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No. 93562-9

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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

Petitioners,

v.

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

Respondents.

Supplemental Brief of Petitioner Chem-Safe Environmental, Inc.

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 ORIGINAL

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I. INTRODUCTION

This is not a typical Public Records Act (“PRA”) lawsuit. Kittitas County (“County”) sued the requester preemptively to enjoin itself¹ and the Department of Ecology (“DOE”) from releasing records to the requester (“Chem-Safe” or “Mr. Allphin”). After multiple hearings that narrowed a vague temporary restraining order (“TRO”) obtained by the County ex parte, Chem-Safe sought in camera review of two sets of records: (1) 50 emails withheld pursuant to the County’s 4/2/2013 exemption log, and (2) 21 emails withheld pursuant to various additional logs. All of the challenged emails had been exchanged openly between the County and the DOE. All were withheld under a claim of attorney work product. None of the County’s exemption logs identified the “common interest doctrine” as grounds or explanation for the withholdings.

The Kittitas County Superior Court sealed both sets of records, concluding that the emails constituted attorney work product and that no waiver occurred because the County and DOE were on the “same legal team”. The Court of Appeals did not adopt the “same legal team” conclusion, concluding instead that waiver would had occurred but for the “common interest” exception.

¹ The request for a “self-injunction” was granted at the ex parte hearing, but later rejected over the County’s request that the self-injunction continue. RP 40:19-41:3; 119:4-23; 130:12-18.

The Court of Appeals should be reversed. The County and DOE did not have a “common interest” or “joint prosecution” relationship. Any coordination or cooperation by the two separate agencies in their dealings with Chem-Safe is insufficient to justify the withholding of these public records. The common interest doctrine must be tethered to some actual agreement arising in a controversy; otherwise it becomes an exception that swallows the waiver rule. Here, the County’s and DOE’s manner of proceeding – not entering a joint agreement initially and being adverse parties in this lawsuit – evidences the absence of agreement protecting any expectation of confidentiality in legal representation, a necessary predicate to the common legal doctrine.

II. ISSUES FOR REVIEW

Whether emails exchanged between county prosecuting attorneys and Department of Ecology employees relating to the Chem-Safe NOVA litigation are exempt from public records production as attorney work product under the “common interest doctrine.” Order (January 4, 2017).

III. STATEMENT OF THE CASE

a. Chem-Safe NOVA litigation.

The County took regulatory action against Mr. Allphin’s two family businesses, Chem-Safe Environmental, Inc. and ABC Holdings, Inc., by shuttering Mr. Allphin’s transfer operation for the alleged lack of

a state or County permit. The County issued its Notice of Violation and Abatement (“NOVA”) on January 27, 2011. CP 1267-69. Chem-Safe appealed the NOVA to the hearing examiner on February 10, 2011. CP 1275. The hearing examiner held a hearing on April 28, 2011, and issued a decision on May 12, 2011. CP 1273. Chem-Safe appealed to the Superior Court in 2011 and then to the Court of Appeals on April 11, 2012. CP 1290-1300.

b. The Public Records Act lawsuit.

On October 17, 2012, Mr. Sky Allphin filed requests for public records with the County and DOE. CP 1480. The requests were made only after the DOE refused to respond to a September 19, 2012, email requesting information on the location of the alleged hazardous waste spill. CP 2793-94. On February 22, 2013, the County sued Mr. Allphin for seeking the public records. CP 1-8. The County also sued the DOE because the DOE had already released public records and continued to do so. *Id.* Otherwise, the DOE would have continued releasing the emails. CP 5:1-3; CP 32:23-33:2. The DOE has never claimed that the emails constitute work product. CP 2178, 2186, ¶ 9.14. The DOE released many of the County-DOE emails between November 15, 2012, and February

2013, even though the County contacted the DOE on October 18, 2012, requesting they be withheld as work product. CP1844-46.²

The DOE released an email dated July 18, 2011, of its legal counsel stating that the emails were not protected under the attorney client privilege, that no joint prosecution agreement existed, and that the unrestricted exchange of records between the DOE and the County “would likely result in a waiver of any associated privilege.” CP 1499. The DOE’s attorney’s conclusions are consistent with the County’s former attorney’s conclusion that “DOE is not my client (Kittitas County is), therefore, these emails are not attorney-client privileged”. CP 1500, 2445; see also RP 18:20-19:1 (County attorney agreeing during ex parte TRO hearing that waiver would occur if County materials were disclosed to the DOE).

1. The 50 TRO emails from the County’s April 2, 2013 exemption log.

On April 4, 2013, without notice to opposing counsel, the County obtained an ex parte TRO that enjoined Mr. Allphin from requesting, receiving, or possessing a broad and undefined number of public records.

² County attorney Zera Lowe emailed the DOE on October 18, 2012, with her request that the DOE withhold the records as work product. See sealed copy within CP 3220-3390; see redacted at CP 2694-95. Despite this, she perjured herself in three sworn statements, stating that she did not know of the DOE request until later, in “early 2013”. CP 1413, ¶ 15, ¶ 17, CP 61:13-20, CP 2673-74. See also CP 1476-77.

CP 92-97. Mr. Allphin objected. CP 194-341. In subsequent hearings, the initial TRO was vacated entirely against Mr. Allphin and narrowed to specifically identified emails (“the TRO emails”). CP 557-563, 661-677. The TRO emails consist of 50 separate emails listed on the County’s 4/2/2013 exemption log and withheld as work product. CP 92-97, CP 661-677. Each of the TRO emails had been shared between the agencies. CP 668-677. The exemption log makes no reference to, or claim of, the common interest doctrine. *Id.*

The County represented that it would submit “the records to be reviewed *in camera* by close of business on Thursday March 28, 2013, before the matter is set for hearing on Monday, April 1, 2013.” CP 49:21-22. However, after obtaining the ex parte TRO, the County refused to submit the records for review. CP 678-715, RP 207:8-12, 208:5-13. The County’s real purpose in suing Mr. Allphin and obtaining the ex parte TRO was to prevent Chem-Safe from using the records in its defense of appellate proceedings and contempt proceedings in the Chem-Safe NOVA litigation, which contempt motion the County filed immediately upon obtaining the ex parte TRO. CP 1463, 1474; CP 197-98, CP 264-71, 311-25. The County only submitted the TRO emails on September 11, 2013, upon Mr. Allphin’s motion to vacate the TRO. CP 680-712.

At the September 11, 2013 hearing, the County submitted a sealed packet of records and represented that it contained the 11 emails identified by its cover index.³ CP 781, RP 213:21-214:6, 215:23-217:23. The County represented that it only sought protection of the 11 emails listed on the cover index. CP 781, RP 216:8-12. On September 30, 2013, the court issued a memorandum decision that concluded the records were work product and that no waiver had occurred because the County and the DOE were members of the same “legal team.” CP 964-974 (December 19, 2013 order) and CP 3059-3219 (sealed records).

2. *In Camera Review of 21 additional emails.*

In the fall of 2014, Mr. Allphin sought in camera review of 21 additional records withheld as work product. CP 1211-1212; 1431-1432. Of the hundreds of records withheld by the County, CP 2484-2552, Mr. Allphin challenged only those emails withheld as work product that had been shared between the agencies. The court sealed these 21 emails. CP 2966-73 (February 27, 2015 order) and CP 3220-3390 (sealed records).

c. *The Court of Appeals.*

The Court of Appeals rejected the “same legal team” approach for sealing the records, but approved the withholding based on the “common

³ As later discovered, the County’s envelope contained several additional and different records, see Petition for Review, p. 6, n. 2 (Sept. 8, 2016).

interest doctrine.” *Kittitas County v. Sky Allphin et al.*, 195 Wn. App. 355, 381 P.3d 1202 (Div. 3 2016) (“Decision”). The Court of Appeals decision is not clear how it reached the common interest doctrine. Because the “common interest doctrine” is an “exception to waiver”, the Court of Appeals must have first concluded that waiver would have occurred but for the exception. Mr. Allphin petitioned for review.

IV. ARGUMENT

A. The Court’s review is *de novo* under RCW 42.56.550(3).

The PRA, Chapter 42.56, RCW, is “a strongly worded mandate for broad disclosure of public records.” *Soter v. Cowles Pub. Co.*, 162 Wn.2d 716, 731, 174 P.3d 60 (2007). The PRA “should be liberally construed and its exemptions should be narrowly construed in favor of disclosure.” *Id.*; RCW 42.56.030. The PRA promotes open government and reflects the American principle that “full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.” *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127-28, 530 P.2d 246 (1978). The legislature tasks the judiciary with liberal construction of the PRA to further “the people’s insistence that they have information about the workings of the government they created.” *Nissen v. Pierce County*, 183 Wn.2d 863, 884, 357 P.3d 45 (2015).

B. The “common interest doctrine” should not exempt from public release the emails at issue here because the County and DOE exchanged the emails when no agreement, arrangement, or expectation of confidentiality existed between them.

1. The “common interest doctrine” is merely an exception to waiver.

The “common interest doctrine” is a narrowly construed exception to waiver that can protect materials prepared in anticipation of litigation when two parties share a common legal claim or defense and exchange the materials in furtherance of their joint legal representation under an agreement or expectation that the materials remain confidential. *Sanders v. State*, 169 Wn.2d 827, 853, 240 P.3d 120 (2010) (the “common interest” doctrine “provides that when multiple parties share confidential communications pertaining to their common claim or defense, the communications remain privileged as to those outside their group”). *United States v. Gonzalez*, 669 F.3d 974, 978 (9th Cir. 2012) (“[w]hether the jointly interested persons are defendants or plaintiffs, and whether the litigation or potential litigation is civil or criminal, the rationale for the joint defense rule remains unchanged: persons who share a common interest in litigation should be able to communicate with their respective attorneys and with each other to more effectively prosecute or defend their claims”)(citations omitted).

The “common interest doctrine” intersects the PRA through the

“controversy exemption”, RCW 42.56.290, which exempts “[r]ecords that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.” RCW 42.56.290. The discovery rules, in turn, provide a limited protection for “attorney work product” that has been “prepared by or for the party or the party’s representative as long as [the materials] are prepared in anticipation of litigation.” CR 26(b)(4); *Limstrom v. Ladenburg*, 136 Wn.2d 595, 611, 963 P.2d 869 (1998). The common interest doctrine “is merely a common law exception to waiver of privilege that applies when parties share a common interest in litigation.” *Sanders*, 169 Wn.2d at 853.

2. At least some of the withheld emails are ordinary business records that were not created in anticipation of litigation.

RCW 42.56.290 and CR 26(b)(4) only protect records created “in anticipation of litigation” and not in the ordinary course of business. *Sanders*, 169 Wn.2d at 856 (controversy exemption pertains to records “relevant to completed, existing, or reasonably anticipated litigation,” citing *Soter*, 162 Wn.2d at 732). The work product doctrine “does not shield records created during the ‘ordinary course of business.’” *Morgan v. City of Fed. Way*, 166 Wn.2d 747, 754–55, 213 P.3d 596 (2009)

(holding that investigation report was not prepared in reasonable anticipation of litigation and was not protected work product).

The County has not established that the 50 emails it withheld from the 4/2/13 exemption log or the 21 emails challenged from its other logs were created in relation to or in anticipation of litigation. Of those Mr. Allphin possesses⁴, at least several do not contain work product material created in anticipation of litigation, and several were exchanged between staff without an attorney involved, CP 2736-94, specifically CP 2736, nos. 1-3, 5, 13. The most important record in this lawsuit, however, is a February 4-8, 2011, email string between the County and the DOE. Withheld at CP 1505-06; unredacted copy at CP 2431-35. The record was created in the ordinary course of business, prior to Chem-Safe's February 10, 2011, administrative appeal of the NOVA. It contains no statement or indication that it was generated in anticipation of litigation.

The County took extraordinary steps to bury this record because it demonstrates that the County knew Chem-Safe's operations were exempt

⁴ Mr. Allphin obtained 41 of the 50 emails initially withheld on the County's 4/2/13 exemption log. CP 1468, 2236-2479. Mr. Allphin has prevailed as to their release and entitled to the statutory award of RCW 42.56.550. *Spokane Research & Defense Fund v. City of Spokane*, 155 Wn.2d 89, 102-04, 117 P.3d 1117 (2005). The County released most of these as a direct result of the trial court's May 6, 2013 ruling to release the records, stating "the cat's out of the bag". RP 84:10-24; CP 2207, 562-63.

from the very permit that the County was requiring as its basis for the NOVA. CP 2435 (County's email, citing WAC 173-350-360(1)(b)(i), "This section is not applicable to: (i) Persons transporting MRW managed in accordance with the requirements for shipments of manifested dangerous waste under WAC 173-303-240"). The DOE's response affirmed that Chem-Safe had obtained the state-issued, transfer facility permit per WAC 173-303-240(6). CP 2433-34. The County should have immediately reversed its NOVA. Rather, it continued to insist that Chem-Safe obtain a moderate risk waste facility permit. The County withheld this record, CP 1505-06, and sued Mr. Allphin to preclude him from using it in his defense of the NOVA litigation. CP 2695, 2707, 2711; CP 600 (stricken portion) (expressly requesting a gag-order over this record).

The "common interest doctrine" does not extend to this ordinary business record. Similarly the court has sealed the 9/24/12 and 9/20/12 emails. See CP 2973, nos. 2-3. These are also ordinary business records unrelated to the NOVA litigation. See CP 2791. This email chain demonstrates the agencies' vindictive motive against Chem-Safe, but does not contain contents related to the NOVA litigation. CP 2790-93. Further, the County altogether removed the 9/20/12, 10:33 a.m. and 9/24/12, 11:26 a.m. emails from disclosure when it produced its exemption log for this record. CP 2537, no. 110. For further example, the July 15, 2011 at 2:40

p.m. email that has been sealed, CP 781, no. 6, contains no contents related to the NOVA litigation. This is a clear example of an inter-agency email created in the ordinary course of business that should never have been withheld or sealed. Further example is the 6/27/12; 11:22 a.m. email sealed at CP 2973, no. 13, which contains only “Sounds good. See you then”, yet this record has been withheld and sealed from the public. CP 2966-73. These withheld records – whether sealed or since-released – are not work product prepared in anticipation of the NOVA litigation.

More examples of the County’s unauthorized withholdings of records as work product include non-privileged communications, CP 1767-72, such as “My calendar is clear tomorrow. What time do you want to meet?”, CP 1760, yet the County claimed them exempt. CP 1742. Comparison of redacted records with later released records demonstrates similar unjustified withholdings. Cf. redacted versions of nine such emails, CP 1722-41, with their unredacted versions, CP 1743-1769, e.g., “Very helpful. Thanks, Mary Sue. Have a great evening, and rest of your week. Hopefully I won’t pester you any further”, CP 1730 v. CP 1743, or, “It is okay with me if you are there Norm”, CP 1739 v. CP 1754. Such emails are not mental impressions, thoughts, and theories that warrant attorney work product protection. *Soter*, 162 Wash.2d at 735-36; *Limstrom*, 136 Wn.2d at 611.

Strict adherence to the “completed, existing or reasonably anticipated litigation” standard is critical to the “controversy” exemption, particularly in the PRA context and particularly with regulatory agencies who might otherwise claim that all of their ordinary business records were related to enforcement actions and potential litigation. See *Sanders*, 169 Wn.2d at 856 (adopting this definition of “controversy” as opposed to one based on “a prolonged public dispute, debate or contention” because the latter was “too broad”) (citing *Dawson v. Daly*, 120 Wn.2d 782, 790, 845 P.2d 995 (1993)). The “distinction is one based on the expected likelihood of formal litigation, not merely the controversial nature of the agency’s work.” *Sanders*, 169 Wn.2d at 856 (citing *Hangartner v. City of Seattle*, 151 Wn.2d 439, 449–50, 90 P.3d 26 (2004)).

3. The common interest doctrine does not apply because the County and DOE do not have a common interest that is legal in nature.

A “legal interest” in the litigation must be implicated as a prerequisite to applying the “common interest doctrine”. *Morgan*, 166 Wn.2d at 757 (stating that the “presence of a third person during the communication waives the privilege, unless the third person is necessary for the communication [...] or has retained the attorney on a matter of “common interest” (internal citations omitted), but refusing to apply the common interest doctrine because the proponent failed to show how the

email “implicated any common legal interest”). *Allendale Mut. Ins. Co. v. Bull Data Systems, Inc.*, 152 F.R.D. 132, 140-41 (N.D. Ill. 1993) (stating “like the work product privilege, a necessary precondition for the common interest doctrine to apply is that the common interest arise as a result of impending or anticipated litigation, and not in the ordinary course of business”). The County and DOE lacked any common “legal interest” in the NOVA litigation. The DOE had no legal claim, defense, exposure, or legal connection to the Chem-Safe NOVA litigation. Its general interest in environmental regulation is insufficient.

The legislative declaration at RCW 70.105.005(10) does not create, or “statutorily require[,],” as stated by the Court of Appeals, a “collaborative relationship between the County and Ecology.” *Decision*, p. 16, n. 6. If anything, the statute highlights the agencies’ separate legal roles, including that the DOE could never have had a common legal claim or defense in the County’s administrative action against Chem-Safe. Cf. RCW 90.58.210(4) (granting DOE and local governments joint authority to issue civil penalties for shoreline protection). Further, many areas of the Revised Code of Washington have similar declarations defining the regulatory relationship between agencies. See e.g. RCW 90.58.050 (Shoreline Management Act provision establishing a “cooperative program” where local government has the “primary responsibility” and the

state provides assistance); see also e.g., RCW 36.70A.190 (Growth Management Act provision providing Department of Commerce's assistance to cities and counties for their local planning). Those statements do not create a "common interest" or "joint defense" for purposes of the attorney-client privilege or work product rule. Nor should they. To conclude otherwise would exempt a vast number of regulatory governmental records from the public.

4. The common interest doctrine does not apply because the County and the DOE had no reasonable understanding or arrangement to undertake a joint legal effort.

A proponent of the common interest doctrine must demonstrate that the parties reasonably agreed and expected that the disclosed materials would be confidential and protected from discovery or release. *Avocent Redmond Corp. v. Rose Electronics, Inc.*, 516 F.Supp.2d 1199, 1203 (W.D. Wash. 2007) ("A written agreement is not required, but the parties must invoke the privilege; they must intend and agree to undertake a joint defense effort."); see also, *United States v. Schwimmer*, 892 F.2d 237, 243-44 (2d Cir. 1989) (common interest rule requires that "a joint strategy has been decided upon and undertaken by the parties"); *In re the Matter of Beville, Brester & Schlman Inc.*, 805 F.2d 120 126 (3d Cir. 1986) (proponent failed to provide evidence that the parties had agreed to pursue

a joint defense strategy). A “common interest” can be “implied from conduct and situation”, *U.S. v. Gonzalez*, 669 F.3d 974, 979 (9 Cir. 2012), but the privileged communications “do, at a minimum, need to be ‘engaged in maintaining substantially the same cause on behalf of other parties in the same litigation,’” *Id.* at 980 (citing *Cont’l Oil v. United States*, 330 F.2d 347, 350 (9 Cir. 1964); see also *In re Pacific Pictures Corp.*, 679 F.3d 1121, 1129 (9 Cir. 2012) (“a shared desire to see the same outcome in a legal matter is insufficient to bring a communication between two parties within this exception. Instead, the parties must make the communication in pursuit of a joint strategy in accordance with some form of agreement—whether written or unwritten”)(citations omitted).

The County and the DOE did not agree to joint prosecution or share a sufficient common interest to justify withholding the records from the public. There is no written agreement. CP 1499. The DOE staff person on most of the withheld and sealed records, Mr. Norm Peck, expressed, on the day after the request, October 18, 2012, that he did not understand the County-DOE materials to be exempt. See unredacted copy within CP 3220-3390; see redacted at CP 2694-95. The DOE never claimed the emails to constitute exempt work product, CP 2178, 2186, ¶ 9, and would have released the emails but for the County’s suit against the DOE, CP 5: 1-3, 32:23-33:2. When the non-attorney staff of the agencies asked

whether the materials would be protected from disclosure, their attorneys informed them the protection was waived. CP 1499, 1500, 2445. Even then, the agencies did not enter a joint agreement or undertake to do so. The agencies were functioning independently and without an agreement, understanding, or expectation that their emails to one another could create exempt work product.

Additionally, the DOE was not a member of the County's "legal team" for purposes of work product or common interest purposes. The concept of "legal team" comes from this Court's decision in *Soter*, deciding in a 5-4 decision that handwritten notes created by a school district's retained investigative team in anticipation of litigation following a student's death constituted work product. *Soter*, 162 Wn.2d at 730, 734, 744. The critical distinction between *Soter* and the present case is that the school district hired the private investigator specifically for the purposes of preparing for the lawsuit. *Id.* at 725-26. In the present case, the County did not retain the DOE in anticipation of litigation. The DOE was not the County's expert, technician, private investigator, or "representative." CR 26(b)(4). Rather, the independent agencies emailed each other in the course of their ordinary business, without any mark of "confidential", "work product", or other indicia of intent to protect from disclosure, CP 2236-2479, other than an email-automated disclaimer.

Finally, this Court need not concern itself with the policy reason enunciated by the Court of Appeals: “[r]eleasing these records would force government attorneys to forego communicating with other law enforcement professionals during litigation due to the fear that their opponents will obtain their mental impressions and ideas.” *Decision*, p. 17. First, the government attorneys, cognizant of privileges and waiver rules, could simply memorialize their understanding, similar to that required by Rules of Professional Conduct in joint representation. Second, there is already an investigative/law enforcement exemption at RCW 42.56.240. It was the County’s burden to evidence that a common agreement or interest existed. RCW 42.56.550. At a minimum, in this case, the County has failed its burden to prove that a narrowly construed exemption “squarely applies,” RCW 42.56.550; *Soter*, 169 Wn.2d at 730-31.

5. The County failed to allege the “common interest doctrine” on its exemption logs, which separately violates RCW 42.56.210(3).

The County raised the “common interest rule” as authority for its withholding of records for the first time at the summary judgment hearing in late 2015. CP 1466-67, ¶ 5, fn. 1. The County did not state that ground for exemption on any of its many exemption logs, public records release letters, or pleadings in 2013. See CP 2234, 2484-2553, CP 1468, CP 1505-1512. The PRA requires agencies not only to identify the specific

exemption, but also to provide an explanation of how it applies to the record. RCW 42.56.210(3); *City of Lakewood v. Koenig*, 182 Wn.2d 87, 94, 343 P.3d 335 (2014) (“an agency must identify ‘with *particularity*’ the specific record or information being withheld and the specific exemption authorizing the withholding”(emphasis in original); see also *Sanders*, 169 Wn.2d at 846, (noting that “[c]laimed exemptions cannot be vetted for validity if they are unexplained”); WAC 44-14-040(5).

The County defends only that the common interest doctrine is a litigation defense that it did not need to identify or explain when withholding the public records. The response is disingenuous; the issue of waiver has been at the heart of the dispute from the outset, but the common interest doctrine was only raised, claimed, or explained almost two years later. CP 1466-67, ¶ 5, n. 1. One of the purposes served by requiring disclosure of the author and recipient on the exemption log is to analyze waiver. *Progressive Animal Welfare Soc. v. Univ. of Wash.*, 125 Wn.2d 243, n. 18, 884 P.2d 592 (1994). The claim of “common interest”, if the County’s grounds for withholding records, was required to be explained at the time the records were withheld. RCW 42.56.210(3); *Lakewood*, 182 Wn.2d at 95 (improper to provide exemption information in such vague terms that “the burden [is] shifted to the requester to sift through the statutes cited ... and parse out possible exemption claims”).

V. CONCLUSION AND REQUEST FOR FEES

Privileges, just like PRA exemptions, contravene fundamental principles and are therefore interpreted narrowly to serve their purposes. *In re Pacific Pictures Corp.*, 679 F.3d at 1126. Under the facts of this case and the Court of Appeal's analysis, many government records could be claimed privileged after-the-fact and excluded from evidence. The "common interest doctrine," minimally requires that the proponent demonstrate that the parties 1) had a legal interest in common, 2) reasonably anticipated litigation, and 3) acted in agreement or with reasonable expectation that the communication would be privileged/protected. All are lacking here. The County did not even claim "common interest doctrine" for these records at the outset of this lawsuit, which was only initiated by the County to position itself better in the NOVA litigation, and cover up the wrongfulness of that prosecution. Chem-Safe requests reversal, release of the records, remand for a statutory reward hearing, and fees on appeal.

Respectfully submitted this 3rd day of February, 2017.

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No. 93562-9

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Kittitas County Superior Court Cause No.13-2-00074-4

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

Petitioners,

v.

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

Respondents.

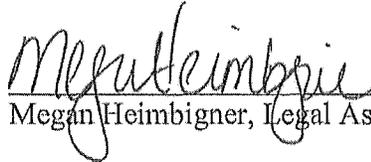
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Attorneys for Appellant

I hereby declare under penalty of perjury under the laws of the State of Washington that on the 3rd day of February, 2017, I served copies of the *Supplemental Brief of Petitioner Chem-Safe Environmental, Inc.*, in the matter indicated below:

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<input type="checkbox"/> First Class U.S. Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email	Leslie A. Powers Powers & Therrien Law Offices 3502 Tieton Dr. Yakima WA 98902 Powers_Therrien@yvn.com
<input type="checkbox"/> First Class U.S. Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email	William John Crittenden Attorney at Law 12345 Lake City Way NE 306 Seattle WA 98125-5401 wjcrittenden@comcast.net
<input type="checkbox"/> First Class U.S. Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email	Margaret Enslow Enslow Martin PLLC 701 5 th Ave. Ste. 4200 Seattle WA 98104-7047 margaret@enslowmartin.com

DATED this 3rd day of February, 2017.



 Megan Heimbigner, Legal Assistant

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Chem-Safe et. al, v. Kittitas County
Supreme Court No. 93562-9

Submitted by:

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