

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

IN THE MATTER OF:)	
)	
L & D Trucking & Scrap, Inc.)	Administrative Proceeding
d/b/a L & D Scrap of Magee)	Number: <u>L-11-0226</u>
1999 Simpson Highway 49)	
Magee, MS 39111)	
)	
<i>Respondent</i>)	

FINAL ORDER

This cause came before a hearing officer on October 27, 2011. On November 22, 2011, the appointed Hearing Officer submitted his Findings of Fact and Conclusions of Law, attached as Exhibit A. Respondent, L & D Trucking and Scrap, Inc., submitted comment on the Hearing Officer's findings on January 5, 2012. 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 Property 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, L & D Trucking and Scrap, Inc. (hereinafter "L & D") is subject to the requirements of the Act and regulations promulgated thereunder.
3. During an examination of L & D by an Examiner from the Regulation and Enforcement Division of the Secretary of State on September 28, 2011, the following violations of the Act were alleged:

- a. Respondent purchased regulated metals while not registered with the Secretary of State's office as required by Mississippi Code Annotated Section 97-17-71.1(a);
 - b. Respondent failed to post in a conspicuous place a current Certificate of Registration issued by the Secretary of State, as required by Title I, Part III, Chapter 7 Rule 105 of the Mississippi Scrap Metal Dealer Registration Administrative Rules;
 - c. Respondent failed to upload Scrap Metal Purchase Customer Transaction Reports for each regulated metal purchase to LeadsOnline, as required by Title I, Part III, Chapter 5 Rule 100, in eleven (11) separate instances;
 - d. Respondent failed to tag and hold purchased regulated metal property for a three (3) day period, as required by Mississippi Code Annotated Section 97-17-71(3), in nine (9) separate instances;
 - e. Respondent failed to retain a copy the seller's personal identification, as required by Mississippi Code Annotated Section 97-17-71(2)(h)(i), in one (1) instance;
 - f. Respondent failed to record information regarding the seller's vehicle, as required by Mississippi Code Annotated Section 97-17-71(2)(e), in four (4) instances; and
 - g. Respondent failed to obtain a signed statement by the seller affirming that he is the owner of the regulated metal or is entitled to sell the regulated metal property, as required by Mississippi Code Annotated Section 97-17-71(2)(g), in one (1) instance.
4. A hearing on the matter was held on October 27, 2011, with Hon. Harold D. Miller, Jr., serving as hearing officer.

5. The hearing officer's Findings of Fact and Conclusions of Law is attached to this Final Order as Exhibit A. The Hearing Officer found twenty-five (25) violations against L & D in his Findings of Fact. However, a review of the record reveals four violations established by the Division wherein L & D failed to record the seller's vehicle information – rather than a single occurrence. Therefore, the total number of violations proven by the Division is twenty-eight (28), instead of twenty-five (25).

CONCLUSIONS OF LAW

6. L & D purchased regulated metals while not registered with the Secretary of State's office as required by Mississippi Code Annotated Section 97-17-71.1(a).
7. L & D failed to post in a conspicuous place a current Certificate of Registration issued by the Secretary of State, as required by Title I, Part III, Chapter 7 Rule 105 of the Mississippi Scrap Metal Dealer Registration Administrative Rules.
8. L & D failed to upload Scrap Metal Purchase Customer Transaction Reports for each regulated metal purchase to LeadsOnline, as required by Title I, Part III, Chapter 5 Rule 100, in eleven (11) separate instances.
9. L & D failed to tag and hold purchased regulated metal property for a three (3) day period, as required by Mississippi Code Annotated Section 97-17-71(3), in nine (9) separate instances.
10. L & D failed to retain a copy of the seller's personal identification, as required by Mississippi Code Annotated Section 97-17-71(2)(h)(i), in one (1) instance.
11. L & D failed to record information regarding the seller's vehicle, as required by Mississippi Code Annotated Section 97-17-71(2)(e), in four (4) instances.

12. L & D failed to obtain a signed statement by the seller affirming that he is the owner of the regulated metal or is entitled to sell the regulated metal property, as required by Mississippi Code Annotated Section 97-17-71(2)(g), in one (1) instance.

Each separate violation detailed above subjects L & D Trucking and Scrap, Inc., to an administrative penalty not to exceed One Thousand Dollars (\$1,000) per occurrence. Miss. Code Ann. § 97-17-71.1(5)(c)(i). The twenty-eight (28) violations carry a maximum penalty of Twenty-Eight Thousand Dollars (\$28,000.00). However, as a first offense violation by the registrant, the undersigned hereby issues an administrative penalty in the amount of one-half of the maximum fine. Therefore, it is hereby **ORDERED** an administrative penalty in the amount of Fourteen Thousand Dollars (\$14,000.00) against L & D Trucking and Scrap, Inc., plus costs in the amount of One Thousand Two Hundred Ten Dollars and Fifty Cents (\$1,210.50), be paid to the Secretary of State, pursuant to the authority granted by Mississippi Code Annotated Section 97-17-71.1(5)(c)(i). Therefore, the total amount in penalties and costs to be paid is Fifteen Thousand Two Hundred Ten Dollars and Fifty Cents (\$15,210.50).

SO ORDERED and ADJUDGED.

This, the 2 day of February, 2012.



C. Delbert Hosemann, Jr.
C. DELBERT HOSEMANN, JR.
Secretary of State
State of Mississippi

DELBERT HOSEMANN
SECRETARY OF STATE

L&D TRUCKING & SCRAP, INC. D/B/A
L&D SCRAP OF MAGEE

REGISTRATION NO. 110112587
SOS CAUSE NO. L-11-0226

FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF HEARING OFFICER

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 October 27, 2011 at which the Secretary of State and respondent L&D presented witness testimony and exhibits. A total of three witnesses, and nine (9) exhibits were presented.

FINDINGS OF FACT

1. As amended, the Secretary of State made allegations of violations of Mississippi Code Annotated and/or Secretary of State Regulations violations. They are:

a. Purchase of regulated metals without being registered with the Secretary of State's office as required by Mississippi Code Annotated §97-17-71(1)(a) with a fine of \$1,000.00.

b. Failure to post in a conspicuous place a current certificate of registration issued by the Secretary of State in a conspicuous place as required by Title I, Part III Chapter 7 Rule 105 with an administrative penalty of \$1,000.00.



c. Failure to upload scrap metal purchase customer transaction reports as required by Title I, Part III Chapter 5 Rule 100 on eleven occasions with a cumulative fine of \$11,000.00.

d. Failure to tag and hold purchased regulated metal property for a three day period as required by Mississippi Code Annotated §97-17-71(3). This occurred on nine (9) occasions, each occasion being an independent violation, with a cumulative fine of \$9,000.00.

e. Failure to retain a copy of a regulated metal seller's personal identification as required by Mississippi Code Annotated §97-17-71(2)(h)(i) on one occasion with a fine of \$1,000.00.

f. Failure to record information regarding the regulated metal seller's vehicle as required by Mississippi Code Annotated §97-17-71(2)(e). The penalty is \$1,000.00.

g. Failure to obtain a signed statement by the regulated metal seller affirming that he is the owner of the regulated metal or is entitled to see the regulated metal as required by Mississippi Code Annotated §97-17-7(2)(g) for a fine of \$1,000.00.

2. Magee's presentation did not deny, contradict or refute the evidence establishing the above violations. The evidence offered by respondent was to the effect that the violations were not intentional, i.e., were the result of confusion transferring an internet system from one location to another; and a misunderstanding of the law.

3. In sum, the evidence of the Secretary of State establishes the commission of the alleged acts, and the evidence of respondent does not refute the commission of the acts, but offers explanations designed to establish a lack of intent to violate the regulations and statutes.

CONCLUSIONS OF LAW

1. The Secretary of State has established, as found above, seven (7) sets of violations of his regulations and the statutes regulating scrap material dealers in Mississippi, and that the violations total twenty-five thousand dollars (\$25,000.00) in penalties.

2. The only issue raised by respondent is that the violations were not intentional, and presumably some discretion should be exercised by the Secretary of State in determining the amount of penalties to be assessed. Assuming for the sake of discussion only, that the Secretary of State has discretion in these matters, whether it should be exercised, and, if so, in what manner is beyond the duties and functions of this hearing officer.

CONCLUSION AND AWARD

1. The hearing officer finds that L&D Scrap Metal has violated Mississippi law and regulations of the Secretary of State relating to the regulation of scrap metal sales in the manner as found above, and that the penalties applicable to those violations are set forth above.

L&D Scrap Metal is indebted to the Secretary of State of the State of Mississippi in the amount of twenty-five thousand dollars (\$25,000.00) for the enumerated violations of Mississippi law and the applicable regulations of the Secretary of State.

WITNESS MY SIGNATURE this the 29th day of November, 2011.


HAROLD D. MILLER, JR.
HEARING OFFICER