



Settlement Reached in Local Clean Water Act Case  
May 19, 2006

**Approved Joint Public Statement**

The City of Vancouver, Clark County Natural Resources Council and Rosemere Neighborhood Association have reached a mutually satisfactory agreement that ends the appeals of a 2005 judgement in a Clean Water Act lawsuit heard by the Federal District Court for the Western District of Washington. The joint agreement furthers the goals of all three parties by enhancing ongoing efforts to protect and improve the community's water resources. Additional water monitoring, inventory work and public involvement opportunities, including creation of a Burnt Bridge Creek Watershed Council, are among the highlights of the agreement.

Approved Settlement Agreement, Signed May 2006

**AGREEMENT**

This Agreement (the "Agreement") is entered into by the following parties (the "Parties"): (1) Rosemere Neighborhood Association ("RNA"); (2) Clark County Natural Resources Council ("CCNRC"); and (3) the City of Vancouver ("Vancouver").

**Recitals**

1. RNA and CCNRC filed an action against Vancouver in the Federal District Court for the Western District of Washington, Docket No. CV-04-05667-RBL, asserting a "citizens' suit" claim under the Clean Water Act (the "Action"). On July 5, 2005, RNA and CCNRC filed an Amended Complaint in the Action, adding a second claim under the Clean Water Act. Vancouver disputes the averment that it has violated the Clean Water Act, and denies that it has any liability on the claims asserted in the Action.
2. On October 18, 2005, the District Court granted Vancouver summary judgment against the Plaintiff's initial Complaint in the Action.
3. On October 26, 2005, RNA and CCNRC filed a Notice of Appeal in the District Court, appealing the October 18, 2005, Order granting Vancouver's motion for summary judgment (the "Appeal").
4. On November 28, 2005, the District Court entered a Stipulated Order granting summary judgment against Plaintiffs, and in favor of Vancouver, on Plaintiffs' Second Amended

Complaint and all claims therein, in accordance with FRCP 58(a)(1). Also on November 28, 2005, the District Court entered an Order Denying Defendant's Motion For Bill Of Costs. On November 29, 2005, the District Court entered a Final Judgment in the Action in favor of Vancouver against Plaintiffs' Second Amended Complaint and all claims therein.

5. The Parties desire to settle and resolve their dispute by terminating Plaintiffs' Appeal of the Judgment, on the terms and conditions set forth below.

## **Agreement**

1. Dismissal of the Appeal, and Agreement in Exchange for Dismissal. Within 10 working days after execution of this Agreement, RNA and CCRNC shall file with the Ninth Circuit Court of Appeals any and all documents necessary to dismiss the Appeal. In exchange for dismissal of the Appeal, Vancouver agrees to the following terms of this Agreement:

A. Western Washington Stormwater Manual. Vancouver will adopt as part of its Municipal Stormwater Program those provisions of the 2005 Stormwater Management Manual for Western Washington or those determined to be equivalent that are required by the Washington State Department of Ecology's Phase II Municipal Stormwater Permit for Western Washington, which is expected to be issued to Vancouver in late 2006. Said provisions shall be adopted within eighteen (18) months of the final Permit's issuance to the City of Vancouver.

B. Construction Erosion Control Training. In an effort to improve construction erosion control enforcement, Vancouver will provide training under the State's Stormwater Construction Erosion Control Training program for at least 60 employees of the Public Works Department's Engineering, Operations and Construction Management Divisions, and Development Review Services Building Inspection Department, including all code enforcement inspectors. Such training will be initiated as soon as practical but not later than one (1) year after the execution of this Agreement. Such employees shall complete such training within a reasonable time.

C. Outfall Field Screening. Vancouver will conduct field screening of all known City-owned outfalls on both Burnt Bridge Creek and the Columbia River. All screening shall take place during the "dry weather" months of May through September. The Guidance Manual published by the Center for Watershed Protection dated October 2004, which is entitled "Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments," will provide procedural guidance in conducting the screening of outfalls. Said field screening shall commence during the first "dry weather" period following execution of this Agreement, and shall be completed within thirty months of the execution of this Agreement. RNA and CCRNC may submit, for Vancouver's consideration, a list suggesting prioritization of the areas in which outfall screening should be conducted, and the timing of such screening, although the actual outfall screening program remains subject to Vancouver's sole discretion.

D. Illicit Discharge Hot Line. Vancouver will establish a "hot line" for citizen complaints and reporting of illicit discharges to the Vancouver stormwater sewer system within ninety (90)

days of the execution of this agreement. The number listed will be one that is regularly answered at least twelve hours a day, and, when it is not answered, where messages can be left and will be monitored at a regular and reasonable frequency. The City will establish response procedures for investigating and performing appropriate follow up actions consistent with those required by the Washington State Department of Ecology's Final Phase II Municipal Stormwater Permit for Western Washington, which is expected to be issued to Vancouver the end of 2006. The hot line telephone number will be posted at an appropriate place on the City of Vancouver internet web site and the City will use its best efforts to have the number published in the "government listings" section of the telephone book.

E. Septic Tank Inventory and STEP Prioritization. Vancouver will compile a reasonably accurate inventory of all septic tanks within the City's sewer service area, and will consider that portion of the inventory within corporate City limits in conjunction with the outfall screening performed pursuant to section "C" above, in order to help the City prioritize the efforts undertaken through its Septic Tank Elimination Program ("STEP"). The inventory shall be completed within two (2) years of the execution of this Agreement.

F. Burnt Bridge Creek Water Quality Monitoring Program. Vancouver will develop and implement a long term water quality monitoring program to generate data regarding water quality in Burnt Bridge Creek. The program will include both water chemistry sampling and a biological assessment. Details of the proposed program will be developed and published for public review and comment within one year of the execution of this Agreement, with the goal to commence water quality monitoring within eighteen (18) months after execution of this Agreement.

G. BBC Watershed Council. Vancouver will establish a Watershed Council for the Burnt Bridge Creek watershed within eighteen (18) months of the execution of this Agreement. It is the intent that the Watershed Council will incorporate elements of the Oregon Watershed Council model. No less than one representative of an "environmental group" shall be a required member of the Council. The Watershed Council established for Burnt Bridge Creek may also undertake efforts in other geographic areas within the corporate City limits that are not within the Burnt Bridge Creek watershed.

H. Stormwater Management Program Public Comment. Vancouver will provide a reasonable opportunity or opportunities for the public to comment regarding the development and implementation of the Stormwater Management Program required by the Washington State Department of Ecology's Final Phase II Municipal Stormwater Permit for Western Washington, as finally issued to Vancouver.

I. Copies of Documents to Ecology. Vancouver will forward copies on a quarterly basis of all documents it is required to send to the Washington State Department of Ecology pursuant to the Phase II Municipal Stormwater Permit for Western Washington, as finally issued to Vancouver, to Dvija Michael Bertish, Rosemere Neighborhood Association, P.O. Box 61471, Vancouver, WA 98666, or such other person as may be later designated by the RNA and the CCNRC, for five years from issuance of the Phase II Municipal Stormwater Permit in final form to the City of Vancouver, which is expected to occur the end of 2006.

2. Joint Statement. The Parties shall issue a joint statement that the Appeal has been dismissed pursuant to a mutually satisfactory Agreement between the Parties. Vancouver shall draft and propose for RNA's and CCNRC's review and approval such joint statement. The Parties agree to cooperatively endeavor to complete and issue such mutually acceptable joint statement within ten days of the date of this Agreement. Neither the fact of this Agreement, the outcome of the Action, nor Vancouver's agreement to the performance items above shall be construed as an admission of fault, liability or wrongdoing, or as a 'victory' by any of the parties represented in this agreement. This does not preclude the public or private discussion of the substance of the agreement by any of the represented parties in a manner consistent with this requirement.

3. Representation and Participation in Drafting. All parties have been represented by counsel during the negotiation and have participated in the drafting of this Agreement.

4. Washington Choice of Law. This Agreement is governed by the laws of the state of Washington that apply to contracts executed and to be performed entirely within the state of Washington.

5. Severability. Should any provision of this Agreement be declared illegal or unenforceable by any court of competent jurisdiction, which provision cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect.

6. Dispute Resolution and Attorneys' Fees. It is the Parties' mutual intent that any dispute regarding this agreement or any alleged failure to perform in accordance with this agreement should be resolved informally if at all possible. To that end, any Party alleging a failure to perform as required by this Agreement must provide to the other party thirty days written notice of the allegation, in order to provide the other party an opportunity to cure the alleged failure. Said notice and opportunity to cure shall be a condition precedent to the filing of any action alleging a breach of this Agreement. The Parties agree to meet and attempt to resolve any disputes regarding such alleged failure by mutual agreement. In the event of litigation regarding this Agreement, the prevailing party shall be entitled to recover its costs and attorneys' fees, unless the Court determines that substantial injustice would result from such an award.

7. Integration. This Agreement is the final and complete expression of all Agreements between the Parties on all subjects and supersedes and replaces all prior discussions, representations, Agreements, policies and practices. The Parties acknowledge they are not signing this Agreement relying on anything not set out here.

8. Authority to Execute. Each person signing this agreement represents and warrants that he or she has authority to sign on behalf of and bind the Party represented, and that any necessary conditions to the execution of the Agreement on behalf of the Party represented have been met.

Signators for the Agreement:

Dvija Michael Bertish, Chairman, Rosemere Neighborhood Association

John Karpinski, Attorney, Clark County Natural Resources Council  
Pat McDonnell, City Manager, City of Vancouver

Attest:

R. Lloyd Tyler, City Clerk, City of Vancouver

By: Carrie Lewellen, Deputy City Clerk, City of Vancouver

Approved as to form:

Ted H. Gathe, City Attorney, City of Vancouver

