



Seattle City Attorney

Thomas A. Carr

Theresa R. Wagner
Senior Assistant City Attorney
206/233-2159

February 20, 2007

cc: Enf. Database Coord.
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Clerk
Environmental Hearings Office
Washington State Pollution Control Hearings Board
4224 Sixth Ave SE, Rowe Six, Bldg. 2
Lacey, WA 98504-0903

Re: City of Seattle Petition to Intervene
Phase I Municipal Stormwater Permit Appeal, PCHB No. P 07-030
*Clark County v. Dept. of Ecology, City of Tacoma, City of Seattle, King
County, Pierce County, and Snohomish County*

To the Clerk of the Board:

Enclosed for consideration by the Board are the original and one copy of the following:

1. City of Seattle's Petition to Intervene
2. Declaration of Chuck Clarke in Support of City of Seattle's Petition to Intervene
3. Declaration of Service

Seattle is a named permittee under the Phase I Municipal Stormwater Permit that is on appeal. Seattle requests that the Petition to Intervene be decided on the City's written submissions, unless Seattle's Petition is contested. If contested, Seattle reserves the right to request by letter that oral argument occur during the Prehearing Conference.

Seattle has contacted counsel for the parties to seek stipulation of the parties to intervention by the City of Seattle. To date, counsel for the City of Tacoma, Pierce County, Snohomish County, Clark County and King County have indicated that they consent to intervention by Seattle. We await the response of counsel for Ecology.

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BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

In the Matter of:)	
)	
CLARK COUNTY, WASHINGTON,)	No P 07-030
)	
Appellant,)	CITY OF SEATTLE'S PETITION TO
vs.)	INTERVENE
)	
STATE OF WASHINGTON, DEPARTMENT)	
OF ECOLOGY, CITY OF TACOMA, CITY)	
OF SEATTLE, KING COUNTY, PIERCE)	
COUNTY, and SNOHOMISH COUNTY,)	
)	
Respondents.)	
)	

The City of Seattle ("Seattle") hereby petitions the Board for intervenor status in the above-captioned matter, pursuant to WAC 371-08-420 and CR 24.

Seattle requests that this Petition to Intervene be decided on the City's written submissions, unless the Petition is contested. If contested, Seattle reserves the right to request by letter that oral argument occur during the Prehearing Conference. Seattle has contacted the parties to learn whether or not this petition is contested and awaits response from Ecology. All other named parties have consented to intervention by Seattle.

Seattle specifically requests permission to participate in the prehearing conference as an



1 intervenor.

2 The City of Seattle's contact information for this matter is:

3 City of Seattle
4 c/o Seattle Public Utilities Director's Office
5 700 Fifth Avenue, Suite 4900
6 P.O. Box 34018
7 Seattle, WA 98124-4018
8 Attention: Chuck Clarke, Director

9 Phone: (206) 684-5851
10 Fax: (206) 684-4631

11 Seattle is represented by:

12 Theresa R. Wagner
13 Senior Assistant City Attorney
14 Seattle City Attorney's Office
15 600 Fourth Ave., 4th Floor
16 P.O. Box 94769
17 Seattle, WA 98124-4769

18 Phone: (206) 684-8200
19 Fax: (206) 684-8284

20 STATEMENT OF FACTS

21 The City of Seattle is a municipal corporation organized under the laws of the State of
22 Washington. Seattle is one of six cities and counties specifically named in and covered by the Phase
23 I Municipal Stormwater Permit, National Pollutant Discharge Elimination System and State Waste
Discharge General Permit for discharges from Large and Medium Municipal Separate Storm Sewer
Systems (the "Permit"), which was issued by the Washington State Department of Ecology
("Ecology") on January 17, 2007. Permit at S1.B.¹ Clark County named Seattle as a respondent in
its Notice of Appeal. PCHB No. P 07-030.

¹ "The following Cities and Counties are covered under this permit as permittees: 1 The City of Tacoma and the City of Seattle. 2. Clark, King, Pierce, and Snohomish Counties." The Permit is attached as an Exhibit to the Notices of Appeal filed in the above-captioned matters.

1
2 **ARGUMENT**

3 Seattle requests to intervene in this matter for all purposes. WAC 371-08-420.² As a named
4 permittee, Seattle is entitled to intervene as a matter of right pursuant to CR 24(a), because all of the
5 requirements are met: (1) Seattle claims an interest relating to the subject of the action, which is the
6 Permit; (2) disposition of the action may as a practical matter impair or impede Seattle's ability to
7 protect its interest; and (3) Seattle's interest is not adequately represented by the existing parties.
8 The requirements of CR 24(a) are liberally construed to favor intervention. Columbia Gorge
9 Audubon Society v. Klickitat County, 98 Wn. App. 618, 623, 989 P 2d 1260, 1263 (1999). CR
10 24(a) should be interpreted to allow intervention unless it would work a hardship on one of the
11 original parties. Loveless v. Yantis, 82 Wn.2d 754, 759, 513 P.2d 1023, 1026 (1973). In the
12 alternative, Seattle should be permitted to intervene pursuant to CR 24(b) because any claim Seattle
13 may have is based on the subject of the action, which is the Permit.

14 Seattle has an indisputable stake in the future of its own NPDES permit, which is before the
15 Board on appeal. Pertinent facts are stated in the Declaration of Chuck Clarke, filed with this
16 Petition. Seattle is already investing staff time and resources to comply with the Permit. Seattle is
17 concerned that the pending appeal might change the Permit as it relates to Seattle, altering Seattle's
18 expected compliance obligations. The appeal raises important issues about the Permit. If Seattle is
19 not party to the appeal, Seattle will be unreasonably denied the opportunity to participate in briefing,
20 hearings and other proceedings but will be subject to any resulting permit modifications. Therefore,

21 ² WAC 371-08-420 Intervention.

22 (1) The presiding officer may grant a petition for intervention at any time, upon determining that the
petitioner qualifies as an intervenor pursuant to Civil Rule 24, that the intervention will serve the interests
of justice, and that the prompt and orderly conduct of the appeal will not be impaired.

23 (2) The presiding officer may impose conditions upon the intervenor's participation in the
proceedings.

1 the interests of justice will be served by allowing Seattle to fully participate in the appeal of its
2 permit.

3 No other party adequately represents Seattle's interests and the needs of Seattle's general
4 public and elected officials. Seattle is the state's largest city and has a more dense and developed
5 urban environment than any other Phase I city or county. Seattle's perspective on the Permit is
6 unique, based on Seattle's characteristics and Seattle Public Utilities' practice of using the principles
7 of Asset Management to consider the financial, social and environmental costs and benefits of many
8 decisions. Decl. of Chuck Clarke at ¶¶ 3-5 The other parties to appeals of the Permit, both
9 permittees and citizen groups, can be expected to diverge from Seattle's interests because of the
10 geographical, organizational, social, and political attributes of each. Although Seattle is in
11 agreement with Ecology's approach to many aspects of the Permit, Ecology's role as regulator
12 inherently distinguishes it from the permittees.

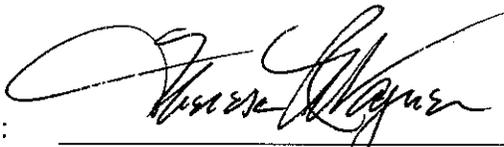
13 Because Seattle's Petition is filed and served within a week after the appeal deadline,
14 intervention will not cause hardship, undue delay or prejudice to either appellant or respondents.

15 Seattle respectfully requests that its Petition be granted and that no conditions be placed on
16 Seattle's participation before the Board. A proposed form of order will be provided upon request.

17 DATED this 20th day of February, 2007.

18 THOMAS A. CARR
Seattle City Attorney

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20
21 By:


Theresa R. Wagner, WSBA #17352
Assistant City Attorney

22 Attorneys for Intervenor City of Seattle
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1 Seattle's compliance with the Permit for the City's "large municipal separate storm sewer system."
2 Seattle Public Utilities is now expending staff time and resources to comply with the Permit.

3 4. Seattle's interests in appeals of the Phase I municipal stormwater permit cannot be
4 represented by any other party. Seattle is the state's most populous and densely-developed city.
5 Seattle is unique among Phase I permittees and the other parties. Seattle's approach to managing
6 stormwater is consistent with a Stormwater Management Program approved by Ecology and suited
7 to the attributes of the City:

8 (a) Most of Seattle was fully developed before modern environmental laws were enacted.

9 Seattle is served by a variety of stormwater infrastructure: piped and informal separate storm
10 sewers, partially separated storm sewers, and combined sewers.

11 (b) In Seattle's stormwater regulatory program, redevelopment is a more prominent issue
12 than new development. The average parcel size in Seattle is very small, approximately 5000
13 sq ft., and the rate of redevelopment is <1% per year.

14 (c) About 25% of Seattle's land mass is in city, state and federal transportation corridors,
15 which poses unusual challenges for stormwater management.

16 (d) Seattle's stormwater system drains to a great variety of receiving waters, including small
17 lakes and urban streams, large lakes (Lake Union and Lake Washington), the Duwamish
18 River, and Puget Sound.

19 (e) Seattle is governed by its unique City Charter as well as state and local laws.

20 5. Seattle Public Utilities is a leader in using Asset Management principles to make
21 well-informed utility decisions about directing resources to stormwater management and other
22 areas of business. "Asset Management" means that Seattle Public Utilities uses a formal
23 internal review process to make well-informed and cost-effective decisions in a transparent

1 manner, fully informed of the life-cycle triple bottom line of financial, social and environmental
2 costs and benefits.

3 DATED this 20th day of February, 2007, at Seattle, Washington.

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6 CHUCK CLARKE
7 Director, Seattle Public Utilities
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BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

In the Matter of:)	
)	
CLARK COUNTY, WASHINGTON,)	No. P 07-030
)	
Appellant,)	DECLARATION OF SERVICE
vs.)	
)	
STATE OF WASHINGTON, DEPARTMENT)	
OF ECOLOGY, CITY OF TACOMA, CITY)	
OF SEATTLE, KING COUNTY, PIERCE)	
COUNTY, and SNOHOMISH COUNTY,)	
)	
Respondents.)	

KIM FABEL states and declares as follows:

1 I am over the age of 18, am competent to testify in this matter, am a Legal Assistant in the Law Department, Civil Division, Seattle City Attorney's Office, and make this declaration based on my personal knowledge and belief.

2 On February 20, 2007, I filed for the City of Seattle the following documents with the Pollution Control Hearings Board, via legal messenger to 4224 6th Ave SE, Rowe Six, Bldg. 2, Lacey, WA 98504-0903:

- Cover letter
- City of Seattle's Petition to Intervene
- Declaration of Chuck Clarke in Support of City of Seattle's Petition to Intervene
- Declaration of Service



1 Catherine Drews
2 Elizabeth Anderson
3 Civil Division
4 Snohomish County Prosecutor's Office
5 3000 Rockefeller, M/S 504
6 Everett, WA 98201-4046
7 Fax: (425) 388-6333
8 *Attorneys for Snohomish County*

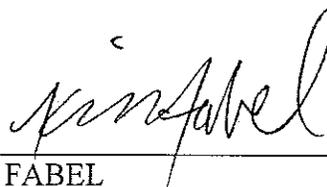
Via: Facsimile and U.S. Mail

6 Joe Rochelle
7 King County Prosecutor's Office
8 500 4th Avenue, 9th Floor
9 Mail Slot ADM-PA-0900
10 Seattle, WA 98104-2312
11 Fax: (206) 296-0415
12 *Attorneys for King County*

Via: Facsimile and U.S. Mail

10 4. I declare under penalty of perjury under the laws of the State of Washington that
11 the foregoing is true and correct.

12 DATED this 20th day of February, 2007, at Seattle, King County, Washington.

14 

16 KIM FABEL

