

DEPARTMENT OF ECOLOGY

May 21, 2003

TO: MTCA Science Advisory Board (SAB)

FROM: Pete Kmet, Toxics Cleanup Program

SUBJECT: SeaTac 3rd Runway Decision by the Pollution Control Hearings Board (PCHB)

Chair Landau asked that I brief the SAB on the above referenced decision issued August 12, 2002. Attached for your reference are selected pages from this decision.

This decision stems from an appeal of Ecology's 401 Certification to allow filling of wetlands to enable the Port of Seattle to construct another runway (the 3rd Runway) at the SeaTac airport. The appeal was filed by opponents of this airport expansion.

There were a number of issues heard by the PCHB. The issue of concern related to this briefing is the part of the certification that set criteria for the soil to be used to fill the wetlands. There are two aspects of this decision of note:

1. The PCHB accepted the use of the 3-phase model (modified for the 3rd runway) and Ecology's background soils study (Ecology publication # 94-115) to establish acceptable soil contaminant concentrations.
2. The PCHB disallowed the use of the SPLP to override these concentrations.

The parties to this lawsuit have appealed certain aspects of this decision and it is my understanding that the State Supreme Court has agreed to hear this appeal.

It is this latter decision that resulted in the Port of Seattle seeking legislative authorization to use the SPLP in 401 certifications, ultimately culminating in the passage of SB 5787. You may find it interesting to know that opponents to SB 5787 cited the SAB briefing papers on leaching tests and comments made by the SAB during the MTCA rule-making to support their opposition to the bill. (see attached letter)

At this point it is unclear what effect, if any, this decision and legislation will have on the use of leaching tests under MTCA, since both are focused on RCW 90.48 and the Supreme Court has not yet heard the appeal.