

1 **POLLUTION CONTROL HEARINGS BOARD**
2 **STATE OF WASHINGTON**

3 WM. DICKSON CO.,

4 Appellant,

5 v.

6 WASHINGTON STATE DEPARTMENT
7 OF ECOLOGY,

8 Respondent.

PCHB No. 11-163

ORDER ON MOTIONS

9 **BACKGROUND**

10 On November 7, 2011, the Department of Ecology (Ecology) issued Wm. Dickson Co.
11 (Dickson) a \$24,000.00 penalty for violation of the Sand and Gravel General Permit. Dickson
12 timely appealed the penalty to the Board. On October 2, 2013, the Board decided the matter on
13 summary judgment, upholding some but not all violations, and reducing the penalty amount.
14 Dickson appealed the Board's decision to Pierce County Superior Court, which remanded the
15 case to the Board for hearing. The matter is set for hearing on January 7-8, 2014 at the Board's
16 Tumwater Office.

17 Pre-hearing motions were filed by the parties. Based on the written record, and without
18 oral argument, Presiding Officer Kristie C. Elliott issued oral rulings on pending motions
19 during a pre-hearing conference held on December 30, 2013. Attorney Joe M. Quaintance
20 represented Appellant Dickson. Assistant Attorney General Allyson C. Bazan represented
21 Respondent Ecology. The rulings issued are incorporated into this Order:

1 1. Ecology’s Motion in Limine is GRANTED. Evidence and testimony regarding
2 enforcement efforts undertaken by Ecology at other sites is hereby excluded. This
3 decision is consistent with the Board’s Order on Motion to Compel (July 9, 2012),
4 in which the Board analyzed this question in relation to the permissible extent of
5 discovery in this case and decided that “[i]nformation about other permit holders
6 and violations, and other enforcement actions taken against other violators did not
7 form the basis for Ecology’s assessment of the penalty against Dickson, and is
8 therefore irrelevant to this appeal.” Evidence and testimony on other, unrelated
9 enforcement actions continues to be irrelevant to the narrowly framed issues before
10 the Board on remand, and under its de novo standard of review, and is excluded for
11 purposes of the hearing.

12 2. Consistent with the above ruling granting Ecology’s Motion in Limine, the
13 Presiding Officer excluded Exhibits A-24, A-27, A-28, and A-29.¹

14 3. Appellant’s ER 904 Notice is GRANTED in part, DENIED in part, and
15 RESERVED in part, as follows:

16 a. Exhibits A-1, A-4 to A-9, A-13 to A-23, A-25 to A-26, and A-30 to A-31
17 are hereby admitted;

18 b. Exhibits A-2, A-3, and A-10 are admitted subject only to a relevance
19 objection at hearing;

20 ¹ All references to exhibits are based on Appellant’s Exhibit List filed Dec. 27, 2013.
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1 c. A ruling is reserved on the admissibility of Exhibits A-11 and A-12, which
2 may be offered at hearing and will be ruled upon at that time.
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4 SO ORDERED this 31st day of December, 2013.
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6 **POLLUTION CONTROL HEARINGS BOARD**
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8 Kristie C. Elliott, Presiding
9 Administrative Appeals Judge
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