

POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,

Appellant,

CITIZENS AGAINST SEATAC  
EXPANSION,

Intervenor,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY and THE  
PORT OF SEATTLE,

Respondents.

On April 11, 2002, Appellant ACC filed a motion to redact portions of the pre-filed testimony of Paul Fendt. The basis for this motion is the Board's earlier ruling on a motion to strike certain pre-filed testimony. That earlier order clearly set forth the need for a discovery cut off and set the date as February 28, 2002. The parties were "prohibited from relying on information created after February 28, 2002."

Specifically, the order prohibited the parties from indicating "what the Port or Ecology has done since February 28, 2002, .... to revise, clarify, explain or modify the Low Flow Plan."

In the current motion, the alleged offense comes from discussions and work conducted on the Low Flow Plan between February 12, 2002 and February 19, 2002,

1 but which did not get collected and delivered until March 6, 2002, after the discovery  
2 cut-off noted above.

3 This case is complicated by the changing documentation resulting from on-  
4 going work on various aspects of the required mitigation plans at the airport. Although  
5 the intent of these modifications appears to be to make the plans better, these efforts  
6 impair the ability of the Board or the other parties to know the current status of each  
7 plan. The purpose of a bright-line discovery cut-off is to make relevant information  
8 available to the litigants in a timely fashion.

9 The situation created by Mr. Fendt's material is not as clearly violative of the  
10 Board's earlier order as the Appellant wishes it to be. Nor does it appear the intent of  
11 the timing was to hinder the Appellant's preparation for hearing. For that reason, the  
12 Board denies Appellant's motion to redact, but notes that given the continually moving  
13 target, the Board will give this material weight as it sees fit.

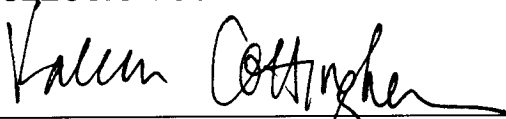
14 For the above noted reasons the Board enters the following:

15 **ORDER**

16 The Appellant's motion to redact portions of the pre-filed testimony of Paul Fendt is  
17 DENIED.

18 SO ORDERED this 22<sup>nd</sup> day of April, 2002.

19 POLLUTION CONTROL HEARINGS BOARD

20   
21 KALEEN COTTINGHAM, Presiding