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WESTERN DISTRICT OF WASHINGTON AT TACOMA  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

JUL 05 1991  
GCNW, SEATTLE, WA

THE UNITED STATES OF AMERICA,  
STATE OF WASHINGTON, PUYALLUP TRIBE  
OF INDIANS, AND MUCKLESHOOT INDIAN  
TRIBE

Plaintiffs,

v.

SIMPSON TACOMA KRAFT COMPANY,  
CHAMPION INTERNATIONAL CORPORATION, AND  
WASHINGTON STATE DEPARTMENT OF  
NATURAL RESOURCES,

Defendants

C91-5260T  
Civil No.

COMPLAINT

Plaintiffs, the United States of America, by authority of the Attorney General of the United States, at the request of the Administrator of the Environmental Protection Agency (EPA), the Secretary of Commerce (Commerce) and the Secretary of the Interior (Interior) on behalf of the public as trustee for natural resources, the State of Washington, the Puyallup Tribe of Indians, and the Muckleshoot Indian Tribe, represent as follows:

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I. PRELIMINARY STATEMENT OF CASE

1. This is a civil action under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. §§ 9606 and 9607; Section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6973, as amended; and Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321, as amended; for injunctive relief to abate an imminent and substantial endangerment to public health or welfare or the environment due to the release or threatened release of hazardous substances at the St. Paul Waterway Problem Area at and within the Commencement Bay Nearshore/Tideflats (CB/NT) Superfund site. Plaintiffs seek recovery of costs that have been and will be incurred in response to releases and threatened releases of hazardous substances from the CB/NT site; for damages to natural resources at the St. Paul Waterway Problem Area for which the United States, State of Washington, Puyallup Tribe and Muckleshoot Tribe are co-trustees, in connection with releases of hazardous substances into the environment in and around the St. Paul Waterway and CB/NT site; and for the recovery of civil penalties and removal costs incurred in connection with the unauthorized discharge of oil or hazardous substances into the navigable waters of the United States.

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II. JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to Sections 106, 107, and 113(b) of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613(b); Sections 3008(a) and 7003 of RCRA, 42 U.S.C. §§ 6928(a) and 6973; Sections 309(b) and 311 of CWA, 33 U.S.C. §§ 1319(b) and 1321; and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b); Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); Section 309(b) of CWA, 33 U.S.C. § 1319(b); and 28 U.S.C. § 1391(b).

III. DEFENDANTS

4. Defendant Simpson Tacoma Kraft Company (Simpson) is a Washington corporation that presently owns and operates the Tacoma Kraft Mill (Mill). The Mill is situated on a peninsula of filled tidelands projecting into Commencement Bay between the mouths of the Puyallup River and the St. Paul Waterway. Hazardous substances from the Mill have contaminated sediments in the St. Paul Waterway. Simpson is liable as the current owner and operator of the Mill which discharged hazardous substances to the St. Paul Waterway.

5. Defendant Champion International Corporation (Champion) merged with the former owner of the Mill, St. Regis Paper Company, in 1985. Champion is the successor in interest of St. Regis Paper Company. Champion sold the Mill to Simpson in August 1985. Champion is liable as the previous owner and

1 operator of the Mill at the time of discharge of hazardous  
2 substances to the St. Paul Waterway.

3 6. Defendant Washington Department of Natural  
4 Resources (DNR) manages the adjacent aquatic lands on behalf of  
5 the State of Washington. DNR leases certain state-owned aquatic  
6 lands to Simpson and leased such lands to prior owners and  
7 operators of the Mill. DNR is liable as an owner of sediments  
8 contaminated with hazardous substances at the St. Paul Waterway.

9 IV. GENERAL FACTUAL REPRESENTATIONS

10 7. The CB/NT Superfund site is located in Tacoma,  
11 Washington at the southern end of the main basin of Puget Sound.  
12 The CB/NT site encompasses an active commercial seaport and  
13 includes approximately 10-12 square miles of shallow water,  
14 shoreline, and adjacent land, most of which is highly developed  
15 and industrialized. The St. Paul Waterway has been designated as  
16 one of nine problem areas within the CB/NT Superfund site.

17 A. Prior Remedial Activities at the St. Paul  
18 Waterway Problem Area

19 8. On December 24, 1987, Simpson, Champion, and DNR  
20 entered into a State Court Consent Decree with the Washington  
21 Department of Ecology (Ecology) following Ecology's issuance of  
22 an order requiring, inter alia, relocation of Simpson's National  
23 Pollutant Discharge Elimination System (NPDES) permit outfall for  
24 its secondary wastewater treatment plant. That Decree required  
25 Simpson to place a cap of clean sediments from a nearby section  
26 of the Puyallup River over the St. Paul Waterway contaminated

1 sediments to isolate toxic concentrations of contaminated  
2 sediments released by the Mill's outfall to the marine  
3 environment.

4 9. The United States, Puyallup Tribe, and Muckleshoot  
5 Tribe were not parties to the 1987 State Court Consent Decree.  
6 Ecology is continuing to implement source controls and related  
7 activities through the Mill's NPDES permit.

8 B. The Record of Decision

9 10. On September 30, 1989, EPA issued a Record of  
10 Decision (ROD) for two operable units of the CB/NT Superfund  
11 site. The ROD addresses both sediment remediation (Operable Unit  
12 1) and source control (Operable Unit 5), at eight Problem Areas  
13 within the CB/NT site, including the St. Paul Waterway Problem  
14 Area.

15 11. The ROD included the EPA's finding that actual or  
16 threatened releases of hazardous substances from the CB/NT site,  
17 if not corrected by implementation of response actions selected  
18 in the ROD, may present an imminent and substantial endangerment  
19 to public health, welfare, or the environment.

20 12. The ROD sets forth response actions for eight of  
21 the nine Problem Areas within the CB/NT site, including the St.  
22 Paul Waterway Problem Area. As documented in the ROD and the  
23 CB/NT Remedial Investigation/Feasibility Study, the 17-acre St.  
24 Paul Waterway Problem Area, contaminated by chemicals and organic  
25 debris (though now capped with clean sediments), was identified  
26 for remedial action as a result of sediment contamination

1 adjacent to the Mill. EPA documented sediment contamination at  
2 five acres of sediment near the old Mill outfall containing a  
3 high level of chemical contamination and organic debris, an area  
4 to the southeast of the Mill with a high level of organic debris  
5 and some chemical contamination, and chemical contamination at  
6 the bottom of the entrance to the St. Paul Waterway itself, which  
7 was contaminated by wood chips.

8 13. The principle chemicals identified as contaminants  
9 in the RI/FS for the St. Paul Waterway Problem Area include  
10 4-methylphenol, phenol, 2-methoxyphenol, and  
11 1-methyl-2-(methylethyl) benzene, all of which are hazardous  
12 substances within the meaning of Section 101(14) of CERCLA,  
13 42 U.S.C. § 9601(14) and Section 311(a)(14) of CWA, 33 U.S.C.  
14 § 1321(a)(14), and hazardous wastes within the meaning of Section  
15 1004(5) of RCRA, 42 U.S.C. § 6903(5), and which are known to be  
16 toxic to marine life; as well as other compounds which are  
17 hazardous substances within the meaning of Section 101(14) of  
18 CERCLA, 42 U.S.C. § 9601(14) and Section 311(a)(14) of CWA,  
19 33 U.S.C. § 1321(a)(14), hazardous wastes within the meaning of  
20 Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and/or pollutants  
21 or contaminants within the meaning of Section 101(33) of CERCLA,  
22 42 U.S.C. § 9601(33), and which may be toxic to marine life.  
23 These chemicals were found in concentrations exceeding the  
24 cleanup goals and performance standards subsequently specified by  
25 EPA in the CB/NT ROD.

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1  
2 14. The hazardous substances, hazardous wastes, and  
3 pollutants and contaminants at the St. Paul Waterway Problem Area  
4 were primarily released from the Mill.

5 15. EPA's ROD specifies that source control,  
6 confinement of contaminated sediments, and source and sediment  
7 monitoring are the selected remedy for the CB/NT site.

8 C. Natural Resource Trusteeship

9 16. Pursuant to 40 C.F.R. § 300.600, as amended  
10 (55 Fed. Reg. 8666, 8857, Mar. 8, 1990), the Secretary of  
11 Commerce serves as Natural Resource Trustee for certain  
12 resources found in coastal waters, including marine fishery  
13 resources and their supporting ecosystems, anadromous fish, and  
14 certain endangered species and marine mammals. The Secretary of  
15 Commerce in its capacity as Natural Resource Trustee may assert  
16 its natural resource damage claims pursuant to Section 107(f) of  
17 CERCLA and Section 311(f) of the Clean Water Act.

18 17. Pursuant to 40 C.F.R. § 300.600, as amended  
19 (55 Fed. Reg. 8666, 8857, Mar. 8, 1990), the Secretary of the  
20 Interior serves as Natural Resource Trustee for resources which  
21 include migratory birds; certain anadromous fish, endangered  
22 species, and marine mammals; and certain federally managed water  
23 resources. The Secretary of Interior in its capacity as Natural  
24 Resource Trustee may assert its natural resource damage claims  
25 pursuant to Section 107(f) of CERCLA and Section 311(f) of the  
26 Clean Water Act.

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2 18. Pursuant to Section 107(f) of CERCLA, 42 U.S.C.  
3 § 9607(f), and the June 1990 Memorandum of Agreement Among the  
4 Federal, State, and Tribal Natural Resource Trustees and the  
5 U.S. Environmental Protection Agency Regarding Natural Resource  
6 Damages Assessment in the Commencement Bay, Washington  
7 Environment, the Puyallup Tribe of Indians is a federally  
8 recognized Natural Resource Trustee for the land, fish, wildlife,  
9 biota, air, water, groundwater, drinking water supplies, and  
10 other such resources belonging to, managed by, held in trust for  
11 and pertaining to, or otherwise controlled by the Puyallup Tribe  
12 of Indians and for which the Puyallup Tribe of Indians in its  
13 capacity as Natural Resource Trustee may assert its natural  
14 resource damage claims pursuant to Section 107(f) of CERCLA.

15 19. Pursuant to Section 107(f) of CERCLA, 42 U.S.C.  
16 §. 9607(f), and the June 1990 Memorandum of Agreement Among the  
17 Federal, State, and Tribal Natural Resource Trustees and the U.S.  
18 Environmental Protection Agency Regarding Natural Resource  
19 Damages Assessment in the Commencement Bay, Washington  
20 Environment, the Muckleshoot Indian Tribe is a federally  
21 recognized Natural Resource Trustee for the land, fish, wildlife,  
22 biota, air, water, groundwater, drinking water supplies, and  
23 other such resources belonging to, managed by, held in trust for  
24 and pertaining to, or otherwise controlled by the Muckleshoot  
25 Indian Tribe and for which the Muckleshoot Indian Tribe in its  
26 capacity as Natural Resource Trustee may assert its natural  
resource damage claims pursuant to Section 107(f) of CERCLA.

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2 20. Pursuant to Ch. 43.21A RCW, Ch. 70.105D RCW, and  
3 Ch. 90.48 RCW, the Washington State Department of Ecology serves  
4 as a Natural Resource Trustee for the State of Washington. In  
5 its capacity as a Natural Resource Trustee, the Department of  
6 Ecology has the authority to assert natural resource damage  
7 claims and to settle such claims when Ecology deems settlement  
8 appropriate and in the public interest. The Department of  
9 Ecology was designated, in a May 10, 1988 letter from Governor  
10 Booth Gardner to EPA, as lead Natural Resource Trustee for  
11 natural resource damages among Washington State agencies.  
12 Ecology is a party to the June 1990 Memorandum of Agreement Among  
13 the Federal, State, and Tribal Natural Resource Trustees and the  
14 EPA Regarding Natural Resource Damages Assessment in the  
15 Commencement Bay, Washington Environment.

16 21. Pursuant to Title 75 RCW, the Fisheries Code, the  
17 Washington State Department of Fisheries serves as a Natural  
18 Resource Trustee for the State of Washington. Specifically, the  
19 Department of Fisheries is Trustee for food, fish and shellfish.  
20 These resources include, but are not limited to, salmon, marine  
21 fish, and shellfish. The Department of Fisheries also protects  
22 the habitat necessary for the continued existence of these marine  
23 organisms. In its capacity as a Natural Resource Trustee, the  
24 Department of Fisheries has the authority to assert natural  
25 resource damage claims and to settle such claims when it deems  
26 settlement appropriate and in the public interest.

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22. Pursuant to Title 77 RCW, the Wildlife code, the Washington State Department of Wildlife serves as a Natural Resource Trustee for the State of Washington. Specifically, the Department of Wildlife is a Trustee for wildlife resources of the state, including those resources that inhabit Commencement Bay and the St. Paul Waterway. These resources include, but are not limited to, steelhead trout, cutthroat trout, other game fish species, waterfowl, and the habitat necessary for the continued existence of these organisms. In its capacity as a Natural Resource Trustee, the Department of Wildlife has the authority to assert natural resource damage claims and to settle such claims when it deems settlement appropriate and in the public interest.

23. Pursuant to Title 79 RCW, and the Constitution of the State of Washington, the Washington State Department of Natural Resources serves as a Natural Resource Trustee for the State of Washington. Specifically, the Department of Natural Resources is a trustee for all state-owned lands and those and those resources occupying such lands. With regard to the St. Paul Waterway problem area, which is the subject of this Complaint, the Department of Natural Resources has divided its aquatic lands division staff along natural resource trustee and potentially responsible party lines. The Department of Natural Resources has insured that no contact occurs between these respective staffs concerning the St. Paul Waterway problem area. The natural resource trustee portion of the Department of Natural

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1 Resources staff has participated in the events leading to the  
2 filing of this Complaint.

3 D. Costs Incurred by the United States

4 24. The costs of the RI/FS and other response actions  
5 incurred by the United States as a result of releases and  
6 threatened releases of hazardous substances at the CB/NT site  
7 exceed \$5,138,000. Costs allocated by EPA to the St. Paul  
8 Waterway Problem Area exceed \$350,000.

9 E. Requirements for State Consistency

10 25. In addition to the foregoing measures, it is  
11 necessary to revise the 1987 state consent decree's Monitoring  
12 Plan for the St. Paul Waterway Problem Area remedial action to  
13 ensure the consistency of such work under the state consent  
14 decree with EPA's selected remedy in the ROD and for settlement  
15 of natural resource damage claims at the St. Paul Waterway  
16 Problem Area.

17 V. FIRST CLAIM FOR RELIEF

18 26. Plaintiffs reallege paragraphs 1 through 25.

19 27. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a),  
20 provides in pertinent part:

21 In addition to any other action taken by a  
22 State or local government, when the President  
23 determines that there may be an imminent and  
24 substantial endangerment to the public health  
25 or welfare or the environment because of an  
26 actual or threatened release of a hazardous  
substance from a facility, he may require the  
Attorney General of the United States to  
secure such relief as may be necessary to  
abate such danger or threat, and the district  
court of the United States in the district in  
which the threat occurs shall have

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1 jurisdiction to grant such relief as the  
2 public interest and the equities of the case  
3 may require.

4 28. The President has delegated his authority pursuant  
5 to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), to determine  
6 that an imminent and substantial endangerment exists at a  
7 facility to the Administrator of the EPA pursuant to Executive  
8 Order 12580, dated January 23, 1987, 52 Fed. Reg. 2923 (January  
9 29, 1987). This authority was further delegated to the EPA  
10 Regional Administrators and the EPA Assistant Administrator for  
11 Solid Waste and Emergency Response by the EPA Delegations Manual  
12 Sections 14-14, 14-14-A, and 14-14-C. This authority is  
13 conferred on the EPA Region 10 Director, Hazardous Waste  
14 Division, by Regional Redefinition Order signed by the Regional  
15 Administrator.

16 29. Materials disposed of and released at the St. Paul  
17 Waterway Problem Area include hazardous substances within the  
18 meaning of Section 101(14) and 106(a) of CERCLA, 42 U.S.C.  
19 §§ 9601(14) and 9606(a).

20 30. The Mill, St. Paul Waterway Problem Area, and the  
21 contaminated sediments each are a facility within the meaning of  
22 Sections 101(9) and 106(a) of CERCLA, 42 U.S.C. §§ 9601(9) and  
23 9606(a).

24 31. Releases or threatened releases of hazardous  
25 substances from the Mill, within the meaning of Sections 101(22)  
26 and 106(a) of CERCLA, 42 U.S.C. §§ 9601(22) and 9606(a), have  
occurred at the St. Paul Waterway Problem Area.

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1 32. EPA has determined that the release or threatened  
2 release of hazardous substances at St. Paul Waterway Problem Area  
3 at and within the CB/NT site may present an "imminent and  
4 substantial endangerment to the public health or welfare or the  
5 environment" within the meaning of Section 106(a) of CERCLA,  
6 42 U.S.C. § 9606(a).

7 33. The Defendants are subject to the provisions of  
8 Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and are jointly  
9 and severally liable to perform such measures as may be necessary  
10 to abate the danger or threat posed by the release or threat of  
11 release of hazardous substances at the St. Paul Waterway Problem  
12 Area.

13 VI. SECOND CLAIM FOR RELIEF

14 34. Plaintiffs reallege paragraphs 1 through 33.

15 35. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a),  
16 provides in pertinent part, as follows:

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

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

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

23 (3) any person who by contract, agreement, or  
24 otherwise arranged for disposal or treatment,  
or arranged with a transporter for  
25 transport for disposal or treatment, of  
hazardous substances owned or possessed by  
26 such person, by any other party or entity, at  
any facility or incineration vessel owned or

1 operated by another party or entity and  
2 containing such hazardous substances, and

3 (4) any person who accepts or accepted any  
4 hazardous substances for transport to  
5 disposal or treatment facilities,  
6 incineration vessels or sites selected by  
7 such person, from which there is a release,  
8 or a threatened release which causes the  
9 incurrence of response costs, of a hazardous  
10 substance, shall be liable for -

11 (A) all costs of removal or remedial action  
12 incurred by the United States Government or a  
13 State or an Indian tribe not inconsistent  
14 with the National Contingency Plan;

15 (B) any other necessary costs of response  
16 incurred by any other person consistent with  
17 the National Contingency Plan;

18 (C) damages for injury to, destruction of,  
19 or loss of natural resources, including the  
20 reasonable costs of assessing such injury,  
21 destruction, or loss resulting from such a  
22 release; and

23 (D) the costs of any health assessment or  
24 health effects study carried out under  
25 section 9604(i) of this title.

26 36. The St. Paul Waterway Problem Area, the Mill, and  
contaminated sediments, each are a facility within the meaning of  
Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 107 of  
CERCLA, 42 U.S.C. § 9607.

37. As a result of the releases or threatened releases  
of hazardous substances at the St. Paul Waterway Problem Area,  
the United States has incurred and will continue to incur  
response costs, including costs of removal or remedial action, as  
defined in Sections 101(25), (23), and (24), 42 U.S.C. §§  
9601(25), (23), and (24), and as used in Section 107(a) of  
CERCLA, 42 U.S.C. § 9607(a).

1 38. The response and remedial actions taken by the  
2 United States in connection with the CB/NT site were not  
3 inconsistent with the National Contingency Plan, 40 C.F.R.  
4 Part 300.

5 39. The United States has satisfied any and all  
6 conditions precedent to a response action and to recovery of its  
7 costs under Section 107 of CERCLA, 42 U.S.C. § 9607.

8 40. The Defendants are persons within the meaning of  
9 Section 107 of CERCLA, 42 U.S.C. § 9607.

10 41. The Defendants are jointly and severally liable to  
11 the United States for all costs of response, remedial, and  
12 removal actions incurred and to be incurred by the United States  
13 relating to the St. Paul Waterway Problem Area pursuant to  
14 Section 107 of CERCLA, 42 U.S.C. § 9607. "

15 VII. THIRD CLAIM FOR RELIEF

16 42. Plaintiffs reallege paragraphs 1 through 41.

17 43. Section 107(a)(4)(C), 42 U.S.C. § 9607(a)(4)(C)  
18 provides that the defendants are strictly liable for injury and  
19 damages to, or the destruction or loss of, natural resources,  
20 including the reasonable costs of assessing such injury,  
21 destruction, or loss resulting from such releases. Releases of  
22 hazardous substances by defendants alleged herein, have caused  
23 and continue to cause injury to, destruction of, and loss of  
24 natural resources at the St. Paul Waterway Problem Area and  
25 within the Commencement Bay site, for which the United States,  
26 State of Washington, Puyallup Tribe of Indians, and Muckleshoot

1 Indian Tribe are co-trustees within the meaning of Section  
2 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C).

3 44. The United States, State of Washington, Puyallup  
4 Tribe of Indians, and Muckleshoot Indian Tribe have incurred and  
5 continue to incur response costs caused by the releases of  
6 hazardous substances by defendants and resulting injury to,  
7 destruction and loss of natural resources for which they are co-  
8 trustees, and the assessment of such injury, destruction and  
9 loss, including resulting damages.

10 45. The United States, State of Washington, Puyallup  
11 Tribe of Indians, and Muckleshoot Indian Tribe have satisfied all  
12 conditions precedent to the initiation of this action.

13 46. Pursuant to Section 107 of CERCLA, 42 U.S.C.  
14 § 9607(a), defendants are jointly and severally liable for all  
15 response costs and damages, including loss of use and cost of  
16 restoration, replacement, or acquisition of equivalent resources  
17 resulting from injury to, destruction of, or loss of natural  
18 resources for which the United States, State of Washington,  
19 Puyallup Tribe of Indians, and Muckleshoot Indian Tribe are co-  
20 trustees, resulting from the release of hazardous substances by  
21 defendants, and for the costs of assessing such injury and  
22 damages.

23 VIII. FOURTH CLAIM FOR RELIEF

24 47. Plaintiffs reallege paragraphs 1 through 46.

25 48. Section 7003 of RCRA, 42 U.S.C. § 6973, provides  
26 that the Administrator of the EPA may bring suit --

[U]pon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment. . . against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage or disposal facility) who has contributed or who is contributing to such handling, storage, treatment, transportation, or disposal to restrain such person from such handling, storage, treatment, transportation, or disposal, to order such person to take such action as may be necessary, or both.

49. "Hazardous waste" is defined in RCRA Section 1004(5), 41 U.S.C. § 6903(5), as:

[A] solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may --

(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

50. "Disposal" is defined in RCRA Section 1004(3), 42 U.S.C. § 6903(3), as:

[T]he discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

51. "Storage" is defined in RCRA Section 1004(33), 42

1 U.S.C. § 6903(33), when used in connection with hazardous waste  
2 as:

3 [T]he containment of hazardous waste, either  
4 on a temporary basis or for a period of  
5 years, in such a manner as not to constitute  
6 disposal of such hazardous waste.

7 52. The defendants discharged or are otherwise liable  
8 for releases of chemicals and other substances at the St. Paul  
9 Waterway Problem Area, including those listed in Paragraph 13,  
10 which are or may be either hazardous wastes or solid wastes  
11 within the meaning of Sections 1004(5) and (27) of RCRA, 42  
12 U.S.C. § 6903(5) and (27).

13 53. The discharge and other handling of such solid and  
14 hazardous wastes at the St. Paul Waterway Problem Area constitute  
15 storage, treatment, transportation or disposal within the meaning  
16 of Sections 1004(3), and 7003 of RCRA, 42 U.S.C. §§ 6903(3),  
17 6973.

18 54. EPA has determined that prior to the response  
19 actions described in paragraphs 8 and 9 above, the storage,  
20 treatment, transportation or disposal of such solid and hazardous  
21 wastes at the St. Paul Waterway Problem Area may have presented  
22 an imminent and substantial endangerment to health or the  
23 environment within the meaning of Section 7003 of RCRA, 42 U.S.C.  
24 § 6973.

25 55. The United States has incurred costs to  
26 investigate, assess and abate the danger to health or the  
environment arising from the solid or hazardous wastes at the St.  
Paul Waterway Problem Area.

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1 56. Pursuant to Section 7003 of RCRA, 42 U.S.C.  
2 § 6973, the defendants are jointly and severally liable to abate  
3 the conditions, and, therefore, to make restitution to the United  
4 States for the costs the United States has incurred and may incur  
5 to investigate, assess and abate the conditions, which may have  
6 presented an imminent and substantial endangerment at the St.  
7 Paul Waterway Problem Area or may in the future present such an  
8 endangerment.

9 IX. FIFTH CLAIM FOR RELIEF

10 57. Plaintiffs reallege paragraphs 1 through 56.

11 58. Section 311(b)(3) of CWA, 33 U.S.C. § 1321(b)(3),  
12 as amended, provides in pertinent part:

13 The discharge of oil or hazardous substances  
14 (i) into or upon the navigable waters of the  
15 United States, adjoining shorelines, or into  
16 or upon the waters of the contiguous zone  
17 . . . or which may affect natural resources  
18 belonging to, appertaining to, or under the  
19 exclusive management authority of the United  
20 States . . . in such quantities as may be harmful  
21 as determined by the President under paragraph (4)  
22 of this subsection, is prohibited . . . .

23 59. Section 311(b)(6)(A) of CWA, 33 U.S.C.  
24 § 1321(b)(6)(A), provides in pertinent part that:

25 Any owner, operator, or person in charge of  
26 any onshore facility . . . from which oil or  
a hazardous substance is discharged in  
violation of paragraph (3) of this subsection  
shall be assessed a civil penalty . . . of  
not more than \$5,000 for each offense . . . .

27 60. Section 311(b)(6)(B) of CWA, 33 U.S.C.  
28 § 1321(b)(6)(B), provides in pertinent part that:

The Administrator, taking into account the  
gravity of the offense, and the standard of

1 care manifested by the owner, operator, or  
2 person in charge, may commence a civil action  
3 against any such person subject to the  
4 penalty under subparagraph (A) of this  
5 paragraph to impose a penalty . . . . The  
6 amount of such penalty shall not exceed  
7 \$50,000, except that where the United States  
8 can show that such discharge was the result  
9 of willful negligence or willful misconduct  
10 within the privity and knowledge of the  
11 owner, operator, or person in charge, such  
12 penalty shall not exceed \$250,000 . . . .

13 61. Section 311(c) of CWA, 33 U.S.C. § 1321(c),  
14 provides in pertinent part that:

15 Whenever any oil or a hazardous substance is  
16 discharged, or there is a substantial threat  
17 of such discharge, into or upon the navigable  
18 waters of the United States [or] adjoining  
19 shorelines, . . . which may affect natural  
20 resources belonging to, appertaining to, or  
21 under the exclusive management authority of  
22 the United States . . . the President is  
23 authorized to act to remove or arrange for  
24 the removal of such oil or substance at any  
25 time, unless he determines such removal will  
26 be done properly by the owner or operator of  
the . . . onshore facility . . . from which  
the discharge occurs.

62. Section 311(e) of CWA, 33 U.S.C. § 1321(e),  
provides in pertinent part that:

In addition to any other action taken by a  
State or local government, when the President  
determines there is an imminent and  
substantial threat to the public health or  
welfare of the United States including, but  
not limited to, fish, shellfish, and wildlife  
and public and private property, shorelines,  
and beaches within the United States, because  
of an actual or threatened discharge of oil  
or hazardous substance into or upon the  
navigable waters of the United States from an  
onshore or offshore facility, the President  
may . . . secure such relief as may be  
necessary to abate such threat, and the  
district courts of the United States shall  
have jurisdiction to grant such relief as the

public interest and the equities of the case  
may require . . . .

63. Section 311(f)(2) of CWA, 33 U.S.C. § 1321(f)(2),  
provides in pertinent part that:

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, . . . 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 in an amount not to exceed \$50,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. . . .

64. Section 311(f)(4) of CWA, 33 U.S.C. § 1321(f)(4),  
provides in pertinent part that:

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.

65. The chemicals discharged from the Mill at the St.

1 Paul Waterway Problem Area were and are hazardous substances  
2 within the meaning of CWA. 33 U.S.C. § 1321(a)(14).  
3

4 66. These hazardous substances were discharged or  
5 otherwise released from the Mill to the St. Paul Waterway and  
6 Commencement Bay, which are navigable waters of the United States  
7 within the meaning of CWA.

8 67. Such discharge was and is prohibited by Section  
9 311(b)(3) of CWA.

10 68. Defendants Champion and Simpson were or are owners  
11 of the Mill, an on-shore facility within the meaning of Section  
12 311(10) of CWA 33 U.S.C. § 1321(10). Defendant DNR is the owner  
13 of the contaminated sediments in the St. Paul Waterway, a  
14 facility within the meaning of CWA.

15 69. The discharge of hazardous substances into the St.  
16 Paul Waterway and Commencement Bay may pose an imminent and  
17 substantial threat to natural resources of the United States and  
18 the State of Washington.

19 70. Defendants are jointly and severally liable to  
20 perform such measures as may be necessary to abate the danger or  
21 threat which may be posed by the discharge of hazardous  
22 substances from the Mill to navigable waters of the United  
23 States, for the actual cost of abatement of any damage to natural  
24 resources, and for civil penalties.

25 X. REQUEST FOR RELIEF

26 WHEREFORE, plaintiffs request that this Court enter  
judgment against the Defendants:

COMPLAINT-PAGE 22

U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1684

1  
2 (a) For injunctive relief as may be necessary to abate  
3 the imminent and substantial endangerment to the public health or  
4 welfare or the environment posed by the contaminated sediments in  
5 the St. Paul Waterway Problem Area, which relief at a minimum  
6 includes performing monitoring and other work necessary for  
7 implementing the remedial action selected in the EPA's June 30,  
8 1989 Record of Decision for the CB/NT site;

9 (b) For reimbursement of all costs incurred by the  
10 United States, State of Washington, Puyallup Tribe, and  
11 Muckleshoot Tribe allocable to the St. Paul Waterway Problem  
12 Area, arising from response activities related to the releases or  
13 threatened releases of hazardous substances at or from the Mill,  
14 or at or from the contaminated sediments at the St. Paul Waterway  
15 Problem Area through the date of judgment, including: i) response  
16 and oversight costs; ii) costs for conducting a natural resource  
17 damage assessment; iii) costs for damages to natural resources;  
18 and iv) abatement for continuing injuries to natural resources  
19 within the trusteeship of the United States, State of Washington,  
20 Puyallup Tribe, and Muckleshoot Tribe caused by defendants'  
21 releases of hazardous substances into the environment;

22 (c) Ordering that defendants pay damages for the  
23 injury, destruction and/or loss of use of natural resources  
24 within the trusteeship of the United States, State of Washington,  
25 Puyallup Tribe, and Muckleshoot Tribe resulting from defendants'  
26 releases of hazardous substances, including but not limited to  
the costs of assessing such injury, destruction or loss, and

1 restoration, rehabilitation and/or, if accepted by the  
2 plaintiffs, acquisition of the equivalent of such natural  
3 resources;

4 (d) Ordering that defendants reimburse the plaintiffs  
5 for all costs of enforcement, including attorneys fees, costs and  
6 expenses, and any civil penalties and interest incurred in this  
7 action;

8 (e) Awarding the plaintiffs such other and further  
9 relief as this Court may deem appropriate.

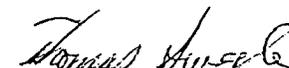
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11 Respectfully Submitted,

12 UNITED STATES OF AMERICA:

13 

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16 U.S. Department of Justice  
17 Environment and Natural Resources  
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For the PUYALLUP TRIBE OF INDIANS:

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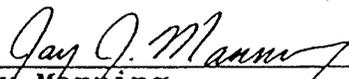
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For the STATE OF WASHINGTON:

Ken Eikenberry  
Attorney General

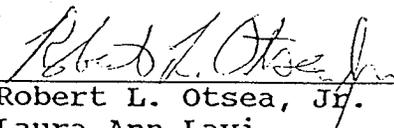
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WESTERN DISTRICT OF WASHINGTON AT TACOMA  
BY \_\_\_\_\_ DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

NOAA OFFICE OF GENERAL COUNSEL  
RECEIVED

THE UNITED STATES OF AMERICA,  
STATE OF WASHINGTON, PUYALLUP TRIBE  
OF INDIANS, AND MUCKLESHOOT INDIAN  
TRIBE,

Plaintiffs,

v.

SIMPSON TACOMA KRAFT COMPANY,  
CHAMPION INTERNATIONAL CORPORATION, AND  
WASHINGTON STATE DEPARTMENT OF  
NATURAL RESOURCES,

Defendants.

JUL 05 1991

GCNW, SEATTLE, WA

**C91-5260T**  
Civil No.

UNITED STATES'  
NOTICE OF LODGING

Pursuant to 28 C.F.R. § 50.7, a proposed Consent Decree for the St. Paul Waterway Problem Area of the Commencement Bay Nearshore/Tideflats Superfund Site is concurrently being lodged with the Court in this Civil Action, after having been concurred to and signed by the appropriate parties. After the requisite Federal Register Notice is published, the time period for comments has run, and the comments, if any, have been evaluated,

NOTICE OF LODGING - Page 1

UNITED STATES ATTORNEY  
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Seattle, Washington 98104  
(206) 553-5196

1 the Court will be further advised as to any action which may be  
2 required by the Court at that time. During the pendency of the  
3 Federal Register notice comment period under 28 C.F.R. § 50.7, no  
4 action is required by the Court.

5  
6 DATED this 24<sup>th</sup> day of June, 1991.

7  
8 Respectfully submitted,

9  
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11 United States Attorney

12  
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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 THE UNITED STATES OF AMERICA,  
12 STATE OF WASHINGTON, PUYALLUP TRIBE  
13 OF INDIANS, AND MUCKLESHOOT INDIAN  
14 TRIBE,

15 Plaintiffs,

16 v.

17 SIMPSON TACOMA KRAFT COMPANY,  
18 CHAMPION INTERNATIONAL CORPORATION, AND  
19 WASHINGTON STATE DEPARTMENT OF  
20 NATURAL RESOURCES,

21 Defendants.

Case No. C 91-5260T

**CERTIFICATE  
OF SERVICE**

22 I, Anne M. Nickless, state that on this 3<sup>rd</sup> day  
23 of July, 1991, that I caused the Complaint and Notice of  
24 Lodging filed by the United States, State of Washington, Puyallup  
25 Tribe of Indians and Muckleshoot Indian Tribe, to be served on  
26 each of the following persons depositing copies in the U.S. Mail,  
27 postage prepaid:

1 **THE UNITED STATES OF AMERICA**

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4 U.S. Department of Justice  
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Dated this 3<sup>rd</sup> day of July, 1991.

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