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OCT 11 2001

ENVIRONMENTAL  
HEARINGS OFFICE

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POLLUTION CONTROL HEARINGS BOARD  
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,	)	No. 01-133
	)	No. 01-160
Appellant,	)	
	)	DECLARATION OF DR. JOHN
v.	)	STRAND IN SUPPORT OF ACC'S
	)	SUR-REPLY ON MOTION FOR STAY
STATE OF WASHINGTON,	)	
DEPARTMENT OF ECOLOGY; and	)	(Section 401 Certification No.
THE PORT OF SEATTLE,	)	1996-4-02325 and CZMA concurrency
	)	statement, Issued August 10, 2001,
Respondents.	)	Reissued September 21, 2001, under No.
_____	)	1996-4-02325 (Amended-1))

Dr. John Strand declares as follows:

1. I declare the following from personal knowledge and am competent to testify thereto before the Board if necessary.
2. My qualifications and previous review of the issues in this matter are set out in the two declarations which I have already submitted in support of ACC's Motion for Stay in this matter.

**General Comments:**

3. The Port's Sur-Reply and the Declaration of C. Linn Gould ignore the evidence that contamination already exists on site. There are no adequate safeguards in the Amended 401 Certification to stop the Port from again accepting contaminated soils. The Declaration of

DECLARATION OF DR. JOHN STRAND IN  
SUPPORT OF ACC'S SUR-REPLY ON MOTION  
FOR STAY - 1

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**ORIGINAL**

**AR 006461**

1 Elizabeth Clark submitted with the Port's response materials also unjustifiably downplays the  
2 contamination in soils the Port has already accepted, e.g., from the Hamm Creek and First  
3 Avenue Bridge sites. See First Strand Decl. at ¶¶ 6, 31; Second Strand Decl. at ¶¶ 23-25, 28; Ms.  
4 Clark does not even begin to address the point we make about sample size. First Strand Decl. at  
5 ¶ 30; Second Strand Decl. at ¶ 26. Regarding Hamm Creek sediments, she also does not address  
6 the differences in the results between the Army Corps and Boeing studies as to residual  
7 contamination, when good science would demand an explanation, and more sampling to  
8 determine just what is the level of residual contamination.  
9

10 **Specific Comments Addressing Ms. Gould's New Declaration:**

11 **Paragraph 4:**

12  
13 4. Ms. Gould does not explain how the "numeric criteria are more stringent than is  
14 necessary to ensure that water quality standards are not violated." She provides no proof to back  
15 up this statement. Where are the modeling data that assures us that the concentrations of metals  
16 entering groundwater will not exceed toxic thresholds for fish in Miller Creek? This continues  
17 the Port's 'just trust us' approach. Reasonable assurance needs to be provided up front, not at  
18 some point down the road when it may be too late.  
19

20 **Paragraphs 10, 11:**

21 5. Again, the Port has not done any leach tests to date. The SPLP protocol has not  
22 been used with any of the soils that the Port has already accepted. They may wish the Board to  
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24

25 DECLARATION OF DR. JOHN STRAND IN  
SUPPORT OF ACC'S SUR-REPLY ON MOTION  
FOR STAY - 2

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**AR 006462**

1 rely on promises of what they will do in the future, but part of the problem is that the Port has  
2 already accepted millions of cubic yards of soil, some of which is clearly contaminated.

3 **Paragraphs 8, 13:**

4 6. Despite Gould's claims that they are following the provisions of the FWS  
5 Biological Opinion, I continue to see a discrepancy. It is my opinion that the FWS requires the  
6 soil to be rejected where it exceeds the upper bounds of the MTCA Method A Soil Cleanup  
7 Level. See Page 2, third paragraph, of Attachment E to Revised 401 Certification. The FWS  
8 Biological Opinion says that if the screening criteria are exceeded but the upper bounds not  
9 exceeded, the Port must demonstrate the fill suitability using SPLP. The Port would have us  
10 believe that, no matter what, even if they exceed the upper bounds, all they have to do is  
11 demonstrate fill suitability using SPLP.  
12  
13

14 **Paragraph 16:**

15 7. The Toxics Cleanup Program (TCP) guidance can apply here. I believe Ecology's  
16 own Pete Kmet said as much. It is interesting to note Ms. Gould's statement that begins at line  
17 14 in paragraph 16, which says that the "TCP's more extensive area-wide sampling program is an  
18 approach designed to search for a distribution of soils at known contaminated sites which may  
19 require remediation, not soils from sources previously determined not to be contaminated." This  
20 fails to explain instances such as the fill accepted from the First Avenue Bridge site, where soil  
21 samples were found to exceed MTCA Method A Cleanup levels. The point is that most but not  
22 all First Avenue Bridge soils were accepted based on a total of eight samples. The hot spot  
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24

25 DECLARATION OF DR. JOHN STRAND IN  
SUPPORT OF ACC'S SUR-REPLY ON MOTION  
FOR STAY - 3

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**AR 006463**

1 where contamination was found was also not delineated. The TPH as diesel was 870 mg/kg  
2 which exceeded the standard at the time, and which also exceeds the standard, in part, now. *See*  
3 Second Strand Decl. at ¶ 24 . This indicates there is a good probability that there are levels of  
4 TPH in that soil which are higher than 870 mg/kg, just as there is a good probability that there are  
5 levels of TPH which are lower than 870 mg/kg. Only additional sampling -- actually much  
6 additional sampling -- would tell us if the levels of TPH are higher or lower than 870 mg/kg in  
7 the First Avenue Bridge soils. TCP takes the appropriate approach, which is based on sound  
8 science.  
9

10 8. Ms. Gould also says, "investigating the extent of contamination and determining  
11 compliance with cleanup levels at a source known to be contaminated requires a greater number  
12 of samples than confirmatory sampling at a source where prior studies have found no  
13 contamination." This again ignores the TPH disclosed at the First Avenue Bridge site, or the  
14 DDT and PCBs in the Hamm Creek dredged sediments. She then says that "use of MTCA  
15 sampling protocols is not warranted." The Port wants to rely upon MTCA where it is to the  
16 Port's advantage, and avoid MTCA protocols that the Port thinks too onerous. The Port cannot  
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25 DECLARATION OF DR. JOHN STRAND IN  
SUPPORT OF ACC'S SUR-REPLY ON MOTION  
FOR STAY - 4

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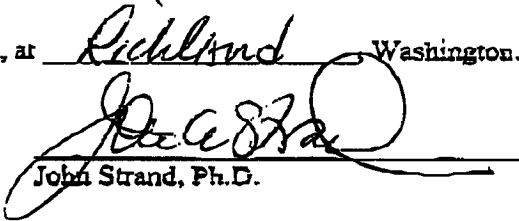
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**AR 006464**

1 have it both ways. The bottom line is that good science demands that the Port use more than six  
2 samples to characterize every 100,000 cubic yards of candidate fill.

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

5 DATED this 10<sup>th</sup> day of October, 2001, at Richland Washington.

6  
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8   
9 John Strand, Ph.D.

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DECLARATION OF DR. JOHN STRAND IN  
SUPPORT OF ACC'S SUR-REPLY ON MOTION  
FOR STAY - 5

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POLLUTION CONTROL HEARINGS BOARD  
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION, )

No. 01-133

Appellant, )

No. 01-160

v. )

CERTIFICATE OF SERVICE

STATE OF WASHINGTON, )

DEPARTMENT OF ECOLOGY; and )

(Section 401 Certification No.

THE PORT OF SEATTLE, )

1996-4-02325 and CZMA concurrency  
statement, issued August 10, 2001,

Respondents. )

Reissued September 21, 2001, under No.  
1996-4-02325 (Amended-1))

I, Michelle Isaacson, 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 resident of the State of Washington, and  
over the age of eighteen years.

On October 10, 2001, I caused to be delivered a true and correct copy of the following  
documents via legal messenger to:

1. ACC's Sur-Rebuttal in Support of its Motion for a Stay;
2. Second Declaration of Dr. Patrick Lucia in Support of ACC's Motion for Stay;
3. Declaration Of Amanda Azous In Support Of ACC's Sur-Reply On Motion For Stay;
4. Declaration of Dr. John Strand in Support of ACC's Sur-Reply on Motion for Stay;

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CERTIFICATE OF SERVICE - 1

**ORIGINAL**

**AR 006466**

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5. Declaration of Dr. Peter Willing in Support of ACC's Sur-Reply on Motion for Stay;
  6. Declaration of Dyanne Sheldon in Support of ACC's Sur-Reply on Motion for Stay; and
  7. Certificate of Service

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Seattle, WA 98101

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

DATED this 10<sup>th</sup> day of October, 2001, at Seattle, Washington.

  
\_\_\_\_\_  
Michelle Isaacson

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