



# Seattle City Attorney

Thomas A Carr

Theresa R. Wagner  
Senior Assistant City Attorney  
206/233-2159

February 20, 2007

Clerk  
Environmental Hearings Office  
Washington State Pollution Control Hearings Board  
4224 Sixth Ave. SE, Rowe Six, Bldg. 2  
Lacey, WA 98504-0903

cc:  Enf. Database Coord.  
 Rev/Rec - Cust Recovery  
   
 File File to ATG  
ATG Document Clerk  
X Amy Lindlow  
initial: WC 2/21/07

Re: City of Seattle Petition to Intervene  
Phase I Municipal Stormwater Permit Appeal, PCHB No. P 07-028  
*Port of Seattle v Dept. of Ecology*

To the Clerk of the Board:

Enclosed for consideration by the Board are the original and one copy of the following:

1. City of Seattle's Petition to Intervene
2. Declaration of Chuck Clarke in Support of City of Seattle's Petition to Intervene
3. Declaration of Service

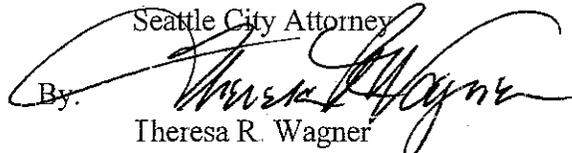
Seattle is a named permittee under the Phase I Municipal Stormwater Permit that is on appeal. Seattle requests that the Petition to Intervene be decided on the City's written submissions, unless Seattle's Petition is contested. If contested, Seattle reserves the right to request by letter that oral argument occur during the Prehearing Conference.

Seattle has contacted counsel for the parties to seek stipulation of the parties to intervention by the City of Seattle. Counsel for the Port of Seattle has responded that the Port consents to intervention by Seattle. We await the response of counsel for Ecology.

Please do not hesitate to contact me by direct line (206/233-2159) or by email (theresa.wagner@seattle.gov) with any questions. Thank you for your assistance

Very truly yours,

THOMAS A. CARR  
Seattle City Attorney

By:   
Theresa R. Wagner  
Senior Assistant City Attorney

Enclosures

cc: Mary Sue Wilson and Ron Lavigne, Counsel for Department of Ecology  
Susan Ridgley, Stephen Tan and Tanya Barnett, Counsel for Port of Seattle



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

THE PORT OF SEATTLE,	)	
	)	
	)	No. P 07-028
Appellant,	)	
vs.	)	CITY OF SEATTLE'S PETITION TO
	)	INTERVENE
STATE OF WASHINGTON, DEPARTMENT	)	
OF ECOLOGY,	)	
	)	
Respondent.	)	
	)	

The City of Seattle ("Seattle") hereby petitions the Board for intervenor status in the above-captioned matter, pursuant to WAC 371-08-420 and CR 24.

Seattle requests that this Petition to Intervene be decided on the City's written submissions, unless the Petition is contested. If contested, Seattle reserves the right to request by letter that oral argument occur during the Prehearing Conference. Seattle has contacted the parties to learn whether or not this petition is contested and awaits response from Ecology. The Port of Seattle has consented to intervention by Seattle.

Seattle specifically requests permission to participate in the prehearing conference as an intervenor.

The City of Seattle's contact information for this matter is:



**Thomas A. Carr**  
Seattle City Attorney  
600 Fourth Avenue, 4th Floor  
P.O. Box 94769  
Seattle, WA 98124-4769  
(206) 684-8200

1 City of Seattle  
2 c/o Seattle Public Utilities Director's Office  
3 700 Fifth Avenue, Suite 4900  
4 P.O. Box 34018  
5 Seattle, WA 98124-4018  
6 Attention: Chuck Clarke, Director

7 Phone: (206) 684-5851  
8 Fax: (206) 684-4631

9 Seattle is represented by:

10 Theresa R. Wagner  
11 Senior Assistant City Attorney  
12 Seattle City Attorney's Office  
13 600 Fourth Ave., 4<sup>th</sup> Floor  
14 P.O. Box 94769  
15 Seattle, WA 98124-4769

16 Phone: (206) 684-8200  
17 Fax: (206) 684-8284

## 18 STATEMENT OF FACTS

19 The City of Seattle is a municipal corporation organized under the laws of the State of  
20 Washington. Seattle is one of six cities and counties specifically named in and covered by the Phase  
21 I Municipal Stormwater Permit, National Pollutant Discharge Elimination System and State Waste  
22 Discharge General Permit for discharges from Large and Medium Municipal Separate Storm Sewer  
23 Systems (the "Permit"), which was issued by the Washington State Department of Ecology  
(“Ecology”) on January 17, 2007. Permit at S1.B.<sup>1</sup>

## 24 ARGUMENT

25 Seattle requests to intervene in this matter for all purposes. WAC 371-08-420<sup>2</sup> As a named

26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

<sup>1</sup> “The following Cities and Counties are covered under this permit as permittees: 1. The City of Tacoma and the City of Seattle. 2. Clark, King, Pierce, and Snohomish Counties.” The Permit is attached as an Exhibit to the Notices of Appeal filed in the above-captioned matters.

<sup>2</sup> WAC 371-08-420 Intervention.

1 permittee, Seattle is entitled to intervene as a matter of right pursuant to CR 24(a), because the  
2 Petition is timely and all of the requirements are met: (1) Seattle claims an interest relating to the  
3 subject of the action, which is the Permit; (2) disposition of the action may as a practical matter  
4 impair or impede Seattle's ability to protect its interest; and (3) Seattle's interest is not adequately  
5 represented by the existing parties. The requirements of CR 24(a) are liberally construed to favor  
6 intervention. Columbia Gorge Audubon Society v. Klickitat County, 98 Wn. App. 618, 623, 989  
7 P 2d 1260, 1263 (1999). CR 24(a) should be interpreted to allow intervention unless it would work  
8 a hardship on one of the original parties. Loveless v. Yantis, 82 Wn 2d 754, 759, 513 P 2d 1023,  
9 1026 (1973). In the alternative, Seattle should be permitted to intervene pursuant to CR 24(b)  
10 because any claim Seattle may have is based on the subject of the action, which is the Permit.

11 Seattle has an indisputable stake in the future of its own NPDES permit, which is before the  
12 Board on appeal. Pertinent facts are stated in the Declaration of Chuck Clarke, filed with this  
13 Petition. Seattle is already investing staff time and resources to comply with the Permit. Seattle is  
14 concerned that the pending appeal might change the Permit as it relates to Seattle, altering Seattle's  
15 expected compliance obligations. The appeal raises important issues about the Permit. If Seattle is  
16 not party to the appeal, Seattle will be unreasonably denied the opportunity to participate in briefing,  
17 hearings and other proceedings but will be subject to any resulting permit modifications. Therefore,  
18 the interests of justice will be served by allowing Seattle to fully participate in the appeal of its  
19 permit.

---

22 (1) The presiding officer may grant a petition for intervention at any time, upon determining that the  
petitioner qualifies as an intervenor pursuant to Civil Rule 24, that the intervention will serve the interests  
of justice, and that the prompt and orderly conduct of the appeal will not be impaired

23 (2) The presiding officer may impose conditions upon the intervenor's participation in the  
proceedings

1 No other party adequately represents Seattle's interests and the needs of Seattle's general  
2 public and elected officials. Seattle is the state's largest city and has a more dense and developed  
3 urban environment than any other Phase I city or county. Most Port of Seattle properties covered by  
4 the Permit are located in the City of Seattle. Seattle's perspective on the Permit is unique, based on  
5 Seattle's characteristics, its regulatory responsibilities, and Seattle Public Utilities' practice of using  
6 the principles of Asset Management to consider the financial, social and environmental costs and  
7 benefits of many decisions. Decl. of Chuck Clarke at ¶¶ 3-5. The other parties to appeals of the  
8 Permit, both permittees and citizen groups, can be expected to diverge from Seattle's interests  
9 because of the geographical, organizational, social, and political attributes of each. Although Seattle  
10 is in agreement with Ecology's approach to many aspects of the Permit, Ecology's role as regulator  
11 inherently distinguishes it from the permittees.

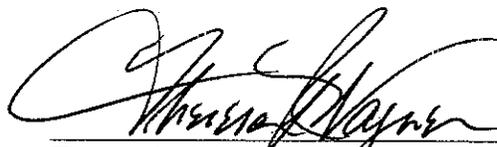
12 Because Seattle's Petition is filed and served within a week after the appeal deadline,  
13 intervention will not cause hardship, undue delay or prejudice to either appellant or respondent.

14 Seattle respectfully requests that its Petition be granted and that no conditions be placed on  
15 Seattle's participation before the Board. A proposed form of order will be provided upon request.

16 DATED this 20th day of February, 2007.

17 THOMAS A. CARR  
Seattle City Attorney

18  
19  
20 By:



Theresa R. Wagner, WSBA #17352  
Assistant City Attorney

21 Attorneys for Intervenor City of Seattle  
22  
23

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

THE PORT OF SEATTLE,	)	
	)	
Appellant,	)	No. P 07-028
vs.	)	
STATE OF WASHINGTON, DEPARTMENT	)	DECLARATION OF CHUCK CLARKE IN
OF ECOLOGY,	)	SUPPORT OF CITY OF SEATTLE'S
	)	PETITION TO INTERVENE
Respondent.	)	
	)	

I, CHUCK CLARKE, declare and state:

1. I am the director of Seattle Public Utilities, which is a department of the City of Seattle, a Washington municipal corporation.
2. The City of Seattle is a permittee under the Phase I Municipal Stormwater Permit (National Pollutant Discharge Elimination System and State Waste Discharge General Permit for discharges from Large and Medium Municipal Separate Storm Sewer Systems) (the "Permit") issued by the Washington State Department of Ecology ("Ecology") on January 17, 2007, with an effective date of February 16, 2007
3. Seattle Public Utilities has been assigned responsibility for coordinating the City of Seattle's compliance with the Permit for the City's "large municipal separate storm sewer system."

1 Seattle Public Utilities is now expending staff time and resources to comply with the Permit.

2 4. Seattle's interests in appeals of the Phase I municipal stormwater permit cannot be  
3 represented by any other party. Seattle is the state's most populous and densely-developed city.  
4 Seattle is unique among Phase I permittees and the other parties. Seattle's approach to managing  
5 stormwater is consistent with a Stormwater Management Program approved by Ecology and suited  
6 to the attributes of the City:

7 (a) Most of Seattle was fully developed before modern environmental laws were enacted.

8 Seattle is served by a variety of stormwater infrastructure: piped and informal separate storm  
9 sewers, partially separated storm sewers, and combined sewers.

10 (b) In Seattle's stormwater regulatory program, redevelopment is a more prominent issue  
11 than new development. The average parcel size in Seattle is very small, approximately 5000  
12 sq ft., and the rate of redevelopment is <1% per year.

13 (c) About 25% of Seattle's land mass is in city, state and federal transportation corridors,  
14 which poses unusual challenges for stormwater management.

15 (d) Seattle's stormwater system drains to a great variety of receiving waters, including small  
16 lakes and urban streams, large lakes (Lake Union and Lake Washington), the Duwamish  
17 River, and Puget Sound.

18 (e) Seattle is governed by its unique City Charter as well as state and local laws.

19 5. Seattle Public Utilities is a leader in using Asset Management principles to make  
20 well-informed utility decisions about directing resources to stormwater management and other  
21 areas of business. "Asset Management" means that Seattle Public Utilities uses a formal  
22 internal review process to make well-informed and cost-effective decisions in a transparent  
23

1 manner, fully informed of the life-cycle triple bottom line of financial, social and environmental  
2 costs and benefits.

3 DATED this 20th day of February, 2007, at Seattle, Washington.

4  
5 

6 CHUCK CLARKE  
7 Director, Seattle Public Utilities  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

THE PORT OF SEATTLE,	)	
	)	
Appellant,	)	No. P 07-028
vs.	)	
	)	DECLARATION OF SERVICE
STATE OF WASHINGTON, DEPARTMENT	)	
OF ECOLOGY,	)	
	)	
Respondent.	)	
_____		

KIM FABEL states and declares as follows:

1. I am over the age of 18, am competent to testify in this matter, am a Legal Assistant in the Law Department, Civil Division, Seattle City Attorney's Office, and make this declaration based on my personal knowledge and belief.

2. On February 20, 2007, I filed for the City of Seattle the following documents with the Pollution Control Hearings Board, via legal messenger to 4224 6th Ave. SE, Rowe Six, Bldg. 2, Lacey, WA 98504-0903:

- Cover letter
- City of Seattle's Petition to Intervene
- Declaration of Chuck Clarke in Support of City of Seattle's Petition to Intervene
- Declaration of Service

3. Also on February 20, 2007, I caused true and correct copies of those documents to be delivered in the manner indicated to the parties listed below:



1 Jay Manning, Director  
2 Department of Ecology  
3 300 Desmond Drive  
4 Lacey, WA 98503

Via: Legal Messenger

4 Mary Sue Wilson, Sr Ass't Attorney General  
5 Ron Lavigne, Ass't Attorney General  
6 Attorney General of Washington  
7 Ecology Division  
8 2425 Bristol Court SW  
9 P.O. Box 40117  
10 Olympia, WA 98504-0117  
11 *Attorneys for State of Washington,*  
12 *Department of Ecology*

Via: Legal Messenger

9 Susan Ridgley, Sr. Port Counsel  
10 Port of Seattle  
11 2711 Alaskan Way, Pier 69  
12 P.O. Box 1209  
13 Seattle, WA 98111  
14 Fax: (206) 728-3205

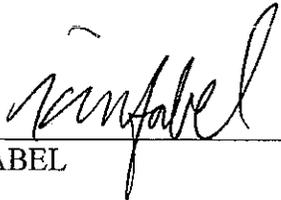
Via: Facsimile and U.S. Mail

12 Stephen J. Ian  
13 Tanya Barnett  
14 Cascadia Law Group, PLLC  
15 1201 Third Ave., Suite 320  
16 Seattle, WA 98101  
17 Fax: (206) 292-6301  
18 *Attorneys for Port of Seattle*

Via: Facsimile and U.S. Mail

17 4. I declare under penalty of perjury under the laws of the State of Washington that  
18 the foregoing is true and correct.

19 DATED this 20th day of February, 2007, at Seattle, King County, Washington.

21  
22   
23 \_\_\_\_\_  
KIM FABEL