

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING THE) RESOLUTION NO. 11-4249
HEARINGS OFFICER'S PROPOSED ORDER)
REGARDING METRO'S NOTICE OF VIOLATION) Introduced by the Chief Operating Officer
NOV-280-11 ISSUED TO K.B. RECYCLING, INC.) Daniel B. Cooper with the concurrence of
AND AUTHORIZING THE CHIEF OPERATING) Council President Tom Hughes
OFFICER TO ISSUE A FINAL ORDER)

WHEREAS, on February 2, 2011, the Finance and Regulatory Services Director ("the Director") issued Notice of Violation NOV-280-11 to K.B. Recycling, Inc. ("K.B."); and

WHEREAS, NOV-280-11 stated that the Director had found that on January 25, 2011, K.B. violated Section 5.13 of its Solid Waste Facility License which requires specified signage to be posted at all public entrances to the facility and imposed a penalty of \$50.00; and

WHEREAS, K.B. submitted a timely request for a contested case hearing; and

WHEREAS, a hearing on the matter was held on March 9, 2011, before Metro Hearings Officer Joe Turner; and

WHEREAS, pursuant to Metro Code 2.05.035(a), on March 15, 2011, the Hearings Officer issued a proposed order (attached as Exhibit A) finding that Metro met its burden of proof action and upholding NOV-280-11 and the \$50.00 civil penalty; and

WHEREAS, in accordance with Metro Code 2.05.035(b), the Director mailed copies of the proposed order to K.B. and informed Metro and K.B. of the deadline for filing written exception to the proposed order; and

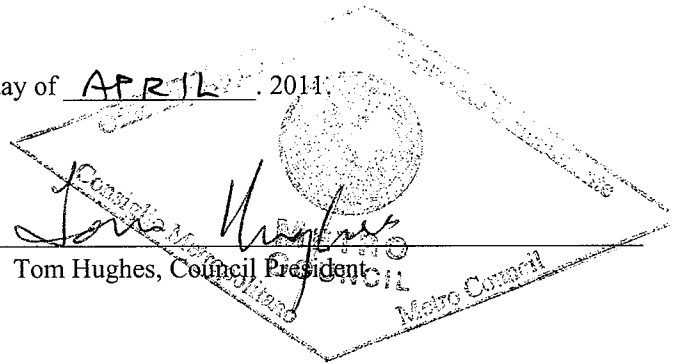
WHEREAS, the parties did not file written exceptions to the Hearings Officer's proposed order; and

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 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 Joe Turner in the Metro contested case: Notice of Violation NOV-280-11 issued to K.B. Recycling, Inc. and directs the Chief Operating Officer to issue a final order substantially similar to Exhibit B to this resolution.

ADOPTED by the Metro Council this 14 day of APRIL, 2011.



Tom Hughes, Council President

Approved as to form:

Alison Kean Campbell

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IN THE MATTER OF THE CONTESTED CASE HEARING OF

ORIGINAL

K.B. RECYCLING, INC.,
Appellant

Case No:

NOV-280-11

v.

PROPOSED FINAL ORDER

METRO,
Respondent

I. STATEMENT OF THE CASE

1. This proposed final order concerns an appeal of Notice of Violation and Order No. NOV-280-11 (the "NOV") filed by K.B. Recycling, Inc. (the "Appellant"). The NOV concerns operation of the Appellant's solid waste facility. The NOV alleges that the Appellant violated Section 5.13 of its solid waste facility license by failing to post signs listing certain required information at all public entrances to the facility. The NOV imposed a civil penalty of \$50.00.
2. Hearings Officer Joe Turner (the "Hearings Officer") received testimony at the public hearing about this appeal on March 9, 2011, at approximately 9:30 a.m. at Metro's offices, located at 600 NE Grand Avenue, Portland, Oregon. At the beginning of the hearing, the Hearings Officer made a statement describing the hearing procedure and disclaiming any *ex parte* contacts, bias or conflicts of interest. All witnesses testified under oath or affirmation. Metro made an audio recording of the hearing. Metro maintains the record of the proceedings.

II. EVIDENTIARY MATTERS

Respondent provided a packet of Exhibits (Metro Exhibits 1 through 5), a list of witnesses and exhibits, "Respondent Metro's Witness and Exhibit List" dated February 22, 2011 (Metro Exhibit 6), a notice of hearing dated February 2011 (Metro Exhibit 7) and oral testimony by Tiffany Gates, Metro Solid Waste Facility Inspector. Ray Kahut and Gary Roe testified on behalf of the Appellant. All offered exhibits and testimony was admitted without objection.

III. ISSUES PRESENTED

1. Whether Respondent sustained its burden of proof that the Appellant violated Section 5.13 of the solid waste facility license by failing to post and maintain required signage at the public entrance to the facility.

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ORIGINAL

IV. BACKGROUND

1. Respondent, Metro, is a regional government created by the State of Oregon with voter approval. The Metro Council, a political body elected by voters within the Metro region, governs Metro. Among other things, Metro regulates the transportation, processing and disposal of waste generated within the Metro region. Metro manages the whole waste stream within the region, implementing environmental, health, safety and public welfare mandates and mandates for recycling and reduction of waste. Metro has developed and implemented a Regional Solid Waste Management Plan, a management system for regional waste disposal and resource recovery. Pursuant to this authority, Metro requires any person who establishes, operates, maintains, or expands a solid waste facility¹ in the Metro region to secure the appropriate license or franchise. Metro Code Section 5.01.030.

2. The Appellant operates a solid waste facility at 9602 SE Clackamas Road, Clackamas, Oregon (the "facility"). The facility is located within Metro's jurisdictional boundaries. Therefore the Appellant was required to obtain a license from Metro to operate the facility. Operation of the facility is regulated by solid waste facility license No. L-007-07A (the "License"). See Metro Exhibit 1. Metro issued the License to the Appellant on February 17, 2009. Section 5.13 of the License provides:

The Licensee shall post signs at all public entrances to the facility, and in conformity with local government signage regulations. These signs shall be easily and readily visible, and legible from off-site during all hours and shall contain at least the following information:

- a) Name of the facility;
- b) Address of the facility;
- c) Emergency telephone number for the facility;
- d) Operating hours during which the facility is open for the receipt of authorized waste;
- e) Fees and charges;
- f) Metro's name and telephone number (503) 234-3000;
- g) A list of authorized and prohibited wastes;
- h) Vehicle/traffic flow information or diagram;
- i) Covered load requirements; and
- j) Directions not to queue on public roadways.

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¹ MC 5.01(uu) provides:

"Solid waste facility" means the land and buildings at which Solid Waste is received for Transfer and/or Processing but excludes disposal.

III. FINDINGS OF FACT

1. The Appellant's 2007 and 2009 solid waste facility licenses both listed a new Metro emergency contact phone number to be listed on the sign. On November 9, 2010, Metro Solid Waste Facility Inspector Duane Altig inspected the facility and noted that Appellant's sign had not been updated to reflect the new Metro emergency contact phone number. Mr. Altig contacted Mr. Roe, the facility manager, about the issue, who told him they were planning to update the sign. Mr. Altig reinspected the facility on December 8, 2010 and noted the same problem. Mr. Altig again talked to Mr. Roe about the need to update the sign. Metro Solid Waste Facility Inspector Tiffany Gates inspected the facility on January 13, 2011 and noted that the entire sign had been sanded down and painted over. The blank sign did not provide any of the information required by Section 5.13 of the License. She contacted Mr. Roe about the problem and noted the lack of signage as a concern on the inspection form.
2. Ms. Gates reinspected the facility on Thursday, January 20, 2011 and noted that the sign remained blank. Therefore she issued Field Notice of Violation No. FNOV-276-11 (the "FNOV," Metro Exhibit 2) to Mr. Roe, as the Appellant's representative. The FNOV provided the Appellant an opportunity to cure the cited violation and avoid imposition of civil penalties by displaying either temporary or permanent signage as required by the License. The FNOV allowed the Appellant two business days in which to cure the violation. Ms. Gates reinspected the facility on Wednesday, January 27, 2011 and noted that the sign remained blank and the Appellant had not installed any temporary signage. See Metro Exhibit 3. Ms. Gates testified that temporary signage is always allowed to meet the signage requirements.
3. On February 2, 2011, Respondent issued Notice of Violation No. NOV-280-11 alleging that on January 25, 2011 the Appellant violated Section 5.13 of the License. NOV-280-11 imposed a civil penalty of \$50.
4. The Appellant filed a written appeal of NOV-280-11 on February 7, 2011. See Metro Exhibit 7. The Appellant argued that it was not given sufficient notice to change its sign. The Appellant first learned that the Metro emergency contact phone number had changed when Mr. Altig informed the Appellant of the change in November 2010. The Appellant attempted, on several occasions, to repaint its sign to include the new Metro telephone number. However it was impossible for the Appellant to repaint their cement sign during the winter, when wet weather prevented the paint from drying. During a period of clear weather in January the Appellant sanded the sign to prepare it for repainting. However the weather changed and the Appellant was unable to finish painting the sign. The Appellant painted lettering on the sign anyway, but the paint bubbled and "looks terrible." The Appellant was unable to obtain a temporary sign during the two-day opportunity to cure provided in NOV-280-11. The Appellant installed a spray

painted temporary sign on January 27, 2011, after Ms. Gates completed her inspection.

IV. CONCLUSIONS OF LAW

Respondent sustained its burden of proof that the Appellant violated Section 5.13 of the solid waste facility license by failing to display required signage on January 25, 2011. Therefore the \$50.00 civil penalty assessed against the Appellant is appropriate.

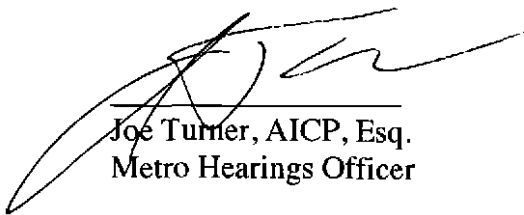
V. OPINION

1. Section 5.13 of the License requires that the Appellant post signs containing certain information at all public entrances to the facility. The Appellant, while attempting to update the Metro phone emergency contact phone number on the sign, removed all of the existing information from the sign. Wet weather conditions prevented the Appellant from repainting the sign with the required information. The Appellant did not install temporary signage to ensure compliance with Section 5.13 of the License.
2. Respondent inspected the facility on January 20, 2011 and observed that the signage required by Section 5.13 of the License was not provided at the public entrance to the facility. Therefore Respondent issued the FNOV, noting that the facility was in violation Section 5.13 of the License and ordering the Appellant to cure the violation by installing temporary or permanent signage with the required information. The FNOV required that the Appellant cure the violation by installing temporary or permanent signage within two business days. The Appellant failed to cure the violation within the time period specified in the FNOV. Therefore the Hearings Officer finds that the Appellant was in violation of Section 5.13 of the License on January 25, 2011.
3. The Hearings Officer finds that the Appellant was afforded ample time remedy the violation. The Hearings Officer understands that wet weather prevented the Appellant from repainting the existing sign. But the Appellant could have installed temporary signage at any time after Respondent informed Appellant of the need to update the sign.

VI. PROPOSED ORDER

1. Respondent sustained its burden of proving that the Appellant violated License Section 5.13 by failing to install and maintain required signage at the public entrance to the facility.
2. NOV-280-11 and the associated \$50.00 civil penalty is upheld.

Respectfully Submitted:



Joe Turner, AICP, Esq.
Metro Hearings Officer

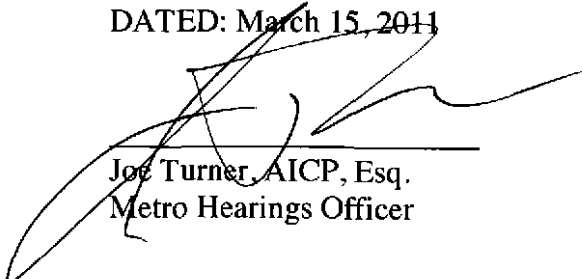
DATED: March 15, 2011

CERTIFICATE OF SERVICE

I, Joe Turner, certify that on this day I mailed the original PROPOSD FINAL ORDER to the Metro Council, Attention Steve Kraten at 600 Northeast Grand Avenue, Portland, Oregon 97232-2736 and via electronic transmission to Mr. Kraten at Steve.Kraten@oregonmetro.gov. I sent an original copy of the foregoing PROPOSD FINAL ORDER to the Appellant by US Mail, first class postage pre-paid, in a properly addressed and sealed envelope, at the address shown:

K.B. Recycling, Inc.
Gary Roe, Plant Manager
PO Box 550
Canby, OR 97013

DATED: March 15, 2011



Joe Turner, AICP, Esq.
Metro Hearings Officer

BEFORE THE METRO COUNCIL

In the Matter of Notice of Violation and)	
Imposition of Civil Penalty NOV-280-11)	
)	
Issued to)	FINAL ORDER
)	
KB RECYCLING INC.)	
)	
Respondent)	
)	

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VI. CONCLUSIONS OF LAW

Respondent sustained its burden of proof that the Appellant violated Section 5.13 of the solid waste facility license by failing to display required signage on January 25, 2011. Therefore the \$50.00 civil penalty assessed against the Appellant is appropriate.

VII. OPINION

1. Section 5.13 of the License requires that the Appellant post signs containing certain information at all public entrances to the facility. The Appellant, while attempting to update the Metro phone emergency contact phone number on the sign, removed all of the existing information from the sign. Wet weather conditions prevented the Appellant from repainting the sign with the required information. The Appellant did not install temporary signage to ensure compliance with Section 5.13 of the License.

2. Respondent inspected the facility on January 20, 2011 and observed that the signage required by Section 5.13 of the License was not provided at the public entrance to the facility. Therefore Respondent issued the FNOV, noting that the facility was in violation Section 5.13 of the License and ordering the Appellant to cure the violation by installing temporary or permanent signage with the required information. The FNOV required that the Appellant cure the violation by installing temporary or permanent signage within two business days. The Appellant failed to cure the violation within the time period specified in the FNOV. Therefore the Hearings Officer finds that the Appellant was in violation of Section 5.13 of the License on January 25, 2011.

3. The Hearings Officer finds that the Appellant was afforded ample time remedy the violation. The Hearings Officer understands that wet weather prevented the Appellant from repainting the existing sign. But the Appellant could have installed temporary signage at any time after Respondent informed Appellant of the need to update the sign.

VIII. ORDER

1. Respondent sustained its burden of proving that the Appellant violated License Section 5.13 by failing to install and maintain required signage at the public entrance to the facility.

2. NOV-280-11 and the associated \$50.00 civil penalty is upheld.

METRO REGIONAL GOVERNMENT

DATED: April _____, 2011

Dan Cooper,
Chief Operating Officer

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