

Docket No. TG-190488 - Vol. I

In the Matter of: Sean Smith

November 25, 2019



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Determining) DOCKET TG-190488
the Proper Carrier Classification)
of, and Complaint for Penalties)
Against)
)
)
)
SEAN SMITH)

SPECIAL PROCEEDING - TRANSPORTATION COURT, VOLUME I
Pages 1-21
ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

November 25, 2019
9:02 A.M.

Washington Utilities and Transportation Commission
621 Woodland Square Loop Southeast
Lacey, Washington 98503

REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358

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A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:

RAYNE PEARSON

FOR COMMISSION STAFF:

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* * * * *

1 LACEY, WASHINGTON; NOVEMBER 25, 2019

2 9:02 A.M.

3 --o0o--

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

5
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

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.

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

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

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

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

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

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

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

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

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

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

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

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.

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

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

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

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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C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand
Reporter in and for the State of Washington, do hereby
certify that the foregoing transcript is true and
accurate to the best of my knowledge, skill and ability.

Tayler Garlinghouse, CCR 3358