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EPA--REGION 10

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

AMENDED ANSWER, AFFIRMATIVE  
DEFENSES AND REQUEST FOR  
HEARING

Respondents Special Interest Auto Works, Inc. and Troy Peterson, individual, (“Respondents”) pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Rule 22.15, (“the Rules”) hereby submit this Amended Answer to the Complaint dated July 11, 2013, and filed July 15, 2013 with the Hearing Clerk for the Environmental Protection Agency, Region 10 and served on Respondents July 18, 2013 (“the Complaint”), as follows:

**I. AUTHORITIES**

**(Paragraphs of answer correspondence to Nos. I through VIII in the Complaint)**

1.1 Respondents are without knowledge as to the truth of the allegations contained in Paragraph 1.1 of the Complaint and, therefore, DENY the same. Respondents specifically DENY that they have violated the Clean Water Act (“CWA”) or that there is any factual or legal basis to impose a civil penalty on them.

AMENDED ANSWER, AFFIRMATIVE DEFENSES, AND  
REQUEST FOR HEARING - 1 of 20  
DOCKET NO. CWA-10-2013-0123 [90218-1]

DENNIS D. REYNOLDS LAW OFFICE  
200 Winslow Way West, Suite 380  
Bainbridge Island, WA 98110  
(206) 780-6777  
(206) 780-6865 (Facsimile)

ORIGINAL

1           1.2     Respondents ADMIT that the Environmental Protection Agency (“EPA”)  
2 proposes in the Complaint the assessment of a civil penalty against themselves for alleged  
3 violations of the CWA. Respondents are without knowledge as to the truth of the remaining  
4 allegations in Paragraph 1.2 of the Complaint and, therefore, DENY the same.

5           1.3     Respondents ADMIT that the EPA did provide the State of Washington  
6 Department of Ecology (“Ecology”) by letter dated July 11, 2013 a notice of the filing of this  
7 action. Respondents affirmatively allege that the EPA’s notice to Ecology is insufficient and  
8 does not comply with statutory requirements. Respondents are without knowledge as to the  
9 truth of the remaining allegations contained in Paragraph 1.3 of the Complaint and, therefore,  
10 DENY the same.

11  
12                           **II.     STATUTORY AND REGULATORY BACKGROUND**

13           2.1     Paragraph 2.1 of the Complaint recites provisions of the Clean Water Act,  
14 which require no answer. Respondents affirmatively allege that none of their actions  
15 constitute a violation of the CWA.

16           2.2     Paragraph 2.2 of the Complaint recites provisions of the Clean Water Act,  
17 which require no answer. Respondents affirmatively allege that none of their actions  
18 constitute a violation of the CWA.

19           2.3     Paragraph 2.3 of the Complaint recites provisions of the Clean Water Act,  
20 which require no answer. Respondents affirmatively allege that none of their actions  
21 constitute a violation of the CWA.

22           2.4     Paragraph 2.4 of the Complaint recites provisions of the Clean Water Act,  
23 which require no answer. Respondents affirmatively allege that none of their actions  
24 constitute a violation of the CWA.

1           2.5     Paragraph 2.5 of the Complaint recites provisions of the Clean Water Act,  
2 which require no answer. Respondents affirmatively allege that none of their actions  
3 constitute a violation of the CWA.

4           2.6     Paragraph 2.6 of the Complaint recites provisions of the Clean Water Act,  
5 which require no answer. Respondents affirmatively allege that none of their actions  
6 constitute a violation of the CWA.

7           2.7     Paragraph 2.7 of the Complaint recites provisions of the Clean Water Act,  
8 which requires no answer. Respondents affirmatively allege that none of their actions  
9 constitute a violation of the CWA.

10          2.8     Paragraph 2.8 of the Complaint recites provisions of the Clean Water Act,  
11 which require no answer. Respondents affirmatively allege that none of their actions  
12 constitute a violation of the CWA.

13          2.9     Paragraph 2.9 of the Complaint recites provisions of the Clean Water Act,  
14 which require no answer. Respondents affirmatively allege that none of their actions  
15 constitute a violation of the CWA.

16          2.10    Respondents ADMIT that the State of Washington has been authorized by the  
17 EPA to administer the National Pollutant Discharge and Elimination (“NPDES”) Program.  
18 Respondents are without knowledge as to the truth of the remaining allegations of  
19 Paragraph 2.10 of the Complaint and, therefore, DENY the same.

20          2.11    Respondents are without knowledge as to the truth of the allegations contained  
21 in Paragraph 2.11 of the Complaint and, therefore, DENY the same. Respondents  
22 affirmatively allege that they have coverage under the Washington Industrial Stormwater  
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1 General NPDES Permit although their activities do not require coverage. *See* ¶3.7, *infra*.  
2 Respondents DENY they propose to discharge (or have discharged) pollutants via stormwater  
3 to a surface water body constituting waters of the Unites States including, but not limited to,  
4 the Green River.

5 2.12 Respondents are without knowledge as to the truth of the allegations contained  
6 in Paragraph 2.12 of the Complaint and, therefore, DENY the same.  
7

8 2.13 Respondents are without knowledge as to the truth of the allegations contained  
9 in Paragraph 2.13 of the Complaint and, therefore, DENY the same. Respondents  
10 affirmatively allege that they have an NPDES permit issued to them by the State of  
11 Washington Department of Ecology, No. WAR-126144, Troy Peterson /Special Interest Auto  
12 Works, Inc, Facility Name: "Special Interest Auto Works, Inc.", located at 25923 7<sup>th</sup> Avenue  
13 South, Kent, Washington, King County.  
14

15 2.14 The allegations contained in Paragraph 2.14 of the Complaint are recitations of  
16 the law and require no answer. Respondents affirmatively allege that they have an NPDES  
17 permit issued by the State of Washington Department of Ecology.

18 2.15 Regarding Paragraph 2.15 of the Complaint, Respondents ADMIT that the  
19 EPA has authority to issue administrative penalties for violations of the CWA. Respondents  
20 specifically DENY that any of their activities have violated the CWA or that there is any legal  
21 or factual basis to impose administrative penalties against them.  
22

### 23 III. ALLEGATIONS

24 3.1 Respondents ADMIT the allegations contained in Paragraph 3.1 of the  
25 Complaint.  
26

1           3.2     In response to the allegations contained in Paragraph 3.2 of the Complaint,  
2 Respondents ADMIT that they have day-to-day operational control of activities which occur  
3 at the Special Interest Auto Wrecking facility site. Respondents DENY that they are releasing  
4 (or have released) pollutants to waters of the United States including, but not limited to the  
5 Green River, which would necessitate permit coverage. Respondents affirmatively allege that  
6 they have an NPDES Permit from the State of Washington Department of Ecology.  
7

8           3.3     Respondents ADMIT the allegations contained in Paragraph 3.3 of the  
9 Complaint.

10          3.4     Respondents ADMIT the allegations contained in Paragraph 3.4 of the  
11 Complaint, except DENY that the site is 6.8 acres in size. The subject site has an area of 3.4  
12 acres. Soils on the site are a deep alluvial sandy loam with relatively high infiltration  
13 capacity.  
14

15          3.5     Respondents DENY the allegations contained in Paragraph 3.5 of the  
16 Complaint. Respondents specifically DENY that any surface stormwater discharges have  
17 emanated from the site or have reached the Green River or any other water of the United  
18 States from their activities.

19          3.6     Respondents ADMIT the allegations contained in Paragraph 3.6 of the  
20 Complaint.  
21

22          3.7     Respondents DENY the allegations contained in Paragraph 3.7 of the  
23 Complaint and affirmatively allege that the State of Washington Department of Ecology  
24 issued them an NPDES Permit on or about October 9, 2012, Permit No. WAR-126144. Prior  
25 to this time, Respondents operated under the reasonable assumption that all stormwater on the  
26

1 site vertically infiltrated into the pervious sandy native soil, thus negating the requirement to  
2 attain NPDES coverage.

3 3.8 Respondents ADMIT that they took over the site on August 1, 2008.

4 Automobiles were not stored on the site until January 2009. Respondents specifically DENY  
5 that any of their activities have resulted in “discharges of pollutants via stormwater to the  
6 Green River.” Respondents ADMIT that they did not have an NPDES Permit until on or  
7 about October 9, 2012.  
8

9 3.9 Respondents DENY the allegations contained in Paragraph 3.9 of the  
10 Complaint.

11 3.10 Respondents DENY that they received a November 2011 EPA mailing.  
12 Respondents ADMIT that a site inspection occurred on or about February 24, 2012.  
13 Respondents ADMIT the remaining allegations contained in Paragraph 3.10 of the Complaint  
14 subject to the qualifications set out in ¶4.3.1.2, *infra*.  
15

16 3.11 Respondents DENY the allegations contained in Paragraph 3.11 of the  
17 Complaint, except they ADMIT that there was a site inspection on February 24, 2012.

18 3.12 Respondents ADMIT the allegations contained in Paragraph 3.12 of the  
19 Complaint, but specifically DENY that stormwater discharges are occurring from the site (or  
20 have occurred) which emanate to and discharge into the Green River. *See* Response, ¶3.13  
21 and 3.23, *infra*.  
22

23 3.13 Respondents ADMIT an analysis of the samples collected on March 29, 2012  
24 contain the substances stated in the Complaint. The pollutants observed in EPA’s water  
25 quality sample results, including copper, lead, zinc, cadmium, and TPH, are typically present  
26

1 in stormwater runoff from roadways, parking lots and other surfaces traveled by vehicles.  
2 Their presence in standing water tested from the subject site is not alarming. Of the pollutants  
3 observed, only copper and zinc exceeded the benchmark concentrations that have been  
4 established in the Industrial Stormwater General Permit. The concentration of zinc in EPA's  
5 sample only slightly exceeded the benchmark with an observed value of 127 ug/L versus the  
6 benchmark value of 117 ug/L. The Respondents affirmatively DENY any "pollutants" were  
7 released in stormwater emanating from their property or were discharged into the Green River  
8 as a result of their activities.  
9

10 3.14 Respondents ADMIT the allegations at Paragraph 3.14, but affirmatively  
11 allege that their operations or activities did not require coverage under the NPDES program.  
12

13 3.15 Respondents are without knowledge as to the truth of the allegations contained  
14 in Paragraph 3.15 of the Complaint and, therefore, DENY the same.

15 **Count 1 (Failure to Apply for a Permit)**

16 3.16 Respondents reallege their responses to Paragraphs 1.1 through 3.15 of the  
17 Complaint, which responses are incorporated by reference.

18 3.17 Respondents DENY the allegations of Paragraph 3.17 of the Complaint.

19 3.18 Respondents DENY the allegations of Paragraph 3.18 of the Complaint.

20 3.19 Respondents DENY the allegations of Paragraph 3.19 of the Complaint.

21 Respondents ADMIT they did not have an NPDES permit until on or about October 9, 2012.

22 Respondents affirmatively allege that they were not required to obtain an individual NPDES  
23 permit or seek coverage under the industrial stormwater general permit as the result of their  
24 activities conducted on the site. Respondents affirmatively allege that they promptly applied  
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1 for and secured an individual NPDES permit when so advised by Ecology. Respondents  
2 affirmatively allege that they have continually invested in voluntary upgrades to the facility  
3 over each of the preceding five years to minimize any impacts of the activities conducted on  
4 site in a total amount of approximately \$40,000, which is beyond what is standard in the  
5 industry.

6  
7 3.20 Respondents ADMIT that they did not obtain an NPDES Permit until on or  
8 about October 9, 2012.

9 3.21 Respondents DENY allegations of Paragraph 3.21 of the Complaint.

10 **Count 2 (Discharge Without a Permit)**

11 3.22 Respondents reallege their responses to Paragraphs 1.1 through 3.21 of the  
12 Complaint, which responses are incorporated by reference.

13 3.23 Respondents DENY the allegations to Paragraph 3.23 of the Complaint.  
14 Respondents affirmatively allege that on only one occasion was surface water observed to be  
15 discharging from the subject site. This occurred on March 29, 2012 when the EPA conducted  
16 a site visit and collected a sample of the water leaving the site through a small breach in a  
17 berm caused by an animal digging the dirt. The storm water likely infiltrated the native soil a  
18 short distance from the site. No established flow path exists between the subject site and the  
19 Green River. The discharge occurring from the site on March 29, 2012 was at a low rate and  
20 of low volume. A small portion of the site drains to the area where discharge was observed  
21 by the EPA. The EPA estimated an area of about 0.5 acre draining to the discharge location.  
22 This portion of the site is being used for salvaged car storage. The ground surface is grass  
23 covered with gravel access driveways. Stormwater collects in low portions of the site and  
24 infiltrates into the native soil vertically, not horizontally. A flow path would have become  
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1 established with any significant quantity of runoff discharging from the property, but this has  
2 not occurred nor been observed.

3 3.24 Respondents DENY the allegations to Paragraph 3.24 of the Complaint.

4 3.25 Respondents DENY the allegations to Paragraph 3.25 of the Complaint.

5 3.26 Respondents DENY the allegations to Paragraph 3.26 of the Complaint.

6  
7 3.27 Respondents DENY that they violated Section 301(a) of the CWA, 33 U.S.C. §  
8 1311(a). Respondents ADMIT that they did not have a NPDES permit until October 4, 2012.

9  
10 3.28 Respondents DENY the allegations to Paragraph 3.28 of the Complaint.

11 Respondents affirmatively allege that, at most, on only one (or a few occasions) did  
12 stormwater emanate from the site and on no occasion was stormwater observed to enter into  
13 the Green River or into any other water of the United States. *See* Response, *supra* ¶ 3.23.

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

15 4.1 Respondents DENY the allegations of Paragraph 4.1 of the Complaint. The  
16 EPA has applied a hydrologic model to predict when runoff from the site has allegedly  
17 occurred. Based on Respondent's expert's initial review of the Model, its predictions are not  
18 accurate and cannot be relied upon. The Model has been misapplied and is not calibrated to  
19 site conditions. The Model uses the wrong soil type to model those present on the site. The  
20 Model includes interflow in the surface runoff predictions wherein there is little or no  
21 interflow originating from the Special Interest Auto site. The Model neglects surface storage  
22 provided onsite with naturally occurring surface roughness and a constructed low berm that  
23 extends along the site perimeter that was installed to contain runoff. EPA's Model neglects to  
24 take into account the pervious nature of the soils on the site and their natural infiltration  
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1 capacity. The accuracy of EPA's model predictions can be field tested by drilling some  
2 monitoring wells, and comparing the results of the Model's predictions, but the EPA refuses  
3 to do so.

4 4.2 Respondents DENY the allegations of Paragraph 4.2 of the Complaint.

5 Respondents ADMIT that they received a NPDES permit on or about October 9, 2012.

6 4.3 No response is required as to what the EPA proposes in paragraph 4.3 of the  
7 Complaint. Respondents DENY that they have violated any section of the Clean Water Act  
8 or that there is any factual or legal basis upon which a final order can or should be issued to  
9 Respondents assessing administrative penalties in any amount, including an amount not to  
10 exceed \$177,500.00.

11 4.3.1 *Nature, Circumstances, and Gravity of Violations.* Respondents  
12 DENY the allegations of Subparagraph 4.3.1 of the Complaint.

13 4.3.1.1 Respondents are not familiar with the full policies of the  
14 NPDES Permitting Program, so lack knowledge as to the truth of the allegations set out in  
15 Subparagraph 4.3.1.1 of the Complaint and, therefore, DENY the same.

16 4.3.1.2 Respondents ADMIT that the sample results from the NPDES  
17 inspection show certain pollutants found in the stormwater collected from the site. There is no  
18 evidence stormwater from the subject site reached a water of the United States, nor are the  
19 pollutants in such levels that even if the discharged from the site to the Green River, the  
20 discharge would be harmful to human health and aquatic species. This is because (1)  
21 discharge, if any, is occasional at most and (2) except for copper and zinc, any discharge  
22 would not have exceeded the threshold levels or counts set in Respondent's NPDES Permit.  
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1 Respondents specifically DENY the “potential for environmental harm” is high as the result  
2 of their activities. As to the allegations the Green River is listed on the National Priorities list  
3 under the Comprehensive Environmental, Response, Compensation and Liability Act,  
4 Respondents have no knowledge of the truth of this particular allegation and, therefore,  
5 DENY the same. Respondents affirmatively allege that they have operated at all times in  
6 good faith that the facility was not required to have an NPDES permit, but they promptly  
7 applied for and secured an NPDES permit when so advised by Ecology. Respondents have  
8 continually invested in voluntary upgrades to the facility over each of the preceding five  
9 years, in a total amount of approximately \$40,000, beyond what is standard in the industry, to  
10 minimize any impacts of the activities conducted on site. Respondents specifically DENY  
11 that their facility is “one of the many industrial sources contaminating the Duwamish River.”  
12 Respondents DENY the remaining allegations of 4.3.1.2 of the Complaint, except they  
13 ADMIT the Green River has certain beneficial uses for fish and wildlife habitat and use.

16 4.3.2 *Respondents’ Ability to Pay.* Respondents have no knowledge as to  
17 exactly what information the Complainant has which indicates their responsibility or to their  
18 ability to pay a penalty up to the statutory maximum penalty for the stated violations, and  
19 therefore, DENY the same. The Respondents acknowledge that the Complainant will  
20 consider any information submitted by the Respondents related to their ability to pay a  
21 penalty. Respondents respectfully DENY they have violated the CWA or that there is any  
22 factual or legal basis to impose civil penalties. Without waiving that position, if any quasi-  
23 judicial or judicial officer in his or her wisdom imposes civil penalties, Respondents do not  
24 have the ability to pay them. Subject to a protective order to protect the confidentiality of their  
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1 sensitive proprietary information and private financial worth, Respondents are ready, willing  
2 and able to present information supporting the allegation that they do not have the ability to  
3 pay a substantial civil penalty, if any. If any civil penalties are imposed (which should not be  
4 the case) Respondents request that their fees and costs, including attorney fees and expert  
5 engineering consulting fees responding to EPA's complaint, plus the amounts set out in 4.3.5,  
6 *infra*, be credited towards the penalty.  
7

8 4.3.3 *Respondents' History of Prior Violations.* Respondents are unaware of  
9 EPA's knowledge as to history of past violations at the facility that they now operate, and  
10 therefore, DENY the same. Respondents affirmatively allege that they have never violated  
11 the CWA. However, they have received communication from the State of Washington  
12 Department of Ecology regarding minor concerns relating to compliance with their NPDES  
13 Permit since that approval was issued in October, 2012. Respondents have operated at all  
14 times in good faith. Notwithstanding the fact that they were not required to obtain an NPDES  
15 permit until 2013, Respondents continually invested in voluntary upgrades to the facility over  
16 each of the preceding five years, in a total amount of approximately \$40,000, beyond what is  
17 standard in the industry, to minimize any impacts of the activities conducted on site.  
18

19 4.3.4 *Respondents' Degree of Culpability.* Respondents DENY the  
20 allegations of Subparagraph 4.3.4 of the Complaint. Respondents affirmatively allege that  
21 they sought permit coverage from the Department of Ecology in approximately April of 2012,  
22 but Ecology was unable to issue permit coverage until October 9, 2012.  
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24 4.3.5 *Respondents' Economic Benefit.* Respondents DENY the allegations in  
25 Subparagraph 4.3.5 of the Complaint. Respondents affirmatively allege that they have  
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**VI. FILING AN ANSWER**

6.1 Respondents acknowledge the allegations of Paragraph 6.1 of the Complaint, which requires no answer, except that according to Part 22 of the Rules, the Answer to the Complaint must be filed within 30 days after service of the Complaint and not 20 days.

6.2 Respondents acknowledge the allegations of Paragraph 6.2 of the Complaint, which requires no answer. The Respondents affirmatively allege that in their belief their Answers and Responses submitted herein are in accordance with 40 C.F.R. § 22.15.

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**VII. INFORMAL SETTLEMENT CONFERENCE**

7.1 Respondents acknowledge the allegations of Paragraph 7.1 of the Complaint, which requires no answer. Respondents affirmatively advise the hearing officer that they will request an informal Settlement Conference.

7.2 Respondents acknowledge the allegations of Paragraph 7.2 of the Complaint, which requires no answer. Respondents affirmatively allege that there is a 30 day time period to file a written Answer according to the Rules.

7.3 Respondents acknowledge the allegations of Paragraph 7.3 of the Complaint, which requires no answer. Respondents do not intend and will not engage in any ex parte (unilateral) discussion of the merits of this matter with the administrator, the Environmental Appeals Board, or its members, the Regional Judicial Officer, the Presiding Officer, or any other person likely to advise these officials as to the correct decision to issue of this case.

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**VIII. RESERVATION**

8.1 Respondents acknowledge the allegations of Paragraph 8.1 of the Complaint, which requires no answer.

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**IX. CONCLUSION**  
**(Summary of Circumstances or Arguments Which Constitute**  
**Grounds of Defenses, Facts Which Respondents Dispute,**  
**Basis for Opposing Proposed) Relief**

9.1 Respondents operated under a reasonable belief that obtaining a NPDES Permit for their site was unnecessary since all stormwater was infiltrating vertically and no discharges emanated offsite. While Respondents have accepted a NPDES Permit issued by the State of Washington Department of Ecology, there is no showing that this permit is required based upon their activities and site conditions. Stating as much, Respondents do not object to meeting reasonable government directives. There is no proof that any discharges emanated offsite from Respondents' site that reached any waters of the United States, including but not limited to, the Green River. There is no showing of a defined channel that documents any measurable flow emanating offsite from Respondents' facilities to the Green River. The EPA's sole basis for allegations of Clean Water Act violations and imposition of civil penalties is a generic model, which is not properly calibrated to take into account onsite conditions, including the highly permeable soils. The validity of the EPA's model can only be tested in an adjudicative hearing with the opportunity to cross-examine witnesses and present evidence. Respondents dispute all "facts" alleged by EPA, including that their activities require coverage under the General NPDES Permit or that stormwater has emanated offsite from their facility into the Green River or any other water of the United States. Without a violation of law there is no basis to impose civil penalties. In addition, Respondents' activities are now fully in compliance with any requirements. In sum, there is no basis in fact, law, or public policy to impose civil penalties on Respondents.

1                   **X.     REQUEST FOR ASSIGNMENT OF PRESIDING OFFICER**

2           10.1   Pursuant to the Rule 22.21, Respondents herein request that EPA's Regional  
3   Hearing Clerk forward a copy of the Complaint and Answer, Affirmative Defenses and  
4   Request for Hearing to the Chief Administrative Law Officer for assignment of a presiding  
5   officer to hear this matter.

6                   **XI.    REQUEST FOR HEARING**

7           11.1   Pursuant to Rule 22.21, a Presiding Officer should be appointed. As allowed  
8   by Rules, Rule 22.15(c), Respondents request an adjudicative hearing.

9                   **XII.   FUTHER LEAVE TO AMEND ANSWER**

10          12.1   Much of the information related to the EPA's enforcement action taken in this  
11   matter is solely in the possession of that agency. As allowed by the Rules, Rule 22.19(c),  
12   Respondents' will request leave to engage in discovery. Once they have received more  
13   information from the EPA, Respondents give notice that they may further amend this Answer  
14   to provide more defenses than set-out herein.

15                   **XIII.   AFFIRMATIVE DEFENSES**

16          Having fully answered the Complaint, the Respondents assert the following

17          1.       The Complaint fails to state a claim upon which relief can be granted because  
18   civil penalties cannot be imposed unless there is a material violation of the CWA, and as set  
19   out herein, Respondents have not violated the CWA. *United States v. Bay-Houston Towing*  
20   *Co., Inc.*, 197 F.Supp.2d 788 (E.D. Mich. 2002).

21          2.       The EPA delegated authority to implement all federal and state water pollution  
22   control laws and regulations in Washington State to the State Department of Ecology;  
23   Ecology did not require Respondents to obtain an individual NPDES permit or seek coverage  
24

1 under the industrial stormwater general permit until the summer of 2012; the EPA waived any  
2 and all claims related to Respondents' alleged failure to obtain a permit prior to such date.

3 3. To the extent the Complaint identifies any violations of the CWA, they are  
4 solely the result of Ecology's actions or omissions in administering the NPDES permitting  
5 program.

6 4. Respondents' activities have not resulted (and did not a result) in the discharge  
7 of pollutants to "waters of the United States."

8 5. The EPA cannot establish that Respondents were the source of any of the  
9 pollutants allegedly found in surrounding waters.

10 6. The existence of any wastewater discharges in the vicinity of Respondents'  
11 operations has been caused solely by acts of God and/or the acts or omissions of a third party.  
12 Respondents affirmatively allege that the owner/operator of a 10-acre metal recycling  
13 operation adjacent to Respondents' property has placed approximately 6 feet of fill dirt on a  
14 common property line. Upon information and belief, the fill dirt has altered the natural flow  
15 path of drainage on Respondents' site. Additional runoff from the adjacent property is  
16 emanating onto Respondent's property.

17 7. To the extent that Respondent's acts or omissions may, without either so  
18 admitting or denying, be in noncompliance with the Clean Water Act, those acts or omissions  
19 are *de minimis* in nature, have created no danger to health and public safety or human welfare,  
20 or a danger to the environment. *See United States v. Bay-Houston Towing Co., Inc.*, 197  
21 F.Supp.2d 788 (E.D. Mich. 2002).

22 8. The EPA fails to state a claim under the CWA because it cannot establish a  
23 continuing violation.  
24

1           9.     The EPA fails to state a claim under the CWA because Ecology has already  
2 enforced permitting requirements in connection with the allegations in the Complaint.

3           10.    The allegations in the Complaint are barred by laches and/or waiver.

4           11.    The Court lacks subject matter jurisdiction over Respondents because the EPA  
5 failed to comply with statutory requirements to provide the State of Washington Department  
6 of Ecology with proper notice of the filing of the Complaint.  
7

8           12.    The EPA lacks authority to assess a penalty under 33 U.S.C. § 1319(g) because  
9 it cannot establish any violation of the Clean Water Act as a result of Respondents' actions or  
10 omissions. *See United States v. Bay-Houston Towing Co., Inc.*, 197 F.Supp.2d 788 (E.D.  
11 Mich. 2002).

12           13.    The EPA lacks authority to assess a penalty under 33 U.S.C. § 1319(g) because  
13 it failed to consult with Ecology before proposing the penalty against Respondents as set forth  
14 in the Complaint.  
15

16           14.    Any and all actions or omissions concerning compliance with the Clean Water  
17 Act have not resulted in any economic benefit to Respondents. *See United States v. Bay-*  
18 *Houston Towing Co., Inc.*, 197 F.Supp.2d 788 (E.D. Mich. 2002).

19           15.    Respondents at all times acted in good faith. *See United States v. Bay-Houston*  
20 *Towing Co., Inc.*, 197 F.Supp.2d 788 (E.D. Mich. 2002).  
21

22           16.    EPA fails to meet its burden of proof.

23           Respondents reserve the right to further amend these pleadings and to add such further  
24 affirmative defenses as discovery and development of the case may disclose.  
25  
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**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:

<b><u>Original plus one (1) copy to:</u></b>	
Candace Smith, Regional Hearing Clerk U.S. Environmental Protection Agency, Region 10 1200 Sixth Avenue, #900 / Mail Stop ORC-158 Seattle, WA 98101 (206) 553-6524, tel <a href="mailto:Smith.candace@epamail.epa.gov">Smith.candace@epamail.epa.gov</a> , email	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Express Mail, Next Day <input checked="" type="checkbox"/> Email
<b><u>Copies to:</u></b>	
Edward J. Kowalski, Director Office of Compliance and Enforcement U.S. Environmental Protection Agency 1200 Sixth Avenue, #900 / Mail Code OCE-184 Seattle, WA 98101 (206) 553-6695, tel <a href="mailto:Kowalski.edward@epamail.epa.gov">Kowalski.edward@epamail.epa.gov</a> , email	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile <input type="checkbox"/> First Class Mail <input type="checkbox"/> Express Mail, Next Day <input checked="" type="checkbox"/> Email
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 <a href="mailto:Mckenna.Elizabeth@epamail.epa.gov">Mckenna.Elizabeth@epamail.epa.gov</a> , email	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile <input type="checkbox"/> First Class Mail <input type="checkbox"/> Express Mail, Next Day <input checked="" type="checkbox"/> Email

DATED at Bainbridge Island, Washington, this 12<sup>th</sup> day of August, 2013.

  
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Christy A. Reynolds  
Legal Assistant