

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CHILL TRANSPORTATION LLC,

Toppenish, Washington

Respondent.

DOCKET NO. CWA-10-2023-0020

**(proposed) DEFAULT ORDER**

**1. INTRODUCTION**

1.1. This Default Order is issued in a case brought under the authority of Clean Water Act (“CWA”) Section 311(b)(6), 33 U.S.C. § 1321(b)(6), and CWA Section 309(g), 33 U.S.C. § 1319(g). The Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region 10 (“Complainant”), has alleged that Chill Transportation LLC (“Respondent”), violated 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 violated CWA Section 301(a), 33 U.S.C. § 1311(a), by adding pollutants to navigable waters from a point source without a permit.

1.2. This Default Order is issued in accordance with 40 C.F.R. § 22.17, and the default rendered herein constitutes an admission by Respondent of all facts alleged in the Complaint, as well as a waiver by Respondent of a right to a hearing regarding such factual allegations. Further, Respondent is held to have committed the violations alleged in the Complaint and is hereby assessed a penalty of \$2,000.

**2. FINDINGS OF FACT TO SUPPORT DEFAULT ORDER**

Pursuant to 40 C.F.R. § 22.17, and based upon the record, I make the following factual findings:

2.1. On February 14, 2023, Complainant filed its Complaint in the above captioned matter. The Complaint alleges that Respondent violated 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 violated CWA Section 301(a), 33 U.S.C. § 1311(a), by adding pollutants to navigable waters from a point source without a permit. For these violations, Complainant requests that Respondent be required to pay an administrative penalty in the amount of \$2,000.

2.2. Complainant served the Complaint on Respondent by personal service on June 15, 2023.

2.3. Respondent is a “person” as that term is defined in CWA Sections 311(a)(7) and 502(5), 33 U.S.C. §§ 1321(a)(7), 1362(5).

2.4. Pursuant to 40 C.F.R § 22.15(a), Respondent was required to file an answer to the Complaint with the Regional Hearing Clerk within 30 days of service of the Complaint. Accordingly, Respondent was required to file an answer 30 days after service of the Complaint, or by no later than July 15, 2023.

2.5. Respondent failed to file its answer by July 15, 2023. Moreover, as of November 7, 2023 when Complainant filed its Motion for Default, Respondent had still not filed an answer to the Complaint.

### **3. CONCLUSIONS REGARDING MATERIAL ISSUES OF LAW OR DISCRETION**

Pursuant to 40 C.F.R. § 22.17, and based upon the record, I conclude as follows:

3.1. This case is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22. The Consolidated Rules, at 40 C.F.R. § 22.17, apply to a motion for default, and provide in pertinent part:

(a) Default. A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint .... Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations.

(c) Default order. When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued.

3.2. The Complaint was lawfully and properly served upon Respondent on July 15, 2023, in accordance with 40 C.F.R. § 22.5(b)(1).

3.3. In accordance with 40 C.F.R. §§ 22.15(a) and 22.7(c), Respondent was required to file its answer to the Complaint by July 15, 2023.

3.4. Respondent failed to file a timely answer to the Complaint.

3.5. Complainant has moved for this Default Order in the manner prescribed by the 40 C.F.R. § 22.17(a).

3.6. Respondent is in default as prescribed by 40 C.F.R. § 22.17(a).

3.7. In accordance with 40 C.F.R. §§ 22.15(d) and 22.17(a), the default in this case constitutes an admission by Respondent of all facts alleged in the Complaint, and a waiver by Respondent of a right to a hearing regarding such factual allegations. Respondent is thus held to have committed the violations alleged in the Complaint.

#### **4. PENALTY**

4.1. Complainant has proposed an administrative penalty of \$2,000.

4.2. In determining the proposed penalty of \$2,000, I find that Complainant considered and accounted for the penalty factors set forth in CWA Section 311(b)(8), 33 U.S.C.

§ 1321(b)(8), and CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3). In determining the amount of penalty for violations of CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3), CWA Section

311(b)(8), 33 U.S.C. § 1321(b)(8), provides that EPA “shall consider the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.” In determining the amount of penalty for violations of CWA Section 301(a), 33 U.S.C. § 1311(a), CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), states that EPA “shall take into account the nature, circumstances, extent and gravity of the violation or 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.”

4.3. CWA Section 311(b)(11), 33 U.S.C. § 1321(b)(11), states that civil penalties shall not be assessed under both CWA Section 311(b), 33 U.S.C. § 1321(b), and CWA Section 309, 33 U.S.C. § 1319, for the same discharge. As a result, I find that civil penalties are appropriate pursuant to CWA Section 311(b), 33 U.S.C. § 1321(b), and that because civil penalties are assessed under CWA Section 311(b), 33 U.S.C. § 1321(b), civil penalties are not being assessed under CWA Section 309, 33 U.S.C. § 1319, for the same discharge.

4.4. The facts alleged in the Complaint, and now deemed admitted, demonstrate that a penalty of \$2,000 is appropriate and is hereby assessed against Respondent.

## **5. ORDER**

Accordingly, it is hereby ORDERED that:

5.1. Default be entered against Respondent pursuant to the Consolidated Rules, 40 C.F.R. § 22.17.

5.2. No later than thirty days after the date that this Default Order becomes a Final Order, Respondent shall make payment in the amount of \$2,000 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:

*Address format for standard delivery (no delivery confirmation requested):*

U.S. Environmental Protection Agency  
P.O. Box 979078  
St. Louis, Missouri 63197-9000

*Address format for signed receipt confirmation (FedEx, DHL, UPS, USPS certified, registered, etc):*

U.S. Environmental Protection Agency  
Government Lockbox 979078  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101

Respondent must note on the check the title and docket number for this matter.

5.3. Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 5.2, 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 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
R10\_RHC@epa.gov

Rick Cool  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 20-C04  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
cool.richard@epa.gov

5.4. Each party shall bear its own costs in bringing or defending this action.

5.5. Should Respondent fail to pay the penalty specified in Paragraph 5.2 above in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action

to collect the assessed penalty under the CWA. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

5.6. Should Respondent fail to pay any portion of the penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

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 this order, 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 Section CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis its penalty set forth in Paragraph 5.2, 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 twenty percent (20%) of the aggregate amount of that Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

5.7. This Default Order constitutes an Initial Decision, in accordance with 40 C.F.R. § 22.17(c) of the Consolidated Rules. The Initial Decision shall become a Final Order forty-five days after its service upon the parties, and without further proceedings unless: (1) a party moves to reopen the hearing; (2) a party appeals the initial decision to the Environmental Appeals Board; (3) a party moves to set aside a default order that constitutes an initial decision; or (4) the Environmental Appeals Board elects to review the initial decision on its own initiative.

5.8. Within thirty days after the Initial Decision is served, any party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board. 40 C.F.R. § 22.30.

5.9. Where a Respondent fails to appeal an Initial Decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30 of the Consolidated Rules, and that initial decision becomes a Final Order pursuant to 40 C.F.R. § 22.27(c) of the Consolidated Rules, Respondent waives its rights to judicial review.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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Richard Mednick  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10