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5 BEFORE THE  
6 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

7 In the Matter of: )  
8 ) DOCKET NO. TSCA 10-2010-0253  
9 Chilkoot Lumber Company, Inc. and )  
10 Mr. L. Edward Lapeyri )  
11 ) **COMPLAINT AND NOTICE OF**  
12 ) **OPPORTUNITY FOR HEARING**  
Haines, Alaska )  
Respondents. )

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14 **I. AUTHORITIES**

15 1.1 This civil administrative complaint (“Complaint”) is issued under the authority  
16 vested in the Administrator of the U.S. Environmental Protection Agency (“EPA” or  
17 “Complainant”) by the Toxic Substances Control Act (“TSCA” or “Act”), 15 U.S.C. § 2601 *et*  
18 *seq.* The Administrator has delegated this authority to the Regional Administrator of EPA  
19 Region 10, who has redelegateated this authority to the Director of the Office of Compliance and  
20 Enforcement in Region 10.  
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22 1.2 Pursuant to Section 16(a) of the Act, 15 U.S.C. § 2615(a), and in accordance with  
23 the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil  
24 Penalties,” 40 C.F.R. Part 22 (“Consolidated Rules of Practice”), Complainant hereby seeks the  
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1 assessment of a civil administrative penalty against the Chilkoot Lumber Company, Inc. and Mr.  
2 L. Edward Lapeyri (“Respondents”) for violations of Section 15 of TSCA, 15 U.S.C. § 2614.

3 **II. STATUTORY AND REGULATORY BACKGROUND**

4 2.1 Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides in pertinent part that  
5 any person who violates a provision of Section 15 of TSCA shall be liable to the United States  
6 for a civil penalty for each such violation.

7 2.2 Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), makes it unlawful for any  
8 person to fail to comply with, among other things, any rule promulgated under Section 6 of the  
9 Act, 15 U.S.C. § 2605.

10 2.3 Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), EPA promulgated rules  
11 governing the manufacturing, processing, distribution in commerce, use, and disposal of  
12 polychlorinated biphenyls (“PCBs”). These rules are codified at 40 C.F.R. Part 761.

13 2.4 “PCB” and “PCBs” are defined at 40 C.F.R. § 761.3 to mean “any chemical  
14 substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or  
15 any combination of substances which contains such substance.”

16 2.5 “PCB Article” is defined at 40 C.F.R. § 761.3 to mean “any manufactured article,  
17 other than a PCB Container, that contains PCBs and whose surface(s) has been in direct contact  
18 with PCBs. “PCB Article” includes capacitors, transformers, electric motors, pumps, pipes, and  
19 any other manufactured item... .”

20 2.6 “PCB Item” is defined at 40 C.F.R. § 761.3 to mean “any PCB Article . . . or  
21 anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.”  
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1           2.7     “PCB Transformer” is defined at 40 C.F.R. § 761.3 to mean any transformer that  
2 contains PCBs at a concentration greater than or equal to 500 parts per million (“ppm”).

3           2.8     “PCB Capacitor” is defined at 40 C.F.R. § 761.3 to mean any capacitor that  
4 contains PCBs at a concentration greater than or equal to 500 ppm.

5           2.9     “PCB-Contaminated” is defined at 40 C.F.R. § 761.3 to mean a non-liquid  
6 material containing PCBs at concentrations equal to or greater than 50 ppm but less than 500  
7 ppm.

8           2.10    A “person” is defined at 40 C.F.R. § 761.3 to mean “any natural or judicial person  
9 including any individual, corporation, partnership, or association... .”

10          2.11    40 C.F.R. § 761.30(a)(1)(vi) requires owners of PCB Transformers, including  
11 those in storage for reuse, to register each transformer with EPA by December 28, 1998, and to  
12 retain a copy of each registration with inspection and maintenance records required to be  
13 maintained for each PCB Transformer.

14          2.12    40 C.F.R. § 761.30(a)(1)(x) requires that “[i]f a PCB Transformer is found to  
15 have a leak which results in any quantity of PCBs running off or about to run off the external  
16 surface of the transformer, then the transformer must be repaired or replaced to eliminate the  
17 source of the leak. In all cases any leaking material must be cleaned up and properly disposed of  
18 according to the disposal requirements of subpart D of this part [40 C.F.R. Part 761]. Cleanup of  
19 the released PCBs must be initiated as soon as possible, but in no case later than 48 hours of its  
20 discovery.”  
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1           3.2       Respondent Chilkoot Lumber Company, Inc. ("CLC") is a corporation  
2 organized under the laws of the state of Alaska and is a "person" as defined at 40 C.F.R. § 761.3.  
3 CLC is the owner of real property located at or around Milepost 5 on Lutak Highway in Haines,  
4 Alaska, 99827, and identified by Haines Borough property numbers C-LTR-05-1100, C-LTR-  
5 05-1200, C-LTR-05-1300, and C-LTR-05-1400 (together "Site"). CLC last operated a lumber  
6 operation at the Site in or around 1991. CLC is listed as an active but noncompliant corporation  
7 and received a dissolution reminder letter from the state of Alaska dated December 31, 2009.

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9           3.3       Respondent Mr. L. Edward Lapeyri ("Mr. Lapeyri") is an individual and is a  
10 "person" as defined at 40 C.F.R. § 761.3. Mr. Lapeyri is a director, the president, and sole  
11 shareholder of CLC. Mr. Lapeyri manages, has operational control of, and/or owns the Site and  
12 electrical equipment stored at the Site.

13           3.4       From at least November 1997 until July 2008, Respondents owned seven  
14 electric transformers manufactured by the General Electric Company ("GE") and identified by  
15 the following serial numbers B147414-A, B768244, B315920, 7525100, 7525101, 8036912, and  
16 8174727, and one electric transformer manufactured by Kuhlman Electric Corporation  
17 ("Kuhlman") and identified by the serial number 16499. During the same time period,  
18 Respondents owned three electric capacitors manufactured by the McGraw-Edison Company  
19 ("McGraw") and identified by the serial numbers C266915, C267014, and C267018.

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21           3.5       From at least November 1997 until July 2008, Respondents stored at the Site  
22 three GE transformers (serial numbers 7525100, 7525101, and 8036912) that contained  
23 concentrations of PCBs equal to or greater than 500 ppm. These three GE transformers are  
24 "PCB Transformers" as defined at 40 C.F.R. § 761.3.

1           3.6       From at least November 1997 until July 2008, Respondents stored at the Site  
2 four GE transformers (serial numbers B147414-A, B768244, B315920, and 814727) and one  
3 Kuhlman transformer (serial number 16499) that contained concentrations of PCBs equal to or  
4 greater than 50 ppm but less than 500 ppm. These five transformers are "PCB-Contaminated" as  
5 defined at 40 C.F.R. § 761.3.

6           3.7       From at least November 1997 until July 2008, Respondents stored at the Site  
7 three McGraw capacitors that each contained approximately four gallons of dielectric fluid with  
8 PCB concentrations of 100%. These three capacitors are both "Large Capacitors" and "PCB  
9 Capacitors" as those terms are defined at 40 C.F.R. § 761.3.

10           3.8       Authorized EPA inspectors entered the Site with the consent of Mr. Lapeyri on  
11 July 16, 1999, and again on August 21, 2007, to inspect for compliance with TSCA and the  
12 regulations at 40 C.F.R. Part 761. Findings and photographs from the inspections were recorded  
13 in two inspection reports dated August 10, 1999 and September 27, 2007.

14           3.9       At the time of both inspections, Respondents were not storing PCB  
15 Transformers, PCB-Contaminated transformers, and PCB Capacitors located at the Site in a  
16 storage unit that complied with the requirements set forth at 40 C.F.R. § 761.65(b)(1).

17           3.10       At the time of the August 21, 2007 inspection, the GE transformers identified by  
18 the serial numbers B147414-A, B768244, B315920, 7525100, 7525101, 8036912, and 8174727,  
19 the Kuhlman transformer identified by the serial number 16499, and the McGraw capacitors  
20 identified by the serial numbers C266915, C267014, and C267018, were not labeled with the ML  
21 Mark described and illustrated at 40 C.F.R. §761.45(a).  
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1 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19, Respondents are liable for civil penalties not to  
2 exceed \$32,500 for each day that such violations continued.

3 **Count 3**  
4 **(Improper Storage of PCB Articles Stored for Indefinite Reuse)**

5 3.23 Paragraphs 1.1 through 3.14 are realleged and incorporated herein by reference.

6 3.24 Pursuant to 40 C.F.R. § 761.35(c)(1), any person may store PCB Articles for  
7 reuse indefinitely in a unit that complies with the requirements set forth at 40 C.F.R. § 761.65(b).

8 3.25 In a letter to EPA dated January 25, 2001, Respondents stated that three PCB  
9 Transformers and five PCB-Contaminated transformers for be stored indefinitely for reuse in  
10 accordance with 40 C.F.R. § 761.35(c)(1).

11 3.26 At the time of the 2007 inspection, EPA observed two PCB Transformers (GE  
12 serial numbers 7525101 and 8036912) and two PCB-Contaminated transformers (GE serial  
13 number 8174727 and Kuhlman serial number 16499) stored outside on a concrete pad with no  
14 walls, roof, or containment; one PCB Transformer (GE serial number 7525100) stored in a shed  
15 with rain water collected on the floor; and one PCB-Contaminated transformer (GE serial  
16 number B315920) stored on an overhang with no walls, roof, or containment. These storage  
17 areas do not meet the storage requirements at 40 C.F.R. § 761.65(b) because they do not have  
18 adequate roof and walls to prevent rain water from reaching stored PCBs and PCB Items.

19 3.27 Respondents' indefinite storage for reuse of PCB Transformers and PCB-  
20 Contaminated transformers in storage areas that did not comply with 40 C.F.R. § 761.65(b) was  
21 in violation of 40 C.F.R. § 761.35(c)(1) and therefore violated Section 15 of TSCA,  
22 15 U.S.C. § 2614. In accordance with Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and  
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1 40 C.F.R. Part 19, Respondents are liable for civil penalties not to exceed \$32,500 for each day  
2 that such violations continued.

3 **Count 4**

4 **(Failure to Inspect PCB Items in Storage or to Maintain Inspection Records)**

5 3.28 Paragraphs 1.1 through 3.14 are realleged and incorporated herein by reference.

6 3.29 Pursuant to 40 C.F.R. § 761.65(c)(5), the owner of PCB Items in storage shall  
7 check all PCB Items for leaks at least once every 30 days, and maintain copies of such inspection  
8 records in accordance with 40 C.F.R. § 761.180(a).

9 3.30 40 C.F.R. § 761.180(a) provides that records of inspections required by  
10 40 C.F.R. § 761.65(c)(5) must be included in annual documents logs that are maintained for at  
11 least three years after the storage of PCBs or PCB Items ceases.

12 3.31 In a letter to Respondents dated February 15, 2008, EPA requested that  
13 Respondents provide records and information including, among other things, copies of  
14 inspection records for the years 2005, 2006, and 2007. In a letter to EPA dated April 24, 2008,  
15 Respondents submitted a response that did not provide the requested inspection records.

16 3.32 Respondents either failed to inspect PCB Items in storage for leaks at least  
17 every 30 days, or failed to maintain records of such inspections in violation of  
18 40 C.F.R. § 761.65(c)(5), and therefore violated Section 15 of TSCA, 15 U.S.C. § 2614. In  
19 accordance with Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19,  
20 Respondents are liable for civil penalties not to exceed \$32,500 for each day that such violations  
21 continued.  
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1 for inspection at the facility and must be maintained at least three years after storage of PCB  
2 Items ceases.

3 3.39 In a letter to Respondents dated February 15, 2008, EPA requested that  
4 Respondents provide copies of annual document logs for the years 2004, 2005, and 2006 as  
5 required by 40 C.F.R. 761.180. In a letter to EPA dated April 24, 2008, Respondents submitted a  
6 response that did not provide the requested annual document logs.

7 3.40 Respondents either failed to develop annual document logs or to maintain  
8 annual document logs for a period of at least three years after storage of PCB Items ceases in  
9 violation of 40 C.F.R. § 761.180(a), and therefore violated Section 15 of TSCA,  
10 15 U.S.C. § 2614. In accordance with Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and  
11 40 C.F.R. Part 19, Respondents are liable for civil penalties not to exceed \$32,500 for each day  
12 that such violations continued.  
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#### 14 IV. PENALTY

15 4.1 Proposed Civil Penalty: Based upon the facts alleged in this Complaint and  
16 upon the statutory factors enumerated above, Complainant request that a civil penalty of  
17 \$116,100 be assessed against the Respondents for violations of TSCA and 40 C.F.R. Part 761.  
18 This proposed civil penalty was calculated in accordance with EPA's Polychlorinated Biphenyls  
19 (PCB) Penalty Policy, April 9, 1990, the purpose of which is to implement a fair, uniform, and  
20 consistent system for applying the statutory penalty factors set forth in Section 16(a)(2)(B) of  
21 TSCA, 15 U.S.C. § 2615(a)(2)(B). The statutory penalty factors are as follows: the nature,  
22 circumstances, extent, and gravity of the violations, and, with respect to Respondents, ability to  
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1 pay, prior history of violations, degree of culpability, economic benefit or savings (if any)  
2 resulting from the violation, and such other matters as justice may require.

3 **V. OPPORTUNITY TO REQUEST A HEARING**

4 5.1 As provided in Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Respondents  
5 have the right to request a formal hearing to contest any material fact set forth in this Complaint  
6 or the appropriateness of the penalty proposed herein. Any hearing requested will be conducted  
7 in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the  
8 Consolidated Rules of Practice, 40 C.F.R. Part 22. A copy of the Consolidated Rules of Practice  
9 is enclosed with this Complaint.  
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11 5.2 Respondents' Answer, including any request for hearing, must be in writing  
12 and must be filed with:

13 Regional Hearing Clerk  
14 U.S. Environmental Protection Agency, Region 10  
15 1200 Sixth Avenue,  
16 Suite 900 (Mail Stop ORC-158)  
17 Seattle, Washington 98101

18 **VI. FAILURE TO FILE AN ANSWER**

19 6.1 To avoid a default order being entered pursuant to 40 C.F.R. § 22.17,  
20 Respondents must file a written Answer to this Complaint with the Regional Hearing Clerk  
21 within thirty (30) days after service of this Complaint.

22 6.2 In accordance with 40 C.F.R. § 22.15, Respondents' Answer must clearly and  
23 directly admit, deny, or explain each of the factual allegations contained in this Complaint with  
24 regard to which the Respondents have any knowledge. Respondents' Answer must also state: (1)  
25 the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the

1 facts which the Respondents intend to place at issue; and (3) whether a hearing is requested.  
2 Failure to admit, deny, or explain any material factual allegation contained herein constitutes an  
3 admission of the allegation.

4 **VII. INFORMAL SETTLEMENT CONFERENCE**

5 7.1 Whether or not Respondents request a hearing, Respondents may request an  
6 informal settlement conference to discuss the facts of this case, the proposed penalty, and the  
7 possibility of settling this matter. To request such a settlement conference, Respondents should  
8 contact:  
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10 Alex Fidis, Assistant Regional Counsel  
11 U.S. Environmental Protection Agency, Region 10  
12 1200 Sixth Avenue,  
13 Suite 900 (Mail Stop ORC-158)  
14 Seattle, Washington 98101  
15 (206) 553-4710

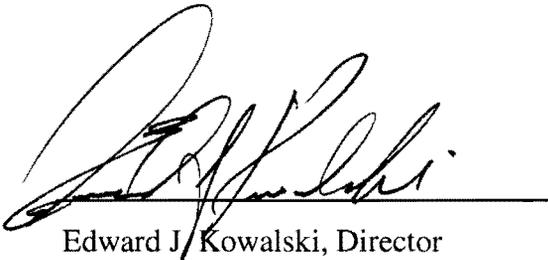
16 7.2 Note that a request for an informal settlement conference does not extend the  
17 thirty (30) day period for filing a written Answer to this Complaint, nor does it waive  
18 Respondents' right to request a hearing.

19 7.3 Respondents are advised that, after the Complaint is issued, the Consolidated  
20 Rules of Practice prohibit any *ex parte* (unilateral) discussion of the merits of these or any other  
21 factually related proceedings with the Administrator, the Environmental Appeals Board or its  
22 members, the Regional Judicial Officer, the Presiding Officer, or any other person who is likely  
23 to advise these officials in the decision on this case.  
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1 **VIII. RESERVATIONS**

2 8.1 Neither assessment nor payment of a civil penalty pursuant to this Complaint  
3 shall affect Respondents' continuing obligations to comply with TSCA and all other  
4 environmental statutes and regulations.  
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7 Dated this 27<sup>th</sup> day of September, 2010.  
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12 Edward J. Kowalski, Director  
13 Office of Compliance and Enforcement  
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1 **CERTIFICATE OF SERVICE**

2 I certify that the foregoing "Complaint" was filed and sent to the following persons, in  
3 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,  
8 Suite 900 (Mail Stop ORC-158)  
9 Seattle, Washington 98101

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

11 Fred W. Triem, Esq.  
12 Attorney at Law  
13 Box 129  
14 Petersburg, Alaska 99833-0129

15 L. Edward Lapeyri, President & Registered Agent  
16 Chilkoot Lumber Company, Inc.  
17 P.O. Box 1469  
18 Haines, Alaska 99827

19 Dated: 28 Sept. 2010

20 Carol D. Kennedy  
21 Regional Hearing Clerk  
22 U.S. EPA Region 10  
23  
24  
25