

FEB 13 2015

E
Ronald R. Carpenter
Clerk

IN THE WASHINGTON STATE SUPREME COURT

PORT OF OLYMPIA, et al., and)	Supreme Court Case No. 90973-3
WEYERHAEUSER CO.,)	COA II Case No. 43876-3-II
Petitioners, et al.;)	Superior Court Case No. 07-2-01198-3
v.)	
ARTHUR S. WEST, and)	Dierker's Reply to Port's Response to
JERRY L. DIERKER JR.,)	to Dierker's Jan. 30, 2015 Motion for Extension of
Respondents.)	Time; Dierker's Motion for Sanctions and
)	Motion to Strike Port's improper Response and
)	Certificate of Service
)	

1. Mr. Dierker makes this Reply to the Port's improper, frivolous, and absurd Response to Mr. Dierker's Jan. 30, 2015 Motion for Extension of Time to prevent a gross miscarriage of justice due to new "extraordinary circumstances" of the Port's again seriously harming Mr. Dierker's health to the point his voice, heart, and respiratory system may have been permanently damaged, that have also exacerbated Mr. Dierker's prior disabling conditions, causing him increased "acute attacks" of several of his life-threatening health conditions that he has been disabled with before this new Port "gas warfare" attack on Mr. Dierker, his home and his neighbors. (Id.).

The Port Response's alleged "denials" of Mr. Dierker's "averments" made in this Motion **DO NOT** "FAIRLY MEET THE SUBSTANCE" of Mr. Dierker's "averments" in his Motion, its incorporated pleadings, and its attachments, for the Port's Responses here to be "responsive pleadings", and this violates CR 8(b), et seq.

As absurd as it sounds, **THOUGH THE PORT'S RESPONSE DOES RAISE SOME QUESTIONS AS TO THE "EXTENT" OF MR. DIERKER'S INJURIES CAUSED BY THE PORT'S THE HARM that Mr. Dierker the Port's Response DID NOT make any defending claim or pleadings to even allege that the Port did not harm Mr. Dierker here.**

Therefore, pursuant to CR 8 (d), et seq., the Port has now "admitted" that the Port DID harm Mr. Dierker here, and the Port has now admitted Mr. Dierker's other "averments" claims and arguments, including that Mr. Dierker does have "standing" to proceed in this case, and the Port is barred under collateral and equitable estoppel from making any conflicting pleadings in this case.

Mr. Dierker was so ill from his toxic exposures Jan. 12 & 19, 2015 he filed his that he collapsed in the State Supreme Court Clerks Office when filing his Jan. 30, 2015 Motion for Extension of Time and exhibits, so Mr. Dierker could only "reference" his other previous Motions for Extension of Time where Dierker made numerous pleadings on RCW 4 and common law doctrines "tolling" all "statutes of limitation" like the part of RAP 18.8 cited in the Port's Response. (See Port's Response, at page 2 Footnote 1, including the citations to State v. Moon, and Shumway v. Payne; compare Fisons, supra, and Dierker's cites of RCW 4 and common law doctrines "tolling" all such statutes of limitations).

When Mr. Dierker got home from filing his Jan. 30, 2015 Motion for Extension of Time and exhibits, Mr. Dierker found the Port business card of Port of Olympia Commissioner George Barner wedged in his front door, and Mr. Dierker called Port Commissioner Barner's Port cell phone number on the card and Port Commissioner Barner answered saying he was very concerned that the Port had caused this harm to Mr. Dierker's health, and he wanted to come and see Mr. Dierker to talk to him about this.

From about 1:00 p.m. to almost 4:00 p.m. on Jan. 30, 2015, Port Commissioner Barner spent about 3 hours with Mr. Dierker talking about the Port caused this harm to Mr. Dierker's health, during which Port Commissioner Barner used his Port cell phone to talk to Port staff, where Port Commissioner Barner found during these phone calls to and from Port staff that it was the Port's contractor for this case's complained of Port project who the Port had contracted to dispose of various Port of Olympia toxic hazardous waste generated from this project and others, which this Port contractor illegally dumped and buried in this same Port contractor's illegal un-permitted sand and gravel mining operation located next door to Mr. Dierker's home, for apparently the last 8 years of this project and this case. Mr. Dierker also notes that both he and Mr. Arthur West were present during the phone calls from the Port staff to Port Commissioner Barner confirming that this Port contractor had been contracted to remove and disposed of the Port's hazardous waste, though the Port staff claimed that the Port did not tell this Port contractor to dump it next to Mr. Dierker's home to harm him, so there may not have been any Port "intent" to harm Mr. Dierker at this time, merely the Port's continued "negligent harming" of Mr. Dierker, his neighbors, and others located in the West Side of Olympia, the State Capitol of Washington near this Port contractor's illegal un-permitted sand and gravel mining operation located next door to Mr. Dierker's home.

In any case, this clearly shows that on Jan. 30, 2015, only two days after half of Downtown Olympia was evacuated because of the Port of Olympia's giant Hydrogen Peroxide tank leak into the Olympia's stormwater system, at least Port Commissioner Barner must have understood that this Port caused this harm to Mr. Dierker's health was a very "extraordinary circumstance" which require Port Commissioner Barner's immediate attention since Port Commissioner Barner's spent about 3 hours on Jan. 30, 2015 with Mr. Dierker talking about how the Port caused this harm to Mr. Dierker's health.

Clearly, the Port's actions and or failures to act here which are directly related to and leading from the Port's complained of unlawful PRA, SEPA, and other Port project actions complained of in this case, by acutely harming Mr. Dierker recently and harming his health and home for the last several years, by this case's complained of Port project's Port contractor's "fraudulently concealed" illegal dumping of Port-generated toxic hazardous waste from this case's complained of Port project into this Port contractor's illegal un-permitted sand and gravel mining operation next door to Mr. Dierker's home for the last 8 years of this project and this case, and thereby, Mr. Dierker therefore now has sufficient "standing" to proceed in this case.

Further, it is clear from this newly discovered previously "fraudulently concealed" evidence and harm to Mr. Dierker that Mr. Dierker does have "standing" to proceed in this case from the Port's past, recent, current, and future harm to Mr. Dierker and his home reasonably likely to be leading from the Port's 69 years continuing "fraudulently concealed" illegal dumping of Port-generated toxic hazardous waste from this case's complained of Port project into this Port contractor's illegally operated un-permitted sand and gravel mining operation located next door to Mr. Dierker's home for the last 8 years of this Port project.

Clearly, unless this Supreme Court prevents this gross miscarriage of justice, the "extraordinary circumstances" of Mr. Dierker being harmed by the Port's "ordinary" actions of illegally dumping Port toxic hazardous waste next to Mr. Dierker's home, have caused this delay in this case, which further violates Mr. Dierker's rights to due process and equal protection of the law that "Justice will be done openly and without unnecessary delay" in the Court's of this State, which have already been so severely violated in this 8 year long delayed case that has never even had any PRA "discovery" hearing normally done in only 21 days, let alone an impartial and meaningful hearing on the merits of the complete record of the facts and law controlling this case.

This newly discovered evidence on Port's related illegal un-permitted sand and gravel mining operation made to aid the Port and their contractors to illegally "cover-up" this Port hazardous waste under this site and under various other sites that have newly proposed or newly constructed housing developments built over the top of this Port waste throughout the Olympia/Tumwater area by these Port's contractors, was fraudulently concealed from Mr. Dierker by the Port for over 8 years in this case and this "tolls" all rules or "statutes of limitation" in this case, until some Court makes the Port stop and/or correct such Port-caused "extraordinary circumstances" in this case, so that the case is no longer delayed by the Port's, et al's, "ordinary" illegal or unlawful actions, which have cause many gross miscarriages of justice and unlawful prior restraints of Mr. Dierker exercise of his fundamental rights in this case so that he can try to protect himself and others from being harmed by the Port.

Further, the Port's attorneys either failed to read or Dierker's Jan. 30, 2015 Motion for Extension of Time, or the Port's attorneys are too corrupt, misinformed, and/or incompetent to understand the extreme harm caused by the Port's use of "chemical gas weapons" to chemically burn the already severely disabled Mr. Dierker's already damaged upper respiratory system, and his lips, mouth, tongue, vocal cords, and tastes buds, and thereby, the Port's claims and arguments here are absurd and frivolous, and,;

- 1) pursuant to CR 8, the Port's attorneys have failed to make a "responsive pleading" to Dierker's Jan. 30, 2015 Motion for Extension of Time here;
- 2) pursuant to CR 8(d), the Port has "admitted" all portions of Mr. Dierker's Jan. 30, 2015 3rd Motion for Extension of Time that Port's Response ignored and/or otherwise made no responsive pleading against;
- 3) under CR 11 and RAP 18.9, the Port's attorneys have violated their "due diligence" owed to this Court and Mr. Dierker in this case;
- 4) the Port's attorneys have violated their "Duty of Conscientious Service" owed to this Court and Mr. Dierker under MEZA v. Washington State Dept. of Social and Health Services, supra; and
- 5) the Port attorneys have admitted that it is an "ordinary circumstance" for the Port to dump toxic hazardous waste next to the home of Mr. Dierker to seriously harm him while he is suing the Port in this State's Courts here.

Clearly, despite the ill-plead and absurd admissions and allegations of the Port's frivolous

Response here, there are “extraordinary circumstances” necessary to support prevention of a gross miscarriage of justice in this case to grant this Jan. 30, 2015 Motion for Extension of Time of the Pro se, Aged, Indigent, U.S. Air Force Service-Connected Disabled Veteran CoRespondent Jerry Lee Dierker Jr. under RAP 18.8(a) & (b), et seq.

Clearly, had the Port’s new attorneys ever even read any of Mr. Dierker’s many pleadings filed in this Supreme Court matter the Port’s new attorneys would have known that Mr. Dierker’s pleadings here had already served the Port with Dierker’s numerous pleadings on the “tolling” of all “statutes of limitation” like the part of RAP 18.8 cited the Port’s Response “Footnotes” here under the many earlier Port-caused “extraordinary circumstances” which have delayed this case and have harmed and continue to harm Mr. Dierker. (Supra).

The Port’s new attorneys’ misuse of that part of RAP 18.8 cited the Port’s Response “Footnotes” here clearly shows that the Port’s new attorneys never even read any of Mr. Dierker’s prior pleadings, a clear violation of “due diligence” under CR 11 and RAP 18.9(a), et seq.

Further, under CR 8(d), the Port’s new attorneys have previously “admitted” to Dierker’s “tolling” claims Dierker’s numerous prior pleadings on the “tolling” of all “statutes of limitation” in this case like this part of RAP 18.8 cited the Port’s Response “Footnotes”, since the Port’s new attorneys failed to timely respond to Dierker’s numerous prior pleadings in this case on the “tolling” of all “statutes of limitation” like RAP 18.8 cited the Port’s Response and “Footnote 1”, and, thereby, under the doctrine of collateral estoppel, the Port’s new attorneys’ cannot make a “conflicting” pleading like that improper pleading in the Port’s Response here, and this would also violate CR 11 and RAP 18.9(a).

Consequently, it would be an improper gross miscarriage of justice for this Court to deny Mr. Dierker’s Jan. 30, 2015 Motions for Extension of Time filed due to the new Port-caused “extraordinary circumstances” in this case which have again harmed Mr. Dierker and delayed this case, if that denial was based upon the Port’s improper, frivolous, barred, and absurd Response to Mr. Dierker’s Jan. 30, 2015 Motion for Extension of Time, where the Port’s Response lacks any legal or factual basis, and where the Port has again failed to make a proper “responsive pleading” contesting Mr. Dierker’s Jan. 30, 2015 Motions for Extension of Time in violation of CR 8(d), et seq.

This Supreme Court should grant Dierker's Jan. 30, 2015 Motions for Extension of Time to prevent a gross miscarriage of justice due to these new "extraordinary circumstances" of the Port's again seriously harming Mr. Dierker's health, where, thereby, the Port has again delayed this case, and the Port's attorneys should be sanctioned under CR 11 and RAP 18.9(a) for filing this improper, frivolous, barred, and absurd Port Response to Dierker's Jan. 30, 2015 Motion for Extension of Time, for this reason alone. (Id.; see also below).

2. As noted above, the new Port's attorneys' improper, frivolous, barred, and absurd Port Response to Dierker's Jan. 30, 2015 Motion for Extension of Time and his attached exhibits clearly shows the new Port's attorneys' lack of due diligence and extremely frustration with this case.

Mr. Dierker has been forced by the Port's actions to complain to the Court for more time since the Port has just physically assaulted him almost to death again, this time by the Port's current and/or past 69 years of dumping of the Port's extremely toxic hazardous waste next door to Mr. Dierker's home, which on Jan. 12 & 19, 2015 exposed Mr. Dierker to that seriously harmed Mr. Dierker's already fragile health as noted Mr. Dierker's Jan. 30, 2015 Motion for Extension of Time and his attached exhibits, as the Port has been doing over the past 69 years and continues to do now by the Port's dumping of extremely toxic hazardous waste next door to Mr. Dierker's home.

Further, the Port's Response's argument at page 2 appears to claim that it is **NOT** an "extraordinary circumstance" for the Port to seriously harm Mr. Dierker's already fragile health to delay and/or prevent him from proceeding in this case by use of the Port's toxic hazardous waste this time that the Port dumped next door to Mr. Dierker's home -- which means that the Port has plead here that the Port has an "ordinary" or standard illegal "custom, policy, procedure, and/or business practice" to use the Port's toxic hazardous waste as weapons to assault and harm those like Mr. Dierker who complain to the Court's about the Port's actions in such cases -- an apparent Port admission of a Port criminal conspiracy to harm Mr. Dierker's already fragile health to delay and/or prevent him from timely filing pleadings to proceed in this case. (See Port's Response's argument at page 2, especially Footnote 1).

Further, the Port's Response appears to claim that this Court's granting or denying of Mr. Dierker's Jan. 30, 2015 "3rd" Motion for Extension of Time for the Port's serious harming of

Mr. Dierker's already fragile health that has delayed and/or prevented him from timely filing pleadings to proceed in this case, **would not** in any way "prevent a gross miscarriage of justice" in this case, since the lower Courts have already denied Mr. Dierker all meaningful access to justice, sue process and equal protection of the law, since the lower Courts have already denied Mr. Dierker's claims to be heard on merits by an impartial Judge of the Court of this State based upon proper review of a complete record of the facts relevant to this matters and the law controlling such matters so that there can be the "rule of law" and "Court of Record" doctrines can be followed in Washington State for this case, since the lower Courts have already taken all of Mr. Dierker's fundamental due process and equal protection of the law rights, and since the lower Courts have already refused to "sanction" of control the Port's and Weyerhaeuser's attorneys in this case for any reason, even when the Port, et al, physically harms Mr. Dierker, as the Port's and Weyerhaeuser's recent improper and non-responsive pleadings in this Court have noted, for which the Port's and Weyerhaeuser's attorneys should also be sanctioned. (See Port's Response; see the Port's and Weyerhaeuser's recent pleadings in this Supreme Court concerning the Port's Petition and Voluntary Dismissal Motion, et al).

Pursuant to CR 8(d), the Port has admitted all portions of Mr. Dierker's Jan. 30, 2015 3rd Motion for Extension of Time that Port's Response ignored and/or otherwise made no responsive pleading against, where it clearly stated Mr. Dierker:

"... was extremely physically harmed by two recent Jan. 12 & 19, 2015 exposures to an extremely hazardous colorless and odorless gas coming from contaminated materials from the Port of Olympia's Swantown Boat Works dumped by Port contractors during this last year near the front gate of the illegally operated Sundberg Sand and Gravel mine site next to Dierker's home, and since Mr. Dierker will need at least another two months to even partially recuperate from the harm associated with this exposure to toxic waste illegally dumped by the Port next to Mr. Dierker's home, as noted by the attached Dept. of Ecology Complaint, and as Mr. Dierker has previously noted in his recent oral pleadings to this Court's Clerks Office of this Supreme Court on this matter." (Id.).

Further, Mr. Dierker's Dept. of Ecology Complaint filed on my two recent exposures to the recently dumped Port toxic industrial hazardous waste next to my home noted that Mr. Dierker had been harmed by the Port's contractors dumping Port contaminated toxic industrial hazardous waste on a site next to my home, the Port had been dumping hazardous waste on this site for decades, and part of the newly dumped Port waste appears to be leaking some odorless/colorless toxic gas which is so corrosive that with less than one breath my "throat started burning", "the entire inside of (my) mouth is almost blistered", which also caused me to also have an immediate and acute

“COPD” attack “so this really also affect his breathing” partly due to my Bronchial Asthma which saved my lungs from being burned by the Port’s “chemical weapon” which they have used on me in their frustration with me on these matters, or by their continued negligence failures to for the laws to protect me and other disabled persons like me from being harmed by living around, going to, breathing the air from, or drinking the water contaminated from toxic areas in Thurston County where the Port has and is still hiding one of the Port’s 30 to 40 or more “secret” hazardous waste dumps spread around Thurston County, like the Port’s “secret” hazardous waste dump next door to my home that I have only have discovered in the past 3 weeks after 15 years of trying to find the Port’s “secret” hazardous waste dumps spread around Thurston County. (Id.).

Also Mr. Dierker’s Jan. 30, 2015 3rd Motion for Extension of Time had Dierker’s attached Jan. 27, 2015 Continuing Public Records request to the Port for records on the Port’s contractors dumping of Port contaminated toxic industrial hazardous waste on a site next to my home, etc., which is one of the Port’s 30 to 40 or more “secret” hazardous waste dumps spread around Thurston County, also had noted that Mr. Dierker had been seriously harmed by the Port’s dumping of Port contaminated toxic industrial hazardous waste on a site next to my home. (Id.).

Despite the frustrated Port attorneys fraudulent claims here, any reasonable person who reviewed Mr. Dierker’s Jan. 30, 2015 3rd Motion for Extension of Time and its supporting documents attached here would clearly find that Mr. Dierker had been severely harmed by the Port’s complained of actions here, that years of the Port’s “fraudulently concealed” dumping of Port waste next to Dierker’s home and Dierker’s two recent exposures to that Port toxic waste harming Mr. Dierker here that would necessarily require Mr. Dierker to have time to rest and recuperate from his being harmed by the Port here, and would be a set of “extraordinary circumstances” for granting an Extension of Time here. (Id.).

Conclusion and Relief

Therefore, pursuant to GR 33, RAP 1.2(a) & (c), RAP 18.8(a) & (b), et seq., as noted in this Jan. 30, 2015 Motion for Extension of Time here, the Pro se, Aged, Indigent, U.S. Air Force Service-Connected Disabled Veteran CoRespondent Jerry Lee Dierker Jr., humbly and respectfully requests that this Supreme Court grant his Jan. 30, 2015 Motion for Extension of Time, which was brought due to the “extraordinary circumstances” of the Port’s continuing illegal dumping of

extremely toxic Port industrial hazardous waste leaking corrosive toxic gas and other air, water and soil pollutants next to Mr. Dierker's home, which on Jan. 12, 2015, and again on Jan. 19, 2015, has seriously harmed Mr. Dierker's health as the Port and the Port's attorneys have continued to do for the last 16 years Dierker has been trying to find where the Port was dumping all their hazardous waste for their construction projects to develop the Port, like the 8 years of this case which the Port has "concealed" the Public Records Dierker has been requesting for 16 years to protect himself and his community from the predatory acts of such illegal actions of their government and it's attorneys, agents, and contractors in this state caused by actions of the Port, et al, and the Port's continuing illegal policy of having the Port's current and past contractors owning this site upstream and next door to Mr. Dierker's home, while the Port's contractors illegally mined sand and gravel for Port projects from this site and then had the Port's contractors illegally use a DNR "reclamation plan" to fill the mined holes in this mine site with Port-dumped hazardous waste from the Port's construction projects developing the Port's Marine Terminal area, which has resulted in new life-threatening medical conditions that Mr. Dierker now has to recuperate from, by this Supreme Court's granting of his Motion and its appropriately requested relief.

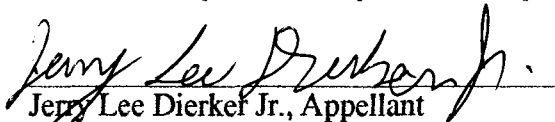
Further, Dierker requests that part of this Supreme Court Order also grant Dierker's Motions made within this Reply to make appropriate findings, conclusions and/ Orders consistent with the relevant facts and the law of this case, stating that:

- 1) the Port attorneys' alleged "Port Response" (*sic*) filed in "response" to the disabled Mr. Dierker's Motion for Extension of Time here, was erroneous, improper, frivolous and absurd, and that it failed to make any timely "responsive pleadings" to defend the Port against most if not all of the disabled Mr. Dierker's factual and legal claims made in his Jan. 30, 2015 Motion for Extension of Time here, in direct violation of CR 8 (b), (c), (d), (e), and/or (f), GR 33, CR 11, and RAP 18.9(a), et seq., and thereby, pursuant to CR 8(d) and the doctrines of equitable and collateral estoppel, the Port has "admitted" most if not all of the disabled Mr. Dierker's factual and legal claims made in his Jan. 30, 2015 Motion for Extension of Time here and the Port is barred from making any conflicting claims in the future, etc., and, therefore, pursuant to CR 11, and RAP 18.9(a), et seq., the Court should award appropriate sanctions against the Port's attorneys for their dereliction of their legal duties and their violations of the Court rules here; and
- 2) since many of the disabled Mr. Dierker's factual and legal claims made in his Jan. 30, 2015

Motion for Extension of Time here had been “incorporated by reference” from Mr. Dierker’s 2 other recent Motions for Extension of Time made due to his disabilities and/or due to “scheduling” problems” caused by the Port, etc., where the Port attorneys had previously failed make any “responsive pleadings” to defend the Port against all of the disabled Mr. Dierker’s factual and legal claims made in Mr. Dierker’s 2 other recent Motions for Extension of Time here, and thereby, again, pursuant to CR 8(d) and the doctrines of equitable and collateral estoppel, the Port has “admitted” all of the disabled Mr. Dierker’s factual and legal claims made there which support also support his current Jan. 30, 2015 Motion for Extension of Time here, and the Port is barred from making any conflicting claims in the future, etc.

I also declare that I timely served this pleading upon the Supreme Court and the parties in this matter.

I certify the foregoing to be true and correct to the best of my knowledge, beliefs and/or abilities, under penalty of perjury of the laws of the State of Washington and the United States of America, this 13th day of February, 2015 in Olympia, Washington.

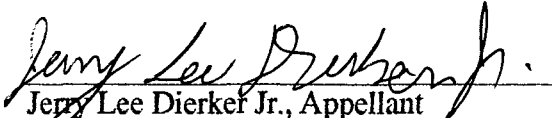


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The Olympian

Exploding valve thought to have triggered recent leak at Port of Olympia

By Rolf Boone

Staff writer February 9, 2015

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Officials believe a recent chemical spill at the Port of Olympia was caused by an exploding valve on a storage tank filled with hydrogen peroxide, the port's environmental programs director told the commission on Monday night.

The explosion was one of several details shared at the meeting about the Jan. 28 spill, which led to the evacuation of several businesses within a quarter mile of the port's marine terminal.

The port has a new stormwater treatment plant, and hydrogen peroxide is used to re-introduce oxygen into the stormwater before it is released into Budd Inlet.

Environmental Programs Director Alex Smith told the commission that the port is set to hire an engineering firm this week. It will assess what happened, determine a specific cause and make recommendations to the port.

"I'm hoping within a month to get some answers," Smith said.

She said it appeared that a valve connected to the 3,300-gallon tank had combusted, or exploded.

The hydrogen peroxide portion of the treatment system remains offline, she said, although the plant continues to treat stormwater.

The treatment plant serves the marine terminal, which is home to a large log yard.

Commissioner George Barner asked how hazardous hydrogen peroxide is and whether other hazardous chemicals are used by the port.

Smith said the port receives a diluted form of hydrogen peroxide. "I don't believe the solution is designated 'hazardous,'" she said.

As for other chemicals, which she didn't name, they are kept in powder form, which presents less of a risk than they would in liquid form, Smith said.

The spill took place around noon Jan. 28. The chemical billowed up from the port and city streets in the form of white vapor.

The evacuation was largely handled by the Olympia Fire Department, which reported no injuries that day.

But Marcia Drake, 41, of Olympia, who contacted The Olympian on Sunday, said she wasn't feeling well after the spill.

Drake had gone to lunch about noon that same day at Mercato's, an Italian restaurant within the evacuation zone. She walked through some of the vapor on her way to the restaurant, she said.

Once inside, restaurant customers were told to stay indoors for about an hour, and then they left. An emergency responder told her to hold her breath as she ran to her car, she recalled.

The next day she went to the Westcare Clinic in Olympia for bronchial spasms and major irritation, possible burns in her nose and airways. By Saturday, she had gone to the emergency room at Providence St. Peter Hospital, where she said she was diagnosed with "chemical pneumonitis," an inflammation of the lungs.

Following that, she missed a week of work, Drake said.

"Not sure where to report this but I am still not well," she said Sunday.

Citing patient privacy rules, hospital spokesman Chris Thomas couldn't confirm whether Drake had checked into the ER. But "chemical pneumonitis" is a legitimate diagnosis, he said.

Spokespersons for the Olympia Fire and Police departments said they weren't aware of any first responders reporting respiratory problems.

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