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UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE,	)	
	)	
Plaintiff,	)	
v.	)	COMPLAINT
	)	
UNION PACIFIC RAILROAD	)	
COMPANY,	)	
	)	
Defendant.	)	
	)	
	)	

**I. INTRODUCTION**

1. This action is a citizen suit brought under Section 505 of the Clean Water Act (“CWA”) as amended, 33 U.S.C. § 1365. Plaintiff Puget Soundkeeper Alliance seeks a declaratory judgment, injunctive relief, the imposition of civil penalties, and the award of costs, including attorneys’ and expert witnesses’ fees, for Defendant Union Pacific Railroad Company’s repeated and ongoing violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, and the terms and conditions of its National Pollutant Discharge

COMPLAINT - 1

SMITH & LOWNEY, P.L.L.C.  
 2317 EAST JOHN STREET  
 SEATTLE, WASHINGTON 98112

1 Elimination System (“NPDES”) permit authorizing discharges of pollutants from Defendant’s  
2 Seattle, Washington, facility to navigable waters.

## 3 II. JURISDICTION AND VENUE

4 2. The Court has subject matter jurisdiction under Section 505(a) of the CWA, 33  
5 U.S.C. § 1365(a). The relief requested herein is authorized by 33 U.S.C. §§ 1319(d) and  
6 1365(a).  
7

8 3. Under Section 505 (b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), Plaintiff  
9 notified Defendant of Defendant’s violations of the CWA and of Plaintiff’s intent to sue under  
10 the CWA by letter dated and postmarked July 24, 2020 and delivered July 27, 2020 (“Notice  
11 Letter”). A copy of the Notice Letter is attached to this complaint as Exhibit 1. The allegations  
12 in the Notice Letter are incorporated herein by this reference. Plaintiff notified Defendant’s  
13 Registered Agent, the Administrator of the United States Environmental Protection Agency  
14 (“USEPA”), the Administrator of USEPA Region 10, and the Director of the Washington  
15 Department of Ecology (“WDOE”) of its intent to sue Defendant by mailing copies of the Notice  
16 Letter to these officials on July 24, 2020.  
17

18 4. More than sixty days have passed since the notice was served and the violations  
19 complained of in the Notice Letter are continuing or are reasonably likely to continue to occur.  
20 Defendant is in violation of its NPDES permit and the CWA. Neither the USEPA nor the  
21 WDOE has commenced any action constituting diligent prosecution to redress these violations.  
22

23 5. The source of the violations complained of is located in King County,  
24 Washington, within the Western District of Washington, and venue is therefore appropriate in  
25 the Western District of Washington pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. §  
26 1365(c)(1).  
27  
28

### III. PARTIES

6. Plaintiff Puget Soundkeeper Alliance (“Soundkeeper”) is suing on behalf of itself and its member(s). Soundkeeper is a non-profit corporation organized under the laws of the State of Washington. Soundkeeper is a membership organization and has at least one member who is injured by Defendant’s violations. Soundkeeper is dedicated to protecting and preserving Puget Sound including all waters flowing into Puget Sound and adjacent lands.

7. Plaintiff has representational standing to bring this action. Soundkeeper’s members are reasonably concerned about the effects of discharges of pollutants, including stormwater from Defendant’s facility, on aquatic species and wildlife that Plaintiff’s members observe, study and enjoy. Soundkeeper’s members are further concerned about the effect of discharges from Defendant’s facility on human health. In addition, discharges from Defendant’s facility lessen Soundkeeper’s members’ aesthetic enjoyment of nearby areas. Soundkeeper has members who live, work, fish and recreate around or use the Duwamish River, tributaries thereto, and waters to which the Duwamish River is tributary, Elliott Bay and Puget Sound. These members are affected by Defendant’s discharges and permit violations. Soundkeeper’s members’ concerns about the effects of Defendant’s discharges are aggravated by Defendant’s failure to record and report information about its discharges and pollution controls. The recreational, economic, aesthetic and/or health interests of Soundkeeper and its member(s) have been, are being, and will be adversely affected by Defendant’s violations of the CWA. The relief sought in this lawsuit can redress the injuries to these interests.

8. Plaintiff has organizational standing to bring this action. Soundkeeper has been actively engaged in a variety of educational and advocacy efforts to improve water quality and to address sources of water quality degradation in the waters of western Washington, including the

1 Duwamish River and Puget Sound. Defendant has failed to fulfill monitoring, recordkeeping,  
2 reporting and planning requirements, among others, necessary for compliance with its NPDES  
3 permit and the CWA. As a result, Plaintiff is deprived of information necessary to properly  
4 serve its members by providing information and taking appropriate action to advance its mission.  
5 Plaintiff's efforts to educate and advocate for greater environmental protection for the benefit of  
6 its members are also precluded. Finally, Plaintiff and the public are deprived of information that  
7 influences members of the public to become members of Soundkeeper, thereby reducing  
8 Soundkeeper's membership numbers. Thus, Plaintiff's organizational interests have been  
9 adversely affected by Defendant's violations. These injuries are fairly traceable to Defendant's  
10 violations and redressable by the Court.

13 9. Defendant is a corporation authorized to conduct business under the laws of the  
14 State of Washington.

15 10. Defendant owns and operates a facility used for railcar storage, switching,  
16 maintenance, equipment and material storage and related activities, located at or about 402 S.  
17 Dawson St., Seattle, WA, including contiguous or adjacent properties owned or operated by  
18 Defendant (the "facility").

#### 20 IV. LEGAL BACKGROUND

21 11. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of  
22 pollutants by any person, unless in compliance with the provisions of the CWA. Section 301(a)  
23 prohibits, inter alia, such discharges not authorized by, or in violation of, the terms of a NPDES  
24 permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

25 12. The State of Washington has established a federally approved state NPDES  
26 program administered by the WDOE. Wash. Rev. Code § 90.48.260; Wash. Admin. Code ch.  
27

1 173-220. This program was approved by the Administrator of the USEPA pursuant to 33 U.S.C.  
2 § 1342(b).

3 13. Pursuant to Section 402(a) of the CWA, 33 U.S.C. § 1342(a), the WDOE has  
4 repeatedly issued the Industrial Stormwater General Permit, most recently on November 20,  
5 2019, (the “General Permit”). The General Permit, in its various iterations since its first issuance  
6 in 1993 containing comparable requirements, authorizes those that obtain coverage under the  
7 General Permit to discharge stormwater, a pollutant under the CWA, and other pollutants  
8 contained in the stormwater to the waters of the State subject to certain terms and conditions.  
9

10 14. The General Permit imposes certain terms and conditions on those covered  
11 thereby, including monitoring and sampling of discharges, reporting and recordkeeping  
12 requirements. To reduce and eliminate pollutant concentrations in stormwater discharges, the  
13 General Permit requires, among other things, that Permittees develop and implement best  
14 management practices (“BMPs”) and a Stormwater Pollution Prevention Plan (“SWPPP”), and  
15 apply all known and reasonable methods of prevention, control and treatment (“AKART”) to  
16 discharges. When a Permittee’s stormwater discharge exceeds benchmark values for  
17 concentrations of certain pollutants (and action levels for concentrations of certain pollutants in a  
18 previous version of the General Permit), the General Permit requires the Permittee to complete  
19 the applicable Level 1, 2, or 3 corrective action requirements. The specific terms and conditions  
20 of the General Permit are described in detail in the Notice Letter, attached hereto as Exhibit 1,  
21 and incorporated herein by this reference.  
22  
23  
24

## 25 V. FACTS

26 15. Pursuant to Condition S2 of the General Permit, Defendant filed with the WDOE  
27 an Application for General Permit to Discharge Stormwater Associated with Industrial Activity.  
28



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