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APPENDICES

1. Administrative Orders Imposing Penalties.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF AN)
ADMINISTRATIVE ORDER)
AGAINST:)
Pacific Topsoils, Incorporated)

ORDER No. 4095

To: Pacific Topsoils, Inc.
Dave Forman
805 80th Street SW
Everett, WA 98203

For the site located at:
3000 West Smith Island Road, Everett, WA 98205

This is an Administrative Order requiring Pacific Topsoils, Inc. to comply with Chapter 90.48 of the Revised Code of Washington (RCW) by taking certain actions which are described below. RCW 90.48.120(2) authorizes the Department of Ecology (Department) to issue Administrative Orders requiring compliance whenever it determines that a person has violated, or is about to violate, any provision of Chapter 90.48 RCW.

The Department's determination that a violation has occurred is based on the following facts:

Violation: Unlawful discharge of polluting matter into waters of the state

On or before October 17, 2006, approximately 12 acres of fill material was discharged into wetlands at the Pacific Topsoils, Inc. facility on Smith Island, Snohomish County. There is no record at the Department or Snohomish County of the submission of a permit application for the placement of said fill, nor a record of any permit for the placement of fill in the wetlands having been issued. Under RCW 90.48.080 and RCW 90.48.160, it is unlawful to discharge polluting matters into waters of the state without a permit. Discharge of such polluting matters into waters of the state is also a violation of the anti-degradation policy, WAC 173-201A-300.

Corrective Action: For these reasons, and in accordance with RCW 90.48.120(2), it is ordered that Pacific Topsoils take the following actions at Pacific Topsoils Smith Island facility located at 3000 West Smith Island Road, Everett, WA 98205:

1. Remove all unauthorized fill within 60 days of receipt of this order.
2. Restore the affected wetland to its pre-fill condition by regding and replanting with representative species within 15 days of fill removal.

Failure to comply with this Administrative Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

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You have the right to appeal this Administrative Order to the Pollution Control Hearings Board. Pursuant to Chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology, within thirty (30) days of the date of your receipt of this document.

To appeal this action or decision, your notice of appeal must contain a copy of the Ecology order, action, or decision you are appealing.

<p>You must file your appeal with The Pollution Control Hearings Board.</p> <p>Mail your appeal to:</p> <p>The Pollution Control Hearings Board PO Box 40903 Olympia WA 98504-0903</p> <p>OR</p> <p>Deliver your appeal in person to:</p> <p>The Pollution Control Hearings Board 4224 - 6th Ave SE Rowe Six, Bldg 2 Lacey, WA 98504-0903</p>	<p>Your appeal must also be served on:</p> <p>The Department of Ecology Appeals Coordinator P.O. Box 47608 Olympia, Washington 98504-7608</p>
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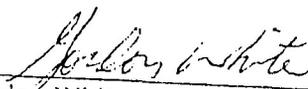
In addition, please send a copy of your appeal to:

Ms. Kerry Carroll
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

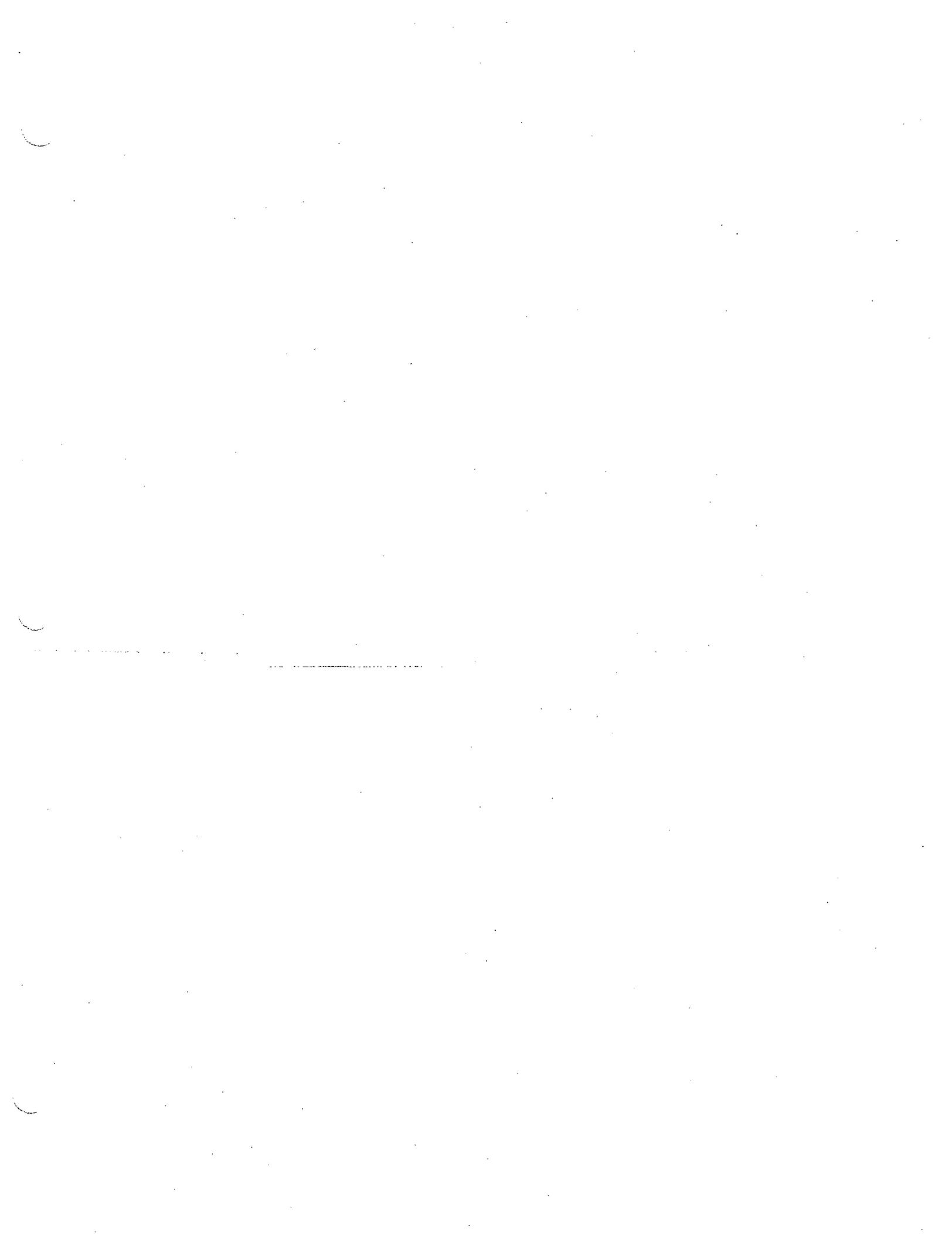
For additional information: Environmental Hearings Office Website: <http://www.eho.wa.gov>

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Chapter 43.21B-RCW.

DATED this 14 day of March, 2007 at Olympia, Washington.



Gordon White
Program Manager
Shorelands and Environmental Assistance Program



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF PENALTY)
ASSESSMENT AGAINST)
Pacific Topsoils, Incorporated)

NOTICE OF PENALTY
INCURRED AND DUE
No. 4096

To: Mr. Dave Forman
Pacific Topsoils, Inc.
805 80th Street SW
Everett, WA 98203

For the site located at:

Pacific Topsoils, Inc. Smith Island Facility at 3000 West Smith Island Road, Everett, WA 98205

Notice is given that the Department of Ecology (Department), pursuant to RCW 90.48.144(3), has assessed a penalty against you in the amount of \$88,000.00 for violation of RCW 90.48.080 at the location known as Pacific Topsoils, Inc. Smith Island facility located at 3000 West Smith Island Road, Everett, WA 98205.

The penalty is based on the following Department findings:

Prior to January 24, 2006, fill was placed in approximately 12 acres of wetlands at Pacific Topsoils' Smith Island facility without a permit in violation of RCW 90.48.080. Discharge of such polluting matters into waters of the state is also a violation of the anti-degradation policy, WAC 173-201A-300. Fill remains in place in the wetlands. Each and every day the fill remains in the wetlands constitutes a separate and distinct violation of RCW 90.48.080 and 90.48.160, and WAC 173-201A-300.

The penalty is due and payable by Pacific Topsoils within thirty (30) days of your receipt of this Notice. Please send your penalty payment to: Department of Ecology, Cashiering Section, P.O. Box 5128, Lacey, Washington 98509-5128.

You have the right to submit an **Application for Relief to Ecology**. You also have the right to **Appeal** this penalty to the Pollution Control Hearings Board immediately without exercising the option of filing an Application for Relief to Ecology.

If you file a timely Application for Relief to Ecology within thirty (30) days of your receipt of this notice of penalty, Ecology will respond with a "Notice of Disposition Upon Application for Relief." You will then have a right to appeal Ecology's "Notice of Disposition Upon Application for Relief" to the Pollution Control Hearings Board.

NOTICE: If you do not submit a timely Application for Relief or Appeal, this Penalty will become due and owing and will not be subject to further administrative or judicial review.

To submit an Application for Relief from an Assessed Penalty: Pursuant to Chapter 43.21B RCW, your Application for Relief must be submitted in writing to the Department of Ecology within thirty (30) days of the date of receipt of this document. The Application for Relief must be sent to the following two locations:

Original Application for Relief sent to:
Paul Anderson
Department of Ecology
3190 160th Ave. SE
Bellevue, Washington 98008-5452

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Copy sent to:

Department of Ecology
Fiscal Office
P.O. Box 47615
Olympia, Washington 98504-7615.

To Appeal this Notice of Penalty to the Pollution Control Hearings Board: Pursuant to Chapter 43.215 RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology, within thirty (30) days of the date of receipt of this document. Your notice of appeal must contain a copy of the Notice of Penalty you are appealing.

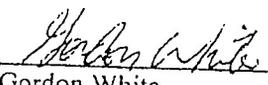
<p>You must file your appeal with The Pollution Control Hearings Board.</p> <p>Mail your appeal to:</p> <p>The Pollution Control Hearings Board PO Box 40903 Olympia WA 98504-0903</p> <p>OR</p> <p>Deliver your appeal in person to:</p> <p>The Pollution Control Hearings Board 4224 - 6th Ave SE Rowe Six, Bldg 2 Lacey, WA 98504-0903</p>	<p>Your appeal must also be served on:</p> <p>The Department of Ecology Appeals Coordinator P.O. Box 47608 Olympia, Washington 98504-7608</p>
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In addition, please send a copy of your appeal to:

Ms. Kerry Carroll
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

For additional information: Environmental Hearings Office Website: <http://www.eho.wa.gov/>

DATED this ___ day of ___, 2007 at Olympia, Washington.

 3/7/07
Gordon White
Program Manager
Shorelands and Environmental Assistance Program

2. Excerpts from Dr. Kelley's Wetland Study.

1 Introduction

This report addresses wetlands on undeveloped land located west of the operating Pacific Topsoils facility at Smith Island, Snohomish County Washington. The land evaluated in this report is designated as Snohomish County Tax Parcels 29050500400400 and 29050500400600. The site address is 805 80th Street SW, Everett Washington, 98205. These parcels are owned by MAP#2 LLC. The site is located about 2,000 ft west of State Route 529 (Marine View Drive), between the cities of Marysville and Everett (Figures 1 and 2).

The site consists of recently filled land (about 12 acres) and farmland (several acres of land that adjoin the fill). The recently placed fill soils are undeveloped and the adjacent farmland is largely vegetated with pasture grasses (Figure 3).

This report has been prepared to comply with the requirements of the Snohomish County Critical Areas Regulations (CAR) (SCC 30.62). The report identifies all on-site wetland and stream, and fish and wildlife critical areas and classifies wetlands and streams according to CAR requirements. The report includes a restoration plan that proposes restoration of filled wetlands and buffers. Submittal of the Critical Areas Report is intended as partial compliance with the Snohomish County Hearing Examiner's decision of September 12th 2007 (see File No. 06 127119 CT, page 5, conclusion #9).

The Washington Department of Ecology has asserted that the fill material was placed in 12 acres of jurisdictional wetland. The Ecology determination was apparently made during the late growing season, and appears to be largely based on the assumption that the presence of hydric (wetland) soils on the site adjacent to the fill indicates the entire fill was placed in wetland. Contrary to required delineation procedures, on-site assessments of hydrology during the early growing season were not performed by Ecology. This report provides a more detailed and accurate assessment of conditions beneath the recently placed fill, and assesses their wetland/non-wetland status according to the required wetland delineation criteria.

2.1.3 Wetland Hydrology

Wetland hydrology refers to the occurrence of saturated soils or surface inundation at a site for extended periods (usually 14 or more consecutive days during the growing season) (Ecology 1997, Environmental Laboratory 1987). Wetland delineation manuals identify that direct observation of surface or soil saturation is the most reliable way to confirm that an area supports wetland hydrology.

Examination of this soil saturation requires digging a soil pit to a depth of greater than 12 inches and observing the level at which water stands in the hole after sufficient time has been allowed for any water to drain into the hole. (The required time will vary depending on soil texture. In some cases, the upper level at which water is flowing into the pit can be observed by examining the wall of the hole. This level usually represents the depth to the water table.) The depth to saturated soils will always be nearer the surface due to the capillary fringe. For soil saturation to impact vegetation, it must occur within a major portion of the root zone of the prevalent vegetation (i.e. the portion of the soil profile in which more than one half of the plant roots occur. This is usually within 12 inches of the surface). If the water table (the level at which standing water is found in an unlined hole) is found within twelve inches of the soil surface in a non-sandy soil, one can assume that soil saturation occurs to the surface, and the wetland hydrology criteria is met.

Wetland hydrology must be present under normal climate conditions for an area to be considered wetland. In the Pacific Northwest, direct observations of hydrologic conditions are ideally made during the early part of the growing season following the wetter winter months and prior to the typically drier spring and summer months. Observations of wetland hydrology are most reliable if they also follow periods of near average precipitation. Observations made out of the growing season, or during exceedingly wet or dry seasons, may not reflect typical conditions and thus require special evaluation procedures. Issues associated with, and procedure for the collection and interpretation of wetland hydrology data are presented in *Accessing and Using Meteorological Data to Evaluate Wetland Hydrology* (US Army Corps of Engineers 2000)

Because of the dry summer months typical in the Pacific Northwest, many wetlands do not contain any surface water or any saturated soils from May through October. When conducting wetland evaluations during the dry season, various secondary indicators of wetland hydrology may be used to establish whether an area meets the wetland hydrology criteria. The secondary indicators that are used to identify wetland hydrology during dry seasons include:

- Water Marks
- Sediment Deposits
- Drainage Patterns in Wetlands
- Oxidized Root Channels in Upper 12 inches
- Water-Stained Leaves
- Local Soil Survey Data

- FAC Neutral test of vegetation

These indicators may show or suggest that an area is at least seasonally saturated or inundated, but they may not adequately demonstrate, without other conforming data, that the wetland hydrology is met. For certain secondary indicators, the Corps requires 2 indicators to be present for a positive wetland determination (see Corps of Engineers *Wetlands Delineation Manual, on-line edition*; available at: <http://www.saj.usace.army.mil/regulatory/assets/docs/mj/1987WetlandDelineation.pdf>).

The wetland delineation procedures and WAC 173-080 require good documentation that an area experiences prolonged inundation and/or saturated soil prior as part of a wetland determination, for example:

- Washington State Wetland Identification and Delineation Manual (para. 15, page 27):
"Hydrology is often the least exact of the parameters, and indicators of wetland hydrology are sometimes difficult to find in the field. However, it is essential to establish that a wetland area is periodically inundated or has saturated soils for a sufficient duration during the growing season."
- WAC 173-080 ((5)(b)(i)):
"It is necessary to have good documentation that the area experiences prolonged inundation and/or saturation in order to call it a wetland. The presence of standing water or saturated soil on a site at a single point in time or for short periods is insufficient evidence that the species present are able to tolerate long periods of inundation. The user must relate the observed species to other similar situations and determine whether they are normally found in wet areas, taking into consideration the season and immediately preceding weather conditions. If you encounter this situation, you may be dealing with an atypical situation or a problem area."
- And WAC 173-080 ((13)(b)):
"In some cases, it may be necessary to withhold making a final wetland determination until a site is examined during the wettest part of the growing season."

Observations of wetland hydrology may be further complicated by altered site conditions, including hydrologic alterations, filling, and clearing. Certain "problem area" wetlands and hydrologic alterations may require direct observations of wetland hydrology for valid wetland determinations (see Section 2.2 below).

2.2 Special Wetland Delineation Procedures

According to the Ecology delineation manual and WAC 173-22-080, assessment of a site to determine if wetlands are present requires special considerations under several circumstances. These circumstances include:

- Wetlands subjected to hydrologic modifications,
- Filled wetlands,
- Problem area wetlands, and
- Human induced wetlands.

Evaluation of such sites for wetlands must follow special procedures that are outlined in the delineation manual (see *Washington State Wetland Identification and Delineation Manual*, Sections F and G, pages 70-83) and WAC 173-22-080 (sections 11 -13). Additional explanations of these procedures are discussed in the following sections.

2.2.1 Sites with Hydrologic modifications

Special delineation procedures are required on sites where hydrologic modifications, (considered an atypical situation) have occurred. Potential hydrologic modifications that may affect the distribution of wetlands include present on the Smith Island site include the presence of :

- levees around the perimeter of the site
- drainage ditches along the east and south sides of the site
- a tide gate that protects a blind slough from significant tidal fluctuations.

These features protect the area from periodic inundation by over bank flooding, promote the drainage of surface water from the site, and promote the drainage of groundwater from the site reducing. The tide gate eliminates potential tidal influences in the adjacent slough and increases the ability of an adjacent slough to drain surface and groundwater from the site. With these modifications in mind the wetland delineation considered procedures identified in WAC 173-22-080 (Section III) and Part IV, Section F of the *Washington State Wetland Delineation Manual*. Additional recommendations that represent a "best available science" approach to evaluating hydrologically modified areas for wetlands are listed in Table 3. These and Ecology methods require careful documentation of the hydrologic alteration(s), and determinations that wetland hydrology is still present on the site.

Table 3. Actions for Determining Whether an Area has Wetland Hydrology

RECOMMENDED ACTIONS	
1	Review existing hydrologic information, including stream gauge data or groundwater well data.
2	Conduct on-site groundwater evaluations. (Collect data during the wetter part of the growing season.)
3	Conduct a onsite inspection and look for wetland hydrology field indicators or assess vegetation to determine if drainage has significantly and adversely affected hydrophytic vegetation.
4	Compare vegetation of altered wetland vs. similar, neighboring wetland (the comparison site should support the same original vegetation, soils, hydrology, and be in a similar landscape position. If vegetation on both sites remains similar (at least in terms of species of similar wetland indicator status) then the area is likely still wetland.
5	Determine the "zone of influence" of ditches, channels, or drainage structures by using soil drainage guides. ("Scope and effect" equations and/or computer programs like Drainmod may also be appropriate.)
6	Examine aerial photography taken during the wettest part of the growing season for signs of inundation or soil saturation. Photos from multiple years should need to be assessed.

Source: Modified from the Federal Interagency Committee for Wetland Delineation, 1989.

2.2.2 Sites with Recently Placed Fill

Conditions are considered "atypical" on sites where recent fill material has been placed on land and potentially within wetlands. These atypical situations require special evaluation approaches.

The Ecology manual addresses the determination of wetlands that may have been filled by unauthorized activities in the wetland delineation manual and identifies procedures to evaluate hydrology and soil conditions beneath fill. For the hydrology parameter, the manual (page 76-77) specifies 7 factors used to determine if wetland hydrology previously existed on the site. Assessment of these factors do not require removal of the fill material. Per the manual procedures (page 74), soil evaluations require digging holes through the fill until natural soils are encountered. The natural soils are then evaluated for wetland indicators. Complete removal of the fill is not a specified evaluation method.

2.2.3 Problem Area Wetlands

In addition to the two "atypical situations" discussed above, there are certain wetland types and/or conditions that may make application of indicators of one or more parameters difficult, at least at certain times of the year. Wetland types where wetland indicators of one or more parameters may be periodically lacking due to normal environmental conditions or variations in environmental conditions (not caused by human activities or catastrophic natural events) are considered "problem areas". The occurrence of wetlands adjacent to the fill are a potential problem area wetland because the areas contain drained or partially drained hydric soil, support wetland vegetation, yet lack wetland hydrology for all or most of the growing season. Ecology identifies special procedures for evaluating problem area wetlands.

In Washington, some seasonal wetlands are considered problem areas because they may have wetland indicators of all three parameters during the wetter portion of the growing season, but normally lack wetland indicators of hydrology and/or vegetation during the drier portion of the growing season. This condition applies to the Smith Island site where surface water is generally lacking year-round, and when present, soil saturation is present during winter and early spring months.

These seasonal wetlands may be inundated during the wetter portion of the growing season, but wetland hydrology indicators may be totally lacking during the drier portion of the growing season. The Ecology manual states that it is important to establish that an area truly is a wetland. Water in a depression normally must be sufficiently persistent to exhibit an ordinary high-water mark or the presence of wetland characteristics before it can be considered as wetland potentially subject to jurisdiction.

Evidence concerning the persistence of an area's wetness can be obtained from its history, vegetation, soil, drainage characteristics, uses to which it has been subjected, and weather or hydrologic records. Page 37 of the Ecology manual states that:

"Wetlands classified as having a temporarily flooded or intermittently flooded water regime should be viewed with particular caution since this designation is indicative of plant communities that are transitional between wetland and non-wetland. These are among the most difficult plant communities to map accurately from aerial photography."

For problem area seasonal wetlands, page 80 of the manual states that:

"The determination that an area exhibits wetland characteristics for a sufficient portion of the growing season to qualify as a wetland must be made on a case-by-case basis. Such determinations should consider the respective length of time that the area exhibits upland and wetland characteristics".

The manual (page 80) also states that: *"In some cases, it may be necessary to withhold making a final wetland determination until a site is examined during the wet part of the growing season."*

2.2.4 Sites with Human Induced Wetlands

On the Smith Island site, there are limited areas where wetland plants are present atop the recently placed fill. These areas are potentially "human induced wetlands" and are also considered an atypical situation. The areas should be evaluated according to the *Washington State Wetland Identification and Delineation Manual* procedures (see Section F, pages 71-80). Regarding "human induced wetlands", the Ecology manual identifies procedures use in delineating wetlands that have been purposely or incidentally created by human activities, but in which wetland indicators of one or more parameters are absent. These procedures are not intended to bring into jurisdiction those human-made wetlands that are exempted under applicable regulations or policy. It is also important to consider whether the human-induced changes are now the "normal circumstances" for the area. Both the relative permanence of the change and the functioning of the area as a wetland are implied.

2.2.5 Other Special Circumstances

When interpreting the presence of wetland vegetation, the Ecology manual (page 47) states that *"there must be documented evidence of periodic inundation or saturated soils when the project area:*

- a. Has plant communities dominated by one or more FAC species;*
- b. Has vegetation dominated by FACW species but no adjacent community dominated by OBL species;*
- c. Has a gradual, non-distinct boundary between wetlands and non-wetlands; and/or*
- d. Is known to have or is suspected of having significantly altered hydrology."*

On the Smith Island site, each of these factors apply (see Table 7). Therefore, a key goal of the delineation is to make early spring observations of the site to directly observe areas that may have saturated soil and/or inundated areas that meet the wetland hydrology criteria. On the Smith Island site, the earliest and wettest part of the growing

season occurs during March and April¹ (following April, as rainfall decreases, temperatures warm, and plants use increasing amounts of water, seasonally wet areas begin to dry and can no longer be reliably delineated).

The Ecology manual states that "oxidized rhizospheres surrounding living roots are acceptable hydrology indicators on a case-by-case basis and may be useful in groundwater driven systems" (see WAC 173-22-080 Section 11 (b)(vii)). Oxidized rhizospheres are the result of mineral deposition on and in the soil material surrounding some roots; they should not be confused with decomposing organic tissue. The indicator also requires that rhizospheres be associated with live roots, be reasonably abundant, and within the upper 12 inches of the soil profile. Oxidized rhizospheres are a secondary hydrology indicator, and are recognized as having limited reliability (of the 9 wetland hydrology indicators commonly used in Washington State, this indicator ranks only 7th in reliability (see WAC 172-22-080 (Section 10)) and the Ecology manual (page 33)). As a result of this limited reliability, conclusions regarding wetlands should be supported by other indicators of hydrology if hydrology evidence is weak. Supporting information is especially important on sites where hydrologic alterations are present, where "problem area" wetlands may be present, or where atypical conditions are present.

3 Wetland Findings

The findings of this evaluation are reported in this section. The section includes a review of background and historical information relevant to wetlands and results of an on-site investigation and wetland delineation.

3.1 Background Information Review

Background information relating to the potential occurrence of wetlands and streams on or near the site was reviewed prior to the field evaluation. A USGS (1989) Topographic map was examined to identify general drainage patterns and potential stream and wetlands. Aerial photographs were reviewed to document the history of the site and to evaluate the potential occurrence of flooding or wetland plant communities on the site. To identify previously mapped wetlands, the National Wetland Inventory (NWI) maps (US Fish and Wildlife Service 2007) and Snohomish County Soil Survey maps (Natural Resource Conservation Service 2007) were reviewed.

3.1.1 USGS Topographic Maps and General Land Office Survey

Topographic maps of the site have been prepared by the USGS in 1911 and 1973. The earliest known map of the site is a land survey map prepared by the U.S. General Land Office in 1869. These maps are discussed in this section.

¹ In 2007, climate data for the Everett Junior College Reporting station shows a growing season that started on March 13th, the last date of a 28 degree temperature reading. This temperature threshold is used when specific on-site measurements are lacking.

3.1.1.1 1869 General Land Office Survey Map

The General Land Office Map (GLO) (Figure 5) shows limited information regarding conditions on or near the Pacific Topsoil site. The map shows the general shoreline of the Snohomish River. The slough area, which forms the northern boundary of the site, is not shown, and there is no indication of wetlands, stream, or surface water features on the site. Levees are shown on portions of Smith Island northeast and east of the site, but none are mapped on the site.

3.1.1.2 1911 Topographic Map

The USGS topographic map (Figure 6) shows that the entire Smith Island is levee protected. A railroad constructed along the southeast edge of the site (coincident with the existing road) on the south side. No streams, wetlands, or other surface water are mapped on the site. A tidal channel is mapped south of the site, in the approximate location of the existing landfill that is located southeast of the Pacific Topsoils site.

3.1.1.3 1973 Topographic Map

The USGS topographic map (Figure 7) shows the slough area north of the site and the constructed lagoons located south east of the site. The entire island is shown as being levee protected. No streams, wetlands, or other surface water are mapped on the site.

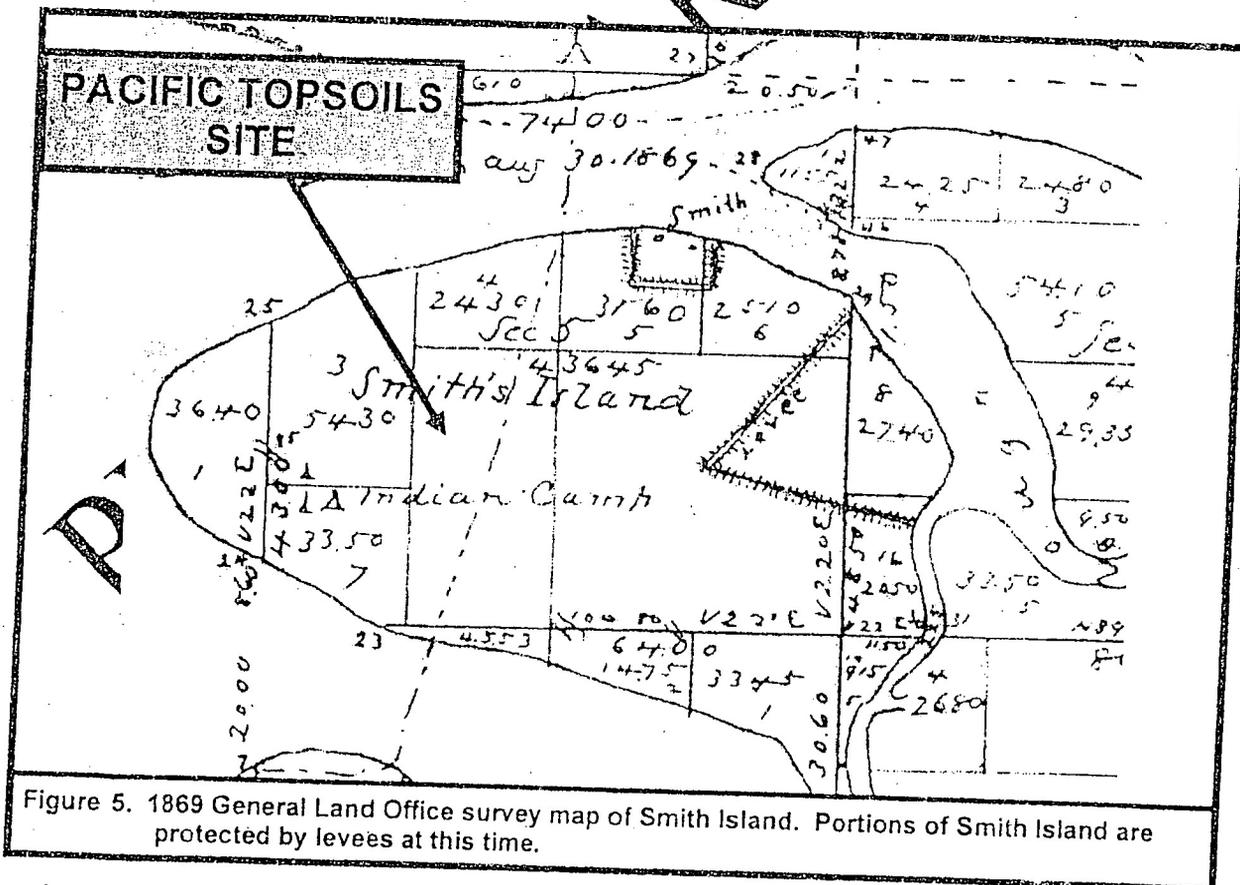


Figure 5. 1869 General Land Office survey map of Smith Island. Portions of Smith Island are protected by levees at this time.

3.1.6 On-Site Wetland Determinations

Based on the review of background information, including findings of substantial hydrologic alterations due to levee construction, the placement of fill and mowing within the past 5 -10 years, the best technical basis for a wetland determination on the Smith Island site is to follow the approach recommended by the Federal Interagency Committee for Wetland Delineation 1989), as outlined in Table 3. The focus of this evaluation was to, through direct observation; determine where on the site wetland hydrology is present. Direct observations of hydrology are required in this case to ensure consistency with the Snohomish County Critical Areas Code (Snohomish County Code 30.62A, State Law (WAC 172.22.080), the Washington State Wetland Delineation Manual (1997), and The Corps of Engineers' Wetland Delineation Manual (1987). Direct observations of wetland hydrology avoid the significant technical and scientific shortcomings identified in the State and Federal wetland delineation manual that may occur on sites where levee construction alters flooding and drainage patterns and/or where evaluation of wetland vegetation is no longer feasible due to filling.

3.1.6.1 *Wetland Hydrologic Interpretations*

Wetland determinations must consider previous rainfall patterns to determine if hydrologic conditions (soil inundation or saturation) are likely to be typical and reflective of normal wetland conditions or if they are aberrant as a result of excessive precipitation. This is especially true for wetland determinations made during the winter and early spring months in western Washington when extended rainy periods may occur.

The most practical technique for evaluating wetland hydrology is to visit the area during the wettest part of the growing season and look for direct signs of wetness (either surface water or high ground water levels). Tiner (1999)⁴ recommends shallow installation of shallow ground water wells that are observed weekly during the wet part of the growing season (March and April, for sites that are not heavily influenced by irrigation waters, spring runoff, or tidal conditions (see Ecology 1997, page 32))⁵

Tiner (1999) identifies cases where a single site visit may provide reliable hydrologic interpretations. These include:

⁴ Ralph W. Tiner is a nationally recognized expert in wetland delineation. As a member of the Federal Interagency Committee on Wetland Delineation, he was compiler and principal author of the federal interagency wetland delineation manual published in 1989.

⁵ In 2007, temperature data for Everett indicates that the growing season began on March 13, the last date of a 28 degree temperature reading.⁶

- If the site is dry during the normally wet period in a wetter than normal year, the site is likely to be effectively drained (Tiner 1999).
- If a site is wet during the typically wet period in a drier than normal year or wet during the dry period of a normal rainfall year, the site would appear to possess wetland hydrology.

While these single site visits may be quite reliable in some circumstances, additional observations during the wet part of the growing season (e.g., March and April in most of Western Washington) are typically needed to make wetland determinations on altered sites.

The rainfall patterns for the months prior to my on-site investigation and prior to the dates various aerial photographs were taken are listed in Table 6. Additional rainfall data are presented in Appendix G. Climate data collected in Everett indicate that the hydrologic conditions present during February, March and April in 1967, 1976, 1981, and 1985 (when wet season aerial photographs were available) are generally reflective of normal rainfall years. Rainfall during 2007 exceeds long term averages, and the observations of groundwater during the spring of 2007 are likely to be somewhat wetter (e.g. higher than average groundwater tables) than average.

Daily rainfall observations (available for Silver Lake, Marysville, and other local stations) indicate that in late March and April 2nd and 3rd substantial rain fell in the Everett area. On April 2nd and 3rd, directly preceding my site visit, relatively intense "convergence zone" showers affected the Everett area and dropped several inches of wet snow on the area, including 1.03 inches of melted precipitation in nearby Snohomish. This rainfall may have resulted in somewhat above average groundwater conditions during the period of my observations.

Based on the local climate observation, and knowledge that the Pacific Topsoils site has been hydrologically, and using "Best Available Science Principles" for logical conclusions and reasonable inferences, it is reasonable and logical to conclude, that:

- During the early growing season of 2007 (a wetter than normal season), an area that lacks wetland hydrology is non-wetland. These areas would also be expected to lack wetland hydrology during a similar normal rainfall period.
- During the early growing season of 2007 (a wetter than normal period), some areas where marginal wetland hydrology is found may not be wetlands. In a normal rainfall period, some of these areas may lack wetland hydrology. For these areas, additional observations may be needed to determine the wetland/non-wetland status of the area.

- During the November - February 2007 period (a wetter than normal season) areas where wetland hydrology is found may not be wetland. Studies during the early part of the growing season may be required to make definitive conclusions regarding their wetland status.

Table 6. Summary of precipitation data preceding dates of on-site observations in 2007 and historical "wet season" aerial photographs obtained for this study.

Month	Long Term	Everett - Silver Lake	Everett Junior College				
	Average	2007	2007	1967	1976	1981	1985
November	5.11	10.50	9.41(4)	4.59	6.29	<i>M (>25)</i>	7.51
December	4.99	6.78	6.79	6.67	4.37	3.98	5.89
January	4.37	3.81	3.57	7.18	3.83	3.25	0.54
February	3.41	3.17	2.57	2.75	3.07	3.11	3.2 (3)
March	3.86	5.32	4.63	3.58	4.36	-	-
SUM	21.74	29.59	26.97	24.77	21.92	10.34	17.14

Note: Values in bold italic include missing daily values (the numbers of missing observations are identified in parenthesis). Due to missing data in 2007, data for Silver Lake in Everett are also provided. The Silver Lake reporting station is maintained by Cascade Climatology Consulting Corporation. Years 1967, 1976, 1981, and 1985 are selected to correspond to aerial photographs available during the wet season, where surface water indicating the potential presence of wetlands is most likely (See Appendix I). The months listed include November and December of the previous years, as conditions during these months may be relevant to interpreting any surface water observed on an aerial photograph.

3.1.6.2 Soil and Water Table Conditions Adjacent to Fill

The soil and hydrologic conditions in undisturbed areas located immediately adjacent to the fill were evaluated for wetland conditions. This evaluation was conducted during the early growing season (between April 3 and April 17, 2007), and during the winter months of 2007/2008. The evaluation included the excavation of shallow holes to determine if hydric soil conditions and shallow groundwater (indicative of wetland hydrology) were present. Soil and hydrologic conditions were examined in about 35 locations on April 3, April 6, and April 17, 2007; during the winter, 6 additional, similarly located sites were added to the evaluation. The various soil characteristics and features examined are interpreted, relative to wetland or non-wetland conditions, as shown in Figure 2. On the Pacific Topsoils site, areas on the west side of the fill contained indicators of hydric soil. Areas north and northeast of the fill generally lacked hydric soil indicators. Because of hydrologic modifications (levees and artificial drainage of the site since the early 1900s), the occurrence of hydric soil colors may be a relict feature, where soils were historically exposed to flooding and high water tables, but, as indicated by aerial photographs and groundwater observations, are no longer present. Additional direct observations of actual wetland hydrology must be made in early March to demonstrate where area adjacent to the fill as wetland.

To examine the area for wetland hydrology, holes were dug and examined along the fill perimeter. Holes examined along the northeast portion of the site had ground water depths greater than 15 inches below the soil surface throughout the observation period. In this area, the soils generally lack the color patterns typically found in wetland soils, and there is high confidence that the area is non-wetland (Table 7 and Appendix D).

Soil water tables in the northwest portion generally had water tables that were 12 -14 inches on April 3 and 6, and were greater than 14 inches on April 17. In the central portion of a small patch of reed canary grass (also an area unaffected by fill), ground water was less than 12 inches below the ground surface on April 3, and greater than 12 inches below the soil surface on April 17. Because the groundwater monitoring Well 6 shows that this area has shallow water tables present during much of March, the observations suggest that the central portion of the reed canary grass patch is likely wetland, but other areas adjacent to the fill are unlikely to be wetland.

The April, December and January data demonstrate the water table on this site is quite dynamic, and groundwater within the upper 12 inches of the soil is generally ephemeral and intermittent during the wet season. For these reasons, wetland delineation must rely on the "problem area" methodology of the delineation manual (see page 81, paragraph 78(b) of the *Washington State Wetlands Delineation Manual*). Additional observations during the early growing season must be made before a final wetland determination can be made. This interpretation is consistent with the Ecology manual (page 81) which states that:

"In some cases, it may be necessary to withhold making a final wetland determination until a site is examined during the wet part of the growing season".

While the April observations were made during the wet part of the growing season, they also follow a period of above normal precipitation, and should be verified during a period of more normal rainfall (see Section 3.1.6.1).

Along the south and southwest edge of the fill (identified as Wetland 1A by Parametrix (2007)), the groundwater table was found to be within 12 inches of the soil surface on April 3 and 6th and during the winter months. On April 17th, the water table ranged from 7 to >14 inches below the soil surface. Ground water monitoring wells near this area indicate that the wetland hydrology criteria is not met. Wetland hydrology was not present in most of this area for more than 14 consecutive days during the early growing season, and the area may thus be non-wetland. In some areas, measurements indicate that the wetland hydrology criteria are met, and the areas are likely wetland. Observations during the winter months suggest the potential that some areas south of the fill are not wetland. The observations show that during wetter than average periods (December to mid-January) the area experience high groundwater. During a period of normal precipitation the water table drops to levels that frequently fail to meet wetland hydrology criteria.

Parametrix identified an area near the west-central portion of the fill as Wetland 1B. Several monitoring sites are located in this area (Table 7). The several groundwater observation locations and periods demonstrate that the groundwater table in this area is intermittent and ephemeral. Additional observations during the early growing season must be made before a final wetland determination can be made, but April 2007 and January 25 2008 observations suggest that the area is non-wetland.

Parametrix identified an area near the northwest portion of the fill as Wetland 1C. Several monitoring sites are located in this area (Table 7). The groundwater observation locations and periods demonstrate that the groundwater table in this area is generally located near the surface during the winter months. In April 2007, much of the area supported wetland hydrology and should be considered wetland. A delineation on April 17, 2007 indicated that wetland hydrology occurred in the central portion of the wetland, but the more peripheral areas lacked hydrology and should not be considered wetland. Additional observations during the early growing season of 2008 are being made to verify the findings of 2007. The observations made on January 25 suggest that delineation made in 2007 is correct.

Several groundwater monitoring wells were installed by Parametrix, Inc. Wells located near the fill that are relevant to my analysis are Well #s 6, 9, 10, 12, 18, 26, and 27 (See Appendix D, and Table 8). Conditions measured by Parametrix, Inc. in these wells are as follows:

- Well 6, located in a small depression near the edge of fill was found to have a groundwater table within 14 inches of the soil surface between the date of installation (March 23, 2007) and April 16, 2007. This area meets the wetland hydrology criteria.
- Well 9 is located about 40 feet west of the fill. Water levels found at this location were consistently more than 2 feet below the ground surface. The area in the vicinity of this well does not appear to meet the wetland hydrology criteria.
- Well 10 is located about 30 ft from the west side of the fill. Water levels found at this location were consistently more than 1.3 feet below the ground surface. The area in the vicinity of this well does not meet the wetland hydrology criteria.
- Well 12 is located about 50 ft from the west side of the fill. Water levels found at this location were consistently more than 2.1 feet below the ground surface. The area in the vicinity of this well does not meet the wetland hydrology criteria.
- Well 18 is located about 90 ft from the west side of the fill. Water levels found at this location were consistently more than 2.1 feet below the ground surface. The area in the vicinity of this well does not meet the wetland hydrology criteria.

Table 7. Hydrologic measurements obtained from hand dug soil pits located in undisturbed areas near the edge of fill (continued).

- Well 26 is located about 80 ft from the southwest side of the fill. Water levels found at this location were less than 1.0 feet below the ground surface between March 20 and March 26th. The water level was also less than 12 inches below the ground surface on April 4th and April 9th. The area in the vicinity of this well may meet the wetland hydrology criteria, as data suggest that a water table within 12 inches of the soil surface may be present during the early growing season (early March).
- Well 27 is located about 40 ft from the south side of the fill. Water levels found at this location were less than 1.0 feet below the ground surface on March 20th and very near the 12-inch hydrology criteria on several other occasions. The area in the vicinity of this well may meet the wetland hydrology criteria, as data suggest that a water table within 12 inches of the soil surface may be present during the early growing season.

3.1.6.3 Soil Borings through the Fill

Soil borings were made through the fill material and samples of natural soil from beneath the fill were obtained and examined for wetland soil colors and saturated conditions that could indicate the potential presence of wetland hydrology. Borings in the fill were obtained from about 44 locations (Appendix E). At these locations, the colors and textures of native soil materials were described. Soils were examined to determine if they were saturated. Saturation was evaluated by observing extracted soil samples for glistening, which indicates very wet soils conditions, where the soil pore spaces are largely filled with free water. Soils were also squeezed between the fingers to collapse their pore space.

When squeezed, if the pore space is filled or partially filled with free water, small water droplets emerge from the soil. If soils lacked free water in the pore space, no water droplets would emerge when squeezed. Since both saturated and non-saturated soils can emit water during the "squeeze test", the test cannot be used to confirm the presence of soil saturation and cannot be reliably used for wetland delineations. In this study, the test was used to identify areas where further evaluation of soil hydrologic conditions may be necessary. If soils lacked free water in the pore space, no water droplets were visible upon squeezing, and a reliable conclusion that saturation is absent and the area is non-wetland was made.

The natural soils found in all borings were found to meet the hydric soil color criteria within the upper 12 inches of soil. This finding is similar to the finding of hydric soil colors in areas adjacent to the fill, and may be similarly related to the drainage alterations caused by levees and a tidegate, which has apparently drained the area to permit farming.

Soils retrieved from most borings were not saturated in the upper 12 inches. In these soils, no glistening of the soil sample was present, and water could not be squeezed from the soil samples (see Appendix E). Several soil samples obtained near the west and southwestern portions of the fill were found to have free water in their pore space, and thus may be at or near saturation. Further evaluation of these soils is necessary to determine if they are saturated, and if this saturation meets the wetland hydrology criteria (saturation for 14 consecutive days during the growing season). The area of fill that is atop these wet soils is estimated to be between 0.1 and 0.2 acres in size.

Geotechnical consultants (Mr. Sondergaard of Associated Earth Sciences Inc., Kirkland, WA) determined that despite the volume of fill material placed atop natural soils, the presence of saturated soil beneath the fill would be expected if the areas beneath the fill were indeed wetland. This assessment was proven to be true, as areas of saturated soils were found beneath the fill, and these areas generally corresponded to areas of

saturated soil found adjacent to the fill. Where non-saturated soil was found adjacent to the fill, soils beneath the fill were non-saturated.

3.1.7 Vegetation adjacent to fill

Vegetation adjacent to the 12 acres of fill material was examined to determine if it was indicative of wetlands. This assessment included examining the dominant (those species that comprise greater than 20 percent ground cover) plant species and determining their wetland indicator status. Where greater than 50 percent of the dominant species are rated facultative, facultative wetland, or obligate wetland plants (see Table 3), then the dominant vegetation is considered adapted to wetlands and is hydrophytic (wetland) vegetation if it occurs on hydric soils that are subjected to wetland hydrology.

Plant species were examined in April, June, and July 2007. Plant species found on the site are listed in Table 10. In nearly all locations, the dominant plants found are rated as facultative wetland plants (FAC, plants equally likely as occurring in either wetlands or uplands, see Table 3). As a result, vegetation cannot be reliably used to determine the likelihood of wetlands on the site. Wetlands determinations must be based on the presence of hydric soil and wetland hydrology conditions.

In interpreting vegetation as an indicator of wetland hydrology on this site, wetland hydrology must be found. Specifically, the manual states that "*there must be documented evidence of periodic inundation or saturated soils when the project area*" as listed in Table 11.

On the Pacific Topsoils site, each of these factors apply. Under these circumstances, wetland hydrology determinations must be reliable and, as noted in the manual, and other scientific sources, they should be direct observations of wetland hydrology. Reliance on marginally reliable secondary indicators (such as the occasional presence of oxidized iron rhizospheres) is not sufficient.

3.1.8 Wetland Determination

The site was examined for wetland and streams during early April 2007. At these times, 2 wetlands were identified on the Smith Island Site, adjacent to recently filled areas. Characteristics of the wetlands occurring on or near the site are tabulated in Table 12 and shown in Figure 11. All wetlands are classified as Category 3 wetlands because they are dominated by non-native plant species, lack significant hydrologic and vegetative diversity, and do not contain the characteristics of Category 1 or 2 wetlands.

Table 12. Summary of critical areas present adjacent to the Smith Island fill area.

Wetland	Rating	Buffer	Rating Score by Function		
			Water Quality	Hydrology	Habitat
Wetland A (located west of fill)	III	60 ft	16	14	12
Wetland B (located south of fill)	III	60 ft	14	14	14

These wetland areas were identified following procedures contained in the 1997 *Washington State Wetlands Delineation Manual* (Ecology 1997) and the Army Corps of Engineers' *Wetland Delineation Manual*. (Environmental Laboratory 1987), using the "atypical areas" assessment procedures (for areas beneath the fill) (Table 13) and the "problem areas" assessment procedures (for grassland areas adjacent to the fill)(Table 14). Key vegetation, soil, and hydrologic conditions and conclusions relative to these wetland determinations discussed below.

For areas evaluated under the atypical conditions (filled areas) direct observations of hydrologic conditions beneath the fill were made and used to identify non-wetland and areas of potential wetland. The area of potential wetland where buried saturated soil were found were correlated to similar hydrologic conditions in monitoring wells and soil pits located immediately adjacent to the fill. In areas where buried soils were not saturated, the adjacent grassland vegetation was found to occur on non-saturated soils. Coupled with historical records that fail to show flooding on the site (wet season aerial photographs), observations by Ecology staff regarding wetland conditions, and other (factual observations regarding soils, drainage alterations etc.) that are discussed above, the wetland delineation has been conducted in accordance with the Ecology manual.

Limited areas atop the fill support wetland vegetation and seasonally wet soils. In these areas, the fill soils are greater than 18 inches in depth, and adjacent non-fill areas are also immediately adjacent to non-wetland grassland where fill is absent and near areas where the native soils lack early season soil saturation. As a result, the soils beneath these areas are not wetland. Wetland vegetation growing on placed fill recently place in non-wetlands is not regulated by Section 404 of the Clean Water Act. They are properly identified as non-jurisdictional human induced wetlands.

Table 14 Summary of Problem Area Analysis for Potential Wetlands Beneath recently placed Fill on Smith Island.⁷

Item	Finding	
1	<i>Identify the Parameter(s) to be Considered.</i>	This assessment considers grassland vegetation to be the "normal circumstance" for vegetation on the site because it has existed on the site since about 1995 when periodic mowing was re-initiated. Mowing is a legal activity, and consistent with the Ecology Manual (see page 70). Ecology states that: The atypical section "should not be used for activities that have been previously authorized or those that are exempted from regulation. For example, this section is not applicable to areas that have been legally drained or not regulated." While some of these areas may be wetlands other procedures described in the manual must be used in these cases. Since mowing is not an illegal activity in a wetland, and since it is not a recent activity on this site that has obscured the ability to make wetland determinations from the established grassland vegetation, the atypical assessment approach is not valid.
2	<i>Determine the Reason for Further Consideration</i>	The problem area methods are appropriate due to the altered drainage conditions, which have reduced or eliminated the amount and duration of soil saturation on the site.
3	<ul style="list-style-type: none"> • Environmental condition(s) that have impacted the parameter(s). 	Conditions that have altered hydrology include levee construction, the presence of nearby operating tidegates, and drainage ditches.
4	<ul style="list-style-type: none"> • Impacts of the identified environmental condition(s) on the parameter(s) in question. 	The above alterations have effectively drained much of the site. The hydric soil on the site is identified as effectively drained, which indicates a substantial hydrologic alteration.
5	<i>Document Available Information for Parameter(s) in Question.</i>	Topographic maps, historical documents, the soil survey, and on-site observations indicate the presence of levees, tidegates, and ditches. The best available information regarding wetland hydrology on the site are well and soil observation made during March and April 2007 (see Appendix D).
6	<i>Determine Whether Wetland Indicators are Normally Present During a Portion of the Growing Season</i>	For vegetated areas where mid-April groundwater was found to occur within 12 inches of the soil surface, wetland hydrology was presumed likely. There is some probability that the duration soil saturation may not be met due to the wetter than normal conditions observed in 2007 (see Appendix G). Hydric soils and wetland vegetation parameters are present.

3.1.9 Wetland Rating and Functions

The potential ecological functions provided by the wetlands were evaluated using the Washington State Wetland Rating System (Ecology 1996). Both wetlands are rated as Category III wetlands. Because of the habitat features present, they score considerably less than 20 points, indicating low function for wildlife species and habitats. They provide moderate low to moderate functions for water quality improvement and hydrologic functions.

⁷This summary address a problem area wetland analysis for conditions adjacent to the the recently placed fill.

3.1.10 Summary and Recommendations

- This evaluation provides strong evidence that no wetlands are present under the majority of the 12 acres of fill placed by Pacific Topsoils. Hydrologic conditions found near the fill perimeter, hydrologic conditions found beneath the fill, and information from aerial photographs support this conclusion. Vegetation found near the perimeter of fill is also consistent with this conclusion.
- Most areas beneath the fill were found to lack soil saturation. Because these observations were made during the wet part of the early growing season and in a year with above normal rainfall, they considered determinative. This finding is consistent with recommended interpretations by Tiner (1999), Ecology and Corps wetland delineation manuals, and "Best Available Science" analysis. Tiner (1999) and logical inference indicate that a site that lacks wetland hydrology during the normally wet period in a wetter than normal year, is likely to be effectively drained.
- Near the northwest edge of the fill, a small reed canary grass dominated wetland present (Wetland A). This area is about 0.2 acres in size. The wetland area appears to be contained entirely a shallow depression that was not subjected to fill activities. The edge of this wetland is dominated by reed canary grass, occurs on natural soils, and does not extend to the fill material that is generally placed around the wetland.
- Some areas south and southwest west of the fill may meet the wetland hydrology criteria (Wetland B). Further evaluation in this area is needed during the early growing season in 2008 to verify that these areas meet the wetland hydrology criteria during periods of normal rainfall and during the early growing season. Areas meeting the wetland delineation criteria must be flagged and surveyed.
- Wet soil areas beneath the fill (estimated to be about 0.1 to 0.2 acres) soils were found adjacent to Wetland B. These soils contained some free water within their pore space, but it is unknown if they are saturated within 12 inches of the soil surface for 14 consecutive days during the early growing season. Further evaluation must be conducted during the early growing season in 2008. This evaluation must also consider precipitation patterns, and whether the precipitation falls within the normal ranges, as defined by agency (Natural Resource Conservation Service or Corps of Engineers Guidance (see Appendix G)). Evaluation must focus on determining whether the depth to groundwater beneath estimated elevation of the pre-fill soil horizon, and meets the 12-inch criteria for wetlands and if soil saturation extends to the surface. Installation of groundwater monitoring wells may be desirable to make this determination.
- Mowing of plants within 50-ft of the fill should not occur so that future evaluations can more accurately include vegetation assessments.
- Fill located over the 0.1 - 0.2 acre area where wet soils were found could be removed to facilitate hydrologic evaluations in 2008. Either complete removal or excavation of trenches in the fill to provide direct visual observation of

undisturbed natural soil is desirable. If this approach is taken, care must be taken to avoid operating equipment on the newly exposed, original soil surface. Equipment operated in this area could compact soil, altering soil structure, and reduce water infiltration rates. Were this to occur, erroneous conclusions regarding the pre-fill wetland condition could result.

- On other areas of the fill, where there is no evidence of wet soil conditions, additional data could be collected using the same boring techniques and evaluation methods used in 2007. Additional information to document the apparent non-wetland condition of these areas could include use of monitoring wells that extend through the fill and 18 to 24 inches into the underlying native soil. If used, these wells must be carefully screened within the natural soil horizons, and thoroughly sealed with bentonite above the natural soil (e.g. throughout the fill material). Frequent measurements (at least bi-weekly) should be taken during the February to April period).
- Studies completed in 2007 and the background information discussed above should be more thoroughly documented in a technical memorandum.

PRELIMINARY DRAFT

3. Summary of Cases Handled by Pollution Control Hearings
Board.

3

**EHO Case Manager
Closing Case Summary**

Case #	Case Name	Appeal Type	Date Filed	Date Closed
P07-066	Quality Rock Products v. Ecology Reason: Appeal of \$12,230 penalty for not completing a two-cell pond, waterfall, pond overflow, and not monitoring and reporting. Result:	WP	6/6/07	10/26/07
P07-069	United Agri Products dba UAP Distribution v. Ecology Reason: Appeal of penalty for failing to designate waste as dangerous waste. Result:	WP	6/8/07	11/7/07
<i>Agreed Dismissal - Mediated Settlement</i>				
P01-029	Bert DeGroot and John DeGroot dba DeGro-View Farms, Inc. v. Ecology Reason: Appeal of an \$8,000 civil penalty for failure to comply with immediate action order. Result: The Degroofs challenged a civil penalty issued for discharge of manure contaminated water. Following mediation, the parties agreed to a stipulated order of dismissal. The board dismissed the appeal.	WP	3/8/01	2/26/02
P01-055	Robin Herring v. Ecology and Dodson Road Orchards, LLC Reason: Appeal of the issuance of State Waste Discharge Permit issued to Dodson Road Orchards. Result: The appellants individually challenged the waste discharge permit issued to Dodson Road Orchards. The cases were consolidated. With the assistance of a mediator, the parties reached a stipulation that would give the orchard time to pursue hooking up to the City of Quincy's waste treatment system. A one year stay was imposed. The stay expired. Although the facility is not yet connected to the system, progress has been made to that end. After a Show Cause Order, the board dismissed the appeal without prejudice. Consolidated with PCHB No. 01-061.	WP	5/8/01	10/30/02
P01-061	Richard Royston v. Ecology & Dodson Road Orchards Reason: Appeal by third party of issuance of state waste discharge permit to Dodson Road Orchards. Result: June 6, 2001, case was dismissed for failure to perfect appeal, even though allowed time to do so. Order Nunc Pro tunc issued due to problem with US mail. Appeal re-opened on June 18th. Consolidated with PCHB No. 01-055. The appellants individually challenged the waste discharge permit issued to Dodson Road Orchards. The cases were consolidated. With the assistance of a mediator, the parties reached a stipulation that would give the orchard time to pursue hooking up to the City of Quincy's waste treatment system. A one year stay was imposed. The stay expired. Although the facility is not yet connected to the system, progress has been made to that end. After a Show Cause Order, the board dismissed the appeal without prejudice.	WP	5/10/01	10/30/02
P01-187	C.C. Edwards Construction Co. & Jack Willing v. Ecology Reason: Appeal of \$9000 civil penalty for violations of NPDES Construction Stormwater Permit. Result: The parties reached a settlement of a \$9000 penalty assessed for alleged water quality violations. The company agreed to pay a portion of the penalty and the remainder was suspended on the condition that the appellants have no further water quality violations during the next three years.	WP	11/28/01	5/8/02
P01-193	Phillip F. Olsen v. Ecology Reason: Appealing a penalty of \$1,000 for unlawful discharge of oil into state waters. Result: The appellant withdrew his appeal of a citation issued in connection with an accidental oil spill and chose to pay the penalty.	WP	12/24/01	4/10/02
P02-012	Fields Corporation v. Ecology Reason: Appeal of \$25,000 civil penalty for discharge of diesel fuel. Result: This was settled through mediation. During fuel transfer activities, Fields Corporation discharged between 150-400 gallons of diesel fuel into onsite ditches that ultimately discharged into the Blair Waterway of Tacoma. Ecology assessed a penalty of \$25,000. Fields admitted liability but contested the reasonableness of the fine. A settlement was achieved, structured upon a reduced and mitigated penalty in exchange for proven periods of fault free performance. Accordingly, the case was dismissed.	WP	1/30/02	7/24/02
P02-081	Woodinville Riding Club/Futurity Farms, Inc. v. Ecology Reason: Appeal of a \$6,000 civil penalty issued by Ecology for improper manure management. Result: Woodinville Riding Club challenged a \$6,000 penalty issued by Ecology for improper manure management. The parties, in mediated settlement discussions, agreed to a stipulated settlement in which the appellants agree to develop and implement a farm plan approved by the Conservation District. Details about the Farm Plan are contained in the stipulated Agreement. The board dismissed the case.	WP	6/17/02	11/15/02
P02-128	Public Utility District No. 1 of Stevens County v. Ecology Reason: Appealing a Waste Discharge Permit for Clayton Sewer System.	WP	8/12/02	3/12/03

**EHO Case Manager
Closing Case Summary**

Case #	Case Name	Appeal Type	Date Filed	Date Closed
Agreed Dismissal - Mediated Settlement				
P03-054	Belfair Sand & Gravel, Inc. and Allen Shearer Sand and Gravel, LLC v. Ecology Result: This case was dismissed based upon a mediated settlement. Modifications to the waste discharge permit for the Clayton Sewer System were developed jointly and processed by Ecology. Reason: Appealing a penalty of \$18,000.	WP	4/4/03	1/9/04
P03-065	Port of Seattle v. Ecology Result: The appellant challenged a \$18,000 penalty imposed for failing to appropriately respond to a Notice of Correction issued for the lack of sediment and erosion control at a sand and gravel site. The parties reached a mediated settlement which withdraws the penalty if the appellant constructs and paves an asphalt road at the site with appropriate drainage. The appeal was dismissed. Reason: Appealing a penalty of \$99,000 for discharge of oil into the East Waterway on Harbor Island.	WP	4/21/03	8/20/03
P03-132	Northwest Aquatic Eco-Systems v. Ecology Result: Ecology issued a \$99,000 civil penalty to the Port of Seattle for an oil spill. The parties, through mediation, were able to reach a settlement. Reason: Appealing Administrative Order requiring compliance with proper notification.	WP	9/11/03	12/19/03
P04-118	Marshland Flood Control District v. Ecology Result: Appellant contested an Administrative Order issued by Ecology for failure to comply with all the posting and notification requirements required under the Aquatic Nuisance Plant and Algae Control NPDES General Permit. The appellant requested removal of false statements regarding his business from all Ecology files in addition to rescission of the order. The parties agreed to several steps to improve their working relationship, and the case was dismissed. Reason: Appeal of penalty in the amount of \$4,000 for alleged dredging violations.	WP	9/1/04	1/20/05
-129	PUD No. 1 of Stevens County v. Ecology & Mike's Septic Result: The parties reached a mediated settlement of this dispute over flood control ditch maintenance activities. The District agrees to obtain hydraulics project approval for such activities so appropriate best management practices can be assured. The penalty assessed will be reduced annually as compliance is demonstrated. Dispute resolution mechanisms are in place for any future concerns. Pursuant to the settlement, the case was dismissed. Reason: Appeal of permit granted to Mike's Septic and request that the permit be terminated and rendered void.	WP	9/20/05	4/17/06
P07-097	Passage Tug & Barge LLC v. Ecology Result: The parties reached a settlement of this biosolids permit appeal through board-sponsored mediation. The case was, accordingly, dismissed. Reason: Appeal of \$4000 penalty for spilling diesel into the water.	WP	7/24/07	9/17/07
	Result: Ecology issued a \$7000 penalty to the appellant for a diesel spill attendant to the sinking of a tug boat. The parties settled the case after a board mediation and the appeal was dismissed.			
Agreed Dismissal - Rescission of Order				
P01-170	Bosma Enterprises, Inc. v. Ecology Reason: Appeal of Ecology order to allow access for an inspection. Result: Case was dismissed after Ecology rescinded the order in question.	WP	10/19/01	2/12/02
P02-212	Ferndale Town Center, LLC. v. Ecology Reason: Appeal of administrative order issued by Ecology to Ferndale Town Center. Result: Ecology rescinded an administrative order requiring site stabilization after it appeared satisfactory work had been completed. Both parties agreed the case was no longer in controversy. The appellant requested an award of attorneys' fees which the board denied as outside its statutory authority. The appeal was dismissed without costs and attorneys' fees.	WP	11/22/02	4/23/03
P06-048	Julie LeMay v. Ecology Reason: Appeal of an Administrative Order to stop work on a boat. Result: This case involved an appeal of a corrective action order issued by Ecology related to unpermitted ship repair work. After further evaluation of the facts and law surrounding the matter, in consultation with Appellant, Ecology rescinded its order. Appellant then requested withdrawal of the appeal, and the board dismissed the case.	WP	7/10/06	9/13/06
Agreed Dismissal - Stipulated				
P96-280	Darigold, Inc. v. Ecology Reason: Summary of Scheduled Permit Report Submittals for NPDES permit.	WP	11/26/96	9/13/02

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**EHO Case Manager
Closing Case Summary**

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Stipulated</i>				
P96-281	City of Centralia v. Ecology	WP	11/26/96	9/13/02
	<p>Result: The parties entered into a settlement agreement which was based upon completion of the actions required in a Federal Consent Decree, which called for approval of a total maximum daily load (TMDL) and a National Pollutant Discharge Elimination System (NPDES) permit. These milestones have been completed. Based on the parties' settlement, the board dismissed the appeal. Three appeals were consolidated into one action, comprising PCHB 96-280, 281, 282.</p> <p>Reason: Appeal of conditions imposed by Ecology on an NPDES permit.</p>			
P96-282	City of Chehalis v. Ecology	WP	11/27/96	9/13/02
	<p>Result: The parties entered into a settlement agreement which was based upon completion of the actions required in a Federal Consent Decree, which called for approval of a total maximum daily load (TMDL) and a National Pollutant Discharge Elimination System (NPDES) permit. These milestones have been completed. Based on the parties' settlement, the board dismissed the appeal. Three appeals were consolidated into one action, comprising PCHB 96-280, 281, 282.</p> <p>Reason: Appeal of conditions imposed by Ecology on an NPDES permit.</p>			
P99-171	Arco Products Company v. Ecology & Resources Inc.	WP	10/26/99	5/8/01
	<p>Reason: Appeal of certain conditions contained in an NPDES permit.</p> <p>Result: The parties entered a stipulation, agreeing to an amended permit. After Ecology amended the permit, as agreed, the appellant withdrew his appeal.</p>			
P99-198	City of North Bend v. Ecology	WP	12/20/99	5/29/01
	<p>Reason: Appeal of new and more restrictive discharge limitations placed on city's NPDES Permit.</p> <p>Result: Parties stipulate and agree upon actions to be taken regarding the permit for discharge from the municipal wastewater treatment plant. Ecology will initiate the public process to modify the permit in several specific ways relating to: 1) effluent limitations; and 2) compliance schedules for heavy metal limitations. The stipulation was entered as an order of the PCHB and the case dismissed with prejudice.</p>			
P00-013	Carl Post d/b/a Sand Road Dairy Farm, Inc. v. Ecology	WP	2/2/00	6/18/01
	<p>Reason: Appealing \$72,000 penalty for discharges of manure from dairy to flowing drainage ditches.</p> <p>Result: Case dismissed upon settlement between the parties.</p>			
P00-016	Dale Marr dba Marr Mink Farm v. Ecology	WP	2/4/00	5/9/03
	<p>Reason: Appeal of \$24,000 penalty for water pollution discharge.</p> <p>Result: The parties entered into a settlement involving partial payment and a donation of a parcel of land adjacent to the Nooksack River, to the Whatcom Land Trust. Based on this stipulation, the board dismissed the appeal.</p>			
P00-053	J. H. Baxter Company v. Ecology	WP	5/12/00	10/25/01
	<p>Reason: Appeal of state waste discharge permit and administrative order.</p> <p>Result: The parties entered a stipulation and agreed order of dismissal. The settlement resulted in modifications to the permit and clarifications to the order. The board dismissed the appeal based upon the stipulation. Consolidated with PCHB No. 00-055.</p>			
P00-055	J. H. Baxter Company v. Ecology	WP	5/12/00	10/25/01
	<p>Reason: Appeal of Administrative Order.</p> <p>Result: The parties entered a stipulation and agreed order of dismissal. The settlement resulted in modifications to the permit and clarifications to the order. The board dismissed the appeal based upon the stipulation. Consolidated with PCHB No. 00-053.</p>			
P00-063	City of Snohomish v. Ecology	WP	5/17/00	4/4/03
	<p>Reason: Appealing NPDES Permit conditions.</p> <p>Result: The City of Snohomish appealed the terms of the NPDES permit for discharges from its sewage treatment plant. Effluent discharge limitations for copper and carbonaceous biochemical oxygen demand were in dispute. The parties agreed to the conduct of a mixing zone study. The study results led to construction of a 4 port diffuser. The concern for water quality was resolved and the case dismissed.</p>			
J85	Boulevard Excavating, Inc. v. Ecology	WP	6/21/00	2/16/01
	<p>Reason: Appeal of a \$9,000 penalty for violations of sand and gravel permit.</p>			

EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Stipulated</i>				
P00-092	<p>Result: Dismissed on stipulation providing for an \$8,000 Supplemental Environmental Project and reducing penalty to \$1,000.</p> <p>Marco Seattle, Inc. v. Ecology</p> <p>Reason: Appeal of certain conditions on NPDES permit for stormwater discharges from a shipyard.</p>	WP	5/26/00	1/23/01
P00-099	<p>Result: The parties reached a settlement agreeing to modifications in conditions. The Board signed the Stipulation and Agreed Order of Dismissal.</p> <p>Westfarm Foods v. Ecology</p> <p>Reason: Appeal of conditions placed on a NPDES permit.</p>	WP	7/10/00	11/16/01
P00-102	<p>Result: The parties achieved a stipulated settlement agreeing to certain modifications of the permit. The board approved the stipulation and dismissed the appeal.</p> <p>Department of Energy v. Ecology</p> <p>Reason: Appeal of Administrative Order issued by Ecology.</p>	WP	7/13/00	12/27/01
P00-106	<p>Result: The parties reached settlement and agreed to dismiss the appeal. Consolidated with PCHB Nos. 00-106 & 00-156.</p> <p>CH2M Hill Group, Inc. v. Ecology</p> <p>Reason: Appeal of two Administrative Orders issued by Ecology.</p>	WP	7/13/00	12/27/01
P00-122	<p>Result: The parties reached settlement and agreed to dismiss the appeal. Consolidated with PCHB Nos. 00-102 & 00-156.</p> <p>Doelman Dairy Farm v. Ecology</p> <p>Reason: Appeal of \$4,000 penalty for failure to comply with NPDES & discharge permit.</p>	WP	8/10/00	9/5/01
P00-123	<p>Result: The parties reached settlement and an order of dismissal was entered.</p> <p>Doelman Dairy Farm v. Ecology</p> <p>Reason: Appeal of \$3,000 penalty for failure to comply with NPDES & discharge permit.</p>	WP	8/10/00	9/5/01
P00-124	<p>Result: The parties reached settlement and an order of dismissal was entered.</p> <p>Doelman Dairy Farm v. Ecology</p> <p>Reason: Appeal of \$3,000 penalty for failure to comply with NPDES & discharge permit.</p>	WP	8/10/00	9/5/01
P00-128	<p>Result: Case dismissed pursuant to stipulation of the parties. Appellant undertook action to develop and implement a stormwater pollution prevention plan.</p> <p>Groat Brothers, Inc. v. Ecology</p> <p>Reason: Appeal of alleged permit violations and pollutant discharges.</p>	WP	8/21/00	1/9/01
P00-135	<p>Result: Dismissed on stipulation reversing industrial classification and monitoring requirements.</p> <p>Weyerhaeuser Company v. Ecology</p> <p>Reason: Appeal of NPDES permit industrial classification.</p>	WP	8/24/00	3/29/01
P00-156	<p>Result: The parties reached settlement and agreed to dismiss the appeal. Consolidated with PCHB Nos. 00-102 & 00-106.</p> <p>United States Department of Energy v. Ecology</p> <p>Reason: Appealing a penalty of \$200,000.</p>	WP	9/19/00	12/27/01
P00-158	<p>Result: Dismissed on stipulation reducing penalty to \$2,500 and suspending \$2,500 on condition that there be no violations within one year.</p> <p>Tony Barnes dba Highway 3 Wrecking v. Ecology</p> <p>Reason: Appeal of \$5,000 civil penalty for water quality violations.</p>	WP	9/25/00	1/9/01
P00-170	<p>Result: The parties reached a settlement. The appellant agreed to take several steps to eliminate the discharge, and in the meantime apply for coverage under the general permit for industrial discharge of stormwater. The Board dismissed the appeal based upon the parties' stipulation.</p> <p>H & H Diesel Service, Inc. v. Ecology</p> <p>Reason: Appeal of Ecology regulatory order requiring appellant to stop certain stormwater discharges to waters of the state due to alleged violations of Washington Water Pollution Control Act.</p>	WP	11/1/00	2/27/01
77	<p>Result: Dismissed on stipulation modifying effluent limitations on permit.</p> <p>United States Department of the Navy v. Ecology</p> <p>Reason: Appeal of NPDES permit conditions.</p>	WP	11/29/00	6/18/01

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EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Stipulated</i>				
P00-183	The Oeser Company v. Ecology Reason: Appeal of \$12,000 civil penalty for alleged violations of pH and pentachlorophenol discharge limits of an NPDES permit. Result: The parties settled, with appellant agreeing to pay a reduced penalty of \$8,500. The Board dismissed the appeal based on the settlement.	WP	12/7/00	4/25/01
P00-185	City of Port Angeles v. Ecology Reason: Appealing a penalty of \$24,000 for late reporting of a sewage spill. Result: Case dismissed based upon stipulated settlement of parties.	WP	12/7/00	3/21/01
P00-188	United Parcel Service, Inc. ("UPS") v. Ecology Reason: Appealing an Order to take certain actions in connection with the Hazardous Waste Management Act & Dangerous Waste Reg. Result: The parties reached settlement. The appeal was dismissed.	WP	12/26/00	9/5/01
P01-013	Cowlitz Water Pollution Control v. Ecology Reason: Appeal of conditions of an NPDES permit. Result: Prior to the pre-hearing conference, the appellant moved for dismissal of the appeal. The Board dismissed the appeal.	WP	2/26/01	4/25/01
P01-035	Port of Port Angeles v. Ecology Reason: \$14,000 penalty for violations of NPDES permit. Result: The parties reached settlement and dismissed the appeal.	WP	3/22/01	8/28/01
P01-054	Friends of Whatcom County et al v. Ecology et al Reason: Appeal of NPDES Permit issued to Georgia-West Inc. Result: The parties stipulated to dismissal of the appeal. The stipulation provides Georgia-West, Inc. will provide appellants with a letter explaining Georgia Pacific Corp. or any of its subsidiaries will not restart, reactivate or construct a chemical pulping mill, bleach plant, or attendant by-products facility in Bellingham, WA. Based on the stipulation, the board dismissed the appeal.	WP	5/1/01	5/20/04
P01-062	Pete Van Grinsven v. Ecology Reason: Appeal of penalty for failure to comply with Admin. Order and failure to develop a farm plan. Result: The parties reached settlement and agreed to dismiss the appeal.	WP	5/2/01	11/16/01
P01-065	Gary Bower d/b/a Gary Bower Dairy v. Ecology Reason: Appeal of \$9,000 penalty for alleged fecal coliform discharge in the Chehalis River. Result: The appeal was dismissed based on a settlement between the parties that provided for payment of a reduced penalty. The penalty was assessed for fecal coliform discharge from a dairy operation.	WP	5/16/01	12/14/01
P01-069	Marine Services NW v. Ecology Reason: Appealing a penalty of \$2,000 for violation of a condition of a Boatyard Permit. Result: The appellant dismissed his appeal based on a stipulation reached by Ecology.	WP	5/23/01	6/29/01
P01-083	Jerome Rosa d/b/a Jer-Osa Dairy v. Ecology Reason: Appeal of \$34,000 civil penalty for discharge from manure lagoon into a ditch flowing into the South Fork of the Chehalis River. Result: Mr. Rosa challenged a civil penalty related to the discharge from his manure lagoon. After mediation, the parties agreed to a stipulated settlement and the board dismissed the appeal. Prior to the settlement, Mr. Rosa challenged the ability of the board to hear the civil appeal until the statute of limitations expired on potential criminal charges. The board ruled the civil appeal could proceed. This ruling was upheld by the Lewis County Superior Court.	WP	6/4/01	4/17/02
P01-087	Finn Clausen, Stokrose Farms v. Ecology Reason: Appeal of a \$12,000 penalty for dumping pollutants into Lind Coulee. Result: Appellant challenged an order from Ecology requiring it to cease dumping waste into Lind Coulee and to submit and implement a repair plan as well as a civil penalty. The parties agreed to a stipulation and agreed order in which the appellant agreed to specific repair work. The board dismissed the appeal.	WP	6/5/01	10/22/01
189	TransAlta Centralia Generation LLC v. Ecology Reason: Appeal of modification of NPDES permit. Result: Case was dismissed after parties reached agreement on technical clarifications of the permit.	WP	6/11/01	7/18/01

EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Stipulated</i>				
P01-088	Richard Seaborn, Alaska Venture v. Ecology	WP	6/15/01	2/7/02
	Reason: Appealing a penalty of \$10,000 for diesel fuel discharged in to the water at the north end of Lake Union.			
	Result: The parties reached settlement and the case was dismissed.			
P01-120	Ponderay Newsprint Company and Northwest Pulp and Paper Assoc. v. Ecology	WP	7/27/01	4/15/03
	Reason: Appealing certain provisions of an NPDES Permit.			
	Result: Ponderay Newsprint challenged several provisions in its newly approved NPDES permit. Most of the concerns related to temperature conditions. The parties reached agreement for Ecology to reissue the permit. That has occurred. The parties request the dismissal of the case. The board dismissed.			
P01-121	City of Colville v. Ecology	WP	7/30/01	3/4/02
	Reason: Appealing certain provisions of an NPDES Permit.			
	Result: The parties reached a settlement in which Ecology agreed to initiate an amendment to two of the conditions attached to the permit. Based on the agreement, the board dismissed the case.			
P01-123	Waste Action Project v. Van Boven Calf Ranch and Ecology	WP	8/9/01	2/7/02
	Reason: Appeal of NPDES Permit issued to Van Boven Ranch.			
	Result: The appeal was dismissed based on a settlement agreement reached between the parties.			
P01-124	Jerome Rosa dba Jer-Rosa Dairy v. Ecology	WP	8/10/01	4/17/02
	Reason: Appeal of \$34,000 civil penalty for discharge from manure lagoon into a ditch flowing into the South Fork of the Chehalis River.			
	Result: Mr. Rosa challenged a civil penalty related to the discharge from his manure lagoon. After mediation, the parties agreed to a stipulated settlement and the board dismissed the appeal. Prior to the settlement, Mr. Rosa challenged the ability of the board to hear the civil appeal until the statute of limitations expired on potential criminal charges. The board ruled the civil appeal could proceed. This ruling was upheld by the Lewis County Superior Court.			
131	Barkshire Panel Systems, Inc. v. Ecology	WP	8/20/01	4/12/02
	Reason: Appeal of \$3,000 penalty for violation of an NPDES Permit.			
	Result: The parties reached settlement by agreeing to suspend \$1,000 of the \$3,000 penalty assessed for alleged violation of the NPDES permit and stormwater pollution prevention plan.			
P01-132	Lake Tahuyeh Community Club v. Ecology	WP	8/23/01	2/27/02
	Reason: Appeal of Ecology's denial of permit for spot treatment of pondweed in a lake.			
	Result: The parties reached a settlement, agreeing to a process to facilitate the planning and submittal of an application relevant to aquatic plant management for the year 2002. The board dismissed the appeal based on the agreement.			
P01-133	Airport Communities Coalition v. Ecology and The Port of Seattle	WP	8/23/01	10/10/01
	Reason: Appeal of 401 Certification related to construction of a third runway and related projects at Seattle Tacoma International Airport.			
	Result: The parties by stipulation, agreed that Ecology would rescind and re-issue the permit appealed in this matter. As a result, the parties requested the dismissal of this action, but that all the files be transferred over to case No. PCHB 01-160. The board dismissed the case and the files have been duly noted in PCHB 01-160, which is the appeal filed on the re-issued permit.			
P01-149	Steve Krommenacker dba Allweather Wood Treaters, Inc. v. Ecology	WP	9/10/01	11/5/01
	Reason: Appealing an Order requiring compliance with RCW 90-48.			
	Result: The parties reached settlement and agreed to dismiss the appeal.			
P01-150	The Port of Seattle v. Ecology	WP	9/10/01	10/10/01
	Reason: Appeal of Water Quality Certification for various improvements of Seattle Tacoma International Airport.			
	Result: The parties by stipulation, agreed that Ecology would rescind and re-issue the permit under appeal in this matter. Ecology has done that. As a result, the parties requested dismissal. The board dismissed. A new appeal has been filed on the newly issued permit. It is PCHB No. 01-160.			
P01-156	City of Harrington v. Ecology	WP	9/19/01	6/6/02
	Reason: Appealing a penalty of \$10,000 for violations of its NPDES Permit.			
	Result: The City of Harrington challenged a civil penalty associated with their wastewater treatment facility. The parties reached a stipulated agreement. Harrington agreed to pay \$1000 and spend the remaining \$9000 on a pollution prevention project relating to stormwater control. The board dismissed the appeal.			
P01-161	City of Conconully v. Ecology	WP	10/2/01	3/22/02
	Reason: Appeal of an Administrative Order requiring the city comply with RCW 90.48.			

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Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Stipulated</i>				
	Result: The parties reached settlement and asked that their appeal be dismissed.			
P01-164	Associated Petroleum Products, Inc. v. Ecology	W/P	10/12/01	3/15/02
	Reason: Appealing a penalty of \$47,000 for discharge of #2 High-sulfur diesel fuel oil into drainage areas, stormwater systems, and tributaries of Lynch Creek.			
	Result: Parties agreed to a settlement. Associated Petroleum agreed to pay \$14,000 of the civil penalty and install electronic overflow alarms on tanks at its Eatonville facility. In addition, Associated Petroleum will conduct site specific emergency training annually for its Eatonville employees for at least five years. Based on this agreement, the board dismissed the appeal.			
P01-169	Neptune, LLC v. Ecology	W/P	10/18/01	1/8/02
	Reason: Appeal of \$1000 penalty for an Oil Spill Field Citation.			
	Result: Neptune challenged a \$1000 civil penalty issued by Ecology for a fuel spill that occurred while transferring fuel from one vessel's tank to another tank. The parties agreed to a reduced penalty and requested a dismissal of the appeal. The board dismissed the appeal.			
P01-172	Chiquita Processed Foods, LLC. v. Ecology	W/P	10/22/01	10/3/02
	Reason: Appeal of order relating to odor mitigation at its facility.			
	Result: Chiquita challenged an order relating to odor mitigation at its facility. The parties reached a settlement regarding implementation of the order. The board dismissed the appeal.			
P01-185	The Burlington Northern and Santa Fe Railway Company v. Ecology	W/P	11/13/01	6/6/02
	Reason: Appeal of \$10,000 civil penalty for diesel fuel spill.			
	Result: The parties submitted a settlement and agreed order of dismissal. The appellant agreed to pay \$2000 of the civil penalty and invest \$8,200 in environmental training for its employees. The board dismissed the appeal based on the settlement.			
P01-188	Noveon Kalama, Inc. v. Ecology	W/P	11/30/01	10/3/03
	Reason: Appealing a determination that certain modular tank units do not meet regulations.			
	Result: Tanks used by the appellant to manage groundwater and stormwater prior to treatment in the appellant's wastewater treatment system, were questioned regarding whether they were structurally strong enough to be safe. The parties reached a settlement in which the appellant would deconstruct and replace the tanks.			
P01-194	Arwana Farms v. Ecology	W/P	12/28/01	5/8/02
	Reason: Appealing a penalty of \$6,000 for discharging pollutants into waters of the state.			
	Result: The parties reached settlement. They agreed to a reduction of the penalty, suspension of and payment of portions of the remaining penalty, upon the condition the penalized party commits no further water quality violations prior to July 11, 2003. The board dismissed the appeal based upon the settlement.			
P02-001	William S. McGonagle v. Ecology	W/P	1/2/02	6/25/02
	Reason: Appeal of \$2000 penalty for oil spill into Saratoga Passage off Camano Island.			
	Result: The appellant grounded his boat, causing some fuel to leak into the water. The appellant agreed to pay a reduced fine and purchase oil spill response supplies and equipment for Camano Island State Park.			
P02-003	Todd Pacific Shipyards Corp. v. Ecology	W/P	1/9/02	6/6/02
	Reason: Appeal of \$7,500 civil penalty for allowing oil contaminated contents of a tank to spill into Elliott Bay.			
	Result: The parties settled an appeal of Ecology's \$7,500 penalty related to an oil spill into Elliott Bay. The appellant is making a \$6,100 monetary payment to the Island Oil Spill Association in resolution of the case.			
P02-025	Weyerhaeuser Company v. Ecology	W/P	2/19/02	6/6/02
	Reason: Appeal of conditions placed on wastewater discharge permit.			
	Result: Weyerhaeuser operates its Raymond lumber mill under a State Waste Discharge Permit (#ST6167). The permit was reissued January 25, 2002 with new monitoring requirements, which Weyerhaeuser appealed. The parties entered into a settlement agreement which relaxed the original monitoring requirements and the case was dismissed.			
P02-028	Resources for Sustainable Communities v. Ecology and Phillips 66 Company Ferndale Refinery	W/P	2/21/02	10/18/02
	Reason: Appeal of NPDES permit and fact sheet issued to Phillips 66 Company Ferndale Refinery.			
	Result: The appellants challenged the NPDES and its fact sheet issued by Ecology for the Phillips 66 Ferndale Refinery. The parties reached settlement and asked the board to dismiss the appeal. The settlement established a fund to develop a Pacific herring chronic bioassay protocol. The board dismissed the appeal.			
129	J.R. Simplot Company v. Ecology	W/P	2/22/02	6/6/02
	Reason: Appeal of modifications of State Discharge Permit for potato processing facility in Moses Lake.			
	Result: Ecology and the appellant agreed to a modified wastewater discharge permit to allow the land application of industrial wastewater. The appeal was dismissed.			

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Closing Case Summary**

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Stipulated</i>				
P02-053	The Port of Sunnyside v. Ecology Reason: Appealing certain conditions of an Order on a wastewater permit. Result: The Port of Sunnyside discharges industrial wastewater to a sprayfield. Groundwater quality under parts of the sprayfield has degraded below permit limits. The parties agreed to an amended order which includes provisions for groundwater monitoring. The parties agreed to dismiss the appeal.	WP	4/5/02	9/10/02
P02-055	Merino's Seafoods, Inc. v. Ecology Reason: Appeal of \$55,800 civil penalty for water quality violations. Result: Appellant challenged a civil penalty issued for water quality violations. The parties reached a stipulated agreement wherein Ecology recalculated part of the penalty (to \$48,690) and allowed the appellant to pay the penalty in installments. The board dismissed the appeal.	WP	4/24/02	11/14/02
P02-057	Alaska Tanker Company, LLC v. Ecology Reason: Appeal of \$25,000 civil penalty for an oil spill violation. Result: A penalty of \$25,000 was assessed against the appellant after 11 barrels of oil were spilled from one of its tankers. The parties have reached an agreement for the appellant to pay up to \$25,000 towards the support of the Valley Restoration Project near Port Angeles. The appeal was dismissed at the parties' request.	WP	4/25/02	8/8/02
P02-064	ACE Paving v. Ecology Reason: Appeal of Ecology order requiring Ace to take various actions pursuant to a Sand and Gravel General Permit and RCW 90.48. Result: The permit requiring specific monitoring and reporting requirements after storm events and dam releases, is being modified by Ecology. The appeal was dismissed.	WP	5/3/02	5/6/02
P02-065	Grant County Mosquito Control District #1 v. Ecology Reason: Appeal of conditions placed on NPDES Permit. Result: The appellant Mosquito Control Districts challenged Ecology's position that the districts need NPDES permit coverage for their activities. The parties reached a settlement including action by the department to provide information, and action by the districts to seek coverage under General Permit No. WAG-992000. The applicant will develop a monitoring plan and integrated pest management plan. Future disagreements would be subject to separate review. Three appeals were consolidated into one action, comprising PCHB Nos. 02-065, 066, & 067.	WP	5/9/02	1/23/03
P02-066	Adams County Mosquito Control District v. Ecology Reason: Appealing an NPDES general permit for Mosquito Control. Result: The appellant Mosquito Control Districts challenged Ecology's position that the districts need NPDES permit coverage for their activities. The parties reached a settlement including action by the department to provide information, and action by the districts to seek coverage under General Permit No. WAG-992000. The applicant will develop a monitoring plan and integrated pest management plan. Future disagreements would be subject to separate review. Three appeals were consolidated into one action, comprising PCHB Nos. 02-065, 066, & 067.	WP	5/9/02	1/23/03
P02-067	Benton County Mosquito Control District v. Ecology Reason: Appealing an NPDES general permit for mosquito control. Result: The appellant Mosquito Control Districts challenged Ecology's position that the districts need NPDES permit coverage for their activities. The parties reached a settlement including action by the department to provide information, and action by the districts to seek coverage under General Permit No. WAG-992000. The applicant will develop a monitoring plan and integrated pest management plan. Future disagreements would be subject to separate review. Three appeals were consolidated into one action, comprising PCHB Nos. 02-065, 066, & 067.	WP	5/9/02	1/23/03
P02-073	Launi Forar v. Ecology Reason: Appeal of \$2,000 civil penalty for failure to develop and implement a farm plan. Result: Appellant was penalized for failure to develop and implement a farm plan. The parties reached a settlement involving suspension of the fine in exchange for compliance, and the case was dismissed.	WP	5/21/02	8/21/02
P02-078	Portac, Inc. v. Ecology Reason: Appealing an administrative order. Result: Portac challenged a \$4,000 penalty issued by Ecology for violation of its general stormwater permit. The parties reached a stipulated settlement reducing the penalty and requiring the removal of built-up ash. The board dismissed the appeal. The penalty and order were consolidated into one action, comprising PCHB Nos. 02-078 & 02-102.	WP	6/3/02	9/10/02
P02-083	WA Toxics & Ad Hoc Coalition/Willapa Bay v. Ecology, Willapa Bay/Grays Harbor Reason: Appeal of NPDES Permit issued to Willapa Bay Oyster Growers.	WP	6/17/02	5/5/03

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EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Stipulated</i>				
P02-089	The Shipyard v. Ecology Result: The appellants challenged Ecology's issuance of a NPDES permit to oyster growers in Willapa Bay and Grays Harbor authorizing the use of carbaryl during the summer season to kill burrowing shrimp. The board originally issued a stay to prohibit its use in 2002, but this stay was overturned in Thurston County Superior Court. This decision was not appealed. The parties submitted a settlement agreement which phases out the use of carbaryl by December 31, 2012. The appeal was dismissed based upon this settlement. Reason: Appeal of \$2000 penalty for violation of boatyard general permit.	WP	6/26/02	1/29/03
P02-091	West Bay Marine Services, L.L.C v. Ecology Result: This case concerns a penalty imposed for failure to file a stormwater discharge monitoring report. The parties negotiated on their own and reached a settlement agreement. This case was dismissed pursuant to their agreement. Reason: Appeal of \$2,000 penalty for failure to submit Discharge Monitoring Reports.	WP	6/27/02	9/4/02
P02-093	Transalta Centralia Mining LLC v. Ecology Result: West Bay Marina challenged a \$2000 penalty issued by Ecology for violating reporting requirements of its NPDES permit. The parties reached a stipulated agreement regarding payment, in installments, of the penalty and future reporting requirements. The board dismissed the case. Reason: Appeal of a \$24,000 civil penalty for alleged violations of NPDES permit.	WP	6/28/02	7/2/03
P02-096	Todd Van Middendorp Dairy v. Ecology Result: The parties reached a settlement covering this penalty and further violations alleged to have occurred after this penalty. Transalta agreed to pay \$10,000 to Ecology within 30 days of the order and further agreed to provide either a cash or in-kind contribution of \$50,000 to the Centralia Riparian Restoration Project. This project which was submitted to the Salmon Recovery Board, which apparently selected this proposal as 5th out of 15 proposals. The Salmon Recovery Board anticipates funding only the top five applicants. Reason: Appealing a penalty of \$8,000 for discharges of manure into state waters.	WP	7/2/02	3/24/03
P02-102	Portac, Inc. v. Ecology Result: The parties reached a settlement of this penalty issued for discharging manure into waters of the state. The dairy will make payments on a reduced fine. If payments are not made timely, the full penalty will be reinstated. Based on the settlement, the appeal was dismissed. Reason: Appeal of \$4000 penalty for violation of Stormwater Discharge permit.	WP	7/10/02	9/10/02
P02-117	Sumas Transport, Inc. v. Ecology Result: Portac challenged a \$4,000 penalty issued by Ecology for violation of its general stormwater permit. The parties reached a stipulated settlement reducing the penalty and requiring the removal of built-up ash. The board dismissed the appeal. The penalty and order were consolidated into one action, comprising PCHB Nos. 02-078 & 02-102. Reason: Appeal of \$28,000 penalty and Ecology order for violation of statewide General Permit for Biosolids Management.	WP	7/29/02	12/12/02
P02-151	City of Ridgefield v. Ecology Result: Sumas Transport appealed a \$28,000 civil penalty issued by Ecology for violations to their statewide general permit for biosolids. The parties reached a stipulated settlement whereby the penalty is reduced to \$23,000, with \$10,000 of that held in abeyance for 2 1/2 years. Sumas agreed to fund a biosolids supplemental environmental project exploring the potential environmental and human health impacts of the application of biosolids to range lands. The value of this project is in lieu of the remainder of the civil penalty (\$13,000). Ecology agreed to issue a revised permit with additional and more stringent conditions. A Revised Dismissal Order was issued on March 20, 2003. Reason: Appeal of \$30,000 penalty for violations of state water quality laws.	WP	9/11/02	7/9/03
P02-170	National Food Corporation v. Ecology Result: Ecology issued a \$30,000 penalty to City of Ridgefield for alleged violations of state water quality laws. The parties agreed to a settlement in which the City agreed to pay \$6,000 and complete a supplemental environmental project. Reason: Appealing a penalty of \$107,000 for violations of state waste discharge permit.	WP	10/2/02	7/14/03
P02-171	Puglia Engineering, Inc. v. Ecology Result: National Food Corporation appealed a penalty issued to it by Ecology for alleged violations of its discharge permit. Ecology moved for summary judgment. Before the order was issued but after the board had informed the parties how it was going to decide, the parties settled. Reason: Appealing an NPDES Permit.	WP	10/3/02	4/18/05
P02-177	Caicos Corp. v. Ecology Result: Puglia Engineering, inc. appealed conditions of an NPDES Permit issued to it by Ecology. Areas of contention included the compliance schedule for submitting the stormwater engineering report and the lack of an authorized mixing zone. The parties were eventually able to settle this matter, and the appeal was dismissed. Reason: Appeal of \$2000 civil penalty for oil spill in Eagle Harbor.	WP	10/7/02	1/23/03

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EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Stipulated</i>				
P02-178	Michael DeFrees; Columbia Rim Construction, Inc.; Parkview Trails L.L.C v. Ecology	WP	10/8/02	10/3/03
	<p>Result: Approximately 50 gallons of fuel spilled from a tug operated by the appellant into Eagle Harbor. The parties entered into a settlement agreement in which the fine was reduced from \$2000 to \$1000. The remainder of the penalty was suspended, but can be reinstated if another violation occurs within one year.</p> <p>Reason: Appealing a penalty of \$40,000 for violations of applicable water quality laws.</p>			
P02-179	Strider Construction Co., Inc. v. Ecology	WP	10/10/02	12/24/02
	<p>Result: The appellants challenged a penalty of \$40,000 assessed for alleged violations of applicable water quality laws. The parties entered into a settlement allowing payments of a reduced penalty amount. The case was dismissed pursuant to the parties' agreement.</p> <p>Reason: Appeal of two \$3,000 civil penalties totaling \$6,000 for discharge of silt plume into a stream.</p>			
P02-181	Whatcom County Water District 10 v. Ecology	WP	10/11/02	12/17/02
	<p>Result: The appellants Strider Construction Inc., Whatcom County Water District No. 10, and Ecology executed a settlement agreement in which Strider agreed to pay a \$1,500 civil penalty. Based on this stipulation, the board dismissed the appeal. The two civil penalties were consolidated into one action, comprising PCHB 02-179 and 02-181.</p> <p>Reason: Appeal of two \$3,000 civil penalties totaling \$6,000 for discharge of silt plume into a stream.</p>			
P02-185	Puget Soundkeeper Alliance v. Todd Pacific Shipyards Corporation; and Ecology	WP	10/16/02	3/18/04
	<p>Result: The appellants, Whatcom County Water District No. 10, and Ecology executed a settlement agreement in which Whatcom County Water District agreed to pay a \$1,500 civil penalty. Based on this stipulation, the board dismissed the appeal. The two civil penalties were consolidated into one action, comprising PCHB 02-179 and 02-181.</p> <p>Reason: Appeal of conditions included in NPDES permit issued by Ecology to Todd Pacific Shipyards Corp.</p>			
186	Dave's Painting, Inc. v. Ecology	WP	10/16/02	11/4/02
	<p>Result: Appellants challenged the conditions included in the Industrial Stormwater Permit issued to Todd Pacific Shipyards. The appeal was particularly concerned with the lack of stringent numeric effluent standards. The parties resolved this matter pursuant to a consent decree in federal district court. The Board dismissed the appeal based upon the stipulation of the parties.</p> <p>Reason: Appeal of \$500 civil penalty for spilling water contaminated with latex paint into a storm drain.</p>			
P02-205	University of Puget Sound v. Ecology	WP	11/15/02	5/9/03
	<p>Result: The case was dismissed after the appellant paid the penalty of \$500 assessed for a paint spill.</p> <p>Reason: Appealing a penalty of \$10,000 for a diesel fuel spill.</p>			
P02-224	The Burlington Northern and Santa Fe Railway Company v. Ecology	WP	12/24/02	10/23/03
	<p>Result: Due to operator error, the returning fuel from a boiler flowed into the wrong underground storage tank. Approximately 122 gallons of diesel fuel overflowed the tank and spilled into a stormdrain which empties into Commencement Bay. The parties entered into a settlement in which the fine was reduced from \$10,000 to \$2,000. As part of the settlement, the University agreed to fund on-the-water pollution patrols along Ruston Way, fund the purchase of clean boating/marina kits for distribution, fund a water quality education conference, fund a program to conduct outreach on stormwater pollution in the area, and develop an invasive non-native plant brochure. The appeal was withdrawn based on the settlement and the appeal was dismissed.</p> <p>Reason: Appeal of \$20,000 civil penalty for alleged diesel spill through storm drain into Elliott Bay.</p>			
P03-002	Harrison Road Dairy v. Ecology	WP	1/6/03	6/25/03
	<p>Result: The parties reached settlement of a penalty Ecology assessed in connection with an oil spill at the Balmer rail yard in Seattle. Burlington Northern and Santa Fe agreed to purchase and equip a spill response trailer for the Balmer Yard. Employee training will accompany the spill response trailer's acquisition. Pursuant to the settlement, the board entered an agreed dismissal of the case.</p> <p>Reason: Appeal of civil penalty for discharge of manure-contaminated water into a water of the state.</p>			
P03-020	Port of Seattle v. Ecology	WP	1/30/03	3/24/03
	<p>Result: The appellant was fined for failing to take timely action to repair a leak in an irrigation line running under a corral at his dairy. This resulted in manure-contaminated water being discharged into state waters. The parties reached a settlement which lowered the amount of the penalty. The case was dismissed based on the settlement.</p> <p>Reason: Appeal of administrative order issued to the Port of Seattle.</p>			
P03-038	Kiewit Pacific Co., v. Ecology	WP	2/28/03	11/25/03
	<p>Result: The parties to this challenge of an administrative order issued by Ecology agreed to a resolution of the case. Ecology withdrew the Order in question without precluding future action based upon the facts in controversy. Further discussions to resolve the diesel pipeline situation on site are ongoing. Accordingly, the case was dismissed.</p> <p>Reason: Appealing a penalty of \$8,000 for discharging wastewater into the Skagit River.</p>			

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EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Stipulated</i>				
P03-042	<p>United States Department of the Navy v. Ecology</p> <p>Result: The parties reached a settlement of this penalty appeal. Concrete dewatering wastewater had been discharged into the Skagit River. Ecology assessed a penalty of \$8,000 for the violation. A portion of the penalty is being paid and a portion is being suspended upon the condition of no further violations. Accordingly, the case was dismissed.</p> <p>Reason: Appeal of conditions placed on State Waste Discharge Permit.</p>	WP	3/12/03	7/10/03
P03-056	<p>Pointe on Semiahmoo Homeowners Association; Partnership for Responsible Development v. Ecology</p> <p>Result: The U.S. Navy appealed conditions contained in a state waste discharge permit issued for operations at the Bremerton Naval Shipyard. The permit required the storage of all liquid products in amounts greater than 20 gallons behind berms or in double-walled tanks. The parties stipulated to a revision in the permit which removed the storage requirement and replaced it with other requirements for storing and disposing of chemicals and industrial wastes. The board dismissed the case based upon the stipulation.</p> <p>Reason: Appeal of NPDES permit for the City of Blaine Wastewater Treatment Plant.</p>	WP	4/9/03	5/4/04
P03-059	<p>City of Aberdeen v. Ecology</p> <p>Result: The parties were able to reach a settlement of this challenge to the NPDES permit for the City of Blaine Wastewater Treatment Plant. The City will be undertaking steps to improve its treatment plant pursuant to an implementation schedule. Consolidated with PCHB No. 03-050.</p> <p>Reason: Appeal of a \$2,000 civil penalty for violations of NPDES permit.</p>	WP	4/15/03	3/21/03
P03-060	<p>Nooksack Indian Tribe v. City of Blaine and Ecology</p> <p>Result: This appeal of a civil penalty issued for violations of an NPDES permit was resolved by the recipient of the penalty agreeing to pay.</p> <p>Reason: Appealing an NPDES Permit issued to City of Blaine.</p>	WP	4/15/03	5/4/04
P03-074	<p>Junction City Redevelopment Group v. Sierra Pacific Industries & Ecology</p> <p>Result: The parties were able to reach a settlement of this challenge to the NPDES permit for the City of Blaine Wastewater Treatment Plant. The City will be undertaking steps to improve its treatment plant pursuant to an implementation schedule. Consolidated with PCHB No. 03-056.</p> <p>Reason: Appeal of NPDES permit issued to Sierra Pacific Industries by Ecology</p>	WP	5/19/03	3/23/04
P03-100	<p>Sierra Pacific Industries & Ecology v. Ecology</p> <p>Result: Sierra Pacific built a new sawmill near Junction City in Grays Harbor County. Sierra Pacific also built a co-generation facility to supply power to the mill and provide electricity for sale. The co-generation facility would burn wood waste to generate the steam as the power source. The NPDES permit allowed the co-generation facility to discharge wastewater into the Chehalis River at 93.2 degrees, which exceeds water quality standards. Ecology did not conduct an AKART study. The Respondents were willing to stipulate to a discharge of 73 degrees at the stay hearing. A majority of the Board granted a stay of this permit. The parties stipulated to either amending the permit to allow a 73 degree discharge, or cancellation and withdrawal of the permit. The appeal was dismissed.</p> <p>Reason: Ecology has not satisfactorily carried out the remand from PCHB #02-022 and issued an order with public notice.</p>	WP	7/18/03	4/5/04
P03-103	<p>Friends of the Cowlitz, et. al. v. Ecology and Tacoma Power</p> <p>Result: The parties reached a settlement agreement designed to implement the board's earlier decision. Based thereon, the board dismissed the appeal.</p> <p>Reason: Ecology has not satisfactorily carried out the remand from PCHB #02-022 and issued an order with public notice.</p>	WP	7/25/03	12/17/03
P03-103	<p>Nichols Bros. Boat Builders, Inc. v. Ecology</p> <p>Result: This case involves Nichols Bros.' appeal of a civil penalty issued to it by Ecology for alleged failure of the principal executive officer of Nichols Bros. to certify the accuracy and truthfulness of a State Waste Discharge Permit Supplemental Application. The parties were able to reach a settlement resulting in an agreed dismissal of the appeal.</p> <p>Reason: Appealing a \$8,987 Notice of Penalty regarding unsubstantiated evidence.</p>	WP	7/25/03	12/17/03
P03-114	<p>Sumas Transport, Inc. v. Ecology</p> <p>Result: The parties resolved this enforcement action relating to proper placement of biosolids. A portion of the material in question was applied to land at agronomic rates. Other biosolids were to be removed for disposal at an alternate facility. The case was dismissed based upon the parties' stipulation. Consolidated with PCHB 03-114</p> <p>Reason: Appealing Order requiring Sumas to submit a plan for disposal of biosolids and septage.</p>	WP	8/7/03	10/20/04
P03-116	<p>Evergreen Marine Corporation, Owner of M/V Ever Group v. Ecology</p> <p>Result: The parties reached settlement. Evergreen Marine Corporation agreed to pay Ecology \$10,078.62 for damages to natural resources of the state, \$62,111.39 for the costs of the state in investigating one oil spill and \$58,750 of the \$67,500 civil penalty. Based on the settlement, the board dismissed the case.</p> <p>Reason: Appealing nine penalties totaling \$67,500 for alleged discharge of pollutants into state waters.</p>	WP	8/12/03	11/4/03
P03-122	<p>Brooks Manufacturing Company v. Ecology</p> <p>Result: The parties reached settlement. Evergreen Marine Corporation agreed to pay Ecology \$10,078.62 for damages to natural resources of the state, \$62,111.39 for the costs of the state in investigating one oil spill and \$58,750 of the \$67,500 civil penalty. Based on the settlement, the board dismissed the case.</p> <p>Reason: Appeal of conditions placed on NPDES permit for stormwater discharge from permittee's facility.</p>	WP	8/29/03	5/26/04

EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Stipulated</i>				
P03-136	Willie Downs Logging v. Ecology	WP	9/22/03	1/15/04
	<p>Result: The appellant challenged certain conditions contained in its NPDES permit authorizing stormwater discharges from its facility in Bellingham. The parties stipulated to a settlement, which requires Ecology to initiate a permit modification to no longer require the installation of granular activated carbon filtration at the facility. In addition, the method for calculating effluent limits for pentachlorophenol is modified. The case was dismissed based upon this settlement.</p> <p>Reason: Appeal of \$3,500 civil penalty for water quality violations related to road construction.</p>			
P03-145	Wellington Hills LLC v. Ecology	WP	10/10/03	5/23/04
	<p>Result: The appellant was fined \$7000 for violating water quality standards contained in the Department of Natural Resources' Forest Practice Rules. Ecology reduced this penalty to \$3500 in response to an application for relief from penalty. The penalty pertained to sediment being washed into a stream during culvert installation. The parties agreed to a reduced penalty of \$2000 with the remainder only payable if another violation occurred within two years. The case was dismissed based on the settlement.</p> <p>Reason: Request that all penalties for violation notice be waived.</p>			
P03-146	Seavestco, Inc. v. Ecology	WP	10/14/03	6/23/04
	<p>Result: The parties reached a settlement, whereby the Seavestco civil penalty was reduced from \$8,000 to \$2,000. The remaining \$2,000 civil penalty is suspended for one year and will be removed if Ecology does not issue an order or penalty that is upheld if there is any appeal. Wellington agrees to pay the \$8,000 civil penalty within 30 days. If Wellington fails to pay timely, then both the original civil penalties of \$8,000 will become due and payable. The board dismissed the appeal, based on the settlement. Consolidated with PCHB 03-146.</p> <p>Reason: Request that penalties for violation notice be waived as sediment levels being discharged were never higher at any time than the previous year.</p>			
P03-150	Weyerhaeuser Company v. Ecology	WP	10/16/03	5/26/04
	<p>Result: The parties reached a settlement, whereby the Seavestco civil penalty was reduced from \$8,000 to \$2,000. The remaining \$2,000 civil penalty is suspended for one year and will be removed if Ecology does not issue an order or penalty that is upheld if there is any appeal. Wellington agrees to pay the \$8,000 civil penalty within 30 days. If Wellington fails to pay timely, then both the original civil penalties of \$8,000 will become due and payable. The board dismissed the appeal, based on the settlement. Consolidated with PCHB 03-145.</p> <p>Reason: Appealing terms and conditions of NPDES Permit No. WA-003197-6.</p>			
P03-154	Weyerhaeuser Company (Cosmopolis Facility) v. Ecology	WP	10/29/03	3/18/05
	<p>Result: Weyerhaeuser challenged certain conditions imposed in the NPDES permit regulating stormwater discharges and landfill leachate from its woodwaste landfill site near Everett. The parties stipulated to a settlement that requires Ecology to initiate a permit modification to amend the permit, including a new calculation for the dilution ratio for pH. The case was dismissed based upon the settlement.</p> <p>Reason: Appeals NPDES Permit WA-000080-9, with condition S.9 requiring the use of chronic toxicity test methods.</p>			
P03-158	Dow Jones & Co., Inc. (The Wall Street Journal) v. Ecology	WP	11/14/03	2/27/04
	<p>Result: Weyerhaeuser appealed the whole effluent toxicity provisions in their NPDES permit for the Cosmopolis mill. Parties reached settlement using ongoing toxicity monitoring procedures and possible future permit modifications. The board dismissed the appeal.</p> <p>Reason: Appeal of specific requirements contained within the permit governing silver discharge limitations.</p>			
P03-163	City of Tacoma, Department of Public Works v. Ecology	WP	12/8/03	4/27/04
	<p>Result: Appeal of state waste discharge permit, withdrawn after Ecology re-issued the permit with modifications.</p> <p>Reason: Appealing the conditions of Permit requiring greater amounts of chlorine.</p>			
P04-003	Waste Action Project v. City of Quincy and Ecology	WP	1/13/04	2/22/05
	<p>Result: The parties reached agreement on a settlement. Ecology will conduct a Fecal Coliform and Mixing Zone Evaluation for the outfall from Tacoma's North End Wastewater Treatment plant to determine whether the outfall has a reasonable potential to exceed the fecal coliform water quality standard. The board dismissed the appeal based on the parties' stipulation.</p> <p>Reason: Appellant appealed issuance of NDPEs permit for industrial wastewater treatment plant. Parties also involved in federal Clean Water Act citizens suit involving same issues. Parties reached settlement agreement based on changes to permit monitoring and water treatment requirements and ongoing exchange of technical information on permit compliance. Federal consent decree in Clean Water Act suit served as settlement agreement for PCHB appeal.</p>			
04-008	Washington Toxics Coalition; People for Puget Sound, and Washpirg v. Kimberly	WP	1/23/04	8/18/04
	<p>Reason: Appeal of NPDES Permit No WA 000062-1, issued by Ecology to Kimberly-Clark Worldwide.</p>			

EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Stipulated</i>				
P04-009	<p>Kimberly-Clark Worldwide, Inc. v. Ecology</p> <p>Result: The parties entered into a stipulation settling the appeals of the NPDES permit issued to Kimberly-Clark Worldwide, Inc. for operations at its Everett mill. A modified permit will be issued for public review. The appeal of the existing permit approval was therefore dismissed. Consolidated with PCHB 04-009.</p> <p>Reason: Appealing provisions placed on NPDES Permit No. WA00062-1</p>	WP	1/29/04	8/18/04
P04-022	<p>Washington State Department of Corrections v. Ecology</p> <p>Result: The parties entered into a stipulation settling the appeals of the NPDES permit issued to Kimberly-Clark Worldwide, Inc. for operations at its Everett mill. A modified permit will be issued for public review. The appeal of the existing permit approval was therefore dismissed. Consolidated with PCHB 04-008.</p> <p>Reason: Appeal of \$60,000 penalty for violations of NPDES permit.</p>	WP	2/23/04	10/15/04
P04-023	<p>Shakertown 1992, Inc. v. Ecology</p> <p>Result: This is an appeal from McNeil Island Correctional Center (MICC) of a \$60,000 penalty for violations of their NPDES permit. Ecology alleges MICC intentionally made false entries on its discharge monitoring reports (DMR). The parties entered into a settlement discussion and reached agreement. Part of the agreement was the dismissal of the appeal.</p> <p>Reason: Appealing the Notice of Penalty Incurred (\$24,000.00) and Due and the Administrative Order.</p>	WP	2/25/04	6/9/05
P04-025	<p>Sumas Transport, Inc. v. Ecology</p> <p>Result: This case involved an appeal of a 24,000 penalty issued by Ecology for alleged violations of its State Waste Discharge Permit. The parties reached a settlement and the appeal was dismissed.</p> <p>Reason: Appealing Enforcement Action No. 03SWFAPNR-5897.</p>	WP	3/3/04	10/20/04
P04-026	<p>Northwest Aquatic Eco-Systems v. Ecology</p> <p>Result: The parties resolved this enforcement action relating to proper placement of biosolids. A portion of the material in question was applied to land at agronomic rates. Other biosolids were to be removed for disposal at an alternate facility. The case was dismissed based upon the parties' stipulation. Consolidated with PCHB 04-025.</p> <p>Reason: Appealing the rejection of application for coverage under Aquatic Pesticide General Permit received Feb 20 for Sylvia Lake</p>	WP	3/4/04	6/4/04
P04-027	<p>Northwest Aquatic Eco-Systems v. Ecology</p> <p>Result: The Associations and applicator reached a settlement relating to herbicide application and planning to control aquatic nuisance plants and algae. The cases were then dismissed pursuant to a stipulation.</p> <p>Reason: Appealing the rejection of application for coverage under the Aquatic Pesticide General Permit received Feb. 26th for Lake Josephine.</p>	WP	3/4/04	6/4/04
P04-029	<p>Anthony Ayer and Nancy Ayer v. Ecology</p> <p>Result: The Associations and applicator reached a settlement relating to herbicide application and planning to control aquatic nuisance plants and algae. The cases were then dismissed pursuant to a stipulation.</p> <p>Reason: Appealing Administrative Order which states Ayers in violation because they excavated and partially filled a wetland.</p>	WP	3/11/04	1/5/05
P04-033	<p>Northwest Aquatic Eco-Systems v. Ecology</p> <p>Result: Ecology fined landowner for unauthorized excavation and filling of wetland. Landowner appealed on basis that activity was authorized under permit issued by County. Parties settled based on agreed wetland restoration plan.</p> <p>Reason: Appealing rejection of application for coverage under the Aquatic Pesticide General Permit received 3/13/04 (Lake Kilarney)</p>	WP	3/15/04	6/4/04
P04-038	<p>Northwest Aquatic Eco-Systems v. Ecology (Lake Serene)</p> <p>Result: The Associations and applicator reached a settlement relating to herbicide application and planning to control aquatic nuisance plants and algae. The cases were then dismissed pursuant to a stipulation.</p> <p>Reason: Appealing denial of application for coverage under the aquatic pesticide general permit.</p>	WP	3/26/04	6/4/04
P04-039	<p>Northwest Aquatic Eco-Systems v. Ecology (Gravelly Lake)</p> <p>Result: The Associations and applicator reached a settlement relating to herbicide application and planning to control aquatic nuisance plants and algae. The cases were then dismissed pursuant to a stipulation.</p> <p>Reason: Appealing denial of application for coverage under the aquatic pesticide general permit.</p>	WP	3/26/04	6/4/04
P04-040	<p>Northwest Aquatic Eco-Systems v. Ecology (Lake Louise)</p> <p>Result: The Associations and applicator reached a settlement relating to herbicide application and planning to control aquatic nuisance plants and algae. The cases were then dismissed pursuant to a stipulation.</p> <p>Reason: Appealing denial of application for coverage under the aquatic pesticide general permit.</p>	WP	3/26/04	6/4/04

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**EHO Case Manager
Closing Case Summary**

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Stipulated</i>				
P04-042	Northwest Aquatic Eco-Systems v. Ecology	WP	4/5/04	6/4/04
	Reason: Appealing rejection of application for coverage under the aquatic pesticide general permit No. WAG 994000 Anderson Lake (Lakeland Village) Permit #WAG 994031B			
	Result: The Associations and applicator reached a settlement relating to herbicide application and planning to control aquatic nuisance plants and algae. The cases were then dismissed pursuant to a stipulation.			
P04-043	Northwest Aquatic Eco-Systems v. Ecology - Ketchum Lake	WP	4/5/04	6/4/04
	Reason: Appealing rejection of application for coverage under the aquatic pesticide general permit No. WAG 994000 - Ketchum Lake Permit #WAG 994006			
	Result: The Associations and applicator reached a settlement relating to herbicide application and planning to control aquatic nuisance plants and algae. The cases were then dismissed pursuant to a stipulation.			
P04-046	Ferndale Town Center, LLC v. Ecology	WP	4/8/04	12/15/04
	Reason: Appealing Order that requires Ferndale Town Center to comply with Water Pollution Control Act.			
	Result: Ferndale Town Center (FTC) LLC, challenged a regulatory order issued by Ecology regarding the development of a site. The board previously granted FTC's motion for summary judgment regarding flood modeling. The parties reached an agreement on the remaining issues regarding best management practices. Ecology reserved its right to take additional enforcement actions. The appeal was dismissed.			
P04-047	Northwest Aquatic Eco-Systems v. Ecology	WP	4/12/04	6/4/04
	Reason: Rejection of application for coverage under the aquatic pesticide general permit No. WAG 994000 - Cherry Pond (Mill Creek).			
	Result: The Associations and applicator reached a settlement relating to herbicide application and planning to control aquatic nuisance plants and algae. The cases were then dismissed pursuant to a stipulation.			
P04-048	Northwest Aquatic Eco-Systems v. Ecology	WP	4/12/04	6/4/04
	Reason: Rejection of application for coverage under the aquatic pesticide general permit No. WAG 994000. (Lake Debra)			
	Result: The Associations and applicator reached a settlement relating to herbicide application and planning to control aquatic nuisance plants and algae. The cases were then dismissed pursuant to a stipulation.			
051	Wilcox and Flegel Oil Company v. Ecology	WP	4/26/04	8/23/04
	Reason: Appealing penalty in the amount of \$18,000 for spill of diesel fuel into a stream.			
	Result: The parties started mediation, but reached settlement on their own. They agreed to reduce the number of days of the violation from four to two and the civil penalty from \$18,000 to \$9,000. The board dismissed the appeal based on the settlement agreement.			
P04-054	Northwest Aquatic Eco-Systems v. Ecology	WP	5/4/04	6/4/04
	Reason: Rejection of application for coverage No. 994000 (Lakes at Winterwood Permit #WAG 994008) (Fawn Lake #994029B)			
	Result: The Associations and applicator reached a settlement relating to herbicide application and planning to control aquatic nuisance plants and algae. The cases were then dismissed pursuant to a stipulation.			
P04-061	National Food Corporation v. Ecology	WP	5/21/04	3/17/05
	Reason: Appealing Notice of Penalty No. DE03WQNR-5894.			
	Result: This case involved the appeal of a \$54,000 civil penalty issued to National Food Corporation for discharges in excess of the permitted level. The parties settled for a reduced penalty. The board dismissed the appeal.			
P04-062	nLight Photonics Corporation v. Ecology	WP	5/24/04	8/18/04
	Reason: Appeal of \$6,000 penalty for exceeding daily discharge limitations on waste discharge permit.			
	Result: The appellant reported it had violated the arsenic limits established in its industrial wastewater permit. The violation occurred because the chemical used to treat the arsenic has a short shelf life, and lost potency. The \$6,000 fine was challenged as excessive. The parties agreed to reduce the fine to \$2,000. The appeal was dismissed based on the settlement.			
P04-064	Okanogan Highlands Alliance, Washington Public Interest Research Group, and	WP	5/26/04	5/24/05
	Reason: Appealing Ecology's NPDES Permit WA-0001317 for the Pend Oreille Mine.			

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EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Stipulated</i>				
	<p>Result: Environmental organizations appealed issuance of NPDES for discharge of water from underground lead and zinc mine in Metaline Falls. On summary judgment, Board determined that NPDES permit was properly reissued to new permit holder, that certain actions relating to prior permit transfer and alleged permit modification did not result in invalidity of permit, and that discharge was not a new source under certain Clean Water Act regulations. Board reserved for the hearing on the merits legal issues on the adequacy of the effluent limits, whether the permit authorizes invalid permit modifications, whether the discharge was a new source under certain Clean Water Act regulations not brought before the Board on summary judgment, and whether the compliance schedule for the discharge was proper. After issuance of the Board's summary judgment order, the parties reached a settlement agreement to dismiss the remainder of the appeal and specifying a timeline for preparing AKART engineering reports, permit modifications based on those reports, and a final effluent limit for temperature. The board dismissed the appeal.</p>			
P04-065	<p>Glacier Bay, Inc. v. Ecology</p> <p>Reason: Appeal of \$39,000 penalty for alleged violations of Chapter 70.105 RCW.</p> <p>Result: Ecology fined Glacier Bay \$39,000 for violations of Ch 70.105, the Hazardous Waste Management Statute. The parties reached a settlement, and agreed to dismissal of the appeal.</p>	WP	5/26/04	4/1/05
P04-067	<p>Covich-Williams Co., Inc. v. Ecology</p> <p>Reason: Appeal of \$28,242 civil penalty for violating RCW 90.56.310, alleged illegal transfer of certain cargo to a vessel.</p> <p>Result: This appeal involved a challenge to a civil penalty (\$28,242) issued by Ecology to Covich-Williams for a violation arising out of a transfer of diesel cargo fuel oil. The parties settled, and the appeal was dismissed.</p>	WP	5/27/04	10/13/04
P04-070	<p>Kenneth R. Miller & Miller Construction v. Ecology & DOT</p> <p>Reason: Appealing three decisions issued by Ecology to DOT.</p> <p>Result: Property owners appealed a wetland permit and 401 certification associated with WSDOT's condemnation. Parties settled appeal through modification of 401 certification. The board dismissed the appeal.</p>	WP	6/9/04	10/22/04
P04-073	<p>Reichhold, Inc. v. Ecology</p> <p>Reason: Appealing NPDES Permit No. WA0040771.</p> <p>Result: Appellant appealed the renewal of its NPDES permit and the required use of pre-printed forms by Ecology. The appellant asserts the pre-printed forms modify the permit by requiring additional sampling locations and referring to effluent limits at these locations. The parties agreed the use of the pre-printed forms are not required. They also agreed the additional monitoring is required, but it doesn't change the limitations in the permit. The case was dismissed based upon the settlement.</p>	WP	6/11/04	9/20/04
P04-075	<p>Central Pre-Mix Concrete Company v. Ecology</p> <p>Reason: Appealing of conditions and mitigation measures imposed by Ecology's Order granting 401 Certification</p> <p>Result: The appellant challenged certain conditions and mitigation measures contained in Ecology's order granting 401 certification. This appeal was originally consolidated with another case, but that case was dismissed by order of the board. The parties in this appeal were able to stipulate to a settlement and the appeal was dismissed.</p>	WP	6/15/04	3/25/05
P04-079	<p>David Manning v. Central Pre-Mix Concrete and Ecology</p> <p>Reason: Appealing Certification 04SEACR-1211</p> <p>Result: The appellant challenged a 401 water quality certification approval issued for gravel mining in wetlands near the Yakima River. The appeal was dismissed for nonparticipation. The appellant failed to respond to a motion to dismiss, and never furnished preliminary lists of witnesses or exhibits. The board dismissed the appeal.</p>	WP	6/17/04	11/10/04
P04-094	<p>Mid-Mac Enterprises v. Ecology</p> <p>Reason: Appealing Penalty No. DE 02SPPRNR-4724 in the amount of \$49,500.</p> <p>Result: The parties reached a settlement in this matter regarding a fuel spill. Without admission of liability, the company agreed to pay a portion of the penalty assessed. The case was dismissed based on the parties' stipulation.</p>	WP	7/15/04	2/9/05
P04-099	<p>Sound Refining Corporation v. Ecology</p> <p>Reason: Appealing Penalty in the amount of \$24,700 for allegedly not collecting storm water samples.</p> <p>Result: Ecology fined refinery \$25,000 for failure to collect stormwater data as required by permit and failure to apply for renewal of permit. Appeal settled based on suspension of penalty and refinery plan to conduct audit of environmental and permitting practices and provide report to Ecology.</p>	WP	7/22/04	12/23/04
P04-106	<p>Smith Brothers Farms, Inc. v. Ecology</p> <p>Reason: Appeal of denial of coverage under the Dairy Waste General Discharge Permit</p> <p>Result: The appellant challenged Ecology's denial of coverage under the Dairy General Permit. The parties stipulated to a dismissal of the appeal and the case was dismissed.</p>	WP	8/5/04	7/24/06
P04-119	<p>James Day v. Ecology</p> <p>Reason: Appealing citation received in the amount of \$500 for alleged spill.</p>	WP	9/1/04	11/23/04

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**EHO Case Manager
Closing Case Summary**

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Stipulated</i>				
P04-121	<p>Portac, Inc. v. Ecology</p> <p>Result: The appellant was fined \$500 when his boat came loose from its mooring and drifted ashore, causing diesel fuel to be spilled into the water. The parties reached a settlement in which the appellant will perform a project for natural resource mitigation work. The case was dismissed based upon the settlement.</p> <p>Reason: Appealing penalty in the amount of \$13,000 for alleged violation of condition of Industrial Stormwater Permit.</p>	WP	9/3/04	3/30/05
P04-134	<p>Evans Fruit Co., Inc. v. Ecology</p> <p>Result: This appeal involved a challenge to a \$13,000 civil penalty issued to Portac for violations of the Industrial Stormwater General Permit. The parties reached a settlement and the appeal was dismissed.</p> <p>Reason: Appeal Ecology's requirement of obtaining a permit and paying annual fee to state.</p>	WP	10/12/04	3/16/06
P04-158	<p>Weyerhaeuser Company (Raymond Lumber Mill) v. Ecology</p> <p>Result: This is a settlement of controversy over a wastewater discharge permit and NPDES permit for a lagoon at fruit facility.</p> <p>Reason: Appeal of Administrative Order concerning wastewater and stormwater discharges.</p>	WP	12/13/04	1/5/06
P04-159	<p>Manke Lumber Company, Inc. v. Ecology</p> <p>Result: This case involved the appeal of an administrative order and penalty issued to Weyerhaeuser for State Wastewater Permit violations. The parties were able to reach a settlement whereby Weyerhaeuser agreed to take corrective measures, the penalty was reduced from \$39,000 to \$6,000, and Weyerhaeuser agreed to make an additional payment to the Willapa Bay Fisheries Enhancement Group in the amount of \$19,000 to be used for salmon restoration projects. The board dismissed the appeal. Consolidated appeals PCHB 04-158 and 05-044.</p> <p>Reason: Appeal of conditions on NPDES Permit No. WA0040339.</p>	WP	12/14/04	6/9/05
P04-160	<p>Kaiser Aluminum & Chemical Corporation v. Ecology</p> <p>Result: The appellant challenged provisions contained in the NPDES permit issued for its wood treating facility. They particularly challenged the size of the mixing zone authorized, the effluent limits for arsenic and chromium, and the requirement to isolate treated lumber from rainfall. The parties agree the appellant will install a treatment system for discharge from one of its outfalls. The parties also agreed on an interim effluent limit for total copper, and the potential to re-evaluate the mixing zone for copper, based on a study required in the permit. The case was dismissed based on the settlement.</p> <p>Reason: Appeal of penalty in the amount of \$40,000 for alleged violations.</p>	WP	12/15/04	10/5/05
P04-161	<p>Kaiser Aluminum & Chemical Corporation v. Ecology</p> <p>Result: Kaiser Aluminum appealed a \$40,000 penalty issued to it by Ecology for alleged discharges of various pollutants into the Spokane River from its aluminum products mill in Trentwood Works. The parties settled these consolidated appeals prior to hearing. The board dismissed the appeals. PCHB 04-160 & 161.</p> <p>Reason: Appeal of "Order" requiring corrective actions for alleged violations.</p>	WP	12/15/04	10/5/05
P05-016	<p>Washington Aggregates and Concrete Association v. Ecology</p> <p>Result: Kaiser Aluminum appealed a \$40,000 penalty issued to it by Ecology for alleged discharges of various pollutants into the Spokane River from its aluminum products mill in Trentwood Works. The parties settled these consolidated appeals prior to hearing. The board dismissed the appeals. PCHB 04-160 & 161.</p> <p>Reason: Appeal Sand and Gravel General Permit issued by Ecology with requirements for monitoring.</p>	WP	2/3/05	10/21/05
P05-017	<p>Appellants challenged conditions contained in the Sand and Gravel NPDES and State Waste Discharge Permit. The parties agreed to a settlement in the case. As part of the settlement, the frequency of pH monitoring is deemed a permit modification for the purpose of comments on the condition and the right to appeal the condition. The case was dismissed based on the settlement. Consolidated appeals, PCHB 05-016 & 017.</p> <p>Reason: Appellants challenged conditions contained in the Sand and Gravel NPDES and State Waste Discharge Permit. The parties agreed to a settlement in the case. As part of the settlement, the frequency of pH monitoring is deemed a permit modification for the purpose of comments on the condition and the right to appeal the condition. The case was dismissed based on the settlement. Consolidated appeals, PCHB 05-016 & 017.</p> <p>Request that Sand & Gravel General Permit be modified to be consistent with applicable legal requirements.</p>	WP	2/4/05	10/21/05
P05-021	<p>Puget Soundkeeper Alliance v. Ecology</p> <p>Reason: Request that Sand & Gravel General Permit be modified to be consistent with applicable legal requirements.</p> <p>Result: Appellants challenged conditions contained in the Sand and Gravel NPDES and State Waste Discharge Permit. The parties agreed to a settlement in the case. As part of the settlement, the frequency of pH monitoring is deemed a permit modification for the purpose of comments on the condition and the right to appeal the condition. The case was dismissed based on the settlement. Consolidated appeals, PCHB 05-016 & 017.</p>	WP	2/11/05	1/13/06
P05-021	<p>Kariah Enterprises, LLC v. Ecology</p> <p>Reason: Appeal of Ecology's decision to deny request for 401 Water Quality Certification.</p> <p>Result: Appellant challenged Ecology's denial of a Section 401 Certification. Ecology denied the certification based on the appellant's refusal to provide an additional wetland delineation which depicts non-federal wetlands. The refusal was based on appellant's belief that the U.S. Army Corps of Engineers was solely responsible for wetland delineations for federal permits. After the board ruled in Ecology's favor on summary judgment on this point, the parties stipulated to a settlement of the remaining issue. The board dismissed the appeal.</p>	WP	2/11/05	1/13/06

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EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Stipulated</i>				
P05-039	Cascade Paint and Supply, Inc. v. Ecology Reason: Appeal of Penalty in the amount of \$21,000 for alleged violations. Result: Paint company appealed civil penalty issued for allowing paint and paint/water mixture to drain into storm sewer. Case settled based on agreement to reduce penalty amount. The board dismissed the appeal.	WVP	3/11/05	6/28/05
P05-044	Weyerhaeuser Company (Raymond Lumber Mill) v. Ecology Reason: Appeal of Penalty No. 1744 in the amount of \$49,078. Result: This case involved the appeal of an administrative order and penalty issued to Weyerhaeuser for State Wastewater Permit violations. The parties were able to reach a settlement whereby Weyerhaeuser agreed to take corrective measures, the penalty was reduced from \$39,000 to \$6,000, and Weyerhaeuser agreed to make an additional payment to the Willapa Bay Fisheries Enhancement Group in the amount of \$19,000 to be used for salmon restoration projects. The board dismissed the appeal. Consolidated appeals PCHB 04-158 and 05-044.	WP	3/16/05	1/5/06
P05-048	Woodworth & Co., Inc. v. Ecology Reason: Appeal of \$9,000 civil Penalty #1946 & Admin. Order #1947 for discharge into waters of the state. Result: This case involved the appeal of an administrative order and \$9,000 civil penalty issued to Woodworth & Co. for discharges of process water and leachate from shingle grinding operations in violation of the general permit. The parties settled the matter prior to the hearing.	WVP	3/28/05	3/14/06
P05-065	Tomasos Brothers, Inc. v. Ecology Reason: Appeal of size of penalty in the amount of \$12,000. Disputes findings of Ecology in Notice of Penalty. Result: The appellants operate a boat which spilled oil into the Columbia River while fuel oil was being transferred into the ship. The appellants disputed the amount of fuel spilled and the accompanying penalty and natural resource damage assessment. The parties agreed to settle the case if the appellant paid a \$25,000 fine. The board dismissed the appeal.	WVP	5/3/05	6/9/05
P05-067	Pacific Rock Products, LLC dba Rinker Materials v. Ecology Reason: Appeal of Ecology's determination asserting regulatory authority. Result: Ecology directed mine operation to take steps to ensure safety of impoundment area. The operator disputed Ecology's jurisdiction and appealed to the PCHB. Parties agreed to stipulation whereby operator will agree to safety procedures without conceding Ecology jurisdiction. The board dismissed the appeal.	WP	5/6/05	7/5/05
P05-074	B & G Farms, Inc.; Brown & Gius Farms, Inc.; Veg-Tech Chemicals, Inc.; Brown E Reason: Appeal of assessment of penalty in the amount of \$69,000 for release of used oil. Result: This case involved the appeal of a civil penalty (\$69,000) and administrative order issued to B&G Farms for violations of the dangerous waste laws due to improper disposal of used oil. The parties settled the appeal prior to hearing and the appeal was dismissed.	WP	5/16/05	8/22/06
P05-079	Gig Harbor Marina v. Ecology Reason: Appeal of Penalty No. 1971 in the amount of \$2,000 for violations of NPDES and General Boatyard permit. Result: Ecology issued a \$2,000 penalty to boatyard for allegedly violating their NPDES permit by allowing pressure wash wastewater containing excessive amounts of copper to discharge into sewer. Parties settled on \$1,500 fine, and no admission of liability by marina. The board dismissed the appeal.	WP	5/31/05	7/1/05
P05-092	Tri Pak, Inc. v. Ecology Reason: Appeal of penalty in the amount of \$6,000 for wastewater violations. Result: Appellant was fined \$9,000 for pumping process wastewater into a detention pond, which is a tributary to a waterway. Ecology reduced the penalty to \$6,000, and the parties settled the case based upon the reduced fine. The board dismissed the appeal.	WP	6/16/05	7/13/05
P05-099	Safeway Inc. v. Ecology Reason: Appeal of \$96,000 civil penalty for violations at Safeway Distribution Facility in Auburn. Result: The above-referenced case has settled and a dismissal order entered. The dispute involved a penalty assessed for discharges to groundwater caused by activities in the course of construction, including improper batch plant equipment washing, that were not in compliance with requirements of the SWPPP and applicable pollution regulations. The parties agreed on an adjusted penalty and appropriate mitigation measures.	WP	7/6/05	3/7/06
P05-105	Northwest Aquatic Eco-Systems v. Ecology(Crystal Lake) Reason: Appeal of Ecology decision to deny application for treatment of weeds in Crystal Lake. Result: The parties reached a settlement allowing the treatment of aquatic nuisance weeds in Crystal lake in accordance with detailed conditions. The conditions limit the type of herbicide and methods of application. Buffers were also established to protect sensitive species in the lake. The board dismissed the case based upon the parties' resolution.	WVP	7/19/05	9/1/06

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EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Stipulated</i>				
P05-107	Lakeview Terrace Mobile Home Park v. Ecology Reason: Appeal of effluent limitation from Water Discharge Permit. Result: This was an appeal of a wastewater discharge permit which allowed discharge of wastewater to groundwater. Permit terms were appealed and the parties entered into a stipulated agreement settling the case. The appeal was dismissed.	WP	7/25/05	2/9/06
P05-110	McEvoy Oil Company v. Ecology Reason: Appeal of penalty in the amount of \$12,000 for fuel spilled. Result: This case settled following a stipulation agreement reducing the penalty. The dispute concerned a petroleum spill following an accident involving a tanker truck. The issue concerned the promptness of notification to Ecology about the spill. The board dismissed the appeal.	WP	8/11/05	1/25/06
P05-113	Jim's L&M Marine Services v. Ecology Reason: Appeal of Penalty in the amount of \$2,000. Result: This case involved the appeal of a penalty issued to Jim's L&M Marine Services for failure to perform the required surface water discharge monitoring under the Boatyard General Permit. The \$2,000 penalty was reduced to \$1,000, and a payment schedule was negotiated. The board dismissed the appeal.	WP	8/19/05	1/5/06
P05-114	Brian M. Brace v. Ecology Reason: Appeal of \$500 civil penalty for petroleum spill in Cedar River. Result: The appellant was fined \$500 for discharging oil and gasoline into state waters when his vehicle rolled into the Cedar River and sank. The parties stipulated to a payment schedule and the case was dismissed based on the settlement.	WP	8/26/05	1/6/06
P05-116	Riley River Ranch v. Ecology Reason: Appeal of Ecology order No. 2634 & \$5,000 civil penalty 2633. Result: The parties settled this appeal of a civil penalty and administrative order relating to operations on the Riley River Ranch. The parties agreed to a plan which would include fencing areas of the ranch to prevent livestock from gaining direct access to a creek. The Ranch will also be funding a special project by the Whitman Conservation District. A portion of the penalty is being reduced and another portion will be used to purchase plants to vegetate the riparian area on the Ranch. The case was dismissed pursuant to the parties' agreement.	WP	8/29/05	6/29/07
P05-117	Rock Services Incorporated (RSI) v. Ecology Reason: Appeal of penalty in the amount of \$16,000 for four violations and Administrative Orders. Result: This case involved the appeal of an administrative order and penalty issued to Rock Services, Inc., the operator of a gravel pit in Tenino. Ecology alleged that Rock Services had violated conditions of its coverage under the Sand and Gravel General permit. The parties reached a settlement, and the appeal was dismissed.	WP	8/29/05	11/1/06
P05-120	I.P. Callison and Sons v. Ecology Reason: Appeal of Notice of Penalty Incurred in the amount of \$28,197 Result: This case involved the appeal of a civil penalty in the amount of \$31,330 issued to I.P. Callison for alleged violations of its state waste discharge permit. The violations involved failure to submit discharge monitoring reports. The parties ultimately submitted a settlement to the Board, and the appeal was dismissed.	WP	9/1/05	2/16/06
P05-121	Eaton Ranch (Jerry Eaton) v. Ecology Reason: Appeal of Order and Penalty in the amount of \$5,000. Result: This appeal resulted in settlement of an Administrative Order and Penalty related to Ecology's determination that Eaton Ranch was a Concentrated Animal Feeding Operation (CAFO). Based on the settlement, the board dismissed the appeal.	WP	9/1/05	7/6/06
P05-122	Bedrock Excavation and Construction v. Ecology Reason: Appeal of Penalty in the amount of \$24,000. Result: The parties in this case have reached an agreement that reduces the penalty assessed against Bedrock for NPDES violations associated with a construction project. Ecology found that Bedrock was responsible for inadequate erosion control practices that resulted in discharges of turbid, sediment-laden water that overflowed the sediment pond and impacted a lake and a tributary. The board dismissed the appeal.	WP	9/2/05	3/17/06
P05-125	Clearbrook Holsteins v. Agriculture Reason: Appeal of Administrative Order issued by Agriculture & Appeal of Ecology's Order and associated fine & corrective actions. Result: Appellant was fined \$9,000 by the Department of Agriculture because the appellant's manure lagoon overflowed into a wetland and subsequently into a tributary of the Sumas River. This overflow resulted in a fish kill and possible impact to salmon spawning beds. The parties stipulated to a reduction of the fine to \$4,500, of which \$3,500 was suspended if the lagoons pass inspection and no further violation occurs. The case was dismissed.	WP	9/8/05	1/23/06

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EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Stipulated</i>				
P05-128	Rod Erickson, Ro-Dar Farms v. Agriculture	WP	9/19/05	2/9/06
	Reason: Appeal of Penalty in the amount of \$7,000 for alleged water pollution.			
	Result: The appellants were fined \$7,000 because a break in the dike of their manure lagoon resulted in a discharge of manure into a creek, and ultimately Dayton Harbor. This pollution resulted in contamination to shellfish beds. The penalty was reduced to \$3,500, of which \$1,500 was suspended due to the repairs undertaken by the appellants. The case was dismissed based on the settlement.			
P05-133	Foss Maritime Company v. Ecology	WP	10/5/05	10/11/07
	Reason: Appeal of \$462,000 civil penalty for fuel oil spill from a barge into Puget Sound.			
	Result: Foss Maritime Company appealed a \$462,000 civil penalty issued to it by Ecology for a 4,637 gallon fuel oil spill into Puget Sound waters from a barge owned by Foss. Foss did not dispute the occurrence of the violation, but argued the amount of the penalty was excessive. The parties were able to reach a settlement, whereby Foss agreed to pay Kitsap County a reduced amount (\$415,000) to complete a supplement environmental project.			
P05-145	Sammamish Plateau Water and Sewer District v. Ecology and Port Blakely Comm	WP	11/23/05	5/29/07
	Reason: Appeal of National Pollutant Discharge Elimination Permit & State Waste Discharge Permit for Issaquah Highlands project.			
	Result: The parties reached a settlement of this appeal of an NPDES permit for construction stormwater from the Issaquah Highlands Development. An amended permit was issued containing additional monitoring provisions and the parties stipulated to dismissal of the appeal.			
P06-003	Snokist Growers v. Ecology	WP	1/17/05	6/12/05
	Reason: Appeal of conditions of NPDES permit.			
	Result: This appeal of the effluent limits for BOD/TSS in the NPDES permit settled, with modification of limits. The board dismissed the appeal.			
P06-010	Boss Construction, Inc. v. Ecology	WP	3/2/06	4/20/07
	Reason: Appeal for relief of \$16,000 penalty for unauthorized release of turbid stormwater.			
	Result: Appellant challenged a \$16,000 penalty imposed by Ecology for the unauthorized release of turbid stormwater and for failure to comply with their stormwater pollution prevention plan. The appellant agreed to pay the penalty with the condition that Ecology not include this violation as a consideration in future enforcement actions. The case was dismissed based on the settlement.			
P06-024	Herriman Speedy Tank Services, Inc. v. Ecology	WP	4/5/06	6/16/06
	Reason: Appeal of Penalty No. 3169, and request for mitigation or remission.			
	Result: Appellant challenged a \$6,000 penalty assessment for violations of biosolids management regulations. The parties reached a settlement in which the penalty will be reduced to \$5,000, \$3,000 of which will be suspended for three years on the condition that no further similar violations are committed. The case has been dismissed with prejudice.			
P06-030	Union Pacific Railroad Company v. Ecology	WP	5/12/06	10/4/06
	Reason: Appeal of Penalty in the amount of \$106,000 for spill of diesel and lube oil, and an order for reimbursement of 12,006.44 to State of Washington.			
	Result: Parties reached a settlement of the penalty imposed for violation of water quality regulations related to an oil spill. The appeal was dismissed.			
P06-036	Northwest Washington Fair and Event Center and Mr. Jim Baron v. Ecology	WP	5/22/06	2/6/07
	Reason: Appeal of corrective action for elevated fecal bacterial counts in Portage Bay.			
	Result: Appellant challenged an administrative order issued by Ecology as a result of fecal coliform bacteria contamination of state waters due to livestock manure coming from the Lynden Fair. The appellant satisfied the administrative order by addressing stormwater discharge and implementing a monitoring and inspection program. The case was dismissed.			
P06-047	Westfarm Foods v. Ecology	WP	7/6/06	11/22/06
	Reason: Appeal of waste discharge permit.			
	Result: This appeal of an NPDES permit was settled with permit modifications by Ecology. The appeal was dismissed.			
P06-056	Pacific Functional Fluids v. Ecology	WP	7/21/06	2/26/07
	Reason: Appeal of a \$2,000 penalty for violation of NPDES permit.			
	Result: Appellant challenged a \$2,000 penalty by Ecology for discharges during a one-month period which exceeded the permit level established for zinc, and also for failing to submit a discharge monitoring report for one month. The parties agreed to a reduction in the penalty amount to \$1,000 and the case was dismissed.			
P06-059	Weyerhaeuser Company v. Ecology	WP	7/25/06	2/6/07
	Reason: Appeal of certain terms and conditions of Moses Lake waste discharge permit.			

EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Stipulated</i>				
P06-066	Tom Crabtree v. Ecology	WP	8/9/06	12/22/06
	Result: This case involved an appeal of certain effluent limitations, monitoring requirements, and other terms and conditions in a state waste discharge permit issued by Ecology for Weyerhaeuser's Moses Lake Box Plant (a container board packaging plant). As a result of settlement discussions, the parties stipulated to modifications of two effluent limitations (for BOD and TSS) and agreed to dismissal of this appeal. Accordingly, the Board dismissed the case.			
	Reason: Appeal of \$2000 penalty for violations of discharge monitoring requirements for general permit.			
P06-078	Bayview Redi-Mix v. Ecology	WP	8/30/06	6/29/07
	Result: This case involved an appeal of a \$2,000 penalty issued by Ecology for violations of the discharge monitoring requirements of the Sand and Gravel General Permit at a surface mining site in Whatcom County. The parties settled the matter by reducing the penalty to \$1,500 and arranging a payment schedule. At the joint request of the parties, the Board dismissed the appeal.			
	Reason: Appeal of penalty and Order for not providing proper access for waste water.			
P06-083	Coast Seafoods v. Ecology	WP	9/11/06	2/27/07
	Result: This was the appeal of a penalty and order issued for violations of terms and conditions of the General Permit Bayview Redi-Mix was operating under. The parties reached a resolution and the appeals were dismissed. Consolidated appeals, PCHB 06-078 and 06-117.			
	Reason: Appeal of fecal coliform limits on waste discharge permit.			
P06-084	South Bend Packers v. Ecology	WP	9/11/06	10/24/06
	Result: This matter involved the consolidated appeals of fecal coliform effluent limits established in the NPDES permits issued to two seafood processing plants on the Willapa River. The parties reached a settlement in which Ecology agreed to modify both permits to include compliance schedules (subject to the public notice and comment requirements of the permit modification process) in exchange for dismissal of the appeals. Based on the settlement agreement, the Board dismissed the appeals. Consolidated appeals, PCHB 06-083 & 06-085.			
	Reason: Appeal of fecal coliform limits on waste discharge permit.			
P06-085	East Point Seafoods v. Ecology	WP	9/11/06	2/27/07
	Result: This matter involved three consolidated appeals of the fecal coliform effluent limits established in the NPDES permits issued to three seafood processing plants on the Willapa River. South Bend Packers requested voluntary dismissal of its appeal without any effect on the other two companies' appeals of their permits, and the Board dismissed the one company from the consolidated appeal.			
	Reason: Appeal of fecal coliform limits on waste discharge permit.			
P06-091	Kitsap Marina Industries Inc. v. Ecology	WP	9/28/06	12/14/06
	Result: This matter involved the consolidated appeals of fecal coliform effluent limits established in the NPDES permits issued to two seafood processing plants on the Willapa River. The parties reached a settlement in which Ecology agreed to modify both permits to include compliance schedules (subject to the public notice and comment requirements of the permit modification process) in exchange for dismissal of the appeals. Based on the settlement agreement, the Board dismissed the appeals. Consolidated appeals, PCHB 06-083 & 06-085.			
	Reason: Appeal of \$2000 penalty for failure to monitor stormwater discharge.			
P06-092	Ocean Protein, LLC v. Ecology	WP	9/29/06	4/20/07
	Result: Appellant challenged a \$2,000 penalty imposed by Ecology for failing to monitor and report stormwater discharges from their boatyard operation. The parties agreed to a reduced penalty of \$1,000 and the case was dismissed.			
	Reason: Appeal of \$12,500 penalty for discharge of stickwater without a permit.			
P06-093	Dockside Sales & Service v. Ecology	WP	9/29/06	12/28/06
	Result: The appellant was fined \$12,500 for discharging fish process wastewater without a permit on farmland. The parties agreed to a settlement which requires the appellant to pay \$7,500 to the City of Hoquiam for development of a comprehensive wastewater plan. The case was dismissed based on the settlement.			
	Reason: Appeal of \$1000 penalty for failure to monitor and report stormwater discharge.			
P06-105	Wilcox Family Farms v. Ecology	WP	10/26/06	1/26/07
	Result: This case involved a Dept. of Ecology penalty assessment against a marine sales and service business for failing to monitor and report stormwater discharges as is required by the stormwater general permit covering the business. Although the business had sent in discharge monitoring reports, they did not contain the required monitoring data and information. The parties were able to reach an agreement on a conditional reduction in the penalty provided that the business has no further violations of the general permit reporting requirements. If Dockside fails to sample and provide stormwater discharge monitoring reports within a two-year period, the suspended portion of the penalty amount will be reinstated. Having reached agreement, the parties requested that the appeal to the PCHB be dismissed with prejudice.			
	Reason: Appeal of \$8,000.00 penalty for failing to remove manure from field.			

EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Stipulated</i>				
P06-111	Central Puget Sound Regional Transit Authority v. Ecology	WP	11/20/06	10/9/07
	Result: The parties reached an agreement resolving this penalty for alleged water quality violations related to certain handling of manure on the farm property. A portion of the penalty will be paid and a portion will be used for a supplemental environmental project involving creation of an interpretive trail. Based upon the stipulation, the case was dismissed.			
	Reason: Appeal of Immediation Action Order issued to Sound Transit by Ecology.			
P06-114	D.B. Johnson Construction v. Ecology	WP	11/22/06	9/17/07
	Result: Sound Transit filed appeals of an administrative order, a civil penalty in the amount of \$66,000, and Ecology's denial of coverage for Sound Transit under the Construction Stormwater General Permit. PCHB 06-111, 07-008 & 07-018 were consolidated. The parties were able to reach a settlement of these appeals.			
	Reason: Appeal of \$14,000 penalty for violation of NPDES permit.			
P06-117	Bayview Redi-Mix v. Ecology	WP	11/29/06	6/29/07
	Result: D.B. Johnson Construction appealed a \$14,000 penalty issued by Ecology for violations of the Construction Stormwater general permit (NPDES). The parties entered into a settlement agreement resolving the appeal and the appeal was dismissed.			
	Reason: Appeal of \$25000 penalty for not monitoring discharges.			
P06-119	Pacific Gro v. Ecology	WP	12/7/06	7/11/07
	Result: This was the appeal of a penalty and order issued for violations of terms and conditions of the General Permit Bayview Redi-Mix was operating under. The parties reached a resolution and the appeals were dismissed. Consolidated appeals, PCHB 06-078 and 06-117.			
	Reason: Appeal of \$10,000 penalty for unpermitted discharge into Port of Willapa Harbor.			
P06-120	Port of Willapa Harbor v. Ecology	WP	12/8/06	7/11/07
	Result: Appellant was fined \$10,000 for an unpermitted discharge of high strength liquid fertilizer (stickwater) into a city's wastewater treatment plant. The appellant, together with the appellant in a related stickwater case (Port of Willapa Harbor - PCHB 06-120) agreed to a settlement that requires them to provide \$20,000 to fund the design and implementation of a stormwater improvement plan for the Port of Raymond Port Dock facility. The case was dismissed based on the settlement.			
	Reason: Appeal of \$24,000.00 penalty for discharge of high strength waste water.			
P06-124	Donald B. Murphy Contractors Inc dba DBM Contractors Inc v. Ecology	WP	12/22/06	5/11/07
	Result: Appellant was penalized \$24,000 for allowing a discharge of high strength liquid fertilizer (stickwater) into a city's wastewater treatment plant. The appellant, together with the appellant in a related stickwater case (Pacific Gro - PCHB 06-119) agreed to a settlement that requires them to provide \$20,000 to fund the design and implementation of a stormwater improvement plan for the Port of Raymond Port Dock facility. The case was dismissed based on the settlement.			
	Reason: Appeal of \$100 civil penalty for spill into creek.			
P07-008	Central Puget Sound Regional Transit Authority v. Ecology	WP	1/18/07	10/9/07
	Result: This appeal was from a penalty assessed by Ecology pursuant to RCW 90.48.080 for a two gallon spill of diesel fuel to the Little Swamp Creek as a result of a coupler failure on an on-site generator. No containment had been used with the equipment. Ecology agreed to withdraw the citation upon the Appellant's completion of obligations under a stipulation that includes a donation to the King County Environmental Grants program to a project benefiting water quality. The Appellant then withdrew the appeal and the case was dismissed.			
	Reason: Appeal of \$66,000 penalty for stormwater discharge.			
P07-018	Central Puget Sound Regional Transit Authority v. Ecology	WP	2/12/07	10/9/07
	Result: Sound Transit filed appeals of an administrative order, a civil penalty in the amount of \$66,000, and Ecology's denial of coverage for Sound Transit under the Construction Stormwater General Permit. PCHB 06-111, 07-008 & 07-018 were consolidated. The parties were able to reach a settlement of these appeals.			
	Reason: Appeal of denial for coverage under the Construction Stormwater General Permit.			
P07-045	Jon Port, A Home Doctor dba Real Homes v. Ecology	WP	3/26/07	9/17/07
	Result: Sound Transit filed appeals of an administrative order, a civil penalty in the amount of \$66,000, and Ecology's denial of coverage for Sound Transit under the Construction Stormwater General Permit. PCHB 06-111, 07-008 & 07-018 were consolidated. The parties were able to reach a settlement of these appeals.			
	Reason: Appeal of \$5,000 penalty for water quality violations at a construction site.			
	Result: This case involved an appeal of a \$5,000 penalty for alleged water quality violations involving unpermitted discharges of sediment from a construction site into storm drains that drain to the Columbia River. The parties negotiated a settlement in which the penalty was reduced to \$2,500, and the Board accordingly dismissed the appeal.			

**EHO Case Manager
Closing Case Summary**

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Stipulated</i>				
P07-049	Cheryl Adams v. Ecology Reason: Appeal of permit to discharge pollutants into the water. Result: Cheryl Adams appealed Ecology's issuance of the NPDES General Permit covering mosquito control activities that discharge insecticides into surface waters of the state. Ms. Adams' concern was potential impacts to water quality and wildlife. Ms. Adams and Ecology were able to reach an agreement in which Ecology agreed to propose a groundwater study, contingent on funding, and agreed to have Ms. Adams sit on an External Advisory Committee that will participate in the reissuance process of the general permit. On this basis, Ms. Adams agreed to dismissal of the appeal.	WP	4/6/07	6/20/07
P07-063	John McGraw v. Ecology Reason: Appeal of \$250 penalty for discharging gasoline-contaminated water into the storm drain system. Result: This case involved an appeal of a \$250 penalty issued by Ecology for the discharge of gasoline-contaminated water into the storm drain system that allegedly occurred while pumping flood water out of the basement of Mr. McGraw's home. The parties negotiated a settlement agreement, and the Board accordingly dismissed the appeal.	WP	5/31/07	7/11/07
P07-070	Central Puget Sound Regional Transit Authority v. Ecology Reason: Appeal of \$79,000 civil penalty for violations of stormwater permit. Result: Sound Transit and PCL Construction (PCHB 07-070 & 075) filed appeals of a \$79,000 civil penalty issued to the two entities. The two appeals were consolidated and settled as part of the settlement of PCHB No. 05-111, 07-008 and 07-018.	WP	6/11/07	10/9/07
P07-074	Canal Boatyard LLC v. Ecology Reason: Appeal of \$9500 penalty for violations of permit. Result: Appellant challenged the \$9,500 penalty imposed for violations of the Boatyard General Permit and/or Ch. 90.48 RCW. The parties reached settlement and the appeal was dismissed.	WP	6/18/07	9/5/07
P07-075	PCL Construction Services v. Ecology Reason: Appeal of \$79,000 penalty for violations of stormwater permit. Result: Sound Transit and PCL Construction (PCHB 07-070 & 075) filed appeals of a \$79,000 civil penalty issued to the two entities. The two appeals were consolidated and settled as part of the settlement of PCHB No. 06-111, 07-008 and 07-018.	WP	6/19/07	10/9/07
<i>Agreed Dismissal - Withdrawal</i>				
P01-003	Nature's Path Foods USA, Inc. v. Ecology Reason: Appealing an Order to comply with terms of a Waste Discharge Permit. Result: Case dismissed upon appellant's withdrawal of appeal.	WP	1/11/01	2/22/01
P01-005	Kitsap County Sewer District No. 5 v. Ecology Reason: Appealing a penalty of \$6,000 Result: Case dismissed upon appellant's withdrawal of appeal.	WP	1/25/01	2/27/01
P01-026	Roadway Express, Inc. v. Ecology Reason: Appeal of Ecology's deferral of coverage under an NPDES permit. Result: Roadway Express challenges Ecology's deferral of coverage under the NPDES general stormwater permit for industrial activities. Ecology's deferral was based on the pending challenge to that general permit in Soundkeeper Alliance v. Ecology (PCHB 00-173). Following the board's decision on the motion for stay and summary judgment in the Puget Sound Keepers' case, these parties were able to work through their differences. An NPDES permit was subsequently issued, and Roadway granted coverage. Roadway then withdrew its appeal and the board dismissed.	WP	3/2/01	4/4/03
P01-052	Evans Fruit Company v. Ecology Reason: Appeal of \$2,000 penalty for alleged violations of NPDES permit. Result: Appellant withdrew her appeal of a penalty assessed by Ecology for water pollution.	WP	4/30/01	6/5/01
P01-057	IBP, Inc. v. Ecology Reason: Appealing special conditions of State Waste Discharge Permit. Result: IBP withdrew its appeal of this challenge to conditions attached to approval of a state waste discharge permit relating to wastewater irrigation. The case was, accordingly, dismissed.	WP	5/10/01	4/4/03
P01-074	City of Bremerton Public Works and Utilities v. Ecology Reason: Appeal of \$3000 penalty for an alleged unauthorized discharge into waters of the state.	WP	5/25/01	6/5/01

**EHO Case Manager
Closing Case Summary**

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Withdrawal</i>				
P01-091	<p>Result: Appellant withdrew the appeal and the board dismissed the case.</p> <p>Weyerhaeuser Company (Kent Recycle Facility) v. Ecology</p> <p>Reason: Appeal of Ecology's failure to acknowledge coverage under the NPDES general permit for stormwater discharges associated with industrial activities issued October 4, 2000.</p> <p>Result: The appellant withdrew its appeal and the appeal was dismissed by the board.</p>	WP	6/22/01	11/29/01
P01-105	<p>AquaTechnex v. Ecology</p> <p>Reason: Appealing an administrative order.</p> <p>Result: Appeal withdrawn by appellant and dismissed.</p>	WP	7/10/01	9/5/01
P01-107	<p>Aquatechnex v. Ecology</p> <p>Reason: Appealing Condition S-06 of administrative orders.</p> <p>Result: Appeal withdrawn by appellant and dismissed.</p>	WP	7/16/01	9/5/01
P01-110	<p>AquaTechnex v. Ecology</p> <p>Reason: Appealing an administrative order, specifically to Condition S-6.</p> <p>Result: Appeal withdrawn by appellant and dismissed.</p>	WP	7/17/01	9/5/01
P01-186	<p>Richard and Beverly Luce v. Ecology</p> <p>Reason: Appeal of order issued to King County by Ecology relating to construction of East Lake Sammamish Trail project.</p> <p>Result: The appellants withdrew their appeal, and the appeal was dismissed by the board.</p>	WP	11/21/01	12/27/01
P01-192	<p>Washington State Parks & Recreation Commission v. Ecology</p> <p>Reason: Appealing a \$10,000 penalty for violation at Blake Island State Park Wastewater Treatment Plant.</p> <p>Result: This is an appeal from a \$10,000 penalty for alleged water quality violations. The appellant requested its appeal be withdrawn and the case was dismissed.</p>	WP	12/19/01	4/19/02
P02-002	<p>City of Hoquiam v. Ecology</p> <p>Reason: Appeal of an Ecology order requiring the City to comply with certain actions pertaining to NPDES Permit.</p> <p>Result: The appellant voluntarily dismissed its appeal.</p>	WP	1/3/02	1/16/02
P02-030	<p>Clark Public Utilities v. Ecology</p> <p>Reason: Appeal of \$3,000 civil penalty for discharge of chlorine from a generating plant into the Columbia River.</p> <p>Result: Case was dismissed when appellant indicated a desire to withdraw its challenge.</p>	WP	2/25/02	3/19/02
P02-077	<p>IP Callison & Sons v. Ecology</p> <p>Reason: Appealing a penalty of \$24,000.</p> <p>Result: The appeal of the civil penalty and regulatory order was untimely. The appellant chose not to appeal the amended order, so the board dismissed the appeal.</p>	WP	5/30/02	6/24/02
P02-105	<p>Northwest Aquatic Eco-Systems v. Ecology</p> <p>Reason: Appeal of provisions on an NPDES Permit for Gravelly Lake Improvement Club.</p> <p>Result: The appellant challenged provisions of the Aquatic Nuisance Plant and Algae Control NPDES Waste Discharge General Permit. The appellant contended copper-based products should be allowed to control algae, and the use of aluminum sulfate should be disallowed. The appellant withdrew the appeal because aluminum use can be addressed on a lake by lake basis, and Ecology will be reviewing the use of copper-based products in 2003.</p>	WP	7/12/02	1/10/03
P02-115	<p>Safety-Kleen Systems, Inc., v. Ecology</p> <p>Reason: Appeal of discharge limitations and monitoring requirements placed on state waste discharge permit.</p> <p>Result: This was an appeal of discharge limitations and monitoring requirements placed by Ecology on a state waste discharge permit. The parties entered into a performance-type settlement agreement. All parties performed per the agreement and the appellant voluntarily withdrew its appeal.</p>	WP	7/25/02	10/15/03
P02-124	<p>Waste Action Project v. Ecology and City of Sunnyside</p> <p>Reason: Appeal of NPDES permit issued by Ecology to City of Sunnyside.</p> <p>Result: The appellants withdrew this appeal of the NPDES permit issued for the City of Sunnyside Sewage Treatment Facility. The parties reached a settlement of the dispute.</p>	WP	8/2/02	5/5/03
P02-131	<p>Duane Jacoby v. Ecology</p> <p>Reason: Appeal of Ecology's Administrative Order for compliance with the Water Pollution Control Act.</p>	WP	8/19/02	12/5/02

**EHO Case Manager
Closing Case Summary**

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Withdrawl</i>				
P02-133	Noveon Kalama, Inc. v. Ecology Result: The appellant rented acreage to an individual who operated it as a dairy farm. After inspection, Ecology entered an Immediate Action Order to the operator and owner. The owner (appellant) forced the renter to cease operations to achieve compliance and withdrew his appeal. Reason: Appeal of provisions on an NPDES Permit	WP	8/23/02	9/4/03
P02-150	Snoqualmie Tribe and Snoqualmie Falls Preservation Project v. Ecology, King Co Result: Noveon Kalama Inc. challenged provisions of their NPDES permit. The matter was resolved between the parties, and Noveon moved the board for a voluntary dismissal. Reason: Appeal of Ecology's Order granting water quality certification to King County and US Army Corps of Engineers.	WP	9/19/02	11/14/02
P02-165	King County v. Ecology Result: The Snoqualmie Tribe and the Snoqualmie Falls Preservation Project challenged Ecology's issuance of a 401 certification to the Army Corps of Engineers and King County for a flood damage reduction project on the Snoqualmie River. The parties agreed that the project contract documents would include provisions for the hiring of a blasting expert to review the blasting plan and also address the Tribe's concerns. The tribe will also be allowed to monitor activities regarding earth disturbance, and the Tribe will receive a letter acknowledging the spiritual significance of the Falls to the Tribe. The appeal was withdrawn based upon the agreement. Reason: Appeal of Ecology's water quality certification to US Army Corps of Engineers and King County.	WP	9/23/02	12/5/02
P03-013	Martig Engineering & Sea Shore Villa Mobile Home Park v. Ecology Result: The Department of Ecology issued an order granting water quality certification to the US Army Corps of Engineers and King County for a flood control project on the Snoqualmie River. The county had provided Ecology information on the project, but did not intend to be named on the permit. The parties reached a settlement calling for the issuance of an amended order which does not refer to King County. Reason: Appeal of conditions placed on NPDES permit for the Sea Shore Villa Mobile Home Park.	WP	1/15/03	5/9/03
P03-051	Cummins Northwest v. Ecology Result: Ecology placed several conditons on the NPDES permit issued for operation of a sewage treatment facility serving the Sea Shore Villa Mobile Home Park. The appellants withdrew the permit appeal and the case was, accordingly, dismissed. Reason: Appeal of civil penalty of \$7,000 for exceedance of effluent limits in waste discharge permit.	WP	3/31/03	5/28/03
P03-057	Jerry Lee Dierker v. Ecology and Department of Health Result: The appellant ws assessed a \$7,000 penalty for exceeding effluent limits established in its waste discharge permit, and for failing to submit discharge monitoring reports. The appellant notified the board of its decision to withdraw the appeal, and an order of dismissal was entered. Reason: Appeal of Dept of Health's NPDES permit relating to mosquito control activities.	WP	4/10/03	10/3/03
P03-063	Harold Lemay Enterprises, Inc. v. Ecology Result: Mr. Dierker appealed Ecology's issuance of coverage to Department of Health for mosquito control activities under a general NPDES permit. Mr. Dierker moved for a a stay which was denied by the board. Mr. Dierker then withdrew his appeal. Reason: Appealing an administrative order relating to an Industrial Stormwater General Permit.	WP	4/17/03	6/30/03
P03-068	Brown Boys Feed, Inc. v. Ecology Result: Appellant complied with the Administrative Order issued by Ecology, and the appellant requested withdrawal of the appeal. The board entered an Order of Dismissal Reason: Appealing a penalty of \$10,000 for dumping silage leachate onto the snow.	WP	4/24/03	4/14/04
P03-084	Fishing Vessel Owners Marine Ways, Inc. v. Ecology Result: This case involved the appeal of a \$10,000 civil penalty issued to Brown for a discharge of silage leachate onto the snow. After listening to a half day of testimony, Brown Boy Feed decided to withdraw its appeal and pay the penalty. The board dismissed the appeal. Reason: Ecology's decision that a individual permit is required for facility, rather than boatyard general permit.	WP	6/10/03	12/11/03
P03-087	Goodrich Aviation Technical Services, Inc. v. Ecology Result: This challenge concerned Ecology's decision to require an individual permit rather than allow coverage under a general permit. Appellant decided this was not the correct forum to address its issues and withdrew its appeal. Reason: Penalty incurred in the amount of \$6,000, for violations of wastewater treatment operation.	WP	6/18/03	10/3/03
P03-088	Norwegian Cruise Line v. Department of Ecology Result: The appellant withdrew its appeals. Based thereon, the board dismissed them. Consolidated with PCHB No. 03-111	WP	6/30/03	1/23/04

EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Withdrawl</i>				
P03-095	<p>Reason: The Norwegian Cruise Line appeals Ecology's Immediate Action Order received following release of gray water and black water solids into the Strait of Juan de Fuca.</p> <p>Result: Norwegian Cruise Line (NCL) appealed Ecology's Immediate Action Order issued in response to NCL's discharge of sewage into the Strait of Juan de Fuca. Private environmental groups sought and were granted intervention. NCL complied with the order and thereafter withdrew its appeal. Consolidated with PCHB 03-138.</p> <p>Columbia River Alliance for Nurturing the Environment (CRANE) v. Ecology, U.S.</p> <p>Reason: CRANE objects to the water quality certification granted to the Corps of Engineers by Ecology</p> <p>Result: This was an appeal of the 401 Certification and CZMA concurrence on the Columbia River dredging project. A temporary stay and a stay pending hearing were issued in this case. However, the parties settled prior to hearing and the appellants withdrew their appeal.</p>	WP	7/14/03	10/31/03
P03-111	<p>Reason: Appeal of \$3,000 civil penalty associated with a soapy water release to wetland.</p> <p>Result: The appellant withdrew its appeals. Based thereon, the board dismissed them. Consolidated with PCHB No. 03-087.</p> <p>Goodrich Aviation Technical Services, Inc. v. Ecology</p>	WP	8/5/03	10/3/03
P03-138	<p>Reason: Appeal of Ecology's Amended Immediate Action Order # DE 03WQNR-5538</p> <p>Result: Norwegian Cruise Line (NCL) appealed Ecology's Immediate Action Order issued in response to NCL's discharge of sewage into the Strait of Juan de Fuca. Private environmental groups sought and were granted intervention. NCL complied with the order and thereafter withdrew its appeal. Consolidated with PCHB 03-088.</p> <p>Norwegian Cruise Lines v. Ecology</p>	WP	9/24/03	1/23/04
P03-164	<p>Reason: Appeal of Administrative Order alleging violations of General Industrial Stormwater Permit.</p> <p>Result: The parties filed a stipulation withdrawing the appeal. The Board, based on the stipulation, dismissed the appeal.</p> <p>Doug Rogers Trucking, Inc. v. Ecology</p>	WP	12/11/03	2/25/04
P03-167	<p>Reason: Appealing Administrative Order requiring company to become a regulated facility.</p> <p>Result: Covich-Williams appealed an order from Ecology requiring it to become a regulated facility to transfer diesel fuel. The order resulted from an accidental transfer that occurred when the owner was not present. The parties reached a settlement in which Ecology agreed to withdraw the order and issue a substitute order.</p> <p>Covich-Williams Co., Inc. v. Ecology</p>	WP	12/17/03	2/27/04
P04-016	<p>Reason: Appealing conditions of State Waste Discharge Permit No. ST-7405</p> <p>Result: Skagit County appealed a State Discharge Permit issued to it by Ecology for discharges from a landfill. The parties entered into a settlement which resulted in a modified discharge permit being issued and the appeal being withdrawn.</p> <p>Skagit County v. Ecology</p>	WP	2/10/04	6/17/04
P04-024	<p>Reason: Appealing non-compliance letter dated 2-9-04 with accusations against Northwest Aquatic Eco-Systems.</p> <p>Result: Northwest Aquatic Ecosystems withdrew the appeal of this non-compliance letter to pursue resolution of issues with Ecology directly. The case was dismissed.</p> <p>Northwest Aquatic Eco-Systems v. Ecology</p>	WP	2/27/04	8/5/04
P04-030	<p>Reason: Appeal of \$2000 civil penalty issued by Ecology regarding a Spill Field Citation.</p> <p>Result: This is an appeal of a civil penalty for a fuel spill where the appellant denied having control of the truck trailer, fuel facility or real property. The matter was dismissed after the parties entered a settlement agreement.</p> <p>Charles D. Conley v. Ecology and Will Strand</p>	WP	3/11/04	7/8/04
P04-072	<p>Reason: Appealing conditions placed on NPDES Permit No. WA-000012-4 regarding wastewater and stormwater discharges.</p> <p>Result: Weyerhaeuser appealed the reissuance of its NPDES permit alleging the imposition of unreasonable conditions. The parties negotiated and reached a settlement which altered those conditions. As a result of the settlement, the parties agreed to dismiss the appeal.</p> <p>Weyerhaeuser Company (Longview Facility) v. Ecology</p>	WP	6/10/04	11/30/04
P04-084	<p>Reason: Appealing Sewage Systems On Site Permit #03-105180-000.</p> <p>Result: Appellants filed an appeal of a septic system installation and well decommissioning decision. After discussions between the parties, the appellants agreed to withdraw their appeal.</p> <p>Mr. & Mrs. Gary Isaacson v. Thurston County Public Health & Social Services, an</p>	WP	6/21/04	9/15/04
P04-090	<p>Reason: Appealing issuance of 401 Certification No. 1996-4-02325</p> <p>Result: The appellant withdrew its appeal before resting its case. This withdrawal is binding on the parties and the board under WAC 391-08-065(2). Therefore, the board dismissed the appeal.</p> <p>Airport Communities Coalition v. Ecology and the Port of Seattle</p>	WP	7/8/04	8/31/04

EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Withdrawl</i>				
P04-107	Lee & Eastes Tank Lines, Inc. v. Ecology Reason: Appealing \$38,000 Penalty for alleged gasoline spill. Result: This case involved an appeal by Lee & Eastes Truck Lines of a \$38,000 penalty issued to it by Ecology for a gasoline spill that occurred during a trucking accident. While a motion for summary judgment was pending, appellant decided to pay the penalty and withdrew their appeal. The appeal was dismissed.	WP	8/11/04	3/16/05
P04-109	Tony's Roofcare, Inc. v. Ecology Reason: Appeal of Penalty No. 03SPPRSR-5943. Result: The appellant withdrew this appeal of a penalty assessed for discharging roof preservative to asphalt when a line ruptured. Accordingly, the case was dismissed.	WP	8/19/04	2/9/05
P04-112	Department of Transportation v. Ecology Reason: Appeal of \$21,000 penalty for alleged discharge into the Tacoma Narrows waterway, with accompanying Order Result: The Washington State Department of Transportation (WSDOT) appealed a \$21,000 civil penalty issued by Ecology for not containing materials during sweep blasting of the Tacoma Narrows Bridge. WSDOT withdrew its appeal and the case was dismissed. WSDOT indicated it would pay the penalty.	WP	8/19/04	5/23/05
P04-114	Department of Transportation v. Ecology Reason: Appealing Ecology's Notice of Penalty in the amount of \$121,000. Result: The Washington State Department of Transportation (WSDOT) is widening SR 18 between Maple Valley and Issaquah Hobart Road. The mitigation plan requires building or enhancing wetlands. Some of the mitigation work included placement of brush piles. The contractor began storing some woody material in a wetland. USDOT was fined \$121,000 for filling a wetland. WSDOT withdrew its appeal and the case was dismissed.	WP	8/20/04	11/3/04
P04-115	Atkinson Construction Company v. Ecology Reason: Appeal penalty in the amount of \$121,000 for alleged violation of 401 Water Quality Certification Order No. 04SEAHQ5432. Result: Woody debris for use in a wetland mitigation project was placed in a wetland for storage until needed. Ecology fined the appellant \$121,000 for unauthorized impacts to the wetland. The appeal was withdrawn and the case was dismissed.	WP	8/20/04	12/9/04
P04-132	United States Department of the Navy v. Ecology Reason: Appeal of conditions placed on State wastewater discharge permit for outfalls discharging to the City of Oak Harbor Sewage Treatment Plant. Result: The Department of Navy appealed a condition on a state wastewater discharge permit requiring it to monitor for BTEX in discharges from a gas station located on the Naval Air Station at Whidbey Island. Shortly before the prehearing conference, the Navy withdrew its appeal.	WP	10/1/04	10/27/04
P04-133	Daniel Rasar v. Ecology Reason: Appeal of Order #1615 with alleged unnecessary and unreasonable conditions. Result: Appellant contested conditions imposed by Ecology on wetlands restoration plan for 50 acres of farmland. Parties subsequently worked out new language, and the appeal was withdrawn.	WP	10/8/04	1/12/05
P04-141	City of Rainier v. Ecology Reason: Appeal of City of Rainier's denial of General Sewer Plan/Facility Plan Result: The City of Rainier challenged Ecology's denial of its proposed general sewer/facility plan. The City decided to withdraw its appeal and re-submit its sewer plans at a later time. The case was dismissed.	WP	10/29/04	3/17/05
P04-150	Olympia and Vicinity Building & Construction Trades Council and Affiliated Unio Reason: Appealing Ecology's issuance of stormwater permit to Cardinal FG Company. Result: This appeal of a stormwater permit issued to Cardinal FG Company, was withdrawn following appellant's inspection of the facility. The board dismissed the appeal.	WP	11/19/04	1/11/05
P05-004	Advanced Silicon Materials, LLC v. Ecology; Solar Grade Silicon, LLC Reason: Appeal of Waste Discharge Permit issued for Solar Grade Silicon facility. Result: Ecology issued an NPDES waste discharge permit to a facility which makes polysilicon in Moses Lake. The permit listed Advance Silicon Materials as a co-permittee, although they have no ownership or control over most of the facility. The issue was resolved because the appellant's business was sold to another entity. The appeal was withdrawn and the board dismissed.	WP	1/13/05	9/6/05
P05-010	William Chadek v. Ecology Reason: Appeal of conditions imposed in Ecology's Order #1839 (401 Certification).	WP	1/26/05	11/30/05

**EHO Case Manager
Closing Case Summary**

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Withdrawl</i>				
P05-054	<p>AquaTechnex, LLC v. Ecology</p> <p>Result: The appellant challenged conditions imposed by Ecology in its Section 401 water quality certification for the appellant's wetland fill project. The appellant revised his project resulting in less wetlands being filled. The revised project was granted coverage under a federal fill permit, and Ecology approved the revised project. The appeal was dismissed as moot.</p> <p>Reason: Appeal of denial of permit applications.</p>	WP	4/8/05	7/8/06
P05-056	<p>Clyde J. Hall and Patricia Hall v. City Transfer, Inc. and Ecology</p> <p>Result: The issues in this appeal related to permit denials for the 2005 aquatic weed treatment season. The issues are no longer in controversy and the appellant has withdrawn the appeal. The case was, accordingly, dismissed.</p> <p>Reason: Appeal of Sand and Gravel Permit issued to City Transfer for Valley View-Dieringer Pit.</p>	WP	4/11/05	9/6/05
P05-068	<p>Northwest Eco-Systems v. Ecology</p> <p>Result: The above case has settled and the appellant has withdrawn the appeal. The case involved the expansion of a surface mining operation for gravel and other materials being used for the SeaTac Airport third runway construction. Appellant, a neighbor of the mine, challenged Ecology's extension of coverage under a general NPDES permit, arguing that the mining operation should have been required to get an individual permit. The board dismissed the appeal.</p> <p>Reason: Appeal of General Permit and Permits for Lake Debra Jane and Trails End Lake</p>	WP	5/11/05	9/13/05
P05-073	<p>Northwest Aquatic Eco-Systems v. Ecology (Lakeland Village Community Club)</p> <p>Result: The appealing parties withdrew their challenge regarding coverage under the NPDES General Permit for Aquatic Nuisance Plants & Algae after a settlement was reached with the Department of Ecology. The board, accordingly dismissed the cases. Consolidated cases PCHB 05-068 and 05-073.</p> <p>Reason: Appeal of Rejection of Application for coverage under the Aquatic Pesticide General Permit.</p>	WP	5/16/05	9/13/05
P05-075	<p>City of Medical Lake v. Ecology</p> <p>Result: The appealing parties withdrew their challenge regarding coverage under the NPDES General Permit for Aquatic Nuisance Plants & Algae after a settlement was reached with the Department of Ecology. The board, accordingly dismissed the cases. Consolidated cases PCHB 05-068 and 05-073.</p> <p>Reason: Appeal of National Pollutant Discharge Permit and Water Permit.</p>	WP	5/18/05	6/9/05
P05-124	<p>Puget Soundkeeper Alliance v. Ecology & Nichols Brothers Boat Builders, Inc.</p> <p>Result: The city of Medical Lake appealed the special and general conditions of a waste discharge permit and reclaimed water permit issued by the Department of Ecology. The specific concern was the daily minimum discharges allowed because the conditions would affect the City's plans to develop a Reclaimed Water Plan for its waste water treatment plant. The City did not wish to be responsible for increasing the amount of water that was traditionally discharged to West Medical Lake prior to the City constructing its new wastewater treatment plant. Based on the City's withdrawal, the board dismissed the appeal.</p> <p>Reason: Appeal of issuance of waste discharge Permit No. ST-7396 to Nichols Brothers Boat Builders.</p>	WP	9/8/05	9/27/05
P05-126	<p>Friends of Holmes Harbor v. Ecology & Nichols Brothers Boat Builders</p> <p>Result: Ecology issued a waste discharge permit to a shipyard operation to discharge industrial stormwater and rinse water to groundwater. The appellants challenge this decision because they believe an NPDES permit is also required because of some discharges to surface water and that the permit does not comply with AKART. The appeal was withdrawn and the board dismissed the case.</p> <p>Reason: Appeal of the issuance of Waste Discharge Permit No. ST-7396.</p>	WP	9/8/05	10/3/05
P05-136	<p>Main Street Sewer District v. Ecology & Freeland Water District</p> <p>Result: The Department of Ecology issued a waste discharge permit to the operators of a shipyard. The appellant contends Ecology should also have required an NPDES permit for the operation because there were some discharges to surface waters. The appellant withdrew the appeal and it was dismissed.</p> <p>Reason: Appeal of Freeland Water District's application for Certificate of Necessity, for approval to construct sewer service system in Freeland.</p>	WP	10/7/05	6/1/06
P05-141	<p>Jackpot Industries, Inc. v. Ecology</p> <p>Result: This case has been dismissed at the request of the appellant. The case involved Ecology's approval of the establishment, construction and operation of a sewer service system in Freeland, WA. Another sewer district providing sewer services in the area challenged that approval as unlawful because it had a demonstrated intent to construct and operate a sewer system in a substantial portion of the area proposed in the applications for the competing sewer provider.</p> <p>Reason: Appeal of Corrective Action #2 which requires an evaluation of sediment contamination in the Willapa River.</p>	WP	11/3/05	2/13/06

EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Withdrawl</i>				
	Result: This case involved the appeal of an administrative order issued by Ecology to a fishing business in Raymond that serviced their own fishing boats. This servicing involved the use of sandblast grit. Ecology issued the company an order requiring them to stop repairing boats without an NPDES permit, to dispose of sandblast grit in an approved location, and to do a scope of work for evaluating sediment contamination. Jackpot withdrew its appeal prior to hearing.			
P05-162	CSR Marine, Inc., v. Ecology	WP	12/22/05	3/29/06
	Reason: Appeal of National Pollutant Discharge Elimination system Boatyard General Permit.			
	Result: The case has been dismissed at the request of the appellant. The case involved Ecology's issuance of the general permit for boatyards. The specific issues involved the treatment of discharges to waters from boatyard operations and the classification of the Lake Washington Ship Canal. Another case challenging the permit and its classification of various waters has been filed and CSR Marine requested that this individual case be dismissed because its issues would be addressed in the general case.			
P05-163	Seaview Boatyard, Inc. v. Department of Ecology	WP	12/29/05	3/2/06
	Reason: Requesting Ecology modify permit issued to Seaview Boatyard, Inc.			
	Result: The above-referenced case involved the challenge to Ecology's classification of the Lake Washington Ship Canal as a lake under the new boatyard general permit. The issue is part of another case, so Seaview Boatyard requested that this individual case be dismissed.			
P06-022	Washington Toxics Coalition v. Ecology	WP	3/31/06	6/29/07
	Reason: Appeal of Aquatic Plant & Algae Management General Permit.			
	Result: These consolidated appeals challenged the Aquatic Plant and Algae Management General NPDES Permit issued by the Department of Ecology in 2006. Issues raised by the Washington Toxics Coalition and a group of yacht clubs were resolved prior to hearing through motion practice and withdrawal of issues. The case proceeded to hearing with two aquatic plant management firms as appellants and Ecology as the respondent. The appellants asked the Board to modify or eliminate the fish timing windows which were placed in the permit to prevent fish from coming into contact with harmful chemicals. The Board upheld the fish timing windows as a reasonable and necessary provision to avoid damage to threatened species in the area. The Board upheld a challenge to the Permit provision allowing Ecology to deny permit coverage based on prior unpaid penalties. Ecology lacked statutory or regulatory authority to impose that type of sanction. The Board also remanded the Permit to Ecology for further refinement of a condition addressing the use of herbicides to control noxious aquatic weeds on Lake Washington, Lake Sammamish and Lake Union/Portage Bay. The Permit limited treatment of noxious weeds on individual lots to ten feet on either side of a dock. The Board concluded that a provision should be made for municipalities or homeowners associations to treat a larger contiguous area of noxious weeds. The Permit was remanded to Ecology for revisions consistent with the decision. Consolidated appeals, 06-011, 06-020 & 06-023.			
P06-033	City of Aberdeen v. Ecology	WP	5/19/06	10/10/06
	Reason: Request an amendment of Notice of Penalty in the amount of \$36,000 regarding violations at wastewater treatment plant.			
	Result: This case involved an appeal of a \$36,000 penalty issued by Ecology for multiple violations of the City's municipal NPDES permit related to discharges from its wastewater treatment plant at the mouth of the Chehalis River. The City later decided to pay the assessed penalty and requested dismissal of its appeal. The Board dismissed the appeal.			
P06-046	Paul Sanchez v. Ecology	WP	7/3/06	9/20/07
	Reason: Appeal of a penalty resulting from filling and re-routing a stream.			
	Result: This case involved Ecology's stop work order from grading and land disturbance work adjacent to a regulated stream and an associated penalty assessment. The appellant decided not to proceed with his appeal and requested that it be dismissed. Consolidated appeals PCHB 06-046 & 07-039.			
P06-053	City of Pomeroy v. Ecology	WP	7/19/06	8/31/06
	Reason: Appeal of \$1,500 civil penalty			
	Result: This appeal of a \$1,500 wastewater permit penalty was settled and the appeal was withdrawn. The board dismissed the appeal.			
P06-055	Deruyter Brothers Dairy, Inc., Spring Canyon Ranch, LLC, and Skyridge Farms v.	WP	7/20/06	1/12/07
	Reason: Appeal of CAFO, NPDES & State Waste Discharge permit.			
	Result: This action involved an appeal by several dairies of the Combined Animal Feeding Operation (CAFO) General Permit issued by Ecology. It was consolidated with an appeal of the same permit filed by an environmental organization (CARE v. Ecology, P 06-057), and several parties representing different industry groups had been granted intervention in the consolidated appeals. After the Northwest Dairy Association intervened, the individual dairies requested voluntary dismissal of their appeal. The Board granted the request and dismissed their action, but retained the dairy appellants' legal issues raised as part of the consolidated appeal. Was consolidated with PCHB 06-057, which remains open.			

**EHO Case Manager
Closing Case Summary**

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Agreed Dismissal - Withdrawl</i>				
P06-058	Island Concrete Products v. Ecology	WVP	7/24/06	11/22/06
	Reason: Appeal of \$2,000 penalty assessed for failure to file discharge monitoring reports.			
	Result: The case involved the stormwater monitoring requirements of the NPDES Sand and Gravel General Permit of Island Concrete Products in Eagle Harbor, Washington. Ecology had issued a Notice of Disposition Upon Application for Relief for Penally No. 3025 against Island Concrete denying reduction of the \$2,000 penalty that had been assessed. The penalty was assessed for the company's failure to file Discharge Monitoring Reports (DMRs) required as a condition of the general permit. The parties were able to come to an agreement that, in part, reduced the penalty and provided for a specific site visit and inspection. They signed an agreement and requested that the case be dismissed.			
P06-192	Arlt Family Limited Partnership v. Ecology and WDFW	WP	10/25/06	12/1/06
	Reason: Appeal of permit for to apply pesticide on Park Lake.			
	Result: This case involved the appeal of Ecology's decision not to revoke its approval of an NPDES and Waste Discharge Individual Permit issued to Washington State Department of Fish and Wildlife in 2002. The permit allowed application of rotenone to various lakes in Washington. Along with the appeal, the Arlt Family Limited Partnership filed a motion for a stay. The Board denied the stay, the Rotenone application took place, and subsequently the AFLP withdrew its appeal.			
P07-031	City of Pacific v. Ecology	WP	2/16/07	8/20/07
	Reason: Appeal of Phase II of Municipal Stormwater Permit, NPDES Permit and State Waste Discharge General Permit.			
	Result: The City of Pacific filed an appeal challenging conditions of the Phase II Municipal Stormwater Permit. The City subsequently withdrew its appeal and the case was dismissed.			
P07-034	Audrey Boyer v. Kitsap County and Shawn Mullenix	WP	2/16/07	5/1/07
	Reason: Appeal of permit to build on wetlands.			
	Result: This case was an appeal involving Kitsap County Health District's approval of a septic drain field for a new house that the appellant claimed was too close to a wetland. The case followed a critical area variance issued by the County. The appellant withdrew the appeal and the Board dismissed the case.			
P07-036	First Student Inc. v. Ecology	WP	2/20/07	5/8/07
	Reason: Appeal of \$7811 penalty for failure to apply for and obtain an Industrial Stormwater General permit.			
	Result: This case involved an appeal of a \$7,811 civil penalty issued by Ecology to First Student, Inc. for failing to obtain coverage under the Industrial Stormwater General Permit for its student bus dispatch and maintenance facility in Tacoma, WA. In the appeal, First Student sought to eliminate the penalty due to extenuating circumstances, but later decided to pay the full penalty amount. Based on First Student's payment of the penalty and request for voluntary withdrawal of the appeal, the Board dismissed the case.			
P07-039	Paul Sanchez v. Ecology	WP	2/22/07	9/20/07
	Reason: Appeal of 16,000.00 penalty for clearing, grading fill and excavation work.			
	Result: This case involved Ecology's stop work order from grading and land disturbance work adjacent to a regulated stream and an associated penalty assessment. The appellant decided not to proceed with his appeal and requested that it be dismissed. Consolidated appeals PCHB 06-046 & 07-039.			
P07-062	Icicle Seafoods v. Ecology	WP	5/25/07	6/11/07
	Reason: Appeal of \$750 penalty for hydraulic fluid leaking into Lake Union.			
	Result: Appellant challenged a \$750 penalty for the release of hydraulic oil into Lake Union after the return line ruptured. Appellant decided to withdraw his appeal and the case was dismissed.			
P07-071	City of Burlington, City of Mount Vernon, Skagit County Dike, Drainage & Irrigatic	WP	6/12/07	11/7/07
	Reason: Appeal of Ecology's Water Quality Certification and Coastal Zone Management Consistency Determination for the Baker River Project.			
	Result: The appellants withdrew their appeal of Ecology's Clean Water Act Certification and Coastal Zone Management Act Consistency Determination for Puget Sound Energy's Baker Dam Project. The Board, accordingly, dismissed the appeal.			
<i>Contested Dismissal</i>				
P02-122	Ace Paving, Inc. v. Ecology	WP	8/1/02	3/16/04
	Reason: Appealing of Ecology order issued to Ace Paving Co. to comply with the RCW rules and regulations of Ecology.			
	Result: This is an appeal from an administrative order requiring compliance with appellant's sand and gravel general permit conditions. Appellant complied after starting the appeal and Ecology sought dismissal for mootness. Dismissal was granted.			

EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Contested Dismissal</i>				
P03-134	Northwest Aquatic Eco-Systems v. Ecology Reason: Appeal based on a Notice of Violation. Result: The appellant filed an appeal based upon a Notice of Violation issued by Ecology. Ecology rescinded the Notice of Violation. The appeal was dismissed because the board lacked jurisdiction over the complaint. Appellant wanted false claims against him removed from the files.	WP	9/11/03	10/2/03
<i>Contested Dismissal - Failure to Perfect Appeal</i>				
P06-077	Shining Ocean v. Ecology Reason: Appeal of termination of stormwater permit. Result: Appellant challenged the revocation of its industrial stormwater permit. The appeal was dismissed for failure to perfect the appeal.	WP	8/25/06	9/22/06
P07-086	Saint-Gobain v. Ecology Reason: Appeal of revocation of NPDES Permit. Result: The appellant appeal challenged the revocation of its NPDES permit. The appeal was dismissed, based on the failure of the appellant to perfect its appeal, even though given several chances to do so.	WP	7/12/07	8/21/07
<i>Contested Dismissal - Non-Participation</i>				
P00-173	Puget Soundkeeper Alliance et al. v. Ecology Reason: Appeal of general NPDES permit for industrial discharges. Result: The case was dismissed after a new NPDES general permit was issued superceding the permit under dispute in this case. The parties failed to respond to an Order to Show Cause why the case should not be dismissed. Accordingly, the case was closed. Originally was consolidated with PCHB 00-174, which closed on 10/3/02.	WP	11/17/00	3/15/06
00-174	Puget Soundkeeper Alliance et al. v. Ecology Reason: Industrial Stormwater Permit Result: The appellants challenged the general NPDES permit for industrial discharges. Pursuant to a settlement agreement, the appeal is being dismissed because Ecology has reissued the industrial permit.	WP	11/17/00	10/3/02
P06-065	Randy Felt v. Ecology Reason: Appeal of penalty for spill in water. Result: This case involved an appeal of two orders related to an oil spill following the sinking of a small tug on Mats Mats Bay (a Cost Reimbursement Order, and an Order of Civil Penalty). Following a motion for summary judgment, the Board dismissed the appeal of the Cost Reimbursement Order because it is outside the Board's jurisdiction to review such orders. The parties attempted to negotiate a settlement of the remaining penalty order, but the Appellant filed for Chapter 7 Bankruptcy and then stopped communicating with Ecology. After several months without being able to contact Mr. Felt, Ecology requested dismissal of the appeal or default judgment. The Board then issued repeated requests to Mr. Felt to contact the Board and, after Mr. Felt missed a status conference, dismissed the appeal for failure to participate.	WP	8/8/06	9/28/07
<i>Contested Dismissal - Timeliness</i>				
P02-051	Seavestco, Inc. v. Ecology Reason: Appeal of \$5,000 civil penalty for discharge of sediment into natural drainage system and creek. Result: The appellant did not timely file or serve his appeal. The appeal is dismissed for lack of jurisdiction.	WP	4/1/02	6/14/02
P02-088	Jerry Dierker, Jr. v. Ecology & Quality Rock Products Reason: Appeal of Wastewater Discharge Permit issued by Ecology to Quality Rock Products. Result: Mr. Dierker appealed Ecology's issuance of an NPDES permit to Quality Rock Products for its Littlerock pit in Tenino, Washington. The appeal was defective when filed, lacking complete information, and untimely on its face. Quality Rock Product filed a motion to dismiss for lack of jurisdiction, and the motion was granted. This case is unique because of appellant's handicap and request for reasonable accommodation under ADA.	WP	6/24/02	11/4/02
P03-152	J.M. Martinac Shipbuilding Corporation v. Ecology Reason: Contesting the penalty assessed for failure to file and collect rainwater samples as stipulated by NPDES permit. Result: The appellant challenged a \$3,265 penalty imposed by Ecology for failure to monitor and report stormwater discharges from their boatyard for several months as required under its discharge permit. The appeal was not timely filed with the board, and Ecology's motion to dismiss was granted.	WP	10/20/03	12/2/03

EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Contested Dismissal - Timeliness</i>				
P04-006	City of Ridgefield v. Ecology Reason: Requests that NPDES permit be reissued and flow be granted at 0.7mgd. Result: The Board dismissed the appeal as untimely after considering the Department of Ecology's Motion to Dismiss.	WP	1/15/04	3/3/04
P04-153	Lewis County Water District No. 2 v. Ecology Reason: Appeal of notice of penalty in the amount of \$1000.00. Result: Lewis County Water District No. 2 appealed a \$1,000 penalty imposed by the Department of Ecology for failing to timely renew its NPDES permit for a wastewater treatment plant, exceeding effluent limits for total suspended solids and fecal coliform, and the lack of an authorization letter for the person to sign discharge monitoring reports. Ecology filed a Motion to Dismiss because the appeal was filed late. The Board granted the motion and the case was dismissed.	WP	11/29/04	2/14/05
<i>Decision on Merits</i>				
P06-018	Allied Aquatics v. Ecology Reason: \$32,000 penalty for alleged violation of permit conditions regarding application of pesticides to various lakes. Result: The Board found Ecology did not prove many of the violations at issue and reduced the penalty to \$16,000.	WP	2/9/00	1/31/01
P00-019	Herm & Mike Douma; MJD Farms LLC & Richard M. Stephens v. Ecology Reason: \$53,000 penalty for manure discharge into a trench leased from DNR. Result: 5/8/00: Ecology's motion to dismiss appeal as untimely was granted as to appellants Herm Douma and MJD Farms, LLC. The motion to dismiss Mike Douma was denied. 7/20/00: Appellant Mike Douma withdrew his appeal and the case was dismissed. On March 18, 2004, the case was remanded to the board from Whatcom County Superior court. 3/30/05: A \$53,000 penalty was issued for digging a trench in a wooded area and storing 500,000 gallons of dairy waste. Board found that dairy waste polluted groundwater. Board reduced the economic benefit portion of the penalty from \$13,000 to \$6,500 and suspended \$10,000 of the \$40,000 gravity-based penalty subject to inspection of dairy, implementation of BMPs, and 2 years period of water quality compliance. The board dismissed the appeal.	WP	2/16/00	3/30/05
P00-121	Charles R. Johnson dba C R Johnson, Inc. v. Ecology Reason: Appeal of \$18,000 civil penalty for alleged violation of RCW 90.48. Result: The board concluded Ecology proved one of the violations and that \$2,000 was a reasonable penalty.	WP	8/8/00	6/22/01
P01-102	Allied Aquatics v. Ecology (Elbow Lake) Reason: Appeal of an Administrative Order. Result: The Board affirmed Ecology's permit conditions requiring a survey of rare and sensitive plants, notification to parents of campers, and preparation of an Integrated Aquatic Management Plan.	WP	7/9/01	1/23/02
P01-103	Allied Aquatics v. Ecology (Crystal Lake) Reason: Appealing an Administrative Order Result: The appellant withdrew his appeal. The appeal was dismissed.	WP	7/9/01	8/13/01
P01-111	Huntington Dairy, Dairy #29 v. Ecology Reason: Appeal of \$10,000 penalty for violations of conditions of NPDES "dairy general discharge permit". Result: The board, after a hearing, affirmed the violations and concluded a reasonable penalty would be \$8,000, with \$2,000 suspended, provided the dairy commit no further violations of the governing water pollution laws, and fully implement its Farm Plan.	WP	7/18/01	1/2/02
P01-115	Roy M. Yaeger v. Ecology Reason: Appeal of order for alleged polluting of Clugston creek. Result: The appellant did not appear for the hearing. After Ecology put on a prima facie case, the board affirmed the civil penalty of \$6,000 and the regulatory order issued by Ecology.	WP	7/20/01	11/6/03
P01-159	City of Vancouver Dept of Public Works v. Ecology Reason: Appeal of conditions placed on NPDES permit. Result: The board affirmed Ecology's condition requiring Vancouver to remove 85 percent of total suspended solids and biochemical oxygen demand of its West Side Wastewater Treatment Facility, after deducting out solids transmitted from its Marine Park Water Reclamation Facility.	WP	9/28/01	9/13/02
160	Airport Communities Coalition v. Ecology and The Port of Seattle Reason: Appealing an amended section 401 certification.	WP	10/1/01	8/12/02

EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Decision on Merits</i>				
P02-022	<p>Result: Appellants challenged the 401 Certification issued by Ecology to the Port of Seattle for construction of the third runway and related facilities at the SeaTac International Airport. The board granted intervention status to CASE. The board granted a stay in December 2001. In August 2002, the board approved the 401 Certification with 16 additional conditions. The stay was lifted.</p> <p>Friends of the Cowlitz, CPR-Fish and the Cowlitz Indian Tribe v. Ecology and City</p> <p>Reason: Appeal of a Section 401 Certification related to re-licensing of Cowlitz River Hydroelectric Project.</p> <p>Result: The board generally affirmed Ecology's Section 401 Water Quality Certification of Tacoma's application to re-license three dams on the Cowlitz River. The board, however, added certain conditions to provide reasonable assurance to the project, as re-licensed, will comply with state and federal water quality laws and regulations. In addition, it remanded one aspect of the re-license application, requiring Ecology to examine a flood control article, which was added after Ecology certified the project, for compliance with the anti-degradation standard.</p>	WP	2/14/02	12/13/02
P02-095	<p>Reason: Appeal of discharge permit and Ecology order for coverage to conduct mining operations at North Bend Gravel Operation.</p> <p>Result: Appellants Cascade Gateway Foundation and Korchina Inc., filed an appeal with the Pollution Control Hearings Board ("Board"), contesting the Department of Ecology's granting coverage to Cadman's North Bend facility, under the Sand and Gravel General Permit. The matter went to trial in March of 2003. The Board upheld Ecology's grant of coverage.</p> <p>Cascade Gateway Foundation; Korchina, Inc. v. Ecology; Cadman, Inc. and King</p>	WP	7/1/02	6/25/03
P02-166	<p>Reason: Appealing an NPDES Permit.</p> <p>Result: The board vacated Ecology's regulatory order, insofar as it required the appellant to employ a flood model, which has not been fully calibrated and tested. The board ruled, once fully calibrated and tested, Ecology would have the authority to apply it both prospectively and retrospectively to assess water quality inputs associated with flooding resulting from the proposed project for filling and grading property in the 100-year floodplain for a commercial center.</p> <p>Ferndale Town Center, LLC v. Ecology</p>	WVP	9/5/02	7/14/03
P02-162	<p>Reason: Appeal of Industrial General Stormwater Permit.</p> <p>Result: The board granted summary judgment on 3 issues to the appellants. The board invalidated: the compliance schedule provisions for existing facilities, the standard mixing zones, and certain conditions allowing Ecology to modify the permit without public notice and an opportunity to appeal. The board remanded the permit to Ecology to reconsider these provisions. After hearing on the merits, on the remaining issue involving the validity of the monitoring provisions, the board remanded the matter to Ecology to modify the permit to include: language requiring sampling of the first full storm event, to develop a lower benchmark for copper for use in waters limited by stormwater for salmon recovery and water impaired for copper on the 303(d) lists, and to establish monitoring limited in the receiving water for mixing zones authorized under the permit, where significant environmental risk is possible, and to the extent feasible.</p> <p>Puget Soundkeeper Alliance et al. v. Ecology</p>	WP	9/20/02	8/4/03
P02-163	<p>Reason: Appeal of Industrial General Stormwater Permit.</p> <p>Result: The board granted summary judgment on 3 issues to the appellants. The board invalidated: the compliance schedule provisions for existing facilities, the standard mixing zones, and certain conditions allowing Ecology to modify the permit without public notice and an opportunity to appeal. The board remanded the permit to Ecology to reconsider these provisions. After hearing on the merits, on the remaining issue involving the validity of the monitoring provisions, the board remanded the matter to Ecology to modify the permit to include: language requiring sampling of the first full storm event, to develop a lower benchmark for copper for use in waters limited by stormwater for salmon recovery and water impaired for copper on the 303(d) lists, and to establish monitoring limited in the receiving water for mixing zones authorized under the permit, where significant environmental risk is possible, and to the extent feasible.</p> <p>The Boeing Company v. Ecology</p>	WP	9/20/02	8/4/03
P02-164	<p>Reason: Appealing an Industrial Stormwater General Permit.</p> <p>Result: The board granted summary judgment on 3 issues to the appellants. The board invalidated: the compliance schedule provisions for existing facilities, the standard mixing zones, and certain conditions allowing Ecology to modify the permit without public notice and an opportunity to appeal. The board remanded the permit to Ecology to reconsider these provisions. After hearing on the merits, on the remaining issue involving the validity of the monitoring provisions, the board remanded the matter to Ecology to modify the permit to include: language requiring sampling of the first full storm event, to develop a lower benchmark for copper for use in waters limited by stormwater for salmon recovery and water impaired for copper on the 303(d) lists, and to establish monitoring limited in the receiving water for mixing zones authorized under the permit, where significant environmental risk is possible, and to the extent feasible.</p> <p>Snohomish County v. Ecology</p>	WP	9/20/02	8/4/03
P02-173	<p>Reason: Appealing an order.</p> <p>Ferndale Town Center, LLC v. Ecology</p>	WP	10/3/02	7/14/03

EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Decision on Merits</i>				
P02-204	<p>Professional Marine Company v. Ecology</p> <p>Result: The board vacated Ecology's regulatory order, insofar as it required the appellant to employ a flood model, which has not been fully calibrated and tested. The board ruled, once fully calibrated and tested, Ecology would have the authority to apply it both prospectively and retrospectively to assess water quality inputs associated with flooding resulting from the proposed project for filling and grading property in the 100-year floodplain for a commercial center.</p> <p>Reason: Appealing a penalty of \$7,000 for violations of General Boatyard Permit.</p>	WP	11/13/02	7/3/03
P03-075	<p>Confederated Tribes of the Umatilla Indian Reservation and Columbia River Inter</p> <p>Result: The appellant challenged a \$5,000 penalty imposed by Ecology for violations of the Boatyard General NPDES Permit. A contractor was sanding a portion of a vessel in the water without placing a tarp between the vessel and the dock to catch the sander dust. This sander dust fell into Lake Union. The board reduced the amount of the penalty to \$3,000 because of the extensive training it provided to employees regarding proper practices at the boatyard, and because the board did not find a violation of the provision prohibiting more than 25% of the hull being repaired in the water.</p> <p>Reason: Appeal regarding 401 Certification for the Lake Chelan Hydroelectric Project Relicensing.</p>	WP	5/21/03	4/21/04
P03-082	<p>Cascade Ag Services, Inc. v. Ecology</p> <p>Result: This case concerns the re-licensing of the Lake Chelan Hydroelectric project. In order to be re-licensed it must receive a 401 certification from Ecology. The matter went to trial and the board approved the 401 certification. The appeal was dismissed.</p> <p>Reason: Appellant seeks a reduction in assessed penalty for not obtaining stormwater and waste discharge permits.</p>	WP	6/6/03	4/20/04
P03-140	<p>The Port of Seattle v. Ecology</p> <p>Result: Appellant was fined \$4,000 for failing to apply for and obtain coverage under the General Industrial Stormwater Permit and an individual State Waste Discharge Permit. The appellant's facility processed cucumbers into pickles and cabbage into sauerkraut. The board found the failure to obtain permits was a serious violation, and it was not necessary for Ecology to prove pollution was actually occurring. The board upheld the penalty amount.</p> <p>Reason: Port is appealing a number of conditions imposed under NPDES Permit</p>	WP	10/3/03	12/16/04
P03-141	<p>Airport Communities Coalition and Citizens Against SeaTac Expansion v. Ecology</p> <p>Result: The case involved an appeal of the NPDES permit issued to the Port of Seattle for discharges made from the Seattle Tacoma International Airport. Separate appeals by the Port of Seattle and by citizens groups were consolidated for hearing and decision. The board concluded the AKART determination for the Industrial Wastewater Treatment Plant was erroneous and remanded it for a determination based on the controlling legal standard. The board concluded the compliance schedule for water quality exceeded the ten year maximum and needed to be modified. Revisions to the Comprehensive Receiving Water and Stormwater Runoff Study were ordered. The protocols for acute toxicity testing and chronic toxicity testing were adjusted. The board also clarified the terms of a mixing zone for the Industrial Wastewater Treatment Plant outfall to Puget Sound. The permit was remanded to Ecology for revision. Consolidation included PCHB Nos. 03-140, 141 & 142.</p> <p>Reason: Appeal of NPDES permit issued to the Port of Seattle.</p>	WP	10/3/03	12/16/04
P03-142	<p>Puget Soundkeeper Alliance v. Ecology and Port of Seattle</p> <p>Result: The case involved an appeal of the NPDES permit issued to the Port of Seattle for discharges made from the Seattle Tacoma International Airport. Separate appeals by the Port of Seattle and by citizens groups were consolidated for hearing and decision. The board concluded the AKART determination for the Industrial Wastewater Treatment Plant was erroneous and remanded it for a determination based on the controlling legal standard. The board concluded the compliance schedule for water quality exceeded the ten year maximum and needed to be modified. Revisions to the Comprehensive Receiving Water and Stormwater Runoff Study were ordered. The protocols for acute toxicity testing and chronic toxicity testing were adjusted. The board also clarified the terms of a mixing zone for the Industrial Wastewater Treatment Plant outfall to Puget Sound. The permit was remanded to Ecology for revision. Consolidation included PCHB Nos. 03-140, 141 & 142.</p> <p>Reason: Appealing of NPDES Permit issued to Port of Seattle.</p>	WP	10/6/03	12/16/04

EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Decision on Merits</i>				
P03-156	Snoqualmie Indian Tribe v. Ecology and Puget Sound Energy	WP	10/31/03	4/7/04
	Reason: Appealing the issuance of Order No. DE 03WQNR-5410, Certification for the Snoqualmie Falls Hydroelectric Project.			
	Result: The Snoqualmie Tribe challenged a 401 Certification issued for the re-licensing of the Snoqualmie Falls Dam. They assert there is not reasonable assurance that water quality and fish will be adequately protected. They argue a separate Tribal beneficial use should be recognized for historic, spiritual, cultural, and recreational purposes. The Board upheld the 401 Certification, but modified the critical flow level until it could be established after further study.			
P04-044	Jay Rude v. Ecology	WP	4/7/04	12/14/04
	Reason: Appealing an order revoking wastewater operator certification.			
	Result: The appellant challenged Ecology's revocation of his wastewater operator certification. He was employed as a Group IV wastewater operator at McNeil Island by the Department of Corrections. His certification was revoked on the basis of failing to timely report a spill, failing to act expeditiously to clean up the sewage spill, and falsifying data. The board upheld the revocation on the basis he did not report the spill in a timely fashion.			
P05-035	Northwest Aquatic Eco-Systems (Palmer Lake) v. Ecology	WP	3/4/05	7/20/05
	Reason: Appeal of denial of NPDES permit for Palmer Lake.			
	Result: The board issued a decision upholding Ecology's denial of general permit coverage for Lake Palmer because the Integrated Aquatic Vegetation Management Plan (IAVMP) was substantively inadequate. The board directed Ecology to conditionally extend coverage on two other lakes when only clerical corrections were needed to their IAVMP plans. Coverage for a part of Lake Arrowhead was considered appropriate pending further work related to a rare species existing in a portion of the lake. Consolidated appeals; PCHB Nos. 05-035, 036, 046 & 047.			
P05-036	Northwest Aquatic Eco-Systems v. Ecology	WP	3/7/05	7/20/05
	Reason: Appeal of NPDES permit application denial. General Permit Lake Killarney & Cherry Pond Permits			
	Result: The board issued a decision upholding Ecology's denial of general permit coverage for Lake Palmer because the Integrated Aquatic Vegetation Management Plan (IAVMP) was substantively inadequate. The board directed Ecology to conditionally extend coverage on two other lakes when only clerical corrections were needed to their IAVMP plans. Coverage for a part of Lake Arrowhead was considered appropriate pending further work related to a rare species existing in a portion of the lake. Consolidated appeals; PCHB Nos. 05-035, 036, 046 & 047.			
P05-046	Northwest Aquatic Eco-Systems v. Ecology	WP	3/24/05	7/20/05
	Reason: Rejection of application for coverage under Aquatic Pesticide General Permit. (Lake Ketchum).			
	Result: The board issued a decision upholding Ecology's denial of general permit coverage for Lake Palmer because the Integrated Aquatic Vegetation Management Plan (IAVMP) was substantively inadequate. The board directed Ecology to conditionally extend coverage on two other lakes when only clerical corrections were needed to their IAVMP plans. Coverage for a part of Lake Arrowhead was considered appropriate pending further work related to a rare species existing in a portion of the lake. Consolidated appeals; PCHB Nos. 05-035, 036, 046 & 047.			
P05-047	Northwest Aquatic Eco-Systems v. Ecology (Lake Arrowhead, Fawn Lake, Ken L)	WP	3/24/05	7/20/05
	Reason: Rejection of application for coverage under the aquatic pesticide general permit.			
	Result: The board issued a decision upholding Ecology's denial of general permit coverage for Lake Palmer because the Integrated Aquatic Vegetation Management Plan (IAVMP) was substantively inadequate. The board directed Ecology to conditionally extend coverage on two other lakes when only clerical corrections were needed to their IAVMP plans. Coverage for a part of Lake Arrowhead was considered appropriate pending further work related to a rare species existing in a portion of the lake. Consolidated appeals; PCHB Nos. 05-035, 036, 046 & 047.			
P05-063	1-5 Properties, Jansen Inc., and Al Jansen individually v. Ecology	WP	4/28/05	2/12/07
	Reason: Appeal of \$82,000 civil penalty for repeat violation of conditions in NPDES General Permit			
	Result: The board upheld a \$82,000 penalty for multiple violations of the 2000 Construction Stormwater General Permit (NPDES). The board concluded there were multiple violations of water quality standards for turbidity and a failure to implement best management practices required by the permit. The board concluded the penalty was reasonable. The appeal was dismissed.			
P05-101	Northwest Aquatic Eco-Systems v. Ecology (Meydenbauer Yacht Club)(Skinner C	WP	7/11/05	2/15/06
	Reason: Appeal of Rejection of Application for coverage for herbicide application under NPDES general permit.			
	Result: The appellants were denied coverage for herbicide applications at their marinas in Lake Washington under the NPDES general permit for aquatic nuisance weeds. The Department of Ecology denied coverage because the aquatic weeds on the sites were not primarily nuisance weeds. The board upheld Ecology's conclusion because there was inadequate evidence to establish that the majority of weeds present were nuisance weeds. Under the terms of the nuisance permit, coverage is only appropriate if the treatment is primarily for control of nuisance weeds and impacts on noxious weeds are incidental.			

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Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Decision on Merits</i>				
P05-150	Puget Soundkeeper Alliance v. Ecology	WP	12/2/05	1/26/07
	Reason: Appeal of Boatyard General NPDES Permit.			
	Result: Following a hearing, a decision was issued in this case remanding the Boatyard General NPDES Permit covering boatyard stormwater discharges. The Board found that Ecology's use of a regime utilizing benchmarks for toxic metals in the discharges that would trigger a phased adaptive management response following exceedances was legitimate, but that the methodology used to arrive at the benchmarks was improper.			
	The Board found that, although the 2005 boatyard general permit was an improvement over previous boatyard stormwater permits, Appellant Puget Soundkeeper Alliance had met its burden of proof and established that the permit failed to protect water quality and comply with the law. The Board invalidated the derivation of the benchmarks, holding that Ecology's methodology for arriving at the copper benchmarks was flawed and resulted in benchmarks that were too high, and that reliance on copper levels to determine the levels of lead and zinc in discharges was improper and that separate benchmarks should be set for zinc and lead. The Board also held that numeric effluent limitations for copper, lead and zinc are not required by applicable law.			
	Appellants challenged the monitoring and response provisions as not stringent enough and not enforceable. The Board found that the adaptive management approach was incomplete because it did not explicitly require implementation of triggered responses or address what happens when permittees continue to exceed benchmark levels. The Board found that these provisions required certain changes to strengthen and clarify the responses of boatyards once benchmarks are exceeded.			
	The Board remanded the 2005 BGP to Ecology for recalculation of the copper benchmarks, addition of separate benchmark and monitoring provisions for lead and zinc, modification of the adaptive management response scheme, and to correct other deficiencies that the Board identified in its decision. Consolidated cases: PCHB 05-150, 151 & 06-034 & 040			
P05-151	Northwest Marine Trade Association v. Ecology	WP	12/2/05	1/26/07
	Reason: Appeal of Boatyard Permit.			
	Result: Following a hearing, a decision was issued in this case remanding the Boatyard General NPDES Permit covering boatyard stormwater discharges. The Board found that Ecology's use of a regime utilizing benchmarks for toxic metals in the discharges that would trigger a phased adaptive management response following exceedances was legitimate, but that the methodology used to arrive at the benchmarks was improper.			
	The Board found that, although the 2005 boatyard general permit was an improvement over previous boatyard stormwater permits, Appellant Puget Soundkeeper Alliance had met its burden of proof and established that the permit failed to protect water quality and comply with the law. The Board invalidated the derivation of the benchmarks, holding that Ecology's methodology for arriving at the copper benchmarks was flawed and resulted in benchmarks that were too high, and that reliance on copper levels to determine the levels of lead and zinc in discharges was improper and that separate benchmarks should be set for zinc and lead. The Board also held that numeric effluent limitations for copper, lead and zinc are not required by applicable law.			
	Appellants challenged the monitoring and response provisions as not stringent enough and not enforceable. The Board found that the adaptive management approach was incomplete because it did not explicitly require implementation of triggered responses or address what happens when permittees continue to exceed benchmark levels. The Board found that these provisions required certain changes to strengthen and clarify the responses of boatyards once benchmarks are exceeded.			
	The Board remanded the 2005 BGP to Ecology for recalculation of the copper benchmarks, addition of separate benchmark and monitoring provisions for lead and zinc, modification of the adaptive management response scheme, and to correct other deficiencies that the Board identified in its decision. Consolidated cases: PCHB 05-150, 151 & 06-034 & 040			
P05-157	Associated General Contractors of Washington and Building Industry Associatic	WP	12/15/05	6/4/07
	Reason: Appeal of Construction Stormwater Permit issued by Ecology.			
	Result: These consolidated appeals were filed by industry groups, a county, and an environmental group of Ecology's issuance of the 2005 Construction Stormwater General Permit. The combined appeals contained 36 issues, many of which were ruled upon by the Board, following extensive motion practice by all parties. Thirteen issues proceeded to a 6-day hearing. The Board issued its decision which affirmed the permit with minor modifications. The Board concluded that the permit, as modified by the Board's order, would ensure compliance with water quality standards and AKART.			
	Consolidated cases: PCHB 05-157, 158 & 159			
P05-158	Snohomish County v. Ecology	WP	12/16/05	6/4/07
	Reason: Appeal of NPDES and State Waste Discharge Stormwater General Permit			

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Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Decision on Merits</i>				
P05-159	<p>Puget Soundkeeper Alliance v. Ecology</p> <p>Reason: Appeal of Construction Stormwater General Permit.</p>	WP	12/16/05	5/4/07
<p>Result: These consolidated appeals were filed by industry groups, a county, and an environmental group of Ecology's issuance of the 2005 Construction Stormwater General Permit. The combined appeals contained 36 issues, many of which were ruled upon by the Board, following extensive motion practice by all parties. Thirteen issues proceeded to a 6-day hearing. The Board issued its decision which affirmed the permit with minor modifications. The Board concluded that the permit, as modified by the Board's order, would ensure compliance with water quality standards and AKART.</p> <p>Consolidated cases: PCHB 05-157, 158 & 159</p>				
P06-011	<p>Northwest Aquatic Eco-Systems v. Ecology</p> <p>Reason: Appeal of the Aquatic Plant and Algae Management General NPDES Permit issued by the Department of Ecology in 2006.</p>	WP	3/6/06	6/29/07
<p>Result: These consolidated appeals challenged the Aquatic Plant and Algae Management General NPDES Permit issued by the Department of Ecology in 2006. Issues raised by the Washington Toxics Coalition and a group of yacht clubs were resolved prior to hearing through motion practice and withdrawal of issues. The case proceeded to hearing with two aquatic plant management firms as appellants and Ecology as the respondent. The appellants asked the Board to modify or eliminate the fish timing windows which were placed in the permit to prevent fish from coming into contact with harmful chemicals. The Board upheld the fish timing windows as a reasonable and necessary provision to avoid damage to threatened species in the area. The Board upheld a challenge to the Permit provision allowing Ecology to deny permit coverage based on prior unpaid penalties. Ecology lacked statutory or regulatory authority to impose that type of sanction. The Board also remanded the Permit to Ecology for further refinement of a condition addressing the use of herbicides to control noxious aquatic weeds on Lake Washington, Lake Sammamish and Lake Union/Portage Bay. The Permit limited treatment of noxious weeds on individual lots to ten feet on either side of a dock. The Board concluded that a provision should be made for municipalities or homeowners associations to treat a larger contiguous area of noxious weeds. The Permit was remanded to Ecology for revisions consistent with the decision.</p> <p>Consolidated cases: PCHB 05-157, 158 & 159</p>				
P06-020	<p>Northwest Aquatic Eco-Systems v. Ecology</p> <p>Reason: he Aquatic Plant and Algae Management General NPDES Permit issued by the Department of Ecology in 2006.</p>	WP	3/29/06	6/29/07
<p>Result: These consolidated appeals challenged the Aquatic Plant and Algae Management General NPDES Permit issued by the Department of Ecology in 2006. Issues raised by the Washington Toxics Coalition and a group of yacht clubs were resolved prior to hearing through motion practice and withdrawal of issues. The case proceeded to hearing with two aquatic plant management firms as appellants and Ecology as the respondent. The appellants asked the Board to modify or eliminate the fish timing windows which were placed in the permit to prevent fish from coming into contact with harmful chemicals. The Board upheld the fish timing windows as a reasonable and necessary provision to avoid damage to threatened species in the area. The Board upheld a challenge to the Permit provision allowing Ecology to deny permit coverage based on prior unpaid penalties. Ecology lacked statutory or regulatory authority to impose that type of sanction. The Board also remanded the Permit to Ecology for further refinement of a condition addressing the use of herbicides to control noxious aquatic weeds on Lake Washington, Lake Sammamish and Lake Union/Portage Bay. The Permit limited treatment of noxious weeds on individual lots to ten feet on either side of a dock. The Board concluded that a provision should be made for municipalities or homeowners associations to treat a larger contiguous area of noxious weeds. The Permit was remanded to Ecology for revisions consistent with the decision.</p> <p>Consolidated appeals, 06-011, 06-020 & 06-023.</p>				
P06-023	<p>Aquatechnex, LLC v. Ecology</p> <p>Reason: Appeal of the Aquatic Plant and Algae Management General NPDES Permit issued by the Department of Ecology in 2006.</p>	WP	3/30/06	6/29/07
<p>Result: These consolidated appeals challenged the Aquatic Plant and Algae Management General NPDES Permit issued by the Department of Ecology in 2006. Issues raised by the Washington Toxics Coalition and a group of yacht clubs were resolved prior to hearing through motion practice and withdrawal of issues. The case proceeded to hearing with two aquatic plant management firms as appellants and Ecology as the respondent. The appellants asked the Board to modify or eliminate the fish timing windows which were placed in the permit to prevent fish from coming into contact with harmful chemicals. The Board upheld the fish timing windows as a reasonable and necessary provision to avoid damage to threatened species in the area. The Board upheld a challenge to the Permit provision allowing Ecology to deny permit coverage based on prior unpaid penalties. Ecology lacked statutory or regulatory authority to impose that type of sanction. The Board also remanded the Permit to Ecology for further refinement of a condition addressing the use of herbicides to control noxious aquatic weeds on Lake Washington, Lake Sammamish and Lake Union/Portage Bay. The Permit limited treatment of noxious weeds on individual lots to ten feet on either side of a dock. The Board concluded that a provision should be made for municipalities or homeowners associations to treat a larger contiguous area of noxious weeds. The Permit was remanded to Ecology for revisions consistent with the decision.</p> <p>Consolidated appeals, 06-011, 06-020 & 06-023.</p>				

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Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Decision on Merits</i>				
	<p>Result: These consolidated appeals challenged the Aquatic Plant and Algae Management General NPDES Permit issued by the Department of Ecology in 2006. Issues raised by the Washington Toxics Coalition and a group of yacht clubs were resolved prior to hearing through motion practice and withdrawal of issues. The case proceeded to hearing with two aquatic plant management firms as appellants and Ecology as the respondent. The appellants asked the Board to modify or eliminate the fish timing windows which were placed in the permit to prevent fish from coming into contact with harmful chemicals. The Board upheld the fish timing windows as a reasonable and necessary provision to avoid damage to threatened species in the area. The Board upheld a challenge to the Permit provision allowing Ecology to deny permit coverage based on prior unpaid penalties. Ecology lacked statutory or regulatory authority to impose that type of sanction. The Board also remanded the Permit to Ecology for further refinement of a condition addressing the use of herbicides to control noxious aquatic weeds on Lake Washington, Lake Sammamish and Lake Union/Portage Bay. The Permit limited treatment of noxious weeds on individual lots to ten feet on either side of a dock. The Board concluded that a provision should be made for municipalities or homeowners associations to treat a larger contiguous area of noxious weeds. The Permit was remanded to Ecology for revisions consistent with the decision.</p> <p>Consolidated appeals, 06-011, 06-020 & 06-023.</p>			
P06-034	Northwest Marine Trade Association v. Ecology	WP	5/19/06	1/26/07
	<p>Reason: Appeal and request for stay of modification of Boatyard General Permit, effective May 20, 2006.</p> <p>Result: Following a hearing, a decision was issued in this case remanding the Boatyard General NPDES Permit covering boatyard stormwater discharges. The Board found that Ecology's use of a regime utilizing benchmarks for toxic metals in the discharges that would trigger a phased adaptive management response following exceedances was legitimate, but that the methodology used to arrive at the benchmarks was improper.</p> <p>The Board found that, although the 2005 boatyard general permit was an improvement over previous boatyard stormwater permits, Appellant Puget Soundkeeper Alliance had met its burden of proof and established that the permit failed to protect water quality and comply with the law. The Board invalidated the derivation of the benchmarks, holding that Ecology's methodology for arriving at the copper benchmarks was flawed and resulted in benchmarks that were too high, and that reliance on copper levels to determine the levels of lead and zinc in discharges was improper and that separate benchmarks should be set for zinc and lead. The Board also held that numeric effluent limitations for copper, lead and zinc are not required by applicable law.</p> <p>Appellants challenged the monitoring and response provisions as not stringent enough and not enforceable. The Board found that the adaptive management approach was incomplete because it did not explicitly require implementation of triggered responses or address what happens when permittees continue to exceed benchmark levels. The Board found that these provisions required certain changes to strengthen and clarify the responses of boatyards once benchmarks are exceeded.</p> <p>The Board remanded the 2005 BGP to Ecology for recalculation of the copper benchmarks, addition of separate benchmark and monitoring provisions for lead and zinc, modification of the adaptive management response scheme, and to correct other deficiencies that the Board identified in its decision. Consolidated cases: PCHB 05-150, 151 & 06-034 & 040</p>			
P06-040	Puget Soundkeeper Alliance v. Ecology	WP	6/2/06	1/26/07
	<p>Reason: Appeal of the modification of the Boatyard General Permit</p>			

EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Decision on Merits</i>				
	<p>Result: Following a hearing, a decision was issued in this case remanding the Boatyard General NPDES Permit covering boatyard stormwater discharges. The Board found that Ecology's use of a regime utilizing benchmarks for toxic metals in the discharges that would trigger a phased adaptive management response following exceedances was legitimate, but that the methodology used to arrive at the benchmarks was improper.</p> <p>The Board found that, although the 2005 boatyard general permit was an improvement over previous boatyard stormwater permits, Appellant Puget Soundkeeper Alliance had met its burden of proof and established that the permit failed to protect water quality and comply with the law. The Board invalidated the derivation of the benchmarks, holding that Ecology's methodology for arriving at the copper benchmarks was flawed and resulted in benchmarks that were too high, and that reliance on copper levels to determine the levels of lead and zinc in discharges was improper and that separate benchmarks should be set for zinc and lead. The Board also held that numeric effluent limitations for copper, lead and zinc are not required by applicable law.</p> <p>Appellants challenged the monitoring and response provisions as not stringent enough and not enforceable. The Board found that the adaptive management approach was incomplete because it did not explicitly require implementation of triggered responses or address what happens when permittees continue to exceed benchmark levels. The Board found that these provisions required certain changes to strengthen and clarify the responses of boatyards once benchmarks are exceeded.</p> <p>The Board remanded the 2005 BGP to Ecology for recalculation of the copper benchmarks, addition of separate benchmark and monitoring provisions for lead and zinc, modification of the adaptive management response scheme, and to correct other deficiencies that the Board identified in its decision. Consolidated cases: PCHB 05-150, 151 & 06-034 & 040</p>			
P06-057	<p>Community Association for Restoration of the Environment (CARE) v. Ecology</p> <p>Reason: Appeal of CAFO, NPDES & State Waste Discharge permit</p> <p>Result: This consolidated case involved appeals of the Concentrated Animal Feeding Operation NPDES and State Waste Discharge General Permit (CAFO General Permit) issued by Ecology. The Appellant and Intervenor challenged numerous conditions of the permit, including those related to nutrient management plans (NMPs), soil monitoring, surface and groundwater quality monitoring, reporting requirements, and public access to CAFO records. Several issues were resolved on summary judgment or withdrawn prior to hearing. After the hearing on the merits, the Board concluded that the CAFO General Permit, with certain clarifications, complies with applicable federal and state water quality requirements. The Board found the permit represents a scientifically sound and reasonable decision on the part of Ecology. The Board further found CARE failed to prove the permit's record keeping and reporting provisions conflict with the public access requirements of the federal Clean Water Act or state public records disclosure laws. The Board also concluded the permit's approach to providing public access to facility inspection, discharge, and other record information strikes a lawful balance between allowing public access to adequate information while protecting permittees from disclosure of confidential business information. The Board found CARE had similarly failed to prove the permit's reliance on NMPs based on Natural Resources Conservation Service (NRCS) standards is either unlawfully vague or Finally, the Board affirmed the CAFO General Permit's environmental monitoring regime as reasonable and appropriate and determined that CARE's challenge to the adequacy of the Permit's soil monitoring requirements, and its request for the Permit to include surface and groundwater monitoring, were not supported by the weight of the evidence.</p>	WP	7/21/06	8/1/07
<i>Summary Judgment</i>				
P99-124	<p>Sherilyn Wells & C.W.A v. Whatcom Co. Water Dist. #10, Sudden Valley Comm. &</p> <p>Reason: Appeal of order granting coverage under general stormwater permit for construction activities.</p> <p>Result: Appellants failed to respond to motion for summary judgment. Summary Judgment and Order of Dismissal entered by Board.</p>	WP	8/16/99	6/8/01
P00-115	<p>AD HOC Coalition for Willapa Bay v. Willapa Bay/Grays Harbor Oyster Growers &</p> <p>Reason: Appeal of order authorizing temporary modification of water quality standards to apply Carbaryl to oyster beds in Willapa Bay.</p> <p>Result: Dismissed on summary judgment where appellant failed to oppose judgment with any declaration, affidavits, or other evidence to establish a genuine issue of material fact.</p>	WP	8/3/00	3/14/01
P01-034	<p>Francis J. Walker v. Ecology, Henderson Boulevard LLC, and City of Olympia</p> <p>Reason: Approval of a Stormwater General Permit for Construction activity.</p> <p>Result: The PCHB granted summary judgment to Ecology finding that Ecology had complied with SEPA and was not required to carry forth the city's conditions when it granted coverage under the General Stormwater Permit. The Board also granted the City of Olympia's Motion to remove it from this case.</p>	WP	3/21/01	6/5/01
P01-090	<p>Citizens Against SeaTac Expansion v. Ecology and The Port of Seattle</p> <p>Reason: Appeal of NPDES and Waste Discharge Permit for SeaTac expansion.</p>	WP	6/15/01	1/4/02

EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Summary Judgment</i>				
	Result: Appellants challenged the modification of the NPDES issued to the Port of Seattle for the expanded geographical area involved with the expansion of the airport. The appellants challenged the permit, notice, and fact sheet as failing to comply with minimum requirements, especially the failure to note the points of discharge. The appellants also challenged the issuance of the modified NPDES prior to the issuance of the 401 certification. On Aug. 29th the board denied a stay. On summary judgment the board granted summary judgment to appellants on the need for the fact sheet to contain a sketch or detailed description of the points of discharge. The board granted summary judgment to the respondents on all other issues.			
P01-095	Ad Hoc Coalition for Willapa Bay v. Ecology, Willapa Bay/Grays Harbor Oyster Gr	WP	6/28/01	9/28/01
	Reason: Appeal by third party of short-term water quality modifications to allow spraying of Carbaryl by various oyster growers in Willapa Bay and Grays Harbor.			
	Result: The short-term water quality modifications required the applicants to apply for National Pollution Discharge Elimination System (NPDES) permits prior to spraying. The board dismissed the appeals as moot because the permits had lapsed, the oyster growers had applied for the NPDES permits, and the oyster growers had not sprayed Carbaryl prior to termination of the water quality modification approvals.			
P02-079	Helping Homes Development Corp. & Ray Gosney v. Ecology and The City of Kal	WP	6/14/02	12/31/02
	Reason: Appealing an order relating to the City's wastewater treatment facility.			
	Result: This case was dismissed on summary judgment. The appealing developers lacked standing to challenge an NPDES enforcement order agreement between Ecology and the City of Kalama. The board was unable to grant substantive relief from the ordinance passed by Kalama. Two appeals were consolidated into one action, comprising PCHB Nos. 02-079 & 02-080.			
P02-080	John Wheatly and Nate Davis v. Ecology and The City of Kalama	WP	6/14/02	12/31/02
	Reason: Appealing an order relating to the City's wastewater treatment facility.			
	Result: This case was dismissed on summary judgment. The appealing developers lacked standing to challenge an NPDES enforcement order agreement between Ecology and the City of Kalama. The board was unable to grant substantive relief from the ordinance passed by Kalama. Two appeals were consolidated into one action, comprising PCHB Nos. 02-079 & 02-080.			
P02-090	AquaTechnex v. Ecology	WP	6/27/02	12/24/02
	Reason: Appealing certain conditions of an NPDES general permit.			
	Result: The appellant challenged certain conditions contained in the Aquatic Nuisance Plant and Algae Control NPDES Waste Discharge General Permit. The appellant challenged the application of this permit to isolated waters of the state, the exclusion of copper algaecides from this permit, the publication of notice requirements, and the reduced coverage under the permit if an integrated aquatic vegetation management plan isn't in place. The appellant failed to respond to Ecology's summary judgment motion. The motion was granted.			
P02-092	Barrett Lake Foundation v. Ferndale Town Center, LLC.; City of Ferndale and Eco	WP	6/28/02	2/26/03
	Reason: Appealing an NPDES Storm Water General Permit.			
	Result: The project proponents were denied a summary judgment finding automatic coverage under the NPDES general stormwater permit for construction activity. The board found the application insufficient to trigger Ecology duties under relevant statutes. In the absence of automatic coverage, the Barrett Lake appeal challenging such coverage was moot and the case was accordingly dismissed.			
P02-146	Ferndale Town Center LLC v. Ecology	WP	8/26/02	1/31/03
	Reason: Appeal of letter authored by an assistant attorney general.			
	Result: The board granted summary judgment dismissing the appellant's appeal of a letter authored by an assistant attorney general representing Ecology. Such an appeal is outside the board's defined statutory jurisdiction. The appellant's motion to confirm automatic coverage under the NPDES General Permit for Construction activity was denied. The series of actions in the case did not meet the requirements for automatic coverage and an insufficient showing was made to invoke waiver or estoppel against Ecology.			
P02-198	Jerry Lee Dierker v. Ecology & Port of Olympia	WP	10/28/02	2/14/03
	Reason: Appeal of NPDES permit issued to the Port of Olympia by Ecology.			
	Result: The board granted summary judgment to the Port of Olympia and Ecology, and dismissed the appeal.			
P03-121	Ray Bloomquist; Bloomquist Properties, LLC, and Sun Country Homes, Inc. v. St	WP	8/27/03	3/16/04
	Reason: Petitioners appeal Order No. DE 03WQVA-5665 requiring them to obtain Ecology's approval of Stormwater Pollution Prevention Plan.			
	Result: A developer was issued an administrative enforcement order after performing site work without a permit. The Board granted summary judgment, ruling the Department of Ecology has authority to require approval of a stormwater pollution prevention plan prior to making a decision on general permit coverage under the facts and circumstances of this case.			

EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Summary Judgment</i>				
P03-120	Thomas H. Anderson v. Ecology, Olhava Associates & Wal-Mart	WP	8/29/03	9/16/05
	Reason: Appeal of Stormwater Permit No. S03-005412 requested for stormwater control during construction of a Wal-Mart store.			
	Result: Appellants challenged Ecology's grant of coverage under the Construction Stormwater general permit for the development of a site for a Wal-Mart. The developer and Wal-Mart modified their agreement so that the property would be developed before transferring ownership to Wal-Mart. This action meant separate permit coverage was no longer required for this site because the developer already had permit coverage. The motion for mootness was granted because no active permit was before the board. The board found the public interest exception inapplicable. Consolidated cases PCHB Nos. 03-120, 03-123 & 03-129.			
P03-123	Joan M. Hett, Ph.D.v. Olhava Associates & Ecology	WP	9/3/03	9/16/05
	Reason: Appealing permit for construction activity and stormwater control during construction of a Wal-Mart.			
	Result: Appellants challenged Ecology's grant of coverage under the Construction Stormwater general permit for the development of a site for a Wal-Mart. The developer and Wal-Mart modified their agreement so that the property would be developed before transferring ownership to Wal-Mart. This action meant separate permit coverage was no longer required for this site because the developer already had permit coverage. The motion for mootness was granted because no active permit was before the board. The board found the public interest exception inapplicable. Consolidated cases PCHB Nos. 03-120, 03-123 & 03-129.			
P03-129	Richard C. Boughner v. Ecology; Mark Zenger; and Olhava Associates, L.P.	WP	9/9/03	9/16/05
	Reason: Appealing permit for construction activity and stormwater control during construction of a Wal-Mart.			
	Result: Appellants challenged Ecology's grant of coverage under the Construction Stormwater general permit for the development of a site for a Wal-Mart. The developer and Wal-Mart modified their agreement so that the property would be developed before transferring ownership to Wal-Mart. This action meant separate permit coverage was no longer required for this site because the developer already had permit coverage. The motion for mootness was granted because no active permit was before the board. The board found the public interest exception inapplicable. Consolidated cases PCHB Nos. 03-120, 03-123 & 03-129.			
126	Northwest Aquatic Eco-systems v. Ecology (Lake Serene)	WP	9/13/04	2/1/05
	Reason: Appeal of WAG 99-4028C (Lake Serene) and Permit No. WAG 994000.			
	Result: The board issued a Summary Judgment in this appeal of coverage extended to Lake Serene under the Aquatic Nuisance Plant and Algae Control NPDES general permit. Many of the issues were precluded by a prior settlement between the parties. The remaining issues were considered untimely attacks on the general permit terms, which are prohibited by WAC 173-226-190.			
P04-136	Ole & Charlie's Marina's v. Ecology	WP	10/18/04	2/18/05
	Reason: Appeal of penalty in the amount of \$500 for oil spill caused by customer's boat.			
	Result: A summary judgment granting dismissal of this penalty appeal was entered. Ecology contended the appeal was untimely and the appellants failed to rebut Ecology's evidence. Accordingly, the case was dismissed for failure to file within the required thirty day period.			
P05-025	George Harmon v. Ecology	WP	2/22/05	6/2/06
	Reason: Appeal of Penalty in the amount of \$268,740 for violations involving biosolids disposed of on land.			
	Result: In this appeal, Mr. Harmon challenged the amount of a civil penalty issued to him for illegally disposing of biosolids and septage on his property. Ecology moved for summary judgment on the amount of the penalty and Mr. Harmon failed to respond. Attempts were made to contact Mr. Harmon, but they were unsuccessful. Based on the record put forward by Ecology, the Board concluded that Ecology had met its burden of proof that the penalty amount was reasonable. The Board affirmed Ecology's penalty and dismissed the appeal.			
P05-030	Emma Dixon, Gerald Farris, Sno-King Environmental Alliance v. Ecology and KC	WP	3/1/05	10/21/05
	Reason: Appeal of NPDES Permit.			
	Result: These two consolidated appeals were filed on NPDES permits issued for discharges during construction of the Brightwater treatment plant and accompanying conveyance system. The appellants' main contentions related to the possibility of seismic events and the effect of a prior decision by a King County Hearing Examiner on the validity of the EIS issued on the project. Following the denial of a stay on the permits, the Board granted summary judgment to the respondents on all issues. Consolidated appeals, PCHB 05-030 & 05-059.			
P05-059	Emma Dixon, Gerald Farris, and Sno-King Environmental Alliance v. Ecology and KC	WP	4/15/05	10/21/05
	Reason: Appeal of NPDES # 003204-2.			
	Result: These two consolidated appeals were filed on NPDES permits issued for discharges during construction of the Brightwater treatment plant and accompanying conveyance system. The appellants main contentions related to the possibility of seismic events and the effect of a prior decision by a King County Hearing Examiner on the validity of the EIS issued on the project. Following the denial of a stay on the permits, the Board granted summary judgment to the respondents on all issues. Consolidated appeals, PCHB 05-030 & 05-059.			

EHO Case Manager Closing Case Summary

Case #	Case Name	Appeal Type	Date Filed	Date Closed
<i>Summary Judgment</i>				
P05-087	Northwest Aquatic Eco-Systems v. Ecology	WP	6/13/05	12/16/05
	Reason: Appeal of General Permit 994000 and permit for Seattle Yacht Club.			
	Result: The board granted summary judgment dismissing appeals filed by Seattle Yacht Club and Queen City Yacht Club relating to proposed treatment of aquatic weeds. The board found the NPDES General Permit for Nuisance Weeds was only properly used for treatment primarily for nuisance weed control. The facts showed noxious weeds were predominant in the proposed treatment areas and therefore coverage was properly denied under the Nuisance Weed Permit. Consolidated appeals, PCHB 05-087 & 088.			
P05-088	Northwest Aquatic Eco-Systems v. Ecology	WP	6/15/05	12/16/05
	Reason: Appeal of Permit #99400 (Site Specific: Queen City Yacht Club)			
	Result: The board granted summary judgment dismissing appeals filed by Seattle Yacht Club and Queen City Yacht Club relating to proposed treatment of aquatic weeds. The board found the NPDES General Permit for Nuisance Weeds was only properly used for treatment primarily for nuisance weed control. The facts showed noxious weeds were predominant in the proposed treatment areas and therefore coverage was properly denied under the Nuisance Weed Permit. Consolidated appeals, PCHB 05-087 & 088.			
P05-091	Michael John Tario v. Ecology	WP	6/15/05	3/2/06
	Reason: Appeal of variance granted by Ecology to M. Joseph Baidwin.			
	Result: This case involved the appeal of the granting of a variance to a residential lot owner to site a well closer than the required 100 foot setback from the owner's septic drain field. The appellant, a neighbor, primarily raised concerns regarding the location and use of the existing septic system which had not been used in the past. The Board granted summary judgment to the respondent Ecology and the lot owner, primarily on the basis that the issues the appellant was raising were not within the jurisdiction of the Board.			
P05-093	Ad Hoc Coalition for Willapa Bay v. Ecology, and Willapa Bay/Grays Harbor Oyster	WP	6/17/05	11/1/05
	Reason: Appeal of decision modifying NPDES Permit.			
	Result: This case involved the appeal of a modification to an NPDES permit which allowed the application of carbaryl to control burrowing shrimp. The modification involved the time frame for completion of sediment studies, as well as the protocol for the studies. The Board denied a motion for stay, and ultimately dismissed the appeal on summary judgment.			
P05-106	Ahtanum General Store Dennis Cook v. Ecology	WP	7/20/05	2/3/06
	Reason: Appeal of Penalty No. 002110 for alleged violation of Underground Storage Tank regulations.			
	Result: Ahtanum General Store/ Dennis Cook involved an appeal by Cook of a \$500 civil penalty for alleged underground storage tank regulations. The Board granted Ecology's motion to dismiss this appeal because it was untimely.			
P05-140	City of Ilwaco v. Ecology	WP	10/21/05	2/23/06
	Reason: City of Ilwaco's appeal of fecal coliform limits imposed by new NPDES permit.			
	Result: The board granted summary judgment affirming the fecal coliform limits contained in the renewal of the City of Ilwaco's NPDES permit for discharges from its sewage treatment plant to Baker Bay. Ecology characterized the receiving water as marine water for the first time in this renewal. The City had no evidence that the data used to characterize the receiving water was incorrect. Based on the undisputed salinity readings presented in evidence, Ecology's action was correct. Accordingly the City of Ilwaco's appeal was dismissed.			

4. Ecology employee Anderson's notes from his 30 minute site visit October 27, 2006.

PACIFIC TOPSOILS 10/27/06

MOORE GRASSY Field non-native species -
some SWEET GLYX, FESARY, RAN REP
weaver topsoil

Soils: 10YRST c. m. Lo. nodules @ ~10"
nodules 2.5YR 3/6. Silt. Most not wet
to 12" wet @ surf

OCAL, SPIDOU, ROSNUT. ~~unassigned~~
AREX, HAKAREY, SPIDOU D Surf
wet. RM ~~erosion~~ with ~~wood~~
N. side of Hill, ~~covered~~ wood
with ~~to~~ RM

002103

5. Ecology employee Anderson's July 17, 2007 report regarding the Smith Island property.

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CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED
COMMUNICATION

Kelly Preliminary Draft (7/16/07) Critique

Paul Anderson, WDOE Wetland Specialist, July 17, 2007

1. Pg. 1, Table 1. Wetland hydrologic conditions include standing water or shallow groundwater at or above 12 inches. Soil saturation within the upper 12 inches of the surface is also an indicator of wetland hydrology. In non-sandy soils, the groundwater capillary fringe typically extends 12 inches above the water table. For example, the water table could be at 23 inches with saturation extending to 11 inches depth, which would be a positive indicator of wetland hydrology (i.e., saturation within the upper 12 inches).
2. Pg. 2, Previous Wetland Maps, bullet 1. PTI site mapped as non-wetland in 1979 Snohomish Estuary Wetlands Study. More recent documents (Weyerhaeuser BA, Weyerhaeuser SEPA notice, SEWIP, NWI) identify the subject parcel as wetland or show wetlands on the site. Active management (e.g., diking, drainage, or mowing) may sufficiently alter the site so that wetland conditions are not present. If active management is discontinued, particularly on floodplain sites such as the subject property, wetland conditions may reestablish.
3. Pg. 4, Historical Aerial Photographs, Bullet 2. Historical photographs show no surface water in area of alleged wetland fill. Surface water (standing water) is not the only evidence of water needed to satisfy wetland hydrology parameter. Soil saturation and shallow groundwater, which may not be visible on aerial photography, are sufficient to meet the wetland hydrology parameter. In Western Washington, aerial photographs flights are typically flown during the summer when conditions are dry and surface water may not be present. More recent aerial photographs (1990-2004) do not show water but do show a diversity of vegetation consistent with wetland plant communities.
4. Pg. 4, Historical Aerial Photographs, Bullet 4. All available photographs taken during the winter... show a lack of standing water... lack wetland vegetation. The period covered by these photographs (1967-1985) coincides with the period the area was actively managed as farmland, as described in the preceding paragraph. Management as farmland may have sufficiently altered the hydrology and plants that wetland conditions were not present. More recent aerial photographs (1990-2004) do not show clear evidence of farming practices on the property. The 2006 aerial photograph, since the site was acquired by PTI does show mowing or tilling furrows on the site.
5. Pg. 4, Climate and Rainfall, Table 2. ...observations of groundwater during the spring of 2007 may be somewhat wetter than average. Dr. Kelly states that the rainfall in the spring of 2007 was somewhat wetter than normal, which appears to be contradicted by the precipitation data provided in Table 2. The long-term average reported for 2007 in Table 2 is 21.74 inches, exactly the same amount of rainfall reported for the summed average and for 1967 and 1976, the only other

years with complete data included in the table. This would indicate that rainfall in the spring of 2007 was normal.

The 30-year mean annual precipitation reported for 1971 to 2000 at Everett Junior College is 37.54 inches, which would indicate that the first half of the 2007 water year was not wetter than average. A direct comparison with Table 2 is not possible at this time as Dr. Kelly summarizes precipitation data only for November through March and does not provide the annual averages.

During my site visit on October 27, 2007, I found sufficient soil moisture to request a wetland delineation of the subject site. Regular fall rains had not yet returned and the preceding summer had been very dry.

6. Pg. 5, Vegetation adjacent to fill, ¶ 2. In nearly all locations, the dominant plants found are rated as facultative wetland plants...vegetation cannot be reliably used to determine the likelihood of wetlands on the site. These two statements appear to be contradictory. As stated in Table 1 (pg. 1), wetland vegetation is present when greater than 50 percent of the dominant vegetation is rated as FACULTATIVE or wetter. Dr. Kelly states on page 5 that the dominant plants are FACULTATIVE wetland plants, a statement that meets the wetland vegetation parameter. The presence of wetland vegetation (i.e., greater than 50 percent of dominant species are FACULTATIVE or wetter), is one of the three parameters required to establish the presence of a regulated wetland. In the concluding sentence of this paragraph, Dr. Kelly states that wetland determinations must be based on the presence of hydric soil and wetland hydrology. More correctly, wetland determinations must be based on the presence of hydric soil, wetland hydrology, and hydrophytic (wetland) vegetation.

Vegetation on much of the site may not be reliable for determining the presence of wetlands because it has been recently managed (i.e., replanted and mowed). In atypical situations where the vegetation has been altered, undisturbed reference sites or conditions, if available, should be used to characterize the vegetation. Vegetation that I observed over most of the site during my site visit on October 27, 2007, was non-native pasture grasses. Beyond the filled area, the site appeared to have been tilled, planted in grasses, and mowed. Where the vegetation had not been mowed reed canarygrass (*Phalaris arundinacea*) and Douglas' spiraea (*Spiraea douglasii*) were the dominant species, both of which are listed as FACULTATIVE WETLAND species. This may indicate that prior to mowing and recent site management by PTI, the dominant vegetation on the parcel was wetter than the current FACULTATIVE community.

7. Pg. 7, Groundwater monitoring wells located near the fill. Four of the seven monitoring wells, (Wells 6, 10, 27, and 27) indicate positive wetland hydrology with a water table within 1.3 feet of the surface. Well 6, which Dr. Kelly describes as "located in a small depression near the edge of the fill", clearly shows wetland hydrology was present during the monitoring period. Stating that the well is near the edge of the fill implies that the well is outside of the filled portion of the site. More properly, this location should be described as within the fill, as this well is located within an unfilled "doughnut hole" that is entirely surrounded by fill.

8. Pg. 5, Soil and water table conditions adjacent to fill, ¶ 2. ...areas on the west side of the fill contained indicators of hydric soil...the occurrence of hydric soil colors may be relict features. During my October 27, 2007 site visit, I dug soil pits along the western and northern edges of the fill. I photographed and wrote down the soil colors from one of the western soil pits, which was representative of the soils in the other pits that I examined. Soils in the representative pit were a gray (10YR 5/1) silty clay loam with many, large, distinct dark red (2.5YR 3/6) redoximorphic features (formerly mottles) from approximately 4 to 10 inches depth. The matrix soil color and presence of redoximorphic features meet the hydric soils parameter. Redoximorphic features, some of which were found along the linings of living roots, were found throughout the soil layers examined, including the surface layer. The margins of all of the redoximorphic features were diffuse and there was no clear break in the presence or distribution of redoximorphic features, indicating they are a contemporary feature. If soil hydric soil indicators are a relict feature, there is typically a clear boundary in the soil where there appearance changes.

In the last full paragraph on page 8 and the next paragraph, which continues on page 9, Dr. Kelly states that groundwater was present within 14 inches of the surface in soil pits he dug to the northwest, south, and southwest of the fill. With a potential capillary fringe of 12 inches, these findings indicate that wetland hydrology (groundwater or saturated soils) was present for these locations during Dr. Kelly's site visit.

9. Pg. 9, Soil borings through fill, ¶ 3. Several soil samples obtained near the west and southwest portions of the fill were found to have water in their pore spaces...The area of fill that is atop these wet soils is estimated to be between 0.1 and 0.2 acres in size. Dr. Kelly states that native soils beneath the fill in all of the borings met the hydric soils parameter. Assessing wetland hydrology in native soils beneath up to 15 feet of fill is more problematic and an absence of saturation is not clear evidence that wetland hydrology would not have been present prior to placement of the fill. The fill would intercept any precipitation before it could reach the native soil surface and the weight of the fill would compress the native soil, likely reducing permeability within the native soil. The fact that soil bores from the west and southwestern portions of the fill were at or near saturation is a strong indication that wetland hydrology was present when the bore was collected.
10. Pg. 11, Summary and recommendations, Bullet 1. ...strong evidence that no wetlands are present under the majority of the 12 acres of fill. The findings reported by Dr. Kelly confirm that fill on the subject site has been placed within wetlands. The precise extent of the area of filled wetlands is unknown at this time. In the last sentence of this paragraph, Dr. Kelly also states that the vegetation around the perimeter of the fill supports the conclusion that wetlands are not present under the majority of the fill. During my site visit, I saw a predominance of wetland vegetation along the perimeter of the fill that I examined.
11. Pg. 11, Summary and recommendations, Bullets 2, 3, and 4. Near the northwest area of the fill a small reed canary grass dominated wetland present (0.2 acres). Dr. Kelly does not describe how he determined the extent of this wetland. His

description of this area is consistent with the unfilled doughnut hole, which I mapped at 0.2 of an acre in the GIS on the 2006 orthorectified photograph. He further states that the wetland does not extend into the filled area and recommends that this site be delineated in the spring of 2008. He does not offer evidence to support his conclusion that the wetland edge does not extend into the fill, nor does he explain why it is necessary to wait until the spring of 2008 to delineate this wetland. The delineation could be done now and if primary or secondary indicators of hydrology are lacking, a return visit in the fall could confirm if wetland hydrology is present. Removing the fill is the best way to assess the site conditions and determine the extent of wetlands within the fill footprint.

12. Pg. 11, Summary and recommendations, Bullet 5. Mowing of plants within 50-feet of the fill should not occur... On page 5, Dr. Kelly stated that the dominant vegetation on the site is FACULTATIVE, which meets the hydrophytic vegetation criterion. Further study of the site is not necessary to conclude that hydrophytic vegetation is present.
13. Pg. 11, Summary and recommendations, Bullets 6. Fill located over the 0.1-0.2 acre area where wet soils were found could be removed to facilitate hydrologic evaluations in 2008. Removing all of the fill is the best way to begin assessing the site conditions and there is no sound scientific or regulatory reason to wait until 2008. This would also apply to Bullet 7, other areas of fill without wet soils.
14. Pg. 11, Summary and recommendations, Bullet 8. Studies completed in 2007 and the background information discussed above should be more thoroughly documented in a technical memorandum. What other studies is Dr. Kelly referring to? Were other technical reviews or critical areas studies completed for the site in 2007 and does Dr. Kelly have copies of those studies? It is my understanding that Parametrix completed a wetlands study of the site in December 2006. Other than Dr. Kelly's assessment, PTI has not provided any other wetland information on this property, despite my repeated requests for a copy of the delineation findings between October 2006 and March 2007.

6. Ecology employee Tallent's notes from meeting with 13 regulators whom Ecology encouraged to bring enforcement actions.

Pacific Topsoils, Inc.

Smith Island Enforcement Review

10:00a.m.-12:00 p.m. March 30, 2007

Agenda:

Introduction and Violation Background
Information provided by Everett Shorelines Coalition and PTI
Parametrix critical areas study

Status of Snohomish County Order

Status of Ecology Order

Settlement negotiation meeting with Jane Koler

Snohomish County Health District Action

U.S. Army Corps of Engineers Action

f

Conclusion

000420

Pacific Topsoil MTG @ DOE Hqs. 3-30-07

GEORGE TALLENT - DOE - Section Supervisor

JOAN GARRAIRO - MIT BANK - EPA

DEBRA HILLMAN - EPA

BOB - EPA

SLOTT WEST - EPA

PAUL ANDERSON - DOE

GARY HANIDA - SNO H. D.

JAN MAUTHARD - AG'S OFFICE

John Pell - Corps of Engineers



DOE - cannot view PT as repeat violator unless
it occurs on same site

DOE is in Oct from Snok Shorelines Coalition
* class 3 emergent wetland *

Peggy Toepel



Weephauser - did not do critical area study

Paul A - Oct 27th - insp - noted wetland soils

P.T. filling since Jan '06

Paul A - PT has been unresponsive

3

Get transaction records for Weychauer/PT
Gary H - selling agent

Weychauer - had a 3 acre landfill site prior

NPDES viol?

water quality - probably a viol.

2003/04 Thomas Lk. - EPA penalty

Call S.O. to see if I can get
aerials of Thomas Lk.

" Smiths Island?

(2)

Joan M. - Jane Kohler - PT's atty
" PT admits a grading violation

PT - doing borings to find H₂O level
" wants after-the-fact permits

PT - 60 days from date of DOE's notice
to remove fill.

Joan M. - wants Ueyerhaeuser sale documents
to ✓ for wetland information

Joan M. - may pursue solid waste viol.
concrete - const debris - fill - and?

Geoff T. - PT wants remove soil not
w/in wetland

Federal wetland viol? - Scott West

Cedar Grove Compost - good witness
- Emerald Services -

* High Bridge Rd site - new fill - DOE contaminants
what's coming in? - contact neighbors

000418