

CHARLOTTE
227 West Trade Street
Suite 1490
Charlotte, NC 28202
(704) 247-8520 Telephone
(704) 247-8582 Facsimile

**GRAY KING CHAMBERLIN &
MARTINEAU LLC**
ATTORNEYS AT LAW

ATLANTA
2408 Mount Vernon Road
Atlanta, GA 30338
(770) 542-0500 Telephone
(770) 295-0001 Facsimile

WILLIAM B. "BO" GRAY II
(770) 542-0505 Direct Line
(404) 393-0478 Facsimile
E-Mail: bgray@graykinglaw.com

May 6, 2010

**VIA CERTIFIED MAIL -
RETURN RECEIPT REQUESTED**

Phil Hart
President of County Commission
Barbour County Courthouse
8 North Main Street
Philippi, WV 26416

Ronald K. Collins
President of County Commission
Berkeley County Courthouse
400 W. Stephen Street, Suite 201
Martinsburg, WV 25401

Atholl W. Halstead
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Boone County Courthouse
200 State Street
Madison, WV 25130

Teresa Frame
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Bernard L. Kazienko
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632 Main Street
Wellsburg, WV 26070

May 6, 2010

Page 2

Bob Bailey
President of County Commission
Cabell County Courthouse
750 5th Avenue, Suite 300
Huntington, WV 25701

Robert Weaver
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Calhoun County Courthouse
P.O. Box 230
Grantsville, WV 26147

Jerry Linkinoggor
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Clay County Courthouse
216 Main Street
Clay, WV 25043

Angela B. Pratt
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Doddridge County Courthouse
118 East Court St., Room 102
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Ripley, WV 25271

Dale Manuel
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Jefferson County Courthouse
100 E Washington Street
Charles Town, WV 25414

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Page 4

W. Kent Carper
President of County Commission
Kanawha County Courthouse
407 Virginia Street, East
Charleston, WV 25301

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Silas Mullins Jr.
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Wyoming County Courthouse
P.O. Drawer 309
Pineville, WV 24874

Susan Plum, Environmental
Barbour County Health Department
23 Wabash Avenue
Philippi, WV 26416

Cara Harding, Environmental
Berkeley County Health Department
800 Emmett Rousch Drive
Martinsburg, WV 25401

Phyllis Lowe, Environmental
Boone County Health Department
Post Office Box 209
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William Garrett, Environmental
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495 Old Turnpike Road
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204 Courthouse Square
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Cabell County Health Department
703 7th Avenue
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Jay Carper, Environmental
Clay County Health Department
Post Office Box 36
Clay, WV 25043

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Page 10

Mark Whittaker, Environmental
Doddridge County Health Department
Route 2, Box 54
West Union, WV 26456

Philip Perone, Environmental
Fayette County Health Department
202 Church Street
Fayetteville, WV 25840

Jessica Shreve, Environmental
Gilmer County Health Department
809 Mineral Road
Glenville, WV 26351

Cullen Sherman, Environmental
Grant County Health Department
Post Office Box 608, Route 28
Petersburg, WV 26847-0608

Michael Eltzroth, Environmental
Greenbrier County Health Department
9207 Seneca Trail South
Ronceverte, WV 24970

Terry Mayhew, Environmental
Hampshire County Health Department
HC 71, Box 9
Augusta, WV 26704

Jolene Zuros, Environmental
Hancock County Health Department
Post Office Box 578
New Cumberland, WV 26047

William Ours, Environmental
Hardy County Health Department
411 Spring Avenue, Suite 101
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William Zaleski, Environmental
Jefferson County Health Department
1948 Wiltshire Road, Suite 1
Kearneysville, WV 25430

Anita Ray, Environmental
Kanawha County Health Department
Post Office Box 927
Charleston, WV 25323

Randy Hawkins, Environmental
Lewis County Health Department
125 Court Avenue
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Lincoln County Health Department
Post Office Box 527
Hamlin, WV 25523

Pete Spurlock, Environmental
Logan County Health Department
300 Stratton Street, Room 203
Logan, WV 25601

Karol Wallingford, Environmental
Marion County Health Department
300 Second Street
Fairmont, WV 26554

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Page 12

Richard Lucas, Environmental
Marshall County Health Department
Post Office Box 429
Moundsville, West Virginia 26041

Michael Waugh, Environmental
Mason County Health Department
216 Fifth Street
Point Pleasant, WV 25550

Jesse Rose, III, Environmental
McDowell County Health Department
Post Office Box 218
Wilcoe, WV 24895

Susan Kadar, Environmental
Mercer County Health Department
Route 2, Box 382
Bluefield, WV 24701

Timothy Miller, Environmental
Mid-Ohio Valley County Health Department
211 Sixth Street
Parkersburg, WV 26101-5113

Andrew Root, Environmental
Mineral County Health Department
Route 3, Box 3045
Keyser, WV 26726

Brett Vance, Environmental
Mingo County Health Department
Post Office Box 1096
Williamson, WV 25661

Jon Welch, Environmental
Monongalia County Health Department
453 Van Voorhis Road
Morgantown, WV 26505-3408

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Dale McCutcheon, Environmental
Monroe County Health Department
Post Office Box 590
Union, WV 24983

R. Ullom, Environmental
Morgan County Health Department
187 South Green Street
Suite 2
Berkeley Springs, WV 25411-1741

Rodney Boyce, Environmental
Nicholas County Health Department
One Stevens Road, Suite 201
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Nada Beneke, Environmental
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106 West Main Street
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Carey Eden, Environmental
Putnam County Health Department
1401 Hospital Drive, Suite 304
Hurricane, WV 25526

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Beckley-Raleigh Health Department
1602 Harper Road
Beckley, WV 25801

Warren Elmer, Environmental
Randolph County Health Department
32 Randolph Avenue, Suite 101
Elkins, WV 26241

Chad Meador, Environmental
Summers County Health Department
Post Office Box 898
Hinton, West Virginia 25951

Ronald Dellinger, Environmental
Grafton-Taylor Health Department
Post Office Box 15
Grafton, WV 26354

James Snyder, Environmental
Tucker County Health Department
206 1/2 Third Street
Parsons, WV 26287

Josh Marsh, Environmental
Upshur-Buckhannon Health Department
15 North Locust Street
Buckhannon, WV 26201

Melissa Spence, Environmental
Wayne County Health Department
Post Office Box 368
Wayne, WV 25570

Jason Raschka, Environment
Webster County Health Department
112 Bell Street, Suite C
Webster Springs, WV 26288

May 6, 2010

Page 15

Mark Hawkins, Environment
Wetzel-Tyler Health Department
425 South Fourth Avenue
Paden City, WV 26159

William Cox, Environment
Wyoming County Health Department
Post Office Box 1679
Pineville, WV 24874-1679

Re: Request for Information under the FOIA

Dear County Presidents and Sanitariums:

This letter is a request made under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

The West Virginia Department of Environmental Protection (hereinafter "WVDEP"), pursuant to a court's order in Ohio Valley Environmental Coalition v. Horinko, 279 F.Supp.2d 732 (S.D.W.Va. 2003), was required to test all of the waters of the streams and rivers of West Virginia for pollution. The state was divided into thirty-two (32) different watersheds. Certain streams were classified as 303d, or impaired streams.

These 303d streams were not, by any means, all of the streams and open ditches where raw sewage is being disposed. The WVDEP, under the supervision of the United States Environmental Protection Agency (hereinafter "USEPA"), identified in excess of 160,000 homes that have defective or have no proper waste water disposal system or are just straight-piping raw sewage into the waters of West Virginia.

An analysis of this data has indicated that this practice is statewide and widespread, and we believe that the number greatly exceeds the 160,000 known cases. Many of these homes are situated on lots that are less than one acre, and many do not have a safe source of drinking water, nor are many of these situations correctable by the homeowner, i.e., the lot is too small for a septic tank and a place to put a well.

The purpose of this FOIA request is to have you identify the locations and addresses of these homes that are in violation of both the state of West Virginia and the Federal Clean Water laws.

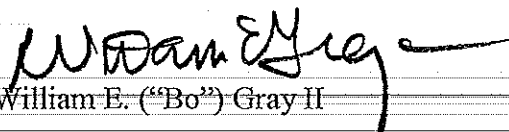
May 6, 2010
Page 16

Please provide these addresses and the property owner's contact information. You may provide this information by address and zip code or Tax plat PIN numbers and mailing addresses for the tax bills, or in any manner that is most convenient for you.

Thank you in advance for your prompt attention.

Sincerely,

GRAY KING CHAMBERLIN &
MARTINEAU LLC



William E. ("Bo") Gray II

WEG/dsg

CHARLOTTE
227 West Trade Street
Suite 1490
Charlotte, NC 28202
(704) 247-8520 Telephone
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2408 Mount Vernon Road
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(770) 542-0500 Telephone
(770) 295-0001 Facsimile

WILLIAM E. "BO" GRAY II - ATTORNEY
(770) 542-0505 Direct Line
(404) 393-0478 Facsimile
E-Mail: bgray@graykinglaw.com

May 6, 2010

**VIA CERTIFIED MAIL --
RETURN RECEIPT REQUESTED**

West Virginia Department of
Environmental Protection
601 57th Street S.E.
Charleston, WV 25304

Re: Request for Information under the FOIA

Dear Sir or Madam:

This letter is a request made under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

Your agency performed many tests and studies on the waters of impaired streams and wrote a series of reports. These reports are known as TMDL reports, Total Maximum Daily Loads for Streams in various watersheds of West Virginia. Most of these reports appear to have been prepared by Tetra Tech, Inc. in Charleston, West Virginia.

The watersheds were divided into 5 different Hydrologic groups, A, B, C, D and E. These groups covered 32 major watersheds within the state. There were multiple sources of pollution. This request is confined only to the category known as a "nonpoint source," and further reduced to the nonpoint source commonly known as "on-site treatment systems." Failing septic systems and straight pipes are significant sources of fecal coliform bacteria. WVDEP identified specific numbers of failing septic systems or straight pipes in each of the 5 Hydrologic groups. WVDEP and the USEPA further stated that none of these systems or straight pipe discharges had NPDES (National Pollutant Discharge Elimination System) permits.

The West Virginia Bureau for Public Health Regulations prohibits the discharge of raw sewage into surface waters. Therefore, no permit would ever be available for an illicit discharge of human waste. Consequently, every system or lack thereof is in violation of both West Virginia law and the Federal Clean Water Act.

Below are a statistical number of homes that were determined by source tracking by the WVDEP in each of the 5 Hydrologic groups as the data was presented, sometimes by the watershed main report and sometimes by the individual river appendices.

GROUP A RIVERS:

Cheat	No data found
Shenandoah Jefferson	No data found
South Branch	No data found
Upper Kanawha	16,423 Homes
Upper Ohio North	1,008 Homes
Youghiogheny	2,300 Homes
TOTAL	19,731 Homes

GROUP B RIVERS:

Coal Watershed Main Report 32,783

Note: There was a small discrepancy
between the individual river
appendices total and the main report.

TOTAL **32,783**

GROUP C RIVERS:

Gauley Watershed	2,064
Upper and Lower Guyandotte	No data found
Middle Ohio South	No data found
Potomac Direct Drains	<u>40,960</u>
Tug Fork	No data found
TOTAL	43,024

GROUP D RIVERS:

Greenbriar Watershed	5,964
James River	40
Little Kanawha	229
Lower New appendix	10,897
Piney Creek	10,311
Bluestone River	3,477
Upper New	7,944
Monongahela River	No data found
TOTAL	38,862

GROUP E RIVERS:

Capapon estimated at 2% of 3431 or	69
Camp Creek	154
Dunkard Creek	2,790
Lower Ohio	Not many
Upper Guyandote	No data found
Upper Ohio South Watershed	23,000
TOTAL	26,013

GRAND TOTAL 160,413

In reviewing these reports, some data did not seem to be finished and some dated back to 1998 and did not appear to be as complete as the later studies, but regardless, there are 160,413 known sources of pollution of nonpoint homes within the state, and that data is only from 303D streams; the real total is much higher.

West Virginia Department
of Environmental Protection
May 6, 2010
Page 4

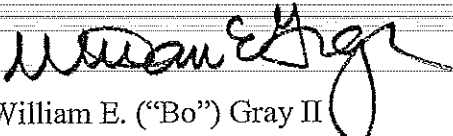
The purpose of this FOIA request is to obtain the address of each of the 160,413 homes. Whatever form the data was collected and assembled, whether it was by address or a tax parcel pin number (Parcel ID), is acceptable for presentation for this request.

This request is being made simultaneous with a 60-day required Notice of Intent to Sue.

Thank you in advance for your prompt attention to this matter.

Sincerely,

GRAY KING CHAMBERLIN &
MARTINEAU LLC



William E. ("Bo") Gray II

WEG/dsg

**NOTICE OF INTENT TO FILE SUIT
PURSUANT TO THE CLEAN WATER ACT**

THREE RIVERS COMPANIES, LLC,)
et al.,)
)
Proposed Plaintiffs,)
)
v.)
)
WEST VIRGINIA DEPARTMENT OF)
HEALTH AND HUMAN RESOURCES,)
)
Proposed Defendants.)
)
)

**NOTICE OF CITIZEN SUIT
PURSUANT TO 33 U.S.C. § 1365
(CLEAN WATER ACT)**

**NOTICE IS HEREBY GIVEN TO THESE PERSONS
PURSUANT TO 33 U.S.C. § 1365(b) OF THE CLEAN WATER ACT**

**PERSONS RECEIVING THIS NOTICE PURSUANT TO § 1365(b)(1)(A)(i) AS THE
ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY:**

Lisa P. Jackson, Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

Shawn M. Garvin, Regional Administrator
United States Environmental Protection Agency, Region 3
1650 Arch Street
Philadelphia, PA 19103-2029

**PERSONS RECEIVING THIS NOTICE PURSUANT TO § 1365(b)(1)(A)(ii) AS
REPRESENTATIVES OF THE STATE OF WEST VIRGINIA:**

Governor Joe Manchin III
1900 Kanawha Boulevard East
Charleston, WV 25305

Darrell V. McGraw, Jr., West Virginia Attorney General
State Capitol Complex, Building 1, Room E-26
Charleston, WV 25305

PERSONS RECEIVING THIS NOTICE PURSUANT TO §§ 1365(a)(1) and (b)(1)(A)(iii):

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Wyoming County Courthouse
P.O. Drawer 309
Pineville, WV 24874

Susan Plum, Environmental
Barbour County Health Department
23 Wabash Avenue
Philippi, WV 26416

Cara Harding, Environmental
Berkeley County Health Department
800 Emmett Rousch Drive
Martinsburg, WV 25401

Phyllis Lowe, Environmental
Boone County Health Department
Post Office Box 209
Madison, WV 25130

William Garrett, Environmental
Braxton County Health Department
495 Old Turnpike Road
Sutton, WV 26601

Michael Bolen, Environmental
Brooke County Health Department
204 Courthouse Square
Wellsburg, WV 26070

Stanley Mills, Environmental
Cabell County Health Department
703 7th Avenue
Huntington, WV 25701

Jay Carper, Environmental
Clay County Health Department
Post Office Box 36
Clay, WV 25043

Mark Whittaker, Environmental
Doddridge County Health Department
Route 2, Box 54
West Union, WV 26456

Philip Perone, Environmental
Fayette County Health Department
202 Church Street
Fayetteville, WV 25840

Jessica Shreve, Environmental
Gilmer County Health Department
809 Mineral Road
Glennville, WV 26351

Cullen Sherman, Environmental
Grant County Health Department
Post Office Box 608, Route 28
Petersburg, WV 26847-0608

Michael Eltzroth, Environmental
Greenbrier County Health Department
9207 Seneca Trail South
Ronceverte, WV 24970

Terry Mayhew, Environmental
Hampshire County Health Department
HC 71, Box 9
Augusta, WV 26704

Jolene Zuros, Environmental
Hancock County Health Department
Post Office Box 578
New Cumberland, WV 26047

William Ours, Environmental
Hardy County Health Department
411 Spring Avenue, Suite 101
Moorefield, WV 26836

Robert Thomas, Environmental
Harrison County Health Department
330 West Main Street
Clarksburg, WV 26301

Jeffrey Fowler, Environmental
Jackson County Health Department
504 South Church Street
Ripley, WV 25271

William Zaleski, Environmental
Jefferson County Health Department
1948 Wiltshire Road, Suite 1
Kearneysville, WV 25430

Anita Ray, Environmental
Kanawha County Health Department
Post Office Box 927
Charleston, WV 25323

Randy Hawkins, Environmental
Lewis County Health Department
125 Court Avenue
Weston, WV 26452

Francis Holton, Environmental
Lincoln County Health Department
Post Office Box 527
Hamlin, WV 25523

Pete Spurlock, Environmental
Logan County Health Department
300 Stratton Street, Room 203
Logan, WV 25601

Karol Wallingford, Environmental
Marion County Health Department
300 Second Street
Fairmont, WV 26554

Richard Lucas, Environmental
Marshall County Health Department
Post Office Box 429
Moundsville, WV 26041

Michael Waugh, Environmental
Mason County Health Department
216 Fifth Street
Point Pleasant, WV 25550

Jesse Rose, III, Environmental
McDowell County Health Department
Post Office Box 218
Wilcoe, WV 24895

Susan Kadar, Environmental
Mercer County Health Department
Route 2, Box 382
Bluefield, WV 24701

Timothy Miller, Environmental
Mid-Ohio Valley County Health Department
211 Sixth Street
Parkersburg, WV 26101-5113

Andrew Root, Environmental
Mineral County Health Department
Route 3, Box 3045
Keyser, WV 26726

Brett Vance, Environmental
Mingo County Health Department
Post Office Box 1096
Williamson, WV 25661

Jon Welch, Environmental
Monongalia County Health Department
453 Van Voorhis Road
Morgantown, WV 26505-3408

Dale McCutcheon, Environmental
Monroe County Health Department
Post Office Box 590
Union, WV 24983

R. Ullom, Environmental
Morgan County Health Department
187 South Green Street
Suite 2
Berkeley Springs, WV 25411-1741

Rodney Boyce, Environmental
Nicholas County Health Department
One Stevens Road, Suite 201
Summersville, WV 26651

Nada Beneke, Environmental
Ohio County Health Department
1500 Chapline Street
Wheeling, WV 26003

Kami Keyser, Environmental
Pendleton County Health Department
Post Office Box 520
Franklin, WV 26807

David Henderson, Environmental
Pocahontas County Health Department
900 Tenth Avenue
Marlinton, WV 24954

Bruce Jenkins
Preston County Health Department
106 West Main Street, Suite 203
Kingwood, WV 26537

Carey Eden, Environmental
Putnam County Health Department
1401 Hospital Drive, Suite 304
Hurricane, WV 25526

John Walls, Environmental
Beckley-Raleigh Health Department
1602 Harper Road
Beckley, WV 25801

Warren Elmer, Environmental
Randolph County Health Department
32 Randolph Avenue, Suite 101
Elkins, WV 26241

Chad Meador, Environmental
Summers County Health Department
Post Office Box 898
Hinton, WV 25951

Ronald Dellinger, Environmental
Grafton-Taylor Health Department
Post Office Box 15
Grafton, WV 26354

James Snyder, Environmental
Tucker County Health Department
206 1/2 Third Street
Parsons, WV 26287

Josh Marsh, Environmental
Upshur-Buckhannon Health Department
15 North Locust Street
Buckhannon, WV 26201

Melissa Spence, Environmental
Wayne County Health Department
Post Office Box 368
Wayne, WV 25570

Jason Raschka, Environment
Webster County Health Department
112 Bell Street, Suite C
Webster Springs, WV 26288

Mark Hawkins, Environment
Wetzel-Tyler Health Department
425 South Fourth Avenue
Paden City, WV 26159

William Cox, Environment
Wyoming County Health Department
Post Office Box 1679
Pineville, WV 24874-1679

This is notice to you pursuant to 33 U.S.C. § 1365 that sixty (60) days from today suit will be filed against you in the United States District Court wherein you sit unless you take ~~action to stop your constituents from discharging untreated sewage into federally protected waterways. These discharges are being accomplished through the prohibited practices of straight-piping and the use of defective septic systems.~~

Congress strictly prohibited these methods of human waste disposal when it enacted the Clean Water Act nearly forty (40) years ago. By refusing and failing to enforce the Clean Water Act, you are aiding and abetting in this illegal conduct and undermining the purpose for which it was intended to serve, *i.e.*, the reduction of direct pollutant discharges to maintain and restore the integrity of our nation's waters. By failing to discharge these legal duties, you have exposed hundreds of thousands of people to serious health problems, created significant environmental hazards, endangered wildlife, inclusive of already endangered species, and contaminated waters used to provide fresh drinking water to the public.

As you know, the West Virginia Department of Environmental Protection (hereinafter "WVDEP"), at the direction and under the supervision of the United States Environmental Protection Agency (hereinafter "USEPA"), developed a Total Maximum Daily Load Report (TMDL) that identified and enumerated all non-point sources where human waste was being illegally discharged into federally protected waters ("impaired streams") within your jurisdiction through straight-piping or failing septic systems.

Section 303(d) of the Clean Water Act defines "impaired streams." These are the waterways that Congress protected by enacting the Clean Water Act. Behind the law, as it applies to this notice, is the undisputed fact that failing septic systems and straight-piping are significant sources of Fecal Coliform bacteria. The dangers associated with such contamination are widely recognized throughout this country and specifically by the West Virginia Bureau for Public Health ("WVBPH") which promulgated regulations strictly prohibiting the discharge of raw sewage into surface waters. All applicable laws establish a zero-tolerance policy for these prohibited practices. It is your duty to enforce these laws and to promote the underlying policies.

Your failure to discharge your legal duties is without authority and directly countermands the law you are charged with enforcing. In effect, you have created a policy and practice within your jurisdiction of zero-enforcement rather than zero-tolerance.

In its studies, the WVDEP identified both failing septic systems and straight-pipe sources. As the WVDEP noted, none of these discharges were made pursuant to a NPDES (National Pollutant Discharge Elimination System) permit. Of course, implicit in that finding is that none of these activities could have been authorized under a NPDES permit as no permit could ever be legally issued to allow such illicit discharge of human waste. Consequently, in every single instance of a defective system and every single instance of straight-piping, you and your colleagues and perhaps your constituents have conspired to and are in fact violating both West Virginia law and the law of this nation as set forth in the Clean Water Act.

Congress delegated the authority and corresponding duty to enforce these provisions of the Clean Water Act to the USEPA. The USEPA, in turn, delegated enforcement of the Clean Water Act within West Virginia to the WVDEP. The WVDEP, in turn, delegated its authority and duty to the West Virginia Public Health Department. Under the direction of Rick Hertges, the West Virginia Bureau for Public Health Sanitation, in turn, delegated its authority and this duty to you and each and every other county sanitarian located in West Virginia. You and your fellow sanitarians share joint responsibility with every delegating authority above you in this chain of authority. Ultimately, however, you are on the front lines to enforce the law within your jurisdiction. It is, and for a number of decades has been, up to you and your predecessors to make sure that point source discharges and discharges from existing, but defective septic systems, do not occur and, if they do, to take immediate action to cause such persons to cease and desist.

Even isolated instances of straight-piping are illegal. The diffuse pattern and practice that is ongoing within your jurisdiction, however, makes this an environmental and health issue of the first magnitude. It affects the environment. It affects the many hundreds of thousands of people residing in West Virginia who rely on you for their health and sanitation. It also affects the thousands of annual visitors from within and outside of West Virginia who use these waterways for recreational purposes.

Your pervasive practice of not providing an approved wastewater disposal system to your residents is unprecedented anywhere in this country outside of West Virginia. In fact, this practice falls below the prevailing health standards in most civilized third-world countries.

The fact that you, your colleagues and your predecessors have failed and refused to satisfy even the most basic legal requirements related to the health standards created by this body of law makes this problem both systemic and epidemic. The fact that you have taken no action despite the fact that dollars collected from taxpayers across this country were allocated and expended to do your work for you by identifying these illegal discharges within your jurisdiction suggest that you are incompetent, malevolent or engaged in other illegal, perhaps criminal, practices.

Given how pervasive and widespread these illegal practices have been in your own backyard for nearly forty (40) years, and the fact that ignorance of the law is no excuse, strongly suggests that your actions are willful, wanton, malicious and intentional. This, in turn, implies that you consider yourself to be above the law or beyond its reach.

My clients intend to put you to the test on this belief. Your receipt of this letter starts the clock on a sixty (60)-day grace period that Congress has graciously extended to you. Ironically, the very statute that you have thumbed your nose at for so long is the source of protection for you at this point. It alone grants you the power and a sixty (60)-day window of time to preclude this enforcement action against you from being filed. You can stop this action by simply complying with the clear and unambiguous requirements of the Clean Water Act. This statutory grace period prohibits my clients from initiating the promised suit until the expiration of sixty (60) days, and at that time, only if you have not stopped the prohibited practices.

~~It is unfortunate to the citizens of West Virginia and others who enjoy this beautiful state that you have chosen to use our nation's waterways as the waste removal system in your jurisdiction rather than providing functional sewer or septic tank systems. Ironically, the number of people flushing toilets into these waters is roughly equivalent to the number of reported whitewater rafters using these same waters. No effort has yet been made to identify the number of fishermen that visit these impaired streams.~~

Nonetheless, there is no evidence that any portion of the significant contribution made by such enthusiasts to the reported \$4.4 billion a year travel and tourism industry in West Virginia has been spent towards meaningfully addressing this problem. You have to wonder whether anyone would put a whitewater craft in use in these waters if you disclosed to them what you have long known.

The practices you authorize, promote, condone, facilitate and even require of your residents make the waters of West Virginia a virtual cesspool. West Virginia is rightfully known and held out to be one of God's great creations. As such, it recently attracted the Boy Scouts of America, which announced plans to use a reported \$50 million gift to add a high adventure camp in West Virginia. It is reported that this camp will put thousands of scouts per week in West Virginia's rivers.

In your position, you have the duty to regulate the disposal of human waste in a manner that is sanitary and meets the requirements of the Clean Water Act. The environmental and health impact associated with introducing these pollutants into these waters is far reaching. The detrimental effects of such pollutants are extreme.

For thirty-eight (38) years, you have ignored the Clean Water Act, but we are hopeful that the threat of these actions will induce you to act according to the law. I am sure that you agree that if left alone now, another thirty-eight (38) years will pass and the possibility of correction will be even more difficult.

To date, you and your colleagues have made a statement that you have no intention of stopping people from dumping raw sewage into these federally-protected waterways. Nothing

can be done to change the past, but you can make changes that correct this problem in the present and for the future. As you know, this problem is pervasive and remedial measures require action, not talk.

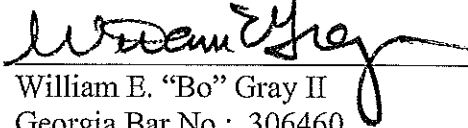
Again, this is your sixty (60)-day notice under the Clean Water Act that you have an opportunity to choose a course of voluntary actions that will directly benefit hundreds of thousands of people and, indirectly, countless others throughout our nation. In the alternative, you can choose to do what you have done for thirty-eight (38) years, turn a blind eye and a deaf ear. In that event, you and your constituents will suffer an array of expensive consequences specifically provided for by Congress under the Clean Water Act.

On top of such monetary consequences, litigation of these issues can be time-consuming and costly, with the violators, such as you, bearing the costs of both sides. Added cost, of course, is not something that you will want to tack on to the already significant cost of becoming compliant.

You have to start somewhere and at sometime and, pursuant to this notice, now is the time.

This 6th day of May, 2010.

**GRAY KING CHAMBERLIN &
MARTINEAU LLC**


William E. "Bo" Gray II
Georgia Bar No.: 306460
Attorney for Proposed Plaintiffs

P.O. Box 467277
Atlanta, GA 31146-7277
Telephone: (770) 542-0505
Facsimile: (404) 393-0478

OTHER PERSONS RECEIVING THIS NOTICE AS A PROFESSIONAL COURTESY:

Brad Cochran, R.S., Director
Office of Environmental Health Services
Public Health Sanitation Division
Capitol & Washington Streets
1 Davis Square, Suite 200
Charleston, WV 25301-1798

Randy C. Huffman, Cabinet Secretary
West Virginia DEP
601 57th Street
Charleston, WV 25304

Raymond S. Franks, II, General Counsel to West Virginia DEP
601 57th Street
Charleston, WV 25304

United States EPA Region 3
1650 Arch Street
Philadelphia, PA 19103-2029

Rick Hertges, Director
WV Bureau for Public Health Sanitation
Office of Environmental Health Services
Public Health Sanitation Division
One Davis Square, Suite 200
Charleston, WV 25301-1798

Kelley Goes, Cabinet Secretary
West Virginia Department of Commerce
Division of Natural Resources
Capitol Complex, Building 6, Room 525
Charleston, WV 25305

Frank Jezioro, DNR Director
Department of Commerce
Division of Natural Resources
Building 74
324 Fourth Avenue
South Charleston, WV 25303