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HEARINGS CLERK
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
Respondent.

DOCKET NO.
CWA-10-2013-0123

COMPLAINT

I. AUTHORITIES

1.1. This administrative Complaint ("Complaint") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Sections 308(a) and 309(a) of the Federal Water Pollution Control Act ("CWA"), 33 U.S.C. §§ 1318(a) and 1319(a). 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 Region 10.

1.2. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(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

1 against Special Interest Auto Works, Inc. and Troy Peterson (“Respondents”) for violations of
2 the CWA.

3 1.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and
4 40 C.F.R. § 22.38(b), the EPA has provided the State of Washington with an opportunity to
5 consult with the EPA on this matter.

6 **II. STATUTORY AND REGULATORY BACKGROUND**

7 2.1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of any
8 pollutant by any person” except as authorized by a National Pollutant Discharge and Elimination
9 System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

10 2.2. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a
11 pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

12 2.3. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include,
13 *inter alia*, industrial waste discharged into water.

14 2.4. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as
15 “waters of the United States.”

16 2.5. 40 C.F.R. § 122.2 defines “waters of the United States” to include “tributaries” to
17 waters that are “interstate waters” and/or waters that “may be susceptible to use in interstate or
18 foreign commerce, including all waters which are subject to the ebb and flow of the tide”

19 2.6. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to
20 include “any discernible, confined and discrete conveyance, including but not limited to any
21 pipe, ditch, channel, tunnel, conduit ... from which pollutants are or may be discharged.”

22 2.7. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” as “an
23 individual, corporation, partnership, association, State, municipality, commission, or political
24 subdivision of a State, or any interstate body.”

1 2.8. Section 402(p) of the CWA, 33 U.S.C. § 1342, specifies that an NPDES permit is
2 required for any stormwater discharge “associated with industrial activity.” Section 402(p) also
3 authorizes the EPA to issue regulations that designate additional stormwater discharge sources
4 and establish a comprehensive program to regulate these additional sources.

5 2.9. 40 C.F.R. § 122.26(b)(14)(vi) defines “[s]torm water associated with industrial
6 activity” to include discharges associated with “[f]acilities involved in the recycling of materials,
7 including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards,
8 including . . . those classified as Standard Industrial Classification 5015 and 5093.”

9 2.10. The State of Washington has been authorized by the EPA to administer the
10 NPDES program. As an authorized state under the CWA, in October 2009, the State of
11 Washington issued the Washington Industrial Stormwater General Permit (“ISGP”) pursuant to
12 Section 402 of the CWA, 33 U.S.C. § 1342. The ISGP became effective on January 1, 2010 and
13 authorizes certain discharges of stormwater associated with industrial activity at permitted
14 facilities.

15 2.11. Coverage under the ISGP is available to facilities engaged in certain industrial
16 activities, including recycling facilities involved in the recycling of materials, including but not
17 limited to, metal scrap yards, battery reclaimers, salvage yards, auto recyclers, and automobile
18 junkyards, if those facilities propose to discharge pollutants via stormwater, surface water body,
19 or to a storm sewer system that discharges to a surface water body.

20 2.12. The ISGP’s coverage extends to discharges of stormwater and conditionally
21 approved non-stormwater discharges to waters of the State of Washington, which includes
22 waters of the United States within the jurisdiction of the State of Washington. Once covered,
23 permittees are required to comply with the conditions and requirements set forth in the ISGP.

1 relevant to the Complaint, either owned, leased or otherwise controlled the real property that is
2 the subject of this Complaint and/or otherwise controlled the activities that occurred on such
3 property. As an individual Mr. Peterson is a “person” as defined in Section 502(5) of the CWA,
4 33 U.S.C. § 1362(5).

5 3.2. Respondents have day-to-day operational control of those activities at the Special
6 Interest Auto Wrecking facility (“Site”) that cause releases necessitating permit coverage under
7 the ISGP.

8 3.3. Respondents’ business at the Site includes operation of Special Interest Auto
9 Wrecking, which involves industrial activities that are among those described by Standard
10 Industrial Classification (SIC) code 5015. SIC Code 5015 includes battery reclaimers, salvage
11 yards, and automobile recyclers.

12 3.4. The Site is located at 25923 78th Ave S., Kent, WA, 98032, and is approximately
13 6.8 acres in size.

14 3.5. The Site is located at the top of a short, steep bank of the Green River. The Green
15 River is the receiving water for all surface stormwater discharges from the Site.

16 3.6. The Green River is a navigable water as defined in Section 502(7) of the CWA,
17 33 U.S.C. § 1362(7), and a “water of the United States” as defined in 40 C.F.R. § 122.2.

18 3.7. As the operator of a regulated industrial facility that discharges stormwater into
19 waters of the United States, Respondents were required to obtain coverage under the ISGP or
20 obtain an individual NPDES permit before beginning industrial activities.

21 3.8. On or about August 1, 2008, Respondents began auto salvage activities that
22 resulted in discharges of pollutants via stormwater to the Green River. Respondent did not
23 obtain coverage under the ISGP or obtain an individual NPDES permit.

1 3.9. In early November 2011, the EPA mailed to Respondents, along with other
2 unpermitted auto salvage yards, a letter and brochure informing them of the Washington
3 Department of Ecology's permit requirements, the EPA's auto recycler compliance initiative,
4 and the potential ramifications of noncompliance with permit requirements.

5 3.10. The EPA followed the communication described in Paragraph 3.9 with a Site
6 inspection on February 24, 2012. During the Site inspection, the EPA inspector reviewed
7 potential areas of concern at the Site, described the permit requirements, provided materials
8 informing Respondents of the permit requirements, and advised the Site manager to look for
9 stormwater discharges from the facility during storm events. The manager was told that if the
10 Site discharged stormwater to the Green River, permit coverage was required.

11 3.11. During the February 24, 2012, site inspection the EPA documented Site
12 conditions that could expose stormwater to pollutants from industrial activities and lead to
13 unauthorized pollutant discharges to the Green River. There was evidence of numerous oil and
14 gas spills, auto fluid spills on the ground, and no pollution prevention measures were in place in
15 the vicinity of the vehicle crusher. The EPA observed evidence of automobile fluids being
16 carried via stormwater to ponded areas along the northern boundary of the Site and into the
17 Green River.

18 3.12. The following month, on March 29, 2012, the EPA conducted a second inspection
19 in which the EPA sampled stormwater discharges from the facility flowing through channels and
20 conduits into the Green River and, during the inspection, advised the facility of the permit
21 requirements for industrial stormwater dischargers.

22 3.13. Analysis of the samples collected on March 29, 2012 showed the presence of the
23 following substances in the stormwater runoff: petroleum, zinc, copper, arsenic, cadmium and
24
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1 lead. These substances are “pollutants” pursuant to Section 502(6) of the CWA, 33 U.S.C.
2 §1362(6).

3 3.14. After the EPA’s samples had been analyzed, on July 3, 2012, the EPA sent a
4 Notice of Violation and copy of the inspection report to Respondents again advising them of the
5 ongoing unpermitted dischargers and of the need to seek permit coverage and comply with the
6 Clean Water Act.

7 3.15. According to the Washington Department of Ecology, Respondents did not
8 submit a Notice of Intent to apply for coverage under the ISGP until October 4, 2012.

9 **Count 1**
10 **(Failure to Apply for a Permit)**

11 3.16. Paragraphs 1.1 through 3.15 are realleged and incorporated herein by reference.

12 3.17. At the time they began automobile salvage operations at the Site, Respondents
13 were each a “person who discharges or proposes to discharge pollutants” within the meaning of
14 40 C.F.R. § 122.21(a)(1).

15 3.18. At the time they began automobile salvage operations at the Site, Respondents
16 were each a “discharger of stormwater associated with industrial activity” within the meaning of
17 40 C.F.R. § 122.26(c) and they were “operator[s]” within the meaning of the ISGP.

18 3.19. As the operators of the Site, Respondents were required to either submit a Notice
19 of Intent to obtain coverage under the GP or apply for an individual NPDES permit before
20 beginning industrial activities at the Site.

21 3.20. Between or about August 1, 2008 and October 4, 2012, Respondents failed to
22 apply for an individual NPDES permit or properly seek coverage under the ISGP.

23 3.21. Respondents’ failure to timely apply for an NPDES permit placed Respondents in
24 violation of the requirements imposed pursuant to Section 308 of the CWA, 33 U.S.C. § 1318.

1 Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R Part 19, Respondents
2 are liable for civil penalties not to exceed \$11,000 per day for the days between August 1, 2008
3 and January 12, 2009 during which this violation continued. Respondents are liable for up to
4 \$16,000 per day for the additional days from January 12, 2009 through October 3, 2012 during
5 which the violation continued.

6 **Count 2**
7 **(Discharge Without a Permit)**

8 3.22. Paragraphs 1.1 through 3.15 are realleged and incorporated herein by reference.

9 3.23. The auto salvage activities and associated conditions at the Site resulted in the
10 discharge of pollutants in “stormwater associated with industrial activity” to the Green River.

11 3.24. Industrial stormwater from the Site was contaminated with petroleum, zinc,
12 copper, arsenic, cadmium and lead.

13 3.25. The channel leading from the Site described in Paragraph 3.12 constitutes a “point
14 source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

15 3.26. By causing such stormwater to enter waters of the United States, Respondents
16 engaged in the “discharge of pollutants” from a point source within the meaning of Sections
17 301(a) and 502(12) of the CWA, 33 U.S.C. § 1311(a) and 1362(12).

18 3.27. Respondents’ discharges of stormwater from August 1, 2008 through October 4,
19 2012 were not authorized by a permit issued pursuant to Section 402 of the CWA, 33 U.S.C.
20 §1342. Therefore, Respondents violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

21 3.28. Each day that stormwater was discharged without the required permit constitutes
22 an additional day of violation of Section 301 of the CWA, 33 U.S.C. § 1311. Pursuant to Section
23 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19, Respondents are liable for civil
24 penalties not to exceed \$11,000 per day for each day during which the violation occurred from
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1 August 1, 2008 through January 12, 2009. Respondents are liable for up to \$16,000 per day for
2 each day during which the violation continued from January 13, 2009 through July 16, 2012.

3 **IV. PROPOSED PENALTY**

4 4.1 Based on the foregoing allegations, Respondents violated Section 301(a),
5 33 U.S.C. § 1311(a), and Section 308, 33 U.S.C. §1318, of the CWA. Consequently, pursuant to
6 Section 309(g)(2)(B) of the CWA, and 40 C.F.R. Part 19, Respondents are liable for the
7 administrative assessment of civil penalties in an amount not to exceed \$11,000 per day for each
8 violation that occurred through January 12, 2009, and \$16,000 per day for each violation that
9 occurred after January 12, 2009, up to a maximum of \$177,500.

10 4.2 Respondents discharged pollutants to the Green River, a water of the United
11 States, on repeated occasions between August 1, 2008 and July 16, 2012 without authorization
12 by the applicable industrial stormwater discharge permit, in violation of 33 U.S.C. § 1311(a).
13 Respondents also failed to seek permit coverage under the applicable permit, in violation of 33
14 U.S.C. §1318.

15 4.3 In accordance with Section 22.14(a)(4)(ii) of the Part 22 Rules, 40 C.F.R.
16 § 22.14(a)(4)(ii), Complainant proposes that a Final Order be issued to Respondents assessing
17 administrative penalties in an amount not to exceed \$177,500, taking into account the nature,
18 circumstances, extent and gravity of the violations, and, with respect to the violators, ability to
19 pay, any prior history of such violations, the degree of culpability, economic benefit or savings
20 (if any) resulting from the violations, and such other matters as justice may require. CWA
21 Section 309(g)(3), 33 U.S.C. § 1319(g)(3).

22 4.3.1 *Nature, Circumstances, and Gravity of Violations:* Respondents' failure
23 to seek coverage under the applicable industrial stormwater permit, as well as their unauthorized
24 discharges of pollutants and contaminants into waters of the United States, are serious violations
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1 that significantly undermine the CWA's regulatory scheme and cause potential harm to the
2 environment.

3 4.3.1.1 The NPDES permitting system is designed, in part, to prevent
4 stormwater runoff from washing harmful pollutants into local surface waters such as streams,
5 rivers, lakes or coastal waters. Automobile salvage yards are one of the specific categories of
6 industrial facilities that are prohibited from discharging pollutants in stormwater discharges
7 without authorization under an applicable NPDES permit. An operator's application for a permit
8 is vital to the NPDES regulatory scheme, and failure to seek permit coverage undermines the
9 statutory and regulatory purposes of the CWA. The application for a permit is essential to the
10 EPA's ability to consistently monitor, evaluate, and make informed decisions regarding each
11 facility, and to assess whether and what type of pollution controls are needed to maintain or
12 restore water quality. The permit process enables the EPA or a State to ensure that operators are
13 implementing best management practices and are operating with an appropriate stormwater
14 management program.

15 4.3.1.2 Sample results from the EPA's inspection showed that
16 Respondents' stormwater discharges contained several pollutants that are harmful to human
17 health and aquatic species, including petroleum, zinc, copper, and lead. In addition, the potential
18 for environmental harm is high. During the EPA's inspection of the facility, few management
19 practices appeared to have been implemented, no apparent spill prevention or cleanup measures
20 were being taken, and no treatment measures were in place to prevent pollution of stormwater
21 discharging from the site. The segment of the Green River to which the facility discharges
22 supports beneficial uses that are highly impacted by such pollutants. These beneficial uses
23 include core summer habitat for char, primary contact recreation, domestic water supply, and
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1 wildlife habitat. The Green River flows directly into the Duwamish River, which is listed on
2 the National Priorities List under the Comprehensive Environmental, Response, Compensation
3 and Liability Act. The EPA and the State of Washington are in the midst of developing a
4 cleanup plan for the Duwamish, including identifying source control measures. Respondents'
5 facility is one of the many industrial sources contaminating the Duwamish River.

6 4.3.2 *Respondents' Ability to Pay:* Complainant has no information indicating
7 that Respondents are unable to pay a penalty up to the statutory maximum penalty for these
8 violations. Complainant will consider any information submitted by Respondents related to their
9 ability to pay a penalty.

10 4.3.3 *Respondents' History of Prior Violations:* The EPA is unaware of
11 Respondents having any history of prior violations of the CWA at this facility.

12 4.3.4 *Respondents' Degree of Culpability:* As set forth in Paragraphs 3.9, 3.10,
13 3.12, and 3.14, the EPA informed Respondents several times of the permit requirements for auto
14 recyclers that discharge stormwater. Notifications of permit requirements were given to
15 Respondents in early November, 2011, February 24, 2012, March 29, 2012, and culminated in a
16 Notice of Violation from the EPA on July 3, 2012. Even after the EPA issued a Notice of
17 Violation on July 3, 2012, Respondents did not seek permit coverage from the Department of
18 Ecology until October 4, 2012.

19 4.3.5 *Respondents' Economic Benefit:* Respondents received an
20 economic benefit by avoiding the costs of complying with a permit, including labor and service
21 costs for performing sampling and monitoring, preparing annual reports and installing and
22 certifying that proper BMP practices are reviewed, revised, and carried out.
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2 4.3.6 *Other Matters as Justice May Require*: There are no facts
justifying the use of this factor to adjust the penalty amount.

3 **V. OPPORTUNITY TO REQUEST A HEARING**

4 5.1. Respondents have the right to file an Answer requesting a hearing on any material
5 fact contained in this Amended Complaint or on the appropriateness of the penalty proposed
6 herein. Upon request, the Presiding Officer may hold a hearing for the assessment of these civil
7 penalties, conducted in accordance with the provisions of the Part 22 Rules and the
8 Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* A copy of the Part 22 Rules accompanies
9 this Amended Complaint.

10 5.2. Respondents' Answer[s], including any request for hearing, must be in writing
11 and must be filed with:

12 Regional Hearing Clerk
13 U.S. Environmental Protection Agency, Region 10
14 1200 Sixth Avenue, Suite 900, Mail Stop ORC-158
Seattle, Washington 98101

15 **VI. FAILURE TO FILE AN ANSWER**

16 6.1. To avoid a default order being entered pursuant to 40 C.F.R. § 22.17,
17 Respondents must file a written Answer to this Amended Complaint with the Regional Hearing
18 Clerk within twenty (20) days after service of this Amended Complaint.

19 6.2. In accordance with 40 C.F.R. § 22.15, Respondents' Answer[s] must clearly and
20 directly admit, deny, or explain each of the factual allegations contained in this Complaint with
21 regard to which Respondents have any knowledge. Respondents' Answer[s] must also state: (1)
22 the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the
23 facts which Respondents intend to place at issue; and (3) whether a hearing is requested. Failure
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1 to admit, deny or explain any material factual allegations contained herein constitutes an
2 admission of the allegation.

3 **VII. INFORMAL SETTLEMENT CONFERENCE**

4 7.1. Whether or not Respondents request a hearing, Respondents may request an
5 informal settlement conference to discuss the facts of this case, the proposed penalty, and the
6 possibility of settling this matter. To request such a settlement conference, Respondents should
7 contact:

8 Elizabeth McKenna
9 Assistant Regional Counsel
10 U.S. Environmental Protection Agency, Region 10
11 1200 Sixth Avenue, Suite 900, Mail Stop ORC-158
12 Seattle, Washington 98101
13 (206) 553-0016

14 7.2. Note that a request for an informal settlement conference does not extend the
15 twenty (20) day period of filing a written Answer to this Amended Complaint, nor does it waive
16 Respondents' right to request a hearing.

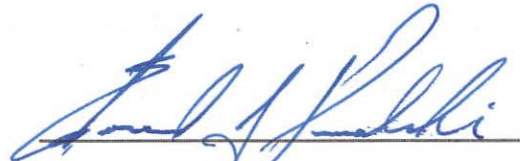
17 7.3. Respondents are advised that, after the Complaint is issued, the Part 22 Rules
18 prohibit any *ex parte* (unilateral) discussion of the merits of these or any other factually related
19 proceedings with the Administrator, the Environmental Appeals Board or its members, the
20 Regional Judicial Officer, the Presiding Officer, or any other person who is likely to advise these
21 officials in the decision of this case.

22 **VIII. RESERVATIONS**

23 8.1. Neither assessment nor payment of an administrative civil penalty pursuant to this
24 Complaint shall affect Respondents' continuing obligation to comply with: (1) the CWA and all
25 other environmental statutes; (2) the terms and conditions of all applicable CWA permits; and (3)

1 any Compliance Order issued to Respondents under Section 309(a) of the CWA, 33 U.S.C.
2 § 1319(a), concerning the violations alleged herein.

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4 Dated this 14th day of July, 2013
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8 Edward J. Kowalski, Director
9 Office of Compliance and Enforcement
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1 CERTIFICATE OF SERVICE

2 I certify that the foregoing Complaint was sent to the following persons, in the manner
3 specified, on the date below:

4 Original and one copy, hand-delivered:

5 Candace Smith, Regional Hearing Clerk
6 U.S. Environmental Protection Agency, Region 10
7 1200 Sixth Avenue, Mail Stop ORC-158
8 Seattle, WA 98101

8 A true and correct copy, by certified mail, return receipt requested:

9 Mr. Dennis Reynolds
10 Dennis Reynolds Law Office
11 200 Winslow Way W.
12 Suite 380
13 Bainbridge Island, WA 98110

14 Troy Peterson
15 Special Interest Auto Wrecking, LLC
16 P.O. Box 1207
17 Kent, WA 98035

16 Dated: July 16, 2013

Sharon Eng

ORC-158
U.S. EPA Region 10

