

Thu 9/8/2011 2:58
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87892-7
Case No. 42411-8-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

THE BOEING COMPANY,

Petitioner,

v.

STATE OF WASHINGTON, POLLUTION CONTROL HEARINGS
BOARD, and DEPARTMENT OF ECOLOGY

Respondents

REPLY TO MOTION FOR DISCRETIONARY REVIEW

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Olympians for Public Accountability

A. Joinder in Department of Ecology Response

Respondents Puget Soundkeeper Alliance, Columbia Riverkeeper, and Olympians for Public Accountability (collectively, “Soundkeeper”) hereby join in the Department of Ecology’s response in opposition to Petitioner The Boeing Company’s motion for discretionary review.

B. No Precedential Value

Soundkeeper writes separately to emphasize the point that this appeal has absolutely no precedential value. This appeal exclusively concerns the interpretation of RCW 90.48.555. This statute affects only construction and industrial stormwater general permits. RCW 90.48.555(1). By its own terms, RCW 90.48.555 expires on January 1, 2015, the same date that the Industrial Stormwater General Permit at issue in this case expires. *See*, Motion for Discretionary Review, App. 6. Ecology’s Construction Stormwater General Permit expires on December 31, 2016. *See*, <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permitdocs/cswgpppermit120110.pdf>. Thus, subsequent versions of both of these permits will not be subject to the requirements of RCW 90.48.555 because

that statute will no longer be effective when the new versions of the permits become effective. Furthermore, besides modifications to be made to the Industrial Stormwater General Permit in response to the Pollution Control Hearings Board's final order, there is no indication whatsoever that Ecology will ever again issue a permit subject to RCW 90.48.555.

Outside the instant appeal, there is no value – precedential or otherwise – to a judicial interpretation of RCW 90.48.555.

RESPECTFULLY SUBMITTED this 29th day of August, 2011.

SMITH & LOWNEY, PLLC

A handwritten signature in black ink, appearing to read 'RASA', is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2011 I caused to be served the foregoing **REPLY TO MOTION** for **PUGET SOUNDKEEPER ALLIANCE, COLUMBIA RIVERKEEPER, and OLYMPIANS FOR PUBLIC ACCOUNTABILITY** on the following via U.S. Mail:

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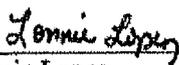
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 29th day of August, 2011, in Seattle, Washington.



Lonnie Lopez