

Docket No. TG-190488 - Vol. I

In the Matter of: Sean Smith

November 25, 2019



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Page 1

1 BEFORE THE WASHINGTON
 2 UTILITIES AND TRANSPORTATION COMMISSION
 3 _____
 4 In the Matter of Determining) DOCKET TG-190488
 5 the Proper Carrier Classification)
 6 of, and Complaint for Penalties)
 7 Against)
 8 SEAN SMITH)
 9 _____
 10 SPECIAL PROCEEDING - TRANSPORTATION COURT, VOLUME I
 11 Pages 1-21
 12 ADMINISTRATIVE LAW JUDGE RAYNE PEARSON
 13 _____
 14 November 25, 2019
 15 9:02 A.M.
 16 Washington Utilities and Transportation Commission
 17 621 Woodland Square Loop Southeast
 18 Lacey, Washington 98503
 19
 20 REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358
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1 APPEARANCES
 2 ADMINISTRATIVE LAW JUDGE:
 3 RAYNE PEARSON
 4
 5 FOR COMMISSION STAFF:
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1 LACEY, WASHINGTON; NOVEMBER 25, 2019
 2 9:02 A.M.
 3 --o0o--
 4 PROCEEDINGS
 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

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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 Stevens, 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.

Page 17	<p>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</p>	Page 19	<p>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</p>
Page 18	<p>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</p>	Page 20	<p>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.) 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

1 C E R T I F I C A T E
2
3 STATE OF WASHINGTON
4 COUNTY OF THURSTON
5
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.
10
11
12 _____
13 Tayler Garlinghouse, CCR 3358
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