

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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In the Matter of :  
:   
CHILKOOT LUMBER COMPANY, INC. :  
AND :  
MR. L. EDWARD LAPEYRI :  
:   
Haines, Alaska :  
:   
*Respondents.* :  
:   
:

Docket No. TSCA-10-2010-0253

**RESPONDENT L. EDWARD LAPEYRI'S ANSWER**

L. Edward Lapeyri [Lapeyri], a respondent in the above captioned administrative action, by and through his attorney, Fred W. Triem of Petersburg, Alaska, answers the agency's Complaint and Notice of Opportunity for Hearing of 27 September 2010 as follows:

(1.1) Lapeyri admits that the Toxic Substances Control Act grants enforcement powers to government agencies, but otherwise lacks sufficient information to admit or to deny the allegations contained in paragraph 1.1 of the Environmental Protection Agency [EPA] Complaint and Notice of Opportunity for Hearing [Complaint] and therefore denies the allegations contained in paragraph 1.1 of the EPA's Complaint .

(1.2) The allegations in paragraph 1.2 are a legal conclusion to which no responsive answer is required. To the extent a responsive answer is required, Lapeyri denies the allegations contained in paragraph 2.1 of the EPA's Complaint, and specifically denies that any administrative penalty should be assessed against Lapeyri.

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(2.1) The allegations in paragraph 2.1 are a legal conclusion to which no responsive answer is required. To the extent a responsive answer is required, Lapeyri denies the allegations contained in paragraph 2.1 of the EPA's Complaint, and otherwise answers that federal enforcement power can be delegated to an agency of the State of Alaska, which in turn can grant permits to Lapeyri and can exercise regulatory authority and enforcement powers regarding environmental issues.

(2.2) The allegations in paragraph 2.2 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 2.2 of the EPA's Complaint.

(2.3) The allegations in paragraph 2.3 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 2.3 of the EPA's Complaint.

(2.4) The allegations in paragraph 2.4 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 2.4 of the EPA's Complaint.

(2.5) The allegations in paragraph 2.5 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 2.5 of the EPA's Complaint.

(2.6) The allegations in paragraph 2.6 are a legal conclusion to which no

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responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 2.6 of the EPA's Complaint.

(2.7) The allegations in paragraph 2.7 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 2.7 of the EPA's Complaint.

(2.8) The allegations in paragraph 2.8 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 2.8 of the EPA's Complaint.

(2.9) The allegations in paragraph 2.9 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 2.9 of the EPA's Complaint.

(2.10) The allegations in paragraph 2.10 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 2.10 of the EPA's Complaint.

(2.11) The allegations in paragraph 2.11 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 2.11 of the EPA's Complaint.

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(2.12) The allegations in paragraph 2.12 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 2.12 of the EPA's Complaint.

(2.13) The allegations in paragraph 2.13 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 2.13 of the EPA's Complaint.

(2.14) The allegations in paragraph 2.14 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 2.14 of the EPA's Complaint.

(2.15) The allegations in paragraph 2.15 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 2.15 of the EPA's Complaint.

(2.16) The allegations in paragraph 2.16 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 2.16 of the EPA's Complaint.

(2.17) The allegations in paragraph 2.17 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the

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allegations contained in paragraph 2.17 of the EPA's Complaint.

(3.1) Lapeyri repeats and reaffirms his answers to the allegations in paragraphs 1.1 through 2.17 above.

(3.2) Lapeyri denies the allegations contained in paragraph 3.2 of the EPA's Complaint, except that whether Lapeyri is a person under 40 C.F.R. § 761.3 is a legal conclusion to which no responsive answer is required and Lapeyri has never operated a sawmill in or near Haines, Alaska, although he has been employed at such a facility.

(3.3) With regard to the allegations in paragraph 3.3 of the Complaint, Lapeyri admits that he is an individual and that he currently is a director and president of CLC. Lapeyri admits that he is the sole shareholder of CLC. Lapeyri admits that he currently manages CLC. The status of Mr. Lapeyri as a person under 40 C.F.R. § 761.3 is a legal conclusion to which no responsive answer is required. Lapeyri denies that he owns the site. Lapeyri denies that electrical equipment is stored on the site.

(3.4) Lapeyri denies the allegations in paragraph 3.4.

(3.5) Lapeyri denies the allegations in paragraph 3.5

(3.6) Lapeyri denies the allegations in paragraph 3.6.

(3.7) Lapeyri denies the allegations in paragraph 3.7.

(3.8) With regard to the allegations in paragraph 3.8 of the EPA's Complaint, the historical records of CLC are not accessible, therefore Lapeyri lacks sufficient knowledge to admit or deny the allegations in paragraph 3.8 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.8 of the EPA's Complaint.

(3.9) Lapeyri denies the allegations in paragraph 3.9.

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(3.10) With regard to the allegations in paragraph 3.10 of the EPA's Complaint, the historical records of CLC are not accessible, therefore Lapeyri lacks sufficient knowledge to admit or deny the allegations in paragraph 3.10 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.10 of the EPA's Complaint.

(3.11) With regard to the allegations in paragraph 3.11 of the EPA's Complaint, the historical records of CLC are not accessible, therefore Lapeyri lacks sufficient knowledge to admit or deny the allegations in paragraph 3.11 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.11 of the Complaint. Lapeyri further denies that any transformer was ever leaking.

(3.12) With regard to the allegations in paragraph 3.12 of the EPA's Complaint, the historical records of CLC are not accessible, therefore Lapeyri lacks sufficient knowledge to admit or deny the allegations in paragraph 3.12 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.12 of the EPA's Complaint. Lapeyri specifically denies

(3.13) Lapeyri denies that Chilkat Environmental, LLC did any work for him at any time; it was employed only by CLC. Lapeyri lacks sufficient knowledge to admit or deny the remaining allegations in paragraph 3.13 of the Complaint and therefore denies the remaining allegations contained in paragraph 3.13 of the EPA's Complaint.

(3.14) The allegations in paragraph 3.14 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 3.14 of the EPA's Complaint.

(3.15) Lapeyri repeats and reaffirms his answers to the allegations in paragraphs 1.1

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through 3.14 above. Lapeyri denies (a) that he had any duty to register PCB transformers or (b) that he failed to register them.

(3.16) The allegations in paragraph 3.16 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 3.16 of the EPA's Complaint.

(3.17) Lapeyri denies the allegations in paragraph 3.17. He has never owned any transformers.

(3.18) Lapeyri denies that he had an obligation to register transformers. Lapeyri denies that he is liable for civil penalties. The remaining allegations in paragraph 3.18 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the remaining allegations contained in paragraph 3.18 of the EPA's Complaint.

(3.19) Lapeyri repeats and reaffirms his answers to the allegations in paragraphs 1.1 through 3.18 above. Lapeyri denies that any PCB transformer ever leaked, needed repair or cleaning, or posed any environmental hazard.

(3.20) The allegations in paragraph 3.20 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 3.20 of the EPA's Complaint. Lapeyri further denies that any transformer was ever leaking.

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(3.21) With regard to the allegations in paragraph 3.21 of the EPA's Complaint, Lapeyri denies that any transformer ever leaked; none leaked at any time. Furthermore, the historical records of CLC are not accessible, therefore Lapeyri lacks sufficient knowledge to admit or deny the allegations in paragraph 3.21 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.21 of the EPA's Complaint.

(3.22) With regard to the allegations in paragraph 3.22 of the EPA's Complaint, Lapeyri denies that any transformer ever leaked; none leaked at any time. Lapeyri denies that he had an obligation to repair leaking PCB Transformers or to initiate cleanup. Lapeyri denies that he is liable for a civil penalty. The remaining allegations in paragraph 3.22 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the remaining allegations contained in paragraph 3.22 of the EPA's Complaint.

(3.23) Lapeyri repeats and reaffirms his answers to the allegations in paragraphs 1.1 through 3.22. Lapeyri denies (a) that he improperly stored any PCB articles (transformers, capacitors, etc.) or (b) that any such articles ever leaked, needed repair or cleaning, or posed any environmental hazard.

(3.24) The allegations in paragraph 3.24 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 3.24 of the EPA's Complaint.

(3.25) With regard to the allegations in paragraph 3.25 of the EPA's Complaint, the historical records of CLC are not accessible, therefore Lapeyri lacks sufficient knowledge

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to admit or deny the allegations in paragraph 3.25 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.25 of the EPA's Complaint.

(3.26) Lapeyri lacks sufficient knowledge or information of what EPA inspectors observed in 2007 to admit or deny the allegations in paragraph 3.26 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.26 of the EPA's Complaint.

(3.27) The allegations in paragraph 3.27 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 3.27 of the EPA's Complaint.

(3.28) Lapeyri repeats and reaffirms his answers to the allegations in paragraphs 1.1 through 3.27 above. Lapeyri denies (a) that he failed to inspect any PCB item or (b) that he failed to maintain inspection records.

(3.29) The allegations in paragraph 3.29 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 3.29 of the EPA's Complaint.

(3.30) The allegations in paragraph 3.30 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 3.30 of the EPA's Complaint.

(3.31) With regard to the allegations in paragraph 3.31 of the EPA's Complaint, the

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historical records of CLC are not accessible, therefore Lapeyri lacks sufficient knowledge to admit or deny the allegations in paragraph 3.31 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.31 of the EPA's Complaint.

(3.32) With regard to the allegations in paragraph 3.32 that Respondents failed inspect or keep records, the historical records of CLC are not accessible, therefore Lapeyri lacks sufficient knowledge to admit or deny the allegations pertaining to inspections and records. The remaining allegations in paragraph 3.32 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the remaining allegations contained in paragraph 3.32 of the EPA's Complaint.

(3.33) Lapeyri repeats and reaffirms his answers to the allegations in paragraphs 1.1 through 3.32 above. Lapeyri denies that he failed to mark any PCB articles.

(3.34) The allegations in paragraph 3.34 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 3.34 of the EPA's Complaint.

(3.35) With regard to the allegations in paragraph 3.35 of the EPA's Complaint, the historical records of Lapeyri are not accessible, therefore Lapeyri lacks sufficient knowledge to admit or deny the allegations in paragraph 3.35 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.35 of the EPA's Complaint.

(3.36) Lapeyri denies that he ever owned PCB transformers, PCB-Contaminated transformers, and PCB Capacitors. The remaining allegations in paragraph 3.32 are a legal conclusion to which no responsive answer is required. To the extent that a factual

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allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the remaining allegations contained in paragraph 3.32 of the EPA's Complaint.

(3.37) Lapeyri repeats and reaffirms his answers to the allegations in paragraphs 1.1 through 3.36 above. Lapeyri denies (a) that he failed to develop or (b) to maintain annual document logs.

(3.38) The allegations in paragraph 3.38 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 3.38 of the EPA's Complaint.

(3.39) With regard to the allegations in paragraph 3.35 of the EPA's Complaint, the historical records of CLC are not accessible, therefore Lapeyri lacks sufficient knowledge to admit or deny the allegations in paragraph 3.35 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.35 of the EPA's Complaint.

(3.40) With regard to the allegations in paragraph 3.40 that Lapeyri failed to maintain document logs, the historical records of CLC are not accessible, therefore Lapeyri lacks sufficient knowledge to admit or deny the allegations maintenance of document logs. The remaining allegations in paragraph 3.32 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, Lapeyri denies the remaining allegations contained in paragraph 3.32 of the EPA's Complaint.

(4.1) Lapeyri lacks sufficient knowledge to admit or deny the allegations in paragraph 4.4 of the EPA's complaint and therefore denies the allegations contained in

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paragraph 4.4 of the EPA's Complaint. Lapeyri denies that he owes a civil penalty.

(5.1) The allegations in paragraph 5.1 are a legal conclusion to which no responsive answer is required. To the extent that additional factual allegations are contained in this paragraph by implication and that a responsive answer is required, Lapeyri denies the allegations contained in paragraph 5.1 of the EPA's Complaint. By this Respondent's Answer, Lapeyri does request a hearing pursuant to 40 C.F.R. § 22.15(c) and the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*

(5.2) Lapeyri agrees that his answer to the EPA's Complaint should be filed with the Regional Hearing Clerk at the address provided in ¶ 5.2 of the Complaint pursuant to 40 C.F.R. § 22.15(a); and Lapeyri certifies that he is mailing his Answer to the Clerk.

(6.1) Lapeyri agrees that his answer to the EPA's Complaint should be filed in a timely manner with the Regional Hearing Clerk, and Lapeyri states that his written answer is timely and therefore no default can be entered against him. 40 C.F.R. § 22.15.

(6.2) The allegations in paragraph 6.2 are a legal conclusion to which no responsive answer is required. To the extent a responsive answer is required, Lapeyri denies the allegations contained in paragraph 6.2 of the EPA's Complaint. Furthermore, Lapeyri alleges and avers that indeed, he is complying with the pleading requirements of 40 C.F.R. § 22.15 — and if the administrative law judge later determines that Lapeyri has not satisfied the pleading requirements then Lapeyri requests leave to amend his answer pursuant to 40 C.F.R. § 22.15(e).

(7.1) The allegations in paragraph 7.1 are a legal conclusion to which no responsive answer is required. To the extent a responsive answer is required, Lapeyri

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denies the allegations contained in paragraph 7.1 of the EPA's Complaint. By filing this Answer, Lapeyri does request an informal settlement conference with EPA pursuant to 40 C.F.R. § 22.18(b(1)).

(7.2) The allegations in paragraph 7.2 are a legal conclusion to which no responsive answer is required. To the extent a responsive answer is required, Lapeyri denies the allegations contained in paragraph 7.2 of the EPA's Complaint. Furthermore, Lapeyri requests both (a) a hearing pursuant to 40 C.F.R. § 22.15(c) and (b) an informal settlement conference with EPA pursuant to 40 C.F.R. § 22.18(b(1)).

(7.3) The allegations in paragraph 7.3 are a legal conclusion to which no responsive answer is required. To the extent a responsive answer is required, Lapeyri denies the allegations contained in paragraph 7.3 of the EPA's Complaint. Furthermore, Lapeyri notes the inconsistency between the prohibition against *ex parte* contact stated in ¶ 7.3 of the Complaint and the suggestion or permission that is granted by implication in 40 C.F.R. § 22.18(b(1)) to the parties that purports to allow settlement discussions between the respondent and the agency.

(8.1) The allegations in paragraph 8.1 are a legal conclusion to which no responsive answer is required. To the extent a responsive answer is required, Lapeyri denies generally the allegations contained directly or by implication in paragraph 8.1 of the EPA's Complaint, and furthermore, Lapeyri specifically denies that he has committed forbidden acts of pollution or has illegally discharged PCB's or otherwise has violated the TSCA and the regulations in 40 C.F.R.

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## Affirmative Defenses

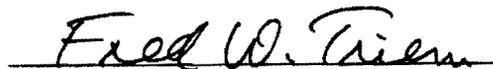
Lapeyri asserts the following affirmative defenses:

- (A) Statute of Limitations
- (B) Laches
- (C) Entrapment by Estoppel
- (D) Estoppel
- (E) Waiver

## Relief Requested

- (A) Lapeyri requests that a hearing be conducted.
- (B) Lapeyri requests that all claims against him be dismissed.
- (C) Lapeyri requests an award to Respondents of their reasonable attorney's fees and costs as provided by law or equity.
- (D) Lapeyri requests such other relief as may be just and proper.

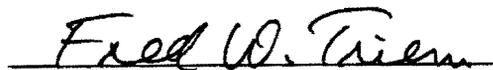
Respectfully submitted this 3rd day of November 2010 at Petersburg, Alaska.



Fred W. Triem, No. 7912140

## CERTIFICATE OF SERVICE

I, Fred W. Triem, certify that on the 3rd day of November in 2010 I mailed a copy of the foregoing Respondent's Answer to the Regional Hearing Clerk at U.S. Environmental Protection Agency, 1200 Sixth Avenue, Suite 900 (Mail Stop ORC-158), Seattle, Washington 98101, by placing a copy in the postal mail addressed to the Clerk.



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