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SIERRA CLUB THREATENS TO SUE USEPA
Mo. DNR Failed To Submit Required Lists Of Impaired Waters

Today, April 4, 2006, the Sierra Club with legal representation provided by Great Rivers Environmental Law Center of St. Louis, sent a Sixty-Day Notice of Intent to Sue letter to the US Environmental Protection Agency (USEPA). Copies were provided to the US Attorney General, USEPA Region 7 and to the Water Protection Program of the Missouri Department of Natural Resources (MDNR).

The Notice of Intent to Sue is required by the provisions of the federal Clean Water Act, and gives notice to the USEPA that unless certain steps are taken, the sender of the letter will file litigation in federal court. The Sierra Club is asserting that the MDNR has not complied with the requirements of Section 303(d) of the Clean Water Act. That section and corresponding regulations - 40CFR130.10(d) - stipulate that each state must submit a list of “impaired waterbodies” (those not meeting state standards) every even-numbered year. If the state agency fails to submit the list, the USEPA is required to make the list itself. The MDNR failed to submit the lists that were due on April 1, 2004, and April 3, 2006.

“This is a key component of the Clean Water Act,” stated Ken Midkiff, Conservation Chair of the Ozark (MO) Chapter of the Sierra Club. “By listing polluted waters, a roadmap is provided. The 303(d) List tells the State that these streams should receive immediate attention – that these streams are the Number One Priority for restoration.”

“The first step is to identify the impaired waters,” said Kathleen Henry, attorney with Great Rivers Environmental Law Center. “The next step is to do a study of the amount of each pollutant that can be discharged without causing the stream to be impaired. The third step is most critical and, based on the study in Step 2, assigns an allocation to each discharger. But without taking the first step, the second and third ones can’t be taken – and Missouri’s streams and rivers remain polluted. The USEPA is responsible for seeing to it that the first step is taken. It has not done so, even though federal law says it is required to do so.”

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