

**SMITH & LOWNEY, P.L.L.C.**  
2317 EAST JOHN STREET  
SEATTLE, WASHINGTON 98112  
(206) 860-2883, FAX (206) 860-4187

January 25, 2017

**Via Certified Mail - Return Receipt Requested**

Acting Secretary Sean M. Stackley  
Office of the Secretary of the Navy  
1000 Navy Pentagon, Rm. 4D652  
Washington, DC 20350

**Via Certified Mail - Return Receipt Requested**

United States Secretary of Defense  
1400 Defense Pentagon  
Washington, DC 20301-1400

**Via Certified Mail - Return Receipt Requested**

Captain Edward Schrader  
Naval Base Kitsap  
120 S. Dewey St., Bldg. 443  
Bremerton, WA 98314-5020

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

Dear Secretaries and Captain Schrader:

This letter is submitted on behalf of Puget Soundkeeper Alliance ("PSA"), Washington Environmental Council ("WEC"), and the Suquamish Tribe ("Tribe"). This letter provides sixty days' notice of PSA, WEC, and the Tribe's intent to file a citizen suit against the United States Navy (collectively "the Navy") and each of you in your official capacities under section 505 of the Clean Water Act ("CWA"), 33 U.S.C. § 1365, for discharging pollutants to Sinclair Inlet without a National Pollutant Discharge Elimination System ("NPDES") permit in violation of section 301(a) of the CWA, 33 U.S.C. §1331(a) as described below.

Since approximately January 6, 2017, on a daily basis or on dates known to you, the Navy or its contractors or agents began physically and/or mechanically scraping and brushing the hull of the decommissioned ship U.S.S. Independence, below waterline, in Sinclair Inlet or adjacent or tributary waters at or adjacent to the location of Naval Base Kitsap, Bremerton, Washington, for the purpose of towing the ship to Brownsville, Texas for dismantling. In association with this work, the Navy has also been using high pressure water jets to remove debris and other material from the hull. In the course of this scraping and water jetting, pollutants, including but not limited to paint chips and particles, copper, zinc, and other metals, biological materials, suspended solids, turbidity, and debris, are and continue to be

discharged to the navigable waters of Sinclair Inlet. This activity is ongoing and will continue until the Navy determines the U.S.S. Independence is sufficiently cleaned for towing purposes. This activity will recur when the Navy conducts similar work on other decommissioned ships in the future. The Navy maintains several decommissioned ships at or near this location and at other naval installations.

Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes unlawful the discharge of any pollutant from a point source to waters of the United States without authorization by a NPDES permit issued under Section 402, 33 U.S.C. § 1342. *Headwaters v. Talent Irr. Dist.*, 243 F.3d 526, 532 (9th Cir. 2001). The Navy's discharge of pollutants from the hull of the former U.S.S. Independence or other decommissioned ships constitutes the discharge of pollutants from a point source, or point sources, including the hulls themselves, any mechanical or manual equipment used to scrape or brush the hulls, and hydro-blasting equipment, to waters of the United States without NPDES permit authorization.

The lack of a NPDES permit has significant consequences. The location of the hull cleaning of the former U.S.S. Independence is within an area already highly contaminated with metals and is also within the Puget Sound Naval Shipyard Complex Superfund site.

The full names, addresses, and telephone numbers of the parties giving notice are:

Puget Soundkeeper Alliance  
130 Nickerson Street, Suite 107  
Seattle, Washington 98109  
(206) 297-7002

Washington Environmental Council  
1402 Third Ave, Suite 1400  
Seattle, Washington 98101  
(206) 631-2600

The Suquamish Tribe  
P.O. Box 498  
18490 Suquamish Way  
Suquamish, Washington 98392  
(360) 598-3311

The attorney representing Puget Soundkeeper Alliance and Washington Environmental Council in this matter is:

Richard A. Smith  
Smith & Lowney, PLLC  
2317 East John Street  
Seattle, Washington 98112  
(206) 860-2883

The attorney representing the Suquamish Tribe in this matter is:

Melody Allen  
Suquamish Tribe  
Office of Tribal Attorney  
18490 Suquamish Way  
Suquamish, Washington 98392  
(206) 394-8488

The above-described violations reflect those indicated by the information currently available to PSA, WEC, and the Tribe. These violations are ongoing. PSA, WEC, and the Tribe intend to sue for all violations, including those yet to be uncovered and those committed after the date of this Notice of Intent to Sue.

PSA, WEC, and the Tribe will seek injunctive relief to prevent further violations under Sections 505(a) and (d) of the CWA, 33 U.S.C. § 1365(a) and (d), and such other relief as is permitted by law. Section 505(d) of the CWA, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs, including attorney's fees.

PSA, WEC, and the Tribe believe that this NOTICE OF INTENT TO SUE sufficiently states grounds for filing suit. PSA, WEC, and the Tribe intend, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against you and the Navy, under Section 505(a) of the CWA.

PSA, WEC, and the Tribe are jointly willing to discuss effective remedies for the violations described in this letter and settlement terms during the 60-day notice period. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within ten (10) days of receiving this notice so that a meeting can be arranged and so that negotiations may be completed promptly. We do not intend to delay the filing of a complaint if discussions are continuing when the notice period ends.

Very truly yours,

SMITH & LOWNEY, PLLC

By: 

Richard A. Smith

[rasmithwa@igc.org](mailto:rasmithwa@igc.org), (206) 860-2124

cc: Catherine McCabe, Acting Administrator, U.S. EPA  
Michelle Pirzadeh, Region 10 Acting Administrator, U.S. EPA  
Maia Bellon, Director, Washington Department of Ecology

