

RECEIVED

JAN 11 2002

ENVIRONMENTAL
HEARINGS OFFICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.)

No. 01-160

DECLARATION OF MICHAEL P.
WITEK IN SUPPORT OF ACC'S
MOTION TO COMPEL INSPECTION
OF PORT PROPERTY AND TO
EXTEND DISCOVERY SCHEDULE

(Section 401 Certification No.
1996-4-02325 and CZMA concurrency
statement, Issued August 10, 2001,
Reissued September 21, 2001, under No.
1996-4-02325 (Amended-1))

Michael P. Witek declares as follows:

1. I am over the age of 18, am competent to testify, and have personal knowledge of the facts stated herein.
2. Attached to my declaration as Exhibit A is a true and correct copy of pages 59-61 from the December 20, 2001, Ann Kenny deposition transcript.
3. Attached to my declaration as Exhibit B is a true and correct copy of pages 71-75 from the January 8, 2002, Ray Hellwig deposition transcript.

DECLARATION OF MICHAEL P. WITEK IN
SUPPORT OF ACC'S MOTION TO COMPEL
AND TO EXTEND DISCOVERY SCHEDULE - 1

HELSELL FETTERMAN LLP
1500 Puget Sound Plaza
1325 Fourth Avenue
Seattle, WA 98101-2509

Rachael Paschal Osborn
Attorney at Law
2421 West Mission Avenue
Spokane, WA 99201

ORIGINAL

AR 005316

1 4. Attached to my declaration as Exhibit C is a true and correct copy of ACC's
2 November 26, 2001, Request for Entry.

3 5. Attached to my declaration as Exhibit D is a true and correct copy of a December
4 12, 2001, e-mail from ACC counsel to Port counsel.

5 6. Attached to my declaration as Exhibit E is a true and correct copy of a December
6 18, 2001, e-mail from Port counsel to ACC counsel.

7 7. Attached to my declaration as Exhibit F is a true and correct copy of a December
8 27, 2001, e-mail from ACC counsel to Port counsel.

9 8. Attached to my declaration as Exhibit G is a true and correct copy of the Port's
10 December 24, 2001, Objection to Request for Entry.

11 9. Attached to my declaration as Exhibit H is a true and correct copy of a December
12 28, 2001, e-mail from Port counsel to ACC counsel.

13 10. Attached to my declaration as Exhibit I is a true and correct copy of a January 4,
14 2002, letter from Port counsel to ACC counsel.

15 11. Attached to my declaration as Exhibit J is a true and correct copy of a January 8,
16 2002, letter from ACC counsel to Port counsel.

17 12. Attached to my declaration as Exhibit K is a true and correct copy of a January 9,
18 2002, letter from Port counsel to Acc counsel.

19
20
21
22
23
24
25
DECLARATION OF MICHAEL P. WITEK IN
SUPPORT OF ACC'S MOTION TO COMPEL
AND TO EXTEND DISCOVERY SCHEDULE - 2

HELSELL FETTERMAN LLP
1500 Puget Sound Plaza
1325 Fourth Avenue
Seattle, WA 98101-2509

Rachael Paschal Osborn
Attorney at Law
2421 West Mission Avenue
Spokane, WA 99201

AR 005317

1 13. Attached to my declaration as Exhibit L is a true and correct copy of a November
2 21, 2001, e-mail to counsel for Ecology regarding deposition scheduling.

3 14. Attached to my declaration as Exhibit M is a true and correct copy of a November
4 29, 2001, e-mail from counsel for Ecology regarding deposition scheduling.

5 15. Attached to my declaration as Exhibit N is a true and correct copy of the cover
6 letter accompanying the Port's final Natural Resources Mitigation Plan.

7 16. Attached to my declaration as Exhibit O is a true and correct copy of the cover
8 letter accompanying the Port's December 2001, Low Flow Analysis.

9 17. Attached to my declaration as exhibit P is a true and correct schedule of the
10 deposition schedule for this case, in calendar format.

11 18. During a November 14, 2001, telephone conference regarding agreed issues,
12 counsel for ACC informed counsel for Ecology and the Port that ACC intended to take the
13 depositions of Ecology witnesses first, and that ACC would make every effort to do so in
14 December.

15 19. On December 3, 2001, ACC and the Port had a telephone conference to discuss
16 discovery issues. In that telephone conference, counsel for the Port asked ACC to provide more
17 detail regarding who would attend the site visits, where such persons would want to go, and what
18 activities were proposed.
19
20
21

22
23
24
25
DECLARATION OF MICHAEL P. WITEK IN
SUPPORT OF ACC'S MOTION TO COMPEL
AND TO EXTEND DISCOVERY SCHEDULE - 3

HELSELL FETTERMAN LLP
1500 Puget Sound Plaza
1325 Fourth Avenue
Seattle, WA 98101-2509

Rachael Paschal Osborn
Attorney at Law
2421 West Mission Avenue
Spokane, WA 99201

AR 005318

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,)
 Appellant,)
 vs.) PCHB No. 01-160
 STATE OF WASHINGTON,)
 DEPARTMENT OF ECOLOGY; and)
 THE PORT OF SEATTLE,)
 Respondents.)

DEPOSITION UPON ORAL EXAMINATION
OF
ANN KENNY

9:00 A.M.

DECEMBER 20, 2001

1325 FOURTH AVENUE, SUITE 1700

SEATTLE, WASHINGTON

DIANE MILLS, CSR# MI-LL-SD-M380N3

AR 005321

1 and then we did a site tour.

2 Q. Why were the attorneys involved in this site
3 visit?

4 A. I believe that our attorneys and the Port's
5 attorneys -- well, first they wanted to better
6 understand the technical issues involved with this very
7 complex analysis that was done for the low flow work.
8 And then our attorneys wanted some familiarity with the
9 layout of the site and locations for proposed
10 structures under the third runway application.

11 Q. Any other site visit?

12 A. No, not to my recollection.

13 Q. On any of these site visits did you need any
14 sort of security or clearance?

15 A. Access to these areas is limited. The
16 airport is fenced. There is security in place, and you
17 need to sign in and you're assigned a visitor ID pass
18 that must be visible. And there are various
19 checkpoints that you have to go through, and only
20 certain Port staff have the secret code.

21 Q. The magic card or whatever?

22 A. The code or the card to get past various
23 gates that have either staffed gates or locking gates
24 to get on site. **AR 005322**

25 Q. But prior to going to the site visit you

1 didn't go through any sort of security clearance?

2 A. No, no.

3 Q. Or give your Social Security number or
4 anything like that?

5 A. I don't believe so.

6 Q. Were you required to do anything in advance
7 of these site visits?

8 A. No.

9 Q. Were you allowed to see whatever you wanted
10 to see?

11 A. Yes.

12 Q. Were you always escorted?

13 A. Yes.

14 Q. By a Port person, I'm talking about?

15 A. Right. We went in Port vehicles and they
16 drove, primary consideration there being sure that you
17 don't cross the pathway of a jet that's taking off or
18 landing.

19 Q. Sure. Other than that, though, there weren't
20 any restrictions on where you could go or what you
21 could see?

22 A. No, it was whatever we wanted to go. We'd
23 stop, we'd get out, we'd look around. Whatever we
24 wanted to do was fine. **AR 005323**

25 Q. So if you wanted to see a particular outfall,

1 you told them and you were taken there?

2 A. Yeah, we went, that's correct.

3 (Recess taken.)

4 Q. (BY MR. STOCK) How did you get involved with
5 the Sea-Tac Airport application?

6 A. I was asked to take on responsibility for the
7 401 certification.

8 Q. By whom?

9 A. By my supervisor.

10 Q. Who was that?

11 A. Jeannie Summerhays.

12 Q. What did she say?

13 A. She asked if I would be interested in doing
14 that, and I said yes.

15 Q. Did she explain why you were being asked?

16 A. She said that she had been asked by Paula
17 Ehlers if there was possibility in our capacity in our
18 region for that responsibility to be taken on.

19 Q. Did she tell you about her conversation with
20 Ms. Ehlers?

21 A. Indirectly -- well, she indicated that there
22 was the desire for Tom Luster to get back to some of
23 his other job responsibilities as the policy lead for
24 401. **AR 005324**

25 Q. Did you have any conversations with Paula

**E
X
H
I
B
I
T**

AR 005325

POLLUTION CONTROL HEARINGS BOARD

1
2
3 AIRPORT COMMUNITIES COALITION,)
4
5 Plaintiff,)
6 vs.) NO. 01-160
7 DEPARTMENT OF ECOLOGY and THE)
8 PORT OF SEATTLE,)
9 Defendants.)

DEPOSITION UPON ORAL EXAMINATION
OF

RAY HELLWIG

10:00 A.M.

JANUARY 8, 2002

1325 FOURTH AVENUE, SUITE 1500

SEATTLE, WASHINGTON

MARY L. GREEN, CCR, RPR

CSR NO. GREENML497RZ

AR 005326

1 runway?

2 A. I'm not recalling that, no.

3 Q. You're not recalling them or you don't know?

4 A. Well, we've talked about those consultants
5 before. We've had conversations about the ACC's
6 consultants generally.

7 Q. Who is we?

8 A. Staff.

9 Q. Who is staff?

10 A. Ching-Pi Wang and I believe Dave Garland and
11 Ann Kenny.

12 Q. And when was the last such conversation?

13 A. Don't remember.

14 Q. Was it in 2002?

15 A. No.

16 Q. Was it in 2001?

17 A. Possibly.

18 Q. Did you keep any notes of these
19 conversations?

20 A. Not that I recall.

21 Q. Any e-mails?

22 A. Not that I recall.

23 Q. Have you ever been on the Sea-Tac site?

24 A. Yes.

25 Q. More than once?

AR 005327

1 A. Yes.

2 Q. How many times?

3 A. When you say Sea-Tac site, are you talking
4 about office facilities, the area where the runway --
5 proposed runway would be built? What do you mean?

6 Q. Project area, not existing office facilities.

7 A. I've been to the project area two or three
8 times.

9 Q. And over the course of what period of time?

10 A. Two or three years.

11 Q. And how have you happened to be there? Did
12 you just lose your way getting ready to take a flight?

13 A. On trips with technical experts from the
14 operating programs on whom I rely substantially and
15 trust in their judgment. Eric Stockdale and Kevin
16 Fitzpatrick may have been at one, and I believe --
17 well, I don't know if Tom Luster was at one or not
18 earlier as the 401 coordinator. He may have been.

19 The primary purpose, though, was to see the
20 site, see where the embankment would be built, and get
21 an understanding of where some of the environmental
22 impacts would occur to assist in understanding
23 mitigation requirements.

24 Q. Now, I made a joke there, how did you happen
25 to be there, did you miss a flight, and I think you

1 launched right into why you were there, so I assume
2 this was something that you arranged with the port?

3 A. Yes.

4 Q. And did they put a lot of restrictions on
5 your access to the site or did they let you see what
6 you wanted to see?

7 A. We saw what we wanted to see.

8 Q. Went where you wanted to go to assess these
9 things you just described to me; is that right?

10 A. Yes.

11 Q. And did you have to sign a lot of paperwork
12 to do this?

13 A. No.

14 Q. And how long on average did these site visits
15 last?

16 A. A couple hours.

17 Q. Each?

18 A. Approximately.

19 Q. Was some of this by vehicle and some walking?

20 A. Yes.

21 Q. Anyone with a camera?

22 A. I don't remember.

23 Q. Do you recall anybody telling you you can't
24 bring a camera?

25 A. No.

1 Q. And did you take notes?

2 A. I don't remember taking notes.

3 Q. Now, I think when I asked you about the site
4 visits to start with you were describing things that
5 you wanted to see, and you said something about assist
6 in understanding. That was a phrase you used. Do you
7 recall that?

8 A. Yes.

9 Q. So why does the site visit assist you in
10 understanding?

11 A. In working with the technical experts in the
12 program, the 401 coordinator works closely with the
13 technical experts, should work with them, and knowing
14 that I would be having conversations with the technical
15 people and the 401 coordinator, having seen the site, I
16 knew it would add context to or around my understanding
17 of mitigation requirements, what type of wetland was
18 being impacted, for example, what Miller Creek looked
19 like, how the residences backed up to Miller Creek.

20 Q. So as far as you were concerned, that was
21 something that you thought would be useful to your
22 understanding of the project and the request for
23 certification; is that correct?

24 A. Yes.

25 Q. When was the last time you were on the site?

1 A. It's been many months since I've been on the
2 project site, I believe. I'm not recalling -- let me
3 think. Well, we had -- sometime in 2001 I believe I
4 was on the project site. I'm not remembering the exact
5 date. It was from a -- that trip, I believe, was all
6 in a vehicle.

7 Q. And previous trips were multimodal as we
8 said?

9 A. In the vehicle and then walking onto
10 properties to look at aquatic resources.

11 Q. Aquatic resources. For someone who reads
12 this who isn't a member of our little club here, you're
13 talking about streams and wetlands and that sort of
14 thing?

15 A. Wetlands, streams, related habitat.

16 Q. Looking at the September 21 certification,
17 did ecology notify the Environmental Protection Agency
18 before it issued the modified certification?

19 A. I don't recall that.

20 Q. So did ecology get approval from the
21 Environmental Protection Agency for the modifications
22 in the September 21 certification?

23 A. Not that I'm aware of.

24 Q. So to your knowledge, has ecology ever
25 notified EPA that the original August certification was

**E
X
H
I
B
I
T** **C**

AR 005332

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

ACC'S CR 34(a)(2) REQUEST FOR
ENTRY UPON PORT PROPERTY
FOR INSPECTION AND OTHER
PURPOSES

TO: PORT OF SEATTLE ("Port");

AND TO ITS COUNSEL: Jay Manning and Gillis Reavis, Marten Brown, Inc.;
Roger Pearce and Steven Jones, Foster Pepper &
Shefelman;
Linda Strout and Traci Goodwin, Port of Seattle

**REQUEST FOR ENTRY UPON LAND FOR INSPECTION AND OTHER
PURPOSES.**

Pursuant to the PCHB's October 30, 2001, Prehearing Order and CR 34(a)(2),
ACC requests that the Port permit ACC and its experts to enter upon Port property
for the purpose of "inspection and measuring, surveying, photographing, testing or
sampling the property." CR 34(a)(2).

AR 005333

1 **Scope of Request.** ACC requests that the Port permit ACC and its experts to
2 enter upon the portions of the Port property upon which the Port proposes to
3 construct the Third Runway and Related Projects as described in the October 25,
4 2000, JARPA application (as amended).
5

6 **Time, Place and Manner of Inspection.** ACC requests for itself and its
7 experts entry to the Port property on three dates between mid-December 2001 and
8 mid-January 2002. ACC will coordinate scheduling with its experts.

9 **Time for Response.** Pursuant to CR 34(b) you must serve a written response
10 to this request within 30 days after this request is served upon you. Space for your
11 response is provided below. If you object to this request, please provide sufficient
12 information regarding the basis for your objection to allow ACC to make a motion
13 to compel pursuant to Civil Rule 37.
14

15 **RESPONSE:**
16
17
18
19
20
21
22
23
24
25

AR 005334

1 Request to permit entry upon land or property dated this 26th day of
2 November, 2001.

3 **HELSELL FETTERMAN LLP**

4
5 By: 

Peter J. Ehlick, WSBA No. 8809
6 Michael P. Witek, WSBA No. 26598
7 Attorneys for Appellant Airport
Communities Coalition

8 G:\LU\ACC\PCHB\Discovery\CR34req for entry.doc
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AR 005335

1 SIGNED on behalf of Port of Seattle

2 By: _____
3 Signature

4 _____
5 Printed Name

6
7 STATE OF WASHINGTON)
8 COUNTY OF _____) ss:

9 _____, being first duly sworn, on oath deposes
10 and says:

11
12 That _____ is the _____ for the
13 Respondent named herein, has read the request for entry upon Port property
14 contained herein and the answers and responses thereto; believes the response to
15 be true and correct; and has not interposed any objection for any improper purpose,
16 such as to harass or to cause unnecessary delay or needless increase in the cost of
17 litigation.

18 SUBSCRIBED AND SWORN to before me this . day of _____, 2001.

19 _____
20 NOTARY PUBLIC in and for the State of
21 Washington residing at _____
22 _____
23 My commission expires _____

24 _____, attorney for Port of Seattle, certifies that (s)he
25 has read the response and objection (if any) to the foregoing request for entry upon
Port property and, to the best of her/his knowledge, information, and belief formed
after a reasonable inquiry they are (1) consistent with these rules and warranted by
existing law or a good faith argument for the extension, modification, or reversal of
existing law; (2) not interposed for any improper purpose, such as to harass or to
cause unnecessary delay or needless increase in the cost of litigation; and (3) not

1 unreasonably or unduly burdensome or expensive, given the needs of the case, the
2 discovery already had in the case, the amount in controversy, and the importance
3 of the issues at stake in the litigation.

4 By: _____
5 (WSBA No. _____)
6 Attorney for Port of Seattle

7 g:\lu\acc\pchb\discovery\cr34req for entry.doc
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AR 005337

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

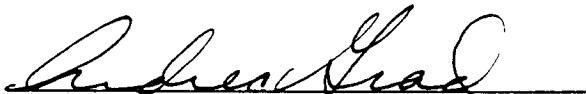
CERTIFICATE OF SERVICE

I hereby certify that I have on this 26th day of November, 2001, served
ACC's CR 34(a)(2) Request for Entry Upon Port Property for Inspection and Other
Purposes on the following persons, by legal messenger:

Jay J. Manning
Gillis E. Reavis
Marten & Brown LLP
1191 Second Avenue, Suite 2200
Seattle, WA 98101

Roger Pearce
Steven Jones
Foster Pepper & Shefelman
1111 Third Avenue, Suite 3400
Seattle, WA 98101

Linda J. Strout, General Counsel
Traci M. Goodwin, Senior Port Counsel
Port of Seattle, Legal Dept.
Pier 69
2711 Alaskan Way
Seattle, WA 98121


Andrea Grad

AR 005338

**E
X
H
I
B
I
T**

AR 005339

Witek, Michael P.

From: Witek, Michael P.
Sent: Wednesday, December 12, 2001 1:25 PM
To: Steven G. Jones (E-mail)
Subject: Site Visit Activities

Dear Steve:

Per our discussion of December 3, 2001, here is a description of the types of activities ACC may pursue during the site visit requested in our November 26, 2001, CR 34 request for entry. We are providing this as a courtesy: there is no obligation to provide such detail in order to obtain a site inspection under the Rule. In any event, discussion of this description should not delay further the Port's response to our request for dates for the site visits, since these need to be coordinated with the deposition schedule.

Persons attending would include one or two client representatives, counsel, paralegal(s), and the experts identified in ACC's November 15, 2001, Witness List.

The site visit would include general inspection and observation including but not limited to the following activities.

Observe and photograph wetland complexes in the Master Plan area and in the Miller, Walker and Des Moines Creek watersheds, and take samples by hand auger.

Observe, photograph and take samples of the streams within the Master Plan area, including existing stormwater outfalls and discharge gauging stations, any stations downstream of Port outfalls and proposed locations for flow augmentation outfalls.

Observe and photograph the area proposed for construction of the embankment and MSE wall.

Observe, photograph and take samples of the stockpiled fill material and any areas cleared, graded or otherwise disturbed in anticipation of construction.

AR 005340

**E
X
H
I
B
I
T**

AR 005341

Witek, Michael P.

From: Steven Jones [Jones@foster.com]
Sent: Tuesday, December 18, 2001 10:29 AM
To: Witek, Michael P.
Cc: Traci Goodwin (E-mail); Roger Pearce; Gillis Reavis (E-mail)
Subject: RE: response to voicemail from earlier today

Mike, please give me a call as soon as you have completed your meeting so we can talk about the stipulation and remaining scheduling issues. I would like to patch Gil Reavis in on that call so we can talk about scheduling Tom Luster.

With respect to the site visit, we still need some more detail from you. You have not specified precisely who will be visiting. There are a number of security concerns that require that the Port know specifically who will be coming, specifically where they want to go and specifically what they want to do. I also need to know from you why you cannot rely on reports of stormwater or other samples that are routinely provided to Ecology. If there is a reason that you need to verify those sampling reports, or if you have a basis for contending that they are inaccurate, then please provide it to us. Please understand that we are not trying to deny you your legitimate discovery, but the Airport is a secured area, with security requirements mandated by the FAA. This is not a normal site visit to private property or a commercial business site.

-----Original Message-----

From: Witek, Michael P. [mailto:mwitek@helsell.com]
Sent: Monday, December 17, 2001 5:30 PM
To: Steven Jones
Subject: response to voicemail from earlier today

Steven:

my direct dial is 689-2137. email is mwitek@helsell.com. I go by Mike unless signing a letter or pleading.

I believe Andrea Grad sent an email to you earlier today proposing dates for most of the people referenced in your email. I am hopeful that we can schedule dates for others this week. I am meeting with the other ACC attorneys tomorrow at 10:00am and will get back to you on the stipulation after the meeting. Also, we are very interested in getting dates for site visits.

thanks,

Mike

AR 005342

**E
X
H
I
B
I
T**

AR 005343

Witek, Michael P.

From: Witek, Michael P.
Sent: Thursday, December 27, 2001 9:49 AM
To: Steven G. Jones (E-mail); Roger A. Pearce (E-mail)

Steve:

The Port's December 18, 2001, response to ACC's CR 34 site visit request is not moving us forward. We suggest a telephone conference without delay to come to an agreement on ACC's Request for Entry. ACC and its experts need to go on the site to prepare for the hearing on the merits. Delay in proposing dates compresses the advance notice we can give our experts, making it less likely they can participate. As we have noted before, it makes no sense to expect our experts to make themselves available for deposition before they have been permitted on the site.

We filed our CR 34 request for entry on November 26, 2001. In response, you asked me to provide more specific information about who would be on the site visits and what activities were proposed, but offered no dates for entry so that we could schedule ahead. As a courtesy, we polled our experts for responses to your requests for information, even though they are not contemplated under the discovery rules, and, after receiving responses, provided the requested information on December 12, 2001. That response also reminded of the immediate need to get dates scheduled for the site visits and about the problems which would result in deposing our experts before the site visits had occurred.

The December 18 email we received in response still offers NO DATES, and instead raises the bar, requiring that ACC provide still "more details" as to who will be attending, where they want to go and what they want to do. It also demands that ACC explain to the Port's satisfaction why it wants to examine water and soil rather than take the Port's word, for example, as to what a water or soil sample might show.

As stated in my December 12, 2001, email, the people who will attend are ACC's experts, identified in our November 15, 2001, Witness List, Counsel for ACC and our paralegal, Ms. Grad. Two additional client representatives from the ACC will attend, depending on the dates.

Not having been on the site, it would be impossible for ACC to provide you with a detailed itinerary, and such a request is not consistent with CR 34 or with "security concerns." During her deposition, Ecology's Ms. Kenny testified that she has been to the site at least three times, including one visit with counsel for Ecology and the Port, which extended to any and all portions of the site. The PCHB itself had no trouble in scheduling a site visit without successive demands from the Port for information. Others have had similar access. ACC is entitled to no less under the discovery rules. Further, the rules do not require ACC to establish some "probable cause" for taking water or soil samples.

In the absence of some movement by the Port on the site visit issue, it will be difficult to proceed with the depositions of ACC witnesses. This in turn may affect the hearing schedule as a whole. We suggest therefore that the Port provide the requested dates now. 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 as witnesses 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.

We look forward to speaking with you soon.

Mike Witek

AR 005344

**E
X
H
I
B
I
T**

AR 005345

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1148

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

ACC'S CR 34(a)(2) REQUEST FOR
ENTRY UPON PORT PROPERTY FOR
INSPECTION AND OTHER PURPOSES
AND RESPONSES AND OBJECTION
OF RESPONDENT PORT OF SEATTLE

TO: PORT OF SEATTLE ("Port");

AND TO ITS COUNSEL: Jay Manning and Gillis Reavis, Marten Brown, Inc.;
Roger Pearce and Steven Jones, Foster Pepper & Shefelman;
Linda Strout and Traci Goodwin, Port of Seattle

REQUEST FOR ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES.

Pursuant to the PCHB's October 30, 2001, Prehearing Order and CR 34(a)(2), ACC requests that the Port permit ACC and its experts to enter upon Port property for the purpose of "inspection and measuring, surveying, photographing, testing or sampling the property." CR 34(a)(2).

Scope of Request. ACC requests that the Port permit ACC and its experts to enter upon the portions of the Port property upon which the Port proposes to construct the Third Runway and Related Projects as described in the October 25, 2000, JARPA application (as amended).

ACC'S CR 34(a)(2) REQUEST FOR ENTRY UPON PORT PROPERTY FOR INSPECTION AND OTHER PURPOSES AND RESPONSES AND OBJECTIONS OF RESPONDENT PORT OF SEATTLE - 1

FOSTER PEPPER & SHEFELM
1111 THIRD AVENUE, SUITE
SEATTLE, WASHINGTON 98101
206-447-4400

50286593.01

COPY

AR 005346

1 **Time, Place and Manner of Inspection.** ACC requests for itself and its experts entry to
2 the Port property on three dates between mid-December 2001 and mid-January 2002. ACC will
3 coordinate scheduling with its experts.

4 **Time for Response.** Pursuant to CR 34(b) you must serve a written response to this
5 request within 30 days after this request is served upon you. Space for your response is provided
6 below. If you object to this request, please provide sufficient information regarding the basis for
7 your objection to allow ACC to make a motion to compel pursuant to Civil Rule 37.

8 **RESPONSE:**

9 **OBJECTIONS:**

10 1. **Respondent Port of Seattle ("Port") objects to the above request to the extent**
11 **it attempts to impose requirements beyond the Superior Court Civil Rules or the Prehearing**
Order entered by the Pollution Control Hearings Board in this action.

12 2. **The Port objects to the above request because it is vague and ambiguous,**
13 **overbroad and unduly burdensome.**

14 3. **The Port objects to the above request to the extent it seeks discovery not**
15 **relevant to this action and beyond the scope of CR 26. In particular, the scope of the present**
16 **appeal involves whether the Washington Department of Ecology had reasonable assurance**
17 **that the planned improvements requiring a §404 permit under the Clean Water Act will**
conform to state water quality standards. ACC's request to test existing improvements at
the Port in an attempt to collaterally attack the Port's existing §402 permit for existing
permitted facilities is neither relevant to the present appeal nor permitted by controlling
law.

18 4. **The Port objects to the above request because it fails to specify any reasonable**
19 **time, place and manner for the proposed inspection and fails completely to specify the items**
20 **to be inspected with any reasonable particularity. Even after repeated requests for**
21 **clarification by the Port of Seattle, ACC has failed to specify precisely who the persons are**
22 **that it wishes to have access to Seattle Tacoma International Airport property, precisely**
23 **where those persons want to go, what they want to test, and where they want to test.**
24 **Instead, ACC has merely stated that it wants all of its "experts" to come onto STIA and test**
wetlands, dirt and water at the existing STIA operation, without specifying any locations or
rationale for the proposed inspections. This overbroad request does not conform to the
requirements of CR 34. The request is also unduly burdensome because STIA is a secure
facility and, particular after the events of September 11, 2001, security issues at STIA are of
paramount concern, especially in the area of the operational airfield, which is included in
the scope of ACC's request.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Request to permit entry upon land or property dated this 26th day of November, 2001.

HELSELL FETTERMAN LLP

By: _____
Peter J. Eglick, WSBA No. 8809
Michael P. Witek, WSBA No. 26598
Attorneys for Appellant Airport Communities
Coalition

SIGNED on behalf of Port of Seattle

DATED this 24th day of December 2001.

PORT OF SEATTLE

Linda J. Strout
Linda J. Strout, General Counsel, WSBA No. 9422
Traci M. Goodwin, Senior Port Counsel, WSBA No.
14974

FOSTER PEPPER & SHEFELMAN PLLC

Roger A. Pearce
Roger A. Pearce, WSBA No. 21113
Steven G. Jones, WSBA No. 19334

MARTEN & BROWN LLP

Jay J. Manning
Jay J. Manning, WSBA No. 13579
Gillis E. Reavis, WSBA No. 21451

Attorneys for Port of Seattle

**E
X
H
I
B
I
T**

AR 005350

Witek, Michael P.

From: Steven Jones [JonesS@foster.com]
Sent: Friday, December 28, 2001 4:14 PM
To: Witek, Michael P.
Cc: Traci Goodwin (E-mail); Elizabeth Leavitt (E-mail); Roger Pearce; Gillis Reavis (E-mail)
Subject: Response to your message on site visit

Mike:

I am writing in response to your voice-mail of this afternoon regarding ACC's request for a site visit to Sea-Tac International. I think that your suggestion that we try to establish any points of agreement between the Port and ACC with respect to a site visit by your clients and experts is a good one. Accordingly, Roger Pearce and I have been in contact with officials at the Port today regarding the security issues and other constraints that would be applicable to any site visit. I have outlined them below:

First, the Port needs to know specifically who will be visiting. Security at the airport requires that all persons must be escorted. This means that the group be of a manageable size (e.g. 4-5 people). Your generic request that all of ACC's experts, some attorneys and client representatives is unreasonable.

Second, we need to know specifically where ACC wishes to go. The Port must notify any contractors who are working in an area of a site visit, so that appropriate hold harmless provisions can be executed. Appropriate hold harmless agreements will also be required from those ACC representatives (or experts) undertaking the site visit.

Third, if sampling is to be conducted, the Port needs to have an appropriate expert there to review any sampling or to conduct its own sampling as a control. I have been informed that on a previous occasion, Port and ACC representatives split samples so as to avoid conflicts over sampling protocols or sampling techniques. We believe this is a good approach and would offer that as an option that is acceptable to the Port.

Fourth, we need to know specifically what ACC wishes to sample or photograph. This will allow us to arrange for appropriate Port personnel to accompany any site visit and assure that appropriate releases are obtained from contractors.

Finally, the Port will not allow access onto the airfield. This is not reasonable given the impact to airport operations that this would entail.

Within those parameters, we would be happy to discuss any reasonable requests for a site visit by ACC experts or representatives. Both Roger and I will be here on Monday (I will be here until 12:00 -- Roger will be here in the afternoon). We will not be in on Tuesday, but will be available on Wednesday, January 2. Please let me know when you would like to schedule a call on these issues.

AR 005351

Steven G. Jones

Foster Pepper & Shefelman PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101

Direct phone: 206-447-8902
Direct fax: 206-749-1962
Mobile: 206-226-2897

E-mail: jones@foster.com
Web: www.foster.com

AR 005352

1/11/02

AR 005353

E
X
H
I
B
I
T

FOSTER PEPPER & SHEFELMAN PLLC
ATTORNEYS AT LAW



Direct Phone
(206) 447-8902

Direct Facsimile
(206) 749-1962

E-Mail
JoneS@foster.com

January 4, 2002

VIA FACSIMILE

Mr. Kevin Stock
Mr. Michael Witek
Helsell Fctterman, LLP
1325 Fourth Avenue
Suite 1500
Seattle, WA 98101

Re: ACC's Requested Site Visit to Sea-Tac International

Dear Kevin and Michael:

I am writing as a follow-up to our telephone discussion yesterday regarding ACC's request for a site visit to Sea-Tac International ("STIA"). While the Port will accommodate a reasonable request for a site visit that accords with CR 34, ACC's current demands are far in excess of those allowed under the rule. Based on the discussions yesterday, we understand ACC's position to be as follows:

- 17 people must be allowed to visit the site. This group includes all 9 of ACC's experts, 5 attorneys and one paralegal, and two unnamed client representatives;
- ACC demands that it be allowed to take hand-auger samples from any and all of the more than 18 acres of wetlands within the project area. Designation of which wetlands are to be sampled, the sample location and the method of sampling will not be made prior to the visit, but instead will be made at the experts' discretion, during the site visit;
- ACC demands to be allowed to take samples from Miller, Des Moines and Walker Creek, at any point on the project site, with designation of the types of samples and sample location to be made by ACC's experts during the site visit;
- ACC demands access to the entire proposed embankment area "from north to south and east to west;"

1111 THIRD
AVENUE
Suite 3400
SEATTLE
Washington
98101-3299

Telephone
(206)447-4400
Facsimile
(206)447-9700
Website
WWW.FOSTER.COM

ANCHORAGE
Alaska

PORTLAND
Oregon

SEATTLE
Washington

SPOKANE
Washington

AR 005354

Mr. Kevin Stock
Mr. Michael Witek
January 4, 2002
Page 2

- With respect to stockpiled fill material, ACC demands access to all areas where fill has been stockpiled by the Port, without any restriction and without specifying where or what type of samples are to be taken.

You did concede that ACC's group could be accompanied by Port personnel and that the group could be broken up into a manageable size, but you stated that you anticipated that each group would likely require a day to complete its site visit activities.

CR 34(b) specifically requires that ACC must "set forth the items to be inspected . . . and describe each item with reasonable particularity. The request shall specify a reasonable time, place and manner of making the inspection and performing the related acts." ACC's current position is entirely at odds with those requirements.

In the Port's response to ACC's request for entry upon land, the Port raised the following objections:

(1) ACC is seeking discovery that is beyond the scope of this action and thus beyond the scope of CR 26.

The scope of the present appeal involves whether the Department of Ecology had reasonable assurance that the planned improvements requiring a §404 permit under the Clean Water Act will conform to state water quality standards. ACC's request to test improvements at the Port in an attempt to collaterally attack the Port's §402 permit for existing permitted facilities is neither relevant to the present appeal, nor permitted by controlling law. Even after our telephone conference, ACC continues to maintain that it is entitled to sample any and all stormwater outfalls. In addition, ACC maintains that it is entitled to access any portion of the Port's stockpiled fill, even though ACC has made no contention that the stockpiled fill is placed in waters of the U.S. With the stay of the §401 Certification, there can be no argument that there are fill criteria currently applicable to that fill. In addition, during our phone call, you consistently refused to specify a location of inspection or sampling of any wetland, any stream, any outfall or any portion of the embankment or stockpiled fill. Even assuming for argument's sake that each and every expert must participate in each and every sample (a position we would dispute), it is very difficult to understand why five lawyers, a paralegal and two lay clients have the need to participate in any such sampling.

AR 005355

Mr. Kevin Stock
Mr. Michael Witek
January 4, 2002
Page 3

2. ACC has failed to specify any reasonable time, place and manner for the proposed inspection and completely failed to specify the items to be inspected with any reasonable particularity.

Throughout our phone conversation you refused to accept any restriction on where ACC's representatives could go, or any request that the locations to be visited, samples to be taken, sampling locations or sampling protocols be specified prior to the site visit. Instead, you maintained that CR 34 allowed ACC basically unfettered access to any and all locations on the project site, maintaining that it was the Port that had designated the project site, not ACC, and accordingly, that ACC had no obligation to specify where it wished go within the site. It was your position that any ACC expert could decide, during the site visit, to visit any wetland, any stream, any stormwater outfall, and any portion of the embankment or fill and to take samples using procedures to be designated only during the site visit. Such a position is entirely at odds with CR 34.

3. In addition to going beyond the scope of CR 34, ACC's position is unduly burdensome and entirely unreasonable.

By federal law, STIA is a secure facility and, particularly after the events of September 11, 2001, security issues at STIA are of paramount concern, especially in the area of the operational airfield, which is included in the scope of ACC's request. While you maintained that you did not desire to be allowed access to the airfield, your specification of the range of the embankment, the fill site, and some of the wetlands would include the airfield.

As we have stated previously, the Port will accommodate a reasonable CR 34(b) request for entry upon land, subject to the following conditions:

First, the Port needs to know specifically who will be visiting. Security at the airport requires that all persons must be escorted. This means that the group is of a manageable size (e.g. 4-5 people). ACC's request that 17 experts, attorneys, client representatives and a paralegal is unreasonable, as is your request that the Port accommodate that many persons in groups of 7-8, each of which will require a day for a site visit (using your estimate). Under your assumptions, site visits would require anywhere from four to six working days, if ACC's entire entourage was accompanied by Port personnel/experts.

Second, the Port needs to know specifically where ACC wishes to go. This is not simply a security concern (though that is a paramount issue), but also a requirement of CR 34. In addition, there are contractual and safety concerns if any portion of the site visit includes areas where contractors are working. For this reason, the Port will require all those on the site visit to sign a hold harmless agreement protecting both the Port and those contractors currently working on site.

AR 005356

Mr. Kevin Stock
Mr. Michael Witek
January 4, 2002
Page 4

Third, if sampling is to be conducted, the Port needs to have an appropriate expert there to review any sampling or to conduct its own sampling as a control. In my message to Mike Witek of December 28, I offered the alternative of having ACC and the Port split samples so as to avoid conflicts over sampling protocols or sampling techniques. I was disappointed that you had not even raised this proposal with any of ACC's experts prior to our phone call yesterday morning. In the event that you ultimately reject this offer, the Port's experts will be taking split samples at the same time as ACC's experts, as a control.

Fourth, the Port needs to know specifically what ACC wishes to sample or photograph. This will allow the Port to arrange for appropriate personnel to accompany any site visit and assure that appropriate releases are obtained from contractors. Here again, this is not a requirement the Port manufactured, but it is a requirement under CR 34.

Fifth, the Port will not allow access onto the airfield. This is not reasonable given the impact to airport operations that this would entail.

Within those parameters, we remain willing to discuss any reasonable requests for a site visit by ACC experts or representatives and believe that a site visit can be accommodated some time next week. If ACC continues to maintain its current position, then we would suggest that the issue be resolved by a conference call with the Board at the earliest possible time so as to avoid any delay in discovery.

Sincerely,

FOSTER PEPPER & SHEFELMAN PLLC



Steven G. Jones

cc: Elizabeth Leavitt
Traci Goodwin
Tom Newlon
Gillis Reavis
Roger Pearce

AR 005357

Law Offices
HELSELL
FETTERMAN
A Limited Liability Partnership

January 8, 2002

Michael P. Witek
Attorney At Law

Sent via FAX and Mail

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

Re: PCHB No. 01-160
CR 34 Request for Entry (Site Visits)

Dear Steven:

This is in response to your letter of January 4, 2001, regarding ACC's CR 34 Request for Entry. We had hoped that our telephone conference on January 3, 2002, would have resulted in progress on this request. Instead, the January 4 letter reflects that the conference was used as a springboard for letter writing rather than problem solving.

Worse yet, the letter continues the Port's pattern of adding new conditions to make the site visit goal unattainable, and materially distorts some points ACC made in explaining how the site visit ought to be conducted while overlooking others. And, despite our repeated requests, the Port still has not offered any dates when such site visits by our experts could occur, despite our repeated requests in writing and by phone, in light of the substantial lead time necessary to schedule experts for such activities. It therefore appears likely that this dispute over the Request for Entry will impact the discovery schedule, including the schedule for deposition of our experts and possibly the hearing schedule in this matter. This appears especially likely in light of your January 7 telephone call which offered no solutions – and no dates – and instead essentially encouraged ACC to file a Motion to Compel before the Board.

We have requested, beginning with my email of December 12, 2001, my email of December 27, 2001, and in our telephone conferences of December 12, 2001, and January 3, 2002, that the Port immediately provide three dates for site visits, so that we can begin to make scheduling arrangements with our experts while negotiations on the terms of the visits continue. Now, in light of the Port's obstructionism ACC's experts have not had the opportunity to inspect the site. The Port should not expect to depose **any** of ACC's experts prior to resolution of the dispute over the Request for Entry. As we have explained numerous times, it makes little sense for the Port to depose ACC's experts prior to a site visit and it would put ACC's experts at an unfair disadvantage to depose them prior to such a visit. We hope, however, that the Port

AR 005359

Mr. Steven G. Jones
January 8, 2002
Page 2

will reconsider its position and avoid unnecessary discovery disputes and consequent delay in the proceeding. Meanwhile, in light of your call on January 7, which asserted that the Port would be unwilling to further change its position, ACC will likely be forced to bring the matter before the Board.

To assist the Port in reconsidering its position, we offer below partial responses to the five apparently nonnegotiable "conditions" demanded in your letter as bases under which the Port will comply with the discovery rules concerning entry:

1. Who Will Attend. As we have stated a number of times, ACC is requesting that the experts identified in its November 15, 2001 witness list, the ACC attorneys and our paralegal, Ms. Grad, and two client representatives from the ACC be permitted on the site. As we discussed on the phone on January 3, 2002, you know the specific names of all persons that will attend, with the exception of the client representatives, and we can provide you with the two additional names shortly after we know the dates for the site visits. This is not an extraordinary number of persons: we understand that the Port has in fact offered site visits specifically in connection with the Third Runway project for far larger groups. As we stated in our telephone conference of January 3, 2002, ACC is willing to work with the Port in organizing the visits into smaller groups if the Port thinks it is necessary although we understand that the Port has previously conducted site visits using a bus. Of course, we will know more about what the group sizes will be after the Port proposes three dates for site visits and we poll our experts for their availability.

2. Where ACC Wishes To Go. As we have stated, ACC is requesting the same access that was provided to the Department of Ecology, as well as to other agencies and entities. For example, during her deposition, Ecology's Ms. Kenny testified that she has been to the site at least three times, including one visit with counsel for Ecology and the Port, which extended to any and all portions of the site. Please consider the following exchange between Ms. Kenny and Mr. Stock during the December 20, 2001, deposition:

Q. But prior to going to the site visit you didn't go through any sort of security clearance?

A. No, no.

Q. Or give your social security number or anything like that?

A. I don't believe so.

AR 005360

Q. Were you required to do anything in advance of these site visits?

A. No.

Q. Where you allowed to see whatever you wanted to see?

A. Yes.

Q. Were you always escorted?

A. Yes.

Q. By a Port person, I'm talking about?

A. Right. We went in Port vehicles and they drove, primary consideration there being sure that you don't cross the pathway of a jet that's taking off or landing.

Q. Sure. Other than that, though, there weren't any restrictions on where you could go or what you could see?

A. No, it was whatever we wanted to go. We'd stop, We'd get out, we'd look around. Whatever we wanted to do was fine.

Q. So if you wanted to see a particular outfall, you told them and you were taken there?

A. Yeah, we went, that's correct.

See, Deposition Transcript of Ann Kenny, December 20, 2001, pages 59-61.

ACC is agreeable to having its site visit parties escorted by Port personnel and is asking for the same access provided to Ecology and others.

Your letter of January 4, 2002, makes a demand that all those visiting the site sign a "hold harmless agreement" a copy of which has not been provided in any event. This demand well illustrates the Port tactic of progressively placing new obstacles in the way of agreement on a site visit even while ACC attempts to address older ones. No mention was made of any need for a hold harmless agreement in any of the Port's correspondence, or in our telephone conferences, or even in the Port's formal objection to the Request for Entry, dated December 24, 2001. In fact, it was not until your email of December 28, 2001, that the Port first insisted that any hold harmless agreement would be required. The PCHB has not been required to sign a hold

harmless agreement for its site visit nor was Ecology for its visits, nor were others not associated with the PCHB case. In our discussion you also were unable to tell us that you signed such an agreement prior to going on the site. Rather, it appears that this requirement is merely another obstacle generated late in the discussion by the Port in order to keep ACC experts off the site.

3. Sampling. Again, this is another issue the Port did not raise until late in the game, even after the Port's December 24, 2001, Objection to ACC's Request for Entry and even though we specifically informed you of the sampling ACC seeks to perform at the site in my email to you of December 12, 2001. You have requested that we agree to "split samples." Rather than take weeks to work out the appropriate protocols for such split samples, the simple solution seems to be for ACC to allow the Port's experts to take their own samples at the same time and at the same location as ACC's experts take samples during the site visits. The specific sampling protocols that ACC's experts may choose to employ to collect samples at the site may be the proper basis for questions during depositions, but it is not a legitimate objection to deny access to the site.

4. What ACC Wishes To Photograph Or Sample. As we have stated, for example, in our email to you on December 12, 2001, ACC and its experts want to observe and photograph wetland complexes in the Master Plan area and in the Miller, Walker and Des Moines Creek watersheds, and take samples by hand auger; observe, photograph and take samples of the streams within the Master Plan area, including existing stormwater outfalls and discharge gauging stations, any stations downstream of Port outfalls and proposed locations for flow augmentation outfalls; observe and photograph the area proposed for construction of the embankment and MSE wall; and observe, photograph and take samples of the stockpiled fill material and any areas cleared, graded or otherwise disturbed in anticipation of construction. ACC cannot reasonably be expected to be more specific than this, particularly given that ACC's experts have not yet been given access to the site. What the Port has **not** credibly explained is why this explanation does not suffice.

5. Access To Airfield. As we have discussed, ACC is **not** requesting access onto the airfield itself. The statement in the January 4, 2002, letter that "this is not reasonable given the impact to airport operations that this would entail" therefore makes no sense except in the context of the Port's resort to any excuse, however farfetched, to deny access to ACC.

We hope that the Port will reconsider its position on ACC's Request for Entry. However, as stated above, unless the Port agrees to provide entry without the current

Mr. Steven G. Jones
January 8, 2002
Page 5

preconditions and provides the requested dates by the close of business on January 8, 2002, we will pursue our remedies and meanwhile will not make ACC experts available for deposition.

Sincerely,

HELSELL FETTERMAN LLP



Michael P. Witek

MPW:mpw

cc: Jay J. Manning / Gillis E. Reavis
Joan M. Marchioro / Thomas J. Young / Jeff B. Kray
Linda Strout / Traci Goodwin
Richard A. Poulin
Rachel Paschal Osborn

G:\LLA\ACC\PC\HB\Discovery\Jones010702.doc

AR 005363

**E
X
H
I
B
I
T**

AR 005364

FOSTER PEPPER & SHEFELMAN PLLC
ATTORNEYS AT LAW



Direct Phone
(206) 447-8902

Direct Facsimile
(206) 749-1962

E-Mail
JaneS@foster.com

January 9, 2002

VIA FACSIMILE

Mr. Michael P. Witek
Helsell Fetterman
1500 Puget Sound Plaza
1325 Fourth Avenue
Seattle, WA 98101-2509

Re: Port of Seattle's Demand That ACC Produce Witnesses for Deposition

Dear Mike:

This letter responds to your letter to me of January 8, 2002 in which you stated that "[t]he Port should not expect to depose any of ACC's experts prior to resolution of the dispute over the Request for Entry." (Emphasis in original). The Port interprets this statement as notice that ACC will refuse to produce any of its witnesses for deposition until the site visit issue has been resolved.

The Board's Pre-Hearing Order of October 30, 2001 provides: "If requested by another party, employees of the parties (including employees of members of appellant ACC) and witnesses whose testimony a party has proffered by declaration shall be made available for deposition by the employer or proffering party without the necessity of a subpoena." Order at 6:10-13 (emphasis supplied). As you know, the Port has both noted the deposition and served subpoenas duces tecum for each of ACC's identified expert witnesses, and those depositions are currently scheduled to commence next week. ACC's unilateral decision to withhold its witnesses from deposition violates both the Pre-Hearing Order, as well as the discovery rules.

Consistent with my phone message to you earlier today and pursuant to CR 26(i), I am confirming that if ACC fails to make its witnesses available for deposition according to the currently agreed schedule, the Port will view ACC's actions as a willful violation of the Prehearing Order and seek appropriate relief.

1711 THIRD
AVENUE
Suite 3400
SEATTLE
Washington
98107-3499

Telephone
(206) 447-4400
Facsimile
(206) 447-9700
Website
WWW.FOSTER.COM

ANCHORAGE
Alaska

PORTLAND
Oregon

SEATTLE
Washington

SPOKANE
Washington

AR 005365

Mr. Michael P. Witek
January 9, 2002
Page 2

The Port intends to go forward with John Strand's deposition, currently scheduled for Monday, January 14, 2002, and with the other depositions of ACC witnesses per the agreed schedule and will expect those witnesses to be made available for deposition.

Sincerely,

FOSTER PEPPER & SHEFELMAN PLLC



Steven G. Jones

- cc: Traci Goodwin
- Tom Newlon
- Roger Pearce
- Gillis Reavis
- Jay Manning
- Joan Marchioro
- Tom Young

AR 005367

Dennis, Michael

From: Witek, Michael P.
Sent: Wednesday, November 21, 2001 12:04 PM
To: Eglick, Peter J.; Stock, Kevin L.; Grad, Andrea E.; Isaacson, Michelle L.
Subject: FW: Depositions for §401 Appeal

fyi

-----Original Message-----

From: Witek, Michael P.
Sent: Wednesday, November 21, 2001 10:30 AM
To: Joan Marchioro; Young, Tom (ATG)
Cc: Roger A. Pearce (E-mail); Steven G. Jones (E-mail); Rachael Paschal Osborn (E-mail)
Subject: Depositions for §401 Appeal

Joan and Tom:

Here is a list of Ecology staff/consultants ACC would like to depose in December:

Ann Kenny
Erik Stockdale
Katie Walter
Kelly Whiting
Dave Garland
Gordon White
Ching Pi Wang
Chung Yee
John Drabeck
Ed O'Brien
Pete Kmet
Ray Hellwig
Kevin Fitzpatrick
Tom Fitzsimmons (possible)
Bob Barwin (possible)
Dan Swenson (possible)

Please let us know of the availability of these deponents in December so we can begin coordinating schedules.

thanks,

Rachael Paschal Osborn
Mike Witek

AR 005368

EXHIBIT

AR 005369

Dennis, Michael

From: Witek, Michael P.
Sent: Thursday, November 29, 2001 2:22 PM
To: Eglick, Peter J.; Stock, Kevin L.; Rachael Paschal Osborn (E-mail); Rick Poulin (E-mail)
Cc: Grad, Andrea E.; Isaacson, Michelle L.
Subject: FW: Depositions for 401 Appeal



Tentative Deposition Schedule ...

fyi

-----Original Message-----

From: Winkelman, Christine (ATG) [mailto:ChristineW@ATG.WA.GOV]
Sent: Thursday, November 29, 2001 2:21 PM
To: Witek, Michael P.
Cc: Marchioro, Joan (ATG); Kray, Jeff (ATG); Young, Tom (ATG); 'Reavis, Gil'; 'Pearce, Roger'; 'Manning, Jay'
Subject: Depositions for 401 Appeal

Mike - attached is a listing of the deponents' availability in December. Please note we are still awaiting available dates from Dave Garland and Tom Fitzsimmons. I anticipate receiving those tomorrow or Monday. Joan will be contacting you in the next day or so regarding the designation of our CR 30(b)(6) witness.

If you have any questions regarding this schedule, you may contact me, Joan, Tom, or Jeff.
Thanks.

<<Tentative Deposition Schedule to Opposing Counsel.doc>>

Deponent	Deposition Date
Katie Walter	12/14 9:00 a.m. Half day Seattle?
Ray Hellwig	12/17 9:00 a.m. All day Seattle?
Erik Stockdale	12/19 10:00 a.m. Half day Seattle?
Ann Kenny	12/20 9:00 a.m. All day Seattle?
Gordon White	12/21 1:00 p.m. Half day Olympia?
Kelly Whiting	12/20 9:00 a.m. All Day Seattle
Dave Garland	Awaiting available dates
John Drabeck	12/14 9:00 a.m. 2 to 4 hours Bellevue?
Kevin Fitzpatrick	12/12 9:00 a.m. All Day Bellevue?
Dan Swenson	12/14 1:00 p.m. 2 to 4 hours Bellevue?
Pete Kmet	12/19 1:00 p.m. to 4:00 p.m. Olympia?
Ching Pi Wang	12/17 9:00 a.m. to 12:00 p.m. Bellevue?
Chung Yee	12/17 1:00 p.m. to 4:00 p.m. Bellevue?
Ed O'Brien	12/20 10:00 a.m. 2 to 4 hours Olympia?
Bob Barwin	12/21 1:00 p.m. 2 to 4 hours Bellevue?
Tom Fitzsimmons	Awaiting available dates

AR 005371

**E
X
H
I
B
I
T**

AR 005372

FOSTER PEPPER & SHEFELMAN PLLC
ATTORNEYS AT LAW



Direct Phone
(206) 447-4676

Direct Facsimile
(206) 749-1997

E-Mail
PearR@foster.com

November 26, 2001

VIA MESSENGER

Mr. Peter J. Eglick
Helsell Fetterman, LLP
1325 Fourth Avenue
Suite 1500
Seattle, WA 98101

RECEIVED
NOV 26 2001
PJE J:YS SFZ
HELSELL FETTERMAN LLP

Re: ACC v. Ecology, PCHB No. 01-160

Dear Peter:

Here is a copy of the Final Natural Resources Mitigation Plan, which was sent to Ecology on or about Tuesday, November 20, 2001, and was received in our office on Wednesday, November 21, 2001. This is being forwarded to you pursuant to Section IV of the Pre-Hearing Order in the above-referenced appeal.

Very truly yours,

Roger A. Pearce

Enclosure

cc: Counsel of Record (w/o enclosures)

1111 THIRD
AVENUE
Suite 3400
SEATTLE
Washington
98101-3299

Telephone
(206)447-4400
Facsimile
(206)447-9700
Website
WWW.FOSTER.COM

ANCHORAGE
Alaska

PORTLAND
Oregon

SEATTLE
Washington

SPOKANE
Washington

**E
X
H
I
B
I
T**

AR 005374

FOSTER PEPPER & SHEFELMAN PLLC
ATTORNEYS AT LAW

✓ DB
gen. conesp.



Direct Phone
(206) 447-4676

Direct Facsimile
(206) 749-1997

E-Mail
PearR@foster.com

December 18, 2001

VIA MESSENGER

Mr. Peter J. Eglick
Mr. Kevin Stock
Helsell Fetterman, LLP
1325 Fourth Avenue
Suite 1500
Seattle, WA 98101

PJE
HEC
9:00
SFA

Re: ACC v. Ecology, PCHB No. 01-160

Dear Peter:

Here is a copy of the December 2001 Low Streamflow Analysis and Summer Low Flow Impact Offset Facility Proposal. This is being forwarded to you pursuant to Section IV of the Pre-Hearing Order in the above-referenced appeal.

1111 THIRD
AVENUE
Suite 3400
SEATTLE
Washington
98101-3299

Telephone
(206) 447-4400
Facsimile
(206) 447-9700
Website
WWW.FOSTER.COM

Very truly yours,

Roger A. Pearce

Enclosure

cc: Counsel of Record (w/o enc.)

ANCHORAGE
Alaska

PORTLAND
Oregon

SEATTLE
Washington

SPOKANE
Washington

EXHIBIT P

AR 005376

January 2002

January 2002							February 2002						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
6	7	8	9	10	11	12	3	4	5	6	7	8	9
13	14	15	16	17	18	19	10	11	12	13	14	15	16
20	21	22	23	24	25	26	17	18	19	20	21	22	23
27	28	29	30	31			24	25	26	27	28		

Monday	Tuesday	Wednesday	Thursday	Friday
1	2	3	4	5
6	7	8	9	10
11	12	13	14	15
16	17	18	19	20
21	22	23	24	25
26	27	28	29	30
31				

9:30am Dep. John Strand
12:30pm Dep. Greg Wingard

9:00am Dep. Kevin Fitzpatrick
10:00am Dep. Gordon White

9:00am Dep. Paul Agid
9:30am Dep. Ed Kavazanjian
10:00am Dep. Katie Waiter
1:00pm Dep. Barry Christopher

9:00am Dep. James Kelley
9:00am Dep. Peter Douglas
10:00am Dep. Tom Fitzsimmons
1:00pm Dep. I. M. Idriss

9:00am Dep. James Mitchell
9:00am Dep. James Thompson
1:00pm Dep. Linda Logan
1:00pm Dep. William Stubblefield

9:00am Dep. Donald Weitkamp
9:30am Dep. Bill Rozeboom
10:00am Dep. Erik Stockdale
1:00pm Dep. Paul Fendt

9:00am Dep. Kevin Brix
9:00am Dep. Michael Bailey
9:30am Dep. Malcolm Leytham
10:00am Dep. Dyanne Sheldon
1:00pm Dep. Keith Smith

9:00am Dep. Scott Tobiason
9:30am Dep. Pat Lucia
9:30am Dep. Peter Willing
1:00pm Dep. Tom Hubbard

9:00am Dep. Michael Cheyne
9:00am Dep. Elizabeth Leavitt
1:00pm Dep. C. Linn Gould
1:00pm Dep. Elizabeth Clark

9:00am Dep. Jan Cassin
9:00am Dep. Norman Crawford
1:00pm Dep. Charles Wisdom
1:00pm Dep. Mary Vigilante

9:00am Dep. Ann Kenny (Cont)
9:00am Dep. William Dunlay
1:00pm Dep. Mike Riley
1:00pm Dep. Steve Swenson