OFFICE OF THE PROSECUTING ATTORNEY
KING COUNTY, WASHINGTON
CIVIL DIVISION
Natural Resources

Norm Maleng
Prosecuting Attorney

900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-8820
FAX (206) 296-0415

RECEIVED
FEB 2 1 2007
DEPARTMENT OF ECOLOGY
OFFICE OF DIRECTOR

February 21, 2007

Judy Greear, Clerk
Environmental Hearings Office
Washington State Pollution Control Hearings Board
4224 Sixth Ave. SE, Rowe Six, Bldg. 2
Lacey, WA 98504-0903

Re: Phase I Municipal Stormwater Permit, PCHB case: Port of Seattle, Appellant v. Department of Ecology, # 07-028

To the Clerk of the Board:

On behalf of King County, we are enclosing for consideration by the Board the original and one copy of the following:

1. King County's Petition to Intervene
2. Declaration of Curt Crawford in support of King County's Petition to Intervene
3. Declaration of Service

King County is one of six identified Permittees under the Phase I Municipal Stormwater Permit that is on appeal. King County requests that this Petition be filed in the above captioned appeal. King County requests that the Petition to Intervene be decided on the County's written submissions, unless the matter is contested. If contested, the County reserves the right to request that oral argument occur during the Prehearing Conference (if the matters are consolidated) or in each Prehearing Conference (if the matters are not consolidated).

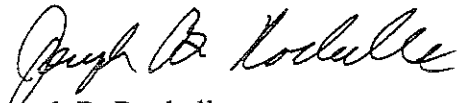
I have contacted the parties to this appeal and they have indicated that they do not oppose intervention by King County so long as King County does not seek to raise new legal grounds for appeal that were not raised in the six notices of appeal that have been filed in PCHB Nos. 07-021, 07-026, 07-027, 07-028, 07-029, and 07-030. King County concurs with this condition.

cc: ☐ Enf. Database Coord.
☐ Rev/Rec C... ...overy
☐
one: ☐ File F... ...TG
☒ ATG Docket Clerk
☒ Ann Ludlow
initial: MC 2/21/07

I can be reached directly at 206-296-0421 for any questions. Thank you for your assistance.

Sincerely,

For NORM MALENG
King County Prosecuting Attorney



Joseph B. Rochelle
Senior Deputy Prosecuting Attorney

Cc: Stephen Tan
Tanya Barnett
Susan Ridgley
Mary Sue Wilson/Ronald Lavigne (all with enclosures)

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

THE PORT OF SEATTLE; Appellant, v STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Respondent.	)	No. P 07-028 KING COUNTY'S PETITION TO INTERVENE

I. PETITION

King County petitions the Pollution Control Hearings Board (Board) for an order allowing it intervention in the caption-referenced appeal with regard to the issuance of the State of Washington Department of Ecology's Phase I Municipal Stormwater Permit on January 17, 2007. Appellant Port of Seattle has been contacted and does not oppose this Petition for Intervention by King County. Respondent Department of Ecology has also been contacted and does not oppose this Petition so long as King County does not seek to raise new legal grounds for appeal that were not raised in the five notices of appeal that have been filed in PCHB Nos. 07-021, 07-026, 07-027, 07-029 and 07-030, and the above captioned appeal. King County concurs with this condition. This petition is made pursuant to WAC 371-08-420 and WAC 371-08-450.

Norm Maleng, Prosecuting Attorney
CIVIL DIVISION
Natural Resources Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-8820 Fax (206) 296-0415

II. INTERVENOR

King County is a political subdivision of the State of Washington, organized as a home rule charter county under Article XI, Section 4 of the Washington State Constitution. This petition is brought by and through the Office of the King County Prosecuting Attorney. King County's contact information is:

King County Water and Land Resources Division
Stormwater Services Section
201 S Jackson St., Suite 600
Seattle, Washington 98104-3855

Counsel for King County is:

Joseph B. Rochelle
Senior Deputy Prosecuting Attorney
500 Fourth Avenue, Suite 900
Seattle, Washington 98104-2316
Ph: 206-296-0421; fax 206-296-0415
joe.rochelle@metrokc.gov

III. STATEMENT OF FACTS

The Department of Ecology (Ecology) has issued a Phase I Municipal Stormwater Permit on January 17, 2007, with an effective date of February 16, 2007 (Permit), that regulates municipal stormwater discharges of the Permittees identified in the Permit, including the City of Tacoma, the City of Seattle, Clark County, King County, Pierce County and Snohomish County, and Secondary Permittees identified in the Permit as the Port of Seattle and the Port of Tacoma. The Port of Seattle has filed an appeal of the Permit on various grounds and has named the Department of Ecology as Respondent in the appeal. The appeal generally asserts that certain provisions in the Permit contain conditions that are unreasonable or inappropriate for the Port of Seattle to meet.

IV. ANALYSIS

Norm Maleng, Prosecuting Attorney
CIVIL DIVISION
Natural Resources Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-8820 Fax (206) 296-0415

King County seeks to intervene in the above appeal for all purposes.

Intervention before the Pollution Control Hearing Board is governed by WA 371-08-420:

(1) The presiding officer may grant a petition for intervention at any time, upon determining that the petitioner qualifies as an intervenor pursuant to civil rule 24, that the intervention will serve the interests of justice and that the prompt and orderly conduct of the appeal will not be impaired.

(2) The presiding officer may impose conditions upon the intervenor's participation on the proceedings.

In ruling on a petition to intervene, the presiding officer analyzes the submission under CR 24, which provides for two types of intervention:

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application, anyone may be permitted to intervene in an action: (1) When a statute confers a conditional right to intervene; or (2) When an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirements, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

In analyzing intervention of right, the Washington courts have recognized the inquiry must be specific to the case in question. "Rather, it is for the court in each instance to analyze and balance the relative concerns, not only of the absentee in having his interest protected, but also of the parties to the main action in controlling their own lawsuit, and of the public in the

Norm Maleng, Prosecuting Attorney
CIVIL DIVISION
Natural Resources Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-8820 Fax (206) 296-0415

efficient resolution of controversies." *American Discount Corporation v. Saratoga West, Inc.*, 81 Wn.2d 34, 42, 499 P.2d 869 (1972).

The decisions in *Westerman v. Carey*, 125 Wn.2d 277, 303, 892 P.2d 1067 (1994) described a four-part test for intervention as a matter of right:

> This rule thus imposes four requirements that must be satisfied before intervention must be granted: (1) timely application for intervention; (2) an applicant claims an interest which is the subject of the action; (3) the applicant is so situated that the disposition will impair or impede the applicant's ability to protect the interest; and (4) the applicant's interest is not adequately represented by the existing parties.

Timeliness. This petition to intervene is timely and, if granted, will not cause any delay in the proceedings, as the pre-hearing conference in which the issues will be further specified and formulated and the timeline for the proceedings established, has not been held. King County's petition to intervene is thus timely.

King County's Interest. King County is identified in the Permit as a Permittee in its own right, and as a Co-Permittee with the City of Seattle for discharges from outfalls King County owns or operates within the City of Seattle. The appeal has raised broad issues about the legality of many provisions in the Permit. Any decisions that the Board makes regarding the interpretation, application, implementation or revision of the Permit will have direct consequences for King County as an entity subject to the Permit, and will have direct impacts on King County's stormwater program and the county's management and control of stormwater within its jurisdictional area. King County's interest here is clearly significant and sufficient for the purposes of intervention in this matter.

Impairment of the County's Interest. The outcome of the Board's decisions with regard to interpretation, application and implementation of the Permit will directly affect King County's obligations under the Permit, the means it uses to manage stormwater

Norm Maleng, Prosecuting Attorney
CIVIL DIVISION
Natural Resources Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-8820 Fax (206) 296-0415

within the county, and the nature, scope and priorities of its stormwater program. If King County were to be denied participation in this appeal, then it would be forced to operate under a permit whose provisions were decided upon as a result of briefings, hearings and other proceedings in which the county had no part. Without participation in this appeal, King County's interests in managing its stormwater under the obligations of the Permit will be impeded and impaired.

King County's Interests are Inadequately Represented by the Existing Parties. No other party can adequately represent King County's interests. As demonstrated in the Declaration of Curt Crawford, filed with this petition, King County has its own set of authorities establishing and governing its surface water management program. (Crawford Decl. ¶ 7). Further, King County's approach to addressing compliance under the Permit will differ from that of the other parties, as King County's surface water management programs have features that are different from those of the other parties. (Crawford Decl. ¶ 8). King County has geographic and physical characteristics that differ from those of the other parties and that will affect its stormwater management practices under the Permit. (Crawford Decl. ¶ 9). Although King County is in agreement with the Department of Ecology's approach in many aspects of the Permit, the Department of Ecology's role as regulator inherently distinguishes it from the other parties to the appeal (Crawford Decl. ¶ 10). King County is the proper entity to represent King County's interests in the Permit that has been appealed.

V. CONCLUSION

King County respectfully states that it has met the required demonstration for intervention as a matter of right and should be allowed to intervene in the referenced

Norm Maleng, Prosecuting Attorney
CIVIL DIVISION
Natural Resources Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-8820 Fax (206) 296-0415

appeal. King County further requests that its Petition for Intervention be granted and that no conditions be placed on King County's participation in the appeal before the Board, except as specified below. Appellant Port of Seattle has been contacted and does not oppose this Petition for Intervention by King County. Respondent Department of Ecology has also been contacted and does not oppose this Petition so long as King County does not seek to raise new legal grounds for appeal that were not raised in the five notices of appeal that have been filed in PCHB Nos. 07-021, 07-026, 07-027, 07-029 and 07-030, and the above captioned appeal. King County concurs with this condition. King County requests that King County's Petition to Intervene be decided on the County's written submission, unless the Petition is contested, in which case King County requests oral argument. If the Board so requests, King County will provide a proposed form of order.

Dated this 21st day of February, 2007.

NORM MALENG
KING COUNTY PROSECUTING ATTORNEY

By:
Joseph B. Rochelle, WSBA # 26978
Senior Deputy Prosecuting Attorney
Attorney for King County

Norm Maleng, Prosecuting Attorney
CIVIL DIVISION
Natural Resources Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-8820 Fax (206) 296-0415

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

THE PORT OF SEATTLE; Appellant, v. STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Respondent.	)	No. P 07-028 DECLARATION OF CURT W. CRAWFORD, P.E.

CURT W. CRAWFORD declares as follows:

1. I am competent to testify to the following:

2. I am the Manager of the Stormwater Services Section of the King County Department of Natural Resources and Parks. I make this declaration based on personal knowledge, or based on facts disclosed by public documents.

3. I am a licensed professional engineer registered in the State of Washington to practice Civil Engineering. I have an Associate Degree in Civil Engineering Technology from Shoreline Community College and a Bachelor of Science Degree in Civil Engineering from the University of Washington. I have 28 years of work experience in the field of stormwater

Norm Maleng, Prosecuting Attorney
CIVIL DIVISION
Natural Resources Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-8820 Fax (206) 296-0415

management and have had extensive training and exposure to published information related to stormwater management. I am currently a member of the American Water Resources Association and the American Public Works Association.

4. The Stormwater Services Section that I currently manage is responsible for the general municipal stormwater permits issued to King County under the federal Clean Water Act and the Washington Water Pollution Control Act. The section is also responsible for many of the stormwater management programs required by the permits, including investigation of reported drainage and water quality problems, identification and construction of capital improvement projects to fix these problems, correction of drainage and water quality code violations through enforcement actions, inspection and maintenance of stormwater facilities that control and treat runoff from developed sites, and updating the stormwater facility design standards applied to new development and redevelopment projects.

5. I am familiar with and have reviewed the Phase I Municipal Stormwater Permit issued by the State of Washington Department of Ecology on January 17, 2007 (Permit). The Permit constitutes the National Pollutant Discharge Elimination System and State Waste Discharge General Permit for discharges from Large and Medium Separate Storm Sewer Systems under state and federal authorities. The Permit identifies the cities of Seattle and Tacoma and the counties of Clark, King, Pierce and Snohomish as Permittees under its coverage, as well as the Port of Seattle and the Port of Tacoma as Secondary Permittees under its coverage.

6. It is my understanding that the Port of Seattle has filed an appeal with the Pollution Control Hearings Board in regard to a number of provisions in the Permit issued by Respondent Department of Ecology, including the application of specified conditions as applied to the Port of Seattle. King County's interest will not be adequately represented by the existing

Norm Maleng, Prosecuting Attorney
CIVIL DIVISION
Natural Resources Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-8820 Fax (206) 296-0415

parties to this appeal due to a number of circumstances or characteristics that are particular to King County.

7. First, King County has its own set of authorities establishing and governing its surface water management program. These include:

a) A stormwater management manual approved by the King County Council for regulating the design of stormwater control facilities required on new development and redevelopment projects in King County, i.e., the 2005 King County Surface Water Design Manual;

b) A water quality source control manual for reducing or preventing stormwater pollution caused by business and residential activities, i.e., the 2005 King County Stormwater Pollution Prevention Manual;

c) An adopted set of land use regulations for preserving and protecting streams, wetlands, and other designated critical areas from development impacts; these regulations are codified in the King County Code Title 21A; and

d) An adopted set of clearing regulations that include required soil amendments in all cleared areas to mimic natural retention of stormwater and that contain limitations of 35% to 50% on removal of forest cover on rural area residential lots to minimize stormwater impacts; these regulations are codified in the King County Code Title 16.

8. Second, King County's approach to addressing compliance under the Permit will differ in some manner from that of the other parties as King County has:

a) A set of programs, staffing, and funding levels for addressing the various programmatic requirements of the Permit, including stormwater capital improvements, facilities

Norm Maleng, Prosecuting Attorney
CIVIL DIVISION
Natural Resources Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-8820 Fax (206) 296-0415

maintenance, public education, basin stewards, development review, water quality compliance, etc., all tailored to the demands, needs, and physical characteristics of King County;

b) A water quality monitoring program tailored specifically to King County's waterbodies, activities, projects, facilities, and pollutants of concern; and

c) A set of programs, policies, procedures, and expertise in promoting compliance with stormwater best management practices in King County.

9. Third, King County has geographic and physical characteristics that differ from the appellant that will affect its stormwater management practices under the Permit. Examples include:

a) King County is more populated and has more separate municipalities with stormwater management programs it must interface with than any other county in the state;

b) King County has a higher proportion of designated urban areas than other counties in the state;

c) Because of its larger proportion of older development, King County has a higher diversity of land development types, including older urban, older and more recent suburban, rural, and agricultural lands that require a blend of stormwater best management practices in coordination with land development regulations; and

10. Finally, the Department of Ecology, as issuer of the Permit, and as a regulator, has interests that are inherently different and distinct from King County's interests as a Permittee or Secondary Permittee regulated under the Permit.

I swear under penalty of perjury under the laws of Washington that the foregoing is true and correct to the best of my knowledge.

Norm Maleng, Prosecuting Attorney
CIVIL DIVISION
Natural Resources Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-8820 Fax (206) 296-0415

Dated this 21st day of February, 2007 at Seattle, Washington.

Curt W. Crawford, P.E.

Norm Maleng, Prosecuting Attorney
CIVIL DIVISION
Natural Resources Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-8820 Fax (206) 296-0415

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

THE PORT OF SEATTLE; Appellant, v. STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Respondent.	)	No. P 07-028 CERTIFICATE OF SERVICE AND MAILING

I, Mary A. Livermore, certify that on February 21, 2007, I caused to be served via ABC Legal Messenger, one copy of a Letter dated February 21, 2007, from Joseph B. Rochelle to the Clerk of the Pollution Control Hearings Board, a copy of King County's Petition to Intervene with attached Declaration of Curt W. Crawford, P.E., and a copy of this Certificate of Service and Mailing to:

Washington State Pollution Control Hearings Board (original and one copy)
Environmental Hearings Office
4224 – 6th Avenue S.E., Rowe Six, Bldg. 2
Lacey, WA 98504-0903

Mary Sue Wilson
Ronald L. Lavigne
Washington State Attorney General's Office
2425 Bristol Court SW, 2nd Floor

Norm Maleng, Prosecuting Attorney
CIVIL DIVISION
Natural Resources Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-8820 Fax (206) 296-0415

P.O. Box 40117
Olympia, WA 98504-0117

Washington State Department of Ecology
300 Desmond Drive
Lacey, WA 98503

I also caused true and correct copies to be delivered in the manner indicated to the parties listed below:

Theresa Wagner, Assistant City Attorney (via U.S. Mail)
Seattle City Attorney's Office
600 Fourth Avenue, 10th Floor
Seattle, WA 98104-1877

Doug Mosich (via U.S. Mail)
Tacoma City Attorney's Office
747 Market St., Rm. 1120
Tacoma, WA 98402

Bronson Potter (via U.S. Mail)
Clark County Prosecuting Attorney's Office
Civil Division
P.O. Box 5000
Vancouver, WA 98666-5000

Tad Shimazu (via U.S Mail)
Williams Kastner & Gibbs, PLLC
601 Union Street, Suite 4100
P.O. Box 21926
Seattle, Washington 98101

Phil Prettyman (via U.S.Mail)
Pierce County Prosecuting Attorney's Office
955 Tacoma Avenue S., Ste. 301
Tacoma, WA 98402

Catherine Drews (via U.S Mail)
Elizabeth Anderson
Civil Division
Snohomish County Prosecutor's Office
3000 Rockefeller, M/S 504
Everett, WA 98201-4046

Norm Maleng, Prosecuting Attorney
CIVIL DIVISION
Natural Resources Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-8820 Fax (206) 296-0415

Susan Ridgley (via U.S. Mail)
Port of Seattle Legal Department
P.O. Box 1209
Seattle WA 98111

Stephen J. Tan (via U.S. Mail)
Tanya Barnett
Cascadia Law Group PLLC
1201 Third Avenue, Suite 320
Seattle, WA 98101

Jan Hasselman (via U.S.Mail)
Todd True
Earthjustice
705 Second Avenue, Suite 203
Seattle, WA 98104

Richard A. Smith (via U.S.Mail)
Smith & Lowney, PLLC
2317 East John Street
Seattle, WA 98112

Dated this 21st day of February, 2007.

Mary A. Livermore
Legal Secretary to Joseph B. Rochelle

Norm Maleng, Prosecuting Attorney
CIVIL DIVISION
Natural Resources Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-8820 Fax (206) 296-0415