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Hon. _____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,)	
STATE OF WASHINGTON,)	
PUYALLUP TRIBE OF INDIANS; and)	
MUCKLESHOOT INDIAN TRIBE,)	Civil No.
)	
Plaintiffs,)	
)	
v.)	COMPLAINT
)	
BHP HAWAII, INC., as successor to PRI)	
Northwest, Inc.,)	
)	
Defendant.)	

Plaintiffs United States of America, by authority of the Attorney General, on behalf of the National Oceanic and Atmospheric Administration of the Department of Commerce and the Department of the Interior; State of Washington through the Washington Department of Ecology; Puyallup Tribe of Indians; and Muckleshoot Indian Tribe, allege as follows:

I. GENERAL ALLEGATIONS

1. This is a civil action under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607(a); section 311 of the

1 Clean Water Act (CWA), 33 U.S.C. § 1321; section 1002(b) of the Oil Pollution Act (OPA), 33
2 U.S.C. § 2702(b); and the Model Toxics Control Act (MTCA), RCW 70.105D, for damages for
3 injury to, destruction of, or loss of natural resources resulting from the release of hazardous
4 substances and discharges of oil into Commencement Bay in Tacoma, Washington.

5 II. JURISDICTION AND VENUE

6 2. This Court has jurisdiction over this case pursuant to sections 107 and 113(b) of
7 CERCLA, 42 U.S.C. §§ 9607 and 9613(b); section 311(n) of the CWA, 33 U.S.C. § 1321(n);
8 section 1017(b) of OPA, 33 U.S.C. § 2717(b); and 28 U.S.C. §§ 1331, 1345 and 1367(a).

9 3. Venue is proper in this district pursuant to section 113(b) of CERCLA, 42 U.S.C.
10 § 9613(b); section 1017(b) of OPA, 33 U.S.C. § 2717(b); and 28 U.S.C. § 1391(b) and (c).

11 III. THE SITE

12 4. Commencement Bay is an embayment in southern Puget Sound located in and
13 adjacent to Tacoma, Washington.

14 5. The “Commencement Bay Environment” as used in this Complaint means the
15 waters of Commencement Bay, including the shoreline, intertidal areas, tributaries, drainage
16 areas, estuaries and bottom sediments, lying south of a line drawn from Point Defiance to Dash
17 Point, and including the Thea Foss Waterway, Wheeler-Osgood Waterway, Middle Waterway,
18 St. Paul Waterway, Puyallup River from the mouth south to the present City limits, Milwaukee
19 Waterway, Sitcum Waterway, Blair Waterway and Hylebos Waterway. This area includes but is
20 not limited to the Commencement Bay Nearshore/Tideflats Superfund Site, as identified or
21 amended by the U.S. Environmental Protection Agency, and areas affected by releases of
22 hazardous substances within the Commencement Bay Nearshore/Tideflats Superfund Site.

23 6. Commencement Bay is contaminated with a variety of hazardous substances,
24 including antimony, cadmium, chromium, copper, mercury, nickel, lead, zinc, bis(2-ethylhexyl)-
25 phthalate, hexachlorobenzene, hexachlorobutadiene, polycyclic aromatic hydrocarbons and
26 polychlorinated biphenyls (PCBs).

27 7. The Hylebos Waterway and Commencement Bay are navigable waters within the
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1 meaning of section 1001(21) of OPA, 33 U.S.C. § 2701(21), and section 502(7) of the CWA, 33
2 U.S.C. § 1362(7).

3 IV. PLAINTIFFS

4 8. Pursuant to section 107(f) of CERCLA, 42 U.S.C. § 9607(f), section 1006 of
5 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. §
6 300.600, the United States is trustee for certain natural resources in the Hylebos Waterway and
7 the Commencement Bay Environment.

8 9. Pursuant to section 107(f) of CERCLA, 42 U.S.C. § 9607(f), section 1006 of
9 OPA, 33 U.S.C. § 2706, section 311(f)(5) of the CWA, 33 U.S.C. § 1321(f)(5), 40 C.F.R. §
10 300.605, Ch. 43.21A RCW, Ch. 70.105D RCW, and Ch. 90.48 RCW, the State of Washington is
11 trustee for certain natural resources in the Hylebos Waterway and the Commencement Bay
12 Environment.

13 10. Pursuant to section 107(f) of CERCLA, 42 U.S.C. § 9607(f), section 1006 of
14 OPA, 33 U.S.C. § 2706, and 40 C.F.R. § 300.610, the Puyallup Tribe of Indians is trustee for
15 certain natural resources in the Hylebos Waterway and the Commencement Bay Environment.

16 11. Pursuant to section 107(f) of CERCLA, 42 U.S.C. § 9607(f), section 1006 of
17 OPA, 33 U.S.C. § 2706, and 40 C.F.R. § 300.610, the Muckleshoot Indian Tribe is trustee for
18 certain natural resources in the Hylebos Waterway and the Commencement Bay Environment.

19 V. DEFENDANT

20 12. Defendant BHP Hawaii, Inc. is a corporation organized under the laws of the State
21 of Hawaii.

22 13. Defendant BHP Hawaii, Inc. is the successor to PRI Northwest, Inc. (PRI).

23 14. At times relevant to this Complaint, PRI did business in this district.

24 15. PRI operated a bulk fuel storage and distribution facility on the Hylebos
25 Waterway from 1978 to 1985, and owned the facility from 1982 to 1985. PRI also operated a
26 tetra-ethyl lead fuel additive plant and a fuel “topping plant” on the Waterway.

27 16. PRI’s plants and properties are facilities within the meaning of section 101(9) of
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1 CERCLA, 42 U.S.C. § 9601(9).

2 17. There have been discharges and releases of hazardous substances and fuel at PRI's
3 facilities into the Hylebos Waterway and the Commencement Bay Environment.

4 VI. FIRST CLAIM FOR RELIEF

5 18. Plaintiffs reallege paragraphs 1 through 17.

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

8 Notwithstanding any other provision or rule of law, and subject
9 only to the defenses set forth in subsection (b) of this section -

10 (1) the owner and operator of a vessel or a facility,

11 (2) any person who at the time of disposal of any hazardous
12 substance owned or operated any facility at which such hazardous
substances were disposed of,

13 (3) any person who by contract, agreement, or otherwise arranged
14 for disposal or treatment, or arranged with a transporter for
transport for disposal or treatment, of hazardous substances owned
15 or possessed by such person, by any other party or entity, at any
facility or incineration vessel owned or operated by another party
or entity and containing such hazardous substances, and

16 (4) any person who accepts or accepted any hazardous substances
17 for transport to disposal or treatment facilities, incineration vessels
or sites selected by such person, from which there is a release, or a
18 threatened release which causes the incurrence of response costs,
of a hazardous substance, shall be liable for

19 * * *

20 (C) damages for injury to, destruction of, or loss of natural resources,
21 including the reasonable costs of assessing such injury, destruction, or loss
resulting from such a release;

22 * * *

23 20. Materials disposed of and released in the Commencement Bay Environment by
24 PRI include hazardous substances within the meaning of section 101(14) of CERCLA, 42 U.S.C.
25 § 9601(14).

26 21. The Commencement Bay Environment is a facility within the meaning of section
27 101(9) of CERCLA, 42 U.S.C. § 9601(9).

1 facilities owned or operated by PRI has resulted in injury to, destruction of, or loss of natural
2 resources within the trusteeship of one or more of the Plaintiffs.

3 31. Defendant is liable to Plaintiffs for natural resource damages resulting from
4 discharges of oil pursuant to section 1001 of OPA, 33 U.S.C. § 2701.

5 VIII. THIRD CLAIM FOR RELIEF

6 32. Plaintiffs reallege paragraphs 1 through 31.

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

9 The discharge of oil or hazardous substances (i) into or upon the navigable waters
10 of the United States, adjoining shorelines, or into or upon the waters of the
11 contiguous zone . . . or which may affect natural resources belonging to,
12 appertaining to, or under the exclusive management authority of the United States
13 . . . in such quantities as may be harmful as determined by the President under
14 paragraph (4) of this subsection, is prohibited

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

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

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

28 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.

36. The facilities owned or operated by PRI are onshore facilities within the meaning
of section 311(f)(1) of the CWA, 33 U.S.C. § 1321(f)(1).

37. There have been discharges of oil or hazardous substances in harmful quantities

1 into the Hylebos Waterway and adjoining shorelines from the facilities owned or operated by
2 PRI.

3 38. Discharges of oil or hazardous substances from the facilities owned or operated by
4 PRI into the Hylebos Waterway or adjoining shorelines have affected, damaged or destroyed
5 natural resources belonging to, appertaining to, or under the exclusive management authority of
6 the United States.

7 39. Defendant is liable to the United States and State of Washington for natural
8 resource damages resulting from discharges of oil or hazardous substances into the Hylebos
9 Waterway or adjoining shorelines pursuant to section 311(f) of the CWA, 33 U.S.C. § 1321(f).

10 IX. FOURTH CLAIM FOR RELIEF

11 40. Plaintiffs reallege paragraphs 1 through 39.

12 41. MTCA, Chapter 70.105D.040 RCW, provides in pertinent part as follows:

13 (1) Except as provided in subsection (3) of this section, the following persons are liable
14 with respect to a facility:

15 (a) The owner or operator of the facility;

16 (b) Any person who owned or operated the facility at the time of disposal or
release of the hazardous substances;

17 (c) Any person who owned or possessed a hazardous substance and who by
18 contract, agreement, or otherwise arranged for disposal or treatment of the hazardous
19 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;

20 (d) Any person (i) who accepts or accepted any hazardous substance for transport
21 to a disposal, treatment or other facility selected by such person, from which there is a
22 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
23 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 chapter 70.105 RCW; and

24 (e) Any person who both sells a hazardous substance and is responsible for written
25 instructions for its use if (i) the substance is used according to the instructions and (ii) the
use constitutes a release for which remedial action is required at the facility.

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

28 42. Materials disposed of and released in the Commencement Bay Environment at the

1 sites owned or operated by PRI include hazardous substances within the meaning of Chapter
2 70.105D.020(6)(c) RCW.

3 43. The sites owned or operated by PRI are facilities within the meaning of Chapter
4 70.105D.020(4) RCW.

5 44. The Commencement Bay Environment is a facility within the meaning of Chapter
6 70.105D.020(4) RCW.

7 45. Releases or threatened releases of hazardous substances have occurred in the
8 Commencement Bay Environment within the meaning of Chapter 70.105D.020 RCW and
9 Chapter 70.105D.040 RCW.

10 46. The natural resources that have been and continue to be injured, destroyed, or lost
11 by the release of hazardous substances at the facilities owned or operated by PRI include fish,
12 shellfish, invertebrates, birds, marine sediments, and other such natural resources.

13 47. The State of Washington has incurred and continues to incur response costs
14 related to the assessment of injury to natural resources caused by the releases of hazardous
15 substances at the facilities owned or operated by PRI.

16 48. Pursuant to Chapter 70.105D.040(2) RCW, Defendant is jointly and severally
17 liable to the State of Washington for all damages to natural resources in the Commencement Bay
18 Environment, resulting from the release of hazardous substances at or from PRI's facilities.

19 X. REQUEST FOR RELIEF

20 WHEREFORE, Plaintiffs request that this Court enter judgment against
21 Defendant:

22 (1) For damages for injury to natural resources resulting from the discharges or releases
23 of hazardous substances in the Hylebos Waterway and Commencement Bay Environment,
24 including the cost of assessing such damages; and

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

26 Dated: April 10, 2008
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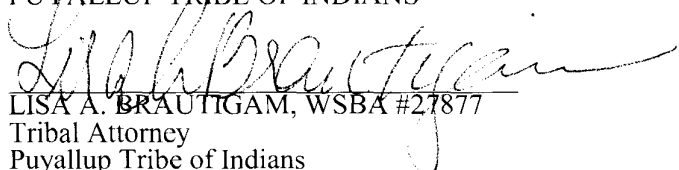
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