

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING A)	ORDINANCE NO. 97-680
FRANCHISE TO AMERICAN COMPOST)	
AND RECYCLING INC. FOR OPERATING)	Introduced by Mike Burton,
A COMMERCIAL FOOD WASTE PROCESSING)	Executive Officer
FACILITY AND A YARD DEBRIS COMPOSTING)	
FACILITY)	

WHEREAS, Section 5.01.030 of the Metro Code requires a Metro franchise for any person to own and operate a facility for processing solid waste; and

WHEREAS, American Compost and Recycling has applied for a non-exclusive franchise to own and operate a solid waste processing and recovery facility and a yard debris composting facility in Portland Oregon; and

WHEREAS, American Compost and Recycling has submitted a franchise application in compliance with Metro Code Section 5.01.060; and

WHEREAS, The American Compost and Recycling facility will provide recycling of waste delivered by affiliated companies, other commercial haulers, contractors and businesses; and

WHEREAS issuance of a franchise to American Compost and Recycling is consistent with the policies set forth in the Regional Solid Waste Management Plan adopted November 1995 for recovering source-separated food wastes from businesses and recycling yard debris; and

WHEREAS, Metro Code Section 5.01.110 provides for the ability of Metro Council to grant variances pursuant to criteria contained therein; and

WHEREAS, American Compost and Recycling has requested a variance from Metro rate setting requirements as detailed in the Staff Report to this ordinance; and

WHEREAS, American Compost and Recycling has requested a variance from Metro Code Section 5.01.120(l) to allow it to retain ownership of its affiliated hauling companies and allow non-affiliated companies to use the facility as detailed in the staff report to this ordinance; and

WHEREAS, based on the information submitted by the franchise applicant, specified in the Staff Report or otherwise submitted, the Council has determined that it is appropriate to grant the variances requested; and

WHEREAS, American Compost and Recycling will provide a surety bond in the amount of \$100,000 as determined by Metro staff to be appropriate; and

WHEREAS, the Executive Officer recommends that the Council grant the attached franchise to American Compost and Recycling; and

WHEREAS, the Council finds that it is necessary for the welfare of the Metro area that this ordinance take effect immediately, because the franchise site consists of an existing yard debris composting operation and a proposed commercial food waste processing facility which will recover additional materials from the solid wastestream, and potential nuisance impacts such as odor, dust and vectors are a cause of public concern, and the franchisee needs a signed franchise to begin operation of the commercial food waste processing facility and to proceed with the Metro Commercial Food Waste Recovery Pilot Project; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The Council authorizes the Executive Officer to enter into the attached franchise agreement within ten days of the effective date of this ordinance.
2. American Compost and Recycling is granted a variance from rate setting under Metro Code Section 5.01.110.

3. American Compost and Recycling is granted a variance from Metro Code Section 5.01.120(l) to allow it to retain ownership of its hauling companies and allow non-affiliated companies to use the facility.
4. An emergency having been declared for the reasons stated above, this ordinance shall take effect immediately, pursuant to Sections 37(2) and 39(1) of the 1992 Metro Charter.

ADOPTED by the Metro Council this 27th day of March 1997.



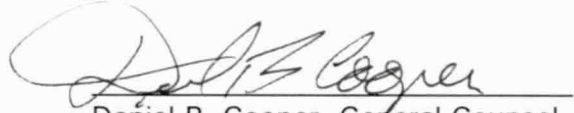
Jon Kvistad, Presiding Officer

ATTEST:



Recording Secretary

Approved as to Form



Daniel B. Cooper, General Counsel

EXHIBIT A

SOLID WASTE FRANCHISE

issued by

METRO

600 NE Grand Avenue

Portland, Oregon 97232-2736

(503) 797-1700

FRANCHISE NUMBER: _____

DATE ISSUED: _____

AMENDMENT DATE: _____

EXPIRATION DATE: _____

ISSUED TO: _____ AMERICAN COMPOST AND RECYCLING, INC.

NAME OF FACILITY: _____ AMERICAN COMPOST AND RECYCLING, INC.

ADDRESS: _____ 9707 N. COLUMBIA BOULEVARD

CITY, STATE, ZIP: _____ PORTLAND, OREGON 97203

LEGAL DESCRIPTION: _____ (see attached application)

NAME OF OPERATOR: _____ DON I. CHAPPELL

PERSON IN CHARGE: _____ DON I. CHAPPELL

ADDRESS: _____ P.O. BOX 83960

CITY, STATE, ZIP: _____ PORTLAND, OR 97203

TELEPHONE NUMBER: _____ (503) 286-0886

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FRANCHISE AGREEMENT

This Franchise is issued by Metro, a municipal corporation organized under ORS chapter 268 and the 1992 Metro Charter, referred to herein as "Metro," to American Compost and Recycling Inc., referred to herein as "Franchisee."

In recognition of the promises made by Franchisee as specified herein, Metro issues this Franchise, subject to the following terms and conditions:

1. DEFINITIONS

The definitions in Metro Code Section 5.01.010 shall apply to this Franchise, as well as the following definitions. Defined terms are capitalized when used.

"Affiliated Hauling Companies" means hauling companies owned, either in whole or in part, or legally affiliated with, the Franchisee.

"Authorized Waste" or "Authorized Wastes" means those wastes defined as such in Section 5.2 of this Franchise.

"Battery" means a portable container of cells for supplying electricity. This term includes, but is not limited to, lead-acid car batteries, as well as dry cell batteries such as nickel cadmium, alkaline, and carbon zinc.

"Business" means a commercial enterprise or establishment licensed to do business in the state of Oregon.

"Compost" means the stabilized end product of the biological degradation of organic matter under aerobic conditions to a stable humus-like material that is used or distributed for use as a soil amendment, artificial top soil, growing medium amendment or other similar uses.

"Composting" means the controlled biological decomposition of organic materials through microbial activity which occurs in the presence of free oxygen, to produce compost. Composting does not include the stockpiling of organic material.

"Conditionally Exempt Generator Waste" has the meaning specified in 40 C.F.R. § 261.

"DEQ" means the Oregon Department of Environmental Quality, which includes the Oregon Environmental Quality Commission.

"Disposal Site" has the meaning specified in ORS 459.005.

"Facility" means the site where one or more activities that the Franchisee is authorized to conduct occur.

"Friable Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite and tremolite, but only to the extent that such materials, when dry and subjected to hand-pressure, can be crumbled, pulverized or reduced to powder.

"General Purpose Landfill" means any land disposal facility that is required by law, regulation, or permit, to utilize a liner and leachate collection system equivalent to or more stringent than that required for municipal solid waste landfills under Subtitle D of the Resource Conservation and Recovery Act and is authorized by law to accept more than incidental quantities of Putrescible Waste.

"Hazardous Waste" has the meaning specified in ORS 466.005.

“Household Hazardous Waste” has the meaning specified in Metro Code Section 5.02.015(f).

“Industrial Solid Waste” or **“Industrial Waste”** means:

- (1) Solid Waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under ORS chapters 465 and 466 or under Subtitle C of the Federal Resource Conservation and Recovery Act. Such waste may include, but is not limited to, the following wastes or wastes resulting from the following processes:
 - (a) electric power generation;
 - (b) fertilizer/agricultural chemicals;
 - (c) food and related products and by-products;
 - (d) inorganic chemicals;
 - (e) iron and steel manufacturing;
 - (f) leather and leather products;
 - (g) nonferrous metals manufacturing/foundries;
 - (h) organic chemicals;
 - (i) plastics and resins manufacturing;
 - (j) pulp and paper industry;
 - (k) rubber and miscellaneous plastic products;
 - (l) stone, glass, clay and concrete products;
 - (m) textile manufacturing;
 - (n) transportation equipment;
 - (o) water treatment;
 - (p) timber products manufacturing;

- (2) This term does not include :
 - (a) Putrescible Waste, or office or lunch room waste from manufacturing or industrial facilities;
 - (b) Construction and Demolition Waste
 - (c) Contaminated Soils

“Infectious Medical Waste” or **“Infectious Waste”** has the meaning specified in ORS 459.386(2).

“Metro Regional User Fee” has the meaning specified in Metro Code Section 5.02.015(e).

“Metro Transfer Station” means the Metro South Station, Metro Central Station, or Forest Grove Transfer Station.

“Prohibited Wastes” has the meaning set forth in Section 5.3.1 of this Franchise.

“Putrescible Waste” means Solid Waste containing organic material that can be rapidly decomposed by microorganisms, and which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies.

“Recoverable Material” means material that still has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and that can be reused or recycled for the same or other purpose(s).

“Residential Solid Waste” means the garbage, rubbish, trash, and other Solid Wastes generated by the normal activities of households, including but not limited to, food wastes, ashes, and bulky wastes, but does not include Construction and Demolition Waste. This definition applies to multifamily structures of any size.

“Residue” means Solid Waste, resulting from Solid Waste Materials Recovery, that is transported from a franchised Solid Waste Processing and Recovery Facility to a Disposal Site.

"Sludge" means any solid or semi-Solid Waste and associated supernatant generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar characteristics and effects.

"Solid Waste Materials Recovery" means the activity of manually or mechanically Processing Solid Wastes that separates materials for purposes of recycling or recovery.

"Solid Waste Processing and Recovery Facility" means a facility franchised by Metro as a Processing and/or Resource Recovery Facility and authorized to receive specific categories of Solid Waste and to conduct one or more of the following activities: (1) Source-Separated Recyclables Processing, (2) Solid Waste Material Recovery, (3) Yard Debris Reloading (4) Fiber-Based Fuel Processing, and (5) Contaminated Soils Reloading.

"Source Separate" or "Source Separating" or "Source Separation" means

- (1) The setting aside of recyclable materials at their point of generation by the generator; or
- (2) That the person who last uses recyclable material separates the recyclable material from Solid Waste.

"Special Waste" has the meaning specified in Metro Code Section 5.02.015(s).

"Subfranchisee" means any business co-located with Franchisee at the Facility and engaged in Processing Solid Waste.

"Unacceptable Waste Incident Tracking Form" means the form attached to this Franchise as Attachment 1.

"Vegetative Commercial Food Waste" means solid waste which has the following characteristics: 1) preseggregated solid wastes which are derived from plants including but not limited to fruit or vegetable peelings or parts, grains, coffee grounds, crop residue, waxed cardboard and uncoated paper products, but does not include oil or grease; and 2) are generated by stores, offices, restaurants, schools, colleges, universities, hospitals and other non-manufacturing entities.

"Vermi-Processing" means the controlled method or system of altering the form, condition or content of vegetative, food and/or paper wastes, utilizing worms to consume and digest the organic fraction to produce worm-castings which are typically the final product, and may be blended with compost or soil for marketing purposes. The worm castings may require additional processing to ensure pathogen destruction.

"Yard debris" means vegetative and woody material generated from residential property or from commercial landscaping activities. "Yard debris" includes landscape waste, grass clippings, leaves, hedge trimmings, stumps and other similar vegetative waste, but does not include demolition debris, painted or treated wood.

2. TERM AND APPLICABILITY OF FRANCHISE

- 2.1 This Franchise is issued for a term of five years from the date of execution by the Executive Officer and following approval by the Metro Council.
- 2.2 Unless otherwise specified in this Franchise, the provisions and obligations of this Franchise shall apply to the Franchisee and all Subfranchisees of the Facility. Prior to any Subfranchisee commencing Processing at the Facility, Franchisee shall provide to Metro written agreements from that Subfranchisee acknowledging that the Subfranchisee is bound by and will comply with all terms of this Franchise.

3. LOCATION OF FACILITY

The franchised Facility is located at 9707 N. Columbia Boulevard, Portland Oregon 97203. Tax Lot 1 of lots A, B, and J, Ramsey Villa Acres; Section 36, Township 2N, Range 1W, W.M.

4. OPERATOR AND OWNER OF FACILITY AND PROPERTY

- 4.1 The owner of the Facility is Don I. and Janice E. Chappell. Franchisee shall submit to Metro any changes in ownership of the facility in excess of five percent of ownership, or any change in partnership, within 10 days of the change. Franchisee warrants that it has obtained the owner's consent to operate the Facility as specified in the Franchise
- 4.2 The owner of the property underlying the Facility is Don I. and Janice E. Chappell. Franchisee warrants that it has obtained the owner's consent to operate the Facility as specified in the Franchise
- 4.3 The operator of the Facility is Don I. Chappell. Franchisee may contract with another person or entity to operate the Facility only upon 90 days prior written notice to Metro and the written approval of the Executive Officer.

5. AUTHORIZED AND PROHIBITED ACTIVITIES AND WASTES

- 5.1 Subject to the following conditions, Franchisee is authorized to operate and maintain the following: 1) a Solid Waste Processing and Recovery Facility and 2) a Yard Debris Composting Facility. The Franchisee is authorized to conduct the following activities: (a) Vermi-Processing of Vegetative Commercial Food Waste, and (b) Yard Debris Composting.
- 5.1.1 The Franchisee shall accept only Authorized Wastes. Franchisee and Subfranchisees are prohibited from receiving, Processing or disposing of any Solid Waste not authorized in this Franchise. Neither Franchisee nor Subfranchisees shall knowingly accept loads of Solid Waste containing only incidental amounts of Recoverable Material or loads which Franchisee or Subfranchisee intend to landfill without first Processing for Recoverable Material.
- 5.1.2 This Franchise limits the amount and types of Authorized Waste that may be received each year at the Facility as listed in Section 5.2.1 of this Franchise. Upon written request from the Franchisee, the Executive Officer may increase the amount and add types of waste Franchisee or Subfranchisees are authorized to receive for activities authorized at the Facility. Franchisee and Subfranchisees may receive the designated amount of Solid Waste consistent with (1) applicable law, (2) the terms of this Franchise, and (3) any other applicable permits and licenses obtained from governmental or regulatory entities.
- 5.1.3 Franchisee may accept Authorized Waste from its own Affiliated Hauling Companies, Non-Affiliated Hauling Companies, Contractors and other Businesses, but not from the general public. Franchisee may accept Yard Debris from any source.
- 5.2 Authorized Activities, Waste Types and Waste Quantities
- 5.2.1 Franchisee is authorized to conduct the following activities and receive the following categories of wastes according to the tonnage limits specified below:

5.2.1.1 Vermi-Processing of Vegetative Commercial Food Wastes of up to a total of 18,000 tons per year (50 tons per day), subject to the following conditions:

5.2.1.1.a Processing of Vegetative Commercial Food Wastes shall be limited by the conditions described in Sec 7.3. Residuals from processing these Wastes shall be transported to the Metro Central Transfer Station.

5.2.1.2 Yard Debris Composting of up to a total of 50,000 cubic yards per year, subject to the conditions described in Section 7.3.

5.3 Prohibited Wastes

5.3.1 Neither Franchisee nor Subfranchisees shall knowingly accept or retain any material amounts of the following types of waste, unless specifically authorized in Sections 5.3.2 or 7.3 of this Franchise

5.3.1.2 Materials contaminated with or containing Friable Asbestos;

5.3.1.3 Batteries

5.3.1.4 Residential Solid Waste;

5.3.1.5 Liquid waste;

5.3.1.6 Oil;

5.3.1.7 Sludge;

5.3.1.8 Tires;

5.3.1.9 Vehicles;

5.3.1.10 Infectious Waste;

5.3.1.11 Special Waste or any sub-stream of Special Waste unless authorized elsewhere within this Franchise;

5.3.1.12 Hazardous Waste;

5.3.1.13 Conditionally Exempt Generator Waste;

5.3.1.14 Household Hazardous Waste.

5.3.2 Prohibited Wastes received at the Facility shall be: (1) isolated from other materials at the Facility or (2) removed from the Facility. Franchisee shall transport any Prohibited Waste other than Hazardous Waste to a Disposal Site authorized to accept such waste, unless an alternate Disposal Site or method has been approved by DEQ. Non-hazardous Prohibited Wastes shall be managed pursuant to the approved facility Operations Plan submitted as part of the Franchise application process. In the event that Franchisee determines or suspects that discovered waste constitutes Hazardous Waste, Franchisee shall immediately initiate procedures to identify the waste and the generator and shall, within 48 hours of receipt of the waste, initiate procedures to remove the waste. Hazardous Waste must be removed from the Facility within 5 days after receipt unless an alternate disposal method and additional storage period has been approved by DEQ. Franchisee shall implement and conduct temporary storage and transportation procedures in accordance with DEQ rules. Franchisee shall record receipt of Prohibited Wastes on Metro's Unacceptable Waste Incident Tracking Form (Attachment 1).

6. MINIMUM REPORTING REQUIREMENTS

6.1 Franchisee shall collect and transmit to Metro, according to the timetable in Section 6.5, accurate records of the following information

6.1.A Commercial Food Waste Vermi-Processing Operation:

- 6.1.A.1 Tons of incoming Vegetative Commercial Food Waste received each month
- 6.1.A.2 Tons of yard debris used for Vermi-Processing each month
- 6.1.A.3 Tons of worm castings produced each month
- 6.1.A.4 Tons of waste and Residue sent for disposal each month
- 6.1.A.5 The fee Franchisee charged or paid the hauler for incoming loads.
- 6.1.A.6 Receipt of any materials encompassed by Section 5.3.2 of this Franchise, utilizing Metro's Unacceptable Waste Incident Tracking Form.

6.1.B Yard Debris Composting Operation

6.1.B.1 Amount of feedstock received and quantity of product produced at the facility to include:

- a) Tons of incoming yard debris received each month
- b) Tons of compost produced each month
- c) Tons of residual waste sent for disposal each month

6.2 Records of any special occurrences encountered during operation and methods used to resolve problems arising from these events, including details of all incidents that required implementing emergency procedures.

6.3 Records of any public nuisance complaints (e.g., noise, dust, vibrations, litter) received by the operator, including:

- (a) The nature of the complaint;
- (b) The date the complaint was received;
- (c) The name, address, and telephone number of the person or persons making the complaint; and
- (d) Any actions taken by the operator in response to the complaint.

6.4 For every odor complaint received, the Franchisee shall record the date, time, and nature of any action taken in response to an odor complaint, and record such information within one business day after receiving the complaint. Records of such information shall be made available to Metro and local governments upon request.

6.5 Records required under Section 6 shall be reported to Metro no later than fifteen (15) days following the end of each quarter. A cover letter shall accompany the data which certifies the accuracy of the data and is signed by an authorized representative of Franchisee.

6.6 The Franchisee shall participate in an annual review with Metro of the Facility's performance. The review will include:

- 6.6.1 The Facility's performance in accomplishing waste reduction goals consistent with the adopted Regional Solid Waste Management Plan. This review shall include, without limitation, whether the Facility's operation is consistent with both local government and

private sector efforts to expand source separation recycling programs for commercial and industrial generators;

- 6.6.2 Receipt or release of Hazardous Waste or Infectious Waste at the Facility; nuisance complaints as recorded in the log required under Section 7.4.1.2; changes to site equipment, hours of operation and/or staffing; and other significant changes in the Facility's operations that occurred during the previous year; and
- 6.6.3 Any modifications under Section 18 of this Franchise.

Within one year after the Facility begins operations, and each year thereafter, Metro will contact Franchisee to schedule the annual review meeting. Metro will provide at least three business weeks advance notice of this meeting. At least one business week prior to this meeting, Franchisee shall submit to the Franchise Administrator a summary, in letter format, addressing the above-listed topics.

- 6.7 Franchisee shall provide the Metro Regional Environmental Management Department copies of all correspondence, exhibits or documents submitted to the DEQ relating to the terms or conditions of the DEQ solid waste permit or this Franchise, within two business days of providing such information to DEQ. In addition, Franchisee shall send to Metro, upon receipt, copies of any notice of non-compliance, citation, or enforcement order received from any local, state or federal entity with jurisdiction over the Facility.
- 6.8 Authorized representatives of Metro shall be permitted to inspect information from which all required reports are derived during normal working hours or at other reasonable times with 24-hour notice. Metro's right to inspect shall include the right to review, at an office of Franchisee or Subfranchisee located in the Portland metropolitan area, records, receipts, books, maps, plans, and other like materials of the Franchisee that are directly related to the Facility's operation.
- 6.9 Where fees and charges are levied and collected on the basis of tons of waste received, either a mechanical or automatic scale approved by the National Bureau of Standards and the State of Oregon may be used for weighing waste.
- 6.10 Where a fee or charge is levied and collected on an accounts receivable basis, pre-numbered tickets shall be used in numerical sequence. The numbers of the tickets shall be accounted for daily and any voided or canceled tickets shall be retained for three years. The Executive Officer may approve use of an equivalent accounting method.
- 6.11 Any periodic modification by Metro of the reporting forms themselves shall not constitute any modification of the terms of Section 6 of this Franchise, nor shall Metro include within the reporting forms a request for data not otherwise encompassed within Section 6.

7. OPERATIONAL REQUIREMENTS

7.1 General Requirements

- 7.1.1 The Franchisee and Subfranchisees shall provide an operating staff which is qualified to perform the functions required by this Franchise and to otherwise ensure compliance with the conditions of this Franchise.
- 7.1.2 A copy of this Franchise shall be displayed on the Facility's premises, and in a location where it can be readily referenced by Facility personnel. Additionally, signs shall be erected at a location visible to all users of the Facility before unloading at the Facility, and in conformity with any local government signage regulations. These signs shall be easily and readily visible, legible, and shall contain at least the following information:

- 7.1.2.1 Name of the Facility;
- 7.1.2.2 Address of the Facility;
- 7.1.2.3 Emergency telephone number for the Facility;
- 7.1.2.4 Operational hours during which the Facility shall be open for the receipt of authorized waste;
- 7.1.2.5 Rates and fees
- 7.1.2.6 Metro's name and telephone number; and
- 7.1.2.7 A list of all Authorized Wastes under this Franchise.

7.2 General Operating and Service Requirements

- 7.2.1 If Franchisee or any Subfranchisee contemplates or proposes to close the Facility for 120 days or more, or proposes to close the Facility permanently, Franchisee shall provide Metro with written notice, at least 90 days prior to closure, of the proposed closure schedule and procedures.
- 7.2.2 If Franchisee or any Subfranchisee contemplates or proposes a closure of the Facility for more than two business days but less than 120 days, Franchisee shall notify Metro and local government Solid Waste authorities of the closure and its expected duration at least 24 hours before the closure.
- 7.2.3 If any significant occurrence, including but not limited to equipment malfunctions, or fire, results in a violation of any conditions of this Franchise or of the Metro Code, the Franchisee shall:
 - 7.2.3.1 Immediately act to correct the unauthorized condition or operation;
 - 7.2.3.2 Immediately notify Metro; and
 - 7.2.3.3 Prepare, and submit to Metro within 10 days, a report describing the Franchise or Metro Code violation.
- 7.2.4 The Franchisee shall establish and follow procedures to give reasonable notice and justification prior to refusing service to any customer of the Facility authorized under this Franchise. Copies of notification and procedures for such action will be retained on file for three years.
- 7.2.5 Neither the Franchisee nor any Subfranchisee shall, by act or omission, unlawfully discriminate against any person. Rates and disposal classifications established by Franchisee and Subfranchisees shall be applied reasonably and in a non-discriminatory manner.

7.3 Operating Procedures

- 7.3.1 Receipt and Processing of all Vegetative Commercial Food Wastes shall occur inside Facility buildings. Storage of finished product may occur outside, in an orderly manner, as specified in the Facility's operating procedures.
- 7.3.2 All Vegetative Commercial Food Wastes received at the Facility must be either 1) Processed within two hours from receipt, or 2) properly disposed within four hours of receipt.
- 7.3.3 The Franchisee and Subfranchisee must operate the facility in accordance with the Operating Plan submitted in the Franchise Application process, including any amendments approved by Metro.

- 7.3.4 The Franchisee must revise the Operating Plan as necessary to keep it current and reflective of current facility conditions and procedures. The Franchisee must submit revisions of the Operations Plan to Metro for approval.
- 7.3.5 Sorting and Processing areas shall be cleaned on a regular basis, in compliance with plans and procedures required under Section 7.3.
- 7.3.6 All vehicles and devices transferring or transporting Solid Waste from the Facility shall be constructed, maintained, and operated to prevent leaking, spilling, or blowing of Solid Waste on-site or while in transit.
- 7.3.7 Franchisee shall take reasonable steps to notify and remind haulers that all loaded trucks coming to or leaving the Facility must be covered, to prevent any material from blowing off the load during transit.
- 7.3.8 All recovered materials and processing residuals at the Facility must be stored in bales, drop boxes or otherwise suitably contained. Material storage areas must be maintained in an orderly manner and kept free of litter. Stored materials shall be removed at sufficient frequency to avoid creating nuisance conditions or safety hazards.
- 7.3.9 Contaminated water and sanitary sewage generated on-site shall be disposed of in a manner complying with local, state and federal laws and regulations.
- 7.3.10 Public access to the Facility shall be controlled as necessary to prevent unauthorized entry and dumping.

7.4 Nuisance Prevention and Response Requirements

- 7.4.1 Franchisee shall respond to all citizen complaints on environmental issues (including, but not limited to, blowing debris, fugitive dust or odors, noise, traffic, and vectors). If Franchise receives a complaint, Franchisee shall:
 - 7.4.1.1 Attempt to respond to that complaint within one business day, or sooner as circumstances may require, and retain documentation of unsuccessful attempts; and
 - 7.4.1.2 Log all such complaints by name, date, time and nature of complaint. Each log entry shall be retained for one year.
- 7.4.2 To control blowing or airborne debris, Franchisee shall:
 - 7.4.2.1 Keep all areas within the site and all vehicle access roads within a 1/4 mile of the site free of litter and debris;
 - 7.4.2.2 Patrol the Facility and all vehicle access roads within a 1/4 mile of the site daily;
- 7.4.3 To control odor, dust and noise, the Franchisee shall:
 - 7.4.3.1 Install dust control and odor systems whenever excessive dust and odor occur, or at the direction of Metro. Alternative dust and odor control measures may be established by the Franchisee with Metro approval.
 - 7.4.3.2 Take specific measures to control odors in order to avoid or prevent any violation of this Franchise, which measures include (but are not limited to) adherence to the contents of the odor minimization plan set forth in Section 7.4.3.3.

7.4.3.3 The Franchisee and Subfranchisee must operate the facility in accordance with the Odor Minimization Plan submitted in the Franchise Application process, including any amendments approved by Metro. This plan shall include (but not be limited to): (1) methods that will be used to minimize, manage, and monitor all odors of any derivation including malodorous loads received at the Facility; (2) procedures for receiving and recording odor complaints; and (3) procedures for immediately investigating any odor complaints in order to determine the cause of odor emissions, and promptly remedying any odor problem at the Facility.

7.4.4 With respect to vector control, the Franchisee shall manage the Facility in a manner that is not conducive to infestation of rodents or insects. If rodent or insect activity becomes apparent, Franchisee shall initiate and implement supplemental vector control measures as specified in the Facility operating procedures or as a modification to such procedures, and bear all the costs thereof.

7.4.5 The Franchisee shall operate and maintain the Facility to prevent contact of Solid Wastes with stormwater runoff and precipitation.

7.5 Facility Design and Construction

7.5.1 Unless otherwise directed or authorized in this Franchise Agreement, the Facility must be designed and constructed in accordance with the plans submitted in the Franchise Application, and any amendments approved in writing by Metro.

7.5.2 Upon completion of construction, notice must be submitted to Metro certifying that the construction was in accordance with the submitted plans. If there have been any significant changes in those plans, the Franchisee must submit a complete description of those changes.

8. ANNUAL FRANCHISE FEES

Franchisee shall pay an annual franchise fee, as established under Metro Code Section 5.03.030. The fee shall be delivered to Metro within 30 days of the effective date of this Franchise and each year thereafter. Metro reserves the right to change its franchise fees at any time, by action of the Metro Council, to reflect franchise system enforcement and oversight costs.

9. INSURANCE

9.1 Franchisee shall purchase and maintain the following types of insurance, insuring Franchisee, its employees, and agents, and naming all Subfranchisees as additional insureds:

9.1.1 Broad form comprehensive general liability insurance covering personal injury, property damage, and personal injury with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and

9.1.2 Automobile bodily injury and property damage liability insurance.

9.2 Insurance coverage shall be a minimum of \$500,000 per occurrence, \$100,000 per person, and \$50,000 property damage. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.

- 9.3 Metro, its elected officials, departments, employees, and agents shall be named as Additional Insureds. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.
- 9.4 Franchisee, Subfranchisees, and contractors of Franchisee or Subfranchisees, if any, and all employers working under this Franchise, are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Franchisee shall provide Metro with certification of Workers' Compensation insurance including employer's liability.

10. INDEMNIFICATION

Franchisee shall indemnify and hold METRO, its agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with Franchisee's performance under this Franchise, including patent infringement and any claims or disputes involving subcontractors or Subfranchisees.

11. SURETY BOND/CONDITIONAL LIEN

Before this Franchise shall become effective, Franchisee shall provide a surety bond or letter of credit in the amount of One Hundred Thousand Dollars (\$100,000), in a form acceptable to Metro, or at its option may provide a conditional lien on the franchised property in a form satisfactory to Metro.

12. COMPLIANCE WITH LAW

Franchisee and Subfranchisees shall fully comply with all federal, state, regional and local laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this Franchise, including all applicable Metro Code provisions whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the operation of the Facility by federal, state or local governments or agencies having jurisdiction over the Facility are part of this Franchise by reference as if specifically set forth herein. Such conditions and permits include those attached as exhibits to this Franchise, as well as any existing at the time of issuance of this Franchise and not attached, and permits or conditions issued or modified during the term of this Franchise.

13. METRO ENFORCEMENT AUTHORITY

- 13.1 Enforcement of this Franchise shall be as specified in the Metro Code.
- 13.2 Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this Franchise. Access to inspect is authorized:
- (a) During all working hours;
 - (b) At other reasonable times with 24 hours notice;
 - (c) At any time without notice when, in the opinion of the Metro Regional Environmental Management Department Director, such notice would defeat the purpose of the entry. In such instance, the Director shall provide a written statement of the purpose for the entry.

- 13.3 The power and right to regulate, in the public interest, the exercise of the privileges granted by this Franchise shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations, fees, or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Franchisee.
- 13.4 At a minimum, Metro may exercise the following oversight rights in the course of administering this Franchise: (1) perform random on-site inspections; (2) conduct an annual franchise audit to assess compliance with operating requirements in this Franchise; (3) conduct an annual audit of Franchisee's inventory and billing records; (4) analyze monthly transaction data; (5) invoice Franchisee for any fees or penalties arising under this Franchise; (6) perform noncompliance investigations; (7) inspect and visually characterize incoming and outgoing loads for the purpose of assessing Prohibited Waste and/or Recoverable Material received and disposed; (8) maintain regular contact with the Franchisee; and (9) review and approve Franchisee's operating plan and amendments to the plan. In all instances Metro shall take reasonable steps to minimize disruptions to operations at the Facility.
- 13.5 Nothing in this Franchise shall be construed to limit, restrict, curtail, or abrogate any enforcement provision contained in the Metro Code, nor shall this Franchise be construed or interpreted so as to limit or preclude Metro from adopting ordinances that regulate the health, safety, or welfare of any individual or group of individuals within its jurisdiction, notwithstanding any incidental impact that such ordinances may have upon the terms of this Franchise or the Franchisee's operation of the Facility.

14. DISPOSAL RATES AND FEES

- 14.1 Franchisee is exempted from collecting and remitting Metro User Fees on waste received at the Facility in conformance with this Franchise.
- 14.2 Franchisee and Subfranchisees may dispose of Solid Waste and Residue generated at the Facility only at a Metro designated facility or under authority of a non-system license issued as specified in Metro Code Chapter 5.05.
- 14.3 Franchisee shall establish uniform rates to be charged for all loads accepted at the Facility. To minimize potential customer conflicts regarding the recoverability of loads, the Franchisee shall minimize the number of rate categories and shall not change the rates during an operating day. Franchisee shall establish objective criteria and standards for acceptance of loads. In accordance with Metro Code Section 5.01.110, this facility shall be exempt from Metro rate setting.

15. GENERAL CONDITIONS

- 15.1 Franchisee shall be responsible for ensuring that its contractors, agents and Subfranchisees operate in complete compliance with the terms and conditions of this Franchise.
- 15.2 Neither the parent company, if any, of the Franchisee or any Subfranchisee, nor their subsidiaries nor any other Solid Waste facilities under their control shall knowingly accept Metro area Solid Waste at their non-designated facilities, if any, except as authorized by a non-system license issued by Metro.
- 15.3 The granting of this Franchise shall not vest any right or privilege in the Franchisee or Subfranchisee to receive specific quantities of Solid Waste during the term of the Franchise.
- 15.4 Neither this Franchise nor the Franchisee may be conveyed, transferred or assigned without the prior written approval of Metro.

- 15.5 To be effective, a waiver of any term or condition of this Franchise must be in writing, and signed by the Executive Officer. Waiver of a term or condition of this Franchise shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.
- 15.6 This Franchise shall be construed, applied, and enforced in accordance with the laws of the State of Oregon and all pertinent provisions of the Metro Code.
- 15.7 If any provision of the Franchise shall be found invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Franchise shall not be affected.

16. NOTICES

- 16.1 All notices required to be given to the Franchisee under this Franchise shall be delivered to:

Don I. Chappell
President
American Compost and Recycling, Inc.
P.O. Box 83960
Portland, OR 97203

- 16.2 All notices required to be given to Metro under this Franchise shall be delivered to:

Metro Franchise Administrator
Regional Environmental Management Department
Metro
600 N.E. Grand Avenue
Portland, Oregon 97232-2736

- 16.3 Notices shall be in writing, effective when delivered, or if mailed, effective on the second day after mailed, postage prepaid, to the address for the party stated in this Franchise, or to such other address as a party may specify by notice to the other.

17. REVOCATION

Suspension, modification or revocation of this Franchise shall be as specified herein and in the Metro Code.

18. MODIFICATION

- 18.1 At any time during the life of this Franchise, either the Executive Officer or the Franchisee may propose amendments or modifications to this Franchise. Except as specified in the Metro Code and Section 5.1.2 of this Franchise, no amendment or modification shall be effective unless it is in writing, approved by the Metro Council, and executed by the Franchisee and the Executive Officer.
- 18.2 The Executive Officer shall review the Franchise annually, consistent with Section 6 of this Franchise, in order to determine whether the Franchise should be changed and whether a recommendation to that effect needs to be made to the Metro Council. While not exclusive, the following criteria and factors may be used by the Executive Officer in making a determination whether to conduct more than one review in a given year:
- 18.2.1 Franchisee's compliance history;
- 18.2.2 Changes in waste volume, waste composition, or operations at the Facility;

- 18.2.3 Changes in local, state, or federal laws or regulations that should be specifically incorporated into this Franchise;
- 18.2.4 A significant release into the environment from the Facility;
- 18.2.5 A significant change or changes to the approved site development plan and/or conceptual design; or
- 18.2.6 Any change in ownership that Metro finds material or significant.

- 18.2.7 Community requests for mitigation of impacts to adjacent property resulting from Facility operations.

AMERICAN COMPOST AND RECYCLING, INC.

METRO

Mike Burton, Metro Executive Officer

Date

Date

WM:clk
S:\SHARE\METZ\ORGANICS\REGULATE\OSC\FRANCHIS\AM_OSC01.CLN



METRO

Regional Environmental
Management
600 NE Grand Ave
Portland, OR 97232-2736
(503) 797-1650
Fax (503) 797-1795

Unacceptable Waste Incident Tracking Form

Item Number: _____ Date Discovered: _____

Description of Unacceptable Waste: _____

Generator (if known): _____

Waste Hauler: _____

Waste was determined to be: Hazardous Non-Hazardous

Disposition: _____

Date Disposed: _____

cash/metro/unaccept.pm6

original = Franchise Administrator
yellow = Franchisee
pink = file



June 1996
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STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 97-680 FOR THE PURPOSE OF GRANTING A METRO FRANCHISE TO AMERICAN COMPOST AND RECYCLING INC. TO OPERATE A COMMERCIAL FOOD WASTE PROCESSING FACILITY AND YARD DEBRIS COMPOSTING FACILITY

Date: February 19, 1997

Presented by: Bill Metzler

INTRODUCTION

The purpose of this report is to provide the information necessary for the Metro Council to act on the recommendation that American Compost and Recycling Inc., be awarded a Franchise to operate a new commercial food waste processing facility (vermi-processing) and an existing yard debris composting facility located in Portland, Oregon. The Franchise Agreement is attached to Ordinance No. 97-680 as Exhibit A.

Overview

The franchise applicant is Don Chappell, owner of American Compost and Recycling, an existing yard debris composting operation located at 9707 N. Columbia Boulevard in Portland. Mr. Chappell is proposing a vermi-processing facility adjacent to the existing yard debris composting operation. The new vermi-processing facility will be completely enclosed. Commercial food wastes will not be composted with the yard debris. The two operations are complimentary in that some of the yard debris will be used in the vermi-processing operation.

Definitions of the two franchise site operations:

1. Vermi-processing. Vermi-processing refers to the controlled method of producing worm-castings for use as a soil amendment product. Special red worms consume and digest organic material and then excrete castings, which may be blended with compost or soil for marketing purposes.
2. Yard debris composting. Yard debris composting refers to the controlled biological decomposition of organic materials through microbial activity which occurs in the presence of free oxygen to produce compost.

American Compost and Recycling has contracted with Oregon Soil Corporation to operate the vermi-processing facility. Oregon Soil Corporation has been vermi-processing produce trim from grocery stores at a Clackamas County site since 1991. It is expected that the vermi-processing facility will eventually process up to 50 tons per day of food waste from grocery stores and restaurants located in the Portland area. The food waste will be ground and mixed with the yard debris trimmings from American Compost and fed to special worms which excrete castings which are high in plant nutrients and soil enhancing qualities. The castings will be mixed with finished yard debris compost to produce potting mixes and other soil amendment products.

Metro is currently in the process of negotiating a contract with Oregon Soil Corporation to participate in Metro's commercial food waste collection and processing pilot project. The pilot project is designed to test the feasibility of source separation, collection, transport, processing and marketing of commercially generated vegetative food waste. The information obtained from this pilot project will help Metro, local governments, food businesses, waste collectors and food waste processors determine how they can best work together to implement organic waste recovery programs that are cost-effective, environmentally sound and publicly acceptable. This franchise agreement is necessary to proceed with the pilot project.

This report is divided into three main parts: (a) a description of the facility, its operations and other relevant applicant information, including requests for variances to the franchise code; (b) staff analysis of the application and whether the facility meets the criteria as specified in Metro Code in order to be awarded a franchise; and (c) staff's recommendations and specific conditions to be contained in the franchise agreement.

Key Findings and Recommendations Include:

- The facility would be authorized to receive and process (vermi-process) up to 18,000 tons per year (approximately 50 tons per day) of pre-segregated vegetative commercial food waste.
- The facility would be authorized to receive and process (compost) up to 50,000 cubic yards per year of yard debris.
- In order to ensure that the facility will continue to operate in accordance with the purpose of Metro's franchise system to protect public health and safety and maintain consistency with the RSWMP, staff has recommended terms and conditions related to the vermi-processing of pre-segregated commercial food wastes.

I. FACILITY AND APPLICANT INFORMATION

Location:

9707 N. Columbia Boulevard, Portland, Oregon. Tax Lots: 1 of lots A, B, and J, Ramsey Villa Acres. Section: 36; Township: 2N; Range: 1W; W.M. Tax Account # R 68730-0010

Zoning and Permitting:

The site is zoned IH, Heavy Industrial/Industrial Sanctuary. Land Use Review: Conditional Use and Adjustment for a waste-related use. A Conditional Use Permit (LUR 96-00652 CU AD) was issued by the City of Portland effective October 16, 1996.

The applicant's DEQ Solid Waste Permit is pending approval of a Metro Franchise Agreement.

Customers and Area Served:

The vermi-processing facility will accept loads of pre-segregated vegetative commercial food waste from both its own affiliated hauling company and other licensed and/or franchised commercial haulers, but not from members of the general public. The facility will generally serve the Portland area.

General Facility Description:

The 4.4 acre site is located near the intersection of N. Columbia Boulevard and Burgard Road. It is accessed off of N. Columbia, a five lane minor truck street which borders the North Portland Truck District. The adjacent uses are heavy industrial uses, pipe storage and distribution and metal salvage.

The franchised operation will consist of a new, fully enclosed, commercial food waste processing facility built adjacent to the existing yard debris composting operations (see the Franchise Application Attachments). Some of the site improvements and buildings will be phased in over time.

The new vermi-processing facility construction includes:

- Vermi-processing reactor building (poly-house), appx. 28,000 square feet.
- Steel building for food waste tipping and maintenance, appx. 2,800 square feet
- Product storage shed, 9,600 square feet
- Approximately 35,800 square feet of paving for circulation and parking
- Screening pad (concrete) appx. 3,600 square feet
- Biofilter (odor control)

The site is currently used to process yard trimmings, consisting of grinding, composting and screening the finished compost product. Self-hauled and hauler-collected yard trimmings are brought to the site and product is sold to the public and soil blending companies. The site will be reorganized and upgraded to accommodate the new vermi-processing facility, which will be completely enclosed. The two operations will be kept separate.

Commercial food wastes will not be composted with the yard debris. However, the two operations are complimentary in that some of the yard debris product will be used in the vermi-processing operation.

Yard Debris Composting Operations

The existing yard debris composting operation will continue relatively unchanged. Only clean, source-separated yard debris will be accepted from self-haulers and commercial haulers. American will continue to grind incoming yard debris trimmings and compost them in a pile, turning the pile when needed to maintain the desirable rate of degradation. The number of vehicles (cars, pick-ups and larger trucks) expected to deliver yard debris to the site per day may increase from the existing average of 20-30, to 30-40 with a peak of 50 per day possible.

The configuration of the compost area on the franchise site will consist of a clockwise movement of material through the site. Incoming yard debris will be staged in the southwest area of the composting yard, then moved to the northwest section of the yard, with the material being finished in the northeast section. In this way, the ground product will be close to the vermi-processing building where much of it will be used.

Vermi-Processing Operations

Feedstocks: Material to be collected and brought to the vermi-processing facility will be primarily produce trim from grocery stores and produce wholesalers (source-separated pre-consumer vegetative commercial food waste). This waste material is generally not odorous upon delivery. Along with produce trim, there will be a small amount of bakery discards and unsold cut flowers, as well as incidental pieces of paper packaging. These wastes will be targeted for pre-segregation by the store employees into separate (specially marked) bins to be collected by organic waste collection haulers every one to three days. Due to imperfect segregation by employees, a small amount of inorganics (less than 1% by weight) is expected to be included with the food discards. This includes film plastic, plastic cups and lids, twistees, and possibly beverage containers.

Restaurants and other food services may be added to the collection routes at a later time, after facility ramp-up. Food wastes from these businesses will include pre-consumer kitchen scraps, and may include post-consumer plate scrapings. Collection and processing of these types of food wastes will depend on the facility operator's ability to demonstrate success in processing basic pre-consumer vegetative commercial food waste.

Processing: The commercial food wastes will be delivered to the facility by collection trucks. The trucks will back into the building and tip the loads of food waste into a leak-proof hopper. The material will then be conveyed gradually onto a conveyor where inorganics will be manually removed. The contaminants will be discarded in a dumpster and disposed at Metro Central Station. The food wastes will then be macerated in a hammermill, conveyed to a mixer where the wet food materials will be mixed with drier, ground yard debris. This mix will then be conveyed to a gantry, which straddles each reactor in turn, and deposits a 1" - 2" layer of the food waste mixture on the reactor surface where it is consumed by the worms.

The reactors are 10' wide by 300' long and elevated 3' above the concrete slab. The worms reside in the top layer of the material and digest the fresh mix within a 24-hour period. This prevents the fresh food waste mix from going sour and causing odors. The worms excrete castings which are mechanically removed from the bottom of the reactors. The castings are screened to separate any remaining inorganics and are then mixed with yard debris compost to form different soil amendment products. These products are then moved off-site in bulk or in bags to market.

The proposed throughput of the vermi-processing facility is 50 tons per day of pre-segregated food wastes. It is estimated that it will take about one year for the facility to ramp-up to full capacity, after which up to 15 trucks per day will bring food wastes and up to 8 trucks per day will haul off the castings/compost blends.

Facility Activities:

The applicant requests authorization to perform the following activities:

1. Vermi-processing of pre-segregated vegetative commercial food wastes.
2. Yard debris composting.

Variances from the Metro Code or other specific conditions requested by the applicant:

The applicant has requested variances for the following:

1. Metro's rate setting authority (Section 5.01.170), and
2. Metro Code restrictions on accepting waste from non-affiliated hauling companies (Section 5.01.120)

II. ANALYSIS OF FRANCHISE APPLICATION

Completeness and Sufficiency of Application

Applicants for franchises are required to complete the application form and provide additional information as requested. The applicant submitted a franchise application on December 13, 1996.

The applicant was very cooperative in discussing and sharing information with staff on a number of additional questions regarding plans for the facility. The discussions were important to establishing the specific conditions of the franchise agreement negotiated with the applicant.

Compliance with Code Requirements

In determining whether to recommend award of a franchise, Metro Code Section 5.01.070(b) requires the Executive Officer to formulate recommendations regarding:

- Whether the applicant is qualified;
- Whether the proposed franchise complies with the district's solid waste management plan;
- Whether the proposed franchise is needed considering the location and number of existing and planned disposal sites, transfer stations, processing facilities and resource recovery facilities and their remaining capacities; and,
- Whether or not the applicant has complied or can comply with all other applicable regulatory requirements.

Applicant Qualifications

The franchise applicant is Don Chappell, owner of American Compost and Recycling. American Compost and Recycling has been in business at this site since 1988 and has over nine years experience in composting yard debris. Oregon Soil Corporation, the vermi-processing facility operator, has been in this business since 1991, and has an established record of collecting and successfully vermi-processing food wastes and producing a marketable product. The applicant's established record of operation provides reasonable assurances that the facility will be operated and managed competently and efficiently.

Compliance with the Regional Solid Waste Management Plan

In determining whether the applicant's facility is in compliance with the Regional Solid Waste Management Plan (RSWMP), staff asked the following questions:

- Is the facility and its current operations consistent with the RSWMP goals and objectives or recommended practices?
- Is the facility and its current operations in conflict with any RSWMP goals and objectives or recommended practices?

Consistency with the RSWMP

Staff has determined that granting the franchise for the facility would not be inconsistent with, or in conflict with any provisions in the Plan. In assessing the facility for consistency with the Plan, staff determined that the operation of this facility is broadly consistent with the following RSWMP provisions:

- **System-Wide Goals**

- **Goal 4 - Adaptability.** A flexible solid waste system exists that can respond to rapidly changing technologies, fluctuating market conditions, major natural disasters and local conditions and needs.

- **Waste Reduction Goals and Objectives**

- **Goal 7 - Regional Waste Reduction Goal.** The regional waste reduction goal is to achieve at least a 53 percent recycling rate by the year 2005.

- **Goal 8 - Opportunity to Reduce Waste.** Participation in waste prevention and recycling is convenient for all households and businesses in the urban portions of the region.

- **Goal 9 - Sustainability, Objective 9.3.** Support an environment that fosters development and growth of reuse, recycling and recovery enterprises.

- **Goal 10 - Integration.** Develop an integrated system of waste reduction techniques with emphasis on source-separation, not to preclude the need for other forms of recovery such as post-collection material recovery.

- **Recommended Practices: Business Waste Reduction Practice #3.**
Collection and off-site recovery of source-separated food and non-recyclable paper.

Conclusion

Staff believes that the terms and conditions of the franchise agreement will effectively ensure that the facility will operate with adequate provisions to safeguard human health and safety, while allowing the applicant to conduct an appropriate level of recovery, consistent with the goals, objectives and recommended practices in the RSWMP.

Need for Facility

Yard Debris Composting Facility. The existing yard debris compost operation is the only facility of its type located in the City of Portland. The facility enables both commercial and self-haulers to recycle their source-separated yard debris locally, with a minimum of transportation, at a competitive rate. The facility also provides the public and contractors in the St. Johns/North Portland area a source of compost product.

Vermi-Processing Facility. This facility will create a new recycling opportunity for commercial generators of food waste that is consistent with the RSWMP. The operation will recycle approximately 18,000 tons of food waste each year and produce a valuable soil amendment product. The enclosed, controlled operation offers technological advantages over traditional composting methods regarding odor control and other potential negative impacts. These advantages allow the facility to be sited close to generators, eliminating the need for long distance hauling of food wastes to more rural sites. The facility targets only source-separated organics. This ensures a very high quality end product and decreases the chances for processing problems associated with putrescible wastes.

Compliance with Regulatory Requirements

The applicant has land use approval from the City of Portland and has a DEQ Solid Waste Disposal Permit pending the issuance of a Metro Franchise.

Variance Requests

1. The applicant has requested a variance from Metro's rate setting authority (Section 5.01.170).

Under the Metro franchise Code, the Council sets the rates charged by a franchisee. Metro Code Section 5.01.110 allows a variance to be granted to this policy if the intent of the requirement can be otherwise achieved and if strict compliance with the requirement: "(1) Is inappropriate because of conditions beyond the control of person(s) requesting the variance; or (2) Will be rendered extremely burdensome or highly impractical due to special physical conditions or causes; or (3) Would result in substantial curtailment or closing down of a business, plant, or operation which furthers the objectives of the district. "

Staff believes that the intent of the rate setting provision of the Code is to prevent franchisees from exercising monopoly power in the marketplace resulting from being a holder of a franchise.

Staff opinion is that the intent of the Code requirement will be achieved by competition in the marketplace. Competition will be maintained because this franchise will not be exclusive, and other franchises have been, and others are expected to be granted, that will compete with this franchise. Without freedom to set its own rates, the facility would be unable to remain competitive in the volatile marketplace of recycled materials. This would result in the facility not opening or failing to stay open. Therefore, staff recommends granting the variance to the rate setting requirement.

2. The applicant has requested a variance from Metro Code restrictions on accepting waste from non-affiliated hauling companies. (Section 5.01.120(l)) Under Section 5.01.120(l), a franchised processor cannot own hauling companies. (A franchisee who accepts waste only from affiliated haulers is exempt from this restriction.) American Compost and Recycling Inc., needs to allow non-affiliated haulers to use the facility, as explained below. Metro Code Section 5.01.110 (quoted above) allows a variance to be granted to this policy.

Staff believes that the intent of the Metro Code restriction is to prevent franchisees who also have hauling companies from being able to promote their own haulers and treating competing haulers who must use the facility unfairly.

Staff opinion is that the intent of the Code requirement will be achieved because no competing hauler will be forced to use the facility and the franchise contains provisions to ensure fair treatment of all customers using the facility. Strict compliance with this requirement would be unduly burdensome, and would result in this facility closing down. Staff, therefore, recommends granting the variance to the restriction on non-affiliated haulers using the facility.

III. CONDITIONS OF THE FRANCHISE

The proposed franchise agreement ensures that the facility will operate in accordance with the purpose of Metro's franchise system to protect public health and safety and maintain consistency with the RSWMP.

Specific conditions unique to this particular franchise include the following:

- Receipt and processing of all Vegetative Commercial Food Wastes shall occur inside facility buildings. Storage of finished product may occur outside, in an orderly manner, as specified in the facility's operating procedures.
- All Vegetative Commercial Food Wastes received at the facility must be either 1) processed within two hours from receipt, or 2) properly disposed within four hours of receipt.
- The Franchisee and Subfranchisee must operate the facility in accordance with the Operating Plan submitted in the Franchise Application process, including any amendments approved by Metro.

- The Franchisee must revise the Operating Plan as necessary to keep it current and reflective of current facility conditions and procedures. The Franchisee must submit revisions of the Operations Plan to Metro for approval.
- To control odor, dust and noise, the Franchisee shall install dust control and odor systems whenever excessive dust and odor occur, or at the direction of Metro. Alternative dust and odor control measures may be established by the Franchisee with Metro approval.

IV. BUDGET IMPACTS

Yard Debris Composting Operations

There are no budget impacts. The yard debris composting facility is an existing operation and Metro does not collect User Fees on source-separated yard debris delivered to this facility.

Vermi-Processing Operations

The vermi-processing operations are expected to eventually process 18,000 tons of commercial food waste each year. If these wastes were not recovered for recycling, it is likely that they would be disposed at Metro Central Transfer Station.

Therefore, the gross revenues that Metro might forgo could be as much as:

• Solid Waste:	18,000 tons	X	\$24.12	=	\$434,160
• Excise Tax:	18,000 tons	X	\$4.96	=	\$89,280

The \$24.12 is the sum of the Tier I and Tier II (fixed-cost) portions of the \$75 Metro Tip Fee, net of excise tax. The \$4.96 is the excise tax portion of the Metro Tip Fee.

In reality, Metro would probably not feel the full impact of the amounts above, because the Metro rate model adjusts rate components for changes in tonnage (due to any cause) from year to year. The gross impacts above could be made up by an incremental increase in the rate on the tonnage that continues to be disposed.

V. STAFF RECOMMENDATIONS

Based on the forgoing analysis it is the opinion of staff that American Compost and Recycling should be granted a non-exclusive franchise in accord with the provisions of the draft franchise attached to Ordinance No. 680.

VI. EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 97-680