

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING A FINAL ) RESOLUTION NO. 02-3215  
ORDER IMPOSING A MONETARY FINE ON )  
WARREN Z. BIDEN, dba WESTMONT )  
PROPERTIES, FOR A VIOLATION OF SECTION ) Introduced by Mike Burton,  
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, Warren Z. Biden, dba Westmont Properties, knowingly and fraudulently certified that eight loads of solid waste he delivered to the Lakeside Reclamation Landfill between May, 2001, and October, 2001, were generated at a specific location outside the Metro region; and,

WHEREAS, Mr. Biden 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,

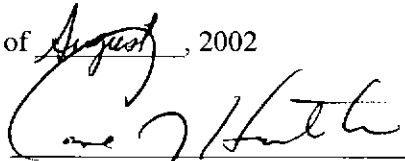
WHEREAS, following a contested case hearing in this matter, the Hearings Officer issued a Proposed Order imposing a fine of \$828.48 on Mr. Biden; and,

WHEREAS, the Executive Officer recommends that the Hearings Officer's Proposed Order be amended to correct certain typographical errors and the factual description of certain documents that were accepted into evidence by the Hearings Officer, as shown in Exhibit A; and,

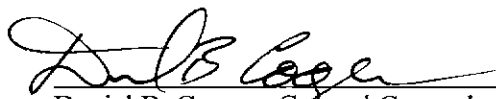
WHEREAS, with such corrections, the Executive Officer recommends that the Hearings Officer's Proposed Order be affirmed by approving a Final Order substantially similar to Exhibit B; now therefore,

BE IT RESOLVED that the Regional Hearings Officer's Proposed Order No. 01-0193 imposing upon Warren Z. Biden, dba Westmont Properties, a \$828.48 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 1st day of August, 2002

  
\_\_\_\_\_  
Carl Hosticka, Presiding Officer

Approved as to Form:

  
\_\_\_\_\_  
Daniel B. Cooper, General Counsel

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3215, FOR THE PURPOSE OF APPROVING A FINAL ORDER IMPOSING A MONETARY FINE ON WARREN Z. BIDEN, dba WESTMONT PROPERTIES, FOR A VIOLATION OF SECTION 7.01 OF THE METRO CODE

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July 11, 2002

Presented by: Terry Petersen

### BACKGROUND

Between May and October of 2001, Warren Z. Biden, dba Westmont Properties, completed and signed certification forms claiming that eight loads of solid waste he disposed of at Lakeside Reclamation Landfill originated from 22360 SW Shaltenbrand Lane, Sherwood, Oregon, a location outside the Metro boundary. When interviewed by Metro investigators, Mr. Biden admitted that he knowingly and intentionally falsified these forms to avoid paying system fees and excise taxes on the eight loads, which had actually originated from within the Metro boundary.

On February 20, 2002, Metro issued a citation to Mr. Biden for the above described violations of the Metro Code. Mr. Biden submitted security in the amount of \$2,300 and requested a contested case hearing. Such hearing was held on May 1, 2002. The \$2,300 security amount was based on staff's proposed penalty of \$100 per load and an initial evaluation of the case that indicated 23 loads of solid waste had been fraudulently claimed as having originated from 22360 SW Shaltenbrand Lane. A later evaluation revealed that 15 of these loads were recyclables from which excise taxes and regional system fees would not have been due. Staff subsequently amended the citation issued to Mr. Biden to reflect that only eight loads consisted of solid waste on which he had attempted to evade the payment of excise taxes and regional system fees. Correspondingly, the proposed penalty was reduced to \$800. On May 8, 2002, the Hearings Officer issued a Proposed Order imposing a fine in the amount \$800 and excise tax in the amount of \$28.48 for a total penalty of \$828.48, and provided Mr. Biden a Notice of Opportunity to File Written Exceptions within 21 days of the Notice's mailing. Mr. Biden did not file a written exception in this matter.

Passage of Resolution No. 02-3215 will adopt a Final Order that affirms that penalty.

### ANALYSIS/INFORMATION

#### 1. Known Opposition

Mr. Biden 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. The penalty imposed by the Hearings Officer in this case

amounts to \$100 for each of the eight loads fraudulently claimed as having originated from outside the boundary, plus the excise tax due.

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. Biden 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. Biden 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 \$828.48 penalty imposed.

## **EXECUTIVE OFFICER'S RECOMMENDATION**

The Executive Officer recommends approval of Resolution 02-3215.

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

In The Matter of Citation No: M1253R	)	<del>PROPOSED ORDER BY</del>
	)	<del>HEARINGS OFFICER</del>
Issued to	)	<u>FINAL ORDER</u>
	)	MSD # 01-01930913
WARREN Z. BIDEN, dba WESTMONT	)	
PROPERTIES,	)	
	)	
Respondent.	)	

On January 30, 2002, Metro, ~~Through~~ through its executive officer made a Finding of Violation and Notice of Assessment of Penalties, finding that Respondent Warren Z. Biden, dba Westmont Properties, violated the provisions of Metro Code Section 7.01.020. On January 31, 2002, ~~the Metropolitan Service District~~ Metro through its ~~Metro~~ Solid Waste Enforcement Unit (~~Metro~~) issued Citation No. M1253 to Respondent Warren Z. Biden. Attached to that Citation was a Findings of Fact, dated January 30, 2002.

Respondent was served with the Finding of Violation and Notice of Assessment of Penalties, Citation M1253, with attachment, and a Contested Case Notice, through certified mail, return receipt requested, mailed to Warren Biden dba, Westmont Properties, at 7299 S.W. Hunt Club Lane, Portland, Oregon 97223-9439. The ~~Certified~~ certified mailing was signed for on February 1, 2002 by Warren Biden.

On February 20, 2002, Warren Biden paid security in the amount of \$2,300, and requested a ~~Hearing~~ hearing.

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1 On February 21, 2002, a ~~Hearing~~hearing notice was mailed, certified return receipt, to  
2 Warren Biden at 7299 S.E. Hunt Club Lane, Portland, Oregon, notifying him that a hearing  
3 would be held on April 3, 2002, at 9:30 a.m. in the Council Chambers at Metro Center 600  
4 N.E. Grand Avenue, Portland, Oregon 97232. On February 23, 2002, Mr. Biden signed for the  
5 mailing.

6 On April 1, 2002, a Metro assistant counsels office contacted the Hearings Officer and  
7 notified him that the ~~Hearing~~hearing on M1253 would be postponed as it appeared that there  
8 may have been some new information that would alter the proposed findings of fact.

9 On April 2, 2002 a ~~Hearing~~hearing notice was mailed, certified return receipt, to  
10 Warren Biden at 7299 S.E. Hunt Club Lane, Portland, Oregon, notifying him that a hearing  
11 would be held on May 1, 2002, at 9:30 a.m. in the Council Chambers at Metro Center 600 N.E.  
12 Grand Avenue, Portland, Oregon 97232. On April 5, 2002, someone picked up the mailing,  
13 apparently on behalf of Mr. Biden. The signature is not legible, and the person neglected to  
14 print his or her their name. It appears it may be a Mr. or Mrs. Steele.

15 On April 15, 2002, a Revised Finding of Violation and Notice of Assessment of  
16 Penalties was issued by Metro, signed by Mike Burton, Executive Officer. A Revised Citation,  
17 M1253R was issued along with a revised Finding of Fact as an attachment to the Citation.  
18 Metro also included a partial refund in security in the amount of \$1,540.01.

19 On May 1, 2002 at 9:30 a.m., ~~the~~a hearing was held. Present were Robert Harris,  
20 attorney and Hearings Officer, Paul Garrahan, Metro Assistant Counsel, Deputy Todd  
21 Lautenbach, Metro enforcement agent, and Respondent Warren Z. Biden. The hearing was  
22 audio-taped. The Hearings Officer stated the rights of the respondent as provided in Metro  
23 Code 2.05.007(a)(1-6). There were no ex-parte communications with the ~~hearings~~Hearings  
24 ~~office~~Officer by the ~~agency~~Metro or the respondents, except as earlier stated.

1 Based on the evidence presented at the Hearingshearing, the following Evidentiary  
2 Rulings, Findings of Fact, Conclusions and Law and ~~PROPOSED~~ FINAL ORDER are hereby  
3 entered:

4 **EVIDENTIARY RULINGS**

5 The Following Items are made a part of the Record:

- 6 1. METRO Enforcement Special Report # 01-0913, along with time log;
- 7 2. January 30, 2002 Letter form Metro to Respondent RE: Finding of Violation  
8 and Notice of Assessment of Penalties;
- 9 3. Citation M1253, with Finding of Fact attachment;
- 10 4. Contested Case Notice dated January 29, 2002;
- 11 5. Invoice to Westmont Properties, dated December 28, 2001, in the amount of  
12 \$68.49;
- 13 6. Copy of certified mail return dated February 1, 2002;
- 14 7. Copy of letter setting hearing, dated February 21, 2002, and return receipt dated  
15 February 23, 2002;
- 16 8. Copy of check from respondent in the amount of \$2,300 (Hearings Officer  
17 blacked out confidential information);
- 18 9. Two pages of ~~Weight weight~~ Slipsslips;
- 19 10. Revised summary of weight slips;
- 20 11. Letter dated April 2, 2002, from Metro to Respondent setting the hearing over  
21 until May 1, 2002, along with return receipt showing respondent's agent signed  
22 for said letter on April 5, 2002;
- 23 12. Letter from Metro to Respondent, dated April 15, 2002, RE: Revised Finding of  
24 Violation and Notice of Assessment of Penalties;

- 1 13. Copy of Metro Citation M1253R, and attachment entitled Finding of Fact, dated  
2 April 15, 2002;
- 3 14. Metro Exhibits No. 2 through No. 24, copies of exemption forms signed by  
4 Westmont Properties; and
- 5 15. Metro Exhibits 25 through 47, ~~calculations of excise taxes, which would be~~  
6 ~~owed on the loads referenced in exhibit 2~~incoming solid waste weight slips  
7 produces by Grabhorn, Inc., corresponding to the exemption forms referenced in  
8 exhibits 2 through 24.

9 All items offered were accepted into evidence and made a part of the record without  
10 objection.

#### 11 FINDINGS OF FACT

12 1. Between May and October of 2001, Respondent Warren Z. Biden, dba Westmont  
13 Properties, completed and signed certification forms claiming that 23 loads of solid waste which  
14 he disposed of at Lakeside Reclamation Landfill originated from 22360 SW Schaltenbrand Lane,  
15 Sherwood, Oregon. Of these 23 loads, fifteen were recyclable materials that are not subject to  
16 Metro excise tax, and eight loads consisted of solid waste that was subject to the tax. Mr. Biden  
17 believed that all 23 loads would be subject to the tax, and his intent was to avoid paying excises  
18 taxes and system fees on all 23 loads.

19 2. Warren Biden paid no Metro System fee or excise tax on the eight loads of solid  
20 waste.

21 3. When confronted by Metro officials, Mr. Biden admitted he knowingly and  
22 intentionally falsified official records in an effort to avoid paying excise taxes and system fees.  
23 Mr. Biden claimed that some of the eight loads may have originated outside of the Metro  
24 Boundaryboundary, but he could show no proof of that claim. Based on the fact that Mr. Biden  
25

1 falsified the records of the eight loads in question, and could provide no proof at the hearing to  
2 substantiate his claim that some of these loads originated outside Metro ~~Boundaries~~boundaries, I  
3 we find it more likely than not that all eight loads in question originated from within Metro  
4 boundaries. Otherwise, there would be no reason to falsify the records in the first place.

5 4. The actual excise taxes which should have been levied and paid ~~for~~ by  
6 Respondent on the eight loads in question is \$28.48.

### 7 CONCLUSIONS OF LAW

8 1. Metro Code Section 7.01.020 requires all users of the solid waste system to pay  
9 excise taxes on solid waste generated from within the Metro ~~Boundary~~boundary.

10 2. Warren Z. Biden, dba Westmont Properties, was legally required to pay excise  
11 taxes in the amount of \$28.48 on the eight loads in question. Mr. Biden failed to do so. Mr.  
12 Biden has therefore violated Metro Code, Section 7.01.020 on eight separate occasions.

13 3. Metro Code, Section 7.01.150 provides for a fine of up to \$500 for each incident  
14 of falsifying any report for the purpose of avoiding the excise taxes in question here. Said fine  
15 may be imposed by the Executive, with the Respondent being granted a right to a contested  
16 hearing.

### 17 REASONING

18 This investigation has expended a large amount of public resources, and Mr. Biden  
19 objects to ~~my~~ taking into account the time spent investigating the 15 loads that, as it turned out,  
20 were not subject to the Metro excise tax. The fact is, however, if he hadn't falsified records,  
21 there would have been no need to investigate those transactions. Mr. Biden also objects to the  
22 imposition of an \$800 fine when the excise tax he avoided was only \$28.48. Again, but for his  
23 falsifications, and attempts to avoid paying his share of our mutual tax burden, there would  
24 have been no investigation.



1 Imposition of a fine is not just punishment, it is also a recoupment of the taxpayer's  
2 costs of processing the violation. It would be a double burden on the law abiding taxpayer if he  
3 or she were to not only make up for the tax burden Mr. Biden would like to avoid, but also to  
4 subsidize the investigation of his violation.

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8 Finally, Mr. Biden's main complaint against the officers was that they should have told  
9 him how much his fine would be, in which case he would not have cooperated with the  
10 investigation. That is not indicative of sorrow, or remorse, or a recognition that he violated the  
11 law. Therefore a substantial fine is appropriate.

12 **ORDER**

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

15 Respondent Warren Z. Biden, dba Westmont Properties, is liable for the violation as  
16 alleged, and shall pay the following amounts:

17	Fine in the amount of :	\$800.00
18	Excise Tax of:	\$ 28.48
19	<b>TOTAL:</b>	<b>\$828.48</b>

20  
21 The Respondent shall be given credit for any excise tax already paid. The balance shall be due  
22 and payable immediately, and may be levied against the security already posted.

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25 Dated: May 8, 2002 \_\_\_\_\_

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Robert J. Harris Carl Hosticka,  
Hearing Presiding Officer

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THIS ORDER IS REVIEWABLE ONLY AS SET FORTH IN METRO CODE SECTION  
2.05.035050 OR ORS 34.010 through 34.102.

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METROPOLITAN SERVICE DISTRICT  
METRO EXCISE TAX ORDINANCE

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20 Metro enforcement agent, and Respondent Warren Z. Biden. The hearing was audio-taped. The  
21 Hearings Officer stated the rights of the respondent as provided in Metro Code 2.05.007(a)(1-  
22 6). There were no ex-parte communications with the Hearings Officer by Metro or the  
23 respondents, except as earlier stated.

24 Based on the evidence presented at the hearing, the following Evidentiary Rulings,  
25 Findings of Fact, Conclusions and Law and FINAL ORDER are hereby entered:

2 FINAL ORDER

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1 15. Metro Exhibits 25 through 47, incoming solid waste weight slips produced by  
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19 boundary, but he could show no proof of that claim. Based on the fact that Mr. Biden falsified  
20 the records of the eight loads in question, and could provide no proof at the hearing to  
21 substantiate his claim that some of these loads originated outside Metro boundaries, we find it  
22 more likely than not that all eight loads in question originated from within Metro boundaries.  
23 Otherwise, there would be no reason to falsify the records in the first place.  
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4 him how much his fine would be, in which case he would not have cooperated with the  
5 investigation. That is not indicative of sorrow, or remorse, or a recognition that he violated the  
6 law. Therefore a substantial fine is appropriate.

7 **ORDER**

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

10 Respondent Warren Z. Biden, dba Westmont Properties, is liable for the violation as  
11 alleged, and shall pay the following amounts:

12	Fine in the amount of :	\$800.00
13	Excise Tax of:	\$ 28.48
14	<b>TOTAL:</b>	<b>\$828.48</b>

15  
16 The Respondent shall be given credit for any excise tax already paid. The balance shall be due  
17 and payable immediately, and may be levied against the security already posted.

18

19

20 Dated: \_\_\_\_\_

\_\_\_\_\_  
Carl Hosticka,  
Presiding Officer

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22 THIS ORDER IS REVIEWABLE ONLY AS SET FORTH IN METRO CODE SECTION  
23 2.05.050 OR ORS 34.010 through 34.102.

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