

FILED

January 17, 2025

4:01 P.M. PST

**U.S. EPA REGION 10
HEARING CLERK**

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

JACKSON & SON DISTRIBUTORS, INC.,
Dba JACKSON AND SON OIL,

Seaside, Oregon,

Respondent.

DOCKET NO. CWA-10-2025-0023

RESPONDENT'S ANSWER TO
COMPLAINT, AFFIRMATIVE
DEFENSES AND REQUEST FOR
HEARING

**ANSWER TO COMPLAINT, AFFIRMATIVE DEFENSES AND
REQUEST FOR HEARING**

Respondent, Jackson & Son Distributors, Inc., dba Jackson and Son Oil ("Jackson" or "Respondent"), through the undersigned attorneys, presents its Answer to the Administrative Complaint ("Complaint") issued by the United States Environmental Protection Agency Region 10 ("EPA" or "Complainant"), and respectfully states, alleges and prays as follows:

RESPONDENT'S ANSWER TO
COMPLAINT, AFFIRMATIVE
DEFENSES AND REQUEST FOR
HEARING - 1

BAKALIAN & ASSOCIATES P.S.
8201 164th Ave NE, Suite 200
Redmond, WA 98052
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1 **I. STATUTORY AUTHORITY**

2 1.1 This paragraph sets forth legal conclusions to which no response is required. To the
3 extent further response is required, Respondent is without knowledge or information
4 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
5 and the allegations are therefore denied.

6 1.2 This paragraph sets forth legal conclusions to which no response is required. To the
7 extent further response is required, Respondent is without knowledge or information
8 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
9 and the allegations are therefore denied.

10 **II. STATUTORY AND REGULATORY BACKGROUND**

11 2.1 This paragraph sets forth legal conclusions to which no response is required. To the
12 extent further response is required, Respondent is without knowledge or information
13 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
14 and the allegations are therefore denied.

15 2.2 This paragraph sets forth legal conclusions to which no response is required. To the
16 extent further response is required, Respondent is without knowledge or information
17 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
18 and the allegations are therefore denied.

19 2.3 This paragraph sets forth legal conclusions to which no response is required. To the
20 extent further response is required, Respondent is without knowledge or information
21 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
22 and the allegations are therefore denied.

1 2.4 This paragraph sets forth legal conclusions to which no response is required. To the
2 extent further response is required, Respondent is without knowledge or information
3 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
4 and the allegations are therefore denied.

5 2.5 This paragraph sets forth legal conclusions to which no response is required. To the
6 extent further response is required, Respondent is without knowledge or information
7 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
8 and the allegations are therefore denied.

9 2.6 This paragraph sets forth legal conclusions to which no response is required. To the
10 extent further response is required, Respondent is without knowledge or information
11 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
12 and the allegations are therefore denied.

13 2.7 This paragraph sets forth legal conclusions to which no response is required. To the
14 extent further response is required, Respondent is without knowledge or information
15 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
16 and the allegations are therefore denied.

17 2.8 This paragraph sets forth legal conclusions to which no response is required. To the
18 extent further response is required, Respondent is without knowledge or information
19 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
20 and the allegations are therefore denied.

21 2.9 This paragraph sets forth legal conclusions to which no response is required. To the
22 extent further response is required, Respondent is without knowledge or information

1 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
2 and the allegations are therefore denied.

3 2.10 This paragraph sets forth legal conclusions to which no response is required. To the
4 extent further response is required, Respondent is without knowledge or information
5 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
6 and the allegations are therefore denied.

7 2.11 This paragraph sets forth legal conclusions to which no response is required. To the
8 extent further response is required, Respondent is without knowledge or information
9 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
10 and the allegations are therefore denied.

11 2.12 This paragraph sets forth legal conclusions to which no response is required. To the
12 extent further response is required, Respondent is without knowledge or information
13 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
14 and the allegations are therefore denied.

15 2.13 This paragraph sets forth legal conclusions to which no response is required. To the
16 extent further response is required, Respondent is without knowledge or information
17 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
18 and the allegations are therefore denied.

19 2.14 This paragraph sets forth legal conclusions to which no response is required. To the
20 extent further response is required, Respondent is without knowledge or information
21 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
22 and the allegations are therefore denied.

1 2.15 This paragraph sets forth legal conclusions to which no response is required. To the
2 extent further response is required, Respondent is without knowledge or information
3 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
4 and the allegations are therefore denied.

5 2.16 This paragraph sets forth legal conclusions to which no response is required. To the
6 extent further response is required, Respondent is without knowledge or information
7 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
8 and the allegations are therefore denied.

9 2.17 This paragraph sets forth legal conclusions to which no response is required. To the
10 extent further response is required, Respondent is without knowledge or information
11 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
12 and the allegations are therefore denied.

13 **III. ALLEGATIONS**

14 3.1 Respondent, upon information and belief, admits the allegations contained in this
15 paragraph.

16 3.2 Respondent, upon information and belief, admits it owns the property located at
17 84721 Happel Lane, Seaside, Oregon. Respondent denies the remainder of the allegations
18 contained in this paragraph.

19 3.3 This paragraph sets forth legal conclusions to which no response is required. To the
20 extent further response is required, Respondent is without knowledge or information
21 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
22 and the allegations are therefore denied.

1 3.4 This paragraph sets forth legal conclusions to which no response is required. To the
2 extent further response is required, Respondent is without knowledge or information
3 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
4 and the allegations are therefore denied.

5 3.5 Respondent is without knowledge or information sufficient to form a belief as to
6 the truth or falsity of the allegations stated in this paragraph, and the allegations are
7 therefore denied.

8 3.6 Respondent, upon information and belief, admits that an inspection was performed
9 by EPA and/or its representatives on or about September 21, 2021. Respondent lacks
10 knowledge or information sufficient to form a belief as to whether the person that
11 performed the inspection was, as alleged, “an authorized EPA representative” and,
12 likewise, as to whether the purpose of the inspector was “to determine compliance with
13 Section 311(j) of the CWA and the requirements of 40 C.F.R. part 112” and therefor denies
14 the same.

15 3.7 This paragraph sets forth legal conclusions to which no response is required. To the
16 extent further response is required, Respondent is without knowledge or information
17 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
18 and the allegations are therefore denied.

19 3.8 This paragraph sets forth legal conclusions to which no response is required. To the
20 extent further response is required, Respondent is without knowledge or information
21 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
22 and the allegations are therefore denied.

1 3.9 Respondent admits that Powers Engineering and Inspection, Inc. conducted certain
2 work at Respondent's property on or about April 5, 2023. Respondent denies the remainder
3 of this paragraph as it calls for a legal conclusion.

4 3.10 Respondent denies the allegations stated in this paragraph.

5 3.11 Respondent denies the allegations stated in this paragraph.

6 3.12 Respondent denies the allegations stated in this paragraph.

7 3.13 Respondent denies the allegations stated in this paragraph.

8 3.14 Respondent denies the allegations stated in this paragraph.

9 **Violations**

10 **Count 1: Failure to Prepare and Implement SPCC Plan**

11 3.15 This paragraph describes, in general terms, regulatory requirements appearing in
12 40 C.F.R. §112.7, to which no response is required and is therefore denied.

13 3.16 Respondent denies the allegations stated in this paragraph.

14 3.17 Respondent denies the allegations stated in this paragraph.

15 3.18 Respondent denies the allegations stated in this paragraph.

16 **Counts 2-3: Failure to Provide Adequate Secondary Containment**

17 3.19 This paragraph sets forth legal conclusions to which no response is required. To the
18 extent further response is required, Respondent is without knowledge or information
19 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,
20 and the allegations are therefore denied.

21 3.20 This paragraph describes, in general terms, regulatory requirements appearing in
22 40 C.F.R. §112.8(c)(2), to which no response is required and is therefore denied.

applicability to this case is denied.

RESPONDENT'S ANSWER TO
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1 3.21 Respondent denies the allegations stated in this paragraph.

2 3.22 Respondent denies the allegations stated in this paragraph.

3 3.23 Respondent denies the allegations stated in this paragraph.

4 **Counts 4-5: Failure to Properly Design Facility Discharge Systems from Transfer**

5 **Areas**

6 3.24 This paragraph describes, in general terms, regulatory requirements appearing in
7 40 C.F.R. §112.8(b)(3), to which no response is required and is therefore denied.

8 3.25 This paragraph describes, in general terms, regulatory requirements appearing in
9 40 C.F.R. §112.8(b)(3) and 112.8(b)(4), to which no response is required and is therefore
10 denied.

11 3.26 Respondent admits there are diesel and gasoline storage tanks at the property, but
12 denies the remainder of the allegations stated in this paragraph.

13 3.27 Respondent denies the allegations stated in this paragraph.

14 3.28 Respondent denies the allegations stated in this paragraph.

15 3.29 Respondent denies the allegations stated in this paragraph.

16 3.30 Respondent denies the allegations stated in this paragraph.

17 **Count 6: Failure to Provide Sufficient Containment at Loading/Unloading Rack**

18 3.31 This paragraph describes, in general terms, regulatory requirements appearing in
19 40 C.F.R. §112.7(h)(1) but it's applicability to this case is denied.

20 3.32 Respondent denies the allegations stated in this paragraph.

1 3.33 Respondent is without knowledge or information sufficient to form a belief as to
2 the truth or falsity of the allegations stated in this paragraph, and the allegations are
3 therefore denied.

4 3.34 Respondent denies the allegations stated in this paragraph.

5 3.35 Respondent is without knowledge or information sufficient to form a belief as to
6 the truth or falsity of the allegations stated in this paragraph, and the allegations are
7 therefore denied.

8 3.36 Respondent denies the allegations stated in this paragraph.

9 **Counts 7-16: Failure to Conduct and Maintain a Procedure and Schedule for**

10 **Integrity Testing**

11 3.37 This paragraph describes, in general terms, regulatory requirements appearing in
12 40 C.F.R. §112.8(c)(6), to which no response is required and is therefore denied.

13 3.38 Respondent denies the allegations stated in this paragraph.

14 3.39 Respondent denies the allegations stated in this paragraph.

15 3.40 Respondent denies the allegations stated in this paragraph.

16 3.41 Respondent denies the allegations stated in this paragraph.

17 3.42 This paragraph describes, in general terms, statutory requirements to which no
18 response is required and is therefore denied.

19 **Counts 17-18: Failure to Conduct and Maintain Records of Inspections and Tests**

20 3.43 This paragraph describes, in general terms, regulatory requirements appearing in
21 40 C.F.R. §112.7(e), to which no response is required and is therefore denied.

22 3.44 Respondent denies the allegations stated in this paragraph.

1 3.45 Respondent denies the allegations stated in this paragraph.

2 3.46 Respondent denies the allegations stated in this paragraph.

3 3.47 Respondent denies the allegations stated in this paragraph.

4 3.48 Respondent denies the allegations stated in this paragraph.

5 **Count 19: Failure to Provide Warning Lights or Barrier System at Loading/**

6 **Unloading Rack**

7 3.49 Respondent is without knowledge or information sufficient to form a belief as to
8 the truth or falsity of the allegations stated in this paragraph, and the allegations are
9 therefore denied.

10 3.50 Respondent is without knowledge or information sufficient to form a belief as to
11 the truth or falsity of the allegations stated in this paragraph, and the allegations are
12 therefore denied.

13 3.51 Respondent denies the allegations stated in this paragraph.

14 3.52 Respondent denies the allegations stated in this paragraph.

15 **Counts 20-28: Failure to Employ Devices to Avoid Discharges**

16 3.53 This paragraph describes, in general terms, regulatory requirements appearing in
17 40 C.F.R. §112.8(c)(8), to which no response is required and is therefore denied.

18 3.54 Respondent denies the allegations stated in this paragraph.

19 3.55 Respondent denies the allegations stated in this paragraph.

20 3.56 This paragraph describes, in general terms, statutory requirements to which no
21 response is required and is therefore denied.

22 **IV. PROPOSED PENALTY**

RESPONDENT'S ANSWER TO
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1 4.1 In response to this section, Respondent alleges that the proposed penalty assessing
2 administrative penalties in an amount not to exceed \$23,048 per day for each day during
3 which the violation continues, up to a maximum penalty of \$288,080, has no basis in law
4 or in fact.

5 In addition, the proposed penalty assessment is excessive, unwarranted and
6 burdensome.

7 Except as specifically admitted, all factual allegations contained in Part IV of the
8 Complaint are denied.

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

10 Paragraphs 5.1-5.5 contain legal conclusions and procedures. To the extent further
11 response is required, it is contained in this Answer, Affirmative Defenses and Request for
12 Hearing.

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

14 Paragraphs 6.1-6.3 contain legal conclusions and procedures. To the extent further
15 response is required, it is contained in this Answer, Affirmative Defenses and Request for
16 Hearing.

17 **VII. INFORMAL SETTLEMENT CONFERENCE**

18 Paragraphs 7.1-7.2 contain legal conclusions and procedures. To the extent further
19 response is required, it is contained in this Answer, Affirmative Defenses and Request for
Hearing.

20 **VIII. RESERVATIONS**

21 Paragraph 8.1 contains legal conclusions and procedures. To the extent further response is
22 required, it is contained in this Answer, Affirmative Defenses and Request for Hearing.

1 **IX. PUBLIC NOTICE**

2 Paragraph 9.1 contains legal conclusions and procedures. To the extent further response is
3 required, it is contained in this Answer, Affirmative Defenses and Request for Hearing.

4 **X. AFFIRMATIVE DEFENSES**

5 1. The Complaint fails to state a claim upon which relief can be granted against
6 Respondent.

7 2. Respondent activities at the Facility did not result in the discharge of stormwater,
8 oil or pollutants to “waters of the United States”.

9 3. Respondent has previously documented to EPA its compliance with all relevant
10 statutory and regulatory references and requirements alleged in the Complaint.

11 4. Respondent relied upon oral and written advice from EPA and its
12 representatives at all times prior to the Complaint, after providing adequate and accurate
13 information regarding its property and operations. Respondent received written and oral
14 advice from EPA, which it reasonably relied upon at all times prior to this Complaint.

15 5. The Complaint is barred in whole or in part by the doctrines of waiver and/or
16 estoppel.

17 6. Complainant’s allegations are barred by laches.

18 7. Complainant’s allegations are barred by the statute of limitations.

19 8. Complainant’s allegations are not supported by substantial evidence.

20 9. Complainant’s penalty assessment constitutes an abuse of discretion.

21 10. The proposed penalty is excessive, inappropriate and unwarranted, and
22 Complainant has not provided adequate explanation as to how the penalty amount was
calculated.

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