

*

am

Decision No. 79175

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
 own motion into the operations,
 rates, charges and practices of
 FRED M. WERT, an individual doing
 business as F. M. WERT TRUCKING;
 and GREENE'S READY-MIXED CONCRETE
 CO., a California Corporation.

Case No. 9038
 (Filed March 24, 1970)

Petition for Modification
 of Decision No. 78637
 (Filed June 17, 1971)

ORDER MODIFYING DECISION NO. 78637

On May 4, 1971, the Commission issued its order that Fred M. Wert, an individual doing business as F. M. Wert Trucking (Wert) shall pay a fine of \$2,000 and shall collect from Greene's Ready-Mixed Concrete Co. (Greene) the sum of \$22,262, which had been found to be a rebate. Upon the collection of the \$22,262, Wert was to pay a fine in that amount to the Commission as provided by Section 3800 of the Public Utilities Code.

On June 17, 1971, Wert filed a petition for modification requesting that the fine of \$22,262 be reduced to \$5,000 on the ground that the \$22,262 fine is extremely onerous to himself and to Greene. As a basis for the petition, Wert asserts that Greene currently must pay \$14,000 for air pollution control devices; pay about \$3,000 for a settlement system to prevent the discharge of undesirable wastes into the Dominguez Channel; pay \$4,600 to improve sidewalks pursuant to an order of the City of Los Angeles; and pay other lawful debts.

*

C. 9038

Wert has paid the \$2,000 punitive fine imposed upon him. Grounds for reducing the amount of the rebate fine of \$22,262 are that Wert and Greene proceeded in good faith in the belief that their arrangements were legal in every respect and that they still understood that this was so after making inquiries of the Commission staff. These arrangements are discussed at some length in Decision No. 78637. Upon review it appears that, although it is difficult to make exact determinations of the value of the services Greene provided Wert, it would be more equitable, in all of the circumstances, and, we so find, that the aggregate rebate was \$15,000. We conclude, therefore, that Decision No. 78637 should be modified to reduce the amount Wert is directed to collect from Greene and to pay as a rebate fine to \$15,000. Accordingly,

IT IS ORDERED that Ordering Paragraphs 2 and 3 of Decision No. 78637 are hereby modified by substituting "\$15,000" for "\$22,262" in each such paragraph.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California
 this 8th day of SEPTEMBER, 1977.

I dissent

[Handwritten signature]

[Handwritten signature]
 Chairman
[Handwritten signature]
[Handwritten signature]
[Handwritten signature]

Commissioners