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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

9 In the Matter of:

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

Respondents.

Docket No. CWA-10-2013-0123

MOTION FOR LEAVE TO FILE
AMENDED ANSWER

13 Respondents Special Interest Auto Works, Inc. and Troy Peterson, individual,
14 (“Respondents”) pursuant to the Consolidated Rules of Practice Governing the Administrative
15 Assessment of Civil Penalties, Rule 22.15(e), (“the Rules”) respectfully move for leave to file
16 the enclosed Amended Answer.

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18 Respondents filed their original Answer, Affirmative Defenses and Request for
19 Hearing on July 31, 2013, in answer to the Complaint dated July 11, 2013, filed July 15, 2013
20 with the Hearing Clerk for the Environmental Protection Agency, Region 10 and served on
21 Respondents on July 18, 2013. As of the date of this filing, the original 30-day deadline for
22 filing an Answer, established by 40 C.F.R. §22.15(a), has not expired.

23 Respondents seek leave to file this Amended Answer to add information regarding
24 voluntary upgrades to the facility and the actions/omissions of third parties. This information
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RESPONDENT’S MOTION FOR LEAVE
TO FILE AMENDED ANSWER- 1 of 4
DOCKET NO. CWA-10-2013-0123 [90218-1]

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1 is included to support their affirmative defenses and to more fully answer the allegations
2 concerning a Proposed Penalty.

3 The Rules state that “[t]he respondent may amend the answer to the complaint upon
4 motion granted by the Presiding Officer.” 40 C.F.R. §22.15(e). Similarly, Fed. R. Civ. P.
5 15(a) allows parties to amend their pleadings “by leave of court or by written consent of the
6 adverse party; and *leave shall be freely given when justice so requires*. Fed. R. Civ. P. 15(a).
7 This policy is to be applied with “extraordinary liberality.” *See Morongo Band of Mission*
8 *Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). A motion to amend should be denied
9 only where it would be prejudicial, there has been bad faith, or the amendment would be
10 futile. *HCMF Corp. v. Allen*, 238 F.3d 273, 276-77 (4th Cir.2001); *Gabrielson v. Montgomery*
11 *Ward & Co.*, 785 F.2d 762, 766 (9th Cir.1986). None of these circumstances are present here.

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14 Justice requires that the Presiding Officer grant Respondents leave to amend their
15 Answer. Because of the prompt timing of the proposed amendments to the Original Answer,
16 there will not be any prejudice to the Petitioner; the Motion is brought in good faith.
17 Respondents’ amended Answer will not delay this matter because it is submitted within the
18 original 30-day time period for filing an Answer. Finally, a proposed amendment is futile
19 only if no set of facts can be proved under the amendment to the pleadings that would
20 constitute a valid and sufficient claim or defense. *Baker v. Pacific Far East Lines, Inc.*, 451
21 F.Supp. 84, 89 (N.D.Cal.1978); *see generally* 3 J. Moore, Moore's Federal Practice p 15.08
22 (2d ed. 1974). Here, the proposed amendments provide support for Respondents’ answer to
23 allegations concerning the Proposed Penalty and Respondents’ affirmative defenses.
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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:

<u>Original plus one (1) copy to:</u>	
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 Smith.candace@epamail.epa.gov, 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
<u>Copies to:</u>	
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 Kowalski.edward@epamail.epa.gov, 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 Mckenna.Elizabeth@epamail.epa.gov, 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 12th day of August, 2013.



Christy A. Reynolds
Legal Assistant