



City of Tacoma
Office of the City Attorney

DEPARTMENT OF ECOLOGY

FEB 15 2007

WATER QUALITY PROGRAM

February 15, 2007

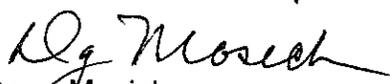
Judy Greear
Hearings Coordinator/Clerk
Pollution Control Hearings Board
4224 – 6th Avenue SE, Rowe Six, Bldg. 2
PO BOX 40903
Lacey, WA 98504-0903

RE: City of Tacoma's Appeal of Phase 1
Municipal Stormwater Permit

Dear Ms. Greear:

Attached please find the City of Tacoma's appeal of the Phase 1
Municipal Stormwater Permit issued by the Department of Ecology on January
17, 2007.

Very Truly Yours,


Doug Mosich
Assistant City Attorney
WSB # 18341

Cc: Karen Larkin, P E., Assistant Director, Department of Public Works

DEPARTMENT OF ECOLOGY
FEB 15 2007
WATER QUALITY PROGRAM

STATE OF WASHINGTON
POLLUTION CONTROL HEARINGS BOARD

CITY OF TACOMA,

Appellant,

v.

THE WASHINGTON STATE
DEPARTMENT OF ECOLOGY,

Respondent.

NO.

NOTICE OF APPEAL OF PHASE 1
MUNICIPAL STORMWATER PERMIT

I. APPELLANT AND SUBJECT OF APPEAL.

The City of Tacoma ("the City") appeals the Phase 1 Municipal Stormwater Permit ("Permit") issued by the Washington State Department of Ecology on January 17, 2007, (copy attached).

The City is represented in this appeal by the Tacoma City Attorney's Office.

Correspondence sent to the City Attorney's Office should be directed to:

Doug Mosich
Assistant City Attorney
747 Market Street, Room 1120
Tacoma, WA 98402-3767
Telephone: (253) 591-5626
Facsimile: (253) 591-5755
dmosich@ci.tacoma.wa.us

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Correspondence sent to City management should be directed to:

Karen Larkin, P.E.,
Assistant Director, Public Works Department
747 Market Street, Room 408
Tacoma, WA 98402-3767
Telephone: (253) 591-5311
Facsimile: (253) 591-5097
klarkin@ci.tacoma.wa.us

II. ADDITIONAL PARTIES

The Department of Ecology is also a party to this appeal. Ecology's address is:

Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504

The Phase I Municipal Stormwater Permit was issued to other municipalities, including the City of Seattle, the Port of Seattle, Clark County, King County, Pierce County, Snohomish County, and the Port of Tacoma. It is the City's understanding that some of these other permittees also intend to appeal the Phase I Municipal Stormwater Permit.

III. PERMIT CONDITIONS UNDER APPEAL.

The City is appealing the following conditions in the Permit:

- (a) Special Condition S4;
- (b) Special Condition S5; and
- (c) Special Condition S8.

IV. GROUNDS FOR APPEAL.

While the City generally supports the approach Ecology has taken with respect to the Permit, Special Conditions S4 and S8, as written, may well lead to unnecessary future enforcement litigation and inconclusive and expensive monitoring. The City would rather dedicate its limited municipal stormwater

1 resources to making tangible improvements in stormwater quality. In addition,
2 although the City was provided an opportunity to comment on the majority of
3 the Permit before it was issued, the City was not given an opportunity to
4 comment on many of the provisions contained in Special Conditions S4 and S8.
5 This appeal is necessary to, among other things, address provisions within
6 Special Conditions S4 and S8 which are unreasonable, unjust, vague or
7 impracticable, and inappropriate for municipal stormwater.
8

9 Although the City generally supports the iterative BMP process identified
10 in S4.F, provisions within Special Condition S4 which are unreasonable, unjust,
11 vague, impracticable, and inappropriate for municipal stormwater will undermine
12 the City's efforts to comply with the Permit.

13 The City is appealing S5 because it is vague and inconsistent with
14 applicable laws and regulations. S5 improperly delegates Ecology's federal and
15 state Clean Water Act authority by requiring the City to inspect, surveil and
16 monitor stormwater discharges of third parties over whom the City has no
17 control.
18

19 Special Condition S8 contains provisions that are unreasonable, unjust,
20 vague, inconsistent or impracticable, and inappropriate including, but not limited
21 to provisions relating to stormwater monitoring frequency and type of sampling,
22 seasonal first flush toxicity testing, and various conflicting reporting
23 requirements.

24 V. RELIEF REQUESTED.

25 The City respectfully requests the Pollution Control Hearings Board
26 ("Board") order the Department of Ecology to remove unreasonable, unjust,

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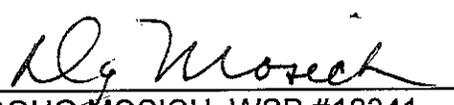
vague, impracticable, inconsistent, and inappropriate terms in Special Condition S4, and provide that compliance with the substantive Permit provisions equates to full compliance with the requirements of state and federal law. With regard to S5, the City respectfully requests the Board order the Department of Ecology to remove provisions within S5 which improperly delegate state and federal Clean Water Act responsibilities to the City. With regard to Special Condition S8, the City respectfully requests the Board order the Department of Ecology to remove unreasonable, unjust, vague, impracticable, inconsistent and inappropriate monitoring and reporting requirements.

VI. SERVICE.

Copies of this Appeal were served upon the Department of Ecology on February 15, 2007.

DATED this 15th day of February, 2007.

ELIZABETH A. PAULI, City Attorney

By: 
DOUG MOSICH, WSB #18341
Assistant City Attorney