

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 17-4783 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NEW NON-SYSTEM LICENSE TO PACIFIC FOODS OF OREGON, INC. 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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Approval of Resolution No. 17-4783 will authorize the Chief Operating Officer (COO) to issue a new non-system license (NSL), to Pacific Foods of Oregon, Inc. (Pacific Foods). The proposed NSL will authorize Pacific Foods to transport up to 1,300 tons per calendar year of non-recoverable waste, including putrescible (wet) waste, generated at its facility located at 19480 SW 97<sup>th</sup> Ave. in Tualatin (Metro District 3) to the Covanta Waste-to-Energy facility (Covanta) located in Brooks, Oregon.

## BACKGROUND

### Overview

The applicant, Pacific Foods, was founded in 1987 and is a locally owned and operated food manufacturing company specializing in soups and non-dairy beverages. Pacific Foods has a robust sustainability program including a dedicated recycling staff of 4-5 full time employees and a current landfill diversion rate of approximately 85 percent. As part of these efforts, the company seeks to become a zero-waste-to-landfill company. The waste that Pacific Foods seeks to transport to Covanta includes lunch room and restroom waste, and off-specification food products contained in aseptic packaging. Pacific Foods minimizes food waste in a variety of ways. For example, certain food by-products go to their cattle farms in the Willamette Valley to be used as animal feed or bedding. Liquid off-specification product (such as broth or soy milk) is de-watered on site to recover the aseptic containers. The waste water is treated on-site and solids captured during the process are transported to Farm Power in Tillamook for anaerobic digestion. Certain products (such as off-specification pea soup) contain too much solid material to be processed through the facility's de-watering machinery. If the off-specification product is edible it is donated to the Oregon Food bank, if it is inedible and cannot be de-watered, it is disposed.

On December 16, 2016, Pacific Foods filed a complete application seeking a new NSL to transport up to 1,300 tons per calendar year of non-recoverable waste, including wet waste, generated at its facility to Covanta. The proposed license is subject to approval or denial by the Metro Council because it also authorizes the delivery of wet waste to a non-system facility.<sup>1</sup>

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<sup>1</sup> Metro Code Chapter 5.05

## **ANALYSIS/INFORMATION**

### **A. Known Opposition**

Marion County staff has recently raised concerns about Covanta's practice of accepting waste from the Metro region to the exclusion of waste generated within Marion County. The County notified Covanta of its concerns about the facility's capacity in a letter issued last fall. County staff verbally requested that Metro take Covanta's capacity into account when it considers issuing NSLs to use the facility. Metro staff sent an email on March 2<sup>nd</sup> and then a letter on March 7<sup>th</sup> to the County requesting written clarification on its concerns and seeking specific comment on the proposed NSL application. The County has not responded in writing to either of Metro's request for more information.

Although approval of this resolution would authorize Pacific Foods to transport waste to Covanta, the proposed NSL does not obligate Covanta to accept the waste. In addition, Metro may subsequently amend, suspend, or terminate the NSL should there be any change in circumstances after it is issued. Metro staff will continue to monitor the situation and work with the County to resolve any issues that may arise during the term of this license.

### **B. Legal Antecedents**

Metro Code Chapter 5.05 prohibits any person from utilizing non-system facilities without an appropriate license from Metro. Additionally, Metro Code Section 5.05.043 provides that, when determining whether or not to approve an NSL application, the Metro Council must 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;*

Covanta primarily accepts solid waste generated in Marion County. The facility also accepts special waste and other wastes generated by companies seeking to promote alternative disposal policies or government agencies seeking to destroy certain waste for public safety or the public good such as contraband, postage stamps, expired pharmaceuticals, and lottery tickets.

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

Covanta holds a DEQ Solid Waste Energy Recovery Permit.<sup>2</sup> 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 operational practices and management controls at the non-system facility;*

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;*

Pacific Foods maintains an extensive internal recycling program and seeks to deliver only its non-recoverable waste, including wet 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 watershed boundaries may count a portion of it towards their DEQ recovery rate calculation. Marion County is the only watershed within Oregon that hosts a waste-to-energy facility within its boundaries; therefore, it is the only watershed 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 consistency of issuing the license with Metro's existing contractual arrangements;*

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 record of the applicant 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 rules and regulations;*

In October 2016, Pacific Foods contacted Metro to inquire about NSL requirements. Pacific Foods had been transporting waste to Covanta without appropriate authorization since October 2014. During that time period Pacific Foods transported 963.60 tons to Covanta and did not remit the fees and taxes due Metro totaling \$28,866.10. Metro invoiced Pacific Foods for the back fees and taxes rather than issue a

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<sup>2</sup> Oregon DEQ permit #364

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

formal enforcement action for this violation of Metro Code.<sup>4</sup> Pacific Foods contacted Metro to come into compliance, and agreed to cease transporting waste to Covanta until such time as they become authorized for such activity. Pacific Foods has paid all back fees and taxes owed to Metro in full.

*(7) Such other factors as the Chief Operating Officer deems appropriate for purposes of making such determination.*

Covanta is the primary disposal site for solid waste generated within Marion County. At certain times during the year, in order to operate more efficiently, the facility requires more solid waste than is generated within the County. Metro transfer stations have provided this waste in the past, but have not done so since December of 2015.

The proposed license includes a 32-month term, commencing on May 1, 2017, and expiring on December 31, 2019. Metro Code Section 5.05.170(5)(B) states that a new NSL may be issued for a term of up to a three years. The proposed term will align future consideration of this NSL with other similar NSLs.

### **C. Anticipated Effects**

The effect of Resolution No. 17-4783 will be to issue a new NSL authorizing Pacific Foods to transport up to 1,300 tons per calendar year of non-recoverable waste, including wet waste to Covanta for disposal. The proposed license will commence on May 1, 2017, and expire on December 31, 2019.

### **D. Budget/Rate Impacts**

The waste covered under the proposed NSL will be delivered to Covanta. Covanta is not a general-purpose landfill and the proposed tonnage will not impact Metro's obligations under its disposal contract. The regional system fee and excise tax will be collected on the waste transported to Covanta under authority of the proposed NSL.

## **RECOMMENDED ACTION**

The COO finds that the proposed license satisfies the requirements of Metro Code Chapter 5.05 and recommends that the Metro Council adopt Resolution No. 17-4783. Approval of this resolution will authorize the COO to issue an NSL to Pacific Foods (attached as Exhibit A).

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<sup>4</sup> Metro Code Section 5.05.025