

1
2 **UNITED STATES DISTRICT COURT**
3 **WESTERN DISTRICT OF WASHINGTON**

4 _____
5)
6 UNITED STATES OF AMERICA,)

7 Plaintiff,)

8 v.)

Civil Action No. 2:20-cv-1746

9 ELECTRON HYDRO, LLC,)

COMPLAINT

10 Defendant.)
11 _____)

12 **COMPLAINT**

13 The United States of America (“United States”), by authority of the Attorney General of the
14 United States, acting at the request of the Administrator of the United States Environmental
15 Protection Agency (“EPA”), files this Complaint and alleges as follows:

16 **NATURE OF THE ACTION**

17 1. This is a civil action brought pursuant to Sections 309(b) and (d) of the Clean
18 Water Act (“CWA”), 33 U.S.C. §§ 1319(b) and (d), to obtain injunctive relief and civil penalties
19 against Electron Hydro, LLC (“Defendant”), for the discharge of pollutants into waters of the
20 United States without authorization and for violations of permits issued by the United States
21 Army Corps of Engineers (“Corps”) and the State of Washington.

22 2. Defendant owns and operates a hydroelectric facility located on the Puyallup
23 River in Pierce County, Washington. In July 2020, Defendant commenced work on an in-water

1 construction project involving reconstruction and repair of the facility's diversion dam structure
2 and spillway.

3 3. During the construction project, Defendant created a bypass channel within a
4 portion of the Puyallup River and, in violation of applicable permits, lined the channel with
5 waste field turf – composed, in part, of plastic yarn and crumb rubber – obtained from a nearby
6 disposal area. Defendant covered the waste field turf with plastic liner. Shortly thereafter,
7 Defendant routed the Puyallup River into the channel and the plastic liner tore, releasing at least
8 six hundred square yards of waste field turf and at least four to six cubic yards of crumb rubber
9 into the Puyallup River. The Puyallup River flows to Puget Sound and is home to several
10 species of fish protected by the Endangered Species Act and subject to treaty rights by the
11 Puyallup Tribe.

12 4. In this action, the United States seeks to: (1) enjoin the unauthorized discharge of
13 pollutants to waters of the United States without a permit in violation of Section 301(a) of the
14 CWA, 33 U.S.C. § 1311(a); (2) require Defendant to comply with the requirements of the CWA,
15 its implementing regulations, and with the terms of applicable CWA Section 402 and Section
16 404 permits; (3) require Defendant, at its own expense and at the direction of EPA, to restore
17 and/or mitigate the damages caused by its unlawful activities; and (4) require Defendant to pay
18 civil penalties as provided in Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and Section 404
19 of the CWA, 33 U.S.C. § 1344.

20 **JURISDICTION AND VENUE**

21 5. This Court has jurisdiction over the subject matter of this action and the parties
22 pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), and pursuant to
23 28 U.S.C. §§ 1331, 1345, and 1355.

1 14. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include,
2 among other things, an “individual,” “corporation,” “partnership,” or “association.”

3 15. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge
4 of a pollutant” to include “any addition of any pollutant to navigable waters from any point
5 source.”

6 16. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines the term “pollutant” to
7 include, among other things, solid waste, garbage, chemical wastes, wrecked or discarded
8 equipment, rock, sand, dirt, and industrial, municipal, and agricultural waste discharged into
9 water.

10 17. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point
11 source” as “any discernible, confined and discrete conveyance, including, but not limited to, any
12 pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, [or] rolling stock . . . from
13 which pollutants may be discharged.”

14 18. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable
15 waters” as “waters of the United States, including the territorial seas.” In turn, “waters of the
16 United States” has been defined to include, among other things, waters which are currently used,
17 or were used in the past, or may be susceptible to use in interstate or foreign commerce,
18 including waters which are subject to the ebb and flow of the tide.” 40 C.F.R. § 120.2 (2020); 33
19 C.F.R. § 328.3(a)(1), (2).

20 19. Tributary, in turn, means a river, stream, or similar naturally occurring surface
21 water channel that contributes surface water to a water described in Paragraph 18 above in a
22 typical year. A tributary must be perennial or intermittent in a typical year. The alteration or
23 relocation of a tributary does not modify its jurisdictional status. The term tributary includes a

1 ditch that either relocates a tributary or is constructed in a tributary. 40 C.F.R. §§ 120.2 (2020).

2 20. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that EPA may issue
3 National Pollutant Discharge Elimination System (“NPDES”) permits that authorize the
4 discharge of any pollutant to navigable waters, but only in compliance with Section 301 of the
5 CWA, 33 U.S.C. § 1311, and such terms and conditions as EPA determines are necessary to
6 carry out the provisions of the CWA.

7 21. Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), requires an NPDES
8 permit for storm water discharges associated with industrial activity.

9 22. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), EPA may designate
10 a state as the permitting authority for NPDES permits. The State of Washington, through the
11 State of Washington Department of Ecology (“Ecology”), is an authorized permitting authority.

12 23. Under Sections 308 and 402 of the CWA, 33 U.S.C. §§ 1318 and 1342, EPA
13 promulgated regulations relating to the control of storm water discharges at 40 C.F.R. § 122.26.
14 Pursuant to 40 C.F.R. § 123.25, any state-authorized permitting authority must include such
15 requirements in its NPDES permitting program.

16 24. Pursuant to 40 C.F.R. § 122.28, EPA may issue individual permits for a facility or
17 general permits covering one or more categories of storm water discharges. Pursuant to 40
18 C.F.R. § 123.25, any authorized state permitting program may include provisions for general
19 permits.

20 25. 40 C.F.R. §§ 122.21(a), 122.26(c), 122.28, and 123.25 require that any person
21 who discharges or who proposes to discharge storm water associated with industrial activity or
22 small construction activity must apply for an individual permit or seek coverage under a
23 promulgated storm water general permit.

1 26. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), if a state NPDES
2 program is approved pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), the
3 Administrator of the EPA retains the authority to take enforcement action under Section 309 of
4 the CWA, 33 U.S.C. § 1319.

5 27. Section 404(a) of the CWA, 33 U.S.C. § 1344(a), authorizes the Secretary of the
6 Army, acting through the Chief of Engineers of the Corps, to issue permits for the discharge of
7 dredged and/or fill material into navigable waters at specified disposal sites.

8 28. “Fill material” is defined as “any pollutant which replaces portions of the waters
9 of the United States with dry land or which changes elevation of a water body for any purpose.”
10 40 C.F.R. § 232.2.

11 29. Section 404(e) of the CWA, 33 U.S.C. § 1344(e), authorizes the Corps to issue
12 the permits referenced above on a state, regional, or nationwide basis for certain categories of
13 activities involving discharges of dredged and/or fill material.

14 30. Once issued or authorized, CWA Section 404 permits have the force of law.

15 31. Pursuant to Section 404(n) of the CWA, 33 U.S.C. § 1344(n), the Administrator
16 of the EPA retains the authority to take enforcement action under Section 309 of the CWA, 33
17 U.S.C. § 1319, for CWA violations.

18 32. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes civil actions for
19 “appropriate relief, including a permanent or temporary injunction” in the case of violations of
20 Section 301 of the CWA, 33 U.S.C. § 1311, violations of any condition or limitation set forth in
21 an NPDES permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, or violations of any
22 permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and grants jurisdiction to
23 district courts to restrain such violations and to require compliance.

1 33. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), together with the Federal Civil
2 Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement
3 Act of 1996, 28 U.S.C. § 2461, and 40 C.F.R. Part 19.4, provide for civil penalties of up to
4 \$55,800 per day for each violation that occurred after November 2, 2015 and is assessed after
5 January 13, 2020, for violations of Section 301 of the CWA, 33 U.S.C. § 1311, or violations of
6 any condition or limitation set forth in an NPDES permit issued under Section 402 of the CWA,
7 33 U.S.C. § 1342.

8 34. Section 404(s)(4) of the CWA, 33 U.S.C. § 1344(s)(4), together with the Federal
9 Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection
10 Improvement Act of 1996, 28 U.S.C. § 2461, and 33 C.F.R. Part 326.6, provide for civil
11 penalties of up to \$55,801 per day for each violation that occurred after November 2, 2015 and is
12 assessed after June 8, 2020.

13 **GENERAL ALLEGATIONS**

14 A. The Site

15 35. The Hydroelectric Facility includes a wooden flow diversion structure, a spillway,
16 a water intake, and a 10-mile long flume that conveys diverted water to the powerhouse for
17 electricity generation.

18 36. Defendant planned and proposed the Electron Hydro Diversion Repair and
19 Spillway Replacement Project (“the Project”), which includes construction to repair the wooden
20 diversion structure, replace the spillway, and reinforce existing shoreline protection
21 infrastructure at the Site.

22 B. Applicable Permits

23 37. Defendant applied for and received permits under Sections 402 and 404 of the

1 CWA, 33 U.S.C. §§ 1342 and 1344 in order to conduct the Project.

2 *i. Section 404 Permits*

3 38. On March 31, 2017, Defendant submitted a preconstruction notice and request to
4 the Corps, Seattle District, seeking verification that the Project qualified for Clean Water Act
5 Section 404 permit coverage for maintenance of the existing hydroelectric structure and bank
6 stabilization. The submission described the Project and Defendant's plan for construction. The
7 submission stated Defendant would exclude fish from the work site and construct a cofferdam to
8 isolate river flows and create a bypass channel on the right bank of the Puyallup River to re-route
9 the river flow from the work area where the diversion structure, spillway, and shoreline
10 protection work would take place.

11 39. On August 8, 2018, the Corps provided a verification letter authorizing proposed
12 work, as described in Defendant's proposal and drawings dated March 28, 2017, under
13 Nationwide Permit 3 (Maintenance) and 13 (Bank Stabilization), subject to certain special
14 conditions.

15 40. Nationwide Permit 3 ("NWP 3"), subsection (a), generally authorizes the repair,
16 rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill,
17 provided that the structure or fill is not put to a different use. 82 Fed. Reg. 1860, 1984 (2017).
18 Subsection (c) of Nationwide Permit 3 generally authorizes certain temporary structures, fills,
19 and other work necessary to conduct the maintenance activity. *Id.* The temporary fills must
20 "consist of materials, and be placed in a manner, that will not be eroded by expected high flows."
21 *Id.* The temporary fills must be removed in their entirety and the affected areas returned to their
22 pre-construction elevations and be revegetated after construction. *Id.*

23 41. Nationwide Permit 13 ("NWP 13") generally authorizes bank stabilization

1 activities necessary for erosion control or prevention, provided the activity meets specified
2 criteria. 82 Fed. Reg. at 1986. Those criteria include a requirement that “[n]o material is placed
3 in a manner that will be eroded by normal or expected high flows” and that “[t]he activity must
4 be properly maintained, which may require repairing it after severe storms or erosion events.”

5 *Id.* NWP 13 further authorizes temporary structures, fills, and work, including the use of
6 temporary mats, necessary to construct the bank stabilization activity. *Id.* It also provides that
7 “[t]emporary fills must consist of materials, and be placed in a manner, that will not be eroded by
8 expected high flows.” *Id.*

9 42. For activities authorized by NWP 13 that (1) involve discharges into special
10 aquatic sites, (2) are in excess of 500 feet in length, or (3) will involve the discharge of greater
11 than an average of one cubic yard per running foot as measured along the length of the treated
12 bank, below the plane of the ordinary high water mark or the high tide line, the prospective
13 permittee must submit a pre-construction notification to the appropriate Corps district engineer
14 prior to commencing the activity.

15 43. For work to be valid under a nationwide permit authorization, including
16 Nationwide Permits 3 and 13, a permittee must comply with the general conditions set out at 82
17 Fed. Reg. 1860, 1998–2003. Those general conditions include National General Condition 6
18 (Suitable Material), which states: “No activity may use unsuitable material (e.g. trash, debris, car
19 parts, asphalt, etc.). Material used for construction or discharged must be free from toxic
20 pollutants in toxic amounts.” 82 Fed. Reg. at 1998–99.

21 44. Where required by the terms of a nationwide permit, a prospective permittee must
22 notify the relevant Corps district engineer by submitting a pre-construction notification. 82 Fed.
23 Reg. at 2003. In such a case, the prospective permittee may not begin the proposed activity until

1 it is notified in writing that the activity may proceed under the relevant nationwide permit with
2 any special conditions imposed by the district or division engineer, or until other conditions set
3 out in General Condition 32(a)(2) are met. *Id.*

4 *ii. Section 402 Permit*

5 45. On November 18, 2015, Ecology issued the State of Washington’s NPDES and
6 State Waste Discharge General Permit for storm water discharges associated with construction
7 activity (“Construction Stormwater General Permit” or “CSWGP”), effective through December
8 31, 2020.

9 46. Defendant applied for and was granted coverage under the CSWGP effective July
10 5, 2018. The Site was permitted for 4.5 acres of disturbed area resulting from construction
11 activity for the Project at the Site.

12 47. The CSWGP sets forth Special and General Conditions with which permittees
13 must comply, including among other things, requirements to:

- 14 a. prepare and update a Stormwater Pollution Prevention Plan (“SWPPP”) (*See*
15 Conditions S9.B and E);
- 16 b. implement all appropriate Best Management Practices (“BMPs”) (*See* Conditions
17 S9.B and D);
- 18 c. comply with monitoring requirements, including performing weekly site
19 inspections and conducting monthly water quality monitoring (*See* Conditions
20 S4.B, S5.B, and S5.D);
- 21 d. notify Ecology of planned physical alterations, modifications, or additions to
22 permitted construction activity (*See* Condition G20); and
- 23 e. notify Ecology of noncompliance when the permittee is unable to comply with

1 any part of the terms and conditions of the permit, and the resulting
2 noncompliance may cause a threat to human health or the environment, including
3 discharges that violate water quality standards (*See* Condition S5.F).

4 C. Discharges

5 48. In July 2020, Defendant started in-water work on the Project. Plans for the 2020
6 construction season included creating a temporary cofferdam and bypass channel to divert the
7 flow of the Puyallup River around the construction work area.

8 49. Between July 20 and 27, 2020, Defendant installed a temporary cofferdam.

9 50. The temporary cofferdam divided the Puyallup River, allowing Defendant to
10 isolate the flow of the River on either the right side (bypass channel) or left side (construction
11 area) of the River in order to carry out construction activity.

12 51. The bypass channel was thus constructed in the Puyallup River by dividing the
13 River's flow and temporarily relocating the River to the channel along the River's right bank.

14 52. Defendant planned to install an impervious high-density polyethylene (HDPE)
15 plastic liner in a portion of the bypass channel.

16 53. Prior to installing the plastic liner, Defendant's personnel identified a risk that the
17 liner could tear or otherwise be compromised by rock or debris. To address this risk,
18 Defendant's personnel installed waste field turf underneath the plastic liner.

19 54. Defendant obtained the waste field turf from a nearby quarry that serves as a
20 dumpsite.

21 55. Defendant used a crane to place the waste field turf in the bypass channel.

22 56. The use of waste field turf material was not authorized by the relevant permits,
23 and Defendant did not inform any permitting authorities of its decision to use the waste field turf

1 in the bypass channel.

2 57. Defendant placed approximately 2,409 square yards of waste field turf at the
3 bottom of the bypass channel and installed the plastic liner over the waste field turf.

4 58. On July 28, 2020, Defendant diverted the Puyallup River into the bypass channel.

5 59. A partial breach of the plastic liner occurred on or about July 29, 2020.

6 60. As a result of the partial breach of the plastic liner, Defendant discharged
7 approximately 617 square yards of waste field turf material into the Puyallup River.

8 61. The waste field turf material consisted of a linear low-density polyethylene
9 (“LLDPE”) grass yarn matrix and a loose granular infill material composed of a mixture of
10 graded silica sand and crumb rubber.

11 62. As a result of the partial breach of the plastic liner, Defendant discharged an
12 estimated four to six cubic yards of crumb rubber into the Puyallup River.

13 63. Portions of the plastic liner and waste field turf matrix material were found in
14 various locations throughout the Puyallup River, including at least 5,000 feet downstream of the
15 construction site.

16 64. The crumb rubber rapidly and widely dispersed into the Puyallup River and has
17 travelled at least 19 miles downstream.

18 65. The Puyallup River continued to flow through the bypass channel until on or
19 about October 25, 2020. Portions of both the plastic liner and waste field turf remained in place
20 in the bypass channel until on or about October 28, 2020.

21 66. The Puyallup River, including that portion of the River Defendant used as a
22 bypass channel, flows year-round and contributes surface water flow to Commencement Bay and
23 Puget Sound, which are traditional navigable waters.

1 D. Ecology Inspections

2 67. On August 11, 2020, after receiving an Environmental Report Tracking System
3 complaint regarding the discharge of waste field turf and crumb rubber, Ecology conducted an
4 inspection of the Site. The inspector found that Defendant violated the CSWGP because it:

- 5 a. failed to report the July 29 discharge of field turf and crumb rubber; and
- 6 b. failed to conduct monthly water quality sampling.

7 68. On August 17, 2020, Ecology conducted another inspection of the Site. The
8 inspector found that Defendant violated the CSWGP because it:

- 9 a. had disturbed more than the 4.5 acres authorized by the CSWGP;
- 10 b. failed to conduct and or keep records of weekly site inspections;
- 11 c. failed to stabilize exposed and unworked soil; and
- 12 d. failed to provide secondary containment for equipment containing fuel.

13 69. On September 30, 2020, Ecology conducted another inspection of the Site. The
14 inspector found that Defendant violated the CSWGP because it:

- 15 a. failed to adequately maintain its site log books;
- 16 b. failed to ensure its SWPPP was up-to-date and reflected all on-site BMPs;
- 17 c. failed to provide secondary containment for equipment containing fuel; and
- 18 d. failed to maintain and repair erosion and sediment control BMPs.

19 **FIRST CLAIM FOR RELIEF**

20 (Illegal Discharges of Waste Field Turf and Crumb Rubber into the Puyallup River in Violation
21 of Section 301(a) of the CWA, 33 U.S.C. § 1311(a))

22
23 70. Paragraphs 1 through 69 are realleged and incorporated herein.

24 71. At least on or about July 29, 2020, Defendant discharged waste field turf and its
25 component crumb rubber from the bypass channel into waters of the United States.

1 72. Upon information and belief, subject to a reasonable opportunity for future
2 discovery, from on or about July 29, 2020 until on or about October 25, 2020, Defendant
3 continued to discharge waste field turf and its component rubber crumb from the bypass channel
4 into waters of the United States.

5 73. The waste field turf and the component crumb rubber discharged from
6 Defendant's bypass channel are pollutants, as defined by Section 502(6) of the CWA, 33 U.S.C.
7 § 1362(6).

8 74. The bypass channel is a point source as defined by Section 502(14) of the CWA,
9 33 U.S.C. § 1362(14).

10 75. The Puyallup River is a "navigable water" within the meaning of Section 502(7)
11 of the CWA, 33 U.S.C. § 1362(7), and applicable regulations.

12 76. Defendant did not have a permit to discharge the waste field turf and component
13 crumb rubber from the bypass channel into the Puyallup River.

14 77. Defendant violated Section 301 of the CWA, 33 U.S.C. § 1311(a) by discharging
15 a pollutant from a point source into a navigable water.

16 78. Each day of each discharge referred to in paragraphs 71 and 72 above constitutes
17 a separate violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

18 79. Defendant is strictly liable to the United States for injunctive relief and civil
19 penalties under Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d).

20 **SECOND CLAIM FOR RELIEF**

21 (Illegal Discharges of Waste Field Turf into the Bypass Channel in Violation of Section 301(a)
22 of the CWA, 33 U.S.C. § 1311(a))

23
24 80. Paragraphs 1 through 69 are realleged and incorporated herein.

25 81. Upon information and belief, on or about July 20, 2020, Defendant and/or persons

1 acting on its behalf used a crane to place approximately 2,409 square yards of waste field turf
2 into waters of the United States, specifically that portion of the Puyallup River being used as a
3 bypass channel at the Site.

4 82. Defendant and/or persons acting on its behalf obtained the waste field turf and
5 component crumb rubber obtained from a nearby dumpsite.

6 83. Defendant conducted, contracted for, supervised, directed, or otherwise caused
7 the activities alleged in Paragraphs 81–82 of this Complaint.

8 84. The waste field turf and component crumb rubber placed in the bypass channel
9 are fill material under Section 404(a) of the CWA, 33 U.S.C. § 1344(a), as defined in 40 C.F.R.
10 § 232.2.

11 85. The fill material that Defendant discharged constitutes “pollutants” as defined in
12 CWA Section 502(6), 33 U.S.C. § 1362(6).

13 86. Defendant and/or persons acting on its behalf used a crane to discharge the waste
14 field turf into the bypass channel. This crane constitutes a “point source” as defined in Section
15 502(14) of the CWA, 33 U.S.C. § 1362(14).

16 87. The Puyallup River, including that portion Defendant used as a bypass channel, is
17 a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and
18 applicable regulations.

19 88. The addition of waste field turf and component crumb rubber into the bypass
20 channel was unauthorized because it exceeded the scope of activities authorized in the Corps’
21 August 8, 2018 permit verification.

22 89. Defendant violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by
23 discharging fill material into the bypass channel without authorization.

1 90. The violations alleged in Paragraph 81–89, above, continued on each and every
2 day between the time the fill was placed until its removal on or about October 28, 2020.

3 91. Defendant is strictly liable to the United States for injunctive relief and civil
4 penalties under Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d).

5 **THIRD CLAIM FOR RELIEF**

6 (Failure to Comply with Section 404 Permits)

7
8 92. Paragraphs 1 through 69 are realleged and incorporated herein.

9 93. Upon information and belief, on or about July 20, 2020, Defendant placed waste
10 field turf and component crumb rubber into the bypass channel at the Site.

11 94. The waste field turf and component crumb rubber placed in the bypass channel
12 are “trash,” which is an unsuitable material under General Condition 6 of Nationwide Permits 3
13 and 13. Waste field turf and component crumb rubber are unsuitable for use in a river system
14 where it can break down and potentially discharge toxins and other pollutants into the water.

15 95. The placement of unsuitable material into the bypass channel violates National
16 General Condition 6 applicable to Nationwide Permits 3 and 13.

17 96. The placement of waste field turf and component crumb rubber in the bypass
18 channel under a liner that could tear or otherwise be compromised by rock or debris constitutes
19 the use or placement of materials that may be, and were, “eroded by expected high flows.”

20 97. The use or placement of materials in a temporary fill that will be “eroded by
21 expected high flows” violates NWP 3 and 13.

22 98. Defendant has violated conditions or limitations of a permit issued by the Corps
23 pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

24 99. Defendant is strictly liable to the United States for injunctive relief and civil
25 penalties under Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d).

FOURTH CLAIM FOR RELIEF

(Failure to Comply with Section 402 Permit)

100. Paragraphs 1 through 69 are realleged and incorporated herein.

101. As stated above, Defendant failed to comply with the terms and conditions of the applicable Construction Stormwater General Permit, including by: (1) failing to report noncompliance; (2) failing to conduct monthly water quality sampling; (3) violating the allowed disturbed acreage limit and failing to apply for a modification; (4) failing to conduct and maintain a record of weekly site inspection reports; (5) failing to maintain its site log books; (6) failing to maintain its SWPPP; (7) failing to stabilize exposed and unworked soil; (8) failing to provide secondary containment for equipment containing fuel; and (9) failing to maintain and repair erosion and sediment control BMPs.

102. Defendant has violated a condition or limitation of a permit issued by the State pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

103. Each day that Defendant failed to comply with each term and condition of the Construction Stormwater General Permit referred to in Paragraph 101 above constitutes a separate violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

104. Defendant is strictly liable to the United States for injunctive relief and civil penalties under Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d).

RELIEF SOUGHT

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court grant the following relief:

1. Order Defendant to be assessed, pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), civil penalties of up to \$55,800 per day for each violation of the CWA occurring after January 13, 2020.

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1 2. Order Defendant to be assessed, pursuant to Section 404 of the CWA, 33 U.S.C.
2 § 1344, civil penalties of up to \$55,801 per day for each violation of the CWA occurring after
3 June 8, 2020.

4 3. Order Defendant to take all appropriate action to remove all remaining fill
5 material and any pollutants from the Puyallup River and to mitigate the effects of each of its
6 violations.

7 4. Order Defendant to comply with the requirements of the CWA, its implementing
8 regulations, and with the terms of applicable CWA Section 402 and Section 404 permits.

9 5. Award the United States its costs in this action.

10 6. Grant such other relief as this Court may deem just and proper.

11
12 Respectfully submitted,

13
14 JONATHAN D. BRIGHTBILL
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19
20 /s John Broderick
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