

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF) RESOLUTION NO. 19-5041
OPERATING OFFICER TO APPROVE A NEW NON-)
SYSTEM LICENSE AUTHORIZING MARTIN) Introduced by Andrew Scott,
BROWER TO TRANSPORT AND DISPOSE NON-) Interim Chief Operating
RECOVERABLE SOLID WASTE, INCLUDING) Officer, with the concurrence of
PUTRESCIBLE WASTE AT THE COVANTA) Lynn Peterson, Council
WASTE-TO-ENERGY FACILITY LOCATED IN) President
BROOKS, 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, Martin Brower filed a complete application seeking a new 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

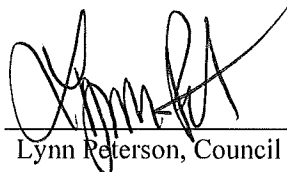
WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors set forth in Metro Code Section 5.05.140; and

WHEREAS, the Chief Operating Officer recommends that Metro issue a new non-system license to Martin Brower 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 application of Martin Brower subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. Authorizes the Chief Operating Officer to issue to Martin Brower a new non-system license substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this 21st day of November 2019.



Lynn Peterson, Council President

Approved as to Form:



Carrie MacLaren, Metro Attorney



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

METRO SOLID WASTE FACILITY NON-SYSTEM LICENSE

No. N-189-20

LICENSEE:
Martin Brower company, LLC. 9310 N Harborage St. Portland, OR 97203
CONTACT PERSON:
Kris Richard Phone: (971) 703-5101 E-Mail: krichard@martin-brower.com
MAILING ADDRESS:
Martin Brower company, LLC. 9310 N Harborage St. Portland, OR 97203

ISSUED BY METRO:

Roy W. Brower
Interim Property and Environmental Services Director

Date

1	NATURE OF WASTE COVERED BY LICENSE
	Non-recoverable solid waste mixed with putrescible waste, including restroom and lunchroom waste, generated at the Martin Brower Company facility located at 9310 N Harborgate St. in Portland, Oregon.
2	CALENDAR YEAR TONNAGE
	The licensee is authorized to transport to the non-system facility listed in Section 3 up to 400 tons per calendar year of the waste described in Section 1.
3	NON-SYSTEM FACILITY
	<ol style="list-style-type: none"> 1. The licensee is authorized to transport the waste described in Section 1 to the following non-system facility: <p style="margin-left: 40px;">Covanta Waste-to-Energy Facility 4850 Brooklake Road, NE Brooks, OR 97305</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.
4	TERM OF LICENSE
	January 1, 2020 to December 31, 2021, unless amended, suspended, or revoked as provided in this license.
5	COVERED LOADS
	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.
6	REPORTING OF ACCIDENTS AND CITATIONS
	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.
7	REGIONAL SYSTEM FEE AND EXCISE TAX
	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.

8	RECORD KEEPING AND REPORTING
	<ol style="list-style-type: none"> 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>. 2. The licensee must perform the following no later than fifteen days following the end of each month: <ol style="list-style-type: none"> (a) Submit to Metro the records required under Section 8.1 in an electronic format prescribed by Metro; (b) Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; and (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. 3. The licensee must make available to Metro (or Metro’s designated agent) all records from which Section 8.1 and 8.2 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 facility named in Section 3. 4. Metro may require the licensee to report the information required by this section on a weekly or daily basis. 5. If the licensee fails to submit the records or payments to Metro by the timeline set forth in Section 8, 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.

9	ADDITIONAL LICENSE CONDITIONS
	<p>This non-system license is subject to the following conditions:</p> <ol style="list-style-type: none"> 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. 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"> (a) There has been sufficient change in any circumstances under which Metro issued this license; or (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 that listed in Section 3. 3. In addition to subsections 9.2(a) and (b), Metro may amend, suspend, revoke or terminate this license pursuant to the Metro Code.

	<ol style="list-style-type: none"> 4. The licensee cannot transfer or assign any right or interest in this license without Metro’s prior written approval. 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. 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. 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. 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.
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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 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 are deemed part of this license as if specifically set forth.</p>

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

IN CONSIDERATION OF RESOLUTION NO. 19-5041 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NEW NON-SYSTEM LICENSE AUTHORIZING MARTIN BROWER COMPANY, LLC TO TRANSPORT AND DISPOSE NON-RECOVERABLE SOLID WASTE, INCLUDING PUTRESCIBLE WASTE AT THE COVANTA WASTE-TO-ENERGY FACILITY LOCATED IN BROOKS, OREGON

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

Prepared by: Will Ennis, x1667,
will.ennis@oregonmetro.gov

ISSUE STATEMENT

Martin Brower Company, LLC (Martin Brower) is requesting a new Metro Solid Waste Facility Non-System License (NSL) to transport up to 400 tons per calendar year of non-recoverable solid waste, including putrescible waste, from its facility located at 9310 N Harborgate St. 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 to transport putrescible waste to a disposal site.

ACTION REQUESTED

Approve Resolution No. 19-5041 which will authorize the Chief Operating Officer to issue a new Metro Non-System Facility License to Martin Brower for a term of two years.

IDENTIFIED POLICY OUTCOMES

Approval of the proposed NSL 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 new NSL, as provided in Metro Code Chapter 5.05.110, to Martin Brower to deliver up to 400 tons per calendar year of putrescible waste to the Covanta Waste-to-Energy facility?

POLICY OPTIONS FOR COUNCIL TO CONSIDER

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

3. Do not approve the resolution.

STAFF RECOMMENDATION

Staff recommends Metro Council approve of Resolution 19-5041 to authorize the Chief Operating Officer to issue a renewed Metro Solid Waste Facility Non-System License to Martin Brower.

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;

Martin Brower 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 considered to be disposal and does not count toward recovery 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 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;

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

Metro staff's investigation of the applicant revealed a good record of compliance with local and state agencies responsible for health, safety, and environmental 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.

Anticipated Effects

Adoption of Resolution 19-5041 will authorize the Chief Operating Officer to issue a new NSL, as provided in Metro Code Chapter 5.05.110, to Martin Brower to deliver up to 400 tons of putrescible waste per calendar year to the Covanta Waste-to-Energy facility.

Financial Implications

The application under consideration is for a new NSL to transport up to 400 tons of non-recoverable solid waste, including putrescible waste to Covanta Waste-to-Energy facility. While the financial impact of this NSL has not been factored into the budget, its impact is expected to be negligible due to the limited amount of tonnage authorized by the NSL. 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 a new NSL to transport non-recoverable solid waste, including 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 is subject to Metro Council approval because it involves putrescible waste.

The applicant, Martin Brower, operates a supply chain and distribution center located at 9310 N Harborgate St. in Portland (Metro District 5). The Portland facility supplies McDonald's restaurants in Oregon, southwest Washington, western Idaho and northern California. The facility operates 24 hours a day, seven days a week and employs approximately 120 people.

Martin Brower routinely generates miscellaneous non-recoverable wastes at the above-mentioned facility which consist primarily of office, restroom, and lunchroom wastes. The facility also generates other non-recyclable wastes from its warehouse activities including expired packaged food product, plastics and banding. Martin Brower has a robust sustainability program and seeks to become a zero-waste-to-landfill company by 2025. To that end it has applied for a NSL to deliver non-recyclable waste to a waste-to-energy facility instead of landfill for disposal.

ATTACHMENTS

Exhibit A to Resolution No. 19-5041: Draft Non-System License No. N-189-20.