

DEPARTMENT OF ECOLOGY

FEB 15 2007

WATER QUALITY PROGRAM



Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

Washington State University Division

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February 15, 2007

**TRANSMITTED VIA
FACSIMILE AND U.S. MAIL**

Pollution Control Hearings Board
P.O. Box 40903
Olympia, WA 98504-0903

**RE: Washington State University v. Department of Ecology
Notice of Appeal**

I am transmitting to you via facsimile Washington State University's Notice of Appeal (without exhibits) and a Declaration of Mailing. Today I am mailing to you these original documents (with exhibits) and a copy of the same. Please conform the copies and return to me in the enclosed stamped envelope.

Thank you.

Sincerely,

FRANK M IIRUBAN
Assistant Attorney General

imh

cc: Appeals Coordinator, Department of Ecology
Kathleen Emmett, Department of Ecology
Mary Sue Wilson, Ecology Division, Attorney General's Office



DEPARTMENT OF ECOLOGY

FEB 15 2007

WATER QUALITY PROGRAM

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**POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON**

WASHINGTON STATE
UNIVERSITY,

Appellant,

v.

WASHINGTON DEPARTMENT OF
ECOLOGY,

Respondent.

NO.

NOTICE OF APPEAL

I. INTRODUCTION

1.1 Appellant, Washington State University (WSU), a state agency and institution of higher education, hereby appeals the Eastern Washington Phase II Municipal Stormwater Permit (Permit) issued by the Washington Department of Ecology (Ecology) on January 17, 2007. WSU considers itself a leader in environmental stewardship. WSU's commitment to environmental stewardship extends to its desire to protect the quality of waters both in the state of Washington and beyond. This appeal does not change that commitment. However, the Permit issued by Ecology fails to adequately account for the unique nature of municipal stormwater and the unique problems the Palouse environment presents to controlling stormwater, which include challenging topography, turbidity, and soils as well as the commingling of municipal and agricultural runoff.

II. APPEALING PARTIES

2.1 Appellant is:

Office of Business Affairs
Washington State University
442 French Administration Building
P.O. Box 641045
Pullman, WA 99164-1045
Telephone: (509) 335-5524
Facsimile: (509) 335-4642

2.2 Appellant is represented by:

Frank M. Hruban, Assistant Attorney General
Office of the Attorney General
Washington State University Division
332 French Administration Building
P.O. Box 641031
Pullman, WA 99164-1031
Telephone: (509) 335-2636
Facsimile: (509) 335-1663

III. ADDITIONAL PARTY

3.1 The other party to this appeal is the Washington Department of Ecology, which issued the permits for which review is sought.

3.2 Ecology's address is:

Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

IV. ORDER OR DECISION APPEALED

4.1 WSU appeals Ecology's issuance of the Eastern Washington Phase II Municipal Stormwater Permit (Permit). The Permit was issued by Ecology January 17, 2007. A copy of the Permit is attached as Exhibit A. WSU received notice of the Permit from Ecology in the form of a letter dated January 17, 2007, which was received by WSU January 19, 2007. The letter is attached as Exhibit B.

V. GROUNDS FOR APPEAL

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2 5.1 Ecology acted unreasonably, unjustly, or unlawfully in imposing the following
3 conditions in the Permits:

4 5.1.1 Special Condition S.4 to the extent it imposes requirements beyond
5 Maximum Extent Practicable.

6 5.1.2 Conditions in the Permit that mandate the use of Ecology's Stormwater
7 Management Manual(s) or equivalent measures.

8 5.1.3 The definitions, or lack thereof, which relate to the above issues,
9 including, but not limited to, the definition of "all known, available, and reasonable methods of
10 prevention, control and treatment (AKART)" and "maximum extent practicable (MEP)."

11 5.2 Ecology acted unreasonably, unjustly, or unlawfully by failing to adequately
12 evaluate and consider the economic impact of the Permit.

13 5.3 Ecology failed to adopt provisions that are included or incorporated in the
14 Permits as rules, in violation of the Washington State Administrative Procedure Act (APA),
15 RCW 34.05.

16 5.4 Ecology acted unreasonably, unjustly, or unlawfully in designating WSU as a
17 secondary permittee.

VI. RELIEF REQUESTED

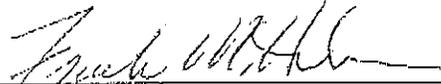
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19 6.1 Appellant respectfully requests that the Board issue an Order remanding the
20 Permit to Ecology with direction to address the Permit's deficiencies.

21 6.2 Appellant also requests that the Board declare invalid provisions in and
22 incorporated into the Permit that are "rules" as defined in RCW 34.05.010(16) and were not
23 adopted in accordance with the APA.
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6.3 Appellant requests such other and further relief as the Board deems appropriate.
Respectfully submitted this 15th day of February, 2007.

ROBERT M. MCKENNA
Attorney General


FRANK M. KURUBAN, WSBA #35258
Assistant Attorney General
Attorney for Appellant, WSU
332 French Administration Building
P.O. Box 641031
Pullman, WA 99164-1031
(509) 335-2636

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**POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON**

WASHINGTON STATE
UNIVERSITY,

Appellant,

v.

WASHINGTON DEPARTMENT OF
ECOLOGY,

Respondent.

NO.

DECLARATION OF MAILING

I, Rita M. Haas, hereby declare and state as follows:

1. I am the Assistant to the Division Chief with the Office of the Attorney General, Washington State University Division.

2. On February 15, 2007, I served a true copy of Appellant Washington State University's Notice of Appeal upon the Respondent by transmitting via facsimile (without exhibits) and mailing the same, postage prepaid, (with exhibits) to:

- 1. Appeals Coordinator
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
Fax: (360) 407-6989

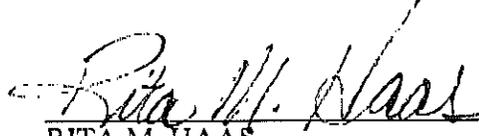
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2. Ms. Kathleen Emmett
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
Fax: (360) 407-6426

3. Mary Sue Wilson
Office of the Attorney General
Ecology Division
P.O. Box 40117
Olympia, WA 98504-0117
Fax: (360) 586-6760

I hereby certify under penalty of perjury under the laws of the state of Washington that the above declaration is true and correct to the best of my knowledge.

DATED this 15th day of February, 2007, at Pullman, Washington.



RITA M. HAAS