

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING A FINAL) RESOLUTION NO. 02-3214
ORDER IMPOSING A MONETARY FINE ON)
MICHAEL REYNOLDS, dba WORKHORSE)
SERVICES, INC., FOR A VIOLATION OF) Introduced by Mike Burton,
SECTION 7.01 OF THE METRO CODE) Executive Officer

WHEREAS, Section 7.01 of the Metro Code requires users of the Metro solid waste system to pay an excise tax on solid waste generated from within the Metro boundary; and,

WHEREAS, Michael Reynolds, dba Workhorse Services, Inc., knowingly and fraudulently certified that approximately 47 loads of solid waste he delivered to the Lakeside Reclamation Landfill between May, 2001, and October, 2001, were generated at specific locations outside the Metro region; and,

WHEREAS, Mr. Reynolds failed to pay excise tax on such solid waste; and,

WHEREAS, Code Section 7.01.150 provides for the imposition of monetary fines of up to \$500 for each violation of Code chapter 7.01; and,

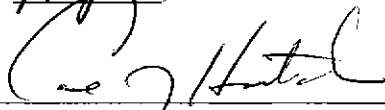
WHEREAS, following a contested case hearing in this matter, the Hearings Officer issued a Proposed Order imposing a fine of \$1,808.85 on Mr. Reynolds; and,

WHEREAS, the Executive Officer recommends that the Hearings Officer's Proposed Order be amended to correct certain typographical errors, as shown in Exhibit A; and,

WHEREAS, with such corrections, the Executive Officer recommends that the Hearings Officer's Proposed Order be affirmed by approving a Final Order substantially similar to Exhibit B; now therefore,

BE IT RESOLVED that the Hearings Officer's Proposed Order No. 01-0912 imposing on Michael Reynolds, dba Workhorse Services, Inc., a \$1,808.85 penalty for violations of the Metro Code requirement to pay excise taxes on solid waste generated within the boundary and delivered to system facilities for disposal shall be affirmed, with certain amendments as provided in Exhibit A. A Final Order substantially similar to the order attached as Exhibit B shall be entered in this matter.

ADOPTED by the Metro Council this 15th day of August, 2002.



Carl Hosticka, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3214, FOR THE PURPOSE OF APPROVING A FINAL ORDER IMPOSING A MONETARY FINE ON MICHAEL REYNOLDS, dba WORKHORSE SERVICES, INC., FOR A VIOLATION OF SECTION 7.01 OF THE METRO CODE

July 11, 2002

Presented by: Terry Petersen

BACKGROUND

Between May and November of 2001, Michael Reynolds dba Workhorse Services, Inc., completed and signed certification forms claiming that 47 loads of solid waste that he disposed of at Lakeside Reclamation Landfill originated from either 12160 Wheatland Road, Sherwood, Oregon, or from Nehalem, Oregon, both being locations outside the Metro boundary. On November 15, 2001, Metro investigators observed Mr. Reynolds as he picked up a load of debris from a location in Milwaukie, delivered it to Lakeside Reclamation Landfill for disposal, and certified that the load had originated in Nehalem. When interviewed by Metro investigators, Mr. Reynolds admitted that the majority of the 47 loads in question had actually originated from within the Metro boundary and that he had knowingly and intentionally falsified the forms to avoid paying system fees and excise taxes on the loads.

On January 22, 2002, Metro issued a citation to Mr. Reynolds for the above described violations of Metro Code. The citation stipulated that Mr. Reynolds submit security in the amount of \$4,700 (\$100 for each of the 47 violations). Mr. Reynolds requested a contested case hearing but certified that he was unable to submit security in any amount as his truck had been repossessed and he was no longer working. Such hearing was held on March 6, 2002. On March 22, 2002, the Hearings Officer issued a Proposed Order. Citing as mitigating circumstances, Mr. Reynolds' cooperation with the investigators, his situation of financial hardship, and the possibility that at least a few of the loads may not have originated from within the Metro boundary, the Hearings Officer imposed a fine in the amount \$1,500 and excise tax in the amount of \$308.85 for a total penalty of \$1,808.85, and provided Mr. Reynolds a Notice of Opportunity to File Written Exceptions within 21 days of the Notice's mailing. Mr. Reynolds did not file a written exception in this matter.

Passage of Resolution No. 02-3214 will adopt a Final Order that affirms that penalty.

ANALYSIS/INFORMATION

1. Known Opposition

Mr. Reynolds requested a contested case hearing in this matter, but has not filed any exceptions to the Hearings Officer's Proposed Order.

2. Legal Antecedents

Metro Code 7.01.020 requires users of the Metro solid waste system to pay an excise tax on solid waste generated from within the Metro boundary. Code section 7.01.150 stipulates that no person required to make or sign a report shall make any false or fraudulent report, with intent to defeat or evade the determination of any amount due required by the chapter and that such violations are subject to a civil penalty of up to \$500 for each violation.

Metro Code 2.05.035 stipulates that the Hearings Officer's Proposed Order and any written exceptions that have been filed shall be forwarded to the Council for consideration and that Council's decision shall be adopted by a final order. Mr. Reynolds did not file any exceptions to the Hearings Officer's Proposed Order in this matter.

3. Anticipated Effects

Approval of this resolution will finalize this enforcement action against Mr. Reynolds for having evaded payment of Metro excise taxes on solid waste that originated from within the Metro region.

4. Budget Impacts

Metro's revenue will increase by the amount of the \$1,808.85 penalty imposed.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution 02-3214.

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METROPOLITAN SERVICE DISTRICT
~~METRO ILLEGAL DUMPING~~ EXCISE TAX ORDINANCE

In The Matter of Citation No. M 1251) ~~PROPOSED FINAL ORDER~~
Issued to) FROM CONTESTED HEARING
MICHAEL REYNOLDS, dba WORKHORSE) MSD # 01-0912
SERVICES INC.,)
Respondent.)

On or about January 22, 2002, the Metropolitan Service District, through Mike Burton, Executive officer, Terry PetersonPetersen (Metro) issued A ~~findings~~ Findings of violation Violation and Notice of Assessment of Penalties, as well as a Findings ~~Of~~ of Fact to the above respondent. The Assessment was \$4,700.

Pursuant to Metro ordinance, Citation M1251 was issued to Respondent Michael Reynolds dba Workhorse Services, Inc. Said citation was signed by the Executive Officers designate, Terry PetersonPetersen. The citation was mailed U.S. Mail, return receipt, and notified Respondent of his procedural rights. Respondent requested a hearing.

/////

1 A Hearing was scheduled for March 6, 2002, at 9:30 a.m., to be held at the METRO
2 offices in Portland, Oregon. A Notice of Hearing was mailed to Mr. Reynolds, which notice
3 was not returned. On March 6, 2000 at 9:30 a.m. a hearing was held. Present were Michael
4 Reynolds, Detective John Gaddis, METRO enforcement agent, and Robert J. Harris, attorney
5 and Hearings Officer. The Hearing was audio-taped.

6 Based on the evidence presented at the Hearing, the following Findings of Fact,
7 Conclusions and Law and Order are hereby entered:

8 FINDINGS OF FACT

9 1. Michael Reynolds owns and operates Workhorse Services Inc. (though the
10 business is not actually incorporated). Workhorse Services Inc., is in the business of hauling and
11 disposing of construction debris and other solid waste.

12 2. Between May 2001 and November 2001, Michael Reynolds, dba Workhorse
13 Services, Inc. completed and signed certification forms claiming that 47 loads of solid waste (the
14 solid waste) he disposed of at the Lakeside Reclamation Landfill originated from either 12160
15 Wheatland Road, Sherwood or from the city of Nehalem, both located outside the Metro
16 Boundary.

17 3. Mr. Reynolds paid no Metro System fees or excise tax on the solid waste.

18 4. The owner of the property located at Wheatland Road in Sherwood told Metro
19 officials that Mr. Reynolds had hauled some solid waste from their property prior to May 2001,
20 but that he had not hauled any materials from ~~their~~ there since that date.

21 5. Mr. Reynolds conducts business out of Aloha Oregon, which is within Metro
22 service district.

23 6. On November 15, 2001, Metro investigators followed Mr. Reynolds as he drove
24 his truck from his house to a job site in Milwaukie, Oregon. At that ~~that~~ location, which is within
25 the Metro boundary.

1 DISCUSSION

2 The mitigating circumstances here are: The cooperation of Mr. Reynolds; and the
3 financial condition of Mr. Reynolds (Workhorse Services is now out of business and the truck
4 has been repossessed). Additionally, while I believe the vast majority of the loads were generated
5 from within Metro boundaries, I do believe Mr. Reynolds' testimony that at least some of them
6 did not originate within Metro. Finally, this is Mr. Reynolds' first offense.

7 Aggravating Circumstances are: Multiple offenses.

8 I believe the fine should have some relation to the amount of taxes avoided, while taking
9 into consideration Mr. Reynolds' ability to pay, his cooperation, and the scale of the loss.
10 Therefore I believe a fine of \$1,500, plus the actual lost excise tax, is a proper remedy to ensure
11 future compliance.
12

13 ORDER

14 It is hereby Ordered that a civil penalty be imposed in the amount of \$1,808.6585.

15
16 Robert J. Harris Carl Hosticka
17 Hearing Presiding Officer

18 Dated: March 22, 2002

19 **NOTICE OF RIGHT TO RECONSIDER, AMEND OR SUPPLEMENT THE RECORD.**

20 ANY MOTION TO RECONSIDER THIS ORDER, SUPPLEMENT THE EVIDENCE OR
21 CONTEST THE FINDINGS MUST BE FILED IN ACCORDANCE WITH METRO CODE
22 CHAPTER AND SECTION 2.05.010 ET SEQ. FILING A MOTION FOR
23 RECONSIDERATION DOES NOT TOLL THE PERIOD FOR FILING AN APPEAL IN
24 COURT.

25 **RIGHT OF APPEAL:**

A PERSON MAY APPEAL A FINAL ADVERSE RULING ANY BY FILING A WRIT OF
REVIEW AS PROVIDED FOR IN ORS 34.010 THROUGH 34.400102

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17 Carl Hosticka
18 Presiding Officer

19 Dated: _____

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