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.	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
THE TULALIP SECTION 17 CORPORATION, Intervenor.	

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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the liability of the defendants in this action.

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

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

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

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Respectfully submitted,

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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
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Date

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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. C99-[illegible]-R CIVIL COMPLAINT FOR NATURAL RESOURCE DAMAGES RELATED CASES: NO.: C97-152-D C97-1648-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

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

INTRODUCTION

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

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

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

JURISDICTION AND VENUE

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

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

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

PLAINTIFFS

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

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

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

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

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

DEFENDANTS

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

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

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

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

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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,

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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 chapter 70.105 RCW; 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 remedial action costs and for all natural resource damages resulting from the releases or threatened releases of hazardous substances.

FACTS RELEVANT TO LIABILITY OF ALL DEFENDANTS

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

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

18. Each of the above-named defendants, 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 or incineration vessel owned or operated by another party or entity and containing such hazardous substances.

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

FIRST CLAIM FOR RELIEF

RECOVERY OF NATURAL RESOURCES DAMAGES UNDER SECTION 107 OF CERCLA

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

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

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

SECOND CLAIM FOR RELIEF

RECOVERY OF NATURAL RESOURCE DAMAGES UNDER MTCA

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

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

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70.105D040(1)(c) RCW.

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

PRAYER FOR RELIEF

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

A. Award the plaintiffs a judgment against each of the defendants, jointly and severally, for all 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 releases;

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

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

D. Grant such other and further relief as is appropriate.

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