

1 **BEFORE THE**
2 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

3 In the Matter of:

4 Alaska Boat Company, LLC

5 Seattle, WA

6 Respondent.

) DOCKET NO. CWA-10-2016-0116

) **CERTIFICATE OF SERVICE**

) RECEIVED

16 JUL 26 AM 10:27

HEARINGS CLERK
EPA - REGION 10

8
9 I hereby certify that an original and one copy of Alaska Boat Company, LLC's Answer
10 and Request for Hearing were served on July 25, 2016 to the following parties:

11
12 **VIA HAND DELIVERY**

13 **Teresa Luna, Regional Hearing Clerk**
14 U.S. Environmental Protection Agency
15 Region 10, Mail Stop ORC-113
16 1200 Sixth Avenue, Suite 900
17 Seattle WA 98101

12 **VIA HAND DELIVERY AND EMAIL**

13 Alex Fidis
14 U.S. Environmental Protection Agency
15 Region 10, Mail Stop ORC-113
16 1200 Sixth Avenue, Suite 900
17 Seattle WA 98101
Fidis.Alexander@epa.gov

18
19 I certify under penalty of perjury under the laws of the State of Washington that the
20 foregoing is true and correct.

21 DATED this 25th day of July 2016, in Bellevue, Washington.

22 ENVIRONMENTAL LAW NORTHWEST

23
24
25 
26 Terry A. Morrison

27 CERTIFICATE OF SERVICE - 1

28 Environmental Law Northwest
29 PO Box 6786
Bellevue, WA 98008
(425) 556-4303
Doug@nwenvlaw.com

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5 **BEFORE THE**
6 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

7 In the Matter of:

8 Alaska Boat Company, LLC

9 Seattle, WA

10 Respondent.

) DOCKET NO. CWA-10-2016-0116

) **ANSWER AND**

) **REQUEST FOR HEARING**

11
12
13 **ANSWER AND ADDITIONAL AND AFFIRMATIVE DEFENSES**

14 Comes now the Alaska Boat Company, LLC (Alaska Boat or Respondent) and by way of
15 its answer to the Administrative Complaint issued in the above referenced action, alleges and
16 prays as follows:

17 **RESPONSE TO ALLEGATIONS RE STATUTORY AUTHORITY**

- 18 1.1 Respondent lacks information and knowledge to form a belief as to the truth of
19 these allegations and therefore denies them.
- 20 1.2 Respondent admits that EPA is proposing assessment of a civil penalty, but
21 otherwise does not have information and knowledge to understand the legal basis
22 for EPA's proposal and therefore denies the other allegations.
- 23 1.3 Respondent lacks information and knowledge to form a belief as to the truth of
24 these allegations and therefore denies them.

25 **RESPONSE TO ALLEGATIONS RE STATUTORY AND REGULATORY**

26 **BACKGROUND**

- 27 2.1 The statute speaks for itself and no response to a legal conclusion is required. To
28 the extent that this allegation requires a response, Alaska Boat denies it.

- 1 2.2 The statute speaks for itself and no response to a legal conclusion is required. To
2 the extent that this allegation requires a response, Alaska Boat denies it.
- 3 2.3 The statute speaks for itself and no response to a legal conclusion is required. To
4 the extent that this allegation requires a response, Alaska Boat denies it.
- 5 2.4 The statute speaks for itself and no response to a legal conclusion is required. To
6 the extent that this allegation requires a response, Alaska Boat denies it.
- 7 2.5 The statute speaks for itself and no response to a legal conclusion is required. To
8 the extent that this allegation requires a response, Alaska Boat denies it.
- 9 2.6 The statute speaks for itself and no response to a legal conclusion is required. To
10 the extent that this allegation requires a response, Alaska Boat denies it.
- 11 2.7 The statute speaks for itself and no response to a legal conclusion is required. To
12 the extent that this allegation requires a response, Alaska Boat denies it.
- 13 2.8 The regulations speak for themselves and no response to a legal conclusion is
14 required. To the extent that this allegation requires a response, Alaska Boat
15 denies it.
- 16 2.9 Alaska Boat admits that a version of the ISGP became effective on January 1,
17 2010. The permit speaks for itself and no response to a legal conclusion is
18 required. Respondent lacks information and knowledge to form a belief as to the
19 truth of the other allegations and therefore denies them.
- 20 2.10 The permit speaks for itself and no response to a legal conclusion is required. To
21 the extent that this allegation requires a response, Alaska Boat denies it.
- 22 2.11 The permit speaks for itself and no response to a legal conclusion is required. To
23 the extent that this allegation requires a response, Alaska Boat denies it.
- 24 2.12 The permit speaks for itself and no response to a legal conclusion is required. To
25 the extent that this allegation requires a response, Alaska Boat denies it.
- 26 2.13 The permit speaks for itself and no response to a legal conclusion is required. To
27 the extent that this allegation requires a response, Alaska Boat denies it.
- 28 2.14 The permit speaks for itself and no response to a legal conclusion is required. To
the extent that this allegation requires a response, Alaska Boat denies it.

- 1 2.15 The permit speaks for itself and no response to a legal conclusion is required. To
2 the extent that this allegation requires a response, Alaska Boat denies it.
- 3 2.16 The permit speaks for itself and no response to a legal conclusion is required. To
4 the extent that this allegation requires a response, Alaska Boat denies it.
- 5 2.17 The permit speaks for itself and no response to a legal conclusion is required. To
6 the extent that this allegation requires a response, Alaska Boat denies it.
- 7 2.18 The permit speaks for itself and no response to a legal conclusion is required. To
8 the extent that this allegation requires a response, Alaska Boat denies it.
- 9 2.19 The permit speaks for itself and no response to a legal conclusion is required. To
10 the extent that this allegation requires a response, Alaska Boat denies it.
- 11 2.20 The permit speaks for itself and no response to a legal conclusion is required. To
12 the extent that this allegation requires a response, Alaska Boat denies it.
- 13 2.21 The statute speaks for itself and no response to a legal conclusion is required. To
14 the extent that this allegation requires a response, Alaska Boat denies it.

15 **RESPONSE TO ALLEGATIONS**

- 16 3.1 Respondent admits this allegation.
- 17 3.2 Respondent admits this allegation.
- 18 3.3 Respondent admits this allegation.
- 19 3.4 Respondent admits that the subject facility is proximate to NE Northlake Way to
20 the north and Lake Union to the south, but lacks information and knowledge to
21 form a belief as to the truth of the other allegations and therefore denies them.
- 22 3.5 Respondent admits this allegation.
- 23 3.6 Respondent lacks information and knowledge to form a belief as to the truth of
24 the allegations that the stormwater catch basin known as outfall D4 is on the
25 property leased by Alaska Boat Company, and that it discharges to Lake Union on
26 or through that property, and therefore denies them. Respondent admits the other
27 allegations.
- 28 3.7 Respondent admits this allegation.
- 3.8 Respondent admits this allegation.

- 1 3.9 Respondent admits this allegation.
- 2 3.10 Respondent denies that its activities are covered by SIC codes 3732 and 4225. As
3 to the other allegations, the statute, regulations and permit speak for themselves
4 and no response to a legal conclusion is required. To the extent that this
5 allegation requires a response, Alaska Boat denies it.
- 6 3.11 Respondent admits this allegation.
- 7 3.12 Respondent admits the allegation, and alleges that it may have obtained such
8 coverage erroneously due to mistakes regarding assignment of the proper SIC
9 code.
- 10 3.13 Respondent lacks information and knowledge to form a belief as to the truth of
11 these allegations and therefore denies them. Mr. Kristjanson is deceased and
12 therefore unable to assist Respondent in ascertaining the truth of this allegation.
- 13 3.14 Respondent lacks information and knowledge to form a belief as to the truth of
14 these allegations and therefore denies them. Mr. Kristjanson is deceased and
15 therefore unable to assist Respondent in ascertaining the truth of this allegation.
- 16 3.15 Respondent denies these allegations on the basis that the document EPA refers to
17 as the "May 8, 2012 SWPPP" may not constitute the entire SWPPP in effect at the
18 time.
- 19 3.16 Respondent denies these allegations on the basis that the document EPA refers to
20 as the "May 8, 2012 SWPPP" may not constitute the entire SWPPP in effect at the
21 time.
- 22 3.17 Respondent lacks information and knowledge to form a belief as to the truth of
23 these allegations and therefore denies them. Mr. Kristjanson is deceased and
24 therefore unable to assist Respondent in ascertaining the truth of this allegation.
- 25 3.18 Respondent lacks information and knowledge to form a belief as to the truth of
26 these allegations and therefore denies them. Mr. Kristjanson is deceased and
27 therefore unable to assist Respondent in ascertaining the truth of this allegation.
28

- 1 3.19 Respondent lacks information and knowledge to form a belief as to the truth of
2 these allegations and therefore denies them. Mr. Kristjanson is deceased and
3 therefore unable to assist Respondent in ascertaining the truth of this allegation.
- 4 3.20 Respondent lacks information and knowledge to form a belief as to the truth of
5 these allegations and therefore denies them. Mr. Kristjanson is deceased and
6 therefore unable to assist Respondent in ascertaining the truth of this allegation.
- 7 3.21 Respondent admits that no vacuuming of paved surfaces was conducted between
8 June 27, 2013 and February 28, 2014. Respondent lacks information and
9 knowledge to form a belief as to the truth of the allegation regarding sediment
10 build up and therefore denies that allegation.
- 11 3.22 Respondent lacks information and knowledge to form a belief as to the truth of
12 these allegations and therefore denies them.
- 13 3.23 Respondent lacks information and knowledge to form a belief as to the truth of
14 these allegations and therefore denies them, except that Respondent admits that
15 some reports mistakenly have the word "chlorophyll" instead of "coliform."
- 16 3.24 Respondent admits that the referenced DMRs represent that there were
17 exceedances, but Respondent is unable to confirm that such exceedances occurred
18 in fact due to a lack of information and therefore denies that an exceedance
19 occurred in fact.
- 20 3.25 Respondent admits this allegation.
- 21 3.26 Respondent admits this allegation.
- 22 3.27 Respondent admits that the referenced DMRs represent that there were
23 exceedances, but Respondent is unable to confirm that such exceedances occurred
24 in fact due to a lack of information and therefore denies that an exceedance
25 occurred in fact.
- 26 3.28 Respondent denies that the 2011 annual report reflects exceedances or
27 implementation of corrective actions for copper.
28

1 3.29 Respondent admits that this allegation reflects what is on the face of the 2012
2 annual report for copper, but Respondent denies that any additional treatment
3 BMPs were required.

4 3.30 Respondent admits that this allegation reflects what is on the face of the 2013
5 annual report for copper, but Respondent denies EPA's characterizations of the
6 replacement of the filter media based on unclear phrasing and Respondent denies
7 that treatment BMPs were required.

8 3.31 Respondent lacks information and knowledge to form a belief as to the truth of
9 these allegations and therefore denies them.

10 3.32 Respondent lacks information and knowledge to form a belief as to the truth of
11 these allegations and therefore denies them.

12 3.33 Respondent lacks information and knowledge to form a belief as to the truth of
13 these allegations and therefore denies them.

14 **RESPONSE TO ALLEGATIONS FOR VIOLATION 1**

15 3.34 Respondent realleges and incorporates by this reference all responses to
16 paragraphs 3.1 through 3.33.

17 3.35 The permit speaks for itself and no response to a legal conclusion is required. To
18 the extent that this allegation requires a response, Alaska Boat denies it.

19 3.36 The permit and statute speak for themselves and no response to a legal conclusion
20 is required. To the extent that this allegation requires a response, Alaska Boat
21 denies it.

22 **RESPONSE TO ALLEGATIONS FOR VIOLATION 2**

23 3.37 Respondent realleges and incorporates by this reference all responses to
24 paragraphs 3.1 through 3.33.

25 3.38 The permit speaks for itself and no response to a legal conclusion is required. To
26 the extent that this allegation requires a response, Alaska Boat denies it.

27 3.39 The permit and statute speak for themselves and no response to a legal conclusion
28 is required. To the extent that this allegation requires a response, Alaska Boat
denies it.

1 3.51 The permit and statute speak for themselves and no response to a legal conclusion
2 is required. To the extent that this allegation requires a response, Alaska Boat
3 denies it.

4 **RESPONSE TO ALLEGATIONS FOR VIOLATION 7**

5 3.52 Respondent realleges and incorporates by this reference all responses to
6 paragraphs 3.1 through 3.33.

7 3.53 The permit speaks for itself and no response to a legal conclusion is required. To
8 the extent that this allegation requires a response, Alaska Boat denies it.

9 3.54 The permit and statute speak for themselves and no response to a legal conclusion
10 is required. To the extent that this allegation requires a response, Alaska Boat
11 denies it.

12 **RESPONSE TO ALLEGATIONS FOR VIOLATION 8**

13 3.55 Respondent realleges and incorporates by this reference all response to paragraphs
14 3.1 through 3.33.

15 3.56 The permit speaks for itself and no response to a legal conclusion is required. To
16 the extent that this allegation requires a response, Alaska Boat denies it.

17 3.57 The permit and statute speak for themselves and no response to a legal conclusion
18 is required. To the extent that this allegation requires a response, Alaska Boat
19 denies it.

20 **RESPONSE TO ALLEGATIONS FOR VIOLATION 9**

21 3.58 Respondent realleges and incorporates by this reference all responses to
22 paragraphs 3.1 through 3.33.

23 3.59 The permit speaks for itself and no response to a legal conclusion is required. To
24 the extent that this allegation requires a response, Alaska Boat denies it.

25 3.60 The permit and statute speak for themselves and no response to a legal conclusion
26 is required. To the extent that this allegation requires a response, Alaska Boat
27 denies it.

28 **RESPONSE TO ALLEGATIONS FOR VIOLATION 10**

1 3.61 Respondent realleges and incorporates by this reference all response to paragraphs
2 3.1 through 3.33.

3 3.62 The permit speaks for itself and no response to a legal conclusion is required. To
4 the extent that this allegation requires a response, Alaska Boat denies it.

5 3.63 The permit and statute speak for themselves and no response to a legal conclusion
6 is required. To the extent that this allegation requires a response, Alaska Boat
7 denies it.

8 **RESPONSE TO PROPOSED PENALTY**

9 4.1 Respondent admits that there is a statutory maximum penalty of \$187,500, but
10 otherwise denies these allegations.

11 4.2 Respondent acknowledges that EPA seeks to assess civil penalties for the
12 allegations in its Complaint.

13 4.3 The regulation and statute speak for themselves and no response to a legal
14 conclusion is required. To the extent that this allegation requires a response,
15 Alaska Boat denies it. Respondent acknowledges that EPA proposes to assess
16 civil penalties for the allegations in its Complaint.

17 4.3.1 Respondent denies the factual allegations in this paragraph, and no
18 response to its legal conclusions is required. To the extent that the legal
19 conclusions require a response, Alaska Boat denies them.

20 4.3.2 Respondent acknowledges that it may present information regarding its
21 ability to pay a penalty.

22 4.3.3 Respondent is also unaware of a history of any prior CWA violations at
23 this facility.

24 4.3.4 Respondent admits that it submitted a notice of intent for coverage under
25 the ISGP but otherwise denies EPA's list of generalized allegations of
26 failings. Respondent acknowledges a brief meeting between an EPA
27 inspector and Mr. Kline but denies that this meeting could be
28 characterized as a "closing conference." Respondent lacks information and
knowledge to form a belief as to the truth of the allegations related to

1 interactions between an EPA inspector and Mr. Kristjanson and therefore
2 denies them. Mr. Kristjanson is deceased and therefore unable to assist
3 Respondent in ascertaining the truth of these allegations. Respondent
4 admits that it received EPA's letter dated March 24, 2016 but otherwise
5 lacks information and knowledge to form a belief as to the truth of the
6 allegations related to EPA's other attempts to contact Respondent, and
7 therefore denies them. Respondent denies the allegation that it has not
8 remedied areas of concern that are set out as violations in the Complaint,
9 but otherwise lacks information and knowledge to form a belief as to the
10 truth of the allegations related to what areas of concern were identified by
11 an EPA inspector and therefore denies them.

12 4.3.5 Respondent denies that it received an economic benefit from all of the
13 alleged violations noted in this paragraph.

14 4.3.6 Respondent lacks information and knowledge to form a belief as to the
15 truth of these allegations and therefore denies them.

16 **RESPONSE TO NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

17 5.1 Respondent requests a hearing regarding all material facts alleged in the
18 Complaint, as well as on the appropriateness of the proposed penalty. Respondent
19 admits that it received a copy of the Part 22 Rules with service of the Complaint.

20 5.2 Respondent intends to timely file this Answer and Request for Hearing on the
21 Regional Hearing Clerk.

22 5.3 No answer required.

23 5.4 A copy of this answer has been sent to Mr. Fidis.

24 **RESPONSE TO FAILURE TO FILE AN ANSWER**

25 6.1 The regulation speaks for itself and no response to a legal conclusion is required.
26 To the extent that this allegation requires a response, Alaska Boat denies it.

27 6.2 The regulation speaks for itself and no response to a legal conclusion is required.
28 To the extent that this allegation requires a response, Alaska Boat denies it.

1 6.3 The regulation speaks for itself and no response to a legal conclusion is required.
2 To the extent that this allegation requires a response, Alaska Boat denies it.

3 **INFORMAL SETTLEMENT CONFERENCE**

4 7.1 Respondent has requested an informal settlement conference.

5 7.2 No response to a legal conclusion is required. To the extent that this allegation
6 requires a response, Alaska Boat denies it.

7 7.3 The regulation speaks for itself and no response to a legal conclusion is required.
8 To the extent that this allegation requires a response, Alaska Boat denies it.

9 **RESPONSE RE RESERVATIONS**

10 8.1 No response to a legal conclusion is required. To the extent that this allegation
11 requires a response, Alaska Boat denies it.

12 **AFFIRMATIVE DEFENSES AND OTHER RESPONSES**

13 9.1 Alaska Boat denies each and every allegation of the Complaint not specifically
14 admitted.

15 9.2 Alaska Boat Company LLC did not exist until February 3, 2011 and therefore
16 cannot be the subject of any enforcement action with respect to conduct before
17 that date.

18 9.3 EPA's claims are barred, in whole or in part, by the doctrine of equitable estoppel
19 on the grounds that ISGP coverage was imposed or obtained under duress or
20 erroneously.

21 9.4 EPA's claims are barred, in whole or in part, by the applicable statute(s) of
22 limitation.

23 9.5 Respondent disputes the penalty proposed by EPA as inappropriate and
24 unwarranted, based on the allegations of the complaint.

25 9.6 Respondent reserves its right to present any other defenses to the Complaint.
26
27
28

1 I CERTIFY: That on this same date the original and a copy of this Answer was sent via
2 hand delivery to

3 Teresa Luna, Regional Hearing Clerk
4 U.S. Environmental Protection Agency
5 Region 10, Mail Stop ORC-113
6 1200 Sixth Avenue, Suite 900
7 Seattle WA 98101

8 This Answer was also emailed to Alex Fidis at Fidis.Alexander@epa.gov.

9 In King County, State of Washington, this 25th day of July, 2016,

10 ENVIRONMENTAL LAW NORTHWEST
11 Attorneys for Alaska Boat Company, LLC
12 P.O. Box 6786
13 Bellevue, WA 98008
14 Telephone (425) 556-4303
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17 By: 
18 Douglas S. Morrison
19 WSBA #18769
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