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FAX COVER SHEET

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Including this cover sheet, this fax is 8 pages

Date: 9/7/00 Time: 3:15 p.m.

To:

RAYMOND HELLWIG
DIRECTOR, NW REGIONAL OFFICE
WASHINGTON DEPARTMENT OF ECOLOGY

425-649-7098

TOM LUSTER
PERMIT COORDINATION UNIT
WASHINGTON DEPARTMENT OF ECOLOGY

360-407-6904

This document is from:

Rick Poulin (206) 860-1394

Comments:

Please see attached letters.

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Exhibit	138
Date	1/16/02
Witness	Fitzpatrick
Diane Mills, Court Reporter	

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SMITH & LOWNEY, P.L.L.C.

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September 7, 2000

Via Fax and E-mail

Raymond Hellwig
Director, NW Regional Office
Department of Ecology
3190 160th Avenue SE
Bellevue, WA 98008

Tom Luster
Permit Coordination Unit
Department of Ecology
P.O. Box 47703
Olympia, WA 98504-7703

Re: Port of Seattle's Ongoing Violations of State Water Quality Standards for Toxic
Pollutants Copper, Lead, and Zinc

Greetings:

I am enclosing for your immediate attention a copy of the 60-day "Notice of Intent to File Suit Under the Clean Water Act" issued to the Port of Seattle today by Citizens Against Seatac Expansion (CASE) and Waste Action Project (WAP). The Notice Letter -- based on the Port's own 1999 Annual Stormwater Monitoring Report -- shows that the Port's ongoing discharges of contaminated stormwater from Sea-Tac International Airport are violating the Port's NPDES permit, Washington's water quality standards for the toxic substances copper, lead, and zinc, and the Clean Water Act.

The Notice Letter identifies seventy-five (75) distinct violations of the water quality standards documented in the 1999 Annual Stormwater Monitoring Report alone. Given the Port's failure to report water hardness data for the vast majority of samples it takes, **this number of violations is shockingly high**. In fact, the Port reported hardness data for only fourteen (14) of the hundreds of samples discussed in the 1999 Report. *Compare*, 1999 Annual Stormwater Monitoring Report Appendix B (reporting hundreds of sampling events without hardness data) and Appendix D (providing hardness data for 14 of the sampling events also contained in Appendix B). Since there are two water quality standards (acute and chronic) for each of the three metals (copper, lead, and zinc), these 14 samples could result in -- at most -- 84 violations ($2 \times 3 \times 14 = 84$). In other words, **the Port failed 75 out of the 84 tests made possible by the limited hardness data. This is a failure rate of eighty-nine per cent (89%).**

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Raymond Hellwig,
Tom Luster
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As a result of these continuing violations, Ecology cannot legally issue a water quality certification for the Port's proposed Third Runway under the requirements of section 401 of the Clean Water Act (Act). Most specifically, Ecology cannot certify reasonable assurance that the proposed project will comply with the Washington State water quality standards because the receiving waters -- Miller and Des Moines Creek -- already exceed State water quality criteria and toxic criteria for copper, lead, and zinc, and the Port has provided no basis to conclude that its proposed expansion of activities would not cause or contribute to further exceedances. See, 40 CFR 230.10(b)(1)-(2), and WAC 173-201A-040; and see, CASE's letter to Tom Luster dated December 13, 1999.

Please contact the undersigned with any questions, at 206-860-1394.

Very truly yours,

SMITH & LOWNEY, P.L.L.C.

By: 

Richard A. Poulin
Of Counsel

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Via Certified Mail - Return Receipt Requested

September 7, 2000

M. R. Dinsmore
Executive Director
Port of Seattle
P.O. Box 1209
Seattle, WA 98111

Re: **NOTICE OF INTENT TO FILE SUIT UNDER THE CLEAN WATER ACT**

Dear Mr. Dinsmore:

We represent Citizens Against Seatac Expansion (CASE), 19900 Fourth Avenue S.W., Normandy Park, Washington 98166, (206) 242-9417, and Waste Action Project (WAP), P.O. Box 4832, Seattle, Washington 98104, (206) 322-3061. Any response or correspondence related to this matter should be directed to us at the letterhead address. CASE and WAP hereby provide you with sixty days' notice of their intent to file a citizen suit against the Port of Seattle under Section 505 of the Clean Water Act ("CWA"), 33 USC § 1365.

The Port of Seattle ("the Port") has violated and continues to violate the CWA by discharging stormwater that exceeds effluent standards or limitations for toxic pollutants. The Port's discharges violate state and federal water quality standards for toxic pollutants, as well as the Port's National Pollutant Discharge Elimination System Waste Discharge Permit No. WA-002465-1, issued by the Washington Department of Ecology on February 20, 1998, effective March 1, 1998, modified on January 25, 1999, and due to expire on June 30, 2002 (the "permit"). See, sections 301, 307, and 402 of the CWA, 33 USC §§ 1311, 1317, and 1342. These violations involve the Port's discharges of pollutants from Seattle-Tacoma International Airport (the "facility") located in King County, Washington, to the Puget Sound by way of Des Moines Creek and Miller Creek. All alleged violations are ongoing. These violations are described in more detail below.

Violations of Water Quality Standards for Toxic Pollutants

As described in detail below, the Port's Annual Stormwater Monitoring Reports confirm that the Port's stormwater discharges have violated and continue to violate Washington's water quality criteria for the toxic pollutants copper, lead, and zinc. Toxic water quality criteria are requirements of CWA section 307(a). Compliance with toxic water quality criteria is a condition applicable to "all NPDES permits" (see 40 CFR 122.41), including permits issued under state programs (see 40 CFR 123.25(a)(12)).

40 CFR 122.41 requires the permittee to "comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants . . . even if the permit has not yet been modified to incorporate the requirement." The Port's permit explicitly incorporates the requirements of 40 CFR 122.41 by reference. See, Permit General Condition G12. Moreover, as the Port has been informed by the Washington State Department of Ecology,

"The Water Quality Standards apply to all point source discharges at the outfall unless a mixing zone has been granted through a discharge permit, general permit, or order (WAC 173-201A-100(1))."

Letter from Kevin Fitzpatrick, Industrial Unit Supervisor, WADOE Water Quality Program to Michael Feldman, Aviation Development and Maintenance, Port of Seattle (January 29, 1999). Accordingly, the Port violates the Permit by discharging stormwater that is contaminated at levels exceeding the water quality standards for toxic pollutants.

A. Violations of the Toxic Water Quality Criterion for Copper.

The Port has violated and continues to violate Washington's water quality standards for surface waters and Permit General Condition G12 by discharging pollutants including copper into Miller and Des Moines Creeks in excessive quantities. Sampling results stated in the Port's Stormwater Monitoring Reports confirm that the Port's stormwater discharges exceed both acute and chronic water quality standards for the toxic substance copper. See, e.g., "Annual Stormwater Monitoring Report for Seattle-Tacoma International Airport for the period July 1, 1998 through June 30, 1999," dated September, 1999 ("1999 Annual Stormwater Monitoring Report").

Twenty-eight (28) examples of the Port's recent violations of Washington's acute and chronic water quality criteria for copper are set forth in the following table:

Sample Date ¹	Outfall ¹	Hardness ²	Acute WQS for Copper ^{3,4}	Chronic WQS for Copper ^{3,4}	TR Copper ^{1,4} Discharged
11/19/98	SDE4	16	3.02	2.37	32
1/20/99	SDE4	14.5	2.75	2.17	22
2/22/99	SDE4	10	1.94	1.58	15
3/24/99	SDE4	10	1.94	1.58	20
7/2/99	SDE4	14	2.66	2.11	26
11/13/98	SDS3	24	4.43	3.35	22
1/13/99	SDS3	20	3.73	2.86	23
11/13/98	SDN1	16	3.02	2.37	24
1/13/99	SDN1	8	0.47	0.29	24
3/24/99	SDN1	16	3.02	2.37	15
5/11/99	SDN1	14.2	2.70	2.14	46
7/2/99	SDN1	10	1.94	1.58	38
11/13/98	SDN4	24	4.43	3.35	25
1/13/99	SDN4	28	5.12	3.82	20

1. From 1999 Annual Stormwater Monitoring Report, Appendix B and Appendix D.
2. From 1999 Annual Stormwater Monitoring Report, Appendix D.
3. Calculated in accordance with WAC 173-201A-040.
4. Values stated in micrograms per liter.

B. Violations of the Toxic Water Quality Criterion for Lead.

The Port has violated and continues to violate Washington's water quality standards for surface waters and Permit General Condition G12 by discharging pollutants including lead into Miller and Des Moines Creeks in excessive quantities. Sampling results stated in the Port's Stormwater Monitoring Reports confirm that the Port's stormwater discharges exceed both acute and chronic water quality standards for the toxic substance lead. See, e.g., 1999 Annual Stormwater Monitoring Report.

Twenty-one (21) examples of the Port's recent violations of Washington's acute and chronic water quality criteria for lead are set forth in the following table:

Sample Date ¹	Outfall ¹	Hardness ²	Acute WQS for Lead ^{3,4}	Chronic WQS for Lead ^{3,4}	TR Pb ^{1,4} Discharged
11/19/98	SDE4	16	8.38	0.32	31.4
1/20/99	SDE4	14.5	7.49	0.29	13
2/22/99	SDE4	10	4.90	0.19	22
3/24/99	SDE4	10	4.90	0.19	17
7/2/99	SDE4	14	7.20	0.28	13
11/13/98	SDN1	16	8.38	0.32	25.3
1/13/99	SDN1	8	3.79	0.14	48
3/24/99	SDN1	16	8.38	0.32	10
5/11/99	SDN1	14.2	7.31	0.28	4
7/2/99	SDN1	10	4.90	0.19	9
11/13/98	SDN4	24	13.25	0.51	12
1/13/99	SDN4	28	15.77	0.61	1

1. From 1999 Annual Stormwater Monitoring Report, Appendix B and Appendix D.
2. From 1999 Annual Stormwater Monitoring Report, Appendix D.
3. Calculated in accordance with WAC 173-201A-040.
4. Values stated in micrograms per liter.

C. Violations of the Toxic Water Quality Criterion for Zinc.

The Port has violated and continues to violate Washington's water quality standards for surface waters and Permit General Condition G12 by discharging pollutants including zinc into Miller and Des Moines Creeks in excessive quantities. Sampling results stated in the Port's Stormwater Monitoring Reports confirm that the Port's stormwater discharges exceed both acute and chronic water quality standards for the toxic substance zinc. See, e.g., 1999 Annual Stormwater Monitoring Report.

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Twenty-six (26) examples of the Port's recent violations of Washington's acute and chronic water quality criteria for zinc are set forth in the following table:

Sample Date ¹	Outfall ¹	Hardness ²	Acute WQS for Zinc ^{3,4}	Chronic WQS for Zinc ^{3,4}	TR Zn ^{3,4} Discharged
11/19/98	SDE4	16	24.22	22.12	163
1/20/99	SDE4	14.5	22.28	20.35	168
2/22/99	SDE4	10	16.26	14.85	108
3/24/99	SDE4	10	16.26	14.85	134
7/2/99	SDE4	14	21.63	19.75	141
11/13/98	SDS3	24	34.15	31.18	189
1/13/99	SDS3	20	29.26	26.72	30
11/13/98	SDN1	16	24.22	22.12	487
1/13/99	SDN1	8	13.46	12.29	182
3/24/99	SDN1	16	24.22	22.12	175
5/11/99	SDN1	14.2	21.89	19.99	276
7/2/99	SDN1	10	16.26	14.85	238
11/13/98	SDN4	24	34.15	31.18	127

1. From 1999 Annual Stormwater Monitoring Report, Appendix B and Appendix D.
2. From 1999 Annual Stormwater Monitoring Report, Appendix D.
3. Calculated in accordance with WAC 173-201A-040.
4. Values stated in micrograms per liter.

The above-described violations reflect only what information currently available to CASE and WAP indicates. All of these violations are ongoing. CASE and WAP intend to sue for all violations, including those yet to be uncovered and those committed subsequent to the date of this notice of intent to sue.

Pursuant to Section 309(d) of the CWA, 33 USC § 1319(d), each of the above-described violations subjects the violator to a penalty of up to \$27,500 per day. In addition to civil penalties, CASE and WAP will seek injunctive relief to prevent further violations under sections 505(a) and (d) of the CWA, 33 USC § 1365(a) and (d), and such other relief as is permitted by law. Also, section 505(d) of the CWA, 33 USC § 1365(d), permits CASE and WAP to recover costs including attorney's fees.

Citizens Against Seatac Expansion and Waste Action Project believe that this NOTICE OF INTENT TO SUE sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against the Port of Seattle under Section 505(a) of the Clean Water Act for any and all violations of the Act.

During the 60-day notice period, we would be willing to discuss effective remedies for the violations in this letter and settlement terms. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within 10 days of receiving this notice so that a meeting can be arranged and negotiations completed before the

end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when the notice period ends.

Very truly yours,

SMITH & LOWNEY, P.L.L.C.

By: 

Richard A. Poulin
Of Counsel

cc: Carol Browner, Administrator, U.S. EPA
Charles Clarke, Administrator, Region 10 U.S. EPA
Tom Fitzsimmons, Director, Washington Department of Ecology

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