

November 14, 2024

Dear YRCAA Board of Directors:

My name is Jean Mendoza, and I live in White Swan. Please accept these comments. If my three minutes expire before I complete my oral presentation, I ask that these written comments be incorporated into the board minutes for November 2024.

Key Points:

- At last month's board meeting Commissioner McKinney misinformed the public by implying that the YRCAA Board discussed FORT's appeal to the PCHB in executive session. Not true. You all can still meet and discuss this litigation.
- Has the YRCAA APCO improperly assumed the role of public information officer without training and certification required by law? Does the APCO have sufficient time to properly perform the duties of public information officer?
- One section of Resolution NO. 2024-07, when analyzed closely, would shield unscrupulous YRCAA staff from liability when they fail to do their jobs.
- Yakima County Commissioners and the YRCAA should advertise the fact that Position 3 on the YRCAA Board of Directors is up for appointment in December.

1. The minutes for last month's board meeting state:

*(Commissioner) McKinney addressed Mendoza's comments, noting that while there is always a preference for transparency, common legal advice is to discuss matters concerning potential litigation in executive session as information disclosed in a public forum can be used in potential future litigation. She added there is no desire to withhold information, it is done under the advice of counsel to protect and preserve whatever case the board or agency might have.*

This may be argued. But in fact, the YRCAA board has not met in executive sessions to discuss the Friends of Rocky Top appeal to the WA State Pollution Control Hearings Board that was filed on April 10, 2024.

Commissioner McKinney implied that the YRCAA board has adequately discussed the appeal. This is incorrect and her statement is extremely misleading.

The YRCAA Board has scheduled two executive sessions this year. An executive session scheduled for the June meeting to discuss performance evaluation for the YRCAA APCO. That evaluation was tabled, rescheduled, and held in August.

To be clear: The YRCAA Board has not discussed the FORT appeal in executive session and has barely discussed the appeal in an open meeting. The YRCAA Board has taken a hands-

off approach to an issue that directly involves significant air pollution, compliance with the laws of our state, and could cost Yakima County taxpayers hundreds of thousands of dollars.

I repeat my concerns that the YRCAA is likely to lose this case, and that the community would be better served if the YRCAA agreed to FORT's request for an up-to-date SEPA review of the air permit for the DTG landfill. The Board should analyze the decision to proceed and not reflexively assume there is only one option available.

I repeat my opinion that using an outdated SEPA review of the DTG operation conflicts with the purpose of SEPA. The YRCAA should attempt to fulfill the laws and not circumvent the laws. The YRCAA Board should fully evaluate the potential impact of litigation and should not muddy the waters with misleading statements.

A current SEPA review would better protect air quality in Yakima County and that is what this agency is all about.

2a. Proposed RESOLUTION NO. 2024-07 states:

*. . . . WHEREAS, the Board of Directors is required to appoint a Public Records Officer for the Agency whose responsibility is to oversee the Agency's compliance with public records disclosure requirements pursuant to RCW 42.56.580; . . . . NOW THEREFORE, BE IT RESOLVED, that the Board does hereby designate . . . Marc Thornsbury as Executive Director, Air Pollution Control Officer, Public Records Officer, Secondary Auditing and Investing Officer, and . . . .*

Related to this Resolution, I ask the board to ask:

- How long has the APCO been performing the duties of Public Records Officer?
- How much time is typically involved in fulfilling public records requests?
- Does the APCO have enough time to perform these added duties?
- Has the APCO completed the training required for Public Records Officers that is required by RCW 42.56.152?
- What will happen if public records requests are not properly handled? Note: WAC 44-14-00005 states: *Training can be the difference between a satisfied requestor and expensive litigation. The courts can consider lack of training as a penalty factor in actions filed under RCW [42.56.550](#), the act's enforcement provision.*
- The YRCAA has been sued over public records requests in the past.

2b. Who holds public employees accountable for properly performing their duties? As written in this resolution, the APCO, Public Records Officer, Auditing and Investing Officer

and others can take all kinds of illegal actions and there is no path for citizens or the board to hold them responsible.

I suggest removing or revising the following section from the Resolution:

*1. The named individuals shall be held harmless, to the fullest extent allowed by law, for actions taken, or for failure to take actions, that are required by virtue of their designated offices;*

If you do not want to eliminate that proviso, I suggest replacing it with the following: This section can be dissected into two parts. The two parts would be:

*1a. The named individuals shall be held harmless, to the fullest extent allowed by law, for actions taken, that are required by virtue of their designated offices;*

*1b. The named individuals shall be held harmless, to the fullest extent allowed by law, for failure to take actions, that are required by virtue of their designated offices;*

I see no problems with 1a, but I see great problems with 1b.

Please consider this alternative provision:

*The named individuals are required by virtue of their designated offices to take certain actions. If citizens believe these officers fail to perform these duties, citizens may appeal to the YRCAA Board of Directors, and the Directors shall conduct an investigation based on Washington laws and YRCAA Regulations. If the Directors determine that accused individuals have in fact failed to perform their duties, the Directors shall dismiss the accused individuals and pursue appropriate legal actions to correct any impacts of agency mismanagement and recoup lost funds.*

My suggested alternative resolution, or a similar resolution, is appropriate given recent problems with an employee who was dismissed due to mistreatment of staff. Such a person should not leave employment with a retirement package while others must clean up the mess he or she leaves behind. Such a person should be prosecuted for taking a salary, not doing the work, costing taxpayers hard earned money, and damaging the reputation of the agency.

Here is a fictitious scenario that shows why such a provision in the resolution is important. Suppose that an unscrupulous APCO is tasked with accepting bids for contracts to purchase wood stoves for the YRCAA wood stove change out program. Suppose this APCO makes an under-the-table deal with a friend to give him or her the contract and receives kickbacks from that contractor. Suppose you or I also sell wood stoves and learn about this arrangement. We could easily sue the YRCAA for failure to comply with equal opportunity

laws and several others. If the courts find in our favor and levy a fine, why should the taxpayers have to compensate the abused businessmen and women? Shouldn't the unscrupulous APCO have to pay for the damage he or she has done?

3. Regarding the YRCAA Staff Report that states:

*Seventeen businesses were added bringing the total number of registered sources to 396 and staff continue to work toward ensuring all sources within the Agency service area are registered and properly permitted. By ensuring all operations subject to registration are identified, the financial burden of registration is spread across a larger number of companies, reducing the cost on an individual basis and ensuring no firm is forced to carry more than their fair share.*

Friends of Toppenish points out once again, that concentrated animal feeding operation (CAFO) dairies emit the largest amount of air pollution in Yakima County (excluding forest fires) and the YRCAA does not register these operations, does not collect fees.

Consequently, other less polluting operations make up the difference in the cost to address air pollution. Everyone else pays for the health and environmental costs incurred due to air pollution from CAFO dairies. This is wrong and the YRCAA should correct that wrong. The YRCAA has the power to do this and FOTC asks why the YRCAA fails to do so.

4. I ask the Board to inform the public that YRCAA Board Position #3, appointed by the Yakima County Commissioners, is open at the end of this year. I ask the YRCAA and Yakima County to inform the public about the process if a citizen wants to be considered for this position. Failure to do so in both English and Spanish would constitute discrimination against interested individuals in Yakima County who are likely unaware of this opportunity.

5. I ask the Board to consider a resolution requiring all board members to appoint alternates so there is adequate representation of the community at all board meetings.

6. I request an explanation for the fact that the Sunnyside air monitor was offline for the entire month of October.

7. I ask the YRCAA staff to share with the Board a summary of recent discussions between the Environmental Protection Agency and the YRCAA, especially information regarding air testing conducted by the EPA earlier this year at a site in Wapato. (The City of Wapato pays fees to the YRCAA). The people who live here are entitled to know the state of the air.

8. I ask the YRCAA staff to share with the Board summaries of discussions with the EPA External Civil Rights Compliance Office regarding a complaint to that office filed by the Friends of Toppenish Creek earlier this year.

9. I ask the Board to inquire whether new YRCAA staff have received diversity and equity training which the YRCAA agreed to in 2019.

Sincerely,

A handwritten signature in blue ink that reads "Jean Mendoza". The signature is cursive and fluid, with the first name "Jean" and last name "Mendoza" clearly legible.

Jean Mendoza

3142 Signal Peak Road  
White Swan, WA 98952

#### **RCW [42.30.110](#)**

##### **Executive sessions.**

(1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:

(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW [5.60.060](#)(2)(a) concerning:

(i) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;

(ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or

(iii) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;

(2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer. The announced purpose of excluding the public must be entered into the minutes of the meeting required by RCW [42.30.035](#).

## **RCW [42.56.152](#)**

### **Training—Public records officers.**

(1) Public records officers designated under RCW [42.56.580](#) and records officers designated under RCW [40.14.040](#) must complete a training course regarding the provisions of this chapter, and also chapter [40.14](#) RCW for records retention.

(2) Public records officers must:

(a) Complete training no later than ninety days after assuming responsibilities as a public records officer or records manager; and

(b) Complete refresher training at intervals of no more than four years as long as they maintain the designation.

(3) Training must be consistent with the attorney general's model rules for compliance with the public records act.

(4) Training may be completed remotely with technology including but not limited to internet-based training.

(5) Training must address particular issues related to the retention, production, and disclosure of electronic documents, including updating and improving technology information services.

[ [2017 c 303 s 2](#); [2014 c 66 s 4](#).]