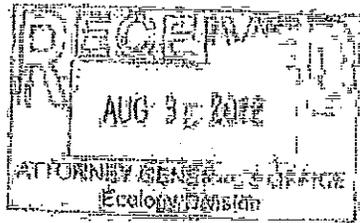


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AUG 30 2012

DEPARTMENT OF ECOLOGY
OFFICE OF DIRECTOR

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POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

ENVIRONMENTAL AND LAND
USE HEARINGS OFFICE

PIERCE COUNTY,

No.

Appellant,

NOTICE OF APPEAL

v.

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,

Respondent.

I. INTRODUCTION

1.1 Appellant, Pierce County, appeals the Phase I Municipal Stormwater Permit issued on August 1, 2012, Effective Date: August 1, 2013; Expiration Date: July 31, 2018 ("the Permit"). Pierce County has a longstanding and demonstrated commitment to preserving, protecting, and improving water quality. This appeal does not signify any change in that commitment. While the Permit will be difficult and challenging to implement, in most respects, the County can accept the Permit's requirements. Nonetheless, the County must appeal the provisions set forth in Section V below to protect the County's interests and those of its citizens.

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II. APPEALING PARTY

2.1 Pierce County
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Public Works and Utilities Department
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Tacoma, WA 98409-7322
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2.2 Representation:

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Email: nelsj@foster.com

II. IDENTIFICATION OF PARTIES

- 3.1 Pierce County, Appellant.
- 3.2 Washington State Department of Ecology, Respondent.

IV. ORDER OR DECISION APPEALED FROM

4.1 Pierce County appeals the Phase I Municipal Stormwater Permit ("the Permit"),
which was issued on August 1, 2012; Effective Date: August 1, 2013; Expiration Date: July 31,

NOTICE OF APPEAL - 2

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1 2018. A copy of the Permit and the Public Notice for the issuance of said Permit is attached here
2 to as Exhibit "A".

3 V. FACTS AND GROUNDS FOR APPEAL

4 Pierce County understands and appreciates the important role that municipal
5 stormwater permits play as part of the collective actions that are necessary to improve the water
6 quality of our streams and lakes. In fact, fully three-quarters of Pierce County's surface
7 waterbodies are impacted from nonpoint source pollution. While, only half of these waterbodies
8 are impacted by municipal stormwater, about 80% of Pierce County's water quality resources
9 are driven by Permit implementation. However, without also eliminating pollution from other
10 sources, and without major funding assistance from the state and federal government, neither
11 Pierce County nor any other local government could hope to achieve the State Legislature's goal
12 of achieving a healthy Puget Sound by addressing stormwater runoff.

13 The Permit contains requirements that Pierce County estimates will cost its citizens
14 between \$3 Million to \$4 Million per year *more* than the existing Permit. These costs are in
15 addition to the *significant costs* added by the 2007 Permit, which itself required the County to
16 hire 20 full-time employees. The additional costs associated with this Permit come at a time
17 when the County is suffering the effects of a severe and prolonged economic recession. So far,
18 the recession has required the County to reduce hundreds of County employees over the past
19 four years (including 100 full-time employees from the Planning and Land Services
20 Department), implement wage freezes, and increase furloughs.

21 Pierce County understands that continued improvements of the effectiveness of Permit
22 implementation will occur through adaptive management, which necessarily requires the
23 involvement and use of local expertise. In several respects, however, the Permit simply goes too
24 far by imposing highly prescriptive requirements on Pierce County and its citizens and
25 businesses that are in direct conflict with the flexible, programmatic Permit envisioned by the
26

1 federal Clean Water Act, its Maximum Extent Practicable standard, and Washington State's
2 AKART standard.

3 In many cases, Ecology imposed these requirements without considering their cost or
4 balancing those costs against demonstrated water quality benefits reasonably expected to be
5 achieved. Moreover, the requirements are not feasible, reasonable, or practicable. Ecology did
6 not properly consider the impact or reconcilability of these requirements on other Pierce County
7 programs. In many instances, the Permit's prescriptive requirements were not legally required,
8 but instead were imposed by Ecology without reasonably considering alternative, more flexible
9 approaches that would take into account the unique nature of municipal stormwater.

10 For these reasons and others that will be proved at the hearing of this matter, Ecology
11 acted unreasonably, unjustly, or unlawfully in imposing the following conditions and/or
12 provisions in the Permit:

13 5.1 Pierce County appeals the watershed-scale stormwater planning requirements set
14 forth in Condition S5.C.5. These requirements compel Pierce County to conduct extensive
15 monitoring and modeling in the Clover Basin, with no option to choose another basin, and
16 impact land use planning within Pierce County's jurisdiction as well as within other jurisdictions.
17 The Permit also requires Ecology's approval of basin plans for implementation that Pierce
18 County has already completed and which have already been adopted through ordinance by the
19 County Council at local expense. These permit provisions are not required by law, are
20 extraordinarily expensive and inflexible, implicate the use of tools and modeling that are not
21 sufficiently reliable, and/or unfairly impose burdensome Permit requirements on Pierce County
22 that are not uniformly placed on other local governments. The purported purposes of these
23 Permit requirements can be achieved through other more efficient and effective means outside of
24 the Permit.
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NOTICE OF APPEAL - 4

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1 5.2 Pierce County appeals the monitoring and assessment provisions in Condition S8
2 of the Permit. These provisions require Pierce County to monitor status and trends, program
3 effectiveness, and source identification -- or pay the Washington State Department of Ecology to
4 do so. These Permit requirements are appealed to the extent that the Permit language does not
5 clearly state that the existing monitoring being conducted by Pierce County terminates on July
6 31, 2012. Unless the existing monitoring terminates on July 31, 2012, without risk of non-
7 compliance for Pierce County, the County could be required to conduct over-lapping,
8 inconsistent, and unnecessary monitoring.
9

10 5.3 Pierce County appeals the Low Impact Development ("LID") provisions in the
11 Permit, Appendix 1 which fails to specify infeasibility criteria, and referenced provisions of
12 Ecology's Stormwater Management Manual for Western Washington. These provisions
13 interfere with and/or conflict with land-use planning, the Growth Management Act, vesting, and
14 impose economic burdens, and infeasible, unreasonable restrictions on growth and economic
15 development, which negatively impact the economic health of Pierce County and the community
16 it serves.
17

18 5.4 Pierce County appeals the Low Impact Development provisions in the Permit,
19 Appendix 1, and corresponding references to Ecology's Stormwater Management Manual for
20 Western Washington on the basis that there was no meaningful opportunity for review and
21 comment afforded the County because the draft Permit and draft Manual were issued at the same
22 time and, in certain instances, referenced future guidance that was not drafted or available for
23 review at all. Moreover, the Permit and Appendix 1 require Pierce County to adopt LID
24 development standards that are at least as stringent as those found in the Stormwater Manual,
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1 including criteria for infeasibility, which are not included in the Permit. In this regard, the
2 Permit creates confusing, unreasonable requirements.

3 5.5 Pierce County appeals provisions in the Permit, Appendix I, and corresponding
4 reference to Ecology's Stormwater Management Manual for Western Washington with regard to
5 provisions that apply to roadway projects, including but not limited to porous pavement and full
6 dispersion, on the basis that these provisions are extremely burdensome and expensive to Pierce
7 County, unreasonable, unjust, and not legally required.
8

9 VI. RELIEF REQUESTED

10 6.1 Appellant respectfully requests that the Board issue an Order remanding the
11 Permit to Ecology with direction to address the Permit deficiencies as set forth above.

12 6.2 Appellant requests such other and further relief as the Board deems appropriate.
13

14 DATED this 30th day of August, 2012.

15 FOSTER PEPPER PLLC

FOSTER PEPPER PLLC

16 
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 30, 2012, I caused to be served upon the parties in this action a true and correct copy of the Notice of Appeal via facsimile (without exhibits), via mail (with exhibits), and via Legal Messenger (with exhibits):

1. Department of Ecology
Attn: Appeals Processing Desk
300 Desmond Drive, SE
Lacey, WA 98503
Fax: (360) 407-6989
2. Department of Ecology
Attn: Appeals Processing Desk
P.O. Box 47608
Olympia, WA 98504-7608
3. Ted Sturdevant, Director
Department of Ecology
300 Desmond Drive, SE
Lacey, WA 98503
Fax: (360) 407-6989
4. Kelly Stusewind
Water Quality Program Manager
Department of Ecology
300 Desmond Drive, SE
Lacey, WA 98503
Fax: (360) 407-6426
5. Ronald L. Lavigne
Office of the Attorney General
Ecology Division
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Olympia, WA 98502
Fax: (360) 586-6760
6. Ronald L. Lavigne
Office of the Attorney General
Ecology Division
P.O. Box 40117
Olympia, WA 98504-0117

NOTICE OF APPEAL - 7

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I declare under penalty of perjury that the foregoing is true and correct.

DATED this 30th day of August 2012, at Seattle, Washington.

FOSTER PEPPER, P.L.L.C.

By Sherry R. Tores
Sherry Tores