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EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA 10-2008-0009
Anthony Lerma,)	COMPLAINANT'S INITIAL
Anchorage, Alaska)	PREHEARING INFORMATION
)	EXCHANGE
Respondent.)	

I. INTRODUCTION

Pursuant to the Administrative Law Judge's March 14, 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:

1. Margo Young (fact witness): Ms. Young was employed as a Compliance Officer for the National Pollutant Discharge Elimination System Compliance Unit ("NCU"), Office of

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

1 Compliance Enforcement, Region 10, United States Environmental Protection Agency ("EPA").
2 She continues to work for EPA, Region 10, in a different capacity. Her office is located in
3 Seattle, Washington. Ms. Young's duties included inspecting facilities subject to regulation
4 under the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251, *et seq.*, providing compliance
5 assistance to willing landowners and collecting and reviewing evidence regarding alleged
6 violations of the CWA. Ms. Young, together with other employees of EPA, participated in a
7 Clean Water Act compliance inspection of Respondent's construction site on May 11, 2006. Ms.
8 Young is expected to testify to her observations during her inspections of the subject property,
9 her review of the evidence in this matter, and the factual basis for EPA's determination that the
10 Respondent has violated the CWA.
11

12 2. Tara Martich (fact witness): Ms. Martich is employed as a Compliance Officer
13 for the NCU, Office of Compliance Enforcement, Region 10, EPA. Her office is located in
14 Anchorage, Alaska. Ms. Martich's duties include inspecting facilities subject to regulation under
15 the CWA, providing compliance assistance to willing landowners, and collecting and reviewing
16 evidence regarding alleged violations of the CWA. Ms. Martich participated, together with other
17 employees of EPA, in CWA compliance inspections of the subject property on October 4, 2004,
18 and June 27, 2007. Ms. Martich is expected to testify to her observations during her inspections
19 of the subject property and witness interviews, her review of the evidence in this matter, and the
20 factual basis for EPA's determination that the Respondent has violated the CWA.
21

22 3. Chae John Park (fact witness): Mr. Park is employed as a Case Developer for
23 NCU, Office of Compliance Enforcement, Region 10, EPA. His office is located in Seattle,
24 Washington. Mr. Park's duties include developing cases for enforcement purposes, synthesizing
25

1 inspection reports, and collecting and reviewing evidence regarding alleged violations of the
2 CWA. Mr. Park has reviewed the inspection reports prepared in this case. Mr. Park is expected
3 to testify to his understanding of Respondent's submission of a Notice of Intent to seek coverage
4 under the CGP and to the scope, gravity, and seriousness of CWA violations documented in the
5 May 11, 2006, and June 27, 2007, inspection reports. In addition, Mr. Park will testify to his
6 investigation into the storm water sewer line leading from Respondent's construction site to
7 Campbell Creek and his investigation of other construction activities in the area.

8
9 4. Kristine Karlson (expert witness): Ms. Karlson is employed as the storm water
10 enforcement coordinator for NCU, Office of Compliance Enforcement, Region 10, EPA. Her
11 office is located in Seattle, Washington. Ms. Karlson's duties include case development,
12 enforcement, and community outreach and education related to EPA's storm water program.
13 Ms. Karlson's resume is attached hereto as Complainant's Exhibit ("CX")-25. Ms. Karlson is
14 expected to testify about the construction storm water program, the CGP, and EPA's
15 enforcement authority under the CWA and the storm water program.

16 5. Lloyd Oatis (expert witness): Mr. Oatis is employed as a financial analyst for
17 EPA Region 10. His office is located in Seattle, Washington. His resume is attached hereto as
18 CX-14. Mr. Oatis is identified so that he may testify as an expert regarding the economic benefit
19 derived by Respondent as a result of Respondent's noncompliance with storm water regulations
20 and regarding Respondent's ability to pay. Respondent filed his prehearing exchange on June
21 16, 2008: one day ahead of the deadline this Court set for Complainant to file its initial
22 prehearing exchange. Complainant did not have sufficient time to evaluate the materials
23 submitted in Respondent's prehearing exchange to address either the economic benefit or ability
24
25

1 pay issue. However, Complainant will provide additional information regarding any documents
2 or exhibits to support its economic benefit analysis in a rebuttal prehearing exchange, and will
3 address the ability to pay issue when it proposes a specific penalty amount.

4 6. Mark Schroeder (expert witness): Mr. Schroeder has a Master of Science degree
5 in National Resources Management from Humboldt State University. Mr. Schroeder was
6 employed by the U.S. Fish and Wildlife Service in the Anchorage Fish and Wildlife Field Office
7 from 1997 to 2006. As part of his official duties and in cooperation with the Anchorage
8 Waterways Council and other agencies, Mr. Schroeder has evaluated ecological function of
9 Anchorage streams and the relationship between turbidity and fish survival and health. His
10 resume is attached hereto as CX-17. Mr. Schroeder is expected to testify to the impacts of
11 unnatural sediment loading to aquatic ecosystems in general, and in Anchorage waterways in
12 particular.

13
14 7. Steve Ellis (fact witness): Mr. Ellis is employed as a Storm Water Plan Reviewer
15 for the Municipality of Anchorage. Mr. Ellis's office is located in Anchorage, Alaska. Mr.
16 Ellis' duties include reviewing plans for permanent and temporary storm water treatment systems
17 at residential, commercial, and subdivision construction sites. Mr. Ellis is expected to testify
18 about his observations of dewatering activities and his familiarity with Respondent's
19 construction site. In addition, Mr. Ellis will testify about his understanding of the storm sewer
20 line that leads from Respondent's property to Campbell Creek, including any pollution
21 abatement technology existing in the storm sewer line.

22
23 8. Cherie Northon (fact witness): Ms. Northon is the Little Campbell Creek Rescue
24 Coordinator for the Anchorage Waterways Council. Ms. Northon is expected to testify to her
25

1 observations of construction activity on and dewatering of the subject property on several
2 occasions in 2007 and 2008. She is also expected to testify to her observations of Campbell
3 Creek at and near the location of the storm sewer outfall. Ms. Northon has photographed
4 dewatering activity at the subject property and stream conditions in Campbell Creek.

5 **III. DOCUMENTS AND EXHIBITS**

6 **CX - 1** May 11, 2006 Inspection Report;

7 **CX - 2** Respondent's Storm Water Pollution Prevention Plan;

8 **CX - 3** Notice of Intent, Anthony Lerma, Operator;

9 **CX - 4** June 27, 2007 Inspection Report;

10 **CX - 5** Satellite image of Respondent's construction site;

11 **CX - 6** Satellite image of Respondent's construction site with elevation contour lines;

12 **CX - 7** Satellite image of Respondent's construction site relative to Campbell Creek and
13 Cook Inlet;

14 **CX - 8** Tara Martich memorandum to file, June 16, 2008, re: June 5, 2008, Interview
15 with Janice Ray and James Burgin;

16 **CX - 9** Chae Park memorandum to file, May 14, 2008, re: Description of Storm Water
17 Drain System;

18 **CX - 10** Chae Park memorandum to file, June 9, 2008, re: ADOT Activity in the Vicinity
19 of the Tony Lerma Site;

20 **CX - 11** Precipitation data for Anchorage, Alaska;

21 **CX - 12** Construction General Permit – Fact Sheet;

22 **CX - 13** Construction General Permit;

1 CX - 14 Resume of Lloyd B. Oatis;

2 CX - 15 Anthony Lerma Quit Claim Deed;

3 CX - 16 Property Appraisals, Municipality of Anchorage, Alaska;

4 CX - 17 Resume of Mark Schroeder;

5 CX - 18 Restoring ecological function and value to aquatic resources in the Little
6 Campbell Creek watershed, by Mark Schroeder, May 17, 2005;

7 CX - 19 Turbidity Monitoring in Little Campbell Creek, Summer 2005, by Mark
8 Schroeder, November 2005;

9 CX - 20 Frequency and Distribution of Fish Kills in Little Campbell Creek, July -
10 September 2005, by Mark Schroeder, Final Draft January 2006;

11 CX - 21 Storm water system map, Municipality of Anchorage, Alaska;

12 CX - 22 As-built designs for storm sewer line leading to Campbell Creek;

13 CX - 23 Municipality of Anchorage, Stop Work Order, issued to Anthony Lerma;

14 CX - 24 Photographs of Anthony Lerma's construction site and of a storm sewer outfall
15 leading to Campbell Creek, taken by Cheri Northon; and
16

17 CX - 25 Resume of Kristine Karlson.

18 **IV. CALCULATION OF PROPOSED PENALTY**

19 In accordance with this Court's Prehearing Order and Section 22.14 of the Part 22 Rules,
20 40 C.F.R. § 22.14(a)(4)(ii), the Complaint in this matter does not include a specific penalty
21 demand. Pursuant to Section 22.19 of the Part 22 Rules, 40 C.F.R. § 22.19(a)(4), and this
22 Court's Prehearing Order, Complainant intends to file (no more than 15 days after Respondent
23 files its prehearing information exchange) a document specifying a proposed penalty and
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1 explaining how this penalty was calculated in accordance with the criteria set forth in the CWA.
2 The following discussion outlines the legal and factual framework Complainant will employ in
3 proposing this specific penalty amount.

4 Section 309(g) of the CWA authorizes the assessment of an administrative civil penalty
5 for a Section 301 violation of up to \$10,000 per day for each day the violation continues, with a
6 maximum penalty of \$125,000. Pursuant to the Debt Collection Improvement Act of 1996, 31
7 U.S.C. § 3701, the statutory maximum administrative penalty amounts have been increased to
8 \$11,000 per day, with a maximum penalty of \$157,500. 40 C.F.R. § 19.4, Table 1.

9
10 The violations alleged in this case concern the Construction General Permit. In July of
11 2003, EPA re-issued the NPDES General Permit for Storm Water Discharges from Construction
12 Activities ("CGP") pursuant to Section 402 of the Act, 33 U.S.C. § 1342. The CGP became
13 effective on July 1, 2003 and authorizes certain discharges of storm water associated with
14 construction activities. The CGP's coverage extends to all facilities in the State of Alaska and
15 requires permittees to comply with the conditions and requirements set forth in the CGP.
16 Violations of the CGP constitute violations of Section 402 of the CWA. Complainant alleges a
17 minimum of 41 violations of the CGP over 35 days. Consequently, an appropriate starting point
18 for the proposed penalty is at the maximum penalty of \$157,500. *See Atlantic States Legal*
19 *Foundation v. Tyson Seafoods*, 897 F.2d 1128, 1142 (11th Cir. 1990) (calculating CWA penalty
20 using "top down" method, starting with the statutory maximum and reducing that amount for any
21 statutory factors in mitigation of the penalty); *Catskill Mountains Chapter of Trout Unlimited,*
22 *Inc. v. City of New York*, 244 F. Supp. 2d 41, 49 (N.D.N.Y. 2003) (applying top-down approach
23 to penalty calculation for CWA violations); *United States v. Marine Shale Processors*, 81 F.3d
24
25

1 1329, 1337 (5th Cir. 1996) (“[W]e note that when imposing penalties under the environmental
2 laws, courts often begin by calculating the maximum possible penalty, then reducing that penalty
3 only if mitigating circumstances are found to exist.”).

4 Complainant will propose a specific penalty in this matter that is based on the applicable
5 statutory penalty factors in section 309(g)(3) of the CWA. These factors are “[1] the nature,
6 circumstances, extent, and gravity of the violation, or violations, and, with respect to the violator,
7 [2] ability to pay, [3] any prior history of such violations, [4] the degree of culpability, [5]
8 economic benefit or savings (if any) resulting from the violation, and [6] such other matters as
9 justice may require.” 33 U.S.C. § 1319(g)(3).
10

11 In accordance with the Court's Prehearing Order, Complainant respectfully submits the
12 following statement describing the factual information it considers relevant to the assessment of
13 a penalty:

14 1. **Nature, Circumstances, Extent, and Gravity of Violation:** The nature,
15 circumstances, extent, and gravity of the violation reflect the “seriousness” of the violation. *In re*
16 *Urban Drainage and Flood Control District, et al.*, Docket No. CWA-VIII-94-20-PII, 1998 EPA
17 ALJ Lexis 42, at *56 (Initial Decision, June 24, 1998). The seriousness of a particular violation
18 depends primarily on the actual or potential harm¹ to the environment resulting from the
19 violation, as well as the importance of the violated requirement to the regulatory scheme. *See id.*
20

21
22 ¹ In analyzing the degree of harm posed by a violation, it is not necessary to establish that the violation caused
23 actual harm in order to justify imposition of a substantial civil penalty; the fact that the violation posed potential
24 harm may be sufficient. *See United States v. Gulf Park Water Company, Inc.*, 14 F. Supp. 2d 854, 860 (S.D. Miss.
25 1998) (“The United States is not required to establish that environmental harm resulted from the defendants’
discharges or that the public health has been impacted due to the discharges, in order for this Court to find the
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

1 Complainant believes that the nature, circumstances, extent, and gravity of the violations
2 in this case are significant and justify a substantial penalty. Under the CGP, an operator of a
3 construction site is required to prepare a storm water pollution prevention plan ("SWPPP").
4 CGP at Part 3.1. The required contents of a SWPPP are set forth in Part 3 of the CGP. On May
5 11, 2006, EPA conducted an inspection of Respondent's construction site. The inspection
6 revealed that Respondent had violated the following SWPPP requirements: (1) the SWPPP was
7 not signed by Respondent; (2) the SWPPP did not identify all operators and their areas of
8 control; (3) the SWPPP site map did not clearly show the location of storm water discharges; (4)
9 the SWPPP site map did not depict the location of materials or equipment storage; (5) the
10 SWPPP did not include dates for major grading activities, temporary construction cessation, or
11 initiation of stabilization practices; (6) the SWPPP was not revised to reflect the existence or use
12 of an earthen berm built at Respondent's construction site; (7) the SWPPP did not describe the
13 intended sequence and timing of construction activities that would disturb soils; (8) the SWPPP
14 did not identify sources of non-storm water discharges; and (9) the SWPPP did not include the
15 required Endangered Species Act documentation. EPA conducted a follow-up inspection on
16 June 27, 2007. During that inspection, EPA found no indication that the SWPPP had been
17 modified to address the deficiencies identified in the May 11, 2006 inspection.
18

19 Complainant will show that Part 3.13.A. of the CGP specifies storm water control
20 measures must be properly selected, installed, and maintained in accordance with relevant
21

22
23 more difficult and sometimes impossible to demonstrate, it need not be proven to establish that substantial penalties
24 are appropriate in a Clean Water Act case."), *aff'd* 150 F.3d 259 (3d Cir. 1998); *Urban Drainage*, 1998 EPA ALJ
25 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*)fs20 , 191 F.3d 516 (4th Cir. 1999)).

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1 manufacturer specifications and good engineering practices. Complainant has evidence that (1)
2 at the time of EPA's May 11, 2006 inspection, a storm drain located near Laurel Street did not
3 have any controls; (2) at the time of EPA's May 11, 2006 inspection, an earthen berm, which
4 appeared to be utilized to prevent discharges of storm water from the construction site, was
5 breached at several points; and (3) on June 27, 2007, EPA inspectors revisited the construction
6 site and observed some control measures being utilized, such as straw bales and silt fences;
7 however, the straw bales had breaches indicating improper installation and/or maintenance, the
8 silt fences were improperly installed with gaps between the joining sections, and portions of the
9 silt fence had collapsed indicating poor maintenance.

11 Complainant will show that Part 3.10.A of the CGP requires a permittee to conduct
12 inspections: (1) "[a]t least once every 7 calendar days," or (2) "[a]t least once every 14 calendar
13 days and within 24 hours of the end of a storm event of 0.5 inches or greater." The inspection
14 frequency must be identified in the SWPPP. Complainant has evidence that Respondent did not
15 conduct any inspections from at least the date he received CGP coverage through EPA's second
16 Site inspection on June 27, 2007.

17 Finally, Complainant will show that Part 3.13.D. of the CGP specifies that stabilization
18 measures must be initiated at least within fourteen (14) days after construction activity is
19 temporarily or permanently ceased. Complainant has evidence that during the May 11, 2006,
20 inspection active construction had ceased and that no stabilization measures had been
21 implemented at Respondent's construction site.

23 The panoply of violations that Complainant is prepared to present at trial represent a
24 failure to implement management practices that, as discussed below, resulted in both actual and
25

1 potential harm to waters of the United States. Furthermore, Complainant is prepared to present
2 evidence that Respondent's violations undermine the regulatory scheme EPA has established to
3 prevent the discharge of construction storm water. The testimony and evidence Complainant
4 expects to present at trial will demonstrate that the construction storm water program and the
5 CGP are not mere formalisms under the CWA. Like other federal environmental regulations, the
6 storm water program and CGP rely upon regulated entities to implement, monitor, and modify
7 their activities to conform with the CWA. Failure to comply with terms of the CGP undermines
8 the regulatory strictures of the CWA, as well as EPA's ability to satisfy its congressional
9 mandate to protect and enhance the quality of the Nation's waters and to promote public health
10 and welfare. Penalizing Respondent for failure to satisfy the terms of the CGP serves to level the
11 playing field for those who have fully complied with the CGP. For all of these reasons,
12 Complainant believes that the violations at issue in this case are serious and warrant a substantial
13 civil penalty.

15 Complainant recognizes, however, that the seriousness of the violations at issue in this
16 case would not, standing alone, warrant assessment of the maximum administrative civil penalty.
17 For instance Respondent did attempt to implement some management practices to prevent
18 discharge of construction storm water, and some of Respondent's violations constitute a failure
19 to maintain updated plans concerning control of construction storm water. When Complainant
20 proposes a specific penalty, it will weigh the considerations mentioned above, as well as any
21 other information submitted in Respondent's prehearing exchange.
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1 2. Respondents' Ability to Pay: In its 1994 *New Waterbury, Ltd.* decision, the
2 Environmental Appeals Board ("EAB") set forth a now well-established process for considering
3 and proving in the context of an administrative hearing a violator's ability to pay a civil penalty:

4 Where ability to pay is at issue going into a hearing, the Region will need to
5 present some evidence to show that it considered the respondent's ability to pay a
6 penalty. The Region need not present any *specific* evidence to show that the
7 respondent *can pay* or obtain funds to pay the assessed penalty, but can simply
8 rely on some *general* financial information regarding the respondent's financial
9 status which can support the *inference* that the penalty assessment need not be
10 reduced. Once the respondent has presented *specific* evidence to show that despite
11 its sales volume or apparent solvency it cannot pay any penalty, the Region as
12 part of its burden of proof in demonstrating the "appropriateness" of the penalty
13 must respond either with the introduction of additional evidence to rebut the
14 respondent's claim or through cross examination it must discredit the
15 respondent's contentions

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

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

18 Accordingly, while EPA has the initial burden of production to establish that the Respondent has
19 the ability to pay the proposed penalty, "[t]he burden then shifts to the respondent to establish
20 with specific information that the proposed penalty assessment is excessive or incorrect."

21 *Chempace Corp.*, slip op. at 22. Failure by a respondent to provide specific evidence substan-
22 tiating a claimed inability to pay results in waiver of that claim. *In re Spitzer Great Lakes Ltd.*,
23 TSCA Appeal No. 99-3, slip op. at 29 (EAB, June 30, 2000).

24 At any hearing in this matter, Complainant will establish that it has considered
25 Respondent's ability to pay in proposing a civil penalty and will, at a minimum, present general
financial information about Respondent that shows that he appears to be financially solvent and
is the fee owner of several valuable parcels of land. Respondent filed his prehearing exchange
on June 16, 2008: one day ahead of the deadline this Court set for Complainant to file its initial

1 prehearing exchange. Complainant did not have sufficient time to evaluate the materials
2 submitted in Respondent's prehearing exchange to address Respondent's ability pay in this
3 pleading. However, Complainant will consider the information included in Respondent's
4 prehearing exchange when proposing a specific penalty amount.

5 3. Prior History of Violations: Complainant is unaware of Respondent having any
6 history of prior violations of the CWA.

7 4. Degree of Culpability: A "respondent's willful disregard of the permit process or
8 Clean Water Act requirements" may be used to support the assessment of the maximum penalty
9 allowed by statute. See, e.g., *In re Urban Drainage*, 1998 EPA ALJ Lexis 42, at *68. In this
10 case, Respondent's disregard of CWA requirements manifests itself in two ways.

11
12 First, Respondent applied for and received coverage under the CGP, yet he failed to fully
13 implement and maintain storm water management practices. Complainant has evidence that
14 Respondent's violations not only created the potential for discharges of pollutants, but in fact did
15 result in the discharge of pollutants into Campbell Creek, which is a salmon-bearing stream and a
16 jurisdictional water of the United States. In addition, Complainant expects to present evidence
17 regarding the impact of unnatural sediment loads on Campbell Creek.

18 Second, Respondent failed to comply with requirements of the CGP related to developing
19 a SWPPP, monitoring management practices at the construction site, and modifying the SWPPP
20 and practices as needed. That these violations existed when EPA inspected Respondent's
21 construction site in May 11, 2006, indicates a degree of culpability that suggests a failure to
22 comply with the law. However, that many of these same violations appeared at EPA's second
23 inspection on June 27, 2007, demonstrate a degree of culpability suggesting an abject disregard
24

1 of the CGP and the CWA. Respondent's degree of culpability, as evidenced by all of these
2 considerations, warrants a substantial civil penalty. *See e.g., In re Dr. Marshall C. Sasser,*
3 3 E.A.D. 703, 708 (CJO 1991) (noting that wilful disregard of the Section 404 permitting process
4 and refusal to comply with restoration orders are grounds supporting assessment of maximum
5 penalty); *In re Urban Drainage*, 1998 EPA ALJ Lexis 42, at *74 (noting that the respondent's
6 degree of cooperation with EPA in rectifying the violations is a factor to consider in determining
7 an appropriate penalty).

8
9 5. **Economic Benefit:** Complainant believes that Respondent has realized at least a
10 modest economic benefit as a result of the violations described above. This economic benefit
11 includes the delayed or avoided compliance costs, such as consultant costs and fees,
12 implementation of storm water management technologies or practices, as well as maintenance
13 and inspection costs, all of which would have been necessary to fully implement the
14 requirements under the CGP. Complainant does not have in its possession at this time sufficient
15 information to quantify Respondent's economic benefit of noncompliance. Should such
16 information not be provided through Respondent's prehearing exchange, Complainant reserves
17 the right to seek discovery in accordance with Section 22.19(e) of the Part 22 Rules so that this
18 information may be considered in proposing and assessing a specific civil penalty.

19
20 6. **Other Matters as Justice May Require:** Credible and consistent enforcement of
21 the Act's requirements to comply with the CGP is necessary to deter this Respondent and others
22 similarly situated from violating the Act or the terms and conditions of the CGP. Complainant is
23 presently unaware of any "other matters as justice may require" that would warrant a downward
24 adjustment to the penalty. *See In re Spang & Co.*, 6 E.A.D. 226, 250 (EAB 1995) ("[U]se of
25

1 the justice factor should be far from routine, since application of the other adjustment factors
2 normally produces a penalty that is fair and just.”).

3 **V. LOCATION AND ESTIMATED DURATION OF HEARING**

4 In accordance with 40 C.F.R. § 22.19(d) and 22.21(d), Complainant proposes Anchorage,
5 Alaska for the hearing location. Anchorage is in the Municipality of Anchorage, Alaska, where
6 the relevant EPA office is located. Court rooms are typically available in the building that
7 houses EPA’s Alaska office (where one of Complainant’s witnesses work). In addition, four of
8 Complainant’s witnesses live in Anchorage. Respondent’s attorney also maintains an office
9 Anchorage, Alaska.

10
11 Complainant estimates that it will require approximate one and one-half days, exclusive
12 of Respondent’s cross examination, to put on its case-in-chief. The length of time required for
13 rebuttal testimony and cross examination of Respondent’s witnesses will depend on the numbers
14 and substance of documents and witnesses disclosed in Respondent’s prehearing information
15 exchange.

16 As of the date of this initial prehearing exchange, counsel and/or witnesses for
17 Complainant would be unavailable to participate in a hearing during September and October,
18 2008.

19 **VI. PAPERWORK REDUCTION ACT**

20
21 The Paperwork Reduction Act (“PRA”), 44 U.S.C. § 3501 *et seq.*, is applicable to the
22 National Pollutant Discharge Elimination System. Applicable Office of Management and
23 Budget (“OMB”) control numbers and Information Collection Request (“ICR”) numbers are
24 listed in the following table:
25

CFR Citations and corresponding Information Collection Request Approvals	ICR			
	2040-0004	2040-0086	2040-0110	2040-0250
40 C.F.R. § 122.26(c)		X		
40 C.F.R. § 122.28(b)				X
40 C.F.R. § 122.41(h), (j), and (l)			X	
40 C.F.R. § 122.47(a)			X	
40 C.F.R. § 122.48	X			

All applicable ICRs were active and in force, without lapse in OMB approval, during the alleged period of violation in this case. Details of these approvals and effective dates are given below:

1. OMB Control Number 2040-0004 (NPDES and Sewage Sludge Monitoring Reports): On September 13, 2005, OMB extended this ICR approval through September 30, 2008.

2. OMB Control Number 2040-0086 (Applications for NPDES Discharge Permits and the Sewage Sludge Management Permits): On June 12, 2003, OMB extended this ICR approval through June 30, 2006. On June 29, 2006, EPA submitted a request to OMB for an emergency extension of the expiration date, which was approved the same day with a new expiration date of September 30, 2006. On July 13, 2006, EPA submitted a renewal request to OMB, which was approved October 31, 2006, with an expiration date of October 31, 2009.

3. OMB Control Number 2040-0110 (NPDES Compliance Assessment / Certification Information): On May 17, 2004, EPA submitted a renewal request to OMB, which was approved September 28, 2004, with an expiration date of September 30, 2007. On September 27, 2007, EPA submitted a renewal request to OMB, which was approved February 6, 2008, with a current expiration date of February 28, 2011.

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1 4. OMB Control Number 2040-0250 (NPDES Regulation and Effluent Limitation

2 Guidelines and Standards for Concentrated Animal Feeding Operations): On July 10, 2003,
3 OMB approved this new ICR, with an expiration date of July 31, 2006. On July 12, 2006, EPA
4 submitted a renewal request to OMB, which was approved November 1, 2006, with an expiration
5 date of November 30, 2009.

6 EPA has complied with section 3512 of the PRA control number display requirement by
7 publishing the ICR and OMB approval numbers in the Federal Register and 40 C.F.R. § 9.1.

8 Displaying specific information regarding NPDES permits is a regulatory “collection of
9 information.” Since such display is regulatory rather than collection of information through
10 forms or questionnaires, publishing the control number and the disclaimer statement in the
11 Federal Register satisfies the display requirements in the OMB regulations, 5 C.F.R. §
12 1320.3(f)(3). Publication of the OMB approval in 40 C.F.R. part 9 is an alternative method of
13 satisfying the display requirements. See 40 C.F.R. § 1320.5(b).

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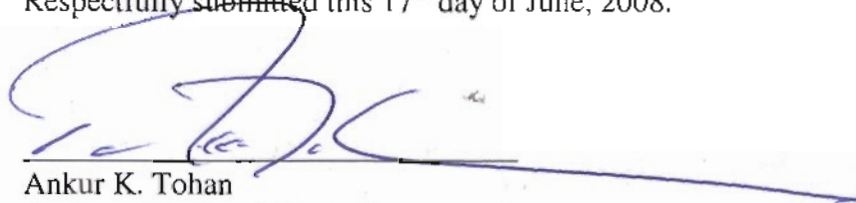
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VII. RESERVATIONS

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

Respectfully submitted this 17th day of June, 2008.



Ankur K. Tohan
Assistant Regional Counsel

CERTIFICATE OF SERVICE

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

Original and one copy, hand-delivered:

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

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

David Shoup
Tindall Bennett & Shoup PC
508 W 2nd Ave, 3rd Floor
Anchorage, AK 99501

Judge Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., NW
Washington, DC 20460-2001

Dated:

June 17, 2008

Lisa Brigham

Office Manager
U.S. EPA Region 10

COMPLAINANT'S INITIAL PREHEARING
INFORMATION EXCHANGE - 19

DOCKET NO. CWA 10-2008-0009

U.S. Environmental Protection Agency
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