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Honorable Judge Rothstein

JUL 23 1999

ORIGINAL

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

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AUG 12 1999

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, THE STATE
OF WASHINGTON, AND THE TULALIP
TRIBES OF WASHINGTON,

CIVIL ACTION
C99-665-R

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

Plaintiffs,

SECOND
ORDER ENTERING
NATURAL RESOURCE DAMAGES
CONSENT DECREE

v.

THE PORT OF SEATTLE, SEARS, ROEBUCK
AND CO., LOCKHEED MARTIN, INC., THE
SEATTLE SCHOOL DISTRICT, GENERAL
DISPOSAL CORP., and THE CITY OF
MERCER ISLAND,

RELATED CASES:
C97-152-D
C97-1648-WD
C98-300-R

Defendants.

v.

TULALIP SECTION 17 CORPORATION,

Intervenor.

C/oc, BUR

For good cause shown, this Court hereby issues this Second Order Entering the Natural Resource Damages Consent Decree between plaintiffs the United States of America, the State of Washington Department of Ecology and the Tulalip Tribes of Washington, as trustees for natural resources at the Tulalip Landfill Superfund Site, and the defendants in this action.

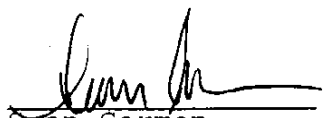
So ORDERED this 10th day of August, 1999

Barbara J. Rothstein
UNITED STATES DISTRICT JUDGE

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Presented by:



Sean Carman
U.S. Dept. of Justice
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Seattle, WA 98115
(206) 526-6617

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
THE STATE OF WASHINGTON, and THE
TULALIP TRIBES OF WASHINGTON,

Plaintiffs,

v.

THE PORT OF SEATTLE, SEARS & ROEBUCK
CO., LOCKHEED MARTIN, INC., THE SEATTLE
SCHOOL DISTRICT, GENERAL DISPOSAL
COMPANY, and THE CITY OF MERCER ISLAND,

Defendants.

THE TULALIP SECTION 17 CORPORATION,
Intervenor.

CIVIL ACTION NO.

C99-665-R

NOTICE OF LODGING
OF CONSENT DECREE
AND FORTHCOMING
COMPLAINT IN
INTERVENTION

RELATED CASES:

Nos. C97-152-D
C97-1648-WD
C98-300-R

PLEASE TAKE NOTICE that the United States of America, on behalf of the United States Department of Interior and the National Oceanic and Atmospheric Administration of the United States Department of Commerce, and the State of Washington and the Tulalip Tribes of Washington, as trustees for natural resources at the Tulalip Landfill Superfund Site (together, "the trustees"), have on this day lodged a Consent Decree resolving

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1 the liability of the defendants in this action.

2 Pursuant to 28 C.F.R. § 50.7, the United States will publish
3 notice of the Consent Decree in the Federal Register and receive
4 public comments for a period of 30 days. Thereafter, the United
5 States will file a motion to enter the Consent Decree with this
6 Court that addresses any public comments received, unless the
7 public comments disclose information establishing that the
8 settlements are unfair, unreasonable or not in the public
9 interest, in which case the United States may withdraw its
10 consent to the Consent Decree.

11 This Court should not enter or approve the Consent Decree
12 until it has received the motion to enter the Consent Decree from
13 the United States, and has fully considered the arguments of any
14 other party in favor of, or in opposition to, the entry of the
15 Consent Decrees.

16 Furthermore, as indicated in the Complaint and Consent
17 Decree, the Tulalip Section 17 Corporation will shortly file a
18 Complaint in Intervention in this action, and a motion to
19 intervene. The parties to the Consent Decree have agreed in the
20 Consent Decree not to oppose the intervention of the Tulalip
21 Section 17 Corporation.

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Respectfully submitted,

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Environment and Natural Resources
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United States Department of Justice
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KATRINA C. PFLAUMER
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CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, true and correct copies of the foregoing Notice of Lodging of Consent Decrees were served by United States mail, postage paid, to the parties identified on the table attached to this Certificate.

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April 29, 1999
~~May 3, 1999~~
Date



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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
THE STATE OF WASHINGTON, and THE
TULALIP TRIBES OF WASHINGTON,

Plaintiffs,

v.

THE PORT OF SEATTLE, SEARS & ROEBUCK
CO., LOCKHEED MARTIN, INC., THE SEATTLE
SCHOOL DISTRICT, GENERAL DISPOSAL
COMPANY, and THE CITY OF MERCER ISLAND,

Defendants.

THE TULALIP SECTION 17 CORPORATION

Intervenors.

CIVIL ACTION NO.

699-635-R

CIVIL COMPLAINT FOR
NATURAL RESOURCE
DAMAGES

RELATED CASES:
NO.: C97-152-D
C97-1646-WD
C98-300-R

Plaintiffs, the United States of America, by the authority
of the Attorney General of the United States and on behalf of the
National Oceanic and Atmospheric Administration of the United
States Department of Commerce ("NOAA") and the United States
Department of the Interior, the Tulalip Tribes of Washington, and
the State of Washington, through the Department of Ecology,
(together "the Trustees"), in their capacity as trustees for

1 natural resources at the Tulalip Landfill Superfund Site in
2 Marysville, Washington, ("the Site") allege as follows:

3 INTRODUCTION

4 1. This is a civil action for recovery of natural resource
5 damages under Sections 107(a)(3), 107(a)(4)(C) and 107(f)(1) of
6 the Comprehensive Environmental Response, Compensation, and
7 Liability Act ("CERCLA"), 42 U.S.C. §§ 9607(a)(3), 9607(a)(4)(C)
8 & (f)(1), as amended, and the Model Toxics Control Act (MTCA),
9 chapter 70.105D RCW. The Trustees seek to recover damages for
10 injury to, destruction of, or loss of natural resources at the
11 Site, including the reasonable costs of assessing such injury,
12 destruction, or loss resulting from such a release.

13 2. The Site is located on the Tulalip Indian Reservation,
14 between Ebey and Steamboat Sloughs, near Marysville, Washington.
15 The Site is the location of a municipal landfill operated by
16 Seattle Disposal Company from approximately 1964 to April, 1979.
17 During those years, the landfill received waste containing
18 hazardous substances, which are currently leaching from the
19 landfill into the surrounding waters of Puget Sound.

20 3. NOAA, the United States Department of Interior, the
21 Tulalip Tribes of Washington and the Washington State Department
22 of Ecology are trustees for natural resources at the Site.

23 JURISDICTION AND VENUE

24 4. This Court has jurisdiction over this action and each
25 defendant pursuant to Sections 107 and 113(b) of CERCLA, 42
26 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

27 5. Venue is proper in this District pursuant to Section
28 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C.

1 § 1391(b), because the claims arose in this District and releases
2 and/or threatened releases of hazardous substances at the Site
3 occurred in this District.

4 PLAINTIFFS

5 6. Pursuant to 40 C.F.R. § 300.600, as amended (55 Fed.
6 Reg. 8666, 8857, Mar. 8, 1990), the Secretary of Commerce serves
7 as Natural Resource Trustee for certain resources found in
8 coastal waters, including marine fishery resources and their
9 supporting ecosystems, anadromous fish, and certain endangered
10 species and marine mammals. The Secretary of Commerce in his
11 capacity as Natural Resource Trustee may assert natural resource
12 damage claims pursuant to Section 107(f) of CERCLA. The
13 Secretary of Commerce has delegated this authority to the Under
14 Secretary of Commerce for Oceans and Atmosphere, the
15 Administrator of the National Oceanic and Atmospheric
16 Administration ("NOAA").

17 7. Pursuant to 40 C.F.R. § 300.600, as amended, 55 Fed.
18 Reg. 8666, 8857 (Mar. 8, 1990), the Secretary of the Interior
19 serves as Natural Resource Trustee for resources which include,
20 but are not limited to, migratory birds; certain anadromous fish,
21 endangered species, and marine mammals; and certain federally
22 managed water resources. The Secretary of the Interior in his
23 capacity as Natural Resource Trustee may assert natural resource
24 damage claims pursuant to Section 107(f) of CERCLA.

25 8. Pursuant to Section 107(f) of CERCLA, 42 U.S.C.
26 § 9607(f), and 40 C.F.R. § 300.610, 55 Fed. Reg. 8666, 8857
27 (Mar. 8, 1990), the Tulalip Tribes of Washington ("the Tribe") is
28 a federally recognized Natural Resource Trustee for the land,

1 fish, wildlife, biota, air, water, groundwater, drinking water
2 supplies, and other such resources belonging to, controlled by,
3 appertaining to, or held in trust for the benefit of the Tribe.
4 In its capacity as Natural Resource Trustee, the Tribe may assert
5 its natural resource damage claims pursuant to Section 107(f) of
6 CERCLA.

7 9. Pursuant to Section 107(f) of CERCLA, 42 U.S.C.
8 § 9607(f), 40 C.F.R. § 300.605, 55 Fed. Reg. 8666, 8857
9 (Mar. 8, 1990), Ch. 43.21A RCW, Ch. 70.105D RCW, and Ch. 90.48
10 RCW, the Washington State Department of Ecology serves as a
11 Natural Resource Trustee for the State of Washington. In its
12 capacity as a Natural Resource Trustee, the Department of Ecology
13 has the authority to assert natural resource damage claims and to
14 settle such claims when Ecology deems settlement to be
15 appropriate and in the public interest. The Department of
16 Ecology was designated, in a May 10, 1988 letter from Governor
17 Booth Gardner to EPA, as lead Natural Resource Trustee for
18 natural resource damages among Washington State agencies.

19 DEFENDANTS

20 10. Defendants Sears, Roebuck & Co., Lockheed Martin, Inc.,
21 and General Disposal Company are registered corporations doing
22 business in the State of Washington.

23 11. Defendant the Port of Seattle is a municipal
24 corporation organized under the laws of the State of Washington.

25 12. Defendant the Seattle School District is a municipal
26 corporation organized under the laws of the State of Washington.

27 13. Defendant the City of Mercer Island is a municipality
28 duly incorporated in the State of Washington.

LAW GOVERNING CLAIMS FOR RELIEF

14. Sections 107(a) ((3) and (a) (4) (C) of CERCLA, 42 U.S.C. §§ 9607(a) (3) & (a) (4) (C), provide:

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

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

(4) * * *
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

15. MTCA, Chapter 70.105D040 RCW, 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 substances and who by contract, agreement, or otherwise arranged for disposal or treatment of the hazardous substances 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 substances for transport to a disposal, treatment or other facility selected by such person,

1 from which there is a release, or a threatened release
2 for which remedial action is required unless such
3 facility, at the time of disposal or treatment, could
4 legally receive such substance; or (ii) who accepts a
5 hazardous substance for transport to such a facility
6 and has reasonable grounds to believe that such
7 facility is not operated in accordance with chapter
8 70.105 RCW; and

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

14 (2) Each person who is liable under this section
15 is strictly liable, jointly and severally, for all
16 remedial action costs and for all natural resource
17 damages resulting from the releases or threatened
18 releases of hazardous substances.

19 FACTS RELEVANT TO LIABILITY OF ALL DEFENDANTS

20 16. There have been "releases" and "threatened releases" of
21 "hazardous substances" at or from the Site, as those terms are
22 defined in Sections 101(14) and (22) of CERCLA, 42 U.S.C. §§
23 9601(14) & (22), and "hazardous substances" have been "disposed"
24 at the Site within the meaning of Chapter 70.105D040 RCW.

25 17. The Site, which contains, or prior to response actions
26 by EPA contained, hazardous substances, is a "facility" within
27 the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and
28 Chapter 70.105D.020(4) RCW.

18 Each of the above-named defendants, by contract,
19 agreement or otherwise arranged for disposal or treatment, or
20 arranged with a transporter for transport for disposal or
21 treatment, of hazardous substances owned or possessed by such
22 person, by any other party or entity, at any facility or
23 incineration vessel owned or operated by another party or entity
24 and containing such hazardous substances.

1 19. Releases of hazardous substances at the Site have
2 resulted in injury, to destruction of, or loss of natural
3 resources, including the destruction and loss of valuable
4 wetlands habitat at the Site, the resulting loss of habitat for a
5 variety of wildlife, as well as injury to fish and other wildlife
6 in Ebey and Steamboat Sloughs and other areas of Puget Sound as a
7 result of releases of hazardous substances from the Tulalip
8 Landfill.

9 FIRST CLAIM FOR RELIEF

10 RECOVERY OF NATURAL RESOURCES DAMAGES
11 UNDER SECTION 107 OF CERCLA

12 20. Paragraphs 1 through 19 are re-alleged and incorporated
13 herein by reference.

14 21. Each of the defendants arranged for the disposal of
15 hazardous substances at the Site within the meaning of Section
16 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

17 22. Each of the defendants is jointly and severally liable
18 to the plaintiffs under Sections 107(a)(3) and 107(f)(1) of
19 CERCLA, 42 U.S.C. §§ 9607(a)(3) & 107(f)(1), for damages for
20 injury to, destruction of, or loss of natural resources, including
21 the reasonable costs of assessing such injury, destruction, or
22 loss resulting from such releases.

23 SECOND CLAIM FOR RELIEF

24 RECOVERY OF NATURAL RESOURCE DAMAGES
25 UNDER MTCA

26 23. Paragraphs 1 through 22 are re-alleged and incorporated
27 herein by reference.

28 24. Each of the defendants arranged for the disposal of
hazardous substances at the Site within the meaning of Chapter

1 70.105D040(1)(c) RCW.

2 25. Each of the defendants is jointly and severally liable
3 to the plaintiffs under MTCA, Chapter 70.104D040 RCW, for all
4 damages to natural resources resulting from such releases.

5 PRAYER FOR RELIEF

6 WHEREFORE, Plaintiffs, the United States of America on
7 behalf of NOAA and the United States Department of the Interior,
8 the Tulalip Tribes of Washington and the State of Washington,
9 through the Department of Ecology, respectfully request that the
10 Court:

11 A. Award the plaintiffs a judgment against each of the
12 defendants, jointly and severally, for all damages for injury to,
13 destruction of, or loss of natural resources, including the
14 reasonable costs of assessing such injury, destruction, or loss
15 resulting from such releases;

16 B. Award the plaintiffs prejudgment interest on the amount
17 of natural resource damages awarded;

18 C. Enter a declaratory judgment in favor of the plaintiffs
19 on liability that will be binding on any subsequent action or
20 actions to recover further natural resource damages;

21 D. Grant such other and further relief as is appropriate.
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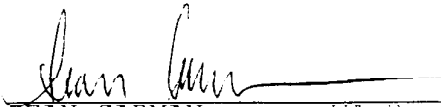
Respectfully submitted,

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4-29-99
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FOR THE TULALIP TRIBES OF WASHINGTON:

4-29-99

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FOR THE STATE OF WASHINGTON:

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Mary McCrea for

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