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No. 42411-8-II

COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY *[Signature]*
DEPUTY

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

THE BOEING Co.
Petitioner
Vs.

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

OBJECTION TO MOTION FOR
DISCRETIONARY REVIEW

Arthur West
120 State Ave N.E. #1497
Olympia, Washington, 98501

Comes now Arthur West and respectfully objects to the motion of the Boeing Co. seeking discretionary review of a limited set of issues concerning the defects in the Industrial Storm Water General Permit.

Like the Boeing Co. West has an interest in water quality. West testified at the legislative hearings where the present law concerning ISWGP permit requirements was passed. West also filed an appeal of the permit issued by the DOE, and a companion action for judicial review of the dismissal of the specific issue he raised, which were dismissed by the PCHB. Prior to the formal hearing.

While West certainly concurs with much of what Boeing argues about the manifest deficiencies of the permit, which is essentially indefensible, unlike the Boeing Co. this petitioner believes that the proper remedy is to require the issue of a permit with valid and

enforceable conditions adequate to protect water quality and comply with the State's duties under the MOU and agreement with the federal Government to enforce the Clean Water Act, rather than simply eliminating what minimal and improperly derived requirements the permit contains.

Resolution of Boeing issues prior to and in the absence of a determination of the validity of the permit may result in further weakening of what is already a defective enforcement scheme.

Prior to the dismissal of his issues, West argued and submitted evidence to substantiate the manifest defects in the permit, that it failed to comply with the delegation of authority to the State to administer the CWA, that it lacked numerical effluent limitations required by statute¹ for discharge into impaired water

1RCW 90.48.555(7)(a) provides... By November 1, 2009, the department shall modify or reissue the industrial storm water general permit to require compliance with appropriately derived numeric

bodies, and that the monitoring, reporting and response requirements were manifestly inadequate to protect water quality or prevent discharge of toxic materials and pollutants and unlawful degradation of water quality.

The transcribed depositions of DOE permit writer Killeuea and compliance officer Paul Stache, which the plaintiff filed with the PCHB are appended to and incorporated in this objection.

CONCLUSION

While Boeing's complaints about the defects in the permit are in part well taken, the appropriate remedy is not to render the permit completely toothless by removing what minimal and inadequate conditions it contains, but rather to invalidate the entire scheme and

water quality-based effluent limitations for existing discharges to water bodies listed as impaired according to 33 U.S.C. Sec. 1313(d) (Sec. 303(d) of the federal clean water act, 33 U.S.C. Sec. 1251 et seq.).

replace it with one that adequately complies with the requirements of State and federal law.

This petitioner sympathizes with the Boeing Co. in its desire to conclude this matter as expeditiously as possible, consideration of the proposed issues in a vacuum without determination of the underlying issue of whether the permit is a valid exercise of regulatory authority as a whole is not consistent with economy and foreclosed issues that Boeing's proposed subject matter is designed to evade or eliminate.

West agrees with Boeing that the permit is defective and requires revisions, in that it does not contain appropriate derived numerically effluent limitations, fails to specify what an operator must do when in noncompliance even after years of repeated violations, and is based upon a completely unscientific syllogistic rational that defies reason and all recognized

principles of scientific method. (see testimony of Jeff Killeuea)

. However, the proper remedy for a deaf dumb, blind and largely toothless watchdog is to euthanize it and replace it with one that can actually perform its intended function, rather than simply pulling what few rotten teeth it might still, by some miracle, possess.

Through their participation in the ISWG stakeholders work group privately facilitated by Floyd Snyder, the Boeing Co. and a small cabal of insider water quality "foxes" have succeeded in dominating the State's water quality policy and in designing a policy of CWA "hen house" regulation that ensures that manifest violations of water quality standards will continue without any possibility of detection or effective remediation.

Before the PCHB, they succeeded in suppressing the consideration of relevant evidence and in excluding any comprehensive challenge to the permit as a whole.

Now, in the Court of Appeals, they seek to frame specific issues and have them decided in a vacuum that ignores the systemic defects of the permit, and which will result in the removal of what little (and defective) enforcement mechanisms it does contain.

Petitioner West has confidence that the honorable Judge McPhee of the Superior Court can adequately and fairly adjudicate the issues related to this permit in a comprehensive and efficient manner, and believes that, especially in light of the refusal of the PCHB to record all of its proceedings, Superior Court review would be a valuable aid to thorough consideration of the various issues that underlie the manifestly defective

permitting scheme of the Industrial Storm water general Permit.

If this Court does retain jurisdiction, the underlying issue of whether the permit is a valid exercise of regulatory authority and whether it is adequate to protect water quality (particularly in impaired water bodies such as Budd inlet) should also be decided in conjunction with Boeing's more limited attack on specific permit conditions.

CERTIFICATE OF SERVICE

I certify that I served this response on the parties of record at their respective addresses on September 1, 2011, by Email and regular mail.

I certify the foregoing to be correct and true. Done
September 1, 2011.

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