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EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA-10-2016-0116
)	
Alaska Boat Company, LLC)	
)	COMPLAINT
Seattle, WA)	
Respondent.)	

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”) by Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g). 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 Office of Compliance and Enforcement in EPA Region 10.

1.2. Pursuant to Section 309(g)(1) and (2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (2)(B), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, the EPA hereby proposes the assessment of a civil penalty against Alaska Boat Company, 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), the EPA has provided the Washington State Department of Ecology with an opportunity to consult with the EPA on this matter.

II. STATUTORY AND REGULATORY BACKGROUND

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

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

2.3. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, chemical wastes, biological materials, rock, sand and industrial wastes.

2.4. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines navigable waters as “waters of the United States.” 40 C.F.R. § 122.2 defines “waters of the United States” to include “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” and “all other waters such as intrastate lakes, rivers, streams which would affect or could affect interstate or foreign commerce.”

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

2.6. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State or any interstate body.”

2.7. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), specifies that an NPDES permit is required for any stormwater discharge “associated with industrial activity.” Section 402(p) also authorizes EPA to issue regulations that designate additional stormwater discharge sources

associated with industrial activity and to establish a comprehensive program to regulate sources of stormwater associated with industrial activity.

2.8. 40 C.F.R. § 122.26(b)(14) broadly defines the term “storm water associated with industrial activity” to mean the discharge from any conveyance that is used for collecting and conveying storm water at an industrial plant. 40 C.F.R. § 122.26(b)(14)(viii) and (xi) further identifies categories of facilities engaged in industrial activity to include facilities classified under Standard Industrial Code (“SIC”) category code 4225 (General Warehousing and Storage) and under SIC category code 3732 (Boat Building and Repairing).

2.9. EPA has 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 (“Ecology”) issued, pursuant to section 402 of the CWA, the Washington Industrial Stormwater General Permit (“ISGP”) in October 2009. The ISGP, which became effective on January 1, 2010, authorizes the discharge of stormwater associated with industrial activity at permitted facilities.

2.10. Coverage under the ISGP is available to facilities engaged in certain industrial activities, identified in Table 1 of the ISGP, that discharge pollutants via stormwater including industrial activities under SIC code 3732 (Boat Building and Repairing) and industrial activities under SIC code 4225 (General Warehousing and Storage).

2.11. The ISGP’s 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 to comply with the conditions and requirements set forth in the ISGP.

2.12. Facilities that require NPDES permit coverage for stormwater discharges 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 Section S1 of the ISGP.

2.13. Section S3 of the ISGP requires all permittees to prepare and implement a Stormwater Pollution Prevention Plan (“SWPPP”). Section S3.B of the ISGP sets out minimum content requirements for a SWPPP which include, *inter alia*, a site map with a scale that includes relative distances between identified significant structures and drainage systems and identifies areas of pollutant contact (actual or potential) associated with specific industrial activities (section S3.B.1); a facility assessment that identifies all areas of industrial activities that may be sources of pollutants and an inventory of materials handled at the facility and description of any potential sources of pollution (section S3.B.2); the names and titles of facility personnel who are responsible for implementing and updating the SWPPP (section S3.B.3); the identification and description of best management practices (“BMPs”) to be implemented at the facility to control and reduce stormwater pollution and discharge (section S3.B.4); and a detailed facility sampling plan that includes the procedures for identifying the pollutant parameters for monitoring and collecting and analyzing stormwater samples (section S3.B.5). Section S3.A.6 requires that SWPPPs be certified pursuant to section G2 of the ISGP.

2.14. Section S3.B.4.b.i of the ISGP requires that a SWPPP identify, and that a permittee implement, operational source control BMPs such as good housekeeping, preventive maintenance, spill prevention and employee training requirements. Such operational source

control BMPs include, but are not limited to, requirements that all paved surfaces be vacuumed to remove accumulated pollutants at least once per calendar quarter (section S3.B.4.b.i.2); all dumpsters be kept under cover or fit with a lid that must remain closed when not in use (section S3.B.4.b.i.2); spills and leaks be immediately cleaned up to prevent the discharge of pollutants (section S3.B.4.b.i.3); all chemical liquids, fluids, and petroleum products be stored on an impervious surface that is surrounded with a containment berm or dike that is capable of containing 10% of the total enclosed tank volume or 100% of the volume contained in the largest tank (section S3.B.4.b.i.4.a); and that spills and leaks be immediately cleaned up to prevent the discharge of pollutants (section S3.B.4.b.i.3.c).

2.15. Section S4.B.1 of the ISGP requires a permittee to sample the discharge of stormwater from each designated location at least once per calendar year quarter. Pursuant to section S4.B.2, a permittee is required to designate as a sampling location each point where stormwater associated with industrial activity is discharged from the facility.

2.16. Section S5.A, Table 2 of the ISGP identifies pollutant benchmarks and sampling requirements for the pollutants turbidity, pH, oil sheen, copper and zinc that are applicable to all permitted facilities. Section S6.C.1 of the ISGP establishes additional sampling requirements and effluent limitations for facilities that discharge into impaired waters that are listed pursuant to Section 303(d) of the CWA, 33 U.S.C. § 1313(d), and that do not have an EPA-approved total maximum daily load. In Appendix 4 to the ISGP, Ecology provides a website identifying the permittees that discharge to CWA 303(d) impaired waters, the impairment pollutants that such

permittees are required to sample for, the specific sampling requirements applicable to each such permittee, and effluent limitations for each impairment pollutant applicable to a permittee.

2.17. Section S9.A.2 of the ISGP requires permittees to submit quarterly sampling data in discharge monitoring reports (“DMRs”) within 45 days of the end of each reporting period. Table 7 of section S9.A.4 identifies the specific DMR due dates for each calendar-year quarter as May 15 for the first quarter (January to March), August 14 for the second quarter (April to June), November 14 for the third quarter (July to September) and February 14 for the fourth quarter (October to December). All reports required by the ISGP, including quarterly DMRs, must be certified pursuant to section G2 of the ISGP.

2.18. If a permittee’s discharge exceeds a pollutant benchmark, section S5.A.3 of the ISGP requires that the permittee take the corrective actions specified in section S8 of the ISGP. Section S8 establishes three levels of corrective action based on the recurrence of benchmark exceedances. Section S8.B requires implementation of a Level One corrective action for a single benchmark exceedance. A Level One corrective action requires that within fourteen (14) days of receipt of the sampling results that indicate a benchmark exceedance the permittee conduct an inspection to investigate the cause, review the SWPPP to ensure it fully complies with permit requirements and contains the correct BMPs and to make appropriate revisions to include additional operational source control BMPs to achieve the benchmark. The deadline for completing a Level One corrective action is the DMR due date for the quarter in which the benchmark was exceeded. Section S8.C requires implementation of a Level Two corrective action if the benchmark for a single pollutant parameter is exceeded in any two quarters in a calendar year. A Level Two corrective action requires the permittee to review the SWPPP to ensure it fully complies with permit requirements and to make appropriate revisions to include

additional structural source control BMPs to achieve the benchmark. The deadline for completing a Level Two correction action is to fully implement the revised SWPPP as soon as possible but no later than August 31st of the following year. Section S8.D requires implementation of a Level Three corrective action if the benchmark for a single pollutant is exceeded for any three quarters in a calendar year. A Level Three corrective action requires the permittee to review the SWPPP to ensure it fully complies with permit requirements and to make appropriate revisions to include additional treatment BMPs to achieve the benchmark. Treatment BMPs must be designed by a licensed professional engineer, hydrogeologist, or certified professional in stormwater quality unless waived by Ecology. The deadline for completing a Level Three corrective action is as soon as possible but no later than September 30th of the following year. Section S8 requires that all three levels of corrective actions be summarized in the annual report required by section S9.B of the ISGP.

2.19. Section S7.A.1 of the ISGP requires that a permittee conduct and document visual inspections of the site each month. Section S7.C.1.e requires that the records of each monthly inspection be signed and certified by the person conducting the inspection. Section S7.C.1.f requires further requires that documentation of visual inspections be signed and certified pursuant to section G2 of the ISGP.

2.20. Section S9.C of the ISGP requires that all plans, documents and records required by the ISGP be retained onsite for a minimum of five years and made immediately available upon request including, but not limited to, a copy of the facility's ISGP, a copy of and sampling

and inspection reports and other documentation of compliance with the permit such as the SWPPP.

2.21. 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 violations 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 Alaska Boat Company, LLC (“Alaska Boat” or “Respondent”) is a limited liability company organized under the laws of the state of Alaska and authorized to do business in the state of Washington.

3.2. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.3. Respondent leases property for its business operations located at 303 NE Northlake Way, Seattle, Washington 98105 (“Facility”).

3.4. The Facility is situated on riparian property along the northern part of Lake Union, and is bounded by NE Northlake Way to the north and Lake Union to the south.

3.5. Structures at the Facility include a long rectangular building consisting of an office and warehouse and a smaller office trailer located on the southeastern portion of the Facility. The southern edge of the Facility consists of a paved concrete surface adjacent to Lake Union that is approximately 60 feet wide and 200 feet long, a docking area for vessels, and a concrete pier extending over Lake Union that is approximately 30 feet wide by 98 feet long.

3.6. Stormwater is discharged from the Facility at four separate and distinct locations. A stormwater catch basin, identified on the Facility's SWPPP map as "D4," collects stormwater in the vicinity of the office/warehouse building and discharges to Lake Union from an outfall beneath the concrete pier. Two small drains, identified on the Facility's SWPPP map as "D2" and "D3," collect stormwater in the vicinity of the concrete pier and paved dock area and discharge to Lake Union at the top of the concrete pier. An outfall, identified on the Facility's SWPPP map as "D1," discharges stormwater collected in the vicinity of the paved dock and boatyard area to Lake Union in the middle of the dock area.

3.7. Lake Union is listed as water quality impaired for, among other pollutants, bacteria, lead and total phosphorus.

3.8. In Appendix 4 of the ISGP, Ecology established effluent limitations and sampling requirements for fecal coliform, lead and phosphorus that are applicable to the Respondent.

3.9. Respondent has day-to-day operational control over industrial activities at the Facility and over potential sources of stormwater pollutants and conveyance and discharge structures that discharge stormwater from the Facility, and is an "operator" as that term is defined at 40 C.F.R. § 122.2.

3.10. Respondent's business operations at the Facility are industrial activities that are covered by SIC 3732 (Boat Building and Repairing) and by SIC 4225 (General Warehousing and Storage), and are subject to NPDES stormwater permitting requirements pursuant to section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26.

3.11. Lake Union is a water of the United States as defined in 40 C.F.R. § 122.2, and a navigable water pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.12. Respondent submitted a renewal application to Ecology, dated February 22, 2007, for permit coverage under the 2010 ISGP and obtained coverage under ISGP permit number WAR001246.

3.13. Complainant conducted an unannounced inspection of Respondent's Facility on December 4, 2014. Complainant's inspector ("Inspector") was accompanied by Respondent's port engineer Mr. Rich Kristjanson.

3.14. At the time of the inspection, Respondent was unable to provide the Inspector with a complete copy of the SWPPP. Following the inspection, Respondent emailed a copy of the SWPPP, dated May 8, 2012, to the Inspector.

3.15. The May 8, 2012 SWPPP provided to the Inspector contained incomplete information and was not certified. The Facility maps and diagrams provided with the SWPPP were not drawn to scale and did not provide a complete depiction of the stormwater management system. The SWPPP also lacked a description and inventory of the industrial activities conducted onsite, the pollutants associated with such activities, locations of potential spills, and identification of stormwater sampling locations.

3.16. Respondent's May 8, 2012 SWPPP identified outfall D1 as the only sampling location and did not identify as sampling locations the point of discharge from drains D2 and D3 or catch basin D4.

3.17. The Inspector confirmed with Mr. Kristjanson that Respondent only collects samples at outfall D1 and does not sample stormwater discharge from drains D2 and D3 or catch basin D4.

3.18. The Inspector requested that Respondent produce all monthly site inspection reports dating back to January 2013 for review. The most recent inspection report provided to the Inspector was dated February 2014.

3.19. When questioned by the Inspector, Mr. Kristjanson stated that Respondent had not conducted monthly inspections since March 2014.

3.20. The monthly inspection reports that were provided to the Inspector were signed by Mr. Kristjanson but were not certified by a responsible corporate officer of at least the level of vice president or a representative of the Facility duly authorized by Ecology.

3.21. According to Respondent's inspection reports, no vacuuming of paved surfaces was conducted between June 27, 2013 and February 28, 2014. An inspection report dated December 17, 2013, identified a build-up of sediment in the boatyard.

3.22. The Inspector reviewed Respondent's DMRs, lab reports and chain of custody records dating back to first quarter of 2010. The DMRs reviewed by the Inspector did not contain any sampling data for the pollutants lead and phosphorus.

3.23. The DMRs reviewed by the Inspector listed sampling results for fecal coliform commencing in the fourth quarter of 2013. However, lab reports provided to the Inspector indicate that Respondent requested lab analysis for chlorophyll instead of fecal coliform and reported the chlorophyll sampling data in the place of fecal coliform on the DMRs for the fourth quarter of 2013 through the third quarter of 2014.

3.24. Respondent submitted DMRs to Ecology that documented exceedances of the benchmark for zinc in the following quarters: 2011 – quarters two and four; and 2012 – quarter one.

3.25. In response to the 2011 benchmark exceedances of zinc Respondent's annual report identified the implementation of a Level One corrective action that consisted of reviewing and revising the facility sweeping schedule that was completed on March 16, 2012, and a Level Two corrective action that consisted of removing fishing gear and galvanized steel baskets and evaluating the purchase of a downspout filtration system to treat rooftop runoff. The annual report stated that the corrective action to remove fishing gear and galvanized baskets was completed on March 22, 2012, and projected that the installation of the downspout filtration system would be completed by July 30, 2012.

3.26. In response to the 2012 benchmark exceedance for zinc Respondent's annual report identified the implementation of Level One corrective action that consisted of removing an oil filter cabinet corroded with rust and repairing the affected area that was completed on April 23, 2013.

3.27. Respondent submitted DMRs to Ecology that documented exceedances of the benchmark for copper in the following quarters: 2011 – quarters three and four; 2012 – quarters one, two, three and four; 2013 – quarters two and three; 2014 – quarters one and three.

3.28. In response to the 2011 benchmark exceedances for copper Respondent's annual report identified the implementation of a Level One corrective action that consisted of reviewing and revising the facility sweeping schedule that was completed on March 16, 2012, and a Level Two corrective action that consisted of removing fishing gear and galvanized steel baskets that was completed on March 22, 2012.

3.29. In response to the 2012 benchmark exceedances for copper Respondent's annual report did not identify any Level One or Level Two corrective actions but did identify a Level Three corrective action that consisted of removing and repairing a corroding storage cabinet that

was completed on April 23, 2013, and disposing of a piece of machinery that was completed on May 1, 2013, but did not include additional treatment BMPs.

3.30. In response to the 2013 benchmark exceedances for copper Respondent's annual report did not identify any Level One or Level Two corrective actions but did identify replacement of the stormwater filtration media for the downspout filtration system as a Level Three corrective action that was completed on September 12, 2013. The replacement of the stormwater filtration media did not include additional structural source control BMPs and is not an additional treatment BMP.

3.31. The DMR for the fourth quarter of 2012 was not signed or dated. The DMRs for the third and fourth quarters of 2013 were signed and dated March 5, 2014. The DMR for the first quarter of 2014 was signed and dated May 22, 2014.

3.32. During the Facility inspection, the Inspector observed a 55-gallon drum of waste oil that was stored uncovered and without secondary containment near the edge of the dock. Along the south side of the warehouse the Inspector observed twelve paint cans stored uncovered and without secondary containment. At the southwest corner of the concrete pier the Inspector observed three 55-gallon drums of antifreeze stored uncovered and without secondary containment.

3.33. During the Facility inspection, the Inspector observed a sheen of oil on the concrete pier in proximity to drain D2 and near outfall D1.

Violation 1
(Violation of Section S9.C of the ISGP; One Count)

3.34. Paragraphs 3.1 to 3.33 are realleged and incorporated herein by reference.

3.35. Section S9.C.1 of the ISGP sets forth minimum requirements for documents that are required to be maintained onsite, including documentation of compliance with ISGP permitting requirements. Pursuant to section S9.C.3 of the ISGP, records and documents required to be maintained onsite shall be made immediately available upon request.

3.36. Respondent violated section S9.C of the ISGP by failing to maintain a complete copy of the SWPPP onsite and available for inspection. Violations of section S9.C of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 2
(Violations of Sections S3.A.6 and S3.B of the ISGP; Six Counts)

3.37. Paragraphs 3.1 to 3.33 are realleged and incorporated herein by reference.

3.38. Section S3.B of the ISGP establishes minimum content and completeness requirements for SWPPPs including up-to-date facility description and information, a site map that identifies facility scale or distances and the location of stormwater drainage and discharge structures, a description of BMPs selected for implementation and a sampling plan and procedures for identifying pollutants for monitoring and analysis. Section S3.A.6 of the ISGP requires that a SWPPP be signed and certified consistent with section G2 of the ISGP.

3.39. Respondent committed five separate and distinct violations of section S3.B of the ISGP because its SWPPP failed to address the following requirements: (1) a site map that identified the scale or relative distances between significant structures and drainage systems (section S3.B.1.a); (2) a site map that identified each stormwater drainage area and discharge point (section S3.B.1.d); (3) a facility assessment that included a description of facility, an inventory of facility activities and equipment and an inventory of materials that contribute to or

have the potential to contribute pollutants to stormwater (section S3.B.2); (4) a description of each BMP selected to eliminate or reduce the potential to contaminate stormwater and prevent violations of water quality standards (S3.B.3); and (5) a sampling plan that identifies points of discharge and documentation of why each discharge point is not sampled (section S3.B.5). Respondent also violated section S3.A.6 of the ISGP by failing to certify the SWPPP. Violations of sections S3.A.6 and S3.B of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 3
(Violations of Section S3.B.4.b.i.2 of the ISGP; Three Counts)

3.40. Paragraphs 3.1 to 3.33 are realleged and incorporated herein by reference.

3.41. Section S3.B.4 of the ISGP requires that permittees select and implement BMPs to eliminate or reduce the potential to contaminate stormwater and prevent violations of water quality standards. Section S3.B.4.b.i of the ISGP requires the selection and implementation of operational source control BMPs intended to control the sources of pollutants from a facility to eliminate or reduce contamination of stormwater. Section S3.B.4.b.i.2 of the ISGP requires implementation of good housekeeping measures including the vacuuming of paved surfaces to remove accumulated pollutants a minimum of once per calendar-year quarter and keeping all dumpsters under cover or fit with a lid that must remain closed when not in use.

3.42. Respondent committed three separate and distinct violations of section S3.B.4.b.i.2 of the ISGP by (1) failing to vacuum the boatyard during the third quarter of 2013 (section S3.B.4.b.i.2.a); (2) failing to vacuum the boatyard during the fourth quarter of 2013 (section S3.B.4.b.i.2.a); and (3) failing to keep three dumpsters undercover or covered with lids

when not in use (section S3.B.4.b.i.2.d). Violations of section S3.B.4 of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 4
(Violations of Section S3.B.4.b.i.3 of the ISGP; One Count)

3.43. Paragraphs 3.1 to 3.33 are realleged and incorporated herein by reference.

3.44. Section S3.B.4 of the ISGP requires that permittees select and implement BMPs to eliminate or reduce the potential to contaminate stormwater and prevent violations of water quality standards. Section S3.B.4.b.i of the ISGP requires the selection and implementation of operational source control BMPs intended to control the sources of pollutants from a facility to eliminate or reduce contamination of stormwater. Section S3.B.4.b.i.3 of the ISGP requires preventative maintenance that includes frequent inspection and immediate cleanup of spills and leaks to prevent the discharge of pollutants.

3.45. On December 4, 2014, Respondent violated section S3.B.4.b.i.3 of the ISGP by not immediately cleaning up oil sheens on the concrete pier in the proximity of drain D2 and in proximity to outfall D1. Violations of section S3.B.4.b.i.3 of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 5
(Violations of Section S3.B.4.b.i.4 of the ISGP; One Count)

3.46. Paragraphs 3.1 to 3.33 are realleged and incorporated herein by reference.

3.47. Section S3.B.4 of the ISGP requires that permittees select and implement BMPs to eliminate or reduce the potential to contaminate stormwater and prevent violations of water quality standards. Section S3.B.4.b.i of the ISGP requires the selection and implementation of

operational source control BMPs intended to control the sources of pollutants from a facility to eliminate or reduce contamination of stormwater. Section S3.B.4.b.i.4 of the ISGP requires spill prevention measures to prevent spills that include storing all chemical liquids, fluids and petroleum products on an impervious surface that is surrounded with a containment berm or dike.

3.48. On December 4, 2014, Respondent violated section S3.B.4.b.i.4 of the ISGP by storing outside in areas without secondary containment a 55-gallon drum of used oil, numerous paint cans and three 55-gallon drums of antifreeze. Violations of section S3.B.4.b.i.4 of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 6
(Violations of Section S4.B.1 of the ISGP; Thirty-Nine Counts)

3.49. Paragraphs 3.1 to 3.33 are realleged and incorporated herein by reference.

3.50. Section S4.B.2 of the ISGP requires that a permittee sample each location where it discharges stormwater associated with industrial activity. Section S4.B.1 of the ISGP requires that each discharge location be sampled at least once per quarter.

3.51. Respondent committed thirty-nine separate and distinct violations of section S4.B.1 of the ISGP by failing to conduct quarterly sampling for stormwater discharges from drains D2 and D3 and catch basin D4 over a period of thirteen calendar-year quarters between the third quarter of 2011 and the third quarter of 2014. Violations of section S4.B.1 of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 7
(Violations of Section S7.A.1 and S7.C.1.f of the ISGP; Twenty-two Counts)

3.52. Paragraphs 3.1 to 3.33 are realleged and incorporated herein by reference.

3.53. Section S7.A.1 of the ISGP requires that a permittee conduct and document visual inspections of the facility each month. Section S7.C.1.f of the ISGP requires that each inspection report prepared for a facility be signed and certified, pursuant to section G2 of the ISGP, by a responsible corporate officer of at least the level of vice president or a duly authorized representative of the facility.

3.54. Respondent committed eight separate and distinct violations of section S7.A.1 of the ISGP by failing to conduct and document monthly visual site inspections over the seven-month period from March 2014 to November 2014. Respondent committed fourteen separate and distinct violations of section S7.C.1.f of the ISGP by failing to certify the monthly inspection reports dated January 2013 to February 2014 consistent with the requirements of section G2 of the ISGP. Violations of Sections S7.A.1 and S7.C.1.f of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 8
(Violations of Section S6.C.1 of the ISGP; Thirty-nine Counts)

3.55. Paragraphs 3.1 to 3.33 are realleged and incorporated herein by reference.

3.56. In Appendix 4 of the ISGP Ecology established sampling requirements for fecal coliform, lead and phosphorus applicable to Respondent. Section S6.C.1, Table 5 of the ISGP requires that Respondent sample for fecal coliform, lead and phosphorus at least once per calendar-year quarter.

3.57. Respondent committed thirty-nine separate and distinct violations of section S6.C.1 of the ISGP by failing to conduct required quarterly sampling for fecal coliform, lead and phosphorus over a period of thirteen calendar-year quarters between the third quarter of 2011 and the third quarter of 2014. Violations of section S6.C.1 of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

**Violation 9
(Violations of Section S5.A.3 and S8 of the ISGP; Six Counts)**

3.58. Paragraphs 3.1 to 3.33 are realleged and incorporated herein by reference.

3.59. Section S5.A.3 of the ISGP requires a permittee to implement corrective actions pursuant to section S8 of the ISGP for exceedances of the benchmarks for copper or zinc. Section S8.B requires that a Level One corrective action be completed for any benchmark exceeded in a quarter by no later than the DMR due date for the quarter in which the benchmark was exceeded. Section S8.C requires that a Level Two corrective action be completed if a benchmark for a single pollutant parameter is exceeded two quarters in a calendar year. A Level Two corrective action shall be completed as soon as possible but no later than August 31 of the following calendar year. Section S8.D requires that a Level Three corrective action be completed if a benchmark for a single pollutant parameter is exceeded three quarters in a calendar year. A Level Three corrective action shall be completed as soon as possible but no later than September 30 of the following calendar year.

3.60. Respondent committed seven separate and distinct violations of sections S5.A.3 and S.8 of the ISGP by failing to implement or to timely implement required corrective action measures. Respondent failed to implement: (1) a Level Three corrective action for copper

benchmark exceedances in all four quarters of 2012 that included additional treatment BMPs; (2) a Level One corrective action for the second quarter copper benchmark exceedance in 2013 that included additional operational source control BMPs; and (3) a Level Two corrective action for the second and third quarter copper benchmark exceedances in 2013 that included additional structural source control BMPs. In addition, Respondent failed to timely implement: (4) the Level One corrective action for the second quarter zinc benchmark exceedance in 2011; (5) the Level One corrective action for first quarter zinc benchmark exceedance in 2012; (6) the Level One corrective action for the third quarter copper benchmark exceedance in 2011; and (7) the Level One corrective action for the first quarter copper benchmark exceedance in 2012. Violations of sections S5.A.3 and S.8 of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 10
(Violations of Section S9.A.4 of the ISGP; Four Counts)

3.61. Paragraphs 3.1 to 3.33 are realleged and incorporated herein by reference.

3.62. Section S9.A.4 of the ISGP identifies the specific due dates for the required quarterly submission of DMRs as May 15, August 14, November 14 and February 14. All permit reports, including DMRs, are required to be certified pursuant to section G2 of the ISGP.

3.63. Respondent committed four separate and distinct violations of section S9.A.4 of the ISGP by: (1) failing to sign and date the DMR for the fourth quarter of 2012; (2) failing to timely prepare and submit the DMR for the third quarter of 2013; (3) failing to timely prepare and submit the DMR for the fourth quarter 2013; and (4) failing to timely prepare and submit the

DMR for the first quarter of 2014. Violations of section S9.A.4 of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

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 \$16,000 per day for each violation up to a maximum of \$187,500.

4.2. Based on the foregoing allegations, Complainant seeks to assess civil penalties for 123 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 \$187,500, 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's failure to comply with permit conditions intended to control and minimize stormwater pollution associated with industrial activities are serious violations. The violations associated with Respondent's failure to comply with SWPPP requirements inhibits Respondent's ability to properly characterize and

address pollution sources and conveyance of pollutants to surface waters, to select and implement appropriate BMPs to address sources of pollution and to assure that all discharge locations are identified and sampled as required by the ISGP. The failure to comply with BMPs related to reducing, controlling and treating sources of pollutants exposed to stormwater increases the likelihood that pollutants will comingle with stormwater and be discharged to surface waters. Respondent's failure to properly store chemical liquids, fluids and petroleum products in areas with secondary containment similarly increases the likelihood that spills, whether due to overturned containers or smaller leaks, will convey pollutants to surface waters. Respondent's failure to conduct required monthly visual site inspections and to conduct required sampling impair the ability of Respondent and regulatory agencies to understand and evaluate, and therefore address, impacts the Facility may be causing to water quality. Respondent's failure to properly implement required corrective actions is significant because Respondent is failing to address documented levels of pollution that exceed levels established in the permit. Respondent's monitoring documented that pollutants in stormwater discharges regularly exceeded applicable benchmarks for zinc and copper, both of which are highly toxic to aquatic life. Due to Respondent's failure to conduct required sampling for fecal coliform, lead and phosphorus, both Respondent and Complainant lack information to determine whether stormwater discharges contain these pollutants at levels of concern. The pollutants fecal coliform, lead and phosphorus are of unique concern because Lake Union,

into which Respondent discharges, already exceeds the water quality standards established for these pollutants to protect the designated uses of the waterbody.

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:* Complainant is unaware of Respondent having a history of prior CWA violations at this facility.

4.3.4 *Respondent's Degree of Culpability:* Respondent submitted a notice of intent for coverage under the ISGP and was therefore aware of the permit requirements. However, Respondent failed to comply with a number of important permit conditions directly relevant to preventing stormwater pollution, such as failing to implement certain BMPs and secondary containment requirements, failing to collect samples from three of the Facility's four stormwater discharge locations, failing to sample stormwater discharges for identified pollutants of concern, and failing to take corrective actions to address pollutant concentrations that repeatedly exceeded benchmark values. In addition, at the end of the inspection on December 4, 2014, Complainant's Inspector held a closing conference with Mr. Kline, Respondent's General Manager, and Mr. Kristjanson. During this closing conference the Inspector discussed his observations and identified as areas of concern the violations alleged in this complaint. On February 19, 2016,

Complainant notified Respondent of its intent to commence enforcement proceedings and provided a list of the alleged violations identified by the Inspector at the closing conference. Complainant offered Respondent the opportunity to discuss the allegations in order to address the compliance concerns raised during the December 2014 inspection. Despite subsequent and repeated attempts to engage Respondent, made on February 26, March 3, March 15, March 17, and finally by a certified mail letter dated March 24, 2016, Respondent failed to respond and engage EPA in a discussion concerning the compliance issues raised during the inspection and alleged in this Complaint. Accordingly, without any information to the contrary, EPA alleges that Respondent has not remedied the areas of concern identified by the Inspector, which are set out as the violations in this Complaint.

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 conduct required visual assessments, monitoring and sampling, and to implement necessary corrective actions including required treatment BMPs.

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 at the address listed below within thirty (30) days after service of the Complaint, as determined by reference to 40 C.F.R. § 22.7(c).

5.3. 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:

Teresa Luna, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

A copy of each document filed in this proceeding must also be served on the Presiding Officer and each party to this proceeding.

5.4. Respondent should also send a copy of the Answer, as well as a copy of all other documents which Respondent files in this action to Alex Fidis, the attorney assigned to represent EPA and designated to receive service in this matter at:

Alex Fidis
Assistant Regional Counsel
U.S. EPA, Region 10
1200 6th Avenue, Suite 900, Mail Stop ORC 113
Seattle, WA 98101
(206) 553-4710

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, EPA Region 10. Contact information for Mr. Fidis is provided in paragraph 5.4 of this Complaint.

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.

Dated this 13th day of June, 2016


EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT in In the Matter of Alaska Boat Company, LLC, DOCKET NO.: CWA 10-2016-0116** was served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Teresa Luna, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900
Mail Stop ORC-113
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Mr. Chris Kline, General Manager
Alaska Boat Company, LLC
P.O Box 31091
Seattle, WA 98105

BS&G Inc.
Registered Agent
1191 2nd Avenue, #1800
Seattle, WA 98101-2939

Dated this 20 day of June, 2016



Alex Fidis
Assistant Regional Counsel
EPA Region 10

