NO. 44700-2-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY,

Appellant,

v.

WAHKIAKUM COUNTY, a political subdivision of Washington State,

Respondent.

ERRATA TO DEPARTMENT OF ECOLOGY'S ANSWER TO AMICUS CURIAE BRIEF OF LEWIS COUNTY

ROBERT W. FERGUSON
Attorney General

LEE OVERTON, WSBA #38055
Assistant Attorney General

P.O. Box 40117
Olympia, WA 98504-0117
(360) 586-2668

Appellant, the State of Washington, Department of Ecology, respectfully requests to make the following correction in Department of Ecology's Answer to Amicus Curiae Brief of Lewis County. In one instance the brief incorrectly states 80 percent when it should have stated 88 percent. Accompanying this erratum is Department of Ecology's Answer to Amicus Curiae Brief of Lewis County (Corrected), which incorporates the correction.

1. Page 4, line 11: "80 percent" should be "88 percent"

RESPECTFULLY SUBMITTED this 2d day of June 2014.

ROBERT W. FERGUSON
Attorney General

LEE OVERTON, WSBA #38055
Assistant Attorney General

Attorneys for Appellant
State of Washington
Department of Ecology
P.O. Box 40117
Olympia, WA 98504-0117
(360) 586-2668

NO. 44700-2-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY,

Appellant,

v.

WAHKIAKUM COUNTY, a political subdivision of Washington State,

Respondent.

DEPARTMENT OF ECOLOGY'S ANSWER TO AMICUS CURIAE BRIEF OF LEWIS COUNTY (CORRECTED)

ROBERT W. FERGUSON
Attorney General

LEE OVERTON, WSBA #38055
Assistant Attorney General

P.O. Box 40117
Olympia, WA 98504-0117
(360) 586-2668

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Regulations

Other Authorities

I. INTRODUCTION

This Court should decline to address the arguments raised in Lewis County's amicus curiae brief because they relate almost entirely to the issue of field preemption, an issue not raised by the parties in this case. The issue in this case concerns conflict preemption: whether Wahkiakum County has gone too far in its regulation of biosolids, implementing a policy so opposed to that of the Legislature that it thwarts the legislative purpose of the biosolids statute. In contrast, Lewis County seeks a declaratory judgment from the Court that the State has not preempted the field of biosolids regulation, an issue that neither party has raised or argued. The Court should not be distracted from the issue of this case by Lewis County's preoccupation with an issue the parties have not raised.

To the extent that the amicus brief acknowledges the issue of conflict preemption at all, it merely asserts a mainstay of preemption law—that local governments may legislate upon subjects already covered by state legislation, and even require more than state law requires, so long as the local enactments do not conflict with the state legislation. But it argues no further, merely contending without argument that this allows Wahkiakum County to legislate to a degree that virtually eliminates the state biosolids program in the county.

Even if this Court reaches Lewis County's arguments, it should reject the county's attempts to establish that the biosolids statute extends the county's solid waste authority to cover biosolids. In its attempts to establish that the State has not preempted the field, Lewis County argues wrongly that local authority to regulate biosolids derives from its authority under the solid waste statute, and that this was the Legislature's intent in enacting the biosolids statute. This is a fundamental error. No local authority to regulate biosolids derives from the solid waste statute, and none derives from the biosolids statute except through delegation from the Department of Ecology (Ecology). However, article XI, section 11 of the Washington Constitution does provide local governments with authority to reasonably legislate on local matters, so long as such legislation does not conflict with the general laws. And Ecology has assumed for purposes of this litigation that, if counties have any authority to legislate on biosolids matters, article XI, section 11 is the likely source of that authority.

II. ARGUMENT

A. The Issue in This Case Is Whether Wahkiakum County's Ordinance Conflicts Irreconcilably With State Legislative Policy

The issue in this case is whether the different policies reflected in county ordinance and state statute are so opposed that the ordinance thwarts the legislative purpose of the statute. If such is the case, then

ordinance and statute conflict irreconcilably and cannot be harmonized. *Diamond Parking, Inc. v. City of Seattle*, 78 Wn.2d 778, 781, 479 P.2d 47, 49 (1971) (holding that the conflict between ordinance and statute is irreconcilable because the legislative purpose of statute is necessarily thwarted); *Ritchie v. Markley*, 23 Wn. App. 569, 597 P.2d 449 (1979) (holding that "the two laws conflict because they reflect opposing policies" and because the "ordinance thwarts the state's policy"); *Biggers v. City of Bainbridge Island*, 162 Wn.2d 683, 169 P.3d 14 (2007) (ordinance and statute conflict because statute's mandate is thwarted by the ordinance).

Here, the Legislature's policy choice and approach to biosolids management is clear. Disposing of sewage sludge as waste in landfills and incinerators creates needless financial burdens on municipalities and ratepayers. RCW 70.95J.005(1)(c). When properly managed as biosolids, sewage sludge ceases to be waste and becomes a valuable commodity, reusable as fertilizer on farms and forests. RCW 70.95J.005(1)(d). The biosolids statute reflects the Legislature's chosen policy solution to this statewide problem, directing (not merely permitting) Ecology to create a program that will ensure, "to the maximum extent possible," that sewage sludge is treated, managed, and applied to land as biosolids on farms and forestland, rather than disposed of as waste in landfills.

RCW 70.95J.005(2). The Legislature further promoted this maximum reuse policy by authorizing Ecology to prohibit the disposal of sewage sludge in landfills, the primary alternative to reuse, with any exceptions to be based on the economic infeasibility of landfill alternatives. RCW 70.95.255. Ecology's biosolids regulations have adopted this landfill prohibition, together with its narrow economic infeasibility exemption. WAC 173-308-300(9).

Wahkiakum County's biosolids policy and the effect of its ordinance are equally clear. The County's ordinance prohibits land application of all biosolids produced by its own local facilities and at least 88 percent of biosolids produced in the rest of the State. CP 8–10, 27, 317–18, 148. The ordinance thus effectively bans virtually all land application of biosolids in the county.

This county policy directly opposes state legislative policy, which tackles a statewide economic and wastewater management challenge by mandating that its beneficial reuse policy shall be implemented to the maximum extent possible. A ban of virtually all biosolids land application is the exact opposite of "to the maximum extent possible." The ordinance can only be understood as pursuing a policy in direct opposition to that of the Legislature.

B. The Amicus Brief Focuses on Field Preemption, an Issue Not Raised by the Parties in This Case

New issues are not considered when raised for the first time in an amicus brief. *Protect the Peninsula's Future v. City of Port Angeles*, 175 Wn. App. 201, 217, 304 P.3d 914, 923 (2013), citing *Ruff v. King Cnty.*, 125 Wn.2d 697, 704 n.2, 887 P.2d 886 (1995). Because Lewis County presents its various arguments in support of a position on field preemption, an issue not raised by the parties, and because it neglects to address the issues actually presented in the case, this Court should simply decline to address the arguments of the amicus brief.

1. The amicus brief improperly raises a new issue.

Amicus Lewis County asserts that Ecology's position in this litigation is "that local governments like Wahkiakum county lack concurrent regulatory authority over biosolids," and it requests this Court to "declare that counties retain the concurrent authority over the use of biosolids." Amicus Curiae Brief of Lewis County (Amicus Br.) at 19, 17. This is the thrust of its brief and, accordingly, the succession of arguments in the brief are designed to show that the State has not preempted the field of biosolids regulation. But Ecology has not taken the position in this litigation that the State has preempted the field. Indeed, Wahkiakum County has acknowledged this explicitly. *See* CP 75 ("the Department has

not argued that the state has preempted the field"). Nor has Wahkiakum County raised or argued the issue of field preemption.

2. The amicus brief does not address whether Wahkiakum County's ordinance conflicts with the biosolids statute.

Amicus Lewis County presents a succession of arguments designed to establish that the State has not preempted the field of biosolids regulation. These arguments are as follows: (1) that counties possess, as a part of their authority to regulate solid waste, the authority to regulate biosolids, Amicus Br. at 5–6; (2) that the Legislature, when enacting the biosolids statute, intended that counties should retain this alleged solid waste authority to regulate biosolids, Amicus Br. at 6–9; (3) that the state biosolids regulations expressly recognize the authority of local governments to impose further, more stringent biosolids regulations, Amicus Br. at 9–10; (4) that even if the counties' solid waste authority does not extend to biosolids, article XI, section 11 of the Washington Constitution provides counties with sufficient authority to regulate biosolids, and the biosolids statute does not over-ride that authority by preempting the field, Amicus Br. at 10–11; (5) that where state law has regulated but not preempted the field, Washington law recognizes local authority to impose further, more stringent regulations, Amicus Br. at 11-14; and (6) that the State has not preempted the field because, had it done

so, this would prevent counties from meeting their obligations under the Growth Management Act (GMA), Amicus Br. at 16–17. None of these arguments engages with whether Wahkiakum County's policy of discouraging land application to the extent of banning it almost entirely can be reconciled with the legislature's maximum reuse mandate.

Lewis County does touch on the conflict preemption issue when it asserts a well-established mainstay of preemption law—that local governments may legislate upon subjects already covered by state legislation, and even require more than state law requires, so long as the local enactments do not conflict with the state legislation. Amicus Br. at 11–14. But it goes no further. Asserting this principle falls short of engaging Ecology's argument that the county ordinance conflicts with legislative policy. Such engagement is not accomplished merely by asserting that Wahkiakum County may require more than state law requires. But that is the extent of Lewis County's venture into the conflict preemption issue. Despite the headings of two sections purporting to address the conflict preemption issue, *see* Amicus Br. at 11, 15, the amicus brief does not actually engage that issue. It merely asserts that, "Wahkiakum county is permitted to adopt broader restrictions on the application of biosolids than state law, including an outright ban on certain classes of biosolids," Amicus Br. at 14, and that, "the state right to apply

biosolids is explicitly conditioned on compliance with local law," Amicus Br. at 15. These assertions do not even acknowledge the degree of opposition between ordinance and legislative policy. They simply take the position that harmony can be achieved by allowing the local ordinance to over-ride legislative policy.

Importantly, the biosolids statute is not a mere licensing statute setting out a precondition to engaging in an activity, like the state registration requirements for watercraft in *Weden v. San Juan County*, 135 Wn.2d 678, 958 P.2d 273 (1998), and in *State ex rel. Schillberg v. Everett District Justice Court*, 92 Wn.2d 106, 594 P.2d 448 (1979). Nor is it a mere regulatory statute that places prohibitory constraints on an activity to which the Legislature is indifferent as to whether anyone engages in it, like the statute pertaining to auto wrecking yards in *Lenci v. City of Seattle*, 63 Wn.2d 664, 388 P.2d 926 (1964), or the state law pertaining to dangerous dogs in *Rabon v. City of Seattle*, 135 Wn.2d 278, 957 P.2d 621 (1998). Far from imposing licensing or regulatory requirements on an activity to which it is indifferent, the Legislature has mandated in the biosolids statute that biosolids be beneficially reused in farming and forestry *to the maximum extent possible*. Wahkiakum County's ordinance unquestionably opposes this mandate, prohibiting the very activity that the Legislature mandates be maximized.

C. Neither the Solid Waste Statute nor the Biosolids Statute Grants Local Governments Authority to Regulate Biosolids

While this Court should not reach Lewis County's arguments that local governments are not preempted from regulating biosolids, if it does reach those arguments, this Court should conclude that whatever authority counties may have to regulate biosolids, it cannot derive from the solid waste statute or the biosolids statute.

Washington's solid waste statute, RCW 70.95, establishes a comprehensive statewide program for regulating solid waste handling. RCW 70.95.020. It requires Ecology to adopt rules establishing minimum functional standards for solid waste handling. RCW 70.95.060(1). Ecology's rules are at WAC 173-350. The solid waste statute assigns primary responsibility for *solid waste* regulation to local governments. RCW 70.95.020(1). It requires them to adopt regulations governing solid waste handling, and provides that local solid waste ordinances may be more stringent than the minimal functional standards adopted by Ecology. RCW 70.95.160.

The amicus brief contends that "[b]iosolids are a small part of a larger state solid waste program," for which counties are assigned primary regulatory responsibility and given the express authority to impose further, more stringent regulations. Amicus Brief at 3, 5–6. It argues that this

contention is supported by the biosolids statute, RCW 70.95J, and by the statute's legislative history.

This is a fundamental misreading of the law. The biosolids statute and its regulations are explicit that biosolids are not solid waste and are not regulated as solid waste. *See* RCW 70.95J.005(1)(d); RCW 70.95J.010(1); RCW 70.95J.020(4); WAC 173-308-060(2); WAC 173-350-020(11). Moreover, the biosolids statute and its legislative history are clear that local regulatory authority granted by the solid waste statute does not carry over to the regulation of biosolids. Thus, whatever authority counties may have to regulate biosolids, it does not derive from their authority under the solid waste statute.

1. State law provides that biosolids are not solid waste.

Sewage sludge that has not been treated to biosolids standards is regulated as solid waste. RCW 70.95.030(22). However, when treated to biosolids standards, it ceases to be waste and becomes a valuable commodity destined for beneficial reuse. RCW 70.95J.005(1)(d); RCW 70.95J.010(1).[1] Washington law is clear that biosolids do not fall within

[1] The federal Environmental Protection Agency uses the terms "sewage sludge" and "biosolids" interchangeably. Ecology's regulations and the Washington biosolids statute do not. RCW 70.95.030(20) defines "sewage sludge" as "semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials, generated from a wastewater treatment system, *that does not meet the requirements of chapter 70.95J RCW*." RCW 70.95.030(20) (emphasis added). "Biosolids" are defined as "municipal sewage sludge that . . . meets all requirements under this chapter." RCW 70.95J.010(1).

the solid waste regulatory scheme. RCW 70.95J.020(4) (biosolids shall be regulated pursuant to the biosolids statute); WAC 173-308-060(2) (biosolids are not solid waste and are not subject to regulation under solid waste laws); WAC 173-350-020(11) (solid waste regulations do not apply to biosolids). Lewis County's contention that biosolids are a solid waste for which the Legislature approved local regulation cannot be sustained.

2. The biosolids statute does not authorize local governments to regulate biosolids other than through delegation by Ecology.

RCW 70.95J, the biosolids statute, establishes a permitting program, declares a policy of maximizing the reuse of biosolids, directs Ecology to adopt rules implementing the program, and provides Ecology the necessary authority to assume responsibility over the administration, permitting, and enforcement related to biosolids management. RCW 70.95J.007 describes the purpose of the chapter as providing "the authority and direction to meet federal regulatory requirements for municipal sewage sludge," so that Ecology "may seek delegation and administer the sludge permit program required by the federal clean water act." Prior to passage of the statute, Ecology lacked the authority necessary to meet the federal delegation requirements. The biosolids statute remedied that.

The amicus brief offers the theory that, because the biosolids statute requires the biosolids program to meet federal delegation requirements and conform to federal technical standards, this somehow requires Ecology to incorporate into its rules a federal savings clause, transforming it thereby into an explicit grant of authority to local governments to regulate biosolids. Amicus Br. at 6–9. However, the requirement to meet the federal delegation requirements and federal biosolids standards does not and cannot amount to a grant of such authority. Federal law and regulations establish minimum standards and leave it to the states to adopt their own policies and programs, so long as the minimum standards are met. Moreover, inconsistently with Lewis County's theory, the federal delegation rules require state programs to assign primary responsibility for regulating biosolids to the State.

There are two provisions in the biosolids statute that mention the need to meet federal regulations. The first is the statute's purpose provision, focusing on federal delegation requirements. It provides Ecology authority to seek delegation and administer the federal biosolids program. RCW 70.95J.007. In 1989, the U.S. Environmental Protection Agency (EPA) promulgated the regulations containing federal delegation requirements for state programs, at 40 C.F.R. § 501, pursuant to the Clean Water Act. These regulations provided the procedures that the EPA would

follow in approving, revising, and withdrawing state programs, as well as the requirements that state programs must meet to be approved by the EPA. 40 C.F.R. § 501.1(b). It is these requirements to which the state Legislature was primarily responding, in 1992, with the passage of RCW 70.95J. *See* CP 66–68 (Final B. Rep. on E.S.H.B. 2640, 52nd Leg., Reg. Sess. (Wash. 1992)).[2]

The federal regulations at 40 C.F.R. § 501 required that states seeking delegation possess certain powers: the authority to require compliance with the sludge regulations, the authority to issue and enforce permits pertaining to use and disposal of sewage sludge, to take legal actions, abate violations, issue civil and criminal penalties, and the authority to regulate all sewage sludge management activities subject to the (not then released) regulations of 40 C.F.R. § 503. *See* 40 C.F.R. § 501.1(c)–(d). The federal regulations allowed a state to delegate portions of its program responsibilities to local agencies, but required that the state assume "full authority and ultimate responsibility for administering all aspects of the State's approved program . . . ." 40 C.F.R. § 501.1(l)(6).

[2] This document is also available on the Washington Legislature's website, at: http://apps.leg.wa.gov/documents/billdocs/1991-92/Pdf/Bill%20Reports/House/2640-S.FBR.pdf.

Prior to passage of RCW 70.95J, Ecology had no authority to issue or enforce biosolids permits, issue penalties, or delegate permitting authority to counties. Thus, Ecology lacked the authority to meet the federal regulatory requirements in 40 C.F.R. § 501. The purpose of the law was in part to provide that authority. This is captured in the Final Bill Report on E.S.H.B. 2640, the bill that became RCW 70.95J:

> In 1989, the EPA adopted rules relating to how states must regulate a sludge management program. These rules, in part, require states to have direct enforcement authority, including the power to impose both civil and criminal penalties, and to have the power to delegate permitting authority to local governments. The state solid waste law does not provide the department with direct enforcement authority or the ability to delegate sludge permits to local governments.

CP 66–67 (Final B. Rep. on E.S.H.B. 2640, at 1–2). Thus, one of the purposes of RCW 70.95J was to provide Ecology with that authority and thereby meet the federal delegation requirements of 40 C.F.R. § 501.

The second provision in the biosolids statute referring to federal rules anticipated the forthcoming federal rules that were to provide the technical standards for treating biosolids, at 40 C.F.R. § 503, and directed Ecology to adopt rules that would, "at a minimum," conform to those federal rules. RCW 70.95J.020(1). The federal rules at 40 C.F.R. § 503 provided minimum standards. The federal rules were clear that they did

not preempt the field, and explicitly allowed states to adopt more stringent requirements. 40 C.F.R. § 503.5(b).[3]

Lewis County's theory is that this federal non-preemption provision must somehow be incorporated into state rules and be transformed thereby into an explicit grant of authority to local governments.[4] The theory fails, because a non-preemption provision at the federal level pertains to the relation between federal law on the one hand and state and local law on the other; it does not address the relation between state and local law. Moreover, it also fails because it is inconsistent with the federal delegation requirements for state programs. The biosolids statute requires Ecology to establish a program that would meet federal delegation requirements, which require Ecology to have primary responsibility for administering the biosolids program and local governments to receive such authority only through delegation by

---

[3] Similar non-preemption provisions occur at 40 C.F.R. § 501.1(i), (j), in the context of the delegation requirements. "Nothing in this part precludes a State or political subdivision thereof, or interstate agency, from adopting or enforcing requirements established by State or local law that are more stringent or more extensive than those required in this part or in any other federal statute or regulation." 40 C.F.R. § 501.1(i). And, "Nothing in this part precludes a State from operating a program with a greater scope of coverage than that required under this part. If an approved State program has greater scope of coverage than required by federal law, the additional coverage is not part of the federally approved program." 40 C.F.R. § 501.1(j).

[4] At least one court has encountered this argument and called it bizarre: "[The County of] Kern argues bizarrely that if the [state law] were construed to prohibit local bans on land application, it would somehow 'conflict' with the federal Clean Water Act." *City of L.A. v. Cnty. of Kern*, 509 F. Supp. 2d 865, 894 (C.D. Cal. 2007), *dismissed in part, vacated in part and remanded on prudential standing grounds*, 581 F.3d 841 (9th Cir. 2009) (absence of a restriction is not a grant of authority).

Ecology. This is inconsistent with Lewis County's contention that the biosolids statute directly grants local governments the authority to regulate biosolids. In accordance with the federal delegation requirements for state programs, the biosolids statute makes no provision for further regulation by local governments, providing instead for local governments to receive, at the discretion of Ecology, delegated authority to issue and enforce permits. RCW 70.95J.080.

3. The Legislature clearly intended that local solid waste authority should not extend to the regulation of biosolids.

In 1992, the Legislature enacted Engrossed Substitute House Bill 2640, codified at RCW 70.95J. The amicus brief contends the Legislature intended that local governments would retain solid waste authority over biosolids, seizing on the Legislature's removal from an earlier version of the bill a provision that would have restricted local governments from banning the use or disposal of biosolids. However, put into context, the removal of this provision shows exactly the opposite of what the amicus brief contends.

Prior to its passage, ESHB 2640 went through several versions, with the final version incorporating amendments by the Senate.[5] The

[5] In appropriate circumstances, sequential drafts may be useful in determining legislative intent. *Bellevue Fire Fighters Local 1604 v. City of Bellevue*, 100 Wn.2d 748,

original bill, H.B. 2640, required Ecology to adopt rules to implement a sludge management program, but kept primary regulatory authority at the local level. This first version provided that even where standards established by Ecology regulations had been met, local jurisdictions would have authority to prohibit the use of biosolids, although on a permit-by-permit basis only. H.B. 2640, at 2–3, 52nd Leg., Reg. Sess. (Wash. 1992).

The first version of the bill failed to distinguish between sewage sludge that qualified as biosolids and sewage sludge that did not. However, by explicitly defining sewage sludge and biosolids, subsequent versions of the bill were able to clarify that local governments would not by this bill be conferred jurisdiction over sewage sludge that had been treated to biosolids standards. The language granting primary authority to local jurisdictions was deleted and the delegation provision inserted. The House report on the substitute bill explained: "Municipal sewage sludge that meets all state and federal standards will be regulated as a biosolid; sludge not meeting these standards will continue to be regulated as a solid waste." CP 67 (H.B. Rep. on E.S.H.B. 2640, at 2, 57th Leg., Reg. Sess. (Wash. 1992)).

Further clarifying the matter, the enacted bill contained the provision: "Materials that have received a permit as a biosolid shall be

675 P.2d 592 (1984). Implied in this reasoning is that the Legislature was aware of prior drafts and language. *State v. Komok*, 113 Wn.2d 810, 816, 783 P.2d 1061, 1064 (1989).

regulated pursuant to this chapter." *See* RCW 70.95J.020(4). The report on the bill as amended by the Senate explained: "Technical amendments are made to clarify: the intent to maintain state primacy for the sludge management program . . . ." S.B. Rep. on E.S.H.B. 2640, at 3, 57th Leg., Reg. Sess. (Wash. 1992).[6] The Senate bill report also included the following summary of testimony in favor of the bill:

> The legislation is necessary for the state to maintain its primacy in administering the federally delegated authority for sludge (biosolids) management programs. The Department of Ecology shall be the lead agency and may delegate the permitting responsibilities to local governments.

S.B. Rep. on E.S.H.B. 2640, at 3.

Thus, the original inclusion of the "may prohibit, on a permit-by-permit basis only" provision shows that even where the Legislature initially supposed that local governments could retain solid waste authority over biosolids, they intended to prevent local governments from enacting sweeping bans, and limited prohibitions to a permit-by-permit basis. When the bill was revised so that local governments received biosolids regulatory authority only through delegation, the "may prohibit, on a permit-by-permit basis only" provision was struck because there was simply no need to restrict such authority. The statute no longer granted

[6] This document is available at: http://apps.leg.wa.gov/documents/billdocs/1991-92/Pdf/Bill%20Reports/Senate/2640-S.SBR.pdf.

counties authority to regulate biosolids, except through delegation by Ecology.

III. CONCLUSION

Because they are presented in support of Lewis County's request for a declaratory judgment on an issue that neither party has raised or argued, this Court should decline to address the arguments in the amicus curiae brief. Moreover, this Court should reject the amicus brief's arguments and contentions that the solid waste statute and the biosolids statute confer to local governments the authority to regulate biosolids. If local governments do have the authority to regulate biosolids (and Ecology does not here argue otherwise), it is not conferred through either of these two statutes.

Wahkiakum County's ordinance directly and irreconcilably conflicts with state policy and the purpose of the state biosolids law. For

//

//

//

this reason, it is conflict preempted, and the February 22, 2013, decision of the Cowlitz County Superior Court upholding the ordinance should be reversed.

RESPECTFULLY SUBMITTED this 2nd day of June 2014.

ROBERT W. FERGUSON
Attorney General

LEE OVERTON, WSBA #38055
Assistant Attorney General

Attorneys for Appellant
State of Washington
Department of Ecology
P.O. Box 40117
Olympia, WA 98504-0117
(360) 586-2668

NO. 44700-2-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, *Appellant*, v. WAHKIAKUM COUNTY, a political subdivision of Washington State, *Respondent.*	CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, I certify that on the 2nd day of June 2014, I electronically filed Errata to Department of Ecology's Answer to Amicus Curiae Brief of Lewis County and Department of Ecology's Answer to Amicus Curiae Brief of Lewis County (Corrected) with the JIS e-filing system for the Court of Appeals, Division II, which will send e-mail notification of such filing upon the parties herein as indicated below:

DANIEL H. BIGELOW WAHKIAKUM COUNTY PROSECUTING ATTORNEY 64 MAIN STREET, P.O. BOX 397 CATHLAMET, WA 98612	[ ] U.S. Mail [ ] By Fax [x] By Email: dbigelow@WAPA-SEP.wa.gov

GLENN J. CARTER CHIEF CIVIL DEPUTY PROSECUTING ATTORNEY FOR LEWIS COUNTY 345 W. MAIN STREET, 2ND FLOOR CHEHALIS, WA 98532	[ ] U.S. Mail [ ] By Fax [x] By Email: Glenn.Carter@lewiscountywa.gov
KENNETH W. HARPER MENKE JACKSON BEYER, LLP 807 NORTH 39TH AVENUE YAKIMA, WA 98902	[ ] U.S. Mail [ ] By Fax [x] By Email: kharper@mjbe.com
KONRAD J. LIEGEL KONRAD J. LIEGEL ATTORNEY AT LAW PLLC 1463 E. REPUBLICAN STREET, #190 SEATTLE, WA 98112	[ ] U.S. Mail [ ] By Fax [x] By Email: Konrad@konradjliegel.com
JAMES B. SLAUGHTER BEVERIDGE & DIAMOND, P.C. 13501 I STREET NW WASHINGTON, DC 20005	[ ] U.S. Mail [ ] By Fax [x] By Email: jslaughter@bdlaw.com

the foregoing being the last known addresses.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 20 day of June 2014, at Olympia, Washington.

Teresa L. Trippel

TERESA L. TRIPPEL, Legal Assistant

WASHINGTON STATE ATTORNEY GENERAL

June 02, 2014 - 4:44 PM

Transmittal Letter

Document Uploaded: 447002-Other Brief.pdf

Case Name: Department of Ecology v. Wahkiakum County
Court of Appeals Case Number: 44700-2

Is this a Personal Restraint Petition? Yes ■ No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

■ Brief: __Other__

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

Errata to Department of Ecology's Answer to Amicus Curiae Brief of Lewis County and Department of Ecology's Answer to Amicus Curiae Brief of Lewis County (Corrected)

Sender Name: Teresa L Trippel - Email: Teresa.Trippel@atg.wa.gov

A copy of this document has been emailed to the following addresses:

dbigelow@WAPA-SEP.wa.gov
glenn.carter@lewiscountywa.gov
kharper@mjbe.com
konrad@konradjliegel.com
jslaughter@bdlaw.com
lee.overton@atg.wa.gov