

# KANJI & KATZEN P.L.L.C.

www.kanjikatzen.com

## ANN ARBOR

303 DETROIT ST., SUITE 400  
ANN ARBOR, MI 48104  
(734) 769-5400

## SEATTLE

811 1<sup>ST</sup> AVE., SUITE 630  
SEATTLE, WA 98104  
(206) 344-8100

## FLAGSTAFF

P.O. BOX 30543  
FLAGSTAFF, AZ 86003  
(928) 380-3508

July 21, 2020

### **Via Certified Mail – Return Receipt Requested**

Dow Constantine  
King County Executive  
King County Chinook Building  
401 5th Ave., Suite 800  
Seattle, WA 98104

Christie True  
Director, King County Department of Natural Resources and Parks  
King Street Center, Mail Stop KSC-NR-0700  
201 S. Jackson St., Room 700  
Seattle, WA 98104-3855

Mark Isaacson  
Director, Wastewater Treatment Division  
King County Department of Natural Resources and Parks  
King Street Center, Mail Stop KSC-NR-0501  
201 S. Jackson St., Room 501  
Seattle, WA 98104-3855

### **RE: NOTICE OF INTENT TO SUE UNDER THE CLEAN WATER ACT**

Dear Executive Constantine, Department Director True, and Division Director Isaacson,

On behalf of the Suquamish Tribe (“Tribe”), we submit this letter to provide sixty days’ notice of the Tribe’s intent to file suit against King County and each of you in your official capacities (collectively, “the County”) under section 505 of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1365. As described below, the County has discharged pollutants from its wastewater collection and treatment system into Puget Sound not in accordance with a National Pollutant Discharge Elimination System (“NPDES”) permit and in violation of section 301(a) of the CWA, 33 U.S.C. §§ 1311(a), 1342.

The Suquamish people have lived, fished, hunted, and gathered in and around Puget Sound since time immemorial. The Suquamish Tribe takes its name from the traditional Lushootseed phrase for “people of the clear salt water” and is signatory to the 1855 Treaty of Point Elliot, in which the Tribe forever reserved the right to take fish in its usual and accustomed fishing areas (U&A). Suquamish U&A encompasses Elliott Bay and other water bodies into

which King County's wastewater collection and treatment system discharges that are connected to U&A waters.

The County has illegally discharged sewage, including untreated or improperly treated wastewater, which often includes harmful chemicals and pathogens, into these waters from its wastewater collection and treatment system. The Suquamish Tribe and its members are harmed by the County's discharges, which foul the water and habitat for aquatic species, result in the posting of health advisories and closure of beaches where Suquamish tribal members harvest shellfish, prompt recalls of commercially sold shellfish, interfere with tribal member harvest and sale of salmon, and disturb important cultural activities such as the annual Canoe Journey. Fecal coliform bacteria pollution is a persistent threat to human health and the safe harvest and consumption of fish from these waters, many areas of which are already listed as Category 5 for bacteria in Washington State's Water Quality Atlas.

In its July 10, 2020 comments on the King County Wastewater Treatment Division's Determination of Significance and Request for Comments on the Scope of a Programmatic Environmental Impact Statement for the Clean Water Plan, the Tribe expressed its ongoing concerns with the County's discharge of pollutants from its wastewater treatment facilities into Puget Sound. In its comments, the Tribe reiterated the various negative impacts the County's discharge of pollutants from its wastewater treatment facilities has on the health of the Puget Sound's ecosystem, the Tribe's treaty resources, and the Tribe's ability to practice its cultural activities.

Section 301(a) of the CWA prohibits the discharge of any pollutant by any person to waters of the United States except as authorized by a NPDES permit issued under section 402 of the Act. 33 U.S.C. §§ 1311(a), 1342. The CWA defines "sewage" as a "pollutant." *Id.* § 1362(6). The Washington State Department of Ecology ("Ecology") issued King County NPDES Waste Discharge Permit No. WA0029181 for the operation of its wastewater collection and treatment system on December 19, 2014. The permit had an effective date of February 1, 2015, and expiration date of January 31, 2020. On January 22, 2020, Ecology sent a letter to King County acknowledging receipt of King County's NPDES permit renewal application and indicating that the existing permit and its terms and conditions were "administratively extended and will remain in effect and enforceable until Ecology issues a new permit and it becomes effective for your facility." Since on or around October 10, 2015, on dates known to you, the County has repeatedly allowed discharges of sewage from its wastewater collection and treatment system to enter Puget Sound that are not authorized by NPDES Waste Discharge Permit No. WA0029181, as well as violated several conditions of that permit.

Based on information within the Tribe's possession, the County is responsible, at a minimum, for illegal discharges of sewage into Puget Sound, including Elliott Bay, at the following locations on or around the following dates in violation of the Clean Water Act and one or more of the terms and conditions of NPDES Permit No. WA0029181, including Special Conditions S1 (discharge limits), S5 (first section of operation and maintenance section), S5.B (operation and maintenance program), S5.D (electrical power failure), S5.F (bypass procedure), and S10 (wet weather operation):

***West Point Wastewater Treatment Plant:***

- 1/20/2018 (430,000 gallons to Puget Sound)
- 5/19/2018 (1,280,000 gallons to Puget Sound)
- 5/26/2018 (430,000 gallons to Puget Sound )
- 6/21/2018 (100,000 gallons to Puget Sound)
- 6/27/2018 (100,000 gallons to Puget Sound )
- 11/30/2018 (400,000 gallons to Puget Sound)
- 12/5/2018 (400,000 gallons to Puget Sound)
- 3/17/2019 (1,000,000 gallons to Puget Sound)
- 4/11/2019 (100,000 gallons to Puget Sound)
- 7/19/2019 (2,100,000 gallons to Puget Sound)
- 11/15/2019 (50,000 gallons to Puget Sound)

These unpermitted discharges resulted in millions of gallons of untreated or improperly treated sewage illegally entering Suquamish U&A.

Based on information within the Tribe's possession, the County is also responsible, at a minimum, for illegal discharges exceeding effluent limits in NPDES Waste Discharge Permit No. WA0029181 at the following locations on or around the following dates in violation of the Clean Water Act and NPDES Permit No. WA0029181 Special Condition S1.A or S1.B:

***West Point Waste Water Treatment Plant (Outfall 001):***

Failure to meet NPDES permit pH effluent instantaneous minimum requirements, including but not limited to the following dates:

- 2015: 10/10, 10/30, 12/6, 12/7, 12/8, 12/10
- 2016: 2/11
- 2017: 4/12, 11/21, 11/22, 12/19
- 2018: 1/17, 1/18, 1/29, 10/27, 11/26, 11/27
- 2019: 12/19
- 2020: 1/27, 1/28, 1/31, 2/1, 2/5, 2/6

Failure to meet NPDES permit Total Residual Chlorine maximum daily effluent limits, including but not limited to the following dates:

- 2015: 10/10, 10/30, 11/13, 11/14, 12/7, 12/8, 12/9, 12/17, 12/21
- 2016: 10/19
- 2017: 3/7, 10/18
- 2018: 1/17
- 2019: 12/19, 12/20, 12/21
- 2020: 1/27

***Elliott West CSO (Outfall 27b)***

Failure to meet NPDES permit pH effluent instantaneous minimum requirements, including but not limited to the following dates:

- 2015: 10/14, 10/30, 12/17, 12/21
- 2016: 1/21, 2/11, 10/19, 11/14
- 2018: 1/11, 1/17, 1/18, 1/29, 11/26, 11/27
- 2020: 1/27, 1/31, 2/1

Failure to meet NPDES permit Total Residual Chlorine maximum daily effluent limits, including but not limited to the following dates:

- 2015: 10/14, 12/21
- 2016: 10/19
- 2018: 1/11, 1/17
- 2019: 12/19, 12/20, 12/21
- 2020: 1/27

***Alki CSO (Outfall 051)***

Failure to meet NPDES permit pH effluent instantaneous minimum requirements, including but not limited to the following dates:

- 2018: 10/27, 11/26
- 2019: 12/19, 12/20, 12/21

Failure to meet NPDES permit Total Residual Chlorine maximum daily effluent limits including but not limited to the following dates:

- 2016: 10/13
- 2017: 1/18

The above-described violations reflect information currently available to the Tribe. The Tribe contends, upon information and belief, that the County is responsible for additional unpermitted discharges, that discharges are ongoing, and that violations are reasonably likely to continue. The Tribe further contends, upon information and belief, that the County lacks the required NPDES permit authorization for such discharges.

The Tribe intends to sue for all violations of the CWA, including those yet to be uncovered and those committed after the date of this Notice of Intent to Sue. The Tribe will seek injunctive relief to prevent further violations under sections 505 of the CWA, 33 U.S.C. § 1365(a), (d), and such other relief as is permitted by law. The Tribe will also ask that the court order King County to pay civil penalties, as authorized by 33 U.S.C. § 1365(a), based on the factors set forth in 33 U.S.C. § 1319(d) and calculated in accordance with 40 C.F.R. § 19.4. Section 505(d) of the CWA, 33 U.S.C. § 1365(d), permits prevailing and substantially prevailing parties to recover costs, including attorney and expert witness fees, which the Tribe will seek.

The Tribe believes this Notice of Intent to Sue sufficiently states the grounds for filing suit. At the close of the 60-day notice period, or shortly thereafter, the Tribe intends to file a citizen suit against the County under Section 505(a) of the CWA.

The full name, address, and telephone number of the party giving notice is:

Suquamish Tribe  
P.O. Box 498  
18490 Suquamish Way  
Suquamish, WA 98392  
Tel: (360) 598-3311

The attorneys representing the Suquamish Tribe in this matter are:

Jane Steadman  
Cory Albright  
Kanji & Katzen, P.L.L.C.  
811 1st Ave., Suite 630  
Seattle, WA 98104  
Tel: (206) 344-8100

Melody Allen  
Kendra Martinez  
Suquamish Tribe  
Office of Tribal Attorney  
18490 Suquamish Way  
Suquamish, WA 98392  
Tel: (206) 394-8488

During the 60-day notice period, the Suquamish Tribe is interested in discussing effective remedies for the Clean Water Act violations described above with King County. If you would like to pursue these discussions, please initiate them with us within 30 days of receiving this Notice of Intent to Sue, so that we may promptly begin negotiations. We do not anticipate delaying the filing of a complaint in this matter merely because discussions may continue beyond the end of the notice period.

Sincerely,



Jane Steadman  
Kanji & Katzen, P.L.L.C.

Cc:

Client

Andrew Wheeler, Administrator  
U.S. Environmental Protection Agency  
Mail Code 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Chris Hladick, Region 10 Administrator  
U.S. Environmental Protection Agency  
Mail Code 21-B03  
1200 Sixth Ave., Suite 155  
Seattle, WA 98101

William Barr, Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, DC 20530-0001

Laura Watson, Director  
Washington State Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600