

Service Date: July 8, 2002

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER OF JAMES A. JONES,	)	TRANSPORTATION DIVISION
dba OILFIELD MAINTENANCE COMPANY,	)	
Complaint by WASTE CONNECTIONS OF)		DOCKET NO. T-00.50.COM
MONTANA, INC., and BROWNING-FERRIS	)	
WASTE SYSTEMS OF NORTH AMERICA	)	ORDER NO. 6516

FINAL ORDER

Introduction

1. On June 21, 2000, Waste Connections of Montana, Inc. (WCM), the lessee of Class D (solid waste) motor carrier authority PSC No. 9418, and Browning-Ferris Waste Systems of North America (BFI), the owner of PSC No. 9418, jointly filed before the Public Service Commission (PSC) a complaint against James A. Jones, dba Oilfield Maintenance Company (Jones), the owner of Class D motor carrier authority PSC No. 9131, and, at least incidentally, against Rickey D. Rost, dba Disposal Services Company (Rost), as the lessee of PSC No. 9131. On August 15, 2000, ownership of the BFI authority was transferred to WCM and BFI later withdrew as a complainant. WCM remains a complainant.

2. Both Class D motor carrier authorities, WCM's PSC No. 9418 and Jones's PSC No. 9131 (leased to Rost), allow operations in Custer County, Montana, and several neighboring counties. WCM and Rost are competing carriers for services in these areas, primarily in and near Miles City. WCM bases its complaint on a number of allegations, principally pertaining to the Jones authority being invalid as having not met the Class D requirement of use on a regular basis and annual motor carrier reports related to the authority being incorrect or false.

3. The PSC issued a notice of the WCM complaint to Jones on July 13, 2000. Jones answered on September 1, 2000, denying the principal allegations in the complaint. On July 27, 2001, based on information obtained through discovery, WCM moved for summary judgment. Oral argument on that motion was held before the PSC on November 6, 2001, in Helena. The

PSC did not grant the motion for summary judgment, but, based on allegations presented in the underlying complaint and information provided in the motion, on December 31, 2001, the PSC issued an order to Jones to show cause why the Jones authority should not be revoked. Hearing on the show cause order was held January 25, 2002, before PSC commissioner and hearings examiner Jay Stovall in Miles City. At hearing the parties stipulated to a final order (an order by the PSC as a whole). Post-hearing arguments (briefs) by the parties on the show cause proceeding have been filed.

#### Findings of Fact

4. All introductory statements which can properly be considered findings of fact and which should be considered as such to preserve the integrity of this order are incorporated herein as findings of fact.

5. Jones is in the oil field business and has been in that business for a number of years. As a part of that business Jones engages in oil-field maintenance and clean up, which may, and apparently did at one time, include transportation of solid waste. To lawfully pursue this aspect of the business Jones obtained his Class D authority from the PSC in 1991. At that time Jones was operating in the Belle Creek area oil fields in south eastern Montana, primarily, if not exclusively for Exxon. The authority granted by the PSC, as later amended one or more times, allows Jones to transport garbage, solid waste, and debris in certain Montana counties. Annual reports have been filed with the PSC regarding the use of the Jones Class D authority. The annual reports represent Jones's use of the Class D authority on a regular basis.

6. Jones characterizes himself as a roustabout and as knowledgeable and capable in directing and performing the on-site oil-field tasks required of his business. However, Jones admits to little or no knowledge or capability regarding the accounting and record-keeping aspects of his business. For many years Jones employed a secretary and delegated these administrative tasks to her, completely and without oversight. The secretary is no longer employed by Jones. The secretary's employment relationship with Jones apparently ended on less than favorable terms and apparently resulted in office confusion, the aspect of confusion

most relevant to this proceeding being Jones's assertion of inability to reconstruct his Class D records.

7. Jones recalls transporting solid waste during the years, but does not recall the specifics of such transportation. Jones presented a few records relating to transportation during the early years of his Belle Creek operations (*i.e.*, early 1990s), but if he has other records, as he claims he does, he is unable to readily assemble them and presented none at hearing. Jones, although generally recalling transportation of solid waste throughout the years, neither recalls nor can relate anything of substance pertaining to the details of transportation which would tend to adequately support his general recollections. Jones presented no witnesses who could verify matters pertaining to use of his authority. Jones has no explanation for the existence of transportation on a regular basis for Jones's only identifiable and identified customer, Exxon, following closure of Exxon's operations in or about 1996. Jones explains his secretary did the accounting and record keeping regarding his operations, including the Class D annual reporting requirements, even signing Jones's name to the forms submitted. Jones did not review the annual reports and did not sign the annual reports, apparently ever. From all practical and legal aspects Jones paid no attention to the Class D record-keeping and reporting requirements.

8. Jones leased PSC No. 9131 to Rost in early 2000. Rost has obtained customers in the Miles City area and has operated on a regular basis since that time. Rost states he relied on PSC records (Jones's annual reports) and Jones's assurances to conclude PSC No. 9131 was in good standing. Rost has been aware of the WCM complaint since its filing.

#### Conclusions of Law

9. All findings of fact which can properly be considered conclusions of law and which should be considered as such to preserve the integrity of this Order are incorporated herein as conclusions of law.

10. The PSC has jurisdiction over complaints against motor carriers. § 69-12-210, *MCA*. The PSC has authority over Jones as a motor carrier and holder of PSC No. 9131. § 69-12-201, *MCA*. The PSC may issue show cause orders, conduct show cause hearings, and revoke

certificates if the certificate holder does not show cause regarding revocation. § 69-12-327, MCA.

11. Class D carriers must actually engage in the transportation of garbage on a regular basis as part of usual business operations. § 69-12-314(2), MCA. The PSC has authority to adopt rules implementing this statute, § 69-12-201, MCA, and the PSC has adopted such rules, ARM 38.3.1201 through 38.3.1207. Class D carriers, as well as other carriers, must file annual reports on a form approved by the PSC. § 69-12-407, MCA. The PSC has authority to make rules pertaining to annual reports and to developed the reporting form, *id.*; § 69-12-201, MCA, and the PSC has adopted such rules, ARM 38.3.805. Annual reports must be signed under oath. § 69-12-407, MCA; *PSC Annual Report (PSC form), General Instructions, para.4, and Oath (last page PSC form)*. The PSC may, at any time, require Class D motor carriers provide sufficient information that § 69-3-314(2), MCA (transportation on a regular basis) has been met. § 69-12-407(3), MCA. The PSC has done so as an incident to the show cause order in this proceeding.

12. Motor carrier annual reports must be signed by the owner of the certificate (or an officer, if the owner is of such nature that it is operated by officers, *e.g.*, a corporation). *PSC Annual Report (PSC form), General Instructions, Para. 4, and Oath (last page PSC form)*. Jones, as a sole proprietor (owner), did not sign his annual reports. Jones is not an entity operated by officers. Jones's failure to sign is in violation of PSC requirements pertaining to annual reports. Jones did not review the annual reports, which is also in violation of requirements pertaining to annual reports. "I, the undersigned ... on my oath say the foregoing return has been prepared, under my direction, from the original books ... I have carefully examined the same ... " and so forth. *PSC Annual Report, Oath (last page PSC form)*.

13. Jones's failure to review the annual reports filed by Jones (or filed on behalf of Jones) and sign them under oath (or at all) renders the annual reports invalid. Jones has violated the law applying to Class D annual report requirements. Jones did not show cause why PSC No. 9131 should not be revoked for this reason. Jones's only demonstrated inability or unwillingness to: pay attention to the accounting and record keeping requirements pertaining to Class D

operations; maintain proper records or any records; and delegate responsibilities only when legal to do so in regard to lawful reporting requirements and apply proper oversight. This cannot be accepted as a legitimate excuse or good cause.

14. Jones also did not show cause why his authority should not be revoked regarding inaccurate or false annual reports. Jones did not demonstrate his annual reports, if otherwise valid, actually included correct and true information. Jones's recollection of transporting solid waste throughout the years is seriously suspect, as Jones could recall little or nothing at hearing pertaining to details of his Class D operation, even as those relate to transportation in the recent years he claims to have operated under the authority. Jones failed to show cause why PSC No. 9131 should not be revoked for failure to use the authority on a regular basis. WCM raised serious regular-use questions regarding the validity of Jones's PSC No. 9131 during the summary judgment proceedings in this matter. The list of unanswered questions regarding Jones's regular use is extensive and credible, much being based on information provided by Jones through discovery. Jones did not show cause regarding these questions and has not otherwise demonstrated cause pertaining to regular use of his authority. The Jones authority is revoked on the basis of failure to meet regular-use requirements.

15. Jones has had an opportunity to be heard on the validity of PSC No. 9131. The PSC concludes Jones either did not or could not use the opportunity to show cause. Because Jones has been represented by counsel and has been afforded sufficient time to prepare, the PSC concludes Jones not only did not show cause but most likely cannot show cause why PSC No. 9131 should not be revoked.

#### Order

IT IS HEREBY ORDERED PSC No. 9131, owned by James A. Jones, dba Oilfield Maintenance Company, and leased to and operated by Rickey D. Rost, dba Disposal Services Company, is revoked. As Rost is presently in operation and active in serving customers who will need time to arrange for other solid waste transportation services, revocation is effective 60 days from the service date of this order. Revocation of the underlying authority affects Rost, as the

authority leased by Rost is revoked, but this order is not intended and should not be construed to represent anything negative regarding Rost or his operations as lessee of the revoked authority.

All pending objections, motions, and arguments not specifically having been ruled on in this order are denied, to the extent that such denial is consistent with this order.

Done and dated this 25th day of June, 2002, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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GARY FELAND, Chairman

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JAY STOVALL, Vice Chairman

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BOB ANDERSON, Commissioner

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MATT BRAINARD, Commissioner

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BOB ROWE, Commissioner

ATTEST:

Rhonda Simmons  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision.  
A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Final Order No. 6516, in Docket T-00.50.COM has today been sent to parties listed below.

MAILING DATE: July 8, 2002

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FOR THE COMMISSION

FIRST CLASS MAIL:

James A. Jones  
dba Oilfield Maintenance Company  
PO Box 2590  
Gillette, WY 82717-2590

Frank C. Crowley  
Attorney at Law  
PO Box 1185  
Helena, MT 59624-1185

Rickey D. Rost  
dba Disposal Services Company  
PO Box 536  
Miles City MT 59301

Jerome Anderson  
Attorney at Law  
PO Box 866  
Helena, MT 59624

BFI Waste Systems of North America, Inc.,  
a Delaware Corporation  
PO Box 8449  
Missoula, MT 59802

Loren O'Toole  
Attorney at Law  
PO Box 529  
Plentywood, MT 59254

Waste Connections of Montana, Inc.  
PO Box 966  
Miles City, MT 59301

AS ITS INTEREST MAY APPEAR:

Montana Consumer Counsel  
616 Helena Avenue  
P.O. Box 201703  
Helena, MT 59620-1703