

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CHILL TRANSPORTATION LLC,

Toppenish, Washington

Respondent.

DOCKET NO. CWA-10-2023-0020

**MEMORANDUM IN SUPPORT OF COMPLAINANT'S MOTION TO TERMINATE
PROCEEDINGS**

This memorandum is filed in support of Complainant's Motion to Terminate Proceedings brought by the Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region 10 ("Complainant"), in accordance with 40 C.F.R. § 22.17 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 ("Consolidated Rules"), 40 C.F.R. Part 22.

This case concerns Chill Transportation LLC's ("Respondent") ownership and operation of a semi-truck and refrigerated trailer ("Truck") that on August 8, 2021, crashed and overturned on Washington State Route 97 within the external boundaries of the Yakama Indian Reservation, causing the discharge and release of motor/lube oil, or petroleum, from the Truck's motor and lubricating systems, and diesel fuel, or fuel oil, from the trailer's refrigeration fuel tank and from the Truck's saddle fuel tanks into Toppenish Creek, onto the adjoining shoreline of Toppenish Creek, and to wetlands adjacent to Toppenish Creek. On February 14, 2023, Complainant filed an administrative complaint ("Complaint") against Respondent under CWA Section 311(b)(6), 33 U.S.C. § 1321(b)(6), and CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1). *See* Dkt. 1. The Complaint charged Respondent with violations of CWA Section 311(b)(3), 33 U.S.C.

§ 1321(b)(3), by discharging oil into navigable waters and adjoining shorelines in harmful quantities, and violations of CWA Section 301(a), 33 U.S.C. § 1311(a), by adding pollutants to navigable waters from a point source without a permit. *See* Complaint ¶¶ 3.12 to 3.28.

On June 15, 2023, Respondent was served with a true and correct copy of the Complaint, Part 22 Rules, and Standing Order via personal service. *See* Dkt. 2 and 3. Respondent did not file a timely answer to the Complaint by the deadline specified at 40 C.F.R. § 22.15(a). As a result, on November 7, 2023, Complainant filed a Motion for Default, Memorandum in Support of Complainant’s Motion for Default, Declaration of Scott Wilder, and 39 Exhibits.

On November 15, 2023, the Presiding Officer issued an Order on PII and CBI directing Complainant “to redact all PII and potential CBI from the Exhibits and to then refile the entire set of Exhibits that Complainant proposes be considered in support of the Motion.” *See* Dkt. 4. Shortly thereafter, Complainant and Respondent reached an agreement to resolve the matter through settlement. On November 27, 2023, Complainant filed with the Regional Hearing Clerk a fully executed Consent Agreement seeking the Presiding Officer to issue a Final Order constituting a settlement of all claims for civil penalties pursuant to the CWA. Due to a procedural error by Complainant, the docket number for that fully executed Consent Agreement was different than the docket number for this proceeding.

On November 28, 2023, the Presiding Officer issued an Order to Show Cause, stating that “before issuance of a ruling on the settlement request of the parties, Complainant is directed to refile the Exhibits, as redacted, and withdraw the Motion.” *See* Dkt. 7. On November 30, 2023, Complainant filed a motion to Withdraw Motion for Default along with refiled and redacted exhibits to the Motion to Withdraw Motion for Default. *See* Dkt. 11. On December 20, 2023, the Presiding Officer granted Complainant’s Motion to Withdraw Motion for Default and

directed Complainant “to either (1) notify the undersigned that Complainant has obtained a waiver from these individuals to the public disclosure of the PII information and statements through uploading of these resubmitted Exhibits into the electronic filing system or (2) further redact the Exhibits for additional PII in a manner deemed satisfactory to the EPA employee and officials for Respondent and resubmit the Exhibits as further redacted.” That same day, the Consent Agreement and Final Order (Docket Number CWA-10-2024-0012) resolving the CWA violations in this matter was issued containing a different docket number than this proceeding due to a procedural error by Complainant. On December 26, 2023, Complainant filed a notice to the Presiding Officer explaining that Complainant “obtained a waiver from [the Respondent and the EPA employee referenced in the Presiding Officer’s December 20, 2023 Order on PII and Motion to Withdraw Motion for Default] to the public disclosure of the PII information and statements through uploading of these resubmitted Exhibits into the electronic filing system.” *See Dkt. 15.*

The CWA violations at issue in this matter have been fully resolved through a Consent Agreement and Final Order issued under a different docket number (CWA-10-2024-0012). Therefore, Complainant respectfully requests that the Presiding Officer grant Complainant’s Motion to Terminate these Proceedings.

Respectfully Submitted,

Dated: June 17, 2024

PATRICK
JOHNSON

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