

ENVIRONMENTAL
HEARINGS OFFICE

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

AIRPORT COMMUNITIES
COALITION,

Appellant,

CITIZENS AGAINST SEA-TAC
EXPANSION,

Intervenor/Appellant,

v.

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

Respondents.

PCHB No. 01-160

DEPARTMENT OF ECOLOGY'S
MOTION IN LIMINE RE: WAC 371-
08-475(7)

The Department of Ecology (Ecology) seeks a motion in limine striking pre-filed written direct testimony submitted by Appellant Airport Communities Coalition (ACC) that contravenes the Pollution Control Hearings Board's (Board) rules of practice. The ACC submitted pre-filed testimony of Thomas R. Luster, a former Ecology employee, identifying him as an expert witness. The Board's rules of practice prohibit such testimony.

Chapter 371-08 WAC sets forth rules of practice before the Board. In WAC 371-08-475(7), the Board addresses the ability of a former Ecology employee to appear before it as an expert witness. The rule provides:

Former employee as an expert witness. No former employee of the department shall at any time after leaving the employment of the department appear, except when permitted by applicable state conflict of interest law, as an expert witness on behalf of other parties in a formal proceeding in which an active part in the investigation as a representative of the department was taken.

1 Pursuant to this rule, Ecology seeks a motion in limine striking those portions of the pre-filed
2 written direct testimony of Mr. Luster where he offers expert testimony.

3 The ACC submitted pre-filed written direct testimony of Mr. Luster in support of its
4 appeal seeking to overturn Ecology's issuance of a Clean Water Act § 401 Certification to the
5 Port of Seattle for construction activities at the Seattle-Tacoma International Airport. During
6 his tenure at Ecology, Mr. Luster was assigned as Ecology's § 401 Permit Reviewer for the
7 Port's application. In that position, Mr. Luster served as the agency's point of contact
8 regarding the Port's application. He interacted with the Port and its consultants, interested
9 parties including both of the appellants, and coordinated agency technical experts' review of
10 the Port's project and supporting documents. In his testimony, Mr. Luster is held out as an
11 expert witness and he expresses several opinions regarding the adequacy of the § 401
12 Certification ultimately issued to the Port. The Board's rule prohibits such testimony.

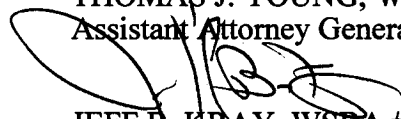
13 Ecology requests that, pursuant to WAC 371-08-475(7), the Board strike those
14 portions of Mr. Luster's testimony offering expert testimony.

15 DATED this 4th day of March, 2002.

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17 Attorney General

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**BEFORE THE POLLUTION CONTROL HEARINGS BOARD
IN AND FOR THE STATE OF WASHINGTON**

AIRPORT COMMUNITIES COALITION,

PCHB No. 01-160

Appellant,

CERTIFICATE OF SERVICE

CITIZENS AGAINST SEA-TAC
EXPANSION,

Intervenor/Appellant,

v.

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

Respondents.

Pursuant to RCW 9A.72.085, I certify that on March 4, 2002, I caused to be served, Department of Ecology's Motion in Limine Re: WAC 371-08-475(7), and this Certificate of Service, in the above-captioned matter to be served upon the parties herein, as indicated below:

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20 the foregoing being the last known business addresses.

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

23 DATED this 4th day of March, 2002, in Olympia, Washington.

24 
25 TAMMY L. TEETER
Legal Assistant
26

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