

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

In the Matter of the Enforcement)	
of Notices and Orders to Abate)	PL 08-0688
)	PL 10-0199
AVIS LLC, SKAGIT HILL)	
RECYCLING and SCOTT WALDAL)	FINAL ORDER ON
)	CIVIL PENALTIES
Respondents.)	
)	
v.)	
)	
SKAGIT COUNTY,)	
)	
Petitioners.)	
_____)	

On January 25, 2012, a hearing on the assessment of civil penalties was reconvened at the Board of County Commissioners Hearing Room. The penalties relate to a Notice and Order to Abate issued November 13, 2008 (hereinafter NOA#1), and a Notice and Order to Abate issued May 5, 2010 (hereinafter NOA#2).

The Notices and Orders were issued to Avis LLC, Skagit Hill Recycling and Scott Waldal (collectively hereinafter Waldal). They were the subject of an extended appeal hearing held over eleven days in June and July of 2010. The Examiner ultimately affirmed seven of the violations asserted -- three from NOA #1 and four from NOA#2).

In the Examiner's decision, dated August 23, 2010, he declined to assess penalties, but provided for a new hearing to be held on the issue "should any determination of violation become final and the County elects to pursue enforcement of civil penalties."

On appeal, the Commissioners ruled that no grandfather rights covering the activities in question exist. The Examiner's decision that violations were committed without land use and building permits was upheld by both the Commissioners and the Superior Court. No further appeals were made. In November of 2011, the County requested a hearing on the issuance of civil penalties.

The penalty hearing was initially convened on January 11, 2012, at which time Waldal declined to participate, relying on his "fifth amendment rights." He cited criminal charges which had been lodged against him for dumping activities on August 17 and 18, 2010. The Examiner allowed the County to go ahead and present its case for the amount of penalties to be assessed, without calling Waldal as a witness.

The Examiner interpreted Waldal's action as, in effect, a motion to delay the penalty proceedings until the criminal charges against him have been resolved. The Examiner took that

proposition under advisement. On January 19, 2012, the Examiner, in a separate Order, denied Waldal's "motion."

Having concluded that any testimony Waldal might choose to give would not be given under compulsion, the Examiner reconvened the penalty hearing on January 25, 2010, to provide Waldal another opportunity to present a defense and to cross-examine the County's witnesses.

At the beginning of the January 25, 2012 hearing session, Waldal moved to dismiss asserting that the Hearing Examiner has a conflict of interest. Waldal's argument was that he (Waldal) was formerly represented by an attorney who sometimes serves as a hearing examiner pro tempore for Skagit County. The attorney in question has had no involvement in the instant proceedings.

The Examiner explained that the functions of the various persons who serve the County from time to time as hearing examiners are completely separate and involve no communication among them about the cases they handle. Waldal's motion was denied.

In these penalty proceedings, Waldal represented himself. The County was represented by Arne Denny, Deputy Prosecuting Attorney. The County's witnesses were Matt Kaufman, County Environmental Health Specialist, and Tim Devries, County Building Official and Enforcement Officer. Waldal testified and argued on his own behalf. He presented no other witnesses.

FINDINGS

1. The activities which are the subject of this proceeding concern the use of property that was historically used as a gravel pit. (P10465). It is located at 7705 State Route 9, about one-half mile north of Sedro Woolley,

2. The violations that Waldal was found to have committed were connected to the unpermitted operation of a landfill/recycling facility. These illegalities were violations of the land use and building codes, separate and distinct from asserted violations of regulations enforced by the Health Department.

3. The violations for which penalties are sought are as follows:

NOA#1 (November 13, 2008)

- (1) Operation of a use, a landfill/recycling facility that (1) is not permitted and (2) does not qualify as a nonconforming use. (SCC 14.16.320)
- (2) Placement of an office (trailer) without a building permit. (SCC 15.04 and IBC 105.1)
- (3) Occupancy of a structure without a certificate of occupancy. (SCC 15.04 and IBC 105.1)

NOA#2 (May 5, 2010)

- (1) Grading without a valid grading permit (SCC 15.04, IBC J103.1)
- (2) Relocation of a structure without a building permit. (SCC15.04 and IBC 105.1)
- (3) Unpermitted sale of materials imported to the property. (SCC14.16.320)

(4) Maintaining a sign advertising sale of materials not permitted to be sold. (SCC 14.16.820)

4. The acts of remediation ordered to correct the violations were:

NOA#1

(1) Immediately discontinue operation of the landfill/recycling facility; immediately discontinue acceptance of any material other than clean dirt that will be used to fill the quarry; remove all stockpiles of concrete, asphalt, dirt, fill, wood etc. from the property no later than December 15, 2008.

(2) and (3) Submit a complete building permit application by December 15, 2008 or remove the structure by that date.

NOA#2

(1) Provide a complete application for a grading permit that applies to the recent grading within 30 days of the date of this notice and obtain the required permit for such grading.

Discontinue grading until the permit is issued.

(2) Provide a completed application for a building permit within 30 days of this notice and obtain the required permit.

(3) Immediately discontinue sales of materials imported to the property

(4) Remove the sign advertising recycled dirt, rock and bark within 5 days after service of this notice.

5. As to remediation of the violations, the evidence shows the following:

NOA#1

(1) Based on photographic evidence dated December 28, 2011, the facility does not appear to be in active operation. However, as of that date, all stockpiles of imported waste had not been removed from the site. From the "immediate" compliance date set with the issuance of the NOA on November 13, 2008 to December 28, 2011, the violation continued for 1,143 days.

(2) and (3) The need for a building permit and a certificate of occupancy was removed when the office (trailer) was removed. The compliance date for applying for a permit or removing the office (trailer) was stated in the NOA as December 15, 2008. The record shows that this structure was removed from its original site sometime between July 31, 2009 and September 17, 2009. It was then relocated to the northern portion of the property. The violation was shown to have continued until at least July 31, 2009, or a total of 228 days.

NOA#2

(1) No grading permit had been applied for as of the date of the instant hearing. In these penalty proceedings, however, the County presented no evidence that grading was, in fact, carried on at the site after it was observed on April 10, 2010.

(2) The office (trailer) was removed by May 4, 2011. However, the record does not show the precise date of its removal. The office (trailer) was known to be in place as of conclusion of the hearing on July 21, 2010. The NOV called for an application for building permit for it within 30

days after service of the notice (June 3, 2010). Between June 3 and July 21, 2010, 48 days elapsed.

(3) A sign advertising recycling remained in place on the site on December 28, 2011. Thus the operation, as of that date, was still holding itself out as open for business. Whether or not business was then actually being conducted from the site, the landfill/recycling facility had not as of that date been fully remediated.

(4) The sign for which the violation was issued has been removed. It was still in place on July 21, 2010. The County compliance date was June 3, 2010, so a total of 34 days of violation were proven.

6. Waldal called no witnesses. He testified on his own behalf. The bulk of his testimony was directed toward re-argument of the substantive case that has been decided against him.

7. However, he did state that there have been no operations at the site for a year and 1/2 and that no sales from the site have been made since the 2010 hearings ended. He pointed out that access to the site has been closed off for over a year, and he said that inquiries about access permits did not go further because they were thwarted at the counter.

8. Notwithstanding the moribund nature of the business at present, the record is clear that the results of Waldal's illegal operations have not been fully remediated. The record is also clear that no applications for permits in pursuit of remediation have been filed by Waldal or his company since the 2010 hearings concluded.

CONCLUSIONS

1. The Hearing Examiner has jurisdiction over the subject matter of this appeal. SCC 14.44.120.

2. SCC 14.44.030 provides for the assessment of civil penalties against anyone who violates SCC Titles 14 or 15. The violations in question have been affirmed on appeal. The stay of enforcement during appeals (SCC 14.44.140) is no longer in effect. Accordingly, civil penalties may now appropriately be assessed.

3. The Code states that violators "shall be subject to a civil penalty in an amount of \$100 per day for each continuous violation," and that such penalties shall continue to accumulate "until such violation is corrected." SCC 14.44.030(2)

4. In his decision of August 23, 2010, the Examiner noted that civil penalties accrue for each day that a violation continues past the required compliance date and that it is possible for penalties to accumulate while an appeal is pursued. He held that an appellant decides not to comply with an NOA at his own peril during the pendency of an appeal.

5. In evaluating the violations, the Examiner has concluded that Violation (1) of NOA#1 and Violation (3) of NOA#2 are essentially the same violation (See Conclusion 26, Decision of August 23, 2010). Therefore, it is not appropriate to assess penalties for both. The activity described in NOA#2, Violation (3) does not describe a new and separate violation. The sale of imported materials is just another aspect of the illegal operation of the business.

6. Likewise, for the purposes of penalty assessment, Violations (2) and (3) of NOA#1 are treated as a single violation. These two aspects of permission (building permit and certificate of occupancy) for using a structure are part of one process. Significantly, the NOA provides a single remedy for both violations -- submitting a building permit application or removing the structure.

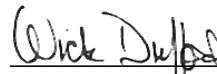
7. On the record made in this latest chapter of these proceedings, the Examiner concludes that civil penalties have accrued as follows:

NOA#1 (1)	\$114,300
(2)(3)	22,800
NOA#2(1)	100
(2)	4,800
(3)	0 (included within penalty for NOA#1(1))
(4)	<u>3,400</u>
	\$ 145,400

ORDER

At this time, \$145,400 in penalties is due and owing from Appellant Waldal. Waldal is ordered to make payment of such penalties to the County within 30 days of the date of this decision. If payment is not made within that time frame, the County may take action pursuant to SCC 14.44.140(1) and/or SCC 14.44.160.

DONE this 13th day of February, 2012.



Wick Dufford, Hearing Examiner

Reconsideration/Appeal -- A Request for Reconsideration may be filed with PDS within 10 days of this decision (SCC 14.06.180). The decision may be appealed to the Board of County Commissioners within 14 days of the date of decision or decision on reconsideration, if applicable. (SCC 14.06.110(13)).