

**POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON**

THE CITY OF WOODINVILLE, a political
subdivision of the State of Washington,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

And,

KING COUNTY, SNOHOMISH COUNTY,
and the CITY OF SEATTLE,

Intervenors,

PCHB No. 15-013

PREHEARING ORDER AND ORDER
GRANTING INTERVENTION TO CITY
OF SEATTLE

Appellant The City of Woodinville (Woodinville) filed an appeal with the Pollution Control Hearings Board (Board) on January 21, 2015, challenging Section S5.C.5.c of the January 16, 2015 Phase I Permit Modification, and Section S5.C.4.g of the January 16, 2015 Western Washington Phase II Permit Modification. On February 3, 2015, King County filed a Petition to Intervene and no objections were filed with the Board. On February 5, 2015, the presiding officer issued an Order Granting Intervention to King County. On February 5, 2015, Snohomish County filed a Petition to Intervene and no objections were filed. On February 9, 2015, the presiding officer issued an Order Granting Intervention to Snohomish County.

1 A prehearing conference was held on February 24, 2015. Kay M. Brown presided for the
2 Board. Attorney Greg A. Rubstello appeared on behalf of Woodinville. Assistant Attorney
3 General Ronald L. Lavigne, Senior Counsel, appeared on behalf of the Respondent Ecology.
4 Deputy Prosecuting Attorney Joseph B. Rochelle appeared on behalf of Intervenor King County;
5 and Deputy Prosecuting Attorneys Alethea Hart and Christina Richmond appeared on behalf of
6 Intervenor Snohomish County. Assistant City Attorney Theresa R. Wagner appeared on behalf
7 of the City of Seattle which had filed a Motion to Intervene. Based on the conference, the Board
8 enters the following Pre-Hearing Order:

9 **I. INTERVENTION**

10 On February 19, 2015, the City of Seattle requested leave to intervene in this matter. As
11 no party opposed the City of Seattle's Motion to Intervene, the motion is hereby granted. The
12 City of Seattle's participation as Intervenor will be limited to the legal issues raised by Appellant
13 Woodinville and Respondent Ecology which are adopted herein as the issues that govern this
14 case. City of Seattle is required to file a preliminary list of witnesses and exhibits by **March 4,**
15 **2015.**

16 **II. HEARING**

17 The hearing in this matter is set for **January 25 – February 2, 2016**, commencing at
18 **9:00 a.m.**, at the Board's office in Tumwater, Washington. Parties shall be prepared to proceed
19 to hearing on that date.
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1 WSSPR, and then cooperatively develop and approve unidentified land use planning strategies
2 and make changes to affected city and county comprehensive plans and development
regulations?

3 7. Whether or not the requirements of the modified permits' WSSPR are arbitrary and
4 capricious and contrary to law by the imposition of unreasonable costs of compliance on certain
counties and Western Washington cities, including the Appellant.

5 8. Does Woodinville have standing to challenge Ecology's decision to allow Snohomish
6 County to conduct required watershed-scale stormwater planning in Little Bear Creek?

7 9. Are any of Woodinville's challenges to the modified Phase I and Western
8 Washington Phase II Permits outside the scope of what may be challenged in an appeal of a
permit modification?

9 10. Are any of Woodinville's challenges to the modified Phase I and Western
Washington Phase II Permits barred by res judicata, judicial estoppel, or similar doctrines?

10 11. Did Woodinville timely file and serve its Notice of Appeal?

11 **V. MOTIONS**

12 1. Dispositive Motions: Motions on any jurisdictional issue shall be filed and served by
13 **July 6, 2015**. Motions on all other issues that would be dispositive of all or part of the case shall
14 be filed and served by **October 1, 2015**. Opposing parties shall have **14 days from the date**
15 **received for response**, and the moving party will have **10 days from receipt of the response**
16 **for reply**. For dispositive motions, responses, and replies, **an original and three (3) copies** of
17 the pleading and supporting documents shall be filed with the Presiding Officer. **All copies and**
18 **attachments shall be three-hole punched.**

19 2. Non-Dispositive Motions: **Responses** to any non-dispositive motion shall be filed and
20 served **five business days from receipt of the motion** by the non-moving party. The moving
21 party shall then have **three business days from receipt of the response to file and serve a**

1 **reply.** For non-dispositive motions, responses, and replies, **an original and one (1) copy** of the
2 pleading and supporting documents shall be filed with the Presiding Officer. **All copies and**
3 **attachments shall be three-hole punched.**

4 3. Oral Argument Not Required. Motions will be decided based on the written record,
5 unless oral argument is requested by a party and granted by the Presiding Officer.

6 **VI. WITNESSES AND EXHIBITS**

7 The parties submitted preliminary witness and exhibit lists.

8 A. Final Witness List: Final lists of witnesses shall be served on the parties and filed
9 with the Board by **January 15, 2016.** **An original and three (3) copies** shall be filed. Any
10 witness listed in final lists may be called by any party. The party calling a witness has the
11 responsibility to ensure his/her attendance at the hearing. A witness's expertise shall be
12 established by resume offered as an exhibit.

13 B. Final Exhibit List and Exhibit Exchange: By **January 8, 2016,** the parties shall
14 exchange lists of the exhibits intended to be used at the hearing. Parties shall then provide copies
15 of the exhibits to the other parties (if requested) in 2 working days, confer, try to reach
16 agreement on exhibits' authenticity and admissibility, and eliminate duplicate exhibits. Final
17 exhibit lists shall also be filed with the Board and served on the other parties by **January 15,**
18 **2016.** **An original and three (3) copies** shall be filed. All exhibits must be introduced in
19 connection with a witness' testimony, unless stipulated to and admitted by the presiding officer.
20 Parties are asked to submit into evidence only those portions of voluminous documents actually
21 being referred to or relied upon by a witness.

1 interrogatories, requests for production or inspection, requests for admission and the responses
2 shall not be filed with the Board. It is the initiating party's responsibility to maintain the original
3 together with answers to interrogatories and to make them available for the proceedings, as
4 necessary.

5 B. Discovery Disputes: The parties shall endeavor to resolve any discovery disputes
6 without involving the Board. An original and one (1) copy of discovery motions and supporting
7 documents must be filed with the Presiding Officer. Any party filing a discovery motion shall
8 also file a proposed order and shall accompany such filing with an affidavit reciting efforts to
9 resolve the discovery dispute.

10 **VIII. BRIEFS**

11 Pre-Hearing Briefs are required for Woodinville and Ecology and optional for
12 Intervenors King County, Snohomish County, and City of Seattle. They shall be filed and served
13 no later than **January 19, 2016**, with an **original and three (3) copies** for the Board (copies to
14 be filed the same day the brief is filed). Briefs are limited to **fifteen (15) pages** absent an order
15 granting a motion to lengthen.

16 **IX. COMMUNICATION**

17 **COMMUNICATION/CONTACT**: All correspondence and filings with the Board shall
18 be sent to the attention of the Presiding Officer with copies sent at the same time to all other
19 parties. There shall be no *ex parte* contact (contact by one party in the absence of the other party)
20 with the Presiding Officer or other member of the Board.

21 The Board does not accept e-mail correspondence directed to the presiding officer.

1 **ORDER**

2 This order shall govern the proceedings, unless subsequently modified by order of the
3 Board for good cause upon a party's motion or the Board's volition. Below is a summary of the
4 deadlines:

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Due date	Description
July 6, 2015	Jurisdictional Dispositive Motions must be filed
October 1, 2015	All Non-jurisdictional Dispositive Motions must be filed
October 30, 2015	Discovery cutoff
September 11, 2015 and December 22, 2015	Joint Status Report due
January 8, 2016	Final Exhibit Exchange
January 15, 2016	Final Witness Lists due
January 15, 2016	Final Exhibit Lists due
January 19, 2016	Prehearing Briefs due
January 25 – February 2, 2016	Hearing dates

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13 SO ORDERED this 26th day of February, 2015.

14 **POLLUTION CONTROL HEARINGS BOARD**

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18 Kay M. Brown, Presiding
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