

IN AND BEFORE THE POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

PACIFICORP and PUGET
SOUND ENERGY

Appellants,

vs.

WASHINGTON DEPARTMENT
OF ECOLOGY

Respondent.

No

DECLARATION of
CHARLES HOAG

Charles Hoag being first duly sworn, upon oath states as follows:

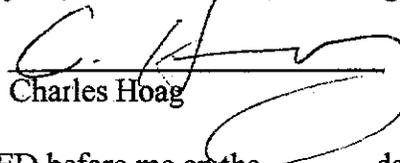
1. I am a Legal Messenger employed by Halo. I have personal knowledge of the matters contained herein and am competent to testify thereto.

2. On February 16, 2007, at 3:41 PM, I was pulled over on my vehicle by Washington State Patrol at exit 137 of Interstate 5, en route to file and serve a Notice of Appeal and a copy of a Phase 1 Municipal Stormwater Permit at the Pollution Control Hearings Board and

Washington State Department of Ecology. The officer informed me that an administrative suspension had been issued on my driver's license on February 15, and that my vehicle would be towed and impounded. As a result, I was unable to deliver the documents in a timely manner.

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

EXECUTED this day of February 19, 2007 in Seattle, Washington.


Charles Hoag

SIGNED AND AFFIRMED before me on the _____ day of _____, 2007, by _____

NOTARY PUBLIC

Print Name:

My appointment expires: _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

RECEIVED

FEB 20 2007

DEPARTMENT OF ECOLOGY
OFFICE OF DIRECTOR

IN AND BEFORE THE POLLUTION CONTROL HEARINGS BOARD FOR THE
STATE OF WASHINGTON

PACIFICORP and PUGET SOUND
ENERGY

Appellants,

v.

WASHINGTON DEPARTMENT OF
ECOLOGY

Respondent.

No.

NOTICE OF APPEAL

- cc: Enf. Database Coord.
 - Rev/Rec - Cost Recovery
 - _____
 - orig: File - Fax to ATG
 - ATG Docket Clerk
 - _____
- initial: MC 2/20/07

I. Background for Appeal and Parties

PacifiCorp and Puget Sound Energy submit this Notice of Appeal of the issuance, by the Washington Department of Ecology ("Ecology"), of the Phase I Municipal Stormwater Permit (the "Permit"). The Permit was issued on January 17, 2007 and is a general permit issued by Ecology under RCW 90.48 and 33 USC § 1251 et seq., which together establish the State and Federal Clean Water Act regulatory system.

A copy of the Permit is attached to this Notice. The Permit regulates and authorizes discharges from stormwater systems operated by major municipal entities in western Washington.

1 The appellants are:

2 PacifiCorp
3 c/o MidAmerican Energy Holdings Company
4 4299 NW Urbandale Drive
5 Urbandale, IA 50322

6 Puget Sound Energy
7 10885 N.E. 4th St. (98004)
8 P.O. Box 97034 - PSE 11 North
9 Bellevue WA 98009-9734
10 Phone: (888) 225-5773
11 Fax: (425) 462-3976

12 The appellants' representatives are:

13 For PacifiCorp:

14 Steven C. Guyer
15 MidAmerican Energy Holdings Company
16 4299 NW Urbandale Drive
17 Urbandale, IA 50322
18 Phone: (515) 281-2692
19 Fax: (515) 242-3084

20 For Puget Sound Energy:

21 Loren R. Dunn
22 Riddell William P.S.
23 1001 Fourth Avenue, Suite 4500
24 Seattle, WA 98154
25 Phone: (206) 389-1794
26 Fax: (206) 389-1708

II. Grounds for Appeal

The Permit is fundamentally inconsistent with key provisions and requirements of the Federal and State Clean Water Acts. The Permit states that it does not authorize violations of water quality standards and sediment criteria. However, it creates a mechanism that will allow, and authorize without penalty, continuing discharges from municipal stormwater systems that result in

1 exceedances of water quality and sediment criteria. As a result, the Permit is
2 unlawful, and compliance with its provisions will not assure compliance by the
3 permittees with State and Federal law. In particular, permit provision S4 allows
4 operating systems to cause exceedances of water quality and sediment criteria,
5 subject to implementation of a stormwater management plan. Such a plan is not,
6 however, subject to public review, and does not require or necessarily produce
7 compliance with water quality or sediment criteria.

8 **III. Statement of Facts**

9 Municipal stormwater discharges are the primary source of clean water and
10 sediment criteria exceedances in Puget Sound. Ecology has traditionally sought
11 to achieve compliance with clean water and sediment standards by requiring that
12 municipalities develop and implement stormwater management plans. Such plans
13 typically feature the application of "best management practices" and the use of
14 efforts directed to encouraging behavior modifications by the general public with
15 respect to discharges to municipal storm drains.

16 Such plans have not proven effective for ensuring that standards are met.
17 Despite the implementation of stormwater management plans, criteria
18 exceedances remain common.

19 The Permit authorizes continued operation of stormwater systems, subject
20 to compliance with stormwater management plans, even where clean water and
21 sediment criteria exceedances are on-going. As a result, the Permit effectively
22 exonerates the permittees from actually meeting standards mandated by State
23 and Federal law. In addition, by virtue of the "permit shield" provisions contained
24 in state and federal hazardous substance cleanup laws, the Permit would protect
25 the permittees from legal liability for discharges which violate clean water and
26 sediment standards.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IV. Relief Sought

For the reasons described above, the Utilities ask that the Board determine that the Permit, including the permit conditions identified above, is unlawful.

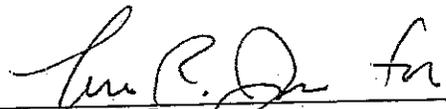
The Utilities further request that the Board remand the Permit to Ecology, and direct that it be modified to correct the defects described above.

RESPECTFULLY SUBMITTED this 16th day of February, 2007.

RIDDELL WILLIAMS P.S.

By 
Loren R. Dunn, WSBA #17135
Attorneys for Puget Sound Energy

PARTY REPRESENTATIVE

By 
Steven C. Guyer
Representative for PacifiCorp
Per authorization
2-16-07

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DECLARATION OF SERVICE

I, Darla K. Holterman, declare as follows:

1. I am over 18 years of age and a U.S. citizen. I am employed as an executive assistant by the law firm of Riddell Williams P.S.

2. I certify that on this 16th day of February, 2007, I caused a copy of the foregoing Notice of Appeal to be served via the method(s) listed below on the following parties:

Party	Delivery
Washington State Department of Ecology 300 Desmond Drive Lacey, WA 98503	VIA Hand Delivery

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and that this certificate was executed on February 16, 2007, at Seattle, Washington.


Darla K. Holterman