

DRABEK, JOHN

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ENVIRONMENTAL
HEARINGS OFFICE

AR 028411.01

Summary Statement for Deposition Publication

**submitted pursuant to
Order Granting Appellant's Motion to Publish Depositions
of Ecology Managers and CR 30(b)(6) Designated Witnesses
dated March 19, 2002**

***ACC & CASE v. Dept. of Ecology & Port of Seattle,
PCHB No. 01-160***

Deponent: JOHN DRABEK

Date of Deposition: DECEMBER 14, 2001

1. Admissibility

A. Purpose used for or what it will be offered to prove: lack of reasonable assurance for 401 with respect to water quality, fill, and low flow. Mr. Drabek is one of the Ecology personnel who has been explicitly cited by Gordon White (the 401 signator) and others as providing a basis for reasonable assurance.

B. Specific designation (if CR 30(b)(6) deponent): Water Quality (Stormwater and stormwater mitigation). Mr. Drabek is the supervisor if the Industrial Permit and Stormwater Unit in Ecology's Northwest Regional Office. He is designated as an Ecology witness on matters related to the basis for reasonable assurance with regard to water quality, the Port's NPDES permit and the 401 certification.

C. Basis for admissibility if challenged by objection: If an objection is attached pursuant to provision 4 below, ACC's and CASE's response is also attached.

2. Excerpting: The following portions of the DRABEK deposition are offered by ACC and CASE:

<u>START</u>		<u>END</u>
Page 1, line 1	through	page 11, line 23
Page 15, line 1	through	page 20, line 12
Page 25, line 15	through	page 28, line 18
Page 29, line 9	through	page 36, line 1
Page 41, line 1	through	page 44, line 20
Page 46, line 16	through	page 48, line 16
Page 50, line 5	through	page 61, line 20
Page 64, line 22	through	page 70, line 8
Page 71, line 15	through	page 73, line 24
Page 74, line 3	through	page 82, line 16

AR 028412

Page 86, line 18	through	page 92, line 5
Page 95, line 23	through	page 96, line 23
Page 97, line 18	through	page 98, line 17
Page 105, line 1	through	page 109, line 2
Page 118, line 12	through	page 125, line 24

3. **Counter Excerpts of Respondents:** See attached.
4. **Objections of Respondents:** See attached.

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**ACC & CASE v. Dept. of Ecology & Port of Seattle
PCHB No. 01-160**

Department of Ecology's Designation of Additional Portions of
Deposition and Objections Entered Pursuant to the
Board's Order of March 19, 2002 and Port of Seattle's
Joinder in those Objections and Designations

Deponent: **John Drabek**

Date of Deposition: **December 14, 2001**

3. Counter Excerpts by Respondent Department of Ecology:¹

<u>START</u>	<u>END</u>
Page 11, line 24	page 12, line 5
Page 44, line 21	page 45, line 10
Page 46, line 8	page 46, line 15
Page 70, line 9	page 70, line 13
Page 85, line 18	page 86, line 13
Page 128, line 25	page 130, line 7
Page 131 (Completed Correction and Signature page)	

4. Objections to Designations by Appellants:

<u>START</u>	<u>END</u>	<u>OBJECTION</u>
Page 74, line 3	page 82, line 16	No personal knowledge and lack a foundation for showing the relevance of his comments on a report not known to the witness.
Page 87, line 21	Page 88, line 19	No personal knowledge.
Page 118, line 14	Page 120, line 14	No personal knowledge and lack a foundation for showing the relevance of his comments on a report not known to the witness.

PORT JOINS ECOLOGY'S DESIGNATIONS AND OBJECTIONS

Counsel for the Port of Seattle have reviewed Ecology's designations and objections. The Port joins in all of Ecology's designations and objections.

¹ By designating counter excerpts, Ecology does not waive its objections to ACC's and CASE's publication of this transcript. Those objections are reflected in Ecology's Response to Appellants' Motion to Publish and in argument before this Board. Further, Ecology does not waive its objections to ACC's and CASE's use of particular portions of the transcript. Those objections are identified in subsection 4 of this document.

**Appellants' Responses to Objections Raised by Ecology and the Port
To The Publication of Depositions of Ecology Managers and
CR 30(b)(6) Witnesses**

***ACC & CASE v. Dept. of Ecology & Port of Seattle,
PCHB No. 01-160***

Deponent: John Drabek, Supervisor, Industrial Permit and Stormwater Unit,
Ecology Northwest Regional Office

Date of Deposition: December 14, 2001

Responses to Ecology Objections:

For the publication of the deposition of Mr. Drabek, Ecology raises three specific objections. Each Ecology objection is addressed below.

1. Objection: Page 74, line 3 through Page 82, line 16

Response: This portion of the deposition involves a discussion of Exhibit 7 -- documents titled "STIA Construction Site Stormwater Monitoring." The foundation for this question and Mr. Drabek's personal knowledge of the subject matter of the question was established when Mr. Drabek testified that he was Ecology's NPDES Permit and Facility Manager for the Seattle-Tacoma International Airport ("STIA") from March 2001 until October 2001 (Page 11, line 13), that he wrote the section of the NPDES major permit modification concerning monitoring of construction-related stormwater discharges, and worked on related sections in the 401. (Page 95, lines 18 through 22; *see also*, page 15, line 1 through page 16, line 15.) Mr. Drabek further testified that he had reviewed construction stormwater monitoring plans relating to STIA (page 22, line 4 through page 23, line 3), and explained the permit provision governing reporting of the results of construction stormwater monitoring (page 25, line 23 through page 26, line 18). Thus, although he had not previously seen Exhibit 7, Mr. Drabek was readily able to identify it ("This is the construction site stormwater monitoring for -- from the Sea-Tac Airport. * * * What this is is the results of the turbidity and results of pH monitoring." Page 74, lines 5-14.)

This portion of the deposition is relevant because the discussion shows that Ecology's former Sea-Tac NPDES permit manager, Mr. Drabek, had not seen construction stormwater monitoring reports indicating apparent violations of the water quality standard for turbidity. These facts are directly relevant to the issue of whether Ecology has reasonable assurance that construction of the proposed third runway and MPU projects will not result in violations of water quality standards.

AR 028415

2. Objection: Page 87, line 21 through Page 88 line 19

Response: Under the facts, this is not a valid objection: Mr. Drabek is not testifying to matters beyond his personal knowledge. In the first two questions here, Mr. Drabek was asked whether he would agree that the August 10, 2001 401 Certification ("Exhibit 2") was the first of two water quality certifications issued [last] year, and whether he was aware that it had been revised after its issuance. (Page 87, line 21 through page 88, line 1). Mr. Drabek answered that he did not know, and that he was "[n]ot really" aware of those facts. (Page 87, line 23 through page 88, line 2). With respect to the third question, Mr. Drabek plainly does know "what role [he] played in the water quality certification decision." (Page 88, lines 3-9.) With respect to the fourth question, Mr. Drabek's uncertainty is relevant to the quality of his input, on which Ms. Kenny relied. (Page 88, lines 10-19; *and see*, Kenny Dep. at page 41 at lines 1-3, and page 42, line 7.) In each instance, Mr. Drabek's response is based on his personal knowledge -- not speculation or guesswork.

3. Objection: Page 118, line 14 through Page 120 line 14

Response: This portion of the deposition involves a discussion of Exhibit 11 which, like Exhibit 7 discussed above, is a document titled, "STIA Construction Site Stormwater Monitoring." Exhibit 11 details the discharge of turbid, construction-related stormwater to a wetland in the Walker Creek Drainage. This is a construction stormwater discharge governed by the permit modification that Mr. Drabek wrote (page 95, lines 18 through 22; *see also*, page 15, line 1 through page 16, line 15), and which took place during Mr. Drabek's service as the STIA permit manager. (Page 11, line 13.) Further, the 401 incorporates the same construction stormwater monitoring requirements. (Page 95, lines 18 through 22; *see also*, Kenny Dep. at page 40 line 22 through page 41, line 3.)

Here, Mr. Drabek testified that he could identify Exhibit 11 and the colloquy at page 19, line 14-23 through page 120, line 14 is plainly within Mr. Drabek's personal knowledge, and relevant to the issue of whether Ecology has reasonable assurance that construction of the proposed third runway and MPU projects will not result in violations of water quality standards. Specifically, if the Port does not submit notices of noncompliance to Ecology, Ecology cannot act to prevent further exceedances of the water quality standards under the permit or the 401.

DEPOSITION UPON ORAL
EXAMINATION OF

John Drabek

Date: December 14, 2001

Case: Airport Communities Coalition v. State of WA, et al.

Diane Mills, CCR, RMR, CRR
Yamaguchi Obien & Mangio

Phone: (206) 622-6875
Fax: (206) 343-4110
Email: dmills@yomreporting.com
Internet: yomreporting.com

AR 028417

POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

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3
4 AIRPORT COMMUNITIES COALITION,)
5 Appellant,)
6 vs.) PCHB No. 01-160
7 STATE OF WASHINGTON,)
8 DEPARTMENT OF ECOLOGY; and)
9 THE PORT OF SEATTLE,)
10 Respondents.)

11
12 DEPOSITION UPON ORAL EXAMINATION
13 OF
14 JOHN DRABEK

15
16
17 10:00 A.M.
18 DECEMBER 14, 2001
19 1325 FOURTH AVENUE, SUITE 1500
20 SEATTLE, WASHINGTON

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25 DIANE MILLS, CSR# MI-LL-SD-M380N3

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CORRECTION & SIGNATURE PAGE

RE: AIRPORT COMMUNITIES COALITION VS. STATE OF
WASHINGTON, et al.
BEFORE THE POLLUTION CONTROL HEARINGS BOARD
DEPOSITION OF: JOHN DRABEK; DECEMBER 14, 2001

I, JOHN DRABEK, have read the
within transcript taken DECEMBER 14, 2001, and the same
is true and accurate except for any changes and/or
corrections, if any, as follows:

PAGE	LINE	CORRECTION	ORIGINAL
0072	12, 13	<u>The fact you had to ask that question demonstrates for the record the Condition is confusing. It is open to interpretation. I never made an interpretation that construction stormwater monitoring is required to be submitted under this condition. I did not interpret the condition.</u>	
0073	18, 19	<u>The fact you had to ask that question demonstrates for the record the question is confusing. It is open to interpretation. I never made an interpretation that construction stormwater monitoring is required to be submitted under this condition.</u>	
125	24	<u>Yes. The reporting requirements are clear. Monitoring is required to be submitted every other month as opposed to the 402 which is open to interpretation. If you clearly had to submit your speed on the freeway every other month to the highway patrol you would be more likely to comply with State of Washington speed laws. Similarly the clear reporting requirements of the 401 which are not open to interpretation will make it more likely for the Port to comply with State of Washington effluent limitations.</u>	

Signed at Belleme, Washington,
on the 18 day of January, 2002.

John Drabek

JOHN DRABEK

AR 028419

A P P E A R A N C E S

1
2
3 FOR THE APPELLANT:
4 RICHARD A. POULIN
5 Smith & Lowney, P.L.L.C.
6 2317 East John Street
7 Seattle, Washington 98112
8
9
10 FOR THE RESPONDENT STATE OF WASHINGTON and
11 DEPARTMENT OF ECOLOGY:
12 THOMAS J. YOUNG
13 Assistant Attorney General
14 2425 Bristol Court SW
15 Olympia, Washington 98504-0117
16
17
18 FOR THE RESPONDENT PORT OF SEATTLE:
19 ROGER A. PEARCE
20 Foster Pepper & Shefelman, P.L.L.C.
21 1111 Third Avenue
22 Suite 3400
23 Seattle, Washington 98101-3299
24
25

1 SEATTLE, WASHINGTON; DECEMBER 14, 2001
2 10:00 A.M.
3 --oOo--
4
5 JOHN DRABEK,
6 sworn as a witness by the Notary Public,
7 testified as follows:
8

EXAMINATION

9
10
11 BY MR. POULIN:
12 Q. Hi, John, I'm Rick Poulin and I'll be asking
13 you questions today on behalf of ACC. And I'm first
14 interested in having you state and spell your name for
15 the record.
16 A. My name is John Drabek. The last name is
17 spelled D like in David, r-a-b-e-k.
18 Q. John, have you ever had your deposition taken
19 before?
20 A. No, I don't believe I have.
21 Q. Have you ever served as a witness in a trial
22 or an administrative appeal?
23 A. An administrative appeal, yes.
24 Q. Well, I want to make sure you understand the
25 process here. I'll be asking you questions. We're

I N D E X

1
2
3 EXAMINATION BY: PAGE(S)
4 MR. POULIN 4
5 MR. PEARCE 128
6
7
8
9 EXHIBITS FOR IDENTIFICATION PAGE
10 1 - Ltr, 9/21/01. Re: Water Quality Certification 86
11 2 - Ltr, 8/10/01. Re: Water Quality Certification 87
12 3 - Ltr, 5/29/01. Re: Modification of NPDES Permit 14
13 4 - NPDES Permit 13
14 5 - WAC, Chapter 173-201A 36
15 6 - Annual Stormwater Monitoring Report 57
16 7 - STIA Construction Site Stormwater Monitoring 74
17 Reports, 10/16/00, 10/20/00, 11/8/00, 11/26/00
18 8 - e-mail correspondence 94
19 9 - Draft Meeting Notes. March 9, 2001 96
20 10 - Draft Meeting Notes. March 14, 2001 116
21 11 - STIA Construction Site Stormwater Monitoring 118
22 Report, 6/28/01
23 12 - STIA Construction Site Stormwater Monitoring 120
24 Report, 6/28/01
25 13 - STIA Construction Site Stormwater Monitoring 121
Report, 9/26/01

1 creating a record, so we need a spoken response, a yes
2 or no preferably, if that's what the question asks for,
3 but a nod or a shake of your head won't suffice. I'd
4 really like to make sure that you understand the
5 question, so would you please let me know if you don't
6 know what I'm asking?
7 A. Yes.
8 Q. And if there's anything confusing or unclear
9 about a question, would you tell me that?
10 A. Yes.
11 Q. Thank you. Is there any reason that you
12 wouldn't be able to give clear answers to questions
13 today? Are you feeling okay?
14 A. I'm feeling okay.
15 Q. Have you had any medications that might
16 affect your thought processes in the last 24 hours?
17 A. No.
18 Q. Had any alcohol to drink?
19 A. No.
20 Q. And otherwise feel fine?
21 A. Yes.
22 Q. Great. Could you please tell me about your
23 educational background.
24 A. I have a Bachelor of Science degree in
25 chemical engineering from the University of Washington.

1 Q. Is that your most advanced degree?
 2 A. It is.
 3 Q. Have you had any additional training beyond
 4 that Bachelor of Science degree?
 5 A. What do you mean by training? You mean --
 6 what kind of training?
 7 Q. Have you taken any additional course work?
 8 A. At a university?
 9 Q. Yes.
 10 A. No.
 11 Q. Have you participated in any certification
 12 programs?
 13 A. Certification programs?
 14 Q. Right.
 15 A. Certification, you mean certification in
 16 relation to -- oh, I'm registered in the state of
 17 Washington as a chemical engineer. I'm a professional
 18 engineer in the state of Washington.
 19 Q. And what does that involve? Is that a
 20 license?
 21 A. It is a license. It's a license granted by
 22 the Board of Licensing of the State of Washington.
 23 Q. And are there requirements to maintain or
 24 keep a certain level of proficiency? Do you have
 25 continuing educational requirements of any sort?

1 A. No.
 2 Q. So it's a one-time testing standard?
 3 A. Yes.
 4 Q. How long have you been with the Department of
 5 Ecology?
 6 A. Approximately 25 years.
 7 Q. And what was your position at the outset of
 8 your employment with Ecology?
 9 A. What did I do at the Department of Ecology at
 10 the beginning?
 11 Q. Yes.
 12 A. I was in the air program. I performed source
 13 tests, conducted source tests, and did air quality
 14 analysis.
 15 Q. What is your present position?
 16 A. My present position is an environmental
 17 engineer in the Water Quality Program.
 18 Q. You work out of the Northwest regional
 19 office; is that right?
 20 A. I do.
 21 Q. And please tell me about that in terms of who
 22 you work with, who you report to.
 23 A. I report to Kevin Fitzpatrick, my direct
 24 supervisor, section manager in the Department of
 25 Ecology for the Water Quality Program in the Northwest

1 regional office.
 2 Q. And do you supervise any staff or employees?
 3 A. Yes, I do.
 4 Q. Who are they?
 5 A. They are the Industrial Permit and Stormwater
 6 Unit.
 7 Q. Approximately how many people work in --
 8 A. Nine.
 9 Q. Nine in each unit?
 10 A. No, nine in my unit. I cut you off.
 11 Q. So between the industrial and the stormwater,
 12 is that nine people total or nine --
 13 A. Well, the name of the one unit that I'm the
 14 supervisor of is called the Industrial Permit and
 15 Stormwater Unit. So it's all one unit; that's the
 16 complete name.
 17 Q. And that one unit has nine employees that you
 18 supervise?
 19 A. Yes.
 20 Q. How long have you been at the head of that
 21 unit?
 22 A. Since approximately March of 2001,
 23 approximately.
 24 Q. And what did you do before that? Before
 25 March 2001, what was your position?

1 A. My position was an environmental engineer, a
 2 facility manager.
 3 Q. Was that in the Industrial Permit and
 4 Stormwater Unit?
 5 A. It wasn't called that at that time. At that
 6 time it was called the Industrial Permit Unit.
 7 Q. Are you generally familiar with the
 8 administrative appeal that this deposition is part of?
 9 A. Not completely familiar.
 10 Q. Well, do you understand that the Airport
 11 Communities Coalition has appealed the issuance of the
 12 Clean Water Act Section 401 certification that Ecology
 13 issued?
 14 A. I am.
 15 Q. And you understand that this deposition is
 16 part of that appeal?
 17 A. I am.
 18 Q. Have you been identified or designated as a
 19 witness in the appeal?
 20 A. No.
 21 Q. You don't believe you have been?
 22 A. A witness?
 23 Q. Yes.
 24 A. Well, I was required to be at the deposition.
 25 Is that being a witness?

1 Q. No, I'm referring to the upcoming hearing
 2 that is scheduled to take place in March.
 3 A. Oh, oh. I don't have a date to appear at the
 4 hearing. I know I had to give a deposition.
 5 Q. Do you know whether the legal team that is
 6 representing the Department of Ecology in the appeal
 7 intends to call on you to provide testimony to support
 8 the decision?
 9 A. I don't know they're going to call on me to
 10 support testimony at trial, no, I don't know that.
 11 Q. Well, let's talk about your familiarity with
 12 the operations at Sea-Tac.
 13 As part of your work in the Industrial Permit
 14 and Stormwater Unit, do you have occasion to review
 15 operations at Sea-Tac?
 16 MR. PEARCE: Rick, I'm sorry to interrupt.
 17 By "Sea-Tac" do you mean the airport or do you mean the
 18 City of Sea-Tac? If you could be more clear, I think
 19 it'll be more helpful for the record.
 20 MR. POULIN: Thank you, Roger. Yeah, I do
 21 mean Sea-Tac International Airport and the Sea-Tac Port
 22 of Seattle operations.
 23 MR. YOUNG: If you could ask him a more
 24 specific question.
 25 Q. (BY MR. POULIN) Do you have any oversight

1 A. Ed Abbasi.
 2 MR. YOUNG: Can you spell that?
 3 A. A-b-b-a-s-i.
 4 Q. (BY MR. POULIN) And the first name was Ed?
 5 A. Ed, E-d.
 6 Q. Thank you. What were your responsibilities
 7 as a facility or permit manager?
 8 A. I was responsible for answering questions
 9 concerning the interpretation of the permit for the
 10 Port of Seattle. I was responsible for ensuring that
 11 the conditions of the permit were adhered to.
 12 Q. Would it be accurate to describe that second
 13 element as compliance?
 14 A. Yes.
 15 Q. Permit compliance?
 16 A. Yes.
 17 Q. Does that include permit enforcement?
 18 A. Yes.
 19 Q. During your term as the permit manager, did
 20 you take any enforcement actions under the permit?
 21 A. No, no formal enforcement actions.
 22 Q. How do you go about determining whether a
 23 permittee is in compliance with the permit?
 24 A. Primarily through the monitoring requirements
 25 of the permit. Yeah, primarily through the monitoring

1 role with respect to the Port of Seattle's NPDES
 2 Permit, National Pollution Discharge Elimination System
 3 Permit, under the Clean Water Act?
 4 A. I do.
 5 Q. Could you please tell me about that aspect of
 6 your job?
 7 A. I am responsible for -- I would be the
 8 facility manager for the NPDES, managing and
 9 implementation.
 10 Q. You are the permit manager?
 11 A. Yes. Well, I was. Excuse me. I was.
 12 Q. When was that?
 13 A. From March 2001 until October 2001.
 14 Q. Is the facility manager for the permit
 15 different than the permit manager?
 16 A. No, no.
 17 Q. Same thing?
 18 A. Yes.
 19 Q. So for this seven- or eight-month period you
 20 were the permit manager?
 21 A. Yes.
 22 Q. Who was the permit manager before you?
 23 A. Kevin Fitzpatrick.
 24 Q. And do you know who the permit manager is
 25 now?

1 requirements of the permit.
 2 Q. With respect to this particular permit, are
 3 there -- well, let's introduce an exhibit, if we could.
 4 (Deposition Exhibit No. 4 was marked for
 5 identification.)
 6 Q. (BY MR. POULIN) Could you please take a look
 7 at this exhibit and tell me if you're familiar with it,
 8 if you recognize the document?
 9 A. Yes, I recognize it.
 10 Q. Could you please describe the exhibit for the
 11 record?
 12 A. Well, it's a little confusing. It says it's
 13 the old NPDES permit -- yeah, the old NPDES permit for
 14 the Port of Seattle, Seattle-Tacoma International
 15 airport. That's what it is.
 16 Q. And where does it say that it's the old
 17 permit?
 18 A. On this sticky right here.
 19 Q. Oh, I see. Let me clarify. There's a
 20 sticky. That's not actually part of the exhibit
 21 itself. But is there anything on the face of this
 22 permit that suggests to you that it's not the current
 23 permit?
 24 A. Yes, there is something on the face of it
 25 that suggests it's not the current permit.

1 Q. And what's that?
 2 A. The fact that it doesn't have the major
 3 modification date on here.
 4 Q. So does this appear to be the version of the
 5 permit that was in force prior to the most recent major
 6 modification?
 7 A. I think it is. I'd have to check our files
 8 to make sure, the files at the Department of Ecology
 9 records.
 10 Q. I'd like to introduce a second exhibit.
 11 (Deposition Exhibit No. 3 was marked for
 12 identification.)
 13 Q. (BY MR. POULIN) And would you agree that
 14 Exhibit 3 appears to be the current permit as most
 15 recently modified on May 29, 2001?
 16 A. Yes.
 17 Q. So as the permit manager, I think you stated
 18 that you would rely on monitoring to determine whether
 19 the permittee was in compliance. Where would you look
 20 to find monitoring requirements here?
 21 A. I didn't say that would be the way to rely on
 22 compliance but the primary way. And the monitoring
 23 requirements are in S2.
 24 Q. What else would you rely on?
 25 A. Periodic inspections.

1 Q. How does the monitoring system work?
 2 A. The permit requires the Port of Seattle to
 3 monitor wastewater discharges from Port of Seattle,
 4 Seattle-Tacoma International Airport.
 5 Q. Are there monitoring requirements that also
 6 apply to stormwater discharges?
 7 A. Yes.
 8 Q. And how are the monitoring requirements
 9 determined when the permit is developed or written?
 10 A. The permit manager develops them or the
 11 permit writer develops them.
 12 Q. Is the permit writer someone that's within
 13 the Industrial Permit and Stormwater Unit?
 14 A. The permit writer for this permit was in that
 15 unit that was named a slightly different name prior to
 16 that name. Industrial Permit Unit is what it was
 17 called.
 18 Q. So the responsibility for writing this permit
 19 was within that unit?
 20 A. Well, writing the major modification for the
 21 permit was within that unit, yes.
 22 Q. Were you personally involved in that process?
 23 A. Yes, I was.
 24 Q. And who else did you work with in that
 25 process of writing the major modification?

1 A. In writing the final major modification, is
 2 that what you're referring to?
 3 Q. Well, the process involving both the draft
 4 and final modification.
 5 A. Kevin Fitzpatrick and Joan Marchioro.
 6 Q. So three people; yourself, Kevin Fitzpatrick
 7 and Joan Marchioro were --
 8 A. -- involved in the final permit language.
 9 And Ray Hellwig was also in on that a little bit too.
 10 He's the regional director.
 11 Q. How did the monitoring requirements in the
 12 permit change as a result of the most recent
 13 modification for, say, construction stormwater?
 14 A. There were conditions added to specify more
 15 precisely the monitoring requirements.
 16 Q. Do you know how the monitoring requirements
 17 translate into the actual physical activities of
 18 sampling stormwater discharges?
 19 A. It requires them to take samples at a
 20 specified frequency, so they must physically go out and
 21 take a sample.
 22 Q. And where do those physical sampling events
 23 take place? Does the permit specify where the Port
 24 should take the sample for a given outfall or discharge
 25 point?

1 A. For some of them it does.
 2 Q. Could you show me an example in Exhibit 3,
 3 the current permit?
 4 A. Yeah. It would be Condition S2, it's got A,
 5 B. Both have specifically identified outfalls that
 6 require monitoring; Page 13, 14 and 15.
 7 Q. Well, let's look at, for instance, Permit
 8 Condition S2.B.1.
 9 A. Okay.
 10 Q. On Page 14.
 11 A. Yes.
 12 Q. And do you see where it states, "The
 13 Permittee shall monitor the stormwater discharges at
 14 Outfalls 002, 005, 006, and 011"?
 15 A. Yes, I do.
 16 Q. Is there any further direction or
 17 specification of how those samples are to be taken?
 18 A. Yes. It's at the bottom, the footnotes. It
 19 gives the methodology for -- yes, in the footnotes.
 20 Q. Do you see any particular footnote that
 21 specifies where or how?
 22 A. Yes, I do.
 23 Q. Could you tell me which one?
 24 A. Yes. It's B, "Total Petroleum Hydrocarbons
 25 shall be measured using the Northwest Total Petroleum

1 Hydrocarbons-Diesel method or an equivalent method
 2 approved by the Department." That's B.
 3 And D, "BOD monitoring at Outfall 005 shall
 4 occur, to the extent practicable, during a
 5 precipitation event that coincides with a runway
 6 deicing event in those months in which a runway deicing
 7 event occurs."
 8 Q. Now, Footnote D, that pertains to when
 9 sampling should occur, doesn't it?
 10 A. It does.
 11 Q. Which provisions govern where, specifically
 12 where in the facility the sample should be taken?
 13 A. That would be No. 1. It would be above the
 14 table there. So each outfall is listed there.
 15 Q. Now, let's take a given outfall, for example,
 16 Outfall 002. Where is the sample of Outfall 2 taken?
 17 A. At Outfall 002.
 18 Q. Could you describe that physically? Is it a
 19 pipe that's raised above the ground?
 20 A. No, I can't.
 21 Q. Do you know with respect to any of these four
 22 identified outfalls what they're like, what they look
 23 like?
 24 A. No.
 25 Q. Well, an outfall is a place where the

1 and I'm referring again to the four outfalls identified
 2 in Permit Condition S2.B.1 on Page 14, can you tell
 3 from this permit where the samples are taken?
 4 A. They're taken at those four outfalls.
 5 Q. Do you know if they're samples of the
 6 discharge itself or of the --
 7 A. It's of the discharge itself.
 8 Q. Prior to any mixing?
 9 A. Correct.
 10 Q. And how are you sure of that?
 11 A. Because it says you have to measure the
 12 discharges at the outfall.
 13 Q. And is there any opportunity during the
 14 reports of monitoring that are submitted to the
 15 Department for the permittee to explain if they've done
 16 something different?
 17 A. What do you mean by "something different"?
 18 Q. Let's say again in a hypothetical if the
 19 actual discharge point of the outfall is not easily
 20 accessible so they go to the closest point in the
 21 stream. Would an event like that be described?
 22 A. The monitoring reports have a box, a line at
 23 the bottom of it for explanations.
 24 Q. What happens to the monitoring reports that
 25 are generated by the permittee?

1 discharge flows into surface waters; is that right?
 2 A. It could be that.
 3 Q. What else might it be?
 4 A. There's various interpretations of defining
 5 an outfall. That would be the traditional definition
 6 of an outfall.
 7 Q. Now, let's assume a hypothetical. If you
 8 have an outfall that's, say, a raised pipe that then
 9 flows into a stream and the permit requires sampling of
 10 that outfall's discharge, where does the permittee
 11 actually take the sample?
 12 A. Traditionally it would come out as it leaves
 13 the pipe.
 14 Q. So they would be sampling effluent
 15 discharging from the pipe?
 16 A. If it was a pipe it would take it as it's
 17 coming out of the pipe, yes.
 18 Q. Is it permissible to sample the discharge in
 19 the stream after the pipe's effluent mixes --
 20 A. Could you repeat the question, please?
 21 (Reporter read back as requested.)
 22 Q. (BY MR. POULIN) With the stream water?
 23 A. In certain situations monitoring requirements
 24 require that.
 25 Q. Now, with respect to these specific outfalls,

1 A. They are submitted to the Department of
 2 Ecology and entered into a database. Are you referring
 3 to the ones at the Port of Seattle?
 4 Q. Yes.
 5 A. That's what happens.
 6 Q. So when monitoring reports are submitted
 7 under this permit, they are sent to the Department of
 8 Ecology?
 9 A. Yes.
 10 Q. Is that always the case?
 11 A. It's a permit requirement.
 12 Q. Are there any kinds of sampling that are not
 13 subject to that requirement to submit monitoring
 14 reports to Ecology?
 15 A. For which part of the permit are you
 16 referring?
 17 Q. Any part. Are you aware of any part of the
 18 permit?
 19 A. Am I aware of any part of the permit that --
 20 Q. -- that creates an exception to that
 21 requirement you mentioned of submitting monitoring
 22 reports to the Department?
 23 A. Correct. That was referring to the outfalls
 24 that you were talking about here. I think that's what
 25 you were talking about.

1 Q. By "correct," you mean yes, there are, or --
 2 A. There are certain requirements -- monitoring
 3 in here that don't have a requirement to be submitted.
 4 Q. Let's consider the monitoring requirements
 5 for construction stormwater.
 6 A. Okay.
 7 Q. Would you agree that all of the monitoring
 8 requirements for construction stormwater are stated in
 9 Permit Condition S2.C?
 10 A. I do. Wait a minute. Excuse me, give me a
 11 second. Could you repeat the question?
 12 (Reporter read back as requested.)
 13 A. Yes.
 14 Q. (BY MR. POULIN) Now, in the first provision
 15 of this section, the permit refers to a monitoring
 16 plan.
 17 A. Yes, it does.
 18 Q. And it says that the permittee shall submit a
 19 monitoring plan which is submitted for review and
 20 approval. Are you involved in that review and approval
 21 process?
 22 A. I no longer am.
 23 Q. Were you at one time?
 24 A. Yes.
 25 Q. Did you ever review or approve a monitoring

1 Q. Don't think he has. Why do you say that?
 2 A. I don't recall that -- I've been talking with
 3 him a lot about the managing of the permit since I was
 4 the previous manager, and the subject has never come
 5 up.
 6 Q. While you were the permit manager -- scratch
 7 that, please.
 8 Could you describe what one of these
 9 construction stormwater monitoring plans looks like?
 10 A. It has a description of the monitoring
 11 locations and a map.
 12 Q. Is it an extensive or detailed document?
 13 A. Detailed enough usually. Detailed enough? I
 14 don't understand. What do you mean "detailed"?
 15 Q. I guess what I'm getting at is, how much
 16 effort does it take to review one of these plans?
 17 A. How much effort does it take to review one of
 18 the plans? How much effort does it take? I guess I
 19 don't understand what you're asking, how much effort
 20 does it take to review the plans. What do you mean? I
 21 don't understand.
 22 Q. Well, this permit requires the permittee, the
 23 Port of Seattle, to submit a monitoring plan.
 24 A. Yes, it does.
 25 Q. And it states that it's submitted to the

1 plan relating to this permit itself?
 2 A. I have reviewed the monitoring plans related
 3 to this.
 4 Q. Have you approved any monitoring plans under
 5 this permit?
 6 A. I don't recall having approved a monitoring
 7 plan under this permit.
 8 Q. At this time under the current permit when
 9 the Port of Seattle submits monitoring plans for
 10 construction discharges, who reviews them?
 11 A. As of now it would be Ed Abbasi.
 12 Q. Does he do that personally or does he have a
 13 staff to review monitoring plans?
 14 A. I don't think he's done it yet.
 15 Q. Do you know whether any monitoring plans have
 16 been submitted yet?
 17 A. Yes, monitoring plans have been submitted.
 18 Q. Since the date of the permit modification?
 19 A. I don't recall.
 20 Q. Now, you just stated that Ed Abbasi, the
 21 current permit manager, has not yet reviewed any
 22 construction stormwater monitoring plans.
 23 A. No, that's not what I said.
 24 Q. I'm sorry.
 25 A. What I said is I don't think he has.

1 Department for review and approval, and you work in
 2 management in a supervisory capacity in the section
 3 responsible for the permit.
 4 What I'm asking is, how much staff time would
 5 you expect it to take to review and approve one of
 6 these monitoring plans when they come in?
 7 A. I suppose it could depend on the time -- I
 8 don't think it would take more than -- unless you
 9 wanted to conduct a field inspection, it wouldn't take
 10 more than probably 30 minutes.
 11 Q. So really not much time?
 12 A. No. Well, 30 minutes. I didn't say it
 13 didn't take much time. Thirty minutes in our section
 14 is plenty of time.
 15 Q. Where does this Permit Condition S2.C which
 16 governs construction stormwater indicate whether
 17 sampling and monitoring results need to be submitted to
 18 Ecology?
 19 A. (Witness reviewing document). Would you read
 20 the question back, please?
 21 (Reporter read back as requested.)
 22 A. It does not.
 23 Q. (BY MR. POULIN) Are the results of
 24 monitoring of construction stormwater required to be
 25 submitted to Ecology under this permit?

1 (Reporter read back as requested.)
 2 A. Portions of it, yes. Some of it.
 3 Q. (BY MR. POULIN) And which portions are
 4 those?
 5 A. S3.C and S3.G.
 6 Q. Could you please describe how those permit
 7 conditions that you just identified operate?
 8 A. Every other month the Port of Seattle must
 9 support monitoring results for construction stormwater
 10 discharges to Walker Creek and tributaries and Gilliam
 11 Creek tributaries beginning July 1, 2001.
 12 And the other one is, "In the event the
 13 Permittee is unable to comply with any of the permit
 14 terms and conditions due to any cause, the Permittee
 15 shall," and it's No. 2, "Repeat sampling and analysis
 16 of any violation and submit the results to the
 17 Department within 30 days after becoming aware of the
 18 violation."
 19 Q. What happens if the permittee is not aware of
 20 the violation?
 21 A. Well, in the case of Walker Creek and Gilliam
 22 Creek, he has to submit it. But you're probably
 23 referring to G.2, evidently.
 24 (Witness reviewing document.) Then I
 25 guess -- well, if we -- well, then he would probably be

1 A. Yes.
 2 Q. Why doesn't that reporting requirement also
 3 apply to construction stormwater discharges to
 4 Des Moines Creek?
 5 A. (Witness reviewing document.) The scope of
 6 the modification was Walker and Gilliam Creeks and
 7 tributaries.
 8 Q. Well, before the modification took place
 9 there were no authorized discharges to Walker and
 10 Gilliam Creeks, isn't that right?
 11 A. That's correct.
 12 Q. But there were authorized discharges for
 13 Des Moines Creek; right?
 14 A. Yes.
 15 Q. Is there a requirement to monitor the
 16 construction discharges to Des Moines Creek in some
 17 other provision of the permit?
 18 A. I'm not sure. I don't know.
 19 Q. Condition S.C.1 (sic) refers to construction
 20 projects required to have a Stormwater Pollution
 21 Prevention Plan.
 22 A. There's no such condition.
 23 Q. Sorry?
 24 A. There's no such condition.
 25 Q. Please explain.

1 in violation of Condition S3.G.
 2 Q. How so?
 3 A. He would need to report violations to us.
 4 "In the event the Permittee is unable to comply with
 5 any of the permit terms and conditions due to any
 6 cause, the Permittee shall." So if he is in violation
 7 and he's not aware of it, he's not complying with S3.G.
 8 Q. Doesn't Condition S3.G.2 give the permittee
 9 30 days after becoming aware of the violation to repeat
 10 sampling and analysis on the violation and submit the
 11 results to the Department?
 12 A. (Witness reviewing document.)
 13 (Reporter read back as requested.)
 14 A. Yes.
 15 Q. (BY MR. POULIN) How would that requirement
 16 be triggered if the permittee didn't know, didn't
 17 become aware of the violation?
 18 A. It wouldn't be triggered.
 19 Q. It would not be triggered?
 20 A. No.
 21 Q. Now, you mentioned Permit Condition S3.C
 22 which requires that monitoring results for construction
 23 stormwater discharges to Walker Creek and tributaries
 24 and Gilliam Creek and tributaries to be submitted every
 25 other month.

1 A. S.C.1? S.C.1 is what you said.
 2 Q. I'm sorry, I misspoke. I mean Permit
 3 Condition S2.C.1 on Page 16.
 4 A. Okay, right. Yes.
 5 MR. YOUNG: Of which, 3 or 4?
 6 MR. POULIN: Could we go off record for just
 7 a moment, please?
 8 (Discussion off the record.)
 9 Q. (BY MR. POULIN) In response to your
 10 question, I am asking about the current permit,
 11 Exhibit 3. And looking to Permit Condition S2.C.1 on
 12 Page 16, we see a reference to construction projects
 13 required to have a Stormwater Pollution Prevention Plan
 14 under Special Condition S13.
 15 Is it possible that the Stormwater Pollution
 16 Prevention Plan, or SWPPP as they're sometimes called,
 17 requires monitoring and reporting of monitoring results
 18 independently of the other conditions that we've looked
 19 at?
 20 A. (Witness reviewing document.)
 21 (Reporter read back as requested.)
 22 A. I don't believe it does, no. I don't think
 23 so. I may have to do a bit more reading on that, but I
 24 don't believe it does.
 25 Q. (BY MR. POULIN) Is it possible that this

1 NPDES permit as modified on May 29, 2001 does not
 2 require monitoring of construction stormwater
 3 discharges to Des Moines Creek?
 4 A. No, it does require. It requires a
 5 monitoring plan for -- my understanding is that this
 6 permit requires a monitoring plan for all construction
 7 stormwater discharges. My understanding of this permit
 8 is all construction stormwater discharges require a
 9 monitoring plan.
 10 Q. Doesn't Condition S2.C.1 in effect say that
 11 only those construction projects required to have a
 12 SWPPP under Special Condition S13 are required to have
 13 a monitoring plan?
 14 A. (Witness reviewing document.) That's
 15 correct.
 16 Q. And doesn't Permit Condition S13 say that a
 17 SWPPP is required only for construction activities
 18 which disturb five or more acres of total land area?
 19 A. Yeah, that's what it says.
 20 Q. It also says "or other minimum land area to
 21 be determined by federal regulation"?
 22 A. Yes, that's what it says.
 23 Q. As permit manager, what did you understand
 24 that language to mean, "minimum land area to be
 25 determined by federal regulation"?

1 A. I didn't have an interpretation. I did not
 2 have an interpretation.
 3 Q. Do you know whether federal regulations
 4 require SWPPPs for some construction projects that
 5 disturb less than five acres?
 6 A. Significant contributors. The general
 7 construction permit requires -- no, wait, excuse me.
 8 Yeah, the general construction permit requires a SWPPP
 9 for facilities that are significant contributors even
 10 though they're less than five acres. That's the
 11 general construction stormwater permit.
 12 Q. Does that permit apply to operations at
 13 Sea-Tac Airport?
 14 A. No.
 15 Q. Does this permit, Exhibit 3, require any
 16 SWPPP for construction projects that disturb less than
 17 five acres?
 18 A. (Witness reviewing document). Not to my
 19 knowledge.
 20 MR. POULIN: Could you repeat the question
 21 and answer, please?
 22 (Reporter read back as requested.)
 23 Q. (BY MR. POULIN) So is it correct to say that
 24 the permittee is not required to monitor construction
 25 stormwater discharges resulting from construction

1 activities that disturb less than five acres at Sea-Tac
 2 Airport?
 3 A. (Witness reviewing document). Yes, it does.
 4 I think it does.
 5 Q. You think it does require monitoring?
 6 A. I think it does require it, yes.
 7 Q. But you haven't been able to identify it
 8 specifically?
 9 A. Yeah, in S2.C.2.
 10 Q. Permanent Condition S2 --
 11 A. C.2.
 12 Q. -- C.2 does not apply to Des Moines Creek,
 13 does it?
 14 A. No, it doesn't.
 15 Q. So no monitoring requirement imposed by
 16 Condition S2.C.2 would apply to any construction
 17 project discharging to Des Moines Creek, would it?
 18 A. No, no.
 19 Q. Is it possible, then, that the permit does
 20 not require monitoring of construction-related
 21 discharges to Des Moines Creek resulting from projects
 22 disturbing less than five acres?
 23 A. What's the question again?
 24 (Reporter read back as requested.)
 25 A. Yes.

1 Q. (BY MR. POULIN) And I'd like to clarify that
 2 the question was "permit" not "department." Can we
 3 clarify that the question pertains to the permit
 4 requirements?
 5 A. Once again, please?
 6 (Reporter read back as requested.)
 7 A. Yes.
 8 Q. (BY MR. POULIN) If the permit does not
 9 require monitoring of those discharges to Des Moines
 10 Creek, how would the permittee or the Department know
 11 if those discharges were resulting in violations of the
 12 permit?
 13 A. Well, without the monitoring -- if the
 14 permittee did it without being required by the permit,
 15 then we could determine what the -- determine
 16 compliance that way.
 17 Q. Is that because Condition S3.F requires the
 18 permittee to include the results of monitoring when the
 19 permittee monitors more frequently than required?
 20 A. Yes.
 21 Q. So that's if the permittee engages in
 22 essentially voluntary monitoring beyond the
 23 requirements of the permit?
 24 A. Correct.
 25 Q. But if they don't then you wouldn't know,

1 isn't that right?
 2 A. We get a lot of complaints. Perhaps a
 3 complaint basis. We would know from a complaint basis
 4 possibly, possibly. When we receive a complaint we
 5 might know there's a -- and like I said, from one of
 6 our inspections, we might know that way.
 7 Q. Did you order any inspections of
 8 construction-related discharges in response to
 9 complaints?
 10 A. I don't remember. I can't remember. I know
 11 we've received complaints of pollution discharge from
 12 Sea-Tac Airport.
 13 Q. And whose responsibility is it to follow up
 14 on that kind of complaint?
 15 A. Well, one of the responsible parties that I
 16 know of would be the Department of Ecology.
 17 Q. And would that be your Industrial Permit and
 18 Stormwater Unit or is there some other enforcement
 19 branch?
 20 A. There's another enforcement branch that we
 21 now have.
 22 Q. In your view as the former permit manager of
 23 this NPDES permit governing Sea-Tac Airport, does this
 24 permit require compliance with water quality standards?
 25 A. The portion that I'm familiar with, the major

1 review the permit fairly carefully.
 2 Q. Let's look at a new exhibit.
 3 (Deposition Exhibit No. 5 was marked for
 4 identification.)
 5 Q. (BY MR. POULIN) Exhibit 5 is a photocopy of
 6 a chapter of the Washington Administrative Code,
 7 Chapter 173-201A. And that's the same chapter that's
 8 cited in that construction stormwater monitoring
 9 provision that we just read pertaining to Walker and
 10 Gilliam Creeks, Condition S2.2.b (sic); is that right?
 11 A. S2.C.2.b. Yes, that is the same.
 12 Q. S2.C.2.b, thank you. So is this the relevant
 13 source for water quality standards under state law that
 14 you look to?
 15 A. It's one of the regulations that we use to
 16 protect waters of the state.
 17 Q. Are you familiar with these water quality
 18 standards?
 19 A. What do you mean "familiar"?
 20 Q. Have you worked with them and understand how
 21 they're applied and defined?
 22 A. Not all of them, not all of them.
 23 Q. Well, let's look at some examples that are
 24 relevant to the dispute.
 25 A. Okay.

1 modification I'm most familiar with, as you say, states
 2 that "Monitoring will be reviewed for compliance with
 3 WAC 173" -- I'm looking at Page 17, S2.C.2.b.
 4 "Monitoring will be reviewed for compliance
 5 with WAC 173.201A. The Department will exercise its
 6 enforcement discretion in the event of noncompliance
 7 with these standards."
 8 Q. Now, that provision that you've cited is part
 9 of Condition S2.C.2, isn't that right?
 10 A. That is correct.
 11 Q. So that particular provision only pertains to
 12 Walker Creek and Gilliam Creek, isn't that right?
 13 A. That provision only applies to Walker and
 14 Gilliam Creek, that is correct.
 15 Q. How about discharges to Des Moines Creek?
 16 A. WAC 173-201A applies to Des Moines Creek.
 17 Q. If a discharge to Des Moines Creek exceeded
 18 water quality standards or resulted in exceedance of
 19 water quality standards, would that be a violation of
 20 this permit?
 21 A. It would be a violation of state law.
 22 Q. Is there any provision of this permit itself
 23 that would make that violation of state law also a
 24 violation of the permit?
 25 A. I'd have to look at the permit. I'd have to

1 Q. Let's look at the water quality standard for
 2 some of the so-called toxic substances in WAC
 3 173-201A-040 which you'll see on Page 480, 481 and 482
 4 of this Exhibit 5.
 5 A. Yeah, okay. I'm there.
 6 Q. Now, initially Section 1 states that toxic
 7 substances shall not be introduced above natural
 8 background levels in waters in the state. Section 2
 9 states that the Department shall employ or require
 10 chemical testing as appropriate to evaluate compliance
 11 with Subsection 1. And section 3 identifies the
 12 specific water quality criteria.
 13 In your view does this permit require the
 14 kind of testing necessary to determine if these
 15 criteria are being met by the discharges subject to the
 16 permit?
 17 A. For which parts of the permit?
 18 Q. Well, let's look at non-construction
 19 stormwater. That's Permit Condition S2.B beginning on
 20 Page 14 of Exhibit 3.
 21 A. I'm not that familiar with the development of
 22 that section, that condition. It wasn't part of the
 23 major modification.
 24 Q. And your understanding of the permit to these
 25 tables in Section S2.B.1, 2, 3 and 4 identify all of

1 the parameters for which the permittee is required to
 2 sample and monitor?
 3 A. Well, there's A. Isn't there A also?
 4 Condition S2 is the monitoring requirements for the
 5 NPDES permit.
 6 Q. Yes. And S2.A applies to industrial
 7 wastewater?
 8 A. Yes, sir.
 9 Q. S2.B is non-construction stormwater?
 10 A. That's right.
 11 Q. And S2.C is construction stormwater?
 12 A. Yes, sir.
 13 Q. And wasn't it the Department's position in
 14 the permit modification that some of the toxic
 15 substances that the community expressed concern about,
 16 including copper and lead and zinc, were not
 17 particularly relevant to the modification because those
 18 kinds of discharges don't typically result from
 19 construction activities?
 20 (Reporter read back as requested.)
 21 A. Construction stormwater discharges are not
 22 characterized for those pollutants.
 23 Q. (BY MR. POULIN) And for that reason, when we
 24 look to the monitoring requirements for construction
 25 stormwater under the permit, we don't see, there is no

1 parameters identified in the first column?
 2 A. Of S2.B.1?
 3 Q. Yes.
 4 A. Does the permit --
 5 (Reporter read back as requested.)
 6 A. S2.B.1 is a list of monitoring requirements
 7 for those four outfalls.
 8 Q. (BY MR. POULIN) And doesn't it say that
 9 permittee shall monitor for TPH, or total petroleum
 10 hydrocarbons?
 11 A. Yes.
 12 Q. And TSS, total suspended solids?
 13 A. Yes.
 14 Q. And it lists Turbidity, Fecal Coliform, BOD?
 15 A. Yes.
 16 Q. Ethylene Glycol and Propylene Glycol, and
 17 then Total Recoverable Copper, Lead and Zinc?
 18 A. Yes, it does.
 19 Q. Are there any other parameters that this
 20 provision requires permittee to sample for?
 21 A. I'm not sure. This provision, S2.B.1.,
 22 reading it over here, I don't see any other monitoring
 23 parameters that are required in S2.B.1 except what's in
 24 S2.B.1. Those are the parameters that are required for
 25 those outfalls under this condition.

1 requirement to sample for copper and lead and zinc, is
 2 there?
 3 A. That's correct.
 4 Q. However, there is such a requirement under
 5 S2.B, isn't there?
 6 A. For copper, lead and zinc, yes.
 7 Q. And we see that requirement for monitoring
 8 stormwater discharges for copper, lead and zinc in both
 9 S2.B.1 and S2.B.2; right?
 10 A. S2.B.1 has monitoring requirement for copper,
 11 lead and zinc. And the next one you asked about was
 12 S2.B.2?
 13 Q. Correct.
 14 A. Also has monitoring requirements for copper,
 15 lead and zinc, that's correct.
 16 Q. And doesn't the permit explain that the
 17 requirements of S2.B.1 apply to four specified
 18 outfalls, Nos. 2, 5, 6 and 11?
 19 A. Yes, that's the outfalls that monitoring
 20 applies to.
 21 Q. Let's focus just on those four outfalls and
 22 the non-construction stormwater requirements of S2.B.1.
 23 A. Okay.
 24 Q. Does the permit require the permittee to
 25 sample for anything other than these specific so-called

1 Q. So is it correct to state that this Permit
 2 Condition S2.B.1 does not identify any effluent limits?
 3 A. That's correct, it does not.
 4 Q. Effluent limits are in a different part of
 5 the permit; right?
 6 A. That's correct.
 7 Q. They're identified in Special Condition S1
 8 which is called discharge limitations?
 9 A. That's where the NPDES permits put effluent
 10 limitations usually.
 11 Q. Condition S1.A applies to industrial
 12 wastewater, is that right, on Page 8?
 13 A. It applies to treated industrial wastewater.
 14 Q. And S1.B, Page 9, that's another provision
 15 for industrial wastewater; right?
 16 A. That's what it looks like. The answer is --
 17 that's what it says, Final Effluent Limitations. Yeah,
 18 that would be the final effluent limitations.
 19 Q. Is there any provision here in Condition S1
 20 that applies to stormwater?
 21 A. I would have to become more familiar with the
 22 discharge of the airport to make that -- answer that
 23 question.
 24 Q. Would you agree that if there were an
 25 effluent limitation for stormwater, a limitation on

1 specific parameters of the effluent, that numeric
2 criteria, for example, it would be stated in Permit
3 Condition S1?

4 A. That's where they usually go, in Condition
5 S1.

6 Q. Let's turn back to Exhibit 5 and the water
7 quality criteria for those toxic substances, copper,
8 lead and zinc.

9 Now, do you see in the first column of the
10 table where it identifies the substances
11 alphabetically?

12 A. Yes.

13 Q. And do you see that copper, lead and zinc
14 each has a note to the table, a little sort of a
15 footnote that's there on the same line?

16 A. Yes.

17 Q. And it says "dd"?

18 A. Yes.

19 Q. Have you ever reviewed that note to the table
20 to figure it out or see how it applies?

21 A. Yeah. I recognize what it's saying here.

22 Actually, no, no, I haven't. I'm familiar with the
23 first line in "dd." Cyanide, unfamiliar with that.

24 Q. Are there people within your staff at Ecology
25 that are considered expert in how these regulations

1 that's -- that is grabbed. You take it, put it
2 underneath the water coming out the outfall, make sure
3 that you follow the proper procedures. Take the sample
4 and just put it underneath the water coming out of the
5 outfall. That's a grab sample. Fill up the bottle.
6 Make sure you have the right bottle and the right
7 procedures.

8 Q. Do you have to do that more than once to get
9 a 1-hour average?

10 A. No. We haven't taken it more than once to
11 get a 1-hour -- we've applied the grab samples to the
12 criteria.

13 Q. So in your view if the grab sample satisfies
14 or meets the criteria, it's okay?

15 A. Exceedances will be determined -- we've
16 determined exceedances of the criteria by grab samples.

17 Q. So if the grab sample exceeds the criteria,
18 you don't need to measure again to determine the 1-hour
19 average?

20 A. Correct. Well, to determine violation.

21 Q. How about footnote "o"?

22 A. Yes.

23 Q. Does that make any sense to you?

24 A. Yeah, it does. Yes, it does. It is a -- the
25 criterion is dependent on hardness, so you need to know

1 work?

2 A. I don't know if there's anybody that's an
3 expert on everything in this regulation.

4 Q. Who would you go to to determine what the
5 water quality criteria is for copper in fresh water?

6 A. I would go to the regulation.

7 Q. And that's what we have here, isn't it?

8 A. Yeah.

9 Q. When we look at copper in the table, the
10 freshwater acute criteria is identified with two
11 letters, "o" and "c." Do you see that?

12 A. Yes, I do.

13 Q. And we can find those stated in the
14 regulation; right?

15 A. Yes.

16 Q. C states, "A 1-hour average concentration not
17 to be exceeded more than once every three years on
18 average"?

19 A. Yes.

20 Q. How do you take a sample to obtain a 1-hour
21 average concentration?

22 A. We have determined compliance with that
23 condition by grab samples.

24 Q. What's a grab sample?

25 A. A grab sample is a sample that you take

1 the hardness in order to determine the criteria.

2 Q. You need to know the hardness to determine
3 whether --

4 A. What the "o" is.

5 Q. You can't determine what the criteria is
6 unless you know the hardness?

7 A. Correct.

8 Q. Because does the criteria vary with the
9 hardness of the water?

10 A. Yes, it does.

11 Q. When the permittee samples non-construction
12 stormwater discharges, does the permit require them to
13 sample for hardness as well?

14 A. I don't know. I don't know. I'd have to
15 look at the condition.

16 Q. Where would you look to find that out?

17 A. I would look under S2, monitoring
18 requirements.

19 Q. And for non-construction stormwater, would
20 that be S2.B?

21 A. Yes. Yes, it would.

22 Q. Do you see any mention there of hardness?

23 A. I do not.

24 Q. Is there any provision that says the
25 permittee has to perform sampling sufficient to

1 determine compliance with water quality standards?
 2 A. I'm not that familiar with all the conditions
 3 of the permit.
 4 Q. Do you know who would be within the
 5 Department?
 6 A. With all the conditions of the permit? You'd
 7 have to look --
 8 Q. Well, this specific one. This issue of
 9 applying the metals, toxic substances criteria under
 10 173-201A-040, who is the go-to guy for that part of the
 11 permit?
 12 A. Well, it would be the facility manager would
 13 be responsible for the compliance with the permit.
 14 Q. And that would be Ed Abbasi?
 15 A. Right now it's Ed Abbasi.
 16 Q. Just to make sure we're reviewing this and
 17 understanding the same way, back to the water quality
 18 criteria, that table in Exhibit 5 on page -- well, the
 19 table in WAC 173-201A-040.
 20 A. Yeah, I'm there.
 21 Q. Do you see that those two footnotes we looked
 22 at, footnote "c" and footnote "o" -- well, let me
 23 strike that.
 24 Would you agree that footnote "c" applies to
 25 the acute freshwater criteria for copper, lead and

1 A. I would probably talk to our Environmental
 2 Assessment Program, our Manchester lab -- well, called
 3 the Environmental Assessment Program is the only person
 4 I would talk to. I might talk to a variety of people
 5 about that.
 6 Q. So if you don't know how the Department
 7 determines the 4-day average concentration, do you know
 8 whether the permit requires the sampling that you need
 9 to determine compliance with the 4-day average
 10 concentration?
 11 A. I would have to look into it, make sure. I'd
 12 have to look into it. I don't know if that answers the
 13 question. Did that answer the question?
 14 Q. It sounds like for today you're not sure at
 15 present?
 16 A. That's correct.
 17 MR. POULIN: Well, this might be a good time
 18 to break for lunch. It's 12:04.
 19 (Deposition recessed at 12:04, to be
 20 reconvened at 1:00 p.m.)
 21
 22
 23
 24
 25

1 zinc, each one of those has a "c" as part of the
 2 criteria?
 3 A. Yes.
 4 Q. And "c" is that provision referring to a
 5 1-hour average concentration?
 6 A. Yes.
 7 Q. And that's the one where you said that the
 8 Department would use a grab sample?
 9 A. Yes. We use grab samples to determine
 10 compliance with the criteria in 173-201A-040.
 11 Q. Now, there's also a chronic criteria for
 12 freshwater; is that right?
 13 A. That's correct.
 14 Q. And instead of footnote "c" and footnote "o"
 15 now there's a footnote "d"?
 16 A. Yes.
 17 Q. That applies to both copper, lead and zinc?
 18 A. Yes.
 19 Q. So for the chronic criteria, footnote "d"
 20 says, "A 4-day average concentration not to be exceeded
 21 more than once every three years on average."
 22 How does the Department determine a 4-day
 23 average?
 24 A. I don't know.
 25 Q. Do you know who would know?

1 AFTERNOON SESSION
 2 1:00 P.M.
 3 --oOo--
 4 CONTINUING EXAMINATION
 5
 6 BY MR. POULIN:
 7 Q. Do you recall that you're still under oath
 8 and sworn to give truth in testimony?
 9 A. I am.
 10 Q. We were reviewing the water quality criteria
 11 identified in Chapter 173-201A, and specifically the
 12 provisions pertaining to toxic substances under
 13 173-201A-040.
 14 A. Yes.
 15 Q. On the subject of toxic substances, are you
 16 familiar with General Condition G11 of the permit?
 17 It's on Page 52 of 52 of Exhibit 3.
 18 A. Well, I'm reading it now. (Witness reading
 19 document). Not real familiar with that, no.
 20 Q. Would it be your understanding that the toxic
 21 criteria under state law are just as stringent as those
 22 under federal law?
 23 A. I think many of our criteria are based on The
 24 Gold Book, which is a federal document. It's a
 25 document that has limits -- that have numbers that are

1 stated to be protective of waters of the United States.
 2 And I'm not an expert on how we used those to derive
 3 these limits, but they were used in that process
 4 somehow, I believe.
 5 Q. In your view of the permit system, who has
 6 the primary responsibility of determining whether the
 7 permittee is complying with water quality standards?
 8 Would that be Ecology or the permittee?
 9 A. The one that's responsible for compliance
 10 with the permit is the permittee, yes.
 11 Q. Right, the permittee is responsible for
 12 compliance, but who is most responsible for determining
 13 whether the permittee is in fact complying?
 14 A. That would be the Department of Ecology.
 15 Q. That would be the Department. So in order to
 16 do that, the primary tools that the Department relies
 17 on are monitoring --
 18 A. -- the permit. The permit and then -- yeah,
 19 the permit and the conditions of the permit, including
 20 the monitoring in the permit.
 21 Q. And you also mentioned inspection?
 22 A. Inspections. We also do inspections for
 23 compliance with the permit. We also do -- yeah.
 24 Q. Now, if you were to conduct an inspection to
 25 determine compliance with water quality standards,

1 let's say the same non-construction stormwater-related
 2 requirements that we reviewed earlier under Permit
 3 Condition S2.B, how would you do that?
 4 A. During the inspection there would have to be
 5 a sample taken or review of their monitoring data that
 6 they have on site. And sometimes you can find out if
 7 there's turbidity problems by observations of the
 8 turbidity in the discharges. The compliance method
 9 isn't visual, but you can tell turbid discharges many
 10 times when you see them. So if there's a lot of turbid
 11 water coming out of one of these outfalls, you can see
 12 turbidity. That's what it is is discoloration in the
 13 water, discharge. It might appear as a plume in the
 14 receiving water.
 15 Q. Turbidity is not one of the toxic substances,
 16 is it?
 17 A. No, it's not.
 18 Q. Where would you find the water quality
 19 standard or criteria that applies to turbidity?
 20 A. Up ahead there, I think it's 030. Yeah, it's
 21 030, the various classes of waters in the state.
 22 173-201A-030. So it's listed and it's divided by
 23 classes of waters of the state. So you've got Class
 24 AA, Class A, Class B, Class B, I think it is. And so,
 25 for example, Class AA, it's in there someplace. It's

1 on the second column, it looks like fourth paragraph
 2 down. So it would be 173-201A.030, I think it's 1(b)
 3 -- it's in the second column, third paragraph down.
 4 Q. I'm reading that as Section 1(c)(vi). Would
 5 you agree you see that (c) is water quality criteria,
 6 that's about halfway down the left-hand column?
 7 A. Oh, yeah, I do see that (c). It's 1(c) --
 8 yes, correct.
 9 Q. 1(c)(vi)?
 10 A. Yes, sir.
 11 Q. And there it states, "Turbidity shall not
 12 exceed 5 NTU over background turbidity when the
 13 background turbidity is 50 NTU or less, or have more
 14 than a 10 percent increase in turbidity when the
 15 background turbidity is more than 50 NTU."
 16 A. Yes, that's what it says.
 17 Q. And is this criteria, is this like the others
 18 we looked at where there's something like hardness or
 19 some other information that you need to know before you
 20 can apply this rule?
 21 A. No, there's no hardness related to this.
 22 It's a nephelometer that measures it. One way to do it
 23 is take a sample per the method, and then within I
 24 think it's two days or three days, you take it to a
 25 laboratory and you analyze it in a nephelometer.

1 There's also -- yeah, that's what you do.
 2 Q. And there's no temperature variation?
 3 A. No, there's not.
 4 Q. No hardness?
 5 A. And we've taken enforcement on visual
 6 turbidity also. Not here but at a construction site.
 7 Q. Has the Port ever reported to you any
 8 violations of the water quality criteria for turbidity
 9 resulting from construction-related discharges?
 10 A. I'd have to review the files. I'd have to
 11 review the files.
 12 Q. You don't have any recollection whether they
 13 have or not?
 14 A. There was a turbid discharge from I believe
 15 it was the north employees parking lot a few years ago
 16 that had turbidity violations associated with it that
 17 was reported to the Department of Ecology.
 18 Q. Can you think of any more recently? Have
 19 there been any since the permit modification?
 20 A. No.
 21 Q. Now, we looked at the permit provisions for
 22 construction stormwater in Condition S2.C on Pages 16
 23 and 17?
 24 A. Yes.
 25 Q. And I believe you said those were the

1 provisions in the permit that you're most familiar with
2 because they were part of the recent modification?

3 A. That's correct.

4 Q. And this says that in addition to the
5 requirements of Special Condition S13.C.1.c, and I'm
6 reading here from Condition S2.C.2.a --

7 A. I'm with you.

8 Q. In addition to those requirements, "the
9 Permittee shall monitor turbidity and pH in any surface
10 water discharge from construction sites within 24 hours
11 after any storm event of greater than 0.5 inches of
12 precipitation per 24-hour period."

13 Does the permit require that kind of
14 monitoring to be reported?

15 A. Yes.

16 MR. PEARCE: I'm sorry, Rick. Did you say
17 "recorded" or "reported"?

18 MR. POULIN: Thanks, Roger.

19 Q. (BY MR. POULIN) I said "reported," and of
20 course I meant does it require the results of that kind
21 of monitoring to be reported?

22 A. Yes, it does.

23 Q. How and where do you find that?

24 A. Page 19, S3.C.

25 Q. And that's that provision that requires

1 Q. Because it's not subject to Permit Condition
2 S2.C.2; is that right?

3 A. That's correct.

4 Q. Those are the provisions we discussed earlier
5 where if it's a construction project that results in
6 the disturbance of less than five acres, it might not
7 be subject to any reporting requirements at all?

8 A. Well, the reporting requirements, you know,
9 the non-compliance notification requirements, that's a
10 reporting requirement. Oh, if it's less than -- okay.

11 Yeah, we've got the G that we talked about before,
12 S3.G, the non-compliance notification reporting
13 requirements. That's still there, the one that we went
14 over before.

15 Q. And just to clarify again in terms of
16 non-compliance notification, the only non-compliance
17 notification that you could recall today happened some
18 years ago with the employee parking lot incident?

19 A. Yes, that I can recall, that I can recall.
20 There's been discussions about problems that cropped
21 up, but your question refers to violations, I believe.

22 Q. Right. Notification of any non-compliance
23 that has been brought to your attention by the Port.

24 A. I can't recall any.

25 Q. Let's look at Permit Condition S2.E, that's

1 monitoring results to be submitted every other month?

2 A. Yes, sir.

3 Q. So if there's a storm event that exceeds this
4 half-inch-per-24-hour period threshold identified in
5 S2.C.2.a on Page 16, would that automatically be
6 reported along with the regular every-other-month
7 monitoring results reporting of S3.C?

8 A. What was the first part of the question?
9 Violations, you say? Or was it exceedances or what did
10 you say?

11 (Reporter read back as requested.)

12 A. The answer is yes, that does require that to
13 be reported to the Department.

14 Q. (BY MR. POULIN) Are you aware of any kind of
15 stormwater monitoring that is not required to be
16 reported to Ecology if taken by report under this
17 permit?

18 A. Well, yeah, because this -- well, what kind
19 aren't required to be reported? From construction
20 stormwater?

21 Q. Yes.

22 A. The monitoring that's outside of Walker Creek
23 and tributaries and Gilliam Creek and tributaries, that
24 construction stormwater isn't specifically required to
25 be submitted to the Department.

1 on Page 17 of Exhibit 3.

2 A. Yeah.

3 Q. This pertains to an Annual Stormwater
4 Monitoring Summary Report. Does this annual stormwater
5 report include both non-construction stormwater under
6 S2.B and construction stormwater?

7 A. No, it's just non-construction stormwater.

8 Q. So that annual reporting requirement for
9 stormwater does not apply to construction-related
10 stormwater?

11 A. That's correct.

12 Q. Have you during your employment with Ecology
13 reviewed any Annual Stormwater Monitoring Reports
14 submitted under this provision?

15 A. Yes, I have.

16 Q. Let's introduce a new exhibit.
17 (Deposition Exhibit No. 6 was marked for
18 identification.)

19 Q. (BY MR. POULIN) Exhibit 6 bears a title page
20 labeled Port of Seattle Annual Stormwater Monitoring
21 Report for Seattle-Tacoma International Airport for the
22 period July 1, 2000 through June 30, 2001, and dated
23 September 2001.

24 Have you seen this report before?

25 A. I have seen it before.

1 Q. How would you explain the intended purpose of
2 this report? Why does Ecology require the Port of
3 Seattle to submit these annual reports?

4 A. To summarize the monitoring of the previous
5 year.

6 Q. Is there a compliance review or enforcement-
7 related aspect to this report?

8 A. I haven't conducted an enforcement action
9 based on the review of this report.

10 Q. Was it more of an educational or management
11 tool, would you say?

12 A. It's to inform the Department of the
13 monitoring required under the permit -- the results of
14 the monitoring under the permit for whatever purposes.

15 Q. Would you use this report to determine
16 compliance with water quality standards?

17 A. I don't know what I would do. I haven't in
18 the past.

19 Q. Could you use this kind of report to
20 determine compliance with water quality standards?

21 A. I'd have to review it in depth before I would
22 take such a step. My review has not been in that kind
23 of detail.

24 Q. Let's look at Page 32 of the report. If you
25 look to the first paragraph of text, it states in

1 A. Yes.

2 Q. Before it hit the stream?

3 A. I don't understand that. That's where it
4 does hit the stream. I mean, it does hit the stream.
5 The pipe does hit the stream.

6 Q. Yes. Referring to the discharge, are you
7 measuring simply what is coming out of the pipe or do
8 you measure in the stream where the pipe flows in?

9 A. No, we measure it at the pipe. So the pipe
10 is here, the stream is here. The flow of water from
11 the pipe is going to the stream. I take a sample
12 there.

13 Q. Even before the discharge hits the stream?

14 A. That's right, because then it's mixed. You
15 wouldn't know what you're measuring.

16 Q. Are you aware of any discussions or
17 communication between Ecology and the Port where this
18 point was raised and considered?

19 A. Within Ecology, is that what you said?

20 Q. Discussions between Ecology and the Port.

21 Like, say, when you read this report and see this kind
22 of statement, would you ever inform the Port, hey, wait
23 a minute, that's not the way we think you should do it?

24 A. They're doing it the way we want them to do
25 it, but I didn't comment about this interpretation of

1 Paragraph 4.5.3, Metals, "All data reported below are
2 for total recoverable metals. It is important to note
3 that Washington State Water Quality Standards (WAC
4 173-201A) apply to the receiving waters, not to the
5 discharges from a particular outfall."

6 Do you agree with that statement?

7 A. Unless a mixing zone's been granted,
8 compliance with surface water quality criteria is at
9 the point of discharge.

10 Q. So when we talked about this before, we used
11 the example of a hypothetical pipe --

12 A. Yes, we did.

13 Q. -- that was above the stream --

14 A. Yes.

15 Q. -- and discharging.

16 A. Yes.

17 Q. Where would you sample to determine
18 compliance with water quality standards --

19 A. I would take this -- unless a mixing zone --
20 well, even if -- if I was to determine compliance with
21 surface water quality criteria without a mixing zone, I
22 would take the sample at the point of discharge for the
23 metals. Turbidity is different, as you know.

24 Q. So for the metals you would sample the
25 discharge directly from the pipe?

1 the state standards.

2 Q. But your understanding is that you don't
3 measure the receiving waters unless there's an approved
4 mixing zone?

5 A. Even if there was a mixing zone you still
6 wouldn't be monitoring the receiving waters. As part
7 of the mixing zone analysis you would be measuring the
8 receiving waters, but once a mixing zone is granted by
9 the Department, I wouldn't set it up so you'd measure
10 it in the receiving water. I suppose you could but I
11 wouldn't.

12 Q. Do you know in fact with respect to a
13 particular outfall, any particular outfall, where the
14 sampling is done? How would you find that out?

15 A. By looking at the condition that says you
16 must monitor it at the point of discharge. You measure
17 it at the outfall, the four we mentioned before. It's
18 at the outfall, not in the receiving water. So it says
19 in that Condition S2, you will measure the outfall.
20 That's how I know.

21 Q. And do you just assume that the Port is
22 following those instructions or is there some way to
23 verify?

24 A. The answer to your question is I have not
25 personally witnessed them take a sample from the

Page 62

1 outfalls. That's the answer to your question.
 2 Q. The next sentence here on Page 32 in that
 3 Paragraph 4.5.3 that we read says, "See the discussion
 4 in Section 3.3 concerning the STIA monitoring locations
 5 relative to the receiving streams." And if we look to
 6 that Paragraph 3.3 on Page 10, it states there, "The
 7 Port monitors stormwater discharges at 14 locations."
 8 A. Yes, sir.
 9 Q. "One for each subbasin."
 10 A. Yep.
 11 Q. And further states, "Figure 1 shows the
 12 location of the outfalls and monitoring locations."
 13 I'd like to refer you to this foldout color
 14 copy of Figure 1 that follows Page 14 in the permit.
 15 A. All right, I'm there.
 16 Q. Are you generally familiar with these
 17 identified outfalls?
 18 A. I have toured the facility and drove around
 19 these outfalls and in fact got out of the car and
 20 looked at some of them.
 21 Q. And the outfalls here are identified by,
 22 looks like a blackish circle?
 23 A. Yes.
 24 Q. Where can you find this kind of information
 25 about the location of the construction-related

Page 63

1 discharge outfalls?
 2 A. In the monitoring plan submitted to the
 3 Department for review and approval, there's a map
 4 attached to it.
 5 Q. A map. And is that for each individual --
 6 A. Upstream, downstream and point of discharge
 7 are big black dots on the map.
 8 Q. Are there upstream, downstream and point of
 9 discharge sampling requirements for each approved
 10 construction outfall?
 11 A. Each reviewed outfall, yeah. Well, I think
 12 so. The ones I recall had it. They should. I'd like
 13 to see it. I'd want it that way. Yeah, I haven't seen
 14 them all, I guess is what I'm saying.
 15 Q. Are there construction-related discharges
 16 into Des Moines Creek?
 17 A. I'm not sure. I don't know. I'd have to
 18 review the files.
 19 Q. Do you know whether the construction
 20 monitoring plans for the projects in the Walker Creek
 21 and Gilliam Creek basins require monitoring of hardness
 22 data?
 23 A. No, I don't believe they -- did you say for
 24 the --
 25 (Reporter read back as requested.)

Page 64

1 A. No, they don't.
 2 Q. (BY MR. POULIN) How about the monitoring
 3 plans for the Des Moines Creek basin?
 4 A. For which type of --
 5 Q. For construction-related.
 6 A. Construction-related, no. Hardness is not
 7 something that we need monitored for construction
 8 stormwater discharges, because turbidity, oil, grease
 9 and pH are not hardness dependent. The standards are
 10 not hardness dependent.
 11 Q. How about for non-construction stormwater
 12 discharges under S2.B?
 13 A. Well, I didn't see it under there when we
 14 went over it. I didn't see hardnesses required. And
 15 for the monitoring plans, I don't remember. I don't
 16 remember. I don't know.
 17 For the monitoring plans for non-construction
 18 stormwater, it's not required under the monitoring
 19 requirements. Do the monitoring plans have it? I'd
 20 have to -- I don't know, I don't know. I'd have to
 21 look.
 22 Q. And your understanding of the way the water
 23 quality criteria works for toxic substances under WAC
 24 173-201A-040, is it possible to determine whether the
 25 non-construction stormwater discharges comply with

Page 65

1 water quality standards if there is no hardness data?
 2 A. You need hardness data to determine
 3 compliance with WAC 173-201A-040 because the fresh
 4 water standards are hardness dependent. And whether
 5 hardness is in the monitoring plans, I don't know, I
 6 don't know. It's not in the S2.B that we were
 7 referring to.
 8 Q. You don't see it in the permit?
 9 A. I don't see it in S2.B.
 10 Q. If it's not in the monitoring plan, is there
 11 anywhere else that that requirement might exist?
 12 A. I'd have to look at the permit. I'd have to
 13 look -- if I was writing the permit it would be in
 14 S2.B. But I didn't write that portion of the permit.
 15 I don't know. Probably not, probably not.
 16 Q. We were looking at the requirement for the
 17 annual report under S2.E. Do you know if the annual
 18 report, Annual Stormwater Monitoring Report, requires
 19 reporting of hardness data?
 20 A. I don't recall seeing it. I don't know. I
 21 haven't reviewed that annual report that carefully.
 22 "This hardness value is the median of seven instream
 23 standards collected in Miller and Des Moines Creek."
 24 I'm looking at Page 20 of the annual report. Looks
 25 like they've got hardness data there, on Page 20 of the

1 annual report. I'm looking at (f) down at the
2 footnote.
3 Q. This is the Table 4 Stormwater Quality
4 Comparators?
5 A. Yes. "Washington state acute standards
6 expressed as total recoverable, calculated at 56
7 milligrams per liter hardness using generic translators
8 in Ecology's TSDCALC8.XLW spreadsheet. This hardness
9 value is the median of seven instream samples collected
10 in Miller and Des Moines Creeks in 1999."
11 So that is hardness data submitted in the
12 annual report.
13 Q. But that's not hardness data from this year
14 or from the year that the report covers, is it?
15 A. No, it's -- that's correct.
16 Q. Do you think that kind of hardness data is
17 sufficient to determine compliance with water quality
18 standards? Are you comfortable taking a median, an
19 average of seven samples conducted in one year?
20 A. I would -- I believe the guidance is somewhat
21 around that to determine background concentrations of
22 hardness in receiving waters, something around seven,
23 maybe ten samples. Or maybe four. I'd have to check.
24 It's four to ten is the way the Department determines
25 hardness in receiving waters, four to ten samples,

1 four to ten. I'd have to look at the guidances a
2 little bit more, receiving water monitoring. I think
3 it's four to ten.
4 Q. Does that need to be contemporaneous with a
5 particular sample or it's just they do one average and
6 now they know what the typical hardness in the creek is
7 and that's good for --
8 A. Yeah, that is the way they would determine a
9 mixing zone, in compliance using a mixing zone
10 analysis, is they would take background samples of the
11 metals and hardness. And I'd have to refresh myself on
12 the exact number. But then that would be -- then that
13 mixing zone established would then be established for
14 after that period. I'm referring you to a way that we
15 establish mixing zones.
16 Q. Are you aware of any mixing zones that
17 pertain to any of these outfalls?
18 A. No.
19 Q. Are there any mixing zones at all approved or
20 authorized by this permit?
21 A. No, there's not.
22 Q. No mixing zones at all?
23 A. Not to my knowledge. Not that I can recall.
24 I'm not familiar with any.
25 Q. Now, when you read this footnote (f) from the

1 Table 4 Stormwater Quality Comparators, there's a
2 reference here to this Ecology spreadsheet, the
3 TSDCALC8.XLW. Do you have any idea what that is?
4 A. Yeah, that's the TSDCALC. I think that has
5 an equation in it that aids that big long equation, I
6 think it was -- you were referring in previous
7 questioning to the letter that had a big equation, M, I
8 think it was. Well, it's a formula that you plug in
9 the hardness and you get the criteria. It's in that
10 TSDCALC8.
11 Q. And that's a workbook of some sort?
12 A. It's a spreadsheet, Department of Ecology
13 spreadsheet that would have that equation in an Excel
14 file, and then you plug in the hardness and you get the
15 copper receiving water acute standard or whatever.
16 Q. So then is it your understanding that using
17 this spreadsheet means you don't need specific hardness
18 data?
19 A. No, you need specific hardness data, but you
20 need to plug it in -- you could do it by hand or you
21 could plug it into the equation that's already
22 developed for you. So you plug the hardness into that
23 equation and you end up with the "o," you know, the "o"
24 that's in the 173-201A-040, the "o." That's how you
25 get "o". And you could try do it by hand or you can do

1 TSDCALC and it does it for you. But you've got to have
2 hardness for it.
3 Q. Do you need that from the same time, the same
4 date that you take the sample?
5 A. I am taking Department action on exceedances
6 of the copper limit based -- I'm taking Department
7 actions based on past hardness data for certain
8 facilities without having it contemporaneous, at the
9 same time. And I think it's -- if I knew -- if I could
10 read this -- I think you take -- I think it's the lower
11 10 percentile.
12 I would have to review the -- there's a
13 method of using that hardness to determine maximum
14 concentrations to receiving water and maximum impacts
15 to receiving water. And I think you take a certain
16 percentile of the range of hardness in order to
17 determine compliance. And I've taken actions based on
18 that without it -- actions. I've taken -- yes, I've
19 taken actions based on the fact that it's past hardness
20 data without it being contemporaneously taken. I've
21 done it a number of times.
22 Q. And what kind of action is that?
23 A. I've issued -- I've required -- I've told
24 every boatyard -- I've mentioned to the Northwest
25 Marine Trade Association that the copper limits that

1 they're measuring in their discharges exceed the water
2 quality standards based on a hardness of 50, and that's
3 for 81 boatyards in my region, 130 statewide, I put
4 that in a fax sheet, without it being measured
5 simultaneously with copper. So I'm telling the
6 boatyards, you are exceeding state water quality
7 standards because we're within assumption of 50 or with
8 a 50, you're over the standard.

9 Q. Does exceeding the water quality standards on
10 that basis constitute a violation of the permit?

11 A. I'd have to look at it, I'd have to look at
12 it. I haven't used TSDCALC to determine the
13 comparison, to make the comparison.

14 Q. Now, this Table 4 on Page 20 has comparative
15 study data that mentions Metro and Bellevue and highway
16 runoff and Portland.

17 A. Where is that, now?

18 Q. That's across the top column.

19 A. Oh, yes. Yes, okay.

20 Q. Why is that being reported here?

21 A. I'm not sure why. I think it's to compare
22 Sea-Tac Airport discharges to other discharges in the
23 area or that would be other types of non-point source
24 discharges. They're comparing Sea-Tac discharges to
25 non-point source discharges, it looks like to me.

1 I don't even know what NURP and BURP is. I have no
2 idea what that is. I know what Bellevue 95 probably
3 is. It's stormwater runoff samples from -- I don't
4 know.

5 Q. That's not information that Ecology
6 requested?

7 A. I didn't request it. I don't know what my
8 previous permit managers requested.

9 Q. Do you think that comparison is relevant to
10 determining permit compliance or water quality
11 compliance?

12 A. Well, if you're going to -- at this point no.
13 No. At this point no. If you're going to do a mixing
14 zone, maybe, but at this point no.

15 Q. Now, I'm curious. If I understood right, you
16 said that the Annual Stormwater Monitoring Report does
17 not include construction stormwater; is that right?

18 A. Yeah, that's what I said.

19 Q. Well, just looking at S2.E, Page 17, it says
20 in paraphrase, the Permittee shall submit a report
21 summarizing the results of stormwater monitoring
22 conducted pursuant to S2.B or S3.E.

23 A. Yeah.

24 Q. Now, the first, that word "or," does that
25 mean the permittee gets to pick which one it wants?

1 Is that either/or, and/or?

2 A. That's a good question. (Witness reading
3 document). I'm not sure, I'm not sure. S2.B. Well,
4 when it says "or," that generally means either one.
5 You have to do S2.B or S3.B. That's my literal
6 interpretation of that requirement.

7 Q. So whether the sampling was conducted under
8 one or the other, essentially both need to be reported?
9 Does it mean either/or so that it could read stormwater
10 monitoring conducted pursuant to either Special
11 Condition S2.B or S3.E?

12 A. (Witness reading document). Well, I think it
13 would mean either/or. Both.

14 Q. Well, then let's consider this Permit
15 Condition S3.E, which is the second of those two,
16 addresses Recording of Results. And it says, "For each
17 measurement or sample taken, the Permittee shall record
18 the following information," including Part (6), "the
19 results of all analyses."

20 And that S3.E includes all the kinds of
21 sampling, doesn't it, construction and regular
22 stormwater and industrial wastewater?

23 A. Well, yeah, I think it would. I think that's
24 the kind of data that requires. So for -- yeah. Yes.

25 Q. So would you agree that if Permit Condition

1 S2.E pertaining to the Annual Stormwater Monitoring
2 Summary Report, if that is read to mean either/or,
3 meaning the results of monitoring conducted either
4 under Condition S2.B or S3.E should be reported, then
5 the annual report should include construction
6 stormwater discharges?

7 A. S3.E has to do with recording -- well, I
8 don't see in there where it has anything to say about
9 reporting.

10 Q. Well, S3.E by itself just says "the Permittee
11 shall record."

12 A. Yes.

13 Q. Doesn't S2.E require a report summarizing the
14 results?

15 A. I see.

16 Q. A report summarizing the results recorded
17 under those other sections?

18 A. Yeah, you could look at it -- I guess the
19 answer to your question is -- yeah. The answer is yes.

20 Q. But evidently that construction, the results
21 of -- scratch that.

22 Evidently there is no report of any summary
23 of construction-related stormwater sampling?

24 A. That is correct.

25 Q. Let's look at a new exhibit.

1 (Deposition Exhibit No. 7 was marked for
 2 identification.)
 3 Q. (BY MR. POULIN) Would you please describe
 4 the documents included here in Exhibit 7.
 5 A. This is the construction site stormwater
 6 monitoring for -- from the Sea-Tac Airport.
 7 Q. Do you know whether you've seen these
 8 particular documents before?
 9 A. Don't recall seeing them before.
 10 Q. Have you seen documents like these? Is this
 11 format of reporting familiar to you?
 12 A. (Witness reviewing document). Am I familiar
 13 with the format. What this is is the results of the
 14 turbidity and results of pH monitoring.
 15 Q. And how do you know that?
 16 A. Well, it's got headings Turbidity and pH on
 17 it, and Time.
 18 Q. So this appears to report the results of
 19 sampling --
 20 A. Yes.
 21 Q. -- for those two parameters, turbidity and
 22 pH?
 23 A. Yes, it does.
 24 Q. And in the first column on the left, it
 25 identifies the site where the sample took place?

1 Q. And can we make that comparison here for that
 2 first site, the Logistics Site Development site?
 3 A. Yes. Yeah, for the Tyee pond. Well, I'm
 4 not -- I would have to take a look at the monitoring
 5 plan, I think, just to make sure what these numbers
 6 represent, the outfall location, the upstream,
 7 downstream. Compare these numbers to what the big dots
 8 are on the monitoring plan and make a call that way,
 9 make a decision that way. That's what I would do.
 10 Q. What would you be looking for in the
 11 monitoring plan to add to the information?
 12 A. The map. You've got Tyee pond south end,
 13 Tyee pond outfall to Des Moines Creek. So what I would
 14 look at is the Tyee outfall to Des Moines Creek, is
 15 that reflected in the monitoring plan as the downstream
 16 sampling location, and is the upstream location the
 17 Tyee pond south end. I'd want to make sure that that's
 18 in line with what the monitoring plan says. And if it
 19 truly is upstream and downstream to the point of
 20 discharge per the monitoring plan, then I could make a
 21 call.
 22 Q. And here, if there was nothing in the
 23 monitoring plan to change your understanding of this
 24 information, what would the call be? How do you make
 25 the call?

1 A. Yes.
 2 Q. Here in the first page which has a date of
 3 October 16, 2000 --
 4 A. Yes, I see that.
 5 Q. -- under the first site, Logistics Site
 6 Development, describes "unnamed catch basin d/s of
 7 treatment facility." Do you what that means?
 8 A. No.
 9 Q. And then below that on the left there's one
 10 line that says "u/s" and another again that says "d/s."
 11 Is that upstream, downstream?
 12 A. That's what it appears to be, yes.
 13 Q. Would it make sense, if this is in fact
 14 monitoring of stormwater at a construction site, that
 15 they would take samples both upstream and downstream?
 16 A. It would make sense for them to take -- yes.
 17 Q. Is that because you want to make sure that
 18 the conditions --
 19 A. It's for direct comparison of the turbidity
 20 standard.
 21 Q. And how does that work?
 22 A. Well, it's the 5 over background standard.
 23 You take the background and then the downstream and you
 24 subtract the two to see if it's 5 over background.
 25 What we want is a turbidity comparison, and pH.

1 A. I would make the call by subtracting the
 2 downstream from the upstream. If the downstream is
 3 more than 5 over background of the upstream
 4 concentration, and that's the Class AA waters in the
 5 state standard that we're referring to here, then that
 6 would be a direct comparison to the standard. So if
 7 it's more than 5 over background, then it would be a
 8 violation of the state criteria for turbidity.
 9 Q. So this is the turbidity criteria that we
 10 found in 173-201A-030(1)(c)(vi) back on Exhibit 5, Page
 11 477?
 12 A. That was that (vi) that we were referring to?
 13 Q. Yes.
 14 A. If in fact the receiving waters were Class AA
 15 waters of the state, yes. I think Class A are the
 16 same, though. I think it's 5 over background of Class
 17 A also, which is what the receiving waters for the Port
 18 is. So it's the turbidity standard in WAC
 19 173-201A-030(1)(c)(vi), if the receiving waters are
 20 class double A.
 21 Q. And if it's class single A, then you look to
 22 (2)(c)(vi); is that right?
 23 A. Yes, yes.
 24 Q. And as you've just pointed out, that's the
 25 same standard, it's 5 NTU --

1 A. That's correct.
 2 Q. -- over background?
 3 A. That's correct.
 4 Q. And here, if you subtract upstream from the
 5 downstream --
 6 A. The downstream from the upstream. You
 7 subtract downstream from the upstream.
 8 Q. Well --
 9 A. It's 5 over background. So the upstream is
 10 the background. So you subtract the downstream from
 11 the upstream.
 12 Q. Well, aren't we looking to see if the
 13 construction site is adding more than 5 NTU to the
 14 upstream, to the background?
 15 A. Yes, we are. Yes.
 16 Q. So wouldn't we expect some downstream to be
 17 larger than some upstream?
 18 A. Yes. Perhaps I misunderstood you.
 19 Q. The question is, is that some downstream more
 20 than 5 above the upstream?
 21 A. That is the way I would determine compliance
 22 with the turbidity standard, yes, it is.
 23 Q. And that would involve subtracting upstream
 24 from the downstream, wouldn't it?
 25 A. That's right, that's right.

1 Q. And here, if we subtract the upstream
 2 turbidity sample of 13.2 from the downstream sample of
 3 18.4, that's more than 5, isn't it?
 4 A. Yes, it is. Yes, it is.
 5 Q. Let's look at the second page of this Exhibit
 6 7. Here we see another upstream and downstream pair of
 7 samples for a site that's identified as the Air Traffic
 8 Control Tower on October 20, 2000. Do you see that at
 9 the bottom of the second column, or rather, I guess the
 10 third column, the Turbidity column?
 11 A. Air Traffic Control Tower, yes, I do, I see
 12 that.
 13 Q. What do you see as the upstream monitoring
 14 result for that site?
 15 A. 50.6 nephelometric turbidity units.
 16 Q. And what is the downstream?
 17 A. 176.2.
 18 Q. And this is an instance where we have to look
 19 at that second half of the turbidity standard, don't
 20 we, because we're looking at a background that's higher
 21 than 50 NTU?
 22 A. Yes, that's right. Practically the same.
 23 Q. Right. And since we're looking at 10 percent
 24 of 50.6, it's basically 5.06?
 25 A. You've got to take into consideration the

1 accuracy of the instrument too. That last answer I
 2 might qualify. I'd have to take a look at the accuracy
 3 of the analytical method. I mean, is it close enough
 4 to make a compliance call on that.
 5 Q. Page 1, the difference was only 5.2?
 6 A. That's right.
 7 Q. So it's maybe questionable?
 8 A. I'd have to look at the analytical -- it may
 9 be questionable because the -- I'd have to look at the
 10 PQL, practical quantitation limit, et cetera, about
 11 that.
 12 Q. How about the results here on Page 2?
 13 A. I wouldn't have to look at that. I'd have to
 14 look at the monitoring plan again, like I said, to make
 15 sure that these are the right locations. But if this
 16 is the right location, yeah, that's over the turbidity
 17 criteria, yes.
 18 Q. That's a difference of 176.2 minus 50.6?
 19 A. Yeah.
 20 Q. That's over 125 NTU or higher, isn't it?
 21 A. Yes, sir. Yes, it is.
 22 Q. Looks like a violation, doesn't it?
 23 A. It looks like a violation, yes, it does.
 24 Q. And this took place on October 20, 2000?
 25 A. Yes.

1 Q. Is this the kind of monitoring result that
 2 should have been reported on that every-other-month
 3 report?
 4 A. No, because that isn't part of the permit
 5 that was in existence at the time of October 20, 2000.
 6 Q. What do you mean?
 7 A. The every-other-month requirement wasn't in
 8 the permit on October -- that was in the major
 9 modification. The every-other-month reporting is in
 10 the major modification, not in the permit effective
 11 10/20/00.
 12 Q. Would this be the kind of monitoring result
 13 that the Port would have to report under the
 14 non-compliance notification section --
 15 A. Yes.
 16 Q. -- of S3.G?
 17 A. Well, yeah. That's the non-compliance --
 18 S3.G, that's correct.
 19 Q. And Permit Condition S3.G requires more than
 20 just reporting, doesn't it?
 21 A. Yes.
 22 Q. It says "the Permittee shall," in Subsection
 23 1, "Immediately take action to stop, contain, and
 24 cleanup unauthorized discharges or otherwise stop the
 25 violation, and correct the problem."

Page 82

1 A. Yeah. Maybe -- I don't know. I'm not an
 2 attorney, but it says "terms and conditions" of this --
 3 I would want it reported to me, this violation reported
 4 to me, which I think your question is --
 5 Q. Did you say you would or you would not?
 6 A. I would want this violation of surface water
 7 quality criteria reported to me. Your question had to
 8 do with permit terms and conditions. And we talked
 9 about that in the previous questioning about whether
 10 the criteria are part of the permit terms and
 11 conditions.
 12 I want it reported to me. I want to know
 13 where they violated, as an engineering manager, without
 14 the legalese of, is it part of the permit or not part
 15 of the permit. It's state law. I want it reported. I
 16 want an explanation of why they violated.
 17 Q. Let's look at the third page of Exhibit 7.
 18 A. Okay.
 19 Q. And here in the center there's several rows
 20 of information for the South Terminal Expansion
 21 Project. Do you see that?
 22 A. Yes, I do.
 23 Q. North Ductbank, it says? Because I guess the
 24 final one on the page is also South Terminal Expansion
 25 Project, but it doesn't say North Ductbank.

Page 84

1 Q. Let's move on to Page 4. If we compare this
 2 to Page 3, would you agree that this looks like more
 3 sampling for the same three sites that's taken two or
 4 three weeks later on November 8, 2000?
 5 A. Could you give me that again?
 6 (Reporter read back as requested.)
 7 A. Doesn't look like the same as Page 3 to me.
 8 I see Dobbs Flight Kitchen Remodel and Booster Pump
 9 Station, and Page 3's got Feeder 104/204 Replacement,
 10 South Terminal Expansion. Have I got the wrong Page 3?
 11 Q. (BY MR. POULIN) I'm sorry. We between us
 12 have our last two pages switched. Unfortunately, these
 13 pages aren't numbered, but do you have a page there
 14 that has the date 11/8/00 on the upper left?
 15 A. Yeah, I do. Oh, okay. Okay, the answer is
 16 yes. There's 11/8 and 10/20 appear to be the same --
 17 okay, my mistake. The answer to your question is yes.
 18 Q. And if we could for convenience designate the
 19 October 20 sample including the South Terminal
 20 Expansion Project North Ductbank as Page 3 and the
 21 November 8, 2000 sample as Page 4, that would I think
 22 help.
 23 A. Okay, I'm with you.
 24 Q. Here again, the monitoring shows a downstream
 25 of 74.0 and an upstream of 62.0. Does that appear to

Page 83

1 A. Okay. South Terminal Expansion Project,
 2 North Ductbank. I'm there.
 3 Q. And cutting to the chase, this appears to be
 4 another instance where the downstream turbidity
 5 sampling results are well over both 5 and 10 percent of
 6 the upstream?
 7 A. Yeah.
 8 Q. Would you agree?
 9 A. I agree.
 10 Q. 61.6 over 31.5?
 11 A. I agree, it appears to be a violation of the
 12 5 over background standard which is the state water
 13 quality standards for turbidity.
 14 Q. If we look to the far column on the right
 15 under Comments, it seems to say if downstream minus
 16 upstream is greater than 5 NTU, notify KL. Do you have
 17 any idea who KL is?
 18 A. I don't. I don't know who KL is.
 19 Q. And then on the previous page, I see now
 20 there's a comment that says -- in the last two rows of
 21 the last column, it says if downstream minus upstream
 22 is greater than 5 NTU, notify KL and DJ?
 23 A. No, I don't know who they are. Those aren't
 24 the initials of me, Ed Abbasi or Kevin Fitzpatrick.
 25 Whose initials they are, I don't know.

Page 85

1 exceed the relevant criteria for turbidity?
 2 A. It does.
 3 Q. And this one there's only a single comment,
 4 "lots of flow." There's no indication that anyone was
 5 notified, would you agree?
 6 A. There's no indication that anybody was
 7 notified on that line.
 8 Q. Do you see any indications of notification
 9 anywhere on this particular page?
 10 A. No.
 11 Q. This Page 4 has a pair of names at the top
 12 after the word "Samplers." It says R. Simmons and
 13 S. Currie. Do you know who any of those people are?
 14 A. No, I don't.
 15 Q. Well, let's look at the last page of this
 16 exhibit, Page 5, with a November 26, 2000 date.
 17 A. Okay.
 18 Q. If we look here to the third site identified,
 19 the Air Traffic Control Tower, how would you describe
 20 that turbidity result?
 21 A. It appears to be a violation of the 5 over
 22 background turbidity standard for Class AA and Class A
 23 waters of the state.
 24 Q. And that's for the downstream sample result
 25 of 45.0 and upstream of 36.0?

1 A. Yep.
 2 Q. And then there's a comment over on this one
 3 that says, "No access to site so sample taken at
 4 SDE4-930"?
 5 A. Yeah, I see that.
 6 Q. Does that make any sense to you?
 7 A. I'd have to look at the monitoring plan.
 8 Q. And again, what information would you look
 9 for on the monitoring plan?
 10 A. To see the location of this SDE4-930, if you
 11 could deduce where it was taken from in relation to the
 12 SDE4-948 sample. See if it was representative of
 13 background conditions.
 14 Q. We may have occasion to come back to this
 15 subject, but let's move on for now. Are you okay to
 16 keep going?
 17 A. Yeah.
 18 Q. Let's introduce Exhibit 1.
 19 (Deposition Exhibit No. 1 was marked for
 20 identification.)
 21 Q. (BY MR. POULIN) Could you describe that,
 22 please.
 23 A. This is the Water Quality Certification for
 24 the Construction of Third Runway and related projects
 25 at the Seattle-Tacoma International Airport, et cetera,

1 quality certification was revised after its issuance?
 2 A. Not really.
 3 Q. Tell me what role you played in the water
 4 quality certification decision.
 5 A. I aided the stormwater protection measures in
 6 the 401 certification, the monitoring that we had
 7 talked about -- the monitoring through the -- the
 8 monitoring requirements to protect the surface water
 9 quality.
 10 Q. Did those monitoring requirements cover both
 11 construction-related and non-construction-related
 12 discharges?
 13 A. I'd have to look at it. I'd have to make a
 14 more thorough review of this. I didn't really author
 15 this. I'd have to do a pretty -- that would certainly
 16 cover the construction-related activities, that I know.
 17 Q. But you're not certain without further review
 18 whether it covers non-construction?
 19 A. Correct.
 20 Q. How would you describe your level of
 21 involvement with the agency decision-making process
 22 that resulted in this certification order?
 23 A. I helped develop the provisions in the
 24 permit -- or in the Order, in the certification, to
 25 protect surface water quality.

1 et cetera.
 2 Q. And this exhibit bears a date of September
 3 21, 2001, on the cover page?
 4 A. Yes.
 5 Q. Does that indicate that this is the revised
 6 water quality certification?
 7 A. I don't know. I don't know.
 8 Q. You don't know?
 9 A. Don't know.
 10 Q. Well, let's introduce Exhibit 2.
 11 (Deposition Exhibit No. 2 was marked for
 12 identification.)
 13 Q. (BY MR. POULIN) Could you please describe
 14 Exhibit 2?
 15 A. It's titled Water Quality Certification for
 16 U.S. Army Corps of Engineers Public Notice
 17 1996-4-02325, et cetera, et cetera.
 18 Q. And this one bears the date of August 10,
 19 2001?
 20 A. Yeah, it does.
 21 Q. Would you agree that Exhibit 2 was the first
 22 of two water quality certifications issued this year?
 23 A. I do not know. I'm not that familiar with
 24 the 401 certification orders that were issued.
 25 Q. Are you aware that the August 10 water

1 Q. Do you have a sense of what part or portion
 2 of the whole decision that aspect of it is? Is it a
 3 major part, tiny part?
 4 A. No. I think it's important. It's an
 5 important part. It's an important part.
 6 Q. Were the provisions and conditions that you
 7 worked on intended to assure that the discharges
 8 resulting from the covered work would comply with water
 9 quality standards?
 10 A. Yes. Yeah, from that portion of the permit
 11 that it applies to.
 12 Q. Could you please describe the relationship
 13 between the water quality protective conditions you
 14 worked on in this certification and the things we've
 15 been looking at earlier today in the 402 permit?
 16 A. Yeah. We tried to make them pretty
 17 consistent.
 18 Q. You tried to make the conditions in this
 19 certification consistent with --
 20 A. -- the conditions in the 402 generally, at
 21 least not to be inconsistent.
 22 Q. So do these impose essentially the same
 23 conditions or do they impose additional conditions?
 24 A. You would have to do a side by side
 25 comparison between the two documents, but the idea was

1 to have consistent conditions between the two
2 documents.
3 Q. Did you do that kind of side by side
4 comparison at the time these were drafted?
5 A. I didn't, no. No, I did not.
6 Q. Do you know if anyone in Ecology did?
7 A. I don't know.
8 Q. Well, who else did you work with?
9 A. Ann Kenny.
10 Q. And is she a part of your staff?
11 A. No, she was the lead on the 401 certification
12 in another program within Ecology.
13 Q. Did she ask you to help her on this
14 particular part of the 401?
15 A. Yes, she did.
16 Q. And were you directed to give her that
17 assistance by your supervisor?
18 A. Yes.
19 Q. You said earlier that you were the facility
20 and permit manager for Sea-Tac Airport up until
21 October?
22 A. Yes.
23 Q. And that was after both these certification
24 decisions came out; is that right?
25 A. Yes. Yeah, up until October -- yes, up until

1 A. He came on board in October.
2 Q. Where would you place him on that curve?
3 A. I don't know. He's becoming more familiar
4 with the certification as he works in his job as the
5 facility manager for the NPDES permit.
6 Q. Do you know whether Ann Kenny will be
7 involved in the permit review?
8 A. I don't know. I don't think she'll be very
9 much involved in the -- maybe in the review capacity
10 possibly.
11 Q. Do you think the Port is going -- let me
12 start that over.
13 Do you think Ecology is going to attempt to
14 incorporate the requirements and conditions of this
15 water quality certification into the new permit that --
16 A. We'll certainly look at doing that. We're
17 going to look hard, long and hard at doing -- adding
18 some of the conditions that are in the certification to
19 the 402 permit, especially for construction, stormwater
20 limitations and monitoring requirements, you bet.
21 Q. You previously stated that the provisions
22 that you worked on in the water quality certification
23 needed to protect surface water quality.
24 A. Yes.
25 Q. Would you agree that the water quality

1 October.
2 Q. Are you aware that the Port's current permit
3 is set to expire on June 30, 2002?
4 A. I am.
5 Q. And do you recall that the Port is required
6 to submit a new permit application 180 days before that
7 expiration date?
8 A. Yes, I am.
9 Q. And that that's coming up here within just a
10 couple weeks, isn't it?
11 A. You bet, yes, sir.
12 Q. Will you be involved in the review of that
13 permit application?
14 A. Maybe. Ed Abassi is the lead. I may be
15 involved a little bit as supervisor, sure.
16 Q. Ed Abassi is on your staff?
17 A. Yeah, Ed Abassi is the current facility
18 manager for the Sea-Tac permit, and he's the lead. And
19 as the supervisor -- yeah, I'm probably going to be
20 involved. How much, we'll see.
21 Q. How would you describe Ed Abassi's
22 familiarity with the conditions and requirements of the
23 water quality certification?
24 A. He's on a learning curve.
25 Q. And where would you put --

1 certification is intended to go beyond the requirements
2 of permit compliance to assure compliance with water
3 quality criteria whether they are specified in the
4 permit or not?
5 A. Let me rephrase the question back to you and
6 see if I understand what you're asking me. Is the 401
7 permit going to be -- the 401 is already written.
8 Q. Yes.
9 A. So it's not going to be rewritten to be in
10 conformance with 402. Is that what you're asking? It
11 was quite a long question to answer. It was a
12 mouthful.
13 MR. POULIN: I'd appreciate having the
14 question reread.
15 (Reporter read back as requested.)
16 A. I don't know what you're asking. Sorry,
17 you've got to rephrase.
18 Q. (BY MR. POULIN) I'm asking, as it's
19 presently written --
20 A. The 401?
21 Q. Yes. Does the 401 go beyond requiring permit
22 compliance?
23 A. It's not a permit, it's an Order. It has
24 conditions in it to protect water quality. That's what
25 it has in it. But it's not a permit, it's an Order.

1 So the permit -- I think your permit is throwing me a
 2 little bit.
 3 Q. Well, I'm trying to explore the relationship
 4 between the permit and the water quality certification.
 5 MR. PEARCE: What permit are you talking
 6 about?
 7 MR. POULIN: Sorry?
 8 MR. PEARCE: What permit are you referring
 9 to?
 10 MR. POULIN: The current NPDES permit at
 11 Sea-Tac, yes.
 12 MR. PEARCE: Thank you for clarifying that.
 13 (Recess taken.)
 14 (Deposition Exhibit No. 8 was marked for
 15 identification.)
 16 Q. (BY MR. POULIN) Could you describe Exhibit
 17 8, please.
 18 A. It looks like an e-mail I sent to Ann Kenny
 19 on August 3, 2001, a question about AKART and the
 20 reissuance of the NPDES permit.
 21 Q. And this e-mail includes a previous message
 22 from Ann Kenny to numerous people, including you; is
 23 that right?
 24 A. Yes.
 25 Q. Dated July 29, 2001?

1 Q. -- of operations at Sea-Tac, or does it also
 2 cover the --
 3 A. I believe it covers construction stormwater
 4 outfalls.
 5 Q. Does it cover construction discharges to all
 6 of the creek systems?
 7 A. Construction stormwater outfalls to the creek
 8 systems.
 9 Q. Is that a yes?
 10 A. What was the question?
 11 (Reporter read back as requested.)
 12 Q. (BY MR. POULIN) Meaning we looked at how the
 13 recent NPDES permit modification only applies new
 14 conditions to Walker and Gilliam Creeks.
 15 A. Yes, sir.
 16 Q. But the original permit applies somewhat
 17 different conditions to Des Moines Creek. How does the
 18 401 work? Does that apply the same conditions to all
 19 three creeks? Does it in a sense retrofit?
 20 A. I think it does. I believe it does. Without
 21 a thorough reading here at the moment, I believe it
 22 goes beyond the Walker and Gilliam Creek and
 23 tributaries for construction stormwater outfalls.
 24 Q. Let's introduce a new exhibit.
 25 (Deposition Exhibit No. 9 was marked for

1 A. Yes.
 2 Q. And she states, "The stormwater related
 3 sections will require the most work at this point.
 4 Some of the language in this draft permit is from the
 5 old permit, some is from the Tacoma Narrows 401." And
 6 here in bold she states, "We need to be sure that the
 7 401 will be well integrated with the 402, the major
 8 mod. and future 402 permits."
 9 A. Consistence. I'm sorry, you didn't ask a
 10 question.
 11 Q. I'd like you to address the importance, the
 12 significance of that statement.
 13 A. The 401 and 402 have to be consistent, so the
 14 402 and 401 have to be consistent in protecting water
 15 quality.
 16 Q. What has Ecology done to assure the
 17 consistency and integration that you're mentioning?
 18 A. Well, I helped Ann with the construction
 19 stormwater limitation language because I wrote language
 20 in the major modification for construction stormwater
 21 monitoring. And I helped her make sure that the 401
 22 was consistent with that.
 23 Q. Does the 401 apply only to the new
 24 elements --
 25 A. I don't believe so, no.

1 identification.)
 2 Q. (BY MR. POULIN) Before we move on to Exhibit
 3 9, let's look again at Exhibit 8. Your addition to
 4 this e-mail is at the top where you wrote, "RCW 90.48
 5 required AKART implementation in resissuances of NPDES
 6 permits. The Department will make this determination
 7 at permit issuance. How is the 401 going to integrate
 8 these determinations?"
 9 What answer did you get to that question?
 10 A. I don't remember. Honestly, I don't
 11 remember. How is the 401 going to integrate these
 12 determinations? I don't know if I got an answer.
 13 I don't remember. I don't remember the context. I
 14 don't remember. I was maybe -- I don't remember the
 15 answer I got. I was trying to learn about the 401
 16 process, and I get it in writing, I try to learn by
 17 writing, so I shot a few questions to her.
 18 Q. Has involvement in 401 certifications not
 19 been part of your work with Ecology?
 20 A. Not at all. Not a bit.
 21 Q. Is this the first one you've had any part in?
 22 A. Yes.
 23 Q. And again, your part is focusing on surface
 24 water?
 25 A. Stormwater, surface water.

1 Q. How did you become involved in this 401 for
2 the first time?

3 A. Like I said, Kevin assigned it to me and
4 then -- because I was involved in the 402 permit, I
5 think we wanted to make sure that the 402 and the 401
6 were consistent. And so I got involved that way, to
7 make sure they're consistent and to aid Ann in
8 developing the condition that would be protective of
9 surface water quality, which is an important part of
10 the 401.

11 Q. Looking at Exhibit 1, the 401 certification,
12 which part is that? Which part did you work on?

13 A. The conditions for Construction Stormwater
14 Limitations Requirements and Monitoring Requirements is
15 one of the parts I worked on, Condition K.

16 Q. Is there a page number on that?

17 A. Yeah, Page 28.

18 Q. I see that the permit is organized in these
19 lettered Sections A, Water Quality Standard Conditions;
20 B, Permit Duration; on Page 5, C, Notification and
21 Reporting Requirements. Is K the first one that you
22 were involved in?

23 A. I haven't read the whole thing so I don't
24 know. I haven't read it.

25 Q. Well, this was just issued three months ago;

1 B.1.(f) is talking about the NPDES permit. But that's
2 not something you were involved on?

3 A. Let me read it. (Witness reading document).

4 No, I did not work on that.

5 Q. Section C starts on Page 5, it's Notification
6 and Reporting Requirements. Did you work on that?

7 A. No, I did not.

8 Q. Page 6 has the beginning of Section D for
9 Wetland, Stream and Riparian Mitigation.

10 A. No, no, I don't see anything.

11 Q. So when you say you worked on surface water,
12 you're really referring to a narrow slice or at least
13 not all of surface water related issues?

14 A. Yeah, correct. Wetlands would be considered
15 surface waters of the state. No, I didn't work on
16 Page 6, except I probably told her at one time that
17 wetlands are surface waters of the state, it's clearly
18 been determined to be waters of the state, and criteria
19 applies to waters of the state.

20 Q. And of course stream and riparian mitigation,
21 that's streams or surface waters, but you didn't work
22 on those?

23 A. What page are you on there?

24 Q. That's also part of Section D as in dog that
25 begins on Page 6.

1 right?

2 A. Yep.

3 Q. Did you work on Section A, the Water Quality
4 Standard Conditions, starting on Page 2?

5 A. Well, I didn't -- did I work on? It looks
6 like something I would want. Did I tell her about it?
7 I don't know. Well, I'm looking at A.1. That's
8 something I may have discussed with her at one time.
9 Did I work on it in the permit? No. That's not -- I
10 didn't write that.

11 That looks like, they talk about visual sheen
12 here from oil and grease. That's something I talked
13 with Ann about. That's (f), Page 3. Did I write that?
14 She may have taken the language from me. She may have
15 taken the language from me because we weren't sitting
16 side by side doing this. But that language I think I
17 gave her. That's (f) on Page 3.

18 Q. And Ann Kenny was the primary author?

19 A. Yes, that's correct.

20 Q. She was in charge of the actual language?

21 A. Yes.

22 Q. Section B is Permit Duration, that's starting
23 on Page 3 at the very bottom. Did you work on that?

24 A. No, I didn't.

25 Q. If you look to the middle of Page 4, Section

1 A. No. No riparian, I did not work on riparian
2 mitigation measures.

3 Q. How about this Borrow Site stuff, Pages 11
4 and 12?

5 A. Well, let me look at 12. (Witness reading
6 document). No. "Excess water from stormwater overflow
7 shall be diverted away from the wetland," no. "The
8 Port shall monitor hydrologic conditions of wetlands,"
9 no. "The wetland protection swale shall be inspected
10 and maintained at a minimum frequency twice a year,"
11 no.

12 Q. And you're reading --

13 A. I'm reading the first sentence of each of the
14 conditions on Page 12 to see if I worked on that
15 language, and the answer is no.

16 Increased Buffer Area, no. "Performance
17 standards," no. Wetland, Stream and Riparian
18 Mitigation Monitoring and Reporting, "Monitoring of all
19 wetlands," no. "The Port shall prepare and submit
20 annual monitoring reports to the Federal Permit
21 Manager," no. So I'm up to Page 14, and the answer is
22 no.

23 Q. Okay, so that brings us to the end of Part D.
24 So the next Section, E, Conditions for Acceptance of
25 Fill to be used in Construction of the Third Runway,

1 did you work on that?
 2 A. No, not the language specifically, no. No,
 3 that was not part of my involvement in the 401.
 4 Q. Did you work on some part of that besides
 5 language?
 6 A. No.
 7 Q. Is this also so far everything we've looked
 8 at was Ann Kenny or were there other people that --
 9 A. Chung Yee had some responsibility for the
 10 clean fill criteria.
 11 Q. Chung Yee?
 12 A. Yes.
 13 Q. And I've heard the name Elizabeth Leavitt.
 14 Do you know what her role was or what she --
 15 A. She was an attorney representing the Port of
 16 Seattle -- or, no, Elizabeth Leavitt is some kind of
 17 environmental supervisor at the Port of Seattle. I
 18 think she's an attorney, I'm not sure.
 19 Q. Do you know, was she involved in drafting
 20 some of these sections?
 21 A. We listened to public comment, including the
 22 Port of Seattle's public comment in drafting conditions
 23 for the 402. I don't know about the 401. I don't
 24 know. I don't know.
 25 Q. And the 402 is the NPDES permit?

1 A. Yes, the 402 is the NPDES permit. I don't
 2 know. The answer is I don't know.
 3 Q. So when comments came in on this 401
 4 certification, you didn't have any role in reviewing
 5 them?
 6 A. I don't know anything about that.
 7 Q. All through the clean fill you're saying you
 8 didn't have anything to do with that, these fill
 9 criteria limitations on Page 17?
 10 A. Let me look. No, I didn't.
 11 Q. How about fill sources on Page 18?
 12 A. No.
 13 Q. It's all still Chung Yee?
 14 A. I don't know, but he worked on this fill
 15 criteria.
 16 Q. We move on to Condition F, Page 19,
 17 Conditions to Prevent Transport of Contaminants.
 18 A. Did not work on it.
 19 Q. You didn't work on that section?
 20 A. No.
 21 Q. Would you know if anyone under you, anyone in
 22 your staff worked on any of these? Would that go
 23 through you?
 24 A. Yeah, I'd know about it. And there wasn't
 25 anybody to work on it under my staff -- in my staff

1 under my supervision.
 2 Q. And you said there wasn't anyone who did work
 3 on it?
 4 A. Right, right.
 5 Q. We have Dam Safety Requirements?
 6 A. Don't know anything about it.
 7 Q. You're not a dam safety guy?
 8 A. No.
 9 Q. Condition H, Conditions for Upland
 10 Construction Activities?
 11 A. I'm looking at the first line of every one of
 12 these. Yeah, 4, maybe 4. I think I had some input on
 13 4. Yeah, 4. That's on Page 21. "Stormwater Detention
 14 for New Outfalls: Any new diversion ditch or channel,
 15 pond, trap, or other detention or retention BMP
 16 constructed at the site for treatment of stormwater
 17 shall be designed, constructed, and maintained to
 18 contain and provide treatment for the peak flow for the
 19 10-year 24-hour precipitation event estimated from" --
 20 that's my language. I wrote that but she put it in
 21 there.
 22 Q. Where did you find that 10-year --
 23 A. The sand and gravel general permit.
 24 Q. The sand and gravel general permit?
 25 A. Yes, sir.

1 Q. And has there been a determination that that
 2 10-year 24-hour precipitation event is adequate to --
 3 is it sufficiently conservative to protect against
 4 larger more frequent storms?
 5 A. Larger more frequent storms. The design
 6 doesn't have to meet -- well, yes, it would still be
 7 there for larger storms. You have to have a design
 8 requirement for facility, and that's the design
 9 requirement.
 10 Q. How do you decide that that standard is good
 11 enough?
 12 A. Well, it was from a similar facility, the
 13 sand and gravel general permit, so similar facilities
 14 would meet similar AKART conditions. And that is an
 15 AKART condition; it's a reasonably available
 16 technology. Retention detention for a 10-year storm
 17 event is a reasonable condition to protect water
 18 quality.
 19 Q. And has there been a determination that that
 20 standard is AKART?
 21 A. I believe it has been for the other exhibit.
 22 Let me look, let me look. I'm looking at the new
 23 permit. (Witness reviewing document).
 24 I can't find where it's been made in -- I
 25 can't find where it's been made. I can't find it. So

1 the answer is I can't find it. So the answer is
 2 probably not.
 3 Q. If I remember, does that mean you're not sure
 4 that the 10-year 24-hour precipitation event standard
 5 is AKART for stormwater detention?
 6 A. It is for sand and gravel, but you're
 7 referring to the Port, of course, Sea-Tac; is that
 8 right?
 9 Q. Uh-huh. Yes.
 10 A. No, it hasn't. I can't find it in here what
 11 has that. Probably not.
 12 Q. Here, based on that concern you raised in
 13 your e-mail that we looked at, Exhibit No. 8, is it
 14 your understanding that if this requirement is
 15 incorporated into the NPDES permit, then as per RCW
 16 90.48 under your e-mail citation, when the permit gets
 17 renewed they're going to have to implement whatever
 18 AKART is?
 19 A. They're going to have to implement whatever
 20 AKART is. That's a true statement.
 21 Q. Let's back up to the first part of Condition
 22 H here on Page 20 in the 401 certification, Exhibit 1.
 23 It says, "During construction the Port shall comply
 24 with all stormwater requirements within the National
 25 Pollutant Discharge Elimination System (NPDES) Permit"

1 mistaken, isn't it possible that the Port was in
 2 complete compliance with its permit and did everything
 3 it was supposed to do?
 4 A. I don't know. If we were to look at all the
 5 documents, I don't know.
 6 Q. Could it be that it implemented the BMPs and
 7 maintained its silt fences and did what it was supposed
 8 to and still the turbidity bumped up more than 5 NTU?
 9 A. Is it possible for a violation of the 402
 10 permit to occur? Probably it's possible for a
 11 violation of the 402 permit to occur.
 12 Q. What I'm asking, is it possible for
 13 violations of the water quality standards to occur even
 14 though the permittee is complying with the permit?
 15 A. I'd have to check in there to see -- because
 16 that gets back to your question about whether the
 17 surface water quality criteria are part of the permit.
 18 You asked that a while back and I said I'd have to look
 19 through the permit. So I'd have to look at the permit.
 20 Because you were asking that earlier.
 21 Q. But those apparent violations of the
 22 turbidity standard that we saw did take place under the
 23 permit, isn't that right?
 24 A. That's correct.
 25 Q. So the permit itself was not sufficient to

1 as modified -- I'm skipping language -- "as modified on
 2 May 29, 2001."
 3 So that's the most current permit that we've
 4 been looking at as Exhibit 3; is that right?
 5 A. Yeah, whatever it is. That's correct. The
 6 answer is yes.
 7 Q. And here's what we've talked about. By
 8 stating that the construction will comply with the
 9 permit, are you sure that it will also comply with
 10 water quality standards?
 11 A. The conditions of the 402 permit are designed
 12 to ensure compliance with surface water quality
 13 criteria for construction stormwater outfalls.
 14 Q. They're designed to ensure compliance?
 15 A. Yes.
 16 Q. But they don't always ensure compliance, do
 17 they?
 18 A. Well, violations occur under NPDES permits.
 19 Q. Right. And we saw some apparent violations
 20 of turbidity standards earlier?
 21 A. Yes, we did. Yes, we did.
 22 Q. Now, isn't it possible that if we all took a
 23 week off and examined, got a research team and looked
 24 at every fact and circumstance surrounding those
 25 incidents that were reported in Exhibit 7, if I'm not

1 keep them from happening, was it?
 2 A. No. No, they occurred under the permit.
 3 Q. Let's look at Condition I, Page 22,
 4 Conditions for Mitigation of Low Flow Impacts.
 5 A. All right.
 6 Q. Is this familiar as something you've worked
 7 on?
 8 A. No, I didn't work on it. I may have -- no,
 9 let me look at it here. (Witness reading document).
 10 The answer is no, I didn't work on this
 11 language.
 12 Q. Now, did you also look at Page 24 and 25
 13 where they're talking about Miller Creek?
 14 A. I did not draft this language.
 15 Q. Were you involved in reviewing it and
 16 deciding if it was adequate to do --
 17 A. No. I did not review the language.
 18 Q. Condition J starts on Page 25, Operational
 19 Stormwater Requirements. The first part involves the
 20 Approved Stormwater Plan and then two pages later it
 21 moves on to the Discharge of operational stormwater to
 22 state receiving waters. Is this something you worked
 23 on?
 24 A. No. (Witness reading document). No. The
 25 answer is no.

1 Q. So finally we get to Section K which you
2 identified earlier as a section you did work on.
3 A. Yes, sir.
4 Q. What did you have to do with this section?
5 A. I suggested language to Ann Kenny to include
6 in the 401 permit, the 401 Order, certification.
7 Q. And how did that happen? Did she give you an
8 initial draft that you commented on?
9 A. No. I e-mailed her the language, I think.
10 Q. So she said --
11 A. To the best of my recollection, I e-mailed it
12 to her.
13 Q. She said, in effect, John, please give me
14 language that I can use for Section K?
15 A. No, not K, but for protection of surface
16 waters from construction stormwater discharges.
17 Q. Here in K.1, it looks like we might be
18 missing a word.
19 A. True.
20 Q. It looks like maybe it should say
21 "requirements of the NPDES permit."
22 A. Yes.
23 Q. I see here that Section K.3 talks about
24 Stormwater Monitoring Schedule for Construction and
25 Stormwater Discharges. "The Port shall monitor each

1 stormwater outfall discharge."
2 Where does this condition talk about
3 reporting the monitoring results?
4 A. I don't know. A cursory look at this K.3
5 doesn't have a monitoring report in it -- a reporting
6 requirement in it.
7 Q. Doesn't have a reporting requirement?
8 A. I don't see that in K.3.
9 Q. On Page 28. Is it anywhere in K? Did you
10 write all of Section K?
11 A. I'm unfamiliar with Section K as a
12 designation.
13 Q. Oh, I see.
14 A. I just helped her with permit conditions to
15 protect water quality. Here's something on reporting,
16 6. This looks like something I wrote for her or helped
17 her and then got the language to her somehow. Page 30.
18 Q. This is K.6?
19 A. K.6. That looks like something I would have
20 written.
21 Q. "Monitoring results for construction
22 stormwater discharges shall be submitted every other
23 month to Ecology's Federal Permit Manager, Sea-Tac
24 Third Runway."
25 Is that Ed Abbasi again?

1 A. Yes, it is.
2 Q. "Monitoring shall be reviewed for compliance
3 with WAC 173-201A," it says. Do you know, is there a
4 provision that says that exceedances of the state water
5 quality criteria are violations of these conditions and
6 certification?
7 A. Good question for Ann Kenny. Is that a
8 smart-ass answer? I don't know. I don't know where it
9 would be.
10 Q. Any time you'd like to direct -- inform me of
11 who the best person to ask is, that's welcome.
12 A. Good question for Ann Kenny.
13 Q. How about Condition L on Page 30?
14 A. Okay, I'm there. (Witness reading document).
15 (Long pause.)
16 Q. I'm sorry, are you still thinking?
17 A. Did you ask me a question?
18 Q. Yes, I did.
19 A. I'm sorry, my apologies.
20 Q. The question is, did you have anything to do
21 with writing or reviewing Section L?
22 A. No.
23 Q. Let's back up, though, into Section K again.
24 Looking at this language on Page 30, Section 7, talking
25 about the use of additives in the treatment of

1 discharge water, what's that all about?
2 A. That's concerning polymers and coagulants
3 that are used to settle out turbidity should be not
4 harmful to aquatic organisms -- shall have low toxicity
5 to aquatic organisms. And this is a condition to help
6 implement that, to protect aquatic organisms.
7 Q. How do you get the coagulants out of the
8 water?
9 A. They settle out with a particulate, with the
10 solids. So the coagulants adhere the particles
11 together and it stays there and they drop out. It aids
12 settling. So they also settle out.
13 Q. And is that standard procedure to add these
14 things to reduce turbidity?
15 A. Standard procedures? Yeah, it's used to
16 settle out turbidity.
17 Q. Did you write any of the general conditions
18 in Section M?
19 A. No.
20 Q. How about Section N or O, the last two?
21 A. No.
22 Q. You did not. So really the only condition in
23 this entire certification that you worked on is Section
24 K?
25 A. Yeah, I think it was that one section on the

1 10-year storm event that was in some other section, but
2 basically K, yes.

3 Q. Now, when we first started looking at these
4 certifications, it sounded like you weren't aware that
5 the certification was revised and reissued.

6 A. No. I think I read about it in the
7 newspaper.

8 Q. Do you know whether the section that you
9 wrote, Section K, was changed in that revision?

10 A. No, I do not. I do not know that.

11 Q. If it was changed you weren't consulted?

12 A. Correct.

13 Q. Some time ago we introduced Exhibit 9 right
14 before the break. Please tell me if you -- well, I
15 don't know that we need to do that.

16 Let me ask, direct your attention to a
17 statement first on Page 2 towards the bottom it says,
18 Technical meeting attendees will include John Drabek of
19 Ecology.

20 A. Yes.

21 Q. What was the technical group as described in
22 the next heading down?

23 A. What were they?

24 Q. Yes. What was its function?

25 A. The function was to review the hydrology

1 have been some brought to my attention.

2 (Deposition Exhibit No. 10 was marked for
3 identification.)

4 Q. (BY MR. POULIN) Exhibit 10 is identified as
5 Draft Meeting Notes of Technical Meeting of the 401
6 permit decision-making, and here you're identified in
7 the list of attendees?

8 A. Yes, sir.

9 Q. Do you remember being at this meeting?

10 A. No, but I suppose I was there.

11 Q. When these draft minutes came out, would you
12 review them?

13 A. What do you mean by "review"? If you could
14 clarify that, because there's various levels.

15 Q. Would you look at them to see if they were --
16 to see that they correctly reflected what you
17 remembered taking place at the meeting?

18 A. Not in great detail.

19 Q. Here on Page 3 there's a section that says,
20 "Regarding communication between technical group
21 members between meetings, the following rules apply:"
22 The first one says, "If a change in scope of
23 deliverable is needed, communication must include John
24 Drabek of Ecology and must be documented in an e-mail
25 sent to John D., Ann K. and Rachel M." And then the

1 study in the Stormwater Master Plan for conformance --
2 in regards to a Statement of Concurrence that the SMP
3 is in compliance with the technical requirements of the
4 1998 King County Surface Water Design Manual.

5 Q. And what's that you're reading from?

6 A. The first line of Page 2.

7 Q. So this involves that review process that
8 King County assisted in?

9 A. Yes.

10 Q. Also on Page 2, two-thirds of the way down,
11 these minutes state, "Requested changes with potential
12 'ripple effects' will be identified during the
13 Technical Group meeting. If 'ripple effects' are
14 detected outside of the Technical Group meeting, no
15 changes are to be made without first discussing with
16 both King County and Ecology's John Drabek."

17 Now, why would you be identified as the
18 person to bring these ripple effects up with?

19 A. I was the -- why would I be -- I was there as
20 a representative of the Water Quality Program on the
21 technical committee. That's why. That would be the
22 reason. Water Quality Program.

23 Q. Do you remember any times when these ripple
24 effects were brought to your attention?

25 A. Not specifically, but I believe there may

1 second of the two rules states that, "All e-mail
2 interim communication must copy Ann Kenny and John
3 Drabek."

4 Were those rules in fact followed?

5 A. To the best of my knowledge, yes. I can't
6 remember them all, but to the best of my knowledge,
7 yes.

8 Q. Well, that seems to suggest that the
9 technical group members thought it was important for
10 you to know about these things, doesn't it?

11 A. Yeah. It suggested I needed to be notified
12 of it.

13 Q. And then what would you do with that
14 information? Were you in turn reporting to someone
15 else or reporting back to the group?

16 A. No, no. Ann Kenny was the lead on the 401
17 certification with Kelly Whiting as the principal
18 hydrology expert. So I received the interim
19 communications and noted them.

20 Q. Who is Rachel M.?

21 A. Oh, she would be one of the facilitators.
22 Rachel M., I don't know her last name, but Rachel was
23 one of the facilitators. Oh, Rachel McCrea, Floyd and
24 Snider.

25 Q. I see. Have you been involved in any other

1 processes where this kind of facilitated reading
 2 arrangement was used?
 3 A. You mean --
 4 Q. I mean where a consultant came in to
 5 essentially run the meeting?
 6 A. Years ago maybe. Yeah, I think so. I can't
 7 remember exactly. I'd have to refresh my memory.
 8 Years ago I believe there was such a facilitated
 9 meeting. I forgot what it was about.
 10 Q. So it does not happen often?
 11 A. No. No, it doesn't.
 12 (Deposition Exhibit No. 11 was marked for
 13 identification.)
 14 Q. (BY MR. POULIN) I'd like to introduce
 15 Exhibit 11. I have a few more of these STIA
 16 Construction Site Stormwater Monitoring Reports.
 17 Is this Exhibit 11 anything that you've seen before?
 18 A. I don't recall seeing it before.
 19 Q. Do you see where it identifies Site 21 as
 20 SR 509/S?
 21 A. Yes, I do.
 22 Q. And do you see upstream and downstream
 23 monitoring reports for turbidity in the third column?
 24 A. Yes.
 25 Q. And doesn't this show that there's a

1 previously aware of this exceedance?
 2 A. Don't recall it. I don't recall seeing this
 3 exceedance, that is correct.
 4 Q. If this report had been submitted to Ecology,
 5 who would it go to?
 6 A. This report would go to the facility --
 7 non-compliance notification goes to the facility
 8 manager.
 9 Q. And at the time that was you, right?
 10 A. That was me, yes, sir.
 11 Q. Not someone on your staff?
 12 A. No.
 13 Q. You personally?
 14 A. Yes.
 15 (Deposition Exhibit No. 12 was marked for
 16 identification.)
 17 Q. (BY MR. POULIN) Let's introduce Exhibit 12.
 18 Now, on Exhibit 12, which shows sampling reports also
 19 on June 28, 2001, the first group of rows addresses
 20 Embankment Phase 3 Construction and Stockpile. And
 21 while there's no upstream or downstream sampling
 22 results, there's an indication of a site discharge at
 23 the treatment facility outfall that indicates 2000 NTU.
 24 Does that make any sense to you?
 25 A. (Witness reviewing document.) I'd have to

1 downstream 33 NTUs and upstream just 9?
 2 A. Yes, it does.
 3 Q. Now, the upper left-hand corner of this
 4 exhibit indicates that the sampling date or perhaps the
 5 printing report date was June 28, 2001. Are you aware
 6 of or can you think of any reason why the Port would
 7 not be required to forward this kind of monitoring
 8 results to the Department?
 9 A. Well, perhaps -- it should -- I would like to
 10 see it. Is there a reason why they wouldn't submit it?
 11 I would have to -- I would like to see this kind of
 12 data. I would want to see this kind of data. That
 13 doesn't answer your question.
 14 Q. Well, if in fact a violation of water quality
 15 standards is a violation of the permit, they would be
 16 required to inform Ecology about this, would they not?
 17 A. Yes, they would. Yes, they would.
 18 Q. And they would also have to take action to
 19 stop the non-compliance?
 20 A. That's correct.
 21 Q. And they'd have to perform another sampling?
 22 A. I believe that's what the condition says,
 23 yes.
 24 Q. And yet, even though you were the permit
 25 manager through October of this year, you were not

1 take a look at the monitoring plan. I'd have to look
 2 at the monitoring plan.
 3 (Deposition Exhibit No. 13 was marked for
 4 identification.)
 5 Q. (BY MR. POULIN) Let's look at Exhibit 13.
 6 Now, this STIA Construction Site Stormwater Monitoring
 7 is dated September 26, 2001, and at the very bottom it
 8 indicates that turbidity sample at the South Terminal
 9 Expansion Project was 31 NTU downstream, 16.4 NTU
 10 upstream.
 11 Does that appear to be another violation of
 12 the water quality criteria for turbidity?
 13 A. I'd have to check the monitoring plan, but it
 14 could be. I'd have to check the monitoring plan. But
 15 if those were the proper monitoring locations for
 16 determining compliance with turbidity standards, then
 17 it would be.
 18 Q. Who decides where those monitoring sites are?
 19 A. Well, the Port submits a monitoring plan for
 20 review and I review them.
 21 Q. So they propose certain sites?
 22 A. Yeah.
 23 Q. And you say, It works for me?
 24 A. Yes.
 25 Q. What happens if they sample somewhere else?

1 A. Well, then it might not be a demonstration of
2 a violation of turbidity standards, it might be a
3 violation of their monitoring requirements. Or if it's
4 an equivalent location, if there's an obstacle to get
5 into the location, for example a background station,
6 they can perhaps sample in an alternate background
7 station which would still be representative of
8 background, not the exact monitoring plan. That might
9 be all right.

10 Q. Are you familiar with any circumstances where
11 the Port has monitored somewhere other than where it
12 said it would in the monitoring plan without stating
13 that on the face of the monitoring report?

14 A. I'm not aware of that.

15 Q. So in the absence of some comment or
16 indication that they were changing their approach, you
17 would assume that they're doing what they said they
18 would, right?

19 A. Yes, I would.

20 Q. And as you pointed out, if they're doing
21 something else --

22 A. You'd hope they'd tell me. I would be
23 expecting them to tell me that, if it's a different
24 monitoring location than in the monitoring plan.

25 Q. And if they're not monitoring where they said

1 latest conditions in the modified permit are still
2 showing exceedances of the turbidity standard?

3 A. Yes, that's what it appears to be.

4 Q. Has the Port proposed any additional BMPs to
5 keep this from happening, that you're aware of?

6 A. Not that I'm aware of.

7 Q. Would you think you would be aware of it if
8 they had?

9 A. Sometimes they take corrective action -- I
10 don't know. They could take corrective actions without
11 notifying me. They should, but --

12 Q. They're supposed to notify you, right?

13 A. They're supposed to notify me of corrective
14 actions for violation. But they could be taking
15 corrective actions without notifying me. They're
16 required to notify me.

17 (Discussion off the record.)

18 Q. (BY MR. POULIN) John, is there anything that
19 you're aware of in the 401 certification that would
20 apply to this kind of violation of water quality
21 criteria?

22 A. That would apply to -- there's monitoring
23 required for turbidity in the 401 certification.

24 Q. Right, but we already have provisions in the
25 permit that say that this isn't supposed to happen,

1 they would, that could be a violation?

2 A. It could be, or it could be another
3 representative spot that would be acceptable to an
4 engineer.

5 Q. So if they sample it at an alternate location
6 that's representative, that's okay?

7 A. Yes, it is.

8 Q. And if it's not a representative place then
9 they're --

10 A. They're violating.

11 Q. -- violating the permanent?

12 A. Yeah.

13 Q. So doesn't that mean that one way or the
14 other, it suggests a violation?

15 A. Oh, yes, it suggests a violation.

16 Q. And would you agree that both Exhibits 11 and
17 13 are samples of monitoring that have taken place
18 since the major mod went into effect back in May of
19 2001?

20 A. Yes, that's correct.

21 Q. And in fact, this apparent violation on
22 Exhibit 11 involves the State Route 509 interchange,
23 doesn't it?

24 A. Yes, it does.

25 Q. So even the sites that are governed by the

1 isn't that right?

2 A. It's a surface water quality criteria. And
3 we went over that, you know. Is it in the permit or
4 not, I'd have to look more carefully. But this is
5 surface water quality criteria violations, apparently.

6 Q. Are you suggesting that the Port doesn't have
7 to submit this information to you unless it's actually
8 a permit violation?

9 A. They have to submit it every other month.
10 Walker and Gilliam Creeks, they're required to submit
11 monitoring data for Walker and Gilliam Creeks and
12 tributaries to the Department every other month.

13 Q. But these reports haven't been submitted to
14 the Department, have they?

15 A. I haven't seen them. They would have come to
16 me. I don't remember seeing them.

17 Q. So the permit says they're supposed to submit
18 these reports to you, but they didn't. And you
19 apparently were not aware of these apparent violations
20 until today?

21 A. Correct.

22 Q. Is there anything you're aware of in the 401
23 certification that would change that?

24 A. No, I'm not.

25 Q. Now, there's talk in some of the e-mails and

1 file documents that includes your name about short-term
2 modification of water quality standards that will occur
3 during the construction related to this 401
4 certification.

5 Are you familiar with how that process will
6 take place, the modification?

7 A. No, I'm not.

8 Q. Will you be involved in deciding whether
9 water quality standards will be modified?

10 A. I will probably -- Ed Abbasi will be involved
11 in that.

12 Q. Now, is that a process that will take place
13 in the future or has approval for a short-term
14 modification already been granted in effect?

15 A. No, I don't know of any approval for a
16 short-term modification for the Port of Seattle,
17 Sea-Tac Airport.

18 Q. So that's something they'll have to apply for
19 in the future?

20 A. I don't know if they'll have to apply for it
21 or not.

22 Q. That's a part of the certification that you
23 didn't work on?

24 A. That's mostly correct. You're referring to
25 the water effects ratio, is that what you're referring

1 to?

2 Q. I believe there's some relationship between
3 the so-called WERS study and the modification of water
4 quality standards?

5 A. No, I didn't work on that language in the 401
6 permit.

7 Q. And if the Port determines it needs a
8 modification of water quality standards, that won't
9 come to you?

10 A. Ed Abbasi would be involved in that, and I'm
11 his supervisor, so I might be involved.

12 Q. Now, I have been given a copy of Respondent
13 Department of Ecology's Revised Preliminary Witness and
14 Exhibit List, and in fact you are identified as a
15 witness.

16 A. For what?

17 Q. Doesn't say, and it doesn't explain whether
18 you're a fact witness or an expert witness. Do you
19 have any idea what you would be a witness --

20 A. I'm a witness here at the deposition, I know
21 that. And I'm a witness here at the deposition for my
22 involvement in the 402 permit and the 401 permit.

23 Q. But you haven't talked with anyone about
24 whether you'll be a witness at the hearing, the appeal
25 hearing of the 401 challenge?

1 A. No. Deposition, for the deposition. That's
2 what I'm aware of.

3 MR. POULIN: If we could take a short break,
4 I'm on the verge of being able to wrap it up.

5 (Recess taken.)

6 Q. (BY MR. POULIN) John, could I just clarify
7 that you didn't work on any of the clean fill issues?

8 A. Correct.

9 Q. Related to the 401?

10 A. Correct.

11 Q. I don't believe I asked you who did.

12 A. Chung Yee.

13 Q. Chung Yee did.

14 Are you aware of any outfalls under the
15 permit other than construction-related outfalls that
16 are not identified on the map that we looked at earlier
17 in the Annual Stormwater Monitoring Report?

18 A. I think -- no, not in detail, no.

19 MR. POULIN: I have no further questions.

20 MR. YOUNG: I have none.

21 MR. PEARCE: I have a couple. It'll be real
22 brief.

23 EXAMINATION

24 BY MR. PEARCE:

25 Q. John, you said that the Port's required to

1 submit Construction Stormwater Monitoring Reports, is
2 it every other month?

3 A. Yeah, for Walker and Gilliam Creek, yes.

4 Q. So if you hadn't seen one of these daily
5 reports, that doesn't mean the Port didn't give you
6 something they were supposed to give you; correct?

7 A. Well --

8 Q. I mean, just in terms of a piece of paper,
9 that type of reporting form?

10 A. Right. The type of form that's used for
11 reporting isn't in concrete. We don't have a -- it's

12 not like -- it's not in concrete, the type of
13 reporting. But I am the facility manager, and as the
14 facility manager I would have been the one to have been
15 notified of violations and the reports would have come
16 to me.

17 Q. The report of a violation would have come to
18 you?

19 A. Yes.

20 Q. And you said that these seemed like they
21 might indicate a violation, you weren't certain?

22 A. I'd have to check the monitoring plan.

23 Q. If these are violations, if they represent
24 violations, you said they took place I think under the
25 permit, or counsel said that and you agreed they took

1 place under the permit. You don't mean that the permit
2 allows violations, do you?

3 A. No, it doesn't. That's correct, it does not
4 allow violations.

5 Q. It does not allow violations of turbidity
6 standards?

7 A. It does not.

8 MR. PEARCE: That's all I have. Thank you.
9 (Deposition adjourned at 4:30 p.m.)
10 (Signature reserved.)
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1 REPORTER'S CERTIFICATE

2
3 I, DIANE MILLS, the undersigned Certified Court
4 Reporter and Notary Public, do hereby certify:

5 That the testimony and/or proceedings, a transcript
6 of which is attached, was given before me at the time
7 and place stated therein; that any and/or all
8 witness(es) were by me duly sworn to tell the truth;
9 that the sworn testimony and/or proceedings were by me
10 stenographically recorded and transcribed under my
11 supervision, to the best of my ability; that the
12 foregoing transcript contains a full, true, and
13 accurate record of all the sworn testimony and/or
14 proceedings given and occurring at the time and place
15 stated in the transcript; that I am in no way related
16 to any party to the matter, nor to any counsel, nor do
17 I have any financial interest in the event of the
18 cause.

19 WITNESS MY HAND AND SEAL this 3rd day of
20 January 2002.

21
22 DIANE MILLS, CSR# MI-LL-SD-M380N3
23 Notary Public in and for the State
24 of Washington, residing in King
25 County. Commission expires 10/10/02.

1 CORRECTION & SIGNATURE PAGE

2 RE: AIRPORT COMMUNITIES COALITION VS. STATE OF
3 WASHINGTON. et al.
4 BEFORE THE POLLUTION CONTROL HEARINGS BOARD
5 DEPOSITION OF: JOHN DRABEK; DECEMBER 14, 2001

6 I, JOHN DRABEK, have read the
7 within transcript taken DECEMBER 14, 2001, and the same
8 is true and accurate except for any changes and/or
9 corrections, if any, as follows:

10 PAGE LINE CORRECTION
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21

22 Signed at _____, Washington,
23 on the ____ day of _____, 2002.

24 _____
25 JOHN DRABEK