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Western Environmental Law Center

June 16, 2008

Honorable Ted Kulongoski,
Governor, State of Oregon
160 State Capitol
900 Court Street
Salem, Oregon 97301-4047

Dear Governor Kulongoski,

Yet another grass seed field burning season is nearly upon us, with all its associated suffering. As you know well, each summer residents and visitors in and around the Willamette Valley are forced to breathe, work and live in plumes of fine particulate matter and associated toxins that are generated by this state-sanctioned practice.

This year, however, the community will get a short reprieve because the grass seed industry has promised the City of Eugene that it will not burn during and immediately following the 2008 U.S. Olympic Track and Field Trials, starting June 28. Wisely, your Department of Agriculture decided to support the industry's temporary, if non-binding, no-burn pledge by deciding to not issue burn permits during the Olympic Trials. Further, your Department of Environmental Quality (DEQ)—which retains statutory oversight of the burn program—has not objected to that delay.

In pressing for a temporary burning stand-down, Eugene's leaders were motivated by more than consideration of the City's image projected around the world, that is, so that the City's "Tracktown USA" renaissance should not go up in smoke. Rather, City Council members acted with genuine concern for the safety of an estimated 1,000 elite athletes who will be undertaking maximal respiratory efforts during the Olympic Trials. They acted, as well, for the tens of thousands of Olympic Trials fans, young and old, who will be guests of our city and who, during their stay in Eugene, should not be forced to breathe toxic plumes from grass seed burning.

But the legitimate concerns that propelled the City to protect Olympic Trials athletes and their fans will remain after the spotlight fades. First, athletes will continue to train in our region. Some select athletes will train in preparation for the Beijing Olympics, others for competitions yet to be determined. And many other people will train less for competition than for the love of sport and good health. The harm that would have come to the Olympic Trials athletes will fall upon these folks, when the burning resumes. None of them will benefit from the field burning smoke that threatens to foul our common airshed.

Second, and more important, field burning smoke affects Willamette Valley residents in innumerable ways -- impacting our health and forcing us to alter our daily activities. The impact is especially acute for residents with pre-existing respiratory disease--including those with asthma, chronic bronchitis, cystic fibrosis and emphysema. Their exposure to sharply elevated particulate matter can be lethal. Such exposure also has been implicated in reduced lung function, stroke, irregular heartbeat, heart attack and premature death in people with cardiovascular disease. Young children, whose lungs are not fully formed and who, on average, spend more time outdoors, are also at elevated risk of injury from smoke inhalation. So, too, are elderly persons at higher risk.

Just one year ago, on behalf of all state residents, including highly vulnerable persons in our community, the Lane County Board of Health and all five Lane County Commissioners implored your Environmental Quality Commission (EQC), albeit without success, to exercise its statutory authority to order a temporary cessation of open field burning in the Willamette Valley. The Board noted that such action was needed "to protect the lives and health of Lane County residents and others throughout the state."

The Board and Commissioners noted that "public patience with field burning has been exhausted," citing, among other reasons, Willamette Valley residents who have been "driven from their homes during field burning season;" others who suffer from "chronic sinus infections;" some with "exacerbated asthma [caused by] each smoke intrusion;" residents suffering from headaches, nosebleeds, swollen glands, wheezing, fatigue, migraines, and burning lungs; children who battle bronchial and nasal congestion; persons who have been "trapped at home during 90 degree weather without air conditioning, unable to open windows for fear of the smoke;" reports of smoke so thick "it set off a school fire alarm;" and an eye-witness account of an elite track star "coughing up blood after a meet that coincided with a burn day."¹

In support of Lane County's position, the Western Environmental Law Center presented the EQC with hundreds of pages of medical and scientific information about the health risks imposed on persons exposed to sharp increases in fine particulate matter and associated toxins. One of the undersigned also personally provided you with a briefing and a binder detailing this information.² None of this information has been contradicted by the grass seed industry—or even directly responded to—in the course of that industry's persistent advocacy for the right to continue burning. Yet the EQC failed to act, the 2007 field burning season proceeded, and smoke inundated Willamette Valley communities on a number of occasions.

In light of the EQC's failure to protect Willamette Valley residents, we now urge you to act so as to ensure that the summer of 2007 will have been Oregon's last field burning season.

You have the requisite authority.

First, field burning is unlawful absent an appropriate state permit. OAR 340-266-0040. Accordingly, Governor, if you end the permitting program, you end the suffering. Your Department of Agriculture's

¹ Lane County letter to EQC, June 19, 2007.

² We hereby supplement that information with the attached (1) September 14, 2000 death certificate of Marsha Mason, (2) a May 2002 declaration from the widower of Sharon Buck, and (3) a June 2007 letter from Kenny Moore to the Lane County Board of Commissioners.

Western Environmental Law Center letter, June 16, 2008, regarding Ending Field Burning, to Governor Kulongoski.

willingness to temporarily suspend burning at the request of industry constitutes a minor exercise of that authority.

Second, you can act through your Environmental Quality Commission. The EQC does more than write the rules governing the Department of Environmental Quality. In particular, the law clearly authorizes the EQC to suspend grass field burning "at any time." ORS 468A.610(10). You have appointment authority and replacement power over EQC members. ORS 468.010. They will not refuse your determination to protect public health.

Finally, your Department of Environmental Quality is required to abate nuisances, OAR 340-208-0300, and halt "imminent and substantial endangerment" to public health. ORS 468.115. But DEQ has been stymied by industry pressure. The unfortunate fact, as far as we can determine, is that DEQ will act to protect the public by halting the 2008 field burning program only on your unequivocal instruction.

Field burning was ended in Washington by executive action and in Idaho by court order. Last year, Oregon was the only Pacific Northwest state to allow grass seed field burning. There is no valid reason why vulnerable Oregon residents should be subjected to yet another summer of respiratory assault.

We look forward to your decision.

Sincerely Yours,



Dan Galpern, Staff Attorney
Western Environmental Law Center



Charlie Tebbutt, Staff Attorney
Western Environmental Law Center

CC:

Hardy Myers, Oregon Attorney General
Michael Carrier, Office of the Governor
Jeff Merkley, Speaker of the Oregon State House of Representatives
Peter Courtney, President of the Oregon State Senate
Representative Paul Holvey
Senator Floyd Prozanski
Lynn Hampton, Chair, Bill Blosser, Vice Chair, Donald Dotson, Judy Uherbelau, Ken Williamson,
Members, Environmental Quality Commission
Dick Pedersen, Director, Department of Environmental Quality
Katy Coba, Director, Oregon Department of Agriculture

CERTIFICATION OF VITAL RECORD

STATE OF IDAHO
 IDAHO DEPARTMENT OF HEALTH AND WELFARE
 CENTER FOR VITAL STATISTICS AND HEALTH POLICY
 State of Idaho
CERTIFICATE OF DEATH

State File No. _____
 Local Reg. No. 1403

DECEDENT	DECEDENT - NAME Marsha Joy Mason		SEX Female	DATE OF DEATH September 14, 2000
	SOCIAL SECURITY NUMBER 538-54-0714	AGE - LAST BIRTHDAY 49	UNDER 1 YEAR NO	DATE OF BIRTH (month, day, year) Nov 16, 1950
TYPE OF DEATH Print in REVERSE BLACK INK DO NOT USE RED INK	PLACE OF DEATH <input type="checkbox"/> Home <input checked="" type="checkbox"/> Hospital		DATE OF DEATH (month, day, year)	
	FACILITY NAME AND ADDRESS OF HOSPITAL, NAME OF NURSING HOME, NAME OF HOME AND ADDRESS		CITY, TOWN OR LOCATION OF DEATH	
NAME OF DECEASED Print in REVERSE BLACK INK DO NOT USE RED INK	MARRIAGE STATUS Married		OCCUPATION Waitress	
	SPOUSE'S NAME Edwin Patrick Mason		INDUSTRY Restaurant	
RESIDENCE STATE	COUNTY Kootenai		CITY, TOWN OR LOCATION Rathdrum	
	STREET AND NUMBER 1568 Oneida		ZIP CODE 83858	
PARENTS	FATHER - NAME Donald Griffith		MOTHER - FULL MAIDEN NAME Joyce (Unknown)	
	BIRTHPLACE Michigan		BIRTHPLACE Washington	
INFORMANT	NAME Pat Mason		ADDRESS 1568 Oneida, Rathdrum, ID 83858	
	RELATIONSHIP TO DECEASED Spouse		PHONE NUMBER 208-838-8322	
DISPOSITION	METHOD OF DISPOSITION <input checked="" type="checkbox"/> Burial <input type="checkbox"/> Cremation <input type="checkbox"/> Removal from Idaho		LOCATION - City or Town, State Rathdrum, Idaho	
	CEMETERY Pinegrove Cemetery		FACILITY NAME AND ADDRESS Yates Funeral Home 744 North 4th Street, Coeur d'Alene, ID 83814	
CAUSE OF DEATH	DATE OF DEATH SEPTEMBER 14, 2000		MANNER OF DEATH <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Homicide <input type="checkbox"/> Suicide <input type="checkbox"/> Accident	
	IMMEDIATE CAUSE (final process or condition resulting in death) ACUTE STATUS ASTHMATICUS		DURATION OF ILLNESS 1 HOUR	
CERTIFIER	UNDERLYING CAUSE (cause of death) SEVERE AIR POLLUTION		DURATION OF ILLNESS 2 HOURS	
	OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH CHRONIC ASTHMA		DURATION OF ILLNESS 1 HOUR	
CORONER'S REVIEW AREA	SIGNATURE AND TITLE OF CERTIFIER Robert S. West, M.D. - Coroner		LICENSE NUMBER M-2875	
	DATE OF REVIEW 9/13/00		DATE SIGNED (month, day, year) 9/15/00	
REGISTRAR	TO BE USED FOR EXTERNAL CAUSES ONLY AIR POLLUTION FROM WHEAT FIELD BURNING		LOCATION (City or Town, State) 1568 ONEIDA RATHDRUM, IDAHO 83858	
	CORONER'S ACTION <input checked="" type="checkbox"/> I have reviewed and/or amended and certified.		CORONER'S SIGNATURE [Signature]	
REGISTRAR SIGNATURE [Signature]		DATE SIGNED (month, day, year) September 20, 2000		



This is a true and correct reproduction of the document officially registered and placed on file with the IDAHO CENTER FOR VITAL STATISTICS AND HEALTH POLICY

DATE ISSUED: **SEP 20 2000**

This copy is not valid unless prepared on engraved border displaying state seal and signature of the Registrar.

JANE S. SMITH
 STATE REGISTRAR



ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

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Sandpoint, ID 83864
208.263.8517
208.263.0759 (fax)

Attorney for Plaintiff Safe Air for Everyone

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

_____)	
)	
SAFE AIR FOR EVERYONE,)	
)	Case No. <u>02-0241N-EJL</u>
Plaintiff,)	
)	
v.)	
)	
WAYNE MEYER, <i>et al.</i> ,)	DECLARATION OF PAUL
)	WILLIAM VOGEL, JR.
Defendants.)	
)	
_____)	

Pursuant to 28 U.S.C. §1746, Paul William Vogel, Jr. declares as follows:

1. I reside at 1028 Janish Drive in Sandpoint, Idaho, with my two children, Hannah, age 12, and Dylan, age 8. I have been a widower since 1996, when my wife, Sharon Buck, died from an asthma attack at age thirty-seven, in Sandpoint.

2. Prior to the events that led to her death, Sharon had asthma and numerous allergies and occasionally required medication or inhalers to keep the asthma under control. Sharon was diagnosed with asthma at an early age, and learned to live with the

minimal limitation asthma placed on her life. Sharon occasionally received allergy shots to limit her allergic reactions and moderate their effects.

3. Sharon was physically active and in good shape at the time of her death. Sharon's seasonal activities included hiking, running, bicycling and skiing. Sharon often brought her inhaler along while engaging in activities, but it was rarely necessary for her to use the inhaler during the activity.

4. While Sharon was alive, and when we were provided with advance notice of grass field burning, we did not schedule outdoor activities. We often postponed or eliminated activities that we would have otherwise enjoyed but for the grass field burning season. We often scheduled our vacations to ensure that we were out of the region during the field burning times.

5. On August 15, 1996, the last day of Sharon's life, I got home around 8:00 p.m. and we ate dinner and then Sharon and I played with our children. Sharon was feeling fine and she decided to camp out in a tent with our children in our backyard. Unbeknownst to Sharon, a large quantity of smoke from the burning of grass fields in Kootenai County, Idaho, was heading towards Sandpoint.

6. Earlier on August 15, 1996, grass seed growers in Kootenai County had ignited and burned over 2,000 acres of grass fields. The wind speed and direction of the smoke, along with other factors, caused the plume of smoke from the grass seed burning to reach Sandpoint, Idaho.

7. On August 15, 1996, sometime before midnight, I heard Sharon in the bathroom struggling to breathe and attempting to use her inhaler. I went to her, and she was very afraid. She said to me, "I don't want to die." I called an ambulance and returned to Sharon thirty seconds later. She looked at me fearfully and said, "I'm going to die" and collapsed through my arms onto the floor into unconsciousness.

8. I did not wait for an ambulance to arrive. I drove Sharon to the Bonner General Hospital but she was dead by the time we arrived at the hospital.

9. My children were six years old and two years old when their mother died. My children and I have suffered terrible pain from Sharon's death. My children are bright, loving and interesting, yet the loss of their mother has left a profound, irreplaceable absence in their lives. Each day they miss Sharon's love, patience, support, encouragement and participation in their activities.

10. Prior to Sharon's death, I had been a member of the Idaho Smoke Management Board. I was appointed to the Board by Governor Andrus. I agreed to participate on this Board because of the health impacts I knew the smoke from agricultural burning had on Sharon and other members of the community, although I never could have imagined then that exposure to smoke from grass field burning could result in Sharon's death.

11. I resigned from the Smoke Management Board after Sharon's death. As I stated in my resignation letter to Governor Batt, a copy of which is attached as Exhibit A, I believe the Idaho Smoke Management Board is "farcical," and that the practice of grass field burning must come to an end. Sharon died six years ago, yet the burning of large

areas of grass fields on the Rathdrum Prairie and the Coeur d'Alene Reservation has continued and has even grown.

12. I support SAFE's efforts to end the practice of Kentucky bluegrass field residue burning in North Idaho. I do not want any more people in North Idaho to die from exposure to grass field burning smoke, and I hope no more children have to experience, as a result of this untenable practice, what mine now have to experience every day of their lives.

I declare under penalty of perjury that the foregoing is true and correct

EXECUTED ON
this 23rd day of May, 2002
by: Paul W. William Vogel, Jr.
Paul William Vogel, Jr.

Sent: Thursday, June 21, 2007 3:43 PM
Subject: Re: county letter

Dear Peter,

Thanks for urging the Environmental Quality Commission to exercise its authority under ORS 468A.610 (9) to stop open field burning in the Willamette Valley. I was sorry to miss the hearing.

As Bill Bowerman's and Steve Prefontaine's biographer, I'm often asked how they would feel about some issue of the day. Most of the time, I haven't got a clue. They were so unpredictable, I get queasy if I try to guarantee what they would support or oppose. But on one subject, my conscience is clear. Bill and Pre ached and worked for the prohibition of field burning.

In February of 1975, Bowerman and four distance runners he'd coached to be Olympians (Prefontaine, Steve Savage, Mike Manley and I) went to Salem to testify at a state senate hearing on rye grass burning. Pre was the star witness. He told how the summer before, he'd been in the best shape of his life. He was about to leave for big races in Europe. As a final tune-up, on Sept. 4, 1974, "to blow the carbon out," as he put it (with unknowing irony), he'd scheduled a mile time trial. A thousand fans showed up to watch.

A wall of field smoke rolled in as well. You could not see the length of Hayward Field. But because of his fans, his people, Pre ran anyway. He ran 3:58.3, and finished coughing blood. His hacking tore muscle fibers under his rib cage.

He didn't realize the extent of the damage until a two-mile in London a week later. He couldn't breathe with two laps to go, and had to step nauseous into the infield. In his entire career, that was the single race he did not finish.

The facts dramatized by Pre have not changed. Field smoke is a danger to the health of the strongest as well as to the infirm. It is inescapably a medical question.

There are a host of reasons to stop. The Olympic Trials are nearing. Oregon's alone in this now, with no other state burning. But those are matters legitimately weighable against the growers' financial contributions to the economy. Those are questions of nuisance vs. benefit.

The real reason is different. The real reason is the nature of that smoke invading Oregonians' lungs.

So you may tell the EQC don't do it for me, don't do it for the memory of Bill or Pre. Do it that the health of our citizens shall be compromised no longer.

Sincerely,

Kenny Moore
2793 Kincaid St.
Eugene, OR 97405