

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING THE ) RESOLUTION NO. 07-3862A  
HEARINGS OFFICER'S PROPOSED ORDER )  
REGARDING METRO'S NOTICE OF VIOLATION )  
162-06 ISSUED TO USA GENERAL ) Introduced by Chief Operating Officer  
CONTRACTORS, LLC AND AUTHORIZING THE ) Michael J. Jordan, with the concurrence of  
CHIEF OPERATING OFFICER TO ISSUE A ) Council President David Bragdon  
FINAL ORDER )

WHEREAS, the Metro Chief Operating Officer initiated an enforcement action against USA General Contractors, LLC ("the Respondent") alleging that from January 1, 2006, through August 31, 2006, the Respondent avoided paying Metro excise tax and regional system fees on solid waste generated within Metro's boundaries;

WHEREAS, the Metro Chief Operating Officer sought to collect the taxes that the Respondent owed to Metro and to impose a civil penalty for the Respondent's knowing use of the Riverbend Landfill, a non-system facility, without a non-system license and knowing avoidance of Metro fees and taxes;

WHEREAS, the Respondent requested a contested case hearing;

WHEREAS, a hearing on the matter was held on December 6, 2006, before Metro Hearings Officer Robert J. Harris;

WHEREAS, on July 20, 2007, the Hearings Officer issued a proposed order (attached as Exhibit A) requiring the Respondent to pay to Metro \$107,359.85 in excise taxes, penalties, and interest;

WHEREAS, pursuant to Metro Code 2.05.035(a), the Hearings Officer prepared and submitted a proposed order, together with the record compiled in the hearing, to the Metro Council;

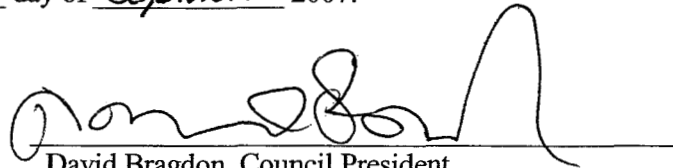
WHEREAS, the Respondent filed written exceptions to the Hearings Officer's proposed order (attached as Exhibit B) and Metro filed written exceptions to the Hearings Officer's proposed order (attached as Exhibit C);

WHEREAS, Metro Code 2.05.045(b) provides that the Metro Council shall (1) adopt the Hearings Officer's proposed order; (2) revise or replace the findings of fact or conclusions of law in the order; or (3) remand the matter to the Hearings Officer; and

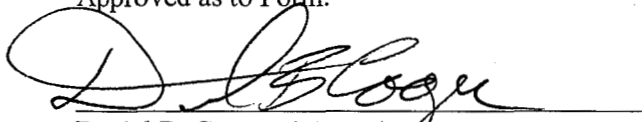
WHEREAS, the Metro Council has considered the proposed order and the parties' exceptions as required by the Metro Code; now therefore

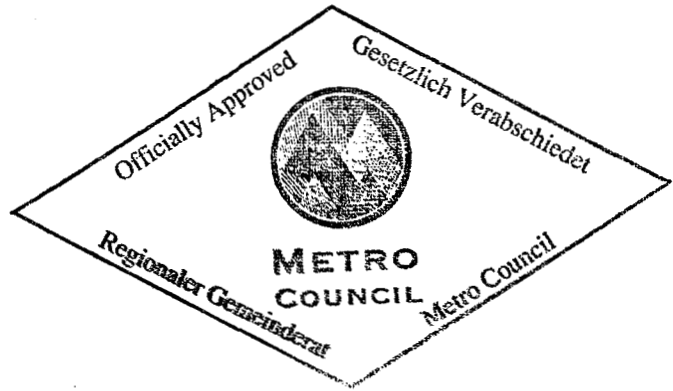
BE IT RESOLVED that the Metro Council adopts the Proposed Order from Hearing issued by Hearings Officer Robert J. Harris in Metro Contested Case: Notice of Violation 162-06 in the Matter of Notice of Violation NOV 162-06 issued to USA General Contractors, LLC, as revised by the exceptions filed by Metro (Exhibit C) and by the Metro Council at the Council meeting on September 6, 2007, and directs the Chief Operating Officer to issue a final order substantially similar to the proposed order as so revised.

ADOPTED by the Metro Council this 6<sup>th</sup> day of September 2007.

  
David Bragdon, Council President

Approved as to Form:

  
Daniel B. Cooper, Metro Attorney



BEFORE THE METRO COUNCIL

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ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_ 2007.

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David Bragdon, Council President

Approved as to Form:

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Daniel B. Cooper, Metro Attorney

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METRO ILLEGAL DUMPING ORDINANCE

BEFORE ROBERT J. HARRIS HEARINGS OFFICER

In The Matter of Notice of Violation NOV-162-06:	)	PROPOSED AND FINAL ORDER FROM HEARING
Issued to	)	
Herme Rivas, dba USA General Contractors, LLC,	)	
Respondent.	)	

On September 29, 2006, Metro issued A Notice of Violation and Notice of Assessment of Civil Penalty as case number NOV-162-616 to Respondent Herme Rivas dba USA General Contractors, LLC (Respondents herein).

Respondent was given a notice of contested case allowing thirty (30) days from the date of mailing to Respondent to request a contested case hearing. Respondent filed a request for hearing in a timely manner on October 6, 2006, through his attorney C. David Hall.

Respondent also filed a Petition for Redemption and Refund.

On October 30, 2006, the Hearings Officer sent a notice of Hearing to Metro and to Respondent through his attorney Mr. Hall stating that a Contested Case Hearing would be held on December 6, 2006 at the Metro offices located at 600 Northeast Grand Avenue, Portland, Oregon 97232.

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1 Included in that Notice of Hearing were copies of:

- 2 1. Findings of Facts, regarding Metro Citation No NOV-162-6, dated September  
3 29, 2006;
- 4 2. Finding of Violation and Notice of Imposition of Penalty, dated September 29,  
5 2006; and
- 6 3. Explanation of Rights.

7 On December 6, 2006, at the Metro Offices in Portland, Oregon the hearing was held.  
8 Present were: Representing Metro Paul Garrahan, Metro Assistant Counsel. Present for  
9 Respondent were Herme Rivas and C. David Hall, attorney.

10 The Hearings Officer, Robert Harris, stated on the record that there had been no ex-parte  
11 communications. The parties acknowledged on the record that they understood the rights and  
12 procedures, and waived their reading.

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

14 **EVIDENTIARY RULINGS**

15 **Uncontested Exhibits:** The Hearings Officer accepted documents and photos  
16 during the Hearing. Based on the evidence offered at the hearing and the records and evidence  
17 admitted prior to the close of record, the Hearings Officer made the following a part of the  
18 Record:

19 **METRO EXHIBITS:**

20 <u>Exhibit Number</u>	<u>Exhibit</u>
21 1	Metro Solid Waste Enforcement Unit Special Report 06-0380 22 dated August 30, 2006, authored by Detective Michael Gates
23 2	Metro Solid Waste Enforcement Unit Special Report 06-0380, 24 Undated
25 3	Map of Metro Jurisdiction
	4 Waste Management Ticket #466420

- 1           5           Waste Management Ticket #472607
- 2           6           Waste Management Ticket #473472
- 3           7           Waste Management Ticket #473832
- 4           8           Photo dated April 26, 2006
- 5           9           Waste Management Ticket #475033
- 6           10          Waste Management Ticket #485419
- 7           11          Photo dated June 26, 2006

8  
9 Licensee offered no exhibits.

10 The Hearings Officer made the following Exhibits a part of the record:

<u>Exhibit Number</u>	<u>Exhibit</u>
11           HO-1	Letter from Metro Dated December 11, 2006
12           HO-2	Letter from Respondents attorney dated December 12, 2006

13  
14       **Contested Exhibits:** At the close of the Hearing, Respondent raised an objection to  
15 making the following Exhibits a part of the Record.

- 16           12           Finding of Violation and Notice of Assessment of Penalties by  
Metro dated December 27, 2005
- 17           13           Application for Non System License, dated March 10, 2006
- 18           14           Letter from Metro to Riverbend Landfill regarding Transaction  
19           Records for USA General Contractors and Avila Drywall, dated  
20           August 29, 2006
- 21           15           Spreadsheet Prepared by Metro

22       Respondent argues that Metro never formally offered exhibits 12 though 15 to the  
23       Hearings officer as part of the record. Metro argues that it solicited testimony about these  
24       exhibits, that they are reliable and therefore admissible under Metro Code Section 2.05.030(a)  
25       and that there are no magic words necessary to make exhibits a part of the record.

1 Respondent argued that he did not cross examine Metro witnesses on these exhibits  
2 because they were never offered into evidence. He also argues that there is a formality  
3 necessary to offer exhibits and make them a part of the record.

4 The Hearings Officer took the objection under advisement. Subsequently, the Hearings  
5 Officer received written arguments related to the admissibility of Exhibits 12 through 15  
6 (letters now marked and made a part of the Record as HO-1 and HO-2).

7 I find that as a matter of law, absent some other rule, an exhibit must be formally  
8 offered into evidence before it can be made a part of the record. It is at that point that an  
9 adverse party can raise objections to foundation or reliability of the proffered evidence.  
10 Therefore, absent some other substantive or procedural rule, Exhibits 12 through 15 cannot be  
11 made a part of the record.

12 Exhibits 12 and 13: Mr. Kraten and Herme Rivas both testified that Exhibits 12 and  
13 13 were sent, received and are accurate, so the contents of these two documents is part of the  
14 record. However I find no alternative substantive or procedural rule that would allow me to  
15 make these documents themselves exhibits absent them being offered at the time of the  
16 hearing. Therefore Exhibits 12 and 13 are excluded (It is possible that these documents, being  
17 public records of action taken By Metro, could arguable be admissible through a form of  
18 Judicial Notice, which is also recognized in the Oregon Administrative Procedures Act,  
19 however, I find no need to make that decision as the material facts set forth in Exhibits 12 and  
20 13 were testified to by Mr. Kraten and confirmed by Respondent in his own testimony).

21 Exhibit 14: Again Mr. Kraten testified about the contents, and testified about the  
22 number of loads and tons Riverbend reported Respondent brought to their facility each month  
23 from January to August 2006. However, the actual email exchanges were not offered into  
24 evidence and I find no alternative legal or procedural rule that would allow Metro to offer this  
25 document after the hearing was closed. Therefore Exhibit 14 is excluded. To the extent the



1 Communications in Exhibit 14 contain anything that Mr. Kraten did not testify about, that  
2 information is not a part of the record and will not be considered.

3 I want to point out that while exhibits 12, 13 and 14 are excluded, Mr. Kraten's  
4 testimony is still a part of the record. Metro Code 2.05.030(c) provides that "*All offered*  
5 *evidence not objected to will be received by the Hearings Officer ...*". Respondent did not  
6 object to Mr. Kraten's verbal testimony. If Respondent wished to challenge that testimony  
7 based on hearsay or foundation, he could have done so. He did not. It is admitted. There was  
8 no requirement that Metro even offer exhibits buttressing Mr. Kraten's testimony and the fact  
9 that they tried, yet failed to admit exhibits that may have supported Mr. Kraten's testimony,  
10 does not mean that the testimony itself should be stricken.

11 Exhibit 15: I see this Exhibit as being different in kind and it is admissible.

12 After Mr. Kraten testified about the amount of loads and tons that Riverbend reported  
13 that Respondent took to their landfill from January to August 2006, he testified about how  
14 much excise tax and system fees would have been paid if all these loads were subject to those  
15 assessments, and what the regulatory penalty and applicable interest would have been.

16 Exhibit 15 is a detailed calculation of these assessments and was used by the  
17 Respondent, the Hearings Officer and Mr. Kraten to follow Metro's calculation of these  
18 amounts, which calculations were testified to in detail. These calculations were not challenged  
19 by Respondent.

20 I find that Exhibit 15 is a written summary of the potential damages that Respondent  
21 may be liable for should the fact finder find in favor of Metro's theory. It presents no new  
22 evidence. It is taken to a Jury deliberation form that would be produced by a party in a civil  
23 damages action. Therefore it is admissible and made a part of the record for the purpose of  
24 calculation of any Taxes, Fees, Penalties or Interest that Respondent would have owed under  
25 Metro's theory of the case.

1 **ISSUES**

2 Did Respondent take solid waste originating within the jurisdiction of Metro and  
3 dispose of it outside the Metro jurisdiction at a non system facility without paying applicable  
4 Fees and Taxes, in violation of Metro Code Section 5.02.045 and 7.01.020?

5 If there is a violation, on how many occasions did the Respondent violate the applicable  
6 code sections and what was the total tonnage of Metro waste disposed of at a non-licensed  
7 facility?

8 For each violation of violations proved, what is the appropriate recovery of unpaid fees  
9 and taxes, should there be a penalty imposed, Should interest be imposed, and what should be the  
10 appropriate penalty for the violation or violations?

11 **APPLICABLE LAW**

- 12 1. Metro Code, Section 5.05.025: Regarding Disposal of Metro Generated Solid
- 13 Waste
- 14 2. Metro Code Section 5.05.070(a) and (b): Civil Penalties
- 15 3. Metro Code Section 7.01.020: Tax Imposed
- 16 4. Metro Code Section 7.01.080(a): Penalties
- 17 5. Metro Code Section 7.01.080(b): Finance Charges
- 18 6. Metro Code Section 7.01.090(b): Taxes due and payable

19 **FINDINGS OF FACT**

20 1. Herme Rivas is the owner of USA General Contractors, LLC (Herme Rivas and  
21 the LLC are hereinafter referred to as Respondent), which is in the business of cleaning up the  
22 construction debris, mainly drywall, from home and small residential construction sites and  
23 disposing of it. Construction companies hire Respondent as an independent contractor and pay it  
24 based on the total square feet of the structure cleaned.

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1           2.       Some of Respondent's job sites are within the jurisdiction of Metro, and some are  
2 outside Metro jurisdiction.

3           3.       In late 2005 Metro received information that Respondent was taking waste from  
4 within Metro jurisdiction and disposing of it at Riverbend Landfill, in McMinnville, Oregon,  
5 which is a non system landfill. When solid waste is disposed of at Riverbend, the driver of the  
6 truck is supposed to give the origin of the solid waste so that any applicable fees and taxes can be  
7 assessed.

8           4.       Shortly after December 7, 2005, Metro contacted Mr. Rivas after one of his trucks  
9 was observed disposing of Metro generated solid waste, consisting of drywall, at the Riverbend  
10 Landfill. Respondent was cited for violation of Metro Code Sections 5.02.025 and 7.01.020. A  
11 \$300 penalty was imposed and Mr. Rivas was informed of his obligation to pay excise tax and  
12 system fees on Metro generated solid waste. The penalty imposed by Metro was in a reduced  
13 amount because Metro felt that Respondent was acting out of ignorance of the rules. Mr. Rivas  
14 was also informed that he could apply for a Non-System License so that Respondent could take  
15 Metro generated solid waste to a non-license facility such as Riverbend.

16           5.       In early 2006 Respondent applied for a non-system license. In March of 2006, Mr.  
17 Rivas was informed that no non-system licenses were being issued and that he would have to  
18 take Metro generated waste to a Metro disposal facility. Mr. Rivas was also reminded that any  
19 mixed loads, that is loads of solid waste that were generated partially within and partially without  
20 Metro jurisdiction, would be treated as all being generated within Metro Jurisdiction and subject  
21 to the Excise tax and system fees absent some documentation supporting a pro rata imposition of  
22 the tax and fee.

23           6.       Metro continued to investigate Respondent due to concern that it was continuing  
24 to violate Metro flow control codes. On March 15, 2006, Detectives Jon Gaddis and Michael  
25 Gates found a truck belonging to Respondent within the Metro region at Morgan Meadows in

1 Troutdale, Oregon where it was loading drywall. The vehicle then drove to 206<sup>th</sup> and  
2 Amberwood, in Hillsboro, Oregon, also within Metro jurisdiction, and loaded more drywall. The  
3 truck then left at 1:06 p.m. and drove to the Riverbend Landfill in McMinnville, Oregon. The  
4 truck disposed of the waste at Riverbend and the driver gave the origin of the debris as Yamhill,  
5 which is not located in Metro Jurisdiction (See Exhibit 4). Respondent paid no Metro taxes or  
6 system fees.

7 7. On April 19, 2006, Detective Gaddis located one of Respondent's trucks at the  
8 Arbor Rose Development in Hillsboro, Oregon, a location within the jurisdiction of Metro,  
9 where the truck was loaded with drywall. The truck then went to Waterhouse Street and Blue  
10 Ridge Street in Beaverton, also a location within the jurisdiction of Metro, where it was loaded  
11 with more drywall. Detective Gaddis followed the truck to North Plains, Oregon, but it was  
12 already 6:30 p.m. by then and as Riverbend closes at 5:00 p.m., Detective Gaddis discontinued  
13 his tracking. On the following day, April 20, 2006, Detective Gates arrived at the Riverbend  
14 Landfill at 7:45 a.m. At 8:50 a.m. Detective Gates observed the same truck as they had observed  
15 the day before at the Riverbend facility and dispose of its load of drywall. The receipt for the  
16 drywall from Riverbend showed the driver gave the place of origin as Yamhill (see exhibit 5).  
17 Respondent paid no Metro taxes or system fees.

18 8. On April 24, 2006, Detectives Gaddis and Gates located one of Respondent's  
19 trucks at Morgan Meadows in Troutdale loading drywall. The truck then drove to NE 250<sup>th</sup> and  
20 Halsey, also in Metro Jurisdiction, where it loaded some more drywall. From there the truck  
21 went to Newberg where it loaded some more drywall. Newberg is not within Metro Jurisdiction.  
22 The truck then drove to Riverbend landfill where it disposed of the drywall. The receipt stated  
23 the origin of the solid waste as Washington County (See Exhibit 6). Respondent paid no Metro  
24 taxes or system fees.

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1           9.       On April 26, 2006, Detective Gaddis located one of Respondent's trucks near Bull  
2 Mountain Road and SW 164<sup>th</sup> in Washington County. This is within the jurisdiction of Metro  
3 where it was loading drywall. Detective Gates followed the truck to Riverbend Landfill where  
4 the drywall was deposited. The receipt showed 4.75 tons and the origin as Yamhill (See Exhibit  
5 7). Respondent paid no Metro taxes or system fees.

6           10.      On May 2, 2006, Detective Gates located one of Respondent's trucks at Bull  
7 Mountain Road and SW 164<sup>th</sup> in Washington County once again. The truck was loaded with  
8 drywall and it proceeded to "The Greens" in Newberg, Oregon where more drywall was loaded  
9 on the truck. The truck then went to another location in Newberg where more drywall was  
10 loaded. The truck then went to Riverbend and disposed of the drywall. The receipt showed 5.55  
11 tons was disposed of and the reported origin as Yamhill County (See Exhibit 9). Respondent  
12 paid no Metro taxes or system fees.

13          11.      On June 26, 2006, a witness reported to Detective Gates that he was following a  
14 truck from the Arbor Rose Home Development in Hillsboro, a location within Metro's  
15 Jurisdiction. The witness had observed the truck loading drywall at that location. The witness  
16 followed the truck to a development near Beef Bend Road. Detective Gates went to that location  
17 and contacted the witness. The Witness stated that the truck was loading drywall from a  
18 residence at SW Davinci Lane and SW Greenfield. This location is in Washington County and  
19 within Metro Jurisdiction. Detective Gates observed the truck as it left the neighborhood.  
20 Detective Gates ran the plate number and determined that it was registered to Respondent. The  
21 truck went to the Riverbend Landfill where it disposed of the drywall. The receipt for disposal  
22 showed the driver gave an origin of Yamhill County. The weight of the load was 4.53 tons (See  
23 Exhibit 10). Respondent paid no Metro taxes or system fees.

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1           12.     On July 20, 2006, Detectives Gaddis and Gates met with Herme Rivas, owner of  
2 USA General Contractors, LLC. Mr. Rivas stated that he was the owner of USA General  
3 Contractors, LLC. Mr. Rivas stated that his company does work for Westside Drywall, Tri  
4 County Drywall and PNR Drywall. Mr. Rivas stated that his company works at many job sites in  
5 the area. The company has eight trucks but four trucks currently in operation. He has three  
6 drivers. Mr. Rivas stated that he took almost no loads to Riverbend and that 40% of his loads  
7 come from inside the region.

8           13.     Mr. Rivas stated that he had applied for a non system license, however he was  
9 unclear if he had even been issued that license, though he did state for some reason he had  
10 received his license fee back.

11          14.     Mr. Rivas stated that he did most of his work in the Hillsboro-Beaverton area.

12          15.     Mr. Rivas stated that he couldn't make enough money if he disposed of the  
13 drywall at the Hillsboro landfill. Mr. Rivas also stated that the other companies are doing the  
14 same thing as he is doing. That recycling the drywall is too expensive and that he is a small  
15 company trying to grow.

16          16.     On August 29, 2006, Detectives Gaddis and Gates met with the owner of Tri  
17 County Drywall, Odus Lambert. Mr. Lambert stated that USA General Contractors, LLC had  
18 cleaned up approximately the following number of homes within the Metro area: 80 homes at  
19 Morgan Meadows; 15 homes at the Trolley barn development in Sellwood; 30-40 homes at the  
20 Bull mountain development; 6 homes at Riverside homes on Beef Bend Road; 30 homes at the  
21 Grant Development off of 207<sup>th</sup> and Sandy Blvd. Mr. Lambert estimated that it would take 4-5  
22 homes to create a truckload of drywall.

23        /////

24        /////

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1 17. On August 29, 2006, Detectives Gates and Gaddis met with the General Manager  
2 of Westside Dry Wall, Doug Bennett. Mr. Bennett reported that Respondents had cleaned up the  
3 following number of homes for them within Metro jurisdiction. 200-300 at Arbor Homes in  
4 Hillsboro; 200 homes at Arbor Homes in Sunnyside; 100 or more homes at Arbor Homes in  
5 Happy Valley; 80 or more homes at Centex Development in Fairview; 70-80 homes ion Centex  
6 in Hillsboro. Mr. Bennett also stated that it would take 4-5 houses to fill a truck that Respondents  
7 used.

8 18. The total number of homes that Westside Drywall and Tri-County reported  
9 Respondents cleaning within the Metro area, that they could remember, was approximately 900.

10 19. Detective Gates requested on numerous occasions that Respondent get him his  
11 records on the homes he cleaned so that Metro could determine how many of the homes were  
12 within the jurisdiction of Metro. Respondent promised on numerous occasions to get Detective  
13 Gates that information but never did. At one point Mr. Rivas stated he had the information.  
14 When he met with Detective Gates to give it to him however, he stated he didn't have it but  
15 could, from memory tell him that there were a total of 210 homes within Metro jurisdiction that  
16 he worked at.

17 20. At the Hearing, Mr. Rivas admitted that Respondents did take some drywall  
18 debris from within the Metro area and dispose of it at Riverbend Landfill without paying the  
19 applicable tax and fees. Mr. Rivas, testifying solely from his own memory, testified that he  
20 cleaned the following number of homes in the following areas outside the Metro area:

<u>Location</u>	<u>Number of Residences</u>
Corvallis	10
Eugene	10
Dayton	10
Sheridan	14-16

1	Dallas	12
2	Salem	15
3	Dundee	5
4	Camas	10
5	Washougal	10
6	Longview	5
7	Kalama	5
8	LaCenter	5
9	Battle Ground	5
10	Vancouver	70
11	Sandy	30
12	McMinnville	20
13	St. Helens	20
14	Columbia City	5
15	Scappoose	5
16	<b>TOTAL</b>	<b>266-268</b>

17           21.   Herme Rivas' testimony is not credible in that he estimated only approximately  
18 266-268 homes that he cleaned were within Metro Jurisdiction, while his two main customers,  
19 Westside Drywall and Tri-County Drywall, estimated at least 900 homes cleaned by Respondent  
20 were within the Metro area.

21           22.   Mr. Rivas testified that if he had to pay the fees and taxes he could not compete  
22 with other businesses. Mr. Rivas also testified that after Metro cited him for this instant offense,  
23 he went to his customers and was able to negotiate a higher price for his work to cover the added  
24 cost of fees and taxes that he is now paying for disposal.

25   /////



1           23.    Mr. Rivas testified that when Respondent worked in Washington, it used a landfill  
2 in that state.

3           24.    From January 1, 2006 thorough August 31, 2006 Respondent delivered  
4 approximately 605 truck loads of solid waste to Riverbend Landfill a non license facility. Those  
5 loads totaled approximately 2,979 tons of solid waste.

6           25.    If all of the loads delivered to Riverbend by Respondent consisted, in total or in  
7 part, of Metro generated solid waste, the total excise tax avoided would be approximately  
8 \$24,815. A 25% penalty, plus cumulative interest, would bring the Excise Tax total owed to  
9 approximately \$33,017.81.

10          26.    If all of the loads delivered to Riverbend by Respondents consisted, in total or in  
11 part, of Metro generated solid waste, the total Systems Fees avoided plus a 25% penalty, plus  
12 cumulative interest, would bring the Excise Tax total owed to approximately \$54,450.

13          27.    At 900 Metro area homes cleaned and 4.5 homes per load, Respondent delivered  
14 at least 200 full loads to Riverbend Landfill. At 4.92 tons per load that means that Respondents  
15 delivered at a minimum 984 tons of Metro generated solid waste to Riverbend Landfill.

16          28.    Some of Respondent' loads were mixed loads of solid waste consisting of Metro  
17 generated and non Metro generated Waste. Therefore, it is reasonable to conclude that the total  
18 number of loads delivered to Riverbend Landfill that contained Metro Generated Waste was  
19 greater than 200 loads. Based on the facts of this case, including the Detectives observations that  
20 Respondents trucks would often pick up solid waste within Metro are, then drive towards  
21 Riverbend Landfill and make other stops along the way outside the Metro Area, I find that at a  
22 minimum, a fair inference is that at least 300 of the loads delivered to Riverbend contained, in  
23 whole of in part, Metro generated Solid Waste. At 4.92 tons per load, I conclude that  
24 Respondents avoided fees and taxes on 1,476 tons of materials.

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1 **CONCLUSIONS OF LAW**

2 Based on the Findings of Fact, I make the following Conclusions of Law:

3 1. Herme Rivas is the owner of USA General Contractors, LLC (Herme Rivas and  
4 the LLC are hereinafter referred to as Respondent) which is in the business of cleaning up the  
5 construction debris, mainly drywall, from home and small residential construction sites and  
6 disposing of it. Construction companies hire Respondent as an independent contractor and pay  
7 it based on the total square feet of the structure that they are cleaning.

8 2. Some of Respondent's job sites are within the jurisdiction of Metro, and some  
9 are outside Metro jurisdiction.

10 3. On at least 300 separate and distinct occasions between January 1, 2006 and  
11 August 31, 2006 Respondent unlawfully disposed of Solid Waste that was generated wholly or  
12 in part, within Metro's jurisdiction, to Riverbend Landfill, a non license facility with the intent  
13 to avoid paying applicable Excise tax and System Fees. Each occasion is a separate violation.

14 4. On each occasion Respondent violated Metro Code Sections 5.02.025, by  
15 disposing of Metro Generated solid waste at a non licensed facility, and Metro Code Section  
16 7.01.020, by failing to pay the excise taxes on Metro generated solid waste. More specifically,  
17 I find that it is more likely than not that Respondent committed at least the following number  
18 of violations in the following months: January 2006, 30 violations and 148 tons; February  
19 2006, 28 violations and 138 tons; March 2006, 40 violations and 197 tons, April 2006, 39  
20 violations and 191 tons, May 2006, 48 violations and 236 tons, June 2006, 49 violations and  
21 241 tons, July 2006, 43 violations and 212 tons, August 2006, 23 violations and 113 tons.

22 5. Respondent committed these violations with intent and knowledge and in order  
23 to gain a competitive advantage over competitors.

24 /////

25 /////



1 Respondent's own customers gave evidence that Respondent cleaned approximately  
2 900 homes in the Metro jurisdiction and that the average load for Respondent consisted of 4-5  
3 homes. That means that of the work done just for these two customers, Respondent would have  
4 disposed of 200 full loads.

5 The evidence from Metro Enforcement agents was that they followed Respondent's  
6 trucks and several times the trucks loaded solid waste from locations within Metro boundaries  
7 and without the boundaries. Therefore we know that Respondent did not only bring Metro only  
8 solid waste to Riverbend, so that means that the number of violations had to have been in  
9 excess of the 200 loads.

10 Given Mr. Rivas' description of his business and his customers, it is reasonable to infer  
11 that at least half of Respondent's business is within the Metro Jurisdiction.

12 Riverbend reported to Metro that Respondent's trucks delivered 605 loads to its facility  
13 for a total tonnage of 2,979. There were no reports from any other landfill presented by  
14 Respondent that would show that Mr. Rivas used any other landfill. While Mr. Rivas testified  
15 that some of his trucks used a landfill in Washington, he produced no documentation of that  
16 fact, his testimony on that point was not consistent with other facts, and frankly, Mr. Rivas is  
17 not a trustworthy witness and cannot be believed.

18 As to the penalties imposed; the Excise tax and penalty and interest under Chapter 7 is  
19 all pursuant to the Metro Code. The 25% penalty is appropriate because Respondent acted with  
20 the intent to evade the tax.

21 A penalty of \$1000 for failing to have a non system license is also according to Metro  
22 Code.

23 /////  
24 /////  
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1 I am also imposing a \$250 penalty for each of the 300 violations of Metro Code Section  
2 5.05.070(1); the Hearings Officer used the following logic: Metro imposed a \$300 penalty for  
3 Respondent's prior violation in December 2005. I realize that a portion of that penalty was for  
4 a prospective non license fee application; however, Respondent still should have realized that  
5 such a violation could impose such a penalty. In spite of that knowledge, and in spite of a \$300  
6 fine, Respondent continued to commit the exact same violation for the next several months. He  
7 did so for selfish and greedy reasons. I had seriously considered making the fine per violation  
8 more than the prior fine, which is what most courts or judges would consider fair for a second  
9 time offender. However a fine of \$250 per violation when multiplied by the total number of  
10 violations is appropriate when considering the system fees avoided.

11 This is a steep fine. But the hearings officer has no sympathy for Respondent or its  
12 ability to continue its business if it has to pay these penalties. Respondent has been able to  
13 undercut all of its competitors and make a profit precisely because it avoided excise taxes and  
14 system fees possibly well in excess of what is being imposed by this Order. It is as if he did not  
15 have to pay minimum wage, or FICA or any other normal business expense that his  
16 competitors were paying.

17 And it is not only Metro that has been damaged by Respondent's calculated behavior. It  
18 is also all of Respondent's competitors and their employees who lost jobs and work due to  
19 Respondent's ability to undercut their prices. I would expect that these people would feel that  
20 justice may not have been done unless there was some penalty, other than a mere re-coupment  
21 of money lawfully due, imposed on Respondent.

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1 **ORDER**

2 Based upon the above findings of fact, ultimate findings of fact, reasoning and  
3 conclusions of law, it is hereby ORDERED THAT:

4 Pursuant to Metro Code Section 5.05.070(a)(1) a fine of \$300 is imposed for each of  
5 the 300 loads delivered to Riverbend Landfill, for a total penalty of \$90,000.

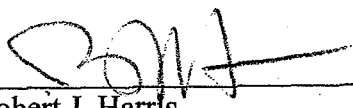
6 Pursuant to Metro Code Section 5.05.070(b)(2) for Respondent's failure to obtain a  
7 non system license prior to disposing of Metro generated waste at a non license facility a fine  
8 of \$1000 is imposed.

9 Pursuant to Metro Code Section 7.01.020 and 7.01.080(b) Respondent is ordered to  
10 pay excises taxes as follows:

11	Excise Taxes Due	\$12,295.08
12	Penalty of 25%	\$ 3,073.77
13	Interest as of October 31, 2006	\$ 991.00
14		
15	<b>TOTAL</b>	<b>\$16,359.85</b>

16 SUMMARY OF FINANCIAL PENALITES

17	5.05.070(a)(1) Violation	\$90,000.00
18	5.05.070(b)(2) Violation	\$1,000.00
19	7.010.020 / 7.01.080(b) Violation	\$16,359.85
20	<b>TOTAL</b>	<b>\$107,359.85</b>

21  
22   
23 Robert J. Harris  
Hearing Officer

24 Dated: July 20, 2007

1 **PROPOSED ORDER AS FINAL ORDER:**

2 ANY MOTION TO RECONSIDER THE ORDER MUST BE FILED WITHIN TEN DAYS  
3 OF THE ORIGINAL ORDER. IF YOU FAIL TO OBJECT OR FILE A MOTION FOR  
4 RECONSIDERATION, THEN THE ORDER BECOMES THE FINAL ORDER. THE  
5 HEARINGS OFFICER MAY RECONSIDER THE FINAL ORDER WITH OR WITHOUT  
6 FURTHER BRIEFING OR HEARINGS. IF ALLOWED, RECONSIDERATION SHALL  
7 RESULT IN REAFFIRMANCE, MODIFICATION OR REVERSAL. FILING A MOTION  
8 FOR RECONSIDERATION DOES NOT TOLL THE PERIOD FOR FILING AN APPEAL IN  
9 COURT.

10  
11 **RIGHT OF APPEAL:**

12 A PERSON MAY APPEAL A FINAL ADVERSE RULING BY WRIT OF REVIEW AS  
13 PROVIDED FOR IN ORS 34.010 THROUGH 34.100  
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METRO SOLID WASTE ENFORCEMENT UNIT  
SPECIAL REPORT

06-0380

SUMMARY:

In December 2005, the Metro Solid Waste Enforcement Unit assigned me to investigate USA General Contractors for violations of Metro code. An investigation was conducted and it was determined that USA General Contractors was violating Metro code by falsely claiming loads originated outside them Metro region when they, in fact, originated inside the Metro region.

MENTIONED:

Violating company: USA General Contractors, LLC  
(Address: same as company owner)

Company Owner: Herme Hernaide Rivas, HMA, DOB: 02/23/75  
Address: 730 ST. Mary circle Mtan  
PO box 1146  
Mt. Angel, Or. 97362  
Phone: 503-910-1937 Cell: 503-910-1937  
Fax: 503-845-2645

Drywall Company: Tri-County Drywall Inc.  
Owner: Odus Lambert  
Address: 15815 S Pope Ln  
Oregon City, Or. 97045  
Phone: 503-624-2006 Cell: 503-849-0540

Drywall Company: Westside Drywall  
General Manager: Doug Bennett  
Owner: Mohsn Salem  
2755 Pacific Hwy  
Hubbard, Or. 97032  
P.O. box 99  
Phone: 503-620-7036

Detective: Jon Gaddis, DPSST #23618

Detective: Michael Gates, DPSST #14652, writer.



## METRO REQUIREMENTS:

Waste that originates within the Metro Region is subject to Metro fees and taxes (see Metro code 7.01.020 and 5.02.045, which is attached). Landfills and transfer stations in and around the Metro regional boundary, such as Riverbend landfill and Lakeside reclamation, receive waste from both inside and outside the region. Landfills that are system facilities, such as Lakeside reclamation, provide individuals or companies with a Metro-provided form (Certification form for out-of-Metro load) to complete if their load originated outside the Metro region. If the load originated inside the region, the hauler would be responsible to pay Metro fees and taxes. Companies can avoid paying approximately \$23.67 a ton in Metro fees and taxes by claiming their load originated outside the Metro region, when in fact, they originated inside the region.

Riverbend landfill, which is not a system facility, is located on Hwy 18 in McMinnville, Oregon. Riverbend landfill is not required to provide individuals or companies with a certification form for out of Metro loads. However, the scale house workers asks the drivers what County their loads came from, which is then documented on the receipt. Companies can avoid paying approximately \$23.67 a ton in Metro fees and taxes by taking a load from inside the Metro regional boundary to the Riverbend landfill.

## NARRATIVE:

On November 29, 2005, Metro received information from a complainant that several companies were transporting drywall remnants from inside the Metro region to landfills outside the region and claiming the debris originated outside the region. I subsequently contacted the complainant and he explained the situation to me.

The complainant said that he has learned that many companies, including Avila Drywall and USA General Contractors, are landfilling drywall instead of recycling the material. The informant said that he knows that Avila Estrada, of Avila Drywall, and Herme Rivas, of USA Contractors had several meetings with a recycler but a clear cut agreement as per price per ton was not reached on the price of disposal. The informant told me that he learned that both companies were asked to recycle their drywall instead of disposing the waste at a Landfill. The informant said that USA and Avila temporarily took their drywall to Resource Recovery but discontinued after a short time.

Based on the information provided by the informant, Detective Gaddis and I began searching new home development sites for Avila Drywall or USA General Contractors. On March 15, 2006, Detective Gaddis found a USA truck (t553992) within the Metro region in Multnomah County at Morgan Meadows in Troutdale (257<sup>th</sup>) loading drywall. At 10:25am the vehicle left the site and stopped at SW 206/Amberwood in Hillsboro where they loaded more drywall. At 1:06pm the truck left Hillsboro and arrived at the Riverbend landfill at 2:45pm. The origin of the debris on the Riverbend landfill receipt was listed as Yamhill County and the weight was 4.08 tons.

On April 19, 2006 at 1:45pm, I located a USA General Contractors truck (t555117) in Washington County at the Arbor Rose development in Hillsboro, which is inside the Metro region. The workers loaded drywall until 1:15pm at which time they left the site. I followed the truck to Waterhouse Street and Blue Ridge Street in Beaverton, which is in the Metro Region. The workers loaded drywall until 3:57pm at which time they left. Detective Gaddis then followed the truck westbound on hwy 26 to a site in North Plains. At 6:30 the truck left North Plains and traveled eastbound on hwy 26.

Based on the time of day and the fact that that the Riverbend landfill closes at 5:00pm, Detective Gaddis did not continue following the truck. On the following day, I arrived at the Riverbend landfill at 0745 to wait for the listed truck to arrive. At 0850, I saw the same truck arrive at the Riverbend landfill fully loaded with drywall. The origin of the drywall on the receipt was Yamhill and the weight was 5.25 tons.

On April 24, 2006 at 9:31am, Detective Gaddis found a USA General Contractors truck (t553992) in Multnomah County at the Morgan Meadows development in Troutdale (257<sup>th</sup>) loading drywall. The truck was partially full when Detective Gaddis located the truck. The workers loaded the truck until 11:08am at which time truck left the site. We followed the truck to the flying J truck stop where the workers got some food. At 11:45am we followed the truck to a site on NE 250<sup>th</sup> and Halsey at Edgefield Meadows lane, inside the Metro region. The workers began loading drywall until 1:16pm at which time they left the site. We followed the truck to Newberg (Chehalem/Mountain view drive) where the workers began loading drywall. At 2:55pm, the truck left the site and arrived at the Riverbend landfill at 3:20pm. The origin of the drywall on the receipt was Washington County and the weight was 6.1 tons.

On April 26, 2006 at 1140am, I located a USA General Contractors truck (t553992) in Washington County at a development on SW Bull Mountain road and SW 164<sup>th</sup>, which is in the Metro region. I watched the worker briefly load drywall into the truck. At 11:46am, the truck left the site. I followed the truck to the Riverbend Landfill, arriving at 12:34pm. The origin of the load on the receipt was from Yamhill and the weight was 4.75 tons.

On May 2, 2006 at 0942, I located a USA General Contractors truck (t553992) in Washington County at the Bull Mountain site, which is in the Metro region. I watched the workers load drywall until 10:14am at which time they left the site. I followed the truck to hwy 99 where detective Gaddis met up with me. We then followed the truck to the Greens (by the golf course) in Newberg, arriving at about 10:40am. The workers loaded drywall until 11:55am at which time they left the site. We followed the truck to Chehalem/Mountain View Drive in Newberg where the workers began loading drywall at 12:15pm. At 3:09pm we followed the truck from the site and to the Riverbend landfill, arriving at 3:42pm. The origin of the drywall on the receipt was Yamhill County and the weight was 5.55 tons.

On June 26, 2006 at about 9:30am, Metro received a phone call from a complainant who was following a drywall truck from the Arbor Rose home development in Hillsboro. The complainant said that he found the truck at the Arbor Rose development at about 8:00am. He said he observed workers loading drywall into their truck until about 9:30am. At that time the truck left the development and the complainant said he was presently following the truck into a development off SW Beef Bend road. I

told the complainant that I was enroute and that I would call him when I arrived in the area.

At about 10:00 I called the complainant and informed him I was in the area. The complainant told me that he was watching the workers load sheet rock into the truck and that he had taken several pictures. The complainant further stated that the house the workers were removing the sheet rock from was lot # 16 at SW Davinci Ln and SW Greenfield, which is in Washington County and the Metro region.

At about 10:30am, the complainant told me that the workers were getting ready to leave. I informed him that I would wait for them at the bottom of Beef Bend Road. We maintained phone contact for about four minutes at which time I observed the truck crest the hill on SW Beef bend road and drive to SW Roy Rogers's road. I pulled behind the truck as it turned westbound on Roy Rogers. I ran the license plate (t558666) and determined the registered owner is USA General Contractor. I subsequently followed the truck to the Riverbend Landfill, arriving at 11:16am. The origin of the load on the receipt was Yamhill County and the weight was 4.53 tons.

On July 19, 2006, Detective Gaddis and I drove to Herme Rivas' residence at 730 St. Mary Circle in Mt. Angel to talk with him concerning his company, USA General Contractors. A about 2:00pm we knocked on the door of the residence and a man answered. We asked him if Herme was home at which time he said he was not and didn't know when he would be back. I supplied him with my business card and asked him to have Herme call me when he returned home.

About ten minutes later, I received a call from Herme on my cell phone. I explained the situation to him and asked if we could meet to discuss his business. We subsequently agreed to meet with us at Metro the following morning at 10:00am.

On July 20, 2006 at about 10:20am, Herme met me at the Metro building located at 600 NE Grand avenue. Upon meeting Herme, I noted that he looked exactly like the man that answered the door at Hermes residence in Mt. Angel. I asked him if he had a brother at which time he told me he was the person that answered the door at his residence. He said he had received threats of kidnapping and doesn't tell people who he is if he doesn't know them.

We subsequently went to room 370A and sat down. I explained to Herme that I was a Detective with the Multnomah County Sheriff's Office and that I am contracted to Metro to conduct investigations. I explained to Herme that I wanted to talk with him about his business and asked him if I could record our conversation. He agreed to the recording at which time I turned the tape recorder on at 10:30am.

Herme said that he was the owner of USA General Contractors. He said he started the company on July 5, 2005. He said his company does drywall cleanup and final cleanup, which consists of taking paper down and sweeping the floors. He said he is not contracted with drywall companies but does the cleanup for: Westside Drywall, Tri County drywall and PNR drywall.

Herme said that he works at different locations during the day. He said he never knows from one day to the next where he is going to clean. He said he receives a call from the drywall companies who tell him what house needs to be cleaned up on a certain day. He said one day he could be in Eugene, the next day he could be in Hood River. The farthest away he thinks he's been is Eugene and Longview, WA.

Herme said he owns eight trucks but only four trucks are operating at the present time. He currently has three employees working for him. He said the USA receives about 2 cents per sq foot to dispose of sheet rock from a house. The employees are also paid by the foot, which Herme said averages out to be more than minimum wage.

I asked Herme if he knew what the Metro Region was. He told me it was Multnomah County, Washington County and Clackamas County. I explained to Herme that the Metro region was not the three Counties as a whole. I told him that the Metro region consisted of parts of the three Counties, but that some of the three Counties were not in the region. (I provided him with a Metro map) Herme told me that he thought that the Region consisted of all three counties. Herme said that every time his loads are from Washington, Multnomah or Clackamas County, his workers tell the scale house worker at Riverbend which County the load came from so that County will receive the taxes. He said that if the load were from Multnomah County, his workers would claim the load came from Multnomah County, etc.

Herme said that he is not the only company that works for the drywallers. He said there are many other subcontractors that do drywall cleanup for Westside. But, he believes he is the only company that does cleanup for Tri-County. He said Westside also have two of their own trucks that do drywall cleanup. He said he doesn't know the name of the other subcontractors except for Avila who contracts with Westside. He said Avila has been in business for about 8 years. He said that Avila does not have an office but they work out of a home.

I asked Herme how many full truckloads of drywall he thinks he picks up a day. He said that sometimes he gets one full load. He said he might have a house today and he may not be called back to that house; it may be given to another cleanup company. He said that he might go to a house and find that all he has to clean up is paper from the walls. He said he then may have to go to another house in Forest Grove and from there he may have to go to Cornelius and after that he may go to Newberg.

I asked Herme how much he thinks his average full loads weighs. He thought that they might weigh about 2 ½ tons. I asked Herme what disposal facilities he had an account with. He said that the only account he has is with Riverbend landfill in McMinnville. I asked him if he could estimate how many loads a week he takes to the Riverbend landfill. He told me he takes almost nothing to Riverbend. He estimated that 40 % of his loads come from inside the region. I again asked Herme how many of his loads a week goes to McMinnville from inside the region. He said "one or two, three at the most".

I asked Herme if he had accounts with other disposal facilities. He said he tried to get accounts with Grabhorn but they asked for too many references. He then went to Oregon City (Metro south) and discovered that they charge three times what Riverbend landfill charge for the same load. We discussed the loads again at which time Herme said that he probably takes, on the average, twelve tons a week from inside the Metro region to the Riverbend landfill.

Herme said that since he talked with Steve (Kraten), he paid some money to Metro to get a non-system license. He said he paid a partial payment to Metro for the license and then sent the remaining balance. I asked him if he, in fact, had a non-system license. He said he didn't know because for some reason he received the money back from Metro and he didn't know what his situation was.

I asked Herme if he has cleaned any house on Sunnyside. He said he rarely goes up there; he said he might do 1 or 2 houses a week. He said Westside does a lot on Sunnyside. He said he does most of his work in Beaverton or Hillsboro area.

He said he started working at Arbor Rose in Hillsboro last year. He claimed that he cleaned up about 3,4 or five houses a week at that location. Herme said that he also cleaned up houses at Centex development located on River Road in Hillsboro. He claimed that he cleaned about one house a week, which amounts to about a ¼ truckload a house. He said he also cleaned about 10 houses at Arbor on Bull Mountain, inside the Metro region. Herme said that he does mostly single house that are not in new developments.

I asked him why he didn't take his loads to the Hillsboro landfill when he was picking up loads a short distance away. He said that he might start a load in Hillsboro but then finish the load in Newberg. He said that Hillsboro also charges \$55.00 or \$65.00 a ton. He said he has used Hillsboro landfill before and that he can't make any money by using them.

I asked Herme why he doesn't recycle his drywall. He told me that he went to Knez recycling and their rates are "really, really high and they don't want to take us". He said they charged \$15.00 a yard. He said that would amount to way more than he can afford. He said that he also worked with a recycle company by the name of Resource Recovery. He said they agreed upon an amount of \$35.00 a ton for the drywall for about a month. Resource recovery then told them that his company wasn't worth it and that if they wanted to keep going to them they would have to pay \$65.00 a ton.

I asked Herme if he was willing to supply Metro with the records of the houses that he has cleaned inside the region. He told me that he has records but he wouldn't be able to tell us if the house was inside the Metro region or out. I asked him if he had address of the houses he has cleaned. He said he had some records but most of the addresses were given to him by phone. He said sometimes they would give him an address; other times they would give him lot numbers. Herme said that he believes "nobody has specific records for everything".

Herme said he is a small company trying to grow. He said that the bigger companies are doing the same thing as he is doing; going from inside the region to landfills outside the region. I asked Herme if he knew he wasn't suppose to operate that way. He said that he talked to Steve about a non-system license. He thought that if he claimed the County where the debris originated from, he would be paying the taxes. I explained to Herme that his workers were not claiming the County the debris originally came from. He said the workers are supposed to know what County the loads came from and tell Riverbend.

I explained to Herme that Riverbend doesn't care where the loads come from. Herme told me he knew that. He said that if you don't have a full load, what are you going to do? He said the landfills charge you a minimum fee for a load, \$35.00-\$40.00. Herme said that if you have one house that makes you a profit of \$50.00 and have to pay a minimum charge, you couldn't make a profit. I told Herme I understand his concerns but I explained to him that if half his load was inside the region and the other half was outside the region, he must claim the whole load as being inside the region.

I explained to Herme that his workers were loading debris inside the Metro region and claiming the loads were coming from outside the region. I asked him if he knew that? He said he didn't know that was taking place. He asked me if it would be alright if he had a Non system license and the receipts show the load was coming from Washington County, Clackamas County... I explained to Herme that he didn't have a non-system license. I told him that his money was sent back to him with a letter explaining that he didn't have a non-system license. Herme claimed that he didn't know he didn't have a non-system license. Herme told me that he pays taxes when he takes a load to the Riverbend landfill. I explained to him that the taxes he pays at Riverbend are probably County taxes, not Metro taxes.

I asked Herme to supply me with the companies he has worked for inside the region and the amount of homes he has cleaned for each company inside the region. I also requested that he provide me with all the subdivisions he has worked in of which he said he would do that.

On August 29, 2006 at 0830, detective Gaddis and I met Odus Lambert at Tri County Drywall located in Oregon City. I advised Odus that we were detectives with the Multnomah County Sheriff's Office and we that were working under contract for Metro. I told Odus that we were currently investigating several small companies, including USA Contractors, that were violating Metro code by taking debris from inside the Metro region to the Riverbend landfill, avoiding Metro fees and taxes.

Odus told us that he had recently talked with Herme from USA Contractors and that Herme told him that we had spoke to him concerning taking debris from inside the region to Riverbend landfill. He said based on their conversation, he raised Herme's income from 2 ½ cents a square foot to 3 cents a square foot. Odus also said that he pays Herme 1 ¼ cents a square foot to do cleanup of each house, which consists of picking up paper, mud boxes, cleaning tubes, etc.

Odus said that he is the owner of Tri-County drywall. He said he has been in business for about 6 years. He said that USA Contractors has been subcontracting for him as a drywall cleanup company for about a year and a half.

Odus said that USA has done the drywall clean up for him at the following locations: 80 houses at Morgan meadows located at NE 257<sup>th</sup> and Glisan, 15 houses at the Trolley barn development in Sellwood, 30-40 houses at arbor point on Bull mountain, 6 houses at Riverside homes on Beef bend road, 30 houses a the Grant development off 207<sup>th</sup> and Sandy, all of which are inside the Metro boundary.

We asked Odus if he could estimate how many houses of drywall scrap it would take to complete a truck-load full enough to take to the landfill. Odus said that it would be difficult to estimate because every house is different. But, he said that if he had to guess, he would estimate that it would take about 3-4 houses to fill a truck.

On August 29, 2006 at 2:00pm, detective Gaddis traveled to Westside dry wall in Hubbard, Oregon to meet with Mohsn Salem for a prearranged meeting. Upon our arrival, we were informed that Mohsn was unavailable but we could meet with the general manager, Doug Bennett.

I advised Doug that we were Detectives with the Multnomah County Sheriff's Office and that we were working under contract for Metro to conduct investigations. I told Doug that we were currently investigating several small companies, including USA Contractors and Avila Drywall, that were violating Metro code by taking debris from inside the Metro region to the Riverbend landfill, thus avoiding Metro fees and taxes.

Doug informed us that about six weeks ago he heard that we had spoken to Herme Hernaide Rivas, of USA Contractors, and Juventino Avila Estrada, of Avila Drywall. Based on what Herme and Juventino told him about the additional costs and the Metro code, Westside Drywall raised their rates by ½ cent a square foot. Doug said that the scrappers are now getting 2 ½ cents a square foot and the cleaners are getting 1 ¼ cent a square foot. He said that Avila Drywall normally does the scrapping, which accounts to about 70% of the new construction and USA Contractors normally do about 30% of the scrapping and most of the cleanup.

Doug told us that the two listed companies have scrapped and cleaned up the following developments in the Metro region: 200-300 homes in Arbor home development in Hillsboro, 200 houses at the Arbor home development at 156<sup>th</sup> and Sunnyside, 100 homes (or better) at the Arbor homes and Buena Vista developments in Happy valley, 80 (plus) homes in the Centex development in Fairview, Or., and 70-80 homes in the Centex development in Hillsboro.

Doug informed me that the average house they drywall is about a 2100 square foot home, which amounts to about 10,000 square feet of drywall. Doug said that the drywall cleanup amounts to about \$250.00 a house. He said that Avila told him that he could scrap about four houses a day. Doug went on to say that he thought it would take about 4 to 5 houses of drywall scrap to fill an average truck that the scrappers use.

During the interview of Herme Rivas on July 20, 2006, I requested that he provide me with an estimate of how many houses he has been contracted to clean inside the Metro region in the last year. I also requested he provide me with the companies he has cleaned homes for and the subdivisions he has worked in. I also requested he provide me with the average square foot of the houses he cleans. Herme said, "sure, no problem."

During the last five weeks, I have called Herme four times and again requested he provide me with the information. Each time, Herme said he would get me the information that day or the next day, which he never did. On August 29, 2006, Detective Gaddis and I ran into Herme at Westside Drywall in Hubbard, Oregon. I again asked him to provide me with the listed information. Herme assured me he would call me later in the afternoon with all the information I needed. As of the writing of this report, Herme has not provided me with the information I requested from him.

On September 1, 2006, I received a message from Herme on my cell phone. He indicated to me that he had the information I needed and requested I call him back. On September 6<sup>th</sup> I returned the call to Herme. I again requested that he provide me with the information I needed in regards to the homes that he has taken drywall out of inside the region and transported to Riverbend landfill. Herme said he was in Oregon City, but that he would call and meet with me later in the day. Herme never contacted me.

On September 6, 2006 at about 9:00am, I again called Herme on his cell phone. I asked him if he had the information at which time he said he did and that he would meet me at the Metro office. At about 10:00am, Herme arrived at the Metro office carrying a notebook holder with paperwork inside. I asked Herme if he had the information I needed. He said he did and opened his notebook up like he was looking for something. Herme then closed the notebook and said that he didn't have the paper work with him but he could tell me what I needed by memory

Herme subsequently told me that since July 5, 2005, he has cleaned the following number of homes at the listed developments: 80 homes at Morgan meadows (DR Horton) NE 257<sup>th</sup> and Glisan, 15 homes at Bull Mountain, 80 homes at Arbor rose located on Tualatin Valley highway in Hillsboro, 25 homes at Centex located on River road in Hillsboro and 10 homes at the Trolley barn development in Sellwood, of which all locations are within the Metro regional boundary.

**PRIOR VIOLATIONS:**

On December 6, 2005, detective Gaddis and I began an investigation of USA General Contractors. As a result of a two-day surveillance, we concluded that the Company was violating Metro code sections: 7.01.20 (failure to pay Metro solid waste tax) and 5.05.025 (utilization of an unauthorized disposal site). Metro imposed a total penalty of only \$300.00. The minimal penalty was based on several mitigating circumstances. It appeared, at the time, that the actions of USA Contractors "may have been the result of lack of knowledge about the Metro system rather than a deliberate attempt to illegally avoid the payment of Metro fees and taxes". It also appeared, at the time, that "since you have only recently started up your business and that you are based well outside the Metro regional boundary make it reasonable to believe that you were not fully aware of the requirement to deliver solid waste only to system facilities when such solid waste is generated from within the Metro boundary".

On December 27, 2005, Metro sent a certified letter to USA General Contractors and Herme Rivas advising him that Metro found him in violation of Metro code. Metro imposed a penalty of \$300.00. The finding of violation letter explained in specific detail that debris generated inside the Metro regional boundary cannot be disposed of in any solid waste facility or disposal site without an appropriate license from Metro. The letter also informed USA General contractors and Herme Rivas that Metro code requires payment of Metro excise taxes on each ton of solid waste generated within the Metro region. (See original attached report)

It is apparent that after conducting a lengthy investigation of USA general Contractors, USA general contractors continued to (knowingly) violate Metro code by transporting debris from inside the Metro region to the Riverbend landfill, a non-system disposal site, without having obtained the required non-system license and without having paid Metro excise taxes on such waste.

**REPORTING DEPUTY:**

Detective, Michael Gates, #14652.

Date: August 30, 2006





## METRO SOLID WASTE ENFORCEMENT UNIT SPECIAL REPORT 06-0380

### SUMMARY

During the course of Detective Gates and my investigation, we interviewed representatives from D R Horton and Arbor Homes (West Hills Development). The information we received from the interviews was mainly a confirmation of facts known and numbers of homes possibly done by USA General Contractors and Avila Drywall.

### MENTIONED

D R Horton  
4386 SW Macadam Avenue Suite 102  
Portland, OR 97239  
Angie Grajewski  
Phone 503.222.4151 ext. 1114  
Heather Steele  
Phone 503.222.4151 ext. 1127

Arbor Homes (West Hills Development)  
15500 SW Jay Street  
Beaverton, OR 97006  
Gary Wong  
Phone 503.641.7342 ext. 256

### NARRATIVE

We interviewed Heather Steele and later spoke with Angie Grajewski. According to D R Horton's records, homes built inside the Metro Region (totaling 776 units as of July 2006) are listed as follows:

Brookwood Crossing in Hillsboro, 150 completed out of 304 planned.

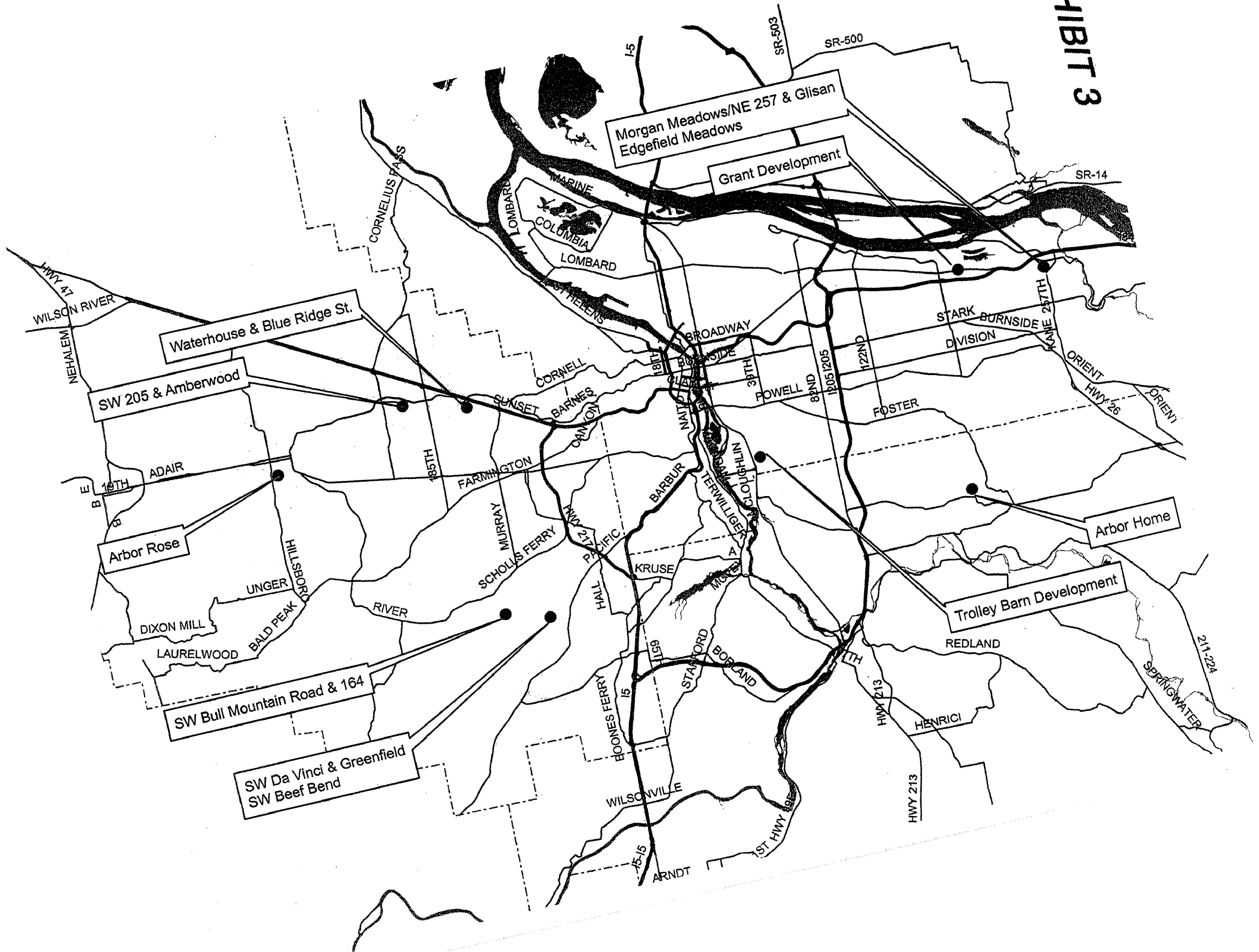
Trolley Barn in Sellwood/Portland, 4 completed out of 69 planned.

Burgundy Rose in Happy Valley, 40 completed out of 146 planned.

Morgan Meadows in Troutdale, 257 almost all completed as of 08/29/06.

We also interviewed Gary Wong of Arbor Homes who said that they (Arbor Homes) use Westside Drywall for 90-95% of their work. He said that they do use Tri County and, in the very near future (late August 2006) will be using Pyramid Drywall from Vancouver, Washington. Gary Wong estimated that they built 600 homes in the past year and the average is 2,000 – 2,200 square feet – not to be confused with total sheet rock square feet, which was explained to me as approximately 10,000 square feet of sheet rock for a 2,100 square foot home.

# EXHIBIT 3





Riverbr Landfill  
 13469 Sw Highway 18  
 McMinnville, OR, 97128  
 Ph: (503) 472-8788

Reprint  
 Ticket# 466420

Customer Name USAGENERAL USA General Constr Carrier USAGEN USA GENERAL CONTRACTORS  
 Ticket Date 03/15/2006 Vehicle# WHITE Volume  
 Payment Type Credit Account Container  
 Manual Ticket# Driver  
 Hauling Ticket# Check#  
 Route Billing # 0000693  
 State Waste Code Gen EPA ID  
 Manifest  
 Destination  
 PD  
 Profile ()  
 Generator

	Time	Scale	Operator	Gross		
In	03/15/2006 14:45:14	Scale	CAROLJ	21220	LBS	
Out	03/15/2006 15:04:59	Scale	CAROLJ	13050	LBS	
				Net	8160	LBS
				Tons		4.08

Comments



Product	LD%	Qty	UOM	Rate	Tax	Amount	Origin
1 CDT-C&D Tons	100	4.08	Tons	25.16	14.12	\$102.65	YAM

Total Tax \$14.12  
 Total Ticket \$116.77

Driver's Signature

402WM

EXHIBIT 5



Riverb/ Landfill  
13469 Sw Highway 18  
McMinnville, OR, 97128  
Ph: (503) 472-8788

Reprint  
Ticket# 472607

Customer Name USAGENERAL USA General Constr Carrier USAGEN USA GENERAL CONTRACTORS  
Ticket Date 04/20/2006 Vehicle# ORANGE Volume  
Payment Type Credit Account Container  
Manual Ticket# Driver  
Hauling Ticket# Check#  
Route Billing # 0000693  
State Waste Code Gen EPA ID  
Manifest  
Destination  
PO  
Profile ()  
Generator

	Time	Scale	Operator	Inbound	Gross	22760	1b
In	04/20/2006 08:53:17	Scale	EMM		Tare	12260	1b
Out	04/20/2006 09:18:15	Scale	EMM		Net	10500	1b
					Tons		5.25

Comments

Product	LD%	Qty	UOM	Rate	Tax	Amount	Origin
1 CDT-C&D Tons	100	5.25	Tons	25.16	18.17	\$132.09	YAM

Total Tax \$18.17  
Total Ticket \$150.26

Driver's Signature

402WM

EXHIBIT 6



Riverb... Landfill  
13469 S. Highway 18  
McMinnville, OR, 97128  
Ph: (503) 472-8788

Reprint  
Ticket# 473472

Customer Name USAGENERAL USA General Constr Carrier USAGEN USA GENERAL CONTRACTORS  
Ticket Date 04/24/2006 Vehicle# WHITE Volume  
Payment Type Credit Account Container  
Manual Ticket# Driver  
Hauling Ticket# Check#  
Route Billing # 0000693  
State Waste Code Gen EPA ID  
Manifest  
Destination  
PO  
Profile ()  
Generator

	Time	Scale	Operator	Inbound	Gross	24700	lb
In	04/24/2006 15:20:02	Scale	shelleyf		Tare	12680	lb
Out	04/24/2006 15:36:27	Scale	shelleyf		Net	12020	lb
					Tons		6.01

Comments



Product	LD%	Qty	UDM	Rate	Tax	Amount	Origin
1 CDT-C&D Tons	100	6.01	Tons	25.16	20.80	\$151.21	WAS

Total Tax \$20.80  
Total Ticket \$172.01

Driver's Signature

402WM

EXHIBIT 7



Riverb Landfill  
13469 Sw Highway 18  
McMinnville, OR, 97128  
Ph: (503) 472-8788

Reprint  
Ticket# 473832

Customer Name USAGENERAL USA General Constr Carrier USAGEN USA GENERAL CONTRACTORS  
Ticket Date 04/26/2006 Vehicle# WHITE Volume  
Payment Type Credit Account Container  
Manual Ticket# Driver  
Hauling Ticket# Check#  
Route Billing # 0000693  
State Waste Code Gen EPA ID  
Manifest  
Destination  
PO  
Profile ()  
Generator

	Time	Scale	Operator	Inbound	Gross	22220	lb
In	04/26/2006 12:34:52	Scale	TEMP		Tare	12720	lb
Out	04/26/2006 12:50:16	Scale	TEMP		Net	9500	lb
					Tons		4.75

Comments



Product	LD%	Qty	UOM	Rate	Tax	Amount	Origin
1 CDT-C&D Tons	100	4.75	Tons	25.16	16.43	\$119.51	YAM

Total Tax \$16.43  
Total Ticket \$135.94

Driver's Signature

402WM



EXHIBIT 8



Riverb ' Landfill  
 13469 S. Highway 18  
 McMinnville, OR, 97128  
 Ph: (503) 472-8788

Reprint  
 Ticket# 475033

Customer Name USAGENERAL USA General Constr Carrier USAGEN USA GENERAL CONTRACTORS  
 Ticket Date 05/02/2006 Vehicle# WHITE Volume  
 Payment Type Credit Account Container  
 Manual Ticket# Driver  
 Hauling Ticket# Check#  
 Route Billing # 0000693  
 State Waste Code Gen EPA ID  
 Manifest  
 Destination  
 PO  
 Profile ()  
 Generator

Time	Scale	Operator	Inbound	Gross	
In 05/02/2006 15:42:10	Scale	TEMP		24540	1b
Out 05/02/2006 16:08:06	Scale	TEMP		13440	1b
				Net	11100 1b
				Tons	5.55

Comments



Product	LD%	Qty	UDM	Rate	Tax	Amount	Origin
1 CDT-C&D Tons	100	5.55	Tons	25.16	19.20	\$139.64	YAM

Total Tax \$19.20  
 Total Ticket \$158.84

Driver's Signature

402WM



EXHIBIT 10



River Road Landfill  
13469 W Highway 18  
McMinnville, OR, 97128  
Ph: (503) 472-8788

Reprint  
Ticket# 485419

Customer Name USAGENERAL USA General Constr Carrier USAGEN USA GENERAL CONTRACTORS  
Ticket Date 06/26/2006 Vehicle# WHITE RED Volume  
Payment Type Credit Account Container  
Manual Ticket# Driver  
Hauling Ticket# Check#  
Route Billing # 0000693  
State Waste Code Gen EPA ID  
Manifest  
Destination  
PO  
Profile ()  
Generator

	Time	Scale	Operator	Inbound	Gross	17620	lb
In	06/26/2006 11:20:24	Scale	EMM		Tare	8560	lb
Out	06/26/2006 11:39:22	Scale	EMM		Net	9060	lb
					Tons		4.53

Comments



Product	LD%	Qty	UOM	Rate	Tax	Amount	Origin
1 CDT-C&D Tons	100	4.53	Tons	25.16	15.68	\$113.97	YAM

Total Tax \$15.68  
Total Ticket \$129.65

Driver's Signature

402WM



EXHIBIT 11

06-26-06

USA General\_Arbor Rose-Beefbend-DaVinci.JPG



METRO

Exhibit  
HO-1

Paul A. Garrahan  
Tele: (503) 797-1661  
FAX: (503) 797-1792

RECEIVED

DEC 12 2006

HARRIS LAW FIRM, PC

December 11, 2006

Mr. Robert J. Harris  
Harris Law Firm PC  
165 SE 26th Avenue  
Hillsboro, OR 97123

Re: Contested Case Hearing on NOV-162-06—Status of Exhibits 12 through 15 as  
Part of the Hearing Record

Dear Mr. Harris:

At the close of the hearing held on Wednesday, December 6, 2006, C. David Hall, counsel for respondent USA General Contractors, LLC, asserted that Exhibits 12 through 15 should not be considered as part of the record in this matter. This letter is to rebut Mr. Hall's assertion and to ask you to rule that these exhibits are part of the record in this matter.

The sole source of authority providing rules for the conduct of Metro hearings is Metro Code Chapter 2.05. Metro Code Section 2.05.030(a) provides that "evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible," and Metro Code Section 2.05.030(c) provides that "all offered evidence, not objected to, will be received by the hearings officer subject to his/her power to exclude irrelevant, immaterial or unduly repetitious matter."

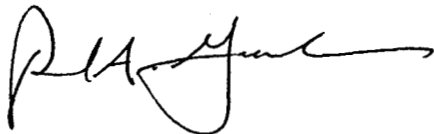
These requirements have been satisfied with respect to Exhibits 12 through 15, and you, therefore, should rule that they are part of the record. Specifically, first, the exhibits contain information that a reasonably prudent person would rely on "in conduct of their serious affairs." Second, adequate foundation for the admissibility and authenticity of the exhibits was provided by the testimony of Metro employee Steve Kraten. Third, Metro offered these exhibits at the hearing. Metro Code Chapter 2.05 does not require the recitation of pro forma words for evidence to be considered "offered" at a hearing. At the hearing, Exhibits 12 through 15 were clearly marked and were provided to the hearings officer and to Mr. Hall prior to the start of the hearing. Each of these exhibits was introduced and discussed in detail by Mr. Kraten. By these steps, these exhibits were offered by Metro at the hearing. Fourth, Mr. Hall did not ask Mr. Kraten any questions challenging the authenticity of the exhibits, nor did he object to their admission into the

Mr. Robert J. Harris  
December 11, 2006  
Page 2

record on substantive grounds. (To the extent that Mr. Hall feels he did not have adequate opportunity to object to the admission of these exhibits into the record on the grounds that Metro did not lay proper foundation for their admittance or that they do not meet the prerequisites for the admissibility of evidence under Metro Code Section 2.05.030(a), Metro does not object to him raising any such objections to the hearings officer in writing within a reasonable period of time.)

For these reasons, Metro asserts that Exhibits 12 through 15 are part of the record in this matter and that you are fully within your discretionary authority as hearings officer to so order.

Respectfully submitted,



Paul A. Garrahan  
Senior Assistant Metro Attorney

pag:sa

cc: C. David Hall, Esq., Attorney for Respondent USA General Contractors, LLC  
Roy Brower, Metro Regulatory Affairs Division Manager

Exhibit 140-2

**C. David Hall  
Attorney at Law**

Telephone: 503-234-3245  
Fax: 503-234-2992  
E-mail: CDHlawoffice@aol.com



**Mailing address:**

P.O. Box 14546  
Portland, OR 97293

**Office address:**

1432 E. Burnside  
Portland, OR 97214

December 12, 2006

Mr. Robert Harris  
Attorney at Law  
165 SE 26<sup>th</sup> Avenue  
Hillsboro, OR 97123

**RE: USA General Contractors, LLC**

Dear Mr. Harris:

I have received Mr. Garrahan's letter dated December 11, 2006 proposing that Exhibits 12 through 15 should be made part of the record because they are admissible and they were offered into evidence. I strongly object to Mr. Garrahan's assertion that these items were offered into evidence.

I would ask the hearings officer to review the transcript of the proceedings. It is clear that Mr. Garrahan never offered these documents into evidence. I did not cross-examine the witness with regards to these documents because they not been offered into evidence. Mr. Garrahan did not lay any foundation as to the admissibility of these documents nor did he properly authenticate the documents. Had he offered them into evidence, I would have objected to their admissibility. He did not, however, offer them into evidence and they are not part of the record. I request that the hearings officer exclude them from any consideration in determining the outcome of this case.

Very truly yours,

A handwritten signature in black ink, appearing to read "C. David Hall".

C. David Hall

CDH;lh

cc: client  
Paul Garrahan



**METRO**

December 27, 2005

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**  
Herme Rivas  
USA General Contractor, LLC  
PO Box 1146  
St. Mary's Circle  
Mount Angel, OR 97362

**RE: Finding of Violation and Notice of Assessment of Penalties**

Dear Mr. Rivas:

On December 7, 2005, one of your company's employees, under your direction, delivered solid waste generated from within the boundaries of Metro to the Riverbend Landfill. The Riverbend Landfill is a non-system disposal site and your company delivered the solid waste without having applied for or been granted the required Metro non-system license. Metro staff investigated your handling of this load by conducting surveillance to determine the origin of waste load, interviewing the driver and the manager of the landfill, and by reviewing the landfill-issued weight ticket for the load. Based on that review, as set forth below, I find that you violated the provisions of Metro Code Sections 5.05.025 and 7.01.020 and are subject to the assessment of civil penalties. You are hereby notified of my findings and of my assessment of penalties pursuant to Metro Code Sections 5.05.070 and 7.01.150.

**FACTS AND APPLICABLE METRO CODE PROVISIONS**

On December 6, 2005, Multnomah County Sheriff Detectives Jon Gaddis and Mike Gates, the investigators in this case, observed employees of USA General Contractors, LLC, load a substantial quantity of waste drywall into one of your company's trucks at a new housing development in the City of Troutdale near NE 257<sup>th</sup> and Glisan, a location within the Metro Regional boundary. The waste from that location filled the truck approximately half full. The detectives then followed the truck to additional locations outside the Metro boundary where more drywall scrap was loaded onto the truck until the

truck was full. At the end of the day, the truck was parked, still full, at an apartment building located at 19839 S. Hwy 213, in Oregon City.

On the morning of December 7, 2005, the detectives arrived at the apartment building before the truck was moved and followed the truck again as it was driven by one of your employees, Gregorio Perez-Perez, from the apartment building to the Riverbend Landfill in McMinnville, Oregon, where the waste was delivered for disposal. The Riverbend Landfill is a disposal site that is not designated as part of the Metro solid waste system. Detective Gates documented these facts in a written report (case # 05-1273).

Section 5.05.025 of the Metro Code prohibits any person from transporting solid waste generated within Metro to any solid waste facility or disposal site without an appropriate license from Metro. Metro Code Section 5.05.070 provides for a fine in an amount equal to the \$1,000 non-system license application and issuance fee plus an amount equal to the Regional System Fee multiplied by the number of tons (or fractions thereof) of solid waste generated within Metro that is disposed at the non-system facility. The weight slip provided to the detectives by the landfill show that the load weighed 5.39 tons.

Section 7.01.020(c) of the Metro Code requires payment of Metro excise taxes on each ton of solid waste generated within the Metro region. Metro Code Section 7.01.080 provides for penalties and finance charges to be assessed on unpaid excise taxes, and Code Section 7.01.150 provides for a civil penalty of up to \$500 for each violation of Code Chapter 7.01.

#### FINDINGS AND ASSESSMENT OF PENALTIES

Based on the foregoing investigation, I find that you have violated Metro Code Sections 5.05.025 and 7.01.020(c) by delivering solid waste to the Riverbend Landfill, a non-system disposal site, without having obtained the required non-system license and without having paid Metro excise taxes on such waste. However, I also find that there are possible mitigating circumstances in this case, most notably that it appears your actions may have been the result of a lack of knowledge about the Metro system rather than a deliberate attempt to illegally avoid the payment of Metro fees and taxes. The fact that you have only recently started up your business and that you are based well outside the Metro regional boundary make it reasonable to believe that you were not fully aware of the requirement to deliver solid waste only to system facilities when such solid waste is generated from within the Metro boundary. Therefore, I am imposing a total penalty of only \$300.00. This is an amount just slightly greater than the combined total of the excise tax that would have otherwise been due on the load (\$8.33 per ton x 5.39 tons) plus an amount equal to a limited-duration non-system license (\$250.00). An invoice for that amount is included with this letter. Some information to assist you in staying in compliance will be provided under separate cover.

Pursuant to Metro Code Section 2.05.005, you have a right to request a hearing regarding this enforcement action. Formal contested case notice is enclosed with this letter. You may be represented by legal counsel at any requested hearing, if you so desire. Should

you have any questions regarding this matter please contact Steve Kraten, Principal Solid Waste Planner, at (503) 797-1678, or have your attorney contact Paul Garrahan, Metro Assistant Counsel, at (503) 797-1661.

Sincerely,



Michael G. Hoglund  
Solid Waste & Recycling Director

SK/MEH

cc: Michael Jordan, Metro Chief Operating Officer  
Roy Brower, Regulatory Affairs Manager  
Steve Kraten, Principal Solid Waste Planner  
Paul Garrahan, Metro Assistant Counsel  
George Duvendack, Riverbend Landfill



BEFORE THE METRO REGIONAL GOVERNMENT

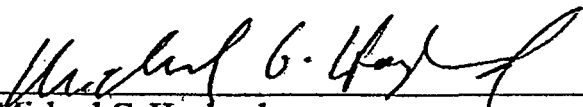
IN THE MATTER OF THE VIOLATION OF )  
SECTION 7.01.020 OF THE METRO CODE BY )  
HERME RIVAS dba USA GENERAL )  
CONTRACTORS, LLC ) )  
CONTESTED CASE HEARING )  
)

TO HERME RIVAS dba USA GENERAL CONTRACTORS, LLC, PO Box 1146  
St. Mary's Circle, Mount Angel, OR 97362

Pursuant to Metro Code § 2.05.005(c), Metro hereby provides Herme Rivas dba USA General Contractors, LLC with contested case notice in the matter of the Executive Officer's citation and findings regarding violations of the Metro Code. Specifically, Mr. Rivas violated section 5.05.025 of the Metro Code which prohibits any person from transporting solid waste generated within Metro to any solid waste facility or disposal site without an appropriate license from Metro. A statement of the Chief Operating Officer's determination and a copy of the citation letter directed to the company are included with this notice.

A contested case arises in this matter pursuant to Metro's authority under Article XI, Section 14 of the Oregon Constitution, the 1992 Metro Charter, ORS Chapter 268, including ORS 268.317, and Metro Code Chapters 2.05 and 5.05. Pursuant to Metro Code Chapter 2.05, Mr. Rivas 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 findings of the Chief Operating Officer with regard to Mr. Rivas' delivery of solid waste generated from within the Metro boundary to the Riverbend Landfill on December 7, 2005, without having obtained the required non-system license. Mr. Rivas can be represented by legal counsel at the hearing, if he so desires.

DATED the 27th day of December, 2005.

  
\_\_\_\_\_  
Michael G. Hoglund  
Metro, Solid Waste & Recycling Director

Mr. Rivas  
December 27, 2005

**CERTIFICATE OF MAILING**

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

Herme Rivas dba USA General Contractor, LLC  
PO Box 1146  
St. Mary's Circle  
Mount Angel, OR 97362

On December 27, 2005, 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

SK:bjl  
S:\REM\Enforcement\Flow Control\USA\_Gen\_Contractors\Dec2005\Dec2005LA.DOC  
Quebec



**METRO**

March 10, 2006

Mr. Herme Rivas, President  
USA General Contractors LLC  
730 St. Mary's Circle  
P.O. Box 1146  
Mt. Angel, OR 97362

**RE: Application for a Non-System License**

Dear Mr. Rivas:

On March 9, 2006 we received your application for a Metro non-system license to deliver to the Riverbend Landfill loads of construction cleanup waste partly originating from within the Metro boundary. However, on February 2, 2006, the Metro Council adopted Ordinance Number 06-1098B that put in place a temporary moratorium on the acceptance of applications for new non-system licenses. The purpose of the moratorium is to hold in abeyance any further changes to the regional solid waste system until Metro has completed a Disposal System Planning project presently underway. This project will help to determine the shape that the disposal system will take after the moratorium is lifted. The moratorium will remain in place until December 31, 2007 but may be lifted earlier if sufficient progress is made in setting system policy on solid waste disposal and recovery. For this reason, we are returning your application form and check for the \$250 application fee.

Until such time as the moratorium is lifted and you are granted a non-system license, any solid waste that you haul from within the Metro boundary must be delivered only to a Metro-designated facility. On February 2, 2006 the Council adopted Ordinance Number 06-1103. This ordinance amended the Code to clarify the status of loads containing waste from both inside and outside the boundary such as the ones you have described in your application. Though the ordinance will not become effective until 90 days after passage, this particular ordinance constitutes a clarification of Metro's long-standing position on the issue and not a change in policy. The new language is found in section 5.02.045(d) of the Code and reads as follows:

*When solid waste generated from within the Metro boundary is mixed in the same vehicle or container with solid waste generated from outside the Metro boundary, the load in its entirety shall be reported at the disposal site by the generator or hauler as having been generated within the Metro boundary and the Regional System Fee shall be paid on the entire load unless the generator or hauler provides the disposal site operator with documentation regarding the total weight of the solid waste in the vehicle or container that was generated within the Metro boundary and the disposal site operator forwards*

Mr. Herme Rivas  
March 10, 2006  
Page 2

*such documentation to Metro, or unless Metro has agreed in writing to another method of reporting.*

In other words, if you mix waste from inside the Metro region with outside waste in the same load, then you must identify all of the waste as having been generated inside the Metro region unless you can distinguish and document the weight of waste from inside the district from that outside the district, or unless Metro has pre-approved a method for you to use to distinguish such waste.

If you have questions about this, you can call me at (503) 797-1678

Sincerely,



Steve Kraten  
Principal Solid Waste Planner

SK:mb  
Enclosure  
S:\REM\kraten\Gen Corresp\Rivas030906-NSLapp.doc  
Queue

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
TEL 503 797 1700 | FAX 503 797 1797



METRO

August 29, 2006

George Duvendack, District Manager  
Riverbend Landfill  
13469 SW Highway 18  
McMinnville, OR 97128

RE: Transaction records for USA General Contractors and Avila Drywall

Dear Mr. Duvendack:

An investigation conducted by Metro has revealed that the Herme Rivas, dba USA General Contractors, and Juventino Estrada dba Avila Drywall have repeatedly violated provisions of the Metro Code by delivering solid waste generated from within the Metro boundary to the Riverbend Landfill, a non-system facility, without benefit of a non-system license and without paying appropriate Metro fees and taxes on such waste.

In order to assess the appropriate fees and taxes on these companies for this tonnage, Metro requests that you provide us with the tonnage that USA General Contractors and Avila Drywall have delivered to the Riverbend Landfill each month from January 1, 2006 to the present. If you have any questions about this matter, please call me at (503) 797-1678. Thank you.

Sincerely,

Steven Kraten  
Principal Solid Waste Planner

SK:bjl

cc: Roy Brower, Regulatory Affairs Manager  
Michael Hoglund, Solid Waste & Recycling Director  
Dean Kampfer, Waste Management

S:\REM\kraten\Facilities\Riverbend LFD\duvendack-kr082906.doc  
Queue

**From:** "Duvendack, George" <GDuvendack@wm.com>  
**To:** <kratens@metro.dst.or.us>  
**Date:** Thu, Sep 7, 2006 9:53 AM  
**Subject:** FW: USA General & Juventino Reports

Steve,

Please find the attached information that you requested in your letter dated August 29, 2006.

If you require any additional data please contact me.

Thank you,  
George

> -----Original Message-----

> From: Fultz, Shelley  
> Sent: Tuesday, September 05, 2006 4:12 PM  
> To: Duvendack, George  
> Subject: USA General & Juventino Reports  
> Importance: High

>

> George,

>

> Per your request here are the two spreadsheets that show the tonnages for these two customers from January 2006 through August 2006.

>

> Thank you,

>

> Shelley Fultz  
> Operations Specialist  
> Riverbend Landfill  
> 13469 SW Hwy 18  
> McMinnville, OR 97128  
> 503-472-8788 ext 25

>

>> <<USA General-Metro Rpt.xls>> >> <<Juventino-Metro Rpt.xls>>

**CC:** "Winston, Adam" <Awinston@wm.com>, "Kampfer, Dean" <dkampfer@wm.com>, "Kenefick, Andrew M" <AKenefick@wm.com>

**Material Summary Report****Criteria: 01/01/2006 12:00 AM to 01/31/2006 11:59 PM****Business Unit Name: Riverbend Landfill****Customer Name: USAGENERAL(USA General Constructors LLC)****User: shelleyf****Operation Type: All****Date: Sep 05 2006, 2:57:55 PM**

<b>Material</b>	<b>Material D:Rate Unit</b>	<b>Loads</b>	<b>Tons</b>	<b>Yards</b>
CDT	C&D Tons TON	58.0	260.9	0.0
CDY	C&D YardsCYD	3.0	0.0	15.0
<b>Total</b>		<b>61.0</b>	<b>260.9</b>	<b>15.0</b>

**Material Summary Report****Criteria: 02/01/2006 12:00 AM to 02/28/2006 11:59 PM****Business Unit Name: Riverbend Landfill****Customer Name: USAGENERAL(USA General Constructors LLC)****User: shelleyf****Operation Type: All****Date: Sep 05 2006, 3:01:09 PM**

<b>Material</b>	<b>Material D</b>	<b>Rate Unit</b>	<b>Loads</b>	<b>Tons</b>	<b>Yards</b>
CDT	C&D Tons	TON	55.0	242.4	0.0
CDY	C&D Yards	CYD	2.0	0.0	10.0
MST	MSW Tons	TON	1.0	3.6	0.0
YRY	Yard Debris	CYD	1.0	0.0	5.0
<b>Total</b>			<b>59.0</b>	<b>246.0</b>	<b>15.0</b>



**Material Summary Report****Criteria: 03/01/2006 12:00 AM to 03/31/2006 11:59 PM****Business Unit Name: Riverbend Landfill****Customer Name: USAGENERAL(USA General Constructors LLC)****User: shelleyf****Operation Type: All****Date: Sep 05 2006, 3:13:54 PM**

<b>Material</b>	<b>Material D:Rate Unit</b>	<b>Loads</b>	<b>Tons</b>	<b>Yards</b>
CDT	C&D Tons TON	80.0	371.2	0.0
CDY	C&D YardsCYD	1.0	0.8	5.0
<b>Total</b>		<b>81.0</b>	<b>371.9</b>	<b>5.0</b>

**Material Summary Report****Criteria: 04/01/2006 12:00 AM to 04/30/2006 11:59 PM****Business Unit Name: Riverbend Landfill****Customer Name: USAGENERAL(USA General Constructors LLC)****User: shelleyf****Operation Type: All****Date: Sep 05 2006, 3:16:30 PM**

<b>Material</b>	<b>Material D</b>	<b>Rate Unit</b>	<b>Loads</b>	<b>Tons</b>	<b>Yards</b>
CDT	C&D Tons	TON	77.0	415.1	0.0
CDY	C&D Yards	CYD	1.0	0.8	5.0
<b>Total</b>			<b>78.0</b>	<b>415.9</b>	<b>5.0</b>

**Material Summary Report****Criteria: 05/01/2006 12:00 AM to 05/31/2006 11:59 PM****Business Unit Name: Riverbend Landfill****Customer Name: USAGENERAL(USA General Constructors LLC)****User: shelleyf****Operation Type: All****Date: Sep 05 2006, 3:17:00 PM**

<b>Material</b>	<b>Material D</b>	<b>Rate Unit</b>	<b>Loads</b>	<b>Tons</b>	<b>Yards</b>
CDT	C&D Tons	TON	96.0	513.4	0.0
MST	MSW Tons	TON	1.0	6.8	0.0
<b>Total</b>			<b>97.0</b>	<b>520.2</b>	<b>0.0</b>

**Material Summary Report****Criteria: 06/01/2006 12:00 AM to 06/30/2006 11:59 PM****Business Unit Name: Riverbend Landfill****Customer Name: USAGENERAL(USA General Constructors LLC)****User: shelleyf****Operation Type: All****Date: Sep 05 2006, 3:17:47 PM**

<b>Material</b>	<b>Material D:Rate Unit</b>	<b>Loads</b>	<b>Tons</b>	<b>Yards</b>
CDT	C&D Tons TON	100.0	504.4	0.0
<b>Total</b>		<b>100.0</b>	<b>504.4</b>	<b>0.0</b>

**Material Summary Report****Criteria: 07/01/2006 12:00 AM to 07/31/2006 11:59 PM****Business Unit Name: Riverbend Landfill****Customer Name: USAGENERAL(USA General Constructors LLC)****User: shelleyf****Operation Type: All****Date: Sep 05 2006, 3:18:19 PM**

<b>Material</b>	<b>Material D</b>	<b>Rate Unit</b>	<b>Loads</b>	<b>Tons</b>	<b>Yards</b>
CDT	C&D Tons	TON	88.0	446.3	0.0
<b>Total</b>			88.0	446.3	0.0

**Material Summary Report****Criteria: 08/01/2006 12:00 AM to 08/31/2006 11:59 PM****Business Unit Name: Riverbend Landfill****Customer Name: USAGENERAL(USA General Constructors LLC)****User: shelleyf****Operation Type: All****Date: Sep 05 2006, 3:19:08 PM**

<b>Material</b>	<b>Material D:Rate Unit</b>	<b>Loads</b>	<b>Tons</b>	<b>Yards</b>
CDT	C&D Tons TON	46.0	217.0	0.0
Total		46.0	217.0	0.0

# CANIDII 13

Herme Rivas  
dba USA General Contractor, LLC

Penalty Interest on Excise Tax

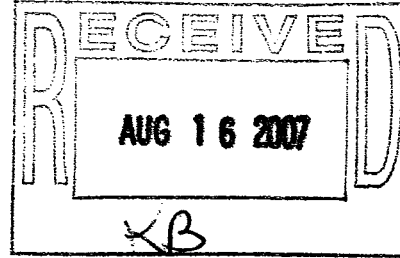
	Jan-06	Feb-06	Mar-06	Apr-06	May-06	Jun-06	Jul-06	Aug-06	Sep-06	Oct-06	Total
Number of Loads	61	55	81	78	96	100	88	46	0	0	605
Tons	260.9	242.4	371.9	415.9	520.2	504.4	446.3	217.0	0.0	0.0	2,979.0
<b>Excise Tax</b>											
Excise Tax Rate	\$8.33	\$8.33	\$8.33	\$8.33	\$8.33	\$8.33	\$8.33	\$8.33	\$8.35	\$8.35	
Excise Tax Due	\$2,173.30	\$2,049.19	\$3,097.93	\$3,464.45	\$4,333.27	\$4,201.65	\$3,717.68	\$1,807.61	\$0.00	\$0.00	\$24,815.08
Cumulative Tax	\$2,173.30	\$4,222.49	\$7,290.42	\$10,754.87	\$15,088.14	\$19,289.79	\$23,007.47	\$24,815.08	\$24,815.08	\$24,815.08	
25% Penalty Due	\$543.33	\$504.80	\$774.48	\$866.11	\$1,083.32	\$1,050.41	\$929.42	\$451.90	\$0.00	\$0.00	\$6,203.77
Cumulative Penalty	\$543.33	\$1,048.13	\$1,822.61	\$2,688.72	\$3,772.04	\$4,822.45	\$5,751.87	\$6,203.77	\$6,203.77	\$6,203.77	
Tax & penalty due	\$2,716.63	\$2,523.99	\$3,872.41	\$4,330.56	\$5,416.59	\$5,252.06	\$4,647.10	\$2,259.51	\$0.00	\$0.00	\$31,018.85
Cumulative tax & penalty due	\$2,716.63	\$5,240.62	\$9,113.03	\$13,443.59	\$18,860.18	\$24,112.24	\$28,759.34	\$31,018.85	\$31,018.85	\$31,018.85	
1.5% monthly interest on delinquent taxes & penalty (assessed on the 15th of the month following the month taxes were due)			\$40.75	\$78.61	\$136.70	\$201.65	\$282.90	\$361.68	\$431.39	\$465.28	\$1,998.96
Cumulative interest due			\$40.75	\$119.36	\$256.06	\$457.71	\$740.61	\$1,102.29	\$1,533.68	\$1,998.96	
<b>Cumulative tax, penalty, &amp; interest due</b>	<b>\$2,716.63</b>	<b>\$5,240.62</b>	<b>\$9,153.78</b>	<b>\$13,562.95</b>	<b>\$19,116.24</b>	<b>\$24,569.95</b>	<b>\$29,499.95</b>	<b>\$32,121.14</b>	<b>\$32,552.53</b>	<b>\$33,017.81</b>	<b>\$33,017.81</b>

## Regional System Fee

System Fee Rate	\$14.54	\$14.54	\$14.54	\$14.54	\$14.54	\$14.54	\$14.54	\$14.54	\$13.57	\$13.57	
Regional System Fee Due	\$3,793.49	\$3,524.50	\$5,407.43	\$6,047.19	\$7,563.71	\$7,333.98	\$6,489.20	\$3,155.18	\$0.00	\$0.00	\$43,314.68
Cumulative Tax	\$3,793.49	\$7,317.99	\$12,725.42	\$18,772.61	\$26,336.32	\$33,670.30	\$40,159.50	\$43,314.68	\$43,314.68	\$43,314.68	
25% Penalty Due	\$948.37	\$881.13	\$1,351.86	\$1,511.80	\$1,890.93	\$1,833.50	\$1,622.30	\$788.80	\$0.00	\$0.00	\$10,828.69
Cumulative Penalty	\$948.37	\$1,829.50	\$3,181.36	\$4,693.16	\$6,584.09	\$8,417.59	\$10,039.89	\$10,828.69	\$10,828.69	\$10,828.69	
Fee & penalty due	\$4,741.86	\$4,405.63	\$6,759.29	\$7,558.99	\$9,454.64	\$9,167.48	\$8,111.50	\$3,943.98	\$0.00	\$0.00	\$54,143.37
Cumulative tax & penalty due	\$4,741.86	\$9,147.49	\$15,906.78	\$23,465.77	\$32,920.41	\$42,087.89	\$50,199.39	\$54,143.37	\$54,143.37	\$54,143.37	
1.5% monthly interest on delinquent fee & penalty (assessed on the 15th of the month following the month taxes were due)			\$71.13	\$137.21	\$238.60	\$351.99	\$493.81	\$631.32	\$752.99	\$812.15	\$3,489.20
Cumulative interest due			\$71.13	\$208.34	\$446.94	\$798.93	\$1,292.74	\$1,924.06	\$2,677.05	\$3,489.20	
<b>Cumulative fee, penalty, &amp; interest due</b>	<b>\$4,741.86</b>	<b>\$9,147.49</b>	<b>\$15,977.91</b>	<b>\$23,674.11</b>	<b>\$33,367.35</b>	<b>\$42,886.82</b>	<b>\$51,492.13</b>	<b>\$56,067.43</b>	<b>\$56,820.42</b>	<b>\$57,632.57</b>	<b>\$57,632.57</b>

Average Regional System Fee avoided per load \$ 71.59      Average RSF + Penalty + Int per load (as of 9/15) \$ 93.92

Per load rate	\$75	\$80	\$85	\$90	\$95	\$100	\$105	\$110	\$115
Total fine	\$45,375	\$48,400	\$51,425	\$54,450	\$57,475	\$60,500	\$63,525	\$66,550	\$69,575



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BEFORE THE METRO REGIONAL GOVERNMENT

IN THE MATTER OF NOV-162-06 )  
ISSUED TO ) RESPONDENT'S EXCEPTIONS  
HERME RIVAS dba USA GENERAL ) TO PROPOSED ORDER  
CONTRACTORS, LLC )  
RESPONDENTS. )

COMES NOW, HERME RIVAS, dba USA GENERAL CONTRACTORS, LLC.,  
P.O. Box 1146, St. Mary's Circle, Mt. Angel, OR 97362, by and through his attorney, C.  
David Hall, and hereby takes exceptions to proposed Order of Hearings Officer, Robert J.  
Harris, dated July 20, 2007 and requests oral argument before the Metro Council on  
Thursday, September 6, 2007. Respondent's specific objections are as follows:

1. Respondent objects to the proposed Order as not timely filed and therefore  
invalid. The hearing was on December 6, 2006. A proposed Order was not  
issued until July 20, 2007, 7 ½ months after the hearing, without any delay on  
the part of the participants. The extended delay of the Hearings Officer  
prejudices the Respondent's case.
2. Respondent takes exception to the Hearings Officer's Admission of Exhibit 15.  
This Exhibit was not offered into evidence during the course of the hearing and

1 - RESPONDENT'S EXCEPTIONS TO PROPOSED ORDER

Page

C. David Hall  
Attorney at Law  
P.O. Box 14546  
1432 E. Burnside  
Portland, OR 97293  
(503) 234-3245

Exhibit B to Resolution No. 07-3862  
Respondent's Exceptions to  
Proposed Order



1 its admissibility without Respondent's right to object violates Respondent's  
2 right to confront evidence against him.

- 3
- 4 3. Respondent takes exception to Findings 16 and 17 on the grounds that these  
5 findings are based on the statements of Odus Lambert and Doug Bennett as  
6 conveyed to Detectives Gaddis and Gates. The statements are not reliable and  
7 are based on guesswork and speculation and not based on any evidence in the  
8 record. The statements do not warrant the Hearing Officer's Conclusions of  
9 Law.
- 10
- 11 4. Respondent takes exception to Finding 21 that the Respondent is not credible.  
12 The Finding is based on the speculative statements of Lambert and Bennett to  
13 Detectives Gaddis and Gates as opposed to Respondent's direct testimony.
- 14
- 15 5. Respondent takes exception to Finding 25, as being speculative in nature and not  
16 supported by the evidence. The Hearings Officer begins the Finding with the  
17 words "If..." The actual violations total six in number and are set forth in  
18 Findings 6, 7, 8, 9, 10 and 11.
- 19
- 20 6. Respondent takes exception to Finding 26 for the same reasons set forth in  
21 Exception 5 above.
- 22
- 23 7. Respondent takes exception to Finding 27 for the reason that it is based on the  
24 speculative reasoning set forth in Findings 26 and 27 and the unsupported  
25 statements of Lambert and Bennett in Findings 16 and 17.
- 26

## 2 – RESPONDENT'S EXCEPTIONS TO PROPOSED ORDER

Page

C. David Hall  
Attorney at Law  
P.O. Box 14546  
1432 E. Burnside  
Portland, OR 97293  
(503) 234-3245

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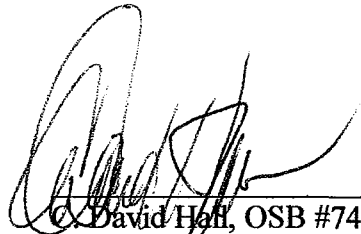
8. Respondent takes exception to Finding 28 on the grounds that it is based on speculation and inference not support by evidence in the record. The Hearings Officer's conclusions are neither reasonable nor fair and are based on matters not contained in the evidentiary record.

9. Based on Respondent's exceptions to Findings #16, 17, 21, 25, 26, 27 and 28 and for the reasons set forth above, Respondent takes exception to Conclusions of Law #3, 4, 5, 6 and 7.

10. Respondent takes exception to the Order of the Hearings Officer on page 18 after concluding that a fine of \$250 per load is appropriate (Respondent concedes 6 loads). The Hearings Officer has assessed a \$300 fine per load in the Order.

Respondent having fully taken exceptions to the Findings of Fact, Conclusions of Law and Proposed Order, request the fine be reduced to \$250 per load for 6 loads as set forth in the evidence.

DATED this 11<sup>th</sup> day of August, 2007.

  
\_\_\_\_\_  
C. David Hall, OSB #74122  
Attorney for Respondent Herme Rivas  
dba USA General Contractors, LLC

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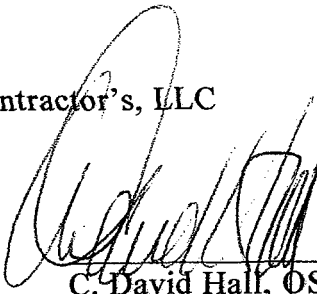
CERTIFICATE OF MAILING

The undersigned certifies that as the attorney for Respondent, he served the foregoing Exceptions to Proposed Order on the parties on the date hereinafter mentioned, by depositing a copy of said notice in a sealed envelope in the United States Post office on said day at Portland, Oregon with postage thereon fully prepaid, and addressed to the said parties at their last known place of business or residence on this 16 day of August, 2007.

Paul Garrahan  
Attorney for Metro  
600 NE Grand Ave.  
Portland, OR 97232-2736

Robert J. Harris  
Metro Hearings Officer  
Harris Law Firm PC  
165 SE 26<sup>th</sup> Ave.  
Hillsboro, OR 97123

Herme Rivas, dba USA General Contractor's, LLC  
PO Box 1146  
Mt. Angel, OR 97362

  
C. David Hall, OSB #74122  
Attorney for Respondents

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BEFORE THE METRO REGIONAL GOVERNMENT

IN THE MATTER OF NOV 162-06 )  
ISSUED TO )  
HERME RIVAS, DBA USA GENERAL )  
CONTRACTORS, LLC )  
RESPONDENT. )

METRO'S EXCEPTIONS FILED  
PURSUANT TO METRO CODE  
§ 2.05.035(b)

TO: Michael Jordan, Metro Chief Operating Officer

Pursuant to Metro Code § 2.05.035(b), Metro submits exceptions to the proposed order of the Hearings Officer in the above-referenced matter.

Attached is Exhibit A, which contains Metro's proposed exceptions in redline format. Metro's proposed changes are, for the most part, technical amendments that do not change the substance of the proposed order. Metro does not expect the Respondent or the Hearings Officer to object to the proposed technical amendments. Exhibit A also contains substantive changes, noted in bold in the document, as described below:

1. Page 7, lines 18-24: Metro modified this language to contain an accurate statement of the Metro Code.
2. Page 7, line 24: Metro added language to reflect accurately the evidence presented that Respondent did not have a non-system license.
3. Page 8, lines 16-18: Metro added language to clarify the title and duties of the detectives who worked on this matter.

**Exhibit C to Resolution No. 07-3862  
Metro's Exceptions Filed Pursuant to  
Metro Code § 2.05.035(b)**



EXHIBIT A – PROPOSED ORDER FROM HEARING  
METRO’S EXCEPTIONS FILED PURSUANT TO METRO CODE § 2.05.035(b)

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METRO CONTESTED CASE: ILLEGAL DUMPING ORDINANCE NOTICE OF VIOLATION 162-06

BEFORE ROBERT J. HARRIS HEARINGS OFFICER

In The Matter of Notice of Violation NOV-162-06:	)	PROPOSED AND <del>FINAL</del> ORDER FROM HEARING
	)	
Issued to	)	
<del>Herme Rivas, dba USA General Contractors, LLC,</del>	)	
	)	
Respondent.	)	

On September 29, 2006, Metro issued A Notice of Violation and Notice of Assessment of Civil Penalty as case number NOV-162-6106 to Respondent ~~Herme Rivas dba USA General Contractors, LLC~~ (“Respondent”~~s~~ herein).

Respondent was given a notice of contested case allowing thirty (30) days from the date of mailing to Respondent to request a contested case hearing. Respondent filed a request for hearing in a timely manner on October 6, 2006, through ~~his~~its attorney C. David Hall.

Respondent also filed a Petition for Redemption and Refund.

On October 30, 2006, the Hearings Officer sent a notice of Hearing to Metro and to Respondent through ~~his~~its attorney Mr. Hall stating that a Contested Case Hearing would be held on December 6, 2006 at the Metro offices located at 600 Northeast Grand Avenue, Portland, Oregon 97232.

////

**EXHIBIT A – PROPOSED ORDER FROM HEARING  
METRO’S EXCEPTIONS FILED PURSUANT TO METRO CODE § 2.05.035(b)**

1 #####

2 #####

3 Included in that Notice of Hearing were copies of:

- 4 1. Findings of Facts, regarding Metro Citation No NOV-162-06, dated September
- 5 29, 2006;
- 6 2. Finding of Violation and Notice of Imposition of Penalty, dated September 29,
- 7 2006; and
- 8 3. Explanation of Rights.

9 On December 6, 2006, at the Metro Offices in Portland, Oregon the hearing was held.  
10 Present were: Representing Metro Paul Garrahan, Metro Assistant Counsel. Present for  
11 Respondent were Herme Rivas and C. David Hall, attorney.

12 The Hearings Officer, Robert Harris, stated on the record that there had been no ex-parte  
13 communications. The parties acknowledged on the record that they understood the rights and  
14 procedures, and waived their reading.

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

**EVIDENTIARY RULINGS**

17 **Uncontested Exhibits:** The Hearings Officer accepted documents and photos  
18 during the Hearing. Based on the evidence offered at the hearing and the records and evidence  
19 admitted prior to the close of record, the Hearings Officer made the following a part of the  
20 Record:

21 **METRO EXHIBITS:**

<u>Exhibit Number</u>	<u>Exhibit</u>
22 1	Metro Solid Waste Enforcement Unit Special Report 06-0380
23	dated August 30, 2006, authored by Detective Michael Gates
24 2	Metro Solid Waste Enforcement Unit Special Report 06-0380,
25	

**EXHIBIT A – PROPOSED ORDER FROM HEARING  
METRO’S EXCEPTIONS FILED PURSUANT TO METRO CODE § 2.05.035(b)**

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- Undated
- 3 Map of Metro Jurisdiction
- 4 Waste Management Ticket #466420
- 5 Waste Management Ticket #472607
- 6 Waste Management Ticket #473472
- 7 Waste Management Ticket #473832
- 8 Photo dated April 26, 2006
- 9 Waste Management Ticket #475033
- 10 Waste Management Ticket #485419
- 11 Photo dated June 26, 2006

LicenseeRespondent offered no exhibits.

The Hearings Officer made the following Exhibits a part of the record:

<u>Exhibit Number</u>	<u>Exhibit</u>
HO-1	Letter from Metro Dated December 11, 2006
HO-2	Letter from Respondents attorney dated December 12, 2006

**Contested Exhibits:** At the close of the Hearing, Respondent raised an objection to making the following Exhibits a part of the Record.

- 12 Finding of Violation and Notice of Assessment of Penalties by Metro dated December 27, 2005
- 13 Application for Non System License, dated March 10, 2006
- 14 Letter from Metro to Riverbend Landfill regarding Transaction Records for USA General Contractors and Avila Drywall, dated August 29, 2006
- 15 Spreadsheet Prepared by Metro



**EXHIBIT A – PROPOSED ORDER FROM HEARING  
METRO’S EXCEPTIONS FILED PURSUANT TO METRO CODE § 2.05.035(b)**

1 Respondent argues that Metro never formally offered exhibits 12 through 15 to the  
2 Hearings Officer as part of the record. Metro argues that it solicited testimony about these  
3 exhibits, that they are reliable and therefore admissible under Metro Code Section 2.05.030(a)  
4 and that there are no magic words necessary to make exhibits a part of the record.

5 Respondent argued that he did not cross examine Metro witnesses on these exhibits  
6 because they were never offered into evidence. He also argues that there is a formality  
7 necessary to offer exhibits and make them a part of the record.

8 The Hearings Officer took the objection under advisement. Subsequently, the Hearings  
9 Officer received written arguments related to the admissibility of Exhibits 12 through 15  
10 (letters now marked and made a part of the Record as HO-1 and HO-2).

11 I find that as a matter of law, absent some other rule, an exhibit must be formally  
12 offered into evidence before it can be made a part of the record. It is at that point that an  
13 adverse party can raise objections to foundation or reliability of the proffered evidence.  
14 Therefore, absent some other substantive or procedural rule, Exhibits 12 through 15 cannot be  
15 made a part of the record.

16 Exhibits 12 and 13: Mr. Kraten and Herme Rivas both testified that Exhibits 12 and  
17 13 were sent, received and are accurate, so the contents of these two documents is part of the  
18 record. ~~However~~ I find no alternative substantive or procedural rule, however, that would allow  
19 me to make these documents themselves exhibits absent them being offered at the time of the  
20 hearing. Therefore Exhibits 12 and 13 are ~~excluded~~ excluded. (It is possible that these  
21 documents, being public records of action taken By Metro, could arguable be admissible  
22 through a form of Judicial Notice, which is also recognized in the Oregon Administrative  
23 Procedures Act, however, I find no need to make that decision as the material facts set forth in  
24  
25

**EXHIBIT A – PROPOSED ORDER FROM HEARING  
METRO’S EXCEPTIONS FILED PURSUANT TO METRO CODE § 2.05.035(b)**

1 Exhibits 12 and 13 were testified to by Mr. Kraten and confirmed by Respondent in his own  
2 testimony).

3 Exhibit 14: Again Mr. Kraten testified about the contents, and testified about the  
4 number of loads and tons Riverbend reported Respondent brought to their facility each month  
5 from January to August 2006. However, the actual email exchanges were not offered into  
6 evidence and I find no alternative legal or procedural rule that would allow Metro to offer this  
7 document after the hearing was closed. Therefore Exhibit 14 is excluded. To the extent the  
8 Communications in Exhibit 14 contain anything that Mr. Kraten did not testify about, that  
9 information is not a part of the record and will not be considered.

10 I want to point out that while exhibits 12, 13 and 14 are excluded, Mr. Kraten’s  
11 testimony is still a part of the record. Metro Code 2.05.030(c) provides that “*All offered*  
12 *evidence not objected to will be received by the Hearings Officer ...*”. Respondent did not  
13 object to Mr. Kraten’s verbal testimony. If Respondent wished to challenge that testimony  
14 based on hearsay or foundation, he could have done so. He did not. It is admitted. There was  
15 no requirement that Metro even offer exhibits buttressing Mr. Kraten’s testimony and the fact  
16 that they tried, yet failed to admit exhibits that may have supported Mr. Kraten’s testimony,  
17 does not mean that the testimony itself should be stricken.

18 Exhibit 15: I see this Exhibit as being different in kind and it is admissible.

19 After Mr. Kraten testified about the amount of loads and tons that Riverbend reported  
20 that Respondent took to their landfill from January to August 2006, he testified about how  
21 much excise tax and system fees would have been paid if all these loads were subject to those  
22 assessments, and what the regulatory penalty and applicable interest would have been.

23 Exhibit 15 is a detailed calculation of these assessments and was used by the  
24 Respondent, the Hearings Officer and Mr. Kraten to follow Metro’s calculation of these  
25

**EXHIBIT A – PROPOSED ORDER FROM HEARING  
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1 amounts, which calculations were testified to in detail. These calculations were not challenged  
2 by Respondent.

3 I find that Exhibit 15 is a written summary of the potential damages that Respondent  
4 may be liable for should the fact finder find in favor of Metro’s theory. It presents no new  
5 evidence. It is analogous ~~taken~~ to a Jury deliberation form that would be produced by a party in  
6 a civil damages action. Therefore it is admissible and made a part of the record for the purpose  
7 of calculation of any Taxes, Fees, Penalties or Interest that Respondent would have owed under  
8 Metro’s theory of the case.

9 ////

10 ////

**ISSUES**

12 Did Respondent take solid waste originating within the jurisdiction of Metro and  
13 dispose of it outside the Metro jurisdiction at a non-system facility without paying applicable  
14 Fees and Taxes, in violation of Metro Code Sections 5.02.045 and 7.01.020?

15 If there is a violation, on how many occasions did the Respondent violate the applicable  
16 code sections and what was the total tonnage of Metro waste disposed of at a non-licensed  
17 system facility?

18 For each violation of violations proved, what is the appropriate recovery of unpaid fees  
19 and taxes, should there be a penalty imposed, Should interest be imposed, and what should be the  
20 appropriate penalty for the violation or violations?

**APPLICABLE LAW**

- 22 1. Metro Code, Section 5.05.025: Regarding Disposal of Metro Generated Solid  
23 Waste
- 24 2. Metro Code Section 5.05.070(a) and (b): Civil Penalties

**EXHIBIT A – PROPOSED ORDER FROM HEARING  
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- 3. Metro Code Section 7.01.020: Tax Imposed
- 4. Metro Code Section 7.01.080(a): Penalties
- 5. Metro Code Section 7.01.080(b): Finance Charges
- 6. Metro Code Section 7.01.090(b): Taxes due and payable

**FINDINGS OF FACT**

1. Herme Rivas is the owner of USA General Contractors, LLC (~~Herme Rivas and the LLC are hereinafter referred to as Respondent~~), which is in the business of cleaning up the construction debris, mainly drywall, from home and small residential construction sites and disposing of it. Construction companies hire Respondent as an independent contractor and pay it based on the total square feet of the drywall hung inside the structure cleaned.

////

2. Some of Respondent’s job sites are within Metro’s the-jurisdictional boundary (“Metro’s jurisdiction”) of Metro, and some are outside Metro’s jurisdiction.

3. In late 2005 Metro received information that Respondent was taking waste from within Metro’s jurisdiction and disposing of it at Riverbend Landfill, in McMinnville, Oregon, which is a non-system landfill. ~~When solid waste is disposed of at Riverbend, the driver of the truck is supposed to give the origin of the solid waste so that any applicable fees and taxes can be assessed. Under the Metro Code, waste generated or originating within Metro’s jurisdiction may be delivered to a non-system facility only under the authority of a non-system license issued to the waste generator or hauler. Metro Code requires holders of such a license to pay Metro system fees and excise taxes on the waste delivered to such a facility.~~

4. Shortly after December 7, 2005, Metro contacted Mr. Rivas after one of his trucks was observed disposing of Metro generated solid waste, consisting of drywall, at the Riverbend Landfill. ~~Respondent did not have a non-system license authorizing such a delivery.~~ Respondent

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1 was cited for violation of Metro Code Sections 5.02.025 and 7.01.020. A \$300 penalty was  
2 imposed and Mr. Rivas was informed of his obligation to pay excise tax and system fees on  
3 Metro generated solid waste. The penalty imposed by Metro was in a reduced amount because  
4 Metro felt that Respondent was acting out of ignorance of the rules. Mr. Rivas was also informed  
5 that he could apply for a Non-System License so that Respondent could take Metro generated  
6 solid waste to a non-license facility such as Riverbend.

7         5. In early 2006 Respondent applied for a non-system license. In March of 2006, Mr.  
8 Rivas was informed that no non-system licenses were being issued and that he would have to  
9 take Metro generated waste to a Metro system disposal facility. Mr. Rivas was also reminded  
10 that any mixed loads, that is loads of solid waste that were generated partially within and  
11 partially without Metro jurisdiction, would be treated as all being generated within Metro’s  
12 jurisdiction ~~Jurisdiction~~ and would be subject to the ~~E~~excise taxes and non-system fees absent  
13 some documentation of the amount of out-of-region waste in each load supporting a pro rata  
14 imposition of the taxes and fees.

15         6. Metro continued to investigate Respondent due to concern that it was continuing  
16 to violate Metro flow control codes. On March 15, 2006, Multnomah County Sheriff Detectives  
17 Jon Gaddis and Michael Gates, who are assigned to Metro for solid waste code enforcement  
18 purposes, found a truck belonging to Respondent within the Metro region at Morgan Meadows in  
19 Troutdale, Oregon where it was loading drywall. The vehicle then drove to 206<sup>th</sup> and  
20 Amberwood, in Hillsboro, Oregon, also within Metro’s s-jurisdiction, and loaded more drywall.  
21 The truck then left at 1:06 p.m. and drove to the Riverbend Landfill in McMinnville, Oregon.  
22 The truck disposed of the waste at Riverbend and the driver gave the origin of the debris as  
23 Yamhill, which is not located in ~~M~~Metro’s jurisdiction ~~Jurisdiction~~. (See Exhibit 4). Respondent  
24 paid no Metro taxes or system fees.

**EXHIBIT A – PROPOSED ORDER FROM HEARING  
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1           7.       On April 19, 2006, Detective Gaddis located one of Respondent’s trucks at the  
2 Arbor Rose Development in Hillsboro, Oregon, a location within the jurisdiction of Metro,  
3 where the truck was loaded with drywall. The truck then went to Waterhouse Street and Blue  
4 Ridge Street in Beaverton, also a location within ~~the~~Metro’s jurisdiction ~~of Metro~~, where it was  
5 loaded with more drywall. Detective Gaddis followed the truck to North Plains, Oregon, outside  
6 Metro’s jurisdiction, but it was already 6:30 p.m. by then and as Riverbend closes at 5:00 p.m.,  
7 Detective Gaddis discontinued his tracking. On the following day, April 20, 2006, Detective  
8 Gates arrived at the Riverbend Landfill at 7:45 a.m. At 8:50 a.m. Detective Gates observed the  
9 same truck as ~~they~~he had observed the day before ~~at the Riverbend facility and dispose of its~~  
10 ~~load of drywall~~ at the Riverbend facility. The receipt for the drywall from Riverbend showed the  
11 driver gave the place of origin as Yamhill (see exhibit 5). Respondent paid no Metro taxes or  
12 system fees.

13           8.       On April 24, 2006, Detectives Gaddis and Gates located one of Respondent’s  
14 trucks at Morgan Meadows in Troutdale loading drywall. The truck then drove to NE 250<sup>th</sup> and  
15 Halsey, also in Metro’s Jurisdiction, where it loaded some more drywall. From there the truck  
16 went to Newberg where it loaded some more drywall. Newberg is not within Metro’s  
17 Jurisdiction.

18 The truck then drove to Riverbend landfill where it disposed of the drywall. The receipt stated  
19 the origin of the solid waste as Washington County (See Exhibit 6). Respondent paid no Metro  
20 taxes or system fees.

21 ~~////~~

22           9.       On April 26, 2006, Detective Gaddis located one of Respondent’s trucks near Bull  
23 Mountain Road and SW 164<sup>th</sup> in Washington County. ~~This is within the~~ Metro’s jurisdiction.  
24 The truck ~~of Metro where it~~ was loading drywall. Detective Gates followed the truck to  
25

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1 Riverbend Landfill where the drywall was deposited. The receipt showed 4.75 tons and the  
2 origin as Yamhill (See Exhibit 7). Respondent paid no Metro taxes or system fees.

3           10.     On May 2, 2006, Detective Gates located one of Respondent’s trucks at Bull  
4 Mountain Road and SW 164<sup>th</sup> in Washington County once again within Metro’s jurisdiction. The  
5 truck was loaded with drywall and it proceeded to “The Greens” in Newberg, Oregon, outside  
6 Metro’s jurisdiction, -where more drywall was loaded on the truck. The truck then went to  
7 another location in Newberg where more drywall was loaded. The truck then went to Riverbend  
8 and disposed of the drywall. The receipt showed 5.55 tons was disposed of and the reported  
9 origin as Yamhill County (See Exhibit 9). Respondent paid no Metro taxes or system fees.

10           11.     On June 26, 2006, a witness reported to Detective Gates that he was following a  
11 truck from the Arbor Rose Home Development in Hillsboro, a location within Metro’s  
12 jurisdiction. The witness had observed the truck loading drywall at that location. The witness  
13 followed the truck to a development near Beef Bend Road. Detective Gates went to that location  
14 and contacted the witness. The witness stated that the truck was loading drywall from a  
15 residence at SW Davinci Lane and SW Greenfield. This location is in Washington County and  
16 within Metro’s jurisdiction. Detective Gates observed the truck as it left the neighborhood.  
17 Detective Gates ran the plate number and determined that it was registered to Respondent. The  
18 truck went to the Riverbend Landfill where it disposed of the drywall. The receipt for disposal  
19 showed the driver gave an origin of Yamhill County. The weight of the load was 4.53 tons (See  
20 Exhibit 10). Respondent paid no Metro taxes or system fees.

21 #####

22 #####

23           12.     On July 20, 2006, Detectives Gaddis and Gates met with Herme Rivas, owner of  
24 USA General Contractors, LLC. Mr. Rivas stated that he was the owner of USA General

**EXHIBIT A – PROPOSED ORDER FROM HEARING  
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1 Contractors, LLC. Mr. Rivas stated that his company does work for Westside Drywall, Tri  
2 County Drywall and PNR Drywall. Mr. Rivas stated that his company works at many job sites in  
3 the area. The company has eight trucks but four trucks currently in operation. He has three  
4 drivers. Mr. Rivas stated that he took almost no loads to Riverbend and that 40% of his loads  
5 come from inside the region.

6 13. Mr. Rivas stated that he had applied for a non system license, however he was  
7 unclear if he had even been issued that license, though he did state for some reason he had  
8 received his license fee back.

9 14. Mr. Rivas stated that he did most of his work in the Hillsboro-Beaverton area.

10 15. Mr. Rivas stated that he couldn't make enough money if he disposed of the  
11 drywall at the Hillsboro landfill. Mr. Rivas also stated that the other companies are doing the  
12 same thing as he is doing. ~~That~~ That recycling the drywall is too expensive, and that he is a small  
13 company trying to grow.

14 16. On August 29, 2006, Detectives Gaddis and Gates met with the owner of Tri  
15 County Drywall, Odus Lambert. Mr. Lambert stated that USA General Contractors, LLC had  
16 cleaned up approximately the following number of homes within the Metro area: 80 homes at  
17 Morgan Meadows; 15 homes at the Trolley barn development in Sellwood; 30-40 homes at the  
18 Bull mountain development; 6 homes at Riverside homes on Beef Bend Road; and 30 homes at  
19 the Grant Development off of 207<sup>th</sup> and Sandy Blvd. Mr. Lambert estimated that it would take 4-  
20 5 homes to create a truckload of drywall waste.

21 ~~////~~

22 ~~////~~

23 ~~////~~

24

25



**EXHIBIT A – PROPOSED ORDER FROM HEARING  
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1           17.    On August 29, 2006, Detectives Gates and Gaddis met with the General Manager  
2 of Westside Dry Wall, Doug Bennett. Mr. Bennett reported that Respondents had cleaned up the  
3 following number of homes for them within Metro’s jurisdiction: 200-300 at Arbor Homes in  
4 Hillsboro; 200 homes at Arbor Homes in Sunnyside; 100 or more homes at Arbor Homes in  
5 Happy Valley; 80 or more homes at Centex Development in Fairview; and 70-80 homes in at  
6 Centex in Hillsboro. Mr. Bennett also stated that it would take 4-5 houses of drywall waste to fill  
7 a truck that Respondents used.

8           18.    The total number of homes that Westside Drywall and Tri-County reported  
9 Respondents cleaned within the Metro area, that they could remember, was approximately  
10 900.

11           19.    Detective Gates requested on numerous occasions that Respondent Mr. Rivas get  
12 him ~~his~~ records on the homes ~~he~~ that Respondent cleaned so that Metro could determine how  
13 many of the homes were within ~~the jurisdiction of Metro’s jurisdiction.~~ Respondent Mr. Rivas  
14 promised on numerous occasions to get Detective Gates that information but never did. At one  
15 point Mr. Rivas stated he had the information. When he met with Detective Gates to give it to  
16 him, however, he stated he didn’t have it but could, from memory tell him that there were a total  
17 of 210 homes within Metro’s jurisdiction ~~that~~ where he had worked-at.

18           20.    At the Hearing, Mr. Rivas admitted that Respondents did take some drywall  
19 debris from within the Metro area and dispose of it at Riverbend Landfill without paying the  
20 applicable taxes and fees. Mr. Rivas, testifying solely from his own memory, testified that he  
21 cleaned the following number of homes in the following areas outside the Metro area:

<u>Location</u>	<u>Number of Residences</u>
Corvallis	10
Eugene	10

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1	Dayton	10
2	Sheridan	14-16
3	Dallas	12
4	Salem	15
5	Dundee	5
6	Camas	10
7	Washougal	10
8	Longview	5
9	Kalama	5
10	LaCenter	5
11	Battle Ground	5
12	Vancouver	70
13	Sandy	30
14	McMinnville	20
15	St. Helens	20
16	Columbia City	5
17	Scappoose	5
18	<b>TOTAL</b>	<b>266-268</b>

21. Herme Rivas’ testimony is not credible in that he estimated only approximately 266-268 homes that he cleaned were ~~within~~ outside Metro’s jurisdiction, while his two main customers, Westside Drywall and Tri-County Drywall, estimated at least 900 homes cleaned by Respondent were within ~~the Metro’s jurisdiction~~ the Metro’s jurisdiction area.

22. Mr. Rivas testified that if he had to pay the fees and taxes he could not compete with other businesses. Mr. Rivas also testified that after Metro cited him for this instant offense,

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1 he went to his customers and was able to negotiate a higher price for his work to cover the added  
2 cost of fees and taxes that he is now paying for disposal.

3 //

4 23. Mr. Rivas testified that when Respondent worked in Washington, it used a landfill  
5 in that state.

6 24. From January 1, 2006 through August 31, 2006 Respondent delivered  
7 approximately 605 truck loads of solid waste to Riverbend Landfill, a non-system-license  
8 facility. Those loads totaled approximately 2,979 tons of solid waste.

9 25. If all of the loads delivered to Riverbend by Respondent consisted, in total or in  
10 part, of ~~Metro-generated~~ solid waste generated in Metro’s jurisdiction, the total excise tax  
11 avoided would be approximately \$24,815. A 25% penalty, plus cumulative interest, would bring  
12 the ~~Excise Tax~~ total owed to approximately \$33,017.81.

13 26. If all of the loads delivered to Riverbend by Respondents consisted, in total or in  
14 part, of ~~Metro-generated~~ solid waste generated in Metro’s jurisdiction, the total ~~Systems Fees~~  
15 avoided plus a 25% penalty, plus cumulative interest, would bring the total sExcise Tax-system  
16 fees total owed to approximately \$54,450.

17 27. At 900 Metro area homes cleaned and 4.5 homes per load, Respondent delivered  
18 at least 200 full loads to Riverbend Landfill. At 4.92 tons per load that means that Respondents  
19 delivered at a minimum 984 tons of ~~Metro-generated~~ solid waste generated in Metro’s  
20 jurisdiction to Riverbend Landfill.

21 28. Some of Respondent’s loads were mixed loads of solid waste consisting of ~~Metro~~  
22 ~~generated and non Metro-generated~~ Waste waste generated in Metro’s jurisdiction and waste  
23 generated outside Metro’s jurisdiction. Therefore, it is reasonable to conclude that the total  
24 number of loads delivered to Riverbend Landfill that ~~contained Metro-Generated Waste~~ contained  
25

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1 waste generated in Metro’s jurisdiction was greater than 200 loads. Based on the facts of this  
2 case, including the Detectives’ observations that Respondent’s trucks would often pick up solid  
3 waste within Metro’s jurisdiction are, then drive towards Riverbend Landfill and make other  
4 stops along the way outside ~~the Metro’s jurisdiction Area~~, I find that, at a minimum, a fair  
5 inference is that at least 300 of the loads delivered to Riverbend Landfill contained, in whole or  
6 in part, waste generated in Metro’s jurisdiction ~~Metro-generated Solid Waste~~. At 4.92 tons per  
7 load, I conclude that Respondents avoided fees and taxes on 1,476 tons of materials.

8 ////

**CONCLUSIONS OF LAW**

9  
10 Based on the Findings of Fact, I make the following Conclusions of Law:

11 1. Herme Rivas is the owner of USA General Contractors, LLC, ~~(Herme Rivas and~~  
12 ~~the LLC are hereinafter referred to as Respondent)~~ which is in the business of cleaning up the  
13 construction debris, mainly drywall, from home and small residential construction sites and  
14 disposing of it. Construction companies hire Respondent as an independent contractor and pay  
15 it based on the total square feet of drywall hung within each ~~the~~ structure that they are  
16 cleaning.

17 2. Some of Respondent’s job sites are within ~~the jurisdiction of M~~ Metro’s  
18 jurisdiction, and some are outside Metro’s jurisdiction.

19 3. On at least 300 separate and distinct occasions between January 1, 2006 and  
20 August 31, 2006 Respondent unlawfully disposed of Ssolid Wwaste ~~that was generated wholly~~  
21 ~~or in part,~~ within Metro’s jurisdiction, ~~to~~ at Riverbend Landfill, a non-system license facility,  
22 with the intent to avoid paying applicable Metro E excise tax and Ssystem F ees. Each occasion  
23 is a separate violation.

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1           4.       On each occasion Respondent violated Metro Code Sections 5.02.025, by  
2 disposing of Metro-Generated solid waste generated within Metro's jurisdiction at a non-  
3 system licensed facility, and Metro Code Section 7.01.020, by failing to pay the Metro excise  
4 taxes on Metro-generated solid waste generated within Metro's jurisdiction. More specifically,  
5 I find that it is more likely than not that Respondent committed at least the following number  
6 of violations in the following months: January 2006, 30 violations and 148 tons; February  
7 2006, 28 violations and 138 tons; March 2006, 40 violations and 197 tons; April 2006, 39  
8 violations and 191 tons; May 2006, 48 violations; and 236 tons; June 2006, 49 violations and  
9 241 tons; July 2006, 43 violations and 212 tons; and August 2006, 23 violations and 113 tons.  
10 Respondent delivered at a minimum 984 tons of solid waste generated in Metro's jurisdiction  
11 to Riverbend Landfill.

12           5.       Respondent committed these violations with intent and knowledge and in order  
13 to gain a competitive advantage over competitors.

14 ////

15 ////

16           6.       The Metro excise tax during this time period was \$8.33 per ton. The total Metro  
17 Excise Tax avoided by Respondents is \$12,295.08 \$196.72 (984 x \$8.33). A 25% penalty is  
18 \$3,073.77 2,049.18. The interest from January 1, 2006 until October 31, 2006 is approximately  
19 \$991. Total Excise tax and penalty and interest due as of October 31, 2006 is  
20 \$10,245.90 16,395.85.

21           7.       The Metro regional system fee during this time was \$14.54 per ton. The total  
22 Metro Total System Fees avoided by Respondents is \$33,135.73 14,307.36 (984 x \$14.54).  
23 a 25% penalty is \$8,283.93 and interest is \$1,730.64 as of October 31, 2006.

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DISCUSSION

1  
2 It is clear that Respondent in this case has taken the calculated risk of avoiding taxes  
3 and fees in order to gain a business advantage over its competitors. It is clear that Respondent  
4 has acted with intent, forethought and shows no remorse over its actions. Respondent, when  
5 given a chance to produce records that would have shown how many of ~~their~~its jobs were  
6 inside versus outside the Metro region, failed to produce any documents. The best that ~~they~~it  
7 could do was verbal testimony of Mr. Rivas, which testimony was contradicted not only by the  
8 evidence of his customers, but also his prior statement to Metro, and frankly simply made no  
9 sense from the standpoint of where his business was generated. For instance, if Mr. Rivas were  
10 to be believed, in regards to how many houses he cleaned within the Metro jurisdiction; it  
11 would mean that over two thirds of his business was coming from outside the Metro’s  
12 jurisdiction. ~~Jurisdiction.~~ Yet Mr. Rivas himself stated that the majority of his business was  
13 from the two customers cited in this Order, who did most of their business within Metro’s  
14 jurisdiction.

15 Mr. Rivas was under oath and chose to not tell the truth. The Hearings Officer ignored  
16 Mr. Rivas’ His self-serving testimony regarding the number of houses Respondent cleaned  
17 was ignored by the finder of fact.

18 Nevertheless, it is still up to Metro to prove the number of violations and the penalties  
19 that should be imposed. Using the evidence presented by Metro, the fact finder drew the  
20 following reasonable conclusions in crafting this order.

21 ////

22 ////

23 Respondent’s own customers gave evidence that Respondent cleaned approximately  
24 900 homes in the Metro’s jurisdiction and that the average load for Respondent consisted of

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1 waste from 4-5 homes. That means that of the work done just for these two customers,  
2 Respondent would have disposed of 200 full loads.

3       The evidence from Metro ~~enforcement d~~~~Enforcement agents~~~~etectives~~ was that they  
4 followed Respondent’s trucks and several times the trucks loaded solid waste from locations  
5 within ~~Metro boundaries~~ and without Metro’s jurisdiction~~the boundaries~~. Therefore ~~w~~We know  
6 that many of Respondent’s deliveries to Riverbend Landfill contained waste from both inside  
7 and outside Metro’s jurisdiction. Therefore, ~~did not only bring Metro only solid waste to~~  
8 Riverbend, so that means that the number of violations had to have been in excess of the 200  
9 loads.

10       Given Mr. Rivas’ description of his business and his customers, it is reasonable to infer  
11 that at least half of Respondent’s business is from within the Metro’s Jurisdiction.

12       Riverbend Landfill reported to Metro that Respondent’s trucks delivered 605 loads to  
13 its facility for a total ~~tonnage~~weight of 2,979 tons. There were no reports from any other  
14 landfill presented by Respondent that would show that Mr. Rivas used any other landfill.

15 While Mr. Rivas testified that some of his trucks used a landfill in Washington, he produced no  
16 documentation of that fact, his testimony on that point was not consistent with other facts, and  
17 frankly, Mr. Rivas is not a trustworthy witness and cannot be believed.

18       As to the penalties imposed; the Excise tax and penalty and interest under Chapter 7 is  
19 all pursuant to the Metro Code. The 25% penalty is appropriate because Respondent acted with  
20 the intent to evade the tax.

21       A penalty of \$1000 for failing to have a non system license is also according to Metro  
22 Code. See Metro Code Section 5.05.070(b).

23 ~~////~~

24 ~~////~~

25

**EXHIBIT A – PROPOSED ORDER FROM HEARING  
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1 ~~////~~

2 I am also imposing a \$250 penalty for each of the 300 violations of Metro Code Section  
3 5.05.070(1); the Hearings Officer used the following logic: Metro imposed a \$300 penalty for  
4 Respondent’s prior violation in December 2005. I realize that a portion of that penalty was for  
5 a prospective non-system license fee application; however, Respondent still should have  
6 realized that such a violation could result in the imposition of such a penalty. In spite of that  
7 knowledge, and in spite of a \$300 fine, Respondent continued to commit the exact same  
8 violation for the next several months. He did so for selfish and greedy reasons. I had seriously  
9 considered making the fine per violation more than the prior fine, which is what most courts or  
10 judges would consider fair for a second time offender. However a fine of \$250 per violation  
11 when multiplied by the total number of violations is appropriate when considering the system  
12 fees avoided.

13 This is a steep fine. But the hearings officer has no sympathy for Respondent or its  
14 ability to continue its business if it has to pay these penalties. Respondent has been able to  
15 undercut all of its competitors and make a profit precisely because it avoided excise taxes and  
16 system fees possibly well in excess of what is being imposed by this Order. It is as if he did not  
17 have to pay minimum wage, or FICA or any other normal business expense that his  
18 competitors were paying.

19 And it is not only Metro that has been damaged by Respondent’s calculated behavior. It  
20 is also all of Respondent’s competitors and their employees who lost jobs and work due to  
21 Respondent’s ability to undercut their prices. I would expect that these people would feel that  
22 justice may not have been done unless there was some penalty, other than a mere re-coupment  
23 of money lawfully due, imposed on Respondent.

24 ~~////~~



**EXHIBIT A – PROPOSED ORDER FROM HEARING  
METRO’S EXCEPTIONS FILED PURSUANT TO METRO CODE § 2.05.035(b)**

1 ////

2 ////

3 ////

4

**ORDER**

5

Based upon the above findings of fact, ultimate findings of fact, reasoning and

6

conclusions of law, it is hereby ORDERED THAT:

7

Pursuant to Metro Code Section 5.05.070(a)(1) a fine of \$30,250 is imposed for each of the 300 loads delivered to Riverbend Landfill, for a total penalty of \$9075,000.

9

Pursuant to Metro Code Section 5.05.070(b)(2) for Respondent’s failure to obtain a non system license prior to disposing of Metro generated waste at a non license facility a fine of \$1000 is imposed.

10

non system license prior to disposing of Metro generated waste at a non license facility a fine

11

of \$1000 is imposed.

12

Pursuant to Metro Code Section 7.01.020 and 7.01.080(b) Respondent is ordered to

13

pay excises taxes as follows:

14

Excise Taxes Due	\$12,295.08 8,196.72
------------------	----------------------

15

Penalty of 25%	\$ 3,073.772,049.18
----------------	---------------------

16

Interest as of October 31, 2006	\$ 991.00
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17

<b>TOTAL</b>	<b>\$16,359,850,245.90</b>
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18

SUMMARY OF FINANCIAL PENALITES

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5.05.070(a)(1) Violation	\$9075,000.00
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5.05.070(b)(2) Violation	\$1,000.00
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22

7.01.020 / 7.01.080(b) Violation	\$16,359,850,245.90
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<b>TOTAL</b>	<b>\$ 86,245,90107,359.85</b>
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EXHIBIT A – PROPOSED ORDER FROM HEARING  
METRO'S EXCEPTIONS FILED PURSUANT TO METRO CODE § 2.05.035(b)

Robert J. Harris  
Hearing Officer

Dated: July 20, 2007

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

~~PROPOSED ORDER AS FINAL ORDER:~~

~~ANY MOTION TO RECONSIDER THE ORDER MUST BE FILED WITHIN TEN DAYS OF THE ORIGINAL ORDER. IF YOU FAIL TO OBJECT OR FILE A MOTION FOR RECONSIDERATION, THEN THE ORDER BECOMES THE FINAL ORDER. THE HEARINGS OFFICER MAY RECONSIDER THE FINAL ORDER WITH OR WITHOUT FURTHER BRIEFING OR HEARINGS. IF ALLOWED, RECONSIDERATION SHALL RESULT IN REAFFIRMANCE, MODIFICATION OR REVERSAL. FILING A MOTION FOR RECONSIDERATION DOES NOT TOLL THE PERIOD FOR FILING AN APPEAL IN COURT.~~

~~RIGHT OF APPEAL:~~

~~A PERSON MAY APPEAL A FINAL ADVERSE RULING BY WRIT OF REVIEW AS PROVIDED FOR IN ORS 34.010 THROUGH 34.100~~

1 **CERTIFICATE OF SERVICE**

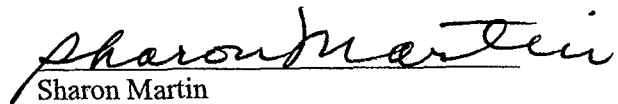
2 I hereby certify that I served the foregoing METRO'S EXCEPTIONS FILED PURSUANT TO METRO  
3 CODE § 2.05.035(b) to the following:

4 C. David Hall  
5 Attorney at Law  
6 P.O. Box 14546  
7 Portland, Oregon 97293  
8 Attorney for Respondent Herme Rivas, dba USA General Contractors, LLC

9 Herme Rivas, dba USA General Contractors, LLC  
10 P.O. Box 1146  
11 St. Mary's Circle  
12 Mount Angel, Oregon 97362

13 Robert J. Harris  
14 Metro Hearings Officer  
15 HARRIS LAW FIRM PC  
16 165 SE 26<sup>th</sup> Avenue  
17 Hillsboro, Oregon 97123

18 by mailing by regular mail to those persons a true and correct copy thereof, certified by me as such, placed in a  
19 sealed envelope addressed to them at the addresses set forth, and deposited in the United States Post Office at  
20 Portland, Oregon, on August 17, 2007, with the postage prepaid.

21  
22  
23  
24  
25  
26  
  
27 Sharon Martin  
28 Legal Secretary