

Pollution Control Hearing Board
Shorelines Hearings Board
Forest Practices Appeals Board
Hydraulics Appeals Board



Marc Pacifico

*cc Janice
orig Eric*
(360) 459-6327
FAX (360) 438-7699
E-Mail: EHO@EHO.WA.GOV
INTERNET: http://www.eho.wa.gov

STATE OF WASHINGTON
ENVIRONMENTAL HEARINGS OFFICE

4224 - 6th Avenue SE, Bldg. 2, Rowe Six
P.O. Box 40903, Lacey, WA 98504-0903

'01 AUG 30 10:44

DEPT. OF ECOLOGY
FISCAL & BUDGET

August 28, 2001

Stephen E. Oliver
PLATT IRWIN TAYLOR
403 South Peabody
Port Angeles WA 98362

Joan M. Marchioro
Assistant Attorney General
Department of Ecology
PO Box 40117
Olympia WA 98504-0117

RE: PCHB NO. 01-035
PORT OF PORT ANGELES v. ECOLOGY (DE00WQSR)

Penalty

Dear Parties:

Enclosed is a Stipulation and Agreed Order of Dismissal.

The parties' efforts in settling this matter are greatly appreciated.

Sincerely yours,

Deborah Mull

Deborah Mull
Administrative Appeals Judge

DM/tj/P 01-035 LTR

cc: Leann Ryser - 7615

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 *Aug 28, 01* at Lacey, WA:

Nancy Johnson

RECEIVED

AUG 27 2001

ENVIRONMENTAL
HEARINGS OFFICE

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

PORT OF PORT ANGELES,

PCHB No. 01-035

Appellant,

STIPULATION AND AGREED
ORDER OF DISMISSAL

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

Appellant, Port of Port Angeles (Port), by and through its attorneys, Stephen E. Oliver and the Law Firm of Platt Irwin Taylor, and Respondent, State of Washington, Department of Ecology (Ecology) by and through its attorneys, Christine O. Gregoire, Attorney General, and Joan M. Marchioro, Assistant Attorney General, agree to the entry of this Stipulation and Agreed Order of Dismissal in the form attached.

RECITALS

1. On or about January 4, 2001, Ecology issued Notice of Penalty Incurred and Due No. DE 00WQSR-1822 (NOP) to the Port, assessing a \$14,000.00 penalty for alleged violations of state water quality laws, ch. 90.48 RCW.

2. On or about January 20, 2001, the Port filed an Application for Relief from Penalty with Ecology.

STIPULATION AND AGREED ORDER
OF DISMISSAL

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

ORIGINAL

1 3. On or about February 22, 2001, Ecology affirmed the NOP by Notice of
2 Disposition Upon Application for Relief From Penalty No. DE 00WQSR-1822 (NOD). The
3 Port filed its appeal of the NOD with the Pollution Control Hearings Board (PCHB) on or
4 about March 20, 2001.

5 4. On or about August 1, 2001, the Port submitted to Ecology for review and
6 approval a proposal for a supplemental environmental project (SEP). Ecology subsequently
7 approved the SEP. The SEP involves the restoration of a creek near the western end of Port
8 Angeles Harbor and it has been approved by the Washington State Department of Fish and
9 Wildlife. The Port's contribution to the SEP will be at least \$11,200.00 in labor and
10 equipment. The SEP is due to be completed by September 1, 2003.

11 **STIPULATION**

12 The parties wish to avoid the time and cost of further litigation of this matter, and
13 therefore, without admitting guilt or liability, stipulate and agree as follows:

14 1. Within thirty days of the date the PCHB signs the attached Agreed Order of
15 Dismissal, Port shall pay a penalty of \$2,800.00 to Ecology. The penalty shall be paid to:

16 Department of Ecology
17 c/o Fiscal Cashier
18 P.O. Box 5128
Lacey, WA 98503-0210

19 2. The Port shall complete the approved SEP by September 1, 2003. If the Port
20 fails to complete the approved SEP by September 1, 2003, the Port shall pay Ecology a penalty
21 of \$11,200.00 in addition to the \$2,800.00 penalty specified in paragraph 1. The additional
22 \$11,200.00 shall be paid in full to Ecology by October 1, 2003.

23 3. During the implementation of the SEP, the Port shall submit reports to Ecology
24 every six (6) months describing the progress being made on implementing the SEP and
25 detailing the funds expended.

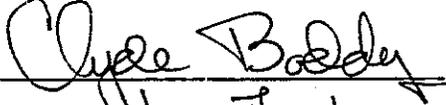
1 4. The undersigned representatives for Ecology and the Port certify that they are
2 fully authorized by the party whom they represent to enter into the terms and conditions of this
3 Stipulation and Agreed Order of Dismissal and legally to bind such party thereto. Ecology and
4 the Port consent to the submission of this Stipulation and Agreed Order of Dismissal to the
5 PCHB for approval and entry.

6 DATED this 27th day of August, 2001.

8 STATE OF WASHINGTON
9 DEPARTMENT OF ECOLOGY

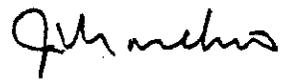
10 
11 KELLY SUSEWIND
12 Section Supervisor
13 Water Quality Section
14 Northwest Regional Office

THE PORT OF PORT ANGELES

By: 
Its: Executive Director

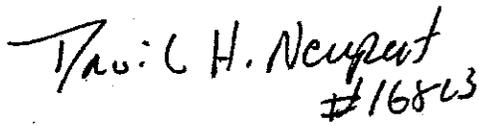
14 Approved as to Form and Content:

15 CHRISTINE O. GREGOIRE
16 Attorney General

17 
18 JOAN M. MARCHIORO, WSBA #19250
19 Assistant Attorney General

20 Attorneys for Respondent
21 State of Washington
22 Department of Ecology

PLATT IRWIN TAYLOR

23 
24  STEPHEN E. OLIVER, WSBA #6244

25 Attorney for Appellant
Port of Port Angeles

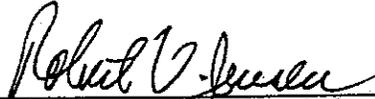
AGREED ORDER OF DISMISSAL

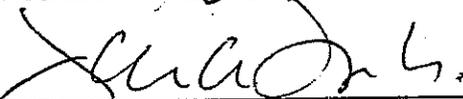
Having reviewed the foregoing Stipulation and file and pleadings herein, and it appearing that the parties have reached an agreement;

IT IS HEREBY ORDERED that the foregoing Stipulation is entered as an Order of this Board, and this case, *Port of Port Angeles v. Ecology*, PCHB No. 01-035, is hereby DISMISSED with prejudice and without costs or attorney's fees.

DATED this 28th day of August, 2001.

POLLUTION CONTROL HEARINGS BOARD


ROBERT V. JENSEN, Chair

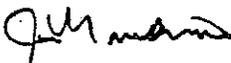

JAMES A. TUPPER JR., Member

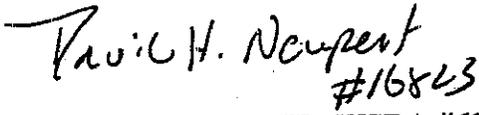

KALEEN COTTINGHAM, Member

Presented by:

CHRISTINE O. GREGOIRE
Attorney General

PLATT IRWIN TAYLOR


JOAN M. MARCHIORO, WSBA #19250
Assistant Attorney General


STEPHEN E. OLIVER, WSBA #6244

Attorneys for Respondent
State of Washington
Department of Ecology

Attorney for Appellant
Port of Port Angeles

\\... \marchioro\port of port angeles\stipulation and agreed order of dismissal doc



Pat Riley

SWRO

STATE OF WASHINGTON
ENVIRONMENTAL HEARINGS OFFICE

4224 - 6th Avenue SE, Bldg. 2, Rowe Six
P.O. Box 40903, Lacey, WA 98504-0903

March 21, 2001

cc - Julie
my enc

Craig D. Knutson
Attorney at Law
City of Port Angeles
321 East Fifth Street
PO Box 1150
Port Angeles WA 98362-0217

Joan M. Marchioro
Assistant Attorney General
Department of Ecology
PO Box 40117
Olympia WA 98504-0117

RE: PCHB No. 00-185
CITY OF PORT ANGELES v. ECOLOGY (DE 00WQSR-799)

Dear Parties:

Enclosed is the Stipulation and Agreed Order of Dismissal in this matter.

The parties' efforts in reaching this settlement are appreciated.

Sincerely yours,

Phyllis K. Macleod
Administrative Appeals Judge

PKM/jg/P 00-185 LTR
cc: Leann Ryser - Ecology
enc.

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 March 21, 2001, at Lacey, WA.



RECEIVED

MAR 15 2001

ENVIRONMENTAL
HEARINGS OFFICE

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

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

CITY OF PORT ANGELES,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB NO. 00-185

STIPULATION AND AGREED
ORDER OF DISMISSAL

Appellant, City of Port Angeles, by and through its attorney, Craig D. Knutson, City Attorney, and Respondent, State of Washington, Department of Ecology (Ecology) by and through its attorneys, Christine O. Gregoire, Attorney General, and Joan M. Marchioro, Assistant Attorney General, agree to the entry of this Stipulation and Agreed Order of Dismissal in the form attached.

RECITALS

1. On or about March 21, 2000, Ecology issued Notice of Penalty No. DE 00WQSR-799 (NOP) to the City of Port Angeles, assessing a \$24,000.00 penalty for alleged violations of the City's NPDES Permit.
2. On or about April 7, 2000, the City of Port Angeles filed an Application for Relief from Penalty with Ecology.
3. On or about November 7, 2000, Ecology affirmed the NOP by Notice of Disposition Upon Application for Relief From Penalty No. DE 00WQSR-799 (NOD). The City of Port Angeles filed its appeal of the NOD with the Pollution Control Hearings Board (PCHB) on or about December 7, 2000.

STIPULATION AND AGREED
ORDER OF DISMISSAL

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

ORIGINAL

STIPULATION

1
2 1. The City of Port Angeles has submitted to Ecology for review and approval a
3 proposal for a supplemental environmental project ("SEP") with a minimum value of \$18,000.00
4 of the City of Port Angeles' resources. Ecology will not approve an SEP that involves a stream
5 enhancement project unless the project is approved by the Washington State Department of Fish
6 and Wildlife. Ecology shall not unreasonably withhold its approval of an SEP. However,
7 Ecology reserves the right to reject any SEP that will not be completed by March 31, 2003.

8 3. If Ecology and the City of Port Angeles are unable to agree on an SEP that will be
9 completed by March 31, 2003, the City of Port Angeles shall pay the entire \$24,000.00 penalty to
10 Ecology.

11 4. If the City of Port Angeles fails to complete or fund an approved SEP by March
12 31, 2003, the City of Port Angeles shall pay a penalty of \$24,000.00. The \$24,000.00 shall be
13 payable to Ecology by April 1, 2003.

14 5. During the implementation of the SEP, the City of Port Angeles will submit
15 reports to Ecology every six (6) months describing the progress being made on implementing the
16 SEP and detailing the funds expended.

17 6. The undersigned representatives for Ecology and the City of Port Angeles certify
18 that they are fully authorized by the party whom they represent to enter into the terms and
19 conditions of this Stipulation and Agreed Order of Dismissal and legally to bind such party
20 thereto. Ecology and the City of Port Angeles consent to the submission of this Stipulation and
21 Agreed Order of Dismissal to the PCHB for approval and entry.

22 ///

23 ///

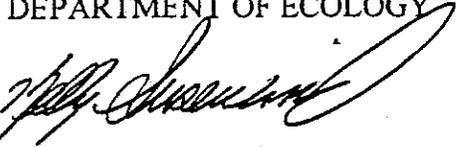
24

25

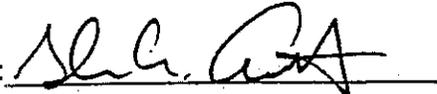
26

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

DATED this 19th day of March, 2001.

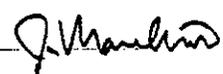
STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

KELLY SUSEWIND
Section Supervisor
Water Quality Section
Northwest Regional Office

THE CITY OF PORT ANGELES.

By: 
Its: Dir, Public Works & Utilities

Approved as to Form and Content:

CHRISTINE O. GREGOIRE
Attorney General


JOAN M. MARCHIORO, WSBA #19250
Assistant Attorney General

PORT ANGELES CITY ATTORNEY


CRAIG D. KNUTSON, WSBA #7540
City Attorney

Attorneys for Respondent
State of Washington
Department of Ecology

Attorney for Appellant
City of Port Angeles

AGREED ORDER OF DISMISSAL

Having reviewed the foregoing Stipulation and file and pleadings herein, and it appearing that the parties have reached an agreement;

IT IS HEREBY ORDERED that the foregoing Stipulation is entered as an Order of this Board, and this case, *City of Port Angeles v. Ecology*, PCHB No. 00-185, is hereby DISMISSED with prejudice and without costs or attorney's fees.

DATED this 21st day of March, 2001.

POLLUTION CONTROL HEARINGS BOARD

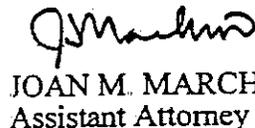

JAMES A. TUPPER JR., ~~Chair~~ Member


ROBERT V. JENSEN, ~~Member~~ Chair


KALEEN COTTINGHAM, Member

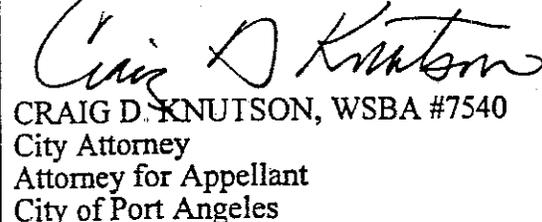
Presented by:

CHRISTINE O. GREGOIRE
Attorney General


JOAN M. MARCHIORO, WSBA #19250
Assistant Attorney General

Attorneys for Respondent
State of Washington
Department of Ecology

PORT ANGELES CITY ATTORNEY


CRAIG D. KNUTSON, WSBA #7540
City Attorney
Attorney for Appellant
City of Port Angeles



Christine O. Gregoire
ATTORNEY GENERAL OF WASHINGTON

Ecology Division
PO Box 40117 • Olympia WA 98504-0117 • (360) 586-6770

FAX COVER SHEET

Date: August 9, 2002

Time: 3:46 PM

Please deliver the following 5 page(s)

TO: ~~Tell Dishel &~~
Eric Heinitz
ECY

Fax Number: 407-6305
407-7288

COMMENTS:

Re: Alaska Tanker Co.
PCHB 02-057

FROM: **Jay Geck**
AGO-ECY

Fax Number: 360-586-6760
Voice Number: 360-586-6769

If there is a problem receiving this fax, please call Lori Norwood at 360-586-6758.

NOTE: THIS FAX TRANSMISSION IS INTENDED ONLY FOR THE ADDRESSEE SHOWN ABOVE. IT MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, OR OTHERWISE PROTECTED FROM DISCLOSURE. ANY REVIEW, DISSEMINATION, OR USE OF THIS TRANSMISSION OR ITS CONTENTS BY PERSONS OTHER THAN THE ADDRESSEE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND MAIL THE ORIGINAL TO US AT THE ABOVE ADDRESS. THANK YOU

THE ATTORNEY GENERAL'S OFFICE DOES NOT ACCEPT SERVICE BY FAX.

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

**POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON**

ALASKA TANKER COMPANY,
Appellant,

PCHB No. 02-057

v.

**AGREEMENT AND STIPULATION
TO ORDER OF DISMISSAL**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,
Respondent.

C. Kent Roberts, Counsel for Appellant Alaska Tanker Company, and the State of Washington, Department of Ecology, by and through its attorney, Jay D. Geck, Senior Counsel, Office of the Attorney General, stipulate to the following agreement and to entry of an order dismissing this appeal.

The parties hereby agree:

1. The parties to this appeal are the parties to this agreement: The Alaska Tanker Company (ATC) and the State of Washington Department of Ecology (Ecology). The name and address of the ATC are of record in the Supplemental Notice of Appeal.

2. Ecology issued penalty No. DE 02SPRHQ-3509 to ATC, imposing a penalty of \$25,000 for a spill of approximately 11 barrels (462 gallons) of oil from the tank ship PRINCE WILLIAM SOUND into waters of the state near Port Angeles, Washington, on or about January 29, 2001. Ecology's description of the spill incident is described in Ecology's

1 | NOTICE OF DISPOSITION UPON APPLICATION FOR RELIEF FROM PENALTY NO.
2 | DE 02SPPRHQ-3509.

3 | 3. ATC timely filed an application for relief from the penalty, which Ecology did
4 | not grant. ATC timely filed a notice of appeal to the Pollution Control Hearings Board. The
5 | parties have delayed scheduling this matter for hearing because they are working in good faith
6 | to resolve the matter without a hearing.

7 | 4. This stipulation is an agreement of the parties which is based on mutual
8 | consideration in the form of the mutual promises contained herein. The parties warrant to each
9 | other that they have authority to enter this agreement.

10 | 5. **Agreement to concept for project.** The parties have identified a proposal
11 | where ATC would pay up to \$25,000 to the support of the Valley Creek Restoration Project,
12 | Port Angeles, Washington, and that such a payment shall resolve this matter. At this time,
13 | however, Ecology and ATC do not have a proposal from the project proponent in a form that
14 | provides details regarding the acceptance, use, and accounting for such moneys in a project.
15 | Therefore, the alternative has not been finally and fully resolved between ATC and Ecology.
16 | The parties, however, have worked in good faith and are willing to accept the immediate
17 | dismissal of this appeal, based on their agreements as follows: (a) they will use good faith to
18 | finalize an agreement by December 31, 2002 directing the money to this project with terms and
19 | conditions that meet Ecology's approval and statutory authority; (b) The parties mutually
20 | assure each other that they will work in good faith to resolve all issues and disputes needed to
21 | enter into an agreement that directs the money towards the Valley Creek Restoration Project as
22 | they have conceived; and (c) The parties specifically agree that if they are no able to finalize an
23 | agreement involving the Project on or before December 31, 2002, for any reason whatsoever,
24 | then the default agreement in paragraph 9 shall apply, and Ecology shall no longer be obligated
25 | to negotiate and enter an agreement where this alternative payment is accepted as a basis for
26 | reducing or waiving Penalty No. DE 02SPPRHQ 3509.

1 6. By entering this agreement, ATC waives any and all appeals or claims against
2 Ecology, its agents and its employees, which ATC may otherwise have right to the extent the
3 appeal or claim arises out of the issuance of Penalty No. DE 02SPPRHQ-3509

4 7. The parties agree that they will support efforts to direct ATC's payment of
5 Natural Resource Damage Assessment (NRDA) of (\$11,000) towards the Valley Creek
6 Restoration Project. *Provided however*, that this agreement describes mutual support for that
7 expenditure of NRDA moneys and shall not be construed as binding on any state agency or
8 employee or official charged with authority to authorize expenditure of NRDA funds, and the
9 parties expressly recognize that they cannot by this agreement control or direct particular
10 expenditure moneys paid for NRDA.

11 8. The concept in paragraph 5 is based on a rational relationship between nature of
12 violation and the parties expectation that a significant environmental benefit would be achieved
13 by the Valley Creek Restoration project. Port Angeles is an area in which ATC conducts
14 business, and where the spill occurred. It is further based on the premise that settlement
15 supports the category of environmental restoration because it goes beyond repair of the
16 environmental damage by improving and enhancing the environment in the vicinity of the spill,
17 Port Angeles Harbor. The parties agree, however, that the Valley Creek Restoration Project is
18 not a party to this agreement to dismiss and that no person who is not a party to this agreement
19 shall have authority to enforce it.

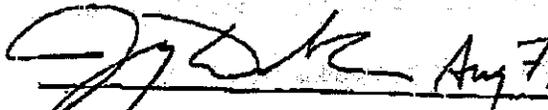
20 9. **Default Agreement if there is Failure to Reach Agreement on the Valley**
21 **Creek Restoration Project.** In the event that the agreement contemplated by paragraph 5 is
22 not entered for any other reason by the parties on or before December 31, 2002 (or within a
23 time extended by written amendment of this agreement), then Ecology may demand payment
24 of \$25,000 for Penalty No. DE 02SPPRHQ-3509, which ATC shall pay within 15 days of its
25 receipt of Ecology's demand. If ATC fails to make such payment, Ecology or its assign may
26 pursue all remedies available under Washington law for collection and enforcement of that

1 penalty as provided in RCW 43.21B.300 and the Washington APA RCW 34.05.578. ATC
 2 specifically agrees that venue for any judicial action to collect and enforce that penalty may be
 3 in Thurston County Superior Court and that it has hereby dismissed its appeal of that penalty
 4 before the PCHB and that it shall have no further right to contest the penalty.

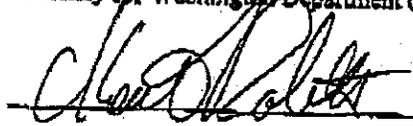
5 10. Each party shall bear its own costs and attorneys fees.

6 11. The parties stipulate that the PCHB should enter an order immediately
 7 dismissing the appeal of ATC in PCHB No 02-057, and the parties hereby move the PCHB
 8 for such an order. In the event the PCHB does not enter an order, ATC agrees to file a
 9 voluntary dismissal as provided by CR 41.

10
 11 Stipulated to:

12  Aug 7, 2002

13
 14 Jay D. Beck, Senior Counsel, WSBA 17916 (date)
 15 Washington State Office of the Attorney General
 16 Attorney for Washington Department of Ecology

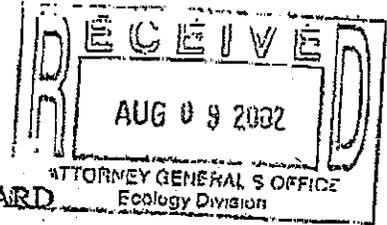
17 

18
 19 C. Kent Roberts, (date) Aug 8, 2002
 20 Schwabe Williamson & Wyatt, PC
 21 Attorneys for Alaska Tanker Company

22 ///
 23 ///
 24 ///
 25 ///
 26 ///

Agreement and Stipulation JDB
~~NOTICE OF APPEARANCE~~

ATTORNEY GENERAL OF WASHINGTON
 1125 Washington Street SE
 PO Box 40100
 Olympia, WA 98504-0100
 (360) 753-6200



BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

ALASKA TANKER COMPANY,)

PCHB NO. 02-057

Appellant,)

v.)

ORDER OF DISMISSAL

STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)

Respondent.)

The parties have stipulated to a settlement agreement and to entry of an order dismissing the appeal. Based upon the stipulations contained in paragraphs 9 and 11 of the agreement, the Board hereby orders that this appeal is dismissed with prejudice.

IT IS ORDERED that the case is DISMISSED.

DONE this 8th day of August, 2002.

POLLUTION CONTROL HEARINGS BOARD

Kaleen Cottingham

KALEEN COTTINGHAM

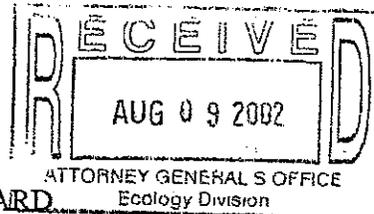
Robert V. Jensen

ROBERT V. JENSEN, Chair

William H. Lynch

WILLIAM H. LYNCH

ORDER OF DISMISSAL
PCHB 02-057



BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

1
2 ALASKA TANKER COMPANY,) PCHB NO. 02-057

3)
4)
5 Appellant,)

6 v.)

7) ORDER OF DISMISSAL

8 STATE OF WASHINGTON,)
9 DEPARTMENT OF ECOLOGY,)

10 Respondent.)
11)
12)

13 The parties have stipulated to a settlement agreement and to entry of an order dismissing
14 the appeal. Based upon the stipulations contained in paragraphs 9 and 11 of the agreement, the
15 Board hereby orders that this appeal is dismissed with prejudice.

16 IT IS ORDERED that the case is DISMISSED.

17 DONE this 8th day of August, 2002.

18 POLLUTION CONTROL HEARINGS BOARD

19 *Kaleen Cottingham*

20 KALEEN COTTINGHAM

Robert V. Jensen
ROBERT V. JENSEN, Chair

William H. Lynch
WILLIAM H. LYNCH

ORDER OF DISMISSAL
PCHB 02-057

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

**POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON**

ALASKA TANKER COMPANY,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 02-057

AGREEMENT AND STIPULATION
TO ORDER OF DISMISSAL

C. Kent Roberts, Counsel for Appellant Alaska Tanker Company, and the State of Washington, Department of Ecology, by and through its attorney, Jay D. Geck, Senior Counsel, Office of the Attorney General, stipulate to the following agreement and to entry of an order dismissing this appeal.

The parties hereby agree:

1. The parties to this appeal are the parties to this agreement: The Alaska Tanker Company (ATC) and the State of Washington Department of Ecology (Ecology). The name and address of the ATC are of record in the Supplemental Notice of Appeal.

2. Ecology issued penalty No. DE 02SPPRHQ-3509 to ATC, imposing a penalty of \$25,000 for a spill of approximately 11 barrels (462 gallons) of oil from the tank ship PRINCE WILLIAM SOUND into waters of the state near Port Angeles, Washington, on or about January 29, 2001. Ecology's description of the spill incident is described in Ecology's

1 NOTICE OF DISPOSITION UPON APPLICATION FOR RELIEF FROM PENALTY NO.
2 DE 02SPPRHQ-3509.

3 3. ATC timely filed an application for relief from the penalty, which Ecology did
4 not grant. ATC timely filed a notice of appeal to the Pollution Control Hearings Board. The
5 parties have delayed scheduling this matter for hearing because they are working in good faith
6 to resolve the matter without a hearing.

7 4. This stipulation is an agreement of the parties which is based on mutual
8 consideration in the form of the mutual promises contained herein. The parties warrant to each
9 other that they have authority to enter this agreement.

10 5. **Agreement to concept for project.** The parties have identified a proposal
11 where ATC would pay up to \$25,000 to the support of the Valley Creek Restoration Project,
12 Port Angeles, Washington, and that such a payment shall resolve this matter. At this time,
13 however, Ecology and ATC do not have a proposal from the project proponent in a form that
14 provides details regarding the acceptance, use, and accounting for such moneys in a project.
15 Therefore, the alternative has not been finally and fully resolved between ATC and Ecology.
16 The parties, however, have worked in good faith and are willing to accept the immediate
17 dismissal of this appeal, based on their agreements as follows: (a) they will use good faith to
18 finalize an agreement by December 31, 2002 directing the money to this project with terms and
19 conditions that meet Ecology's approval and statutory authority; (b) The parties mutually
20 assure each other that they will work in good faith to resolve all issues and disputes needed to
21 enter into an agreement that directs the money towards the Valley Creek Restoration Project as
22 they have conceived; and (c) The parties specifically agree that if they are no able to finalize an
23 agreement involving the Project on or before December 31, 2002, for any reason whatsoever,
24 then the default agreement in paragraph 9 shall apply, and Ecology shall no longer be obligated
25 to negotiate and enter an agreement where this alternative payment is accepted as a basis for
26 reducing or waiving Penalty No. DE 02SPPRHQ-3509.

1 6. By entering this agreement, ATC waives any and all appeals or claims against
2 Ecology, its agents and its employees, which ATC may otherwise have right to the extent the
3 appeal or claim arises out of the issuance of Penalty No. DE 02SPPRHQ-3509.

4 7. The parties agree that they will support efforts to direct ATC's payment of
5 Natural Resource Damage Assessment (NRDA) of (\$11,000) towards the Valley Creek
6 Restoration Project. *Provided however*, that this agreement describes mutual support for that
7 expenditure of NRDA moneys and shall not be construed as binding on any state agency or
8 employee or official charged with authority to authorize expenditure of NRDA funds, and the
9 parties expressly recognize that they cannot by this agreement control or direct particular
10 expenditure moneys paid for NRDA.

11 8. The concept in paragraph 5 is based on a rational relationship between nature of
12 violation and the parties expectation that a significant environmental benefit would be achieved
13 by the Valley Creek Restoration project. Port Angeles is an area in which ATC conducts
14 business, and where the spill occurred. It is further based on the premise that settlement
15 supports the category of environmental restoration because it goes beyond repair of the
16 environmental damage by improving and enhancing the environment in the vicinity of the spill,
17 Port Angeles Harbor. The parties agree, however, that the Valley Creek Restoration Project is
18 not a party to this agreement to dismiss and that no person who is not a party to this agreement
19 shall have authority to enforce it.

20 9. **Default Agreement if there is Failure to Reach Agreement on the Valley**
21 **Creek Restoration Project.** In the event that the agreement contemplated by paragraph 5 is
22 not entered for any other reason by the parties on or before December 31, 2002 (or within a
23 time extended by written amendment of this agreement), then Ecology may demand payment
24 of \$25,000 for Penalty No. DE 02SPPRHQ-3509, which ATC shall pay within 15 days of its
25 receipt of Ecology's demand. If ATC fails to make such payment, Ecology or its assign may
26 pursue all remedies available under Washington law for collection and enforcement of that

AUG-06-2002 TUE 12:02

FAX NO. 509 588 6759

P. 05

1 penalty as provided in RCW 43.21B.300 and the Washington APA RCW 34.05.578. ATC
2 specifically agrees that venue for any judicial action to collect and enforce that penalty may be
3 in Thurston County Superior Court and that it has hereby dismissed its appeal of that penalty
4 before the PCHB and that it shall have no further right to contest the penalty.

5 10. Each party shall bear its own costs and attorneys fees.

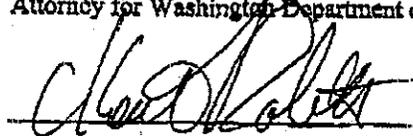
6 11. The parties stipulate that the PCHB should enter an order immediately
7 dismissing the appeal of ATC in PCHB No. 02-057, and the parties hereby move the PCHB
8 for such an order. In the event the PCHB does not enter an order, ATC agrees to file a
9 voluntary dismissal as provided by CR 41.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Stipulated to:

 Aug 7, 2002

Jay D. Geck, Senior Counsel, WSBA 17916 (date)
Washington State Office of the Attorney General
Attorney for Washington Department of Ecology



C. Kent Roberts, (date) Aug 8, 2002
Schwabe Williamson & Wyatt, PC
Attorneys for Alaska Tanker Company

///
///
///
///
///

Agreement and Stipulation JDG
~~NOTICE OF APPEARANCE~~

ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 753-6200

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

ORDER

Based on the stipulation of the parties in paragraph 11 above, the Board hereby orders that this appeal is dismissed with prejudice.

DATED this ____ day of August, 2002.

POLLUTION CONTROL HEARINGS BOARD

ROBERT V. JENSEN, Member

KALEEN COTTINGHAM, Member

WILLIAM LYNCH, Presiding