

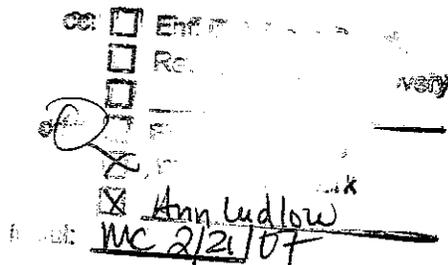


# Seattle City Attorney

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

Re: City of Seattle Petition to Intervene  
Phase I Municipal Stormwater Permit Appeal, PCHB No. P 07-021  
*Puget Soundkeeper Alliance; People for Puget Sound 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. We await the responses of counsel for Ecology, Puget Soundkeepers Alliance and People for Puget Sound.

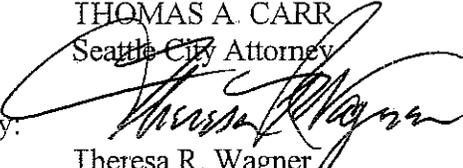
Clerk, PCHB  
February 20, 2007  
Page 2

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  
Jan Hasselman, Todd True and Richard Smith, Counsel for Puget Soundkeepers Alliance  
And People for Puget Sound

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BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

	)	
PUGET SOUNDKEEPER ALLIANCE;	)	
PEOPLE FOR PUGET SOUND,	)	No P 07-021
	)	
Appellants,	)	CITY OF SEATTLE'S PETITION TO
vs.	)	INTERVENE
	)	
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 one or more parties.

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

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



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

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<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

20 No other party adequately represents Seattle's interests as a permittee and the needs of  
21

---

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 Seattle's general public and elected officials. Seattle is the state's largest city and has a more dense  
2 and developed urban environment than any other Phase I city or county. Seattle's perspective on  
3 the Permit is unique, based on Seattle's characteristics and Seattle Public Utilities' practice of using  
4 the principles of Asset Management to consider the financial, social and environmental costs and  
5 benefits of many decisions. Decl of Chuck Clarke at ¶¶ 3-5. The other possible parties to appeals  
6 of the Permit, both permittees and citizen groups, can be expected to diverge from Seattle's interests  
7 because of the geographical, organizational, social, and political attributes of each. Although Seattle  
8 is in agreement with Ecology's approach to many aspects of the Permit, Ecology's role as regulator  
9 inherently distinguishes it from the permittees.

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

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

14 DATED this 20th day of February, 2007.

15 THOMAS A. CARR  
16 Seattle City Attorney

17 By:



18 Theresa R. Wagner, WSBA #17352  
19 Assistant City Attorney

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

6 PUGET SOUNDKEEPER ALLIANCE; )  
7 PEOPLE FOR PUGET SOUND, )  
8 Appellants, ) No. P 07-021  
9 vs. ) DECLARATION OF SERVICE  
10 DEPARTMENT OF ECOLOGY, )  
11 Respondent. )

---

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
  - City of Seattle's Petition to Intervene
  - Declaration of Chuck Clarke in Support of City of Seattle's Petition to Intervene
  - Declaration of Service
- 20  
21

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

DECLARATION OF SERVICE - 1

A large, stylized stamp that says "COPY" in a bold, outlined font. To the left of the word "COPY" is a small square icon containing the letters "CG".

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

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 Jan Hasselman  
10 Todd True  
11 Earthjustice  
12 705 Second Ave., Suite 203  
13 Seattle, WA 98104

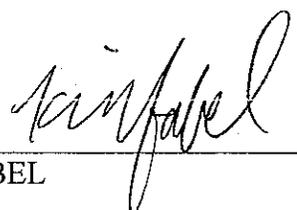
Via: Legal Messenger

12 Richard A. Smith  
13 Smith & Lowney, PLLC  
14 2317 E John St.  
15 Seattle, WA 98112-5412  
16 *Attorneys for Appellants*  
17 *Puget Soundkeeper Alliance and*  
18 *People for Puget Sound*

Via: Legal Messenger

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

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

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23 KIM FABEL

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BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

PUGET SOUNDKEEPER ALLIANCE;	)	
PEOPLE FOR PUGET SOUND,	)	No P 07-021
	)	
Appellants,	)	DECLARATION OF CHUCK CLARKE IN
vs.	)	SUPPORT OF CITY OF SEATTLE'S
	)	PETITION TO INTERVENE
DEPARTMENT OF ECOLOGY,	)	
	)	
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

1 Seattle's compliance with the Permit for the City's "large municipal separate storm sewer system"  
2 Seattle Public Utilities is now expending staff time and resources to comply with the Permit

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

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

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

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

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

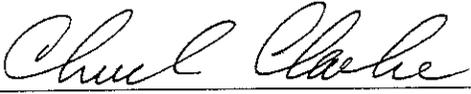
16 (d) Seattle's stormwater system drains to a great variety of receiving waters, including small  
17 lakes and urban streams, large lakes (Lake Union and Lake Washington), the Duwamish  
18 River, and Puget Sound.

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

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

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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