

Pollution Control Hearings Board
Shorelines Hearings Board
Forest Practices Appeals Board
Hydraulic Appeals Board
Environmental and Land Use Hearings Board



STATE OF WASHINGTON
ENVIRONMENTAL HEARINGS OFFICE

Mailing Address: PO Box 40903, Olympia, WA 98504-0903

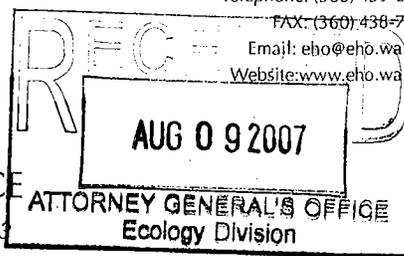
Physical Address: 4224 - 6th Ave. SE, Bldg. 2, RoweSix, Lacey, WA 98504-0903
August 8, 2007

Telephone: (360) 459-6327

FAX: (360) 438-7699

Email: eho@eh0.wa.gov

Website: www.eho.wa.gov



Jan Hasselman
Todd True
EARTHJUSTICE
705 Second Avenue, Suite 203
Seattle WA 98104

and

Richard A. Smith
SMITH & LOWNEY, PLLC
2317 East John Street
Seattle WA 98112
(PCHB 07-022)

James A. Tupper, Jr.
TUPPER MACK BROWER PLLC
1100 Market Place Tower
2025 First Avenue
Seattle WA 98121
and

Wayne D. Tanaka
City Attorney
City of Issaquah
1771 12th Ave NW
PO Box 1307
Issaquah WA 989027-1307
(PCHB 07-024)

Jay Bennett
Public Works Director
City of Pacific
100 - 3rd Avenue SE
Pacific WA 98047-0250
(PCHB 07-031)

Ronald L. Lavigne & Thomas J. Young
Assistant Attorneys General
Department of Ecology
PO Box 40117
Olympia WA 98504-0117

Kathryn L. Gerla & Lori A. Terry
FOSTER PEPPER
1111 Third Avenue Suite 3400
Seattle WA 98101
(PCHB 07-023)

Frank M. Hruban
Assistant Attorney General
WSU Division
332 French Admin. Bldg.
PO Box 641031
Pullman WA 99164-1031
(PCHB 07-025)

Stephen Klasinski
Assistant Attorney General
Department of Transportation
PO Box 40113
Olympia WA 98504-0113

Daniel L. Gibson
Whatcom County Prosecutor
311 Grand Avenue Suite 201
Bellingham WA 98225
(PCHB 07-032)

RE: APPEALS OF PHASE II MUNICIPAL STORMWATER PERMIT

Dear Parties:

Enclosed please find the Pre-Hearing Order from the conference held on March 16, 2007. Please review the order carefully in order to understand the details of what the process requires. For ease of reference, the key deadlines are as follows:

1. **Motions:** File motions on any issue that would be dispositive on or before **December 3, 2007**. Opposing parties shall file a response 14 days from the date received. The Reply must be made within 10 days from receipt of the response

2. **Discovery:** Discovery should be complete by **January 11, 2008**.
3. **Joint Status Report** shall be filed by **March 17, 2008**.
4. **Witness and Exhibit Lists:** Final witness lists by **March 10**, and Final exhibit lists by **March 26, 2008**.
5. **Briefs:** Pre-Hearing Briefs shall be filed by **April 9, 2008**.
6. **Hearing:** The hearing dates are set for **April 16 to May 2, 2008**.

Also enclosed is an Order of Consolidation and Order on Intervention.

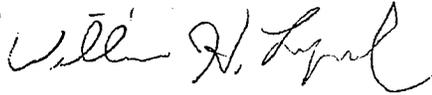
The presiding officer has not made any determination regarding the division of time between the parties or whether to use direct written testimony by experts. The parties should communicate their thoughts about the use of prefiled testimony by experts after they have had a chance to do further discovery.

The presiding officer made some small changes to the proposed legal issues. In particular, broad catch-all language was deleted with the understanding that the parties can amend the legal issues upon good cause.

If there are concerns with the timelines proposed in these orders, please contact the presiding officer to discuss possible revisions to the schedule.

If you have questions, please do not hesitate to call.

Sincerely yours,



William H. Lynch, Presiding

WHL/jg/Phase II

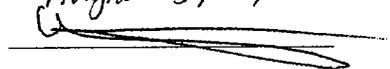
Cc: Kathleen Emmett, Ecology

CERTIFICATION

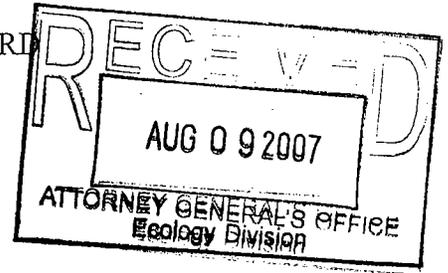
On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid to the attorneys of record herein.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED August 8, 2007, at Lacey, WA.



POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON



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3 PUGET SOUNDKEEPER ALLIANCE;
4 PEOPLE FOR PUGET SOUND;
5 COALITION OF GOVERNMENTAL
6 ENTITIES: CITY OF ANACORTES,
7 CITY OF AUBURN, CITY OF
8 BELLEVUE, CITY OF BELLINGHAM,
9 CITY OF BOTHELL, CITY OF
10 BREMERTON, CITY OF BUCKLEY,
11 CITY OF BURIEEN, CITY OF
12 BURLINGTON, CITY OF CAMAS,
13 CITY OF DES MOINES, CITY OF
14 ELLENSBURG, CITY OF EVERETT,
15 CITY OF FEDERAL WAY, CITY OF
16 FIRCREST, CITY OF KENNEWICK,
17 CITY OF KENT, CITY OF LONGVIEW,
18 CITY OF MARYSVILLE, CITY OF
19 MOUNT VERNON, CITY OF
20 NORMANDY PARK, CITY OF
21 ORTING, CITY OF PORT ANGELES,
CITY OF PULLMAN, CITY OF
PUYALLUP, CITY OF RENTON, CITY
OF RICHLAND, CITY OF
SAMMAMISH, CITY OF SEATAC,
CITY OF SUMNER, CITY OF
UNIVERSITY PLACE, CITY OF
VANCOUVER, and KITSAP COUNTY;
and CITY OF PACIFIC,

Appellants,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent,

PCHB NOS. 07-022, 07-023, 07-031

ORDER ON CONSOLIDATION
(PHASE II MUNICIPAL
STORMWATER PERMIT)

1 STATE OF WASHINGTON,
2 DEPARTMENT OF
3 TRANSPORTATION,

Intervenor.

4
5 On January 17, 2007, the Department of Ecology (Ecology) issued National Pollutant
6 Discharge Elimination System and State Waste Discharge General Permit for discharges from
7 Small Municipal Separate Storm Sewer Systems in Western Washington (Western Washington
8 Phase II Municipal Stormwater Permit). On January 17, 2007, the Department of Ecology
9 (Ecology) also issued National Pollutant Discharge Elimination System and State Waste
10 Discharge General Permit for discharges from Small Municipal Separate Storm Sewer Systems
11 in Eastern Washington (Eastern Washington Phase II Municipal Stormwater Permit) (The
12 Western and Eastern Phase II Municipal Stormwater Permits are referred to collectively as the
13 permits). The effective date of both permits is February 16, 2007.

14 Separate appeals were filed challenging various provisions of the permit. Appeals of the
15 permits were filed by Puget Soundkeeper Alliance and People for Puget Sound (PCHB No. 07-
16 022); the Coalition of Governmental Entities, which consists of the City of Anacortes, City of
17 Auburn, City of Bellevue, City of Bellingham, City of Bothell, City of Bremerton, City of
18 Buckley, City of Burien, City of Burlington, City of Camas, City of Des Moines, City of
19 Ellensburg, City of Everett, City of Federal Way, City of Fircrest, City of Kennewick, City of
20 Kent, City of Longview, City of Marysville, City of Mount Vernon, City of Normandy Park,
21 City of Orting, City of Port Angeles, City of Pullman, City of Puyallup, City of Renton, City of

1 Richland, City of Sammamish, City of SeaTac, City of Sumner, City of University Place, City of
2 Vancouver, and Kitsap County (PCHB No. 07-023); and the City of Pacific (PCHB No. 07-031)
3 (collectively referred to as Phase II appeals). The Board granted Washington State Department
4 of Transportation's (DOT) Petition to Intervene in these Phase II appeals.

5 Separate appeals were also filed by Whatcom County (PCHB No. 07-032) and
6 Sammamish Plateau Water & Sewer District (PCHB No. 07-024). Washington State University
7 filed an appeal of the Eastern Washington Phase II Municipal Stormwater Permit (PCHB No. 07-
8 025). There was no objection to the appeal by Whatcom County not being consolidated with the
9 other Phase II appeals, and the presiding officer indicated at the pre-hearing conference that this
10 appeal would remain separate from the other Phase II appeals because of the narrow issue
11 involved.

12 The presiding officer reserved ruling on whether the appeal by Sammamish Plateau
13 Water & Sewer District should be consolidated with the other appeals. The Board believes that
14 the District's counsel has sufficiently narrowed the legal issues in that appeal to make
15 consolidation of that case with the other Phase II appeals inappropriate. The presiding officer
16 intends to schedule this appeal after the other Phase II appeals have concluded. Parties to the
17 Phase II appeals, however, will be given an opportunity to file Petitions for Intervention in
18 PCHB No. 07-024 if they believe it is necessary to protect their interests.

19 The presiding officer had initially indicated that the appeal by Washington State
20 University would be consolidated as part of the Phase II appeals. The presiding officer believes,
21 however, that the counsel for the University has sufficiently narrowed the issues in that appeal to

1 make consolidation with the other Phase II appeals inappropriate. The presiding officer also
2 intends to schedule this appeal after the other Phase II appeals have concluded. Parties to the
3 Phase II appeals, however, will be given an opportunity to file Petitions for Intervention in
4 PCHB No. 07-025 if they believe it is necessary to protect their interests.

5 It appears that the issues and the subject matter of appeals PCHB NOS. 07-022, 07-023,
6 07-031 are related, and it further appears that a consolidation of these appeals will expedite their
7 disposition, avoid duplication of testimony and not prejudice the rights of the parties.

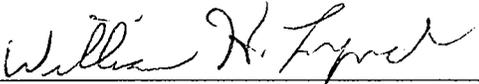
8 It also appears that Permit Special Condition S4, which is contained in both the Permit
9 that is the subject of this appeal and in the Permits that are the subject of the Phase II appeals,
10 should be consolidated between these two proceedings in order to avoid duplication of testimony
11 and prevent potential prejudice to the rights of all parties to both proceedings. NOW

12 THEREFORE

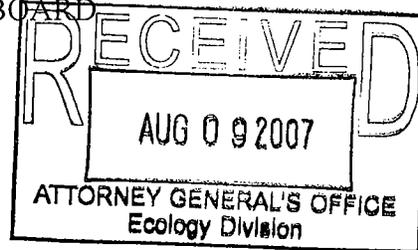
13 IT IS ORDERED that the above listed appeals are consolidated for hearing, and Permit
14 Special Condition S4 is consolidated for hearing between the Phase I and Phase II appeals.

15 DATED this 8th day of August, 2007.

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18 **POLLUTION CONTROL HEARINGS BOARD**

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20 
21 **WILLIAM H. LYNCH, Presiding**

POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON



PUGET SOUNDKEEPER ALLIANCE;
PEOPLE FOR PUGET SOUND;
COALITION OF GOVERNMENTAL
ENTITIES: CITY OF ANACORTES,
CITY OF AUBURN, CITY OF
BELLEVUE, CITY OF BELLINGHAM,
CITY OF BOTHELL, CITY OF
BREMERTON, CITY OF BUCKLEY,
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ELLENSBURG, CITY OF EVERETT,
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NORMANDY PARK, CITY OF
ORTING, CITY OF PORT ANGELES,
CITY OF PULLMAN, CITY OF
PUYALLUP, CITY OF RENTON, CITY
OF RICHLAND, CITY OF
SAMMAMISH, CITY OF SEATAC,
CITY OF SUMNER, CITY OF
UNIVERSITY PLACE, CITY OF
VANCOUVER, and KITSAP COUNTY;
and CITY OF PACIFIC,

Appellants,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent,

PCHB NOS. 07-022, 07-023, 07-031

ORDER GRANTING
MOTION TO INTERVENE
(PHASE II MUNICIPAL
STORMWATER PERMIT)

1 STATE OF WASHINGTON,
2 DEPARTMENT OF
3 TRANSPORTATION,

Intervenor.

4
5 On January 17, 2007, the Department of Ecology (Ecology) issued National Pollutant
6 Discharge Elimination System and State Waste Discharge General Permit for discharges from
7 Small Municipal Separate Storm Sewer Systems in Western Washington (Western Washington
8 Phase II Municipal Stormwater Permit). On January 17, 2007, the Department of Ecology
9 (Ecology) also issued National Pollutant Discharge Elimination System and State Waste
10 Discharge General Permit for discharges from Small Municipal Separate Storm Sewer Systems
11 in Eastern Washington (Eastern Washington Phase II Municipal Stormwater Permit) (The
12 Western and Eastern Phase II Municipal Stormwater Permits are referred to collectively as the
13 permits). The effective date of both permits is February 16, 2007.

14 Separate appeals were filed challenging various provisions of the permit. Appeals of the
15 permits were filed by Puget Soundkeeper Alliance and People for Puget Sound (PCHB No. 07-
16 022); the Coalition of Governmental Entities, which consists of the City of Anacortes, City of
17 Auburn, City of Bellevue, City of Bellingham, City of Bothell, City of Bremerton, City of
18 Buckley, City of Burien, City of Burlington, City of Camas, City of Des Moines, City of
19 Ellensburg, City of Everett, City of Federal Way, City of Fircrest, City of Kennewick, City of
20 Kent, City of Longview, City of Marysville, City of Mount Vernon, City of Normandy Park,
21 City of Orting, City of Port Angeles, City of Pullman, City of Puyallup, City of Renton, City of

1 Richland, City of Sammamish, City of SeaTac, City of Sumner, City of University Place, City of
2 Vancouver, and Kitsap County (PCHB No. 07-023); and the City of Pacific (PCHB No. 07-031)
3 (collectively referred to as Phase II appeals).¹ The Washington State Department of
4 Transportation (DOT) filed a Petition to Intervene on the Phase II appeals, which was objected to
5 by Puget Soundkeeper Alliance and People for Puget Sound (PSA).

6 PSA asserts that DOT's intervention is not appropriate in these appeals because DOT is
7 not a regulated entity under this permit. PSA believes that DOT only has an indirect interest in
8 this permit and if intervention is granted to DOT, other potential permit holders could also seek
9 to intervene in these appeals.

10 DOT acknowledges it is not directly named as a permittee under this permit, but the
11 development of this permit will substantially and directly shape the terms of its own permit that
12 Ecology will issue to DOT. DOT contends that its interest in this permit is therefore substantial.

13 WAC 371-08-420 authorizes the presiding officer to "grant a petition for intervention by
14 any person at any time, upon determining that the petitioner qualifies as an intervenor pursuant to
15 civil rule 24, that the intervention will serve the interests of justice and that the prompt and
16 orderly conduct of the appeal will not be impaired."

17 CR 24 allows intervention, either as a matter of right, or on a discretionary basis. CR 24
18 sets forth the requirements as follows:

20 ¹ Separate appeals were also filed by Whatcom County (PCHB No. 07-032) and Sammamish Plateau Water &
21 Sewer District (PCHB No. 07-024). Washington State University filed an appeal of the Eastern Washington Phase
II Municipal Stormwater Permit (PCHB No. 07-025). These appeals were not consolidated with the other Phase II
appeals.

- 1 (a) Intervention of Right. Upon timely application anyone shall be permitted to
2 intervene in an action: (1) when a statute confers an unconditional right to intervene;
3 or (2) when the applicant claims an interest relating to the property or transaction
4 which is the subject of the action and he is so situated that the disposition of the
5 action may as a practical matter impair or impede his ability to protect that interest,
6 unless the applicant's interest is adequately represented by existing parties.
- 7 (b) Permissive Intervention. Upon timely application, anyone may be permitted to
8 intervene in an action: (1) When a statute confers an unconditional right to intervene;
9 or (2) When an applicant's claim or defense and the main action have a question of
10 law or fact in common. When a party to an action relies for ground of claim or
11 defense upon any statute or executive order administered by a federal or state
12 governmental officer or agency or upon any regulation, order, requirements, or
13 agreement issued or made pursuant to the statute or executive order, the officer or
14 agency upon timely application may be permitted to intervene in the action. In
15 exercising its discretion the court shall consider whether the intervention will unduly
16 delay or prejudice the adjudication of the rights of the original parties.

17 This Board has previously noted Washington appellate courts have held that a trial court should
18 disallow intervention only when it will unduly delay or prejudice the rights of the original
19 parties. *City of West Richland v. Ecology*, PCHB No. 01-033 (Order Granting Motion to
20 Intervene)(June 12, 2003)(citing *Wilson Sporting Goods v. Pedersen*, 76 Wn. App. 300, 303,
21 (1994); and *Vashon Island Committee for Self Government v. Washington State Boundary
Review Board for King County*, 127 Wn.2d 759, 765 (1995)).

22 The Board believes that DOT has a substantial interest in the terms of this permit. In
23 order that the appeals may proceed in an orderly fashion, Intervenor DOT may not raise new
24 legal issues distinct from those raised by Appellants, and evidence introduced must relate to
25 matters directly at issue.

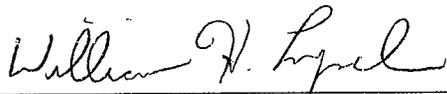
26 The request to intervene by the Washington State Department of Transportation is hereby

1 GRANTED pursuant to WAC 361-08-420 and CR 24(b) for PCHB NOS. 07-022, 07-023, and
2 07-031.

3 DONE this 8th day of August, 2007.

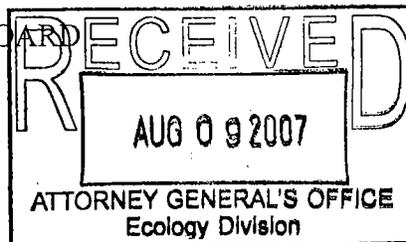
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POLLUTION CONTROL HEARINGS BOARD



WILLIAM H. LYNCH, Presiding

POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON



PUGET SOUNDKEEPER ALLIANCE;
PEOPLE FOR PUGET SOUND;
COALITION OF GOVERNMENTAL
ENTITIES: CITY OF ANACORTES,
CITY OF AUBURN, CITY OF
BELLEVUE, CITY OF BELLINGHAM,
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BREMERTON, CITY OF BUCKLEY,
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SAMMAMISH, CITY OF SEATAC,
CITY OF SUMNER, CITY OF
UNIVERSITY PLACE, CITY OF
VANCOUVER, and KITSAP COUNTY;
WASHINGTON STATE UNIVERSITY;
and CITY OF PACIFIC,

Appellants,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent,

PCHB NOS. 07-022, 07-023, 07-025,
07-031, 07-058

PRE-HEARING ORDER
(PHASE II MUNICIPAL
STORMWATER PERMIT)

1 STATE OF WASHINGTON,
2 DEPARTMENT OF
3 TRANSPORTATION,

4 Intervenor.

5 On January 17, 2007, the Department of Ecology (Ecology) issued National Pollutant
6 Discharge Elimination System and State Waste Discharge General Permit for discharges from
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14 Separate appeals were filed challenging various provisions of the permit. Appeals of the
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16 022); the Coalition of Governmental Entities, which consists of the City of Anacortes, City of
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18 Buckley, City of Burien, City of Burlington, City of Camas, City of Des Moines, City of
19 Ellensburg, City of Everett, City of Federal Way, City of Fircrest, City of Kennewick, City of
20 Kent, City of Longview, City of Marysville, City of Mount Vernon, City of Normandy Park,
21

1 Richland, City of Sammamish, City of SeaTac, City of Sumner, City of University Place, City of
2 Vancouver, and Kitsap County (PCHB No. 07-023); and the City of Pacific (PCHB No. 07-031)
3 (collectively referred to as Phase II appeals). Separate appeals were also filed by Whatcom
4 County (PCHB No. 07-032) and Sammamish Plateau Water & Sewer District (PCHB No. 07-
5 024). Washington State University filed an appeal of the Eastern Washington Phase II
6 Municipal Stormwater Permit (PCHB No. 07-025). The Washington State Department of
7 Transportation (DOT) filed a Petition to Intervene on the Phase II appeals, which was objected to
8 by Puget Soundkeeper Alliance and People for Puget Sound.

9 A pre-hearing conference on the Phase II appeals was held in person at the offices of the
10 Pollution Control Hearings Board (Board) in Lacey, Washington, on March 16, 2007. Bill
11 Lynch presided for the Board at the pre-hearing conference. The presiding officer reserved
12 ruling on DOT's Petition to Intervene until after the pre-hearing conference in order to review
13 the submitted material relevant to the petition. The presiding officer subsequently granted
14 DOT's Petition to Intervene and this was communicated to the parties by telephone. The written
15 order granting intervention to all the petitioners is attached to this Pre-Hearing Order. The
16 presiding officer consolidated certain Phase II appeals for hearing purposes. The presiding
17 officer did not consolidate the appeals by Whatcom County, the Sammamish Plateau Water &
18 Sewer District, or Washington State University. The decision to not consolidate the Sammamish
19 Plateau Water & Sewer District appeal or the Washington State University appeal was based
20 upon the revised list of legal issues submitted in those cases. The appeals that were not
21

1 whether testimony is needed. The parties should make their recommendations to the presiding
2 officer on this matter at their earliest possible convenience.

3
4 **II. MEDIATION AND SETTLEMENT**

5 Parties are encouraged to engage in mediation or settlement discussions with each other
6 at any time without the presence of the presiding officer of the Board or with his or her presence
7 if all parties and the presiding officer agree. If the parties wish to engage the services of an
8 administrative appeals judge for mediation, they shall contact the presiding officer in writing at
9 the Board's office.

10 The parties, through respondent's attorney, shall file with the Board a joint status report,
11 setting forth settlement possibilities in the case, by **March 17, 2008.**

12 **III. LEGAL ISSUES**

- 13
- 14 1. Did Ecology act unreasonably, unjustly, or unlawfully in imposing Special Condition
15 S4 in the Permits to the extent it imposes requirements beyond Maximum Extent
16 Practicable (MEP) and/or requires permittees to comply with standards that are not
17 legally required, or are otherwise unreasonable unjust, or invalid.
 - 18 2. Whether Special Condition S4.F in the Permits is invalid, unreasonable, unjust, or
19 unlawful in a municipal stormwater discharge permit by characterizing a violation of
20 water quality standards as permit noncompliance and a permit violation and by
21 imposing timeframes that do not allow sufficient time within which to implement
follow-up actions.
 3. Whether Special Condition S4.F in the Permits is invalid, unreasonable, unjust, or
unlawful because it fails to state specifically that compliance with the terms and
conditions of this permit constitutes compliance with all applicable legal standards.
 4. Did Ecology act unreasonably, unjustly, or unlawfully in imposing Special Condition
S5.C.4 and in Appendix 1 of the Western Washington Phase II Municipal Stormwater
Permit, that among other things, purport to require stormwater discharges from new

1 development and redevelopment activities to meet flow control requirements for pre-
2 developed conditions.

- 3 5. Did Ecology act unreasonably, unjustly, or unlawfully by failing to include in the
4 Western Washington Phase II Municipal Stormwater Permit a condition stating that
5 the Department of Ecology will indemnify cities and counties in the event claims are
6 filed against cities and counties for violation of constitutional provisions or RCW
7 82.02.020 arising out of implementation of the Western Washington Phase II
8 Municipal Stormwater Permit.
- 9 6. Did Ecology act unreasonably, unjustly, or unlawfully in imposing conditions in the
10 Permits that mandate use of Ecology's Stormwater Management Manuals or
11 equivalent measures.
- 12 7. Did Ecology act unreasonably, unjustly, or unlawfully in including provisions in the
13 Permits, that might be considered duplicative and burdensome, because they require
14 permittees to regulate stormwater discharges from construction activities that are also
15 regulated by Ecology under the National Pollutant Discharge Elimination System
16 (NPDES) and State Waste Discharge General Permit for Stormwater Discharges
17 Associated with Construction Activity or to conduct activities that should be
18 conducted by Ecology.
- 19 8. Did Ecology act unreasonably, unjustly, or unlawfully in imposing Special
20 Conditions S5.A.4 and S5.C.4 in the Western Washington Phase II Municipal
21 Stormwater Permit, Special Conditions S5.A.2 and S5.B.4.a in the Eastern
Washington Phase II Municipal Stormwater Permit, and provisions in Appendix 1 in
both Permits that prohibit permittees from repealing any existing local requirements
to control stormwater that go beyond the minimum standards set forth in the Permits.
9. Did Ecology act unreasonably, unjustly, or unlawfully in imposing Special
Conditions S5.C.1.a and b in the Western Washington Phase II Municipal Stormwater
Permit, which requires permittees to achieve measurable improvements and to
measure the understanding and adoption of the targeted behaviors among the targeted
audiences with respect to public education.
10. Did Ecology act unreasonably, unjustly, or unlawfully in imposing Special Condition
S5.C.3 in the Western Washington Phase II Municipal Stormwater Permit and Special
Condition S5.B.3.a in the Eastern Washington Phase II Municipal Stormwater Permit,
which require permittees to regulate activities such as discharges of potable water,
fire hydrant flushing, discharges from lawn watering and irrigation, and dechlorinated
swimming pool discharges (of any size) and to engage in potentially expensive and
extensive investigations based on indications of potential illicit discharges.
11. Did Ecology act unreasonably, unjustly, or unlawfully in including in the Permits, or
failing to include in the Permits, definitions of "All known, available and reasonable
methods of prevention, control and treatment" and "Maximum Extent Practicable".

- 1 12. Did Ecology act unreasonably, unjustly, or unlawfully by failing to conduct an
2 economic analysis under WAC 173-226 and by otherwise failing to adequately
3 evaluate and consider economic impact of the Permits.
4 13. Did Ecology violate the State Administrative Procedure Act, chapter 34.05 RCW, by
5 failing to adopt as rules provisions included in or incorporated into the Permits.¹
6 14. Is the timeframe for the City of Buckley to implement the required actions for the
7 South Prairie Creek Bacteria and Temperature TMDL unreasonable, unjust, unlawful,
8 or invalid.
9 15. Low Impact Development:
10 a. Does the permit fail to require maximum onsite dispersion and infiltration of
11 stormwater, through the use of “low impact development” techniques, basin
12 planning, and other appropriate technologies, and if so, does that failure
13 unlawfully cause or contribute to violations of water quality standards?
14 b. Does the permit fail to require maximum onsite dispersion and infiltration of
15 stormwater, through the use of “low impact development” techniques, basin
16 planning, and other appropriate technologies, and if so, does that failure
17 unlawfully allow permittees to discharge pollutants that have not been treated
18 with all known available and reasonable methods of treatment (“AKART”),
19 and/or fail to reduce the discharge of pollutants to the maximum extent
20 practicable (“MEP”)?
- 11 16. One Acre Threshold:
12 a. Does the exemption from the requirement to regulate stormwater runoff from
13 development and redevelopment that disturbs less than one acre unlawfully
14 cause or contribute to violations of water quality standards?
15 b. Does the exemption from the requirement to regulate discharges from
16 development and redevelopment that disturbs less than one acre allow
17 permittees unlawfully to discharge pollutants that have not been treated,
18 reduced or prevented with AKART, and/or fail to reduce the discharge of
19 pollutants to the MEP?
- 16 17. Existing Development:
17 a. Does the lack of controls for reducing stormwater discharges from existing
18 development unlawfully cause or contribute to violations of water quality
19 standards?
20 b. Does the lack of controls for reducing stormwater discharges from existing
21 development unlawfully allow permittees to discharge pollutants that have not
been treated with AKART, and/or fail to reduce the discharge of pollutants to
MEP?

¹ The presiding officer believes this particular issue requires greater clarification and directs the Coalition of Government Entities to identify those provisions of the Permits that were included or incorporated into the Permits in violation of the APA.

1 18. Monitoring: Does the permit unlawfully or unreasonably fail to require monitoring of
2 stormwater discharges, effectiveness of control techniques, and/or receiving water
3 quality?

4 19. Water Quality Standards Violations:

- 5 a. Does the permit unlawfully exempt permittees that comply with the process
6 established in Permit Condition S4.F from the requirement to ensure that
7 discharges do not cause or contribute to violations of water quality standards?
8 b. Does the process established in Permit Condition S4.F unlawfully fail to
9 include standards and/or timelines necessary to ensure that discharges will
10 comply with water quality standards?
11 c. Does the prohibition on violations of water quality standards contained in
12 Permit Condition S4 unlawfully or unreasonably conflict with the other
13 provisions of the permit?
14 d. Does the permit unlawfully authorize known, continued, and ongoing
15 violations of water quality standards?

16 20. Compliance:

- 17 a. Does the permit unlawfully provide for compliance with permit terms on a
18 schedule that is indefinite and unenforceable, not as expeditious as possible,
19 and/or in excess of statutory deadlines?
20 b. Does the permit unlawfully allow a permittee to create and implement permit
21 requirements without Ecology's oversight or involvement?

22 21. Permit Modifications: Does the permit unlawfully provide for modification of
23 permit terms without adherence to permit modification procedures?

24 22. Coverage Area: Is the coverage area of the permit, which is restricted to cities above
25 a specific size and the urban areas of counties, unlawfully or unreasonably limited?

26 23. Urban and Large Rivers Exemption:

- 27 a. Do the 2005 amendments to the 2001 Western Washington Stormwater
28 Management Manual altering the flow control requirements for urban areas
29 and areas adjacent to larger rivers, which are incorporated into the permit's
30 terms, result in discharges that unlawfully cause or contribute to violations of
31 water quality standards?
32 b. Do the 2005 amendments to the 2001 Western Washington Stormwater
33 Management Manual altering the flow control requirements for urban areas
34 and areas adjacent to larger rivers, which are incorporated into the permit's
35 terms, represent AKART and/or reduction of pollutants to the MEP?

36 24. TMDLs:

- 37 a. Does the permit unlawfully or unreasonably fail to require compliance with
38 TMDLs issued after the date of the permit's issuance?
39 b. Does the permit unlawfully or unreasonably fail to include additional
40 restrictions on stormwater discharges for applicable TMDL beyond the five
41 listed in Appendix 2 to the permit?

1 for the purpose of attempting to stipulate in advance of hearing to exhibits' authenticity and
2 admissibility and to remove any duplicative exhibits. Parties are encouraged to offer only those
3 exhibits, or portions they intend to rely upon in their case. Telefax is allowed, provided that the
4 original is mailed the same day. Even though the parties may stipulate to the admissibility of
5 exhibits, the exhibits generally should be offered through a witness at the hearing.

6 When meeting with the presiding officer on the first hearing day, each party shall have
7 available for the Board an original and three (3) copies of its exhibits and exhibit lists which
8 shall identify those admissible by stipulation of the parties. An original or one copy of any
9 exhibit that cannot be conveniently copied due to size, bulk, reproduction difficulty, etc., must be
10 available for the Board at the hearing.

11 Each exhibit shall be pre-marked and organized by tab for identification (A-1, A-2, etc.,
12 for appellant and R-1, R-2, etc., for respondent, respectively) and so identified on the exhibit
13 lists. The number given to an exhibit does not limit the order of its introduction at hearing.

14 Any exhibit listed by one party may be introduced by another party.

15 **VI. DISCOVERY**

16 The discovery cutoff is **January 11, 2008**. If formal discovery is pursued, parties should
17 pay particular attention to the time requirements imposed by the superior court civil rules with
18 regard to interrogatories, depositions, etc. Discovery requests shall be served sufficiently ahead
19 of the discovery deadline so that the opposing party has the response time allowed by these rules.
20 (For example, responses to interrogatories are typically due thirty (30) days after service. See
21 CR 33).

1 Responses to any non-dispositive motion shall be filed and served five days from receipt
2 of the motion by the non-moving party. The moving party shall have three days from receipt of
3 the response to file and serve a reply.

4 Motions will be decided based on the written record, unless oral argument is requested by
5 a party and granted by the Board pursuant to WAC 371-08-450. At the parties' request,
6 argument may be held by telephone with the parties arranging the connections

7 Note: Service and filing of motion, answer, and reply (if 15 pages or less) may be by
8 telefax, provided that the original and required numbers of copies are mailed the same day.

9 **VIII. BRIEFS**

10 Pre-hearing briefs are optional. If submitted, they shall be filed and served no later than,
11 **April 9, 2008** with an original and three (3) copies for the Board. Telefax of 15 pages or less is
12 allowed, provided that the original is mailed the same day.

13 Briefs are limited to 15 pages in length, absent an order granting a motion to lengthen. If
14 a citation is made to a case other than Wn. App. or Wn.2d, a complete copy of the referenced
15 citation must be filed and served.

16 **IX. COMMUNICATION**

17 All correspondence and filings with the Board shall be sent to the attention of the
18 presiding officer with copies sent at the same time to all other parties.

19 Telefax may be used to communicate with the Board and the parties, limited to 15 pages
20 in length.

21

1 The parties have agreed to allow e-mail for communication between each other, and that
2 this may be used for purposes of pleadings and service. The parties also have agreed that the 3-
3 day rule applies for purposes of communication. Communications with the Board, however, will
4 still be by facsimile or mail.

5
6 **X. MISCELLANEOUS**

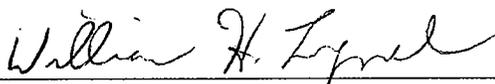
7 "Filed and "served" means the date received by the Board.

8
9 **ORDER**

10 This order shall govern the proceedings, unless subsequently modified by order of the
11 Board for good cause upon a party's motion or the Board's volition.

12
13 SO ORDERED this 8th day of August, 2007.

14
15 **POLLUTION CONTROL HEARINGS BOARD**

16
17 
18 WILLIAM H. LYNCH, Presiding