

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING THE HEARINGS) RESOLUTION NO. 03-3312
OFFICER'S PROPOSED ORDER AND AUTHORIZING)
THE CHIEF OPERATING OFFICER TO ISSUE A FINAL)
ORDER IMPOSING A MONETARY FINE AND) Introduced by: Mark Williams,
REVOKING NON-SYSTEM LICENSE NO. N-033-00,) Interim Chief Operating Officer
ISSUED TO A & R ENVIRONMENTAL SERVICES, LLC)
/ A. NOBLE, INC.)

WHEREAS, the Executive Officer issued Non-System License No. N-033-00 to A & R Environmental Services, LLC / A. Noble, Inc. (the "Licensee"), in July of 2000; and,

WHEREAS, the Metro Executive Officer initiated an enforcement action against the Licensee alleging that, for the period from May through November 2001, the Licensee failed to provide reports to Metro and failed to remit regional system fees and excise taxes to Metro, as required by Non-System License N-033-00 and the Metro Code; and,

WHEREAS, the Metro Executive Officer sought to collect the fees and taxes that the Licensee allegedly owed to Metro and to impose a civil penalty for the Licensee's failure to submit to Metro the required tonnage reports and remit to Metro the applicable regional system fees and excise taxes; and,

WHEREAS, the Licensee requested a contested case hearing; and,

WHEREAS, a hearing on the matter was held on December 16 and 17, 2002, before Metro Hearings Officer Robert J. Harris; and,

WHEREAS, on February 28, 2003, the Hearings Officer issued a proposed order to require the licensee to pay to Metro a total of \$35,875.07 in fines, regional system fees, and excise taxes, and to revoke the Licensee's non-system license; and,

WHEREAS, the Licensee has filed written exceptions to the Hearings Officer's proposed order; and,

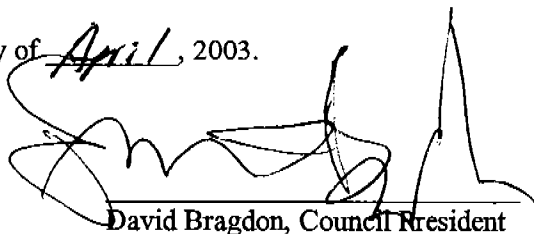
WHEREAS, Metro Code 2.05.045(b) provides that the Council shall adopt the Hearings Officer's proposed order or revise or replace the findings or conclusions in the order, or remand the order to the Hearings Officer; and,

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

BE IT RESOLVED that the Council adopts the Proposed Order From Hearing issued by Hearings Officer Robert J. Harris in Metro Contest Case: Notice of Noncompliance 111-02 in the matter of Metro Non-System License No. N-033-00 issued to A & R Environmental Services,

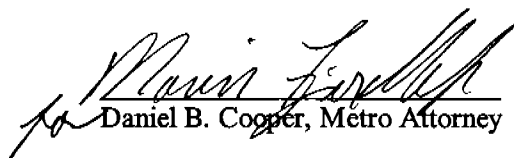
LLC / A. Noble, Inc., and directs the Chief Operating Officer to issue a final order substantially similar to the Proposed Order.

ADOPTED by the Metro Council this 3rd day of April, 2003.



David Bragdon, Council Resident

Approved as to Form:



Daniel B. Cooper, Metro Attorney

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BEFORE THE METRO REGIONAL GOVERNMENT

IN THE MATTER OF METRO NON-SYSTEM)
 LICENSE NUMBER N-033-00)
)
 ISSUED TO) OPPORTUNITY/RESPONSE TO
) FILE WRITTEN EXCEPTIONS
 METRO REGIONAL GOVERNMENT)
 600 NE GRAND AVENUE)
 PORTLAND, OR 97232)

RESPONDANT:

TO MARK WILLIAMS / Metro Interim Chief Operating Officer

Pursuant to Metro Code 2.05.035, as defendants in the matter of Metro License NON-033-00 Violation we accept our opportunity to submit written exceptions to the Hearings Officer's decision within 14 days of the date of the mailing of this notice.

For your consideration we will address and detail concerns specific objections to the findings and rulings of the Hearings Officer. Discuss submittal of evidence that was not afforded the opportunity to present at time of hearing, and will explain why the information was provided at hearing and demonstrate that evidence submitted and accepted would likely have resulted in a different decision.

- 1) Defendant at pre hearing (Oct. 2, 2002) stated and requested that two days would be required to properly submit evidence and defend alleged violation. Defendant was afforded approximately one scheduled hearings day.
- 2) Metro provided Defendant no opportunity to question the following witnesses that provided vital impute to that influenced the Hearings Officers decision. Dean Large from Waste Connections / Nancy Mitchell from North Wasco County Landfill / Brian Engelson from Oregon Recycle Systems.

The following are specific objections to the Hearings Officers decisions.

SECTION II: Licensees Defense (first defense)

Additional Testimony: Vince Gilbert the owner of (ECR) East County Recycling will testify that (ORS) does not deliver Asbestos Containing Construction debris to his facility. And that the residual tonnage delivered by (ORS) has fallen well below averages.

Numbers 1-6, had representatives from either of the two companies mentioned been available for questioning from Defendant and had Defendant had allotted amount of time requested to present case, the Hearings Officer would have had the knowledge to provide a different decision.

SECTION II: Licensees Defense (second defense)

#2) Defendant asked during first day of hearing to have the Metro Specialist available to provide a decision as to whether Asbestos is exempt from Metro tax. Metro's experts provided to the Hearings Officer just that, an opinion. Asbestos is a Hazardous Substance and the abatement process is to prevent the release of Hazardous materials into the environment.

Had Defendant had time to present case Defendant would have reviewed submitted evidence.

SECTION II: Licensees Defense (third defense)

Had Defendant had the opportunity to question Dean Large from Waste Connections and Nancy Mitchell from North Wasco County Landfill the Hearings Officer would have known that the Screen & Grits were intended and in fact used beneficially at the landfill. Metro employee Steve Kraten testified that Dean Large stated in a telephone call made during the hearing that the Screen & Grits were never used as beneficial use. Whoever Steve Kraten also testified that Nancy Mitchell stated that the Screen & Grits were sometimes used for daily cover.

The City Of Portland to date, refuses to acknowledge taxes due on Screen & Grits. Defendant submitted accepted evidence (Invoices to The City Of Portland/Waste Water Treatment Plant) which clearly shows Defendant billed full Metro tax on several occasions and The City Of Portland continued to cross-out and deduct Metro taxes. Metro refuses to acknowledge the financial hardship section submitted on monthly reports.

Had Defendants been afforded the time to present defense we would have reviewed evidence.

ULTIMATE FINDINGS OF FACT REASONING AND CONCLUSIONS OF LAW

Numbers 7,8,9,10 & 11 (Asbestos)

Had Defendant had the allotted time requested the Hearings Officer would have had an opportunity to hear testimony and review the (ORS STATUTES & FCR RULES) as they apply to hazardous substance/material, and how they apply to Metro Code.

INTEREST AND PENALTIES

Without the opportunity to properly present and defend entire case, and based on the fact that during Administrative Law Process defendant had no opportunity to call and question witnesses presented in Metro submitted evidence. The fact still remains that a determination still has not been made on Asbestos materials. Metro Code cannot exclude

one item from the list of Federally Listed Hazardous Materials. All penalties and fines should be held with no additional financial impact until this process is complete.

Respectfully,

A handwritten signature in black ink, consisting of a stylized capital letter 'B' followed by a horizontal line that extends to the right.

Robert Noble

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4 METRO CONTESTED CASE: NOTICE OF NONCOMPLIANCE 111-02
5 BEFORE ROBERT J. HARRIS HEARINGS OFFICER

6 In The Matter of Metro Non-System License)
number N-033-00, and NON 111-02)
7 Issued to) PROPOSED ORDER
8 A&R Environmental Services, LLC, and) FROM HEARING
9 A. Noble, Inc.,)
10 Respondents.)

11
12 **BACKGROUND AND PROCEDURAL POSTURE**

13 On July 13, 2002, A & R Environmental Services, LLC / A. Noble, Inc. (hereinafter
14 licensee) was issued a Metro non-system license number N-033-00.

15 On January 22, 2002, Terry Petersen, Director of Regional Environmental Management
16 Department for Metro, executed a "*Finding of Violations and Notice of Non-Compliance for*
17 *Failure to Submit Tonnage Reports and Remit Fees as Required by Non-System License (N-*
18 *033-00).*" Pursuant to previous Metro Code, 5.05.035(e) and Metro Code 7.01 *et seq.*

19 Metro Code Licensee was given until February 18, 2002 to correct the alleged
20 violations by submitting correct reports, and submit any user fees and excise taxes that would
21 be due to Metro. The required reports were to record the type and number of tons of solid
22 waste generated within Metro boundaries and delivered by the licensee to the non-system
23 facility. The purpose of said reports are to calculate user fees and excise taxes due to Metro.

24 On Approximately February 14, 2002 Licensee submitted amended reports.

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1 Metro contested the accuracy of the Amended reports, and on March 18, 2002 Douglas
2 Anderson, acting Director for Terry Petersen, issued a "*Finding of Failure to Cure Non-*
3 *System Violations (NON-111-02) and Notice of Termination of Non-System License, No. N-*
4 *033-00 and the Imposition of Fines.*" Pursuant to previous Metro Code sections 5.05.035(e),
5 5.05.070 and 7.01 *et seq.*

6 Pursuant to previous Metro Code 5.05.090, and 7.01.100 Metro provided to Licensee a
7 Contested Case Notice along with the March 18, 2002 Finding of Violations.

8 Licensee requested a Contested Hearing by letter dated April 17, 2002. From April 2002
9 until about September 2002, Licensee and Metro engaged in negotiations and exploratory
10 discussions regarding the issues in dispute. In August 2002 it became clear that negotiations to
11 resolve the dispute had failed. A Contested Hearing was scheduled for October 2, 2002 at 9:30
12 a.m. at the Metro Offices located at 600 Northeast Grand Avenue, Portland, Oregon 97232.

13 On September 24, 2002, Licensee sent a letter by facsimile, stating that Robert Noble, the
14 President of A. Noble, who was acting as agent of Licensee, had been subpoenaed to Circuit
15 Court for October 2, 2002. Mr. Noble requested a reset.

16 The Hearings Officer promptly informed all parties that the October 2, 2002 date would
17 be treated as a pre-hearing conference, so that procedural issues and hearing dates, would be
18 discussed.

19 On September 29, 2002, Licensee submitted a pleading entitled "REQUEST FOR
20 DEPOSITION".

21 On September 30, 2002 Licensee filed a document entitled "ANSWER".

22 On October 2, 2002 the Pre-Hearing Conference was held. Present were Paul Garrahan
23 for Metro, Robert J. Harris Hearings Officer, and Mr. Jeff Keathley for Licensee. The Hearing
24 was audiotaped. Pre-hearing matters were resolved, and A new hearing date was set for
25 December 16, 2002. The Hearing was scheduled for two days.

1 On October 29, 2002, by letter the Hearings Officer denied Licensees request to Order
2 Depositions.

3 Licensee submitted a document entitled "ANSWER", and later amended by the Hearings
4 officer to "AMENDED ANSWER" on December 2, 2002.

5 On December 9, 2002, Metro filed "METRO'S RESPONSE TO A&R/ANI's
6 AMENDED ANSWER".

7 On December 10, 2002 Licensee requested that the Hearings officer Order Metro to
8 produce certain documents and case law referenced in its Response. The Agency complied
9 voluntarily.

10 On December 16, 2002 and continuing to December 17, 2002 the hearing on this matter
11 was held at Metro's offices located at 600 Northeast Grand Avenue, Portland, Oregon 97232.
12 Present at the Hearing were: For Metro, Paul Garrahan, Assistant Metro Counsel. For Licensee,
13 Robert Noble, President of A. Noble, Inc., and interested party in A & R Environmental
14 Services, as well as Jeff Keathley, Agent for A. Noble, Inc. Robert Harris acted as Hearings
15 Officer. The Hearing was audio-taped.

16 The Hearings Officer stated on the record that there had been no ex-parte
17 communications. The Hearings Officer recited on the record the Hearing Procedures, rights of
18 the parties, and the right to appeal.

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

20 On the Last Day of the Hearing, Licensee presented at the hearing additional copies of
21 invoices and other documents (marked as exhibits ANI 600 through ANI 1105). Based on a
22 quick review it became obvious that some of these documents would likely evidence that some
23 of the heretofore undocumented loads were in fact generated from outside the Metro boundary
24 and thus not subject to Metro Code. The Hearings Officer gave the Agency until December 26,
25 2002 to review these materials, and submit a written response to these documents, and Licensee

1 until December 31, 2002 to answer Metros response. The record was kept open for the response
2 and answer.

3 On December 26, 2002 Metro filed with the Hearings Officer summary of its review.
4 This correspondence, dated December 26, 2002 and signed by Mr. Paul Garrahan, included the
5 following attachments: "Correlation analysis of ANI Documents 6001 to 1106." "Loads
6 Documented as Outside the Metro Region" and "Calculation of Fees, Taxes and Penalties"

7 By Letter, Licensees answer to Metros December 26, 2002 response was extended until
8 January 3, 2003. On that date, Licensee submitted a letter dated January 3, 2003, along with an
9 attachment entitled "Tonnage Report / A&R – A. Noble / May 2110 - November 2001", and a
10 copy of a Circuit Court Complaint, Multnomah County case number 0212-12719.

11 EVIDENTIARY RULINGS

12 METRO offered the following Exhibits into evidence, which were accepted without
13 objection and marked accordingly:

14 Metro 00001 through Metro 00138

15 Metro 00139A

16 Metro 00140 through Metro 00183

17 Metro 01001 through Metro 01486

18 Metro 01486 through Metro 01653

19 Metro 2000 through Metro 2003

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1 Licensee offered the following Exhibits into evidence which were accepted without
2 objection and marked accordingly

3 ANI 1 through ANI 293

4 ANI 294A through ANI 380A

5 ANI 310 through ANI 575

6 ANI 600 through ANI 1105

7 COP 1 through COP 13

8 Also made a part of the record were the following documents which were filed with the
9 Hearings officer by Metro or the Licensee, or which were produced by the Hearings officer.

10 HO-01 Licensees Pleading dated September 24, 2002, entitled POSTPONE
11 SCHEDULED HEARING DATE

12 HO-02 Licensees Pleading dated September 26, 2002, entitled PRODUCTION OF
13 DOCUMENTS

14 HO-03 Licensees Pleading dated September 29, 2002 entitled, REQUEST FOR
15 DEPOSITIONS

16 HO-04 Licensees Pleading dated September 30, 2002, entitled ANSWER

17 HO-05 Letter from Hearings Officer Dated October 4, 2002

18 HO-06 Letter from Hearings Officer dated October 29, 2002

19 HO-07 Pleading from Licensee dated December 2, 2002 entitled AMENDED
20 ANSWER

21 HO-08 Pleading from Licensee, dated December 4, 2002, un-captioned

22 HO-09 Pleading from Metro, dated December 9, 2002, entitled METRO'S RESPONSE
23 TO A&R/ANI'S AMENDED ANSWER

24 HO-10 Pleading from Licensee, dated December 10, 2002, un-captioned

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- 1 HO-11 Letter, with attachments, from Metro, dated December 26, 2002, RE: Review of
2 ANI Documents Produced at Hearing; Metro Non-System License Violation
3 NON -111-02
- 4 HO-12 Copy of Multnomah County Circuit Court Complain, Case number 0212-12719
- 5 HO-13 Letter from Licensee, dated January 3, 2003, responding to Metros December
6 26, 2002 letter

7 **FINDINGS OF FACT**

8 **SECTION I: Finding of Violation by Metro**

9 On July 13, 2000, A & R Environmental Services, LLC / A. Noble, Inc., (licensee herein)
10 was issued a Metro non-system license. Section 6(b) of the license provides that the licensee
11 shall provide Metro with monthly written reports of the tonnage and types of all solid waste
12 delivered from each generation site to the non-system facility under the authority of the license.
13 A report for each month is to be submitted no later than the fifteenth day of the following month.
14 Each report must list the type and number of tons of solid waste generated within the Metro
15 boundary that is delivered by the licensee to the non-system facility. The requirement to submit
16 reports is also a requirement under Metro Code section 5.05.035(d)(2).

17 Section 6(c) of the license further provides that the licensee shall remit to Metro the
18 applicable system user fees and excise taxes in accordance with the Metro Code provisions
19 applicable to the collection, payment, and accounting of such user fees and excise taxes. This is
20 also a requirement required under Metro Code section 5.05.035(d)(3).

21 Licensee did submit monthly reports as required by the Code and under the licensee, in
22 October 2000 and in February 2001 and March 2001. These reports were for the months of
23 September 2000 and January and February 2001. Licensee used incorrect forms for these reports,
24 so metro contacted licensee and explained which forms to use, and how to complete them. In
25 May 2001, Jeff Keathley, an employee of licensee, worked with Metro employee Janet Tolopka,

1 to correct and resubmit the forms. (see MET 064-070). The last form and payment for user fees
2 and taxes by licensee for 2001 was for April 2001.

3 By December of 2001, it was noted that licensee had failed to submit monthly report
4 forms or payments for six months. Therefore Metro initiated an investigation of the amount of
5 materials hauled by licensee to the various non-system landfills. Metro discovered that licensee
6 had hauled a substantial amount of waste to NWCL, as evidenced from the weight tickets
7 obtained from NWCL (see MET 075-088) Metro researched and collected data from licensees
8 clients, mainly the City of Portland wastewater treatment facility where licensee had a substantial
9 contract to haul the grit and screenings generated by said facility (see MET 091-095).

10 On January 22, 2002 Metro issued a finding of violation against licensee (NON), in that it
11 was alleged that licensee had failed to complete accurate monthly reports for the months of May
12 2001 through November 2001, and if user fees and taxes were due, had failed to pay said user
13 fees and taxes. (MET 098-102) The finding demanded that licensee complete accurate reports for
14 the months of April 2001 through November 2001, and to submit any user fees or excise taxes
15 that may be due. Licensee was given until February 18, 2002 to comply. In addition, licensee
16 was informed that the incorrectly completed reports for the period between September 2000 until
17 April, 2001 were not being considered violations for purposes of the January 22nd, NON, but
18 that, if they were not corrected by February 18th, 2002 then they would be considered violations
19 for which licensee may be subject to additional enforcement action.

20 Metro's finding of violation, dated January 22nd, 2002 complied with Metro Code section
21 5.05.035(e) in that in its findings of violation it allowed a cure period of at least 20, but not more
22 than 60 days. Metro Code, section 5.05.035(e) also provides that if licensee fails to cure as
23 directed, then the NSL shall automatically terminate.

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1 On February 18, 2002 licensee faxed to Metro a set of system and user fee and excise tax
2 reports. Included with this faxed material were revised reports for the period between September
3 2000 and April 2001, and reports for the previously unreported months of May 2001 to
4 December 2001. These amended reports claimed that licensee had delivered no in-region waste
5 to the Wasco County Landfill (hereinafter NWCL) in April 2001, nor any for the months June,
6 2001 through December 2001. These reports did indicate that 23.13 tons of in-region waste was
7 hauled in May 2001. Licensee did not remit any system user fee or excise tax payments with its
8 new amended reports (see MET 103-138).

9 After February 18, 2002 Metro continued to collect information regarding licensees
10 hauling practices, including reports from the City of Portland's wastewater treatment facility; the
11 quarterly tonnage report filed by licensee with the City's solid waste department; and tonnage
12 reports from licensees account at NWCL for the months of September 2000 and December 2001.

13 After reviewing all of the information collected on March 18, 2002, Metro issued its
14 Findings of Failure to Cure (see MET 145-151). Metro concluded that licensee had failed, as
15 required by sections 6(b) and 6(c) of its NSL, and Metro Code sections 5.05.035(d)(2) and
16 (d)(3), to submit the required monthly system user fee and excise tax reports, and to pay the
17 system user fees and excise taxes owed to Metro for the period from May through November
18 2001. Metro also found that each month's failure to submit the form was a separate violation. As
19 a result Metro imposed fines against licensee in an amount equal to \$500 per violation, plus the
20 regional system user fee and excise taxes owed, plus interest penalty on the amount of the excise
21 taxes owed, as provided in Metro Code section 7.01.080(b) (see MET 147-148). Licensee's NSL
22 license was terminated, as required by Metro Code, section 5.05.035(e), and Licensee was
23 notified that Metro would not extend it credit at any Metro facilities, as provided in Metro Code
24 section 5.05.070(a). Metro through Douglas Anderson, the Acting Director of Regional
25 Environmental Management Department, assessed a total fine against licensee of \$44,670.84.

1 Records support the following factual findings:

2 1. Based on the records provided by Metro and Licensee, and the testimony of the
3 individuals at the Hearing, I find that Licensee hauled the following tonnage of solid waste to
4 NWCL during the listed months:

5	May 2001:	271.24 tons
6	June 2001:	389.31 tons
7	July 2001:	365.53 tons
8	August 2001:	283.23 tons
9	September 2001:	338.71 tons
10	October 2001:	265.15 tons
11	November 2001:	230.76 tons
12	TOTAL:	2,143.93 tons

13 SECTION II: Licensees Defenses

14 Licensee, in response, presented four defenses to the Finding of Violation. They are:

15 ***Licensee's First Defense: Licensee delivered solid waste to a recovery facility owned by***
16 ***Oregon Recycling System (ORS) and ORS, not licensee, was responsible for disposing of the***
17 ***solid waste at NWCL. Therefore licensee argues that there is no requirement to include this***
18 ***solid waste on its monthly NSL report.***

19 As to this defense, I make the following findings of fact:

20 1. NWCL has licensee listed as the hauler of the solid waste on its receipt and
21 weight logs, Not ORS (see MET 075-088)

22 2. Licensee was required to file quarterly reports with the City of Portland
23 Wastewater Treatment facility in regards to the grit and screenings contract. In each report the
24 destination for the solid waste is listed as "Wasco County" or "Wasco Landfill", not ORS (see
25 MET 091-095, 140,141, and 162).

1 3. November 2000 Mr. Robert Noble, an owner of licensee, specifically asked
2 Metro whether it would be legal for licensee to consolidate loads at the ORS facility before
3 taking them to NWCL (see MET 021). This clearly indicates licensee's intent was to use the
4 ORS facility as a place to park its solid waste for consolidation and reloading on its way to
5 NWCL, and not to transfer responsibility for the waste to ORS.

6 4. Licensee presented no evidence that it ever paid ORS to conduct recovery on its
7 solid waste, or that ORS had ever paid it to haul the "residual" to NWCL.

8 5. ORS's NSL only allows it to haul asbestos containing material to NWCL, not the
9 type of material that licensee was hauling. In fact ORS has never used its NSL. ORS hauls its
10 waste to the Metro Licensed East County Recycling (ECR) under a license issued to ECR.

11 6. ORS is not a metro licensed material recovery facility (MRF) authorized to accept
12 this type of solid waste. It is a "clean MRF" exempt from Metro licensing requirements because
13 it exclusively accepts non-putrescible source separated recyclable material which it sorts and
14 sells as commodities.

15 ***Licensee's Second Defense: Much of the waste delivered to NWCL consisted of***
16 ***asbestos waste and, and that asbestos waste is either completely exempt from paying Metro***
17 ***fees and taxes, or is eligible for a per ton reduction on the user fee of \$10.40 as provided in***
18 ***Metro Code section 5.02.047(d), and for reduced excise tax of \$1.00 per ton as provided in***
19 ***Metro Code, section 7.01.020(e)(2).***

20 I make the following Findings of Facts as to this defense:

21 1. The asbestos hauled by licensee was construction debris, and produced as a result
22 of asbestos abatement projects.

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1 2. It is the opinion of Metro that solid waste generated from asbestos abatement
2 projects, and general construction debris that has asbestos material, is not "Cleanup Material
3 Contaminated by Hazardous Substances" within the meaning of Metro Code Sections
4 5.01.010(d) and 7.01.010(c).

5 3. All other waste haulers in the Metro region pay user fees and excise taxes on
6 asbestos and asbestos laden construction debris.

7 ***Licensee's Third Defense: The grits and screenings that it collects from the City of***
8 ***Portland wastewater treatment facility and delivered to NWCL were used at the landfill as***
9 ***alternative daily cover or for other useful purposes, and were therefore eligible for the user fee***
10 ***and excise tax exemptions provided in Metro Code sections 5.01.150(b)(4) and 7.01.050(a)(10).***

11 I make the following findings of facts as to this defense:

12 1. NWCL charged licensee a fee for disposal of the grits and screenings at NWCL.

13 2. NWCL did not actually use the grits and screenings as alternate daily cover, or for
14 any other useful purpose.

15 ***Licensee's Fourth Defense: Significant amounts of waste hauled by licensee were***
16 ***generated outside the Metro region, and are not subject to Metro reporting, fees or excise***
17 ***taxes.***

18 Based on the records presented, including the Licensees supplement to the record post-
19 hearing, and the testimony of the witnesses, I find that the following amounts of solid waste
20 which licensee hauled to NWCL were generated outside the Metro Region.

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1	May 2001:	38.55 tons
2	June 2001:	4.07 tons
3	July 2001:	63.16 tons
4	August 2001:	66.03 tons
5	September 2001:	64.74 tons
6	October 2001:	45.00 tons
7	November 2001:	43.35 tons
8	TOTAL:	326.90 tons

ULTIMATE FINDINGS OF FACT
REASONING AND CONCLUSIONS OF LAW

11 1. On July 13, 2000, A & R Environmental Services, LLC / A. Noble, Inc.
12 (Licensee herein) was issued a Metro non-system license. Section 6(b) of the license provides
13 that the licensee shall provide Metro with monthly written reports of the tonnage and types of
14 all solid waste delivered from each generation site to the non-system facility under the
15 authority of the license.

16 2. Licensee did submit monthly reports as required by the Code and under the
17 license, in October 2000 and in February and March 2001. These reports were for the months
18 of September 2000 and January and February 2001

19 3. By December of 2001, it was noted that licensee had failed to submit monthly
20 report forms or payments for six months. Therefore Metro initiated an investigation of the
21 amount of materials hauled by licensee to the various non-system landfills

22 4. On January 22, 2002 Metro issued a finding of violation against licensee, in that
23 it was alleged that licensee had failed to complete accurate monthly reports for the months of
24 May 2001 through November 2001, and if user fees and taxes were due, had failed to pay said
25 user fees and taxes. (MET 098-102) The finding demanded that licensee complete accurate

1 reports for the months of April 2001 through November 2001, and to submit any user fees or
2 excise taxes that may be due.

3 5. On February 18, 2002 licensee faxed to Metro a set of system user fee and
4 excise tax reports. Included with this faxed material were revised reports for the period
5 between September 2000 and April 2001, and reports for the previously unreported months of
6 May 2001 to December 2001. These amended reports claimed that licensee had delivered no
7 in-region waste to the Wasco County Landfill (hereinafter NWCL) in April 2001, nor any for
8 the months June 2001 through December 2001. These reports did indicate that 23.13 tons of in-
9 region waste was hauled in May 2001. Licensee did not remit any system user fee or excise tax
10 payments with its new amended reports (see MET 103-138).

11 6. From May 2001 until November 2001, Licensee hauled 2,143.93 tons of solid
12 waste to the Wasco County Landfill, a non-system landfill. Of that amount Licensee has
13 documented that 326.90 tons originated from outside the Metro jurisdiction. The net tonnage of
14 waste hauled by licensee to NWCL that was generated from inside the Metro jurisdiction is
15 more likely than not 1,817.03 tons (hereinafter the "net tonnage").

16 7. Of the 1,817.03 net tons of solid waste hauled by licensee to NWCL, some of it
17 consisted of asbestos and asbestos laden construction debris. This construction debris was
18 generated as a result of asbestos abatement or remediation projects, or general demolition.

19 8. Cleanup material contaminate by Hazardous substances is eligible for a reduced
20 system user fees and excise tax. Pursuant to Metro Code Section 5.01.010(d), such exempt
21 cleanup material is defined as solid waste resulting from the cleanup of releases of hazardous
22 substances into the environment.

23 9. Asbestos is a hazardous substance, but not hazardous waste. It is considered a
24 special solid waste and may be disposed of in a general purpose landfill. (OAR 340-093-1090,
25 340-248-0280, 340-248-0290) Asbestos generated from general construction or asbestos

1 abatement projects is not a cleanup or release of hazardous substances (3550 Stevens Creek
2 Assoc. V. Barclay's Bank, 915 F2d. 1355, 1359-60 (9th Cir. 1990)

3 10. Metro's interpretation of "Cleanup Material Contaminated by Hazardous
4 Substances" does not include General Asbestos laden construction debris or asbestos solid
5 waste generated as a result of asbestos abatement projects, and so does not fall within the
6 exceptions to fees and excise taxes provided for in Metro Code, 5.01.010(d) and 7.01.010(c).

7 11. Metro's interpretation of the term Cleanup Material Contaminated by
8 Hazardous Substances" is reasonable, given the case law, and the intent of the exception to
9 payment of fees and taxes for cleanup of hazardous releases, and is adopted by the Hearings
10 Officer. (Gage v. City of Portland, 319 Or. 308, 317. 877 P.2d 1187 (1994) Deference is given
11 to local governing body's interpretation of its own ordinance...)

12 12. The grits and screenings that licensee hauled to NWCL during the period in
13 question were not used productively in the operation of the disposal site. Specifically, there
14 was no evidence that the grits and screenings were ever used as Alternate Daily Cover at
15 NWCL. In addition, NWCL did charge a fee related to the disposal of the grits and screenings.
16 Therefore the grits and screenings does not fall within Metro Code section 5.01.150(b)(4)
17 exemption and user fees and excise taxes are due on grits and screenings solid waste.

18 13. Licensee was required to include the net tonnage of solid waste it hauled to
19 NWCL in its monthly reports to Metro, and to pay the user fees and excise taxes associated
20 with said net tonnage.

21 14. Licensee violated Metro code section 5.05.035(d)(2) and its Non system license
22 in that it failed to file accurate written monthly reports for the months of May 2001, June 2001,
23 July 2001, August 2001, September 2001, October 2001, and November 2001.

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1 15. Licensee failed to cure said violation in a timely manner after receiving the
2 “Findings of Violation and Notice on Non-Compliance for Failure to Submit Tonnage Reports
3 and Remit Fees as Required by Non System License (N-033-00) in that the “Amended” reports
4 it submitted on February 18th, 2002 were inaccurate and incomplete.

5 16. The net tonnage of solid waste that was subject to Metro user fees and excise
6 taxes and that Licensee should have reported on its May 2001 report was 232.69. The user fee
7 due on that amount was \$3,001.70. The excise tax due was \$1,088.99. Monthly interest on said
8 excise tax is \$16.33 from the date due until paid.

9 17. The net tonnage of solid waste that was subject to Metro user fees and excise
10 taxes and that Licensee should have reported on its June 2001 report was 385.24. The user fee
11 due on that amount was \$4,969.60. The excise tax due was \$1,802.92 . Monthly interest on
12 said excise tax is \$27.04 from the date due until paid.

13 18. The net tonnage of solid waste that was subject to Metro user fees and excise
14 taxes and that Licensee should have reported on its July 2001 report was 302.37. The user fee
15 due on that amount was \$3,900.57. The excise tax due was \$1,523.94 . Monthly interest on
16 said excise tax is \$22.86 from the date due until paid.

17 19. The net tonnage of solid waste that was subject to Metro user fees and excise
18 taxes and that Licensee should have reported on its August 2001 report was 217.20. The user
19 fee due on that amount was \$2,801.88. The excise tax due was \$1,094.69. Monthly interest on
20 said excise tax is \$16.42 from the date due until paid.

21 20. The net tonnage of solid waste that was subject to Metro user fees and excise
22 taxes and that Licensee should have reported on its September 2001 report was 273.97. The
23 user fee due on that amount was \$3,534.21. The excise tax due was \$1,380.81. Monthly
24 interest on said excise tax is \$20.71 from the date due until paid.

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1 8. For May 2001 Licensee shall pay to Metro the sum of \$3,001.70 in user fees, and
2 \$1,088.99 in excise taxes. Interest on the excise taxes shall accumulate in the amount of
3 \$16.33/month from the due date until paid.

4 9. For June 2001 Licensee shall pay to Metro the sum of \$4,969.60 in user fees, and
5 \$1,802.92 in excise taxes. Interest on the excise taxes shall accumulate in the amount of
6 \$27.04/month from the due date until paid.

7 10. For July 2001 Licensee shall pay to Metro the sum of \$3,900.57 in user fees, and
8 \$1,523.94 in excise taxes. Interest on the excise taxes shall accumulate in the amount of
9 \$22.86/month from the due date until paid.

10 11. For August 2001 Licensee shall pay to Metro the sum of \$2,801.88 in user fees, and
11 \$1,094.69 in excise taxes. Interest on the excise taxes shall accumulate in the amount of
12 \$16.42/month from the due date until paid.

13 12. For September 2001 Licensee shall pay to Metro the sum of \$3,534.21 in user fees, and
14 \$1,380.81 in excise taxes. Interest on the excise taxes shall accumulate in the amount of
15 \$20.71/month from the due date until paid.

16 13. For October 2001 Licensee shall pay to Metro the sum of \$2,839.94 in user fees, and
17 \$1,109.56 in excise taxes. Interest on the excise taxes shall accumulate in the amount of
18 \$16.64/month from the due date until paid.

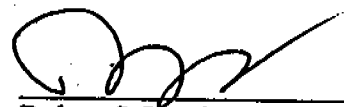
19 14. For November 2001 Licensee shall pay to Metro the sum of \$2,391.79 in user fees, and
20 \$934.47 in excise taxes. Interest on the excise taxes shall accumulate in the amount of
21 \$14.02/month from the due date until paid.

22 15. Licensee's NSL N-033-00 shall be terminated and revoked pursuant to Metro Code
23 Section 5.05.035(e).

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1 SUMMARY:
2 Fines imposed for Violation of the requirement to Report Monthly: \$ 3,500.00
3 Total User Fees Due: \$23,439.69
4 Total Excise Taxes Due: \$ 8,935.38
5 TOTAL DUE WITHOUT INTEREST: \$35,875.07
6 Plus interest accruing on each monthly excise tax due but not yet paid.

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9 _____
Robert J. Harris
Hearing Officer

10 Dated: February 24, 2003
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12 **THIS ORDER MAY BE REVIEWED PURSUANT TO THOSE PROVISIONS AS SET**
13 **FORTH IN METRO CODE SECTION 2.05**
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