

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING) RESOLUTION NO. 07-3769
OFFICER TO ISSUE A FINAL ORDER)
IMPOSING A CIVIL PENALTY ON DAN)
OBRIST EXCAVATION, INC., FOR) Introduced by Michael Jordan,
VIOLATION OF METRO CODE SECTIONS) Chief Operating Officer, with the
5.01.030(a) AND 5.01.045) concurrence of David Bragdon,
) Council President
)
)

WHEREAS, on July 14, 2006, the Director of the Metro Solid Waste and Recycling Department (“Director”) issued Notice of Violation No. NOV-155-06 to Dan Obrist Excavation, Inc., dba Dan Obrist Recycling (“Obrist”); and

WHEREAS, NOV-155-06 stated that the Director had found that on July 6, 2006, Obrist violated Metro Code Sections 5.01.030(a) and 5.01.045 by operating a solid waste facility within the Metro region without a Metro solid waste facility license, and imposed a civil penalty of \$500.00 for the violation; and

WHEREAS, included with NOV-155-06 was a contested case notice providing Obrist with an opportunity to have a hearing regarding the NOV; and

WHEREAS, Obrist submitted a timely request for a contested case hearing and such hearing was held before Metro Hearings Officer Robert J. Harris on September 6, 2006; and

WHEREAS, following the hearing the Hearings Officer issue a proposed order, a copy of which is attached as Exhibit A to this resolution, for the Metro Council’s consideration as required by Metro Code Section 2.05.035; and

WHEREAS, the proposed order concludes that Obrist violated the Metro Code as stated in NOV-155-06 and upholds the Director’s imposition of a civil penalty of \$500.00 for such violation; and

WHEREAS, in accordance with Metro Code Section 2.05.035, the Chief Operating Officer mailed a copy of the proposed order to Obrist and informed Obrist of the deadline for filing written exceptions to the proposed order; and

WHEREAS, Obrist did not file any exceptions to the proposed order; and

WHEREAS, the Chief Operating Officer has reviewed the proposed order and recommends that certain technical revisions be made, as provided in Exhibit B to this resolution, but otherwise concurs with the proposed order and recommends that the

Council authorize the Chief Operating Officer to issue a Final Order in substantially the form as that attached as Exhibit C to this resolution; and

WHEREAS, in accordance with Metro Code Section 2.05.035, the Metro Council has been provided with a copy of the record in this matter for its review as it considers this resolution; and


WHEREAS, the Council has considered the proposed order, the record in this matter, the exhibits attached to this resolution, and any exceptions raised to the proposed order; now therefore

BE IT RESOLVED that the Council revises the Proposed Order issued by Hearings Officer Robert J. Harris in the Matter of Metro NOV-155-06 issued to Dan Obrist Excavation, Inc., dba Dan Obrist Recycling, as provided in Exhibit B, and authorizes the Chief Operating Officer to issue a Final Order substantially similar to Exhibit C to this resolution.

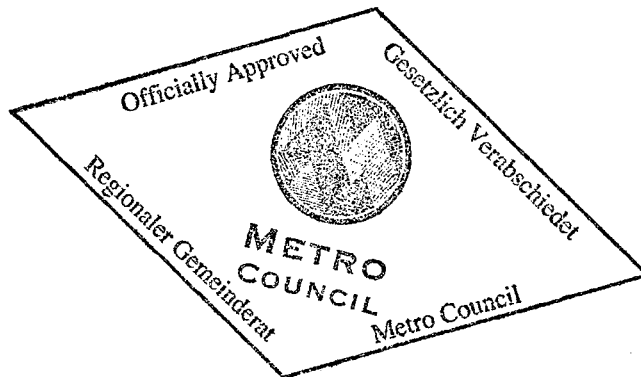
ADOPTED by the Metro Council this 25th day of January, 2007


David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney

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METRO CONTESTED CASE: NOTICE OF NONCOMPLIANCE 111-02

BEFORE ROBERT J. HARRIS HEARINGS OFFICER

In The Matter of Notice Of Violation)	
No. NOV-155-06)	
)	PROPOSED ORDER
Issued to)	FROM HEARING
)	
Dan Obrist Excavation Inc, dba,)	
Dan Obrist Recycling)	
)	
Respondent.)	
_____)	

BACKGROUND AND PROCEDURAL POSTURE

On July 14, 2006, Dan Obrist, Dan Obrist Excavation Inc., dba Dan Obrist Recycling (hereinafter Obrist) was issued Notice of Violation No. NOV-155-06. The Notice of Violation (hereinafter the NOV) was sent to Mr. James D. Church, 1001 SW 5th Avenue, Suite 1520, Portland, Oregon 97204. Also included in the NOV was a Contested Case Notice.

The Violation alleged that Dan Obrist Excavation Inc., dba Dan Obrist Recycling, violated Metro Code Chapters 5.01.030 and 5.01.045 by operating a Solid Waste Facility without a license of franchise and by accepting mixed non-putrescible waste at an unlicensed facility.

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1 Exhibit C: Finding of Violation No. NON 126-03 to Dan Obrist and Dan Obsit
2 Recycling dated January 5, 2004;

3 Exhibit D: Citation and Notice of Violation NOV -147-05 dated October 6, 2005 to
4 Dan Obrist and Dan Obrist Recycling; and

5 Exhibit E: Status of NON 126-03 and notice of Violation NOV-147-05 dated May
6 15, 2006.

7 **FINDINGS OF FACT**

8 1. Dan Obrist Excavation Inc. and Obrist Recycling (hereinafter Respondent) owns
9 property located at 4540 SE 174th Avenue, Portland Oregon (the site). The site is located
10 within the Jurisdiction of Metro.

11 2. Respondent is in the business of excavation demolition and or cleanup.

12 3. On January 5, 2004 Respondent was issued a Notice of Noncompliance #NON
13 126-03 for unlawful operation of a solid waste facility at the site without a license of franchise.
14 Metro agreed not to take further enforcement action regarding the processing of demolition
15 debris that was produced through Respondents own demolition business provided that
16 Respondent started the process of appropriate land use approval and Metro licensing of the
17 facility. The NOV also ordered Respondent to cease accepting demolition materials from third
18 parties.

19 4. On the following date Metro staff observed Respondent accepting mixed Solid
20 Waste from the public at the Site. August 30, and 31, 2005, September 1, 2, 6 and 7, 2005, the
21 solid waste accepted by Respondent on those dates included carpet, plastic buckets, fiberglass
22 panels, roofing, a mattress, household items and mixed putrescible waste.

23 5. On October 6, 2005, Metro issued a citation and Notice of Violation (NOV 147-
24 05) to Respondent for the activities observed as outlined in paragraph 4 above. Metro granted
25 Respondent an opportunity to cure the violations without imposition of a monetary penalty.

1 The conditions of that deferral are as set forth in Exhibit D. One of the conditions, or options,
2 granted to Respondent was to continue to process solid waste at the site if it submitted a solid
3 waste facility license application. Alternatively, Respondent would be required to cease
4 processing solid waste at the facility.

5 6. On May 15, 2006, Metro sent a Status letter to Respondent. In that letter, Metro
6 informed Respondent that as it had failed to submit a solid waste license application, and that
7 in the meantime, Metro had placed a moratorium on new applications for non-putrescible
8 waste processing facilities. That letter went on to notify Respondent that it could not accept
9 unsorted mixed loads of non-putrescible solid waste at the site. Including materials generated
10 from its own activities.

11 7. On July 6, 2006, Rob Smoot, Metro Inspector, went to the site. There he
12 observed construction demolition debris on site, as well as piles of sorted materials. Mr. Smoot
13 took numerous photographs of the demolition materials. See Exhibit A. The photos show
14 several piles of mixed solid waste materials, including but not limited to: wood, metal,
15 sheetrock, plastic, a couch, and carpet (see specifically photos numbers 10, 11 and 12 of
16 Exhibit A). Mr. Smoot also observed sorted piles of solid waste. Mr. Smoot talked to the site
17 manager, and confirmed that this solid waste was generated and delivered to the Site by
18 Respondents own demolition business activity where it was sorted for recovery.

19 8. Mr. Obrist testified that he had been operating his business for fourteen (14)
20 years and that he believed that 95% of the materials brought in are recycled or recyclable
21 materials. All hazardous materials have been removed prior to bringing the materials to the
22 site.

23 9. Mr. Obrist believed that he should be able to bring his own materials onto his
24 property to sort and dispose of or recycle.

25 /////

APPLICABLE LAW

Metro Code: Chapter 5.01.030: Provides in part:

Except as otherwise provided in this chapter, or in Metro Code Chapter 5.05, it shall be unlawful:

(a) For any person to establish, operate, maintain or expand a Solid Waste Facility or Disposal Site within Metro Without an appropriate License or Franchise from Metro.

Metro Code Chapter 5.01.010(uu): States

“Solid Waste Facility” means the land and buildings at which Solid Waste is received for Transfer, Resource Recovery and/or Processing, but excludes disposal

Metro Code Chapter 5.01.010(tt) defines “Solid Waste” , in part, as

...all Putrescible and Non-Putrescible Wastes, including, without limitation, garbage, rubbish, refuse, ashes, waste paper and Cardboard; discarded of abandoned vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid wand semi-Solid Wastes, dead animals, infectious waste as defined in ORS 459.386, petroleum-contaminated soils and other wastes...

Metro Code Chapter 5.01.045 states in part:

(a) A Metro Solid Waste License shall be required of the person owning or controlling a facility at which any of the following Activities are performed.

(1) Processing of Non-Putrescible Waste.

Metro Code Chapter 5.01.200 provides in part:

(a) Each violation of this chapter shall be punishable by a fine of not more than \$500. Each day a violation continues constitutes a separate violation....

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**ULTIMATE FINDINGS OF FACT
REASONING AND CONCLUSIONS OF LAW**

1
2
3 1. Dan Obrist Excavation Inc. and Obrist Recycling (hereinafter Respondent)
4 owns property located at 4540 SE 174th Avenue, Portland Oregon. (the site). The site is located
5 within the Jurisdiction of Metro.

6 2. Respondent is in the business of excavation demolition and or cleanup.

7 3. On or about July 6, 2006, Respondent brought to the site non-putrescible mixed
8 solid waste materials consisting of demolitions materials, including but not limited to: Wood,
9 concrete, metals, insulation, plastic, a couch, sheetrock, carpet and foam. Respondent then
10 sorted this mixed waste for recovery. Respondent’s site is a Solid Waste Facility as defined by
11 Metro Code.

12 4. The site is not licensed as a Solid Waste Facility.

13 5. On July 6, 2006, Respondent violated Metro Code Chapter 5.01.030(a) and
14 5.01.045 in that he operated a Solid Waste Facility without an appropriate License

ORDER

15
16 Based upon the above findings of fact, ultimate findings of fact, reasoning and
17 conclusions of law, IT IS HEREBY ORDERED THAT:

18 For Violation of Metro Code, Chapters 5.01.030 and 5.01.045 on July 6, 2006, a fine of
19 \$500 is imposed on Dan Obrist Excavation Inc dba Dan Obrist Recycling. Said fine is due and
20 payable ten days after this Order becomes Final.

21
22 _____
Robert J. Harris
Hearing Officer

23 Dated: December 6, 2006

24 **THIS ORDER MAY BE REVIEWED PURSUANT TO THOSE PROVISIONS AS SET**
25 **FORTH IN METRO CODE SECTION 2.05**

[NOTE: Print final copy for the Chief Operating Officer's signature on Metro letterhead.]

~~METRO CONTESTED CASE: NOTICE OF NONCOMPLIANCE 111-02~~

BEFORE ~~ROBERT J. HARRIS HEARINGS OFFICER~~ THE METRO COUNCIL

In The Matter of Notice Of Violation)	
No. NOV-155-06)	
Issued to)	PROPOSED-FINAL ORDER
)	FROM HEARING
Dan Obrist Excavation Inc, dba,)	
Dan Obrist Recycling)	
)	
Respondent.)	

BACKGROUND AND PROCEDURAL POSTURE

On July 14, 2006, Dan Obrist, Dan Obrist Excavation Inc., dba Dan Obrist Recycling (hereinafter Obrist) was issued Notice of Violation No. NOV-155-06. The Notice of Violation (hereinafter the NOV) was sent to Mr. James D. Church, 1001 SW 5th Avenue, Suite 1520, Portland, Oregon 97204. Also included in the NOV was a Contested Case Notice.

The Violation alleged that Dan Obrist Excavation Inc., dba Dan Obrist Recycling, violated Metro Code Chapters 5.01.030 and 5.01.045 by operating a Solid Waste Facility without a license or franchise and by accepting mixed non-putrescible waste at an unlicensed facility.

Within thirty days after the issuance and service of the NOV, Obrist requested a Contested Case Hearing. On July 25, 2006, Robert Harris, Hearings Officer for Metro sent to Obrist a Notice of Hearing, setting the hearing for August 2, 2006 at 9:30 a.m. Included in that notice were copies of the following documents: Findings of Facts regarding Metro

1 Violation No. NOV-155-06 dated July 14, 2006; Contested Case Notice dated July 14, 2006;
2 Explanation of Rights. That notice and the items attached thereto are all part of the record in
3 this matter.

4 On July 28, 2006, Obrist requested a reset of the Hearing. On July 31, 2006, the
5 Hearings Officer sent out a new Hearing Notice setting the hearing for September 6, 2006 at 9:30
6 a.m. to be held at the Metro offices located at 600 Northeast Grand Avenue, Portland, Oregon
7 97232. That notice is also part of the record in this matter.

8 On September 6, 2006 at 9:30 a.m. a hearing was held as scheduled. Present were: Paul
9 Garrahan, Senior Assistant Metro Counsel Attorney; Rob Smoot, Metro ~~investigator~~ Solid Waste
10 Facility Inspector; Steve Kraten, Metro Principal Solid Waste Planner; and Dan Obrist,
11 Respondent and principle of Dan Obrist Excavation, dba Dan Obrist Recycling. Also present
12 was Robert Harris, Metro Hearings eOfficer.

13
14 The Hearings Officer stated on the record that there had been no ex-parte
15 communications. The Hearings Officer recited on the record the hearing procedures, rights of
16 the parties, and the right to appeal.

17 Prior to taking testimony, all witnesses were put under oath.

18 EVIDENTIARY RULINGS

19 MetroETRO offered the following Exhibits into evidence, which were accepted without
20 objection and marked accordingly:

21 Exhibit A: Including the Inspection notes of Rob Smoot dated July 6th, 2006; 13
22 photos of the subject site (in two different formats);

23 Exhibit B: Full page photo of entrance to facility with a sign for “Dan Obrist
24 Recycling”;

25 Exhibit C: Finding of Violation No. NON 126-03 to Dan Obrist and Dan Obrist
Recycling dated January 5, 2004;

1 Exhibit D: Citation and Notice of Violation NOV -147-05 dated October 6, 2005 to
2 Dan Obrist and Dan Obrist Recycling; and

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4 15, 2006.

5 FINDINGS OF FACT

6 1. Dan Obrist Excavation Inc. and Obrist Recycling (hereinafter Respondent) owns
7 property located at 4540 SE 174th Avenue, Portland Oregon (the site). The site is located within
8 the Jurisdiction of Metro.

9 2. Respondent is in the business of excavation demolition and or cleanup.

10 3. On January 5, 2004 Respondent was issued a Notice of Noncompliance #NON
11 126-03 for unlawful operation of a solid waste facility at the site without a license or
12 franchise. Metro agreed not to take further enforcement action regarding the processing of
13 demolition debris that was produced through Respondent's own demolition business provided
14 that Respondent started the process of appropriate land use approval and Metro licensing of the
15 facility. The NOV also ordered Respondent to cease accepting demolition materials from third
16 parties.

17 4. On the following dates Metro staff observed Respondent accepting mixed
18 ~~S~~solid ~~W~~waste from the public at the ~~S~~site:- August 30, and 31, 2005, September 1, 2, 6 and 7,
19 2005. ~~T~~The solid waste accepted by Respondent on those dates included carpet, plastic
20 buckets, fiberglass panels, roofing, a mattress, household items and mixed putrescible waste.

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15 manager, and confirmed that this solid waste was generated and delivered to the ~~S~~site by
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18 years and that he believed that 95% of the materials brought in are recycled or recyclable
19 materials. All hazardous materials have been removed prior to bringing the materials to the
20 site.

21 9. Mr. Obrist believed that he should be able to bring his own materials onto his
22 property to sort and dispose of or recycle.

23 APPLICABLE LAW

24 Metro Code: ~~Chapter Section~~ 5.01.030: ~~P~~provides in part:

25 *Except as otherwise provided in this chapter, or in Metro Code Chapter
5.05, it shall be unlawful:*

1
2 (a) For any person to establish, operate, maintain or expand a
3 Solid Waste Facility or Disposal Site within Metro Without an
4 appropriate License or Franchise from Metro.

5 Metro Code ~~Chapter~~ Section 5.01.010(uu): ~~S~~states

6 “Solid Waste Facility” means the land and buildings at which
7 Solid Waste is received for Transfer, Resource Recovery and/or
8 Processing, but excludes disposal

9 Metro Code ~~Chapter~~ Section 5.01.010(tt) defines “Solid Waste,” in part, as

10 ...all Putrescible and Non-Putrescible Wastes, including, without
11 limitation, garbage, rubbish, refuse, ashes, waste paper and
12 Cardboard; discarded of abandoned vehicles or parts thereof;
13 sewage sludge, septic tank and cesspool pumpings or other sludge;
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15 discarded home and industrial appliances; asphalt, broken
16 concrete and bricks; manure, vegetable or animal solid wand
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18 ORS 459.386, petroleum-contaminated soils and other wastes...

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22 Activities are performed.

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not more than \$500. Each day a violation continues
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5 by Metro Code.

6 4. The site is not licensed as a ~~S~~solid ~~W~~waste ~~F~~facility.

7 5. On July 6, 2006, Respondent violated Metro Code ~~Chapter-Sections~~ 5.01.030(a)
8 and 5.01.045 in that he operated a ~~S~~solid ~~W~~waste ~~F~~facility without an appropriate ~~L~~icense.

9 **ORDER**

10 Based upon the above findings of fact, ultimate findings of fact, reasoning and
11 conclusions of law, IT IS HEREBY ORDERED THAT:

12 For ~~V~~yiolation of Metro Code, ~~Chapters-Sections~~ 5.01.030 and 5.01.045 on July 6,
13 2006, a ~~fine-civil penalty~~ of \$500 is imposed on Dan Obrist Excavation Inc. dba Dan Obrist
14 Recycling. Said ~~fine-civil penalty~~ is due and payable ten days after the date of this Final Order
15 is served on Respondent~~becomes Final~~.

16
17 Robert J. Harris~~Michael Jordan~~
18 Hearing Chief Operating Officer

19 Dated: ~~December 6, 2006~~ _____

20 **RIGHT OF APPEAL:**

21 **THIS FINAL ORDER MAY BE APPEALED BY WRIT OF REVIEW AS PROVIDED IN**
22 **ORS 34.010 THROUGH 34.100**~~REVIEWED PURSUANT TO THOSE PROVISIONS AS~~
23 **SET FORTH IN METRO CODE SECTION 2.05**

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25 ~~Waste\16ENFORC\31Obrist\Res 07-3769 Ex. B Techn edits to Proposed Order NOV 155-06 011107.doc~~

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BEFORE THE METRO COUNCIL

In The Matter of Notice Of Violation)	
No. NOV-155-06)	
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The Hearings Officer stated on the record that there had been no ex-parte communications. The Hearings Officer recited on the record the hearing procedures, rights of the parties, and the right to appeal.

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FINDINGS OF FACT

1. Dan Obrist Excavation Inc. and Obrist Recycling (hereinafter Respondent) owns property located at 4540 SE 174th Avenue, Portland Oregon (the site). The site is located within the Jurisdiction of Metro.

2. Respondent is in the business of excavation demolition and or cleanup.

3. On January 5, 2004 Respondent was issued a Notice of Noncompliance #NON 126-03 for unlawful operation of a solid waste facility at the site without a license or franchise. Metro agreed not to take further enforcement action regarding the processing of demolition debris that was produced through Respondent's own demolition business provided that Respondent started the process of appropriate land use approval and Metro licensing of the facility. The NOV also ordered Respondent to cease accepting demolition materials from third parties.

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APPLICABLE LAW

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2. Respondent is in the business of excavation demolition and or cleanup.

3. On or about July 6, 2006, Respondent brought to the site non-putrescible mixed solid waste materials consisting of demolitions materials, including but not limited to: wood, concrete, metals, insulation, plastic, a couch, sheetrock, carpet and foam. Respondent then sorted this mixed waste for recovery. Respondent's site is a solid waste facility as defined by Metro Code.

4. The site is not licensed as a solid waste facility.

5. On July 6, 2006, Respondent violated Metro Code Sections 5.01.030(a) and 5.01.045 in that he operated a solid waste facility without an appropriate license.

ORDER

Based upon the above findings of fact, ultimate findings of fact, reasoning and conclusions of law, IT IS HEREBY ORDERED THAT:

For violation of Metro Code Sections 5.01.030 and 5.01.045 on July 6, 2006, a civil penalty of \$500 is imposed on Dan Obrist Excavation Inc. dba Dan Obrist Recycling. Said civil penalty is due and payable ten days after the date of this Final Order is served on Respondent.

Michael Jordan
Chief Operating Officer

Dated: _____

RIGHT OF APPEAL:

THIS FINAL ORDER MAY BE APPEALED BY WRIT OF REVIEW AS PROVIDED IN ORS 34.010 THROUGH 34.100

HEARING RECORD
METRO NOTICE OF VIOLATION 155-06

INCLUDES:

- NOV-155-06, including Findings of Fact and Contested Case Notice;
- Hearing Notices; and
- Exhibits A through E.

NOTE: A copy of the audio recording of the hearing is available from Metro upon request (contact Barb Leslie at 503-797-1835).

Resolution No.
07-3769



METRO

July 14, 2006

Dan Obrist
Dan Obrist Excavation, Inc., dba Dan Obrist Recycling
6431 Jenne Rd.
Portland, OR 97236

Mr. James D. Church
1001 SW 5th Ave. Suite 1520
Portland, OR 97204

RE: Notice of Violation (No. NOV-155-06) and imposition of a monetary penalty for violations of Section 5.01.030(a) and Section 5.01.045(a)(1) of the Metro Code for continued operation of a solid waste facility without an appropriate license from Metro

Dear Mr. Obrist and Mr. Church:

On October 6, 2005, Dan Obrist Recycling ("DOR") was issued Notice of Violation ("NOV") No. NOV-147-05 for continuing to accept solid waste from the public and failing to abide by the conditions under which Metro had agreed to use enforcement discretion under a previous Notice of Noncompliance (NON-126-03) issued to DOR in January 2004.* I have conducted an investigation of the operations of DOR. As set forth below, based on this investigation, I now find that DOR is again violating the same provisions of the Metro Code that elicited NON-126-03 and NOV-147-05. DOR is hereby notified of my findings.

I. FACTS, APPLICABLE LICENSE AND CODE PROVISIONS

A. Facts

In NOV-147-05 issued on October 6, 2005, Metro provided DOR with an opportunity to "cure" its violations by ceasing to accept any solid waste other than source-separated, homogeneous loads of inert materials (such as concrete and stone), used lumber, clean wood waste and yard debris to be ground on-site into hog fuel, and source-separated metals. In addition, DOR was required either to cease accepting and processing mixed construction and demolition debris, including debris generated from DOR's own demolition projects or to submit a complete solid

* At the time the initial notice was issued, such notices were termed "Notices of Noncompliance" or "NONs." Metro now refers to such notices as "Notices of Violation" or "NOVs." There is no difference in meaning between the two terms.

waste facility license application to Metro by October 14, 2005. If DOR chose to submit a license application to Metro, then in the interim, DOR would have been allowed to continue to accept and process mixed construction and demolition debris generated from its own demolition projects until such time that Metro acted on its application.

DOR did not submit a complete application to Metro by October 14, 2005 and on February 2, 2006, the Metro Council enacted a moratorium on the acceptance of new applications for non-putrescible waste processing facilities.

In a letter to you dated May 15, 2006, I updated you on the status of NOV-147-05. The letter specifically stated, "DOR is presently prohibited from accepting solid waste, including construction and demolition waste, from any source, including demolition projects undertaken by your own demolition business." The letter also informed you that your facility would be periodically re-inspected by Metro staff to assure compliance and that if DOR failed to comply, Metro would impose monetary penalties of up to \$500 per incident of noncompliance (with each successive day of a continuing violation considered as a separate violation) and that Metro may seek an injunction to prohibit DOR from continuing prohibited activities.

During an inspection of DOR's facility located at 4540 SE 174th Avenue, in Portland, conducted on July 6, 2006, by Metro inspector Rob Smoot, the inspector again observed construction and demolition debris on site. These observations were documented in photographs and an inspection report. Conversations with the site manager and with you confirmed that the demolition debris was generated and delivered to DOR by your own demolition business.

B. Applicable License and Code Provisions and Finding of Violation

Section 5.01.030(a) of the Metro Code stipulates that it shall be unlawful for any person to establish, operate, or maintain a solid waste facility within the Metro region without an appropriate Metro license or franchise. "Solid Waste Facility" is defined in Code section 5.01.010(uu) to include the land and buildings used to receive solid waste for resource recovery and processing. "Solid Waste" is defined in Code section 5.01.010(tt) to specifically include demolition and construction waste. The activities being undertaken by DOR are not exempt under Code section 5.01.040. DOR is therefore in violation of section 5.01.030(a) of the Metro Code.

Section 5.01.045(a)(1) of the Metro Code stipulates that a Metro Solid Waste License shall be required of a person owning or controlling a facility that processes non-putrescible waste. DOR does not have a Metro Solid Waste License but continues to process non-putrescible waste (specifically, construction and demolition debris). DOR is therefore in violation of section 5.01.045(a)(1) of the Metro Code.

Code Section 5.01.200 stipulates that each violation of the chapter shall be punishable by a fine of not more than \$500, and that each day a violation continues is considered a separate violation.

II. IMPOSITION OF MONETARY PENALTY

The violations described above cannot be cured. In determining appropriate penalties for such violations, Metro examines the totality of the situation. In determining the appropriate penalty for these violations, I considered all of the factors described above including that this is not the first NOV issued to DOR for the same type of violation and that shortly before these violations were observed, DOR was specifically reminded of the prohibition on the acceptance of construction and demolition debris. Given these factors, I am imposing a penalty of \$500 in total for the violations documented during the June 6, 2006 inspection. Metro will continue to conduct follow-up inspections. Any additional violations will also be subject to fines of up to \$500 per violation with each day that prohibited material remains on site constituting a separate violation. Metro may also seek an injunction to prohibit DOR from continuing prohibited activities.

DOR has a right to request a hearing concerning this Notice of Violation and imposition of a monetary penalty. Formal contested case notice is provided with this letter. If DOR requests a hearing, it can be represented by legal counsel at such hearing if it so desires.

If you have any questions regarding these findings, please contact Steve Kraten at (503) 797-1678, or Roy Brower at (503) 797-1657, or have your attorney contact Paul Garrahan, Assistant Metro Attorney, at (503) 797-1661.

Sincerely,



Michael G. Heglund
Solid Waste & Recycling Director

MH:SK:mb

cc: Roy Brower, Regulatory Affairs Division Manager
Warren Johnson, Solid Waste Facility Inspector
Rob Smoot, Solid Waste Facility Inspector
Will Ennis, Solid Waste Facility Inspector
Steve Kraten, Solid Waste Principal Planner
Paul Garrahan, Assistant Metro Attorney
Kathleen Stokes, Portland Bureau of Development Services
Rebecca Esau, Portland Bureau of Development Services
Duane Altig, DEQ
Dave Thomsen, Multnomah County Health Department
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Queue

BEFORE THE METRO REGIONAL GOVERNMENT

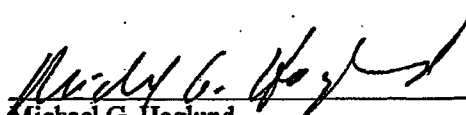
IN THE MATTER OF METRO NOTICE OF)
VIOLATION NO. NOV-155-06 AND) CONTESTED CASE
IMPOSITION OF A MONETARY PENALTY) NOTICE
ISSUED TO DAN OBRIST EXCAVATION,)
INC., dba DAN OBRIST RECYCLING FOR)
VIOLATIONS OF SECTIONS 5.01.030 AND)
5.01.045 OF THE METRO CODE)

TO: DAN OBRIST EXCAVATION, INC., dba DAN OBRIST RECYCLING, 6431 Jenne
Road, Portland, OR 97236

Pursuant to Metro Code § 2.05.005(c), Metro hereby provides Dan Obrist Recycling ("DOR") with contested case notice in the matter of the Solid Waste & Recycling Director's findings and imposition of a monetary penalty for the violations described in the Director's Notice of Violation No. NOV-155-06. Specifically, DOR violated Section 5.01.030(a) and Section 5.01.045(a)(1) of the Metro Code. A copy of the Director's Notice of Violation No. NOV-155-06 is being provided with this notice, and is incorporated herein by reference.

A contested case arises in this matter pursuant to Metro's authority under Article XI, Section 14 of the Oregon Constitution, the Metro Charter, ORS Chapter 268, including ORS 268.317, and Metro Code Chapters 2.05 and 5.01, including, specifically, Metro Code Sections 5.01.030, 5.01.045, 5.01.180 and 5.01.200. Pursuant to Metro Code Chapter 2.05, DOR has a right to request a hearing within 30 days of the date of the mailing of this notice. A hearing, if requested, would concern the citation and findings of the Director with regard to DOR's failure to adhere to Sections 5.01.030(a) and 5.01.045(a)(1) of the Metro Code. DOR can be represented by legal counsel at the hearing, if it so desires.

DATED the 14 day of July 2006.



Michael G. Hoglund
Metro, Solid Waste & Recycling Department Director

CERTIFICATE OF SERVICE


I hereby certify that I served the foregoing NOTICE OF CONTESTED CASE on the following:

Dan Obrist
Dan Obrist Excavation, Inc., dba Dan Obrist Recycling
6431 Jenne Rd.
Portland, OR 97236

and

James D. Church, registered agent for Dan Obrist Excavation, Inc.
1001 SW 5th Ave. Suite 1520
Portland, OR 97204

On July, 14 2006, by mailing to said individual a complete and correct copy thereof via certified mail, return receipt requested, contained in a sealed envelope, with postage prepaid, and deposited in the U.S. post office at Portland, Oregon.


Roy W. Brower
Regulatory Affairs Manager
Metro

Robert J. Harris • Attorney at Law

METRO Hearings Officer

165 S.E. 26th Avenue, Hillsboro, Oregon 97123 • Phone (503) 648-4777 • Fax (503) 648-0989

July 25, 2006

Dan Obrist
Dan Obrist Excavation, Inc., dba Dan Obrist Recycling
6431 Jenne Road
Portland, Oregon 97236

**RE: Notice of Violation No. NOV-155-06
Dan Obrist Recycling**

Hearing Date: August 2, 2006 at 9:30 a.m.

**PLACE: METRO
600 Northeast Grand Avenue
Portland, Oregon 97232**

COPY
06 JUL 28 AM 9:55
METRO
SW&R DEPT

At Respondent's request a Hearing has been set on the above referenced matter for August 2, 2006 at 9:30 a.m.. The hearing will be held on that date at Metro Offices, located at 600 Northeast Grand Avenue, Portland, Oregon 97232. This hearing will be conducted pursuant to the provisions of Metro Code Chapter 2.05.

Please read this notice and the enclosed documents carefully. Some or all of the documents will be made a part of the record.

The following documents are enclosed:

1. Findings of Facts, regarding Metro Violation No. NOV-155-06 and dated July 14, 2006;
2. Contested Case Notice dated July 14, 2006; and
3. Explanation of Rights.

If any parties, or witnesses is in need of an interpreter or if they have any special needs, you need to contact Barbara Leslie, Metro, at (503) 797-1835, to make arrangements prior to the hearing.

Very truly yours,

Robert J. Harris
Metro Hearings Officer

RJH:jah
Enclosures

cc: Steve Kraten, Principal Solid Waste Planner
Barb Leslie, Metro

Robert J. Harris • Attorney at Law

METRO Hearings Officer

165 S.E. 26th Avenue, Hillsboro, Oregon 97123 • Phone (503) 648-4777 • Fax (503) 648-0989

July 31, 2006

Dan Obrist
Dan Obrist Excavation, Inc., dba Dan Obrist Recycling
6431 Jenne Road
Portland, Oregon 97236

06 AUG - 10:31
METRO
SW&R DEPT
COPY

RE: NOTICE OF NEW HEARING DATE
Notice of Violation No. NOV-155-06
Dan Obrist Recycling

Hearing Date: September 6, 2006 at 9:30 a.m.
PLACE: METRO
600 Northeast Grand Avenue
Portland, Oregon 97232

At Respondent's request a Hearing has been set on the above referenced matter for August 2, 2006 at 9:30 a.m.. The hearing will be held on that date at Metro Offices, located at 600 Northeast Grand Avenue, Portland, Oregon 97232. This hearing will be conducted pursuant to the provisions of Metro Code Chapter 2.05.

Please read this notice and the enclosed documents carefully. Some or all of the documents will be made a part of the record.

If any parties, or witnesses is in need of an interpreter or if they have any special needs, you need to contact Barbara Leslie, Metro, at (503) 797-1835, to make arrangements prior to the hearing.

Very truly yours,

Robert J. Harris
Metro Hearings Officer

RJH:jah

cc: Steve Kraten, Principal Solid Waste Planner
Barb Leslie, Metro



METRO

Inspection Notes

-Exhibit A

(12)

Facility Name:	<u>Dan Obrist Recycling</u>	Date of Inspection:	<u>July 6, 2006</u>
Inspector:	<u>Rob Smoot</u>	Time of Inspection:	<u>16:00 to 16:45</u>
Weather Conditions:	<u>70° F., overcast, wind SSW @ 0-5mph</u>		

The inspector approached the subject site via Jenny Road from the south. The inspector parked across the street from the facility. The inspector did not observe any substantial amounts of litter or waste debris along the roadway as he approached the site nor did he notice any substantial malodors along that area.

The site entrance gate was open. The inspector sat in the vehicle and observed vehicles coming and going from the site. He was also able to observe some of the facility operators. At the time of arrival there were a couple of trucks unloading what appeared to be yard debris and construction waste (wood, cardboard, plastic wrap). Most vehicles entering the site were not covered. Most loads observed at the time of this inspection were yard debris.

The inspector left his vehicle across the street and walked into the site. The inspector greeted Mr. Johnny Schmitz (DOR employee that directs incoming loads). The inspector asked to observe the site and take photos; permission was granted.

The inspector took photos of waste recently deposited in front of stored material. The inspector asked if the lumber wrap, which is plastic (green in the photo), was being ground with wood. Mr. Schmitz said yes.

The inspector took photos of a large pile (30 plus cubic yards) of construction debris. The inspector asked the nature of the waste. Mr. Schmitz said that it was from demolition performed by Dan Obrist. The pile contained foam, plastic, sheetrock, roofing paper, insulation, glass, metal, etc.

There was a small amount of foam and carpet also stored on site. Mr. Schmitz said that it would be sent to Grabhorn.

The inspector observed a fair amount of non-wood type material in the ground hog fuel pile. A photo was taken to show this.

Mr. Schmitz was not aware of any complaints lodged against the facility. Mr. Obrist called Mr. Schmitz to have Mr. Schmitz ask the inspector to visit Mr. Obrist at his shop (located about a mile south of the facility, off Jenny rd.). The inspector informed Mr. Schmitz that there may not be time for that.

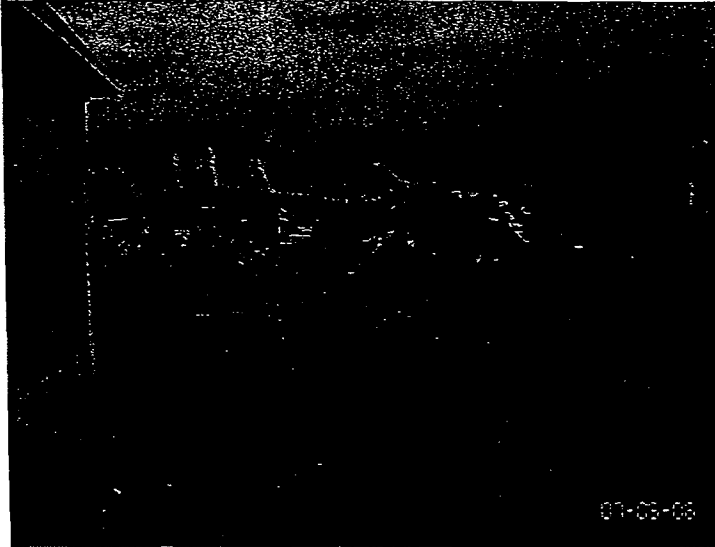
The inspector called Mr. Obrist on July 7, 2006 at 11:45am to inquire about the demolition debris that was observed on site. Mr. Obrist said that the material was to be ground as hog fuel. He said that they do not process the material on site.

Mr. Obrist said that he was working with an aid of one of the City Commissioners (Portland) on the plan for his perimeter wall. He also said that the Centennial School District is interested in the property for parking their busses.

13 photos were taken during the inspection.

End of Inspection Notes by Rob Smoot

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from site entrance

#1



siding material with lumber wrap, glue tubes, paper, plastic, etc. from one load.

#2



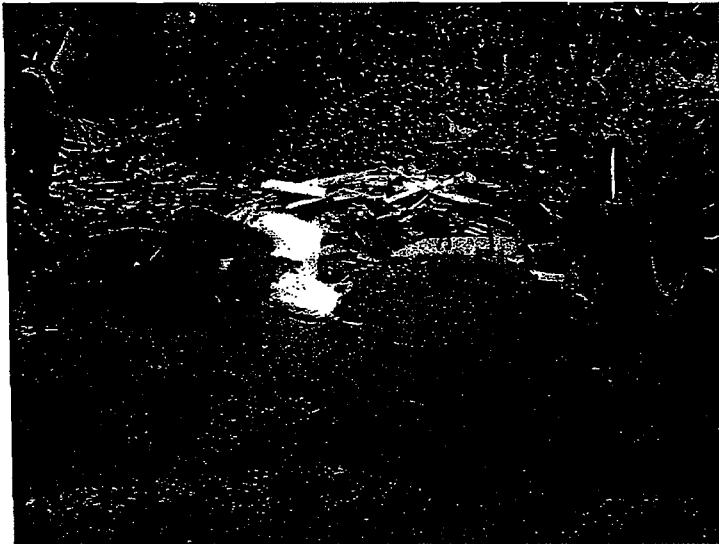
scrap aluminum at NE corner of site.

#3



Aluminum and firewood along eastside of site

#4



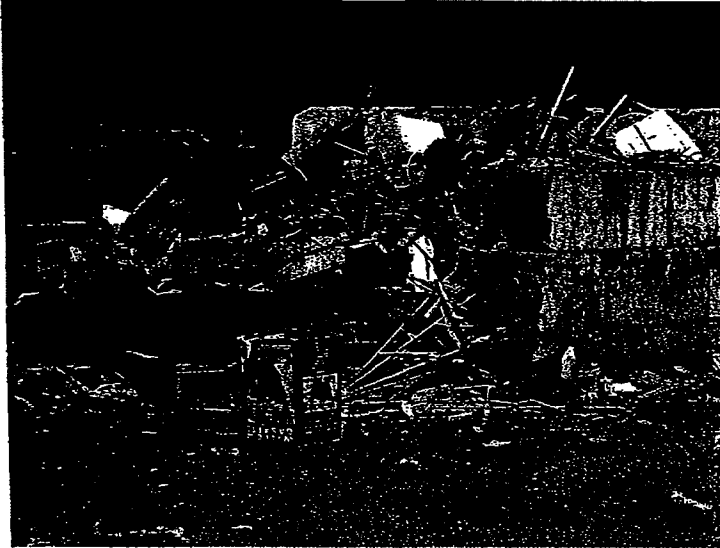
wider view of siding waste with yard debris pile in background

#5



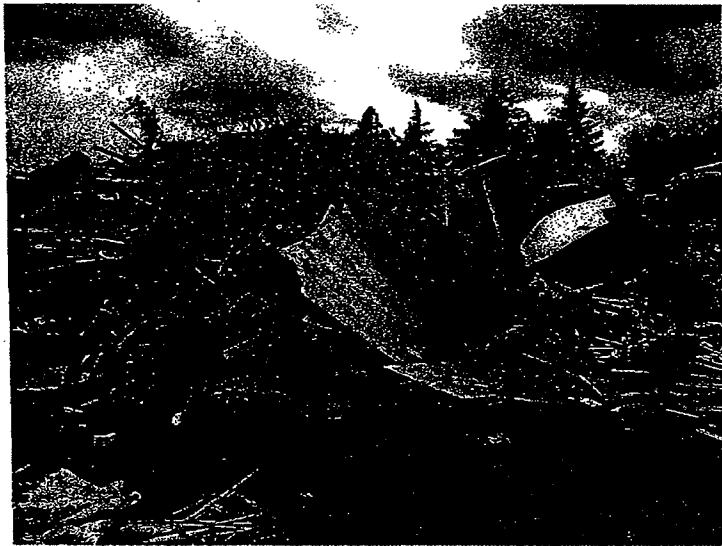
Demolition pile from 20 yards away

#6



Metals storage bunker

#7



wood and yard debris storage bunker

#8



rock crushing equipment in middle of sit
-e

#9



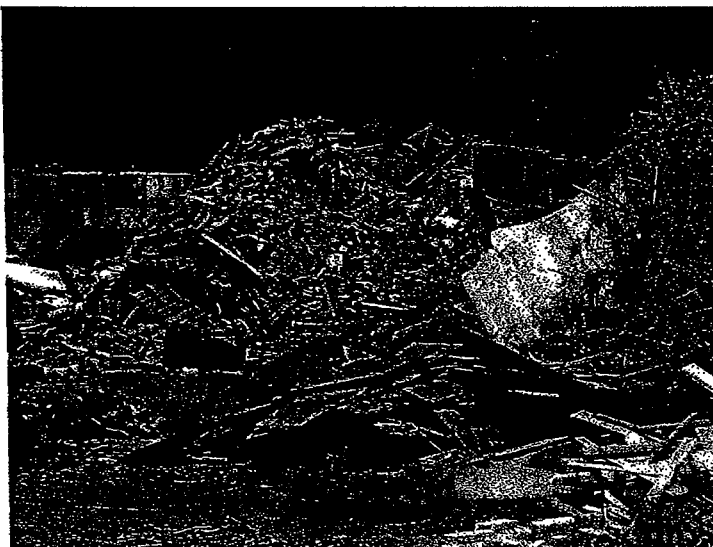
Another view of demolition debris with foam and carpet shown to left

10



different angle of demolition debris

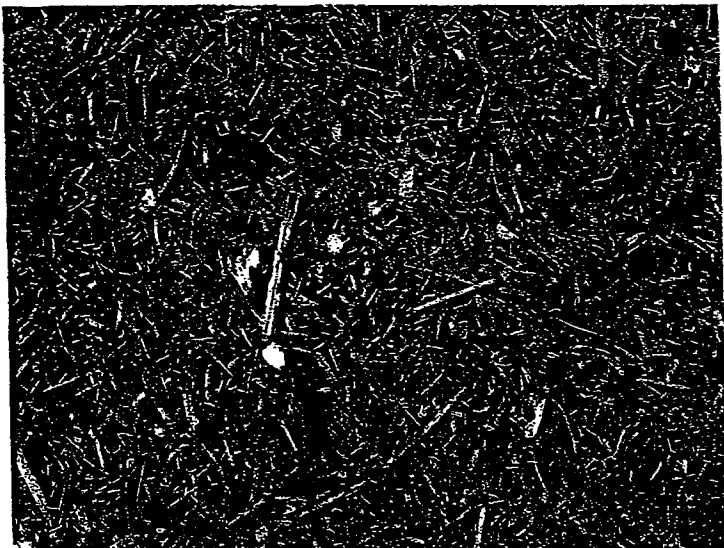
11



Demolition debris with better view of couch in foreground

12

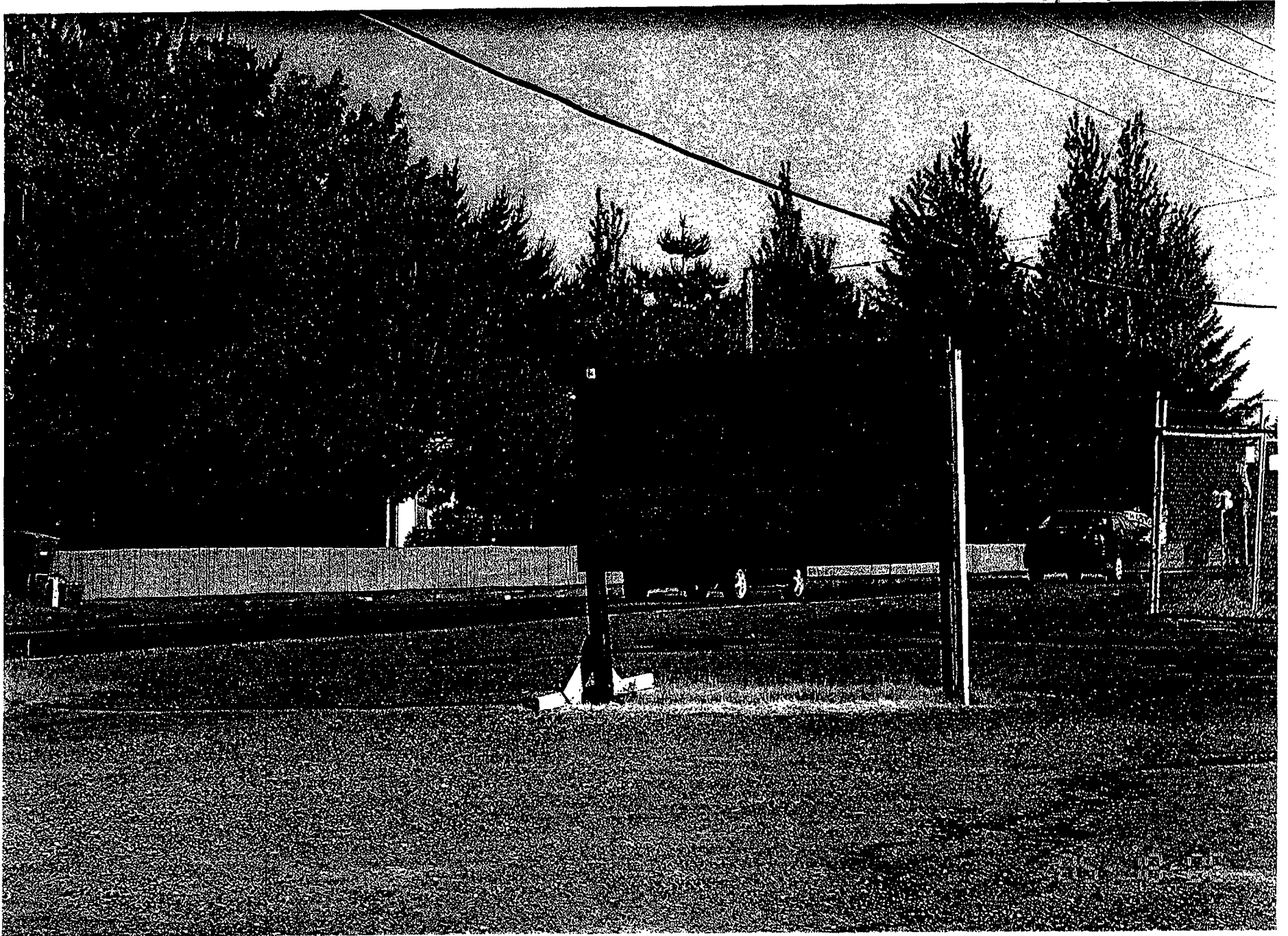
Obrist.07-06-06.RS



ground hog fuel

13

EX. B (14)





METRO

EXHIBIT C

January 5, 2004

Dan Obrist
Dan Obrist Recycling
6431 Jenne Rd.
Portland, OR 97236

RE: Finding of Violation for unauthorized material recovery operations at Dan Obrist Recycling (No. NON-126-03)

Dear Mr. Obrist:

Under Metro Code Sections 5.01.030(a) and 5.01.045(a)(1), it is unlawful to operate a solid waste facility or disposal site within the Metro region without a license or franchise. In addition, under Metro Code Section 5.01.030(c), it is unlawful to deliver or transport solid waste to any place other than a licensed or franchised solid waste facility or disposal site, or to an exempt facility as provided in Metro Code Section 5.01.040. Dan Obrist Recycling (DOR) operates both a demolition and waste hauling business and a solid waste sorting facility. The DOR facility, located at 4540 SE 74th Avenue, in Portland, is not an exempt facility and has not obtained a Metro solid waste facility license or franchise, yet is operating as a solid waste facility. In addition, the DOR demolition and waste hauling business has delivered or transported solid waste to the DOR facility. Therefore, as set forth below, I find that DOR has violated the Metro Code. This notice details DOR's violations.

I. BACKGROUND

On March 19, 2003 you participated in a license pre-application conference with Metro staff during which it was explained to you that material recovery activities may only be performed under the authority of a Metro solid waste facility license. This information was summarized in a follow-up letter to you dated March 25, 2003.

An application for a solid waste facility license requires proof of local land use approval. According to the City of Portland, you need to obtain conditional use approval from the City in order to operate a solid waste facility on your property. Although you have stated to Metro Regulatory Affairs staff that you believe your facility's activities are "grandfathered in," as documented in a progress letter dated October 29, 2003, the City of Portland has searched its files regarding your site and has found no evidence that confirms the existence of a right to a legal nonconforming use. Moreover, the listing of your facility in Metro's construction site recycling guide does not constitute or imply any kind of operating authority conferred by Metro or land use approval or authority conferred by a local government.

II. FACTS, APPLICABLE LICENSE AND CODE PROVISIONS

A. Facts

During a visit to DOR on October 28, 2003, Metro inspectors observed the facility running debris consisting of whole demolished houses over a picking line where wood and metal were being sorted from other materials for recovery. Although inert materials such as concrete and brick may be sorted and recovered at locations separate from the actual demolition sites at which they were generated without need of a Metro license, the processing of whole demolished buildings (or any other mixed solid waste) off-site may not be performed without a Metro license.

B. Applicable License and Code Provisions and Finding of Violation

Section 5.01.030(c) of the Metro Code stipulates that it shall be unlawful for any person to deliver or transport solid waste to any place other than a Metro-authorized solid waste facility or a disposal site that is exempt under Chapter 5.01. Metro staff have observed that DOR continues to deliver demolition debris from your project sites to the DOR facility. Such deliveries are in violation of section 5.01.030(c) of the Metro Code.

Sections 5.01.030(a) and 5.01.045(a)(1) of the Metro Code further stipulate that it shall be unlawful for any person to establish, operate, or maintain a solid waste facility within the Metro region without an appropriate Metro license or franchise. "Solid Waste Facility" is defined in Code section 5.01.010(tt) as the land and buildings used to receive solid waste for resource recovery and processing. "Solid Waste" is defined in Code section 5.01.010(ss) to specifically include demolition waste. The activities being undertaken by DOR are not exempt under Code section 5.01.040. DOR is therefore also in violation of section 5.01.030(a) of the Metro Code.

Code Section 5.01.200 stipulates that each violation of the chapter shall be punishable by a fine of not more than \$500.

III. OPPORTUNITY TO CURE

Metro considers these to be serious violations but will provide DOR with an opportunity to "cure" the violation without the imposition of a monetary penalty.

Metro will consider these violations "cured" only when DOR either permanently ceases accepting mixed construction and demolition debris and agrees to change its operating procedures accordingly or obtains a Metro solid waste facility license authorizing such activity. If DOR chooses to stop accepting such waste, please notify Metro of your decision in a letter. In such a case, Metro staff will continue to monitor your facility and Metro will pursue enforcement action against your facility for future violations of the Metro Code.

If you choose to pursue a solid waste facility license, in the interim period while you are seeking a license Metro will exercise its enforcement discretion to allow DOR to temporarily continue to process demolition debris from Dan Obrist demolition projects only, provided that DOR:

- does so in a manner that does not generate nuisance conditions;

- ceases accepting any demolition debris or other solid waste from any other demolition contractor or the public¹; and
- makes timely progress in acquiring local land use approval and a Metro solid waste facility license.

If DOR is denied local land use approval to operate a solid waste facility, then it must cease recovery operations from construction and demolition debris at the DOR facility as of the date of such denial. In such a case, DOR may choose to deliver its demolition debris to an authorized material recovery facility.

If DOR is granted local land use approval, then it must submit a complete solid waste facility license application to Metro within 30 days of the date its local land use approval is granted. In such a case, if DOR fails to submit a complete license application but continues to process construction or demolition debris at its facility, pursuant to Metro Code 5.01.200(g), Metro will seek civil penalties of up to \$500 per day for each day it continues such activities and may seek an injunction to prohibit DOR from continuing such activities.

In the event that DOR has not secured local land use approval to operate a solid waste facility by May 1, 2004, Metro will reevaluate its decision to exercise enforcement discretion in this matter, will determine whether it believes DOR is continuing to make timely progress toward acquiring local land use approval and a solid waste facility license, and will inform DOR as to whether Metro will continue to exercise enforcement discretion in this matter.

If you have any questions regarding these findings, please contact Steve Kraten at (503) 797-1678, or have your attorney contact Paul Garrahan, Assistant Metro Attorney, at (503) 797-1661.

Sincerely,



Michael Heglund
Metro Solid Waste & Recycling Dept. Director

SK/MJ:bjl

cc: Michael Jordan, Chief Operating Officer
Roy Brower, Regulatory Affairs Division Manager
Steve Kraten, Principal Solid Waste Planner
Paul Garrahan, Assistant Metro Attorney
Michelle Seward, Senior Planner, Portland Bureau of Development Services
Dave Kunz, DEQ

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¹ If DOR accepts any demolition debris or other solid waste from the public, then Metro will consider such acts as additional violations of the Metro Code.



METRO

Exhibit D

October 6, 2005

Dan Obrist
Dan Obrist Recycling
6431 Jenne Rd.
Portland, OR 97236

RE: Citation and Notice of Violation for acceptance of unauthorized solid waste at Dan Obrist Recycling (NOV-147-05)

Dear Mr. Obrist:

Dan Obrist Recycling ("DOR") has continued to accept solid waste from the public and therefore has failed to abide by the conditions under which Metro had agreed to use enforcement discretion under a Notice of Violation issued to DOR in January 2004. Therefore, as set forth below, I find that DOR is again in violation of the Metro Code. This notice is to serve as a citation that details DOR's continuing violations.

I. BACKGROUND

On January 5, 2004, DOR was issued Notice of Noncompliance # NON-126-03 (the "NON") for unlawfully operating a solid waste facility at 4540 SE 174th Avenue, in Portland without a license or franchise. The Notice stated that Metro would use enforcement discretion and not take further enforcement action regarding continued processing of demolition debris generated by your own demolition business provided that you made steady progress toward obtaining local land use approval and a Metro solid waste facility license. The NON also ordered DOR to cease accepting solid waste from any other demolition contractor and the public.

DOR was specifically warned in NON-126-03 that if it accepted any demolition debris or other solid waste from the public, Metro would consider such acts as additional violations of the Metro Code.

II. FACTS, APPLICABLE LICENSE AND CODE PROVISIONS

A. Facts

Metro staff observed DOR accepting mixed solid waste from the public at the DOR facility on August 30 and 31, and September 1, 2, 6, and 7, 2005. These observations were documented in inspection reports and photographs. Multnomah County Health Department staff

made similar observations during an inspection of the facility on August 29, 2005. County staff's observations were also documented in an inspection report and photographs. Solid waste observed at the facility during the above mentioned dates included carpet, plastic buckets, fiberglass panels, roofing, a mattress, household items, and mixed putrescible waste.

B. Applicable License and Code Provisions and Finding of Violation

Sections 5.01.030(a) and 5.01.045(a)(1) of the Metro Code stipulate that it shall be unlawful for any person to establish, operate, or maintain a solid waste facility within the Metro region without an appropriate Metro license or franchise. "Solid Waste Facility" is defined in Code section 5.01.010(tt) as the land and buildings used to receive solid waste for resource recovery and processing. "Solid Waste" is defined in Code section 5.01.010(ss) to specifically include demolition waste. The activities being undertaken by DOR are not exempt under Code section 5.01.040. I therefore find that DOR is engaged in continuing violations of sections 5.01.030(a) and 5.01.045(a)(1) of the Metro Code.

Code Section 5.01.200 stipulates that each violation of the chapter shall be punishable by a fine of not more than \$500, and that each day a violation continues constitutes a separate violation subject to such a fine.

III. OPPORTUNITY TO CURE

Metro will provide DOR with an opportunity to "cure" the current violations without the imposition of a monetary penalty. Metro will consider these current violations "cured" only if DOR:

1. Immediately ceases accepting all solid waste other than source-separated, homogeneous loads of inert materials (such as concrete and stone), used lumber, clean wood waste and yard debris to be ground on-site into hog fuel, and source-separated metals, and
2. Either
 - a. Immediately ceases accepting and processing mixed construction and demolition debris generated from DOR's own demolition projects and informs Metro in writing no later than October 14, 2005, that DOR has ceased accepting and processing such waste and will not accept and process such waste in the future; or
 - b. Submits a complete solid waste facility license application to Metro by October 14, 2005. If DOR chooses to submit a license application to Metro, then, in the interim, DOR may continue to accept and process mixed construction and demolition debris generated from its own demolition projects. However, with respect to such mixed construction and demolition debris, DOR must provide documentation of the origin of loads upon Metro's request and, if no documentation is provided, we will presume that such waste originated from other persons and will consider that a failure to cure this violation. We note that, if you file a license application, Metro will only consider authorizing activities for which

your application includes written local land use approval (see below for additional information regarding your land use approval).

DOR will be re-inspected by Metro staff to assure compliance. If DOR fails to comply, Metro will impose monetary penalties of up to \$500 per day of noncompliance and may seek an injunction to prohibit DOR from continuing such activities. Please keep in mind also that when evaluating a solid waste facility license application, one of the factors Metro considers is the applicant's compliance history.

IV. LAND USE APPROVAL

DOR has recently obtained a land use decision from the City of Portland approving operation of a "recycling facility for building materials and used concrete and a manufacturing use that creates hog fuel from wood and yard debris," provided that DOR meets certain specified conditions. The City's written decision authorizes DOR to continue to conduct activities of the type it has pursued at the site for a number of years. However, the City's decision does not include authority to conduct expanded material recovery from mixed waste such as you described during your Metro license pre-application conference on July 28, 2005. Such land use authority must be provided to Metro in the form of a Land Use Compatibility Statement (LUCS) signed by an appropriate City representative before Metro will issue a solid waste facility license to DOR. The LUCS must clearly and unambiguously authorize DOR to process mixed non-putrescible solid waste in order to be considered a valid land use approval for the type of facility authorization you have indicated that you intend to seek from Metro. Your application will not be deemed "complete" without such a LUCS.

A Metro license is not required for a facility that accepts only materials that have been separated from solid waste at the site of generation. If you have any questions about this, please call Steve Kraten at (503) 797-1678.

Sincerely,



Michael G. Høglund
Solid Waste & Recycling Director

MH/SK:bjl

cc: Roy Brower, Regulatory Affairs Division Manager
Warren Johnson, Solid Waste Facility Inspector
Paul Garrahan, Assistant Metro Attorney
Kathleen Stokes, Portland Bureau of Development Services
Rebecca Esau, Portland Bureau of Development Services
Duane Altig, DEQ
Dave Thomsen, Multnomah County Health Department



METRO

Exhibit E

May 15, 2006

Dan Obrist
Dan Obrist Recycling
6431 Jenne Rd.
Portland, OR 97236

RE: Status of Notice of Noncompliance number NON-126-03 and Notice of Violation number NOV-147-05 issued to Dan Obrist Recycling for acceptance of unauthorized solid waste

Dear Mr. Obrist:

On October 6, 2005, Dan Obrist Recycling ("DOR") was issued Notice of Violation ("NOV") No. NOV-147-05 for continuing to accept solid waste from the public and failing to abide by the conditions under which Metro had agreed to use enforcement discretion under a previous Notice of Noncompliance (NON-126-03) issued to DOR in January 2004.* The purpose of this letter is to clarify the current status of DOR as regards these notices.

BACKGROUND

In NOV-147-05 issued on October 6, 2005, Metro provided DOR with an opportunity to "cure" its violations by ceasing to accept any solid waste other than source-separated, homogeneous loads of inert materials (such as concrete and stone), used lumber, clean wood waste and yard debris to be ground on-site into hog fuel, and source-separated metals. In addition, DOR was required either to cease accepting and processing mixed construction and demolition debris, including debris generated from DOR's own demolition projects or to submit a complete solid waste facility license application to Metro by October 14, 2005. If DOR chose to submit a license application to Metro, then in the interim, DOR would have been allowed to continue to accept and process mixed construction and demolition debris generated from its own demolition projects, until such time that Metro acted on its application.

DOR initially chose the option of pursuing a Metro application and continuing to accept and process mixed construction and demolition debris generated from its own demolition projects.

* At the time the initial notice was issued, such notices were termed "Notices of Noncompliance" or "NONs." Later, such notices came to be called "Notices of Violation" or "NOVs." There is no difference in meaning between the two terms.

However, DOR did not submit a complete application to Metro by October 14, 2005 and on February 2, 2006, the Metro Council enacted a moratorium on the acceptance of new applications for non-putrescible waste processing facilities.

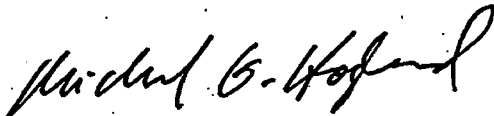
CURRENT STATUS

Until such time as the moratorium is lifted and DOR completes its application and obtains a Metro solid waste facility license, DOR does not have authority to accept solid waste. "Solid Waste" is defined in Metro Code section 5.01.010(ss) to specifically include demolition waste. Thus, DOR is presently prohibited from accepting solid waste, including construction and demolition waste, from any source, including demolition projects undertaken by your own demolition business.

A Metro license is not required for a facility that accepts only materials that have been separated from solid waste at the site of generation. Such materials would include source-separated, homogeneous loads of inert materials (such as concrete and stone), used lumber, clean wood waste and yard debris to be ground on-site into hog fuel, and metals. Such materials, however, may not be mixed in a single load—any load that requires processing at your facility to separate recoverable materials is not authorized. DOR may remove contaminants from any source-separated, homogeneous loads, provided that such contaminants are not present in more than trivial amounts. To repeat, DOR may not accept any loads of material that require sorting, even if the different components of a load are all recyclable.

DOR will be periodically re-inspected by Metro staff to assure compliance. If DOR remains in compliance for a period of six months following the date of this letter, then Metro will deem the existing NOV to be cured. If DOR fails to comply, Metro will impose monetary penalties of up to \$500 per incident of noncompliance (and each successive day of a continuing violation is a separate violation) and may seek an injunction to prohibit DOR from continuing prohibited activities. If you have any questions about this, please call Steve Kraten at (503) 797-1678.

Sincerely,



Michael G. Heglund
Solid Waste & Recycling Director

SK/MH:bj

cc: Roy Brower, Regulatory Affairs Division Manager
Warren Johnson, Solid Waste Facility Inspector
Steve Kraten, Solid Waste Principal Planner
Paul Garrahan, Assistant Metro Attorney
Kathleen Stokes, Portland Bureau of Development Services
Rebecca Esau, Portland Bureau of Development Services
Duane Altig, DEQ
Dave Thomsen, Multnomah County Health Department

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