

FILED

SEP 01 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 29918-0-III
COURT OF APPEALS,
DIVISION III
OF THE STATE OF WASHINGTON

DOUBLE H, L.P.,

Appellant,

v.

WASHINGTON DEPARTMENT OF ECOLOGY,

Respondent.

BRIEF OF APPELLANTS

Michael B. Gillett, WSBA # 11038
Attorney for Appellant

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A. ASSIGNMENTS OF ERROR

Assignments of Error

No. 1. The trial court erred in Finding of Fact No. 1.10, in which the court found: “Double H was denied access to documents responsive to its records requests for 495 days.”

No. 2. The trial court erred in Conclusion of Law No. 2.4, in which it concluded: “[T]his court has discretion to determine the number of days documents were improperly withheld”

No. 3. The trial court erred in Conclusion of Law No. 2.7, in which it concluded: “[T]he records which Ecology improperly withheld or failed to disclose constitute one group for purposes of calculating the penalty period.”

Issues Pertaining to Assignments of Error

No. 1: Where an agency has wrongfully withheld a record, does the Public Records Act require that the resulting penalty be applied for each day such record was withheld? (Assignment of Error No. 1, No. 2, and No. 3)

No. 2: Should non-overlapping records responsive to two separate requests be grouped together? (Assignment of Error No. 1, No. 2, and No. 3)

No. 3: Does grouping records according to the dates they were

produced result in a statutorily-mandated penalty for each day a record was wrongfully withheld? (Assignment of Error No. 1, No. 2, and No. 3.)

B. STATEMENT OF THE CASE

1. PROCEDURE BELOW

This matter involves a lawsuit brought by the Appellant, Double H, L.P. (Double H), against the Respondent, Washington Department of Ecology (Ecology), for wrongfully withholding records requested under the Public Records Act (PRA), Chp. 42.56 RCW. CP 1-17. The parties brought cross motions for summary judgment. Ecology brought a motion for summary judgment on October 4, 2010, and Double H brought a motion for partial summary judgment on November 17, 2010. CP 23-24 and 432-433. Ecology admitted that it had wrongfully withheld records from Double H, and that Double H was entitled to a penalty award under the PRA. CP 1306. On January 14, 2011, the cross motions came before the Hon. Robert Lawrence-Berrey, who heard oral argument thereon. RP (Jan. 14, 2011). On April 18, 2011, Judge Lawrence-Berrey entered a judgment against Ecology, awarding Double H a penalty in the amount of \$13,365.00, as well as \$88,659.82 in attorney fees and costs. CP 1319-1321. Double H filed a Notice of Appeal on June 8, 2011. CP 1316-1321.

2. RELEVANT FACTS

On August 7, 2009,¹ Ecology received a public records request from Double H, which asked for –

– copies of all public records concerning any investigation by the Department of Ecology into activities, or alleged activities, by George Higgins, Edith Higgins, Jim Hansen, Linda Hansen, or Double H, LLC, or any of their business entities.

CP 139. On January 14, 2009, Ecology received a second records request from Double H, this one asking for: “All public records that are responsive to our request by letter dated August 6, 2009 ... that were created after the date you received that request.” CP 348. This case concerns Ecology’s failure to produce multiple records responsive to these two public records requests. Since the commencement of the lawsuit, Ecology produced records that were responsive to Double H’s August 7, 2009 request on seven occasions,² and it produced records that were responsive to Double H’s January 14, 2010 request on nine occasions.³

¹ Occasionally in the record this request is referred to by the date August 6, 2009, which is the date of the letter. The request was received by Ecology on August 7, 2009. CP 141. Under the PRA, the date of receipt has more legal significance; therefore, in this Appellant’s Brief, the request is referred to as the August 7, 2009 request.

² Records responsive to the August 7, 2009 request were produced on June 10, 2010, June 24, 2010, July 1, 2010, September 2, 2010, January 12, 2011, January 26, 2011, and July 25, 2011. CP 91-92, 675-676, and 1109-1250; and Granberg Affidavit (subdoc. 108 filed 7/25/2011).

³ Records responsive to the January 14, 2010 request were produced on June 10, 2010, June 24, 2010, July 1, 2010, September 2, 2010, November 29, 2010, December 17,

On August 10, 2009, Ecology acknowledged that it had received the records request and estimated that the information requested would be “compiled, reviewed, copied and available the week of September 10, 2009.” CP 141. On September 24, 2009, Ecology posted an initial installment of responsive records on an Ecology website. CP 153. A second installment was posted on the website on September 30, 2009. CP 157. On January 28, 2010, Ecology provided a third installment to Double H, consisting of two compact discs containing photos. CP 93. An exemption log was posted as well, disclosing 17 records that Ecology withheld from production, in whole or in part, under claims that the records were exempt from production under the PRA. CP 92.

On January 19, 2010, Ecology acknowledged that it had received Double H’s second records request, and estimated that the information requested would be “compiled, reviewed, copied/scanned and available the week of February 18, 2010.” CP 357. Ecology posted records responsive to the second request on its website in two installments: on March 19, 2010 and on March 22, 2010. CP 366 and 368. An exemption log posted on the website disclosed 37 records that Ecology withheld from production, in whole or in part, under claims of exemption. CP 97. In the

2011, January 14, 2010, January 26, 2011, and July 25, 2011. CP 94-97, 586, 675-676, 739-742, and 1089-1276; and Granberg Affidavit (subdoc. 108 filed 7/25/2011).

meantime, however, on March 11, 2010, Double H filed this lawsuit, alleging that Ecology had violated the PRA. CP 1311.

Date Produced	Responsive to 8/7/2009 Request		Responsive to 1/14/2010 Request		Total Records
	Records	Days Late	Records	Days Late	
6/10/2010	3	307	6	147	9
6/24/2010	3	321	3	161	6
7/1/2010	8	328	5	168	13
9/2/2010	2	391	12	231	14
11/29/2010	0	-	1	319	1
12/17/2010	0	-	9	337	9
1/12/2011	35	523	92	363	127
1/26/2011	12	537	13	377	25
7/25/2011	147	717	193	557	340
		3,124		2,660	544

Table 1. Late-Produced Records by Date

Between the dates on which the lawsuit was filed, March 11, 2010, and when judgment was entered, April 18, 2011, Ecology produced 204 records that had not previously been produced. These late-produced records are identified in Appendix B (showing 63 late-produced records responsive to the first records request) and Appendix C (showing 141 late-produced records responsive to the second records request). Of these 204 late-produced records, Ecology had disclosed the existence of 19, but withheld them from production, in whole or in part, under claims of exemption; the remaining 185 records had not even been disclosed. App. B, notes 1-8, and App. C, notes 1-11. As noted above, these late-produced records were produced on several different dates throughout the course of

the litigation. Wrongfully withheld records responsive to the first request were produced on six dates, and wrongfully withheld records responsive to the second request were produced on eight dates. In addition, on July 25, 2011, as this appeal was pending, Ecology filed with the trial court an affidavit to which was attached copies of 340 photographs that had not previously been disclosed. Affidavit of Richard Granberg, (subdoc. 108 filed July 25, 2011). Ecology characterizes 147 of these photographs as responsive to Double H's first request, and 193 as responsive to the second request. Supplemental Brief Regarding Additional Responsive Public Records, pp. 2-3 (subdoc. 110, filed July 25, 2011).⁴ The number of records produced on each of these occasions is shown in Table 1.

On summary judgment, Ecology agreed that it had wrongfully withheld records from Double H, and that it was liable for a daily penalty under the PRA. CP 1306. Ecology also agreed that the penalty period should be determined by grouping the records produced on each separate date for each of the two requests. CP 1307⁵

⁴ Double H will be filing a Supplemental Designation of Clerk's Papers.

⁵ Double H had proposed that the records also be grouped according to whether the record had been disclosed, or instead had been "silently withheld" from production. CP 420. The trial court did not consider this issue in grouping the records for purposes of determining the number of penalty days, but did consider it as an aggravating factor in determining the amount of the per diem penalty. CP 1314. Since the trial court gave consideration to the issue in terms of setting the amount of the penalty, Double H is not raising this issue on appeal.

C. SUMMARY OF ARGUMENT

Grouping of records for purposes of determining the number of penalty days is a procedure that has been used by the courts in recent years to avoid clearly disproportionate awards that might result from calculation of a penalty for each record that was wrongfully withheld. In this case, both parties agreed that in determining the number of days for which Ecology is subject to a per-diem penalty, the 544 records produced during the course of the litigation should be divided into groups. Both parties agreed that the records should be grouped together according to each separate date on which wrongfully withheld records were produced for each of the separate requests. Since commencement of the litigation, Ecology produced wrongfully withheld records responsive to the August 7, 2009 request on seven occasions, and those responsive to the January 14, 2010 request on nine occasions. Totaling the number of days each group of records was late with respect to the applicable request date, this approach results in a determination that the number of penalty days is 5,784, not the 495 days used by the trial court. The trial court used 495 days because it adopted a super-group of one. The trial court's approach minimizes the seriousness of the PRA violations that even Ecology itself recognized. In doing so, the trial court's decision fails to achieve the objective of RCW 42.56.550(4). As stated by the Supreme Court: "This

provision has been treated by this court as a penalty to enforce the strong public policies underlying the public disclosure act. This court has emphasized that strict enforcement of this provision will discourage improper denial of access to public records.” *Amren v. City of Kalama*, 131 Wn.2d 25, 35-36, 929 P.2d 389 (1997) (citations and internal quotation marks omitted).

D. ARGUMENT

1. THE STANDARD OF REVIEW FOR THE ISSUES RAISED BY DOUBLE H IS DE NOVO

In this appeal, Double H challenges the trial court’s interpretation of the PRA concerning determination of the penalty period – that is, the period of time over which Ecology wrongfully withheld records from Double H. This is a question of law subject to de novo review:

[W]e must determine whether abuse of discretion is the appropriate standard for reviewing the trial court’s decision to reduce the penalty period. ... [T]his court reviews questions of law de novo. In our judgment, the question of whether RCW 42.17.340(4)⁶ authorizes a trial court to reduce the penalty period is a question of law. De novo, therefore, is the proper standard of review, not the abuse of discretion standard.

Yousoufian v. Office of Ron Sims, 152 Wn.2d 421, 436, 98 P.3d 463 (2004) (*Yousoufian II*).⁷

⁶ Predecessor to RCW 42.56.550(4).

⁷ By contrast, “the trial court’s determination of appropriate daily penalties is properly reviewed for an abuse of discretion.” *Yousoufian II*, 152 Wn.2d at 431. In this case, the

Double H also challenges the trial court's finding of fact that Double H was denied access to documents responsive to its records request for 495 days. The record on which the trial court made this finding consisted entirely of affidavits and documents. No testimony was taken from witnesses; therefore, there is no question of witness credibility or competence. Under these circumstances, review of the challenged findings of fact is de novo:

Where, as in this case, the record on both trial and appeal consists of affidavits and documents, and the trial court has neither seen nor heard testimony requiring it to assess the credibility or competency of witnesses, nor had to weigh the evidence or reconcile conflicting evidence in reaching a decision, the appellate court stands in the same position as did the trial court in reviewing the record.

Spokane Police Guild v. Washington State Liquor Control Bd., 112 Wn.2d 30, 35-36, 769 P.2d 283 (1989), cited in *Progressive Animal Welfare Soc. v. University of Washington*, 125 Wn.2d 243, 252-253, 884 P.2d 592 (1994).

2. RECORDS PRODUCED ON EACH SEPARATE DATE FOR EACH REQUEST CONSTITUTE A SEPARATE RECORD

The trial court's adoption of a super-group of one so as to reduce the penalty period should be reversed and remanded because it fails to give force to the statutorily-mandated requirement that a PRA penalty be

trial court set the per diem penalty at \$27. CP1315. Double H does not challenge the amount of the penalty; if it did, that challenge would be reviewable under the abuse of discretion standard.

awarded for each day a record is wrongfully withheld. The trial court's decision falls short of the statutory mandate for two reasons. First, the trial court lumped together the initial request and the refresher request, as though they were a single request, despite the fact that Ecology required Double H to submit a refresher request to obtain records created after August 7, 2009. Second, the trial court's decision to not group the records according to each date on which records were produced robs the penalty of any real per-diem nature. The trial court's super-group of one simply reduces the penalty to a mere shadow of what even Ecology proposed.

a. Where an Agency Has Wrongfully Withheld Records, the PRA Requires the Resulting Penalty to Be Applied for Each Day Such Record Was Withheld

The PRA provides that a person prevailing against an agency "in any action in the courts seeking the right to inspect or copy any public record" shall be awarded a penalty "for each day that he or she was denied the right to inspect or copy said public record." RCW 42.56.550(4). This provision might suggest that that a separate penalty should apply for each record that was wrongfully withheld. The PRA, however, "does not require the assessment of per day penalties for each requested record." *Yousoufian II*, 152 Wn.2d at 436. In cases involving many records, the courts have been reluctant to apply the penalty provision to each record because of a concern that such penalties could be "totally out of proportion

to the [agency's] negligence, the harm done thereby, and any amount needed for deterrence.” *Yousoufian II*, 152 Wn.2d at 427 (internal quotation marks omitted). In this case, the trial court determined that the appropriate per-diem penalty is \$27. CP 1315. To apply a daily penalty of \$27 on a per-record basis in this case would result in a seven-figure penalty. Double H agrees that a penalty of that size is out of proportionate to the circumstances of this case. It is far beyond the penalty that Double H advocates.

In the *Yousoufian* case, the trial court solved the problem by putting the records into groups and counting each group as a record for purposes of determining the number of penalty days. In that case, the records related to two subject matters: (1) studies concerning how a tax used to finance a sports stadium might affect consumers, and (2) materials related to a study concerning the economic impacts of sports stadiums. *Yousoufian II*, 152 Wn.2d at 425. The trial court, however, calculated the penalty based on ten, not two, groups, basing the groups both on subject matter and the date on which the records were produced. *Id.* at 427.

The trial court further separated the documents into categories based upon the day they were made available to Yousoufian. These categories were not arbitrary, but were based on reasonable criteria and provided the court with a middle ground between the extreme penalty requested by Yousoufian and the minimal penalty sought by the County. In fact, given our above conclusions, the trial court would

have been within its discretion to simply award an amount within the statutory range for each day that each of Yousoufian's requests went unanswered. Using these categories instead of assessing a per-document penalty was not an abuse of discretion.

Yousoufian v. Office of Ron Sims, 114 Wn.App. 836, 849, 60 P.3d 667 (2003) (*Yousoufian I*).

The approach taken by the court in *Yousoufian* of grouping the records according to date of production and determining how many days after the request each group of records was produced – essentially the position taken by Double H and Ecology on summary judgment – ensures that the penalty is applied to the actual number of days the respective records were wrongfully withheld, without awarding a penalty for each and every record.

b. The Non-Overlapping Records Responsive to the Two Separate Requests Should Not Be Grouped Together

Double H made two public records requests, one on August 7, 2009 and the second on January 14, 2010. CP 1311. Nevertheless, the trial court determined the penalty period by creating a super-group of one, CP 1313, disregarding the existence of two separate requests for entirely different sets of records.

The first request asked for records concerning an Ecology investigation with respect to Double H. CP 139. As Ecology, and the Attorney General, read the PRA, this request only covered, and could only

cover, those records in existence at the time Ecology received the request. In other words, the August 7, 2009 request did not, and could not, impose on Ecology a continuing duty to supplement its response to Double H as new records relating to the investigation were created. Model rules for the PRA, published by the Attorney General, provide:

An agency must only provide access to public records in existence at the time of the request. An agency is not obligated to supplement responses. Therefore, if a public record is created or comes into the possession of the agency after the request is received by the agency, it is not responsive to the request and need not be provided. A requestor must make a new request to obtain subsequently created public records.

WAC 44-14-04004(4)(a). A new request to obtain subsequently created public records is called a “refresher” request. Ecology expressly applied this model rule to Double H’s first records request, informing Double H on January 12, 2009 that no new records would be provided in response to the first request:

An agency must only provide access to public records in existence at the time of the request, and is not obligated to supplement its response. If a public record is created or comes into the possession of the agency after the request is received, it is not responsive to the request. WAC 44-14-04004(4)(a). To my knowledge, Ecology produced all responsive, non-privileged records in its possession in response to Double H Farms’ August 6 records request, and no record was “inappropriately omitted” from its response. The records you refer to in your letter were created subsequent to August 6, and were not responsive to the August 6 request. Unless additional, previously unknown

records are discovered, no further records will be provided in response to that request because that request is now closed.

CP 352-353. For example, a page of handwritten notes dated August 26, 2009, CP 705, was created after Ecology's receipt of the first records request; therefore, Ecology's failure to provide the notes as a supplement to its response to the first request was not a violation of the PRA. As the above-cited communication makes clear, Ecology expressly declined to supplement its response to the initial request with any records created after the receipt of that request. Therefore, Double H made a second request on January 14, 2010, including a refresher request for "[a]ll public records that are responsive to our request by letter dated August 6, 2009 ... that were created after the date you received that request." CP 348, RP p. 37, lines 1-20 (Jan. 14, 2011).

Although both the initial request and the refresher request concerned the same subject matter (i.e., Ecology's investigation of Double H), they related to entirely separate and distinct sets of records. The first request covered records created on or before August 7, 2009. The second request covered records created after August 7, 2009 and on or before January 14, 2010. Under the Attorney General's model rules, invoked by Ecology, it was not possible for Double H, on August 7, 2009, to request future records concerning the Ecology investigation, because

those future records were not “public records in existence at the time of the request.” WAC 44-14-04004(4)(a).

There may be circumstances where it is appropriate to group multiple requests together, treating them as a single request for purposes of calculating the number of penalty days. In *Yousoufian II*, amicus curiae expressed a concern that the Supreme Court’s holding in that case might encourage individuals to file separate requests for each record sought in order to increase the potential penalty. The Court responded that its “holding does not suggest that the trial court lacks the ability to determine that multiple requests are actually one single request based on the subject matter and timing of the requests.” *Yousoufian II*, 152 Wn.2d at 436, n. 10. That is not the situation presented by this case. Double H did not submit multiple requests in order to obtain a larger penalty award. It submitted multiple requests because Ecology required a refresher request from Double H before it would produce any records created after receipt of the first request. To conflate the two requests into one ignores the reality that they were separate requests, and that Ecology’s action to not supplement its response to the first request made the refresher request necessary.

c. Grouping the Records According to the Dates They Were Produced Results In a Statutorily-Mandated Penalty for Each Day a Record Was Wrongfully Withheld

In this case, Ecology produced wrongfully withheld records responsive to the August 7, 2009 request on seven occasions: June 10, 2010, June 24, 2010, July 1, 2010, September 2, 2010, January 12, 2011, January 26, 2011, and July 25, 2011. CP 91-92, 675-676, and 1109-1250. Likewise, it produced wrongfully withheld records responsive to the January 14, 2010 request on nine occasions: June 10, 2010, June 24, 2010, July 1, 2010, September 2, 2010, November 29, 2010, December 17, 2011, January 12, 2011, January 26, 2011, and July 25, 2011. CP 94-97, 586, 675-676, 739-742, and 1089-1276. The trial court, however, held:

Dividing the records into groups by response dates is artificial and would actually discourage governmental agencies from producing records over time as they are discovered and reviewed. Therefore, the records which Ecology improperly withheld or failed to disclose constitute one group for purposes of calculating the penalty period.

CP 1313. The trial court was concerned that grouping records according to date of production “would actually encourage a governmental agency to *withhold* records for days, weeks, or months, until the agency is positive that all documents have been gathered.” CP 1284 (emphasis in original). Therefore, it created what it called “one group,” CP 1313, though, in reality, it simply discarded the grouping approach in favor of a fiction that

all of the wrongfully withheld records were withheld for the same length of time. On close examination, trial court's concern that grouping by date of production might encourage agencies to withhold records implicitly assumes that an agency, discovering that it has responsive records that it did not produce in a timely manner, will cynically postpone compliance with the PRA while it conducts a lackadaisical search, if it conducts any search at all, for all responsive records that could possibly exist. If an agency were to approach its PRA obligations with this view, it would certainly be guilty of bad faith and gross misconduct, and the trial court would be justified in taking that into consideration as a serious aggravating factor when determining the amount of the per diem penalty. Moreover, in light of the *Yousoufian* case, Ecology's actions in this case, producing wrongfully withheld records in drips and drabs over the course of many months, shows no evidence that the courts' use of grouping by date of production causes Ecology to withhold records until it is positive that all records have been gathered.

The trial court's decision takes the concept of grouping records to an extreme, and causes the penalty determination to lose all touch with the actual number of days that the respective records were wrongfully withheld. As discussed earlier, the grouping of records was adopted as a way of avoiding disproportionately high penalties that might result if a

penalty were applied on a per-record basis. If penalty days were determined on a per-record basis, a penalty period would be determined for *each record* that was wrongfully withheld. Double H did not ask the trial court to apply a penalty to each record, and it is not arguing for that outcome before this Court. Double H is arguing, however, that a penalty should be applied for *each day* that a wrongfully withheld record (or, more precisely, group of records) was *actually* withheld, as required by statute. RCW 42.56.550(4).

Ecology's proposed order on summary judgment does a good job of articulating the position that both parties took before the trial court: "The records provided on each separate date for each request constitute a separate 'record.'" CP 1307. As shown in Table 1, under this approach, there are seven groups of wrongfully withheld records responsive to the August 7, 2009 request, and nine groups responsive to the January 14, 2010 request.⁸ Counting the actual number of days the records were wrongfully withheld results in a determination of 3,124 penalty days for

⁸ This number differs from the number of groups that Ecology recognized in its proposed order (13) for the following reasons. First, subsequent to preparing the proposed order, Ecology produced additional records – on January 26, 2011 and July 27, 2011, in both cases producing records responsive to each of the requests. In addition, Ecology overcounted the number of groups by one, because it attributed some records produced on December 17, 2010 to the first request, whereas Double H believes all of the records produced on that date were responsive to the second request. Therefore, Double H counts a total of 16 record groups, which is consistent with the manner in which Ecology grouped records in its proposed order.

the first request, and 2,660 penalty days for the second request (i.e., a total of 5,784 penalty days).

3. DOUBLE H SHOULD BE AWARDED ITS REASONABLE ATTORNEYS FEES AND COSTS ON APPEAL

The PRA provides that “[a]ny person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record ... shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action.” RCW 42.56.550(4). Such attorney fees as are incurred on appeal are recoverable. *Progressive Animal Welfare Soc. v. University of Washington*, 114 Wn.2d 677, 690, 790 P.2d 604 (1990) (*PAWS I*). Therefore, Double H requests that this Court award it its costs on appeal, as well as its reasonable attorney fees. Double H will, in a timely manner, comply with the applicable provisions of RAP 18.1.

E. CONCLUSION

In a PRA case involving many records that were wrongfully withheld, a penalty does not necessarily need to be awarded with respect to each such record – records may be grouped together in order to avoid penalties that clearly are disproportionate to the circumstances of the case. But the text of the statute does require that the penalty be awarded “for each day” the record was withheld. RCW 42.56.550(4). Grouping records together in order to avoid disproportionate penalty outcomes does

not give the courts carte blanche to ignore the statutory text. A penalty must be awarded for each day a record was withheld. Fortunately, the objective of grouping records together does not run afoul of the statutory text as long as the trial courts determine the number of days each group was actually wrongfully withheld from production. The position taken by both parties on summary judgment would have done that. Double H asks this Court to reverse the trial court's decision with respect to this issue, and to remand the case for the trial court to determine the number of penalty days by placing the records into groups of records responsive to each request and that were produced on the same date.

DATED this 30th day of August, 2011.

THE GILLETT LAW FIRM


Michael B. Gillett
Attorney for Appellant

APPENDIX A
CITED PROVISIONS OF REVISED CODE OF WASHINGTON

RCW 42.56.550(4) (2010)

(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not less than five dollars and not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

[Note: In 2011, the Legislature amended this provision to eliminate the minimum \$5 penalty amount. Laws of 2011, ch. 273.]

APPENDIX B
RECORDS RESPONSIVE TO 1st RECORDS REQUEST (8/7/2009)
PRODUCED BETWEEN 6/10/2010 AND 1/26/2011

	Date of Record	Description of Record	Date Produced	Record Citation
1	beginning 3/2009	Brian Dick's personal calendar for March 2009 through June 2009 with handwritten notations	1/12/2011	CP 958-963
2	beginning 3/2009	Richard Granberg's personal calendar for March 2009 through August 2009 with handwritten notations	1/12/2011	CP 966-981
3	beginning 3/2009	Gary Bohn's personal calendar for March 2009 with handwritten notations	1/12/2011	CP 982-983
4	3/20/2009	Email from Mike Louisall to Mark MacIntyre, Dan Heister, Joye Redfield-Wilder and Jason Kelly; subj: FW: Yakima waste pesticide disposal event set for May: signups due March 23 (without attachment)	1/12/2011	CP 1032
5	3/20/2009	Email from Joye Redfield-Wilder to Sandra Hughes and Joye Redfield-Wilder; subj: RE: ECOLOGY MEDIA ADVISORY: Media Availability at 11 a.m. March 20, 2009, at 1501 Bethany Road, Grandview, Wash	1/12/2011	CP 1033
6	3/20/2009	Email from David Misko to Jeri Berube, Jack Boiler, Lisa Brown, Emily A. Celto Vache, Ava Edmonson, Joanne Lind, David Misko, Leslie Morris, James D. Pearson, Jean Rushing, Steve Szendre, Michelle Underwood, Eric Van Mason and Kim Wigfield; subj: Compliance Network Notes from March 19 2009 (with attachment)	1/26/2011	CP 1195-1199
7	3/21/2009	Email from Ross Courtney to Joye Redfield-Wilder; subj: Re: Dump investigation	1/12/2011	CP 1014-1015

	Date of Record	Description of Record	Date Produced	Record Citation
8	3/21/2009	Email from Joye Redfield-Wilder to Mark MacIntyre, Jason Kelly, Mike Louisell, Jeffrey Fowlow, and Dan Heister; subj: YHR stories on Grandview investigation	1/12/2011	CP 1030-1031
9	3/23/2009	Email from Joye Redfield-Wilder to Joye Redfield-Wilder, Ross Courtney, Julie McGhan, Grandview Herald, Lance Torney, KLMA-TV, KAPP-TV, and KNDO-TV; subj: RE: DOH advice	1/12/2011	CP 1026-1027
10	3/23/2009	Email from Joye Redfield-Wilder to ECY DL CRO ALL; subj: FW: Ecoclip – Grandview clips	1/12/2011	CP 1028-1029
11	3/24/2009	Email from Gordon Kelly to Joye Redfield-Wilder; subj: RE: well testing Q&A handout	1/12/2011	CP 1024-1025
12	3/25/2009	Email from Jeffrey Fowlow to Joye Redfield-Wilder; subj: Re: KNDO reporter	1/12/2011	CP 1016
13	3/25/2009	Email from Mark MacIntyre to Mark MacIntyre and Joye Redfield-Wilder; subj: Final, Approved Grandview Release Text (with attachment)	1/12/2011	CP 1017-1019
14	3/25/2009	Email from Joye Redfield-Wilder to ECY DL CRO RMT and ECY DL CRO ADMIN; subj: FW: Ecology News Release: With Grandview pesticide investigation site secured, field operations will be temporarily suspended on Friday, March 27	1/12/2011	CP 1020-1021
15	3/25/2009	Email from Jason Kelly to Joye Redfield-Wilder; subj: RE: Yakima pesticide collection event	1/12/2011	CP 1022-1023
16	3/25/2009	Email from Richard L. Granberg to Gregory Bohn; subj: RE:	1/12/2011	CP 1053

	Date of Record	Description of Record	Date Produced	Record Citation
17	3/31/2009	Email from Brian R. Dick to James D. Pearson; subj: FW: Meetings w/Ted and Program Section RE: Draft Agendas Available?	1/26/2011	CP 1163-1164
18	3/31/2009	Email from James D. Pearson to David Misko, Dennis L. Bowhay, Lisa Brown, Chris Chapman, Brian R. Dick, Jenny Hallengren, Darin Rice, John Ridgway, Julie Sellick, and Ken Zarker; subj: EPA ACS mid-year adjustment request (with attachment)	1/26/2011	CP 1166-1168
19	3/31/2009	Email from David Misko to ECY DL HWTR COMPLIANCE NETWORK; subj: Compliance Network Notes from March 19, 2009 (with attachment)	1/26/2011	CP 1170-1174
20	4/13/2009	Email from Brian R. Dick to K Seiler; subj: RE: Wholesale Printers Enforcement	7/1/2010	CP 220
21	4/21/2009	Email from Brian R. Dick to Polly Zehm and K Seiler; subj: FW: April 22 Pesticide Advisory Board Meeting (with attachments)	7/1/2010	CP 217-219
22	beginning 4/21/2009	Two pages of handwritten notes	7/1/2010	CP 221-222
23	4/21/2009	Email from Jean Rushing to Jeri Berube, Jack Boiler, Lisa Brown, Emily A. Celto Vache, Ava Edmonson, Joanne Lind, David Misko, Leslie Morris, James D. Pearson, Jean Rushing, Steve Szendre, Michelle Underwood, Eric Van Mason and Kim Wigfield; subj: Draft CN minutes 4-16-09.docx (with attachment)	1/26/2011	CP 1156-1160
24	4/22/2009	Email from Brian R. Dick to Polly Zehm and Bob Arrington; subj: Draft 'Double H' Slideshow - Grandview Pesticide Disposal Site	7/1/2010	CP 216

	Date of Record	Description of Record	Date Produced	Record Citation
25	4/23/2009	Email from Jason Kelly to Mark MacIntyre and Joye Redfield-Wilder; subj: Talking Point on nitrates and groundwater more generally	1/12/2011	CP 1011
26	4/23/2009	Email from Jason Kelly to Joye Redfield-Wilder and Mark MacIntyre; subj: RE: Boilerplate	1/12/2011	CP 1012-1013
27	4/24/2009	Email from Jean Rushing to ECY DL HWTR COMPLIANCE NETWORK; subj: CN minutes 4-16-09.docx (with attachment)	1/26/2011	CP 1149-1154
28	4/29/2009	Email from Marianne Holsman to Mark MacIntyre, Joye Redfield-Wilder, Jason Kelly, Erin L. Kochaniewicz, Barbara Trejo, Gordon Kelly, Dan Opalski, Chris Field, Thomas Eaton, Jeff Philip, Karma Anderson, Scott Downey and Clifford Villa; subj: Re: FINAL DRAFT – GRANDVIEW BURIAL SITE PRESS RELEASE FOR TOMORROW (4/30/09) (CLOSE-HOLD/NOT FOR DISTRIBUTION) CALL WITH “FATAL FLAWS” ONLY ... MM 206-369-7999	1/12/2011	CP 1008-1010
29	4/29/2009	Email from Laurie Mauerman to Bob Arrington, Ted Maxwell, Ann Wick, Cliff Weed, Margaret Tucker, Brian R. Dick, David M. Heimer, Tito H. Rodriguez and Larry Treleven; subj: Draft Pesticide Advisory Board Minutes Summary (with attachment)	1/12/2011	CP 1062-1071
30	4/30/2009	Email from Brian R. Dick to Joye Redfield-Wilder; subj: RE: Cliff's Notes on Q&A	1/12/2011	CP 1004-1007
31	5/1/2009	Email from Joye Redfield-Wilder to ECY DL CRO RMT; subj: ecoclip – Grandview dumpsite	1/12/2011	CP 1000-1001

	Date of Record	Description of Record	Date Produced	Record Citation
32	5/6/2009	Email from Richard L. Granberg to Andy Smith and Barbara Trejo; subj: RE: Ecoclip – pesticide pickup	1/12/2011	CP 1002-1003
33	5/6/2009	Email from James D. Pearson to James D. Pearson, Leslie Morris, Michelle Underwood, David Misko, and Emily A. Celto Vache; subj: RE: Ecoslip – pesticide pickup	1/26/2011	CP 1146-1147
34	5/7/2009	Email from Brian R. Dick to Bob Arrington; subj: FW: Growers toss out pesticides property (KAPP TV)	1/12/2011	CP 1054
35	5/11/2009	Email from Laurie Mauerman to Ted Maxwell, Margaret Tucker, Cliff Weed, Patrick Ryan, Allan Felsot, Allen Smith, Barry Duerk, Bob Arrington, Brian R. Dick, Catherine Daniels, Cynthia Lopez, David M. Heimer, Dennis Tufts, Ed Walter, Erika Schreder, Heather Hansen, James Ossman, James Speaks, Jose Ramirez, Katheryn Olson, Larry Treleven, Mark Burnett, Michael Christensen, Pamela Edwards, Roger Wesselman, Steve George, Steve Passmore, Timothy Smith, and Trudy Blalic; subj: Draft 4/22 Minutes Summary (with attachment)	1/12/2011	CP 1071-1079
36	5/12/2009	Email from Gregory Bohn to Jennifer Fitchhorn and Daniel O'Malley; subj: Double H information ¹	6/10/2010	CP 186
37	5/13/2009	Email from Gregory Bohn to Jennifer Fitchhorn and Daniel O'Malley; subj: Double H (Bethany Farms), Grandview, WA ²	6/24/2010	CP 199

	Date of Record	Description of Record	Date Produced	Record Citation
38	5/14/2009	Email from K Seiler to Julie Selleck; subj: RE: Request for help on a thank you letter to EPA for field work help	7/1/2010	CP 215
39	5/18/2009	Email from Michael Dunning to Joye Redfield-Wilder and Brian R. Dick; subj: your questions	1/12/2011	CP 989-993
40	5/19/2009	Email from Michael Dunning to Joye Redfield-Wilder; subj: RE:	1/12/2011	CP 987
41	5/19/2009	Email from Jason Kelly to Ross Courtney; subj: FW: container recycling	1/12/2011	CP 996
42	5/21/2009	Email from James D. Pearson to ECY DL HWTR COMPLIANCE NETWORK; subj: draft compliance network notes (with attachment)	1/26/2011	CP 1140-1144
43	5/22/2009	Email from K Seiler to Brian R. Dick; subj: Ross Courtney Pesticide story	7/1/2010	CP 211
44	5/28/2009	Email from Brian R. Dick to K Seiler; subj: FW: Ecoclip – recycling pesticide containers (with attachment)	7/1/2010	CP 212-214
45	5/28/2009	Email from K Seiler to Carol P. Kraege, Laurie Davies, Polly Zehm, Jay Manning, Ted Sturdevant and David Workman; subj: FW: Ecoclip – recycling pesticide containers	1/12/2011	CP 997-999
46	5/28/2009	Email from Brian R. Dick to K Seiler; subj: RE: Ecoclip – recycling pesticide containers	1/12/2011	CP 1055-1057
47	5/28/2009	Email from Brian R. Dick to ECY DL CRO HWTR; subj: FW: Ecoclip – recycling pesticide containers	1/26/2011	CP 1136-1138
48	6/2009	Brian Dixon's printed calendar for October 2009	1/12/2011	CP 965
49	6/2/2009	Two pages of handwritten notes prepared by Richard Granberg ³	6/24/2010	CP 191-192

	Date of Record	Description of Record	Date Produced	Record Citation
50	6/4/2009	Email from Brian R. Dick to Debby Sargeant, K Seiler and Polly Zehm; subj: FW: Minutes Summary from April Meeting (with attachment)	1/12/2011	CP 1080-1088
51	6/8/2009	Email from Holly S. Cushman to Joye Redfield-Wilder; subj: pictures (without attachments)	1/12/2011	CP 995
52	6/9/2009	Email from David Misko to James D. Pearson; subj: Compliance_Network_Notes_2009_05_21-DsM comments.docx (with attachment)	1/26/2011	CP 1128-1132
53	6/9/2009	Email from Richard L. Granberg to K Seiler; subj: RE: EPA thank you	1/12/2011	CP 1058
54	6/10/2009	Email from Richard L. Granberg to Joye Redfield-Wilder; subj: Emailing: PICTO0012, PICT0018, PICT0039, PICT0062, PICT0116 (without attachments)	1/12/2011	CP 994
55	about 6/14/2009	Two pages of handwritten notes prepared by Richard Granberg ⁴	6/10/2010	CP 167-168
56	6/22/2009	Email from Richard L. Granberg to Brian R. Dick; subj: FW: Untitled Document	1/12/2011	CP 1059-1060
57	7/16/2009	Email from Richard L. Granberg to Richard L. Granberg; subj: DoubleHLPRFE (with attachment) ⁵	9/2/2010	CP 324-330
58	7/23/2009	Email from James D. Pearson to Kim Wigfield; subj: CRO roundtable	1/26/2011	CP 1134
59	7/28/2009	Draft Recommendation for Enforcement	9/2/2010	CP 231-238

	Date of Record	Description of Record	Date Produced	Record Citation
60	8/4/2009	Email from Lisa Brown to Jeri Berube, Jack Boiler, Lisa Brown, Emily A. Celto Vache, Ava Edmonson, Joanne Lind, David Misko, Leslie Morris, James D. Pearson, Jean Rushing, Steve Szendre, Michelle Underwood, Eric Van Mason and Kim Wigfield; subj: 'Draft' June 18, 2009 Compliance Network Notes (with attachment)	1/26/2011	CP 1124-1126
61	8/4/2009	Three pages of handwritten notes prepared by Richard Granberg ⁶	6/24/2010	CP 188-190
62	8/6/2009	Two pages of handwritten notes prepared by Richard Granberg ⁷	6/10/2010	CP 170-171
63	8/7/2009	Redacted email from Nels Johnson to Jim Pendowski, Roger E. Johnson and Carol Dorn; subj: FW: Preservation of electronically-stored information/ATTORNEY-CLIENT PRIVELEGED COMMUNICATION (without attachment) ⁸	7/1/2010	CP 210

¹ Disclosed in Exemption Log Double H Farm Request 8-09. CP 335 (12th row).

² Disclosed in Exemption Log Double H Farm Request 8-09. CP 335 (11th row).

³ Disclosed in Exemption Log Double H Farm Request 8-09. CP 335 (8th row).

⁴ Disclosed in Exemption Log Double H Farm Request 8-09. CP 335 (5th row).

⁵ Disclosed in Exemption Log Double H Farm Request 8-09. CP 335 (4th row).

⁶ Disclosed in Exemption Log Double H Farm Request 8-09. CP 335 (2nd row).

⁷ Disclosed in Exemption Log / Double H Request 1-2010. CP 375 (37th row).

⁸ Disclosed in Exemption Log Double H Farm Request 8-09 (misdated 8/10/2009). CP 335 (1st row).

APPENDIX C
RECORDS RESPONSIVE TO 2nd RECORDS REQUEST (1/14/2010)
PRODUCED BETWEEN 6/10/2010 AND 1/26/2011

	Date of Record	Description of Record	Date Produced	Record Citation
1	beginning 8/2009	One page of handwritten notes	7/1/2010	CP 207
2	beginning 8/2009	Richard Granberg's personal calendar for August 2009 through January 2010 with handwritten notations	1/12/2011	CP 755-767
3	8/20/2009	Email from Brian R. Dick to K Seiler; subj: FW: Ecoclip – Grandview cleanup	1/12/2011	CP 1038-1039
4	8/20/2009	Two pages of handwritten notes	12/17/2010	CP 703-704
5	8/20/2009	Email from Katie Utehs to Joye Redfield-Wilder; subj: RE: Grandview dumpsite	1/12/2011	CP 782-783
6	beginning 8/20/2009	Nine black & white copies of photos taken by Gary Bleeker	1/26/2011	CP 1260-1276
7	8/21/2009	Email from Joye Redfield-Wilder to ECY DL CRO RMT; subj: Ecoclip – Grandview cleanup	1/12/2011	CP 780-781
8	8/22/2009	Email from John Ridgway to Nina Kocourek, Cheryl B. Williams, Jeff Kenknight, Jan Palumbo, Peter Magolske, Lisa McArthur, Zach Hedgpeth, Jack Boiler, Dave Bartus, Ava Edmonson, Brian R. Dick, Greta Davis, James DeMay, James D. Pearson, Julie Sellick, Kim Wigfield, Ken Zarker, Lisa Brown, Ron Skinnerland, Kaia Peterson, Michelle Underwood, and John Ridgway; subj: Draft minute for June 4, 2009 – TSD Quarterly Meeting (with attachment)	1/26/2011	CP 1117-1122
9	8/26/2009	One page of handwritten notes	12/17/2010	CP 705

	Date of Record	Description of Record	Date Produced	Record Citation
10	8/27/2009	Email from Lisa Brown to ECY DL HWTR COMPLIANCE NETWORK; subj: Final CN Notes for June (with attachment)	1/26/2011	CP 1113-1115
11	8/31/2009	Email from Rose Pascua to Richard L. Granberg; subj: Please fill-in docket form (with attachment) ¹	6/10/2010	CP173-174
12	8/31/2009	Memo from Darlene M. Frye to Gary W. Bleeker; subj: SWFAP-CRO Monthly Report for August 2009	1/26/2011	CP 1255-1256
13	after 8/2009	August 2009 Activities	1/26/2011	CP 1258
14	beginning 9/2009	Brian Dick's personal calendar for September 2009 through January 2010 with handwritten notations	1/12/2011	CP 747-754
15	9/1/2009	Email from Richard L. Granberg to Gary Bleeker; subj: Solid waste disposal at Double H Farms	1/12/2011	CP 1061
16	9/1/2009	Email from Sam Hunn to James D. Pearson, Richard L. Granberg and Brian R. Dick; subj: RE: Meet to discuss penalty amounts for the violations at Double H ²	6/10/2010	CP 176-177

	Date of Record	Description of Record	Date Produced	Record Citation
17	9/2/2009	Email from Laurie Mauerman to Joanne Pardo, Allen Smith, Barry Duerk, Bob Arrington, Brian R. Dick, Catherine Daniels, David M. Heimer, Dennis Tufts, Ed Walter, Heather Hansen, James Ossman, John Stark, Jose Ramirez, Kathryn Olson, Larry Treleven, Mark Burnett, Monte Spence, Pamela Edwards, Patrick Ryan, Roger Wesselman, Steve George, Steve Passmore, Timothy Smith, Trudy Bialic, Wayne Clifford, Ali Kashani, Angela Balint, Ann Wick, Bob Berge, Bob Gore, Brian Bret, Bryan Stuart, Cliff Weed, Dale Wirick, Dan Coyne, Dan Newhouse, David Zamora, Debbie Hacker, Fran McBride, Fred Morscheck, Gary Buckner, Jeff Gage, Jim Cowles, Jim Fitzgerald, Joel Kangiser, John Massey, John Perkins, Julian Barta, Todd Kammeron, Keith Mathews, Kirk Cook, Kirk Mayer, Liesi Zappler, Lisa Niehause, Art Losey, Margaret Tucker, Mary Beth Lang, Mike Louisell, Sharra Finley, Ted Maxwell, Tim Schultz, Tito H. Rodriquez, Tom Hoffman, Veronica Segura, William Robertson, and Willis Goodwin; subj: 9/16 Pesticide Advisory Board Meeting (with attachment)	1/12/2011	CP 955-956
18	9/1/2009	Email from Richard L. Granberg to Gary Bleeker; subj: Solid waste disposal at Double H Farms	1/12/2011	CP 779
19	9/4/2009	Email from Ava Edmonson to K Seiler; subj: FW: 2nd Draft minute for June 4, 2009 – TSD Quarterly Meeting (with attachments)	1/12/2011	CP 1040-1052

	Date of Record	Description of Record	Date Produced	Record Citation
20	9/4/2009	Email from Brian R. Dick to Richard L. Granberg, Sam Hunn and James D. Pearson; subj: FW: Joye's whereabouts and who to contact	1/26/2011	CP 1249-1250
21	9/8/2009	Email from Donna Allen to K Seiler and Ken Zarker; subj: FW: Ecoclip – Grandview cleanup (without attachment)	1/12/2011	CP 784
22	9/14/2009	Email from Brian R. Dick to Nels Johnson, Richard L. Granberg and K Seiler; subj: Yakima Business Times article on Double H (without attachment)	1/12/2011	CP 785
23	9/17/2009	Email from Brian R. Dick to K Seiler; subj: RE: Carpool to Seattle tomorrow	7/1/2010	CP 208
24	9/17/2009	Email from Richard L. Granberg to Nels Johnson; subj: DoubleHLPRFE (with attachment)	9/2/2010	CP 262-271
25	9/18/2009	Email from K Seiler to Brian R. Dixon; subj: FW: Letter to Yakima Business Times (without attachment)	1/12/2011	CP 786
26	9/18/2009	Email from James D. Pearson to James D. Pearson and Richard L. Granberg; subj: RE: Is Double H a small business? ³	6/10/2010	CP 179
27	9/22/2009	Email from Richard L. Granberg to Nels Johnson; subj: FW: Emailing: FAX (without attachment)	1/12/2011	CP 815
28	9/22/2009	Email from Gary Buckner to Cliff Week and Mike Louisall; subj: Tuesday	1/12/2011	CP 816
29	9/23/2009	Email from Richard L. Granberg to Nels Johnson; subj: DoubleHLPRFE (with attachment)	9/2/2010	CP 272-282

	Date of Record	Description of Record	Date Produced	Record Citation
30	9/28/2009	Email from Brian R. Dick to Randy Luvaas; subj: Att. Randy Luvas – Ecology letter regarding cleanup site near Grandview (with attachment)	1/12/2011	CP 817-819
31	about 9/29/2009	Docket Number Request Form	9/2/2010	CP 225-226
32	9/29/2009	Response to Docket Request	9/2/2010	CP 227
33	9/29/2009	Email from Maylee Collier to Richard L. Granberg; subj: Docket created successfully	1/12/2011	CP 820-821
34	9/29/2009	Email from Maylee Collier to Richard L. Granberg; subj: Docket created successfully	1/12/2011	CP 822-823
35	10/2009	Brian Dixon's printed calendar for October 2009	1/12/2011	CP 964
36	10/2/2009	Email from Richard L. Granberg to Nels Johnson; subj: FW: Grandview Illegal Dumping (with attachment) ⁴	6/24/2010	CP 196-197
37	10/5/2009	Email from Richard L. Granberg to James D. Pearson; subj: RE: DoubleHLPRFE	9/2/2010	CP 239
38	10/5/2009	Draft Recommendation for Enforcement	9/2/2010	CP 240-252
39	10/5/2009	Draft Recommendation for Enforcement, with handwritten notes in the margins	9/2/2010	CP 253-261
40	10/5/2009	Email from Maylee Collier to Richard L. Granberg; subj: RE: Did you issued these? Reply by Oct 8th ⁵	9/2/2010	CP 229-230
41	10/6/2009	Email from Brian R. Dick to Richard L. Granberg; subj: FW: large penalty amounts ⁶	6/10/2010	CP 182
42	10/6/2009	Email from Richard L. Granberg to Joye Redfield-Wilder; subj: FW: DoubleHLPRFE (without attachment)	1/12/2011	CP 777

	Date of Record	Description of Record	Date Produced	Record Citation
43	10/6/2009	Email from G. Thomas Tebb to Poly Zehm, David Workman and Darin Rice; subj: FW: Grandview Illegal Dumping – Response to Yakima Valley Business Times (without attachment)	1/12/2011	CP 778
44	10/6/2009	Email from Brian R. Dick to G. Thomas Tebb, Polly Zehm, David Workman, K Seiler, Joye Redfield-Wilder, Valerie Bound, Darin Rice and Richard L. Granberg; subj: RE: Grandview Illegal Dumping – Response to Yakima Valley Business Times (with attachment)	1/12/2011	CP 889-894
45	10/6/2009	Email from James D. Pearson to Richard L. Granberg, Brian R. Dick and Nels Johnson; subj: RE: DoubleHPen	1/12/2011	CP 895
46	10/6/2009	Email from Nels Johnson to Richard L. Granberg; subj: Out of Office AutoReply: DoubleHPen	1/12/2011	CP 896
47	10/7/2009	Email from Nels Johnson to Richard L. Granberg and Brian R. Dick; subj: RE: DoubleHPen/ATTORNEY-CLIENT PRIVILEGED COMMUNICATION	1/12/2011	CP 897
48	10/7/2009	Email from Nels Johnson to Richard L. Granberg; subj: RE: Double H Farms request for report/ATTORNEY-CLIENT PRIVILEGED COMMUNICATION	1/12/2011	CP 887-888
49	10/7/2009	Email from James D. Pearson to K Seiler; subj: RE: PMT Agenda 9 09.docx (without attachment)	1/12/2011	CP 790-791

	Date of Record	Description of Record	Date Produced	Record Citation
50	10/8/2009	Email from Polly Zehm to Brian R. Dixon, G. Thomas Tebb, David Workman, K Seiler, Joye Redfield-Wilder, Valerie Bound, Darin Rice and Richard L. Granberg; subj: RE: Grandview Illegal Dumping – Responses to Yakima Valley Business Times-DEBRA PRINTED!	1/12/2011	CP 787-788
51	10/8/2009	Email from Rose Pascua to Richard L. Granberg; subj: RE: Double H Farms request for report/ATTORNEY-CLIENT PRIVILEGED COMMUNICATION	1/12/2011	CP 880-882
52	10/8/2009	Email from Nels Johnson to Richard L. Granberg; subj: RE: DoubleHPen/ATTORNEY-CLIENT PRIVILEGED COMMUNICATION	1/12/2011	CP 884-885
53	10/8/2009	Email from Brian R. Dick to K Seiler; subj: FW: Grandview Illegal Dumping – Response to Yakima Valley Business Times (without attachment)	1/12/2011	CP 789
54	10/8/2009	Email from Andy Smith to Ron Hicks; subj: Schedule for sampling well water	1/12/2011	CP 898

	Date of Record	Description of Record	Date Produced	Record Citation
55	10/9/2009	Email from Andy Smith to Andy Smith, Dan Heister, Eric Nuchims, Thomas Eaton, Dan Opalski, Chris Field, Adam Bilodeau, Mark MacIntyre, Calvin Terada, Carl Lautenberger, Michael Boykin, Kathy Parker, Sharon Nickels, Mary Matthews, A. Russell, Sam Hunn, Caryn Klaff, Barbara Trejo, Erin L. Kochaniewicz, Cliff Villa, Lee Barigar, Richard L. Granberg, Jason Kelly, Karma Anderson, Jennifer Fitchorn, Gordon Kelly, Sandra Halstead, Monica Tonel, Ross Courtney, Ron Hicks, Linda Anderson-Carnahan, Wally Moon, Katie Utehs, Jeffrey Fowlow, Joye Redfield-Wilder, KAPP News, KVEW News, F. Lindsay, J. McGhan, Gary Bleeker, and Ted Silvestri; subj: POLREP #8 Double H Pesticide Burial Site – Installation of monitoring wells (with attachment)	1/12/2011	CP 899-900
56	10/9/2009	Email from Nels Johnson to Richard L. Granberg; subj: RE: DoubleHLPRFE	1/12/2011	CP 878
57	10/13/2009	Email from Brian R. Dick to Joye Redfield-Wilder; subj: Double H Press Release (without attachment)	1/12/2011	CP 776
58	10/13/2009	Email from Brian R. Dick to K Seiler; subj: FW: HH penalty – Joye’s edits draft NR.doc (with attachment)	1/12/2011	CP 792-794
59	10/13/2009	Email from Nels Johnson to Richard L. Granberg; subj: RE: DoubleHLPRFE	1/12/2011	CP 872
60	10/13/2009	Email from Nels Johnson to Richard L. Granberg; subj: DoubleHLPRFE (without attachment)	1/12/2011	CP 874

	Date of Record	Description of Record	Date Produced	Record Citation
61	10/13/2009	Email from Nels Johnson to Richard L. Granberg; subj: FW: Double H Property – Grandview, Washington/ATTORNEY-CLIENT PRIVILEGED COMMUNICATION (without attachment)	1/12/2011	CP 876
62	10/13/2009	Email from Richard L. Granberg to Nels Johnson; subj: Document1 (without attachment)	1/12/2011	CP 901
63	10/13/2009	Email from Brian R. Dick to Richard L. Granberg; subj: Draft Press release (with attachment)	1/12/2011	CP 902-904
64	10/13/2009	Email from Joye Redfield-Wilder to Brian R. Dick; subj: HH penalty – Joye’s edits draft NR.doc (with attachment)	1/12/2011	CP 905-907
65	10/14/2009	Email from K Seiler to Brian R. Dick, Richard L. Granberg, Jenny Hallengren; subj: RE: Double H SMT Briefing Info	1/12/2011	CP 908-927
66	10/14/2009	Email from Joye Redfield-Wilder to Richard L. Granberg and Brian R. Dick; subj: RE: DoubleHCommPlan (with attachments)	1/12/2011	CP 928-935
67	10/14/2009	Email from Joye Redfield-Wilder to Brian R. Dick; sub: RE: Double H Communication Plan	1/12/2011	CP 936
68	10/14/2009	Email from Richard L. Granberg to Brian R. Dick; subj: DoubleHComml (without attachment)	1/12/2011	CP987
69	10/14/2009	Email from Brian R. Dick to Jenny Hallengren and K Seiler; subj: RE: SMT	1/12/2011	CP 938-939
70	10/14/2009	Draft Recommendation for Enforcement	12/17/2010	CP 708-717

	Date of Record	Description of Record	Date Produced	Record Citation
71	10/14/2009	Email from Brian R. Dick to Joye Redfield-Wilder; subj: Double H Communication Plan (with attachment)	1/12/2011	CP 769-772
72	10/14/2009	Email from Richard L. Granberg to Brian R. Dick; subj: DoubleHCommPlan (with attachment)	1/12/2011	CP 773-775
73	10/14/2009	Email from K Seiler to Dianne Pastore; subj: FW: Double H SMT Briefing Info (without attachments)	1/12/2011	CP 800
74	10/14/2009	Email from Kim Wigfield to Jeri Berube, Jack Boiler, Lisa Brown, Emily A. Celto, Ava Edmonson, Joanne Lind, David Misko, Leslie Morris, James D. Pearson, Jean Rushing, Steve Szendre, Michelle Underwood, Eric Van Mason and Kim Wigfield; subj: Draft Notes for July Conference Call (with attachment)	1/26/2011	CP 1241-1247
75	10/15/2009	Email from Jenny Hallengren to K Seiler; subj: SMT (without attachment)	1/12/2011	CP 801
76	10/15/2009	Email from K Seiler to James D. Pearson and Brian R. Dixon; subj: SRP/Enforcement data/November PMT	1/12/2011	CP 802-803
77	10/15/2009	Email from Richard L. Granberg to Nels Johnson; subj: FW: Double H SMT Briefing Info (without attachment)	1/12/2011	CP 940
78	10/15/2009	Email from Brian R. Dick to Richard L. Granberg; subj: FW: 10/16 SMT Agenda & Material (without attachments)	1/12/2011	CP 941
79	10/15/2009	Email from Richard L. Granberg to Rose Pascua; subj: DoubleHPen (without attachment)	1/12/2011	CP 942

	Date of Record	Description of Record	Date Produced	Record Citation
80	10/15/2009	Email from Brian R. Dick to Joye Redfield-Wilder; subj: Govs Alert – Double H	1/12/2011	CP 943
81	10/15/2009	Email from Leslie Morris to ECY DL HWTR COMPLIANCE NETWORK; subj: Draft October 15 Comp Net notes for review (with attachment)	1/26/2011	CP 1233-1239
82	10/16/2009	Ecology Senior Management Team Meeting, October 16, 2009 Agenda	1/12/2011	CP 944
83	10/16/2009	Email from Richard L. Granberg to Rose Pascua; subj: DoubleHCvrLtr (with attachment)	1/12/2011	CP 945-946
84	10/16/2009	Email from Brian R. Dick to Joye Redfield-Wilder; subj: FW: Grandview disposal site article – Farwest Agribusiness Association Newsletter (without attachment)	1/12/2011	CP 947
85	10/16/2009	Email from Nels Johnson to Clifford Villa; subj: Double H Farms penalty	1/12/2011	CP 948
86	10/16/2009	Email from Brian R. Dick to Dianne Pastore, K Seiler, Jenny Hallengren, Janice Adair, Josh Baldi, Debra Blodgett, Carol Fleskes, Tom Laurie, Pat McLain, Christopher Parsons, Grant D. Pfeifer, Derek Sandison, Evan Sheffels, Ted Sturdevant, Jeannie Summerhays, G. Thomas Tebb, Sally Toteff, Vickie Van Ness, Mary Sue Wilson, David Workman, and Polly Zehm; subj: Double H Farms SMT discussion	1/12/2011	CP 949
87	10/16/2009	Email from Rose Pascua to K Seiler; subj: Double H LP Documents (without attachments)	1/12/2011	CP 794

	Date of Record	Description of Record	Date Produced	Record Citation
88	10/16/2009	Email from Nels Johnson to Richard L. Granberg; subj: DoubleHCvtLtr/ATTORNEY-CLIENT PRIVILEGED COMMUNICATION	1/12/2011	CP 870
89	10/19/2009	Email from Joye Redfield-Wilder to G. Thomas Tebb, Brian R. Dixon, and K Seiler; subj: THIS ONE – HH penalty – final draft.doc (with attachment)	1/12/2011	CP 795-797
90	10/19/2009	Email from K Seiler to Jenny Hallengren; subj: FW: Double H LP Documents (without attachments)	1/12/2011	CP 798-799
91	10/19/2009	Email from Jenny Hallengren to Brian R. Dixon, Richard L. Granberg, Rose Pascua, and Nels Johnson; subj: Double H LP Farm Penalty (without attachments)	1/12/2011	CP 804
92	10/19/2009	Email from Nels Johnson to Brian R. Dick; subj: [Redacted]/ATTORNEY-CLIENT PRIVILEGED COMMUNICATION	1/12/2011	CP 868
93	10/19/2009	Email from Richard L. Granberg to Gregory Bohn; subj: FW: Grandview Illegal Dumping (without attachment)	1/12/2011	CP 950
94	before 10/20/2009	Draft news release	9/2/2010	CP 284-285
95	10/20/2009	Email from K Seiler to the File [disclosed, but not produced]	7/1/2010	CP 201
96	10/20/2009	Letter from K Seiler to James T. Hansen (with attachment)	9/2/2010	CP 285-292
97	10/20/2009	Recommendation for Enforcement	9/2/2010	CP 293-309
98	10/20/2009	Email from Brian R. Dick to Sandra Hughes; subj: RE: Governor Alert – UPDATE THERE WILL BE A DELAY IN ISSUEING THIS PENALTY	1/12/2011	CP 768

	Date of Record	Description of Record	Date Produced	Record Citation
99	after 10/20/2009	Letter from Michael B. Gillett to Richard Granberg, with handwritten notes in the margins	12/17/2010	CP 700-701
100	10/21/2009	Email from Richard L. Granberg to Rose Pascua; subj: Business Times letter from Brian	1/12/2011	CP 952
101	10/21/2009	Email from Richard L. Granberg to Nels Johnson; subj: FW: Schedule for sampling well water	1/12/2011	CP 953
102	10/21/2009	One page of handwritten notes	12/17/2010	CP 694
103	10/21/2009	Four pages of black & white copies of photographs	12/17/2010	CP 695-698
104	10/22/2009	One page of handwritten notes	7/1/2010	CP 205
105	10/22/2009	Email from Brian R. Dick to Nels Johnson; subj: RE: Double H Farms enforcement/ATTORNEY-CLIENT PRIVILEGED COMMUNICATION	12/17/2010	CP 702
106	10/22/2009	Email from Brian R. Dick to K Seiler; subj: Yakima Business Times letter – Grandview Double H Farms (without attachment)	1/12/2011	CP 805
107	10/22/2009	Email from Brian R. Dick to K Seiler; subj: FW: Double H Farms enforcement/ATTORNEY-CLIENT PRIVILEGED COMMUNICATION	1/12/2011	CP 806-807
108	10/23/2009	Email from Leslie Morris to James D. Pearson, ECY DL HWTR COMPLIANCE NETWORK; subj: Final Comp Net notes for posting to intranet (with attachment)	1/26/2011	CP 1225-1231
109	10/26/2009	Email from Richard L. Granberg to Brian R. Dick; subj: FW: hastings letter (without attachment)	1/12/2011	CP 808-811
110	10/26/2009	Email from Brian R. Dick to Nels Johnson; subj: Gillett work in the Sunnyside area	1/12/2011	CP 954

	Date of Record	Description of Record	Date Produced	Record Citation
111	10/27/2009	Kim Wigfield to Jeri Berube, Jack Boiler, Lisa Brown, Emily A. Celto, Ava Edmonson, Joanne Lind, David Misko, Leslie Morris, James D. Pearson, Jean Rushing, Steve Szendre, Michelle Underwood, Eric Van Mason and Kim Wigfield; subj: Final Notes for July 2009 Comp Net Conference Call (with attachment)	1/26/2011	CP 1217-1223
112	10/29/2009	Email from Teresa Trippel to K Seiler; subj: 3rd Qtr 2009 Report (without attachment)	1/12/2011	CP 813
113	10/29/2009	Email from Nels Johnson to Richard L. Granberg; subj: draft letter to Gillett Re 220 report request/ATTORNEY-CLIENT PRIVILEGED COMMUNICATION	1/12/2011	CP 864
114	10/29/2009	Email from Nels Johnson to Roger E. Johnson; subj: Ag Dept. records request, ecology ERTS/ATTORNEY-CLIENT PRIVILEGED COMMUNICATION	1/12/2011	CP 866
115	10/31/2009	Email from Nels Johnson to Brian R. Dick; subj: RE: Double H Farms enforcement/ATTORNEY-CLIENT PRIVILEGED COMMUNICATION	1/12/2011	CP 861-862
116	before 11/2/2009	One page of handwritten notes	12/17/2010	CP 699
117	11/5/2009	Email from Maylee Collier to Richard L. Granberg; subj: DE 7133 – was this issued? ⁷	9/2/2010	CP 228
118	11/9/2009	Email from Maylee Collier to Richard L. Granberg; subj: DMS System – Outstanding Docket Notification ⁸	6/10/2010	CP 184

	Date of Record	Description of Record	Date Produced	Record Citation
119	11/10/2009	Email from Teresa Trippel to Jennifer Fitchhorn, Kelly O'Neill, Ken Ramm, Jerri Thomas, Richard L. Granberg and Brian R. Dick; subj: FW: Meeting to discuss and coordinate enforcement issues re Double H	6/24/2010	CP 198
120	11/12/2009	Email from Richard L. Granberg to Maylee Collier; subj: FW: DMS System – Outstanding Docket Notification	1/12/2011	CP 824
121	11/12/2009	Email from Richard L. Granberg to Maylee Collier; subj: RE: DE 7133 – was this issued?	1/12/2011	CP 825
122	11/12/2009	Email from Richard L. Granberg to Brian R. Dick; subj: FW: Possible Meeting (with attachment)	1/12/2011	CP 826-831
123	beginning 11/17/2009	Two pages of handwritten notes with multiple dates	7/1/2010	CP 203-204
124	11/17/2009	Email from Richard L. Granberg to Brian R. Dick and Holly S. Cushman; subj: FW: Ecoclip – Ag pesticide pickup busiest year	1/12/2011	CP 832-834
125	11/20/2009	Email from Richard L. Granberg to Brian R. Dick; subj: FW: Hansen meeting	1/12/2011	CP 836-837
126	11/20/2009	Email from Richard L. Granberg to Brian R. Dick; subj: FW: Hansen meeting	1/12/2011	CP 838-840
127	11/23/2009	Email from Richard L. Granberg to Rose Pascua; subj: FW: Hansen meeting	1/12/2011	CP 841-842
128	11/23/2009	Email from Brian R. Dick to Joe Hoffman; subj: FW: news release from WSDA on waste pesticide collection program (with attachment)	1/12/2011	CP 843-846
129	11/30/2009	Email from Rose Pascua to Richard L. Granberg; subj: FW: Request Summary	1/12/2011	CP 847

	Date of Record	Description of Record	Date Produced	Record Citation
130	11/30/2009	Email from Richard L. Granberg to Rose Pascua; subj: FW: Hansen meeting	1/12/2011	CP 848-855
131	11/30/2009	Nina Kocourek to Ava Edmonson, Brian R. Dick, Barbara McCulloch, Cheryl B. Williams, Dave Bartus, Greta Davis, James DeMay, James D. Pearson, John Ridgway, Julie Sellick, Jack Boiler, Jeff Kenknight, Kim Wigfield, Kaia Peterson, K Seiler, Ken Zarker, Lisa Brown, Lisa McArthur, Michelle Underwood, Nina Kocourek, Peter Magolske, Ron Skinnarland, Steve Szendre, Shawn Blocker, and Zach Hedgpeth; subj: Fw: Final minuts for June 4, 2009 – TSD Quarterly Meeting (with attachments)	1/26/2011	CP 1201-1215
132	12/1/2009	Two pages of handwritten notes prepared by Laura Klasner ⁹	11/29/2010	CP 592
133	12/1/2009	Three pages of handwritten notes prepared by Richard Granberg ¹⁰	6/24/2010	CP 193-195
134	12/8/2009	Email from Richard Granberg to Brian R. Dick; subj: FW: Monitoring Wells and soil Sampling Results for Double H (with attachments)	1/26/2011	CP 1095-1108
135	12/9/2009	Email from Richard L. Granberg to Elleen Loerch; subj: Emailing: Hansen	1/12/2011	CP 857
136	12/21/2009	Email from Richard L. Granberg to Tim Schultz; subj: RE: Commercial Applicator Training	1/12/2011	CP 858-859
137	1/2010	Gary Bohn's personal calendar for January 2010 with handwritten notations	1/12/2011	CP 984-985
138	1/6/2010	One page of handwritten notes prepared by Richard Granberg ¹¹	6/10/2010	CP 165
139	1/6/2010	One page of handwritten notes prepared by Laura Klassner	1/26/2011	CP 1093

	Date of Record	Description of Record	Date Produced	Record Citation
140	1/10/2010	Email from K Seiler to Nels Johnson; subj: FW: HWTRP 2Q 2009 Report	1/12/2011	CP 1035
141	1/11/2010	Two pages of handwritten notes	12/17/2010	CP 706-707

¹ Disclosed in Exemption Log / Double H Request 1-2010. CP 375 (30th row).

² Disclosed in Exemption Log / Double H Request 1-2010. CP 375 (29th row).

³ Disclosed. CP 178. Not listed in Exemption Log / Double H Request 1-2010.

⁴ Disclosed in Exemption Log / Double H Request 1-2010. CP 375 (20th row).

⁵ Disclosed in Exemption Log / Double H Request 1-2010. CP 375 (19th row).

⁶ Disclosed in Exemption Log / Double H Request 1-2010. CP 375 (18th row).

⁷ Disclosed in Exemption Log / Double H Request 1-2010. CP 375 (16th row).

⁸ Disclosed in Exemption Log / Double H Request 1-2010. CP 375 (13th row).

⁹ Disclosed in Exemption Log / Double H Request 1-2010. CP 375 (9th row).

¹⁰ Disclosed in Exemption Log / Double H Request 1-2010. CP 375 (7th row).

¹¹ Disclosed in Exemption Log / Double H Request 1-2010 (misdated 1/16/2010). CP 375 (1st row).

Declaration of Service

I, MICHAEL B. GILLETT, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct: I am the attorney-of-record for Appellant Double H, L.P. in the above-entitled matter. I am over 18 years of age, knowledgeable of the matters stated herein, and competent to testify as to the same. On this day, I caused to be served on the persons indicated below the Brief of Appellants, via the U.S. Postal Service, first-class postage prepaid:

Attorneys for Respondent:

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SIGNED this this 30th day of August, 2011, at Seattle, Washington.



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