

2024 WL 1829411 (W.D.Wash.) (Trial Pleading)  
United States District Court, W.D. Washington.

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.

No. CV-24-307.  
March 7, 2024.

### Complaint

United States of America, [Todd Kim](#), Assistant Attorney General, Environment & Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, Erika M. Wells, Senior Counsel, Environmental Enforcement Section, Environment & Natural Resources Division, U.S. Department of Justice, c/o NOAA, 7600 Sand Point Way, NE, Seattle, Washington 98115, (202) 532-3258.

Of Counsel: [Joseph Edgell](#), National Oceanic and Atmospheric Administration, [Deirdre Donahue](#), U.S. Department of the Interior.

State of Washington, [Robert Ferguson](#), Attorney General, [John Level](#), Assistant Attorney General, 2425 Bristol Court S.W., P.O. Box 40117, Olympia, WA 98504 0117.

Suquamish Indian Tribe of the Port Madison Reservation, Kendra Martinez, Suquamish Tribe, Office of Tribal Attorney, P.O. Box 498, Suquamish, WA 98392-0498, (360) 394-8494; Muckleshoot Indian Tribe, Trent S.W. Crable, WSBA #38227, Muckleshoot Indian Tribe, 39015 172nd Avenue Se, Auburn, WA 98092, (253) 876 3185.

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Yasmine Tarhouni (Yasmine.tarhouni@atg.wa.gov), for defendant Wsdot.

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; Muckleshoot Indian Tribe; and Suquamish Indian Tribe of the Port Madison Reservation, 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 Clean Water Act (CWA), 33 U.S.C. § 1321; Section 1002(b) of the Oil Pollution Act (OPA), 33 U.S.C. § 2702(b); and the Model Toxics Control Act (MTCA), RCW 70A.305, for damages for injury to, destruction of, or loss of natural resources resulting from the release of hazardous substances and discharges of oil into the Lower Duwamish River and Elliott Bay in Seattle, Washington.

## II. JURISDICTION AND VENUE

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

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

## 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 facilities identified in Paragraphs 14 and 15 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 facilities identified in Paragraphs 14 and 15 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, mercury, nickel, lead, zinc, bis(2-ethylhexyl) phthalate, hexachlorobenzene, hexachlorobutadiene, tributyltin (TBT), dichlorodiphenyltrichloroethane (DDT), phenol, polychlorinated biphenyls (PCBs), and polycyclic aromatic hydrocarbons (PAHs). Overall, the Trustees have identified the presence of over 30 hazardous substances in the sediments of the Lower Duwamish River.

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

## IV. PLAINTIFFS

10. Pursuant to Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), Section 1006 of 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. § 300.600, the United States is trustee for certain natural resources in the Lower Duwamish River and Elliott Bay.

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

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

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

## V. DEFENDANTS

14. Defendants Crowley Marine Services, Inc., and 8th Avenue Terminals, Inc., formerly known as Pacific Terminals, Inc., (collectively, Crowley Defendants) owned and operated a marine transportation and logistics operation at a facility along the LDR located at 7400 8th Avenue S., Seattle, Washington, from about 1992 to 2014. In about 2007, Crowley Marine Services, Inc., sold a portion of the property to the City of Seattle. Around 2008, Crowley Marine Services, Inc., conveyed its remaining interest in the property to 8th Avenue Terminals, Inc., which sold the property in 2014. In 2019, 8th Avenue Terminals, Inc. reacquired the property it sold in 2014. Prior to the Crowley Defendants' ownership of the facility, companies conducted various industrial activities on the property, including manufacturing and repairing heavy equipment; manufacturing pipe, asphalt, and concrete; and treating wood. Prior to and during the Crowley Defendants' operations, releases of hazardous substances including PAHs, phenol, and 4-methylphenol, and discharges of oil to the LDR occurred at and from the facility.

15. Defendant Washington State Department of Transportation owns and operates an outfall identified as I-5 Storm Drain #2046-Slip 4, which collects stormwater runoff from I-5 and surrounding areas, that the Trustees have identified as a source of releases of hazardous substances, particularly DDT, to the LDR.

16. The property and outfall identified in Paragraphs 14 and 15 of this Complaint are facilities 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 facilities.

17. During Defendants' respective periods of ownership and operation of the facilities identified in Paragraphs 14 and 15 of this Complaint, 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 facilities and found in the sediments of the Lower Duwamish River and Elliott Bay include, but are not limited to, PAHs, DDT, phenol, and 4-methylphenol.

## VI. FIRST CLAIM FOR RELIEF

18. Plaintiffs reallege paragraphs 1 through 17.

19. 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; ...

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

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

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

23. Defendants are each a person within the meaning of Section 107 of CERCLA, [42 U.S.C. § 9607](#).

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

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

25. Plaintiffs reallege paragraphs 1 through 17.

26. Section 1002(a) of OPA, [33 U.S.C. § 2702\(a\)](#), provides in pertinent part, as follows:

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

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

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

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

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

30. The discharge of oil into the Lower Duwamish River, Elliott Bay or adjoining shorelines from the facilities owned and operated, or formerly owned and operated, by the Crowley Defendants identified in Paragraph 14 of this Complaint resulted in injury to, destruction of, or loss of natural resources within the trusteeship of one or more of the Plaintiffs.

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

## VII. THIRD CLAIM FOR RELIEF

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

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

The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone ... or which may affect 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 ....

34. 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 ....

35. 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.

36. The facilities owned and operated, or formerly owned and operated, by Defendants, identified in Paragraphs 14 and 15 of this Complaint, 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 hazardous substances in harmful quantities into the Lower Duwamish River, Elliott Bay and adjoining shorelines from the facilities.

38. Discharges of hazardous substances from the facilities 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.

39. 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**

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

41. 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

UNITED STATES OF AMERICA, On Behalf of the National..., 2024 WL 1829411...

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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\(13\)](#).

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

44. Releases or threatened releases of hazardous substances have occurred in the Lower Duwamish River and Elliott Bay within the meaning of [RCW 70A.305.020](#) and [70A.305.040](#).

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

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

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

## X. REQUEST FOR RELIEF

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

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

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

Dated: March 7, 2024

UNITED STATES OF AMERICA

TODD KIM

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UNITED STATES OF AMERICA, On Behalf of the National..., 2024 WL 1829411...

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