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POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

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| THE PORT OF SEATTLE, | No. |
| Appellant, | |
| v. | |
| STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, | |
| Respondent. | |

**NOTICE OF APPEAL OF
PHASE I MUNICIPAL
STORMWATER PERMIT**

I. APPEALING PARTY

The appealing party is:

Port of Seattle
2711 Alaskan Way, Pier 69
P.O. Box 1209
Seattle, WA 98111
(206) 728-3000
(206) 728-3205 (fax)

The Port is represented by:

Susan Ridgley, Senior Port Counsel, WSBA No. 28086
Port of Seattle
2711 Alaskan Way, Pier 69
P.O. Box 1209
Seattle, WA 98111
(206) 728-3000
(206) 728-3205 (fax)

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DEPARTMENT OF ECOLOGY
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POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

THE PORT OF SEATTLE,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,

Respondent.

No.

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PHASE I MUNICIPAL
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DEPARTMENT OF ECOLOGY
OFFICE OF DIRECTOR

1 Stephen J. Tan, WSBA No. 22756
2 Tanya Barnett, WSBA No. 17491
3 Cascadia Law Group PLLC
4 1201 Third Avenue, Suite 320
5 Seattle, WA 98101
6 (206) 292-6300
7 (206) 292-6301 (fax)

8 **II. ADDITIONAL PARTIES**

9 The Washington State Department of Ecology is also a party to this appeal.

10 Ecology's address is:

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

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

18 **III. DECISION APPEALED FROM**

19 The Port appeals the Phase I Municipal Stormwater Permit that Ecology issued on
20 January 17, 2007. *See* Exhibit 1.

21 **IV. GROUND FOR APPEAL**

22 The Phase I Municipal Stormwater Permit was issued to a number of cities, counties,
23 ports, and other municipalities. However, these municipalities are classified differently under
24 the Permit, either as "Permittees," "Co-Permittees," or "Secondary Permittees." The Permit
25 subjects different classes of permittees to somewhat different requirements. Furthermore,
26 Special Condition S3 subjects members of the same permittee class to different requirements.
27 In particular, the Ports of Seattle and Tacoma, both of which are "Secondary Permittees,"
must meet requirements that are more onerous, more expensive, and more difficult than those
that apply to other Secondary Permittees. Special Condition S3 exceeds Ecology's authority
under the Clean Water Act and RCW 90.48, and/or is unreasonable and inappropriate.

1 In addition, Special Condition S6 of the Permit establishes Stormwater Management
2 Program requirements for "Co-Permittees and Secondary Permittees," including the Port of
3 Seattle. Certain requirements of this condition exceed Ecology's authority under the Clean
4 Water Act and RCW 90.48, and/or are unreasonable and inappropriate. For example, Special
5 Condition S6.E.7 requires the Ports of Seattle and Tacoma to prepare and implement
6 Stormwater Pollution Prevention Plans "for all Port-owned lands" that are not covered by an
7 existing stormwater discharge permit. Stormwater discharges from "all Port-owned lands"
8 may include discharges that are not subject to municipal stormwater permitting requirements,
9 such as stormwater discharges that do not contain pollutants or stormwater discharges that are
10 not conveyed through Municipal Separate Storm Sewers. Because this condition is not
11 properly limited, it is unlawful and/or unreasonable and inappropriate.

12 **V. RELIEF REQUESTED**

13 The Port respectfully requests that the Board eliminate or modify Special Conditions
14 S3 and S6 as necessary to remedy the errors described in Section IV

15 Dated: February 15, 2007.

16 PORT OF SEATTLE

17 *Tanya Barnett for*

18 Susan Ridgley, Senior Port Counsel, WSBA No. 28086
19 2711 ALASKAN WAY, PIER 69
20 PO Box 1209
21 SEATTLE, WA 98111
(206) 728-3000
(206) 728-3205 (FAX)

22 CASCADIA LAW GROUP PLLC

23 *Tanya Barnett*

24 Stephen J. Tan, WSBA No. 22756
25 Tanya Barnett, WSBA No. 17491
26 1201 THIRD AVENUE, SUITE 320
27 SEATTLE, WASHINGTON 98101
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DECLARATION OF SERVICE

I hereby certify that I have on this 15th day of February, 2007, served a copy of the foregoing Notice of Appeal on the following, by ABC-Legal Messenger:

Washington State Department of Ecology
300 Desmond Drive
Lacey, WA 98503

Ronald L. Lavigne
Washington State Attorney General's Office
2425 Bristol Court SW, 2nd Floor
P.O. Box 40117
Olympia, WA 98504-0117



Tanya Barnett