
MEMORANDUM

DATE: June 3, 1999
TO: Becky Shoemaker, Council Archivist
FROM: Aaron Brondyke, Assistant to the Director of REM
RE: Disposition of Ordinance No. 98-723

Energy Reclamation, Inc. (ERI) applied to Metro for the authority to accept waste from non-affiliated haulers, but before REM filed the ordinance with Council, the new Metro Code Chapter 5.01 was adopted. Since the new Chapter 5.01 rescinded the prohibition on servicing non-affiliated haulers, Ordinance No. 98-723 was made moot.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING A)	ORDINANCE NO. 98-723
FRANCHISE VARIANCE TO ENERGY)	
RECLAMATION, INC. TO ALLOW)	Introduced by
ACCEPTANCE OF SOLID WASTE)	Mike Burton,
FROM NON-AFFILIATED HAULERS;)	Executive Officer
AND AMENDING THE FRANCHISE)	

WHEREAS, Energy Reclamation, Inc. (ERI) has operated a Metro franchised facility for the processing of non-putrescible mixed solid waste and commercial, industrial, construction and demolition debris in Portland, Oregon since 1993; and

WHEREAS, ERI has complied with the requirements of Metro Code Section 5.01.060 for franchise modification applications; and

WHEREAS, ERI has requested a variance from Metro Code Section 5.01.120(1) to allow it to retain ownership of its hauling companies and allow non-affiliated companies to use the Facility, as detailed in the Staff Report accompanying this Ordinance; and

WHEREAS, ERI has requested a variance from Metro Code Section 5.01.170 to allow it to set rates at the facility in response to the recycling markets, as detailed in the Staff Report accompanying this Ordinance; and

WHEREAS, granting the requested variance will create additional recycling opportunities for non-affiliated haulers; and

WHEREAS, acceptance of non-affiliated hauler waste at ERI is consistent with the Metro Code and the Regional Solid Waste Management Plan; and

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

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

WHEREAS, Metro and ERI have determined that modification to the franchise is needed to clarify the methodology for calculating the recovery rate at the facility; and

WHEREAS, this Ordinance was submitted to the Executive Officer for consideration and is now forwarded to the Council for approval; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. ERI shall be granted a variance from Metro Code Section 5.01.120(1) to allow it to retain ownership of its hauling companies and allow non-affiliated companies to use the facility.
2. ERI shall be granted a variance from Metro rate-setting under Metro Code Section 5.01.170.
3. Franchise No. 14 issued to ERI shall be modified as described in Exhibit A to this Ordinance.

ADOPTED by the Metro Council this ____ day of _____, 1998.

WITHDRAWN

Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

Exhibit A to Ordinance 98-723

The following amendments shall be included in Franchise No. 14 between Metro and ERI.

Add the following to Section 1, Definitions:

- 1.5 “Source Separate” has the meaning given that term in ORS 459.005(26).
- 1.6 “Source-Separated Recyclables” means material that has been Source-Separated for the purpose of recycling, recovery, or reuse. “Source-Separated Recyclables” includes both recyclables that are Source-Separated by material type and recyclables that are commingled in one container.

Delete Section 7.5, Recovery Requirements, and Replace with the following:

- 7.5 Recovery Requirements:
 - (a) A minimum recovery rate of 45 percent shall be maintained at the facility. The recovery rate will be calculated as of the first of each month based upon the average recovery rate from the preceding three-month period. The ratio of tons recovered each month divided by tons received each month, exclusive of Source-Separated Recyclables, shall constitute the recovery rate for the relevant time period.
 - (b) A ninety (90) day grace period for operational testing shall precede the commencement of official measurement of the recovery rate. A recovery rate of 35 percent shall be attained in the first month following the grace period, and a recovery rate of 40 percent shall be attained in the second month following the grace period.
 - (c) If ERI fails to attain the specified required recovery rate, ERI shall pay to Metro a per-ton penalty in an amount equal to the current Metro Regional User Fee of \$15 per ton plus \$1.71 per ton for each ton comprising the recovery shortfall. Such penalty will be adjusted on July 1 of each year to reflect the then-current Regional User Fee. Additionally, on July 1 of each year, the incremental penalty rate of \$1.71 per ton shall be adjusted to bear the same relationship to the Regional User Fee as the current incremental penalty rate of \$1.71 bears to the current Regional User Fee of \$15.00.

Add the sheet attached as Exhibit 2 to this Exhibit as Exhibit 2 of the Franchise.

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ACCEPTANCE OF SOLID WASTE)	Mike Burton,
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WHEREAS, Energy Reclamation, Inc. (ERI) has operated a Metro franchised facility for the processing of non-putrescible mixed solid waste and commercial, industrial, construction and demolition debris in Portland, Oregon since 1993; and

WHEREAS, ERI has complied with the requirements of Metro Code Section 5.01.060 for franchise modification applications; and

WHEREAS, ERI has requested 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 as detailed in the Staff Report accompanying this Ordinance; and

WHEREAS, granting the requested variance will create additional recycling opportunities for non-affiliated haulers; and,

WHEREAS, acceptance of non-affiliated hauler waste at ERI is consistent with the Metro Code and the Regional Solid Waste Management Plan; and,

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

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

WHEREAS, The ordinance was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now, therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

ERI shall be granted a variance from Metro Code Section 501.120(1) to allow it to retain ownership of its hauling companies and allow non-affiliated companies to use the facility.

ADOPTED by the Metro Council this ____ day of _____, 1998.

Jon Kvistad, Presiding Officer

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STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 98-723 FOR THE PURPOSE OF GRANTING A FRANCHISE VARIANCE TO ENERGY RECLAMATION, INC., TO ACCEPT NON-AFFILIATED HAULERS AT ITS SOLID WASTE PROCESSING FACILITY

Date: _____, 1997

Presented by: Roosevelt Carter
Steve Kraten

FACTUAL BACKGROUND AND ANALYSIS

This report provides analysis regarding the application filed by Energy Reclamation, Inc. ("ERI") for a franchise variance to accept non-affiliated haulers at its solid waste processing facility in Portland ("the facility"). The application was complete on September 22, 1997. The facility recovers and markets recoverable materials from construction and demolition debris, as well as dry, nonputrescible and non-hazardous mixed waste. The facility also processes source-separated materials obtained from residential and commercial recycling programs.

At present, the facility's franchise only allows it to accept material hauled by the Franchisee or affiliated entities; no outside or non-affiliated haulers are authorized to use the subject facility. The facility is exempt from Metro rate setting under Section 5.01.170 of the Metro Code. The facility may only dispose of residue from its operations at Metro-approved disposal facilities.

ERI has requested a variance from restrictions on the acceptance of waste from non-affiliated hauling companies. Under Metro Code Section 5.01.120(1), a franchised processor cannot own hauling companies. However, a franchisee that accepts waste only from affiliated haulers is exempt from this restriction. ERI would like to retain its affiliated hauling companies and allow non-affiliated haulers to use the facility.

The Metro Code restriction serves to prevent franchisees that also own hauling companies from promoting their own haulers and treating competing haulers unfairly. The intent of the Code requirement will be achieved by a variance in this instance because there will be alternative facilities available to competing haulers. In a competitive market, no competing hauler will be forced to use the ERI facility. Competition will be maintained because the ERI franchise is not exclusive, and other franchises have been, and others are expected to be, granted that will offer additional competition with this franchise. The ERI franchise also contains provisions to ensure fair treatment of all customers using the facility.

Other similar facilities that have requested such a variance, have had those variances approved. Staff, therefore, recommends granting the modification and eliminating the restriction on non-affiliated haulers using the facility.

Recovery Rate Issues

In order to assure that ERI performs sufficient recovery and marketing of recoverable materials, ERI's franchise sets a minimum recovery rate of 45%. However, ERI has been in continuous violation of that requirement since February 1996.

The applicant's rationale for accepting non-affiliated haulers is that the throughput of recoverable material will increase, which, in turn, will allow the facility to operate with greater efficiency and it will provide greater MRF access for non-affiliated haulers. The operator believes that the proposed franchise modification will provide an opportunity to acquire additional high grade loads.

Typically, an operator's control of facility users enables the operator to receive loads with more recoverable materials than would otherwise occur when an operator lacks such control and must instead accept all-comers. Staff would, therefore, anticipate that, ERI's recovery rate might decline still further.

LOCATION OF FACILITY

554 North Columbia Blvd., Portland, Oregon.

MATERIALS PROCESSED

Materials to be processed are limited to construction and demolition debris, and dry, nonputrescible and non-hazardous mixed wastes. Recovered materials are sorted, inventoried, baled and/or prepared for shipment to commodities markets with which ERI already has a working relationship.

COMPLIANCE WITH THE SOLID WASTE MANAGEMENT PLAN

With the requested franchise modification, the ERI facility would remain in compliance with the goals, objectives and policies of the Regional Solid Waste Management Plan, including the Waste Reduction Chapter adopted by the Metro Council in 1988. The Regional Solid Waste Management Plan (RSWMP) states in part "Purpose: To recover recyclable materials and reusable items from the waste stream through facilities that process waste that contains a high percentage of economically recoverable material." The applicant's proposed amendment will allow the processing of materials from non-affiliated haulers that might otherwise go unprocessed or might ultimately be shipped for disposal at a regional landfill.

BUDGET IMPACT

None

SUMMARY

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Staff concludes that:

- The proposed modification complies with Metro's Regional Solid Waste Management Plan.
- Acceptance of non-affiliated haulers is consistent with the way similar facilities are permitted to operate.
- Acceptance of third party haulers will provide greater MRF access to unaffiliated haulers and may allow more efficient utilization of the facility.

STAFF RECOMMENDATION

Based on the foregoing analysis, staff recommends that Energy Reclamation, Inc., should be granted the modification in accord with the provisions of the draft franchise agreement shown as Exhibit A of Ordinance No. 98-723.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 98-723.

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