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**POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON**

PUGET SOUNDKEEPER)
ALLIANCE) *No.*
)
APPELLANTS,) *NOTICE OF APPEAL*
)
v.)
)
DEPARTMENT OF ECOLOGY;)
AND PORT OF SEATTLE)
(SEATAC INTERNATIONAL)
AIRPORT),)
)
RESPONDENT,

1. *IDENTITY OF APPEALING PARTY AND REPRESENTATIVE*

Puget Soundkeeper Alliance
4401 Leary Way, NW
Seattle, WA 98107
(206) 297-7002

Represented by:

David S. Mann
Gendler & Mann, LLP

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5 **2. IDENTIFICATION OF OTHER PARTIES.**

6 *THE RESPONDENTS IN THIS APPEAL ARE:*

7 **A. WASHINGTON DEPARTMENT OF ECOLOGY**
8 **300 DESMOND DRIVE**
9 **LACEY, WA 98503**

0 **B. PORT OF SEATTLE**
1 **SEATAC INTERNATIONAL AIRPORT**
2 **P.O. BOX 1209**
3 **SEATTLE, WA 98111**

4 **3. THE DECISION UNDER APPEAL.**

5 *THIS IS AN APPEAL OF THE NATIONAL POLLUTION*
6 *DISCHARGE ELIMINATION SYSTEM WASTE DISCHARGE*
7 *PERMIT NO. WA -002465-1, ISSUED TO THE PORT OF*
8 *SEATTLE ON SEPTEMBER 4, 2003 FOR OPERATIONS AT*
9 *SEATAC INTERNATIONAL AIRPORT. ("SEATAC NPDES*
0 *PERMIT"). THE PERMIT IS EFFECTIVE OCTOBER 1, 2003. A*
1 *COPY OF THIS PERMIT IS ATTACHED.*

2 **4. SHORT AND PLAIN STATEMENT SHOWING**
3 **GROUNDS FOR APPEAL.**

4 *APPELLANT CONSIDERS THE SEATAC NPDES PERMIT*
5 *TO BE UNLAWFUL AND UNFAIR BECAUSE IT DOES NOT*
6 *MEET THE REQUIREMENTS OR INTENT OF THE FEDERAL*
7 *CLEAN WATER ACT, APPLICABLE REGULATIONS*
8 *PROMULGATED BY THE ENVIRONMENTAL PROTECTION*

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1 AGENCY, WASHINGTON STATE WATER POLLUTION
2 CONTROL LAW, AND THE WASHINGTON DEPARTMENT OF
3 ECOLOGY'S REGULATIONS. OF PARTICULAR CONCERN TO
4 APPELLANT ARE THE ONGOING UNMONITORED AND
5 UNREGULATED DISCHARGES OF BOD, COD AND ACUTE AND
6 CHRONIC TOXIC POLLUTANTS INTO PUGET SOUND FROM
7 THIS FACILITY. THE SEATAC NPDES PERMIT ILLEGALLY
8 APPROVES AN AKART COMPLIANCE SCHEDULED WELL
9 BEYOND THAT ALLOWED BY THE CLEAN WATER ACT AND
0 WASHINGTON REGULATIONS. FURTHER, DESPITE
1 ACKNOWLEDGMENT THAT THE FACILITY HAS NOT
2 IMPLEMENTED AKART, THE SEATAC NPDES PERMIT
3 APPROVES A MIXING ZONE FOR VARIOUS POLLUTANTS.
4 MOREOVER, DESPITE RECOGNITION THAT THE FACILITY IS
5 EXCEEDING WATER QUALITY STANDARDS FOR BOD5, THE
6 SEATAC NPDES PERMIT DELAYS MONITORING OF BOD5
7 UNTIL AFTER THE FACILITY IMPLEMENTS AKART. THE
8 SEATAC NPDES PERMIT ALSO FAILS TO PROHIBIT THE
9 DISCHARGE OF ACUTE AND CHRONIC TOXIC POLLUTANTS
10 AND REQUIRES MONITORING FOR TOXIC POLLUTANTS ONLY
11 DURING ARTIFICIALLY LOW FLOW CONDITIONS.

12 **5. STATEMENT OF FACTS.**

13 The SEATAC NPDES Permit covers discharges of industrial wastewater,
14 general stormwater and construction stormwater for SEATAC. The NPDES Permit

1 is inconsistent with applicable legal requirements in at least the following ways:

2 a. Special Condition S10 establishes a compliance schedule for
3 reaching AKART for the industrial wastewater system (IWS) for contaminated
4 stormwater runoff. The NPDES permit allows until July 1, 2007 for compliance
5 with AKART and does not require monitoring for BOD5 until this date. This
6 compliance schedule violates section 402(p)(4)(A) of the Clean Water Act, which
7 requires compliance with water quality standards within three years of initial permit
8 issuance for industrial stormwater dischargers. The initial permit for this facility
9 was issued on or before 1994.

1 b. The compliance schedule in Special Condition S10 violates
2 WAC 173-201A-160(4) by approving an AKART compliance schedule that exceeds
3 10 years. The 1994 permit for this facility required compliance with AKART in the
4 shortest practicable time, but no later than June 30, 2004. This version of the
5 NPDES permit extend that compliance deadline an additional 3 years – well
6 beyond the maximum allowed under Washington law and the Clean Water Act.

7 c. Special Condition S1(C) approves a mixing zone for BOD5,
8 and both acute and chronic toxic pollutants. The grant of a mixing zone violates
9 WAC 173-201A-100(2) which prohibits mixing zones unless AKART has been
10 implemented.

11 d. The NPDES permit fails to impose a water quality based
12 effluent limitation for BOD5 despite acknowledgment that the proposed discharge

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1 will exceed water quality criteria for technology based controls. The permit relies
2 on a technology based standard due to the approval of a mixing zone. A mixing
3 zone is illegal when the facility had not implemented AKART.

4 e. The approval of a mixing zone violates WAC 173-201A-100(4)
5 because the permit is not supported by information that “clearly indicates the mixing
6 zone would not have a reasonable potential to cause a loss of sensitive or
7 important habitat, substantially interfere with the existing or characteristic uses of
8 the water body, result in damage to the ecosystem, or adversely affect public health
9 as determined by the department.”

1 f. Special Conditions S3 and S4 require acute and chronic
2 toxicity testing to be conducted only when the effluent BOD5 concentration is at or
3 below 250 mg/L, in order “to simulate post AKART effluent quality.” Discharges
4 from this facility, however, routinely exceed a BOD concentration of 250 mg/L
5 concentration and AKART compliance has been postponed until 2007. The
6 SEATAC NPDES Permit fails therefore to limit the discharge of acute and chronic
7 toxic pollutants as required by WAC 173-201A-040(1) and fails to require testing for
8 acute and chronic toxic discharges as required by WAC 173-201A-040(2).

9 g. The SEATAC NPDES Permit fails to impose an effluent
10 limitation for Chemical Oxygen Demand and a water quality based effluent
11 standard for dissolved oxygen that takes into account the combined effect of both
12 BOD and COD.

1 h. The NPDES permit fails to schedule modifications to the Storm
2 Water Pollution Prevention Plan.

3 **6. RELIEF REQUESTED.**

4 *APPELLANT REQUESTS THAT THE PCHB DECLARE THE*
5 *SEATAC NPDES PERMIT NULL AND VOID AND/OR MODIFY*
6 *THE SEATAC NPDES PERMIT TO BE CONSISTENT WITH*
7 *APPLICABLE LEGAL REQUIREMENTS IN RESPONSE TO THE*
8 *ABOVE-LISTED DEFECTS.*

9 *DATED THIS ___ DAY OF OCTOBER, 2003.*

0 *GENDLER & MANN, LLP*

1 *By:*

2 _____
3 *DAVID S. MANN, WSBA*
4 *#21068*
5 *ATTORNEYS FOR*
6 *APPELLANT*

7 **CERTIFICATE OF SERVICE**

8 *I, DAVID S. MANN, DECLARE THAT I HAD THIS NOTICE*
9 *OF APPEAL SERVED BY U.S. MAIL TO THE DEPARTMENT OF*
10 *ECOLOGY, 300 DESMOND DRIVE, LACEY, WA 98503 AND TO*
11 *THE PORT OF SEATTLE, SEATAC INTERNATIONAL AIRPORT*
12 *AT P.O. BOX 1209, SEATTLE, WA 98111, ON OCTOBER 6,*
13 *2003.*

14 _____
15 David S. Mann

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17 **LLP**
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