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HEIDI PERCY
COUNTY CLERK
SNOHOMISH CO. WASH.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF SNOHOMISH

No. **21 2 05633 31**

DTG ENTERPRISES, INC.,
Petitioner

vs.

SNOHOMISH COUNTY DEPARTMENT OF
PUBLIC WORKS SOLID WASTE
DIVISION,

Respondent

PETITION FOR REVIEW

☐ NO FILING FEE REQUIRED
(RCW 74.08.080(3)(a))
☒ FILING FEE REQUIRED

1. The Petitioner, DTG Enterprises, Inc., whose mailing address is 22745 29th Drive SE, 2nd Floor, Bothell, WA 98021, petitions for review pursuant to RCW 34.05.510 et seq. and RCW 74.08.080, of an administrative agency decision.

2. The decision is from the Snohomish County Hearing Examiner's Office. Their address is: 3000 Rockefeller Avenue, M/S #405, Everett, WA 98201.

3. At issue is the administrative hearing decision of the Snohomish County Hearing Examiner's Office, docket number 21-100, which was issued on November 10, 2021. A copy of the decision is attached to this Petition.

4. The parties in the hearing were Petitioner herein and the Snohomish County Department of Public Works Solid Waste Division.

Petition for Review

PAGE 1

DAVID H. BLACK, ESQ.
c/o DTG Enterprises, Inc.
22745 29th Dr SE, 2nd FL
Bothell, WA 98021

Tel: (425) 549-7837 E-Mail: dblack@dtgrecycle.com

5. This Petition for Review is timely filed with the proper court. Petitioner has exhausted administrative remedies and is aggrieved by the final decision of the agency.

6. Petitioner is entitled to relief pursuant to RCW 34.05.570(3) because the Hearing Examiner's Office erred in determination of fact and conclusion of law in regards to Findings F.6, F.10, F.11, F.12, F.13, F.18, F.19, F.20, F.21, F.22, and F.23 and Conclusions C.3, C.6, C.8, C.9, C.10, C.13, and C.14.

and based on one or more of the following:

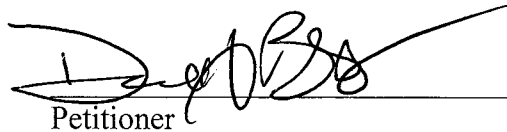
- (a) the order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;
- (b) the order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;
- (c) the agency has engaged in unlawful procedure or decision making process, or has failed to follow a prescribed procedure;
- (d) the agency has erroneously interpreted or applied the law;
- (e) the order is not supported by evidence that is substantial when viewed in light of the whole record before the court;
- (f) the agency has not decided all issues requiring resolution by the agency;
- (g) a motion to disqualify the administrative law judge was made and was properly denied or, if no motion was made, facts are shown to support the granting of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;
- (h) the order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency;
- (i) the order is arbitrary or capricious.

7. WHEREFORE, Petitioner asks the Court for judgment:

- A. Changing the administrative hearing decision and granting other relief as follows: vacating/reversing the order in total (including the fine).
- B. Awarding costs to Petitioner;

C. Awarding any further relief this Court deems proper.

DATED: 11-30-21


Petitioner

CERTIFICATE OF SERVICE

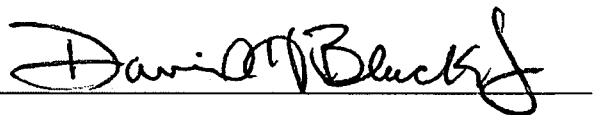
I hereby certify that on the date set forth below, arranged for service of the foregoing document upon the following persons by the method indicated:

SNOHOMISH COUNTY
DEPARTMENT OF PUBLIC
WORKS SOLID WASTE DIVISION
Attn: Jon Greninger
3000 Rockefeller Ave,
Everett, WA 98201

Method(s) of Service:

- ☒ Process Server/Hand Delivery/Legal Messenger
☐ First Class U.S. Mail, Postage Pre-paid
☒ Electronic Mail (by written agreement)
☐ Facsimile (as requested and/or by rule)
☐ CM/ECF filing

Dated this 30th day of November, 2021.

By 

David H. Black, WSBA No. 29183

(425) 549-7837

E-Mail: dblack@dtgreecycle.com

BEFORE THE HEARING EXAMINER
IN AND FOR THE COUNTY OF SNOHOMISH

In Re Appeal of DTG Enterprises, Inc.,

No. 21-100

Appellant,

DECISION AFFIRMING NOTICE OF
VIOLATION AND CIVIL PENALTY

Snohomish County Department of
Public Works Solid Waste Division,

Respondent.

A. BACKGROUND

An open record hearing was held on October 20, 2021 regarding DTG Enterprises, Inc's appeal from a notice of violation of SCC 7.35.125. DTG appeared by David Black, Esq. Solid Waste appeared by George Marsh, Esq., Deputy Snohomish County Prosecuting Attorney. The Hearing Examiner considered the argument of counsel, the substantive exhibits,¹ and the testimony of Jon Greninger, Canyon Little, Jo-Anne Antoun, Ted Sylvestri, Brooks Franklin, and Marissa Bowers.

B. FINDINGS OF FACT

Weighing all the evidence, the Hearing Examiner finds the following facts by a preponderance of evidence:

F.1 Reclamation is the process of segregating source-separated² recyclable solid waste for sale and reuse.³ Reclamation occurs at a reclamation site, which must comply

¹ Exhibits O.1, R.3 through R.12, S.1, S.2, and S.5 through S.11.

² "'Source separation' means the segregation of recyclable materials from other solid waste for the purpose of recycling, conducted by or for the generator of the materials on the premises at which they were generated. Source separation does not require that different types of recyclable materials be separated from each other." SCC 7.35.020(40) (2011).

³ SCC 7.35.020(31) (2011).

1 with local, state, and federal regulations.⁴ Recyclable solid waste brought to a
2 reclamation site is usually self-hauled⁵ construction and demolition debris.⁶

3 F.2 Although a generator separates recyclables from non-recyclable solid waste at the
4 source, some non-recyclable solid waste escapes the separation process at the
5 source and is often included in the solid waste delivered to the reclamation site. The
6 reclamation site separates recyclable solid waste from non-recyclable solid waste and
7 segregates the recyclables. Materials that can be sold on a secondary market are
8 baled or otherwise processed for shipment and sale. Materials which have no
9 secondary market are residual solid waste.⁷

10 F.3 Residual solid waste must be shipped to a Snohomish County solid waste facility.⁸
11 The recycler delivers the residual waste to the facility and pays a "tip fee" to the
12 county for disposal of the residuals.⁹

13 F.4 Appellant DTG operates a reclamation site at 8624 219th SE, Woodinville,
14 Washington¹⁰ in unincorporated Snohomish County.

15 F.5 On March 31, 2021, a truck with a DTG logo and a trailer¹¹ loaded with a container left
16 DTG's Woodinville site. It did not go to a Snohomish County solid waste system
17 facility, i.e., a county transfer station or the county's solid waste intermodal facility. The
18 truck and its trailer drove south on Interstate 405, then east on Interstate 90 to
19 Yakima, Washington.

20 F.6 In Yakima, the truck and trailer entered DTG's limited purpose landfill.

21 F.7 DTG's limited purpose landfill in Yakima may only accept waste described in DTG's
22 application for the landfill permit.¹²

⁴ SCC 7.35.020(32) (2011).

⁵ I.e., brought to the reclamation site by the generator of the solid waste.

⁶ Testimony of Greninger.

⁷ See SCC 7.35.125 (2011).

⁸ SCC 7.35.125(6), (7) (2011).

⁹ Testimony of Greninger. Large recyclers such as Republic Services check out open-top intermodal containers, fill them with residual waste, and then transports the containers directly to county's intermodal rail facility in north Everett. Transporting containers of residual solid waste directly to the intermodal facility reduces the tip fee that would otherwise be paid when delivering the containers to a county transfer station.

¹⁰ Tax parcel number 00590800000700.

¹¹ The trailer's Washington license plate number was 65564AE.

¹² Ex. R.3, conditions 8, and 19 and page 6 (page numbers refer to the PDF page number in the electronic exhibit). DTG applied for and received a permit for a materials recovery facility in the Sunnyside area, but the facility never opened, and the permitted location is different location from the location of the landfill. Testimony of Sylvestri.

- 1 F.8 DTG's limited purpose landfill permit allows it to salvage or recycle concrete, asphalt,
2 metal, plastic, and wood waste.¹³ The facility is "not a material recovery facility and
3 should not accept source separated recyclables for recycling."¹⁴
- 4 F.9 In March 2021, DTG's Yakima landfill was not permitted by the Yakima Health District
5 or Washington State as a material recovery facility¹⁵ nor was it allowed to accept
6 source separated¹⁶ recyclables for recycling.
- 7 F.10 Shortly before 10 am on March 31, 2021, the truck from Woodinville backed the DTG
8 trailer into the tipper and disconnected the trailer from the truck. The tipper then
9 dumped the container of solid waste for disposal at DTG's Yakima landfill.
- 10 F.11 The surface of the pile contained significantly less than 10% recyclable materials.¹⁷
- 11 F.12 The pile was pushed away from the tipper to allow the next truck's load to be tipped.
12 The pile was spread out in an even layer on the back part of the working face of the
13 landfill and then driven over a couple of times to flatten it. No significant amount of
14 recyclable material was observed by eyewitnesses.¹⁸ No effort was made to sort or
15 process what little recyclable material may have been beneath the surface of the pile.
16 The load of the next trailer was tipped, and then spread out on top of the load from
17 DTG's Woodinville facility.¹⁹
- 18 F.13 Reclamation is not usually performed at the working face of a landfill. Recyclable
19 materials are usually reclaimed before the waste is deposited at the working face; the
20 working face is the last stop in disposing of solid waste, where it is placed, spread out,
21 compacted, and then covered in place.²⁰
- 22 F.14 The Solid Waste Division issued a notice of violation to DTG on June 10, 2021,
23 asserting three violations of county code.²¹

¹³ *Id.*, condition 20. Cf. page 6, which allows recycling of "concrete, asphalt, metal, wood" but not plastic. *Id.* p. 6. This discrepancy is immaterial to this appeal. The photo of the container contents does not reveal material quantities of recyclable plastic. Ex. S.11.

¹⁴ *Id.*, condition 22 ("This facility [DTG Yakima landfill] is not a material recovery facility and should not accept source separated recyclables for recycling.")

¹⁵ "Material recovery facility" means any facility that receives, compacts, repackages, or sorts source separated solid waste for the purpose of recycling." WAC 173-350-100.

¹⁶ "Source separation" means the separation of different kinds of solid waste at the place where the waste originates." WAC 173-350-100.

¹⁷ Testimony of Little and Sylvestri (eyewitnesses), Ex. S.11, and testimony of Greninger regarding Ex. S.11.

¹⁸ See testimony of Little and Sylvestri, both of whom testified that the pile consisted of solid waste to be disposed of in a landfill, i.e., not recyclable materials. The Hearing Examiner finds their testimony credible.

¹⁹ Ex. S.11; testimony of Little and Sylvestri.

²⁰ Testimony of Little and Sylvestri. It would not make economic sense for DTG to drive a load from Woodinville to Yakima for any significant sorting for and reclamation of metal because of the cost of transportation compared to the availability of a metal recycler nearby in Woodinville, such as Schnitzer Steel. See testimony of Bowers.

²¹ Ex. S.2.

- 1 F.15 DTG appealed the notice of violation on June 23, 2021.²²
- 2 F.16 The Solid Waste Division amended its notice of violation to eliminate two of the three
3 initial alleged violations. The remaining alleged violation is for violation of SCC
4 7.35.125(1) and (7). The civil penalty would therefore be assessed for only this
5 violation.²³
- 6 F.17 The Solid Waste Division contends that the container deposited at the Yakima landfill
7 contained more than 10% residuals and therefore county code required it be shipped
8 to a Snohomish County solid waste facility and a tip fee paid. The county relied on the
9 testimony of witnesses and photographs.
- 10 F.18 DTG offered no evidence regarding the percentage of residuals, arguing that the
11 county had not carried its burden of proving by a preponderance of evidence that the
12 container held more than 10% residuals.²⁴
- 13 F.19 Considering the testimony of the witnesses²⁵ and the photographs, the Hearing
14 Examiner finds by a preponderance of the evidence that the container held more than
15 10% residuals. The Hearing Examiner finds credible and persuasive the testimony of
16 experienced solid waste professionals who viewed the dumping, spreading, and
17 covering of the container contents and the photograph. The materials visible in the pile
18 in Ex. S.11 are almost entirely residual waste and not recyclable. The visible materials
19 included unrecyclable material such as carpet padding, container lids, buckets, couch
20 cushions, and plastic bags of solid waste.
- 21 F.20 DTG argued that it was *possible* the pile contained a larger quantity of recyclables
22 than visible in Exhibit S.11.²⁶ The Hearing Examiner is not persuaded by this
23 argument. It would require finding it likely that the visible residuals were a thin veneer
24 over an interior composed almost completely of recyclables. The standard of proof is
25 preponderance, i.e., more likely than not.
- 26 F.21 It is unlikely that the interior of the pile consisted almost entirely of recyclables, which
27 would be necessary to comply with the 10% residuals limit. It is more likely than not
28 that the interior of the pile contains a substantial quantity of residuals similar to those
29 seen on the exterior of the pile.

²² Ex. O.1.

²³ To the extent necessary, the Hearing Examiner grants the motion to amend. See Ex. P.2. The parties tried the case based solely upon the alleged violation of SCC 7.35.125(1) and (7).

²⁴ The Hearing Examiner assumes without deciding that the county has the burden of disproving the application of an exception to the county code general rule regarding disposition of solid waste. Exceptions to general rules are often affirmative defenses, and the burden of pleading and proving an affirmative defense usually falls on the one asserting the defense. In this case, both parties assumed the county had the burden and tried the matter accordingly.

²⁵ Testimony of Sylvestri, Little, and Greninger.

²⁶ While witnesses agreed that it was possible that the material below the surface of the pile was recyclable, the eyewitnesses to the tipping, spreading, compacting, and covering testified the pile was mostly non-recyclable solid waste. Testimony of Greninger, Little, and Sylvestri.

1 F.22 The Solid Waste Division does not have to prove the extent of residuals with either
2 certainty or mathematical precision; it merely needs to prove by a preponderance of
3 evidence that the pile contains more than 10% residuals. It did so. Therefore, the
4 Hearing Examiner finds the pile contained more than 10% residuals.

5 F.23 The Hearing Examiner finds from a preponderance of evidence that DTG transported
6 a container holding more than 10% residual waste and interred it in DTG's Yakima
7 landfill which is not a Snohomish County solid waste system facility.

8 F.24 Any finding of fact in this decision which should be deemed a conclusion of law is
9 hereby adopted as a conclusion of law.

10 C. CONCLUSIONS OF LAW

11 1. SUMMARY

12 C.1 The Hearing Examiner has the authority to hear this appeal. SCC 7.35.175(1) (2005).
13 Appeal issues are those limited to those identified in the notice of appeal.²⁷

14 C.2 DTG contends (a) the county did not carry its burden of proving that the container held
15 more than 10% residual waste and (b) even if the container held more than 10%
16 residual waste, county code allowed DTG to deliver a container of solid waste
17 (irrespective of percentages of recyclables and residuals) to a reclamation site and
18 that its Yakima landfill is a reclamation site as defined by county code.²⁸ SCC
19 7.35.125(3) (2011).

20 C.3 DTG is wrong for several reasons. First, the county demonstrated by a preponderance
21 of evidence that the container held more than 10% residual waste. Second, county
22 code does not allow transport of solid waste between reclamation sites. A container's
23 contents must be sorted to reach the 90% level before the container is transported off-
24 site. Third, the Yakima landfill is not a reclamation site even if county code allowed
25 transport of solid waste between reclamations.

26 2. SOLID WASTE DISPOSAL

27 C.4 Solid waste generated and collected in Snohomish County must be disposed of in a
28 Snohomish County solid waste facility, unless explicitly excepted by county code.²⁹

29 C.5 Solid waste generators may deliver containers consisting of at least 90% by volume of
30 recyclable materials to any reclamation site, no matter where it is located and
31 irrespective of whether the reclamation site is a county facility. SCC 7.35.125(3)
32 (2011).

²⁷ SCC 7.35.020 (29), (31), (32) (2011). "No new appeal issues may be raised or submitted after the close of the time period for filing of the original appeal." SCC 2.02.125(4) (2013). See also SCC 2.02.125(11) (2013).

²⁸ Ex. O.1, 3:8-18.

²⁹ SCC 7.35.125(1) (2011).

1 C.6 Containers leaving a reclamation site with reclaimed materials for the secondary
2 recycling market must contain no more than 10% residual waste. A container or truck
3 containing more than 10% residual waste leaving a reclamation site is carrying solid
4 waste that must be transported to and disposed of at a Snohomish County solid waste
5 facility such as a transfer station. SCC 7.35.125(3) (2011).

6 C.7 A container delivered to a reclamation site holding less than 90% recyclable material
7 may be sorted further to reach the 90% threshold prior to being transported off-site. *Id.*
8 (Emphasis added.)

9 **3. TRANSPORT BETWEEN RECLAMATION SITES**

10 C.8 DTG argues that a container can be transported between reclamation sites for further
11 sorting and processing, citing SCC 7.35.125(3) (2011). DTG's argument fails because:
12 (a) containers holding more than 10% residual waste can only be transported to a
13 county solid waste system facility and (b) the Yakima landfill is not a reclamation site
14 as defined by county code even if waste could be transported between reclamation
15 sites for additional processing.

16 C.9 DTG's container held less than 90% recyclable materials and must therefore have
17 been delivered to a Snohomish County solid waste facility. It could not be "further
18 sorted" at Yakima, which was off-site; it had to have been sorted to at least a 90%
19 level at Woodinville. *Id.*

20 C.10 Further, DTG could not transport a container to its Yakima landfill for further
21 processing. DTG's Yakima landfill is not a reclamation site as defined by SCC
22 7.35.020(32) because reclamation (as defined by Snohomish County code) would
23 violate DTG's permit from the Yakima Health District.³⁰

24 C.11 County code defines reclamation as segregation of source separated recyclable solid
25 waste.³¹ DTG's Yakima landfill permit from the Yakima Health District prohibits DTG
26 from "accept[ing] source separated recyclables for recycling."³²

27 C.12 County code defines a reclamation site as "a facility compliant with local, state and
28 federal regulations used for the processing or the storage of reclaimed materials."³³
29 The Yakima landfill violates its permit conditions and does not comply with local and
30 state regulations if it accepts non-source segregated recyclable materials for sale and
31 reuse. The Yakima landfill therefore cannot be a reclamation site as defined by
32 Snohomish County code.

33 C.13 DTG therefore did not transport the container to a reclamation site.

³⁰ Salvaging occasional pieces of recyclable ferrous metal with a magnet at its landfill does not make it a reclamation site defined by county code.

³¹ SCC 7.35.020(31) (2011).

³² *Id.*, condition 22.

³³ SCC 7.35.020(32) (2011).

1 C.14 DTG transported a container of less than 90% recyclable materials from its
2 Woodinville site to its Yakima landfill. DTG disposed of the container's contents by
3 interring it as solid waste in its Yakima limited purpose landfill. DTG violated SCC
4 7.35.125(1) and (7).

5 C.15 Any conclusion of law in this decision which should be deemed a finding of fact is
6 hereby adopted as a finding of fact.

7 **D. ORDER**

8 It is hereby ORDERED that: (1) the notice of violation is affirmed; and (2) the civil penalty of
9 \$1,500 is affirmed.

10 DATED this 10th day of November, 2021.

11 *Peter Camp*

12 _____
13 Peter B. Camp
Snohomish County Hearing Examiner

EXPLANATION OF RECONSIDERATION and APPEAL PROCEDURES

This decision is final and conclusive with right of appeal through the filing of a writ of review in Superior Court. However, reconsideration by the Examiner may also be sought by any principal party as provided by SCC 2.02.170 (2013). The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration procedures, please see chapter 2.02 SCC and the Examiner Rules of Procedure.

Reconsideration

Any principal party may request reconsideration by the Examiner pursuant to SCC 2.02.170 (2013). A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 3000 Rockefeller Avenue, M/S #405, Everett WA 98201, **on or before November 22, 2021**. The petition may be filed by email addressed to Hearing.Examiner@snoco.org. There is no fee for filing a petition for reconsideration. The petitioner for reconsideration shall provide a copy of the petition of reconsideration to all parties to the appeal on the date of filing.

The petition for reconsideration does not have to be in any special form but must:

(a) Contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner's attorney, if any;

(b) Identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested;

(c) State the relief requested; and,

(d) Where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

(a) The Hearing Examiner exceeded their jurisdiction;

(b) The Hearing Examiner failed to follow the applicable procedure in reaching their 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.

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

1 **Appeal**

2 This decision of the Hearing Examiner is final and reviewable by a petition for a writ of
3 review filed in Snohomish County Superior Court. If no principal party requests
4 reconsideration, the petition to the Superior Court for a writ of review **must** be filed with the
5 Superior Court Clerk **within 21 calendar days**. If a request for reconsideration **is** filed by
6 any principal party, the Superior Court action **must** be filed no later than twenty-one
7 calendar days after the reconsideration decision. For more information about appeals to
8 Superior Court, please see chapter 7.16 RCW, chapter 2.02 SCC, chapter 9.12 SCC, and
9 applicable court rules.

10 The cost of transcribing the record of proceedings, of copying photographs, video tapes,
11 and oversized documents, and of staff time spent in copying and assembling the record and
12 preparing the return for filing with the court shall be borne by the petitioner. SCC
13 2.02.195(1) (b) (2013). Please include the county file number in any correspondence
14 regarding this case.

15 **Staff Distribution:**

16 Snohomish County Public Works Department, Solid Waste Division: Jon Greninger