

Law Offices
HELSELL
FETTERMAN
A Limited Liability Partnership

July 18, 2001

Kevin L. Stock
Attorney at Law
EMAIL: kstock@helsell.com
DIRECT DIAL: 206-689-2162

By Fax, Mail and Email

Mr. Gordon White
Program Director
Shorelands and Environmental Assistance Program
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: Sea-Tac Third Runway: Lack of Ecology Response to ACC's
Recent PDA Requests

Dear Mr. White:

We are writing to bring to your urgent attention the fact that, despite ongoing weekly Public Disclosure Act requests to Ecology's NWRO and additional weekly inquiries to NWRO's records clerk Sally Perkins, ACC has not received any PDA documents from Ecology for over a month (with the exception of a few emailed Excel spreadsheets, with no accompanying context, and one partial document faxed to us yesterday after we learned of and specifically requested it). NWRO has apparently -- effectively -- cut off the flow of documents to ACC at this crucial time in the review process.

One egregious example concerns the most current version of the Sea-Tac contaminants pathways analysis -- acknowledged as a key element of the review process. ACC's hydrogeology expert, Mark Varljen of SCS Engineers, has been commenting on this analysis and other aspects of potential contamination risks as concurrently as possible. We have now learned that the information he has been relying on to draft his latest letter (which we are transmitting to you today) -- the draft Technical Memorandum dated May 20, 2001, with Ecology's substantial edits dated May 30, 2001 -- was superseded by Port materials dated June 19, 2001. We only learned of the June 19 materials yesterday, July 17, after I asked Ching-Pi Wang by email (copy attached) to identify the date of the most current version. We did not receive these June 19 materials on a timely basis despite our weekly PDA requests and additional weekly inquiries as to whether any documents are ready for us

Mr. Gordon White
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(representative copies attached¹). Late yesterday, after my email exchange with Mr. Wang, he faxed me the text of the Port's June 19 submission, but not the figures. As Mr. Wang acknowledges, however, "You really need the figures" -- which we do not yet have. In response to my informing him that we had not yet been provided with the June 19 figures, Mr. Wang said:

My apologies. The figures that Mark picked up at our meeting in Olympia have been improved, reduced, and pretty colors added. I gave Ann Kenny a few sets to distribute. I'll see if she has anymore.

Ms. Kenny then responded:

I gave a set of the materials provided by the Port dated June 19th to our records clerk Sally Perkins about two weeks ago. ... Kevin, please let me know if you haven't received this document.² ...

Two weeks prior to July 17 is July 3 -- which in turn is two weeks after June 19. In other words, the materials were not given to Ms. Perkins for some two weeks after they were received, and two weeks after that we still have not received them. No doubt there are many, many other documents and emailed communications which have likewise been languishing on one desk or another instead of being copied for and provided to us pursuant to our PDAs.

Furthermore, no indication was given to us by Ms. Kenny at our July 10, 2001, meeting with you and Ms. Kenny, which Mr. Varljen attended and at which he expressed his ongoing concerns, that information existed which superseded what we previously received from Ecology. Why weren't we informed that Ecology was in possession of a revised draft of the Technical Memorandum?

The last date we received any PDA documents from Ecology was June 14, 2001 -- over a month ago. Prior to the current hiatus, disclosures were relatively regular. ACC is striving to provide comments on behalf of its 150,000-plus constituents in as timely a manner as possible. You yourself acknowledged in our recent meeting that

¹ PDA requests dated July 16, July 6, June 29, June 22, June 7, and June 1; email follow-up inquiries to Sally Perkins dated July 12, July 6, June 26, and June 22.

² By copy of this letter, I am informing Ms. Kenny that we have not received this document (the figures) -- nor have we received any other PDA documents from Ecology since June 14, except for the raw Excel spreadsheets received by email and the June 19 text faxed to me late yesterday by Ching-Pi Wang.

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many of ACC's concerns have merit, should be fully addressed, and explicitly complimented the contributions made by scientists engaged by ACC to provide independent review. Yet Ecology has now deprived us of the ability to provide timely comments and analyses by NWRO's failure to provide us with documents in a timely manner. In our meeting it was acknowledged that Ecology has requested, and will be requesting, more information and analyses from the Port on various topics, yet we are left in the dark as to whether that information has been received and what it contains. This does more than prejudice the public's ability to comment -- it prevents it.

Ecology's current hold-up on PDA document production for the Port's Section 401 application is especially ironic in light of the fact that Ecology has itself termed ACC's much-less-frequent PDA requests for information on the Port's NPDES permit and major modification as "standing," and used that characterization to justify the lack of information provided in its NPDES permit modification and attached Responsiveness Summary:

Through the standing public disclosure request the Airport Communities Coalition will be notified of the precise points of discharge.

Responsiveness Summary, Modification of NPDES Permit No. WA-002465-1, at p. 1, Response No. 1. In light of the fact that, despite weekly PDA requests and follow-up inquiries, we have not received any new documents for over a month concerning any aspect of Ecology's third runway review including particularly the 401 certification (except for a few raw spreadsheets with no accompanying explanations or context), Ecology's reassurance that timely disclosures will be made in response to a "standing" request is not credible.

We understand from our meeting that you would like to issue a decision on the 401 certification, but continue to accept submission of new substantive, technical information from the Port. The NWRO cut-off of public disclosure documents may facilitate a quick and final decision by avoiding independent public scrutiny of and comment on the Port's latest claims. However, by cutting off timely independent review by the very scientists whose expertise you have acknowledged, Ecology does nothing for the credibility or defensibility of its 401 decision. We urge you therefore to refrain from issuing a 401 decision until after the PDA cut-off is reversed and

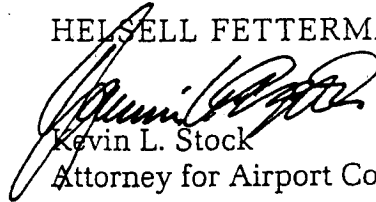
AR 023723

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independent scientists have the opportunity to review the Port's latest, final claims upon which Ecology will rely in issuing its decision.

Sincerely,

HELSELL FETTERMAN LLP



Kevin L. Stock

Attorney for Airport Communities Coalition

Enclosure

cc: Mr. Ray Hellwig
Ms. Ann Kenny
Mr. Ching-Pi Wang

g:\lu\acc\white-pda-071801.doc

AR 023724

Grad, Andrea E.

Subject: FW: SeaTac Pathways analyses

-----Original Message-----
From: Kenny, Ann [mailto:AKEN461@ECY.WA.GOV]
Sent: Tuesday, July 17, 2001 4:50 PM
To: Wang, Ching-Pi; Stock, Kevin L.
Cc: 'Mark Varljen'
Subject: RE: SeaTac Pathways analyses
Importance: High

Ching-Pi and Kevin:

I gave a set of the materials provided by the Port dated June 19th to our records clerk Sally Perkins about two weeks ago. The drawings were attached to a report prepared by Associated Earth Sciences entitled: Draft Technical Memorandum, Analysis of Preferential Ground Water Flow Paths Relative to Proposed Third Runway, STIA.

Kevin, please let me know if you haven't received this document. I have one extra copy available and can have additional color copies made of the report if necessary.

Ann
425-649-4310

> -----Original Message-----
> From: Wang, Ching-Pi
> Sent: Tuesday, July 17, 2001 4:33 PM
> To: 'Stock, Kevin L.'
> Cc: 'Mark Varljen'; Kenny, Ann
> Subject: RE: SeaTac Pathways analyses
>
> My apologies. The figures that Mark picked up at our meeting in Olympia
> have been improved, reduced, and pretty colors added. I gave Ann Kenny a
> few sets to distribute. I'll see if she has anymore.
>
>
>

> -----Original Message-----
> From: Stock, Kevin L. [mailto:kstock@helsell.com]
> Sent: Tuesday, July 17, 2001 3:53 PM
> To: Wang, Ching-Pi
> Subject: RE: SeaTac Pathways analyses
>
> Ching Pi: I checked with Mark. He says the only figures that he has
> are the figures we picked up at our meeting in May. Do you have new
> figures from the Port and an explanation of the figures? If so, I can
> have a messenger pick them up. Kevin.
>

> -----Original Message-----
> From: Wang, Ching-Pi [mailto:CWAN461@ECY.WA.GOV]
> Sent: Tuesday, July 17, 2001 3:18 PM
> To: Stock, Kevin L.
> Cc: 'Mark Varljen'
> Subject: RE: SeaTac Pathways analyses
>

> Kevin:
>

> I faxed the text, but not the figures. Mark has a few sets of the color
> figures. Get one from him, I only have my set left. You really need
> the
> figures.
>
> Ching-Pi
>
> -----Original Message-----
> From: Stock, Kevin L. [mailto:kstock@helsell.com]
> Sent: Tuesday, July 17, 2001 2:15 PM
> To: Wang, Ching-Pi
> Subject: RE: SeaTac Pathways analyses
>
> Ching Pi, I would appreciate receiving a faxed copy if possible. My fax
> # is (206) 340-0902.
>
> -----Original Message-----
> From: Wang, Ching-Pi [mailto:CWAN461@ECY.WA.GOV]
> Sent: Tuesday, July 17, 2001 9:59 AM
> To: Stock, Kevin L.
> Cc: 'Mark Varljen'
> Subject: SeaTac Pathways analyses
>
>
> The June 19th, 2001 version of the pathways analyses is the most
> current.

Grad, Andrea E.

From: Isaacson, Michelle L.
Sent: Monday, July 16, 2001 2:45 PM
To: 'Ray Hellwig (E-mail)'; 'Ann Kenny (E-mail)'; 'Steve Alexander (E-mail)'; 'Ching-Pi Wang (E-mail)'
Cc: 'Sally Perkins (E-mail)'
Subject: RE: Public Disclosure Act Request (re: Third Runway and Agreed Order)

Pursuant to the Public Disclosure Act, please provide us with copies of all documents related to the Port of Seattle's proposed Third Runway, other STIA Master Plan Update projects, and the Port/Ecology May 1999 Agreed Order generated by the Department of Ecology or received by Ecology from the Port of Seattle, its contractors or representatives (e.g., Parametrix), King County, state agencies, or federal agencies (including but not limited to the Corps of Engineers) since the date of our last such PDA request (July 6, 2001). This includes but is not limited to letters, memos, reports, data, emails (including their attachments), notes of telephone conversations, meeting notes, other handwritten notes, briefing or meeting preparation materials, and any other form of data, documentation or communication.

This request includes documents received or generated by anyone at Ecology's Northwest Regional Office as well as its Lacey Office/Headquarters.

If there are any documents responsive to this request which are dated or were received by Ecology prior to July 6, but which have not already been provided to us pursuant to our previous PDA requests, this request includes those documents as well.

If any documents are withheld, please provide a log of such documents in accordance with the Act.

Thank you in advance for your assistance. Please call me when the documents are ready to be picked up. If you have any questions about this request, please give me a call.

Sincerely,

Andrea Grad
Paralegal
Helsell Fetterman
Tel. (206) 292-1144
agrad@helsell.com

Grad, Andrea E.

From: Grad, Andrea E.
Sent: Thursday, July 12, 2001 4:52 PM
To: Sally Perkins (E-mail)
Cc: Isaacson, Michelle L.
Subject: Out Friday and Monday

Hi, Sally. I will be out of the office Friday July 13th and Monday July 16th. If you have any documents ready for us either day, please contact Michelle Isaacson (misaacson@helsell.com, (206) 292-1144) instead of me.

Thanks,

Andrea Grad

Grad, Andrea E.

From: Grad, Andrea E.
Sent: Friday, July 06, 2001 10:21 AM
To: Sally Perkins (E-mail)
Subject: More documents ready?

Hi, Sally. Are you going to have some more documents for us soon?

Thanks,

Andrea Grad

Grad, Andrea E.

From: Grad, Andrea E.
Sent: Friday, July 06, 2001 10:20 AM
To: 'Ray Hellwig (E-mail)'; 'Ann Kenny (E-mail)'; 'Steve Alexander (E-mail)'; 'Ching-Pi Wang (E-mail)'
Cc: 'Sally Perkins (E-mail)'
Subject: Public Disclosure Act Request (re: Third Runway and Agreed Order)

Pursuant to the Public Disclosure Act, please provide us with copies of all documents related to the Port of Seattle's proposed Third Runway, other STIA Master Plan Update projects, and the Port/Ecology May 1999 Agreed Order generated by the Department of Ecology or received by Ecology from the Port of Seattle, its contractors or representatives (e.g., Parametrix), King County, state agencies, or federal agencies (including but not limited to the Corps of Engineers) since the date of our last such PDA request (June 29, 2001). This includes but is not limited to letters, memos, reports, data, emails (including their attachments), notes of telephone conversations, meeting notes, other handwritten notes, briefing or meeting preparation materials, and any other form of data, documentation or communication.

This request includes documents received or generated by anyone at Ecology's Northwest Regional Office as well as its Lacey Office/Headquarters.

If there are any documents responsive to this request which are dated or were received by Ecology prior to June 29, but which have not already been provided to us pursuant to our previous PDA requests, this request includes those documents as well.

If any documents are withheld, please provide a log of such documents in accordance with the Act.

Thank you in advance for your assistance. Please call me when the documents are ready to be picked up. If you have any questions about this request, please give me a call.

Sincerely,

Andrea Grad
Paralegal
Helsell Fetterman
Tel. (206) 292-1144
agrad@helsell.com

Grad, Andrea E.

From: Grad, Andrea E.
Sent: Friday, June 29, 2001 11:40 AM
To: 'Ray Hellwig (E-mail)'; 'Ann Kenny (E-mail)'; 'Steve Alexander (E-mail)'; 'Ching-Pi Wang (E-mail)'
Cc: 'Sally Perkins (E-mail)'
Subject: Public Disclosure Act Request (re: Third Runway and Agreed Order)

Pursuant to the Public Disclosure Act, please provide us with copies of all documents related to the Port of Seattle's proposed Third Runway, other STIA Master Plan Update projects, and the Port/Ecology May 1999 Agreed Order generated by the Department of Ecology or received by Ecology from the Port of Seattle, its contractors or representatives (e.g., Parametrix), King County, state agencies, or federal agencies (including but not limited to the Corps of Engineers) since the date of our last such PDA request (June 22, 2001). This includes but is not limited to letters, memos, reports, data, emails (including their attachments), notes of telephone conversations, meeting notes, other handwritten notes, briefing or meeting preparation materials, and any other form of data, documentation or communication.

This request includes documents received or generated by anyone at Ecology's Northwest Regional Office as well as its Lacey Office/Headquarters.

If there are any documents responsive to this request which are dated or were received by Ecology prior to June 22, but which have not already been provided to us pursuant to our previous PDA requests, this request includes those documents as well.

If any documents are withheld, please provide a log of such documents in accordance with the Act.

Thank you in advance for your assistance. Please call me when the documents are ready to be picked up. If you have any questions about this request, please give me a call.

Sincerely,

Andrea Grad
Paralegal
Helsell Fetterman
Tel. (206) 292-1144
agrad@helsell.com

Grad, Andrea E.

From: Grad, Andrea E.
Sent: Tuesday, June 26, 2001 9:52 AM
To: 'Sally Perkins (E-mail)'
Subject: More PDA documents?

Hi, Sally. Since we didn't get anything last week, are we going to be getting a big batch of documents this week? Please keep me posted.

Thanks,

Andrea Grad

Grad, Andrea E.

From: Grad, Andrea E.
Sent: Friday, June 22, 2001 11:57 AM
To: 'Perkins, Sally'
Subject: RE: More PDA documents?

Thanks -- please keep me posted.

Andrea

-----Original Message-----
From: Perkins, Sally [mailto:SPER461@ECY.WA.GOV]
Sent: Friday, June 22, 2001 11:52 AM
To: 'Grad, Andrea E.'
Subject: RE: More PDA documents?

Not this week, sorry

-----Original Message-----
From: Grad, Andrea E. [mailto:agrad@helsell.com]
Sent: Friday, June 22, 2001 11:42 AM
To: Perkins, Sally
Subject: More PDA documents?

Hi, Sally. Do you have any more PDA documents in the loop for us?

Thanks,

Andrea

Grad, Andrea E.

From: Grad, Andrea E.
Sent: Friday, June 22, 2001 11:42 AM
To: 'Sally Perkins (E-mail)'
Subject: More PDA documents?

Hi, Sally. Do you have any more PDA documents in the loop for us?

Thanks,

Andrea

Grad, Andrea E.

From: Grad, Andrea E.
Sent: Friday, June 22, 2001 11:31 AM
To: 'Ray Hellwig (E-mail)'; 'Ann Kenny (E-mail)'; 'Steve Alexander (E-mail)'; 'Ching-Pi Wang (E-mail)'
Cc: 'Sally Perkins (E-mail)'
Subject: Public Disclosure Act Request (re: Third Runway and Agreed Order)

Pursuant to the Public Disclosure Act, please provide us with copies of all documents related to the Port of Seattle's proposed Third Runway, other STIA Master Plan Update projects, and the Port/Ecology May 1999 Agreed Order generated by the Department of Ecology or received by Ecology from the Port of Seattle, its contractors or representatives (e.g., Parametrix), King County, state agencies, or federal agencies (including but not limited to the Corps of Engineers) since the date of our last such PDA request (June 7, 2001). This includes but is not limited to letters, memos, reports, data, emails (including their attachments), notes of telephone conversations, meeting notes, other handwritten notes, briefing or meeting preparation materials, and any other form of data, documentation or communication.

This request includes documents received or generated by anyone at Ecology's Northwest Regional Office as well as its Lacey Office/Headquarters.

If there are any documents responsive to this request which are dated or were received by Ecology prior to June 7, but which have not already been provided to us pursuant to our previous PDA requests, this request includes those documents as well.

If any documents are withheld, please provide a log of such documents in accordance with the Act.

Thank you in advance for your assistance. Please call me when the documents are ready to be picked up. If you have any questions about this request, please give me a call.

Sincerely,

Andrea Grad
Paralegal
Helsell Fetterman
Tel. (206) 292-1144
agrad@helsell.com

Grad, Andrea E.

From: Grad, Andrea E.
Sent: Thursday, June 07, 2001 12:13 PM
To: 'Ray Hellwig (E-mail)'; 'Ann Kenny (E-mail)'; 'Steve Alexander (E-mail)'; 'Ching-Pi Wang (E-mail)'
Cc: 'Sally Perkins (E-mail)'
Subject: Public Disclosure Act Request (re: Third Runway and Agreed Order)

Pursuant to the Public Disclosure Act, please provide us with copies of all documents related to the Port of Seattle's proposed Third Runway, other STIA Master Plan Update projects, and the Port/Ecology May 1999 Agreed Order generated by the Department of Ecology or received by Ecology from the Port of Seattle, its contractors or representatives (e.g., Parametrix), King County, state agencies, or federal agencies (including but not limited to the Corps of Engineers) since the date of our last such PDA request (June 1, 2001). This includes but is not limited to letters, memos, reports, data, emails (including their attachments), notes of telephone conversations, meeting notes, other handwritten notes, briefing or meeting preparation materials, and any other form of data, documentation or communication.

This request includes documents received or generated by anyone at Ecology's Northwest Regional Office as well as its Lacey Office/Headquarters.

If there are any documents responsive to this request which are dated or were received by Ecology prior to June 1, but which have not already been provided to us pursuant to our previous PDA requests, this request includes those documents as well.

If any documents are withheld, please provide a log of such documents in accordance with the Act.

Thank you in advance for your assistance. Please call me when the documents are ready to be picked up. If you have any questions about this request, please give me a call.

Sincerely,

Andrea Grad
Paralegal
Helsell Fetterman
Tel. (206) 292-1144
agrad@helsell.com

Grad, Andrea E.

From: Grad, Andrea E.
Sent: Friday, June 01, 2001 1:06 PM
To: 'Ray Hellwig (E-mail)'; 'Ann Kenny (E-mail)'; 'Steve Alexander (E-mail)'; 'Ching-Pi Wang (E-mail)'
Cc: 'Sally Perkins (E-mail)'
Subject: Public Disclosure Act Request (re: Third Runway and Agreed Order)

Pursuant to the Public Disclosure Act, please provide us with copies of all documents related to the Port of Seattle's proposed Third Runway, other STIA Master Plan Update projects, and the Port/Ecology May 1999 Agreed Order generated by the Department of Ecology or received by Ecology from the Port of Seattle, its contractors or representatives (e.g., Parametrix), King County, state agencies, or federal agencies (including but not limited to the Corps of Engineers) since the date of our last such PDA request (May 25, 2001). This includes but is not limited to letters, memos, reports, data, emails (including their attachments), notes of telephone conversations, meeting notes, other handwritten notes, briefing or meeting preparation materials, and any other form of data, documentation or communication.

This request includes documents received or generated by anyone at Ecology's Northwest Regional Office as well as its Lacey Office/Headquarters.

If there are any documents responsive to this request which are dated or were received by Ecology prior to May 25, but which have not already been provided to us

Grad, Andrea E.

From: Grad, Andrea E.
Sent: Thursday, June 07, 2001 12:13 PM
To: 'Ray Hellwig (E-mail)'; 'Ann Kenny (E-mail)'; 'Steve Alexander (E-mail)'; 'Ching-Pi Wang (E-mail)'
Cc: 'Sally Perkins (E-mail)'
Subject: - Public Disclosure Act Request (re: Third Runway and Agreed Order)

Pursuant to the Public Disclosure Act, please provide us with copies of all documents related to the Port of Seattle's proposed Third Runway, other STIA Master Plan Update projects, and the Port/Ecology May 1999 Agreed Order generated by the Department of Ecology or received by Ecology from the Port of Seattle, its contractors or representatives (e.g., Parametrix), King County, state agencies, or federal agencies (including but not limited to the Corps of Engineers) since the date of our last such PDA request (June 1, 2001). This includes but is not limited to letters, memos, reports, data, emails (including their attachments), notes of telephone conversations, meeting notes, other handwritten notes, briefing or meeting preparation materials, and any other form of data, documentation or communication.

This request includes documents received or generated by anyone at Ecology's Northwest Regional Office as well as its Lacey Office/Headquarters.

If there are any documents responsive to this request which are dated or were received by Ecology prior to June 1, but which have not already been provided to us pursuant to our previous PDA requests, this request includes those documents as well.

If any documents are withheld, please provide a log of such documents in accordance with the Act.

Thank you in advance for your assistance. Please call me when the documents are ready to be picked up. If you have any questions about this request, please give me a call.

Sincerely,

Andrea Grad
Paralegal
Helsell Fetterman
Tel. (206) 292-1144
agrad@helsell.com

Grad, Andrea E.

From: Grad, Andrea E.
Sent: Friday, June 01, 2001 1:06 PM
To: 'Ray Hellwig (E-mail)'; 'Ann Kenny (E-mail)'; 'Steve Alexander (E-mail)'; 'Ching-Pi Wang (E-mail)'
Cc: 'Sally Perkins (E-mail)'
Subject: Public Disclosure Act Request (re: Third Runway and Agreed Order)

Pursuant to the Public Disclosure Act, please provide us with copies of all documents related to the Port of Seattle's proposed Third Runway, other STIA Master Plan Update projects, and the Port/Ecology May 1999 Agreed Order generated by the Department of Ecology or received by Ecology from the Port of Seattle, its contractors or representatives (e.g., Parametrix), King County, state agencies, or federal agencies (including but not limited to the Corps of Engineers) since the date of our last such PDA request (May 25, 2001). This includes but is not limited to letters, memos, reports, data, emails (including their attachments), notes of telephone conversations, meeting notes, other handwritten notes, briefing or meeting preparation materials, and any other form of data, documentation or communication.

This request includes documents received or generated by anyone at Ecology's Northwest Regional Office as well as its Lacey Office/Headquarters.

If there are any documents responsive to this request which are dated or were received by Ecology prior to May 25, but which have not already been provided to us