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POLLUTION CONTROL HEARINGS BOARD  
FOR THE STATE OF WASHINGTON

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4 AIRPORT COMMUNITIES COALITION, )  
5 ) PCHB No. 01-160  
6 Appellant, )  
7 v. ) APPELLANTS' REPLY IN SUPPORT OF  
8 ) MOTION TO STRIKE THE PORT'S PRE-  
9 STATE OF WASHINGTON, ) HEARING BRIEF  
10 DEPARTMENT OF ECOLOGY; and )  
11 THE PORT OF SEATTLE, )  
Respondents. )

12 The Port has offered a number of flimsy excuses for its over-length brief. Appellants  
13 therefore reply, briefly, as follows:

14 1. The Port dismisses Appellants' motion in general by stating that "focusing on  
15 formatting issues seems less than productive." Appellants wholeheartedly agree. In fact,  
16 Appellants believed that such formatting issues were resolved when, after the Port moved to  
17 strike ACC's Stay Brief, it turned out that the Port had manipulated the spacing of its brief  
18 and had submitted a grossly over-length brief itself. All parties agreed then to adhere to the  
19 ground rules in the Pre-hearing Order. The Port's failure to do so has forced Appellants to  
20 again "focus on formatting issues".

21  
22 2. The Port does not directly respond to the observation, readily determined by  
23 looking at its brief and comparing it to the Word program, that it did not use double-spacing,  
24 but instead manipulated the program to fit additional lines on a page. The excuse that this  
25 manipulation is routinely done because it "allows the text to align with the numbers on the

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APPELLANTS' REPLY IN SUPPORT OF MOTION  
TO STRIKE THE PORT'S PRE-HEARING BRIEF - 1

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1 left-hand margin used in pleading paper” is spurious. The Board can readily determine what  
2 the Port has done by, for example, comparing page 2 of the Port’s Response to Appellant’s  
3 Motion to Strike the Port’s Pre-hearing Brief, with page 10 of the Port’s actual Pre-hearing  
4 Brief<sup>1</sup>. What the Board will find is that, while the numbers on the left-hand side of the  
5 pages (the pleading paper numbers) line up, the actual lines of text do not, because more  
6 lines have been stuffed into the pre-hearing brief. The Board can also see the difference by  
7 comparing its own recent Order Granting Summary Judgment on SEPA in this case, which  
8 was double-spaced, with the Port’s Pre-hearing Brief.

9 3. One of the Port’s “defenses” is that ACC and CASE have utilized footnotes.  
10 In fact, all parties utilize footnotes, on occasion. For example, at the same time that the Port  
11 filed a Response to Appellant’s Motion to Strike its Prefiled Brief, it also filed a Response to  
12 Appellants’ Motion in Limine to Exclude Plans and Reports Utilized in Violation of the Pre-  
13 hearing Order. That Port response includes several lengthy footnotes, in a smaller typeface,  
14 as have many pleadings from all the parties. The Port’s reference to footnotes as  
15 demonstrating non-compliance by Appellants with the page limitation is also inapposite for  
16 another reason. As the Board can tell by just comparing the briefs, Appellants “over  
17 complied” with the Board’s margin requirements. Each page of Appellants’ Brief has a 1.5  
18 inch margin at the top, one-half inch more than the Board’s pre-hearing order requires (it  
19 requires one inch margins all around). Any space taken up by footnotes is more than  
20 compensated by the additional 30 inches of space provided by this extra margin.  
21  
22  
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25

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<sup>1</sup> A copy of page 2 and page 10 of the documents referenced above are attached. They were both prepared by the same firm, Brown, Reavis and Manning.

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1 Appellant's brief also has a 1.25 inch margin at the bottom of each page, compensating even  
2 more.

3 4. The Port claims that "the margin issues mentioned by ACC are either  
4 erroneous or insignificant." It offers no substantive response beyond that. In fact, the Port's  
5 margins are palpably off.

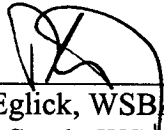
6 5. Finally, the Port argues that, because Ecology only filed a 24-page brief, it  
7 makes up for the Port's over-length brief. It is not up to the Port to appropriate Ecology's  
8 briefing allocation, nor was there any joint Respondents' brief submitted here. The fact that  
9 Ecology has less to say in defense of its decision does not give the Port leave to say more, in  
10 violation of the Pre-hearing Order.


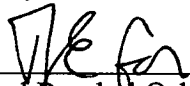
11 6. For all the reasons discussed above, the Board should grant ACC's motion  
12 and the relief requested in it.

13 DATED this 17<sup>th</sup> day of March, 2002.

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those footnotes appeared as normal double-spaced text, Appellants' brief would have been 12-15 pages longer than it was.

Although the Port believed that ACC's manipulation of the briefing guidelines was inappropriate, the Port determined that filing a motion to strike ACC's brief would divert everyone's attention, including the Board's, from the merits of the case. The parties are working very hard to prepare for trial, so that the evidence on the merits can be presented efficiently and persuasively. Focusing on formatting issues seems less than productive.

The Port's counsel used "exactly 24-point" line spacing, as many attorneys do, because it allows the text to align with the numbers on the left-hand margin used in pleading paper. This is another way of expressing "double spacing" since, in printer's terms, 12 point is single spacing. That formatting is consistent with the Civil Rules and is commonplace. The margin issues mentioned by ACC are either erroneous or insignificant.

Rather than debate the fine points of formatting, the Port suggests that the Board consider, as ACC chose to do, the number of pages filed per side in this case. As noted above, ACC and CASE jointly filed a brief that ran over onto the 61<sup>st</sup> page. Ecology filed a 24-page brief, one-half page of which contains only the caption. If, as Appellants erroneously contend, the Port's brief should be treated as 37 pages long, then between them Ecology and the Port filed 60 pages of briefing. Since each side has filed the same number of pages, no "side" (or party) has any basis for complaint.

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1 To mitigate peak flow impacts and thereby avoid erosion, scouring, and habitat damage  
2 associated with uncontrolled stormwater discharges, the Port will capture all stormwater runoff  
3 and detain it in 344.1 acre-feet of stormwater detention facilities, including ponds and vaults.  
4 The Port will slowly release collected stormwater at carefully developed flow rates to avoid  
5 peak flow impacts, as required by Ecology's and King County's continuous flow analysis  
6 methods. Fendt ¶10, 14.

7 The Port will mitigate the very small reductions in stream flows during historic low flow  
8 periods predicted to occur as a result of the project by three means. First, the Port will infiltrate  
9 a portion of the collected stormwater into the embankment itself, which will delay flows into  
10 Miller and Walker Creeks, reducing seepage into these streams during periods of high  
11 precipitation and increasing seepage during seasonal low flow periods. Second, the Port will  
12 retain approximately 9% of the stormwater detained during high precipitation months and then  
13 release it into Des Moines and Walker Creeks during the summer low flow season. This  
14 controlled release of detained water will replicate the timing and volume of preproject baseflow,  
15 as the Port's consultants determined through the hydrologic modeling described below. Third,  
16 the retirement of existing water uses will improve seasonal low flows in Miller Creek. Fendt ¶14  
17 - 17.

18 The Port's plan to construct wetponds, wetvaults, and other systems to mitigate for low  
19 flow impacts utilizes standard engineering principles commonly applied in stormwater  
20 management. While the scale of the MPU project is larger than most, the constructibility and  
21 engineering issues are far from unique and do not raise feasibility concerns. Fendt ¶20 - 24;  
22 Swenson ¶16-20. To meet peak flow control requirements, the Port has prescribed very low  
23 release rates for designated detention facilities. Under the Port's plan, the proposed peak flow  
24 pond constructed for each of the three watersheds will store stormwater more than 62% of the  
25 time. Detention periods and volumes have been established to closely mimic predevelopment  
26 conditions and to comply with the Port's NPDES permit and the 401. Fendt ¶25 - 30.

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