

Legal Antecedents

Metro has solid waste management authority under the Oregon Constitution, state law and the Metro Charter. The proposed resolution seeks to add the Divert Integrated Food Recovery Facility in Longview, Washington to Metro's designated facilities list. Metro Code Section 5.05.070(b) provides that the Metro Council considers the following factors to the extent relevant to determine whether to add a facility to the designated facilities list.

- (1) The degree to which Metro had knowledge of prior facility users and waste types accepted at the facility and the degree to which those wastes pose a future risk of environmental contamination;*

The proposed designated facility is new construction and therefore does not have a history of receiving and managing waste at this property. The operating plan submitted as part of the application includes procedures for receiving and managing waste that align with requirements for a facility located within the Metro region.

- (2) The facility owner's and operator's record of regulatory compliance with federal, state and local requirements, including but not limited to public health, safety and environmental rules and regulations;*

Divert has applied for and obtained an Air Discharge Permit (permit No. 23-3604) for the construction and operation of a renewable natural gas production facility from the Southwest Clean Air Agency and a Construction and Stormwater General Permit (permit No. WAR312144) from the Washington Department of Ecology (Ecology). Divert has also submitted applications to Cowlitz County for a Solid Waste Permit and Ecology for a National Pollutant Discharge Elimination System (NPDES) Permit, which have not yet been issued as of the writing of this staff report. Based on investigations by staff and information provided by these regulatory agencies, both applications have been deemed complete, and the applicant has been responsive throughout each application process. If the proposed resolution is approved prior to the issuance of these permits, staff will continue to monitor the application process to ensure that the facility obtains the requisite permits and Metro executes a designated facility agreement (DFA) with the facility before it receives any Metro area waste.

The parent company of the applicant, Divert Inc., is known to Metro staff. In 2017, the Oregon Department of Environmental Quality (DEQ) issued a Warning Letter with Opportunity to Correct to Divert for operating a solid waste facility in Dayton, Oregon without a permit. Divert moved its Oregon facility to its current location in Albany, Oregon and applied for and obtained a solid waste permit. In 2021, DEQ issued a Warning Letter with Opportunity to Correct to Divert Inc. for violations found at the Albany facility during a routine inspection. Divert performed corrective measures and returned the facility to compliance.

- (3) The adequacy of the facility's operational practices and management controls;*

Cowlitz County and Ecology are currently working with the facility to ensure that it has the operational practices and management controls in place for managing solid waste, wastewater and stormwater, as well as operating an anaerobic digestion facility in the state of Washington. Based on the information provided in the application, Metro considers the operational practices and management controls proposed at this facility to be adequate for this type of facility and consistent with similar facilities designated by Metro.

(4) The expected impact on the region's recycling and waste reduction efforts;

The proposed food waste processing facility under consideration in this resolution is important to Metro's efforts to increase food waste recovery rather than disposal in a landfill. Currently, nearly 5,000 tons of packaged and unpackaged food waste generated in the Metro region flows to Divert's facility in Albany, Oregon. Divert has not indicated whether any of the Metro area food waste currently going to Albany will be routed to the Longview facility. However, the new facility will have increased capacity to capture packaged and unpackaged food waste. Divert's service model also prioritizes separation of donatable food at the store level and provides data to its customers about the types of food that are wasted. Staff finds that designating this facility will create a direct relationship between Metro and the facility, which provides Metro with greater oversight to ensure that food waste is properly managed.

(5) The facility designation's compatibility with Metro's existing contractual arrangements;

Metro's existing contractual arrangements will not be affected by the designation of this facility. However, it is important to note that Metro is currently developing a Regional System Facilities Plan to modernize the region's reuse, recycling and garbage infrastructure. That planning effort may identify areas of the current solid waste system that require further analysis or re-evaluation. Metro Council may reconsider the designated facility list in the future in accordance with Metro Code Chapter 5.05.

(6) The facility's record of compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement; and

This facility is new construction and therefore does not have a record of compliance with Metro. However, Divert Inc., the parent company of the applicant, is well known to Metro staff through its operation of the Divert Albany Processing Facility which is a designated facility of Metro's solid waste system. Divert has a good record of cooperating with Metro regarding waste flow control matters and staff also finds that Divert has generally been responsive to Metro's requests for information about the Albany facility and origins of the waste it receives. Staff has an effective working relationship with the Albany facility operators and finds that they have a good record of assisting and complying with Metro's requirements.

(7) Other benefits or detriments accruing to regional residents if Council designates the facility.

As previously mentioned, staff finds that designating the proposed facility creates a direct relationship between Metro and the designated facility and provides Metro with greater oversight of the region's waste to ensure that it is properly managed and disposed of. This direct relationship reduces the need for users of a facility to obtain a non-system license. Under a DFA the facility would be responsible for reporting tonnage and remit fees and taxes to Metro monthly.

Based on an evaluation of the above-mentioned factors, staff finds that the applicant will operate this new facility in a manner that meets Metro Code requirements. The facility has applied for permits from the appropriate authorities to minimize the potential for environmental risk.