

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING A)	ORDINANCE NO. 97-708
FRANCHISE TO TPST SOIL RECYCLERS)	
OF OREGON, INC. TO OPERATE A)	Introduced by Mike Burton
PETROLEUM CONTAMINATED SOIL)	Executive Officer
PROCESSING FACILITY)	

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

WHEREAS, TPST SOIL RECYCLERS OF OREGON, Inc. (TPST) has applied for a non-exclusive franchise under which TPST would operate a petroleum contaminated soil processing facility at Portland, Oregon; and

WHEREAS, Metro Code Section 5.01.220(a)(1) requires a Metro franchise for any person to own or operate a facility for processing petroleum contaminated soil; and

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

WHEREAS, TPST's facility will process petroleum contaminated soil delivered by commercial soil remediation contractors; and

WHEREAS, issuance of a franchise to TPST is consistent with the policies set forth in the Regional Solid Waste Management Plan, adopted November 1995, for recovering resources from the mixed waste stream and reducing toxics in the environment; 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, TPST has requested a variance from Metro rate-setting requirements as detailed in the staff report to this ordinance; and

WHEREAS, based on 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 variance requested; and

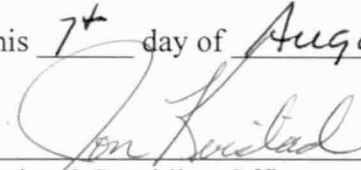
WHEREAS, TPST will provide a surety bond in the amount of \$25,000 as determined by Metro staff to be appropriate; and

WHEREAS, the Executive Officer recommends that the Council grant the attached franchise to TPST; 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. TPST is granted a variance from rate-setting under Metro Code Section 5.01.110.


ADOPTED by the Metro Council this 7th day of August, 1997.




Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:



Recording Secretary



Daniel B. Cooper, General Counsel

AS

S:\SHARE\DEPT\MRFTSKF\TPS\97708.ORD

SOLID WASTE FRANCHISE
issued by
METRO
600 NE Grand Avenue
Portland, Oregon 97232-2736
(503) 797-1700

FRANCHISE NUMBER: _____
DATE ISSUED: _____
AMENDMENT DATE: _____ N/A _____
EXPIRATION DATE: _____
ISSUED TO: _____ TPST Soil Recyclers of Oregon Inc. _____
NAME OF FACILITY: _____ TPST Contaminated Soil Processing Facility _____
ADDRESS: _____ 9333 N. Harborside Street _____
CITY, STATE, ZIP: _____ Portland, OR 97203 _____
LEGAL DESCRIPTION: _____ Lot 6 and North 40 feet of Lot 5, Block 28 Rivergate Industrial Park Quarter _____
_____ Sections 1519-1520-1619-1620 _____
NAME OF OPERATOR: _____ TPST Soil Recyclers of Oregon Inc. _____
PERSON IN CHARGE: _____ John Barbay _____
ADDRESS: _____ 9333 N. Harborside Street _____
CITY, STATE, ZIP: _____ Portland, OR 97203 _____
TELEPHONE NUMBER: _____ 503-735-9525 _____

TABLE OF CONTENTS

1. DEFINITIONS.....3

2. TERM AND APPLICABILITY OF FRANCHISE.....6

3. LOCATION OF FACILITY.....4

4. OPERATOR AND OWNER OF FACILITY AND PROPERTY4

5. AUTHORIZED AND PROHIBITED ACTIVITIES AND WASTES.....4

6. MINIMUM REPORTING REQUIREMENTS4

7. OPERATIONAL REQUIREMENTS.....5

8. ANNUAL FRANCHISE FEES.....7

9. INSURANCE8

10. INDEMNIFICATION8

11. SURETY BOND/CONDITIONAL LIEN.....8

12. COMPLIANCE WITH LAW8

13. METRO ENFORCEMENT AUTHORITY8

14. DISPOSAL RATES AND FEES9

15. GENERAL CONDITIONS.....9

16. NOTICES.....10

17. REVOCATION.....10

18. MODIFICATION.....10

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 TPST Soil Recyclers of Oregon Inc., an Oregon Corporation, 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. Where Metro Code, State or Federal law definitions are referenced herein, reference is to the definition as amended or replaced.

"Authorized Waste" or "Authorized Wastes" means those wastes defined as such in Section 5.1 of this Franchise.

"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.

"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.

"Limited Purpose Landfill" means a landfill that is not a General Purpose Landfill but that is authorized by DEQ to accept Solid Waste.

"Operating Procedures Plan" means the description of the activities and procedures used at the Facility and required as a submittal under Section 7.3.1 of this Franchise.

"Petroleum Contaminated Soil" has the meaning specified in Metro Code Section 5.01.010 (q).

"Prohibited Wastes" has the meaning set forth in Section 5.2 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.

"Unacceptable Waste Incident Tracking Form" means the form attached to this Franchise as Exhibit A.

2. TERM AND APPLICABILITY OF FRANCHISE

This Franchise is issued for a term of five years following approval by the Metro Council and specifically from the date of execution by the Executive Officer.

3. LOCATION OF FACILITY

The franchised Facility is located at 9333 N. Harborage Street, Portland, Oregon. The legal description of the Facility's location appears in Exhibit B to this agreement.

4. OPERATOR AND OWNER OF FACILITY AND PROPERTY

4.1 The owner of the Facility and the property upon which the Facility is located is TPS Technologies Inc. of Apopka, Florida. Franchisee warrants that it has obtained the owner's consent to operate the Facility as specified in the Franchise.

4.2 The operator of the Facility is Franchisee. 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 Authorized Activities and Wastes

5.1.1 Franchisee is authorized to operate and maintain a Petroleum Contaminated Soils Processing Facility.

5.1.2 The Facility shall only accept loads of Petroleum Contaminated Soils (PCS).

5.1.3 Franchisee may receive and Process PCS 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.

5.1.4 Franchisee may accept PCS from any source.

5.2 Prohibited Activities and Wastes

5.2.1 Franchisee shall not knowingly accept or retain any material amounts of any Solid Waste other than PCS.

5.2.2 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 Section 7.3 of this Franchise. 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 90 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 (Attached as Exhibit A).

6. MINIMUM REPORTING REQUIREMENTS

6.1 Franchisee shall collect and transmit to Metro, according to the timetable in Section 6.2, accurate records of the following information:

6.1.1 Total tons of PCS delivered to the Facility. These data shall designate:

6.1.1.2 The type of hydrocarbon contamination in incoming loads.

6.1.1.2.a Within three months after this franchise takes effect, Franchisee shall submit to the Metro Franchise Administrator a standardized list of soil contaminants used for reporting purposes.

6.1.2 Total tons of treated PCS transported from the site.

6.1.2.1 These data shall designate the destination of outgoing loads according to one of the following categories: 1.) General Purpose Landfill; 2.) Limited Purpose Landfill; 3.) Inert Landfill; 4.) Site of Origin; 5.) Marketable Product.

6.1.2.2 These data shall include the county to which each load is delivered.

6.1.3 Receipt of any Prohibited Waste encompassed by Section 5.2 of this Franchise, utilizing Metro's Unacceptable Waste Incident Tracking Form (Attached as Exhibit A).

6.2 Records required under Section 6.1 shall be reported to Metro no later than fifteen (15) days following the end of each calendar quarter, in hardcopy format. All loads of Solid Waste received at or transported from the Facility shall be weighed on a scale that is calibrated at least once each calendar quarter and certified annually by the State of Oregon. A cover letter shall accompany the data which certifies the accuracy of the data and is signed by an authorized representative of Franchisee.

6.4 Franchisee shall provide the Metro Franchise Administrator with copies of all correspondence, exhibits or documents submitted to the DEQ relating to the terms or conditions of the Facility's DEQ permit or this Franchise, within two business days of providing such information to DEQ. In addition, Franchisee shall send to the Metro Franchise Administrator, 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.

6.5 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 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.

7. OPERATIONAL REQUIREMENTS

7.1 General Requirements

7.1.1 The Franchisee 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.

7.1.3 A sign shall be placed at a location visible to all users of the Facility before unloading at the Facility, and in conformity with any local government signage regulations. This sign shall be easily and readily visible, legible, and shall contain at least the following information:

7.1.3.1 Name of the Facility;

7.1.3.2 Address of the Facility;

7.1.3.3 Emergency telephone number for the Facility, and the telephone numbers of the nearest police and fire stations;

7.1.3.4 Operational hours during which the Facility shall be open for the receipt of Authorized Waste;

7.1.3.5 Rates and fees for loads accepted at the Facility, but excluding loads accepted under negotiated contracts.;

7.1.3.6 Metro's name and the telephone number for the REM Department; and

7.1.3.7 A list of Authorized and Prohibited Wastes under this Franchise.

7.2 General Operating and Service Requirements

7.2.1 If Franchisee 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 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 for 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 The Franchisee shall not, by act or omission, unlawfully discriminate against any person. Rates and disposal classifications established by Franchisee shall be applied reasonably and in a non-discriminatory manner.

7.3 Operating Procedures

7.3.1 Franchisee shall establish and follow procedures for accepting, managing and Processing loads of Authorized Waste received at the Facility. These procedures shall demonstrate compliance with the Franchise, and shall be submitted to Metro in writing, within 30 days after this agreement takes effect, for review and approval. Franchisee may, from time to time, modify such procedures. All substantial modifications Franchisee proposes to the Facility or the Operating Procedures Plan shall be submitted to the Metro Regional Environmental Management Department for review and approval. The Executive Officer shall have 10 business days from receipt of proposed modifications to object to such modifications. If the Executive Officer does not object, such modifications shall be considered approved following the 10-day period. Franchisee may implement proposed modifications to Facility plans and procedures on a conditional basis pending Metro review and notice from Metro that such changes are not acceptable. The procedures shall include at least the following:

7.3.1.1 Methods of notifying generators not to place Prohibited Wastes in collection containers destined for the Facility;

7.3.1.2 Methods of inspecting incoming loads for the presence of Prohibited Waste;

7.3.1.3 Methods for managing and transporting for disposal at an authorized Disposal Site any Prohibited Wastes discovered at the Facility; and

- 7.3.1.4 Objective criteria and standards for accepting or rejecting loads. These must include, but are not necessarily limited to, a testing regimen sufficient to prevent hazardous or otherwise Prohibited Waste from entering the Facility.
- 7.3.1.5 Methods (that may include rate disincentives) for discouraging Facility users from delivering loads that are not transported in compliance with Sections 7.3.4 and 7.3.5+.
- 7.3.1.6 Methods for addressing all other operating requirements of Section 7.
- 7.3.2 All PCS received at the Facility must, within eight hours from receipt, be either (1) Processed or (2) appropriately stored.
- 7.3.3 Upon discovery, all Prohibited Wastes shall be removed or managed in accordance with Section 7.3.2.3 of this Franchise.
- 7.3.4 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.
- 7.3.5 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.
- 7.3.6 All Processed materials and residuals at the Facility must be 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.
- 7.3.7 Contaminated water and sanitary sewage generated on-site shall be disposed of in a manner complying with local, state and federal laws and regulations.
- 7.3.8 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, etc.). 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;
- 7.4.3 To control odor, dust and noise, the Franchisee shall:
 - 7.4.3.1 Install odor, dust and noise control systems if excessive odor, dust or noise occur, or at the direction of Metro. Alternative control measures may be established by the Franchisee with Metro approval.

8. ANNUAL FRANCHISE FEES

Franchisee shall pay an annual franchise fee, as established under Metro Code Section 5.03.030.

9. INSURANCE

9.1 Franchisee shall purchase and maintain the following types of insurance, insuring Franchisee, its employees, and agents:

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, and contractors of Franchisee, 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.

11. SURETY BOND/CONDITIONAL LIEN

Franchisee shall provide a surety bond or letter of credit in the amount of Twenty-Five Thousand Dollars (\$25,000), in a form acceptable to Metro, or at its option may provide a conditional lien on the Facility in a form satisfactory to Metro.

12. COMPLIANCE WITH LAW

Franchisee 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 review to assess compliance with operating requirements in this Franchise; (3) conduct an annual review of Franchisee's inventory and billing records; (4) review results of chemical tests performed on incoming loads; (5) analyze monthly transaction data; (6) invoice Franchisee for any fees or penalties arising under this Franchise; (7) perform noncompliance investigations. 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 In accordance with Metro Code Section 5.01.150 (a), Franchisee is exempted from collecting and remitting Metro Fees on waste received at the Facility and in conformance with this Franchise.

14.2 Franchisee shall dispose of Solid Waste generated at the Facility only at a Metro designated facility or under authority of a non-system license issued by Metro as specified in Metro Code Chapter 5.05. This provision shall not apply to Solid Waste generated at the Facility that is Inert.

14.3 Except for loads accepted under negotiated contracts, Franchisee shall establish uniform rates for loads accepted at the Facility. Franchisee shall minimize the number of rate categories and shall not change rates during an operating day.

15. GENERAL CONDITIONS

15.1 Franchisee shall be responsible for ensuring that its contractors, and agents operate in complete compliance with the terms and conditions of this Franchise.

15.2 Neither the parent company, if any, of the Franchisee, 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 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:

Mr. John Barbay
TPST Soil Recyclers of Oregon Inc.
9333 N. Harborside St.
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 NE 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. (See especially Sections 12 and 13 and Metro Code Chapter 5.01.)

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, 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;
- 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;

TPST SOIL RECYCLERS OF OREGON INC..

METRO

Mike Burton, Metro Executive Officer

Date

Date

PAS:acy
S:\dept\unrtsk\fpstps04.cln

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 97-708 FOR THE PURPOSE OF RENEWING A FRANCHISE TO TPST SOIL RECYCLERS OF OREGON, INC. FOR OPERATING A PETROLEUM CONTAMINATED SOIL PROCESSING FACILITY

Date: June 27, 1997

Presented by: Bruce Warner
Andy Sloop

INTRODUCTION

The purpose of this report is to provide the information necessary for the Metro Council to evaluate the recommendation that TPST Soil Recyclers of Oregon Inc. (TPST) be awarded a renewal of its solid waste franchise to operate a petroleum contaminated soil processing facility located in northeast Portland, Oregon. The proposed franchise agreement is attached.

This report is divided into four 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 the Metro Code, including compliance with the Regional Solid Waste Management Plan, in order to be awarded a franchise; (c) specific conditions to be contained in the franchise agreement; and (d) an analysis of the budget impact of the facility. On the basis of this analysis and findings the Executive Officer is making recommendation to renew the franchise.

Key finding and recommendations include:

- The facility assists in accomplishing the goals and objectives of the Regional Solid Waste Management Plan (RSWMP).
- The facility would be authorized to receive an unlimited quantity of petroleum contaminated soils (PCS) from any source for processing. It would not receive any other types of solid waste. It has the capacity and expects to receive 270,000 tons of PCS per year.
- Franchised PCS processing facilities are exempt from Metro user fees on materials accepted at the facility under Metro Code Section 5.01.150(a). Franchised solid waste facilities that accomplish material recovery or recycling as a primary operation are exempt from Metro excise taxes under Metro Code Section 7.01.050(a)(6).
- This is an existing facility that has been operating satisfactorily under a Metro franchise since 1991.
- The DEQ Solid Waste Permit for this facility was renewed in August 1996.

I. FACILITY AND APPLICANT INFORMATION

Location:

9333 N. Harborgate Street, Portland, Oregon, 97203

Franchise Ownership and Operation

The owner of the Facility is TPS Technologies Inc. of Apopka, FL. The Franchisee and operator of the Facility is TPST Soil Recyclers of Oregon Inc., which is a wholly owned subsidiary of Thermal Remediation Inc.

General Facility Description:

The franchised operation consists of a covered storage area for PCS delivered to the Facility, an office, a rotary dryer for burning contaminants out of the PCS, and a treated soil storage pile. Treated soil from the Facility is used as daily cover at landfills and as clean fill in construction projects.

Zoning and Permitting:

The site is in the Rivergate Industrial Park in the City of Portland. It is zoned IH (Heavy Industrial with Aircraft Landing Zone overlay). The Franchisee has a conditional use permit authorizing use of the site for a "waste related" business. The site is bordered by light and heavy industrial businesses.

Customers and area served:

TPST is the only soil remediation facility in the Metro area. PCS is delivered to the site by commercial soil remediation contractors. This waste is derived primarily from leaking underground storage tanks throughout Oregon and southwest Washington.

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

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

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 has provided all necessary information.

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 Metro's Regional Solid Waste Management Plan (RSWMP),
- 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 Facility is owned by TPS Technologies Inc. and operated by TPST Soil Recyclers of Oregon. TPS operates nine PCS treatment facilities nationwide. TPST has been operating the Portland facility satisfactorily and without incident since 1993. In staff's opinion, TPST is qualified to operate the facility.

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, staff asked the following questions:

- Are plans for the facility consistent with RSWMP goals and objectives or recommended practices?
- Are plans for the facility in conflict with any RSWMP goals and objectives or recommended practices ?

If approved, the franchise will be consistent with and not in conflict with the goals, objectives and recommended practices in the RSWMP.

Analysis of consistency with the RSWMP

In assessing the facility for consistency with the Plan, staff determined the following:

1. This facility is broadly consistent with the following RSWMP System-Wide Goals and Objectives:

Goal 1 – The Environment. Solid waste management practices that are environmentally sound, conserve natural resources and achieve the maximum feasible reduction of solid waste being landfilled are implemented by the region.

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

Goal 12 – Recovery Capacity. A regionally balanced system of cost-effective solid waste recovery facilities provides adequate service to all waste generators in the region.

Goal 13 -- Toxics Reduction. The toxicity of mixed solid waste to the environment, residents of the region and workers who collect, transport, process and dispose of waste by keeping hazardous waste out of the mixed solid waste collection and disposal system.

Goal 15 -- Facility Regulation. Metro's methods for regulatory control of solid waste facilities will include a system of franchising, contracting, owning and/or licensing to ensure that disposal and processing facilities are provided and operated in an acceptable manner.

2. RSWMP Recommended Practices do not address PCS treatment facilities.

Analysis of conflicts with the RSWMP

This facility does not conflict with any of the RSWMP System-Wide Goals and Objectives.

Need for facility

This facility has been operating in the Metro area for five years and has processed approximately 300,000 tons of contaminated soils. With the recent closure announcement from Thermal Remediation Solutions, another PCS processor that has been serving the Metro area, TPST will be the only thermal treatment facility for PCS serving the Metro area. Without this facility, all PCS generated in the Metro region would be landfilled and hydrocarbon pollutants in PCS would not be destroyed. The consequences of this are:

- A greater quantity of volatile hydrocarbons in PCS be released into the atmosphere, thus contributing to air pollution in the Metro area.
- A greater quantity of non-volatile hydrocarbons would have to be managed in landfills.

Compliance with Regulatory Requirements

TPST has complied with all other regulatory requirements. The DEQ issued TPST a new Solid Waste Facility Permit January 1997. TPST's conditional use permit was issued in 1986 and is valid indefinitely. TPST applied in a timely manner for renewal of its National Pollutant Discharge Elimination System (NPDES) Permit from the City of Portland. This permitting program is being restructured. Pending completion of this process, TPST's old permit remains in effect. TPST applied for renewal of its Air Contaminant Discharge Permit in a timely manner. DEQ has not acted on this application yet, but has confirmed that there do not appear to be any issues with it. Under DEQ's administrative rules, TPST's old permit remains in effect until the Department acts on the renewal application.

Variance Requests

1. Staff recommends 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 that 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 competing facilities -- namely landfills -- actively compete with PCS treatment facilities. It would not be in TPST's economic interest to set rates over market, as this would drive business away. If TPST set rates under market and thereby gained market share, the parties that would be financially harmed would be landfills. As processing is an environmentally preferable alternative to landfilling, this would be an acceptable effect. The ratepayer would also generally benefit from lower prices.

Without freedom to set its own rates, TPST would be unable to effectively compete in the marketplace. Note that Metro has not set the rates for this facility in the past.

Staff recommends granting the variance to the rate-setting requirement.

III. CONDITIONS OF THE FRANCHISE

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

Major conditions contained in this agreement include:

- Definitions of the types of activities and wastes that are authorized and prohibited at the facility.
- Submission of an Operating Plan which, among other things, must include procedures for accepting and managing authorized wastes, and managing and disposing of prohibited wastes that may be delivered to the facility.
- Nuisance prevention and mitigation provisions.
 - A surety bond of \$25,000.
 - A requirement to post rates charged for loads delivered to the facility, but excluding loads accepted under negotiated contracts.

IV. BUDGET IMPACT

This facility is exempt from Metro user fees under Code Section 5.01.150(a) and from excise taxes under Code Section 7.01.050 (a) (6). The budget forecast has anticipated tonnages projected to be handled by existing processors, including TPST. The fiscal impact of granting this franchise has been factored into the FY 1997-98 tip fee and budget.

STAFFING REQUIREMENTS

Administration and enforcement of this franchise agreement during FY 1997-98 is expected to be handled with existing staff resources.

V. STAFF RECOMMENDATIONS

Based on the forgoing analysis it is the opinion of staff that TPST Soil Recyclers of Oregon, Inc. should be granted a non-exclusive franchise in accord with the provisions of the draft franchise attached to Ordinance No. 97-708 as Exhibit "A".

VI. EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 97-708