

RECEIVED

OCT - 8 2001

ENVIRONMENTAL
HEARINGS OFFICE

POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

1			
2			
3			
4			
5	AIRPORT COMMUNITIES COALITION,	)	No. 01-133
6		)	No. 01-160
7	Appellant,)	
8		)	DECLARATION OF GREG WINGARD
9	v.	)	IN SUPPORT OF ACC'S MOTION FOR
10		)	STAY
11	STATE OF WASHINGTON,)	
12	DEPARTMENT OF ECOLOGY; and	)	(Section 401 Certification No.
13	THE PORT OF SEATTLE,	)	1996-4-02325 and CZMA concurrency
14		)	statement, issued August 10, 2001,
15	Respondents.	)	Reissued September 21, 2001, under No.
16	_____	)	1996-4-02325 (Amended-1))

Greg Wingard declares as follows:

1. The following is based on personal knowledge to which I am competent to testify before the Board.

2. I have worked extensively on issues related to the SeaTac International Airport's NPDES permit since 1994 in my capacity as a consultant, at various times, to CASE, the City of Des Moines, the Airport Communities Coalition, and individual area residents, and in my capacity as the Executive Director of Waste Action Project. This work has included reviewing NPDES permit applications, working on NPDES permit appeals, reviewing of discharge monitoring reports from 1994 to present, participating in site inspections, including inspection of the airport's listed NPDES permitted outfalls, site sampling activities, and photographing of the site. My review of documents

DECLARATION OF GREG WINGARD IN
SUPPORT OF ACC'S MOTION FOR STAY - 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

ORIGINAL

AR 007327

1 included the Port of Seattle's 1996 Section 404 application, which was later withdrawn in 1998, as well
2 as the existing Section 401 certification-related materials.

3 3. As an environmental consultant for the past 18 years and in my capacity as Executive
4 Director of Waste Action Project since 1994, I have thoroughly reviewed well over three hundred
5 Department of Ecology NPDES permit files and become very familiar with Ecology's administration of
6 the NPDES program, including public comment processes.

8 4. I have also become very familiar with the Public Disclosure Act, and Ecology's procedures
9 for responding to public record requests. I have submitted many requests to Ecology under the Public
10 Disclosure Act, and have also had occasion to litigate with Ecology over its denials of certain records
11 requests.

13 5. I have filed a number of record requests under the Public Disclosure Act with Ecology
14 that are relevant to the Airport Community Coalition's pending appeal of the 401 Certification. On
15 June 5, I asked for all records related to monitoring of construction related outfalls at Sea-Tac
16 International Airport, based on Ecology's representation that they had such information. On August 13,
17 I asked for all upstream and downstream monitoring for each phase of construction at Sea-Tac, based
18 on Ecology's claim in the NPDES Permit Modification Responsiveness Summary (Fendt Decl., Ex. G)
19 that such data had been collected. On September 24, I requested copies of Sea-Tac's recent Discharge
20 Monitoring Reports for April through August 2001.

22 6. Ecology was unable to provide even one record related to construction outfall
23 monitoring, or upstream downstream monitoring of phases of construction. They did provide the four
24

25 DECLARATION OF GREG WINGARD IN
SUPPORT OF ACC'S MOTION FOR STAY - 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 007328

1 months of DMRs, but failed to provide a copy of the June 14, 2001 explanation letter for the TSS
2 violations from May. I called Department of Ecology Water Quality Section Supervisor John Drabek
3 multiple times about these public records requests and did not get a call back.
4

5 7. I called Ken Lederman, Assistant AG for Ecology, and expressed my disappointment about
6 Ecology's responses to my records requests. If Ecology did not have this data, I explained, then it
7 seemed to me that Ecology had made false claims in their Responsiveness Summary for the Port's
8 NPDES Permit Modification. On the other hand, if Ecology did have the data, then the law required
9 that they turn it over to me. Ken said he would look into it right away. I got a call from John Drabek
10 less than a half an hour later.
11

12 8. Mr. Drabek told me that Ecology does not have any of the records requested in my June
13 and August PDA requests -- that is, records of monitoring of construction related outfalls at Sea-Tac
14 International Airport, and records of upstream and downstream monitoring for each phase of
15 construction at Sea-Tac. He explained that the records exist, but said I would need to contact Tom
16 Hubbard at the Port of Seattle and get them from him. He did find one exception, monitoring related to
17 construction outfalls in Walker Creek and/or Gilliam Creek which were provided to Ecology in July,
18 2001. Ecology had apparently overlooked this document in responding to my requests. It is not clear
19 from the document provided what location the sampling results relate to.
20

21 9. Mr. Drabek had no explanation for why Ecology does not have copies of all the Port's
22 construction stormwater outfall monitoring data (including visual monitoring records), or of the Port's
23 upstream, downstream monitoring for each phase of construction at Sea-Tac. In response to my
24

25 DECLARATION OF GREG WINGARD IN
SUPPORT OF ACC'S MOTION FOR STAY - 3

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 007329

1 questions, he said that the issue is sure to come up for discussion during the renewal of the permit, and
2 that he would want to require that all the sampling data be submitted to Ecology.

3 10. It is my belief that both the Port's current NPDES Permit, and the previous one, require
4 the Port to submit copies of all such monitoring results, or notice as specified in the permit, to
5 Ecology.
6

7 11. In Special Condition S3. F., "Additional Monitoring by the Permittee" (Permit page 20),
8 the Permit states:

9 "If the Permittee monitors any pollutant more frequently than required by this permit using the
10 test procedures and the locations specified by Special Condition S2 of this permit, then the
11 results of this monitoring shall be included in the calculation and reporting of the data
12 submitted in the Permittee's self-monitoring.

13 If the Permittee performs validated water quality monitoring or sediment monitoring using
14 methods and/or locations other than those specified in Special Condition S2, the Permittee shall
15 include notice of this monitoring with the Discharge Monitoring Report for the month in which
16 the monitoring data is received and must provide the data to the Department upon request..."

17 12. In short, the Port's NPDES Permit requires the Port to submit to Ecology all data from
18 the monitoring of outfalls authorized under the terms of Condition S2 of the permit, including -- since
19 the date of recent permit modification -- the new construction outfalls. The Permit also requires the
20 Port to include notice to Ecology along with its monthly DMRs of any data from samples taken at other
21 locations, like the upstream, downstream monitoring of each phase of construction, or the monitoring
22
23
24

25 DECLARATION OF GREG WINGARD IN
SUPPORT OF ACC'S MOTION FOR STAY - 4

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

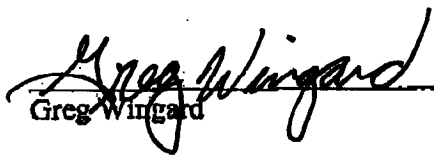
Rachael Paschal Osborn
Attorney at Law
2421 West Mission Avenue
Spokane, WA 99201

AR 007330

1 of the new construction outfalls not covered by the new permit modification.

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

4 DATED this 8th day of October, 2001, at Seattle, Washington.

5
6
7 
8 Greg Wingard

9 g:\u\acc\p\chb\wingard-decl-stay.doc

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DECLARATION OF GREG WINGARD IN SUPPORT OF ACC'S MOTION FOR STAY - 5

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