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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

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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. )  
  
CROWLEY MARINE SERVICES, INC., )  
8th AVENUE TERMINALS, INC., and )  
WASHINGTON DEPARTMENT OF )  
TRANSPORTATION, )  
  
Defendants. )

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Case No. CV-24-307  
COMPLAINT

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:  
6

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.  
15

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**

1  
2 4. The Lower Duwamish River is a highly industrialized river that flows into Elliott  
3 Bay in Seattle, Washington.

4 5. The Lower Duwamish River includes the in-waterway portions of three  
5 Superfund Sites: the Harbor Island Site (located south of downtown Seattle, Washington,  
6 including the East Waterway and West Waterway that flow from the south end of Harbor Island  
7 north to Elliott Bay), the Lower Duwamish Waterway Site (approximately 5 miles of the  
8 Duwamish River from the southern tip of Harbor Island south to the area around the Norfolk  
9 Combined Sewer Overflow/Storm Drain in Tukwila, Washington), and the Lockheed West Site  
10 (areas in and around the site formerly known as Lockheed Shipyard No. 2, located near the  
11 confluence of the West Waterway and Elliott Bay).  
12  
13

14 6. The “Lower Duwamish River” as used in this Complaint means any portion of the  
15 river (including the shoreline, intertidal areas, tributaries, estuaries and bottom sediments) in the  
16 State of Washington where hazardous substances and oil originating from the facilities identified  
17 in Paragraphs 14 and 15 of this Complaint have come to be located.  
18

19 7. “Elliott Bay” as used in this Complaint means any portion of Elliott Bay  
20 (including the shoreline, intertidal areas, tributaries, estuaries and bottom sediments) in the State  
21 of Washington where hazardous substances and oil originating from the facilities identified in  
22 Paragraphs 14 and 15 of this Complaint have come to be located.  
23

24 8. The Lower Duwamish River and Elliott Bay are contaminated with oil and a  
25 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.

6  
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**

11  
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

- 4 -

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

28

1           13. Pursuant to Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), Section 1006 of  
2 OPA, 33 U.S.C. § 2706, and 40 C.F.R. § 300.610, the Muckleshoot Indian Tribe is trustee for  
3 certain natural resources in the Lower Duwamish River and Elliott Bay.

4   **V. DEFENDANTS**

5           14. Defendants Crowley Marine Services, Inc., and 8th Avenue Terminals, Inc.,  
6 formerly known as Pacific Terminals, Inc., (collectively, Crowley Defendants) owned and  
7 operated a marine transportation and logistics operation at a facility along the LDR located at  
8 7400 8th Avenue S., Seattle, Washington, from about 1992 to 2014. In about 2007, Crowley  
9 Marine Services, Inc., sold a portion of the property to the City of Seattle. Around 2008,  
10 Crowley Marine Services, Inc., conveyed its remaining interest in the property to 8th Avenue  
11 Terminals, Inc., which sold the property in 2014. In 2019, 8th Avenue Terminals, Inc.  
12 reacquired the property it sold in 2014. Prior to the Crowley Defendants’ ownership of the  
13 facility, companies conducted various industrial activities on the property, including  
14 manufacturing and repairing heavy equipment; manufacturing pipe, asphalt, and concrete; and  
15 treating wood. Prior to and during the Crowley Defendants’ operations, releases of hazardous  
16 substances including PAHs, phenol, and 4-methylphenol, and discharges of oil to the LDR  
17 occurred at and from the facility.  
18  
19  
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21           15. Defendant Washington State Department of Transportation owns and operates an  
22 outfall identified as I-5 Storm Drain #2046- Slip 4, which collects stormwater runoff from I-5  
23 and surrounding areas, that the Trustees have identified as a source of releases of hazardous  
24 substances, particularly DDT, to the LDR.  
25

1 16. The property and outfall identified in Paragraphs 14 and 15 of this Complaint are  
2 facilities within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). Investigations  
3 have detected oil and hazardous substances in soils, groundwater or sediments at and near the  
4 facilities.

5  
6 17. During Defendants' respective periods of ownership and operation of the facilities  
7 identified in Paragraphs 14 and 15 of this Complaint, hazardous substances and/or oil were  
8 discharged and released to the Lower Duwamish River and Elliott Bay through direct discharges  
9 or other process discharges, and some of these hazardous substances are found in the sediments  
10 of the Lower Duwamish River and Elliott Bay. Discharges were to "navigable waters" or  
11 "adjoining shorelines" within the meaning of Section 1002(a) of OPA, 33 U.S.C. § 2702(a), and  
12 Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3). Hazardous substances released from the  
13 facilities and found in the sediments of the Lower Duwamish River and Elliott Bay include, but  
14 are not limited to, PAHs, DDT, phenol, and 4-methylphenol.  
15

16  
17 **VI. FIRST CLAIM FOR RELIEF**

18 18. Plaintiffs reallege paragraphs 1 through 17.

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

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

1 reasonable costs of assessing such injury, destruction, or loss  
2 resulting from such a release; . . .

3 20. Materials disposed of and released in the Lower Duwamish River and Elliott Bay  
4 by Defendants include, but are not limited to, PAHs, DDT, phenol, and 4-methylphenol, which  
5 are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §  
6 9601(14).

7 21. The facilities owned and operated, or formerly owned and operated, by  
8 Defendants, identified in Paragraphs 14 and 15 of this Complaint, are facilities within the  
9 meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

10 22. Releases of hazardous substances, including but not limited to PAHs, DDT,  
11 phenol, and 4-methylphenol have occurred in the Lower Duwamish River and Elliott Bay within  
12 the meaning of Sections 101(22) of CERCLA, 42 U.S.C. § 9601(22). The releases of these  
13 hazardous substances in the Lower Duwamish River and Elliott Bay from the facilities owned  
14 and operated, or formerly owned and operated, by Defendants have resulted in injury to,  
15  
16 and operated, or formerly owned and operated, by Defendants have resulted in injury to,  
17 destruction of, or loss of natural resources within the trusteeship of one or more of the Plaintiffs.

18 23. Defendants are each a person within the meaning of Section 107 of CERCLA, 42  
19 U.S.C. § 9607.

20 24. Defendants are jointly and severally liable to Plaintiffs for natural resource  
21 damages resulting from releases of hazardous substances pursuant to Section 107(a)(4)(C) of  
22 CERCLA, 42 U.S.C. § 9607(a)(4)(C).  
23

1 **VII. SECOND CLAIM FOR RELIEF (CROWLEY DEFENDANTS ONLY)**

2 25. Plaintiffs reallege paragraphs 1 through 17.

3 26. Section 1002(a) of OPA, 33 U.S.C. § 2702(a), provides in pertinent part, as  
4 follows:

5 Notwithstanding any other provision or rule of law, and subject to  
6 the provisions of this Act, each responsible party for a vessel or a  
7 facility from which oil is discharged, or which poses the  
8 substantial threat of a discharge of oil, into or upon the navigable  
9 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.

10 27. Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), makes responsible  
11 parties liable for:

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

16 28. The facilities owned and operated, or formerly owned and operated, by the  
17 Crowley Defendants identified in Paragraph 14 of this Complaint are facilities within the  
18 meaning of Sections 1001(9) and 1002 of OPA, 33 U.S.C. §§ 2701(9) and 2702.

19 29. Section 1001(32) of OPA, 33 U.S.C. § 2701(32), makes owners and operators of  
20 onshore facilities responsible parties for damages resulting from the discharge of oil from those  
21 facilities.

22 30. The discharge of oil into the Lower Duwamish River, Elliott Bay or adjoining  
23 shorelines from the facilities owned and operated, or formerly owned and operated, by the  
24



1 Crowley Defendants identified in Paragraph 14 of this Complaint resulted in injury to,  
2 destruction of, or loss of natural resources within the trusteeship of one or more of the Plaintiffs.

3 31. The Crowley Defendants identified in Paragraph 14 of this Complaint are jointly  
4 and severally liable to Plaintiffs for natural resource damages resulting from discharges of oil  
5 pursuant to Section 1002 of OPA, 33 U.S.C. § 2702.  
6

7 **VIII. THIRD CLAIM FOR RELIEF**

8 32. Plaintiffs the United States and the State of Washington reallege paragraphs 1  
9 through 17.

10 33. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), provides in pertinent part,  
11 as follows:  
12

13 The discharge of oil or hazardous substances (i) into or upon the  
14 navigable waters of the United States, adjoining shorelines, or into  
15 or upon the waters of the contiguous zone . . . or which may affect  
16 natural resources belonging to, appertaining to, or under the  
17 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 . . . .

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

20 Except where an owner or operator of an onshore facility can  
21 prove that a discharge was caused solely by (A) an act of God, (B)  
22 an act of war, (C) negligence on the part of the United States  
23 Government, or (D) an act or omission of a third party without  
24 regard to whether any such act or omission was or was not  
25 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

1 actual costs incurred under subsection (c) of this section for the  
2 removal of such oil or substance by the United States Government

3 . . . .

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

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

13 36. The facilities owned and operated, or formerly owned and operated, by  
14 Defendants, identified in Paragraphs 14 and 15 of this Complaint, are onshore facilities within  
15 the meaning of Section 311(f)(1) of the CWA, 33 U.S.C. § 1321(f)(1).

16 37. There have been discharges of hazardous substances in harmful quantities into the  
17 Lower Duwamish River, Elliott Bay and adjoining shorelines from the facilities.

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

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

**IX. FOURTH CLAIM FOR RELIEF**

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40. Plaintiff the State of Washington realleges paragraphs 1 through 17.

41. MTCRA, 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 constitutes a release for which remedial action is required at the facility.

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

42. Materials disposed of and released in the Lower Duwamish River and Elliott Bay from the facilities owned and operated, or formerly owned and operated, by Defendants, identified in Paragraphs 14 and 15 of this Complaint, include hazardous substances within the meaning of RCW 70A.305.020(13).

1 43. The facilities identified in Paragraphs 14 and 15 of this Complaint are facilities  
2 within the meaning of RCW 70A.305.020(8).

3 44. Releases or threatened releases of hazardous substances have occurred in the  
4 Lower Duwamish River and Elliott Bay within the meaning of RCW 70A.305.020 and  
5 70A.305.040.

6 45. The natural resources that have been and continue to be injured, destroyed, or lost  
7 by the release of hazardous substances from the facilities owned or operated, or formerly owned  
8 or operated, by Defendants include fish, shellfish, invertebrates, birds, sediments, and other such  
9 natural resources.  
10

11 46. The State of Washington has incurred and continues to incur costs related to the  
12 assessment of injury to natural resources caused by the releases of hazardous substances from the  
13 facilities owned or operated, or formerly owned or operated, by Defendants identified in  
14 Paragraph 14 of this Complaint.  
15

16 47. Pursuant to RCW 70A.305.040(2), Defendants are jointly and severally liable to  
17 the State of Washington for all damages to natural resources in the Lower Duwamish River and  
18 Elliott Bay, resulting from the release of hazardous substances at or from Defendants' owned and  
19 operated, or formerly owned and operated, facilities.  
20

21 **X. REQUEST FOR RELIEF**

22 WHEREFORE, Plaintiffs request that this Court enter judgment jointly and severally  
23 against Defendants:  
24

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

4 (2) Awarding Plaintiffs such other and further relief as this Court may deem appropriate.  
5

6 Dated: March 7, 2024

7 UNITED STATES OF AMERICA

8  
9 TODD KIM  
10 Assistant Attorney General  
11 Environment & Natural Resources Division  
12 U.S. Department of Justice  
13 Washington, D.C. 20530

14 /s Erika M. Wells  
15 ERIKA M. WELLS  
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20 OF COUNSEL:

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23 DEIRDRE DONAHUE  
24 U.S. Department of the Interior

25  
26 COMPLAINT

- 13 -

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

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STATE OF WASHINGTON

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SUQUAMISH INDIAN TRIBE  
OF THE PORT MADISON RESERVATION

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/s Trent Crable  
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COMPLAINT

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 7, 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:

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*Counsel for Defendant WSDOT*

s/ Erika M. Wells