

POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION, )  
Appellant, ) PCHB 01-160  
CITIZENS AGAINST SEATAC ) ORDER GRANTING INTERVENTION  
EXPANSION, )  
Intervenor, )  
v. )  
STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY and THE )  
PORT OF SEATTLE, )  
Respondents. )

On August 23, 2001, Airport Communities Coalition (ACC) filed an appeal challenging the § 401 Certification No. 1996-4-02325 issued by the Department of Ecology (Ecology) to the Port of Seattle (Port) on August 10, 2001. As a result of a stipulation between the parties entered by the Board on September 28, 2001, Ecology re-issued the § 401 Certification No. 1996-4-02325 (amended-1) on September 21, 2001. Also as a result of the stipulation, ACC filed a new appeal on the re-issued § 401 Certification No. 1996-4-02325 (amended-1).

On November 30, 2001, Citizens Against SeaTac Expansion (CASE) filed a motion to intervene in the appeal. CASE is a non-profit, local citizens' group which, among other things, acts to protect the local environment and communities from activities associated with the SeaTac International Airport. CASE is involved with another appeal before the Board regarding the National Pollutant Discharge Elimination System permit (NPDES permit) for the airport.

1 Further, CASE was involved in the public involvement stage of the issuance of the § 401  
2 certification at issue in this appeal, including submitting oral and written comments.

3 In response to the motion to intervene, the Port indicates no objection to the intervention  
4 so long as appropriate limits are set to avoid the impairment of the “prompt and orderly conduct  
5 of the appeal.” In particular, the Port requests that CASE:

- 6 1. Not be allowed to raise new issues than those stipulated or imposed by the  
7 Board in this appeal;
- 8 2. Abide by the existing Pre-Hearing Order, including all discovery schedules in  
9 that order;
- 10 3. Not be allowed to present any additional witnesses or exhibits that have not  
11 been listed by the existing parties as of this date

12 Ecology, in its response, concurs with the limits recommended by the Port to be imposed  
13 in any granting of intervention status to CASE. CASE counters in its reply memorandum that it  
14 should be allowed to file additional exhibits beyond the December 14<sup>th</sup> cutoff indicated in the  
15 Pre-Hearing order.

16 WAC 371-08-420 authorizes the Presiding Officer to grant a motion for intervention by  
17 any person “at any time, upon a showing that the petitioner qualifies as an Intervenor pursuant to  
18 Civil Rule 24, that the intervention will serve the interests of justice and that the prompt and  
19 orderly conduct of the appeal will not be impaired.” CR 24 recognizes two types of intervention:  
20 a) intervention as of right; and b) permissive intervention. CR 24 sets forth the requirements as  
21 follows:

1 (a) Intervention of Right. Upon timely application anyone shall be permitted to  
2 intervene in an action: (1) when a statute confers an unconditional right to  
3 intervene; or (2) when the applicant claims an interest relating to the property or  
4 transaction which is the subject of the action and he is so situated that the  
5 disposition of the action may as a practical matter impair or impede his ability to  
6 protect that interest, unless the applicant's interest is adequately represented by  
7 existing parties.

8 (b) Permissive Intervention. Upon timely application, anyone may be permitted to  
9 intervene in an action: (1) When a statute confers a conditional right to intervene;  
10 or (2) When an applicant's claim or defense and the main action have a question  
11 of law or fact in common. When a party to an action relies for ground of claim or  
12 defense upon any statute or executive order administered by a federal or state  
13 governmental officer or agency or upon any regulation, order, requirements, or  
14 agreement issued or made pursuant to the statute or executive order, the officer or  
15 agency upon timely application may be permitted to intervene in the action. In  
16 exercising its discretion the court shall consider whether the intervention will  
17 unduly delay or prejudice the adjudication of the rights of the original parties.

18 Intervention pursuant to CR 24 (b) is, by definition, discretionary. Washington appellate  
19 courts have held that a trial court should disallow intervention only when it will unduly delay or  
20 prejudice the rights of the original parties. *Wilson Sporting Goods v. Pedersen*, 76 Wn. App.  
21 300, 303 (1994). See also *Vashon Island Committee for Self Government v. Washington State  
Boundary Review Board for King County*, 127 Wn.2d 759, 765 (1995).

CASE has shown an interest and prior involvement that warrants participation in this  
appeal. As a result, the request to intervene is hereby GRANTED pursuant to WAC 371-08-420  
and CR 24(b). CASE will be allowed intervention as an appellant with the following limitations:

1. CASE will not be allowed to raise new issues. CASE, like the other parties to  
this appeal, will be limited to those issues which have been stipulated to or  
imposed by the Board in the Second Pre-Hearing Order issued on November  
26, 2001;

