

Received by FAX

Nov 2, 01

RECEIVED

NOV - 5 2001

ENVIRONMENTAL
HEARINGS OFFICE

POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

1	AIRPORT COMMUNITIES COALITION,)	
2)	PCHB No. 01-160
3	Appellant,)	
4)	ACC'S SEPARATE STATEMENT
5	v.)	OF LEGAL ISSUES
6)	
7	STATE OF WASHINGTON,)	
8	DEPARTMENT OF ECOLOGY; and)	
9	THE PORT OF SEATTLE,)	
10)	
11	Respondents.)	

12 Appellant Airport Communities Coalition proposes the following legal issues in addition to the

13 Stipulated Statement of Legal Issues filed in this matter on today's date. This statement is issued

14 without prejudice to proposed amendment based on issuance and admissibility of new documents

15 related to the Section 401 Certification.

- 16 1. Does the Amended Section 401 Certification dated September 21, 2001 ("Certification") fail to
- 17 provide reasonable assurance that the Third Runway Project, Master Plan Update and related activities
- 18 ("Third Runway Project") will not violate Section 401 of the Clean Water Act and state water quality
- 19 law?
- 20 2. Does the Certification's reliance on data, reports, and plans that were not in being at the time of
- 21 issuance violate the requirements of Section 401 of the Clean Water Act?
- 22 3. Does the 401 Certification's reliance on future monitoring violate the requirements of Section
- 23 401 of the Clean Water Act and state water quality law?
- 24 4. Will the low flow impacts of the Third Runway Project violate the requirements of Section 401
- 25 of the Clean Water Act and state water quality law?

AR 006202

ACC'S SEPARATE STATEMENT
OF LEGAL ISSUES - 1

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

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

ORIGINAL

1 5. Do the provisions of Condition I of the Certification and the low flow technical analysis and
2 mitigation plan, as adopted into the Certification, violate the requirements of Section 401 of the Clean
Water Act and state water quality law?

3 6. Does the Port's failure to obtain a water right to implement the low flow mitigation
4 requirements of the Certification violate the requirements of Section 401 of the Clean Water Act and
5 state water quality law?

6 7. Does the failure to analyze the environmental impacts of a water right application violate the
7 State Environmental Policy Act or the requirements of Section 401 of the Clean Water Act and state
water quality law?

8 8. Will the stormwater impacts of the Third Runway Project violate the requirements of Section
9 401 of the Clean Water Act and state water quality law?

10 9. Do the provisions of Conditions J and K of the Certification and the Comprehensive
11 Stormwater Management Plan (CSMP), as adopted into the Certification, violate the requirements of
Section 401 of the Clean Water Act and state water quality law?

12 10. Does the Certification violate the requirements of Section 401 of the Clean Water Act and state
13 water quality law if the Port was in violation of its NPDES permit or its discharges were not meeting
water quality standards at the time of issuance of the Certification?

14 11. Does the Certification's reliance on the Port's current and future NPDES permits violate the
15 requirements of Section 401 of the Clean Water Act and state water quality law?

16 12. Do the provisions of Condition A2 of the Certification violate the requirements of Section 401
17 of the Clean Water Act and state water quality law?

18 13. Does Condition G of the Certification, which defers compliance with dam safety requirements
19 for facilities associated with the Third Runway Project, violate the requirements of Section 401 of the
Clean Water Act and state water quality law?

20 14. Does the failure of the Port and Ecology to conduct environmental review for certain
21 components of the Certification violate SEPA, RCW Ch. 43.21C and the requirements of Section 401
of the Clean Water Act and state water quality law?

22 15. Will groundwater discharging from the embankment and Mechanically Stabilized Earth wall
23 violate the requirements of Section 401 of the Clean Water Act and state water quality law?

24 16. Does the method of determining compliance with fill criteria as set forth in the provisions of
25 Condition E of the Certification, including post-Certification amendment of that method, violate the
requirements of Section 401 of the Clean Water Act and state water quality law?

- 1
2
3 17. Do the fill criteria and related embankment and wall construction methods set forth in the provisions of Condition E of the Certification violate the requirements of Section 401 of the Clean Water Act and state water quality law?
- 4
5 18. Will the migration and discharge of existing groundwater pollutants originating in and around SeaTac Airport violate the requirements of Section 401 of the Clean Water Act and state water quality law?
- 6
7 19. Do the provisions set forth in Condition F of the Certification violate the requirements of Section 401 of the Clean Water Act and state water quality law?
- 8
9 20. Does the Port's failure to comply with the terms of the pre-existing Agreed Order for SeaTac International Airport (Ecology Order No. 97TC-N122, dated 5/15/99) violate the requirements of Section 401 of the Clean Water Act and state water quality law?
- 10
11 21. Does the Certification's failure to address potential failure of the Mechanically Stabilized Earth wall and embankment structures violate the requirements of Section 401 of the Clean Water Act and state water quality law?
- 12
13 22. Will the impacts of wetland fill and concomitant mitigation activities violate the requirements of Section 401 of the Clean Water Act and state water quality law?
- 14
15 23. Do the provisions of Condition D of the Certification and the Natural Resources Mitigation Plan and related documents, adopted into the Certification, violate the requirements of Section 401 of the Clean Water Act and state water quality law?
- 16
17 24. Does the Certification violate the requirements of Section 401 of the Clean Water Act and state water quality law for its failure to address water quality impacts to Gilliam Creek?
- 18
19 25. Does the Third Runway Project fail to meet the requirements of the Clean Water Act and state water quality law and therefore violate the requirements of the CZMA?
- 20
21 26. Does the Third Runway Project fail to meet the requirements of the State Environmental Policy Act, RCW Ch. 43.21C, and therefore violate the requirements of the CZMA?
- 22
23 27. Does the Port's commencement of activities impacting the waters of the state without Section 401 review and certification violate the requirements of Section 401 of the Clean Water Act and state water quality law?
- 24
25 28. Does the Certification violate the requirements of WAC 173-201A-160?

AR 006204

1 29. Is the Certification invalid based on its authorization of future amendment of its terms "by any
2 future Ecology-approved NPDES permit for the Seattle-Tacoma International Airport (STIA), ... as
3 determined in that permit"? (See, e.g., Amended Certification at p. 4, § 1.f.)

4 DATED this 2nd day of November, 2001.

5 HELSELL FETTERMAN LLP

6
7 By:

8 Michael P. Witek
9 Peter J. Eglick, WSBA #8809
Kevin L. Stock, WSBA #14541
Michael P. Witek, WSBA #26598
Attorneys for Appellant

10 Rachael Paschal Osborn for
11 Rachael Paschal Osborn
12 WSBA # 21618
13 Attorney for Appellant

14 g:\u\acc\pchb\issues-acc-110201.doc

15
16
17
18
19
20
21
22
23
24
25
AR 006205