



*Friends of Toppenish Creek*

May 27, 2025

Dear Yakima Regional Clean Air Agency,

This is an informational offering from the Friends of Toppenish Creek.

Subject: Can the YRCAA Executive Director/Air Pollution Control Officer serve as a Hearing Examiner for Hearings related to YRCAA permitting?

During the appeal of YRCAA's air quality permit for the DTG Limited Purpose Landfill, the YRCAA Executive Director stated that he served as the Hearing Examiner for the September 26, 2023 public hearing regarding a Draft New Source Review Order of Approval for the DTG operation. Was this legal?

1. A review of the applicable laws finds that RCW 70A.15 says the Board of Directors for a local clean air agency has the power to hold hearings. RCW 70A.15 is silent on who can serve as a Hearing Examiner.

RCW 70A.15.2300 delineates the duties of an Air Pollution Control Officer for a local clean air agency, "whose sole responsibility shall be to observe and enforce the provisions of this chapter and all orders, ordinances, resolutions, or rules and regulations of such activated authority pertaining to the control and prevention of air pollution." Does this include serving as a Hearing Examiner? Not explicitly.

2. YRCAA Administrative Code Part A says:

"1.1.2 As authorized by RCW 70.94.141, the Board, in addition to any other powers vested in them by law, shall have the power to: ii. Hold hearings relating to any aspect of or matter in the administration;"

"3.4 Executive Director. The Board shall appoint an Executive Director (Director) who shall have the primary duty and responsibility for the day-to-day operations of the Agency, including, but not limited to, fiscal responsibilities, administrative oversight, and employee appointment and termination."

“3.5 Control Officer. Pursuant to RCW 70.94.170 the Board shall appoint an Air Pollution Control Officer to implement and enforce the Federal and State Clean Air acts (statutes) and the rules, regulations and policies pursuant to the statutes. This position and that of the Executive Director are usually occupied by the same person,

”

3. YRCAA Administrative Code Part B describes the position of Executive Director.

“11.3.1 Supervisor Positions

a. Executive Director

The Director is responsible for overseeing the administration of the Agency and assuring compliance with the Federal Clean Air Act, the Washington Clean Air Act, and all regulations promulgated thereunder. The Director maintains the Agency in good operational status with municipalities, the regulated community, the Governing Board of Directors, the Department of Ecology, the US EPA, and the Washington State Auditor. The Director provides guidance and leadership to staff for the lawful and effective management of the various activities performed and programs implemented by YRCAA.

The Director prepares and monitors the agency budget, oversees Board meeting preparation and presentations by Staff, and sets (and monitors attainment of) goals for each year. The Director acts as CEO for the agency enterprise, Northwest Opacity Certification, and any other Enterprise programs YRCAA may have. The Director represents the agency in any interaction with Federal, State or Local government and with the Washington Air Quality Managers Group, the National Association of Clean Air Agencies. The Director reports directly to the Governing Board of Directors.”

4. The WA Administrative Procedures Act does not apply to local clean air agencies. If it did there were numerous actions related to the September 26, 2023 hearing that did not comply with provisions in that act.

Most notably, RCW 34.05.425 states:

“(2) An agency expressly exempted under RCW [34.12.020](#)(4) or other statute from the provisions of chapter [34.12](#) RCW or an institution of higher education shall designate a presiding officer as provided by rules adopted by the agency.”

The Yakima Regional Clean Air Agency has not done this.

5. The Municipal Research and Services Center (MRSC) states:

“Cities and counties in Washington State have statutory authority to establish a hearing examiner system. Under a hearing examiner system, a city or county hires or contracts with a hearing examiner to conduct quasi-judicial hearings, usually in place of local bodies such as the planning commission, the board of adjustment, the board of county commissioners, or the city council.

The basic purpose of having a hearing examiner conduct these hearings is to have a professionally trained individual, typically an attorney, make objective quasi-judicial decisions that are supported by an adequate record and that are free from political influences. Using a hearing examiner system allows local legislative and advisory bodies that might otherwise conduct these hearings to better concentrate on policymaking. It can also potentially reduce local government liability exposure through what should be more consistent and legally sustainable quasi-judicial decisions.”

The YRCAA has never set up a formal process for conducting hearings and has not designated a hearing examiner.

6. During the update of the Yakima State Implementation Plan (SIP), FOTC requested a rule change that would authorize appeals to the YRCAA Board of Directors prior to appeals to the WA State Pollution Control Hearings Board.

The Washington State Implementation Plan Revision Including Revised Yakima Regional Clean Air Agency Regulation 1, New Source Review and General Regulations, available at [Washington State Implementation Plan Revision: Including Revised Yakima Regional Clean Air Agency Regulation 1, New Source Review and General Regulations](#) states, under Response to Public Comments on pages 21-22:

“Comment 10: A request for a rule change on the appeal process:

“A change to Section 2.05 Appeals. Delete Section C and replace it with a process in which the YRCAA Board of Directors hears appeals of YRCAA action. This is more appropriate than forcing citizens to appeal to the WA State Pollution Control Hearings Board over complaints that can easily be addressed at the local level.”

Ecology’s response: This is an appropriate comment on the rulemaking. However, there is nothing in the federal SIP requirements that Ecology staff is aware of to

compel this change for SIP purposes. Ecology always encourages the most cost-effective and collaborative resolution at the local level. This SIP revision fulfills the requirement to provide the local rule to EPA for review and approval into the SIP. SIP approval of the rule makes the approved rules federally-enforceable meaning that EPA and citizens can enforce the rules in the federal court.”

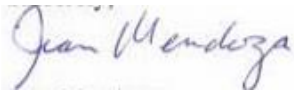
7. To our reading, only the Northwest Clean Air Agency among all WA clean air agencies has specific provisions authorizing hearings by the Board of Directors:

[\[Washington Air Quality SIP\] Approved But Not Incorporated by Reference Regulations - Washington Department of Ecology](#) Page 14

The Southwest Clean Air Agency specifically prohibits adjudicative proceedings pursuant to the Administrative Procedures Act.

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Sincerely,

A handwritten signature in cursive script that reads "Juan Mendez". The signature is written in dark ink on a light-colored background.

Executive Director, Friends of Toppenish Creek

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**SECTION 120 - HEARINGS**

- 120.1 The Board shall retain authority to hold hearings, issue subpoenas for witnesses and evidence, and take testimony under oath and do all things not prohibited by or in a conflict with state law, in any hearing held under the Regulations of the NWCAA.
- 120.11 The Board shall admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs. The Board shall give effect to the rules of privilege recognized by law. The Board shall exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.
- 120.12 All evidence, including but not limited to records, and documents in the possession of the Board of which it desired to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.
- 120.13 Every party shall have the right to cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.
- 120.14 The Board may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within their specialized knowledge. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. The Board may utilize their experience, technical competence, and their specialized knowledge in the evaluation of the evidence presented to them.
- 120.2 Any hearings held under this section, under the Washington Clean Air Act (RCW 70.94 and 43.21B) shall be pursuant to the provisions of RCW 34.05 as now or hereafter amended.