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Division III
State of Washington

NO. 34760-5

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

KITTITAS COUNTY, a municipal corporation and political subdivision of the State of Washington,

Plaintiff/Respondent,

v.

SKY ALLPHIN, ABC HOLDINGS, INC., and CHEM-SAFE ENVIRONMENTAL, INC.,

Defendants/Appellants,

and

WASHINGTON STATE DEPARTMENT OF ECOLOGY,

Defendant/Respondent.

RESPONSE BRIEF OF RESPONDENT WASHINGTON STATE DEPARTMENT OF ECOLOGY

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I. INTRODUCTION

Appellants Sky Allphin and his two businesses (collectively "Chem-Safe") challenged the Department of Ecology's handling of their public records requests. After a show cause hearing, the trial court rejected their claims, ruling that Ecology had adequately searched its records; reasonably allowed a third party time to seek an injunction; timely produced all responsive records not enjoined; asserted no exemptions; and neither withheld nor denied the release of any responsive records discovered in its searches. In contrast, the court found that "Mr. Allphin repeatedly conveyed confusion about what documents he possessed and when he obtained them."

On appeal, Chem-Safe fails to show any legal error in the trial court's ruling. Chem-Safe largely repeats the inaccurate factual allegations it made in the trial court, none of which have merit. For example, Chem-Safe contends that the show cause hearing was premature because, supposedly, discovery was incomplete. Not only is this simply not true—the trial court was generous, permitting close to two years of discovery and a final court-monitored round of production requests before ending it—the argument does not show any violation of the Public Records Act (PRA) by Ecology. Chem-Safe challenges the authority of the court to hold a show cause hearing on motion by the agency, but this strained reading of the PRA conflicts with decisions and practice of Washington courts.

Chem-Safe also objects to the court's denial of its last-minute motion for in camera review. That motion would have sent the court fishing on Chem-Safe's behalf—searching, on pure speculation, for errors in the redactions Ecology had made at the court's own order, and sifting through attorney-client privileged communications to learn which documents Ecology had shared with its attorneys. Even if discovery had not been ended, Chem-Safe's requests were improper, and the motion met none of the threshold criteria for in camera review. It was properly denied.

The trial court's decision should be affirmed in its entirety.

II. COUNTER-STATEMENT OF THE CASE

On October 17, 2012, while litigating Chem-Safe's appeal of Kittitas County's enforcement against it for illegally operating a waste-handling facility,[1] Sky Allphin made the first of many public records requests to Ecology, and a similar one to the County, for documents related to the subject of that litigation. CP 229; Suppl. CP ___ (sub no. 167, Ex. A); *see also* CP 229–49. This case arises out of those requests.

A. Documents Created During the County's Enforcement and Litigation Became the Subject of Mr. Allphin's Public Records Requests

Four years earlier, in July 2008, James Rivard of the Kittitas County Department of Health and Gary Bleeker of Ecology's solid waste program were making a routine inspection of a recycling facility.

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[1] *See ABC Holdings, Inc. v. Kittitas Cty.*, 187 Wn. App. 275, 284–85, 348 P.3d 1222 (2015), *review denied*, 184 Wn.2d 1014, 360 P.3d 817 (2015). *See also* Suppl. CP ___ (sub no. 173, at 1–57).

CP 1780–81. They stumbled onto a warehouse facility on the same lot containing hundreds of 55-gallon drums which, by their labels, were filled with hazardous waste. *Id.* Larry Bradley, the officer of Chem-Safe Environmental and ABC Holdings who was escorting them, told the inspectors that the facility operated under a permit issued by Ecology's hazardous waste program. *Id.* This was false—the facility had no permit and was operating in violation of local and state solid waste permitting regulations. CP 1780; *ABC Holdings*, 187 Wn. App. at 284–85.
Mr. Rivard, with assistance from Ecology hazardous and solid waste specialists, worked with Chem-Safe for over two years to help bring the facility into compliance so that it could meet the conditions for a permit and avoid enforcement. CP 1778–89.

But Chem-Safe continued to violate regulations. CP 1786–87. On January 27, 2011, the County determined that operations at the facility were a public nuisance and issued a Notice of Violation and Abatement (NOVA) requiring that all operations be suspended until a solid waste permit was obtained. CP 1787; Suppl. CP ___ (sub no. 173, Ex. A). On appeal, the County's NOVA was affirmed by a hearing examiner, the superior court, and ultimately by the Court of Appeals. Suppl. CP ___ (sub no. 173, Exs. B, C); *ABC Holdings*, 187 Wn. App. at 284–85.

The County's order required that the facility's floor and the soil underneath be tested for contamination. Suppl. CP ___ (sub no. 173, Ex. A at 5). This was affirmed by the hearing examiner and by the superior court. On May 6, 2013, after more than two years of Chem-Safe's non-

compliance with the County's order, the superior court issued an order of contempt for Chem-Safe's failure to comply with the court's order to test the floor and soil. Suppl. CP ___ (sub no. 173, Ex. D at 17–18).

In April 2011, the County contacted Ecology's Toxics Cleanup Program to report a possible release of hazardous substances from the facility. Such a report triggers an initial investigation under the Model Toxics Control Act (MTCA). WAC 173-340-300(5).[2] Ecology toxics cleanup specialist Norm Peck conducted an initial investigation based on documentary and photographic evidence, and interviews with County and Ecology solid waste specialists, and recommended a site hazard assessment.[3] Ecology then issued an "early notice letter" to Chem-Safe.[4] CP 428–30.[5]

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[2] "An initial investigation is an inspection of a suspected site by the department and documentation of conditions observed during that site inspection. The purpose of the initial investigation is to determine whether a release or threatened release of a hazardous substance may have occurred that warrants further action under this chapter." WAC 173-340-310(1).

[3] "The purpose of the site hazard assessment is to provide sufficient sampling data and other information for the department to . . . [c]onfirm or rule out that a release or threatened release of a hazardous substance has occurred." WAC 173-340-320(1)(a).

[4] "For sites requiring further remedial action under chapter 70.105D RCW, the department shall notify the owner, operator, and any potentially liable person known to the department of its decision. This notification shall be a letter ('Early Notice Letter') mailed to the person . . . ." WAC 173-340-310(6)(b).

[5] Chem-Safe brought an action under 42 U.S.C. § 1983 against Ecology employees and a former County employee for their roles in these agency actions. CP 1113–58. The federal district court dismissed the claims for failing to identify any constitutionally protected right implicated by actions of County and Ecology employees. *See* CP 1113–58.

B. The County Sought an Injunction Because Mr. Allphin's Public Records Requests to Ecology Encompassed County Work Product Shared With Ecology

Chem-Safe began making public records requests to the County and Ecology in October 2012. Suppl. CP ___ (sub no. 167, Ex. A); CP 229–49. The scope of the requests encompassed attorney-client communications and attorney work product held by both agencies, created in preparation for the litigation over Kittitas County's enforcement against Chem-Safe. In responding to Chem-Safe's requests, Ecology asserted no exemptions for its own attorney-client privileged documents. CP 225–49. But the County asked Ecology to delay release of work product that the County had shared with Ecology until an injunction could be obtained from superior court. CP 233–34. Ecology did so, and in February 2013, the County filed an action to enjoin Ecology from releasing certain records, on grounds that they were County work product. CP 270–77.[6]

The initiating lawsuit—the County's request for an injunction—was resolved in December 2013 in favor of the County. CP 171–72. But the litigation did not end. The court allowed Chem-Safe to amend its answer to the County's complaint, to bring counter-claims against the County. Suppl. CP ___ (sub no. 148). These claims, too, were resolved in favor of the County about a year later, on February 27, 2015. Suppl. CP ___ (sub no. 265). On appeal, the Court of Appeals affirmed, and the Supreme Court granted review in part. *Kittitas Cty. v. Allphin*, 195 Wn.

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[6] The County's initial request focused on 19 e-mails, and was reduced to 11 by the time the court granted the permanent injunction, in part because Ecology had already inadvertently released some of the documents. CP 148–72.

App. 355, 360–61, 381 P.3d 1202 (2016), *review granted in part*, 187 Wn.2d 1001, 386 P.3d 1089 (2017). That decision remains pending.

In October 2014, Chem-Safe again amended its answer, this time to bring cross-claims against Ecology. CP 37–42. Chem-Safe's cross-claims challenged Ecology's responses to three of Mr. Allphin's many public records requests, alleging violations of the PRA. CP 37–44. The cross-claims in the pleading were mostly non-specific, speculative, and unsupported by any factual allegations. *See id.* For the next two years, until the hearing on the merits in August 2016, Chem-Safe conducted an enormous amount of discovery, searching for any evidence of any violations to substantiate these claims. *See infra* § II.D.

C. Mr. Allphin's Public Records Act Requests to Ecology

Beginning with his first public records request to Ecology on October 17, 2012, and continuing for more than two years through e-mail communications, phone conversations, and visits to Ecology's Yakima offices, Mr. Allphin sought and received assistance of various sorts from Ecology's public records coordinators Roger Johnson and Jackie Cameron, related to numerous (28 in all) public records requests. *See generally* CP 225–49; CP 190–95.[7] Chem-Safe's cross-claims against Ecology relate to requests made on October 17, 2012; January 8, 2014; and May 12, 2014. CP 37–42.[8]

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[7] The 28 requests are listed at Ecology's Reply to Chem-Safe's Response to Ecology's Motion to Show Cause, CP 1091–92 n.3.

[8] Roger Johnson stated in his declaration that attending to Mr. Allphin's many requests was "one of the most prolonged series of requests and communications I have had with a public records requestor about a particular matter in my 19 years of doing this

1. October 17, 2012, records request to Ecology

On October 17, 2012, Mr. Allphin requested from Ecology:

> Any and all paperwork correspondence, emails, pictures and documentation pertaining to Chem-Safe Environmental, Inc. on file from January 1, 2010 to current. Specifically regarding Chem-Safe Environmental Inc. to and from Kittitas County Public Health Department, Montana DEQ, Idaho DEQ, Kittitas County Prosecutors, Kittitas County Sheriff Department and Kittitas County Fire Department. In addition any correspondence, documentation, pictures and emails involving Chem-Safe Environmental, Inc. from the following Washington State DOE representatives, Mr. Richard Granberg, Mr. Gary Bleeker, Ms. Wendy Neet, Mr. Norman Peck and Valery Bound.

CP 229, 252.

Roger Johnson, the public records coordinator at Ecology's Central Regional Office, received Mr. Allphin's request on October 18, 2012, and provided an initial response five business days later, estimating completion by November 19, 2012. CP 229–31.[9]

In addition to documents he gathered from his own search of the central files room and associated databases, Mr. Johnson received responsive documents from staff in three separate programs—from the preserved files of former employee Richard Granberg, then retired, who had worked in Ecology's Hazardous Waste and Toxics Reduction Program; from Wendy Neet and Gary Bleeker of the Waste 2 Resources Program; and from Valerie Bound and Norm Peck of the Toxics Cleanup

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job. . . . [I]t is likely that I spent over two-hundred hours addressing Mr. Allphin's needs over the course of the last three years . . . ." CP 228.

[9] Unknown to Mr. Johnson, Ecology's Headquarters office had received the request the day before, but the request itself had no date on it. These circumstances are described by Mr. Johnson in his declaration. CP 229–31.

Program. After coordinating searches in all places where responsive documents might have existed, Mr. Johnson ultimately responded to this request by providing more than 14,000 pages of responsive documents, in three installments. CP 230–32, 234. *See also* CP 427–33; CP 133–38; CP 221–22; CP 421–24; CP 141–43.

During this time, Mr. Johnson spoke on the phone with Kittitas County Deputy Prosecuting Attorney Zera Lowe, who asked to review some of the documents that Ecology intended to release, to determine whether any of them might be privileged and whether the County might need to seek court protection. CP 233. After Mr. Johnson accommodated this request, Ms. Lowe asked that additional time be allowed, to give Kittitas County the opportunity, under RCW 42.56.540, to seek an injunction preventing their release. *Id.* The County filed its Complaint for Declaratory Judgment and Injunctive Relief on February 22, 2013, seeking to enjoin Ecology from releasing 19 e-mails. CP 270–77.

Mr. Johnson released the third installment of records on February 26, 2013. CP 234. County Deputy Prosecutor Zera Lowe had identified 19 e-mails for which she intended to seek court protection. *Id.* Mr. Johnson sent an e-mail to Mr. Allphin's legal counsel on February 26, 2013, informing him that additional time would be taken with respect to those 19 listed e-mails, to enable the County to seek the court's review. *Id.* At that time, Mr. Johnson also released several previously unreleased e-mails, counting this as the final installment,

completing the October 17, 2012, request (except for the 19 e-mails for which the County sought court protection). *Id.*

The trial court issued a temporary restraining order (TRO) on April 4, 2013, to prevent disclosure while it conducted in camera review. CP 148–53. Two months later, on June 6, 2013, the court extended the TRO. CP 79–85. Finally, in an order on motion for in camera review, on December 19, 2013, the court permanently enjoined Ecology from releasing certain of the e-mails examined, and ordered Ecology to produce others that had been governed by the TRO but were not protected by the final injunction. CP 171–73. In accordance with the court's order, Ecology released the remaining responsive records that were no longer protected by the order. CP 191.

During the four months when Ecology was gathering and providing these 14,000 pages of documents, Mr. Allphin made many more requests—submitting 19 other public records requests as well as many other requests for assistance, requests for duplicates, and requests for expedited disclosure so that he could use documents to prepare for upcoming meetings with regulators. CP 234–42. In addition to Mr. Allphin's numerous and varied requests, Mr. Johnson received and addressed 150–250 public records requests a month, as well as another 100–200 water rights records requests each month. CP 234–35. As a result, he would have dealt with 1,000 to 1,800 other requests during this period. *Id.*

2. January 8, 2014, records request to Ecology

On January 8, 2014, Ecology received another public records request from Mr. Allphin, seeking: "Any and all paperwork correspondence, emails, pictures and documentation pertaining to ERTS#626393, VCP#CE0371 and Facility/Site ID #58926155." CP 244.[10] Mr. Johnson acknowledged receipt of the request on January 16, 2014, and sought and obtained clarification. CP 244–45. On February 11, 2014, Mr. Johnson produced the documents responsive to the request, confirmed the production by e-mail, and after hearing no reply, closed out the request. *Id.*

3. May 12, 2014, records request to Ecology

On May 12, 2014, Mr. Allphin made a request for public records pertaining to Moderate Risk Waste facilities operating in Benton and Kittitas Counties. CP 246–47. Mr. Johnson provided an initial response within five business days. CP 247. Ecology then produced two installments of records within the same month. CP 247–48. After providing 254 pages of documents in response, the May 12, 2014, request was closed out on June 9, 2014. *Id.* Chem-Safe states that Ecology did not respond within five days. Opening Br. 14. The record evidence refutes this. CP 247.[11]

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[10] "ERTS" stands for Environmental Report Tracking System. The number is assigned to a site when it is entered into the system. "VCP" stands for the Voluntary Cleanup Program. The number is assigned to a site that enters the program for tracking by the toxics cleanup program. The Facility/Site ID number is assigned as a tracking number for the hazardous waste program.

[11] Chem-Safe's sole claim with respect to Ecology's response to this request was Ecology had violated the PRA requirement to provide an initial response within five

4. Mr. Allphin was confused as to what he requested, when he requested it, what he received, and when he received it

During the two years of his public records requests to Ecology, from October 2012 until December 2014, Mr. Allphin displayed a lack of awareness about what he had requested, what he had received, and when he had received it from Ecology. He occasionally asserted to Mr. Johnson that he had asked for documents when he clearly had not done so. CP 242-43. He several times claimed that he had not been provided with documents, only to be shown that Ecology had provided them to him. CP 235; CP 238; CP 243. He misplaced or could not find certain documents and requested them again. CP 238; CP 243–44; CP 245–46; CP 192.[12] In December 2014, records coordinators Roger Johnson and Jackie Cameron, aware of Mr. Allphin's confusion, provided him with three DVD's containing all the records that had been previously provided to him. CP 248.[13]

D. Ecology Moved for a Determination by the Court as to Whether It Had Violated the PRA

On January 22, 2016, on a motion to show cause, Ecology requested that the court determine whether it had committed any violations

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days. The record refutes the claim—the May 12 request arrived after business hours. CP 247.

[12] This pattern repeated itself in Chem-Safe's discovery requests during this PRA litigation. *See, e.g.*, CP 1529–46.

[13] Mr. Allphin received even more records from the County, many duplicates of what was provided by Ecology. And Mr. Allphin had commenced a Section 1983 suit against County and Ecology employees, where, under the federal rules requiring initial disclosures, Chem-Safe received thousands more documents relating to the illegal operations of its facility. Mr. Allphin's public records requests, and his discovery requests, reflected his inability to keep abreast of all the documents he had requested and received.

of the PRA. CP 99–121. Ecology noted the hearing for March 10, 2016. CP 436. By then, Chem-Safe had conducted extensive discovery. On March 24, 2015, it had served Ecology with 35 interrogatories and 12 requests for production, to which Ecology responded with over 28 pages of answers and over 11,000 pages of documents. Suppl. CP ___ (sub no. 309 ¶ 6). In June and July 2015, Chem-Safe had deposed Ecology employees Norm Peck, Gary Bleeker, James Rivard, Roger Johnson, and Richard Granberg. Suppl. CP ___ (sub no. 309 ¶¶ 7, 8). After receiving a letter that Chem-Safe intended even more discovery, Ecology filed a motion, on August 19, 2015, for a protective order. CP 445–54. The trial court allowed discovery to continue. CP 455–56; CP 97–98. On September 18, 2015, Chem-Safe served a second set of interrogatories and production requests on Ecology. CP 457–63. Ecology again responded with answers and documents. CP 464–76. By the end of December 2015, it appeared all outstanding discovery requests had been satisfied, and Ecology filed its motion and noted a hearing for March 10, 2016. CP 501-02; CP 99–132; CP 436. Ecology accommodated Chem-Safe's initial request for delay, and agreed to move the hearing to April 1, 2016. CP 1339–40.

E. Chem-Safe Sought to Delay a Hearing on the Merits

Over the next six months, Chem-Safe undertook a series of efforts to delay the hearing on the merits. It filed a motion to compel discovery, which was denied. CP 438-513, 1526–28, 933. Chem-Safe then sought more discovery, in part ignoring the court's admonition, in denying the

motion to compel discovery, that Chem-Safe's discovery requests had been improper. CP 2390–94. It objected to Ecology's motion for a show cause hearing, arguing that only Chem-Safe could move for such a hearing. CP 528–41; *see also* CP 1085–1107. It filed a motion to continue the hearing, on the grounds that there was outstanding discovery. CP 1189–92; *see also* CP 1329–34. When the date of the hearing was moved, several times, Chem-Safe followed with more motions for continuance. *See infra* § II.E.3. It filed a motion for sanctions for allegedly failing to supplement an answer. CP 1495–96. It sought further discovery, a request that the court granted, in order to bring an end to discovery. CP 1544–46. And after the court ended discovery, Chem-Safe sought delay again by seeking more discovery through a motion for in camera review of documents. CP 2192–2201.

1. Chem-Safe's motion to compel discovery was denied for failing to comply with civil rules and the court's injunctions

Chem-Safe moved to compel discovery, representing to the court that the motion sought outstanding discovery so critical that Chem-Safe could not present its case without it. CP 438–513, 514–24. Chem-Safe's attorney represented to the court in a sworn affidavit that he had conducted a CR 26(i) conference with Ecology's attorneys concerning the requests. CP 441. Both claims were false. CP 1526–28, CP 933; *see also* CP 856-80. The court heard Chem-Safe's motion on March 4, 2016, and found it devoid of merit. CP 1526–28, CP 933. ("The motion to compel is denied entirely"). Of the requests it contained, "[t]wo of the three requests

were made for the first time in the motion," and the third sought documents "which this Court has already ruled are protected." CP 1526-28. The court also found that "no CR 26(i) conference was held." *Id.* Thus, there had been no outstanding discovery; Chem-Safe's attorney had represented to the court that a CR 26(i) conference had taken place when it had not; Chem-Safe had defied a court order; and, despite Chem-Safe's representation that the documents sought were critical to its case, it was clear that Chem-Safe had never requested them in 16 months of discovery.[14]

2. Flouting the court's order denying Chem-Safe's motion to compel, Chem-Safe submitted production requests for court-protected documents

On March 28, 2016, Chem-Safe submitted to Ecology as discovery the exact same requests for production that it had made in its failed motion to compel. CP 2390–94. Two of the discovery requests were improper and merited no production. The first explicitly sought records that were unrelated in any way to the litigation, and Ecology declined to produce any documents through discovery.[15] And, as the second request again sought the documents that the court had ordered protected, Ecology declined to produce them. The third request was a voluminous request that the court, in denying the motion to compel, had determined that Chem-

[14] Despite the court's rejecting that there was any outstanding discovery, Chem-Safe continues to assert that it sought "outstanding discovery" in this motion. *See* Opening Br. 6.

[15] However, because Chem-Safe simultaneously made the same request as a public records request, Ecology did in fact fully respond to that request. *See* CP 1651; *see also* CP 1551–53.

Safe had not previously submitted to Ecology. Chem-Safe simultaneously submitted those same requests to Ecology as new public records requests. *See* n.15, *supra*.

Up to this point, and including its response to this request, Ecology had never asserted attorney-client privilege in response to any of Chem-Safe's discovery requests or to its public records requests. Several of the documents released in response to this request were attorney-client privileged, but Ecology did not assert the privilege. CP 1652. One of these was an e-mail from Ecology's public records coordinator Roger Johnson to Assistant Attorney General Travis Burns. In it, Mr. Johnson tells Mr. Burns that he has placed several documents onto the "AGSecureDocs" site for Mr. Burns to review. CP 1556. The e-mail refers to a dedicated file transfer protocol (FTP) site set up to facilitate remote attorney review of Ecology documents without e-mailing them. CP 1556, 1531–32, 1549–50.[16]

3. Chem-Safe sought and received several continuances

On March 24, 2016, Chem-Safe moved the court for a continuance of the April 1, 2016, hearing on the merits, alleging the need to conduct more discovery. CP 1189–92. That hearing was cancelled due to the court's own scheduling conflicts and reset for May 12. CP 1360. Chem-

[16] Chem-Safe's "Statement of the Case" contains the false assertion that Ecology had, by sharing documents with its attorneys, hidden away "an entire set of previously undisclosed records [that] exist in electronic storage known as the 'AGSecured drive.' " Opening Br. 15. The assertion is false because the documents placed on the secure drive were simply copies of documents that had either already been provided to Chem-Safe or determined to be privileged and non-disclosable.

Safe therefore effectively received the continuance it sought. But Chem-Safe again sought continuance. Suppl. CP ___ (sub no. 377). This date, too, was cancelled and reset, again due to the court's scheduling conflicts, so that Chem-Safe again effectively received the continuance it sought; but Chem-Safe sought another continuance still. CP 1487–88.

4. Chem-Safe's final, court-monitored production requests sought documents already produced or non-existent

The court finally held a hearing, on June 3, 2016, but did not reach the merits of the case. Chem-Safe argued its motion for continuance again, asserting that there were specific documents it needed that were critical to its case. CP 1522. To bring finality to the discovery process, the court granted Chem-Safe one last round of production requests, to be monitored by the court, prior to terminating discovery. *Id.*; CP 1544–46. The court's order set out a discovery process: Chem-Safe would submit its requests to Ecology and the court; Ecology would respond with production of documents or by showing that the requests had already been fully addressed; Chem-Safe would reply; and the court would then conduct a telephonic discovery conference. CP 1544, 1529–30.

Chem-Safe presented twelve production requests. CP 1545–46. Ecology responded, showing that of the twelve, nine were repeat requests that had been fully addressed, in which Chem-Safe sought documents that had already been produced or that did not exist. CP 1529–40, 1547–53. The other three were entirely new requests, but were either beyond the scope of discovery or sought privileged documents. *Id.* As the court had

allowed, Chem-Safe submitted a reply to Ecology's responses. CP 2057-64. The reply pursued further discovery, making more requests for documents claimed to be critical to its case. *See, e.g.*, CP 2063.

The court was persuaded by Ecology's response and all evidence presented that Chem-Safe had received everything it had asked for that was not protected, privileged, or non-existent, and that almost all of what it asked for had already been provided to it. CP 2191. The court declared discovery complete, and ordered a hearing to be conducted on August 11, 2016. CP 2191.

But one week before hearing, Chem-Safe filed another motion—a motion for in camera review asking the court to double-check Ecology's redactions made to comply with the court's orders, and to examine attorney-client communications to determine which documents Ecology shared with its attorneys. CP 2192–2201. Ecology responded. CP 2348-76. At hearing, the court heard argument on Chem-Safe's motion and denied it as a request for more discovery after the court had terminated discovery. VRP 5, 11, 13. The court then proceeded to the hearing on the merits. VRP 13–54. At the court's invitation, Ecology provided an index to record cites showing Chem-Safe's claims and Ecology's responses, to assist the court. CP 2647–48. The court issued its order on September 8, 2016, granting Ecology's motion and dismissing Chem-Safe's claims in their entirety. CP 2665–71.

III. COUNTER-STATEMENT OF THE ISSUES

1. Did the trial court act within its authority when it conducted a show cause hearing on affidavits to determine whether Ecology had complied with the PRA in its responses to Mr. Allphin's public disclosure requests?

2. Did the trial court abuse its discretion when it denied Chem-Safe's last-minute request that the court conduct in camera review of Ecology's attorney-client privileged communications and documents redacted in compliance with the court's order?

3. Did the trial court properly conclude that Ecology had timely released four hand-drawn sketches; that Ecology had timely released a certain set of 53 e-mails and 9 documents; that the County's possession of a particular document does not show Ecology must also possess it; and that Ecology conducted an adequate search and timely produced all responsive records found in response to Chem-Safe's January 8, 2014, public records request?

4. Did the trial court properly conclude that Mr. Bleeker conducted an adequate search of his files?

5. Did the trial court properly conclude that Ecology acted in accordance with the PRA when it delayed release of several documents in order to allow the County time to seek an injunction?

IV. STANDARD OF REVIEW

Judicial review under the PRA is de novo, as to both the agency's actions and the court opinions below. RCW 42.56.550(3); *Fisher Broad.-*

Seattle TV LLC v. City of Seattle, 180 Wn.2d 515, 522, 326 P.3d 688 (2014). A show cause motion under the PRA is neither a CR 56 motion nor a CR 12(b)(6) motion. *O'Neill v. City of Shoreline*, 145 Wn. App. 913, 939, 187 P.3d 822 (2008), *aff'd in part, rev'd in part on other grounds by O'Neill v. City of Shoreline*, 170 Wn.2d 138, 240 P.3d 1149 (2010). As it seeks adjudication on the legal and factual merits, it is not reviewed as a summary judgment motion on appeal. *Brouillet v. Cowles Publ'g Co.*, 114 Wn.2d 788, 793–94, 791 P.2d 526 (1990); *West v. Gregoire*, 184 Wn. App. 164, 172, 336 P.3d 110 (2014). Where neither party has moved for summary judgment, facts will not be construed in the light most favorable to the non-moving party. *Brouillet*, 114 Wn.2d at 793. A trial court's decision to deny in camera review is reviewed for abuse of discretion. *Forbes v. City of Gold Bar*, 171 Wn. App. 857, 867, 288 P.3d 384 (2012).

Unchallenged factual findings of the trial court are treated as verities on appeal; review is limited to determining whether the findings support the conclusions of law. *In re Application of Santore*, 28 Wn. App. 319, 323, 623 P.2d 702 (1981). RAP 10.3(g) requires a separate assignment of error for each finding of fact a party contends was improperly made. Strict adherence to RAP 10.3(g) is not merely a technical nicety. *In re Estate of Lint*, 135 Wn.2d 518, 532, 957 P.2d 755 (1998). Indiscriminate assignment of error to every finding of the trial court fails to comply with RAP 10.3(g). *Santore*, 28 Wn. App. at 323.

V. ARGUMENT

A. The Trial Court Properly Conducted a Hearing on Whether Ecology Had Complied With the PRA

The PRA authorizes the superior court to conduct a show cause hearing based solely on affidavits when a litigant challenges an agency's actions surrounding a public records request. RCW 42.56.550(1), (3). Courts typically hear PRA disputes in such a proceeding. RCW 42.56.550(1); *Neighborhood All. of Spokane Cty. v. Cty. of Spokane*, 172 Wn.2d 702, 729, 261 P.3d 119 (2011) (Madsen, J., concurring); *West*, 184 Wn. App. at 171–72; *Kozol v. Dep't of Corr.*, 192 Wn. App. 1, 7, 366 P.3d 933 (2015); *Wood v. Thurston Cty.*, 117 Wn. App. 22, 27, 68 P.3d 1084 (2003). The provision at RCW 42.56.550(1) is permissive; it does not by that permission exclude any type of proceeding. *Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 104–05, 117 P.3d 1117 (2005). In particular, it does not preclude the superior court from conducting a hearing on a motion to show cause brought by the defendant agency, and numerous courts have done so. *See Kozol*, 192 Wn. App. at 7; *Forbes*, 171 Wn. App. at 862; *In re Request of Rosier*, 105 Wn.2d 606, 608, 717 P.2d 1353 (1986); *Benton Cty. v. Zink*, 191 Wn. App. 269, 361 P.3d 801 (2015); *McKee v. Dep't of Corr.*, 195 Wn. App. 1046, 2016 WL 4371658 at *5 (2016) (unpublished) (holding that RCW 42.56.550 does

not expressly preclude a show cause hearing initiated by defending agency).[17]

Chem-Safe contends that the superior court lacks authority to order a show cause hearing in a PRA case unless moved to do so by the challenging requestor. Opening Br. 18–20. Chem-Safe offers no support for this contention, other than a recitation of RCW 42.56.550(1). *Id.* This is not enough to show error. To the contrary, the authorities cited above plainly demonstrate that the trial court did have authority to conduct the hearing. There is, anyway, no conceivable relief that could be granted with respect to this issue. The trial court terminated discovery by order, on July 13, 2016. CP 2191. With discovery concluded, there is nothing more to do.

B. The Trial Court Properly Denied Chem-Safe's Last-Minute Request That the Court Conduct In Camera Review of Ecology's Attorney-Client Communications

Chem-Safe moved for in camera review of: (1) "all those [records] inputted at any time into or stored at any time on the DOE's 'AG Secured' drive that are covered by Chem-Safe's public records requests," and (2) "the 60+ pages of redacted records and the withheld records [that] have been sealed by court order." CP 2196, 2198. The trial court did not abuse its discretion in denying this motion.

Under the PRA, courts may review in camera any record that an agency seeks to exempt from disclosure. RCW 42.56.550(3). A decision

[17] *McKee* is an unpublished opinion, cited pursuant to GR 14.1. It has no precedential value, is not binding on any court, and is cited only for such persuasive value as the court deems appropriate.

by the trial court regarding a request for such review is reviewed for abuse of discretion. *Forbes*, 171 Wn. App. at 867. A court abuses its discretion when its decision is manifestly unreasonable, or is exercised on untenable grounds or for untenable reasons. *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003) (citing *State v. Blackwell*, 120 Wn.2d 822, 830, 845 P.2d 1017 (1983)). "Purely speculative claims about the existence and discoverability of other documents will not overcome an agency affidavit which is accorded a presumption of good faith." *Forbes*, 171 Wn. App. at 867. Where a request for in camera review lacks "any clear articulation as to why such a review would be appropriate . . . the request amount[s] to nothing more than a fishing expedition." *Id.* Here, Chem-Safe's motion for in camera review sought further discovery after the court had terminated discovery; it sought review of documents that had already been disclosed or determined to be privileged in a prior in camera review; it sought this on the basis of pure speculation, without any clear articulation as to why such review was appropriate; and it improperly sought attorney-client privileged information. It was properly denied.

Chem-Safe became aware through discovery in April 2016 that Ecology maintains a location on its server with the name "AGSecuredDocs," a dedicated file transfer protocol (FTP) site set up to facilitate remote attorney review of Ecology documents without e-mailing them. CP 2195, 1556, 1531–32, 1549–50. Chem-Safe sought, in its final court-monitored discovery requests, to learn which documents Ecology had shared with its attorneys on this site. CP 1531–32, 1549–50.

However, any documents responsive to Mr. Allphin's public records requests that Ecology had shared with its attorneys via this FTP site had long before either been produced to Mr. Allphin or withheld pursuant to court order. In response to Mr. Allphin's October 17, 2012, public records request, Ecology had conducted its search, gathered its responsive documents, and began releasing them. CP 229–34. Ecology claimed no exemptions. CP 229–49. At the request of the County, Ecology delayed release of some of its responsive documents so that the County could seek a protective order. CP 233–34. The documents that Ecology shared with its attorneys using the FTP site included some of these. CP 1531–32; CP 1549–50.[18] What Chem-Safe sought, via its discovery request and again through its in camera review motion, was to learn *which* documents Ecology shared with its attorneys. *Id.* Such information is not a document, but it would be revealed by release of documents "inputted at any time into or stored at any time on the DOE's 'AG Secured' drive." This is attorney-client privileged information. Although the documents shared for attorney review were often not privileged, the matter of which documents Ecology wanted its attorneys to look at was privileged.

This first request of the motion was properly denied. It sought to continue with discovery after the court had terminated discovery. It sought

[18] Chem-Safe complains that "DOE has never claimed a privilege or created an exemption log." Opening Br. 22. This is correct. Ecology never asserted privilege or exemptions in response to Mr. Allphin's public records requests, providing all responsive documents that were not enjoined by the court. As no exemptions were asserted, no exemption log was necessary. Here, on an entirely separate quest in their motion for in camera review, Chem-Safe seeks attorney-client privileged information through discovery.

to discover attorney-client information, in violation of CR 26(b)(1). And Chem-Safe articulated no valid reason for needing such information. Thus, the trial court did not abuse its discretion in refusing this improper request.

Chem-Safe's motion also sought in camera review of documents that Ecology had redacted at the court's order. CP 2198. These were documents responsive to Mr. Allphin's October 17, 2012 public records request, but whose release the court had prohibited, after conducting in camera review of them.[19] They had more recently been produced, redacted, in response to a discovery request made in April 2016.[20] The redactions were in accordance with the court's order, and were thus required. In its motion, Chem-Safe was tasking the court with reviewing the redactions that its own order had required, to ensure that they were done correctly. This request was made on nothing but pure speculation that there might be redaction errors. There was no legitimate purpose to it, because even if there had been an inadvertent redaction, it would have been a redaction of a document that Chem-Safe already possessed from earlier releases of these redacted documents.

The court properly denied this second request of the motion. VRP 13. Because the motion sought discovery after the court had terminated discovery, sought review on pure speculation about possible over-redactions, and essentially sought documents it already possessed, it

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[19] The court conducted two in camera reviews, in response to two separate motions. CP 171–72; Suppl. CP ___ (sub no. 265).

[20] Chem-Safe's demand for an exemption log pursuant to the PRA is confused. The April 2016 production was in response to a discovery request, and was just repeating ground that had been covered four years earlier.

was clear that this request was without merit. The trial court did not abuse its discretion in denying this improper request.

C. The Trial Court Properly Concluded That Ecology Conducted an Adequate Search

An agency is required to conduct an adequate search in response to a PRA request and on review show that the search was adequate. *Fisher Broad.*, 180 Wn.2d at 522. Adequacy of a search is "judged by a standard of reasonableness, that is, the search must be reasonably calculated to uncover all relevant documents." *Neighborhood All.*, 172 Wn.2d at 720. A reasonable search need not include "*every* possible place a record may conceivably be stored, but only those places where it is *reasonably likely* to be found." *Id.* The reasonableness of an agency's search turns on "the likelihood that it will yield the sought-after information, the existence of readily available alternatives, and the burden of employing those alternatives." *Forbes*, 171 Wn. App. at 866.

The focus of review "is the agency's search process[,] not the result of that process." *Id.* "A reasonable search need neither be exhaustive or successful." *Kozol*, 192 Wn. App. at 9. The fact that a responsive record eventually was found does not establish that the agency's search was not adequate. *Neighborhood All.*, 172 Wn.2d at 719–20.

An agency may demonstrate an adequate search by having its employees submit " 'reasonably detailed, nonconclusory affidavits' attesting to the nature and extent of their search." *Nissen v. Pierce Cty.*, 183 Wn.2d 863, 885, 357 P.3d 45 (2015) (citing *Neighborhood All.*, 172

Wn.2d at 721). "These should include the search terms and the type of search performed, and they should establish that all places likely to contain responsive materials were searched." *Neighborhood All.*, 172 Wn.2d at 721.

Declarations from seven Ecology staff members fully describe the sequence of events surrounding Ecology's search and production. *See* CP 98–121; 225–49; 133–38; 190–95; 427–33; 141–43; 221–22; 421–24. Ecology documented in detail where records were likely to be found, the locations searched, the multiple searching methods used, and the organizational structures relied on to support its search. *Id.*

After considering the evidence and hearing oral argument, the trial court concluded that "Ecology's response[s] to the public records requests submitted by Sky Allphin on October 17, 2012, January 8, 2014, and May 12, 2014, are documented in the declarations of Roger Johnson, Gary Bleeker, Valerie Bound, Norman Peck, Wendy Neet, Jackie Cameron, and Brian Dixon. The declarations are uncontroverted as to any material facts and establish that Ecology's search for responsive records was reasonably calculated to lead to the discovery of all responsive records." CP 2654.

Chem-Safe challenges the court's conclusion regarding the adequacy of Ecology's search, asserting: "Mr. Bleeker admitted in his deposition that he did not search for or release his 'sent messages.' " Opening Br. 29. But the cited deposition testimony contains no such admission; it contains the opposite. *See* CP 2469, 2471. Mr. Bleeker even explained how he conducted a global search of his e-mails for any related

to Chem-Safe, thus ensuring that his sent e-mails were searched. CP 135-36. Chem-Safe speculates that Mr. Bleeker must have had more sent e-mails than were produced, asserting: "Chem-Safe believed this to be the case because some of his emails were released from the recipients." Opening Br. 29.[21] In the very deposition testimony cited, Mr. Bleeker stated that he normally does not save sent e-mails unless they have retention value. CP 2469. He also stated that he occasionally emptied his sent e-mail folder to comply with storage capacity restrictions. CP 135. And again, he stated that he conducted a global search of his e-mails and provided all of the responsive documents that he found. CP 135–36.

Chem-Safe seizes on a statement by public records coordinator Roger Johnson that he did not train Mr. Bleeker to search his sent records when responding to a public records request, to show that Mr. Bleeker did not conduct an adequate search. Opening Br. 29. The premise of this argument does not support the conclusion. Mr. Bleeker clearly conducts his searches properly. CP 135–36. He has received public records training. CP 135. And Roger Johnson did not train him in searches because Mr. Johnson does not provide anyone with PRA training—it's not his job. CP 2482.

In short, Chem-Safe fails to show that Ecology's search was inadequate.

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[21] This one quoted sentence is the entirety of Chem-Safe's argument. Its fallacy is easily displayed. An agency employee may delete his or her copy of a sent e-mail soon after sending the e-mail, when the e-mail has no further retention value. As a result, the recipient has a copy, but the sender does not. Mr. Bleeker declared that this is often what he did. CP 135.

D. The Trial Court Properly Concluded That Ecology Acted Appropriately by Delaying Release of Records to Allow the County to Seek an Injunction

The PRA authorizes an agency to take additional time before releasing documents if doing so is needed to accommodate a third party's efforts to seek judicial review for potential exemptions. RCW 42.56.420, .540; WAC 44-14-04003(11). As it responded to Mr. Allphin's October 17, 2012, public records request, Ecology took additional time with respect to a limited number of records, to inform Kittitas County prior to releasing them and to allow it to seek court protection for these documents. CP 233–34. Chem-Safe contends that Ecology "violated the PRA when it coordinated with the County to withhold and not disclose records responsive to Chem-Safe's October 17, 2012 request." Opening Br. 30. Chem-Safe also appears to claim that two e-mails whose release was delayed, but not ultimately enjoined, were never released. *Id.* Neither contention has merit.

Ecology notified Mr. Allphin that its attorneys needed more time to complete review on January 28, 2013. CP 233. That review was conducted, and approximately three weeks later the County filed its complaint in Kittitas County Superior Court, seeking a declaratory judgment and injunction preventing Ecology from releasing certain specified documents. *Id.* Once the County filed its complaint, seeking to enjoin the release of records held by Ecology, Ecology awaited resolution. *See* CP 148–53. The County ultimately prevailed in its request for

permanent protection.[22] CP 171–73. Ecology ultimately released the documents responsive to Mr. Allphin's October 17, 2012, request that were not enjoined, in installments, within a mere four months, and did so despite needing to search, conduct attorney review, and perform its other work duties. CP 234. Chem-Safe's allegations of wrongful delay have no valid basis.

Chem-Safe identifies two e-mails, and states that "DOE refused to release these emails at all until December 23, 2014." Opening Br. 30.[23] The basis for this claim appears to be that the e-mails were produced on DVDs given to Mr. Allphin in December 2014. But the presence of these e-mails on the DVDs does not mean they were not produced earlier. Quite the opposite. In December 2014, Ecology's former public records coordinator, Roger Johnson, attempted to assist Mr. Allphin, who had exhibited repeated confusion about what he had received from Ecology, by compiling for him a set of three DVDs with all documents previously provided, from October 17, 2012, until summer of 2014. CP 248–49. This set of DVDs was delivered to Mr. Allphin by the new public records

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[22] The court's Final Order permanently enjoins Ecology from disclosing 11 e-mails and directs Ecology to produce records previously withheld subject to the TRO within 11 days. CP 172. Ecology produced the remaining e-mails on December 30, 2013, 11 days after the Final Order. CP 191.

[23] In the section of its brief purportedly about this issue, Chem-Safe continues, with an extended "discussion" with no reference to the record, that appears to be asserting that several other documents were never released. As none of this argument is supported by citations to the record, Ecology is unable to respond to it. *See* Opening Br. 31–33. Nor should this Court consider it. *E.g.*, *Norcon Builders, LLC v. GMP Homes VG, LLC*, 161 Wn. App. 474, 486, 254 P.3d 835 (2011) (court will not consider argument without citation to the record or legal authority).

coordinator, Jackie Cameron, on December 23, 2014. CP 193–94. Based on the evidence presented, the trial court found:

> In December 2014, Roger Johnson provided Chem-Safe with a set of three DVDs that contained all previously produced records as a courtesy. . . . [I]t was produced to assist Mr. Allphin with his own record keeping. Sky Allphin claims he saw records for the first time in this set of three DVDs, but such claims are not supported by the evidence. Mr. Allphin repeatedly conveyed confusion about what documents he possessed and when he obtained them, which is the very reason Ecology reproduced its past installments through the three-DVD set. Chem-Safe fails to controvert Ecology's demonstration of its timely production of records.

CP 2644. Chem-Safe's assertion that the two e-mails it identifies were contained in these three DVDs does not show that they were not disclosed earlier; to the contrary it serves as an admission that it had received these e-mails earlier from Ecology, in a timely release, and has now received them from Ecology several times.

E. The Trial Court Properly Concluded That Ecology Provided All Responsive Records Discovered in Its Searches

The trial court found that Ecology provided all records it found in its searches. CP 2643. It found that Ecology also made available for Mr. Allphin's inspection Ecology's entire file of hardcopy records relating to the Chem-Safe facility, and allowed Mr. Allphin multiple opportunities to search those hardcopy files. CP 2643–44.

Chem-Safe asserts that certain documents which it now possesses, having received them from Ecology, were improperly withheld for some period before being provided. Opening Br. 25–28. No evidence is offered

in support of this claim, apart from Mr. Allphin's statements in his declarations that this is so. As the trial court found, however, these declarations are unreliable because "Mr. Allphin repeatedly conveyed confusion about what documents he possessed and when he obtained them." CP 2644. Thus, there is simply no evidence to support Chem-Safe's unreliable allegations.[24]

1. No record evidence supports Chem-Safe's assertion that Ecology was untimely in its release of four sketches

Chem-Safe asserts that Ecology "withheld four sketches responsive to Chem-Safe's October 17, 2012 request." Opening Br. 25. There is no support for this contention in the record. Instead, Chem-Safe cites to an identical assertion in its own previous briefing. Opening Br. 25; CP 2397. That briefing in turn points back to a bare assertion of the same in another of Mr. Allphin's many unreliable declarations. CP 546. There is no credible evidence in the record that these documents were not produced to Mr. Allphin in electronic form in installments during the first four months following the October 17, 2012, request. CP 2409–13, 2416, 2644. As discussed above, the trial court expressly found that Ecology conducted a reasonable search in response to this request and turned over all documents found therein. This satisfies the PRA.

[24] The record does not contain the thousands of pages of records provided in response to Mr. Allphin's records requests, nor does it contain a listing of them. Mr. Allphin has repeatedly attempted to exploit this by making assertions that cannot be definitively proven one way or the other, based on the record. For this reason, the credibility of the declarant matters.

Even supposing that Mr. Allphin did not obtain these sketches until July 2015, there still was no violation of the PRA. The PRA requires that records be made available for inspection or copying. RCW 42.56.080. All hardcopy documents related to Chem-Safe, which included the hardcopy versions of the four sketches, were expressly made available for Mr. Allphin's inspection. CP 248. Mr. Allphin did inspect this collection of documents, but did not bother to do so until December 2014, and even then did not identify and ask for copies of those documents until his next inspection in July 2015. CP 194.

2. The County's possession of a document does not show that Ecology possesses a copy of that document

Chem-Safe states that on June 29, 2016, in response to another records request to Kittitas County, it received from the County a copy of a document with handwritten notes on it. Opening Br. 26. A "sticky note," attached to the document and photocopied along with it, indicates the notations were either made by, or made following a discussion with, Ecology employee Norm Peck. Opening Br. 26. Chem-Safe declares that Ecology, too, must possess a copy of this notated version of the document, and has so far withheld it. *Id.* It is unclear why this is supposed to follow. The proper conclusion is that the County possesses the document and Ecology does not. The record evidence shows that Ecology conducted an extensive and adequate search and provided what it found, which did not include a copy of this notated document. It repeated this search more than once in response to discovery requests. The mere fact that Chem-Safe

received a document from another entity, with notes on it purportedly from Ecology, does not show a violation of the PRA.

3. No record evidence supports Chem-Safe's assertion that Ecology was untimely in its release of 53 e-mails and other documents

Chem-Safe claims that 53 e-mails and other documents were improperly withheld until December 23, 2014. Opening Br. 27. This again is a reference to the DVDs provided by Mr. Johnson to Mr. Allphin. Chem-Safe contends that these DVDs contained "53 emails and nine separate documents" released for the first time on that date. CP 547. The trial court examined this claim and found nothing in the record to support Mr. Allphin's assertion that these records had not been previously provided to him. Mr. Johnson's purpose in making the three DVDs was to provide Mr. Allphin, who had repeatedly displayed disorganization and confusion, with all the documents that Ecology had previously provided to him, now gathered in one place. CP 248–49. It is an unchallenged fact on appeal that the DVDs contained copies of what Ecology had previously provided Chem-Safe. Unchallenged factual findings are verities on appeal. *Santore*, 28 Wn. App. at 323. Thus, Chem-Safe's assertion that the documents were contained in these three DVDs does not show a violation of the PRA; it actually serves as an admission that it had received them earlier from Ecology, in a timely release.

4. Chem-Safe's assertion that its January 8, 2014, public records request is equivalent to its March 28, 2016, discovery request is demonstrably false

Chem-Safe asserts that records disclosed by Ecology in April of 2016, in response to Chem-Safe's March 28, 2016, discovery request, were responsive to its January 8, 2014, public records request, and should have been disclosed back in 2014. This is false, and the trial court recognized it as such. CP 2654.[25] Chem-Safe's March 28, 2016, request was starkly different from the January 8, 2014, request.

The March 28, 2016, discovery and public records requests incorporate by reference Mr. Allphin's October 17, 2012, public records request. The March 28, 2016, request states:

> Please produce all the records created, used, received, and possessed by the DOE responsive to Chem-Safe's 10/17/12 request but extending the scope of responsive records to include all responsive DOE records and documents from 10/18/12 to 1/8/14.

CP 1351. This request incorporates by reference the following public records request, made on October 17, 2012:

> Any and all paperwork correspondence, emails, pictures and documentation pertaining to Chem-Safe Environmental, Inc. on file from January 1, 2010 to current. Specifically regarding Chem-Safe Environmental Inc. to and from Kittitas County Public Health Department, Montana DEQ, Idaho DEQ, Kittitas County Prosecutors, Kittitas County Sheriff Department and Kittitas County Fire Department. In addition any correspondence, documentation, pictures and emails involving Chem-Safe

[25] The trial court considered and rejected this argument on two separate occasions—once in its order denying Chem-Safe's motion to compel discovery, and once in its final order granting Ecology's motion for a hearing on the merits.

> Environmental, Inc. from the following Washington State DOE representatives, Mr. Richard Granberg, Mr. Gary Bleeker, Ms. Wendy Neet, Mr. Norman Peck and Valery [sic] Bound.

CP 102–03, 252. The result is a 122-word, extremely wide-ranging request. It encompassed thousands of pages of records. In stark contrast, the January 8, 2014, request is extremely narrow—a 15-word request asking specifically for documents containing identification numbers used to track sites of concern.

The January 8, 2014, request was the nineteenth public records request that Mr. Allphin made, and after the initial, broad October 2012 request, Mr. Allphin's requests had often become quite specific. CP 234-45. This request was highly specific. It asked for documents which contained any of three tracking numbers:

> Any and all paperwork correspondence, emails, pictures and documentation pertaining to ERTS#626393, VCP#CE0371 and Facility/Site ID #58926155.

CP 379. Only a few such documents were found meeting this description, and Ecology produced them all. None of the documents provided in response to the March 28, 2016, request contain the ID numbers by which documents were referenced in the January 8, 2014 request, and they were thus not responsive to that request. Chem-Safe contends that the 122-word request for all Chem-Safe-related records is the same as the 15-word request for documents containing one of the indicated tracking ID numbers. This is simply not the case and the trial court properly ruled against Chem-Safe on this issue. CP 933; CP 1526–28.

VI. CONCLUSION

The decision of the trial court should be affirmed.

RESPECTFULLY SUBMITTED this 17th day of May 2017.

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

DATED this 17th day of May 2017 in Olympia, Washington.

Teresa L. Trippel

TERESA L. TRIPPEL
Legal Assistant

ATTORNEY GENERAL'S OFFICE - ECOLOGY DIVISION

May 17, 2017 - 4:21 PM

Transmittal Information

Filed with Court:	Court of Appeals Division III
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Appellate Court Case Title:	Kittitas County v Sky Allphin, et al
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