

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Astro Auto Wrecking, LLC

Federal Way, Washington

Respondent.

DOCKET NO. CWA-10-2021-0097

**COMPLAINT**

**I. STATUTORY AUTHORITY**

1.1. This administrative complaint (Complaint) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA or Complainant) by Section 309(g) of the Federal Water Pollution Control Act (CWA), 33 U.S.C. § 1319(g)(2). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 10, who in turn has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division in Region 10.

1.2. Pursuant to CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby proposes the assessment of a civil penalty against Astro Auto Wrecking, LLC (Respondent) for violations of the CWA.

1.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), EPA has provided the Washington State Department of Ecology (Ecology) with an opportunity to consult with EPA on this matter.

**In the Matter of: Astro Auto Wrecking, LLC**  
**Docket Number: CWA-10-2021-0097**  
**Complaint**  
**Page 1 of 25**

**U.S. Environmental Protection Agency**  
**1200 Sixth Avenue, Suite 155, 11-C07**  
**Seattle, Washington 98101**

## **II. STATUTORY AND REGULATORY BACKGROUND**

2.1. The objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

2.2. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits “the discharge of any pollutant by any person” except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

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

2.4. Section 502(6) of the CWA defines “pollutant” to include, *inter alia*, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, sand, and industrial waste discharged into water. 33 U.S.C. § 1362(6).

2.5. Section 502(14) of the CWA defines “point source” to include, *inter alia*, any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel or conduit from which pollutants are or may be discharged. 33 U.S.C. § 1362(14).

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

2.7. Section 502(7) of the CWA defines “navigable waters” as the “waters of the United States including the territorial seas.” 33 U.S.C. § 1362(7). At the time of the allegations set forth in Complaint, “waters of the United States” was defined to include, *inter alia*: all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters, including interstate wetlands; and all tributaries to such waters. 40 C.F.R. § 122.2 (2015). As of the date of this Complaint, “waters of the United States” are defined to

include tributaries which are defined to mean, *inter alia*, naturally occurring surface water channels that are perennial or intermittent in a typical year. 40 C.F.R. §§ 122.2, 120.2(1)(ii) & (3)(xii).

2.8. Section 402(p) of the CWA requires an NPDES permit for stormwater discharge “associated with industrial activity,” and authorized EPA to issue regulations to designate stormwater discharges associated with industrial activity and to establish a comprehensive program to regulate sources of stormwater associated with industrial activity. 33 U.S.C. § 1342(p).

2.9. EPA promulgated regulations defining the phrase “stormwater associated with industrial activity” to mean “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw material storage areas at an industrial plant.” 40 C.F.R. § 122.26(b)(14). Facilities involved in the recycling of materials, such as metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but not limited to facilities classified under Standard Industrial Classification (SIC) codes 5015 and 5093 (metal scrap and recycling yards, batter reclaimers, salvage yards, and automobile junkyards), are defined to be engaging in industrial activity. 40 C.F.R. § 122.26(b)(14)(vi).

2.10. EPA authorized the state of Washington to administer the NPDES program pursuant to Section 402(b) of the CWA. 33 U.S.C. § 1342(b). As an authorized state, the state of Washington, through its Department of Ecology, issued, pursuant to section 402 of the CWA, the

Industrial Stormwater General Permit (ISGP) on December 3, 2014, which became effective January 2, 2015, and expired on December 31, 2019.

2.11. Coverage under the Washington State ISGP is available for facilities that are engaged in certain industrial activities identified in Table 1 of the ISGP. Facilities eligible for ISGP coverage include those conducting industrial activities under SIC codes 5015 and 5093 (Recycling facilities involved in the recycling of materials, including but not limited to, metal scrap yards, battery reclaimers, salvage yards, auto recyclers, and automobile junkyards).

2.12. ISGP coverage extends to discharges of stormwater and conditionally approved non-stormwater discharges to waters of the state of Washington, which includes waters of the United States within the jurisdiction of the state of Washington. Once covered, permittees are required by condition G.16 of the ISGP to comply with conditions and requirements set forth in the permit.

2.13. Facilities that require NPDES permit coverage for stormwater dischargers associated with industrial activities obtain coverage under the ISGP by submitting a complete and accurate notice of intent to the Department of Ecology in accordance with the procedures set forth in condition S2 of the ISGP.

2.14. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the EPA to assess administrative penalties against any person who violates Section 301 of the CWA,

33 U.S.C. § 1311, or any condition or limitation in a permit issued under section 402 of the CWA, 33 U.S.C. § 1342.

### **III. ALLEGATIONS**

3.1. Respondent is a limited liability company organized under the laws of Washington State, and a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.2. Respondent operates a 5.15-acre auto wrecking, recycling, and storage facility located at 37307 Enchanted Parkway South in Federal Way, Washington (Facility).

Respondent’s Facility comprises a shop with indoor repair areas and two covered but open-air vehicle bays for processing and draining vehicle fluids, a mobile outdoor crusher, auto fluid storage areas, and outdoor storage areas for scrap and vehicles.

3.3. Respondent’s typical activities at the Facility include the processing, dismantling, draining, storing and crushing of vehicles for sale, and the sale of car parts. Respondent’s activities are covered under SIC codes 5015 and 5093 (Recycling facilities involved in the recycling of materials, including but not limited to, metal scrap yards, battery reclaimers, salvage yards, auto recyclers, and automobile junkyards).

3.4. Stormwater runoff at the Facility flows from east to west. The Facility’s western property line runs along the top of a ravine. A trench and berm system along the northwestern and western edge conveys stormwater from areas associated with industrial activity to the southwestern part of the Facility where it is discharged into the ravine. The trench and berm system, along with other topographical features of the Facility are discernible, defined and discrete conveyances and therefore “point sources” as defined at CWA section 502(14), 33 U.S.C. § 1362(14).

3.5. At the bottom of the ravine is the east fork of Hylebos Creek. Hylebos Creek is a naturally occurring surface water which flows perennially approximately nine months of the year

and is a tributary to the Hylebos Waterway. The Hylebos Waterway is an inlet of Commencement Bay in Puget Sound which is a water used in interstate and foreign commerce and susceptible to the ebb and flow of the tide. Hylebos Creek, Hylebos Waterway and Commencement Bay are “navigable waters” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.6. Hylebos Creek is listed by Ecology as impaired, pursuant to section 303(d) of the CWA, 33 U.S.C. § 1313(d), for copper, bacteria and dissolved oxygen. The Hylebos Waterway and Commencement Bay are also listed as impaired for copper, bacteria and dissolved oxygen, in addition to other pollutant parameters.

3.7. Respondent discharged stormwater associated with industrial activity from the Facility into waters of the United States, within the meaning of Sections 402(p) and 502(7) of the CWA, 33 U.S.C. §§ 1342(p) and 1362(7), and as defined at 40 C.F.R. § 122.26(a)(14).

3.8. At all times relevant to this action, Respondent was covered by ISGP number WAR011869, effective January 2, 2015, to December 31, 2019. Respondent submitted an application for coverage under the ISGP, dated December 30, 2014, indicating that stormwater from the Facility would discharge directly or indirectly to a surface water. Respondent submitted a request for renewal coverage under the ISGP, dated July 26, 2019, that identified Hylebos Creek as the receiving water for stormwater from the Facility.

3.9. On May 20, 2019, Complainant’s inspector (Inspector) conducted an unannounced inspection of Respondent’s Facility accompanied by a stormwater inspector and compliance specialist from Ecology

3.10. The Inspector arrived at Respondent’s Facility at or around 9:20 am, presented his credentials to an employee at the front desk, and informed the employee that the Inspector intended to conduct an industrial stormwater inspection of the Facility. The employee requested

that the Inspector wait for Mr. Leo McMilian, who typically arrived around 10:00 am. The employee identified Mr. McMilian as Respondent's owner, and he is identified as Respondent's sole governor in Respondent's filings with the Washington Secretary of State.

3.11. At or around 10:00 am, the Inspector requested an update on when Mr. McMilian would arrive and was provided with contact information for Respondent's counsel at the time, Mr. Justin Park. The Inspector phoned Mr. Park from Respondent's parking lot and Mr. Park stated that his client typically requires advanced appointments for regulatory inspections at which point the Inspector notified Mr. Park that he intend to contact counsel for Complainant to describe the Inspector's discussions with Respondent's employee and counsel.

3.12. At or around 10:40 am, Mr. McMilian arrived at the Facility. The Inspector presented his credentials and requested access to the Facility to conduct an industrial stormwater inspection. Mr. McMilian stated that the Inspector would need to schedule an appointment at a later date to conduct the inspection.

3.13. After receiving a call from the Inspector, Complainant's counsel phoned Mr. Park to discuss access to the Facility to conduct the inspection. Following the phone conversation, Complainant's counsel emailed Mr. Park citations to the CWA and ISGP regarding the authority of the Inspector to access the Facility to conduct the compliance inspection. Mr. Park responded by offering to schedule an inspection within seven to fourteen days. Over the next three hours, Complainant's counsel and Mr. Park continued to correspond by email. At or around 1:40 pm, an agreement was reached to provide the Inspector access to the Facility at 3:00 pm that day.

3.14. Once granted access to the Facility, the Inspector conducted a stormwater compliance inspection from approximately 3:00 pm to 4:55 pm. Prior to the start of the inspection, the Inspector informed Mr. McMilian of the purpose and expectations for the inspection. Over the course of the inspection the Inspector observed and photographed the

vehicle processing areas of the Facility including the two covered open-air vehicle processing and draining areas, the location of the E-Z crusher and the exterior areas on the western portion of the Facility.

3.15. At the two covered open-air vehicle processing and draining areas the Inspector observed that the ground was heavily stained. The Inspector also observed three totes in the vehicle fluid draining area that were stored without secondary containment. The Inspector was informed by Respondent's representative that the totes contained anti-freeze, motor oil, gear lube and transmission oil. The inspector also observed that granular absorbent material had been placed beneath vehicles that were being drained of fluids.

3.16. To the south of the main building and two covered open-air vehicle areas the Inspector observed two totes containing transmission fluid that were stored uncovered and without secondary containment. The Inspector also observed extensive dark staining extending from the two covered open-air vehicle areas to the ground outside.

3.17. To the west of the two covered open-air vehicle areas the Inspector observed nine totes outdoor and not under cover that were stored without secondary containment. Respondent's representative informed the Inspector that six of the totes were empty and the other three totes contained motor oil, gasoline and an unknown petroleum chemical. The Inspector noted that the area smelled strongly of petroleum and observed that the tote containing the unknown petroleum chemical was leaking its contents to the ground.

3.18. In the area where the mobile crusher was located, the Inspector observed a catch basin that was caked with mud and that lacked any filtration or other best management practices to limit or prevent introduction of pollutants to the catch basin. Mr. McMilian informed the inspector that the catch basin, along with an oil water separator had been recently installed.

3.19. Along the northwestern and western edge of the Facility the Inspector observed a



trench and a berm consisting of ecology blocks covered by geotextile and plastic material. The trench and berm were separated from the western portion of the Facility by sediment fencing that was not properly installed. Mr. McMilian informed the Inspector that the berm and trench had been installed approximately six years earlier to help contain stormwater onsite. The Inspector asked Mr. McMilian if stormwater discharged from the Facility, to which Mr. McMilian replied that stormwater discharged from the southwestern portion of the Facility. The Inspector observed that the berm and trench installed along the northwestern and western boundary of the Facility did not extend to the southwestern boundary.

3.20. At the south end of the Facility, the Inspector observed a large uncovered dumpster labeled “Schnitzer” containing scrap metal and located outdoors. Respondent’s representative informed the Inspector that the dumpster was used to store sheet aluminum that was sent to Schnitzer Steel approximately every three to four months.

3.21. At the time of the Facility inspection, the Inspector requested copies of Respondent’s permit compliance documents. Mr. McMilian stated that all recent permit files were located at his attorney’s office. In the week following the inspection, the Inspector contacted Respondent to request copies of the permit compliance documents. On or around June 8, 2019, Complainant received two flash drives containing digital copies of Respondent’s permit compliance files.

3.22. At the time of the Inspection, Mr. McMilian informed the Inspector that the Respondent was under a court order to implement injunctive measures to ensure compliance with the terms and conditions of Respondent’s ISGP. Mr. McMilian stated that the measures include paving the area of the Facility adjacent to the crusher, installation of an oil-water separator, installation of a stormwater drainage system and installation of a rain garden to allow for infiltration of stormwater on-site.

3.23. On July 23, 2019, the Inspector completed an inspection report that documented his observations during the inspection and conversations with Respondent's representatives including Mr. McMilian. The inspection report included photographs taken during the inspection and information from the Inspector's review of the permit compliance documents received from Respondent on June 8, 2019, and other sources of publicly available information.

3.24. The documents reviewed by the Inspector included Respondent's Stormwater Pollution Prevention Plan dated May 2015 (SWPPP). The SWPPP states it was revised in anticipation of withdrawing the notice of intent for ISGP coverage submitted by Respondent to Ecology. The SWPPP explains that a trench and berm comprised of ecology blocks, soil and an impervious liner was placed along the western edge of the Facility such that stormwater cannot leave the Facility and therefore does not discharge to east for of Hylebos Creek.

3.25. Based on information and belief, Respondent has not withdrawn its notice of intent for ISGP coverage nor has Ecology determined that Respondent is not subject to ISGP. On July 24, 2019, Respondent submitted a renewal notice of intent for ISGP coverage identifying Hylebos Creek as the location of stormwater discharge from the Facility.

3.26. Complainant reviewed publicly available information in the court docket for *Waste Action Project v. Astro Auto Wrecking*, No. 2:15-cv-796-JCC (W.D. Wash.), a federal civil action brought against the Respondent pursuant to Section 505 of the CWA, 33 U.S.C. § 1365. Following a trial held from February 27 to March 2, 2017, the Court issued its Findings of Facts and Conclusions of Law that included, *inter alia*, a finding that, even after installation of the berm and trench structure, it is more likely than not that stormwater discharged from the southern portion of the Facility and that such discharges contained petroleum or petroleum byproducts. *Id.* Dkt. 91, pp. 4-5.

3.27. Complainant reviewed publicly available information on Ecology's Permit and

Reporting Information System (PARIS) database, including correspondence from Ecology to Respondent. This information included a report summarizing a water quality compliance inspection, conducted by Ecology on February 5, 2015. The inspection report identified several compliance issues at Respondent's Facility including stormwater flow with visible oil, a lack of commonly employed best management practices to address stormwater pollution and a crusher leaking oil to the ground. Ecology's inspection report further noted that Respondent was unable to provide ISGP compliance documents.

3.28. Complainant's review of the PARIS database included correspondence from Ecology to Respondent documenting Respondent's failure to submit quarterly discharge monitoring reports in 2016 and 2017, and Ecology's assessment of a penalty related to the failure to submit required discharge monitoring reports.

3.29. The allegations set forth herein are based on the May 20, 2019 inspection, a review of records provided by Respondent, including the Facility's SWPPP dated May 2015, and review of publicly available records.

3.30. As described below, from at least January 1, 2018 to May 20, 2019, Respondent violated CWA Section 301, 33 U.S.C. § 1311, and/or the conditions and/or limitations of its ISGP permit number WAR011869. Violations of CWA Section 301 and the ISGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

**Violation 1 – Failure to Immediately Clean Up Spills  
(Violation of Condition S3.B.4.b.i.3.d of the ISGP; Three Counts)**

3.31. Paragraphs 3.1 to 3.30 are realleged and incorporated herein by reference.

3.32. On May 20, 2019, the Inspector observed an area behind the main building used for draining vehicles and storing engines. The Inspector observed heavy staining and a sheen on the ground in the vehicle draining and engine storage area that extended to the southern part of

the main building. To the west of the vehicle draining area the Inspector observed a tote containing an unknown petroleum substance leaking its contents to the ground. To the north of the area with the leaking tote the Inspector observed a 1000-gallon diesel fuel tank with heavy staining on the side of the tank and staining on the ground below the hose connection to the fuel storage tank.

3.33. Condition S3.B.4.b.i.3.d of the ISGP requires permittees to immediately clean up spills and leaks to prevent the discharge of pollutants.

3.34. Respondent violated condition S3.B.4.b.i.3.d of the ISGP by failing to immediately clean up spills in the vehicle draining and engine storage area and leaks from the tote containing the unknown petroleum substance and 1000-gallon diesel fuel tank.

**Violation 2 – Failure to Provide for Secondary Containment  
(Violation of Condition S3.B.4.b.i.4.a; Eight Counts)**

3.35. Paragraphs 3.1 to 3.30 are realleged and incorporated herein by reference.

3.36. On May 20, 2019, the Inspector observed three totes in the vehicle draining area containing anti-freeze, motor oil, gear lube and transmission oil that were stored without secondary containment; three totes to the west of the vehicle draining containing gasoline, motor oil and an unknown petroleum substance that were stored without secondary contained; and two totes to the south of the main building and vehicle processing area containing transmission fluid that were stored without secondary containment.

3.37. Condition S3.B.4.b.i.4.a of the ISGP requires permittees to store all chemical liquids, fluids and petroleum products on an impervious surface that is surrounded with a containment berm or dike that is capable of containing 10% of the total enclosed container volume or 110% of the volume contained in the largest tank, whichever is greater.

3.38. Respondent violated condition S3.B.4.b.i.4.a of the ISGP by failing to provide

secondary containment for eight totes containing chemical liquids, fluids or petroleum products located in the covered open-air vehicle draining area and outside this area to the west and south.

**Violation 3- Failure to Locate Spill Kit Within 25 Feet of Fueling Station  
(Violation of Condition S3.B.4.b.i.4.c; One Count)**

3.39. Paragraphs 3.1 to 3.30 are realleged and incorporated herein by reference.

3.40. On May 20, 2019, the Inspector observed a stationary 1000-gallon diesel fuel storage tank to the north of the main building. The fuel storage tank was heavily stained on the side and the ground below the hose connection to the fuel storage tank was also stained. No spill kits were located within 25 feet of the fuel storage tank.

3.41. Condition S3.B.4.b.i.4.c of the ISGP requires permittees to locate spill kits within 25 feet of all fueling stations, fuel transfer stations, mobile fueling units, and used oil storage.

3.42. Respondent violated condition S3.B.4.b.i.4.c of the ISGP by failing to locate a spill kit within 25 feet of the stationary 1000-gallon diesel fuel storage tank.

**Violation 4 – Failure to Use Drip Pan  
(Violation of Condition S3.B.4.b.i.4.h; One Count)**

3.43. Paragraphs 3.1 to 3.30 are realleged and incorporated herein by reference.

3.44. On May 20, 2019, the Inspector observed a stationary 1000-gallon diesel fuel storage tank to the north of the main building. The fuel storage tank was heavily stained on the side and the ground below the hose connection to the fuel storage tank was also stained.

3.45. Condition S3.B.4.b.i.4.h of the ISGP requires permittees to use drip pans and absorbents under or around leaky vehicles and equipment or to store such equipment indoors where feasible.

3.46. Respondent violated condition S3.B.4.b.i.4.h of the ISGP by failing to use a drip pan beneath the hose connection to the stationary 1000-gallon diesel fuel storage tank.

**Violation 5 – Failure to Cover Dumpster  
(Violation of Condition S.3.B.4.b.i.2.d; One Count)**

3.47. Paragraphs 3.1 to 3.30 are realleged and incorporated herein by reference.

3.48. On May 20, 2019, the Inspector observed a large dumpster labeled “Schnitzer” that contained scrap metal and that was not under cover or fitted with a lid. At the time the Inspector observed the dumpster it was not in use.

3.49. Condition S.3.B.4.b.i.2.d of the ISGP requires that permittees keep all dumpsters under cover or fit with a lid that must remain closed when not in use.

3.50. Respondent violated condition S.3.B.4.b.i.2.d of the ISGP by failing to store the scrap metal dumpster under cover or to fit with a lid when not in use.

**Violation 6 – Failure to Maintain Records Onsite  
(Violation of Conditions S.3.A.4.a, S.9.C.1 and S.9.C.3; One Count)**

3.51. Paragraphs 3.1 to 3.30 are realleged and incorporated herein by reference.

3.52. On May 20, 2019, the Inspector requested Respondent provide ISGP compliance records from 2015 to present. Mr. McMillan responded that all compliance records from 2015 to present, including the May 2015 SWPPP, were located at his attorney’s office, and not maintained onsite at the Facility.

3.53. Condition S.9.C.1 requires that the permittee retain ISGP compliance documents onsite for a minimum of five years. Condition S.9.C.3 of the ISGP requires that permittees make all plans, documents and records required by the ISGP immediately available to Ecology or the local jurisdiction upon request.

3.54. Respondent violated Conditions S.9.C.1 and S.9.C.3 of the ISGP by failing to maintain the SWPPP and ISGP compliance records onsite and to make them available when requested.

**Violation 7 – Failure to Maintain a Complete and Updated SWPPP  
(Violation of Conditions S.3.B.3, S.3.A.4.b and S.3.B.1.c; Two Counts)**

3.55. Paragraphs 3.1 to 3.30 are realleged and incorporated herein by reference.

3.56. On or around June 18, 2019, Complainant received from Respondent two flash drivers containing digital files of required IGSP reports, documents and other compliance files from 2015 through May 2019. The SWPPP provided by Respondent was dated May 2015 and certified by Mr. McMilian on June 1, 2015. The section of the SWPPP designated for the identification of the pollution prevention team was blank. The SWPPP stated that there are no stormwater drainage structures at the Facility and the SWPPP site map did not depict such structures; however, the Inspector noted that there was a catch basin located in the vicinity of the crusher and Mr. McMilian stated that the catch basin lead to an oil-water separator.

3.57. Condition S.3.B.3 of the ISGP requires that the SWPPP identify specific individuals that are part of the pollution prevention team by name or title. Condition S.3.B.1.c of the ISGP requires that the site map identify stormwater drainage and drainage structures. Condition S.3.A.4.b requires that the SWPPP and site map be modified whenever there is a change in design, construction, operation, or maintenance at the facility that significantly changes the nature of pollutants discharged in the stormwater from the facility.

3.58. Respondent violated condition S.3.B.3 of the ISGP by failing to maintain a complete and updated SWPPP and violated conditions S.3.A.4.b and S.3.B.1.c by not identifying stormwater drainage and drainage structures present at the Facility.

**Violation 8 – Failure to Conduct or Document Annual Training  
(Violation of Condition S3.B.4.b.i.5 or S9.C.1.e; One Count)**

3.59. Paragraphs 3.1 to 3.30 are realleged and incorporated herein by reference.

3.60. On or around June 18, 2019, Complainant received from Respondent two flash

drivers containing digital files of required IGSP reports, documents and other compliance files from 2015 through May 2019. The files provided did not include any documents related to Respondent's completion and/or documentation of annual SWPPP training for employees in 2018.

3.61. Condition S3.B.4.b.i.5 of the ISGP requires that employees who have duties in areas of industrial activities subject to the ISGP receive, at a minimum, annual SWPPP training and that a log of the specific dates on which employees are trained be maintained. Condition S9.C.1.e of the ISGP requires that logs of annual training be maintained for a period of at least five years.

3.62. Respondent violated conditions S3.B.4.b.i.5 or S9.C.1.e of the ISGP by either failing to provide annual SWPPP training for employees in 2018 or failing to document such training.

**Violation 9 – Failure to Accurately Complete Monthly Inspection Reports  
(Violation of Condition S7.C.1; 17 Counts)**

3.63. Paragraphs 3.1 to 3.30 are realleged and incorporated herein by reference.

3.64. On or around June 18, 2019, Complainant received from Respondent two flash drivers containing digital files of required IGSP reports, documents and other compliance files from 2015 through May 2019. The files included Respondent's monthly visual inspection reports from January 2018 through May 2019. The Inspector's review of the monthly visual inspection reports concluded the reports were incomplete and inconsistent. None of the reports from January 2018 to May 2019 were certified or identified the time of the inspection. The reports also contained inconsistent assessments of site conditions, stating that no discharge was occurring while simultaneously observing the discharge was free from pollutants. The reports stated that secondary containment was in use and no leaking vehicles or equipment were present



at the Facility, which is inconsistent with the Inspectors observations on May 20, 2019.

3.65. Condition S.7.A.1 requires a permittee to conduct and document visual inspections of the site each month. Condition S7.C.1 of the ISGP requires that visual inspections be recorded, include the time and date of the inspection and provide a certification that the report is true, accurate and complete.

3.66. Respondent violated Condition S7.C.1 of the ISGP by failing to accurately and/or completely record information in monthly visual inspection reports.

**Violation 10 – Failure to Complete Discharge Monitoring Report  
(Violation of Condition S9.A.4; One Count)**

3.67. Paragraphs 3.1 to 3.30 are realleged and incorporated herein by reference.

3.68. On or around June 18, 2019, Complainant received from Respondent two flash drivers containing digital files of required IGSP reports, documents and other compliance files from 2015 through May 2019. The files included Respondent’s discharge monitoring report for the first quarter of 2019. The Inspector’s review of the first quarter discharge monitoring report concluded that the Respondent failed to sample the discharge of stormwater or to indicate why a sample was not collected for the quarter.

3.69. Condition S9.A.4 of the ISGP requires a permittee to submit a discharge monitoring report for each reporting period whether or not the facility discharged stormwater from the site. If no stormwater sample was obtained from the site during the reporting period, condition S9.A.4.a of the ISGP requires the permittee to submit a discharge monitoring report indicating “no sample obtained” or “no discharge during quarter.”

3.70. Respondent violated Condition S9.A.4 of the ISGP by failing to state on the discharge monitoring report for the first quarter of 2019 why no discharge sample was obtained.

#### **IV. PROPOSED PENALTY**

4.1. Based on the foregoing allegations, Respondent violated section 301 of the CWA, 33 U.S.C. § 1311, and violated permit conditions or limitations in a permit issued pursuant to section 402 of the CWA, 33 U.S.C. § 1342. Consequently, pursuant to section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties in an amount not to exceed \$22,584 per day for each violation up to a maximum of \$282,293.

4.2. Based on the foregoing allegations, Complainant seeks to assess civil penalties for 36 separate and distinct violations of the ISGP.

4.3. In accordance with 40 C.F.R. § 22.14(a)(4)(ii), Complainant proposes that a Final Order be issued to Respondent assessing penalties in an amount not to exceed \$282,293, and taking into account the nature, circumstances, extent and gravity of the 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. 33 U.S.C. § 1319(g)(3).

*4.3.1 Nature, Circumstances and Gravity of the Violations:* Respondent failed to implement required terms and conditions of the ISGP intended to prevent or limit stormwater pollution caused by leaks and spills. As set forth in the allegations, the Inspector observed heavy staining and a sheen on the ground in the vehicle draining that extended from the interior to the exterior of the building. The Inspector also observed a tote containing an unknown petroleum substance leaking its contents to the ground and a 1000-gallon diesel fuel tank with heavy staining on the side of the tank and staining on the ground below

the hose connection to the fuel storage tank. Respondent's failures to immediately respond and cleanup these spills and leaks are serious violations that greatly increase the potential that pollutants will commingle with stormwater that reaches Hylebos Creek, a surface water that is listed by Ecology as impaired. Furthermore, Respondent's failure to implement required secondary containment measures, to use drip pans beneath leaking equipment and to properly locate a spill response kits increases the risk of large releases or spills and complicates efforts to mitigate the impacts of such spills and releases. The Court in *Waste Action Project v. Astro Auto Wrecking*, No. 2:15-cv-796-JCC (W.D. Wash.), Dkt. 91 pp. 4-5, concluded that it is more likely than not that stormwater contaminated with petroleum has been discharged from Respondent's Facility. Since the Court's finding, and as alleged herein, Respondent has continued to engage in practices that can reasonably be expected to cause and contribute to ongoing discharges of contaminated stormwater. The allegations concerning Respondent's failure to maintain a complete and updated SWPPP, to provide compliance records when requested and to submit complete and accurate monthly and quarterly reports required by the ISGP are all serious violations. Respondent's failure to maintain a complete and updated SWPPP and to fully comply with monthly inspection and quarterly reporting requirements inhibits its ability to assess and evaluate, on a continuing basis, the effectiveness of its stormwater pollution prevention measures and to identify pollution problems. Failure to implement these core permit requirements undermines a critical condition of

the ISGP that requires implementation of corrective action measures to address ineffective pollution prevention measures and to reduce stormwater pollution that exceeds specified monitoring benchmarks. Respondent's failure to comply with these monitoring and reporting requirements, in addition to its failure to maintain and make available required compliance documentation, complicates Complainant's and Ecology's regulatory oversight efforts.

Without access to the self-monitoring and reporting that the ISGP requires of all permittees Complainant and Ecology cannot fully understand and evaluate, and therefore address, impacts the Facility may be causing to water quality and, by extension, impacts the Facility may be causing to human health and the environment. The ISGP requires Respondent to monitor and sample its stormwater discharge for pollutants including turbidity, pH, copper, zinc, lead and petroleum hydrocarbons. These are the pollutants that could reasonably be expected to be present in Respondent's stormwater discharges. Hylebos Creek and the downstream waters of Hylebos Waterway and Commencement Bay are listed as impaired for copper, meaning that the levels of copper in these waters exceed standards that are established to protect designated uses.

Copper is a toxic pollutant that causes adverse impacts to aquatic life including threatened and endangered salmonids in Puget Sound.

*4.3.2 Respondent's Ability to Pay:* Complainant has no information indicating that Respondent is unable to pay a penalty up to the statutory maximum penalty for the violations set forth in this Complaint. Complainant will consider any information submitted by Respondent related to its ability to pay a penalty.

4.3.3 *Respondent's History of Prior Violations:* Respondent has a long history of non-compliance with its ISGP permit. Since it received coverage under the 2015 ISGP, Respondent has received correspondence from Ecology concerning Respondent's failure to submit required discharge monitoring reports in 2015, 2016 and 2017. On June 20, 2018, Ecology assessed Respondent a \$3,000 penalty for failure to submit quarterly discharge monitoring reports in 2016. In 2015, Respondent was sued by a citizen group alleging violations of its ISGP. On summary judgment, and again after a trial, the Court found Respondent liable for numerous permit violations including failure to implement secondary containment for fluid storage, failure to indicate compliance status on 40 monthly inspection reports, failure to prepare 24 noncompliance reports, failure to fulfill corrective action requirements in 2011 and 2014, failure to prepare complete and accurate annual reports, and failure to sample stormwater discharges over three quarterly reporting periods. *Waste Action Project v. Astro Auto Wrecking*, No. 2:15-cv-796-JCC (W.D. Wash.), Dkt. 67 and 91.

4.3.4 *Respondent's Degree of Culpability:* Respondent has been operating under an ISGP for over ten years. In 2014 and 2019, Respondent submitted applications for renewal coverage under the ISGP. In 2015, Respondent prepared a SWPPP that was signed and certified by Mr. McMilian, listed as Respondent's governor in filings with the Washington Secretary of State. Furthermore, as noted above, Respondent received repeated correspondence from Ecology informing it of its non-compliance with reporting requirements.

In 2017, Respondent was ordered by a federal court to implement injunctive measures to improve its stormwater management. *Id.* at Dkt. 91, pp. 6-8.

Based on information and belief, Respondent has not completed all injunctive measures ordered by the Court. Respondent's long-running disregard for the requirements of the ISGP and its failure to take measures to correct violations even when brought to its attention by Ecology and the District Court for the Western District of Washington supports a high degree of culpability for the violations alleged herein.

4.3.5 *Respondent's Economic Benefit*: Respondent received an economic benefit by avoiding the costs of complying with ISGP permit requirements, including the labor, service and capital costs necessary to maintain an up-to-date SWPPP, to implement required BMPs, to provide for secondary containment, to provide for employee training, and to conduct required inspection, monitoring and reporting.

4.3.6 *Other Matters as Justice Requires*: There are no facts known to Complainant justifying the use of this factor to adjust the penalty amount.

## V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

5.1. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.14(a)(5), notice is hereby given that Respondent has the right to file an Answer requesting a hearing on any material fact contained in this Complaint or on the appropriateness of the penalty proposed herein. Upon request, the Presiding Officer may hold a hearing that would be conducted in accordance with the provisions of 40 C.F.R. Part 22 ("Part 22 Rules") and the

Administrative Procedures Act, 5 U.S.C. § 551 *et seq.* A copy of the Part 22 Rules was provided to Respondent with service of this Complaint.

5.2. Respondent's Answer, including any request for hearing, must comply with 40 C.F.R. § 22.15 and must be filed with the Regional Hearing Clerk within thirty (30) days after service of the Complaint, as determined by reference to 40 C.F.R. § 22.7(c).

5.3. The EPA Regional Judicial Officers for Region 10 issued a Standing Order, pursuant to 40 C.F.R. § 22.5(a)(1), designating EPA's Outlook-based email system to serve as the Region's Electronic Filing System (EFS). The Standing Order does not require that documents be filed using the email EFS. Rather it authorizes the use of email EFS as an option, in addition to the methods of service already authorized by the Part 22 Rules for the filing of documents with the Regional Hearing Clerk. A copy of the Standing Order was provided to Respondent with service of this Complaint.

5.4 The original and one copy of the Answer to this Complaint, as well as the original and one copy of all other documents which Respondent files in this action, must be sent to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 155  
Mail Stop ORC-11-C07  
Seattle, WA 98101

If Respondent elects to use the email EFS, documents may be emailed to the Regional Hearing Clerk at R10\_RHC@epa.gov.

## **VI. FAILURE TO FILE AN ANSWER**

6.1. In accordance with 40 C.F.R. § 22.15, Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with

regard to which Respondent has any knowledge. Respondent's Answer must also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent intends to place at issue; and (3) whether a hearing is requested. Failure to admit, deny or explain any material factual allegations contained herein constitutes an admission of the allegation.

6.2. If Respondent fails to file a timely Answer to this Complaint, Respondent may be found to be in default, pursuant to 40 C.F.R. § 22.17, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

6.3. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in any default order shall become due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final.

## **VII. INFORMAL SETTLEMENT CONFERENCE**

7.1. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settling this matter. To request such a settlement conference Respondent should contact:

Alex Fidis, Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 155  
Mail Stop ORC-11-C07  
Seattle, WA 98101  
(206) 553-4710  
Fidis.alexander@epa.gov

7.2. A request for an informal settlement conference does not extend the thirty (30)



day period for filing a written Answer to this Complaint, nor does it waive Respondent's right to request a hearing.

7.3. Respondent is advised that, after the Complaint is issued, the Part 22 Rules prohibit any *ex parte* (unilateral) discussion of the merits of these or any other factually related proceedings with the Administrator, the Environmental Appeals Board or its members, the Regional Judicial Officer, the Presiding Officer, or any other person who is likely to advise these officials in the decision of this case.

### **VIII. RESERVATIONS**

8.1. Neither assessment nor payment of an administrative civil penalty pursuant to this Complaint shall affect Respondent's continuing obligation to comply with: (1) the CWA and all other environmental statutes and regulations promulgated thereunder; (2) the terms and conditions of all applicable CWA permits; (3) and any Compliance Order issued to Respondent under Section 309(a) of the CWA, 33 U.S.C. § 1319(a), concerning the violations alleged herein.

---

EDWARD J. KOWALSKI, Director  
Enforcement and Compliance Assurance Division  
EPA Region 10

