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**STATE OF WASHINGTON
ENVIRONMENTAL HEARINGS OFFICE**

THE OSTROM COMPANY INC.,

Appellant,

vs.

OLYMPIC REGION CLEAN AIR AGENCY

Respondent.

PCHB NO. 04-105 &
PCHB NO. 04-140

**MEMORANDUM IN SUPPORT OF
PETITION FOR
RECONSIDERATION**

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I. INTRODUCTION

By Order dated March 8, 2005, the Board reversed ORCAA's orders and granted summary judgment to Ostrom. In so doing, the Board decided important legal and policy issues despite numerous issues of material fact and without even the benefit of oral argument, let alone a hearing on the merits.

ORCAA petitions the Board for reconsideration of its Order Granting Summary Judgment to Ostrom and respectfully requests the Board to schedule a hearing at which all of the evidence may be presented prior to the Board ruling on these important legal and policy issues.

II. SUMMARY JUDGMENT STANDARD

ORCAA agrees with the recitation of the summary judgment standard as set forth on pages 3 and 4 of the Board's Order:

- 1 • The party moving for summary judgment, in this case Ostrom, must show
2 there are no genuine issues of material fact and the moving party is entitled
3 to judgment as a matter of law.
- 4 • A material fact in a summary judgment proceeding is one affecting the
5 outcome under the governing law.
- 6 • The trier of fact must construe the evidence and consider the material facts
7 in all reasonable inferences therefrom in the light most favorable to the non-
8 moving party.
- 9 • The burden of showing the absence of any issue of material fact may be met
10 by pointing out that there is an absence of evidence in support of the non-
11 moving party's case. Once the moving party makes that showing, the burden
12 shifts to the non-moving party to set forth specific facts showing that there is
13 a genuine issue for trial.
- 14 • The presence of specific facts showing there is a genuine issue of material
15 fact precludes summary judgment.

16 While the Board's recitation of the summary judgment standard is correct, there has
17 been an error in its application to the facts. Clearly, in this case, there are genuine issues
18 of material fact which preclude summary judgment.

19 **III. ARGUMENT: ISSUES OF MATERIAL FACT PRECLUDE SUMMARY JUDGMENT**

20 The Board concluded that the growing of mushrooms is an agricultural activity, that
21 "the related production of compost, which is used in the 'growing, raising, or production' of
22 mushrooms, meets the statutory definition of 'agricultural activity,'" and that therefore
23 Ostrom's production of compost is protected under RCW 70.94.640. (Order Granting
24 Summary Judgment at page 6.)

25 In so doing, the Board ignored the substantial factual evidence presented by ORCAA
26 regarding the extent of Ostrom's composting production which is wholly unrelated to its
27 production of mushrooms at its Lacey facility. Ostrom's responses to ORCAA's
28 Interrogatories (Exhibit 10, submitted with Olympic Region Clean Air Agency's
Memorandum in Opposition to Ostrom's Dispositive Motion) indicate that Ostrom's compost
production was very stable at its Lacey and its Everson facilities for several years prior to
1999. For the years 1993 through 1999, the Ostrom's Lacey facility produced 78,000 cubic
yards of compost. For the years 1997 through 1999, the Everson facility produced 20,800
cubic yards of compost. Subsequent to the opening of the indoor composting facility (ICF)

1 at its Lacey facility, compost production there significantly increased from 78,000 cubic
2 yards in 2000 to 114,000 cubic yards in 2003. Significantly, the volume of mushrooms
3 grown in Lacey remained about the same and even decreased in 2004.

4 In response to Interrogatory No. 4 and Request for Production No. 1, regarding
5 shipment of compost produced at the Lacey plant and shipped to the Everson plant,
6 Ostrom's listed two separate periods, in December of 2003 and March of 2004, during
7 which 800 cubic yards were shipped from Lacey to Everson. This was not mushrooms.
8 This was not spent compost. This was fresh compost produced at the Lacey plant which
9 was not used in the growing of mushrooms there.

10 In response to Interrogatory No. 5 and Request for Production No. 2, regarding
11 shipment of compost produced at the Lacey plant and sold to other persons or entities,
12 Ostrom's lists three firms in Canada to whom they report having shipped a total of 104,644
13 cubic yards of fresh compost from November 2000 through August 2003. In addition,
14 documents produced in response to the Request for Production No. 2 include 27 separate
15 pages detailing shipment of compost from Ostrom's between January 4, 2004, and July 9,
16 2004, which were picked up by Martin's Feed. According to these documents, during the
17 first six months of 2004, 22,542 cubic yards of fresh compost were picked up by Martin's
18 Feed.

19 All told, the evidence submitted by ORCAA to the Board, in the form of Ostrom's
20 Answers to Interrogatories and Requests for Production, indicate that Ostrom's produced
21 over 127,000 cubic yards of compost which it did not use for its own mushroom production
22 at its Lacey facility. Despite evidence of the enormous quantity of compost produced by
23 Ostrom at its Lacey facility and shipped offsite, the Board characterized the compost as
24 "surplus" and a "by-product of mushroom growing." (Order Granting Summary Judgment
25 at page 6.)

26 At the very least, the evidence provided by ORCAA with respect to the enormous
27 volume of compost sold by Ostrom's Lacey facility and not used in their production of
28 mushrooms raises a material issue of fact which must be tried before the Board can decide

1 whether Ostrom's production of this compost is an agricultural activity or not. The nature
2 and the volume of this compost make it very unlike a sale of manure from a dairy farm.
3 This compost is unused, not leftover after Ostrom's mushrooms are grown. Contrary to
4 footnote two on page six of the Board's Order, the record before the Board does include
5 substantial evidence that much of the compost produced by Ostrom's is not used in the
6 growing, raising, or production of Ostrom's mushrooms.

7 This was a summary judgment motion, decided without even the benefit of oral
8 argument, let alone an evidentiary hearing. The Board ignored issues of material fact when
9 it rejected ORCAA's argument that Ostrom lost the protection afforded an "agricultural
10 activity" because it sold a portion of contiguous land for residential purposes. Despite
11 evidence that Ostrom sold a contiguous piece of land for residential purposes, the Board
12 said "it does not appear likely" that the 60 acre parcel was ever used for Ostrom's
13 agricultural activities. (Emphasis added.) (Order Granting Summary Judgment at pages
14 7 and 8.) At another point, the Board said that it "is persuaded by Ostrom's explanation of
15 the reasons why the purchase and sale took place. The fact that the 60 acres was
16 purchased in 1976 or 1977, and that all but the 20 acres closest to the existing Ostrom farm
17 was resold almost immediately, lends credence to Ostrom's explanation of the purchase
18 and resale." (Emphasis added.)

19 The language used by the Board is telling indication of the presence of material
20 issues of fact. This was a summary judgment motion, not a decision rendered after an
21 evidentiary hearing. Ostrom argued that it was entitled to the agricultural exemption.
22 ORCAA pointed to the exception to the agricultural exemption where there has been a sale
23 of a contiguous piece of land for residential purposes and presented evidence of Ostrom's
24 sale of a contiguous piece of land for residential purposes. At the very least this raised a
25 material issue of fact with respect to application of the exception to the exemption. That
26 there is a material issue of fact is acknowledged by the Board in the language it used in
27 deciding this issue. Language such as "it does not appear likely," "the Board is not
28 persuaded," "the Board is persuaded," and "lends credence to Ostrom's explanation" is

1 clearly indicative of the presence of a material issue of fact which precludes summary
2 judgment.

3 ORCAA presented evidence of Ostrom's sale of a contiguous piece of land for
4 residential purposes. Such evidence was clearly sufficient to, at the very least, raise a
5 material issue of fact as to whether Ostrom's was entitled to the agricultural exemption
6 found in RCW 70.94.640 or whether the sale had rendered the exemption inapplicable.

7 It is clear, however, from the Order, that the Board based its decision in this regard
8 on the argument raised by Ostrom in its Reply that Ostrom intended to and did in fact buy
9 the 60 acre parcel and sell 40 acres of this in order to create a "buffer" and that this
10 somehow makes the exception to the agricultural exemption inapplicable.

11 Without conceding that the exception to the exemption would be inapplicable if the
12 20 acres had in fact, been used as a "buffer," ORCAA moves to supplement the record to
13 include the attached Declaration of John T. Kelly which indicates that, far from being a
14 "buffer," the 20 acre parcel houses the ICF, the 260,000 gallon wastewater holding tank,
15 and the aerated composting bunkers! Ostrom first made this "buffer" exception argument
16 in its Reply and ORCAA had no opportunity to respond earlier. Certainly it would be

17 improper at this juncture for the Board to reach a legal conclusion based on facts which are
18 disputed, particularly where the non-moving party had no opportunity to address the issue
19 earlier. Attached hereto is the Declaration of John T. Kelly, an Engineer 1 with ORCAA,
20 and a map showing the original mushroom farm location, the acreage sold to Tanglewilde
21 Properties by Ostrom, and the 20 acres Ostrom's refers to as its "buffer zone." As
22 evidenced by Mr. Kelly's Declaration and the attached map, Ostrom's indoor composting
23 facility (ICF), its 260,000 gallon wastewater holding tank, and its aerated composting
24 bunkers are all located upon the 20 acre piece that Ostrom's calls its "buffer zone."

25 Clearly, there is a material issue of fact which must be determined and which
26 precludes summary judgment.

1 **IV. CONCLUSION**

2 There are clearly issues of material fact with respect to whether Ostrom's increased
3 compost production is an agricultural activity. These issues of material fact must be
4 determined before the Board can rule on the legal issues of whether Ostrom is subject to
5 the protections contained in RCW 70.94.640 for agricultural activities and whether Ostrom's
6 compost production falls within or outside of ORCAA's Regulation 1 Section 7.01(d)(51).

7 Furthermore, even assuming, for the sake of argument, that RCW 70.94.640 is
8 otherwise applicable, there are material issues of fact with respect to Ostrom's sale of a
9 contiguous piece of property and whether that takes Ostrom outside of any protections
10 afforded by RCW 70.94.640.

11
12 Respectfully submitted this 24th day of March, 2005.

13 BEAN & GENTRY
14 Attorneys for Respondent ORCAA

15 
16 **FRED D. GENTRY, WSBA #1448**

FRED D. GENTRY
STEPHEN J. BEAN, INC., P.S.
MARY E. GENTRY
CECILIA M. CLYNCH

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FAX 786-6943

February 25, 2005

KAY BROWN, PRESIDING
ADMINISTRATIVE APPEALS JUDGE
ENVIRONMENTAL HEARINGS OFFICE
4224 6TH AVE SE BLDG #2 ROWE SIX
P.O. BOX 40903
LACEY WA 98504-0903

RECEIVED

FEB 28 2005

ORCAA

Re: The Ostrom Company Inc. v. ORCAA
PCHB No. 04-105-140

Dear Judge Brown:

I write, on behalf of respondent herein, Olympic Region Clean Air Agency, this joint status report regarding the possibility of settlement. The parties believe, that given that all parties want a final resolution of the legal issues raised in this matter, that settlement will not be possible. Counsel for the appellant has reviewed this letter, has authorized me to represent to you that is the position of appellant as well as respondent.

Very truly yours,

FRED D. GENTRY
Attorney for Olympic Region Clean
Air Agency

FDG/crm
Enclosure
cc: Richard Stedman, ORCAA (w/encl)
Mark M. Myers (w/encl)

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February 23, 2005

RECEIVED

FEB 24 2005

ORCAA

KAY BROWN, PRESIDING
ADMINISTRATIVE APPEALS JUDGE
ENVIRONMENTAL HEARINGS OFFICE
4224 6TH AVE SE BLDG #2 ROWE SIX
P.O. BOX 40903
LACEY WA 98504-0903

Re: The Ostrom Company Inc. v. ORCAA
PCHB No. 04-105-140

Dear Judge Brown:

Herewith is ORCAA's Final Witness and Exhibit List.

Very truly yours,

FRED D. GENTRY
Attorney for Olympic Region Clean
Air Agency

FDG/crm
Enclosure
cc: Richard Stedman, ORCAA (w/encl)
Mark M. Myers (w/encl)

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4 **STATE OF WASHINGTON**
5 **ENVIRONMENTAL HEARINGS OFFICE**
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7 THE OSTROM COMPANY INC.,

8 Appellant,

9 vs.

10 OLYMPIC REGION CLEAN AIR AGENCY

11 Respondent.

PCHB NO. 04-140

**OLYMPIC REGION CLEAN AIR
AGENCY'S FINAL WITNESS AND
EXHIBIT LIST**

12 **I. WITNESSES**

13 1. Richard Stedman, Executive Director, Olympic Region Clean Air Agency,
14 2940-B Limited Lane NW, Olympia, WA 98502.

15 2. John Kelly, Air Quality Specialist II, Olympic Region Clean Air Agency, 2940-
16 B Limited Lane NW, Olympia, WA 98502.

17 3. Robert Moody, Supervising Air Quality Specialist, Olympic Region Clean Air
18 Agency, 2940-B Limited Lane NW, Olympia, WA 98502.

19 4. Mark V. Goodin, Professional Engineer, Olympic Region Clean Air Agency,
20 2940-B Limited Lane NW, Olympia, WA 98502.

21 5. Clay Frederick, CFO, Ostrom, c/o Mark M. Myers of Williams, Kastner &
22 Gibbs, Attorney at Law, Two Union Square, Suite 4100, Seattle, Washington 98111.

23 6. William Street, President, Ostrom, c/o Mark M. Myers of Williams, Kastner &
24 Gibbs, Attorney at Law, Two Union Square, Suite 4100, Seattle, Washington 98111.

25 7. Tom Giroux, 8635 Christa Drive N.E., Lacey, Washington 98516.

26 8. Gail Lundsten, 1325 Union Mills Road, Lacey, Washington 98503.

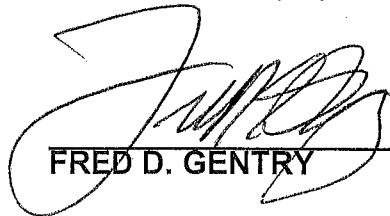
27 9. Penny Batts, 3000 Hannah Court N.E., Lacey, Washington, 98516.
28

1 10. Hal Aspgren, 8616 Sebastian Drive N.E., Christa Heights, Lacey,
2 Washington, 98516.

3 **II. EXHIBITS**

- 4 1. Regulation 1 of the Olympic Region Clean Air Agency (by official notice).
5 2. Notice of Civil Penalty Assessment re: NOV 2198, dated October, 2004.
6 3. Notice of Violation No. 2198.
7 4. General Civil Penalty Worksheet and Recommendation regarding NOV 2198.
8 5. NOC No. 99NOCO23.
9 6. ORCAA inspection report dated 6/22/04 re: date of inspection 5/21/04.
10 7. Regulatory Order dated 6/29/04.
11 8. Notice of Civil Penalty Assessment dated October 4, 2004.
12 9. Respondent Olympic Region Clean Air Agency's First Interrogatories and
13 Requests for Production of Documents Propounded to Appellant The Ostrom Company,
14 Inc., and Responses Thereto.
15 10. Materials provided in response to discovery including the records supporting
16 annual compost production at the Ostrom site for the 10 years preceding the ICF and for
17 the years subsequent to the ICF, documentation pertaining to the property sales, building
18 permits for construction, installation of facilities, repair of existing facilities, additions to
19 facilities, etc., all of this information, being provided by Ostrom is known to them.
20 11. Letter dated December 20, 2000, to Mr. Roland Middleton, from William
21 Street.
22 12. Aerial photo of Ostrom mushroom farm in 1992, aerial photo of Ostrom
23 mushroom farm in the year 2000, aerial photo of Ostrom mushroom farm in the year 2002.
24 14. Olympic Region Clean Air Agency's enforcement history, Ostrom mushroom
25 farm - Olympia, Washington.
26 15. Records received from Thurston County Developmental Services.
27
28

1 DATED this 23 day of February, 2005, at Olympia, Washington.

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FRED D. GENTRY



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**Olympic Region
Clean Air Agency**
2940-B Limited Lane NW
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1-800-422-5623 or
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www.ORCAA.org

**Executive Director
Richard A. Stedman**

February 22, 2005

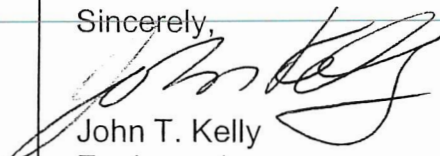
Mr. Fred Gentry
Bean & Gentry
320 North Columbia St.
PO Box 2317
Olympia, WA 98507

Re: Ostrom v. Olympic Region Clean Air Agency (ORCAA)

Dear Mr. Gentry:

As you requested in your correspondence of February 10, 2005 I have reviewed the Appellant's Dispositive Motion, ORCAA's Memorandum in Opposition to the same, and Appellant's Reply Memorandum in Support of its Dispositive Motion. Attached please find my comments and other supporting documents.

Sincerely,


John T. Kelly
Engineer 1

cc: MVG, RTM, RAS

Enclosures: Response to Documents filed in Ostrom v. ORCAA

*Clean Air is
Everyone's
Business*

ing Clallam, Grays
Jefferson, Mason,
and Thurston
s.

Response to Fred Gentry

02/22/2005

General Comments on Appellant's Dispositive Motion

I will not comment specifically on the legal arguments around whether the Clean Air Act (RCW 70.94) or the "Right to Farm Act" (RCW 7.48) take precedence in determining whether ORCAA has regulatory authority over Ostrows regarding odor control.

However, ORCAA's regulatory and enforcement authority over Ostrows' operations under RCW 70.94 and ORCAA Regulation 1 (in particular regard to odor control requirements) has been upheld by the PCHB since at least 1981. Refer to the attached enforcement summary in Table 1 and the copy of the PCHB decision "Final Findings of Fact, Conclusions of Law and Order of the Pollution Control Hearings Board for PCHB #s: 81-15, 81-33, 81-43, 81-55, 81-57, 81-62, 81-66. Ostrom Mushroom Farms v. OAPCA" dated July 16, 1981.

Comments on Section C of the Appellant's Reply "Ostrom is entitled to the exemption for agricultural activity under RCW 70.94.640(1) because it has not made the kind of sale of contiguous farmland contemplated by RCW 70.94.640(4)."

Under RCW 70.94.640(4) the exemption from the odor control provisions for agricultural operations was explicitly withheld from those that had profited from the sale of part of their property for residential development:

"If a person engaged in agricultural activity on a contiguous piece of agricultural land sells or has sold a portion of that land for residential purposes, the exemption of this section shall not apply."
(Emphasis added)

Mr. William Street Sr. affirms that Ostrows sold property that was contiguous with the mushroom farm in his affidavit included in the Appellant's Dispositive Motion:

"In 1996 or 1997, I learned that the 60-acre property to the north of the mushroom farm property, along Marvin Road, was being offered for sale. Ostrom considered it likely that whoever bought the property would develop it for residential use...Ostrom decided to buy the property first, keep a 20-acre buffer between the farm and any non-agricultural development, and then sell the remaining 40 acres. Ostrom did so, and sold the 40-acre property in 1977. That 40 acres was later developed for residences."

The statement that the property "was later developed for residences" does not precisely state the case. In fact Mr. Street sold the property directly to a developer with full knowledge that there would be a housing development built there. Mr. Street has publicly acknowledged as much and recognizes that had Ostrows held the entire 60 acres, impacts to the community could have been avoided or at least delayed. Enclosed is a copy of an article "Homes Occupy Ostrows Former Buffer Zone", which appeared in the Sunday Olympian on December 14, 1986. In the article Mr. Street is quoted:

"In retrospect, I would have never sold the property. I would have liked to keep the whole thing, but I couldn't afford to." The article further notes "Street sold 40 acres for \$110,000 to Lacey area developer Rolland Thompson."

It is noteworthy that the above-referenced 1981 PCHB decision was issued at about the same time that the "agricultural exemption" was incorporated into the Clean Air Act under RCW 70.94.640. In fact, the PCHB decision makes note of the fact that Ostroms sold part of their property for residential development, resulting in impacts to the public:

"It is unfortunate that the complainants' properties were those sold by appellant for subdividing, for the appellant has sowed the seeds of its present difficulties with its neighbors."

Attached are copies of correspondence between yourself and Mr. Richard Hill, Ostroms counsel at that time. These documents indicate that the present positions taken by Ostroms and by the agency on the import of the agricultural exemption and its associated exclusionary clause date back to the time it was adopted.

Property History

To clarify some of the questions regarding the history and uses of properties owned by Ostroms I visited the Washington State Archives. The following history of the Ostroms property is based on my examination of various Thurston County Assessors and Auditors records archived there. I have enclosed copies of pertinent documents for reference. Also enclosed are two maps of the properties in question which I downloaded from the Thurston County Geodata website. I have marked up the maps to help in the analysis of the historical and present activities conducted on specific parcels.

Presently Ostroms compost and mushroom production activities are conducted on three adjacent parcels situated at the northwest corner of Marvin Road SE and Steilacoom Road SE in unincorporated Thurston County, but lying within the Urban Growth Management Area. There are also holdings lying south of Steilacoom Road, but no production activity takes place on that portion of Ostroms property. The parcel numbers where production related activity is conducted are 11814140100, 11814140200 and 11814140300. Refer to Thurston County Map # 1 for reference.

In September 1967 Ostroms purchased several properties from the Green Giant Company, including the piece that would later be designated Parcel #s 11814140200 and 11814140300 by the county. (Statutory Warranty Deed # 767597, dated September 6, 1967). Also please refer to the area labeled "Original Mushroom Farm location" on the attached Thurston County Map #2.

About ten years later Ostroms acquired the approximately 60-acre L-shaped piece to the north and west of the mushroom farm from Mr. Robert Gibb (Statutory Warranty Deed # 1003054, dated May 25, 1977). Later that year Ostroms divided that property into two parcels, designated on Thurston County Map #2 as "Acreage sold to Tanglewilde Properties Inc." (about 40 acres) and "Ostroms Buffer Zone - Parcel # 11814140100" (about 20 acres).

The sale by Mr. Street of the 40-acre remainder of that property to the north of the mushroom farm for residences occurred about five months later. (Statutory Warranty Deed # 1017021, dated November 3, 1977).

Ostroms Expansion 1999-2000

In the present case, during the years 1999-2000 Ostroms erected the Indoor Composting Facility (ICF), a 260,000-gallon wastewater-holding tank, and the aerated concrete composting bunkers, all of which are likely sources of increased odors. Furthermore, as seen in the attached aerial photograph from the Thurston County Geodata website, these components, which enabled Ostroms to dramatically increase their production of compost, lie within Parcel # 11814140100, the "buffer zone" claimed by Mr. Street in his affidavit.

Also of particular consequence, all of these new processes have been established on property where compost had never before been produced. The original mushroom farm owned by the Green Giant Company included only Parcel #s 11814140200 and 1181414300. There was no history of mushroom compost production on parcel # 11814140100 prior to Ostroms' purchase of the property in 1977. My examination of records on file with ORCAA, Thurston County and the Washington State Archives has likewise produced no evidence of compost production on this property prior to construction of the ICF project in 1999-2000. This may counter in part Ostroms' assertion that these activities are "grandfathered." under the "Right to Farm Act". This is new activity occurring after development has encroached, being conducted on property on which there was no previous history of compost production.

Comments on Section D "Excessiveness of the Civil Penalty" of Appellant's Reply

Regarding the odor impact case (NOV-2172), it is my understanding that at hearing we will be obliged to present a detailed presentation of the facts proving that a violation occurred. The Appellant's Reply seems not to dispute whether or not a violation occurred, but rather takes issue with the appropriateness of the assessed penalty amount. The record will show that the assessed penalties are appropriate, based on both long-standing agency enforcement policies and the past history of Ostroms. Refer to the attached Enforcement Summary for Ostroms in Table 1.

The reasonableness of a civil penalty depends upon the nature of the violation, the existence of any prior violations, and the remedial actions taken by the violator. All of these factors have been incorporated into ORCAA enforcement policies and penalty guidelines since they were approved by the ORCAA Board of Directors on September 9, 1998. Full consideration of all of these factors was given in this case, according to standard agency procedures. Attached please find copies of the worksheets used in this case to determine the penalties for NOV # 2172 and NOV # 2198.

Of further note, in 1993 and 1994 Ostroms was assessed \$10,000 for each of two previous violations: NOV # 397-91 in 1993 and NOV # 535-91 in 1994. There is no record of the disposition of those penalties, but correspondence in the file indicates that at the time Ostroms had requested mitigation, and intended to appeal those penalties to

the PCHB. The record is incomplete, and apparently the NOV's were settled in some manner other than appeal to the PCHB or payment of the penalty. It is noteworthy that Ostrows had incurred similar penalties for the same types of violations in the past, and should therefore not be too astounded to receive a penalty in the same amount at this time. We should discuss further the issue of the appropriateness of the current penalties before the hearing.

Comments on Section E of the Appellant's Reply "When ORCAA Regulation 7.01(d) 51 was adopted makes no difference and ORCAA cannot regulate agricultural odors by labeling them as "pollutants"."

The exemption from Notice of Construction for "primary agricultural production activities" was incorporated into WAC 173-400-110 in 1997 and subsequently by ORCAA in Regulation 1, 7.01(d)(51) in 2003. The Pre-proposal Statement of Inquiry for the 1997 changes in the New Source Review (NSR) rules filed by the Department of Ecology as WSR 97-15-071 (attached) states:

"The purpose of these amendments are to clarify and streamline the review of new sources of air pollution and to identify de minimis new sources as required by the 1996 amendments to RCW 70.94.152." (emphasis added)

The underlying statute, RCW 70.94.152(11) as amended in 1996, states in part:

"No person is required to submit a notice of construction or receive approval for a new source that is deemed by the department of ecology or board to have de minimis impact on air quality. The department of ecology shall adopt and periodically update rules identifying categories of de minimis new sources. The department of ecology may identify de minimis new sources by category, size, or emission thresholds." (emphasis added)

Further, at RCW 70.94.152(12):

"For purposes of this section, "de minimis new sources" means new sources with trivial levels of emissions that do not pose a threat to human health or the environment." (emphasis added)

Similarly, changes to Notice of Construction procedures in ORCAA Regulation 1 under WSR 03-11-045 were described at proposal to

"align ORCAA's new source review (NSR) program with the state's NSR program pursuant to RCW 70.94.152."

To sum up the intent of these changes, exemption from Notice of Construction procedures for dozens of "small emissions units", including "primary agricultural activities" were added to WAC 173-400-110 in 1997 and to ORCAA Regulation 1, 7.03 in 2003. These exemptions were intended to "streamline and clarify" regulations. Both rule-changes were undertaken in response to changes made to the Washington State Clean Air Act by the 1996 Legislature at RCW 70.94.152, which requires exemptions for de minimis new sources, defined by the Legislature as those emitting "trivial levels of emissions."

At the time of the expansion of Ostrows composting operations (1999-2000) under 99NOC023 no such exemption for agricultural activities had been incorporated into ORCAA Regulation 1, Section 7. The exemption for "primary agricultural activities" under WAC 173-400-110 did not apply in ORCAA's jurisdiction. The authority for local jurisdictions to be more stringent than state law is a general principle of various regulatory schemes, including in air quality regulation. Specifically, as applied to New Source Review (NSR) under WAC 173-400-110(1):

"Applicability. This section, WAC 173-400-112 and 173-400-113 apply statewide except where an authority has adopted its own new source review rule." (emphasis added)

So, at the time that the ICF was built, regardless of whether Ostrows' compost producing operations were "primary agricultural activities" (and this is in serious question in light of information developed in this case) they were legally required under Regulation 1, Article 7 to file a Notice of Construction, which they did under NOC # 99NOC023.

Approval Order conditions incorporated in air permits issued by local authorities are generally enforceable under WAC 173-400-020(2). There is nothing explicitly stated in the intent or language of the revised statute or subsequent changes to the NSR rules that indicates that enforcement authority under WAC-173-020(2) for previously issued, legally enforceable Approval Order conditions has been vacated. There is no indication in the history of these regulatory changes to indicate that the Legislature, the Department of Ecology or ORCAA intended to vacate previous legally issued determinations or to exempt large-scale operations such as Ostrows from future review. As stated at proposal by Ecology, the intent of the changes was to be consistent with changes to the statute in order to "*streamline*" the permitting process for "small" sources. The clearly stated intent was to remove the requirement for businesses to apply for permits and to relieve government of the need to write permits for small emissions units in the future:

"These changes will also streamline the new source review permitting process. Ecology anticipates that industry will save a substantial amount of time and money by not having to permit small air emission units. Also, ecology and those local air authorities that chose to use these exemptions will save a significant amount of staff time by not having to write permits for very small units." [WSR 97-15-071]
(emphasis added)

Sources installing or modifying small emissions units now classified as "de minimis" are exempted from having to apply for Notice of Construction (NOC) permits after the effective adoption date of the revisions to the respective NSR rules. If Ostrows compost producing activities are found to be "primary agricultural activity" they would be exempt from applying for Notices of Construction for new construction or modifications of the facility that occur after October 2003.

Conclusions

To vacate the legal requirements duly placed on Ostroms by ORCAA under 99NOC023 and find them to be exempt from future permitting requirements would be an absurd and unintended outcome from changes made to State and local rules in response to legislative direction to exempt sources "with trivial levels of emissions" in order to "streamline" the permitting process. The Ostroms facility is clearly not "a small emissions unit" and its emissions are anything but "trivial".

Changes made to Ostroms operations in Lacey during 1999-2000 have resulted in significant emissions increases, due to increased production that occurred contrary to assurances offered by Ostroms representatives at the time the project was proposed. Production of compost, including a substantial amount shipped off-site, has increased dramatically. Data provided by Ostroms demonstrate a forty-six percent (46%) increase in compost production at the Lacey facility compared to historical levels. These increased emissions have been directly associated with community impacts far beyond the immediate vicinity of the plant. Complaints against Ostroms since this expansion occurred have significantly increased, making Ostroms the third largest source of complaints in ORCAA's six counties as seen in Table 2 below. This has impacted residents in the surrounding area and has required a substantial amount of staff time for processing and investigation.

As seen in the attached Thurston County Map # 2, the changes to the physical plant at Ostroms include construction of several new and significant sources of air pollution. All of these changes have occurred on property Ostroms' has described in documents submitted in this case as a "buffer zone."

Furthermore, Ostroms sale of compost produced at the Lacey facility to off site users both within the State of Washington and across the border in British Columbia has removed the compost producing activities in Lacey from being definable as an "agricultural" activity. Compost production at the Ostroms Lacey facility should therefore not be deemed eligible for any of the agricultural exemptions under RCW 70.94, WAC 173-400 or ORCAA Regulation 1.

Additional Comments

Other observations and issues for your consideration.

- 1) Information provided by Ostroms in response to your interrogatories under "Exhibit 10" indicates that Ostroms has in fact significantly increased production of compost and shipped compost off-site since the ICF came on line. I have examined the documentation provided by Ostroms on this issue in responses to our First Interrogatory And Request For Production After reviewing this material, I offer the following observations. Please refer to Tables 3 and 4 in the attachments for further details.

- a) *Response to Interrogatory No. 2 regarding compost and mushroom production data for the Lacey and Everson plants for the ten years preceding the opening of the ICF plant in Lacey.*
Ostroms indicates that compost production at Lacey was very stable at both facilities during the years before the construction of the ICF - at Lacey, 78,000 cu yds for the years 1993-1999, and at Everson, 20,800 cu yds for the years 1997-1999.
- b) *Response to Interrogatory No. 3 regarding compost and mushroom production data for the Lacey and Everson plants since opening of the ICF plant in Lacey.*
Ostroms indicates that compost production at Lacey has significantly increased since opening of the facility, from 78,000 cu yds in 2000 to a maximum of 114,000 cu yds in 2003. Production at Everson has not changed. It has consistently been 20,800 cu yds.
- c) Response to Interrogatory No. 4 and Request for Production No. 1 regarding shipment of compost produced at the Lacey plant to the Everson plant.
In response, Ostroms lists two separate periods in December 2003 and March 2004 during each of which 400 cubic yards were shipped from Lacey to Everson. Records produced in support of this response (Ten separate "Bills of Lading" from Martins Feed of Lynden, Washington) provide detailed information on the ten shipments of compost between Lacey and Everson in December 2003 and March 2004. My analysis of the data concludes that the median density of Ostroms compost was approximately 771 pounds per cubic yard. Refer to Table 3 "Analysis of Interrogatory Response #1."
- d) Response to Interrogatory No. 5 and Request for Production No. 2 regarding shipment of compost produced at the Lacey plant to other persons or entities.
In response, Ostroms lists three firms in Canada with whom they report having traded a total of 104,644 cubic yards of compost from November 2000 through August 2003. No documents were produced to support this response. However, twenty-seven (27) separate pages, apparently copies of faxes between Martin's Feed and Ostroms are included in the packet. Each bears the heading "Mushroom Compost picked up during the w/o:" and apparently lists the shipments of compost picked up by Martins from Ostroms (location not specified), with weight totals. The documents submitted cover the period January 4, 2004 through July 9, 2004.

Notably, several refer to companies named in Ostroms response to Interrogatory # 5, but bear dates significantly later than those reported in the response. There is no reference to these documents in the text of Ostroms responses to any of the interrogatories, nor is there any explanatory notation attached. It is not immediately clear where the compost referred to in the documents originated, nor where it was delivered.

However, analysis of these documents leads me to believe that they may well document shipments of compost from Lacey to growers in Canada on a regular basis occurring as recently as July 2004. Refer to Table 4 "Analysis of Request for Production # 2". Using the median density of 771-lbs/cu yd calculated from Ostroms Lacey compost that was delivered to Everson, the amount of compost picked up by Martin's Feed (from an as-yet unspecified location) between January and July 2004 totals approximately 22,542 cubic yards. Considering that the total annual production reported by Ostroms for the Everson facility (20,800 cubic yards) is less than this amount, it seems likely that some considerable portion, if not the entire amount, of this material originated at the Lacey plant. Further documentation and/or explanation of Ostroms compost production and shipment practices are needed to clarify this matter.

- 2) On September 23, 2004 during an inspection of the Lacey facility with Air Quality Specialist Rebecca Hersha, I directly asked Christopher Street whether Ostroms had ever shipped compost from Lacey for mushroom production by growers in Canada. Mr. Street specifically stated that Ostroms had never done so. Ms. Hersha should be able to corroborate this statement if necessary. Based on the information subsequently acquired in response to your first interrogatory, I believe that Mr. Street's statements of September 23, 2004 constitute a violation of Section 3.07 of ORCAA Regulation 1:

Section 3.07 False or Misleading Statements

No person shall willfully make a false or misleading statement to the Board or its representative as to any matter within the jurisdiction of the Board.

- 3) Also, the information developed here may have implications in other arenas. Two examples appear below. To what extent is information thus far submitted in this case usable for further investigative or enforcement work? Are the documents provided confidential at this point, and therefore not subject to disclosure to other agencies?
- a) As you noted in your Memorandum in Opposition to the request for summary judgment, the decisions of the Superior Court and Appellate Courts in *Vicwood Meridian v. Thurston County* upholding Ostroms protection from nuisance lawsuit claims under the RTFA in the landfill case were based in large part on the lack of evidence that Ostroms had increased production of compost or shipped compost off-site. Information developed in this case regarding compost production levels and off-site sales, based on sworn statements by Ostroms officials may be of some interest to the county, particularly if they have not responded similarly to these sorts of questions in the past.
- b) Under WAC 173-350-220(1)(b)(i) *Solid Waste Handling Standards for Composting*, facilities producing mushroom compost are exempt from having to obtain a Solid Waste Permit unless they ship compost off site. Ostroms is well aware of this fact, as they faced this specific issue in Whatcom County in regard to the Everson facility. Washington State Department of Ecology or Thurston County officials may want to pursue this matter further.

Attachments

Pages 11-12	Table 1. Ostrows Enforcement History 1976 - 2005
Page 13	Table 2. Top Ten Sources of Complaints Against Businesses in ORCAA's Jurisdiction
Page 14	Table 3. Analysis of Response to "Request for Production #1"
Page 15	Table 4. Analysis of Response to "Request for Production #2"
Pages 16-17	Washington State register Notice # WSR 97-15-071: Proposed Rules - Department Of Ecology Title of Rule: General Air Regulations: New source review
Pages 18-19	RCW 70.94.152 - Notice may be required of construction of proposed new contaminant source -- Submission of plans -- Approval, disapproval -- Emission control -- "De minimis new sources" defined

Other Documents Referenced (pages not numbered)

- Thurston County Map # 1 - Ostrows Parcels
- Thurston County Map # 2 - Ostrows Property History
- Final Findings of Fact, Conclusions of Law and Order of the Pollution Control Hearings Board for PCHB #s: 81-15, 81-33, 81-43, 81-55, 81-57, 81-62, 81-66. Ostrom Mushroom Farms v. OAPCA" dated July 16, 1981.
- "Homes Occupy Ostrows Former Buffer Zone". Sunday Olympian. December 14, 1986
- Correspondence circa 1981 between Mr. Richard Hill, Ostrows counsel and Mr. Fred Gentry, OAPCA counsel regarding agricultural exemptions under RCW 70.94.640
- Statutory Warranty Deed # 767597, dated September 6, 1967
- Statutory Warranty Deed # 1003054, dated May 25, 1977
- Statutory Warranty Deed # 1017021, dated November 3, 1977
- General Civil Penalty Worksheet And Recommendation for NOV # 2172
- General Civil Penalty Worksheet And Recommendation for NOV # 2198

Table 1. Ostrooms Enforcement History 1976 - 2005					February 18, 2005
Ostroms Mushroom Farm - Olympia, Washington					
Date	NOV#	Section	Penalty	Amount Paid	Disposition
5/5/1976	915	9.01	N/A	N/A	N/A
1/16/1981	93-80	9.11 and 9.23	NR	NR	Unknown
1/26/1981	158-80	9.11 and 9.23	NR	NR	Unknown
1/26/1981	159-80	9.11 and 9.23	\$ 250.00	N/A - Compliance schedule	Upheld - PCHB 81-15
2/17/1981	162-80	9.11 and 9.23	\$ 250.00	N/A - Compliance schedule	Upheld - PCHB 81-15
2/21/1981	194-80	9.11 and 9.23	\$ 250.00	N/A - Compliance schedule	Upheld - PCHB 81-15
2/24/1981	163-80	9.11 and 9.23	\$ 250.00	N/A - Compliance schedule	Upheld - PCHB 81-15
3/3/1981	164-80	9.11 and 9.23	\$ 250.00	N/A - Compliance schedule	Upheld - PCHB 81-15
3/25/1981	192-80	9.11 and 9.23	\$ 250.00	N/A - Compliance schedule	Upheld - PCHB 81-15
4/9/1981	193-80	9.11 and 9.23	\$ 250.00	N/A - Compliance schedule	Upheld - PCHB 81-15
4/21/1981	NR	9.11 and 9.23	\$ 250.00	N/A - Compliance schedule	Upheld - PCHB 81-15
5/1/1981	196-80	9.11 and 9.23	\$ 250.00	N/A - Overturned on appeal	Overturned - PCHB 81-15
5/7/1981	198-80	9.11 and 9.23	\$ 250.00	N/A - Overturned on appeal	Overturned - PCHB 81-15
6/9/1981	202-80	9.11 and 9.23	\$ 250.00	N/A - Compliance schedule	Upheld - PCHB 81-93
7/10/1981	PCHB decision 81-15 overturns NOVs 196-80 and 198-80. Compliance schedule required for others, which were upheld.				
7/23/1981	205-80	9.11 and 9.23	\$ 250.00	N/A - Compliance schedule	Upheld - PCHB 81-93
7/28/1981	206-80	9.11 and 9.23	\$ 250.00	N/A - Compliance schedule	Upheld - PCHB 81-93
8/18/1981	209-80	9.11 and 9.23	\$ 250.00	N/A - Compliance schedule	Upheld - PCHB 81-93
8/24/1981	210-80	9.11 and 9.23	\$ 250.00	N/A - Compliance schedule	Upheld - PCHB 81-93
9/28/1981	212-80	9.11 and 9.23	\$ 250.00	N/A - Compliance schedule	Upheld - PCHB 81-93
10/7/1981	Compliance schedule approved by OAPCA requires specific improvements.				
10/20/1981	PCHB decision 81-93 upholds several more NOVs subject to compliance schedule.				
	Table 1 continued on next page.				

32

Table 1 (continued). Ostroms Enforcement History 1976 - 2005

Olympic Region Clean Air Agency Enforcement History					February 18, 2005
Ostroms Mushroom Farm - Olympia, Washington					
Date	NOV#	Section	Assessed Penalty	Amount Paid	Disposition
3/22/1982	Ostroms pays \$1,000.00 due to delays in implementing compliance schedule.				
11/15/1982	Ostroms files for bankruptcy.				
4/25/1983	131-80	9.11 and 9.23	\$ 100.00	N/A - Bankruptcy	NR
9/6/1983	273-80	9.11 and 9.23	\$ 250.00	N/A - Bankruptcy	NR
4/2/1984	310-80	9.15	\$ 250.00	N/A - Bankruptcy	NR
7/10/1985	025-80	9.11(c)	\$ 250.00	N/A - Bankruptcy	NR
7/16/1985	026-80	9.11 and 9.23	\$ 1,000.00	N/A - Bankruptcy	NR
8/5/1985	029-80	9.11 and 9.23	\$ 1,000.00	N/A - Bankruptcy	NR
9/10/1985	32-80	9.11 and 9.23	\$ 1,000.00	N/A - Bankruptcy	Upheld - PCHB 85-229
10/31/1985	350-80	9.11 and 9.23	\$ 1,000.00	N/A - Bankruptcy	Upheld - PCHB 85-266
5/15/1986	PCHB decisions 85-229 and 85-266 upholding NOVs 32-80 and 350-80				
3/24/1989	1102-87	14.01	\$ 500.00	\$ 500.00	Paid
7/22/1993	397-91	9.11(c)	\$ 10,000.00	TBD	TBD
5/5/1994	535-91	9.11(c)	\$ 10,000.00	TBD	TBD
4/18/2004	2172	9.11(c)	\$ 10,000.00	TBD	TBD
5/21/2004	2198	7.01(a)	TBD	TBD	TBD
Abbreviations/Key:					
Regulation	Description				
7.01(a)	Failure to file a Notice of Construction (NOC)				
9.01	Open burning				
9.11 and 9.23	Unreasonable interference with a person's use and enjoyment of their property (odor impacts)				
9.11(c)	Unreasonable interference with a person's use and enjoyment of their property (odor impacts)				
9.15	Inadequate operation or maintenance of air pollution control equipment				
14.01	Failure to notify of removal of asbestos containing material				
Other terms					
N/A	Not applicable				
NR	No record on file				
PCHB	Pollution Control Hearings Board				
TBD	To be determined				

52

Table 2. Top Ten Sources of Complaints Against Businesses in ORCAA's Jurisdiction 1999 - 2005

Source	City	Number of Complaints
Sierra Pacific Industries	Aberdeen	144
Nutriom LLC	Lacey	76
Ostrows Mushrooms	Lacey	52
Thurston County Landfill	Lacey	46
WE & B Company	Yelm	21
Olympia Airport	Tumwater	20
North Mason Fiber	Belfair	19
Grays Harbor Paper LP	Hoquiam	19
K-Ply	Port Angeles	14
Puget Sound & Pacific Railroad	Elma	12

Table 3. Analysis of Response to "Request for Production #1"

Shipments of Ostrows Compost from Lacey to Everson - data from "Bills of Lading"
Martin's Feed of Lynden, Washington

Shipment #	Date	Weight (lbs)	Total Volume (cu yds)	Density = Weight/Volume (lbs/cu yd)
CW 27009	12/10/2003	65,820		
CW 27008	12/09/2003	67,200		
CW 27007	12/09/2003	55,860		
CW 27006	12/09/2003	65,160		
CW 27005	12/09/2003	65,960		
	Total	320,000	400	800

Shipment #	Date	Weight (lbs)	Total Volume (cu yds)	Density = Weight/Volume (lbs/cu yd)
CW 28751	03/09/2004	56,200		
CW 28750	03/09/2004	60,860		
CW 28749	03/09/2004	65,180		
CW 28748	03/09/2004	62,060		
CW 28748	03/08/2004	52,840		
	Total	297,140	400	743
Median Density of Compost 771 lbs/cu yd			Median	771

Table 4. Analysis of Response to "Request for Production #2"

"Mushroom Compost Picked up During the Week of:" by Martin's Feed Lynden, Washington

Week of	Weight (lbs)	Number of Shipments	Cubic Yards (Weight/Density)*
07/04/2004	128,160	2	166
06/27/2004	548,160	9	711
06/20/2004	116,020	2	150
06/13/2004	629,680	9	816
06/06/2004	563,020	9	730
05/30/2004	575,480	9	746
05/23/2004	376,000	6	487
05/16/2004	ND	ND	ND
05/09/2004	318,720	5	413
05/02/2004	501,480	8	650
04/25/2004	690,700	11	895
04/18/2004	799,760	13	1,037
04/11/2004	807,400	13	1,047
04/04/2004	626,440	10	812
03/28/2004	606,840	10	787
03/21/2004	869,100	14	1,127
03/14/2004	940,940	15	1,220
03/07/2004	686,400	13	890
02/29/2004	763,940	14	990
02/22/2004	1,031,960	17	1,338
02/15/2004	984,070	16	1,276
02/08/2004	844,680	14	1,095
02/01/2004	859,080	15	1,114
01/25/2004	736,400	12	955
01/18/2004	ND	ND	ND
01/11/2004	1,046,860	17	1,357
01/04/2004	1,340,120	23	1,737
Total	17,391,410	286	22,542

* Assumed median density of compost = 771 lbs/cu yd (refer to previous table)

WSR 97-15-071

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 96-01--Filed July 16, 1997, 9:37 a.m.]

Original Notice.

Pre-proposal statement of inquiry was filed as WSR 96-12-080.

Title of Rule: General Air Regulations: New source review.

Purpose: The purpose of these amendments are to clarify and streamline the review of new sources of air pollution and to identify de minimis new sources as required by the 1996 amendments to RCW 70.94.152.

Other Identifying Information: WAC 173-400-110.

Statutory Authority for Adoption: RCW 70.94.152.

Statute Being Implemented: Clean Air Act.

Summary: These rule changes identify de minimis equipment for the purposes of new source review. De minimis equipment are exempt from new source review and the requirement to install best available control technology (BACT).

Reasons Supporting Proposal: This rule will clarify and streamline the review process for new sources of air pollution saving both industry and agencies time and money. Further, the identification of de minimis new sources was required by the 1996 legislature in amendments to RCW 70.94.152.

Name of Agency Personnel Responsible for Drafting: Department of Ecology, Lacey, (360) 407-6892; Implementation and Enforcement: Ecology/local authorities, various.

Name of Proponent: Department of Ecology, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: This rule amends the new source review portion of the general air regulations to incorporate de minimis exemptions into the rule as required by the 1996 legislature. These changes will also streamline the new source review permitting process. Ecology anticipates that industry will save a substantial amount of time and money by not having to permit small air emission units. Also, ecology and those local air authorities that chose to use these exemptions will save a significant amount of staff time by not having to write permits for very small units.

Proposal Changes the Following Existing Rules: As WAC 173-400-110 is currently written it is not clear that there are any exemptions to new source review. These amendments will list both specific exempted equipment as well as emission thresholds that can be used to exempt other pieces of equipment. Other changes are made to WAC 173-400-110 to clarify the review process.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The results of these amendments would all be positive in terms of their economic impact on small businesses. Further, because many of the exemptions created by this rule are based on emission rates (typically only small units are exempt from new source review) this rule will likely provide more exemptions to small businesses compared to larger businesses.

Section 201, chapter 403, Laws of 1995, applies to this rule adoption.

Hearing Location: On August 26, 1997, Vancouver Fire Station 88, 6701 N.E. 147, Vancouver, at 6:00 p.m.; on August 27, 1997, Department of Ecology, Northwest Regional Office, 3190 160th Avenue S.E., Room 1-C, Bellevue, at 2:00 p.m.; and on August 28, 1997, Spokane Library, West 906 Main, Spokane, at 6:00 p.m.

Assistance for Persons with Disabilities: Contact Pat Norman-Bailey by July 30, 1997, TDD (360) 407-6006, or (360) 407-6841.

Submit Written Comments to: Tony Warfield, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, FAX (360) 407-6802, by September 5, 1997.

Date of Intended Adoption: October 24, 1997.

June 27, 1997

RCW 70.94.152

Notice may be required of construction of proposed new contaminant source -- Submission of plans -- Approval, disapproval -- Emission control -- "De minimis new sources" defined.

(1) The department of ecology or board of any authority may require notice of the establishment of any proposed new sources except single family and duplex dwellings or de minimis new sources as defined in rules adopted under subsection (11) of this section. The department of ecology or board may require such notice to be accompanied by a fee and determine the amount of such fee: PROVIDED, That the amount of the fee may not exceed the cost of reviewing the plans, specifications, and other information and administering such notice: PROVIDED FURTHER, That any such notice given or notice of construction application submitted to either the board or to the department of ecology shall preclude a further submittal of a duplicate application to any board or to the department of ecology.

(2) The department shall, after opportunity for public review and comment, adopt rules that establish a workload-driven process for determination and review of the fee covering the direct and indirect costs of processing a notice of construction application and a methodology for tracking revenues and expenditures. All new source fees collected by the delegated local air authorities from sources shall be deposited in the dedicated accounts of their respective treasuries. All new source fees collected by the department from sources shall be deposited in the air pollution control account.

(3) Within thirty days of receipt of a notice of construction application, the department of ecology or board may require, as a condition precedent to the establishment of the new source or sources covered thereby, the submission of plans, specifications, and such other information as it deems necessary to determine whether the proposed new source will be in accord with applicable rules and regulations in force under this chapter. If on the basis of plans, specifications, or other information required under this section the department of ecology or board determines that the proposed new source will not be in accord with this chapter or the applicable ordinances, resolutions, rules, and regulations adopted under this chapter, it shall issue an order denying permission to establish the new source. If on the basis of plans, specifications, or other information required under this section, the department of ecology or board determines that the proposed new source will be in accord with this chapter, and the applicable rules and regulations adopted under this chapter, it shall issue an order of approval for the establishment of the new source or sources, which order may provide such conditions as are reasonably necessary to assure the maintenance of compliance with this chapter and the applicable rules and regulations adopted under this chapter. Every order of approval under this chapter must be reviewed prior to issuance by a professional engineer or staff under the supervision of a professional engineer in the employ of the department of ecology or board.

(4) The determination required under subsection (3) of this section shall include a determination of whether the operation of the new air contaminant source at the location proposed will cause any ambient air quality standard to be exceeded.

(5) New source review of a modification shall be limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification.

(6) Nothing in this section shall be construed to authorize the department of ecology or board to require the use of emission control equipment or other equipment, machinery, or devices of any particular type, from any particular supplier, or produced by any particular manufacturer.

(7) Any features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted pursuant to subsection (1) or (3) of this section shall be maintained and operate in good working order.

(8) The absence of an ordinance, resolution, rule, or regulation, or the failure to issue an order pursuant to this section shall not relieve any person from his or her obligation to comply with applicable

emission control requirements or with any other provision of law.

(9) Within thirty days of receipt of a notice of construction application the department of ecology or board shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within sixty days of receipt of a complete application the department or board shall either (a) issue a final decision on the application, or (b) for those projects subject to public notice, initiate notice and comment on a proposed decision, followed as promptly as possible by a final decision. A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required by RCW 70.94.161 and the notice of construction application required by this section. A notice of construction application designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines.

(10) A notice of construction approval required under subsection (3) of this section shall include a determination that the new source will achieve best available control technology. If more stringent controls are required under federal law, the notice of construction shall include a determination that the new source will achieve the more stringent federal requirements. Nothing in this subsection is intended to diminish other state authorities under this chapter.

(11) No person is required to submit a notice of construction or receive approval for a new source that is deemed by the department of ecology or board to have de minimis impact on air quality. The department of ecology shall adopt and periodically update rules identifying categories of de minimis new sources. The department of ecology may identify de minimis new sources by category, size, or emission thresholds.

(12) For purposes of this section, "de minimis new sources" means new sources with trivial levels of emissions that do not pose a threat to human health or the environment. [1996 c 67 § 1; 1996 c 29 § 1; 1993 c 252 § 4; 1991 c 199 § 302; 1973 1st ex.s. c 193 § 2; 1969 ex.s. c 168 § 20; 1967 c 238 § 29.]

Thurston County Map #1



Disclaimer: Thurston County makes every effort to ensure that this map is a true and accurate representation of the work of County government. However, the County and all related personnel make no warranty, expressed or implied, regarding the accuracy, completeness or convenience of any information disclosed on this map. Nor does the County accept liability for any damage or injury caused by the use of this map.

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LEGEND

	Major Roads		Flood Zones
	Roads		Water Bodies
	Streams		Zoning
	Contours		Cities
	Wetlands		Parcels
	Wetland Buffers		

Thurston County Map #2



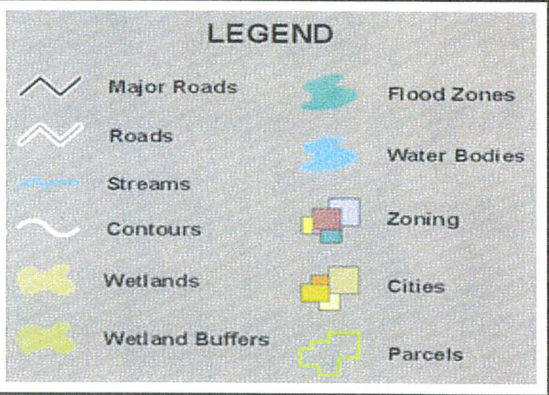
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Olympia, WA 98502-6052



Original Mushroom Farm Location - Parcel #s 11814140200 and 11814140300



Acreage sold to Tanglewilde Properties Inc. by Ostroms in 1977



Ostroms "Buffer Zone" - Parcel # 11814140100

JOHN SPELLMAN
Governor



7/17

STATE OF WASHINGTON
ENVIRONMENTAL HEARINGS OFFICE

4224-6th Avenue SE, Building No. 2, Rowe Six, MS: PY-21 • Lacey, Washington 98504 • (206) 753-3025 • (SCAN) 234-3025

POLLUTION CONTROL HEARINGS BOARD
SHORELINES HEARINGS BOARD
FOREST PRACTICES APPEALS BOARD

July 16, 1981

G. Richard Hill, Attorney
Foster, Pepper & Riviera
1111 Third Avenue Building
Seattle, WA 98101

Fred Gentry, Attorney
Bean, Gentry & Rathbone
P.O. Box 2317
Olympia, WA 98507

I certify that I mailed a copy of this document
to the persons and addresses listed thereon,
postage prepaid, in a receptacle for United
States mail at Lacey, Washington
on JULY 16 1981.

Linda Hart

Gentlemen:

Re: PCHB Nos. 81-15, 81-33, 81-43, 81-55, 81-57, 81-62, 81-66
Ostrom Mushroom Farms v. OAPCA

Herewith are the Final Findings of Fact, Conclusions of Law
and Order of the Pollution Control Hearings Board in the
above-entitled matter as a result of the hearings held on
June 5 and 11, 1981.

This is a FINAL ORDER for purposes of appeal pursuant to
WAC 371-08-200.

Yours very truly,

David Akana

David Akana
Presiding Officer

DA/lh
Enclosure

cc: John Rosene
Control Officer
OAPCA
120 E. State Avenue
Olympia, WA 98501

William K. Street
Ostrom Mushroom Farms
8323 Steilacoom Road SE
Olympia, WA 98503

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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
OSTROM MUSHROOM FARMS,

Appellant,

v.

OLYMPIC AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB Nos. 81-15, 81-33,
81-43, 81-55, 81-57,
81-62 & 81-66

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

These matters, the consolidated appeals from the assessment of nine \$250 civil penalties for the alleged violation of Sections 9.11 and 9.23 of respondent's Regulation I, came before the Pollution Control Hearings Board, Nat W. Washington, Chairman, Gayle Rothrock, and David Akana (presiding), at a formal hearing in Lacey on June 5 and 11, 1981.

Respondent was represented by its attorney, Fred D. Gentry; appellant was represented by its attorney, G. Richard Hill. Court reporters Betty Koharski and Carolyn Koinzan recorded the proceedings.

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1 Having heard the testimony, having examined the exhibits, and
2 having considered the contentions of the parties, the Board makes these

3 FINDINGS OF FACT

4 I

5 The Olympic Air Pollution Control Authority (hereinafter
6 "respondent") is an agency formed pursuant to Chapter 70.94 RCW and
7 has jurisdiction within the counties of Clallam, Grays Harbor,
8 Jefferson, Mason, Pacific and Thurston.

9 II

10 Ostrom Mushroom Farms (hereinafter "appellant") is a grower and
11 marketer of fresh and processed mushroom products. The entire
12 operation is situated on 120 acres at 8323 Steilacoom Road SE, in
13 Olympia, Washington. Mushrooms have been cultivated on portions of
14 the site for some 50 years. The site is generally identified as

15 "Mushroom Corner" on area maps.

16 The site is located west of a 20-unit trailer park, east of a
17 school and ball park, and 500 feet south of Hawksridge, a residential
18 subdivision.

19 Appellant's use of the site appears consistent with the applicable
20 zoning laws.

21 III

22 Before the Hawksridge subdivision was created, it became apparent
23 to appellant that the property located north of appellant's site would
24 be subdivided. In 1977 appellant purchased as much of the surrounding
25 property as it could afford, about 60 acres. Three months later on
26

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

1 August 4, 1977, about 40 acres was sold to R.D. and L.D. Thompson.
2 The twenty remaining acres were reserved by appellant primarily as a
3 buffer from surrounding activities.

4 As a part of its agreement with Thompsons, appellant attached
5 certain covenants to the real estate purchase agreement. Thompsons
6 and their successors recognized the existence of appellant's operation
7 and took the property--waiving any opposition to the operation--and
8 waiving claims for damages or injunctive actions. The covenants were
9 to be "null and void" if the Thompsons' proposed subdivision was a "VA
10 or FHA subdivision." There is no evidence that the covenants were
11 recorded or, if recorded, effective rather than "null and void."

12 IV

13 On November 1, 1977, appellant wrote to the Thurston Regional
14 Planning Council regarding the residential plat proposed by the
15 Thompsons. Appellant did not object to the plat but did ask that
16 prospective buyers be made aware of the farm and the likelihood of
17 noticeable odors by residents in the development.

18 On November 21, 1977, the County approved the preliminary plat of
19 the subdivision now known as Hawksridge. A condition of approval was
20 that the developer make clear, in the disclosure form for the state
21 and in the plat covenants, that the buyers be aware of appellant's
22 composting operation and of the odor that will occur.

23 V

24 The mushroom growing process includes a composting phase. The
25 materials currently used in the process are wetted wheat straw, dried

1 poultry waste, cottonseed meal, cottonseed hulls, and agricultural
2 gypsum. The materials are combined and turned according to a
3 schedule. Thereafter, the compost is pasteurized with steam. After
4 cooling, the compost is inoculated with a mold of mushroom spores
5 attached to wheat grain. The materials are then taken to an area
6 where mushrooms are grown and harvested. After harvesting, the
7 compost is pasteurized and removed.

8 VI

9 Any odor from the mushroom growing process likely comes from the
10 composting phase of the operation. Composting is conducted on a large
11 concrete slab located about 500 feet from the Hawksridge subdivision.
12 Materials may be located either undercover or in the open, depending
13 on the state of the composting. Likely specific odor sources include
14 the slab dip tank (where straw is wetted), the large mounds of
15 composting wetted straw stored in the open area, and the combined
16 composting materials ricked under a roofed area.

17 Appellant categorizes odors from the composting process as either
18 a "barnyard" odor or a "malodor." Barnyard odor is further described
19 as the inevitable odor associated with the aerobic decomposition of
20 organic materials. It can be strong but is less objectionable odor
21 than "malodor". Even with proper management practices a "barnyard
22 smell" will remain, but this odor, except under unusual circumstances,
23 would not violate chapter 70.94 RCW or Regulation I. "Malodor" is a
24 sour, penetrating odor associated with an anaerobic condition within
25 the compost. It is associated with decomposing straw and standing
26

1 pools of liquid on the ground. The presence of a "malodor" in the
2 compost signals an inferior composting material and the likelihood of
3 lower crop yields. Such odor is avoidable by proper management of the
4 composting materials. The odor associated with the standing pools of
5 liquid can be eliminated by proper water runoff management.

6 VII

7 In July, 1980, in response to several complaints about odor,
8 respondent's inspector visited complainants' and appellant's site.
9 Odors were determined to come from appellant's operations. Appellant
10 was advised of the complaints and results of the investigation but no
11 notice of violation, citation or civil penalty was issued for the
12 observations.

13 VIII

14 In July, 1980, appellant, respondent and some residents of
15 Hawksridge met. Appellant explained the process and procedures of the
16 operation and answered questions. Respondent developed an outline of
17 steps to be taken by appellant as a part of a voluntary compliance
18 program to find a solution to the odor problem. Although the
19 correspondence from appellant showed cooperation, respondent doubted
20 the effectiveness of the steps outlined by appellant. The voluntary
21 program continued until January 16, 1981, when appellant was issued a
22 notice of violation as a warning that enforcement action would begin
23 for future odor violations.

24 IX

25 Commencing on January 26, 1981, and on February 17, 24, March 3,
26 25, April 9, 21 and May 1, respondent's inspector visited appellant's

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1 site in response to complaints of odor. On each occasion appellant's
2 operation was emitting the odor in question. The odor was variously
3 described by the many complainants as smells from an "open sewer",
4 "decayed fish", "decayed body", "not pleasant", "putrid", and/or "long
5 lasting" on the days in question. Appellant acknowledges the
6 existence of odors but disputes that the odor is as bad as described.
7 However, appellant's own odor survey beginning in February, 1981,
8 confirms the presence of at least a "sour" or "penetrating" unpleasant
9 odor on February 17, 24, and March 25. The odor was described as much
10 stronger on March 3, April 9 and 21. Evidence of odor on May 1 was
11 conflicting and was not sufficient to establish a violation.
12 Respondent presented no evidence of any odor on May 7, 1981.

13 X

14 The smell on the dates and times alleged was of such character and
15 duration that the residents affected curtailed their outside
16 activities such as barbeques, yardwork, picnics, entertaining and
17 gardening. Children were confined indoors. Many friends of
18 complainants are either not invited or will not come if invited
19 because of the odor. Some complainants who do have guests fear that
20 the smell will interfere with their entertaining, and are embarrassed
21 and humiliated when an odor is present.

22 Some complainants attribute nausea, allergies, dizziness, eye
23 irritations, and asthmatic symptoms to the presence of the odor.

24 The complainants testified that they either had no actual
25 knowledge of the existence of the mushroom farm or were unaware that
26 unpleasant odors were associated with the nearby farm.

As a result of the complaints and the verification of odor and its source, a notice of violation was timely given to appellant for each instance which notified appellant of the alleged violation. After considering appellant's record, practices and the amount of penalty authorized, respondent determined that a \$250 penalty for each of the nine events was reasonable and proper. Appellant appealed the decisions to this Board.

XI

Appellant and its expert witness acknowledge that more can be done in the composting area to reduce odor. Along this topic, appellant proposes to install a chemical misting system to mask odors, improve the slab and dip tank, add grape pomace to the compost as an odor retardent, and improve communications with its neighbors. The expert witness suggests a sweetner added to the compost, compost pile

aeration, control of water runoff and attention to good management. It is apparent that appellant did not reach its own goal of good agricultural practices with respect to odor control. Appellant's economic position has prevented, and may continue to prevent, the starting and completion of some of its proposed odor control measures.

XII

Pursuant to RCW 43.21B.260, respondent has filed with this Board a certified copy of its Regulation I which is noticed.

XII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the persons and over the subject matter of this proceeding.

II

Section 9.11 of Regulation I provides for the installation and use of odor control measures:

(a) Effective control apparatus, measures, or process shall be installed and operated to reduce odor-bearing gases or particulate matter emitted into the atmosphere to a minimum, or, so as not to create air pollution.

(b) The Board may establish requirements that the building or equipment be closed and ventilated in such a way that all the air, gases and particulate matter are effectively treated for removal or destruction of odorous matter or other air contaminants before emission to the outdoor atmosphere.

(c) No person shall cause or allow the emission or generation of any odor from any source which unreasonably interferes with another person's use and enjoyment of his property.

Section 9.23 of Regulation I provides:

(a) No person shall cause or allow the emission of an air contaminant or water vapor, including an air contaminant whose emission is not otherwise prohibited by this Regulation, if the air contaminant or water vapor causes detriment to the health, safety, or welfare of any person, or causes damage to property or business.

"Air contaminant" is "dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof."

Section 1.07; RCW 70.94.030(1). "Emission" is the "release into the

1 outdoor atmosphere of air contaminants." Section 1.07;

2 RCW 70.94.030(8). Air Pollution is defined as:

3 . . . presence in the outdoor atmosphere of one or
4 more air contaminants in sufficient quantities and of
5 such characteristics and duration as is, or is likely
6 to be, injurious to human health, plant or animal
life, or property, or which unreasonably interferes
with enjoyment of life and property. Section 1.07.
RCW 70.94.030(2).

7 Sections 9.11(c) and 9.23(a) thus make "air pollution" unlawful.

8 Therefore, when an odor is present in the outdoor atmosphere in
9 sufficient quantities and of such characteristics and duration as is,
10 or is likely to be, injurious to human health, plant or animal life,
11 or property, or which unreasonably interferes with enjoyment of life
12 and property, Sections 9.11(c) and 9.23(a) are violated. In
13 interpreting Sections 9.11(a) and 9.23(a), the fundamental inquiry is
14 not whether the use to which property is put is reasonable or

15 unreasonable, but whether air pollution is of such characteristics and
16 duration as is, or is likely to be, injurious to human health, plant
17 or animal life, or property, or which unreasonably interferes with
18 enjoyment of life and property. In the instant cases, respondent did
19 not prove injury to human health, plant or animal life, or property.
20 In determining whether the air pollution unreasonably interferes with
21 enjoyment of life and property, we note that the precise degree of
22 discomfort and annoyance experienced cannot be definitely stated.
23 Suffice it to say that complainants should be persons of ordinary and
24
25
26

1 normal sensibilities.¹ Respondent must prove its case by a
2 preponderance of the evidence. In weighing such evidence, we conclude
3 that odor from appellant's facilities on January 26, February 17, 24,
4 March 3, 25, April 9, and 21, 1981, produced an unreasonable and
5 substantial discomfort and annoyance to persons of ordinary and normal
6 sensibilities.

7 Appellant can reduce its odor by using good agricultural
8 practices. It recognizes that further steps can be taken, and
9 proposes to take such steps. However, the economic burden placed on
10 appellant to take the proposed steps to reduce its odor is not
11 relevant to whether a violation occurred. Such burden would be
12 relevant in an application for a variance under Section 3.23 of
13 Regulation I and addressed to the discretion of respondent's Board of
14 Directors.

15 Respondent did not show, by a preponderance of the evidence, that
16 appellant caused or allowed the emission of an odor of such
17 characteristics and duration as would violate either Section 9.11(c)
18 or Section 9.23(a) of Regulation I on May 1 and 7, 1981.

19 III

20 The \$250 civil penalties assessed pursuant to Section 3.27 for the
21 events on January 26, February 17, 24, March 3, 25, April 9, and 21,
22

-
- 23 1. "Where the invasion affects the physical condition of the
24 plaintiff's land, the substantial character of the interference is
25 seldom in doubt. But where it involves mere personal discomfort
26 or annoyance, some other standard must obviously be adopted than
the personal tastes, susceptibilities and idiosyncracies of the
particular plaintiff. The standard must necessarily be that of

1 1981 are reasonable in amount; appellant does not contend otherwise.
2 However, payment of the civil penalties should be tailored to
3 accomplish the purposes of the Washington Clean Air Act as declared in
4 RCW 70.94.011² and not to compensate complainants. The mushroom
5 farms's contribution to the economic development of the state should
6 be promoted consistent with the comfort and convenience of the state's
7 inhabitants.³ As demonstrated by this case, these considerations
8 are in tension. It is unfortunate that the complainants' properties
9 were those sold by appellant for subdividing, for appellant has sowed
10 the seeds of its present difficulties with its neighbors. However,

12 1. Cont.

13 definite offensiveness, inconvenience or annoyance to the normal
14 person in the community--the nuisance must affect 'the ordinary
15 comfort of human existence as understood by the American people in
16 their present state of enlightenment.'" Prosser, Law of Torts
(1971), p. 758 (citations omitted).

17 2. RCW 70.94.011 provides in part:

18 It is declared to be the public policy of the state to secure and
19 maintain such levels of air quality as will protect human health
20 and safety and comply with the requirements of the federal clean
21 air act, and, to the greatest degree practicable, prevent injury
22 to plant and animal life and property, foster the comfort and
23 convenience of its inhabitants, promote the economic and social
24 development of the state, and facilitate the enjoyment of the
25 natural attractions of the state...

26 3. Executive Order EO 80-01 (January 4, 1980) cited by appellant,
27 declares a policy to preserve farmland preservation with respect
to environmental and land use permits, among other things. This
order applies to permits rather than enforcement action. More in
point is ESHB 252 exempting odors caused by agricultural
activities under certain conditions. However, the instant
enforcement actions predate the effective date of the Act.

1 appellant can take steps to lessen the impact of its operation on its
2 neighbors. These steps, and perhaps others, can best be done under
3 the terms of variance. Of the seven \$250 civil penalties, \$1000 of
4 the \$1750 total should be payable. The remaining amount should be
5 suspended on condition that appellant apply for and diligently pursue
6 a variance from Sections 9.11 and 9.23 of Regulation I.

7 IV

8 The \$250 civil penalties issued for the alleged events on May 1
9 and 7, 1981 should be stricken.

10 V

11 Any Finding of Fact which should be deemed a Conclusion of Law is
12 hereby adopted as such.

13 From these Findings the Board enters this
14

ORDER

1. The seven \$250 civil penalties for the violation of Regulation I on January 26, February 17, 24, March 3, 25, April 9, 21, and May 5, 1981, totalling \$1750 are affirmed, provided that payment of \$750 of the civil penalties is suspended on condition that appellant Ostrom Mushroom Farms immediately apply for and diligently pursue a variance from the appropriate sections of Regulation I.

2. The two \$250 civil penalties for the alleged violation of Regulation I on May 1 and 7, 1981, are stricken.

DONE this 16th day of July, 1981.

POLLUTION CONTROL HEARINGS BOARD


MAT W. WASHINGTON, Chairman


DAVID AKANA, Member


GAYLE ROTHROCK, Member

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FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

Homes occupy Ostrom's former buffer zone

By John Dodge
Olympian staff writer

The owner of Ostrom Mushroom Farms has himself to blame for touching off a land use controversy that has persisted for years.

Farm owner Bill Street sold off a major chunk of the farm's buffer zone to a land developer nearly 10 years ago. The property was turned into a 95-lot subdivision called Hawksridge.

The decision to sell is one that Street has lived to regret.

Mushroom farm composting operations are within 500 feet of the Hawksridge boundary. Prevailing winds from the southwest blow the odors through the housing development.

The conflict in land use has touched off hundreds of odor complaints, fears of property devaluation and strained relations between the farm and homeowners. The farm odors also offend children who attend a school next to the farm that was built to keep pace with the development.

"In retrospect, I would have never sold the property," Street said. "I would have liked to keep the whole thing, but I couldn't afford to."

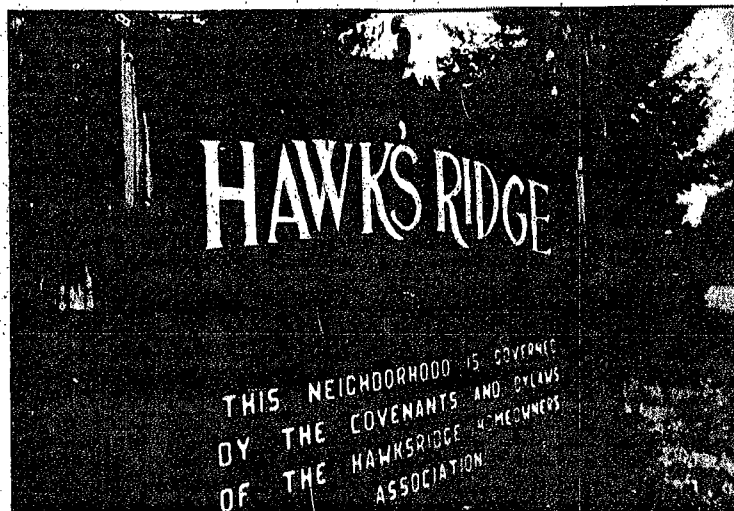
Street sold 40 acres for \$110,000 to Lacey area developer Rolland Thompson in August of 1977. Street then reminded county officials who were considering approval of the subdivision that the compost was within 500 feet of the boundary.

"At certain times and under certain weather conditions, there will be barnyard odors noticeable by residents of the proposed development," Street said in a Nov. 1, 1977, letter to the Thurston Regional Planning Commission. "I believe that prospective buyers should be made aware of these conditions so that it comes as no surprise at a later date."

On Nov. 21, 1977, the county commissioners approved the plat of Hawksridge. One of the conditions placed on Thompson was a buyer-beware provision in the plat covenant, warning potential homebuyers of the farm odors.

But the condition was never attached to the covenant, according to records in the county treasurer's office.

Thompson said he was exempt from the plat condition on disclosure because he sold the property to several builders. Cleotis Borner, a manager in the consumer protection division of the state Department of Licensing, confirmed the second-party transaction cancelled the county order.



Population growth: A 95-lot subdivision has been built on property formerly belonging to the mushroom farm.

"I really feel we were badly used on that (the exemption)," Street said.

"The homeowners had to know about the odors," Thompson countered. "The odors reach as far as Tanglewilde sometimes."

Thompson defended the decision to develop Hawksridge, labeling it a beautiful location. Besides, he said, Street has taken steps to control the compost odors.

Not everyone was aware of the Ostrom farm operations when they bought their homes, Hawksridge resident Pat Bailey said. For instance, there was a strike at the farm in 1979 that reduced production levels, and the smell. People who bought their homes during the labor dispute weren't aware how bad the odors could be, she said.

People who buy homes in the development today are well aware of the farm, said Ann Salary, president of the Hawksridge Homeowners Association.

But she said "they (Ostrom) should have never sold it as a housing development."

In the past year, Street has instituted what he calls a "good neighbor policy" in an attempt to improve relations with the Hawksridge residents.

"What we have tried to sell as an idea to the homeowners association is that it is in both our interests to minimize the complaints, and the media attention that fol-

lows," he said. "It just depreciates the value of homes and one call (to the Olympic Air Pollution Control Authority) can leave me with a \$1,000 fine."

Part of the policy is offering mushrooms to the Hawksridge residents at wholesale prices. Only a few families take advantage of the offer, Street said.

"I considered his offer an insult," Bailey said. Street needs to reduce odors from his compost piles, if he wants to improve relations with his neighbors, Bailey said.

The question of whether property values and home resales are depressed in Hawksridge because of the farm's foul smells is on the minds of residents. Real estate agents who have worked in the area give differing opinions.

"The farm is a definite impact on property sales," said Ken Bennett, a salesman for Century 21 Hometown in Lacey.

"It is realistic to say that there is a stigma attached to that area in the minds of real estate agents, homebuyers and homeowners," said Ken Gibbs, a real estate agent for Century 21. "However, it may be an unearned stigma — developers continue to build and sell homes in the area."

In the past two years, about 23 percent of the homes in Hawksridge have sold, which is an average of about 12 percent per year, according to records maintained by the county assessor's office. The countywide annual turnover rate for occupied

homes is about 7 percent to 8 percent, said Don Schaefer, chief appraiser in the Assessor's Office.

But he said the mobility of military families in Hawksridge — not odor problems at the mushroom farm — probably accounts for the higher than average turnover rate.

The resale values of the homes do not appear to be influenced by the farm odors, Schaefer said.

"From what I've seen of the sales, they are typical of other areas that do not have a mushroom farm near them," Schaefer said.

An estimated 7,800 people live within one mile of the mushroom farm, according to site inspection report by the state Department of Ecology. But the wind patterns are such that Hawksridge gets the brunt of the stink.

"We've never had a complaint from Rainier Vista," said Street, referring to a mobile home park situated directly east of the farm.

Just to the west of the farm is the Nisqually Middle School. The school opened in 1967, the same year Street purchased the mushroom farm, which has been in operation for more than 55 years.

John Howard was a member of the North Thurston School Board when it bought the 45-acre school site from Anton Kiechle for \$22,500 in June of 1963.

"We discussed the possibility of odors from the mushroom farm back then, but the farm operation was much smaller," Howard recalled. "It wasn't seen as an issue."

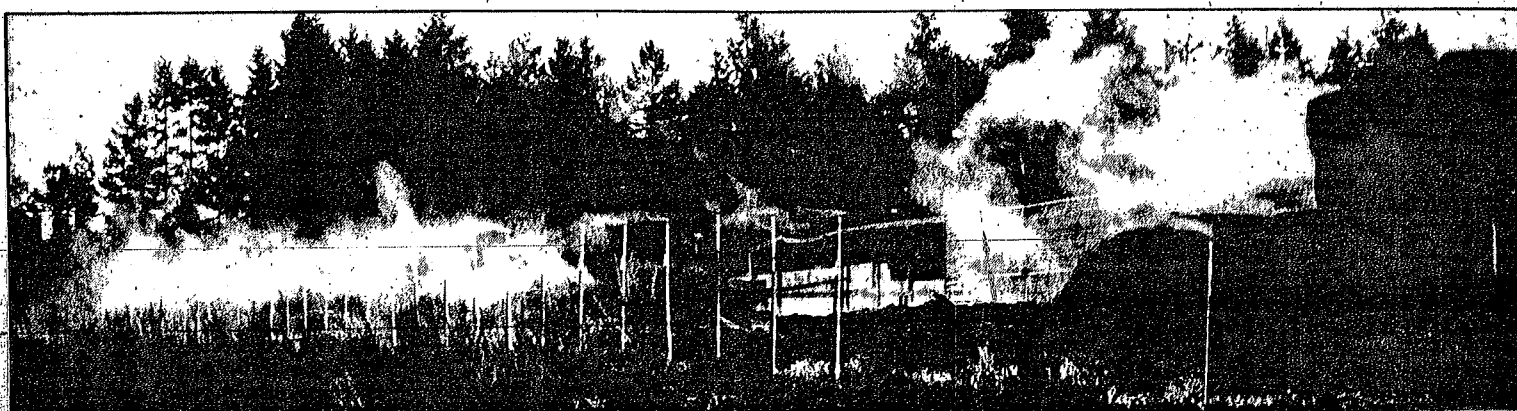
"Neither the school board nor the school administration has perceived it as a problem," said Howard, who served on the school board from 1963 to 1983. "When the wind is out of the east, there is some odor around the school, but most of the time we are upwind of it."

But an informal survey of 20 eighth graders indicated odors are strong at the school — especially in the mornings — about two or three times each school week.

About 85 men's and women's softball teams play on four ballfields across the street from the mushroom farm on land leased to the Lacey Athletic Association by the North Thurston School District, association past president Pat Bucknell said.

Bucknell said the athletic association, a non-profit group, wasn't aware of the farm odors until volunteers started building the four fields in 1980.

"We've kind of learned to live with the smell," Bucknell said. "At times it is really obnoxious."



Odiferous: This 1984 photo shows the chemical misting equipment installed to counteract composting odors. Ostrom refused Olympian photographers access to the plant for this series of stories.

Farm neighbors complain about terrible odors

THOMAS B. FOSTER
LOUIS H. PEPPER, P. S.
DANIEL J. RIVIERA
WILLIAM H. ELLIS
DAVID W. SANDELL, P. S.
RICHARD E. KEEFE, P. S.
CAMDEN M. HALL, P. S.
MICHAEL E. STANSBURY
JEROME D. WHALEN
CHARLES P. NOMELLINI
ROBERT J. DIERCKS
D. DOUGLAS MATSON
JOHN T. BLANCHARD, P. S.
CARL J. WEST III
MARCO J. MAGNANO, JR.
DOUGLAS S. PALMER, JR.
JOSEPH M. GAFFNEY, P. S.
V. RAFAEL STONE
JUDITH M. RUNSTAD
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FAY L. CHAPMAN
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BARRIE L. ALTHOFF
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1111 THIRD AVENUE BUILDING
SEATTLE, WASHINGTON 98101
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MODEROW, WALSH, SHARICK & TUCKER
510 "L" STREET, SUITE 207
ANCHORAGE, ALASKA 99501
(907) 276-8400

PAUL P. ASHLEY
1896-1979

DAVID C. ANDERSON
DEAN V. BUTLER
CATHERINE R. HALL
G. RICHARD HILL
ALLEN D. ISRAEL
DIANE M. ISTVAN
JENNIFER L. KEEFER
STELLMAN K. KEEHNEL
PATRICK F. KENNEDY
DONALD E. MARCY
BARBARA OHNICK
DONALD E. PERCIVAL
WILLIAM K. RAWSON
STUART T. ROLFE
ARMISTEAD P. ROOD
BERNARD L. RUSSELL
CARRIE L. SCHNELKER
NANCY G. STEPHENSON
DAVID UTEVSKY
JOSEPH P. WHITFORD
BENSON D. WONG

August 26, 1981

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SEP - 3 1981

Mr. Fred D. Gentry
Bean, Gentry & Rathbone
320 N. Columbia Street
P.O. Box 2317
Olympia, Washington 98507

OAPCA

Dear Fred:

Olympic Air Pollution Control Authority
Ostrom Mushroom Farms

~~This letter addresses several issues relating to the various proceedings which at the moment include both the Olympic Air Pollution Control Authority and Ostrom Mushroom Farms.~~

1. Site Visit. As you know, Ostrom has applied for a variance and compliance schedule with the board of directors of the Olympic Air Pollution Control Authority. A public hearing on the application is set for September 9, 1981. Ostrom suggests that it would be helpful for the board to make a site visit to Ostrom in connection with the public hearing. Such a site visit will give the board a more complete understanding of the facts relevant to its decision. If the board is interested in making such a site visit, a mutually convenient time for the visit could be scheduled.

2. Acknowledgment of Service. Enclosed are the original and one copy of Acknowledgment of Receipt of Service of the Petition for Judicial Review of the decision of the Pollution Control Hearings Board of last July. At your earliest convenience, please sign the Acknowledgment and return it to me.

3. Revisions to Clean Air Act. As you know, the 1981 Legislature amended the Clean Air Act, RCW 70.94. The amendment requires that any notice of violation issued pertaining to odor caused by agricultural activities shall include a statement as to why the activity is inconsistent with good agriculture practices. The amendment has now passed into law and is effective. Nevertheless,

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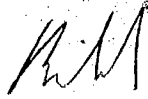
OAPCA

Mr. Fred D. Gentry
August 26, 1981
Page Two

recent notices of violation issued by the control officer to Ostrom have failed to contain statements alleging that Ostrom's activities are inconsistent with good agricultural practices. It would be appreciated if you could verify why the control officer is not following the requirements of the recent amendments to the Clean Air Act.

Please do not hesitate to call if you have any questions. Your courtesy in these matters is appreciated.

Sincerely,



G. Richard Hill

GRH:dj

Enc.

cc: William K. Street

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OAPCA

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BEAN, GENTRY & RATHBONE

ATTORNEYS AT LAW

COLUMBIA SQUARE

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P. O. BOX 2317

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STEPHEN J. BEAN
WARD J. RATHBONE
FRED D. GENTRY
MARY E. GENTRY

AREA CODE 206
TELEPHONE 943-8040

September 2, 1981

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OAPCA

C. Richard Hill
Attorney at Law
1111 Third Avenue Bldg.
Seattle, Washington 98101

RE: Olympic Air Pollution Control Authority vs. Ostrom Mushroom
Farms

Dear Richard:

This is in response to yours of August 26, regarding the above.
I will attempt to respond to your questions as follows:

1. Site Visit - To my knowledge, the Board of Directors has never made a site visit in connection with an application for a variance in compliance schedule. It would be my considered opinion, that their decision as to whether or not to visit the site in question should be made following the reception of evidence at the hearing. Frankly, I doubt if they would desire to do so, but they might. In any event, a decision would have to await the board meeting and inasmuch as six of the seven members of the board are County Commissioners, five of them would find it difficult to get together I suspect other than at the board meeting on September 9. In conclusion, I would suggest that if you desire a site visit that you be prepared following the hearing on September 9 but, as I say, I rather doubt if the board will deem it necessary.
2. Acknowledgement of Service - Enclosed is a signed Acknowledgement of Service accepting the Petition for a Judicial Review.
3. Revisions to Clean Air Act - You have asked why the Control Officer, in recent notices of violation, has failed to allege that Ostrom's activities are inconsistent with good agricultural practices. It is my opinion that evidence developed at the hearing brings the Ostrom situation within the provisions of Section 4 of the Act which provides:

"(4) If a person engaged in agricultural activity on a contiguous piece of agricultural lands sells or has sold a portion of that land for residential purposes, the exemption of this section shall not apply."

C. Richard Hill
Page Two
September 2, 1981

It is our position that this section of the acts provides that we need not, in situations such as this, comply with the requirements set forth in the new legislation.

I hope the above has adequately responded to your inquiries.

Very truly yours,

FRED D. GENTRY

FDG:lle

Enc.

cc: Chuck Peace, OAPCA

RECEIVED

SEP - 3 1981

00 031 OAPCA



SECURITY TITLE INSURANCE COMPANY
OF WASHINGTON
1108 SECOND AVENUE - SEATTLE, WASHINGTON 98101 MAIN 3-0970

SOIL FARM AND LAND ADJACENT TO PLANT

THIS SPACE RESERVED FOR RECORDER'S USE

Filed for Record at Request of



NAME Garvin, Ashley & Foster

ADDRESS 1725 Exchange Building

CITY AND STATE Seattle, Washington

Tax Statements: 12645 - 27th Ave NE
Seattle, Washington

THURSTON COUNTY
TITLE COMPANY
C-76195



\$2.00 767597 \$64.35
ST \$58.50



767597 Statutory Warranty Deed (CORPORATE FORM)

THE GRANTOR GREEN GIANT COMPANY, a Minnesota corporation

for and in consideration of Ten Dollars and other valuable consideration

in hand paid, conveys and warrants to OSTRUM MUSHROOM COMPANY, a Washington corporation,

the following described real estate, situated in the County of Thurston, State of Washington:

The N 1/2 of the NW 1/4 of the NE 1/4 of section 32, Township 19 North, Range 1 West, W.M.; EXCEPTING therefrom the north 264 feet and the west 528 feet. Together with easement for road running westerly from the property to county road known as Sleater-Kinney Road, as described in deed made by W. B. Allen and wife, dated November 21, 1947 and recorded under File No. 428162; and

The NW 1/4 of the SW 1/4 of Section 13 and the NE 1/4 of the SE 1/4 of Section 14, Township 18 North, Range 1 West, W.M.; EXCEPTING therefrom county road known as Marvin Road along the west boundary, Thurston County, Washington, and excepting also the portion in the south 30 feet of the west 245 feet of said northeast quarter of southeast quarter of Section 14 for county road known as Metcalf Street.



Real Estate Sales Tax Paid 581.70

Receipt No. 22156 Date SEP-6-1967
George M. Haskett, Thurston County Treas.

By AM Morem Deputy



IN WITNESS WHEREOF, said corporation has caused this instrument to be executed by its proper officers and its corporate seal to be hereunto affixed this 1st day of September, 1967



MINNESOTA
STATE OF ~~WASHINGTON~~
County of LE SUEUR



GREEN GIANT COMPANY

By L. C. Volling Senior Vice President
By N. R. Morem Secretary

On this 1st day of September 1967, before me, the undersigned, a Notary Public in and for the State of Minnesota, duly commissioned and sworn, personally appeared L. C. Volling and N. R. Morem to me known to be the Senior Vice President and Secretary, respectively, of GREEN GIANT COMPANY the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year in this certificate above written.



[Signature]
Notary Public in and for the State of Minnesota
residing at

DAVID D. JOHNSON, Notary Public, Le Sueur Co., Minn.
My Commission Expires August 20th, 1969



1003054
STATUTORY WARRANTY DEED

SAFECO TITLE INSURANCE COMPANY

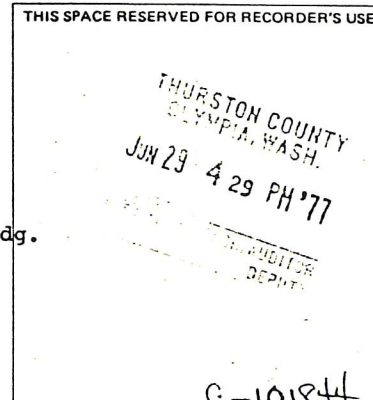
THIS SPACE RESERVED FOR RECORDER'S USE

Filed for Record at Request of

NAME Foster, Pepper & Riviera
ADDRESS 4400 Seattle-First National Bank Bldg.
CITY AND STATE Seattle, Wash. 98154

ATTN: LISA C. HICKER

1003054



THE GRANTOR ROBERT D. GIBB, as his separate estate
for and in consideration of One Dollar and other good and valuable consideration,
in hand paid, conveys and warrants to THE OSTROM COMPANY, a Washington corporation,
the following described real estate, situated in the County of Thurston
Washington:

The west 60 feet of that part of the west half of the west half of the northwest quarter of Section 13, Township 18 North, Range 1 West, W.M., lying northerly of county road known as Steilacoom Road, and that part of the east half of the northeast quarter of Section 14, Township 18 North, Range 1 West, W.M., lying northerly of county road known as Steilacoom Road and easterly of county road known as Marvin Road; EXCEPTING that portion described as follows: Beginning at a point on the south line of said subdivision, 402 feet west of its southeast corner; running thence west along said south line 917 feet to the southwest corner of said subdivision; thence north along the west line of said subdivision 950 feet; thence east 917 feet and south 950 feet to the point of beginning.

In Thurston County, Washington.

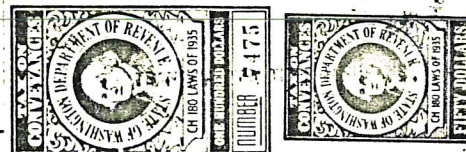
Subject to the second half of the 1977 taxes in the total sum of \$630.01 account nos. 118-13-220300-1, 118-14-110000-8 and 118-14-140100-0 which grantee herein assumes and agrees to pay.

State of
1.500
6-29-77
082996
FIFTY DOLLARS
MAR 29 1977
MAR 29 1977
MAR 29 1977

Dated May 25, 1977

Robert D. Gibb (Individual)

(Individual)



By _____ (President)

By _____ (Secretary)

STATE OF WASHINGTON
COUNTY OF King

ss. STATE OF WASHINGTON
COUNTY OF _____ ss.

On this day personally appeared before me
Robert D. Gibb

to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this
25 day of May, 19 77

Elaine M. Adams
Notary Public in and for the State of Washington, residing at Seattle

On this _____ day of _____, 19 _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____

and _____ to me known to be the _____ President and _____ Secretary, respectively, of

the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that _____ authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

Notary Public in and for the State of Washington, residing at _____

1017021

STATUTORY WARRANTY DEED

SAFECO TITLE INSURANCE COMPANY



Filed for Record at Request of

NAME Imperial Lumber Co
 ADDRESS 7235 Martin Way SE
 CITY AND STATE Olympia, Wash 98501

THIS SPACE RESERVED FOR RECORDER'S USE



0-103525

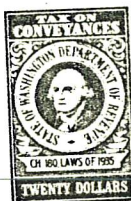
THE GRANTOR, THE OSTROM COMPANY, a Washington Corporation, TRANSAMERICA TITLE INSURANCE

for and in consideration of Ten dollars and other valuable considerations,

in hand paid, conveys and warrants to ROLLAND D. THOMPSON and LADEEN M. THOMPSON, husband and wife

the following described real estate, situated in the County of Thurston, State of Washington:

The north 1355.59 feet of that part of the east half of the northeast quarter of Section 14, Township 18 North, Range 1 West, W.M., lying easterly of county road known as Marvin Road. ALSO the north 1355.54 feet of the west 60 feet of the west half of the west half of the northwest quarter of Section 13, Township 18 North, Range 1 West, W.M.



Dated November 3rd, 1977

(Individual)

(Individual)

THE OSTROM COMPANY

By

(President)

By

(Secretary)

STATE OF WASHINGTON
COUNTY OF

}

STATE OF WASHINGTON
COUNTY OF

}

On this day personally appeared before me
William K. Street

to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that
 signed the same as
 free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this
3rd day of November, 19 77

Adlene E. Thomas
 Notary Public in and for the State of Washington, residing at Olympia, Wa.

Real Estate Sales Tax Paid 1.10000Receipt No. 386633

Harris G. Hunter, Thurston County Treas.

at Olympia,By Maui Hubbard

On this 3rd day of November, 19 77, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared
William K. Street

and
 to me known to be the _____ President
 and _____ Secretary, respectively, of

the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that
 they are _____ authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

Notary Public in and for the State of Washington, residing

at Olympia,By Adlene E. Thomas

GENERAL CIVIL PENALTY WORKSHEET AND RECOMMENDATION

SOURCE: OSTROMS MUSHROOM FARM ¹⁹⁹⁴
 NOV #: 2172 Previous NOVs #, 535-91 397-91 350-80 032-80 029-80 026-80 (more than 5)

The following procedures shall be used in making a recommendation for assessment of civil penalties for violations of Federal, State and local regulations. Civil penalties should include a "gravity" component of an amount which is appropriate considering the severity of the violation. The gravity component of a civil penalty shall be determined according to Step 1 below. In addition, civil penalties for violations involving demonstrable economic benefit to the violator should include a "benefit" component. The amount of benefit component should be equivalent to the economic benefit realized by the violator due to the noncompliance and may be determined according to Step 2 below. The total civil penalty assessed for a violation should be the sum of the "gravity" and "benefit" components.

STEP 1, GRAVITY COMPONENT: Answer all questions in Table 1 below using guidance found on the back of this page. Add the numerical "Ratings" for all answers and proceed to Tables 2 and 3 which indicate the recommended amount for the gravity component.

Table 1 - Gravity Criteria

Rating:	0	1	2	3
1. Did the violation result in an emission of an air pollutant?				X
2. Was the violation due to emissions in excess of an applicable emission limitation or standard?			X	
3. Violation of applicable permitting, new source review or registration requirements?	X			
4. Violation of applicable monitoring, record keeping or reporting requirements?	X			
5. Was the violation a result of improper operation or inadequate maintenance?				X
6. Was the violator unresponsive in correcting the violation?			X	
7. Were there any complaints associated with this violation?				X

Total Gravity Criteria Rating: 13

Table 2 - Gravity Component Amount(see Table 3)

Total Rating	1-3	4-6	7-8	9+
Penalty	Level 1	Level 2	Level 3	Level 4

Table 3

	Level 1	Level 2	Level 3	Level 4
1st Violation	\$ 100	\$ 400	\$ 700	\$ 1,000
2nd Violation	\$ 1,000	\$ 1,200	\$ 1,400	\$ 2,000
3rd Violation	\$ 3,000	\$ 4,000	\$ 4,500	\$ 5,000
4th Violation	\$ 6,000	\$ 7,000	\$ 7,500	\$ 8,000
5th Violation	\$10,000			\$10,000

STEP 2, BENEFIT COMPONENT: Did the violator economically benefit from the violation? YES , NO . If the answer is "YES", an economic benefit portion shall be included in the penalty. The estimated dollar amount of economic benefit is: \$. Attach any calculations, reports, or any other pertinent information.

STEP 3, TOTAL CIVIL PENALTY: The total amount of the recommended civil penalty should be the sum of the dollar amounts from Step 1 and Step 2.

TOTAL RECOMMENDED CIVIL PENALTY: \$10,000

Issuing Staff

Date

Reviewed By

Date

1. *Did the violation result in an emission of an air pollutant?*

Answer "0" if the violation was not the result of an emission. Answer "1" if there was an emission which was not verified. Answer "2" if the emission was verified. Answer "3" if the emission was verified and/or there was a formal complaint or informal complaints from more than one complainant.

2. *Was the violation due to emissions in excess of an applicable emission limitation or standard?*

Answer "0" if the violation was not a result of, or did not result in an air contaminant emission. Answer "1" when records or data indicate a violation for a period of time less than a day. Answer "2" when records or data indicate probable intermittent excess emissions over a number of days. Answer "3" when records or data indicate ongoing, continuous excess emissions over a number of days.

3. *Violation of applicable permitting, new source review or registration requirements?*

Answer "0" if the violation was not the result of failure to comply with registration, new source performance standards (NSPS), national emission standards for hazardous air pollutants (NESHAP), new source review (NSR), or permitting requirements. Answer "1" if the violation was a result of failure to comply with registration requirements. Answer "2" if the violation was a result of failure to comply with minor NSR requirements. Answer "3" if the violation was a result of failure to comply with major NSR (PSD), Title V applicable requirements, NSPSs or NESHAPs, failure to submit a Title V air operating permits application (and/or operating a major source without a Title V operating permit.)

4. *Violation of applicable monitoring, record keeping or reporting (MRR) requirements?*

Answer "0" if the violation was not a result of failure to comply with monitoring, record keeping or reporting (MRR) requirements. Answer "1" if the violation was a result of failure to comply with applicable MRR requirements of Regulation 1 or WAC 173-400. Answer "2" if the violation was a result of failure to comply with a MRR requirement of a NOC Approval Order condition. Answer "3" if the violation was a result of failure to comply with a MRR requirement of an Air Operating Permit, federal NESHAP or federal NSPS.

5. *Was the violation a result of improper operation or inadequate maintenance (O&M)?*

Answer "0" if the violator was following proper operation and maintenance (O&M). Answer "1" if the violator was following an O & M plan/ procedures that were not adequate. Answer "2" if the violator did not have an O & M plan or procedures in place. Answer "3" if the violation was clearly a result of improper O & M.

6. *Was the violator unresponsive in correcting the violation?*

Answer "0" if the violation was corrected as soon as the violator learned of it. Answer "1" if the violation was corrected in a less timely and cooperative fashion. Answer "2" if the violator attempted to correct the problem, but did not correct it. Answer "3" if the violator did not attempt to correct the problem.

7. *Were there any complaints associated with this violation?*

Answer "0" if there were no complaints. Answer "1" if there was a formal complaint. Answer "2" if there was a complaint, or emission, which was verified. Answer "3" if complaints were received from more than one complainant, which were verified.

Comments: _____

Executive Director

6/24/04
Date

GENERAL CIVIL PENALTY WORKSHEET AND RECOMMENDATION

SOURCE: OSTROMS MUSHROOM FARM
 NOV #: 2198 Previous NOVs #, NONE, _____, _____ (more than 5)

The following procedures shall be used in making a recommendation for assessment of civil penalties for violations of Federal, State and local regulations. Civil penalties should include a "gravity" component of an amount which is appropriate considering the severity of the violation. The gravity component of a civil penalty shall be determined according to Step 1 below. In addition, civil penalties for violations involving demonstrable economic benefit to the violator should include a "benefit" component. The amount of benefit component should be equivalent to the economic benefit realized by the violator due to the noncompliance and may be determined according to Step 2 below. The total civil penalty assessed for a violation should be the sum of the "gravity" and "benefit" components.

STEP 1, GRAVITY COMPONENT: Answer all questions in Table 1 below using guidance found on the back of this page. Add the numerical "Ratings" for all answers and proceed to Tables 2 and 3 which indicate the recommended amount for the gravity component.

Table 1 - Gravity Criteria

Rating:	0	1	2	3
1. Did the violation result in an emission of an air pollutant?				X
2. Was the violation due to emissions in excess of an applicable emission limitation or standard?			X	
3. Violation of applicable permitting, new source review or registration requirements?			X	
4. Violation of applicable monitoring, record keeping or reporting requirements?	X			
5. Was the violation a result of improper operation or inadequate maintenance?				X
6. Was the violator unresponsive in correcting the violation?				X
7. Were there any complaints associated with this violation?				X

Total Gravity Criteria Rating: 16

Table 2 - Gravity Component Amount(see Table 3)

Total Rating	1-3	4-6	7-8	9+
Penalty	Level 1	Level 2	Level 3	Level 4

Table 3

	Level 1	Level 2	Level 3	Level 4
1st Violation	\$ 100	\$ 400	\$ 700	\$ 1,000
2nd Violation	\$ 1,000	\$ 1,200	\$ 1,400	\$ 2,000
3rd Violation	\$ 3,000	\$ 4,000	\$ 4,500	\$ 5,000
4th Violation	\$ 6,000	\$ 7,000	\$ 7,500	\$ 8,000
5th Violation	\$10,000			

1. Did the violation result in an emission of an air pollutant?

Answer "0" if the violation was not the result of an emission. Answer "1" if there was an emission which was not verified. Answer "2" if the emission was verified. Answer "3" if the emission was verified and/or there was a formal complaint or informal complaints from more than one complainant.

2. Was the violation due to emissions in excess of an applicable emission limitation or standard?

Answer "0" if the violation was not a result of, or did not result in an air contaminant emission. Answer "1" when records or data indicate a violation for a period of time less than a day. Answer "2" when records or data indicate probable intermittent excess emissions over a number of days. Answer "3" when records or data indicate ongoing, continuous excess emissions over a number of days.

3. **Violation of applicable permitting, new source review or registration requirements?**

Answer "0" if the violation was not the result of failure to comply with registration, new source performance standards (NSPS), national emission standards for hazardous air pollutants (NESHAP), new source review (NSR), or permitting requirements. Answer "1" if the violation was a result of failure to comply with registration requirements. Answer "2" if the violation was a result of failure to comply with minor NSR requirements. Answer "3" if the violation was a result of failure to comply with major NSR (PSD), Title V applicable requirements, NSPSs or NESHAPs, failure to submit a Title V air operating permits application (and/or operating a major source without a Title V operating permit.)

4. **Violation of applicable monitoring, record keeping or reporting (MRR) requirements?**

Answer "0" if the violation was not a result of failure to comply with monitoring, record keeping or reporting (MRR) requirements. Answer "1" if the violation was a result of failure to comply with applicable MRR requirements of Regulation 1 or WAC 173-400. Answer "2" if the violation was a result of failure to comply with a MRR requirement of a NOC Approval Order condition. Answer "3" if the violation was a result of failure to comply with a MRR requirement of an Air Operating Permit, federal NESHAP or federal NSPS.

5. **Was the violation a result of improper operation or inadequate maintenance (O&M)?**

Answer "0" if the violator was following proper operation and maintenance (O&M). Answer "1" if the violator was following an O & M plan/ procedures that were not adequate. Answer "2" if the violator did not have an O & M plan or procedures in place. Answer "3" if the violation was clearly a result of improper O & M.

6. **Was the violator unresponsive in correcting the violation?**

Answer "0" if the violation was corrected as soon as the violator learned of it. Answer "1" if the violation was corrected in a less timely and cooperative fashion. Answer "2" if the violator attempted to correct the problem, but did not correct it. Answer "3" if the violator did not attempt to correct the problem.

7. **Were there any complaints associated with this violation?**

Answer "0" if there were no complaints. Answer "1" if there was a formal complaint. Answer "2" if there was a complaint, or emission, which was verified. Answer "3" if complaints were received from more than one complainant, which were verified.

STEP 2, BENEFIT COMPONENT: Did the violator economically benefit from the violation? YES ☒, NO _____. If the answer is "YES", an economic benefit portion shall be included in the penalty. The estimated dollar amount of economic benefit is: \$ 1,600.00
Attach any calculations, reports, or any other pertinent information.

STEP 3, TOTAL CIVIL PENALTY: The total amount of the recommended civil penalty should be the sum of the dollar amounts from Step 1 and Step 2.

Penalty Assessment:

John Kelly 10/1/04 \$1,600.00
Issuing staff date Recommended penalty

Comments

RG Moody 10/1/04 \$1,600.00
Supervisor date Recommended penalty

Comments

[Signature] 10/1/04 \$1,600.00
Executive Director date Assessed penalty

Comments