BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF SEATTLE CHAPTER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC., TACOMA CHAPTER, AGC and TACOMA HOME BUILDERS ASSOCIATION, THE CAMRAN CORP. and RAYMOND L. WEHOLT, Appellants, v. STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Respondent.	PCHB Nos. 658 and 663 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

THESE consolidated matters being a conditional approval by the Department of Ecology of Camran's air curtain device as an alternate to open burning of clearing slash; having come on regularly for formal hearing before the Pollution Control Hearings Board on the 15th day of October, 1974, at Lacey, Washington; and appellants, Camran Corporation and Raymond L. Weholt, appearing through Marvin B. Durning; appellants, Associated General Contractors of America, Inc., and Tacoma Home Builders

Association, appearing through Thomas L. Fishburne and respondent, Washington State Department of Ecology, appearing through Wick Dufford, assistant attorney general; and Board members present at the hearing being Chris Smith, W. A. Gissberg and Walt Woodward and the Board having considered the sworn testimony, exhibits, records and files herein and the briefs of the parties and having entered on the 2nd day of May, 1975, its proposed Findings of Fact, Conclusions of Law and Order, and the Board having served said proposed Findings, Conclusions and Order upon all parties herein by certified mail, return receipt requested and twenty days having elapsed from said service; and

The Board having received no exceptions to said proposed Findings, Conclusions and Order; and the Board being fully advised in the premises; now therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed Findings of Fact, Conclusions of Law and Order, dated the 2nd day of May, 1975, and incorporated by this reference herein and attached hereto as Exhibit A, are adopted and hereby entered as the Board's Final Findings of Fact, Conclusions of Law and Order herein.

DONE at Lacey, Washington, this 4th day of June, 1975

POLLUTION CONTROL HEARINGS BOARD

Chris Smith

CHRIS SMITH, Chairman

W. A. Gissberg

W. A. GISSBERG, Member

Walt Woodward

WALT WOODWARD, Member

S F No 9928-A

ACCEPTANCE OF SERVICE CLERK'S STAMP

POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

THE CAMRAN CORPORATION, and RAYMOND L. WEHOLT, Appellants, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC., (SEATTLE and TACOMA CHAPTERS), and TACOMA HOME BUILDERS ASSOCIATION, Appellants, v. STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Respondent.	PCHB Nos. 658 and 663 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

These consolidated matters came on for formal hearing on October 15, 1974, at the residence of the Board in Lacey, Washington.

Appellants Camran Corporation and Raymond L. Weholt appeared through Marvin B. Durning; appellants Associated General Contractors of America, Inc., and Tacoma Home Builders Association appeared through Thomas L. Fishburne; respondent State of Washington, Department of Ecology appeared through Wick Dufford, assistant attorney general.

Exhibits were admitted, sworn testimony taken and briefs submitted. From the entire record herein, the Pollution Control Hearings Board

EXHIBIT A

makes these

FINDINGS OF FACT

1. On March 18, 1974, the Camran Corporation applied to the Department of Ecology, pursuant to WAC 18-12-110, for certification of its air curtain combustion system as an alternative to the open burning of wood wastes from the following types of commercial land clearing projects:

a. Federal, state and county highway rights-of-way.

b. Forest access roads on federal, state and private property.

c. Power line and pipeline rights-of-way.

d. Roadside cleanup on existing federal and state scenic highways.

e. Land development projects in excess of five acres.

f. Reservoir and navigable waterway cleanup and maintenance.

2. On July 7, 1974, the Department of Ecology issued an order in response to Camran's application and after consideration of the record of two public hearings on the matter. By the terms of the order, a conditional certification was granted subject to numerous limitations. A copy thereof is attached hereto and by this reference incorporated herein.

3. The Department of Ecology did not prepare an environmental impact statement, pursuant to RCW 43.21C.030(2)(c), prior either to its adoption of WAC 18-12-110 or to its issuance of the certification order; nor did its actions in either case constitute the functional equivalent of such a statement.

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4. The provisions of WAC 18-12-110 relate solely to a governmental procedure, and contain no substantive standards respecting use or modification of the physical environment, other than a reiteration of the statutory words "reasonably economical and less harmful to the environment," derived from RCW 70.94.745.

5. In relation to the application for certification of the Camran device and the Department of Ecology's action thereon, the Department did not determine whether its action was a major action significantly affecting the quality of the environment.

6. All open burning creates particulate emissions. Such emissions are detrimental to and adversely affect health. Camran's device employs improved combustion by higher zone temperatures and control of combustion air which results in substantial reduction of emissions to the atmosphere. A reduction of atmospheric particulate emissions lessens the health danger. Therefore, Camran's device is less harmful to the environment than open burning.

7. Availability is a proper test of whether the alternative is reasonably economical, but that test should be limited to a determination of whether Camran's alternative (not someone or somebody else's alternative is available. In other words, whether Camran's alternative technology or method of disposing of organic waste is reasonably economical is directly related to whether Camran is capable of furnishing (availability) its technology to users within a reasonable time frame. If Camran is not capable of doing so then its technology would not be "reasonably economical." We find that the limited number of its devices and a 60-day

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delay of making it available for use precludes a determination that it is "reasonably economical" for the certification sought by appellants. We agree that it is reasonably economical in disposing of wood wastes from projects over five acres in size within one-half mile of any highway or highway project involving four or more vehicle lanes.

8. We agree with the Order of the Department of Ecology, paragraph 1, page 7, that more information and experience is required before a permanent certification of the economic reasonableness of an alternative to open burning for disposal of wood waste.

9. Paragraph 3a., page 7, of the Department of Ecology's order of July 7, 1974, is ambiguous as written. By the Department's admission it is a scrivener's error for the words "highway and" to appear therein.

From these Findings the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

1. The action of the Department of Ecology in adopting WAC 18-12-110 was not violative of the requirements of the State Environmental Policy Act, chapter 43.21C RCW.

2. The action of the Department of Ecology in issuing its certification order of July 7, 1974, did not comply with the requirements of the State Environmental Policy Act relating to environmental impact statements. Had the Department, which it did not, performed the functional equivalent of compliance therewith, such action would not have satisfied the requirements of the statute.

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3. In relation to the action taken by the Department on Camran's application, compliance with RCW 43.21C.030(2)(c) necessitates a threshold determination by such agency of whether its action will or will not be a major action significantly affecting the quality of the environment and whether, in light of such determination, an environmental impact statement should be prepared.

4. The Department of Ecology's decision reflected in its certification order must be reconsidered on the basis of the information and analysis available to it after the provisions of the State Environmental Policy Act have been complied with.

5. The Department of Ecology correctly determined that the Camran device is less harmful to the environment than open burning.

6. The Department of Ecology correctly determined that the Camran devices are reasonably economical in disposing of wood wastes from projects over five acres in size within one-half mile of any highway or highway project involving four or more vehicle lanes, but are not reasonably economical for the entire certification sought by appellants.

7. The Department of Ecology erred by including within its findings on availability considerations relating to the availability of an alternative to open burning from more than one source of supply.

8. The Department of Ecology erred by ordering that no certification of an alternative should take effect until it has been demonstrated that the alternative or another means comparable in cost and effect is available from more than one source of supply, and by requiring such to be shown within thirty days of issuance of the certification order.

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9. The Deparment erred by ordering that the limited certification should not become effective until 90 days after issuance of a supplemental order.

10. The Department of Ecology has the authority to conditionally limit the scope and time of the partial certification to one year in order to insure the availability (and hence economic reasonableness) of the device. Implicit in the power to grant is the power to condition the grant.

Therefore, the Pollution Control Hearings Board issues this

ORDER

This matter is remanded to the Department of Ecology to consider the environmental factors involved in its action on certification and to make a determination, based on such consideration as to: a) Whether the project is or is not a major action significantly affecting the quality of the environment; b) Whether or not to require the preparation of an environmental impact statement; and c) To reconsider the issuance of the partial certification in light of such determinations. If an environmental impact statement is required, and if the certification shall nonetheless be granted by the Department, the terms of its Order shall be consistent with the Findings and Conclusions entered herein.

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DONE at Lacey, Washington, this 2nd day of May, 1975.

POLLUTION CONTROL HEARINGS BOARD

Chris Smith
CHRIS SMITH, Chairman

Walt Woodward
WALT WOODWARD, Member

W. A. Gissberg
W. A. GISSBERG, Member

Presented by

SLADE GORTON
Attorney General

Wick Dufford
WICK DUFFORD
Assistant Attorney General

Attorneys for Respondent.

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