

1
2
3
4
5
6 OFFICE OF THE KING COUNTY HEARING EXAMINER

7
8 In the Matter of
9 Surplus Items, Inc.,

}
}
} No. 266-05

}
} STIPULATION AND AGREED
} ORDER OF DISMISSAL
10

11 **I. STIPULATION**

12 The Appellant, Surplus Items, Inc., by its attorney, Gregory A. Jacoby, and Respondent,
13 King County, through the Wastewater Treatment Division of its Department of Natural
14 Resources, by its attorney, William E. Blakney, agree and stipulate to the following:

15 1. Surplus Items, Inc. (Surplus Items) filed an appeal with the Office of the King
16 County Hearing Examiner on April 26, 2011. The subject of that appeal was the April 11, 2011
17 Final Decision by Pam Elardo, P.E., Director of the King County Wastewater Treatment
18 Division.

19 2. The Division's Final Decision was issued in response to Surplus Items' February
20 22, 2011 request for the Division to reconsider certain conditions and requirements contained in
21 the Division's February 7, 2011 issuance of Major Discharge Authorization (DA) 266-05.
22 Specifically, Surplus Items appealed the Division's Final Decision: (a) to require Surplus Items
23 to design and install a pretreatment facility for the purpose of preventing solid accumulations

1 caused by wastewater discharging from property owned by Surplus Items mixing with discharges
2 first entering the City of Seattle's sewer system, and then the County's sewer system; and (b) to
3 subject Surplus Items to the assessment of retroactive sewer fees.

4 3. The parties have engaged in extensive negotiations subsequent to Surplus Items'
5 filing of its appeal to the Office of the Hearing Examiner, and have agreed to settle this matter on
6 the terms and conditions of this Stipulation and Agreed Order of Dismissal.

7 4. Surplus Items submitted a "Design Report for Seepage Pretreatment System" to
8 the Division in October 2011 and subsequently submitted a "Construction Plan and Operational
9 Procedures" on August 16, 2012.

10 5. The Division reviewed the Design Report and engaged in relevant discussions
11 with Surplus Items. The Division issued its Conditional Approval of the Design Report,
12 consistent with the applicable rules and procedures, to Surplus Items on February 15, 2012. A
13 Conditional Approval of the Construction Plan and Operational Procedures was subsequently
14 issued on August 23, 2012.

15 6. Surplus Items is in the process of obtaining necessary permits and approvals from
16 the City of Seattle regarding the installation of the pretreatment facility that is the subject of the
17 Design Report and the Construction Plan and Operational Procedures.

18 7. The actions taken by the parties, as summarized above in paragraphs 4, 5 and 6
19 represents the parties agreed upon settlement of the first issue on appeal, described above in
20 paragraph 2 (a).

1 8. The Division has determined, and the parties have agreed, that the appeal item
2 described above in paragraph 2(b) is not properly before the Office of the Hearing Examiner and
3 is appropriately addressed by the agency that ordinarily addresses such matters.

4 9. The action taken by the parties, as summarized above in paragraph 8, represents
5 the parties agreed upon settlement of the second issue on appeal, described above in paragraph 2
6 (b).

7 10. The parties agree that the pretreatment facility referred to above in paragraphs 4,
8 5, and 6 is intended as the long-term solution to address the discharges from Surplus Items'
9 property into King County's sewer system and treatment plant. The parties understand and
10 acknowledge, however, that until the pretreatment facility becomes successfully operational, the
11 reports required to be submitted by Surplus Items have shown that discharges exceeded the
12 County's discharge limits for pH. The parties also understand that future discharges, during the
13 time period prior to successful operation of the pretreatment facility, may also exceed the
14 County's discharge limits for pH. The parties have agreed to address these pH exceedences as
15 follows:

16 A. On or before June 1, 2013, the conditionally approved pretreatment facility
17 must be complete and ready for a preoperative inspection to be conducted by King County.
18 Surplus Items may request an extension of this date, if any permit set forth in Exhibit A has not
19 been issued in the time frames listed in Appendix A due to reasons beyond Surplus Item's
20 control. Surplus Items must submit documentation to King County for their review and approval
21 prior to May 1, 2013 that includes:

- 22 1. The permit(s) not yet received,
23

2. Contact name and phone number for issuing organization,
3. Reason for each delay,
4. Estimated date that permit(s) will be received, and
5. Estimated date that pretreatment system shall be complete

B. Within 15 days receipt of a written notice of approval of the installed pretreatment facility from King County (e-mail correspondence is sufficient), Surplus Items must commence pretreatment facility discharges.).

C. The County understands that a newly-installed pretreatment facility may need minor operational changes at startup; therefore, the County will allow a 60 calendar day period after commencement of pretreatment facility discharges to achieve full compliance with the pH discharge limitations set forth in Major Discharge Authorization No. 266-05 and King County Public Rule PUT 8-13-1 (PR) - King County Industrial Waste Local Discharge Limits .

D. Surplus Items, Inc. shall be subject to Final Notice for violations of pH greater than 12.0 s.u., which should they occur again, within the calendar year commencing 60 days after commencement of pretreatment system discharges, or in no case, later than September 15, 2013 shall result in assessment of monetary penalties, under the provisions of King County Code (K.C.C.) 28.84.060.N.

E. Surplus Items shall pay post-violation monitoring charges of \$2,640.00 for violations of King County pH and maximum daily discharge volume limits as contained in Major Discharge Authorization No. 266-05 for the period up to and including the 60 calendar day startup period or September 15, 2013, whichever date is first, as referenced in paragraph 10.D, above.

1
2 F. pH violations that occur prior to commencement of the final notice period
3 which in no case shall be later than September 15, 2013 shall be reported (including submittal of
4 all 14-Day reports) by Surplus Items. The Division shall follow up per applicable King County
5 rules and regulations, and the Division will take no further action, unless the discharge causes the
6 company to be placed in the SNC category as per 40 CFR 403.8(f)(2)(viii) (C), (D), or (H). If
7 this occurs, the Division may take further action in accordance with applicable King County
8 rules and regulations.

9 G. Within 15 days of the date of receipt of a written notice of approval of the
10 installed pretreatment facility from King County (e-mail correspondence is sufficient), , Surplus
11 Items, Inc. shall commence: continuous pH monitoring and recording at the approved sample site
12 and report the daily minimum and maximum pH as recorded and the daily discharge volume on
13 the monthly self-monitoring report required in Major Discharge Authorization No. 266-05. For
14 purposes of this paragraph, readings taken every 15 minutes shall be continuous.

15 1. Should this automatic pH monitoring or recording system fail the
16 permittee shall:

- 17 i. manually check the pH at least once per calendar day, and
18 ii. repair or replace the system so that it is operational within 72
19 hours of failure.

20 2. Any discharge without a pH record shall be considered a violation
21 of this compliance order.
22
23

1 These pH and discharge volume recording and reporting requirements shall remain in effect until
2 Major Discharge Authorization No. 266-05 is revised, renewed, or another permit document is
3 issued.

4 11. The parties agree that the actions described above in paragraph 10 are intended
5 only to address the pH discharges described therein. Any discharge limits or other matters not
6 described in paragraph 10 shall be addressed by applicable King County rules and regulations.

7
8 12. Copies of all correspondence between the parties related to the stipulation and
9 agreed order of dismissal shall be sent to the following persons:

10 Surplus Items, Inc.:

11 Joel Bolduc
12 c/o Holcim (US)
1170 Transit Dr
Colorado Springs, CO 80903

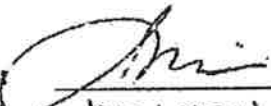
13 cc: Gregory A. Jacoby
14 McGavick Graves, P.S.
1102 Broadway, Suite 500
15 Tacoma, WA 98402

16 King County:

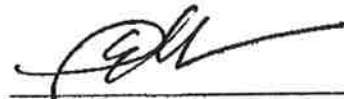
17 Patricia Magnuson
18 King County Wastewater Treatment Division
Industrial Waste Program
130 Nickerson Street, Suite 200
19 Seattle, WA 98109

20 cc: William E. Blakney
Office of the Prosecuting Attorney
21 W400 King County Courthouse
516 Third Avenue
22 Seattle, WA 98104
23

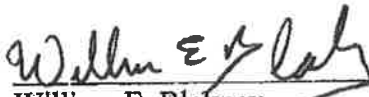
1
2
3 **SURPLUS ITEMS, INC.:**

4 By: 
5 Its: Jason J. Mozin, VP ENVIRONMENTAL AFFAIRS
6 Date: 10/8/12

7 **KING COUNTY DEPARTMENT OF**
8 **NATURAL RESOURCES, WASTEWATER**
9 **TREATMENT DIVISION**

10 By: 
11 Its: KING COUNTY WTD DIRECTOR
12 Date: JAN 22, 2013

13 Approved as to form:

14 
15 William E. Blakney
16 King County Prosecutor's Office
17 WSBA #16734

18
19 **II. ORDER**

20 This matter having come on for hearing upon the foregoing Stipulation and Agreed Order
21 of Dismissal, it is hereby ordered that this appeal is dismissed with prejudice and without costs in

22 //

23
STIPULATION AND AGREED ORDER OF
DISMISSAL

1 accordance with the terms and conditions of the Stipulation and Agreed Order of Dismissal.

2 DATED this 27th day of February, 2013

3 KING COUNTY OFFICE
4 OF THE HEARING EXAMINER

5 By: 
6 King County Hearing Examiner

7 TRANSMITTED this ____ day of _____, 2012, to the persons identified in the
8 foregoing Stipulation and Agreed Order of Dismissal.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

EXHIBIT A

Permits that Surplus Items, Inc. is required to obtain, as referenced in paragraph 10.A of the Stipulation and Agreed Order of Dismissal:

DPD Land Use Permitting

- Preliminary Application (submitted on December 2, 2011)
- Pre-Application Site Visit Request (submitted on December 2, 2011)
- Preliminary Assessment Report (issued December 21, 2011)
- Pre-submittal Conference (attended on May 16, 2012)
- ECA Exemption Application (submitted on June 15, 2012; review status described below):
 - Steep Slope (currently in review by DPD)
 - Potential Slide (currently in review by DPD)
 - Known Slide (currently in review by DPD)
 - Liquefaction-prone (currently in review by DPD)
 - Riparian Corridor (currently in review by DPD)
 - Fish and Wildlife Habitat Area (exemption denied; permit required through Department of Fish & Wildlife)
 - Wetland (exemption approved, no further action required)
- Modification to ECA Submittal Requirements Application (submitted on June 15, 2012; currently in review by DPD)
- Master Use Permit (in preparation; assumed approval by April 25, 2013)
- SEPA Review (need for submittal currently being reviewed by DPD; assumed approval by April 25, 2013)
- Fish & Wildlife Priority Habitat Area Permit (in preparation; unknown approval date)
- Other permits if ECA Exemptions denied (unknown approval date)

DPD Building Permitting

- Grading (in preparation; assumed approval by April 25, 2013)
- Fire (in preparation; assumed approval by April 25, 2013)
- Curb Cut (in preparation; assumed approval by April 25, 2013)
- Other permits to be identified (e.g., mechanical).

Electrical Permitting

- Service entrance to pretreatment module (in preparation; assumed approval by September 12, 2012)
- Service drop to service entrance (in preparation; assumed approval by September 12, 2012)

DPD Side Sewer Permit

- Permit for underground surface water management structures/connections (assumed approval by April 26, 2013)

SDOT Street Use Permit

- Sidewalk Exemption (submitted on June 15, 2012; currently in review by DPD)
- Street Improvement Plan (need for submittal currently being reviewed by DPD; if required, assumed approval by October 5, 2012)
- Driveway/Right-of-Way (assumed approval by April 26, 2013)

Acronyms:

DPD: Seattle Department of Planning and Development

ECA: Environmental Critical Area

SDOT: Seattle Department of Transportation

SEPA: State Environmental Policy Act