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In the Matter of :  
 :  
 CHILKOOT LUMBER COMPANY, INC. :  
 AND : Docket No. TSCA-10-2010-0253  
 MR. L. EDWARD LAPEYRI, :  
 Haines, Alaska :  
 Respondents. :  
 :  
 :

**RESPONDENTS' PREHEARING EXCHANGE**

Pursuant to the Prehearing Order of 15 December 2010, Respondents submit the following information:

(1) *Respondents expect to call the following witnesses:* The Prehearing Order directs each party to submit the names of any expert or other witnesses it intends to call at the hearing, together with a brief narrative summary of each witnesses' expected testimony, or a statement that no witnesses will be called. Respondents propose to call the following witnesses:

(a) **L. Edward Lapeyri:** Co-respondent, who will testify to the origin of the alleged offenses and the efforts of Chilkoot Lumber Co., Inc. ("CLC") to comply with the Regulations. Mr. Lapeyri will testify to the fact that he inherited a TSCA site and that Chilkoot Lumber Co., Inc. has spent immense funds to clean up the site. He will testify that a large fine will preclude cleanup of a former mill site on CLC's property and on adjacent property leased by CLC because neither CLC nor Mr. Lapeyri will have any money.

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(b) **Larry Beck:** Manager of CLC will testify that the TSCA chemicals that were on the site were not placed there by CLC and that CLC has made serious efforts to clean the site and properly dispose of the contaminants. He is expected to testify that the prospect of a large fine has caused ongoing environmental cleanup of a former mill site to be put on hold and that imposition of a large fine will prevent completion of the environmental cleanup of a former mill site.

(c) **Elijah Donat:** Environmental remediation specialist who will testify about Respondents' efforts to comply with the regulations and to interactions with State and federal agencies. Mr. Donat will be designated as an expert who will address the numerous remediation efforts undertaken by CLC. He will also explain CLC's efforts to keep the EPA and the State DEC informed of the status of remediation efforts at the TSCA site. He will testify to the cooperation he received from CLC's managers and to the strong commitment of the current management of CLC to clean up a mess, not of their making. Finally, he will testify that no TSCA pollution event occurred (no spill or leak of TSCA chemicals) and that all TSCA chemicals have been removed and properly disposed.

(d) **Anne Marie Palmieri:** Former Alaska Department of Environmental Conservation (ADEC) Private Contaminated Sites Manager, will testify concerning ADEC involvement in TSCA concerns at Chilkoot Lumber Company that led to misunderstandings about project authorities and landowner responsibility.

(e) **Bruce Wanstall:** Current ADEC Private Contaminated Sites Manager who will testify that no TSCA pollution event occurred and that the Respondents made continuing and serious efforts to clean up and remediate the site that Chilkoot Lumber from the State of Alaska. Mr. Wanstall is expected to narrate a tour of the former mill site and

to describe cleanup work that has been completed and to describe critical cleanup work that is still to be completed.

(f) **Dan Duncan:** Seattle EPA, TSCA clean-up coordinator, who will testify to the regular and close dialogue between EPA and CLC representatives. He is expected to testify to CLC's strong commitment to cleaning up of its site.

(g) **David Marco:** Portland-Seattle, managed Specialized Metal Recycling and removal of the mill equipment, clean-up and remediation at the site in Haines. He is expected to testify about CLC's strong commitment to cleaning up of its site and use of all revenue from recycling 6000 tons of steel to address TSCA concerns.

*Reservations about witness list:* Respondents reserve the right to call all witnesses named by Complainant. Respondents further reserve the right to submit names of additional witnesses and to submit additional exhibits prior to the hearing of this matter, upon timely notice to Complainant and to the Presiding Officer.

(2) ***Respondents will introduce the following documents at hearing:***

Respondents' Exhibit #1: Phase II Site Characterization Report April 2000, prepared by Access Consulting (submitted on a CD).

Respondents' Exhibit #2: Haines Sawmill Clean-up Plan July 2000, prepared by Access Consulting (submitted on a CD).

Respondents' Exhibit #3: Phase 3 Environmental Site Clean-up August 2008, prepared by Chilkat Environmental. This document has been filed with the EPA and is available to the Agency counsel and the tribunal for review (submitted on a CD).

Respondents' Exhibit # 4: Curriculum Vitae [CV] for Elijah Donat, Environmental Specialist (printed copy attached).

(3) *Respondents request that the hearing be held in Haines, Alaska (or alternatively, in Juneau, Alaska):* The respondents request that the hearing in this matter be held in Haines, Alaska and will request that during the hearing, the administrative tribunal tour the Haines TSCA site that is the subject of this action. Witness, Bruce Wanstall, will explain the nature of the site and the clean-up efforts to date.

The Agency has explained that it does not object to Haines, Alaska, as a hearing location. Haines is in Haines Borough and is the location where Respondents reside and conduct business. There is an Alaska State Courthouse located in Haines that contains both a courtroom and jury room. Either the court room or the jury room can be used for the hearing. Haines is accessible from Juneau, Alaska by direct air service and by ferry.

The best alternative site is Juneau, Alaska. Juneau is the State capital and has a busy state courthouse. Juneau also has a rarely used federal courtroom with full facilities. Juneau is a three hour ferry ride from Haines and has frequent direct air service to and from Juneau.

Anchorage, on the other hand, is not convenient. Haines is distant from Anchorage; driving time is about 18 hours, the same as the driving time between Seattle and San Francisco or between Washington, D.C. and St. Louis, MO. There is no direct air service between Anchorage and Haines. All flights between Anchorage and Haines must connect through Juneau using different air carriers for each leg of the trip. Thus, Anchorage is not a good alternative site, Juneau is a much better alternative.

Respondents anticipate that they will need two and a half days to put on their case and to provide a site visit to the ALJ.

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**(4) The proposed fine is so large that it will result in insolvency for CLC and put an end to its current and continuing cleanup efforts on the site:**

**(a) CLC is a company with a passive, non-productive asset but no cash flow:** CLC's only asset is the former saw mill site that is the subject of this action. Because of remaining critical environmental issues, the is not saleable. CLC earns no revenue from the site. Because there is no revenue, there is no money to clean the site. For this reason, there are no current financial records — nothing to record or to report. Because CLC has received no revenue since the early 1990's, the most recent corporate income tax return was filed in 1993.

**(b) Although the complaint alleges that stored transformers leaked fluids containing PCB's, no PCB's actually leaked:** The agency has documentation from an environmental specialist that confirms that no fluid containing PCB's leaked from transformers stored on CLC property. No environmental harm or spill ever occurred. Surely, this is a mitigating factor, and the proposed penalty should be adjusted downward.

**(c) The TSCA site has been completely cleaned up and the components of the offending transformers have been properly removed and disposed:** At a demonstrated expense of \$290,000.00 to CLC, the respondents hired a certified company to properly dispose of the transformers and the PCB laden liquid contained within them. The documentation attesting to this cleanup is on file with the Seattle office of the EPA and is therefore available to Agency Counsel. That respondents have completely cleaned the TSCA chemicals, performed the tests, and documented the cleanup is a mitigating factor. The proposed penalty should be further adjusted downward.

**(d) The alleged violations that are viable are reporting violations, and did not result in any environmental harm:** The offending transformers were placed on CLC's property by a third party. Nevertheless, the respondents stepped up and disposed of

them at considerable expense. The EPA was aware of the presence of these transformers at all relevant times. The respondents were keeping no secrets. CLC took care that the transformers did not leak or contaminate the earth; CLC disposed of them before any environmental damage was done.

(e) **Respondent Lapeyri is not liable:**<sup>1</sup> Respondent L. Edward ("Ed") Lapeyri did not own the offending transformers, nor did he put them on the property on which they were stored, nor does he own the property. Mr. Lapeyri's financial resources are quite limited. He is an innocent helper whose efforts to clean up the site are a paradigm of the ancient wisdom *No good deed goes unpunished!*

Respectfully submitted this 8<sup>th</sup> day of April 2011 at Petersburg, Alaska.



Fred W. Triem, No. 7912140

Attachments: Respondents' Exhibits ## 1 - 4 (described in ¶ 2, above)  
Respondent Lapeyri's Answer, of 3 November 2010

**CERTIFICATE OF SERVICE**

I, Fred W. Triem, certify that I sent the original and one copy of the foregoing Prehearing Exchange to the Regional Hearing Clerk at U.S. Environmental Protection Agency, 1200 Sixth Avenue, Suite 900, Mail Stop ORC-158, Seattle, Washington 98101, and that I sent copies to Hon. Barbara A. Gunning, Administrative Law Judge, EPA Office of Administrative Law Judges, 1200 Pennsylvania Avenue, NW, Mail Code 1900L, Washington, DC 20460-2001 and Alexander Fidis, Esq. Agency Counsel, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Suite 900, Mail Stop ORC-158, Seattle, Washington 98101 by placing a copy in the postal mail to them.



Fred W. Triem

<sup>1</sup> Mr. Lapeyri's defense is summarized in his Answer that was mailed to the Regional Clerk on 3 November 2010 in the same envelope with CLC's Answer. The Prehearing Order of 15 December 2010 states that "[t]he record does not contain an Answer from Respondent Lapeyri in his individual capacity." Prehearing Order of 15 December 2010 at 1 & n. 1. However, Mr. Lapeyri did prepare and serve his Answer. Respondents have sought confirmation of this fact from the Regional Clerk.

Meanwhile, a copy of Mr. Lapeyri's Answer is attached to this memorandum.

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