

ORIGINAL

THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

No. 39859-1-II

SKAGIT HILL RECYCLING, INC.,

Respondent,

v.

SKAGIT COUNTY and SKAGIT COUNTY HEALTH DEPARTMENT,

Appellants.

BRIEF OF RESPONDENT

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I. INTRODUCTION

The issue before this Court is whether the Pollution Control Hearings Board (“PCHB”) erred in granting summary judgment dismissing an appeal by Skagit Hill Recycling. This case arose when the Skagit County Health Department denied renewal of an inert waste landfill permit, and Skagit Hill Recycling appealed that denial to the PCHB pursuant to RCW 70.95.210. The basis for the County’s denial was that Skagit Hill Recycling was processing non-inert construction and demolition waste at the same site as its inert waste landfill, without having obtained a separate permit for that activity. Skagit Hill Recycling asserted that its processing of construction and demolition waste constituted permit-exempt materials recovery and recycling, pursuant to state regulations intended to encourage solid waste recycling and reuse.

The core dispute between the parties – whether Skagit Hill Recycling’s materials recovery and recycling activities were permit-exempt – was squarely before the PCHB. The County filed a “dispositive motion” in which it conceded that the landfill permit did not prohibit the processing of non-inert waste covered by a permit exemption or by a separate permit, but argued that Skagit Hill Recycling’s handling of non-inert waste did not qualify for any permit exemption. Skagit Hill Recycling submitted evidence that it was processing a variety of recyclable materials from demolition waste, arguing that it did not violate its inert waste landfill permit because its materials recovery and recycling activities were permit-exempt.

Rather than holding a hearing on the merits to resolve issues of fact regarding the applicability of the permit exemptions to Skagit Hill Recycling's activity, the PCHB refused entirely to address those exemptions. The PCHB summarily decided that Skagit Hill Recycling violated its inert waste landfill permit, reasoning that the landfill permit prohibited the acceptance of non-inert waste, Skagit Hill Recycling accepted and processed non-inert wastes for recycling and reuse, and permit exemptions were irrelevant.

The PCHB's decision is inherently contradictory. The PCHB recognized that the permit's prohibition on acceptance of non-inert waste was not absolute and unqualified, because it did not prohibit non-inert waste covered by a specific permit or permit exemption. However, the PCHB refused to consider the applicability of the permit exemptions for materials recovery and recycling, despite the fact that this issue was squarely before it. Because it refused to decide this issue, the PCHB ignored disputed issues of material fact relating to the applicability of the permit exemptions to Skagit Hill Recycling's activities. The PCHB also erred in ruling on summary judgment that (i) Skagit Hill Recycling violated its landfill permit by accepting waste tires for recycling, in the face of evidence that the tires were brought onto the site in 2006, before the permit was issued; (ii) Skagit Hill Recycling violated a permit requirement to remove piles of existing construction and demolition waste, in the face of evidence that the requirement to remove such waste had been stayed by the Health Department; and (iii) Skagit Hill Recycling

violated a permit requirement to cover existing piles of construction and demolition waste, where that issue was not raised in Skagit County's summary judgment motion.

The Thurston County Superior Court correctly reversed the PCHB decision and remanded the appeal to the PCHB for hearing. The Superior Court's decision should be affirmed.

II. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The PCHB erred in granting Skagit County's motion for summary judgment and dismissing Skagit Hill Recycling's appeal of the County's decision to deny its landfill permit renewal on the ground that there were no genuine issues of material fact as to whether Skagit Hill Recycling's materials recovery and recycling of non-inert waste violated permit conditions prohibiting acceptance of non-inert waste.

2. The PCHB erred in granting Skagit County's motion for summary judgment and dismissing Skagit Hill Recycling's appeal of the County's decision to deny its landfill permit renewal without resolving the issue of whether Skagit Hill Recycling's materials recovery and recycling activities were permit-exempt under state solid waste regulations.

3. The PCHB erred in granting Skagit County's motion for summary judgment and dismissing Skagit Hill Recycling's appeal of the County's decision to deny its landfill permit renewal on the ground that there were no genuine issues of material fact as to whether Skagit Hill

Recycling had violated permit conditions requiring covering and removal of existing piles of construction and demolition waste.

B. Issues Pertaining to Assignments of Error

1. Did the PCHB commit an error of law, requiring reversal and remand pursuant to RCW 34.05.570(3)(d), by granting summary judgment to Skagit County based on a determination that Skagit Hill Recycling's processing of construction and demolition waste for materials recovery and recycling violated provisions in its 2007 landfill permit prohibiting acceptance of non-inert waste, where there were disputed issues of material fact relating to the applicability of those permit provisions and the County had conceded that the permit prohibited only the acceptance of non-inert waste not otherwise covered by a permit exemption or separate permit? (Error No. 1)

2. Did the PCHB commit an error of law, requiring reversal and remand pursuant to RCW 34.05.570(d), by granting summary judgment to Skagit County where there were genuine issues of material fact regarding whether Skagit Hill Recycling's materials recovery and recycling activities were permit-exempt under state solid waste handling regulations? (Error No. 1)

3. Did the PCHB's refusal to address the issue of whether Skagit Hill Recycling's materials recovery and recycling activities were permit-exempt under state solid waste handling regulations constitute a failure to decide all issues requiring resolution by the PCHB, warranting reversal and remand pursuant to RCW 34.05.570(3)(f)? (Error No. 2)

4. Did the PCHB engage in unlawful decision-making process or fail to follow a prescribed procedure, requiring reversal and remand pursuant to RCW 34.05.570(3)(c), by failing to address the issue of whether Skagit Hill Recycling's materials recovery and recycling activities were permit-exempt under state solid waste handling regulations, where that issue was presented as a "keystone issue" in Skagit County's summary judgment motion? (Error No. 2)

5. Did the PCHB commit an error of law, requiring reversal and remand pursuant to RCW 34.05.570(3)(d), by granting summary judgment to Skagit County based in part on a determination that Skagit Hill Recycling violated a requirement in its 2007 landfill permit to remove existing piles of construction and demolition waste, where there were genuine issues of material fact as to whether the requirement to remove such waste had been stayed by the Skagit County Health Department? (Error No. 3)

6. Did the PCHB commit an error of law, requiring reversal and remand pursuant to RCW 34.05.570(3)(d), by granting summary judgment to Skagit County based in part on a determination that Skagit Hill Recycling violated a requirement in its 2007 landfill permit to remove existing piles of construction and demolition waste, where there were genuine issues of material fact regarding whether the waste had been removed from the property? (Error No. 3)

7. Did the PCHB violate Skagit Hill Recycling's constitutional right to due process, engage in unlawful decision-making

process, and commit an error of law, requiring reversal and remand pursuant to RCW 34.05.570(3)(a), (c), and (d), by granting summary judgment to Skagit County based in part on its determination that Skagit Hill Recycling violated a requirement in its 2007 landfill permit to cover existing piles of construction and demolition waste, where the County's motion for summary judgment did not affirmatively raise the issue of failure to comply with that permit requirement? (Error No. 3)

8. Did the PCHB commit an error of law, requiring reversal and remand pursuant to RCW 34.05.570(3)(d), by granting summary judgment to Skagit County based in part on a determination that Skagit Hill Recycling violated provisions in its 2007 landfill permit prohibiting acceptance of non-inert waste by accepting tires onto the site, where there were genuine issues of material fact regarding whether the tires were brought onto the site in 2006, before the permit was issued? (Error No. 1)

III. STATEMENT OF THE CASE

A. **Statutory and Regulatory Framework**

Solid waste handling and disposal in Washington is governed by state law, RCW chapter 70.95, and standards promulgated by the Department of Ecology ("Ecology"), WAC chapter 173-350. The purpose of the statute is "to establish a comprehensive statewide program for solid waste handling, and solid waste recovery and/or recycling which will

prevent land, air, and water pollution and conserve the natural, economic, and energy resources of this state.” RCW 70.95.020.¹

The term “solid waste” is defined as “all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.” RCW 70.95.030(23) (renumbered as RCW 70.95.030(22) effective June 30, 2010).² *See also* WAC 173-350-100.³

1. State priorities for waste reduction and recycling

The Legislature has set the following priorities, in descending order, for collection, handling, and management of solid waste:

- (a) Waste reduction;
- (b) Recycling, with source separation of recyclable materials as the preferred method;
- (c) Energy recovery, incineration, or landfill of separated waste;
- (d) Energy recovery, incineration, or landfill of mixed municipal solid wastes.

RCW 70.95.010(8). *See* Appendix 1.

The statute defines “waste reduction” as “reducing the amount or toxicity of waste generated or reusing materials.” RCW 70.95.030(28).

“Recycling” means “transforming or remanufacturing waste materials into

¹ The Legislature’s findings (RCW 70.95.010) and declaration of purpose (RCW 70.95.020) are attached hereto as Appendices 1 and 2, respectively.

² Effective June 30, 2010, RCW 70.95.030 was amended to delete subsection (3) and renumber subsections (4) through (29) as subsections (3) through (28). Laws 2010, c. 7, § 86. Citations to RCW 70.95.030 herein are to the subsection numbers currently in effect and cited in all pleadings below.

³ Relevant definitions from Ecology’s regulations are set forth in Appendix 3 hereto.

usable or marketable materials for use other than landfill disposal or incineration.” RCW 70.95.030(19). “Recyclable materials” are solid wastes “that are separated for recycling or reuse, such as papers, metals, and glass, that are identified as recyclable material pursuant to a local comprehensive solid waste plan.” RCW 70.95.030(18). A “landfill” is “a disposal facility or part of a facility at which solid waste is placed in or on land and which is not a land treatment facility.” RCW 70.95.030(13). An “inert waste landfill” is “a landfill that receives only inert waste, as determined under RCW 70.95.065, and includes facilities that use inert wastes as a component of fill.” RCW 70.95.030(11).⁴ *See also* WAC 173-350-100 (excerpts set forth in Appendix 3 hereto).

The Legislature explicitly intended to expand solid waste recycling, materials recovery, and reuse, RCW 70.95.010(3), and to encourage the development and operation of waste recycling facilities needed to accomplish the “management priority” of waste recycling. RCW 70.95.020(4); WAC 173-350-010(7). Private industry involvement in these efforts is encouraged. *See* RCW 70.95.020(6); 70.95.167.

⁴ “Inert waste” is a term of art under state solid waste regulations, generally encompassing wastes that do not present a threat to human health or the environment. *See* RCW 70.95.065(2). WAC 173-350-990 lists certain materials (cured concrete, asphaltic materials, and brick and masonry that have been used for structural and construction purposes; ceramic materials; glass; stainless steel; and aluminum) as “listed inert wastes” and sets forth “inert waste characteristics” as criteria for determining whether a solid waste that is not specifically listed will be considered “inert” waste. WAC 173-350-990(2), (3).

2. Local solid waste plans and regulations

Each county is required to adopt a comprehensive solid waste management plan. RCW 70.95.080. The plan must include a comprehensive waste reduction and recycling element. RCW 70.95.090(6). The waste reduction and recycling element must include “an implementation schedule for the designation of specific materials to be collected for recycling, and for the provision of recycling collection services.” RCW 70.95.090(7).⁵ Each county must adopt solid waste regulations that implement the comprehensive solid waste management plan and are consistent with state policies and priorities. RCW 70.95.160. Skagit County has incorporated WAC chapter 173-350 into its ordinance governing solid waste handling. Skagit County Code (“SCC”) 12.16.020.

3. Solid waste permitting system

In general, any person operating a solid waste handling facility must obtain a permit from the local health department. RCW 70.95.170; RCW 70.95.180; WAC 173-350-710(1), (2). Such permits must be renewed at least every five years. RCW 70.95.190(1). Prior to renewing a permit, the health department is required to conduct a review “to assure that the solid waste handling facility or facilities located on the site continues to meet minimum functional standards of the department,

⁵ Excerpts from Skagit County’s Comprehensive Solid Waste Management Plan were part of the summary judgment record before the PCHB. CP 372-382.

applicable local regulations, and are not in conflict with the approved solid waste management plan.” *Id.*; *see also* WAC 173-350-710(3)(a).⁶

Whenever a health department denies a permit or suspends a permit, the applicant or permit holder may request a hearing before the local health officer. The health officer’s determination is then appealable to the PCHB, which “shall hold a hearing in accordance with the provisions of the [APA].” RCW 70.95.210. If the health department denies a permit renewal for a recycling facility that receives waste from more than one city or county, and the permittee files an appeal, the permit denial does not take effect until completion of the appeal process, unless the health department declares that continued operation poses “a very probable threat” to human health and the environment. RCW 70.95.210; WAC 173-350-710(6)(c); *see* Appendices 6 and 7 attached hereto.

4. Solid waste permit exemptions

Not all solid waste handling activities require a permit; certain activities and facilities are exempt from solid waste permitting. *See* RCW 70.95.305. Ecology’s regulations set forth specific permit exemptions for, *inter alia*, recycling (WAC 173-350-210(2)); materials recovery facilities (WAC 173-350-310(2)); storage piles of wood waste and wood derived

⁶ RCW 70.95.190 is attached hereto as Appendix 4. Ecology’s regulation governing the permit application process, permit issuance, and permit renewals (WAC 173-350-710(1) through (3)) is attached hereto as Appendix 5.

fuel (WAC 173-350-320(1)(b)); and storage of inert waste in piles (WAC 173-350-320(1)(d)). *See also* SCC 12.16.110; 12.16.160; 12.16.170.

Materials recovery facilities are a type of “intermediate solid waste handling facility.” WAC 173-350-100. The intermediate solid waste handling facility standards provide a permit exemption for material recovery facilities managed in accordance with WAC 173-350-310(2)(b). WAC 173-350-310(2)(a). A permit-exempt materials recovery facility must (i) meet the performance standards of WAC 173-350-040; (ii) accept “only source separated recyclable materials and dispose of an incidental and accidental residual not to exceed five percent of the total waste received, by weight per year, or ten percent by weight per load;” (iii) allow inspections by Ecology or the local health department; (iv) notify Ecology and the health department of intent to operate; and (v) submit an annual report. WAC 173-350-310(2)(b). *See* Appendix 8 attached hereto.

Solid waste recycling in compliance with the requirements of WAC 173-350-210(2)(b) is also exempt from permitting. WAC 173-350-210(2)(a). A permit-exempt recycling facility must (i) meet the performance standards of WAC 173-350-040; (ii) “accept only source separated solid waste for the purpose of recycling;” (iii) allow inspections;

(iv) provide advance notification; and (v) submit an annual report. WAC 173-350-210(2)(b). *See* Appendix 9 attached hereto.⁷

The permit exemptions for materials recovery and recycling each require that the waste be “source separated.” “Source separation” is defined as “the separation of different kinds of solid waste at the place where the waste originates.” RCW 70.95.030(25); WAC 173-350-100. As set forth above, different kinds of solid waste are explicitly listed in the definition of “solid waste” – including “demolition and construction wastes” as a specific kind of solid waste. RCW 70.95.030(23); WAC 173-350-100. “Source separation” is embodied in Ecology’s definition of “material recovery facility” (“any facility that collects, compacts, repackages, sorts, or processes for transport source separated solid waste for the purpose of recycling”). WAC 173-350-100. Ecology’s regulations also address the concept of “source separation” in the definition of “municipal solid waste,” which refers to “[m]ixed or segregated recyclable material that has been source-separated from garbage, refuse and similar solid waste.” WAC 173-350-100. *See* Appendix 3.

B. Skagit County Health Department Permit Review

1. 2006 inert waste landfill permit

In 2006, Respondent Skagit Hill Recycling, Inc. (“Skagit Hill Recycling”) purchased a site from Duke’s Hill Resource & Recycling

⁷ Ecology’s regulations providing permit exemptions and standards for piles of “wood waste used for fuel or as a raw material,” “wood derived fuel,” and storage piles of inert wastes (WAC 173-350-320(1)) are set forth in Appendix 10 hereto.

Center, located on State Route 9 just north of Sedro-Woolley. CP 53; CP 97.⁸ The site had been used for sand and gravel mining for decades. CP 53. Beginning in 1993, Skagit County issued permits for operation of an inert waste landfill at the site. CP 262. In 2006, Duke's Hill Resource & Recycling Center held an inert waste landfill permit effective December 31, 2005 and due to expire December 31, 2006. AR 8, Dubbel Ex. 1 (Appendix 11). On June 21, 2006, the owner requested transfer of the inert waste landfill permit to Skagit Hill Recycling. CP 97, 99.

On September 22, 2006, in response to the request to transfer the 2006 permit, the County advised Skagit Hill Recycling that "the permit only pertains to the landfilling of inert waste at the facility." CP 99. The County acknowledged Skagit Hill Recycling's intention to stockpile materials for recycling, advised that "the inert waste landfill permit does not excuse you from compliance with other permits or requirements that your business may need" (CP 99-100), and enclosed a form for

⁸ The administrative record before the PCHB is not paginated. Many documents in the PCHB administrative record were attached to pleadings in the Superior Court and therefore are also included in the Clerk's Papers; those portions of the administrative record are cited herein as "CP" followed by the page number. Portions of the administrative record that are not included in the Clerk's Papers are cited as "AR" followed by the document number assigned in the Index submitted by the PCHB (*see* CP 4-6). The County's summary judgment motion was supported by an Affidavit of Polly Dubbel in Support of Skagit County's Dispositive Motion to Affirm Denial of Application for Solid Waste Permit and to Dismiss Appeal, accompanied by Exhibits 1 through 35. AR 8. Exhibits to that affidavit that are not included in the Clerk's Papers are cited herein as "AR 8, Dubbel Ex." followed by the exhibit number. For the convenience of the Court, each document cited herein as "AR" is attached as an Appendix hereto, unless already appended to the Appellants' Opening Brief ("App. Brief").

notification/exemption for recycling and material recovery facilities (CP 103-104). The County reissued the inert waste landfill permit to Skagit Hill Recycling, effective September 22, 2006 through December 31, 2006. AR 8, Dubbel Ex. 4 (Appendix 12).

On September 26, 2006, County Health Department staff inspected the Skagit Hill Recycling site. CP 106-110. Inspector Britt Pfaff-Dunton reported that Skagit Hill Recycling was “bringing in concrete and soils to fill off the western edge of the pit,” and “they are not landfilling, just stockpiling and they plan on excavating and recycling the concrete out later.” She described “a pile of asphaltic roofing waste and some metal debris” at the top of the pit and “several piles of construction and demolition wastes” and “tires” at the eastern side of the pit.⁹ CP 106.

On October 13, 2006, Britt Pfaff-Dunton conducted another inspection, accompanied by Ecology staff, and met with Skagit Hill Recycling’s operations manager Ron Johnson. CP 112-122. Photographs taken on October 13, 2006 depict piles of construction and demolition waste and tires on the site. CP 114. Ms. Pfaff-Dunton reported that she told Mr. Johnson that if Skagit Hill Recycling intended to process construction and demolition waste, it would need a separate solid waste permit for that activity. CP 116.

⁹ In 2006, Skagit Hill Recycling accepted a small quantity of tires, to evaluate the potential of shredding and recycling the tire material. CP 55.

2. County's denial of permit renewal and Notice of Violation

On November 14, 2006, Skagit Hill Recycling applied for renewal of its 2006 landfill permit. CP 127. On November 20, 2006, County staff acknowledged receipt of the renewal application, reiterated that “the facility is only permitted as an inert waste landfill,” and told Skagit Hill Recycling to apply for permits for other solid waste activities. CP 127. The County requested copies of disposal receipts for the construction and demolition debris and asphalt shingles observed in October 2006, and offered to work with Skagit Hill Recycling through the permitting process “to conduct other activities that are not covered under the current inert waste landfill permit”. CP 127-128.

On January 16, 2007, the County denied the permit renewal because “the Health Department has not received the information requested from Skagit Hill Recycling.” CP 124. The County also issued a Notice of Violation to Skagit Hill Recycling on the ground that its 2006 permit had expired on December 31, 2006 and “Skagit Hill Recycling is currently operating without a valid permit.” CP 124-126. The County ordered Skagit Hill Recycling to submit a revised plan of operation for the inert waste landfill by February 1, 2007. CP 124. On January 24, 2007, Skagit Hill Recycling submitted a draft landfill Operation Plan to the County Health Department. CP 142-144.

On January 29, 2007, Skagit Hill Recycling requested a hearing before the County Health Officer on the Notice of Violation, contending that its processing and recycling of construction and demolition waste was

exempt from solid waste permitting requirements and did not violate its inert waste landfill permit. AR 8, Dubbel Ex. 11 (Appendix 13). On February 7, 2007, Ms. Pfaff-Dunton submitted a staff report to the Health Officer describing the wastes observed during her previous inspection, stating: “In addition there are a few tires mixed in with the construction and demolition waste and additional tires piled next to the C&D piles.” AR 8, Dubbel Ex. 12 (Appendix 14) at 2.

On February 12, 2007, Ecology staff sent an e-mail to County Health Department staff which stated in part: “[Skagit Hill Recycling] could potentially get an exemption under the intermediate solid waste handling standards if they accepted only source separated materials, and incidental and accidental residuals did not exceed 10% per load or 5% annually by weight.” AR 8, Dubbel Ex. 14 (Appendix 15) at 2.¹⁰

On February 22, 2007, the Health Department directed Skagit Hill Recycling to incorporate additional information into its landfill operation plan. CP 146-148. The County stated that “the Health Department is assuming that the waste being received at the facility is only inert waste,” that if Skagit Hill Recycling wished to accept wastes other than inert wastes, it must apply for a permit “under the appropriate solid waste regulation heading” and that “the future activities may be permitted under WAC 173-350-320 . . . or WAC 173-350-310.” CP 148.

¹⁰ This permit exemption, for “materials recovery facilities” under the intermediate solid waste handling standards, is set forth at WAC 173-350-310(2). *See* Appendix 8.

On February 27, 2007, the Health Officer issued his determination on Skagit Hill Recycling's appeal of the Notice of Violation, ruling that Skagit Hill Recycling had violated its 2006 landfill permit by accepting and storing construction and demolition waste without a permit. AR 8, Dubbel Ex. 13 (Appendix 16) at 1-4. The Health Officer stated that processing of debris from demolition and construction projects was not permit-exempt, and encouraged Skagit Hill Recycling to apply for permits. *Id.* at 1, 5. The Health Officer requested that Skagit Hill Recycling submit a written description of its proposed recycling activities in order to identify the appropriate permits. *Id.* at 5.

On March 14, 2007, Skagit Hill Recycling appealed the Health Officer's determination to the County Board of Health, contending that its handling of construction and demolition debris was not a violation because it was exempt from permitting. AR 8, Dubbel Ex. 15 (Appendix 17).

On March 22, 2007, Skagit Hill Recycling provided a written synopsis of recycling goals to the Health Department, as requested. CP 134-35. Skagit Hill Recycling explained its proposed activities, described its process for preventing the introduction of hazardous materials, stated that residual material that met the criteria for inert waste would be landfilled under its inert landfill permit, and stated that all other materials "will be resold or removed to an appropriate disposal facility." CP 135.

On March 27, 2007, the County Health Department acknowledged Skagit Hill Recycling's submittal of a revised operation plan for the

landfill as well as quarterly water quality testing results, and requested additional revisions to the landfill operation plan. CP 150-152.

On March 29, 2007, the Health Department responded to Skagit Hill Recycling's written Synopsis of Recycling Goals by stating that "the proposed facility would not be exempt from permit." CP 137. The County stated that the facility required a permit under either WAC 173-350-310 (as an "intermediate solid waste handling facility") or WAC 173-350-320 (as "piles used for storage or treatment"). The County enclosed a solid waste facility permit application and review checklist, and encouraged Skagit Hill Recycling to contact the Health Department with any questions about the permit application. CP 137-138.

3. Issuance of the 2007 inert waste landfill permit

The following day, on March 30, 2007, the County renewed Skagit Hill Recycling's inert waste landfill permit for 2007. CP 201. The permit expressly incorporated the landfill Operation Plan submitted by Skagit Hill Recycling as part of the permit. CP 203. Part II of the permit set forth specific permit conditions. The permit's "Minimum Standards for Performance" included the following "Fill Requirements": "Only inert waste shall be accepted into the facility. Only inert waste shall be stock piled or landfilled at the facility. . . . No other types of solid waste shall be accepted or allowed at the facility." CP 205. The permit also contained a "Compliance Requirement" which referred to Skagit Hill Recycling's acceptance of construction and demolition wastes "in violation of the inert waste landfill facility permit" and provided that Skagit Hill Recycling "not

accept any additional construction and demolition wastes or any other solid wastes except inert waste at the facility.” The Compliance Requirement further provided: “The existing piles of construction and demolition wastes must be covered to prevent precipitation from entering the piles. The piles of construction and demolition wastes including the asphaltic roofing waste must be removed from the facility by October 1, 2007.” CP 208.

The Skagit Hill Recycling landfill Operation Plan dated March 30, 2007, incorporated as part of the permit, includes an “Amendment to operation plan” dated March 30, 2007, which states:

At this time we will cover the debris piles and will remove them by the end of Oct 2007, at the same time we will continue to obtain the proper permit from Department of Ecology for this type of material. If the proper permit is issued before the end of Oct. 2007 then this material will not be removed but recycled as our goal has always been.

CP 154; CP 175; CP 199.

After the landfill permit was renewed for 2007, Skagit Hill Recycling continued to respond to County requests for additional changes to the landfill operation plan, submitting a revised plan dated April 10, 2007. CP 177. The County approved the revised Operation Plan on May 4, 2007. CP 177. The March 30, 2007 “Amendment to operation plan” remained as part of the approved plan. CP 199.

4. Continuance of Skagit Hill Recycling’s pending appeal

While County review of its revised landfill Operation Plan was pending, Skagit Hill Recycling requested a continuance of the Board of

Health hearing on its appeal of the Notice of Violation. On April 24, 2007, the County notified Skagit Hill Recycling by letter that the appeal hearing would be continued to July 24, 2007. AR 8, Dubbel Ex. 26 (Appendix 18). The Health Department stated that it would continue to work with Skagit Hill Recycling on the solid waste permitting process for the proposed construction, demolition and land clearing facility. *Id.* at 2.

In July 2007, Skagit Hill Recycling requested another continuance of the Board of Health hearing on the Notice of Violation. On July 20, 2007, the County sent a letter confirming the continuance of the hearing to September 24, 2007, again encouraging Skagit Hill Recycling to apply for a solid waste permit for processing of construction and demolition waste. AR 8, Dubbel Ex. 27 (Appendix 19).

5. July 2007 inspection of the Skagit Hill Recycling site

On July 20, 2007, Health Department staff conducted an inspection and noted that “piles of construction/demolition wastes have increased.” CP 240. The inspection report includes a photograph with the following caption: “Note asphaltic roofing more intact than previous roofing pile, appears to be new roofing waste.” CP 241. Another photograph bears the caption: “Waste pile located in pit on south easterly edge, near pond. Waste pile of press board that is degrading, plastics[,] waste tires & roofing, metals.” CP 245. Another photograph bears the caption: “In pit looking west. Landclearing debris, concrete, waste tires, black pile is wood ash, C&D wastes. Landclearing debris in background also.” CP 246. Inspector Britt Pfaff-Dunton reported:

As we stood on the western edge of the pit, I observed a large pile of construction and demolition waste and several smaller piles of waste materials down in the pit area. Mr. Johnson said that Mr. Waldal was planning on purchasing a piece of equipment that would sort and grind the construction and demolition wastes. There was an increase in the amount of construction and demolition waste at the site compared to the last inspection.

The piles of construction and demolition wastes included: dimensional wood scraps, plywood, painted woods, laminates, plastics including sheeting and piping, foam, laminate flooring, large quantities of insulation, fiberglass, wiring, roofing, and metals. There were tires mixed into some of the piles. . . .

Some of the smaller piles of construction and demolition waste along the eastern side of the pit had degraded considerably since the last inspection since the piles had not been tarped during the rainy periods.

CP 250-251. Under “Compliance/Recommendations” the report stated:

The amount of construction and demolition wastes located in the pit area has increased. The pit area has non-inert wastes and non-inert wastes. [sic] The site is not permitted to receive non-inert wastes. The permit allowed them to keep the construction and demolition waste that they had on site in 2006, but the permit does not allow them to bring in additional wastes while they work on applying for the appropriate solid waste permits.

CP 251. Ms. Pfaff-Dunton’s July 20, 2007 inspection report did not identify any increase in the amount of tires present on the site compared to the 2006 inspections (*see* CP 106, 114). CP 239-251.

6. Further continuances of Skagit Hill Recycling’s appeal

On September 11, 2007, Skagit Hill Recycling requested a third continuance of the appeal hearing before the Board of Health. On September 21, 2007, Environmental Health Supervisor Corinne Story confirmed the continuance to November 20, 2007, stating:

Skagit Hill Recycling's 2007 inert waste landfill permit is still in effect and Skagit Hill Recycling must comply with the permit conditions. In Part II, Specific Conditions, G. Compliance Requirement, the permittee agreed to remove the construction and demolition wastes by October 1, 2007. *The requirement to remove the waste by October 1, 2007 is stayed pending the appeal determination.*

AR 8, Dubbel Ex. 28 (Appendix 20) at 1 (emphasis added).

On November 14, 2007, the hearing on Skagit Hill Recycling's appeal of the Notice of Violation was again removed from the Board of Health calendar, this time at the instance of the Skagit County Prosecuting Attorney. AR 8, Dubbel Ex. 29A (Appendix 21). Skagit Hill Recycling agreed to continue the hearing, but did not agree that its appeal was moot. *Id.* The County did not set a date for the continued hearing. AR 8, Skagit County's Dispositive Motion (App. Brief, Appendix A) at 7.

7. County's denial of renewal of the 2007 landfill permit

In November, 2007, Skagit Hill Recycling submitted an application for renewal of its 2007 landfill permit. CP 223-226. On November 20, 2007, the County Health Department conducted another inspection. CP 253-263. Inspector Britt Pfaff-Dunton reported:

I observed several piles on the top westerly portion of the site including: a pile of clean wood waste, some large woody debris, ground wood waste, soil, and asphalt chunks mixed with soil. All of wood waste piles appeared to consist of only clean wood waste. The wood waste piles were up out of the landfill area and Mr. Waldal indicated that the wood waste would be sold for various uses. *These materials were all being handled and stored in accordance with the permit and under the wood waste exempt pile status.*

. . . . The pit area contained several different piles of construction and demolition (C&D) wastes which were being processed, sorted

and ground. Mr. Waldal also had a new piece of equipment which is designed to grind the C&D wastes and can sort out metal from the debris. Some of the piles of C&D near the equipment had been ground up and there was a pile of metal debris from the sorting unit. There was a dumpster in the pit which contained separated metals. There were a few small piles of waste which contained a high percentage of plastics, foam and other solid waste.

The piles of C&D wastes included: dimensional wood scraps, plywood, painted woods, laminates, plastics including sheeting and piping, foam, laminate flooring, and insulation. Some of the C&D piles contained larger chunks of debris and other piles had been ground into finer pieces. Mr. Waldal indicated that these piles would be sold as clean wood waste and wood derived fuel for use in co-generation burners such as the Sierra Pacific co-gen plant. . .

There were a few smaller piles of mixed C&D wastes which were located along the eastern wall of the pit. A pile of asphaltic roofing waste was located on the northern edge of the pit area, near the access road.

AP 262-263 (emphasis added). The report continued:

The piles of inert waste and wood waste on the upper westerly portion of the property appear to be handled appropriately. The wood waste piles on the upper site appear to contain only wood waste. One of the piles appears to be the ground wood waste from the land clearing debris which are brought [sic] into the site. These piles of wood waste are separated from the area of the site designated for landfilling activities.

The piles of construction and demolition wastes located in the pit area continue to be processed. It appears that new C & D wastes have been brought in and removed from the site. The processed ground waste has had some materials removed, but the resulting ground waste is not clean wood waste. The pit area has non-inert wastes and non-inert wastes are being processed. The site is not permitted to receive non-inert wastes. The site is not permitted for processing non-inert wastes.

CP 263 (emphasis added). Ms. Pfaff-Dunton's November 20, 2007

inspection report contained no mention of the degraded piles of

construction and demolition waste she had reported after the July 20, 2007 inspection (*see* CP 245, 251); nor did it identify any increase in the number of tires present on the site compared to what she had reported after her 2006 inspections (*see* CP 106, 114). CP 253-263.

On December 19, 2007, the Health Department denied Skagit Hill Recycling's application to renew its inert waste landfill permit. CP 219-222. The County stated that Skagit Hill Recycling had "not adhered to the 2007 inert waste landfill permit" because it had (1) accepted materials other than inert waste; (2) processed "mixed construction and demolition wastes without an appropriate solid waste permit;" (3) failed to "adhere to the permit compliance requirement to remove non-inert waste from the facility by October 1, 2007;" (4) deposited non-inert wastes and materials "into the area of the facility designated as the landfill cell;" and (5) failed to submit "all of the proscribed [sic] routine water monitoring as required in the permit." CP 221.¹¹

C. Health Officer's Determination Denying Permit Renewal

On January 4, 2008, Skagit Hill Recycling appealed to the Health Officer, stating that it "does not believe it is in violation of its 2007 Inert

¹¹ The County's letter denying renewal, signed by Environmental Health Supervisor Corinne Story, did not mention the September 21, 2007 letter – also signed by Ms. Story – notifying Skagit Hill Recycling that the requirement to remove the existing wastes by October 1, 2007 was stayed pending Skagit Hill Recycling's appeal of the Notice of Violation (*see* Appendix 20). Skagit Hill Recycling's appeal of the Notice of Violation was still pending at the time the County denied the permit renewal. CP 37; AR 8, Skagit County's Dispositive Motion (App. Brief, Appendix A) at 7.

Waste Landfill Permit for the same reasons that are currently under appeal before the Skagit County Board of Health.” AR 8, Dubbel Ex. 34 (App. Brief, Appendix C) at 1. Skagit Hill Recycling responded to each violation asserted by the County, denying that it was required to remove any construction and demolition waste from the site, denying that it had buried any material into the landfill, and asserting that its recycling of construction and demolition waste was exempt from permitting. *Id.* at 1-5.

On March 14, 2008, the Health Officer issued his decision denying renewal of the landfill permit. CP 46-52. The Health Officer acknowledged Skagit Hill Recycling’s intention “to process all the material and take it off-site for recycling or final disposal at an appropriate landfill, which is a laudable goal” (CP 48). In response to Skagit Hill Recycling’s contention that its recycling of construction and demolition waste was permit-exempt, the Health Officer disagreed that the construction and demolition debris was “source separated” because he interpreted “source separation” to require recyclable material to be “fully segregated” prior to arriving at the site. CP 48. The Health Officer stated:

Truly source separated material such as landclearing debris and concrete found on the upper portion of the property is clearly exempt from permitting under WAC 173-350-210(2)(a) if it is received as source separated material and is not a part of this action.

CP 49 (emphasis in original). Addressing the permit compliance requirement to remove existing piles of construction and demolition waste, the Health Officer acknowledged that if the materials were permit-exempt

they were not required to be removed. CP 49. The Health Officer did not acknowledge that the Health Department had stayed the requirement to remove the existing waste piles pending resolution of Skagit Hill Recycling's ongoing appeal of the Notice of Violation. CP 46-52.

The Health Officer determined (1) that "Skagit Hill Recycling is not operating an inert waste landfill, nor did they in 2007, but is accepting, stockpiling and processing non-inert solid waste in the inert waste landfill designated facility" and (2) that the "construction and demolition debris, tires and asphalt shingles are not wood waste, wood derived fuel, and it is not source separated recyclable materials" and therefore "Skagit Hill Recycling's current operation at this site is not exempt from solid waste permitting." CP 51. The County Health Officer allowed Skagit Hill Recycling to continue to accept non-inert "wood waste" because "wood waste" was permit-exempt. CP 51-52.

D. Skagit Hill Recycling's Appeal to the PCHB

Skagit Hill Recycling appealed the Health Officer's decision to the PCHB. CP 395-402. Skagit Hill Recycling requested that the PCHB "order that Skagit County recognize the recycling exemptions allowed by Washington law that apply to Appellant's operation." CP 402. The appeal squarely presented the issue of whether Skagit Hill Recycling's handling of construction and demolition waste qualified for exemptions from solid waste permitting. CP 404; AR 6 (Skagit County's Recommendations for Reframing Petitioner's Issues) (Appendix 22).

E. PCHB's Dismissal of Skagit Hill Recycling's Appeal

Before the PCHB, the County filed a “dispositive motion” seeking to dismiss Skagit Hill Recycling’s appeal without a hearing on the merits. AR 8, Skagit County’s Dispositive Motion (App. Brief, Appendix A) (hereinafter “County’s Motion”). The County sought dismissal of Skagit Hill Recycling’s appeal on the ground that it had accepted non-inert materials “in violation of regulations and permit conditions” and that no permit exemption covered the non-inert waste that Skagit Hill Recycling was processing at the site. *Id.* at 10-13. The County’s Motion asserted violation of the permit based on failure to remove existing piles of construction and demolition waste.¹² *Id.* at 2, 13. It did not allege a violation based on failure to cover the existing piles of waste. *Id.* at 13. The County’s Motion was accompanied by an Affidavit of Polly Dubbel with over thirty attached exhibits.¹³ CP 33.

In response, Skagit Hill Recycling argued that it was engaging in permit-exempt materials recovery and recycling of non-inert waste, and that it had landfilled only inert waste. It also argued that the 2007 inert waste landfill permit did not prohibit other lawful, permit-exempt

¹² The County’s Motion did not acknowledge that the requirement to remove the waste had been stayed by the Health Department, even though it included as an exhibit the September 21, 2007 letter from Corinne Story (*see* Appendix 20) and acknowledged that Skagit Hill Recycling’s appeal of the Notice of Violation remained pending at the time the County’s motion was filed. County’s Motion at 6-7.

¹³ Because the County’s “dispositive motion” was accompanied by matters outside the pleadings, the PCHB treated it as a motion for summary judgment. CP 40.

activities on the site. CP 342-348; AR 16, Response to Skagit County's Motion to Strike (attached hereto as Appendix 23).

Skagit Hill Recycling submitted a declaration by Scott Waldal, the owner of Skagit Hill Recycling. CP 53-64 (attached hereto as Appendix 24). Mr. Waldal stated that since 2006, Skagit Hill Recycling had accepted limited inert waste for landfilling and instead focused on materials recovery and recycling. CP 54. He described Skagit Hill Recycling's processing of land clearing waste, concrete waste, ash, asphalt waste, and construction and demolition waste, including demolition debris from demolition of houses. CP 54-56. He stated that all waste material at the Skagit Hill Recycling site was source separated. CP 54. He described recovery of reusable materials from demolition debris, including scrap metal, plastics, carpeting, and insulation, as well as equipment used to sort metals, insulation, roofing material and wood waste from demolition debris and to shred or grind debris to create products used for landscaping, asphalt manufacturing, road ballast, and fuel. CP 54-56.

Mr. Waldal described procedures for ensuring that waste is free of toxic material, including asbestos, lead, and other hazardous materials. CP 54. He stated that none of the piled material was placed on the site for the purpose of disposal; all the waste piles were retained or created as part of Skagit Hill Recycling's recycling operations. CP 55. He also stated that Skagit Hill Recycling accepted a small amount of used tires in 2006 to evaluate the potential for shredding and recycling the tires. CP 55.

In its reply, the County stated the issue before the PCHB as whether Skagit Hill Recycling's handling of demolition debris qualified for solid waste permit exemptions as "a source separated recyclable." CP 354-355. The County argued that "source separation" requires that each type of recyclable material be segregated from other types of recyclable material before it arrives at the site. CP 367-369. The County argued – for the first time – that the demolition wastes being recycled by Skagit Hill Recycling are not "recyclable materials" because the County's Comprehensive Solid Waste Management Plan does not designate "construction and demolition waste" as recyclable. CP 366-367.

Skagit Hill Recycling requested oral argument on the County's summary judgment motion. The PCHB denied this request. CP 409. On December 17, 2008, the PCHB granted summary judgment to the County, ruling that "Skagit Hill violated the terms of the 2007 inert waste landfill permit for this site" by accepting non-inert construction and demolition wastes and tires. CP 42. The PCHB also ruled that Skagit Hill Recycling violated its permit because it "failed to cover the existing piles of waste, and failed to remove construction and demolition waste and asphalt roofing from the site by October 1, 2007." CP 43. The PCHB did not rule that Skagit Hill Recycling had illegally landfilled any waste. CP 33-45.

The PCHB suggested that Skagit Hill Recycling could have processed non-inert wastes on the site without violating its landfill permit if it had obtained separate permits for those activities. CP 43 ("any activity other than inert waste landfilling would have to be authorized by

different and additional permits”). The PCHB also acknowledged that Skagit Hill Recycling’s handling of wood waste – which was non-inert – did not violate its landfill permit because it was covered by a permit exemption. CP 38 (“piles of clean wood debris . . . were being handled in accordance with the permit and wood waste exemption regulations”).

The PCHB explicitly did not address the parties’ arguments regarding whether Skagit Hill Recycling’s materials recovery and recycling of construction and demolition waste was permit-exempt:

The issue before the Board is whether Skagit County properly denied a renewal of the 2007 inert waste landfill permit. The legality or proper characterization of different or additional recycling activity on the site is not relevant to the Board’s decision on renewal. As the County has stated numerous times, if the company wishes to process non-inert material or engage in activities other than inert waste landfilling on the site, other permits are required. The Board does not need to examine or opine on the nature of any such permits or the facility’s ability to obtain them.

CP 43-44 (emphasis added).

F. Thurston County Superior Court’s Remand to PCHB

On January 16, 2009, Skagit Hill Recycling appealed the PCHB order pursuant to the APA by filing a petition for judicial review in Thurston County Superior Court. CP 419-439. Skagit Hill Recycling argued that the PCHB’s decision must be reversed because material issues of fact and law remained in dispute relating to whether Skagit Hill Recycling had violated its inert waste landfill permit, whether the 2007 permit actually prohibited processing of non-inert waste that was covered by a permit exemption, and whether Skagit Hill Recycling’s materials

recovery and recycling activities meet the criteria for solid waste handling permit exemptions. CP 7-31; CP 323-335; CP 386-409.

On September 25, 2009, Judge Wm. Thomas McPhee heard oral argument, granted Skagit Hill Recycling's appeal and reversed the PCHB decision, concluding that the PCHB erred in granting summary judgment to Skagit County because material issues of fact remain in dispute, particularly regarding the applicability of the permit conditions relating to Skagit Hill Recycling's handling of non-inert waste. CP 410-411; RP 3:13-18; RP 10:22 - 11:21. Judge McPhee noted in particular that "Skagit County agreed that some non-inert waste exempt from other permits was not a violation of this permit." RP 11:1-3. Judge McPhee entered an Order Granting Appeal which remanded the matter to the PCHB for an evidentiary hearing. CP 410-411; RP 11:13-25; RP 12:1-9.

G. Skagit County's Appeal to the Court of Appeals

Skagit County filed a Notice of Appeal with this Court on October 2, 2009. CP 412-415. After Skagit Hill Recycling moved to dismiss the County's appeal on the ground that the superior court decision was not an appealable final judgment, the County filed a Motion for Discretionary Review. On January 7, 2010, Court Commissioner Skerlec converted the County's notice of appeal into a notice of discretionary review. On March 12, 2010, Court Commissioner Schmidt issued a Ruling Granting Review, holding that the superior court committed obvious error by reversing and remanding the PCHB's order granting summary judgment. Skagit Hill

Recycling filed a motion to modify the Commissioner's ruling. This Court denied the motion to modify on May 14, 2010.

IV. ARGUMENT

A. Standard of Review

PCHB orders are reviewed under the Washington Administrative Procedure Act, RCW 34.05. Under the APA, a PCHB decision may be overturned if the reviewing court determines that any one of the nine standards in RCW 34.05.570(3) has been met. The appellate courts apply the APA standards directly to the administrative record. *Tapper v. Employment Sec. Dep't*, 122 Wn.2d 397, 402, 858 P.2d 494 (1993).

The appropriate standard of review in this case hinges on the fact that it is an appeal from a PCHB summary judgment decision. Appellate review of an administrative agency's summary judgment decision is *de novo*, using the APA "error of law" standard set forth in RCW 34.05.570(3)(d). *Verizon Northwest, Inc. v. Washington Employment Security Dep't*, 164 Wn.2d 909, 915-916, 194 P.3d 255 (2008); *Johnson Forestry Contracting, Inc. v. Dep't of Natural Res.*, 131 Wn. App. 13, 19-20, 126 P.3d 45 (2006). Reviewing courts must overlay this APA standard of review with Civil Rule 56. *Verizon*, 164 Wn.2d at 916 (citing *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.*, 102 Wn. App. 1, 14, 979 P.2d 929 (1999); *Eastlake Comm. Council v. City of Seattle*, 64 Wn. App. 273 276, 823 P.2d 1132 (1992)).

An appellate court reviewing a PCHB summary judgment decision thus engages in the same inquiry as the PCHB, utilizing the CR 56

summary judgment standards. *Bowers v. Pollution Control Hearings Bd.*, 103 Wn. App. 587, 624, 13 P.3d 1076 (2000). The reviewing court must view the facts in the record and all reasonable inferences therefrom in the light most favorable to the nonmoving party before the PCHB – in this case, Skagit Hill Recycling. *Bowers*, 103 Wn. App. at 587 (citing *Atherton Condo. Apartment Owners Ass’n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990); *Clay v. Portik*, 84 Wn. App. 553, 557, 929 P.2d 1132 (1997)).

Summary judgment is appropriate only if the entirety of the pleadings and records before the PCHB show that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c). Where there is a genuine issue of material fact, summary judgment is improper. *R.D. Merrill Co. v. Pollution Control Hearings Bd.*, 137 Wn.2d 118, 143-44, 969 P.2d 458 (1999). Summary judgment may be granted only if, from all of the evidence, reasonable persons could reach but one conclusion. *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).

Furthermore, the moving party on the motion for summary judgment before the PCHB – in this case, Skagit County – bears the burden of demonstrating by uncontroverted facts that there is no genuine issue of material fact. The moving party is held to a strict standard. *Atherton Condo.*, 115 Wn.2d at 516. This is so even where the non-moving party has the burden of proof on the underlying claims.

Duckworth v. City of Bonney Lake, 91 Wn.2d 19, 22, 586 P.2d 860 (1978);
Martin v. Patent Scaffolding, 37 Wn. App. 37, 678 P.2d 362 (1984).

Skagit County incorrectly asserts that the PCHB's "findings" are based on a preponderance of the evidence, citing WAC 371-08-485(2). App. Brief at 23. This PCHB rule has no relevance here, as it relates only to findings of fact entered after an evidentiary hearing. Here, the PCHB did not conduct an evidentiary hearing and made no findings of fact. The PCHB's summary dismissal of Skagit Hill Recycling's appeal without a hearing on the merits constituted a decision not to engage in any fact finding. It is thus inappropriate to review the PCHB's summary judgment order under either the APA substantial evidence standard (RCW 34.05.570(3)(e)) or the "preponderance of the evidence" standard advocated by the County. *See Verizon, supra* at 915, 916 n.4.

B. This Case Does Not Involve Illegal Landfilling

At the outset, it is important to bear in mind that this case does not involve illegal landfilling. Skagit Hill Recycling has consistently denied that it landfilled any non-inert waste. CP 55; CP 399; AR 8, Dubbel Ex. 34 (App. Brief, Appendix A) at 5. The PCHB did not rule that Skagit Hill Recycling had violated its permit by landfilling any non-inert waste. *See* CP 39. Instead, the PCHB based its ruling on two provisions in the landfill permit (the "Fill Requirements" and the "Compliance Requirement"; CP 205, 208) that prohibited "acceptance" of non-inert waste. This case involves the applicability of those provisions to Skagit Hill Recycling's processing – but not landfilling – of non-inert waste for

materials recovery and recycling. Put another way, this case is about whether Skagit County is correctly interpreting and applying the solid waste regulations by insisting that Skagit Hill Recycling must obtain a permit for that activity. The PCHB ducked this issue entirely.

C. **The PCHB Erred in Ruling that the 2007 Inert Waste Landfill Permit Prohibited the Acceptance of Non-Inert Construction and Demolition Waste**

The PCHB's decision failed to address the contradiction inherent in its recognition that stockpiling of wood waste did not violate the 2007 landfill permit because it was permit-exempt, while ruling that processing of construction and demolition waste is prohibited, without regard to the applicability of permit exemptions. CP 38, 42-44. The record is replete with evidence that the County did not view the landfill permit as prohibiting the handling of permit-exempt wood waste (even though wood waste is clearly non-inert), and the County conceded in its summary judgment motion that permit-exempt processing of non-inert wood waste did not violate the landfill permit. CP 49, 51, 262; County's Motion at 11.

Moreover, despite the permit's prohibition against acceptance of non-inert waste, the County also consistently encouraged Skagit Hill Recycling to apply for permits for its materials recovery and recycling activities. CP 137-38; CP 220; Appendix 16 at 1, 5; Appendix 18 at 2; Appendix 19. The permit itself (in the Operation Plan) recognized the possibility of obtaining permits for materials recovery and recycling activities. CP 199. The PCHB recognized these facts. CP 43, 44.

In sum, the County's interpretation of the landfill permit was that non-inert wastes that qualified for the wood waste permit exemption under WAC 173-350-320(1)(b) could be handled on the site without violating the permit, and that non-inert wastes that were covered by a separate permit for recycling could be handled on the site without violating the landfill permit. The clear implication – indeed, the only inference that may be drawn from this evidence on summary judgment – is that the 2007 landfill permit did not absolutely prohibit acceptance of all non-inert waste, but only non-inert waste that was not covered by a separate permit or permit exemption. Nevertheless, the PCHB addressed the construction and demolition waste recycling as if the permit provisions categorically prohibited all non-inert waste, regardless of permit exemptions.

The County attempts to obscure this fundamental contradiction in the PCHB decision (and its own previous arguments) by contending now that the permit absolutely prohibits the acceptance of all non-inert wastes – even non-inert wastes covered by a permit exemption. App. Brief at 36. Simply calling the permit “clear and unambiguous” (App. Brief at 28-31) does not make it so. The County's position is completely at odds with its argument to the PCHB and with its own evidence. *See* CP 262; CP 49; CP 51. At a minimum, this evidence creates a genuine issue of material fact relating to whether the landfill permit's prohibitions on acceptance of non-inert waste applied to Skagit Hill Recycling's separate materials recovery and recycling. The PCHB's summary judgment order based on

acceptance of non-inert waste is internally contradictory and erroneous as a matter of law. It must be reversed pursuant to RCW 34.05.570(3)(d).

D. The PCHB Erred in Refusing to Consider Whether Skagit Hill Recycling's Materials Recovery and Recycling Activities Were Permit Exempt and in Ignoring the Issues of Fact Relating Thereto

1. The PCHB erred in refusing to address the applicability of the permit exemptions.

Under the APA, courts grant relief from agency orders in adjudicative proceedings where the agency has failed to decide all issues requiring resolution by the agency. RCW 34.05.570(3)(f); *Low Income Housing Institute v. City of Lakewood*, 119 Wn. App. 110, 77 P.3d 653 (2003); *see also Yakima Police Patrolmen's Ass'n v. City of Yakima*, 153 Wn. App. 541, 565, 222 P.3d 1217 (2009). Here, the PCHB was squarely presented with the question of whether Skagit Hill's processing of non-inert waste qualified for the permit exemptions for materials recovery facilities and recycling. According to the County, this was a "keystone issue" presented in its dispositive motion. County's Motion at 9. Despite this, the PCHB ruled that Skagit Hill Recycling's activity violated the landfill permit while simultaneously refusing to consider whether that activity was exempt from permitting requirements. CP 43-44. As a matter of law and fact, the legality of Skagit Hill Recycling's materials recovery and recycling activities must be addressed before it can be determined whether Skagit Hill Recycling violated its permit.

The centrality of the permit exemption issue is underscored by the Health Officer's decision. *See* CP 48-50. The parties' factual and legal

dispute over the permit exemptions centered on whether the construction and demolition waste was “source separated” within the meaning of the regulations. *Id.* See also CP 401-402. At the County’s urging, the PCHB framed the list of issues specifically requiring a determination of the applicability of permit exemptions. CP 404; Appendix 22 at 2-3.

Consistent with the identified issues in the case, the County’s Motion asserted that no permit exemptions applied to Skagit Hill Recycling’s processing of construction and demolition waste, and sought a ruling from the PCHB that this activity was not permit-exempt. County’s Motion at 11-12, 17. The parties’ pleadings all addressed the dispute over the applicability of the permit exemptions, focusing on “source separation” of recyclable materials. *See e.g.*, CP 342-348; CP 354-382; Appendix 23 at 4-6. By refusing to address this issue, the PCHB failed to decide all issues requiring resolution by it, requiring reversal pursuant to RCW 34.05.570(3)(f), and engaged in an unlawful decision-making process, requiring reversal pursuant to RCW 34.05.570(3)(c).¹⁴

2. The PCHB erred in ignoring disputed issues of fact and law regarding applicability of the permit exemptions.

Had the PCHB addressed the applicability of the materials recovery and recycling exemptions – as it was required to do – it would

¹⁴ It is not necessary for this Court to decide whether Skagit Hill Recycling’s materials recovery and recycling activities were permit-exempt. The issue before this Court is whether the PCHB erred by refusing to hold an evidentiary hearing to determine the applicability of the permit exemptions.

have recognized that genuine issues of material fact precluded summary judgment. The relevant permit exemptions are predicated on compliance with specific standards, including the amount of allowable “residual” material (i.e., material that cannot be recycled). *See* Part III.A.4, *supra*; Appendices 8, 9, 10. The applicability of the permit exemptions presents a mixed question of fact and law. The interpretation of what the regulations require is a question of law; whether the circumstances of Skagit Hill Recycling’s operation satisfy the regulatory standards is a mixed question of law and fact, and Skagit Hill Recycling presented factual evidence sufficient to defeat summary judgment. *Compare* CP 54-56 (description of materials processed by Skagit Hill Recycling for materials recovery, recycling, and reuse) *with* CP 48 (Health Officer’s application of “source separation” requirement); *see also* CP 379-382 (discussion of recycling in County’s solid waste management plan); CP 181 (Operation Plan providing for Skagit Hill Recycling employees to prescreen waste material at origination site). In contrast, the County offered only legal argument that the demolition waste accepted by Skagit Hill Recycling was not source separated; the County offered no evidence that the demolition debris accepted by Skagit Hill Recycling was mixed with garbage, industrial waste, or any other kind of solid waste.

The County’s view of “source separation” is wrong as a matter of law. App. Brief at 42-43; CP 48. The County confuses “separating” construction and demolition waste from other kinds of solid waste – which, obviously, is what happens at a demolition site which generates

only demolition waste – with “sorting” or “segregating” various materials for recycling, such as wood, plastics, metals, textiles, drywall, etc., which is an inherent part of materials recovery. Construction and demolition waste is a specific kind of solid waste. Demolition waste is thus “source separated” if it originates at a demolition site where it is the only kind of solid waste generated and is not mixed with other kinds of solid waste, such as garbage. Different recyclable materials may be mixed together and still be considered “source separated” under the solid waste laws and regulations. The sorting of distinct types of recyclable materials – wood, plastics, metals, drywall, etc. – from a load of demolition debris is not “source separation” but materials recovery. *See* Part III.A.4 *supra*.

The PCHB simply treated as irrelevant the material issues of fact relating to the applicability of the materials recovery and recycling exemptions. Pursuant to RCW 34.05.570(3)(c) and (d), this was error and constitutes grounds for reversal.

3. The County’s Comprehensive Solid Waste Management Plan identifies as recyclable material the materials processed by Skagit Hill Recycling.

The County argues that the recycling and materials recovery permit exemptions cannot apply to Skagit Hill Recycling because “construction and demolition waste” is not “identified” as recyclable in the County’s Comprehensive Solid Waste Management Plan. App. Brief at 40-41. To the contrary, the plan identifies the following as recyclable: metals, appliances, plastics, wood, drywall, concrete, asphalt, yard debris, tires, textiles, carpet, and “roofing and other C&D wastes.” CP 379-382.

The County confuses “designation” of materials for which recycling services must be provided (*see* RCW 70.95.090(7)) with the “identification” of recyclable material as that concept is used in the definition of “recyclable material” (*see* RCW 70.95.030(18); WAC 173-350-100). The “designation” list at CP 381 is a minimum, not a maximum; here, the County is attempting to convert a floor into a ceiling. It is obvious from the County’s plan that numerous other items besides those on the “designation” list are not only identified as recyclable materials but are in fact being recycled in Skagit County. *E.g.*, CP 379 (“Other materials recycled in Skagit County by private companies, . . . include textiles, . . . tires, . . .”); CP 382 (identifying “service gaps” in “recycling of specific materials, including . . . textiles, carpet, roofing and other C&D wastes, other plastics . . .”). The County’s narrow view of its plan should not be allowed to thwart state policy encouraging recycling and reuse of solid waste. *See* Part III.A.1 *supra*. As a matter of law, the materials being processed by Skagit Hill Recycling (*see* Appendix 24) are “recyclable materials” as defined in statute and regulation.

4. A materials recovery and recycling operation can share a site with an inert waste landfill.

The County asserts that “by definition” an inert waste landfill may not exist on the same site as a materials recovery and recycling facility processing non-inert waste. App. Brief at 38. The applicable statute and regulations compel the opposition conclusion: that a solid waste landfill and a materials recovery and recycling facility may exist on the same site.

The definition of “landfill” in RCW 70.95.030(13) and WAC 173-350-100 makes clear that a landfill may be a disposal facility “or part of a facility.” WAC 173-350-710(2)(e) specifically authorizes local health departments to “issue one permit for a location where multiple solid waste handling activities occur. . . .” In other words, different activities can be authorized by multiple permits, or they can be authorized by a single permit covering multiple activities. Consistent with this provision, the regulation regarding solid waste permit renewals provides that the health department may conduct a review of the “solid waste handling *facility or facilities* located on the site. . . .” (WAC 173-350-710(3)(a)). The County’s “by definition” argument simply ignores this statutory scheme, which allows an inert waste landfill facility and a separate materials recovery and recycling operation to be located on the same site. The County’s argument also ignores and is directly contrary to its position before the PCHB, where it insisted that Skagit Hill Recycling was required to obtain additional permits for its materials recovery and recycling operation at the same site as the landfill. *See* Parts III.B and IV.C *supra*; CP 137-38; CP 220; Appendix 16 at 1, 5; Appendix 18 at 2; Appendix 19.

E. The PCHB Erred in Granting Summary Judgment on the Basis of Skagit Hill Recycling’s Alleged Failure to Cover and Remove Existing Construction and Demolition Waste Piles from the Site by October 1, 2007

The PCHB erred by granting summary judgment predicated in part on its ruling that Skagit Hill Recycling had violated the “Compliance Requirement” in the 2007 permit directing it to cover the existing (i.e., as

of March 30, 2007) piles of construction and demolition wastes and remove such piles by October 1, 2007. CP 43.

1. Compliance Requirement to remove existing piles.

Although the PCHB based its decision in part on the landfill permit's requirement to remove existing construction and demolition waste by October 1, 2007, the summary judgment record includes a Health Department letter dated September 21, 2007 stating: "The requirement to remove the waste by October 1, 2007 is stayed pending the appeal determination." *See* Appendix 20. The County's letter referred to Skagit Hill's appeal of a Notice of Violation – an appeal still pending at the time of the PCHB's decision. CP 36-37. Thus, the County's own evidence controverts its assertion that Skagit Hill Recycling was required to remove the existing piles of waste by October 1, 2007.¹⁵

Even if the requirement to remove the existing piles had not been stayed, there are disputed issues of fact as to whether those existing piles actually remained on the site. The County asserts that "Mr. Waldal did

¹⁵ Not only did the PCHB not acknowledge this letter, it also failed to address the effect of the approved Operation Plan, including the March 30, 2007 amendment that stated that if "the proper permit is issued before the end of Oct. 2007 then this material will not be removed but recycled as our goal has always been." *Dubbel Aff.*, Ex. 24. According to the County, the compliance requirement "provided Skagit Hill Recycling with the opportunity to apply for and obtain the necessary permits to receive approval for other solid waste activities that the inert waste landfill permit did not cover." *Dubbel Aff.*, Ex. 31 at 2. It has been Skagit Hill's consistent position that no such permits were necessary because the waste handling activity at issue was exempt from permit requirements. If Skagit Hill was not required to obtain a permit for permit-exempt activity, the logical inference is that the County did not require, as a condition of the inert waste landfill permit, that Skagit Hill remove waste piles that were covered by a permit exemption.

not deny” that Skagit Hill Recycling had not removed the piles. App. Brief at 18¹⁶. That assertion is false. Scott Waldal’s declaration states that Skagit Hill Recycling was continuously engaged in processing materials for recycling. CP 54-56. Moreover, the County’s own evidence before the PCHB controverts its assertion that the existing piles had not been removed. In the July, 2007 inspection, the Health Department staff reported that the asphalt roofing waste was more intact than the previously-reported pile and “appears to be new roofing waste” – giving rise to the inference that the “previous roofing pile” that existed as of March 30, 2007 had been removed. CP 241. *See also* CP 263 (“[i]t appears that new C & D wastes have been brought in *and removed from* the site” in November 2007). Comparing the July 2007 inspection report with the November 2007 inspection report gives rise to the inference that the “waste pile of press board that is degrading” observed in July (CP 245) and which was not even mentioned in November (CP 253-263) had been removed. This evidence is sufficient to defeat summary judgment.

As a matter of law, Skagit Hill Recycling cannot be held to have violated a “Compliance Requirement” that had been stayed by the Health

¹⁶ The County makes a number of double-negative assertions that “Mr. Waldal did not deny. . .” various things. App. Brief at 18. Because the evidence at issue was presented to the PCHB on the County’s motion for summary judgment, it was the County – not Skagit Hill Recycling – that had the burden of presenting undisputed evidence establishing that there were no genuine issues of material fact. Mr. Waldal was under no obligation to “deny” anything in response to the County’s Motion and its jumble of contradictory evidence; the burden was on the County to show that it was entitled to summary judgment. *See* Part IV.A *supra*.

Department. At a minimum, there are genuine disputed issues of material fact as to whether the previously-existing waste piles remained on the site or had been recycled and removed.

2. Compliance Requirement to cover existing piles.

The PCHB also granted summary judgment on the basis of Skagit Hill Recycling's failure to cover existing piles of construction and demolition wastes, as provided in the permit's Compliance Requirement. CP 43. However, alleged violation of the "cover" requirement was not cited by the County as a basis for denying the landfill permit. CP 221; CP 46-52. Nor was this issue raised in the County's summary judgment motion. Although the County's Motion contained the bare assertion (without citation to any evidence) that "[t]here is no evidence that Skagit Hill Recycling ever covered the pre-existing construction and demolition wastes," (County's Motion at 7), the County did not argue that failure to cover the existing waste piles was a basis for finding a permit violation. *See* County's Motion at 13.

The PCHB is required to follow the summary judgment procedures set forth in CR 56. RCW 43.21B.330; WAC 371-08-300. Summary judgment may be granted as to only those issues which the moving party has clearly raised in its motion. *R.D. Merrill Co. v. PCHB*, 137 Wn.2d 118, 146-47, 969 P.2d 458 (1999); *White v. Kent Med. Ctr., Inc.*, 61 Wn. App. 163, 169, 810 P.2d 4 (1991) ("it is incumbent upon the moving party to determine what issues are susceptible to resolution by summary

judgment, and to clearly state in its opening papers those issues upon which summary judgment is sought”).

Skagit Hill Recycling had no opportunity to present evidence regarding the covering of the waste piles when it responded to the County’s Motion, and no opportunity to address the issue at oral argument because the PCHB did not even allow oral argument. “It is unfair to grant the extraordinary relief of summary judgment without allowing the nonmoving party the benefit of a clear opportunity to know on what grounds summary judgment is sought.” *R.D. Merrill*, 137 Wn.2d at 148. In relying upon the alleged “failure to cover” as a ground for its decision, the PCHB violated proper summary judgment procedure. Its decision should be reversed pursuant to RCW 34.05.570(3)(c) and (d).

Furthermore, by granting summary judgment on an issue not raised in the County’s motion, the PCHB deprived Skagit Hill Recycling of its constitutional right to due process. U.S. Const., Amendment XIV, Sec. 1; Wash. Const., Art. 1, Sec. 3. Notice and an opportunity to be heard are the fundamental elements of due process of law. *Soundgarden v. Eichenberry*, 123 Wn.2d 750, 768, 871 P.2d 1050 (1994). As the holder of a solid waste permit for an inert waste landfill issued under RCW chapter 70.95 and WAC chapter 173-350, Skagit Hill Recycling was aggrieved by the County’s denial of its permit renewal, and had a statutory right to administrative review by the PCHB of the County’s denial. RCW 70.95.210; WAC 173-350-710(6)(b)(iii). It also had a right to notice of the specific issues on which the County sought summary judgment. The

PCHB deprived Skagit Hill of its right to a hearing without due process of law, and must be reversed pursuant to RCW 34.05.570(3)(a).

F. The PCHB Erred in Granting Summary Judgment on the Basis of Skagit Hill Recycling's Acceptance of Tires Where the Tires Were Already On-Site Prior to Issuance of the 2007 Permit

The PCHB's summary judgment decision was based in part on the Board's ruling that tires had been brought onto the site in alleged violation of the 2007 inert waste landfill permit. CP 42. Because there was evidence before the PCHB that the tires were already on the site prior to the March 30, 2007 issuance of the landfill permit, there are disputed issues of material fact which preclude summary judgment regarding this alleged violation of the permit. Mr. Waldal's declaration states that the tires were accepted in 2006. CP 55. The County's own evidence supports his declaration, describing tires on the site before the 2007 permit was issued. CP 106; CP 114; Appendix 14 at 2. Inspection reports from July and November 2007, while noting the presence of tires, contain no indication that the number of tires had increased since the 2006 inspections. CP 239-251; CP 253-263. Drawing all inferences in favor of Skagit Hill Recycling, there is a disputed issue of material fact as to whether tires were brought to the site in violation of the March 30, 2007 permit. The PCHB's summary judgment must be reversed pursuant to RCW 34.05.570(3)(d).

G. The Procedural Issues Raised by the County Are Without Merit

1. Skagit Hill Recycling was prejudiced by the PCHB order.

The County now asserts that Skagit Hill Recycling has not been “substantially prejudiced” as required by RCW 34.05.570(1)(d). This is not really a “standing” argument but an argument that Skagit Hill Recycling is not entitled to relief. App. Brief at 25-28. This argument was not raised before the PCHB. *See* CP 404. Issues not raised before the PCHB may not be raised on appeal. RCW 34.05.554(1).

The County does not appear to seriously contend that denial of the landfill permit renewal has not caused prejudice to Skagit Hill Recycling. Rather, the County asserts – wrongly – that the remedy sought by Skagit Hill Recycling will not redress that prejudice. App. Brief at 26-28. In this appeal, Skagit Hill Recycling seeks affirmance of the superior court order reversing the PCHB’s summary judgment and remanding the matter to the PCHB – for an evidentiary hearing on Skagit Hill Recycling’s appeal and final resolution of the issues set forth in the PCHB prehearing order (CP 404). If Skagit Hill Recycling were to prevail, the permit would be renewed and it could go about its business – hardly a “Pyrrhic” victory.

The parties have a serious dispute over whether Skagit Hill Recycling’s materials recovery and recycling activities were permit-exempt, and whether those activities were prohibited by the 2007 landfill permit. The County has one interpretation of the permit exemptions; Skagit Hill has another interpretation. The County suggests a number of

alternative ways in which the parties could continue to battle over this issue (App. Brief at 26-28), but the fact is that the County chose to use the vehicle of the landfill permit renewal to assert its interpretation. *See* Appendix 21. Skagit Hill Recycling is entitled to have this dispute resolved by the PCHB now rather than in some hypothetical future appeal.

Finally, the County's assertion that the 2007 landfill permit has expired is incorrect as a matter of law. App. Brief at 26-27. Pursuant to RCW 70.95.210 and WAC 173-350-710(6)(c), the County's denial of the permit renewal is not effective until completion of this appeal process.

2. Skagit Hill Recycling was not required to "assign error" to the Health Officer's findings.

Skagit County asserts that "Skagit Hill did not assign error to the Health Officer's findings" and that they are verities on appeal. App. Brief at 33. The County cites two land use cases involving appeals from quasi-judicial hearing examiner decisions (*Anderson v. Pierce County*, 86 Wn.App. 290, 936 P.2d 432 (1997) (appeal on statutory writ of review); *City of Medina v. T-Mobile U.S.A., Inc.*, 123 Wn. App. 19, 95 P.3d 377 (2004) (appeal under LUPA)). In such cases the hearing examiner acts as the trier of fact; judicial review is of the examiner's decision, based on the record before the examiner. RCW 36.70C.120(1); RCW 7.16.070.

In this case, Skagit Hill Recycling had a statutory right to appeal the Health Officer's decision to the PCHB and to have its appeal heard in

accordance with the APA. RCW 70.95.210. Skagit Hill Recycling exercised that right. CP 395-402.¹⁷ The PCHB conducts its hearings *de novo*. WAC 371-08-485(1); *Port of Seattle v. PCHB*, 151 Wn.2d 568, 642, 90 P.3d 659 (2004). Under the APA, it is the PCHB's decision – not the Health Officer's – that is reviewed. RCW 34.05.449; RCW 34.05.452. This Court is reviewing the PCHB's decision to summarily dismiss Skagit Hill Recycling's appeal. This Court is not reviewing the Health Officer's determination, and Skagit Hill Recycling was not required to "assign error" to that determination.

V. CONCLUSION

For the foregoing reasons, the Thurston County Superior Court's Order Granting Appeal should be affirmed.

Respectfully submitted this 14th day of June, 2010.



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¹⁷ Skagit Hill Recycling effectively "assigned error" to the Health Officer's findings and conclusions by invoking its right to a *de novo* hearing by the PCHB. CP 395-402; CP 404 (legal issues before the PCHB). Skagit Hill Recycling's identification of the Health Officer's errors (CP 395-402) complied with the requirements for initiating a PCHB appeal. *See* WAC 371-08-340(4); former RCW 43.21B.310(4)(d) (recodified at RCW 43.21B.230(3)(d) effective July 1, 2010; Laws 2010, ch. 210, §§11, 13).

DECLARATION OF DELIVERY

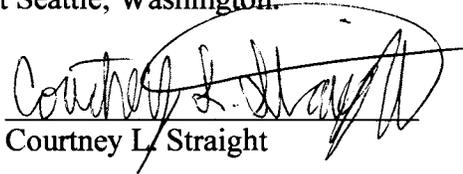
I, Courtney L. Straight, declare as follows:

I sent for delivery by: US Postal Service, first-class postage pre-paid, ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached, to the following party of record:

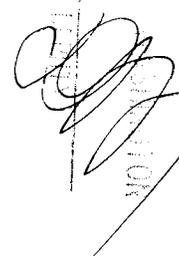
A.O. Denny, Civil Deputy
Skagit County Prosecuting Attorney
Courthouse Annex, 605 S. Third
Mount Vernon, WA 98273

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

Dated June 14, 2010, at Seattle, Washington.


Courtney L. Straight

4846-9360-9222, v. 1

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Appendix 1
RCW 70.95.010

RCW 70.95.010

Legislative finding — Priorities — Goals.

The legislature finds:

(1) Continuing technological changes in methods of manufacture, packaging, and marketing of consumer products, together with the economic and population growth of this state, the rising affluence of its citizens, and its expanding industrial activity have created new and ever-mounting problems involving disposal of garbage, refuse, and solid waste materials resulting from domestic, agricultural, and industrial activities.

(2) Traditional methods of disposing of solid wastes in this state are no longer adequate to meet the ever-increasing problem. Improper methods and practices of handling and disposal of solid wastes pollute our land, air and water resources, blight our countryside, adversely affect land values, and damage the overall quality of our environment.

(3) Considerations of natural resource limitations, energy shortages, economics and the environment make necessary the development and implementation of solid waste recovery and/or recycling plans and programs.

(4) Waste reduction must become a fundamental strategy of solid waste management. It is therefore necessary to change manufacturing and purchasing practices and waste generation behaviors to reduce the amount of waste that becomes a governmental responsibility.

(5) Source separation of waste must become a fundamental strategy of solid waste management. Collection and handling strategies should have, as an ultimate goal, the source separation of all materials with resource value or environmental hazard.

(6)(a) It should be the goal of every person and business to minimize their production of wastes and to separate recyclable or hazardous materials from mixed waste.

(b) It is the responsibility of state, county, and city governments

to provide for a waste management infrastructure to fully implement waste reduction and source separation strategies and to process and dispose of remaining wastes in a manner that is environmentally safe and economically sound. It is further the responsibility of state, county, and city governments to monitor the cost-effectiveness and environmental safety of combusting separated waste, processing mixed municipal solid waste, and recycling programs.

(c) It is the responsibility of county and city governments to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies.

(d) It is the responsibility of state government to ensure that local governments are providing adequate source reduction and separation opportunities and incentives to all, including persons in both rural and urban areas, and nonresidential waste generators such as commercial, industrial, and institutional entities, recognizing the need to provide flexibility to accommodate differing population densities, distances to and availability of recycling markets, and collection and disposal costs in each community; and to provide county and city governments with adequate technical resources to accomplish this responsibility.

(7) Environmental and economic considerations in solving the state's solid waste management problems requires strong consideration by local governments of regional solutions and intergovernmental cooperation.

(8) The following priorities for the collection, handling, and management of solid waste are necessary and should be followed in descending order as applicable:

(a) Waste reduction;

(b) Recycling, with source separation of recyclable materials as the preferred method;

(c) Energy recovery, incineration, or landfill of separated waste;

(d) Energy recovery, incineration, or landfill of mixed municipal solid wastes.

(9) It is the state's goal to achieve a fifty percent recycling rate by 2007.

(10) It is the state's goal that programs be established to eliminate residential or commercial yard debris in landfills by 2012 in those areas where alternatives to disposal are readily available and effective.

(11) Steps should be taken to make recycling at least as affordable and convenient to the ratepayer as mixed waste disposal.

(12) It is necessary to compile and maintain adequate data on the types and quantities of solid waste that are being generated and to monitor how the various types of solid waste are being managed.

(13) Vehicle batteries should be recycled and the disposal of vehicle batteries into landfills or incinerators should be discontinued.

(14) Excessive and nonrecyclable packaging of products should be avoided.

(15) Comprehensive education should be conducted throughout the state so that people are informed of the need to reduce, source separate, and recycle solid waste.

(16) All governmental entities in the state should set an example by implementing aggressive waste reduction and recycling programs at their workplaces and by purchasing products that are made from recycled materials and are recyclable.

(17) To ensure the safe and efficient operations of solid waste disposal facilities, it is necessary for operators and regulators of landfills and incinerators to receive training and certification.

(18) It is necessary to provide adequate funding to all levels of

government so that successful waste reduction and recycling programs can be implemented.

(19) The development of stable and expanding markets for recyclable materials is critical to the long-term success of the state's recycling goals. Market development must be encouraged on a state, regional, and national basis to maximize its effectiveness. The state shall assume primary responsibility for the development of a multifaceted market development program to carry out the purposes of this act.

(20) There is an imperative need to anticipate, plan for, and accomplish effective storage, control, recovery, and recycling of discarded tires and other problem wastes with the subsequent conservation of resources and energy.

[2002 c 299 § 3; 1989 c 431 § 1; 1985 c 345 § 1; 1984 c 123 § 1; 1975-'76 2nd ex.s. c 41 § 1; 1969 ex.s. c 134 § 1.]

Appendix 2
RCW 70.95.020

RCW 70.95.020

Purpose.

The purpose of this chapter is to establish a comprehensive statewide program for solid waste handling, and solid waste recovery and/or recycling which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of this state. To this end it is the purpose of this chapter:

(1) To assign primary responsibility for adequate solid waste handling to local government, reserving to the state, however, those functions necessary to assure effective programs throughout the state;

(2) To provide for adequate planning for solid waste handling by local government;

(3) To provide for the adoption and enforcement of basic minimum performance standards for solid waste handling, including that all sites where recyclable materials are generated and transported from shall provide a separate container for solid waste;

(4) To encourage the development and operation of waste recycling facilities needed to accomplish the management priority of waste recycling, to promote consistency in the requirements for such facilities throughout the state, and to ensure that recyclable materials diverted from the waste stream for recycling are routed to facilities in which recycling occurs;

(5) To provide technical and financial assistance to local governments in the planning, development, and conduct of solid waste handling programs;

(6) To encourage storage, proper disposal, and recycling of discarded vehicle tires and to stimulate private recycling programs throughout the state; and

(7) To encourage the development and operation of waste recycling facilities and activities needed to accomplish the management priority of waste recycling and to promote consistency in the permitting requirements for such facilities and activities

throughout the state.

It is the intent of the legislature that local governments be encouraged to use the expertise of private industry and to contract with private industry to the fullest extent possible to carry out solid waste recovery and/or recycling programs.

[2005 c 394 § 2. Prior: 1998 c 156 § 1; 1998 c 90 § 1; 1985 c 345 § 2; 1975-'76 2nd ex.s. c 41 § 2; 1969 ex.s. c 134 § 2.]

Appendix 3

WAC 173-350-100 (excerpts)

WAC 173-350-100

Definitions.

"Disposal" or **"deposition"** means the discharge, deposit, injection, dumping, leaking, or placing of any solid waste into or on any land or water.

"Garbage" means animal and vegetable waste resulting from the handling, storage, sale, preparation, cooking, and serving of foods.

"Inert waste" means solid wastes that meet the criteria for inert waste in WAC 173-350-990.

"Inert waste landfill" means a landfill that receives only inert wastes.

"Intermediate solid waste handling facility" means any intermediate use or processing site engaged in solid waste handling which is not the final site of disposal. This includes material recovery facilities, transfer stations, drop boxes, baling and compaction sites.

"Landfill" means a disposal facility or part of a facility at which solid waste is permanently placed in or on land including facilities that use solid waste as a component of fill.

"Material recovery facility" means any facility that collects, compacts, repackages, sorts, or processes for transport source separated solid waste for the purpose of recycling.

"Municipal solid waste (MSW)" means a subset of solid waste which includes unsegregated garbage, refuse and similar solid waste material discarded from residential, commercial, institutional and industrial sources and community activities, including residue after recyclables have been separated. Solid waste that has been segregated by source and characteristic may qualify for management as a non-MSW solid waste, at a facility designed and operated to address the waste's characteristics and potential environmental impacts. The term MSW does not include:

- Dangerous wastes other than wastes excluded from the requirements of chapter 173-303 WAC, Dangerous waste regulations, in WAC 173-303-071 such as household hazardous wastes;

- Any solid waste, including contaminated soil and debris, resulting from response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601), chapter 70.105D RCW, Hazardous waste cleanup -- Model Toxics Control Act, chapter 173-340 WAC, the Model Toxics Control Act cleanup regulation or a remedial action taken under those rules; nor

- Mixed or segregated recyclable material that has been source-separated from garbage, refuse and similar solid waste. The residual from source separated recyclables is MSW.

"Permit" means an authorization issued by the jurisdictional health department which allows a person to perform solid waste activities at a specific location and which includes specific conditions for such facility operations.

"Processing" means an operation to convert a material into a useful product or to prepare it for reuse, recycling, or disposal.

"Recyclable materials" means those solid wastes that are separated for recycling or reuse, including, but not limited to, papers, metals, and glass, that are identified as recyclable material pursuant to a local comprehensive solid waste plan.

"Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration. Recycling does not include collection, compacting, repackaging, and sorting for the purpose of transport.

"Solid waste" or **"wastes"** means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, contaminated soils and contaminated dredged material, and recyclable materials.

"Solid waste handling" means the management, storage, collection, transportation, treatment, use, processing or final disposal of solid

wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from such wastes or the conversion of the energy in such wastes to more useful forms or combinations thereof.

"Source separation" means the separation of different kinds of solid waste at the place where the waste originates.

"Treatment" means the physical, chemical, or biological processing of solid waste to make such solid wastes safer for storage or disposal, amenable for recycling or energy recovery, or reduced in volume.

"Wood derived fuel" means wood pieces or particles used as a fuel for energy recovery, which contain paint, bonding agents, or creosote. Wood derived fuel does not include wood pieces or particles coated with paint that contains lead or mercury, or wood treated with other chemical preservatives such as pentachlorophenol, copper naphthanate, or copper-chrome-arsenate.

"Wood waste" means solid waste consisting of wood pieces or particles generated as a by-product or waste from the manufacturing of wood products, construction, demolition, handling and storage of raw materials, trees and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark, pulp, hogged fuel, and log sort yard waste, but does not include wood pieces or particles containing paint, laminates, bonding agents or chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.

Appendix 4
RCW 70.95.190

RCW 70.95.190

**Permit for solid waste handling facility — Renewal — Appeal —
Validity of renewal — Review fees.**

(1) Every permit for an existing solid waste handling facility issued pursuant to RCW 70.95.180 shall be renewed at least every five years on a date established by the jurisdictional health department having jurisdiction of the site and as specified in the permit. If a permit is to be renewed for longer than one year, the local jurisdictional health department may hold a public hearing before making such a decision. Prior to renewing a permit, the health department shall conduct a review as it deems necessary to assure that the solid waste handling facility or facilities located on the site continues to meet minimum functional standards of the department, applicable local regulations, and are not in conflict with the approved solid waste management plan. A jurisdictional health department shall approve or disapprove a permit renewal within forty-five days of conducting its review. The department shall review and may appeal the renewal as set forth for the approval of permits in RCW 70.95.185.

(2) The jurisdictional board of health may establish reasonable fees for permits reviewed under this section. All permit fees collected by the health department shall be deposited in the treasury and to the account from which the health department's operating expenses are paid.

[1998 c 156 § 4; 1997 c 213 § 4; 1984 c 123 § 9; 1969 ex.s. c 134 § 19.]

Appendix 5

WAC 173-350-710(1), (2), (3)

WAC 173-350-710

(1) *Permit application process.*

(a) Any owner or operator required to obtain a permit shall apply for a permit from the jurisdictional health department. All permit application filings shall include two copies of the application. An application shall not be considered complete by the jurisdictional health department until the information required under WAC 173-350-715 has been submitted.

(b) The jurisdictional health department may establish reasonable fees for permits, permit modifications, and renewal of permits. All permit fees collected by the health department shall be deposited in the account from which the health department's operating expenses are paid.

(c) Once the jurisdictional health department determines that an application for a permit is complete, it shall:

(i) Refer one copy to the appropriate regional office of the department for review and comment;

(ii) Investigate every application to determine whether the facilities meet all applicable laws and regulations, conform to the approved comprehensive solid waste management plan and/or the approved hazardous waste management plan, and comply with all zoning requirements; and

(d) Once the department has received a complete application for review, it shall:

(i) Ensure that the proposed site or facility conforms with all applicable laws and regulations including the minimum functional standards for solid waste handling;

(ii) Ensure that the proposed site or facility conforms to the approved comprehensive solid waste management plan and/or the approved hazardous waste management plan; and

(iii) Recommend for or against the issuance of each permit by the jurisdictional health department within forty-five days of receipt of a complete application.

(e) Application procedures for statewide beneficial use

exemptions and permit deferrals are contained in WAC 173-350-200 and 173-350-710(8), respectively.

(2) Permit issuance.

(a) When the jurisdictional health department has evaluated all pertinent information, it may issue or deny a permit. Every solid waste permit application shall be approved or disapproved within ninety days after its receipt by the jurisdictional health department. Every permit issued by a jurisdictional health department shall contain specific requirements necessary for the proper operation of the permitted site or facility.

(b) Every permit issued shall be valid for a period not to exceed five years at the discretion of the jurisdictional health department.

(c) Jurisdictional health departments shall file all issued permits with the appropriate regional office of the department no more than seven days after the date of issuance.

(d) The department shall review the permit in accordance with RCW 70.95.185 and report its findings to the jurisdictional health department in writing within thirty days of permit issuance.

(e) The jurisdictional health department is authorized to issue one permit for a location where multiple solid waste handling activities occur, provided all activities meet the applicable requirements of this chapter.

(3) Permit renewals.

(a) Prior to renewing a permit, the health department shall conduct a review as it deems necessary to ensure that the solid waste handling facility or facilities located on the site continue to:

- (i) Meet the solid waste handling standards of the department;
- (ii) Comply with applicable local regulations; and
- (iii) Conform to the approved solid waste management plan and/or the approved hazardous waste management plan.

(b) A jurisdictional health department shall approve or deny a permit renewal within forty-five days of conducting its review.

(c) Every permit renewal shall be valid for a period not to exceed five years at the discretion of the jurisdictional health department.

(d) The department shall review the renewal in accordance with RCW 70.95.190 and report its findings to the jurisdictional health department in writing.

(e) The jurisdictional board of health may establish reasonable fees for permits reviewed under this section. All permit fees collected by the health department shall be deposited in the treasury and to the account from which the health department's operating expenses are paid.

Appendix 6
RCW 70.95.210

RCW 70.95.210**Hearing — Appeal — Denial, suspension — When effective.**

Whenever the jurisdictional health department denies a permit or suspends a permit for a solid waste disposal site, it shall, upon request of the applicant or holder of the permit, grant a hearing on such denial or suspension within thirty days after the request therefor is made. Notice of the hearing shall be given [to] all interested parties including the county or city having jurisdiction over the site and the department. Within thirty days after the hearing, the health officer shall notify the applicant or the holder of the permit in writing of his determination and the reasons therefor. Any party aggrieved by such determination may appeal to the pollution control hearings board by filing with the hearings board a notice of appeal within thirty days after receipt of notice of the determination of the health officer. The hearings board shall hold a hearing in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW. If the jurisdictional health department denies a permit renewal or suspends a permit for an operating waste recycling facility that receives waste from more than one city or county, and the applicant or holder of the permit requests a hearing or files an appeal under this section, the permit denial or suspension shall not be effective until the completion of the appeal process under this section, unless the jurisdictional health department declares that continued operation of the waste recycling facility poses a very probable threat to human health and the environment.

[1998 c 90 § 3; 1987 c 109 § 21; 1969 ex.s. c 134 § 21.]

Appendix 7

WAC 173-350-710(6)

WAC 173-350-710

(6) *Permit suspension and appeals.*

(a) Any permit for a solid waste handling facility shall be subject to suspension at any time the jurisdictional health department determines that the site or the solid waste handling facility is being operated in violation of this chapter.

(b) Whenever the jurisdictional health department denies a permit or suspends a permit for a solid waste handling facility, it shall:

(i) Upon request of the applicant or holder of the permit, grant a hearing on such denial or suspension within thirty days after the request;

(ii) Provide notice of the hearing to all interested parties including the county or city having jurisdiction over the site and the department; and

(iii) Within thirty days after the hearing, notify the applicant or the holder of the permit in writing of the determination and the reasons therefor[]. Any party aggrieved by such determination may appeal to the pollution control hearings board by filing with the board a notice of appeal within thirty days after receipt of notice of the determination of the health officer.

(c) If the jurisdictional health department denies a permit renewal or suspends a permit for an operating waste recycling facility that receives waste from more than one city or county, and the applicant or holder of the permit requests a hearing or files an appeal under this section, the permit denial or suspension shall not be effective until the completion of the appeal process under this section, unless the jurisdictional health department declares that continued operation of the waste recycling facility poses a very probable threat to human health and the environment.

(d) Procedures for appealing beneficial use exemption determinations are contained in WAC 173-350-200 (5)(g).

Appendix 8

WAC 173-350-310(1), (2)

WAC 173-350-310

Intermediate solid waste handling facilities.

(1) *Intermediate solid waste handling facilities - Applicability.* This section is applicable to any facility engaged in solid waste handling that provides intermediate storage and/or processing prior to transport for final disposal. This includes, but is not limited to, material recovery facilities, transfer stations, baling and compaction sites, and drop box facilities. This section is not applicable to:

- (a) Storage, treatment or recycling of solid waste in piles which are subject to WAC 173-350-320;
- (b) Storage or recycling of solid waste in surface impoundments which are subject to WAC 173-350-330;
- (c) Composting facilities subject to WAC 173-350-220;
- (d) Recycling which is subject to WAC 173-350-210;
- (e) Storage of waste tires which is subject to WAC 173-350-350;
- (f) Storage of moderate risk waste prior to recycling which is subject to WAC 173-350-360;
- (g) Energy recovery or incineration of solid waste which is subject to WAC 173-350-240; and
- (h) Drop boxes placed at the point of waste generation which is subject to WAC 173-350-300.

(2) *Materials recovery facilities - Permit exemption and notification.*

(a) In accordance with RCW 70.95.305, material recovery facilities managed in accordance with the terms and conditions of (b) of this subsection are exempt from solid waste handling permitting. An owner or operator that does not comply with the terms and conditions of (b) of this subsection is required to obtain a permit from the jurisdictional health department as an intermediate solid waste handling facility and shall

comply with the requirements of WAC 173-350-310. In addition, violations of the terms and conditions of (b) of this subsection may be subject to the penalty provisions of RCW 70.95.315.

(b) Material recovery facilities shall be managed according to the following terms and conditions to maintain their exempt status:

(i) Meet the performance standards of WAC 173-350-040;

(ii) Accept only source separated recyclable materials and dispose of an incidental and accidental residual not to exceed five percent of the total waste received, by weight per year, or ten percent by weight per load;

(iii) Allow inspections by the department or jurisdictional health department at reasonable times;

(iv) Notify the department and jurisdictional health department, thirty days prior to operation, or ninety days from the effective date of the rule for existing facilities, of the intent to operate a material recovery facility in accordance with this section. Notification shall be in writing, and shall include:

(A) Contact information for facility owner or operator;

(B) A general description of the facility; and

(C) A description of the types of recyclable materials managed at the facility;

(v) Prepare and submit an annual report to the department and the jurisdictional health department by April 1st on forms supplied by the department. The annual report shall detail facility activities during the previous calendar year and shall include the following information:

(A) Name and address of the facility;

(B) Calendar year covered by the report;

(C) Annual quantities and types of waste received, recycled and disposed, in tons, for purposes of determining progress towards achieving the goals of waste reduction, waste recycling, and treatment in accordance with RCW 70.95.010(4); and

(D) Any additional information required by written notification of the department.

Appendix 9

WAC 173-350-210

WAC 173-350-210

Recycling.

(1) *Recycling - Applicability.* These standards apply to recycling solid waste. These standards do not apply to:

(a) Storage, treatment or recycling of solid waste in piles which are subject to WAC 173-350-320;

(b) Storage or recycling of solid waste in surface impoundments which are subject to WAC 173-350-330;

(c) Composting facilities subject to WAC 173-350-220;

(d) Solid waste that is beneficially used on the land that is subject to WAC 173-350-230;

(e) Storage of waste tires prior to recycling which is subject to WAC 173-350-350;

(f) Storage of moderate risk waste prior to recycling which is subject to WAC 173-350-360;

(g) Energy recovery or incineration of solid waste which is subject to WAC 173-350-240;

(h) Intermediate solid waste handling facilities subject to WAC 173-350-310.

(2) *Recycling - Permit exemption and notification.*

(a) In accordance with RCW 70.95.305, recycling of solid waste is subject solely to the requirements of (b) of this subsection and is exempt from solid waste handling permitting. Any person engaged in recycling that does not comply with the terms and conditions of (b) of this subsection is required to obtain a permit from the jurisdictional health department in accordance with the requirements of WAC 173-350-490. In addition, violations of the terms and conditions of (b) of this subsection may be subject to the penalty provisions of RCW 70.95.315.

(b) Recycling shall be conducted in conformance with the following terms and conditions in order to maintain permit exempt status:

(i) Meet the performance standards of WAC 173-350-040;

(ii) Accept only source separated solid waste for the purpose of recycling;

(iii) Allow inspections by the department or jurisdictional health department at reasonable times;

(iv) Notify the department and jurisdictional health department, thirty days prior to operation, or ninety days from the effective date of the rule for existing recycling operations, of the intent to conduct recycling in accordance with this section. Notification shall be in writing, and shall include:

(A) Contact information for the person conducting the recycling activity;

(B) A general description of the recycling activity;

(C) A description of the types of solid waste being recycled; and

(D) An explanation of the recycling processes and methods;

(v) Prepare and submit an annual report to the department and the jurisdictional health department by April 1st on forms supplied by the department. The annual report shall detail recycling activities during the previous calendar year and shall include the following information:

(A) Name and address of the recycling operation;

(B) Calendar year covered by the report;

(C) Annual quantities and types of waste received, recycled and disposed, in tons, for purposes of determining progress towards achieving the goals of waste reduction, waste recycling, and treatment in accordance with RCW 70.95.010(4); and

(D) Any additional information required by written notification of the department.

Appendix 10
WAC 173-350-320(1)

WAC 173-350-320

Piles used for storage or treatment.

(1) Piles used for storage or treatment - Applicability.

(a) This section is applicable to solid waste stored or treated in piles where putrescible waste piles that do not contain municipal solid waste are in place for more than three weeks, nonputrescible waste and contaminated soils and dredged material piles are in place for more than three months and municipal solid waste piles are in place for more than three days. This section is not applicable to:

(i) Waste piles located at composting facilities subject to WAC 173-350-220 that are an integral part of the facility's operation;

(ii) Piles of nonputrescible waste stored in enclosed buildings provided that no liquids or liquid waste are added to the pile; and

(iii) Piles of waste tires or used tires subject to WAC 173-350-350.

(b) In accordance with RCW 70.95.305, storage piles of wood waste used for fuel or as a raw material, wood derived fuel, and agricultural wastes on farms, are subject solely to the requirements of (c)(i) through (iii) of this subsection and are exempt from solid waste handling permitting. An owner or operator that does not comply with the terms and conditions of (c)(i) through (iii) of this subsection is required to obtain a permit from the jurisdictional health department and shall comply with all other applicable requirements of this chapter. In addition, violations of the terms and conditions of (c)(i) through (iii) of this subsection may be subject to the penalty provisions of RCW 70.95.315.

(c) Owners and operators of all storage piles that are categorically exempt from solid waste handling permitting in accordance with (b) of this subsection shall:

(i) Ensure that at least fifty percent of the material stored in the pile is used within one year and all material is used within three years;

(ii) Comply with the performance standards of WAC 173-350-040; and

(iii) Allow department and jurisdictional health department representatives to inspect the waste pile at reasonable times for the purpose of determining compliance with this chapter.

(d) In accordance with RCW 70.95.305, the storage of inert waste in piles is subject solely to the requirements of (e)(i) through (vi) of this subsection and are exempt from solid waste handling permitting. The storage of inert waste in piles at a facility with a total volume of two hundred fifty cubic yards or less is subject solely to the requirements of (e)(iv) of this subsection. An owner or operator that does not comply with the terms and conditions of (e)(i) through (vi) of this subsection is required to obtain a permit from the jurisdictional health department and shall comply with all other applicable requirements of this chapter. In addition, violations of the terms and conditions of (e)(i) through (vi) may be subject to the penalty provisions of RCW 70.95.315.

(e) Owners and operators of all storage piles that are categorically exempt from solid waste handling permitting in accordance with (d) of this subsection shall:

(i) Implement and abide by a procedure that is capable of detecting and preventing noninert wastes from being accepted or mixed with inert waste;

(ii) Ensure that at least fifty percent of the material stored in the pile is used within one year and all the material is used within three years;

(iii) Control public access and unauthorized vehicular traffic to prevent illegal dumping of wastes;

(iv) Comply with the performance standards of WAC 173-350-040;

(v) Allow department and jurisdictional health department representatives to inspect the waste pile at reasonable times for the purpose of determining compliance with this chapter; and

(vi) Notify the department and jurisdictional health department thirty days prior to commencing operations of the intent to store inert waste in accordance with this section. Notification shall be in writing, and shall

include:

- (A) Contact information for the owner or operator;
- (B) A general description and location of the facility; and
- (C) A description of the inert waste handled at the facility.

Appendix 11

AR 8, Affidavit of Polly Dubbel, Ex. 1

12/31/2005

Effective Date



*"Always working for
a safer and healthier
Skagit County"*

12/31/2006

Expiration Date

SOLID WASTE PERMIT

Business Name DUKE'S HILL RESOURCE & RECYCLING CENTER
Located At 7735 STATE ROUTE 9
SEDRO WOOLLEY, WA 98284
Permit Type(s) INERT LANDFILL
Operated By DIAMOND, JOHN

The operator agrees to comply with all ordinances, rules and regulations that apply and is hereby granted permission to conduct the business specified.

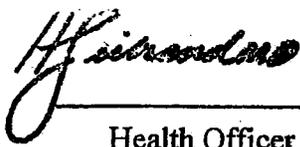
This permit may be suspended by the Health Officer or his or her authorized representative for violation by the holder of any of the ordinances or rules and regulations applicable.

The operator shall comply with the permit conditions and Health Department approved plan of operation for the facility.



Environmental Health Specialist

Exhibit 1



Health Officer



PETER BROWNING, DIRECTOR
HOWARD LEIBRAND, HEALTH OFFICER

700 SOUTH SECOND STREET #301, P.O. BOX 91071, MOUNT VERNON, WA 98273-1071, TEL (360) 336-9380

FAX (360) 336-9401

PERMIT PERIOD: January 1, 2006 through December 31, 2006

FACILITY TYPE: Inert Waste Landfill

FACILITY NAME: Duke's Hill Resource Center

FACILITY LOCATION: 7735 State Route 9
Sedro Woolley, WA 98284

FACILITY OPERATOR/
OWNER,
ADDRESS: John Diamond
7735 State Route 9
Sedro Woolley, WA 98284

OPERATOR/OWNER
PHONE NUMBER: (360) 856-2128

This permit is issued by the Skagit County Health Department as the jurisdictional Department of Health under WAC 173-350 and may be suspended or revoked, with the opportunity for appeal, upon violation of any rules or regulations applicable hereto. This permit is issued to the owner/operator for the specific facility indicated above and is not transferable without written notice to the Health Department and its concurrence based on the agreement of the new owner to comply with the permit conditions. The permit must be renewed annually as provided in WAC 173-350.

The Operational Plan for the Duke's Hill Resource Center (September, 1993) is hereby incorporated by reference as part of the terms and conditions of this permit. Any deviations or changes must be made in writing to the Health Department for review and approval prior to implementation or noted upon the application for renewal as provided in WAC 173-350.

Part I GENERAL PERMIT CONDITIONS

- A. All conditions of this permit shall be binding upon the facility owner/operator (permittee), and the permittee shall be responsible for all contractors and agents of the permittee, for the term of the permit and the post closure period.
- B. The permittee shall notify the Skagit County Health Department - Environmental Health Division in advance and in writing, of any proposed alterations or additions to the permitted facility or changes planned in solid waste handling practices or operations.
- C. ~~Facility operations and maintenance shall be conducted in strict compliance with Chapter 173-350 WAC, as amended, Solid Waste Regulations, other applicable federal, state, and local regulations, and the conditions of this permit. In the event of conflict between state and local regulations, the more stringent requirement shall apply.~~
- D. The permittee shall allow any duly authorized officer, employee, or representative of the Health Officer of Skagit County to inspect, at any reasonable time, the site, facilities, structures, records, and equipment required or regulated under the terms and conditions of this permit. The facility owner/operator shall bear the analysis cost of any samples the Health Department deems necessary to assure compliance with the permit conditions.
- E. The site shall be operated in a manner to prevent the contamination of groundwater, surface water, air, land, and adjacent properties.
- F. The Health Department shall be notified immediately of any spills or discharges or incidents of non-compliance at the facility.
- G. All means of public access, unauthorized entry and/or disposal at the site shall be controlled and restricted, by means of a lockable gate, barrier, or other means approved by the Health Department as outlined in the approved Operations Plan for the facility.
- H. This permit is subject to suspension if the Health Department finds that the facility is being operated in violation of RCW 70.95 or WAC 173-350 subject to the appeals process outlined therein.

[The Health Department will not suspend a permit for minor violations such as failure to adequately control dust on site or submit a report the day it is due. A suspension of the permit would occur in the case of major or repeated violations of the permit conditions such as a recurrent significant violation where the permittee was unwilling or failed to act in good faith to correct the violation or adhere to a compliance schedule.]

- I. This permit, or a copy thereof, along with the Operations Plan shall be displayed where operating personnel can readily refer to the Plan.
- J. Terms pertaining to solid waste used in this permit shall be defined per 173-350 WAC and the Skagit County Solid Waste Code.

Part II SPECIFIC PERMIT CONDITIONS

- A. Reporting requirements. Reports shall be forwarded directly to Skagit County Health Department, Environmental Health Division, 700 South Second Street, Mount Vernon, WA 98273-1071.
 1. ~~The permittee shall prepare and submit the annual report to the Skagit County Health Department by March 1 of each year. The annual report shall cover facility activities during the previous calendar year and must include, at a minimum, the following information:~~
 - a. Name, address/location of the facility and the owner/operator;
 - b. Calendar year covered by the report;
 - c. A summary of operation and maintenance activities as specified in the permit and operations plan including annual quantity, in tons, or volume, in cubic yards, and estimated in-place density in pounds per cubic yard of solid waste handled, by type of solid waste. Identify when the 73 - foot and 78 - foot elevations are reached;
 - d. A summary of all water monitoring with respect to background and/or pre-application as described in the Operational Plan and this permit. All exceedances of federal or state surface water standards and statistically significant changes in parameter analyses shall be reported and explained to the extent possible, including what actions the permittee proposes to undertake to correct the exceedances. The summary shall also contain graphs, charts and statistical analyses to further clarify the meaning of the data.
 2. The permittee shall prepare and submit environmental monitoring reports as specified under the "Minimum Environmental Monitoring Requirements" contained in Part III, D. of this permit.

B. Minimum Standards for Maintenance

The permittee shall provide all activities necessary to allow for continued facility maintenance. These activities include, but are not limited to:

1. Prevention and control of dust on site;
2. Maintenance of facility systems, access roads, gates, equipment, and all facility structures and detention facilities.
3. As filling occurs, contours must be maintained to direct storm water flow to the sedimentation/detention pond. The pond must be maintained throughout site operation.

C. Minimum Standards for Performance

The permittee shall provide all activities necessary to allow for the continued monitoring of the facility to protect human health and the environment.

1. Groundwater The facility shall not contaminate the groundwater underlying or beyond the facility. The facility shall not cause exceedance of the standards contained in 173-200 WAC (Water Quality Standards for Ground Waters of the State of Washington).
2. Surface Water The facility shall not contaminate surface waters at or adjacent to the facility site. The facility shall not cause exceedance of the standards contained in 173-201A WAC (Water Quality Standards for Surface Waters of the State of Washington).
3. Fill Requirements
 - a. The facility shall limit the amount of asphaltic concrete to a maximum of 5% of the fill in the following areas:
 - (i). The area within 100 feet of the perimeter of the sedimentation pond to an elevation of 78 feet.
 - (ii). The remaining area beyond the 100 foot mark to an elevation of 73 feet.
 - b. The 78 and 73 foot elevations shall be adequately marked at the site.
 - c. Only concrete, asphalt, brick, masonry, clean soils and gravel, clay products and other materials determined by Department of Ecology to be inert per published Technical Information Memorandums may be landfilled. The permittee may request for review that other inert waste be added to the list of acceptable inert wastes for disposal.

D. Minimum Environmental Monitoring Requirements

1. Monitoring and testing shall be done pursuant to standard accepted protocols. Date of sample, sample location, sampling procedure, manifesting, analytical testing methodology, and appropriate quality assurance/quality control shall be documented and submitted with laboratory analytical results and statistical analyses to the Health Department.

All monitoring results and statistical analyses shall be submitted 60 days after the sampling event. If the permittee determines that there is a statistically significant increase for parameters or constituents, the Health Department must be notified in writing within 7 days of receipt of the sampling data. The Health Department may require additional sampling and/or implementation of corrective action.

E. Minimum Permit Requirements for Other Agencies

The permittee shall obtain, renew and comply with all applicable approvals or permits required by other agencies or departments. As outlined in the original 1993 inert landfill permit issued by Skagit County Health Department, the permittee shall comply with:

1. The Department of Fisheries Hydraulics Project Approval, and;
2. Obtain, maintain and provide the Health Department with a current copy of the permittee's General Stormwater Permit from the Department of Ecology.

F. Operator Certification Requirement

As required by WAC 173-300-060, when the inert waste landfill becomes operational, an on-site certified landfill operator shall be in responsible charge during all hours of operation when accepting waste, and during closure of the facility.

Part III PERMIT RENEWAL CONDITIONS

The permittee shall submit an application for renewal of the solid waste permit by November 1 of each year, commencing 1994. The Health Department will review and approve the renewal application as outlined in WAC 173-304. The permit period will be from January 1 to December 31 of each year.

If the permittee is submitting an application for an expanded facility or significant expansion of the Operations Plan, the permit may be reissued under the existing permit conditions until the proposed changes are evaluated by Skagit County

Duke Hill Inert Landfill Permit
Page 6

Health Department, at which time the Health Department would modify the conditions of the permit. Failure of the Health Department to reissue the permit under existing permit conditions by January 1 will not result in the facility operating out of compliance or in suspension of the permit.

Appendix 12

AR 8, Affidavit of Polly Dubbel, Ex. 4

9/22/2006

Effective Date



12/31/2006

Expiration Date

*Always working for
a safer and healthier
Skagit County*

SOLID WASTE PERMIT

Business Name SKAGIT HILL RECYCLING, INC.
Located At 7705 STATE ROUTE 9
SEDRO-WOOLLEY, WA 98284
Permit Type(s) INERT LANDFILL
Operated By WALDAL, SCOTT
JOHNSON, RON E

The operator agrees to comply with all ordinances, rules and regulations that apply and is hereby granted permission to conduct the business specified.

This permit shall remain the property of the Health Department and may be suspended by the Health Officer or his or her authorized representative for violation by the holder of any of the ordinances or rules and regulations applicable.

The operator shall comply with the permit conditions and Public Health Department approval plan of operation for the facility.

Hand delivered
~~MAILED~~
SEP 26 2006

K. Britz Pfaff-Dunton
Environmental Health Specialist

H. [Signature]
Health Officer

Exhibit 4

PERMIT PERIOD: September 22, 2006 through December 31, 2006

FACILITY TYPE: ~~Inert Waste Landfill~~

FACILITY NAME: Skagit Hill Recycling, Inc.
(formerly Duke's Hill Resource Center)

FACILITY LOCATION: 7705 State Route 9
Sedro Woolley, WA 98284

FACILITY OPERATOR/
OWNER,
ADDRESS: Scott Waldal, owner
Ron Johnson, operator
7705 State Route 9
Sedro Woolley, WA 98284

OPERATOR/OWNER
PHONE NUMBER: (360) 856-4833 (site)

This permit is issued by the Skagit County Health Department as the jurisdictional Department of Health under WAC 173-350 and may be suspended or revoked, with the opportunity for appeal, upon violation of any rules or regulations applicable hereto. This permit is issued to the owner/operator for the specific facility indicated above and is not transferable without written notice to the Health Department and its concurrence based on the agreement of the new owner to comply with the permit conditions. The permit must be renewed annually as provided in WAC 173-350.

The Operational Plan for the Duke's Hill Resource Center (September, 1993) is hereby incorporated by reference as part of the terms and conditions of this permit. Any deviations or changes must be made in writing to the Health Department for review and approval prior to implementation or noted upon the application for renewal as provided in WAC 173-350.

Part I GENERAL PERMIT CONDITIONS

- A. All conditions of this permit shall be binding upon the facility owner/operator (permittee), and the permittee shall be responsible for all contractors and agents of the permittee, for the term of the permit and the post closure period.
- B. The permittee shall notify the Skagit County Health Department - Environmental Health Division in advance and in writing, of any proposed alterations or additions to the permitted facility or changes planned in solid waste handling practices or operations.
- C. Facility operations and maintenance shall be conducted in strict compliance with Chapter 173-350 WAC, as amended, Solid Waste Regulations, other applicable federal, state, and local regulations, and the conditions of this permit. In the event of conflict between state and local regulations, the more stringent requirement shall apply.
- D. The permittee shall allow any duly authorized officer, employee, or representative of the Health Officer of Skagit County to inspect, at any reasonable time, the site, facilities, structures, records, and equipment required or regulated under the terms and conditions of this permit. The facility owner/operator shall bear the analysis cost of any samples the Health Department deems necessary to assure compliance with the permit conditions.
- E. The site shall be operated in a manner to prevent the contamination of groundwater, surface water, air, land, and adjacent properties.
- F. The Health Department shall be notified immediately of any spills or discharges or incidents of non-compliance at the facility.
- G. All means of public access, unauthorized entry and/or disposal at the site shall be controlled and restricted, by means of a lockable gate, barrier, or other means approved by the Health Department as outlined in the approved Operations Plan for the facility.
- H. This permit is subject to suspension if the Health Department finds that the facility is being operated in violation of RCW 70.95 or WAC 173-350 subject to the appeals process outlined therein.

[The Health Department will not suspend a permit for minor violations such as failure to adequately control dust on site or submit a report the day it is due. A suspension of the permit would occur in the case of major or repeated violations of the permit conditions such as a recurrent significant violation where the permittee was unwilling or failed to act in good faith to correct the violation or adhere to a compliance schedule.]

- I. This permit, or a copy thereof, along with the Operations Plan shall be displayed where operating personnel can readily refer to the Plan.
- J. Terms pertaining to solid waste used in this permit shall be defined per 173-350 WAC and the Skagit County Solid Waste Code.

Part II SPECIFIC PERMIT CONDITIONS

- A. Reporting requirements. Reports shall be forwarded directly to Skagit County Health Department, Environmental Health Division, 700 South Second Street, Mount Vernon, WA 98273-1071.
 - 1. The permittee shall prepare and submit the annual report to the Skagit County Health Department by March 1 of each year. The annual report shall cover facility activities during the previous calendar year and must include, at a minimum, the following information:
 - a. Name, address/location of the facility and the owner/operator;
 - b. Calendar year covered by the report;
 - c. A summary of operation and maintenance activities as specified in the permit and operations plan including annual quantity, in tons, or volume, in cubic yards, and estimated in-place density in pounds per cubic yard of solid waste handled, by type of solid waste. Identify when the 73 - foot and 78 - foot elevations are reached;
 - d. A summary of all water monitoring with respect to background and/or pre-application as described in the Operational Plan and this permit. All exceedances of federal or state surface water standards and statistically significant changes in parameter analyses shall be reported and explained to the extent possible, including what actions the permittee proposes to undertake to correct the exceedances. The summary shall also contain graphs, charts and statistical analyses to further clarify the meaning of the data.
 - 2. The permittee shall prepare and submit environmental monitoring reports as specified under the "Minimum Environmental Monitoring Requirements" contained in Part III, D. of this permit.

B. Minimum Standards for Maintenance

The permittee shall provide all activities necessary to allow for continued facility maintenance. These activities include, but are not limited to:

1. Prevention and control of dust on site;
2. Maintenance of facility systems, access roads, gates, equipment, and all facility structures and detention facilities.
3. As filling occurs, contours must be maintained to direct storm water flow to the sedimentation/detention pond. The pond must be maintained throughout site operation.

C. Minimum Standards for Performance

The permittee shall provide all activities necessary to allow for the continued monitoring of the facility to protect human health and the environment.

1. Groundwater The facility shall not contaminate the groundwater underlying or beyond the facility. The facility shall not cause exceedance of the standards contained in 173-200 WAC (Water Quality Standards for Ground Waters of the State of Washington).
2. Surface Water The facility shall not contaminate surface waters at or adjacent to the facility site. The facility shall not cause exceedance of the standards contained in 173-201A WAC (Water Quality Standards for Surface Waters of the State of Washington).
3. Fill Requirements
 - a. The facility shall limit the amount of asphaltic concrete to a maximum of 5% of the fill in the following areas:
 - (i). The area within 100 feet of the perimeter of the sedimentation pond to an elevation of 78 feet.
 - (ii). The remaining area beyond the 100 foot mark to an elevation of 73 feet.
 - b. The 78 and 73 foot elevations shall be adequately marked at the site.
 - c. Only concrete, asphalt, brick, masonry, clean soils and gravel, clay products and other materials determined by Department of Ecology to be inert per published Technical Information Memorandums may be landfilled. The permittee may request for review that other inert waste be added to the list of acceptable inert wastes for disposal.

D. Minimum Environmental Monitoring Requirements

1. Monitoring and testing shall be done pursuant to standard accepted protocols. Date of sample, sample location, sampling procedure, manifesting, analytical testing methodology, and appropriate quality assurance/quality control shall be documented and submitted with laboratory analytical results and statistical analyses to the Health Department.

All monitoring results and statistical analyses shall be submitted 60 days after the sampling event. If the permittee determines that there is a statistically significant increase for parameters or constituents, the Health Department must be notified in writing within 7 days of receipt of the sampling data. The Health Department may require additional sampling and/or implementation of corrective action.

E. Minimum Permit Requirements for Other Agencies

The permittee shall obtain, renew and comply with all applicable approvals or permits required by other agencies or departments. As outlined in the original 1993 inert landfill permit issued by Skagit County Health Department, the permittee shall comply with:

1. The Department of Fisheries Hydraulics Project Approval, and;
2. Obtain, maintain and provide the Health Department with a current copy of the permittee's General Stormwater Permit from the Department of Ecology.

F. Operator Certification Requirement

As required by WAC 173-300-060, when the inert waste landfill becomes operational, an on-site certified landfill operator shall be in responsible charge during all hours of operation when accepting waste, and during closure of the facility.

Part III PERMIT RENEWAL CONDITIONS

The permittee shall submit an application for renewal of the solid waste permit by November 1 of each year, commencing 1994. The Health Department will review and approve the renewal application as outlined in WAC 173-350. The permit period will be from January 1 to December 31 of each year.

If the permittee is submitting an application for an expanded facility or significant expansion of the Operations Plan, the permit may be reissued under the existing permit conditions until the proposed changes are evaluated by Skagit County

Skagit Hill Inert Landfill Permit
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Health Department, at which time the Health Department would modify the conditions of the permit. Failure of the Health Department to reissue the permit under existing permit conditions by January 1 will not result in the facility operating out of compliance or in suspension of the permit.

Appendix 13

AR 8, Affidavit of Polly Dubbel, Ex. 11



"Always working for a safer and healthier Skagit County"

PETER BROWNING, DIRECTOR
HOWARD LEIBRAND, M.D., HEALTH OFFICER

700 South 2nd Street Room #301, PO Box 91071, Mount Vernon, WA 98273
Telephone (360) 336-9380, Toll free 877-336-9380; Fax (360) 336-9401
Internet: www.skagitcounty.net/health

RECEIVED
JAN 29 2007
SKAGIT COUNTY
PUBLIC HEALTH DEPT

dm

REQUEST FOR HEARING BEFORE HEALTH OFFICER TO APPEAL NOTICE, FINE, OR ORDER FOR VIOLATION OF SKAGIT COUNTY CODE 12.16

Appellant Name: Skagit Hill Recycling, Inc. Phone: _____

Mailing Address: PO Box 818, Sedro Woolley, WA 98284

Appellant Representative Name: Scott Waldal Phone: 360-856-4833

Mailing Address: PO Box 818, Sedro Woolley, WA 98284

Property referenced in enforcement action (Parcel Number and Address):

7705 State Route 9, Sedro Woolley, WA 98284, Parcel #P101465

Violation referenced in enforcement action:

SCC 12.16.080, 12.16.240, 12.16.300, 12.16.310 - Required Revised Plan of Operation, copies of the facility operator inspection reports, water monitoring results and records of waste volumes and types received at facility, submit disposal receipts of the construction and demolition waste and asphalt roofing.

Date enforcement action issued by Health Department: 1/19/07

Reason(s) for request for hearing - please name specific points of appeal:

Facility is currently stockpiling materials and is not required to remove any construction or demolition waste.

Pursuant to WAC 173-350-320(b), storage of piles of wood waste used for fuel or as a raw material, wood derived Fuel are required to be ensured that at least fifty percent of the material stored in the pile is used within one year and that all of the material is used within three years. Construction and demolition materials are clearly within the definitions of "wood waste" and "wood derived fuel" under the WAC; therefore, Skagit Hill Recycling, Inc. is not required to dispose of it as stated by the Health Inspector. Skagit Hill Recycling, Inc. has been in operation since approximately July of 2006 and, under WAC 173-350-320(b) must use 50% of the material stored in the pile within one year (which has not yet passed) and/or the entire amount in three years (which again has not yet passed). Skagit Hill Recycling, Inc.'s permit cannot be revoked or cancelled without a major violation. All other requested information is being provided by the requisite Feb. 1, 2007 deadline.

(attach additional sheets as necessary)

Signature of appellant: [Signature] Date: 01/29/07

Please submit original signed form to Skagit County Health Department within 10 days of receipt of enforcement action.

Exhibit //

ORIGINAL

Appendix 14

AR 8, Affidavit of Polly Dubbel, Ex. 12



TO: Howard Leibrand, Health Officer

FROM: Britt Pfaff-Dunton, Environmental Health Specialist

SUBJECT: Skagit Hill Recycling, Inc.
Staff Report for Hearing to Appeal Notice of Violation

DATE: February 7, 2007

Background:

Skagit Hill Recycling, Inc. and Avis LLC purchased the business and property known as Dukes Hill Recycling in July 2006. In August, 2006, Skagit Hill Recycling, Inc. requested to transfer the existing 2006 inert waste landfill permit from Dukes Hill Recycling to Skagit Hill Recycling, Inc.. In September 2006, Health transferred the inert waste landfill permit to Scott Waldal and Ron Johnson of Skagit Hill Recycling, Inc. The permit required in part that they comply with the approved plan of operation which includes routine water monitoring and record keeping. The site was permitted to take only inert waste (concrete, asphalt, brick and masonry, ceramic materials, glass, stainless steel and aluminum).

A solid waste permit renewal application for 2007 was sent October 10, 2006. An inspection of the above-referenced property was conducted October 13, 2006. Follow up correspondence from Health dated November 20, 2006 (attached) acknowledged receipt of solid waste permit renewal application on November 14, 2006, clarified that the facility was only permitted for inert waste landfill and requested a revised plan of operation by December 20, 2006 as part of the permit renewal process for 2007. Correspondence also requested copies of disposal receipts for the demolition and asphalt shingle waste as agreed to during October 13, 2006 meeting.

The 2007 renewal application could not be processed since the requested information was not provided by Skagit Hill Recycling. The 2006 inert waste landfill permit expired on December 31, 2006. The 2007 inert waste landfill permit has not been issued and a notice of violation was hand delivered to the site on January 19, 2007 (attached).

Points of Appeal:

1. Skagit Hill Recycling claims that construction and demolition waste materials are within the definitions of "wood waste" and "wood derived fuel" and therefore should be eligible for exempt piles storage criteria according to WAC 173-350-320(b) and (c).

Response "'**wood waste**' means solid waste consisting of wood pieces or particles generated as a by-product or waste from the manufacturing of wood products, construction, demolition, handling and storage of raw materials, trees and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark, pulp, hogged fuel, and log sort yard waste, but does not include wood pieces or particles containing paint, laminates, bonding agents or chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate." (WAC 173-350-100).

The construction and demolition wastes at Skagit Hill Recycling include, but are not limited to: pieces of dimensional lumber as well as painted and laminated lumber such as plywood and press board, insulation, plastics, metal, electrical wiring, foam and the asphaltic roofing wastes. In addition there are a few tires mixed in with the construction and demolition waste and additional tires piled next to the C&D piles. The piles of construction, demolition and roofing waste, and tires do not meet the definition of "wood waste" nor "wood derived fuel" per WAC 173-350. Since the wastes do not meet the definition of "wood waste" or "wood derived fuel", WAC 173-350-320(b) and (c) are not applicable.

2. Skagit Hill Recycling, Inc.'s claims that the inert solid waste permit cannot be revoked or cancelled without a major violation.

Response. The inert waste landfill permit was not renewed for 2007 because Skagit Hill Recycling, Inc. failed to provide the information requested by Skagit Health and failed to adhere to the approved plan of operation. The facility was receiving wastes that were not allowed as part of the permit. The operators did not have knowledge of the requirements in the approved plan of operation and therefore were not performing the tasks required such as water monitoring. When the permit was transferred to Skagit Hill Recycling, Inc., the operators assumed responsibility for complying with the permit. The operators were notified repeatedly that they could review the facility files and get copies of any information that they had not received from the former facility owner.

As part of the abatement schedule, Skagit Health required the submittal of information that will allow Health to continue the review of the renewal request. Once the Health Department has received the necessary information, the facility has met the requirements of the abatement schedule, and the facility meets the applicable solid waste handling standards of the Health Department then the Health Department will be able to issue a 2007 inert waste landfill permit.

Chronology:

- July 2006: Skagit Hill Recycling, Inc. and Avis LLC purchases business from Dukes Hill Recycling.
- August 2006: Skagit Hill Recycling, Inc. requests transfer of existing 2006 inert waste landfill permit.
- September 22, 2006: Health issued the revised 2006 inert waste landfill permit to Skagit Hill Recycling, Inc.
- October 10, 2006 Health mailed solid waste permit renewal application for 2007.
- October 13, 2006 Health and Ecology conducted inspection of facility.
- November 14, 2006 Health received solid waste permit renewal application from Skagit Hill Recycling, Inc.
- November 20, 2006 Health correspondence requesting additional information from Skagit Hill Recycling, Inc. to clarify their application, including a revised plan of operation, and requested disposal receipts for the construction, demolition and roofing debris.
- December 31, 2006 2006 inert waste landfill permit expired.
- January 19, 2007 Notice of Violation hand delivered to Skagit Hill Recycling, Inc.

Appendix 15

AR 8, Affidavit of Polly Dubbel, Ex. 14

Britt Pfaff-Dunton

From: Christiansen, Peter (ECY) [PCHR461@ECY.WA.GOV]
Sent: Monday, February 12, 2007 7:19 AM
To: Britt Pfaff-Dunton
Cc: Maurer, Dawn (ECY)
Subject: Skagit Hill Recycling

The situation you describe at Skagit Hill Recycling looks to be a violation of state rule (WAC 173-350, Solid Waste Handling Standards) on several counts. The material that has been accepted is not well defined, but it appears that is a mixed construction and demolition debris, not a source separated clean wood. That is key in our evaluation of the situation.

The Washington Administrative Code has clear definitions of wood waste and wood derived fuel. Per WAC 173-350-100:

"Wood waste" means solid waste consisting of wood pieces or particles generated as a by-product or waste from the manufacturing of wood products, construction, demolition, handling and storage of raw materials, trees and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark, pulp, hogged fuel, and log sort yard waste, but does not include wood pieces or particles containing paint, laminates, bonding agents or chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.

"Wood derived fuel" means wood pieces or particles used as a fuel for energy recovery, which contain paint, bonding agents, or creosote. Wood derived fuel does not include wood pieces or particles coated with paint that contains lead or mercury, or wood treated with other chemical preservatives such as pentachlorophenol, copper naphthanate, or copper-chrome-arsenate.

Neither of these definitions include other materials such as asphaltic roofing shingles, insulation, drywall, plasterboard, carpeting, or other materials regularly encountered in demolition debris. Therefore, mixed piles of waste coming from construction or demolition projects are not categorically exempt. While it may be true that the material deposited on site is being sorted and eventually most of this material may become a wood waste or a wood derived fuel as defined, there is no exclusion to permitting when a mixed waste is deposited at the site. The material initially is a solid waste and must be treated and permitted as such.

If the material is separated or if the only material taken in is wood, then there are allowances for exemption under the pile standards. Per WAC 173-350-320(1)(b):

In accordance with RCW 70.95.305, storage piles of wood waste used for fuel or as a raw material, wood derived fuel, and agricultural wastes on farms, are subject solely to the requirements of (c)(i) through (iii) of this subsection and are exempt from solid waste handling permitting. An owner or operator that does not comply with the terms and conditions of (c)(i) through (iii) of this subsection is required to obtain a permit from the jurisdictional health department and shall comply with all other applicable requirements of this chapter. In addition, violations of the terms and conditions of (c)(i) through (iii) of this subsection may be subject to the penalty provisions of RCW 70.95.315.

(c) Owners and operators of all storage piles that are categorically exempt from solid waste handling permitting in accordance with (b) of this subsection shall:

- (i) Ensure that at least fifty percent of the material stored in the pile is used within one year and all material is used within three years;
- (ii) Comply with the performance standards of WAC 173-350-040; and
- (iii) Allow department and jurisdictional health department representatives to inspect the waste pile at reasonable times for the purpose of determining compliance with this chapter.

Unlike the old WAC 173-304 standards, there is no allowance for an inert waste and demolition waste landfill. Today under WAC 173-350 there are allowances for only two kinds of landfills – inert waste landfills and special purpose landfills. The standards for inert waste are also

2/12/2008

Exhibit 14

quite restrictive and limiting to what type of waste can be deposited. WAC 173-350-390 states:

(2) *Criteria for inert waste - Listed inert wastes.* For the purpose of this chapter, the following solid wastes are inert wastes, provided that the waste has not been tainted, through exposure from chemical, physical, biological, or radiological substances, such that it presents a threat to human health or the environment greater than that inherent to the material:

(a) Cured concrete that has been used for structural and construction purposes, including embedded steel reinforcing and wood, that was produced from mixtures of Portland cement and sand, gravel or other similar materials;

(b) Asphaltic materials that have been used for structural and construction purposes (e.g., roads, dikes, paving) that were produced from mixtures of petroleum asphalt and sand, gravel or other similar materials. Waste roofing materials are not presumed to be inert;

(c) Brick and masonry that have been used for structural and construction purposes;

(d) Ceramic materials produced from fired clay or porcelain;

(e) Glass, composed primarily of sodium, calcium, silica, boric oxide, magnesium oxide, lithium oxide or aluminum oxide. Glass presumed to be inert includes, but is not limited to, window glass, glass containers, glass fiber, glasses resistant to thermal shock, and glass-ceramics. Glass containing significant concentrations of lead, mercury, or other toxic substance is not presumed to be inert; and

(f) Stainless steel and aluminum.

(3) *Criteria for inert waste - Inert waste characteristics.* This subsection provides the criteria for determining if a solid waste not listed in subsection (2) of this section is an inert waste. Solid wastes meeting the criteria below shall have comparable physical characteristics and comparable or lower level of risk to human health and the environment as those listed in subsection (2) of this section.

(a) Inert waste shall have physical characteristics that meet the following criteria. Inert waste shall:

(i) Not be capable of catching fire and burning from contact with flames;

(ii) Maintain its physical and chemical structure under expected conditions of storage or disposal including resistance to biological and chemical degradation; and

(iii) Have sufficient structural integrity and strength to prevent settling and unstable situations under expected conditions of storage or disposal.

(b) Inert waste shall not contain chemical, physical, biological, or radiological substances at concentrations that exceed the following criteria. Inert waste shall not:

(i) Be capable of producing leachate or emissions that have the potential to negatively impact soil, ground water, surface water, or air quality;

(ii) Pose a health threat to humans or other living organisms through direct or indirect exposure; or

(iii) Result in applicable air quality standards to be exceeded, or pose a threat to human health or the environment under potential conditions during handling, storage, or disposal.

If the facility was permitted as an inert waste landfill, then only inert wastes may be accepted. If they wish to accept mixed debris from construction and demolition projects such as wood, roofing materials, drywall, etc., this activity is not exempt. They must apply for a permit under the appropriate heading. If they wish to store the material in piles, then the Piles standards would apply. If they wish to dispose of the material by landfilling, then the Limited Purpose Landfill standards would be in effect. If they wish to first collect, then transfer the material to another facility, the Intermediate Handling standards would cover those activities. They could potentially get an exemption under the intermediate solid waste handling standards if they accepted only source separated materials, and incidental and accidental residuals did not exceed 10 % per load or 5% annually by weight.

Ecology agrees that in this instance it appears the facility is not in compliance with their permit or with the regulations set forth in the WAC. If

2/12/2008

the facility operator chooses to continue to operate they must be properly permitted. We can address the specific requirements of permitting at a later time when we know what kind of permit they want to pursue. There are a couple of areas in any permitting situation that that I would be concerned with:

Screening Procedures: A screening process should be developed, and a plan established to divert unsuitable materials. Incoming loads should be screened preferably at the gate, and possibly again when dumped. If for any reason a load is dumped and turns out to be unacceptable, procedures to isolate that load should clearly be outlined.

Fire Hazard Without knowing how much material the facility is planning to take in, I can't comment on whether this is adequate or not. The permit should state the total volume of material that will be allowed on site. What fire suppression equipment does the facility have? Also, the permit should require that smoking not be allowed within a specified distance of the pile. I know of two instances in the past year from our Eastern Regional Office where piles of unchipped material spontaneously combusted and burned unabated.

Marketability: The applicant should adequately explore the marketability of the material. What are the specifications for hogged fuel. For example, if a significant portion of the material accepted was stumpage, the soils taken in as a by product could reduce the marketability of the chips as a hog fuel. Is there a legitimate market out there for the type of material this facility will be producing?

Skagit Hill Recycling, Inc. claim that construction and demolition waste materials are within the definitions of wood waste and wood derived fuel is incorrect. We do not, nor have we ever viewed construction and demolition waste to be equivalent to "wood waste used for fuel or as a raw material".

We show the site was permitted as an inert waste landfill in 2006. As part of the permit conditions, they are required to follow an approved plan of operations. When the facility owner took in mixed demolition debris and stored it on site, he violated the terms of the permit and has the obligation to either remove the material or submit for approval a revised plan of operations. However, it should be noted that mixed demolition debris is not an inert waste, and thus the facility operator could not use the inert waste landfill permit to support these activities. He would have to get a different permit depending on what operations he actually will be working there.

If we can do anything to further help you, please contact either myself or Dawn Marie Maurer (425-649-7192).

Peter D. Christiansen

Section Manager
Solid Waste & Financial Assistance Program
Washington Department of Ecology
Northwest Regional Office
3190 160th Ave. SE
Bellevue, WA 98008
425-649-7076
pchr461@ecy.wa.gov
<http://www.ecy.wa.gov/programs/swfa>

2/12/2008

Appendix 16

AR 8, Affidavit of Polly Dubbel, Ex. 13



Ron Johnson, operator
Scott Waldal, owner
Skagit Hill Recycling, Inc.
Avis, LLC.
PO Box 818
Sedro Woolley, WA 98284

February 27, 2007

Subject: Notice of Finding and Intent of Health Officer

Dear Mr. Johnson and Mr Waldal;

A hearing before the Skagit County Health Officer was held on February 20, 2007 appealing the notice of violation and abatement schedule received by the appellants on January 19, 2007. The Health Officer's findings are as follows:

Appeal Point 1, (paraphrasing appellant): the facility should not be required to remove any construction or demolition waste from the site because it meets the definition of wood waste and wood derived fuel and should only be subject to WAC 173-350-320(1)(b).

Health Officer Finding:

Construction and demolition wastes are not within the definitions of "wood waste" or "wood derived fuel" as defined in WAC 173-350-100, Definitions. Skagit Hill Recycling, Inc. 2006 inert waste landfill permit only permitted inert wastes to be accepted at the facility. The facility was not in compliance with their inert waste facility permit when they accepted mixed debris from construction and demolition projects and stored it on site, therefore the facility violated the terms of its permit. The operator is obligated to remove the material from the site. The facility shall not accept non inert waste at the facility until such time as the facility has applied for and received a solid waste facility permit from the Health Department that allows acceptance of non-inert wastes.

Appeal Point 2, (paraphrasing appellant): the permit cannot be revoked or cancelled without a major violation.

Health Officer Finding:

The 2007 inert waste landfill permit was denied since the Health Department had not received all of the requested information in order to review and approve the 2007 inert waste landfill permit. A permittee is obligated to comply with the facility permit, including complying with the plan of operation. Receiving unpermitted wastes and failing to remove those wastes and not conducting routine monitoring as required by the permit are major deviations from the permit. Prior to renewing a permit, the Health Department is obligated to ensure that the facility meets the solid waste handling standards. When a facility has not demonstrated the willingness to comply with those standards and has not supplied requested information to conduct the review, then the Health Department should deny the renewal until such time as the applicant has complied with the requests.

Several other issues were brought up by the appellant and discussed during the hearing. These items are covered below.

The appellant stated that they presumed waste roofing material to be inert and therefore allowed as part of their inert waste landfill permit. In WAC 173-350-990 *Criteria for inert waste*, the section provides the criteria for determining if a solid waste is inert.

Per WAC 173-350-990(2) *Criteria for inert waste - Listed inert wastes*. For the purpose of this chapter, the following solid wastes are inert wastes, provided that the waste has not been tainted, through exposure from chemical, physical, biological, or radiological substances, such that it presents a threat to human health or the environment greater than that inherent to the material:

(a) Cured concrete that has been used for structural and construction purposes, including embedded steel reinforcing and wood, that was produced from mixtures of Portland cement and sand, gravel or other similar materials;

(b) Asphaltic materials that have been used for structural and construction purposes (e.g., roads, dikes, paving) that were produced from mixtures of petroleum asphalt and sand, gravel or other similar materials. Waste roofing materials are not presumed to be inert;

(c) Brick and masonry that have been used for structural and construction purposes;

(d) Ceramic materials produced from fired clay or porcelain;

(e) Glass, composed primarily of sodium, calcium, silica, boric oxide, magnesium oxide, lithium oxide or aluminum oxide. Glass presumed to be inert includes, but is not limited to, window glass, glass containers, glass fiber, glasses resistant to thermal shock, and glass-ceramics. Glass containing significant concentrations of lead, mercury, or other toxic substance is not presumed to be inert; and

(f) Stainless steel and aluminum.

When the Department of Ecology drafted WAC 173-350-990 *Criteria for inert waste*, and listed specific wastes as inert wastes, they did so because the listed inert wastes were the most typical and common types of inert wastes encountered in the solid waste stream. Under the listed waste in subsection (b) asphaltic materials listed above, Ecology specifically included the sentence, "waste roofing materials are not presumed to be inert," because this was a common question that was raised by stakeholders and reviewers of the criteria for inert waste section of the above referenced WAC when the regulation was under development. Waste roofing materials were specifically mentioned as not being included in the listed waste description for asphaltic materials to ensure that the intent of the regulation was clarified. Waste roofing material is not inert and is not an acceptable waste under the Skagit Hill Recycling inert waste landfill permit. The only wastes that are allowed under the inert waste landfill permit are the inert wastes that meet WAC 173-350-990, *Criteria for inert waste*.

If the appellant wants to accept and process other types of solid waste at the facility, then the facility shall apply for a permit from the Health Department. Once the applicable permit has been issued, then the facility can conduct the other permitted activities.

Another issue mentioned by the appellant at the hearing was that the facility was a "grandfathered sand and gravel pit" and that the status pertaining to grandfathered sand and gravel operations allowed them to bring in materials to the site and stockpile and process the materials without having to comply or obtain other permits or approvals for the activities.

The Health Department does not make the determination of what constitutes a pre-existing use. That determination is made by the Skagit County Planning and Development Services. You can contact John Cooper of the Planning and Development Services at 360-336-9410 to discuss if the facility is determined to be a pre-existing use. This could have a bearing on zoning and land use issues for your facility.

Regardless of whether the site is determined to be a pre-existing sand and gravel operation, the solid waste regulations including WAC 173-350 and SCC 12.16 still apply to your facility and any other site regardless of previous or current land use activities. Your facility must have an approved permit from the Health Department which covers the actual solid waste activities your facility wants to conduct before those activities commence.

The notice of violation set out an abatement schedule to resolve the solid waste code violations occurring at Skagit Hill Recycling, Inc. The requirements of the abatement schedule were appropriate and shall be carried out by Skagit Hill Recycling, Inc. Skagit Hill Recycling has already started to address several of the abatement requirements. Other abatement requirements need to be met in order to bring the facility into compliance and re-permitted as an inert waste landfill facility. The abatement dates and requirements are discussed below.

A.1 By February 1, 2007 the facility was required to submit a draft inert waste landfill plan of operation.

Skagit Hill Recycling submitted a draft plan of operation for the inert waste landfill facility dated January 24, 2007 and received by the Health Department January 31, 2007. The Health Department has reviewed the draft plan and responded in a letter dated February 22, 2007. That letter requests additional information in the plan of operation in order to comply with the requirements of WAC 173-350-410, *Inert waste landfills* and asks for further clarification of the intended activities at the facility.

A.2. By March 15, 2007, the facility operator shall finalize a Health Department approved plan of operation for the inert waste landfill.

The facility will need to incorporate the information requested in the February 22, 2007 Health Department letter into the draft plan. In order to allow the facility operator sufficient time to produce a detailed plan of operation covering the requested information, the Health Department will modify this timeframe as follows. Skagit Hill Recycling shall revise and complete the requested information for the inert waste landfill plan of operation and resubmit the plan by March 15, 2007. Any further revisions or corrections requested by Health shall be completed by March 31, 2007.

A.3. By February 1, 2007 the facility shall submit copies of the requested reports and results.

On January 31, 2007 the facility submitted the daily log of materials received, the 2006 inert waste landfill annual report, and a chain of custody form showing the submittal of a water sample from the facility detention pond for analysis at Edge Analytical on January 29, 2007. Please clarify the source and amount of construction and demolition waste that was received at the site. These wastes were not noted in the daily logs or the annual report information. Submit this information to the Health Department by March 15, 2007.

A.4. By February 1, 2007 the facility shall submit the disposal receipts for the construction, demolition and roofing waste.

This portion of the abatement schedule was part of the appeal hearing. Based on the findings of the hearing, the construction, demolition and roofing waste is not acceptable waste for your inert waste landfill facility. By April 13, 2007 remove the waste and provide the Health Department with copies of the disposal receipts for all of the construction, demolition and roofing wastes present at your facility. Your facility shall not accept any additional non-inert wastes at the facility until such time as an appropriate solid waste facility permit has been granted by the Health Department which allows the acceptance of non-inert wastes.

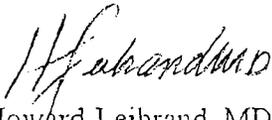
Skagit Hill Recycling asked about the regulatory authority of the Skagit County Health Department and the Department of Ecology as it pertains to solid waste regulations. RCW 70.95 delineates the authority between Department of Ecology and the local jurisdictional health authority. The state has assigned primary responsibility for adequate solid waste handling to the local government and reserved for the state the functions necessary to assure effective programs throughout the state including setting

the minimal functional standards for solid waste handling. Each jurisdictional board of health shall adopt regulations and ordinances governing solid waste handling activities such as storage, collection, transportation, treatment, utilization, processing and final disposal including issuing permits for those activities. The jurisdictional health department investigates and reviews compliance with applicable laws and regulations and issues the solid waste permits. The Department of Ecology reviews all applications, provides technical assistance, and ensures that every permit issued by the health department conforms to applicable laws and regulations including the minimal functional standards for solid waste handling set by the State. Applications, annual reports and permit approvals all go through the jurisdictional health department and Ecology also receives copies of the information. Skagit County Health Department is your local point of contact for solid waste regulations and the Department of Ecology provides additional technical review and support to ensure that solid waste regulations are carried out throughout the State.

In order for Skagit Hill Recycling, Inc. to get back into compliance with the inert waste landfill permit requirements, the facility operator and owner must comply with the above requirements. When the Health Department is able to approve the inert waste landfill plan of operation and the facility is complying with the regulatory and permit requirements, including not accepting non inert waste materials, then the Health Department will be able to issue the 2007 inert waste landfill permit.

Skagit Hill Recycling, Inc. has also talked about processing non inert wastes such as construction and demolition wastes at the facility. If you wish to accept mixed debris from demolition and construction projects such as wood, drywall, roofing materials, etc., this activity is not exempt. You must apply for and receive approval from the Skagit County Health Department before conducting these activities. The Health Department will be able to fully address the specific requirements of permitting when we know what specific types of solid waste activities your company wishes to pursue. The Health Department looks forward to working with Skagit Hill Recycling, Inc., including scoping out the types of solid waste activities you wish to pursue and working toward an approved and permitted solid waste facility. Please submit in writing a few paragraphs which describes the types of solid waste that you would like to accept, how you would like to process and handle those wastes, what the intended end materials and wastes will be from the site, and where the materials and/or wastes will go for disposal or marketing at the end of the process. With this description, the Health Department will be able to determine what type(s) of permits would be appropriate for your desired activities and we can provide the specific requirements of those permits.

Sincerely,

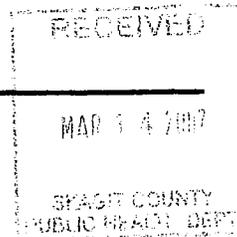

Howard Leibrand, MD
Skagit County Health Officer

Appendix 17

AR 8, Affidavit of Polly Dubbel, Ex. 15



700 South 2nd Street Room #301, PO Box 91071, Mount Vernon, WA 98273
Telephone (360) 336-9380. Toll free 877-336-9380; Fax (360) 336-9401
Internet: www.skagitcounty.net/health



**REQUEST FOR HEARING BEFORE THE SKAGIT COUNTY BOARD OF HEALTH TO APPEAL NOTICE,
FINE, OR ORDER FOR VIOLATION OF SKAGIT COUNTY CODE 12.16**

Appellant Name: Skagit Hill Recycling, Inc Phone: 360-856-4833

Mailing Address: P.O. Box 818, Sedro Woolley, WA 98284

Appellant Representative Name: Tom Moser Phone: 360-428-7900

Mailing Address: 411 Main Street, Mount Vernon, WA 98273

Property referenced in enforcement action (Parcel Number and Address):

7705 State Route 9, Sedro Woolley, WA 98284 P101465

Violation referenced in enforcement action:

Appellant believes there is no violation. The Department has incorrectly determined that the storage of construction and demolition material is subject to solid waste handling regulations and in violation of the inert waste permit issued to the facility. The Department refused to issue a permit to the facility for operation in 2007. The Department wrongfully issued an abatement schedule. The Department incorrectly determined that the storage of demolition material is a major violation.

Date enforcement action issued by Health Department: January 16, 2007

Reason(s) for request for hearing - please name specific points of appeal:

See attached

(attach additional sheets as necessary)

Signature of appellant: [Handwritten Signature] Date: 03/14/07

Please submit original signed form to Skagit County Health Department within 10 days of receipt of enforcement action

Exhibit 1.5 ORIGINAL

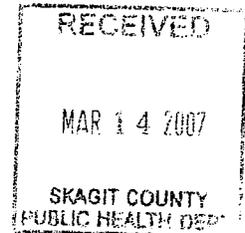
NOTICE OF APPEAL TO SKAGIT COUNTY BOARD OF HEALTH

Appeal of Decision By Health Officer

To: Skagit County Board of Health; and
To: Skagit County Health Officer

Appellant Name: Skagit Hill Recycling, Inc.
P.O. Box 818
Sedro Woolley, WA 98284
360-856-4833

**Appellant's
Representative:** C. Thomas Moser, Attorney at Law
411 Main Street
Mount Vernon, WA 98273
360-428-7900
360-336-3488 FAX
tom@tomoser.com



Property Reference: 7705 State Route 9
Sedro Woolley, WA 98284
P101465

Decision Appealed: Appellant appeals the February 27, 2007 decision issued by Howard Leibrand, MD, Skagit County Health Officer, entitled Notice of Finding and Intent of Health Officer. The decision was in response to an appeal of a notice of violation issued by the Skagit County Health Department on January 16, 2007.

Reasons Why Relief Should Be Granted: The Appellant and its predecessor in interest have operated the facility since 1993. The Appellant purchased the property in 2006 and became operator of the facility known as Duke's Hill Resource & Recycling Center. The facility was issued a solid waste permit by the Department for "inert landfill" operation.

The Department conducted an inspection on October 13, 2006 and issued a Notice of Violation on January 16, 2007. During this time the Appellant applied for a solid waste permit renewal in November 2006 and a plan of operation. The Department has wrongfully denied the permit renewal application. The Department issued an abatement schedule, to abate a condition that does not need abatement.

Appellant has accepted construction and demolition debris at the facility for stockpiling. These materials are exempt pursuant to RCW 70.95.305 and WAC 173-350-320(1)(b), because they are being stockpiled and meet the definition of wood waste and wood derived fuel. These stockpiled materials "are exempt from solid waste handling permitting" under the law in Washington.

The Department refuses to acknowledge the exemption allowed for storage piling allowed by statute and administrative code and wrongfully issued a notice of violation and wrongfully denied renewal of the solid waste permit application.

The Department wrongfully concluded that the stockpiling of the described materials is a major violation of the inert landfill permit issued to the facility.

The Health Officer incorrectly affirmed the determination of the Department and issued a Notice of Finding and Intent of Health Officer that wrongfully found and concluded the following:

1. Construction and demolition wastes are not within the definitions of wood waste and wood derived fuel.
2. The facility is not in compliance with the inert waste facility permit.
3. The operator is obligated to remove the materials.
4. The operator has committed a major violation.
5. The operator has not provided all the requested information to the Department for renewal of the permit.
6. The facility has not demonstrated willingness to comply with standards and regulations.
7. Waste roofing material is not inert and not acceptable for an inert waste permit.
8. Refusal to acknowledge the pre-existing use of the travel operations at the property.
9. Affirming the abatement schedule issued by the Department.
10. Refusal to recognize exempt activity for stockpiling of material allowed by Washington law.

Appendix 18

AR 8, Affidavit of Polly Dubbel, Ex. 26



April 24, 2007

Scott Waldal
Ron Johnson
Skagit Hill Recycling, Inc.
P.O. Box 818
Sedro Woolley, WA 98284

Scott Waldal
Avis, LLC
P.O. Box 25
Arlington, WA 98223

Re: Continuing the of Board of Health appeal hearing, July 24, 2007

Dear Mr. Waldal and Mr. Johnson;

Skagit Hill Recycling, Inc. received a notice of violation from Skagit County Health Department dated January 16, 2007. Skagit Hill Recycling requested a hearing to appeal the notice of violation before the Skagit County Health Officer. The appeal hearing before the Health Officer was held on February 20, 2007, at which the notice of violation was upheld. Skagit Hill Recycling appealed the notice of violation and findings of the Health Officer to the Skagit County Board of Health. The Board of Health appeal hearing was scheduled for April 24, 2007. Skagit Hill Recycling requested that the Board of Health continue the hearing to appeal the notice of violation before the Board of Health for three months.

The new appeal hearing date before the Board of Health is scheduled for **July 24, 2007 at 10:00 am in the Skagit County Commissioners Hearing Room**, 1800 Continental Place, Mount Vernon, Washington.

The Skagit County Public Health Department wants to reiterate to Skagit Hill Recycling the following information:

Skagit Hill Recycling must comply with the State solid waste handling definitions and regulations in RCW 70.95, Chapter 173-350 WAC and Skagit County Code 12.16 as interpreted by the Health Department and the Department of Ecology.



MAILED
APR 24 2007

Exhibit 26

Skagit Hill Recycling must comply with the terms and conditions of the Health Department issued 2007 inert waste landfill permit. This includes but is not limited to only accepting inert waste material, as defined in WAC 173-350-990, at the facility.

If Skagit Hill Recycling does not comply with the 2007 inert waste landfill permit conditions, and complying with Chapter 173-350 WAC and SCC 12.16, then Skagit Hill Recycling may be subject to further enforcement action.

The Health Department will continue to work with Skagit Hill Recycling on the solid waste permitting process for the proposed construction, demolition and land clearing facility.

Sincerely,



Peter Browning,
Skagit County Public Health Department Director



Corinne Story,
Environmental Health Supervisor

cc: Tom Moser, Attorney
Peter Christiansen, Department of Ecology

Appendix 19

AR 8, Affidavit of Polly Dubbel, Ex. 27



PETER BROWNING, DIRECTOR
HOWARD LEIBRAND, HEALTH OFFICER

700 SOUTH SECOND STREET #301, MOUNT VERNON, WA 98273, TEL (360) 336-9380 FAX (360) 336-9401

July 20, 2007

Tom Moser, Attorney at Law
411 Main Street
Mount Vernon WA 98273

Re: Skagit Hill Recycling, continuance of hearing

Dear Tom:

This is to confirm our telephone conversation this morning that the **Skagit Hill Recycling appeal to the Board of Health has been continued per your request to September 24, 2007 at 1:30 pm**. The hearing will be held in the Skagit County Commissioners Hearing Room located at 1800 Continental Place, Mount Vernon.

Please be aware that the inert waste landfill permit for Skagit Hill Recycling is conditioned upon the owner meeting an October 1, 2007 deadline to complete the permit process for a construction and demolition waste processing facility, or to remove the construction/demolition debris to a solid waste facility which is permitted to accept construction and demolition waste.

The facility owner and operator have been informed repeatedly that they need to apply for and receive a solid waste permit for a construction and demolition waste processing facility before they can accept and process construction and demolition wastes. The most recent correspondence from Health dated March 29, 2007 is attached. The Health Department supports and encourages the recycling and reuse of construction and demolition wastes in Skagit County. Any facility that wants to conduct these activities must do so through the required permitting process. To date, the Health Department has not received a completed application and it does not appear that Planning and Development Services has been contacted to schedule a pre-development meeting with County staff.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Corinne Story".

Corinne Story,
Environmental Health Supervisor

cc: John Spencer
Ron Johnson (certified mail)
Scott Waldal (certified mail)

enclosure: March 29, 2007 Health letter

Exhibit 27

Appendix 20

AR 8, Affidavit of Polly Dubbel, Ex. 28

PETER BROWNING, DIRECTOR
HOWARD LEIBRAND, HEALTH OFFICER

700 SOUTH SECOND STREET #301, MOUNT VERNON, WA 98273, TEL (360) 336-9380 FAX (360) 336-9401



September 21, 2007

MAILED
SEP 24 2007

Tom Moser, Attorney at Law
411 Main Street
Mount Vernon, WA 98273

Re: Skagit Hill Recycling, continuance of hearing

Dear Tom:

This is to confirm that the **Skagit Hill Recycling appeal to the Board of Health has been continued per your request for the third time to November 20, 2007 at 11:00 am.** The hearing will be held in the Skagit County Commissioners Hearing Room located at 1800 Continental Place, Mount Vernon. No further continuances will be granted.

The Health Department was informed on September 11, 2007 that Spencer Law Firm withdrew as counsel for Skagit Hill Recycling and you are unable to represent the appellant at the scheduled September 24th hearing.

Skagit Hill Recycling's 2007 inert waste landfill permit is still in effect and Skagit Hill Recycling must comply with the permit conditions. In Part II, Specific Conditions, G. Compliance Requirement, the permittee agreed to remove the construction and demolition wastes by October 1, 2007. The requirement to remove the waste by October 1, 2007 is stayed pending the appeal determination. In the interim period, Skagit Hill Recycling is required to cover the piles of construction and demolition wastes in order to prevent precipitation from entering the piles. As part of the current solid waste facility permit, Skagit Hill Recycling can not accept any additional construction and demolition waste at the facility.

Once the determination of the appeal is given, if the Board of Health concurs with the findings of the Health Officer then Skagit Hill Recycling will be responsible for the prompt removal and documentation of the construction and demolition wastes to a solid waste facility properly permitted to accept the wastes. Failure to properly dispose of the solid waste may result in the assessment of \$1,000 per day civil penalties against Skagit Hill Recycling.

Exhibit 28

The Skagit Hill Recycling 2007 permit also requires quarterly and semi annual water monitoring and reporting. To date the Health Department has received one set of water quality analysis taken in January 2007. Please advise your client to submit the required information including the quarterly water quality parameters results for March and June 2007 and the semi-annual water quality results for July 2007 as stipulated in Part II, Specific Permit Conditions, D: Minimum Environmental Monitoring Requirements of their 2007 inert waste landfill permit.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Corinne Story".

Corinne Story,
Environmental Health Supervisor

cc: Scott Waldal (certified mail)
Ron Johnson (certified mail)
Arne Denny

Appendix 21

AR 8, Affidavit of Polly Dubbel, Ex. 29A

CorinneStory

From: Arne Denny
ent: Wednesday, November 14, 2007 9:14 AM
o: JoanneGiesbrecht; LindaHammons
Cc: Will W. Honea; CorinneStory; Britt Pfaff-Dunton
Subject: RE: Skagit Hill Recycling appeal

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION ATTORNEY WORK PRODUCT EXEMPT FROM PUBLIC RECORD DISCLOSURE

All,

Tom and I just talked. We will not have a hearing next week. I expect Tom to ask for a continuance in the appeal to about February. By that time, there may be a new appeal on other issues that will certainly override this pending appeal.

aod

A.O. Denny, DPA
Prosecuting Attorney's Office
360-336-9460
arned@co.skagit.wa.us

CONFIDENTIALITY STATEMENT: This message may contain information that is protected by the attorney-client privilege. If this message was sent to you in error, any use, disclosure or distribution of its contents is prohibited. If you receive this message in error, please contact me at the telephone number or e-mail address listed above and delete this message without printing, copying, or forwarding it.

-----Original Message-----

From: Tom Moser [mailto:tom@tomoser.com]
Sent: Wednesday, November 14, 2007 9:01 AM
To: Arne Denny; JoanneGiesbrecht; LindaHammons
Cc: Will W. Honea; CorinneStory; Britt Pfaff-Dunton
Subject: RE: Skagit Hill Recycling appeal

Arne:

Hold on!! I told you yesterday I needed my client's permission. I just got off the phone with him and he is willing to continue the hearing, but does not want to have this declared moot. Please give me a call.

Tom

-----Original Message-----

From: Arne Denny [mailto:arned@co.skagit.wa.us]
Sent: Tuesday, November 13, 2007 4:15 PM
To: JoanneGiesbrecht; LindaHammons
Cc: Tom Moser; Will W. Honea; CorinneStory; Britt Pfaff-Dunton
Subject: Skagit Hill Recycling appeal

JoAnne,

Please strike the Skagit Hill Recycling appeal that is set for next week before the Board of Health on Tuesday, November 20, at 11. The attached letter explains the reason for the cancellation.

Thanks,

Appendix 22

AR 6, Skagit County's Recommendations for
Reframing Petitioner's Issues (August 8, 2008)

WASHINGTON STATE POLLUTION CONTROL HEARINGS BOARD
ENVIRONMENTAL HEARINGS OFFICE

SKAGIT HILL RECYCLING,

Petitioner,

vs.

SKAGIT COUNTY and SKAGIT COUNTY
HEALTH DEPARTMENT,

Respondents,

PCHB NO. 08-038

SKAGIT COUNTY'S
RECOMMENDATIONS FOR
REFRAMING PETITIONER'S ISSUES

Because Skagit Hill Recycling submitted its list of issues during the pre-hearing conference, Skagit County did not have time to review them and note its objections or discuss changes. The Pollution Control Hearings Board (Hearings Board) authorized the parties to consult and submit an agreed list of issues. Skagit County attempted to consult with the Skagit Hill Recycling's representative on Wednesday, August 6, 2008, via telephone and e-mail. The e-mail, submitted at 9:03 a.m. included the county's suggestions for issues, which are listed below. Skagit County attempted to contact Skagit Hill Recycling's representative twice on Thursday, August 7, 2008, via telephone. Messages to return the telephone call were left each time. No response was made to the county's efforts to reach an agreement on Skagit Hill Recycling's

Skagit County's Recommendations for
Reframing Petitioner's Issues

1

PROSECUTING ATTORNEY
OF SKAGIT COUNTY
605 South Third Street
Mt. Vernon, Washington 98273
360-336-9460

1 proposed issues. Therefore, the parties have not been able to agree on any changes to the issues
2 submitted by Skagit Hill Recycling.

3 The following, which corresponds to the list of issues submitted by Skagit Hill Recycling
4 during the pre-hearing conference, identifies the disputed issues:

5 1. Amended as discussed during the prehearing conference.

6 2. No objection.

7 3. Whether the Hearings Board has jurisdiction to hear an appeal involving the denial of Skagit
8 Hill Recycling's application for an inert waste permit for 2008, when an appeal of a Notice of Violation
9 issued by the Skagit County Department of Health to Skagit Hill Recycling on January 16, 2007, pends
10 before the Skagit County Board of Health?

11 4. Whether violations that are the subject of the January 16, 2007, Notice of Violation, which
12 have been appealed to but not yet heard by the Skagit County Board of Health, can be used as reasons
13 for the denial of Skagit Hill Recycling's application for an inert waste permit for 2008?

14 5. This issue should be deleted because the only issue appealed by Skagit Hill Recycling to the
15 Hearings Board is the denial of its application for an inert waste permit for 2008. Skagit County has
16 not issued a notice of violation for any violations of Skagit Hill Recycling's 2007 inert waste permit
17 and, consequently, there have not been any appeals of any notice of violation to the Hearings Board.

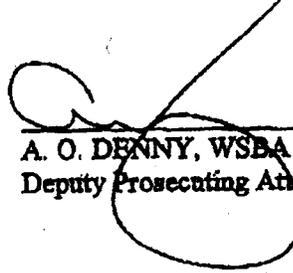
18 6. No objection.

19 7. Whether construction and demolition waste, which includes raw and painted dimensional
20 lumber, painted wood, laminated wood, plywood and press (chip) board, insulation, plastic, synthetic
21 flooring materials, foam, asphalt roofing waste and tires qualify as exempt source separated materials?

22 8. Whether piles of construction and demolition waste, which includes raw and painted
23 dimensional lumber, painted wood, laminated wood, plywood and press (chip) board, insulation,
24

1 plastic, synthetic flooring materials, foam, asphalt roofing waste and tires, that is stored on the Skagit
2 Hill Recycling site qualify as exempt under WAC 173-350-310 or -3207

3 Respectfully submitted this 8th day of August, 2008.
4
5

6 By: 
7 A. O. DENNY, WSBA # 14021
8 Deputy Prosecuting Attorney
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Appendix 23

AR 16, Response to Skagit County's Motion to Strike
Declaration of Scott Waldal (October 20, 2008)

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POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

SKAGIT HILL RECYCLING, INC.,

Appellant,

v.

SKAGIT COUNTY, SKAGIT COUNTY
HEALTH OFFICER and SKAGIT COUNTY
HEALTH DEPARTMENT,

Respondents.

NO. 08-038

RESPONSE TO SKAGIT
COUNTY'S MOTION TO STRIKE
DECLARATION OF SCOTT
WALDAL

Skagit Hill Recycling, Inc., by and through its attorneys, Tupper Mack Brower, PLLC, submits this response to Skagit County's (County) motion to strike the declaration of Scott Waldal. Skagit County's motion is frivolous and should be denied.

Argument

1. The Motion is frivolous, because the standard of review before the PCHB is de novo.

The County argues that Mr. Waldal's declaration should be excluded because it contains "new" evidence. County's Mot. to Strike at 2: 15-17. The County also argues Mr. Waldal's declaration is "at odds" with the procedures described by Skagit Hill Recycling in its Synopsis of Recycling Goals and its Operations Plan. *Id.* at 2: 20-25.

The County's motion is frivolous and in violation of Civil Rule 11. Mr. Waldal's statements are clearly relevant to the issues before the Board. The standard of review before the Board is de novo. WAC 371-08-485(1). The "Board's de novo review authority . . . allows all

1 parties to submit new evidence on the contested issues to determine compliance with the law.”
2 *North Park Neighbors v. City of Long Beach*, SHB 05-030 (Order Denying Summary Judgment)
3 (Feb. 21, 2006), at 6 n.1. Because the applicable standard of review is de novo, and the evidence
4 is relevant, the County’s claim that the evidence is “new” (though it is not), is frivolous. Skagit
5 Hill Recycling should not be put to the expense of responding to a motion that is not grounded in
6 fact and not warranted by existing law. CR 11(a).

7 2. The Motion should be denied because the declaration is supported by the record.

8 The County does not explain what evidence in Mr. Waldal’s declaration is new or “at
9 odds” with the record. But the record shows the County’s claim is unsupported.¹

10 Mr. Waldal’s statements regarding source separation procedures were as follows. Except
11 for “very minor separation of metals from CDL waste, all waste material at the SHR facility was
12 source separated. The grinding and sorting equipment was taken off-site and all waste sorted and
13 separated before it arrived at the SHR facility.” Decl. of Waldal at ¶ 5; *see also* ¶ 16. Wood,
14 metals, and construction materials are source separated, though some incidental metal can appear
15 in source separated materials. *Id.* at ¶¶ 9–11. Carpeting can be recycled. *Id.* ¶ 16. “None of the
16 piles in the pit have been placed there for the purpose of disposal.” *Id.* ¶ 13.

17 The record supports these statements. The Operation Plan states that all material would
18 be source-separated. The first paragraph states that only inert materials will be accepted, and a
19 Skagit Hill Recycling employee will prescreen the material “at the origination site prior to
20 delivery.” Ex. 23 to Aff. of Polly Dubbel at 1. The Synopsis describes a plan to separate inside
21 a building. But the Operation Plan, created after the Synopsis, clarifies that “unacceptable
22 waste” would remain the responsibility of those supplying the materials. *Id.* In addition to
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25 ¹ As to the “business practices observed” by the County, County’s Mot. to Strike at 2: 23–24, Skagit Hill
26 Recycling disputes the County’s characterization thereof, so the County’s characterization is not the standard for
measuring what “evidence” is in the record.

1 prescreening at the site, Skagit Hill Recycling employees would do additional inspection at the
2 facility, and test materials to prevent violations of the Plan. *Id.* Mr. Waldal's statements are
3 firmly supported by the record.

4 Likewise, Mr. Waldal's declaration and the record are congruous regarding Skagit Hill
5 Recycling's selection and handling of materials. He stated that "[i]n the upper portion of the
6 landfill there are currently piles of soil, concrete debris, asphalt, wood waste, and land clearing
7 debris (consisting of wood debris and ash). These materials are crushed and used to blend soil
8 material for fill and landscaping. Some of the materials are sold and used as fuel at facilities
9 such as energy plants." *Id.* at ¶ 9. "A small pile of roofing material" . . . will be ground and
10 sold with other recyclable asphalt materials for new asphalt or as road ballast. *Id.* at ¶ 11. Non-
11 inert waste, like insulation, will be disposed of as solid waste. *Id.* at ¶ 11.

12 Nothing in Mr. Waldal's declaration is "at odds" with the record. The "Synopsis of
13 Recycling Goals" states that Skagit Hill Recycling would "take in construction and demolition,
14 clean wood, asphalt-roofing materials." Ex. 16 to Aff. of Polly Dubbel at 1. Skagit Hill
15 Recycling stated it would use a machine to grind asphalt shingles, removing "all metal from the
16 product," recycle the metal, and sell the ground shingles. *Id.* Skagit Hill Recycling would gather
17 clean wood, stumps and brush, grind it, and sell it for either mulch, hog fuel or wood derived
18 fuel. *Id.* The "Clean Fill Agreement" states that only inert materials will be disposed of, and no
19 hazardous materials will be accepted. Ex. 24 to Aff. of Polly Dubbel. The Plan states that
20 "incidental non-inert waste" that arrives at the facility would be separated and removed. Ex. 16
21 to Aff. of Polly Dubbel at 1. The record perfectly supports Mr. Waldal's declaration.

22 Finally, Mr. Waldal's statements regarding handling hazardous materials are supported
23 by the record. The Health and Safety Plan states that employees undergo 40 hour training and an
24 8 hour refresher course to properly handle hazardous materials. Ex. 23 to Aff. of Polly Dubbel.
25 These are precisely the practices described in paragraph 8 of Mr. Waldal's declaration. Mr.
26 Waldal's declaration is a synthesis of the record.

1 3. The Waldal Declaration shows the County has not met its burden of proof.

2 Mr. Waldal's declaration is relevant because it raises genuine issues of material fact
3 regarding whether Skagit Hill Recycling has, as the County alleges, violated Washington State
4 solid waste handling standards. Chapter 173-350 WAC; CR 56(c). In considering a motion for
5 summary judgment, all reasonable inferences must be construed in favor of the non-moving
6 party. *Osborn v. Mason County*, 157 Wn.2d 18, 22, 134 P.3d 197 (2006).

7 Under WAC 173-350-310, a material recovery facility that "provides intermediate
8 storage and/or processing" of solid waste is exempt from solid waste permitting. WAC 173-350-
9 310(1), (2). A material recovery facility is "any facility that collects, compacts, repackages,
10 sorts, or processes for transport source separated solid waste for the purpose of recycling."
11 WAC 173-350-100. The facility can maintain its exempt status so long as it accepts "only
12 source separated recyclable materials and dispose[s] of an *incidental and accidental residual* not
13 to exceed five percent of the total waste received, by weight per year, or ten percent by weight
14 per load." WAC 173-350-310(2)(b)(ii) (emphasis added).²

15 Based in part on Mr. Waldal's declaration, the facts show that Skagit Hill Recycling
16 operates a material recovery facility exempt from solid waste handling permitting under WAC
17 173-350-310. With the exception of minor amounts of metals, all waste material at the facility
18 was source separated. Decl. of Waldal at ¶ 5. Skagit Hill Recycling has accepted limited inert
19 waste for the purposes of final disposal. *Id.* at ¶ 4. Skagit Hill Recycling insures that the waste
20 is free from toxic material, including asbestos. *Id.* at ¶ 6. Insulation will be disposed of as solid
21 waste. *Id.* at ¶ 11. The County has failed to show that the small amount of "incidental and
22 accidental residual" at the facility exceeds "five percent of the total waste received, by weight
23

24 ² The County is evidently aware of this provision, because it was explained to them by the Department of
25 Ecology in February 2007. Ex. 14 to Aff. of Polly Dubbel. In that e-mail, Peter Christiansen of Ecology explained
26 to the County that Skagit Hill Recycling was potentially eligible for the exemption if it accepted only source
separated materials and incidental and accidental residuals did not exceed 10% per load or 5% by weight. *Id.*

1 per year, or ten percent by weight per load.” WAC 173-350-310(2)(b)(ii). The Skagit Hill
2 Recycling facility is otherwise in compliance with the 2007 permit.

3 The County would have the Board exclude Mr. Waldal’s declaration, because the County
4 does not have enough evidence to support its dispositive motion. Mr. Waldal’s declaration
5 synthesizes and explains Skagit Hill Recycling’s efforts to operate recycled CDL and other solid
6 waste material in a cost effective, environmentally sound, and lawful manner. Only by
7 excluding this evidence can the County create a record that appears to support its position.

8 4. The Legislature did not intend for counties to restrict CDL recycling by promulgating
9 limited definitions of recyclables.

10 It is Skagit Hill Recycling’s intention to recycle the vast majority of the materials at its
11 facility. Decl. of Waldal at ¶ 11. These materials include roofing, asphalt, scrap metal, and tires.
12 *Id.*

13 The County would thwart this effort; it argues Skagit Hill Recycling is ineligible for the
14 recycling exemption. County’s Reply at 13–14. According to the County, the exemption is only
15 available to the list of recyclables in its Solid Waste Management Plan. *Id.* That plan has yet to
16 recognize some CDL waste is recyclable. Attach. 1 to County’s Reply; *cf.* King County Solid
17 Waste Code 10.04.020.ZZZ (“Recyclable CDL waste’ means CDL waste material that can be
18 kept out of or recovered from CDL waste and reused or transformed into a usable product.”).
19 The County’s outmoded list violates state law by discouraging CDL recycling.

20 The Legislature, through the Solid Waste Management laws, clearly intended to expand
21 the reach of recycling and encourage private/public cooperation. “It is the intent of the
22 legislature that local governments be encouraged to use the expertise of private industry and to
23 contract with private industry to the fullest extent possible to carry out solid waste recovery
24 and/or recycling programs.” RCW 70.95.020. The Legislature recognized that solid waste
25 recovery is necessitated by environmental and economic realities. “Considerations of natural
26 resource limitations, energy shortages, economics and the environment make necessary the

1 development and implementation of solid waste recovery and/or recycling plans and programs.”
2 RCW 70.95.010(3). State waste management law should be read to as to “encourage the
3 development and operation of waste recycling facilities needed to accomplish the management
4 priority of waste recycling” RCW 70.95.020(4).

5 The Legislature also recognized that waste management involves far more than
6 traditional recycling of glass, paper, and aluminum. The Legislature made specific reference to
7 the “fundamental goal” of source separating “all materials with resource value” RCW
8 70.95.020(5). There is no question that Skagit Hill Recycling is expanding recycling in Skagit
9 County by targeting a wide variety of materials with resource value.

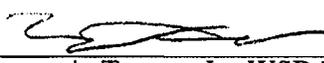
10 The County’s argument that Skagit Hill Recycling is not entitled to recycle waste because
11 the County has not updated its list of recyclables is not well taken. Ecology adopted chapter
12 173-350 WAC “under the authority of Chapter 70.95 RCW.” WAC 173.350.010. When
13 Ecology defined recyclable materials by reference to a local comprehensive waste plan, WAC
14 173.350.100, it would have assumed these waste plans were in compliance with state law. The
15 County cannot use its outmoded waste plan to thwart the Legislature’s recycling objectives.

16 **Conclusion**

17 The County’s motion to strike should be denied because “new” or not, the evidence is
18 relevant to the issues before the Board, and the Board engages in de novo review under which it
19 considers all the evidence. Nonetheless, the declaration is firmly supported by the record and
20 relevant to the Skagit Hill Recycling facility’s exempt status. Therefore, the Board should
21 dismiss the County’s Motion to Strike Mr. Waldal’s declaration.

22 DATED this 20th day of October, 2008.

23 TUPPER MACK BROWER PLLC

24 
25 _____
26 James A. Tupper, Jr., WSBA No. 16873
Brad Doll, WSBA No. 38479
Attorneys for Skagit Hill Recycling, Inc.

Appendix 24

AR 14, Declaration of Scott Waldal (October 6, 2008)

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POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

SKAGIT HILL RECYCLING, INC.,

Appellant,

v.

SKAGIT COUNTY, SKAGIT COUNTY
HEALTH OFFICER, and SKAGIT COUNTY
HEALTH DEPARTMENT,

Respondents.

CASE NO. 08-038

DECLARATION OF SCOTT
WALDAL

I, SCOTT WALDAL, upon penalty of perjury, depose and state as follows:

1. I am over the age of eighteen years and am competent to testify to the matters herein, and have personal knowledge of the matters discussed below.
2. Skagit Hill Recycling, Inc., (SHR) operates a sand and gravel facility, a recycling facility, and an inert solid waste landfill at 7705 State Route 9, Sedro-Woolley, Washington. The facility, located just north of the City of Sedro-Wooley, is roughly 11 acres in size.
3. The SHR property has operated as a sand and gravel pit since the early 1900s. The facility was first permitted as an inert landfill in 2001. Under that permit, a portion of the southern side of the property was filled. SHR acquired the assets of Duke Hills Recycling in 2006 and obtained a transfer of the solid waste facility permit.

1 4. Since 2006, SHR has accepted limited inert waste for the purposes of final
2 disposal. SHR has instead focused on opportunities for recycling. To that end, SHR accepts land
3 clearing, concrete waste, ash, and asphalt waste.

4 5. With the exception of very additional minor separation of metals from CDL
5 waste, all waste material at the SHR facility was source separated. The grinding and sorting
6 equipment was taken off-site and all waste sorted and separated before it arrived at the SHR
7 facility.

8 6. SHR also owns equipment that will shred or grind demolition debris. This
9 equipment separates metals, insulation, roofing material and wood waste. SHR employs this
10 equipment at job sites to source separate the waste before it arrives at the SHR facility. SHR also
11 uses track hoes to separate demolition debris at job sites before the waste is brought to SHR's
12 facility.

13 7. SHR insures that the waste is free from toxic material, including asbestos. This is
14 done through certification for customers, including testing required under the Solid Waste
15 Management Act. This testing includes leaching tests using Toxicity Characteristic Leaching
16 Procedure test methods.

17 8. SHR employees have forty hours of hazardous material training and every year
18 take an eight hour hazardous material refresher course, with special emphasis on asbestos
19 awareness training, construction demolition and deconstruction site training, and lead hazard
20 training. As a supervisor, I undergo additional hazardous material training annually. The
21 purpose of this training is to exclude any and all hazardous materials from the facility, including
22 any material containing lead or asbestos products.

23 9. There is some incidental metal and other material in source separated material.
24 This material is removed from the waste at the SHR facility and disposed of or recycled as
25 appropriate. Metal amounts to a very small amount of waste within the upper portion of the
26 facility, where there are currently piles of soil, concrete debris, asphalt, wood waste, and land

1 clearing debris (consisting of wood debris and ash). These materials are crushed and used to
2 blend soil material for fill and landscaping. Some of the materials are sold and used as fuel at
3 facilities such as energy plants.

4 10. Within the gravel pit there is very little material. The majority of the material
5 consists of source separated wood debris from the demolition of houses. There is no more than
6 5,000 cubic yards of this material. This material will be combined with other wood waste
7 material and sold as fuel to energy plants.

8 11. Within the gravel pit there are small piles of incidental materials that were source
9 separated from the demolition debris, including scrap metal and insulation. The insulation will
10 be disposed of as solid waste. A small pile of roofing material was accepted at the site as
11 recyclable material. This material will be ground and sold with other recyclable asphalt materials
12 for new asphalt or as road ballast.

13 12. Within the landfill there is also a small pile of tires accepted for recycling in 2006.
14 All of this material was recently approved as a fuel source at a cement facility in Seattle and will
15 be sold to that facility. The pile does not amount to more than 800 tires. SHR accepted this
16 material to evaluate the potential of shredding and recycling the material.

17 13. None of the piles in the pit have been placed there for the purpose of disposal. All
18 of the piles in the pit are being retained or have been created as part of the recycling operations at
19 SHR. SHR hopes that most or all of the material can be recycled rather than being disposed of at
20 another location.

21 14. Pursuant to the terms of its 2007 Solid Waste Facility Permit, SHR conducted
22 monitoring of receiving water at an outfall from a settling pond in the gravel pit. The results of
23 this monitoring show that the facility is not causing or contributing to a violation of state water
24 quality standards.

25 15. Recycling of construction, demolition and land clearing debris (CDL) is a forward
26 thinking and important aspect of solid waste management in the modern world. Attached as

1 Exhibit A are true and accurate copies of recent articles describing CDL. CDL recycling saves
2 significantly on the societal costs of construction and waste management. It also substantially
3 reduces construction costs by reducing what would otherwise be incurred in disposal costs.
4 Recycling not only reduces disposal costs, it reduces reliance on landfills and the environmental
5 risk posed by operation and long-term maintenance of such facilities. More important, land
6 filling CDL is simply wasteful. A large part of CDL debris is fully reusable.

7 16. SHR undertakes CDL recycling on demolition projects with state of the art
8 equipment purchased from Europe. On contracts to conduct recycling, the waste must be
9 certified as free of toxic contaminants, including asbestos. The grinding equipment is located at
10 the job site and debris is processed to remove as much metal, asphalt roofing, carpeting, plastic,
11 and insulation as possible. On some projects, source separation can be done with track hoes.
12 The source separated material is then hauled to the SHR facility to be recycled. As part of the
13 process at the SHR site there will be the further removal of any incidental amount of debris from
14 wood waste. Some of the debris will be recycled. Carpeting, for example, can be sold to
15 shipping companies for use as packing. Dry insulation can be used in manufacturing new
16 insulation. Any remaining plastics and metals can be recycled. The remaining wood waste can
17 be combined with other CDL waste and sold as fuel for industrial operations.

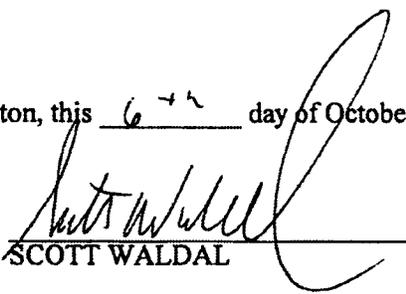
18 17. SHR is also able to market crushed concrete waste as ballast and gravel fill.
19 Asphalt can be ground and similarly used as material to stabilize construction sites and industrial
20 yards. Some amount of asphalt can also be recycled in making new asphalt products. Ash
21 collected at the site is registered fertilizer and can be combined with top soil and marketed as a
22 soil amendment for landscaping.

23 18. SHR desires to maintain its inert landfill permit in order to take full advantage of
24 a cost effective and environmentally sound opportunity for managing and recycling CDL and
25 other solid waste material.

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Dated at Sedro Woolley, Washington, this 6th day of October, 2008.


SCOTT WALDAL

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Tuesday, September 16, 2008 - Page updated at 12:09 AM

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We recycle cans and bottles, why not buildings?

Since the first curbside recycling program was initiated in 1987, Seattleites have become accustomed to recycling paper, glass, metals and yard waste. Many see it as their civic duty and a way to help the environment.

By Peter Steinbrueck and Kathryn Rogers Merlino
Special to The Times

Since the first curbside recycling program was initiated in 1987, Seattleites have become accustomed to recycling paper, glass, metals and yard waste. Many see it as their civic duty and a way to help the environment.



Peter Steinbrueck

PREV 1 of 2 NEXT

Still, the city of Seattle sends by truck and train more than 50 percent — 440,000 tons per year — of its municipal waste to landfills, much of it to Bend, Ore. A large percentage of municipal landfill waste is from construction and demolition debris, estimated to be between 20 and 30 percent nationally.

Construction and demolition waste is produced from new construction and renovation of buildings, and by the demolition of existing buildings. Such waste is an enormous environmental problem because of the sheer volume of discarded construction-related refuse dumped into landfills.

We recycle cans, bottles and even plastic bags, so why not reuse older buildings? There are many good reasons to do so, and opportunities and benefits abound to reduce such waste.

First, it's very costly and energy consumptive: Municipal waste that must be loaded, hauled, transferred from trucks to trains, processed and dumped into landfills costs between \$50 and \$75 per ton.

Second, it pollutes: Fuel used in the handling and disposal contributes significantly to environmental impacts and carbon emissions. Landfills are filling up, and the sites themselves pose environmental hazards from loss of natural-resource lands, leaching of toxic chemicals and release of methane gas.

Third, it's wasteful: Most construction debris — such as land clearing, wood, metal, glass, asphalt and concrete rubble — is fully reusable at lower cost than the production of new materials. Upstream, reducing construction and demolition waste reduces the need for the extraction and processing of raw materials, product manufacture and eventual disposal.

And finally, the preservation and adaptive reuse of older buildings — especially historic landmarks — as compared with new construction is considered to be one of the most sustainable "green building" practices achievable.

Climate-protection strategies must address the issue. In the United States, building construction and operations account for 48 percent of greenhouse-gas emissions. The U.S. Environmental Protection Agency sees enormous benefits from preventing construction and demolition waste, and has made it a top policy priority over land-filling, incineration and even recycling.

In Seattle, nearly 700 buildings were torn down last year to make way for new buildings. This is an enormous lost source of renewable, embodied energy. A recent study by the Brookings Institution projects that by the year 2030, we will have demolished and replaced 82 billion square feet of our existing building stock, or nearly one-third of our 300 billion square feet of space in the U.S. today.

How many bottles and metal cans would we have to save and recycle to match an equivalent amount of construction and demolition waste and embodied energy — the amount of energy originally embedded in the materials and expended through extraction, processing and construction? There is no reason why durable buildings of all types and ages cannot be adaptively reused, retrofitted, or at least deconstructed and recycled, rather than be demolished and hauled off to landfills.

While preservation laws help protect our valued historic landmarks, incentives and possibly new regulations are needed to address waste of building stock. For example, Portland, Ore., mandates that all building projects valued at over \$50,000 separate on site and recycle all nontoxic construction materials. New York City provides tax incentives, electric rebates and employs rezoning strategies to encourage reuse and conversion of commercial buildings to residential.

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Exhibit A

King County's GreenTools recycling program emphasizes education and outreach to contractors and suburban cities on the environmental and economic benefits of reuse and recycling. Another approach would be to impose a federal carbon tax on the demolition of existing buildings, calculated on the embodied energy wasted in disposing of the structure.

The bottom line: Landfills should no longer be an option for used but otherwise clean and durable building materials. Policymakers, preservationists and architects need to push green building practices into the 21st century by promoting the environmental, economic and community benefits of building reuse and recycling. State and local governments should establish working guidelines, programs and incentives to promote the reuse, retrofit and reinvestment of older buildings.

The energy invested in the existing built environment must be seen as a tangible resource of economic, environmental and cultural value, not to be wasted. In this way, preservation and reuse can be our "greenest" tools of sustainability.

Peter Steinbrueck, left, is an architect and former member of the Seattle City Council. Kathryn Rogers Merlino is an architectural historian and an assistant professor of architecture at the University of Washington.

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Tuesday, November 2, 2004 - Page updated at 12:00 AM

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Building demolition often a recycling effort

By JENNIFER C. YATES
The Associated Press

PITTSBURGH — Twenty-five hundred tons of concrete, 350 tons of steel and 9 tons of aluminum window frames will be left after a seven-story downtown building is taken down. But instead of ending up in the scrap heap, the concrete will be ground up and used to fill the site, steel will be melted to create construction supports and the aluminum will be reused in cans and other products.

As companies become more environmentally aware, that attitude is reflected in the buildings they work in and the ones they renovate or tear down.

Officials at PNC Financial Services, for example, plan to recycle more than 70 percent of the downtown Pittsburgh building they recently began deconstructing, a trend being seen at more demolition sites nationwide.

"Traditionally, if someone were to demolish a building, they would simply go in with a wrecking ball," said Gary Saulson, PNC's director of corporate real estate. Now the company is being much more deliberate in how it takes down the building, a process that will run about two months.

PNC Financial bought the city's former Public Safety Building in 2004 for \$4.2 million and immediately announced plans to turn the space into a park. The company had previously built the world's largest certified green corporate building at a site nearby.

Officials estimate the building will yield 11,000 tons of waste — 8,000 of which is recyclable. In addition to the steel and concrete, 24 tons of exterior steel will be used in other products, and the foam-board ceiling tiles will be returned to the manufacturer to be used again.

"Rather than knocking it down and carting it off to a landfill, if you deconstruct a building and reuse its parts elsewhere, you're saving labor, materials," said Alan Traugott, a founding member of the U.S. Green Building Council. "You are trying to avoid going for new, virgin materials and all the embodied energy and associated environmental impact that reflects."

The practice has become more commonplace, Traugott said, as a distribution network for used building materials has sprung up. Pittsburgh-based Construction Junction, a nonprofit retail store for used and surplus building materials, saves thousands of doors, windows and cabinets for reuse every year, according to its Web site.

The demolition of buildings in the United States produces about 124 million tons of debris every year, according to the Deconstruction Institute, a Florida-based group which encourages recycling of buildings and the use of recycled building materials.

"Clearly, as our land use becomes much more critical, doing this makes a lot of sense," said Rebecca Flora, executive director of the Green Building Alliance.

Peter Templeton, deputy director of the Leadership in Energy and Environmental Design project and International Programs for the Green Building Alliance, said different municipalities have different requirements. Some of the strongest programs are in place in Washington state and California.

According to the Minneapolis-based Institute for Local Self-Reliance, a nonprofit research and educational organization, some towns across the country have passed ordinances requiring recovery of construction and renovation debris. In Atherton, Calif., 50 percent of waste from demolition projects must be recycled or diverted from landfills.

Meanwhile, Saulson said deconstruction actually benefits businesses by creating and sustaining jobs

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at the plants where old building materials are sent. It also makes fiscal sense for PNC, he said.

"We're going to save over \$200,000 in dump fees alone," Saulson said.

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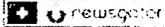
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DECONSTRUCTION: Seattle Struts Its Construction Recycling Stuff

Nov 1, 2001 12:00 PM, Kim A. O'Connell

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Only one city is synonymous with Starbucks, Microsoft, Boeing and Amazon.com — Seattle. In the past decade, the home of the Space Needle has experienced a 10 percent population increase, which has resulted in more jobs, offices and construction. Accordingly, Seattle's King County has seen a surge in construction waste that comprises 20 percent to 30 percent of the waste stream.

To handle burgeoning construction waste, King County has established a comprehensive construction recycling program — saving the region's builders thousands of dollars.

As other markets have ebbed and flowed, the local recycling market for construction and salvage debris has remained fairly steady. High demand exists for salvaged concrete, asphalt, brick and rock, lumber, timber, and architectural features such as staircases and moldings. The Seattle region has a strong private-sector infrastructure for this type of recycling, and approximately 30 percent to 40 percent of construction debris is recycled.

Although this rate is relatively high, the county is aiming to increase construction recycling through its construction, demolition and landclearing (CDL) program, which focuses on teaching the building industry about recycling and reusing construction materials. Since 1993, the CDL program has grown from one part-time employee offering limited technical assistance to two full-time employees offering full technical assistance.

Program employees identify upcoming projects that could generate substantial construction waste, contact developers and work with each company to develop a waste management plan. The county also responds to public inquiries and maintains a searchable online database of recyclers and specific materials. Lastly, the county distributes regular publications and how-to guides that include technical language to incorporate recycling into construction contracts.

The county has found that the most successful way to encourage recycling is to sell builders on the economic benefits. In King County, the cost to dump construction materials is about \$85 per ton, whereas recycling costs \$55 per ton or less and is sometimes even free.

The overall success of construction recycling hinges on two factors, says Theresa Koppang, manager of the King County Green Building Program. "Recycling must remain voluntary rather than mandatory, and the marketplace must determine the economic viability of recycling without direct subsidies from King County government," Koppang says. "The CDL program staff focuses on creating and exploiting incentives for construction companies to recycle their waste and to build with salvaged and recycled-content materials."

One concern that developers often have is that recycling will require time-consuming and costly separation of material to be sent for processing. Koppang argues that several companies have found that the cost savings from recycling far outweigh any increase in labor costs. For example, one Seattle-based contractor, H.S. Wright, was tasked with remodeling the Microsoft Data Center in Bothell, Wash., on a tight six-month deadline. The contractor found that the construction project had distinct phases where single types of waste, such as concrete or wood, could be sorted easily. This nearly eliminated the time spent sorting the material. In all, more than 1,200 tons of debris were recycled, saving more than \$195,000 in the construction and demolition phases.

"Recycling is the last thing on your mind when you're under the gun," says Madalyn Rustagi, project engineer with H.S. Wright. "But when we broke down the project into chunks, we realized, 'Hey, we can do this.'"

Several other developers have taken advantage of the program as well, such as Seattle-based Sellen Construction. Sellen contracted for work on Microsoft Pebble Beach in Redmond, Wash., and recycled 74 percent of its waste and saved \$186,000. Hensel Phelps, Greeley, Colo., recycled 61 percent of the debris generated by the King County Regional Justice Center in Kent, Wash., saving \$242,630.

To offer further guidance and inspiration, the county has compiled a report entitled, "Construction and Demolition Recycling: The King County Experience," which details further case studies. Additionally, other helpful information can be found in the "Seattle/King County Construction Recycling Directory." Produced yearly, the directory walks customers through the process of setting up a construction recycling program and includes detailed lists of area recyclers, broken down by material.

One of the directory's case studies centers on Seattle-based Baugh Construction, which recycled 94 percent of the waste from its Boeing Commercial Airplane Group Headquarters project in Renton, Wash. The company recovered more than 6,400 tons of concrete, 64 tons of wood and 39 tons of metals. Furthermore, the company also used wood paneling harvested from sustainable forests, parking lot curbs and pathways made from recycled plastic, and lobby countertops made of recycled paper. In all, Baugh saved about \$90,000.

In another example, the King County Department of Construction and Facilities Management teamed with developer Wright Runstad and contractor Lease Crutcher Lewis, all Seattle based, to build the King Street Center, one of the largest sustainable buildings on the West Coast. Eighty percent of construction materials were recycled, including more than 3,800 tons of concrete, 668 tons of granite and 136 tons of wood.

Koppang says that one of the county's biggest challenges is keeping the directory up to date. It also can be a challenge to design educational workshops that attract project managers and site superintendents, she says.

"These folks are so incredibly busy that, as much as they care about job-site recycling, it can be difficult for them to get away and find the time to attend a seminar or workshop on how to make a

program work,” she says. “We’ve been fortunate in this case because we learned early on the value of partnering with large firms and the trade organizations to join forces and offer education together.”

The CDL program is just one part of a multi-pronged effort in the county to increase recycling and reduce waste. The county also maintains an online materials exchange, matching generators of reusable building materials with potential users. The exchange is accessible at www.metrokc.gov/rbme.

The Construction Recycling Directory can be found at dnr.metrokc.gov/swd/bizprog/sus_build/CDLguide.pdf. For further information, e-mail theresa.koppang@metrokc.gov.

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Project	Cost Savings	Recycling Rate	Tons Recycled
Washington Residence Salvage Mercer Island, Wash. Earthwise Inc.	\$38,443	60%	373
Microsoft Pebble Beach Redmond, Wash. Sellen Construction	\$186,000	74%	2,310
Klahanie Development Issaquah, Wash. Lozier Homes	\$14,736	55%	133
Kentlake High School Kent, Wash. Crutcher Lewis	\$16,500	60%	664
King Co. Regional Justice Center Kent, Wash. Hensel Phelps	\$242,630	61%	2,730

Find this article at:
http://www.wasteage.com/mag/waste_deconstruction_seattle_struts/index.html

Check the box to include the list of links referenced in the article.

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