

Hello Nancy & Scott,

I have been looking at YRCAA actions related to DTG. YRCAA posted a notice of public hearing for the DTG permit. YRCAA asserted that a public hearing was held in September 2023.

This was a public meeting but not a public hearing. None of the YRCAA board members were present, so it cannot be considered a public hearing and did not comply with requirements in the WA Administrative Procedures Act or the WA Clean Air Act.

Hope this is helpful.

Best wishes.

Jean



186 Iron Horse Court, Suite 101
Yakima, WA 98901-1468
509-834-2050
www.yakimacleanair.org

September 17, 2024

Notice of Public Hearing

for

Proposed Order of Approval
Operation of a Crusher for Reclaimed Asphalt, Concrete, and Brick
Located at DTG Recycle – Yakima

Permit Applicant

DTG Enterprises Inc.
Dba DTG Recycle - Yakima
41 Rocky Top Road; Yakima, WA 98908

Yakima Regional Clean Air Agency (YRCAA) will conduct a public hearing on October 2, 2024 at 6:00 PM. The hearing will be conducted at the Yakima Regional Clean Air Agency office located at 186 Iron Horse Court; Suite 101; Yakima, Washington. Access is also available via Zoom (meeting ID no. 605 800 7569) at <https://us06web.zoom.us/j/6058007569> or by calling 253-215-8782 or 253-205-0468.

The YRCAA received a Notice of Construction from DTG Enterprises to permit and operate a crusher for reclaimed asphalt, concrete, and brick at the above location. A notice inviting public comment on the proposed Order of Approval was posted to the Agency website on August 28, 2024, and the comment period is open until October 3, 2024.

As a result of a request pursuant to WAC 173-400-171, the YRCAA will hold a public hearing on October 2, 2024, starting at 6:00 PM, in accordance with the public comment notice posted to the Agency website on August 28, 2024. The public is invited to attend the hearing and may submit comments either in writing or during the hearing. The public comment period will close at the end of the business day on October 3, 2024.

The Yakima Regional Clean Air Agency (YRCAA) accommodates persons with disabilities and provides free interpretation of public hearings and translation of documents for persons with limited English proficiency. To receive accommodation due to a disability, to request interpretation of this hearing, to obtain a translation of the documents provided, or to offer public comment at this hearing in a language other than English, please call 509-834-2050 extension 100, or send electronic mail to admin@yrcaa.org, at least 72 hours in advance of the hearing.

Screen Shot from YRCAA Website February 19, 2025 From Petitioners Motion for Summary Judgement

1 documentation that either YRCAA or Yakima County followed or complied with threshold
2 determination processes set forth in WAC 197-11-310 with regard to the *NSR Application*. There
3 was no SEPA Checklist for the proposal (WAC 197-11-315); no independent evaluation of prior
4 checklists or environmental documents; no issuance of a threshold determination (WAC 197-11-
5 330); no public notice of the threshold determination or invitation for comment (WAC 197-11-
6 502 and – 510); or compliance with the agency’s own procedures (i.e. certification of SEPA
7 compliance).

8 A single reference within the administrative record regarding SEPA compliance
9 was the following:

10 After the Public Hearing held by YRCAA on September 26th,
11 2023, YRCAA reached out to Yakima County and it was
12 concluded that the SEPA of 2015 determination is still valid for
this project and satisfies SEPA’s requirements.

13 *NSR Permit Approval ¶1.13*. The uncontroverted facts are that literally no environmental review
14 was undertaken in any manner that complies with SEPA’s established review policies and
15 procedures.

16 **(b) YRCAA acknowledges that it was not the “Lead Agency” for SEPA**
17 **processes. (Issues 4 and 5).** SEPA’s regulatory framework requires the responsible official for
18 the “lead agency” to review non-exempt proposals, and make a threshold determination. *City of*
19 *Puyallup v. Pierce County*, 20 Wn. App. 2d 466, 470, 500 P.3d 216 (2021). See also WAC 197-
20 11-310(1) and (2). DTG Recycle applied for an *after-the-fact* permit to establish a new source of
21 air emissions. There was no “new source. The Rocky Top Landfill had operated for nearly four
22 decades without any serious review of actual or potentially adverse air emissions. The lead
23 agency is required to make a threshold determination deciding whether the proposal requires an
24 EIS, mitigation, or supplemental review processes. WAC 197-11-050(2) – 797, - 330. The lead
25 agency is required to document its determination. WAC 197-11-310, -350. This appeal involves
26 a decision-making process in which no lead agency determinations or processes were followed.

27 YRCAA admits that it did not act as “lead agency” for the *NSR Application*. In
28 responses to public comment, YRCAA acknowledged that it did not act as “lead agency” for the
29 SEPA required review process.
30

Screen Shot from YRCAA Website on February 19, 2025 from Respondents Motion for Summary Judgement

1 DTG's ownership (around December of 2022). Thronsbury Decl., **Exhibit 1** at 3-5. Thereafter, the Facility
2 submitted a New Source Review (NSR) application, NSRP-03-DTGEI-22, to the Yakima Regional Clean
3 Air Agency (YRCAA) for expansion of LPL operations to Phase #2 (also called cell #2) which was
4 eventually determined complete on June 29, 2023. *Id.*, at ¶3. The NSR application for the Phase 2/Cell
5 #2 of LPL operations included a Materials Recovery Facility (MRF), a Wood Chipper/Grinder and
6 Crushed Rock Exportation as part of the LPL operations. *Id.*

8 The Facility's application did not cover emissions from petroleum contaminated soils (PCS) which
9 were not being accepted by the Facility. Thronsbury Decl., ¶5. Thus, acceptance of PCS materials was
10 not part of the NSR permit. *Id.*, **Exhibit 5** at 3. Similarly, a portion of the facility (within Cell No. 1) is
11 subject to the Model Toxics Control Act (MTCA) and covered by a Department of Ecology Agreed Order
12 (AO). The NSR Permit does not include air emissions from the MTCA area. *Id.*, **Exhibit 5** at 2

14 During its review of the NSR application, YRCAA issued a public notice and solicited public
15 comments on the application. Thronsbury Decl., ¶6. YRCAA conducted a public hearing at 6:00 PM on
16 September 26, 2023. *Id.* To ensure full compliance with Washington Administrative Code (WAC) 173-
17 400-171, and in response to requests for additional time, YCRAA extended the public comment period
18 for thirty (30) days through October 25, 2023. *Id.*

19 In conducting its review and responding to public comments, YRCAA inquired with the SEPA
20 lead agency as to whether a new SEPA determination was required. Thronsbury Decl., ¶8; Tahat Decl.,
21 ¶2. The Responsible Official for the SEPA lead agency informed YRCAA in a letter dated October 3,
22 2023 that:

24 After careful review, it is my view that the proposed landfill operation under consideration in your
25 office for a New Source Review (NSR) is adequately covered under the 2015 SEPA threshold
26 determination (SEP2015-00024) issued by Yakima County. ...

**RESPONDENT YAKIMA REGION CLEAN AIR AGENCY'S
MOTION FOR SUMMARY JUDGMENT – 4**

PCHB NO. 24-021

LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.
ATTORNEYS AT LAW
2674 R.W. JOHNSON RD. TUMWATER, WA 98512
P.O. BOX 11880 OLYMPIA, WASHINGTON 98508-1880
(360) 754-3480 FAX: (360) 357-3511

Screen Shot YRCAA Notice of Approval February 19, 2025

- 1.13 Yakima County Planning Department issued a Determination of Non-Significance (DNS) for a new 64 acres expansion to the existing 61 acres LPL pursuant to the State Environment Policy Act (SEPA) with SEPA number SEP2015-00024 and signed by the County in September 9, 2015. After the Public Hearing held by YRCAA on September 26th, 2023, YRCAA reached out to Yakima County and it was concluded that the SEPA of 2015 determination is still valid for this project and satisfies SEPA's requirements. In addition, a Conditional Use Permit (CUP) was issued by Yakima County on November 27, 2015; CUP2015-00051.
- 1.14 Air emissions from the LPL operations being permitted stated above are mainly Particulate Matter with small aerodynamic diameters (PM₁₀ and PM_{2.5}) and H₂S a Toxic Air Pollutant (TAP) in accordance with the Federal Clean Air Act (FCAA) and the WAC 173-460-150, respectively.
- 1.15 Air emissions from MTCA's area (shown in Figure 3 below) are not included in this Order for the reasons stated above. However, YRCAA will consider the air permitting issue for that area upon the conclusion of the MTCA project, if and when required. In which all documentation and air emissions to be submitted to YRCAA during MTCA project.
- 1.16 Air emissions from the Facility include fugitive emissions from; the LPL and MRF ancillary equipment on the waste deposition areas, paved and unpaved road use, tub grinder, wood chip piles, transport of occasional crushed rock, and the addition of H₂S primarily from sheetrock disposed of in both cells of the LPL.
- 1.17 Cell #1 volume is about 2.5 million cubic yards (yd³) while Cell #2 disposal capacity will be about 2.2 million yd³. This will give a design capacity of 875,000 tons for cell #1 and 770,000 tons for cell #2 based on a compacted density of 0.35 tons per cubic yard (tons/yd³). Figures 5 and 6 show Phase/Cell #1 and Phase/Cell #2.
- 1.18 A 30-day Public Notice, and an extended 60-day Public Comment Period and a Public Hearing for this NSR were published and held in accordance with the RCW 70A.15.2210 and WAC 173-400-171.
- 1.19 As stated above, Cell #2 is under construction and the Facility is currently not accepting demolition waste until all requirements specified by YHD are met by the Facility.
- 1.20 The Facility is allowed to operate a maximum of 3,744 hours per year (allowed) by the County of Yakima, YHD. Allowable operating hours are Monday through Saturday 6 a.m. to 6 p.m. as the allowable. Actual operating hours for waste disposal are Monday through Friday 7 a.m. to 5 p.m. based also on the NSR application. If these hours are not in compliance with the County's hours, they shall be adjusted to the more stringent one (the lesser one).