

RECEIVED
MAR 18 2002
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

POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,)	
and CITIZENS AGAINST SEA-TAC)	PCHB No. 01-160
EXPANSION,)	
)	ACC'S MOTION TO STRIKE THE PRE-
Appellants,)	HEARING BRIEF OF PORT OF SEATTLE
)	
v.)	
)	
STATE OF WASHINGTON,)	
DEPARTMENT OF ECOLOGY; and)	
THE PORT OF SEATTLE,)	
)	
Respondents.)	
)	

The Board's Pre-Hearing Order in this case allowed each party to file a pre-hearing brief no greater than 30 pages in length.¹ To ensure that no party took unfair advantage, the Board's Order also explicitly required that:

The standards of General Rule 14 adopted by the Supreme Court regarding paper size and formatting shall apply to all papers filed with the Board. In addition, the parties shall not manipulate document fonts or line spacing to attempt to crowd more words on each page. The font size shall be 12 points and the line spacing shall be double, except when blocking a quotation.

AR 002111

Pre-Hearing Order at 9.

¹ The Pre-Hearing Order states at p. 9: "Pre-hearing briefs are limited to 30 pages in length, including attachments."

ORIGINAL

1 In compliance with the Board's Order, ACC and CASE filed a joint brief which was 60
2 pages in length (30 pages per party). That brief complied in all respects with the Board's
3 requirements. To achieve that compliance, ACC and CASE had to pare down the submission from
4 85 pages and, in doing so, was forced to eliminate key arguments and points critical to ACC and
5 CASE's concerns, respectively, in order to meet the page limitation in the Pre-Hearing Order.
6

7 In contrast, while it is not numbered that way, the Port has submitted to the Board a brief in
8 violation of the Pre-Hearing Order page limitation – a 37 page brief. The Port accomplishes this by
9 using precisely the same manipulations of margins and line spacing which prompted the Board to
10 prohibit them in the Pre-Hearing Order. This can be readily determined even by the naked eye, if
11 the Board simply compares the Port's Pre-Hearing Brief with the brief the Port submitted on the
12 Stay proceeding (Port of Seattle's Memorandum Opposing ACC's Motion for Stay) which
13 resulted in the prohibition in the Pre-Hearing Order. *See*, our letter to the PCHB dated October 11,
14 2001. Both, even visually, appear as "stuffed sausages" rather than normal briefs. That is because,
15 instead of providing 1 inch margins all around, the Port has carefully shaded each margin to provide
16 an advantage (top margin, .8 inch; left margin .9 inch). This allowed the Port to squeeze in an
17 additional two pages of text. While this alone might initially be construed as inadvertent, it must be
18 viewed in light of another manipulation by the Port which gained it a full five pages of text. That
19 was accomplished by overriding the routine "double space" setting on the Word program and
20 instead setting the line spacing at somewhat less, 24 point, which is between one and a half and
21 double spacing. The end result is a brief which is numbered at 30 pages, but which is actually 37
22 pages long under the ground rules set by the Board.
23
24 **AR 002112**

25 This is not an insignificant overage in the context of this case, which is extremely complex

1 and which involves at least 20 issues (not including sub-issues). The original briefing prepared by
2 ACC and CASE for submission to the Board totaled 85 pages. Whole arguments had to be
3 truncated and in some cases virtually eliminated to comply with the Board's limitation of 30 pages
4 per party (for a total of 60 pages for the ACC/CASE joint brief). ACC would have gladly mutually
5 agreed to a proposal to the Board to allow filing of over-length briefs. However, the Board should
6 note that on the Stay motions, the Port and Ecology vehemently objected to ACC's honestly
7 paginated, over-length brief, for which ACC apologized profusely – until it realized that the Port
8 had itself breached the Board's Stay briefs page limitations but in a less forthright manner.

10 This is not a mere matter of statistics. Every argument not made (or eviscerated to comply
11 with the Board's Order) gives the opposing party an advantage in convincing the Board of the
12 correctness of its position. Every argument made that would otherwise have had to be eliminated
13 by the Port had it complied with the page limitations enhances its advantage. ACC therefore
14 requests that the Board strike the Port's Pre-trial Brief and require that it submit one in compliance
15 with the Pre-Hearing Order. In the alternative, ACC requests that the Board reduce the time allotted
16 to the Port for opening argument to redress this balance or, in the alternative, allow ACC and CASE
17 additional time for oral argument for the same purpose.

19 DATED this 14th day of March, 2002.

20 HELSELL FETTERMAN LLP

21 By: 

22 Peter J. Eglick, WSBA #8809

23 Kevin L. Stock, WSBA #14541

24 Michael P. Witek, WSBA #26598

25 Attorneys for Appellant

g:\u\acc\pchb\strike-prehearing.doc

AR 002113

ACC'S MOTION TO STRIKE PORT'S
PREHEARING BRIEF - 3

HELSELL FETTERMAN LLP
1500 Puget Sound Plaza
1325 Fourth Avenue
Seattle, WA 98101-2509

Rachael Paschal Osborn
Attorney at Law
2421 West Mission Ave.
Spokane, WA 99201

RECEIVED
MAR 18 2002
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

POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION)
And CITIZENS AGAINST SEA-TAC)
EXPANSION,)
)
Appellant,)
)
v.)
)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY; and)
THE PORT OF SEATTLE,)
)
Respondents.)
_____)

No. 01-160

CERTIFICATE OF SERVICE

I, Michelle Isaacson, an employee of Helsell Fetterman LLP, attorneys for the Airport
Communities Coalition, certify that:

I am now, and at all times herein mentioned was, a resident of the State of Washington, and
over the age of eighteen years.

On March 14, 2002, I caused to be hand delivered true and correct copies of ACC's
Motion to Strike The Port Of Seattle's Pre-Hearing Brief in the above matter to:

ORIGINAL
CERTIFICATE OF SERVICE - 1

HELSELL FETTERMAN LLP
1500 Puget Sound Plaza
1325 Fourth Avenue
Seattle, WA 98101-2509

Rachael Paschal Osborn
Attorney at Law
2421 West Mission Avenue
Spokane, WA 99201

AR 002114

1 Linda Strout
2 Traci Goodwin
3 Port of Seattle, Legal Dept.
4 2711 Alaskan Way, Pier 69
5 Seattle, WA 98111

Jay Manning
Gillis Reavis
Brown, Reavis & Manning
1191 Second Avenue, Suite 2200
Seattle, WA 98101


6 Roger Pearce
7 Steven Jones
8 Foster Pepper & Shefelman
9 1111 Third Avenue, Suite 3400
10 Seattle, WA 98101

11 On March 14, 2002, I caused to be sent via facsimile and federal express overnight a true
12 and correct copy of ACC's Motion to Strike The Port Of Seattle's Pre-Hearing Brief in the above
13 matter to:

14 Joan M. Marchioro
15 Thomas J. Young
16 Assistant Attorneys General
17 Ecology Division
18 2425 Bristol Court SW, 2nd Floor
19 Olympia, WA 98502

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

22 DATED this 14th day of March, 2002, at Seattle, Washington.

23 
24 _____
25 Michelle Isaacson

g:\lu\acc\pchb\certserv-031402-2.doc

CERTIFICATE OF SERVICE - 2

HELSELL FETTERMAN LLP
1500 Puget Sound Plaza
1325 Fourth Avenue
Seattle, WA 98101-2509

Rachael Paschal Osborn
Attorney at Law
2421 West Mission Avenue
Spokane, WA 99201

AR 002115