

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO.
	)	CWA-10-2023-0020
CHILL TRANSPORTATION LLC,	)	
	)	<b>COMPLAINT</b>
Toppenish, Washington,	)	
	)	
Respondent.	)	
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**I. STATUTORY AUTHORITY**

1.1. This administrative complaint (Complaint) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA or Complainant) by Section 311(b)(6) of the Federal Water Pollution Control Act (CWA), 33 U.S.C. § 1321(b)(6) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1). The Administrator has delegated this authority to the Regional Administrator of EPA Region 10, who in turn has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division in EPA Region 10.

1.2. Pursuant to Section 311(b)(6)(A) and (b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(A) and (B), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby proposes the assessment of a civil penalty against Chill Transportation LLC (Respondent) for violations of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

1.3. Section 311(b)(11) of the CWA, 33 U.S.C. § 1321(b)(11), states that civil penalties shall not be assessed under both Section 311(b) of the CWA, 33 U.S.C. § 1321(b), and Section 309 of the CWA, 33 U.S.C. § 1319, for the same discharge. As a result, should civil penalties not be assessed under Section 311(b)(6)(A) and (b)(6)(B) of the CWA, 33 U.S.C.

§ 1321(b)(6)(A) and (B), EPA hereby proposes the assessment of a civil penalty against Respondent for violations of Section 301 of the CWA, 33 U.S.C. § 1311, pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22.

1.4. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), EPA has provided the State of Washington with an opportunity to consult with EPA on this matter.

## **II. STATUTORY AND REGULATORY BACKGROUND**

2.1. As provided in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

2.2. CWA Section 311 Discharge. The CWA prohibits the discharge of oil into or upon the navigable waters of the United States and adjoining shorelines in such quantities as the President determines may be harmful to the public health or welfare or the environment of the United States. 33 U.S.C. § 1321(b)(3).

2.3. The CWA defines “discharge” to include “any spilling, leaking, pumping, pouring, emitting, emptying or dumping . . . .” 33 U.S.C. § 1321(a)(2).

2.4. “Oil” means “oil of any kind or in any form.” 33 U.S.C. § 1321(a).

2.5. “Oil” is further defined to include, inter alia, “petroleum” and “fuel oil.” 40 C.F.R. § 112.2.

2.6. Section 502(7) of the CWA defines “navigable waters” as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). In turn, at the time of the filing of

this Complaint, “waters of the United States” was defined to include, inter alia, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; tributaries to such waters; and wetlands adjacent to the foregoing waters. 40 C.F.R. § 110.1 (1993).<sup>1</sup>

2.7. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), EPA has determined by regulation that the quantities of oil that may be harmful to the public health or welfare or the environment of the United States include discharges of oil that: (1) violate applicable water quality standards; (2) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or (3) cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. 40 C.F.R. § 110.3.

2.8. An “onshore facility” is any facility (including, but not limited to, motor vehicles and rolling stock) of any kind in, on, or under any land within the United States other than submerged land. 33 U.S.C. § 1321(a).

2.9. CWA Section 301 Discharge. The CWA further prohibits the discharge of any pollutant, including oil, by any person, except, inter alia, in compliance with a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. 33 U.S.C. § 1311(a).

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<sup>1</sup> The applicable regulatory definition of “waters of the United States” at the time of the violations, known as the Navigable Waters Protection Rule (85 Fed. Reg. 22,250 (April 21, 2020)) was vacated (*Pascua Yaqui Tribe, et al. v. U.S. Env’tl. Prot. Agency*, No. CV-20-00266 (D. Ariz. Aug. 30, 2021)), and under “the normal rule of retroactive application,” *see, e.g., Harper v. Virginia Dept. of Taxation*, 509 U.S. 86, 97 (1993) and *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529, 535 (1991), vacatur of the Navigable Waters Protection Rule is retroactive. As a result, the applicable regulatory definition of “waters of the United States” is that definition, cited here, that was effective prior to the Navigable Waters Protection Rule. On January 18, 2023, EPA and the U.S. Army Corps of Engineers published a revised regulatory definition of “waters of the United States” in the Federal Register and that rule will be effective on March 20, 2023 (88 Fed. Reg. 3004).

2.10. “Discharge of a pollutant” means any addition of any pollutant to navigable waters from any point source. 33 U.S.C. § 1362(12).

2.11. “Pollutant” is defined to include “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).

2.12. A “person” is an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body. 33 U.S.C. § 1362(5).

2.13. Section 502(7) of the CWA defines “navigable waters” as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). In turn, at the time of the filing of this Complaint, “waters of the United States” was defined to include, inter alia, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; tributaries to such waters; and wetlands adjacent to the foregoing waters. 40 C.F.R. § 122.2 (1993).<sup>2</sup>

2.14. A “point source” is any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. 33 U.S.C. § 1362(14).

2.15. Civil Penalty. Pursuant to Section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6), EPA is authorized to assess a civil penalty against any owner, operator, or person in charge of an onshore facility from which oil or a hazardous substance is discharged in

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<sup>2</sup> *Id.*

violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3). Additionally, Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes EPA to assess administrative penalties against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311.

### **III. ALLEGATIONS**

#### **General Allegations**

3.1 Respondent is a “person” under Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7), 1362(5).

3.2 On August 8, 2021, a semi-truck and refrigerated trailer (“Truck”) crashed and overturned on Washington State Route 97 near Milepost 57 within the external boundaries of the Yakama Indian Reservation, into and near Toppenish Creek, onto the adjoining shoreline of Toppenish Creek, and to wetlands adjacent to Toppenish Creek.

3.3 The crash occurred within the Toppenish National Wildlife Refuge, one of eight refuges in the Mid-Columbia River National Wildlife Refuge Complex and part of the Pacific Flyway for migratory waterfowl.<sup>3</sup>

3.4 Toppenish Creek and its adjacent wetlands support Middle Columbia steelhead,<sup>4</sup> a species listed as threatened under the Endangered Species Act,<sup>5</sup> as well as lamprey, a species of significant cultural importance to the Confederated Tribes and Bands of the Yakama Nation.<sup>6</sup>

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<sup>3</sup> See Toppenish National Wildlife Refuge, U.S. Fish and Wildlife Service, <https://www.fws.gov/refuge/toppenish/> (accessed Jan. 31, 2023).

<sup>4</sup> See Abundance and distribution of steelhead (*Oncorhynchus mykiss*) in Toppenish Creek, Yakama Confederated Tribes, [https://dashboard.yakamafish-star.net/sites/default/files/2018-06/2013\\_Project\\_199603501YRWPandTopME\\_Sthd\\_july\\_june.pdf?current=/DataQuery/Reports](https://dashboard.yakamafish-star.net/sites/default/files/2018-06/2013_Project_199603501YRWPandTopME_Sthd_july_june.pdf?current=/DataQuery/Reports).

<sup>5</sup> See 71 FR 833 (Jan. 5, 2006) (Endangered and Threatened Species: Final Listing Determinations for 10 Distinct Population Segments of West Coast Steelhead): <https://www.federalregister.gov/documents/2006/01/05/06-47/endangered-and-threatened-species-final-listing-determinations-for-10-distinct-population-segments>.

<sup>6</sup> See Pacific Lamprey Project, Yakama Nation Fisheries, <https://yakamafish-nsn.gov/restore/projects/pacific-lamprey-project> (accessed Jan. 31, 2023).

3.5 At all times relevant to this Complaint, Respondent was the “owner or operator” of the Truck within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6).

3.6 The Washington State Police issued the Truck driver a traffic violation citation for improper lane usage associated with the crash, stating in an infraction report that “[h]ad the [Truck] remained within the guidelines of the lane, the collision would have been avoided.”

3.7 The Truck released motor/lube oil, or petroleum, from the Truck’s motor and lubricating systems, and diesel fuel, or fuel oil, from the trailer’s refrigeration 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.

3.8 Shortly after the crash, responders from EPA, the Confederated Tribes and Bands of the Yakama Nation, and the Washington State Department of Ecology initiated spill response and cleanup activities, including placement of boom and absorbent pads, oil-contaminated soil excavation and removal, pumping and removing oil contaminated water using a vacuum truck, and water quality monitoring.

3.9 The spill response team observed and documented an oil sheen on the surface of Toppenish Creek. The spill response team also observed and documented oil on the adjoining shoreline of Toppenish Creek and on wetlands adjacent to Toppenish Creek.

3.10 Toppenish Creek is a perennial tributary of the Yakima River, which is a perennial tributary to the Columbia River. The Columbia River is currently used, was used in the past, and may be susceptible to use in interstate or foreign commerce, and is subject to the ebb and flow of the tide. Thus, Toppenish Creek and its adjacent wetlands are “navigable waters” as defined under Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and are “waters of the United States” within the meaning of 40 C.F.R. §§ 122.2 (1993) and 110.1 (1993).

3.11 Respondent failed to notify the National Response Center of the discharge, as required by Section 311(b)(5) of the CWA, 33 U.S.C. § 1321(b)(5), and 40 C.F.R. § 110.6.

3.12 CWA Section 311 Violation. At all times relevant to this Complaint, Respondent's Truck was an "onshore" facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

3.13 At all times relevant to this Complaint, Respondent was the "owner or operator" of the Truck within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6).

3.14 At least on August 8, 2021, Respondent discharged motor/lube oil, or petroleum, from the Truck's motor and lubricating systems, and diesel fuel, or fuel oil, from the trailer's refrigeration 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.

3.15 Respondent's actions constituted a discharge of oil into or upon navigable waters and adjoining shorelines within the meaning of Sections 311(a)(2) and (b)(3) of the CWA, 33 U.S.C. §§ 1321(a)(2) and (b)(3).

3.16 Toppenish Creek and wetlands adjacent to Toppenish Creek are waters of the United States within the meaning of Sections 311(b)(3) and 502(7) of the CWA, 33 U.S.C. §§ 1321(b)(3) and 1362(7).

3.17 Fuel oil and petroleum, among other things, are "oil" within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

3.18 The discharge resulted in the presence of oil in waters of the United States and adjoining shorelines in sufficient quantities to cause a sheen, sludge, emulsion, or violation of water quality standards. The discharge of oil was in a quantity that may be harmful, within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3.

3.19 Therefore, Respondent violated Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), by discharging oil into navigable waters and adjoining shorelines in harmful quantities.

3.20 Violations of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), are enforceable under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

3.21 CWA Section 301(a) Violations. The fuel oil and petroleum that was released from the Truck are “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

3.22 The Truck is a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

3.23 Toppenish Creek and wetlands adjacent to Toppenish Creek are waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.24 At least on August 8, 2021, Respondent added lube/motor oil, or petroleum, and diesel fuel, or fuel oil, from the Truck into Toppenish Creek and to wetlands adjacent to Toppenish Creek.

3.25 Respondent’s actions constitute a “discharge of pollutants” within the meaning of Sections 301(a) and 502(12) of the CWA, 33 U.S.C. §§ 1311(a) and 1362(12).

3.26 The discharge was not authorized by a permit issued by EPA or the State of Washington pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

3.27 Therefore, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by adding pollutants to navigable waters from a point source without a permit.

3.28 Violations of CWA Section 301(a) are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).



#### **IV. PROPOSED PENALTY**

4.1. Based on the foregoing allegations, Respondent violated Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and Section 301(a) of the CWA, 33 U.S.C. § 1311(a). Consequently, pursuant to Section 311(b)(6)(A) and (b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(A) and (B), and 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties for violations in an amount not to exceed \$22,324 per day for each day during which the violations of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), occurred, up to a maximum of \$279,036.

4.2. Section 311(b)(11) of the CWA, 33 U.S.C. § 1321(b)(11), states that civil penalties shall not be assessed under both Section 311(b) of the CWA, 33 U.S.C. § 1321(b), and Section 309 of the CWA, 33 U.S.C. § 1319, for the same discharge.

4.3. Should Respondent not be held liable for the administrative assessment of civil penalties pursuant to Section 311(b)(6)(A) and (b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(A) and (B), in the alternative Respondent is liable for the administrative assessment of civil penalties for violations in an amount not to exceed \$25,847 per day for each day during which the violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), occurred, up to a maximum of \$323,081, pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19.

4.4. In accordance with 40 C.F.R. § 22.14(a)(4)(ii), Complainant proposes that a Final Order be issued to Respondent assessing an administrative penalty in an amount not to exceed \$279,036 for the violations of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), taking into account the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same

incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require as outlined in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8). In the alternative, Complainant proposes that a Final Order be issued to Respondent assessing an administrative penalty in an amount not to exceed \$323,081 for the violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), taking into account the nature, circumstances, extent and gravity of the violations, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require as outlined in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).

4.5. *Seriousness of the Violation or Violations/Nature, Circumstances, Extent, and Gravity of the Violations:*

- a. According to responders to the scene from the Confederated Tribes and Bands of the Yakama Nation, at the time of the crash the Truck had two saddle fuel tanks with a maximum capacity of 100-gallons each, a refrigerated trailer with a refrigeration unit diesel fuel tank of approximately 45 gallons located and fixed under the trailer bottom, and the tractor would have likely contained approximately 15 gallons of other petroleum products.
- b. According to the responder to the scene from the Washington State Department of Ecology, there was an estimated release of forty-five gallons of diesel fuel, or fuel oil, to the adjoining shoreline of Toppenish Creek, an estimated release of ten gallons of lube/motor oil, or petroleum, to the adjoining shoreline of Toppenish

Creek, and an estimated release of one gallon of lube/motor oil, or petroleum, into Toppenish Creek and to wetlands adjacent to Toppenish Creek.

- c. According to the responder to the scene from EPA, an estimated maximum of 150-160 gallons of diesel fuel, or fuel oil, was released from the Truck fuel tanks into Toppenish Creek, the adjoining shoreline of Toppenish Creek, and wetlands adjacent to Toppenish Creek. The EPA responder also reported that oil sheen and mousse (an emulsified mixture of water and oil) were observed on the water between the Toppenish Creek bank adjacent to Highway 97 and the overturned trailer, that absorbent pads were deployed in this area, and that an absorbent boom had been placed to isolate the oil-impacted water within Toppenish Creek.
- d. The responder to the scene from EPA estimated that fifty-four (54) cubic yards of oil-contaminated soil was removed and disposed of from the adjoining shoreline of Toppenish Creek and wetlands adjacent to Toppenish Creek.
- e. The responder to the scene from EPA described that a coffer dam had to be built while oil-contaminated soil was being excavated to contain the oil and approximately 300 gallons of oil-contaminated water and “oil mousse” had to be removed from behind the dam.
- f. The discharge occurred within the Toppenish National Wildlife Refuge, one of eight refuges in the Mid-Columbia River National Wildlife Refuge Complex and part of the Pacific Flyway for migratory waterfowl.
- g. Toppenish Creek and its adjacent wetlands also support Middle Columbia steelhead, a species listed as threatened under the Endangered Species Act, as

well as lamprey, a species of significant cultural importance to the Confederated Tribes and Bands of the Yakama Nation for which rehabilitation efforts continue.

- h. Given the ecological and cultural importance of the impacted waterbodies, and the sensitive nature of the species that use it, the violation created a risk for major environmental impacts and therefore was a serious violation.
- i. Due to circumstances out of the control of the Respondent, including an appropriate response by the responders to the scene from EPA, the Confederated Tribes and Bands of the Yakama Nation, and the Washington State Department of Ecology, and the nature of how the Truck landed following the crash, the total volume of oil that flowed downstream was significantly reduced. However, this does not minimize the seriousness of the violation due to the risk for major environmental impacts associated with the violation.

4.6. *Any Other Penalty for the Same Incident:* The Washington State Department of Ecology also investigated the incident resulting in the violations. The Washington State Department of Ecology has informed EPA that it will be seeking an administrative penalty for state law-based violations arising out of the same incident. While the Washington State Department of Ecology's penalty arises out of the same incident, the penalty resolving the state law-based violations do not resolve the federal CWA claims and collecting penalties for federal CWA violations is critical to maintaining the integrity of the CWA.

4.7. *Nature, Extent, and Degree of Success of Any Efforts of the Violator to Minimize or Mitigate the Effects of the Discharge:* To the best of EPA's knowledge, and as stated above, Respondent failed to notify the National Response Center following the incident, as required by Section 311(b)(5) of the CWA, 33 U.S.C. § 1321(b)(5), and 40 C.F.R. § 110.6. The responders

to the scene from the Confederated Tribes and Bands of the Yakama Nation contacted the National Response Center, which ensured that appropriate federal resources could be devoted to spill response and mitigation activities. EPA is not aware of any efforts of Respondent to minimize or mitigate the effects of the discharge.

4.8. *Respondent's Ability to Pay/Economic Impact of the Penalty on the Violator:*

Complainant has not received the necessary information required to determine whether Respondent is able to pay a penalty up to the statutory maximum penalty for this violation. The burden to prove an inability to pay falls on Respondent. Complainant will consider any information submitted by Respondent related to its ability to pay a penalty.

4.9. *Respondent's History of Prior Violations:* To the best of EPA's knowledge, Respondent was created in January 2021 when it filed articles of incorporation with the California Secretary of State's office. To the best of EPA's knowledge, Respondent has no prior CWA violations.

4.10. *Respondent's Degree of Culpability:*

- a. According to an infraction report developed by the Washington State Police following the Truck crash, the Truck was operating on a dry, flat, and straight portion of Washington State Route 97 when the Truck left the roadway to the right shoulder, striking the guardrail. The Truck then went through the guardrail.
- b. The Washington State Police infraction report indicated that there was no observed or recorded road evidence indicating that the Truck braked, performed any evasive maneuvers, or attempted to correct the Truck's trajectory back to the correct right highway lane.

- c. According to the Washington State Police infraction report, had the Truck remained within the guidelines of the right highway lane, the crash would have been avoided. As a result, the Washington State Police issued the driver of the Truck a traffic violation citation for improper lane usage.
- d. The Washington State Police infraction report indicates that the Truck driver provided contradictory justifications for the crash.
- e. Based on the totality of known circumstances, the evidence indicates this crash, and resulting oil spill, was avoidable had Respondent's driver retained appropriate control of the Truck and maintained the Truck's north-bound position in the correct highway lane.
- f. Respondent is a transportation-focused company so highway and driving safety are of paramount importance to Respondent's daily operations and directly under the control of the driver of the Truck. Consequently, the evidence suggests there may have been a prolonged loss of attention regarding the Truck's proximity to the roadside and guardrail which, in combination with the Washington State Police traffic citation, indicates a high level of culpability.

4.11. *Respondent's Economic Benefit*: At this time, EPA is not alleging that Respondent received an economic benefit associated with the violations.

4.12. *Other Matters as Justice May Require*: There are no facts justifying the use of this factor to adjust the penalty amount.

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

5.1. Respondent has the right to file an Answer requesting a hearing on any material fact contained in this Complaint or on the appropriateness of the penalty. Upon request, the

Presiding Officer may hold a hearing for the assessment of these civil penalties, conducted in accordance with the provisions of the Part 22 Rules and the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* A copy of the Part 22 Rules accompanies this Complaint.

5.2. Respondent's Answer, including any request for hearing, must be in writing and must be filed with:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 155, Mail Stop ORC-11-C07  
Seattle, Washington 98101  
[R10\\_RHC@epa.gov](mailto:R10_RHC@epa.gov)

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

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

6.2. In accordance with 40 C.F.R. § 22.15, Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. Respondent's Answer must also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent intends to place at issue; and (3) whether a hearing is requested. Failure to admit, deny, or explain any material factual allegation contained herein constitutes an admission of the allegation.

6.3. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in any default order shall become payable by Respondent without further proceedings thirty (30) days after the default becomes final.

## **VII. INFORMAL SETTLEMENT CONFERENCE**

7.1. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settling this matter. To request such a settlement conference, Respondent should contact:

Patrick B. Johnson  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 10  
Alaska Operations Office  
222 West 7th Avenue, #19  
Anchorage, Alaska 99513-7588  
(907) 271-3914  
[Johnson.patrick@epa.gov](mailto:Johnson.patrick@epa.gov)

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

7.3. Respondent is advised that, after the Complaint is issued, the Part 22 Rules prohibit any *ex parte* (unilateral) discussion of the merits of these or any other factually related proceedings with the Administrator, the Environmental Appeals Board or its members, the Regional Judicial Officer, the Presiding Officer, or any other person who is likely to advise these officials in the decision of this case.



## **VIII. RESERVATIONS**

8.1. Neither assessment nor payment of an administrative civil penalty pursuant to this Complaint shall affect Respondent's continuing obligation to comply with: (1) the CWA and all other environmental statutes, and (2) the terms and conditions of all applicable CWA permits.

Dated this \_\_\_\_ day of \_\_\_\_\_

**EDWARD  
KOWALSKI**

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EDWARD KOWALSKI  
Date: 2023.02.08  
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EDWARD J. KOWALSKI, Director  
Enforcement and Compliance Assurance Division