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POLLUTION CONTROL HEARINGS BOARD  
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,

Appellant,

v.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY, and THE  
PORT OF SEATTLE,

Respondents.

PCHB No. 01-160

ACC'S INTERROGATORIES  
NOS. 1-18 AND REQUESTS  
FOR PRODUCTION NOS. 1-6  
TO DEPARTMENT OF  
ECOLOGY **AND RESPONSES  
THERE TO**

TO: WASHINGTON STATE DEPARTMENT OF ECOLOGY ("Ecology");  
AND TO ITS COUNSEL: Joan Marchioro and Thomas Young, Assistant  
Attorneys General

INSTRUCTIONS

**Interrogatories.** Pursuant to the PCHB's October 30, 2001,  
Prehearing Order and to Civil Rules 26 and 33, you are requested to answer  
the following interrogatories in writing and under oath and, after you and  
your attorney sign them below, to serve a copy upon the undersigned  
counsel at the offices of Helsell Fetterman LLP, 1500 Puget Sound Plaza,

ACC'S INTERROGATORIES NOS. 1-18  
AND REQUESTS FOR PRODUCTION  
NOS. 1-6 TO DEPT. OF ECOLOGY  
AND RESPONSES THERETO - 1

171  
Fitzsimmons  
1-18-2002

1325 Fourth Avenue, Seattle, Washington 98111. You must serve your answers within thirty (30) days after the interrogatories are served on you.

These interrogatories are continuing interrogatories, and require you to provide supplemental answers which set forth any information within the scope of the interrogatories acquired or discovered by you following service of your original answers, as required by Civil Rule 26(e).

Space for your answers has been provided after each interrogatory. If the space provided for the answer is not sufficient, please attach additional pages to the page on which the answer is set forth.

In answering these interrogatories, you are to furnish all information that is available to you, not just information that is of your own knowledge. This means that you are to furnish information which is known by or in the possession of you and your employees or agents.

**Requests for Production of Documents.** Pursuant to the PCHB's October 30, 2001, Prehearing Order and Civil Rules 26 and 34, you are also requested to produce for inspection and copying the documents described in each request made below. True and accurate copies of the requested documents may be produced with the answers to these interrogatories, but in any event shall be made available within thirty (30) days after these requests are served on you. These requests for production are directed to

you and to your employees and agents, including all persons acting on your behalf. You are required to produce all documents within your care, custody or control, including but not limited to documents maintained by an employee, agent or representative, and documents maintained by any third party from whom you have a contractual or other right to require production.

These requests for production are intended to encompass the original document and all copies that differ from the original in any respect, for example, by reason of notations made on the copy.

These requests are also intended to encompass all documents of any nature which are now or have at any time been within your care, custody, or control. If a document is no longer within your care, custody, or control, state what disposition was made of it, who disposed of it, the reason for such disposition, and the date upon which it was so disposed.

**Identification of Privileged Documents:** If you contend that documents encompassed by any request are privileged, in whole or in part, or if you otherwise object to production of such documents, then with respect to such documents:

1. state with particularity the reason or reasons for your objection and/or the nature of any privilege asserted; and

2. state all other information necessary to identify the documents to meet the requirements for inclusion in a motion for production pursuant to Civil Rule 37.

## DEFINITIONS

Included below are definitions of the terms used in these interrogatories and requests for production. Please read these definitions carefully, because some of the terms used in these interrogatories and requests for production are given definitions which may be more expansive than the definitions which those terms are given in common usage.

1. **"401 Certification"** shall mean, unless otherwise specified, the Department of Ecology's certification of the Port of Seattle's ("Port") **Third Runway Project** pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401) and shall include the 401 Certification for the Third Runway Project ~~issued September 21, 2001, the 401 Certification for the Third Runway Project issued August 10, 2001,~~ all applications submitted in support 401 certification of the Third Runway Project (including but not limited to applications for the aforementioned 401 Certifications and any prior applications for 401 Certification of the Third Runway Project), all hearings conducted on any 401 Certification application for the Third Runway Project, and all submittals supporting any of the 401 Certification applications for the Third Runway Project.

2. **"And"** shall also mean **"or,"** and **"or"** shall also mean **"and."**

3. **"Communication"** means any writing or any oral conversation including, but not limited to: telephone conversations, meetings, letters, telegraphic and telex communications, electronic communications, and all documents concerning such writing or such oral conversation.

4. **"Describe,"** when used in reference to matters of fact or contention, means to state every material fact and circumstances specifically and completely (including, but not limited to, date, time, location, and the identity of all participants), and whether each such fact or circumstance is stated on knowledge, information, or belief, or is alleged without foundation.

5. **"Document"** includes, but is not limited to, the original as well as any copies of any agreement, appointment book, blueprint, book, brochure, cassette, chart, check, check stub, compute disc or index thereto, computer printout, computer program, computer tape or disc, contact, correspondence, declarations, desk calendar, drawing, e-mail message, graph, index, invoice, lease, ledger, letter, log book, manual, map, memorandum, message, minutes, minute book, model, note, periodical, phonorecord, photograph, pleading, purchase order, report, reproduction, schedule, sketch, statement, study, summary, survey, tape, telegram, telex, time sheet, working paper, and any and all other written, printed, typed,

taped, recorded, transcribed, punched, filmed, digitized, or graphic matter, however produced or reproduced.

If a document has been prepared in several copies or additional copies have been made, and the copies are not identical, each non-identical copy is a separate "document," and should be produced for inspection and copying.

6. **"All Related Documents"** means any document that refers to, relates to, addresses, or reflects the subject matter of the interrogatory.

7. **"Identify"** or **"identity,"** when applied to a **person**, requires that you give the person's full name, residence address, residence telephone, business or occupation, employer, job title or description, business address, ~~and business telephone.~~ If you do not have current information on the person being identified, then given the last known information.

8. **"Identify"** or **"identity,"** when used in reference to a **business organization, or other entity**, means to give the legal name of the entity, a description of its nature (e.g., corporation, partnership, joint venture, etc.), any business or assumed names under which it does business, its principal place of business, and the address of the office(s) of such entity which are involved in the transaction about which the interrogatory or request is seeking information.

9. **"Person"** shall include any individual, corporation, partnership, association, or any other entity of any kind.

10. **"State with particularity,"** when used in reference to a matter of fact or contention, means to state every material fact and circumstance specifically and completely (including but not limited to date, time, location, and the identity of all participants), and whether each such fact or circumstance is stated on knowledge, information, or belief, or is alleged without foundation.

11. **"Third Runway Project"** shall mean, for purposes of these Interrogatories and Requests for Production, the Port's proposal and efforts to construct a third runway at the Seattle Tacoma International Airport and Master Plan Update projects, including but not limited to all projects included in the October 25, 2000 Joint Aquatic Resources Permit Application for the project, as amended.

12. The plural shall include the singular, and the singular shall include the plural.

#### **GENERAL OBJECTIONS**

1. Ecology objects to the introductory matters set forth on pages 1-8 to the extent Appellants attempt to modify the rules of discovery set forth in the Washington State Court Rules. The State further objects to these interrogatories and requests for production to the



extent they seek to shift the burden of trial production or to invade the attorney-client privilege, the State's work product, or other privilege, or they are beyond the scope of discovery allowed under Washington Court Rules.

2. Ecology further objects to each Interrogatory and Request for Production on the grounds that discovery in this matter is ongoing. Ecology's witnesses are currently being deposed and the information provided in these depositions should be considered supplemental to these answers. Also, documents have been released to ACC and continue to be released to ACC through public disclosure and those document releases are further supplemental to the answers herein. Ecology reserves the right to supplement or change its answers herein as information is revealed in discovery.

### **INTERROGATORIES AND REQUESTS FOR PRODUCTION**

**INTERROGATORY NO. 1:** For each person who supplied information for or answered each Interrogatory or Request for Production:

- a. identify the person;
- b. identify which Interrogatory or Request for Production the person answered or supplied information for; and
- c. state with particularity what information each person provided.

#### **ANSWER:**

See answer to Interrogatory Nos. 2 and 3. Additional persons who supplied information in answer to these interrogatories include Ray Hellwig, Tom Fitzsimmons, and Steve Hirschey.

REQUEST FOR PRODUCTION NO. 1: Please produce all documents within your control relating or otherwise pertaining to facts stated in your answer to the preceding interrogatory.

RESPONSE:

See answer to RFP No. 2 and documents previously released through public disclosure.

INTERROGATORY NO. 2: Identify each person you intend to use as an expert witness in this matter.

ANSWER:

Ann Kenny

Erik Stockdale

Kevin Fitzpatrick

Katie Walter

Dave Garland

Ching-Pi Wang

Chung Yee

John Drabeck

Ed O'Brien

Kelly Whiting

INTERROGATORY NO. 3: For each person identified in the preceding interrogatory, state with particularity:

- a. the subject matter on which the expert is expected to testify;
- b. the substance of the facts and opinions to which the expert is expected to testify; and
- c. a summary of the grounds for each opinion.

**ANSWER:**

**Ann Kenny:**

Ms. Kenny will testify regarding Ecology's § 401 water quality certification procedures and standards, her role in developing the § 401 certification issued in this case, the conditions imposed, and whether the certification provides reasonable assurance that water quality standards will be met. Her testimony will be based on her education, experience, and participation in the § 401 development process for the Third Runway Project.

**Erik Stockdale:**

Mr. Stockdale will testify regarding the wetland and aquatic resource mitigation elements of the 401 Certification, and how the various elements of the natural resource mitigation plan (both in-basin and out-of-basin) combine to provide reasonable assurance that state water quality standards will be protected, and beneficial uses of wetlands will be adequately mitigated. His testimony will be based on his experience and training in reviewing wetland and aquatic resource mitigation plans.

**Kevin Fitzpatrick:**

Mr. Fitzpatrick will testify regarding the Port of Seattle's NPDES permit, the relationship of the NPDES permit to the § 401 Water Quality Certification, the Port of Seattle's Stormwater Management Plan for Master Plan Improvements at Sea-Tac Airport, acceptable fill material conditions developed for the § 401 Water Quality Certification, and

related technical review documents developed both within the agency and by outside consultants in these subject areas. His testimony will be based on his understanding of laws, regulations, policies, and technical issues concerning the subject areas listed above, and his education and experience.

**Katie Walter**

Ms. Walter will testify regarding wetland related issues associated with her review of the Natural Resource Mitigation Plan (NRMP), and her involvement in developing the § 401 Water Quality Certification. Her testimony will be based on her review of the NRMP and supporting documentation, and meetings with Port representatives, Ecology staff and their representatives, and her education and experience.

**Dave Garland:**

Mr. Garland will testify regarding his management of two studies regarding Maury Island and the SeaTac Third runway fill, his review of hydrologic impacts on wetlands from excavation of the borrow areas, and his review of the integration of the groundwater modeling performed by the Port for the embankment fill as it relates to the Port's low flow mitigation plan. His testimony will be based on his review, education and experience.

**Ching-Pi Wang:**

Mr. Wang will testify regarding ground-water flow, soil contamination, contaminant transport in the subsurface, modeling of ground-water flow and contaminant transport, ground-water and soil contamination distribution beneath the airport operations and maintenance area (AOMA), how he analyzed the ground-water flow and contaminant distribution patterns, and how he developed his opinions on the transport of contaminants in the subsurface of the AOMA. The grounds upon which he based his opinions are soil and ground-water quality data, geologic cross-sections, ground-water flow maps, contaminant

distribution maps, contaminant source data, subsurface utility maps, geologic logs, well construction data, and his education and experience.

**Ed O'Brien:**

Mr. O'Brien will testify regarding the need to mitigate for development impacts to low stream flows, the statements made in his declaration, the 1992 Puget Sound Stormwater Manual, the 1998 King County Surface Water Design Manual, and the 2001 Western Washington stormwater insofar as those address low flow impacts and replenishment of groundwater. His opinions will be based on his education, experience, the documents referred to, and local research on the loss of baseflow in urbanized and urbanizing watersheds, *e.g.*, "Forest Cover, Impervious-Surface Area, and the Mitigation of Urbanization impacts in King County, Washington," Derek B. Booth, Ph.D., P.E.

**Chung Yee:**

Mr. Yee will testify regarding the draft fill criteria, the development of those criteria, and the relationship of the criteria to the Model Toxics Control Act (MTCA) Method A and Method B cleanup levels. His testimony will be based on his knowledge and experience, and his understanding of the project.

**John Drabek**

Mr. Drabek will testify regarding Condition K of the § 401 Water Quality Certification, Construction Stormwater Limitations and Monitoring Requirements. His testimony will be based on his experience, WAC 173-210A, the National Pollutant Discharge Elimination System permit issued to the Port, and State Water Discharge Baseline General Permit for Stormwater Discharges Associated with Industrial Activities, and the Sand and Gravel General Permit.

**Kelly Whiting:**

Mr. Whiting will testify regarding his technical review of the stormwater management plan and associated low flow impact analysis and mitigation plan, consistency of the stormwater plan with the technical requirements of the 1998 King County Surface Water Design Manual (KCSWDM), review of the SR-509 interchange construction drawings and technical information report, assessing the use of acceptable assumptions, modifications, model inputs and statistical results. His testimony will be based on his education, expertise, review of the documents, and information provided in the review process.

**REQUEST FOR PRODUCTION NO. 2:** Please produce all documents relied on or reviewed to form the basis of the opinions, facts or other testimony referenced in the preceding interrogatory. In lieu of producing the documents requested in this request for production, you may provide a list of responsive documents provided that the actual documents will be made available upon one business day's notice.

**RESPONSE:**

Ecology objects to this request because it is unduly burdensome. In addition, not all documents reviewed by Ecology's experts can be listed because review is ongoing. Without waiving objection, the following is a partial list of documents reviewed by the listed experts.

**Ann Kenny:**

1. The natural resource mitigation plan and related documents;
2. The stormwater management plan and related documents;
3. The low flow impact off set facility proposal and related documents;

4. Ecology guidance regarding § 401 certifications.

**Erik Stockdale:**

1. The natural resource mitigation plan, and appendices, including design drawings;
2. Wetland delineation report;
3. Wetland function assessment and impact analysis;
4. Wildlife hazard management plan;
5. Various GIS-generated maps;
6. Wetland photographs and maps report.

**Kevin Fitzpatrick:**

1. The NPDES Permit for Sea-Tac Airport and its corresponding Fact Sheet;
2. The § 401 Water Quality Certification issued to the Port of Seattle for Sea-Tac Airport;
3. ~~Recent declarations he has prepared related to the appeals of the NPDES Permit major modification and the 401 Water Quality Certification;~~
4. The final Stormwater Management Plan for Master Plan Improvements at Sea-Tac Airport prepared by the Port of Seattle;
5. A variety of documents and e-mails related to the development of acceptable fill criteria which have already been disclosed and turned over to ACC.

**Katie Walter:**

See attached list, Ex. 1.

**Dave Garland:**

Ecology will supplement this response when information is received.

**Ching-Pi Wang:**

1. State of Washington Department of Ecology Agreed Order #97TC-N122 in the matter of SEA-TAC International Airport;
2. Draft Technical Memorandum, Analysis of Preferential Ground Water Flow Paths Relative to Proposed Third Runway, Seattle-Tacoma International Airport, Prepared for the Port of Seattle, AESI Project No. BV99122C, June 19, 2001;
3. Ground water flow pathways analysis diagrams for presentation at meeting with ACC, Ecology, and state legislators on May 15, 2001. Seven, 2 x 3 feet figures prepared by AEIS for the Port of Seattle dated May 3, 2001;
4. Documents listed by Roger Nye in his memorandum to Colleen Bradford dated September 20, 2001.

**Ed O'Brien:**

See attached list, Ex. 2.

**Chung Yee**

1. Email of June 26, 2001, from Chung Ki Yee to Craig Thompson (cc Kevin Fitzpatrick) with the draft fill criteria and the derivations for these criteria;
2. Model Toxics Control Act Cleanup Regulation, Chapter 173-340 WAC, Amended February 12, 2001;
3. Soil Screening Guidance: Technical Background Document, 9355.4-17A, May 1996, Table 46;
4. U.S.EPA IRIS Substance File;
5. Model Toxics Control Act Cleanup Levels and Risk Calculations (CLARC II) Update, February 1996;



6. "Natural Background Soil Metals Concentrations in Washington State", Publication #94-115, Washington State Department of Ecology;
7. Implementation Memo No. 3, PQLs as Cleanup Standards, by Steve Robb, Washington State Department of Ecology, November 24, 1993.

**John Drabek:**

1. Construction Stormwater Permit;
2. Ch. 173-201A WAC;
3. Sand and Gravel General Permit.

**Kelly Whiting:**

**Box #1:**

- June 2000 POS-SMP with margin notes;
- August 1999 POS-NRMP;
- Agency Review Draft Sea-Tac Runway Fill Hydrologic Studies with margin notes;
- A clipped package of pages from June 6, 2000 POS-SMP Appendix A with margin notes;
- November 1999 POS-SMP with margin notes;
- November 1999 POS-SMP Appendix A with margin notes;
- November 1999 POS-SMP Technical Appendices with margin notes;
- A clipped package of 2 HSPF Input files DM-PRE dated 6/2000 and DM-POST dated 8/2000 with margin notes;
- A clipped package of SMP materials dated 8/10/2000 - Primarily WQ treatment appendices with margin notes;
- Loose pages (now clipped) of notes, photos and reference material from timeperiod 7/2000;
- November 1999 POS-SMP and Technical Appendices marked clean copy;
- June 2000 POS-SMP Technical Appendices with margin notes;
- June 2000 POS SMP Appendix B in replacement gray binder with margin notes;
- Unmarked white binder containing Miller/Walker calibration information from timeperiod 7/2000 with margin notes and comment draft;
- May 2000 POS SMP Technical Appendix B Miller/Walker Calibration with margin notes.

**Box#2:**

- 1 standard size folder with correspondence, notes, press clippings, draft contracts, etc. from timeframe 12/99-3/00;
- 1 legal size folder with correspondence, notes, review materials, meeting notes, press clippings, etc. from timeframe of 3/00 - 8/00;
- 1 legal size folder with correspondence, notes, review materials, meeting notes, etc. from timeframe of 8/00 - 12/00.

**Box #3:**

- August 2000 POS-SMP Volume 1 with margin notes;
- August 2000 POS-SMP Volume 2 with margin notes;
- August 2000 POS-SMP Volume 3 with margin notes and Walker HSPF input file dated 7/2000;
- August 2000 POS-SMP Volume 4 with margin notes;
- 3 Hart Crowser reports dated 12/00 including Feasibility of Infiltration at different STIA locations;
- 2 standard sized folders containing correspondence, notes, review materials, meeting notes, SR509 Interchange review materials from timeframe 8/00 - 12/00.

**Box #4:**

- ~~December 2000 POS-SMP Volume 1 with margin notes;~~
- December 2000 POS-SMP Volume 2 with margin notes and printed hydrographs;
- Copy of materials included in 3/26/01 ACC public disclosure request;
- December 2000 NRMP Appendices A-E;
- Copy of 12/00 POS-SMP Appendix B;
- Paper CD holder with 2 CDs entitled "Des Moines 2006 and Predeveloped" and "Des Moines Calibration". Dated March-May 2001;
- One jewel case holding 2 CDs 1) copy of CD provided by Parametrix (files dated 10/00). Original CD was returned to Parametrix ~3/01. 2) Copy of CD sent to ACC per Public Disclosure Request 3/01;
- One standard size folder containing various HSPF input files received between 7/30/00 and 4/22/01 with margin notes;
- One standard sized folder marked "comments and notes" containing correspondence, notes, review materials, meeting notes. Primarily from timeframe 12/00 - 6/01, but copies of some earlier materials.

**Box #5**

- December 2000 POS-NRMP;
- December 2000 POS-SMP Volume 3 with margin notes;
- December 2000 POS-SMP Volume 3 marked "Contains July 2001 Replacement Pages";
- December 2000 POS-SMP Volume 4 with margin notes.

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**Box #6**

- One large binder including POS-SMP 2001 update process, with margin notes;
- One standard folder containing materials received 7/27/01, marked POS-SMP replacement pages;
- July 2001 POS Hydrologic Divide Report.

**Box #7**

- Box marked Final POS-SMP, dated 8/2001. This contains the 12/00 POS-SMP as updated through process outlined in materials included in Box #6.

**Box #8**

- July 2001 POS-LFAFIOFP with margin notes;
- July 2001 POS-LFAFIOFP Attachments;
- December 2000 POS - Low Streamflow Analysis with margin notes;
- One jewel case with 3 low flow related CDs dated 7/23/01, 7/25/01, and 7/26/01;
- June 2000 Ecology-PGG report "Sea-Tac Runway Fill Hydrologic Studies Report";
- One CD (unopened) received 9/5/01 which is thought to contain Des Moines Creek Low Flow model;
- One standard folder containing low-flow related materials, meeting notes, personal notes, etc. for time period 3/01-7/14/01;
- One legal sized folder containing low-flow related materials, meeting notes, personal notes, etc for time period 3/01-7/14/01;
- One legal sized folder containing low-flow related materials, meeting notes, personal notes, etc for time period 7/15/01-11/13/01.

**Box #9**

- December 2001 POS-LFAFIOFP Volume 1, received December 12, 2001;
- December 2001 POS-LFAFIOFP Volume 2, received December 12, 2001;
- One legal sized folder containing documents received after July, 2001, including appeal and contract related materials;
- One CD containing electronic files and e-mails related to this project.

**Unboxed:**

- 2 large rolled up maps showing contours of site 1994 and 2006 conditions. Received ~2/00;
- 2 long rolled up, taped future grading plans and 154/156 realignment drainage plan. Copied from SMP dated 9/00 and/or 12/00.

INTERROGATORY NO. 4: For each person identified as an expert witness in Interrogatory No. 2, identify each instance within the last ten (10) years in which the person provided opinions or other written or oral testimony before a court of any jurisdiction, the Pollution Control Hearings Board, or any other administrative review panel/board/officer, such identification to include:

- a. the case/matter name;
- b. the client/party represented;
- c. the date the opinion or testimony was provided;
- d. the form of testimony, including but not limited to deposition, trial/hearing testimony, declaration or affidavit;
- e. a description of the nature of the testimony/opinion; and
- f. each document in your control describing or recording this testimony.

ANSWER:

Ecology objects to this Interrogatory as overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving objection, Ecology submits answers for each witness as set forth below to the best of the witnesses' recollection.

Ann Kenny:

Ms. Kenny has not testified in the last ten years.

**Erik Stockdale:**

During the last nine years Mr. Stockdale has testified as an expert witness, representing Ecology, at the following hearings:

1. Shoreline Hearings Board, *Bidwell v. Overlake Fund*. Testimony was oral; proceedings were recorded by court reporter;
2. Shoreline Hearings Board, *Ecology v. Dwight Lewis*. Testimony was oral, in addition to materials placed in record for case. October 21-22, 1996. Proceedings recorded by court reporter;
3. Energy Facility Site Evaluation Council, Olympic Cross Cascade pipeline. Pre-filed testimony and oral testimony at hearing. June 10, 1999. Mr. Stockdale does not recall how proceedings were recorded;
4. Energy Facility Site Evaluation Council, Sumas Energy 2 proposal. Pre-filed testimony and oral testimony at hearings. July 26, 2000 and September 24, 2001. Mr. Stockdale does not recall how proceedings were recorded;
5. Shoreline Hearings Board, *Mohandessi v. Ecology and City of Sammamish*. October 5, 2001 and October 23, 2001. Testimony was oral, in addition to materials placed in record for case. Proceedings recorded by court reporter;
6. Central Puget Sound Growth Management Hearings Board, 1995, *Pilchuck Audubon, Ecology et al. v. Snohomish County* (case 95-3-0047). Pre-filed testimony for hearing.

During the last nine years at Ecology Mr. Stockdale has spoken before the Snohomish County Council, King County Council, various City Councils (North Bend, Snohomish, Marysville), various Planning Commissions, the Higher Education Coordinating Board, and several legislative subcommittees. As far as he recalls, none of these were recorded.

**Kevin Fitzpatrick:**

In the last 10 years Mr. Fitzpatrick can recall being deposed on two occasions for two different cases that were before the Pollution Control Hearings Board. The first instance involved an appeal of a penalty issued to Lake Union Drydock, the second instance was the appeal of an NPDES permit issued to Foss Shipyard. Neither case proceeded to a formal hearing before the PCHB.

In the last 10 years Mr. Fitzpatrick provided testimony in formal hearing before the PCHB on two occasions. The first instance was as a Water Quality Program expert witness for the Cedar and Green Watersheds in a series of appeals by a number of different parties of water right decisions made by Ecology's Water Resources Program. In the second instance, he provided testimony in a PCHB hearing in which Ecology's decision to cover a construction site in Snohomish County under the General Stormwater Permit for Construction Activity was appealed.

Over the past 10 years Mr. Fitzpatrick has had occasion to provide declarations and affidavits in the support of Ecology actions pending before the PCHB. Most recently he has completed declarations related first to the appeal and motion for stay of the major permit modification to the Port of Seattle's NPDES Permit, as well as declarations related to the appeal and motion for stay of the 401 Water Quality Certification for Master Plan Improvements at Sea-Tac Airport.

**Katie Walter:**

- a. Ms. Walter has testified in one case, Pierce County Administrative Appeal case AA24-99 Shoreline Exemption of Proposed Narrows Bridge Exploratory Borings;
- b. United Infrastructure Washington;
- c. Approximately January 13, 2000;

- d. Testimony at a public hearing;
- e. The merits of why the proposed geotechnical explorations met the criteria of the Shoreline Management Act exemptions;
- f. To the best of Ms. Walter's knowledge, Shannon & Wilson, Inc. does not have any recordings of the testimony. Shannon & Wilson, Inc. retains a copy of the exemption decision, and several documents that were used to apply for the contested exemption.

**Dave Garland:**

Mr. Garland has not testified in the last 10 years.

**Ching-Pi Wang**

- A. Unigard Insurance Company, a Washington corporation, et al., Plaintiffs, versus Bruce Leven, individually, et al., Defendants;
- B. Deposition upon oral examination of Ching-Pi Wang;
- C. ~~August 28, 1997.~~

**Ed O'Brien:**

- 1. PCHB No. 93-240, *Save Lake Sammamish vs. Department of Ecology, King County, and Burnstead Construction Company;*
- 2. PCHB No. 95-78, *Save Lake Sammamish v. Ecology, Department of Transportation, King County and City of Seattle;*
- 3. PCHB No. 95-121, *Save Lake Sammamish v. Ecology, Department of Transportation, and King County;*
- 4. PCHB No. 97-127, *Save Lake Sammamish vs. State of Washington, Dept. of Ecology.* Mr. O'Brien filed a declaration on Dec. 8<sup>th</sup> 1997 while representing Ecology.

**Chung Yee:**

In the early 90s, Mr. Yee provided a deposition for a NPDES permit appeal by the pulp and paper mills.

**John Drabek:**

- a. Rempel Brothers Concrete before the Pollution Control Hearings Board, State of Washington;
  - b. Department of Ecology;
  - c. September 9, 1999;
  - d. Hearing Testimony;
  - e. Defending a \$14,000 penalty issued by the Department of Ecology;
  - f. Findings, Conclusions and Order of the Pollution Control Hearings Board.
- 
- a. Appeal of the mitigated Determination of Non-significance for the Rouleau/Lakeside Rock Crushing and Asphalt Plant;
  - b. Department of Ecology;
  - c. January 25, 1996;
  - d. Appeal Hearing;
  - e. Water Quality Protection under the Sand and Gravel General Permit issued to the Rouleau Quarry;
  - f. None.
- 
- a. AAA Monroe Rock - Monroe & Diorite Site Appeals;
  - b. Department of Ecology;
  - c. Approximately October 1 and 12, 1999;



- d. Interrogatory;
- e. Permit Conditions, applicability of AAA Diorite to NPDES permit, Violations, Failure to respond, similar facilities compliance history under the Sand and Gravel General Permit, Permit Manager 5 years, issued coverage under the Sand and Gravel General Permit, applicability Sand and Gravel General Permit;
- f. None.

**Kelly Whiting:**

Hearing Examiner's hearing of an appeal of a Notice and Order issued to property owner for grading activity within a sensitive area without approved permits. Represented King County Surface Water Management Division during the appeal hearing. Testimony was provided approximately Summer/Fall 1992. Verbal testimony provided during the multi-day appeal hearing. Testimony included field observations of site before and after alteration made to sensitive area, and previous knowledge of property while employed at King County Building and Land Development Division. The hearing examiner's report and transcripts may be available from King County Hearing Examiner's office. A copy of the final report and related materials are available in KCDNR Drainage Investigation Complaint file 92-0385. Related information may be found in complaint files 87-1200, 87-1095, and 87-1012 which are archived at the King County Records Center.

Earlier testimony at public hearings on behalf of King County Building and Land Development Division occurred more than 10 years ago.

**INTERROGATORY NO. 5:** Describe with particularity all supporting materials submitted with the Coastal Zone Management Act (16 U.S.C. §§ 1451-1464) ("CZMA") consistency application for the Third Runway Project.

**ANSWER:**

The Port submitted the following documents in support of its Certification of Consistency with the Washington State Coastal Zone Management Program:

1. A Certification of Consistency with the Washington State Coastal Zone Management Program for Federally Licensed or Permitted Activities signed by Elizabeth Leavitt on January 10, 2001;
2. A copy of the Shoreline Exemption received from the City of Auburn for the Auburn wetland mitigation site on August 9, 2000;
3. A copy of the Hydraulic Project Approval issued for the Auburn wetland mitigation site issued by the Department of Fish and Wildlife on July 28, 2000;
4. A cover letter dated March 21, 2001 and a copy of the Order issued by the Puget Sound Clean Air Agency to the Seattle-Tacoma International Airport on September 21, 1999 limiting facility-wide air emissions of sulfur dioxide, nitrogen oxides, and carbon monoxides at the Seattle-Tacoma International Airport to less than 99 tons each during any 12 consecutive months;
5. A copy of Permit No. SO3-004191, the General Stormwater Permit for Construction Activity, for the Auburn Wetland Mitigation Project issued by Ecology on April 4, 2001;
6. All of the materials submitted in support of its 401 Water Quality Certification application.

**REQUEST FOR PRODUCTION NO. 3:** Please produce all documents within your control upon which you rely in your answer to the proceeding interrogatory. In lieu of producing the documents requested in this request

for production, you may provide a list of responsive documents provided that the actual documents will be made available upon one business day's notice.

RESPONSE:

All of the documents described above have been previously provided in response to ACC's ongoing public disclosure requests.

INTERROGATORY NO. 6: Identify with particularity each structure related to the Port's Third Runway Project or master plan improvements that may impound ten acre-feet or more of water (or any substance in combination with water such as, but not limited to, liquid or slurry).

ANSWER:

The Port of Seattle discusses Dam Safety issues in section 3.2 of the Comprehensive Stormwater Management Plan (CSMP) for the Seattle-Tacoma International Airport and identifies all structures impounding ten acre-feet or more of water in Table 3-1 of the CSMP (July 2001 replacement page3-7a).

INTERROGATORY NO. 7: For each structure identified in the preceding interrogatory, please state with particularity which Dam Safety performance standards (in Ch. 173-175 WAC) you contend apply and do not apply to each structure.

**ANSWER:**

These structures will be individually analyzed and the appropriate standards will be determined by Ecology's Dam Safety Office when it receives an application for a Dam Safety Permit from the Port of Seattle for the structures. Condition G.1. of the Water Quality Certification requires the following:

All facilities identified in Table 3-1 of the Comprehensive Stormwater Management Plan (CSMP) that meet the requirements of Chapter 173-175 WAC (Dam Safety Regulations) shall obtain a Dam Safety Permit from Ecology prior to commencement of construction. If any stormwater facilities identified in the CSMP change during final design such that they meet the requirements of Chapter 173-175 WAC, those facilities shall obtain a Dam Safety Permit from Ecology prior to commencement of construction.

**INTERROGATORY NO. 8:** For all work described in the October 25, 2000, JARPA submitted for the Third Runway and related projects (as amended), identify each activity or project you contend is a "Port 404 project" as that phrase is used in the 401 Certification (see, e.g., Condition E, page 33).

**ANSWER:**

The term "Port 404 project" as used in Condition E of the 401 Water Quality Certification means projects for which the § 404 permit was sought, e.g., Third Runway, Runway Safety Areas, South Aviation Support Area and other appropriate Master Plan Update Improvements as determined by Ecology.

The fill criteria are meant to apply to Master Plan Update (MPU) Improvements (Projects) where fill will be placed directly into waters of the state, including wetlands. These

projects include those areas where the third runway embankment will be constructed, the runway safety areas, and the South Aviation Support Area. Ecology is also requiring the Port to apply the fill criteria to other MPU projects when those projects may result in impacts to wetlands or other waters of the state. The criteria that Ecology is using to make this determination involves evaluating each MPU project in order to identify projects where imported fill will be placed in areas that are in close proximity to ground water or surface waters such that there is a reasonable risk of harm to such waters should the fill criteria not be met.

INTERROGATORY NO. 9: For all work described in the October 25, 2000, JARPA submitted for the Third Runway and related projects (as amended), identify each activity or project you contend is not a "Port 404 project" as that phrase is used in the 401 Certification (see, e.g., Condition E, page 14).

ANSWER:

Ecology has not yet completed its in depth review of each MPU project, however, in general, MPU projects that would not meet the definition of a Port 404 project include those projects where there is no direct placement of fill into wetlands or other waters of the state and where the project is not located in close enough proximity to surface waters or to ground water so as to constitute a reasonable risk to such waters if the fill criteria are not met.

The Port has developed a phased construction schedule and can identify all projects which will be constructed in the next two years. Ecology is in the process of meeting with the

Port to determine exactly which of these projects the fill criteria will apply to. This determination will be completed prior to commencement of construction.

INTERROGATORY NO. 10: Describe in detail the difference between the scope of the phrase "Port 404 project" as used in the amended 401 Certification (see, e.g., Condition E, page 14) and the scope of the phrase "Port's Master Plan Update Improvements" as used in the August 10, 2001, 401 certification (see, e.g. Condition E, page 14).

ANSWER:

The language in the original 401 certification issued on August 10, 2001 was amended by the September 21, 2001 401 certification to provide more clarity as to which MPU projects the fill criteria apply. As originally written, the term "Port's Master Plan Update Improvements" could apply to any project identified on the Port's MPU list of projects even though a specific project did not involve the use of imported fill or the project was so far removed from surface waters (for example, when fill is placed and then is covered with concrete so that there is no surface water runoff) or so far removed from ground water that there was a very low likelihood of any possible risk of harm to waters of the state if the criteria were not applied to that project. Ecology did not believe it was warranted to apply the stringent fill criteria of the 401 certification to MPU projects where there is virtually no risk to waters of the state because the project does not directly impact waters of the state or where the project is located or designed in such a manner that waters of the state are highly unlikely to be adversely affected if the fill criteria of the 401 certification are not applied.

INTERROGATORY NO. 11: Is it your contention that there are activities or projects described in the October 25, 2000, JARPA submitted for the Third Runway and related projects (as amended), for which the Port need not seek certification pursuant to § 401 of the Clean Water Act (33 U.S.C. § 1341)?

ANSWER:

No.

INTERROGATORY NO. 12: If the answer to the preceding interrogatory is not an unqualified no, state with particularity which activities or projects you contend do not require certification pursuant to § 401 of the Clean Water Act (33 U.S.C. § 1341).

ANSWER:

Not applicable.

REQUEST FOR PRODUCTION NO. 4: Please produce all documents within your control supporting or otherwise pertaining to facts stated in your answer to the preceding interrogatory.

RESPONSE:

Not applicable.

INTERROGATORY NO. 13: Is it your contention that there are activities or projects related to the Third Runway Project (beyond those included in your answer to Interrogatory No. 12), for which the Port need not seek certification pursuant to § 401 of the Clean Water Act (33 U.S.C. § 1341)?

ANSWER:

No.

INTERROGATORY NO. 14: If the answer to the preceding interrogatory is not an unqualified no, state with particularity which activities or projects you contend do not require certification pursuant to § 401 of the Clean Water Act (33 U.S.C. § 1341).

ANSWER:

Not applicable.

REQUEST FOR PRODUCTION NO. 5: Please produce all documents within your control supporting or otherwise pertaining to facts stated in your answer to the preceding interrogatory.

RESPONSE:

Not applicable.



**INTERROGATORY NO. 15:** Identify all conditions or mitigation proposed for the Third Runway Project which you contend will not apply or may not be enforced over the operational life of the third runway project.

**ANSWER:**

Ecology objects to this interrogatory as vague, as well as overly broad. Without waiving objections, the conditions specified in the 401 certification apply as long as the RCW 90.48 order remains in effect.

**INTERROGATORY NO. 16:** Describe in detail the contents of any meeting or communication in which Joan Marchioro, Port Counsel Jay Manning and Tanya Barnett, Megan White, Dan Swenson, Steve Hirschey and Bob Barwin (or others) participated, addressing in whole or in part the need or potential use of a water right for implementation of flow mitigation for the Third Runway Project, which took place on March 22, 2001.

**ANSWER:**

Ecology objects to this Interrogatory to the extent it calls for attorney-client privileged communications and work product.

On March 22, 2001, Joan Marchioro, Jay Manning, Tanya Barnett, Megan White, Dan Swenson, Steve Hirschey and Bob Barwin participated in a telephone call discussing the Port's proposal. The issue discussed was whether or not a water right is required to store/use stormwater. The participants talked about the administrative perspectives of other states regarding stormwater management and whether or not their policies were applicable to the

question at hand. They also talked about the various authorities administered by Ecology and whether or not they required a water right to issue with a stormwater storage proposal. The participants discussed whether storage of water in a stormwater vault by the Port and the subsequent discharge of that stored water to base flow of streams needed to be authorized under a reservoir and secondary permit or was authorized by the 401 certification and permit conditions. Ecology staff reached no conclusion on whether or not the discharge of stored stormwater was a beneficial use of water or merely compliance with permit requirements. The participants also talked about the policy and administrative implications of requiring all stormwater storage facilities to also obtain a water right. No decisions were made in the meeting as to whether or not a water right storage permit was applicable to the storage of stormwater.

INTERROGATORY NO. 17: Describe in detail the contents of any meeting or communication in which Joan Marchioro, Tom Fitzsimmons and/or Port Counsel Jay Manning (or others) participated, addressing in whole or in part the need or potential use of a water right for implementation of flow mitigation for the Third Runway Project, which took place on April 2, 2001.

ANSWER:

See answer and objection to Interrogatory No. 16. The contents of the meeting generally involved a discussion of whether a water right permit was required in order for the Port to detain stormwater and release it to area streams in mitigation of low flow impacts from the Third Runway Project.

INTERROGATORY NO. 18: Identify any directions or instructions from Tom Fitzsimmons addressing in whole or in part the need or potential use of a water right for implementation of flow mitigation for the Third Runway Project, subsequent to April 2, 2001.

ANSWER:

Mr. Fitzsimmons did not issue a directive or instructions regarding whether a water right was required for the Third Runway Project. Ecology's senior management team decided on April 4, 2001 that a water right was not required for the low flow mitigation portion of the Third Runway Project.

REQUEST FOR PRODUCTION NO. 6: Please produce all documents within your control supporting or otherwise pertaining to facts stated in your answers to the three preceding interrogatories.

RESPONSE:

With the exception of documents protected by attorney/client privilege and the work product doctrine, all documents responsive to this request have already been provided to ACC through public disclosure. Ecology objects to production of attorney-client privileged documents and documents containing attorney work product.

Interrogatories and Requests for Production dated this 28th day of  
November, 2001.

**HELSELL FETTERMAN LLP**

By: \_\_\_\_\_  
Peter J. Eglick, WSBA No. 8809  
Michael P. Witek, WSBA No. 26598  
Attorneys for Appellant Airport  
Communities Coalition

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ACC'S INTERROGATORIES NOS. 1-18  
AND REQUESTS FOR PRODUCTION  
NOS. 1-6 TO DEPT. OF ECOLOGY  
AND RESPONSES THERETO - 36

AR 018424

I, ANN E. KENNY, declare as follows:

I am the authorized representative of Respondent Department of Ecology in the above-entitled action; have read the above Responses to Interrogatories and Requests for Production of Documents and believe the same to be true and in compliance with CR 26.

Executed on this 5<sup>th</sup> day of January, 2002, at Bellevue, Washington.

Ann E. Kenny

The undersigned attorney for Respondent Department of Ecology has read the foregoing Appellant's First Set of Interrogatories and Requests for Production of Documents and the responses thereto and they are in compliance with CR 26(g).

DATED on this 7 day of January, 2002.

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