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SPECIAL BOARD MEETING MINUTES

August 18, 2005 9:00 a.m.
SPOKANE COUNTY PUBLIC HEALTH BUILDING
THIRD FLOOR IN ROOMS 320 AND 321

PRESENT WERE:

Michele Pope
Commissioner Harris
Matthew Pederson
Commissioner Mielke

STAFF:

Eric Skelton, Director
Michelle Wolkey, General Counsel

SPECIAL BOARD MEETING: Matthew Pederson, Chair of the Board, brought the special board meeting to order at 9:03 a.m.

Eric Skelton introduced the first item on the agenda, presentation of the complaint by company representative for Inland Asphalt.

Mr. Schwartz: Good morning! My name is Stanley Schwartz and I am an attorney in Spokane and I am employed by the law firm of Witherspoon, Kelley, Davenport and Toole. For the record, I did send a letter to Mr. Skelton and the Board concerning the scope and purpose of this meeting. Did the Board receive that letter, at least from my perspective?

Mr. Skelton: I did not pass it on to the Board. I thought maybe you were going to.

Mr. Schwartz: Well I actually directed the letter to you and the Board. But it's not been delivered to the Board?

Mr. Skelton: No.

Mr. Schwartz: Mr. Skelton, I don't have any extra copies with me, do you have a copy of that letter so I at least can read it into the record?

Mr. Skelton: I don't have it here in front of me. No.

Mr. Schwartz: Well then let me summarize. My point is not today to talk about the particular circumstances or to make a complaint with respect to Inland Asphalt. That is not my point, as it was laid out on the agenda. My point today is to talk about some general complaints that we have with respect to SCAPCA, with respect to process and to offer you some, I believe, sound direction in order to remedy some of the missteps that we see occurring in Spokane County. I tried to set that forth in the letter that I did write to the Board well in advance of this

meeting, such that, if the Board desired to amend a special meeting notice and to more accurately reflect what we're going to do today. The Board had plenty of time per the opening exact. Unfortunately, that letter was not distributed to you, even though it was written to you and Mr. Skelton. I ask the Board to review that letter please, because it should be in the files of SCAPCA.

Let me begin by saying, I am not here specifically representing Inland Asphalt or Central Pre Mix Corporation. I, along with my partner Tim Lawlor, we are here on our own time. We are not being paid by any clients. We are here to tell you about circumstances and matters that have occurred with SCAPCA that I find personally, as a lawyer, extremely frustrating. And again we have some solutions for you and hopefully some direction that this Board will entertain. I am going to use as an example the Central Pre Mix matter, but I am not here to ask for any relief on behalf of Central Pre Mix. I have no complaints to be made with respect to the NOC that was finally issued, five months after we submitted our application. So, with that let me begin. I hope to take about 15 minutes of the Board's time and then I'm pleased to answer questions.

By way of introduction, I know many of you know me. I am an attorney, as I mentioned, I've practiced in Spokane for 20 years. My practice is municipal law and land use and the related mitigation. I began my career with the City of Spokane for 15 years. I've been with Witherspoon, Kelley six years. I have been privileged, when I worked for the government, to work for the engineering department, utility department, planning, zoning, environmental systems and do litigation in those areas. I also was fortunate enough to work for a man by the name of Erv Reed, who probably many of you know. I think he's actually still on the Spokane County Airport Board. Erv taught me a lot of things, but the most significant thing Erv taught me, as a government employee, was that it was my job as an attorney to bring forward problems; but if I brought forward a problem, it was then my job to find a solution. And I think when I looked at the organization of SCAPCA, it is not solution oriented and I believe that is troubling to businesses in this community and causes people and entities to incur unnecessary expenses. I also believe that where you have an agency such as SCAPCA that has police power, it must be exercised reasonably and with discretion. I'm here to tell you I think that SCAPCA does not properly use it's discretion and I'm going to tell you the story about the permitting process that we went through, with respect to CPN, to show you how, in our view, SCAPCA was abusive and failed to exercise proper discretion or simply didn't know what they were doing.

One small matter and I'm just going to say this for the record. Prior to coming down here, we had communications with many clients that have appeared before SCAPCA and I will tell you that some of those clients expressed fear with respect to retaliation or repercussions as a result of coming before this Board in order to make statements. I hope that fear proves to be untrue. But I know that this Board, as the supervisory body over administration, will not allow any such things to occur as a result of what we tell you today. So let me begin.

I've got a chronology and eventually I would like to submit this to the Board. I'm not going to submit it today because one of the things that I'm going to request is that the Board have their staff develop their own chronology, just so that you can see whether or not what we're

telling you and what your staff is telling you are the same. All of the matters I am telling you today are public record. These records come from your files and have been reviewed, of course, by me and others in our office. So here's what's going on. Inland Asphalt, as you know, submitted an application in order to put up an asphalt batch plant in the north part of Spokane, at the Perry Quarry. Significant fact, they had done this and operated an asphalt batch plant in 1999 at this exact location. All they wanted to do is what they had done in 1999. So March 25, application is submitted to SCAPCA. SCAPCA conducts a site review on April 1st, and then through April 20th, nothing happens. Nothing happens in SCAPCA for 20 days on the permit review. Finally on April 22nd, SCAPCA requests some additional information and then wants Inland to describe how they're going to deal with odor issues. Inland does that. April 28th, here's where we start getting off course. SCAPCA starts inquiring into zoning matters. They want to know if the pit is properly zoned for asphalt mixing. So SCAPCA goes off on its own and starts investigating zoning. May 9, SCAPCA tells Inland they're investigation zoning. May 17, SCAPCA writes to County Planning and says you know, we think that the 1999 work was wrong. We think that SCAPCA is not going to make a final decision on the submitted application for an asphalt plant until they are assured all applicable zoning requirements are in order. Now remember, this is your air quality agency telling the permit applicant they're deeply concerned about zoning. Think about that. You as Board of County Commissioners, you know that you have a code enforcement department, if there is a problem with zoning; it seems to me it falls within the jurisdiction of the County, not SCAPCA. But that's what we're being told and I will tell you as attorneys, we're a little bit stunned, because we thought we were applying for an air quality permit, not a zoning permit. SCAPCA then states, May 24, they're going to determine how to proceed with SEPA requirements, going to determine how. Remember that's a State Environmental Policy Act, review is triggered when you have a Notice of Construction, but they are going to continue to review our NOC while issues are sorted out. May 24, we're now 60 days down the road, nothing has happened. June 3rd, SCAPCA's attorney issues a letter indicating that they believe there's a failure to comply with SEPA requirements by Inland proposing to construct an asphalt plant in an area that's not zoned for asphalt plants. Remember there was one there in 1999; it's been a mining operation for 50 years. Further written, it does not appear that the 2004 zoning code specifically addresses asphalt plants, but rather indicates that mining is allowed as a limited use. June 3rd, we of course intervene. We contact the SCAPCA attorney, to her credit, she recognizes she was wrong. She writes back three days later, it's been brought to my attention the 2004 zoning code passed by the County Commissioners does, in fact, allow for asphalt plants. Okay, looks like we're going to get the permit. Well, it's not over there. You see, because now we understand on June 6th, through SCAPCA, that they're a little bit concerned about whether an asphalt plant is really permitted in this area, based upon old documentation from the 70's. So SCAPCA then decides you know what, we are going to withdraw the 1999 environmental work that was performed by our client and we're going to make a brand new Environmental Determination in order to figure out whether or not this asphalt plant is properly zoned in this area. Remember what I told you in the beginning, it was there in 1999 and it was a temporary operation. By way of painting the picture, north/south freeway is being built, it would have really been convenient to be pulling asphalt from this site.

So, let me digress for a minute and I know the Commissioners and I know Mr. Pederson clearly understand this. So we're now being told you know the Spokane County zoning code does allow for asphalt plants but we're a little bit concerned about history in the 70s. We think that there might be something in the old permit, that is, Inlands old permit for zoning that would prohibit an asphalt plant. Well look at it, show us, show us where there's a problem; nothing, absolutely nothing. So here's the point we try to make to SCAPCA, we are trying to be proactive, because now we're 60 days down the pike and we've got nothing, we've been put in the spin cycle. In being proactive we say, you know we just went through with Spokane County a seven year growth management process and as part of that growth management process, state law requires us to identify natural resource lands, which include mining and guess what, the quarry pit under the GMA was identified as a natural resource land, for mining. You're concerned about the environmental work SCAPCA; guess what, as part of the GMA process, there was an environmental impact statement done. Maybe you should take a look at that and make a determination that mining is okay. Well it doesn't stop there, you've already told us SCAPCA and we know that as part of the GMA process, Spokane County amended its zoning code and specifically provided for asphalt plants. So we got the GMA, we got an environmental impact statement and we've got a zoning code that specifically allows for asphalt plants. What are we suppose to do? What more do you want to know? Well, SCAPCA's not convinced. They're concerned that there's a potential zoning violation here, based upon their read of documents. So they actually say to us, you know, we think Inland, you need to go to the County Hearing Examiner and get a change of conditions. As an attorney, I'm a little confused. What am I going to ask the Hearing Examiner? Mr. Examiner, we petition you in order to give us what the Legislative Body Board of Commissioners gave us for the zoning code. Tell us that we can have what the County did through GMA. Tell us that we can take advantage of the zoning code and operate an asphalt mining plant. Imagine that, it was absolutely incredible that we would be told to go through that process, of course we didn't. To make a long story short, after a whole bunch of fussing, the County writes back, finally, thank you Mr. Manson, good man in your organization. Says, ain't no problem with zoning, it's permitted. Okay, we're 60 days down the road now, we've got absolutely nothing. We write back June 16th, we say, SCAPCA would you tell us what's going on with the application. What does SCAPCA do? On June 21, SCAPCA withdraws the 1999 work and issues a Determination of Significance. Now if you don't know what that means, under SEPA that means that SCAPCA believes that the zoning question is creating a probable, significant, environmental impact. I want to tell you, I'm stunned. I thought the whole point of the seven year GMA process was to address appropriate land uses from an environmental point of view. I thought that's why the County already amended the Spokane zoning code, to permit this use out right. But instead, June 21, in the Spokesman Review, of which we do not have prior notice until our client calls us and says have you read the newspaper, SCAPCA issued a DS, that's a Determination of Significance. That forces us to prepare a full blown environmental impact statement in order to analyze what, the zoning question. What are we going to analyze? It's already been done. Communication with the SCAPCA attorney, we finally are told, oh, you know what, this is a preliminary determination, we may withdraw it. Well, I'll tell you, in my 20 years I don't believe SEPA works that way, but I wasn't about to scream and yell because there was a possibility that a window would be opened. But the problem is when the DS is issued, when the DS is published, there's now a comment period. So now we loose another 20 days. To

add insult to injury, SCAPCA submits to our client the invoice for the Notice published in the newspaper. We correspond with SCAPCA, we say you know what, if you're going to withdraw the 1999 DNS, tells us what the new information is. Let me read to you what we're told, because under state law, if you're going to withdraw a previous environmental determination, there must be significant changes to the project. Remember 1999, it was an asphalt plant, 05' still an asphalt plant, that's not significant. So SCAPCA's saying there's new information about the zoning. Therefore we're going to withdraw the environmental determination and force you to do an EIS. Now you know sitting here as members of the City and members of the County, if you do an EIS, that is a long expensive process. We have no hope of seeing the permit in 05', if we had to do an EIS. So our correspondence is received from SCAPCA, here's what is written. First, it's important to remember that SCAPCA and I'm quoting, both withdrew the prior DNS, that's the 1999 Environmental Determination, and elected not to rely on the prior DNS. In making this determination, SCAPCA's consideration included but was not limited to all the documents in the file, the conversations had with interested persons and the education/training and experience of SCAPCA personnel, on that information SCAPCA made an independent decision that withdraw of the DNS was appropriate and SCAPCA would not rely upon the 1999 work. What do we do? We try to freeze what the information is at this point. We make a public records request. There ain't no new information, no smoking gun, other than a concern that the zoning might not be right for an asphalt plant. No activity for another 20 days, we're now at June 30th. No activity for another 20 days, we're now at July 12th, because these are the comment periods now that are kicking in. So SCAPCA can go fishing and figure out, gee is there anybody out there that's got some dirt, anybody out there that wants to make a complaint, anybody out there that wants to get fired up about this process. Nothing comes in, absolutely nothing comes in.

So, let me share with you now and I've got copies, I want to share with you what we got from your public records. As you can see this is an e-mail. It's a print out. It's from a Chuck Studer; I assume he is in the SCAPCA office. It's to Mr. Skelton, Mr. Southwell and Mr. Ron Edgar, Engineer, also it is cc'd to Matt Holmquist, Compliance. Here's where on July 14th, SCAPCA's now trying to figure out, gee what should we do. Draw your attention to the second paragraph at the top that begins with the words "RCW" and let me just read that to you. This is internal, RCW 90.84 Air Quality Regulations, do not give us authority to enforce another agencies requirements, laws, ordinances or regulations. Thank you. Putting the proposed language in a SCAPCA Order of Approval would put SCAPCA in the position of having to enforce another agency's requirements. Boy is that right on. I guess SCAPCA decides they're going to be the County zoning enforcement officers now. If Inland went ahead and installed and operated equipment, SCAPCA's compliance staff would have to issue NOV of a permit condition, citing a violation of zoning resolution, which we clearly do not have authority to enforce. Imagine that, submit an application in March, we're in a spin cycle now until July 14 and finally somebody inside the organization says, you know this just doesn't seem right. Well, you can see that there are some additional exchanges here between Mr. Skelton, Mr. Southwell. Let me draw your attention to the bottom of the page, this is an e-mail from Mr. Skelton, Central Pre Mix shall not commence, this is Mr. Skelton's proposed language on the Notice of Construction, Central shall not commence operation of an asphalt plant until such time as the County authorizes use of the property upon which the asphalt

plant is sited for this purpose. That's why I said to you, what are we suppose to do? We're suppose to go to the County and get a change of condition, in order to ask the Hearing Examiner to recognize the law, the zoning code passed by the Board of County Commissioners out right permitting this use. That's crazy. The term operation includes and you can see how Mr. Skelton defines asphalt mixing. Let's continue. I'm going to ask you to turn the page please and I'll wrap up. At the top of the page you will see again Mr. Edgar and I compliment him on understanding the SEPA process and understanding the role of an air quality control agency, not a zoning and planning agency. Second sentence, top of the page, I would suspect that it would be up to us to enforce conditions since they were our comments on another agency MDNS and in this case it would be up to County Zoning and Planning to enforce their rules, that's my two cents. Here is what I told SCAPCA, if there is a zoning problem, there is a code enforcement division of the County. It is the charge of the County to enforce its zoning code and I assure you that the County will be out there enforcing its zoning code not SCAPCA, if there's a problem with this particular land use. That's the way it's supposed to work. You'll be interested to know again we received a letter from Mr. Manson saying site fully is compliant for an asphalt mixing plant. No problem. Let me read to you the very end, as you may be aware, based on comments received, this is Mr. Southwell to Mr. Skelton, as you may be aware, based on comments received on the DS scoping notice, I'll explain to you the significance again, remember they issued a DS which chased us in to a EIS process. I'll tell you, we went ballistic, we went absolutely crazy and that's when we made the public records request saying show us the new information that's causing you to believe that there's a significant environmental impact associated with this use out there. It's been reviewed by GMA, by the EIS and specifically permitted, show us cause then we can respond to it. There's nothing. That's the crazy part. But again we're told hey you know what we may withdraw this DS, so we go quite. That's cool, it's an unorthodox practice, but it's cool, we're going to back off, because maybe SCAPCA will show some judgment and we can at least try to protect this building season for our client. And it goes on to say the MDNS will require, as a mitigating measure because now SCAPCA's decided they are going to withdraw the DS and they're going to issue an MDNS, will require as a mitigating measure compliance with all applicable zoning, planning and building department requirements. Well isn't this stating the obvious? You mean to tell me it's now taken 100 days in order to state the obvious. Finally at the end, Mr. Southwell writes, after some discussion with Chuck, "I'm unsure if the SEPA rules allow SCAPCA to include an enforceable condition regarding the required mitigating measures, i.e., land use requirement compliance." Now I ask you as a Board, do you really want SCAPCA being the land use agency out there? Is that there charge under the Clean Air Act? Is that why municipalities and others are paying taxes to this entity so they can be the super planning cop on the street now? I hope not, I sure don't see it in the state law, in the legislation. Finally, any additional thoughts, discussion on this, question mark, from Mr. Southwell, feel free to tell me I'm paranoid, don't know what I'm doing and/or need more training. Now I don't mean to mock that, but what that shows me is that there's uncertainty in this organization, that this uncertainty has lead to a ridiculous delay in this permit. Bottom line, SCAPCA internally is recognizing even if they impose a zoning condition, god knows what it would be; they don't have authority to enforce it.

Let me digress from one more point that is difficult for me to understand conceptually as a lawyer. If SCAPCA had put in this permit that we must comply with Spokane County zoning regulations or if SCAPCA had denied the permit based upon their perception of non-compliance with Spokane County regulations, we have to appeal. We appeal the SCAPCA Order, we don't appeal a Spokane County Order, we appeal the SCAPCA Order and now we are litigating against SCAPCA a Spokane County zoning question. Does that make sense? I'm over in Olympia at the Pollution Control Hearings Board arguing about whether or not we're compliant with zoning. What, that's the craziest thing I'd heard. I really don't know what to do as a lawyer, but it made no sense to me and again if there's a problem with zoning you have an agency to deal with that, but there is no problem with zoning. All right, SCAPCA withdraws the DS, SCAPCA issues now a mitigated determination under SEPA, guess what, another comment period. Now we've got to wait another 14 days to see what happens on the Mitigated Determination of Significance and you know what the MDNS is after a 120 days, "the proposal shall comply with all applicable Spokane County Building and Planning Department regulations". That's on mitigation on an air quality permit. Interestingly, this determination relies upon the work that we submitted in 1999. I tell you as a lawyer what that shows me, nothing changed, there was no new information, they relied upon the old information. 120 days later almost to the date, we get the letter from Spokane County saying no problem. Finally, I'm here to tell you that we are pleased, after five months, after all this fussing, we did receive a final NOC. I will tell you we had to negotiate out an odor provision, that frankly was amazing, but we negotiated it out. One of the most significant points we made to SCAPCA is that during the GMA process when this land was designated natural resource, state law requires that notification be given to people who live within a 1,000 feet that there's a mining operation and there may be noise and odor associated with industrial uses. But SCAPCA put a provision in there saying, gee if there's any noise or odor complaints, we have to prove up that there is no problem. Ridiculous, when you've got a state law directing that there will likely be noise and odor from an operation such as this. When the state law and the Spokane County comprehensive plan required that Notices be placed on the plat for the residential properties acknowledging that a residential use is abutting an industrial use. Notices that must appear on the facing of each and every building permit that are pulled for development of the adjacent property. Matter of law, undebateable, but yet we get an odor condition that somehow is going to modify what the state law has said with respect to odor. What's my point? You've got an agency that's monkeying around in zoning and planning of which it has no business and I think that it really is an abuse of discretion, it's outside the scope of their authority and from our purposes an application that should have taken 60 days according to statute, Mr. Skelton will tell you this, statute says once you get a Notice-once you have the complete application you should bang it out in 60 days. That's what the Clean Air Act says. Well this didn't happen in 60 days; didn't happen in 120 days; took us more than 100 I think and 40 some days. You blew the 60 days, clearly. In order to give us what we got and had in 1999. Well as you can all appreciate, we're almost at the end of August; if we're lucky will get the plant up and operating sometime in September and as you know around here, that'll give us about two months to make asphalt. You know the shame, this is the shame, this is a fine corporate client in Spokane County. This client operates an asphalt plant in Airway Heights and one in the City of the Spokane Valley. What bothered me as a matter of common sense is that in order to fulfill the asphalt needs on the north/south freeway now, asphalt was trucked from

Airway Heights and Spokane Valley at considerable cost to this client, considerable additional loading on the roadways and like it or not more emissions emitted into the air from the trucks. So what exactly was solved here? What is going on, why was this done? Doesn't make any sense and I think as Board members, you should inquire, you should figure out and you should tell your agency, you know what you got a very narrow scope here, we don't need you free lancing out there, you got a question, work with the County. You want to deal with zoning, you want to deal with clean water, you want to deal with fish and wildlife issues; you know what, don't, please don't. Do what you were charged to do and nothing more.

I am going to conclude by telling you a story that I heard Tuesday night at the City of Liberty Lake. On Tuesday night at the City of Liberty Lake, the EDS group came out to present and they told the City Council and members of the audience there a very, I think, exciting story. Spokane, as you know, is growing and it's growing in a positive way, as is the corridor between basically Spokane County and Coeur d'Alene or Kootenai County. Last week we had a fortune 100 company, actually a fortune 50 company, come to Spokane looking for a large parcel of property in order to potentially site 350 jobs. That's significant. They fly in on their Lear jet, they are given a tour by EDC, basically beginning at the west plains and running all the way to the end of Spokane County through Liberty Lake, in order to show them opportunities to bring 350 jobs to Spokane. They meet with leaders of our community, business leaders, professional leaders, governmental leaders as well as educational people and people in health care. Their main concern is two-fold; do we have an educated quality work force? The EDC takes them to the GU campus, shows them the Community Colleges and gets them excited that you know what we do have an educated work force in this community. We can service this company's needs and we have a fine medical establishment of which this fortune 500 is heavily involved, it's a big deal. And you know the one question they asked at the very end, hey how's the regulatory authority around here? How difficult is it going to be to work with the Board of County Commissioners and/or City Councils if we need to get through a permitting process for an opportunity like this? EDC says we'll facilitate it, it shouldn't be that difficult. You know what my shame is, can you imagine if those people here this, what's going on. This is how you treat a corporate citizen that grew its business here and has been in this business for at least two generations. It's inexcusable, I think it's out of balance and I think it's something that this Board should take a serious look at.

My recommendation to you is two-fold and while I can get emotional and wound up about this issue, you know me and I've been practicing in the government arena for many years as a public servant. I try to facilitate things that are within the bounds of the law. Try to be creative and exercise discretion appropriate because I think that that's what you want as a client from me as an attorney. I'm not there to throw up road blocks, I want to assist, because it makes everything better in our community and unfortunately in this organization I don't see it. And I'm standing before you on my own time because I'm frustrated and this is not the first instance. There are other instances that we have had to become involved with SCAPCA on and I have found a lack of reasonableness, a lack of discretion and in this case amazement that they want to operate in the zoning arena. I have two recommendations for you. Number one, I believe that you should commission a performance audit or some other

top to bottom evaluation of this agency. When I last looked in, I think the year 2002, the last time I appeared in front of the Board, I think the SCAPCA budget was about three million dollars, something like that, probably it's somewhere shy of four, I'm guessing. That's larger than some of our small cities around here, but I think you should conduct a performance evaluation from top to bottom. Figure out what the mission of the agency is and whether or not they're truly operating within that agency and do they have the expertise to do what they are doing and how do they compare with other agencies around the state, point number one. Point number two, we've done some preliminary research that I will share with you and I believe that research reveals that we don't need a SCAPCA in Spokane County. I know that one of the avenues and I'll share this with you as I'm finished, is to simply disband, get rid of SCAPCA. And I will also tell you, I care about the environment, I practice environmental law, I like to fish, I want to be in a clean environment, I don't like air pollution and I get annoyed when I see it and it interrupts or interferes with use and enjoyment of my life or my property. The DOE is capable of performing those activities on behalf of SCAPCA. Whether you like it or not, DOE does that and I'm sure that there can be issues with DOE, but I'll hand out to you a map, which I think is available on the internet, that shows you all the Counties that do not have air quality control agencies. It's done by DOE. But here's what I think is the great opportunity, we look at federal law and we believe that some of the responsibilities or if not all of the responsibilities can be assumed by other jurisdictions such as the County or Cities or DOE in partnership and I would ask that you charge your attorneys in order to advise you on what are the options to at least shift some of the responsibilities that are performed by SCAPCA right now and narrow their mission so that we don't get so far a field where a 60 day process turns into this five month ordeal. I can't remember if I said this but you know to add insult to injury, we just got a bill from SCAPCA, are client for your time and for all the time that your people were monkeying around with this SEPA issue that ultimately went no where. Imagine that, sending our client a bill for that work. But you know the most interesting thing about the bill, it shows there's a whole bunch of dead time where nothing was done, even though we were told that despite this land use question, SCAPCA would continue to work on the permit application. But apparently according to the billing we received, it didn't happen. I think this agency needs accountability. I think that it is overstepping its bounds and I respectfully request that you figure out a way to do that and I hope that one or two of those avenues will provide you with the direction that at least can convince you as the Board that this agency is accountable or you need to divide it up and shift some of the responsibilities. That's essentially it from our involvement. I need to reiterate, I'm not asking for anything on behalf of Central Pre Mix. I don't want any permit modification; I don't want to argue about any of the conditions of the permit that's been issued. I want you to know what I'm telling you is all a matter of public record and you can look at it yourself and I think you should look at it yourself, including the records of your attorney so you can see what was going on here. And I'm not here to attack your attorney. I know Michelle Wolkey. She is competent, she's capable, she's responsible, she's trying to do the best job possible for her client, I understand that. But I think what happened here is basically reflected in the e-mail I read to you. Somebody just got out of line and didn't know how to rein themselves in or didn't appreciate what other agencies are supposed to be doing.

My partner, Tim Lawlor, has some things that I'll pass out to you, is going to share with you some NOV experiences. If I leave you with one thought, it's really this, you have a process

right now where you site people with violations and in 2002 I came down and I testified with respect to the NOV process and one of the things that I told the Board and I think Commission Harris you were on the SCAPCA Board at that point in time, is that it's really fundamentally unfair for your enforcement officers to be sneaking around and issuing Notices of Violation. And then the process is such where you're invited in as an offender to have an informational meeting with the person that's written the ticket. You're invited to come in and talk to the cop and at this informational meeting, essentially what you're suppose to do is tell on yourself and throw yourself at their mercy or as we stupidly learned, we point out mistakes in their issuance process. So then you know what happens, they do it again but better the second time. That's a silly process. And then if you don't like the result that happens, at the NOV informational meeting, here's your choice, you appeal and you're shipped off to Olympia in front of the PCHB. But for many businesses in this town, that's expensive, it's a judicial process and they lose touch with people like yourselves who really ought to know why you are fining these companies, why are you hitting them with 10 and 20 thousand dollar fines that have to be litigated over on the coast. I think you should look at a process that at least provides some sort of mediation or resolution here either in front of this Board or in Spokane County because otherwise you are shipping your businesses and your people over to Olympia, that doesn't have a connection with Spokane. That's my final comment. I will tell you, if you are so interested, I appeared before this Board in November of 2002, I reviewed the minutes from that meeting and that's essentially what I told the Board. I am deeply appreciative of your time. I've tried not to be disrespectful; everything I have told you is in the record. If you inquire of your own staff to put together a timeline and a statement refuting anything that I said, I would suggest please do that and then after you do that, I will submit to you the statement that we put together based upon your public records as well as materials that we have in our file. Again I thank you and I'll answer any questions you may have. Thank you.

Matthew Pederson: Does anyone on the Board have any questions? Seeing none (the meeting moved on).

Tim Lawlor: My name is Tim Lawlor, you don't know me. I'm an attorney here in Spokane. I started out as a Jag Officer in the Army representing the soldiers command and military communities. I'm not a land use or environmental lawyer, I'm a litigator and I've litigated in court marshals, arbitrations, mediations, federal court, state court, pretty much everywhere and I've had lots of different experiences with different kinds of agencies and organizations. I've found none to be as frustrating to deal with as SCAPCA. I came here today, I'm not representing anybody, in-part because there isn't a client I represent that would want me to come in here and throw stones at SCAPCA because they're afraid of them. The reason they're afraid of SCAPCA and its real simple, absolute power corrupts absolutely. SCAPCA is the legislator, they write the regulations, they modify the regulations, they're the cop, they decide if the regulations have been violated, they're the prosecutor that makes the case, they're the judge who decides if they're right and then they're the jury. They're the judge that applies the law and the jury that decides the facts and if you disagree with them on anything, that they say, no mater how unreasonable they are, you get to go to Olympia and argue that they're wrong and in Olympia it's a very stylized administrative hearing where they get all deference because they're the agency that's wrote the rules so they get to interpret the rules and for a small company it's cost prohibited. You can't go to Olympia.

For a large company, you can afford it but it's very expensive. What I found when I ran into SCAPCA was a mindset that starts at the top with Mr. Skelton and Mr. Holmquist. They tell you the way it is and that's the way it is. If you disagree with them, that's your right, but they're not going to change. There was no bend; there was no rule of reason. When I'd tried to meet with them they would just say, well we just ticket the violations and that's the way it is. Explanations all fall on deaf ears. You go over to try to explain in this meeting that you have the right, you have to meet with Mr. Holmquist and discuss the Field Notice of Violation, if you do that, if you take that opportunity, it's a one-way track. If you point out that the ticket is deficient on its face, they fix it. If you point out that they have no facts, they come up with facts. You're going to get the ticket and you're going to get the fine no matter what. The whole idea of a Field Notice of Violation bothers me. You're client comes to you and they get a Notice of Violation that says three weeks ago you failed to maintain odor barring gases to a reasonable minimum period. It would be the same as saying you got a ticket in the mail that says three weeks ago outside the Davenport, you were speeding. It doesn't say how fast you were going, it doesn't say what the speed limit was, doesn't tell you exactly when it occurred and you have to think back what was I doing three weeks ago. How are you going to prove that you're innocent, that you didn't speed three weeks ago. In the real world, what would happen when you get a Field Notice of Violation is someone would come up to your plant or your property and say, "you know we think you're violating this regulation and I've got to write you up today because the public health is at risk". Here's your ticket, here's what you're doing wrong, why don't you fix that. I've talked extensively to the Seattle Air Pollution Control Authority, they get a complaint and they call up the business. They say, hey we got a complaint could you check your equipment, your air pollution control, do you have a problem, do you have an upset condition, is there something going on, why don't you check it and call us back and then you do that. Well, we think there might be a problem and then they come out and they solve the problem. Because that's the idea here, the idea here is to protect public welfare, it's not to be cute and write tickets. You get a ticket three weeks later and the way their regulations read is "a violation is a continuing violation", so they can fine you \$10,000 a day for each violation for those three weeks and sometimes the client of mine would get a violation in the mail and the next day he'd get another violation and the next day he'd get another violation, these are all in the past. There's nothing you can do at that point. Let me give you an example of a violation, that as a lawyer you have a real problem with. You get a violation that says "you didn't respond to a request for information". Well what happened in this particular case was a plant burned down in Seattle and a plant here had to take on more of a load. SCAPCA new about it, they wrote up some questions, they sent out a couple of investigators who orally examined the plant manager, they asked him the questions, he answered the questions face to face. Later that day two more investigators come out and delivered a letter, same questions, it's in writing now. He'd already answered the questions. Okay, get a ticket, up to \$10,000 fine because you didn't answer the questions. We did answer the questions; he says we wanted it in writing. We get another Notice of Violation. We don't know it's because it's not in writing, we could have answered it. We get another Notice of Violation, another \$10,000. My partner then writes a letter, Stan Schwartz, here's your answers to your questions to the extent we can answer them, boom, boom, boom, boom, boom, in writing. Now we get another Notice of Violation. Why? We don't deem your answers sufficient. As a lawyer, when you get something like that it infuriates you. You'd like to go into a real court, you'd

like to go to Superior Court, get in front of a judge and see who wins. But you can't. First you have to go have your meeting with SCAPCA and explain your side, which is a waste of time because if you point out that it's a deficient Notice of Violation, even if they agree to you that it's a deficient Notice of Violation, they don't have to withdraw it, they don't reduce your penalty because that's more leverage to make you agree to what, conditions. Because how do they expand the regulations beyond what you know about and what have been approved by this board, you put in conditions, consent orders or make you agree to things you can't live with and then when you violate them it's real easy, you agreed in 1995, based on a letter in 1978 that you wouldn't open the doors to your plant. Okay, fine. Does opening doors to the plant create a problem? Well we don't know. Then why do you require it? Because you agreed to it. But we agreed to it because you had a gun to your head. Doesn't matter. Doesn't make any sense. I got a PhD sitting here right now that can prove to you that opening that door does not cause a problem. Put in a Notice of Construction and will discuss it. Wait, simply physics, we have negative air pressure in the facility, I can open the door, we went so far as highering a videographer, setting smoke bombs outside the building, opening the door, which way does it go. That's not good enough; you've got to do a Notice of Construction. All these things are money and that's not to say that there wasn't a problem. Every facility has a potential for problems. The goal should be to protect the public health. That's the goal, it's not to write tickets and sit there with your arms crossed staring down a lawyer and proving that you can be unreasonable. The goal is to protect the public health and if you're doing that you should be fine. The problem is when you represent a client, I've had several clients come into me just in the last three months with issues with SCAPCA and what do I tell them? I like to think of myself as an ethical lawyer, you can hire me and pay me a lot of money and you will end up further down the drain financially or you can just pay the ticket and move on, but I didn't do anything wrong. So which would you rather do, pay a \$2,000 ticket or pay me \$10,000 to get your \$2,000 ticket reduced to a \$1,000 ticket or pay me \$20,000 to take it over to the PCHB and see if we can get them to agree that the ticket was unreasonable. But when the ticket includes things like failure to maintain odor bearing gases to a reasonable minimum, who's going to win that, you don't know what was going on that day, they don't measure it, they can't see it, they can't quantify it or qualify it, here's a ticket.

I'll give you another example. What you can try to do is reach a settlement, which is what we tried to do in that case. Went all the way up to the PCHB, we spent a lot of money and hired all kinds of experts, a couple of PhDs. One of the frustrations is you have a PhD sitting next to you, a licensed professional engineer with air quality specialist trying to tell SCAPCA this is the way it works everywhere else in the United States, this will work scientifically, and they say no and the person who's telling you no isn't even an engineer. Why? Because they just say no, what are you going to do with that. You've spent all this money to show them that this is the way it works and the answer is no. Then you go so far as you get to get a settlement. We're in front of the PCHB, administrative law judge, which they don't normally do, agreed to fly from Olympia to Spokane to have a mediation and I think Michele Pope was there in the morning. I wasn't there so I heard it all third hand. What happened was we thought we had a settlement, end of the day at seven o'clock we reached financial terms, the LJ went back. We then get a message a few days later, no there isn't a settlement we want six-times as much money. Why? Because the Director wants six-times as much

money as is agreed in the settlement. Call up the Administrative Law Judge, he's not going to be the Judge in the case because mediation Judges never are. I said was there a settlement, am I missing something. He said absolutely there was a settlement, he told me the terms of the settlement. I go back to SCAPCA and say there was a settlement. No there wasn't. Well the rules for any mediation are you must have settlement authority in the room or you don't do the mediation. Rule number one, the Administrative Law Judge imposed in that mediation which you had settlement authority in the room. SCAPCA took the position there was no settlement authority in the room. It was a proposal that had to go back. We thought to the Board, it went back to the Director. No settlement. I called the LJ again, are you sure there was a settlement? He says absolutely there was a settlement. I took the depositions of SCAPCA personnel, no settlement, no settlement, no settlement; it was a proposal that had to be approved by the Director. Well a year later, more than \$100,000 later in legal fees and expert fees, we're back in mediation and what do you think we had to settle on? Six figure number to the penny. Why, because that's what they wanted and that's what they were going to get. Was there any relationship to anything, no, it was just an arbitrary number that's thrown out a year earlier and what can you do about that? You know, it's the only time in my career; I've been a lawyer for 18 years, where I've had a settlement that was reached in front of an Administrative Law Judge, a disinterested third party, that was reneged on, the only time. Now, when you run in to that kind of a situation, when your clients call you and say can you help them, you say probably not, pay the fine and move on it will be better for you financially. Because if you stand up to them, now you're a target and things that were never a violation become violations and this particular client, the only way they can operate their plant is by opening the doors, it's how you get your product in the plant, it's a continuous operation, the plant would run 24-hours a day if it has enough material. They've been opening their door for seven consecutive years. When they started having problems and they stood up a little bit, they started getting tickets, one after another for the same thing they've been doing for seven years. I'm like Mr. Schwartz, I think we should look for solutions. I think the solution needs to start at the top. The Indians are gonna do what the Chiefs tell them to do and there's an attitude at the top that is not favorable to business and it has nothing to do with protecting the public welfare. Now I don't want to eat asbestos, I don't want to have bad air, I know what bad air is like, I lived in Germany, I was in East Germany when the wall was up and they were burning coal and I have asthma and I could feel it with every breath, I don't want that either. I'd like to see you looking out for real problems and when there's a real problem, go out in the field meet with the company, solve it, help them solve the problem. If you have the technical know how, help them solve it, if you don't have the technical know how, don't impose your views on them. Go out and get the technical know how. What I found in that litigation was there wasn't one person at SCAPCA that had really any knowledge about that particular kind of plant and how you control odors. They didn't know, there's no crime in that, but don't act like you do. So I don't know what to tell you exactly to do to solve this problem, but I can tell you there's a problem, I've talked to developers, I've talked to manufactures, I've gone through their records, I've seen how they do their fines, something needs to be done. Thank you.

Matthew Pederson: Thank you very much, is there anyone else who would like to speak to the Board today.

Lester Ledkey: My name is Lester Ledkey and I'm the owner of Spokane Commercial Roofing. I had a fire on July 22nd, my problems aren't as big as these guys but I've run into the same frustrations. Anyway, I was contacted from SCAPCA for asbestos on my property. Told me that I needed to get it surveyed, so I called randomly and MCS Environmental; I had Russ Neumiller come out and do the testing. I left the premises so he could do his sampling without me there and I got the results and apparently every time I get results, there negative, I know that. I've had training, 80 weeks in asbestos in my career and I know what I have in there and I know what's not in there. Then it wasn't a surprise to me that they came back negative. But now basically what it boils down to is they want me to agree that I had a hazardous environment so I get to pay all the other high fees from \$8 a cubic yard demolition to \$23 and I just have a hard time agreeing to something that I know is not there, plain and simple. So that's my case.

Matthew Pederson: Thank you, Michelle. (Michelle Wolkey stated that there were other people here to make comments so she would wait to give her statement to the Board after the comments.)

Dr. Kim Thorburn: My name is Dr. Kim Thorburn, I'm the Spokane County Health Officer here at Spokane Regional Health District and I'm here to express my concern about this special meeting. We're responsible; SCAPCA is responsible for air quality protection, we at the Health District are responsible for the public health protection; we're clear on our missions. We understand that we are not responsible for land use decisions; however we have to insure that land use decisions are properly complied with before we can undertake our regulatory activities. Air quality is an important public health concern, it is indisputable that poor air quality contributes to excess mortality and morbidity, its relation to coronary artery disease and other cardiovascular diseases and respiratory diseases are clear. Spokane has environmental conditions that make it highly susceptible to poor air quality and I would challenge that we don't need a SCAPCA. It has been in recent years, under the leadership of a national renowned air quality specialist, Eric Skelton, that we have seen the improvement of Spokane's air quality as such that we're no longer on the national list of cities of poor air quality. So I have a real concern that we're holding this special meeting to allow complainants outside of the normal processes to challenge the regulatory activities of SCAPCA. I think what is not being recognized in holding this special meeting for complaints is that one of the things that regulations do is level the playing field for all businesses and when businesses are given the message that if you complain, we will hold a special meeting. Then that playing field is no longer leveled and I just have a real concern to see this happening to SCAPCA. I also feel that it is happening in my own agency. Thank you.

Matthew Pederson: Thank you. If we could have public comment hold for a moment, it was not my intention to jump ahead into public comment, we will return to public comment. I was unaware Northwest Renovators were in attendance today. My intention was to allow them their time, they are next on the agenda and we will return to public comment soon after their conclusion.

Commissioner Mielke: Mr. Chair.

Matthew Pederson: Yes sir.

Commissioner Mielke: I think for clarification, one thing we should point out is with regard to the nature of this special meeting and that is typically, this Board meets on a monthly basis. We assume that August is a bad month to meet because of everybody's vacation schedules and typically do not schedule a meeting. I think the only thing special with regard to this meeting was we questioned that assumption, polled the Board Members and said would you be available if we went ahead and held an August meeting, where we assumed we would not. That's I think the only thing. I don't know that had we not scheduled this meeting today, if the Board would have come back and said, to many conflicts can't schedule it, we would have rolled these agenda items to the September meeting and so I just want to clarify that it is not about the content of the meeting, the issue was did we erroneously make an assumption that the Board Members were not available in August.

Matthew Pederson: Thank you Mr. Mielke and I do concur with that.

Commissioner Harris: I'm a little bit saddened that the Doctor had to get up and talk, because the Doctor knows full well that this Board is totally held accountable for staff actions the same as the Health District Board is the final authority that's held accountable for the Health District actions, other than that area where she has the specialty that comes under doctoring, then she's held accountable for that. I just want to make something clear because evidently there's somebody that is misinformed about what this meeting is. I think Todd covered part of it. The hearing part of the meeting is not unusual, we've done it before, but the hearing is not to determine if there should be an asphalt plant there or not, that is not the hearing and so if anybody here is for or against the asphalt plant, that's not it. The purpose of this part of this meeting, the hearing, is to determine if staff stayed in the scope of authority under that granted by law and we certainly as a Board have to hear people and have to have hearings to determine that when it's of this magnitude. Thank you, thanks to all of you for coming. I'm sure that all of us would rather be doing something else at the moment but these things do have to happen.

Matthew Pederson: Thank you and moving forwarded, Northwest Renovators.

Doug Gore: I'm going to pass some things out to you. My name is Doug Gore with Northwest Renovators. This is my partner, Michael Lee. We're here today under a little bit different pretense. We do feel that we have been very well taken care of by SCAPCA as far as that's concerned. We do have some complaints that we're gonna file. We are going to ask for some relief as far as that's concerned. You'll have to pardon me a little bit, I'm actually getting a little bit emotional standing here because I was raised to be a fair and honest person and I believe that that's what our government is suppose to do, be fair and honest. I do believe things happen for a reason, I believe that. I believe that Mike and I bought that building for a reason. I didn't know what that reason was really till today. I believe that reason and you know, I've talked to several people in the community so far, business community. Some of them said thank you for having the guts to stand up to this organization, because we can't, we are constantly tyrannized by them. These are words that people have said and I can prove some of them. I want to first of all say that these are our opinions, I don't want to sit here and again, I was raised a fair and honest man, I wasn't

raised to call somebody a liar, but I do believe that there are some illegal things going on within SCAPCA and I think I can prove some of those here today. I do believe that SCAPCA uses strong arm tactics and intimidation when they have no evidence to back em up. You know we started out just to do business here in Spokane, you know, that's all we want to do, we buy and fix and renovate houses, that's what we really do. We take dumps in Spokane, in and around Spokane and we make them look like nice houses again. We're actually increasing the value of the neighborhoods here in Spokane. When we bought that building, we bought it because it had been an eye sore for over four years, nobody was doing anything. We diligently looked into what needed to be done with that building before we even started. We already knew there was an asbestos survey, right. So we buy this building and we immediately go in to have it taken down.

The stuff that I handed there to you today, there's a couple things that you don't have, some of it I'd just found yesterday and I didn't have time to make copies, but I can certainly get, actually I do have one copy and I'm happy to pass that around. Something that I found to be very interesting, the City of the Spokane Valley on lets see seven, seven of 2004 has a comment that says the burned structure was declared a dangerous building by Spokane County on September 6, 2002. The County failed to proceed with the abatement order. So apparently they were ordered to do some sort of an abatement and in that there is a correspondence between Seneca Cluck and Tom Shultons where Seneca Cluck, of SCAPCA, informs Tom Shultons, City of the Spokane Valley, of what they need to do to take down that building as far as please see attached selected regulation citing the firm you select will need to visit the site and perform some survey. So they must have ordered, the County and I don't know that to be fact, I don't know, I'm assuming that they ordered the County to do something and they didn't enforce their own rule. Now again, go ahead

Michael Lee: Just a quick question, just to give the general, like I didn't know if you were fully aware of it, but this is the building that's at 8702 E. Sprague, I don't know if that was in the original notes. This building is between Valley Transmission and a site that's with Executive Auto and Truck, this is one building of several buildings that burned down back in 2001, so.

Commissioner Mielke: For clarification, my understanding of this building is the previous owner had it when it burned. This building sat, in 2002, exposed for about three years. The County got it back for lack of tax payments and so remanded to the County and then we put it up for auction or bid and you two are the successful bidders and basically picked it up from their.

Michael Lee: That is correct.

Commissioner Mielke: During that time after the fire and I'm assuming the County took possession of it after, because its three years of failure to pay taxes, that there was probably some sort of notice requiring abatement to the previous owner that just carried forward to the County when we assumed control, but there was no activity, that we're aware of, on the site for the three years since the fire, to the period when it was transferred to the County, to the period when the County prepared it for sale and it went to auction, to the time it went to you.

Michael Lee: That's right.

- Doug Gore: Next thing I'm gonna show and I apologies, I don't know, I think that this might be in with your documents there, but this is where we hired Affordable Asbestos to go in and do the abatement of the property, I don't think you have that but I wanted to make sure that you knew we did hire an asbestos company.
- Michael Lee: The nice thing about Affordable Asbestos again, he knew about this site, it needs to be cleaned up, it needs to be taken care of and Affordable Asbestos is a licensed, bonded, insured company that deals with this issue, specifically if there's asbestos, where it is, how it is, how you need to take care of it and such and so we contracted with them since they had familiarity with it, to do that for us.
- Doug Gore: They had done the survey prior to us purchasing the building. Here's another thing that Affordable Asbestos sends to SCAPCA and in there it says Matt Holmquist stated that he will be keeping an eye on this project and may do more inspections. The reason I'm reading that is just to kind of get into light that they have had a personal, I believe, problem between SCAPCA and Affordable Asbestos for many, many years. Something that we had no idea, we had no knowledge of and personal issues should totally stay out of the realm of business 100 percent, 100 percent, they've got no reason to be there and I think that that's a big reason that they've come down on us is because of personal issues not professional issues by any stretch of the imagination. Now I think this is where we get into the documents that you have. The very first thing, I believe you have there is this document here that says Notice of Intent for demolition review findings, 8702 E. Sprague, dated February 16, 2005. I'll take you down to the second paragraph there it says "SCAPCA performed a site inspection on January 31, 2005, during this visit SCAPCA identified suspect asbestos containing materials present in the building debris, specifically cement asbestos board and roofing", their specifically tallying roofing there. "Building materials were observed to be indistinguishable due to fire damage and inaccessible for surveying", I find that to be very interesting that they have said that the building materials are indistinguishable due to fire and that they're inaccessible for surveying, however, they went on the site and they performed a survey and in their survey they clearly identify the materials within that survey. How did they perform a survey, how did they do it, if it was indistinguishable, how did they do it? How did they identify indistinguishable items, their own inspector went out and walked right through our site and was able to do that. She took seven samples of items that she identified. How did she identify unidentifiable items? The other thing that I know you don't have is these are photos that SCAPCA provided to us and I'm certainly willing to pass this around, but you can definitely see easy access into our site. You can look in and you can see wood shelving, you can see the sheetrock, you can see items in that building. They took a picture of the back of the building. You can see the roof sections are intact, so they can be sampled, you can take samples of the roof. Wall sections are intact so they can be sampled, right. Here in their pictures again, one of their pictures they make a little comment saying ACM of roofing, right here and I'm gonna clarify that in my comments as I go through. Here again in their own picture, you can see a telephone, a wood desk, sheetrock, paper bag, hazard tape, plastic j-box. My only purpose in showing you that is because I want you to see that these items can be distinguished, it's not like you can't distinguish items in there. The next document their it starts on February 16, and it's a document request that's sent to Northwest Renovators, by

SCAPCA and it says “provide waste receipts for the cement asbestos board removed from 8702 E. Sprague”, again, we hired a contractor to go out and remove that asbestos, we didn’t remove the asbestos. So why are we being sought after, why are you coming after us to provide you with receipts for something we didn’t do, that the contractor did. Yet you’re coming after the business owner to provide you with those receipts that we had nothing to do with. The next document there, again February 16th and I want to remind the you, the Board here that these are documents that are coming from SCAPCA, we didn’t make up any of these documents, these are from them and I think we’re going to get into a document here today that’s going to open some eyes. On this one here it says Notice of Intent for demolition review findings 8702 E. Sprague. SCAPCA performed a site inspection on January 31, 2005. You go down it says “exception for hazardous conditions or Section 9.07 Alternative Means of Compliance”, the only reason that I’m showing you this, it’s the same document we already looked at, but they kept saying that we could do samples, we could take samples of the site, even at our meeting, we had a meeting, a sit down meeting with SCAPCA and the City of the Spokane Valley and Affordable Asbestos. In and beyond that meeting they kept saying that, that we could do these different surveys. We could survey the debris piles in the back, these are things we can do. Yet, I think this document, since it was before that meeting even, is pretty much saying that you’re going one of these two ways period, there’s no ifs, ands or buts about it. Why not just be honest at the meeting with us? Why not just tells us hey, you’re taking this entire site as friable asbestos period and then cite the reason for it, they didn’t do that and I’ll get into something very interesting about that. I called up and after our meeting with SCAPCA on I believe it’s April 14, we understood what needed to be done and even SCAPCA acknowledges that Northwest Renovators understood what needed to be done. We immediately went out and got MCS Environmental to meet with us at our site. They thought easily surveyable, that’s what they said. Not only that but it was one of those things where, I’m getting a little bit off track, let me get back on track. There was some concern though over are meeting with SCAPCA and so there was communication between Sam Bailey of MCS Environmental and Matt Holmquist. After that conversation, he called me up and Sam called me up and he said it’s gonna go as all asbestos, we can’t take it down basically as, we can’t just go out and survey the site and determine what’s asbestos and remove it and I said but I just had this meeting with ya, I mean we just had a meeting with them and they said we could, so why are you now saying we can’t? It’s not me, it’s them, there saying so. So I called SCAPCA, I called Matt Holmquist and I talked to him and in that conversation we got into the asbestos again, you know as far as the rules and, and mostly the debris piles in the back is what he wanted to consider his main argument and those debris piles in the back, of which he said we could do grid sampling on to prove that there was no asbestos in, hey go ahead do the grid sampling, prove that there’s no asbestos. He then says to me, you can’t prove there’s no asbestos in those piles, you can grid sample em, you can sit there and scoop them things up all you want, you cannot prove that there’s no asbestos in that pile, there’s no way to prove it, there’s no way to prove it, there’s no way to disprove it, we’re not going to allow it. You can take your right to go out and sample, you can’t do that, well you can do it, you can go out and do the samples but I am not going to accept the results unless they’re friable asbestos period. And I was very thrown off by that, I’m like why are you telling me I can go take samples if you’re not going to accept the results regardless of what they are, why, why do I, why do I spend the money to go out and get these samples if you’re not going to accept it? His thing to me was, you’re going to

scoop up large amounts of dirt and there is no way in that large scoop of dirt, can you determine whether or not there is or is not any asbestos. And I told him that I could not go in my child's sand box in my back yard, scoop up a bucket full of sand and prove that there's no asbestos in there. He said, you're right and that's why he'll take the whole site as asbestos. That's wrong. The next document that you have here, May 10, 2005. You can butt in anytime you want to, by the way.

Michael Lee: It perplexes me that this site sat open for four years and all we want to do is clean it up. Get it out, get the nails out, get all this stuff throw it away and lets move on and threw this process, we just said you know what do we got to do, here's a survey and going into it 66 samples of material throughout this entire site, inside the building, outside the building, they've isolated what it is, it looks like a clean place and four years have gone by, lets move on and so it's worth what I think is logical saying hey this site needs just to be cleaned up and move forward. But now they're saying there's asbestos inside, now they're saying there's asbestos outside (Doug Gore "with no evidence") but you can't find asbestos because it might be somewhere in there and we don't have a survey that determines that there's not asbestos there but we don't have a survey that says there is asbestos there, so we'll assume there's asbestos. So we're sort of like guilty until proven innocent and that's what we're asking for and I think that's what Doug alerted to is if you say there's something there, then one of us have to decide threw scientific means that yes there's asbestos there, clean up that or no there isn't it's not clean and they went out and did a survey, identified the stuff but then later said you can't survey it because it's all mixed up, you can't survey it. So in one part they will survey it and then they won't survey it and we're like which way do you want it. You know, we just want to clean the mess up, that's all we want to do. Four years has gone by, what ever is there is probably in Rathdrum anyway, no it's not there cause it's gone through four winters, it's gone through some springs, some wind storms, some rain storms, thunderstorms, now I'm getting off on a tantrum. But that, it's just perplexing that you'll see the time frame between when the building burned down and when we bought it at the tax sale in January, not much happened, but since we got it, a lot of things happened. I'm sorry.

Doug Gore: That document that I was showing you there dated May 10th, Rob's Demolition filed a Notice of Intent on July 30, 2001, and it was for the building next door to our building that had also burned down. A work plan was prepared by MCS Environmental, so MCS Environmental was aware of the site, they knew of the site when they came out to visit our site. So I would think that MCS Environmental has a pretty good understanding of what's going on and I think that they're, first of all I'm gonna go off on what I was going to say, but I've never meet Sam Bailey prior to, prior to this thing and, and over repeated conversations with him I find him to be a man of very high moral character, very high moral character, I wanted to make sure I made that clear. My fear is that any comments that I make about him he'll be retaliated on by SCAPCA and I hope that, that doesn't happen, I hope this Board isn't gonna allow that to happen.

If you go down in there, it says on July 7th, 2004, SCAPCA provided the City of the Spokane Valley with SCAPCA regulations pertaining to exceptions for hazardous waste. So back in 2004, there was some things going on there but they don't continue, they don't enforce anything, they don't do anything. Then if you continue on, it says on August 5, 2004,

SCAPCA sent a letter to Mr. and Ms. Vacanopa, if I said that correctly, who are the owners of the property. In this letter it says the building likely cannot be surveyed. The building may need to be taken as asbestos. Likely, may, why do they use the words likely and may? I find that interesting. If something can likely be done, it means that it likely can't be done, it means that also likely might be able to be done, right and also may need to be taken as asbestos. It kind of suggests to me, in their own letter, that they're not sure, that a professional needs to go out and make that determination, not us. We're just the regulatory authority. A professional needs to go out and make that determination, not us we're a regulatory authority. It's suggesting in their own letter that it must be done by somebody else, not us because we're the regulatory authority. So their wording is very good, their making sure they stay on track. If I follow that down, it says SCAPCA identified the site on January 31st, excuse me, SCAPCA inspected the site on January 31st, 2005 and determined roofing containing 15 to 20 percent remained on site. The roofing thing I find very significant, same thing within the picture because I'm going to bring that back up again later, a little bit later on and I want to point out from my understanding, there's a big, big, big, big difference between roofing and patching tar. I want to point that from my understanding, patching tar is also exempt under the L & I regulations. I don't exactly know what the deal is there because I'm not an asbestos person, but from my understandings, that tar is exempt from regulations. But they're specifically saying roofing, not tar and I'm going to get to the bottom of that here in a bit. On the next page 2 of 3, second column down, it says on March 31st, Northwest Renovators requested a meeting with SCAPCA. I find that significant because we, we asked for a meeting because we didn't understand what was going on because we were confused. Because there was conflicting things being said between SCAPCA, the things that they would send us in the mail versus the things they would tell us on the phone versus the things that our asbestos contractor was saying versus things that others in the community are telling us. So we requested this meeting to make sure we got to the bottom of it and we did the right thing. The meeting was held at the City of the Spokane Valley on April 14, 2005, to discuss the status of the project and what was necessary for cleaning up the site. These are SCAPCA's words not ours. What was necessary for cleaning up the site, that's exactly what we were asking? So why lie to us is one of my biggest things. At the conclusion of the meeting, it was my understanding that Northwest Renovators understood what was necessary to move forward with the project and was planning to do so, SCAPCA wrote those words, SCAPCA wrote these words, at the conclusion of the meeting it was my understanding that Northwest Renovators understood what was necessary to move forward with the project and was planning to do so. I'm gonna prove that we understood. We understood because on May 6th, go ahead (Michael Lee "No.") on May 6th Sam Bailey at MCS Environmental informed me, informed me and being SCAPCA that he was retained by Northwest Renovators, on May 6th, imagine that. Shortly after, MCS was retained by Northwest Renovators, we moved forward immediately. We did not waste any time, we acted immediately. We wasted no time. In particular we discussed options for handling the debris pile on the back of the property. Again, these are SCAPCA's words, "It is my understanding that certain debris, e.g. concrete and lumber, etc. can be clearly identified laying on the top and sticking out of the debris pile, but the issue of what might be within the debris pile cannot be determined using standard surveys. Again here, it's all might what can be, what can't be and I'm gonna clarify some of these issues later on when I get into the asbestos report that was done. Next column down, in the middle down there it says, "As I

pointed out in during our telephone call, the potential issue”, excuse me, “with this is that you reported that only the surface of the debris pile has been surveyed. It seems highly unlikely that representative bulk asbestos samples can be taken of mixed debris pile to declare the entire pile as none ACM”. We even discussed, these are things that we fully discussed with them and again this is where we get into they said we can’t scoop up even the littlest pile of debris and say that there’s no asbestos within that pile. But that’s what sampling is for, right, otherwise why are we even sampling, why are we even doing it? Any building that burns down, anything that happens, any building that you’re gonna demolish should just be taken completely 100 percent as asbestos period. There’s no other discussion on that, because if you can’t prove in any pile of debris that there’s no asbestos, then that’s it, it all goes as asbestos, everything. Here again SCAPCA says “You also inquired about using a front-end loader to scoop up the debris pile”, first of all that was something that Matt said. Matt said that you will be scooping up a debris pile and you can’t survey that pile. “This would not give an onsite asbestos coordinator a good opportunity to observe the material being loaded and would therefore be an issue with identifying suspect ACM”. Again, why do the grid sampling, why, why do any sampling at all, it’s all pointless, it’s all, they’re making every point moot. Down on the next part it says, “As I stated during our conversation, SCAPCA cannot review and approve or deny your work plan until one is submitted” and that is very true. They can’t approve or deny a plan if we don’t submit one. However, he did state he was not going to approve a plan that did not, any plan that was not basically taking the entire site as friable asbestos. We couldn’t do it. So why submit a plan if we can’t do it.

Okay, the next document. The SCAPCA Order, I’m gonna get into the SCAPCA order now. It says, “A fire destroyed several businesses”, go ahead.

Michael Lee: Now, before we go into this, there is a date that I’d like to review. Again, the building burnt down in July of 2001, 2002 it is cleaned up next door, 2003 goes by, 2004 goes by, some other work involved. We get actively involved in January of 2005 after buying it from a tax foreclosure sale and for some reason, which we still don’t understand, we now were issued on July 6th, 2005, an immediate SCAPCA order to remove all debris from the site and clean it up. Why, what happened between June and July of 2005 that created this urgency that now we all have to jump through and clean up the site, that we’ve had dialogue, you want the site to go completely as asbestos but we’ve been shown, through surveys, there is no asbestos. I don’t know I’m just confused by the point.

Doug Gore: A fire destroyed several businesses. During a compliance inspection on January 31st, 2005, cement asbestos board containing the 20 to 25 percent asbestos and roofing containing 15 to 20 percent asbestos was found in the site. Again, I want to go back to how can they go in and do a survey if it’s an unsurveyable site. I still, that perplexes me, I don’t understand how they surveyed it. Again also they say roofing containing 15 to 20 percent asbestos, yet I’m going to show you in one of their documents that, that was not roofing at all, it was roof patch. Roof patch is not roofing and from my understanding again there’s a big difference between those two. If you go down the Order that they’re ordering us under, they’re going right here to this Washington Administrative Code, this is what their whole Order is based on. Washington Administrative Code WAC 173-400-0405 states, emissions detrimental to

persons or property. No person shall cause or permit the emission of any air containment from any source if it is detrimental to health, safety or welfare of any person or cause damage to property, or cause damage to property or business. This is very significant in, it says no person, no person and I can define person for you if you'd like in their own regulations, shall cause or permit, SCAPCA new that this building burnt down in 2001, yet they allowed it to sit until today. They've allowed it to sit this whole time, right. So with their allowing it to stay this way, they're not diligently doing something to make sure that somebody does something about this building whose liable. They allowed it to sit, they're liable. The people that have asbestos, asbestosis and gottin lung cancer, I think off this document have the right to sue SCAPCA. It goes on to say, emissions of any air contaminant from any source if it is detrimental to health or safety. I found this interesting because even they went out and did a survey and found nothing friable on our site. My understanding of asbestos is . . . including ash and other fine particulates has remained exposed to the elements for over four years, this is their document, that it's been exposed for over four years. The material which likely is contaminated with asbestos, now I'm going to drop down a little bit, is prone to being blown by the wind, SCAPCA let this detrimental site that is so full of asbestos blow around for over four years, in their own documentation. Such a release would likely result in asbestos fibers being transported off site with nearby occupied businesses, in other words, we're allowing this site to blow around for four years and create asbestos in peoples lungs. That's SCAPCA's own documents; they're allowing it to happen, not us, we bought the property, we tried to clean it up. Next page it says, repeated contacts with Northwest Renovators have not resulted in cleanup of asbestos. My goodness, we've been trying since the day we bought that building to get rid of it, to get rid of the asbestos, to do what ever needed to be done to legally and legitimately destroy this building. We've tried since day one. We've never once asked for skate in the law. We've never once asked for skate in the rules. We've never once asked for anything that was immoral, illegal or improper, never once. Now it gets down it says, within three days of receipt of this Order, Northwest Renovators must wet and cover all debris, clearly to mark the area with asbestos warning signs and restrict access to the area to authorize personnel only. We did that, because we were told we're gonna be fined \$10,000 bucks a day or a year in prison. We could even face a year in prison if we didn't do this. Every day is a new offense and I'm gonna get into that here in a minute. This site was open for four years, not the County, City, previous owners or SCAPCA did anything. Nobody did anything about it. They knew, SCAPCA knew that our site was there because of the site next door. Then it says, within 10 days of receipt of this Order, a completed Notice of Intent and must be filed with SCAPCA for performing work under the alternative means of compliance. No evidence or science has been put forth to suggest that this is even needed and I'll prove that. If I go down to number five, it says all debris must be removed from the site and properly disposed of within 30 days of receipt of this Order. Like we have any control over the, the contractors out there, the demolition contractors, you know we can just go and order a demolition contractor to go take down this asbestos ridden building in 30 days, do it now. We can't do that. That's, that's unreasonable. I think all of these; these items within this Order totally show intimidation. They totally show strong-arming. They are saying, hey you're gonna do what we tell you to do, by God you're gonna do it and you're gonna do it now, because that's what we want. Right or wrong, you're gonna do it. The next thing down says failure to comply with this Order may result in criminal sanctions. Each day of non-compliance is considered a separate and distinct offense. Criminal in my opinion, is

SCAPCA allowing the site to remain if it is so hazardous. If this site is this hazardous, then it is criminal to have allowed it to remain. To have not forced the issues that they are allowed to force. We just wanted to clean this site up. We've never done anything but try to clean up this site and do it legally and legitimately. Nowhere in the RCW does it state that each day is another occurrence and I've provided the RCW right there for you. In this RCW right here, nowhere does it say that another day, that each day is another offense. If I get a speeding ticket and I don't pay the ticket right away, each day I'm not fined again because I didn't pay it right away, right. I wasn't speeding the next day; it's the same thing, same car. If I do a plumbing job and I'm not a plumber and the building inspector comes out and says hey you're not a licensed plumber, you did this job you weren't suppose to, here's you fine. The job's still the same the next day, it doesn't mean I get a fine the next day. Now according to this RCW, I can be fined \$10,000 a day and a year in prison per day.

Michael Lee: No, it need, it states that for you can be fined \$10,000 for a violation

Doug Gore: Per day, per violation, yes

Michael Lee: That what they've stated is

Doug Gore: Each day is a separate violation

Michael Lee: They've interpreted it to a separate day but it doesn't state that in here, it just says for the offense. So we'll interpret how we believe the RCW is just to be a single fine and how they interpret the RCW and the consequences for that.

Doug Gore: In this, this is the only part of sarcasm that you guys are gonna get out of me today, because I find this to be very serious and I don't think you guys need my sarcasm. But if, if we take this into light okay, if we say that yes, every day is worth the fine and every day is worth a year in prison, then that means that this building has sat there for 1,460 days. I'm gonna transfer 1,460 days into years, so SCAPCA allowed this site to sit for 1,460 days, you sir belong in prison for 1,460 years for allowing this site to sit. Furthermore, 1,460 days times \$10,000 a day equates to SCAPCA owes the people of Spokane \$13,600,000.00, we'd like a check. I mean I'm sorry, I don't mean to be sarcastic about this, because it's not, but here is the true facts that they have put out, they have put out, these are their rules, these are their regulations, these are their laws.

I'm about to get into what I think is the most significant thing, these two documents. If I can get you all to pull out these two documents, right here. These are Chain of Custody Records. The reason I didn't staple these together is cause I wanted you to be able to pull these two out and I wanted you to be able to line these up. Stick em up to the light and line up the ones. Line up the signatures, there're identical. These are the exact same order, the exact same Chain of Custody. I have to tell ya that I talked to Mountain Laboratories this morning and I asked them if they consider a Chain of Custody Record to be a legal document. You know what they said, they said ya, we do consider that to be a legal document and I kind of went into it and she said, the lady that I talked to a Ms. McCarthy who happened to have signed one of these documents, said that anything that the stuff on the right hand side are things that

she wrote and then she signed it if her signature is there. I challenge you to look at the document and to see that it says received February 2, 2005 by Spokane County Air Pollution Control Authority. Now I challenge you to also look down here and see that here is Ms. McCarthy's signature, stating that she wrote these things right here on the side, she wrote this. Now I challenge you to look right here on the very edge where it was faxed. Interestingly enough it says from 924-2287, if you go over here under Mountain Laboratories, it says that there fax number is 924-2287, right, meaning that Mountain Laboratories faxed this to SCAPCA. SCAPCA marked it received on the very next day. Now, notice everything in this column here, how it's written. Look at that next document

Michael Lee: If I may. The document, before we jump into the next issue, they've stated that cement asbestos board, item number one, has crystalline – 20 to 25 percent, bunch of other stuff which is roofing, plaster, white sheetrock, pink sheetrock, brick like material all came back none, which means there is no asbestos abateable and then the last item is roofing and they've identified it as black tar that has some asbestos, the tan layer is none which is kind of a roofing thing, tar paper in the roof none. So looks like this site has some black tar, which is not roofing and it looks like it had something to do with this asbestos board. But that goes beyond the next point that we'll bring in.

Doug Gore: Okay, the next thing I want to bring up, these two documents are different. But I want to point out on the next document, I want you to see again where, excuse me, on this document here, it was sent from SCAPCA and the date is a day later than this date, 2/1 was when they received this document and they stamped it that we received it. Yet SCAPCA faxed it from SCAPCA, when a document has been changed, it has been altered, there's no signature, there's different writing down here at the bottom. Who did SCAPCA fax it to, can you look at that phone number and tell me who it was faxed to.

Michael Lee: It was faxed back to SCAPCA.

Doug Gore: It was faxed to SCAPCA, SCAPCA faxed it to SCAPCA. Why, why was a document faxed

Michael Lee: This is just mind blowing; remember legal document showing Chain of Custody that came from Mountain Laboratories to SCAPCA and it came in on the first at 10:04 a.m., stamped it as received February 2, 2005 and then the document's been altered because it's no longer received by, the none's have been taken out, the description saying black tar has been now called black layer, the description's been made different, there's no reference to the tan layer, there's no reference to the tar paper and it goes from SCAPCA and then again on either of these documents, you want to know where to fax it too, here's the SCAPCA's number at 477-6828. So they lied about the document, they changed it, they faxed it back to themselves and then they called this now the original document. Really interesting, this is the document that I received in the mail to the results that they had of our site. (Doug Gore "Exactly.") Not until we did a request of full documents did we find out there was a previous document; which means that if you change a legal document and then passes it off as the original document, who gave the authority to change the document. Why was the document changed? The document was changed because black tar, anyone can do it, black roofing you can't, you've got to get someone with a white suit would go through a bunch of hoops. And

we, and a site that is not surveyable to prove that there's no asbestos on the site, that they surveyed and said there was no stuff on the site. Makes the whole document suspect and then they go back to the original document of Affordable Asbestos who is a licensed, authorized contractor who did this survey back in 2002; took 66 samples and found the site clean.

Doug Gore: Not totally clean and I'll clarify that. So again on these two documents the first one if you look at that says received and if you go down to the very bottom where it says roofing south and you follow that all the way over it says, written by Ms. McCarthy, black tar crystallite – 15 to 20 percent, black tar. That's what she's written in there, right. Now if you go over to the other document and you follow roofing south, it says black layer, not in Ms. McCarthy's handwriting any longer, right. It says black layer, making it Integra part of a roofing system, rather than a tar that could be a patching compound. But even on here somebody made a mistake and actually wrote patching on their document. Why, why did that happen? I am very, very curious to find out because to me it seems like this would be something that a District Attorney would even be interested in seeing because if this is a legal document that has been altered, what gave them the legal authority, the right to alter that document. What's the purpose of this whole thing to begin with? This is a little building, we are willing to clean the asbestos, what is the point, why can't, why is this, I, I am so dumbfounded by this whole thing.

Michael Lee: And, and the thing is, is we can't get a demolition permit from the City of the Spokane Valley until SCAPCA has given the approval and then SCAPCA says you can't demolish it because it's not surveyable, but there was a survey and you did a survey, well now it is surveyable, but then your pile, that it, we just want to clear it. We want it logical, we want it reasonable. The documents and everything we've done says it's a clean site. All I'm asking is that we are allowed to clean the site. And their fact that this is suspect, I would like to go back to the original survey back from 2002, it says it's all clean, so give us a waiver, we'll go down to the City of the Spokane Valley, get a demolition permit this afternoon and we can clean it up.

Doug Gore: In that, I want to bring up this asbestos survey. This asbestos survey was performed by Affordable Asbestos, state certified AHERA building inspector, whether SCAPCA likes this person or not, he is an AHERA certified building inspector, like him or not doesn't matter. Doesn't, has no bearing on anything whether you like him personally or not. The, again I've provided you all with a copy here and on this page right here it says, asbestos sampling, the asbestos sampling was conducted by Phil Berg of Affordable Asbestos on March 15, 2002. 2002, shortly after the fire there was a survey done. When things are clean and clear, there not five years later, four years later; shortly after the fire they do this and again Mr. Berg being a AHERA building inspector. He took 66 representations of suspected asbestos samplings were collected. So he took 66 samples and from my understanding, that is well above what he was suppose to do, what he needed to do and what he had to do. Took more samples of things then he even needed to. Then go down, the only thing that he found was cement asbestos board, as identified in Seneca's survey where it later, in her survey she says that he did not identify those. But here it is, he did identify it, he did physically identify that cement asbestos board and then his recommendations were to have the asbestos abatement

contractor remove approximately 40 square feet of cement asbestos board and then take the building down as a fire remains. Now, he went out to remove that and the whole, this whole thing, the whole reason that this all blew-up is because he went out and removed the asbestos from the property and then we sent the Notice of Intent that we are going to fire demo the building because all the asbestos had been removed. Seneca Cluck goes out and she finds guess what, more cement asbestos board. She contacts us and lets us know that and Farrell said, yeh I'm sorry there was snow on the ground when I went out there, I missed it, I'm sorry, I will get it taken care of immediately. As far as the roofing tar is concerned, yeh there's a little bit of suspect there. Even I sit there and go well what's the deal there. I'm willing to admit that, I'm willing to stand in front of this Board and admit yeh, that, that might have happened. But what is the deal there? This building is 50, 60 years old, roofing patching tar, I mean those roofs have a tendency to leak quite often so I'm not really sure what happened but since and I'll get into his survey, he took samples of tar, more than he was even required to do, is it possible that he went, that somebody had been up on that roof over the last 30 years and patched it several times; one of those was asbestos, one of em wasn't, one of em was, one of em wasn't, but he took the amount of surveys he was required to take. Is that possible? If you go into where it says High-Tech Environmental Labs here; I want to point this out because they're saying that it's an unsurveyable site and yet if you look at that document, it says where he took the sample, like this one it says outside, says grey cement asbestos board; floor tile, green with black backing; that's pretty detailed to me; mastic, black; floor tile, green with black backing; mastic, black; floor tile, green; mastic; green flooring; green flooring; so he was able to get down to the flooring, right. Flooring texture, ceiling texture, ceiling texture, white tape mud, white taping mud

Michael Lee: You can see that again it's just an extensive survey.

Doug Gore: Silver vermiculite, white popcorn with black rocks, white popcorn material with small black rocks, white plaster, next page over, white roofing, white roofing, white block bond, white block bond, plaster, plaster, flashing mastic, flashing mastic, brown plaster, next page, brown plaster, parapet wall, parapet wall, second wall, second wall, black wall behind sheetrock, black wall behind sheetrock, second roof, second roof, third roof, second roof, third roof, then it says red roofing, red roofing, red roofing, brown roofing, brown roofing, brown roofing, tar, oh there's a tar in there, tar, tar, tar, felt, felt, felt, fiberglass, fiberglass, fiberglass. Then it gets into this document right here and this document says behind the building was the location of the samples. There was red roofing, brown roofing, tar, felt, fiberglass, next page, again outside, grey cement asbestos board, inside, then it gets into floor vinyl with mastic, green flooring, ceiling tile, taping mud, he has identified all these materials shortly after the fire to begin with and then it gets into the certifications and all that. Whether you like him or you don't like him doesn't have any bearing on any business that you're doing. I'm going to take you into this document now. This is well after the fact here and this is where again, I'm gonna prove that we tried to deal with this building and Matt Holmquist intimated, in my opinion, he intimated our asbestos contractors to make sure that no matter what we couldn't prove or disprove a darn thing, nothing, we can't do it. Says here, Sam, general experience has shown us that fire damaged structures or portions thereof make it extremely difficult or impossible to identify individual building components in materials, therefore, conventional asbestos survey as identified below cannot always be performed, first

of all he says generally, which means generally means that you might be able to do it, right, but you need a professional to determine whether or not it can be. Cannot always be performed, which means sometimes it can be performed, again meaning that a professional must determine whether or not it can be surveyed. Not SCAPCA, we're a regulatory authority, we're here to regulate but we're not here to say whether or not it can be surveyed because that takes a professional to do so, right. I think that's fair and reasonable, that's all we're asking for is what is fair and what is reasonable, that's it. SCAPCA Regulation I, Section 9.02 g. is that sentence that you see right there that's written before you and it says, an asbestos survey means a written report describing an inspection using the procedures in EPA Regulations 40 CFR 763.85 and .86, I provided a portion of that document for you, by the way. If you look at that document, alright, first of all I didn't provide you the whole document because it's 240 pages, alright and most of it deals with PCBs, has nothing to do with asbestos, but I provided that for you anyhow. It's interesting to me that he is stating that you must follow the procedure in these regulations and yet I've given you the table of contents, nowhere in there does it state any procedures period, there are no procedures in here to follow and yet that is the regulation that he is citing. Why is that, why are we citing regulations where they don't even have it?

Michael Lee: Again the procedure says, we're not legal scholars, but if you throw enough of those regulations and enough footnotes it intimidates you to say oh, I don't want to go against an EPA regulation, but then that regulation doesn't have anything that pertains to procedures. It just, I see it as another strong arm tactic.

Doug Gore: Okay, then it goes on to say, that in order to do anything outside the norm, you must have prior written approval from the control officer. Prior written approval from the control officer, when he has physically told me on the phone, he's not giving me any approval. So what, you know, you can, you can submit anything you want but I ain't gonna approve it. I'm not gonna approve it, you have fun, you have a good day, right. This proves that they tried to stop us from getting science. I believe that. I believe that them sending MCS Environmental this document proves that they tried to prevent us from getting any further surveys because they're saying you have to have our permission in writing before you do anything further, right. But they're not gonna allow it anyhow, so what's the point. It's proving that to, in my eyes it proves that they are 100% intimidating our contractors and telling them, hey you guys can't get the proof, there is nothing you can do to prove to me that there is no asbestos in that site, there is nothing you can do to prove it. In here it gets into a couple different things like the term protocol has evolved over the years as a term of art among professional practices, from professionals. Most all of this has to do with PCBs.

Michael Lee: We're chewing up some time; I'm thinking maybe we should just go to some of the things we've done

Doug Gore: Okay, I'm just about done. Do we have time, do you all mind? I'll try to speed it up. I'll get off of this document then, thank you. This thing here is a article that was done by the Spokesman Review and I only want to bring up a very small portion of that at the very bottom, it says, neighbors are less concerned with asbestos which they figure has washed and blown away after years of weather than they are with the falling bricks. They went out to the

community and said what do you think and the community said, we're less concerned with the asbestos because we're pretty sure that it's already been washed away, then we are with, I mean, you know, we're more concerned with bricks falling on us. Next document here, it says the control officer may require conditions that are reasonably necessary, reasonably necessary and may revoke an Order if they can show cause and on the next page again it says, reasonably necessary. There is not been one thing done to us in this whole thing has been reasonably necessary, period. And again it talks about proving to the control officer, which we can't do. I did get some letters from a couple of citizens. I can tell ya, I have notes in here, I sat down and I got on the phone and I contacted several businesses in Spokane. I contacted fire officials, you'd be surprised, I challenge this Board to contact just the Fire Marshall's themselves and the Fire Chiefs and the local businesses that have been sent Notices by this organization and just talk to them off the record, because they won't talk on the record because of the fear of SCAPCA. They've used words like mafia mentality, that's pretty strong wording to me. One of the Fire Chiefs and I am happy to inform the Board alone if the Board does not release the names of these people, I am happy to give the Board these names. But one of the Fire Chiefs, you know what he said to me, referring to Seneca Cluck, her exact words I have written down or his exact words I have written down but it's something to the nature

Matthew Pederson: Mr. Gore can we leave individuals out of this please.

Doug Gore: Yes. My apologizes, but I have some very strong wording from those people.

Michael Lee: So what we're asking from the Board is immediate waiver relief from going through this circus ride that one time you say it's surveyable, then you say it's not, you haven't proved that it's not but you haven't proven that it is. If you want us to prove it, but then we can't prove it. We just ask that we get a waiver for relief so that we can go to the city get their permit and demolish the building and we seem like we've gone in a circle and we have, because every time we try to get a document or information, we have to disprove what we've been sent and then credit what we've not been sent, I don't know. So that's what I ask.

Doug Gore: I'll summarize briefly. This site is a hazard, it is an eye sore and it should be removed, it should be take, it should be, it should be dealt with, not a question. It has been a problem for the past four years and actually it's longer than four years now. Northwest Renovators Inc. is asking the Board to intervene to allow MCS Environmental, if they'll still work with us, because they, I believe they have been intimidated, unless SCAPCA wants to say that they're an unqualified organization, to review the surveys by AAA Affordable Asbestos, as he says he can do and the survey done by SCAPCA themselves. We are willing to accept SCAPCA's survey; we're willing to say we accept SCAPCA's survey. We would like the Board to intervene and allow MCS Environmental to go out and verify the survey that was already performed. Allow a certified asbestos abatement contractor to immediately abate the property as it needs to be according to that verification process and allow the entire site to be treated as the evidence and science says it should be treated, as a demolition, not as a hazardous site, because we have the proof within the survey the debris piles in the back you can bring them up all you want, but the plain reality of it is, there was surveys done with no asbestos and nothing friable. We're asking the Board to, excuse me, we're asking the Board

to order SCAPCA to accept our site without any further delay, intervention or intimidation from SCAPCA. SCAPCA said our site is unsurveyable do to the fire and ash, most of which has been washed or blown away over the years. We're asking for fair and reasonable treatment for our company and our site. We're asking the Board to some how insure that MCS Environmental will not be mistreated or fined by SCAPCA if they do work with us or any other contractor for that matter. We're asking the Board to fully investigate our claims, because I think we've made some pretty serious allegations here today and we believe in those allegations. Let's see, we're asking the Board to somehow insure that they'll be treated okay, we're again asking the Board to look into our allegations of abusive power in the way that SCAPCA mistreats the community and I believe lies, strong arms, threaten and performs other illegal activities, such as that document alteration. I would step up and suggest that this organization and its tactics aren't needed and the reason I've, I wouldn't have said that before, but I'm saying it now only because to alter documents, I find that to be extremely serious. I find that to be extremely serious. I've been, thank you. I think that maybe what they need to do is turn everything over to the EPA or other regulatory authority until all of the evidence can be reviewed by the proper legal authorities, as I think it is. This site is a hazard, this site is an eye sore, it should be removed. Why the unfair treatment? Why not allow the science to dictate what needs to be done, we have the science? Why lie? Why strong arm us? Why require this to go, to make a site go as friable asbestos with no evidence? I'm confident by the way, that SCAPCA's gonna come forth and that we never submitted a plan and that is true, because they wouldn't accept it. I'm confident that SCAPCA is going to come forth with explanations for just about everything, their actions. I'm in hopes that the Board can see through what I believe to be an outright fabrications on a lot of different things and do the right thing. Can I entertain any questions? Mike do you have any further comment?

Matthew Pederson: Any questions from the Board?

Doug Gore: Thank you, thank you very much.

Matthew Pederson: Michelle Wolkey would you like to take time now too. (Attorney Peter Scott stated that there are other public comments to be heard.) Please, go ahead.

Steve Robinson: Good morning, my name is Steve Robinson, I run a locally owned company called Spokane Rock Products. We compete directly with Central Pre-Mix and Inland Asphalt; we operate an asphalt plant at 8th and Havana and three ready-mix plants here in the community. I normally wouldn't show up for a meeting like this but I have some direct concerns as it relates to actually a comment that was made earlier this morning by Dr. Thorburn of the Health District, commenting that one of the roles of SCAPCA is to have a level playing field for the businesses here in the community and that's why I'm here this morning because my perception is that's anything but the case. We have gone through, Spokane Rock Products has, in the permit that was issued to them, to us has had very extensive and expensive conditions placed on the permit to operate our asphalt plant. The reasoning behind that is because the mine that we operate in is surrounded by personal residences. My perception is the same things true with the Perry Quarry pit. I'm very familiar with the pit. I use to operate the company that ran that pit. In fact, I'm the one that signed that environmental

checklist that was filed in 1999. I'm here because I believe the process that's taking place, as it relates to the issue of that permit, is substantially different than what should have been taking place. I have, we've followed the permit process up to the point in time where an environmental review was required. About mid July or so, the County made a determination that a temporary asphalt plant was okay for the site and directed SCAPCA to take lead role in it and address issues not only odor and dust and so forth, but also noise, traffic, those other issues. SCAPCA in turn relied on the 1999 environmental check list to address those issues. As I said, I'm very familiar with that checklist, I filled it out. I put the temporary asphalt plant in there; it was there for a two week period in order to pave a section of 395. This plant's substantially different than that plant. It's got all sorts of different components, including silos and so forth associated with it. The conditions that are placed on the permit that was issued last Thursday to this plant are substantially different than the requirements on the permit that we have for our plant. We have very, very extensive conditions on our plant and yet I find it amazing that in mid July the County made a determination that, all right I guess you can locate a temporary asphalt plant on there and literally three weeks later the permit is issued and when we contacted SCAPCA or SCAPCA's council to ask about making comments concerning the permit, the indication was we are not gonna make public comment available on this permit. If you have any comments you want to make, you can make it through an appeal to the PCHB. So how quickly can this permit be issued, that condition, that area up there at the Perry Quarry has changed substantially from what it was in 1999. That arterial, that access road now is an access road to the entire Wandermere development. Housing development is taking place, very high-end houses and so forth adjacent to where this asphalt plant's going to be operating in and yet here we are required to have conditions such as a load-out shed, when the asphalt's dropped into the truck, we're required to have a load-out shed, they are not. When we asked to have our load-out shed removed as a condition on this, specifically we were told that load-out process is an emission source and in order for the surrounding residences to enjoy their properties, we are making that a requirement of your permit, yet it's not being made as a requirement of this permit here. Our asphalt cement tank requires 80 percent elimination of Volatile Organic Compounds, the odor. Theirs is 50 percent, because ours is 80 percent; we had to add additional filtering mechanisms to it, there're not required to do that. We're required to have a VOC limitation on the overall burning and manufacturing of the asphalt plant and the silo injection. Right now it's at, I believe it's 4.6 VOCs per hour and by the way the two plants have the same hourly limitations, 400 tons an hour and yet theirs has at this point no limitations. Going into it, our permit required us to have 80 percent elimination of these VOCs. Theirs is stating, no they don't have any limitations of VOCs, you have to test it within 180 days, and you can ask for an extension beyond that and if 90 days after that testing is done, then an understanding will be reached as to what the VOC limitations are. So again what Dr. Thorburn has been stating, one of the main purposes is a level playing field and also all the issues surrounding neighborhoods and so forth, I don't feel's been properly addressed here. How could this permit be issued that quickly when the determination is finally made, all right an asphalt plant can be located there and schooop it went right through. With that being said, I've got some comments here I would like to have distributed to the Board Members and I've asked Peter Scott to make a few comments. Any questions?

Matthew Pederson: Mr. Scott.

Peter Scott: Thank you. Good morning Mr. Chairman and the members of the Board. I'm Peter Scott, I'm employed at Preston, Gates and Ellis as an attorney here in Spokane. I'm not here on behalf of Spokane Rock Products or any other client. Spokane Rock Products was the only one of my clients that I contacted, regulated by SCAPCA that was actually willing to come and make comments publicly. Many others shared concerns you've already heard. So, like Mr. Schwartz, I'm here on my own time to share with you some of my observations. As part of my practice, I represent a number of municipalities and special municipal districts. I'm very fluent in the requirements of SEPA and particularly in the requirements of Public Notice and the high standard to which those municipalities are held. I've reviewed the record, in this matter, fairly closely and it's my opinion those standards have not been met in this case. I share Mr. Schwartz's concerns and those others you've heard about SCAPCA's handling of the processes here to operate an asphalt plant at Perry Road and the related SEPA process. I do want to clarify his recitation of the chronology somewhat for your benefit. As you've heard, this is not the first application for an asphalt plant at this site. The earlier application was processed by SCAPCA in 1999 for a temporary plant that operated and I'd like to highlight some of the differences between that circumstance and this one. A temporary plant is regulated differently than a permanent emission source. That one, as you've heard, operated for two weeks. The environmental checklist stated it was a temporary plant and it was operated as a temporary plant. This on the other hand is a permanent installation. The company has put and installed permanent natural gas lines, water mains, a very large cement foundation; the permit that's issued contains a five year performance testing element. At the time in 1999, there were very few residences at the site, there are now many new developed residences. An environmental checklist was required for the temporary installation, no new checklist reflecting these changes in circumstances has been acquired here and the conditions that were placed on that site when it was rezoned as mineral lands in 1979 and 1980 applied to the temporary plant having to do with hours of operation, truck traffic trips, final closure and site restoration, none of those conditions are applicable now, at least according to SCAPCA's conclusion. I think this situation was largely created by a breakdown in the SEPA process. There have been, at times, four different threshold determinations, three of them in the span of the last four months. The last one on August 4, the current standing finale determination is a Mitigated Determination of Non-Significance issued on August 4th and it's based on that checklist prepared in 1999. It does not account for the change in circumstances, the houses and the traffic impacts on those houses and the nearby school, doesn't account for the major new sub-division which is literally 200 feet away, it's for a temporary installation and 13 agencies reviewed that checklist for a temporary installation without housing around it. None of them were asked to review a checklist for a permanent installation next to new housing. The County in this instance did provide some comments in response to the Determination of Significance issued by SCAPCA in June of this year. Actually the County gave two responses, the first indicated that the use is not allowed without additional process before the County, the applicant could seek a temporary use permit or a change of conditions and the County would take the environmental lead on SEPA review. A Mitigated Determination of Significance was then issued in July, withdrawing the Determination of Significance and the requirement for an Environmental Impact Statement and instead imposing as a mitigation measure, compliance with the County's letter outlining the zoning requirements for use of the site as applied. On the same day that the mitigation,

mitigated determination came out, the County sent a second response, this one states that a temporary plant is an allowed use at the site and refers the environmental lead to SCAPCA to account not just for emissions but traffic, noise and other factors. SCAPCA took this comment and issued a final Mitigated Determination of Non-Significance, the one I'm speaking about now, requiring adherence now to the second letter issued by the County and we see two problems with the way this process unfolded. The first is the requirement to meet land use standards for a permanent installation have not been met. The County's letter says a temporary plant is permitted, it says nothing about a permanent installation, which is what's been permitted or alternatively the new Mitigated Determination of Non-Significance simply eliminated the required environmental review established in all of its prior determinations and any opportunity for public comment on that decision; and this is where I find the failure of notice and that's my third point. SCAPCA issued two prior determinations, a Determination of Significance requiring an Environmental Impact Statement and a Mitigated Determination of Non-Significance requiring additional land use process, both with comment, both with additional public involvement. The last determination, which is clearly based on the new information, provided by the County has no comment period and eliminates all opportunity for environmental review and this in my view is a clear violation of SEPA. A brief comment on the NOC itself, you've heard about the facial differences between the stringent requirements that Spokane Rock Products faces and the NOC issued in this case. SCAPCA's refusal to accept comment on the draft despite a written request has contributed to this disparity, I think and a playing field that is not level. And I would like to close by saying that I've worked with SCAPCA and their attorney on a number of occasions, I've found them to be courteous, largely responsive and available, but the failure to communicate notice and let me preface this, I contacted their attorney, Ms. Wolkey, specifically as a professional courtesy because the agency is her client and we were engaged in negotiations regarding another violation, she told me not to contact the agency, the matter's on her desk, I should make my inquiry there. So I asked for notice of these determinations. I got the notice of the Determination of Significance, I did not receive the Mitigated Determination of Non-Significance, nor did I receive the NOC they'd issued last week despite the fact that they have filled two Public Records Requests since it issued and it was in neither one. So I'd like to echo Mr. Schwartz's request that the Board take a close look at this process and come up with some recommendations about how SCAPCA can improve the way it does business so that the playing field is level and so that the requirements of SEPA and particularly the Notice requirements are strictly adhered to. If that had been done in this case, much of the concerns you are hearing today could have been avoided. Thank you.

Matthew Pederson: Thank you Mr. Scott. Michelle Wolkey would you, please.

Michelle Wolkey: As you all know my name is Michelle Wolkey, I'm legal council for SCAPCA, have been in that capacity for it'll be three years or so now and as is apparent from the testimony that you've heard today, the application for a temporary asphalt plant at Perry Quarry has been contentious to say the least. We have Central Pre-Mix, Inland Asphalt consistently contending, sometimes through two and three extended phone calls a week, that the process is moving too slowly, it's costing too much money, we're going to sue SCAPCA, we should have just accepted the Determination of Non-Significance that was issued in 1999 and issued

the permit. At the same time we had comment from a homeowners association represent by council Meg Arpin, Margaret Arpin, contending that SCAPCA was not looking closely enough and that the zoning in that particular area did not allow for an asphalt plant. And I think it bears pointing out that upon receipt of a Notice of Construction, that Notice is placed on SCAPCA's web site as part of our rules and regulations. Give notice to anybody who might be concerned that, that type of facility is being sought. There was, as a result of that, I believe, that we got contact from the homeowners association in that area. Somewhat after the fact, we had contact from Spokane Rock Products contending that we were too easy on Central Pre-Mix. Overlaid on all of this was the primary issues which was can there be an asphalt plan at that location or not consistent with the County's zoning and I want to spend some time talking about that. The allegations have been made that SCAPCA wants to be in zoning and let me assure you we made every effort to not be involved in zoning. Initially we contacted the County and said; look we think you ought to take lead agency status on this matter because the issue is whether or not it is properly zoned. And that was, there was a conversation had in a letter received back from the County the recommendation was we suggest that the Spokane . . . parties circulate notice of withdrawal of the Determination of Non-Significance dated March 16th, 1999, make a new threshold determination, notify other agencies and then under that process we'll tell you whether it's properly zoned or not. We wanted to know from the outside, whether they'd take it on or whether they'd just tell us, is it zoned or not, it shouldn't be that difficult of a question you wouldn't think. Because of that, SCAPCA did withdraw and determine not to rely on the 1999 Determination of Non-Significance. As has been stated earlier, things had changed up there, there was some question about whether through the zoning history and the conditions that were placed on the rezone and there's a letter in your packet where I tried to go through the what happened in 78', what happened in 80', what happened in 88', along all those lines to try and determine what the status was. Alright, in any event we issued a Determination of Significance specifically requesting comment on whether or not it was properly zoned. That was the issue, primarily. On the very last day of the comment period, we received a letter from the County and I'll just read it in part, it's July 11th, 2005, "In recognition of the above and subsequent modifications to the Spokane County Zoning Ordinance and Spokane County Zoning Code, it is clear that the conditions of approval attached to zone reclassification ZN-109-77 remain in effect and preclude the use of the subject site for an asphalt plant". Based on that, it's the last day of the comment period, based on that we issue a Mitigated Determination of Non-Significance as to comply with what the County requires. Then on July 14th, your letter says nope, we've looked at it again and we've decided that in-fact having an asphalt plant at that location is allowed under the zoning code. In connection with the County's determination that the primary issue surrounding this application had been resolved and that there wasn't a zoning issue, we issued a Final Mitigated Determination of Non-Significance referencing the latest letter from the County. Shortly after that the Notice of Construction was issued. Now part of the question has been, did SCAPCA act appropriately in even raising that issue? Well, in order to have a Notice of Construction you have to submit a complete application and under the regulations for SCAPCA, part of the required information is that the owner or operator shall provide documentation that the requirements of the Spokane Environmental Ordinance have been met and the Spokane Environmental Ordinance includes as a relevant inquiry whether the proposal is compatible with existing and projected land uses and plans. That pulls in that before we can issue a

Notice of Construction, we need to know that the Spokane Environmental Ordinance has been complied with and we didn't have that until that last letter from the County. There's also been comment about no opportunity to have public comment by Mr. Scott. The NOC went on the web site, there was a Determination of Non or Determination of Significance that was published in the newspaper, there was then the Mitigated Determination of Non-Significance that was published in the newspaper, all of which had comment periods attached, not a work from Spokane Rock Products and it's, it's interesting to note too the initial conversation I had with Mr. Scott, I asked him are you representing someone and he was reluctant and didn't advise me that he had any particular client on who's behalf he was inquiring and in fact my recollection is he tried to make it clear to me that it didn't have anything to do with Spokane Rock Products, not that that's really neither here nor there at this point, but certainly wasn't something that I was aware of even going through this process. He did send me an e-mail, asked me for copies of specific documents, which I forwarded to him immediately. At no time did I have a generalized request, Michelle call me anytime anything happens on this file and I couldn't have complied with that anyway, probably. So to give you yet a better feel for how contentious this has been, multiple threats of litigation against SCAPCA by all sides, multiple appeals to the PCHB which were filed over a preliminary DS that was withdrawn. There have been behind the scenes comments, personal attacks to some degree about who's doing what to who and who's being forthcoming and who's not and, and now we're here today. And I don't go through all of that to come across as whining, that is the system working. SCAPCA should get pressure from Spokane Rock Products. They should get pressure from the Homeowners Association. They should get pressure from the applicant and we should take all of that into account, which we did. We review the applicable law and we make the decision that we believe is in compliance with the law and it's going to make some people unhappy. Some people are going to disagree and that's what's happened here. But the system provides for a remedy for that and that is if, if any one of the parties believes or every one of the parties believes that we have made a misstep, then there is the appeals process to the PCHB. And those regulations are put so that you have people who are familiar with this, familiar with the SEPA process and they can decide whether or not we've made a mistake. And I can tell you we made every effort not to make a mistake. We were careful, we contacted the State Department of Ecology and their SEPA specialist, we made every effort not to mess it up. And I want to talk to about this representation of the PCHB process is, is horrible and expensive and you have to take everybody to Olympia. In the time that I've been representing SCAPCA, there have been a lot of PCHB matters. Only one time were we told that we were gonna have to go to Olympia. As a matter of course, they come to Spokane and set up those hearings. The only time they couldn't is they ran out of budget money and that was the only time we were faced with potentially having to go to Olympia. And the process itself is set up in State Law, it's not SCAPCA's rules, it's State Law that SCAPCA has adopted. It provides for when a Notice of Violation or a Notice of Construction is issued, you file an appeal. Then they offer a free mediation service and they will fly somebody from PCHB over here to conduct a mediation. If that is unsuccessful, they come over here and they have a hearing. They work with council and their schedules. They go to where ever the majority of the witnesses are, which only makes sense. The bottom line here, SCAPCA had legitimate concerns raised by members of the public, who are equally as valid in their opinions as anyone else sitting in this room, that the zoning didn't allow an asphalt plant in

their neighborhood and that a mistake had been made in 99'. If a mistake had been made in 99', we wanted to remedy that. So we issued a Determination of Significance, saying tell us, just tell us, do you have an asphalt plant there or not. We got the response which was yeh or no you can't have an asphalt plant there, so we issued a Mitigated Determination of Non-Significance saying comply with what the County needs. Then we got a different decision and so we revised the Mitigated Determination of Non-Significance to address that letter. The issue was confusing, at best, it was hotly contested. We made every effort to dot all the "Is" and cross all the "Ts" and make sure that everyone was heard, everyone was considered, but we did what the law required us to do. I'm happy to answer any questions, I can't address Northwest Renovators, I don't have any experience or contact on that matter.

Matthew Pederson: Mr. Mielke.

Commissioner Mielke: Thank you, I've got a few questions. Let me just start with trying to make sure whether or not we have an agreement with regard to what the statute says. I think it was Mr. Schwartz that made reference about a pre-existing facility. I think the implication was that the issue was you've got a quarry with a mining permit that's existed for 50 plus years. I think there was reference to a state statute that says that with regard to future building permits in the surrounding areas within a thousand feet, those need to be specified on the building permit that, that is allowed and that there's a presumption of noise and things like that. Is there a disagreement on a legal perspective of whether that requirement exists in statute?

Michelle Wolkey: If I understand you correctly, I think we have two different items going on at the same time. There certainly is, as part of the County's regulations, a requirement that there be a Notice on Title with respect to the expectation of noise and that sort of thing.

Commissioner Mielke: Is that defined in statute or is that just a County Ordinance?

Michelle Wolkey: You know, Stan maybe you can help me on that, I'm not sure exactly, it maybe a combination of both but. . .

Stanley Schwartz: It's a combination of both. The GMA requires that, that be placed on the plan on the building permit and then the County copy has a plan that actually goes a step further and highlights specific issues that can arise with respect to a residence locating next to an industrial mining site.

Commissioner Mielke: Okay.

Michelle Wolkey: The second part of what I heard your comment in question to be had to do with is SCAPCA obligated to abide by the 99' Determination of Non-Significance.

Commissioner Mielke: That was my next question.

Michelle Wolkey: Okay and the answer is they have the discretion to rely on it if they choose to, if there is potentially new information of a probable, significant environmental impact or there may be

incomplete information that was provided in 1999. They have the ability not to rely on that and make a new threshold determination, which is what we elected to do in this particular case.

Commissioner Mielke: I guess I'm still trying to understand, with regard to a SEPA review process, how much of that comes under the guise of SCAPCA, how much of that comes under the guise of Spokane County Building and Planning. I understand that as SCAPCA goes through its review, one of the questions that you have to address is, is this a permitted use within the zone and to me that's a pretty simple yes, no question and that SCAPCA's role does not go beyond a yes, no question. And it sounds like there was really some ambiguity with regard to the response that was received back from the County Building and Planning Department. My concern is, number one, that there was ever a presumption that the County Building and Planning erred in 1999 in permitting a temporary plant at that site and the reason I say that is we're second guessing another regulatory body about how they applied the rules. I mean to me my question of clarification would be, we have to answer the question of, is this permitted use within this zone, yes or no? The question is, is we understand there was a facility, plant at this location back in 99', are we too presume that this is a permitted use within this zone and then we wait for a response from County Building and Planning Department to say yes or no and like I say, I do understand the ambiguity but what concerns me is the part of the story that says, well SCAPCA thinks that another regulatory agency may have erred in their application of their own rules. That concerns me that you would go back, that would be like me saying, well Building and Planning came in and decided that SCAPCA erred in its interpretation of air quality laws in 1998 and so we're going to open that all back up again. It just doesn't make sense to me, it doesn't connect.

Michelle Wolkey: Can I comment briefly on that? (Commissioner Mielke "Please".) Two problems with that, number one the Determination of Non-Significance in 1999 was SCAPCA's, it was our own Determination of Non-Significance, so it would have been our err in 1999.

Commissioner Mielke: Okay. But with regard to the zoning.

Michelle Wolkey: There was no comment from the County, at all in 99'. Now if the County had said in 99', we've looked at this, it's zoned appropriately, no problem. That would have been certainly much easier on our end. But there was no comment in 99' and it was our Determination of Non-Significance.

Commissioner Mielke: Alright. So the Determination of Non-Significance in 1999, with regard to the question of zoning, was not challenged by Spokane County Building and Planning in 1999?

Michelle Wolkey: There was no comment received.

Commissioner Mielke: So I guess when you make a request and you don't get a response, you presume everything's okay.

Michelle Wolkey: I think that's exactly what we did in 99'.

Commissioner Mielke: Okay and I think that's legitimate, let me just say that. So you proceed forward, you comeback and I do understand that it appears that there's another debatable issue which is temporary versus permanent. I'm gonna try to avoid that and just assume that the assumption in all, for simplicity purposes, is temporary in 99' and temporary in 2005. So if it was a SCAPCA determination in 1999 with regard to zoning and there was no challenge made by Spokane County Building and Planning, why would SCAPCA go back and say we think there was an err done in 1999? Why even rehash it?

Michelle Wolkey: Because we had contact from the Homeowners in the area raising it as an issue and in looking at it, SCAPCA had concerns that perhaps it had been messed up in 99'. There are a lot more houses out there now, lot more homeowners out there and in SCAPCA's view, we needed a formal understanding, if you will, from the County, it's okay or it's not.

Commissioner Mielke: Okay and my last observation with regard to this specific case; it appears that the 1999 Determination wasn't ruled out in its entirety. That pieces of it were brought to the attention of SCAPCA and that pieces of it were determined to have been in error as opposed, because I think the accusation was how can you say the 1999 data was incorrect and then go back and in your ultimate decision, rely on 1999 data that was presented. You can't have it both ways unless the clarification here is, we didn't throw it out in its entirety, we just took specific pieces of that and so I guess I'm looking for some clarity.

Michelle Wolkey: Perhaps looking back the better way to phrase it would have been, we aren't going to accept the zoning determination of the 1999, I guess, the lack of a zoning determination in 1999. Because that was really the focal issue of the whole matter, is it properly zoned out there for that or not.

Commissioner Mielke: I guess I go back into the issue of regulatory jurisdiction and you know hind site is always wonderful but it seems like maybe the better way to handle this would have been to say, you know we have a yes, no question to answer and that is, is the zoning appropriate for this use, plain and simple. And it seems like the easiest way for this agency to have handled it is to simply say, we have not received an indication from Spokane County Building and Planning to either confirm or deny this particular use in this particular area and we can't move forward until we have some sort of formal acknowledgment that says it's okay. It's kind of like with so many things in growth management, when you have a checklist from outside agencies and you know you can't just ignore the fact that one box is still empty, you can't move forward until you know Spokane County Water answers the question and then it's up to the permit applicant to go back and sit at the door of whatever agency hasn't responded and say would you give me a letter. I say that having personally gone through that, waiting for an agency to respond that was simply being non-responsive.

Michelle Wolkey: We absolutely tried that. (Commissioner Mielke "okay".) I mean we had contact with the County. Joe Southwell went over and had a meeting and the oral representations were I don't think it's permitted there but you need to do a new threshold determination, put it through the SEPA process, then we'll give you a letter. I mean we would have much rather had just a letter at the beginning that says, yes it's fine or no it isn't. But the

recommendation and it's in a letter from the County, was that we make a new threshold determination and then at that point they'll comment formally.

Commissioner Harris: I guess, Michelle, what you're saying is that SCAPCA feels that they have the role to determine that the zoning is adequate or inadequate, that's what you're saying? You see I don't see that as SCAPCA's role. I think that, and I'm on the SCAPCA Board going on eleven years, I've never heard that before. Generally speaking, if someone says we don't think this should be in our neighborhood, we don't think it should be in this zone. Then the neighborhood approaches the County and says we don't feel that this should be allowed in that zone and then the County will determine if it should or should not be. I don't remember SCAPCA ever coming to the County and challenging the zoning. And there's three Commissioners in that office all the time and I can tell you, not one citizen called me and said they're trying to put this in our neighborhood and we think this zoning is wrong. Because if that had of been happening, I would have walked across to planning and said, I want a Determination on this and I want it today. So I think SCAPCA got there self into a little bit of an area that they shouldn't have been in. Again, like I said in the beginning, I'm not saying whether this asphalt plant should or should not be, I'm just saying that the procedure here seems like SCAPCA took on something that I don't think was in their purview because you know they're separate, if you want to call it that they're a separate level of government.

Michelle Wolkey: I would absolutely agree with you but for the part of the regulation that says in order to have a complete Notice of Construction, you have to show compliance with the Spokane Environmental Ordinance and that's, that's where we got hung up, I think.

Commissioner Harris: Okay, but you remember now, when the person that wants to build a facility comes in to get a building permit, they will not get a building permit if it is not allowed in that zone. So that safety catch is already there and if there's something on the paper that says it's SCAPCA's job then we need to look at that very close, because it's already there. I guarantee you our staff is not going to issue a building permit for something that's not allowed in the zoning.

Michelle Wolkey: Let me say on behalf of myself and all of the SCAPCA folks working through this, we have no desire to be making zoning determinations in the county, none. In fact, we would have been much happier if the County just had taken on lead agency status. I understand there's reasons they didn't and we just addressed the environmental

Commissioner Harris: Well the next time it happens, just for the safety of mind, tell the person to go call your Commissioner and let us worry about that. You see that's our responsibility, both to all the citizens regardless of what side of the fence they're on, but that's the process. And so by SCAPCA, I don't want to say to much here because I've got some stuff that I'm going to have to do that's not going to be fun for me. But anyway, SCAPCA should never ever take on something that's not in their purview. Now I don't know what you're talking about that it's required. I have a suspicion that, that's my old favorite statement, that opinions with attorneys are like ears, they both have two on every subject. So I think that, that's what I'm saying, and I've got a feeling there's one behind you that's not going to agree with that

either. But anyway, I don't know what document you're saying that says SCAPCA has to check with planning to ensure that it's allowed in that zone. I don't know what document you're talking about or rule or regulation. I need to read that, is that in the SCAPCA rules I have here somewhere?

Michelle Wolkey: I don't know if that was included in the packet, I don't think so.

Commissioner Harris: Is that a SCAPCA policy or is state law? Is it a department policy?

Michelle Wolkey: Yes, it's SCAPCA's rules and regulations and it just says the owner or operator shall provide documentation at the requirements of Article XI of this regulation, Spokane Environmental Ordinance have been met. And that's part of the information required in order to have a complete Notice of Construction and the 60 days that's been talked about doesn't start to run until you have a Complete Notice of Construction. And, and we were cognizant of the fact that Inland Asphalt wanted to get started doing asphalt and so how can we follow the rules, get the answers we need in the most efficient way possible and get them making asphalt that's appropriate. Any other questions? I think Matt will talk to you or address Northwest Renovators if you want.

Commissioner Mielke: I know you are not well versed in the Northwest Renovators case today to address that. I do have a question though that has come up in that case that I think is more generic in nature and that is with regard to records. The accusation that's been levied today is that we have an official document that's been doctored and I've got to tell you when you take a look at the two documents and you compare signatures and you compare the things that were over looked in the margin, which were the dates and the phone numbers to and from and all that, it appears very clearly, unless there's overwhelming evidence that can be presented to me otherwise, that the document was doctored. And from the legal perspective, whether we're talking about SCAPCA or any other agency, if a regulatory agency is making a determination based on an official document, to me it's not unethical and immoral, it borders on criminal if not out right criminal. There was a comment made earlier that what is the role of SCAPCA, and the role is to protect public health and safety and public health and safety is not served well when we have delays and we don't just get stuff cleaned up and prevent future harm to public health and safety and so as we review all the different information that flows through, this one really stands out. I guess I'm asking you as the attorney for SCAPCA, legally what are the guide lines with regard to this, because it certainly raises a red flag with me.

Michelle Wolkey: There should be no changing of documents, doctoring of documents, however you want to say it, of any sort particularly documents that come from a third party that represent Chain of Custody. I spent time at the U.S. Attorney's Office and those Chain of Custody's are critical to establishing that things have been handled appropriately and I have not seen those documents and I don't know of them at all. But certainly it absolutely is inappropriate if it happened.

Commissioner Harris: We had a case in the County not to many years ago. I'm gonna say this without saying if it was changed or not, but once a government agency receives a document, if anyone in that government agency changes that document and sends it out, than it becomes falsification

of government documents. And with that alone, it could, I'm not saying it does, but it could be cause for invoking a grand jury investigation of that department. So this is something we don't want to talk a whole lot about here, because I want you to know that I will be going and I'm sure with my other colleagues on the Board, but I will do it either way, I will be going and setting down with the Prosecuting Attorney of Spokane County and ask him to have an investigation on this document. The reason I'm going to do that, I don't know who did it, but the important thing is that once that investigation is over, somebody's going to get vindicated. It could be that SCAPCA had nothing to do with that document and it could be that they did. The only way we're going to find out, is to have that document investigated. I don't have the original documents, but still yet, just so you know Michelle, I'm going to have to do that. I'm obligated under my oath of office to do that.

Michelle Wolkey: I think it's absolutely appropriate to do that. If there is some misconduct going on, we need to know that.

Commissioner Harris: Well the reason I was going to point it out that way that's not to try and threaten anybody. It's just sometimes in these situations we hear a lot of stuff and a lot of stuff we can okay, this we could do and not do, but some things under the oath of office we must do and this is one of them I must do.

Michelle Wolkey: Any other questions for me?

Matthew Pederson: Thank you Michelle. We are reaching our time constraints today, is there any further public comment from the audience today. Please approach the podium and state your name.

Mike Noder: Good morning, Mike Noder, MoMike Demolition. I specialize in demolition work and I'm very familiar with asbestos regulations, so I'd like to speak to just that portion of it, the asbestos portion of it. But before I do I'd like to acknowledge the SCAPCA staff of Matt and Deirdre, they're very courteous people, very responsible and I think they're trying to do a good job for the agency. But having worked in jurisdictions throughout Washington, Idaho and Montana, there's no question that Spokane County's the most difficult, most time consuming and almost impossible to comply with. The direction we receive from SCAPCA often times is conflicting and unreliable and then they seek to cite us after giving us that direction. I think the future here and then I have testimonies and cases I can give you right now that will support my case, but I'm not going to get into it. But if you go on, if you're gonna pursue this further, I'd like the opportunity to lay out some of the problems and I think the problem really is administrative oversight. The agency is so concerned about citations and the representation of citing people, that's like their level of performance; they're really not seemed to be geared to solving the problems. Asbestos can be very difficult and SCAPCA should be the forefront of solving those problems so they can officially move this stuff out of the, out of the, out of the community so it's not harmful to the environment, but they're almost as much of the problem, they're more of the problem then they are the solution. So I'll leave you my phone number, its 535-1718, MoMike Demolition, my name is Mike Noder. So if you want to look at the administrative oversight of this area, I'd like to participate in that and I think I can be of help. Thank you.

Matthew Pederson: Thank you, is there any further comment from the audience? Yes mam.

Ann Bailey: My name is Ann Bailey and I work for Eastern Washington University, I'm the risk manager. Yesterday we received comments, as we do our own building inspections and such out there, and we received a fax from the compliance officer asking questions on its Q and A sheet on asbestos. What I get from this is we have rules as an AHERA Building Inspector that we have to follow and that's what the articles from SCAPCA's rules say; that we have to do a building inspection per their article, per AHERA guidelines, but then it talks about soil sampling and ash sampling and such of that and it's under my impression that SCAPCA is an air pollution control authority; and when they're telling us that if we have a burn structure, Eastern has not had any, but I have concern and I have seen such that it's like they are changing things without a public hearing being held or public comment. I don't know if they are trying to make it that their guidelines and this is how it is going to be, like putting plastic all over sites, some sites have to do it, some sites don't have to do it. Some people have to follow regulations, some don't and then talks about these grid areas, that's an EPA regulation on soil sampling, has nothing to do with air sampling. So anything to do usually with asbestos and usually it goes by general practice of how things have been done beforehand. But to me it's like they are trying to get regulations that are in there, put in there on their questions and answers without changing their articles. Their articles are pretty vague saying they have to have an approved survey method, that they have an alternative survey. No where in their article or in the RCW does it say that in the alternate work method that there has to be grid sampling, that's put into play that falls to soil sampling. So I have great concern that they're changing regulations without the proper notice and I just wanted to state that. Thank you.

Matthew Pederson: Thank you. At this time I'll ask the Board if they would like to adjourn at this time or see a continuation of this meeting at a later date, if necessary. I'm not certain that there is one but I'll open it up to you.

Michele Pope: I'm going to go along with what everybody else wants to do. Do you mean adjourn temporarily right now and reconvene or are you talking about just having an entire other date to discuss this?

Matthew Pederson: An entire other date.

Commissioner Mielke: I think the purpose of this meeting was to kind of look at the bigger picture of process. With regard to that, I would like to role that topic forward to the regularly scheduled September meeting as part of the agenda items. There's one issue that was presented today that I think is a little bit more time sensitive and that is with regard to a building that's been sitting since 2001, that has been determined as a dangerous building, there are you know potential health hazards, whether it be from asbestos or whether it be from falling bricks. We have the threat of daily fines for what is presumed to be inactivity on the part of the owners. I think it's very clear that sense the time the County sold this structure, that there has been on going discussions and on going activity with trying to find a way to resolve the problem, fix this situation, address public health and move on. We're not exactly getting to a point where we as an agency are seeing eye-to-eye. My biggest concern is you know Environmental Law

and Environmental Regulations are extremely challenging and the challenge to them that I keep falling back on is, lets make decisions because they make sense and because there is scientific basis for doing that; as opposed to something that is a little bit more speculative and potentially can waste valuable resources. What I would like to see come out of this meeting today, beyond moving the bigger issue to the September meeting, is as a Board, provide some sort of direction with regard to this Sprague location and Northwest Renovators. My suggestion is with all the information that has been presented today and if you look back into 2001 information that was presented, you had an analysis that was done on that site that clearly goes through and does an asbestos survey. I don't think I have heard any information that challenges the accuracy of the survey that was done in 2001. If anything, I see that it is reinforced through SCAPCA's own correspondence making reference to that same period of time where they say that we've had surveys done on the adjacent structures that were burned and this is what we found. So we've had surveys done that were done at and about the time of the fire. We've had SCAPCA acknowledge that those surveys seem to work well with regard to the alternative means. We have more recent surveys that were done and we seem to also have an attitude that, I don't care what the science says we're not going to accept it. That's the one I have real problems with because I think that there is an effort that I'm seeing to try to resolve this issue. So I guess I would make two recommendations; number one, we hold in abeyance any threat of financial fine or penalty as we work through this; and second, I think the direction should be if you're going to wait the scientific evidence, I've seen two or three surveys done that gives pretty detailed analysis of asbestos and I'm no asbestos expert, but I at least know enough to go higher the expert to find out and so we've got two or three reports that show that it is a surveyable site, we should be seeking out the science that tells us how extensive is the exposure and if it's limited than great and if that's what the science tells us then great. If it's more extensive than that, we need to know and I think there's a commandment to say, okay lets make sure we get it all. I would encourage us, I think there needs to be a direction that we go back and that we review those surveys that were done, that we agree that we rely on the data from those surveys and that we move forward in trying to mitigate what has been a public health hazard since 2001. I would like an update of this at the September meeting and I want a Board direction today that we hold in abeyance any financial penalty or fines, because I think that in this case SCAPCA holds a larger share of the blame of not moving forward on this resolution than the owners do. I mean, I don't see any value in getting to a point where you disagree over the science and then you say fine lets just stop talking, let's just start assessing fines. That doesn't resolve the public health hazard and that is my recommendation today. Moving away from the project on Sprague, I do have a concern with regard to are we trying to resolve public health issues or are we simply trying to go out and assess fines. I know of another situation that wasn't mentioned today where to my knowledge we have had a former corporate citizen in this community that intentionally released emissions for a period of 60 or 90 days and a penalty was negotiated down to \$2,500. We have, I think the largest penalty that this agency has ever assessed is \$50,000, to my knowledge and yet I know of one case out there where we have done this thing where we have imposed a violation fine every day and I think the penalty on somebody that said I didn't know I needed a permit because the City of Spokane's demolition permit didn't say contact SCAPCA, is facing I think a \$120,000 fine with no offer to attempt to mitigate it. So I am extremely concerned about what is it that we're trying to accomplish. Are we trying to protect public health or are we simply out there trying to generate revenue sources and

bankrupt people and not resolve health hazards? That's an issue that we're going to save for another day and address that hopefully as we review what it is that we try to do at SCAPCA. I do think that we have one that is time sensitive and that's part of the reason why we didn't kick this topic today out until September and that is we're the agency and we are threatening daily fines and I think that we need to address it. I think I've said enough. So I don't know if you want that in the form of a motion or what.

Matthew Pederson: Yes, that would be good.

Commissioner Harris: Before the Motion, I want to ask a question. I don't have the RCW in front of me, (Michelle Wolkey stated "We're limited to whatever is on the Agenda as far as what we can do in a special notice if there's no action items identified on the Agenda.") So we cannot make the motion?

Matthew Pederson: We may amend the Agenda also. (Michelle Wolkey stated "Up to 24-hours in advance of the meeting.") For a special meeting? Thank you.

Commissioner Harris: And that's what I'm trying to find out. It's not that I'm against the Motion but I don't know if it was advertised for action, if it was not, then we can't make the Motion.

Eric Skelton: The Board Agenda item on Northwest Renovators, item number 2d. says Board Discussion/Action. I would read that to mean that the Board can take an action relative to Northwest Renovators.

Commissioner Harris: Well lets let Michelle tell us so we can blame it on her if we get challenged. (Michelle Wolkey stated "I have broad shoulders.") It's one of those two ears deals. (Michelle Wolkey stated "With the fact that it says Board Discussion/Action, with respect to Northwest Renovators, I don't think we can say no to that.")

Matthew Pederson: Mr. Mielke if you would please make your Motion.

Commissioner Mielke: Mr. Chair, I think I want to split this into two separate motions because it might be easier for whoever's taking notes. My first Motion would be that we hold in abeyance any penalties, fines or other financial penalties with regard to the resolution of the property at 8702 E. Sprague owned by the owners of Northwest Renovators and that it be further considered at the September meeting. That will make more sense when I make my second Motion.

Commissioner Harris: I'll second it, I'm kind of scared that you're able to read my mind.

Commissioner Mielke: Let me clarify before this goes to a vote because part of this is tied to my second Motion. My second Motion is going to be that a plan be presented back to this Board on how to resolve this issue at the September meeting and I'd like to see that plan before we make a decision, that's why we are just holding the penalties and all that in abeyance until such time as this issue is further discussed at the September meeting.

Commissioner Harris: Call for a question.

Matthew Pederson: Okay, thank you. We have a first motion by Mr. Mielke and a second by Mr. Harris, is there any further discussion on that? Seeing none, all in favor say "I", (Commissioner Harris, Commissioner Mielke, Michele Pope and Matthew Pederson replied "I"). Those opposed; none.

Commissioner Mielke: Mr. Chair, I'd like to make a second Motion. My second Motion is to direct SCAPCA staff to review the, I'll just call them the asbestos surveys, that we know to exist and that we develop a specific plan of remediation for this site to be presented back to this Board at the September meeting and I would like to see it with the expectation that it be scientifically sound. That's my motion and I'll speak to it in a moment.

Commissioner Harris: I second it.

Matthew Pederson: We have motion by Mr. Mielke and a second by Mr. Harris, any further discussion?

Commissioner Mielke: Mr. Chair, my intent on this one is I do not want to see any party come back here and say, you can't prove that it is and you can't prove that it isn't, so we're just going to make an assumption one way or the other. That's why we invest in scientific surveys, that's why we hire experts who have gone through the training to do that and I expect there to be some sort of reliance on scientific data as we put together a remediation plan for this site.

Matthew Pederson: I absolutely agree with that. With no further discussion, all in favor say "I", (Michele Pope, Commissioner Harris, Commissioner Mielke, and Matthew Pederson replied "I"). Those opposed? Being none the Motion passes. With that do we have a motion to adjourn?

Commissioner Mielke: Move to adjourn.

Matthew Pederson: Motion to adjourn. Second, all in favor say "I", (Commissioner Harris, Commissioner Mielke, Michele Pope and Matthew Pederson replied "I"). This closes this meeting of the Spokane County Air Pollution Control Authority special meeting on August 18th at 12:12 p.m.

The next Board Meeting will be September 1, 2005 at 9:00 a.m. in the lower level of the Public Works Building.

MATTHEW PEDERSON, CHAIR

RON EDGAR, SECRETARY