

1 **POLLUTION CONTROL HEARINGS BOARD**
2 **STATE OF WASHINGTON**

3 CATON LANDFILL & RECYCLING LLC,
4 a Washington limited liability company,

5 Appellant,

6 v.

7 YAKIMA HEALTH DISTRICT,

8 Respondent.

PCHB No. 23-053

AMENDED ORDER DENYING
APPELLANT'S ALTERNATIVE
MOTION TO STAY

9 **I. INTRODUCTION**

10 On September 21, 2023, Caton Landfill & Recycling, LLC, (Caton Landfill), filed an
11 appeal with the Pollution Control Hearings Board (Board), challenging the appeal decision
12 denying renewal of the Caton Limited Purpose Landfill Permit (Permit) issued by Yakima
13 Health District (YHD) on August 23, 2023.

14 On April 16, 2024, YHD filed Respondent's Motion for Permanent Injunction based on
15 RCW 7.40.010, .020, WAC 246-10-403 and CR 65(a). Caton Landfill filed a Response and
16 supporting declarations, and YHD filed a Reply.

17 On May 10, 2024, Caton Landfill filed Appellant's Alternative Motion to Stay (Motion)
18 seeking a stay of the effectiveness of the YHD's orders pursuant to RCW 43.21B.320 and
19 WAC 371-08-415(4) for the duration of this appeal. YHD filed a Response and Caton Landfill
20 filed a Reply.

21
AMENDED ORDER DENYING APPELLANT'S
ALTERNATIVE MOTION TO STAY
PCHB No. 23-053
August 5, 2024

1 The Pollution Control Hearings Board (Board) deciding this matter was comprised of
2 Board Chair Michelle Gonzalez, and Member Christopher G. Swanson. Appellant was
3 represented by attorneys John Hempelmann and Christine J. Lee. Respondent was represented
4 by attorney Christopher Mertens.

5 The Board reviewed the following materials in deliberating on the Motion:

- 6 1. Respondent’s Motion for Permanent Injunction;
- 7 2. Memorandum in Support of Respondent’s Motion for Permanent
8 Injunction;
- 9 3. Declaration of Christopher J. Mertens in Support of Respondent’s Motion
10 for Permanent Injunction, with Ex. A;
- 11 4. Declaration of Shawn Magee in Support of Respondent’s Motion for
12 Permanent Injunction, with Exs. A – Q (*Magee Decl.*);
- 13 5. Appellant’s Response to Respondent’s Motion for Permanent Injunction;
- 14 6. Declaration of Kris Strutner in Support of Response to Motion for
15 Permanent Injunction, with Ex. A;
- 16 7. Declaration of Randy Caton in Support of Response to Motion for
17 Permanent Injunction, with Ex. A;
- 18 8. Declaration of Don Caton in Support of Response to Motion for
19 Permanent Injunction, with Ex. A;
- 20 9. Declaration of Todd Thalmer in Support of Response to Motion for
21 Permanent Injunction, with Exs. A – F;

1 On April 27, 2023, YHD denied Caton Landfill’s renewal of its solid waste permit that was
2 about to expire on April 30, 2023. *Id.* ¶ 5, *Ex. D*, pp. 66-70. YHD cited many deficiencies,
3 including requiring a report by certified professionals to re-evaluate the facility’s waste
4 characterization and potential for explosive gas generation due to recent fires at the facility. *Id.*,
5 *Ex. D*, pp. 66-67.

6 In addition, YHD found Caton Landfill’s Conditional Use Permit (CUP) and its air
7 permit had a limit of waste acceptance of fifty thousand cubic yards; and, in 2022, it had
8 accepted more than half a million cubic yards in one year. *Id.*, *Ex. D*, p. 67. Caton Landfill had
9 not provided documentation showing compliance with the Yakima Regional Clean Air Agency
10 (YRCAA) air permit. Because it was out of compliance with its YRCAA permit, YHD
11 determined it was in violation of its solid waste permit under WAC 173-350-040(3). *Id.*, *Ex. D*,
12 p. 67.

13 YHD also identified wildland fire risk due to brush placed in areas that were not
14 approved and not permitted for waste storage. *Id.*, *Ex. D*, p. 67. YHD indicated they had
15 provided several directives to mitigate the issue, which had not been resolved. *Id.* Also, because
16 there had been fires at the facility, YHD required a fire response plan, which had not been
17 provided. *Id.*, *Ex. D*, pp. 67-68.

18 YHD and Washington State Department of Ecology (Ecology) had previously requested
19 documents from Caton Landfill, noting its facility’s activities had increased since its original
20 permit had been approved in 2008. *Id.*, *Ex. D*, p. 69. Because of this failure to provide
21 documentation, YHD denied the renewal of Caton Landfill’s solid waste permit. YHD stated:

1 Effective May 1, 2023, Caton LPL must cease operations due to the insufficient
2 information provided in this submittal. Operations must remain closed until YHD
receives, reviews, and approves the required information from the Caton LPL.

3

4 Because the Caton LPL is not operating a waste recycling facility this denial will
be effective immediately. (WAC 173-350-710(7)(c)).

5 *Id., Ex. D, p. 69.*

6 On April 28, 2023, Caton Landfill, through counsel, responded to the denial of the Permit
7 and requested YHD’s reconsideration of their decision. *Id., Ex. E, pp. 72-74.* Counsel noted two
8 District Inspection Reports for the Landfill had not identified any risk of public harm and
9 advised Shawn Magee, Environmental Health Director for YHD, that many of the issues raised
10 in the April 27, 2023, letter had been addressed or were in the process of being addressed. *Id.,*
11 *Ex. E, p. 72.*

12 Caton Landfill further requested interim relief in the form of a temporary permit pending
13 the YHD’s hearing and any appeal to the Board. *Id., Ex. E, pp. 72-73.* Caton Landfill’s counsel
14 noted that the facility “receives, processes and sends out many metals and other waste for further
15 recycling.” Therefore, counsel argued the Caton Landfill should be allowed to continue operating
16 pending the appeal pursuant to an exception for waste recycling facilities, WAC 173-350-
17 710(7)(c). *Id., Ex. E, p. 73.*

18 Magee granted the request for reconsideration and allowed Caton Landfill to submit
19 documentation to Ecology. *Magee Decl. ¶ 6.*

1 On May 23, 2023, YRCAA informed Caton Landfill that as a result of the fires that
2 occurred at the landfill in 2022 and more specifically on December 11, 2022, YRCAA was
3 joining other agencies in reviewing and inspecting the May 23, 1997, Order of Approval (Permit)
4 for demolition waste.. *Id.* ¶ 7, *Ex, F, p. 76.*

5 YRCAA stated that, according to annual registration reports, materials received in
6 CY2020, CY2021, and CY2022 by Caton Landfill exceeded the amount allowed under the
7 Permit. *Id.*, ¶ 7, *Ex, F, p. 76.* YRCAA notified Canton Landfill that it was in violation of these
8 permit conditions and that it must submit on or before June 30, 2023: 1) A complete New Source
9 Review application, 2) A report identifying all materials accepted by the landfill since January 1,
10 2020, including the specific location within the landfill, 3) A complete calculated actual quantity
11 of the air emissions for the criteria and toxic air pollutants from the facility for each year starting
12 January 1, 2020. *Id.*, *Ex, F, p. 76.*

13 On June 16, 2023, Yakima County Planning (YCP) notified Canton Landfill that it was
14 operating outside the boundary identified in the 1997 Special Property Use decision and SEPA
15 Threshold Determination. *Id.* ¶ 8, *Ex. G, pp. 79-101.* Regulators requested a surveyed drawing of
16 the “approved” boundary of the landfill, and detailed locations where all waste had been
17 deposited on the site and all other unpermitted land disturbances associated with the landfill. *Id.*,
18 *Ex. G, p. 87.* YCP informed Caton Landfill that a permit modification to the existing permit
19 approvals may be required. *Id.*, *Ex. G, p. 87.*

20 On June 23, 2023, Cole Provence, Ecology’s Facilities Specialist, sent a letter to Magee
21 stating Ecology had reviewed Caton Landfill’s May 31, 2023, Permit Application and

1 determined they failed to meet the requirements of WAC 173-350. *Id., Ex. H, p. 103.* Provence
2 indicated that Ecology had provided details to Caton Landfill and YHD about what is required
3 under WAC 173-350-400. Ecology noted that the facility was operating outside of the CUP
4 boundaries, which YCP determined. Ecology also noted YRCAA’s Notice of Violation for
5 exceeding the amounts of waste allowed under the landfill permit. *Id., Ex. H, p. 104.* Ecology
6 determined that Caton Landfill’s documents did not meet regulatory requirements and the facility
7 was not in compliance with WAC 173-350. Ecology further determined Caton Landfill should
8 cease operations when their current permit expires. *Id., Ex. H, p. 104.*

9 On June 27, 2023, YHD sent a letter to Canton Landfill regarding the permit renewal
10 application submitted on May 31, 2023. *Id., Ex. I, pp. 106-110.* YHD denied renewal of the
11 Caton Landfill Permit to operate a limited purpose landfill, citing the determination of Caton
12 Landfill’s non-compliance with their: (1) YRCAA air permit, (2) YCP CUP, and (3) failure to
13 meet WAC 173-350, as determined by Ecology. *Id., Ex. I, p. 106.*

14 On June 29, 2023, Caton Landfill responded to the June 27, 2023, denial of the facility’s
15 Permit, and requested reconsideration of the YHD decision and a hearing before the Health
16 District. *Id. p. 112.* Caton Landfill’s counsel also argued that the facility was a waste recycling
17 facility and therefore entitled to the automatic stay provided by WAC 173-350-710(7)(c). *Id.,*
18 *Ex. J, p. 113.*

19 On July 3, 2023, YHD issued a letter notifying Caton Landfill they were in violation of
20 RCW 70A.205.195, for operating without a valid permit, and again requested it cease operations,
21 rejecting the notion Caton Landfill could override a YHD decision. *Id., Ex. K, p. 116.* On July 5,

1 2023, Randy Caton responded to YHD's notice, asserting Caton Landfill was operating within
2 their right, the automatic stay under WAC 173-350-710(c) applied, and the Permit remained
3 valid during the Appeal process. *Id., Ex. L, p. 119.*

4 On July 25, 2023, YHD's Hearing Examiner conducted a hearing. On August 23, 2023,
5 the Hearing Examiner issued a decision affirming the denial of Caton Landfill's Solid Waste
6 Permit. *Id., Ex. M, p. 121-128.* The Hearing Examiner found Caton Landfill had not met several
7 regulatory compliance requirements. For example, Caton Landfill did not have: monitoring
8 standard procedures in place, any mechanism for immediate notification of smoke or steam
9 release, a detailed firefighting plan, a landfill design field plan and storm water control in
10 compliance with the current boundary, air monitoring sampling or analysis, and sufficient
11 financial assurance in the event the facility needed to be closed. *Id., Ex. M, p. 125.* The Hearing
12 Examiner concluded that YHD made a proper decision to deny the renewal of the Permit. *Id.,*
13 *Ex M, p. 126.* The Hearing Examiner stated that he would not address the issue of whether Caton
14 Landfill is entitled to an automatic stay under WAC 173-350-710(7)(c), as this was beyond the
15 authority of a Health Officer. *Id., Ex. M, p. 127.*

16 On September 21, 2023, Caton Landfill appealed the YHD's decision to deny their
17 Permit. A hearing is scheduled before this Board on December 9 through 11, 2024. *Id., Ex. O.,*
18 *p. 142.* On March 26, 2024, Caton Landfill submitted a 2023 groundwater report by email to
19 Luke LeMond, LHG, Hydrogeologist, from the Solid Waste Management Program for Ecology.
20 *Magee Second Decl., Ex. R., p. 4.* On March 27, 2024, LeMond responded via email to Caton
21 Landfill's submission, including a carbon copy to Magee, informing Appellants that they were

1 currently operating without a valid permit. *Id., Ex. R., p. 4.* LeMond further explained that Caton
2 Landfill was not a waste recycling facility, but a landfill, and for this reason was not afforded a
3 stay during appeals as prescribed by WAC 173-350-710(c)(7). *Id., Ex. R., p. 4.* LeMond stated
4 Caton Landfill was notified that its continued waste disposal at their facility was now considered
5 illegal dumping under RCW 70A.204.195. *Id., Ex. R., p. 4.*

6 YHD asserts Caton Landfill is not a waste recycling facility, and that it poses a risk to
7 public health and the environment. *Id., Ex. S., p. 6.* According to YHD, Caton Landfill cannot be
8 considered a waste recycling facility because it has never identified or requested a recycling
9 process or procedure for review, nor included recycling in its operations manuals for permit
10 renewals since 1997. *Id., Ex. S., p. 6.* The facility lacks a procedure for separating recyclable
11 materials from the waste stream, which would require local health jurisdiction approval as per
12 WAC regulations. *Id., Ex. S., p. 6.* Additionally, annual reports from 2018-2022 show negligible
13 recycling activity, and the facility lacks the infrastructure for recycling, sorting, material
14 recovery, or storage. *Id., Ex. S., p. 6.* The 2023 Annual Report also indicates non-compliance
15 with stockpiling regulations without the necessary permits. *Id., Ex. S., p. 6.* YHD stated that
16 Caton Landfill poses significant risks to public health and the environment due to its failure to
17 comply with WAC 173-350 landfill standards. *Id., Ex. S., p. 8.* Despite orders to cease operations,
18 Caton Landfill continues to operate, increasing the risks of groundwater contamination,
19 hazardous air emissions, and land pollution. *Id., Ex. S., p. 8.* Fires at the facility, including an
20 unreported fire in early 2022 and a major fire in December 2022, underscore the immediate
21 dangers. *Id., Ex. S., p. 8.* The facility lacks an adequate safety and fire response plan, and a large

1 pile of woody debris outside the permitted area poses an imminent fire hazard. *Id.*, *Ex. S*, *p. 8*.
2 YHD reasserts that Caton Landfill’s continued operation of the landfill poses a very probable
3 threat to human health and the environment. *Id.*, *Ex. S*, *p. 8*.

4 Caton Landfill, in support of its Motion, provided the declaration of Kris Strutner, who
5 owns and operates Naches Wenas Sand and Gravel, LLC, which performs and controls all
6 aspects of facility operations, excavation, Limited Purpose Waste placement, and soil covering at
7 Caton Landfill. *Strutner Decl.* ¶ 2. Strutner has personal knowledge that Canton Landfill accepts
8 solid waste from multiple locations in the northwest. *Id.* ¶ 3. Caton Landfill recycles materials
9 and reuses materials at the Landfill and sells materials for reuse and recycling. Strutner loaded
10 hauled and sold 132,159 pounds of various metals sorted from solid waste. *Id.* Caton filed a 2023
11 Annual Report with the YHD documenting recycling. *Id.* Caton Landfill also reuses waste
12 materials such as salvaged chip rock for road maintenance and ferrous/ nonferrous metals. As a
13 former customer of Caton Landfill, Stratner stated he has bought many apple bins from the
14 Landfill. *Id.*

15 Stratner also stated he worked with the Landfill Manager, Randy Caton, in 2022 - 2023 to
16 submit required documents that made up the Caton Limited Purpose Landfill Comprehensive
17 Safety, Inspection, and Operations Package to the YHD. *Id.* ¶ 5. Stratner stated that since Fall
18 2023, the YHD has refused to review any additional documents from Caton Landfill. Stratner
19 provided documents which he asserts show that other Yakima County-owned landfills have
20 committed severe regulatory violations and have not been subject to the same scrutiny. *Id.* ¶ 9,
21 *Exs. A-F*.

1 Naomi Goff is a Principal Environmental Compliance Specialist at GeoEngineers, Inc.
2 and provided a declaration on behalf of Caton Landfill. GeoEngineers was retained by Caton
3 Landfill to address air permit compliance questions raised by the YRCAA. *Goff Decl.* ¶ 3. Goff
4 stated her firm is in the process of gathering information to assess compliance and assist the
5 facility to resolve issues with the air permit. *Id.*

6 Todd Thalhamer is a professional civil engineer in California and was retained by Caton
7 Landfill to conduct a regulatory inspection and visited the facility on April 25, 2024. *Thalmer*
8 *Decl.* ¶ 4. He reviewed the facility’s landfill operations, including Spreading and Compacting,
9 Access Road, Dust Control, Run-on/Run-off Control, Depths of Fill, Intermediate and Daily
10 Cover, Fire Control and Fire Prevention, Employee Weighting Facilities, Unloading Area, Size
11 of Working Face, Odors, and Slope Instability. He also monitored air conditions and observed
12 one documentable odor while walking on the landfill. *Id.* Thalhamer concluded that Caton
13 Landfill was in good operating condition and does not pose a probable threat to human health
14 and the environment. *Id.* ¶ 5.

15 Canton Landfill’s Chief Financial Officer, Don Caton, states that the pages of the
16 “Destination and Final Use of Outgoing Materials Collected for Recycling or Composting,” were
17 left blank mistakenly as a result of oversight and improper form training by previous owners.
18 *D. Caton Decl.* ¶ 3, *Ex. A, p. 9.* Don Caton claims that he had followed the same format for
19 reporting that his mother, Charlotte Caton, had previously followed before her retirement; he
20 further contends that he only learned last year [2023] to complete the portion for Destination and
21

1 Final Use of Outgoing Materials Collected for Recycling or Composting. *Id.* ¶ 3. Don Caton also
2 states that the incomplete form was never questioned after submission. *Id.*

3 III. ANALYSIS

4 A. MOTION TO STAY STANDARD

5 The Board is authorized to stay the effectiveness of an order until a decision is rendered
6 on the merits. RCW 43.21B.320(3); WAC 371-08-415. In order to obtain a stay under these
7 provisions, the appealing party must make a prima facie case for issuance of the stay by showing
8 either: (1) a likelihood of success on the merits of the appeal, or (2) irreparable harm. WAC 371-
9 08-415(4). If an appellant is able to make a prima facie case, the Board is required to grant the
10 stay unless the respondent shows either: (1) a substantial probability of success on the merits, or
11 (2) a likelihood of success on the merits accompanied with an overriding public interest which
12 justifies denial of the stay. *Id.*

13 A stay is akin to a preliminary injunction and is not an adjudication on the merits, but
14 rather a device for preserving the status quo and preventing irreparable loss of rights before the
15 judgment. *Coal. to Protect Puget Sound Habitat v. Dep't of Ecology*, PCHB No. 14-047, p. 6
16 (June 23, 2014, Order Denying Stay). “An injunction is an extraordinary equitable remedy
17 designed to prevent serious harm.” *Kucera v. Dept. of Transp.*, 140 Wn.2d 200, 221, 995 P.2d 63
18 (2000) (quoting *Tyler Pipe Indus. v. Dept. of Revenue*, 96 Wn.2d 785, 796, 638 P.2d 1213
19 (1982)).

20 When a stay is requested, the moving party must show, at a minimum, that the status quo
21 must be maintained until a decision is made upon the merits. Evaluation of the likely outcome on

1 the merits is based on a sliding scale that balances the comparative injuries that the parties and
2 non-parties may suffer if a stay is granted or denied. *Airport Communities Coal. v. Dep't of*
3 *Ecology*, PCHB No. 01-160, p. 3 (Dec. 17, 2001, Order Grant. Mot. to Stay). Evaluating relative
4 harm is consistent with the analogous inquiry undertaken when a litigant seeks a preliminary
5 injunction. *Ardagh Glass, Inc. v. Puget Sound Clean Air Agency*, PCHB No. 15-120, p. 7
6 (Apr. 27, 2016, Order Den. Mot. For Stay and Part. Sum. J.). A reviewing body is not to
7 adjudicate the ultimate rights in the case when considering a request for a preliminary injunction.
8 *Kucera*, 140 Wn.2d 200 (2000) (citing *Rabon v. City of Seattle*, 135 Wn. 2d 278, 285, 957 P.2d
9 621 (1998)).

10 **B. PRIMA FACIE CASE**

11 The Board has authority to issue a stay under RCW 43.21B.320(3); WAC 371-08-415.
12 YHD initially filed a motion for permanent injunction to stop Caton Landfill from continuing to
13 operate its facility without a valid permit.² Subsequently, Caton Landfill filed an alternative
14 motion to stay the effectiveness of the YHD order denying renewal of the facility's solid waste
15 Permit. The Board will address the Alternative Motion to Stay under RCW 43.21B.320(3). The
16 issue of whether Caton Landfill should be enjoined from continuing to operate pending this
17 appeal is more appropriately addressed through the stay motion and the Board will not rule on
18 YHD's Motion for Permanent Injunction.

19 ² The Yakima Health District also filed an injunction with the Yakima County Superior Court to enjoin Caton
20 Landfill from continuing to operate their facility without a permit. Mertens Decl. ISO Respondent's Mo. For
21 Permanent Injunction, Ex. A. On March 15, 2024, the Superior Court issued an Order to Dismiss, determining the
court's authority to exercise jurisdiction over the case was limited until the Board has had an opportunity to resolve
the factual question of whether Caton Landfill was entitled to a stay under RCW 70A.205.155. Id, p. 2.

1 1. Likelihood of Success on the Merits

2 Under the stay analysis, Caton Landfill has the burden to demonstrate it is entitled to a
3 stay of the effectiveness of YHD’s decision to deny the facility’s permit renewal. The parties
4 raised ten issues which govern this appeal. See Prehearing Order, p. 3 (Dec. 18, 2023). Caton
5 Landfill, in its Motion, argues it is entitled to a stay of the permit denial under
6 RCW 70A.205.155 and WAC 173-350-710(7)(c). The Board has authority to issue a stay under
7 RCW 43.21B.320(3), but to the extent that Caton Landfill is arguing it is entitled to a stay under
8 RCW 70A.205.155, the Board will address this issue in its analysis.

9 If Caton Landfill qualifies as a “waste recycling facility” under RCW 70A.205.155 and
10 WAC 173-350-710(7)(c), it has the right to completion of the appeal process before YHD’s
11 denial of its license can become effective. In applying the Board’s stay provision to
12 RCW 70A.205.155, we analyze whether or not Caton Landfill has made a prima facie case by
13 showing a likelihood of success on the merits. Caton Landfill argues that it has. *Response, p. 7.*

14 The Board concludes Caton Landfill has not met a prima facie case by showing a
15 likelihood of success on the merits that it is a waste recycling facility. In making this
16 determination, the Board looks to the plain language of the RCW 70A.205.155.

17 Whenever the jurisdictional health department denies a permit or suspends a
18 permit for a solid waste disposal site, it shall, upon request of the applicant or
19 holder of the permit, grant a hearing on such denial or suspension within thirty
20 days after the request therefor is made. Notice of the hearing shall be given to all
21 interested parties, including the county or city having jurisdiction over the site and
the department. Within thirty days after the hearing, the health officer shall notify
the applicant or the holder of the permit in writing of his or her determination and
the reasons therefor. Any party aggrieved by such determination may appeal to
the pollution control hearings board by filing with the hearings board a notice of

1 appeal within thirty days after receipt of notice of the determination of the health
2 officer. The hearings board shall hold a hearing in accordance with the provisions
3 of the administrative procedure act, chapter 34.05 RCW. If the jurisdictional
4 health department denies a permit renewal or suspends a permit for an operating
5 waste recycling facility that receives waste from more than one city or county,
6 and the applicant or holder of the permit requests a hearing or files an appeal
7 under this section, the permit denial or suspension shall not be effective until the
8 completion of the appeal process under this section, unless the jurisdictional
9 health department declares that continued operation of the waste recycling facility
10 poses a very probable threat to human health and the environment.

7 (Emphasis added).

8 In reviewing the relevant definitions under RCW 70A.205.015:

9 (12) "Landfill" means a disposal facility or part of a facility at which solid
10 waste is placed in or on land and which is not a land treatment facility.

11

12 (20) "Recycling" means transforming or remanufacturing waste materials into
13 usable or marketable materials for use other than landfill disposal or incineration.

14 Caton Landfill argues it has been recycling materials; however, the CFO asserts he left
15 the pages of the reporting form, "Destination and Final Use of Outgoing Materials Collected for
16 Recycling or Composting" blank by mistake and due to lack of training or understanding of this
17 requirement. *D. Caton Decl.*, pp 2-3, ¶ 3. Whether or not such a mistake was made, the lack of
18 records supporting recycling activities, tends to weigh against Caton Landfill's assertions.

19 Caton Landfill and YHD agree that since commencing operation in 1998, Caton Landfill
20 has never reported in their Annual Reports to the Health District that they had sent out recycling
21 material from the landfill. *Magee Decl.* ¶ 23, *Ex. P*, p. 5. It was not until February 14, 2024,
when the annual report for 2023 was filed, following the permit denial and filing of this appeal,

1 that Caton Landfill submitted data on recycling material. *Id.* ¶ 24, *Ex. Q.* Again, these facts tend
2 to weigh against Caton Landfill’s assertions that it is a waste recycling facility.

3 In addition, the YHD reviewed whether Caton Landfill is a waste recycling facility and
4 listed several reasons why it is not a waste recycling facility. *Second Magee Decl.* ¶ 6, *Ex. S,*
5 *p. 2.* For example, Caton Landfill, in order to remove recyclable and reusable materials from the
6 waste stream as a recycling process, would need the approval of YHD and it would be a
7 condition within the solid waste permit. *Id., Ex. S, p. 6.* Furthermore, Caton Landfill does not
8 have a facility for recycling, sorting, material recovery, or storage. *Id., Ex. S, p. 6.* Also, based on
9 2018-2022 annual reports the facility has removed a total of 0.0783% of the total cubic yardage
10 of material brought to the facility for recycling purposes. *Id., Ex. S, p. 6.* We find the reasons
11 listed by YHD to weigh against Caton Landfill’s assertions.

12 Ecology also asserts Caton Landfill is not a waste recycling facility. *Id.* ¶ 3, *Ex. R, pp. 2-*
13 *3.* LeMond, a hydrogeologist in Ecology’s Solid Waste Management Program for the Central
14 Regional Office, stated that “[a] landfill is the opposite of a recycling facility.” He was aware of
15 Caton Landfill’s assertion it was a waste recycling facility and entitled to a stay of the permit
16 denial under WAC 173-350-710(7)(c). LeMond, however, stated that Caton Landfill was
17 operating a landfill without a permit. *Id.* We find Ecology’s assertions also weigh against Caton
18 Landfill.

19 In summary, in reviewing the facts and arguments, RCW 70A.205.155 and WAC 173-
20 350-710(7)(c), the Board concludes Caton Landfill has not presented sufficient facts to support a
21

1 likelihood of success on the merits.³ Caton Landfill did not report recycling materials until 2024,
2 and did not claim to be a waste recycling facility until the appeal before the YHD and this Board.
3 Although Caton Landfill has presented evidence it is recycling some materials, it appears to be
4 very small amounts of the landfill waste materials. Caton Landfill has failed to make a prima
5 facie case by showing a likelihood of success on the merits.

6 2. Irreparable Harm

7 Caton Landfill also asserts it has made a prima facie case by showing irreparable harm.
8 Caton Landfill has provided persuasive evidence that it will incur significant harm if the facility
9 can no longer operate during the pendency of this appeal. The Board concludes Caton Landfill
10 has shown a prima facie case by showing irreparable harm.

11 Caton Landfill had received solid waste handling permits for many years and has
12 undergone inspections. *R. Caton Decl.* ¶ 9. Caton Landfill has been cooperative in trying to meet
13 various permitting regulations. For example, Caton Landfill has worked with the YHD to update
14 its Solid Waste Operations and Maintenance Manual. *Id.* ¶¶ 10-12. Caton Landfill asserts it
15 wants to continue working with YHD, but the District has refused to work with them. In
16 addition, Caton Landfill has attempted to address issues raised by the YRCAA and Yakima
17 County. *Id.* ¶¶ 12-15.

18 Caton Landfill hired GeoEngineers, which is in the process of gathering information to
19 better understand the 1997 YRCAA permit and assess compliance and address any issues. *Goff*

20 ³ Caton Landfill did not address all of the issues in the Prehearing Order raised in this appeal, and primarily argues it
21 is a waste recycling facility and entitled to a stay of the permit denial under RCW 70A.205.155 and WAC 173-350-
710(7)(c),

1 Decl. ¶¶ 3-4. The facility is also addressing the YCP June 16, 2023, letter regarding boundary
2 discrepancies with the 1997 permit. Caton Landfill asserts it is a paperwork discrepancy and
3 seeks to resolve it through a new survey. *R. Caton Decl. ¶ 13.*

4 Caton Landfill asserts it needs to continue operating so it can pay for this appeal and
5 maintain a customer base. *Id. ¶¶ 15, 23.* It is a family operation and does not have the funding to
6 support this appeal. *Id. ¶ 23.* Although the Board has held that expenditure of funds is not
7 considered irreparable harm, the balance of harms weighs in favor of Caton Landfill. *See*
8 *Cadman Materials, Inc. v. Puget Sound Clean Air Agency and City of Kenmore*, PCHB No. 22-
9 089, p. 14, 2023 WA Env Lexis 14 (March 31, 2023). Here, YHD has not presented any contrary
10 evidence regarding harm to Caton Landfill. It is also unclear why YHD has stopped working
11 with Caton Landfill on addressing outstanding issues. The Board concludes Caton Landfill has
12 made a prima facie case for a stay by showing that it will incur irreparable harm if it cannot
13 continue to operate.

14 **C. LIKELIHOOD OF SUCCESS ON THE MERITS AND OVERRIDING**
15 **PUBLIC INTEREST**

16 Once the moving party makes a prima facie case, the Board is required to grant the stay
17 unless YHD can show either: (1) a substantial probability of success on the merits, or (2) a
18 likelihood of success on the merits accompanied with an overriding public interest which
19 justifies denial of the stay. The Board finds YHD has demonstrated a likelihood of success on the
20 merits. The Board also finds YHD has shown an overriding public interest.

1 YHD has presented persuasive evidence that Caton Landfill is not a waste recycling
2 facility, including that it has never reported recycling materials until 2024. Ecology has also
3 stated Caton Landfill is not a waste recycling facility and that a landfill is the opposite of a
4 recycling facility. Caton Landfill, in fact, has stated it is a landfill in its permitting documents
5 and there is scant evidence that it is operating a waste recycling facility. The Board finds YHD
6 has presented sufficient evidence to support its decision to deny the renewal of Caton Landfill's
7 solid waste permit by citing several deficiencies that have yet to be resolved.

8 Regarding YHD showing an overriding public interest, YHD has presented persuasive
9 evidence. YHD denied the renewal of Caton Landfill's permit because of several deficiencies.
10 YHD has ordered Caton Landfill to cease operating and asserts its continued operation without a
11 permit creates a serious risk to the environment and public interest. YHD also asserts it is
12 challenging to be on-site and give direction and oversight to a facility that is operating without a
13 permit. *Second Magee Decl., Ex. S.* Fires have occurred at the facility as recently as 2022, which
14 required YHD to conduct a review of regulatory requirements. *Id., Ex. S* Caton Landfill, for
15 example, does not have an approved fire response plan. The Board finds YHD has presented
16 sufficient evidence that the continued operation of the Caton Landfill without an authorized
17 permit from the local health district is an overriding public interest concern.

18 When ruling on a request for a stay, the Board is not deciding the merits of the underlying
19 appeal. The Board's denial of the stay is not a statement that it has determined that Caton
20 Landfill may not ultimately succeed in their challenge to the YHD's decision to deny the renewal
21 of the Permit. As the appeal process proceeds, the Board will further carefully consider Caton

1 Landfill’s arguments, witness testimony and evidence, but Caton Landfill is not entitled to a stay
2 of the denial of its permit.

3 **IV. ORDER**

4 Appellant’s Alternative Motion to Stay is DENIED.

5
6 SO ORDERED this 5th day of August 2024.

7
8 **POLLUTION CONTROL HEARINGS BOARD⁴**

9
10 

11 _____
MICHELLE GONZALEZ, Presiding Officer
Board Chair

12
13 

14 _____
CHRIS SWANSON, Board Member

15
16
17
18
19
20 _____
21 ⁴ Board decisions are effective upon being signed by two or more Board members. RCW 43.21B.100;
WAC 371-08-330(2).