



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

### APPEAL OF WACKER SANITARY

CASE NO. 3110138

[Bureau Case No.: Unknown]

DATE OF HEARING: April 27, 2011

### APPEARANCES:

Mr. Dave Wacker, for Wacker Sanitary

Mr. Kevin Veaudry Casaus, for the City

HEARINGS OFFICER: Mr. Gregory J. Frank

### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Kevin Veaudry Casaus ("Veaudry Casaus") appeared at the hearing and acted as the representative for the City of Portland (the "City"). Ms. Arianne Sperry ("Sperry") and Ms. Patty Van Antwerp ("Van Antwerp") appeared as witnesses for the City. Mr. Dave Wacker ("Wacker") appeared at the hearing and presented testimony and argument on behalf of Wacker Sanitary. The Hearings Officer makes this decision based upon the testimony of Veaudry Casaus, Sperry, Van Antwerp and Wacker and the exhibits admitted into the evidentiary record (Exhibits 1 through and including 19).

The City, through the Bureau of Planning and Sustainability, sent a letter to Wacker (Exhibit 10; copy with Wacker notations labeled Exhibits 1a and 1b). The City and Wacker agreed that Exhibit 10 (hereafter the "Determination Letter" is the subject of Wacker's appeal. Specifically, Wacker's appeal contests the validity or correctness of the City's calculations used to conclude a violation of Administrative Rules Part 3.2, Residential Solid Waste Recycling & Yard Debris, B. System and Equipment Requirements, 8. Use of Biodiesel Fuel (the "Rules").

In summary, Exhibit 10 states that the Rules require "a minimum Biodiesel Blend of B20 shall be used in all Solid Waste, Recycling and Yard Debris collection vehicles." The City, in Exhibit 10, alleges that for the fourth quarter of 2010 (months of October, November and December) Wacker failed to meet the minimum biodiesel fuel requirements set forth in the rules.

Veaudry Casaus testified that the City sent Wacker a letter, on February 17, 2011, titled "Notice of Alleged Infraction" of the Rules (Exhibit 9). Veaudry Casaus stated that the letter explained the Rules with respect to purchase of fuel and the biodiesel component of such fuel. Veaudry Casaus stated that the City requested Wacker to supply receipts or other proof of purchase of fuel. Veaudry Casaus stated that Wacker did provide receipts/proof of purchase of fuel to the City (Exhibits 11, 12 and 13). Veaudry Casaus stated that based upon the City's review of the receipts/proof of purchase supplied by Wacker, the City calculated Wacker had not purchased sufficient biodiesel fuel to meet the requirements of the Rules (Exhibits 16, 17 and 18).

Wacker testified that the City's calculations were incorrect. Wacker stated that he had added the numbers from his receipts and that the City's estimates for each month (October, November, and December 2010) were in error. Wacker testified that he may have paid for fuel in October that he had received in earlier months. Wacker indicated that he did supply receipts/proof of purchase documents to the City and that Exhibits 11, 12, and 13 appeared to be copies of those documents. Wacker pointed out that the two hundred sixty-five dollar (\$265) purchase of B5 (shown on Exhibits 11 and 16) should not be included in the October entries of fuel purchases; that particular fuel was pumped into Wacker vehicles in earlier months and the invoice paid in October.

Sperry testified that it is possible that the City entered the data from the receipts incorrectly. Sperry stated that it is possible that the two hundred sixty-five dollar (\$265) entry was incorrect. Van Antwerp testified that she reviewed Wacker's receipts and some of the receipts did not indicate the amount of biodiesel. Van Antwerp stated that she conducted a site visit at "Franks 76," a fuel dispenser shown on many of Wacker's receipts (Exhibits 11, 12, and 13) and that "Franks 76" sold only B99 fuel and not B20 fuel.

The Hearings Officer, with concurrence of Wacker, requested the City recheck their calculations. Veaudry Casaus submitted a letter dated April 28, 2011 stating that:

"at the hearing on Wednesday, April 27, our office agreed to review the data entered into the spreadsheets constituting Exhibits 16, 17 and 18. We have done so, comparing the gallons of fuel purchased by Wacker Sanitary as indicated in the receipts submitted to us by Mr. Wacker on March 2, 2011 to the numbers in the spreadsheet. We found no errors; all of the fuel purchases are correctly entered into the spreadsheet and the formulas adding those entries are correct."

The Hearings Officer finds that Wacker provided, at the City's request, copies of receipts/proof of purchase. The Hearings Officer finds that the City, using the receipts/proof of purchase supplied by Wacker, calculated fuel purchased for the months of October, November and December 2010 and determined the B20 equivalent. The Hearings Officer finds the only evidence that the City's calculations and B20 determination are incorrect is the testimony of Wacker stating that when he added up the numbers they came out different than the City's calculations. Wacker testified that his calculations indicate that he did meet the B20 standard for October, November and December 2010.

The Hearings Officer finds Wacker provided no empirical or other documentary evidence to support his contention that the City's numbers were wrong. The Hearings Officer finds that the City provided documents evidencing Wacker's purchase of fuel in October, November and December and also provided documents showing Wacker's total fuel and B20 biodiesel equivalent purchases. The Hearings

Officer finds, based upon the evidence in the record, that Wacker did not, during the months of October, November and December 2010, purchase sufficient biodiesel fuel to satisfy the Rules.

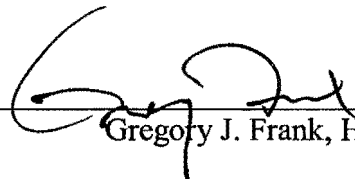
Wacker did not contest the correctness of the \$400 assessment.

The Hearings Officer finds the Determination Letter (Exhibit 10) is valid. The Hearings Officer finds that Wacker's appeal must fail.

#### ORDER AND DETERMINATION:

1. The Determination Letter (Exhibit 10) is valid; appellant's appeal is denied.
2. This order has been mailed to the parties on May 12, 2011.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: May 12, 2011



Gregory J. Frank, Hearings Officer

GJF:rs

Enclosure

| <b>Exhibit #</b> | <b>Description</b>  | <b>Submitted by</b>   | <b>Disposition</b> |
|------------------|---|-----------------------|--------------------|
| 1                | Appeal form page 1  | Veaudry Casaus, Kevin | Received           |
| 1a               | Instructions for appeals to the Code Hearings Officer                               | Veaudry Casaus, Kevin | Received           |
| 1b               | 3/18/11 Notice of Assessment letter, Patty Van Antwerp to Wacker Sanitary Service   | Veaudry Casaus, Kevin | Received           |
| 2                | Appeal form page 2  | Veaudry Casaus, Kevin | Received           |
| 3                | 4/1/11 Summary of Infractions   | Veaudry Casaus, Kevin | Received           |
| 4                | 5/11/10 memo, Laura Haggi to Dave Wacker Sanitary Service                           | Veaudry Casaus, Kevin | Received           |
| 5                | Report  | Veaudry Casaus, Kevin | Received           |
| 6                | Report  | Veaudry Casaus, Kevin | Received           |
| 7                | Quarterly Biodiesel Usage Report - 4th Quarter - 10/1/10 to 12/31/10                | Veaudry Casaus, Kevin | Received           |
| 8                | Chart   | Veaudry Casaus, Kevin | Received           |
| 9                | 2/17/11 Notice of Alleged Infraction letter, Van Antwerp to Wacker Sanitary Service | Veaudry Casaus, Kevin | Received           |
| 10               | 3/18/11 Notice of Assessment letter, Van Antwerp to Wacker Sanitary Service         | Veaudry Casaus, Kevin | Received           |
| 11               | Receipts  | Veaudry Casaus, Kevin | Received           |
| 12               | Receipts  | Veaudry Casaus, Kevin | Received           |
| 13               | Receipts  | Veaudry Casaus, Kevin | Received           |
| 14               | Mailing List  | Hearings Office       | Received           |
| 15               | Hearing Notice  | Hearings Office       | Received           |
| 16               | October chart   | Veaudry Casaus, Kevin | Received           |
| 17               | November chart  | Veaudry Casaus, Kevin | Received           |
| 18               | December chart  | Veaudry Casaus, Kevin | Received           |
| 19               | 4/28/11 letter  | Veaudry Casaus, Kevin | Received           |