

July 21, 2016

Via email: william.lemp@pdc.wa.gov

William A. Lemp, III
Lead Political Finance Investigator
State of Washington
Public Disclosure Commission
PO Box 40908
Olympia, WA 98504-0908

Re: EDB's Response to 45-Day Citizens Action Complaint filed by Arthur West
PDC Case 6627

Dear Mr. Lemp:

This firm represents the Economic Development Board For Tacoma-Pierce County ("EDB"). This letter serves as the EDB's response to your letter of July 14, requesting a response to the Citizens Action Complaint filed by Arthur West, under PDC Case No. 6627. For the reasons set forth below, there is no legal or factual basis for the Complaint filed by Mr. West and the EDB respectfully requests that the PDC close its investigation.

The EDB is Not a Public Office or Agency.

As an initial response to your letter, the EDB is not a public office or agency subject to the restrictions of RCW 42.17A.555. RCW 42.17A.005 (2) defines "Agency" as including all state agencies and all local agencies. A "state agency" is defined to include "every state office, department, division, bureau, board, commission, or other state agency. A "local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

By definition, the EDB is not a public agency, subject to the restrictions of RCW 42.17A.555. To the contrary, the EDB is a private Washington non-profit corporation, actively incorporated in the State of Washington since 1977. *See Corporations Registration Detail provided by Washington Secretary of State, attached as Exhibit "A."* As plainly stated on the front page of the EDB website (www.edbtacomapierce.org), the EDB has a two prong mission: retention and recruitment of existing primary businesses in Tacoma-Pierce County. The EDB's work plan to accomplish its stated mission is developed by a volunteer board of directors. The work plan is executed by private staff members. The EDB's work plan for business recruitment

and retention is funded by its member investors, both private and public. The EDB does not seek, as its primary or one of its primary purposes, to affect, directly or indirectly, governmental decision-making by supporting or opposing candidates or ballot propositions.

The EDB Sought a Legal Determination of the Propriety of a Proposed Local Initiative.

Because the EDB's stated mission is to recruit and retain primary businesses in Tacoma-Pierce County, the EDB had the requisite legal standing to pursue a *pre-election review* of the legal sufficiency of the proposed local initiatives, identified in your letter as Tacoma Citizen's Initiatives 5 and 6 ("Initiatives"). As such, the EDB was a Co-Plaintiff in the legal action ("Complaint") filed in the Pierce County Superior Court under Case No. 16-2-08477-5, which sought declaratory and injunctive relief given that the Initiatives were beyond the proper scope of the initiative power (the "Pierce County Legal Action"). On July 1, 2016, the Honorable Jack Nevin concurred and granted the Plaintiffs' (and the City of Tacoma's) requested declaratory and injunctive relief, which precluded placement of the Initiatives on the ballot.

The Washington Supreme Court has held that pre-election review is proper to determine whether such local initiatives are beyond the scope of the initiative power. See e.g., City of Port Angeles v. Our Water—Our Choice!, 170 Wn.2d 1, 239 P.3d 589 (2010). This exact issue (pre-election review of local initiatives involving water rights) was recently reaffirmed by the Washington Supreme Court in February 2016 in Spokane Entrepreneurial Center v. Spokane Moves to Amend the Constitution, 185 Wn.2d 97; 369 P.3d 140 (2016). As the Court noted, the petitioners who filed the declaratory judgment action challenging the validity of the Spokane initiatives included Spokane County, individual residents of Spokane, for-profit corporations and companies in Spokane, and nonprofit associations, including the Spokane Association of Realtors, the Spokane Building Owners and Managers Association, the Spokane Home Builders Association and the local chambers of commerce. Spokane Entrepreneurial, 185 Wn.2d at 101-102.

Like the EDB, the Spokane Entrepreneurial petitioners had legal standing to challenge the initiatives in the context of a pre-election declaratory judgment action in the superior court. Ultimately, the Washington Supreme Court agreed with the petitioners in that case and held that the proposed initiative exceeded the scope of local legislative authority and thus "should not be put on the ballot." Id., at 110.

In the pursuit of a legal determination of the validity of the Initiatives in this case, the EDB paid for legal services directly to this firm, as its legal counsel, from its operating budget. The EDB has not received, nor does it expect to receive, "contributions" toward any "electoral goals" as its focus was solely to obtain a pre-election legal ruling on the merits of the proposed Tacoma Citizen's Initiatives.

The EDB's Participation as a Co-Plaintiff in the Pierce County Legal Action was not tantamount to action as a "Political Committee."

Your letter also references Mr. West's alleged violations of RCW 42.17A.205, .235, and .240 by failing to register and report "campaign expenditures as a political committee." As you

are well aware, those referenced sections of the Act are dependent on a determination that the EDB was a “political committee.”

The EDB’s pursuit of a legal determination, as a Co-Plaintiff with the Port of Tacoma and the Tacoma-Pierce County Chamber of Commerce, does not make the EDB part of a “political committee” subject to the Fair Campaign Practices Act.

RCW 42.17A.005(37) defines a “political committee” as “any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.” See also Utter v. Building Industry Ass’n of Washington, 182 Wn.2d 398, 416, 341 P.3d 953 (2015)(discussing the “contribution” prong as requiring evidence that an organization “expects to receive or receives contributions toward electoral goals.”).

“Expenditure,” as defined in RCW 42.17A.005(20), includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefitting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign.

Pursuing legal rights (and paying legal fees to do so), under established Washington Supreme Court precedent does not fall within any reasonable definition of an “expenditure” by a “political committee.” As the Court of Appeals held in State ex rel. Evergreen Freedom Foundation v. Washington Educ. Ass’n., 111 Wn. App. 586, 599, 49 P.3d 894 (Div. II 2002), in determining whether an organization is a “political committee,” the organization making the expenditures must have as its “primary or one of the primary purposes . . . to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions.” As the Court noted in this case, “. . . if electoral political activity is merely one means the organization uses to achieve its legitimate broad nonpolitical goals, electoral political activity cannot be said to be one of the organization’s primary purposes.” Id. At 600.

It is undisputed that the EDB was a Co-Plaintiff in the Pierce County Legal Action. The EDB’s stated mission is to recruit and retain primary businesses in Tacoma and Pierce County. While the EDB was concerned that the Initiatives, if passed, would irreparably harm the EDB’s work plan and efforts to attract business in our region, seeking a legal determination on a purely legal issue in which the EDB (and the other Co-Plaintiffs) had legal standing, is a far cry from the requisite electoral political activity necessary to be deemed a “political committee” with the other Co-Plaintiffs.

In sum, the EDB participated in a legal process, and incurred legal fees, to bring an action for declaratory relief before the Pierce County Superior Court on the sole issue as to whether the Tacoma Citizens Initiatives were beyond the proper scope of local initiative power. The Superior Court found that the EDB and the other Co-Plaintiffs had standing and were entitled to the declaratory relief requested. Clearly, the lawful pursuit of declaratory relief in the Superior Court is not the kind of activity that is subject to the restrictions of RCW 42.17A.555.

The EDB Expects an Impartial Investigation of the Citizen's Action Complaint.

As referenced in your July 14 letter, the EDB understands that the PDC has opened a "formal investigation." From our review of the applicable provisions of the Washington Administrative Code, the initiation of a formal investigation is at the direction and discretion of the executive director of the PDC. WAC 390-37-060(1)(a)-(d). As indicated in subpart (d): "The director shall initiate a formal investigation whenever an initial review of a complaint indicates that a material violation of chapter 42.17A RCW may have occurred." We also understand, based on the cited WAC, that the executive director "shall initiate" an adjudicative proceeding or provide a report to the commission "whenever a formal investigation reveals facts **that the executive director has reason to believe** are a material violation of chapter 42.17A RCW and do not constitute substantial compliance." WAC 390-37-060(3).

Because the executive director retains significant discretion in these matters, we ask that the formal investigation include the EDB's concerns over the executive director's appearance of fairness in this matter.

Evelyn Fielding Lopez currently serves as Executive Director of the Public Disclosure Commission. In this capacity, it appears that Ms. Lopez has exercised her discretion under the WACs and has initiated this formal investigation.

Unfortunately, based on the EDB's review of public comments made by Ms. Lopez to the media and on her own social media (Facebook), it appears that Ms. Lopez cannot exercise her discretion in a fair and impartial manner. For instance, as recently as January 22, 2016, as indicated in the attached documentation, Ms. Lopez publicly commented (on a discussion of the recent methanol issue) that "**... we can't let the venal and irresponsible Port and Chamber continue with this nonsense—time for the real people of Tacoma to decide what is in the best interest of our city.**"

The EDB takes exception to being the subject of a formal investigation by the Executive Director of the Public Disclosure Commission where the Executive Director has clearly stated her bias toward members of the business community, including the Port, the Chamber, and, in our case, the EDB with the initiation of this formal investigation on a Citizens Complaint that facially lacks legal or factual merit.

Asserting one's opinion in the public forum is a matter of free speech. However, where one acts in the capacity of an executive director of an agency charged with discretionary review of allegations that may or may not rise to the level of a "formal investigation," we believe the appearance of fairness doctrine (RCW 34.05.425(3)) demands transparency and an unbiased review, analysis and determination of the issues.

Because the EDB does not believe Ms. Lopez can participate in this matter in an unbiased manner, we ask that the Commission exclude her from any further participation in the formal investigation or in the determination of any findings.

We trust that the information presented addresses the concerns and complaints alleged. As you will likely receive similar responses from the Port of Tacoma and the Pierce County Chamber of Commerce, we ask that you view the facts and analysis provided in their entirety and conclude that there is no merit to the Citizen's Action Complaint filed by Mr. West. We look forward to notification that the "formal investigation" has been closed with no findings.

Reservation of Rights. Because of the limited time the EDB was provided to respond to this Citizen's Complaint, the EDB reserves the right to provide additional authority with respect to all issues involved. Additionally, the EDB intends to join in any Request for Recusal and/or Motion for Disqualification which may be filed by any other party to this formal investigation under Case Nos. 6626, 6627, or 6628.

If you have any further questions or need further information, please feel free to call me.

Sincerely,

LEDGER SQUARE LAW, P.S.

Jason M. Whalen

JMW:mjr
Encls

cc: Client
Carolyn Lake, Counsel for Port of Tacoma
Valerie Zeeck, Counsel for Tacoma-Pierce County Chamber of Commerce

ⓘ Due to technical difficulties some search results may not be current or reflect the most recent filing. We are hoping to have this corrected shortly.

ECONOMIC DEVELOPMENT BOARD FOR TACOMA-PIERCE COUNTY ✓

UBI Number 601168742
 Category REG
 Profit/Nonprofit Nonprofit
 Active/Inactive Active
 State Of Incorporation WA
 WA Filing Date 10/11/1977
 Expiration Date 10/31/2016

Inactive Date
 Duration Perpetual

Charity This corporation is also a charity. [View Info » \(http://www.sos.wa.gov/charities/search_detail.aspx?charity_id=36760\)](http://www.sos.wa.gov/charities/search_detail.aspx?charity_id=36760)

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EXHIBIT

A



Justin D. Leighton · Executive Director at Washington State Transit Association

I am certain we could use less of this "key ingredient" in our lives. <https://www.washingtonpost.com/.../by-2050-there-will-be.../>

Like · Reply · 3 · Jan 22, 2016 4:14pm



Wade Neal · Assistant Executive Director at The Grand Cinema

If the writer does not know "the facts" why is he clearly for the plant?

Like · Reply · 8 · Jan 22, 2016 3:50pm



Evelyn Fielding Lopez · Tacoma, Washington

This may be the most ridiculous explanation I've read lately: "It's new because it's environmentally advanced." Talk about Wyle E. Coyote and Acme products--that line is right out of an Acme products advertisement! Tacoma, we can't let the venal and irresponsible Port and Chamber continue with this nonsense--time for the real people of Tacoma to decide what is in the best interest of our city.

Like · Reply · 7 · Jan 22, 2016 3:01pm



Ladymae Walters

If environmental agencies permit this catastrophic disaster in the making they are not doing their job .
They are the first ones to shout about climate change , less snow cap , receding glaciers .
Warm water low water in our rivers .
If they permit this in the heart of a city .
They've been bought !
It's not rocket science to know it's not a good idea ...
Save Our Water says recall Port Commissioners asap .

Like · Reply · 5 · Jan 19, 2016 9:20pm



Kathlyn Neal · Psychotherapist, Clinical Social Worker at Kathlyn Neal LICSW

In addition to the health and safety concerns of the proposed methanol plant to current Tacoma residents and the depletion of our natural resources, I wonder how many corporations/businesses will pass over Tacoma as their future home should it be built. This is not an effective way to attract future commerce. In fact, it seems contrary to attracting future business. I hear a lot of talk about how cutting edge and less polluting this plant would be...compared to what? Older, more polluting technology? FACT: This methanol plant will cause more pollution to our land and waters and people than if it were not built.

Like · Reply · 9 · Jan 18, 2016 9:19pm



Ladymae Walters

Look at the big players involved with Northwest innovations ..
It says it all .
Sad day for Tacoma if this is approved .

Like · Reply · 5 · Jan 18, 2016 8:29am



Nancy McFarland · Tacoma Community College

I've read about this methanol plant to to understand why there is so much public outcry; this is really not a good deal for Tacoma. Let's not lose sight of the environmental concerns because we are excited about desperately needed jobs. Yes, we need more jobs in Tacoma, but we do not need this methanol plant! I am sure there are many other corporations in the United States that would be interested in Tacoma if they were given some incentives.

COMMENTS

7 Comments

Sort by Newest

Add a comment...

**Gavin Guss**

i'm pleased to see all the good ideas and intelligent comments on this thread. it still confounds me how opaque our elected representatives remain when the issue requires direct and immediate dialog.

Like · Reply · 3 · Feb 2, 2016 2:17pm

**Brett Ogin** · Works at Westcoastbiasedsports.com

warehouses, manufacturing, giant hotel and casino (sorry that's me being selfish) all sound better to me than toxic gas emitting time bomb.

Like · Reply · 3 · Feb 1, 2016 10:30am

**Evelyn Fielding Lopez** · Tacoma, Washington

The idea of placing warehouses on the Tideflats is interesting. If freeway access were improved, that might be a better option than converting good farmlands into warehouses in Fife and Puyallup. There should be a comprehensive discussion about what we want the future of Tacoma to look like--rather than leasing land to the first suitor without any critical thought or discussion. I remain deeply disappointed in the Port Commissioners, but maybe we can use the scoping and EIS process to have those critical discussions. I expect our City leaders to participate as well--what is the point of having vision exercises like Tacoma 2025 if you don't do anything to help those positive goals and visions become reality?

Like · Reply · 3 · Feb 1, 2016 9:30am

**Ladymae Walters**

The visions project ...
About \$ 225 , 000 another waste of tax dollars

Like · Reply · Feb 2, 2016 7:24pm

**Alvarita Allen** · Tacoma, Washington

Read the article in Time Magazine on methanol facilities. They are leaking in many locations throughout the world, including the U.S.A. Will Tacoma and the Port guarantee to buy my home at the "former" value when the methanol facility here leaks? If NOT, then this plant should not be built.

Like · Reply · 4 · Feb 1, 2016 8:22am

**Pamela Taylor** · Works at CEO Taylor Household

Anyone remember the superfund clean up!? Such a colossal waste of money and time to only turn around and do this. Oh and whoever is operating here. They should know that in the event of an earthquake 6.8 or higher, break out the surfboard and prepare for the 12 foot high wall of water that will be coming for them

https://en.m.wikipedia.org/wiki/Tacoma_Fault

POLITICS & GOVERNMENT MARCH 10, 2016 5:58 PM

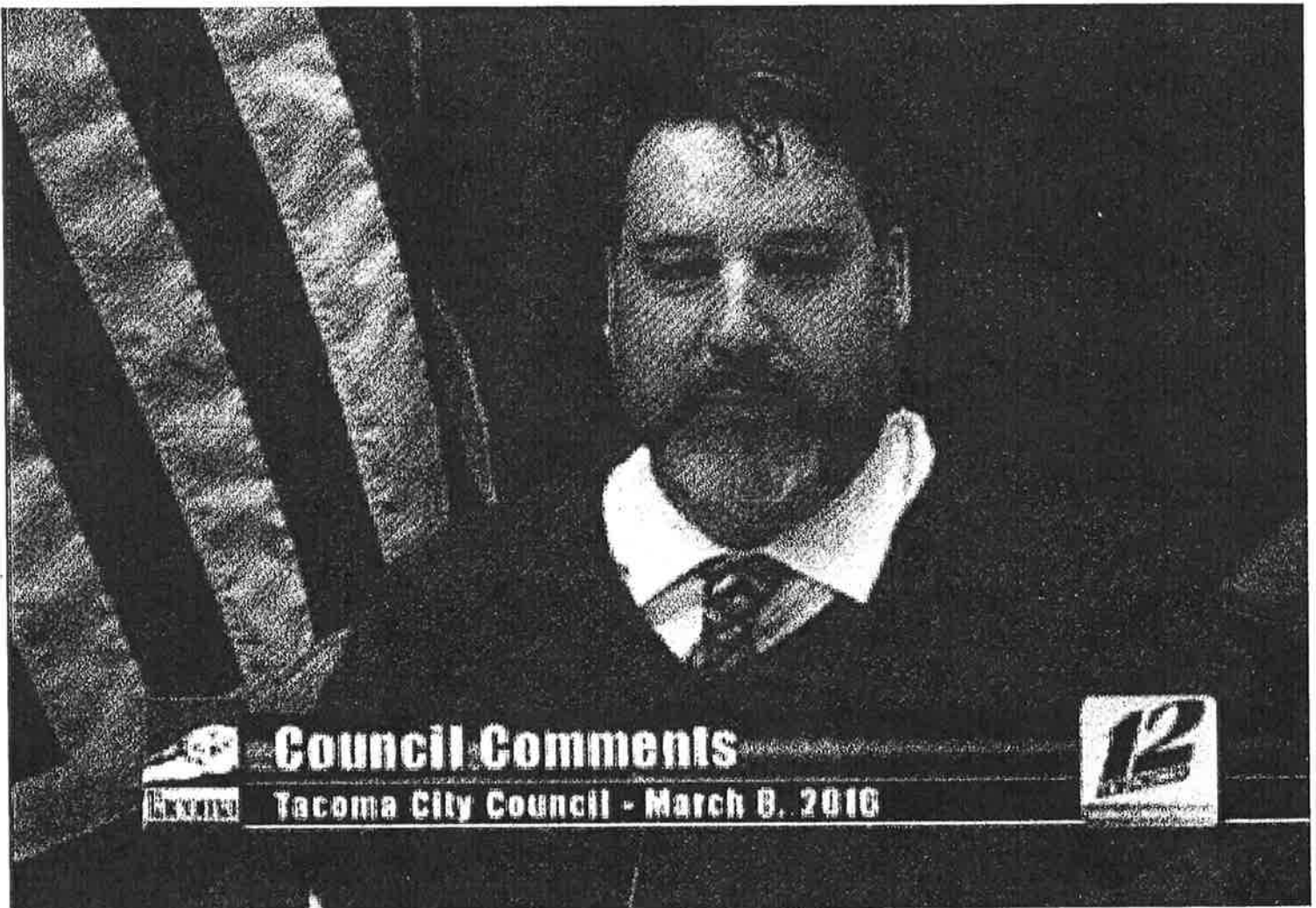
Fashion statement or political message? Tacoma councilman's sweater joins methanol debate

HIGHLIGHTS

Dozens of methanol plant opponents wore red at City Council meeting

Protesters viewed Councilman Campbell's sweater as a sign of solidarity

Council members say they want to raise questions, but not influence study



Her caution made sense to her colleagues, who seconded her remarks at last month's meeting. Some of them have raised questions about the project, including Councilman Ryan Mello, who submitted a two-page letter detailing the issues he hopes the city planning department will consider in its review.

Not present at last month's meeting was Councilman Robert Thoms, who wrote a guest column in Sunday's News Tribune that advocated for a less industrial future at the port.

"My vision is of a city that is less industrial than its past," Thoms wrote. "We can have jobs and commerce and quality of life, but we also must have a better understanding of what the parcels in the port and surrounding area are able to handle, and what are the right projects and zoning to create the future we want."

To some outside city government, that was the first sign that the council was breaking its perceived silence on the project.

Evelyn Fielding Lopez, an attorney and chairwoman of the state Public Disclosure Commission who lives in Tacoma, said she thought the council was being too cautious with the stance its members articulated last month.

"They have a really important role because they represent the citizens of the city, and if they engage, great, but to stand on the sidelines and say 'We can't be involved whatsoever,' that's not great," Lopez said.

Three council members reached by The News Tribune this week would not describe the legal advice they received regarding how they could talk about the methanol proposal.

They said their decisions were informed both by their experiences navigating past controversial projects and by the regular guidance they receive on maintaining the appearance of fairness as elected officials.

City Attorney Elizabeth Pauli also declined to describe the advice she gave to the council regarding the project. But she did say no law or precedent prohibits council members from discussing a topic like the methanol plant.

"There's no such thing," Pauli said. "There are some different concepts that have probably led to caution with regard to what they can and can't say and when."

Other elected bodies in the state have opened themselves to pricey lawsuits when they've either taken gifts from a project applicant or abruptly put up obstacles to projects that otherwise would have complied with local zoning rules. In one case, the city of Spokane had to pay hundreds of

sell it back to the US at a profit.

5. No one has addressed the possible explosion hazard.

6. All this for 250 jobs?


And the TNT appears to support this?

Like · Reply ·  7 · Apr 24, 2016 9:18am



Evelyn Fielding Lopez · Tacoma, Washington

City and Port leaders should embrace the notion that they are elected to serve the people. Yes, use social media. Yes, ask the community what their vision for Tacoma and the Port might be. Yes, find out what industrial use is forward looking and resource appropriate. Yes, have a public discussion before the lease is signed. More asking, more consulting, less telling. Be respectful of the people you serve. This is not easy--but we will all benefit. It is a very good thing to have an engaged and active community--use that resource.


Like · Reply ·  6 · Apr 24, 2016 9:10am



Jerry Bauer

"If you have a community that's against everything, it's awfully hard to recruit businesses that want to come here," Port Commissioner Don Johnson

I'm pretty sure no one would have been against either of the other two options you guys nixed


Like · Reply ·  5 · Apr 24, 2016 8:53am



Debby Herbert

The politicking has already begun for the next boondoggle, "If you have a community that's against everything, it's awfully hard to recruit businesses that want to come here," Port Commissioner Don Johnson said

The issue was the largest methanol plant in the world being built in the middle of town. Obvious twisting of the conversation. Hundreds and thousands of residents have sent letters to the port and officials insisting on sustainable jobs and industry. Selling off our limited natural resources of barely breathable air, water and power to the highest bidder is not sound in any way, including economically, when all accounted for. We just barely dodged a bullet and we have to stay involved to not let this happen again.

Like · Reply ·  10 · Apr 24, 2016 10:23pm · Edited



Ladymae Walters


Save Tacoma Water

Amendment 5 Initiative 6

The People's Right to Water Protection Ordinance .

Will not get to the ballot box without City of Tacoma registered voters signing the petitions .


SaveTacomaWater.org.

Like · Reply ·  4 · Apr 24, 2016 8:17am



Marba Armstrong Cowan · St. Martin's University

Hemp production for biodegradable plastics and earth friendly textiles. Who knows what other petroleum based products could be replaced?

Like · Reply ·  3 · Apr 24, 2016 6:51am



Veronica Niechajczyk