



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

Hearing Examiner's Office

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

DECISION DATE: September 1, 2011
APPELLANT: Maltby Container and Recycling
FILE NO.: 11-8294
TYPE OF CASE: **Appeal of Notice of Violation – Solid Waste**
LOCATION: 20225 Broadway Avenue, Snohomish, WA 98296
DECISION (SUMMARY): **Appeal Denied**

Millie Judge
Hearing Examiner

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 12), 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, Maltby Container and Recycling ("Maltby").

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 May 10, 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. Maltby appeals on the grounds that the waste it transported to Yakima was "inert" and, therefore, exempt from the flow control regulations of SCC 7.35.125.

6. Snohomish County Sheriff's Deputy Andy Mosalsky testified at the public hearing. He is presently assigned to DPW and investigated the operations of Maltby Container and Recycling, and its compliance with the County's flow control ordinance (SCC 7.35.125). For a period of several months, Deputy Mosalsky had their operations under surveillance from a private property next door.

He did so to gain an understanding of their operations. On May 9, 2011, Deputy Mosalsky arrived at the Maltby site in Snohomish in the afternoon and watched workers there load a trailer with solid waste that included materials such as mattresses, roofing materials, hangars, spray bottles and other household goods, sheets of plastic, tarps and wood. He photographed what he saw. (See Exhibits 10-1(a) through (f)). He testified that the materials he saw being loaded into the trailer were not "inert" wastes as defined in the County Code. He testified that the workers finished loading the trailer around 2:00 p.m. He stayed and watched their operations until around 3:30 p.m. when he left. During that time he took numerous photographs of the operations.

Deputy Mosalsky returned early the next morning on May 10, 2011 at 1:50 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. A driver showed up at 2:16 a.m. and inspected the load. Deputy Mosalsky verified that the license on the trailer was the same one as he had seen parked in that location the day before when he was there (license No. 8054 VP). Deputy Mosalsky testified that the trailer was in excess of ten tons in gross weight. He followed it all the way to Yakima, where it entered the Anderson landfill, taking photographs of the truck and trip along the way. After it entered the site, he did not see the trailer being unloaded at the Anderson facility. (Exhibits 10-1(g) through (p)) He stated that the truck was definitely loaded, given the slow speeds it had going up numerous grades as they went over the mountains and hills. He also testified that he has experience as a commercial driver and knows how trucks operate when loaded.

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. Myers 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. Myers testified that he searched all County Solid Waste facility records for receipts from Maltby Container and Recycling on or around May 10, 2011, and found none. Mr. Myers further testified that he checked the records of the Anderson Landfill in Yakima with the Yakima County Health District and learned that it is a "rock and demolition pits limited purpose landfill facility." (Exhibit 10-2-1) Mr. Myers testified that although the Anderson landfill accepts inert waste, it also accepts other types of waste (such as wood waste and construction waste) and, therefore, it does not qualify as an acceptable inert waste deposit site under the exemption to the County's regulations.

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 photographs taken by Deputy Mosalsky in the present case. She stated that she observed materials being loaded into the trailer that cannot be classified as "inert." She stated that looking at Exhibit 10-1(a), it shows that they were loading plastics, cardboard, metals that aren't stainless and textiles. These items are flammable, degrade and decompose. They can produce methane gas. Plastics can produce leachate of BSP and other carcinogens. On cross-examination, Ms. Maurer noted that the cardboard could have been recycled. She stated that there are three inert waste materials within the County.

9. Tony McAuliffe, owner of Maltby Container and Recycling, testified that he is a recycler. He stated that he knows what "inert waste" is (giving examples of brick, rock and the like) and stated that the load they hauled to the Anderson landfill only contained inert waste, which he says they use as daily cover for their operations. (Exhibit 8-5) On cross-examination, he testified that the load in question which was photographed by Deputy Mosalsky was not completed. He stated that they had more to do and denied that it was ready to ship. He noted that their processing pad is only 100 by 100 in size, and isn't very large. If their site gets overloaded, they can move materials to two other facilities until they can process it. However, he offered no evidence in support of his claim relating to the load.
10. Paul Grass, project coordinator for Maltby, testified about their recycling sorting process. He described their process of dumping and sorting the waste by hand into commodity piles. He stated that it was not unusual to load a trailer with mixed waste. They tarp it to keep wood waste dry, because their wood recycler (Kimberly Clark) will not take wet wood. They weigh the loads and hand crank the air bags. He stated that the photograph in Exhibit 10-1(a) looks like an unsorted load to him. Finally, Mr. Grass testified that they would never take a load like the one shown in Exhibit 10-1(a) to a landfill, because it is too heavy and expensive to do so.
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, Maltby is charged with violating SCC 7.35.125, for removing solid waste from Snohomish County to a dump site at the Anderson Landfill in Yakima, Washington. The Hearing Examiner finds that DPW has proven the charge by a clear preponderance of the evidence.

The evidence in the record shows that on May 9, 2011, Maltby 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 simply “inert waste” materials. (Exhibits 10-1(a) through (f), 10-2, 10-3; Testimony of Witnesses Mosalsky, Myers, and Maurer). Maltby removed said solid wastes from the County on the morning of May 10, 2011, and dumped it at the Anderson Landfill, a limited landfill facility in Yakima. (Id.)

Maltby attempted to claim that further processing of the trailer occurred after it was fully loaded and weighed on May 9, 2011, between the hours of 3 p.m. and May 10, 2011 at 1:50 a.m., however they produced no evidence in support of this allegation. Maltby next attempted to argue that the load consisted of only “inert materials”, however, the evidence that was produced was the County’s evidence in the form of photographs taken by Deputy Mosalsky showing mixed waste were in the trailer. (Exhibit 10-1) Even if the materials had been inert, the Anderson Landfill does not meet the County’s inert landfill regulations as found in SCC 7.35.125(5), because it accepts more than simply inert waste. Accordingly, the exemption does not apply. The Hearing Examiner concludes that a preponderance of the evidence in the record supports a finding that the load consisted of mixed solid wastes, which cannot be dumped outside of Snohomish County. Accordingly, the Examiner concludes that 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 SCC has occurred, DPW properly imposed a civil penalty. The evidence in the record

shows by a preponderance 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 \$1,500.00 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 1st day of September, 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 Andy Mosalsky

<p>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.</p>

PARTIES OF RECORD REGISTER
MALTBY CONTAINER 11 8294
DPW APPEAL – VIOLATION NOTICE

MALTBY CONTAINER & RECYCLING
TONY MCAULIFFE & PAUL GRASS
PO BOX 1565
SNOHOMISH WA 98291

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

DEPT OF PUBLIC WORKS
JR MYERS
3000 ROCKEFELLER AVE M/S 607
EVERETT WA 98201

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

SNO CO SHERIFF'S OFFICE
ANDY MOSALSKY
3000 ROCKEFELLER AVEM/S 606
EVERETT WA 98201

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