

Brief Analysis of Pollution Control Hearings Board's Ruling on the Sea-Tac Airport's Section 402 Water Pollution Permit

by Rick Poulin

The PCHB has just issued a 73-page ruling in ACC & CASE's challenge of Sea-Tac airport's 402 Permit, and in the most important respects, the ruling is a resounding victory. Not only did the Board rule in appellants' favor on the most significant issues, but the Board also rejected virtually all of the Port's appeal issues.

The ruling is now posted on the Board's web page, and can be viewed at:

[http://www.eho.wa.gov/searchdocuments/2004 Archive/pchb 03-140 final.htm](http://www.eho.wa.gov/searchdocuments/2004%20Archive/pchb%2003-140%20final.htm) Or, go to <http://www.eho.wa.gov/Decisions.asp> and click on the link for the "final" decision in PCHB 03-140. A [.pdf version](#) is available in the RCAA on-line library.

The issues ACC/CASE et al won:

- The Board reversed and remanded Ecology's AKART (*All known, Available, & Reasonable Treatment options*) determination. The ruling affirms that AKART is a technology-based standard, and that the permit must impose the most stringent limits determined under the technology or water quality-based approach. On remand, Ecology must make a formal determination of economic reasonableness. More important, the AKART determination cannot rely on the ability of the receiving water to dilute the Port's industrial wastewater.
- With respect to the IWTP (*Industrial Wastewater Treatment Plant*) discharges, the Board ruled that time's up for complying with water quality standards. As a result, "Ecology must, at a minimum, impose narrative requirements requiring use of all non-construction measures to achieve water quality criteria and impose interim effluent limitations (narrative and/or numeric)." Although the Board chastized Ecology for bungling the AKART process and giving the Port too much time, the Board also ruled that the strict 10-year limit applies only to compliance with water quality standards—not to implementing AKART. Accordingly, while the Port can be given more time to implement AKART, the permit cannot grant any extension of the expired compliance schedule for meeting water quality standards. The Board stated, "Continuing the same practice of discharging highly polluted water into Puget Sound without effective BOD treatment is unacceptable under the governing regulations."
- The Board remands the Permit conditions governing acute toxicity testing to assure that a meaningful portion of the testing will occur when de-icing agents and their toxic constituents are present in the Port's effluent.
- The Board remands the Permit conditions governing chronic toxicity testing to assure that a meaningful portion of the testing will occur when de-icing agents and their toxic constituents are present in the Port's effluent.

- The Board requires Ecology to modify the permit to clarify that the Puget Sound mixing zone is effective only after AKART has been implemented at the IWTP.
- The Board remands the Permit to Ecology with directions to perform a professional wetlands analysis of Lake Reba, in order to determine whether Lake Reba must be protected as waters of the state. The Board rejected any reliance on the 1987 Lisa Zinner letter on Lake Reba, which was not supported by any technical analysis.
- The Board requires Ecology to add discharge monitoring requirements for the Lake Reba outfall to Miller Creek, and to develop appropriate BMPs and/or effluent limits for the Lake Reba discharge.
- The Board agreed with ACC/CASE's challenge to the Comprehensive Receiving Water Study, and directed Ecology to revise the study to: (a) include SDS3; (b) incorporate the one-hour average testing protocol; (c) require grab samples within the first half-hour of storm events; (d) include testing for BOD, COD, and DO; (e) evaluate whether the study can be completed in less than four years, and whether discharges from the NWP to Des Moines Creek should explicitly be included in the study.
- The Board requires Ecology to eliminate the permit terms reserving the right to modify the permit language without going through the formal permit modification process.
- The Board did not formally approve the stipulated agreement between Ecology and the Port, since the issues were not addressed at the hearing. ACC and CASE will have the opportunity to challenge the proposed modifications in the formal modification process.

Next, the issues the Port lost:

- The Board rejected the Port's challenge to the numeric effluent limits and benchmarks for BOD in the IWS discharge.
- The Board rejected the Port's challenge to effluent limits and monitoring requirements for discharges into the Northwest Ponds.
- The Board rejected the Port's argument that results of chronic toxicity testing should not lead to a toxicity identification / reduction ("TI/RE") evaluation.
- The Board ruled the North West Ponds (NWP) are waters of the state, as the Port failed to show the NWP were intentionally created on a nonwetland site.
- The Board rejected the Port's challenge to stormwater monitoring and sampling requirements under the permit — both with respect to the frequency and locations of sampling.
- The Board rejected the Port's request to delete certain stormwater outfalls from the Permit altogether.

The issues ACC/CASE et al didn't win:

- The Board declined to rule that the (Industrial Wastewater Treatment Plant (IWTP) is a Publicly Owned Treatment Works(POTW), stating that Ecology's long-standing management approach is due to substantial deference.
- The Board declined to rule that secondary treatment for all IWTP waste is reasonable as a matter of law for AKART (*All known, Available, & Reasonable Treatment options*) purposes.
- The Board rejected our argument that the Permit fails to include more stringent limitations necessary to assure compliance with water quality standards.
- The Board rejected our challenge to the adequacy of the SWPPP.
- The Board did not find any violation of the compliance schedule regulations for stormwater or Lake Reba.
- The Board found no violation of the marine sediment monitoring requirements.
- The Board found that no actionable violation resulted from the Port's incomplete permit application.

Finally, consider this: In its concluding pages, the Order includes 7 numbered directives. (pages 71-73) Six of these seven items grant relief requested by ACC/CASE and Puget Soundkeeper Alliance. Only one of them (#5) grants relief requested by the Port. (#5 involves the intricacies of sublethal toxicity testing — issues we didn't attempt to address).