



Special Interest Auto Works , Inc.

Christy Reynolds to: oaljfilng, Elizabeth McKenna
Cc: "Dennis D. Reynolds Law Office", karen

05/05/2014 04:22 PM

From: "Christy Reynolds" <christy@ddrlaw.com>
To: oaljfilng@EPA, Elizabeth McKenna/R10/USEPA/US@MSO365,
Cc: "Dennis D. Reynolds Law Office" <dennis@ddrlaw.com>, <karen@ddrlaw.com>

4 attachments



winmail.dat message_body.rtf Peterson signature page.pdf Motion for Accelerated Dec Amended 050514.pdf

RE: In re the Matter of: SPECIAL INTEREST AUTO WORKS, INC., and TROY
PETERSON, Individual, Kent, WA
Docket No. CWA-10-2013-0123

Good Afternoon - Attached please find (1) p.4 of the Declaration of Troy Peterson in Support of Respondents' Motion for Accelerated Decision (filed on Friday, May 2, 2014), signed by Mr. Peterson, with the accompanying GR 17 declaration regarding the facsimile signature; and (2) Respondents' Amended Motion for Leave to Conduct Discovery, Respondents' Motion for Accelerated Decision. Thank you.

Christy

Christy Reynolds, Legal Assistant

Dennis D. Reynolds Law Office

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Bainbridge Island, WA 98110

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RE: *In re the Matter of: SPECIAL INTEREST AUTO WORKS, INC., and TROY PETERSON, Individual, Kent, WA*
Docket No. CWA-10-2013-0123

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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:
SPECIAL INTEREST AUTO WORKS, INC.
and TROY PETERSON, Individual,
Kent, WA

Respondents

Docket No. CWA-10-2013-0123

RESPONDENTS' *AMENDED* MOTION
FOR ACCELERATED DECISION

(Oral Argument Requested)

I. RELIEF REQUESTED

Pursuant to the EPA's Consolidated Rules of Practice, 40 C.F.R. § 22.20(a), and the Presiding Officer's Order of January 17, 2014, Respondents Special Interest Auto Works, Inc. ("Special Interest") and Troy Peterson (collectively "Respondents") respectfully request issuance of an accelerated decision "without further hearing or upon such limited additional evidence, such as affidavits," because no genuine issue of material fact exists and Respondents are entitled to judgment as a matter of law. Specifically, Respondents request: (1) summary dismissal of all claims against Troy Peterson individually; (2) a summary ruling that any claims based on alleged "threatened" discharge of Special Interest Auto Works, Inc. ("Special Interest") are not cognizable under the Clean Water Act ("CWA"); and (3) summary dismissal of the EPA's claim for "failure to apply for a permit," because the agency lacks

1 authority under the CWA to impose penalties on such a basis.¹ The EPA has refused to
2 amend its Complaint despite requests as to Items (1) and (2).

3 II. RELEVANT FACTS

4 A. Background Facts

5 This case involves allegations by the EPA that storm water from Special Interest's
6 property is leaving the site and reaching the Green River. Even though no evidence supports
7 the allegations, EPA brought this case against Special Interest and Mr. Peterson individually.
8 The allegations as to Mr. Peterson's exposure to a claim of civil penalties are not specific. It
9 appears EPA's intent is to name him as a responsible corporate officer under 33 U.S.C §
10 1319(6). If the intent is to pierce the corporate veil, EPA presents no proof to allow the
11 Administrative Law Judge to make such a ruling.
12

13 Special Interest is the operator of the Special Interest Auto Wrecking facility located at
14 25923 78th Avenue S., in Kent, Washington. Declaration of Troy Peterson in Support of Motion
15 for Accelerated Decision ("Peterson" Dec.), at ¶2. Troy Peterson has been Special Interest's
16 president since its incorporation in April 1992 Peterson Dec., at ¶ 3.
17

18 In September 2006 Troy Peterson LLC purchased the site discussed in the EPA's
19 Complaint, and Special Interest began operations on the site on August 1, 2008 Peterson Dec.,
20 at ¶2. Automobiles were not stored on the site until January 2009 Peterson Dec., at ¶8. The site
21 is neither owned nor operated by Peterson individually. Mr. Peterson has always honored the
22 corporate structure Peterson Dec., at ¶7. Because Peterson reasonably believed, based upon his
23

24
25 ¹ Respondents are not moving at this time for summary judgment on the issue of actual discharge into the Green
26 River. However, Respondents request a summary ruling on the question of "threatened" discharge so as to
narrow the issues for hearing and to properly define the legal questions before the Court.

1 observations and guidance from the State of Washington Department of Ecology (“Ecology”)
2 that no permit was required where there was no discharge of storm water, it cannot be
3 established that Peterson failed to use his authority to assure compliance with laws or
4 regulations, the basis for a finding of liability by a responsible corporate officer.

5 Special Interest believes, based upon personal observation and guidance from Ecology
6 that all storm water on the site vertically infiltrates into the pervious sandy native soil to the
7 groundwater below Peterson Dec., at ¶10.² It therefore believes that there is no run-off from the
8 site to the Green River, and that a permit to discharge storm water is not necessary Peterson
9 Dec., at ¶14. However, in 2012 it applied for and received an NPDES Permit from Ecology
10 after Ecology contacted it and stated it believed Special Interest needed to obtain coverage
11 under the Industrial Stormwater General Permit. *Id.* It accepted that permit without conceding
12 that any discharge had emanated or was emanating from the site Peterson Dec., at ¶14.

15 B. The Enforcement Action

16 On July 17, 2013, the EPA filed an enforcement action against Mr. Peterson,
17 individually, and against the corporation Special Interest. The two counts in the Complaint are
18 based on allegations of discharge of pollutants into the Green River between August 1, 2008
19 and July 31, 2012 without an NPDES permit.

21 ² See, e.g., *Vehicle and Metal Recyclers: A Guide for Implementing the Industrial Stormwater General National*
22 *Pollutant Discharge Elimination System Permit Requirements* (Publication no. 94-146; Revised March 2011) at
23 p. 1 (“All vehicle dismantling and recycling facilities and metal recycling facilities in Washington State **that**
24 **discharge to a surface water body**, or a storm sewer that discharges to a surface water body must obtain a
25 National Pollutant Discharge Elimination System (NPDES) Industrial Stormwater General Permit (ISWGP)
26 from the Washington State Department of Ecology (Ecology)”) (emphasis added); *Washington State Department*
of Ecology Water Quality Program: Industrial Stormwater General Permit Frequently Asked Questions, page 5
at Q13 (“Q13: My facility discharges all stormwater to ground (via infiltration basins and dry wells), **with no**
discharge to surface waters. Does this mean I qualify for a Conditional No Exposure (CNE) exemption? A13:
No, “no discharge” is different than “no exposure”. If your facility doesn’t discharge stormwater to surface
waters of the state (or a storm drain connected to surface waters of the state), your facility is exempt from the
permit, and no form or written exemption is required.”) (emphasis added).

1 Count 1 (Failure to Apply for a Permit) is predicated on the alleged failure to obtain a
2 permit to discharge stormwater. Complaint ¶¶ 3.17 – 3.21 (specifically alleging violation of 33
3 U.S.C. § 1318, which requires the owner of a point source to obtain a NPDES permit).
4 Similarly, Count 2 (Discharge Without a Permit) claims that pollutants were channeled and
5 actually discharged into the Green River. Complaint at ¶¶ 3.23 – 3.27 (specifically alleging
6 violation of 33 U.S.C. § 1311, which prohibits the discharge of pollutants from a point source
7 without a NPDES permit).
8

9 The Complaint does not include any allegations of a “threat” of or potential for an
10 unpermitted discharge as a basis for enforcement action. However, the EPA’s case against
11 Respondents shows that it is based in part on “threatened” discharges of stormwater into the
12 Green River, as predicted by its model. The question of *actual* discharge of stormwater,
13 although vigorously disputed by Respondents, must be addressed at the hearing on the merits.
14

15 III. EVIDENCE RELIED UPON

16 This motion is based on: (1) the Declaration of Troy Peterson, with exhibit; and (2) the
17 records and files herein, including Complainant’s and Respondents’ Initial Prehearing
18 Exchanges and Exhibits, and EPA’s Rebuttal Submittal.

19 IV. ARGUMENT

20 A. Standard of Review

21 A motion for accelerated decision is the administrative analog to the motion for
22 summary judgment under Rule 56 (c) of the Federal Rules of Civil Procedure. *See e.g., In the*
23 *Matter of CWM Chemical Services*, Docket No. TSCA-PCB-91-0213, 1995 TSCA LEXIS 13,
24 TSCA Appeal 93-1 (EAB, Order on Interlocutory Appeal, May 15, 1995). As such, decisions
25 establishing the procedures and requirements of summary judgment provide guidance for
26

1 accelerated decisions under 40 C.F.R. § 22.20. The decision on a motion for summary
2 judgment or accelerated decision must be based on the pleadings, affidavits and other
3 evidentiary materials submitted in support or opposition to the motion. *Celotex Corp. v.*
4 *Catrett*, 477 U.S. 317, 324 (1986); 40 C.F.R. § 22.20(a); F.R.C.P. 56(c)

5 Summary judgment must be granted where the moving party demonstrates that there is
6 no issue of material fact and he is entitled to judgment as a matter of law. *Adickes v. Kress*,
7 398 U.S. 144, 157 (1970). The moving party can prevail merely by pointing out that there is
8 an “absence of evidence” to supporting the nonmoving party's case. *Celotex*, 477 U.S. at 324.
9 If the moving party meets his initial burden, the non-moving party must set forth specific facts
10 showing that there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
11 250 (1986).

12 An unsupported or speculative allegation that a factual dispute exists cannot defeat a
13 properly supported motion for summary judgment. *Id.* at 256. The nonmoving party must
14 instead present "affirmative evidence" and cannot defeat the motion without offering "any
15 significant probative evidence tending to support" its pleadings. *First National Bank of*
16 *Arizona v. Cities Service Company*, 391 U.S. 253, 290 (1968).

17 **B. Mr. Peterson Cannot be Held Individually Liable.**

18 As discussed above and as established by Mr. Peterson's declaration, all activities on
19 the relevant site are conducted by two corporate entities: Troy Peterson LLC and Special
20 Interest Auto Works, Inc. Mr. Peterson as an individual does not own the site, nor does he
21 manage it. The EPA cannot reasonably dispute these facts, so the Court should find as a
22 matter of law that Mr. Peterson cannot be individually liable to the EPA and must be
23 dismissed from this case.

1 In general, the CWA prohibits “the discharge of any pollutant by any person’ unless
2 done in compliance with some provision of the Act.” *S. Fl. Water Mgmt. Dist. v. Miccosukee*
3 *Tribe of Indians*, 541 U.S. 95, 102, 124 S.Ct. 1537, 158 L.Ed.2d 264 (2004) (quoting 33
4 U.S.C. § 1311(a)). The CWA defines the term “person” to include “any responsible
5 corporate officer.” See 33 U.S.C. § 1319(c)(6) (“For the purpose of this subsection, the term
6 ‘person’ means, in addition to the definition contained in section 1362(5) of this title, any
7 responsible corporate officer.”). However, the CWA does not define the term “responsible
8 corporate officer.” *United States v. Iverson*, 162 F.3d 1015, 1022 (9th Cir. 1998). However,
9 the 9th Circuit Court of Appeals has concluded that under the CWA, a person is a “responsible
10 corporate officer” if the person has authority to exercise control over the corporation’s activity
11 that is causing the discharges. *Id.*, at 1025.
12

13 Mr. Peterson cannot be liable as responsible corporate officer here because, while it is
14 clear that he possessed authority over Special Interest Auto Works, Inc.’s activities, the EPA
15 cannot demonstrate that he failed to use his authority to assure compliance with laws or
16 regulations. Mr. Peterson believed that he was assuring compliance because no permit was
17 required. There is no basis at all to pierce the corporate veil, if that is EPA’s intent.
18

19 **C. Threatened Discharges are Not Actionable Under the CWA**

20 The plain language of the CWA only prohibits the *actual* discharge of a pollutant into
21 navigable waters without a permit. 33 U.S.C. § 1311(a); *Sackett v. EPA*, 132 S. Ct. 1367,
22 1369-70 (2012).³ The CWA specifically requires the “addition of any pollutant,” which
23

24
25 ³ NPDES permits are required for stormwater discharges, “associated with industrial activity,” for stormwater
26 discharges from municipal storm sewer systems, and for stormwater discharges that contribute to water quality

1 requires the EPA to prove more than a threat of discharge; the EPA must prove an actual
2 discharge. *National Min. Ass'n v. U.S. Army Corps of Engineers*, 145 F. 3d 1399, 1404 (D.C.
3 Cir 1999) (concluding that even dredged material that falls back into navigable water is not a
4 violation because the fallback material is not an addition of any pollutant). Nonetheless, the
5 EPA in its Initial Prehearing Exchange states, at page 8:

6
7 Several of EPA's witnesses listed in Section I of this Prehearing
8 Exchange ... will testify that they observed conditions at the
9 Site that created a ***potential*** for pollutant-laden stormwater to
10 discharge from the Site to the Green River.... (emphasis added).

11 Numerous courts have confirmed that the EPA lacks authority to require discharge
12 permits under the CWA unless a facility is actually discharging pollutants into the waters of
13 the United States. *E.g. National Pork Producers Council v. EPA*, 635 F.3d 738, 750-51 (5th
14 Cir. 2011); *Waterkeeper Alliance, Inc. v. EPA*, 399 F.3d 486, 504-06 (2nd Cir. 2005). The
15 court in *National Pork Producers Council* examined the *Waterkeeper* ruling:

16 [T]he CWA is clear that the EPA can only regulate the
17 discharge of pollutants. To support its interpretation, the Second
18 Circuit examined the text of the Act. The court noted: (1) 33
19 U.S.C. § 1311(a) of the CWA "provides . . . [that] the *discharge*
20 *of any pollutant* by any person shall be unlawful," (2) section
21 1311(e) of the CWA provides that "[e]ffluent limitations . . .
22 shall be applied to all point sources of *discharge of pollutants*,"
23 and (3) section 1342 of the Act gives "NPDES authorities the
24 power to issue permits authorizing the *discharge of any*
25 *pollutant or combination of pollutants*." *Waterkeeper*, 399 F.3d
26 at 504. Accordingly, the Second Circuit concluded that in the
absence of an actual addition of any pollutant to navigable
waters from any point, there is no point source discharge, no
statutory violation, no statutory obligation of point sources to
comply with EPA regulations for point source discharges, and
no statutory obligation of point sources to seek or obtain an

violations or are otherwise "significant contributor[s] of pollutants." *Northwest Env'tl. Def. Ctr. v. Brown*, 617
F.3d 1176, 1193 (9th Cir. 2010); 33 U.S.C. § 1342(p)(2)(B) & (E).

1 NPDES permit in the first instance. *The Second Circuit's*
2 *decision is clear: without a discharge, the EPA has no*
3 *authority and there can be no duty to apply for a permit.*

4 635 F.3d at 750 (emphasis added). Specifically, the Supreme Court explained:

5 [T]he National Pollutant Discharge Elimination System
6 [requires] a permit for the "discharge of any pollutant" into the
7 navigable waters of the United States, 33 U.S.C. § 1342(a). The
8 triggering statutory term here is not the word "discharge" alone,
9 but "discharge of a pollutant," a phrase made narrower by its
10 specific definition requiring an "addition" of a pollutant to the
11 water.

12 *S.D. Warren Co. v. Maine Bd. of Env'tl. Protection*, 547 U.S. 370, 380-81, 126 S.Ct. 1843, 164
13 L.Ed.2d 625 (2006).

14 The scope of the EPA's authority under the CWA is strictly limited to the discharge of
15 pollutants into navigable waters. In *Natural Resources Defense Council, Inc. v.*
16 *Environmental Protection Agency*, 859 F.2d 156 (D.C. Cir. 1988), the D.C. Circuit explained
17 more than 25 years ago that the CWA "does not empower the agency to regulate point sources
18 themselves; rather, EPA's jurisdiction under the operative statute is limited to regulating the
19 discharge of pollutants." *Id.* at 170. In *Waterkeeper*, the Second Circuit confirmed that "unless
20 there is a discharge of any pollutant, there is no violation of the Act." 399 F.3d at 504. The
21 Eighth Circuit, in *Service Oil, Inc. v. Environmental Protection Agency*, 590 F.3d 545, 550
22 (8th Cir. 2009), reiterated the scope of the EPA's regulatory authority and concluded that
23 "[b]efore any discharge, there is no point source" and the EPA does not have regulatory
24 authority. As the Fifth Circuit aptly stated:

25 These cases leave no doubt that there must be an actual
26 discharge into navigable waters to trigger the CWA's
requirements and the EPA's authority.

National Pork Producers Council, 635 F.3d at 750.

1 As set forth above, courts have unanimously and consistently ruled that the EPA may
2 not regulate on the basis of a “potential to discharge.” The Administrative Law Judge should
3 confirm in a summary determination that any allegations of the EPA against Respondents in
4 this regard are without legal basis and not cognizable under the CWA. As a matter of law,
5 “threatened” or “potential” discharges are not regulated, nor prohibited. A CWA violation
6 can only occur if a pollutant is actually added – not threatened to be added – to the Green
7 River from a point source.
8

9 **D. The EPA Cannot Impose Penalties for a “Failure to Apply for a Permit”**

10 The CWA does not provide authority for EPA to impose liability for an alleged
11 “failure to apply” for an NPDES Permit, as set forth in Count 1 of the EPA’s Complaint in
12 this case. The Fifth Circuit, in *National Pork Producers Council, supra*, observed:

13 33 U.S.C. § 1319 allows the EPA to impose liability if it "finds
14 that any person is in violation of any condition or limitation
15 which implements [violations of]": the discharge prohibition,
16 certain water-quality based effluent limitations, national
17 standards of performance for new sources, toxic and
18 pretreatment effluent standards, the EPA's information-
19 gathering authority, provisions permitting the discharge of
20 specific aquaculture pollutants, any permit condition or
21 limitation, and provisions governing the disposal or use of
22 sewer sludge. *Notably absent from this list is liability for*
23 *failing to apply for an NPDES permit. ...*

24 [O]nly certain violations of the Act can be enforced using
25 section 1319's penalties. *See* 33 U.S.C. § 1319; *see, e.g., Serv.*
26 *Oil, Inc.*, 590 F.3d at 550 ("Congress in § 1319(g)(1) granted
EPA limited authority to assess administrative monetary
penalties for violations of specific statutory provisions related to
the core prohibition against discharging without a permit, or
contrary to the terms of a permit")... *Accordingly, the*
imposition of "failure to apply" liability is outside the bounds
of the CWA's mandate.

635 F.3d at 752-53 (footnotes and citations omitted; emphasis added).

1 The Eighth Circuit's analysis in *Service Oil* is also instructive. In that case, the court
2 examined whether the EPA can assess administrative penalties for failing to apply for an
3 NPDES permit. There, the EPA argued that section 1318, which gives the EPA its
4 information-gathering authority, also gives the EPA power to impose liability for failing to
5 apply for an NPDES permit. 590 F.3d at 550. The Eighth Circuit rejected this argument. In
6 concluding that the EPA cannot assess such penalties, the court commented on the scope of
7 the EPA's regulatory authority. The court explained that "the agency's authority to
8 assess monetary penalties by administrative proceeding is limited to unlawful discharges of
9 pollutants." *Id.*; see also *Env'tl. Prot. Info. Ctr. v. Pac. Lumber Co.*, 469 F.Supp.2d 803, 826
10 (N.D.Cal.2007) (finding 33 U.S.C. § 1342(p) does not authorize liability for "failure to apply"
11 for NPDES permit coverage, but only for non-compliance with permit terms).

12 The EPA may attempt to argue that its interpretation of its regulations is entitled to
13 deference. However, the Supreme Court has explained: "Agencies may play the sorcerer's
14 apprentice but not the sorcerer himself." *Alexander v. Sandoval*, 532 U.S. 275, 121 S.Ct.
15 1511, 149 L.Ed.2d 517 (2001). In other words, an agency's authority is limited to what has
16 been authorized by Congress. See *id.* As the court in *National Pork Producers Council*
17 confirmed, since the creation of the NPDES permit program, Congress has not made any
18 changes to the CWA that creates a "failure to apply" liability. 635 F.3d at 753.

19 The Administrative Law Judge should summarily dismiss Count 1 of the EPA's
20 Complaint based on an alleged failure to apply for a permit because the agency lacks authority
21 to impose penalties on such a basis. The EPA has failed to "establish a prima facie case or
22 other grounds which show no right to relief." 40 C.F.R. § 22.20(a).

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V. CONCLUSION

For all the foregoing reasons, the Administrative Law Judge should grant Respondents' motion for an Accelerated Decision on the three issues set forth herein.

RESPECTFULLY SUBMITTED this 5th day of May, 2014.

DENNIS D. REYNOLDS LAW OFFICE

By 

Dennis D. Reynolds, WSBA #04762
Attorneys for Respondents Special Interest Auto Works, Inc. and Troy Peterson

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify under penalty of perjury under the laws of the State of Washington, that I am now, and have at all times material hereto been, a resident of the State of Washington, over the age of 18 years, not a party to, nor interested in, the above-entitled action, and competent to be a witness herein.

I caused a true and correct copy of the foregoing pleading to be served this date, in the manner indicated, to the parties listed below:

<u>FILED WITH:</u> Sybil Anderson, Headquarters Hearing Clerk Office of Administrative Law Judges U.S. Environmental Protection Agency 1200 Pennsylvania Avenue NW / Mail Code 1900R Washington, D.C. 20460 <u>OALJfiling@epa.gov</u> , email	<input type="checkbox"/> <i>Legal Messenger</i> <input type="checkbox"/> <i>Hand Delivered</i> <input type="checkbox"/> <i>Facsimile</i> <input type="checkbox"/> <i>First Class Mail</i> <input type="checkbox"/> <i>Express Mail, Next Day</i> <input checked="" type="checkbox"/> <i>Email</i>
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<u>SERVED ON:</u> Elizabeth McKenna, Office of Regional Counsel U.S. Environmental Protection Agency, Region 10 1200 Sixth Avenue, #900 / Mail Code OCE-133 Seattle, WA 98101-3140 (206) 553-0016, tel <u>Mckenna.Elizabeth@epamail.epa.gov</u> , email	<input type="checkbox"/> <i>Legal Messenger</i> <input type="checkbox"/> <i>Hand Delivered</i> <input type="checkbox"/> <i>Facsimile</i> <input type="checkbox"/> <i>First Class Mail</i> <input type="checkbox"/> <i>Express Mail, Next Day</i> <input checked="" type="checkbox"/> <i>Email</i>

DATED at Bainbridge Island, Washington, this 5th day of May, 2014.



Christy A. Reynolds
Legal Assistant

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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

SPECIAL INTEREST AUTO WORKS, INC.
and TROY PETERSON, Individual,
Kent, WA

Respondent

Docket No. CWA-10-2013-0123

GR 17 DECLARATION REGARDING
FILING OF FACSIMILE SIGNATURE
PAGE OF TROY PETERSON

I, Christy A. Reynolds, hereby declares and states as follows:

1. I am employed by the Dennis D. Reynolds Law Office, attorneys of record for the Respondent in the captioned matter and make this Declaration pursuant to GR 17(a)(2).

2. Due to Mr. Peterson's unavailability, the "Declaration of Troy Peterson in Support of Respondents' Motion for Accelerated Decision" (with Exhibit A, for a total of 7 pages) was filed on Friday, May 2, 2014 without his signature.

3. The following copy of page 4 bearing the facsimile signature of Troy Peterson is to be added to the Declaration of Troy Peterson in Support of Respondents' Motion for Accelerated Decision, along with this GR 17 Declaration page, for a new total of 9 pages.

4. I have examined the Declaration of Troy Peterson and have determined that the document is complete and eligible.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 5th day of May, 2014 at Bainbridge Island, Washington.



CHRISTY A. REYNOLDS
Legal Assistant

1 berm at the edge of the site and between the site and the Green River as it existed prior to
 2 constructing a boundary road, by reference made part of this Declaration. After construction
 3 of the road, the berm is now higher. This Exhibit is also found in Respondents' Initial Pre-
 4 Hearing Exchange, Exhibit RX-12.

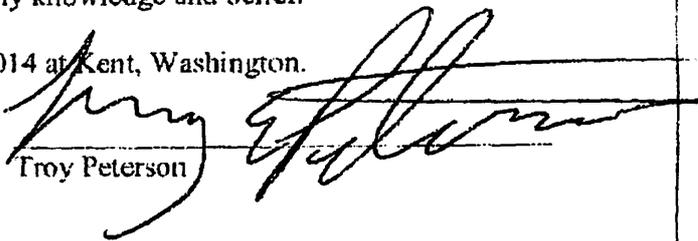
5
 6 13. The berm was of variable but sufficient height (at least 8 inches from grade at
 7 the toe of the berm) to contain all storm water collected in Basins A and C as identified in
 8 EPA's exchange. The berm is located approximately 40 feet from the Green River. The
 9 storage depression of Basin B is located at least 200 feet from the Green River.

10 14. The State of Washington Department of Ecology issued Special Interest an
 11 NPDES Industrial General Permit in October, 20012, a true and accurate copy which is found
 12 in Respondents' Initial Pre-hearing Exchange, Exhibit RX- 6. I note that under Guidance
 13 from the Department of Ecology, coverage under the NPDES General Permit is not required
 14 unless there is discharge of storm water to a surface water body, as referenced in our initial
 15 pre-hearing exchange, p, 10, Note 1, and Exhibits RX-23 and RX-24, by reference made part
 16 of this Declaration. I attest the referenced exhibits are true and accurate copies of the
 17 originals.
 18

19 I declare under penalty of perjury under the laws of the State of Washington that the
 20 foregoing is true and correct to the best of my knowledge and belief.

21 EXECUTED this 2nd day of May, 2014 at Kent, Washington.

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 23 Sth

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 Troy Peterson