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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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HEARINGS CLERK  
REGION 10

In the Matter of:

ASRC ENERGY SERVICES ALASKA,  
INC.

Anchorage, Alaska

Respondent.

DOCKET NO. CWA-10-2018-0001

**CONSENT AGREEMENT**

Proceedings Under Section 309(g) of the Clean  
Water Act, 33 U.S.C. § 1319(g)

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), the EPA is authorized to assess a civil penalty against a person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation implementing any of such sections in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to the 2015 amendments to the Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461, and 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$20,965 per day for each day during which the violation continues, up to a maximum penalty of \$262,066. *See also* 82 Fed. Reg. 3633 (January 12, 2017) (“2017 Civil Monetary Penalty Inflation Adjustment Rule”).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A)  
In the Matter of: ASRC ENERGY SERVICES ALASKA, INC. U.S. Environmental Protection Agency  
Docket Number: CWA-10-2018-0001 1200 Sixth Avenue, Suite 900, ORC-113  
Consent Agreement Seattle, Washington 98101  
Page 1 (206) 553-1037

and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and ASRC Energy Services Alaska, Inc. (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement.

## II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

## III. ALLEGATIONS

### Statutory and Regulatory Framework

3.1. 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.”

3.2. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of a pollutant” by any person into navigable waters of the United States, except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued

pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

3.3. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of any pollutant into the waters of the United States upon such specific terms and conditions as the Administrator may prescribe.

3.4. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides that a State may seek authorization to administer its own program for discharges into navigable waters within its jurisdiction.

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

3.6. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States.” EPA’s regulations define “waters of the United States” to include waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; and tributaries to those waters. 40 C.F.R. § 122.2.

3.7. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, dredged spoil, rock, sand, chemical wastes, and industrial waste.

3.8. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include any “pipe, ditch, channel, tunnel, or conduit . . . from which pollutants are or may be discharged.”

3.9. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines the term “person” to include, *inter alia*, an individual, corporation, partnership, or association.

3.10. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), specifies that an NPDES permit is required for any stormwater discharge “associated with industrial activity.” Section 402(p) also authorizes EPA to issue regulations that designate additional stormwater discharge sources

and establish a comprehensive program to regulate these additional sources.

3.11. EPA's regulations define "storm water discharge associated with industrial activity" to include the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. Industrial stormwater is a type of pollutant. 40 C.F.R. § 122.26(b)(14).

3.12. On September 29, 2008, EPA issued the Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity ("2008 MSGP") (73 FR 56572). The 2008 MSGP expired on September 29, 2013, but was administratively extended.

3.13. EPA approved the State of Alaska Department of Environmental Conservation's ("ADEC's") application to administer the NPDES Program in 2008. The State's program is called the Alaska Pollutant Discharge Elimination System ("APDES") Program.

3.14. In February 2015, ADEC issued the Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity ("2015 MSGP") pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The 2015 MSGP became effective on April 1, 2015, and expires on March 31, 2020. The 2015 MSGP replaces the 2008 MSGP.

3.15. The 2008 and 2015 MSGP authorize and set conditions on the discharge of pollutants from certain industrial activities to waters of the United States. The 2015 MSGP applies to waters of the United States located in the State of Alaska, with the exception of the Indian Reservation of Metlakatla and the Denali National Park and Preserve.

3.16. The 2008 and 2015 MSGPs require facilities engaged in certain industrial activities to apply for permit coverage if stormwater from the facility discharges to a surface water body, or to a storm sewer system that discharges to a surface water body. Permittees are required to comply with the conditions and requirements set forth in the applicable MSGP.

### **General Allegations**

3.17. Respondent is a corporation duly organized under the laws of the State of Alaska and is therefore a “person” as defined under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.18. At all times relevant to this action, Respondent was the owner and/or operator of a structural metal building/module fabrication facility located in Anchorage, Alaska (“Facility”).

3.19. Respondent’s specialization in structural metal building/module fabrication places the company within MSGP Sector AA, Subsector AA1 (Fabricated Metal Products) and North American Industry Classification System code 332999 (Other Fabricated Metal Product Manufacturing).

3.20. The Facility, which was under Respondent’s control at all times relevant to this action, discharges stormwater off-site via four catch basins that discharge into the Municipality of Anchorage’s municipal separate storm sewer system (“MS4”), which discharges into Campbell Lake and then into the Pacific Ocean. The Facility’s stormwater discharges contain “pollutants” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

3.21. The Pacific Ocean is currently used, was used in the past, or may be susceptible to use in interstate and foreign commerce, and thus the Pacific Ocean is a “navigable water” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and “water of the United States” as defined in 40 C.F.R. § 122.2.

3.22. The Facility is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2. In the alternative, the Facility contains point sources.

3.23. At all times relevant to this action, the Facility had coverage under the 2015 MSGP (permit no. AKR06AD76). The Facility previously had coverage under the 2008 MSGP

(permit no. AKR05A635).

### **Violations**

3.24. As described below, Respondent violated CWA Section 301, 33 U.S.C. § 1311 and the 2015 MSGP between at least January 2016 and March 2017. Violations were discovered during EPA's October 2016 inspection of the Facility, and upon EPA's review of Respondent's records, including its Stormwater Pollution Prevention Plan ("SWPPP"), site inspection reports, monitoring reports, and annual reports.

#### **Count 1: Failure to Minimize Exposure**

3.25. Condition 4.2.1 of the 2015 MSGP states, "A permittee must evaluate the facility regarding exposure of manufacturing, processing, and material storage areas (including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations) to rain, snow, snowmelt, and runoff and minimize exposure by either locating these industrial materials and activities inside or protecting them with storm resistant coverings."

3.26. At the time of the October 2016 inspection of the Facility, EPA observed approximately 20 drums and containers filled with various fuels, chemicals, and paints that were stored outside southeast of the main building. The drums and containers were stored on pallets without secondary containment or storm resistant coverings, and a number of the containers were unsealed and exposed to stormwater.

3.27. On at least one occasion in October 2016, Respondent failed to locate industrial materials and activities inside or protect them with storm resistant coverings in violation of Condition 4.2.1 of the 2015 MSGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

## **Count 2: Failure to Properly Conduct Employee Training**

3.28. Condition 4.2.9 of the 2015 MSGP states, “A permittee must train all employees who work in areas where industrial materials or activities are exposed to storm water, or who are responsible for implementing activities necessary to meet the conditions of this permit . . . . Training must cover both the specific control measures used to achieve the effluent limits in this Part, and monitoring, inspection, planning, reporting, and documentation requirements in other parts of this permit. Training shall be conducted at least annually (or more often if employee turnover is high) and documented in the SWPPP.”

3.29. At the time of the October 2016 inspection of the Facility, a representative for Respondent acknowledged that the Facility lacked an employee training program on stormwater.

3.30. On at least one occasion in October 2016, Respondent failed to properly conduct employee training in violation of Condition 4.2.9 of the 2015 MSGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

## **Count 3: Failure to Properly Identify SWPPP Stormwater Pollution Prevention Team**

3.31. Condition 5.2.2 of the 2015 MSGP requires the permittee to “[i]dentify the staff members (by name or title) that comprise the facility’s storm water pollution prevention team as well as their individual responsibilities. The storm water pollution prevention team is responsible for assisting the facility manager in developing and revising the facility’s SWPPP as well as maintaining control measures and taking corrective actions where required. Each member of the storm water pollution prevention team must have ready access to either an electronic or paper copy of applicable portions of this permit and the SWPPP.”

3.32. At the time of the October 2016 inspection of the Facility, a representative for Respondent acknowledged that only one of the three individuals identified as a member of the

Stormwater Pollution Prevention Team was still employed at the Facility, and that individual was unfamiliar with the details of the SWPPP.

3.33. On at least one occasion in October 2016, Respondent failed to properly identify a SWPPP Stormwater Pollution Prevention Team in violation of Condition 5.2.2 of the 2015 MSGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Count 4: Failure to Conduct and/or Document Routine Facility Inspections**

3.34. Condition 6.1.1 of the 2015 MSGP requires the permittee to conduct inspections of areas of the facility covered by the MSGP requirements, and “[i]nspections must be conducted at least quarterly (i.e., once each permit quarter), or in some instances more frequently (e.g., monthly), as appropriate.”

3.35. Condition 6.1.2 of the 2015 MSGP states, “A permittee must document the findings of each routine facility inspection performed and maintain this documentation onsite with the SWPPP.” At a minimum, the documentation of each routine facility inspection must include the inspection date and time; the name(s) and signature(s) of the inspector(s); weather information; all observations relating to the implementation of control measures at the facility; any additional control measures needed to comply with the MSGP requirements; and any incidents of noncompliance observed.

3.36. At the time of the October 2016 inspection of the Facility, Respondent was unable to produce documentation of routine facility inspections for the first three quarters of 2016. Additionally, Respondent failed to document two routine facility inspections following EPA’s October 2016 inspection of the Facility.

3.37. For at least five consecutive quarters between the first quarter of 2016 and the first quarter of 2017, Respondent failed to conduct and/or document routine facility inspections



in violation of Conditions 6.1.1 and 6.1.2 of the 2015 MSGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Count 5: Failure to Conduct and/or Document Quarterly Visual Assessments**

3.38. Condition 6.2.1 of the 2015 MSGP states, “Once each calendar quarter for the entire permit term, the permittee must collect a storm water sample from each outfall . . . and conduct a visual assessment of each of these samples.”

3.39. Condition 6.2.2 of the 2015 MSGP states, “A permittee must document the results of their visual assessments and maintain this documentation onsite with the SWPPP.”

3.40. At the time of the October 2016 inspection of the Facility, Respondent lacked documentation of visual assessments conducted in the first three quarters of 2016. Additionally, Respondent did not conduct visual assessments for one quarter following EPA’s October 2016 inspection of the Facility.

3.41. For at least four consecutive quarters between the first and fourth quarters of 2016, Respondent failed to conduct and/or document quarterly visual assessments in violation of Conditions 6.2.1 and 6.2.2 of the 2015 MSGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Count 6: Failure to Conduct and/or Document Annual Comprehensive Site Inspection**

3.42. Condition 6.3.1 of the 2015 MSGP states, “A permittee must conduct annual comprehensive site inspections while covered under this permit.”

3.43. Condition 6.3.2 of the 2015 MSGP states, “A permittee must document the findings of each comprehensive site inspection and maintain this documentation onsite with the SWPPP.” Condition 6.3.2 of the 2015 MSGP outlines the components the inspection documentation must contain.

3.44. At the time of the October 2016 inspection of the Facility, Respondent lacked any documentation of a 2016 annual comprehensive site inspection.

3.45. For at least one year in 2016, Respondent failed to conduct and/or document an annual comprehensive site inspection in violation of Conditions 6.3.1 and 6.3.2 of the 2015 MSGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Count 7: Failure to Conduct Quarterly Benchmark Monitoring**

3.46. Condition 7.2.1.1 of the 2015 MSGP states, “A permittee must monitor for any benchmark parameters specified for the industrial sector(s), both primary industrial activity and any co-located industrial activities, applicable to the permittees discharge.” The 2015 MSGP provides sector-specific benchmarks.

3.47. Condition 7.2.1.2 of the 2015 MSGP specifies that benchmark monitoring must be conducted quarterly.

3.48. Respondent was unable to produce documentation of sampling from the first through the fourth quarter of 2016.

3.49. For at least four consecutive quarters between the first and fourth quarter of 2016, Respondent failed to conduct quarterly benchmark sampling in violation of Conditions 7.2.1.1 and 7.2.1.2 of the 2015 MSGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Count 8: Failure to Submit Annual Report**

3.50. Condition 9.2 of the 2015 MSGP states, “A permittee must submit an annual report to [A]DEC that includes the findings from their . . . comprehensive site inspection and any corrective action documentation as required” by the MSGP.

3.51. Respondent failed to submit an annual report to ADEC for the 2016 calendar year.

3.52. For at least one year in 2016, Respondent failed to submit an annual report in violation of Condition 9.2 of the 2015 MSGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), the EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined that an appropriate penalty to settle this action is \$31,000.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077

St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10

Compliance Officer at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
young.teresa@epa.gov

Chae Park  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-101  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
park.chae@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

a. Interest. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty

and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.b., above, each party shall bear its own costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal this Consent Agreement and the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

Sept 7, 2017

FOR RESPONDENT:

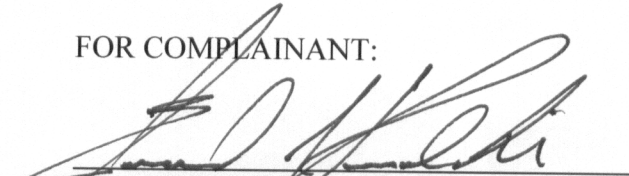


CHRIS WARNER, Senior Director of  
Health, Safety, Environment, and Training  
ASRC Energy Services Alaska, Inc.

DATED:

9/21/2017

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

ASRC ENERGY SERVICES ALASKA,  
INC.

Anchorage, Alaska

Respondent.

DOCKET NO. CWA-10-2018-0001

**FINAL ORDER**

Proceedings Under Section 309(g) of the Clean  
Water Act, 33 U.S.C. § 1319(g)

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.
2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.
3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.
4. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any

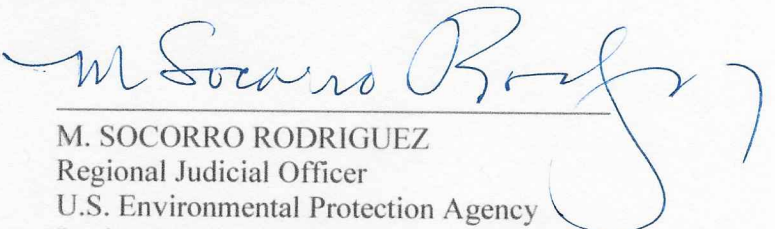
issue of fact or law set forth in this Final Order, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

5. Pursuant to CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Alaska Department of Environmental Conservation has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

6. Pursuant to CWA Section 309(g)(4)(A), 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

7. This Final Order shall become effective upon filing.

SO ORDERED this 10<sup>th</sup> day of October, 2017.

  
M. SOCORRO RODRIGUEZ  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10



**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: ASRC ENERGY SERVICES ALASKA, INC., DOCKET NO.: CWA-10-2018-0001** was served on the addressees in the following manner on the date specified below:

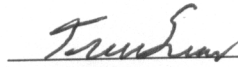
The undersigned certifies that a true and correct copy of the document was delivered to:

Leah Brown  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Chris Warner  
ASRC Energy Services Alaska, Inc.  
3900 C Street, Suite 701  
Anchorage, Alaska 99503

DATED this 11 day of October, 2017

  
\_\_\_\_\_  
Signature

Teresa Luna  
Regional Hearing Clerk  
EPA Region 10