

June 8, 2011

**Via Certified Mail, Return Receipt Requested**

The Honorable Marilyn Brown  
President, Franklin County Board of Commissioners  
373 South High Street  
26<sup>th</sup> Floor  
Columbus, Ohio 43215-6314

The Honorable John O'Grady  
Franklin County Board of Commissioners  
373 South High Street  
26<sup>th</sup> Floor  
Columbus, Ohio 43215-6314

The Honorable Paula Brooks  
Franklin County Board of Commissioners  
373 South High Street  
26<sup>th</sup> Floor  
Columbus, Ohio 43215-6314

Dean C. Ringle  
Franklin County Drainage Engineer  
970 Dublin Road  
Columbus, Ohio 43215

Blendon Township  
6350 S. Hempstead Rd.  
Westerville, Ohio 43081

Brown Township  
2491 Walker Rd.  
Hilliard, OH 43026

Clinton Township  
3820 Cleveland Avenue  
Columbus, Ohio 43224

Franklin Township  
2193 Frank Road  
Columbus, Ohio 43223

Hamilton Township  
6400 Lockbourne Rd  
Lockbourne, Ohio 43137

Jackson Township  
3756 Hoover Road  
Grove City, Ohio 43123

Jefferson Township  
6545 Havens Road  
Blacklick, OH 43004

Madison Township  
4575 Madison Lane  
Groveport, Ohio 43125

Mifflin Township  
155 Olde Ridenhour Road  
Gahanna, Ohio 43230

Norwich Township  
5181 Northwest Parkway  
Hilliard, Ohio 43026

Perry Township  
7125 Sawmill Road  
Dublin, Ohio 43016

Plain Township  
45 Second Street  
New Albany, OH 43054-0273

Pleasant Township  
5373 Norton Road  
Grove City, Ohio 43123

Prairie Township  
23 Maple Drive  
Columbus, Ohio 43228

Sharon Township  
95 E. Wilson Bridge Road  
Worthington, Ohio 43085

Truro Township

6900 E. Main St.  
Reynoldsburg, Ohio 43068-2250

Washington Township  
6200 Eiterman Road  
Dublin, OH 43016

**Re: NOTICE OF INTENT TO FILE SUIT UNDER THE FEDERAL  
CLEAN WATER ACT FOR ILLEGAL DISCHARGES AND N.P.D.E.S.  
PERMIT VIOLATIONS WITHIN THE FRANKLIN COUNTY  
STORMWATER SEWER SYSTEM**

Dear Commissioners, Mr. Ringle, and Trustees:

This is a sixty-day notice of intent to file a citizen suit against you under Section 505 of the federal Clean Water Act, 33 U.S.C. §1365, for the violations of that Act described below. This notice is being provided on the behalf of the Sierra Club, 131 N. High St. Columbus, Ohio 43215, phone: (614) 461-0734, and its members. The Sierra Club is represented by attorney Richard Sahli, who is available at the address and phone number on the letterhead above, and by Trent Dougherty and Camille Yancey of the Ohio Environmental Council's Ohio Environmental Law Center, 1207 Grandview Avenue, Suite 201, Columbus, Ohio 43212-3449, phone: (614) 487-7506. All future communications regarding this notice of intent to sue should be directed to Mr. Sahli.

As described below, Franklin County and the seventeen townships listed above have violated and continue to violate the Clean Water Act in two separate ways: 1) through illegal discharges of non-stormwater pollutants from the storm sewer systems they own, operate and regulate; and 2) by violating the requirements of the permit described below that has been issued to your storm sewer system pursuant to the National Pollutant Discharge Elimination System ("NPDES") provisions in Section 402 of the Clean Water Act, 33 USC §1342, in which Franklin County and the listed townships are co-permittees.

**UNPERMITTED DISCHARGES:** The illegal discharges consist of non-stormwater, dry weather discharges of a variety of pollutants including, but not limited to, fecal coliforms, such as *E. Coli* and fecal streptococci, and nitrogen and phosphorus compounds. These pollutants are being discharged from more than 1090 separate outfalls that daily discharge from Franklin County's storm water sewer system into multiple surface water bodies. All of these surface water bodies are tributaries to the Scioto River, a navigable water of the United States as defined in the Clean Water Act. The Scioto River is also a source of drinking water for the City of Columbus and many additional population centers in central and southern Ohio.

These illegal discharges have been identified through water quality sampling and other information required to be collected pursuant to Franklin County's NPDES permit and which have been disclosed pursuant to the NPDES permit's annual reporting requirement. These

admissions of illegal discharges contained in your annual reports are included by reference into this notice. More specifically, the 2007, 2008, 2009 and 2010 annual reports identify, respectively, 344, 277, 273 and 202 outfalls producing illicit discharges.

The public at large, including Franklin County residents, are daily exposed to the pollutants contained in these discharges without receiving any warning from Franklin County or its townships. Many of these illegal discharges are the result of failed home sewage treatment systems (“HSTS”) and therefore contain human sewage. Due to their human pathogen content, these illegal discharges are creating a serious and chronic potential health threat to the people of Franklin County and residents of downstream areas.

Due in part to the permit violations described below, the total number of outfalls illegally discharging pollutants has not been determined. These non-stormwater discharges have occurred every day for, at a minimum, the past five years and continue to occur on a daily basis. These illegal discharges are occurring in areas designated pursuant to the Clean Water Act as urbanized and non-urbanized areas of Franklin County.

Under Section 301(a) of the Clean Water Act, 33 U.S.C. §1311, discharges of pollutants from point sources to navigable waters must be authorized by a NPDES permit. Because Franklin County and the co-permittee townships have not obtained coverage for these non-stormwater discharges under any NPDES permit, these discharges are illegal under Section 301(a). Every pollutant discharge not composed entirely of stormwater during the past five years has been illegal and will be the subject of the Sierra Club’s lawsuit.

These violations reflect only what the information currently available to the Sierra Club indicates. These violations are ongoing. We intend to sue for all violations, including those yet to be uncovered and those committed subsequent to the date of this notice of intent to sue.

**NPDES PERMIT VIOLATIONS:** In addition to these illegal discharge violations, Franklin County and its townships listed above are required by Section 402(p) of the Clean Water Act, 33 USC §1342(p), and by regulations adopted pursuant thereto at 40 C.F.R. §§ 122.26 and 122.30 to 122.37 (the “Phase II Stormwater Rules”), to obtain and comply with an NPDES permit regulating the discharges from its stormwater sewer system. Pursuant to these requirements, Franklin County applied for and obtained Permit 4GQ10009\*AG in 2004, and a successor permit, Permit 4GQ10009\*BG in 2009, (the “permit), from the Ohio Environmental Protection Agency, which has been delegated by U.S. EPA to implement the Clean Water Act in Ohio. Franklin County and the townships listed above are co-permittees under the permit. The permit designates the Franklin County Engineer as the responsible party for the implementation of the permit.

Pursuant to Section 402(p)(3)(B)(ii) of the Clean Water Act, 33 USC §1342(p)(3)(B)(ii), the permit contains a mandatory requirement prohibiting non-stormwater discharges into storm sewers. This permit requirement has been violated due to the illegal discharges of non-stormwater pollutants described above.

In addition to these illegal discharges, the permit contains numerous program requirements which Franklin County and the co-permittee townships have violated. Some of these violations were identified for you in an audit prepared by the Ohio Environmental Protection Agency dated March 28, 2011, which is included herein by reference.

The permit violations include, but are not limited to:

- 1) failure to list or map, and to identify by address, all home sewage treatment systems discharging into the storm sewer system;
- 2) failure to adopt legal authority adequate to address failing home sewage treatment systems; and
- 3) failure to educate the public regarding illegal discharges to the storm sewer system through an adequate communications plan.

Under Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a), and 40 C.F.R. 122.41(a), violations of NPDES permits constitute violations of the Clean Water Act. Every permit violation summarized above will be the subject of the Sierra Club's lawsuit.

These violations reflect only what the information currently available to the Sierra Club indicates. These violations are ongoing. We intend to sue for all permit violations, including those yet to be uncovered and those committed subsequent to the date of this notice of intent to sue.

Both the unpermitted discharges and NPDES permit violations summarized above are subject to enforcement action in federal district court through the citizen suit provisions of Section 505 (a) of the Clean Water Act, 33 USC §1365. Under Section 309(d) of the Clean Water Act, 33 USC § 1319(d), and 40 C.F.R. 19.4, each of the above-described violations subjects the violator to a penalty of up to \$32,500 per day. In addition to civil penalties, we will seek injunctive relief under Sections 505(a) and (d) of the Clean Water Act, 33 USC §1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the Clean Water Act, 33 USC §1365(d), permits prevailing parties to recover costs, including attorney's and expert's fees.

The Sierra Club believes 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 Franklin County and the townships identified above under Section 505(a) of the Clean Water Act for the violations summarized above.

During the 60-day notice period, we are willing to discuss effective remedies for the violations summarized 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 notice period. We do not intend to delay the filing of a complaint if discussions are continuing when the notice period ends.

Very Truly Yours,

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Richard C. Sahli  
Attorney At Law  
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Columbus, Ohio 43230-3662  
614 – 428 – 6068  
rsahliattorney@columbus.rr.com  
Attorney for the Sierra Club

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Trent Dougherty  
Camille Yancey  
Ohio Environmental Law Center  
1207 Grandview Avenue, Suite 201  
Columbus, Ohio 43212-3449  
(614) 487-7506

CC: Lisa Jackson, Administrator, US EPA – by cert. mail, return rec.  
Susan, Hedman, Administrator, Region V, US EPA – by cert. mail, return rec.  
Scott Nally, Director, Ohio EPA – by cert. mail, return rec.