

Supreme Court No. 98685-1

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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ANNETTE HOLDING, LLC d/b/a SUPER DUPER FOODS,

Appellant,

vs.

NORTHWEST CLEAN AIR AGENCY

Respondent.

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NORTHWEST CLEAN AIR AGENCY'S  
ANSWER TO PETITION FOR REVIEW

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## I. INTRODUCTION

Annette Holding, LLC asks this Court to review an unpublished Court of Appeals decision affirming two civil penalties issued to it by the Northwest Clean Air Agency (“NWCAA”). In operating a gas station, Annette Holding, LLC used a registered trade name: Super Duper Foods. NWCAA issued two notices of violation (“NOV”) that identified Super Duper Foods as the violator and Annette Holding, LLC as the owner. NWCAA then issued notices of imposition of civil penalty (“civil penalties”) to Super Duper Foods, which were served on Annette Holding, LLC. NWCAA also later re-issued one of the civil penalties to Annette Holding, LLC.

The Court of Appeals held that the NOVs, which are necessary precursors to the civil penalties, extended to and bound Annette Holding, LLC. Annette Holding, LLC’s objection is a *non sequitur*: it acknowledges that a company name and its registered trade name refer to the same legal entity, yet argues that a NOV that identifies its trade name as a violator is somehow directed to a non-existent entity.

According to Annette Holding, LLC, this is a decision that involves an issue of “substantial public interest.” But its arguments are irreconcilable with the unambiguous text of the Washington law on registered trade names and the Washington Clean Air Act (“the Act”).<sup>1</sup> The Act authorizes NWCAA to serve

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<sup>1</sup> In the 2020 legislative session, as part of the act to reorganize the laws related to environmental health, the legislature recodified the former Washington Clean Air Act provisions by moving them to Title 70A RCW, which is “the new title created in section 103 of this act.” LAWS OF 2020, ch. 20, § 2010 (effective June 11, 2020).

NOVs to those who construct a “new source” that emit air contaminants without any agency approvals, and to those who violate an agency order. This includes a violator such as Annette Holding, LLC because it constructed a gas station facility without NWCAA’s approval and, once it obtained an approval order from the agency, violated the terms of that order.

The Court of Appeals decision is correct and straightforward: Annette Holding, LLC violated provisions of the Act, and NWCAA served notice of those violations to the correct entity or person. There is no conflict with any decision of this Court or any other appellate court. Annette Holding, LLC fails to provide a reason for this Court to devote its bandwidth to this dispute. Annette Holding, LLC’s Petition for Review should be denied.

**II. COUNTERSTATEMENT OF ISSUE**

NWCAA does not seek review of any issue that is not raised in the petition for review.

**III. STATEMENT OF THE CASE**

This case concerns provisions of the Act that authorize NWCAA to serve a notice of violation on persons who fail to comply with air contaminant source regulations and agency orders. RCW 70.94.211 (to be codified at RCW 70A.010.211); Reg. of NWCAA § 300.1. This case also relates to the Washington law on registered trade names. RCW 19.80.

## A. Statutory Frameworks

### 1. Washington Clean Air Act

In creating the Act, the Legislature declared that “[i]mproving air quality is a matter of statewide concern and is in the public interest[.]” LAWS OF 2020, ch. 20, § 2010; RCW 70.94.011 (to be codified at RCW 70A.010.011). To that end, the purpose of the Act is “to safeguard the public interest through an intensive, progressive, and coordinated statewide program of air pollution prevention and control[.]” *Id.* The Act contemplates controlling air pollution and limiting new source emissions through “notice of construction” and permitting regulations. RCW 70.94.152(5), .161(2)(a) (to be codified at RCW 70A.010.152(5), .161(2)(a)); *see* Reg. of NWCAA § 300. Gas stations are regulated as a “gasoline dispensing facility,” due to its potential to emit volatile organic compound (“VOC”) air pollutant emissions. Reg. of NWCAA §§ 580.1, .6. The regulations prohibit the construction of any “new source,”<sup>2</sup> such as restarting a gas station without first filing a Notice of Construction (“NOC”) application with the local air agency. Reg. of NWCAA §§ 300.1(A), 580.6.

The Act’s enforcement provisions specify two general procedural requirements that the local air agency must follow before taking formal enforcement action. RCW 70.94.211 (to be codified at RCW 70A.010.211). First, the local air agency must serve a NOV “upon the alleged violator or violators” thirty days before issuing a civil penalty. *Id.* The NOV must specify the statute or

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<sup>2</sup> “New Source” means, in pertinent part, “the restart of a stationary source after permanent shutdown[.]” Reg. of NWCAA § 200 at 2-7.

regulation “alleged to be violated, and the facts alleged to constitute a violation[.]” *Id.* The local air agency has the discretion to “include an order directing that necessary corrective action be taken within a reasonable time.” *Id.* NWCAA has incorporated this NOV process into its regulations. Reg. of NWCAA § 131.

The purpose of a NOV is to give the “alleged violator an opportunity to meet with the local air authority prior to the commencement of enforcement action.” RCW 70.94.211 (to be codified at RCW 70A.010.211). This cooperative regulatory model aims to improve “cooperation between . . . public and private organizations, and the concerned individual” as a means to “safeguard the public interest[.]” RCW 70.94.011 (to be codified at RCW 70A.010.011). The NOV does not by itself impose any civil penalties, but is a necessary precursor to civil penalties under the Act and identifies the alleged violations that form the basis for civil penalties. *See* RCW 70.94.211 (to be codified at RCW 70A.010.211) and 70.94.431 (to be codified at RCW 70A.010.431).

The Act authorizes the issuance of civil penalties thirty days after serving the NOV, for violations of the statute, regulatory requirements or orders issued under the Act’s authority. RCW 70.94.431 (to be codified at RCW 70A.010.431). “Any person” who fails to take action as specified in an agency issued order is liable for a civil penalty “for each day of continued noncompliance.” RCW 70.94.431(1)(b) (to be codified at RCW 70A.010.431(1)(b)). Likewise, “any person” who violates any provision of the statute or implementing regulations “may incur a civil penalty” for each violation. RCW 70.94.431(1)(a) (to be codified at RCW 70A.010.431(1)(a)). Each violation is a separate offense; and for continuing



violations, each day the violation continues is a separate and distinct violation. *Id.* The person in violation may “incur a civil penalty in an amount not to exceed ten thousand dollars per day for each violation.” *Id.* NWCAA has incorporated this civil penalty authority into its regulations. Reg. of NWCAA § 133.1.

## **2. Washington’s Trade Name Statute**

The purpose of Washington’s Trade Name statute, RCW 19.80 *et seq.*, is to ensure that those people or entities dealing with a business operating under a trade name have notice of the “real persons” conducting that business. Dale L. Carlisle & Brooke A. Johnson, *19.80.010. Registration required, in* 31 WASH. PRAC., WASH. BUSINESS LAW cmt. to 19.80.010 (2020 ed.) (citing *Laliberte v. Wilkins*, 30 Wn. App. 782, 784, 638 P.2d 596, 597 (1981)). RCW 19.80.001 requires “each person who is conducting business in the state of Washington under a trade name to disclose the true and real name of each person conducting that business[.]”

Under RCW 19.80.005(4), “trade name” is defined as “a word or name... used by a person to identify the person's business which . . . does not include, the true and real name of all persons conducting the business[.]” RCW 19.80.005(3) defines “person” as “any individual, partnership, *limited liability company*, or corporation conducting or having an interest in a business in the state.” (Emphasis added).

### **B. Factual Background**

NWCAA is the primary government agency tasked with protecting the air quality in Island, Whatcom, and Skagit Counties. Reg. of NWCAA § 100.1. In October 2013, Annette Holding, LLC opened a gas station without any proper air

permits, and for over a year Annette Holding, LLC continued its operation in violation of environmental laws and regulations. Decision at 2-3. After learning of the violations, NWCAA served a NOV to Annette Holding, LLC. *Id.*

On November 20, 2014, NWCAA issued NOV 4112 for violation of the requirement to submit a NOC application and obtain an Order of Approval for the gas station. Decision at 4. The NOV identifies the violator as “Super Duper Foods - Chevron 306936” and the owner as “Annette Holdings, LLC.” *See id.* The NOV was served at the gas station and at the business address of Annette Holding, LLC. *Id.* at 3-4.

On August 24, 2015, NWCAA issued NOV 4174 for failure to comply with the Order of Approval issued for the gas station. *Id.* at 6. This NOV also identifies the violator as “Super Duper Foods – Chevron 306936” and the owner as “Annette Holdings, LLC.” *Id.* This NOV also was served at the gas station and at the business address of Annette Holding, LLC. *Id.* During this period, NWCAA encouraged the owners of Annette Holding, LLC to comply with the NWCAA Regulations. *Id.* at 5.

On February 19, 2016, NWCAA issued two civil penalties: a \$3,000 penalty for the violations described in NOV 4112 and a \$6,154 penalty for the violations described in NOV 4174. *Id.* at 7. Both civil penalties were issued to “Super Duper Foods – Chevron 306936.” *Id.* at 7. The civil penalties were both served at the gas station and at the business address of Annette Holding, LLC. *Id.* On March 25, 2016, Super Duper Foods appealed the two civil penalties to the Pollution Control Hearings Board. *Id.*

When the NOVs and civil penalties were delivered to the gas station, they were served on Pierre Youssef, the son of the owners of Annette Holding, LLC. Decision at 3. Pierre Youssef represented to NWCAA staff that he was the manager of the gas station, signed the NOC application for the gas station and the check for permit fees, and interacted with NWCAA staff at all relevant times at the gas station. *Id.* at 6-7.

About a year after NWCAA served the civil penalties, “Super Duper Foods” changed its facility name to “Annette Holding Super Duper Foods (3).” *Id.* at 9. Further, after the civil penalties were issued, Hanna Youssef, one of the owners of Annette Holding LLC, told NWCAA that Pierre Youssef (Hanna’s son) allegedly had no authority and had nothing to do with the gas station. *Id.* at 10.

On February 23, 2017, NWCAA re-issued a civil penalty to Annette Holding, LLC d/b/a Super Duper Foods for \$6,154 for failing to comply with the order. *Id.* at 9. Because the civil penalties was improperly dated February 23 of 2016 rather than 2017, NWCAA issued a replacement civil penalties for NOV 4174, dated June 27, 2017, to “Annette Holding LLC d/b/a Super Duper Foods.” *Id.*

#### **IV. ARGUMENT WHY REVIEW SHOULD NOT BE ACCEPTED**

“A petition for review will be accepted by the Supreme Court only” if the petition involves an issue of substantial public interest that should be determined by this Court. RAP 13.4(b)(4). The decision under review does not meet the standard for review, as it simply applied the plain law to the facts of this case.

Annette Holding, LLC’s arguments are unworthy of review for at least two reasons. First, the NOVs are valid as they adequately notified the proper persons

about violations that needed to be resolved through corrective actions. *See* Petition at 14. Second, the Court of Appeals decision does not expand NWCAA’s powers to issue NOVs and civil penalties. *See* Petition at 13.

**A. The Court of Appeals Properly Decided That NWCAA Gave Notice to the Correct Entity When the NOVs Were Served to Annette Holding, LLC’s Registered Trade Name.**

In contending its Petition meets the substantial public interest criteria, Annette Holding, LLC relies on the false premise that it is a separate entity from its “Super Duper Foods” trade name. Petition at 10. It is not and they are one and the same. In *Seattle Ass’n of Credit Men v. Green*, the Supreme Court found that a corporation conducting a business under a trade name “was not a separate entity... but was in fact the corporation[.]” 45 Wn.2d 139, 144, 273 P.2d 513, 515–16 (1954). After articulating the purpose and contours of RCW 19.80, the court concluded the entities were not separate when the defendant received checks from the company’s trade name, “obtained certain licenses from the city of Seattle, conducted its banking business, and obtained its insurance under its [corporation name] and under the [trade] names.” *Id.* at 141, 144.

Similarly, Annette Holding, LLC, and its trade name “Super Duper Foods” are not separate entities. As a limited liability corporation, Annette Holding, LLC is a “person” that conducted the business under the “Super Duper Foods” trade name. *See* RCW 19.80.001, .005(3). Similar to *Green*, NWCAA received checks for permit fees from Annette Holding, LLC and Super Duper Foods. Decision at 4; 45 Wn.2d at 141. NWCAA received a NOC application from Super Duper Foods and the owner of the facility. Decision at 3; *Green*, 45 Wn.2d at 141.

The Court of Appeals properly noted that the “trade name” of a business is not separate from the persons or entities that operate the business. Decision at 14 (citations omitted). A business operation that violates the Act under its trade name is not separate from the people or entities violating the Act. Consistent with its authority under the Act, NWCAA identified Annette Holding, LLC and its trade name business “Super Duper Foods” in the NOVs for failing to submit the requisite NOC application and for failing to comply with agency orders. Decision at 11. These same NOVs were served to both Annette Holding, LLC and Super Duper Foods. Decision 5-6. By identifying the registered trade name as the violator, the NOV effectively names the related company, as a matter of law. That is the necessary effect of allowing companies to engage in business using a registered trade name.

**B. The Court of Appeals Does Not Expand the Act’s Enforcement Authority Granted to NWCAA.**

Annette Holding, LLC asserts that the decision will “expand agencies’ powers.” Petition at 14. Not so. The Court of Appeals’ decision merely recognizes the enforcement powers that are already authorized to NWCAA. Decision at 11-12.

When interpreting statutes, the court's fundamental objective is to determine and carry out the Legislature's intent. *Ass'n of Washington Bus. v. Washington State Dep't of Ecology*, 195 Wn.2d 1, 10, 455 P.3d 1126, 1130 (2020) (citing *State, Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9–10, 43 P.3d 4, 9 (2002)). When “the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.” *Campbell & Gwinn, L.L.C.*, 146 Wn.2d at 10. To determine plain meaning, the courts consider “all that

the Legislature has said in the statute and *related statutes* which disclose legislative intent about the provision in question.” *Ass'n of Washington Bus.*, 195 Wn.2d at 10 (emphasis added). The courts must also avoid statutory interpretations that yield “unlikely, absurd or strained consequences.” *Kilian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638, 640 (2002) (citation omitted).

As a procedural matter, the Act authorizes NWCAA to cause “written notice to be *served upon* the alleged violator or violators.” RCW 70.94.211 (to be codified as RCW 70A.010.211) (emphasis added). As a substantive matter, NWCAA must include in its NOV the rule or regulation that was violated, and facts to support the allegations. *Id.* At its discretion, NWCAA is authorized to include an “order directing that necessary corrective action be taken within a reasonable time.” *Id.* Thirty days after service, NWCAA is authorized to commence formal enforcement action. *Id.* The plain meaning of the Act requires proper service to the alleged violator. *Id.* It does not require that the NOV list or identify the alleged violator with absolute precision, as implied by *Annette Holding, LLC*. *See id.*; *see* Petition at 13.

Consistent with RCW 70.94.211 (to be codified as RCW 70A.010.211), NWCAA “served” NOVs upon the “alleged violator or violators.” Decision at 12. NWCAA served NOV 4112 to *Annette Holding, LLC*, because as an owner, it failed to file the requisite NOC application with the NWCAA before constructing a gas station that emitted air contaminants. Reg. of NWCAA § 300.1(A); Decision at 11. After failing to comply with an order to take corrective action, NWCAA served a second notice, NOV 4174, to *Annette Holding, LLC*. Decision at 11.

Although the NOV's identified the violator as Super Duper Foods and the owner as Annette Holding, LLC, both are the same entity, and in any event both were "served" with the notices. More than thirty days later, NWCAA issued the civil penalties to Annette Holding, LLC. Decision at 7.

Nevertheless, Annette Holding, LLC confuses the straightforward procedural and substantive requirements that are authorized under the Act. Decision at 13. Specifically, Annette Holding, LLC conflates the distinction between "serving" a NOV upon an alleged violator with identifying or "listing" a violator in the NOV. Petition at 12-13. Instead of confronting the fact that NWCAA satisfied the Act's service requirements, Annette Holding, LLC belabors an argument that NWCAA exceeded its authority by issuing a NOV to its "trade name" business, Super Duper Foods. Petition at 13.

Contrary to the rules of statutory interpretation, Annette Holding, LLC attempts to determine the plain meaning of "persons" under RCW 70.94.431 by looking to an unrelated statute. *Ass'n of Washington Bus.*, 195 Wn.2d at 10 (Determining plain meaning of statute with "related statutes" that disclose legislative intent about the provision in question). In an attempt to define a "person" as provided under the Act, Annette Holding, LLC relies on unrelated "trade names" provisions under RCW 19.80 so as to avoid liability for constructing a facility that emits air contaminants. Petition at 13. Annette Holding, LLC cites to no authority that stands for the proposition that NWCAA cannot commence formal enforcement action by using a business's trade name when issuing a civil penalty. Petition at 11.

Neither is Annette Holding, LLC able to point to any provision under the Act to support its interpretation.<sup>3</sup>

The Court of Appeals properly concluded that the NOVs are valid when the NWCAA served the NOVs to the proper entity or person. Decision at 12. Annette Holding, LLC attempts to create controversy by asserting the NWCAA “could have” reissued the NOV to the correct entity. Petition at 12. Indeed and in fact, NWCAA did serve the NOVs to the correct entities. Decision at 12. Super Duper Foods is Annette Holding, LLC, which is owned by Hanna Youssef. The son of Hanna Youssef is Pierre Youssef, the person who operated the gas station under the name Super Duper Foods. In serving the entities, NWCAA acted within its enforcement authority under the Act.

Even if considered two separate entities, which they are not, both entities, including the owner and operator, had adequate notice of the violations. Throughout 2014 and 2015, NWCAA kept in contact with the Youssefs to assist them in reaching compliance with the Act and NWCAA Regulations. Decision at 6. NWCAA directly encouraged Annette Holding, LLC and notified Super Duper Foods to take corrective actions. Decision at 5; Petition at 14. During 2014 and 2015, NWCAA worked with Annette Holding, LLC and Super Duper Foods and during that time, Annette Holding, LLC did not raise any issues regarding its status as a “violator.” Decision at 3-5. Annette Holding, LLC’s arguments on the merits are inappropriate

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<sup>3</sup> Annette Holding, LLC appears to have incorrectly cited the Act’s civil penalty provisions as “RCW 7.94.431.” Petition at 11.



for a Petition for Review, and does not meet the criteria for establishing a substantial public interest.

**V. CONCLUSION**

This case does not present any issues that meet the criteria for accepting review under RAP 13.4(b). The Court of Appeals correctly decided this case. Thus, Annette Holding, LLC's Petition for Review should be denied.

Dated this 24<sup>th</sup> day of July, 2020.

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*s/ Cheerful Catunao*  
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