renewal will support Metro's longstanding practice to allow solid waste generated in the Metro region to be transported to disposal sites located outside of the region provided that the transporter applies for and receives Metro authorization.

### **POLICY QUESTION**

Should Metro Council approve the resolution and grant the Chief Operating Officer authority to issue a renewed NSL, as provided in Metro Code Chapter 5.05.110, to Swan Island Dairy to deliver up to 110 tons of putrescible waste per calendar year to Covanta?

### **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

1. Approve the resolution as proposed to authorize the Chief Operating Officer to issue a renewed NSL to Swan Island Dairy.
2. Approve the resolution with conditions in addition to or other than those recommended by staff.

3. Do not approve the resolution.

### **STAFF RECOMMENDATIONS**

Staff recommends Metro Council approve of Resolution 19-5032 to authorize the Chief Operating Officer to issue a renewed Metro Solid Waste Facility Non-System License to Swan Island Dairy.

### **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

NSLs are the main vehicles by which Metro manages the flow of solid waste transported to facilities located outside of the Metro regional boundary because they allow Metro to closely monitor and potentially guide waste flows to authorized facilities.

### **Known Opposition/Support/Community Feedback**

There is no known opposition to the proposed NSL.

### **Legal Antecedents**

Metro Code Chapter 5.05, "Solid Waste Flow Control." Specifically, Section 5.05.140 describes the factors the Chief Operating Officer may consider 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 those 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. 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;*

Swan Island Dairy has an aggressive 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 statute (ORS 465A.010(4)(f)(B)) 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 87 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 proposed NSL is not effective until January 1, 2020, after the expiration of Metro's contractual agreement and 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*

In February 2019, Metro issued a Notice of Violation to Swan Island Dairy for exceeding the tonnage authorization of its NSL in calendar year 2018 by 19 tons (Notice of Violation No. NOV-414-19). The tonnage authorization of the facility's current NSL is 85 tons per calendar year. The applicant has requested a renewed NSL with an increase to 110 tons per calendar year. Swan Island Dairy is currently in compliance with the terms of its NSL.

*(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.



### **Anticipated Effects**

Adoption of Resolution 19-5032 will authorize the Chief Operating Officer to issue a renewed NSL, as provided in Metro Code Chapter 5.05.110, to Swan Island Dairy to deliver up to 110 tons of putrescible waste per calendar year to Covanta.

### **Financial Implications**

The application under consideration is the renewal of an existing NSL. The financial impact of this NSL has already been factored into the budget. 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.

### **BACKGROUND**

The applicant seeks to renew its NSL to transport non-recoverable solid waste and putrescible waste generated within the Metro region to Covanta. Covanta is a non-system waste-to-energy facility located outside of the region. Metro Code Section 5.05.040 prohibits any person from transporting solid waste to a non-system facility without an appropriate license from Metro. The proposed NSL renewal is subject to Metro Council approval because it involves putrescible waste.

The applicant, Swan Island Dairy, is a dairy processing plant owned by Kroger Company, located at 4950 N. Basin Avenue in Portland, Oregon (Metro District 5). 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, 2019. The licensee transported approximately 104 tons to Covanta in calendar year 2018, and about 76 tons through September of 2019.

### **ATTACHMENTS**

Exhibit A to Resolution No. 19-5032: Draft Solid Waste Non-System License No. N-167-20.