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Via Certified Mail - Return Receipt Requested

LTG Carl A. Strock, Commander
U.S. Army Corps of Engineers
Office of the Chief of Engineers (DAEN-ZC)
2600 Army Pentagon, Room 2D221A
Washington, DC 20310-2600

Colonel Debra M. Lewis
US Army Corps of Engineers
Seattle District, Northwest Division
P.O. Box 3755
Seattle, WA 98124-3755

Via Certified Mail - Return Receipt Requested

Mayor Michael Bruce
City of Westport
PO Box 505
Westport, WA 98595-0505

Via Certified Mail - Return Receipt Requested

Managing Agent
Mox-Chehalis, LLC
c/o James R. Daly
29308 132nd Avenue SE
Auburn, WA 98092

Managing Agent
Mox-Chehalis, LLC
1001 Cooper Point Road SW, Ste. 140-395
Olympia, WA 98502

June 15, 2006

Re: NOTICE OF INTENT TO FILE SUIT UNDER THE CLEAN WATER ACT

Dear Cmdr. Strock, Col. Lewis, Mayor Bruce, and Mox-Chehalis:

We represent Friends of Grays Harbor ("FOGH") and Mr. Arthur Grunbaum. Any response or correspondence related to this matter should be directed to us at the letterhead address. This letter is to provide you with sixty (60) days' notice of FOGH

and Mr. Grunbaum's intent to file a citizen suit against the U.S. Army Corps of Engineers, the City of Westport ("Westport"), and Mox Chehalis LLC ("Mox") (collectively "Recipients") under Section 505 of the Clean Water Act ("CWA"), 33 USC § 1365, for violations of Revised Order No. TB-98-02, issued by the Department of Ecology on August 30, 1999.

33 USC § 1365 allows citizen suits against any person who is alleged to be in violation of either an effluent standard or limitation under the CWA or an order issued by a state with respect to such standard or limitation. "Effluent standard or limitation" is specifically defined to include water quality certifications under 33 USC § 1341. 33 USC § 1365(f)(5). Thus, orders issued by the Department of Ecology with respect to water quality certifications are enforceable under the citizen suit provision of the CWA.

This case involves violations of Revised Order No. TB-98-02, issued August 30, 1999, in which the Department of Ecology ("Ecology") granted a water quality certification to the U.S. Army Corps of Engineers ("Corps") for the 1,900-foot extension to the Point Chehalis Revetment. ("WQC Order"). The WQC Order is attached as **Exhibit A**.

The WQC Order was issued pursuant to a Stipulated and Agreed Order of Dismissal entered by the Washington State Pollution Control Hearings Board on July 20, 1999 ("Stipulated Order"). The Stipulated Order reflected a negotiated settlement resolving Washington State Surfrider Foundation's appeal of the original water quality certification issued for the revetment extension project. Ecology and the Corps were parties to the settlement and signed on to the Stipulated Order. Mr. Grunbaum negotiated the settlement and the revisions to the WQC Order on behalf of Surfrider Foundation. Mr. Grunbaum is now an officer of FOGH.

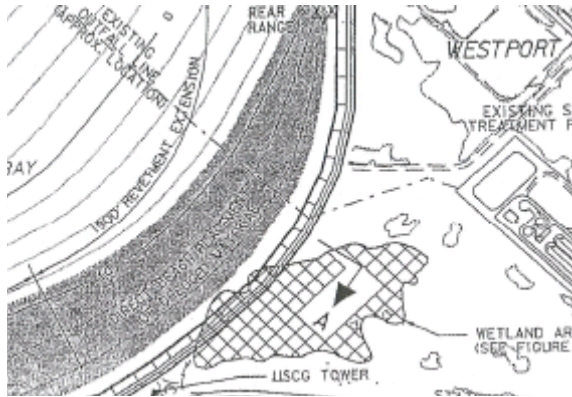
The central element of the settlement -- and the primary purpose of the Stipulated Order and the WQC Order -- was to require the Corps to comply with the Mitigation Plan for the Point Chehalis Revetment Extension ("Mitigation Plan") and to allow for third party enforcement of the Mitigation Plan.

The Corps, Westport, and Mox Chehalis are in violation of the WQC Order as described in this letter. Alternatively and additionally, by virtue of being the current owner of the property, Mox Chehalis is a proper and/or necessary party to any citizen's suit brought to enforce the terms of the WQC Order. At the end of the notice period, FOGH and Mr. Grunbaum will bring an action to enforce the WQC Order, including the Mitigation Plan.

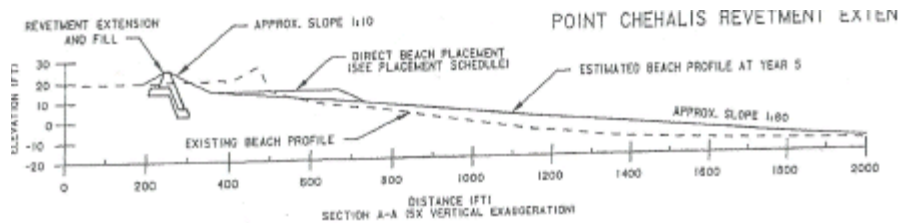
Failure to comply with Beach Nourishment Plan

The WQC Order requires implementation of the Beach Nourishment Plan specified in Attachment A of the Interagency Mitigation Agreement dated October 7, 1998. This requirement was negotiated to protect public recreation and natural resources in the entire area waterward of the revetment extension. The Corps has not complied with this Beach Nourishment Plan. Specifically, the Beach

Nourishment Plan requires the Corps to maintain a *stable beach profile* of approximately *1 vertical to 60 horizontal* in the area waterward of the revetment extension, as shown on Figure 3 to the Mitigation Plan.



A cross-section in the Mitigation Plan specifically shows the existing profile and the 60:1 profile that the WQC Order requires.



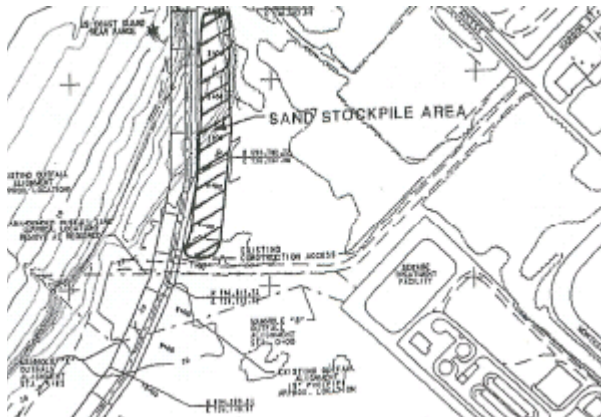
Instead of creating and maintaining a stable 1:60 beach profile waterward of the revetment extension, the Corps has used the area waterward of the revetment extension as a sand stockpile area. The Corps has placed significant dredge spoils in this area and has removed such spoils when needed. The result is anything but a stable slope, and is unusable for public recreation or for long-term beach habitat. This use violates the WQC Order’s requirements to create and maintain a 1:60 slope, to maintain a stable beach profile, and to protect natural resources and public recreation.

Failure to monitor beach profile

The WQC Order requires bathymetric and topographic surveys at least every two years to monitor the beach profile, in particular the profile relative to the mandated 1:60 slope. The City of Westport and the Corps are required to make routine visual surveys. Annual aerial flights are also required. The Corps and Westport have violated the WQC Order by failing to conduct this mandatory monitoring.

Failure to Maintain Limited-Use Stockpile Area

The WQC Order requires the Corps to maintain a sand stockpile area behind the revetment extension in the area shown in Figure 1 to the Mitigation Plan.

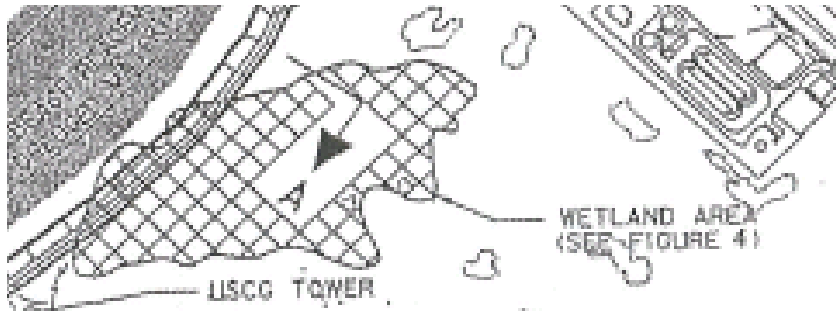


Pursuant to the WQC Order, the Corps and Westport are required to take appropriate steps to insure that the stockpile is used only “in the case of sudden catastrophic erosion to the beach immediately adjacent to the revetment” and is re-supplied as necessary. The Corps has not maintained this stockpile area as required. Moreover, Westport has taken actions that are irreconcilable to this mandated stockpile location in granting permits for this stockpile location to be devoted to a private development proposal of Mox. The Corps holds an easement for operation and maintenance in this stockpile location and further violates the WQC Order by allowing this mandated stockpile location to be permitted for inconsistent uses.

Failure to protect and monitor interdunal wetland

The WQC Order required the Corps to monitor the dunal wetland landward of the revetment extension and the salt marsh restoration site at years 1, 2, 3, 5, 7, and 10 following wetland restoration and revetment construction, respectively. Monitoring was to consist of site visit by a qualified wetland biologist, a vegetation transect, and interpretation of aerial flight photographs. A memorandum is required from the Corps documenting this monitoring. The Corps has violated the WQC Order by failing to conduct this mandatory monitoring and failing to prepare memoranda.

A purpose of the WQC Order, including its monitoring provision, is to protect the 4+ acre wetland just landward of the revetment extension, as shown in the Mitigation Plan:



The Corps was required to take steps to protect the hydrology of the wetland during the revetment construction, which it did. The Corps has an easement in this area and is required to maintain this wetland. The Corps has violated the WQC Order by allowing Westport to grant to Mox a permit for redevelopment within this designated wetland.

Failure to maintain upland vegetation.

The WQC Order required the Corps to replant 4 acres of upland vegetation that were to be de-vegetated during the revetment extension construction. The Corps was to replant the area according to a planting plan, and to monitor through a qualified wetland biologist, vegetation transects, and interpretation of aerial photographs. A memorandum reporting on the replanting was required. The Corps has violated the WQC Order by failing to comply with these mitigation requirements.

Additionally, the Corps has an easement in this area and is required to protect the vegetation from removal or destruction, including any replanting required by the WQC Order. Mox has violated the WQC Order by removing all vegetation in this area, both within the wetland and in the uplands. The Corps has violated the WQC Order by allowing Mox to take such actions despite its easement that gives it jurisdiction in this area.

Under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and 40 C.F.R. 19, each such violation subjects the violator to a penalty of up to \$32,500 per day. In addition to civil penalties, FOGH and Mr. Grunbaum will seek injunctive relief to prevent further violations of the WQC order, 33 U.S.C. § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs including attorney's fees.

FOGH and Mr. Grunbaum believe that this NOTICE OF INTENT TO SUE sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against the recipients of this letter under Section 505(a) of the Clean Water Act for these violations.

During the notice periods, we would be willing to discuss effective remedies for the violations in this letter and settlement terms. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within 10 days of receiving this notice so that a meeting can be arranged and so that negotiations may be completed before the end of the 60-day

CWA notice period. We do not intend to delay the filing of a complaint if discussions are continuing when the notice period ends.

Yours truly,
SMITH & LOWNEY, P.L.L.C.

By: _____
Knoll Lowney

cc: US EPA Administrator Stephen L. Johnson, Ariel Rios Building, 1200
Pennsylvania Ave NW, Washington, DC 20460

EPA Regional Administrator Michael Bogert, 1200 Sixth Avenue
Seattle, WA 98101

US Attorney General Alberto Gonzales, US Dept of Justice, 950 Pennsylvania
Ave NW, Washington, DC 20530-0001

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