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ENVIRONMENTAL
HEARINGS OFFICE

DEPARTMENT OF ECOLOGY
OFFICE OF DIRECTOR

**BEFORE THE POLLUTION CONTROL HEARINGS BOARD
OF THE STATE OF WASHINGTON AND THE UNITED STATES**

ARTHUR WEST)	
Appellant,)	No.
)	
Vs.)	APPELLANT'S NOTICE OF
)	APPEAL OF JUNE 17, 2009
WASHINGTON STATE)	MUNICIPAL PHASE I AND
DEPARTMENT OF ECOLOGY)	PHASE II PERMITS
Respondent)	

(1) Comes now the appellant, Arthur West, 120 State Avenue NE #1497 Olympia, Washington, pursuant to WAC 371-08-340, and makes this notice of appeal.

(2) This is an appeal of the Phase 1 and 2 (Western Washington) Municipal General Storm Water NPDES Permits modified June 17, 2009 by the Department of Ecology. The permits are directed at virtually all of the municipal storm water dischargers in the state, including all of the Cities in Western Washington discharging into Puget Sound.

(3) Copies of the June 17, 2009 order or decisions appealed from are attached.

(4) As a short and plain statement showing the grounds upon which the appealing party considers such order or decision to be unjust or unlawful, appellant states that the permits lack provisions to reasonably and promptly identify and inform the public of even such basic matters

I NOTICE OF APPEAL OF JUNE 17, 2009 MUNICIPAL PHASE I AND II PERMITS

1 as what storm water collection and discharge systems presently exist, and fail to incorporate
2 adequate testing, monitoring, numerical effluent parameters, and disclosure and review
3 requirements to effectively identify or control pollution or be a valid exercise of state power
4 under the federal delegation of Clean Water Act enforcement powers.

5 Further: the permits lack provisions to control toxic waste discharge, the permits will
6 impermissibly degrade water quality and protected species habitat (See ESA), the permits are too
7 broad and permissively designed to be effectively enforced in any meaningful way, and have
8 exemptions that are so broad and monitoring and reporting and adaptive management
9 requirements so lax as to be de facto authorizations to pollute in the absence of any effective
10 enforceable monitoring or reporting requirements. The permit violates the Coastal Zone
11 Management Act and the six enforceable policies incorporated therein, including the Clean
12 Water Act.

13 The permit is also defective in that it fails to require prompt identification of municipal
14 point source discharges, fails to require any meaningful testing or monitoring whatsoever, defers
15 identification of system elements, termination of illicit hookups and other necessary actions
16 unreasonably, and fails to incorporate or require best available (or even standard and accepted)
17 technology in the form of mechanical inline testing equipment that could economically be
18 installed at every major point source.

19 (5) A clear and concise statement of facts upon which an appealing party relies to sustain his
20 or her grounds for appeal: In order to receive a delegation of federal authority to administer the
21 NPDES permitting scheme under the Clean Water Act, Washington State has certified that its
22 permitting program will meet certain basic minimum standards. The June 17, 2009 Phase I and II
23 Municipal General Permits, incorporated by reference herein, as issued, are overly broad and
24 lack adequate monitoring, testing, administrative or reporting requirements necessary to comply
25 with the CWA and the State's duties under the delegation of federal powers. The permit lacks
26 adequate effluent limitations to prevent degradation of water quality, or to reasonably control or
27 regulate discharge of pollutants and toxic waste. The permit lacks any meaningful conditions to
28 address discharges from MTCA sites or other toxic storm water discharges. The permits are also
29 improper in light of all of the various basic matters that it defers to a later date, including,
30 incredibly, the specification of what storm water systems point source discharges exist. The

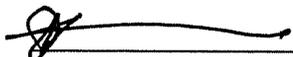
1 permits fail to provide for meaningful co-ordination between primary and secondary permittees.
2 The permits are also inconsistent with the PSP Action Plan of November 6, 2008.*

3
4 (6) The relief sought, including the specific nature and extent.

5 Appellant seeks vacation or withdrawal of the June 17, 2009 Phase I and Phase II
6 (Western Washington) permits, and the issue of alternate permits with thorough, regular,
7 consistent, and adequate monitoring, testing, and reporting requirements to comply with the
8 State's certification to the federal government under the Clean Water Act (and the CZMA) to
9 control and reasonably regulate discharge of pollutants and toxic waste from cities^{counties, ports} and secondary
10 permittees within the State, and in the coastal region. In addition, appellant seeks addition of new
11 conditions in the permits that will require immediate specific identification of exactly what storm
12 water systems presently exist and where (and what and when) they discharge, that will
13 immediately require detection and prohibition of illicit hookups, that will require immediate
14 compliance with all of the conditions in the permit that are presently deferred, and which will
15 compel permit holders to make relevant records readily available to the public in a timely
16 manner to ensure that such information is not concealed. In addition, the permits should also
17 incorporate mechanisms to ensure prompt judicial and administrative review in the absence of
18 prior restraints upon the disclosure of relevant information. Lastly, appellant seeks to require the
19 permits to incorporate available science in the form of mandatory inline mechanical multiple
20 parameter testing equipment for all identified outfalls.
21
22
23

24 (7) Appellant employs the waters that these permits regulate discharges into for leisure and
25 recreation, and is particularly affected in that his use and enjoyment of these waters will be
26 diminished if these permits are issued in their present form. Appellant has read the foregoing
notice of appeal and hereby certifies under penalty of law that he believes that it is true and
consistent with Civil Rule 11.

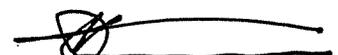
Done July 15, 2009.


Arthur S. West

APPENDIX 1

Appellant objects to a permit based on the following grounds:

1. The permit fails to apply or to ensure compliance with any applicable requirement of 40 C.F.R. part 123;
2. In the case of a proposed permit for which notification to the Administrator is required, the written recommendations of an affected state have not been accepted by the permitting state and ra-
the reasons for rejecting the recommendations inadequate;
3. The procedures followed in formulating the proposed permit failed to comply in a material respect to the terms of the CWA, implementing regulations, or the MOA;
4. State findings made in connection with the proposed permit misinterpret the CWA or any guidelines or regulations under the CWA or misapply them to the facts;
5. Provisions of the proposed permit relating to record maintenance, reporting, monitoring, or sampling are ra-
inadequate to assure compliance with permit conditions;
6. The proposed permit fails to carry out the provisions of the CWA or any applicable regulations, in the case of permits issued in the absence of EPA promulgated effluent limitations guidelines or sewage sludge standards;
7. Issuance of the proposed permit would in any other respect be outside the requirements of the CWA or its regulations;
8. The effluent limits of a permit fail to satisfy the requirements of 40 C.F.R. section 122.44(d) (water quality-based limitations for NPDES permits); or
9. The response requirements and reporting specified are inadequate to prevent known sources of pollution in a timely manner or notify Ecology in time to take effective action. ra-
10. SWMP, BMP and SWPPP requirements in the permits are inadequate to control discharges or protect water quality.
11. The requirements of the Phase I permit improperly defers identification of outfalls, inlets, and system and compliance standards requirements for 3 years in regard to the Port of Seattle and Tacoma.


Arthur West