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Sent via Fax and Email

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Re: Lack of Enforcement of Agreed Order #97TC-N122 between Ecology and the Port of Seattle and its Implications for 401 Certification

Dear Messrs. White and Pendowski:

We represent the Airport Communities Coalition ("ACC") whose members are the Cities of Burien, Des Moines, Federal Way, Normandy Park and Tukwila as well as the Highline School District. We are writing to object to the Port of Seattle's failure to comply with Ecology's May 25, 1999 Agreed Order and to request that Ecology take immediate enforcement action against the Port pursuant to RCW 70.105D.050(1) to compel compliance. ACC further requests that Ecology not issue any decision on the Port's 401 application until the Port has fully complied with the Order. In addition, ACC requests that Ecology immediately ask the State Auditor to audit the Port's expenditure of funds granted to the Port by Ecology for purposes of performing the studies required by the Agreed Order.

As stated in the Agreed Order, known hazardous substances exist in the soil and groundwater in the Airport Operations and Maintenance Area ("AOMA") at the Airport. "The primary cause of soil and groundwater contamination [at the Airport] has been leakage from underground storage tanks and associated underground piping." The Order requires the Port to (1) conduct a groundwater study, (2) model contaminant fate and transport and (3) confirm model results by obtaining and analyzing groundwater samples. The stated purpose of the study and modeling is to determine whether the aquifer downgradient from the Airport "has been significantly impacted by airport operations," confirm that groundwater underneath the Airport is

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flowing in a westward direction, and "identify the potential risk posed by contamination originating within the AOMA" to public drinking water supply wells and to Des Moines and Miller Creeks.

In notes prepared for use at the third runway public hearing recently held on January 26 and January 27 (obtained pursuant to a public disclosure request), Ray Hellwig prepared the following answer to the following anticipated question:

"12. The "Agreed Order", how is [sic] being treated in your 401 review process?

The AO pertains to a set of circumstances and regulatory requirements separate from the 3RW and associated projects. Having said that, however, the 401 will be conditioned to indicate that the Port must comply with all other state laws and regulations relating to the project."

Mr. Hellwig's answer completely ignores the critical (and obvious) connection between (1) the Agreed Order studies, which are to assess the likelihood of known hazardous substances existing at the Airport reaching downgradient water resources, and (2) the Port's 401 application, which seeks certification from Ecology under the Clean Water Act that the third runway project will not result in violations of state water quality standards to those same water resources.

The Port's own preliminary studies conducted by Associated Earth Sciences, Inc. indicate the groundwater flow directions in the shallow (Qva) aquifer in the AOMA vicinity are to the west and northwest. The direction of the flow takes the contaminants through the site of the proposed third runway and toward the headwaters of salmon-bearing Miller and Walker Creeks.

The Port's failure to comply fully, completely and on time with the Agreed Order is particularly egregious given the Port's ongoing massive construction efforts and disturbance of soils relating to the proposed third runway and associated infrastructure. The data submitted by the Port in support of its application for 401 certification makes no assessment of the impacts of the proposed third runway and related infrastructures on the fate and transport of the known hazardous substances in the Airport Operations and Maintenance Area. Without the groundwater study and fate and transport model required by the Agreed Order, neither the Port nor Ecology can predict with any assurance (let alone "reasonable assurance") whether third runway infrastructures will facilitate movement of contaminants to the nearby streams. For example, will the proposed drain field underneath the 20 million cubic yards of imported fill become a preferred pathway for the contaminants from the

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AOMA to the headwaters of Miller and Walker Creeks? Will drainage trenches and underground utilities for the third runway expedite the delivery of hazardous substances to the embankment and beyond? Any answer to these questions (and others) in the absence of an accurate and complete groundwater study and fate and transport model is pure speculation and conjecture. The Clean Water Act requires more from Ecology than mere guesswork.

While Mr. Hellwig is correct that the Agreed Order arises under MTCA rather than the Clean Water Act, his carefully crafted answer for the public hearing avoids the fundamental issue raised by the question: Ecology cannot provide a legally defensible "reasonable assurance" that the third runway project will not result in a violation of state water quality standards unless and until the Port completes the groundwater study and fate and transport model that takes into consideration potential preferred pathways created by the third runway project. Ecology cannot avoid the issue by compartmentalizing or departmentalizing the Port's failure to comply with Ecology's Order and the Port's application for 401 certification.

Mic Dinsmore signed the Agreed Order on behalf of the Port on May 25, 1999. Appendix 2 of the Agreed Order provides that the Port was to complete the groundwater flow study and fate and transport model by December 22, 1999. Yet, the only work presented to Ecology by the Port since entry of the Order is a "conceptual ground water model" presented on October 4, 2000. We understand from discussions ACC consultants have had with Ecology staff that, since the October 4 meeting, the Port has failed to perform, and is refusing to perform, any further work required by the Order under the guise of a lack of funding even though the Port is in the midst of a \$6 billion expansion project and even though the Port received partial funding for the studies from Ecology.

Given the lack of progress and the limited work product to date, ACC has very serious concerns about the Port's expenditure of the grant money Ecology provided to the Port to fund 50% of the costs of the studies required by the Agreed Order. Where has the grant money gone and what did the Port spend it on if the studies are nowhere near complete and the Port has "suspended" work on them? We hereby request that Ecology ask the State Auditor, pursuant to RCW 43.09.055, to audit the Port's expenditures of Ecology's grant.

RCW 70.105D.050(1) provides Ecology with a strong enforcement tool:

"Any liable person who refuses, without sufficient cause, to comply with an order or agreed order of the director is liable in an action

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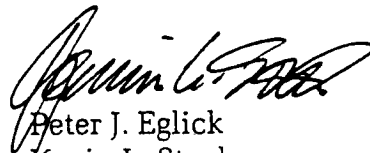
brought by the attorney general for: (a) up to three times the amount of any costs incurred by the state as a result of the party's refusal to comply; and (b) a civil penalty of up to twenty-five thousand dollars for each day the party refuses to comply."

Full and complete compliance with Ecology's Agreed Order is critical from ACC's standpoint. Its member cities and school district are located downgradient from the contaminated areas of the Airport. Des Moines, Miller and Walker Creeks run through the communities. Some of the communities rely upon the aquifer as a sole source for public drinking water. ACC strongly requests that Ecology enforce the May 25, 1999 Agreed Order in accordance with RCW 70.105D.050(1) and not issue any decision on the Port's 401 application until the Port has fully complied with the Order.

Please advise how Ecology will be proceeding on this matter.

Sincerely,

HELSELL FETTERMAN LLP



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Kevin L. Stock

Attorneys for Airport Communities Coalition

cc: Mr. Thomas Fitzsimmons
Mr. Raymond Hellwig
Ms. Ann Kenny (for 401 public record)
Rep. Kelli Linville
Rep. Shay Schual-Berke
Rep. Karen Keiser
Rep. Joe McDermott
Rep. Erik Poulsen
Sen. Julia Patterson
Sen. Dow Constantine
Sen. Tracey Eide

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