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Hon. _____

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

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 TRIBE,

Plaintiffs,

v.

THE BOEING COMPANY,

Defendant.

No.

COMPLAINT

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; Suquamish Tribe; and Muckleshoot Indian Tribe, allege as follows:

1 I. GENERAL ALLEGATIONS

2 1. This is a civil action under section 107(a) of the Comprehensive
3 Environmental Response, Compensation, and Liability Act (CERCLA), 42
4 U.S.C. § 9607(a); section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321;
5 section 1002(b) of the Oil Pollution Act (OPA), 33 U.S.C. § 2702(b); and the
6 Model Toxics Control Act (MTCA), RCW 70.105D, for damages for injury to,
7 destruction of, or loss of natural resources resulting from the release of hazardous
8 substances and discharges of oil into the Lower Duwamish Waterway and Elliott
9 Bay in Seattle, Washington.

10 II. JURISDICTION AND VENUE

11 2. This Court has jurisdiction over this case pursuant to sections 107
12 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b); section 311(n) of the
13 CWA, 33 U.S.C. § 1321(n); section 1017(b) of OPA, 33 U.S.C. § 2717(b); and
14 28 U.S.C. §§ 1331, 1345 and 1367(a).

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

18 III. THE SITE

19 4. The Duwamish Waterway is a highly industrialized area that flows
20 into Elliott Bay in Seattle, Washington.

21 5. The “Lower Duwamish Waterway” as used in this Complaint means
22 any portion of the Duwamish Waterway (including the shoreline, intertidal areas,
23 tributaries, estuaries and bottom sediments) in the State of Washington where
24 hazardous substances and fuel originating from the parcels identified below that
25 have been owned or operated by the Defendant have come to be located.

26 6. “Elliott Bay” as used in this Complaint means any portion of Elliott
27 Bay (including the shoreline, intertidal areas, tributaries, estuaries and bottom
28

1 sediments) in the State of Washington where hazardous substances and fuel
2 originating from the parcels identified below that have been owned or operated
3 by the Defendant have come to be located.

4 7. The Lower Duwamish Waterway and Elliott Bay are contaminated
5 with a variety of hazardous substances, including arsenic, antimony, cadmium,
6 chromium, copper, mercury, nickel, lead, zinc, bis(2 ethylhexyl) phthalate,
7 hexachlorobenzene, hexachlorobutadiene, polychlorinated biphenyls (PCBs), and
8 polycyclic aromatic hydrocarbons (PAHs). Overall, the Trustees have
9 documented the presence of over 30 hazardous substances in the marine
10 sediments of the Lower Duwamish Waterway.

11 8. The Lower Duwamish Waterway and Elliott Bay are navigable
12 waters within the meaning of section 1001(21) of OPA, 33 U.S.C. § 2701(21),
13 and section 502(7) of the CWA, 33 U.S.C. § 1362(7).

14 IV. PLAINTIFFS

15 9. Pursuant to section 107(f) of CERCLA, 42 U.S.C. § 9607(f), section
16 1006 of OPA, 33 U.S.C. § 2706, section 311(f)(5) of the CWA, 33 U.S.C. §
17 1321(f)(5), and 40 C.F.R. § 300.600, the United States is trustee for certain
18 natural resources in the Lower Duwamish Waterway and Elliott Bay.

19 10. Pursuant to section 107(f) of CERCLA, 42 U.S.C. § 9607(f),
20 section 1006 of OPA, 33 U.S.C. § 2706, section 311(f)(5) of the CWA, 33 U.S.C.
21 § 1321(f)(5), 40 C.F.R. § 300.605, Ch. 43.21A RCW, Ch. 70.105D RCW, and
22 Ch. 90.48 RCW, the State of Washington is trustee for certain natural resources
23 in the Lower Duwamish Waterway and Elliott Bay.

24 11. Pursuant to section 107(f) of CERCLA, 42 U.S.C. § 9607(f),
25 section 1006 of OPA, 33 U.S.C. § 2706, and 40 C.F.R. § 300.610, the Suquamish
26 Tribe is trustee for certain natural resources in the Lower Duwamish Waterway
27 and Elliott Bay.

1 VI. FIRST CLAIM FOR RELIEF

2 18. Plaintiffs reallege paragraphs 1 through 17.

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

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

7 (1) the owner and operator of a vessel or a facility,

8 (2) any person who at the time of disposal of any hazardous
9 substance owned or operated any facility at which such
10 hazardous substances were disposed of,

11 (3) any person who by contract, agreement, or
12 otherwise arranged for disposal or treatment, or
13 arranged with a transporter for transport for disposal or
14 treatment, of hazardous substances owned or possessed
15 by such person, by any other party or entity, at any
16 facility or incineration vessel owned or operated by
17 another party or entity and containing such hazardous
18 substances, and

19 (4) any person who accepts or accepted any hazardous
20 substances for transport to disposal or treatment
21 facilities, incineration vessels or sites selected by such
22 person, from which there is a release, or a threatened
23 release which causes the incurrence of response costs,
24 of a hazardous substance, shall be liable for

25 * * *

26 (C) damages for injury to, destruction of, or loss
27 of natural resources, including the reasonable
28 costs of assessing such injury, destruction, or loss
29 resulting from such a release;

30 * * *

31 20. Materials disposed of and released in the Lower Duwamish
32 Waterway and Elliott Bay by Boeing include hazardous substances within the
33 meaning of section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

34 21. The Lower Duwamish Waterway and Elliott Bay are facilities within
35 the meaning of section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

1 hazardous substance is discharged in violation of
2 subsection (b)(3) of this section shall be liable to the
3 United States Government for the actual costs incurred
4 under subsection (c) of this section for the removal of
5 such oil or substance by the United States Government .
6 . . .

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

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

18 36. The identified facilities owned or operated by Boeing are onshore
19 facilities within the meaning of section 311(f)(1) of the CWA, 33 U.S.C. §
20 1321(f)(1).

21 37. There have been discharges of oil or hazardous substances in
22 harmful quantities into the Lower Duwamish Waterway, Elliott Bay and
23 adjoining shorelines from the identified facilities owned or operated by Boeing.

24 38. Discharges of oil or hazardous substances from the facilities owned
25 or operated by Boeing into the Lower Duwamish Waterway, Elliott Bay or
26 adjoining shorelines have affected, damaged or destroyed natural resources
27 belonging to, appertaining to, or under the exclusive management authority of the
28 United States.

39. Defendant is liable to the United States and State of Washington for
natural resource damages resulting from discharges of oil or hazardous
substances into the Lower Duwamish Waterway, 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. Plaintiffs reallege paragraphs 1 through 39.

1 41. MTCA, Chapter 70.105D.040 RCW, provides in pertinent part as
2 follows:

3 (1) Except as provided in subsection (3) of this section, the
4 following persons are liable with respect to a facility:

5 (a) The owner or operator of the facility;

6 (b) Any person who owned or operated the facility at
7 the time of disposal or release of the hazardous
8 substances;

9 (c) Any person who owned or possessed a hazardous
10 substance and who by contract, agreement, or otherwise
11 arranged for disposal or treatment of the hazardous
12 substance at the facility, or arranged with a transporter
13 for transport for disposal or treatment of the hazardous
14 substances at the facility, or otherwise generated
15 hazardous wastes disposed of or treated at the facility;

16 (d) Any person (i) who accepts or accepted any
17 hazardous substance for transport to a disposal,
18 treatment or other facility selected by such person, from
19 which there is a release or a threatened release for
20 which remedial action is required, unless such facility,
21 at the time of disposal or treatment, could legally
22 receive such substance; or (ii) who accepts a hazardous
23 substance for transport to such a facility and has
24 reasonable grounds to believe that such facility is not
25 operated in accordance with chapter 70.105 RCW; and

26 (e) Any person who both sells a hazardous substance
27 and is responsible for written instructions for its use if
28 (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
Waterway and Elliott Bay from the identified sites owned or operated by Boeing
include hazardous substances within the meaning of Chapter 70.105D.020(10)(c)
RCW.

43. The identified sites owned or operated by Boeing are facilities
within the meaning of Chapter 70.105D.020(5) RCW.

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

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SUQUAMISH TRIBE

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Dated: May 4, 2010

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on May 4, 2010, I caused a true copy of the
3 COMPLAINT to be served on each of the following named persons at his or her
4 last known addresses in the manner indicated below:

5 Steven E. Rusak
6 The Boeing Company
7 MC 7A-XP
8 P.O. Box 3707
9 Seattle, WA 98124-2207

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26 **MICHAEL J. ZEVENBERGEN**