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POLLUTION CONTROL HEARINGS BOARD  
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION  
and CITIZENS AGAINST SEA-TAC  
EXPANSION,

Appellants,

v.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY, and THE  
PORT OF SEATTLE,

Respondents.

PCHB No. 01-160

PORT OF SEATTLE'S PETITION FOR  
RECONSIDERATION REGARDING  
CONDITION 8

The Port of Seattle ("Port") respectfully petitions the Board to reconsider Condition 8 of its Final Findings of Fact, Conclusions of Law, and Order ("Final Order") dated August 12, 2002, and the factual findings on which it was based. Condition 8 states that:

The SPLP process may not be used to authorize the importation of fill that exceeds the modified fill criteria.

See Final Order at 137.

**I. INTRODUCTION AND SUMMARY OF ARGUMENT**

In its Final Order, the Board expressed five concerns regarding the use of SPLP. Three of the Board's concerns — relating to the use of SPLP to accept soil that exceeds MTCA Method A levels, to the detection limits attainable when using SPLP, and to the statistical protocol for using SPLP — appear to be based on a mistaken interpretation of the record. All of these

1 concerns were adopted from ACC and CASE's (hereafter, "ACC") proposed findings of fact.  
2 However, ACC's proposed findings lack any evidentiary support on these points and instead  
3 reflect a misunderstanding or distortion of the record. The Board should modify its findings to  
4 correct those three errors.

5 The remaining two concerns can be addressed more appropriately by further conditioning  
6 the Port's use of SPLP, rather than by prohibiting it altogether. Therefore, the Port respectfully  
7 requests that the Board revise its Final Order so that the Port is allowed to use SPLP under the  
8 conditions discussed below.

9 — Because SPLP was an integral part of the process of formulating fill criteria, use of the  
10 very stringent numeric criteria without SPLP skews the entire set of criteria and makes it  
11 practically impossible for the Port — or any other proponent of a major fill project who is  
12 required in the future to comply with similar criteria — to find acceptable fill. The Port  
13 presented statistical evidence showing that if it were required to meet 90<sup>th</sup> percentile "natural  
14 background" levels for 14 constituents, then 78% of the uncontaminated soils it tests will fail to  
15 meet the fill criteria. This is because testing for multiple constituents in each sample greatly  
16 increases the likelihood that the concentration of at least one constituent will fall in the 10% of  
17 samples that will, by definition, exceed the "background" concentration. Moreover, the Final  
18 Order set the fill criteria for some constituents at levels considerably lower than natural  
19 background concentrations,<sup>1</sup> thereby further reducing the chances that acceptable fill can be  
20 found.

21 The practical effect of an extremely high failure rate for pristine, naturally-occurring soils  
22 is very significant for the Third Runway. It is equally significant for other major fill projects  
23 around the state, because other projects requiring a 401 certification will likely be required to

24 \_\_\_\_\_  
25 <sup>1</sup> The Final Order states that the fill criteria should be set at natural background levels "when available." See Final  
26 Order at 62-63. For four constituents, the Final Order set the fill criteria at the numbers that Ecology "back  
27 calculated" to protect water quality, presumably because natural background numbers were not available. *Id.* (criteria  
28 for antimony, selenium, silver, and thallium). Actually, data are available regarding the natural background levels  
of these four constituents, as well. See Exhibit 2126 at 7-4. Ecology established 90<sup>th</sup> percentile background levels  
for three of the four: antimony, selenium, and silver. The background levels for selenium and silver (0.78 mg/kg  
and 0.61 mg/kg, respectively) are higher than the backcalculated levels used in the Final Order (0.52 mg/kg and  
0.28 mg/kg, respectively).

1 comply with similar criteria in the future. The Board's decision prohibiting use of SPLP could  
2 therefore have extremely far-ranging, adverse, and unintended consequences. Major construction  
3 projects will either be impossible or infeasible due to the unavailability of, or the prohibitive cost  
4 of obtaining, fill that meets the numeric criteria set by the Board.

5 These practical effects of the unprecedented fill criteria were mitigated in the 401  
6 Certification by allowing the use of SPLP. There is no dispute that a 401 Certification is  
7 intended to protect water quality, not soil quality. If constituents in fill material will not leach  
8 out of the soil, they pose no threat to water quality. SPLP is the most direct method for  
9 determining whether those constituents will leach from fill. Proper use of SPLP, therefore, poses  
10 no environmental threat. By prohibiting the use of SPLP, the Final Order has imposed what may  
11 be impossible conditions on construction of the project without any corresponding  
12 environmental benefit.

13 The Port believes that SPLP should be allowed, but acknowledges the Board's concerns  
14 and addresses each one below. The Port requests that the Board modify its Final Order to permit  
15 use of SPLP subject to the conditions proposed below, which will allow the Port to accept  
16 uncontaminated fill without causing any threat to water quality. This will allow the Third  
17 Runway project to proceed while meeting the regulatory standard set forth in WAC 173-201A-  
18 040(1), which states that "[t]oxic substances shall not be introduced above natural background  
19 levels *in waters of the state* which have the potential either singularly or cumulatively to  
20 adversely affect characteristic water uses." (Emphasis added).

## 21 II. ARGUMENT AND AUTHORITIES

### 22 A. Factual Background

23 The Final Order modified the numeric fill criteria so that they are set at "natural  
24 background levels" whenever possible. See Final Order at 62-63. Condition 7 of the Final Order  
25 uses natural background levels taken from an Ecology publication entitled *Natural Background*  
26 *Soil Metals Concentrations in Washington State* (Exhibit 2126). As described in the publication,  
27 Ecology found that for most metals studied there is considerable variation in their natural  
28

1 background concentrations. For example, the background concentration of chromium in the Puget  
2 Sound region ranged from 12 parts per million (ppm) to 235 ppm. *Id.* at 7-10. For copper, the  
3 background concentration in the Puget Sound region ranged from 4 parts per million to 243.5  
4 ppm. *Id.* at 7-11. For nickel, the background concentration in the Puget Sound region ranged  
5 from 9 parts per million to 244.4 ppm. *Id.* at 7-16.

6 Ecology chose a single value, the 90<sup>th</sup> percentile, to represent natural background levels.

7 As Ecology explained in its publication:

8 **What is the 90<sup>th</sup> Percentile Value?**

9 The 90<sup>th</sup> percentile is a value that 10% of a given data set will exceed (90<sup>th</sup> = 90%  
10 data below, 10%-data-above). Another way of thinking about the 90<sup>th</sup> percentile is  
you have a one-in-ten chance of having a sample that exceeds the specified  
concentration.

11 **Why is this important?**

12 Ecology uses the 90<sup>th</sup> percentile as the default value for background calculations.  
13 The 90<sup>th</sup> percentile value was selected as a result of Monte Carlo simulations of  
lognormal and normally distributed data (ref: *Statistical Guidance for Site*  
14 *Managers*). The 90<sup>th</sup> percentile is a conservative value; i.e., 10% of the data will  
exceed it.... Background values in some states such as Michigan, and in Ontario  
(Canada) are based on 99<sup>th</sup> and 98<sup>th</sup> percentile values....

15 *Id.* at 6-1 (emphasis in original). Because Ecology uses the admittedly conservative 90<sup>th</sup>  
16 percentile value as the natural background concentration, 10% of *uncontaminated* soils will exceed  
17 this value for any given metal. This means that if the Port analyzes pristine soils for a single  
18 constituent, it will have to reject 10% of those pristine soils for use as fill.

19 If the same soil is tested for multiple constituents, any one of which can disqualify the  
20 soil for use as fill, the probability of that soil being rejected increases dramatically. The Port is  
21 required to analyze for 14 metals. At the hearing, the Port presented evidence explaining how use  
22 of the 90<sup>th</sup> percentile background value for each of 14 metals will lead to rejection of nearly 80%  
23 of pristine soils. *See* Tr. March 28, 2002 page 104 lines 12-25 and page 105 lines 1-17 ("if we  
24 have 14 samples that we have to put at natural background criteria, we are going to exceed the  
25 criteria 78 percent of the time") (Gould testimony); *see also* Prefiled Testimony of Elizabeth  
26 Clark at 14, ¶ 35 ("[t]here is an increasingly greater probability that a sample will exceed a  
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1 background criterion with every additional metal considered (for instance, statistically, 19%  
2 chance for two metals and a 27% chance for three metals)").

3 Since the purpose of the 401 Certification is to ensure protection of water quality, not  
4 soil quality, the focus should be on the concentration of metals that will leach from the Third  
5 Runway embankment into surrounding waters, not on the concentration of metals in the soils  
6 themselves. As ACC's expert Dr. Patrick Lucia stated at the hearing, "regardless of what the  
7 criteria are, regardless of what the concentrations are of any of these various metals or  
8 hydrocarbons in the embankment, *the real question is how mobile are they.*" See Tr. March 20,  
9 2002 page 106 lines 20-24 (Lucia testimony) (emphasis added). It is for this reason that Ecology  
10 included use of the SPLP procedure in the 401 Certification.<sup>2</sup>

11 The SPLP test is the standard tool used to determine how mobile contaminants are –  
12 specifically, to determine the rate at which they will leach from soil into a liquid solution. Soils  
13 with constituents that exceed the 90<sup>th</sup> percentile natural background value, but that do not leach  
14 from soil, do not pose a threat to water quality.

15 **B. Grounds for Granting Reconsideration**

16 The Board's rules do not specify a standard for its review of a petition for  
17 reconsideration. However, WAC 371-08-300(2) states that "[e]xcept where in conflict with the  
18 board's rules, Washington ... civil rules ... shall be followed in proceedings before the board."  
19 CR 59 provides that among the grounds for reconsidering a decision are

20 (7) That there is no evidence or reasonable inference from the evidence to  
21 justify the verdict of the decision, or that it is contrary to law; and

22 (9) That substantial justice has not been done.

23 The Board's findings on SPLP either lack evidentiary support, or deny the Port substantial  
24 justice by prohibiting use of SPLP altogether when additional conditions would adequately  
25 address the Board's concerns.

26  
27 <sup>2</sup> The Fish and Wildlife Service, whose mission includes protection of aquatic organisms, first included use of SPLP  
28 in the fill criteria in its Biological Opinion. See Exhibit 29. Ecology later adopted the SPLP for use in the 401  
Certification.

1           **C.     The SPLP Test is a Standard Method**

2           The Synthetic Precipitation Leaching Procedure or SPLP, EPA SW-846 Method 1312, is  
3 a standard laboratory method for determining the potential for various constituents to leach from  
4 soils. *See* Prefiled Testimony of Linn Gould at 6, ¶ 18. It is considered the “gold standard” for  
5 making this determination. *See* Tr. March 28, 2002 page 106 lines 16-17 (Gould testimony).

6           When the SPLP is performed, soil is exposed to water simulating acid rain. The resulting  
7 extract (“SPLP extract”) represents the leachate that would be generated under conditions that are  
8 most likely to mobilize constituents in soil. *See* Prefiled Testimony of Linn Gould at 6-7, ¶ 18.  
9 The SPLP extract is then analyzed to determine the concentrations of any constituents that leach  
10 from the soil. *Id.* at ¶ 19. These results are compared to water quality standards. *Id.*

11           **D.     The Board’s Concerns About Use of SPLP**

12           In the Final Order, the Board identified five concerns regarding the Port’s intended use of  
13 the SPLP test. Three of those five concerns appear to be based on ACC’s proposed findings of  
14 fact that have no support in the record. The other two concerns can be addressed by further  
15 conditioning the 401 Certification, as explained below.

16           **1.     The Port Has Not Used SPLP To Exceed Method A Levels**

17           The Board expressed concern that the Port may have used the SPLP to approve the  
18 importation of fill exceeding MTCA Method A levels. *See* Final Order at 65, lines 5-7 (“a Port  
19 consultant acknowledged after site sampling shows a site has failed the MTCA Method A based  
20 initial screening criteria, the Port uses the SPLP to approve the importation of fill material”).  
21 However, Attachment E to the 401 Certification prohibits the Port from using results of the  
22 SPLP testing to accept soil that exceeds Method A levels:

23           [U]pper bound limits are established for constituent concentrations that cannot be  
24 accepted even following a successful SPLP test (referred to in this document as  
25 “upper bound limits”). For the drainage layer cover, the upper bound limits are  
26 set in the [Biological Opinion] at applicable MTCA Method A Standards.

27           *See* Exhibit 1 at Attachment E, page 2. Ecology witness Ann Kenny confirmed that this  
28 provision prohibits the use of SPLP to accept fill that exceeds MTCA Method A levels. *See* Tr.  
March 18, 2002 at 179, lines 9-16 (Kenny testimony). Furthermore, nothing in the Final Order

1 modified this prohibition; Method A remains the ceiling for acceptable fill. There is no evidence  
2 in the record that the Port has violated this prohibition.

3 The Board's concern seems to have arisen because ACC misunderstood testimony of Port  
4 environmental consultant Elizabeth Clark. According to ACC's proposing findings of fact:

5 However, in her testimony Port environmental consultant Elizabeth Clark  
6 acknowledged that, after site sampling shows that a site has failed the MTCA  
7 Method A based initial screening criteria, the Port uses the SPLP to nevertheless  
8 approve the importation of fill material. According to Ms. Clark, the Port has  
9 already accepted fill material from the Black River Quarry site, the Kent-Kangley  
10 pit, the Marine View pit and CIT pit #3 (four of the seven sites that were being  
11 used as fill sources at the time of the hearing) based upon the use of SPLP test  
12 results. (Clark, Tr. at 9-0134, line 14, to 9-0136, line 5.) Thus, where the Port  
13 encounters significant variability in soil, rather than conducting additional  
14 sampling to characterize the extent of contamination to an acceptable confidence  
15 limit, the Port has interpreted the 401 Certification to allow use of the SPLP  
16 method to nevertheless justify fill importation.

17 See Findings of Fact, Conclusions of Law, and Order Proposed by ACC and CASE at 77, ¶ 208  
18 (emphasis in original) ("ACC Findings"). Nothing in Ms. Clark's testimony suggests that the  
19 Port accepted fill that exceeded the MTCA Method A levels. Instead, she testified that the Port  
20 had accepted fill that exceeded the 401 criteria. See Tr. March 28, 2002 at 134, line 14 through  
21 136, line 5 (Clark testimony). ACC mistakenly assumed that these 401 criteria were based on  
22 Method A levels. This assumption is wrong, as explained further below.

23 During its cross-examination of Ms. Clark, ACC sought testimony that the Port had  
24 accepted fill that exceeded the 401 criteria for certain metals after the same fill passed the SPLP  
25 test. ACC's counsel asked specifically about chromium and copper, and referred Ms. Clark to  
26 Exhibit 294, a report summarizing laboratory results from soil testing. According to this report,  
27 two of the samples taken from Black River Quarry soil contained concentrations of chromium at  
28 44.7 and 46.3 mg/kg. See Exhibit 294 at Table 1. The 401 Certification set the fill criterion for  
chromium at 42 mg/kg in the wedge, and at 2000 mg/kg throughout the remainder of the  
embankment. See Exhibit 1 at Attachment E. Of these two, only the criterion for the remainder  
of the embankment, 2000 mg/kg, is a MTCA Method A value.<sup>3</sup> See WAC 173-340, Table 740-1.

<sup>3</sup> The criterion for the wedge, 42 mg/kg, is the 90<sup>th</sup> percentile statewide natural background value for chromium.  
See Exhibit 2126 at 1.

1 Obviously, the Black River Quarry samples containing chromium at 44.7 and 46.3 mg/kg were  
2 well below this Method A level.

3 This same laboratory report showed that the Black River Quarry soil had concentrations  
4 of copper that exceeded the 401 criterion of 36 mg/kg. *See* Exhibit 294 at Table 1. MTCA does  
5 not have a Method A level for copper. *See* WAC 173-340, Table 740-1. The 36 mg/kg level set  
6 in the 401 Certification represents the 90<sup>th</sup> percentile Puget Sound natural background  
7 concentration. *See* Exhibit 2126 at 1. The Port did not use the SPLP to accept soils that exceed  
8 Method A levels.

9 **2. Laboratories Can Detect Constituents in SPLP Extract at Levels**  
10 **Lower Than the Water Quality Standards**

11 The Final Order states that the “SPLP method is in large part incapable of detecting  
12 contaminants of concern at the levels established in WAC 173-201A-040.” *See* Final Order at 65,  
13 lines 13-14. In fact, laboratories can conduct analytical tests on SPLP extract that attain  
14 detection limits lower than the water quality standards, and evidence in the record proves this.

15 Attachment C to Exhibit 1320 includes Table C-1, which shows analytical results of  
16 SPLP extract obtained from three fill sources. This table displays results of analyses conducted  
17 by two laboratories, including one specialized lab capable of achieving ultra-low detection levels.  
18 Both laboratories detected concentrations of metals at levels far lower than the water quality  
19 standards. For example, the non-specialized laboratory detected copper — the metal that ACC  
20 used to “prove” that laboratories could not attain low enough detection limits to make the SPLP  
21 results meaningful — at levels as low as 0.00066 mg/kg, or mg/l. *Id.* The other lab detected  
22 metals at even lower concentrations; for example, it found mercury at 0.00000029 mg/kg, and  
23 thallium at 0.0000007 mg/kg. *Id.*

24 The Board’s finding on this point appears to be based on ACC’s proposed finding of  
25 fact, which suggested language identical to that used in the Final Order. *See* ACC Findings at 78-  
26 79, ¶ 211. ACC’s proposed finding is based on an erroneous interpretation of a single laboratory  
27 report. ACC concluded that because the laboratory did not attain detection limits lower than  
28 some water quality standards during that one analysis, no laboratory analyzing SPLP extract



1 could ever attain detection limits lower than the relevant water quality standards. ACC's  
2 conclusion is completely wrong.

3 ACC's proposed finding of fact reads in pertinent part as follows:

4 The SPLP procedure is, however, ineffective at determining compliance with  
5 water quality standards for these metals because, as designed in the 401, the  
6 SPLP's reporting limit is higher than the 401 contamination limit. This is evident  
7 from the baseline chemical characterization report for the Black River Quarry, a  
8 source of fill already utilized by the Port. (Ex. 294.) That report states copper  
9 concentrations from six samples ranged from 95.7 to 131 mg/kg – more than three  
10 times the 36 mg/kg limit for copper in the 401 Certification. This fill material was  
11 then tested under the SPLP and approved because copper was not detected  
12 "above the reporting limit of .05 mg/kg (mg/l) [or 50 ug/l] using SPLP  
13 methodology." (Exhibit 294 at p. 2.) In fact, the SPLP test results in that report  
14 indicate that, for each contaminant tested, the reporting limit was 50  
15 micrograms/liter so that any contaminant that had a WAC 173-201A-040 hardness  
16 adjusted criterion lower than 50 micrograms/liter could not be detected.

17 *Id.* (emphasis in original) (footnotes omitted). The only evidence that ACC cites in  
18 support of this proposed finding is one laboratory report of analysis performed on soil  
19 from the Black River Quarry. ACC presented no testimony or other documentary  
20 evidence that would allow it to extrapolate from this single analytical event the conclusion  
21 that "the SPLP's reporting limit is higher than the 401 contamination limit." The record  
22 simply does not support the finding proposed by ACC and adopted by the Board; in  
23 fact, the very low detected concentrations discussed above refute this contention.

24 **3. The Record Does Not Support the Finding that the Port Lacks a  
25 "Statistically Meaningful Test Protocol" for Using SPLP**

26 The Final Order found that there was no "statistically meaningful test protocol" for using  
27 SPLP because the SPLP Work Plan requires that only one SPLP sample be collected for each  
28 original screening sample that exceeds the fill criteria. See Final Order at 65, lines 10-13. This  
concern, like the ones discussed above, originated with ACC. Just as with the concerns  
addressed above, the record does not support this finding.

The only evidence cited in support of ACC's proposed finding of fact on this issue is the  
following testimony of Dr. Patrick Lucia:

The Port argues that the Certification requires that the SPLP test be performed if  
the concentration of contaminants in the fill exceed the criteria and that this  
provides a higher level of assurance. This argument fails to recognize that the

1 testing protocol is insufficient to evaluate whether the fill will meet the criteria and  
2 soils that should have been subjected to the SPLP test will not be tested and  
3 subsequently placed in the embankment. The acceptability of the fill based on the  
SPLP testing is uncertain. A more appropriate testing and fill acceptance criteria  
would be that proposed by Kmet in his e-mail of September 11, 2000 as discussed  
above.

4 See Prefiled Testimony of Patrick Lucia at 11, ¶ 17. This paragraph is a criticism of the soil  
5 sampling protocol, not of the Port's use of SPLP. Dr. Lucia's point is that the SPLP cannot be  
6 used properly unless an adequate number of soil samples is collected in the first instance; that is  
7 why he refers to the "testing and fill acceptance criteria" proposed by Pete Kmet, whose  
8 suggestions focused on the number of soil samples collected and use of the 95% confidence  
9 interval to interpret the sample results, not on SPLP. Since there is no evidence to support  
10 ACC's proposed finding that there is "no statistically meaningful test protocol for using the  
11 SPLP," that concern cannot serve as a basis for prohibiting the use of SPLP.

12 The Board addressed Dr. Lucia's concern by adopting Condition 9, which requires the  
13 Port to increase the minimum number of samples collected from a proposed fill source to reflect  
14 the number of samples required under MTCA. See Final Order at 137.

15 **4. Groundwater Standards and Constituents Without Surface Water**  
16 **Standards in WAC 173-201A-040(3) Can Be Addressed Through the**  
**Addition of Further Conditions**

17 Both of the remaining concerns about SPLP can be addressed by imposing additional  
18 conditions on the Port's use of the test.

19 First, the Final Order notes that the SPLP procedure ignores state groundwater standards.  
20 See Final Order at 65, lines 8-10. In other words, the 401 Certification does not require the Port  
21 to compare the results of the SPLP extract analysis to groundwater standards. This concern can  
22 easily be resolved by further conditioning the 401 Certification so it requires the Port to compare  
23 the analytical results from its SPLP extract to both the surface water and the groundwater quality  
24 standards. Only if the SPLP results are lower than both sets of water quality standards would  
25 the fill be acceptable for placement in the Third Runway embankment.

26 Second, the Final Order states that surface water quality standards do not exist for four of  
27 the metals for which the Port is required to sample. See Final Order at 66, lines 1-5. Therefore,  
28

1 the Board found that there was no standard by which to evaluate the analytical results from the  
2 SPLP testing of those four metals.

3 In fact, surface water quality standards do exist for these four metals. Washington's  
4 surface water quality standards include a table setting forth numeric criteria for a handful of  
5 constituents. See WAC 173-201A-040(3). Silver is among the constituents for which the table  
6 includes a criterion. In addition to the acute criterion provided in the table, EPA has proposed a  
7 chronic criterion for silver. See Exhibit 1320 at Attachment A, Table 2.

8 However, the numbers in this table are not the only numeric water quality criteria. For  
9 substances not listed in the table, Ecology uses numeric standards identified in the USEPA  
10 Quality Criteria for Water (EPA Publication 440/5-86-001), commonly known as the "Gold  
11 Book," and in the National Toxics Rule found at 40 C.F.R. § 131.36. See WAC 173-201A-  
12 040(5). These two sources provide numeric standards for antimony, beryllium, and thallium, the  
13 other three constituents for which the Board found no standards. The Board's concern could be  
14 addressed simply by requiring the Port to compare the results of its SPLP extract analysis to the  
15 water quality standards referenced in WAC 173-201A-040, including those found in the Gold  
16 Book and the National Toxics Rule.

17 Alternatively, the 401 Certification could require the Port to compare the results of its  
18 SPLP extract tests on these four metals to concentrations that are protective of the most sensitive  
19 aquatic receptors. The Port's consultant, Dr. Charles Wisdom of Parametrix, conducted a  
20 literature search to determine protective levels. For two of the four metals, Dr. Wisdom found  
21 that EPA had proposed surface water quality criteria that are protective of aquatic organisms.  
22 See Exhibit 1320 at Attachment A. For the remaining metals, Dr. Wisdom evaluated information  
23 from EPA's AQUIRE database, which contains toxicity data on lethal and sublethal effect  
24 concentrations for various aquatic organisms. *Id.* Using guidance established by EPA, Dr.  
25 Wisdom selected values from information in the database to represent both acute and chronic  
26 effects thresholds. *Id.* The protective concentrations that Dr. Wisdom identified are listed in  
27  
28

1 Table 2 of Attachment A, Exhibit 1320. ACC presented no evidence to rebut Dr. Wisdom's  
2 conclusion that these concentrations are protective.

3 **CONCLUSION**

4 The SPLP is an accepted regulatory method for determining whether constituents in soil  
5 can leach out and threaten water quality. Unless it can use the SPLP, the Port will have to reject  
6 an extremely high percentage of uncontaminated fill sources. This will make it very difficult, if  
7 not impossible, to find the fill necessary to construct the Third Runway, yet will achieve no  
8 environmental benefit. For the reasons explained above, the Port respectfully requests that the  
9 Board revise Condition 8 of the Final Order so that the Port is allowed to use SPLP subject to the  
10 conditions outlined above.

11 DATED this 22nd day of August 2002.

12 **PORT OF SEATTLE**

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POLLUTION CONTROL HEARINGS BOARD  
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,  
Appellant,

PCHB No. 01-160

CERTIFICATE OF SERVICE

v.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY, and THE  
PORT OF SEATTLE,

Respondents.

I hereby certify that I have on this 22nd day of August, 2002, served a copy of:

- 1. Port of Seattle's Petition for Reconsideration Regarding Condition 8; and
- 2. Certificate of Service

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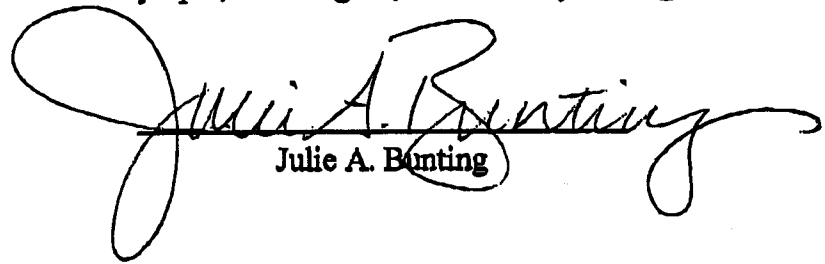
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11 **3 copies:**

12 Pollution Control Hearings Board  
13 4224 6<sup>th</sup> Avenue SE  
14 Row 6, Bldg. 2, MS 40903  
15 Lacey, WA 98504

15 I declare under penalty of perjury under the laws of the State of Washington that the above is  
16 true and correct. Executed at Olympia, Washington, this 22<sup>nd</sup> day of August 2002.

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18 Julie A. Bunting

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