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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROSEMERE NEIGHBORHOOD)	
ASSOCIATION, and CLARK COUNTY)	No.
NATURAL RESOURCES COUNCIL,)	
)	
Plaintiffs,)	
)	COMPLAINT
v.)	
)	
CITY OF VANCOUVER,)	
)	
Defendant.)	
)	

I. INTRODUCTION

1. This is a civil action for declaratory and injunctive relief and the imposition of civil penalties and recovery of litigation expenses under the citizen suit provision of the Clean Water Act, 33 U.S.C. § 1365. Defendant City of Vancouver owns and operates a municipal separate storm sewer system that collects and discharges stormwater to various water bodies in

COMPLAINT - 1

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1 Clark County, Washington, but for which defendant has no National Pollutant Discharge
2 Elimination System permit as required by the Clean Water Act.

3 II. JURISDICTION AND VENUE

4 2. This Court has subject matter jurisdiction over the claims specified in this
5 Complaint under 33 U.S.C. § 1365(a). The relief requested is authorized by 33 U.S.C. §§
6 1319(d) and 1365(a).
7

8 3. On June 14, 2004, plaintiffs served their notice of intent to file a citizen suit for
9 violations of the Clean Water Act (“Notice Letter”) on the defendant, the Administrator of the
10 Environmental Protection Agency (“EPA”), the Regional Administrator of the EPA, and the
11 Director of Washington's Department of Ecology (“Ecology”) in compliance with 33 U.S.C. §
12 1365(b)(1)(A). See Exhibit A, attached. The allegations in Exhibit A are incorporated herein by
13 reference.
14

15 4. More than sixty days have passed since the Notice Letter was served, and the
16 violations complained of in the notice are continuing. Neither the EPA nor Ecology has
17 commenced and diligently prosecuted an action to redress these violations which would preclude
18 this action under either 33 U.S.C. § 1365(b)(1)(B) or § 1319(g).
19

20 5. The source of all violations complained of is located and operating in the Western
21 District of Washington. Venue in the Western District of Washington is therefore proper
22 pursuant to 33 U.S.C. § 1365(c).
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III. PARTIES

6. Plaintiff Rosemere Neighborhood Association sues on behalf of itself and its members. Rosemere Neighborhood Association is a non-profit corporation organized under the laws of the State of Washington, and it serves as the neighborhood association for the residents of the Rosemere neighborhood of Vancouver, Washington. Rosemere Neighborhood Association is a membership organization with numerous members who reside in Vancouver, Washington and who use and enjoy water bodies in and around Vancouver. Rosemere Neighborhood Association is dedicated to enhancing the Rosemere neighborhood and the lives of its residents, including protection of the natural environment and natural resources. For these purposes, Rosemere Neighborhood Association engages in various activities including education and advocacy.

7. Plaintiff Clark County Natural Resources Council sues on behalf of itself and its members. Clark County Natural Resources Council is a non-profit corporation organized under the laws of the State of Washington. Clark County Natural Resources Council is a membership organization with numerous members throughout the Clark County. Clark County Natural Resources Council is dedicated to protecting the natural environment of Clark County and to rehabilitating and restoring the natural environment. For these purposes, Clark County Natural Resources Council engages in various activities including education and advocacy.

8. Plaintiffs have standing to bring this action. Defendant's violations of the Clean Water Act have adversely impacted plaintiffs and plaintiffs' members' ability to use and enjoy water bodies in Clark County, including Burnt Bridge Creek, Vancouver Lake, and the Columbia River, and have injured the health, recreational, environmental, aesthetic, and/or other interests

1 of plaintiffs and their members. These injuries are fairly traceable to defendant's violations and
2 capable of redress by action of this Court.

3 9. Defendant City of Vancouver is a Washington municipal corporation. It is
4 responsible for collection, conveyance, control, treatment, and discharge of precipitation runoff
5 in Vancouver, Washington. Defendant owns and operates the municipal separate storm sewer
6 system that is the subject of this lawsuit.
7

8 IV. FACTS

9 10. The Columbia River constitutes navigable waters of the United States under the
10 Clean Water Act. It provides habitat for salmon and many other species of animals and is a
11 major recreational and aesthetic resource of the region. The Columbia River is severely
12 polluted. Ecology and EPA have determined that the Columbia River's water quality is impaired
13 and that it does not meet Washington water quality standards for fecal coliform, sediment
14 bioassay, total dissolved oxygen, temperature, and arsenic.
15
16

17 11. Vancouver Lake constitutes navigable waters of the United States under the Clean
18 Water Act. It covers approximately 2,600 acres and drains a watershed encompassing
19 approximately 19,000 acres. Vancouver Lake's shoreline runs about eight miles and includes a
20 large public park with water access and a swimming beach. Vancouver Lake provides habitat
21 for birds, salmon, and other wildlife, and constitutes a major regional recreational and aesthetic
22 resource. Vancouver Lake suffers from severe water quality problems, including periodic
23 blooms of toxic algae during summer months, and Ecology and EPA have determined that the
24 lake's water quality is impaired and that it does not meet Washington water quality standards for
25 fecal coliform and total phosphorus.
26
27

1 12. Burnt Bridge Creek constitutes navigable waters of the United States under the
2 Clean Water Act. It is a primary tributary to Vancouver Lake and its watershed encompasses a
3 substantial part of the area within the City of Vancouver. It provides wildlife habitat and
4 constitutes a major recreational, aesthetic, and educational resource for the people of Vancouver
5 and Clark County. Burnt Bridge Creek suffers from severe water quality problems. Ecology and
6 EPA have determined that Burnt Bridge Creek's water quality is impaired and that it does not
7 meet water quality standards for temperature, total dissolved oxygen, fecal coliform, and pH.
8

9 13. Defendant owns and operates a municipal separate storm sewer system in
10 Vancouver, Washington. This storm sewer system collects pollutant-bearing precipitation runoff
11 from the area of service and conducts the pollutants to numerous points of discharge to various
12 navigable waters in Clark County, including the Columbia River, Burnt Bridge Creek, and
13 Vancouver Lake. This storm sewer system includes approximately six miles of open ditches,
14 250 miles of storm sewers, 10,000 catch basins, and 155 outfalls. Discharges of pollutants from
15 each outfall or other point source location occur either continuously or during and after every
16 measurable precipitation event in the relevant service area, depending on the point source
17 location. Pollutants discharged from these point sources include e.coli, fecal coliform, turbidity,
18 suspended solids, oil and grease, zinc, lead, other metals, and other pollutants. These discharges
19 are ongoing.
20
21
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23 14. Contaminants from failing septic systems in the Rosemere neighborhood and
24 other areas of Vancouver infiltrate into defendant's storm sewer system and are discharged from
25 its outfalls at some locations. This infiltration is responsible for dry weather or continuous
26 discharges from some of these outfalls.
27

1 15. Discharges from defendant's storm sewer system have significant detrimental
2 impacts on the receiving waters, particularly Burnt Bridge Creek and Vancouver Lake, and cause
3 or contribute to violations of water quality standards. These discharges contain elevated levels
4 of bacteriological contamination and nutrients among other pollutants. In no sense can
5 defendant's discharges be considered minimal.
6

7 16. That defendant's discharges of contaminated stormwater to Burnt Bridge Creek
8 and Vancouver Lake substantially contribute to serious water quality problems in these
9 waterbodies is a matter of longstanding concern. As long ago as the 1970's, defendant
10 participated with EPA, Ecology and other government agencies in the development of a plan to
11 rehabilitate Vancouver Lake. Two extensive and costly projects to improve lake water quality,
12 dredging of the lake and construction of a flushing channel to bring Columbia River water
13 directly into the lake, were completed in the 1980's with substantial state and federal funding,
14 while defendant largely failed to implement measures to control pollution entering the lake,
15 including pollution from defendant's storm sewer system to the lake and Burnt Bridge Creek,
16 that all parties to those efforts to rehabilitate Vancouver Lake expected defendant to undertake.
17
18

19 17. Defendant has no National Pollutant Discharge Elimination System permit for the
20 discharges from its storm sewer system, although it has submitted to Ecology an application for
21 such permit.
22

23 18. Defendant has not implemented measures that a National Pollutant Discharge
24 Elimination System permit would require to manage the storm sewer system and to control the
25 quality of the discharges.
26
27

1 V. ALLEGATION - VIOLATION OF CLEAN WATER ACT

2 19. A National Pollutant Discharge Elimination System permit is required for any
3 discharge of a pollutant to navigable waters from a point source. 33 U.S.C. §§ 1311(a), 1342.
4 Defendant discharges pollutants from a point source or point sources to various waterbodies,
5 including the Columbia River, Burnt Bridge Creek, and Vancouver Lake without the requisite
6 permit in violation of the Clean Water Act.
7

8 20. Defendant's violations of the Clean Water Act are ongoing.

9 VI. PRAYER FOR RELIEF

10 WHEREFORE, plaintiffs pray that this Court issue:

- 11
- 12 a. A judicial declaration that defendant has violated and continues to violate
13 the CWA;
- 14 b. An order enjoining defendant to comply with the Clean Water Act;
- 15 c. An order imposing maximum civil penalties against defendant for its
16 violations of the CWA in the amount of \$27,500 per violation per day;
- 17 d. An order awarding plaintiffs their costs of litigation, including reasonable
18 attorney and expert witness fees under 33 U.S.C. § 1365(d);
- 19 e. An order requiring defendant to control discharges from its storm sewer
20 system so that these discharges do not cause or contribute to violations of Washington water
21 quality standards;
- 22 f. An order requiring defendant to hire at defendant's expense an expert of
23 plaintiffs' choosing to evaluate possible means to improve the quality of discharges from
24 defendant's system;
- 25
- 26
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1 g. An order requiring defendant to implement all known and reasonable
2 methods of treatment and control to improve the quality of discharges from defendant's system
3 to the maximum extent practicable;

4 h. An order requiring defendant to implement a stormwater management
5 program, including the following components in the fashion deemed appropriate by the Court
6 and on an expedited schedule:

- 7
- 8 1. public education and outreach on stormwater impacts;
 - 9 2. public involvement and participation;
 - 10 3. illicit discharge detection and elimination;
 - 11 4. construction site runoff control;
 - 12 5. post-construction stormwater management in new development
13 and redevelopment;
 - 14 6. pollution prevention and good housekeeping for municipal
15 operations;
 - 16
 - 17

18 i. An order requiring defendant to allow plaintiffs to participate in the
19 development of defendant's stormwater management program;

20 j. An order requiring defendant to implement a monitoring program and
21 associated adaptive management program to improve stormwater control measures;

22 k. An order requiring defendant to undertake actions to remediate harms
23 caused by its violations; and
24

25 l. Such additional relief as the Court deems just and proper.
26
27

Respectfully submitted, this 6th day of October 2004.

SMITH & LOWNEY, PLLC

By: /RS
Richard A. Smith, WSBA #21788
Attorneys for Plaintiffs

JOHN KARPINSKI

By: /JK
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June 14, 2004

Via Certified Mail - Return Receipt Requested

Honorable Royce Pollard, Mayor
City of Vancouver
P.O. Box 1995
Vancouver, WA 98668

Re: **NOTICE OF INTENT TO FILE SUIT UNDER THE CLEAN WATER ACT**

Dear Mayor Pollard:

This sixty day notice of intent to file a citizen suit against the City of Vancouver Section 505 of the Clean Water Act ("CWA"), 33 USC § 1365, for the violations described below is provided on behalf of the Rosemere Neighborhood Association, P.O. Box 61471, Vancouver, WA 98666, (360) 906-8810, and the Clark County Natural Resources Council, PMB 231, 1701 Broadway, Vancouver, WA 98663, (360) 690-4500. RNA and CCNRC are represented by Richard Smith, available at the letterhead address and phone number, and John Karpinski, Attorney At Law, 2612 East 20th St., Vancouver, WA 98661, (360) 690-4500. Any response to this notice of intent to sue should be directed to counsel.

Vancouver has violated and continues to violate the CWA (see Sections 301 and 402 of the CWA, 33 USC §§ 1311 and 1342) with respect to discharges of stormwater from its municipal separate storm sewer system. This municipal stormwater is itself a pollutant and also contains pollutants including e. coli, fecal coliform, turbidity, suspended solids, oil and grease, zinc, lead, other metals, and other pollutants. These discharges are to the Columbia River, Burnt Bridge Creek, and Vancouver Lake, and tributaries to these waterbodies, at each of the approximately 155 outfalls or other discharge points from the Vancouver storm sewer system. Among the discharge points are outfalls located at the following coordinates:

N 45 38m 153s, W 122 36m 021s, from Andresen Pumping Station to Burnt Bridge Creek;

N 45 39m 095s, W 122 38m 942s, from trail overflow pipe from retention pond collecting from U St. to Burnt Bridge Creek;

N 45 39m 134s, W 122 39m 390s, at P St. bridge to Burnt Bridge Creek;

N 45 39m 128s, W 122 39m 044s, near large barn off Burnt Bridge Creek Discovery Trail to Burnt Bridge Creek;

N 45 37m 277s, W 122 40m 346s, just east of I-5 bridge at Joe's Crab Shack on Columbia Way to Columbia River (flows daily, including dry weather flow);

N 45 38m 739s, W 122 38m 355s, just south of SR 500 where Burnt Bridge Creek crosses, east of St. John's Blvd., side of steep hillside to Burnt Bridge Creek;

N 45 38m 873s, W 122 38m 474s, St. John's Blvd. at NE Arnold to Burnt Bridge Creek;

EXHIBIT

A

N 45 40m 439s, W 122 41m 460s, Fruit Valley Rd. north of Bernie Road to Burnt Bridge Creek just before flows into Vancouver Lake;
N 45 37m 074s, W 122 39m 547s, at first row of condos to Columbia Boardwalk where mechanical gate system marks outfall to Columbia River;
N 45 38m 100s, W 122 36m 02s, Andresen Pumping Station to Burnt Bridge Creek.

Unpermitted Discharge

Under Section 402(p) of the CWA, and under regulations promulgated by the United States Environmental Protection Agency (see 40 C.F.R. § 122.26 and § 122.32), discharges from the Vancouver municipal separate storm sewer system must be authorized by a National Pollutant Discharge Elimination System (NPDES) permit. Because Vancouver has not obtained coverage for these stormwater discharges under any NPDES permit, these discharges are illegal under Section 301(a) of the CWA. This illegal discharge results from every measurable precipitation event in Vancouver, including, but not limited to, the events that occurred on January 1, 6, 7, 8, 14, 18, 19, 22, 23, 24, 25, 28, 29, 30, and 31, February 2, 6, 13, 14, 16, 17, 18, 24, 25, 26, 27, 28, and 29, March 3, 5, 24, 25, 26, 27, and 30, April 14, 15, 19, and 21, May 7, 8, 22, 27, and 28, and June 6, 2004, and occurs on a daily basis from discharge points that have dry weather flows. Every discharge from the Vancouver separate storm sewer system during the past five years has been illegal and will be the subject of RNA's and CCNRC's lawsuit.

The above-described violations reflect only what information currently available to us indicates. These violations are ongoing. We intend to sue for all violations, including those yet to be uncovered and those committed subsequent to the date of this notice of intent to sue.

Under Section 309(d) of the CWA, 33 USC § 1319(d), and 40 C.F.R. 19, each of the above-described violations subjects the violator to a penalty of up to \$27,500 per day. In addition to civil penalties, we will seek injunctive relief under Sections 505(a) and (d) of the CWA, 33 USC § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 USC § 1365(d), permits prevailing parties to recover costs including attorney's fees.

RNA and CCNRC believe that this NOTICE OF INTENT TO SUE sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against the City of Vancouver under Section 505(a) of the Clean Water Act for violations.

During the 60-day notice period, we would be willing to discuss effective remedies for the violations in this letter and settlement terms. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within 10 days of receiving this notice so that a meeting can be arranged and so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint if discussions are continuing when the notice period ends.

Very truly yours,

SMITH & LOWNEY, P.L.L.C.

By: 
Richard A. Smith

c: Mike Leavitt, Administrator, U.S. EPA
John Iani, Administrator, Region 10 U.S. EPA
Linda Hoffman, Acting Director, Washington Department of Ecology