

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CHILL TRANSPORTATION LLC,

Toppenish, Washington

Respondent.

DOCKET NO. CWA-10-2023-0020

**MEMORANDUM IN SUPPORT OF COMPLAINANT'S MOTION TO WITHDRAW
MOTION FOR DEFAULT**

This memorandum is filed in support of a motion to withdraw Complainant's Motion for Default and request for the assessment of civil penalties brought by the Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region 10 ("Complainant"), in accordance with 40 C.F.R. § 22.17 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

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

Complaint charged Respondent with violations of CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3), by discharging oil into navigable waters and adjoining shorelines in harmful quantities, and violations of CWA Section 301(a), 33 U.S.C. § 1311(a), by adding pollutants to navigable waters from a point source without a permit. *See* Complaint ¶¶ 3.12 to 3.28.

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

On November 15, 2023, the Presiding Officer issued an Order on PII and CBI directing Complainant “to redact all PII and potential CBI from the Exhibits and to then refile the entire set of Exhibits that Complainant proposes be considered in support of the Motion.” *See* Dkt. 4. Shortly thereafter, Complainant and Respondent reached an agreement to resolve the matter through settlement. On November 27, 2023, Complainant filed with the Regional Hearing Clerk a fully executed Consent Agreement seeking the Presiding Officer to issue a Final Order constituting a settlement of all claims for civil penalties pursuant to the CWA. On November 28, 2023, the Presiding Officer issued an Order to Show Cause, stating that “before issuance of a ruling on the settlement request of the parties, Complainant is directed to refile the Exhibits, as redacted, and withdraw the Motion.” *See* Dkt. 7. On November 30, 2023, Complainant refiled the Exhibits with all PII and CBI redacted.

Complainant respectfully requests that the Presiding Officer grant Complainant’s Motion to Withdraw the Motion for Default and issue the Final Order constituting a settlement of all

claims for civil penalties pursuant to the CWA associated with the fully executed Consent Agreement filed on November 27, 2023.

Respectfully Submitted,

Dated: November 30, 2023

**PATRICK
JOHNSON** Digitally signed by
PATRICK JOHNSON
Date: 2023.11.30
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Patrick B. Johnson
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10, Alaska Operations Office
222 West 7th Avenue, No. 19
Anchorage, Alaska 99513
Johnson.patrick@epa.gov
(907) 271-3914