

Review by Ecology

The process—in general. As noted in the discussion about the wetlands regulatory process, in order to receive permission from the U.S. Army Corps of Engineers to fill wetlands, a project proponent, such as Sea-Tac Airport, must first obtain a certificate from the appropriate State agency (Department of Ecology, in Washington) that the project can be constructed with "reasonable assurance" that State water-quality standards will not be violated. Ecology has six months from the date of an application to act on it. Decisions by Ecology can be appealed to the Pollution Control Hearings Board, a panel of three administrative-law judges with environmental expertise. The PCHB hears such appeals "de novo"—in other words, the parties may present oral testimony from their experts. Decisions of that Board can be appealed to the courts.

"State water quality standards" include the specific requirements of State statutes, various regulations issued by the Department of Ecology, and, as a practical matter, the stormwater-management regulations and plans adopted by King County. Water-quality standards are important for protection of fish and other aquatic life forms, and wildlife protection plans and rules issued by the Department of Fish and Game, and by local groups are also to be taken into account.

First application. Sea-Tac Airport submitted its first application in December 1996, and Ecology granted a sec. 401 certificate on that first application. But Ecology withdrew its approval while the matter was on appeal to the Pollution Control Hearings Board.

Sec. 401 certificate. Second application. A second application was filed. Ecology was ready to deny the certificate on the second (improved) application, but on the last day, allowed the Port to withdraw, to start again.

Sec. 401 certificate. Third application. The third, present application was filed in September 2000. Again, Ecology granted the certificate. This time, the Airport Communities Coalition appealed, and at ACC's request the PCHB has granted a temporary stay of the certificate, meaning that it is not now in effect, pending the outcome

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of the appeal. The Port of Seattle asked the Board to reconsider issuance of the stay; that was denied. The Port filed suit in Superior Court to overturn the stay, and that request was not granted.

In its order granting a stay of the certificate, the PCHB identified three major issues of serious concern: contaminated fill, lack of water rights for water needed for stream-augmentation in the dry part of the year, and adequacy of wetlands mitigation.

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