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10 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

11 SIERRA CLUB, a California nonprofit corporation;
12 PUGET SOUNDKEEPER ALLIANCE, a Washington
nonprofit corporation; RE SOURCES FOR
13 SUSTAINABLE COMMUNITIES, a Washington
nonprofit corporation; COLUMBIA RIVERKEEPER, a
14 Washington nonprofit corporation; FRIENDS OF THE
COLUMBIA GORGE, INC., dba FRIENDS OF THE
15 COLUMBIA GORGE, an Oregon nonprofit corporation;
SPOKANE RIVERKEEPER; NATURAL RESOURCES
16 DEFENSE COUNCIL, a New York nonprofit
corporation,

17 Plaintiffs,

18 v.

19 BNSF RAILWAY COMPANY, a Delaware corporation,
Defendant.

CIVIL No. _____
COMPLAINT

20

1
2
3 **INTRODUCTION**

4 1. This is a civil suit for declaratory and injunctive relief against Defendant
5 Burlington Northern Santa Fe Railway Company (“BNSF”), for violations of the
6 Federal Water Pollution Control Act (commonly known as the Clean Water Act
7 and hereinafter referred to as the CWA), 33 U.S.C. §§1251 *et seq.*

8 2. This action is brought pursuant to Section 505 of the CWA (Citizen Suits),
9 33 U.S.C. §1365.

10 3. As detailed below, Plaintiffs allege that BNSF has discharged coal, coal
11 chunks, coal dust, metabolites or related byproducts of coal, and other substances
12 or materials added to the coal including, but not limited to, surfactants and
13 suppressants, and petroleum coke (“petcoke”) and its byproducts (collectively,
14 hereinafter, “coal pollutants”) into waters of the United States, including the
15 Columbia River, its tributaries and other waterbodies in and around Eastern
16 Washington, as well as throughout the State of Washington.

17 4. These discharges have not been permitted under the CWA, so that each
18 discharge violates §301(a) of the CWA, 33 U.S.C. §1311(a).

19 5. In addition, BNSF is likely to continue to violate the CWA by discharging,
20 from a point source, coal pollutants into the waters of the United States.

1 6. Plaintiffs seek a declaratory judgment, injunctive relief, remedial relief, the
2 imposition of civil penalties, and the award of costs, including attorney and expert
3 witness fees.

4 **JURISDICTION**

5 7. This Court has subject matter jurisdiction over the claims specified in this
6 Complaint pursuant to 33 U.S.C. §1365(a) and 28 U.S.C. §1331. The relief
7 requested is authorized pursuant to 33 U.S.C. §§1319 and 1365(a), and 28 U.S.C.
8 §§ 2201 and 2202.

9 8. In compliance with 33 U.S.C. §1365(b)(1)(A), on April 2, 2013, plaintiffs
10 gave notice of the violations specified in this complaint and of their intent to file
11 suit to the defendants, to the Administrator of the United States Environmental
12 Protection Agency (EPA), to the Regional Administrator of the EPA, and to the
13 State of Washington. On May 9, 2013, plaintiffs supplemented their Notice of
14 Intent to Sue by adding Spokane Riverkeeper and Natural Resources Defense
15 Council as Notifiers. A copy of the notice letters are attached hereto as Exhibits A
16 & B, respectively, and all details and allegations in the notice letters are
17 incorporated by reference.

18 9. Sixty days have passed since the notice was served, and the violations
19 complained of in the notice letter are continuing at this time, or are reasonably
20 likely to continue. Defendants remain in violation of the CWA. Neither the EPA

1 nor the Washington Department of Ecology (WADOE) has commenced or is
2 diligently prosecuting a civil or criminal action to redress the violations.

3 **VENUE**

4 10. Venue is appropriate pursuant to Section 505(c)(1) of the CWA, 33 U.S.C.
5 §1365(c)(1), because the sources of the violations complained of have occurred in
6 the District.

7 **PARTIES**

8 Plaintiffs

9 11. Plaintiffs are seven not-for-profit organizations comprised, in part, of
10 members who live, work, and recreate in the state of Washington. Plaintiffs share
11 similar interests in the protection and preservation of regional water bodies and
12 wild spaces.

13 Sierra Club

14 12. Plaintiff Sierra Club is a nonprofit corporation incorporated and
15 headquartered in California, with a regional office located in Seattle and members
16 throughout the State of Washington. Sierra Club is dedicated to exploring,
17 enjoying, and protecting the wild places of the Earth; to practicing and promoting
18 the responsible use of the Earth's resources and ecosystems; to educating and
19 enlisting humanity to protect and restore the quality of the natural and human
20 environment; and to using all lawful means to carry out these objectives. Sierra

1 Club's concerns encompass the protection and restoration of the water quality of
2 the waters of the U.S. within the state of Washington, including the Columbia
3 River and Puget Sound, and all life connected to these waterbodies, from their
4 headwaters to the Pacific Ocean. Sierra Club has more than 600,000 members
5 nationwide, including over 21,000 in Washington, and brings this action on behalf
6 of itself and its affected members. Sierra Club members reside, work, travel and
7 recreate next to and in the general vicinity of BNSF's railroad tracks in Washington
8 and the waterways into which defendants discharge pollutants. The environmental,
9 health, aesthetic, and recreational interests of Sierra Club members have been, are
10 being, and will be adversely affected by defendants' illegal coal and petroleum
11 coke pollutant discharges into waters of the United States. Members of Sierra
12 Club use and enjoy the waters and lands into and onto which defendants' railcars
13 discharge, including waters in the immediate vicinity of, and downstream from,
14 defendants' discharges into waters of the United States.

15 13. Sierra Club's members live within the impacted watersheds; recreate by
16 fishing, rafting, hiking, plant gathering, walking, windsurfing, sailing,
17 photographing, and boating in and around the impacted waters; observe and enjoy
18 wildlife in the watershed around defendants' discharges; and retain an aesthetic and
19 health interest in the health and restoration of the impacted waters in the vicinity of
20 defendants' railroad tracks and railcars.

1 Puget Soundkeeper

2 14. Puget Soundkeeper 's mission is to protect and preserve the water of Puget
3 Sound by monitoring, cleaning up and preventing pollutants from entering its
4 waters. Puget Soundkeeper is headquartered in Washington with offices in Seattle.
5 Puget Soundkeeper's approximately 1,400 members reside, among other places,
6 throughout the State of Washington, particularly next to and in the general vicinity
7 of BNSF's railroad tracks and the waterways into which defendants discharge
8 pollutants.

9 15. The environmental, health, aesthetic, and recreational interests of Puget
10 Soundkeeper members have been, are being, and will be adversely affected by
11 defendants' illegal coal pollutant discharges into waters of the United States.

12 Members of Puget Soundkeeper use and enjoy the waters and lands into and onto
13 which defendants' railcars discharge, including waters in the immediate vicinity of,
14 and downstream from, defendants' discharges into waters of the United States.

15 16. Puget Soundkeeper's members live within the impacted watersheds; recreate,
16 or would recreate, by fishing, rafting, hiking, plant gathering, walking, sailing,
17 windsurfing, photographing and boating in and around the impacted waters;
18 observe and enjoy wildlife in the watershed around defendants' discharges; and
19 retain an aesthetic and health interest in the health and restoration of the impacted
20 waters in the vicinity of defendants' railroad tracks and railcars.

1 RE Sources for Sustainable Communities

2 17. RE Sources for Sustainable Communities promotes sustainable communities
3 through recycling, education, advocacy, and conservation of natural resources. RE
4 Sources is based in Washington with offices in Bellingham. RE Sources for
5 Sustainable Communities' approximately 5,200 members reside, among other
6 places, throughout the State of Washington next to and in the general vicinity of
7 BNSF's railroad tracks and the waterways into which defendants discharge
8 pollutants.

9 18. The environmental, health, aesthetic, and recreational interests of RE
10 Sources for Sustainable Communities members have been, are being, and will be
11 adversely affected by defendants' illegal coal pollutant discharges into waters of
12 the United States. Members of RE Sources for Sustainable Communities use and
13 enjoy the waters and lands into and onto which defendants' railcars discharge,
14 including waters in the immediate vicinity of, and downstream from, defendants'
15 discharges into waters of the United States.

16 19. RE Sources for Sustainable Communities' members live within the
17 impacted watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant
18 gathering, walking, windsurfing, sailing, photographing and boating in and around
19 the impacted waters; observe and enjoy wildlife in the watershed around
20 defendants' discharges; and retain an aesthetic and health interest in the health and

1 restoration of the impacted waters in the vicinity of defendants' railroad tracks and
2 railcars.

3 Columbia Riverkeeper

4 20. Columbia Riverkeeper's mission is to restore and protect the water quality of
5 the Columbia River and all life connected to it, from the headwaters to the Pacific
6 Ocean. To achieve these objectives, Riverkeeper operates scientific, educational,
7 and legal programs aimed at protecting water, quality, air quality, and habitat in the
8 Columbia River Basin. Columbia Riverkeeper's over 3000 members reside,
9 among other places, throughout the State of Washington next to and in the general
10 vicinity of BNSF's railroad tracks and the waterways into which defendants
11 discharge pollutants.

12 21. The environmental, health, aesthetic, and recreational interests of Columbia
13 Riverkeeper's members have been, are being, and will be adversely affected by
14 defendants' illegal coal pollutant discharges into waters of the United States.

15 Members of Columbia Riverkeeper use and enjoy the waters and lands into and
16 onto which defendants' railcars discharge, including waters in the immediate
17 vicinity of, and downstream from, defendants' discharges into waters of the United
18 States.

19 22. Columbia Riverkeeper's members live within the impacted watersheds;
20 recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking,

1 windsurfing, photographing and boating in and around the impacted waters;
2 observe and enjoy wildlife in the watershed around defendants' discharges; and
3 retain an aesthetic and health interest in the health and restoration of the impacted
4 waters in the vicinity of defendants' railroad tracks and railcars.

5 Friends of the Columbia Gorge

6 23. Friends of the Columbia Gorge seeks to vigorously protect the scenic,
7 natural, cultural, and recreational resources of the Columbia River Gorge. Friends
8 of the Columbia Gorge's approximately 5,000 members reside, among other
9 places, throughout the State of Washington next to and in the general vicinity of
10 BNSF's railroad tracks and the waterways into which defendants discharge
11 pollutants.

12 24. The environmental, health, aesthetic, and recreational interests of Friends of
13 the Columbia Gorge members have been, are being, and will be adversely affected
14 by defendants' illegal coal pollutant discharges into waters of the United States.
15 Members of Friends of the Columbia Gorge use and enjoy the waters and lands
16 into and onto which defendants' railcars discharge, including waters in the
17 immediate vicinity of, and downstream from, defendants' discharges into waters of
18 the United States.

19 Friends of the Columbia Gorge's members live within the impacted
20 watersheds; recreate, or would recreate, by fishing, rafting, hiking, plant gathering,

1 walking, windsurfing, photographing and boating in and around the impacted
2 waters; observe and enjoy wildlife in the watershed around defendants' discharges;
3 and retain an aesthetic and health interest in the health and restoration of the
4 impacted waters in the vicinity of defendants' railroad tracks and railcars.

5 Spokane Riverkeeper

6 25. Spokane Riverkeeper is a program of the Center for Justice, which is a
7 Spokane-based, for-impact legal advocacy organization. Spokane Riverkeeper's
8 mission is to protect and restore the health of the Spokane River watershed.
9 Spokane Riverkeeper seeks to accomplish its mission through collaboration,
10 education, and, where necessary, litigation. Spokane Riverkeeper's first priority is
11 to defend the Spokane River against pollution and polluters.

12 26. Spokane Riverkeeper's approximately 1200 members reside, among other
13 places, throughout the State of Washington next to and in the general vicinity of
14 BNSF's railroad tracks and the waterways into which defendants discharge
15 pollutants.

16 27. The environmental, health, aesthetic, and recreational interests of Spokane
17 Riverkeeper members have been, are being, and will be adversely affected by
18 defendants' illegal coal pollutant discharges into waters of the United States.
19 Members of Spokane Riverkeeper use and enjoy the waters and lands into and onto
20 which defendants' railcars discharge, including waters in the immediate vicinity of,

1 and downstream from, defendants' discharges into waters of the United States.

2 28. Spokane Riverkeeper's members live within the impacted watersheds;
3 recreate, or would recreate, by fishing, rafting, hiking, plant gathering, walking,
4 windsurfing, photographing and boating in and around the impacted waters;
5 observe and enjoy wildlife in the watershed around defendants' discharges; and
6 retain an aesthetic and health interest in the health and restoration of the impacted
7 waters in the vicinity of defendants' railroad tracks and railcars.

8 Natural Resources Defense Council

9 29. Natural Resources Defense Council (NRDC) is a national, not-for-profit
10 membership corporation that is dedicated to the preservation, protection, and
11 defense of the environment, public health, and natural resources. NRDC has long
12 been active in working to protect water quality and specifically, enforcement of the
13 Clean Water Act.

14 30. NRDC has more than 363,700 members nationwide, including
15 approximately 14,600 members who reside throughout the State of Washington
16 next to and in the general vicinity of BNSF's railroad tracks and the waterways into
17 which defendants discharge pollutants.

18 31. The environmental, health, aesthetic, and recreational interests of NRDC
19 members have been, are being, and will be adversely affected by defendants' illegal
20 coal pollutant discharges into waters of the United States. Members of NRDC use

1 and enjoy the waters and lands into and onto which defendants' railcars discharge,
2 including waters in the immediate vicinity of, and downstream from, defendants'
3 discharges into waters of the United States.

4 32. NRDC 's members live within the impacted watersheds; recreate, or would
5 recreate, by fishing, rafting, hiking, plant gathering, walking, windsurfing,
6 photographing and boating in and around the impacted waters; observe and enjoy
7 wildlife in the watershed around defendants' discharges; and retain an aesthetic and
8 health interest in the health and restoration of the impacted waters in the vicinity of
9 defendants' railroad tracks and railcars.

10 Defendants

11 Burlington Northern Santa Fe Railway Company (“BNSF”)

12 33. BNSF Railway has a rail network of 32,500 route miles in 28 states and two
13 Canadian provinces. BNSF owns and operates rail lines throughout the state of
14 Washington and along the Columbia River along the Washington/Oregon border.
15 In 2012, BNSF hauled 2.2 million coal shipments. In 2012, BNSF reported that its
16 coal business unit was responsible for nearly one-quarter--\$4.8 billion--of the
17 company’s \$20 billion total freight revenue, and that more than 90% of the coal
18 hauled by BNSF comes from the Powder River Basin.

19 34. BNSF transports coal from, *inter alia*, the Powder River Basin across
20 waterways via routes in the center and south of Washington to locations

1 throughout Washington and sometimes continuing into Canada. The coal transport
2 trains travel along, among other waterways, the Columbia River and the Puget
3 Sound.

4 **STATUTORY AND REGULATORY FRAMEWORK**

5 35. Under the CWA, the United States has committed itself "to restore and
6 maintain the chemical, physical, and biological integrity of the Nation's waters,"
7 including establishing a "national goal that the discharge of pollutants into the
8 navigable waters be eliminated." CWA § 101, 33 U.S.C. §1251.

9 36. Pursuant to the CWA, a discharge of a pollutant means "any addition of any
10 pollutant to navigable waters from any point source," and "any addition of any
11 pollutant to the waters of the contiguous zone or the ocean from any point source
12 other than a vessel or other floating craft." CWA § 502(12), 33 U.S.C. § 1362(12).
13 *See also* CWA § 502(7), 33 U.S.C. § 1362(7) (definition of "navigable waters");
14 40 CFR § 122.2 (definition of "waters of the U.S.").

15 37. The CWA specifies a number of materials and wastes that, if discharged into
16 water, render them pollutants, including, but not limited to, solid waste, chemical
17 wastes, industrial waste, biological materials, sand, and rock. CWA § 502(6), 33
18 U.S.C. § 1362(6).

19 38. Under the Clean Water Act, the term "point source" means "any discernible,
20 confined and discrete conveyance, including but not limited to any . . . container

1 [or] rolling stock. . .from which pollutants are or may be discharged." CWA §
2 502(14), 33 U.S.C. § 1362(14).

3 49. To advance its goals, Congress established in the CWA that all discharges of
4 pollutants are prohibited "except in compliance" with specified provisions of the
5 CWA including, most importantly, the National Pollutant Discharge Elimination
6 System (NPDES) permitting program. CWA § 301(a), 33 U.S.C. §1311(a); CWA
7 § 402(a), 33 U.S.C. §1342(a); 40 CFR §§122.1 *et seq.*

8 50. The NPDES program requires a potential discharger to first obtain a NPDES
9 permit that limits the type and quantity of pollutants to be released so as to
10 maintain water quality standards, among other objectives. CWA § 402(a), 33
11 U.S.C. §1342(a); 40 CFR §122.1. No NPDES permit may be issued where
12 discharges pursuant to it would cause receiving water-bodies to fail to meet water
13 quality standards. *Id.* and 40 CFR §122.4 (prohibitions on permit issuance).
14 Unless done pursuant to a NPDES permit, any coal pollutant discharge from a rail
15 car or train into navigable waters of the U.S. is prohibited under the CWA.

16 **FACTS**

17 Pollutants Being Discharged

18 51. Defendants, by their ownership, operation, lease of, participation in, contract
19 for, or receipt of material from, trains and rail cars transporting coal, petcoke, and
20 their byproducts (hereinafter, "coal"), have discharged, are discharging, and will

1 continue to discharge coal pollutants to waters of the U.S. within the State of
2 Washington.

3 52. Such coal pollutants include, but are not limited to, coal, coal chunks, coal
4 dust, coal contaminated water, metabolites or related by-products of coal,
5 surfactants applied to the coal, coal chunks and coal dust, petcoke, petcoke chunks,
6 petcoke dust, petcoke contaminated water, and suppressants.

7 Discharge Events

8 53. Defendants have discharged, are discharging, and will continue to discharge
9 coal pollutants into waters of the U.S. by each and every one of the defendants'
10 trains and rail cars that carry coal.

11 54. Each and every train and each and every rail car discharges coal pollutants to
12 waters of the United States when traveling adjacent to, over, and in proximity to
13 waters of the United States.

14 55. Defendants discharge coal pollutants into waters of the U.S. in the State of
15 Washington through holes in the bottoms and sides of the rail cars and by spillage
16 or ejection from the open tops of the rail cars and trains.

17 56. Defendants discharge coal pollutants during the transportation of the coal in
18 both normal and abnormal operating conditions, and upon loading and unloading
19 coal.

20 57. Defendants' discharges of coal pollutants from the container or rolling stock

1 point sources are especially frequent or severe when their coal trains pass over
2 rough rail tracks, track changes, bridges, and switches; during transportation of
3 coal over bumpy terrain, in windy conditions, at high operating speed, during steep
4 descents and ascents and through sag-areas spanning steep ascent and descent
5 reaches of track (or vice versa); during and after precipitation events; at moments
6 of high crosswinds; and during derailments.

7 58. Defendants' coal pollutant discharges occur despite the use of topping
8 agents, surfactants or suppressants, and these topping agents, surfactants and
9 suppressants themselves are pollutants discharged by defendants.

10 59. The specific dates, times, amounts, and exact or approximate locations,
11 along with, for example, the rail conditions, rail car conditions, design and
12 performance of rail cars, weather conditions, passing trains, loading and unloading
13 practices employed, and incline or decline of railways in specific locations of the
14 discharges during each of the years 2008 through the present are, or should be, in
15 the possession of the defendants.

16 Waters Affected

17 60. Waters of the U.S. are located in, in proximity to, or run through the State of
18 Washington and receive defendants' coal pollutant discharges where defendant
19 BSNF-operated rail lines and rail cars pass by, cross, or are in proximity to such
20 waters.

1 61. Defendants have discharged, are discharging, and will continue to discharge
2 pollutants from point sources into waters of the United States, including, but not
3 limited to, rivers, streams, lakes, ponds, coulees, estuaries, bays, sounds, canals,
4 shipping canals, fresh water and tidal wetlands, and coastal waters of the Pacific
5 Ocean. These waters derive water from, are tributaries to, forks of, and/or
6 exchange water with many of the waters in the State of Washington, many of
7 which are navigable waters and all of which eventually discharge into the Pacific
8 Ocean.

9 62. Waters impacted by defendants' coal pollutant discharges include, but are
10 not limited to, the Columbia River, Alder Creek, Ashes Lake, Bass Lake, Beckie
11 River, Beckler River, Chamberlain Lake, Chiwawa River, Chuckanut Bay, Coal
12 Creek, Cow Creek, Cowlitz River, Coweeman Confluence, Crab Creek, Crah
13 Creek, Dakota Creek, Dead Canyon, Deschutes River, Drano Lake, East Low
14 Canal, Elliott Bay, Esquatzel Coulee, Franz Lake, Glade Creek, Green River, Grant
15 Lake, Hangman Creek (also known as Latah Creek), Hewett Lake, Horsethief
16 Lake, Howard Hanson Reservoir, Kalama River, Klickitat River, Lake Union,
17 Lewis River, Little White Salmon River, Little Spearfish Lake, Look Lake, Locke
18 Lake, Newaukum River, Nisqually River, Nooksack River, North Fork –
19 Skykomish River, Pilchuk Creek, Pilchuk River, Possession Sound, Puget Sound,
20 Quilceda Creek, Rock Cove, Rowland Lake, Salmon Creek, Samish River,

1 Shilshole Bay, Skagit River, Skookumchuck River, Skykomish River, Snake
2 River, Snohomish River, South Fork – Skykomish River, Spokane River, Status
3 Creek, Steamboat Slough, Stillaguamish River, Stuck River, Sultan River,
4 Teanaway River, Toppenish Creek, Toutle River, Union Slough, Wallace River,
5 Washougal River, Wenatchee River, West Canal, White Salmon River, Wind
6 River, Yakima River and their tributaries.¹

7 Discharges Unpermitted Under the CWA

8 63. Defendants have never obtained a NPDES permit allowing their discharges
9 of coal pollutants into State of Washington waterbodies from rail cars and trains.
10 Moreover, the types of discharges that have occurred, are occurring and that are
11 likely to continue to occur are not permitted under federal law.

12 64. Defendants intend to continue loading and transporting coal and petcoke and
13 related coal pollutants by rail to and through the State of Washington.

14
15 ¹ Plaintiffs note that this list is inclusive of some waterways in the Eastern District
16 of Washington, some in the Western District of Washington, and some that flow
17 through both the Western and Eastern Districts of Washington. Plaintiffs have
18 filed a similar action in the Western District of Washington and intend to move for
19 consolidation, but, recognizing that some of the waterways overlap Districts,
20 include a fuller list of impacted waterways here for reference.

1 **ALLEGATIONS**

2 65. Plaintiffs hereby incorporate by reference all preceding paragraphs.

3 66. Section 301(a) of the CWA, 33 U.S.C. §1311(a), prohibits the discharge of
4 pollutants from a point source into navigable waters of the United States, unless
5 pursuant to the terms of a NPDES permit issued pursuant to Section 402 of the
6 CWA, 33 U.S.C. §1342.

7 67. Defendants have discharged coal pollutants in contravention of CWA §301,
8 as described herein, during rail transport of coal, since at least April 2008, and such
9 discharges are presently ongoing and likely to continue.

10
11 **COUNT 1**

12 **Discharge of Pollutants Without NPDES Permit into Waters of United States**

13 68. All waterways named herein are waters of the United States protected by the
14 CWA.

15 69. Defendants did not have and do not retain a NPDES Permit authorizing their
16 discharges of coal pollutants into such waterways.

17 70. Defendants have discharged coal pollutants from the operation of rail cars
18 and trains into, at least, the listed waterways from April 2008 (and for many years
19 prior to 2008) to present. Such operations and discharges are continuing and are
20 likely to continue into the future.

1 71. Each such coal discharge from each rail car and train into each separate
2 waterway on each separate day constitutes a separate violation of the CWA.

3
4 **RELIEF REQUESTED**

5 WHEREFORE, plaintiffs respectfully request that this Court grant plaintiffs the
6 following relief:

- 7 A. Issue a declaratory judgment that defendants have violated and continue to
8 violate the CWA;
- 9 B. Issue a declaratory judgment that each rail car container constitutes a
10 separate point source;
- 11 C. Issue a declaratory judgment that each separate discharge into each
12 waterway constitutes a separate violation;
- 13 C. Enjoin defendants from operating rail cars and trains in such a manner as
14 will result in further violation of the CWA;
- 15 D. Enjoin defendants' use of uncovered rail cars for any transport of coal;
- 16 E. Enjoin defendants' use of rail cars that, through design or imperfection –
17 including holes or openings in their sides or bottoms—allow coal pollutants
18 to be discharged into waters of the U.S.;
- 19 F. Order defendants to remove coal pollutants that are in-place or otherwise
20 recoverable from receiving water-bodies;

- 1 G. Order defendants to pay civil penalties of up to \$37,500 per day for each
2 violation of the CWA, pursuant to Sections 309(d) and 505(a) of the CWA,
3 33 U.S.C. §§1319(d) and 1365(a), and 40 C.F.R. § 19 *et seq.*, including
4 those identified in plaintiff's notice letters, violations identified during
5 discovery, and violations committed subsequent to those identified in this
6 Complaint;
- 7 H. Order defendants to monitor and report their coal pollutant discharges to the
8 federal Environmental Protection Agency and the State of Washington
9 Department of Ecology;
- 10 I. Order defendants to provide plaintiff, for a period beginning on the date of
11 the Court's order and running for five years after defendants achieve
12 compliance with the CWA with a copy of all reports and other documents
13 which defendants submit to EPA, to the Regional Administrator of the EPA,
14 or to the State of Washington regarding defendants' coal pollutant
15 discharges at the time these documents are submitted to these authorities;
- 16 J. Issue a remedial injunction ordering defendants to pay the cost of any
17 environmental restoration or remediation deemed necessary and proper by
18 the Court to comply with the Clean Water Act and ameliorate the water
19 degradation caused by defendants' violations;
- 20 K. Award plaintiffs their costs, including reasonable attorney and expert

1 witness fees, as authorized by 33 U.S.C. §1365(d) and 28 U.S.C. §2412(d);

2 and

3 L. Award such other relief as this Court deems appropriate.

4 Respectfully submitted this 24th day of July,

5 /s/ Charles M. Tebutt
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6 *vice* forthcoming)
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