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 1 BEFORE THE WASHINGTON

 2 UTILITIES AND TRANSPORTATION COMMISSION

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 4 In the Matter of Determining )DOCKET TG-190488

 the Proper Carrier Classification )

 5 of, and Complaint for Penalties )

 Against )

 6 )

 )

 7 )

 SEAN SMITH )

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 SPECIAL PROCEEDING - TRANSPORTATION COURT, VOLUME I

10

 Pages 1-21

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 ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

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13

 November 25, 2019

14

 9:02 A.M.

15

16 Washington Utilities and Transportation Commission

 621 Woodland Square Loop Southeast

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 1 A P P E A R A N C E S

 2 ADMINISTRATIVE LAW JUDGE:

 3 RAYNE PEARSON

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 1 LACEY, WASHINGTON; NOVEMBER 25, 2019

 2 9:02 A.M.

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 4 P R O C E E D I N G S

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 6 JUDGE PEARSON: Okay. So let's be on the

 7 record. Good morning. Today is Monday,

 8 November 25th, 2019, and the time is 9:02 a.m.

 9 My name is Rayne Pearson. I'm an

10 administrative law judge with the Washington Utilities

11 and Transportation Commission.

12 And I was just speaking briefly with

13 Ms. McPherson before we -- before we came on the record,

14 and she is going to give us an update on the status of

15 the presence of the carriers who have been subpoenaed to

16 appear here today.

17 Ms. McPherson?

18 MS. McPHERSON: Yes, we have one company,

19 Ray Hahne, in attendance, Docket TG-190844. The other

20 two companies have not checked in yet. I would

21 recommend that we give them a little time to see if they

22 will appear in court this morning.

23 JUDGE PEARSON: Okay. That sounds good. If

24 they don't appear, then those companies will be held in

25 default, and we can take that up later this morning. So

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 1 why don't we go ahead and take a recess until 9:15; does

 2 that work?

 3 MS. McPHERSON: Thank you, yes.

 4 JUDGE PEARSON: Okay. All right. We are in

 5 recess. Thank you.

 6 (Recess taken from 9:03 a.m.

 7 until 9:15 a.m.)

 8 JUDGE PEARSON: So let's be back on the

 9 record. There are three solid waste carriers who should

10 be here today, so the first thing we will do is

11 establish for the record who is and is not present in

12 the room. There is a court reporter who is recording

13 everything we say, so when I call your name, please

14 raise your hand and also say "here" or "present."

15 The first is Docket TG-190488, Sean Smith?

16 Hearing nothing, the next is Docket

17 TG-190793, Paul Henrickson, d/b/a Concrete and More?

18 Hearing nothing, Docket TG-190844, Ray

19 Hahne?

20 MR. HAHNE: Here.

21 JUDGE PEARSON: Did I say your name

22 correctly?

23 MR. HAHNE: Yeah.

24 JUDGE PEARSON: Hahne? Okay.

25 MR. HAHNE: I had to think about it.

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 1 JUDGE PEARSON: All right. So there are two

 2 companies not here today, and those companies will be

 3 held in default, and I'll take those cases up later this

 4 morning.

 5 So the Commission has initiated an

 6 enforcement against you for operating as a solid waste

 7 collection company without the required certificate,

 8 which is illegal and subject to penalties of up to

 9 $1,000 per violation. So today I'm going to ask you how

10 you choose to proceed, and you have two options.

11 Your first choice is agree to cease and

12 desist operating as an unpermitted solid waste carrier.

13 And if you choose this option, you must agree to stop

14 providing, offering, and advertising solid waste

15 collection services unless or until you receive a

16 certificate from the Commission.

17 If you choose this option, you'll need to

18 show Staff what you've done to shut down your business

19 either completely or partially. Staff will want to see

20 proof that you're no longer operating or advertising to

21 provide solid waste collection services.

22 Option B is to ask for a classification

23 hearing. You would choose option B if you believe

24 you're not subject to regulation by the Commission; in

25 other words, denying that you have offered solid waste

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 1 collection services. So if you choose that option, we

 2 will schedule a formal evidentiary hearing where you

 3 will be required to present proof that your business is

 4 not subject to regulation by the Commission.

 5 Kathryn McPherson will be speaking for

 6 Commission Staff this morning. Ms. McPherson is seated

 7 to the table to my right, and she's a Commission

 8 compliance investigator.

 9 So in a few minutes, I will call you up here

10 and swear you in so anything that you tell the Court

11 will be under oath. Once you're sworn in, I will ask if

12 you understand your choices and then ask you to state

13 your choice for the record. And if there is anything

14 else that you want to explain to me, you'll have a

15 chance to do that at that time.

16 If you choose the first option, you will

17 need to testify about how you plan to comply with the

18 law either by obtaining a certificate or shutting down

19 the illegal portions of your business. And you will

20 have an opportunity to meet with Staff during the break

21 to negotiate an agreed order to resolve this matter, and

22 the agreed order will also deal with the proposed

23 penalty.

24 The complaint asks the Commission to

25 penalize you for engaging in business as a solid waste

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 1 collection company without a certificate, and the law

 2 sets the maximum penalty for each violation at $1,000.

 3 So Staff will recommend a penalty, and you will have a

 4 chance to reach an agreement with Staff about that

 5 penalty amount. If you're unable to agree, I will make

 6 the final decision about the penalty amount after

 7 hearing arguments from both parties.

 8 So, Ms. McPherson, I will go ahead and swear

 9 you in right now.

10 (Kathryn McPherson sworn.)

11 JUDGE PEARSON: Okay. All right.

12 Mr. Hahne, if you want to come up to the table just

13 right here and turn on the microphone.

14 Thank you. If you could just state your

15 name and spell your last name for the court reporter.

16 MR. HAHNE: Ray Hahne, Jr. It's spelled

17 H-a-h-n-e.

18 JUDGE PEARSON: Okay. Thank you.

19 And what's your position with the company?

20 MR. HAHNE: Owner, I guess.

21 JUDGE PEARSON: Owner, okay.

22 And you understand your operation -- or your

23 options here today?

24 MR. HAHNE: Yes.

25 JUDGE PEARSON: Okay. Why don't I go ahead

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 1 and swear you in. If you could stand and raise your

 2 right hand.

 3 (Ray Hahne sworn.)

 4 JUDGE PEARSON: Okay. All right. Do you

 5 admit that you were operating as a solid waste carrier

 6 without a certificate?

 7 MR. HAHNE: Yes.

 8 JUDGE PEARSON: Okay. And you understand

 9 which activities require a solid waste certificate and

10 which do not, what you can and can't do?

11 MR. HAHNE: I probably will after I leave

12 here today, but yeah.

13 JUDGE PEARSON: Okay. And you agree to

14 cease and desist operating without a certificate?

15 MR. HAHNE: Yes.

16 JUDGE PEARSON: Okay. And have you shut

17 down your business?

18 MR. HAHNE: Yes, I have.

19 JUDGE PEARSON: Okay, great.

20 So when we take a break, you can talk with

21 Staff and see if you can sign an agreed order. The

22 order will say that you agree that you were operating

23 and advertising without a certificate and that you agree

24 to stop until you get a certificate. And once you feel

25 comfortable that you understand the order, you and Staff

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 1 will both sign it. And it will also include, like I

 2 discussed earlier, an agreed penalty amount, and the

 3 penalty may be small or there may be a reason that Staff

 4 asks for a larger penalty. Usually part of the penalty

 5 is suspended and you won't have to pay it unless you

 6 break the law again.

 7 So after the break, we will reconvene, I

 8 will make sure that you understand the order if you're

 9 able to come to an agreement, I'll sign it, and then you

10 will be free to leave with a copy of the order.

11 Anything else before we take a break?

12 MS. McPHERSON: No, Your Honor.

13 JUDGE PEARSON: Okay. So I'll be in my

14 office. Just let me know when I need to come back, and

15 we are in recess.

16 (Recess taken from 9:21 a.m.

17 until 9:46 a.m.)

18 JUDGE PEARSON: Okay. Let's be back on the

19 record at 9:46 a.m.

20 Mr. Hahne, if you want to come up to the

21 table. So, Mr. Hahne, I just want to confirm for the

22 record that you read the whole order and that you

23 understand all of its contents.

24 MR. HAHNE: Yes, I do.

25 JUDGE PEARSON: Okay, great. So it looks

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 1 like you've both signed it and that there are two

 2 violations; one for offering solid waste collection

 3 services and one for advertising those services. A

 4 $2,000 penalty is imposed, and it looks like you've

 5 agreed to suspend the entirety of the penalty for a

 6 period of two years from the date of the order; is that

 7 correct? Ms. McPherson, yes?

 8 MS. McPHERSON: Yes, yes, Your Honor.

 9 JUDGE PEARSON: Okay. And for the record,

10 you are agreeing to shut down your operations unless you

11 apply for and are granted a certificate; is that

12 correct?

13 MR. HAHNE: Yes.

14 JUDGE PEARSON: Okay. So the $2,000 penalty

15 is suspended for two years from today's date, which is

16 November 25th, 2021. So that means that if Staff finds

17 an advertisement or if you offer solid waste collection

18 services during that time, you will have to pay the

19 $2,000 penalty; and you understand that?

20 MR. HAHNE: Yes.

21 JUDGE PEARSON: Okay. Also, the order to

22 cease and desist is permanent, it never expires. So if

23 Staff discovers that you're still operating even after

24 the two years, Staff can go straight to superior court

25 and ask for much higher penalties, so it's very

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 1 important that you follow the law.

 2 Do you have any questions?

 3 MR. HAHNE: No.

 4 JUDGE PEARSON: Okay. So I will go ahead

 5 and sign the order. I'll hand it back to Ms. McPherson,

 6 and then once you get a copy of it, you're free to

 7 leave.

 8 MR. HAHNE: All right.

 9 JUDGE PEARSON: Thank you very much for

10 coming down today.

11 MR. HAHNE: Thank you.

12 JUDGE PEARSON: Okay. So there's no one

13 else present in the hearing room today, so we can

14 proceed with a motion for default for the remaining two

15 companies. And we are looking at Dockets TG-190488,

16 Sean Smith, and Docket TG-190793, Paul Henrickson, d/b/a

17 Concrete and More. I've had a chance to review both

18 dockets as well as the Commission's evidence and that

19 there was an offer to haul solid waste in Washington and

20 an advertisement for hauling solid waste in both of

21 those cases.

22 So, Ms. McPherson, what is Staff's motion

23 for those two companies?

24 MS. McPHERSON: I would like the companies

25 both classified as solid waste companies and a full

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 1 penalty of $2,000 imposed on each company.

 2 JUDGE PEARSON: Okay. So no portion of the

 3 penalty would be suspended; is that correct?

 4 MS. McPHERSON: No. Both companies

 5 continued to advertise in solid waste; one on Craigslist

 6 and one on Facebook Marketplace.

 7 JUDGE PEARSON: Okay. So these will be

 8 default orders, finding them in default for failure to

 9 appear today and imposing the full $2,000 penalty for

10 the two alleged violations.

11 So let's walk through the evidence you have

12 for each company as well as when and how service was

13 accomplished. So let's begin with Sean Smith.

14 MS. McPHERSON: Sean Smith, Docket No.

15 TG-190488. On April 18th, I found information that Sean

16 Smith was advertising on Facebook Marketplace

17 advertising as a solid waste carrier.

18 I -- on April 18th, I researched his

19 activities with Washington State Department of Revenue

20 and found that records showed that Sean Smith had an

21 active registration with DOR indicating that he had a

22 business address at the time of 3425 North Dale Road,

23 Millwood, Washington.

24 On April 18th, 2019, I reviewed the

25 Commission records to determine if Sean Smith had

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 1 authority to operate as a solid waste carrier in the

 2 state of Washington and learned that the Commission had

 3 no record of the company.

 4 On May 1st, 2019, I sent a letter to Sean

 5 Smith stating that I believed that the company was in

 6 violation of Commission rules by operating as a solid

 7 waste carrier without the required certificate. Sean

 8 Smith was required to respond by May 15th, 2019, by

 9 either submitting a completed application for solid

10 waste certificate or by explaining why, in writing, that

11 he should not -- does not require a solid waste

12 certificate.

13 On May 3rd, 2019, I received two separate

14 emails from Sean Smith. The first email received was at

15 12:48 p.m. explaining that the company started doing

16 trash loads as a source of income. Sean Smith stated

17 that the company would be willing to complete an

18 application for certificate. Sean Smith requested an

19 application -- the application information to be sent to

20 him again. The second email from the company was

21 received at 1:06 p.m. In that email, Sean Smith stated

22 that the advertisements were created for a friend, but

23 she did not -- but she did the business herself.

24 On May 6th, 2019, I replied by email to

25 Mr. -- to Sean Smith requesting a solid waste -- I

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 1 apologize. An email to Sean Smith's request for a solid

 2 waste application. In the email, I provided technical

 3 assistance to help the company determine whether or not

 4 to apply. The email also informed Sean Smith that the

 5 company could not perform solid waste services without a

 6 certificate from the Commission and noted a recent

 7 advertisement for moving services by Sean Smith. I

 8 informed the company that household goods moving also

 9 requires a permit from the Commission.

10 On May 7th, 2019, at 12:37 p.m., Sean Smith

11 sent a response email stating that company was

12 advertising for another friend's company for moving and

13 that the company does not provide moving services. The

14 email stated that the company would stop dumping waste

15 and had deleted all of its posts from Facebook. In the

16 email, Sean Smith stated that the company would not

17 continue until it could apply for and receive a

18 certificate. Sean Smith sent a second email at 12:47

19 p.m. saying he would be accepting a job and would no

20 longer be working independently.

21 On May 7th, 2019, Sean Smith contacted me by

22 phone at 3:34 p.m. He had additional questions

23 regarding the certificate. Sean Smith reiterated that

24 the company had removed all of its Facebook

25 advertisements and no longer would transport solid

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 1 waste.

 2 On May 23rd, using an assumed name on

 3 Facebook Messenger, I messaged Sean Smith regarding a

 4 Facebook Marketplace advertisement. Sean Smith and I

 5 messaged until we agreed on a price for the company to

 6 haul eight large bags of solid waste for $150.

 7 Sean Smith was served on October 20th, 2019,

 8 to appear here today.

 9 JUDGE PEARSON: Okay. Thank you. And for

10 Paul Henrickson, d/b/a Concrete and More?

11 MS. McPHERSON: On May 3rd, 2019 -- I'm

12 sorry, Docket No. TG-190793, Paul Henrickson, d/b/a

13 Concrete and More. On May 3rd, 2019, I found

14 information that Paul Henrickson, d/b/a Concrete and

15 More advertised on Craigslist for solid waste carrier.

16 On May 3rd, 2019, a search of Washington

17 Department of Revenue records showed that Paul

18 Henrickson had an active business registration under the

19 name Concrete and More. DOR records indicate that

20 Concrete and More's address was 8821 - 20th Street

21 Southeast, Unit A, Lake Stephens, Washington. The same

22 address appeared on advertisements found online at

23 hirerush.com.

24 On May 3rd, 2019, a company business phone

25 was listed as 425-686-5270, which matched his business

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 1 advertisements on Craigslist.

 2 On May 3rd, I reviewed the Commission --

 3 2019, I reviewed Commission records to determine if Paul

 4 Henrickson, Concrete and More, had authority to operate

 5 as a solid waste carrier in the state of Washington. I

 6 learned that the Commission had no record of -- of the

 7 company.

 8 On May 6th, 2019, I sent a letter to

 9 Concrete and More at 8821 - 20th Street Southeast, Unit

10 A, Lake Stevens, Washington, stating that I believed his

11 business was in violation of Commission rules by

12 operating as a solid waste carrier without a

13 certificate. The company was required to respond by

14 May 20th, 2019, by either submitting a completed

15 application for a solid waste transportation certificate

16 or by explaining why the company does not require a

17 solid waste certificate.

18 May 27th, 2019, I received returned mail

19 from the company. I know that the envelope stated

20 return to sender on the advertisement.

21 July 16th, 2019, I called Concrete and More

22 at 425-686-5270 and spoke with Paul Henrickson. I

23 identified myself and explained that the Commission had

24 sent the company a letter providing technical assistance

25 and that it was returned. I requested a valid address.

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 1 I explained the technical assistance was provided -- was

 2 regarding online advertisements for solid waste services

 3 and household moving. I explained that the Commission

 4 requires a permit prior to providing either of those

 5 services. Paul Henrickson refused to provide an

 6 address, expressing concerns that the phone call may be

 7 a scam.

 8 On July 18th, 2019, I called Paul Henrickson

 9 at 425-686-5270. Paul Henrickson did not want to

10 discuss his Craigslist advertising and stated that the

11 Commission has no proof that the company was

12 advertising. Paul Henrickson stated that the company

13 was probably -- stated the company probably has the

14 smallest truck at the dump and that the rules do not

15 apply to Concrete and More. Paul Henrickson refused to

16 provide an address and stated that the company was not

17 going to accept mail from the Commission.

18 On August 20th, 2019, I researched current

19 known addresses for Paul Henrickson, Concrete and More

20 and found an address at 22720 - 3rd Avenue Southeast, A,

21 Bothell, Washington. The address appeared inaccurate as

22 inactive as of August 2019.

23 On August 22nd, 2019, I sent a second letter

24 to Paul Henrickson at 22720 - 3rd Avenue Southeast, A,

25 Bothell, Washington, stating that I believed the

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 1 business was in violation of Commission rules by

 2 operating as a solid waste carrier without a required

 3 certificate. Paul Henrickson was required to respond by

 4 September 5th by either submitting a completed

 5 application for a solid waste transportation certificate

 6 or by explaining why the business does not require a

 7 solid waste certificate.

 8 On September 4th, 2019, Paul Henrickson

 9 called me stating that he had received a noncompliance

10 letter. He stated that he does not own Concrete and

11 More and has not owned Concrete for more than 15 years.

12 I stated that I discovered current registration with his

13 name on the DOR website. Paul Henrickson stated that

14 the DOR's information was inaccurate. I explained the

15 laws and regulations regarding household solid --

16 household goods and solid waste operating in the state

17 of Washington. I explained that if the company intends

18 to transport solid waste, it must apply for a

19 certificate. Paul Henrickson stated that he would

20 remove or change the advertisement, but did not feel

21 that he would have to. The information Paul

22 Henrickson -- he informed -- I informed Paul Henrickson

23 that Staff would follow up on his advertisements to

24 ensure compliance in the future.

25 September 4th, I found -- 2019, I found

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 1 current advertising for Concrete and More on Craigslist.

 2 September 17th, 2019, I checked Craigslist

 3 advertising for Concrete and More advertisements. I

 4 found the company's advertisements for hauling anything.

 5 The Craigslist advertisement was posted for

 6 September 16th, 2019.

 7 September 17th, 2019, using an assumed name,

 8 I responded to Concrete and More's Craigslist

 9 advertisement via Gmail. I explained that I had bagged

10 old stuff and needed it hauled away. I placed -- it was

11 placed roadside. The email included photos of

12 approximately eight garbage bags. Paul Henrickson

13 responded September 19th, 2019, requesting that I send

14 the photos via text of solid waste to be hauled to

15 360-686-5270.

16 On September 19th, 2019, I texted Concrete

17 and More the photo of the garbage bags. In the text, I

18 stated I needed the stuff taken to the dump. I included

19 a photo for Paul Henrickson, responded that he would --

20 or that he could do it for $100.

21 Mr. Henrickson was served on

22 October 11th, 2019, at 9:58 a.m. to appear in court

23 today.

24 JUDGE PEARSON: Thank you.

25 MS. McPHERSON: I'm requesting a default

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 1 order.

 2 JUDGE PEARSON: Okay. Thank you. So I will

 3 grant the motion for those two companies, and if you

 4 want to bring the default orders up to me, I will sign

 5 both of them.

 6 Is there any other business that we need to

 7 take care of today?

 8 MS. McPHERSON: No, Your Honor.

 9 JUDGE PEARSON: Okay. So we are adjourned.

10 Thank you.

11 (Adjourned at 10:02 a.m.)

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 1 C E R T I F I C A T E

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 3 STATE OF WASHINGTON

 4 COUNTY OF THURSTON

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 6 I, Tayler Garlinghouse, a Certified Shorthand

 7 Reporter in and for the State of Washington, do hereby

 8 certify that the foregoing transcript is true and

 9 accurate to the best of my knowledge, skill and ability.

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13 Tayler Garlinghouse, CCR 3358

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