



## **WATER POLLUTION:**

### **Enviros file federal lawsuit in campaign to protect Colo. river**

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WildEarth Guardians has filed a federal lawsuit against a Littleton, Colo.-based company, claiming that years of polluted discharges violated the Clean Water Act and significantly damaged the South Platte River, which supplies drinking water to the Denver metropolitan area.

The Santa Fe, N.M.-based group late yesterday filed the so-called citizen enforcement lawsuit in Denver in U.S. District Court for the District of Colorado against IRG Bayaud LLC and two of the company's top officials. The suit claims that the more than century-old mining and chemical manufacturing site, which the company owned and was responsible for cleaning up, continues to pollute the river with arsenic and acidic wastewater.

IRG, a nationally recognized leader in brownfield remediation, took over the 37-acre site on the banks of the South Platte River in 2008 from General Chemical Corp. with the goal of cleaning up decades of polluted soils and groundwater, then selling the parcel back to the city and county of Denver for a profit, according to the 23-page complaint.

IRG dug up and removed contaminated soils with high levels of acids and heavy metals and placed a permeable soil cap on top of the site. In 2009, the company then conveyed the property to the city and county of Denver, where it is being developed as the Denver Public Works Central Platte Campus, housing city public works and wastewater operations, as well as an animal shelter.

But WildEarth Guardians claims in the lawsuit that the site is still polluting and remains in violation of the Clean Water Act.

WildEarth Guardians plans this week to file a 60-day notice of intent to sue the city and county of Denver if the government does not compel IRG to finish cleaning the site, said Jen Pelz, director of the group's wild river program.

"This illegal pollution threatens the health and vitality of Denver's signature river," Pelz said in a statement. "It's unconscionable that IRG has and continues to allow pollutants to flow off the site it is responsible for cleaning up."

In addition to IRG Bayaud, the lawsuit names as defendants Brent Anderson, IRG's CEO, and John Yerton, identified in the complaint as the company's project manager handling the voluntary cleanup plan at the site.

Anderson did not respond to requests seeking comment.

IRG, along with Denver, last year was honored by the Phoenix Awards Institute Inc. -- a nonprofit that recognizes "outstanding achievement and innovation relating to environmental and community issues" -- for its work in remediating the site, according to IRG's website.

But IRG, which has a discharge permit with the Colorado Department of Public Health and Environment, has submitted monthly reports to the state that "plainly acknowledge that the Facility has repeatedly and consistently violated and is continuing to violate the requirements" in its permit mandated under the Clean Water Act, according to the complaint.

"Defendants' acidic discharges have occurred virtually every month since IRG received their Permit in March 2008 and have significantly exceeded the authorized effluent limitations in the permit," the complaint states.

Among other things, the complaint states that IRG "failed to timely report violations of discharges that exceed effluent limitations and to take steps to reduce and eliminate the non-compliance," and that it also "failed to properly operate and maintain all pollution treatment and control systems necessary to comply with the limits" in the permit.

IRG, according to the complaint, notified the Department of Public Health and Environment in January "that it would no longer perform any of the obligations required by the Permit, including monitoring and reporting concentrations of toxic heavy metals, including arsenic, in the groundwater under the Facility," as well as conducting toxicity testing and filing monthly reports.

The Colorado Attorney General's Office "has informed IRG that it continues to be legally bound to comply with the requirements" of the permit despite conveying the property to the city and county, "and warned IRG against its continued violations of state and federal law, but has not taken any enforcement action," according to the complaint.

Thus, according to the complaint, WildEarth Guardians was forced to file the lawsuit.

In the complaint, WildEarth Guardians asks the court to find the defendants in violation of the permit and the Clean Water Act, and to order them "to take specific actions to remediate the past and future environmental harm caused by their violations" and to "pay remedial action costs to fix its failed low cost remediation."

The federal lawsuit is part of a broader campaign by WildEarth Guardians to protect and restore waterways across the Front Range, including the South Platte River and its tributaries.

Additional lawsuits are possible as part of the campaign, Pelz said.

WildEarth Guardians in October 2013 sent a 60-day notice of intent to sue IRG. At the same time, WildEarth Guardians sent a notice of intent to sue the Western Sugar Cooperative over its sugar beet processing plant in Fort Morgan, Colo., about 80 miles northeast of Denver. The group alleges in the notice that the plant has violated the Clean Water Act by

discharging fecal coliform bacteria and wastewater with high acidity levels into the South Platte River through a ditch and several unlined ponds.

Pelz said that lawsuit could be filed in the next few weeks.

As for IRG, the old mine site in question is about 4 miles upstream of Confluence Park in Denver, an area that WildEarth Guardians states in its legal complaint "receives substantial use by the public, as well as fish and other aquatic species."

The park, according to the complaint, "provides a riverside oasis for the public" during the summer, and people swim, kayak and picnic in the area.

"A community cannot thrive if dangerous pollutants threaten the health of the public and the river ecosystem," Pelz said. "We intend to enforce the law and ensure the waterways that inspire people to gather remain clean, fishable and swimmable."