

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CHILL TRANSPORTATION LLC,

Toppenish, Washington

Respondent.

DOCKET NO. CWA-10-2023-0020

**DECLARATION OF SCOTT WILDER**

I, Scott Wilder, declare that the following statements are true and correct to the best of my knowledge and belief and are based on my personal knowledge, information contained in the records of the United States Environmental Protection Agency (“EPA” or “Complainant”), and information supplied to me by current EPA employees.

**Purpose of this Declaration**

1. I write this declaration in support of Complainant’s Motion for Default in the above-captioned matter. The Memorandum in Support of Complainant’s Motion for Default provided analysis in support of the proposed penalty assessment by analyzing the statutory penalty factors Clean Water Act (“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). This Declaration focuses solely on the statutory factors related to Chill Transportation, LLC’s (“Respondent’s”) ability to pay a penalty and the economic impact of the penalty on the Respondent. My analysis generally employed the methodology outlined in EPA’s June 29, 2015 *Guidance on Evaluating a Violator’s Ability to Pay a Civil Penalty in an Administrative Enforcement Action*.<sup>1</sup>

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<sup>1</sup> <https://www.epa.gov/sites/default/files/2015-06/documents/atp-penalty-evaluate-2015.pdf>

## **Declarant's Background and Relevant Experience**

2. I have worked at the EPA since 2010 and at EPA Region 10 since 2016. My official job title is currently "Program Analyst." Throughout my career at EPA, at least a portion of my duties have always included work as a financial analyst. I earned my master's degree in Business Administration in June of 2011, from the Bainbridge Graduate Institute, which is now known as the Presidio Graduate School. During my master's studies, I took courses in, among other things, finance, accounting, and economics. Prior to obtaining my master's degree, I spent 10 years working for Bank of America Home Loans, where I, among other things, worked as a branch manager overseeing annual budgeting operations, responding to financial and operational audits, and ensuring compliance with various financial laws and regulations. As a financial analyst at EPA, my job duties include analyzing financial records of respondents who make claims that paying a proposed penalty would create an undue financial burden upon them. This process is commonly referred to as conducting an Ability to Pay ("ATP") analysis. As part of my regular job duties, I have completed multiple trainings relevant to my duties as a financial analyst, including both online and in-person trainings on EPA's ATP analysis process. I have attended and presented training modules at national EPA-sponsored ATP conferences. I was a member on the National ATP Workgroup that developed EPA's current ATP guidance referenced in the previous paragraph. Since 2010, I estimate that I have completed over 100 analyses of ATP claims made in EPA administrative and judicial enforcement cases.

### **Analysis of Respondent's Ability to Pay Penalty and Economic Impact of Penalty**

3. I have reviewed all records submitted by Respondent to EPA as part of their inability-to-pay claim.

4. Since the initiation of EPA's administrative enforcement case in March 2022 through the date of the filing of this declaration, available information indicates that Respondent was and is an on-going, operating business. Respondent has not provided any adequate, reliable information indicating it has discontinued or substantially reduced routine freight transportation operations.

5. Respondent has demonstrated a limited ability to pay a penalty. The company's 2021 and 2022 tax returns along with their 2023 financial statements document negative net income since the company's inception. The company has apparently struggled to generate positive cash flow on a consistent basis. On the other hand, expenses as a percentage of gross revenue appear to have dropped from 2022 to 2023 and the company may be able to continue operating should this trend continue and revenues increase. The company's ability to take on a car loan and begin making payments on the family loan are also indicators that the company's health may be improving. Respondent has submitted some financial information (e.g., CYs 2021 and 2022 federal income tax filing submissions, financial statements for January – June 2023, etc.) in support of its assertion that it has no ability to pay any penalty, but the information submitted to date is not comprehensive in its description of the company's assets, liabilities, income, expenses, and cash flow. As a result of this lack of comprehensive financial information, I have limitations in my ability to develop clear and definitive conclusions about the Respondent's ability-to-pay.

#### **Family Loan Repayment with Repayment Flexibility**

6. Respondent's submission on February 7, 2023 indicates the existence of a \$20,000 loan from someone in the family of the President of the Respondent. *See Exhibit 37.* According to

that submission, payment of \$1000/month was deferred that apparently would be re-started when net income was positive. *Id.*

7. Respondent's January – June 2023 financial statements indicate an apparently improved financial condition as the combined income statement indicates family loan repayments of \$750, \$1000, and \$250 were made in March, April, and June 2023 respectively (total of \$2000 in six months of 2023 or \$2000 over a 4-month period within the first six months of 2023). *See* Exhibit 38. The combined balance sheet indicates the family loan was increased from \$20,000 to \$30,000 in February 2023. *See* Exhibit 39.

8. Respondent has not provided any loan documents to EPA, preventing me from understanding the details of any loans.

9. It appears that Respondent had flexibility to initiate any repayment of these family loan(s) and that lack of repayment was not inhibiting Respondent from making the routine payments for ordinary and necessary business expenses to maintain Respondent's routine transportation services to customers.

### **Discretionary Payments**

10. The current record indicates there is at least some financial evidence regarding Respondent's general financial status from which it can be inferred that Respondent has some ability to pay a penalty. I have attempted to derive a penalty amount that appears reflective of potentially available discretionary funds that could be made available to make the suggested penalty payment without creating cash-flow constraints that might lead to undue financial hardship.

11. As discussed above, Respondent's financial condition appears to be improving, allowing for some payment on the family loan in 2023. Respondent's financial records indicate that there

is flexibility in the timing of making those loan payments. As a result, this expense could be deferred until monetary penalty payments to address the alleged Clean Water Act violations have been completed.

12. I am also aware that State of Washington Department of Ecology and Respondent have reached a tentative agreement to a payment plan for a \$1,400 penalty involving \$50 per month over approximately two years to resolve state-law claims arising from the same incident. As of the date of this declaration, Ecology has not yet provided a copy of Respondent-signed promissory note incorporating and finalizing this tentative agreement and payment plan. I have considered this penalty for claims arising from the same incident and given the relatively small monthly payment I have concluded that it should not impact the size of the penalty appropriate to resolve the Clean Water Act claims in this matter.

13. In my opinion, based on the financial records provided by Respondent, it can likely afford to pay a penalty of \$2,000 without suffering an undue financial hardship. It is my understanding that if Respondent's ability to pay a penalty and the economic impact of the penalty on the Respondent were not limiting factors in this case, EPA would be seeking a substantially higher penalty in this matter.

I declare that the foregoing is true and correct, based on my personal knowledge and on information provided to me by employees of EPA.

Respectfully Submitted,

Date: 11/07/2023

**SCOTT WILDER** Digitally signed by SCOTT  
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