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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 22. Releases of hazardous substances have occurred in the Commencement Bay  
2 Environment within the meaning of sections 101(22) of CERCLA, 42 U.S.C. § 9601(22). The  
3 releases of hazardous substances in the Commencement Bay Environment at the facilities  
4 operated by PRI have resulted in injury to, destruction of, or loss of natural resources within the  
5 trusteeship of one or more of the Plaintiffs.

6 23. Defendant and PRI are persons within the meaning of section 107 of CERCLA,  
7 42 U.S.C. § 9607.

8 24. Defendant is liable to Plaintiffs for natural resource damages resulting from  
9 releases of hazardous substances pursuant to section 107(a)(4)(C) of CERCLA, 42 U.S.C. §  
10 9607(a)(4)(C).

#### 11 VII. SECOND CLAIM FOR RELIEF

12 25. Plaintiffs reallege paragraphs 1 through 24.

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

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

21 27. Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), provides in pertinent  
22 part, as follows:

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

27 28. The plants and properties owned or operated by PRI were facilities within the  
28 meaning of sections 1001(9) and 1002 of OPA, 33 U.S.C. §§ 2701(9) and 2702.

29 PRI is s responsible party within the meaning of section 1001(32) of OPA, 33  
30 U.S.C. § 2701(32).

31 30. The discharge of oil into the Hylebos Waterway or adjoining shorelines at the

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,  
23 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 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  
28 hazardous substances.

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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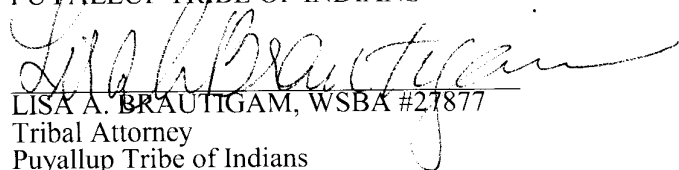
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MUCKLESHOOT INDIAN TRIBE

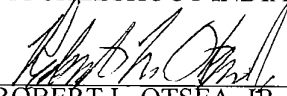
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