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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☐ ATG Docket Clerk
☑ Ann Ludlow
initial: MC 2/20/07

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 07-027
City of Tacoma v. Dept. of Ecology

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. Counsel for the City of Tacoma has responded that the City consents to intervention by Seattle. We await the response of counsel for Ecology.

Please do not hesitate to contact me by direct line (206/233-2159) or by email (theresa.wagner@seattle.gov) with any questions. Thank you for your assistance.

Very truly yours,

THOMAS A. CARR
Seattle City Attorney

By: Theresa R. Wagner
Theresa R. Wagner
Senior Assistant City Attorney

Enclosures
cc: Mary Sue Wilson and Ron Lavigne, Counsel for Department of Ecology
Doug Mosich, Counsel for City of Tacoma

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

CITY OF TACOMA, Appellant, vs. THE WASHINGTON STATE DEPARTMENT OF ECOLOGY, Respondent.	)	No. P 07-027 CITY OF SEATTLE'S PETITION TO INTERVENE

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. Tacoma has consented to intervention by Seattle.

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

COPY

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600 Fourth Avenue, 4th Floor
P.O. Box 94769
Seattle, WA 98124-4769
(206) 684-8200

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

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

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

Seattle is represented by:

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

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

STATEMENT OF FACTS

The City of Seattle is a municipal corporation organized under the laws of the State of Washington. Seattle is one of six cities and counties specifically named in and covered by the Phase 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]

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[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

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ARGUMENT

Seattle requests to intervene in this matter for all purposes. WAC 371-08-420.[2] As a named permittee, Seattle is entitled to intervene as a matter of right pursuant to CR 24(a), because the Petition is timely and all of the requirements are met: (1) Seattle claims an interest relating to the subject of the action, which is the Permit; (2) disposition of the action may as a practical matter impair or impede Seattle's ability to protect its interest; and (3) Seattle's interest is not adequately represented by the existing parties. The requirements of CR 24(a) are liberally construed to favor intervention. Columbia Gorge Audubon Society v. Klickitat County, 98 Wn. App. 618, 623, 989 P.2d 1260, 1263 (1999). CR 24(a) should be interpreted to allow intervention unless it would work a hardship on one of the original parties. Loveless v. Yantis, 82 Wn.2d 754, 759, 513 P.2d 1023, 1026 (1973). In the alternative, Seattle should be permitted to intervene pursuant to CR 24(b) because any claim Seattle may have is based on the subject of the action, which is the Permit.

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

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[2] WAC 371-08-420 Intervention

(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

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

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permit.

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

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

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

DATED this 20th day of February, 2007.

THOMAS A. CARR
Seattle City Attorney

By: Theresa R. Wagner

Theresa R. Wagner, WSBA #17352
Assistant City Attorney

Attorneys for Intervenor City of Seattle

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BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

CITY OF TACOMA, Appellant, vs. THE WASHINGTON STATE DEPARTMENT OF ECOLOGY, Respondent.	)	No P 07-027 DECLARATION OF CHUCK CLARKE IN SUPPORT OF CITY OF SEATTLE'S PETITION TO INTERVENE

I, CHUCK CLARKE, declare and state:

1. I am the director of Seattle Public Utilities, which is a department of the City of Seattle, a Washington municipal corporation.

2. The City of Seattle is a permittee under the Phase 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") issued by the Washington State Department of Ecology ("Ecology") on January 17, 2007, with an effective date of February 16, 2007.

3. Seattle Public Utilities has been assigned responsibility for coordinating the City of Seattle's compliance with the Permit for the City's "large municipal separate storm sewer system"

COPY

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Seattle Public Utilities is now expending staff time and resources to comply with the Permit.

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

(a) Most of Seattle was fully developed before modern environmental laws were enacted. Seattle is served by a variety of stormwater infrastructure: piped and informal separate storm sewers, partially separated storm sewers, and combined sewers.

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

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

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

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

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

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

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

CHUCK CLARKE
Director, Seattle Public Utilities

Thomas A. Carr
Seattle City Attorney
600 Fourth Avenue, 4th Floor
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BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

CITY OF TACOMA, Appellant, vs. THE WASHINGTON STATE DEPARTMENT OF ECOLOGY, Respondent.	)	No. P 07-027 DECLARATION OF SERVICE

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

3. Also on February 20, 2007, I caused true and correct copies of those documents to be delivered in the manner indicated to the parties listed below:

COPY

Thomas A. Carr
Seattle City Attorney
600 Fourth Avenue, 4th Floor
P.O. Box 94769
Seattle, WA 98124-4769
(206) 684-8200

Jay Manning, Director
Department of Ecology
300 Desmond Drive
Lacey, WA 98503

Via: Legal Messenger

Mary Sue Wilson, Sr. Ass't Attorney General
Ron Lavigne, Ass't Attorney General
Attorney General of Washington
Ecology Division
2425 Bristol Court SW
P.O. Box 40117
Olympia, WA 98504-0117
Attorneys for State of Washington, Department of Ecology

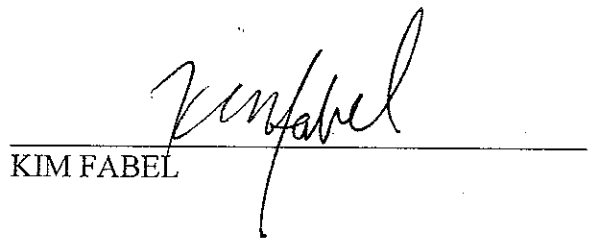
Via: Legal Messenger

Doug Mosich
Assistant City Attorney
747 Market St., Room 1120
Tacoma, WA 98402-3767
Fax: (253) 591-5755
Attorneys for City of Tacoma

Via: Facsimile and U.S. Mail

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

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



KIM FABEL

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