



**FINAL DECISION of the
SNOHOMISH COUNTY HEARING EXAMINER**

Hearing Examiner's Office

Email: Hearing.Examiner@co.snohomish.wa.us

Millie Judge
Hearing Examiner

DECISION DATE: August 31, 2011

APPELLANT: Bobby Wolford Trucking

FILE NO.: 11-10105

TYPE OF CASE: Appeal of Notice of Violation – Solid Waste

LOCATION: 22014 W. Bostian Road, Woodinville, WA 98072

DECISION (SUMMARY): Appeal Denied

M/S 405
3000 Rockefeller Ave.
Everett, WA 98201

(425) 388-3538
FAX (425) 388-3201

This matter having come before the Hearing Examiner on August 3, 2011, and the testimony of witnesses having been heard and all exhibits having been admitted into evidence and considered, the Hearing Examiner enters the following Findings of Fact, Conclusions of Law and Decision based on a preponderance of the evidence:

FINDINGS OF FACT

1. **The Record.** The official record for this proceeding consists of the Exhibits entered into evidence (Exhibits 1 through 10), as well as the testimony of witnesses received at the open record hearing. The entire record was admitted into evidence and considered by the Examiner in reaching the decision herein.

NOTE: For a complete record, an electronic recording of the hearing in this case is available in the Office of the Hearing Examiner.

2. **Parties of Record.** The Parties of Record are set forth in the Parties of Record Register and include interested parties who testified at the open record hearing.
3. **Public Hearing.** The Hearing Examiner held an open record appeal hearing on August 3, 2011. At the hearing, witnesses were sworn, testimony was presented, and exhibits were entered into the record. Senior Deputy Prosecuting Attorney Gordon Sivley appeared as the attorney for the County, Respondents. Attorney Stacia Lay of Hendricks & Lewis, PLLC, appeared on behalf of appellant, Bobby Wolford Trucking, Inc. ("Wolford").
4. Appellants were charged with violating SCC 7.35.125, for transporting solid waste to a facility located outside of Snohomish County (in Yakima) on June 8, 2011. The Public Works Department Solid Waste Division ("DPW") issued the violation and imposed a civil penalty in the amount of \$1,500.00.

5. Wolford appeals on the grounds that DPW has failed to prove that Wolford committed the violation and that the solid waste removed to Yakima was "inert" and therefore exempt from the flow control regulations of SCC 7.35.125.
6. Snohomish County Sheriff's Deputy Tim Malkow testified at the public hearing. He is presently assigned to DPW and investigated the operations of Bobby Wolford Trucking and its compliance with the County's flow control ordinance (SCC 7.35.125). For a period of several days, beginning on May 18, 2011, he had their operations under surveillance. He did so to gain an understanding of their operations. On June 7, 2011, Deputy Malkow arrived at the Wolford site at 8:45 a.m. and watched delivery of containers, and the subsequent dumping, sorting, shaking and separating of recyclables from the loads they received, and the dumping of remainder wastes onto the ground. Deputy Malkow saw a front loader scoop up the waste materials and load it into trailer containers. He observed these operations for about 2-1/2 hours. He noted a track hoe working to compact the load inside the trailer. He videotaped these activities with a small camera. The video was shown at the public hearing and reflects the facts as described by Deputy Malkow. (See, Exhibit 8-1). The video clearly shows a mattress, large plastic sheeting, cardboard, paper, and other solid waste being loaded into the trailer. Deputy Malkow testified that he saw clothing, tar paper and plastic being loaded into the trailer. A yellow tarp was attached to the trailer and it was moved to the south of the site and parked. Deputy Malkow left the site 20 minutes later.

He returned early the next morning on June 8, 2011 at 1:08 a.m., to continue his surveillance. At that time, the trailer was still parked in the same spot as it had been when he left earlier the previous day and it still had a yellow tarp on it. Deputy Malkow testified that the trailer had not been moved, as he had mentally noted the prior day that the tarp stripes lined up with a tree on the site, and when he returned it was still in the same position. At 3:15 a.m. a car arrived at the site. Next he saw a truck start up in the yard with its lights on. It emerged from the Wolford yard with the trailer he had been watching attached to it. The truck tractor was purple and yellow in color and had the name of the Bobby Wolford Trucking Company on it. The trailer license number was 0619. Deputy Malkow proceeded to follow the truck all the way to the Caton Landfill in Yakima, Washington. (Exhibit 8-1) He watched the truck proceed into the site and drive uphill to where other materials had been dumped. He did not see the trailer being unloaded. Deputy Malkow testified that the trailer was in excess of ten tons in gross weight.

7. JR Myers, Senior Planner for DPW, also testified at the public hearing. He was involved in the adoption of the County's flow control regulations. He stated that the primary purpose of the regulations is to ensure that all solid waste generated in Snohomish County is disposed of in Snohomish County. Mr. Meyers noted that there is an exemption to the regulations for inert waste, but that it must be disposed of at a landfill that has a DNR permit that restricts the imported waste to inert wastes only.

Mr. Myers noted that the County's facilities can accommodate the truck and trailer container and the material dumped in Yakima. He testified that the County's solid waste facilities maintain business records of all loads dumped. For commercial customers, they have credit records. For all other customers paying cash, they record the license plate of each vehicle entering their sites. Mr. Meyers testified that he searched all County Solid Waste facility records for receipts from Bobby Wolford Trucking on or around June 8, 2011, and found none. Mr. Meyers further testified that he checked the records of the Caton Landfill in Yakima with the Department of Ecology and learned that they are a limited purpose landfill

facility, and have no Department of Natural Resources (DNR) mining and reclamation permit that would allow them to accept inert materials. (Exhibit 8-2) Instead, they are set up to take only certain solid wastes. (Exhibit 8-3)

On cross-examination, Mr. Myers testified that Mr. Wolford had participated in the discussions around the creation of the County's flow control ordinance, and that Bobby Wolford was the person least in favor of it, stating that Mr. Wolford felt he should be able to dump his solid wastes wherever he wanted.

8. Dawn M. Maurer of the Washington State Department of Ecology also testified on behalf of the County. She is a Facilities Specialist in solid waste resources. She reviews solid waste site plans and permits and is an expert in the State's solid waste handling regulations. She also classifies solid waste facilities as part of her job. Ms. Maurer provided detailed information about "inert waste" and how it is classified. She stated that according to WAC 173-350-990, waste is determined to be "inert" if it is either on the state's list of inert materials or meets certain criteria. The criteria essentially is that the waste cannot burn or change physical shape or characteristics in storage and disposal. It cannot compress, rot, degrade or produce leachate or emissions, and it cannot pose a significant risk to human health or the environment.

Ms. Maurer further testified that she had viewed the videotape in the present case taken by Deputy Malkow. She stated that she observed materials being loaded into the trailer that cannot be classified as "inert." She stated that she saw drywall, which can off-gas hydrogen sulfide as it decomposes. She observed plastics, and textiles which may have PDBEs (commonly flame retardant chemicals) and other chemicals and can be highly toxic, and she thought she may have seen asphalt roofing materials and paper.

9. Bobby Wolford testified at the hearing in support of his appeal. He stated that he was a pioneer of recycling efforts in Snohomish County. He stated that he does haul duff waste from his recycling efforts to Yakima. He recycles concrete, wood and pulls out metals and plastics. He conceded that he has been hauling solid waste to Caton Landfill, arguing that it is much cheaper than dumping it within the County. He stated that he has had a contract with the Caton Landfill's owner, Jim King, for the past five years, but now the County has changed the rules. He admitted that on June 8, 2011, he sent a load of solid waste to Yakima. It was residual material from his recycling operation. He stated that the mattress was a mistake, and that it should not have been included, but that he has a new employee he has been training.
10. Dave Warrick, the owner of Snohomish Valley Roofing testified as a member of the public. He stated that he is in the same recycling business as the appellant. He testified about the profitability of the business, but since the new flow control ordinance went into effect, his business is failing and his savings are gone. Mr. Warrick stated that the County's solid waste fees are simply too high. He stated his frustration at the new regulations and said the he and the others are not criminals, and that the new regulations should be reversed.
11. Any Finding of Fact which should be deemed a Conclusion of Law in this Decision is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over the appeal of a Notice of Violation pursuant to Ch. 2.02 SCC and SCC 7.35.175.
2. On appeal, the DPW has the burden of proving the violation by a preponderance of the evidence.
3. SCC 7.35.125 provides: "(1) Except as permitted by state law or as provided by virtue of this chapter, it is unlawful for any collecting agent or other person to deliver or deposit any solid waste generated and collected within the unincorporated areas of the county at a facility that is not a solid waste disposal system facility located in Snohomish County."
4. SCC 7.35.125(5) provides:

Inert waste may be delivered to any site, no matter where located, including a site that is not a county solid waste disposal system facility, provided the site meets the following requirements:

 - (a) The site is subject to a currently valid Washington State department of natural resources mining and reclamation permit.
 - (b) The site is subject to a currently valid inert waste landfill permit issued by the jurisdictional board of health or health district.
 - (c) The site is not permitted to operate as any other category of landfill than an inert waste landfill.
5. The term "Inert waste" means material meeting the criteria for inert waste in WAC 173-350-990. (See SCC 7.35.020)
6. Here, Wolford is charged with violating SCC 7.35.125, for removing solid waste from Snohomish County to a dump site at the Caton Landfill in Yakima, Washington. The Hearing Examiner finds that DPW has proven the charge by a clear preponderance of the evidence. It is undisputed that on June 7, 2011, Wolford loaded a trailer in excess of 10 tons gross weight with materials clearly meeting the definition of solid wastes, and such waste materials were not only inert waste. (Exhibits 8-1, 8-2, 8-3; Testimony of Witnesses Malkow, Myers, Maurer and Wolford). Wolford removed said solid wastes from the County on the morning of June 8, 2011, and dumped it at the Caton Landfill, a limited landfill facility in Yakima. (Id.) Additionally, the Examiner concludes that Bobby Wolford admitted to the violation during his testimony at the public hearing. Accordingly, the violation should be affirmed and the appeal should be dismissed.
7. A civil penalty is authorized pursuant to SCC 7.35.165. Any person who violates this Chapter, shall incur a civil penalty. For commercial violations, where the vehicle used to violate SCC 7.35.125 is greater than ten (10) tons gross weight, the penalty shall be assessed at the rate of \$1,500.00 per violation. Having proved that a violation of Chapter 7.35 has occurred, DPW properly imposed a civil penalty. The evidence in the record shows by a preponderance of the evidence that the truck used in the violation was in excess of ten tons gross weight. Accordingly, the imposition of the civil penalty in the amount of \$1,500 should be affirmed.

8. Any Conclusion of Law in this Decision which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION AND ORDER

The violation and imposition of the civil penalty in the amount of \$1,500.00 is affirmed. The appeal is denied in its entirety.

Dated this 31st day of August, 2011.



Millie M. Judge, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the hearing examiner on this appeal shall be final and conclusive with an optional right of reconsideration as provided in Chapter 2.02 SCC. This matter may then be reviewable by an action for *writ of review* filed with Snohomish County Superior Court as provided in Chapter 2.02 SCC. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 2.02 SCC, the Snohomish County Hearing Examiner Rules and Superior Court Civil Rules. The Hearing Examiner's Office cannot provide you with legal advice. If you have questions, please contact your attorney.

SCC 2.02.170 - Reconsideration of hearing examiner decision.

(1) Any party to an appeal may file a written petition for reconsideration with the hearing examiner **within 10 calendar days** following the date of the hearing examiner's written decision. The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties to the appeal on the date of filing. The timely filing of a petition for reconsideration shall stay the hearing examiner's decision until such time as the petition has been disposed of by the hearing examiner.

(2) The grounds for seeking reconsideration shall be limited to the following:

- (a) The hearing examiner exceeded the hearing examiner's jurisdiction;
- (b) The hearing examiner failed to follow the applicable procedure in reaching the hearing examiner's decision;
- (c) The hearing examiner committed an error of law;
- (d) The hearing examiner's findings, conclusions, and/or conditions are not supported by the record; or
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered.

(3) The petition for reconsideration must:

- (a) Contain the name, mailing address, and daytime telephone number of the petitioner or petitioner's representative, together with the signature of the petitioner or of the petitioner's representative;
- (b) Identify the specific findings, conclusions, actions, and/or conditions for which reconsideration is requested;
- (c) State the specific grounds upon which relief is requested;
- (d) Describe the specific relief requested; and
- (e) Where applicable, identify the specific nature of any newly discovered evidence.

A decision which has been subjected to the reconsideration process shall not again be subject to reconsideration.

A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before SEPTEMBER 12, 2011.** There is no fee for filing a petition for reconsideration.

Appeal

2.02.195 Appeal to Court from Examiner's Decision.

Where the examiner's decision is final and conclusive, it may be appealed to superior court by an aggrieved party of record as may be provided by applicable law **within 21 days** of the issuance of the examiner's final decision on the matter. The following shall apply to any action for judicial review of the examiner's decision:

(1) Where the reconsideration process of SCC 2.02.170 has been utilized, no action for judicial review may be filed until the reconsideration process has been completed and no action for judicial review by the petitioner for reconsideration may raise an issue which has not been the subject of a petition for reconsideration.

(2) An action for judicial review may be brought by any aggrieved party of record **within 21 calendar days following the date of the examiner's decision on reconsideration**; PROVIDED, **that only the petitioner for reconsideration may file an action for judicial review of the denial of a petition for reconsideration.** The cost of transcribing the record of proceedings, of copying photographs, video tapes, and oversized documents, and of staff time spent copying and assembling the record and preparing the return for filing with the court shall be borne by the appellant.

NOTE: *Please include the County file number in any correspondence regarding this case.*

Staff Distribution:

Prosecuting Attorney's Office: Gordon Sivley, DPA

Department of Public Works: JR Meyers

SCSO: Deputy Tim Malkow

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.

PARTIES OF RECORD REGISTER
BOBBY WOLFORD TRUCKING 11
10105
DPW APPEAL – SOLID WASTE

BOBBY WOLFORD TRUCKING
JACK MILLER & BOBBY WOLFORD
22014 W BOSTIAN RD
WOODINVILLE WA 98072

HENDRICKS & LEWIS
O. YALE LEWIS / STACIA LAY
901 FIFTH AVE SUITE 4100
SEATTLE WA 98164

SNO CO DEPT OF PUBLIC WORKS
JR MYERS
3000 ROCKEFELLER AVE M/S 604
EVERETT WA 98201

SNO CO PROSECUTOR'S OFFICE
GORDON SIVLEY
3000 ROCKEFELLER AVE M/S 504
EVERETT WA 98201

SNO CO SHERIFF'S OFFICE
TIM MALKOW
3000 ROCKEFELLER AVEM/S 606
EVERETT WA 98201

WA ST DEPT OF ECOLOGY
DAWN MARIE MAURER
3190 160TH AVE SE
BELLEVUE WA 98008

DAVE WORICK
625 S LK STEVENS RD
LK STEVENS WA 98292