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**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:)	
)	DOCKET NO. CWA 10-2008-0131
David Sweezey,)	
)	COMPLAINANT'S INITIAL
Anchorage, Alaska)	PREHEARING INFORMATION
)	EXCHANGE
)	
Respondent.)	

I. INTRODUCTION

Pursuant to the Presiding Officer's October 7, 2008, Prehearing Order and Section 22.19(a) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("Part 22 Rules"), the United States Environmental Protection Agency, Region 10, ("Complainant" or "EPA") hereby submits the following Initial Prehearing Information Exchange.

II. WITNESSES

Complainant respectfully submits the following list of expert and other witnesses that Complainant intends to call, together with a brief narrative summary of their expected testimony:

- Heather Dean** (fact witness): Ms. Dean is employed with EPA as an Environmental Scientist for the Aquatic Resources Unit in Region 10. Her office is located in

**COMPLAINANT'S INITIAL PREHEARING
INFORMATION EXCHANGE - 1**

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**U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
(206) 553-1796**

1 Anchorage, Alaska. Ms. Dean's duties include inspecting facilities subject to regulation under
2 the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251, *et seq.*, providing compliance
3 assistance to willing landowners and collecting and reviewing evidence regarding alleged
4 violations of the Act. Ms. Dean conducted a CWA inspection of Respondent's property on July
5 2, 2004. Ms. Dean is expected to testify about EPA's Section 404 enforcement program, her
6 observations during her inspection of Respondent's property, her jurisdictional analysis that
7 Respondent's property contained waters of the United States, her review of the evidence in this
8 matter, the factual basis for EPA's determination that the Respondent has violated the CWA, and
9 her interactions with Respondent.
10

11 **2. Harry A. Baij** (fact witness): Mr. Baij is employed as a Team Leader for the
12 Regulatory Division with the Alaska District of the United States Army Corps of Engineers
13 ("Corps"). His office is located in Anchorage, Alaska. Mr. Baij's duties include inspecting
14 facilities subject to regulation under the CWA, providing compliance assistance to willing
15 landowners and collecting and reviewing evidence regarding alleged violations of the Act. Mr.
16 Baij is the case developer charged with pursuing an enforcement action against Respondent. Mr.
17 Baij is expected to testify about the Corps' Section 404 enforcement program, why the Corps
18 referred an enforcement action to EPA, his review of the evidence collected by the Corps in this
19 matter, the factual basis for demonstrating that Respondent violated the CWA, and the Corps'
20 interactions with Respondent.
21

22 **3. Scott R. Wheaton** (fact and expert witness): Mr. Wheaton is a watershed scientist
23 with the Watershed Management Services Division at the Anchorage Department of Public
24 Works. His office is located in Anchorage, Alaska. His resume is attached hereto as
25

1 Complainant's Exhibit ("CX") – 17. Mr. Wheaton is an engineering geologist and
2 hydrogeologist with over 35 years of Arctic and sub-Arctic experience in: surface and ground
3 water resources, drainage investigation, engineering design, stream and shoreline hydrologic
4 analysis and design, permafrost regions geotechnical analysis and design, design of rural water
5 supply and sanitation facilities, and hydrologic analysis and design of urban storm water
6 drainage and treatment facilities. Mr. Wheaton participated in inspections of Respondent's
7 property on July 2 and August 23, 2004. Mr. Wheaton is expected to testify to his observations
8 during his inspections of the subject property, his expert review of the evidence in this matter,
9 and his expert opinion concerning the downstream ecological impacts caused by Respondent's
10 CWA violations.

11
12 **4. Tracie Nadeau** (expert witness): Dr. Nadeau has a doctoral degree in Ecology
13 and Evolution from the University of Oregon and a master's degree in Biological Sciences from
14 the University of Wisconsin-Milwaukee and the Center for Great Lakes Studies. Her resume is
15 attached hereto as CX – 18. Dr. Nadeau was employed as a postdoctoral fellow at the US
16 Geological Survey, Water Resources Division, National Research Program in Reston, Virginia,
17 prior to taking permanent employment at the EPA Headquarters in the Office of Wetlands,
18 Oceans and Watersheds in 2001. At EPA Headquarters, Dr. Nadeau spent several years working
19 in the Section 404 program, assisting in the technical development and support of policy,
20 regulations, guidance. She also provided advice on matters related to CWA jurisdiction over
21 waters of the U.S., including scientific expertise relevant to litigation and enforcement matters.
22 Currently, Dr. Nadeau works for EPA Region 10 in Portland, Oregon, as an environmental
23 scientist. As part of her official duties, Dr. Nadeau has evaluated the ecological relationship
24
25

1 between headwater streams and downstream waters. Recently, Dr. Nadeau organized a
2 symposium exploring the role of headwaters in maintaining the physical, chemical, and
3 biological integrity of waters in lower watershed positions. Currently, Dr. Nadeau is leading the
4 development of a "streamflow duration assessment method," in partnership with the Corps
5 Portland District, which will guide natural resource professionals in the identification of the
6 geomorphic, hydrological, and biological indicators of stream flow to distinguish between
7 ephemeral, intermittent and perennial streams. Dr. Nadeau is expected to offer expert testimony
8 about the ecological importance of headwater streams to downstream waters and offer her expert
9 opinion regarding the impact of Respondent's actions to downstream waters.
10

11 **5. Lloyd B. Oatis** (expert witness): Mr. Oatis is employed as a financial analyst for
12 EPA Region 10. His office is located in Seattle, Washington. His resume is attached hereto as
13 CX - 19. Mr. Oatis has over 40 years of experience in financial analysis. Among his roles at
14 EPA is to advise Region 10 on evaluating "inability-to-pay" claims and economic benefit
15 derived from non-compliance with federal law. Mr. Oatis is expected to offer his expert
16 testimony regarding any economic benefit derived by Respondent as a result of Respondent's
17 non-compliance with Section 404 of the CWA, and Respondent's ability to pay a penalty in this
18 case. Complainant will provide additional information regarding any documents or exhibits to
19 support its economic benefit analysis in a rebuttal prehearing exchange and will further address
20 Respondent's ability to pay when it proposes a specific penalty amount.
21

22 **III. DOCUMENTS AND EXHIBITS**

23 **CX - 1** Michael Billmaier, email and photographs to Robin Leighty, regarding the
24 David Sweezey Property, July 22, 2003;
25

1 **CX - 2** Michael Billmaier, Notice of Violation-letter to David Sweezey, July 23, 2003;
2 **CX - 3** John Buschman, letter to the U.S. Army Corps of Engineers regarding David
3 Sweezey, July 28, 2003;

4 **CX - 4** Conversation Record, Hank Baij, July 28, 2003;

5 **CX - 5** Routine Wetland Determination Form, Dennis Stone, August 5, 2003;

6 **CX - 6** Basis for Jurisdictional Determination, Dennis Stone, August 6, 2003;

7 **CX - 7** Memorandum for Record, Dennis Stone, August 6, 2003;

8 **CX - 8** Dennis Stone, Notice of Violation letter to David Sweezey; August 7, 2003;

9 **CX - 9** Hank Baij, letter to David Sweezey regarding the Corps' Notice of Violation,
10 October 30, 2003;

11 **CX - 10** Hank Baij, enforcement referral to Heather Dean, November 25, 2003;

12 **CX - 11** Memorandum for Record, Hank Baij, March 17, 2004;

13 **CX - 12** Heather Dean, field inspection notes and photographs, July 2, 2004;

14 **CX - 13** Memorandum: Craig Creek Characterization, Scott Wheaton, August 23, 2004;

15 **CX - 14** Memorandum: Documentation of Unauthorized Activities at David Sweezey
16 Property, Heather Dean, June 27, 2008;

17 **CX - 15** Presentation of the Corps' August 5, 2003 inspection of the David Sweezey
18 Property, created by Heather Dean on July 2, 2008;

19 **CX - 16** Memorandum: Jurisdictional Analysis for Waters on David Sweezey's Property,
20 Heather Dean, November 5, 2008;

21 **CX - 17** Resume of Scott R. Wheaton;

22 **CX - 18** Resume of Tracie Nadeau;

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**COMPLAINANT'S INITIAL PREHEARING
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1 **CX - 19** Resume of Lloyd B. Oatis;

2 **CX - 20** Memorandum: David R. Sweezey – Preliminary Ability to Pay Analysis, Lloyd
3 B. Oatis, November 12, 2008;

4 **CX - 21** Compliance Order issued to David R. Sweezey, May 26, 2005;

5 **CX - 22** Memoranda: Telephone Communication with David Sweezey, Heather Dean,
6 July 15, 2008; and

7 **CX - 23** Michelle Pirzadeh, letter to David Sweezey regarding Compliance Order,
8 September 22, 2005.

9
10 **IV. CALCULATION OF PROPOSED PENALTY**

11 In accordance with Section 22.14 of the Part 22 Rules, 40 C.F.R. § 22.14(a)(4)(ii), the
12 Complaint in this matter did not include a specific penalty demand. Pursuant to Section 22.19 of
13 the Part 22 Rules, 40 C.F.R. § 22.19(a)(4), Complainant intends to file (no more than 15 days
14 after Respondent files his prehearing information exchange) a document specifying a proposed
15 penalty and explaining how this penalty was calculated in accordance with the criteria set forth
16 in the CWA. The following discussion outlines the legal and factual framework Complainant
17 will employ in proposing a specific penalty amount.

18 Section 309(g) of the Act, 33 U.S.C § 1319(g), authorizes the assessment of an
19 administrative civil penalty for a Section 301 violation of up to \$10,000 per day for each day the
20 violation continues, with a maximum penalty of \$125,000. Pursuant to the Debt Collection
21 Improvement Act of 1996, 31 U.S.C. § 3701, the statutory maximum administrative penalty
22 amounts have been increased to \$11,000 per day, with a maximum penalty of \$157,500. 40
23 C.F.R. § 19.4, Table 1.
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**COMPLAINANT'S INITIAL PREHEARING
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1 Under Section 301(a) of the Act, 33 U.S.C. § 1311(a), “discharge of any pollutant by any
2 person” is prohibited except in compliance with, among other things, a permit issued pursuant to
3 Section 404 of the Act, 33 U.S.C. § 1344. The violations alleged in this case concern
4 Respondent’s discharge of dredged and/or fill material into jurisdictional waters of the United
5 States without a Section 404 permit.

6 Complainant alleges a minimum of five CWA violations where Respondent discharged
7 dredged and/or fill material into waters of the United States on or about July 22, 2003; those
8 pollutants remain in place and constitute continuing violations of the Act. Consequently, an
9 appropriate starting point for a proposed penalty is the maximum penalty of \$157,500. *See*
10 *Atlantic States Legal Foundation v. Tyson Seafoods*, 897 F.2d 1128, 1142 (11th Cir. 1990)
11 (calculating CWA penalty using “top down” method, starting with the statutory maximum and
12 reducing that amount for any statutory factors in mitigation of the penalty); *Catskill Mountains*
13 *Chapter of Trout Unlimited, Inc. v. City of New York*, 244 F. Supp. 2d 41, 49 (N.D.N.Y. 2003)
14 (applying top-down approach to penalty calculation for CWA violations); *U.S. v. Marine Shale*
15 *Processors*, 81 F.3d 1329, 1337 (5th Cir. 1996) (“[W]e note that when imposing penalties under
16 the environmental laws, courts often begin by calculating the maximum possible penalty, then
17 reducing that penalty only if mitigating circumstances are found to exist.”).

18
19 Complainant will propose a specific penalty in this matter that is based on the applicable
20 statutory penalty factors in section 309(g)(3) of the Act. These factors are “[1] the nature,
21 circumstances, extent, and gravity of the violation, or violations, and, with respect to the violator,
22 [2] ability to pay, [3] any prior history of such violations, [4] the degree of culpability, [5]
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1 economic benefit or savings (if any) resulting from the violation, and [6] such other matters as
2 justice may require.” 33 U.S.C. § 1319(g)(3).

3 In accordance with the Presiding Officer’s Prehearing Order, Complainant respectfully
4 submits the following statement describing the factual information it considers relevant to the
5 assessment of a penalty:

6 **1. Nature, Circumstances, Extent, and Gravity of Violation**

7 The nature, circumstances, extent, and gravity of the violation reflect the “seriousness” of
8 the violation. *In re Urban Drainage and Flood Control District, et al.*, Docket No. CWA-VIII-
9 94-20-PII, 1998 EPA ALJ Lexis 42, at *56 (Initial Decision, June 24, 1998). The seriousness of
10 a particular violation depends primarily on the actual or potential harm¹ to the environment
11 resulting from the violation, as well as the importance of the violated requirement to the
12 regulatory scheme. *See id.*

13 Complainant believes that the nature, circumstances, extent, and gravity of the violations
14 in this case are significant and justify a substantial penalty. Craig Creek and its three unnamed
15 tributaries, as well as the adjacent wetlands on Respondent’s property are “waters of the United
16 States” within the meaning of Section 502(7) of the Act, 33 U.S.C. 1362(7). Complainant will
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18

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20 ¹ In analyzing the degree of harm posed by a violation, it is not necessary to establish that the violation caused
21 actual harm in order to justify imposition of a substantial civil penalty; the fact that the violation posed potential
22 harm may be sufficient. *See United States v. Gulf Park Water Company, Inc.*, 14 F. Supp. 2d 854, 860 (S.D. Miss.
23 1998) (“The United States is not required to establish that environmental harm resulted from the defendants’
24 discharges or that the public health has been impacted due to the discharges, in order for this Court to find the
25 discharges ‘serious’. . . . Under the law, the United States does not have the burden of quantifying the harm caused
to the environment by the defendants”); *United States v. Municipal Authority of Union Township*, 929 F. Supp. 800,
807 (M.D. Pa. 1996) (“It must be emphasized, however, that because actual harm to the environment is by nature
more difficult and sometimes impossible to demonstrate, it need not be proven to establish that substantial penalties
are appropriate in a Clean Water Act case.”), *aff’d* 150 F.3d 259 (3d Cir. 1998); *Urban Drainage*, 1998 EPA ALJ
Lexis 42, at *65 (“A significant penalty may be imposed on the basis of potential environmental risk without
necessarily demonstrating actual adverse effects”) (citing *United States v. Smithfield Foods, Inc.* 972 F. Supp. 338,
344 (E.D. Va. 1997), *aff’d* 191 F.3d 516 (4th Cir. 1999)).

1 show that Respondent's unauthorized discharges caused the loss of natural stream channels and
2 destabilized remaining natural channels, resulting in increased erosion and sedimentation. In
3 particular, Respondent's actions eliminated approximately 300 linear feet of stream channel and
4 cleared, excavated and/or filled approximately 0.5 acre of adjacent wetlands. Complainant
5 expects to show that these activities destroyed or severely degraded the native benthic
6 communities in four stream channels. In addition, the work caused the loss of wetlands that
7 provided baseflow, flood flow attenuation, stormwater filtration, and thermal protection for the
8 streams and led to an increase in groundwater discharge from Respondent's property.

9
10 Likewise, Complainant expects to show that the loss of wetlands associated with
11 Respondent's actions potentially exacerbated downstream effects by reducing the wetlands' flow
12 retention, filtration and thermal regulation functions and increasing the rate of groundwater
13 discharge leading to increased flow, erosion, sedimentation and destabilized channels. These
14 impacts also have the potential to affect adversely the downstream salmonid sport fishery in
15 Campbell Creek.

16 The violations that Complainant is prepared to present at trial represent Respondent's
17 failure to obtain authorization under the CWA and a failure to implement management practices
18 that would have mitigated against impacts to the waters of the United States. Furthermore,
19 Complainant is prepared to present evidence that Respondent's violations undermine the
20 regulatory scheme EPA has established to prevent the discharge of pollutants into waters of the
21 United States and/or the filling of jurisdictional wetlands. The testimony and evidence
22 Complainant expects to present at trial will demonstrate that the Section 404 permitting program
23 requirements are not mere formalisms under the CWA.
24
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1 Like other federal environmental regulations, the Section 404 program relies upon
2 regulated entities to implement, monitor, and modify their activities to conform to the CWA.
3 Failure to seek coverage under a Section 404 permit or to comply with such a permit's terms
4 undermines the regulatory strictures of the CWA, as well as EPA's ability to satisfy its
5 congressional mandate to protect and enhance the quality of the Nation's waters and to promote
6 public health and welfare. Penalizing Respondent for failure to comply with the CWA and
7 Section 404 serves to level the playing field for those who have fully complied with the Act's
8 requirements. For all of these reasons, Complainant believes that the violations at issue in this
9 case are serious and warrant a substantial civil penalty.
10

11 Complainant recognizes, however, that the seriousness of the violations at issue in this
12 case would not, standing alone, warrant assessment of the maximum administrative civil penalty.
13 For instance, although Respondent's actions occurred in and around headwater streams, the area
14 of impact was relatively small. In addition, some of the impacted area has recovered naturally.
15 When Complainant proposes a specific penalty, it will weigh these considerations, as well as any
16 other information submitted in Respondent's prehearing exchange.

17 **2. Respondents' Ability to Pay**

18 In its 1994 *New Waterbury, Ltd.* decision, the Environmental Appeals Board ("EAB") set
19 forth a now well-established process for considering and proving in the context of an
20 administrative hearing a violator's ability to pay a civil penalty:
21

22 Where ability to pay is at issue going into a hearing, the Region will need to
23 present some evidence to show that it considered the respondent's ability to pay a
24 penalty. The Region need not present any *specific* evidence to show that the
25 respondent *can pay* or obtain funds to pay the assessed penalty, but can simply
rely on some *general* financial information regarding the respondent's financial
status which can support the *inference* that the penalty assessment need not be

1 reduced. Once the respondent has presented *specific* evidence to show that despite
2 its sales volume or apparent solvency it cannot pay any penalty, the Region as
3 part of its burden of proof in demonstrating the “appropriateness” of the penalty
4 must respond either with the introduction of additional evidence to rebut the
5 respondent’s claim or through cross examination it must discredit the
6 respondent’s contentions.

7 *In re New Waterbury, Ltd.*, 5 E.A.D. 529, 542-430 (EAB 1994) (emphasis in original); *see also*

8 *In re Chempace Corp.*, FIFRA Appeal Nos. 99-2 & 99-3, slip op. at 21 (EAB, May 18, 2000).

9 Under *New Waterbury*, EPA has the initial burden of production to establish that the
10 Respondent has the ability to pay the proposed penalty, and once met, “[t]he burden then shifts to
11 the respondent to establish with specific information that the proposed penalty assessment is
12 excessive or incorrect.” *Chempace Corp.*, slip op. at 22. A respondent waives an inability-to-
13 pay claim, if he/she fails to provide specific evidence substantiating the claim. *In re Spitzer*
14 *Great Lakes Ltd.*, TSCA Appeal No. 99-3, slip op. at 29 (EAB, June 30, 2000).

15 At any hearing in this matter, Complainant will establish that it has considered
16 Respondent’s ability to pay in proposing a civil penalty and will, at a minimum, present general
17 financial information showing that Respondent appears to be financially solvent. Complainant is
18 prepared to show at trial that Respondent is (a) financially solvent, (b) an executive, officer and
19 director of several successful businesses across six states, and (c) the fee owner of several
20 valuable parcels of land. In addition, Complainant will consider the information included in
21 Respondent’s prehearing exchange when it proposes a specific penalty amount.

22 **3. Prior History of Violations**

23 Complainant is unaware of Respondent having any history of violations of the CWA.

24 ///

25 ///

1 **4. Degree of Culpability**

2 A “respondent’s willful disregard of the permit process or Clean Water Act requirements”
3 may be used to support the assessment of the maximum penalty allowed by statute. *See, e.g., In*
4 *re Urban Drainage*, 1998 EPA ALJ Lexis 42, at *68.

5 In this case, Respondent failed to apply for and receive authorization to discharge
6 pollutants into waters of the United States. On July 22, 2003, a Municipality of Anchorage Land
7 Use Enforcement Officer confirmed that unauthorized work had occurred on the site and ordered
8 all related activity to cease. He reported the work to the Corps on the same date. On August 6,
9 2003, the Corps confirmed that the work had occurred in jurisdictional waters without CWA
10 authorization. The Corps issued a Notice of Violation (NOV) to Respondent on August 7, 2003.
11 The Corps received no response to the NOV, and on October 7, 2003, contacted Respondent who
12 assured the Corps that he would submit a response within one week. The Corps received no
13 response, and on October 30, 2003, issued a warning letter to Respondent. Respondent did not
14 respond to the Corps’ letter. On November 25, 2003, the Corps referred the action to EPA.

15 EPA conducted an inspection of the site on July 2, 2004 and issued a Compliance Order
16 to Respondent on May 26, 2005, directing him to implement interim erosion and sediment
17 controls within seven days and submit a proposed restoration plan within twenty-one days.
18 Respondent did not respond to the Compliance Order. On September 22, 2005, EPA issued a
19 warning letter to Respondent directing him to submit a proposed restoration plan within ten days.
20 Respondent did not respond to EPA’s warning letter. EPA contacted Respondent between
21 November 4 and 14, 2005. Respondent assured EPA that he would submit the required
22 materials. However, Respondent did not submit the required materials. EPA again attempted to
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1 contact Respondent, leaving a message requesting him to make contact as soon as possible.

2 Respondent did not contact EPA or submit the materials required under the Compliance Order.

3 On June 12, 2008, EPA again contacted Respondent, asking him to submit a response within one
4 week. Respondent did not comply.

5 In this case, Respondent's failure to comply with the CWA demonstrates a level of
6 culpability that warrants a civil penalty. In addition, Respondent's repeated failure to respond to
7 Corps and EPA requests for information and EPA's Compliance Order, as well as Respondent's
8 repeated failure to cooperate with EPA to rectify the violations, underscores Respondent's
9 disregard of federal law. Respondent's degree of culpability, as evidenced by all of these
10 considerations, warrants a substantial civil penalty. See *e.g.*, *In re Dr. Marshall C. Sasser*,
11 3 E.A.D. 703, 708 (CJO 1991) (noting that willful disregard of the Section 404 permitting
12 process and refusal to comply with restoration orders are grounds supporting assessment of
13 maximum penalty); *In re Urban Drainage*, 1998 EPA ALJ Lexis 42, at *74 (noting that the
14 respondent's degree of cooperation with EPA in rectifying the violations is a factor to consider in
15 determining an appropriate penalty).
16

17 **5. Economic Benefit**

18 Complainant believes that Respondent may have realized at least a modest economic
19 benefit as a result of the violations described above. This economic benefit includes the delayed
20 or avoided compliance costs, such as consultant costs and fees, implementation of best
21 management technologies or practices, as well as maintenance and inspection costs, all of which
22 may have been necessary to fully implement the requirements of a Section 404 permit.

23 Complainant does not have in its possession sufficient information to quantify Respondent's
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1 economic benefit of noncompliance. Should such information not be provided through
2 Respondent's prehearing exchange, Complainant reserves the right to seek discovery in
3 accordance with Section 22.19(e) of the Part 22 Rules so that this information may be considered
4 in proposing and assessing a specific civil penalty.

5 **6. Other Matters as Justice May Require**

6 Credible and consistent enforcement of the Act's requirements is necessary to deter this
7 Respondent and others similarly situated from violating the Act. Complainant is presently
8 unaware of any "other matters as justice may require" that would warrant a downward
9 adjustment to the penalty. *See In re Spang & Co.*, 6 E.A.D. 226, 250 (EAB 1995) ("[U]se of
10 the justice factor should be far from routine, since application of the other adjustment factors
11 normally produces a penalty that is fair and just.").

12
13 **V. LOCATION AND ESTIMATED DURATION OF HEARING**

14 In accordance with 40 C.F.R. § 22.19(d) and 22.21(d), Complainant proposes Anchorage,
15 Alaska for the hearing location. Anchorage is in the Municipality of Anchorage, Alaska, where
16 the relevant EPA office is located. Court rooms are typically available in the building that
17 houses EPA's Alaska office (where one of Complainant's witnesses work). In addition, three of
18 Complainant's witnesses live in Anchorage. Respondent's attorney also maintains an office
19 Anchorage, Alaska.

20
21 Complainant estimates that it will require approximate one and one-half days, exclusive
22 of Respondent's cross examination, to put on its case-in-chief. The length of time required for
23 rebuttal testimony and cross examination of Respondent's witnesses will depend on the numbers
24
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1 and substance of documents and witnesses disclosed in Respondent's prehearing information
2 exchange.

3 As of the date of this initial prehearing exchange, counsel and/or witnesses for
4 Complainant would be unavailable to participate in a hearing in 2009 on March 30 and 31,
5 during the weeks of February 2nd, February 9th, and May 6th; and the entire month of April.

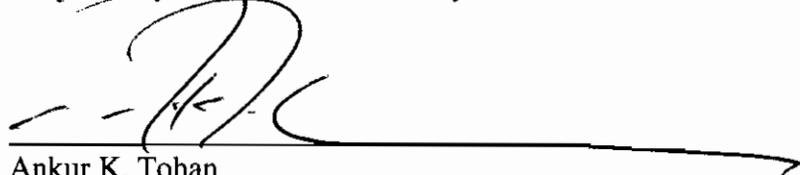
6 **VI. PAPERWORK REDUCTION ACT**

7 The Paperwork Reduction Act does not apply in this proceeding because Complainant
8 does not seek penalties for a failure to provide information to EPA.

9 **VII. RESERVATIONS**

10 Complainant reserves the right to call all witnesses named or called at hearing by
11 Respondent and to introduce as evidence at hearing any exhibit identified in Respondent's
12 prehearing information exchange. Complainant further reserves the right to submit the names of
13 additional witnesses and to submit additional exhibits prior to the hearing of this matter, upon
14 timely notice to the Presiding Officer and to Respondent.
15

16
17 Respectfully submitted this 14th day of November, 2008.

18
19 
20 Ankur K. Tohan
21 Assistant Regional Counsel
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23
24
25

1 **CERTIFICATE OF SERVICE**

2 I certify that the foregoing "Complainant's Initial Prehearing Exchange" was filed and
3 sent to the following person, in the manner specified, on the date below:

4 Original and one copy, hand-delivered:

5 Carol Kennedy, Regional Hearing Clerk
6 U.S. Environmental Protection Agency, Region 10
7 1200 Sixth Avenue, Mail Stop ORC-158
Seattle, WA 98101

8 A true and correct copy, by inter-office mail:

9 The Honorable Susan L. Biro, Chief Administrative Judge
10 Office of Administrative Law Judges
11 U.S. Environmental Protection Agency
12 Mail Code 1900L
13 1200 Pennsylvania Ave., NW
Washington, DC 20460-2001

14 A true and correct copy, by certified mail, return receipt requested:

15 Robert K. Reiman, Esquire
16 Law Offices of Robert K. Reiman
619 E. Ship Creek Avenue, Suite 250
Anchorage, AK 99501

17
18
19 Dated: 11/14/08

Lisa Bingham

Office Manager
U.S. EPA Region 10

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**COMPLAINANT'S INITIAL PREHEARING
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(206) 553-1796**