

POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,)
Appellant,) PCHB 01-160
CITIZENS AGAINST SEATAC)
EXPANSION,) THIRD PRE-HEARING ORDER
Intervenor,)
v.)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY and THE)
PORT OF SEATTLE,)
Respondents.)

On March 6, 2002, a pre-hearing conference was held to address several issues in advance of the upcoming hearing on the above noted appeal. In particular, the parties asked the Board to address the following: allocation of hearing time; allocation of hearing room seating; numbering of the exhibits; examination of witnesses; and other preliminary matters. The hearing was conducted by Kaleen Cottingham, presiding, and was attended by Board member Bill Lynch and AAJ Eric Z. Lucas. The parties were represented by Peter Eglick, Kevin Stock and Rachel Paschal Osborn (for ACC), Rick Poulin (for CASE), Gil Reavis and Roger Pearce (for the Port) and Tom Young (for Ecology). Betty J. Koharski provided court-reporting services.

The following reflects the decisions made after hearing from all parties:

1 1. Allocation of hearing time

2 The parties have agreed to the use of a “chess clock” as a means to keep accurate
3 accounting of the time utilized in the hearing. The Appellants have agreed to provide an easy-to-
4 use chess clock for use during the hearing. The entire two week hearing, not counting time for
5 lunch breaks, rest breaks, and opening and closing arguments, consists of approximately 45
6 hours for the parties to present their witnesses and exhibits. The parties have agreed to an
7 allocation of 22 ½ hours per side. This time includes all direct examination, cross examination,
8 re-direct and rebuttal witness testimony. In addition, specific allocations cover the time
9 consumed by objections and board questions, which will be explained below. Time for the
10 opening arguments will be one-half hour per side. Time for closing arguments will be one hour
11 per side. The hearing will start at 9:30 a.m. each day and conclude at 5:00 p.m., except on the
12 last day when the hearing will conclude at 4:00 p.m. Two fifteen-minute breaks will be held
13 each day.

14 The time-keeping process will operate as follows: The party offering the witness will
15 start their clock at the beginning of examination. The clock will continue to run until cross
16 examination (or a break) starts. The person questioning the witness will be responsible for
17 starting the clock. When the cross-examination begins, the person questioning the witness will
18 start its clock. Again, this clock will run until the re-direct begins. This will continue throughout
19 the entirety of the day. Any questions raised by the Board, which generally occur after re-direct,
20 will be allocated to the side that called the witness. Time associated with any objections will be
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1 allocated to the party that is questioning the witness at the time the objection is made. If an
2 objection is particularly long, or if the Board decides a party is objecting as a means to use up
3 time of the opposing party, the Board may adjust the time consumed by a party at the end of the
4 day to represent a fair allocation of the time consumed or as a sanction for misusing the time
5 allocation system.

6 At the end of each day, the Board will ask the parties to account for the time consumed
7 that day by each side and the amount of time available for each side during the remainder of the
8 hearing. These numbers will be posted on the wall at the end of each day.

9 2. Allocation of seating and space in the hearing room

10 The Board's hearing room has limited space available and thus it was decided to allocate
11 the space in advance of the hearing to minimize confusion. The hearing room will be organized
12 and labeled in advance and the parties will help keep certain seats, described below, open for
13 specific use. The counsel tables will be organized to seat three attorneys each. The row
14 immediately behind the counsel table will be reserved for the remainder of the attorneys of
15 record and a limited number of paralegals. The second row back will be reserved exclusively for
16 clients or paralegals (four seats per side) and will be assigned by the attorneys, rather than by
17 self-selection.

18 The three cushioned seats along the west wall of the hearing room will be reserved for the
19 next-to-be-called witnesses. If a party wants an additional witness to listen to the testimony,
20 such witness shall sit in a seat reserved for attorneys, paralegals or clients, unless the seats
21 reserved for the general public are not fully occupied.

1 The last two rows of seats in the hearing room will be open for public seating on a first-
2 come, first-served, basis. If there are more public than seating available, the attorneys will
3 attempt to convince individuals to rotate seating at a break to allow others the opportunity to
4 observe. In the absence of willing rotation, a line will be formed in the hallway. The first in line
5 will be allowed to enter the hearing room if a seat becomes available in the public seating rows.

6 The areas below the windows and between the court reporter and the counsel table will
7 be reserved for the attorneys to hold boxes, illustrative exhibits, cases and the like. The counsel
8 shall attempt to keep a clear path of ingress and egress to the hearing room.

9 A table will be set next to the witness stand to hold one complete set of the exhibits for
10 use by a witness. The other three copies of the exhibits will be set out on the counter behind the
11 Board members' chairs, for ease in use by each Board member.

12 The two easels in the room will be set between the counsel tables and the front of the
13 room. The podium will be located between the counsel tables for the opening and closing
14 arguments, but will be moved out of the hearing room during the remainder of the hearing to
15 allow for ease in using the aforementioned "chess clock."

16 3. Exhibits

17 To aid the Board's and Parties' use of the exhibits, the parties have agreed to use a
18 sequential exhibit numbering system, unless Ecology notifies the Board no later than 10:00 a.m.
19 March 7th that it is impossible for Ecology to renumber its exhibits.

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The exhibit numbers will be allocated as follows:

- Exhibits 1-499 reserved for deposition exhibits;
- Exhibits 500-999 reserved for ACC and CASE exhibits;
- Exhibits 1000-1999 reserved for Port exhibits; and
- Exhibits 2000-2999 reserved for Ecology exhibits.

The parties will jointly submit, as part of the stipulated exhibit lists, a matrix showing the exhibits, using the above noted numbering system. The matrix shall include an indication of who is offering the exhibit, whether it is stipulated or objected to, the source of the exhibit and, if an objection exists, the nature of the objection. This matrix will assist the Board in the evidentiary hearing scheduled for March 12th.

The exhibits will be placed in easy to use binders and clearly labeled on the front and spine indicating the exhibit numbers contained within.

4. Motion in Limine

The Board currently has before it a motion in limine regarding the pre-filed testimony of Tom Luster. The Board will render a decision on this motion following the receipt of the responses and reply and will attempt to issue its decision on or before Friday March 15th so that travel costs can be minimized should the Board decide to grant the motion. Other motions, if filed, will be handled as necessary and may be addressed on the first day of the hearing, should time not be available prior to the hearing.

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5. Witnesses

The parties asked the Board to clarify whether witnesses could be called in the absence of pre-filed testimony. This issue relates solely to adverse or hostile witnesses. The requirement for pre-filed testimony was developed as tool to minimize the time necessary for the hearing, not as a means to limit the number of witnesses. Therefore, the parties will be allowed some leeway when examining adverse or hostile witnesses. First, in order for a witness to be called, that witness must appear on the final witness lists which have already been filed with the Board. Second, if a witness is adverse or hostile, the parties may cross-examine this witness as if on direct examination. If a witness is adverse or hostile, a party may call this witness for direct examination even though pre-filed testimony was not submitted.

By March 14th, the parties shall file with the Board and serve on the other parties a list identifying the anticipated order of witnesses. At the end of each day of hearing, the parties shall disclose the order of witnesses for the following day and shall note any potential changes anticipated to the order of witnesses for the remainder of the hearing.

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ORDER

This order supplements the original pre-hearing order and the second pre-hearing order.
All three of these pre-hearing orders shall govern the proceedings, unless subsequently modified
by order of the Board for good cause upon a party's motion or the Board's volition.

SO ORDERED this 7th day of March, 2002.

POLLUTION CONTROL HEARINGS BOARD



KALEEN COTTINGHAM,

Presiding