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ADMITTED IN CALIFORNIA, MARYLAND, MASSACHUSETTS, AND WASHINGTON

27 April 2009

Tom Mielke, Clark County Commissioner
Marc Boldt, Clark County Commissioner
Steve Stuart, Clark County Commissioner
Bill Barron, Clark County Administrator
Bronson Potter, Clark County Attorney
1300 Franklin, 6th Floor
Vancouver WA 98666-5000

Re: Notice of Intent to File Suit Under the Clean Water Act

Sent Via Email and First Class Mail

Gentlemen:

This sixty-day notice of intent to file a citizen suit against Clark County pursuant to 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 ("RNA"), P.O. Box 61471, Vancouver, WA 98666, (360) 906-8810, an association of County residents. RNA is represented by Theda Braddock, Attorney at Law, available at the above address and phone number, and by Paul E. Brain, Smith Alling Lane, P.S., 1102 Broadway, Suite 403, Tacoma, WA 98402. Any response to this notice of intent to sue should be directed to counsel.

Clark County has violated, is presently violating, and, if not sued by RNA, is likely to continue 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 storm sewer system. This 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 waters of the United States and Washington State including, among others, the Columbia River, the East and North Forks of the Lewis River, the Washougal River, Lake River, Vancouver Lake, Lacamas Lake, Burnt Bridge Creek, China Ditch, Chicken Creek, Cold Creek, Cougar Creek, Curtin Creek, Dwyer Creek, Gee Creek, Lacamas Creek, Mill Creek, Salmon Creek, Shanghai Creek, Whipple Creek, and

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tributaries to these waterbodies at each of the outfalls or other discharge points from the Clark County storm sewer system.

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 Clark County storm sewer system must be authorized by a National Pollutant Discharge Elimination System ("NPDES") permit. Clark County was granted coverage under the Phase 1 Municipal Stormwater Permit, issued by Ecology under NPDES and State Waste Discharge General Permit, for discharges from Large and Medium Municipal Separate Storm Sewer Systems in 1999 (the "Permit"). The Permit was reissued in 2007 with an effective date of February 16, 2007 and an expiration date of February 15, 2012.

The Permit requires that the County adopt a Stormwater Management Program (the "SWM") concerning "Controlling Runoff from New Development, Redevelopment and Construction Sites" that comports with Ecology's Stormwater Management Manual for Western Washington (the "Manual"). The SWM requires that the County meet certain minimum performance measures with respect to new development or redevelopment which provide equal or similar protection of receiving waters, and equal or similar levels of pollutant control, as compared to Appendix 1 to the Permit. Section 4 of Appendix 1 provides, in relevant part, the minimum requirement:

Stormwater discharges shall match developed discharge durations to pre-developed durations for the range of pre-developed discharge rates from 50% of the 2-year peak flow up to the full 50-year peak flow. The pre-developed condition to be matched shall be a forested land cover unless:

- Reasonable, historic information is available that indicates the site was prairie prior to settlement (modeled as "pasture" in the Western Washington Hydrology Model); or
- The drainage area of the immediate stream and all subsequent downstream basins have had at least 40% total impervious area since 1985. In this case, the predeveloped condition to be matched shall be the existing land cover condition. Where basin-specific studies determine a stream channel to be unstable, even though the above criterion is met, the pre-developed condition assumption shall be the "historic" land cover condition, or a land cover condition

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commensurate with achieving a target flow regime identified by an approved basin study.

On or about March 17, 2009, the Washington Department of Ecology (Ecology) issued Notice of Violation No. 6514 (the "NOV"). The violations are described in the NOV as:

1. Adopting a flow control policy that Ecology has determined does not provide equal or similar protection of receiving waters and equal or similar levels or pollutant control as compared to Appendix 1 (CCC Section 40.385.020.C2.a); and
2. Adopting an exemption for infill and re-development projects from the one tenth (0.1) cubic feet per second flow increase threshold identified in Minimum Requirement #7 or Appendix 1 (CCC Section 40.385.020.C.2.a).

RNA is informed and believes that Ecology and the County have entered into private, non-public negotiations to determine a novel and untested alternative plan that (a) does not meet the requirements of Appendix 1; and (b) in its execution, will be funded by public tax dollars rather than by the individual developers. In short, the County has failed, is failing, and will continue to fail to meet the requirements of Ecology's Manual. Although the County attempted to appeal the provisions of the Manual, the Pollution Control Hearings Board upheld the terms of the Manual.

The County has admitted that it is not in compliance with its Permit. In addition, the County is years behind in bringing its ordinances into compliance, and, without Court supervision, will continue its non-compliance. The County's failure to adopt conforming regulations results in direct, immediate, and ongoing harm to the environment in that the higher flow rate increases erosion in receiving waters, as the County has publicly admitted. In addition, because Clark County's drinking water comes from sole-source aquifer, groundwater recharge through infiltration is important to the maintenance of the County's water supply, wetlands and the base flow of streams. Developers may be discouraged from infiltrating stormwater if they can continue to discharge excess stormwater overland from the site in violation of the Permit. Further, the County's non-compliance with the Manual interferes with Ecology's mandate to improve state water quality under the TMDL program, and further degrades water quality in Clark County.

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The above-described violations reflect only what information is currently available to RNA. These violations are ongoing. RNA intends 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, RNA 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 believes that this Notice of Intent to Sue sufficiently states grounds for filing suit. RNA intends, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against the Clark County under Section 505(a) of the Clean Water Act for violations. We do not intend to delay the filing of a complaint.

Very truly yours,



Theda Braddock

Smith Alling Lane, P.S.

By:



Paul E. Brain

cc: Lisa Jackson, Director, US EPA
Michelle Pirzadeh, Acting Regional Administrator, US EPA Region X
Jay Manning, Director, Washington Department of Ecology
Bill Moore, Department of Ecology, Water Quality
Garin Schrieve, Ecology SW Region Water Quality Manager
Gregory Winters, Ecology SW WA NPDES Permit Manager