

UNITED STATES OF AMERICA, ON BEHALF
OF THE NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION AND THE
UNITED STATES DEPARTMENT OF THE
INTERIOR; THE STATE OF WASHINGTON
THROUGH THE WASHINGTON
DEPARTMENT OF ECOLOGY;
MUCKLESHOOT INDIAN TRIBE;
SUQUAMISH INDIAN TRIBE OF THE PORT
MADISON RESERVATION,

Plaintiffs,

v.

GENERAL RECYCLING OF
WASHINGTON, LLC; THE DAVID J. JOSEPH
COMPANY; NUCOR STEEL SEATTLE, INC.,

Defendants.

1 Plaintiffs United States of America, by authority of the Attorney General, on
2 behalf of the National Oceanic and Atmospheric Administration of the Department of
3 Commerce, and the Department of the Interior; State of Washington through the Washington
4 Department of Ecology; Muckleshoot Indian Tribe; and Suquamish Indian Tribe of the Port
5 Madison Reservation, allege as follows:
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7 **I. GENERAL ALLEGATIONS**

8 1. This is a civil action under Section 107(a) of the Comprehensive Environmental
9 Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607(a); Section 311 of the
10 Clean Water Act (CWA), 33 U.S.C. § 1321; Section 1002(b) of the Oil Pollution Act (OPA), 33
11 U.S.C. § 2702(b); and the Model Toxics Control Act (MTCA), RCW 70A.305, for damages for
12 injury to, destruction of, or loss of natural resources resulting from the release of hazardous
13 substances and discharges of oil into the Lower Duwamish River and Elliott Bay in Seattle,
14 Washington.
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16 **II. JURISDICTION AND VENUE**

17 2. This Court has jurisdiction over this case pursuant to Sections 107 and 113(b) of
18 CERCLA, 42 U.S.C. §§ 9607 and 9613(b); Section 311(n) of the CWA, 33 U.S.C. § 1321(n);
19 Section 1017(b) of OPA, 33 U.S.C. § 2717(b); and 28 U.S.C. §§ 1331, 1345 and 1367(a).
20

21 3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C.
22 § 9613(b); Section 1017(b) of OPA, 33 U.S.C. § 2717(b); and 28 U.S.C. § 1391(b) and (c).
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III. THE SITE

4. The Lower Duwamish River is a highly industrialized river that flows into Elliott Bay in Seattle, Washington.

5. The Lower Duwamish River includes the in-waterway portions of three Superfund Sites: the Harbor Island Site (located south of downtown Seattle, Washington, including the East Waterway and West Waterway that flow from the south end of Harbor Island north to Elliott Bay), the Lower Duwamish Waterway Site (approximately 5 miles of the Duwamish River from the southern tip of Harbor Island south to the area around the Norfolk Combined Sewer Overflow/Storm Drain in Tukwila, Washington), and the Lockheed West Site (areas in and around the site formerly known as Lockheed Shipyard No. 2, located near the confluence of the West Waterway and Elliott Bay).

6. The “Lower Duwamish River” as used in this Complaint means any portion of the river (including the shoreline, intertidal areas, tributaries, estuaries and bottom sediments) in the State of Washington where hazardous substances and oil originating from the facility identified in paragraphs 14, 15, and 16 of this Complaint have come to be located.

7. “Elliott Bay” as used in this Complaint means any portion of Elliott Bay (including the shoreline, intertidal areas, tributaries, estuaries and bottom sediments) in the State of Washington where hazardous substances and oil originating from the facility identified in paragraphs 14, 15, and 16 of this Complaint have come to be located.

8. The Lower Duwamish River and Elliott Bay are contaminated with oil and a variety of hazardous substances, including arsenic, antimony, cadmium, chromium, copper,

1 mercury, nickel, lead, zinc, bis(2-ethylhexyl) phthalate, hexachlorobenzene,
2 hexachlorobutadiene, tributyltin (TBT), dichlorodiphenyltrichloroethane (DDT), phenol,
3 polychlorinated biphenyls (PCBs), and polycyclic aromatic hydrocarbons (PAHs). Overall, the
4 Trustees have identified the presence of over 30 hazardous substances in the sediments of the
5 Lower Duwamish River.

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7 9. The Lower Duwamish River and Elliott Bay are “navigable waters” within the
8 meaning of Section 1001(21) of OPA, 33 U.S.C. § 2701(21), and Sections 311 and 502(7) of the
9 CWA, 33 U.S.C. §§ 1321 and 1362(7).

10 IV. PLAINTIFFS

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12 10. Pursuant to Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), Section 1006 of
13 OPA, 33 U.S.C. § 2706, Section 311(f)(5) of the CWA, 33 U.S.C. § 1321(f)(5), and 40 C.F.R. §
14 300.600, the United States is trustee for certain natural resources in the Lower Duwamish River
15 and Elliott Bay.

16
17 11. Pursuant to Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), Section 1006 of
18 OPA, 33 U.S.C. § 2706, Section 311(f)(5) of the CWA, 33 U.S.C. § 1321(f)(5), 40 C.F.R. §
19 300.605, Ch. 43.21A RCW, Ch. 70A.305 RCW, and Ch. 90.48 RCW, the State of Washington is
20 trustee for certain natural resources in the Lower Duwamish River and Elliott Bay.

21
22 12. Pursuant to Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), Section 1006 of
23 OPA, 33 U.S.C. § 2706, and 40 C.F.R. § 300.610, the Suquamish Indian Tribe of the Port
24 Madison Reservation is trustee for certain natural resources in the Lower Duwamish River and
25 Elliott Bay.

26 COMPLAINT

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U. S. DEPARTMENT OF JUSTICE
Environment and Natural Resources Division
7600 Sand Point Way NE
Seattle, WA 98115

14. Defendant General Recycling of Washington, LLC has owned and operated a scrap metal operation at a facility located at 4260 West Marginal Way Seattle, Washington 98106-1210, from about 2002 to the present.

16. Defendant The David J. Joseph Company conducted scrap metal operations at the 4260 West Marginal Way facility between about 2000 and 2009.

17. The property identified in paragraphs 14, 15, and 16 of this Complaint is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). Investigations have detected oil and hazardous substances in soils, groundwater, or sediments at and near the facility.

18. During Defendants' respective ownership and/or operation of the facility, hazardous substances and/or oil were discharged and released to the Lower Duwamish River and Elliott Bay through direct discharges or other process discharges, and some of these hazardous substances are found in the sediments of the Lower Duwamish River and Elliott Bay. Discharges were to "navigable waters" or "adjoining shorelines" within the meaning of Section 1002(a) of OPA, 33 U.S.C. § 2702(a), and Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

Hazardous substances released from the facility and found in the sediments of the Lower Duwamish River and Elliott Bay include, but are not limited to, PAHs, PCBs, mercury, TBT, phenols, and phthalates.

VI. FIRST CLAIM FOR RELIEF

19. Plaintiffs reallege paragraphs 1 through 18.

20. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part, as follows:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section (1) the owner and operator of a vessel or a facility, (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, ...shall be liable for, . . . (C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; . . .

21. Materials disposed of and released in the Lower Duwamish River and Elliott Bay by Defendants include, but are not limited to, PAHs, PCBs, mercury, TBT, phenols, and phthalates, which are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

22. The facility owned and/or operated by Defendants identified in paragraphs 14, 15, and 16 of this Complaint is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

23. Releases of hazardous substances, including but not limited to PAHs, PCBs, mercury, TBT, phenols, and phthalates, have occurred in the Lower Duwamish River and Elliott

1 Bay within the meaning of Sections 101(22) of CERCLA, 42 U.S.C. § 9601(22). The releases of
 2 these hazardous substances in the Lower Duwamish River and Elliott Bay from the facility
 3 owned and/or operated by Defendants have resulted in injury to, destruction of, or loss of natural
 4 resources within the trusteeship of one or more of the Plaintiffs.

5 24. Defendants are each a person within the meaning of Section 107 of CERCLA, 42
 6 U.S.C. § 9607.
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8 25. Defendants are jointly and severally liable to Plaintiffs for natural resource
 9 damages resulting from releases of hazardous substances pursuant to Section 107(a)(4)(C) of
 10 CERCLA, 42 U.S.C. § 9607(a)(4)(C).
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12 **VII. SECOND CLAIM FOR RELIEF**

13 26. Plaintiffs reallege paragraphs 1 through 18.

14 27. Section 1002(a) of OPA, 33 U.S.C. § 2702(a), provides in pertinent part, as
 15 follows:

16 Notwithstanding any other provision or rule of law, and subject to
 17 the provisions of this Act, each responsible party for a vessel or a
 18 facility from which oil is discharged, or which poses the
 19 substantial threat of a discharge of oil, into or upon the navigable
 20 waters or adjoining shorelines or the exclusive economic zone is
 liable for the removal costs and damages specified in subsection
 (b) of this section that result from such incident.

21 28. Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), makes responsible
 22 parties liable for:

23 Damages for injury to, destruction of, loss of, or loss of use of,
 24 natural resources, including the reasonable costs of assessing the
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1 damage, which shall be recoverable by a United States trustee, a
2 State trustee, an Indian Tribe trustee, or a foreign trustee.

3 29. The facility owned and/or operated by the Defendants identified in paragraphs 14,
4 15, and 16 of this Complaint is a facility within the meaning of Sections 1001(9) and 1002 of
5 OPA, 33 U.S.C. §§ 2701(9) and 2702.

6 30. Section 1001(32) of OPA, 33 U.S.C. § 2701(32), makes owners and operators of
7 onshore facilities responsible parties for damages resulting from the discharge of oil from those
8 facilities.

9 31. The discharge of oil into the Lower Duwamish River, Elliott Bay or adjoining
10 shorelines from the facility owned and/or operated by the Defendants resulted in injury to,
11 destruction of, or loss of natural resources within the trusteeship of one or more of the Plaintiffs.

12 32. The Defendants are jointly and severally liable to Plaintiffs for natural resource
13 damages resulting from discharges of oil pursuant to Section 1002 of OPA, 33 U.S.C. § 2702.

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16 **VIII. THIRD CLAIM FOR RELIEF**

17 33. Plaintiffs the United States and the State of Washington reallege paragraphs 1
18 through 18.

19 34. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), provides in pertinent part,
20 as follows:
21

22 The discharge of oil or hazardous substances (i) into or upon the
23 navigable waters of the United States, adjoining shorelines, or into
24 or upon the waters of the contiguous zone . . . or which may affect
25 natural resources belonging to, appertaining to, or under the
exclusive management authority of the United States . . . in such

quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited

35. Section 311(f)(2) of the CWA, 33 U.S.C. § 1321(f)(2), provides in pertinent part, as follows:

Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government

36. Section 311(f)(4) of the CWA, 33 U.S.C. § 1321(f)(4), provides in pertinent part, as follows:

The costs of removal of oil or a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under subsection (f) of this section shall include any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection (b) of this section.

37. The facility owned and/or operated by Defendants identified in paragraphs 14, 15, and 16 of this Complaint is an onshore facility within the meaning of Section 311(f)(1) of the CWA, 33 U.S.C. § 1321(f)(1).

38. There have been discharges of hazardous substances in harmful quantities into the Lower Duwamish River, Elliott Bay and adjoining shorelines from the facility.

39. Discharges of hazardous substances from the facility into the Lower Duwamish River, Elliott Bay or adjoining shorelines have affected, damaged or destroyed natural resources belonging to, appertaining to, or under the management authority of the United States.

40. Defendants are jointly and severally liable to the United States and State of Washington for natural resource damages resulting from discharges of hazardous substances into the Lower Duwamish River, Elliott Bay, or adjoining shorelines pursuant to Section 311(f) of the CWA, 33 U.S.C. § 1321(f).

IX. FOURTH CLAIM FOR RELIEF

41. Plaintiff the State of Washington realleges paragraphs 1 through 18.

42. MTCA, RCW 70A.305.040, provides in pertinent part as follows:
 (1) Except as provided in subsection (3) of this section, the following persons are liable with respect to a facility: (a) The owner or operator of the facility; (b) Any person who owned or operated the facility at the time of disposal or release of the hazardous substances; (c) Any person who owned or possessed a hazardous substance and who by contract, agreement, or otherwise arranged for disposal or treatment of the hazardous substance at the facility, or arranged with a transporter for transport for disposal or treatment of the hazardous substances at the facility, or otherwise generated hazardous wastes disposed of or treated at the facility; (d) Any person (i) who accepts or accepted any hazardous substance for transport to a disposal, treatment or other facility selected by such person, from which there is a release or a threatened release for which remedial action is required, unless such facility, at the time of disposal or treatment, could legally receive such substance; or (ii) who accepts a hazardous substance for transport to such a facility and has reasonable grounds to believe that such facility is not operated in accordance with RCW 70A.300; and (e) Any person who both sells a hazardous substance and is responsible for written instructions for its use if (i) the substance is used according to the instructions and (ii) the use

1 constitutes a release for which remedial action is required at the
2 facility.

3 (2) Each person who is liable under this section is strictly liable,
4 jointly and severally, for . . . all natural resource damages resulting
5 from the releases or threatened releases of hazardous substances.

6 43. Materials disposed of and released in the Lower Duwamish River and Elliott Bay
7 from the facility owned and/or operated by Defendants include hazardous substances within the
8 meaning of RCW 70A.305.020(13).

9 44. The facility identified in paragraphs 14, 15, and 16 of this Complaint is a facility
10 within the meaning of RCW 70A.305.020(8).

11 45. Releases or threatened releases of hazardous substances have occurred in the
12 Lower Duwamish River and Elliott Bay within the meaning of RCW 70A.305.020 and
13 70A.305.040.

14 46. The natural resources that have been and continue to be injured, destroyed, or lost
15 by the release of hazardous substances from the facility owned and/or operated by Defendants
16 include fish, shellfish, invertebrates, birds, sediments, and other such natural resources.

17 47. The State of Washington has incurred and continues to incur costs related to the
18 assessment of injury to natural resources caused by the releases of hazardous substances from the
19 facility owned and/or operated by Defendants.
20

21 48. Pursuant to RCW 70A.305.040(2), Defendants are jointly and severally liable to
22 the State of Washington for all damages to natural resources in the Lower Duwamish River and
23

1 Elliott Bay, resulting from the release of hazardous substances at or from Defendants' owned
2 and/or operated facility.

3 **X. REQUEST FOR RELIEF**

4 WHEREFORE, Plaintiffs request that this Court enter judgment jointly and severally
5 against Defendants:

6 (1) For damages for injury to natural resources resulting from the discharges of oil or
7 releases of hazardous substances in the Lower Duwamish River and Elliott Bay, including the
8 cost of assessing such damages; and

9 (2) Awarding Plaintiffs such other and further relief as this Court may deem appropriate.

10 Dated: March 12, 2024

11 UNITED STATES OF AMERICA

12 TODD KIM
13 Assistant Attorney General
14 Environment & Natural Resources Division
15 U.S. Department of Justice
16 Washington, D.C. 20530

17
18
19
20 /s Erika M. Wells
21 ERIKA M. WELLS
22 Senior Counsel
23 Environmental Enforcement Section
24 Environment & Natural Resources Division
25 U.S. Department of Justice, c/o NOAA
26 7600 Sand Point Way, NE
27 Seattle, Washington 98115
28 (202) 532-3258

COMPLAINT

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U. S. DEPARTMENT OF JUSTICE
Environment and Natural Resources Division
7600 Sand Point Way NE
Seattle, WA 98115

1 OF COUNSEL:

2 JOSEPH EDGELL
3 National Oceanic and Atmospheric Administration

4 DEIRDRE DONAHUE
5 U.S. Department of the Interior

6 STATE OF WASHINGTON

7 ROBERT FERGUSON
8 Attorney General

9 /s John Level
10 JOHN LEVEL
11 Assistant Attorney General
12 2425 Bristol Court S.W.
13 P.O. Box 40117
14 Olympia, WA 98504 0117

15 SUQUAMISH INDIAN TRIBE
16 OF THE PORT MADISON RESERVATION

17 /s Kendra Martinez
18 KENDRA MARTINEZ
19 Suquamish Tribe, Office of Tribal Attorney
20 P.O. Box 498
21 Suquamish, WA 98392-0498
22 (360) 394-8494

23 MUCKLESHOOT INDIAN TRIBE

24 /s Trent Crable
25 TRENT S.W. CRABLE, WSBA #38227
26 Muckleshoot Indian Tribe

27 COMPLAINT

39015 172nd Avenue SE
Auburn, WA 98092
(253) 876 3185

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COMPLAINT

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7600 Sand Point Way NE
Seattle, WA 98115

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 12, 2024, a copy of the foregoing, COMPLAINT, was served by the Court's CM/ECF system upon all persons registered to receive filings in this matter. In addition, I served a copy via electronic mail to the following counsel:

Michael Kozlowski
Michael.kozlowski@esbrook.com

Counsel for Defendants

s/ Erika M. Wells

COMPLAINT

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U. S. DEPARTMENT OF JUSTICE
Environment and Natural Resources Division
7600 Sand Point Way NE
Seattle, WA 98115