

RECEIVED  
JAN 11 2002

ENVIRONMENTAL  
HEARINGS OFFICE

POLLUTION CONTROL HEARINGS BOARD  
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,	)	PCHB No. 01-160
	)	
Appellant,	)	
	)	THIRD DECLARATION OF STEVEN G.
v.	)	JONES
	)	
STATE OF WASHINGTON	)	
DEPARTMENT OF ECOLOGY, and	)	
THE PORT OF SEATTLE,	)	
	)	
Respondents.	)	

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. The Port propounded its first set of Interrogatories and Requests for Production to ACC on November 9, 2001. A copy of those discovery requests is attached to his declaration as Exhibit A. ACC served the Port with its responses and objections to the Port's discovery requests on December 10, 2001. A copy of ACC's objections and responses is attached to the Third Jones Dec. as Exhibit B.

3. Prior to receipt of ACC's objections and responses, I telephoned counsel for ACC, Michael Witek, to inquire if it was possible to negotiate an agreed scope of discovery regarding the production of documents relating to experts. Mr. Witek responded to this inquiry with a request that the Port defer until after ACC had served its objections and responses to the Port's

THIRD DECLARATION OF STEVEN G. JONES - 1

FOSTER PEPPER & SHEFELMAN PLLC  
1111 THIRD AVENUE, SUITE 3400  
SEATTLE, WASHINGTON 98101-3299  
206-447-4400

ORIGINAL

1 discovery requests, as he believed that those responses might form a basis a stipulation regarding  
2 document production with respect to experts.

3 4. After ACC served its objections and responses to the Port's discovery requests on  
4 December 10, I scheduled a conference call with Mr. Witek in order for the parties to attempt to  
5 negotiate a mutually agreeable scope of discovery with respect to documents. That call took place  
6 on December 12, 2001. I participated in the call along with Roger Pearce and Gillis Reavis  
7 representing the Port. Michael Witek and Kevin Stock participated on behalf of the ACC.


8 5. During the conference call, ACC advanced a position that would have significantly  
9 limited the range of document production. After some negotiation, the parties reached a tentative  
10 agreement on this issue and I agreed to prepare a proposed stipulation that reflected the parties'  
11 negotiations. I transmitted a proposed stipulation to ACC for its review on December 14, 2001.

12 6. Following transmittal of the stipulation, I made repeated inquiry regarding ACC's  
13 response to the stipulation so that it could be finalized and documents produced in anticipation of  
14 the currently scheduled depositions. In response to those inquiries, ACC's counsel (Michael  
15 Witek) told me that the stipulation was under review by ACC and a response would be  
16 forthcoming as soon as all of ACC's lawyers had submitted their comments.

17 7. Finally, on January 7, 2002, more than three weeks after I first transmitted the  
18 proposed stipulation to ACC, ACC sent its response. Upon review of ACC's comments, counsel  
19 for the Port concluded that ACC had so significantly revised the stipulation that it no longer  
20 reflected the original agreement struck during the conference call of December 12.

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

22 Executed at Seattle, Washington this 10<sup>th</sup> day of January, 2002.

23  
24   
25 Steven G. Jones  
26

**A**

**AR 005467**

COPY

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

**RESPONDENT PORT OF SEATTLE'S  
FIRST SET OF INTERROGATORIES  
AND REQUESTS FOR PRODUCTION  
DIRECTED TO APPELLANT AIRPORT  
COMMUNITIES COALITION**

TO: AIRPORT COMMUNITIES COALITION ("ACC")

AND TO: PETER J. EGLICK, Helsell Fetterman LLP; and  
RACHAEL PASCHAL OSBORN, ACC's attorneys of record

**INSTRUCTIONS**

**Interrogatories.** Pursuant to Civil Rules 26 and 33, you are requested to answer the following interrogatories in writing and under oath and, after you and your attorney sign them below, to serve a copy upon the undersigned counsel at the offices of Marten Brown Inc., 1191 Second Avenue, Suite 2200, Seattle, Washington 98101. You must serve your answers within thirty (30) days after the interrogatories are served on you.

**AR 005468**

1  
2 These interrogatories are continuing interrogatories, and require you to provide  
3 supplemental answers which set forth any information within the scope of the interrogatories  
4 acquired or discovered by you following service of your original answers, as required by Civil  
5 Rule 26(e).

6 Space for your answers has been provided after each interrogatory. If the space  
7 provided for the answer is not sufficient, please attach additional pages to the page on which  
8 the answer is set forth.

9 In answering these interrogatories, you are to furnish all information that is available to  
10 you, not just information that is of your own knowledge. This means that you are to furnish  
11 information which is known by or in the possession of you and your employees or agents.

12 **Requests for Production of Documents.** Pursuant to Civil Rules 26 and 34, you are  
13 also requested to produce for inspection and copying the documents described in each request  
14 made below at the offices of Marten Brown Inc., 1191 Second Avenue, Suite 2200, Seattle,  
15 Washington 98101. True and accurate copies of the requested documents may be produced  
16 with the answers to these interrogatories, but in any event shall be provided within thirty (30)  
17 days after these requests are served on you. These requests for production are directed to you  
18 and to your employees and agents, including all persons acting on your behalf. You are  
19 required to produce all documents within your care, custody or control, including but not  
20 limited to documents maintained by an employee, agent or representative, and documents  
21 maintained by any third party from whom you have a contractual or other right to require  
22 production.

23 These requests for production are intended to encompass the original document and all  
24 copies that differ from the original in any respect, for example, by reason of notations made on  
25 the copy.

26 These requests are also intended to encompass all documents of any nature which are  
27 now or have at any time been within your care, custody, or control. If a document is no longer  
28

1  
2 within your care, custody, or control, state what disposition was made of it, who disposed of  
3 it, the reason for such disposition, and the date upon which it was so disposed.

4 **Privilege Log Required by Civil Rule 26(b)(5)**: If you contend that any document  
5 encompassed by any request is privileged, in whole or in part, or if you otherwise object to its  
6 production, then with respect to each such document:

7 1. state with particularity the reason or reasons for your objection and/or the  
8 nature of any privilege asserted;

9 2. identify each person having knowledge of the factual basis, if any, upon which  
10 the privilege or other objection is asserted; and

11 3. state the following:

12 a. the date of the document;

13 b. the nature or type of the document (e.g., whether letter, memorandum,  
14 etc.);

15 c. identify each individual who prepared the document;

16 d. identify each person to whom the document, or a copy thereof, has  
17 been at any time provided;

18 e. identify each person from whom the document has been obtained by  
19 you;

20 f. identify each person or entity having possession of the original of the  
21 document (or if the whereabouts of the original are unknown, identify each person or entity  
22 known or believed to have a copy or copies thereof); and

23 g. all other information necessary to identify the document with sufficient  
24 particularity to meet the requirements for its inclusion in a motion for production pursuant to  
25 Civil Rule 37.

26 If you believe that any of these discovery requests are vague, ambiguous or overbroad,  
27 please contact the attorney who sent the requests, who will make every effort to cure these

1  
2 perceived defects. Please contact such attorney to discuss any such objections prior to  
3 responding at the expiration of the thirty-day period.

#### 4 DEFINITIONS

5 Included below are definitions of the terms used in these interrogatories and requests  
6 for production. Please read these definitions carefully, because some of the terms used in  
7 these interrogatories and requests for production are given definitions which may be more  
8 expansive than the definitions which those terms are given in common usage.

9 1. **"401 Certification"** shall mean, unless otherwise specified, the Department of  
10 Ecology's certification of the Port of Seattle's ("Port") **Third Runway Project** pursuant to the  
11 provisions of 33 U.S.C. 1341 (FWPCA § 401) and shall include the 401 Certification for the  
12 Third Runway Project issued September 21, 2001, the 401 Certification for the Third Runway  
13 Project issued August 10, 2001, all applications submitted in support of 401 certification of  
14 the Third Runway Project (including but not limited to applications for the aforementioned  
15 401 Certifications and any prior applications for 401 Certification of the Third Runway  
16 Project), all hearings conducted on any 401 Certification application for the Third Runway  
17 Project, and all submittals supporting any of the 401 Certification applications for the Third  
18 Runway Project.

19 2. **"And"** shall also mean **"or,"** and **"or"** shall also mean **"and."**

20 3. **"Communication"** means any writing or any oral conversation including, but  
21 not limited to: telephone conversations, meetings, letters, telegraphic and telex  
22 communications, electronic communications, and all documents concerning such writing or  
23 such oral conversation.

24 4. **"Describe,"** when used in reference to matters of fact or contention, means to  
25 state every material fact and circumstance specifically and completely (including, but not  
26 limited to, date, time, location, and the identity of all participants), and whether each such fact

27 **AR 005471**

1  
2 or circumstance is stated on knowledge, information, or belief, or is alleged without  
3 foundation.

4 5. **"Document"** includes, but is not limited to, the original as well as any copies of  
5 any agreement, appointment book, blueprint, book, brochure, cassette, chart, check, check  
6 stub, computer disc or index thereto, computer printout, computer program, computer tape or  
7 disc, contract, correspondence, declarations, desk calendar, drawing, e-mail message, graph,  
8 index, invoice, lease, ledger, letter, log book, manual, map, memorandum, message, minutes,  
9 minute book, model, note, periodical, phonorecord, photograph, pleading, purchase order,  
10 report, reproduction, schedule, sketch, statement, study, summary, survey, tape, telegram,  
11 telex, time sheet, working paper, and any and all other written, printed, typed, taped,  
12 recorded, transcribed, punched, filmed, digitized, or graphic matter, however produced or  
13 reproduced.

14 If a document has been prepared in several copies or additional copies have been  
15 made, and the copies are not identical, each non-identical copy is a separate "document," and  
16 should be produced for inspection and copying.

17 6. **"All Related Documents"** means any document that refers to, relates to,  
18 addresses, or reflects the subject matter of the interrogatory.

19 7. **"Identify"** or **"identity,"** when applied to a **person**, requires that you give the  
20 person's full name, residence address, residence telephone, business or occupation, employer,  
21 job title or description, business address, and business telephone. If you do not have current  
22 information on the person being identified, then give the last known information.

23 8. **"Identify"** or **"identity,"** when used in reference to a **business, organization,**  
24 **or other entity**, means to give the legal name of the entity, a description of its nature (e.g.,  
25 corporation, partnership, joint venture, etc.), any business or assumed names under which it  
26 does business, its principal place of business, and the address of the office(s) of such entity

27 **AR 005472**



1  
2 which are involved in the transaction about which the interrogatory or request is seeking  
3 information.

4 9. "Person" shall include any individual, corporation, partnership, association, or  
5 any other entity of any kind.

6 10. "State with particularity," when used in reference to a matter of fact or  
7 contention, means to state every material fact and circumstance specifically and completely  
8 (including but not limited to date, time, location, and the identity of all participants), and  
9 whether each such fact or circumstance is stated on knowledge, information, or belief, or is  
10 alleged without foundation.

11 11. "Third Runway Project" shall mean, for purposes of these Interrogatories and  
12 Requests for Production, the Port's proposal and efforts to construct a third runway at the  
13 Seattle Tacoma International Airport and any related Master Plan Update projects, including  
14 but not limited to all projects included in the October 25, 2000 Joint Aquatic Resources  
15 Permit Application for the project, as amended.

16 12. The plural shall include the singular, and the singular shall include the plural.

17 **INTERROGATORIES AND REQUESTS FOR PRODUCTION**

18 **INTERROGATORY NO. 1:** For each person who supplied information for or  
19 answered each Interrogatory or Request for Production:

- 20 a. identify the person;
- 21 b. identify which Interrogatory or Request for Production the person answered or  
22 supplied information for; and
- 23 c. state with particularity what information each person provided.

24 **ANSWER:**

25

26

27

28

**AR 005473**

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

**INTERROGATORY NO. 2:** For each person who has knowledge regarding any matter which is relevant to the subject matter involved in the pending action:

- a. identify that person; and
- b. describe in detail the knowledge possessed.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 1:** Please produce all documents within your control supporting or otherwise pertaining to facts stated in your answer to the preceding interrogatory.

**RESPONSE:**

**INTERROGATORY NO. 3:** Identify each person you intend to use as an expert witness in this matter.

**ANSWER:**

**AR 005474**

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

INTERROGATORY NO. 4: For each person identified in the preceding interrogatory, state with particularity:

- a. the subject matter on which the expert is expected to testify;
- b. the substance of the facts and opinions to which the expert is expected to testify; and
- c. a summary of the grounds for each opinion.

ANSWER:

REQUEST FOR PRODUCTION NO. 2: Please produce all documents relied on or reviewed to form the basis of the opinions, facts or other testimony referenced in the preceding interrogatory.

RESPONSE:

INTERROGATORY NO. 5: For each person identified as an expert witness in Interrogatory No. 3, identify each instance in which the person provided opinions or other

1  
2 written or oral testimony before a court of any jurisdiction, the Pollution Control Hearings  
3 Board, or any other administrative review panel/board/officer, such identification to include:

- 4 a. the case/matter name;  
5 b. the client/party represented;  
6 c. the date the opinion or testimony was provided;  
7 d. the form of testimony, including but not limited to deposition, trial/hearing  
8 testimony, declaration, or affidavit;  
9 e. a description of the nature of the testimony/opinion; and  
10 f. each document in your control describing or recording this testimony.

11 ANSWER:

12  
13  
14  
15  
16  
17 REQUEST FOR PRODUCTION NO. 3: Please produce all documents in your  
18 control relating to the 401 Certification or the Third Runway Project.

19 RESPONSE:

20  
21  
22  
23  
24  
25 REQUEST FOR PRODUCTION NO. 4: Please produce all documents in your  
26 control that both (a) relate to the 401 Certification or the Third Runway Project, and (b)  
27 constitute or relate to communications between two or more of the following persons: ACC  
28

1  
2 (including its attorneys); the City of Burien; the City of Des Moines; the City of Federal  
3 Way; the City of Normandy Park; the City of Tukwila; the Highline School District; public  
4 officials, employees, or agents of any of the aforementioned entities; and any other members  
5 of the ACC (including but not limited to private individuals).

6 RESPONSE:

7  
8  
9  
10  
11  
12 REQUEST FOR PRODUCTION NO. 5: Please produce all documents in your  
13 control that both (a) relate to the 401 Certification or the Third Runway Project, and (b)  
14 constitute or relate to communications between one or more of the persons identified in  
15 Request for Production No. 4 and one or more of the following entities: the Department of  
16 Ecology; King County; the U.S. Army Corps of Engineers; the National Marine Fisheries  
17 Service; the U.S. Fish and Wildlife Service; the City of Burien; the City of Des Moines; the  
18 City of Federal Way; the City of Normandy Park; the City of Tukwila; the Highline School  
19 District; elected public officials/representatives; any other state, federal, or local government  
20 entity; or public officials, employees or agents of any of the aforementioned entities.

21 RESPONSE:

22  
23  
24  
25  
26  
27 **AR 005477**



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

ANSWER:

REQUEST FOR PRODUCTION NO. 7: Please produce all documents within your control supporting or otherwise pertaining to facts stated in your answer to the two preceding interrogatories.

RESPONSE:

INTERROGATORY NO. 8: Is it your contention that the 401 Certification issued on September 21, 2001 is inconsistent with the Clean Air Act §§ 7401 to 1767, one of the enforceable policies under Washington's Coastal Zone Management Program?

ANSWER:

INTERROGATORY NO. 9: State with particularity all facts upon which you base your answer to the preceding Interrogatory.

**AR 005479**

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

ANSWER:

INTERROGATORY NO. 10: Identify all persons known to you who have knowledge of facts set out in your answer to the prior two interrogatories, and describe in detail the knowledge possessed.

ANSWER:

REQUEST FOR PRODUCTION NO. 8: Please produce all documents within your control supporting or otherwise pertaining to facts stated in your answer to Interrogatories 8 through 10.

RESPONSE:

INTERROGATORY NO. 11: Identify with particularity those structures related to the Port's Third Runway Project and the 401 Certification that you believe are subject to Dam



1  
2 Safety requirements, and identify the Dam Safety requirements applicable to each such  
3 structure.

4 ANSWER:

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

INTERROGATORY NO. 12: For each structure identified in the preceding  
interrogatory, please state with particularity which Dam Safety performance standards apply  
to each structure.

ANSWER:

INTERROGATORY NO. 13: Do you contend that Condition G of the 401  
Certification issued on September 21, 2001 is insufficient to provide reasonable assurance of  
compliance with state or federal water quality standards?

ANSWER:

**AR 005481**

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

INTERROGATORY NO. 14: If the answer to the preceding interrogatory is not an unqualified no, state with particularity all facts that you believe support your answer to the preceding interrogatory.

ANSWER:

INTERROGATORY NO. 15: Identify all persons know to you who have knowledge of facts set out in your answer to Interrogatories 11 through 14, and describe in detail the knowledge possessed.

ANSWER:

REQUEST FOR PRODUCTION NO. 9: Please produce all documents within your control supporting or otherwise pertaining to facts stated in your answer to Interrogatories 11 through 15.

RESPONSE:

**AR 005482**

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

INTERROGATORY NO. 16: Is it your contention that the Port undertook activities prior to August 10, 2001 that could not have been undertaken lawfully prior to certification of the Third Runway Project under Section 401 of the Federal Clean Water Act?

ANSWER:

INTERROGATORY NO. 17: If the answer to the preceding interrogatory is not an unqualified no, state with particularity all facts that you believe support your answer to the preceding interrogatory.

ANSWER:

INTERROGATORY NO. 18: Identify all persons know to you who have knowledge of facts set out in your answer to Interrogatories 16 and 17, and describe in detail the knowledge possessed.

ANSWER:

**AR 005483**

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

REQUEST FOR PRODUCTION NO. 10: Please produce all documents within your control supporting or otherwise pertaining to facts stated in your answer to the Interrogatories 16 through 18.

RESPONSE:

INTERROGATORY NO. 19: Is it your contention that the 401 Certification issued on September 21, 2001 fails to address the potential structural failure of the Mechanically Stabilized Earth wall and embankment structures, and that such failure to address such a contingency constitutes a violation of Section 401 of the Clean Water Act?

ANSWER:

INTERROGATORY NO. 20: If the answer to the preceding interrogatory is not an unqualified no, state with particularity all facts that you believe support your answer to the preceding interrogatory.

ANSWER:

**AR 005484**

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

INTERROGATORY NO. 21: Identify all persons know to you who have knowledge of facts set out in your answer to Interrogatories 19 and 20, and describe in detail the knowledge possessed.

ANSWER:

REQUEST FOR PRODUCTION NO. 11: Please produce all documents within your control supporting or otherwise pertaining to facts stated in your answer to Interrogatories 19 through 21.

RESPONSE:

REQUEST FOR PRODUCTION NO. 12: Please produce all documents in your control that both (a) relate to the 401 Certification, the Port's Third Runway Project, or this appeal (including but not limited to matters related to acceptance of service of process) and (b) were transmitted between, or otherwise constitute or relate to communications between

1  
2 Thomas R. Luster and one or more of the following persons: ACC (including its attorneys);  
3 the City of Burien; the City of Des Moines; the City of Federal Way; the City of Normandy  
4 Park; the City of Tukwila; the Highline School District; public officials, employees, or agents  
5 of any of the aforementioned entities; or any other members of the ACC (including but not  
6 limited to private individuals). As "documents" is defined for purposes of these  
7 Interrogatories and Requests for Production, this request includes but is not limited to draft  
8 declarations, draft comment letters, and other draft documents.

9 RESPONSE:

10  
11  
12  
13  
14  
15 Interrogatories and Requests for Production dated this 9<sup>TH</sup> day of November, 2001.

16 **MARTEN BROWN INC.**

17 By: 

18 Gillis E. Reavis, WSBA No. 21451

19 Joshua M. Lipsky, WSBA No. 25304

20 Attorneys for Respondent Port of Seattle.

21  
22  
23  
24  
25  
26  
27 **AR 005486**

1 SIGNED on behalf of Airport Communities Coalition.

2 By: \_\_\_\_\_  
3 Signature

4 \_\_\_\_\_  
5 Printed Name

6 STATE OF WASHINGTON )  
7 ) ss.  
8 COUNTY OF \_\_\_\_\_ )

9 \_\_\_\_\_, being first duly sworn, on oath deposes and says:

10 That \_\_\_\_\_ is the \_\_\_\_\_ for the  
11 appellant named herein, has read the interrogatories and requests for production contained  
12 herein and the answers and responses thereto; believes the answers and responses to be true  
13 and correct; and has not interposed any answers or objections for any improper purpose,  
14 such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

15 SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
16 2001.

17 \_\_\_\_\_  
18 NOTARY PUBLIC in and for the State of Washington,  
19 residing at \_\_\_\_\_  
20 My commission expires \_\_\_\_\_

21 \_\_\_\_\_, attorney for Airport Communities Coalition., certifies  
22 that (s)he has read the answers, responses, and objections (if any) to the foregoing  
23 interrogatories and requests and, to the best of her/his knowledge, information, and belief  
24 formed after a reasonable inquiry they are (1) consistent with these rules and warranted by  
25 existing law or a good faith argument for the extension, modification, or reversal of existing  
26 law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary  
27 delay or needless increase in the cost of litigation; and (3) not unreasonably or unduly  
28 burdensome or expensive, given the needs of the case, the discovery already had in the case,  
the amount in controversy, and the importance of the issues at stake in the litigation.

By: \_\_\_\_\_  
(WSBA No. \_\_\_\_\_)

Attorney for Airport Communities Coalition.

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 9th day of November, 2001, served Port of Seattle's First Set of Interrogatories and Requests for Production to ACC, on the following persons, in the manner indicated:

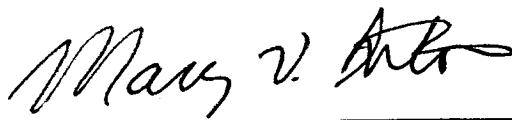
**Via Legal Messenger:**

**Via Facsimile & U.S. Mail:**

<b>Original to:</b> Peter Eglick Kevin Stock Hellsell Fetterman LLP 1500 Puget Sound Plaza 1325 Fourth Avenue Seattle, WA 98111-3846	<b>with copy to:</b> Rachael Paschal Osborn Attorney at Law 2421 West Mission Avenue Spokane, WA 99201
--	--

**Via U.S. Mail:**

<b>with copy to:</b> Joan M. Marchioro Thomas J. Young Assistant Attorneys General Ecology Division P.O. Box 40117 Olympia, WA 98504-0117	<b>with copy to:</b> Roger Pearce Steven G. Jones Foster, Pepper & Shefelman PLLC 1111 Third Avenue, Suite 3400 Seattle, WA 98101
<b>with copy to:</b> Linda Strout Traci Goodwin Port of Seattle 2711 Alaskan Way P.O. Box 1209 Seattle, WA 98111	



Mary V. Liton

**AR 005488**



**B**

**AR 005489**

Law Offices  
**HELSELL**  
**FETTERMAN**  
*A Limited Liability Partnership*

December 10, 2001

**RECEIVED**

Michael P. Witek  
Attorney At Law

DEC 11 2001

**FOSTER PEPPER &  
SHEFELMAN PLLC**

By Hand Delivery

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

Re: ACC's Answers and Objections to Port Interrogatories

Dear Mr. Jones:

Enclosed please find ACC's answers and objections to the Port's first set of Interrogatories and Requests for Production of Documents. We will send you a signature page from ACC when it is provided to us.

Sincerely,

HELSELL FETTERMAN LLP



Michael P. Witek

MPW:mpw

Enclosure

**AR 005490**

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

**RESPONDENT PORT OF SEATTLE'S  
FIRST SET OF INTERROGATORIES  
AND REQUESTS FOR PRODUCTION  
DIRECTED TO APPELLANT AIRPORT  
COMMUNITIES COALITION  
AND ANSWERS AND RESPONSES  
THERE TO**

TO: AIRPORT COMMUNITIES COALITION ("ACC")

AND TO: PETER J. EGLICK, Helsell Fetterman LLP; and  
RACHAEL PASCHAL OSBORN, ACC's attorneys of record

**INSTRUCTIONS**

**Interrogatories.** Pursuant to Civil Rules 26 and 33, you are requested to answer the following interrogatories in writing and under oath, and, after you and your attorney sign them below, to serve a copy upon the undersigned counsel at the offices of Marten Brown Inc., 1191 Second Avenue, Suite 2200, Seattle, Washington 98101. You must serve your answers within thirty (30) days after the interrogatories are served on you.

**AR 005491**

PORT'S FIRST SET OF INTERROGATORIES AND  
REQUESTS FOR PRODUCTION TO ACC  
PAGE 1

**HELSELL  
FETTERMAN**  
*A Limited Liability Partnership*

1500 PUGET SOUND PLAZA P.O. BOX 21846  
SEATTLE, WA 98111-3846 PH: (206) 292-1144

1           These interrogatories are continuing interrogatories, and require you to  
2 provide supplemental answers which set forth any information within the scope of  
3 the interrogatories acquired or discovered by you following service of your original  
4 answers, as required by Civil Rule 26(e).

5           Space for your answers has been provided after each interrogatory. If the  
6 space provided for the answer is not sufficient, please attach additional pages to the  
7 page on which the answer is set forth.

8           In answering these interrogatories, you are to furnish all information that is  
9 available to you, not just information that is of your own knowledge. This means  
10 that you are to furnish information which is known by or in the possession of you  
11 and your employees and agents.

12           **Requests for Production of Documents.** Pursuant to Civil Rules 26 and 34,  
13 you are also requested to produce for inspection and copying the documents  
14 described in each request made below at the offices of Marten Brown Inc., 1191  
15 Second Avenue, Suite 2200, Seattle, Washington 98101. True and accurate copies  
16 of the requested documents may be produced with the answers to these  
17 interrogatories, but in any event shall be provided within thirty (30) days after  
18 these requests are served on you. These requests for production are directed to you  
19 and to your employees and agents, including all persons acting on your behalf.  
20 You are required to produce all documents within your care, custody or control,  
21 including but not limited to documents maintained by an employee, agent or  
22  
23  
24  
25

**AR 005492**

1 representative, and documents maintained by any third party from whom you have  
2 a contractual or other right to require production.

3 These requests for production are intended to encompass the original  
4 document and all copies that differ from the original in any respect, for example, by  
5 reason of notations made on the copy.  
6

7 These requests are also intended to encompass all documents of any nature  
8 which are now of have at any time been within your care, custody, or control. If a  
9 document is no longer within your care, custody, or control, state what disposition  
10 was made of it, who disposed of it, the reason for such disposition, and the date  
11 upon which it was so disposed.  
12

13 **Privilege Log Required by Civil Rule 26(b)(5):** If you contend that any  
14 document encompassed by any request is privileged, in whole or in part, or if you  
15 otherwise object to its production, then with respect to each such document:

16 1. state with particularity the reason or reasons for your objection and/or  
17 the nature of any privilege asserted;

18 2. identify each person having knowledge of the factual basis, if any,  
19 upon which the privilege or other objection is asserted; and  
20

21 3. state the following:

22 a. the date of the document;

23 b. the nature or type of the document (e.g., whether letter,

24 memorandum, etc.);  
25

**AR 005493**

- c. identify each individual who prepared the document;
- d. identify each person to whom the document, or a copy thereof, has been at any time provided;
- e. identify each person from whom the document has been obtained by you;
- f. identify each person or entity having possession of the original of the document (or if the whereabouts of the original are unknown, identify each person or entity known or believed to have a copy or copies thereof); and
- g. all other information necessary to identify the document with sufficient particularity to meet the requirements for its inclusion in a motion for production pursuant to Civil Rule 37.

If you believe that any of these discovery requests are vague, ambiguous or overbroad, please contact the attorney who sent the requests, who will make every effort to cure these perceived defects. Please contact such attorney to discuss any such objections prior to responding at the expiration of the thirty-day period.

**DEFINITIONS**

Included below are definitions of the terms used in these interrogatories and requests for production. Please read these definitions carefully, because some of the terms used in these interrogatories and requests for production are given

**AR 005494**

1 definitions which may be more expansive than the definitions which those terms  
2 are given in common usage.

3 1. **"401 Certification"** shall mean, unless otherwise specified, the  
4 Department of Ecology's certification of the Port of Seattle's ("Port") **Third Runway**  
5 **Project** pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401) and shall  
6 include the 401 Certification for the Third Runway Project issued September 21,  
7 2001, the 401 Certification for the Third Runway Project issued August 10, 2001,  
8 all applications submitted in support of 401 certification of the Third Runway  
9 Project (including but not limited to application for the aforementioned 401  
10 Certifications and any prior applications for 401 Certification of the Third Runway  
11 Project, and all submittals supporting any of the 401 Certification applications for  
12 the Third Runway Project.  
13  
14

15 2. **"And"** shall also mean **"or,"** and **"or"** shall also mean **"and."**

16 3. **"Communication"** means any writing or any oral conversation  
17 including, but not limited to: telephone conversations, meetings, letters,  
18 telegraphic and telex communications, electronic communications, and all  
19 documents concerning such writing or such oral conversation.  
20

21 4. **"Describe"** when used in reference to matters of fact or contention,  
22 means to state every material fact and circumstance specifically and completely  
23 (including, but not limited to, date, time, location, and the identity of all  
24  
25

**AR 005495**

1 participants), and whether each such fact or circumstance is stated on knowledge,  
2 information, or belief, or is alleged without foundation.

3 5. **“Document”** includes, but is not limited to, the original as well as any  
4 copies of any agreement, appointment book, blueprint, book, brochure, cassette,  
5 chart, check, check stub, computer disc or index thereto, computer printout,  
6 computer program, computer tape or disc, contract, correspondence, declarations,  
7 desk calendar, drawing, e-mail message, graph, index, invoice, lease, ledger, letter,  
8 log book, manual, map, memorandum, message, minutes, minute book, model,  
9 note, periodical, phonorecord, photograph, pleading, purchase order, report,  
10 reproduction, schedule, sketch, statement, study, summary, survey, tape, telegram,  
11 telex, time sheet, working paper, and any and all other written, printed, typed,  
12 taped, recorded, transcribed, punched, filmed, digitized, or graphic matter,  
13 however produced or reproduced.  
14  
15

16 If a document has been prepared in several copies or additional copies have  
17 been made, and the copies are not identical, each non-identical copy is a separate  
18 “document,” and should be produced for inspection and copying.  
19

20 6. **“All Related Documents”** means any document that refers to, relates  
21 to, addresses, or reflects the subject matter of the interrogatory.

22 7. **“Identify”** or **“identity,”** when applied to a **person**, requires that you  
23 give the person’s full name, residence address, residence telephone, business or  
24 occupation, employer, job title or description, business address, and business  
25

**AR 005496**



1 telephone. If you do not have current information on the person being identified,  
2 then give the last known information.

3 8. **“Identify” or “identity,”** when used in reference to a **business,**  
4 **organization, or other entity,** means to give the legal name of the entity, a  
5 description of its nature (e.g., corporation, partnership, joint venture, etc.), any  
6 business or assumed names under which it does business, its principal place of  
7 business, and the address of the office(s) of such entity which are involved in the  
8 transaction about which the interrogatory or request is seeking information.

9 9. **“Person”** shall include any individual, corporation, partnership,  
10 association, or any other entity of any kind.

11 10. **“State with particularity,”** when used in reference to a matter of fact  
12 or contention, means to state every material fact and circumstances specifically and  
13 completely (including but not limited to date, time, location, and the identity of all  
14 participants), and whether each such fact or circumstance is stated on knowledge,  
15 information, or believe, or is alleged without foundation.

16 11. **“Third Runway Project”** shall mean, for purposes of these  
17 Interrogatories and Requests for Production, the Port’s proposal and efforts to  
18 construct a third runway at the Seattle Tacoma International Airport and any  
19 related Master Plan Update projects, including but not limited to all projects  
20 included in the October 25, 2000 Joint Aquatic Resources Permit Application for  
21 the project, as amended.

22 **AR 005497**

1           12.    The plural shall include the singular, and the singular shall include  
2 the plural.

3   **GENERAL OBJECTIONS:** ACC objects to the Port's "instructions" to the extent  
4 they impose obligations on ACC or would require discovery beyond the scope of  
5 CR 26 and CR 34. ACC also objects to the definition of "Third Runway Project" in  
6 that the reference to "any related Master Plan Update projects" is vague.  
7

8  
9                           **INTERROGATORIES AND REQUESTS FOR PRODUCTION**

10           **INTERROGATORY NO. 1:** For each person who supplied information for or  
11 answered each Interrogatory or Request for Production:

- 12           a.     identify the person;
- 13           b.     identify which Interrogatory or Request for Production the person  
14 answered or supplied information for; and
- 15           c.     state with particularity what information each person provided.  
16

17           **ANSWER:**

18           Michael P. Witek, Peter J. Eglick, Kevin L. Stock and Rachael Paschal Osborn  
19 supplied information for or answered each interrogatory or request for production.  
20  
21           Dr. John Strand, Dr. Peter Willing, William Rozeboom, Dr. Malcom Leytham, and  
22           Dr. Pat Lucia supplied information for Interrogatory No. 5.

23           **INTERROGATORY NO. 2:** For each person who has knowledge regarding  
24 any matter which is relevant to the subject matter involved in the pending action:  
25

- 1 a. identify that person; and  
2 b. describe in detail the knowledge possessed.

3 ANSWER:

4 Objection: Interrogatory No. 2 is overbroad, unduly burdensome and  
5 beyond the scope of permissible discovery under CR 26(b)(1). "Each person who  
6 has knowledge regarding any matter which is relevant to the subject matter  
7 involved in the pending action" includes any person who has read newspaper  
8 articles relating to the Third Runway or any person who watches TVW.  
9 Notwithstanding the foregoing and without waiver, see ACC's October 10, 2001,  
10 Preliminary list of Legal Issues, Witnesses and Exhibits and the November 15,  
11 2001, updated Preliminary Witness Lists of ACC, the Department of Ecology  
12 ("Ecology"), and the Port of Seattle ("Port").  
13  
14

15  
16 REQUEST FOR PRODUCTION NO. 1: Please produce all documents within  
17 your control supporting or otherwise pertaining to facts stated in your answer to  
18 the preceding interrogatory.  
19

20 RESPONSE: Objection: Request for Production No. 1 is overbroad, unduly  
21 burdensome and not reasonably calculated to lead to the discovery of admissible  
22 evidence. Notwithstanding the foregoing and without waiver, see ACC's Notice of  
23 Appeal dated August 23, 2001; Notice of Appeal dated October 1, 2001; pleadings  
24 and declarations in support of ACC's Motion for Stay; and ACC's October 10, 2001,  
25

1 and November 15, 2001, Witness and Exhibit Lists, all of which have already been  
2 provided to the Port. The Port continues to generate reports and other documents  
3 regarding the Third Runway, which ACC and its experts have not had time to  
4 review. ACC's discovery in this matter is ongoing.  
5

6  
7 INTERROGATORY NO. 3: Identify each person you intend to use as an  
8 expert witness in this matter.

9 ANSWER: Objection: pursuant to the Prehearing Order, final witness lists  
10 are not due until February 8, 2002, at which time ACC will identify each person it  
11 intends to use as an expert witness in this matter. Notwithstanding the foregoing  
12 objection and without waiver, see ACC's List of Witnesses, November 15, 2001,  
13 p. 2.  
14

15  
16 INTERROGATORY NO. 4: For each person identified in the preceding  
17 interrogatory, state with particularity:

- 18 a. the subject matter on which the expert is expected to testify;  
19 b. the substance of the facts and opinions to which the expert is  
20 expected to testify; and  
21 c. a summary of the grounds for each opinion.  
22

23 ANSWER: See the pleadings filed in ACC's Motion for Stay and the  
24 declarations filed in support of ACC's Motion for Stay. See also the comment  
25

1 letters submitted to the Department of Ecology on behalf of ACC, which are  
2 identified in ACC's November 15, 2001 Exhibit List. Subsequent to November 15,  
3 NHC has also submitted an additional comment letter to the Corps of Engineers  
4 regarding the Port's Low Flow analysis.

5  
6 Mr. Wingard has only recently returned from an extended trip out of the  
7 country and has been unavailable. ACC will seasonably supplement its response to  
8 Interrogatory No. 4 with Information regarding Mr. Wingard's testimony. The  
9 declarations of ACC's experts have already been served upon the Port. As the Port's  
10 two-volume "Response to Comments, Master Plan Improvements at Seattle-Tacoma  
11 International Airport" dated April 2001, and submitted to the Department of  
12 Ecology, responds to the comment letters provided by ACC experts referenced  
13 above, it is apparent that the Port already has these comment letters. The Port  
14 continues to revise and release information relating to the Third Runway Project.  
15 ACC's experts are continuing to review documents. As a result, the facts and  
16 opinions to which ACC's experts are expected to testify continue to be developed.  
17  
18

19 REQUEST FOR PRODUCTION NO. 2: Please produce all documents relied  
20 on or reviewed to form the basis of the opinions, facts or other testimony  
21 referenced in the preceding interrogatory.  
22

23 RESPONSE: The documents relied upon or reviewed by ACC's experts are  
24 referenced in the comments and declarations of ACC's experts and are in the public  
25

1 domain. See the documents identified in response to Interrogatory No. 4, which  
2 have already been provided to the Port. The Port continues to revise and release  
3 information relating to the Third Runway Project. ACC's experts are continuing to  
4 review documents. As a result, the facts and opinions to which ACC's experts are  
5 expected to testify continue to be developed.  
6

7  
8 INTERROGATORY NO. 5: For each person identified as an expert witness  
9 in Interrogatory No. 3, identify each instance in which the person provided  
10 opinions or other written or oral testimony before a court of any jurisdiction, the  
11 Pollution Control Hearings Board, or any other administrative review  
12 panel/board/officer, such identification to include:  
13

- 14 a. the case/matter name;
- 15 b. the client/party represented;
- 16 c. the date of the opinion or testimony was provided;
- 17 d. the form of testimony, including but not limited to deposition,  
18 trial/hearing testimony, declaration, or affidavit;
- 19 e. a description of the nature of the testimony/opinion; and
- 20 f. each document in your control describing or recording this testimony.  
21

22 ANSWER:

23 Objection: Interrogatory No. 5 is not reasonably calculated to lead to the  
24 discovery of admissible evidence, is overbroad, and is unduly burdensome.  
25

1 Interrogatory No. 5 is not reasonably calculated to lead to the discovery of  
2 admissible evidence because it seeks information about former testimony without  
3 regard to relevancy to the subject matter of the pending action. For the same  
4 reason, it is overbroad. Interrogatory No. 5 is unduly burdensome in that it is  
5 unlimited with respect to time and seeks information regarding such matters as oral  
6 testimony for which records are not maintained in the ordinary course of business.  
7 Notwithstanding the foregoing and without waiver, information responsive to this  
8 request is provided below:  
9

10  
11 **Dr. John Strand, Columbia Biological Assessments**

12 *Case:* Citizens Against SEATAC Expansion v. Department of Ecology; and Port of  
13 Seattle. *Matter Name:* Legality of Major Modification to the Port of Seattle's  
14 National Pollution Discharge Elimination System (NPDES) Permit for Stormwater  
15 Discharge at Seattle-Tacoma International Airport. Declaration was submitted to  
16 emphasize that Walker and Miller Creeks (project creeks) were valuable resources  
17 worthy of protection, and that the Pollution Control Hearings Board (PCHB) needed  
18 to review the Department of Ecology's (Ecology) handling of the Port of Seattle's  
19 (Port) requested major modification of the NPDES permit.

20 *Case:* Airport Communities Coalition v. State of Washington, Department of  
21 Ecology; and Port of Seattle. *Matter Name:* Stay of Section 401 Certification No.  
22 1996-4-02325 and CZM Concurrency Statement, Issued August 10, 2001, Reissued  
23 September 21, 2001, under No. 1996-4-02325 (Amended-1). Declaration was  
24 submitted in support of ACC's appeal and motion for a stay of the Section 401  
25 Water Qualification Certification for the Port's proposed Master Plan Update  
Improvements at Seattle-Tacoma International Airport granted by Ecology. The  
Declarer's opinion was that the approved Section 401 Certification did not protect  
the valuable and remaining aquatic resources inhabiting the project creeks from the  
proposed construction.

*Case:* Airport Communities Coalition v. State of Washington, Department of  
Ecology; and Port of Seattle. *Matter Name:* Stay of Section 401 Certification No.  
1996-4-02325 and CZM Concurrency Statement, Issued August 10, 2001, Reissued

1 September 21, 2001, under No. 1996-4-02325 (Amended-1). Submitted Declaration  
2 that replied to certain comments made by the Department of Ecology and the Port  
3 in response to Declarer's initial Declaration in the above matter (see Declaration 01-  
4 133). Declarer's reply said that the Department of Ecology and the Port were  
incorrect when they denied that violations of the State's Water Quality Criteria  
occur in the project creeks as a result of stormwater discharges.

5 **Bill Rozeboom and/or Malcolm Leytham, Northwest Hydraulic Consultants**

6 *Case: Heller v. City of Sammamish (Crossings Plat)*

7 *Attorneys: Helsell Fetterman LLP*

8 Retained by appellant of 132 unit subdivision to give testimony regarding  
stormwater impacts.

9 *Case: Heller v. City of Sammamish (Chestnut Lane Plat)*

10 *Attorneys: Helsell Fetterman*

11 Retained by appellant of 35 lot residential subdivision to give testimony regarding  
storwater impacts.

12 *Case: Murphy v. City of Seattle*

13 *Attorneys: Stoel Rives LLP*

14 Retained by plaintiff in case involving flooding of single family residence during the rain-on-  
snow flood of December 1996/January 1997. Provided deposition and trial testimony.

15 *Case: DiBlasi v. City of Seattle*

16 *Attorneys: Karen Willie*

17 Retained by plaintiff in case involving the role of storm drainage in triggering a landslide.  
Provided deposition testimony.

18 *Case: Okanagon Highlands Alliance et al v. Washington State Department of*  
*Ecology and Battle Mountain Gold Company*

19 *Attorneys: Earth Justice Legal Defense Fund*

20 Retained by plaintiff in appeal of water rights and water quality certification for  
21 proposed gold mine in north-central washington. Provided deposition testimony,  
and written and oral testimony before the washington state pollution control  
22 hearings board.

23 *Case: Rainey et al v. PacifiCorp*

24 *Attorneys: Stoel Rives LLP*

25 Retained by defendant in class action case related to operation of hydropower  
projects on the Lewis River during the extreme flood of February 1996.



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

Case: *Covert v. Stowe*

Attorneys: *Carney Badley Smith and Spellman*

Retained by defendant in case involving failure of an impoundment during a severe storm. Provided detailed analysis of storm rainfall depths and an assessment of storm return period.

Case: *Traverso v. City of Kent*

Attorneys: *Bucklin, Keating and McCormack*

Retained by defendant in case involving flooding of commercial property during severe storms in 1990.

Case: *Baydo et. al. v. Pierce County, City of Tacoma, City of Fircrest*

Attorneys: *Rush Hannula and Harkins*

Retained by plaintiffs in case involving severe erosion along the lower reaches of Leach Creek in Pierce County. Provided analysis and trial testimony on the effects of upstream urban development on streamflow rates and volumes.

Case: *Troutlodge Inc. v. Pierce County*

Attorneys: *Brown and Burns*

Retained by plaintiffs in case involving impacts of increased high flows and increased stream turbidity on the operations of a fish hatchery on Clear Creek, Pierce County. Provided input on the effects of urban development on streamflow rates and volumes; identified sources of high stream turbidity; analyzed the effectiveness of Pierce County stormwater control standards.

Case: *Day Island Yacht Club v. Pierce County and City of Tacoma*

Attorneys: *Office of the Prosecuting Attorney, Pierce County*

Retained by defendant in case involving sediment accumulation in a marina. Investigated impacts of urban development and construction practices on delivery of stormwater and sediment to the marina.

Case: *Pepper et. al. v. Welcome Construction*

Attorneys: *Foster Pepper and Shefelman*

Retained by plaintiff in case involving impacts of residential development on high flows and severe sediment accumulation on downslope property. Analyzed the impacts of development on streamflow rates and volumes; estimated sediment accumulation on plaintiff's property; evaluated the defendant's stormwater control system; and provided trial testimony.

Case: *Phillips v. Lozier Homes and King County*

Attorneys: *Richard Aramburu*

**AR 005505**

1 Retained by plaintiff in case involving flooding of plaintiff's property as a result of  
2 the discharge of water from upslope residential development. Reviewed  
3 development's drainage plans; analyzed impacts of development on stormwater  
4 rates and volumes; analyzed the effectiveness of the development's stormwater  
5 control facilities.

6 *Case: Welch v. Landmark Homes*

7 *Attorneys: Peter J. Eglick*

8 Retained by plaintiff in case involving increase in stormwater discharges and  
9 discharge of sediment laden water from upslope residential development into  
10 wetland and ornamental lakes on plaintiff's property. Reviewed development's  
11 drainage plans; reviewed as-built conditions; analyzed effectiveness of  
12 development's stormwater control facilities; and analyzed effectiveness of the  
13 development's erosion control measures.

14 *Case: Queen City Farms v. King County*

15 *Attorneys: Office of the Prosecuting Attorney, King County*

16 Retained by defendant in case involving discharge of stormwater from a county  
17 land fill into a lake adjacent to a superfund site at Queen City Farms. Conducted  
18 detailed state-of-the-art hydrologic modeling of stormwater runoff from the land fill  
19 both for its current level of development and for the pre-development condition;  
20 evaluated the impact of runoff from the land fill on lake levels and overflows from  
21 the lake; analyzed aerial photographs to identify work done by the plaintiff which  
22 adversely affected spill from the lake.

23 *Case: Bjarnason et. al. v. Province of Manitoba*

24 *Attorneys: Office of the Attorney General, Province of Manitoba*

25 Retained by defendant in case involving an alleged increase in the severity and  
duration of flooding of low lying agricultural land brought about by the Provincial  
government's promotion of upstream land drainage projects. Provided hydrologic  
and hydraulic analyses of historical flood events and a critique of engineering  
reports produced by plaintiff's experts.

*Case: Riley v. City of Mill Creek and Snohomish County*

*Attorneys: Keating, Bucklin and McCormack*

Retained by defendant in case involving flooding of residential property. The  
plaintiff alleged that flooding (in this case water backing up from a storm sewer  
system) was caused by inadequate control of stormwater originating from a new  
area of residential development just upstream from the plaintiff's property.  
Provided hydrologic and hydraulic analyses of the storm drainage system in

1 question and identified critical errors in the design of both upstream stormwater  
2 detention facilities and the storm sewer itself.

3 **Dr. Peter Willing, Water Resources Consulting, Inc.**

4 Watershed Defense Fund v. Whatcom County Water Dist. No. 10 (W. District WA  
5 1999). Witness for State of Washington, gave deposition testimony and filed  
6 declaration in support of stay, testimony concerned water quality impacts of sewer  
7 plant expansion.

8 San Juan Co. Hearing Examiner (1998). Witness for Shoal bay residents. Gave  
9 hearing testimony and technical report regarding hydrology, aquifer recharge and  
10 potential for sea water intrusion.

11 San Juan Co. Hearing Examiner (1997-99). Witness for Parks Bay residents. Gave  
12 hearing testimony and technical report regarding hydrology, aquifer recharge and  
13 potential for sea water intrusion.

14 San Juan Co. Hearing Examiner (1999). Witness for neighboring property owners  
15 appealing Conditional Use Permit for shopping mall. Gave hearing testimony and  
16 technical report regarding hydrology, aquifer recharge and interpretation of 72-hour  
17 pump test results.

18 PCHB No. 93-320, 94-7, 94-11 (1994). Witness for water rights holders. Gave hearing  
19 testimony regarding hydrology, interference between wells and sufficiency of DOE  
20 hydrologic analysis.

21 Whatcom Co. Hearing Examiner (1993). Witness for neighboring wells owners  
22 opposing permit for wood waste landfill. Gave hearing testimony regarding  
23 hydrology and potential for well contamination.

24 PCHB No. 87-14 (1987). Witness for Water district. Gave hearing testimony regarding  
25 hydrology of lake Whatcom watershed.

Seattle City Council (1981). Witness for City of Seattle. Gave hearing testimony and  
filed report regarding environmental aspects of coal fired power plant construction.

Seattle City Council (1981). Witness for City of Seattle. Gave hearing testimony and  
filed report regarding environmental aspects of FERC permit to construct Copper  
Creek dam.

**AR 005507**

1 Kitsap County Superior Court (1981). Witness for landowners affected by dredge and  
2 harvest of shellfish. Gave testimony regarding adequacy of environmental impact  
statement.

3 King County District Court (1981). Witness for School parent's association affected by  
4 school closure. Gave testimony regarding adequacy of environmental impact  
5 statement for school closure.

6 **Dr. Patrick Lucia**

7 Dr. Lucia does not keep records in such a manner as to provide detailed information  
8 bout his former testimony, but recalls that he has been an expert witness  
9 approximately 40 times in the past 15 years, and has given trial testimony  
approximately 7 times.

10 Information responsive to Interrogatory No 5. has been requested from Dr.  
11 Ed Kavazanjian, GeoSyntec Consultants; Amanda Azous, Azous Environmental  
12 Sciences; Dyanne Sheldon, Sheldon & Associates; and Greg Wingard, Waste Action  
13 Project. ACC will seasonably supplement its response to Interrogatory No. 5.

14  
15 REQUEST FOR PRODUCTION NO. 3: Please produce all documents in your  
16 control relating to the 401 Certification or the Third Runway Project.

17  
18 RESPONSE: Objection: Request for Production No. 3 is not reasonably  
19 calculated to lead to the discovery of admissible evidence, is unreasonably  
20 cumulative or duplicative, overbroad, and requests production of documents that  
21 are subject to the attorney-client privilege and/or work product doctrine. Request  
22 for Production No. 3 goes far beyond the scope of discovery permitted under CR  
23 26(b). As stated in ACC's August 23, 2001, Notice of Appeal (p. 2), ACC is an entity  
24 established by interlocal agreement and composed of the Cities of Burien, Des  
25

1 Moines, Federal Way, Normandy Park, and Tukwila, and the Highline School  
2 District. ACC was formed for the purpose of, *inter alia*, participating in the  
3 governmental review process related to the Port of Seattle's proposed third runway  
4 project. Thus, your request for production of "all documents in [ACC's] control  
5 related to the 401 certification or the third runway project" could be construed to  
6 include nearly every document ever in ACC's "control" and accordingly, the  
7 request is not reasonably calculated to lead to the discovery of information relevant  
8 to whether or not the Department of Ecology had the requisite reasonable assurance  
9 for issuance of a 401 certification and whether or not the Coastal Zone Management  
10 Act concurrence was appropriately issued. Such a catch-all request is beyond the  
11 scope of discovery permitted under CR 26(b)(1).  
12

13  
14 Under the circumstances, your Request for Production No. 3 is also  
15 unreasonably cumulative or duplicative and unduly burdensome. Unlike a typical  
16 civil action, where discovery is the first opportunity for the parties to learn about  
17 the contentions of an opposing party, the Port already has volumes of materials and  
18 detailed comments from ACC and its experts explaining the basis for ACC's  
19 challenge to the issuance of the 401 certification and CZMA concurrence. Public  
20 records produced by Ecology show that it has been Ecology's practice to forward  
21 comments from ACC to the Port, sometimes within nine minutes of receipt. *See*  
22 attached e-mail dated August 6, 2001, from Ann Kenny to Port of Seattle regarding  
23 comments from Dr. John Strand. Moreover, the Port's two-volume "Response to  
24  
25

1 Comments” dated April 2001, and submitted to the Department of Ecology,  
2 discusses at length the comments and opinions of ACC and its experts. Given the  
3 volume of ACC materials the Port already has, a request for “all documents in  
4 [ACC’s] control relating to the 401 certification or the third runway project” is  
5 clearly unreasonably cumulative or duplicative and needlessly burdensome.  
6

7 The scope of your Request for Production No. 3 is particularly overbroad and  
8 objectionable given the scope of jurisdiction of the Pollution Control Hearings  
9 Board. See RCW 43.21B.110. Environmental boards, such as the Pollution Control  
10 Hearings Board, Shorelines Hearings Board, and Forest Practices Appeals Board,  
11 have appropriately limited such overbroad discovery requests. See, e.g., *Bowers v.*  
12 *Southwest Air Pollution Control Authority*, PCHB No. 98-3 & 31, Order Regarding  
13 Discovery, June 23, 1998; *Seaview Coast Conservation Coalition v. Pacific County*  
14 *and Larry Phelps*, SHB No. 99-020, Order on Request for Clarification and  
15 Reconsideration, November 23, 1999; and *Washington Environmental Council and*  
16 *Washington Trout v. Department of Natural Resources and Weyerhaeuser*, FPAB No.  
17 01-007, Protective Order, March 26, 2001.  
18

19  
20  
21 REQUEST FOR PRODUCTION NO. 4: Please produce all documents in your  
22 control that both (a) relate to the 401 Certification or the Third Runway Project, and  
23 (b) constitute or relate to communications between two or more of the following  
24 persons: ACC (including its attorneys); the City of Burien; the City of Des Moines;  
25

1 the City of Federal Way; the City of Normandy Park; the City of Tukwila; the  
2 Highline School District; public officials, employees, or agents of any of the  
3 aforementioned entities; and any other members of the ACC (including but not  
4 limited to private individuals).

5  
6 RESPONSE:

7 Objection: See objections stated in response to Request for Production No. 3.  
8 Additionally, Request for Production No. 4 is objectionable in that it calls for the  
9 production of documents subject to the attorney client privilege and work product  
10 doctrine. The issue in this case is whether or not the Department of Ecology had  
11 the requisite reasonable assurance for issuance of a 401 certification. A request for  
12 documents that relate both to the 401 Certification or the Third Runway Project  
13 constituting or relating to communications between the entities comprising the  
14 ACC is not reasonably calculated to lead to the discovery of admissible evidence  
15 relevant to whether or not Ecology had the requisite reasonable assurance to issue  
16 the 401 certification. Request for Production No. 4 is particularly objectionable in  
17 that it specifically seeks communications between the entities comprising the ACC  
18 and its attorneys where such communications are clearly subject to the attorney-  
19 client privilege. Request for Production No. 4 seeks communications among or  
20 between "any other members of the ACC (including but not limited to private  
21 individuals)." As stated in response to Request for Production No. 3, ACC is an  
22  
23  
24  
25

**AR 005511**

1 entity composed of governmental entities and no entity or individual participates in  
2 a private capacity.  
3

4 REQUEST FOR PRODUCTION NO. 5: Please produce all documents in  
5 your control that both (a) relate to the 401 Certification or the Third Runway  
6 Project, and (b) constitute or relate to communications between one or more of the  
7 persons identified in Request for Production No. 4 and one or more of the following  
8 entities: the Department of Ecology; King County; the U.S. Army Corps of  
9 Engineers; the National Marine Fisheries Service; the U.S. Fish and Wildlife  
10 Service; the City of Burien; the City of Des Moines; the City of Federal Way; the  
11 City of Normandy Park; the City of Tukwila; the Highline School District; elected  
12 public officials/representatives; any other state, federal, or local government entity;  
13 or public officials, employees or agents of any of the aforementioned entities.  
14  
15

16 RESPONSE:

17 Objection: *See* objections to Request for Production No. 3 and No. 4.  
18 Request for Production No. 5 is cumulative and duplicative--records obtained by  
19 ACC from Ecology under the Public Records Act demonstrate that it is and has  
20 been Ecology's practice to forward communications from ACC to Ecology to the  
21 Port. As to the request for communications between ACC and King County, the  
22 U.S. Army Corps of Engineers, the National Marine Fisheries Service, and the U.S.  
23 Fish & Wildlife Service, these requested communications are "obtainable from  
24  
25



1 some other source (the identified governmental agencies) that is more convenient,  
2 less burdensome, or less expensive.” CR 26(b)(1). To the extent this request for  
3 production seeks public records obtained from Ecology under the public records  
4 act, the Port may obtain them directly from Ecology.  
5

6  
7 REQUEST FOR PRODUCTION NO. 6: please produce all documents in your  
8 control that both (a) relate to the 401 Certification or the Third Runway Project, and  
9 (b) constitute or relate to communications between one or more of the persons  
10 identified in Request for Production No. 4 and news media entities (including daily  
11 newspaper, radio or television news stations, periodicals, news journals) or their  
12 representatives, employees or agents.  
13

14 RESPONSE:

15 Objection: See objections stated in response to Request for Production No. 4.  
16 Request for Production No. 6 is not reasonably calculated to lead to the discovery of  
17 evidence relevant to whether or not the Department of Ecology had the requisite  
18 reasonable assurance to issue the § 401 certification. Thus, this request is clearly  
19 outside the scope of discovery pursuant to CR 26(b)(1). If anything, Request for  
20 Production No. 6 appears calculated to have a chilling effect upon ACC’s  
21 communications with the media and thus is also objectionable based upon First  
22 Amendment grounds. *See e.g., Washington Environmental Council and Washington*  
23

24 **AR 005513**  
25

1 *Trout v. Department of Natural Resources and Weyerhaeuser*, FPAB No. 01-007,  
2 Protective Order, March 26, 2001.

3  
4 INTERROGATORY NO. 6: State with particularity all facts upon which you  
5 base your assertion that the 401 Certification issued on September 21, 2001 is  
6 inconsistent with or is in violation of the requirements or the intent of the Coastal  
7 Zone Management Act or Washington's Coastal Zone Management Program.

8  
9 ANSWER:

10 See ACC's Notice of Appeal, dated August 23, 2001, pages 44-46, and Notice of  
11 Appeal dated October 1, 2001, page 2. ACC's discovery in this matter is  
12 continuing.

13  
14  
15 INTERROGATORY NO. 7: Identify all persons known to you who have  
16 knowledge of facts set out in your answer to the preceding interrogatory and  
17 describe in detail the knowledge possessed.

18 ANSWER: Interrogatory No. 7 is overbroad and unduly burdensome and  
19 beyond the scope of permissible discovery under CR 26(b)(1) as it is not reasonably  
20 calculated to lead to the discovery of admissible evidence. "All persons known to  
21 you who have knowledge of facts set out in your answer to the preceding  
22 interrogatory " includes any person who has read newspaper articles regarding the  
23 Third Runway. Notwithstanding the foregoing and without waiver, see the  
24

25 **AR 005514**

1 November 15, 2001, updated Preliminary Witness Lists by ACC, the Department of  
2 Ecology ("Ecology"), and the Port of Seattle ("Port").  
3

4 REQUEST FOR PRODUCTION NO. 7: Please produce all documents within  
5 your control supporting or otherwise pertaining to facts stated in your answer to  
6 the two preceding interrogatories.  
7

8 RESPONSE: Objection: To the extent Request for Production No. 7 seeks  
9 documents pertaining to "all persons known to you who have knowledge of facts  
10 set out in your answer to [Interrogatory No. 6]" it is overbroad and unduly  
11 burdensome. Notwithstanding the foregoing and without waiver of the objection,  
12 See ACC's November 15, 2001, Exhibit List.  
13

14  
15 INTERROGATORY NO. 8: Is it your contention that the 401 Certification  
16 issued on September 21, 2001 is inconsistent with the Clean Air Act §§ 7401 to  
17 1767, one of the enforceable policies under Washington's Coastal Zone  
18 Management Program?  
19

20 ANSWER: For purposes of this PCHB appeal of the 401 Certification and  
21 CZMA concurrence issued by Ecology in Order No. 1996-4-02325 (Amended-1),  
22 ACC does not intend to argue before the PCHB that the Third Runway Project is  
23 inconsistent with the Clean Air Act, 42 U.S.C. §§ 7401 to 7671.  
24

25 **AR 005515**

1           INTERROGATORY NO. 9: State with particularity all facts upon which you  
2 base your answer to the preceding interrogatory.

3           ANSWER: See answer to Interrogatory No. 8.  
4

5           INTERROGATORY NO. 10: Identify all persons known to you who have  
6 knowledge of facts set out in your answer to the prior two interrogatories, and  
7 describe in detail the knowledge possessed.  
8

9           ANSWER: See answer to Interrogatory No. 8.  
10

11           REQUEST FOR PRODUCTION NO. 8: Please produce all documents within  
12 your control supporting or otherwise pertaining to facts stated in your answer to  
13 Interrogatories 8 through 10,  
14

15           RESPONSE: See answer to Interrogatory No. 8.  
16

17           INTERROGATORY NO. 11: Identify with particularity those structures  
18 related to the Port's Third Runway Project and the 401 Certification that you  
19 believe are subject to Dam Safety requirements, and identify the Dam Safety  
20 requirements applicable to each such structure.  
21

22           ANSWER: Objection: as the Port has yet to produce complete and final  
23 plans and specifications for the Third Runway Project, ACC cannot answer  
24 Interrogatory No. 11 at this time. ACC's discovery regarding Dam Safety  
25

**AR 005516**

1 requirements is ongoing and ACC will respond after final plans and specifications  
2 for the Third Runway Project are provided. Notwithstanding the foregoing and  
3 without waiver, see the February 15 and June 25, 2001 comment letters from  
4 Northwest Hydraulic Consultants.  
5

6  
7 INTERROGATORY NO. 12: For each structure identified in the preceding  
8 interrogatory, please state with particularity which Dam Safety performance  
9 standards apply to each structure.

10 ANSWER: See answer to Interrogatory No. 11. Dam Safety performance  
11 standards are set forth in Ch 173-175 WAC.  
12

13  
14 INTERROGATORY NO. 13: Do you contend that Condition G of the 401  
15 Certification issued on September 21, 2001 is insufficient to provide reasonable  
16 assurance of compliance with state or federal water quality standards?  
17

18 ANSWER: See answer to Interrogatory No. 11.  
19

20 INTERROGATORY NO. 14: If the answer to the preceding interrogatory is  
21 not an unqualified no, state with particularity all facts that you believe support  
22 your answer to the preceding interrogatory.

23 ANSWER: See answer to Interrogatory No. 11.  
24  
25

**AR 005517**



1            ANSWER: Yes.

2  
3            INTERROGATORY NO. 17: If the answer to the preceding interrogatory is  
4 not an unqualified no, state with particularity all facts that you believe support  
5 your answer to the preceding interrogatory.  
6

7            ANSWER: Objection: ACC's discovery regarding the scope of activities  
8 commenced by the Port prior to issuance of the § 401 Certification is ongoing and  
9 ACC has a pending CR 34 request for entry to the Third Runway Project area to  
10 conduct further investigation. To date, ACC has identified what the Port calls  
11 "stockpiling" of fill material as an activity undertaken by the Port, which ACC  
12 contends "could not have been undertaken lawfully prior to certification of the  
13 Third Runway Project under Section 401 of the Federal Clean Water Act." Other  
14 activities include site clearing, grubbing and/or grading.  
15

16  
17            INTERROGATORY NO. 18: Identify all persons know to you who have  
18 knowledge of facts set out in your answers to Interrogatories 16 and 17, and  
19 describe in detail the knowledge possessed.  
20

21            ANSWER: Objection: See response to Interrogatory No. 17. Additionally,  
22 Interrogatory No. 18 is overbroad and unduly burdensome in that "all persons with  
23 knowledge" of the Port's activities would include any person who has read  
24 newspaper articles regarding the third runway. Notwithstanding the foregoing and  
25

1 without waiver, See Declaration of Amanda Azous in support of ACC's Motion for  
2 Stay. Port and Department of Ecology personnel may have such knowledge.

3  
4 REQUEST FOR PRODUCTION NO. 10: Please produce all documents  
5 within your control supporting or otherwise pertaining to facts stated in your  
6 answer to the Interrogatories 16 through 18.

7  
8 ANSWER: Objection: See answer to Interrogatory No 17. Notwithstanding  
9 the foregoing and without waiver, See Declaration of Amanda Azous in support of  
10 ACC's Motion for Stay, which has already been provided to the Port.

11  
12 INTERROGATORY NO. 19: Is it your contention that the 401 Certification  
13 issued on September 12, 2001 fails to address the potential structural failure of the  
14 Mechanically Stabilized Earth wall and embankment structures, and that such  
15 failure to address such a contingency constitutes a violation of Section 401 of the  
16 Clean Water Act?  
17

18 ANSWER: Yes.

19  
20 INTERROGATORY NO. 20: If the answer to the preceding interrogatory is  
21 not an unqualified no, state with particularity all facts that you believe support  
22 your answer to the preceding interrogatory.  
23  
24  
25

**AR 005520**





1  
2           REQUEST FOR PRODUCTION NO. 11: Please produce all documents  
3 within your control supporting or otherwise pertaining to facts stated in your  
4 answer to Interrogatories 19 through 21.  
5

6           RESPONSE: see ACC's Notice of Appeal, dated August 23, 2001, pages 37-  
7 38; and the comment letters by Dr. Patrick Lucia and Dr. Edward Kavazanjian,  
8 regarding embankment fill and west MSE wall, identified in ACC's November 15,  
9 2001 Exhibit List. ACC's notice of Appeal has already been provided to the Port.  
10 As the Port's the Port's two-volume "response to comments" dated April 2001,  
11 discusses at length the February 16, 2001, comment letter from Dr. Pat Lucia and  
12 Dr. Edward Kavazanjian, it is apparent that the Port already has that document.  
13 ACC's discovery in this matter is continuing.  
14  
15

16           REQUEST FOR PRODUCTION NO. 12: Please produce all documents in  
17 your control that both (a) relate to the 401 Certification, the Port's Third Runway  
18 Project, or this appeal (including but not limited to matters related to acceptance of  
19 service of process) and (b) were transmitted between, or otherwise constitute or  
20 relate to communications between Thomas R. Luster and one or more of the  
21 following persons: ACC (including its attorneys); the City of Burien; the City of Des  
22 Moines; the City of Federal Way; the City of Normandy Park; the City of Tukwila;  
23 the Highline School District; public officials, employees, or agents of any of the  
24  
25

**AR 005522**





**Kenny, Ann**

---

**From:** Kenny, Ann  
**Sent:** Monday, August 06, 2001 4:43 PM  
**To:** 'Keith Smith'; 'Elizabeth Leavitt'; 'Paul Fendt'; 'Wendy Clement'; 'Michael Cheyne'  
**Subject:** FW: Sea-Tac Third Runway: Comments on Port of Seattle's New Low Streamflow Analysis by Dr. John Strand



Strand-080601-lowf  
low.doc

Additional comments.

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

**From:** Grad, Andrea E. [mailto:agrad@helsell.com]  
**Sent:** Monday, August 06, 2001 4:34 PM  
**To:** White, Gordon; Kenny, Ann; Hellwig, Raymond; Muffy Walker (E-mail); Gail Terzi (E-mail)  
**Subject:** RE: Sea-Tac Third Runway: Comments on Port of Seattle's New Low Streamflow Analysis by Dr. John Strand

Attached please find comments dated August 6, 2001, by Dr. John Strand of Columbia Biological Assessments regarding the Port of Seattle's July 23, 2001, Low Streamflow Analysis.

We appreciate your consideration of these comments, which are submitted on behalf of the Airport Communities Coalition. We will also be faxing and mailing signature copies to you for your convenience.

Sincerely,

Andrea Grad  
Paralegal  
Helsell Fetterman  
Tel. (206) 292-1144  
agrad@helsell.com

AR 005525

POLLUTION CONTROL HEARINGS BOARD  
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,	)	
	)	No. 01-160
Appellant,	)	
	)	CERTIFICATE OF SERVICE
v.	)	
	)	
STATE OF WASHINGTON,	)	(Section 401 Certification No.
DEPARTMENT OF ECOLOGY; and	)	1996-4-02325 and CZMA concurrency
THE PORT OF SEATTLE,	)	statement, issued August 10, 2001,
	)	Reissued September 21, 2001, under No.
Respondents.	)	1996-4-02325 (Amended-1))
_____	)	

I, Rachel Parks, an employee of Helsell Fetterman LLP, attorneys for the Airport Communities Coalition, certify that:

I am now, and at all times herein mentioned was, a citizen of the United States, a resident of the State of Washington, and over the age of eighteen years.

On December 10, 2001, I caused to be delivered a true and correct copy of Respondent Port of Seattle's First Set of Interrogatories and Requests for Production Directed to Appellant Airport Communities Coalition and Answers and Responses Thereto in the above-captioned case to:

CERTIFICATE OF SERVICE - 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

AR 005526

Via FAX and Mail

Joan Marchioro  
Thomas Young  
Jeff B. Kray  
Assistant Attorneys General  
Ecology Division  
P.O. Box 40117  
Olympia, WA 98504-0117  
Fax: (360) 586-6760

Via Messenger

Roger Pearce  
Steven Jones  
Foster Pepper & Shefelman  
1111 Third Avenue, Suite 3400  
Seattle, WA 98101  
Fax: (206) 447-9700

Via Mail

Linda Strout, General Counsel  
Traci Goodwin, Senior Port Counsel  
Port of Seattle  
P.O. Box 1209  
Seattle, WA 98111

Via Mail

Jay Manning  
Gillis Reavis  
Marten & Brown LLP  
1191 Second Avenue, Suite 2200  
Seattle, WA 98101  
Fax: (206) 292-6301

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

DATED this 10 day of December, 2001, at Seattle, Washington.



\_\_\_\_\_  
Rachel Parks

g:\lu\acc\pchb\certserv-121001.doc

CERTIFICATE OF SERVICE - 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 005527

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

RECEIVED  
JAN 11 2002

ENVIRONMENTAL  
HEARINGS OFFICE

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. PCHB 01-160

CERTIFICATE OF SERVICE

Wendy S. Clement certifies that, on January 11, 2002, I filed/served the following documents on the following persons by the means specified below:

1. Port of Seattle's Motion to Compel Production of Documents and Response to Subpoenas Duces Tecum; and
2. Third Declaration of Steven G. Jones

CERTIFICATE OF SERVICE - 1

**FOSTER PEPPER & SHEFELMAN PLLC**  
1111 THIRD AVENUE, SUITE 3400  
SEATTLE, WASHINGTON 98101-3299  
206-447-4400

**ORIGINAL**

**AR 005528**



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

Joan M. Marchioro  
Thomas J. Young  
Jeff Kray  
Department of Ecology  
2425 Bristol Court S.W., 2nd Floor  
Olympia, Washington 98502  
**By FedEX Overnight-delivery**


Peter J. Eglick  
Kevin L. Stock  
Michael P. Witek  
Helsell Fetterman LLP  
1500 Puget Sound Plaza  
1325 Fourth Avenue  
Seattle, WA 98101-2509  
**By hand-delivery**

Rachael Paschal Osborn  
2421 W. Mission Avenue  
Spokane, WA 99201  
**By FedEX Overnight-delivery**

Richard A. Poulin  
Smith & Lowney, P.L.L.C.  
2317 East John Street  
Seattle, WA 98112  
**By hand delivery**

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

Executed this 11<sup>th</sup> day of January 2002, at Seattle Washington.

  
Wendy S. Clement