



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: ☐ Enr. Database Coord.
☐ Rev/Rec - Cust Recovery
☐
☒ File File to ATG
ATG Decast Clerk
X Amy Lindgren
MC 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 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., 4th 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.¹

24 ARGUMENT

25 Seattle requests to intervene in this matter for all purposes. WAC 371-08-420² As a named

26 ¹ "The following Cities and Counties are covered under this permit as permittees: 1. The City of Tacoma and the
27 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.

² 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
18 Seattle City Attorney

19 By: 

20 Theresa R. Wagner, WSBA #17352
21 Assistant City Attorney

22 Attorneys for Intervenor City of Seattle
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5 BEFORE THE POLLUTION CONTROL HEARINGS BOARD
6 STATE OF WASHINGTON

7 THE PORT OF SEATTLE,)
8)

9 Appellant,)

10 vs.)

11 STATE OF WASHINGTON, DEPARTMENT)
12 OF ECOLOGY,)

13 Respondent.)
14)

No. P 07-028

DECLARATION OF CHUCK CLARKE IN
SUPPORT OF CITY OF SEATTLE'S
PETITION TO INTERVENE

15 I, CHUCK CLARKE, declare and state:

16 1. I am the director of Seattle Public Utilities, which is a department of the City of
17 Seattle, a Washington municipal corporation.

18 2. The City of Seattle is a permittee under the Phase I Municipal Stormwater Permit
19 (National Pollutant Discharge Elimination System and State Waste Discharge General Permit for
20 discharges from Large and Medium Municipal Separate Storm Sewer Systems) (the "Permit")
21 issued by the Washington State Department of Ecology ("Ecology") on January 17, 2007, with an
22 effective date of February 16, 2007

23 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."

DECLARATION OF CHUCK CLARKE IN SUPPORT OF CITY OF
SEATTLE'S PETITION TO INTERVENE - 1

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

7 of 12 COPY

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.

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6 CHUCK CLARKE
7 Director, Seattle Public Utilities
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5 BEFORE THE POLLUTION CONTROL HEARINGS BOARD
6 STATE OF WASHINGTON

7 THE PORT OF SEATTLE,)
8 Appellant,) No. P 07-028
9 vs.)
10 STATE OF WASHINGTON, DEPARTMENT)
11 OF ECOLOGY,)
Respondent.)
DECLARATION OF SERVICE

12 KIM FABEL states and declares as follows:

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

16 2. On February 20, 2007, I filed for the City of Seattle the following documents with
17 the Pollution Control Hearings Board, via legal messenger to 4224 6th Ave. SE, Rowe Six, Bldg.
18 2, Lacey, WA 98504-0903:

- 19 • Cover letter
20 • City of Seattle's Petition to Intervene
21 • Declaration of Chuck Clarke in Support of City of Seattle's Petition to Intervene
22 • Declaration of Service

23 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:

DECLARATION OF SERVICE - 1

A large, stylized, outlined stamp of the word "COPY" with a small icon to its left.

Jay Manning, Director
Department of Ecology
300 Desmond Drive
Lacey, WA 98503

Via: Legal Messenger

Mary Sue Wilson, Sr Ass't Attorney General
Ron Lavigne, Ass't Attorney General
Attorney General of Washington
Ecology Division
2425 Bristol Court SW
P O. Box 40117
Olympia, WA 98504-0117
*Attorneys for State of Washington,
Department of Ecology*

Via: Legal Messenger

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

Via: Facsimile and U.S. Mail

Stephen J. Ian
Tanya Barnett
Cascadia Law Group, PLLC
1201 Third Ave., Suite 320
Seattle, WA 98101
Fax: (206) 292-6301
Attorneys for Port of Seattle

Via: Facsimile and U.S. Mail

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

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


KIM FABEL