

MEMORANDUM | NOVEMBER 2, 2018

TO Tom Post; Department of Energy (DOE)
FROM Catherine Foley, DaWon Lee, Robert Unsworth; Industrial Economics Inc.(IEc)
SUBJECT A Review of Tribal Natural Resource Damage Settlements and Cases

The U.S. Department of Energy (DOE) is currently conducting a natural resource damage assessment (NRDA) related to releases of hazardous substances from the Hanford Site (Site), located in southeastern Washington State.¹ This assessment includes consideration of impacts on regional indigenous communities, with participation on the Hanford Site Trustee Council by three federally recognized tribes: The Confederated Tribes of the Umatilla Indian Reservation; the Nez Perce Tribe; and the Confederated Tribes and Bands of the Yakama Nation. As such, DOE is working to compile information on how settlement and restoration has been achieved in NRDA cases involving tribal trustees. In this context Industrial Economics, Incorporated (IEc) was asked to provide technical support to DOE in 1) identifying existing tribal-related NRDA cases 2) summarizing how Trustee Councils have approached the question of identifying and evaluating losses in services provided by important tribal resources, 3) identifying examples of settlements involving tribal trustees, and 4) describing selected options and scaling for restoration designed to compensate for tribal losses.

The remainder of this memorandum provides a summary of our data collection approach and summarizes our findings to-date. A separate document contains more detailed information on the attributes of the tribal NRDA cases. This includes information on the NRDA name, location, trustee participants, contaminants and nature of releases, settlement data, tribal assessment approach, and other attributes. Appendix A describes the types of data contained within the Tribal NRDA database.

DATA COLLECTION

We relied predominantly on publicly available, existing resources and documents to inform this research. Secondarily, we sought information from individuals who were or are involved in NRDA cases both internal and external to IEC via email and interviews.

DOCUMENTS

To identify and compile information on tribal-related NRDA cases, we accessed a range of publicly accessible sources, including federal webpages, state webpages, internal IEC reports, and public reports for review. The full list of resources consulted is provided in Appendix B.

Tribes have a range of causes of action under which damage claims for injuries to natural resources can be brought. For this effort we limited our search to claims brought under

¹ For additional information on natural resource damage assessment activities at the Hanford Site please see the Hanford Natural Resource Trustee Council Natural Resource Damage Assessment website: <http://www.hanfordnrda.org/>.

the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Oil Pollution Act of 1990 (OPA), or the Clean Water Act (CWA). In one instance we include information on claims brought outside of these causes of action, where we believe the information is relevant to this effort (i.e., *U.S. On Behalf Of Sac and Fox Tribes of Oklahoma v. Tenneco, Inc. Management*; this was brought under the Safe Drinking Water Act).²

As trustee council members, federal and state agencies often create publicly available databases, webpages, and/or written reports that archive information on past and ongoing NRDA claims. Among the government resources, the U.S. Department of the Interior (U.S. DOI) and the National Oceanic and Atmospheric Administration (NOAA) under the U.S. Department of Commerce (Commerce) provide extensive webpages for their affiliated NRDA program activities. NOAA's Damage Assessment, Remediation, and Restoration Program (DARRP) Site Interactive Project Map provides links to general overviews and case documents for 148 NRDA's. The U.S. DOI's Natural Resource Damage Assessment and Restoration (NRDAR Program) provides case descriptions and case document libraries for 294 NRDA's. Some states with active NRD programs including Massachusetts, Michigan, and New Mexico also support NRD websites with information on relevant cases.

In addition to government resources, we identified and reviewed internal and external sources of information to supplement the data collection process. IEc manages a map, database, and bibliography on NRDA's for internal reference. Public documents, reports, and proceedings have also summarized information on NRDA claims. In particular, Brian Israel's³ periodic report, "State-by-State Guide to NRD Programs in All 50 States and Puerto Rico, provide a comprehensive list and summary of NRDA cases.

We reviewed information from Federal web sites, state web sites, internal IEc sources, and relevant documents to log information on all settled and ongoing NRDA cases. Where possible, additional information on case details was then obtained from our review of case documents identified in this effort.

EXPERTS

We reached out to senior-level staff at IEc involved in NRDA cases to fill in data gaps based on the document search. This resulted in multiple conversations and acquisition of additional documents as well as addition of some case details. We also reached out to individuals outside of IEc, including other consultants and attorneys involved in NRDA cases; Department of Justice (DOJ); Department of Interior (DOI); and National Oceanic and Atmospheric Administration (NOAA).

² U.S. Department of the Interior. 1996. H2O for S&F. The Sac and Fox Nation of Oklahoma Settles Water Pollutant Lawsuit. December.

³ Israel, B.D. 2018. State-by-State Guide to NRD Programs in All 50 States and Puerto Rico. Arnold & Porter Kaye Scholer LLP. March.

FINDINGS

The summary provided below is intended to illustrate the information contained within the Tribal NRDA database. The database and more specifically the underlying documents provide more detailed information about each NRDA.

Overall, we identified 54 tribal-related NRDA. Across these cases, 69 unique tribes are/were participating in some manner either as members of formal Trustee Councils or as a result of outreach by the relevant trustee council. The earliest tribal-related NRDA case we identified was settled in 1992; since then 33 additional NRDA involving tribal trustees have resulted in signed consent decrees (some of which are still ongoing). One case (i.e., Penobscot River) resulted in a dropped claim; and the remaining 19 NRDA are ongoing. Overall the NRDA span across 26 states, and are generally concentrated in the Pacific Northwest (Exhibit 1). For example, the state of Washington has participated on trustee councils involving 16 tribal-related NRDA sites.

EXHIBIT 1 TRIBAL-RELATED NRDA CASES⁴



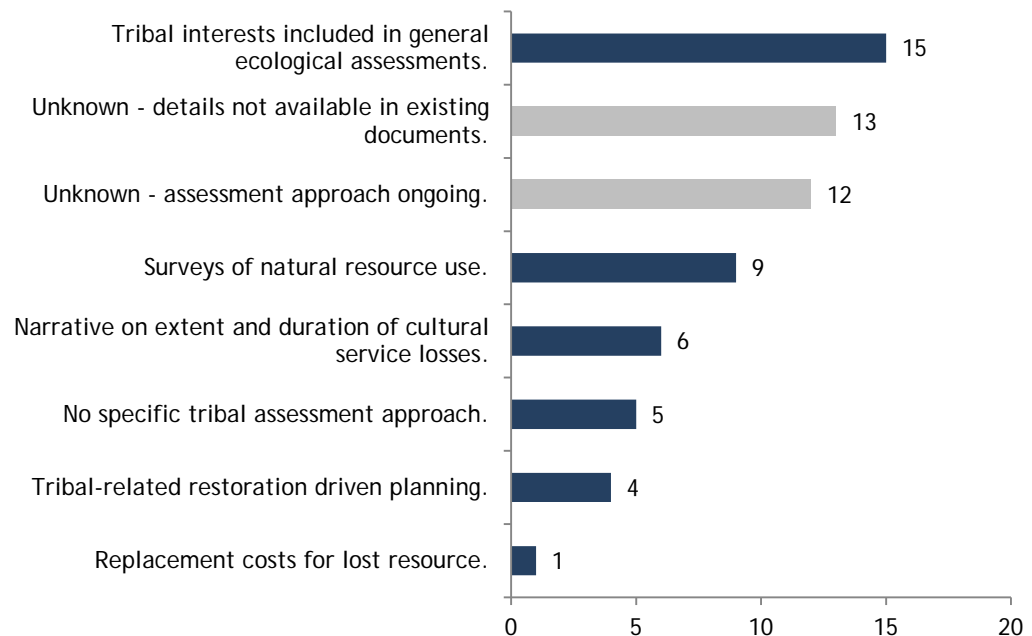
TRIBAL ASSESSMENT APPROACH

Tribal trustees use a wide range of qualitative and quantitative methods to assess damages and lost services, including informal interviews, formal surveys of natural resource use by

⁴ Tronox Inc. Bankruptcy NRDA case has multiple contamination sites, which gathered state trustees from AL, GA, IL, LA, MA, MO, MS, NJ, NY, OH, OK, and TX. Only the contaminated site on Navajo Nation territory is depicted on the map since the Navajo Nation was the sole tribal trustee on the NRDA case.

tribal members (e.g., consumption surveys), and lost natural resource service analyses in support of claims for restoration of natural resources. Exhibit 2 presents the types of assessment approaches that have been applied across tribal-related NRDA's.⁵ Most often, tribal interests are reflected through broader ecological assessments conducted as part of the assessment, via tribal participation in the Trustee Council (15). Tribes may take part in restoration planning before or after settlement, prioritizing cultural, religious, economic, and subsistence use of natural resources when proposing or supporting restoration projects (4). For instance, in the context of the John Day Acid Spill the Confederated Tribes of the Umatilla Indian Reservation were particularly invested in restoring culturally important consumption of fish. As a result of this claim, state and tribal fisheries departments performed corrective measures to benefit habitats for salmon, steelhead, and other resident fish.⁶ Surveys of tribal member's natural resource use are also relatively common (9). These may be general population surveys, or targeted surveys and interviews with key tribal members or sub-populations. These surveys may be used to support development of a tribal-specific narrative on the extent and duration of cultural service losses (6).

EXHIBIT 2 ASSESSMENT APPROACHES ACROSS TRIBAL-RELATED NRDA'S⁷



TRIBAL SETTLEMENTS

Overall we identified 30 tribal-related NRDA's that have settled, 19 that are ongoing, four with partial settlements but are still ongoing, and one that resulted in no settlement and which was terminated by the Trustees (see Exhibit 3). Of the 34 tribal-related NRDA

⁵ Multiple approaches may occur as part of a single NRDA, Exhibit 2 counts the number of approaches therefore the sum of approaches is greater than the total number of NRDA's.

⁶ John Day Acid Spill Trustees. 1994. Final Joint Environmental Assessment and Restoration Plan for the John Day River Acid Spill. August.

⁷ Multiple approaches may occur as part of a single NRDA, Exhibit 2 counts the number of approaches therefore the sum of approaches is greater than the total number of NRDA's.

cases with settlements, we identified 30 cases that explicitly describe tribal-specific compensation in their case documents. Excluding past assessment costs, compensation to tribes for natural resource damages range between \$52,392 and \$18,300,000, with the median compensation of around \$362,000. In some instances, the tribal trustee was compensated for both natural resource damages as well as assessment costs in a single payment, making it difficult to separate out these two components of the claim. Although compensation is most commonly made through direct monetary payment, tribal trustees have previously settled cases through the transfer of land ownership to the tribe. In instances where multiple trustees are involved, the consent decree(s) often establish a joint fund for allocation by trustees for purposes of completing restoration projects. For example, the Texaco Refinery Oil Spills NRDA established the Texaco Restoration Fund (TRF). The consent decree and MOA required the formation of a Trustee Committee to develop a restoration plan prior to expending funds. The Trustee Committee consisted of representatives of the Nooksack Indian Tribe; Lummi Nation, Swinomish Indian Tribal Community; Suquamish Indian Tribe; the U.S. Fish and Wildlife Service; and the Washington State Departments of Ecology, Fish and Wildlife, and Natural Resources.⁸

EXHIBIT 3 SETTLEMENT STATUS FOR TRIBAL-RELATED NRDAS

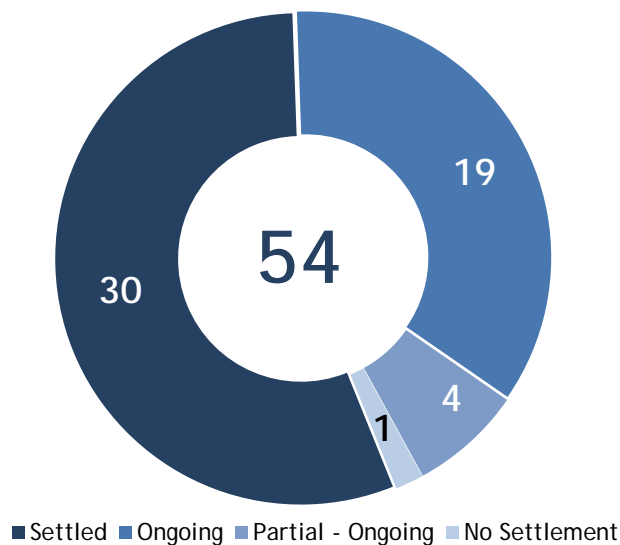


Exhibit 4 presents the types of tribal settlements across NRDA cases, most resulted in establishment of a restoration fund to be administered by a Trustee Council for purposes of resource restoration, with no specific tribal component called out in the settlement document (15). Thirteen cases included tribal-specific compensation either in the form of cash or land.

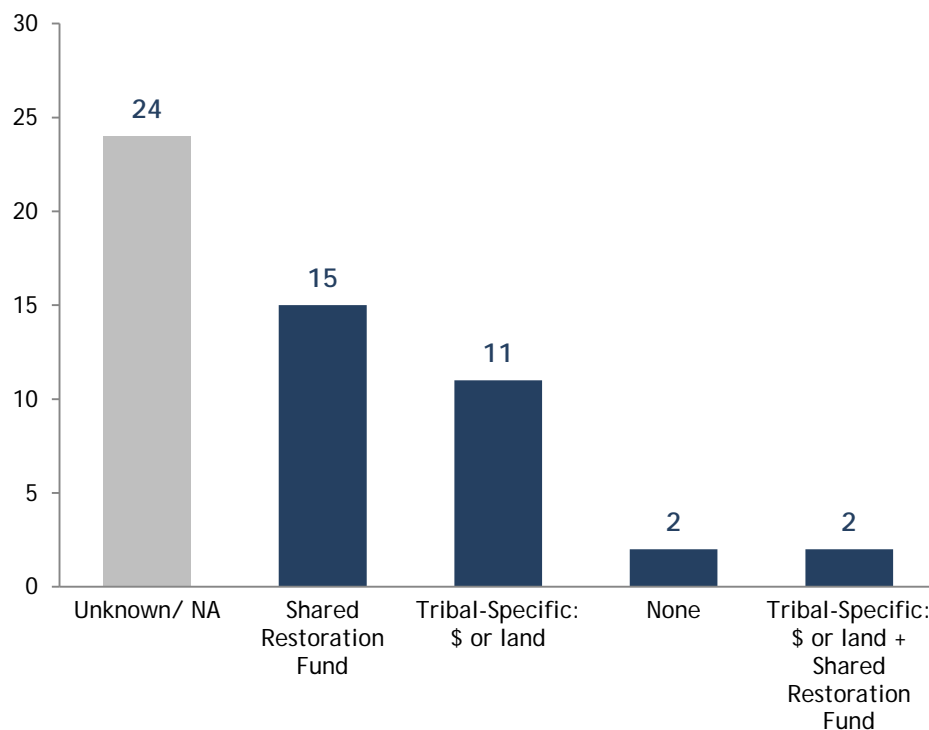
NRDA Cases with Substantial Amounts of Monetary Compensation

The largest reported recoveries, \$18,300,000 and \$11,554,565, were obtained by the tribal trustees in the context of the Clark Fork River Mega Site NRDA (i.e., releases of

⁸ The Texaco Oil Spills Natural Resource Trustee. 2004. Final Restoration Plan and Environmental Assessment for the Texaco Oil Spills into Fidalgo Bay, Anacortes, Washington in 1991 and 1992. November.

mine waste to the Clark Fork, Montana) and the St. Lawrence River and Environment NRDA (releases of PCBs and other hazardous substances to the St. Lawrence environment in New York), respectively.^{9,10,11 12,13} For the Clark Fork River Mega Site, there was no formal publically available assessment leading to the 2008 consent decree. In this case the Tribal trustee relied on a range of studies conducted to inform settlement negotiations. In the case of the St. Lawrence River and Environment NRDA, the St. Regis Mohawk Tribe participated on a trustee council that assessed key aspects of traditional and cultural practices to determine a suite of restoration projects that would re-establish tribal members' connection to and use of affected resources. Through the resulting consent decrees settling this claim, the tribe was compensated \$11,554,565 to be used for cultural restoration projects.^{14,15}

EXHIBIT 4 FRAMEWORKS OF TRIBAL SETTLEMENTS



NRDA Cases with Alternative Tribal Compensation

In addition to conducting natural resource restoration projects, tribal trustees have acquired land ownership through a settlement processes. In the case of the Saginaw River

⁹ U.S. District Court, District of Montana. Consent Decree. Clark Fork River. February 7, 2008.

¹⁰ U.S. District Court, District of Montana. Consent Decree. Milltown Reservoir. February 18, 1999.

¹¹ U.S. District Court, District of Montana. Memorandum of Agreement. Clark Fork River Basin. November 2008.

¹² U.S. Bankruptcy Court, Southern District of New York. Notice of Lodging of Proposed Consent Decree and Settlement Agreement Regarding Natural Resource Damage Claims. St. Lawrence River and Tributaries. March 2011.

¹³ U.S. District Court, Northern District of New York. Consent Decree. St. Lawrence River and Tributaries. July 17, 2013.

¹⁴ U.S. Bankruptcy Court, Southern District of New York. Notice of Lodging of Proposed Consent Decree and Settlement Agreement Regarding Natural Resource Damage Claims. St. Lawrence River and Tributaries. March 2011.

¹⁵ U.S. District Court, Northern District of New York. Consent Decree. St. Lawrence River and Tributaries. July 17, 2013.

and Bay NRDA, multiple responsible parties released hazardous contaminants from industrial facilities in Michigan. Although existing documents suggest that a tribal-specific approach to assessment was not pursued, the Saginaw Chippewa Indian Tribe of Michigan was compensated with approximately 110 acres of the Roney, Walter property on the west side of the Saginaw Bay.¹⁶ In the Sulphur Bank Mercury Mine Site NRDA case, the responsible party's historic mining activities released contaminants in the Clearlake Oaks in California. In addition to reimbursement for past assessment costs and compensation for restoration costs, the Elem Indian Colony of Pomo Indians acquired newly restored parcels of land as part of the settlement process.¹⁷

NRDA Cases with No Tribal Compensation

For a few NRDA cases, tribal-specific compensation was not allocated nor specified in the case documents. For example, in the case of the Onondaga Lake NPL Site NRDA, the Onondaga Nation withdrew from the NRDA prior to settlement.

NEXT STEPS

This document provides a high-level summary of information on tribal-related NRDA, based on information collected from readily available public information. Next steps for further characterizing and analyzing case data include:

- Clarifying the settlement components related to each consent decree via additional research of existing documents.
- Additional interviews and/or information exchanges with other experts involved in the NRDA cases.
- Interviews of tribal staff that worked on the claims.
- Developing more robust information on the restoration implemented as part of the settlements through identification and interpretation of relevant restoration plans.

Finally, additional work is needed to further describe selected options and scaling for restoration designed to compensate for tribal losses that may be beneficial in the context of the Hanford NRDA.

¹⁶ U.S. District Court, Eastern District of Michigan Northern Division. Consent Judgement. Saginaw River and Bay. November 24, 1998.

¹⁷ U.S. District Court, Northern District of California San Francisco Division. Order Approving Entry of Consent Decree. Sulphur Bank Mercury Mine Site. April 19, 2012.

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Whitewood Creek NPL Site Trustee Council. 2005. Final Conceptual Restoration and Compensation Plan for Whitewood Creek and the Belle Fourche and Cheyenne River Watersheds, South Dakota. January.

APPENDIX A. DATA INCLUDED IN TRIBAL NRDA DATABASE

Type	Description
NRDA Name(s)	Known name(s) of the case.
Location	Specific location.
State(s) location	Name of state(s) affected.
RP(s)/PRP(s)	Responsible Parties or Potentially Responsible Parties.
Tribal Trustee(s)	Tribal Trustees.
Federal Trustee(s)	Federal Trustees.
State Trustee(s)	State Trustees.
Primary Contaminants	Primary contaminants identified at the site.
Site Type	General site description (e.g., oil spill in ocean, mining, etc.).
Nature of Releases	Discrete or long-term releases and information on the general type of hazardous substance(s).
Injured Resource(s)	Types of resources injured by releases.
Tribal Assessment Approach and Scaling	To the extent information is available, describe how/if the tribes came to focus on particular resources of concern/interest, studies that were conducted to confirm the injury and service loss, and approaches used to identify and scale restoration options.
Settlement Status	Status of the current NRDA: Ongoing, Partial - Ongoing, Settled, or No Settlement.
Settlement Dates	Detailed notes on settlement such as dates of multiple settlements.
Settlement	Overall monetary and restoration project-related (if applicable) settlement on the case and dollars associated with each piece of the settlement.
Tribal-Specific Compensation	Tribal compensation and restoration projects received as part of the case.
Tribal-Specific Settlement Value	The numeric settlement value used for sorting and developing calculations. This does not include estimated value of land that was also part of the settlement, but does include past restoration costs.
Regulation	Legal regulation for the case.
Website	Website(s) with case-related information.
Initial Resource Consulted	Source for identifying case as a NRDA.
File Name(s)	Downloaded file name with source information.

APPENDIX B. TABLE OF RESOURCES CONSULTED

Source	Type
Federal Register	Federal database
NOAA DARRP Case Documents	Federal database
NOAA DARRP Site Interactive Project Map	Federal database
NOAA Office of the General Counsel - Natural Resource Consent Decrees/Settlements - historical site	Federal webpage
NOAA's Natural Resource Consent Decrees/Settlements	Federal webpage
Outlook for and Experience with Natural Resource Damage Settlements	Federal document
Tribal Cultural Resources Bibliography - DOI	Federal document
U.S. Department of Interior NRDAR Case Document Library	Federal database
U.S. Department of the Interior and U.S. Geological Survey NRDA Restoration Table	Federal webpage
IEc's firm-wide Map on Select NRDA Cases	IEc internal
IEc's Settlement Database 2013	IEc internal
IEc's Tribal Natural Resource Damage Bibliography of Sources from 2015	IEc internal
IEc's updated NRDA Case Dataset	IEc internal
Other IEc internal information collection	IEc internal
Historical LSI Proceedings	IEc internal
Bradshaw, Karen. 2016. Settling for Natural Resource Damages. Harvard Environmental Law Review. Vol. 40.	Report
Israel, Brian D. 2015 State-by-State Guide to NRD Programs in All 50 States and Puerto Rico. Arnold & Porter Kaye Scholer LLP.	Report
Israel, Brian D. 2017 State-by-State Guide to NRD Programs in All 50 States and Puerto Rico. Arnold & Porter Kaye Scholer LLP.	Report
Israel, Brian D. 2018 State-by-State Guide to NRD Programs in All 50 States and Puerto Rico. Arnold & Porter Kaye Scholer LLP.	Report
California Natural Resource Damage Assessment and Restoration	State webpage
Massachusetts Natural Resource Damages Program	State webpage
Michigan DEQ Natural Resource Damage Assessment	State webpage
Montana Natural Resource Damage Program	State webpage
New Mexico Office of Natural Resource Trustee	State webpage
New York Natural Resource Damages	State webpage
Washington Natural Resource Damage Assessment and Restoration	State webpage

NRDA Name

Ashland Lakefront NPL Site

Location

Chequamegon Bay - Lake Superior

State(s) location

Wisconsin

RP(s)/PRP(s)

Northern States Power Company

Tribal Trustee(s)

Bad River Band of Lake Superior Chippewa Indians; Red Cliff Band of Lake Superior Chippewa Indians

Federal Trustee(s)

DOC-NOAA; DOI-USFWS

State Trustee(s)

Wisconsin

Primary Contaminants

PAHs; VOCs

Site Type

Various industrial

Nature of Releases

Long-term releases of contaminants from multiple sources

Injured Resource(s)

soil; sediment; groundwater

Tribal Assessment Approach and Scaling

Assessment approach is ongoing.

Settlement Status

Ongoing

Settlement Dates

NA

Settlement

NA

Tribal-specific Compensation

NA

Regulation

CERCLA

Website

https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=245

NRDA Name

AT&SF Albuquerque Tie-Treater Site

Location

Albuquerque

State(s) location

New Mexico

RP(s)/PRP(s)

Burlington Northern and Santa Fe Railway Company; U.S. Railroad Administration

Tribal Trustee(s)

Santo Domingo Pueblo*

Federal Trustee(s)

DOI-USFWS

State Trustee(s)

New Mexico

Primary Contaminants

PAHs; Heavy Metals

Site Type

Wood-treatment plant

Nature of Releases

Long-term releases of creosote and creosote/oil mixture.

Injured Resource(s)

soil; birds

Tribal Assessment Approach and Scaling

None. Santo Domingo Pueblo is not a Trustee for this case. However, one of the proposed restoration projects involved restoration of their

Settlement Status

Settled

Settlement Dates

2005

Settlement

Total of \$1,100,000 for NRD; \$38,807.40 was paid to DOI and the State of New Mexico for costs previously incurred to assess the injuries and loss of natural resources, \$661,192.60 was paid to ONRT to plan and implement projects specific to groundwater damages, and \$400,000 was placed by the U.S. Department of Justice into a court registry trust account and designated for use by the Trustees to jointly plan and implement restoration projects designed to restore, replace and/or acquire the equivalent of habitat resources injured, destroyed or lost as a result of the release of hazardous substances at or from the Site.

Tribal-specific Compensation

Santo Domingo Pueblo is not a Trustee for this case. However, one of the proposed restoration projects was to enhance wildlife habitat within the Rio Grande Bosque on Santo Domingo Tribal lands. The project would entail planting native trees and shrubs in approximately 130 acres of the Rio Grande Bosque and creating two wetlands on Santo Domingo Tribal lands. This project ranked well and the Trustees had considered it a potential project; however, the Tribe withdrew the project from consideration.

Regulation

CERCLA

Websitehttps://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=131

NRDA Name

Barge Foss 248-P2 Bunker Fuel Oil Spill - Point Wells

Location

Puget Sound

State(s) location

Washington

RP(s)/PRP(s)

Foss Maritime Company

Tribal Trustee(s)

Suquamish Tribe

Federal Trustee(s)

DOC-NOAA; DOI

State Trustee(s)

Washington

Primary Contaminants

Oil; PAHs

Site Type

Oil spill: ocean

Nature of Releases

Discrete release of approximately 5,000 gallons of bunker fuel oil

Injured Resource(s)

surface water; sediment; biota

Tribal Assessment Approach and Scaling

Facts: Reservation lands were oiled as a result of the event, including the Doe-Kag-Wats marsh along with an associated two-mile long shoreline. This site holds special value to the tribe. This site was closed to all uses for six months; after several years use had not fully recovered to its pre-spill state. There are about 380 tribal members who live in Kitsap County. About an equal number live elsewhere. To inform the settlement discussion the responsible party and tribal representatives considered the number of trips that had been taken to the oiled site prior to the event, and assigned values to these trips (neither the number of trips or their value was agreed to, but simply informed discussion). Information on tribal use of the site was available from a survey conducted at a community meeting at the time of the event. The Tribe was prepared, if necessary, to develop and administer a more comprehensive survey of tribal members. Settlement was reached through negotiation. A key consideration in the Tribe's decision to settle was the desire to put this event behind them and jump start funding of a cultural center.

Settlement Status

Settled

Settlement Dates

Multiple - 2/26/2007; 11/3/2008

Settlement

Two settlements affecting the tribe. The 2007 settlement resulted in \$1,100,000 for the Suquamish Tribe. The 2008 NRDA settlement involved the broader Trustee Council. As part of this settlement, \$265,281 was for restoration and \$73,000 for future assessment costs. Restoration projects included the: Doe-Kag-Wats Log Removal; Doe-Kag-Wats Berm Enhancement; Shellfish Enhancement; Indianola Waterfront Preserve Marsh Creation; Tideland Acquisition projects. The settlement also covered past costs: \$26,226.67 for NOAA & DOI; also identified unresolved NPCF past cost (\$10,456.59 plus interest); \$17,615.00 for State Department of Health. Finally the consent decree acknowledged payment of previous assessment costs - \$8,043.26 for the State; \$25,723 for the Tribe; and \$10,203.58 for FWS.

Tribal-specific Compensation

One settlement resulted in the cash payment of \$1,100,000 to the Tribe and the second resulted in reimbursement of previous assessment costs totaling \$25,723. The tribe also gained a seat at the table to determine how shared restoration funds are spent.

Regulation

OPA

Website

https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=973 ;

<https://nwifc.org/suquamish-tribe-reaches-oil-spill-settlement/>

NRDA Name

Beaver Creek Oil Spill - American Energy

Location

Beaver Creek

State(s) location

Oregon

RP(s)/PRP(s)

American Energy, Inc. F/K/A American Transport, Inc.

Tribal Trustee(s)

Confederated Tribes of the Warm Springs Reservation of Oregon

Federal Trustee(s)

U.S. EPA

State Trustee(s)

None

Primary Contaminants

PAHs

Site Type

Oil spill: tanker truck

Nature of Releases

Discrete release of approximately 5,400 gallons of gasoline

Injured Resource(s)

surface water; sediment; biota

Tribal Assessment Approach and Scaling

The Confederated Tribes of the Warm Springs Reservation exercised authority over its Reservation water resources and enacted Tribal Water Quality Standards, which was recognized by EPA. The Tribe's complaint alleges that AEI's discharge of gasoline into Beaver Creek and Beaver Butte Creek violated its water quality rules and seeks civil penalties. The tribe contends the spill is especially injurious to the Tribe given the central role that water plays to the culture, religion and subsistence of the Tribe.

Settlement Status

Settled

Settlement Dates

5/16/2006

Settlement

The RP paid \$315,222.50 to the Trustees as monetary compensation for NRD; the funds to be used to implement a National Resources Plan for restoration. The RP also paid \$80,000 to the Confederated Tribes of the Warm Springs Reservation of Oregon for the Tribe's civil penalty claim. The settlement also dictated payment of \$80,000 to the U.S. Coast Guard for civil penalties; \$94,243.98 to NOAA for reimbursement of costs in assessing NRD; \$15,533.52 to DOI for reimbursement of costs in assessing the NRD.

Tribal-specific Compensation

The RP paid \$315,222.50 to the Trustees as monetary compensation for NRD; the funds to be used to implement a National Resources Plan for restoration. The RP also paid \$80,000 to the Confederated Tribes of the Warm Springs Reservation of Oregon for the Tribe's civil penalty claim. The settlement also dictated payment of \$80,000 to the U.S. Coast Guard for civil penalties; \$94,243.98 to NOAA for reimbursement of costs in assessing NRD; \$15,533.52 to DOI for reimbursement of costs in assessing the NRD.

Regulation

OPA

Website

https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=905

NRDA Name

Buffalo River

Location

Buffalo

State(s) location

New York

RP(s)/PRP(s)

Honeywell International, Inc. and other indemnities

Tribal Trustee(s)

Tuscarora Nation

Federal Trustee(s)

DOI-USFWS; U.S. EPA

State Trustee(s)

New York

Primary Contaminants

PAHs; PCBs

Site Type

Various industrial

Nature of Releases

Long-term releases of contaminants from multiple sources

Injured Resource(s)

soil; surface water; groundwater; biota

Tribal Assessment Approach and Scaling

Identification of restoration actions that would offset harm to the Tribal culture from the loss of access to natural resources.

Settlement Status

Ongoing

Settlement Dates

NA

Settlement

NA

Tribal-specific Compensation

NA

Regulation

CERCLA

Website

<https://www.fws.gov/northeast/nyfo/ec/buffalo.htm>

NRDA Name

Burlington Northern Railroad Company

Location

Nemadji

State(s) location

Wisconsin; Minnesota

RP(s)/PRP(s)

Burlington Northern Railroad Company

Tribal Trustee(s)

Bad River Band of Lake Superior Chippewa Indians; Red Cliff Band of Lake Superior Chippewa Indians; Fond du Lac Band of Chippewa Indians

Federal Trustee(s)

DOI-USFWS

State Trustee(s)

None

Primary Contaminants

PAHs

Site Type

Oil spill: rail car

Nature of Releases

Discrete release of 30,000 gallons of PAHs

Injured Resource(s)

surface water

Tribal Assessment Approach and Scaling

From the Restoration Plan, "The Chippewa Indian bands have interest and involvement regarding the natural resource injury and damages resulting from the release of the aromatic hydrocarbons into the Nemadji River that arise from the tribal hunting, fishing and gathering rights guaranteed in the Treaties of 1837 and 1842. In those treaties, the right to hunt, fish and gather was maintained by the Ojibwe people on the lands comprising the northern third of Minnesota, Michigan and Wisconsin when those lands were ceded to the U.S. government. Natural resource injury and losses from the spill occurred within the ceded territories covered by the treaties which, in turn, adversely affected the resource base available to members of the three Chippewa bands."

Settlement Status

Settled

Settlement Dates

7/17/1995

Settlement

The RP paid \$140,000 into fund jointly managed by the U.S. DOI, the Bad River Band of Lake Superior Chippewas and the Red Cliff Band of Lake Superior Chippewas to address natural resources damaged as a result of the Nemadji spill. The settlement also included \$1,100,000, and to reimburse response costs spent by the U.S. in association with the Nemadji spill in the amount of \$260,000. In addition, the settlement requires RP to acquire improved rail inspection cars at an estimated cost of \$1.2 million, and to contribute \$100,000 to a fund to be used to study internal rail defects of the type that were involved in 2/3 derailments in the case.

Tribal-specific Compensation

There is no evidence of tribal-specific compensation for this NRDA. However, \$140,000 was provided to a fund jointly managed by US-DOI, Bad River Band of Lake Superior Chippewas, and the Red Cliff Band of Lake Superior Chippewas.

Regulation

Clean Water Act

Websitehttps://www.cerc.usgs.gov/orca_docs/CaseDetails?ID=1027

NRDA Name

Coeur D'Alene Basin Cleanup - Bunker Hill Mining and Metallurgical Complex

Location

Coeur d'Alene Basin

State(s) location

Idaho

RP(s)/PRP(s)

Mascot Mines, Inc.; United Resource Holdings Group, Inc.; Nabob Silver-Lead Company; Zanetti Brothers, Inc.; Hecla Limited; Douglas Mining Company; Atlantic Richfield Company; Asarco, L.L.C.

Tribal Trustee(s)

Coeur D'Alene Tribe

Federal Trustee(s)

DOI-USFWS

State Trustee(s)

None

Primary Contaminants

Lead; Cadmium; Zinc

Site Type

Mining; Smelting

Nature of Releases

Long-term releases of mining and mineral processing wastes

Injured Resource(s)

sediment; surface water; terrestrial

Tribal Assessment Approach and Scaling

The Coeur d'Alene Tribe has identified areas within the Alder Creek watershed as high priority for ecological protection. Alder Creek historically supported west slope cutthroat trout, and currently supports resident cutthroat and brook trout populations. The Tribe values all the natural resources in the Basin, including those found to be injured by the courts; and considers many natural resource in the Basin to be culturally important, for example: cutthroat trout, mountain whitefish, muskrat, beaver, deer, water potato, huckleberries, and camas. The Coeur d'Alene Tribe has also identified areas within the Benewah Creek watershed as high priority for ecological protection. Benewah Creek supports a significant resident ad fluvial fish population, including west slope cutthroat trout, but has been closed to fishing since 1994.

Settlement Status

Settled

Settlement Dates

Multiple - 2009 - Asarco; 2010(a) - Zanetti Brothers; 2010(b) Douglas Mining; 2010(c) - Mascot Mines/Nabob Ag-Pb Comp; 2010(d) - United Resource Holdings; 2011(a) - Atlantic Richfield; 2011(b) - Hecla Limited; 5/14/2001; 7/25/2006; 10/23/2006; 1/16/2007; 4/23/2007; 1/12/2010; 9/8/2011; 10/5/2011; 10/4/2012; 2/26/2014

Settlement

Multiple settlements occurred associated with this NRDA. In 2009 the allowed claim totaled \$67,500,000; 2010(a) - \$37,500; 2010(b) - \$4,000 plus 0.5% (25% of 2%) of Net Smelter Returns (NSR) for 50 yrs.; 2010(c) - Mascot Mines \$1,800, Nabob Ag-Pb Comp \$1,100 plus 0.5% of NSR for 50 yrs.; 2010(d) - \$200 plus 0.5% of NSR for 50. Other stipulations of the settlements: 2010(a) comply with Coeur d'Alene Basin Insurance Recovery Trust (IRT); 2010(b) comply with IRT; 2010(c) Mascot Mines \$23,650 and Nabob \$26,100 to IRT and comply with IRT; 2010(d) \$4,300 to IRT and comply with IRT; 2011(a) comply with IRT.

Tribal-specific Compensation

There is no evidence of tribal-specific compensation for this NRDA. However, the tribe has a role in dictating the direction of the restoration funds, overall totaling approximately \$250,000,000.

Regulation

CERCLA

Website

https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=898

NRDA Name

Commencement Bay

Location

Commencement Bay

State(s) location

Washington

RP(s)/PRP(s)

City of Tacoma, Washington and The Tacoma Public Utility; General Metals Of Tacoma, Inc.; Occidental Chemical Corporation, Pioneer Americas, LLC et al.; Petroleum Reclaiming Service, Inc.; AOL Express, Inc., et al.; Glacier Northwest; Streich Brothers, Inc.; Puget Sound Energy, Inc.; Port Of Tacoma

Tribal Trustee(s)

Muckleshoot Indian Tribe; Puyallup Tribe Of Indians

Federal Trustee(s)

DOC-NOAA; DOI-USFWS; DOI-BIA

State Trustee(s)

Washington

Primary Contaminants

Metals; PAHs; PCBs

Site Type

Various industrial

Nature of Releases

Long-term industrial releases of hazardous substances and waste materials

Injured Resource(s)

groundwater; sediment; soil

Tribal Assessment Approach and Scaling

Unknown

Settlement Status

Partial - Ongoing

Settlement Dates

Multiple - 1990, 1993, 1995, 2003; 2005; 2006; 2007; 2008; 2009; 2011; 2015 (19 Consent Decrees)

Settlement

Multiple settlements occurred associated with this NRDA. Major settlement funds included \$34,111,792.38 (with \$1,950,000 allowed to be used for future assessment); \$550,000 oversight; \$500,000 for Tribal habitat work; \$75,000 future cost. Over 13 projects totaling more than 170 acres; \$4,068,129 in PRP restoration; \$290,000 in-kind services; 1.5 FTE in-kind services.

Tribal-specific Compensation

There is some evidence of tribal-specific compensation funds including \$500,000 spent on Tribal habitat work.

Regulation

CERCLA; OPA

Website

<https://casedocuments.darrp.noaa.gov/northwest/cbay/admin.html>

NRDA Name

Cyprus Tohono Mine

Location

Tohono O'odham Reservation

State(s) location

Arizona

RP(s)/PRP(s)

Cyprus Tohono Corporation (CTC)

Tribal Trustee(s)

Tohono O'odham Nation

Federal Trustee(s)

DOI-USFWS; DOI-BIA

State Trustee(s)

None

Primary Contaminants

Heavy Metals; Other; Lead; Radionuclides

Site Type

Mining; Smelting

Nature of Releases

Evaporation ponds and other wastewater treatment ponds

Injured Resource(s)

groundwater; birds

Tribal Assessment Approach and Scaling

Assessment approach is ongoing.

Settlement Status

Partial - Ongoing

Settlement Dates

7/17/2009

Settlement

Currently, the RP has settled for \$825,000 for groundwater claims only.

Tribal-specific Compensation

\$78,710 to the Tohono O'odham Nation for the North Komelik Community for compensation for past lost use of groundwater natural resource damage.

Regulation

CERCLA

Website

https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=958

NRDA Name

Dalco Passage - Polar Tankers Inc.

Location

Dalco Passage

State(s) location

Washington

RP(s)/PRP(s)

Polar Tankers, Inc.

Tribal Trustee(s)

Muckleshoot Indian Tribe; Puyallup Tribe Of Indians

Federal Trustee(s)

DOI-NOAA; DOI-USFWS

State Trustee(s)

Washington

Primary Contaminants

Oil; PAHs

Site Type

Oil spill: ocean

Nature of Releases

Discrete release of approximately 7,200 gallons of oil

Injured Resource(s)

surface water; sediment; shellfish; migratory birds; shoreline; recreation.

Tribal Assessment Approach and Scaling

Unknown

Settlement Status

Settled

Settlement Dates

2010

Settlement

Settlement for restoration totals \$487,300. Settlement for past tribal assessment costs includes \$12,700 for the Payallup Tribe. Other assessment cost reimbursement includes \$52,000 to NOAA; \$10,000 to DOI; \$3,000 to the State; and \$23,000 for King County. Settlement also included reimbursement of removal costs and civil penalties totaling \$2,313,293.94 for the U.S. and \$540,000 for the State.

Tribal-specific Compensation

The Tribe received \$12,700 for past assessment costs. The tribe also gained a seat at the table to determine how shared restoration funds are spent.

Regulation

OPA

Website

https://www.gc.noaa.gov/gc-cd/031509-dalco_appdxA-1.pdf

NRDA Name

Eagle Harbor

Location

Bainbridge Island

State(s) location

Washington

RP(s)/PRP(s)

Pacific Sound Resources Environmental Trust; Wyckoff Company; Ted G. DePriest; Karin DePriest; Tom L. Wyckoff; Margo G. Wyckoff; Susan Wyckoff Mullen; Charles S. Mullen

Tribal Trustee(s)

Suquamish Tribe; Muckleshoot Indian Tribe

Federal Trustee(s)

DOC-NOAA; DOI-USFWS

State Trustee(s)

Washington

Primary Contaminants

PAHs; Mercury; Heavy Metals

Site Type

Treatment facility; Shipyard

Nature of Releases

Long-term releases of contaminants from multiple sources

Injured Resource(s)

groundwater; soil; sediment

Tribal Assessment Approach and Scaling

Unknown

Settlement Status

Settled

Settlement Dates

8/29/1994

Settlement

Individual settling defendants: Tom L. Wyckoff, Margo G. Wyckoff, and Susan Wyckoff Mullen, agree to transfer all shares, ownership rights and interests in PSR to the Environmental Trust. Individual settling defendants: Charles S. Mullen and Susan Wyckoff Mullen agree to resign as directors of PSR, and Charles S. Mullen agrees to resign as secretary of PSR. Individual settling defendant: Ted G. DePriest agrees to become an employee of the Environmental Trust. All assets and resources of PSR shall be liquidated and the proceeds therefrom shall be disbursed by the Environmental Trust. Such proceeds from this liquidation which are exclusively for the benefit of Plaintiffs shall be paid as follows: 50% to the United States Hazardous Substance Superfund Trust, 50% into the registry of this court for environmental response and natural resource restoration goals.

Tribal-specific Compensation

There is no evidence of tribal-specific monetary compensation for this NRDA. However the Tribe gained a seat at the table to determine how shared restoration funds are spent. As part of restoration the Milwaukee Dock Eelgrass Restoration project created 3 acres of new eelgrass habitat by filling a depression created by past dredging. Built in two phases, the 1.6 acres of the 3 acres was partially funded by a grant awarded to the Suquamish Tribe by the Washington state Recreation and Conservation Office for salmon recovery. The project was completed May 20, 2016.

Regulation

CERCLA

Website<https://darrp.noaa.gov/hazardous-waste/eagle-harbor>

NRDA Name

Elliot Bay - Lower Duwamish Waterway

Location

Duwamish River - Elliott Bay

State(s) location

Washington

RP(s)/PRP(s)

Boeing Company, et al.

Tribal Trustee(s)

Suquamish Tribe; Muckleshoot Indian Tribe; Tulalip Tribes Of Washington

Federal Trustee(s)

DOI-USFWS; DOC-NOAA

State Trustee(s)

Washington

Primary Contaminants

PAHs; PCBs; PCPs; Metals

Site Type

Various industrial

Nature of Releases

Long-term release of hazardous substances from industrial and commercial facilities

Injured Resource(s)

groundwater; sediment; soil; biota; human use

Tribal Assessment Approach and Scaling

Four tasks were proposed to generate information to support a damage claim at the Lower Duwamish site that will address Suquamish interests and concerns. Task 1 involves the expansion of the review of existing site information related to the damage assessment to include available information of relevance to a tribal claim. Task 2 involves conducting interview with Tribal Natural Resource Managers and Users to obtain information on tribal use of natural resources. Task 3 involves assessing the extent to which the current assessment addresses tribal concerns. Task 4 will propose additional injury studies and restoration actions to compensate for lost natural resource services if applicable.

Settlement Status

Partial - Ongoing

Settlement Dates

Multiple - 1991; 1999; 2010

Settlement

Multiple settlements are associated with this NRDA. The 2010 settlement occurred for reasonable costs of restoration implementation plus \$360,000 for permanent stewardship to restore/create 4.8 acres wetland; restore 2,400 linear feet and create 700 linear feet of shoreline; remove 53,000 ft² over-water buildings, 560 piles and 10,000 ft² skirting; \$1,943,184.86 reimbursement for past damage assessment costs. In 1991 settlement was \$6,000,000 for sediment restoration and \$2,500,000 habitat restoration and acquisition; additionally the City and Metro each provide up to \$1,000,000 in-kind services.

Tribal-specific Compensation

The Suquamish Tribe received \$21,137 for past assessment costs.

Regulation

CERCLA

Website

<https://casedocuments.darrp.noaa.gov/northwest/lowerduwamishriver/admin.html>

NRDA Name

Enbridge Energy Pipeline - MI

Location

Talmadge Creek - Kalamazoo River

State(s) location

Michigan

RP(s)/PRP(s)

Enbridge Energy, LP

Tribal Trustee(s)

Nottawaseppi Huron Band of the Potawatomi Tribe; Match-E-Be-Nash-She-Wish Band of the Pottawatomi Tribe

Federal Trustee(s)

DOI-USFWS; DOC-NOAA

State Trustee(s)

Michigan

Primary Contaminants

Oil; PAHs

Site Type

Oil spill: wetland and creek

Nature of Releases

Discrete release of 843,444 gallons of crude oil

Injured Resource(s)

wetlands; surface water; sediment; biota

Tribal Assessment Approach and Scaling

The Kalamazoo River and its floodplain also provide important natural services that have been vital to tribal communities for generations and the re-vitalization of traditional ceremonies and uses of resources has been the focus of significant initiatives of the tribal Trustees. Non-recreational uses by tribal members include harvesting fish, turtles, and other animal species for subsistence or for ceremonial feasts; making traditional handicrafts (i.e. turtle shell rattles); gathering plants for food, traditional medicines or handicrafts; and religious/traditional ceremonies. Non-recreational Use Analysis and Restoration project (\$270,000 funded) and Wild Rice Restoration project (\$275,011 funded) were selected to provide non-recreational use by tribal members. The Trustees assessed 2 broad categories of injuries and losses: 1) ecological and 2) human use service losses. The (2) human use service losses focused on recreational service losses as a result of closure of the river to all public use as well as issuance of fish consumption and swimming advisories. Losses to non-recreational uses by tribal members were investigated through discussions with tribal elders and members.

Settlement Status

Settled

Settlement Dates

Multiple - 1/29/2013; 12/3/2018

Settlement

The consent decree dictated \$2,265,048 for restoration and; \$1,484,952 for additional assessment costs. Additionally the RP paid for past assessment costs totaling \$970,687.

Tribal-specific Compensation

The Tribe received \$150,000 past assessment costs. The tribe also gained a seat at the table to determine how shared restoration funds are spent.

Regulation

OPA

Website

https://www.cerc.usgs.gov/orca_docs/CaseDetails?ID=1054

NRDA Name

Enbridge Energy Pipeline - MN - Blackwater Creek

Location

Cohasset

State(s) location

Minnesota

RP(s)/PRP(s)

Enbridge Energy, LP

Tribal Trustee(s)

Leech Lake Band Of Ojibwe

Federal Trustee(s)

DOI-USFWS; DOI-BIA

State Trustee(s)

Minnesota

Primary Contaminants

Oil; PAHs

Site Type

Oil spill: pipeline rupture

Nature of Releases

Discrete release of 6,000 barrels of crude oil

Injured Resource(s)

soil; wetland

Tribal Assessment Approach and Scaling

Leech Lake Band of Ojibwe members stress the importance of wetlands because they nurture many critical resources. The entire subsistence cycle of hunting, fishing, and gathering depend upon the region's water system, which itself is intricately connected to the region's vast wetland resources. Traditional knowledge recognize that these wetlands are not only vessels of life for a vast array of plants and animals, but are an integral part of traditional life. Therefore, restoration of wetland habitat would positively impact tribal cultural resources.

Settlement Status

Settled

Settlement Dates

1/13/2009

Settlement

Settlement included restoration of 30 acres forested/scrub wetlands; retrofit of ten diesel school buses with emission control devices. Oversight and monitoring included in past cost total. Past costs include: \$12,200 federal; \$1,400 state; \$2,700 tribe.

Tribal-specific Compensation

The Tribe received \$2,700 for past assessment costs and a restoration project addressing the Tribe's interest.

Regulation

OPA

Website

https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=1019

NRDA Name

F/V Tenyo Maru Fuel Oil, Diesel, and Lube Oil Spill

Location

Olympic Coast

State(s) location

Washington

RP(s)/PRP(s)

Maruha Corporation, et al.

Tribal Trustee(s)

Makah Indian Tribe

Federal Trustee(s)

DOC-NOAA; U.S. DHS; DOI; U.S. Coast Guard

State Trustee(s)

Washington

Primary Contaminants

Oil; PAHs; Fish Oil

Site Type

Oil spill: ocean

Nature of Releases

Discrete release of unknown amount of oil

Injured Resource(s)

surface water; sediment; biota

Tribal Assessment Approach and Scaling

Unknown

Settlement Status

Settled

Settlement Dates

12/23/1994

Settlement

The consent decree required the RP to pay \$9,000,000 to U.S. Attorney (\$3,000,000 to U.S. Coast Guard-Oil Pollution; \$500,000 to U.S. Coast Guard-Civil Penalty); \$161,991 to DOI-USFWS; \$10,475.76 to DOC-NOAA; \$83,826.87 to State of Washington; \$31,339.66 to Washington Department of Fish and Wildlife; and \$52,392 to Makah Indian Tribe. The remainder of funds left in the Registry of the Court by Defendants. Natural Resource Damages in the Registry of the Court shall be used only for restoring, rehabilitating, replacing or acquiring the equivalent of injured natural resources.

Tribal-specific Compensation

The Tribe received \$52,392. The tribe also gained a seat at the table to determine how shared restoration funds are spent.

Regulation

OPA

Website

https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=908

NRDA Name

Fox River and Green Bay NPL Site

Location

Lower Fox River and Green Bay - Northeastern Wisconsin

State(s) location

Wisconsin

RP(s)/PRP(s)

George A. Whiting Paper Company; Green Bay metropolitan Sewerage District; Green Bay Packaging, Inc.; Heart of the Valley Metropolitan Sewerage District; International Paper Co.; Lafarge North America Inc.; Leicht Transfer & Storage Col; Neenah Foundry Company; The Procter & Gamble Paper Products Co.; Union Pacific Railroad Company; Wisconsin Public Service Corp.; Fort James Operating Company; NCR Corporation, et al.; George A. Whiting Paper Company, et al.

Tribal Trustee(s)

Menominee Indian Tribe of Wisconsin; Oneida Tribe of Indians of Wisconsin

Federal Trustee(s)

DOI-USFWS; DOC-NOAA

State Trustee(s)

Wisconsin

Primary Contaminants

PCBs

Site Type

Various industrial

Nature of Releases

Hazardous substances as a result of operations

Injured Resource(s)

sediment

Tribal Assessment Approach and Scaling

In 1996, the USFWS, Menominee Indian Tribe of Wisconsin, and Oneida Tribe of Indians of Wisconsin published an Assessment Plan (AP) to describe for the public which natural resources would be addressed due to confirmed exposure to PCBs (AP 1996). As part of this plan, tribal injuries and damages tasks were proposed: identify potentially injured natural resources and natural resources service flows (e.g., cultural, historic, recreational, commercial); address, qualitatively and quantitatively, the characteristics and magnitude of service flow injuries; compute, qualitatively and quantitatively, resource, service, and monetary measures of total compensable values.

Settlement Status

Settled

Settlement Dates

Multiple - 2002; 2009

Settlement

Over the course of the NRDA process, the Trustees have recovered \$106 million (2016 dollar value) and may include funding set aside for past NRDA assessment costs (updated as of 2016): 2001- \$34,300,000; 2002 - \$16,400,000; 2004 - \$4,200,000; 2009 - \$446,580.90; 2010 - \$520,000; 2013 - \$4,400,000; 2014 - \$250,000; 2015 - \$46,000,000.

Tribal-specific Compensation

Existing information indicates that in 2002 the settlement provided \$300,000 for the Oneida Tribe for Phase I of a lake and wetland construction project on Oneida Tribal land. The project would involve creation of a 35-40 acre lake with associated wetlands, and would be designed to support a sustainable population of forage fish, pan fish, and game fish. Constructed wetlands at the lake's inlet, outlet, and shallows will support native benthic communities and native plants, which may include wild rice beds. The shore land and upland habitat surrounding the lake will be enhanced and preserved as undeveloped area for tribal cultural activities. Once completed, the project as a whole will create significant additional fish and wildlife habitat and restore some of the nature-based recreational and cultural opportunities that have been impaired as a result of PCB contamination (2002 Consent Decree). This value likely underestimates the tribe's compensation. The tribe also gained a seat at the table to determine how shared restoration funds are spent.

Regulation

CERCLA; Clean Water Act

Website

<http://www.foxrivernrda.org/>

NRDA Name

Gold King Mine

Location

Animas River

State(s) location

New Mexico; Colorado; Utah

RP(s)/PRP(s)

U.S. Environmental Protection Agency

Tribal Trustee(s)

Navajo Nation; Southern Ute Tribe

Federal Trustee(s)

U.S. EPA

State Trustee(s)

New Mexico; Utah; Colorado

Primary Contaminants

Heavy Metals

Site Type

Mining

Nature of Releases

Waste water from mining operations

Injured Resource(s)

surface water; sediment; biota

Tribal Assessment Approach and Scaling

Assessment approach is ongoing.

Settlement Status

Ongoing

Settlement Dates

NA

Settlement

NA

Tribal-specific Compensation

NA

Regulation

CERCLA

Website

<https://onrt.env.nm.gov/gold-king-mine-and-bonita-peak-mining-district/>

NRDA Name

Hanford

Location

Upper Columbia River

State(s) location

Washington

RP(s)/PRP(s)

U.S. Department of Energy

Tribal Trustee(s)

Yakama Nation; Nez Perce Tribe; Confederated Tribes Of the Umatilla Indian Reservation (CTUIR)

Federal Trustee(s)

DOC-NOAA; DOI-USFWS; U.S. DOE

State Trustee(s)

Washington; Oregon

Primary Contaminants

Radionuclides

Site Type

Former nuclear production facility

Nature of Releases

Long-term releases of radionuclides and other contaminants

Injured Resource(s)

sediment; surface water; groundwater

Tribal Assessment Approach and Scaling

Focusing holistically on injuries and Tribal service losses across all terrestrial and aquatic resources, including the ecosystems collectively. Studies: Injury Assessment Plan outlines two Tribal Service assessment efforts to be conducted collectively or individually by the Tribes. Tribal narratives focused on identifying the specific connections between resources and tribal cultural practices. Develop study plans to: 1) Review available information related to tribal services, 2) Assess the nature and extent of tribal lost services, and 3) Develop information to determine the appropriate scope and scale of restoration. Characterization of contamination in site resources, including additional sampling as needed, to allow for informed decisions on current and future use of resources and restoration of services.

Settlement Status

Ongoing

Settlement Dates

NA

Settlement

NA

Tribal-specific Compensation

NA

Regulation

CERCLA

Website<http://www.hanfordnrda.org/>

NRDA Name

Holden Mine Site

Location

Chelan County

State(s) location

Washington

RP(s)/PRP(s)

Intalco Aluminum Corporation

Tribal Trustee(s)

Yakama Nation

Federal Trustee(s)

DOA-USFS, DOI-USFW

State Trustee(s)

Washington

Primary Contaminants

Metals; Petroleum; Acids

Site Type

Mining

Nature of Releases

Long-term releases of contaminants from multiple sources

Injured Resource(s)

instream habitat; riparian habitat; wetland habitat; upland habitat; lacustrine habitat; groundwater

Tribal Assessment Approach and Scaling

Tribal case being pursued separately.

Settlement Status

Ongoing

Settlement Dates

NA

Settlement

NA

Tribal-specific Compensation

NA

Regulation

CERCLA

Website<https://fortress.wa.gov/ecy/gsp/Sitepage.aspx?csid=4414>;<https://www.fs.usda.gov/detail/okawen/landmanagement/projects/?cid=stelprdb5339081>

NRDA Name

John Day Acid Spill - Thatcher Trucking Co. Tanker Truck Accident Hydrochloric Acid Spill

Location

North Fork of John Day River

State(s) location

Oregon

RP(s)/PRP(s)

Thatcher Company Trust Fund

Tribal Trustee(s)

Confederated Tribes of the Umatilla Indian Reservation (CTUIR)

Federal Trustee(s)

DOI-USFWS; DOI-BIA

State Trustee(s)

Oregon

Primary Contaminants

Hydrochloric Acid

Site Type

Oil spill: tanker truck

Nature of Releases

Discrete release of 3,500 gallons of hydrochloric acid

Injured Resource(s)

surface water

Tribal Assessment Approach and Scaling

The impacted area has important cultural and archaeological values to the local Indian Tribes. Tribal subsistence fishing in tributaries in the John Day Basin and main stem Columbia River provides culturally important food source for the Tribes. Pacific lamprey, salmon, and other indigenous species such as whitefish, suckers, and chisel mouth, have been essential food fish for the Tribes of the John Day Basin for centuries. State and Tribal fisheries developed the salmon and steelhead plan for corrective measures that will also benefit resident fish as

Settlement Status

Settled

Settlement Dates

9/29/1992

Settlement

The settlement resulted in \$275,000 to Plaintiffs for natural resource damages. The RP also paid \$7,498 to State of Oregon for response

Tribal-specific Compensation

There is no evidence of tribal-specific compensation as part of this NRDA. However the tribe likely gained a seat at the table to determine how shared restoration funds are spent.

Regulation

CERCLA; Clean Water Act

Website

https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=979

NRDA Name

Leech Lake - St. Regis Paper Co. NPL Site

Location

Cass Lake

State(s) location

Minnesota

RP(s)/PRP(s)

St. Regis Paper Company

Tribal Trustee(s)

Leech Lake Band Of Ojibwe

Federal Trustee(s)

DOI-BIA; DOI-USFWS; DOA-USFS

State Trustee(s)

Minnesota

Primary Contaminants

PAHs; Heavy Metals; PCBs; Dioxin; Mercury; Other

Site Type

Various industrial

Nature of Releases

Long-term releases of wastewater from lumber pressure-treatment operations

Injured Resource(s)

biota including birds fish; water; sediment

Tribal Assessment Approach and Scaling

Assessment approach is ongoing.

Settlement Status

Ongoing

Settlement Dates

NA

Settlement

NA

Tribal-specific Compensation

NA

Regulation

CERCLA

Website

https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=995

NRDA Name

Leviathan Mine

Location

Leviathan and Bryant Creeks - Alpine County; Douglas County

State(s) location

California; Nevada

RP(s)/PRP(s)

Atlantic Richfield Company

Tribal Trustee(s)

Washoe Tribe of Nevada and California

Federal Trustee(s)

DOI-BIA, DOI-USFWS, DOA-USFS

State Trustee(s)

California; Nevada

Primary Contaminants

Acid

Site Type

Mining

Nature of Releases

Acid mine drainage

Injured Resource(s)

surface water; fish; macroinvertebrates; riparian habitat; tribal resource use; recreational use

Tribal Assessment Approach and Scaling

The Pine Nut Mountains, including the Leviathan Creek and Bryant Creek watersheds, are a valued resource for the Washoe Tribe. These areas have been identified as primary subsistence locations, where the Washoe harvest pine nuts, hunt, fish, gather, and engage in cultural ceremonies and practices. These areas support sacred and ceremonial activities as well as traditional and subsistence uses. Three projects were proposed to identify the range of Tribal-specific uses and services that are likely to have been affected (i.e. reduced or lost) by injuries to surface water, riparian resources, and other resources in the Leviathan Creek, Bryant Creek, and East Fork Carson River watersheds. The three projects are (1) For each watershed, identify the resources and their uses by the Tribe, particularly those that support the cultural integrity and continuity of the Washoe Tribe, (2) identify how resources and services are interrelated based on traditional Washoe practices and on physical and natural processes, and (3) determine to what extent injuries to one or more natural resources in the assessment area have affected the level of Tribal services provided by those resources.

Settlement Status

Ongoing

Settlement Dates

NA

Settlement

NA

Tribal-specific Compensation

NA

Regulation

CERCLA

Website<https://www.wildlife.ca.gov/OSPR/NRDA/Leviathan-Mine-CERCLA>

NRDA Name

Los Alamos National Laboratory

Location

Los Alamos

State(s) location

New Mexico

RP(s)/PRP(s)

U.S. Department of Energy

Tribal Trustee(s)

Pueblo of Jemez; Pueblo de San Ildefonso; Santa Clara Pueblo; Cochiti Pueblo

Federal Trustee(s)

DOA-USFS; U.S. DOE

State Trustee(s)

New Mexico

Primary Contaminants

Radionuclides; Explosives

Site Type

Historical and current research facility including nuclear

Nature of Releases

Hazardous substances and oil released as a result of operations and disposal activities, spills, etc.

Injured Resource(s)

groundwater; soil; biota

Tribal Assessment Approach and Scaling

Look broadly across all resources to consider whether and how Tribal services may have been affected by contamination. Studies: Injury Assessment Plan outlines two Tribal service assessment efforts conducted individually by the Pueblos. Characterization of contamination in site resources, including additional sampling as needed, to allow for informed decisions on current and future use of resources and restoration of services. Documentation of cultural uses and perceptions on natural resources, including: Compiling existing literature and historical data related to natural resources and associated Pueblo services now and prior to LANL contaminant releases; and Interviews with Pueblo members, elders and/or historians.

Settlement Status

Ongoing

Settlement Dates

NA

Settlement

NA

Tribal-specific Compensation

NA

Regulation

CERCLA

Website<http://www.lanlnrda.org/>

NRDA Name

M/V Kuroshima

Location

Summer Bay - Unalaska Island

State(s) location

Alaska

RP(s)/PRP(s)

Kuroshima Shipping, S.A.; Unique Trading Company, Ltd.

Tribal Trustee(s)

Qawalangin Tribe of Unalaska

Federal Trustee(s)

DOI-USFWS; DOC-NOAA

State Trustee(s)

Alaska

Primary Contaminants

Oil; PAHs

Site Type

Oil spill: creek to ocean

Nature of Releases

Discrete release of 39,000 gallons of Bunker C fuel oil

Injured Resource(s)

surface water; sediment; vegetation; archaeological site; biota.

Tribal Assessment Approach and Scaling

The Qawalangin Tribe of Unalaska was an active participant in the process of natural resource damage assessment and formulation of restoration options. One of the primary concerns raised in public meeting by tribal members, city leaders, and other residents was the wholesomeness and safety of the oiled seafood. Based on these concerns, the Unified Command arranged to have shellfish tissues collected for human health investigation, and recommended that shellfish in the spill area not be harvested pending completion of the cleanup and finalization of the health risk analysis. The Trustees, in consultation with the Qawalangin Tribe, evaluated several types of restoration alternatives. Within those alternatives, the Trustees concluded that their preferred restoration alternatives would be a mix of both the ecological and lost human alternatives. Particular projects include: removal of introduced predators to enhance seabird populations; restoration and monitoring of oiled vegetation; additional testing of intertidal shellfish and education on seafood safety; sediment control and lakeshore revegetation, limnologic survey work and enumeration of salmon smolt outmigration and adult escapement; beach debris cleanup activities; purchase of tents and other recreation facilities for public use; and funding for public environmental education.

Settlement Status

Settled

Settlement Dates

5/22/2002

Settlement

\$644,017.00 to the Natural Resource Trustees as Restoration Funds; \$57,145.57 as Past Assessment Costs for NOAA; \$9,012.52 as Past Assessment Costs incurred by DOI; Past Assessment costs for Alaska TBD.

Tribal-specific Compensation

The Natural Resource Trustees agree to perform their obligations under this Consent Decree in consultation with the Qawalangin Tribe of Unalaska.

Regulation

OPA

Website

https://www.cerc.usgs.gov/orca_docs/CaseDetails?ID=989

NRDA Name

M/V New Carissa

Location

Coos Bay - Pacific Ocean

State(s) location

Oregon

RP(s)/PRP(s)

Green Atlas Shipping; TMM Co. Ltd

Tribal Trustee(s)

Confederated Tribes of the Coos; Lower Umpqua; and Siuslaw Indians; and Confederated Tribes of Siletz Indians of Oregon

Federal Trustee(s)

DOI-USFWS; DOA-USFS; DOI-BLM

State Trustee(s)

Oregon

Primary Contaminants

Oil; PAHs

Site Type

Oil spill: ocean

Nature of Releases

Discrete release of 25,000 to 140,000 gallons of oil

Injured Resource(s)

surface water; birds; other endangered species

Tribal Assessment Approach and Scaling

Unknown

Settlement Status

Settled

Settlement Dates

6/26/1905

Settlement

\$4,000,000 for natural resource damage claims; \$25,598,063 for the Oil Spill Liability Trust Fund. Restoration projects included: various beach/recreational use projects (\$464,600); HRA maintenance (\$78,420); Bandon Marsh restoration (\$1,625,137); Habitat acquisition/management (\$23,208,245); Seabirds/waterfowl predator management (\$1,033,485); seabirds/waterfowl educational signage (\$925,047); case management (\$501,624) and Trustee oversight (\$209,424).

Tribal-specific Compensation

Regarding the Marbled Murrelets, the assessment team secured \$26.7 million to purchase nearly 4,300 acres of coastal forest for threatened marbled murrelets. Two parcels, equaling 3,851 acres, were given to the Confederated Tribes of Siletz Indians, who have strong cultural ties to the area, and a 400-acre parcel will be added to the Siuslaw National Forest.

Regulation

OPA

Websitehttps://www.cerc.usgs.gov/orca_docs/CaseDetails?ID=992

NRDA Name

Midnite Uranium Mine

Location

Selkirk Mountains

State(s) location

Washington

RP(s)/PRP(s)

Dawn Mining Company; Newmont Mining Company

Tribal Trustee(s)

Spokane Tribe of Indians; Confederated Tribes of the Colville Reservation

Federal Trustee(s)

DOI-BIA; DOI-USFWS; DOI-NPS

State Trustee(s)

None

Primary Contaminants

Radionuclides; Heavy Metals

Site Type

Mining: uranium

Nature of Releases

Waste water from mining operations

Injured Resource(s)

groundwater; surface water

Tribal Assessment Approach and Scaling

Assessment approach is ongoing.

Settlement Status

Ongoing

Settlement Dates

NA

Settlement

NA

Tribal-specific Compensation

NA

Regulation

CERCLA

Website<https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=1001070>

NRDA Name

Milltown Reservoir - Clark Fork River Mega Site - Flathead

Location

Milltown Reservoir - Clark Fork River

State(s) location

Montana

RP(s)/PRP(s)

Atlantic Richfield Company

Tribal Trustee(s)

Confederated Salish and Kootenai Tribes

Federal Trustee(s)

DOI-NPS; DOI-USFWS; DOI-BLM; DOI-BIA;

State Trustee(s)

Montana

Primary Contaminants

Metals

Site Type

Mining, milling, and smelting activities.

Nature of Releases

Waste water from mining operations with a flood causing downstream creep.

Injured Resource(s)

fish; wildlife; surface water; groundwater; soil; vegetation

Tribal Assessment Approach and Scaling

Tribal assessment based on the replacement costs for the lost resource. No expert reports or direct assessment of cultural losses was undertaken.

Settlement Status

Settled

Settlement Dates

Multiple - 1998; 2008

Settlement

\$15,000,000 to State of MT for past assessment and litigation costs; \$80,000,000 for Silver Bow Creek remediation; \$135,000,000 for partial resolution of natural resource damage claims.

Tribal-specific Compensation

\$18,300,000 to Confederated Salish and Kootenai Tribes for settlement of all natural resource damage claims.

Regulation

CERCLA

Website

https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=985

NRDA Name

National Zinc Company Facility - Zinc Corporation of America Facility

Location

City of Bartlesville

State(s) location

Oklahoma

RP(s)/PRP(s)

National Zinc Company Facility/Zinc Corporation of America Facility (NZC/ZCA Facility); Cyprus Amax Minerals Company (Phelps Dodge Inc. now Freeport MacMoRan Inc.); Salomon Incorporated; Fluor Corporation; Horsehead Corporation; Morgan Stanley Smith Barney; Union Pacific Railroad; Burlington Northern Santa Fe (BNSF); Southern Kansas and Oklahoma Railroad (SK&O railroad); Watco; St. Joe Minerals Corporation; City of Bartlesville

Tribal Trustee(s)

Cherokee Nation; Delaware Tribe of Indians; Osage Nation

Federal Trustee(s)

U.S. EPA

State Trustee(s)

Oklahoma

Primary Contaminants

Lead; Cadmium; Arsenic; Zinc

Site Type

Smelting

Nature of Releases

Long-term discharge of particulate matter and metals from smelters

Injured Resource(s)

air; soil; surface water; groundwater

Tribal Assessment Approach and Scaling

The Preassessment Screen indicates that the Trustees believe that plant and animal species that are culturally significant to the Cherokee Nation, Delaware Tribe of Indians, and Osage Nation may have been impaired from releases at National Zinc. No other information on the tribal approach is seemingly available.

Settlement Status

Ongoing

Settlement Dates

NA

Settlement

NA

Tribal-specific Compensation

NA

Regulation

CERCLA

Website

<https://www.fws.gov/southwest/es/oklahoma/nrdar.htm>

NRDA Name

Olympic Pipeline Company - Whatcom Creek Spill

Location

Bellingham

State(s) location

Washington; Oregon

RP(s)/PRP(s)

Olympic Pipeline Company

Tribal Trustee(s)

Lummi Nation; Nooksack Tribe

Federal Trustee(s)

DOC-NOAA; DOI

State Trustee(s)

Washington

Primary Contaminants

PAHs; Gasoline

Site Type

Oil spill: pipeline rupture

Nature of Releases

Discrete release of 236,000 gallons of gasoline and subsequent fire

Injured Resource(s)

surface water; sediment; biota

Tribal Assessment Approach and Scaling

Unknown

Settlement Status

Settled

Settlement Dates

11/12/2004

Settlement

Total for NRDA was \$7,088,000 (\$3,544,000 insurers; \$1,559,360 Heddington; \$1,984,640 Noble). Restoration included: land acquisition and recreational improvements to parcel. Amount not stipulated but CD identified 'unreimbursed assessment costs' as part of settlement.

Tribal-specific Compensation

There is no evidence of tribal-specific compensation as part of this NRDA. However the tribes gained a seat at the table to determine how shared restoration funds are spent.

Regulation

OPA

Website

https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=1012

NRDA Name

Onondaga Lake NPL Site

Location

Syracuse

State(s) location

New York

RP(s)/PRP(s)

Honeywell International, Inc.; Onondaga County

Tribal Trustee(s)

Onondaga Nation

Federal Trustee(s)

DOI-USFWS

State Trustee(s)

New York

Primary Contaminants

Dioxin; Heavy Metals; Selenium; Mercury; PAHs; PCBs; Pesticides

Site Type

Various industrial

Nature of Releases

Industrial waste discharges

Injured Resource(s)

sediment; surface water; biota

Tribal Assessment Approach and Scaling

Document the extent and duration of cultural service losses resulting from the contamination in and around Onondaga Lake to inform restoration (and remedial design). Onondaga Lake and its associated watershed is the homeland of the Onondaga Nation. The Lake is a spiritual, cultural and historic center of the Haudenosaunee Confederacy. A substantial amount of information concerning the cultural practices of and resource use by the Confederacy exists from publicly available sources.

Settlement Status

Settled

Settlement Dates

2018

Settlement

\$166,934 for past assessment costs and a total of \$750,000 for future restoration oversight costs; \$5,000,000 for joint Trustee-sponsored natural resource restoration projects; \$500,000 for costs associated with the stewardship of certain Restoration Projects; \$200,000 each year for implementation of invasive species control and habitat preservation work in accordance with the Scope of Work for the Invasive Species Control and Habitat Preservation Project; \$86,172 for the State's use to acquire public fishing rights.

Tribal-specific Compensation

None. The Onondaga Nation withdrew from the NRDA, indicating that the Nation had been irreparably harmed by the contamination of Onondaga Lake and that there is no remedy available through the process that would compensate for their losses.

Regulation

CERCLA

Websitehttps://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=224

NRDA Name

Penobscot River

Location

Penobscot River, Lincoln

State(s) location

Maine

RP(s)/PRP(s)

Lincoln Paper and Tissue

Tribal Trustee(s)

Penobscot Indian Nation

Federal Trustee(s)

DOC-NOAA

State Trustee(s)

Maine

Primary Contaminants

VOCs; PCBs; SVOCs; Pesticides; Dioxins/furans; Metals

Site Type

Various industrial

Nature of Releases

Long-term discharge of contaminants from paper pulp mill.

Injured Resource(s)

soil; sediment; surface water; fish

Tribal Assessment Approach and Scaling

None

Settlement Status

No Settlement

Settlement Dates

NA

Settlement

Lincoln Pulp & Paper Mill declared bankruptcy. The claim was dropped but was supposedly \$64,000,000 for NRDA and toxic tort damages in bankruptcy court; there was no recovery (Pierce Atwood, LLP 2018).

Tribal-specific Compensation

NA

Regulation

CERCLA

Website

http://www.penobscotriver.org/assets/Fact_Sheet_Oct17_2013.pdf

NRDA Name

Port Angeles Harbor/Rayonier Mill Cleanup

Location

Port Angeles

State(s) location

Washington

RP(s)/PRP(s)

Rayonier Mill

Tribal Trustee(s)

Lower Elwha Klallam Tribe; Jamestown S'Klallam Tribe; Port Gamble S'Klallam Tribe

Federal Trustee(s)

DOC-NOAA; DOI-USFWS

State Trustee(s)

Washington

Primary Contaminants

PCBs; Dioxins

Site Type

Various industrial

Nature of Releases

Long-term discharge of mill process effluents

Injured Resource(s)

sediment; water; biota

Tribal Assessment Approach and Scaling

The Proposed Estimate of Damages (2014) does not make reference to tribal-specific assessment approach or consideration of tribal interests in the estimated service losses.

Settlement Status

Ongoing

Settlement Dates

NA

Settlement

NA

Tribal-specific Compensation

NA

Regulation

CERCLA

Website

<https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-sites/Toxic-cleanup-sites/Puget-Sound/Port-Angeles-Harbor/Port-Angeles-Harbor-NRDA>

NRDA Name

Port Gamble

Location

Port Gamble

State(s) location

Washington

RP(s)/PRP(s)

Pope Resources LP; OPG Properties LLC.; State of Washington, Department of Ecology

Tribal Trustee(s)

Port Gamble S'Klallam Tribe; Suquamish Tribe

Federal Trustee(s)

DOC-NOAA

State Trustee(s)

Washington

Primary Contaminants

Dioxins; Furans; Metals; Wood Waste

Site Type

Saw mill operation

Nature of Releases

Long-term release of contaminants from wood waste and pilings

Injured Resource(s)

marine sediment; upland habitats

Tribal Assessment Approach and Scaling

Assessment approach is ongoing.

Settlement Status

Ongoing

Settlement Dates

NA

Settlement

NA

Tribal-specific Compensation

NA

Regulation

CERCLA

Website<https://fortress.wa.gov/ecy/gsp/Sitepage.aspx?csid=3444>

NRDA Name

Port Gardner

Location

Port Gardner Bay - Snohomish River

State(s) location

Washington

RP(s)/PRP(s)

Jeld-Wen, Inc.; Kimberly Clark Corp.; Weyerhaeuser NR Company

Tribal Trustee(s)

Tulip Tribes Of Washington; Suquamish Tribe

Federal Trustee(s)

DOC-NOAA; DOI-USFWS

State Trustee(s)

Washington

Primary Contaminants

Ammonia; Dioxin; PCBs; Pesticides; PAHs; Heavy Metals; Lead; Mercury; VOCs; Perchlorate; Other

Site Type

Various industrial and municipal wastewater outfalls

Nature of Releases

Long-term releases of contaminants from multiple sources

Injured Resource(s)

surface water; sediment; biota

Tribal Assessment Approach and Scaling

The PAS identified important resources to the tribes and some associated services provided by these natural resources including cultural, spiritual, and religious use, option and existence values, traditional foods, and other lost human use. Additionally, because of the Endangered Species Act listing of Chinook salmon and the significance of salmon to Indian Tribe Trustees and all regional populations, the Trustees weight habitats in terms of their importance to Chinook salmon at twice the value assigned due to their importance to flatfish or birds. For restoration, the selection and construction of restoration sites must also take into account the cultural consideration of tribes such as archeological artifacts or culturally important sites.

Settlement Status

Settled

Settlement Dates

1/31/2018

Settlement

\$128,583 to DOI NRDAR Fund for natural resource damage assessment costs by DOI; \$111,671 to NOAA DARRF for natural resource damage assessment costs by NOAA; \$50,224 to WA for assessment costs; \$25,097 to Suquamish Tribe for assessment costs; \$28,678 to Tulip Tribes for assessment costs. Finally a total of \$3,946,633 to Trustees for Natural Resource Damages (restoration, rehabilitation, replacement of Natural Resources affected by the release of hazardous substances in Port Gardner Bay) to be kept in the Port Gardner Bay Account.

Tribal-specific Compensation

The RP paid \$25,097 to Suquamish Tribe for assessment costs; \$28,678 to Tulip Tribes for assessment costs. The tribes also gained a seat at the table to determine how shared restoration funds are spent.

Regulation

Clean Water Act

Websitehttps://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=234 ;<https://darrp.noaa.gov/hazardous-waste/port-gardner>

NRDA Name

Portland Harbor

Location

Portland Harbor

State(s) location

Washington

RP(s)/PRP(s)

Multiple - including but not limited to: ACF Industries, Inc.; Acme Trading & Supply; Air Liquide America Specialty Gases LLC; Alder Creek Lumber Company, Inc.; Anderson Brothers, Inc.; Arkema Inc.; Ashland, Inc.; ATKN Company; Babcock Land Company, LLC; BAE Systems San Diego Ship Repair, Inc.; Basin Street Associates; Bay Valley Foods, LLC; BBD&R, Inc.; Beazer East, Inc.; BP West Coast Products LLC; Brand-S Corporation; Brix Maritime Co.; Peter Brix, et al.; Burgard 789 LLC; Burlington Northern and Santa fe Railway Company; Calbag metals Co.; CanAm Minerals, Inc. d.b.a. Kleen Blast; Cargill, Inc.

Tribal Trustee(s)

Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of Siletz Indians; Confederated Tribes of the Umatilla Indian Reservation; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe

Federal Trustee(s)

DOI-USFWS; DOC-NOAA

State Trustee(s)

Oregon

Primary Contaminants

PCBs; PAHs; SVOCs; DDT; Pesticides; Heavy Metals; Other

Site Type

Various industrial and commercial facilities wastewater outfalls

Nature of Releases

Long-term releases of contaminants from multiple sources

Injured Resource(s)

surface water; sediment; groundwater; biota

Tribal Assessment Approach and Scaling

Tribes were involved in developing the Assessment Plan as part of Phase I. Phase II early restoration projects are currently being implemented and are chosen as part of a cooperative process with all the Trustees. Tribes used money in this phase to establish a need to monitor lamprey as part of restoration implementation. As a result, all restoration projects require lamprey monitoring. Phase III of the process, implementing the assessment, is getting started, this process includes a tribal loss assessment.

Settlement Status

Ongoing

Settlement Dates

Early restoration is ongoing.

Settlement

NA

Tribal-specific Compensation

NA

Regulation

CERCLA

Website<https://casedocuments.darrp.noaa.gov/northwest/portharbor/admin.html>

NRDA Name

Puget Sound Energy - Crystal Mountain Oil Spill

Location

Silver Creek and White River

State(s) location

Washington

RP(s)/PRP(s)

Puget Sound Energy, Inc.

Tribal Trustee(s)

Muckleshoot Indian Tribe; Puyallup Tribe Of Indians

Federal Trustee(s)

DOI-USFWS; DOC-NOAA; DOA-USFS

State Trustee(s)

Washington

Primary Contaminants

Oil; PAHs

Site Type

Oil spill: wetland

Nature of Releases

Discrete release of 18,000 gallons of diesel fuel

Injured Resource(s)

surface water; sediment; soil; fish

Tribal Assessment Approach and Scaling

The Restoration Plan did not address tribal-specific losses; presumably the assessment did not either.

Settlement Status

Settled

Settlement Dates

7/1/1905

Settlement

A total of \$512,856.59 for natural resource damages. This money recovered will be used for restoration, rehabilitation or replacement of natural resources injured as a result of the spill. The Restoration Plan involved the tribal trustee council members and included: Green water River Floodplain Restoration; Huckleberry Creek Fish Acclimation Pond Repair and Improvements. Past damage assessment costs: \$19,756.71 DOI; \$13,092.21 USFS; \$10,504.24 NOAA; \$3,061.31 State; \$3,200 Puyallup Tribe

Tribal-specific Compensation

For past damage assessment costs, the Puyallup Tribe of Indians received \$3,200. The tribes also gained a seat at the table to determine how shared restoration funds are spent.

Regulation

OPA

Website

https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=1044

NRDA Name

Rio Algom Quivira Mill and Mines

Location

Ambrosia Lake, McKinley County

State(s) location

New Mexico

RP(s)/PRP(s)

Rio Algom Mining, LLC

Tribal Trustee(s)

Navajo Nation

Federal Trustee(s)

USFWS

State Trustee(s)

New Mexico

Primary Contaminants

Ammonia; Heavy Metals; Lead; Selenium; Radionuclides; Others

Site Type

Mining

Nature of Releases

Long-term mining operations for uranium ore extraction and processing released hazardous contaminants.

Injured Resource(s)

groundwater; surface water; sediment; soils; vegetation; biota

Tribal Assessment Approach and Scaling

Assessment approach is ongoing.

Settlement Status

Ongoing

Settlement Dates

NA

Settlement

NA

Tribal-specific Compensation

NA

Regulation

CERCLA

Website<https://onrt.env.nm.gov/rio-algom-quivira-mill-and-mines/>

NRDA Name

Rio Tinto Mine Site - Duck Valley

Location

Mill Creek - East Fork Owyhee River

State(s) location

Nevada

RP(s)/PRP(s)

Atlantic Richfield Company; The Cleveland-Cliffs Iron Company; E.I. Du Pont De Nemours and Company; Teck American Incorporated; Mountain City Remediation, LLC

Tribal Trustee(s)

Shoshone-Paiute Tribes of the Duck Valley Reservation

Federal Trustee(s)

U.S. EPA; DOI-BIA; DOI-USFWS; DOA-USFS

State Trustee(s)

Nevada

Primary Contaminants

Heavy Metals; Other

Site Type

Mining

Nature of Releases

Waste water from mining operations

Injured Resource(s)

surface water; groundwater; soil; sediment; fish; birds; mammals; amphibians; invertebrates; instream riparian habitats

Tribal Assessment Approach and Scaling

The Assessment Plan generally describes the importance of the natural resources to the tribes economy and culture; and includes a section specific to describing cultural resources (Beltman and Hazen 2004). For instance, the East For Owyhee River is the primary water source for surface and ground water recharge, and for Tribal livestock, agriculture, and fisheries in Duck Valley. From the plan, " For example, the Trustees will determine injuries via loss of natural resource services to the public and/or loss of unique natural resource services provided to the Shoshone-Paiute Tribes. Such loss of services may result from perception of contamination and changes in use resulting from releases of hazardous substances. Since loss of services provided by resources may be used to determine the amount of damages, if services are lost because of the release of hazardous substances that causes a "measurable adverse change . . . in the chemical or physical quality . . . of a natural resource" [43 CFR § 11.14 (v)], the resources can be considered injured." The plan outlines a specific task to determine tribal cultural use service loss assessment - see section 4.9. Available data for these purposes include ethnographic assessments of Shoshone-Paiute view and uses of their environment and a vegetative use and cultural survey conducted by the tribes. Additional studies include: inventory of resources used by Tribal members; interviews, literature reviews to determine how resources are used by Tribal members; development of tribal-specific model to illustrate relationships between resources and Tribal services; determination of extent of injuries to natural resources; and field reconnaissance and inventory of baseline or reference areas to distinguish absence or reduction in resources due reasons other than mine releases.

Settlement Status

Settled

Settlement Dates

7/5/1905

Settlement

(1) implement the remedy selected for the Site which includes, among other things, removal of mine tailings from the Owyhee River, achieving certain water quality standards, and providing fish passage and stream bank restoration, ("Remedy"), at an estimated cost of over \$25 million; (2) implement additional work if monitoring after Remedy Construction identifies elevated levels of Site contaminants, and if NDEP or EPA requires such additional work; (3) provide performance guarantees; (4) pay EPA \$1,234,067 for past response costs; (5) pay NDEP and EPA certain future oversight costs; (6) pay federal natural resource trustees, United States Department of interior and USFS, damage assessment costs of \$709,527; (7) pay \$150,000 to the Tribes for their past and future costs; and (8) undertake other commitments such as providing access, institutional controls, insurance, stipulated penalties in the event of non-compliance and retention of records.

Tribal-specific Compensation

The consent decree dictated that the RP pay \$150,000 to the Tribes, payment shall constitute full satisfaction and resolution of all liability to the Tribes for natural resource damages and assessment costs, and costs for the Tribes' oversight of this Consent Decree.

Regulation

CERCLA

Website

https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=243

NRDA Name

Saginaw River and Bay

Location

Saginaw River and Bay

State(s) location

Michigan

RP(s)/PRP(s)

General Motors Corporation; City of Bay City; City of Saginaw; Michigan Department of Transportation

Tribal Trustee(s)

Saginaw Chippewa Indian Tribe of Michigan

Federal Trustee(s)

DOI-USFWS

State Trustee(s)

Michigan

Primary Contaminants

PCBs

Site Type

Various industrial

Nature of Releases

Long-term releases of wastewater from industrial facilities

Injured Resource(s)

surface water; sediment; fish birds

Tribal Assessment Approach and Scaling

Determination that contamination has impacted fish and wildlife in the Saginaw River and Bay, resulting in advisories against human consumption of fish for all species of fish in the River and many species of fish in the Bay. Also, bald eagle reproduction is significantly lower in these areas than is found in less contaminated areas. There is no evidence the Trustees pursued a specific approach to tribal assessment and scaling.

Settlement Status

Settled

Settlement Dates

6/4/1999

Settlement

Multiple NRDA-related compensation including: \$10,640,000 for dredging; \$100,000 for restoration sampling; \$3,000,000 for additional restoration; \$520,000 for environmental learning center and rent-free leases, interpretive center building and 80 acres of riparian and upland habitat; Trustees were reimbursed for \$2,000,000 of their assessment costs.

Tribal-specific Compensation

The tribe received the Roney, Walter property on the West Side of the Bay. The tribe also gained a seat at the table to determine how shared restoration funds are spent.

Regulation

CERCLA; Clean Water Act

Website

https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=114; <https://www.fws.gov/midwest/es/ec/nrda/saginawNRDA/>

NRDA Name

Selendang Ayu Oil Spill - Unalaska

Location

Unalaska Island; Aleutian Islands

State(s) location

Alaska

RP(s)/PRP(s)

IMC Shipping Company Pte. Ltd.

Tribal Trustee(s)

Qawalangin Tribe of Unalaska*

Federal Trustee(s)

DOI-USFWS; DOC-NOAA

State Trustee(s)

Alaska

Primary Contaminants

Oil; PAHs

Site Type

Oil spill: ocean

Nature of Releases

Discrete release of 18,000 gallons of marine diesel and 424,000 gallons of intermediate fuel oil.

Injured Resource(s)

fish; wildlife; birds; marine mammals; shoreline habitats; human use of natural resource

Tribal Assessment Approach and Scaling

The on-site ethnographic work involved direct observation and scores of in-depth interviews with: knowledgeable fishery participants affected by the spill; leaders from federal, state, and local government agencies responding to the event; representatives of the Qawalangin tribe of Alaska Natives; representatives of the Ounalashka Native Corporation; representatives of firms in the local commercial fishing support sector and seafood processing industry; fishing association leaders; subsistence practitioners; village elders; and emergent key informants. A social network sampling approach was used to identify and interact with persons particularly knowledgeable of specific fisheries and the nature of effects on the fleets and persons engaged in those fisheries. Small focus group meetings were conducted to elicit perspectives on specific topics such as: resource use patterns in the areas affected by the spill; subsistence foods and harvesting practices; and effects on local businesses (BOEM 2011).

Settlement Status

Ongoing

Settlement Dates

NA

Settlement

NA

Tribal-specific Compensation

The spill generated more persistent effects among Alaska Native subsistence practitioners. Although the state-sponsored subsistence foods testing program revealed no significant threat from polycyclic aromatic hydrocarbons in 2006, certain residents continue to express uncertainty about the safety of foods from the affected area. This is significant since many Alaska Natives residing on Unalaska Island are descendants of indigenous peoples who have relied on the region's natural resources for many millennia. The Qawalangin tribe of Unalaska submitted a claim for lost subsistence opportunities and related cultural losses totaling \$1 million. The claim was rejected by the National Pollution Funds Center in 2009 (BOEM 2011).

Regulation

OPA

Website

https://www.fws.gov/alaska/fisheries/contaminants/spill/sa_index.htm; https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=1031

NRDA Name

Smurfit-Stone/Frenchtown Mill Site

Location

Clark Fork River

State(s) location

Montana

RP(s)/PRP(s)

M2Green Redevelopment, LLC; International Paper Company; West Rock CP, LLC; BNSF Railway Company; Montana Rail Link

Tribal Trustee(s)

Confederated Salish Tribe; Kootenai Tribe; Kalispel Tribe

Federal Trustee(s)

USFWS; DOA-USFS

State Trustee(s)

Montana

Primary Contaminants

Metals; PCBs; Dioxins/furans

Site Type

Mill site

Nature of Releases

Industrial activities resulted in the release of hazardous substances into the floodplain.

Injured Resource(s)

groundwater; surface water; sediment; biota

Tribal Assessment Approach and Scaling

Assessment approach is ongoing.

Settlement Status

Ongoing

Settlement Dates

NA

Settlement

NA

Tribal-specific Compensation

NA

Regulation

CERCLA

Website<https://dojmt.gov/lands/smurfit-stone/>

NRDA Name

Southeast Idaho Phosphate

Location

Southeast Idaho

State(s) location

Idaho

RP(s)/PRP(s)

J.R. Simplot Company; PF Production (Monsanto)

Tribal Trustee(s)

Shoshone-Bannock Tribes

Federal Trustee(s)

U.S. EPA; DOI-BLM; DOI-USFWS; DOA-USFS

State Trustee(s)

Idaho

Primary Contaminants

Selenium; Other

Site Type

Mining

Nature of Releases

Long-term releases of contaminants across multiple sites

Injured Resource(s)

groundwater; surface water; sediment; soil; vegetation

Tribal Assessment Approach and Scaling

Assessment approach is ongoing.

Settlement Status

Ongoing

Settlement Dates

NA

Settlement

NA

Tribal-specific Compensation

NA

Regulation

CERCLA

Website<http://www.deq.idaho.gov/regional-offices-issues/pocatello/southeast-idaho-phosphate-mining/>

NRDA Name

St. Lawrence River and Environment

Location

Northern New York with border of Canada

State(s) location

New York

RP(s)/PRP(s)

Alcoa, Inc.; Reynolds Metals Company; General Motors Corporation

Tribal Trustee(s)

St. Regis Mohawk Tribe

Federal Trustee(s)

DOC-NOAA; DOI-USFWS

State Trustee(s)

New York

Primary Contaminants

PCBs; PAHs

Site Type

Various industrial

Nature of Releases

Long-term industrial releases of hazardous substances and waste materials

Injured Resource(s)

surface water; sediment; soil; plants; wildlife

Tribal Assessment Approach and Scaling

Focus effort on identifying key areas of traditional cultural practice, qualitatively documenting the effect of contamination on those practices. Four key cultural practice areas: Water, fishing, and use of the river; horticulture, farming, and basket making; medicinal plants and healing; hunting and trapping. Natural resources were contaminated by hazardous substances released from PRP facilities. Identified socio-cultural impacts of contamination distinct from impacts of other stressors. Used existing information and data from primary cultural study to qualitatively assess those impacts. Developed tribal-specific restoration evaluation criteria. Identified a suite of restoration projects that together would assist the Tribe in re-establishing tribal members' connection to and use of affected resources, focusing on the four cultural practice areas.

Settlement Status

Settled

Settlement Dates

Multiple -03/30/2011; 07/17/2013

Settlement

GM: \$9,500,000.00 + other past assessment costs + \$2,000,000 for another subsite. Alcoa Inc. and Reynolds Metals Co.: \$933,950 for past government assessment costs + \$7,279,883 for Joint Trustee-sponsored natural resource restoration projects + \$8,387,898 to Tribe for Tribal Cultural Restoration projects

Tribal-specific Compensation

GM paid \$3,166,666.67 to the Tribe and Alcoa and Reynolds paid an additional \$8,387,898 for Tribal Cultural Restoration projects. The objective of the projects is to: re-establish the cultural practices and associated language to the level at which they were practiced prior to contamination of resources. Apprenticeship program to establish and directly support long-term master-apprentice relationships in the four areas of traditional cultural practices that were harmed by the release of hazardous substances and promote and support the long-term regeneration of practices associated with tribal traditions. Cultural Institution Funding for existing Akwesasne-based institutions and programs that focus on regeneration of traditional cultural practices. Restoration of resources, although not tribal-specific, is a component of the overall settlement and is expected to benefit resources of importance to the Tribe.

Regulation

CERCLA

Website

https://www.cerc.usgs.gov/orca_docs/CaseDetails?ID=936

NRDA Name

St. Louis River - Interlake - Duluth Tar Site

Location

St. Louis River near Duluth

State(s) location

Minnesota

RP(s)/PRP(s)

Domtar, Inc.; Honeywell International, Inc.

Tribal Trustee(s)

Fond Du Lac Band Of Lake Superior Chippewa; Bois Forte and Grand Portage Band of Lake Superior Chippewa

Federal Trustee(s)

DOC-NOAA; DOI-USFWS

State Trustee(s)

Minnesota; Wisconsin

Primary Contaminants

PAHs

Site Type

Various industrial

Nature of Releases

Long-term releases of contaminants from pig iron, coking plants and a water/gas (coal gasification) plant

Injured Resource(s)

sediment; surface water; biota

Tribal Assessment Approach and Scaling

Focused effort on incorporation of wild rice restoration into restoration planning, rather than quantifying ecological injuries and service losses. Wild rice key resource for the Tribes, part of legend of what brought them to the Great Lakes, used ceremonially, medicinally, and for sustenance. Developed narrative referencing Tribal documents to demonstrate and document the cultural importance of wild rice. Crops were devastated historically by pollution and poor water management. Tribal injuries were discussed generally under "cultural losses" and were not quantified. Tribe had significant involvement in the development of site-specific selection criteria for restoration projects, and in the identification and scoping of potential projects.

Settlement Status

Settled

Settlement Dates

7/9/1905

Settlement

\$8,200,000 in November 2017. Implementation of the Restoration Plan is scheduled for 2018.

Tribal-specific Compensation

Restoration planned at the site includes key Tribal components including: \$332,000 for wild rice restoration in Kingsbury Bay and at other key locations within the St. Louis River estuary, serving dual purpose of providing cultural services, as well as ecological services as part of a diverse emergent wetland community. Another project is to: Create cultural education opportunities (signage) to inform visitors of the history of the Ojibwe in the area and the importance of wild rice to their cultural heritage; totaling \$30,000.

Regulation

CERCLA

Website

<https://darrp.noaa.gov/hazardous-waste/st-louis-riverinterlakeduluth-tar> ; <https://www.fws.gov/midwest/es/ec/nrda/Interlake/index.html> ; <https://www.pca.state.mn.us/waste/st-louis-river-interlakeduluth-tar-site>

NRDA Name

Sulphur Bank Mercury Mine Site

Location

Clearlake Oaks

State(s) location

California

RP(s)/PRP(s)

Bradley Mining Company

Tribal Trustee(s)

Elem Indian Colony of Pomo Indians

Federal Trustee(s)

U.S. EPA

State Trustee(s)

None

Primary Contaminants

Mercury; Arsenic

Site Type

Mining

Nature of Releases

Former mining activities historically released mercury and arsenic into the environment.

Injured Resource(s)

soils; sediments; surface waters; fish

Tribal Assessment Approach and Scaling

Actions to-date have focused on efforts to protect human health and the environment. Site investigations and long-term cleanup planning are currently ongoing. There does not appear to be an active NRD assessment.

Settlement Status

Settled

Settlement Dates

4/18/2012

Settlement

\$104,774,423 for recovery and response costs incurred or to be incurred by the U.S. in connection with releases or threatened releases of hazardous substances for multiple sites (beyond just the Sulphur Bank Mercury Site) held by the RP; AND conveyance to the Redevelopment Trust, in accordance with Paragraph 19, of Parcels 29 and 30 and any other property rights it has with respect to Parcels 24, 25, 32, 33, 39, 57, 58, 81, and 83. A portion of this funding (exact amount unclear but at least \$7,200,588) is reserved for the Sulphur Bank Site.

Tribal-specific Compensation

The tribe received \$50,000 for reimbursement of Elem Tribe's assessment and restoration cost; they also received transfer of newly restored parcels of land to the tribe.

Regulation

CERCLA

Website

<https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.Cleanup&id=0902228#bkgground>

NRDA Name

T/B Bouchard B-120 Grounding Fuel Oil Spill

Location

Buzzards Bay

State(s) location

Massachusetts

RP(s)/PRP(s)

Bouchard Transportation, Inc.

Tribal Trustee(s)

Wampanoag Tribe of Aquinnah

Federal Trustee(s)

DOI-USFWS; DOC-NOAA

State Trustee(s)

Massachusetts; Rhode Island

Primary Contaminants

Oil; PAHs

Site Type

Oil spill: ocean

Nature of Releases

Discrete release of 22,000 to 98,000 gallons of fuel oil

Injured Resource(s)

surface water; sediment; biota

Tribal Assessment Approach and Scaling

Facts: In addition to lost fishing opportunities, historical fish weirs and other cultural sites were oiled. Some oil reached Martha's Vineyard and interfered with operation of Tribe's oyster hatchery. Response and monitoring costs and hatchery business lost profits were monetized, however, damages to cultural sites were not monetized. Subsistence losses were monetized based on data from an existing Tribal consumption survey and replacement cost at market prices. The RP valued this loss at \$25,000 but the tribe assessed it as higher. The analysis was able to apply data from a shellfish and fish consumption survey done prior to the spill. Fish and shellfish consumption rates were high, and participation in this activity was high prior to the spill. However, the overall population of Tribal members is small. While the Tribe was prepared, if necessary, to develop an administer a survey of tribal members, they also recognized the risks inherent in such an effort and the time required to complete the effort.

Settlement Status

Settled

Settlement Dates

Multiple - 5/17/2011; 1/24/2018

Settlement

Total damages estimated by Tribe to be about \$400k. Responsible Party offer was around \$300k. Cash settlement was reached.

Tribal-specific Compensation

Tribe received: response and monitoring costs (on order of \$30K) and hatchery business lost profits (on order of \$70K). Subsistence losses - finfish and shellfish. Monetized based on data from an existing Tribal consumption survey and replacement cost at market prices. Valued by Responsible Party on order of \$25K. Additionally, the settlement offer from the Responsible Party included \$100k for "damage to cultural sites", and was based on the cost of monitoring the impact of cleanup over 90+ miles of shoreline.

Regulation

OPA

Website

https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=966

NRDA Name

Texaco Refinery Oil Spills

Location

Puget Sound

State(s) location

Washington

RP(s)/PRP(s)

Texaco Refining and Marketing, Inc.

Tribal Trustee(s)

Lummi Nation; Nooksack Tribe; Suquamish Tribe; Swinomish Tribe

Federal Trustee(s)

DOI-USFWS

State Trustee(s)

Washington

Primary Contaminants

Oil; PAHs

Site Type

Refinery

Nature of Releases

Four discrete releases of oil of varying amounts

Injured Resource(s)

soil; sediment; surface water

Tribal Assessment Approach and Scaling

No tribal-specific assessment approach. Tribes were involved in restoration planning.

Settlement Status

Settled

Settlement Dates

7/8/1998

Settlement

\$467,391.65 to a federal court held restoration fund, to restore, enhance, rehabilitate, or acquire the equivalent of natural resources injured by the Oil Spills. In developing the MOA for the consent decree, the Trustees decided to limit the geographic focus area to Fidalgo Bay and to focus restoration efforts to those actions that would benefit spawning and larval rearing habitats for Fidalgo Bay herring, smelt and Pacific sand lance (forage fish) and other resources in the bay. The Trustees felt that the greatest impacts from the oil spills were to the spawning and rearing habitats of the three ecologically important forage fish species (herring, sand lance and smelt) found within Fidalgo Bay.

Tribal-specific Compensation

There is no evidence of tribal-specific compensation as part of this NRDA. The consent decree and MOA requires the formation of a Trustee Committee to develop a restoration plan before expenditure of funds. A Trustee Committee consists of representatives of the Nooksack Indian Tribe; Lummi Nation, Swinomish Indian Tribal Community; Suquamish Indian Tribe; the U.S. Fish and Wildlife Service; and the Washington State Departments of Ecology, Fish and Wildlife, and Natural Resources).

Regulation

OPA

Website

https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=968

NRDA Name

Tittabawassee River

Location

Tittabawassee River System Area

State(s) location

Michigan

RP(s)/PRP(s)

Dow Chemicals

Tribal Trustee(s)

Saginaw Chippewa Indian Tribe of Michigan

Federal Trustee(s)

DOI-USFWS; DOI-BIA

State Trustee(s)

Michigan

Primary Contaminants

Dioxin; Furans; Organics; Metals

Site Type

Chemicals processing

Nature of Releases

Discrete release of hazardous substances

Injured Resource(s)

biota; surface water; sediment; groundwater; geologic resources

Tribal Assessment Approach and Scaling

Assessment approach is ongoing.

Settlement Status

Ongoing

Settlement Dates

None

Settlement

NA

Tribal-specific Compensation

NA

Regulation

CERCLA

Websitehttps://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=228

NRDA Name

Tri-State Mining District: Oklahoma

Location

Ottawa County

State(s) location

Oklahoma

RP(s)/PRP(s)

Partial List: Acme Land Company, AMAX Industries, ASARCO Inc., Blue Tee Corporation, Inc. (Beazer East, Inc.), Connor Investment Company, E.I. DuPont de Nemours & Company, Eagle-Picher Industries, Inc., FSN, Inc., Gold Fields Mining Corporation, Kellogg Brown & Root, Inc., NL Industries Inc., Paramount Communications, Inc. (Viacom, Inc.), St. Joe Minerals Corporation, Sun Refining and Marketing Company (The Doe Run Company), USX Corporation

Tribal Trustee(s)

Eastern Shawnee Tribe of Oklahoma; the Miami Tribe of Oklahoma; the Modoc Tribe of Oklahoma; the Ottawa Tribe of Oklahoma; the Peoria Tribe of Indians of Oklahoma; the Quapaw Tribe of Oklahoma; the Seneca-Cayuga Tribe of Oklahoma; the Wyandotte Tribe of Oklahoma

Federal Trustee(s)

DOI-USFWS; DOI-BIA

State Trustee(s)

Oklahoma

Primary Contaminants

Cadmium; Lead; Zinc

Site Type

Mining

Nature of Releases

Long-term releases of contaminants across multiple sites

Injured Resource(s)

soil; surface water; groundwater; biota

Tribal Assessment Approach and Scaling

Multiple bankruptcy cases resulted in multiple damage assessments and settlements. The 2007 ASARCO bankruptcy case did not include a separate tribal claim to losses. Tribal interests were incorporated into the general approach to damages (e.g., several freshwater mussel species that are culturally important to the tribe were studied). The 2016 (IEc 2016) Gold Fields and Blue Tee Bankruptcy incorporated tribal uses into injury determination, quantification and restoration-based damages for terrestrial resources floodplain and riparian habitats. Related: as part of the Grand Lake RCDP from 2014, the Tribes conducted an injury analysis based on the definitions of biological injury at 43 CFR § 11.62(f) and §11.64(f). The Tribes focused on lead in this analysis, and compared lead tissue concentrations in the edible portions of biological organisms to tolerance and action levels. The analysis showed that lead tissue concentrations in plants, fish, crayfish, mussels, and other organisms, exceed multiple tolerance and action levels by up to several orders of magnitude (particularly in the case of plants). The analysis demonstrated that the biological resources are therefore injured, according to 43 CFR § 11.62(f)(1)(ii), and §11.64(f)(3). In addition, there has been a resulting loss in Tribal services provided by these resources. The Tribes documented this loss in a 2009 survey in which Tribal members and citizens indicated that they restrict consumption of natural resources and have changed gathering locations because of the contamination (Garvin, 2009). In 2008 the Quapaw Tribe attempted to assert a claim for interim lost use (Quapaw Tribe v. Blue Tee Corp., No. 03-CV-0846-CVEPJC, 2008 WL 2704482 (N.D. Okla. July 7, 2008). However the court rejected the case since EPA remedial actions had not yet been selected. Throughout all these cases, ongoing NRD assessments have continued to occur. As discussed above, the Trustees conducted surveys in 2009 of tribal populations to determine their use of traditional resources; they also developed an interview approach to determine potential losses and restoration options in 2017 (Abt 2017). The current status of the tribal interviews is not known.

Settlement Status

Partial - Ongoing

Settlement Dates

Multiple - ASARCO, LLC. In 2007/8 and Gold Fields and Blue Tee Bankruptcy in 2016/7.

Settlement

2007/8 - None directly for Tribal losses. 2016/7 - Payment for Seven Tribes' Response Costs at Tar Creek payable to: "Ottawa Tribe of Oklahoma" - \$150,000; Tar Creek (Joint NRD, Tribal) -\$317,301.30; Payment for Seven Tribes' Response Costs at Tar Creek payable to Ottawa Tribe of Oklahoma - \$250,000. The tribes also likely gained a seat at the table to determine how shared restoration funds are spent.

Tribal-specific Compensation

\$717,301

Regulation

CERCLA

Website

<https://www.fws.gov/southwest/es/oklahoma/Documents/Contaminants/Final%20RCDP%20for%20Grand%20Lake.pdf>

NRDA Name

Tronox Inc. Bankruptcy

Location

Multiple Sites

State(s) location

Arizona; Florida; Georgia; Idaho; Illinois; Mississippi; North Carolina; New Jersey; New Mexico; Ohio; Oregon; South Dakota; Washington; Wisconsin

RP(s)/PRP(s)

Tronox Incorporated, et al.

Tribal Trustee(s)

Navajo Nation

Federal Trustee(s)

U.S. EPA

State Trustee(s)

Alabama; Georgia; Illinois; Louisiana; Massachusetts; Missouri; Mississippi; New Jersey; New York; Ohio; Oklahoma; Texas

Primary Contaminants

Uranium; PAHs; PCPs; Arsenic; Thorium; Radium; Creosote

Site Type

Chemicals processing

Nature of Releases

Long-term releases of contaminants across multiple sites

Injured Resource(s)

air; groundwater; sediment; soil sludge; surface water

Tribal Assessment Approach and Scaling

Unknown

Settlement Status

Settled

Settlement Dates

7/2/1905

Settlement

\$270 million in cash for the various Trustees; plus claims to other future interests and assets.

Tribal-specific Compensation

Unknown

Regulation

CERCLA

Website

<https://www.epa.gov/enforcement/case-summary-tronox-incorporated-bankruptcy-settlement>

NRDA Name

Tulalip Landfill NPL Site

Location

Snohomish County

State(s) location

Washington

RP(s)/PRP(s)

Seattle Disposal Company; Waste Management Of Washington, Inc. F/K/A Washington Waste Hauling and Recycling, Inc.; The Port Of Seattle, Sears, Roebuck, et al.; Associated Grocers, Inc., and Fog-Tite, Inc.; Ace Galvanizing, et al.; Ace Tank and Equipment, et al.

Tribal Trustee(s)

Tulalip Tribes Of Washington

Federal Trustee(s)

DOI-USFWS; DOC-NOAA

State Trustee(s)

Washington

Primary Contaminants

PAHs; Metals; PCBs

Site Type

Landfill: industrial and other

Nature of Releases

Former landfill 1964-1979, soil cover and constructed perimeter berm was insufficient to protect natural resources

Injured Resource(s)

sediment; soil; groundwater

Tribal Assessment Approach and Scaling

Unknown

Settlement Status

Settled

Settlement Dates

Multiple - 1997; 1998; 1999; 2000; 2002; 2004

Settlement

Ace Tank, et al., Civ. No. C98-0300R (W.D. Wash., 09/22/98) -Tulalip Landfill de minimis NRD Settlement amounts; Ace Galvanizing, et al., Civ. No. C97-152D (W.D. Wash., 04/16/98) - Tulalip Landfill de minimis NRD Settlement amounts; Associated Grocers, Inc. and Fog-Tite, Inc., Civ. No. C00-0167R (W.D. Wash., 04/04/00) - \$43,153; BFI Waste Systems Civ. No. CV02-0225C (W.D. Wash., 05/20/02) - \$37,981; Boeing, et al., Civ. No. C97-1648WD, (W.D. Wash., 12/11/97) - \$27,242; \$42,404; \$31,014; \$27,289; \$38,619; Goodwill Industries, Civ. No. C97-1648WD (W.D. Wash., 01/30/98) - \$19,102; Quemetco, Civ. No. CV02-0225C (W.D. Wash., 05/20/02) - \$39,839; Manson, Civ. No. C97-1648WD (W.D. Wash., 01/30/98) - Tulalip Landfill de minimis NRD Settlement amounts; Port of Seattle, et al., C99-665R (W.D. Wash., 08/12/99) - No monies appear to be involved; Quemetco, Inc. United States et al. v Pharmacia Corp., BFI Waste Systems of North America, and University of Washington, Civ. No. CV02-0225C (W.D. Wash., May 20, 2002). Three separate consent decrees with one number. A combined Order entering all three of them dated 05/20/02. Part of the TULALIP settlements (see below); R.W. Rhine, Civ. No. C97-1648WD (W.D. Wash., 01/20/98) - \$26,734; Seattle Disposal, Civ. No. CV02-1126R (W.D. Wash., 06/03/02) - \$583,000; University of Washington, Civ. No. CV02-0225C (W.D. Wash., 05/20/02); Pharmacia Corp. Combined Order entering all three of them dated 05/20/02. Part of the TULALIP settlements.; Waste Management, Civ. No. C04-983Z (W.D. Wash., 06/23/04) Order - \$190,000.

Tribal-specific Compensation

Unknown

Regulation

CERCLA

Websitehttps://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=804

NRDA Name

U.S. On Behalf Of Sac and Fox Tribes Of Oklahoma v. Tenneco, Inc. Management

Location

Sac and Fox Nation tribal land

State(s) location

Oklahoma

RP(s)/PRP(s)

Tenneco, Inc. Management

Tribal Trustee(s)

Sac And Fox Tribes Of Oklahoma

Federal Trustee(s)

DOJ

State Trustee(s)

None

Primary Contaminants

Salts

Site Type

Drilling

Nature of Releases

Long-term drill site

Injured Resource(s)

groundwater; terrestrial

Tribal Assessment Approach and Scaling

Unknown

Settlement Status

Settled

Settlement Dates

6/2/1997

Settlement

\$1.16 million in compensation for contamination to the water supply and tribal lands. Additionally, Tenneco will reforest a pecan grove, restore an area of tribal land damaged by oil and gas related activities.

Tribal-specific Compensation

The tribe received a new water system and \$1.16 million in compensation for contamination to the water supply and tribal lands.

Regulation

Safe Drinking Water Act

Website

<https://newsok.com/article/2563779/tenneco-to-settle-tribal-suit-sac-and-fox-officials-hail-35-million-plan>

NRDA Name

Upper Columbia River

Location

Upper Columbia River -Lake Roosevelt Site

State(s) location

Washington

RP(s)/PRP(s)

Teck Metals Ltd.

Tribal Trustee(s)

Confederated Tribes of the Colville Reservation; Spokane Tribe of Indians

Federal Trustee(s)

DOI-NPS; DOI-BR; DOI-USFWS; DOI-BIA; DOI-BLM

State Trustee(s)

Washington

Primary Contaminants

Heavy Metals; Dioxins; PCBs

Site Type

Smelting; Fertilizer production; Pulp mills; Mining and milling operations

Nature of Releases

Effluent discharges or spills, and/or slag disposal

Injured Resource(s)

surface water; geological; groundwater; air; biota; human use of natural resources

Tribal Assessment Approach and Scaling

Assessment approach is ongoing.

Settlement Status

Ongoing

Settlement Dates

None

Settlement

NA

Tribal-specific Compensation

NA

Regulation

CERCLA

Website<https://parkplanning.nps.gov/document.cfm?parkID=318&projectID=42954&documentID=48995>

NRDA Name

Whitewood Creek NPL Site and Downstream Waters - Homestake Mine

Location

Black Hills

State(s) location

South Dakota

RP(s)/PRP(s)

Homestake Mining Company Of California

Tribal Trustee(s)

Cheyenne River Sioux Tribe

Federal Trustee(s)

USACE; DOI-USFWS; DOI-BIA; DOI-BLM; DOI-BR

State Trustee(s)

South Dakota

Primary Contaminants

Arsenic; Mercury

Site Type

Mining

Nature of Releases

Waste water from mining operations

Injured Resource(s)

sediment; surface water; biota

Tribal Assessment Approach and Scaling

Facts: This claim involved the release of mercury to Whitewood Creek and the Cheyenne River from gold mining operations in the Black Hills. The Cheyenne River forms the southern boundary of the Reservation, which is one of the largest in the Western U.S. As a result, trust surface waters and floodplain of the Cheyenne River Sioux reservation were injured. Injury included a fishing advisory and the loss of grassland leased to ranchers. There are about 8,700 tribal members who live on the CRS Reservation.

While the initial intent was to conduct a formal assessment, Statute of Limitations issues arose, forcing both sides into Court ordered (and managed) mediation. Categories of damage considered by the Tribe included: Habitat improvements. Injured lands valuation (including lost grazing opportunities) The need for resource monitoring to respond to Tribal member concerns. The need for funds to provide for dissemination of public information and adaptive resource management (e.g., to move the drinking water intake). Changes in the Tribal public use of the environment.

Settlement Status

Settled

Settlement Dates

9/2/1999

Settlement

\$4,000,000 to Trustees (1/3 to Cheyenne River Sioux Tribe, 2/3 to U.S. and SD); \$500,000 to U.S. for reimbursement of Natural Resource Damage assessment costs; \$500,000 to Cheyenne River Sioux Tribe for future environmental monitoring or other environmental purposes; Transfer of 400 acres of land from its holding within the area of the Black hills to the Cheyenne River Sioux Tribe. Land exchange with BLM for lands with tailings for uninjured lands (up to \$300,000) (Federal issue). Modification of water diversions to avoid low flow conditions near

Tribal-specific Compensation

The tribe received \$1,333,333 for restoration; \$500,000 for future monitoring; 400 acres of land transfer to the tribe.

Regulation

CERCLA

Website

https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=900
