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POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,

Appellant,

v.

DEPARTMENT OF ECOLOGY AND
THE PORT OF SEATTLE,

Respondents.

No. 01-160

PORT OF SEATTLE'S
OBJECTIONS TO ISSUES
PROPOSED BY PETITIONER
AIRPORT COMMUNITIES
COALITION

On November 2, 2001, the parties filed a stipulation agreeing to three of the legal issues to be decided in this case.

Also on November 2, 2001, the petitioner Airport Communities Coalition (ACC) and respondent Port of Seattle filed separate lists of issues on which the parties had not reached agreement. Because the parties have agreed on proposed issues (with the exception of the three issues listed below), the Board need not consider the Port's proposed issues.

On November 9, 2001, the ACC furnished the Port and Ecology with the ACC's revised list of proposed issues, in which the ACC reduced their proposed additional issues from 32 issues to 20 issues. In a conference call, the parties were able to agree on the formulation of most of the issues for this case. The agreed-to issues are being filed with a Board pursuant to a stipulation and order signed by all parties.

AR 006159

ORIGINAL

1 The Port objects to three remaining ACC issues as follows (the issues are numbered as they
2 appeared on the ACC's November 9 revised issue list):

3 ACC Proposed Issue 11.

4 Is there reasonable assurance that §401 and applicable water quality law will not be violated where
5 determination of compliance with dam safety requirements is deferred?

6 OBJECTION:

7 The Port objects to this formulation of the issue as argumentative and assuming facts upon
8 which ACC has the burden of proof. In particular, it assumes that compliance is deferred
beyond the time upon which it is appropriate.

9 The issue here relates to stormwater ponds that might require a dam safety permit pursuant to
10 WAC 173-175. The issue is whether a dam safety permit must be issued prior to issuance of a
11 §401 certification (ACC's position) or whether the §401 certification can require dam safety
permits to be obtained prior to construction of those improvements (the position taken by the
Port and Ecology).

12 Proposed Port Issue 2 is an objective and fair statement of this issue. The Port suggests the
13 following language for an issue statement: "Whether requiring facilities subject to dam safety
14 regulations (Chapter 173-175 WAC) to obtain a dam safety permit prior to commencing
construction provides reasonable assurance that water quality standards will be met."

15 ACC Proposed Issue 18.

16 Is there reasonable assurance that § 401 and applicable water quality law will not be violated if the
17 Port has commenced activities impacting waters of the state prior to § 401 certification of the Third
Runway project?

18 OBJECTION:

19 The Port objects to this issue because it is vague and would include numerous activities
20 outside the jurisdiction of the Board and for which no §401 certification is required (e.g., the
21 operation of the existing Port stormwater and industrial wastewater system). The Port
conducts daily activities pursuant to its existing NPDES permit that impact waters of the state,
all of which are in conformance with that permit, and none of which are the subject of this
22 appeal.

23 If the ACC believes that the Port has filled wetlands or conducted other construction activities
24 without required §404 permits and §401 certification, then the Port believes that issue is
beyond the scope of this appeal. ACC has appealed the §401 certification, and this case will
25 decide whether that certification was appropriately issued. ACC's concerns about activities
that may have occurred prior to issuance of the §401 certification, and for which a §404
26 permit or §401 Certification should have been issued, must be raised in a different forum.

AR 006160

1 ACC Proposed Issue 19.

2 Is there reasonable assurance that § 401 and applicable water quality law will not be violated if the
3 Certification violated the requirements of WAC 173-201A-160 regarding implementation of the
4 water quality standards for nonpoint source and stormwater pollution?

4 OBJECTION:

5 The Port objects to this issue as vague, non-specific, and not giving the parties or the Board
6 any guidance as to the issues to be litigated in this case. The issue as stated merely asks
7 whether the law was violated if the law was violated.

7 The ACC has explained that this issue is a “placeholder” so that if they think up any more
8 allegations, they can shoehorn them in under this issue. The ACC approach is inconsistent
9 with the requirement that the parties state issues specifically, gives the Respondents no ability
10 to prepare their response, and gives the Board no guidance about what the issues will be at the
11 hearing on the merits. The ACC must bring specific issues before the Board. This issue
12 should be stricken.

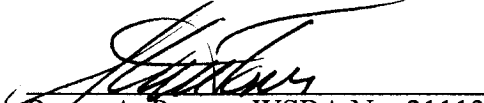
10 Respectfully submitted this 15th of November 2001.

11 PORT OF SEATTLE

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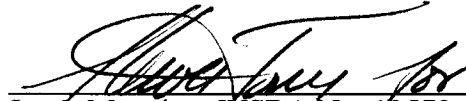
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