

Date: July 23, 2010

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item F, Action item: Contested Case No. LQ/SW-NWR-07-212 regarding Grabhorn, Inc.
August 18-19, 2010 EQC meeting

Introduction The Oregon Department of Environmental Quality implements environmental protection laws. While most voluntarily comply, DEQ may assess civil penalties and orders to compel compliance or create deterrence. When persons or businesses do not agree with DEQ's enforcement action, they have the right to an appeal and a contested case hearing before an administrative law judge. If they do not agree with the judge's decision, they may appeal to the commission.

Background DEQ issued a Notice of Violation, Department Order and Civil Penalty Assessment to Grabhorn, Inc. on Dec. 12, 2007. The notice alleged that Grabhorn had accepted industrial waste for disposal at its landfill in violation of its permit and Oregon law, and failed to meet the financial assurance requirements of its permit and Oregon law.¹ The notice assessed a civil penalty of \$7,230 for accepting unauthorized waste, and a separate civil penalty of \$9,282 for failing to provide sufficient financial assurance. The notice also ordered Grabhorn to correct the financial assurance violation.

Grabhorn requested a contested case hearing before an administrative law judge.² After attempting to resolve this matter informally, Grabhorn and DEQ filed motions for summary determination³ with Administrative Law Judge John Mann.

¹ The notice also alleged a third violation: that Grabhorn was operating its landfill in excess of size limits imposed by its permit. DEQ later withdrew the civil penalty for this violation, and Judge Mann found that DEQ did not present sufficient evidence to sustain the violation on summary determination. DEQ does not challenge that ruling .

² See Attachment L, Request for Contested Case Hearing.

³ Summary determination is available where there are no relevant facts in dispute and all legal issues can be resolved based on the undisputed facts. Under this procedure, each party submits witness affidavits, documentary evidence and legal argument to the administrative law judge. The judge then rules on whether further fact-finding is required. If no further hearing is required, the judge proceeds to decide the legal issues based on the undisputed material facts, as established in the parties' witness affidavits and supporting documents. See Oregon Administrative Rule (OAR) 137-003-0580.

On Feb. 12, 2010, Judge Mann issued his Ruling On Motions for Summary Determination and Proposed Order. Judge Mann concluded that, (1) Grabhorn had accepted industrial waste for disposal in violation of its permit and applicable regulations; (2) that Grabhorn had failed to fully fund financial assurance for post-closure maintenance of the landfill; (3) that Grabhorn should be held liable for civil penalties in the total amount of \$16,512; (4) and must secure additional financial assurance to comply with regulations.

In filings and briefs to the commission, Grabhorn requests that the commission adopt alternate findings of fact and conclusions of law, and that the commission consider additional evidence that was not presented to the administrative law judge. DEQ requests that EQC uphold the Judge's Ruling and Proposed Order.

**DEQ
recommendation
and EQC motion**

DEQ recommends that EQC issue a final order adopting Judge John Mann's Ruling and Proposed Order in its entirety.

Findings of Fact

Based on the witness affidavits, documentary evidence and other supporting materials submitted in support of their respective summary determination motions, Judge Mann found that the following material facts are undisputed:

Facts relating to all violations

Grabhorn has operated Lakeside Reclamation Landfill since the 1950s.⁴

DEQ issued a Solid Waste Disposal Site Permit: Construction and Demolition Waste Landfill to Grabhorn on April 17, 1998.⁵

Facts relating to Violation No. 1: Unauthorized waste disposal

Section 5.2 of the permit authorized Grabhorn to accept "Construction and demolition wastes resulting from the construction, repair or demolition of buildings, roads, and other structures, and debris from the clearing of land."⁶

This section of the permit states that such wastes typically include a number of items, including glass, and specifically references OAR 340-093-0030(20), which prohibits landfills from accepting any type of waste not specifically authorized in their permit.⁷

⁴ Ruling and Proposed Order, page 4, finding of fact no. 1.

⁵ *Id.* at page 5, finding of fact no. 8.

⁶ *Id.* at page 5, finding of fact no. 8.

⁷ *Id.* at page 5, finding of fact no. 8.

The permit authorizes Grabhorn to accept “[t]he following construction and demolition type wastes[.]” This list includes glass.⁸

Between Nov. 20, 1992 and October 2007, DEQ issued four separate Notices of Noncompliance based on allegations that Grabhorn accepted wastes of various types other than what was authorized by its permit, including several items of household waste, putrescible waste, hazardous waste and asbestos waste.⁹

On Oct. 2, 2007, two DEQ inspectors observed a sand-like waste in the landfill. Grabhorn’s employees could not identify it, but committed to investigate its source. DEQ requested that the waste not be compacted or buried in case Grabhorn had to remove it.¹⁰

Grabhorn’s employee later determined that the waste was off-spec cullet that was hauled to the landfill from the Owens-Illinois container manufacturing plant on the day before DEQ’s inspection.¹¹ The material consisted of “off-spec cullet” and included “cullet yard sweepings.”¹²

Cullet is crushed recycled glass used for manufacturing glass containers. Owens-Illinois creates such cullet through processes that remove contaminants and separate colors. The resulting cullet is mixed with virgin materials to produce glass containers. According to Owens-Illinois’s website, “Only the highest quality cullet can be used for manufacturing new glass containers. If the cullet contains too much non-glass material, it cannot be used to close the glass recycling loop.”¹³ Grabhorn received a \$30 tipping fee for this waste, which it buried in the landfill sometime between Oct. 2 and 22, 2007.¹⁴

Facts relating to Violation No. 2: Financial assurance

In 1998, Grabhorn formed Grabhorn Financial Assurance Foundation to hold and manage its financial assurance funds.¹⁵ Grabhorn submitted its first annual financial assurance report to DEQ in February 2000. That report stated:

As required by OAR 340-095-0090(6)(d) GFAF has used the current discount rate for the 5-year Treasury note... This rate is 6.7625% and is slightly greater than the 6.62% used in the 1997

⁸ *Id.* at page 5, finding of fact no. 8.

¹⁰ *Id.* at page 6, finding of fact no. 10.

¹¹ *Id.* at page 6, finding of fact no. 11.

¹² *Id.* at page 6, finding of fact no. 12.

¹³ *Id.* at page 6, finding of fact no. 12.

¹⁴ *Id.* at page 6, finding of fact no. 11.

¹⁵ *Id.* at page 4, finding of fact no. 1.

[Financial Assurance Plan.]

Grabhorn continued to use a rate of 6.7625 percent in subsequent annual reports through 2005.¹⁶

On April 25, 2007, Grabhorn submitted to DEQ its annual financial assurance report for calendar year 2006. The report evaluated the post-closure fund's adequacy using a projected six percent rate of return on investment. The five-year US Treasury Note at that time was 4.58 percent.

If a discount rate of 4.58 percent is used in the calculation, DEQ estimates that an additional \$1,007,519 of financial assurance would have been required.¹⁷ Grabhorn's consultant calculated that using a discount rate of 4.58 percent would result in a smaller deficiency of \$481,225.¹⁸

**Conclusions of
the
administrative
law judge**

In his Ruling and Proposed Order, Judge Mann made the following Conclusions of Law, based on the undisputed facts as outlined in his Findings of Fact:

1. DEQ is entitled to a favorable ruling as a matter of law on Violation No. 1 because Grabhorn accepted industrial waste for disposal at its landfill in violation of the terms of its permit and OAR 340-093-0040(1) and 340-095-0020(2).
2. DEQ is entitled to a favorable ruling as a matter of law on Violation No. 2 because, beginning at least October 15, 2007 and continuing thereafter, Grabhorn failed to fully fund its approved financial assurance mechanism for post-closure maintenance because it failed to apply the correct discount rate when estimating third-party costs in its 2006 annual financial assurance report, in violation of OAR 340-095-0090(1)(b), (4)(a), (6)(d) and 340-095-0095(6)(g).
3. Grabhorn is subject to civil penalties in the total amount of \$16,512.

**Proposed civil
penalty and order**

Judge Mann proposed that DEQ order that civil penalties in the amount of \$7,230 for unauthorized waste acceptance and \$9,282 for financial assurance pursuant to OAR 340-012-0045.

Judge Mann also proposed that DEQ order Grabhorn to secure additional financial assurance for post-closure care that meets the requirements of OAR

¹⁶ *Id.* at page 4, finding of fact no. 2.

¹⁷ *Id.* at page 5, finding of fact no. 6.

340-095-0090 and OAR 340-095-0095, and that Grabhorn submit documentation of compliance with this requirement to DEQ within thirty days of a final order.

Issues on appeal

Grabhorn requests that the commission find that Grabhorn's permit allowed disposal of off-spec glass cullet at the Lakeside Reclamation Landfill, and further requests that the commission find that Grabhorn has fully complied with all applicable financial assurance regulations.

Arguments regarding the violation for unauthorized waste disposal:

Grabhorn 's argument:

Grabhorn requests that additional evidence regarding the history and interpretation of the permit be admitted into the record. Grabhorn claims that, if they had known that Judge Mann would find the language of the permit to be ambiguous, then they would have offered this additional evidence to the judge.

DEQ's response:

Grabhorn should not be allowed to submit this evidence into the record at this late date. The commission's rules require good cause for the failure to present evidence to the administrative law judge. Grabhorn has not established good cause for its failure to present this evidence to the administrative law judge. Judge Mann did not find the terms of the permit to be ambiguous. Judge Mann did find that DEQ's understanding of the permit was accurate based on the plain language of the permit and its consistency with regulations that the permit implements and that Grabhorn's proposed interpretation was implausible because it was inconsistent with the plain language of the permit and underlying regulations, and would create an untenable regulatory loophole.

Grabhorn 's argument:

Grabhorn claims that the permit should be interpreted to allow disposal of off-spec glass cullet generated by a container manufacturing plant because its permit allowed disposal of "construction and demolition type waste ...[including] glass."

DEQ's response:

Grabhorn's argument selectively focuses on the word "glass" and ignores the underlying solid waste landfill regulations. Oregon regulates non-hazardous solid wastes based primarily on the type of facility that generated the waste, and prescribe specific regulatory requirements for landfills that accept specific types of solid waste, as identified by source.

The regulations classify the subject off-spec glass cullet mixed with floor-sweepings as industrial waste, because it was generated by a manufacturing or industrial source or process, and prohibit disposal of industrial waste at construction and demolition landfills.¹⁹ These definitions are clearly cited in Grabhorn's permit.²⁰ Judge Mann properly considered and applied these regulations, and identified Grabhorn's requested interpretation as creating a loophole that would undermine the landfill-permitting process.

Grabhorn's argument:

Grabhorn argues that its permit did not expressly prohibit disposal of industrial solid waste because the phrase "industrial waste" was not listed in Section 6 of the permit, which did list other prohibited waste types.

DEQ's response:

Applicable regulations prohibit landfills from accepting for disposal anything other than the "waste types listed in the solid waste permit."²¹ Because of this regulatory prohibition, the permit did not need to specifically list industrial waste in order to bar this type of waste from Grabhorn's construction and demolition landfill.

Grabhorn's argument:

Grabhorn argues, in the alternative, that a fact-finding hearing is required to determine whether off-spec glass cullet is industrial waste. Grabhorn argues there insufficient evidence that the off-spec glass cullet was generated as industrial waste.

DEQ's response:

Grabhorn did not dispute the industrial genesis of the off-spec glass cullet waste before the administrative law judge. Grabhorn should not be allowed to raise new arguments when the record contains undisputed evidence that the material in question was industrial waste. Judge Mann correctly concluded that further evidence and fact-finding on this issue was unnecessary.²²

¹⁹ See OAR 340-093-0030(24).

²⁰ The permit appears in this record as attachment C3.d to this staff report and was submitted to the administrative law judge as attachment 1 to the Affidavit of Stephanie Rawson. Section 1.8 of the permit states that "all terms are as defined in OAR 340-093-0030."

²¹ See OAR 340-095-0020(2), OAR 340-095-0020(1) and OAR 340-093-0040 (1).

²² In its reply brief, Grabhorn asserts for the first time, and without citation to any evidence in the record, that the waste cullet was "raw material" purchased by Owens-Illinois. This assertion is not supported either by the record or by the new evidence that Grabhorn asks be considered. None of the new evidence is specific to the load of waste at issue here; rather the new evidence generally describes common industrial practices. Even if admitted and

Grabhorn 's argument:

Grabhorn argues that Judge Mann should not have admitted or considered four Notices of Noncompliance letters from DEQ to Grabhorn regarding previous incidents of unauthorized waste disposal. Grabhorn argues that these letters are outside the scope of the current violation and, therefore, irrelevant.

DEQ's response:

These letters are relevant to the penalty calculation, specifically the "M" or mental state factor, because they demonstrate that Grabhorn knew that DEQ considered Grabhorn's permit to authorize only disposal of waste resulting from construction and demolition activities. Judge Mann properly admitted and considered this undisputed evidence.

Grabhorn 's argument:

Grabhorn argues that the magnitude of the violation should be minor, because there is no evidence of any environmental risk or harm from the industrial waste that was improperly disposed of and buried in the landfill.

DEQ's Response:

For penalty calculation purposes, the rules specify that DEQ must assign a default magnitude of moderate if there is no evidence to support a different finding. In this case, neither party presented any evidence of the actual toxicity of the off-spec cullet mixed with floor sweepings.

Grabhorn's argument

Grabhorn argues that it was not reckless in accepting unauthorized industrial waste for disposal.

DEQ's response:

"Recklessly" is defined in DEQ regulation OAR 340-012-0030(18) as "consciously disregarding a substantial and unjustified risk that is a gross deviation from the standard of care of a reasonable person in the situation." Grabhorn does not dispute that a reasonable standard of care for a landfill permittee is to comply with permit conditions and applicable rules, and that failure to comply with that standard is a substantial, unjustified and gross deviation. Grabhorn acted recklessly by accepting waste for disposal with no

considered, nothing in the new evidence proves that the particular load of cullet at issue here was not discarded by Owens-Illinois. The undisputed fact is that Owens-Illinois mixed the cullet with floor sweepings and then contracted with AGG to haul it for disposal to the Lakeside Landfill.

verification of where the waste came from at the time the waste was placed in the landfill.

Arguments regarding the violation for financial assurance:

Grabhorn's argument:

Grabhorn concedes that it has not used the discount rate specified in rule to calculate and make annual adjustments to financial assurance. Grabhorn argues that the particular regulation does not apply to the Lakeside Landfill because it did not use this rate in any of its annual financial assurance reports submitted to DEQ prior to 2007, and DEQ did not enforce this requirement prior to 2007.

DEQ's response:

Based on the undisputed facts before him, Judge Mann concluded that there was no valid reason for Grabhorn's failure to use the rate specified in OAR 340-095-0090(4)(a). That conclusion is a reasonable application of law to the undisputed facts.

DEQ's exercise of its enforcement discretion prior to 2007 does not relieve Grabhorn from its obligation to complying with the rules. Those rules require use of the discount rate specified in OAR 340-095-0090(4)(a) when calculating the adequacy of financial assurance, and require permittees to annually update and certify compliance. DEQ has authority to selectively audit, review, and seek additional financial assurance as necessary.²³ DEQ alleges a period of violation beginning in October 2007. Whether Grabhorn was also in violation prior to 2007 is irrelevant.

Grabhorn's argument:

DEQ previously approved use of Grabhorn's investment rate of return as a proxy for the discount rate specified in rule for evaluating the adequacy of financial assurance, and has always understood the phrase "as applicable" in OAR 340-095-0090(4)(1) to mean that Grabhorn was not required to use the discount rate specified in that rule.

DEQ's response:

DEQ has never approved Grabhorn's use of a different calculation method. The 1997 Financial Assurance Plan that DEQ did approve specified that the discount rate referenced in the rule was and would be used in the future. Grabhorn's alleged misunderstanding of the law is not a valid excuse for maintaining an ongoing violation.

²³ See OAR 340-095-0090(7).

Grabhorn's argument:

Grabhorn argues that the judge's proposed compliance order requires a remedy that is not within the scope of the penalty notice, that financial assurance reports submitted after 2007 should not be considered and that calculations based on the 2006 Annual Report do not reflect the post-closure scenario facing the landfill today.

DEQ's response:

DEQ's Notice of Violation identified Grabhorn's failure to fully fund its financial assurance mechanism as an ongoing violation that began in October 2007 and was ongoing and uncorrected as of the date of the Notice, Dec. 12, 2007. Grabhorn concedes that it has not set aside additional financial assurance resources since that time.²⁴

DEQ's is not asking that Grabhorn be ordered to provide the level of financial assurance that should have been made available in 2007. Rather, DEQ and Judge Mann propose that Grabhorn be ordered to correct this ongoing violation by providing evidence that meets the requirements of the rules based on today's conditions. The operational changes at Grabhorn's facility since 2007 illustrate why DEQ's rules require annual updates of financial assurance information. Grabhorn's financial assurance annual report for 2008, submitted to DEQ in April 2009, documented an almost \$1.7 million shortfall as of the end of calendar year 2008.

Grabhorn's argument:

Grabhorn argues that DEQ incorrectly calculated the penalty by assigned a moderate magnitude and an "M" factor of six for reckless.

DEQ response:

Judge Mann correctly concluded that DEQ had used the appropriate magnitude, for the same reasons as stated above for the similar argument raised in connection with Violation 1. Grabhorn's 1999 Financial Assurance Plan asserted that Grabhorn would use the discount rate stated in the regulations to estimate post-closure costs in future annual updates.²⁵ Grabhorn's subsequent failure to follow through on that commitment was reckless, as that term is defined in applicable penalty calculation rules.

²⁴ Grabhorn concedes that its financial assurance for post-closure care may have been deficient by almost \$481,225 as of the beginning of calendar year 2007 if the rule-required discount rate is used, even when expected investment growth and additional tipping fees are considered in the calculation. See Ruling and Proposed Order at page 5, finding of fact 7 (citing Grabhorn's financial consultant).

²⁵ See page 17 of Attachment 1 to the *Affidavit of Jim Harris* (dated Oct. 8, 2009) submitted in support of DEQ's *Motion for Summary Determination*.

“Recklessly” is defined by DEQ’s penalty rules as consciously disregarding a substantial and unjustified risk that deviates from the standard of care of a reasonable person in the situation. Judge Mann correctly applied the applicable regulation to the undisputed evidence, and the commission should uphold Judge Mann’s conclusion that DEQ assessed an appropriate penalty for Violation 2.

EQC authority

EQC has the authority to hear this appeal under OAR 340-011-0575.

DEQ’s contested case hearings must be conducted by an administrative law judge.²⁶ The proposed order was issued under current statutes and rules governing the Administrative Law Judge Panel.²⁷ Under ORS 183.600 to 183.690, EQC’s authority to change or reverse an administrative law judge’s proposed order is limited.

The most important limitations are as follows:

1. EQC may not modify the form of the administrative law judge’s proposed order in any substantial manner without identifying the modifications and providing an explanation why the commission made the modifications.²⁸
2. EQC may modify a finding of historical fact only if the commission determines that there is clear and convincing evidence in the record that the finding was wrong.²⁹ Accordingly, EQC may not modify any historical fact unless it has reviewed the entire record or at least all portions of the record that are relevant to the finding.
3. EQC must issue a proposed order and allow the parties to file exceptions to the proposed order if it intends to reject a proposed order issued by an administrative law judge that is favorable to the respondent unless the commission either reviews the entire record or makes changes that are not within the scope of any exceptions to which there was an opportunity to respond by the parties.³⁰

²⁶ ORS 183.635.

²⁷ ORS 183.600 to 183.690 and OAR 137-003-0501 to 137-003-0700.

²⁸ ORS 183.650(2).

²⁹ ORS 183.650(3). A historical fact is a determination that an event did or did not occur in the past or that a circumstance or status did or did not exist either before or at the time of the judge’s ruling.

³⁰ OAR 137-003-0655(3) and (4).

4. EQC may not consider any new or additional evidence, but may only remand the matter to the administrative law judge to take the evidence.³¹

The rules implementing these statutes also have more specific provisions addressing how commissioners must declare and address any ex parte communications and potential or actual conflicts of interest.³²

In addition, EQC has established by rule a number of other procedural provisions, including that EQC will not remand a matter to the administrative law judge to consider new or additional evidence unless the proponent of the new evidence has properly filed a written motion that establishes good cause for the evidence having not been presented to the administrative law judge.³³

Alternatives

EQC may take the following action, with respect to either or both violations:

1. As requested by DEQ, issue a final order adopting Judge Mann's proposed order; or
2. Issue a final order determining that the conclusions of law reached by Judge Mann were not based on a preponderance of the evidence, explain why and amend Judge Mann's proposed order accordingly; or
3. Issue an order determining that the affidavits, supporting documents and evidentiary record as a whole show that there is a genuine dispute of material fact that is relevant to resolution of the legal issues, and remand the case to the administrative law judge for a fact-finding hearing.

Attachments

- A. Documents regarding review by the EQC:
 1. Letter from Stephanie Clark to Respondent, dated July 21, 2010.
 2. Respondent's Reply Brief, dated July 16, 2010.
 3. Letter from Stephanie Clark to George W. McKallip, Jr., dated July 8, 2010.
 4. Letter from Stephanie Clark to Regina Cutler, DEQ, dated June 22, 2010.
 5. Letter from Regina Cutler to Stephanie Clark, dated June 22, 2010.
 6. DEQ's Answering Brief.
 7. DEQ's Response to Motion to Present Additional Evidence.
 8. Letter from Stephanie Clark to Regina Cutler, dated June 14,

³¹ OAR 137-003-0655(5).

³² OAR 137-003-0655(7), referring to ORS Chapter 244; OAR 137-003-0660.

³³ OAR 340-011-0575(6).

- 2010.
9. Letter from Stephanie Clark to Regina Cutler, dated May 18, 2010.
10. Letter from Regina Cutler to Stephanie Clark, dated May 17, 2010.
11. Letter from Stephanie Clark to George W. McKallip, Jr., dated May 5, 2010.
12. Respondent's Motion to Present Additional Evidence.
13. Respondent's Opening Brief on Commission Review.
14. Letter from Stephanie Clark to George W. McKallip, Jr., dated March 31, 2010.
15. Respondent's Request for Extension of Time to File Exceptions & Brief.
16. Letter from Stephanie Clark to George W. McKallip, Jr., dated March 11, 2010.
17. Respondent's Petition for Commission Review, dated March 11, 2010.
- B. Ruling on Motions for Summary Determination and Proposed Order, issued by Judge Mann on February 12, 2010, and ALJ's Response to Agency Comments, issued by Judge Mann on March 15, 2010.
- C. DEQ's Motions for Summary Determination and supporting materials, submitted October 8, 2009:
 1. Department's Motion for Summary Determination on Violation 1: Acceptance of Unauthorized Waste. (DEQ Motion No. 1.)
 2. Department's Motion for Summary Determination on Violation 2: Financial Assurance. (DEQ Motion No. 2.)
 3. Materials submitted in support of DEQ's Motions for Summary Determination:
 - a. Exhibit 1 – Notice of Civil Penalty Assessment and Order
 - b. Exhibit 2 – Request for Contested Case Hearing.
 - c. Exhibit 3 – Stipulated Amendments to Notice of Violation and Answer.
 - d. Exhibit 4 – Affidavit of Stephanie Rawson, with attachments 1-5.
 - e. Exhibit 5 – Affidavit of Jim Harris, with attachments 1-8
 - f. Exhibit 6 – Affidavit of Sarah Wheeler, with attachments
 - g. Exhibit 7 – Affidavit of Regina Cutler, with attachments 1-7
- D. Grabhorn's Motion for Summary Determination and supporting materials, submitted October 9, 2009:
 1. Grabhorn's Motion for Summary Determination
 2. Grabhorn's Memorandum in Support of Its Motion for Summary Adjudication
RE: "Green Glass"
 3. Grabhorn's Memorandum in Support of its Motion for Summary

Adjudication

RE: "Working Face"

4. Grabhorn's Memorandum in Support of its Motion for Summary Adjudication
RE: Financial Assurance
5. Materials submitted in support of Grabhorn's Motion for Summary Determination:
 - a. Affidavit of Howard Grabhorn
 - b. Affidavit of Jodie Scholz (with attached exhibits 1-33)
 - c. Affidavit of Andrew Daniel (with attached exhibits A-F)
 - d. Affidavit of Peter Sergienko
- E. Grabhorn's Response to DEQ's Motions for Summary Determination, and supporting materials, submitted October 23, 2009:
 1. Grabhorn's Response to DEQ's Motion for Summary Adjudication RE: Green Glass.
 2. Grabhorn's Response to DEQ's Motion for Summary Adjudication RE: Financial Assurance.
 3. Grabhorn's Objections to and Motion to Strike Portions of DEQ's Submittals.
 4. Materials submitted in support of Grabhorn's Response:
 - a. Supplemental Affidavit of Jodie Scholz (with exhibits attached).
 - b. Supplemental Affidavit of Andrew Daniel (with exhibits attached).
 - c. Affidavit of George W. McKallip, Jr. (with exhibits attached).
 5. Certificate of Service
- F. DEQ's Responses to Respondent's Motions for Summary Determination, and supporting materials, submitted October 23, 2009:
 1. DEQ's Response to Respondent's Motion for Summary Determination Re: Green Glass
 2. DEQ's Response to Respondent's Motion for Summary Determination Re: Financial Assurance
 3. Second Affidavit of Jim Harris
 4. DEQ's Response to Respondent's Motion for Summary Determination Re: Working Face
- G. Grabhorn's Reply and supporting materials, submitted October 30, 2009:
 1. Grabhorn's Reply Memorandum re: Green Glass. (Grabhorn Reply No. 1.)
 2. Grabhorn's Reply Memorandum re: Financial Assurance. (Grabhorn Reply No. 2.)
 3. Grabhorn's Reply Memorandum re: Working Face. (Grabhorn Reply No. 3.)

4. Materials submitted in support of Grabhorn's Reply Memoranda:
 - a. Third Affidavit of Jodie Sholz.
 - b. Second Affidavit of George W. McKallip, Jr.
5. Grabhorn's Objections and Motion to Strike Portions of Jim Harris' Second Affidavit
6. Certificate of Service
- H. DEQ's Reply and supporting materials, submitted October 30, 2009:
 1. DEQ Response to Respondent's Objections and Motions to Strike
 2. DEQ's Reply to Respondent's Response to DEQ's Motion for Summary Determination Re: Violation 1: Acceptance of Unauthorized Waste.
 3. DEQ's Reply to Respondent's Response to DEQ's Motion for Summary Determination Re: Violation 2: Financial Assurance.
 4. Third Affidavit Of Jim Harris
- I. Correspondence regarding summary determination proceeding:
 1. Letter from Regina Cutler to George W. McKallip, Jr. and to Judge Mann, dated October 8, 2009.
 2. Letter from George W. McKallip, Jr. to Judge Mann, dated October 9, 2009.
 3. Letter from George W. McKallip, Jr. to Judge Mann, dated October 13, 2009.
 4. Letter from Regina Cutler to George W. McKallip, Jr. and to Judge Mann, dated October 23, 2009.
 5. Letter from George W. McKallip, Jr. to Judge Mann, dated October 23, 2009.
 6. Letter from George W. McKallip, Jr. to Judge Mann, dated October 28, 2009.
 7. Letter from Regina Cutler to George W. McKallip, Jr. and to Judge Mann, dated October 30, 2009.
 8. Letter from George W. McKallip, Jr. to Judge Mann, dated October 30, 2009.
 9. Letter from George W. McKallip, Jr. to Judge Mann, dated November 11, 2009.
- J. Other Pre-hearing Motions and Orders:
 1. Notice of in-Person Hearing, issued September 14, 2009.
 2. Notice of In-Person Hearing, issued May 21, 2009.
 3. Notice of Status Conference, issued May 15, 2009.
 4. Notice of Status Conference, issued April 17, 2009.
 5. DEQ's Response to Respondent's Motion for Discovery, dated March 26, 2009.
 6. Notice of Prehearing Conference, issued March 19, 2009
 7. Respondent's Motion for Discovery, Motion to Reset Legal Motion Deadline and Hearing Date, and Attachments, dated March 8, 2009.

8. Notice of In-Person Hearing, issued January 26, 2009.
9. Notice of In-Person Hearing, issued November 6, 2008.
10. Notice of Prehearing Conference, issued September 5, 2008
11. Letter from Respondent to Office of Administrative hearings, dated August 18, 2008.
12. Stipulated Motion and Form of Order Extending Discovery and Motion Deadlines and Hearing Date, jointly submitted by DEQ and Respondent to Judge Mann on January 6, 2008
- K. Stipulated Amendments to Notice of Violation and Answer, and to Reset Hearing Date, submitted jointly by DEQ and Respondent to Judge Mann on August 21, 2009.
- L. Request for Contested Case Hearing on No. LQ/SW-NWR-07-212, filed by Respondent, received by DEQ on December 28, 2007.
- M. Notice of Violation, Department Order, and Civil Penalty Assessment, issued by DEQ on December 12, 2007.

**Available upon
request**

Transcripts of the following proceedings:
July 14, 2009 pre-hearing status conference.
May 7, 2009 status conference.
April 13, 2009 pre-hearing conference.
October 28, 2008 pre-hearing conference.

Approved:

Division

Report prepared by: Regina Cutler
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