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Case No. 53041-4-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

NATIONAL PARKS CONSERVATION ASSOCIATION,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, and
BP WEST COAST PRODUCTS LLC,

Respondents.

BRIEF OF APPELLANT

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TABLE OF CONTENTS

INTRODUCTION 1

ASSIGNMENTS OF ERROR 2

STATEMENT OF THE CASE..... 3

STANDARD OF REVIEW 5

ARGUMENT 6

I. NPCA TIMELY FILED ITS PETITION FOR REVIEW AND SATISFIED ALL JURISDICTIONAL REQUIREMENTS 6

 A. Washington Statutes And PCHB Rules Set The Jurisdictional Requirements For Judicial Review of A PCHB Decision..... 6

 B. NPCA Timely Met All The Jurisdictional Requirements For Judicial Review Of A PCHB Decision..... 7

 C. Administrative Rule 2 Is Not A Jurisdictional Requirement. 10

II. THE SUPERIOR COURT ERRED IN FAILING TO APPLY THE DOCTRINE OF CONSTRUCTIVE FILING TO NPCA’S PETITION..... 15

 A. Application Of The Doctrine Of Constructive Filing To NPCA’s Petition Is Appropriate And Dictates That It Be Considered Timely Filed. 15

 B. Cases In Which The Doctrine Of Constructive Filing Was Analyzed And Not Applied Are Clearly Distinguishable. 17

III. THE SUPERIOR COURT SHOULD HAVE APPLIED THE DOCTRINE OF SUBSTANTIAL COMPLIANCE TO NPCA’S PETITION..... 18

CONCLUSION..... 21

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Biomed Comm. Inc. v. State Dep't of Health Bd. of Pharmacy,</i> 146 Wn. App. 929, 193 P.3d 1093 (2008)	11, 12
<i>Burnett v. Tacoma City Light,</i> 124 Wn. App. 550, 104 P.3d 677 (2004)	7, 17
<i>Cintron v. Union Pacific R. Co.,</i> 813 F.2d 917 (9th Cir.1987)	13
<i>City of Lakewood v. Cheng,</i> 169 Wn. App. 165, 279 P.3d 914 (2012)	8
<i>City of Seattle v. Public Emp't Relations Comm'n,</i> 116 Wn.2d 923, 809 P.2d 1377 (1991)	19
<i>Conom v. Snohomish County,</i> 155 Wn.2d 154, 118 P.3d 344 (2005)	11
<i>Continental Sports Corp. v. Dep't of Labor & Indus.,</i> 128 Wn.2d 594, 910 P.2d 1284 (1996)	19
<i>Crosby v. Spokane County,</i> 137 Wn.2d 296, 971 P.2d 32 (1999)	5, 19
<i>Curtis Lumber Co. v. Sortor,</i> 83 Wn.2d 764, 522 P.2d 822 (1974)	14
<i>Daniels-Hall v. National Educ. Ass'n,</i> 629 F.3d 992 (9th Cir. 2010)	13
<i>In re Det. of Turay,</i> 139 Wn.2d 379, 986 P.2d 790 (1999)	14

<i>Diehl v. W. Washington Growth Mgmt. Hearings Bd.</i> , 153 Wn.2d 207, 103 P.3d 193 (2004).....	11
<i>First Fed. Sav. & Loan Ass'n of Walla Walla v. Ekanger</i> , 93 Wn.2d 777, 613 P.2d 129 (1980).....	14
<i>Griffith v. City of Bellevue</i> , 130 Wn.2d 189, 922 P.2d 83 (1996).....	19
<i>Japanese Vill., LLC v. Fed. Transit Admin.</i> , 843 F.3d 445 (9th Cir. 2016)	13
<i>Loya v. Desert Sands Unified School Dist.</i> , 721 F.2d 279 (9th Cir.1983)	13
<i>Margetan v. Superior Chair Craft Co.</i> , 92 Wn. App. 240, 963 P.2d 907 (1998).....	7, 9, 17
<i>In re Matter of Saltis</i> , 94 Wn.2d 889, 621 P.2d 716 (1980).....	19
<i>Quality Rock Prod., Inc. v. Thurston Cty.</i> , 126 Wn. App. 250, 108 P.3d 805 (2005)	11, 12, 14
<i>San Juan Fidalgo Holding Co. v. Skagit Cnty.</i> , 87 Wn. App. 703, 943 P.2d 341(1997).....	17
<i>State v. Krier</i> , 149 Wn. App. 1012 (2009)	8
<i>State v. Robinson</i> , 104 Wn. App. 657, 17 P.3d 653 (2001)	8
<i>Stevens v. City of Centralia</i> , 86 Wn. App. 145, 936 P.2d 1141 (1997).....	7, 15, 16, 18
<i>Stewart v. State, Dep't of Employment Sec.</i> , 191 Wn.2d 42, 419 P.3d 838 (2018).....	6, 9

<i>Vasquez v. Dept. of Labor & Indus.</i> , 44 Wn. App. 379, 722 P.2d 854 (1986)	11
<i>Vaughn v. Chung</i> , 119 Wn.2d 273, 830 P.2d 668 (1992)	20
<i>Waste Connections of Washington, Inc. v. Dep't of Labor and Indus.</i> , 5 Wn. App. 2d 902, 422 P.3d 1224 (2018)	17, 18, 20
<i>Weeks v. Chief of State Patrol</i> , 96 Wn.2d 893, 639 P.2d 732 (1982)	20
<i>ZDI Gaming, Inc. v. State ex rel. Washington State Gambling Comm'n</i> , 173 Wn.2d 608, 268 P.3d 929 (2012)	5

Statutes

42 U.S.C. § 7401	1, 3
RCW 4.36.240	18, 20
RCW 34.05.54	8
RCW 34.05.514	6, 15, 16, 20
RCW 34.05.514(2)	7, 8, 9
RCW 34.05.542	<i>passim</i>
RCW 34.05.542(2)	<i>passim</i>
RCW 34.05.546	6, 8, 16, 20
RCW 36.18.005	8
RCW 36.18.005(2)	7, 9
RCW 36.18.020(2)	7

RCW 36.18.060	7
Regulations	
WAC § 371-08-55.....	16
WAC § 371-08-555.....	<i>passim</i>
Other Authorities	
3A Wash. Rules Practice AR 2 (6th ed.)	10
Fed. R. Evid. 201	13
Fed. R. Evid. 201(b)(2).....	13
Washington Evidence Rule 201(b)(2)	13

INTRODUCTION

Washington Courts have a mandate to interpret and apply rules so that an error in form does not result in the delay or loss of a lawsuit. This case concerns an appeal of a final order from the Pollution Control Hearings Board's ("PCHB") on a challenge to a Clean Air Act permit for the British Petroleum West Coast Products LLC ("BP") refinery in Ferndale, Washington. The National Park Service had determined the proposed permit would adversely affect air quality in and around North Cascades and Olympic National Parks.

On July 17, 2018, the PCHB affirmed the Washington Department of Ecology's ("Ecology") Clean Air Act Permit for the BP Refinery. The National Park Conservation Association ("NPCA") filed a Petition for Judicial Review ("Petition") of the PCHB's decision with the Thurston County Clerk's Office on August 15, 2018. Upon receiving NPCA's filing, the Thurston County Clerk's Office ("Clerk's Office") refused to accept it and returned NPCA's Petition for lack of a cover sheet required by Superior Court Administrative Rule 2 ("AR 2"). While NPCA immediately resubmitted its Petition with the cover sheet, the Thurston County Superior Court dismissed NPCA's appeal as untimely based on the clerk recording NPCA's filing date as August 21, 2018, the date of NPCA's resubmission.

The crux of this appeal is whether NPCA properly and timely invoked the Superior Court's appellate jurisdiction when it filed its Petition for Review with Thurston County before August 16, 2018 (the statutory deadline), but the clerk refused to accept the filing without a cover sheet as required by AR 2. Washington statute and jurisprudence establish that the omission of a cover sheet required by Administrative Rules cannot extinguish a party's access to the court when that party has met all jurisdictional requirements for appeal and there is no prejudice to any of the parties.

NPCA respectfully requests the Court to reverse and remand the Superior Court's Order of Dismissal and that this Court reinstate consideration of NPCA's request for direct review of the appeal.

ASSIGNMENTS OF ERROR

The Superior Court erred as a matter of law in dismissing NPCA's Petition as untimely.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether NPCA invoked the Superior Court's appellate jurisdiction to review the PCHB's Final Order when NPCA timely satisfied the jurisdictional requirements, but mistakenly omitted a cover sheet required by AR 2?

2. Whether the Superior Court should have applied the doctrine of constructive filing to NPCA's Petition for Review, and consider it as timely filed on the date the Thurston County Clerk's Office actually received it—one day prior to the statutory deadline?
3. Whether the Superior Court should have applied the doctrine of substantial compliance to NPCA's failure to include a cover sheet with its Petition for Review, as required by AR 2, when the Petition provided all of the information the cover sheet required?

STATEMENT OF THE CASE

On July 17, 2018, the PCHB issued a final decision in favor of the Ecology and BP West Coast Products LLC ("BP"), denying NPCA's challenge of a Clean Air Act Prevention of Significant Deterioration Permit for a coker-heater replacement project at BP's refinery in Ferndale, Washington (PCHB Final Decision) CP, at 73-103. Pursuant to WAC § 371-08-555, NPCA's Petition for Review was due 30 days from the date of the PCHB's Final Decision, or August 16, 2018.

On August 14, 2018, NPCA submitted its Petition along with the required filing fee, and copies of the PCHB Final Decision and Order on Motions for Summary Judgment to the Thurston County Superior Court

and the PCHB via FedEx overnight delivery. CP, at 182-186.¹ NPCA also mailed copies of its Petition for service on the parties on August 14, 2018, and provided electronic copies to the parties on August 15, 2018. CP, at 182-186, 194. On August 15, 2018, NPCA received confirmation of the delivery of its Petition, filing fee, and exhibits to the Thurston County Superior Court and the PCHB. CP, at 183, 189, 192. Five days later, on Monday, August 20, 2018, NPCA received all of the documents it had filed by return regular U.S. mail with a note from the Clerk's Office indicating that NPCA's filing was being returned for lack of a cover sheet. CP, at 183, 195-196.

NPCA immediately corrected the error and resubmitted its Petition with the required coversheet to the Clerk's Office that same day, August 20, 2018, via overnight delivery. CP, at 183,197-199. NPCA's resubmission included a cover letter where it explained that its initial filing had met all the jurisdictional requirements and requested that the Clerk's Office record the Petition as filed on August 15, 2018, the date it was originally received in the Clerk's Office. CP, at 183, 197-201. The

¹ In 2018, at the time NPCA filed its Petition, Thurston County LGR 30(b)(2)(v) required Petitions for Review of administrative orders to be filed in paper form, not electronically. Thurston County has subsequently changed that rule to allow for electronic filing of appeals of administrative orders.

form cover sheet required by AR 2 provides the courts with the following information: the case title, the name of counsel, the counsel's bar membership number, and a checked box indicating that the filing is an appeal of an administrative decision. CP, at 1, 197-199. All of this information was included on pages 1, 2, and 11 of NPCA's Petition. CP, at 2, 3, 12. The Clerk's Office denied the request as to the filing date and recorded the filing date as August 21, 2018, the date it received NPCA's resubmitted Petition. CP, at 1-2, 202-203.

NPCA subsequently filed a motion to verify the timely filing of its Petition on August 28, 2018 and BP and Ecology filed motions to dismiss NPCA's appeal on August 28, 2018 and August 29, 2018. CP at 173-176, 66-69, 204-205. At hearing on December 12, 2018, the Superior Court dismissed NPCA's appeal as not timely filed, ruling that the court "has no authority to act" and therefore "had to dismiss this action for lack of jurisdiction." Mot. Hr'g Tr. 16-17, Dec. 14, 2018.

STANDARD OF REVIEW

The determination of whether a court has jurisdiction is a question of law that is reviewed de novo. *ZDI Gaming, Inc. v. State ex rel. Washington State Gambling Comm'n*, 173 Wn.2d 608, 624, 268 P.3d 929 (2012); *Crosby v. Spokane County*, 137 Wn.2d 296, 301, 971 P.2d 32 (1999).

ARGUMENT

I. NPCA TIMELY FILED ITS PETITION FOR REVIEW AND SATISFIED ALL JURISDICTIONAL REQUIREMENTS

A. Washington Statutes And PCHB Rules Set The Jurisdictional Requirements For Judicial Review of A PCHB Decision.

A superior court has appellate jurisdiction of a Petition to review an administrative decision once a party satisfies all of the required statutory procedures. *Stewart v. State, Dep't of Employment Sec.*, 191 Wn.2d 42, 52, 419 P.3d 838 (2018), as amended (Aug. 30, 2018)(“When reviewing an administrative decision, the Superior Court is acting in its limited appellate capacity, and all statutory procedural requirements must be met before the court’s appellate jurisdiction is properly invoked”)(internal quotes and citations omitted).

The requirements for review of a PCHB decision are set forth in RCW 34.05.514, 34.05.542, 34.05.546 and WAC § 371-08-555 (collectively referred to as “jurisdictional requirements”). Under these jurisdictional requirements, NPCA must file its Petition with the proper fee in the Superior Court within thirty days of the date of service of the final order from the PCHB. RCW 34.05.514, 34.05.542, and WAC § 371-08-555. NPCA also must serve its Petition for Review on Ecology, the office of the attorney general, and BP within that same thirty-day timeframe. RCW 34.05.542(2). RCW 34.05.546 specifies that NPCA’s

Petition for Review needed to include identification of the order appealed, the issues on appeal, and grounds for the appeal. Finally, WAC § 371-08-555 required NPCA to file a copy of its Petition for Review with the PCHB.

NPCA satisfied each of these jurisdictional requirements within the thirty-day period for appeal.

B. NPCA Timely Met All The Jurisdictional Requirements For Judicial Review Of A PCHB Decision.

NPCA timely filed its Petition for Review with the Thurston County Clerk's Office on August 15, 2018. RCW 34.05.514(2) and WAC § 371-08-555 set the deadline for a party to file and serve a petition for judicial review at thirty days from the date of service of the PCHB's final order. According to Washington law and jurisprudence, a document is properly "filed" with the court when it is delivered to the clerk's office with the appropriate filing fee.² RCW 36.18.005(2) (defines filed as the "act of delivery"), RCW 36.18.020(2) (filing fees), RCW 36.18.060 (tender of fees); *Margetan v. Superior Chair Craft Co.*, 92 Wn. App. 240,

² This definition of filing is reinforced by the Washington Court of Appeals' recognition and application of the concept of constructive filing. See *Stevens v. City of Centralia*, 86 Wn. App. 145, 152, 936 P.2d 1141, 1145 (1997); *Burnett v. Tacoma City Light*, 124 Wn. App. 550, 559, 104 P.3d 677 (2004) (reiterating the requirements for constructive filing.) See also, Part II *infra* at 18-20.

246, 963 P.2d 907 (1998) (explaining that RCW 36.18.005 dictates that a document is filed with the court when it is delivered to the clerk's office with the required filing fee); *State v. Krier*, 149 Wn. App. 1012 (2009) (not reported in P.3d) (same). *See also State v. Robinson*, 104 Wn. App. 657, 668, 17 P.3d 653 (2001) (finding that “[a] document is filed with the clerk when it is delivered to the clerk.”); *City of Lakewood v. Cheng*, 169 Wn. App. 165, 169–70, 279 P.3d 914 (2012) (noting that *Robinson* supports the position that the transmission of a notice of appeal to the clerk rendered it timely filed).

NPCA's submission of its Petition for Review to the Thurston County Clerk's Office on August 15, 2018, with the required fee, constituted filing within the thirty-day statutory deadline. The PCHB issued its Final Decision in this case on July 17, 2018, and served it on NPCA that same day. CP, at 73-103. NPCA delivered its Petition for Review with the proper filing fee, a copy of the PCHB Final Order (and the PCHB's summary judgement decision) to the Thurston County Superior Court and the PCHB via overnight delivery on August 14, 2018. CP, at 182-186, 189, 192. *See* RCW 34.05.514(2) and WAC § 371-08-555. In compliance with RCW 34.05.546, NPCA included in its Petition, identification of the issues on appeal and the grounds for the appeal. CP, at 2-13. Additionally, as required by RCW 34.05.54, NPCA attached a

copy of the PCHB’s Final Decision and Order on Summary Judgment Motions to its Petition for Review. CP, at 2, 3, 14-65. NPCA received confirmation of the Thurston County Clerk’s Office receipt of its materials on August 15, 2018—twenty-nine days after the PCHB issued its Final Decision. CP, at 183, 189, 192. *See* RCW 34.05.514(2) and WAC § 371-08-555. As required by RCW 34.05.514(2), on that date NPCA also served its petition on Ecology, the attorney general, and BP. CP, at 182-188, 190-191. NPCA further provided a courtesy electronic copy of the Petition for Review, attachments, and a cover letter to the court. CP, at 183, 193-194, 184-186.

The Clerk’s Office refused to accept the Petition because it lacked a cover sheet required by AR 2. CP, at 183, 195-196. Under the law outlined above, this refusal had no bearing on whether NPCA’s submission was “filed” on August 15, 2018. While an important tool for court administration, a cover sheet is not required by statute and is therefore not necessary to timely invoke the Superior Court’s appellate jurisdiction. *See* RCW 36.18.005(2) (defines filed as the “act of delivery”), 36.18.020(2) (filing fees), 36.18.060 (tender of fees); *Margetan*, 92 Wn. App. at 246. NPCA satisfied each of the jurisdictional requirements to invoke the Superior Court’s appellate jurisdiction. *Stewart*, 191 Wn.2d at 52.

Because NPCA timely satisfied all of the jurisdictional requirements for invoking the appellate jurisdiction of the Superior Court to review a PCHB decision, the superior court's dismissal of NPCA's Petition was error.

C. Administrative Rule 2 Is Not A Jurisdictional Requirement.

The Superior Court dismissed NPCA's Petition as untimely based on the clerk's refusal to accept NPCA's timely filing without a cover sheet as required by AR 2. This was error because, in dismissing NPCA's Petition, the court effectively and improperly elevated a Superior Court administrative rule to a jurisdictional prerequisite. Administrative Rule 2 specifies, "[e]ach new civil and domestic case filing shall be accompanied by a Case Information Cover Sheet prepared and submitted by the plaintiff." The cover sheet provides easy access to information for the Superior Court regarding the case number, the case title, the name of counsel, the counsel's bar membership number, and the type of proceeding. CP, at 1, 197-199. The data is used "to help the clerks in placing the case in a proper filing category and also to gather information thought relevant to court management." Case Information Cover Sheet, 3A Wash. Rules Practice AR 2 (6th ed.). A cover sheet is not a requirement to invoke the appellate jurisdiction of the Superior Court.

Washington courts have consistently confirmed that “[s]uperior court civil rules are procedural rules...and thus do not purport to extend [or limit] subject matter jurisdiction of the court.” *Diehl v. W. Washington Growth Mgmt. Hearings Bd.*, 153 Wn.2d 207, 216–17, 103 P.3d 193 (2004) (quoting *Vasquez v. Dept. of Labor & Indus.*, 44 Wn. App. 379, 383, 722 P.2d 854 (1986)). Both the Washington Supreme Court and Court of Appeals have explicitly stated that procedural requirements not mandated by statute are not to be elevated to a jurisdictional threshold requirement. *Quality Rock Prod., Inc. v. Thurston Cty.*, 126 Wn. App. 250, 271–72, 108 P.3d 805 (2005) (finding the trial court erred when it dismissed a land use petition for non-compliance with technical formalities of a superior court civil rule); *Conom v. Snohomish County*, 155 Wn.2d 154, 162, 118 P.3d 344 (2005) (reiterating that the courts will not elevate a procedural requirement to a jurisdictional threshold requirement).

For example, this Court in *Biomed Comm. Inc. v. State Dep’t of Health Bd. of Pharmacy*, 146 Wn. App. 929, 940-942, 193 P.3d 1093 (2008), held that the Superior Court had appellate jurisdiction to review an agency action when the petitioner failed to have an attorney sign its petition as required by CR 11 (a rule with ethical underpinnings, important to maintaining the integrity of the legal process), because “neither of [the]

statutes [that govern a petition for judicial review] mentions any signature requirement.” The Court of Appeals made clear that it “will not read into the statute a jurisdictional...requirement where the legislature has not stated one.” *Id.* at 942. Administrative Rule 2 is not even a superior court civil rule, but a rule for the administrative convenience of the Superior Courts. If the civil rules themselves are procedural and do not affect the court’s jurisdiction, an administrative rule cannot be treated as a jurisdictional requirement. *Quality Rock Prod., Inc.*, 126 Wn. App. at 270 (2005). This is evidenced by the plain language of all the statutes governing judicial review of PHCB decisions, which make no mention generally or specifically of AR 2 or a cover sheet requirement. *See, Biomed Comm. Inc.*, 146 Wn. App. at 940-942 (2008).

The lack of uniformity in how Washington counties handle the mistaken omission of a cover sheet also demonstrates that AR 2, while important for the administration of court affairs, is not a jurisdictional requirement. For example, Thurston County’s Faulty Document Policy directs the clerk’s office to reject a filing if not accompanied by a cover sheet, whereas King County only assesses a fee for such omission. Thurston Cnty. Faulty Document Policy (Nov. 24, 2008) *available at* <https://www.co.thurston.wa.us/clerk/ClerkAlerts/WSBA%20Faulty%20Document%20Notice.doc> (“Clerk’s Memorandum); and King Cnty.

Superior Court Case Assignment Area Designation and Case Information

Cover Sheet, *available at*

<https://www.kingcounty.gov/~//media/courts/Clerk/forms/CICS-civil->

[pdf.ashx?la=en](https://www.kingcounty.gov/~//media/courts/Clerk/forms/CICS-civil-pdf.ashx?la=en) (last modified Jan. 2019).³ NPCA understands that

Thurston County established its Faulty Document Policy as a means for the clerk's office to operate more efficiently and to reduce the workload of

its staff. Clerk's Memorandum. "While such interests are important, local

rules to serve them should not be applied in a manner that defeats

altogether a litigant's right to access to the court." *Cintron v. Union*

Pacific R. Co., 813 F.2d 917, 920 (9th Cir.1987) (*quoting Loya v. Desert*

Sands Unified School Dist., 721 F.2d 279 (9th Cir.1983)). The

Washington Supreme Court has repeatedly echoed this sentiment,

³ NPCA requests this Court take judicial notice of the Clerk's Memorandum and King County cover sheet policy. These documents are publicly available on the websites of each of the County Clerk's Offices, so their accuracy is unquestionable. Washington Evidence Rule 201(b)(2) provides that judicial notice may be taken of facts which are not subject to reasonable dispute, meaning that they are "capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned." Judicial notice may be taken at any state of the proceeding and by appellate courts. ER 201(f); Comment to ER 201(f). Cases interpreting the identically worded Fed. R. Evid. 201(b)(2), provide that an appellate court may take judicial notice of information "made publicly available by government entities." *See Daniels-Hall v. National Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010) (citing Fed. R. Evid. 201); and *Japanese Vill., LLC v. Fed. Transit Admin.*, 843 F.3d 445, 454 (9th Cir. 2016).

directing courts, whenever possible, to apply procedural rules “in such a way that substance will prevail over form.” *First Fed. Sav. & Loan Ass'n of Walla Walla v. Ekanger*, 93 Wn.2d 777, 781–82, 613 P.2d 129 (1980) (quoting *Curtis Lumber Co. v. Sortor*, 83 Wn.2d 764, 767, 522 P.2d 822 (1974); *In re Det. of Turay*, 139 Wn.2d 379, 390–91, 986 P.2d 790 (1999) (same)); see also Comment, RAP 18.8. (“the trend of the law in this state is to interpret rules and statutes to reach the substance of matters so that it prevails over form”). Strict application of AR 2 ignores “that the primary concern of statutory procedural requirements for special proceedings is that a petitioner *timely file* and *properly serve* a party.” *Quality Rock Prod., Inc.*, 126 Wn. App. at 268–69 (emphasis in original). NPCA filed its Petition for Review with the proper filing fee in Thurston County and served Ecology and BP within the thirty-day statutory period. CP, at 182-192.

Given Washington jurisprudence and the plain language of the relevant statutes in this case, the Superior Court improperly dismissed NPCA’s Petition and elevated a procedural rule of administrative convenience to a jurisdictional requirement.

II. THE SUPERIOR COURT ERRED IN FAILING TO APPLY THE DOCTRINE OF CONSTRUCTIVE FILING TO NPCA'S PETITION

A. Application Of The Doctrine Of Constructive Filing To NPCA's Petition Is Appropriate And Dictates That It Be Considered Timely Filed.

The court below erred in dismissing NPCA's Petition of Review because application of the doctrine of constructive filing would render NPCA's Petition timely filed on August 15, 2018. *See Stevens v. City of Centralia*, 86 Wn. App. 145, 152, 936 P.2d 1141 (1997). Constructive filing is a concept that this Court has recognized and applied to the very situation here. In *Stevens v. City of Centralia*, the plaintiff—like NPCA here—attempted to file an administrative claim for damages with the appropriate clerk's office, but the clerk rejected the claim because it lacked a pre-printed form required by the local administrative rules. *Id.* at 149-150; RCW 34.05.514, 34.05.542, and WAC § 371-08-555. *See also*, CP, at 182-186, 189, 192. This Court concluded that the claim was constructively filed on the date it was received by the clerk's office because it was timely presented to the correct clerk's office and “allow[ing] the clerk to refuse to accept what [wa]s an otherwise proper complaint would [have] le[d] to an inequitable result.” *Id.* at 152.

The same result is warranted here to avoid an inequitable outcome. NPCA fully complied with all of the jurisdictional requirements for filing

a petition for judicial review of a PCHB order. As explained above, the contents of NPCA's Petition for Review gave full and complete notice of the appeal, the grounds for appeal, and the issues appealed. CP, at 2 -65; RCW 34.05.546. NPCA, in accordance with RCW 34.05.542, presented its Petition to the Clerk's Office with the appropriate fee one day before the expiration of the thirty-day deadline on August 15, 2018. CP, at 182-186, 189, 192. NPCA also timely served its Petition for Review on BP, Ecology, and the Board twenty-nine days after the PCHB's final order in accordance with RCW 34.05.542(2) and WAC § 371-08-555. CP, at 182-192.

NPCA's only omission was a cover sheet required by the administrative rules. As in *Stevens v. City of Centralia*, it would be inequitable to reject NPCA's Petition as untimely when NPCA fulfilled all the jurisdictional requirements, the parties were not prejudiced by NPCA's error, and the dismissal of NPCA's Petition resulted solely from the clerk's refusal to accept it without a cover sheet—a procedural, non-jurisdictional error. *Stevens*, 86 Wn. App. at 152; RCW 34.05.514, 34.05.542, 34.05.546 and WAC § 371-08-55. *See also*, CP, at 182-192, 196; Mot. Hr'g Tr. 14-17. Moreover, NPCA's Petition on pages 1, 2, and 11 provided the information required to be included in a cover sheet. CP, at 2, 3, 12.

In this case, the Superior Court concluded that it had no choice but to dismiss NPCA's Petition as untimely. Mot. Hr'g Tr. 16-17. This was in error because Washington case law provides that the doctrine of constructive filing should apply here and would dictate finding that NPCA timely filed its appeal.

B. Cases In Which The Doctrine Of Constructive Filing Was Analyzed And Not Applied Are Clearly Distinguishable.

The cases where Washington courts declined to employ the concept of constructive filing are inapplicable here because:

- (1) NPCA filed its Petition for Review with the proper fee; CP, at 182-186, 189, 192; *cf. Margetan*, 92 Wn. App. at 246-248 (pleading did not include the statutorily required filing fee);
- (2) NPCA filed its Petition for Review at the correct clerk's office; CP, at 182-186, 189, 192; RCW 34.05.542; *cf. Burnett*, 124 Wn. App. at 559 (pleading was filed "with the wrong...employees...in the wrong...offices"); and
- (3) NPCA filed its Petition for Review a day before the expiration of the thirty-day statutory period. CP, at 182-186, 189, 192; *cf. San Juan Fidalgo Holding Co. v. Skagit Cnty.*, 87 Wn. App. 703, 712, 943 P.2d 341(1997) (attempt to file the pleading was untimely because the attempt was made after the clerk's office closed).

Further, *Waste Connections of Washington, Inc. v. Dep't of Labor and Indus.*, 5 Wn. App. 2d 902, 422 P.3d 1224 (2018), cited by BP and Ecology below, CP at 530-531; 551-552, is readily distinguished from the situation here. In *Waste Connections*, the Department of Labor and

Industries did not actually receive the appellant's appeal until *after* the statutory deadline because the appellant failed to provide sufficient postage for its delivery. *Waste Connections of Washington, Inc.*, 5 Wn. App. 2d at 903-904. Consequently, the Department of Labor could not have constructively accepted the appeal until it received it. *See Stevens*, 86 Wn. App. at 152 (explaining requirements for constructive filing). By contrast, here, the clerk's office actually received the appeal one day *before* the deadline. CP at 183, 192. NPCA timely filed its Petition and met all the jurisdictional requirements, but the clerk rejected it for lack of a cover sheet. CP, at 182-192.

III. THE SUPERIOR COURT SHOULD HAVE APPLIED THE DOCTRINE OF SUBSTANTIAL COMPLIANCE TO NPCA'S PETITION

The Superior Court further erred in dismissing NPCA's Petition because it failed to apply the doctrine of substantial compliance to NPCA's Petition. Washington law provides that "defects or errors in filing that do not affect the substantive rights of the parties, shall be disregarded by the court at *every stage of litigation*." RCW 4.36.240 NPCA's failure to include a cover sheet does not affect the rights of any party and should not result in rejection of an otherwise valid and timely filing.

Courts in Washington have adopted and relied on the doctrine of substantial compliance to allow cases to proceed in circumstances similar to those here. The Washington Supreme Court defines substantial compliance as actual compliance with respect to the substance essential to every reasonable objective of a statute. *City of Seattle v. Public Emp't Relations Comm'n*, 116 Wn.2d 923, 928, 809 P.2d 1377 (1991). “Substantial compliance has been found [in cases] where there has been compliance with the statute albeit with procedural imperfections.” *Continental Sports Corp. v. Dep't of Labor & Indus.*, 128 Wn.2d 594, 603, 910 P.2d 1284 (1996). For example, in *Griffith v. City of Bellevue*, 130 Wn.2d 189, 193-94, 922 P.2d 83 (1996), the court ruled that the Superior Court had acquired jurisdiction even though the required affidavit for perfection of a petition for a statutory writ of certiorari had not been signed. *See also, Crosby v. Cty. of Spokane*, 137 Wn.2d, at 301 (recognizing that in some circumstances, even jurisdictional requirements may be satisfied by substantial compliance where the substance essential to the objective of the statute is met); and *In re Matter of Saltis*, 94 Wn.2d 889, 896, 621 P.2d 716 (1980) (holding that substantial compliance with procedural rules is sufficient because “delay and even the loss of lawsuits [should not be] occasioned by unnecessarily complex and vagrant procedural technicalities”).

Application of the doctrine of substantial compliance is appropriate here too. As detailed above, NPCA met all the jurisdictional requirements and its failure to include a cover sheet as required by Administrative Rule 2 and Thurston County's Faulty Document Policy was a procedural error that did not prejudice any of the parties. CP, at 182-196; RCW 34.05.514, 34.05.542, 34.05.546 and WAC § 371-08-555. NPCA also substantively complied with AR 2 by providing the information required in a cover sheet on pages 1, 2, and 11 of NPCA's Petition. CP, at 2, 3, 12. While NPCA does not seek to discount the importance of court rules to address administrative convenience, it respectfully submits that Washington case law counsels against elevating form over substance, especially where doing so effectively disposes of a case before it can be heard. *See Vaughn v. Chung*, 119 Wn.2d 273, 280, 830 P.2d 668 (1992) ("the civil rules contain a preference for deciding cases on their merits rather than on procedural technicalities"); *Weeks v. Chief of State Patrol*, 96 Wn.2d 893, 895, 639 P.2d 732 (1982) (stating the "present rules were designed to allow some flexibility in order to avoid harsh results").⁴ Therefore,

⁴ *Waste Connections of Washington, Inc.*, 5 Wn. App. 2d at 908 also has no bearing on application of RCW 4.36.240 and the doctrine of substantial compliance here for all of the reasons discussed above.

NPCA's Petition should be considered timely filed because it met all jurisdictional requirements and substantially complied with AR 2.

CONCLUSION

NPCA requests the Court to find that NPCA timely filed its Petition and to reverse the Superior Court's Order of Dismissal of NPCA's Petition for Review. NPCA complied with all the jurisdictional requirements for judicial review of the PCHB's Final Order and its inadvertent omission of a cover sheet is an error that has no effect on the court's jurisdiction. NPCA requests that the case be remanded to the Superior Court for reinstatement of NPCA's appeal of the PCHB's Final Order and that this Court reinstate consideration of NPCA's Request for Direct Review of the Appeal in this Court.

Respectfully submitted this 18th day of March, 2019.

s/ Ashley N. Bennett

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I certify under penalty of perjury under the laws of the State of Washington that on March 18, 2019, I served a true and correct copy of the foregoing to be delivered as follows:

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EARTHJUSTICE

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