

No. 39859-1-II

THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON

SKAGIT COUNTY and
SKAGIT COUNTY HEALTH DEPARTMENT,

Appellants,

v.

SKAGIT HILL RECYCLING,

Respondent.

APPELLANTS' REPLY BRIEF

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BY [Signature]

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TABLE OF CONTENTS

Table of Authorities	iii
I. Introduction.....	1
III. Issues presented by Skagit Hill’s response.	2
IV. Analysis.....	3
A. Skagit Hill’s Response contains obvious errors that have been raised to mislead the court.	3
1) The 2007 permit is not a renewed 2006 permit. It is materially different.....	3
2) The March 20, 2007 “Amendment to operation plan” was not a part of the 2007 permit at the time the permit violations were observed.....	4
3) Undisputed evidence establishes that Skagit Hill failed to comply with the requirement to cover the non-inert waste..	6
4) The appeal of the 2006 permit is not a material fact that bars summary judgment.	6
5) Skagit Hill’s appeal did not stay the effect of the denial of the 2007 inert waste landfill permit.	7
(a) Skagit Hill was not a recycling facility.....	8
(b) Skagit Hill did not have a permit to operate a recycling facility.....	9
(c) Health did not deny Skagit Hill a permit to operate a recycling facility.	9

(d)	Health’s stay of the “removal” requirement does not excuse non-compliance with other material permit conditions.	9
6)	Health is not barred from challenging Skagit Hill’s standing under the APA.....	11
B.	The PCHB correctly decided that Skagit Hill’s claim that it was exempt from permitting was not a relevant issue.	12
1)	Skagit Hill’s argument that it is exempt from permitting is an unwarranted collateral attack on the 2007 permit.	13
2)	Skagit Hill fails to support its implicit collateral estoppel defense.	14
(a)	Skagit Hill did not raise the defense of collateral estoppel before the PCHB.	15
(b)	No evidence in the record supports a claim of collateral estoppel.....	16
(c)	The court should not consider any claim of collateral estoppel because Skagit Hill fails to cite any authority for it.	16
C.	This case was ripe for summary judgment because it did not present any material disputed facts.	17
D.	If Health is bound to its arguments before the PCHB, then Skagit Hill should be bound to its argument to the superior court that the permit was ultra vires.....	19
E.	The court should not accept Skagit Hill’s invitation to determine whether its recycling activities are exempt from permitting.....	23
VI.	Conclusion.	24

TABLE OF AUTHORITIES

CASES

<i>Cowiche Canyon Conservancy v. Bosley</i> , 118 Wn.2d 801, 828 P.2d 549 (1992)	14, 18
<i>Cowiche Canyon Conservancy v. Bosley</i> , at 809	18
<i>Graff v. Allstate Ins. Co.</i> , 113 Wn. App. 799, 54 P.3d 1266 (2002)...	11, 22
<i>Kramarevcky v. Dep't of Soc. & Health Services.</i> , 122 Wn.2d 738, 863 P.2d 535 (1993)	16
<i>Redding v. Virginia Mason Med. Ctr.</i> , 75 Wn. App. 424, 878 P.2d 483 (1994)	11
<i>Silverstreak, Inc. v. Dep't of Labor & Indus.</i> , 159 Wn.2d 868, 154 P.3d 891 (2007)	16
<i>Sultani v. Leuthy</i> , 86 Wn. App. 753, 943 P.2d 1122 (1997).....	13, 15
<i>Westmark Development Corp. v. City of Burien</i> , 140 Wn. App. 540, 166 P.3d 813 (2006)	15

STATUTES

RCW 34.05.010	13
RCW 34.05.530	12
RCW 34.05.554	10, 15

RULES

CR 56 17
RAP 10.3..... 13, 17

REGULATIONS

WAC 173-350-100..... 8, 18
WAC 173-350-710..... 8, 12, 22

I. Introduction.

Skagit Hill Recycling (Skagit Hill) applied to renew its 2007 inert waste landfill permit for calendar year 2008. The Skagit County Department of Public Health (Health) denied the renewal application because Skagit Hill violated material conditions of the 2007 permit. Skagit Hill appealed Health's decision, the denial, to the Pollution Control Hearings Board (PCHB). The PCHB agreed with Health and affirmed Health's decision.

Because the court has accepted discretionary review, this appeal is about whether there are any grounds in the record before the PCHB to support the PCHB's decision.

In an effort to draw the court away from Skagit Hill's uncontroverted non-compliance with material permit conditions, Skagit Hill presents a different issue to the court:

. . . This case involves the applicability of [the Fill Requirements and Compliance Requirement sections of the 2007 permit] to Skagit Hill Recycling's processing – but not landfilling – of non-inert waste for materials recovery and recycling. **Put another way, this case is about whether Skagit County is correctly interpreting and applying the solid waste regulations by insisting that**

**Skagit Hill Recycling must obtain a permit
for that activity.**

Skagit Hill's Response at 34-35. Skagit Hill misstates the issue. This appeal is not about whether any of Skagit Hill's solid waste handling operations were exempt from permitting. The 2007 permit clearly and unambiguously restricted what Skagit Hill could accept or stockpile, required Skagit Hill to cover all non-inert waste, required Skagit Hill to make reports, etc. Skagit Hill did not appeal these restrictive conditions when they were imposed, did not object to them before the PCHB, and did not dispute its failure to comply with them.

Skagit Hill reframes the issue to pursue a collateral attack on the 2007 permit and thereby avoid the obvious reasons for not renewing the 2007 permit. However, Skagit Hill makes no effort to demonstrate why such an attack should be allowed.

Skagit Hill's failure to comply with material permit requirements is sufficient reason for Health's decision to not renew the 2007 permit, and the court should wholly disregard Skagit Hill's unsupported collateral attack on those permit conditions.

III. Issues presented by Skagit Hill's response.

1. Should the court consider facts that were not before the PCHB?

2. Should the court consider issues that were not preserved for appeal?

3. Is Skagit Hill's argument that it was exempt from solid waste permitting requirements a collateral attack on the 2007 permit which included clear and unambiguous conditions that prevented Skagit Hill from accepting, stockpiling, and processing non-inert solid waste? If so, should the court disregard such collateral attack because Skagit Hill fails to offer any analysis about why such collateral attack should be allowed?

4. Does the undisputed evidence that Skagit Hill failed to comply with material permit conditions support the PCHB's decision to affirm Health's decision to deny Skagit Hill's application to renew that exact same permit?

IV. Analysis

A. Skagit Hill's Response contains obvious errors that have been raised to mislead the court.

1) The 2007 permit is not a renewed 2006 permit. It is materially different.

On page 18 of its Response, Skagit Hill erroneously identifies the 2007 permit as a renewal. It is not.

The 2007 permit, CP 202-08, is materially different from the 2006 permit, CP 99. After Health denied Skagit Hill's application to renew its 2006 permit, Health made a concerted effort to issue a new permit that clearly restricted Skagit Hill operations. For example, Health directed Skagit Hill to amend the language of a proposed inert waste landfill permit to include the following language: "Only inert wastes shall be accepted at this facility." CP 15.

2) The March 20, 2007 "Amendment to operation plan" was not a part of the 2007 permit at the time the permit violations were observed.

On page 19 of its Response, Skagit Hill states that its Operation Plan provided for the retention of debris piles at the facility if they obtained a permit for such use of the property from the Department of Ecology. Response at 19 ("The March 30, 2007 'Amendment to operation plan' remained as part of the approved plan.") Skagit Hill fails to inform the court that this clause was deleted from the permit on May 4, 2007.

When the 2007 permit was issued on March 30, 2007, it incorporated the "Inert Waste Landfill Operational Plan for Skagit Hill Recycling (March 30, 2007)." CP 203. No document in the record meets that description. The only document related to an operation plan that bears

the date “March 30, 2007” is an “Amendment to operation plan,” which provides that the operation plan will be amended:

Skagit Hill Recycling, Inc. received the changes needed to our operation plan today March 30, 2007. We will make the necessary changes to the plan and have a revised copy back to Skagit County Health no later than 15 April 2007.

CP 154. On the basis of Skagit Hill’s promise, Health issued the 2007 permit to Skagit Hill. CP 201. After Skagit Hill made “the requested changes” and “submitted [a] revised plan of operation for the inert waste landfill facility dated April 10, 2007,” CP 177, Health approved the Operation Plan dated April 10, 2007, and “incorporated [it] into the 2007 inert waste permit for Skagit Hill Recycling, replacing the referenced March 30, 2007 operational plan.” CP 177. The revised Operation Plan did not include the March 30, 2007 “Amendment to operation plan.” The “Amendment to operation plan” is (1) not date stamped as having been received on April 13, 2007, with the April 10 documents, see CP 181, 193, and 198, (2) not identified as an attachment in the cover letter, CP 177, and (3) not identified as an attachment to the revised Operation Plan:

Clean fill agreement
Daily records for concrete
Daily records for soils
Daily records for other

Operators inspection log
Site Safety Plan.

CP 186.

3) Undisputed evidence establishes that Skagit Hill failed to comply with the requirement to cover the non-inert waste.

Skagit Hill asserts that there is no evidence that it failed to comply with the requirement that it cover the non-inert waste. The court need only look at the photographic evidence in the record to expose this claim as false. See CP 239-49, 253-61.

4) The appeal of the 2006 permit is not a material fact that bars summary judgment.

The 2006 inert waste landfill permit was not renewed. Instead, a new and materially different permit was issued to Skagit Hill on March 30, 2007. Aside from the fact that the issuance of the 2007 permit makes the appeal of the 2006 permit moot, any challenge to the appeal of the 2006 permit was not before the PCHB.

The only relevance to the fact that the 2006 permit was not renewed is the subsequent effort to have the 2007 permit clearly and unambiguously proscribe and/or require certain activities that were not specifically addressed in the 2006 permit. For example, even though

Health supplied Skagit Hill with a form for notification/exemption for recycling and material recovery facilities, CP 103-04, there is no evidence that Health approved such activity. Similarly, even though Skagit Hill submitted a “Synopsis of Recycling Goals,” the synopsis was not incorporated in the 2007 permit. See CP 268 (“This synopsis was not part of their 2007 inert waste landfill operation plan, but was requested so that the Health Department could better direct the appellant as to the property permitting needed for his processing facility.”)

The effort to include clear restrictions in the 2007 permit establishes that such conditions were material. Without them, Health would not have issued another inert waste landfill permit to Skagit Hill.

5) Skagit Hill’s appeal did not stay the effect of the denial of the 2007 inert waste landfill permit.

On page 10 of its Response, Skagit Hill argues that because it has appealed Health’s decision, the “permit denial does not take effect until completion of the appeal process.” This is wholly irrelevant. Not only would such a “stay” have no effect on the PCHB’s or the court’s decision, but Skagit Hill does not qualify for a stay:

If the jurisdictional health department denies a permit renewal or suspends a permit for an operating waste recycling facility that receives waste from more than one city or county, and

the applicant or holder of the permit requests a hearing or files an appeal under this section, the permit denial or suspension shall not be effective until the completion of the appeal process under this section, unless the jurisdictional health department declares that continued operation of the waste recycling facility poses a very probable threat to human health and the environment.

WAC 173-350-710(6)(c).

(a) Skagit Hill was not a recycling facility.

Recycling is defined as:

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

WAC 173-350-100. Per Scott Waldal, Skagit Hill collects, sorts, and sells the components of construction and demolition debris. See CP 290.¹ This is not "recycling."

¹ ". . . As part of the process at the SHR site there will be further removal of any incidental amount of debris from the wood waste. Some of the debris will be recycled. Carpeting, for example, can be sold to shipping companies for use as packaging. Dry insulation can be used in manufacturing new insulation. Any remaining plastics and metals can be recycled. The remaining wood waste can be combined with other CDL waste and sold as fuel for industrial operations."

(b) Skagit Hill did not have a permit to operate a recycling facility.

There is no evidence in the record that Skagit Hill had a permit to operate a recycling facility. Further, it appealed the denial of an inert waste landfill permit, not the denial of a permit to operate a recycling facility.

(c) Health did not deny Skagit Hill a permit to operate a recycling facility.

Skagit Hill applied to renew its inert waste landfill permit for calendar year 2008. It did not apply for a permit to operate a recycling facility or to renew any such permit.

Further, a stay of the effective date of the denial would only serve to allow Skagit Hill to operate under the terms of the 2007 inert waste landfill permit. Those terms preclude Skagit Hill from accepting, stockpiling or processing non-inert waste. In other words, Skagit Hill cannot recycle construction and demolition debris even if there were a recycling facility.

(d) Health's stay of the "removal" requirement does not excuse non-compliance with other material permit conditions.

Admittedly, Health appears to have stayed the requirement in the 2007 permit that required Skagit Hill to remove the non-inert solid waste

from the facility by October 1, 2007. See Response at 43. But this does not defeat the PCHB's summary judgment.

Even though Skagit Hill failed to present this fact to the PCHB for its consideration and is raising this "defense" for the first time on appeal,² the fact that the Health Officer stayed the removal requirement in the 2007 permit does not present a disputed fact.

If the court were to find that the PCHB erred by considering non-compliance with the "removal" requirement to support summary judgment, it follows that Skagit Hill more egregiously violated the proscription on further accepting and stockpiling non-inert waste. If – as Skagit Hill argues – Skagit Hill continually processed the waste, which would require removing waste from the piles, then the observed and undisputed growth in the size of the piles of construction and demolition debris³ means that Skagit Hill accepted more non-inert waste than once thought. Not only did it accept non-inert waste sufficient to increase the total amount over time, but it must have accepted non-inert waste to replace whatever was removed.

² See RCW 34.05.554(1) ("Issues not raised before the agency may not be raised on appeal[.]") None of the exceptions under RCW 34.05.554 apply.

Because the PCHB's decision may be affirmed on any grounds in the record, eliminating consideration of the removal requirement still leaves the continued acceptance of and failure to cover solid waste as violations of material permit conditions. See *Graff v. Allstate Ins. Co.*, 113 Wn. App. 799, 802, 54 P.3d 1266 (2002), *review denied*, 149 Wn.2d 1013 (2003). (Summary judgment may be affirmed "on any ground supported by the record.") (citing *Redding v. Virginia Mason Med. Ctr.*, 75 Wn. App. 424, 426, 878 P.2d 483 (1994)).

6) Health is not barred from challenging Skagit Hill's standing under the APA.

The lack of "prejudice" as it affects an appellant's standing does not become an issue until the appellant appeals the PCHB's action to the superior court:

A person has standing to obtain judicial review of agency action if that person is aggrieved or adversely affected by the agency action. A person is aggrieved or adversely affected within the meaning of this section only when all three of the following conditions are present: (1) The agency action has prejudiced or is likely to prejudice that person; . . .

³ See CP 251 ("The amount of construction and demolition wastes located in the pit area has increased.") CP 263 ("It appears that new C & D wastes have been brought in and removed from the site.")

RCW 34.05.530.

In contrast, appeals to the Health Officer and to the PCHB may be made without a showing of prejudice.⁴ Because “agency” is defined as a “state board,”⁵ the requirement that a person be “prejudiced” by an “agency” decision was not an issue before the PCHB. Health timely raised the issue of standing before the superior court after Skagit Hill appealed the PCHB’s decision under the APA. See CP 78-82.

The court may consider – and should grant – Health’s challenge to Skagit Hill’s standing in this appeal.

B. The PCHB correctly decided that Skagit Hill’s claim that it was exempt from permitting was not a relevant issue.

The conditions in the 2007 permit, which barred Skagit Hill from accepting non-inert waste, were not timely appealed or subject to review by the PCHB. Nor are they subject to review now. Skagit Hill conceded as much when it failed to dispute its noncompliance with the material conditions in the 2007 permit before the PCHB or the superior court. See

⁴ See WAC 173-350-710(6)(b) (“Whenever the jurisdictional health department denies a permit or suspends a permit for a solid waste handling facility, it shall: (i) Upon request of the applicant or holder of the permit, grant a hearing on such denial or suspension within thirty days after the request; . . . ; and (iii) . . . Any party aggrieved by such determination may appeal to the pollution control hearings board by filing with the board a notice of appeal within thirty days after receipt of notice of the determination of the health officer.”)

Sultani v. Leuthy, 86 Wn. App. 753, 760, 943 P.2d 1122 (1997) (A party abandons an appeal by failing to assign error to a ruling below and by failing to provide briefing in support of a challenge, even though the issue was raised in the party's petition.)

1) Skagit Hill's argument that it is exempt from permitting is an unwarranted collateral attack on the 2007 permit.

Skagit Hill's core argument is that its accepting, stockpiling, processing, and subsequent sale of solid waste was exempt from permitting requirements.

The only way that this argument would have any merit is if the court were to determine that the restrictive conditions in the 2007 permit were invalid. The 2007 permit was issued on March 30, 2007. It was not timely appealed. As the PCHB observed, "Skagit Hill cannot accept the benefits of the agreed permit and reject the responsibilities under the same permit." CP 43.

Thus, the PCHB did not have authority to review the conditions in the 2007 permit. The court similarly lacks jurisdiction to review them. Because Skagit Hill cites no authority for its collateral attack on the 2007 permit, the court should not consider this argument. RAP 10.3; *Cowiche*

⁵ RCW 34.05.010(2).

Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (Court will not consider arguments that are not supported by pertinent authority or meaningful analysis.) The “lack of reasoned argument is insufficient to merit judicial consideration.” *Westmark Development Corp. v. City of Burien*, 140 Wn. App. 540, 556, 166 P.3d 813 (2006).

Further, although Skagit Hill presented the issue of whether it was exempt from permitting requirements to the PCHB in its notice of appeal,⁶ it did not pursue that issue before the PCHB. Instead, Skagit Hill argued that “[t]he County has not cited a single regulation that limits in any way the ability to use a facility permitted as an inert landfill for lawful recycling operations.” CP 347. Even though this may have been raised in Skagit Hill’s notice of appeal to the PCHB, by not raising it before the PCHB, it abandoned this issue and may not raise it now. See *Sultani v. Leuthy*, 86 Wn. App. at 760.

2) Skagit Hill fails to support its implicit collateral estoppel defense.

Skagit Hill also argues that because Health ignored certain violations, none of the violations may be sustained. Thus, Skagit Hill implicitly raises collateral estoppel as a defense to summary judgment.

However, as with its collateral attack on the 2007 permit, Skagit Hill fails to provide any authority or reasoned argument for this defense and its collateral estoppel argument lacks merit for several reasons.

(a) Skagit Hill did not raise the defense of collateral estoppel before the PCHB.

In the context of code enforcement, collateral estoppel may excuse a violator from compliance. This defense is only available if the violator can establish, by clear, cogent, and convincing evidence:

(1) a statement, admission, or act by the party to be estopped, which is inconsistent with its later claims; (2) the asserting party acted in reliance upon the statement or action; (3) injury would result to the asserting party if the other party were allowed to repudiate its prior statement or action; (4) estoppel is ‘necessary to prevent a manifest injustice’; and (5) estoppel will not impair governmental functions.

Silverstreak, Inc. v. Dep't of Labor & Indus., 159 Wn.2d 868, 887, 154 P.3d 891 (2007) (quoting *Kramarevcky v. Dep't of Soc. & Health Services.*, 122 Wn.2d 738, 743, 863 P.2d 535 (1993)).

The court may not now consider Skagit Hill’s implicit collateral estoppel defense because it is raised for the first time on appeal. See RCW 34.05.554(1) (“Issues not raised before the agency may not be raised on

⁶ See CP 402, CP 404.

appeal[.]”) Skagit Hill never argued to the PCHB that it ever relied on any statement or action before it began accepting, stockpiling and processing non-inert solid waste.

(b) No evidence in the record supports a claim of collateral estoppel.

Even if the court were to consider Skagit Hill’s claim of collateral estoppel, the claim lacks merit. The evidence demonstrates that Skagit Hill accepted, stockpiled, and processed additional solid waste before the July and September 2007 inspections took place. Further, despite all of the citations to the record that Skagit Hill provides to the court, none provide that Skagit Hill ever knew about the written July and September 2007 inspection reports – upon which Skagit Hill relies so heavily – at anytime during 2007. Skagit Hill does not even establish or argue such reliance.

Because no evidence demonstrates that Skagit Hill relied on any action or statement of Health before it began violating the material permit conditions, its claim of collateral estoppel is unfounded.

(c) The court should not consider any claim of collateral estoppel because Skagit Hill fails to cite any authority for it.

As with its collateral attack on the 2007 permit, Skagit Hill fails to inform the court that it is raising a collateral estoppel argument. It provides

no authority or reasoned argument in support of its collateral estoppel defense. The court does not consider arguments that are not supported by pertinent authority or meaningful analysis. RAP 10.3; *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d at 809.

If the court were to consider collateral estoppel – or even the collateral attack on the 2007 permit - it would find that both of these defenses demonstrate that Skagit Hill was not prejudiced by Health’s denial of the permit, because if the permit conditions were invalid, then the permit is invalid. If the permit contains unenforceable conditions, then Skagit Hill needs a new inert waste landfill permit. Renewal is no remedy.

C. This case was ripe for summary judgment because it did not present any material disputed facts.

Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56(c).

The evidence that was before the PCHB was not disputed.⁷ The 2007 permit was in evidence, and Skagit Hill either admitted or failed to refute the facts of its violation of material permit conditions.

Because it could not refute the evidence of its permit violations, Skagit Hill argued, “[t]he County bases its erroneous interpretation of the law on a factually unsupported allegation that waste within the facility is not ‘source separated’ before it is brought to the facility.” CP 342. Skagit Hill continues to mischaracterize “source separation” as a disputed question of fact. Response at 39-40. It is not. Whether Skagit Hill’s waste is source separated presents a question of law. The facts are undisputed. The definition of source separation is clear and unambiguous. See WAC 173-350-100.

Moreover, as explained above, the PCHB did not have to reach the “exemption” issue because it had undisputed evidence that Skagit Hill had intentionally ignored and violated material permit conditions. “Source separation” is not a defense because Skagit Hill failed to comply with the

⁷ Skagit Hill mistakenly asserts that “the County offered no evidence that the demolition debris accepted by Skagit Hill Recycling was mixed with garbage, industrial waste, or any other kind of solid waste.” Response at 39. Aside from the irrelevance of this argument, the court need only look at CP 248-49, which depicts discarded municipal waste, including a stuffed animal, furniture, and beer cans, to see that Skagit Hill accepted all manner of non-inert waste.

material conditions in the 2007 permit that clearly required Skagit Hill to do certain things and not do others.

D. If Health is bound to its arguments before the PCHB, then Skagit Hill should be bound to its argument to the superior court that the permit was ultra vires.

Another of Skagit Hill's erroneous arguments is the false claim that Health only argued that Skagit Hill's waste was not source separated. Aside from ignoring Health's argument about permit violations, Skagit Hill seems to be arguing that Health is bound to this mischaracterized version of its argument before the PCHB.

First, contrary to Skagit Hill's assertions, Health primarily argued that Skagit Hill's violations of material permit conditions supported Health's decision to deny the application to renew the 2007 inert waste landfill permit:

B. The denial of Skagit Hill Recycling's application for a 2008 solid waste permit is supported by fact and law.

Skagit Hill Recycling continued to accept mixed demolition and construction waste from off-site sources throughout 2007. It then removed recyclable materials, including non-inert metals, from the waste and stored the remaining mixed waste in its landfill. . . .

Accepting and storing these mixed non-inert wastes at the landfill is not permitted under

Skagit Hill Recycling's inert waste landfill permit.

1. Skagit Hill Recycling accepted non-inert materials in violation of regulations and permit conditions.

...

Skagit Hill Recycling only has a permit to operate an inert waste landfill. Under the conditions of that permit, it may not accept or store non-inert wastes. Skagit Hill Recycling ignored this restriction.

...

3. Noncompliance with the conditions imposed under the preceding permit warrants denial of an application to renew a solid waste permit.

Before approving a renewal, the Department must ensure that the solid waste handling facility continues to “[m]eet the solid waste handling standards of the department” and “[c]ompl[ies] with applicable local regulations.” WAC 173-350-710(3)(a).

Because the Department may impose conditions on a permit, failure to comply with permit conditions – such as the timely removal of non-inert wastes from an inert waste landfill – would be a failure to meet Department standards. See WAC 173-350-710(2)(a) (“Every permit issued by a jurisdictional health department shall contain specific requirements necessary for the proper operation of the permitted site or facility.”)

...

PCHB Index 8 (Health's Dispositive Motion at 10-13 (underling added for emphasis.)

Second, Skagit Hill cites no authority for its argument that Health is forever bound to any earlier argument. No authority supports this argument because summary judgment may be affirmed “on any ground supported by the record.” See *Graff*, 113 Wn. App. at 802.

If Skagit Hill's argument had merit, it would be bound to its argument before the superior court that the permit was unlawful because it was ultra vires. CP 8. In response to Skagit Hill's “ultra vires” argument, Health told the superior court that “SHR's argument convincingly proves that the Health and PCHB decisions relieved it of a permit that SHR belatedly views as onerous and unlawful.” CP 79. Skagit Hill abandoned that argument when it understood that it dashed its standing for appeal.

Third, the 2007 inert waste landfill permit – with its restrictive Compliance Requirement, Fill Requirement, and Operations Plan – is an undisputed fact. Skagit Hill did not – indeed, could not – dispute that it failed to comply with these conditions. Thus, the PCHB determined:

Skagit County and Skagit Hill negotiated the terms of the 2007 inert waste permit for this location after the county initially denied a renewal of the 2006 permit. The agreed provisions of the 2007 permit specifically

limited the approval to inert waste. **The 2007 permit was very clear that only inert waste could be accepted into the facility or stockpiled or landfilled at the facility.** The evidence, and admissions by Mr. Waldal, show that non-inert material was accepted onto the site in violation of this permit condition. . . .

CP 42. This decision effectively resolves all of the issues presented to the PCHB.

The PCHB correctly held that the violation of material permit conditions is sufficient reason for a jurisdictional health department to deny renewal of an inert waste landfill permit, and “[t]he legality or proper characterization of different or additional recycling activity on the site is not relevant to the Board’s decision on renewal.” CP 43-44.

The court should agree with the PCHB’s reasoning. The 2007 permit provides the standard against which Skagit Hill’s performance is to be measured. The fact of violation is undisputed. Renewal of an inert waste landfill permit is not a given. There is no vested right to such permits. See WAC 173-350-710(3)(a).⁸ Thus, Skagit Hill’s undisputed

⁸ WAC 173-350-710(3)(a) provides:

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

failure to comply with material permit conditions provides sufficient grounds to affirm the PCHB's decision.

E. The court should not accept Skagit Hill's invitation to determine whether its recycling activities are exempt from permitting.

Yes, Health preemptively addressed the exemption issue before the PCHB, the superior court, and this court. However, for the reasons addressed above and in Health's opening brief, this is not an issue that the court needs to address. It will be decided as a core issue in an appeal before Division I of the Court of Appeals. See *Skagit County and Skagit County Health Department v. Skagit Hill Recycling*, case no. 64395-9-I.⁹

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

⁹ In the matter under appeal before Division I, the superior court held that Skagit Hill Recycling could not operate a solid waste handling facility unless it received a permit or a determination from a court or administrative agency that it was exempt from permitting requirements. Thus, the issue of exemption will be addressed by Division I or should be first addressed in a forum that can prepare a record for any such decision.

VI. Conclusion.

For the reasons set forth above, the Court should affirm the PCHB's grant of summary judgment to Health.

RESPECTFULLY SUBMITTED this 12th day of July, 2010.

RICHARD A. WEYRICH
Skagit County Prosecuting Attorney

By:

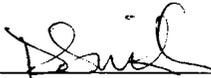


A. O. DENNY
Deputy Prosecuting Attorney
WSBA #14021

DECLARATION OF DELIVERY

I, Danielle Smith, declare as follows:

I sent for delivery by: United States Postal Service; ABC Legal Messenger Service; electronic mail, a true and correct copy of the document to which this declaration is attached, to tupper@tuppermackbrower.com, mack@tuppermackbrower.com, and doll@tuppermackbrower.com for James A. Tupper, Jr., Sarah Mack, and Brad Doll, Tupper Mack Brower, 1100 Market Place Tower, 2025 First Avenue, Suite 1100, Seattle, WA, 98121. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct. Executed at Mount Vernon, Washington, this 12th day of July, 2010.



Danielle Smith

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