

June 4, 1998

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION ON AN APPEAL FROM NOTICE AND ORDER.

SUBJECT: Department of Natural Resources, Solid Waste Division File No. **KCSW0001**

DAN DUNAVANT

Solid Waste Code Enforcement Appeal

Appellant: Dan Dunavant
Dan's Debris Service
20425 - 202nd Avenue SE
Monroe, WA 98272

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:	Deny the appeal
Department's Final:	Deny the appeal
Examiner:	Deny the appeal

PRELIMINARY MATTERS:

Notice of appeal received by Examiner:	March 5, 1998
Statement of appeal received by Examiner:	March 5, 1998

EXAMINER PROCEEDINGS:

Pre-Hearing Conference:	April 8, 1998
Hearing Opened:	May 27, 1998
Hearing Closed:	May 27, 1998

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES ADDRESSED:

- Code violation (solid waste disposal)
- Code interpretation
- Solid waste disposal
- Waste disposal

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On September 9, 1997, the King County Solid Waste Division of the King County Department of Natural Resources (hereinafter, the "Department") served by certified mail a Notice upon Dan Dunavant (the "Appellant") for disposal of construction, demolition and land clearing (CDL) materials at the Department's Houghton Transfer Station. Specifically, the Department cited the Appellant with the disposal of 2.73 tons of drywall, a construction/demolition/clearing waste, on the morning of August 18, 1997, cited as a violation of both King County Public Rule 7-1-2 (PR Section 6.24) and King County Ordinance 10916. In addition, in its letter of Notice and Order, the Department states that this CDL disposal at the Houghton Transfer Station

...nullifies the agreement made between you and the Division on July 22, 1997. The agreement was that the King County Solid Waste Division would hold in abeyance the \$2,000 fine levied on June 19, 1997 for CDL violations for a period of one year. The stated conditions for abeyance were that should you or your company again be found in violation of King County CDL disposal regulations during this one-year period, the fine would be re-instated and increased by an additional \$1,000. If the one-year period passed without further violation of the CDL ordinance, the fine would be dropped.

Because of the repeated incident, the Department, by its September 9, 1997 letter of Notice and Order, re-instated the fine and increased it by \$1,000 to a total of \$3,000 for three violations during the one-year period. The dates and locations at which these violations were alleged to have occurred were May 28, 1997, and August 18, 1997, at the Houghton Transfer Station in Kirkland, as well as June 1, 1997, at the Renton Transfer Station.

2. The Appellant does not deny that the three cited dumpings contained the CDL materials asserted by the Department. In fact, with respect to the earlier violations, the Appellant forthrightly volunteered such information to the appropriate Department employees. Rather, the Appellant's defense and appeal rests upon these arguments:
 - A. That he (the Appellant) is not a regulated "contractor" as suggested by the Department's on-site survey form.
 - B. That, in each instance, there were extenuating circumstances which justify reducing or even waiving penalties (such as being late for dinner).
 - C. That \$3,000 in fines are excessive considering the smallness of the Dunavant operation.
 - D. That some County regulations are inconsistent and/or inconsistently applied to the industry.
 - E. That he (the Appellant) has used the Solid Waste Division's disposal facilities many times without incident, and that the times when an incident has occurred are few

compared to the number of times without incident.

3. The following additional findings are relevant:
 - A. The CDL content of the Dunavant disposal incidents are stipulated by the Appellant. The June, 1997, incident is corroborated by Mr. Paul Perryman, who indicated that the material was at least 70% CDL by either volume or weight.
 - B. Because the fines imposed are based on the three occurrences collectively, the Division stipulates that all three alleged violations may be subject to review within this appeal proceeding.
 - C. KCC 23.08.110.A establishes the civil penalty for violations of persons engaged in commercial ventures to be \$1,000 per violation for violations of KCC Title 10. KCC 23.08.110.B establishes civil penalties for violations by persons engaged in “non-commercial” ventures. Although the Appellant argues that the commercial categorization does not apply to him, he has not suggested in any testimony that the materials to be disposed in the three cited incidents were personally generated from personal purposes. They were, in fact, “for hire” commercial ventures.
 - D. The Department’s files contain, as submitted to this hearing record, three “Unacceptable Waste Reports”: No. 0498, dated May 30, 1997; No. 1194, dated June 1, 1997; and, No. 1897, dated August 18, 1997. See Exhibit No. 2. Each of these reports is issued to “Dan’s Hauling”, operated by the Appellant. In each case, the disposed materials at issue were characterized as “unacceptable” CDL and/or lumber, which is similarly categorized as CDL. Exhibit No. 2 is unrebutted as entered in this hearing record.

CONCLUSIONS:

1. The Appellant argues that because Dan’s Debris Service hauls mixed municipal solid waste generated by individuals and private homeowners (many of whom are elderly or handicapped or do not own a truck), they should not be regulated as a “construction, demolition and land clearing company”. Rather, the Appellant argues, the work of Dan’s Debris Service “falls squarely between the large contracting waste haulers and the homeowner”. Although there may be some validity to this argument, it is not an argument which may be applied on a case-by-case basis of appealed citations. Instead, it is an argument which must be applied to the Department’s review of its Solid Waste Acceptance Policy – a matter which is beyond the Examiner’s jurisdiction or authority.

In this specific case – in fact, in these three specific cases – the unacceptable disposal contents each clearly contained CDL and each load was clearly commercial in character (as characterized by KCC Title 23). For this reason, the fines as assessed by the Department in each case are deemed valid.

2. KCC 23.08.110.C authorizes the Department to double the assessment for the second violation and to triple the civil penalty assessment for any violation beyond the second. Consequently, the Department has been generous toward the Appellant. Using KCC 23.08.110, the fines assessed by the Department against Appellant Dunavant/Dan’s Debris Service could have totaled \$6,000.

The Department has chosen, instead, true to its initial agreement with the Appellant, to keep the penalties at the lower amount of \$1,000 per incident, or \$3,000 total. For this reason, the penalty due should not be further reduced. It is clear from the construction of KCC Title 10 (Solid Waste Management) and KCC Title 23 (Code Enforcement) that the County Council considers the unauthorized deposition of CDL in the County waste stream to be an extremely serious matter. For this reason, also, the civil penalty assessed by the Department upon the Appellant should not be further reduced.

3. The findings above support the Department's civil penalty assessment. The penalty therefore should not be set aside.
4. Any portion of the above findings which may be construed as a conclusion is hereby adopted as such.

DECISION:

The appeal is DENIED.

ORDER:

Appellant Dan Dunavant and Dan's Debris Service shall pay a \$3,000 civil penalty assessment to King County Solid Waste Division of the King County Department of Natural Resources. Upon request from Appellant Dunavant, the Department may, at its discretion, arrange a time payment schedule. In the absence of agreement between the parties regarding a time payment schedule, either party may request in writing for the Examiner to establish such a payment schedule.

ORDERED this 4th day of June, 1998.

R.S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 4th day of June, 1998, to the parties and interested persons shown on the attached list.

The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision.

MINUTES OF THE MAY 27, 1998 PUBLIC HEARING ON KING COUNTY SOLID WASTE
DIVISION FILE NO. KCSW0001 – DUNAVANT:

R.S. Titus was the Hearing Examiner in the matter. Participating in the hearing were Pam Badger, Kevin Kiernan, Dan Dunavant, and Paul Perryman.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 County Codes and Ordinances
- Exhibit No. 2 Written reports by Solid Waste Division
- Exhibit No. 3 Names of Solid Waste Division employees
- Exhibit No. 4 Letter dated June 26, 1997 to Solid Waste Division from Dan Dunavant
- Exhibit No. 5 Policies, Requirements & Guidelines memo by Pam Badger, September 23, 1997
- Exhibit No. 6 KCC Chapter 10.10 excerpt
- Exhibit No. 7 Letter dated September 17, 1997 from Dan Dunavant to Solid Waste Division
- Exhibit No. 8A Letter received September 30, 1997 from Dan Dunavant to Solid Waste Division
- Exhibit No. 8B Second appeal letter from Dan Dunavant dated February 13, 1998
- Exhibit No. 9 Letter of Notice and Order dated February 4, 1998 from Solid Waste Division to Dan Dunavant
- Exhibit No. 10 Solid Waste Division appeal arguments
- Exhibit No. 11 Solid Waste Division File No. KCSW0001
- Exhibit No. 12 Photo of Dan Dunavant's truck

RST:gb

Attachment

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