

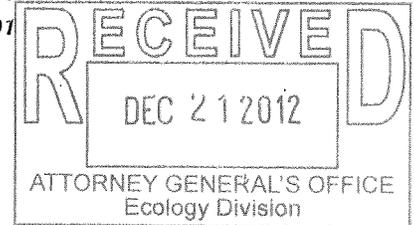


STATE OF WASHINGTON
ENVIRONMENTAL AND LAND USE HEARINGS OFFICE

Mailing Address: PO Box 40903, Olympia, WA 98504-0903

Physical Address: 1111 Israel Rd. SW, Tumwater, WA 98501

December 20, 2012



Lori Terry Gregory
Foster Pepper PLLC
1111 Third Ave Ste 3400
Seattle WA 98101-3922

John Ray Nelson
Foster Pepper PLLC
W 422 Riverside Ave Ste 1310
Spokane WA 99201-0302

Ronald Lavigne
Thomas Young
Assistant Attorney General
Ecology Division
P O Box 40117
Olympia WA 98504-0117

Joseph B. Rochelle
King County Prosecuting Attorney's Office
516 Third Ave, W400
King County Courthouse
Seattle WA 98104

Jan Hasselman
Janette Brimmer
Todd D. True
Earthjustice
705 Second Ave Suite 203
Seattle, WA 98104

Stephen Klasinski
Kimberly Frinnell
Assistant Attorney General
Transportation and Public Construction Div.
P O Box 40113
Olympia WA 98504-0113

Re: **PCHB NOS. 12-097c**
PHASE II MUNICIPAL STORMWATER APPEALS

Dear Parties:

I have reviewed your submittals regarding issue consolidation and the remaining dispute between the Coalition and Ecology over the wording of Issue 2. I agree that Issues 2, 3, 5, 9, 16, 17 and 18 are appropriate for consolidation with the Phase I appeal. Subpart c of Issue 2 is deleted as it is redundant with Issue 3.d. I am denying King County's request that Issues 4, 11, 12, 13 and 14 also be consolidated. The purpose of consolidation is to promote efficiency and ensure consistency in the Board's ruling on common permit terms that have been challenged by appellants in both cases:

The permit terms challenged in Issues 4, 11, 13 and 14, while also appearing in the Phase I Permit, were not appealed by any party to that case. Absent an overlap between the cases, consolidation is not appropriate. With regard to Issue 12, I concur with Ecology's position that

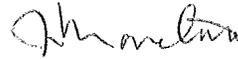


this issue is sufficiently distinct from the issues raised by the Phase I parties that any efficiency will be gained by consolidating that issue with the Phase I appeal.

As Mr. McDonald stated in the Pre-Hearing Order for the Phase I appeal, the Board will not finalize an order consolidating the issues until the parties in the Phase I appeal are provided an opportunity to comment on the proposed consolidation. In order to assist with that effort, I ask that the parties, by December 27, identify the issues in the Phase I appeal that overlap the seven issues from the Phase II appeal requested for consolidation. This information can be provided to me in an email.

If you have any procedural questions, please feel free to contact the staff at the Environmental and Land Use Hearings Office at 360-664-9160.

Sincerely,



Joan Marchioro, Presiding
Administrative Appeals Judge

JM/jb/P12-097c

CERTIFICATION

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through State Consolidated Mail Services to the parties of record herein.

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

DATED 12/20/12, at Tumwater, WA

