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7 **BEFORE THE POLLUTION CONTROL HEARINGS BOARD**
8 **STATE OF WASHINGTON**

9 AIRPORT COMMUNITIES
10 COALITION,

11 Appellant,

12 v.

13 STATE OF WASHINGTON,
14 DEPARTMENT OF ECOLOGY; and
15 PORT OF SEATTLE,

16 Respondents.

PCHB No. 01-133

DECLARATION OF PETE KMET

17 Pete Kmet declares as follows:

18 1. I am a senior environmental engineer within Ecology's Toxics Cleanup
19 Program. My duties include providing technical assistance to Ecology staff and the general
20 public and development of policies, rules and legislation pertaining to the cleanup of
21 contaminated sites under the Model Toxics Control Act.

22 2. On June 13, 2001, I received an e-mail from Kevin Fitzpatrick of Ecology's
23 Water Quality Program in which Mr. Fitzpatrick asked if I could provide recommended
24 language addressing terrestrial ecological risk for use in the Clean Water Act § 401
25 Certification being developed for the Port of Seattle's Third Runway project. I responded to
26 Mr. Fitzpatrick regarding his request on June 27, 2001. A copy of Mr. Fitzpatrick's e-mail and
my response are attached hereto as Exhibit 1.

AR 007691

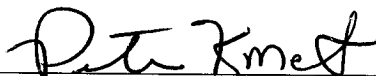
1 3. My June 27, 2001, response only addressed the request made by Mr.
2 Fitzpatrick—the recommended language for a terrestrial ecological evaluation. The response
3 should not be construed to conclude that the acceptable fill criteria established in the § 401
4 Certification are or are not protective of water quality.

5 4. My response to Mr. Fitzpatrick was not intended to address all issues regarding
6 the establishment of standards for fill to be used for the Third Runway project nor did it
7 constitute an evaluation of the protectiveness of the fill criteria ultimately set forth in the § 401
8 Certification, as those criteria had not been finalized at the time of my June 27, 2001 response.

9 5. I have read ACC's Memorandum in Support of Motion for a Stay. On page 18,
10 the paragraph beginning at line 20 incorrectly characterizes the development of cleanup levels
11 under MTCA as being based on a cost/benefit analysis. The discussion ACC refers to in Focus
12 No. 94-130 pertains to the process for selecting a remedy that is permanent to the maximum
13 extent practicable, not the process for developing cleanup levels. A cleanup level is "...the
14 concentration of a hazardous substance in soil, water, air or sediment that is determined to be
15 protective of human health and the environment under specified exposure conditions." WAC
16 173-340-200. The process for establishing cleanup levels does not include consideration of
17 cost. See Responsiveness Summary on the Amendments to the Model Toxics Control Act
18 Cleanup Regulation Chapter 173-340, February, 1991, Part C, VII, Issue #1 (pages 99-101).

19 I declare under penalty of perjury under the laws of the state of Washington that the
20 foregoing is true and correct.

21 DATED this 26th day of September, 2001.

22
23 
24 _____
PETE KMET

25 ... MARCHIORO\SEATAC\PCHB 01-133\KMET DECLARATION.DOC

26 **AR 007692**

EXHIBIT 1

Kenny, Ann

From: Kmet, Peter
Sent: Wednesday, June 27, 2001 4:01 PM
To: Fitzpatrick, Kevin
Cc: Yee, Chung K.
Subject: RE: Acceptable Fill Criteria Language for Draft 401 Certification

DELIBERATIVE DOCUMENT CURRENTLY EXEMPT FROM PUBLIC DISCLOSURE

If we are not going to restrict fill material to naturally occurring uncontaminated soils, I recommend you use the following language to address potential impacts on plants and animals. The intent of this language is to ensure the fill material used would be "clean enough" that it would not be expected to cause adverse impacts on plants and animals that come in contact with it.

Note that this does not address potential human health exposure pathways or protection of aquatic organisms, which will need to be addressed with other language.

There are several elements to this recommendation:

First, is the list of chemicals of concern. I am recommending we use the list in Table 749-3. While lengthy, this list represents the more commonly occurring contaminants that have information on potential terrestrial ecological impacts. Only those suspected of being present at the site would have to be tested beyond those you are already specifying they test for.

Second, I am recommending we require the fill material to meet the most stringent value in Table 749-3 unless bioassay testing is conducted that demonstrates the fill is not toxic to plants and animals. The table 749-3 values are considered screening values for ecologically sensitive sites.

Third, as a further safeguard, I am recommending that the uppermost 6 feet of fill placed be required to be clean natural soil. This is the zone where most soil biological activity occurs and will provide a buffer zone that prevents most plant and animal contact with any deeper contaminated fill material. It should also minimize the potential for worker contact during routine construction and maintenance activities at the airport.

Fourth, because there can be considerable variability in soil concentrations and it is not possible to test every cubic inch of soil, I am recommending that the statistical test methods specified for soils in WAC 173-340-740 be used to analyze any test data and demonstrate compliance with these requirements.

Here is my suggested language:

The uppermost 6 feet of fill material shall consist of clean naturally occurring soil with no detectable manmade organic compounds and no metals above natural background concentrations as defined in Ecology publication #94-115 entitled "Natural Background Soil Metals Concentrations in Washington State". All other fill material not consisting of such clean naturally occurring soil shall be subject to the following requirements.

All fill material not from clean natural soil borrow sources shall be tested for at a minimum [insert your list] plus [any contaminants in Table 749-3] (I recommend you make one list and attach it as an appendix to the permit so there is not confusion as to what is to be tested for). This fill material shall contain concentrations below the most stringent concentration in this table (again, I recommend you

make a list of concentrations and attach it to the permit, to avoid possible confusion. Again, NOTE that this does not address human health concerns or potential aquatic impacts. You will need to integrate those issues into this language). As an alternative to meeting the concentration in Table 749-3, the Port may demonstrate that the soil from the borrow source does not pose a threat to plants and animals by using both bioassays specified in 173-340-7493(3)(b)(i).

The methods specified in WAC 173-340-740(7) shall be used to determine compliance with these concentrations when evaluating soil testing data.

I know this wording needs some work, but it gives you a starting place.

PS, I am on leave until July 11th.

-----Original Message-----

From: Fitzpatrick, Kevin
Sent: Wednesday, June 13, 2001 8:57 AM
To: Yee, Chung K.
Cc: Thompson, Craig E.; Dahlgren, Curtis A.; Nord, Tim; Kmet, Peter; Kenny, Ann; Hellwig, Raymond; Wang, Ching-Pi
Subject: RE: Acceptable Fill Criteria Language for Draft 401 Certification

Chung Yee: Will Pete provide recommended language for a "terrestrial ecological evaluation" that could be used as a condition in the 401 Certification, as well as a list of additional contaminants that would need to be tested in the fill material brought in for Master Plan improvements at Sea-Tac Airport?
Kevin

-----Original Message-----

From: Yee, Chung K.
Sent: Wednesday, June 13, 2001 8:42 AM
To: Fitzpatrick, Kevin
Cc: Thompson, Craig E.; Dahlgren, Curtis A.; Nord, Tim
Subject: Acceptable Fill Criteria Language for Draft 401 Certification

DELIBERATIVE DOCUMENT CURRENTLY EXEMPT FROM PUBLIC DISCLOSURE

On Monday June 11, Mr. Craig Thompson had a limited discussion with Mr. Pete Kmet of the HQ/TCP on this project. Mr. Kmet recommended MTCA should not be used for the establishment of clean-fill criteria for the Seattle-Tacoma International Airport Third Runway project. However, if MTCA is to be used for this purpose, Mr. Kmet further recommended all other requirements of the MTCA should be applied for the establishment of the clean fill criteria.

I have interpreted his MTCA requirements at minimum as requiring: 1) a larger listing of potential contaminants for testing, 2) ground water monitoring for compliance with the ground water and/or surface water criteria, and 2) terrestrial ecological evaluation. There may be other requirements that will need to be identified prior to finalizing the "Acceptable Fill Criteria Language."

Since his recommendations are considered as the department policy with respect to this project, therefore it would be inappropriate for me to comment on his recommendations.

Please advise as to my scope-of-work. In the interim, I will proceed to review the biological opinion by US Fish and Wildlife Service on the Master Plan Update Improvements. From your previous emails, I understand you/NWRO will be meeting with the US Fish and Wildlife Service to finalize an acceptable set of fill criteria. Per agreement, I will start my review of the Clean Fill Criteria based on the most recent draft language, i.e., post US Fish and Wildlife Service meeting.

One final note, I do not know how to implement many of the MTCA requirements, e.g., terrestrial ecological evaluation, in the context of the Third Runway fill project. For these additional MTCA requirements, please consult with the NWRO/TCP staff for implementation assistance.