

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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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. :
:
:

RESPONDENT CHILKOOT LUMBER CO., INC.'S ANSWER

Chilkoot Lumber Co., Inc. [CLC], a respondent in the above captioned administrative action, by and through its attorney, Fred W. Triem of Petersburg, Alaska, answers the agency's Complaint and Notice of Opportunity for Hearing, of 27 September 2010, as follows:

(1.1) Chilkoot Lumber Co., Inc. [CLC] admits that the Toxic Substances Control Act grants enforcement powers to government agencies, but otherwise lacks sufficient information to admit or deny the allegations contained in paragraph 1.1 of the Environmental Protection Agency [EPA] Complaint and Notice of Opportunity for Hearing [Complaint] and therefore denies the allegations contained in paragraph 1.1 of the EPA's Complaint .

(1.2) The allegations in paragraph 1.2 are a legal conclusion to which no responsive answer is required. To the extent a responsive answer is required, CLC denies the allegations contained in paragraph 2.1 of the EPA's Complaint, and specifically denies

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that any administrative penalty should be assessed against CLC.

(2.1) The allegations in paragraph 2.1 are a legal conclusion to which no responsive answer is required. To the extent a responsive answer is required, CLC denies the allegations contained in paragraph 2.1 of the EPA's Complaint, and otherwise answers that federal enforcement power can be delegated to an agency of the State of Alaska, which in turn can grant permits to CLC and can exercise regulatory authority and enforcement powers regarding environmental issues.

(2.2) The allegations in paragraph 2.2 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 2.2 of the EPA's Complaint.

(2.3) The allegations in paragraph 2.3 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 2.3 of the EPA's Complaint.

(2.4) The allegations in paragraph 2.4 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 2.4 of the EPA's Complaint.

(2.5) The allegations in paragraph 2.5 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 2.5 of the EPA's Complaint.

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(2.6) The allegations in paragraph 2.6 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 2.6 of the EPA's Complaint.

(2.7) The allegations in paragraph 2.7 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 2.7 of the EPA's Complaint.

(2.8) The allegations in paragraph 2.8 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 2.8 of the EPA's Complaint.

(2.9) The allegations in paragraph 2.9 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 2.9 of the EPA's Complaint.

(2.10) The allegations in paragraph 2.10 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 2.10 of the EPA's Complaint.

(2.11) The allegations in paragraph 2.11 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the

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allegations contained in paragraph 2.11 of the EPA's Complaint.

(2.12) The allegations in paragraph 2.12 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 2.12 of the EPA's Complaint.

(2.13) The allegations in paragraph 2.13 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 2.13 of the EPA's Complaint.

(2.14) The allegations in paragraph 2.14 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 2.14 of the EPA's Complaint.

(2.15) The allegations in paragraph 2.15 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 2.15 of the EPA's Complaint.

(2.16) The allegations in paragraph 2.16 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 2.16 of the EPA's Complaint.

(2.17) The allegations in paragraph 2.17 are a legal conclusion to which no

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responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 2.17 of the EPA's Complaint.

(3.1) CLC repeats and reaffirms its answers to the allegations in paragraphs 1.1 through 2.17 above.

(3.2) CLC denies the allegations contained in paragraph 3.2 of the EPA's Complaint, except CLC") is a corporation organized under the laws of the state of Alaska; that whether CLC is a person under 40 C.F.R. § 761.3 is a legal conclusion to which not responsive answer is required; and CLC last operated a sawmill in the year 1992.

(3.3) With regard to the allegations in paragraph 3.3 of the EPA's Complaint, CLC admits that Mr. Lapeyri is an individual and that he is currently a director and president of CLC. CLC admits that Mr. Lapeyri is the sole shareholder of CLC. CLC admits that Mr. Lapeyri currently manages CLC. The status of Mr. Lapeyri as a person under 40 C.F.R. § 761.3 is a legal conclusion to which no responsive answer is required. CLC denies that Mr. Lapeyri owns the site. CLC denies that electrical equipment is stored on the site.

(3.4) With regard to the allegations in paragraph 3.4, the historical records of CLC are not accessible, therefore CLC lacks sufficient knowledge to admit or deny the allegations in paragraph 3.4 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.4 of the EPA's Complaint.

(3.5) With regard to the allegations in paragraph 3.5 of the EPA's Complaint concerning the ownership of transformers with particular numbers, the historical records of CLC are not accessible, therefore CLC lacks sufficient knowledge to admit or deny the allegations concerning the ownership of transformers with particular numbers. of the

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EPA's complaint and therefore denies the allegations concerning the ownership of transformers with particular numbers. The allegations that three GE transformers are "PCB Transformers" as defined at 40 C.F.R. § 761.3 of the EPA's Complaint, are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations.

(3.6) With regard to the allegations in paragraph 3.6 of the EPA's Complaint, the historical records of CLC are not accessible, therefore CLC lacks sufficient knowledge to admit or deny the allegations in paragraph 3.6 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.6 of the EPA's Complaint. The allegations that five transformers and are "PCB Transformers" as defined at 40 C.F.R. § 761.3 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations.

(3.7) With regard to the allegations in paragraph 3.7 of the EPA's Complaint, the historical records of CLC are not accessible, therefore CLC lacks sufficient knowledge to admit or deny the allegations in paragraph 3.7 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.7 of the EPA's Complaint. The allegations that four capacitors are both "Large Capacitors" and "PCB Capacitors" as defined at 40 C.F.R. § 761.3, are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations.

(3.8) With regard to the allegations in paragraph 3.8 of the EPA's Complaint, the

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historical records of CLC are not accessible, therefore CLC lacks sufficient knowledge to admit or deny the allegations in paragraph 3.8 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.8 of the EPA's Complaint.

(3.9) With regard to the allegations in paragraph 3.9 of the EPA's Complaint, the historical records of CLC are not accessible, therefore CLC lacks sufficient knowledge to admit or deny the allegations in paragraph 3.9 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.9 of the EPA's Complaint.

(3.10) With regard to the allegations in paragraph 3.10 of the EPA's Complaint, the historical records of CLC are not accessible, therefore CLC lacks sufficient knowledge to admit or deny the allegations in paragraph 3.10 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.10 of the EPA's Complaint.

(3.11) With regard to the allegations in paragraph 3.11 of the EPA's Complaint, the historical records of CLC are not accessible, therefore CLC lacks sufficient knowledge to admit or deny the allegations in paragraph 3.11 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.11 of the EPA's Complaint. CLC further denies that any transformer was ever leaking.

(3.12) With regard to the allegations in paragraph 3.12 of the EPA's Complaint, the historical records of CLC are not accessible, therefore CLC lacks sufficient knowledge to admit or deny the allegations in paragraph 3.12 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.12 of the EPA's Complaint.

(3.13) CLC denies that Chilkat environmental, LLC did any work for Mr. Lapeyri; it was employed only by CLC. CLC lacks sufficient knowledge to admit or deny the remaining allegations in paragraph 3.13 of the EPA's complaint and therefore denies the

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remaining allegations contained in paragraph 3.13 of the EPA's Complaint.

(3.14) The allegations in paragraph 3.14 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 3.14 of the EPA's Complaint.

(3.15) CLC repeats and reaffirms its answers to the allegations in paragraphs 1.1 through 3.14 above. CLC denies (a) that it had any duty to register PCB transformers or (b) that it failed to register them.

(3.16) The allegations in paragraph 3.16 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 3.16 of the EPA's Complaint.

(3.17) With regard to the allegations in paragraph 3.17 of the EPA's Complaint, the historical records of CLC are not accessible, therefore CLC lacks sufficient knowledge to admit or deny the allegations in paragraph 3.17 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.17 of the EPA's Complaint.

(3.18) With regard to the allegations in paragraph 3.18, the historical records of CLC are not accessible, therefore CLC lacks sufficient knowledge to admit or deny the allegations pertaining to 1998. The remaining allegations in paragraph 3.18 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the remaining allegations contained in paragraph 3.18 of the EPA's Complaint.

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(3.19) CLC repeats and reaffirms its answers to the allegations in paragraphs 1.1 through 3.14 above. CLC denies that any PCB transformer ever leaked, needed repair or cleaning, or posed any environmental hazard.

(3.20) The allegations in paragraph 3.20 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 3.20 of the EPA's Complaint. CLC further denies that any transformer was ever leaking.

(3.21) With regard to the allegations in paragraph 3.21 of the EPA's Complaint, CLC denies that any transformer ever leaked; none leaked at any time. Furthermore, the historical records of CLC are not accessible, therefore CLC lacks sufficient knowledge to admit or deny the allegations in paragraph 3.21 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.21 of the EPA's Complaint.

(3.22) With regard to the allegations in paragraph 3.22 of the EPA's Complaint, CLC denies that any transformer ever leaked; none leaked at any time. Furthermore, CLC denies that CLC failed to repair transformers or initiate cleanup. CLC denies that it is liable for a civil penalty. The historical records of CLC are not accessible, therefore CLC lacks sufficient knowledge to admit or deny the allegations pertaining to the repair of transformers. The remaining allegations in paragraph 3.22 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the remaining allegations contained in paragraph 3.22 of the EPA's Complaint.

(3.23) CLC repeats and reaffirms its answers to the allegations in paragraphs 1.1

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through 3.14. CLC denies (a) that it improperly stored any PCB articles (transformers, capacitors, etc.) or (b) that any such articles ever leaked, needed repair or cleaning, or posed any environmental hazard.

(3.24) The allegations in paragraph 3.24 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 3.24 of the EPA's Complaint.

(3.25) With regard to the allegations in paragraph 3.25 of the EPA's Complaint, the historical records of CLC are not accessible, therefore CLC lacks sufficient knowledge to admit or deny the allegations in paragraph 3.25 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.25 of the EPA's Complaint.

(3.26) CLC lacks sufficient knowledge or information of what EPA inspectors observed in 2007 to admit or deny the allegations in paragraph 3.26 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.26 of the EPA's Complaint.

(3.27) The allegations in paragraph 3.27 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 3.27 of the EPA's Complaint.

(3.28) CLC repeats and reaffirms its answers to the allegations in paragraphs 1.1 through 3.14 above. CLC denies (a) that it failed to inspect any PCB item or (b) that it failed to maintain inspection records.

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(3.29) The allegations in paragraph 3.29 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 3.29 of the EPA's Complaint.

(3.30) The allegations in paragraph 3.30 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 3.30 of the EPA's Complaint.

(3.31) With regard to the allegations in paragraph 3.31 of the EPA's Complaint, the historical records of CLC are not accessible, therefore CLC lacks sufficient knowledge to admit or deny the allegations in paragraph 3.31 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.31 of the EPA's Complaint.

(3.32) With regard to the allegations in paragraph 3.32 that CLC failed inspect or keep records, the historical records of CLC are not accessible, therefore CLC lacks sufficient knowledge to admit or deny the allegations pertaining to inspections and records. The remaining allegations in paragraph 3.32 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the remaining allegations contained in paragraph 3.32 of the EPA's Complaint.

(3.33) CLC repeats and reaffirms its answers to the allegations in paragraphs 1.1 through 3.14 above. CLC denies that it failed to mark any PCB articles.

(3.34) The allegations in paragraph 3.34 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these

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allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 3.34 of the EPA's Complaint.

(3.35) With regard to the allegations in paragraph 3.35 of the EPA's Complaint, the historical records of CLC are not accessible, therefore CLC lacks sufficient knowledge to admit or deny the allegations in paragraph 3.35 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.35 of the EPA's Complaint.

(3.36) With regard to the allegations in paragraph 3.36 that CLC owned transformers and capacitors that were not marked, the historical records of CLC are not accessible, therefore CLC lacks sufficient knowledge to admit or deny the allegations pertaining to ownership of transformers or capacitors that were not marked. The remaining allegations in paragraph 3.32 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the remaining allegations contained in paragraph 3.32 of the EPA's Complaint.

(3.37) CLC repeats and reaffirms its answers to the allegations in paragraphs 1.1 through 3.14 above. CLC denies (a) that it failed to develop or (b) to maintain annual document logs.

(3.38) The allegations in paragraph 3.38 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 3.38 of the EPA's Complaint.

(3.39) With regard to the allegations in paragraph 3.35 of the EPA's Complaint, the historical records of CLC are not accessible, therefore CLC lacks sufficient knowledge to

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admit or deny the allegations in paragraph 3.35 of the EPA's complaint and therefore denies the allegations contained in paragraph 3.35 of the EPA's Complaint.

(3.40) With regard to the allegations in paragraph 3.40 that CLC failed to maintain document logs, the historical records of CLC are not accessible, therefore CLC lacks sufficient knowledge to admit or deny the allegations maintenance of document logs. The remaining allegations in paragraph 3.32 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CLC denies the remaining allegations contained in paragraph 3.32 of the EPA's Complaint.

(4.1) CLC lacks sufficient knowledge to admit or deny the allegations in paragraph 4.4 of the EPA's complaint and therefore denies the allegations contained in paragraph 4.4 of the EPA's Complaint. CLC denies that it owes a civil penalty.

(5.1) The allegations in paragraph 5.1 are a legal conclusion to which no responsive answer is required. To the extent that additional factual allegations are contained in this paragraph by implication and that a responsive answer is required, CLC denies the allegations contained in paragraph 5.1 of the EPA's Complaint. By this Respondent's Answer, CLC does request a hearing pursuant to 40 C.F.R. § 22.15(c) and the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*

(5.2) CLC agrees that its answer to the EPA's Complaint should be filed with the Regional Hearing Clerk at the address provided in ¶ 5.2 of the Complaint pursuant to 40 C.F.R. § 22.15(a); and CLC certifies that it is mailing its Answer to the Clerk.

(6.1) CLC agrees that its answer to the EPA's Complaint should be filed in a timely manner with the Regional Hearing Clerk, and CLC states that its written answer is

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timely and therefore no default can be entered against it. 40 C.F.R. § 22.15.

(6.2) The allegations in paragraph 6.2 are a legal conclusion to which no responsive answer is required. To the extent a responsive answer is required, CLC denies the allegations contained in paragraph 6.2 of the EPA's Complaint. Furthermore, CLC alleges and avers that indeed, it is complying with the pleading requirements of 40 C.F.R. § 22.15 — and if the administrative law judge later determines that CLC has not satisfied the pleading requirements then CLC requests leave to amend its answer pursuant to 40 C.F.R. § 22.15(e).

(7.1) The allegations in paragraph 7.1 are a legal conclusion to which no responsive answer is required. To the extent a responsive answer is required, CLC denies the allegations contained in paragraph 7.1 of the EPA's Complaint. By filing this Answer, CLC does request an informal settlement conference with EPA pursuant to 40 C.F.R. § 22.18(b(1)).

(7.2) The allegations in paragraph 7.2 are a legal conclusion to which no responsive answer is required. To the extent a responsive answer is required, CLC denies the allegations contained in paragraph 7.2 of the EPA's Complaint. Furthermore, CLC requests both (a) a hearing pursuant to 40 C.F.R. § 22.15(c) and (b) an informal settlement conference with EPA pursuant to 40 C.F.R. § 22.18(b(1)).

(7.3) The allegations in paragraph 7.3 are a legal conclusion to which no responsive answer is required. To the extent a responsive answer is required, CLC denies the allegations contained in paragraph 7.3 of the EPA's Complaint. Furthermore, CLC notes the inconsistency between the prohibition against *ex parte* contact stated in ¶ 7.3 of the Complaint and the suggestion or permission that is granted by implication in 40 C.F.R. § 22.18(b(1)) to the parties that purports to allow “settlement discussions” between the

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respondent and the agency.

(8.1) The allegations in paragraph 8.1 are a legal conclusion to which no responsive answer is required. To the extent a responsive answer is required, CLC denies generally the allegations contained directly or by implication in paragraph 8.1 of the EPA's Complaint, and furthermore, CLC specifically denies that it has committed forbidden acts of pollution or has illegally discharged PCB's or otherwise has violated the TSCA and the regulations in 40 C.F.R.

Affirmative Defenses

CLC asserts the following affirmative defenses:

- (A) Statute of Limitations
- (B) Laches
- (C) Entrapment by Estoppel
- (D) Estoppel
- (E) Waiver

Relief Requested

- (A) CLC requests that a hearing be conducted.
- (B) CLC requests that all claims against it be dismissed.
- (C) CLC requests an award to Respondents of their reasonable attorney's fees and costs as provided by law or equity.
- (D) CLC requests such other relief as may be just and proper.

Respectfully submitted this 3rd day of November 2010 at Petersburg, Alaska.



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CERTIFICATE OF SERVICE

I, Fred W. Triem, certify that on the 3rd day of November in 2010 I sent a copy of the foregoing Respondent's Answer to the Regional Hearing Clerk at 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 him or her.



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