

September 3, 1999

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REPORT AND DECISION ON APPEAL OF PERIODIC REVIEW DECISION.

SUBJECT: Department of Development and Environmental Services File No. **L89G3180**

**BLACK RIVER QUARRY**  
Appeal of Periodic Review Decision

Location: 6900 South Beacon Hill Coal Mine Road

Permittee: Stoneway Rock and Recycling, *Represented by:*  
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SUMMARY OF DECISION:

Department's Preliminary Recommendation:	Deny the appeal
Department's Final Recommendation:	Deny the appeal
Examiner's Decision:	Grant in part, deny in part

**PRELIMINARY MATTERS:**

Notice of appeal received by Examiner:	July 30, 1998
Statement of appeal received by Examiner:	July 30, 1998

**EXAMINER PROCEEDINGS:**

Pre-Hearing Conference:	September 9, and October 3, 1998
Motions:	December 7, 1998
Hearing Opened:	March 11, 15, April 27, 29, and May 28, 1999
Hearing Closed:	May 28, 1999

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

**ISSUES/TOPICS ADDRESSED:**

- Air pollution
  - dust
- Comprehensive Plan policy application
- Geotechnical
  - slope stability
- Landscaping buffers
- Noise
- Non-conforming use
- Periodic review of mining operations
  - conditions based upon environmental impacts
  - standard of review
- SEPA
  - categorical exemptions
- Visual impacts

**SUMMARY:**

The Preferred Financial appeal of the DDES periodic review decision is granted in part and denied in part. New conditions on site operations are imposed to provide further monitoring and impact mitigation.

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

## FINDINGS:

**A. PROCEDURAL BACKGROUND**

1. The Black River Quarry is a 32-acre site originally comprising a wooded bluff overlooking the Black River. It has been the location of a hard rock extractive operation since 1949. The site has been operating under authority of King County grading permit since 1971 and underwent a SEPA review in 1977. At some point the storage and processing of recycled materials, primarily concrete and other demolition rubble, was added to the mining operation. The periodic review report suggests that these combined operations were in existence in 1977 when the SEPA review was done, although nothing in the checklist specifically supports this conclusion. Probably the original recycling operation occurred on the western third of the property, now operated by Renton Concrete Recyclers and which was split off from the site under current review in 1988. Concrete recycling on the portion of the original site under present review within this proceeding appears to have been introduced after 1988 when it came under the ownership of Stoneway. Although the rock quarry continues to operate at historic levels, the recycling business has become the predominant site activity, with the quantity of recycled material handled on an annual basis described by Stoneway representatives as exceeding the rock product total by a factor of at least 10.
2. The periodic review process conducted by the Department of Development and Environmental Services under authority of KCC Chapter 21A.22 was limited to the rock quarry operations and excluded review of the concrete recycling activity. Even so, the two activities involve the use of the same equipment and are intermingled to such a degree that separation of the two for regulatory purposes is not possible. Staff testimony was that the site is regulated and monitored in its entirety for all adverse impacts except hours of operation. It is the view of both DDES and the Permittee that the hours of operation imposed on the rock quarry by the grading permit do not apply to the recycling activities, which are only limited by the nighttime noise standards contained in the King County Noise Ordinance. For purposes of review pursuant to this appeal, we will also consider recycling impacts to be inseparably commingled with those from mining operations except where separation is demonstrably feasible and such review is consistent with applicable regulations.
3. Since the adoption of Title 21A in 1995, the Black River Quarry site has been split into two separate zones. The southern half of the site is zoned Industrial while the northern carries an Office zoning designation. From a practical standpoint, however, the conflict between the two dissimilar zoning designations has been resolved by the adoption of a special district overlay (SO-060) that specifies a single set of uses for both the Industrial and Office-zoned properties. Properties directly north of the site boundary are zoned R-24 up to Martin Luther King Jr. Way. North of Martin Luther King Jr. Way is an older residential neighborhood zoned R-8-P. Properties to the south and west of the Stoneway site, including since 1997 the Renton Recyclers property, all lie within the City of Renton.
4. Reviewing the aerial photographs within the record, it is clear that in the last ten years site operations have expanded aggressively toward the northeast. This has required removal of the mature forested vegetation which historically lay between the active quarry operations and Empire Estates, a 240-unit apartment complex that overlooks the eastern half of the northern site

boundary. Empire Estates, constructed in 1970, for years was able to co-exist peacefully with the quarry due to the intervening wooded buffer. As that buffer has diminished and Stoneway's operations moved northeasterly, site impacts on Empire Estates have increased as has the level of conflict between the two dissimilar uses. The instant appeal of the DDES July 15, 1998, periodic review report and decision is the product of that conflict.

The inevitability of such conflict was aptly summarized within the closing brief submitted on behalf of DDES by the Prosecuting Attorney's Office:

"In large measure, Empire Estates' complaint with the Black River Quarry operations is that they are expanding and approaching the perimeters of the quarry site and, consequently, coming ever nearer the apartment complex site. However, it is inescapable that the nature of an extractive operation such as that conducted by Stoneway at the Black River Quarry is that it will not remain static over the years. Quarry operations necessarily migrate over the site as the available raw materials are extracted. Such inherent natural progression is apparent here. And, not surprisingly, as the active quarry operations get closer to the apartment complex, any impacts associated with the extractive operations are likely to be more apparent."

5. The periodic review decision issued by DDES on July 15, 1998, is a detailed, thoughtful, and generally thorough document encompassing 17 pages of text, plus nine attachments. It imposes two new conditions on the Permittee, requiring a fugitive dust suppression plan and boundary fencing and signage along the northern property line. In addition, it revises grading permit condition 0091 to clarify the relationship between the hours of operation and the Noise Ordinance.
6. Even so, the DDES periodic report has been vigorously criticized by Appellant Preferred Financial Corporation, owner of the Empire Estates apartment complex. After an extensive prehearing motion process the issues to be considered *de novo* on appeal were defined within a prehearing order issued December 11, 1998. The appeal issues include the noise and visual impacts of quarry operations, the generation of dust at the site perimeter, whether landslide hazard areas exist on the site, and the adequacy of the DDES monitoring and mitigation conditions in the context of the site's location and regulatory history. A large quantity of evidence was received on the sufficiency of the DDES inspection and monitoring activity, which included consideration of the entire County regulatory process regarding the quarry and not just the specific substantive impacts at issue.
7. Due to the generality of the review standards provided for the periodic review process, and in light of the fact that the Black River Quarry was the first periodic review decision issued by DDES, the prehearing process for this appeal featured motions and cross-motions from every direction and involving almost every potential jurisdictional issue. It also resulted in a lengthy appeal process requiring waiver of applicable procedural time limits. A few prehearing matters deserve further mention. First is the Appellant's contention that the periodic review process is a major action affecting the environment requiring issuance of a threshold determination under SEPA. This contention was strenuously opposed by both DDES and the Permittee, with additional opposition submitted within an *amicus* brief filed by the attorneys for Cadman, Inc., and Lakeside Industries.

8. The DDES decision treated the periodic review process as being categorically exempt from SEPA review but did not make an explicit ruling to such effect. The prehearing order held that the periodic review procedure on its face meets the categorical exemption standards stated at WAC 197-11-800(13) and (14), and accordingly the DDES treatment of the process as categorically exempt was not subject to further review within this appeal. A finding of categorical exemption for this procedure is consistent with the intent stated at Comprehensive Plan Policy RL-410, which provides that the “periodic review is intended to be a part of King County’s ongoing enforcement and inspections of mineral resource sites, and not to be a part of the County’s permitting process.”
9. It is important to emphasize, however, that a conclusion that the periodic review process is categorically exempt under SEPA does not necessarily imply with respect to any grading permit renewal that the SEPA review performed in 1977 remains adequate to disclose the current environmental impacts of the project. In this regard, we note that the environmental checklist provided as Attachment 8 to the periodic review decision is a document of limited scope and content that may be of questionable value in evaluating current operations.

For example, while the checklist identifies a 30-acre site, it must be remembered that the present Renton Recyclers' property was at that time part of the complex, thus making the total acreage then potentially subject to SEPA review somewhere in the vicinity of 52 acres. Moreover, whether concrete recycling operations were then in existence or not, clearly such operations received no significant disclosure and review within the SEPA checklist. And had such review occurred, it most likely would have related solely to the Renton Concrete Recyclers' parcels west of the existing Stoneway site. Other limitations apparent on the face of the 1977 SEPA checklist include a projected 1983 operations completion date, a lack of visual impacts analysis, no specification of onsite equipment beyond trucks, and a statement underlined by staff that “no new ground will be opened up”. In view of these limitations, it seems unlikely that the impacts currently experienced by Empire Estates Apartments were disclosed or analyzed in any meaningful way within the 1977 checklist review.

10. A second matter identified within the prehearing process deserving of mention relates to the legal status of the rock mining and concrete recycling operations as nonconforming uses permitted neither within the Industrial nor Office zoning designations. Through persistent argument Stoneway seems to have convinced DDES staff that its nonconforming operations are to be viewed as some form of privileged land use. In fact, the exact opposite is true. Under Washington law nonconforming uses are regarded as contrary to public policy and their continued existence is merely tolerated. This means that while the County pursuant to its police power may not directly extinguish a nonconforming use, it may regulate it to whatever extent necessary to limit and mitigate its impacts. The issue with respect to Stoneway's nonconforming operations is not that the County lacks power to regulate them, but that the recycling activities (assuming they were legally permitted under the zoning in effect at the time of their establishment) seem to have fallen between the cracks within the County’s ordinance framework such that there are no specific regulations governing their conduct. This is an oversight that needs correction, and DDES should recommend to the County Council enactment of an appropriate regulation dealing with concrete recycling facilities.

11. The regulatory basis for periodic review of mineral sites was established by the County Council in 1994 within Comprehensive Plan Policy RL-410. The periodic review process described therein specifically encompasses legal nonconforming uses and has as its purpose “to provide opportunities for public review and comment on the mineral resource facility’s fulfillment of state and county regulations and implementation of industry-standard Best Management Practices, and for King County to modify, add or remove conditions to address new circumstances and/or unanticipated project-generated impacts”. As stated within Policy RL-410, the periodic review process is not to be regarded as an opportunity to revisit the appropriateness of the mineral resource land use or as a substitute for normal permit review of any proposed expansion of site operations.

The substantive areas in which imposition of conditions mitigating adverse impacts resulting from mining operations are considered especially important are listed at Comprehensive Plan Policy RL-411. Included are air quality, sensitive areas, noise, vibration, light and glare, traffic, and visual impacts.

12. The periodic review process described in Policy RL-410 is implemented at KCC 21A.22.050 based on a five-year review cycle. As stated at KCC 21A.22.050.B.2, the DDES director shall use the periodic review process “to determine that the site is operating consistent with the most current standards and to establish other conditions as necessary to mitigate identifiable environmental impacts”. The purpose of periodic review of extractive and processing operations “to insure compliance with the most current operating standards” is also affirmed at KCC 21A.22.010.D, and KCC 21A.22.040 states the general principle that nonconforming extractive operations shall be brought into conformance with the operating standards of KCC 21A.22.070 “to the extent determined feasible by the County”. This latter provision provides the County with the flexibility necessary to account for the unique aspects of nonconforming operations but does not limit the County’s regulatory authority. In other words, by stating that nonconforming extractive operations should be brought into compliance with KCC 21A.22.070 operating standards, section .040 does not seek to limit the County’s regulatory authority over nonconforming activities but merely emphasizes that compliance with operating standards merits particular attention.

## **B. SENSITIVE AREAS**

13. Turning to the specific issues raised by the Preferred Financial Corporation appeal, at the onset Stoneway moved to dismiss from the appeal issues based on the quarry’s alleged violation of the King County Sensitive Areas Ordinance on the grounds that KCC Chapter 21A.22 does not require nonconforming operations to meet sensitive areas standards. Consistent with the discussion provided above, the prehearing order rejected this argument, ruling that the language within Comprehensive Plan Policy RL-410 setting out in broad terms the purposes of the periodic review process is sufficiently inclusive to incorporate the King County Sensitive Areas Ordinance, even though such regulatory mechanism may not have been specifically called out within KCC Chapter 21A.22.
14. This prehearing ruling preserved within the appeal the Appellant’s issue with respect to the existence of landslide hazard areas on the site. As it turns out, however, the question of the

stability of the rock-faced steep slopes created by the Permittee's extractive operations is not a serious concern. Slope stability issues were reviewed recently by SubTerra, Inc. in February 1999 and, along the rock face west of the Empire Estates Apartments, by Golder Associates, Inc. in 1989. Both reports concluded that the steep rock faces on the northern half of the Black River Quarry site were stable, although SubTerra noted the unrelated existence of subsidence upslope on the Empire Estates property due to the apparent use of unstable fill beneath its lower parking areas. The slope stability findings of SubTerra and Golder have also been reviewed by DDES geologist Larry West, who agrees with their conclusions. No affirmative evidence of slope instability has been presented by the Appellant.

### C. VISUAL IMPACTS

15. It is beyond argument that since 1990 the visual impacts of Stoneway's operations at the Black River Quarry on the Empire Estates Apartments have dramatically increased. Before about 1995, mining operations had not expanded into the easternmost portion of the property adjacent to the apartment complex, and for many years the view from the apartment buildings on the slope above the Stoneway site was of a broad expanse of relatively mature mixed deciduous and conifer forest. As shown in the Exhibit 10 aerial photograph, even in September 1995 after the quarry operations had initially expanded into the eastern part of the site, below the apartment buildings a width of some 150 to 200 feet of forested vegetation was still being retained adjacent to Stoneway's northern boundary. The 1991 grading plan pursuant to which site alterations were authorized shows a minimum 50-foot setback between the northern property line and the beginning of the slope cuts, indicates a typical clearing limit at 70 feet, and states that the limits of clearing and areas of vegetation preservation are as described on the plan and to be flagged and observed.
16. A major alteration of the remaining forested buffer along the northern property boundary occurred in the summer of 1996 when a Stoneway equipment operator bulldozed much of the vegetation within the 50-foot setback area shown on the 1991 grading plan. While some mature vegetation remains, the net effect of the 1996 tree removal was to open up the view from the Empire Estates Apartments down into the floor of the pit. As described by a number of Empire Estates residents, their previous view of mature trees has been replaced by slash and debris piles, stockpiles of quarry products, trucks and earth moving equipment, and large expanses of denuded and often muddy landscape.
17. The testimony of Stoneway's representatives was that vegetation removal within the 50-foot setback along the northern site property line was an unfortunate mistake caused by the incorrect placement of some survey markers. The response of DDES staff has been to require replanting of the 50-foot buffer pursuant to a revegetation plan. A replanting of the buffer slope with a mixture of deciduous and evergreen trees has in fact occurred, but the effort thus far has been less than successful. Restoring the buffer area presents some challenges. It is relevantly steep with full sun exposure, and Stoneway's capacity for irrigating the new plantings has been limited to the use of a water truck onsite primarily for dust suppression. Stoneway has approached Empire Estates with a proposal to obtain a water hookup from them, but this overture has been rebuffed by Preferred Financial.

18. The upshot of all this is that the trees planted by Stoneway in 1997 have not fared well. Many have died, some conifers have been pilfered, and the trees that remain are not thriving. Stoneway proposes to provide an augmented buffer planting, has stipulated to a two-year irrigation program, and has included some larger specimens in its revised revegetation plan as requested by Empire Estates. But as Stoneway's landscape architect has pointed out, larger plantings are less likely to survive than smaller ones, so even with the best of intentions the prospects for ultimate success remain uncertain.
19. Due to the upslope location of the Empire Estates Apartment complex, the new buffer plantings on the Stoneway site do not yet produce any visual impact mitigation benefits and cannot be expected to do so for another ten to fifteen years. The July 15, 1998, DDES periodic review decision discusses the buffer encroachment and revegetation issues as land use matters but fails to specifically identify the visual impacts of quarry operations on the Empire Estates Apartments.

#### **D. DUST**

20. The control of dust generated by the Black River Quarry operations appears to have been a consistent topic of regulatory concern since Stoneway took over the site in 1988. Until recently this issue had largely been dialogue between Stoneway and the Puget Sound Air Pollution Control Agency ("PSAPCA"), which over time has issued to Stoneway a variety of notices and citations largely focused on dust generated by the crusher, screener and conveyer belts. Although it appears that the processing equipment has now been outfitted with water spray bars, there are indications that the dust suppression equipment is not always functional.

PSAPCA has some very stringent enforcement requirements that are backed up by a menu of hefty fines, so a sighting of a PSAPCA inspector in the neighborhood always generates excitement among the Stoneway employees. Even so, the PSAPCA inspections appear to occur relatively infrequently, a fact that suggests that PSAPCA enforcement alone is not sufficient to guarantee adequate dust suppression on a regular basis.

21. The Empire Estates residents who testified at the public hearing on this appeal were generally unanimous in their opinion that summer dust problems have substantially worsened since about 1995. This suggests that at the present time the major dust suppression issue on the Stoneway site relates to trucks and loaders traveling along the haul route which now approaches ever closer to the Empire Estates complex. Although perfection has yet to be attained, there is reason to believe that Stoneway is doing a better job of dealing with the dust generated by its vehicle operations. Since July 1998 a water truck has been permanently located at the Black River Quarry site. This represents a substantial improvement over prior conditions, where the water truck had to be called in from an offsite location to address a condition which in many cases had already reached an unsatisfactory level. Stoneway's logs demonstrate that during the dry season with the addition of an onsite truck it is able to start site watering operations in the early morning and continue them through into the afternoon. Performed on a regular basis, this practice constitutes an upgrade over prior operations.
22. The regulation of air quality is complicated by the fact that the precise identification of generation sources may be problematic. Because the same equipment is used for both



operations, DDES properly does not attempt to distinguish between dust generated by the hard rock mining process and that associated with recycling operations. In addition, it is obvious that Renton Recyclers adjacent to the Stoneway site to the west also generates significant quantities of dust. For reasons which are unexplained, Renton Recyclers has been allowed to operate its crushing equipment without water spray bars for dust suppression, and a series of pictures taken by the DDES staff in August 1998 demonstrated that there are occasions when Renton Recyclers is emitting a substantial dust plume and Stoneway is not. Due to the prevailing wind patterns, there is no doubt that dust plumes from the Renton Recyclers' site can reach Empire Estates Apartments. Nonetheless, the correspondence between increased complaints of dust received at Empire Estates and the eastward expansion of Stoneway operations indicates in a general way that the much closer Stoneway operations have also been a major source of emissions.

### E. NOISE

23. The tenants of the Empire Estates Apartments also testified that since 1995 they have experienced a significant increase in the noise experienced from Stoneway's operations. This includes reports of drilling sounds prior to blasting, blasting vibrations, equipment backup beepers, engine sounds, and the various banging noises associated with loading and dumping rock and concrete materials. Here again, the differences between the hard rock mining operation and the concrete recycling activity come into play because the County grading permit regulates the hours of operation as to the former but not the latter. Although of no consequence with respect to site compliance with the County Noise Ordinance, the fact that Stoneway's nighttime noise generation is primarily associated with recycling operations places such activities technically beyond the scope of direct assessment within a periodic review proceeding.
24. The appeal has also generated controversy over the question of which maximum permissible sound level under KCC 12.88.020 should be applied to this site. Where a residential receiving property such as the Empire Estates Apartments is involved, the maximum permissible sound level is 60 dBA if the zoning district of the sound source is designated industrial, but is reduced to 57 dBA where the sound source district is commercial. Because the northernmost portion of the Stoneway property falls within an Office zone, the Appellant has contended that noise emanating from this portion of the property should be considered a commercial sound source subject to the 57 dBA upper limit. The Permittee and DDES, on the other hand, contend that the entire site should be considered industrial and therefore subject to the 60 dBA limit.
25. Based on the provisions of the SO-060 zoning special district overlay, we agree with staff that the industrial sound source criteria should be applied. Even though the underlying zoning is for Office use on the northern portion of the Stoneway site, the overlay condition provides that "permitted uses shall include all uses permitted in the RB, O and I zones, as set forth in KCC 21A.08, regardless of the classification used as the underlying zone on a particular parcel of land". This provision legitimizes the creation of an industrial level of impact and warrants the use of the more permissive industrial sound source designation. This designation is also supported by practical considerations to the extent that it would be difficult to successfully separate out site noises generated on the Office-zoned portion of the site from those originating on the Industrial-zoned portion.

26. This sound source designation question is of more than academic interest because the tests done by both the Appellant and the Permittee indicate the existence of site-generated noise levels that frequently exceed permissible levels if the site is designated a commercial generator but are within acceptable limits if the industrial source designation is used. Even so, all of the studies submitted have their various flaws and limitations, and as site activities move closer to the Empire Estates boundary, impact levels that were acceptable upon an earlier measurement occasion in the future may be found to exceed applicable standards.
27. Definitive resolution of noise problems cannot be attained on this record. First, both blasting vibrations and the warning sounds created by equipment backup beepers are specifically exempted from Noise Ordinance control. Second, as noted, all the noise studies have certain limitations that undermine their usefulness. Ms. Parks' studies tend to be somewhat impressionistic, involving short measurements, inadequate treatment of ambient noise factors, and insufficient data to support any firm conclusions as to whether the Noise Ordinance's hourly exceedences have been violated. Ms. Parks' studies are primarily useful in highlighting that the Permittee's studies have neglected to analyze the effects of pre-blast drilling and that such events may exceed Noise Ordinance limits. Mr. Lilly's studies, on the other hand, are based on more realistic time measurements and deal in a more systematic way with elimination of ambient factors, but his analysis of the specific effects of Stoneway operations is flawed by a lack of personal knowledge of precisely what site activities were being measured at any point in time.
28. The problems attendant to isolating Stoneway's noise generation impacts from the ambient environment are of critical importance because this is clearly a rather noisy locale. In addition to the obvious factor of Renton Recycling's operations next door, this area is impacted by freeway noises from Interstates 5 and 405, aircraft flyover to and from SeaTac and Boeing Field, and railway sounds from a track that loops around the southern boundary of the Stoneway property.  
  
Moreover, Mr. Lilly and Ms. Park have each reported at least one occasion of incongruous ambient measurements, suggesting that atmospheric conditions operate to both increase and decrease ambient sound levels under certain conditions. These factors combine to make representative sound measurements difficult to achieve.
29. Although DDES appears to be attentive to the noise impact issue, the County at this point has little capacity for independent noise monitoring. The Health Department's noise monitoring program has been phased out, and while DDES inspectors have received rudimentary instruction in how sound meters work, none seems currently prepared to undertake a regulatory noise monitoring responsibility. While Stoneway's stipulation that it will not conduct blasting activity east of the southeastern corner of Building C within Empire Estates will certainly limit the locations and duration of future drilling noise impacts, it nonetheless remains likely that the eastward expansion of the Stoneway operation will continue to generate increases in noise impact levels. In the absence of County monitoring capability, some form of program for regular Permittee-sponsored noise measurement needs to be implemented.
30. Finally, a few loose ends with respect to the noise issue need to be addressed. First, the presence or absence of 50-foot tree buffer does not appear to be a major factor in sound attenuation, although the ability to directly observe site operations may increase the awareness of noise impacts resulting therefrom. Second, the Environmental Protection Agency's Region X noise

guidelines have no immediate relevance for this proceeding inasmuch as the County Noise Ordinance does not incorporate them. The Region X guidelines may have some usefulness within the context of a County SEPA review because they provide a widely accepted standard for evaluating the significance of an increase in noise impacts.

## F. MONITORING AND ENFORCEMENT

31. One of the principal criticisms leveled at DDES staff by the Appellant within this proceeding (as well as in earlier correspondence) is that staff has been slow, and even reluctant, in its response to Stoneway's failure to comply with operating regulations. A related allegation is that its solution to identified problems has often been both inadequate in scope and unsupported by meaningful sanctions. While staff has taken umbrage at this characterization, there can be no question that its regulatory stance is more reactive than aggressively pro-active. The few occasions on which DDES has taken a firm enforcement position *vis-a-vis* Stoneway have occurred as a consequence of rather egregious behavior. In 1996 after the Permittee bulldozed the forested buffer adjacent to its northern property line, DDES required a revegetation plan. Then in 1997, after Empire Estates Apartments had been bombarded with fly rock, DDES suspended blasting operations on the Stoneway site and was surprised to discover that in prior years Stoneway had not been systematically compelled to comply with regulatory requirements for blasting. In fairness it must be said that in response to the fly rock incident Stoneway's blasting procedures and the monitoring thereof have greatly improved, although a certain amount of squabbling continues over whether Stoneway's pre-blasting notices are issued to all Empire Estates' residents in a timely manner.
32. Nonetheless, the basic point remains that the DDES regulatory process is largely crisis-driven. But in view of DDES staffing levels and workload, a reactive regulatory scheme is probably inevitable. One of the interesting features of government in the '90s is that while regulatory complexity has increased, funding to adequately enforce new regulations has not kept pace. In such circumstances, the appearance of thoroughness conveyed by the formal regulatory scheme is subverted by the lack of adequate staffing. When there are too few hands to do the work, minor violations tend to be dismissed, and only the flagrant events regularly receive serious attention.
33. Given the resources at DDES' disposal, and recognizing that under the best of circumstances surface mining is an activity where a certain level of adverse impacts will be unavoidable, we find that the DDES regulatory activity is generally responsive to major problems and has demonstrated over the long term a capability to adapt to new circumstances. The periodic review decision issued July 15, 1998, imposes new conditions to fill some of the gaps in the regulatory scheme and recognizes the need to better document the inspection process. Due to the proximity of the Stoneway site to the DDES offices, frequent drive-by surveillance by Department inspectors requires little more than a slight rotation of the head, and when supplemented by occasional unannounced formal inspections, probably provides sufficient information overall to support the regulatory process. As elaborated below, what seems to be lacking within the process primarily is a consistency of regulatory effort and adequate institutional mechanisms for anticipating new impacts before they degenerate into serious problems.

## CONCLUSIONS:

1. Because Black River Quarry represents the first periodic review conducted by DDES of a mineral extraction operation, considerable controversy has centered on the appropriate scope for reviewing the Department's decision on appeal and the standards applicable thereto. In this respect, the few relevant provisions of KCC Title 21A do not provide a great deal in the way of detailed guidance, forcing the analysis to rely in substantial degree on general procedural principles.
2. KCC Chapter 21A.42 outlines the procedures governing review of permits and proposals by the DDES Director. Of specific importance, KCC 21A.42.080.A provides that “periodic reviews of extractive operations shall be based on the criteria outlined in KCC 21A.22.050.B”, and KCC 21A.42.090.A specifies that a decision of the DDES Director shall be final unless the Applicant or an aggrieved party appeals to the Hearing Examiner pursuant to KCC Chapter 20.24. As noted earlier, the principal review standard provided at KCC 21A.22.050.B.2 is that the periodic review process shall determine whether “the site is operating consistent with the most current standards and to establish other conditions as necessary to mitigate identifiable environmental impacts”.
3. Periodic review of extractive operations is listed at KCC 20.20.020 as a Type 2 land use decision appealable to the Hearing Examiner. Consistent therewith, KCC 20.24.080.A provides for Hearing Examiner review of a Type 2 land use decision based on the receipt and consideration of available information at an open record public hearing. KCC 20.24.080.B confers upon the Examiner broad authority to impose such conditions as may be necessary to achieve compatibility with a wide array of applicable state and county laws, regulations and policies.
4. Based on this procedural framework, the instant periodic review appeal included a *de novo* open record hearing focused on implementing the review standard stated at KCC 21A.22.050.B.2. Because KCC 21A.22.050 implements Comprehensive Plan Policies RL-410 and 411, it is appropriate to flesh out the sparse terms of the ordinance provision with concepts derived from the policy framework of the Comprehensive Plan. Implementing this analysis, it is our conclusion that the purpose of the periodic review appeal is primarily to examine the adequacy of the regulatory mechanisms employed by DDES as applied to the specific site under review and its extractive operations.
5. A review of the adequacy of the DDES regulatory process can be broken down into the following component questions:
  - A. Are the current and future adverse environmental impacts generated by site operations being satisfactorily mitigated?
  - B. Are current standards and Best Management Practices being employed?
  - C. Is the DDES regulatory process appropriately designed to achieve the applicable policy-mandated results?

If an appellant sustains a burden of proof to demonstrate by a preponderance of the evidence that the answer to any of the foregoing questions is "no", then it is the appropriate function of the periodic review appeal decision to impose corrective conditions. The emphasis of these corrective conditions will generally be on the DDES regulatory process, with the imposition of specific substantive outcomes occurring only under unusual circumstances.

6. The above-stated formulation of the appeal standard of review is less formally legalistic than those proposed by the attorneys for the Permittee and DDES. It is, however, consistent with the intent of the periodic review procedure, which explicitly recognizes that extractive mining operations are a dynamic process extended over decades. In this context, both the character and the location of the extractive activity may change over time, as well as the regulatory framework applicable to such activities, the technologies for performing the onsite work and mitigating its impacts, and the nature and intensity of surrounding land uses. Within such context the legislative intent is to provide a mechanism for assuring that the regulatory framework is capable of adapting to changed conditions; implementation of this legislative intent requires a periodic review process focused more on the long-term sufficiency of the regulatory scheme than on the factual details that may characterize any particular limited timeframe.
7. Assuming that the essential practical purpose of the periodic review process is to assess the ability of the DDES regulatory mechanism to manage site impacts within the next five-year timeframe, a recent history of permit violations or instances of noncompliance with regulatory standards may be indicative of regulatory inadequacy but not necessarily conclusive. The ultimate question is always directed toward the future. This means that we ought neither dwell unduly on past violations that have been satisfactorily remedied nor be rendered complacent by a record of historic regulatory compliance when the probability of new or increased impacts is on the immediate horizon.
8. While the foregoing analysis is not generally at odds with the positions outlined by the attorneys for DDES and the Permittee, the emphasis differs. The principal point of actual disagreement is an unwillingness to read Hearing Examiner Rule XI.D.9 as requiring the rejection of the normal preponderance of the evidence standard of proof in favor of a substantial weight formulation implying a clearly erroneous standard.

Although its structure may be somewhat misleading, we do not regard the four subparagraphs within Rule XI.D.9 as parallel alternatives. Rather, subparagraph A states the general rule, which is that "unless otherwise provided by law or ordinance, the standard of proof is a preponderance of the evidence", while subparagraphs B and C describe examples when another standard is "otherwise provided". Subparagraph D, on the other hand, is entirely permissive and not intended to automatically trigger the proviso stated in subparagraph A. It formally recognizes the possibility that under some circumstances the expertise of an administrative agency may be deserving of special deference. In view of the broad range of impacts created by extractive operations and DDES staff's admitted lack of detailed technical training and monitoring experience in many critical impact areas, a standard of review based on a blanket deference to DDES expertise is not rationally warranted.

9. Turning to the DDES periodic review decision itself, we have previously observed that it is a thorough and well-crafted document which seriously undertakes to identify outstanding issues

with respect to the Stoneway operations and to impose corrective mitigations where necessary. Even so, some criticisms of the document are in order.

On the most general level, the major shortcoming of the periodic review decision is its lack of a "big picture" perspective. In the last ten years quarry operations have expanded to the northeast into a previously forested area which lies adjacent to a conflicting residential land use. While the Department has attempted to respond to the individual brush fires that this expansion has generated, one gets no sense that any broad and inclusive analysis of this expansion and its effects has been attempted. The DDES regulatory process appears to be resolutely incremental in its approach. What is happening on the Stoneway site this week is largely analyzed in relation to what happened there last week, and so the emphasis is necessarily on minutiae and not on the major alterations that only emerge when change over a period of years is considered.

10. What seems to be needed at this point in time is an overall plan from the Permittee detailing its proposed activities within the northeastern arm of its operations over the next five years, followed by an effort by DDES to quantify and, where necessary, mitigate the resultant impacts. Based solely on the 1977 documents, we would be prepared to conclude that this analysis should also require a supplemental checklist under SEPA authority, but we hesitate to draw this conclusion in the absence of a complete record describing whether more recent SEPA documents exist. We are satisfied that the periodic review process itself is not a permitting activity triggering SEPA review, but somewhat mystified by statements within the periodic review decision implying that the rather scanty and limited 1977 checklist adequately discloses and analyzes all environmental impacts attributable to Stoneway's recently expanded onsite activities. In any event, a new condition will be imposed requiring a systematic analysis of northeastern quarry operations prior to issuance of the next grading permit, including an opportunity to revisit the question of prior SEPA review adequacy.
11. Turning to the discrete impacts generated by Stoneway's operations, perhaps the most serious omission within the periodic review report is the absence of any meaningful discussion of the visual impacts of quarry operations on the Empire Estates Apartments. Some recognition of these issues is implicit both in the concern for replacement of the buffer vegetation removed along the northern site boundary and in the requirement for northern boundary fencing. But it is difficult to know how to measure the effectiveness of mitigations unless some analysis of the relevant impacts is made. On a more specific level, the future success of buffer revegetation will continue to be at risk unless a realistic watering plan is devised. Without a piped water source on the site, it is not clear that during the dry season a single water truck can simultaneously sprinkle the site haul routes to hold down dust and provide irrigation to the new tree plantings. Also, we support the requirement for fencing along the site's northern boundary adjacent to Empire Estates but believe that this section of the fence should be eight feet tall and of solid wooden construction in order to at least partially attenuate noise and visual impacts. The conditions have been modified to include these requirements.
12. With respect to noise impacts, as site operations move further east the risk of Noise Ordinance standards being exceeded inevitably increases, notwithstanding that prior noise studies may indicate that such standards have historically been met. Sound measurement at the Stoneway site is a particular challenge due to the difficulty of separating out ambient noise and the apparent existence of atmospheric variables. In addition, the Permittee's studies have not taken into

account noise impacts from drilling activities. These problems are compounded by the fact that DDES does not have available to it staff personnel with sound monitoring experience and expertise. Some form of regular and inclusive noise monitoring program needs to be implemented, and a condition to such effect has been devised.

13. Dust suppression is a simple problem technically but one which requires great consistency of effort. The periodic review report's requirement that the Permittee provides a dust suppression plan is commendable. It is clear that PSAPCA remains the regulatory heavyweight in this realm, but that due to proximity DDES inspectors have a greater opportunity to actually observe site conditions on a regular basis. The development of a working relationship with PSAPCA that would allow DDES staff to initiate PSAPCA inspections under circumstances of observed dust emission would seem to have the potential for maximizing regulatory efficiency and ought to be considered.

#### DECISION:

The periodic review appeal of Preferred Financial Corporation is GRANTED in part and DENIED in part. Continued extractive operations at the Black River Quarry site under authority of King County grading permit shall be conducted pursuant to the following additional conditions:

1.
  - A. Except as modified herein, the one revised and two new conditions set forth within the DDES July 15, 1998, periodic review report and decision for inclusion within the current grading permit shall be implemented.
  - B. The new condition requiring north property line fencing stated at page 14 of the periodic review report and decision is modified to read as follows:

“In conformance with KCC 16.82.100.I and J, permittee shall maintain a fence along the north property line. The fence shall be no less than five feet in height and the fence material shall have no horizontal opening larger than two inches; provided that, the portion of the fence lying along the boundary with Empire Estates Apartments shall be at least eight feet tall and constructed of solid wood of sufficient thickness to provide sound attenuation.”
2. The existing grading permit issued to Permittee shall be modified to include the following additional conditions:
  - A. Prior to April 1, 2000, the Permittee shall submit a watering plan for the revegetated area lying adjacent to the northern site boundary. The plan shall conform generally to the requirements of KCC 21A.16.300, *et seq.* and identify the source and quantities of water required, frequency of irrigation, and, if dependent upon the water truck used for dust suppression, demonstrate the feasibility of such joint use without jeopardizing the effectiveness of either activity. The duration of Permittee's obligation for watering new plantings shall be determined based on species type and the characteristics of the location, but in no event shall be less than two growing seasons.

Not later than November 1, 1999, Stoneway shall plant the balance of the trees called for on the revised buffer revegetation plan dated May 27, 1999, a copy of which was entered into this periodic review decision appeal record as Exhibit No. 117.

- B. The Permittee shall implement a site noise monitoring plan, as approved by DDES. The monitoring plan shall include measurement of noise generated by day and nighttime site operations at regular intervals for time periods sufficient to produce representative samples and demonstrate compliance with Noise Ordinance standards. The monitoring plan shall also include measurement of pre-blast drilling activity, and no blasting within 150 feet of the Empire Estates boundary shall be permitted until drilling noise impacts have been studied and quantified, and any required noise mitigation measures implemented.
  - C. No blast shall be detonated at any point on the Stoneway site lying easterly of the easternmost point of Empire Estates Building C, as such building is depicted on the "improvement location survey" map of the Empire Estates property entered into this periodic review decision appeal record as Exhibit No. 13.
3. Prior to grading permit renewal, the Permittee shall submit a supplemental site plan for the portion of the site lying east of the western boundary of the Empire Estates parcel, showing existing contours and proposed alterations and uses for the five-year period beginning January 1, 2000. The plan shall describe all proposed site activities and uses for this portion of the property. Based on the site plan, the Permittee shall submit a technical report analyzing the full range of offsite impacts attributable to its operations during the five-year study period, including, but not limited to, visual, noise, blasting and air quality impacts. For each impact analyzed, the technical report shall document the level of compliance of site operations with applicable regulatory standards and discuss strategies for further impact mitigation. In performing its grading permit renewal review, DDES shall consider the material submitted within the context of existing environmental documents and, based on an analysis of the sufficiency of information provided, determine whether a supplemental environmental checklist and threshold determination are required.

ORDERED this 3rd day of September, 1999.

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Stafford L. Smith, Deputy  
King County Hearing Examiner

TRANSMITTED this 3rd day of September, 1999, to the following parties and interested persons:

Gary & Ida Baker  
Chris Breeds  
Roger Douglass

Gail Dykkestén  
Harry Ellis  
Empire Estates Apartments

David L. Halinen  
Patricia Hallwedel  
Dick Harrington



Michael Kadlec  
Michael Krallman  
Brian Lawler  
Richard Levings  
Bruce McCrory  
Ioana Park  
David Pierce

Karen Skold  
Stoneway Rock & Recycling  
Alan Wallace  
Cheryl Carlson  
Susan Clarke  
Doug Dobkins

Ken Grubbs  
Craig Hislop  
Curt Horner  
Gordon Thomson  
Larry West  
Fred White  
Manuela Winter

### NOTICE OF RIGHT TO APPEAL

The action of the Hearing Examiner on this matter shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the issuance of this decision.

MINUTES OF THE MARCH 11 AND 15, APRIL 27 AND 29, AND MAY 28, 1999, PUBLIC HEARING ON BLACK RIVER QUARRY PERIODIC REVIEW REPORT AND DECISION APPEAL DDES FILE NO. L89G3180.

Stafford L Smith was the Hearing Examiner in this matter. Participating at the hearing were Fred White, Cheryl Carlson, Ken Grubbs, Doug Dobkins, Curt Horner, and Larry West, representing the County; Brian Lawler, David Halinen, Alan Wallace, Bruce McCrory, Ida Baker, Gary Baker, Karen Skold, Ioana Park, Jerry Lilly, Chris Breeds, Michael Krallman, Dennis Kadlec, Dick Harrington, Jerry Millar, George Bennett and Gail Dykkestén.

The following exhibits were offered and entered into the hearing record **March 11, 1999**:

- Exhibit No. 1 Periodic Review Report of the Decision - date of transmittal: July 15, 1998
- Exhibit No. 2 February 20, 1998 Notice of Periodic Review
- Exhibit No. 3 Letter of appeal
- Exhibit No. 4 January 10, 1991 Grading and TESC plan (revised 6/12/91)
- Exhibit No. 5 January 31, 1997 Buffer Re-vegetation Plan
- Exhibit No. 6 April 21<sup>st</sup>, 1997 Revised Buffer Re-vegetation Plan
- Exhibit No. 7 Grading permit with conditions; date of expiration: March 23, 1999
- Exhibit No. 8 GIS zoning map
- Exhibit No. 9 Aerial photo of quarry site and apartment complex dated 7/10/90
- Exhibit No. 10 Aerial photo of quarry site and apartment complex dated 9/22/95
- Exhibit No. 11 Aerial photo of quarry site and apartment complex dated 9/9/97
- Exhibit No. 12 Assessor's maps
- Exhibit No. 13 Improvement Location Survey of Empire Estates dated 7/17/89 (HUD Project No. FHA No. 127-10515)
- Exhibit No. 14 Aerial map of quarry (labeled as "Exhibit 1" by court reporter)
- Exhibit No. 15 Aerial map of quarry (labeled as "Exhibit 2" by court reporter)
- Exhibit No. 16 Aerial map of quarry (labeled as "Exhibit 3" by court reporter)

- Exhibit No. 17 SubTerra, Inc. landslide hazard report, dated 2/5/99
- Exhibit No. 18 Final report on blast-monitoring program for Stoneway Corporation/Black River Quarry dated August 14, 1998, prepared by SubTerra, Inc.
- Exhibit No. 19 Letter dated June 15, 1989, from Golder Associates, Inc., to FirstCity Development Corporation regarding Valley View Apartment project building setbacks from the south property boundary
- Exhibit No. 20 Resume of Dr. Chris Breeds
- Exhibit No. 21 Copy of e-mail transmitted August 5, 1998, from Gail Dykkesten's to Ken Grubbs, Randy Sandin and Mark Carey
- Exhibit No. 22 Memorandum dated June 15, 1998, from Dennis Kadleck to Karen regarding Stoneway Concrete
- Exhibit No. 23 Notice and Order dated August 5, 1996, issued to Stoneway Rock & Recycling
- Exhibit No. 24 Letter dated August 8, 1996, from David Halinen to Kenneth Dinsmore (DDES)
- Exhibit No. 25 Letter dated August 1, 1997, from Randy Sandin (DDES) to Gary Merlino (Stoneway Concrete)
- Exhibit No. 26 Letter dated October 13, 1997, from Randy Sandin (DDES) to Dick Harrington (Stoneway Rock and Recycling)
- Exhibit No. 27 Letter dated November 10, 1997, from Dick Harrington (Stoneway) to Randy Sandin (DDES)
- Exhibit No. 28 Letter dated January 20, 1998, from Randy Sandin (DDES) to Dick Harrington (Stoneway)
- Exhibit No. 29 DDES Correction Notice, dated September 22, 1998
- Exhibit No. 30 Letter dated January 15, 1999, from Douglas Dobkins (DDES) to Gary Merlino

The following exhibits were offered and entered into the hearing record **March 15, 1999:**

- Exhibit No. 31 Declaration of Leslie Sinclair dated March 11, 1999
- Exhibit No. 32 Letter from vacating Empire Estates tenant dated July 1, 1998
- Exhibit No. 33 Karen Skold's 12/6 notes (3 pages)
- Exhibit No. 34 (7/23) Message for Karen Skold (from an office employee)
- Exhibit No. 35 Karen Skold's notes, dated 7/17/97
- Exhibit No. 36 Karen Skold's notes (12/19)
- Exhibit No. 37 Karen Skold's notification that she telephones Ken Grubbs (7/9/96)
- Exhibit No. 38 Karen Skold's notes, dated 7/16/96
- Exhibit No. 39 Karen Skold's notes, dated 8/8/96
- Exhibit No. 40 Karen Skold's notes, dated 8/28/96 and 8/29/96
- Exhibit No. 41 Karen Skold's notes, dated 3/4/97
- Exhibit No. 42 Fax transmitted June 25, 1997, from McCallum Rock Drilling, Inc. to Empire Estates, Attn: Karen
- Exhibit No. 43 Fax transmitted July 3, 1997, from McCallum Rock Drilling, Inc. to Empire Estates, Attn: Karen
- Exhibit No. 44 Message notes to Karen Skold, dated 7/7/97
- Exhibit No. 45 Letter dated November 12, 1997, from Karen Skold to D. Merlino (Stoneway)
- Exhibit No. 46 Karen Skold's notes, dated 7/29/96
- Exhibit No. 47 Letter dated August 23, 1998, from BRC Acoustics to Brian Lawler re Sound Level Measurements at Empire Estates

- Exhibit No. 48 Letter dated October 13, 1998, from BRC Acoustics to Brian Lawler re Additional Sound Level Measurements at Empire Estates
- Exhibit No. 49 Resume of Jerry G. Lilly
- Exhibit No. 50 Fax transmission cover sheet, with attachments, dated August 29, 1996, from Jerry G. Lilly to Dick Harrington (Stoneway)
- Exhibit No. 51 Letter dated September 26, 1996, from Jerry G. Lilly to Stoneway Rock & Recycling (Attn: Dick Harrington) re Environmental Noise Measurements
- Exhibit No. 52 Fax transmission cover sheet, with attachments, dated November 30, 1996, from Jerry G. Lilly to Dick Harrington (Stoneway)
- Exhibit No. 53 Letter dated September 20, 1997, from Jerry G. Lilly to Stoneway Rock & Recycling (Attn: Dick Harrington) re Environmental Noise Measurements Preliminary Analysis
- Exhibit No. 54 Figure 1. Ambient Noise Measurements at Position 1 (includes all noise sources) - attachment to JGL Acoustics, Inc.'s September 20, 1997, letter
- Exhibit No. 55 Figure 1A. Pre-test Ambient Noise at Position 1 (enlargement of attachment to JGL Acoustics, Inc.'s September 20, 1997, letter)
- Exhibit No. 56 Figure 1-B Quarry Noise at Position 1 (enlargement of attachment to JGL Acoustics, Inc.'s September 20, 1997, letter)
- Exhibit No. 57 Figure 1C. Quarry Noise at Position 1 (back-up beepers deleted from data) (enlargement of attachment to JGL Acoustics, Inc.'s September 20, 1997, letter)
- Exhibit No. 58 Letter dated May 21, 1998, from Jerry G. Lilly to Fred White from Lilly
- Exhibit No. 59 Letter dated August 1, 1998, from Jerry G. Lilly to Stoneway Rock & Recycling (Attn: Dick Harrington)
- Exhibit No. 60 Letter dated February 5, 1999, from Jerry G. Lilly to David Halinen re Letter Reports from Bruck Richards Chaudiere, Inc.
- Exhibit No. 61 Fig. 8-2 Summary of Annoyance data from 12 surveys with data showing close agreement (chart entitled "Clustering Surveys")

The following exhibits were offered and entered into the hearing record **April 27, 1999**:

- Exhibit No. 62 Letter dated March 16, 1999, from Brian Lawler to Examiner, David Halinen, and Cheryl Carlson with attached EPA Region 10 Noise Program (Noise Guidelines for Environmental Impact Statements)
- Exhibit No. 63 Introduction to the Sensitive Areas Map Folio
- Exhibit No. 64 Aerial photograph with attached acetate marked in several colors illustrating 1997 recycling process
- Exhibit No. 65 Letter dated September 24, 1997, from Donald Merlino (Stoneway) to Empire Estates (Attn: Karen Skold)
- Exhibit No. 66 Letter dated October 2, 1997, from David Halinen to DDES (Attn: Randy Sandin)
- Exhibit No. 67 Letter dated October 13, 1997, from Randy Sandin (DDES) to Dick Harrington
- Exhibit No. 68 Letter dated March 10, 1998, from David Halinen to DDES (Attn: Randy Sandin) with enclosed examples of various notice forms
- Exhibit No. 69 Annotated assessor' map showing site and area within 1/2 mile - prepared by Barghausen Engineering in March 1998
- Exhibit No. 70 Descriptive index of file containing data including 1998 7-day and 24-hour notices to Empire Estates
- Exhibit No. 71 Folder with data supporting Exhibit No. 70

- Exhibit No. 72 Supplemental buffer revegetation plan
- Exhibit No. 73 King County Development Condition Query Results; Post-Conversion Condition: SO-060 (effective August 18, 1997)
- Exhibit No. 74 Statement describing operations on Black Quarry letterhead referencing Grading File #1112-34 (3-15-77 handwritten on top)
- Exhibit No. 75 Department of Building Conditions for Grading Permit #1112 dated March 24, 1971
- Exhibit No. 76 Stoneway Concrete Operation and Maintenance Plan for Contaminant Control Equipment (submitted to PSAPCA)
- Exhibit No. 77 Inspection log kept by Stoneway foreman Ellis (entries from January 1996 through December 1996)
- Exhibit No. 78 Notice of Violation (very poor quality exhibit)
- Exhibit No. 79 Letter dated June 4, 1990, from Richard Gribbon (PSAPCA) to Dick Harrington (Stoneway) re Notice of Violation #26877 and Corrective Action
- Exhibit No. 80 Letter dated June 19, 1990, from Richard Harrington (Stoneway) to Richard Gribbon (PSAPCA)
- Exhibit No. 81 PSAPCA Notice of Violation dated August 14, 1990
- Exhibit No. 82 Letter dated September 7, 1990, from Richard Harrington (Stoneway) to Richard Gribbon (PSAPCA) advising PSAPCA of corrective actions taken
- Exhibit No. 83 PSAPCA Notice and Order of Civil Penalty issued October 24, 1990
- Exhibit No. 84 Letter dated November 2, 1990, from Ike Brown (Stoneway) to Anita Frankel (PSAPCA) requesting remission and/or mitigation of penalty levied
- Exhibit No. 85 Copy of fax cover sheet message dated December 11, 1990, from Ike Brown (PSAPCA) to Stoneway Concrete
- Exhibit No. 86 Consent Order and Assurance of Discontinuance prepared by PSAPCA
- Exhibit No. 87 Letter dated December 5, 1990, from Ike Brown (Stoneway) to Anita Frankel (PSAPCA) re imposition of 2-year probation
- Exhibit No. 88 Proposed form of Consent Order submitted by Stoneway
- Exhibit No. 89 Executed Consent Order and Assurance of Discontinuance (January 7, 1991)
- Exhibit No. 90 Letter dated January 8, 1991, from Ronald Busby (PSAPCA) to Don Merlino (Stoneway) concluding Notice and Order of Civil Penalty #7296 matter
- Exhibit No. 91 Notice of Violation No. 27854 and Corrective Action dated July 25, 1991, issued by PSAPCA
- Exhibit No. 92 PSAPCA Compliance Status Report dated June 13, 1996
- Exhibit No. 93 Letter dated June 18, 1996, from Richard Harrington (Stoneway) to Richard Gribbon (PSAPCA)
- Exhibit No. 94 Letter dated August 29, 1996, from Richard Pogers (PSAPCA) to McCallum Drilling and Stoneway Rock & Recycling
- Exhibit No. 95 Letter dated September 4, 1996, from Richard McCallum to PSAPCA (Attn: Richard Pogers)
- Exhibit No. 96 Letter dated September 10, 1996, from Richard Harrington (Stoneway) to Richard Pogers (PSAPCA)
- Exhibit No. 97 Letter dated December 10, 1996, from Neal Shulman (PSAPCA) to Stoneway Rock & Recycling (Attn: Richard Harrington) re Disposition of Notice of Violation No. 35359
- Exhibit No. 98 PSAPCA Compliance Status Report dated October 8, 1996
- Exhibit No. 99 Sheet with 8 photographs of site taken by Charles Harrington November 6, 1996, March 5, 1997, and October 8, 1997

Exhibit No. 100 Letter dated February 3, 1999, from Douglas Dobkins (DDES, Site Development Specialist) to Gary Merlino (Stoneway)

Exhibit No. 101 A PSAPCA publication with excerpts from Regulation I and Agency Policy on Fugitive Dust Controls

The following exhibits were offered and entered into the hearing record **April 29, 1999**:

Exhibit No. 102 Project comments by Doug Dobkins dated March 16, 1999, for Black River Quarry

Exhibit No. 103 Sheet with four photographs taken August 24, 1998, by Doug Dobkins from weight house of processing equipment on Renton Processing property

Exhibit No. 104 Photograph taken August 24, 1998, by Doug Dobkins looking north from weight house (Stoneway property)

Exhibit No. 105 Photograph taken by Doug Dobkins August 24, 1998, from Stoneway parking lot looking toward Renton Processing property

Exhibit No. 106 Close-up photograph of Renton Processing equipment taken by Doug Dobkins August 24, 1998

Exhibit No. 107 Black River Quarry Grading Permit Renewal Application Information submitted by Mr. Lawler

Exhibit No. 108 Karen Skold July 10, 1997, notes

Exhibit No. 109 Ken Grubbs December 18, 1995, inspection notes for Black River Quarry

Exhibit No. 110 Ken Grubbs December 20, 1995, inspection notes for Black River Quarry (*number reserved*)

Exhibit No. 111 Packet of inspection notes for period of December 1989 to February 1998 obtained from County files

Exhibit No. 112 Declaration of Shelly Zellmer dated April 23, 1999

Exhibit N0. 113 Declaration of Lloyd R. Peterson dated April 27, 1999

The following exhibits were offered and entered into the hearing record May 28, 1998:

Exhibit No. 114 Resume of Bruce McCrory

Exhibit No. 115 Letter dated January 30, 1997, from Bruce McCrory to Ken Grubbs (KC)

Exhibit No. 116 Letter dated April 22, 1997, from Bruce McCrory (Barghausen) to Ken Grubbs (DDES)

Exhibit No. 117 Updated revegetation plan

Exhibit No. 118 Stoneway Rock & Recycling's stipulated Supplemental King County Grading Permits Conditions for Stoneway portion of the Black River Quarry June 28, 1998

Exhibit No. 119 Set of inspection log entries from 1989-1992

Exhibit No. 120 Ken Grubbs inspection notes December 18, 1995, and December 20, 1995

Exhibit No. 121 Inspection log notes from February 13, 1998, and February 17, 1998, by Manuela Winters

Exhibit No. 122 Inspection notes dated March 19, 1998

Exhibit No. 123 Black River Quarry Periodic Review L89G3180 (Fred White)

Exhibit No. 124 Packet of correspondence (3/96-8/98) between Empire Estates/County

Exhibit No. 125 Declaration of Farley Kessler

Exhibit No. 126 Letter dated November 21, 1990 from Curt Horner (Seattle-King County Health Dept.)

to Roy Richards (Towne , Richard & Chaiudiere)

SLS:daz

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