

**OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
REGULATION AND ENFORCEMENT DIVISION**

IN THE MATTER OF:

**SAM Recycling
5044 Highway 90
Bay St. Louis, MS 39322**

SOS Registration No. 12095479

Respondent

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**Administrative Proceeding
Number: LM-14-1131**

FINAL ORDER

This cause came before a hearing officer on December 17, 2014. On February 17, 2015, the Hearing Officer submitted his proposed Findings of Fact and Conclusions of Law, attached as Exhibit A. Respondent, SAM Recycling submitted comment on the Hearing Officer's findings on March 19, 2015. Therefore, the above-styled cause stands ready for final adjudication via this Final Order.

FINDINGS OF FACT

1. The Secretary of State has the authority to administer and to provide for the enforcement of all provisions of the Mississippi Scrap Metal Dealer Registration Act (hereinafter "Act"), Mississippi Code Annotated Section 97-17-71, which regulates the purchase of regulated metals in the State of Mississippi.
2. As a purchaser of regulated metal property, SAM Recycling is subject to the requirements of the Act and regulations promulgated thereunder.
3. Following an examination of SAM Recycling by an Examiner from the Regulation and Enforcement Division of the Secretary of State on August 4, 2014, the following violations of the Act were noted:

- a. In accordance with Mississippi Code Annotated Section 97-17-71(2), a scrap metal dealer must capture a number of identifying pieces of information for each regulated metal purchase. Over a period of several months dating back to April of 2014, the Respondent failed to obtain the following items from regulated metal customers.
 - i. Respondent failed to obtain the seller's vehicle license tag number, state of issue for the tag, the make and type of vehicle used to transport the metal property to the business. This is a violation of Section 97-17-71(2)(e).
 - ii. Respondent failed to obtain a photograph, video or similar likeness of the person who delivered the metal property or for the person receiving payment in which the person's facial features were clearly visible **and** in which the metal property being sold or delivered was clearly visible. This is a violation of Section 97-17-71(2)(i).
 - b. Respondent failed to properly tag and hold purchased regulated metal property for a (3) day period, as required by Mississippi Code Annotated Section 97-17-71(3).
 - c. Respondent failed to properly upload required information for each metal purchase to LeadsOnline, as required by 1 Mississippi Administrative Code, Pt. 13, Rule 5.1.
 - d. Respondent failed to display a copy of his dealer's registration on his property as required by 1 Mississippi Administrative Code Pt. 13, Rule 7.6.
4. A hearing on the matter was held on December 17, 2014, with Hon. Robert T. Jackson, Sr., serving as hearing officer.
 5. The Hearing Officer's Findings of Fact and Conclusions of Law are attached to this Final Order as Exhibit A and are hereby adopted, with amendment.

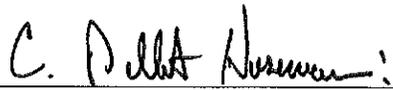
CONCLUSIONS OF LAW

6. SAM Recycling failed to capture identifying information for each regulated metal purchase as required by Mississippi Code Annotated Section 97-17-71(2).
7. SAM Recycling failed to properly tag and hold purchased regulated property as required by Mississippi Code Annotated Section 97-17-71(3). The purchases were improperly mixed and mingled together. Furthermore, SAM Recycling had not implemented a tagging system.
8. SAM Recycling failed to upload required information for metal purchases to LeadsOnline, as required by 1 Mississippi Administrative Code Pt. 13, Rule 5.1.
9. SAM Recycling failed to display a copy of its Certificate of Registration with the Secretary of State's Office as required by 1 Mississippi Administrative Code Pt. 13, Rule 7.6.

The hearing officer recommended an administrative penalty in the amount of Four Thousand Dollars (\$4,000.00). However, considering the Hearing Officer's recommendation and SAM Recycling's response, the undersigned finds that mitigation in penalties from Four Thousand Dollars (\$4,000.00) to Two Thousand and Five Hundred Dollars (\$2,500.00) to be just and appropriate. It is hereby ORDERED an administrative penalty in the amount of Two Thousand and Five Hundred Dollars (\$2,500.00) against SAM Recycling be paid to the Secretary of State, within thirty (30) days from the date of this Final Order, pursuant to the authority granted by Mississippi Code Annotated Section 97-17-71.1(5)(c)(i).

SO ORDERED and ADJUDGED.

This, the 13th day of April, 2015.



C. DELBERT HOSEMANN, JR.
*In his official capacity as Secretary of
State of the State of Mississippi*

**DELBERT HOSEMAN, SECRETARY OF STATE
OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
REGULATION AND ENFORCEMENT DIVISION**

IN THE MATTER OF:

**ROGER LACOSTE
SAM RECYCLING
5044 Highway 90
Bay St. Louis, MS 39322**

**SOS PROCEEDING NO.: LM-14-1131
SOS REGISTRATION NO. 12095479 (09/18/2016)
SOS FILE NO. MT-1408-003**

FINAL ORDER, FINDINGS OF FACT AND CONCLUSIONS OF LAW

The undersigned was appointed by the Secretary of State of the State of Mississippi to conduct a hearing and issue a Findings of Fact and Conclusions of Law in the referenced matter. A hearing was held before the undersigned on December 17, 2014, at the office of the undersigned located at 309 South 40th Avenue, Hattiesburg, MS 39402, at which David Penson, examiner and Regulation and Enforcement Officer for the Mississippi Secretary of State, appeared and at which Mr. Roger Lacoste appeared individually and as the duly authorized and empowered officer of SAM Recycling, 5044 Highway 90, Bay Swt. Louis, MS 39322. The said David Penson testified and was represented by counsel for the Mississippi Secretary of State. He presented exhibits along with his testimony. Roger Lacoste presented testimony only.



FINDINGS OF FACT

1. The Secretary of State made allegations of violations of the Mississippi Code Annotated (the "Code") and/or the Secretary of State Regulations. They are:

A. §97-17-71(2) requires that every scrap metal dealer or other purchaser shall keep an accurate and legible record in which he shall enter the following information of each purchase transaction:

(1) The name, address and age of the person from whom the metal property is purchased as obtained from the seller's personal identification card;

(2) The date and place of each acquisition of the metal property;

(3) The weight, quantity or volume and a general physical description of the type of metal property, such as wire, tubing, extrusions or casing, purchased in a purchase transaction;

(4) The amount of consideration given in a purchase transaction for the metal property;

(5) The vehicle license tag number, state of issue and the make and type of the vehicle used to deliver the metal property to the purchaser;

(6) If a person other than the seller delivers the metal property to the purchaser, the name, address and age of the person who delivers the metal property;

(7) A signed statement from the person receiving consideration in the purchase transaction stating that he is the rightful owner of

the metal property or is entitled to sell the metal property being sold;

(8) (a) A scanned copy or a photocopy of the personal identification card of the person receiving consideration in the purchase transaction; or

(b) If a person other than the seller delivers the metal property to the purchaser, a scanned copy or a photocopy of the personal identification card of the person delivering the metal property to the purchaser; and

(c) A photograph, videotape or similar likeness of the person receiving consideration or any person other than the seller who delivers the metal property to the purchaser in which the person's facial features are clearly visible and in which the metal property the person is selling or delivering is clearly visible.

Such records shall be maintained by the scrap metal dealer or purchaser for not less than two (2) years from the date of the purchase transaction, and such records shall be made available to any law enforcement officer during usual and customary business hours.

As stated above, the information required by that statute was not being kept. There was no vehicle information being gathered from the seller. Photographs were not taken.

Any person willfully or knowingly violating the provisions of this Section shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00) per offense.

- B. Code §97-17-71(3) requires that purchases of regulated materials should be separated and identifiable from each other, and said Section provides the following:

The purchaser of metal property must hold the metal property separate and identifiable from any other purchases for not less than three (3) business days from the date of purchase. The purchaser shall also photographically capture the metal property in the same form, without change, in which the metal property was acquired, and maintain the photograph(s) for a period of not less than two (2) years. The time and date shall be digitally recorded on the photograph, and the identity of the person taking the photograph shall be recorded. The purchaser shall permit any law enforcement officer to make an inspection of the metal property during the holding period, and of all photographs of the metal property. Any photograph of metal property taken and maintained pursuant to this subsection shall be admissible in any civil or criminal proceeding.

Any person willfully or knowingly violating the provisions of this Section shall, upon conviction thereof, be deemed guilty

of a misdemeanor and shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00) per offense.

- C. Rule 5.1 requires that transactions be uploaded by 5:00 the next business day. The Examiner found that the last upload to LeadsOnline was done on 4/3/2014. Said Rule 5.1 provides that applicants for registration and registered Scrap Metal Dealers must keep an accurate and legible record pursuant to the Act. Applicants and Scrap Metal Dealers **shall** comply with the record keeping requirements of the Act by submitting a Customer Transaction Report from each purchase transaction. The Customer Transaction Report must be submitted electronically to the agent, who shall keep and maintain all electronic records pursuant to the Act. Customer Transaction Reports must be uploaded to the Secretary's agent no later than the close of business (5:00 p.m.) of the next business day following the date of purchase by the Dealer.

Any person willfully or knowingly violating the provisions of this Section shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00) per offense.

D. Rule 7.6 requires that a copy of a dealer's registration be displayed. One was not present on the property. Said Rule 7.6 provides that a current Certificate of Registration issued by the Secretary of State shall be posted and displayed in a conspicuous place and in easy view of all who enter the office or a fixed location of the Scrap Metal Dealer. A wallet-size registration will be issued by the Secretary of State so that the same may be presented upon request of any individual in the scrap metal business acting within the scope of his business to confirm lawful registration of any dealer when the dealer is outside of his office or fixed location.

Any person willfully or knowingly violating the provisions of this Section shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00) per offense.

CONCLUSIONS OF LAW

1. The Secretary of State has established, as found above, that the violations of the regulations and statutes regulating Scrap Metal Dealers in Mississippi total Four Thousand Dollars (\$4,000.00).

2. The Respondent testified that his son, Roger Lacoste, Jr., actually managed the scrap yard and the Respondent was mostly not present at the site. He testified that his camera was broken, but he failed to properly upload required information, failed to identify vehicles properly, as well as failed to photograph products purchased. The Respondent also failed to separate purchased products. The Examiner found that purchases were mixed and mingled together. The Examiner found that the Respondent had no tagging system. The Respondent testified that his license was at his home and his son did not have possession of the same at the business site. The Respondent testified that he visited the site perhaps a couple of days per week. He stated that he had a body shop two miles away and was mostly present at the body shop.

CONCLUSION AND AWARD

The Hearing Officer finds that Roger Lacoste and SAM Recycling have violated Mississippi laws and regulations of the Secretary of State relating to the regulation of scrap metal sales in the manner as found above, and the penalties applicable to those violations as set forth above.

Roger Lacoste and SAM Recycling are indebted to the Secretary of State of the State of Mississippi in the total sum of Four Thousand Dollars (\$4,000.00) for the enumerated violations of Mississippi laws and the applicable regulations of the

Secretary of State. WITNESS MY SIGNATURE on this, the _____ day of February,
2015.

ROBERT T. JACKSON, SR.
Hearing Officer