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DEPARTMENT OF ECOLOGY HIFSELL FETTERMAN LLP

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April 11, 2001

Kevin L. Stock  
Attorney at Law  
Helsell Fetterman, LLP  
P.O. Box 21846  
Seattle, WA 98171-3846

Dear Mr. Stock:

Re: Your letter of March 30, 2001 regarding Agreed Order #97TC-N122, 401 Certification processes, and commitments made at the March 27, 2001 meeting between Ecology and certain parties, including legislators, representing the Airport Communities Coalition (ACC)

Thank you for your March 30, 2001 letter summarizing your understanding of what was agreed to at the meeting referred to above. In your letter you also request a written response to the March 9, 2001 letter you sent on behalf of the ACC to Gordon White and Jim Pendowski. This letter outlines my understanding of the agreements reached at the March 27 meeting, and Ecology's commitments pursuant to those agreements. It also provides a response to your March 9 letter (which was supported by a letter dated March 19 signed by Senator Julia Patterson and other legislators).

During the March 27 meeting, we discussed legal and technical concerns related to the above referenced Agreed Order as well as the 401 Certification decision-making process for the Port of Seattle's (POS) Third Runway and associated projects (third runway projects). You presented your perspectives about the legal and procedural relationship between the Agreed Order and the 401 Certification process. We did not reach agreement on your views about this area of concern, but we did agree to take a fresh look at the technical and scientific issues your clients have expressed about Third Runway infrastructure, and a belief it might create pathways for contaminants from the Airport Operations and Maintenance Area (AOMA) to proposed runway sites.

As part of taking a fresh look, Ecology committed to hosting a technical meeting wherein technical experts representing the ACC would have an opportunity to provide additional input to Ecology technical staff and ask questions about available technical information. We mentioned we thought this would be beneficial based on previous experiences where similar technical meetings were arranged with ACC consultants and Ecology technical



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staff. At the meetings held last summer/fall, information provided by ACC consultants was used to enhance our regulatory review of the POS's proposals.

We welcome ACC technical consultants and representatives, as well as legislators and other interested parties to attend such a technical meeting. We found that previous meetings were effective in part, because the number of meeting participants was relatively low, and the focus was on technical areas of concern. This is probably a factor that potential meeting participants will want to consider. We look forward to planning the technical meeting at a time and location that will be mutually beneficial. Please contact Ray Hellwig at 425-649-7010 for assistance in this regard.

As indicated above, I would also like to provide a response to your letter of March 9, 2001. In the earlier letter, as well as during our recent meeting, you requested that Ecology hold off any decision on the Port of Seattle's 401 application until the Port fully complies with the Agreed Order. We have carefully considered your request and concluded it is not necessary to hold up a decision on the 401 application pending completion of the ground water study under the Agreed Order.

The goal of the ground water study required under the Agreed Order is to evaluate: a) Ground-water flow in the intermediate (Qva) aquifer throughout the AOMA; b) Model contaminant fate and transport in this area, and; c) Confirm model results by obtaining and analyzing ground-water samples. The ground-water study results will: 1) Determine whether or not the intermediate aquifer down-gradient of the AOMA has been significantly impacted by airport operations in the last fifty years; 2) Confirm the predominant flow direction of this aquifer relative to and down-gradient from the AOMA, and; 3) Provide a more comprehensive understanding of the fate and transport of contamination originating within the AOMA. The results would identify the potential risk posed by contamination originating within the AOMA to public drinking water supply wells, any publicly recorded and operating local private drinking water supply wells, Bow Lake, Des Moines Creek, and Miller Creek. Any actions required by Ecology as a result of the ground water study will be enforced pursuant to the terms and conditions of the Agreed Order.

The ground water study does not (nor was it intended to) substantially contribute to our understanding of how the infrastructure for the proposed third runway projects could contribute to the transport of contaminated materials from the AOMA to proposed runway sites. However, we do agree to the need for additional information regarding this concern and we will conduct analyses that include the assessment of data already available to us regarding contamination and groundwater in the AOMA. We will also be asking the Port of Seattle to provide us with additional information regarding the interaction of the third runway projects with the AOMA. Let me assure you that Ecology will not decide to approve or deny the Port's third runway projects until this "pathway" analysis is complete.

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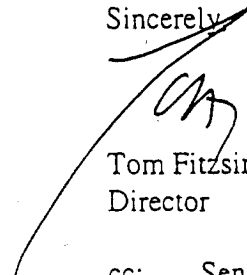
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In your March 9 letter you request Ecology to enforce the Agreed Order in accordance with RCW 70.105D.050(1). Please be advised that, at this time, we are planning to fully reinstate work on this order and will work with POS staff to ensure compliance with its terms and conditions accordingly.

On another note: Ecology's Toxics Cleanup Program has asked our Solid Waste and Financial Assistance Program to conduct an audit of the grant our agency provided to the POS for Agreed Order related work. Concerns revolve around the appropriateness of billings, and grant scope of work. Once this audit is complete we will determine if additional action is necessary.

Thank you for your interest in these matters. If you have further questions regarding the Section 401 water quality certification please call Ms. Ann Kenny at 425-649-4310. If you require more information regarding the status of the Agreed Order you may speak with Mr. Ching-Pi Wang at 425-649-7134.

Sincerely,



Tom Fitzsimmons  
Director

cc: Senator Julia Patterson  
Senator Dow Constantine  
Senator Tracy Eide  
Representative Kelli Linville  
Representative Shay Schual-Berke  
Representative Karen Keiser  
Representative Joe McDermott  
Representative Mark Miloscia  
Representative Maryann Mitchell  
Representative Erik Poulsen  
Peter J. Eglick, Helsell Fetterman, LLP  
Ray Hellwig  
Gordon White  
Jim Pendowski  
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Steve Alexander  
Ching-Pi Wang  
Ann Kenny  
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