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POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

FRIENDS OF GRAYS HARBOR, GRAYS)	
HARBOR AUDUBON SOCIETY,)	
NATURAL RESOURCES DEFENSE)	PCHB NO. 24-037
COUNCIL, TWIN HARBORS)	
WATERKEEPER, and WILD ORCA,)	
)	
Appellants,)	APPELLANTS' PROPOSED LEGAL ISSUES
)	AND PRELIMINARY WITNESS AND
v.)	EXHIBIT LISTS
)	
OLYMPIC REGION CLEAN AIR AGENCY,)	
THE CITY OF HOQUIAM, and PACIFIC)	
NORTHWEST RENEWABLE ENERGY,)	
LLC,)	
)	
Respondents.)	
)	

In accordance with the Pollution Control Hearings Board's (the "Board") June 24, July 1, July 16, and July 22, 2024 Pre-Hearing Letters, Appellants Friends of Grays Harbor, Grays Harbor Audubon Society, Natural Resources Defense Council, Twin Harbors Waterkeeper, and Wild Orca respectfully submit the following proposed list of legal issues and preliminary lists of exhibits and witnesses.

1 PROPOSED LIST OF LEGAL ISSUES

2 Challenges to Olympic Region Clean Air Agency’s Order of Approval

3 1. Did the Olympic Region Clean Air Agency (“ORCAA”) erroneously issue Order
4 of Approval No. 23NOC1606 (“Air Permit”) to Pacific Northwest Renewable Energy, LLC,
5 (“PNWRE”) without requiring pre-construction case-by-case Maximum Achievable Control
6 Technology (“MACT”) analysis because ORCAA incorrectly determined the facility would be a
7 minor, rather than major, source of Hazardous Air Pollutants (“HAPs”)?

8 2. Did ORCAA erroneously issue the Air Permit based on deficient, incorrect, or
9 incomplete emission calculations and assumptions, including but not limited to the following:

- 10 a. failing to use emission factors specific to wood pellet plants to calculate
11 emissions;
- 12 b. concluding that PNWRE’s emission units, including but not limited to, the
13 pelletizers and pellet coolers will emit zero HAP emissions (Emission Source
14 ID EP-08);
- 15 c. approving the use of AP-42 emission factors to calculate the HAP emissions,
16 from emission units, including but not limited to, the dry hammermills and
17 drum dryer (Emission Source ID EP-07 and EP-02, respectively);
- 18 d. concluding that PNWRE’s wood-fired furnace will not emit any hydrochloric
19 acid (a listed HAP)? (Emission Source ID EP-02);
- 20 e. concluding that Storage Piles (Emission Source ID SP-01-03), Dry Product
Intermediate Storage (Emission Source ID EP-03 & 04 and Pellet Storage
21 Silos Emission Source ID EP-10-15) emit zero HAPs;
- 22 f. calculating fugitive emissions from PNWRE’s proposed project; and
- 23 g. assuming tree species in Washington emit lower rates of HAPs when
24 processed at pellet plants as compared to other regions.

25 3. Did ORCAA erroneously issue the Air Permit based on an inaccurate and
26 incomplete Ambient Impact Review for Air Toxics (*i.e.*, HAPs) because ORCAA and PNWRE
substantially underestimated these emissions?

1 4. In addition to its failure to correctly determine the Project’s potential-to-emit
2 HAPs, did ORCAA erroneously issue the Air Permit because it relied on flawed calculations and
3 data to determine the Project’s potential-to-emit volatile organic compounds (“VOCs”), nitrogen
4 oxides (“NOx”), greenhouse gas emissions, and dust (PM 2.5 and PM 10)?

5 5. Did ORCAA erroneously issue the Air Permit without sufficient public notice and
6 opportunity for public participation because ORCAA’s Preliminary Determination listed
7 incorrect emission estimates?

8 6. Did ORCAA erroneously issue the Air Permit without sufficient public notice and
9 opportunity for public participation because ORCAA’s ultimate determination regarding MACT
10 applicability was premised on information not in the record during the public comment period?

11 7. Did ORCAA violate SEPA when it issued the Air Permit by relying on an invalid
12 Determination of Nonsignificance (“DNS”) that failed to consider all environmental factors,
13 including but not limited to:

- 14 a. accurate data with regards to air emissions during Project operation;
- 15 b. the direct, indirect, and cumulative impacts of transporting wood products to
16 the facility by truck, processing them into pellets, exporting the pellets via
17 marine vessel, and burning the pellets to produce energy, including
18 operational impacts to noise, traffic, recreation, ocean uses, aesthetics, air
19 pollution, and greenhouse gas emissions;
- 20 c. the inducing impact of increased logging in the vicinity of the Project; and
- 21 d. the precedential nature of this decision relative to other expected proposals in
22 Washington State to build and operate industrial wood pellet plants.

23 8. Did ORCAA violate the requirements of the Ocean Resources Management Act
24 when it issued the Air Permit by failing to consider or address any of the required criteria with
25 respect to “uses or activities that require federal, state, or local government permits or other
26 approvals and that will adversely impact renewable resources, marine life, fishing, aquaculture,

1 recreation, navigation, air or water quality, or other existing ocean or coastal uses,”
2 RCW43.143.030, particularly for sensitive areas like the Grays Harbor estuaries. WAC 173-26-
3 360(6)(d).

4 Challenges to the City of Hoquiam’s Determination of Nonsignificance

5 9. Did Hoquiam violate WAC 197-11-340(3)(a) by failing to withdraw the July 24,
6 2023, Determination of Nonsignificance (“DNS”) in the face of significant new information on
7 the Project’s probable significant adverse environmental impacts and the fact that the DNS was
8 based on information that failed to disclose material issues?

9 10. Did Hoquiam violate SEPA by failing to disclose all environmental factors,
10 including but not limited to:

- 11 a. the direct, indirect, and cumulative impacts of transporting wood products to
12 the facility by truck, processing them into pellets, transporting the pellets via
13 marine vessel, and burning the pellets to produce energy, including impacts to
14 noise, traffic, recreation, ocean uses, aesthetics, air pollution, and increases in
15 greenhouse gas emissions;
- 16 b. the inducing impact of increasing logging in the vicinity of the Project; and
- 17 c. the precedential nature of this decision relative to other expected proposals in
18 Washington State to build and operate industrial wood pellet plants to
19 conclude that the Project would not have significant environmental impacts.

20 11. Did Hoquiam violate SEPA by:

- 21 a. limiting consideration of environmental impacts to the immediate impacts of
22 constructing the facility;
- 23 b. relying on inaccurate information, including an inaccurate assessment of air
24 pollution emissions at the facility, including, but not limited to, greenhouse
25 gases, VOCs, and HAPs;
- 26 c. failing to disclose material information about the Project, including, but not
limited to VOC and HAPs emissions, emissions from outdoor storage piles,
transportation and loading emissions, sources and types of wood, off-site
emissions; and

- 1 d. failing to perform a life-cycle greenhouse gas analysis of the direct, indirect,
2 and cumulative greenhouse gas impacts of producing, transporting, and
3 burning the wood pellets.

3 12. Did Hoquiam violate the requirements of the Ocean Resources Management Act
4 by failing to consider or address any of the required criteria with respect to “uses or activities
5 that require federal, state, or local government permits or other approvals and that will adversely
6 impact renewable resources, marine life, fishing, aquaculture, recreation, navigation, air or water
7 quality, or other existing ocean or coastal uses,” RCW 43.143.030, particularly for sensitive
8 areas like the Grays Harbor estuaries. WAC 173-26-360(6)(d).

9 PRELIMINARY LIST OF WITNESSES

10 Appellants are at an early stage of developing this case and reserve the right to further
11 refine and expand this list consistent with the discovery schedule and Board orders in these
12 appeals. At this early stage of the case, appellants anticipate potentially calling multiple
13 witnesses including but not limited to the following:

- 14 1. Dr. Ranajit Sahu, Ph.D, on emissions and impacts from PNWRE’s proposed
15 Project approved by ORCAA.
- 16 2. Additional expert witnesses: 2-3 on issues including air emissions from particular
17 wood sources and harm from dust and fines on estuaries and shorelines.
- 18 3. Jennifer Demay, Mark Goodin, Robert Moody, Nancy Wood Siglin, Lauren
19 Whybew, and other staff at ORCAA as identified through discovery.
- 20 4. Ed Warner and other staff at Environmental Science Associates as identified
21 through discovery.
- 22 5. Brandon Henderson and other staff at PNWRE and consultants as identified
23 through discovery.
- 24 6. Dorian Wylie, Brian Shay, and other staff at the City of Hoquiam as identified
25 through discovery.

23 Appellants also plan to file sworn declarations from members of appellants’
24 organizations for the purposes of establishing standing prior to the hearing. Undersigned counsel

1 will work with counsel for other parties to determine whether such witnesses need to present
2 testimony at the hearing.

3 Petitioners reserve the right to call witnesses identified by any other party on the
4 preliminary or final witness and exhibit list, as well as the right to call additional rebuttal
5 witnesses.

6 PRELIMINARY LIST OF EXHIBITS

7 Appellants are at an early stage of developing this case and have not yet conducted
8 discovery nor obtained complete work from their experts. Accordingly, Appellants reserve the
9 right to identify additional exhibits as the case proceeds, whether they are identified through
10 discovery, further review of documents related to the case, investigation of the case and/or
11 arising from filings, submittals, statements or admissions of the parties.

12 At this early stage of the case, Appellants anticipate potentially introducing the following
13 exhibits:

- 14 1. All drafts of the Permit application and any attachments, exhibits, and supporting
15 documents submitted to ORCAA.
- 16 2. All drafts of ORCAA's Preliminary Determination to approve the Permit.
- 17 3. All drafts of ORCAA's Final Determination to approve the Permit and any
18 attachments or exhibits.
- 19 4. All drafts of ORCAA's Approval Order.
- 20 5. ORCAA's review checklists for the Permit.
- 21 6. Meeting notes between ORCAA, including any agent acting on its behalf, and
22 PNWRE, including any agent acting on its behalf, related to the Permit
23 application and Permit.
- 24 7. ORCAA's meeting notes, including but not limited to engineering agenda and
25 meeting notes, concerning PNWRE's Permit application and Permit.
- 26 8. Letter from Southern Environmental Law Center to ORCAA regarding
deficiencies in the Preliminary Determination for PNWRE dated January 8, 2024,
including all linked information.

- 1 9. Natural Resources Defense Council et al.'s Comments on ORCAA's Preliminary
2 Determination with all linked information, attachments, and exhibits.
- 3 10. National Parks Conservation Association's Comments on ORCAA's Preliminary
4 Determination with all linked information, attachments, and exhibits.
- 5 11. Other Comments on ORCAA's Preliminary Determination with all linked
6 information, attachments, and exhibits.
- 7 12. ORCAA and PNWRE's responses to comments on ORCAA's Preliminary
8 Determination and all attachments, exhibits, and supporting documents.
- 9 13. Letter from Jennifer Pohlman, Trinity to Danny Phipps, Southwest Clean Air
10 Agency, re: Completeness Determination for ADP Application CO-1057, Aug.
11 25, 2022, (Pinnacle Renewable Holdings Inc. (Drax) Revised Air Permit
12 Application to construct a wood pellet facility in Longview, Washington) with all
13 attachments, exhibits, and supporting documents.
- 14 14. Pinnacle Renewable Holdings Inc. (Drax), Air Discharge Permit Application
15 Wood Pellet Production Facility (CO-1057) with all attachments, exhibits, and
16 supporting documents.
- 17 15. Emails by and between Southwest Clean Air Agency, including any agent acting
18 on its behalf, and Drax, including any agent acting on its behalf, that concern
19 Drax's Air Permit Application to construct a wood pellet facility in Longview
20 with any attachments thereto.
- 21 16. Clint Lamoreaux, Southwest Clean Air Agency, Phone Notes re. Drax Longview,
22 call with Cody Crytzer, Cowlitz County (Feb. 6, 2024).
- 23 17. Letter from Uri Papish, Southwest Clean Air Agency to Cody Crytzer, Cowlitz
24 County, Re: Drax Longview Pellet Mill (Pinnacle Renewable Holdings), Feb. 14,
25 2024.
- 26 18. Email from Tina Hallock, Southwest Clean Air Agency to Kristen Boyles,
Earthjustice, Re: Drax Longview Draft Air Discharge Permit (Mar. 21, 2024).
19. Southwest Clean Air Agency, Special Permit Notice re: Southwest Clean Air
Agency Withdrawal of Draft Air Discharge Permit 24-3624,
<https://www.swcleanair.gov/permits/publichearings.asp>.
20. U.S. EPA, Office of Compliance and Assurance, EPA Reminder About
Inappropriate Use of AP-42 Emission Factors (Nov. 2021),
[https://www.epa.gov/sites/default/files/2021-01/documents/ap42-
enforcementalert.pdf](https://www.epa.gov/sites/default/files/2021-01/documents/ap42-enforcementalert.pdf).
21. AP-42, Fifth Edition Compilation of Air Pollutant Emissions Factors, Volume 1:
Stationary Point and Area Sources.
22. State of Louisiana Department of Environmental Quality, Consolidated
Compliance Order and Notice of Potential Penalty Enforcement, No. AE-CN-23-
00806 (Jan. 31, 2024).
23. Drax Morehouse BioEnergy, Emission Compliance Test Report (Apr. 2016).

- 1 24. Drax Amite BioEnergy, Emission Compliance Test Report (Feb. 2016).
- 2 25. Drax Amite BioEnergy, Stack Test Report (Sep. 3, 2021).
- 3 26. Enviva Pellets Cottondale, Compliance Test Report (Mar. 18, 2022).
- 4 27. Southern Environmental Law Center, *Pellet Mill Violations in the South*,
5 [https://www.southernenvironment.org/wp-content/uploads/2024/06/Pellet-Mill-](https://www.southernenvironment.org/wp-content/uploads/2024/06/Pellet-Mill-Violations-in-the-South-updated-2024-06-05.pdf)
6 [Violations-in-the-South-updated-2024-06-05.pdf](https://www.southernenvironment.org/wp-content/uploads/2024/06/Pellet-Mill-Violations-in-the-South-updated-2024-06-05.pdf).
- 7 28. Michael Milota, *Emissions from Wood Drying: The Science and the Issues*, Forest
8 Products Journal, 2000, Issue 50 (6).
- 9 29. Michael Milota & Paul Mosher, *Emissions of Hazardous Air Pollutants from*
10 *Lumber Drying*, Forest Products Journal, July 2008 Issue 7/8.
- 11 30. Correspondence, including but not limited to emails and texts, by and between
12 ORCAA, including any agent acting on its behalf, and PNWRE, including any
13 agent acting on its behalf, which concern PNWRE's Permit Application,
14 ORCAA's review of PNWRE's Permit application, ORCAA's preliminary
15 determination to approve PNWRE's Permit application, and ORCAA's final
16 determination to approve PNWRE's Permit.
- 17 31. Correspondence, including but not limited to emails and texts, by and between
18 ORCAA, including any agent acting on its behalf, and Environmental Science
19 Associates, including any agent acting on its behalf, which concern PNWRE's
20 Permit Application, ORCAA's review of PNWRE's Permit application,
21 ORCAA's preliminary determination to approve PNWRE's Permit application,
22 and ORCAA's final determination to approve PNWRE's Permit.
- 23 32. Correspondence, including but not limited to emails and texts, by and between
24 ORCAA, including any agent acting on its behalf, and the Southwest Clean Air
Agency, including any agent acting on its behalf, which concern PNWRE's Permit
Application, the Permit, and reviewing emissions from other proposed wood
pellet manufacturing plants in Washington State.
- 25 33. All drafts of PNWRE's SEPA checklist and any attachments, exhibits, and
26 supporting documents submitted to the City of Hoquiam.
34. All drafts of the City of Hoquiam's Determination of Nonsignificance.
35. Comment letter from the Washington Department of Ecology on the City of
Hoquiam's Draft Determination of Nonsignificance with all attachments and
exhibits, dated August 9, 2023.
36. PNWRE and the City of Hoquiam's responses to comments on the Determination
of Nonsignificance with any attachments, exhibits, and supporting documents.
37. Final Determination of Nonsignificance issued by the City of Hoquiam with any
attachments, exhibits, and supporting documents.
38. Timothy D. Searchinger & Steve Berry, *What Economics Does — or Doesn't —
Tell Us About the Climate Consequences of Using Wood* (Jun. 26, 2024),
<https://statics.teams.cdn.office.net/evergreen-assets/safelinks/1/atp-safelinks.html>.

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4 [23-woodybiomass-global-climate-brack-final2.pdf](https://www.chathamhouse.org/sites/default/files/publications/research/2017-02-23-woodybiomass-global-climate-brack-final2.pdf).
- 5 40. M. S. Booth, *Not Carbon Neutral: Assessing the Net Emissions Impact of*
6 *Residues Burned for Bioenergy*, 13 *Environmental Research Letters* No. 3, (Feb.
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12 *Pelletization and Bioenergy Use in the United States*, 219 *Renewable Energy*
13 *Part 2* (2023),
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16 *EU* (2021),
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20 *Forests, and the Case for Environmental Justice*, Rachel Carson Council (2019),
21 <https://rachelcarsoncouncil.org/wp-content/uploads/2019/01/Clear-Cut-web.pdf>.
- 22 45. National Resources Defense Council, *The Sustainable Biomass Program:*
23 *Smokescreen for Forest Destruction and Corporate Non-Accountability* (2017),
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- 26 46. Andy Dugan, *Demonstrating Biomass Sustainability*, Durham University (2023),
[http://etheses.dur.ac.uk/14831/1/DUGAN-](http://etheses.dur.ac.uk/14831/1/DUGAN-000797071_FINAL_FEB_2023.pdf?DDD15+)
[000797071_FINAL_FEB_2023.pdf?DDD15+](http://etheses.dur.ac.uk/14831/1/DUGAN-000797071_FINAL_FEB_2023.pdf?DDD15+).
47. The Application PNWRE submitted to the U.S. Forest Service for the Wood
Innovations Grants Program including all information and materials submitted in
support of the Application such as, but not limited to, appendices, reports, studies,
letters, assessments, engineering designs, and quotes.
48. The Application PNWRE submitted to the Washington Department of Commerce
for the Evergreen Manufacturing Grant Program including all information and
materials submitted in support of the Application such as, but not limited to,
appendices, reports, studies, letters, assessments, engineering designs, and quotes.
49. Correspondence, including but not limited to emails and texts, by and between the
Washington Department of Commerce, including any agent acting on its behalf,
and PNWRE, including any agent acting on its behalf, which concern PNWRE's
application for the Evergreen Manufacturing Grant Program and review of
PNWRE's application.
50. Documents concerning Mohegan Renewable Energy Crossville, LLC's operation
of an export-focused wood pellet plant located at 17551 Alabama 68 Crossville,

1 Alabama, including but not limited to, dust complaints, violations of air quality
2 and permit requirements, Occupational Safety & Health Administration
violations, inspection reports, and testing and compliance reports.

3 51. Technical reviews of PNWRE's Application to the U.S. Forest Service for the
4 Wood Innovations Grant Program completed by federal reviewers.

5 52. Correspondence, including but not limited to emails and texts, by and between the
6 City of Hoquiam, including any agent acting on its behalf, and the Washington
Department of Ecology, including any agent acting on its behalf, which concern
7 PNWRE's SEPA checklist, the City of Hoquiam's review of PNWRE's SEPA
8 checklist, and the City of Hoquiam's Determination of Nonsignificance.

9 53. Correspondence, including but not limited to emails and texts, by and between the
10 City of Hoquiam, including any agent acting on its behalf, and PNWRE,
11 including any agent acting on its behalf, which concern PNWRE's SEPA
12 checklist, the City of Hoquiam's review of PNWRE's SEPA checklist, and the
13 City of Hoquiam's Determination of Nonsignificance.

14 OTHER ISSUES TO BE ADDRESSED PREHEARING

15 To maximize the efficiency of the hearing, Appellants propose that the Board direct all
16 expert testimony be presented in writing in advance of the hearing. Written pre-filed direct
17 testimony should be optional for fact witnesses.

18 Appellants will accept service by email from all parties and the Board; no paper copies
19 are necessary.

20 Appellants intend to file a motion to stay the permit on August 20, 2024, and ask the
21 Presiding Officer to set a schedule for briefing and argument of the stay motion at the pre-
22 hearing conference.

23 Respectfully submitted this 19th day of August, 2024.

24 *s/Ashley Bennett*

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Wild Orca*

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of August, 2024, the foregoing APPELLANTS' PROPOSED LEGAL ISSUES AND PRELIMINARY LISTS OF WITNESSES AND EXHIBITS was filed electronically through the CMS system and served on the following parties via email and U.S. First Class mail, postage prepaid:

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