

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

| | | |
|-------------------------------|---|------------------|
| In the Matter of: |) | DOCKET NO. |
| |) | CWA-10-2024-0154 |
| STATE OF ALASKA DEPARTMENT OF |) | |
| TRANSPORTATION AND PUBLIC |) | COMPLAINT |
| FACILITIES, |) | |
| |) | |
| Juneau, Alaska |) | |
| |) | |
| Respondent. |) | |

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 309(g)(2)(B) of the Federal Water Pollution Control Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B). 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 CWA Section 309(g)(2)(B), 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, the EPA hereby proposes the assessment of a civil penalty against the State of Alaska Department of Transportation and Public Facilities (“Respondent” or “ADOT&PF”) for violations of the CWA.

1.3. In accordance with CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the EPA is required to notify the State in which an alleged violation occurs within thirty (30) days following proof of service of the Complaint on the Respondent and provide the State with an opportunity to consult with the EPA on the matter. A department of

the State of Alaska is the Respondent in this matter. Therefore, upon service of the Complaint on Respondent, the State of Alaska will be notified of this action in accordance with CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b).

II. STATUTORY AND REGULATORY BACKGROUND

2.1. As provided in CWA Section 101(a), 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 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants to navigable waters by any person, except, *inter alia*, as authorized by a Department of Army permit issued by the United States Army Corps of Engineers (“Corps”) pursuant to CWA Section 404, 33 U.S.C. § 1344.

2.3. CWA Section 502(12) defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

2.4. CWA Section 502(6) defines “pollutant” to include dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, rock, sand, and industrial waste discharged into water. 33 U.S.C. § 1362(6).

2.5. “Fill material” includes material placed in waters of the United States where the material has the effect of replacing any portion of a water of the United States with dry land or changing the bottom elevation of any portion of a water of the United States. Examples of fill material include rock, sand, soil, clay, construction debris, wood chips, overburden from excavation activities, and materials used to create any structure or infrastructure in the waters of the United States. 40 C.F.R. § 232.2.

2.6. CWA Section 502(5) defines “person” to include “an individual, corporation, partnership, [or] association” 33 U.S.C § 1362(5).

2.7. CWA Section 502(14) defines “point source” to include, *inter alia*, “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, [or] container . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

2.8. CWA Section 502(7) defines “navigable waters” as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

2.9. 33 C.F.R. § 328.3(b) defines “wetlands” as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

2.10. Each discharge of pollutants from a point source that is not authorized by a permit issued pursuant to the CWA constitutes a violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

2.11. Each day that the dredged and/or fill material remains in place without the required permit constitutes a violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

2.12. CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), authorizes the EPA to assess administrative penalties against any person who violates CWA Section 301, 33 U.S.C. § 1311, or any permit condition or limitation implementing CWA Section 301, 33 U.S.C. § 1311, in a permit issued under CWA Section 404, 33 U.S.C. § 1344.

III. ALLEGATIONS

3.1 Respondent is the State of Alaska is therefore a “person” as defined by CWA Section 502(5), 33 U.S.C. § 1362(5).

3.2 At all times relevant to this action, Respondent designed, directed, oversaw, and performed certain maintenance activities, including excavating and sidecasting dredged and/or fill material to jurisdictional wetlands, at nine locations along the Old Glacier Highway in Juneau, Alaska. Table 1 contains the specific locations for each of the areas subject to this Complaint.

TABLE 1

| Location Number | Latitude | Longitude |
|------------------------|-----------------|------------------|
| 1 | 58.35967° N | -134.55226° W |
| 2 | 58.3587594° N | -134.5377072° W |
| 3 | 58.3587138° N | -134.5331648° W |
| 4 | 58.3604511° N | -134.5675092° W |
| 5 | 58.3588128° N | -134.5434592° W |
| 6 | 58.3588163° N | -134.5430525° W |
| 7 | 58.358845° N | -134.541661° W |
| 8 | 58.3589052° N | -134.5415510° W |
| 9 | 58.3588358° N | -134.5475791° W |

3.3 Location 1 within Table 1 of this Complaint contains wetlands that are adjacent to and have a continuous surface connection to a relatively permanent unnamed tributary that is subject to the ebb and the flow of the tide and connects to the Gastineau Channel. The Gastineau Channel is subject to the ebb and flow of the tide and is a traditional navigable water. As such, the relatively permanent unnamed tributary and its adjacent wetlands are “navigable waters” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

3.4 Location 2 within Table 1 of this Complaint contains wetlands that are adjacent to and have a continuous surface connection to a relatively permanent unnamed tributary that is subject to the ebb and the flow of the tide and connects to the Gastineau Channel. The Gastineau Channel is subject to the ebb and flow of the tide and is a traditional navigable water. As such, the relatively permanent unnamed tributary and its adjacent wetlands are “navigable waters” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

3.5 Location 3 within Table 1 of this Complaint contains wetlands that are adjacent to and have a continuous surface connection to a relatively permanent unnamed tributary that is subject to the ebb and the flow of the tide and connects to the Gastineau Channel. The Gastineau Channel is subject to the ebb and flow of the tide and is a traditional navigable water. As such, the relatively permanent unnamed tributary and its adjacent wetlands are “navigable waters” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

3.6 Location 4 within Table 1 of this Complaint contains wetlands that are adjacent to and have a continuous surface connection to a relatively permanent unnamed tributary that is subject to the ebb and the flow of the tide and connects to the Gastineau Channel. The Gastineau Channel is subject to the ebb and flow of the tide and is a traditional navigable water. As such, the relatively permanent unnamed tributary and its adjacent wetlands are “navigable waters” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

3.7 Locations 5 – 8 within Table 1 of this Complaint contains wetlands that are adjacent to and have a continuous surface connection to a relatively permanent unnamed tributary that is subject to the ebb and the flow of the tide and connects to the Gastineau Channel. The Gastineau Channel is subject to the ebb and flow of the tide and is a traditional navigable

water. As such, the relatively permanent unnamed tributary and its adjacent wetlands are “navigable waters” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

3.8 Location 9 within Table 1 of this Complaint contains wetlands that are adjacent to and have a continuous surface connection to the Gastineau Channel. The Gastineau Channel is subject to the ebb and flow of the tide and is a traditional navigable water. As such, the Gastineau Channel and its adjacent wetlands are “navigable waters” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

3.9 All of the locations within Table 1 of this Complaint are either located within the Mendenhall Wetlands State Game Refuge or are connected to wetlands that make up the Refuge.¹

3.10 Several of the relatively permanent unnamed tributaries to the Gastineau Channel are mapped in the State of Alaska Department of Fish and Game’s Anadromous Waters Catalog, which identifies water bodies with documented use by anadromous fish, including salmon.²

3.11 As described below, beginning in August 2021, and continuing through the filing of this Complaint, Respondent violated CWA Section 301, 33 U.S.C. § 1311.

3.12 Between August 24 – 26, 2021, Respondent performed and/or directed maintenance work at Locations 1, 2, and 5 – 9 using heavy mechanical equipment such as a truck, backhoe, excavator, and/or water-jet truck that resulted in discharges of dredged and/or fill material, including native organic soils, woody debris, gravel, rock, and sediments, to jurisdictional wetlands.

¹ See Mendenhall Wetlands – State Game Refuge, Alaska Dep’t of Fish and Game, <https://www.adfg.alaska.gov/index.cfm?adfg=mendenhallwetlands.main> (last visited June 12, 2024).

² See Anadromous Waters Catalog Alaska Dep’t of Fish and Game, <https://www.adfg.alaska.gov/sf/SARR/AWC/> (last visited June 12, 2024).

3.13 Between August 30 – 31, 2021, Respondent performed and/or directed maintenance work at Location 3 using heavy mechanical equipment such as a truck, backhoe, excavator, and/or water-jet truck that resulted in discharges of dredged and/or fill material, including native organic soils, woody debris, gravel, rock, and sediments, to jurisdictional wetlands.

3.14 Between September 8 – 9, 2021, Respondent performed and/or directed maintenance work at Location 4 using heavy mechanical equipment such as a truck, backhoe, excavator, and/or water-jet truck that resulted in discharges of dredged and/or fill material, including native organic soils, woody debris, gravel, rock, and sediments, to jurisdictional wetlands.

3.15 On October 14, 2021, the U.S. Army Corps of Engineers (“Corps”) issued a Notice of Violation for discharges of dredged and/or fill material to waters of the United States, concluding that the work was not authorized pursuant to CWA Section 404, 33 U.S.C. § 1344, nor did it qualify for an exemption under CWA Section 404(f), 33 U.S.C. § 1344(f).

3.16 On November 5, 2021, Respondent’s Regional Environmental Manager provided a written response to the Corps’ Notice of Violation, acknowledging that “[h]ad [he] been made aware [], [he] would have submitted a pre-construction notification to the [Corps]” pursuant to CWA Section 404, 33 U.S.C. § 1344, prior to the Respondent’s discharges of dredged and/or fill material.

3.17 On May 6, 2022, representatives of the Corps and the EPA met with ADOT&PF at several locations to document the presence of dredged and/or fill material in jurisdictional wetlands.

3.18 On June 29, 2022, the EPA issued Respondent an information request pursuant to CWA Section 308, 33 U.S.C. § 1318, seeking information about each of the discharges.

3.19 On July 29, 2022, Respondent provided a written response to the EPA's information request, acknowledging that Respondent "failed to secure proper permitting at some of the sites," "did not obtain any federal permits for the work," that Respondent would "work to avoid internal communication failures on future projects," and that this was an "error."

3.20 In Respondent's July 29, 2022, written response to the EPA's information request, Respondent also acknowledged that "bedload material was removed and sidecast" at several locations.

3.21 On December 7, 2022, the Corps referred the CWA Section 404 enforcement case to the EPA pursuant to the Field Level Agreement between the Corps' Alaska District and EPA Region 10.

3.22 The EPA accepted the Corps' referral and became the lead enforcement agency on December 12, 2022.

3.23 From May 20 – 23, 2024, the EPA inspected each of the locations and documented the alleged unauthorized discharges to wetlands adjacent to and having a continuous surface connection to relatively permanent unnamed tributaries that are subject to the ebb and flow of the tide and connect to the Gastineau Channel and unauthorized discharges to wetlands adjacent to and having a continuous surface connection to the Gastineau Channel.

3.24 The equipment referenced in Paragraphs 3.12 – 3.14 is a "point source" within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).

3.25 The dredged and/or fill material that Respondent and/or persons acting on their behalf caused to be discharged, as referenced in Paragraphs 3.12 – 3.14, include native organic

soils, woody debris, gravel, rock, and sediments, each of which constitutes “dredged material” and/or “fill material” within the meaning of 40 C.F.R. § 232.2, and each of which constitutes a “pollutant” within the meaning of CWA Section 502(6), 33 U.S.C. § 1362(6).

3.26 By causing such dredged and/or fill material to enter waters of the United States, Respondent engaged in the “discharge of pollutants” from a point source within the meaning of CWA Sections 301(a) and 502(12), 33 U.S.C. §§ 1311(a) and 1362(12).

3.27 Respondent’s discharge of dredged and/or fill material described in Paragraphs 3.12 – 3.14 was not authorized by any permit issued pursuant to CWA Section 404, 33 U.S.C. § 1344. Respondent is therefore in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

IV. PROPOSED PENALTY

4.1. Based on the foregoing allegations, Respondent violated CWA Section 301(a), 33 U.S.C. § 1311(a). Consequently, pursuant to CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(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 \$26,685 per day for each day during which each violation occurred, up to a maximum of \$333,552.

4.2. Beginning on August 24, 2021, through the filing of this complaint, Respondent discharged pollutants to waters of the United States without authorization under CWA Section 404, 33 U.S.C. § 1344, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

4.3. Each day that the dredged and/or fill material remains in place without the required permit constitutes a violation of CWA Section 301(a), 33 U.S.C. § 1311(a). At the time of the filing of this Complaint, the unauthorized dredged and/or fill material has been in place for over 1,030 days.

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 \$333,552 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. 33 U.S.C. § 1319(g)(3).

4.5. *Nature, Circumstances, Extent, and Gravity of the Violations:* Respondent's unauthorized discharge of pollutants to waters of the United States is a serious violation that significantly undermines the CWA's regulatory scheme and caused harm to the chemical, physical, and/or biological integrity of the Nation's waters.

4.6. Respondent's unauthorized activities impacted wetlands adjacent to multiple unnamed relatively permanent tributaries that are mapped by the State of Alaska Department of Fish and Game's Anadromous Waters Catalog.³ In order for a waterbody to be mapped within the Catalog, "[a]nadromous fish must have been seen or collected and identified by a qualified observer," most frequently a fisheries biologist employed by the State of Alaska Department of Fish and Game.⁴ Once a waterbody is mapped as containing anadromous fish, the State of Alaska has identified that it should be afforded special protections pursuant to State law.⁵

4.7. One of the most iconic anadromous fish, salmon are a critical ecological, commercial, recreational, and subsistence resource to the State of Alaska and its residents.⁶ The multiple unnamed relatively permanent tributaries that are mapped by the State of Alaska

³ *Id.*

⁴ *Id.*

⁵ See Alaska Stat. § 16.05.871.

⁶ See Salmon Research in Alaska, NOAA Fisheries, <https://www.fisheries.noaa.gov/alaska/science-data/salmon-research-alaska> (last visited June 12, 2024).

Department of Fish and Game as containing anadromous fish are likely the first freshwater streams that some salmon enter as they continue their migration for spawning. As a result, maintaining high water quality in those waterbodies is of utmost importance in order to maintain the chemical, physical, and/or biological integrity of the Nation's waters.

4.8. As stated by the State of Alaska Department of Environmental Conservation, “[w]etlands help maintain water quality by slowly filtering excess nutrients, sediments, and pollutants before water seeps into rivers, streams, and underground aquifers.”⁷ By discharging dredged and/or fill material to wetlands and thereby limiting their ability to provide the functions and services that the State of Alaska acknowledges that these wetlands provide, Respondent's activities very likely decreased water quality in those waterbodies that support anadromous fish.

4.9. The wetlands impacted by Respondent's unauthorized activities help to maintain water quality for waterbodies that support a critical ecological, commercial, recreational, and subsistence resource for the State of Alaska and its residents.

4.10. In addition to impacting wetlands that provide important water quality benefits to anadromous fish, all of the wetlands that were impacted by Respondent's unauthorized activities are either located within the Mendenhall Wetlands State Game Refuge or are connected to wetlands that make up the Refuge.⁸ The Refuge is approximately 4,000 acres and provides “a vital feeding and resting area for both resident birds and migrants traveling to and from their Arctic breeding grounds” and “is enjoyed year-round by residents and visitors alike. Waterfowl hunting, hiking, wildlife viewing and photography, boating, fishing, scientific and educational

⁷ See Alaska's Wetlands, Alaska Dep't of Env'tl. Conservation, <https://dec.alaska.gov/water/wastewater/stormwater/permits-approvals/wetlands/ak-wetlands/> (last visited June 12, 2024).

⁸ See Mendenhall Wetlands – State Game Refuge, Alaska Dep't of Fish and Game, <https://www.adfg.alaska.gov/index.cfm?adfg=mendenhallwetlands.main> (last visited June 12, 2024).

studies, and sightseeing are popular activities supporting approximately 20,000 user days annually.”⁹ Respondent’s unauthorized discharges of dredged and/or fill material have likely decreased the functions and services that the wetlands within the Refuge provide.

4.11. In addition to the specific environmental impacts associated with the Respondent’s activities, their actions have undermined the permitting structure under CWA Section 404, 33 U.S.C. § 1344. Compliance with a permit’s conditions and restrictions are vital to the CWA Section 404, 33 U.S.C. § 1344, regulatory scheme, and Respondent’s failure to obtain a permit prior to the discharge activity undermines the statutory and regulatory purposes of the CWA.

4.12. *Respondent’s Ability to Pay*: Complainant has no information indicating that Respondent is unable to pay a penalty up to the statutory maximum penalty for the violations. The burden to prove an inability to pay falls on Respondent. Complainant will consider any information submitted by Respondent related to their ability to pay a penalty.

4.13. *Respondent’s History of Prior Violations*: The most significant and relevant prior violations by Respondent involved, among other things, unauthorized discharges of dredged and/or fill material to waters of the United States at ten locations on the Kenai Peninsula following two large floods.¹⁰ Those violations resulted in a Consent Decree that was entered between the United States and Respondent on September 21, 2010, in the U.S. District Court for the District of Alaska that resulted in total costs to Respondent of nearly \$1 million.¹¹

⁹ *Id.*

¹⁰ See Alaska Department of Transportation and Public Facilities to Pay Nearly \$1 Million for Alleged Clean Water Act Violations, U.S. Dep’t of Justice, <https://www.justice.gov/opa/pr/alaska-department-transportation-and-public-facilities-pay-nearly-1-million-alleged-clean#:~:text=WASHINGTON%E2%80%94The%20Alaska%20Department%20of,Environmental%20Protection%20Agency%20announced%20today> (last visited June 12, 2024).

¹¹ *Id.*

4.14. *Respondent's Degree of Culpability*: Respondent has a high degree of culpability, as it is experienced in obtaining permitting under CWA Section 404, 33 U.S.C. § 1344, and was therefore on notice of the potential consequences associated with discharging dredged and/or fill material prior to obtaining that necessary permitting.

4.15. Given the volume of work that Respondent performs involving earthwork throughout the State of Alaska and given that according to the State of Alaska Department of Natural Resources, the State of Alaska “has the greatest surface water resources of any state in the United States,”¹² Respondent is frequently working within or near waters of the United States. As a result, it has experience obtaining permits under CWA Section 404, 33 U.S.C. § 1344, even explicitly identifying the program in its “Alaska Storm Water Pollution Prevention Plan Guide.”¹³ Respondent also acknowledged its extensive experience working with the Corps on permitting in its July 29, 2022 response to the EPA’s information request.

4.16. In that same response to the EPA’s information request, Respondent also acknowledged that it “failed to secure proper permitting at some of the sites,” “did not obtain any federal permits for the work,” that Respondent would “work to avoid internal communication failures on future projects,” and that this was an “error.”

4.17. Additionally, Respondent was previously subject to a judicial CWA enforcement action involving facts similar to the ones alleged in this Complaint that resulted in Respondent paying nearly \$1 million in civil penalties and injunctive relief.¹⁴

¹² See Alaska Hydrologic Survey, Alaska Dep’t of Natural Resources, <https://dnr.alaska.gov/mlw/water/hydro/> (last visited June 12, 2024).

¹³ See Alaska Storm Water Pollution Prevention Plan Guide, Alaska Dep’t of Transp. and Public Facilities, https://dot.alaska.gov/stwddes/desenvirom/assets/pdf/swppp/english/2021/swppp_guide_2021.pdf at page 1-1.

¹⁴ See Alaska Department of Transportation and Public Facilities to Pay Nearly \$1 Million for Alleged Clean Water Act Violations, U.S. Dep’t of Justice, <https://www.justice.gov/opa/pr/alaska-department-transportation-and-public-facilities-pay-nearly-1-million-alleged->

4.18. Lastly, Respondent has a large number of staff state-wide, with almost 100 personnel employed alone by the Southcoast Region, the area covered by the locations identified within this Complaint.¹⁵

4.19. Respondent's acknowledgment of its error in failing to obtain the necessary CWA authorizations for the work, internal communication failures, past violations of a similar nature that resulted in a Consent Decree, and significant staffing capable of appropriately identifying and applying for the necessary federal permits, illustrate a high degree of culpability for Respondent's failure to obtain authorization pursuant to CWA Section 404, 33 U.S.C. § 1344, prior to performing the work. This high degree of culpability warrants a substantial penalty to serve as deterrence.

4.20. *Respondents' Economic Benefit:* The discharge activities very likely resulted in avoided costs associated with obtaining a CWA Section 404 permit from the Corps. This should be considered an unlawful economic benefit that should be recovered through this penalty action.

4.21. *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 proposed herein. Upon request, the Presiding Officer may hold a hearing for the assessment of these civil penalties,

[clean#:~:text=WASHINGTON%E2%80%94The%20Alaska%20Department%20of,Environmental%20Protection%20Agency%20announced%20today](#) (last visited June 12, 2024).

¹⁵ See Southcoast Region, Alaska Dep't of Transp., https://dot.alaska.gov/stwdmno/mno_sr.shtml (last visited June 12, 2024).

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 comply with 40 C.F.R. § 22.15 and must be filed with the Regional Hearing Clerk within thirty (30) days after service of the Complaint, as determined by reference to 40 C.F.R. § 22.7(c).

5.3. The Part 22 rules provide that "[t]he Presiding Officer . . . may by order authorize or require filing by facsimile or an electronic filing system subject to any appropriate conditions and limitations." 40 C.F.R. § 22.5(a)(1).

5.4. Pursuant to their authority as Presiding Officers, the Regional Judicial Officers of EPA Region 10 have issued a Standing Order to designate the EPA's Outlook-based email system to serve as EPA Region 10's Electronic Filing System ("EFS"). The Standing Order does not require that documents be filed using the email EFS. Rather, it authorizes the use of the email EFS as an option, in addition to those methods already authorized by the Part 22 Rules for the filing of documents with the Regional Hearing Clerk. A copy of the Standing Order accompanies this Complaint.

5.5. The original and one copy of the Answer to this Complaint, as well as the original and one copy of all other documents which Respondent files in this action, must be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 6th Avenue, Suite 155
Seattle, Washington 98101

or if Respondent elects to use the email EFS, Respondent's Answer may be emailed to the Regional Hearing Clerk at R10_RHC@epa.gov.

VI. FAILURE TO FILE AN ANSWER

6.1. 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.

6.2. If Respondent fails to file a timely Answer to this Complaint, Respondent may be found to be in default, pursuant to 40 C.F.R. § 22.17, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

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

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 J. KOWALSKI, Director
Enforcement and Compliance Assurance Division