

# Memo

Date: June 24, 2020  
To: Pam Peck, Policy and Compliance Director  
From: Joanna Dyer, Senior Solid Waste Planner  
Subject: Renewed Solid Waste Facility License No. L-162-20 for Dean Innovations Inc.

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Attached for your signature is renewed Solid Waste Facility License No. L-162-20 for Dean Innovations Inc., a yard debris reload facility located at 6400 SE 101<sup>st</sup> Avenue in Portland (Metro Council District 6). This memo provides background information on the applicant's request, a description of proposed changes to the license and staff's recommendation to renew Metro's authorization for Dean Innovations.

Under Metro Code Section 5.01.080, the proposed license is to be approved or denied by the Chief Operating Officer (COO). On March 16, 2020, the COO delegated to the Policy and Compliance Director (the Director) authority to carry out the COO's responsibilities under Metro Code Chapter 5.01 for approving or denying a solid waste facility license. As such, the Director is authorized to approve this proposed license.

## **OVERVIEW**

The applicant, Dean Innovations, is a Metro licensed facility that accepts yard debris for reloading to facilities that produce compost and other landscaping materials. The facility also accepts land clearing debris and woody debris for grinding and reloading to a facility that uses the wood for boiler fuel, mulch and paper products.



*Aerial view of Dean Innovations*

Dean Innovations is a locally-owned company that has been in operation for more than 18 years and has been operating under a Metro license since September 2014. The facility currently holds Metro Solid Waste Facility License No. L-162-14B which expires on June 30, 2020. Dean Innovations is not required to obtain a solid waste permit from the Oregon Department of Environmental Quality (DEQ).

On March 5, 2020, Dean Innovations submitted an application to Metro requesting the renewal of its license. The applicant did not propose any changes in its operation or request new authorizations. As part of Metro's ongoing efforts to improve clarity and establish more uniform requirements, staff is proposing various updates and additions to the Dean Innovations license that will better align it with other Metro authorizations where appropriate. Some of these updates and additions are facility-specific and some are standard requirements that will be included in all new and renewing licenses. In addition to the updates outlined below, the proposed license includes various non-substantive housekeeping changes for clarity and consistency.

### **New Facility-Specific License Updates and Additions for Dean Innovations**

The proposed license includes facility-specific updates and requirements as follows:

- **Authorizations** (Section 3.0): Remove the authorization to accept painted and treated wood as there are limited viable markets for this material. This authorization is being removed from all yard debris reload facilities.
- **Pile size limits** (Section 4.1): Add pile size limits that align with Oregon Fire Code. Metro has already added this requirement to Metro-licensed compost facilities and is now expanding to include facilities that are authorized to accept yard debris or wood waste.
- **Record keeping requirements** (Section 8.1): Add new reporting requirements that reflect the corrective action of NOV-421-20 issued to the facility on February 11, 2020 (see compliance section below).

### **Standard Requirement Updates and Additions for Dean Innovations**

Certain license requirements are standard across all licenses and franchises. This proposed license updates language in some existing standard conditions and also adds new standard conditions that will be included in all new and renewing licenses as follows:

- **General Performance Standards** (Section 5.1): Add section requiring the facility to operate in a manner that avoids undue nuisance conditions, threats to the environment, or conditions that degrade public health and safety. This section is included in other facility licenses and is proposed here to increase uniformity across licenses.
- **Employment Standard** (Section 5.16): Add a new section requiring that the licensee be in compliance with Oregon's "ban the box" law (ORS 659A.360). Oregon's "ban the box" law makes it illegal for an employer to inquire about criminal convictions before the interview stage of hiring. This advances progress on the 2030 Regional Waste Plan and the Waste Prevention and Environmental Services Diversity, Racial Equity and Inclusion Work Plan goals. This requirement was added to the franchises in 2020 and will be added to all licenses as they are renewed.
- **Closure protocol** (Section 6.11): Update closure protocol to distinguish between a short-term and long-term closure of the facility and require a licensee to notify Metro within one business day of a short-term or long-term closure. This standardizes the closure protocol across licenses and formalizes the expectation that Metro is notified of any short-term or long-term closure.
- **Reporting requirements** (Subsection 8.2.2): Add a new subsection stating that Metro may require reporting on a weekly or daily basis in the event of a significant disruption to the solid waste system. This was created in response to the COVID-19 pandemic and Metro's need for more real-time data. This subsection will be added to all relevant authorizations.
- **Changes in ownership** (Section 8.6): Update language to require notification to Metro of any change in ownership. This change will be standard across new and renewing licenses and aligns with Metro Code Chapter 5.01.

- **Certificate of insurance** (Section 9.5): Add a new section to formalize the expectation and the long-standing practice that licensees submit a certificate of insurance (CERT) to Metro. Licensees must name Metro as an additional insured on the CERT, and also include the *additional insured endorsement* from the general liability policy as recommended by Metro’s risk manager.
- **Right of inspection and audit** (Section 12.3): Update language to require access to the facility by Metro authorized personnel to perform research. This update was made to the franchises in 2020 and will be made to all licenses as they are renewed.
- **Confidential Information** (Section 12.4): Update language to reflect current state public records law which has more restrictive timelines for responding to a requestor. This update was made to the franchises in 2020 and will be made to all licenses as they are renewed.

**PUBLIC NOTICE AND OPPORTUNITY TO COMMENT**

Metro has a longstanding practice of providing public notice and a 30 day comment period for a license renewal application before deciding whether to approve or deny it. However, due to the COVID-19 pandemic, Metro has postponed the public notice and comment period for a series of licenses that expire June 30, 2020. Metro is committed to soliciting input from the public about these facilities and will open a public comment period later this year when our communities are better able to provide feedback.

Though this facility has had a couple of compliance issues during the term of its current license, the facility is currently in compliance with its license. Metro will solicit input from the public about this facility later this year. In the interim, staff finds that it is in the public’s interest to renew the license with a standard five-year term. Metro may amend the license at a later date based on new information received during the public comment period.

**METRO CODE LICENSE RENEWAL CRITERIA**

Metro Code Section 5.01.110 states:

*The Chief Operating Officer must approve a solid waste facility license renewal unless the Chief Operating Officer determines that the proposed license renewal is not in the public interest. The Chief Operating Officer may attach conditions to any renewed license.*

Dean Innovations filed a renewal application on March 5, 2020 accompanied by a \$300 application fee payment. The application was deemed complete on April 7, 2020. Metro requested an updated Land Use Compatibility Statement (LUCS) for Dean Innovations because the LUCS on file had incomplete property information. The facility submitted an application to the City of Portland’s Bureau of Developmental Services, but the application has not been processed yet, likely due to the increased backlog caused by the COVID-19 pandemic. The license renewal application included a description of the facility’s operation and the solid waste it accepts. The proposed license does not include any new authorizations and, if approved, will replace the current license that is set to expire on June 30, 2020.

**COMPLIANCE HISTORY OF THE APPLICANT**

Metro conducted 25 inspections of Dean Innovations between October 2014 and February 2020 and three off-site, non-contact inspections in March and April 2020. During that time, Metro issued to Dean Innovations a non-compliance letter in 2015 and a notice of violation in 2020 for retaining yard debris on-site for longer than seven days and reloading yard debris for use as mulch without prior approval from Metro. As a result of these violations, Metro implemented additional reporting requirements and the facility revised its operating plan. This matter has since been resolved and the facility is in compliance with its license requirements at this time.

During the term of the current license, Metro has not received any complaints regarding the facility and no compliance issues have been reported by city of Portland staff. However, staff is aware of a developing issue related to clopyralid contamination discovered in landscaping products sold by Dean Innovation. Clopyralid is a selective herbicide used for control of broadleaf weeds such as dandelions, clover and thistle. The Oregon Department of Agriculture (ODA) is currently testing soil samples from the facility in response to community reports of high levels of herbicides in some soil blends sold at the facility this spring. As of the date of this report, ODA investigations are ongoing. Staff continues to monitor the situation and coordinate with DEQ and ODA on appropriate follow-up actions. Metro may amend the facility license based upon new information resulting from ODA's investigation or other input received during the upcoming comment period. Staff finds that yard debris reload facilities, like Dean Innovations, play an important role in the region's solid waste recovery efforts and it is in the public interest to renew the facility's license.

#### **STAFF RECOMMENDATION**

Staff recommends approving Solid Waste Facility License No. L-162-20 to renew Dean Innovation's authority to accept yard debris, land clearing debris and clean wood waste for processing and reloading to authorized facilities. If approved, the proposed license will take effect on July 1, 2020 and expire on June 30, 2025. A copy of the proposed license is attached for your signature.