

DANIEL T. SATTERBERG
PROSECUTING ATTORNEY



King County

Office of the Prosecuting Attorney
CIVIL DIVISION
W400 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9015
FAX (206) 296-0191

RECEIVED

AUG 31 2012

August 31, 2012

DEPARTMENT OF ECOLOGY
OFFICE OF DIRECTOR

Pollution Control Hearings Board
1111 Israel Rd. SW, Suite 301
Tumwater, WA 98501

Via ABC Legal Messenger Service

RE: Notice of Appeal of Western Washington Phase II Municipal Stormwater Permit
Issuance Date: August 1, 2012
Effective Date: August 1, 2013
Expiration Date: July 31, 2018

Dear Pollution Control Hearings Board:

Served herewith please find an original and one copy of King County's Notice of Appeal of the Western Washington Phase II Municipal Stormwater Permit issued August 1, 2012, effective August 1, 2013, with an expiration date of July 31, 2018.

Sincerely,

Joseph B. Rochelle

JBR/ml
Enclosures

cc: Prof. Database Coord.
 Raw/Scan - Case Recovery

 File - Fax to ATG
 ATG Desktop Clerk
 Bill Nove WA-HQ
Initial: MC 9/14/12 (Served, UAW)

✓ cc: Department of Ecology, Appeals Processor
300 Desmond Drive SE
Lacey, WA 98503
(with Enclosures)

Attorney General, State of Washington
Ecology Division
2425 Bristol Court SW
2nd Floor
Olympia WA 98502
(with Enclosures)

RECEIVED

AUG 31 2012

DEPARTMENT OF ECOLOGY
OFFICE OF DIRECTOR

cc: Env. Database Coord.
 Res/Res - Cost Recovery

atg: File - Fax to ATG
 ATG Docket Clerk

Bill Moore WQ-HQ

Initial: *MC 9/4/12 served (via) 8/31/12*

POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

| | |
|---|---|
| KING COUNTY, a political subdivision of the |) |
| State of Washington, |) |
| |) |
| |) |
| Appellants, |) |
| vs. |) |
| |) |
| STATE OF WASHINGTON |) |
| DEPARTMENT OF ECOLOGY, |) |
| |) |
| Respondent, |) |
| |) |
| |) |

PCHB NO.

KING COUNTY'S NOTICE
OF APPEAL OF THE
WESTERN WASHINGTON
PHASE II MUNICIPAL
STORMWATER PERMIT

King County, a political subdivision of the State of Washington ("King County"), appeals the Western Washington Phase II Municipal Stormwater Permit, a National Pollutant Discharge Elimination System and State Waste Discharge General Permit for discharges from Small Municipal Separate Storm Sewers in Western Washington ("Phase II Permit") issued by the Washington State Department of Ecology ("Ecology") on August 1, 2012. A copy of the Permit is attached hereto as Exhibit A.

I. APPEALING PARTY

The appealing party is:

King County by and through
The Water and Land Resources Division of

COPY

1 The Department of Natural Resources and Parks
2 201 South Jackson Street
3 Suite 600
4 Seattle, WA 98104
5 Attn: Douglas Navetski

6 King County is represented in this appeal by the Office of the King County Prosecuting
7 Attorney:

8 Attn: Joseph B. Rochelle
9 King County Prosecuting Attorney's Office
10 516 Third Avenue, W400
11 King County Courthouse
12 Seattle, WA 98104
13 Phone: 206-296-9015 Fax: 206-296-0191
14 joe.rochelle@kingcounty.gov

15 II. OTHER PARTIES

16 The Washington State Department of Ecology is the respondent in this appeal:

17 Washington State Department of Ecology
18 P.O. Box 47608
19 Olympia, WA 98504-7608

20 III. RELIEF REQUESTED

21 King County recognizes and commends Ecology's work to develop and issue the Phase II
22 Permit as it interfaces with the Phase I Permit, and looks forward to working with Ecology
23 towards protecting state water quality. King County substantially agrees with most of the Phase
II Permit's terms and conditions; however, the County does object to the lack of consistency of
obligations between the Phase II Permit and the Phase I Permit as these obligations relate to
basin planning, as more fully detailed below. As a result, King County is compelled to appeal
the Phase II Permit and requests that the Pollution Control Hearings Board ("Board") invalidate

1 specific provisions of the Phase II Permit and remand those provisions to Ecology for
2 modification consistent with the Board's order.

3 **IV. STATEMENT OF FACTS AND GROUNDS FOR APPEAL**

4 (1) Subsection S5.C.4.g. of the Phase II Permit contains requirements for
5 participation in watershed-scale stormwater planning by Phase II jurisdictions,
6 but such participation is largely voluntary and passive, as it only requires the
7 furnishing of existing information to the Phase I County jurisdiction that is
8 tasked under the Phase I Permit with sponsoring, developing and funding the
9 entirety of the plan and the planning process. Compare the obligations contained
10 in subsection S5.C.4.g. of the Phase II Permit with subsection S5.C.5.c. of the
11 Phase I Permit. King County objects to these inconsistencies of obligation on the
12 grounds that the Phase II permittees should be required to equitably share in the
13 costs and efforts in developing the plan that are required of the Phase I County
14 jurisdictions. This subsection of the Phase II Permit should be modified to bring
15 about consistency of obligations in watershed-scale stormwater planning
16 between the Phase I and Phase II permits. Without such modification, this
17 provision of the Phase II Permit is unreasonable, inequitable, and arbitrary and
18 capricious.

19 (2) Simultaneously with the filing of this Notice of Appeal on the Western
20 Washington Phase II Permit, King County is filing a notice of appeal in the
21 Phase I Permit, and seeks relief on that Permit's requirements for Phase I County
22 jurisdictions for watershed-scale stormwater planning in a scope and manner that
23 is consistent with the relief sought herein.

