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POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,)
)
 Appellant,)
)
 v.)
)
 STATE OF WASHINGTON)
 DEPARTMENT OF ECOLOGY, and)
 THE PORT OF SEATTLE,)
)
 Respondents.)

PCHB No. 01-160
FOURTH DECLARATION OF STEVEN G. JONES

Steven G. Jones declares as follows:

1. I am one of the attorneys representing the Respondent Port of Seattle. I have a personal knowledge of the facts set forth in this declaration and would be competent to testify to them if necessary.

2. On January 10, 2002, our office was served with a Notice of Deposition by counsel for ACC. In that Notice, ACC noted 31 depositions, commencing on January 17 and going through January 31, 2002. After receiving ACC's notice of deposition, we began contacting the witnesses that ACC had noted for deposition and notified counsel for ACC that the Port would be prepared to produce Paul Agid for deposition on January 17 and James C. Kelley, Ph.D., for deposition on January 18, 2002.

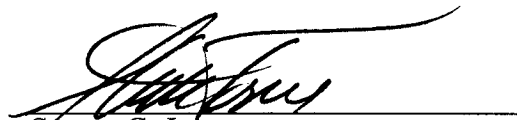
3. I signed the Port's objections and responses to ACC's discovery requests and served those on counsel for ACC on December 26, 2001. In response to ACC's Request for Production No. 2, those responses stated that, "Pursuant to CR 33(c), non-privileged documents

1 will be produced for inspection and copying in the same manner as they are kept within the
2 ordinary course of business, at a mutually convenient time and place.” Port’s Objections and
3 Responses to ACC’s Discovery Requests at 15. On January 15, 2002, counsel for ACC, Kevin
4 Stock, sent a letter to Roger Pearce of our office. A copy of that letter is attached to this
5 declaration as Exhibit A. In his letter, Mr. Stock unilaterally set 10:00 a.m. the following day
6 (January 16) as the date on which ACC would commence review of the Port’s documents.
7 Despite having received no prior request that ACC be allowed to commence document review, we
8 made arrangements to have documents available for review at that time and accommodated Mr.
9 Stock’s unilateral schedule. Andrea Grad, a paralegal in Mr. Stock’s office, spent most of January
10 16 in our office reviewing Port documents produced in response to Mr. Stock’s demand. On
11 January 17, Ms. Grad was once again in our office and the Port produced an additional 13 boxes
12 of documents for Ms. Grad to review, along with 23 CDs containing technical data and
13 engineering review of the Port’s proposed projects.

14 4. In addition to Mr. Stock’s January 15, 2002, which is attached as Exhibit A,
15 attached to this declaration as Exhibit B is a true and correct copy of the January 14, 2002 letter of
16 Kevin Stock, addressed to me.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed at Seattle, Washington this 17th day of January, 2002.

19
20 
21 Steven G. Jones

Law Offices
HELSELL
FETTERMAN
A Limited Liability Partnership

January 15, 2002

Kevin L. Stock
Attorney At Law
EMAIL: kstock@helsell.com
DIRECT DIAL: 206-689-2162

By Fax

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

Re: PCHB No. 01-160
Port Documents and Depositions of Port Witnesses

Dear Roger:

Your January 15, 2002 letter to me is inaccurate on several counts and does nothing to move the ball forward in resolving the serious discovery disputes that exist between our two clients.

For instance, you state that "the Port is unsure what ACC means by documents in the 'public domain.'" Yet, the Port itself used this very term in objecting to ACC's Request for Production No. 2 in responses signed by attorneys in your office: "As stated by ACC in its discovery responses, the documents in this case are in the public domain and are readily accessible to the parties and need not be produced in discovery." We presume that when the Port used this term it was referring to documents that are part of the public record at the Department of Ecology on the Port's application for 401 certification of its proposed third runway project.

You have advised that the documents the Port is now willing to produce "undoubtedly include additional background documents" reviewed by the Port's experts (but not all of the documents responsive to ACC's document requests). Our understanding has been that Ecology received all relevant documents utilized by Port experts in their work. It appears now that this was not the case. ACC will therefore appear in your offices tomorrow morning at 10:00 a.m. to commence its review.

Your statement in your letter that prior to ACC serving its notice of depositions, "ACC had never requested the deposition testimony of a single Port witness, had never identified any specific witnesses that it wished to depose, and had never requested available dates for any such witness" is simply untrue. Roger, please refer to Mike Witek's email to you dated December 27, 2001 and sent at 9:49 a.m. that day. In his email to you, Mr. Witek reconfirms ACC's prior request that the Port make its witnesses available for deposition. Mr. Witek wrote:

Mr. Roger Pearce
January 15, 2002
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On another discovery matter and to follow up on our discussion of December 20, 2001, ACC requests that the Port make available for deposition all persons listed in the Port's October 10, 2001, and November 15, 2001 witness lists. ACC has a pending set of interrogatories to the Port requesting information regarding expert witnesses. If ACC receives early responses to those interrogatories, depending on the responses, we will consider narrowing the number of Port experts we will depose.

As I stated in my letter yesterday, we served ACC's Notice of Depositions of Port experts only after the Port failed despite repeated requests to provide us with available dates. They were set prior to the discovery cutoff in the vain hope that the Port would come to resolution on the prior site access we have been requesting for weeks. The formal notices were served prior to the discovery cutoff to follow up on our repeated informal notices to the Port that ACC is seeking to depose Port witnesses.

ACC is of course not withdrawing its Notice of Depositions. However, the Port's action in denying site access and its failure to produce any documents until today forces us to continue the depositions noted for this week and possibly next. We will re-commence depositions of Port witnesses after ACC, its experts and attorneys have inspected the site and only after ACC has had a reasonable opportunity to review Port documents. And, for at least the third time, ACC requests that the Port advise ACC of any witness currently on the Port's witness list that the Port does not now plan to call to testify at the March hearing. The Port will save all parties time and money if it narrows its witness list.

The Port's refusal, first disclosed in your letter of today, to make available for deposition Messrs. Douglas and Idriss on the grounds that they are "consulting experts" is without merit. Both Mr. Douglas and Prof. Idriss were part of a panel of experts convened by the Port to review the technical aspects of the embankment fill and Mechanically Stabilized Earth Walls. The Port submitted the findings of the panel to the Department of Ecology in support of its application for 401 certification. As a result, Messrs. Douglas and Idriss are fact witnesses with relevant expert knowledge. ACC is entitled to take their depositions pursuant to CR 26 and CR 30. We will work with you to find mutually convenient dates for their depositions.

With respect to your request that ACC tender payment to the Port's testifying experts "including airfare for out-of-town experts," this is the first time the Port has raised the issue. The Port has not adhered to this interpretation of the discovery rules

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Mr. Roger Pearce
January 15, 2002
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for ACC: it has not offered to pay for ACC's experts in responding to the Port's discovery even though the Port has served Notices of Deposition for all of ACC's experts. If the Port is interested in a reciprocal arrangement regarding the obligations of the parties to "pay the expert a reasonable fee for time spent in responding to discovery" pursuant to CR 26(b)(5)(C), then please propose one and we will consider it. Please be mindful, however, of the Scheduling Order's requirement that "[d]epositions of non-party deponents shall, absent agreement by all parties and the witness, occur at a mutually acceptable location, or if agreement cannot be reached, at a location near the residence or workplace of such witnesses. In addition, the Scheduling Order provides: "For out of state deponents, if mutual agreement cannot be reached on the location for the deposition, such deposition shall occur at the Board's office in Lacey."

Roger, ACC is not interested in playing procedural games with the Port. All ACC wants is a full and fair opportunity to obtain discovery that it is rightfully due for presentation to the Board at the hearing. Neither of our clients' interest is advanced by the Port's bi-daily letter writing campaign, riddled with accusations, finger-pointing, and glaring untruths (such as the untrue statement, discussed above, that ACC never requested deposition of Port witnesses and never asked for available dates).

You do not need to respond to this letter. We each have stated our clients' respective position. We now need to await the Board's decisions on the various motions to compel. After the Board rules, I suggest we conduct a discovery conference among all attorneys to agree upon a mutually convenient discovery schedule that treats each party fairly and provides an opportunity for the parties to conduct the discovery they need to conduct.

Very truly yours,

HELSELL FETTERMAN LLP



Kevin L. Stoak

cc: Joan Marchioro / Thomas Young / Jeff Kray
Jay Manning / Gillis Reavis

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AR 004780

Law Offices
HELSELL
FETTERMAN
A Limited Liability Partnership

January 14, 2002

Kevin L. Stock
Attorney At Law
EMAIL: kstock@helsell.com
DIRECT DIAL: 206-689-2162

By Fax

Mr. Steven G. Jones
Foster Pepper & Shefelman
1111 Third Ave., Suite 3400
Seattle, WA 98101

Re: PCHB No. 01-160
Port Documents and Depositions of Port Witnesses

Dear Steve:

We are in receipt of your January 14, 2002 letter in which you advise that "consistent with the Port of Seattle's response to ACC's discovery requests, we can make documents available for review and copying at your convenience." We are puzzled by this statement in light of the Port's written objections to ACC's six specific requests for production of documents. Is the Port now waiving its dozen or so objections?

Except for ACC Request for Production No. 6 seeking documents related to the Port's contacts with Tom Fitzsimmons, the Port objected to each of ACC's six document requests on the grounds that the requests sought disclosure of information subject to the attorney/client privilege or work product doctrine, were overly broad, unduly burdensome, oppressive and sought information that is neither relevant nor reasonable calculated to lead to the discovery of relevant and/or admissible evidence. The Port also objected on the grounds that ACC's requests sought information that is "private, confidential or proprietary business information." With respect to ACC's Request for Production No. 2 which sought production of documents relied upon or reviewed by the Port's experts in formulating their opinions, the Port stated "the documents in this case are in the public domain and are readily accessible to the parties and need not be produced in discovery."

Are the documents that the Port is making available for inspection and copying only those documents found in the public domain? Is the Port now waiving its objections and producing drafts of reports and communications between the Port's experts and its lawyers? Please advise immediately what documents the Port is making available. If the Port is producing documents other than those in the public

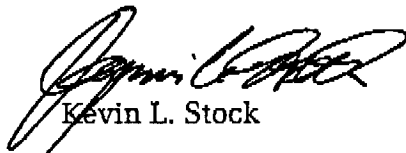
Mr. Steven G. Jones
January 14, 2002
Page 2

domain, we can be at your offices tomorrow morning to commence our review. Please advise.

With respect to depositions of Port witnesses, we served ACC's Notice of Depositions of Port experts after the Port's failure to provide us with their available dates; to ensure that dates had been set (if only unilaterally) prior to the discovery cutoff and in the hope that it would prompt the Port to come to resolution on the prior site access we have been requesting for weeks. In light of the Port's refusal to allow access and the parties' multiple motions to compel, it is impractical and unrealistic to go forward with the depositions until after the Board has had an opportunity to rule on the motions. ACC counsel should not have to proceed with depositions of Port witnesses when we will be the only ones in the room who have not had the opportunity to visit the site like the Port and Ecology attorneys and the Port experts. As Ray Hellwig testified at his deposition, a site visit "adds context" to an understanding of the issues. After the Board has ruled on the various discovery motions, I suggest we work together to arrive at mutually convenient dates for depositions of the Port witnesses. ACC also (again) requests that the Port advise ACC of any witness currently on the Port's witness list that the Port does not now plan to call to testify at the March hearing as this may reduce the number of depositions necessary of Port witnesses.

Very truly yours,

HELSELL FETTERMAN LLP



Kevin L. Stock

cc: Joan Marchioro / Thomas Young / Jeff Kray
Jay Manning / Gillis Reavis

AR 004782