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June 10, 2019

RECEIVED ON:
JUN 13 2019
EPA Region 10
Office of the Regional Administrator

Via Certified Mail – Return Receipt Requested
Patrick Shanahan
Acting Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Via Certified Mail – Return Receipt Requested
Richard Spencer
Secretary of the Navy
Office of the Secretary of the Navy
1000 Navy Pentagon, Room 4D652
Washington, DC 20350-1000

Via Certified Mail – Return Receipt Requested
Captain Edward Schrader
Naval Base Kitsap
120 South Dewey Street, Bldg. 443
Bremerton, WA 98314-5020

Via Certified Mail – Return Receipt Requested
Captain Howard Markle
Puget Sound Naval Shipyard & Intermediate Maintenance Facility
1400 Farragut Ave. Stop 2072
Bremerton, WA 98314-2072

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

Dear Acting Secretary Shanahan, Secretary Spencer, Captain Schrader, and Captain Markle,

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 the United States Navy and each of you in your official capacities (collectively, "Navy") under section 505 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1365. As described below, the Navy has discharged pollutants into Puget Sound without a National Pollutant Discharge Elimination System ("NPDES") permit in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

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's exclusive U&A encompasses Sinclair Inlet, Dyes Inlet, Liberty Bay, Keyport Lagoon, and other waters adjacent and proximate to Naval Base Kitsap and the Puget Sound Naval Shipyard and Intermediate Maintenance Facility (PSNS&IMF).

The Navy has illegally discharged untreated sewage, which often includes harmful chemicals and pathogens, from these facilities into these waters without a permit. The Suquamish Tribe and its members are harmed by the Navy'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, and interfere with tribal member harvest and sale of salmon. Fecal coliform bacteria pollution is a persistent threat to human health and the safe harvest and consumption of fish from these waters, some of which are subject to the "Sinclair and Dyes Inlets Fecal Coliform Bacteria Total Maximum Daily Load: TMDL and Water Quality Implementation Plan" and "Liberty Bay Watershed Fecal Coliform Bacteria Total Maximum Daily Load: TMDL and Water Quality Implementation Plan."

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 Navy does not have a NPDES permit authorizing the discharge of sewage into Puget Sound or waters connected to Puget Sound from any facility, including Naval Base Kitsap-Keyport, Naval Base Kitsap-Jackson Park Naval Housing, or Naval Base Kitsap-Bremerton/PSNS&IMF. Nonetheless, the Navy has illegally discharged hundreds of thousands of gallons of untreated sewage from these facilities into Suquamish U&A waters. These discharges have resulted from long-standing, system-wide problems with aging infrastructure at these naval installations, improper and inadequate training, improper and inadequate maintenance, repair, and replacement of this infrastructure, and other reasons known to you.

The Navy is responsible, at a minimum, for illegal discharges of sewage from the following facilities on or around the following dates. Naval Base Kitsap-Keyport unpermitted sewage discharges occurred on or around December 18, 2017 through April 13, 2018 (sanitary sewer leak to stormwater outfall impacting Liberty Bay, NeSiKa Bay, Port Orchard Passage) and November 14, 2018 (cracked sewer line from ATF barge at pier to force main impacting Liberty Bay). Naval Base Kitsap-Jackson Park unpermitted discharges to Ostrich Bay and Dyes Inlet occurred on or around November 22, 2016 (improper maintenance led to sewer lines clogging, backing up, and flowing out of a manhole). Naval Base Kitsap-Bremerton/ PSNS&IMF unpermitted discharges occurred on or around:

- September 14, 2014 through September 17, 2014 (broken sanitary sewer pipe under Pier 4 connecting to Lift Station 6 impacting Sinclair Inlet and Rich Passage),
- June 3, 2015 (reported daily violations resulting from improper connection of sanitary sewer system at Building 457 to stormwater sewer dating back to 2011),
- February 11, 2018 through February 12, 2018 (improperly opened valve at Dry Dock 6 impacting Sinclair Inlet and Dyes Inlet),

- July 30, 2018 to August 13, 2018 (sanitary sewer line clog and cross connection to stormwater line at NBK Bremerton Pier Delta affecting Sinclair Inlet and Port Washington Narrows),
- August 22, 2018 to September 5, 2018 (broken sanitary sewer line to stormwater system at Dry Dock 4 impacting Sinclair Inlet),
- January 14, 2019 (malfunctioning pressure relief valve at NBK-Bremerton Pier 6 impacting Sinclair Inlet),
- January 24, 2019 to January 31, 2019 (malfunctioning grinder pump station back flowed to storm drain affecting Sinclair Inlet), and
- March 2, 2019 to March 3, 2019 (damaged pressure sensor resulted in sewage collecting and pumping into Sinclair Inlet at Dry Dock 6).

The above-described violations reflect information currently available to the Tribe. The Tribe contends, upon information and belief, that the Navy is responsible for additional sewage discharges, that these discharges are intermittent or ongoing, and that violations are reasonably likely to continue. The Tribe further contends, upon information and belief, that the Navy lacks the required NPDES permit authorization for any 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. 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 Navy 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.
401 2nd Ave. S., Suite 700
Seattle, WA 98104
Tel: (206) 344-8100

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Melody Allen
Maryanne Mohan
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 willing to discuss effective remedies for the Clean Water Act violations described above. Any response or correspondence related to this matter should be directed to the attorneys at Kanji & Katzen P.L.L.C. at the address above. If you would like to pursue these discussions, please initiate them with us within 10 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:

Leonard Forsman, Chairman
Suquamish Tribe
18490 Suquamish Way
Suquamish, WA 98392

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
1200 Sixth Ave., Mail Code 21-B03
Seattle, WA 98101

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

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Maia Bellon, Director
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504