

**POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON**

CEDAR GROVE COMPOSTING, INC.,

Appellant,

V.

PUGET SOUND CLEAN AIR AGENCY,

Respondent.

PCHB No. 19-014c

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

I. INTRODUCTION

On March 8, 2019, Cedar Grove Composting, Inc. (Cedar Grove) appealed Notices of Violation Nos. 3-009499 and 3-005572 and the accompanying Corrective Action Orders issued by Puget Sound Clean Air Agency (PSCAA). On March 27, 2020, Cedar Grove appealed Notice of Violation No. 3-010541 and the accompanying Corrective Action Order issued by PSCAA. The two appeals were consolidated.

The Pollution Control Hearings Board (Board) deciding this matter was comprised of Board Chair Neil L. Wise and Board Members Carolina Sun-Widrow and Michelle Gonzalez. Administrative Appeals Judge Heather C. Francks presided for the Board. Attorneys Michael A. Moore, Kelly H. Sheridan, Matthew Cohen, and Rachel H. Cox represented Cedar Grove. Attorneys Jennifer A. Dold, Jennifer Elias, Lori A. Terry, Andrea L. Bradford, and Devra R. Cohen represented PSCAA. The hearing took place November 2-6, 2020, over Zoom videoconference. The Board received sworn testimony of witnesses, admitted exhibits, and

1 heard argument on behalf of the parties. Based upon the evidence presented, the Board makes
2 the following:

3 **II. FINDINGS OF FACT**

4 **CEDAR GROVE COMPOSTING**

5 1.

6 Cedar Grove operates commercial composting¹ facilities in Maple Valley and Everett,
7 Washington. Cedar Grove began composting commercially in 1988 after the City of Seattle
8 sought help recycling yard waste from residential customers. Since initially opening, Cedar
9 Grove's operations have expanded to meet the growing demand for composting services in the
10 southern Puget Sound region. At issue in this appeal are the operations of Cedar Grove's Maple
11 Valley composting facility located at 17825 Cedar Grove Rd, Maple Valley, WA, 98038 (the
12 Maple Valley Facility). *Ex. R-38, p. 1.*

13 2.

14 The Maple Valley Facility is a 50-acre compost operation. *Ex. R-36, p. 20.* The
15 residential neighborhood nearest to the Maple Valley facility is approximately one-half to one
16 mile away. Other nearby neighborhoods are slightly further away from the facility, with Maple
17 Valley Heights to the west, Mirrormount Estates to the east, Maple Hills to the northwest, and
18 scattered homes southeast of the site. *Van Slyke Testimony; Ex. R-04.*

21 ¹ Commercial composting is the process of taking yard waste, wood, and/or pre- and post-consumer food waste, and using a biologically driven, aerobic digestion process to create a compostable material for commercial sale.

3.

The Maple Valley Facility engages in windrow composting, where incoming organic waste is formed into long piles, or “windrows,” approximately 15 feet wide and 10-20 feet high.

Bartlett Testimony. Within the windrows, certain porosity, moisture, nutrient and oxygen levels must be reached and maintained for the compost process to occur. Aeration of these windrows is necessary to reintroduce oxygen to the organic waste contained within. Windrows may be aerated mechanically, where the waste material is turned by machine, and windrows may be aerated by adding bulking agents which allow for better airflow. *Id.* Bulking agents, such as clean wood waste, are also used generally to improve the homogeneity, carbon-to-nitrogen ratio, and porosity of the organic waste feedstock during initial preparation. *Ex. R-66, p. 16.*

4.

The windrows rest on a negative aeration system which vacuums air downward through the windrow and exhausts into a biofilter. A biofilter is a wood-based media that is intended to retain compost exhaust so that microbes can neutralize any odors. Windrow composting results in saleable compost after approximately nine months to a year. *Bartlett Testimony; See, Ex. R-36, p. 58.*

5

In 2004, the Maple Valley Facility received approval to install in-vessel, Gore Cover composting technology (Gore). *Ex. R-44.* In-vessel composting involves the enclosure of organic waste in a controlled environment, or “vessel,” so that variables important to the composting process, such as temperature and moisture, can be better regulated. *Bartlett*

1 *Testimony.* Positive airflow is passed through the Gore piles periodically to aerate the material.
2 *Van Slyke Testimony.* Gore composting results in saleable compost in as little as 75 days. *Ex. R-*
3 *46, p. 9.* Additionally, Gore's manufacturer claims that the Gore fabric and attached aeration
4 system can control 97% of odors without a biofiltration system. *Ex. R-39, p. 4.*

5 6.

6 The windrow composting areas of the Maple Valley Facility are designated as "Zones."
7 Primary Zones 1 – 7 consist of aerated windrows. Zones 1 – 6 are open-air, negatively aerated
8 windrows, whereas Zone 7 is a partially enclosed building that is also negatively aerated. *Van*
9 *Slyke Testimony.* Zone 7 as well as the Gore piles are authorized to receive post-consumer food
10 waste while Zones 1-6 are not. *Williams Testimony.* Secondary zones 11 – 22 consist of aerated
11 windrows that are negatively aerated and exhausted through a shared biofilter with Zone 7. *Van*
12 *Slyke Testimony.*

13 7.

14 The composting process results in the emission of odors and Volatile Organic
15 Compounds (VOCs). *Van Slyke Testimony.* VOCs are a precursor to ground level ozone.
16 Unhealthy amounts of ground level ozone can trigger a variety of health problems, particularly
17 for children, the elderly, and people who have lung diseases such as asthma. *Ex. R-12, p. 1:* *Van*
18 *Slyke Testimony.*

19 8.

20 The Maple Valley Facility has received odor complaints in the past. In 1997, the Maple
21 Valley Facility received over 3,000 odor complaints. *Ex. R-36, p. 5;* *Van Slyke Testimony.*

1 Historically, the bulk of complaints about the Maple Valley Facility occurred during peak
2 seasonal months where incoming organic waste is typically at its highest volume. *Bartlett*
3 *Testimony.*

4 9.

5 PSCAA² is the local air authority with jurisdiction in King, Snohomish, Pierce, and
6 Kitsap counties to carry out the requirements and purposes of the state and federal Clean Air Act.
7 Odor complaints are submitted to PSCAA via either their website or phone number. *Van Slyke*
8 *Testimony.*

9 10.

10 Director Steven Van Slyke testified about how PSCAA regulates composting facilities
11 such as the Maple Valley Facility. Van Slyke has held various positions of increasing
12 responsibility since joining PSCAA in 2001. Most recently, since 2016, he has served as the
13 Director of Compliance for PSCAA. Before serving as Director, Van Slyke managed the permit
14 engineering team at PSCAA and reviewed over 1,5000 permit applications, review documents,
15 and draft permits, each with its own Best Available Control Technology (BACT) or Reasonably
16 Available Control Technology (RACT) criteria. Additionally, as the Director of Compliance,
17 Van Slyke reviewed State Environmental Policy Act (SEPA) documents and acted as the SEPA
18 responsible official. Prior to joining PSCAA, Van Slyke spent 15 years consulting on air quality
19 permits, compliance requirements, and engineering design projects for industrial clients. *Ex. R-*
20

21

² Puget Sound Clean Air Agency was formerly known as Puget Sound Air Pollution Control Agency (PSAPCA).

1 01, p. 1.; *Van Slyke Testimony*. Van Slyke was not employed by PSCAA in 1998 when PSCAA
2 reviewed and approved Notice of Construction (NOC) and Order of Approval (OOA) 7638,
3 which is the order that PSCAA alleges provided the foundation for the Notices of Violation
4 (NOVs) and Corrective Action Orders (CAOs) that were subsequently issued to the Maple
5 Valley Facility. Van Slyke's testimony regarding NOC and OOA 7638 are based on his review
6 of the air agency files, as well as the approximately six visits he has made to the Maple Valley
7 Facility. *Id.*

8 **NOC REGULATORY FRAMEWORK**

9 11.

10 The Maple Valley Facility operates under multiple permits from multiple agencies.
11 Relevant here are those permits issued by PSCAA and the Seattle King County Department of
12 Public Health (Health Department).

13 *Puget Sound Clean Air Agency*

14 12.

15 PSCAA regulates the Maple Valley Facility as a stationary source of air emissions under
16 the New Source Review provisions in the state Clean Air Act (former ch. RCW 70.94), its
17 accompanying regulations (ch. WAC 173-400) and PSCAA regulations. *Van Slyke Testimony*;
18 *Newman Testimony*; *Ex. R-11*. Emissions from Cedar Grove are regulated through several
19 PSCAA regulations, including: 1) NOC regulations, *Ex. R-11, p. 54* (Reg. I, Art. 6, New Source
20 Review. Article 6, Sec. 6.03(a) (unlawful to establish new source, or replace or alter control
21 equipment on existing source unless “NOC application” filed and air agency issues “Order of

1 Approval”)); 2) nuisance regulation, *Ex. R-11, p. 95* (Reg. I, Article 9, sec. 9.11(a) (unlawful to
2 emit air contaminant likely to cause injury or unreasonably interferes with enjoyment of life and
3 property)); and 3) equipment maintenance regulation, *Ex. R-11, p. 100* (Reg. I, Article 9, sec.
4 9.20 (unlawful to operate machinery not in working order)).

5 13.

6 Emissions from composting facilities do not have an identifiable emissions point like a
7 stack in an industrial facility, and composting emissions may come from any place in the
8 composting process. *Newman Testimony*. Thus, composting emissions are regulated by a
9 throughput or processing limit expressed as the weight of materials in tons added to the
10 composting process over a period of one year (tons/year or TPY). *Van Slyke Testimony*. The
11 purpose of the throughput limit is to limit emissions from a site by regulating how much material
12 a composting facility adds to start the composting process. Operating in excess of the throughput
13 limit results in excess emissions and odors. *Id.* Biofilters are approved as BACT for managing
14 emissions and odors from windrow composting operations at the Maple Valley Facility.
15 *Newman Testimony*.

16 14.

17 The central issue here is the throughput limit that OOA 7638 authorized for the Maple
18 Valley Facility. A facility’s throughput limit may be determined by evaluating a facility’s
19 potential to emit and the allowable level of emissions. *Van Slyke Testimony*; *Newman*
20 *Testimony*. Potential to emit is defined in part as “the maximum capacity of a facility to emit an
21 air contaminant under its physical and operational design.” *Newman Testimony*; *Ex. A-7*, (Reg.

1 I, Sec. 1.07, (kk)).³ Regulatory air agencies expect sources to quantify emissions using a
2 potential to emit analysis given that approval of an NOC application is effective until superseded
3 by a new permit, for the life of the equipment, or until the facility no longer operates. Moreover,
4 evaluating a facility's maximum potential to emit is protective of public health because it allows
5 for evaluation of a worst-case scenario of air impacts. *Newman Testimony*. If an NOC seeks
6 approval of emissions based on the applicant's potential to emit without any restrictions, the
7 regulating air agency will often impose conditions which serve to restrict or lessen the emissions'
8 impact on ambient air quality or public health. *Newman Testimony*. The regulating air agency
9 may set a throughput limit in quantitative terms on the face of an order of approval, *see Exs. A-1,*
10 *A-10, A-19, A-24, A-25, A-32, A-34*, or it may be expressed in a narrative form. *Van Slyke*
11 *Testimony; Newman Testimony*.

12 **NOC APPLICATION PROCEDURE**

13 15.

14 An existing source of air emissions like the Maple Valley Facility must submit an NOC
15 application for approval when making a modification that affects the level of air contaminants
16 emitted. *Van Slyke Testimony; Ex. A-7, p. 5*. Cedar Grove's NOC applications must be
17 approved by PSCAA. *Van Slyke Testimony*.

18

19 ³ The new source regulation in effect at the time PSCAA processed NOC 7638 defined potential to emit as follows:
20 “POTENTIAL TO EMIT means the maximum capacity of a facility to emit an air contaminant under its physical
21 and operational design. Any physical or operational limitation on the capacity of the facility to emit an air
 contaminant, including control equipment and restrictions on the hours of operation or on the type or amount of
 material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it
 would have on emissions is federally enforceable.” *Ex. A-7, p. 159 (pdf p. 4)*.

16.

Once an NOC application is received by PSCAA, a reviewing engineer is assigned to ensure the project's compliance with all applicable regulations, including SEPA.⁴ *Willenberg Testimony*. If the application is deemed incomplete by the reviewing engineer, the engineer may request further information from the applicant, or notify the applicant what steps are necessary to complete the application. *Van Slyke Testimony*. If the application is deemed complete and compliant, PSCAA may then issue an OOA for the project. *Id.* Applications are approved based on the plans and specifications of the project on file with PSCAA. *Id.*

17.

To be considered complete, an NOC application⁵ must include: the standard Form P, which includes general information about the proposal; an environmental checklist, which demonstrates the proposal's compliance with SEPA requirements; a nonrefundable filing fee; and, the site-specific details about the proposal, such as the operation and maintenance plan,⁶ design drawings and equipment information. *Van Slyke Testimony*.

4 “When PSCAA receives an application for or initiates a proposal that involves a nonexempt action, PSCAA shall determine the lead agency for that proposal under WAC 197-11-050, 197-11-253, and 197-11-922 through 197-11-940.” *Ex. R-11, p. 19.*

5 A complete application must “contain all the information necessary for the processing of the application” and “[a]t a minimum, the application must provide information on the nature and amounts of emissions to be emitted by the proposed new source or increased as part of a modification.” WAC 173-400-111(b).

6 *Ex. R-11, p. 48* (Reg. 5, sec. 5.05(c) ([t]he owner or operator of a registered source shall develop and implement an operation and maintenance plan to ensure continuous compliance with Regulations I, II, and III)).

1 18.

2 SEPA compliance is required before an OOA can be issued for an NOC application. *Van*
3 *Slyke Testimony; Ex. R-11, p. 69.*⁷ The lead agency may request comments from other agencies,
4 as well as provide for a public comment period. The purpose of such review is to issue a SEPA
5 determination and condition the project if necessary. *Van Slyke Testimony; Newman Testimony.*

6 19.

7 Once an NOC application is deemed complete, an NOC worksheet is used by a reviewing
8 engineer to document PSCAA's review process and any necessary approval conditions.
9 *Willenberg Testimony.* Additionally, an NOC worksheet serves as confirmation that SEPA
10 review of a project was adequate and communicates the nature of the project to the general
11 public. *Van Slyke Testimony.* As part of the SEPA process, the reviewing engineer will consider
12 all information submitted along with an application. *Id.* However, not all information
13 considered during SEPA review is reflected on an NOC worksheet. *Id.* An NOC worksheet
14 typically includes a project description, PSCAA's findings relevant to a project's compliance
15 with regulations, BACT determinations, PSCAA's permit conditions, and comments from the
16 public or other agencies. *Id.*

17 20.

18 Permit conditions are used by an agency to regulate a project's operational practices.
19 *Van Slyke Testimony.* Conditions may be imposed to mitigate a project's impacts, or conditions
20

21 ⁷ Reg I, sec. 6.03(d) (Notice of Construction applications shall also include an environmental checklist or other documents demonstrating compliance with the State Environmental Policy Act).

1 may be prescriptive if there have been compliance issues in the past, such as by requiring the
2 operator to test its emissions and/or report to PSCAA. *Id.* Once an OOA has been issued with
3 permit conditions, a source has 30 days to appeal after which the OOA takes effect. *Id.* PSCAA
4 can enforce permit conditions through inspection and reporting. *Id.*

5 21.

6 Van Slyke testified that the NOC review process requires professional engineering
7 judgment. For example, an NOC application and subsequent OOA must comply with BACT
8 standards for sources emitting air pollutants subject to regulation under former ch. 70.94 RCW.
9 *Ex. R-10, p. 2; Van Slyke Testimony.* BACT determinations are made on a case-by-case basis
10 and require reviewing engineers to exercise their professional judgment by balancing various
11 factors. *Van Slyke Testimony.* Both Gore Technology and aerated piles with an associated
12 biofilter have been approved as BACT at the Maple Valley Facility. *Williams Testimony.*
13 Furthermore, Van Slyke testified that it is necessary to review previous OOAs when considering
14 an NOC application because it provides context for the project's existing operations as well as
15 what would change if the NOC application were approved. *Van Slyke Testimony.* When an
16 existing source wishes to make a modification and the original reviewing engineer is no longer
17 with PSCAA, Van Slyke testified that current reviewing engineers will familiarize themselves
18 with the source by examining previous OOAs and associated records as well as the plans and
19 specifications on file with PSCAA. *Id.*

20
21

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SEATTLE-KING COUNTY DEPARTMENT OF PUBLIC HEALTH

22.

The Health Department similarly regulates the Maple Valley Facility by a throughput limit and requires Cedar Grove to apply each year for a solid waste permit. The solid waste permit allows the Maple Valley Facility to include only the following categories of feedstocks in its compost feedstock: green waste, land clearing vegetation, paper and cardboard, clean wood waste, and pre-consumer vegetative food waste. *Ex. R-54, p. 3.* However, under the solid waste permit, “incoming loads that are comprised *exclusively* of land clearing vegetation and or clean wood waste shall not be subject to the limits on throughput capacity.” (*emphasis added*) *Ex. R-54, p. 5.*

23.

Since the Maple Valley Facility began operations, the Health Department has steadily increased the authorized throughput at the facility. In 1998, the Health Department conditionally issued Cedar Grove a non-conforming solid waste handling permit which required that the Maple Valley Facility not exceed a maximum monthly input tonnage totaling 165,380 TPY. *Ex. R-54, p.4.* On January 14, 2000, the Health Department increased the Maple Valley throughput limit to 195,207 TPY. *Ex. R-60, p. 3.* In 2018, the Health Department issued a solid waste permit covering January 2017 through December 2018 which authorized a 250,000 TPY throughput limit. *Ex. R-71, p. 4.*

NOC HISTORY OF THE MAPLE VALLEY FACILITY

24.

3 Since initially opening in 1988, the Maple Valley Facility has submitted and received
4 many NOC approval orders from PSCAA. *See, Ex. R-78.* In 1992, the Maple Valley Facility
5 received approval for NOC 4797 which authorized a two-phase composting process that
6 accommodated 15,000-30,000 TPY of throughput, depending on whether sufficient demand
7 existed. *Exs. R-16 -17.* In 1995 and 1996, PSCAA approved increases to the Maple Valley
8 Facility's total throughput of 140,000 and 150,000 TPY respectively. *Exs. R-18-19, 20-23.* In
9 each of these OOAs, the Maple Valley Facility's throughput limit was established through the
10 plans and specifications referenced in Standard Condition 1 (submitted as part of the NOC
11 application) rather than expressly stated on the face of the order. Experts from both parties
12 testified that throughput limits for composting facilities may be imposed by Standard Condition
13 1 which requires an applicant to complete their project in accordance with the plans and
14 specifications submitted along with their application to PSCAA. *Newman Testimony; Van Slyke*
15 *Testimony.* Alternatively, PSCAA has issued OOAs that expressly stated throughput limits on
16 the face of the order, including ones issued to Cedar Grove's Everett facility. *Exs. A-1, A-10, A-*
17 *19, A-24, A-25, A-32, A-34.*

NOC APPLICATION 7638

25.

On November 12, 1998, Cedar Grove submitted NOC 7638 application for the Maple Valley Facility. The application cover sheet stated Cedar Grove was:

1 submitting a Notice of Construction for engineering review for one additional
2 primary zone and two corresponding secondary zones. In addition, pursuant to
3 our ongoing discussions regarding the facility's compliance with PSAPCA's odor
4 regulations, we are submitting a review of 1998 revisions to our Environmental
5 Management System, and a SEPA environmental checklist for review by
6 PSAPCA. The checklist refers to the existing Environmental Management
7 System that is established at the Maple Valley Facility and the proposed
8 additions.

9 *Ex. R-36, p. 1.*

10 26.

11 The NOC 7638 application was prepared by Jerry Bartlett. Bartlett worked for Cedar
12 Grove as General Manager for the Maple Valley Facility for approximately 17 years and still
13 serves as a consultant since he retired in 2015. Bartlett holds a Master of Science in
14 environmental sociology, has completed 500 hours of course work related to composting, and
15 worked for the U.S. Department of Interior prior to joining Cedar Grove. *Bartlett Testimony.*
16 Bartlett has comprehensive personal knowledge of the relevant events and the NOC application
17 documents.

18 27.

19 The NOC 7638 application materials were reviewed by PSCAA engineers Claude
20 Williams and Jay Willenberg. Williams was an air pollution engineer for PSCAA from 1990-
21 2016, and he specialized in facilities such as the Maple Valley Facility. *Williams Testimony.*
22 Williams was responsible for collaborating with Cedar Grove and the Health Department in
23 completing the NOC 7638 worksheet. *Williams Testimony.* Williams testified on behalf of
24 PSCAA. Jay Willenberg was the senior engineer for PSCAA from 1993-2001, and was
25

1 responsible for reviewing, approving, and signing all OOAs, including 7638. He has a degree in
2 mechanical and industrial engineering, and prior to his time as senior engineer, he led the air
3 quality program for the Washington State Department of Ecology. *Ex. A-60.* Part of
4 Willenberg's responsibilities included supervising Claude Williams. *Willenberg Testimony.*
5 Willenberg testified on behalf of Cedar Grove. Also testifying as an expert on behalf of Cedar
6 Grove was Alan Newman, a former Senior Air Quality Engineer with the Department of
7 Ecology. *Newman Testimony; Ex. A-59.* J. Steve Banchero, founder and co-owner of Cedar
8 Grove also testified at hearing.

9 28.

10 On November 2, 1999, PSCAA issued an OOA for NOC 7638. The approval order was
11 signed by reviewing engineers Claude Williams and Jay Willenberg, as well as David Kircher on
12 behalf of PSCAA air pollution control officer Dennis McLerran. *Ex. R-38.*

13 **Order of Approval 7638**

14 29.

15 OOA 7638 is a two-page document which authorizes Cedar Grove "to construct, install,
16 or establish:

17 One Six-Zone Primary Compost Pad with a Vacuum Aeration and Biofiltration
18 System . . . , one Compost Pad with one Primary Zone and 12 Secondary Zones
using Vacuum Aeration and a Biofiltration System . . . one 2,500-gallon
Treatment and Holding Tank for fan condensate, and one Biofilter . . . for the
19 Tipping Building.

20 *Ex. R-38, p. 1.*

1 30.

2 Willenberg testified that at the time of review, PSCAA understood NOC 7638 to be
3 requesting several operational changes, including increases in pile height, a decrease in pile
4 retention time, and the addition of Zone 7, which was a semi-enclosed structure used for negative
5 aeration composting, along with secondary zones, and as a result of those changes, the Maple
6 Valley Facility would be permitted to process organic waste feedstock at its maximum design
7 capacity of 304,150 TPY. *Willenberg Testimony*. In contrast, Van Slyke testified that OOA
8 7638 imposed a throughput limit of 195,000 TPY. *Van Slyke Testimony*. The Board finds that
9 the OOA 7638 permitted a 304,150 TPY throughput limit.

10 31.

11 The OOA 7638 states that approval is subject to eight conditions, none of which
12 expressly state a throughput limit. Although PSCAA presented testimony that conditions 1, 5
13 and 8 impose a throughput limit of 195,000 TPY on the Maple Valley Facility, the final NOC
14 worksheet does not include an express reference to a throughput limit of 195,000 TPY. *Exs. R-*
15 *37, 38.*

16 32.

17 Condition 1 states:

18 “Approval is hereby granted as provided in Article 6 of Regulation I of the
19 Puget Sound Clean Air Agency to the applicant to install or establish the
equipment, device or process described hereon at the INSTALLATION
20 ADDRESS in accordance with the plans and specifications on file in the
Engineering Division of the Puget Sound Clean Air Agency.”

21 *Ex. R-38, p. 1.*

1 33.

2 Willenberg testified that condition 1 was a standard condition included in agency OOAs
3 for the duration of his employment at PSCAA. Standard Condition 1 was necessary because an
4 applicant source may be applying for many different projects within the same facility or as part
5 of the same operation, and it is therefore difficult for PSCAA to list everything in sufficient
6 detail on the face of the order. *Willenberg Testimony*. Standard Condition 1 serves as a “catch
7 all” which requires that applicant sources complete and operate their projects as their plans and
8 specifications articulate. *Id.*

9 34.

10 PSCAA regulations do not define “plans and specifications,” however both parties’
11 witnesses testified that “plans and specifications” include any information provided to an air
12 regulatory agency to support an NOC application, including SEPA materials. *Newman*
13 *Testimony*; *Van Slyke Testimony*. Much of the information included in the Maple Valley
14 Facility’s application was listed on the cover sheet of NOC 7638. *Ex. R-36, p. 1; Willenberg*
15 *Testimony*. The NOC 7638 application cover sheet referenced the following documents: 1)
16 Review of 1998 revisions to its Environmental Management System (EMS), 2) Notice of
17 Construction, 3) SEPA Environmental Checklist, 4) EMS Changes Form 1.1, and 5) EMS. *Ex.*
18 *R-36; Bartlett Testimony*. At the time of review, PSCAA considered all of these materials to be
19 part of the NOC 7638 application materials. *Willenberg Testimony*; *Williams Testimony*.

20

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1 35.

2 An EMS is a more detailed version of an Operations and Maintenance (O&M) plan, and
3 PSCAA treats the two plan types similarly during the NOC review process. *Willenberg*
4 *Testimony*. In the case of NOC 7638, the EMS was considered a part of the application by
5 PSCAA because it described the Maple Valley Facility's proposal in detail consistent with an
6 NOC application, it articulated Maple Valley Facility's intent, and it was directly referenced on
7 Form P on the NOC application. *Id.*; *Williams Testimony*. An applicant source generates the
8 EMS, but it is not a required component of an NOC application and PSCAA does not approve
9 the adequacy of an EMS. PSCAA may use the EMS as context for reviewing an NOC
10 application. Neither an EMS nor an O&M plan can change a source's obligations under an
11 OOA. *Van Slyke Testimony*.

12 36.

13 The Maple Valley Facility's EMS implemented International Standards Organization
14 (ISO) standard 14001, which prioritizes environmental protection. Additionally, the Maple
15 Valley Facility received credit for implementing an EMS towards an odor related violation that
16 had previously been issued. An EMS requires continuous process improvements, which would
17 result in regular updates to the final EMS document. *Bartlett Testimony*.

18 37.

19 Bartlett testified that Cedar Grove submitted NOC 7638 to incorporate changes to the
20 Maple Valley Facility's operations as outlined in the Maple Valley Facility's EMS, which was
21 developed in part to address odor issues at the facility. Additionally, organic waste disposal

1 operations in the south Puget Sound area were rapidly expanding as cities and municipalities
2 sought a more environmentally-friendly option for organic waste disposal, and Cedar Grove
3 sought a permitting capacity that allowed the Maple Valley Facility to expand in order to meet
4 the increasing demand for such services. *Bartlett Testimony.*

5 38.

6 Under the 1998 EMS, the Maple Valley Facility estimated that projected tonnage
7 throughput would either be 192,840 TPY given a 16-day turn rate or 185,068 TPY given a 20-
8 day turn rate. *Ex. R-36, p. 92.* In an updated EMS submitted to PSCAA in June 2000, the Maple
9 Valley Facility altered the 1999 projected tonnage to 195,207 TPY and 186,895 TPY for 16 and
10 20-day turn rates respectively. *Ex. R-94, p. 61.* Bartlett testified that this change was to reflect
11 the throughput limit set by the Health Department. *Bartlett Testimony.* The EMS also included a
12 diversion plan so that the Maple Valley Facility had the ability to divert incoming organic waste
13 that would put the Maple Valley Facility in excess of its throughput limit. *Van Slyke Testimony;*
14 *Ex. R-36, p. 66.*

15 39.

16 The Maple Valley Facility's EMS distinguished between the design capacity and the
17 actual, or biological, capacity of the Maple Valley Facility. The maximum design capacity is the
18 maximum throughput the facility could accommodate assuming unlimited feedstocks, with no
19 seasonal adjustments, and a properly prepared microbial mixture. *Bartlett Testimony.* The
20 biological capacity reflects the "actual capacity" of the Maple Valley Facility and is dependent
21 on the composition of the feedstock and the optimization of process conditions. *Ex. R-36, p. 79.*

1 According to Van Slyke, it is the Maple Valley Facility's biological limitations, such as the
2 ability to process materials without creating excessive emissions, that prevents the facility from
3 fully realizing its design capacity. *Van Slyke Testimony*.

4 40.

5 Bartlett testified that the 304,150 TPY throughput limit reflects the design maximum of
6 the Maple Valley Facility given an unlimited volume throughout the year. *Bartlett Testimony*.
7 However, due to seasonal fluctuations in incoming tonnage, weather, and facility operations,
8 304,150 TPY represented a mathematical calculation that was unachievable at the time. *Ex. R-*
9 *63, p. 5.* Only with increased incoming tonnage and increased operational capacity could
10 304,150 TPY of throughput be realized at the Maple Valley Facility.

11 41.

12 PSCAA served as lead agency for SEPA review of NOC 7638. The NOC 7638
13 worksheet consolidates the SEPA information and documents SEPA compliance. *Van Slyke*
14 *Testimony*. Cedar Grove was aware that NOC 7638 included a substantive change to the Maple
15 Valley Facility's design capacity by increasing the permitted throughput. *Bartlett Testimony*.
16 The EMS Changes Form notes that NOC 7638 reflects a permanent and substantive change to
17 Cedar Grove's design capacity, *Ex. R-36, p. 33*, as shown in table 3.6.3.2. *Ex. R-36, p. 80*.
18 Willenberg testified that PSCAA was aware of the degree and scope of changes that Cedar
19 Grove was seeking with NOC 7638. *Willenberg Testimony*.

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1 42.

2 On February 26, 1999, PSCAA issued a determination of non-significance (DNS) for
3 NOC 7638. *Ex. A-06.* On March 12, 1999, Greg Bishop, Supervisor of the Solid Waste program
4 of the Health Department, sent a letter to PSCAA with concerns that Cedar Grove had not
5 provided adequate mitigation measures for the air quality issues posed by increasing throughput
6 to between 255,500 and 304,150 TPY. *Ex. R-56.* Bishop encouraged PSCAA “to reconsider the
7 DNS determination until Cedar Grove provides mitigation measures that are responsive to the air
8 quality issues posed by their proposed expansion.” *Id., at 3.* Bishop cited odors as the primary
9 concern given the high rate of complaints received, particularly during peak seasonal times when
10 the incoming organic waste may be greater in volume or higher in moisture content. Williams
11 testified that odors were PSCAA’s primary concern as well. *Id.; Williams Testimony.*

12 43.

13 Cedar Grove responded to Bishop’s letter with a position paper, which stated that the
14 throughput tonnage listed was a mathematical calculation required by the permit application that
15 would never actually occur without unlimited incoming volume throughout the year. *Ex. R-63.*
16 Additionally, Cedar Grove noted that it was operating under an EMS that requires “diversion
17 when too much material is generated by yard waste pickup programs, limits pile height when
18 material is moist, and increases pile retention time when high moisture exists.” *Id., p. 5.*
19 PSCAA reviewed, considered, and documented the Health Department’s concerns in the NOC
20 7638 worksheet. *Ex. R-37, pp. 3-4.* Williams testified that it was PSCAA’s belief that the NOC
21 7638 changes would in fact reduce odors from composting operations. For example, the

1 increased pile heights would allow the Maple Valley Facility to add more wood material which
2 allows for better aeration and elimination of odors, particularly during peak seasons. *Williams*
3 *Testimony*. Moreover, the introduction of Zone 7 would authorize a semi-enclosed structure that
4 was able to accept more putrid materials such as post-consumer food wastes. *Bartlett Testimony*.

5 44.

6 PSCAA considered and responded to the Health Department's specific concern of odor
7 impacts associated with a requested increase of throughput capacity up to 304,150 TPY. *Ex. R-*
8 *37, p. 3.*

9 45.

10 OOA 7638 condition 5 states:

11 "During the first quarter of each calendar year 2000, 2001, and 2002, Cedar
12 Grove Composting shall provide written certification to the Puget Sound Clean
13 Air Agency that it has contracts that will allow it, on short notice between the
months of April and July, to divert all feedstock throughputs greater than the
quantities previously allowed in its 1998 Seattle/King County Dept. of Public
Health permit."

14 *Ex. R-38.*

15 46.

16 Unlike condition 1, condition 5 is not a standard condition. Van Slyke testified that
17 condition 5 was included in response to the Health Department's concerns regarding a lack of
18 mitigating measures for increased throughput volumes. Condition 5 required the Maple Valley
19 Facility to have the capacity to divert excess materials and, according to Van Slyke, to do so
20 when necessary. *Van Slyke Testimony*. Willenberg and Newman testified that condition 5
21

1 required only that the Maple Valley Facility have the ability, through contracts with other waste
2 disposal sites, to divert throughput volume in excess of its throughput limit but required nothing
3 else. *Willenberg Testimony; Newman Testimony*. Condition 5 did not require that the Maple
4 Valley Facility report to PSCAA the excess volumes diverted, nor does it have any force and
5 effect beyond 2002. *Van Slyke Testimony*.

6 47.

7 Van Slyke testified that condition 5 in conjunction with condition 1 imposed a 195,000
8 TPY throughput limit because condition 5 serves to ensure that the Maple Valley Facility is
9 operating consistent with the Health Department Permit. *Van Slyke Testimony*. Williams also
10 testified that condition 5 serves as a throughput limit of 195,000 TPY because it references the
11 Health Department solid waste permit. *Williams Testimony*. Newman disagreed with PSCAA's
12 view that condition 5 ensured the Maple Valley Facility's approved throughput limit was
13 consistent with the Health Department permit, testifying that OOA 7638 lacks any limits on
14 Maple Valley facility's potential to emit, where it could have set a throughput limit through
15 BACT requirements. *Newman Testimony*. Willenberg also testified that condition 5 was not
16 included to serve as a throughput limit. *Willenberg Testimony; Ex. R-38, p. 1*. The Board finds
17 Willenberg's and Newman's testimony persuasive, as it comports with the plain terms of
18 condition 5.

19
20
21

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER
PCHB No. 19-014

1 48.

2 Condition 8 states:

3 “This Order of Approval No. 7638, issued to add Primary Zone No. 7 to the
4 Secondary Compost Pad Biofilter, and to increase the fan capacity in the
5 Tipping Building and Biofilter, hereby supersedes and cancels Order of
6 Approval No. 7392 dated Sep 18, 1998.”

7 *Ex. R-38, p.2.*

8 49.

9 For the first time during rebuttal, Van Slyke testified that condition 8 identifies that OOA
10 7638 adds (to the previous OOA 7392) only Primary Zone 7 and some increased fan capacity to
11 the tipping building and biofilter. Compare *R-36, p. 15* with *R-38, p.1*. Van Slyke testified that
12 these changes are not enough to justify the increase in capacity to 304,150 TPY. *Van Slyke*
13 *Testimony*. The Board finds this argument unconvincing. As OOA 7392 has no express
14 throughput limit, the effect of the changes from OOA 7392 to OOA 7698 cannot be linked to a
15 195,000 TPY limit as PSCAA suggests. Moreover, as discussed in findings of fact 35-41, Cedar
16 Grove submitted NOC 7638 to incorporate changes to the Maple Valley Facility’s operations as
17 outlined in the Maple Valley Facility’s EMS. Thus, the Board disagrees that the only changes
18 authorized by OOA 7638 are the addition of primary zone 7 and some increased fan capacity.

19 50.

20 Weighing all the evidence surrounding the NOC 7638 application, the Board finds and
21 concludes that by approving the Maple Valley Facility’s application to add an additional primary
zone, increase the maximum pile height, and reduce the turn rate to 16 days without any

1 limitation, the 304,150 TPY design capacity was approved in OOA 7638. The Board finds the
2 testimony of Willenberg and Bartlett persuasive as they had personal knowledge of the
3 application and approval process. *FOFs 27, 30, 40, 26.* The Board finds Van Slyke and Cenci's
4 testimony less persuasive as they merely reviewed files on the permit years later. *FOFs 10, 30,*
5 *56.*

6 51.

7 PSCAA argues that Cedar Grove's actions before and during PSCAA's review of NOC
8 7638 confirm that Cedar Grove was aware the NOC authorized a 195,000 TPY throughput limit.
9 Van Slyke testified that the NOC 7638 application included a request for an additional 11 vehicle
10 trips per day, and that by extrapolating from the volume of organic waste in each truckload,
11 PSCAA was able to deduce that Cedar Grove was only seeking an increase to 195,000 TPY from
12 its previous 150,000 TPY limit. *Van Slyke Testimony.* However, Willenberg and Newman
13 testified that the 150,000 TPY limit had been imposed by the Health Department. The Health
14 Department and PSCAA's permitting processes are unrelated and neither entity has the authority
15 to enforce the other's regulations. *Willenberg Testimony; Newman Testimony.*

16 52.

17 PSCAA also argues that Cedar Grove was aware of the a 195,000 TPY throughput limit
18 because during a 2003 public hearing and comment period for NOC application 8913, Bartlett
19 stated that the Maple Valley Facility was permitted to receive 195,000 TPY. *Van Slyke*
20 *Testimony; Cenci Testimony.* However, Bartlett testified that this comment only referred to the
21 Maple Valley Facility's solid waste permit with the Health Department. *Bartlett Testimony.*

1 53.

2 In the years following NOC and OOA 7638, Cedar Grove submitted and received
3 approval for multiple NOCs. On March 19, 2004, PSCAA issued OOA 8913 which approved
4 Gore technology for permanent use when previously it had been approved on an experimental
5 basis. *Ex. R-44.* On July 15, 2004, Cedar Grove submitted NOC 9060 seeking to upgrade the
6 aerated windrows in Zones 1-6 to the more efficient Gore technology. *Ex. R-45.* In PSCAA's
7 NOC 9060 worksheet prepared by Williams, the provisional approval order was for "one
8 composting facility capable of handling 195,000 tons per year of compostable pre- and post-
9 consumer food waste, yard waste, wood and land clearing waste." *Ex. R-46.* Bartlett testified
10 that Cedar Grove decided to withdraw NOC 9060 upon seeing in the worksheet that PSCAA had
11 attempted to impose a 195,000 TPY. *Bartlett Testimony.* PSCAA issued three other OOAs
12 between December 2010 and March 2014, none of which expressly reference a 195,000 TPY
13 limit. *Ex. R-48; Ex. R-50; Ex. R-53.* OOA 10645 is the most recent and still active PSCAA
14 permit issued in 2014 and it does not contain any throughput limit. *Van Slyke Testimony.*

15 54.

16 Over several years, the Health Department permitted throughput limit increases for the
17 Maple Valley Facility. On January 14, 2000, approximately two months after the issuance of
18 OOA 7638, the Health Department increased the Maple Valley Facility throughput limit to
19 195,207 TPY. *Ex. R-60.* In 2018, the Health Department issued a waste handling permit
20 covering January 2017 through December 2018, which authorized 250,000 TPY throughput
21 limit. *Ex. R-71.* According to correspondence between the Health Department and PSCAA, the

1 increase was prompted by a 2013 change in Ecology regulations authorizing solid waste
2 regulators to require commercial compost facilities like the Maple Valley Facility to report wood
3 waste. Previously, wood waste was excluded from the throughput reports. Cedar Grove had
4 been subtracting woody material from their total reported volumes of land clearing debris and
5 stumps even when that material was used as a bulking agent or otherwise included in the
6 composting process at the Maple Valley Facility. *Cenci Testimony; Ex. R-92, p. 1.* After
7 analysis of the 2017 monthly reports, the Health Department determined that adjusting the
8 throughput limit in the permit to 250,000 TPY was simply an accounting change to more
9 accurately reflect the actual practices at the Maple Valley Facility. *Ex. A-40*

10 55.

11 When the Health Department 2018 permit authorized 250,000 TPY throughput limit at
12 the Maple Valley Facility to reflect the accounting change, PSCAA initiated review of the
13 facility's permitting history and determined that OOA 7638 required a throughput limit of
14 195,000 TPY. *Cenci Testimony.*

15 56.

16 Carole Cenci is a senior engineer with PSCAA and was responsible for reviewing the
17 permitting history of the Maple Valley Facility to determine what throughput limit PSCAA had
18 imposed in OOA 7638. She has held positions as an air compliance specialist as well as an
19 Engineer 2 with PSCAA and has worked in air quality for 32 years. She has a bachelor's degree
20 in mechanical engineering and is a licensed professional engineer. *Ex. R-2.* She was not
21 employed by PSCAA at the time the OOA 7638 was issued. *Cenci Testimony.*

1 57.

2 After the 2018 notification from PSCAA, Cedar Grove did not file an NOC application to
3 increase its throughput limit above 195,000 TPY. In July 2018, PSCAA issued Cedar Grove an
4 NOV and CAO for the calendar year of 2017 (No. 3-009499), stating that Cedar Grove had
5 failed to obtain an NOC approval prior to exceeding its throughput limit with PSCAA. PSCAA
6 requested that Cedar Grove both submit a written report identifying its compliance with existing
7 throughput limits and remain below the 195,000 TPY limit until an OOA is issued by PSCAA
8 for a higher processing rate. *Ex. R-13.* The NOV provided that it must be appealed to the Board
9 within 30 days of receipt of the NOV. *Id.*, at 3. Cedar Grove did not appeal NOV No. 3-009499
10 to the Board until March 2019. *Notice of Appeal.*

11 58.

12 In February 2019, PSCAA issued an NOV for calendar year 2017 and 2018 (No. 3-
13 005572) on the grounds that based on the Maple Valley Facility's monthly reports, Cedar Grove
14 had failed to comply with the 2018 NOV and imposed a CAO based on that claimed violation.
15 PSCAA again requested that Cedar Grove remain at or below an 195,000 TPY throughput limit.

16 *Ex. R-14.*

17 59.

18 In March 2020, PSCAA issued an NOV for calendar year 2019 (No. 3-010541) on the
19 grounds that based on its monthly reports, Cedar Grove again failed to comply with PSCAA's
20 CAO issued under the 2018 NOV. PSCAA requested that Cedar Grove remain at or below a
21 195,000 TPY throughput limit. *Ex. R-15.*

60.

The CAOs issued under NOVs No. 3-005572 and No. 3-010541 require Cedar Grove to:

(1) within 10 days submit a written report describing the action Cedar Grove has taken to correct the violation and achieve compliance with Agency regulations, and (2) to remain at or below 195,000 TPY processing limit in the future until PSCAA issues an OOA with a higher process rate.

Exs. R-14, R-15.

61.

Cedar Grove appeals NOVs Nos. 3-009499, 3-005572 and No. 3-010541 and associated CAOs. *Notice of appeal.*

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

Based on the foregoing Findings of Fact, the Board enters the following:

III. CONCLUSIONS OF LAW

1.

The Board has jurisdiction over the subject matter and parties in this case pursuant to RCW 43.21B.110. The Board reviews the issues raised in an appeal *de novo*. WAC 371-08-485(1).

2

The issues before the Board are as follows:

1. Did PSCAA commit a series of factual and legal errors in issuing the appealed Notices of Violation and Corrective Action Orders if the Notices of Violations and Corrective Action Orders were based on the following allegations:
 - a. The original Order of Approval, or any subsequent Order of Approval, issued by PSCAA for Cedar Grove's Maple Valley facility-imposed a

1. 195,000-ton annual throughput limit on the Maple Valley facility;
- b. The 2018 change to the Seattle & King County Public Health Department's ("Public Health") solid waste permit for the Maple Valley facility authorized an "increase in allowable throughput" at the Maple Valley facility;
- c. Cedar Grove's operations at the Maple Valley facility have been "modified" as a result of the 2018 change to Public Health's solid waste permit for the Maple Valley facility;
- d. Cedar Grove failed to establish a process in accordance with the plans and specifications on file with PSCAA;
- e. The plans and specifications on file with PSCAA establish a federally enforceable 195,000-ton annual throughput limit on Cedar Grove's Maple Valley facility;
- f. Cedar Grove exceeded an alleged 195,000-ton annual throughput limit at its Maple Valley facility for calendar years 2017, 2018 and 2019; and
- g. Acting arbitrarily and capriciously or with bias in making these allegations.

2. Does the evidence indicate that the appealed Corrective Action Orders are:
 - a. Unreasonable and not supported by fact or law; and
 - b. Imposed arbitrarily and capriciously or with bias.
3. Did Cedar Grove Composting violate Agency Reg. I, Section 603(a) by failing to obtain a Notice of Construction approval prior to modification of a source?
4. Did Cedar Grove Composting fail to comply with Agency Order of Approval No. 10645, Condition 1?
5. Did Cedar Grove Composting fail to comply with PSCAA Corrective Action Order(s) issued under Notice of Violation No. 3-009499 served on July 10, 2018?
6. Based on all of the evidence in this matter, is the Corrective Action Order in Notice of Violation No. 3-005572 reasonable?
7. Did Cedar Grove Composting fail to comply with PSCAA Corrective Action Order(s) issued under Notice of Violation No. 3-005572 served on February 6, 2019?
8. Based on all of the evidence in this matter, is the Corrective Action Order in Notice of Violation No. 3-010541 reasonable?

1 3.

2 PSCAA bears the initial burden of proof in establishing, by a preponderance of the
3 evidence, (1) that Cedar Grove committed the violations alleged in the NOVs, and (2) that the
4 CAOs were reasonable. *See WAC 371-08-485(2)– (3); Evergreen Shingle Recycling v. PSCAA,*
5 PCHB No. 13-095c, p. 4 (June 24, 2014).

6 **Issues 1.a. – 1.f. (Erroneously Issued NOVs and CAOs)**

7 4.

8 Issues 1.a. – 1.f., Cedar Grove asks whether PSCAA committed factual and legal errors
9 in issuing the appealed NOV and CAOs if they were based on the allegations contained within
10 1.a. – 1.f.

11 5.

12 Issues 1a., 1.e, and 1.f all essentially ask whether OOA 7638 or any subsequent OOA
13 issued by PSCAA imposed a 195,000 TPY throughput limit for the Maple Valley Facility.
14 Preliminarily, the parties at hearing disagreed on whether the Board should employ contract
15 interpretation principles in resolving this core issue. Cedar Grove argued that the Board should
16 employ contract interpretation principles to ascertain what throughput limit OOA 7638 approved.
17 *See, e.g., Nat. Res. Def. Council, Inc. v. Cty. of Los Angeles*, 725 F.3d 1194, 1206 (9th Cir. 2013)
18 (interpreting NPDES permit as a matter of law in accord with general rules of contract
19 interpretation). PSCAA initially agreed in its opposition to Cedar Grove’s motion for partial
20 summary judgment that the Board may apply contract interpretation principles to a negotiated
21 permit or the terms of an Agency order. *Resp’t Puget Sound Clean Air Agency’s Opp’n to Cedar*

1 *Grove's Mot. for Partial Summ. J.* at 24. However, during closing, PSCAA argued that the
2 Board may not apply contract interpretation principles, citing Board decision, *Buck v. Dep't of*
3 *Ecology*, PCHB No. 06-018 (Aug. 3, 2006). PSCAA further argued that even if the Board used
4 contract interpretation principles by examining the plain text of OOA 7638 and extrinsic
5 evidence, the result is that it imposed a 195,000 TPY throughput limit.

6

6.

7 The Board uses contract interpretation principles when reviewing permits. *Piney Run*
8 *Preservation Association v. County Commissioners of Carroll County*, 268 F.3d 255, 269-270
9 (4th Cir. 2001); *Puget Soundkeeper at al v. Ecology*, PCHB No. 19-089c (March 23, 2021).

10

7.

11 The Board concludes that PSCAA did not meet its burden of proving by a preponderance
12 of evidence that OOA 7638 imposed a throughput limit of 195,000 TPY. The Maple Valley
13 Facility's plans and specifications incorporated into condition 1 of OOA 7638 clearly establish
14 that it was requesting approval for its operational and design capacity limit of 304,150 TPY,
15 approval which PSCAA granted. *FOF 31, 32, 40, 41, 42*. Despite PSCAA's practice of
16 including express throughput limits on OOAs for other commercial composting facilities,
17 including Cedar Grove's Everett facility, PSCAA did not include any throughput limit on the
18 face of OOA 7638. *FOF 24*.

19

8.

20 Further, the plans and specifications referenced in condition 1 of OOA 7638 do not
21 establish a throughput limit simply because the Maple Valley Facility's EMS referenced a

1 projected tonnage that corresponds with a permit issued by the Health Department. *FOF 39.*
2 The Health Department and PSCAA do not have authority to enforce the other's rules and
3 regulations, and the reference to the Health Department's permit is not the equivalent of
4 PSCAA's throughput limit under OOA 7638. *FOF 23*

5 9.

6 Given the conclusion that OOA 7638 authorized a throughput limit up to the Maple
7 Facility's 304,150 TPY design capacity, the Board need not consider Issues 1.b. and 1.c to
8 resolve this appeal concerning the validity of the air agency's NOVs and CAOs. As phrased by
9 Cedar Grove, Issues 1.b. and 1.c are premised on changes to the Maple Valley Facility
10 ("increase in allowable throughput" and "modified" operations) authorized or resulting from the
11 2018 change to the solid waste permit issued by the Health Department. It then asks whether
12 PSCAA erred in issuing the NOVs and CAOs *if* they were based on such premise. The Board
13 does not opine on the Health Department solid waste permit for the Maple Valley Facility since
14 it is not before us for review. To the extent the findings speak to the solid waste permit, the
15 Board only recites the evidence presented, and makes no judgment on what the 2018 changes to
16 the solid waste permit authorized. *FOF 22, 23, 54.*

17 **Issue 2.a. (Unsupported Corrective Action Orders)**

18 10.

19 Issue 2.a. asks whether the evidence indicates that the appealed CAOs are unreasonable
20 and not supported by fact or law. Webster's Third New International Dictionary (1971) defines
21 "reasonable" as "being within the bounds of reason: not extreme: not excessive and moderate."

1 *See, e.g. Airport Communities Coalition v Dep’t of Ecology*, PCHB No. 01-160, p. 3 (Dec. 17,
2 2001). A CAO is a standard response when a source is not operating as it has been permitted by
3 the regulating agency, thus the CAOs were not unreasonable given PSCAA’s view that Cedar
4 Grove did not submit an NOC for a modification to the Maple Valley Facility. *FOF 57.*

11.

6 However, because the Board has concluded that the Maple Valley Facility was *not*
7 operating in excess of its throughput limit, the Board further concludes that the issuance of the
8 CAOs was erroneous as it was unsupported by facts or law.

Issues 1.g, 2.b (Arbitrary and Capricious)

12.

11 Issue 1.g. asks whether PSCAA committed errors in issuing the NOVs and CAOs if those
12 allegations were the result of PSCAA acting arbitrarily and capriciously or with bias. Issue 2.b.
13 asks whether the evidence indicates that the CAOs were imposed arbitrarily and capriciously, or
14 with bias. Considering the testimony of Van Slyke and Cenci presented by PSCAA, the Board
15 concludes that PSCAA neither acted arbitrarily and capriciously, nor with bias in making
16 allegations in Issues 1.a, 1.d, 1.e, 1.f that are claimed to form the bases of the NOVs and CAOs.
17 These allegations all involve PSCAA's view that it had imposed a 195,000 TPY enforceable
18 throughput limit, and that the Maple Valley Facility exceeded that limit in 2017-2019. The
19 Board concludes that the evidence only establishes that PSCAA and Cedar Grove had different
20 views of what throughput limit OOA 7638 authorized, given the long and complex permitting
21 history at the facility and the fact that OOA 7638 did not on its face state a numeric throughput

1 limit. As related in findings of fact 51, 52, and 55, PSCAA's enforcement response based on its
2 view that OOA 7638 imposed a 195,000 TPY limit did not constitute action that is biased,
3 arbitrary or capricious, even though the Board determines the view to be erroneous.

4 **Issue 3 (Failure to obtain NOC approval)**

5 13.

6 Issue 3 asks whether Cedar Grove violated PSCAA regulations by failing to obtain an
7 NOC approval order prior to modification of the Maple Valley Facility. The Board has
8 concluded that PSCAA did not impose a throughput limit of 195,000 TPY, and therefore Cedar
9 Grove was not obligated to seek NOC approval for throughput volumes in excess of 195,000
10 TPY.

11 **Issue 4 (Violation of OOA 10645 Condition 1)**

12 14.

13 Issue 4 asks whether Cedar Grove violated Order of Approval 10645 Condition 1. OOA
14 10645 was issued to Cedar Grove in 2014. Condition 1 requires Cedar Grove to "install or
15 establish the equipment, device or process described hereon...in accordance with the plans and
16 specifications on file" with ...PSCAA. *Ex. R-53.* The violation PSCAA identifies is exceeding
17 the throughput limit of 195,000 TPY. The Board has concluded that PSCAA did not impose a
18 throughput limit of 195,000 TPY. As condition 1 simply requires Cedar Grove to operate as
19 described in the plans and specifications, the Board concludes Cedar Grove has not violated
20 condition 1 of OOA 10645.

21

1 **Issue 5 (Failure to comply with NOV No. 3-09499)**

2 15.

3 PSCAA argues that Cedar Grove waived its right to contest the first issued NOV (No. 3-
4 009499)⁸ because Cedar Grove did not timely appeal it. The Board agrees. *FOF 57*. The Board
5 lacks jurisdiction to hear an appeal that fails to meet the applicable filing requirements. *Central*
6 *Washington Asphalt, Inc. v. Ecology*, PCHB No. 10-122 p. 8 (April 15, 2011). Once the Board
7 lacks jurisdiction over an appeal, it may do nothing other than enter an order of dismissal.
8 *Inland Foundry v. Spokane County Air Pollution Control Authority*, 98 Wn. App. 121, 123-4,
9 989 P.2d 102 (1999).

10 **Issues 6, 8 (Reasonableness of the CAOs)**

11 16.

12 Issues 6 and 8 ask whether based on all the evidence in this matter, the CAOs included in
13 NOV Nos. 3-005572 and 3-010541 issued by PSCAA were reasonable. The Board has
14 concluded that PSCAA did not meet its burden to establish that Cedar Grove was permitted for a
15 throughput limit of 195,000 TPY. *FOF 30, 50*. Therefore, because the Board concludes the limit
16 was *not* 195,000 TPY, PSCAA's issuance of NOV Nos. 3-005572 and 3-010541 and
17 accompanying CAOs to Cedar Grove for operating in excess of the 195,000 TPY limit was not
18 reasonable.

19
20
21

⁸ *Ex. R-13.*

1 **Issue 7 (Cedar Grove's failure to comply with NOVs)**

2 17.

3 Issue 7 asks whether Cedar Grove failed to comply with PSCAA NOV No. 3-005572.

4 Because the Board has concluded that PSCAA erroneously issued the NOV No. 3-005572, Cedar
5 Grove had no obligation to comply and therefore the Board resolves this issue in Cedar Grove's
6 favor.

7 Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

8 Having so found and concluded, the Board enters the following:

9 **IV. ORDER**

10 The Appeal of Notice of Violation No. 3-09499 is dismissed for lack of jurisdiction.

11 Notices of Violation Nos. 3-005572 and 3-010541 and the associated 2019 Corrective Action
12 Order and 2020 Corrective Action Order are hereby vacated.

13 SO ORDERED this 7th day of July 2021.

14 **POLLUTION CONTROL HEARINGS BOARD**

15 

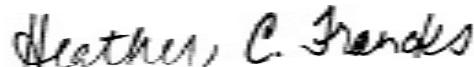
16 NEIL L. WISE, Board Chair

17 

18 CAROLINA SUN-WIDROW, Member

19 

20 MICHELLE GONZALEZ, Member

21 

HEATHER C. FRANCKS, Presiding
Administrative Appeals Judge