



# Champaign County Health Care Consumers

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*Grassroots organizing for health care justice and access since 1977.*

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February 8, 2011

Honorable Gerald Schweighart, Mayor  
City of Champaign  
2906 West Daniel Street  
Champaign, Illinois 61821

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

Dear Mayor Schweighart:

This sixty day notice of intent to file a citizen suit against the City of Champaign Section 505 of the Clean Water Act ("CWA"), 33 USC § 1365, for the violations described below is provided on behalf of the Champaign County Health Care Consumers and the 5th & Hill Neighborhood Rights Campaign, 44 East Main Street, Suite 208 Champaign, Illinois 61820, (217) 352-6533; Claudia Lennhoff, Executive Director.

Champaign has violated and continues to violate the CWA (see Sections 301 and 402 of the CWA, 33 USC §§ 1311 and 1342) with respect to discharges of pollutants into Boneyard Creek from an 8" clay pipe drain line on City of Champaign property north of Skelton Park at Ash and Washington Streets (40° 7'16.41"N, 88°14'14.98"W). Boneyard Creek is a tributary of Saline Branch of the Salt Fork Vermilion River, which is a tributary of the south-flowing Vermilion River and the Wabash River.

These discharges are non-stormwater, wet and dry weather discharges of various pollutants, including but not limited to benzene, ethyl benzene, dichlorobenzene, naphthalene, dissolved solids, turbidity and other coal tar related compounds from sources located on Champaign property(s). The drain pipe discharges from a known abandoned coal tar drain which is unpressurized. The unpressurized drain fills with contaminated percolating groundwater where it is transported and discharged into Boneyard Creek. These non-stormwater discharges have occurred routinely for at least the past five years, regardless of precipitation or the presence of stormwater, and continue to occur on an intermittent basis. These discharges of the identified pollutants, which are not composed entirely of stormwater, have occurred during and after each and every precipitation event during the past five years and continue to occur.

Boneyard Creek, the Vermilion River and the Wabash River are navigable waters of the United States as that term is used in the CWA. Unpermitted Discharge under Section 301(a) of the CWA, discharges of pollutants from point sources to navigable waters must be authorized by a National Pollutant Discharge Elimination System (NPDES) permit. Because the City of Champaign has 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 Champaign County Health Care Consumers' and the 5th

& Hill Neighborhood Rights Campaign's lawsuit. The above-described violations reflect only what information currently available to us 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.

Under Section 309(d) of the CWA, 33 USC § 1319(d), and 40 C.F.R. 19, 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 CWA, 33 USC § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 USC § 1365(d), permits prevailing parties to recover costs including attorney's fees.

Champaign County Health Care Consumers and the 5th & Hill Neighborhood Rights Campaign 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 City of Champaign under Section 505(a) of the Clean Water Act for violations, or to amend our complaint to include these allegations in the pending litigation.

During the 60-day notice period, 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 notice period. We do not intend to delay the filing of a complaint, or the amendment of our current pleadings, if discussions are continuing when the notice period ends.

Very truly yours,

Claudia Lennhoff  
Champaign County Health Care Consumers

cc: Lisa Jackson, Administrator, USEPA  
Susan Hedman, Administrator, Region 5 USEPA  
Douglas P. Scott, Director, Illinois EPA  
Greg Dunn, Manager, Voluntary Site Remediation Unit, Illinois EPA  
Frederick C. Stavins, City of Champaign, City Attorney

Attachment: Photograph of illegal discharge pipe.