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ENVIRONMENTAL
HEARINGS OFFICE

February 19, 2002

Kaleen Cottingham
Presiding Officer
Pollution Control Hearings Board
P.O. Box 40903
Lacey, WA 98504-0903

Re: ACC & CASE v. Ecology & Port of Seattle, PCHB No. 01-160
Port's pending Motion for Partial Summary Judgment on SEPA Issue

Dear Ms. Cottingham,

I am writing to ask for expedited resolution of an issue relating to timing of service of briefs.

On February 8, 2002, the Port filed its Motion for Partial Summary Judgment on SEPA Issue and attempted to serve the Appellants. Copies of the motion were received by Helsell Fetterman and Smith & Lowney, however, I did not receive a copy of the motion, memorandum, or the accompanying materials on that date. Apparently, the Port attempted to serve the memorandum by facsimile, but the fax was not received at my offices. I received the materials on Monday, February 11, 2002.

ACC intends to move to strike the Port's motion as untimely, as it was not served on all counsel before the deadline established in the Board's Pre-hearing Order (February 8, 2002) for filing and serving dispositive motions. However, in an abundance of caution we also intend to file a response. Because the memorandum was not received at my office until February 11, we calculate the time for the ACC-CASE response, which will be filed jointly, to be 10 days from that date, or February 21.

Consistent with the directive of the Pre-Hearing Order, I attempted to resolve this issue with Mr. Pearce. Attached are two letters: mine to Pearce and his response. I also attempted to contact Mr. Pearce this morning to arrange a conference call with your office, however, he is attending depositions and not available until an unknown time today. Because the Port asserts our response is due today, timing is critical.

We would appreciate direction from your office regarding the due date for the ACC-CASE response brief. As you may recall, I anticipated this problem (being outside the west-side same-day service area) and asked that the Pre-Hearing Order explicitly require

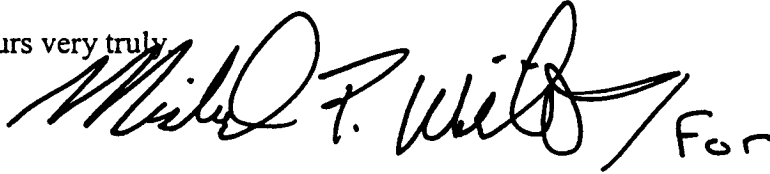
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service on all attorneys. Because I was in hearings in Idaho all last week, the failure of the Port to serve the memorandum and its several hundred pages of attachments on my office on February 8 substantially prejudiced my ability to prepare the ACC/CASE response brief.

We appreciate your attention to this matter.

Yours very truly

A handwritten signature in black ink, appearing to read "Michael F. Witek". The signature is stylized and cursive. To the right of the signature, the word "For" is written in a simple, sans-serif font.

Rachael Paschal Osborn

cc: Peter Eglick, Kevin Stock & Michael Witek
Roger Pearce & Steven Jones
Jay Manning & Gil Reavis
Linda Strout & Traci Goodwin
Joan Marchioro, Tom Young & Jeff Kray
Rick Poulin

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February 18, 2002

Roger Pearce
Foster Pepper & Shefelman
1111 Third Ave., Suite 3400
Seattle, WA 98101-3299

VIA FAX AND U.S. MAIL
Fax: 206-447-4400

Re: ACC and CASE v. Ecology and Port of Seattle
PCHB No. 01-160

Dear Mr. Pearce,

Please be advised that ACC and CASE will be filing a joint response to the Port of Seattle's Motion for Partial Summary Judgment on SEPA Issue on Thursday, February 21, 2002. While the Certificate of Service attached to your Motion indicates that I was served a copy of the memorandum by facsimile on February 8, 2002, in fact I was not so served. I did not receive the motion or the attachments until FedEx delivery on Monday, February 11, 2002. Pursuant to the Pre-Hearing Order, ACC and CASE are entitled to ten days after receipt of the motion to file their response.

Please feel free to call if you have any questions regarding this matter.

Yours very truly,



Rachael Paschal Osborn

cc: Rick Poulin
Joan Marchioro, Tom Young, Jeff Kray
Peter Eglick, Kevin Stock, Michael Witek

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FOSTER PEPPER & SHEFELMAN PLLC
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February 19, 2002

VIA FACSIMILE

Ms. Rachael Paschal Osborn
2421 West Mission Avenue
Spokane, WA 99201

Re: Service of Port of Seattle's Motion for Partial Summary Judgment

Dear Ms. Osborn:

Please be advised that the response to the Port of Seattle's Motion for Partial Summary Judgment on SEPA issue is due today, February 19, 2002. Both the ACC and CASE were physically served with all pleadings and declarations on February 8, 2002, as required by the Prehearing Order. There is no requirement in the PCHB rules or Prehearing Order to serve each and every attorney for a party. As has been our customary practice in this case, on February 8 we attempted to fax to you a copy of the brief with a hard copy of the brief and all supporting materials by FedEx. We look forward to receiving your response today. If the response from CASE and ACC is not received today, the Port reserves the right to move to strike any late response.

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Very truly yours,

Roger A. Pearce

cc: Counsel of Record

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