

**POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON**

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

Appellant,

v.

YAKIMA HEALTH DISTRICT,

Respondent.

PCHB No. 23-053

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER

I. INTRODUCTION

Caton Landfill & Recycling, LLC (Caton Landfill), filed an appeal with the Pollution Control Hearings Board (Board) seeking review of the decision denying renewal of the Caton Limited Purpose Landfill solid waste permit (or Permit) issued by Yakima Health District (YHD) on August 23, 2023.

The Board conducted a five-day hearing on December 9 - 13, 2024. Based on the Board's de novo review of the evidence presented, the Board concludes Caton Landfill has not complied with all the regulatory requirements under chapter 173-350 WAC, including establishing adequate financial assurance in case of closure of the landfill and meeting several other permitting requirements that regulatory agencies raised as early as May 2022. Caton Landfill also failed to show it is a recycling facility and entitled to a stay pending the outcome of this administrative appeal pursuant to RCW 70A.205.155. The Board affirms YHD's denial of Caton Landfill's request to renew its solid waste permit.

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER
PCHB No. 23-053

1 The Board deciding this matter was comprised of Board Chair Michelle Gonzalez and
2 Board Members Christopher G. Swanson and Gabriel E. Verdugo. Board Chair Gonzalez presided
3 for the Board. Attorneys John Hempelmann and Binah B. Yeung represented Caton Landfill.
4 Attorney Christopher J. Mertens represented YHD. Crystal McAuliffe with Buell Realtime Court
5 Reporting provided court reporting services.

6 The Board received the sworn testimony of witnesses, admitted exhibits and heard
7 arguments on behalf of the parties. Based upon the evidence and arguments presented, the Board
8 enters the following findings of fact, conclusions of law, and order.

9 II. PRINCIPLES OF LAW

10 The purpose of Washington's solid waste handling standards (chapter 173-350 WAC)
11 includes setting minimum functional performance standards for proper handling and disposal of
12 solid waste, and establishing requirements for the design, construction, operation, and closure of
13 solid waste handling facilities. WAC 173-350-010. Chapter 173-350 WAC applies to facilities that
14 manage solid waste, including Limited Purpose Landfills (LPLs). WAC 173-350-020(1). An LPL,
15 like Caton Landfill, "is not an inert waste landfill and receives or has received only solid wastes
16 designated as nonhazardous and are not municipal solid wastes." WAC 173-350-100. Municipal
17 solid waste includes unsegregated garbage, refuse, and similar solid waste material discarded from
18 residential, commercial, and industrial sources. *Id.*

19 Any owner or operator required to obtain a solid waste permit must apply to the
20 jurisdictional health department. WAC 173-350-710(1)(a). A solid waste handling permit
21 application must contain, among other things: (1) engineering and construction reports, plans, and

1 specifications that meet construction and design requirements; (2) a plan of operation that complies
2 with applicable operation and performance standards; (3) hydrogeologic reports and plans that
3 meet groundwater monitoring requirements; (4) a closure plan that identifies the closure schedule,
4 procedure, and cost; and (5) documentation that establishes financial assurance is secured for
5 closure and post-closure activities. WAC 173-350-400(4)-(10). The owner or operator of a solid
6 waste handling facility is responsible for ensuring the “satisfactory and legal arrangement for the
7 solid waste handling of all solid waste generated or accumulated by them on the property.”
8 WAC 173-350-025.

9 Jurisdictional health departments are primarily responsible for reviewing solid waste
10 permit applications for LPLs. WAC 173-350-710(1)(a). Pursuant to regulatory requirements, after
11 the jurisdictional health department finds an application is complete, it reviews the application and
12 sends a copy to the Department of Ecology (Ecology) for independent review.
13 WAC 173-350-710(1)(c)(i). Ecology reviews whether the facility complies with applicable laws
14 and regulations and provides its recommendation for or against issuance of the permit to the
15 jurisdictional health department. WAC 173-350-710(1)(d)(i)-(iii).

16 Solid waste permits may be valid for a period not exceeding five years.
17 WAC 173-350-710(2)(b). Prior to renewing a permit, the jurisdictional health department will
18 conduct a review as it deems necessary to ensure that solid waste handling on the site continues to
19 meet solid waste handling standards, does not conflict with approved solid waste management
20 plans, and complies with all applicable laws and regulations. WAC 173-350-710(3)(a)(i)-(iii).

1 In addition to a solid waste handling permit, landfills are required to obtain an Order of
2 Approval (or air permit) issued by regional air agencies. WAC 173-400-110(2)(a). The purpose of
3 the air permit is to provide a systematic control of air pollution from an air contaminant source.
4 WAC 173-400-010(1). In Yakima County, air permits are issued by the regional clean air agency,
5 Yakima Regional Clean Air Agency (YRCAA). Caton Landfill obtained an air permit from
6 YRCAA in 1997. *Ex. A-1, p. 14.*

7 Per the Yakima County Code, solid waste handling facilities—including LPLs—also are
8 required to obtain a conditional use permit (CUP). YCC 19.18.440(2)(a). The purpose of the CUP
9 for such facilities is to provide methods for solid waste disposal and protection for the surrounding
10 environment. YCC 19.18.440(1). CUPs in Yakima County are issued by the local planning agency,
11 the Yakima County Planning Division (YCP). Caton Landfill obtained a CUP (formerly known as
12 a special property use permit) from YCP in 1997. *Ex. A-1, p. 17.*

13 III. PROCEDURAL HISTORY

14 On June 27, 2023, YHD denied Caton Landfill’s application to renew its solid waste
15 permit. *Ex. R-4, pp. 52-55.* On June 29, 2023, Caton Landfill requested a hearing to appeal YHD’s
16 denial of Caton Landfill’s solid waste permit to the YHD Hearing Officer. *Ex. R-61, p. 2.* On July
17 25, 2023, the YHD Hearing Officer conducted a hearing. *Ex. R-61, p. 3.* On August 23, 2023, the
18 YHD Hearing Officer issued a decision affirming YHD’s denial of Caton Landfill’s solid waste
19
20
21

1 permit as there were outstanding issues with its permit application materials that needed to be
2 “brought into compliance with the WACs, local and federal requirements.” *Id.*, pp. 1, 6.

3 On September 21, 2023, Caton Landfill filed this appeal with the Board challenging YHD’s
4 decision denying renewal of Caton Landfill’s solid waste permit.

5 Thereafter, YHD filed an injunction with the Yakima County Superior Court to enjoin
6 Caton Landfill from continuing to operate its facility without a permit. *Yakima Health Dist. v.*
7 *Caton Landfill & Recycling, LLC*, Sup. Ct. of Wash., Cnty. of Yakima, No. 24-2-265-39 (March
8 15, 2024, Order Granting Defendant’s Motion to Dismiss). On March 15, 2024, the Superior Court
9 issued an Order to Dismiss on the basis that its authority to exercise jurisdiction over the case was
10 limited until the Board had the opportunity to resolve the factual question of whether Caton
11 Landfill was entitled to a stay under WAC 173-350-710(7)(c). *Id.* at 2-3.

12 On April 16, 2024, YHD filed a Motion for Permanent Injunction with the Board
13 requesting enforcement of YHD’s denial of Caton Landfill’s solid waste permit. *Amended Order*
14 *Denying Appellant’s Alt. Motion to Stay*, p. 1 (Aug. 5, 2024). On May 10, 2024, Caton Landfill
15 filed an Alternative Motion to Stay the effectiveness of YHD’s solid waste permit denial. *Id.* The
16 Board concluded that the issue of whether Caton Landfill should be enjoined from continuing to
17 operate pending this appeal was more appropriately addressed through the Motion to Stay and
18 declined to rule on YHD’s Motion for Permanent Injunction. Ultimately, the Board denied Caton
19 Landfill’s Alternative Motion to Stay, and the case proceeded to hearing before the Board on
20 December 9, 2024. *Id.*, pp. 19-20. Because the Board had not issued a final decision on the merits
21 of Caton Landfill’s appeal, the Board allowed evidence on the question of whether Caton Landfill

1 was, in fact, a waste recycling facility. As of the date of the hearing, Caton Landfill continued to
2 operate its landfill, claiming it was entitled to do so pursuant to RCW 70A.205.155.

3 IV. FINDINGS OF FACT

4 1.

5 A. Caton Landfill Operations

6 Caton Landfill is a small family-owned business started by Charlotte and Jim Caton in
7 1997. Jim Caton is deceased, and Charlotte Caton owns Caton Landfill. The Catons' son, Randy
8 Caton, became the Manager of Caton Landfill in 2011. *R. Caton Testimony at 40:22-25, 42:3*. In
9 his capacity as Landfill Manager, Randy Caton obtained a Manager of Landfill Operations
10 (MOLO) certification from the Solid Waste Association of North America. *Id. at 41:22-42:6*.
11 Charlotte Caton and Randy Caton testified about the history of the landfill and the events
12 surrounding YHD's denial of the solid waste permit.

13 2.

14 In 1997, Charlotte and Jim Caton applied for a Special Property Use Permit to operate an
15 inert/demolition waste landfill on their property. *Ex. A-1, pp. 1-2*. The 1997 decision approving
16 the Special Property Use Permit states that the landfill would be located approximately one-half
17 mile southeast of Naches-Wenas Road, parcel number 171401-11001. *Id., p. 2*. The decision
18 explains that "[o]nly inert and demolition waste meeting the definitions in . . . WAC 173-304-100
19 will be permitted." *Id., p. 3*. "Inert wastes are non-dangerous solid wastes that are likely to retain
20 their physical and chemical structure under expected conditions of disposal" *Id.* "Demolition
21 waste is largely inert solid waste from the demolition or razing of buildings, roads, and other man-

1 made structures.” *Id.* The 1997 decision notes that “[p]aint and asbestos, household garbage, and
2 green yard wastes will not be accepted because of their potential for fire, vermin, and air borne
3 particulates.” *Id.*

4 3.

5 The 1997 decision describes the location and size of the landfill. It explains that “[t]he
6 Catons proposed an inert/demolition waste landfill within a natural ravine on a portion of their dry
7 land farm.” *Id.* The area of the landfill would be “approximately 59.7 acres.” *Id.* The landfill is
8 within approximately 1,407 acres of land owned by the Catons. *See id.*; *R. Caton Testimony at*
9 *75:6-7.* Charlotte Caton testified that the landfill would be located from “ridge to ridge to ridge”
10 within the natural ravine. *C. Caton Testimony at 609:10-610:11.*

11 4.

12 In 2008, Caton Landfill switched from an inert landfill to a new category of landfill, an
13 LPL. *See id. at 78:22-24.* Charlotte Caton testified that neither she nor her husband applied to be
14 regulated as an LPL. *See id. at 614:8-10.* However, an Ecology engineer found Caton Landfill’s
15 application to become an LPL, which was signed by Jim Caton in 2006. *Rivard Testimony at*
16 *847:17-20; Rounds Testimony at 985:23-986:2.* Based on this evidence the Board finds that Caton
17 Landfill applied to become an LPL.

18 5.

19 In 2008, Herrera Environmental Consultants (Herrera) prepared an operations manual for
20 Caton Landfill. *R. Caton Testimony at 94:16-21; Ex. A-16.* Caton Landfill disputes that it hired
21 Herrera to prepare its operations manual, which YHD and Ecology have asserted lacks key

1 regulatory requirements for an LPL. The Catons claim that it was YHD or Ecology, not the Catons,
2 who consulted with Herrera to author their 2008 operations manual. *C. Caton Testimony at*
3 *615:4-19; R. Caton Testimony at 211:1-13.*

4 6.

5 Shawn Magee, YHD's Environmental Health Director, testified that YHD has no records
6 indicating that it reached out to Herrera to order a new operations manual for Caton Landfill and
7 that, to his knowledge, YHD has never made such a communication. *Magee Testimony at*
8 *642:12-16, 657:22-658:23; see also, id. at 661:4-7* (owner and operator is responsible for
9 preparing operations manual for an LPL). James Rivard, Regional Section Manager of the Solid
10 Waste Management Program's Central Regional Office, also testified that Ecology has no record
11 of paying for the operations manual. *Rivard Testimony at 846:10-14.* On the other hand, Charlotte
12 Caton testified that she answered telephone calls from Herrera in 2008 and answered the firm's
13 questions about landfill operations. *C. Caton Testimony at 634:3-21.* Furthermore, it is undisputed
14 that Charlotte Caton paid Herrera's bill for the operations manual. *C. Caton Testimony at*
15 *615:11-15; Rivard Testimony at 845:21-846:18.* Based on the evidence, the Board finds that Caton
16 Landfill ordered and had the 2008 operations manual prepared—not Ecology or YHD.

17 7.

18 From 1998 to 2022, Ted Silvestri, YHD's Landfill Inspector, inspected Caton Landfill.
19 *Silvestri Testimony at 590:7-10; R. Caton Testimony at 66:7-12.* The record contains several letters
20 prepared by Silvestri. Silvestri wrote that YHD had been inspecting Caton Landfill approximately
21 quarterly during the process of converting to an LPL and that "[t]he Caton Limited Purpose

1 Landfill has been in substantial compliance with the operations plan and WAC 173-350.”
2 *Ex. A-6, p. 1.* Silvestri also wrote that “whenever it was unclear if materials were acceptable for
3 disposal in the Caton Limited Purpose Landfill, the landfill would ask the Yakima Health District
4 for a determination regarding the acceptability of the materials for disposal in this landfill.”
5 *Id.* In another letter, dated October 19, 2021, and reflecting his quarterly inspection of Caton
6 Landfill, Silvestri wrote that “operations appeared to be within the limits set by the permit and
7 other applicable regulations.” *Ex. A-7, p. 1; see also R. Caton Testimony at 72:8-13.*

8 8.

9 Caton Landfill has a history of landfill fires, most recently in December 2022. *R. Caton*
10 *Testimony at 93:8-15, 98:21-25.* In response to the December 2022 fire, Ecology and YHD
11 conducted a site visit to the Caton Landfill and spoke with Randy Caton about the facility’s course
12 of action to address the fire. *Id. at 93:21-24.* After the site visit, Ecology sent Caton Landfill a
13 letter requesting it to hire a fire consultant. *Id. at 94:7-9.* Caton Landfill immediately hired a fire
14 consultant from Landfill Fire Inc., Dr. Tony Sperling. *Id. at 94:7-9, 143:6-17.*

15 9.

16 Dr. Sperling reviewed the facility’s operations manual and determined the fire was caused
17 by inadequate compaction methods, insufficient coverage material, and steep slopes on the eastern
18 and western sides of the landfill. *Id. at 94:10-16.* Randy Caton testified that, despite being the
19 cause of the fire, the facility’s operations were in accordance with its 2008 operations manual. *Id.*
20 *at 94:16-21; 94:25-95:2.* Randy Caton further testified that Dr. Sperling directed the facility to put
21 more soil coverage on top of the landfill, flatten the slopes on the eastern and western sides, and

1 perform more compaction of solid waste materials to prevent future fire events. *Id. at 95:3-6*. Since
2 implementing these methods, Caton Landfill has not experienced another landfill fire event,
3 although there was one instance of smoke emanating from the landfill. *Id. at 95:5-6, 95:16-23*.

4 10.

5 Caton Landfill also hired a consultant, Todd Thalhamer, President of Thalhamer
6 Consulting Services, to address issues surrounding the fire that had occurred in December 2022.
7 Thalhamer testified on behalf of Caton Landfill as an expert witness on landfill and fire
8 management. *Thalhamer Testimony at 498:14; Ex. A-35*. He testified that he worked with Caton
9 Landfill in December 2022 to provide advice on landfill firefighting methods and create a fire
10 action plan. *Thalhamer Testimony at 484:2-3, 497:21-498:14, 499:10-500:1, 511:10-1*.
11 Thalhamer stated that landfill fires are very common and are becoming more frequent due to
12 improper disposal of lithium batteries. *Id. at 524:22-525:3*. Thalhamer testified that when he
13 arrived on site at Caton Landfill on or around December 23, 2022, there were no visible flames,
14 but he did observe some smoke or steam emanating from the landfill. *Id. at 501:11-12,*
15 *511:25-512:11*.

16 11.

17 Thalhamer stated that he performed gas monitoring during the time he was assessing
18 landfill fire, which revealed elevated levels of certain chemicals and constituents inside the landfill
19 that could be of concern to regulatory agencies. *Id. at 573:16-574:6*. Thalhamer testified that the
20 gas monitoring results showed elevated levels of hydrogen sulfide, carbon monoxide, benzene,
21 and methane. *Id. at 574:7-15*.

12.

Thalhamer further testified that when he visited the landfill in December 2022, he was concerned about the length, height, and steepness of the slopes, which would require a significant amount of soil to cover. *Id. at 516:18-23*. Thalhamer stated that he visited Caton Landfill again on April 24, 2024, and expressed continuing concerns about the steepness of the landfill's slopes, which comprised approximately 30-40% of the surface area and needed to be addressed to create a final closure plan. *Id. at 545:16-17, 583:13-584:5*. He also observed significant improvement in his inspection of the landfill, including graveling and grading of a road system. *Id. at 547:8-19*.

13.

As a result of the December 2022 landfill fire, YRCAA began inspecting the landfill's air emissions.

14.

B. Agencies' Communications During Permit Renewal Process

While YHD is primarily responsible for reviewing permit applications, Ecology conducts an independent review of application materials and provides a recommendation to YHD on whether to grant or deny a permit. *Magee Testimony at 651:1-653:1*. Ecology plays a crucial role in the application review process because YHD does not employ engineers or hydrogeologists that

1 can provide technical assistance, recommendations, and guidance for engineering documents
2 pertaining to design fill plans or stormwater features. *Id. at 652:18-653:1.*

3 15.

4 In March 2022, Ecology conducted a site visit at Caton Landfill. *Rivard Testimony at*
5 *821:9-10.* The Ecology representatives who visited Caton Landfill included James Rivard; Luke
6 Lemond, Hydrologist for the Solid Waste Management Program's Central Region; and Megan
7 Rounds, Senior Environmental Engineer for the Solid Waste Management Program's Central
8 Region. *Id. at 812:8-11, 819:25-820:1, 821:9-17; Rounds Testimony at 953:22-954:3.* Ecology
9 conducted the site visit after receiving comments from another local LPL about the composition
10 of Caton Landfill's waste stream. *Rivard Testimony at 81:9-23.*

11 16.

12 During the site visit, Rivard saw waste such as plastic soda bottles, McDonald's wrappers,
13 and candy bar wrappers in the landfill. *Id. at 822:20-823:13.* He was concerned that some of the
14 waste in the landfill constituted municipal solid waste as opposed to waste that was permitted in
15 an LPL. *Id. at 822:20-823:13.* He also observed a pile of waste with steep slopes, dirt excavation
16 activities, and whole boats and recreational vehicles in the landfill. *Id. at 822:2-19.*

17 17.

18 Rivard also saw that Caton Landfill had a brush pile with no firebreaks around it. *Id. at*
19 *822:8-11.* The brush pile is composed of materials that Caton Landfill currently accepts such as
20 stumps, trees, logs, branches, and grasses that are stockpiled and left to dry. *R. Caton Testimony*
21 *at 79:6-18.* The brush pile is located outside the regulated landfill and falls outside of the facility's

1 120-acre parcel footprint—in an area that has not been approved to accept and stockpile waste
2 materials. *Magee Testimony at 680:22-24, 762:15-23; R. Caton Testimony at 79:10-13.*
3 Furthermore, the brush pile is large enough that Caton Landfill would need either a condition in
4 its solid waste permit allowing it to stockpile the material or a separate piles permit. *Magee*
5 *Testimony at 680:1-10.*

6 18.

7 At the site visit, Rounds asked Randy Caton for engineered drawings of the landfill's
8 design. *Rounds Testimony at 960:10-19, 961:2-4.* Randy Caton did not produce any type of
9 engineered drawings of the landfill, but he told Rounds that the landfill extended from “ridgeline
10 to ridgeline.” *See id. at 961:4-7, 8-13.*

11 19.

12 On May 5, 2022, Ecology sent Caton Landfill a letter outlining five items of concern that
13 it needed to address to ensure regulatory compliance, including: (1) increasing its financial
14 assurance; (2) updating its financial assurance holding mechanism; (3) updating its operations
15 plan; (4) updating its hydrogeology review; and (5) updating its landfill emissions sampling.
16 *Ex. R-4, p. 1; Rivard Testimony at 881:23-882:3.*

17 20.

18 Similarly, YHD began outreach to Caton Landfill in May 2022. *Magee Testimony at*
19 *653:24-654:3.* YHD contacted Caton Landfill to notify it that it needed to update its permit
20 application materials to ensure renewal by the deadline of April 30, 2023. *Id. at 653:24-654:3;*
21 *R. Caton Testimony at 211:25-212:8.* Based on the testimony, YHD and Ecology began outreach

1 to Caton Landfill far in advance of the permit renewal deadline because the agencies had growing
2 concerns about whether Caton Landfill would be able to implement the significant changes to its
3 operations manual and submit other documentation required for permit renewal. *Magee Testimony*
4 *at 653:9-654:3, 661:12-662:2; Rivard Testimony at 824:14-825:19, 836:10-19.*

5 21.

6 In August 2022, YHD and Ecology began meeting with Caton Landfill to discuss updates
7 to the operations manual and financial assurance instrument that would be necessary for YHD to
8 renew Caton Landfill's solid waste permit. *Magee Testimony at 654:5-657:8; Rivard Testimony at*
9 *826:3-5.* Regarding the operations manual, Magee testified that regulators were concerned about
10 discrepancies between the 2008 operations manual and the reality of how the facility was running.
11 *Magee Testimony at 655:24-656:12.* It appeared that Caton Landfill was beginning to outpace or
12 outgrow its operations manual. *Id. at 656:8-9.* For example, the engineering documents, landfill
13 design, and fill plan in the manual were not consistent with what regulators observed at the landfill.
14 *Id. at 656:10-12.* Rounds testified that Caton Landfill was not following the 2008 operations
15 manual specifications pertaining to the area, height, and slopes. *Rounds Testimony at 964:21-*
16 *965:2.* And Magee testified that the eastern slope of the landfill, which was identified as one of
17 the steeper slopes at the facility, was butting up against a boundary line and lacked an engineered
18 stormwater feature to separate run-off from the landfill from water that would naturally run into
19 the natural ravine. *Magee Testimony at 656:16-25.* Magee also noted issues with the groundwater
20 monitoring network and the lack of air quality and gas monitoring. *Id. at*
21 *657:1-3.*

1 22.

2 On August 17, 2022, Ecology sent a letter to YHD and Caton Landfill explaining Ecology's
3 recommended updates to Caton Landfill's permit application materials. *Rivard Testimony at*
4 *826:3-829:13; Ex. R-4, pp. 3-6.* Ecology stated Caton Landfill's application materials required
5 permit modifications for the filling plan and updates to the operations plan, groundwater
6 monitoring network, financial assurance instrument, and gas monitoring plan. *Rivard Testimony*
7 *at 826:3-829:13; Ex. R-4, pp. 3-6.* While Caton Landfill accepts inert materials such as gravel,
8 dirt, sand, asphalt, and concrete, Ecology noted that the facility also accepts other non-inert waste
9 materials such as wood, furniture, shredded rubber, clothing, paper, cardboard, grass clippings,
10 leaves, and shrubs. *R. Caton Testimony at 60:14-21; Ex. R-4, pp. 4-5.* Ecology stated that unlike
11 inert waste materials, non-inert waste materials produce methane, which is an explosive gas that
12 must be monitored in accordance with WAC 173-350-400. *Ex. R-4, pp. 4-5.*

13 23.

14 On September 28, 2022, YHD sent Caton Landfill a letter stating that "[a] permit
15 modification process will be required in order to update any changes the facility wishes to make
16 to its current permit." *Ex. R-1, p. 1.* YHD specifically noted Caton Landfill was required to update
17 its operations plan, filling plan, air emissions monitoring and groundwater monitoring networks,
18 and its financial assurance instrument. *Id., pp. 1-2.*

19 24.

20 In October 2022, Cole Provence, Ecology's Solid Waste Facilities Specialist, visited Caton
21 Landfill and saw whole tires deposited in the landfill, even though whole tires are not allowed to

1 be deposited in the landfill. *Provence Testimony at 906:10-11, 925:19-926:5*. Following the site-
2 visit, Provence relayed this information to YHD. *Id. at 939:15-940:11*. Rivard testified he also
3 saw whole tires in the landfill as recently as December 11, 2024. *Rivard Testimony at 896:8-15*.

4 25.

5 On December 9, 2022, Ecology sent YHD and Caton Landfill a letter explaining Ecology's
6 recommendations for updating Caton Landfill's permit application to ensure compliance with state
7 regulations. *Ex. R-4, p. 10*. Ecology provided a detailed analysis of the deficiencies in Caton
8 Landfill's application materials including the permit modification and filling plan, construction
9 quality assurance plan, operations plan, groundwater monitoring network, landfill gas monitoring
10 plan, and financial assurance instrument. *Id., pp. 10-13*. Ecology also outlined the consequences
11 of non-compliance and stated that each of the items discussed in the letter constituted a violation
12 of chapter 173-350 WAC and would require "significant effort" by Caton Landfill to prepare and
13 YHD and Ecology to review. *Id., pp. 13-14*. Ecology also recommended that Caton Landfill submit
14 the required updates before January 30, 2023, to ensure compliance prior to the permit renewal
15 deadline. *Id., p. 14*.

16 26.

17 On December 27, 2022, Caton Landfill sent a letter to YHD regarding Ecology's
18 compliance review of the facility, which Ecology responded to on December 29, 2022. *Id., p. 16*.
19 Ecology stated that Caton Landfill may have information that could address deficiencies in its
20 permit application materials and invited it to provide additional information for Ecology staff to
21 review. *Id.* Ecology reiterated that it expressed concerns in March and August of 2022 precisely

1 because Caton Landfill's permit renewal process would take time, patience, and financial
2 resources to complete. *Id.*, pp. 16-17. Ecology recommended that Caton Landfill meet with
3 regulatory agencies on a weekly basis to discuss the necessary updates to its permit application
4 materials to ensure compliance by the permit renewal deadline. *Id.*, p. 17.

5 27.

6 On February 22, 2023, YHD sent Caton Landfill a letter requesting updated documentation
7 necessary for the permit renewal process. *Ex. R-34*, pp. 1-2. YHD outlined several items that Caton
8 Landfill was required to update and submit for review including the operations and maintenance
9 plan, dust control plan, fire and emergency response plan, fill plan, safety and training documents,
10 stormwater management plan, and air monitoring plan concurrent with YRCAA permits. *Id.* YHD
11 also stated Caton Landfill's previously submitted financial assurance instrument was not in
12 compliance with WAC 173-350-400 and outlined the necessary updates for approval. *Id.*, p. 2.
13 Likewise, on February 23, 2023, Ecology sent Caton Landfill a letter acknowledging Ecology's
14 receipt of Caton Landfill's submission of incomplete application materials and stating Ecology
15 would not review the incomplete materials. *Ex. R-6*, p. 1.

16 28.

17 On March 6, 2023, Ecology sent Caton Landfill a letter expressing concerns about the
18 facility's ability to meet the permit renewal deadline. *Ex. R-4*, p. 18. Ecology summarized the
19 previous interactions between the facility and regulatory entities and emphasized that 30 days were
20 required for Ecology to review the landfill's updated permit application materials prior to the
21 permit renewal deadline. *Id.*, pp. 18-21. On March 10, 2023, YHD sent Caton Landfill a letter

1 expressing similar concerns about incomplete application materials and listing the plans and
2 documents necessary for renewal. *Id.*, pp. 22-23.

3 29.

4 On March 28, 2023, Caton Landfill, through its counsel, sent YHD and Ecology a letter
5 providing responses and documents requested by YHD in its letter dated March 10, 2023.
6 *Ex. R-38, pp. 1-13.*

7 30.

8 The Board finds YHD and Ecology provided multiple communications to Caton Landfill
9 over the period from March 2022 through March 28, 2023, that Caton Landfill's application
10 materials required regulatory compliance, including: (1) increasing its financial assurance; (2)
11 updating its financial assurance holding mechanism; (3) updating its operations plan; (4) updating
12 its hydrogeology review; and (5) updating its landfill emissions sampling. In addition, YHD
13 outlined in its communications what Caton Landfill needed to submit for its permit renewal,
14 including the operations and maintenance plan, dust control plan, fire and emergency response
15 plan, fill plan, safety and training documents, stormwater management plan, and air monitoring
16 plan concurrent with YRCAA permit.

17 31.

18 **C. Permit Denial**

19 Ecology reviewed Caton Landfill's March 28 letter and, on April 19, 2023, sent a letter to
20 YHD explaining that Caton Landfill still had not adequately addressed the topics YHD had raised
21

1 in its March 10 letter. *Ex. R-4, pp. 24-34*. Regarding the requirement to provide an adequate
2 operations and maintenance plan, Ecology wrote that Caton Landfill’s plan did not describe the
3 types of solid waste to be handled at the facility or how that waste would be handled. *Id., p. 25*. In
4 fact, Ecology explained that Caton Landfill had been accepting types of waste that were outside
5 the scope of its Permit, even after being warned not to do so. For example, while Caton Landfill’s
6 website indicated that the facility accepted campers and boats, those items are not listed in the
7 solid waste permit and no permit modification application had been submitted seeking approval to
8 receive campers and boats. *Id., p. 25*. In 2021, YHD had notified Caton Landfill that accepting
9 boats, campers, or fuel tanks would require a permit modification. *Id.* Ecology’s April 19, 2023,
10 letter describes additional deficiencies in Caton Landfill’s operations plan, including that it lacked
11 a description of safety planning and emergency activities. *Id., pp. 26-28*. Ecology also explained
12 in the letter that Caton Landfill had failed to provide other necessary information and documents,
13 such as a detailed survey of the facility and adequate financial assurance based on “worst case
14 scenarios”—including costs of importing dirt, hiring third-party contractors, and monitoring the
15 site for at least 30 years. *Id., pp. 30-32*.

16 32.

17 In conclusion, Ecology stated that “[t]o date, the Caton Landfill has failed to demonstrate
18 that it has made any serious efforts to correct the numerous operational issues that are outlined
19 above or begun the process of completing the required documents as outlined by YHD or Ecology
20 prior to the deadline.” *Id., p. 32*. Ecology explained that “[w]ithout completed application
21

1 materials that Ecology and YHD can review in accordance with WAC 173-350-710 and 715,
2 Ecology will not support permit renewal.” *Id.*

3 33.

4 In a letter dated April 27, 2023, YHD denied Caton Landfill’s application to renew its solid
5 waste permit. *Id.*, pp. 35-39. YHD described multiple deficiencies in Caton Landfill’s renewal
6 request and attached Ecology’s March 28 letter. *Id.* In explaining the basis for the denial, YHD
7 stated that Caton Landfill’s operations and maintenance plan was insufficient in part because it
8 lacked a report on the facility’s waste characterization and potential for explosive gas generation,
9 noting that “[r]ecent data collected due to fire activity at this facility has shown that methane and
10 hydrogen sulfide are being generated.” *Id.*, pp. 35-36. YHD also explained that Caton Landfill was
11 out of compliance with its air permit from YRCAA. *Id.*, p. 36. Under the air permit, Caton Landfill
12 could accept fifty thousand cubic yards of waste, but in 2022 alone the facility had accepted more
13 than half a million cubic yards. *Id.* The violation of the air permit in turn constituted a violation of
14 the solid waste permit. *Id.*; *see also* WAC 173-350-040(3).

15 34.

16 YHD also explained deficiencies in Caton Landfill’s dust control plan. The dust control
17 plan, from 2008, stated that water would be placed on covered waste, which is an unapproved
18 practice that could contribute to leachate or stormwater issues. *Ex. R-4*, p. 36. Furthermore,
19 considering that there were numerous dust violations noted on inspections and in complaints from
20 neighbors, YHD explained that the plan was inadequate to control dust. *Id.*; *see also R. Caton*
21 *Testimony at 76:14-18* (testifying that the county had told Caton Landfill that it receives daily

1 complaints from residents of a nearby trailer park). YHD also discussed the large brush pile, which
2 “has been an ongoing concern and has been noted multiple times during inspections.” *Ex. R-4,*
3 *p. 36.* YHD also communicated that “[t]he wildland fire risk to the facility and surrounding
4 community is too great to allow further storage of this brush pile,” which YHD stated would need
5 to be properly disposed of on site or moved to an approved solid waste facility before the Permit
6 would be renewed. *Id.*

7 35.

8 Because of Caton Landfill’s history of fire events, YHD repeated its request for Caton
9 Landfill to provide a comprehensive fire response plan to meet the expanded scale of the facility.
10 *Id., pp. 36-37.* Required details in the fire response plan would include “who will be notified,
11 timeline of notification, types and number of equipment that will be used for fire suppression, how
12 many employees are necessary, air monitoring implementation and equipment for both onsite
13 personnel and the public, when a fire consultant will be contacted, and employee training for fire
14 response.” *Id., p. 37.*

15 36.

16 Like Ecology, YHD also noted that Caton Landfill had failed to provide sufficient support
17 for its financial assurance. YHD explained that details were necessary to determine the amount of
18 land to be covered, while ensuring stable slopes. *Id., pp. 37-38.* YHD wrote that Caton Landfill’s
19 submission lacked estimates for the cost of groundwater monitoring, wages for technicians, and
20 costs for heavy equipment. *Id., p. 38.* Additionally, YHD required detailed scaled drawings or
21

1 engineering documents to determine the amount of financial assurance that would be necessary to
2 complete closure, but no such documents were provided. *Id.*

3 37.

4 YHD explained in its April 27, 2023, letter that it and Ecology had given “numerous
5 notifications that this facility is out of compliance with the original documents that were approved
6 in 2008, and the Caton LPL has yet to submit permitting documents that meet WAC 173-350.” *Id.*
7 Therefore, YHD refused to renew the solid waste permit for Caton Landfill and stated: “Effective
8 May 1, 2023, Caton LPL must cease operations due to the insufficient information provided in
9 [its] submittal. Operations must remain closed until YHD receives, reviews, and approves the
10 required information from the Caton LPL.” *Id.*

11 38.

12 On April 29, 2023, at Caton Landfill’s request, YHD granted a 60-day reconsideration
13 period, during which time the facility could continue daily operations while providing the
14 necessary updates to the landfill’s plans and documentation that would allow for the renewal of
15 the solid waste permit. *Ex. R-44*. The 60-day period ran through June 29, 2023. *Id.*, *p. 2*. If the
16 required documents and plans were not submitted, reviewed, and approved within that timeframe,
17 YHD retained its authority to reinstate the denial of the solid waste permit renewal. *Id.*

18 39.

19 On May 23, 2023, during the 60-day reconsideration period, YRCAA sent a letter to Caton
20 Landfill stating that the facility was not in compliance with its air permit, which was issued in
21 1997. *Ex. R-4, pp. 40-41*. YRCAA found several discrepancies over the past few years between

1 the amount of waste Caton Landfill could receive under its air permit and the amount of waste that
2 the facility actually received. *Id.*, p. 40. While the air permit states that Caton Landfill planned to
3 receive 50,000 cubic yards of inert materials per year, the annual registration reports that Caton
4 Landfill submitted to YRCAA showed that the facility exceeded that amount “by 20,522 cubic
5 yards (41%) in CY2020, 78,731 cubic yards (157%) in CY2021 and 408,935 cubic yards (871%)
6 in CY2022.” *Id.*; *Tahat Testimony at 769:24-770:2*. YRCAA wrote that Caton Landfill was in
7 violation of its permit conditions and was required to submit the following to YRCAA by June 30,
8 2023: a complete New Source Review (NSR) application, a complete and specific report
9 describing all materials accepted by the landfill since January 1, 2020, and a complete calculated
10 quantity of the air emissions for the criteria and toxic air pollutants from the facility each year
11 starting January 1, 2020. *Ex. R-4, p. 40*.

12 40.

13 On May 31, 2023, Caton Landfill sent YHD a cover letter and documents in response to
14 YHD’s requests. *Ex. R-49*. Caton Landfill provided a set of exhibits updating the operations
15 manual in specific areas identified by YHD, including dust control, fire and emergency response,
16 a fill plan, safety and training documents, a stormwater management plan, an air monitoring plan,
17 and financial assurance. *Id.*, pp. 3-4.

18 41.

19 On June 16, 2023, YCP wrote to Caton Landfill regarding the landfill’s boundary, which
20 had been established in 1997. *Ex. R-51, p. 1*. YCP’s letter was in response to a document sent by
21 Caton Landfill proposing a boundary for the landfill. *Id.* YCP explained that the proposal, prepared

1 by Kent McHenry, the engineer Caton Landfill hired to update its operations manual, “is not what
2 was approved” in the 1997 decision or in the threshold decision under the State Environmental
3 Policy Act (SEPA). *Id.*; *McHenry Testimony at 404:6-9, 407:12-408:4*. YCP referred to five site
4 plans that Caton Landfill had provided in 1997 in support of its application and SEPA checklist:

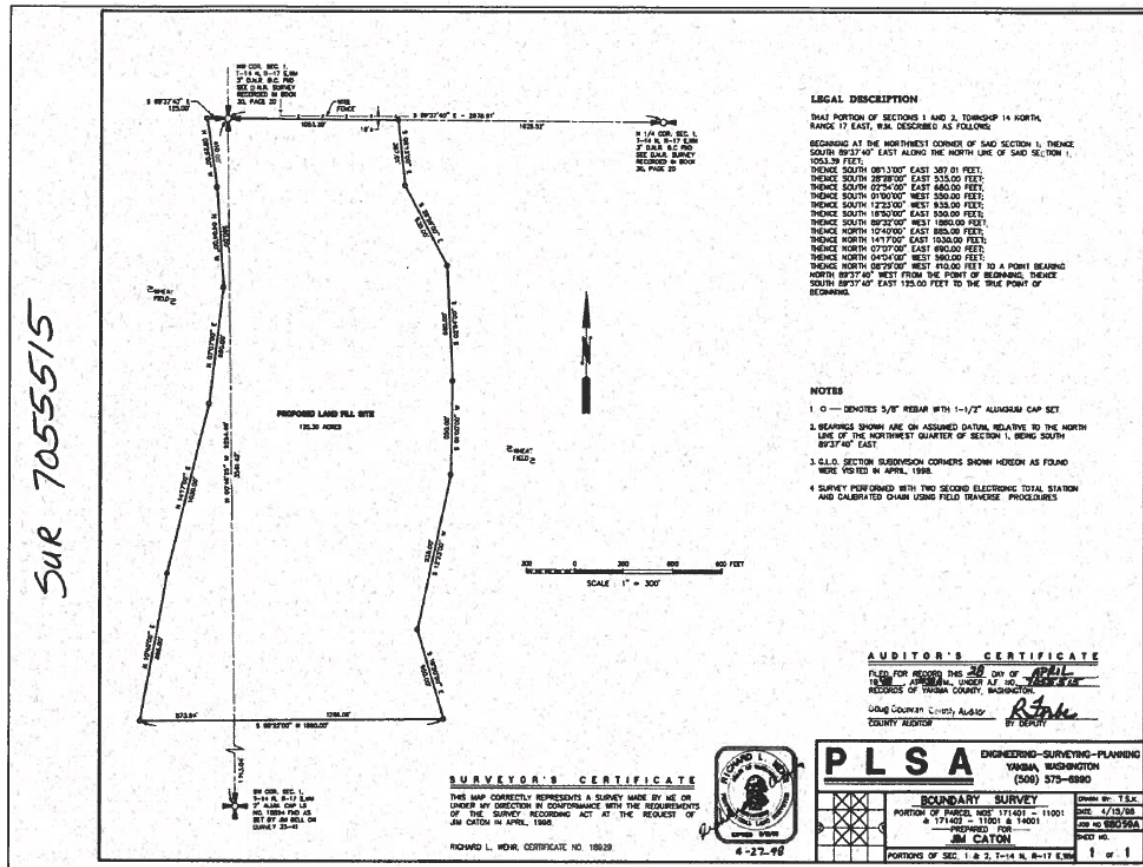


5
6
7
8
9 *Ex. R-51, pp. 1-2; see also id., pp. 16-20* (larger images of site plans). Of the five site plans—
10 which are numbered in the order depicted above—YCP explained that numbers 1, 4, and 5 each
11 show the northwest corner of the landfill directly in the southwest corner of Section 36, the
12 southeast corner of Section 35, the northwest corner of Section 1, and the northeast corner of
13 Section 2. *Id.*, *p. 2*. Site plan 2 shows the northwest corner of the landfill roughly 50 feet to the
14 east of the southwest corner of Section 36. *Id.* Based solely on the site plans provided by Caton
15 Landfill, YCP concluded that the intention at the time of the 1997 application was to have the
16 northwest corner of the landfill at or near the southwest corner of Section 36, the southeast corner
17 of Section 35, the northwest corner of Section 1, and the northeast corner of Section 2. *Id.*

18 42.

19 In its letter, YCP also explained that a condition in the 1997 decision states that “[t]he
20 property shall be surveyed, reflecting the parcel containing the landfill site” *Id.* In 1998, a
21

survey was prepared at Caton Landfill's request, describing a "Proposed Land Fill Site" of roughly 120 acres:



Id., pp. 2-3. YCP explained that the surveyed boundary is roughly 125 feet west of the northwest corner of Section 1 and 573 feet west of the southwest corner of Section 1. *Id.*, p. 3. This survey conflicts with all site plans submitted in support of the original application, and YCP noted that it found no information indicating that YCP reviewed the survey at the time to compare it with the submitted site plans. *Id.* YCP concluded that "[t]he survey is not a survey of the landfill boundaries

1 or a [sic] even a survey of a specific parcel, but rather a survey of *the land that contains the*
2 *landfill.*” *Id.* (emphasis added).

3 43.

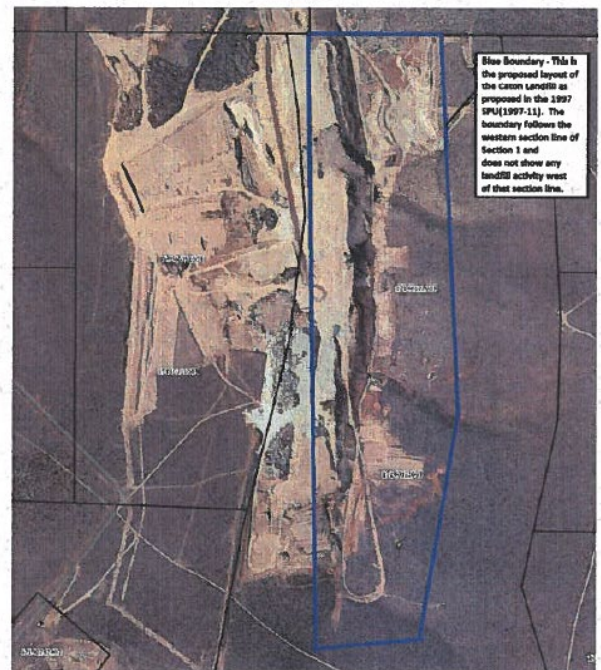
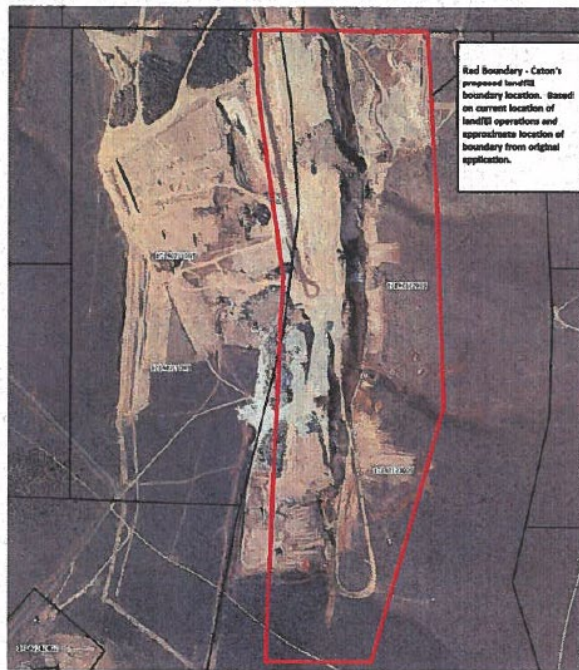
4 YCP also reviewed whether Caton Landfill had ever limited its operations to the area
5 described in the site plans that it submitted with its application. *Id.*, pp. 5-6. Looking back to aerial
6 photographs, YCP found that as far back as 1998, roughly 1/3 (2.3 acres) of ground disturbance at
7 Caton Landfill was outside of the approved landfill boundary. *Id.* Aerial photographs from later
8 years showed that ground disturbance outside of the boundary had increased: more than 4 of the 8
9 total acres of ground disturbance were outside of the boundary in 2002, and roughly 12 out of the
10 total 24 acres of ground disturbance were outside of the boundary in 2005. *Id.*, pp. 6-7.

11 44.

12 Aerial photographs also showed that Caton Landfill operated beyond the area described as
13 the “Proposed Landfill Site” in the 1998 survey. *Id.*, p. 7.

14 45.

15 Caton Landfill’s operations even exceeded the boundary that Caton Landfill was proposing
16 in 2023. YCP’s letter includes two aerial photographs showing the location of land disturbance
17 associated with the landfill as of 2023—the figure on the left overlays the photograph with the new
18 boundary (in red) that Caton Landfill proposed to YCP in 2023; the photograph on the right is
19 overlaid with the boundary (in blue) as proposed by Caton Landfill in 1997 and approved in the
20 1997 decision:



Ex. R-4, p. 49. The figures show that land disturbance associated with Caton Landfill's operations extend not only beyond the original boundary, but also beyond the boundary that Caton Landfill proposed to YCP in 2023.

46.

In its June 16, 2023, letter, YCP noted landfill regulators were concerned that Caton Landfill had “know[ingly] failed to operate within any of the possible landfill boundaries either approved, presumed, or currently proposed.” Ex. R-51, p. 8. YCP then conveyed “two specific comments and requests from the regulators[:]” (1) that Caton Landfill obtain a surveyed drawing of the “approved” boundary of the landfill, and (2) that Caton Landfill “identify the exact location where ALL waste has been [deposited] on the site and ALL other unpermitted land disturbances

1 associated with the landfill.” *Id.*, p. 9. If it was determined that waste was outside of the approved
2 boundary, YCP wrote that a permit modification may be required. *Id.*

3 47.

4 On June 23, 2023, Ecology wrote that Caton Landfill’s application materials submitted on
5 May 31 did not meet the requirements of WAC 173-350. *Ex. R-4, p. 50*. Among other concerns,
6 Ecology explained that “WAC 173-350-710 requires all permittees to comply with all applicable
7 laws and regulations[,]” but Caton Landfill was not in compliance with permits issued by two other
8 agencies (YRCAA and YCP). *Id.* Specifically, YRCAA had found that Caton Landfill was
9 violating the terms of its air permit by accepting amounts of waste that were above the amounts
10 allowed in the facility’s air permit. *Id.* And Caton Landfill was operating outside the boundaries
11 set in the CUP issued by YCP. *Id.*

12 48.

13 On June 27, 2023, YHD again denied Caton Landfill’s application for a solid waste permit.
14 *Id.*, *Ex. R-4, pp. 52-56*. YHD explained that it had reviewed the updated permit renewal application
15 and comments from Ecology, YRCAA, and YCP. *Id.*, p. 52. While YHD approved Caton
16 Landfill’s dust control plan and load inspection procedures, the agency found Caton Landfill had
17 failed to meet several other requirements for its permit renewal. *See id.*, p. 53. While Caton
18 Landfill is required to comply with all other applicable local, state, and federal laws and
19 regulations, YHD explained that Caton Landfill failed to comply with the air permit issued by
20 YRCAA; the CUP issued by YCP; and the terms of WAC 173-350, as described in Ecology’s June
21 23 letter. *Id.*, pp. 52, 56; *see also* WAC 173-350-040(3).

1 49.

2 YHD also had concerns with Caton Landfill's safety and fire response plan, particularly in
3 light of the history of excessive fire activity at the facility. *Ex. R-4, p. 53*. YHD explained that
4 Caton Landfill's proposed safety and fire response plan failed to include language that YHD would
5 be notified immediately of any visual detection of steam or smoke and that Caton Landfill did not
6 include standard operating procedures for sampling. *Id.* Additionally, the safety and fire response
7 plan indicated that a firefighting plan would be developed and implemented, but any major
8 firefighting plan would need to be approved by YHD. *Id.*

9 50.

10 YHD also declined to approve Caton Landfill's engineering documents, which YHD
11 explained were "based on an unapproved landfill boundary that does not reflect the approved
12 landfill boundary set by its conditional use permit, issued by YCP." *Id., p. 54*. And, referencing
13 Ecology's analysis, YHD wrote that the engineering documents did not meet regulatory
14 requirements regarding the level of detail and design specifications required for engineering plans.
15 *Id.*

16 51.

17 YHD also described specific deficiencies in Caton Landfill's gas monitoring and air quality
18 plan, such as the requirement to provide quarterly reports to YHD detailing the operating
19 procedures, monitoring locations, and other information. *Id.*

1 52.

2 Regarding financial assurance, YHD explained that even though Caton Landfill submitted
3 closure and post closure costs, an accurate calculation of necessary financial assurance could not
4 be completed because the engineering documents, landfill design, and fill plan were not approved.
5 *Id.*, p. 55.

6 53.

7 Because YHD did not renew Caton Landfill's solid waste permit, and because Caton
8 Landfill was not exempt as a solid waste recycling facility, YHD concluded that the Permit denial
9 was effective immediately and that Caton Landfill "must cease all solid waste acceptance effective
10 on July 1, 2023." *Id.*; see also *Magee Testimony at 686:7-10* ("There's no operating waste
11 recycling facility here. We communicated that and that was the basis for us to direct them to cease
12 operations effective immediately."). Based on the conclusion that Caton Landfill was not an
13 operating waste recycling facility, YHD notified Caton Landfill that it was "not entitled to
14 continuing operations through the appeals process." *Magee Testimony at 697:7-12*.

15 54.

16 Caton Landfill continued to operate. On July 3, 2023, YHD wrote to Caton Landfill that
17 the facility did "not have authority to overturn a decision made by the [YHD]" and that
18 "continu[ing] operations on Monday July 3 is a violation of Washington law (see
19 RCW 70A.205.195), as [Caton Landfill is] operating without a valid permit." *Ex. R-18, p. 1*. The
20 letter further explained that Caton Landfill was required to "cease all operations effective
21 immediately" and that "[a]ny operations conducted after June 30, 2023, are illegal dumping as

1 defined by RCW 70A.205.195, and you are subject to all penalties defined in the RCW.” *Id.* As of
2 the time of the hearing before the Board, Caton Landfill continued to operate even though it did
3 not have a valid permit. *Rivard Testimony at 867:18-20.*

4 55.

5 Caton Landfill requested a hearing before a hearing examiner to challenge YHD’s denial
6 of the solid waste permit and also contended that it was an “operating waste recycling facility”
7 entitled to an automatic stay of the effect of the Permit denial under WAC 173-350-710(7)(c).
8 *Ex. R-54.* The Hearing Officer conducted a hearing and issued a decision affirming YHD’s denial
9 on August 23, 2023. *Ex. R-61.*

10 56.

11 On September 21, 2023, Caton Landfill timely filed its appeal to the Board. *Not. of Appeal.*
12 In December 2023—after this appeal was pending before the Board—Caton Landfill submitted a
13 revised draft of its operations manual to YHD. *Ex. A-16.* Strutner, Caton Landfill’s Operations
14 Manager, testified, however, that the substantive contents of the revised operations manual were
15 the same as what Caton Landfill had provided regulators before June 30, 2023. *Strutner Testimony*
16 *at 387:1-12; see also McHenry Testimony at 475:1-24* (the information within the December 2023
17 submission had been provided to regulators well before that date).

18 57.

19 The Board finds YHD’s decision to not renew Caton Landfill’s solid waste permit was
20 based on several regulatory compliance issues that had not been adequately addressed. The Board
21 finds Ecology and YHD witnesses credible and persuasive. This finding is based upon the

1 consistency of factual testimony between the witnesses, the frequency and consistency of
2 communications to the landfill, the consistent factual evidence gathered and testified by the
3 witnesses and facts in the record, and expertise, training and experience of the witnesses in the
4 area of landfill management and regulatory compliance with landfill and other regulations,
5 including wastes that can and cannot be accepted under Caton Landfill's permit as well as financial
6 assurance requirements. Caton Landfill was accepting boats, campers, and vehicles with fuel tanks
7 that required a permit modification. Caton Landfill did not have an operations manual that
8 described safety planning and emergency activities. Caton Landfill did not have adequate financial
9 assurance, including costs of importing dirt, hiring third-party contractors, and monitoring the site
10 for at least 30 years. In addition, Caton Landfill was not in compliance with its air permit from
11 YRCAA because it was accepting more cubic yards of waste than had been allowed under its
12 permit. Caton Landfill was also not in compliance with its YCP CUP. YCP determined that Caton
13 Landfill was operating outside of its 1997 landfill boundary. The Board finds that these multiple
14 deficiencies were sufficient to deny Caton Landfill's permit renewal application.

15 58.

16 **D. Waste Recycling Facility**

17 The parties disagree about whether Caton Landfill is an "operating waste recycling facility"
18 entitled to a stay of the effects of the Permit denial under WAC 173-350-710(7)(c). While the
19 parties dispute whether Caton Landfill is operating a waste recycling facility, the facts underlying
20 the issue are largely undisputed. Accordingly, the Board enters the following findings of facts (FF)
21 on the issue of Caton Landfill's claim that it is a waste recycling facility. The Board addresses in

1 the conclusions of law, below, its legal analysis and conclusion on the applicability of WAC
2 173-350-710(7)(c).

3 59.

4 Randy Caton testified that Caton Landfill has been recycling since the first day it started
5 operating. *R. Caton Testimony at 46:23-24*. Caton Landfill claims “recycling” includes accepting,
6 separating, and stockpiling metals, which other companies then pick up and take to recycling
7 centers. *Id. at 46:24-47:3*. Randy Caton also testified that Caton Landfill accepts wooden pallets
8 and bins, which it keeps in a separate pile so that members of the public can take them and reuse
9 them. *Id. at 103:7-21*. Caton Landfill would also separate toys and bicycles that visitors could take
10 and reuse. *Id. at 103:24-104:3*. Additionally, Caton Landfill receives chip seal tailings from the
11 county or city; instead of discarding the tailings, Caton Landfill takes them and reuses them on the
12 facility’s roads. *Id. at 104:4-8*. Randy Caton asserted that it is engaged in recycling by sending
13 materials to a recycling facility as well as reusing materials. *See id. at 108:1-10*.

14 60.

15 Randy Caton also testified that the facility has reported every year that it recycles materials.
16 *Id. at 107:15-16*. While Caton Landfill’s inspection reports indicate that the facility accepted metals
17 and wood waste for recycling or compost, none of the pre-2023 inspection reports that are in the
18 record (from 2018 to 2022) indicate the final destination or use of materials collected for recycling.
19 *See Ex. R-13, pp. 4-5; Ex. R-14, pp. 4-5; Ex. R-15, pp. 4-5; Ex. R-16, pp. 4-5; Ex. R-17, pp. 3-4*.
20 Indeed, prior to the 2023 annual report that Caton Landfill submitted to YHD, the facility had never
21

1 reported that any recycled materials had left the facility. *R. Caton Testimony at 202:1-5; see also*
2 *Ex. A-28, p. 4.*

3 61.

4 YHD contends that Caton Landfill is not a waste recycling facility. *Magee Testimony at*
5 *685:13-16.* Recycling facilities are required to include a description of their recycling operations in
6 their operations manual for review and approval by YHD and Ecology, but recycling is not
7 described in Caton Landfill’s 2008 operations manual or in its solid waste permit. *R. Caton*
8 *Testimony at 211:19-23; Magee Testimony at 683:13-24.* Nor are there containers or drop boxes at
9 the facility to collect or sort recyclables or to store recyclables that are removed from the waste
10 stream. *Magee Testimony at 683:25-684:3.* Magee testified that YHD had never observed recycling
11 taking place at Caton Landfill, and that if recycling had been observed, YHD would have asked
12 Caton Landfill to add recycling to its operations manual. *Id. at 684:6-11.* Magee further testified
13 that while Caton Landfill is removing materials from its waste stream, it is not transforming or
14 remanufacturing waste materials into useable or marketable goods or materials. *Id. at 760:6-9.*

15 62.

16 Furthermore, although the legal name of the company that operates the landfill is “Caton
17 Landfill & Recycling LLC,” that change occurred in November 2022—previously, its name was
18 simply “Caton Landfill.” *R. Caton Testimony at 263:10-20.*

19 63.

20 In the conclusions of law, below, the Board considers whether Caton Landfill is a recycling
21 facility. Based upon the persuasive evidence presented by YHD and Ecology, particularly the lack

1 of recycling operations and equipment (e.g., lack of recycling receptacles and waste stream
2 recycling processes), lack of written records of recycling materials and destination for it, and the
3 timing of Caton Landfill's name change, as well as the legal analysis below, the Board finds that
4 Caton Landfill is not a waste recycling facility.

5 64.

6 **E. Support for Staying Effect of Permit Denial at Time of Hearing**

7 At the time of the hearing, the parties disputed the facts underlying several of the bases for
8 YHD's solid waste permit denial, including Caton Landfill's compliance with other permits,
9 maintenance of a brush pile, and the adequacy of Caton Landfill's operations manual and financial
10 assurance. As discussed below, the Board finds that Caton Landfill failed to resolve any of these
11 issues underlying the denial of its solid waste permit renewal application.

12 65.

13 **1. Conditional Use Permit Issued by YCP**

14 Caton Landfill argues that YHD improperly denied its solid waste permit in part by relying
15 on YCP's June 16, 2023, letter, in which YCP determined that Caton Landfill was operating
16 outside the original 1997 permit boundary for the landfill. FF 47. Therefore, YHD concluded that
17 Caton Landfill was not in compliance with the CUP.

18 66.

19 Thomas Carroll, the Planning Official for YCP, testified at the hearing that the landfill
20 boundary of 59.7 acres, which was approved in 1997, was based on the size requested by Caton
21 Landfill and shown in the site plans that Caton Landfill submitted. *Carroll Testimony at 1009:*

1 7-9, 1013:7-1014:20; *see also* FF 41-46. As noted above, the 1997 decision explained that “[t]he
2 Catons proposed an inert/demolition waste landfill within a natural ravine on a portion of their dry
3 land farm.” *Ex. A-1, p. 3*. The area of the landfill would be “approximately 59.7 acres.” *Id.* As
4 YCP explained in its June 16, 2023, letter, the area approved for the landfill in the 1997 decision
5 is depicted in the site plans—which Caton Landfill provided in support of its 1997 application.
6 FF 41.

7 67.

8 Carroll also explained—and Caton Landfill did not refute at the hearing—that based on
9 aerial photographs showing land disturbance, Caton Landfill is operating outside the boundaries
10 set in the 1997 decision. *Carroll Testimony at 1021:6-21, 1022:5-20*. Carroll also testified that, at
11 the time of the hearing, Caton Landfill still had not resolved the issues with YCP regarding the
12 location of the landfill. *Id. at 1029:15-18*. Nor, at the time of the hearing, had Caton Landfill taken
13 any action or submitted any documentation to YCP to amend its original permit or seek a new
14 special use permit, even though YCP has told Caton Landfill multiple times that it may do so. *Id.*
15 *at 1033:1-4, 1055:15-21*. The Board finds that Caton Landfill is operating beyond the approved
16 59.7-acre boundary described in the 1997 decision.

17 68.

18 Caton Landfill argues that YCP erred by assuming that the parcel number identified in the
19 1997 decision was limited to one section of the Catons’ property, Section 1, when in fact the same
20 parcel number encompassed another section to the west, Section 2—resulting in YCP’s incorrect
21 conclusion that Caton Landfill was operating outside of its approved boundary. *See Strutner*

1 *Testimony at 300:10-24; see also Carroll Testimony at 1038:3-10.* But Caton Landfill’s theory
2 fails to account for the fact that the approved boundary, as explained by YCP, is based on site
3 plans that Caton Landfill itself submitted in support of its 1997 application. *See* FF 41; *see also*
4 *Carroll Testimony at 1018:17-20* (explaining that the YCP letter uses the “original documents to
5 show this is where the boundary was identified by the applicants. So, therefore, anything outside
6 of that boundary would be something that we didn’t approve.”), *1047:17-24* (the approved
7 boundary of the landfill is within the northwest quarter of Section 1, consistent with the site plans
8 provided by Caton Landfill). The Board finds that Caton Landfill’s approved 59.7-acre boundary
9 is within only Section 1, not in Section 2.

10 69.

11 Caton Landfill also argued, based on anecdotal evidence, that the landfill boundary has
12 always encompassed the natural ravine in which it is located—from “ridgeline to ridgeline”—and
13 that YCP’s concerns are merely a “paperwork” issue. *See R. Caton Testimony at 274:2-275:8;*
14 *Appellant’s Prehearing Br., p. 14.* These arguments cannot prevail over the terms of the 1997
15 decision, the site plans Caton Landfill submitted in support of its 1997 application, and the
16 unrefuted evidence described in YCP’s June 16, 2023, letter, explaining that Caton Landfill is
17 operating beyond its approved boundary. Furthermore, as Carroll explained, the placement of a
18 solid waste disposal site is not simply a paperwork issue—rather, it “depends on the property and
19 the topography and groundwater and all the different environmental aspects of a particular
20 property[,]” which can affect the details of the operations plan or SEPA determination. *Carroll*
21 *Testimony at 1018:21-1019:20.* Testimony from Caton Landfill’s witnesses regarding the landfill

1 boundary is not persuasive because it is inconsistent with the boundaries depicted in Caton
2 Landfill's 1997 application. Persuasive evidence, as described above, supports YCP's description
3 of the 59.7 acre landfill boundary as the most accurate and legally and factually supported
4 boundary description. For those reasons, we adopt YCP's description of the landfill boundary as
5 the Board's finding on this issue.

6 70.

7 **2. Air Permit Issued by YRCAA**

8 Caton Landfill also argues that YHD improperly denied its solid waste permit based in part
9 on YRCAA's determination that the facility was not in compliance with its air permit. Dr. Hasan
10 Tahat, YRCAA's Engineering and Planning Division Supervisor, testified regarding Caton
11 Landfill's air permit. Dr. Tahat has a degree in civil engineering, a master's degree in
12 environmental engineering, and a PhD in hydrology and water sources engineering. *Tahat*
13 *Testimony at 765: 14-18*. He is also registered as an environmental engineer in Washington. *Id. at*
14 *18-20*. After reviewing all the evidence related to the YRCAA permit, particularly the unrefuted
15 testimony of Dr. Tahat as described below, the Board finds that Caton Landfill has not complied
16 with its air permit.

17 71.

18 YRCAA began investigating Caton Landfill's air emissions because of the landfill fire in
19 November and December 2022. *Tahat Testimony at 768:16-769:8*. As a result of that investigation,
20 Dr. Tahat, determined that Caton Landfill's operations had changed and exceeded the scope of its
21 air permit issued by YRCAA in 1997. *Id. at 765:1-5, 769:15-770:2*. As described in FF 39, on

1 May 23, 2023, YRCAA notified Caton Landfill that it was out of compliance with its air permit
2 issued in 1997. YRCAA explained in its letter that Caton Landfill exceeded the amount of waste
3 that it could accept under its 1997 permit by 20,522 cubic yards (41%) in 2020, 28,731 cubic yards
4 (157%) in 2021, and 408,935 cubic yards (817%) in 2022. *Id.* YRCAA also stated that by June 30,
5 2023, Caton Landfill was required to submit an NSR application, a report detailing the type and
6 location of all materials accepted by the landfill since January 1, 2020, and a calculation of the
7 actual quantity of air emissions for criteria and toxic air pollutants from January 1, 2020. *Id.*

8 72.

9 Randy Caton testified that Caton Landfill has not accepted waste above permitted levels,
10 based on an analysis completed by GeoEngineers. *R. Caton Testimony at 176:11-25, 179:15-25,*
11 *184:5-185:19; Ex. A-26, pp. 16-17.* Citing GeoEngineers' Compliance Assessment Summary,
12 Randy Caton testified that the landfill was "working within the parameters of [its] original permit"
13 because the assessment concluded that *on average*, over the landfill's lifetime, the amount of
14 material received by the facility was below the regulatory threshold stated in the 1997 YRCAA air
15 permit. *R. Caton Testimony at 176:15-25; Ex. A-26, p. 8-9, 21.* Dr. Tahat disagreed with this
16 analysis because it was inconsistent with the terms of the permit. The threshold set in the 1997
17 permit is based on the amount of material Caton Landfill receives *per year*, not on the average
18 amount received over the landfill's lifetime. *Tahat Testimony at 769:24-770:1, 790:4-15.*
19 Additionally, Caton Landfill did not provide any testimony from GeoEngineers, and instead relied
20 on lay testimony from Randy Caton about his understanding of the information in the technical
21

1 report. The Board finds Dr. Tahat’s expert testimony credible that Caton Landfill has not complied
2 with the terms of its permit from YRCAA.

3 73.

4 Caton Landfill also argues that it is actively working with YRCAA to complete the
5 necessary permit modification process. *R. Caton Testimony at 100:12-17*. For example, Caton
6 Landfill submitted an NSR Application to YRCAA in October 2024, and states that it is working
7 with YRCAA to complete the permit modification process. *Ex. A-38, pp. 2-150; Tahat Testimony*
8 *at 792:24-793:5; R. Caton Testimony at 100:12-17*. However, not only did Caton Landfill submit
9 the materials over one year after YRCAA requested the information, but YRCAA rejected the
10 submission as incomplete. *Tahat Testimony at 774:18-775:6, 776:7-19; Ex. A-40, pp. 1-2*. Among
11 other concerns, Dr. Tahat explained that Caton Landfill reported in the NSR Application that it
12 had deposited waste over a 7.3-acre area outside of the 59.7-acre disposal footprint, but Caton
13 Landfill did not provide a SEPA determination for the additional 7.3-acre area. *Ex. A-40, p. 1*.
14 Additionally, Caton Landfill’s NSR Application treated the 59.7- and 7.3-acre areas of the landfill
15 separately for the purpose of calculating hydrogen sulfide for the Acceptable Source Impact Level
16 (ASIL) and “when combined, they will exceed the ASIL based on [YRCAA] modeling.” *Id., pp.*
17 *1-2*.

18 74.

19 Caton Landfill continued to send materials to YRCAA—even during the hearing in this
20 matter—on December 9, 2024. *Tahat Testimony at 780:22-781:4; Ex. A-42, pp. 1-6*. Although
21 Dr. Tahat had not responded to Caton Landfill’s most recent submission by the time of his

1 testimony, he explained that Caton Landfill was not in compliance with its YRCAA permit because
2 the facility clearly has exceeded the allowable threshold of waste it could accept. *See Tahat*
3 *Testimony at 780:25-781:13.*

4 75.

5 Based on the evidence provided at hearing, particularly the persuasive and credible
6 testimony of Dr. Tahat and the lack of persuasive and credible evidence provided by Caton Landfill
7 witnesses, the Board finds that Caton Landfill exceeded the threshold for volume of inert waste
8 accepted per year set in the 1997 air permit in 2020, 2021, and 2022. The Board further finds that
9 because Caton Landfill exceeded the threshold set in the 1997 air permit, it has failed to comply
10 with the air permit issued by YRCAA.

11 76.

12 **3. Brush Pile**

13 It is undisputed that a large brush pile is currently present on Caton Landfill's property. *R.*
14 *Caton Testimony at 79:6-80:21.* In a 2021 YHD inspection letter, Silvestri identified the brush pile
15 and indicated it was a violation of WAC 173-350-320(2) (Piles Used for Storage or Treatment).
16 *Ex. A-2, p. 1.* He further stated in that letter that Caton Landfill needed to remove the brush pile
17 by Spring of 2022. *Id.*

18 77.

19 Randy Caton testified that the Washington Department of Fish and Wildlife gave Caton
20 Landfill permission to use the brush pile material as wildlife habitat on the property surrounding
21 the landfill. *R. Caton Testimony at 79:23-80:2.* However, Caton Landfill was not permitted under

1 its solid waste permit to stockpile brush material. *Magee Testimony at 680:11-21*. Randy Caton
2 testified that brush was an allowable source in 2008, as long as it was not placed in the landfill
3 when it was still green and could pose a fire hazard. *R. Caton Testimony at 78:22-79:3*.

4 78.

5 Currently, the brush pile is described as spanning multiple acres or the size of two football
6 fields. *Magee Testimony at 679:14-16*. The brush pile is not located in the regulated landfill area
7 and falls outside the 120-acre parcel indicated in Caton Landfill's Special Use Permit. *Id. at 742:8-*
8 *14*. Due to the facility's history of landfill fires, the location of the brush pile poses a potential fire
9 hazard as it is only approximately a few hundred yards away from the landfill. *Id. at 679:17-22*.
10 Caton Landfill's expert, Thalhamer, also noted his concern about the large stump pile building up
11 on the landfill during his April 2024 site visit. *Thalhamer Testimony at 552:5-11*.

12 79.

13 Magee testified that Caton Landfill would need either a condition in its solid waste permit
14 to be able to stockpile the material and hold it separately from the landfill or would need to apply
15 for and obtain a piles permit. *Id. at 680:1-10*.

16 80.

17 The Board concludes Magee's testimony is credible and persuasive. Regardless of whether
18 Washington Department of Fish and Wildlife indicated a brush pile was good for habitat, Caton
19 Landfill was notified in 2021 that it needed to remove the growing wood waste pile by Spring
20 2022 to comply with landfill regulations. As of the hearing date, Caton Landfill has not removed
21 the wood waste pile.

1 81.

2 **4. Financial Assurance**

3 YHD and Ecology assert that Caton Landfill needs sufficient financial assurance and has
4 failed to comply with regulatory requirements, including WAC 173-350-400(9). Rivard raised
5 concerns about Caton Landfill's financial assurance account during his visit in March 2022,
6 indicating that fifty to seventy-five thousand dollars in the account was not sufficient and that the
7 money could be taken out of the checking account at any time. *Rivard Testimony at 823-24:14-4,*
8 *829:2-9.*

9 82.

10 Randy Caton testified Caton Landfill's Chief Financial Officer, Don Caton, attempted to
11 obtain a bond, but bond companies would not provide a bond. *R. Caton Testimony at 118:13-19.*
12 He further stated the reason they declined to issue a bond is that under the relevant WAC, Ecology
13 would control the account and, if it closed the facility, Ecology could confiscate the account. *Id.*
14 *at 118:15-21.* Randy Caton testified they resorted to obtaining a "letter of credit that would suffice
15 for our financial instrument." *Id. at 119:1-2.*

16 83.

17 Caton Landfill argues that an irrevocable letter of credit satisfies the financial assurance
18 requirement under WAC 173-350-600(3)(b)(iii). *R. Caton Testimony at 151:6-11.* Randy Caton
19 testified that Caton Landfill obtained a \$165,556.56 letter of credit. *Id. at 152:7-17.* Randy Caton
20 claims the amount is sufficient to close the portion of the landfill that is open. *Id. at 153:20-24.*

1 84.

2 Megan Rounds testified regarding financial assurance of Caton Landfill. Rounds is MOLO
3 certified. *Rounds Testimony at 955:12*. As part of her job, she reviews the engineering regulatory
4 requirements for permit renewals. *Id. at 957:3-23*. She was involved with Caton Landfill's renewal
5 of its solid waste permit and attended a site visit with other Ecology staff in March 2022. *Id. at*
6 *960:2-17*.

7 85.

8 Rounds testified that during an August 2022 meeting with the Catons, she stated that the
9 only engineering documents Ecology had were hand-drawn sketches, which did not meet regulatory
10 requirements under WAC 173-350-400. *Id. at 962:2-9, 957:8*. She informed Caton Landfill that
11 Ecology needed engineering drawings based on a land survey of the landfill. *Id. at 962:11-18*. She
12 further testified that the operations manual did not identify any landfill cells—instead Caton
13 Landfill's information was based on stationing, which is for roads and not landfills. *Id. at 965:3-9;*
14 *1001:21-25*.

15 86.

16 Rounds testified that engineering documents are necessary to approve a landfill closure
17 plan, including specific information about the amount and type of material in the landfill. *Id. at*
18 *965:17-21*. Rounds explained that engineering documents and an adequate closure plan are
19 necessary to ensure that the landfill, when closed, is impermeable. *Id. at 965:13-23*. Otherwise, the
20 Catons could be responsible for the landfill for the rest of their lives—even after it is closed. *Id. at*
21 *965:21-966:6*. In addition, this information was required to determine the financial assurance for

1 the landfill. *Id. at 966:9-10; 973:12-18*. Rounds stated that Caton Landfill’s closure plan in its
2 operations manual failed to include any calculations of the amount of soil needed to properly close
3 the landfill, and therefore it did not meet the requirements of the financial assurance regulation. *Id.*
4 *at 970:6-12*. The documents also were not stamped by an engineer, as required by regulation. *Id. at*
5 *971:4-7*. Also, there was no assessment of the on-site soil’s permeability that Caton Landfill
6 proposed to use to close the landfill, which also affects the amount of financial assurance. *Id. at*
7 *970:13-19*.

8 87.

9 Rounds participated in Ecology’s review of Caton Landfill’s renewal application for its
10 solid waste permit in May 2023. *Id. at 971:2-14*. She was also involved in detailing what Caton
11 Landfill needed to submit prior to its permit renewal. *Id. at 972:1-3; Ex. R-8*. Rounds testified she
12 found Caton Landfill’s financial assurance insufficient to meet regulatory requirements. *Rounds*
13 *Testimony at 978:6-13; Ex. R-11*. The renewal application lacked engineering documents
14 describing the elevation of the landfill at its inception, which was needed to know the depth of the
15 waste in the landfill. *Rounds Testimony at 975:2-11*. Rounds disagreed with McHenry’s submittal
16 for the renewal application. *Id. at 980:14-981:2*. She stated that without the landfill design
17 specifications through a survey, she could not assess the topography or how much soil would be
18 needed for the “closed landfill area.” *Id. at 981:10-22*. She stated McHenry’s aerial survey was
19 insufficient to evaluate the landfill’s height, width, and length. *Id. at 1002:11-23*. She did not have
20 adequate calculations for the size of the landfill areas described in the engineering documents. *Id.*
21 *at 982:14-22*.

1 88.

2 Rounds also testified that the post-closure costs could not be calculated because Caton
3 Landfill did not provide adequate information for the “area three” section of the landfill. *Id. at*
4 *984:14-22*. She could not determine, for example, the extent of the work that would be required and
5 how many tractors or excavators would be needed given the steepness of the slopes. *Id. at 983:2-*
6 *8*. She also noted that Caton Landfill estimated a thousand dollars for post-closure annual water
7 sampling. *Id. at 983:9-14*. She found this inadequate because sampling is required quarterly, and
8 she needed cost estimates over a period of twenty years. *Id. at 983:12-13, 983:22-984:2*. She also
9 stated she had concerns about the lack of a liner for the landfill. *Id. at 984:19-22*.

10 89.

11 The Board finds Rounds’s testimony credible and persuasive as to the regulatory
12 requirements for financial assurance. Additionally, the Board finds that Rounds persuasively
13 testified that Caton Landfill’s \$165,556.56 letter of credit is insufficient under WAC 173-350-
14 400(9). The Board finds the testimony of Caton Landfill’s witnesses regarding the adequacy of the
15 letter of credit less persuasive. The finding is based upon the detailed evidence-based conclusions
16 reached by Rounds as compared to the broad-brushed conclusions and arguments provided by
17 Caton Landfill as described above. The Board further addresses Caton Landfill’s compliance with
18 this regulatory requirement below.

1 90.

2 **5. Operations Manual**

3 Caton Landfill also challenges YHD's assertion that the facility failed to properly update
4 its operations manual, which is another basis YHD raised in denying Caton Landfill's solid waste
5 permit. *Appellant's Prehearing Br.*, p. 10. The Board finds that Caton Landfill has not adequately
6 updated its operations manual.

7 91.

8 As described by witnesses at the hearing, Caton Landfill's 2008 operations manual required
9 updates because of discrepancies between the manual and the way the landfill actually was
10 running. FF 21. Engineering documents, landfill design, and the fill plan were not consistent with
11 the regulators' observations at Caton Landfill. *Id.*

12 92.

13 Even at the time of the hearing, Caton Landfill had not resolved many of the concerns
14 regarding the operations manual. Although Caton Landfill provided some engineering documents,
15 for example, Magee explained that those documents were inadequate because they were based on
16 boundary lines that Caton Landfill had proposed, but that YCP has not approved. *Magee Testimony*
17 *at 701:13-17*. Furthermore, Magee noted that given McHenry's testimony that the information
18 Caton Landfill provided in December 2023 was essentially the same information previously
19 provided in June 2023, it was still insufficient. *Id. at 700:22-701:7*.

1 93.

2 Rounds also testified about the deficiencies in Caton Landfill's proposed closing plan.
3 Because Caton Landfill has not completed a survey of the landfill, Rounds explained that she did
4 not know the size or topography of the landfill and therefore could not evaluate whether the closing
5 plan included enough soil to cover the area of the landfill. *Rounds Testimony at 980:23-981:20.*
6 While McHenry provided an aerial survey, Rounds testified that she needed an actual survey on
7 the ground that would allow her to create a topographical map showing the height, width, and
8 length of the landfill. *Id. at 1002:11-19.* Additionally, the closure plan indicates that soil is
9 available onsite but does not clarify whether the soil is impermeable. *Id. at 980:21-23, 982:1-2.*
10 Ecology advises landfills to use either impermeable soil or a liner. *Id. at 982:4-7.* Otherwise,
11 leachate will form and the operators would be in post-closure care of a landfill indefinitely. *See id.*
12 *at 998:24-999:2.*

13 94.

14 The Board finds that Caton Landfill has failed to provide the requested updates by YHD
15 and Ecology to its operations manual.

16 95.

17 To the extent Caton Landfill argues it cannot provide at least some of the updates to its
18 operations manual—such as those that depend on an accurate survey of the landfill—because the
19 regulators have never specified the approved boundary of the landfill, the Board disagrees. As
20 discussed above, the record shows that Caton Landfill's boundary, as approved in the 1997
21 decision, is based on the site plans that Caton Landfill provided in support of its application.

1 FF 67-68. YCP provided a clear explanation of Caton Landfill's boundary in its letter dated June
2 16, 2023. *See* FF 41-46.

3 96.

4 Caton Landfill also contends that it has attempted to work with YHD since the denial of
5 the renewal of its solid waste permit, but that YHD has refused to review its further submissions.
6 *See Appellant's Prehearing Br., p. 10.* Caton Landfill mischaracterizes YHD's position. As Magee
7 testified and as YHD indicated in letters to Caton Landfill, renewal of the solid waste permit was
8 denied. *Magee Testimony at 699:4-5; Ex. R-4, p. 55.* Yet, at least as of the time of the hearing,
9 Caton Landfill continued operations, without a valid permit. *See Magee Testimony at 699:1-2.* To
10 move forward with an application for a new permit, YHD required Caton Landfill to complete
11 several action items, including that it cease operating without a permit and that it submit an
12 application and documents and plans to support a new permit. *Id. at 699:10-13.* Caton Landfill
13 also would need to resolve compliance issues with its other permits before YHD could issue a new
14 solid waste permit. *Id. at 699:14-16.* The Board finds that YHD did not refuse to review Caton
15 Landfill's submissions in support of its renewal application—rather, YHD *denied* Caton Landfill's
16 renewal application and required the landfill to complete steps necessary to support an application
17 for a new permit.

18 97.

19 Any Conclusion of Law deemed properly to be considered a Finding of Fact is hereby
20 adopted as such.

21 Based on the foregoing findings of Fact, the Board enters the following:

1

2

3

7

8

10

15

16

1 effect to the plain meaning of the language used as the embodiment of legislative intent. *See Ctr.*
2 *for Env't'l Law & Policy v. Dep't of Ecology*, 196 Wn.2d 17, 29, 468 P.3d 1064 (2020). The Board
3 determines plain meaning from all that the Legislature has said in the statute and related statutes
4 that disclose legislative intent about the provision in question. *See id.* The plain meaning of
5 nontechnical statutory terms may be discerned from their dictionary definitions. *Columbia*
6 *Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 421, 435, 395 P.3d 1031 (2017). If, after the
7 inquiry, the statute can reasonably be interpreted in more than one way, then it is ambiguous and
8 the Board will resort to principles of statutory construction to assist in its interpretation. *Kilbourne*
9 *v. Dep't of Ret. Sys.*, 16 Wn. App. 2d 44, 49, 479 P.3d 377 (2021); *CH2M Hill Hanford Grp. Inc.*,
10 at 16 (citing *Dep't of Labor & Indus. v. Gongyin*, 154 Wn.2d 38, 44-45, 109 P.3d 816 (2005)). To
11 interpret agency regulations, the Board applies the same principles used to interpret statutes. *See*
12 *Port of Tacoma v. Sacks*, 19 Wn. App. 2d 295, 304, 495 P.3d 866 (2021).

13 4.

14 The Board looks to the plain language of RCW 70A.205.155, which provides:

15 Whenever the jurisdictional health department denies a permit or suspends a permit
16 for a solid waste disposal site, it shall, upon request of the applicant or holder of the
17 permit, grant a hearing on such denial or suspension within thirty days after the
18 request therefore is made. . . . Within thirty days after the hearing, the health officer
19 shall notify the applicant or the holder of the permit in writing of his or her
20 determination and the reasons therefor. Any party aggrieved by such determination
21 may appeal to the pollution control hearings board by filing with the hearings board
a notice of appeal within thirty days after receipt of notice of the determination of
the health officer. The hearings board shall hold a hearing in accordance with the
provisions of the administrative procedure act, chapter 34.05 RCW. *If the*
jurisdictional health department denies a permit renewal or suspends a permit for
an operating waste recycling facility that receives waste from more than one city
or county, and the applicant or holder of the permit requests a hearing or files an

1 *appeal under this section, the permit denial or suspension shall not be effective*
2 *until the completion of the appeal process under this section, unless the*
3 *jurisdictional health department declares that continued operation of the waste*
recycling facility poses a very probable threat to human health and the
environment. (Emphasis added).

4 5.

5 The Board first determines whether it has jurisdiction to determine if the stay provision of
6 RCW 70A.205.155 applies. The Board has de novo review to hear an appeal of the health district's
7 decision to deny a permit renewal. RCW 43.21B.110. Furthermore, RCW 70A.205.155
8 unambiguously authorizes the Board to hear such appeals of both a solid waste disposal site and a
9 waste recycling facility:

10 Any party aggrieved by such determination may appeal to the pollution control
11 hearings board by filing with the hearings board a notice of appeal within thirty
12 days after receipt of notice of the determination of the health officer. The hearings
board shall hold a hearing in accordance with the provisions of the administrative
procedure act, chapter 34.05 RCW.

13 6.

14 The Board concludes it has jurisdiction to determine whether Caton Landfill qualifies as a
15 waste recycling facility under the relevant statutes and regulations. The stay provision is part of
16 the same appeal framework and located within the same statute that authorizes the Board to hear
17 an appeal of a health district's permit decision. The Board notes that although the YHD hearing
18 examiner did not address whether the stay provision under RCW 70A.205.155 applied to Caton
19 Landfill, the Board reviews de novo YHD's decision to deny the permit and the applicability of
20 the stay provision.

1 7.

2 The Board next examines the merit of Caton Landfill’s claims that it qualifies as a waste
3 recycling facility and is entitled to a stay. Caton Landfill argues it has been recycling since landfill
4 operations began. *See* FF 59. YHD argues Caton Landfill is not a recycling facility. FF 61.

5 8.

6 Landfill and recycling are defined in RCW 70A.205.015 as follows:

7 (12) “Landfill” means a disposal facility or part of a facility at which solid waste is placed
8 in or on land and which is not a land treatment facility.

9

10 (20) “Recycling” means transforming or remanufacturing waste materials into usable or
11 marketable materials for use other than landfill disposal or incineration.

12 The Board concludes that Caton Landfill does not conduct “recycling” and therefore is not
13 a waste recycling facility under RCW 70A.205.155. Caton Landfill argues that pulling metal,
14 wood, toys, and other materials from the waste stream that others then take to recycling centers or
15 for reuse, is “recycling.” FF 59. However, the activities that Caton Landfill described do not
16 constitute “transforming or remanufacturing waste materials into useable or marketable materials
17 for use other than landfill disposal or incineration.” *See* RCW 70A.205.015(20). Additionally,
18 YHD has not authorized the facility to recycle waste materials, and Caton Landfill does not have
19 a facility for recycling, sorting, material recovery, or storage. FF 61; *Magee Testimony at*
20 *683:17-25*. Nor is there any mention of recycling in Caton Landfill’s operations manual. FF 61.
21 Indeed, since it began operating in 1998 and through 2022, Caton Landfill had never reported to

1 YHD that it had sent out recycling material from the landfill. FF 60. It was not until February 2024,
2 when the annual report for 2023 was filed—following the permit denial and filing of this appeal—
3 that Caton Landfill first submitted data on recycling material leaving the facility. *See id.*
4 Furthermore, Caton Landfill changed its company name to “Caton Landfill & Recycling, LLC”—
5 adding the term “Recycling”—first in November 2022. FF 62; *R. Caton Testimony at 263:10-20.*

6 9.

7 Additional support for the conclusion that Caton Landfill does not conduct “recycling” is
8 the fact that the activities the landfill described appear to fall under a different definition in the
9 regulations. Caton Landfill’s witnesses explained that the landfill separates some materials from
10 the waste stream so that others may pick them up and use them for other purposes. FF 59. However,
11 unless approved by *both* the owner-operator of the facility *and* the jurisdictional health department,
12 removing waste from a waste stream is defined as “scavenging,” which landfill operators are
13 required to *prevent*. WAC 173-350-100; WAC 173-350-400(6)(a)(iv)(E); *Magee Testimony at*
14 *684:19-685:16, 709:3-14*. No evidence was presented that Caton Landfill sought, much less
15 obtained, permission from YHD to remove waste from the waste stream. The fact that Caton
16 Landfill’s activities appear to fall under the definition of “scavenging” weighs against the landfill’s
17 arguments that those activities constitute “recycling.”

18 10.

19 Caton Landfill has not established that it is a waste recycling facility; therefore, it is not
20 entitled to a stay of the effects of YHD’s permit denial under RCW 70A.205.015.

11.

B. Caton Landfill's Failure to Comply with Permits Issued by YCP and YRCAA Support YHD's Denial of the Solid Waste Permit Renewal. (Issues 4-7)

Caton Landfill challenges YHD's reliance on YCP's determination that the landfill was not in compliance with its CUP and YRCAA's determination that the landfill was not in compliance with its air permit. Specifically, under Issues 4 and 6, Caton Landfill argues that YHD lacks authority to determine whether the landfill complies with the permits issued by those agencies. Under Issue 5, Caton Landfill contends that YHD lacks authority to deny the solid waste permit renewal based on Caton Landfill's noncompliance with the other permits because no notice of violation, noncompliance, or revocation for the permits has been issued. *See Appellant's Prehearing Br., p. 14.* Finally, under Issue 7, Caton Landfill argues YHD erred by denying the solid waste permit renewal based on a disagreement with YCP over the landfill boundary when YHD knows the actual location of the landfill. As explained below, the Board resolves each of these issues in favor of YHD.

12.

First, YHD has authority to evaluate whether Caton Landfill is in compliance with its other permits. The owner or operator of an LPL must operate the facility with the performance standards found in WAC 173-350-040. WAC 173-350-400(6)(a). Those performance standards include compliance with all "applicable local, state, and federal laws and regulations." WAC 173-350-040(3). The Board concludes that this regulation authorizes YHD to review and determine whether Caton Landfill is in compliance with other permits, including its air permit and CUP. Furthermore,

1 the evidence presented at the hearing established that Caton Landfill is not in compliance with its
2 YCP and YRCAA permits because the landfill extends well beyond the boundary allowed in its
3 CUP and the landfill has accepted waste in amounts far greater than allowed under its air permit.
4 *See* FF 67, 75.

5 13.

6 Second, YHD is not precluded from relying on Caton Landfill's failure to comply with the
7 permits issued by YRCAA and YCP on the grounds that neither agency issued a notice of violation,
8 noncompliance, or revocation regarding those permits. Nothing in WAC 173-350-040(3) indicates
9 that a health department is limited to determining whether a solid waste facility complies with
10 applicable laws and regulations only if a notice of violation or similar document has been issued.

11 14.

12 Third, YHD did not err in denying the renewal of Caton Landfill's solid waste permit
13 renewal based on the boundary of the landfill. Caton Landfill argues it was well understood that
14 the landfill would operate from ridge to ridge in the natural ravine. However, as explained above,
15 the evidence established that the landfill is operating outside of the boundary approved in the 1997
16 decision. FF 67.

17 15.

18 Accordingly, the Board resolves Issues 4-7 in favor of YHD.
19
20
21

16.

C. Caton Landfill's Due Process Arguments Are Moot Because the Board's Review is De Novo. (Issue 2)

Caton Landfill claims YHD engaged in improper procedures and violated its procedural due process rights when processing the Permit renewal (Issue 2). Caton Landfill argues the YHD Hearing Officer failed to conduct a fair hearing by not identifying witnesses or limits on testimony and committed other procedural issues, such that the Hearing Officer's decision should be accorded no deference. *Appellant's Prehearing Br., p. 13.*

17.

The Board concludes this issue is moot because the Board is reviewing the permit renewal de novo. The Board has considered all the new evidence that was not before the Hearing Officer and provided a full and fair hearing with all due process and other procedural rights accorded to the appealing party.

18.

D. Caton Landfill Failed to Provide Adequate Financial Assurance. (Issue 3)

Caton Landfill claims YHD erred in concluding the facility's financial assurance did not comply with state law, including WAC 173-350-600 (Issue 3). Caton Landfill provided YHD with an irrevocable letter of credit for \$165,556.56, which the landfill asserts satisfies the financial assurance requirement under WAC 173-350-600(3)(b)(iii). FF 83.

19.

While an irrevocable letter of credit is listed as a financial assurance option under WAC 173-350-600(3)(b)(iii), Caton Landfill has not established that the amount of financial assurance it provided is sufficient under WAC 173-350-400(9). The owner or operator of an LPL must establish a financial assurance mechanism “that will accumulate funds equal to the closure and post closure cost estimates over the life of the landfill, or over the life of each landfill unit if closed discretely.” WAC 173-350-400(9)(b). Moreover, “[n]o owner or operator may commence or continue disposal operations in any part of a facility . . . until a financial assurance instrument has been provided for closure and post-closure activities in accordance with WAC 173-350-600.” WAC 173-350-400(9)(c).

20.

Caton Landfill has not offered adequate information to determine the amount of the post-closure costs. FF 86. For example, Caton Landfill failed to provide an engineering survey of the topography, type of landfill material, the amount of on-site soil needed to close an area and its permeability, and the delineation of landfill cells. FF 85-87. As Rounds explained, Caton Landfill’s engineering report did not indicate the steepness of the slopes or the width and depth of the landfill material. FF 87. The aerial survey provided by Caton Landfill lacked this information. *Id.* Therefore, Rounds could not determine how many tractors or excavators would be needed for post closure costs. FF 88. As of the date of the hearing, Caton Landfill had not complied with financial assurance requirements under WAC 173-350-400(9) and WAC 173-350-600.

21.

E. YHD Did Not Act Arbitrarily and Capriciously in Processing Caton Landfill’s Renewal Application. (Issue 1)

In Issue 1, Caton Landfill claims YHD acted arbitrarily and capriciously when processing Caton Landfill’s 2023 solid waste permit renewal application. First, Caton Landfill argues that YHD has refused to accept its updated operations manual, which it attempted to submit in December 2023. *Appellant’s Pre-Hearing Brief*, p. 10. Second, Caton Landfill argues that the permits issued by YRCAA and YCP remain in effect and do not provide a basis for denying the solid waste permit. *Id.* Third, Caton Landfill asserts it has been treated disparately from other Yakima County landfills. *Id.*, pp. 12-13. YHD contends it provided ample opportunity and time for Caton Landfill to submit an updated operations manual, financial assurance, fire response plan, and to address violations of the permits issued by YRCAA and YCP. *Respondent’s Pre-Hearing Brief*, pp. 6-7. YHD further contends that Caton Landfill has not provided permit application materials that satisfy the requirements of chapter 173-350 WAC. *Id.*

22.

Agency action is arbitrary and capricious if it is willful, unreasoned, and taken without regard to the attending facts and circumstances. *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 589, 90 P.3d 659 (2004). Where there is room for two opinions, an action taken honestly and after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous. *Id.* “The scope of review under an arbitrary and capricious standard is very narrow, and the party asserting it carries a ‘heavy burden.’” *Ass’n of Wash. Spirits & Wine*

1 *Distribs. v. Wash. State Liquor Control Bd.*, 182 Wn.2d 342, 359, 340 P.3d 849 (2015) (citations
2 and internal quotation marks omitted).

3 23.

4 Jurisdictional health departments are primarily responsible for determining whether a
5 permit should be issued or renewed for a solid waste handling facility. RCW 70A.205.125;
6 RCW 70A.205.135; WAC 173-350-710(1)(a). “Upon receipt of an application for a permit to
7 establish or modify a solid waste handling facility, the jurisdictional health department shall refer
8 one copy of the application to the department [of Ecology] which shall report its findings to the
9 jurisdictional health department.” RCW 70A.205.125(2); *see also* WAC 173-350-710(1)(c)(i); *see*
10 *also* WAC 173-350-710(3). “The jurisdictional health department shall investigate every
11 application as may be necessary to determine whether a proposed or modified site and facilities
12 meet all solid waste, air, and other applicable laws and regulations, and conforms with the
13 approved comprehensive solid waste handling plan, and complies with all zoning requirements.”
14 RCW 70A.205.125(3); *see also* WAC 173-350-710(1)(c)(ii); *see also* WAC 173-350-
15 710(3)(a)(ii). It is the responsibility of the facility owner or operator to comply with the
16 requirements set forth in chapter 173-350 WAC. WAC 173-350-025.

17 24.

18 To the extent Caton Landfill argues YHD acted arbitrarily and capriciously by failing to
19 consider documents after its decision to deny the permit renewal, the Board considers the issue
20 moot since the Board has de novo review. The Board has fully considered all the new evidence
21

1 that Caton Landfill proffered, including its updated operations manual and letters it sent to
2 YRCAA and YCP.

3 25.

4 Caton Landfill's argument that YHD acted arbitrarily and capriciously by failing to review
5 its submitted materials also fails as a matter of fact—the evidence established that YHD reviewed
6 the substance of the documents that Caton Landfill provided. According to the testimony of Caton
7 Landfill's witnesses, the substance of the December 2023 submission was the same as the materials
8 that Caton Landfill provided earlier, only reorganized. FF 56. Caton Landfill did not show that
9 there was any significant difference in the later-submitted materials that would affect YHD's
10 analysis. Nevertheless, the Board will also address Caton Landfill's argument that YHD acted
11 arbitrarily and capriciously by not considering some of Caton Landfill's submitted documents.

12 26.

13 YHD worked with Ecology to review Caton Landfill's regulatory compliance. Ecology
14 informed Caton Landfill of the need to make substantial updates to its permit documentation to
15 ensure regulatory compliance as early as May 2022. FF 19. On May 5, 2022, Ecology sent a letter
16 to Caton Landfill, with a copy to YHD, outlining five areas that needed to be addressed: (1)
17 increase in financial assurance; (2) financial assurance holding mechanism; (3) updated operations
18 plan; (4) hydrogeology review; and (5) landfill emissions sampling. *Ex. R-4, p. 1*. As stated above,
19 YHD and Ecology made multiple subsequent attempts to communicate and work with Caton
20 Landfill to ensure regulatory compliance prior to the permit renewal deadline of April 30, 2023.

1 27.

2 When a permit renewal application is submitted to YHD, the agency is obligated to ensure
3 it complies with the requirements of chapter 173-350 WAC and with all applicable laws and
4 regulations. WAC 173-350-710(3)(a)(ii); *Provence Testimony at 930:21-24*. On June 27, 2023,
5 after YHD granted Caton Landfill an extension to provide additional support for its permit renewal
6 application, YHD denied Caton Landfill's permit renewal application. FF 48. As grounds for denial,
7 YHD cited Caton Landfill's: (1) violation of its air permit issued by YRCAA, (2) non-compliance
8 with its CUP issued by YCP, and (3) failure to meet WAC 173-350, as determined by Ecology.
9 *Id.*

10 28.

11 As of the date of hearing, Caton Landfill still had not adequately addressed all regulatory
12 requirements to support renewal of its solid waste permit, including providing adequate financial
13 assurance and a sufficiently updated operations manual. FF 89, 92-94. Likewise, Caton Landfill
14 still had not resolved the boundary issue with YCP or the air permit issue with YRCAA. FF 67,
15 71-72; *Tahat Testimony at 781:6-13*; *Carroll Testimony at 1033:1-11*. Caton Landfill provided
16 additional letters up to the hearing date, contending that it is still was working with YRCAA and
17 YCP to resolve any issues. FF 73-74, 67; *Ex. R-41*; *Ex. R-42*. However, Caton Landfill's admission
18 that those issues had not been resolved by the time of the hearing strengthens the conclusion that
19 the landfill is not in compliance with WAC 173-350-710. *See also* FF 67, 74 (regulators testified
20 that Caton Landfill had not met outstanding permitting issues). In addition, Caton Landfill has not
21

1 removed the large brush pile that regulators have raised is a potential fire hazard since 2022.
2 FF 76-80.

3 29.

4 Caton Landfill also claims YHD acted arbitrarily and capriciously in treating it differently
5 from other Yakima County landfills. However, other permits are not before the Board. The only
6 relevant issue is whether the denial of Caton Landfill's permit should be upheld.

7 30.

8 Based on the evidence, the Board concludes that YHD did not act arbitrarily and
9 capriciously when processing the 2023 renewal of Caton Landfill's solid waste permit.
10 Furthermore, the Board concludes that any of the multiple deficiencies in Caton Landfill's
11 application to renew its solid waste permit would justify affirming YHD's denial—including the
12 lack of financial assurance, lack of a proper closure plan, and failure to comply with the YRCAA
13 air permit or YCP CUP.

14 31.

15 **F. Caton Landfill's Request that the Board Renew Its Permit (Issue 10)**

16 Legal Issue 10 is whether the Permit may be renewed for sufficient time to allow Caton
17 Landfill to work with YHD and other regulators to resolve any outstanding matters to ensure the
18 landfill's full compliance with the law. The Board will not renew Caton Landfill's solid waste
19 permit or remand the matter to YHD to renew the permit. There are multiple deficiencies that
20 remain unaddressed, as explained above. Despite numerous communications with regulators since
21

1 May 2022, Caton Landfill is still not in compliance and continues to operate without a valid solid
2 waste permit. Caton Landfill's request for renewal of the Permit is denied.

3 32.

4 Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Having
5 so found and concluded, the Board enters the following:

6 **VI. ORDER**

7 The Yakima Health District's decision to deny Caton Landfill's renewal of its solid waste permit
8 is **AFFIRMED**.

9 SO ORDERED this 10th day of April, 2025.

10
11 **POLLUTION CONTROL HEARINGS BOARD**

12 

13 _____
14 MICHELLE GONZALEZ, Presiding
Board Chair

15 

16 _____
CHRIS SWANSON, Member

17 

18 _____
GABRIEL E. VERDUGO, Member

1 This is a FINAL ORDER for purposes of appeal to Superior Court within 30 days. *See*
2 Administrative Procedures Act (RCW 34.05.542) and RCW 43.21B.180.

3 You are being given the following notice as required by RCW 34.05.461(3): Any party
4 may file a petition for reconsideration with the Board. A petition for reconsideration must be filed
5 with the Board and served on all parties within ten days of mailing of the final decision. WAC
6 371-08-550.