

**BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT**

<b>FOR THE PURPOSE OF GRANTING A )</b>	<b>ORDINANCE NO. 91-434A</b>
<b>FRANCHISE TO OREGON HYDRO- )</b>	
<b>CARBONS, INC. FOR THE )</b>	<b>INTRODUCED BY RENA CUSMA,</b>
<b>PURPOSE OF OPERATING A )</b>	<b>EXECUTIVE OFFICER</b>
<b>PETROLEUM CONTAMINATED SOIL )</b>	
<b>PROCESSING FACILITY )</b>	

WHEREAS, Section 5.01.030 of the Metropolitan Service District Code requires a Metro Franchise for any person to establish, operate, maintain or expand a disposal site, processing facility, transfer station or resource recovery facility within the District; and

WHEREAS, Oregon Hydrocarbon, Inc. (OHI) has applied for a non-exclusive franchise to operate a petroleum contaminated soils (PCS) processing center at Rivergate Industrial Park; and

WHEREAS, OHI has submitted evidence of compliance with Metro Code Section 5.01.060 requirements for franchise applications and operational plans, except those relating to rate requests, as discussed in the attached Staff Report; and

WHEREAS, OHI has applied for a variance from Metro Code Section 5.01.180 with regard to setting rates; and

WHEREAS, OHI has met the purpose and intent of Metro Code Section 5.01.180 and has met variance criteria (2) and (3) under Metro Code Section 5.01.110 as set out in its application for a variance from rate regulation; and

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

**BE IT RESOLVED,**

1. That the Council of the Metropolitan Service District authorizes the District to enter into the attached Franchise Agreement (Exhibit A) with OHI upon receipt of evidence that OHI has received the required state air discharge permit.

2. The variance pertaining to Metro Code Section 5.01.180 to exempt the facility from the Metro Council establishing disposal rates is granted. Further, the variance shall be

reviewed by the Executive Officer within one (1) year from the date of issuance of the Franchise. If, in the opinion of the Executive Officer, the variance warrants additional review it shall be reconsidered by the Council.

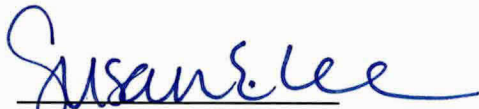
3. This Ordinance being necessary for the immediate preservation of the public health, safety, and welfare, and emergency is declared to exist, and this Ordinance takes effect upon passage.

Adopted by the Council of the Metropolitan Service District this 26 day of November, 1991.



Tanya Collier, Presiding Officer

Attest:



Clerk of Council

**BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT**

FOR THE PURPOSE OF GRANTING A )	ORDINANCE NO. 91-434 <sup>A</sup>
FRANCHISE TO OREGON HYDRO- )	
CARBONS, INC. FOR THE )	INTRODUCED BY RENA CUSMA,
PURPOSE OF OPERATING A )	EXECUTIVE OFFICER
PETROLEUM CONTAMINATED SOIL )	
PROCESSING FACILITY )	

WHEREAS, Section 5.01.030 of the Metropolitan Service District Code requires a Metro Franchise for any person to establish, operate, maintain or expand a disposal site, processing facility, transfer station or resource recovery facility within the District; and

WHEREAS, Oregon Hydrocarbon, Inc. (OHI) has applied for a non-exclusive franchise to operate a petroleum contaminated soils (PCS) processing center at Rivergate Industrial Park; and

WHEREAS, OHI has submitted evidence of compliance with Metro Code Section 5.01.060 requirements for franchise applications and operational plans, except those relating to rate requests, as discussed in the attached Staff Report; and

WHEREAS, OHI has applied for a variance from Metro Code Section 5.01.180 with regard to setting rates; and

WHEREAS, OHI has met the purpose and intent of Metro Code Section 5.01.180 and has met variance criteria (2) and (3) under Metro Code Section 5.01.110 as set out in its application for a variance from rate regulation; and

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

**BE IT RESOLVED,**

1. That the Council of the Metropolitan Service District authorizes the District to enter into the attached Franchise Agreement (Exhibit A) with OHI ~~within ten (10) days of the adoption of this Ordinance.~~ upon receipt of evidence that OHI has received the required state air discharge permit.

2. The variance pertaining to Metro Code Section 5.01.180 to exempt the facility from the Metro Council establishing disposal rates is granted. Further, the variance shall be reviewed by the Executive Officer within one (1) year from the date of issuance of the Franchise. If, in the opinion of the Executive Officer, the variance warrants additional review it shall be reconsidered by the Council.

3. This Ordinance being necessary for the immediate preservation of the public health, safety, and welfare, and emergency is declared to exist, and this Ordinance takes effect upon passage.

Adopted by the Council of the Metropolitan Service District this \_\_\_\_\_ day of \_\_\_\_\_, 1991.

---

Tanya Collier, Presiding Officer

**SOLID WASTE FRANCHISE**  
issued by the  
**METROPOLITAN SERVICE DISTRICT**  
2000 S.W. 1st  
Portland, Oregon 97201-5398  
503-221-1646

**FRANCHISE NUMBER:** \_\_\_\_\_  
**DATE ISSUED:** \_\_\_\_\_  
**AMENDMENT DATE:** \_\_\_\_\_  
**EXPIRATION DATE:** 5 years from date of issuance shown above  
**ISSUED TO:** Oregon Hydrocarbon, Inc.  
**NAME OF FACILITY:** Oregon Hydrocarbon, Inc.  
**ADDRESS:** Lot 6, Rivergate Industrial Park, N. Harborage  
**LEGAL DESCRIPTION:** Lot 6 and part of Lot 5, Block 28, Rivergate Industrial District  
**CITY, STATE, ZIP:** Portland, Oregon  
**NAME OF OPERATOR:** Charles Chisholm  
**PERSON IN CHARGE:** Charles Chisholm  
**ADDRESS:** PO Box 9927,  
**CITY, STATE, ZIP:** Reno, Nevada, 89507  
**TELEPHONE NUMBER:** (702) 342-0200

This Franchise will automatically terminate on the expiration date shown above, or upon modification or revocation, whichever occurs first. Until termination, OHI is authorized to operate and maintain a petroleum contaminated soils (PCS) processing facility at the above location in accordance with the Metro Code and the attached Franchise Schedules A, B, C, D, and E and in accordance with the provisions specified in the Solid Waste Disposal Site Permit No. 1163, and Air Quality Permit No. \_\_\_\_\_, issued by the State of Oregon, Department of Environmental Quality.

This Franchise may be revoked at any time for any violation of the conditions of this Franchise or the Metro Code. This Franchise does not relieve the Franchise Holder from responsibility for compliance with ORS Chapter 459 or other applicable federal, state or local statutes, rules, regulations, codes, ordinances or standards.

\_\_\_\_\_  
Facility Owner or Owner's  
Representative

\_\_\_\_\_  
Rena Cusma  
Executive Officer  
Metropolitan Service District

**FRANCHISE CONDITIONS  
SCHEDULE A**

**Franchise Number:**

**Expiration Date:**

---

**AUTHORIZED AND PROHIBITED SOLID WASTES**

- SA-1      The Franchise Holder is authorized to accept loads of 100% petroleum contaminated soil as defined in Solid Waste Site Disposal Permit No. 1163 for processing. No other wastes shall be accepted unless specifically authorized in writing by Metro supplementary to this Franchise. The Franchise Holder shall operate and maintain the facility in accordance with all applicable federal, state and local laws, rules, regulations, codes or ordinances.
- SA-2      The franchise holder shall only accept loads of PCS that are tarped. Treated soils leaving the site must also be tarped.
- SA-3      The Franchise Holder shall not, by act or omission, discriminate against, treat unequally or prefer any user of the processing facility through application of fees or the operation of the facility.
- SA-4      All PCS transferring vehicles and devices using public roads shall be constructed, maintained, and operated so as to prevent leaking, sifting, spilling, or blowing of solid waste while in transit and shall be operated and maintained in accordance with all applicable federal, state and local laws, rules, regulations, codes or ordinances.
- SA-5      No limit is placed on the amount of PCS that the franchise holder may accept/ process per year.
- SA-6      The Franchise shall follow any procedures or protocols recommended or required by DEQ for materials delivered to the facility to prevent hazardous or otherwise unacceptable materials from entering the facility.

**FRANCHISE CONDITIONS  
SCHEDULE B**

**Franchise Number:**

**Expiration Date:**

**MINIMUM MONITORING AND REPORTING REQUIREMENTS**

**SB-1**            The Franchise Holder or designated Representative shall effectively monitor the processing facility operation and maintain records of the following required data. The records shall conform to the following format.

**SB-2**            **Summary Sheet**

Total Tons Onsite at Beginning of Quarter	Total Tons Accepted During Quarter	Total Tons Treated During Quarter	Total Treated Tons Removed From Site During Month	Total Tons Remaining Onsite at the End of the Quarter

**SB-3**            **Summary of Total Tonnage of PCS Accepted Per Site (list out-of-State after within State)**

DEQ File No.	Date(s) of First Loads Accepted	Generator Name and Address	Site of Origination	Total Tons Received During Quarter	Type of Communication

**SB-4**            **Pre-Treatment Analysis of PCS Per Site (list out-of-State after within State)**

DEQ File Number(s)	Test # (attach copies of test results)

**SB-5**            **Post-Treatment Analysis of PCS**

DEQ File Number(s)	Test # (attach copies of test results)

**SB-6 Final Disposition of Treated Soils**

DEQ File Number(s)	Post-Treatment Test #	Destination of Load (County and Tax Lot #)	Date load Shipped to Destination	Total Tons Shipped to Destination During the Quarter

**SB-7 Loads Rejected**

DEQ File Number (s)	Date of Load	Transporter Name	Weight of Load	Reason for Rejection	Destination of Rejected Load

- SB-8 Report all operational irregularities, accidents, and incidents of non-compliance.
- SB-9 Supply the report in both hard copy and on electronic media.
- SB-10 Signature and title of the Franchisee or designated agent shall certify that all reporting is correct.
- SB-11 The reporting period is the calendar month. Reports must be submitted to Metro by the 10th day of the month following the end of each quarter.
- SB-12 The summary sheet (SB-2) may be requested on a monthly basis at Metro's discretion.
- SB-13 The Franchise Holder shall pay an annual franchise fee established in Metro Code Section 5.03.030 within 30 days of the effective date of the Franchise Agreement and each year thereafter.
- SB-14 The Franchise Holder shall report to Metro any changes in excess of five (5%) of ownership of the Franchisee's corporation or similar entity, or of the partners of a partnership within ten (10) days of such changes of ownership.
- SB-15 The Franchisee may contract with another person to operate the disposal facility only upon ninety (90) days prior written notice to Metro and the written approval of the Executive Officer. If approved, the Franchisee shall remain responsible for compliance with this Franchise Agreement.
- SB-16 The Franchisee shall establish and follow procedures designed to give reasonable notice prior to refusing service to any person. Copies of notification and procedures for such action will be retained on file for three (3) years by each Franchisee for possible review by Metro.
- SB-17 The Franchisee shall maintain during the term of the Franchise public liability insurance in the amounts set forth in SC-1 and shall give thirty (30) days written notice to Metro of any lapse or proposed cancellation of insurance coverage or performance bond.
- SB-18 The Franchisee shall file an Annual Operating Report detailing the operation as outlined in this Franchise on or before the anniversary date of the Franchise of each year for the preceding year.



- SB-19**      **The Franchise Holder shall submit to Metro within 30 days duplicate copies of any information submitted to, or required by, the Department of Environmental Quality pertaining to the solid waste permit for this facility.**
- SB-20**      **In the event a breakdown of equipment, fire or other occurrence causes a violation of any conditions of this Franchise Agreement or of the Metro Code, the Franchise Holder shall:**
- a.      Immediately take action to correct the unauthorized condition or operation.**
  - b. Immediately notify Metro so that an investigation can be made to evaluate the impact and the corrective actions taken and determine additional action that must be taken.**
- SB-21**      **In the event that the processing facility is to be closed permanently or for a protracted period of time during the effective period of this Franchise, the Franchise Holder shall provide Metro with written notice, at least ninety (90) days prior to closure, of the proposed time schedule and closure procedures.**
- SB-22**      **Authorized representatives of Metro shall be permitted to inspect PCS reporting information during normal working hours or at other reasonable times with notice.**

**FRANCHISE CONDITIONS  
SCHEDULE C**

Franchise Number:

Expiration Date:

---

**GENERAL CONDITIONS AND COMPLIANCE SCHEDULES**

- SC-1      The Franchise Holder shall furnish Metro with certified copies of public liability insurance, including automotive coverage, in the amount of not less than \$500,000 for any number of claims arising out of a single accident or occurrence, \$50,000 to any claimant for any number of claims for damage to or destruction of property, and \$100,000 to any claimant for all other claims arising out of a single accident or occurrence, or such other amounts as may be required by State law for public contracts. Metro shall be named as an additional insured in this insurance policy.
- SC-2      The term processing facility is used in this Franchise as defined in Section 5.01.010(n) of the Metro Code.
- SC-3      The conditions of this Franchise shall be binding upon, and the Franchise Holder shall be responsible for, all acts and omissions of all contractors and agents of the Franchise Holder.
- SC-4      The processing facility operation shall be in strict compliance with all applicable sections of the Metro Code regarding storage, collection, transportation, recycling and disposal of solid waste.
- SC-5      The Franchise Holder shall provide an adequate operating staff that is duly qualified to carry out the reporting functions required to ensure compliance with the conditions of this Franchise Agreement.
- SC-6      At least one sign shall be erected at the entrance to the processing facility. This sign shall be easily visible, legible, and shall contain at least the following:
- a.      Name of facility;
  - b.      Emergency phone number;
  - c.      Operational hours during which material will be received;
  - d.      Disposal rates;
  - e.      Metro information phone number; and
  - f.      Acceptable materials.

- SC-7 If the Executive Officer finds that there is a serious danger to the public health or safety as a result of the actions or inactions of a Franchisee, he/she may take whatever steps necessary to abate the danger without notice to the Franchisee.
- SC-8 Authorized representatives of Metro shall be permitted access to the premises of the processing facility owned or operated by the Franchise Holder 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 notice; and
  - c. at any time without notice where, at the discretion of the Metro Solid Waste Department Director, such notice would defeat the purpose of the entry.
- SC-9 This Franchise Agreement is subject to suspension, modification, revocation or nonrenewal upon finding that:
- a. The Franchisee has violated the Disposal Franchise Ordinance, the Franchise Agreement, the Metro Code, ORS Chapter 459 or the rules promulgated thereunder or any other applicable law or regulation; or
  - b. The Franchisee has misrepresented material facts or information in the Franchise Application, Annual Operating Report, or other information required to be submitted to Metro; or
  - c. The Franchisee has refused to provide adequate service at the franchised site, facility or station, after written notification and reasonable opportunity to do so.
  - d. There has been a significant change in the quantity or character of solid waste received or the method of solid waste processing.
- SC-10 This Franchise Agreement, or a photocopy thereof, shall be displayed where it can be readily referred to by operating personnel.
- SC-11 The granting of a Franchise shall not vest any right or privilege in the Franchise to receive specific quantities or solid waste during the term of the Franchise.
- a. To carry out any other purpose of the Metro Disposal Franchise Ordinance, the Executive Officer may, upon sixty (60) days prior written notice, direct solid wastes away from the Franchisee or limit the type of solid wastes that the Franchisee may receive.
  - b. Any Franchisee receiving said notice shall have the right to a contested case hearing pursuant to Code Chapter 2.05. A request for a hearing shall not stay action by the Executive Officer. Prior notice shall not be required if the Executive Officer finds that

there is an immediate and serious danger to the public or that a health hazard or public nuisance would be created by a delay.

SC-12

All notices required to be given to the Franchisee under this Franchise Agreement shall be given to \_\_\_\_\_ . All notices and correspondence required to be given to Metro under this Agreement shall be given to the Solid Waste Director, Solid Waste Department, Metropolitan Service District, 2000 S.W. First Avenue, Portland, OR 97201-5398.

**FRANCHISE CONDITIONS  
SCHEDULE D**

Franchise Number:

Expiration Date:

---

**WASTE REDUCTION PLAN**

SD-1

**FRANCHISE CONDITIONS  
SCHEDULE E**

Franchise Number:

Expiration Date:

---

**DISPOSAL RATES**

- SE-1** In accordance with the variance granted by the Metro Council, the rates charged at this facility shall be exempt from Metro rate- setting provided, however, that Metro reserves the right to exercise its authority to regulate rates pursuant to Metro Code Section 5.01.180.
- SE-2** Franchisee's facility is exempted from collecting and remitting Metro Fees on incoming waste received. Franchisee is fully responsible for paying all costs associated with disposal of residual material generated at the facility. In the event Franchisee is authorized by Metro to dispose of residual material at other than a Metro "Designated Facility," Franchisee shall remit to Metro the Tier 1 (one) User Fee on all residual material thus disposed.
- SE-3** Until Metro establishes rates that are to be charged at the facility, the Franchisee shall adhere to the following conditions in the disposal rates that are charged at OHI.
- a. Franchisee may modify rates to be charged and rate schedules on a quarterly basis. Rates may be adjusted on January 1, April 1, July 1 and October 1. Rates shall not change more frequently unless written approval is obtained from Metro. Metro shall be notified ten (10) days prior to any proposed rate changes.
  - b. All applicable rates charged at the facility shall be posted on a sign near where fees are collected. All customers within a given disposal class shall receive equal, consistent and non-discriminatory treatment in the collection of fees.
  - c. Franchisee shall maintain complete and accurate records of all costs, revenues, rates and other information (see Schedule B, Section SB-1) as they may be directed by Metro to obtain pertaining to the franchise operation. These records shall be made available on request and summary reports shall be provided to Metro within 30 days after each quarter (first quarter report would be due May 1, and so on).

SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF ORDINANCE NO. 91-434A, FOR THE PURPOSE OF GRANTING A FRANCHISE TO OREGON HYDROCARBONS, INC. FOR THE PURPOSE OF OPERATING A PETROLEUM CONTAMINATED SOIL PROCESSING FACILITY

-----  
Date: November 20, 1991

Presented by: Councilor DeJardin

Committee Recommendation: At the November 19 meeting, the Committee voted unanimously to recommend Council adoption of Ordinance No. 91-434. Voting in favor: Councilors DeJardin, Gardner, McFarland, McLain and Wyers.

Committee Issues/Discussion: Bob Martin, Director of Solid Waste, explained that Oregon Hydrocarbons, Inc was among the first two companies to seek a franchise for a petroleum contaminated soil (PCS) processing facility. He noted that the proposed facility is in north Portland. The facility will use a rotary kiln system to remove contaminants from the soil and allow it to be reused for most non-agricultural purposes.

Martin noted that the franchisee will be granted a variance from the Metro Code requirement that Metro set the rates charged by all franchisees. He explained that as additional PCS facilities are franchised, the marketplace will dictate the rates that may be charged.

Martin noted that the facility had not yet obtained an air discharge permit from DEQ, but that receipt of the permit was anticipated shortly. Councilor McFarland moved that the ordinance be amended to provide that the franchise agreement would be entered into by Metro until the permit was received. Martin responded that such a requirement was not needed because the agreement requires the franchisee to comply with all applicable state laws. The proposed amendment and the amended ordinance were passed out of committee unanimously.



**METRO**

# Memorandum

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

To: Solid Waste Committee Members

From: John Houser, Council Analyst

Date: November 13, 1991

Re: Ordinance No. 91-438, For the Purpose of Granting a Franchise to RMAC International, Inc. For the Processing of Petroleum Contaminated Soil

Ordinance No. 91-434, For the Purpose of Granting a Franchise to Oregon Hydrocarbon, Inc. For Processing of Petroleum Contaminated Soil

Ordinances No. 91-438, and No. 91-434 are scheduled to be considered by the Committee at the November 19 meeting.

## Background

Petroleum contaminated soils (PCS) are generated primarily through leakages from underground storage tanks. Recent federal legislation requires that such tanks be inspected and that when contamination is found it must be cleaned up. Currently, PCS is either landfilled or the contaminants are ventilated into the atmosphere. The Regional Solid Waste Management Plan (RSWMP) identifies PCS as a special waste and calls for the development of alternative methods of disposal to remove the material from landfills and address potential contaminants escaping into the air.

New technologies have been developed that remove contaminants from PCS through various types of heating or burning processes. Following this type of processing the soil can be reused for most purposes.

Two companies using this new technology, RMAC and Oregon Hydrocarbon, are the first two entities seeking to become franchised under the provisions of Ordinance 91-422B, which establishes a procedure for franchising those proposing to operate facilities for the processing of petroleum contaminated soils. The RMAC facility will be located in Troutdale and the Oregon Hydrocarbon facility is in the Rivergate Industrial District. The RMAC facility will annually process about 40,000 tons of material and the Oregon Hydrocarbon facility about 32,000 tons per year. The parent company of Oregon Hydrocarbon operates a similar facility in Nevada.

The enabling ordinances and attached franchise agreements for both facilities are virtually identical. The ordinances address the



following major issues:

1) Metro would not collect a user fee from either facility in order to make the processing and reuse of PCS more cost-competitive with landfilling or ventilating.

2) Metro would not set the rates at the facilities. In the past, Metro has chosen not to set rates at franchised facilities that recycle or recover material from the wastestream, preferring to let the marketplace dictate the rates that can be charged by the facility operator. The same logic would appear appropriate for PCS processing facilities. Each ordinance provides a variance from the franchise code provision that requires that Metro set franchisee rates.

3. Metro will not place any limitations on the amount of material that may be processed at either facility or any geographic limits on where the material may originate. Metro has received two other franchise applications as well as inquiries from other interested parties. Staff believes that the marketplace will ultimately determine the economic feasibility of entering the market and that it is not necessary for Metro to restrict entry at this time.

4. Metro will require that the applicant obtain all necessary state and local environmental and land use permits. RMAC has obtained the necessary permits. Oregon Hydrocarbon is awaiting DEQ action on its request for an air discharge permit. Staff agrees that if such approval has not occurred prior to the committee hearing, the ordinance should be amended to provide a condition that the applicant must obtain the permit prior to Metro entering into the agreement.

5. Metro has reviewed and approved the operational logistics of the facilities as outlined in the staff report.

The principal effect of Metro's regulation will be to require detailed recordkeeping that will allow Metro to monitor the amount and type of material processed, the final disposition of processed soil and identify the types of loads that have been rejected for processing.

**BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT**

<b>FOR THE PURPOSE OF GRANTING A )</b>	<b>ORDINANCE NO. 91-434</b>
<b>FRANCHISE TO OREGON HYDRO- )</b>	
<b>CARBONS, INC. FOR THE )</b>	<b>INTRODUCED BY RENA CUSMA,</b>
<b>PURPOSE OF OPERATING A )</b>	<b>EXECUTIVE OFFICER</b>
<b>PETROLEUM CONTAMINATED SOIL )</b>	
<b>PROCESSING FACILITY )</b>	

WHEREAS, Section 5.01.030 of the Metropolitan Service District Code requires a Metro Franchise for any person to establish, operate, maintain or expand a disposal site, processing facility, transfer station or resource recovery facility within the District; and

WHEREAS, Oregon Hydrocarbon, Inc. (OHI) has applied for a non-exclusive franchise to operate a petroleum contaminated soils (PCS) processing center at Rivergate Industrial Park; and

WHEREAS, OHI has submitted evidence of compliance with Metro Code Section 5.01.060 requirements for franchise applications and operational plans, except those relating to rate requests, as discussed in the attached Staff Report; and

WHEREAS, OHI has applied for a variance from Metro Code Section 5.01.180 with regard to setting rates; and

WHEREAS, OHI has met the purpose and intent of Metro Code Section 5.01.180 and has met variance criteria (2) and (3) under Metro Code Section 5.01.110 as set out in its application for a variance from rate regulation; and

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

**BE IT RESOLVED,**

1. That the Council of the Metropolitan Service District authorizes the District to enter into the attached Franchise Agreement (Exhibit A) with OHI within ten (10) days of the adoption of this Ordinance.

2. The variance pertaining to Metro Code Section 5.01.180 to exempt the facility from the Metro Council establishing disposal rates is granted. Further, the variance shall be reviewed by the Executive Officer within one (1) year from the date of issuance of the Franchise. If, in the opinion of the Executive Officer, the variance warrants additional review it shall be reconsidered by the Council.

3. This Ordinance being necessary for the immediate preservation of the public health, safety, and welfare, and emergency is declared to exist, and this Ordinance takes effect upon passage.

Adopted by the Council of the Metropolitan Service District this \_\_\_\_\_ day of \_\_\_\_\_, 1991.

---

Tanya Collier, Presiding Officer

ATTEST:

---

Clerk of the Council

## **STAFF REPORT**

### **CONSIDERATION OF ORDINANCE NO. 91-434, FOR THE PURPOSE OF GRANTING A FRANCHISE TO OREGON HYDROCARBON, INC. FOR PROCESSING PETROLEUM CONTAMINATED SOIL**

---

Date: November 6, 1991

Presented By:        Bob Martin  
                              Roosevelt Carter  
                                     Phil North

#### **FACTUAL BACKGROUND AND ANALYSIS**

Oregon Hydrocarbon, Inc. (OHI), has applied for a Metro franchise to operate a facility that will process and treat soils contaminated by hydrocarbons. The primary source of materials will be from leaking underground storage tanks containing gasoline or oil. No materials classified as hazardous by federal regulations will be permitted into the facility. Also, OHI will not accept materials with heavy metal contamination, materials containing halogenated organic compounds, or materials with free liquids.

In addition to a Metro franchise, the applicant has applied for and/or received a conditional use permit from the City of Portland and a solid waste permit and an air discharge permit from the DEQ.

The location of the proposed facility is Lot 6 and part of Lot 5, Block 28 of the Rivergate Industrial District. The street location is near the intersection of North Harborgate and North Lombard.

The logistics of the facility operation are summarized as follows:

Soils will be brought to the facility by semi-truck and screened.

Soils and debris are separated.

The soil is placed in a rotary kiln, which burns the hydrocarbons out of the soil.

Untreated soil is stored indoors on a liner that prevents leaching into the ground water.

No contaminated liquids will be discharged into the City storm or sanitary system.

Treated soil will be stored outdoors and will be removed from the site for re-use or as clean backfill material.

The treated material will not be used for farming or gardening.

The facility is expected to process approximately 32,000 tons per year. The anticipated service area is the greater Portland metropolitan area and surrounding region. The facility would not exclude materials that originate outside of the Metropolitan Service District.

Under the Metro Code , the facility would be exempt from the requirement of collecting and remitting a user fee. Also, the applicant has requested a variance from Metro rate-setting. This request is based on the nature of the facility, the need to respond rapidly to marketplace requirements and the contributions being made to Metro objective of minimizing or eliminating petroleum contaminated soils from landfills.

The Council may grant a variance in the interest of protecting the public health and welfare if the purpose and intent of the requirement (e.g., setting rates) can be achieved without strict compliance and that strict compliance:

- "(1) Is inappropriate because of conditions beyond the control of the person(s) requesting the variance;, or
- (2) Will be 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 opinion is that the applicant's variance request is consistent with the spirit, intent and variance criteria (2) and (3) requirements. Staff recommendation is that the following findings be incorporated into the franchise if approved by the Council:

- A. Strict compliance with Metro Code provisions regarding rate-setting (Section 5.01.180) is not necessary to protect the public interest, health or welfare with respect to processors of petroleum contaminated soils.
- B. That the applicant (franchise) is performing a processing and recycling function by eliminating contaminants from soil.
- C. Soils treatment and processing facilities will be operating in a highly competitive marketplace which will require the need for rapid response to market needs.
- D. Metro does not collect user fees from processors of petroleum contaminated soils because of Metro policy to promote the processing and treatment of contaminated soil.

- E. That the objectives of the District in encouraging treatment and processing of petroleum contaminated soil at a reasonable cost to the public can be met without regulation of the applicant's rate.
- F. That regulation of rates at the applicant's facility can result in curtailment or closing down of the franchised facility to the detriment of the District's objectives to reduce or eliminate petroleum contaminated soils from landfills and to process and recycle contaminated soils.

Petroleum contaminated soil has been identified as a significant environmental and disposal problem in the District. At the present time, there are no franchised processors of these materials, but Metro has received franchise applications from four potential processors. Additional franchise applications are also expected.

The high level of interest and number of potential processors assure a competitive marketplace, and an adequate processing capacity to meet District needs. Furthermore, the substantial capital investment and required permits to commence petroleum contaminated soil processing provides assurance of the commitment of processors to remain in the marketplace.

#### QUALIFICATIONS OF APPLICANT AND COMPLIANCE WITH THE CODE

In the State of Nevada, the applicant operates a soil treatment facility similar to the one proposed to Metro. The Nevada facility has been in operation since 1988. OHI applied for a DEQ solid waste disposal permit and was issued Permit No. 1163 on August 30, 1991 with an expiration date of August 31, 1996. OHI was issued a Land Use Compatibility Statement from the City of Portland on June 7, 1991.

The facility will be in compliance with the Regional Solid Waste Management Plan (RSWMP). Contaminated soil is classified as a "special waste" and the RSWMP calls for solutions to special waste management be developed as a component of the RSWMP. Ordinance No. 91-422B adopted by Council as an amendment to the Metro Code pertaining to contaminated soils treatment was part of the process of encouraging alternative strategies for petroleum contaminated soil.

With respect to the need for the facility, the present facility is one of the first two facilities to be considered for a Metro franchise to process contaminated soil. At the present time, it is not recommended that restrictions be placed on entry into the petroleum contaminated soil processing business provided that applicants can satisfy DEQ and other regulatory requirements, and further provided that Metro is otherwise satisfied with the applicant's qualifications. Currently, demand for processing can only be estimated. Market demand should be a sufficient regulator of economic entry and departure from the soils processing business. In the interim, undue limitations upon entry into the processing market are not recommended. Furthermore, no geographic operations limitations on soil processors is recommended at this time.

In order for this ordinance to take effect immediately upon passage, an emergency clause has been added to the Ordinance.

**EXECUTIVE OFFICERS RECOMMENDATION**

The Executive Officer recommends adoption of Ordinance No. 91- 434

PN:gbo  
stafl106.rpt



**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

DATE: November 27, 1991

TO: Rena Cusma, Executive Officer

FROM: Susan Lee, Acting Clerk of the Council *sl*

RE: TRANSMITTAL OF ORDINANCE NOS. 91-437, 91-436A, 91-434A AND 91-438

Attached for your consideration are true copies of the ordinances referenced above adopted by the Council on November 26, 1991.

If you wish to veto any of the ordinances referenced above, I must receive a signed and dated written veto message from you no later than 5:00 p.m., Tuesday, December 3, 1991. The veto message, if submitted, will become part of the permanent record. If no veto message is received by the time and date stated above, these ordinances will be considered finally adopted.

-----

I, *W. H. H. H.*, received this memo and true copies of Ordinance Nos. 91-437, 91-436A, 91-434A and 91-438 from the Clerk of the Council on *11-27-91*.

ORD.MEM