

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ISSUING A FINAL ORDER ) RESOLUTION NO. 02-3209  
IN THE MATTER OF THE IMPOSITION OF A CIVIL )  
PENALTY AGAINST SPEYFLY, INC. dba )  
ROOFGONE AND THE REVOCATION OF ) Introduced by Mike Burton,  
ROOFGONE'S SOLID WASTE FACILITY LICENSE ) Executive Officer

WHEREAS, Speyfly, Inc. has operated a roofing waste processing facility under authorization of a Metro solid waste facility license since April, 2001; and,

WHEREAS, Speyfly has violated the provisions of its license; and,

WHEREAS, Speyfly has failed to abate license violations for which it has received notices of noncompliance; and,

WHEREAS, Speyfly abandoned the RoofGone facility in January, 2002; and,

WHEREAS, Metro's Regional Environmental Management Department initiated enforcement actions against Speyfly to impose a monetary penalty for Speyfly's failure to abate such license violations; and,

WHEREAS, Metro's Regional Environmental Management Department issued Speyfly a notice of the revocation of Speyfly's solid waste facility license; and,

WHEREAS, Speyfly has been provided an opportunity for a contested case hearing in the matters of the imposition of monetary penalties and the revocation of its solid waste facility license but has not requested such a hearing; and,

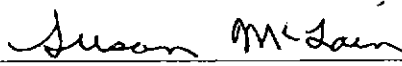
WHEREAS, Speyfly has failed to pay its penalty or to respond in any way to the imposition of such penalty; and,

WHEREAS, Metro Code Chapter 2.05 stipulates that the district may enter an order that supports district action and that such orders shall be approved by the Council; and,

WHEREAS, The resolution was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now therefore,

BE IT RESOLVED that the Metro Council approves the Final Order attached hereto as Exhibit A.

ADOPTED by the Metro Council this 8<sup>th</sup> day of August, 2002.

  
\_\_\_\_\_  
Carl Hosticka, Metro Council Presiding Officer

Dep.  
Presiding Officer

Approved as to Form:

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

EXHIBIT A  
Resolution No. 02-3209

BEFORE THE METRO REGIONAL GOVERNMENT

IN THE MATTER OF THE IMPOSITION OF A	)	NON-108-01
CIVIL PENALTY AND SOLID WASTE FACILITY	)	
LICENSE REVOCATION AGAINST:	)	
	)	FINAL ORDER
SPEYFLY, INC., an Oregon corporation, Metro Solid	)	
Waste Facility License No. L-038-01, Respondent	)	

On October 22, 2001, pursuant to Metro Code § 5.01.200(c), Metro issued Speyfly, Inc., dba Roofgone (“Speyfly”), a Finding of Violation and Notice of Imposition of Penalty (NON-108-01) for Speyfly’s continuing violations of sections 5.2 and 11.0 of Metro Solid Waste Facility License No. L-038-01. That notice informed Speyfly that Metro would be imposing certain civil penalties against Speyfly, and ordered Speyfly to cure its violations or else face the imposition of additional civil penalties.

Speyfly did not respond to Metro’s October 22, 2001, notice, and did not cure its violations of License sections 5.2 and 11.0. On November 30, 2001, Metro issued Speyfly another notice, imposed a civil penalty of \$3,575, and provided Speyfly an opportunity for a hearing, if requested within 30 days of Metro’s mailing of the contested case notice. Speyfly did not request a hearing in this matter.

In early January, Metro suspended RoofGone’s license in order to prevent a further accumulation of waste roofing. On March 31, 2002, Metro issued Speyfly notice of the revocation of its license based upon a finding that the facility had been abandoned. With the notice of revocation, Metro included another contested case notice and provided Speyfly an opportunity for a hearing on this matter if requested within 30 days of Metro’s mailing of the contested case notice. Again, Speyfly did not request a hearing.

NOW THEREFORE, after considering Metro’s file relating to this matter, Metro enters the following Order.

## FINDINGS OF FACT

1. On April 12, 2001, Metro issued Solid Waste Facility License No. L-038-01 to Speyfly, Inc., dba Roofgone ("Speyfly").
2. Section 5.2 of License No. L-038-01 required Speyfly to submit to Metro a facility operating plan that addresses certain specific items.
3. Section 11.0 of License No. L-038-01 required Speyfly to close and clean up its waste roofing processing facility located at 4044 North Suttle Road in Portland within 120 days of the issuance of its license (by August 10, 2001).
4. As of July 1, 2002, Speyfly had not submitted an acceptable facility operating plan.
5. As of July 1, 2002, Speyfly had not removed all material that it had accumulated at that facility.
6. In January, 2002, Speyfly abandoned the RoofGone facility, leaving over 10,000 tons of waste roofing on site.

## CONCLUSION OF LAW

Speyfly violated sections 5.2 and 11.0 of Metro Solid Waste Facility License No. L-038-01, and, as of the date of this Final Order, has not cured its violations.

## ORDER

IT IS HEREBY ORDERED that Respondent, Speyfly, Inc. pay to Metro a civil penalty in the amount of \$3,575.00 plus interest from the date this Final Order is signed below until paid, pursuant to Oregon Revised Statute (ORS) 82.010. It is further ordered that if Speyfly fails to pay this civil penalty within ten (10) days of the date of this Order, this Order may be filed with each County Clerk in Oregon and execution shall issue therefor. It is further ordered that solid waste facility license No. L-038-01 is revoked. Pursuant to ORS 34.010 to 34.102, appeal of this Order may be initiated by filing a petition for

a writ of review with the Circuit Court of the State of Oregon for Multnomah County within 60 days of this date.

METRO REGIONAL GOVERNMENT

*Susan McLean*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Carl Hosticka  
Metro Council Presiding Officer

*Dep  
Presiding  
Officer*

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing FINAL ORDER on:

Dennis Brown, President

Speyfly, Inc.

P.O. Box 23846

Tigard, OR 97281-3846

and

William A. Whitlock, Registered Agent

Speyfly, Inc.

1019 28<sup>th</sup> St.

Springfield, OR 97477

by causing a full, true, and correct copy thereof, contained in a sealed envelope addressed to the last-known office address, to be sent via certified mail, with postage prepaid, and deposited in the U.S. post office at Portland, Oregon, on the date set forth below:

DATE: \_\_\_\_\_

\_\_\_\_\_  
Roy W. Brower  
Regulatory Affairs Manager  
Metro

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## SOLID WASTE AND RECYCLING COMMITTEE REPORT

CONSIDERATION OF **RESOLUTION NO. 02-3209**, FOR THE PURPOSE OF ISSUING A FINAL ORDER IN THE MATTER OF THE IMPOSITION OF A CIVIL PENALTY AGAINST SPEYFLY, INC., DBA ROOFGONE AND THE REVOCATION OF ROOFGONE'S SOLID WASTE FACILITY LICENSE

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Date: August 8, 2002

Presented by: Councilor Bragdon

**Committee Recommendation:** At its August 7, meeting, the Solid Waste and Recycling Committee voted 5-0 to recommend Council adoption of Resolution No. 02-3209. Voting in favor: Councilors Bragdon, Monroe, Park, McLain and Chair Atherton. Voting against: None. Absent: None.

**Background:** Roy Brower, REM Regulatory Affairs Manager, presented the staff report. He explained that the proposed resolution would result in the issuance of a final order that would assess a civil penalty of \$3,875 against Speyfly, Inc, dba Roofgone, and revoke the company license to operate a roofing recycling facility on N. Columbia Blvd. in Portland. He noted that this action was different from two recent REM enforcement actions, in that it is not a contested case and the action was being taken under Metro Code Chapter 5.01 related to facility license regulation.

Brower indicated that this is first license enforcement action taken under the code amendments adopted in 1998. While the code is silent as to whether the proposed enforcement is subject to Council approval, the REM staff and the Office of General Counsel agreed that the proposed final order should be brought forward for Council action.

Brower noted that the licensee initially began operating a roofing recycling on Suttle Rd. in 1999 and had accumulated about 12,000 tons of material at this site. The operation then shifted to the Columbia Blvd. site in April 2000. When the REM enforcement staff became aware of the site, it contacted the owner and advised him of the need to obtain a Metro facility license to continue operating.

The Council approved a facility license in April 2001. The license contained provisions requiring the licensee to submit an operations plan and financial assurance that was acceptable to Metro within 90 days. The license also required the operator to clean up to former site on Suttle Rd. within 90 days. When the licensee failed to meet any of these requirements, the staff issued a series of notices of non-compliance (NON's), which were ignored by the licensee. In addition, a fire broke out at the site on September 26, which burned for 10 days. As a result, REM lowered the amount of material that could be stockpiled on the site from 10,000 to 7,000 tons. This had the effect of closing the site because the operator was no longer processing the material that was being delivered.

The facility license was suspended in late January 2002 and revoked on May 15, 2002.

Brower noted that since the abandonment of the site by Speyfly, Metro has been approached by two potential new operators. Staff is currently processing a license application from an adjacent landowner and S&H Logging which currently has Metro licenses to operate yard debris facilities in Clackamas and Washington Counties. Brower indicated that a staff recommendation on the application would likely come to the Council in September.

**Committee Issues/Discussion:** Committee discussion focused on the licensing and enforcement process. Councilor McLain, Monroe and Park expressed concern that the facility had been licensed without having to submit an acceptable operations plan or adequate financial assurance documents. Councilors Monroe and Park suggested that some form of bonding might be appropriate. Brower responded that, in the past, the type of financial assurance required was based on the types of assurance required by the state DEQ for its licensing program and included self-insurance, a letter of credit or bonding.

Councilor Monroe also questioned the financial viability of the license applicants, noting that many appear to be operating on a “shoestring”. He observed that Metro should also look at the financial status of the proposed operators.

The committee received assurance from Mr. Brower that the proposed new operator at the site would be required to submit an operations plan and financial assurance documents prior to completion of the licensing process.

**Key Public Testimony:** None.

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-0309, FOR THE PURPOSE OF ISSUING A FINAL ORDER IN THE MATTER OF THE IMPOSITION OF A CIVIL PENALTY AGAINST SPEYFLY, INC., dba ROOFGONE AND THE REVOCATION OF ROOFGONE'S SOLID WASTE FACILITY LICENSE

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June 26, 2002

Presented by: Terry Petersen

## BACKGROUND

Speyfly, Inc. holds a Metro solid waste facility license to operate the RoofGone facility located at 9645 N. Columbia Boulevard in Portland. On October 22, 2001, Metro staff issued a citation to Speyfly, Inc. and imposed a \$3,575 penalty for license and Code violations which it failed to cure after being issued earlier Notices of Noncompliance (NONs). On May 15, 2002, Metro staff issued notice to Speyfly, Inc. that its license was being revoked due to its abandonment of the RoofGone facility. Speyfly did not respond to the NONs, citation, or notice of revocation. Metro staff now seek Council's approval of a final order affirming its enforcement actions in this matter.

RoofGone's license required the licensee to establish and follow an operating plan that addressed four specific items. Specifically, Section 5 of the RoofGone solid waste facility license stipulates that the licensee shall establish and follow a written operating plan that includes:

- a. Objective criteria for accepting and rejecting loads;
- b. Methods of inspecting incoming loads for the presence of Prohibited and Unauthorized Wastes;
- c. Methods of managing and transporting for disposal at an authorized disposal site any Prohibited and Unauthorized Wastes inadvertently received; and
- d. Method of managing stockpiles to assure that they remain within the authorized volume.

The licensee was given 90 days from issuance of the license to submit such a plan but failed to do so despite being issued a written reminder. On August 9, 2001, RoofGone was issued a NON for failure to submit an acceptable plan. In response, the licensee submitted a two-page plan that still failed to address the four items required in the license. A second NON was issued on September 19, 2001.

Additionally, Section 11 of the RoofGone solid waste facility license stipulates that the licensee shall complete the processing of accumulated waste roofing and cease performing unlicensed roofing waste processing operations at a site located at 4044 N. Suttle Road in Portland within 120 days of the granting of the license (i.e., by August 10, 2001). The licensee failed to remove all waste roofing from the site and this was also listed as a violation on the September 19<sup>th</sup> NON. The September 19<sup>th</sup> NON warned that penalties would be imposed for continued failure to abate these violations beyond October 10, 2001.

The licensee failed to abate either of the violations listed above and, on October 22, 2001, Metro staff issued another NON, this one imposing monetary penalties for each of the violations



beginning on October 11, 2001. The penalty imposed for failure to submit an adequate operating plan was \$25 per day until the earlier of when such a plan was submitted or October 31. The penalty imposed for failure to remove all roofing waste from the N. Suttle Road site was \$50 per day until such waste was completely removed or October 31, whichever was earlier. The NON stipulated that, pursuant to Metro Code section 5.01.200(d), an additional penalty of \$1,000 for each violation would be imposed if the violations continued after October 31, 2001.

The licensee did not respond to the October 22 NON and on November 30, 2001, Metro staff notified the licensee that it was imposing a \$3,575 penalty. Included with that notice was a contested case notice. Mr. Brown, president of Speyfly, Inc., did not request a contested case hearing, did not abate the violation, failed to pay the penalty and, by early 2002, had abandoned the RoofGone facility, leaving over 10,000 tons of roofing waste on the site. Since then, the licensee has refused to return phone calls or to accept registered mail from Metro. Pursuant to Metro Code section 5.01.200(f), the Executive Officer suspended RoofGone's license on January 22, 2002, and revoked the license on March 31, 2002. The notice of revocation also included a contested case notice. Mr. Brown did not respond to that notice, and, specifically has not requested a contested case hearing in this matter.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

No known opposition.

### **2. Legal Antecedents**

Section 2.05.015 of the Code stipulates that when a party is given an opportunity for a hearing and no hearing is requested, the district may enter an order that supports the district action and that such order shall set forth the facts on which the order is based. Section 2.05.045(e) of the Code stipulates that final orders in cases other than urban growth boundary amendments shall be approved by the Council.

### **3. Anticipated Effects**

Passage of Resolution No. 02-3209 will adopt a final order that affirms the penalty imposed on Speyfly, Inc. and revokes solid waste facility license No. L-038-01.

### **4. Budget Impacts**

No impact unless the \$3,575 penalty is collected. That amount will then be counted as revenue to Metro.

## **RECOMMENDED ACTION**

The Executive Officer recommends approval of Resolution No. 02-3209, for the purpose of approving a final order imposing a \$3,575 penalty on Speyfly, Inc., dba RoofGone for unabated license violations and revoking solid waste facility license No. L-038-01. Such order shall be substantially similar to the final order attached as "Exhibit A" to Resolution No. 02-3209.