



June 16, 2022

VIA CERTIFIED U.S. MAIL  
RETURN RECEIPT REQUESTED  
AND VIA EMAIL WHERE AVAILABLE

Mayor Sofia Aragon  
City of Burien  
400 SW 152<sup>nd</sup> Street, Suite 300  
Burien, WA 98166  
[sofiaa@burienwa.gov](mailto:sofiaa@burienwa.gov)

Mayor Sue-Ann Hohimer  
City of Normandy Park  
801 SW 174<sup>th</sup> Street  
Normandy Park, WA 98166  
[sue-ann.hohimer@normandyparkwa.gov](mailto:sue-ann.hohimer@normandyparkwa.gov)

Burien Public Utilities  
City of Burien  
400 SW 152<sup>nd</sup> Street, Suite 300  
Burien, WA 98166

Ken Courter and Jessie Medrow  
Normandy Park Public Works  
801 SW 174<sup>th</sup> Street  
Normandy Park, WA 98166  
[kcourter@normandyparkwa.gov](mailto:kcourter@normandyparkwa.gov)  
[jmedrow@normandyparkwa.gov](mailto:jmedrow@normandyparkwa.gov)

Garmon Newsom II  
Burien City Attorney  
400 SW 152<sup>nd</sup> Street, Suite 300  
Burien, WA 98166  
[GarmonN@BurienWA.gov](mailto:GarmonN@BurienWA.gov)

Mayor Jake Simpson  
City of Seatac  
4800 South 188<sup>th</sup> Street  
Seatac, WA 98188-8605  
[jsimpson@seatacwa.gov](mailto:jsimpson@seatacwa.gov)

Mary Mirante Bartolo  
Seatac City Attorney  
4800 South 188<sup>th</sup> Street  
Seatac, WA 98188-8605

Public Works Department  
City of Seatac  
4800 South 188<sup>th</sup> Street  
Seatac, WA 98188-8605

**RE: Notice of Intent to Sue For Failure to Comply With Municipal Stormwater General National Pollutant Discharge Elimination Permit, Section S4**

Dear Mayor Aragon, Mayor Hohimer, Burien Public Utilities, Mr. Courter, Ms. Medrow, Mr. Newsom, Mayor Simpson, Ms. Bartolo, and Seatac Public Works:

This is a 60-day Notice under the Clean Water Act, 33 U.S.C. § 1365(a)(2), on behalf of Puget Soundkeeper Alliance (“Soundkeeper”). The Cities of Burien, Normandy Park, and Seatac (“Cities”) have failed to comply with Section S.4 of the Washington Phase II Municipal Stormwater National Pollutant Discharge Elimination System Permit (“Permit”) by causing or

contributing to violations of water quality standards in Miller Creek, by failing to control discharges of stormwater to Miller Creek to the Maximum Extent Practicable and with All Known, Available, and Reasonable Technology, and by failing to report to the Washington State Department of Ecology (“Ecology”) stormwater discharges to Miller Creek that are causing or contributing to the violation of water quality standards.

## I. BACKGROUND

Puget Sound streams are suffering from Urban Runoff Mortality Syndrome in salmon caused by stormwater discharges. Coho salmon, in particular, are affected. Research and monitoring dating back a decade or more have conclusively demonstrated that coho salmon are dying upon entering Puget Sound area streams, including Miller Creek in Seattle, and that they are dying before they are able to spawn. That same or related research also demonstrated that stormwater discharge is the cause. More recently, research isolated a chemical used in car tires, N-(1,3-Dimethylbutyl)-N'-phenyl-p-phenylenediamine-quinone, also known as 6PPD quinone (“6-PPDQ”) as the toxin in stormwater discharges that is killing salmon. Additional research, again from 10 or more years ago, has conclusively demonstrated that filtering stormwater through bioinfiltration systems (plants and soil) removes the salmon-killing pollutants in stormwater. Ecology’s Fact Sheet made permittees including the Cities further aware of this information. See <https://fortress.wa.gov/ecy/ezshare/wq/permits/MunicipalPermitsFactSheet2018.pdf> at pages 15 and 20.

Miller Creek receives stormwater discharges from the Cities. Miller Creek is a salmon stream and the Cities have an interlocal agreement to study the problem. The Cities have received multiple years of summaries of the data documenting Urban Runoff Mortality Syndrome in coho salmon in Miller Creek through meetings, program reports, and in-person presentations. Discharge of stormwater to Miller Creek is causing or contributing to the violation of narrative water quality standards for fish.

Information received from Ecology indicates that the Cities have failed to notify Ecology, under Section S4 of the Permit, of the potential for the Cities’ stormwater discharges into Miller Creek to cause or contribute to Urban Runoff Mortality in coho salmon and thereby to cause or contribute to the violation of water quality standards.

## II. LEGAL FRAMEWORK

The Clean Water Act prohibits the discharge of any pollutant into State waters absent authorization in and compliance with a National Pollutant Discharge Elimination System Permit (NPDES). 33 U.S.C. §§ 1311(a) and 1342.

Section S4 of the Permit provides, in relevant part, as follows:

**A.** In accordance with RCW 90.48.520, the discharge of toxicants to waters of the State of Washington which would violate any water quality standard, including toxicant standards, sediment criteria, and dilution zone criteria is prohibited. The required response to such discharges is defined in Section S4.F, below.

**B.** This Permit does not authorize a discharge which would be a violation of Washington State Surface Water Quality Standards (Chapter 173-201A WAC), Groundwater Quality Standards (Chapter 173-200 WAC), Sediment Management Standards (Chapter 173-204 WAC), or human health-based criteria in the National Toxics Rule (40 CFR 131.45). The required response to such discharges is defined in Section S4.F, below.

**C.** The Permittee shall reduce the discharge of pollutants to the Maximum Extent Practicable (MEP).

**D.** The Permittee shall use All Known, Available, and Reasonable methods of prevention, control and Treatment (AKART) to prevent and control pollution of waters of the State of Washington . . .

**F.** A Permittee remains in compliance with S4 despite any discharges prohibited by S4.A or S4.B, when the Permittee undertakes the following response toward long-term water quality improvement:

**1.** A Permittee shall notify Ecology in writing within 30 days of becoming aware, based on credible site-specific information that a discharge from the MS4 owned or operated by the Permittee is causing or contributing to a known or likely violation of water quality standards in the receiving water. Written notification provided under this subsection shall, at a minimum, identify the source of the site-specific information, describe the nature and extent of the known or likely violation in the receiving water, and explain the reasons why the MS4 discharge is believed to be causing or contributing to the problem. For ongoing or continuing violations, a single written notification to Ecology will fulfill this requirement.

Washington water quality standards, as required by the Clean Water Act 33 U.S.C. § 1313(c), protect aquatic life designated uses, including salmon spawning, rearing, and migration. WAC 173-201A-200(1)(a). General criteria for the protection of these designated uses provide:

**Toxics and aesthetics criteria.** The following narrative criteria apply to all existing and designated uses for fresh and marine water: . . . Toxic, radioactive, or deleterious material concentrations must be below those which have the potential, either singularly or cumulatively, to adversely affect characteristic water uses, cause acute or chronic

conditions to the most sensitive biota dependent upon those waters, or adversely affect public health.

WAC 173-201A-260(2).

Upstream actions must be conducted in manners that meet downstream water body criteria. Except where and to the extent described otherwise in this chapter, the criteria associated with the most upstream uses designated for a water body are to be applied to headwaters to protect nonfish aquatic species and the designated downstream uses.

WAC 173-201A-260(3)(b).

Where multiple criteria for the same water quality parameter are assigned to a water body to protect different uses, the most stringent criterion for each parameter is to be applied.

WAC 173-201A-260(3)(c).

The Clean Water Act authorizes suit by any citizen, defined to include groups such as Soundkeeper, against any government instrumentality or agency that is alleged to be in violation of an effluent limitation or standard in an NPDES permit. 33 U.S.C. § 1365(a)(1).

### III. CITIES OF BURIEN, NORMANDY PARK, AND SEATAC'S VIOLATIONS

The Cities are in violation of Section S4.A. and B. of the Permit for discharging stormwater pollutants and/or toxicants into Miller Creek in violation of water quality standards.

The Cities are in violation of Section S4.C. and D. of the Permit for failure to treat stormwater discharges to MEP and AKART which here, is the implementation of bioinfiltration to treat stormwater prior to discharge into Miller Creek.

The Cities are in violation of Section S4.F.1. of the Permit for failure notify Ecology of the potential for each of their stormwater discharges to Miller Creek to cause or contribute to violations of water quality standards.

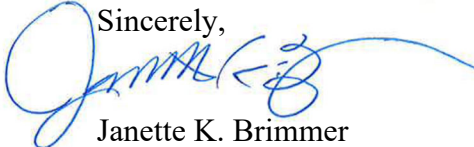
### IV. IDENTITY AND ADDRESSES OF SOUNDKEEPER

Sean Dixon  
Executive Director  
Puget Soundkeeper Alliance  
130 Nickerson St., Suite 107  
Seattle, WA 98109

Janette Brimmer  
Counsel for Soundkeeper  
Earthjustice  
810 Third Ave., Suite 610  
Seattle, WA 98104

V. CONCLUSION

The Cities of Burien, Normandy Park, and Seatac are in continuing violation of Section S4 of the Phase I Municipal Stormwater Permit and this letter constitutes a 60-day notice of intent to file a citizen suit against the Cities of Burien, Normandy Park, and Seatac pursuant to the Clean Water Act, 33 U.S.C. § 1365(a)(2) and applicable implementing regulations, 40 C.F.R. § 135.1(a) and 135.3(b). Unless this violation is cured within sixty days, we reserve the right to take appropriate legal action to compel the Cities of Burien, Normandy Park, and Seatac to comply with the Permit and Clean Water Act to protect Miller Creek from stormwater pollutant discharges that are harming salmon.

Sincerely,  
  
Janette K. Brimmer

cc (via First Class Mail and email where available):

Casey Sixkiller, Administrator  
U.S. EPA, Region 10  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101  
Sixkiller.Casey@epa.gov

Merrick B. Garland, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

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

Laura Watson, Director  
Washington Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600  
laura.watson@ecy.wa.gov