

# CENTER FOR JUSTICE

COMMUNITY BUILDING  
35 WEST MAIN AVENUE  
SUITE 300

SPOKANE, WA 99201

TELEPHONE: 509.835.5211

FAX: 509.835.3867

ATTORNEYS & ADVOCATES

JIM SHEEHAN  
Founder  
BREEAN BEGGS  
Chief Catalyst

BONNE BEAVERS  
RICK EICHSTAEDT  
ANDREA POPLAWSKI  
JOHN SKLUT  
TERRI SLOYER

July 13, 2006

Mayor Dennis Hession  
808 W. Spokane Falls Blvd.  
Spokane, Washington 99201

**Via Certified Mail - Return Receipt Requested**

**RE: NOTICE OF INTENT TO FILE A CITIZEN SUIT UNDER THE  
CLEAN WATER ACT**

Dear Mayor Hession:

We are writing to you on behalf of the Upper Columbia River Group of the Sierra Club (Sierra Club) whose members are aggrieved by the below listed matters. Sierra Club has requested that we contact you regarding the City of Spokane's (the City) violation of its National Pollution Discharge Permit Elimination System permit (NPDES permit) by allowing recurring and ongoing dry weather Combined Sewage Overflows (CSOs) of raw/untreated sewage to the Spokane River, and by failing to provide the appropriate level of maintenance and monitoring required by its NPDES permit to prevent these illegal discharges. This notice is provided pursuant to section 505(b) of the Federal Water Pollution Control Act (hereinafter referred to as the Clean Water Act or CWA), 33 U.S.C. § 1365(b).

If actions are not taken by the City to remedy its ongoing violations of its NPDES permit, Sierra Club intends to act on this notice of intent to sue and to file a citizen suit against the City and its responsible officers. While Sierra Club is interested in addressing this problem in a cooperative manner, immediate action is needed to achieve long-term compliance with environmental laws and to improve the water quality of the Spokane River.

As described in this letter, the City is in violation of the Clean Water Act because of continuing dry weather CSO discharges into the Spokane River and surrounding tributaries, in direct violation of its NPDES permit. These violations are of serious concern to Sierra Club, because they involve the discharge of significant amounts of

#### MISSION STATEMENT

THE CENTER FOR JUSTICE IS A NON-PROFIT LAW FIRM COMMITTED TO THE EXPERIENCE OF JUSTICE WITH THOSE OF LIMITED OR NO RESOURCES OR INFLUENCE THROUGH COMPASSION AND AN AWARENESS OF THE SACREDNESS OF THE EARTH.

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untreated sewage, into the Spokane River, often occurring during dry weather months, when the river flow is extremely low and unknowing recreationalists are more likely to be using the river. Additionally, these discharges are preventable, and should not be allowed to continue. Finally, the City is in violation of its duty to perform necessary maintenance and monitoring under the NPDES permit, which has resulted in such dry-weather discharges. Therefore, until the City complies with such conditions, these violations will continue.

## **I. IDENTIFICATION OF PARTIES AND COUNSEL**

The Upper Columbia River Group of the Sierra Club is a citizen-based advocacy group committed to improving environmental quality in the upper Columbia River Basin, including Eastern Washington and Northern Idaho. Sierra Club members fish, swim, paddle, hike, bike and otherwise enjoy and recreate in and around the Spokane River, including in the areas where the City's CSO outfalls are located. The Upper Columbia River Chapter of the Sierra Club is located at:

Upper Columbia Group of Sierra Club  
P.O. Box 413  
Spokane, Washington 99210

The Center for Justice (CFJ) represents the above described parties in this matter. CFJ is a not-for-profit legal organization which provides legal services to individuals and public interest organizations in the Inland Northwest. CFJ works to ensure that all individuals and public interest organizations of limited means have access to justice, including a clean and healthy environment. CFJ is located in the Community Building in Spokane. Please direct all correspondence to:

Rick Eichstaedt  
Center for Justice  
35 W. Main, Suite 300  
Spokane, Washington 99201  
(509) 835-5211

## **II. THE CITY OF SPOKANE'S VIOLATIONS OF THE CLEAN WATER ACT**

The purpose of the Clean Water Act (CWA) is to attain "water quality which provides for the protection and propagation of fish ... and wildlife, and provides for recreation in and on the water." 33 U.S.C. § 1251(a)(2). In general, violations of the requirements of a NPDES permit constitute violation of the CWA. *See generally EPA v. California ex rel. State Water Resources*, 426 U.S. 200, 205 (1976). The City, by allowing CSO events during dry weather and by failing to conduct adequate monitoring and maintenance, has violated the NPDES permit and thus the CWA.

First, the City's NPDES permit specifically prohibits the occurrence of CSO events unrelated to weather events stating, "[d]ischarges caused by overflows of the combined sewer system that are unrelated to precipitation are prohibited." See City's NPDES Permit, No. WA-002447-3 at 36, ¶ D. Despite this prohibition, the City has reported numerous dry weather CSO events.

As described in Wednesday's Spokesman Review article (attached), a large dry weather CSO discharge event was discovered at the outfall near Downriver Golf Course by a fisherman who noticed "needles, toilet paper, and sewage on the water." Accordingly to the article, this event likely lasted for anywhere from two days to a month. This event occurred in the heart of Riverside State Park, in an area utilized by fishermen and whitewater boaters. An unknown number of people were exposed to health dangers associated with contact with raw sewage and the Spokane Regional Health District recommended avoiding contact with the River for several miles downstream of the CSO. This reach includes the much-visited Bowl and Pitcher portion of the State Park and a whitewater stretch popular with recreational boaters.

In addition, to this significant violation, the City has reported numerous other violations. In 2003, the City reported 20 dry weather CSO events, which discharged a total of 181,271 gallons of untreated waste-water into the Spokane River. The largest events occurred at CSO #25 in June and lasted for 32 and 47 hours. During 2004, the City has reported 8 dry weather CSO events: 6 at CSO #2, 1 at CSO #8, and 1 at CSO #15. During 2005, the City has reported 6 dry weather CSO events: 1 at CSO #7, 2 at CSO #10, 1 at CSO #16B, and 2 at CSO #42. One of the dry weather overflows at CSO #16B lasted for 3,735 minutes (amounting to about 2 ½ days) and discharged an estimate of 40,518 gallons of untreated waste-water into the Spokane River. Another overflow at CSO #42 lasted for 65 minutes and discharged an estimate of 64,791 gallons. The chart below documents recent violations as reported by the City to the Department of Ecology.

**Dry Weather Overflows January 2004- April 2006**

<b>Date</b>	<b>CSO Location</b>	<b>Gallons</b>	<b>Minutes</b>
2/12/04	41	9,731	160
4/1/04	6	16,673	125
5/24/04	16B	840	305
6/22/04	25	4,102	260
9/24/04	6	158	30
9/25/04	6	9,400	265
9/26/04	6	10,370	520
9/27/04	6	4,245	305
9/28/04	6	2,728	165
1/1/05	15	342	35
2/9/05	42	10,095	3,335
2/12/05	39	1,012	640
4/01/05(potential)	40	459	35

4/8/05	40	4,388	140
4/27/05	42	647	230
5/2/05	42	15,076	1,510
8/19/05	16B	40, 518	3,735
9/8/05	10	260	30
9/14/05	42	585	20
9/15/05	42	655	35
9/21/05	7	64,791	65
9/21/05	10	495	30

Most of the reported events occurred during warm months when there was an increased likelihood that unwitting recreationalists were put in danger of serious health risks.

The City is well aware of its ongoing problems with dry weather outfalls, and was fined \$15,000 by the Department of Ecology in 1999 for a massive unpermitted discharge over a three-day period.

Although the City has until the year 2017 to comply with state and federal requirements to reduce wet weather CSOs to one event per outfall per year, nothing in its NPDES allows the discharge of raw sewage into the Spokane River and its tributaries during dry weather. Each and every time a dry weather CSO event occurs, the City is in violation of its NPDES permit and the Clean Water Act.

Second, the City's NPDES permit requires it to provide sufficient "monitoring" and "maintenance" to ensure for the "proper operation and maintenance of any facilities or systems of control installed to achieve compliance with the terms and conditions of the permit." See City's NPDES Permit, No. WA-002447-3 at 10, 14, 34-37, §§ S2, S5, S13. The City has reported a significant amount of missing data for major periods of time. In 2005, the City reported a total of 350 incidents of missing data. In December of 2005 alone, the City reported over 50 incidents of missing data recorded. As of April of 2006, there have already been 108 incidents of missing data this year. The chart below illustrates the number of incidents by month of missing data. The City's failure to perform the necessary monitoring and maintenance, which has resulted in continuing dry weather CSO events, is likely to reoccur and result in ongoing violations of the City's NPDES permit.

**Missing Data for 2004-06**

<b>Month/ Year</b>	<b># of incidents of missing data</b>
01/04	23
02/04	24
03/04	22
04/04	22
05/04	24

06/04	39
07/04	16
08/04	27
09/04	37
10/04	29
11/04	31
12/04	40
01/05	24
02/05	33
03/05	23
04/05	28
05/05	24
06/05	24
07/05	31
08/05	25
09/05	33
10/05	32
11/05	23
12/05	50
01/06	27
02/06	38
03/06	18
04/06	25

Each unauthorized event is a violation of the City's NPDES permit as described above and is subject to civil penalties described below. The City's knowledge of its problems with dry weather CSO discharge events and requirement to provide necessary maintenance and monitoring show that the City is acting negligently and with blatant disregard for the health and welfare of the residents of Spokane.

The above-described violations reflect only the information currently available. Sierra Club intends to sue for all violations, including those yet to be discovered and those committed subsequent to the date of this notice of intent to sue.

Pursuant to Section 309(d) of the CWA, violation of the Clean Water Act subjects violators to civil penalties of up to \$32,500 per violation per day, for every day that a violation has occurred since the permit established legal requirements. In light of the unpermitted discharge events listed above and many ongoing unpermitted events not listed, the City is plainly faced with civil penalties in an amount that greatly exceeds the cost of complying with the law. In addition to civil penalties, Sierra Club will seek injunctive relief to prevent further violations and such other relief permitted by law, including the recovery of costs including attorney's fees.

This Notice states sufficient grounds for filing suit under the CWA. Unless immediate action is taken to remedy the problems described above, Sierra Club intends, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against the City of Spokane and its responsible officials under Section 505(a) of the Clean Water Act for violations. Please contact us to arrange a meeting to discuss the City's strategy to resolve this serious problem.

Sincerely,

A handwritten signature in black ink, appearing to read 'RIS', with a long horizontal stroke extending to the right.

Rick Eichstaedt  
Attorney for Sierra Club

cc: Attorney General Alberto R. Gonzales  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

Stephen L. Johnson, Administrator  
U.S. Environmental Protection Agency  
Washington, D.C. 20460

Ron Kreizenbeck, Acting Regional Administrator  
U.S. Environmental Protection Agency, Region 10  
Regional Administrator's Office, RA-140  
1200 Sixth Avenue  
Seattle, Washington 98101

Jay Manning, Director  
Washington Department of Ecology  
PO Box 47600  
Olympia, Washington 98504-7600

Troubled waters

## Raw sewage spills into river

**Officials unsure how long blocked pipe had been overflowing**

Jonel Aleccia and Parker Howell

Staff writers

July 12, 2006

Raw sewage may have spewed into the Spokane River for days or weeks near the Downriver Golf Course after a blocked pipe caused a gushing overflow that went unnoticed by city crews.

"It's obvious that something has been happening for a while," said Richard Koch, a senior engineer with the state Department of Ecology, as he pointed to an unusual growth of brown algae on the riverbank as evidence.

Brown, foamy fluid diverted from a blocked pipe spilled into the river for at least several hours Tuesday, prompting public health officials to warn swimmers and other recreational users to stay away from the water downstream of the golf course until further notice.

"We are issuing this advisory as a precaution," said Dr. Kim Thorburn, health officer for the Spokane Regional Health District. "We are still learning about the extent of the spill and will lift the advisory when we can be certain that the potential risk has passed."

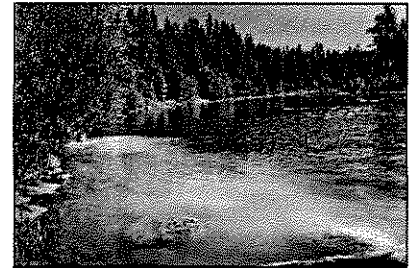
Crews from the city's Wastewater Management Department had no information about how much sewage was discharged or for how long, said Marlene Feist, city public affairs officer.

"The bigger problem is what happened," she said.

The city treats between 35 million and 40 million gallons of wastewater each day, she said.

Alerted by a fisherman, who also contacted a local television station, city crews discovered the spill early Tuesday at an outfall near Kiernan Avenue and Northwest Boulevard, about halfway between TJ Meenach Drive and the wastewater treatment plant.

An 8-inch pipe became blocked just before it intersected with a 54-inch line headed for the treatment plant, Feist said. The blockage, described by one city official as "rocks and something soft," sent raw sewage through the 24-inch overflow pipe. City crews used a water truck to blast it clear at about 5:30 p.m. Tuesday.



Sewage from an outfall pipe between the treatment plant and Downriver Golf Course flows into the Spokane River on Tuesday, causing a light-green contrast to the blue of the water. (Christopher Anderson /The Spokesman-Review )

### Fast facts

Human contact with raw sewage can lead to serious health problems, including cholera, dysentery, infectious hepatitis and gastroenteritis, according to the U.S. Environmental Protection Agency. Early symptoms of exposure can include upset stomach, intestinal problems, headache and other flulike discomfort.

Many of the storm outflows along the river have sensors that warn the city when they are spilling into the river. The affected outflow did not, said Brian Clouse, district supervisor for wastewater maintenance for the city.

The city's wastewater treatment Web site – [www.spokanewastewater.org](http://www.spokanewastewater.org) – lists the location and status of 21 outflows that discharge into the river. On Tuesday, all 21 indicated they were working properly.

Feist added that she didn't know how frequently crews conducted visual inspections of the overflow pipes that line miles of river as it flows through Spokane.

The spill was reported by a Spokane fisherman, Michael Pickering, who noticed needles, toilet paper and sewage on the water and traced it back to the pipe Tuesday. He said he first noticed a hypodermic needle in the river about a month ago, and he noticed raw sewage and another needle during a fishing trip last weekend.

"I fished down there for 15 years, and I've never seen anything come out of that pipe," Pickering said, adding later: "I guarantee it was flowing on Sunday just as heavy as today."

He called health district officials and a local television station, which followed him to the river and filmed the scene. Based on the footage, officials from the state Department of Ecology began investigating.

Koch called the spill "a significant flow" and said he regretted that it hadn't been reported earlier.

City officials and agencies that discharge into the river are scheduled to meet with state officials to discuss pollution issues today. Dr. John Osborn, local conservation chairman for the Sierra Club, called the timing of the incident "ironic."

"We have to do a better job trying to save this river," said Osborn, who came down Tuesday to document the spill.