

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF GRANTING)	ORDINANCE NO. 92-453
A FRANCHISE TO PEMCO, INC. FOR THE)	
PURPOSE OF OPERATING A PETROLEUM)		INTRODUCED BY RENA CUSMA,
CONTAMINATED SOIL PROCESSING)	EXECUTIVE OFFICER
FACILITY AND DECLARING AN)	
EMERGENCY)	

WHEREAS, Section 5.01.220 of the Code of the Metropolitan Service District requires a Metro Franchise for any person to own or operate a facility for the processing of petroleum contaminated soil by thermal destruction, distillation, bioremediation, or any combination of methods that removes soil contamination from the soil and either contains or destroys it; and,

WHEREAS, PEMCO, Inc. has applied for a non-exclusive franchise to operate a petroleum contaminated soils (PCS) processing center initially located in Gresham, Oregon; and

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


WHEREAS, PEMCO 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,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

1. That the Council of the Metropolitan Service District authorizes the District to enter into the attached Franchise Agreement (Exhibit A) with PEMCO 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 based on the findings contained in the Staff Report submitted with this Ordinance. 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, an emergency is declared to exist, and this Ordinance takes effect upon passage.

Adopted by the Council of the Metropolitan Service District this 28th day of
May, 1992.



Jim Gardner, Presiding Officer

EXHIBIT A

SOLID WASTE FRANCHISE
issued by the
METROPOLITAN SERVICE DISTRICT
2000 S.W. First Avenue
Portland, Oregon 97201-5398
(503) 221-1646

FRANCHISE NUMBER: 12

DATE ISSUED: _____

AMENDMENT DATE: _____

EXPIRATION DATE: _____

ISSUED TO: PEMCO, INC.

NAME OF FACILITY: PEMCO Mobile Soil Remediation Unit

ADDRESS: PO Box 11569, Portland, OR 97211

LEGAL DESCRIPTION: T1N, R3E, Section 30, NE 181st, 1 mile south of I-84 in
the City of Gresham

CITY, STATE, ZIP: Gresham, Oregon

NAME OF OPERATOR: PEMCO, Inc.

PERSON IN CHARGE: Richard Y. Wayper

ADDRESS: PO Box 11569

CITY, STATE, ZIP: Portland, OR 97211

TELEPHONE NUMBER: (503) 283-2151

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FRANCHISE

This Franchise is issued by the Metropolitan Service District, a municipal corporation organized under ORS chapter 268, referred to herein as "Metro," to PEMCO, 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

As used in this Franchise:

- 1.1 "Code" means the Code of the Metropolitan Service District.
- 1.2 "DEQ" means the Department of Environmental Quality of the State of Oregon.
- 1.3 "Executive Officer" means the Executive Officer of the Metropolitan Service District or the Executive Officer's designee.
- 1.4 "Facility" means the facility described in section 3 of this Franchise.
- 1.5 "Petroleum Contaminated Soil (PCS)" means soil into which hydrocarbons, (hydrocarbons contaminated soil) including gasoline, diesel fuel, bunker oil or other petroleum products have been released. Soil that is contaminated with petroleum products but also contaminated with a hazardous waste as defined in ORS 466.005, or a radioactive waste as defined in ORS 469.300, is not included in the term.
- 1.6 "Processing Facility" means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerations, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

2. Term of Franchise

This Franchise is issued for a term of five years from the date signed by Metro and the Franchisee, following approval by the Metro Council, such franchise being subject to the renewal provisions under the code.

3. Location of Facility

- 3.1 The franchised Facility is located at T1N, R3E, Section 30, NE 181st, 1 mile south of I-84 in the City of Gresham.
- 3.2 The Franchisee intends to move the Facility to another location during the term of this Franchise. Sixty days prior to any such proposed move, Franchisee shall notify Metro, and provide with the notification all information necessary for Metro to evaluate the proposal. If land use approval and/or DEQ approval for the new location have been obtained, Franchisee shall submit copies of such approvals with the notice. If not, the Franchisee shall submit complete copies of the applications to be submitted for land use and DEQ approval. Council approval of the proposed new location shall be required, and additional conditions may be imposed on Franchisee if necessary relative to the new location.

4. Operator, and Owner of Facility and Property

- 4.1 The owner of the Facility is PEMCO, Inc.. Franchisee shall submit to Metro any changes in ownership of the Facility in excess of five percent of ownership, or any change in partners if a partnership, within 10 days of the change.
- 4.2 The owner of the property underlying the Facility is BP Oil Co. If Franchisee is not the owner of the underlying property, Franchisee warrants that owner has consented to Franchisee's use of the property as described in this Franchise.
- 4.3 The operator of the Facility is PEMCO, Inc. Franchisee may contract with another person or entity to operate the Facility only upon ninety (90) days prior written notice to Metro and the written approval of the Executive Officer. Franchisee shall retain primary responsibility for compliance with this Franchise.

5. Authorized and Prohibited Solid Wastes

- 5.1 Franchisee is authorized to accept loads of 100 percent Petroleum Contaminated Soil (PCS) as specified in Oregon DEQ Approval Letter dated June 28, 1991 for processing at the Facility. No other wastes shall be accepted at the Facility unless specifically authorized in writing by Metro.
- 5.2 Franchisee shall only accept loads of PCS that are tarped or in an otherwise closed container. Treated soils leaving the site must also be tarped or in an otherwise closed container.

- 5.3 All vehicles and devices transferring or transporting solid waste via public roads shall be constructed, maintained, and operated to prevent leaking, sifting, spilling, or blowing of solid waste while in transit.
- 5.4 This Franchise imposes no limitation on the amount of solid waste that may be processed each year at the Facility. Franchisee may process the amount of solid waste that the Facility is capable of processing in a manner consistent with applicable law and the terms of this Franchise.
- 5.5 Consistent with DEQ directives, Franchisee shall establish and follow procedures for determining what materials will be accepted at the Facility. The procedures must include a testing regimen sufficient to prevent hazardous or otherwise unacceptable materials from entering the Facility.

6. Minimum Monitoring and Reporting Requirements

- 6.1 Franchisee shall effectively monitor Facility operation and maintain accurate records of the following information:
 - (a) Amount and type of material processed at the Facility;
 - (b) Amount and type of material delivered to the Facility, along with the name of the individual or company attempting to deliver material, the reason the material was rejected and, if known, the destination of the material after leaving the Facility;
 - (c) The destination of all materials accepted at the Facility, upon leaving the Facility, by county and tax lot number, or by other description that clearly identifies the destination, if no tax lot number is available; and
 - (d) Descriptions of all operational irregularities, accidents, and incidents of non-compliance.
- 6.2 Records required under section 6.1 shall be reported to Metro no later than 30 days following the end of each quarter, in the format attached as Exhibit A to this Franchise, and incorporated herein by reference. The report shall be provided in both hard copy and in electronic form compatible with Metro's data processing equipment. The hard copy of the report shall be signed and certified as accurate by an authorized representative of Franchisee.
- 6.3 Franchisee shall maintain complete and accurate records of all costs, revenues, rates, and other financial information pertinent to operation of the facility. This information shall be made available to Metro on request. Confidentiality of the material shall be maintained pursuant to laws in effect at the time.

- 6.4 The Franchisee shall file an Annual Operating Report on or before each anniversary date of the Franchise, detailing the previous year operation of the Facility as outlined in this Franchise.
- 6.5 The Franchisee shall submit to Metro duplicate copies of any information submitted to the DEQ pertaining to the Facility, within 30 days of submittal to DEQ.
- 6.6 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, all books, records, maps, plans, income tax returns, financial statements, and other like materials of the Franchisee that are directly related to the operation of the Franchisee.

7. Operational Requirements

- 7.1 At least one sign shall be erected at the entrance to the Facility. The 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) Information about obtaining rates;
 - (e) Metro information phone number; and
 - (f) List of materials accepted at the Facility.
- 7.2 A copy of this Franchise shall be displayed where it can be readily referred to by operating personnel.
- 7.3 If a breakdown of equipment, fire, or other occurrence results in a violation of any conditions of this Franchise or of the Metro Code, the Franchisee shall:
- (a) Take immediate 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.

- 7.4 If the Processing Facility is to be closed permanently or for a protracted period of time during the term of this Franchise, Franchisee shall provide Metro with written notice, at least ninety (90) days prior to closure, of the proposed time schedule and closure procedures.
- 7.5 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 years by Franchisee for possible review by Metro.
- 7.6 Franchisee shall not, by act or omission, unlawfully discriminate against any person, treat unequally or prefer any user of the Processing Facility through application of fees or the operation of the Facility.
- 7.7 Franchisee shall provide a staff that is qualified to operate the Facility in compliance with this Franchise and to carry out the reporting functions required by this Franchise.

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.

9. Performance Bond

Franchisee shall provide a TWENTY FIVE-THOUSAND DOLLARS and NO/100 (\$25,000.00) Corporate Surety Bond, or the equivalent pursuant to the requirements of Metro Code Section 5.01.060(b)(1) guarantying full and faithful performance by the Franchisee of the duties and obligations required by the Franchise.

10. Insurance

- 10.1 Franchisee shall purchase and maintain the following types of insurance, covering Franchisee, its employees, and agents:
 - (a) 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
 - (b) Automobile bodily injury and property damage liability insurance.

- 10.2 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.
- 10.3 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.
- 10.4 Franchisee, its contractors, 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.

11. 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.

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. 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 The Executive Officer may, upon sixty (60) days prior written notice, direct solid waste away from the Franchisee or limit the type of solid waste that the Franchisee may receive. Such action, or other necessary steps, may be taken to abate a nuisance arising from operation of the Facility or to carry out other public policy objectives. Upon receiving such notice, the Franchisee 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.

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 notice; and
- (c) At any time without notice when, in the opinion of the Metro Solid Waste Department Director, such notice would defeat the purpose of 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 or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Franchisee.

14 Disposal Rates and Fees

14.1 In accordance with the variance granted by the Metro Council, the rates charged at this Facility shall be exempt from Metro rate setting. Metro reserves the right to exercise its authority to regulate rates pursuant to Metro Code Section 5.01.170, by amendment to this Franchise following reasonable notice to Franchisee and an opportunity for a hearing.

14.2 Franchisee is exempted from collecting and remitting Metro User Fees and excise tax on waste received at the Facility. Franchisee is fully responsible for paying all costs associated with disposal of residual material generated at the Facility. If Franchisee obtains authorization to dispose of residual material at a facility that has not been "Designated" by Metro, Franchisee shall remit to Metro the Tier 1 (one) User Fee on all waste disposed of at the non-designated facility.

14.3 Until such time as Metro may establish disposal rates at the Facility, the Franchisee shall adhere to the following conditions with regard to disposal rates charged at the Facility:

- (a) Franchisee may modify rates to be charged on a continuing basis as market demands may dictate. Metro shall be provided with a summary of current rates upon request.
- (b) All customers within a given disposal class shall receive equal, consistent, and nondiscriminatory treatment in the collection of fees.

15. Revocation

- 15.1 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 Franchisee from responsibility for compliance with ORS chapter 459, or other applicable federal, state or local statutes, rules, regulations, codes, ordinances, or standards.
- 15.2 This Franchise Agreement is subject to suspension, modification, revocation, or nonrenewal upon finding that:
- (a) The Franchisee has violated the terms of this Franchise, 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 Facility, after written notification and reasonable opportunity to do so; or
 - (d) There has been a significant change in the quantity or character of solid waste received at the Facility, the method of processing solid waste at the Facility, or available methods of processing such waste.

16. General Conditions

- 16.1 Franchisee shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Franchise.
- 16.2 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.
- 16.3 This Franchise may not be transferred or assigned without the prior written approval of Metro.
- 16.4 To be effective, a waiver of any term or condition of this Franchise must be in writing, 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.
- 15.5 This Franchise shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.

16.6 If any provision of the Franchise shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Franchise shall not be affected.

17. Notices

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

Richard Y. Wayper, General Manager
PO Box 11569
Portland, OR 97211

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

Solid Waste Director
Solid Waste Department
Metropolitan Service District
2000 S.W. First Avenue
Portland, OR 97201-5398

17.3 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.

Facility Owner or
Owner's Representative

Rena Cusma, Executive Officer
Metropolitan Service District

Date: _____

Date: _____

Exhibit A

MINIMUM MONITORING AND REPORTING REQUIREMENTS

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.

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

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

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)

5 **Post-Treatment Analysis of PCS**

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

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

7 **Loads Rejected**

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

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 92-453, FOR THE PURPOSE OF GRANTING A FRANCHISE TO PEMCO, INC. FOR PROCESSING PETROLEUM CONTAMINATED SOIL

Date: May 5, 1992

Presented By: Bob Martin
Roosevelt Carter
Phil North

FACTUAL BACKGROUND AND ANALYSIS

PEMCO, Inc. 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.

The location of the present processing site is T1N, R3E, Section 30, NE 181st, 1 mile south of I-84 in the City of Gresham.

This proposed franchise differs from the RMAC International, Inc. and Oregon Hydrocarbons, Inc. franchises in that the facility will operate in a "semi-mobile" mode. The proposed franchise holder operates a portable thermal desorption unit. However, its mode of operation is to set up on a fixed site and bring soils from only client. The applicant is presently set up on a site owned by BP Oil Co. in the City of Gresham, and BP Oil possesses land use approval from the City of Gresham. BP also possesses an Oregon DEQ letter of authorization # 254 for treatment of soils by thermal desorption method on the site with authority to use the cleaned materials as clean fill on site. See description of PEMCO Mobil Soil Remediation Unit (Attachment 1). The original DEQ authorization expired on December 31, 1991, but DEQ has orally extended the authorization through June 30, 1992. Conditions of DEQ approval are contained in the letter (Attachment 2).

The unique aspect of this franchise request is that the applicant desires to move the operation to a different, "semi-permanent" site from time to time. Any site change would require Metro's approval as to the new location. In essence, the franchise will follow the operation and will be operative so long as DEQ, local land use conditions and Metro requirements are met.

The applicant is expected to process approximately 6,000 tons of soil at the current site. 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, but will service only BP oil from the initial site.

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 two 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.

Criteria for Approval of Franchise

Final approval of the franchise requires in summary that the Franchisee supply:

1. Proof that the applicant can and will be covered during the term of the franchise by a surety bond.
2. Proof that the applicant can obtain liability insurance, including automotive coverage.
3. If the applicant is not an individual, a list of all stockholders holding more than five percent of the stock .
4. A duplicate copy of all applications necessary for DEQ permits or other information required by DEQ.
5. Consent of the owner of the property.
6. Proof of proper land use approval.
7. Such other information as the Executive Officer deems appropriate.

With respect to bonding, the Executive Officer recommends a minimum \$25,000 bond or equivalent. The size of the recommended bond is based upon the following factors:

- a. In the event of service failure, there are or will be at least three alternative soil processors in the region, without considering the availability of landfill disposal.
- b. Nearby land uses are industrial and the material handled at the facility will include only non-hazardous petroleum contaminated soil.

Applicant has satisfied or will satisfy the balance of approval criteria prior to issuance of the franchise agreement.

QUALIFICATIONS OF APPLICANT AND COMPLIANCE WITH THE CODE

PEMCO has been a petro/chemical contractor in the Northwest since 1979, involved in remedial activities. Over the past three years, PEMCO has included soil remediation on its list of services.

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 four 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 OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. 92-453.

PN:gbc
staf0505.rpt

PEMCO MOBILE SOIL REMEDIATION UNIT (MSRU)

General Description:

The PEMCO Soil Remediation System is a thoroughly transportable decontamination plant permitted to treat soils tainted by petroleum products. The machine will be operated by PEMCO of Portland, Oregon at various sites around the western United States.

The MSRU (Mobile Soil Remediation Unit) is mounted on a single trailer for portability, requires an area of approximately 100' by 50', and is capable of processing up to 25 tons per hour of contaminated soil. Once on site, the MSRU requires approximately 6 hours to set up for operation; six hours is also required to breakdown for demobilization upon completion of the job. The system consists of two parts: the thermal treatment unit and a feed unit. The feed unit provides quality control by screening out erroneous debris such as plastic and large rocks and by dicing clay into small pieces. Accurate documentation of production is provided by the calibrated scales mounted onto the final feed belt. This diced, screened soil is transferred by conveyor into a diesel-fired, cylindrical rotary kiln. The soil migrates through the kiln, reaching approximately 600° F to finally be discharged in an auger system. Water is added within the auger to control fugitive dust emissions, to cool the soil and to produce a product which can be compacted.

The control of particulate matter is accomplished by a baghouse fabric filter system. The baghouse is cleaned by an air pulse method and is designed to reduce the particulate matter concentration in the discharge gas stream to below 0.04 grains per dry standard cubic foot. The particulate cleaned from the bags is discharged from the unit via the main soil discharge. The baghouse is regularly tested for integrity by "dusting" with fine fluorescent powders and inspection with ultraviolet light.

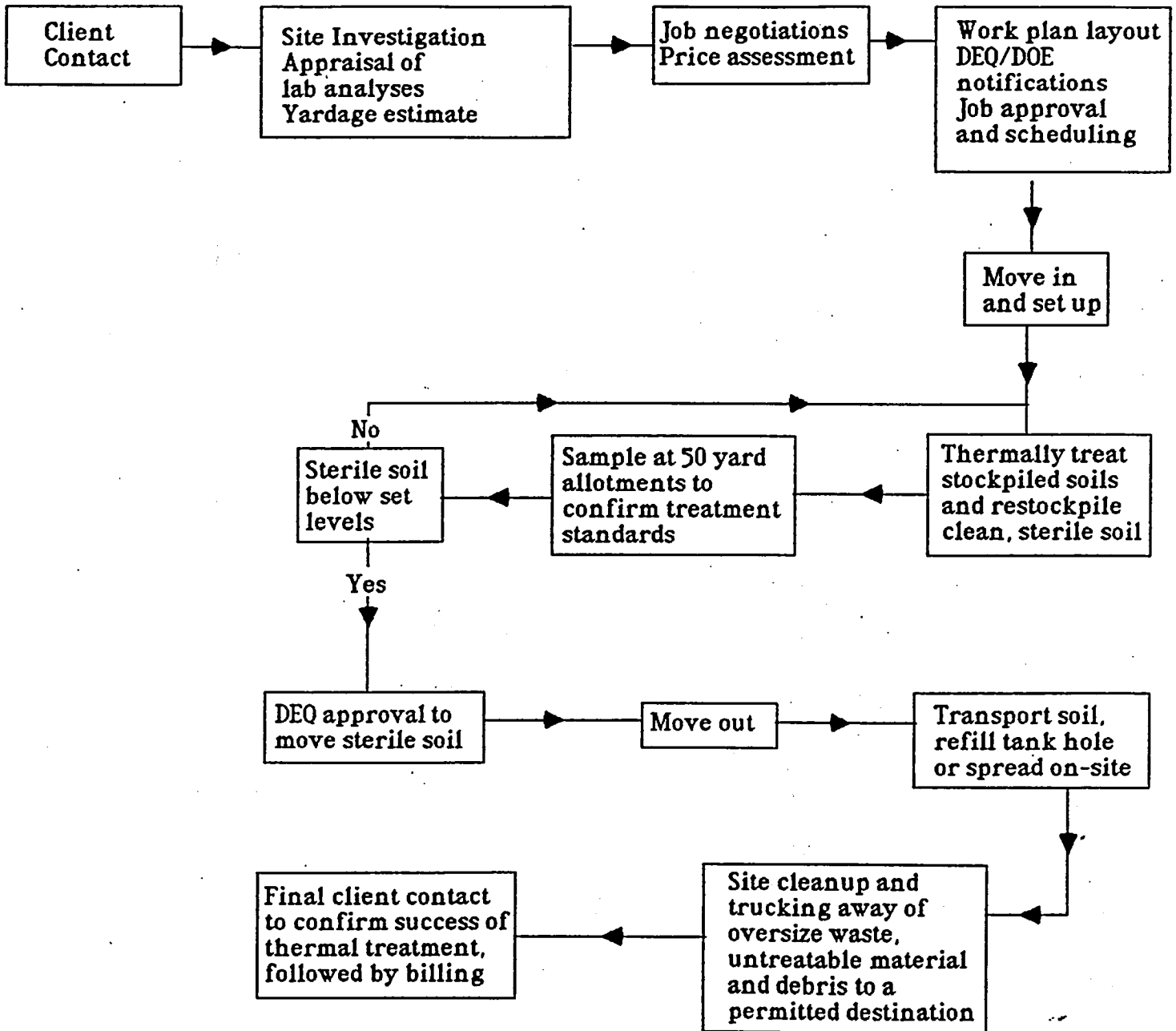
After leaving the baghouse, the gas stream enters a diesel-fired, high efficiency afterburner for the destruction of the hydrocarbons that have been stripped from the contaminated soil. The residence time in the afterburner, based on a nominal operating temperature of 1400° F, is 0.5-0.6 seconds. The afterburner is designed to provide adequate temperature, turbulence and retention time to assure a VOC destruction efficiency in the range of 96 percent.

The MSRU also contains a diesel-powered electric power plant which provides all of the electrical and hydraulic power needed by the unit. The entire process is controlled with a complex system of computer-regulated controls which assure:

- 1) The primary burner will shut down if the afterburner fails,
- 2) Continuing balance of the afterburner even after the loss of the primary burner (to assure VOC destruction),
- 3) Both burners will shut down if the baghouse is breached,
- 4) Both burners will shut down if the high temperature set-points are exceeded.

Other parameters which are monitored include soil exit temperature, baghouse inlet temperature, the afterburner exit temperature, the baghouse pressure differential and operating pressures throughout the system. Backing up the automatic controls are gauges which allow trained operators to monitor the various parameters.

Mobile Soil Remediation Unit (MSRU) Operation Flowchart



June 28, 1991

Peter DeSantis
BP Oil Company
2868 Prospect Park Drive Suite 360
Rancho Cordova CA 95670

Re: SW - Multnomah County
BP Oil Company
Letter of Authorization
#254

Dear Mr. DeSantis :

The Department acknowledges receipt of your application, submitted by Rittenhouse-Zeman & Associates, Inc., for a Solid Waste Disposal Letter of Authorization received on June 18, 1991, for BP Oil Company. You are requesting permission to store and thermally treat petroleum contaminated soils on property owned by BP Oil Company at N.E. 181st Avenue, 1/4 mile south of Interstate-84 in Gresham, Oregon. The contaminated soils originate from underground storage tank cleanup projects occurring at BP Oil Company stations.

We are in receipt of a Land Use Compatibility Statement (LUCS) dated June 11, 1991, from the City of Gresham, that authorizes the storage and treatment of contaminated soils on BP Oil Company's property described as T1N, R3E, Section 30, NE 181st, 1/4 mile south of I-84. Your application states that the legal description of the property is "a parcel of land located in section 30, township 1 north, range 3 east of the Willamette meridian in the city of Gresham, county of Multnomah and state of Oregon, said parcel of land being a part of tract "F", Banfield Corporate Park." The LUCS states that the activity is allowed by the Comprehensive Plan, but is subject to standards in siting, design, construction and/or operation.

We have completed the review of your request and hereby approve your letter of authorization #254 subject to the following conditions:



811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696

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1. The total amount of petroleum contaminated soils authorized to be stored and treated on the above described property is 6000 cubic yards from BP Oil Company underground storage tank cleanup projects and site investigations which have been authorized by the Department. No other solid wastes are authorized for storage, treatment, or disposal at this site.
2. The processed soils must be used as fill material on the above described property and must be treated to the matrix cleanup standard as stated in OAR 340-122-335(2); such soils must be placed above the high groundwater level and out of human contact or possible exposure.
3. The site shall be operated in a manner which avoids to the maximum extent practicable, leachate production. Leachate shall be collected, evaporated or otherwise treated and controlled in a manner so as to prevent malodors, public health hazards, and escapement to public waters in violation of any applicable state or federal water quality rules or regulations.
4. The site shall be operated so as to prevent any adverse impacts on surface water or groundwater. Surface water runoff and run-on shall be controlled within the treatment area.
5. The permittee shall not allow the release of any substance from the storage and treatment site into groundwater which will result in a violation of any applicable federal or state groundwater or drinking water rules.
6. Dust, malodors, and noise shall be controlled so as to comply with the Department's rules pertaining to air pollution and noise control.
7. This Letter of Authorization is valid only for the thermal treatment of contaminated soils using the PEMCO Mobile Soil Remediation Unit. All soil treatment, monitoring, and sampling shall be accomplished in compliance with the Air Contaminant Discharge Permit No. 37-0426 issued to PEMCO, Inc. for operation of this unit, and the Underground Storage Tank Cleanup Rules (OAR 340-122-205 to 360).

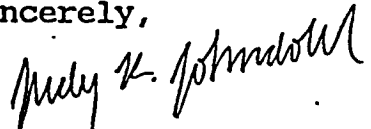
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8. This Letter of Authorization will expire on January 1, 1992, and it is the Department's intent that it will not be renewed after January 1, 1992. However, this authorization may be revoked without prior notice if the permittee fails to comply with any of the conditions outlined in this letter of authorization.

If you have any questions, please contact me at 229-6182.

Sincerely,


Judy K. Johndohl
Environmental Specialist
Northwest Region

cc: SW Permits and Compliance Section, DEQ
Loren Garner, NWR, DEQ
UST Cleanup Section, ECD, DEQ
Chuck Esler, Rittenhouse-Zeman & Associates, Inc.
Leslie Ann Hauer, City of Gresham

SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF ORDINANCE NO. 92-453, FOR THE PURPOSE OF GRANTING A FRANCHISE TO PEMCO, INC. FOR THE PURPOSE OF OPERATING A PETROLEUM CONTAMINATED SOIL PROCESSING FACILITY AND DECLARING AN EMERGENCY

CONSIDERATION OF ORDINANCE NO. 92-454, FOR THE PURPOSE OF GRANTING A FRANCHISE TO SONAS SOIL RESOURCE RECOVERY OF OREGON, INC. FOR THE PURPOSE OF OPERATING A PETROLEUM CONTAMINATED SOIL PROCESSING FACILITY AND DECLARING AN EMERGENCY

Date: May 20, 1992 Presented by: Councilor McFarland/Hansen

Committee Recommendation: At the May 19 meeting, the Committee voted unanimously to recommend Council adoption of Ordinances No. 92-453 and 92-454. Voting in favor: Councilors Buchanan, Hansen, McFarland, Van Bergen and Wyers.

Committee Issues/Discussion: The committee determined that since both proposed ordinances deal with similar types of franchised facilities, that they should be considered together.

Phil North, Solid Waste Staff, indicated that the purpose of the proposed ordinances is to franchise two additional facilities for processing petroleum contaminated soils (PCS). North described the Pemco facility (Ordinance No. 92-453) as a mobile facility capable of moving from one site to another. He noted that Pemco had been operating its equipment in the Portland area for some time, including prior to Metro's decision to regulate PCS facilities. The Sonas facility (Ordinance No. 92-454) is a permanent facility that will be located in the Rivergate industrial area in north Portland.

In response to staff questions, North indicated that that the two existing franchised PCS facilities had processed about 10,000 tons of material since they began operating around the first of the year. Oregon Hydrocarbons has processed about 9,000 tons and RMAC about 1,000 tons. Material processed by Oregon Hydrocarbons was either returned to the generator or used as fill material in areas not used for food production. North said he was not aware of any material being rejected for processing by either facility.

North indicated that the Hillsboro Landfill appears to average receiving about 12,000 tons of PCS every three months, though this flow is subject to seasonal fluctuations. About 40-50% of this material comes from the metropolitan area. The Columbia Ridge Landfill received about 4-5,000 tons of PCS during the last six months of 1991. The disposal charges at the Hillsboro landfill (\$52/ton) are about equal to the processing charge at existing franchised facilities (\$50/ton).

North explained that the department is examining options for

directing more PCS to processing facilities, in part because recycling PCS would be higher on the state recycling hierarchy than landfilling the material.

Michael Betts, representing Pemco, noted that the company has been in the business of processing PCS for 12 years. The company is currently operating in Oregon and Washington and is licensed to operate in Idaho. The company is currently operating under DEQ permits that are scheduled to expire on June 30, 1992. Betts indicated that the company has applied for a new permit. Betts noted that, while the Pemco processing equipment is mobile, the company has no other Portland-area jobs pending other than at the current site at BP Oil in Gresham.

Councilor Van Bergen asked how he should respond to questions from constituents about the environmental safety of Pemco's processing equipment. Betts noted that the company has always worked closely with local and state regulatory authorities and that Pemco's equipment has been subject to frequent inspection and observation by representatives of these agencies.

Van Bergen asked about the nature of the reporting requirements for the franchisees. North replied that the Metro's reporting requirements had been tailored to compliment the reporting required by the DEQ at the state level.

Councilor McFarland asked why the processed soil cannot be used for growing food. Betts indicated that DEQ prohibited such use. He noted that the heating process that removes the petroleum-based contaminants also removes other organisms and nutrients needed for the soil to serve as a growing agent. Such organisms and nutrients would have to be reintroduced into the soil for it to be used to grow food.

Councilor Wyers asked if any potentially harmful materials would remain after the soil had been processed. Betts noted that all PCS is tested for other contaminants and if any hazardous wastes are found, the material is not accepted for processing. Wyers also asked the approximate capacity of the Pemco facility. Betts indicated that it can process at least 9,000 tons every three months.

Jeff Bachrach and Jeff Ward, representing Sonas, explained that the company has one facility in Florida and is proceeding through the permitting process in three other jurisdictions.

Councilor Wyers asked how the company's services are marketed. Bachrach noted that Sonas negotiates contracts on an individual basis with clients. The company promotes the quality of its process and its product.

Lex Johnson, representing Oregon Hydrocarbons, testified in opposition to the Sonas franchise. He noted that the Sonas is located only a quarter of a mile from the Oregon Hydrocarbons. He

expressed concern that the PCS processing marketplace is not fully developed and that as long as material can be taken to the landfill, Metro should not allow additional permanent facilities to be franchised. He indicated that he did not oppose the Pemco franchise because its equipment is mobile and therefore would appeal to a different segment of the market. Johnson noted the DEQ currently restricts processors from providing above-ground cleanup services, though Oregon Hydrocarbons will be requesting such authority.

Councilor McFarland noted that locating a facility in close proximity to another similar should not be damaging. She noted that there appears to be a great deal of PCS available for processing. Johnson expressed concern that, to date, such material has not been made available to existing processors.



METRO

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

Memorandum

To: Solid Waste Committee Members

From: John Houser, Council Analyst

Date: May 12, 1992

Re: Ordinance No. 92-453, For the Purpose of Granting a Franchise to Pemco, Inc. For the Purpose of Operating a Petroleum Contaminated Soil Processing Facility and Declaring an Emergency

Ordinance No. 92-454, For the Purpose of Granting a Franchise to Sonas Soil Resource Recovery of Oregon, Inc. For the Purpose of Operating a Petroleum Contaminated Soil Processing Facility and Declaring and Emergency

Ordinances No. 92-453, and No. 92-454 are scheduled to be considered by the Committee at the May 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.

Pemco and Sonas are the third and fourth 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.

Pemco is proposing to obtain a franchise for a facility that can be physically moved from one location to another. It appears that Pemco intends to contract with individual clients, process all available PCS from that client, and then move its equipment to another client's site. Initially the facility would be sited at BP Oil in Gresham. If the equipment is proposed to be moved to a new site, prior approval from the Council will be required. The staff report also indicates that Pemco intends to operate its equipment

throughout the western states.

Pemco has obtained the necessary permits from the city of Gresham. DEQ has given temporary oral permission (through June 30, 1992) to operate the facility at BP oil site.

Sonas intends to establish a permanent site in North Portland. Sonas has the necessary city of Portland and DEQ permits to operate its facility.

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.

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.

Issues and Questions

In reviewing the proposed ordinances, the committee may wish to address the following issues and questions:

General

- 1) What is the operating status of the two existing franchises? How much material have they processed? How much material have they rejected? What is the decontaminated soil being used for?
- 2) What was the bonding requirement for the initial two franchisees?
- 3) Do we have any estimate as to how much PCS is being disposed of in landfills? Is the department examining the potential of using Metro's flow control ordinance to specifically direct this material to franchised processors?
- 4) Does it appear that the charges at the existing PCS processing facilities are comparable to landfill disposal charges for PCS?

Pemco

- 1) Has Pemco operated PCS processing facilities in any other state or jurisdiction?
- 2) Has Pemco applied for the necessary DEQ permits for the period beginning July 1, 1992? When will these permits be received? Will Metro permit the facility to operate pending the receipt of these permits?
- 3) At approximately how many different sites in the Portland area does Pemco intend to operate its equipment? How frequently will the equipment be moved?
- 4) Does Pemco intend to operate the equipment at the site of an individual storage tank (such as a gas station or small business)?

Sonas

- 1) Has Sonas operated PCS processing facilities in any other state or jurisdiction?
- 2) The staff report notes that the facility has a capacity of 125,000/year. What amount of material does Sonas actually anticipate processing?



METRO

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

Memorandum

DATE: June 1, 1992
TO: Rena Cusma, Executive Officer
FROM: Paulette Allen, Clerk of the Council
RE: TRANSMITTAL OF ORDINANCE NOS. 92-453 AND 92-454

Attached for your consideration are true copies of the ordinances referenced above adopted by the Council on May 28, 1992.

If you wish to veto either or both of these ordinances, I must receive a signed and dated written veto message from you no later than 5:00 p.m., Thursday, June 4, 1992. 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, *Paulette Allen*, received this memo and true copies of Ordinance Nos 92-453 and 92-454 from the Clerk of the Council on 6-1-92.

ORD. MEM