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**U.S. EPA REGION 10
HEARING CLERK**

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:)	
)	
STATE OF ALASKA DEPARTMENT)	Case No.: CWA-10-2024-0154
OF TRANSPORTATION AND PUBLIC)	
FACILITIES,)	
)	STATE OF ALASKA’S ANSWER
Juneau, Alaska)	
)	
Respondent.)	
)	

The State of Alaska, Department of Transportation & Public Facilities (“DOT&PF”) hereby files its Answer to the Administrative Complaint filed by the U.S. Environmental Protection Agency (“EPA”) on August 27, 2024, pursuant to Section 309 of the CWA (“CWA”), 33 USC § 1319.

I. STATUTORY AUTHORITY

1.1. **COMPLAINT:** This administrative complaint (“Complaint”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or “Complainant”) by Section 309(g)(2)(B) of the Federal

Water Pollution Control Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B). 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 Enforcement and Compliance Assurance Division in EPA Region 10.

ANSWER: This paragraph contains a statement of law to which no response is necessary. To the extent that any response is required, DOT&PF denies.

1.2. **COMPLAINT:** Pursuant to CWA Section 309(g)(2)(B), 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 against the State of Alaska Department of Transportation and Public Facilities (“Respondent” or “ADOT&PF”) for violations of the CWA.

ANSWER: This paragraph contains a statement of law to which no response is necessary. To the extent that any response is required, DOT&PF denies.

1.3. **COMPLAINT:** In accordance with CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the EPA is required to notify the State in which an alleged violation occurs within thirty (30) days following proof of service of the Complaint on the Respondent and provide the State with an opportunity to consult with the EPA on the matter. A department of the State of Alaska is the Respondent in this matter. Therefore, upon service of the Complaint on Respondent, the State of Alaska will be notified of this action in accordance with CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b).

ANSWER: This paragraph contains a statement of law to which no response is necessary. To the extent that any response is required, DOT&PF denies.

II. STATUTORY AND REGULATORY BACKGROUND

2.1. **COMPLAINT:** As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

ANSWER: This paragraph contains a statement of law to which no response is necessary. To the extent that any response is required, DOT&PF denies.

2.2. **COMPLAINT:** CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants to navigable waters by any person, except, *inter alia*, as authorized by a Department of Army permit issued by the United States Army Corps of Engineers (“Corps”) pursuant to CWA Section 404, 33 U.S.C. § 1344.

ANSWER: This paragraph contains a statement of law to which no response is necessary. To the extent that any response is required, DOT&PF denies.

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

ANSWER: This paragraph contains a statement of law to which no response is necessary. To the extent that any response is required, DOT&PF denies.

2.4. **COMPLAINT:** CWA Section 502(6) defines “pollutant” to include dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, rock, sand, and industrial waste discharged into water. 33 U.S.C. § 1362(6).

ANSWER: This paragraph contains a statement of law to which no response is necessary. To the extent that any response is required, DOT&PF denies.

2.5. **COMPLAINT:** “Fill material” includes material placed in waters of the United States where the material has the effect of replacing any portion of a water of the United States with dry land or changing the bottom elevation of any portion of a water of the United States. Examples of fill material include rock, sand, soil, clay, construction debris, wood chips, overburden from excavation activities, and materials used to create any structure or infrastructure in the waters of the United States. 40 C.F.R. § 232.2.

ANSWER: This paragraph contains a statement of law to which no response is necessary. To the extent that any response is required, DOT&PF denies.

2.6. **COMPLAINT:** CWA Section 502(5) defines “person” to include “an individual, corporation, partnership, [or] association” 33 U.S.C § 1362(5).

ANSWER: This paragraph contains a statement of law to which no response is necessary. To the extent that any response is required, DOT&PF denies.

2.7. **COMPLAINT:** CWA Section 502(14) defines “point source” to include, *inter alia*, “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, [or] container . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

ANSWER: This paragraph contains a statement of law to which no response is necessary. To the extent that any response is required, DOT&PF denies.

2.8. **COMPLAINT:** CWA Section 502(7) defines “navigable waters” as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

ANSWER: This paragraph contains a statement of law to which no response is necessary. To the extent that any response is required, DOT&PF denies.

2.9. **COMPLAINT:** 33 C.F.R. § 328.3(b) defines “wetlands” as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

ANSWER: This paragraph contains a statement of law to which no response is necessary. To the extent that any response is required, DOT&PF denies.

2.10. **COMPLAINT:** Each discharge of pollutants from a point source that is not authorized by a permit issued pursuant to the CWA constitutes a violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

ANSWER: This paragraph contains a statement of law to which no response is necessary. To the extent that any response is required, DOT&PF denies.

2.11. **COMPLAINT:** Each day that the dredged and/or fill material remains in place without the required permit constitutes a violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

ANSWER: This paragraph contains a statement of law to which no response is necessary. To the extent that any response is required, DOT&PF denies.

2.12. **COMPLAINT:** CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), authorizes the EPA to assess administrative penalties against any person who violates CWA Section 301, 33 U.S.C. § 1311, or any permit condition or limitation implementing CWA Section 301, 33 U.S.C. § 1311, in a permit issued under CWA Section 404, 33 U.S.C. § 1344.

ANSWER: This paragraph contains a statement of law to which no response is necessary. To the extent that any response is required, DOT&PF denies.

III. ALLEGATIONS

3.1. **COMPLAINT:** Respondent is the State of Alaska is therefore a “person” as defined by CWA Section 502(5), 33 U.S.C. § 1362(5).

ANSWER: Denied. Respondent is the State of Alaska Department of Transportation and Public Facilities or “DOT&PF.”

3.2. **COMPLAINT:** At all times relevant to this action, Respondent designed, directed, oversaw, and performed certain maintenance activities, including excavating and sidecasting dredged and/or fill material to jurisdictional wetlands, at nine locations along the Old Glacier Highway in Juneau, Alaska. Table 1 contains the specific locations for each of the areas subject to this Complaint.

TABLE 1

Location Number	Latitude	Longitude
1	58.35967° N	-134.55226° W
2	58.3587594° N	-134.5377072° W
3	58.3587138° N	-134.5331648° W
4	58.3604511° N	-134.5675092° W
5	58.3588128° N	-134.5434592° W
6	58.3588163° N	-134.5430525° W
7	58.358845° N	-134.541661° W
8	58.3589052° N	-134.5415510° W
9	58.3588358° N	-134.5475791° W

ANSWER: DOT&PF admits that it lawfully conducted maintenance work on highway culverts and a drainage ditch, which are component parts of the Glacier Highway roadway prism and storm water management system, in furtherance of DOT&PF's statutory duties to maintain and operate the State's transportation facilities for the safety of the traveling public. DOT&PF's maintenance activities here were statutorily exempt from permitting requirements under Section 404(f)(1)(B) of the CWA as the activities were for the purpose of maintenance of transportation structures. 33 U.S.C. § 1342(f)(1)(B). Alternatively, DOT&PF's highway maintenance activities were preauthorized under one or more nationwide permits (*see e.g.*, Nationwide Permit

Number 3). DOT&PF also denies that the sites listed within Table 1 are jurisdictional wetlands due to the absence of continuous surface water connection with the Gastineau Channel and the Mendenhall Wetlands State Game Refuge¹ as required by the U.S. Supreme Court in *Sackett v. Env't Prot. Agency*, 598 U.S. 651 (2023) (“*Sackett*”). The highway culverts are all located within a highway median separating the Glacier Highway frontage road from Egan Drive, a four-lane, controlled-access, divided highway. The combined transportation facility—and its various culverts and ditches that allow storm water to pass through the multiple roadway prisms and highway medians—forms a discrete barrier with multiple non-jurisdictional features that separate the upland streams from the Mendenhall wetlands.

3.3. **COMPLAINT:** Location 1 within Table 1 of this Complaint contains wetlands that are adjacent to and have a continuous surface connection to a relatively permanent unnamed tributary that is subject to the ebb and the flow of the tide and connects to the Gastineau Channel. The Gastineau Channel is subject to the ebb and flow of the tide and is a traditional navigable water. As such, the relatively permanent unnamed tributary and its adjacent wetlands are “navigable waters” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

¹ The Mendenhall Wetlands State Game Refuge is wholly outside of DOT&PF’s right-of-way that encompasses the Egan Drive and Glacier Highway transportation facility. The Alaska Legislature deliberately excluded the State highway facility from these wetlands by setting the State game refuge boundary “immediately adjacent to but not upon or within the designated right-of-way of Egan Drive.” AS 16.20.034.

ANSWER: DOT&PF denies that Location 1 within Table 1 contains jurisdictional wetlands. Location 1 apparently refers to a culvert through the roadway prism under the paved surface of Glacier Highway and discharges into the highway median that separates the Glacier Highway frontage road from the Egan Drive controlled access facility. Location 1 is .84 miles due north of Gastineau Channel, the traditional navigable water. The approximate distance across the Glacier Highway/Egan Drive transportation facility, from the point where storm water can enter the Location 1 culvert to where storm water exits the Egan Drive roadway prism and right-of-way is approximately 1,525 feet: from the Location 1 Glacier Highway culvert, across the highway median to the entry point of the Egan Drive Culvert is approximately 700 feet; then, crossing through the Egan Drive Culvert and along the roadway prism ditch until water can exit the highway right-of-way is an additional 700 feet. Water leaving DOT&PF's right-of-way at this location would either drain into Honsinger Pond or into an intermittent stream located on property owned by SEAL Trust that flow towards Gastineau Channel. Consistent with *Sackett*, surface water connections between Glacier Highway, the array of culverts, highway medians, Egan Drive and its roadside ditches, private lands and possibly intermittent streams flowing towards Gastineau Channel are not continuous or permanent and this area frequently lacks standing water. Further, DOT&PF's maintenance activities at Location 1 were statutorily exempt from permitting requirements under Section 404(f) of the CWA or, alternatively, were preauthorized under one or more nationwide permits.

3.4. **COMPLAINT:** Location 2 within Table 1 of this Complaint contains wetlands that are adjacent to and have a continuous surface connection to a relatively permanent unnamed tributary that is subject to the ebb and the flow of the tide and connects to the Gastineau Channel. The Gastineau Channel is subject to the ebb and flow of the tide and is a traditional navigable water. As such, the relatively permanent unnamed tributary and its adjacent wetlands are “navigable waters” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

ANSWER: DOT&PF denies that Location 2 within Table 1 contains jurisdictional wetlands. Location 2 refers to a culvert through the roadway prism under the paved surface of Glacier Highway and discharges into the highway median that separates the Glacier Highway frontage road from the Egan Drive controlled access facility. Location 2 is .83 miles due north of Gastineau Channel, the traditional navigable water. The approximate distance across the Glacier Highway/Egan Drive transportation facility, from the point where storm water enters the Location 2 culvert to where storm water exits the Egan Drive roadway prism and right-of-way is approximately 345 feet: from the Location 2 Glacier Highway culvert, across the highway median to the entry point of the Egan Drive Culvert is approximately 155 feet; then, crossing through the Egan Drive Culvert and exiting the highway right-of-way is an additional 190 feet. Water leaving DOT&PF’s right-of-way at this location would drain into intermittent streams that are located in the adjacent Mendenhall Wetlands State Game Refuge. Consistent with *Sackett*, surface water connections between the Glacier Highway culvert and its

associated Egan Drive culvert and roadway median, and ultimately the Gastineau Channel are not continuous or permanent and this area frequently lacks standing water. Further, DOT&PF's maintenance activities at Location 2 were statutorily exempt from permitting requirements under Section 404(f) of the CWA or, alternatively, were preauthorized under one or more nationwide permits.

3.5. COMPLAINT: Location 3 within Table 1 of this Complaint contains wetlands that are adjacent to and have a continuous surface connection to a relatively permanent unnamed tributary that is subject to the ebb and the flow of the tide and connects to the Gastineau Channel. The Gastineau Channel is subject to the ebb and flow of the tide and is a traditional navigable water. As such, the relatively permanent unnamed tributary and its adjacent wetlands are "navigable waters" within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

ANSWER: DOT&PF denies that Location 3 within Table 1 contains jurisdictional wetlands. Location 3 refers to a culvert through the roadway prism under the paved surface of Glacier Highway and discharges into the highway median that separates the Glacier Highway frontage road from the Egan Drive controlled access facility. Location 3 is .83 miles due north of Gastineau Channel, the traditional navigable water. The approximate distance across the Glacier Highway/Egan Drive transportation facility, from the point storm water can enter the Location 3 culvert to where storm water exits the Egan Drive roadway prism and right-of-way is approximately 700 feet: from the Location 3 Glacier Highway culvert, across the highway median to the entry point of the Egan

Drive Culvert is approximately 125 feet; then, crossing through the Egan Drive Culvert and along the roadway prism ditch until water can exit the highway right-of-way is an additional 575 feet. Water leaving DOT&PF's right-of-way at this location would drain into an intermittent stream located in the adjacent Mendenhall Wetlands State Game Refuge that flow towards Gastineau Channel. Consistent with *Sackett*, surface water connections between the Glacier Highway culvert, the highway median, the Egan Drive culverts, the ditch of the roadway prism, and intermittent streams and the Gastineau Channel located nearly a mile from Location 3 are not continuous or permanent. Further, DOT&PF's maintenance activities at Location 3 were statutorily exempt from permitting requirements under Section 404(f) of the CWA or, alternatively, were preauthorized under one or more nationwide permits.

3.6. **COMPLAINT:** Location 4 within Table 1 of this Complaint contains wetlands that are adjacent to and have a continuous surface connection to a relatively permanent unnamed tributary that is subject to the ebb and the flow of the tide and connects to the Gastineau Channel. The Gastineau Channel is subject to the ebb and flow of the tide and is a traditional navigable water. As such, the relatively permanent unnamed tributary and its adjacent wetlands are "navigable waters" within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

ANSWER: DOT&PF denies that Location 4 within Table 1 contains jurisdictional wetlands. Location 4 refers to a drainage ditch north of Egan Drive and does not connect under or otherwise extend south of the road prism. Location 4 is 1.09 miles due north of

Gastineau Channel, the traditional navigable water. The approximate distance through the series of culverts and ditches running along and under the Egan Drive transportation facility and its Yandukin Drive frontage road, and then across and under the adjacent Juneau International Airport (JNU) facility, from the point where storm water exits the Location 4 culvert to where storm water exits the culverts and ditches along the JNU runway prism is approximately 5300 feet: from the Location 4 Egan Drive culvert storm water runs along the Egan Drive roadway prism ditch, and through culverts under Egan Drive and Yandukin Drive rights-of-way for approximately 1,600 feet to the JNU boundary; then, from the airport boundary the storm water may crossing through a series of culverts and ditches to and along the JNU runway for an additional 3,700 feet where it exits the JNU property and drains into unnamed intermittent stream that flow towards Gastineau Channel. Consistent with *Sackett*, surface water connections between the Egan Drive culvert and the Gastineau Channel are not continuous or permanent and this area frequently lacks standing water. Further, DOT&PF's maintenance activities at Location 4 were statutorily exempt from permitting requirements under Section 404(f) of the CWA or, alternatively, were preauthorized under one or more nationwide permits.

3.7. **COMPLAINT:** Locations 5 – 8 within Table 1 of this Complaint contains wetlands that are adjacent to and have a continuous surface connection to a relatively permanent unnamed tributary that is subject to the ebb and the flow of the tide and connects to the Gastineau Channel. The Gastineau Channel is subject to the ebb and flow of the tide and is a traditional navigable water. As such, the relatively permanent unnamed tributary

and its adjacent wetlands are “navigable waters” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

ANSWER: DOT&PF denies that Locations 5 to 8 within Table 1 contains jurisdictional wetlands. Locations 5 to 8 refers to relatively closely spaced culverts through the roadway prism under the paved surface of Glacier Highway that discharge into the highway median that separates the Glacier Highway frontage road from the Egan Drive controlled access facility. Locations 5 to 8 are each approximately .83 miles due north of Gastineau Channel, the traditional navigable water. The approximate distance across the Glacier Highway/Egan Drive transportation facility, from the points where storm water enters the Locations 5 to 8 culverts to where storm water exits the Egan Drive roadway prism and right-of-way is approximately 345 feet: from the Glacier Highway culverts, across the highway median to the entry point of the Egan Drive Culvert is approximately 155 feet; then, crossing through the Egan Drive Culvert and exiting the highway right-of-way is an additional 190 feet. Water leaving DOT&PF’s right-of-way at this location would drain into intermittent streams that are located in the adjacent Mendenhall Wetlands State Game Refuge. Consistent with *Sackett*, surface water connections between Glacier Highway, Egan Drive, and the Gastineau Channel are not continuous or permanent and this area frequently lacks standing water. Further, DOT&PF’s maintenance activities at these Locations 5 through 8 were statutorily exempt from permitting requirements under Section 404(f) of the CWA or, alternatively, were preauthorized under one or more nationwide permits.

3.8. **COMPLAINT:** Location 9 within Table 1 of this Complaint contains wetlands that are adjacent to and have a continuous surface connection to the Gastineau Channel. The Gastineau Channel is subject to the ebb and flow of the tide and is a traditional navigable water. As such, the Gastineau Channel and its adjacent wetlands are “navigable waters” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

ANSWER: DOT&PF denies that Location 9 within Table 1 contains jurisdictional wetlands. Location 9 refers to a culvert through the roadway prism under the paved surface of Glacier Highway that discharges into the highway median separating the Glacier Highway frontage road from the Egan Drive controlled access facility. Location 9 is .92 miles due north of Gastineau Channel, the traditional navigable water. The approximate distance across the Glacier Highway/Egan Drive transportation facility, from the point where storm water enters the Location 9 culvert to where storm water exits the Egan Drive roadway prism and right-of-way is approximately 330 feet: from the Location 9 Glacier Highway culvert, across the highway median to the entry point of the Egan Drive Culvert is approximately 160 feet; then, crossing through the Egan Drive Culvert and exiting the highway right-of-way is an additional 170 feet. Water leaving DOT&PF’s right-of-way at this location would drain into intermittent streams that are located in the adjacent Mendenhall Wetlands State Game Refuge. Consistent with *Sackett*, surface water connections between Glacier Highway, Egan Drive, and the Gastineau Channel are not continuous or permanent and this area frequently lacks standing water. Further, DOT&PF’s maintenance activities at this location were

statutorily exempt from permitting requirements under Section 404(f) of the CWA or, alternatively, were preauthorized under one or more nationwide permits.

3.9. **COMPLAINT:** All of the locations within Table 1 of this Complaint are either located within the Mendenhall Wetlands State Game Refuge or are connected to wetlands that make up the Refuge.

ANSWER: DOT&PF denies that any of the locations within Table 1 are located within the Mendenhall Wetlands State Game Refuge and denies that any of these locations are connected to wetlands located in the Refuge within the meaning of *Sackett*.

3.10. **COMPLAINT:** Several of the relatively permanent unnamed tributaries to the Gastineau Channel are mapped in the State of Alaska Department of Fish and Game's Anadromous Waters Catalog, which identifies water bodies with documented use by anadromous fish, including salmon.

ANSWER: DOT&PF admits that Alaska Department of Fish and Game's ("ADF&G") website shows possible habitat for anadromous fish near Glacier Highway but denies that this is relevant. DOT&PF consulted with ADF&G prior to the filing of EPA's Complaint and was informed that any anadromous fish habitat is marginal to non-existent in the areas where DOT&PF's exempt or preauthorized maintenance activities occurred, due to general lack of permanent standing water and the fact that the highway culverts in this area block fish passage. Anadromous fish habitat cannot exist within the highway median in any meaningful sense without significant mitigation or restoration

measures, including retrofitting most or all of the culverts underneath Egan Drive and Glacier Highway in order to facilitate passage.

3.11. **COMPLAINT:** As described below, beginning in August 2021, and continuing through the filing of this Complaint, Respondent violated CWA Section 301, 33 U.S.C. § 1311.

ANSWER: Denied. The sites listed in EPA's Complaint are not subject to federal jurisdiction pursuant to *Sackett*, and DOT&PF's maintenance activities are exempt under Section 404(f) of the CWA or were preauthorized under one or more nationwide permits.

3.12. **COMPLAINT:** Between August 24 – 26, 2021, Respondent performed and/or directed maintenance work at Locations 1, 2, and 5 – 9 using heavy mechanical equipment such as a truck, backhoe, excavator, and/or water-jet truck that resulted in discharges of dredged and/or fill material, including native organic soils, woody debris, gravel, rock, and sediments, to jurisdictional wetlands.

ANSWER: DOT&PF admits that it lawfully performed maintenance work on the dates stated in this paragraph but denies the rest. The sites listed in EPA's Complaint are not subject to federal jurisdiction pursuant to *Sackett*, and DOT&PF's maintenance activities are exempt under Section 404(f) of the CWA or was preauthorized under one or more nationwide permits.

3.13. **COMPLAINT:** Between August 30 – 31, 2021, Respondent performed and/or directed maintenance work at Location 3 using heavy mechanical equipment such as a truck, backhoe, excavator, and/or water-jet truck that resulted in discharges of dredged

and/or fill material, including native organic soils, woody debris, gravel, rock, and sediments, to jurisdictional wetlands.

ANSWER: DOT&PF admits that it lawfully performed maintenance work on the dates stated in this paragraph but denies the rest. The sites listed in EPA's Complaint are not subject to federal jurisdiction pursuant to *Sackett*, and DOT&PF's maintenance activities are exempt under Section 404(f) of the CWA or was preauthorized under one or more nationwide permits.

3.14. **COMPLAINT:** Between September 8 – 9, 2021, Respondent performed and/or directed maintenance work at Location 4 using heavy mechanical equipment such as a truck, backhoe, excavator, and/or water-jet truck that resulted in discharges of dredged and/or fill material, including native organic soils, woody debris, gravel, rock, and sediments, to jurisdictional wetlands.

ANSWER: DOT&PF admits that it lawfully performed maintenance work on the dates stated in this paragraph but denies the rest. The sites listed in EPA's Complaint are not subject to federal jurisdiction pursuant to *Sackett*, and DOT&PF's maintenance activities are exempt under Section 404(f) of the CWA or was preauthorized under one or more nationwide permits.

3.15. **COMPLAINT:** On October 14, 2021, the U.S. Army Corps of Engineers ("Corps") issued a Notice of Violation for discharges of dredged and/or fill material to waters of the United States, concluding that the work was not authorized pursuant to CWA

Section 404, 33 U.S.C. § 1344, nor did it qualify for an exemption under CWA Section 404(f), 33 U.S.C. § 1344(f).

ANSWER: DOT&PF admits that it received a Notice of Violation (“NOV”) from the U.S. Army Corps of Engineers on October 14, 2021, but denies the rest. The sites listed in EPA’s Complaint are not subject to federal jurisdiction pursuant to *Sackett*, and DOT&PF’s maintenance activities are exempt under Section 404(f) of the CWA or was preauthorized under one or more nationwide permits.

3.16. **COMPLAINT:** On November 5, 2021, Respondent’s Regional Environmental Manager provided a written response to the Corps’ Notice of Violation, acknowledging that “[h]ad [he] been made aware [], [he] would have submitted a pre-construction notification to the [Corps]” pursuant to CWA Section 404, 33 U.S.C. § 1344, prior to the Respondent’s discharges of dredged and/or fill material.

ANSWER: DOT&PF admits that agency personnel initially responded to the NOV on November 5, 2021, but denies the relevance of this response. The statements contained in this paragraph are not proof of a matter asserted, nor do they establish federal jurisdiction or negate the exempt or preauthorized nature of DOT&PF’s maintenance work.

3.17. **COMPLAINT:** On May 6, 2022, representatives of the Corps and the EPA met with ADOT&PF at several locations to document the presence of dredged and/or fill material in jurisdictional wetlands.

ANSWER: Admitted.

3.18. **COMPLAINT:** On June 29, 2022, the EPA issued Respondent an information request pursuant to CWA Section 308, 33 U.S.C. § 1318, seeking information about each of the discharges.

ANSWER: Admitted.

3.19. **COMPLAINT:** On July 29, 2022, Respondent provided a written response to the EPA's information request, acknowledging that Respondent "failed to secure proper permitting at some of the sites," "did not obtain any federal permits for the work," that Respondent would "work to avoid internal communication failures on future projects," and that this was an "error."

ANSWER: DOT&PF admits that agency personnel initially responded to an information request from EPA on July 29, 2022, but denies the relevance of this response. The statements contained in this paragraph are not proof of a matter asserted, nor do they establish federal jurisdiction or negate the exempt or preauthorized nature of DOT&PF's maintenance work.

3.20. **COMPLAINT:** In Respondent's July 29, 2022, written response to the EPA's information request, Respondent also acknowledged that "bedload material was removed and sidecast" at several locations.

ANSWER: DOT&PF admits that agency personnel initially responded to an information request from EPA on July 29, 2022, but denies the relevance of this response. The statements contained in this paragraph are not proof of a matter asserted,

nor do they establish federal jurisdiction or negate the exempt or preauthorized nature of DOT&PF's maintenance work.

3.21. **COMPLAINT:** On December 7, 2022, the Corps referred the CWA Section 404 enforcement case to the EPA pursuant to the Field Level Agreement between the Corps' Alaska District and EPA Region 10.

ANSWER: Admitted.

3.22. **COMPLAINT:** The EPA accepted the Corps' referral and became the lead enforcement agency on December 12, 2022.

ANSWER: Admitted.

3.23. **COMPLAINT:** From May 20 – 23, 2024, the EPA inspected each of the locations and documented the alleged unauthorized discharges to wetlands adjacent to and having a continuous surface connection to relatively permanent unnamed tributaries that are subject to the ebb and flow of the tide and connect to the Gastineau Channel and unauthorized discharges to wetlands adjacent to and having a continuous surface connection to the Gastineau Channel.

ANSWER: DOT&PF admits that EPA conducted site visits in May 2024 but denies that federal jurisdiction exists at the locations in question given the lack of a continuous surface water connection.

3.24. **COMPLAINT:** The equipment referenced in Paragraphs 3.12 – 3.14 is a “point source” within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).

ANSWER: This paragraph contains a conclusion of law to which no response is necessary. To the extent that any response is required, DOT&PF denies because its maintenance activities were exempt under Section 404(f) of the CWA or preauthorized under one or more nationwide permits. Moreover, no federal jurisdiction exists at the locations in question given the lack of a continuous surface water connection.

3.25. **COMPLAINT:** The dredged and/or fill material that Respondent and/or persons acting on their behalf caused to be discharged, as referenced in Paragraphs 3.12 – 3.14, include native organic soils, woody debris, gravel, rock, and sediments, each of which constitutes “dredged material” and/or “fill material” within the meaning of 40 C.F.R. § 232.2, and each of which constitutes a “pollutant” within the meaning of CWA Section 502(6), 33 U.S.C. § 1362(6).

ANSWER: This paragraph contains a conclusion of law to which no response is necessary. To the extent that any response is required, DOT&PF denies because its maintenance activities were exempt under Section 404(f) of the CWA or preauthorized under one or more nationwide permits. Moreover, no federal jurisdiction exists at the locations in question given the lack of a continuous surface water connection.

3.26. **COMPLAINT:** By causing such dredged and/or fill material to enter waters of the United States, Respondent engaged in the “discharge of pollutants” from a point source within the meaning of CWA Sections 301(a) and 502(12), 33 U.S.C. §§ 1311(a) and 1362(12).

ANSWER: This paragraph contains a conclusion of law to which no response is necessary. To the extent that any response is required, DOT&PF denies because its maintenance activities were exempt under Section 404(f) of the CWA or preauthorized under one or more nationwide permits. Moreover, no federal jurisdiction exists at the locations in question given the lack of a continuous surface water connection.

3.27. **COMPLAINT:** Respondent's discharge of dredged and/or fill material described in Paragraphs 3.12 – 3.14 was not authorized by any permit issued pursuant to CWA Section 404, 33 U.S.C. § 1344. Respondent is therefore in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

ANSWER: This paragraph contains a conclusion of law to which no response is necessary. To the extent that any response is required, DOT&PF denies because its maintenance activities were exempt under Section 404(f) of the CWA or preauthorized under one or more nationwide permits. Moreover, no federal jurisdiction exists at the locations in question given the lack of a continuous surface water connection.

IV. PROPOSED PENALTY

4.1. **COMPLAINT:** Based on the foregoing allegations, Respondent violated CWA Section 301(a), 33 U.S.C. § 1311(a). Consequently, pursuant to CWA Section 309(g)(2)(B), 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 for violations in an amount not to exceed \$26,685 per day for each day during which each violation occurred, up to a maximum of \$333,552.

ANSWER: Denied. EPA does not have jurisdiction over the sites in question because there is no continuous surface connection to waters of the United States. DOT&PF's work was statutorily exempt or preauthorized under a nationwide permit.

4.2. **COMPLAINT:** Beginning on August 24, 2021, through the filing of this complaint, Respondent discharged pollutants to waters of the United States without authorization under CWA Section 404, 33 U.S.C. § 1344, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

ANSWER: DOT&PF admits that it lawfully conducted maintenance work along the Glacier Highway on the date listed in this paragraph but denies the rest. EPA does not have jurisdiction over the sites in question because there is no continuous surface connection to waters of the United States. DOT&PF's work was statutorily exempt or preauthorized under a nationwide permit.

4.3. **COMPLAINT:** Each day that the dredged and/or fill material remains in place without the required permit constitutes a violation of CWA Section 301(a), 33 U.S.C. § 1311(a). At the time of the filing of this Complaint, the unauthorized dredged and/or fill material has been in place for over 1,030 days.

ANSWER: This paragraph contains a conclusion of law to which no response is necessary. To the extent that any response is required, DOT&PF denies because its maintenance activities were exempt under Section 404(f) of the CWA or preauthorized under one or more nationwide permits. Moreover, no federal jurisdiction exists at the locations in question given the lack of a continuous surface water connection.

4.4. **COMPLAINT:** In accordance with 40 C.F.R. § 22.14(a)(4)(ii), Complainant proposes that a Final Order be issued to Respondent assessing an administrative penalty in an amount not to exceed \$333,552 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).

ANSWER: This paragraph contains a conclusion of law and request for relief to which no response is necessary. To the extent that any response is required, DOT&PF denies because its maintenance activities were exempt under Section 404(f) of the CWA or preauthorized under one or more nationwide permits. Moreover, no federal jurisdiction exists at the locations in question given the lack of a continuous surface water connection.

4.5. **COMPLAINT:** *Nature, Circumstances, Extent, and Gravity of the Violations:* Respondent's unauthorized discharge of pollutants to waters of the United States is a serious violation that significantly undermines the CWA's regulatory scheme and caused harm to the chemical, physical, and/or biological integrity of the Nation's waters.

ANSWER: Denied. DOT&PF's maintenance work was done as part of the State's response to severe rainstorms that blocked the storm water systems of the subject transportation structures with rock and debris. Federal and State disaster declarations

were called to address the damage from these rainstorms, which caused millions of dollars of damage and loss of life (*see*, FEMA # 4585-DR-AK). DOT&PF's maintenance activities were exempt under Section 404(f) of the CWA or preauthorized under one or more nationwide permits. Moreover, no federal jurisdiction exists at the locations in question given the lack of a continuous surface water connection.

4.6. **COMPLAINT:** Respondent's unauthorized activities impacted wetlands adjacent to multiple unnamed relatively permanent tributaries that are mapped by the State of Alaska Department of Fish and Game's Anadromous Waters Catalog. In order for a waterbody to be mapped within the Catalog, "[a]nadromous fish must have been seen or collected and identified by a qualified observer," most frequently a fisheries biologist employed by the State of Alaska Department of Fish and Game. Once a waterbody is mapped as containing anadromous fish, the State of Alaska has identified that it should be afforded special protections pursuant to State law.

ANSWER: Denied. DOT&PF consulted with ADF&G prior to the filing of EPA's Complaint and was informed that any anadromous fish habitat is marginal to non-existent in the areas where DOT&PF's exempt or preauthorized maintenance activities occurred due to general lack of permanent standing water and the fact that the various highway and airport culverts located between Gastineau Channel and Locations 1 through 9 block fish passage. Anadromous fish habitat cannot exist within the highway median in any meaningful sense without significant mitigation or restoration measures, including

retrofitting most or all of the culverts underneath Egan Drive and Glacier Highway in order to facilitate passage.

4.7. **COMPLAINT:** One of the most iconic anadromous fish, salmon are a critical ecological, commercial, recreational, and subsistence resource to the State of Alaska and its residents. The multiple unnamed relatively permanent tributaries that are mapped by the State of Alaska Department of Fish and Game as containing anadromous fish are likely the first freshwater streams that some salmon enter as they continue their migration for spawning. As a result, maintaining high water quality in those waterbodies is of utmost importance to maintain the chemical, physical, and/or biological integrity of the Nation's waters.

ANSWER: This paragraph contains a statement of policy to which no response is necessary. To the extent that any response is required, DOT&PF consulted with ADF&G prior to the filing of EPA's Complaint and was informed that any anadromous fish habitat is marginal to non-existent in the areas where DOT&PF's exempt or preauthorized maintenance activities occurred due to general lack of permanent standing water and the fact that most of the culverts block fish passage. Anadromous fish habitat cannot exist within the highway median in any meaningful sense without significant mitigation or restoration measures, including retrofitting most or all of the culverts underneath Egan Drive and Glacier Highway in order to facilitate passage.

4.8. **COMPLAINT:** As stated by the State of Alaska Department of Environmental Conservation, "[w]etlands help maintain water quality by slowly filtering

excess nutrients, sediments, and pollutants before water seeps into rivers, streams, and underground aquifers.” By discharging dredged and/or fill material to wetlands and thereby limiting their ability to provide the functions and services that the State of Alaska acknowledges that these wetlands provide, Respondent’s activities very likely decreased water quality in those waterbodies that support anadromous fish.

ANSWER: This paragraph contains a summary of the Alaska Department of Environmental Conservation’s Wetlands Handbook, to which no response is necessary. To the extent that any response is required, DOT&PF denies because its maintenance activities were exempt under Section 404(f) of the CWA or preauthorized under one or more nationwide permits. Moreover, no federal jurisdiction exists at the locations in question given the lack of a continuous surface water connection.

4.9. **COMPLAINT:** The wetlands impacted by Respondent’s unauthorized activities help to maintain water quality for waterbodies that support a critical ecological, commercial, recreational, and subsistence resource for the State of Alaska and its residents.

ANSWER: Denied. DOT&PF’s highway medians may help maintain downstream water quality by retaining and settling out storm water, but DOT&PF’s maintenance of the transportation structures’ storm water system did not degrade downstream ecology. DOT&PF merely cleared mud and debris out of several culverts in a highway median that might at best provide marginal salmon habitat. The *de minimis* nature of DOT&PF’s maintenance work is why it qualifies for the Section 404(f) exemption or one or more

nationwide permits. Furthermore, none of these sites are within federal jurisdiction due to the lack of continuous surface water connection.

4.10. **COMPLAINT:** In addition to impacting wetlands that provide important water quality benefits to anadromous fish, all of the wetlands that were impacted by Respondent's unauthorized activities are either located within the Mendenhall Wetlands State Game Refuge or are connected to wetlands that make up the Refuge. The Refuge is approximately 4,000 acres and provides "a vital feeding and resting area for both resident birds and migrants traveling to and from their Arctic breeding grounds" and "is enjoyed year-round by residents and visitors alike. Waterfowl hunting, hiking, wildlife viewing and photography, boating, fishing, scientific and educational studies, and sightseeing are popular activities supporting approximately 20,000 user days annually." Respondent's unauthorized discharges of dredged and/or fill material have likely decreased the functions and services that the wetlands within the Refuge provide.

ANSWER: Denied. None of the work performed by DOT&PF along the Glacier Highway occurred within the Mendenhall Wetlands State Game Refuge because the Alaska Legislature set the Refuge's northern boundary below the southern edge of the Egan Drive right-of-way. All DOT&PF work sites occurred north of Egan Drive along the Glacier Highway. Thus, all DOT&PF work sites are at the closest 330 feet away (Location 9) and at the farthest 5,300 feet (Location 4) from to the Refuge boundary. The distances between the work sites and Gastineau Channel are much greater. Moreover, the Egan Drive and Juneau International Airport transportation facilities sever any

connection between the Glacier Highway culverts and highway median and Gastineau Channel due to a variety of non-jurisdictional features that preclude continuous surface connection.

4.11. **COMPLAINT:** In addition to the specific environmental impacts associated with the Respondent's activities, their actions have undermined the permitting structure under CWA Section 404, 33 U.S.C. § 1344. Compliance with a permit's conditions and restrictions are vital to the CWA Section 404, 33 U.S.C. § 1344, regulatory scheme, and Respondent's failure to obtain a permit prior to the discharge activity undermines the statutory and regulatory purposes of the CWA.

ANSWER: Denied. EPA's Complaint paradoxically undermines its own permitting authority by (1) improperly asserting federal jurisdiction in the absence of a continuous surface connection to waters of the United States and (2) by simply ignoring the existence of Section 404(f) exemptions and nationwide permit preauthorizations created specifically to enable routine maintenance of transportation structures.

4.12. **COMPLAINT:** *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. The burden to prove an inability to pay falls on Respondent. Complainant will consider any information submitted by Respondent related to their ability to pay a penalty.

ANSWER: This paragraph contains a summary of EPA's CWA Penalty Policy, to which no response is necessary. To the extent that any response is required, DOT&PF

denies because its maintenance activities were exempt under Section 404(f) of the CWA or preauthorized under one or more nationwide permits. Moreover, no federal jurisdiction exists at the locations in question given the lack of a continuous surface water connection.

4.13. **COMPLAINT:** *Respondent's History of Prior Violations:* The most significant and relevant prior violations by Respondent involved, among other things, unauthorized discharges of dredged and/or fill material to waters of the United States at ten locations on the Kenai Peninsula following two large floods. Those violations resulted in a Consent Decree that was entered between the United States and Respondent on September 21, 2010, in the U.S. District Court for the District of Alaska that resulted in total costs to Respondent of nearly \$1 million.

ANSWER: DOT&PF admits that it entered into a consent decree with EPA in 2010 but denies the rest of this paragraph. This consent decree is inadmissible in litigation under FRE 408 and 40 CFR 22.22(a) as well as by the plain language of the decree itself. EPA's improper weaponization of settlements removes the incentive for any party to voluntarily make improvements to its permitting programs and environmental protections by way of a consent decree.

4.14. **COMPLAINT:** *Respondent's Degree of Culpability:* Respondent has a high degree of culpability, as it is experienced in obtaining permitting under CWA Section 404, 33 U.S.C. § 1344, and was therefore on notice of the potential consequences associated with discharging dredged and/or fill material prior to obtaining that necessary permitting.

ANSWER: DOT&PF admits that it has prior experience obtaining permits under the CWA but denies the rest of this paragraph.

4.15. **COMPLAINT:** Given the volume of work that Respondent performs involving earthwork throughout the State of Alaska and given that according to the State of Alaska Department of Natural Resources, the State of Alaska “has the greatest surface water resources of any state in the United States,” Respondent is frequently working within or near waters of the United States. As a result, it has experience obtaining permits under CWA Section 404, 33 U.S.C. § 1344, even explicitly identifying the program in its “Alaska Storm Water Pollution Prevention Plan Guide.” Respondent also acknowledged its extensive experience working with the Corps on permitting in its July 29, 2022 response to the EPA’s information request.

ANSWER: This paragraph contains a factual statement about the prevalence of wetlands and wetland-related permitting in Alaska to which no response is required. To the extent that such a response is required, DOT&PF denies.

4.16. **COMPLAINT:** In that same response to the EPA’s information request, Respondent also acknowledged that it “failed to secure proper permitting at some of the sites,” “did not obtain any federal permits for the work,” that Respondent would “work to avoid internal communication failures on future projects,” and that this was an “error.”

ANSWER: DOT&PF admits that it responded to EPA’s information request but denies the rest of this paragraph. Any statements from agency personnel are irrelevant

and do not alter EPA's lack of federal jurisdiction or the absence of liability due to statutory exemption and nationwide permits.

4.17. **COMPLAINT:** Additionally, Respondent was previously subject to a judicial CWA enforcement action involving facts similar to the ones alleged in this Complaint that resulted in Respondent paying nearly \$1 million in civil penalties and injunctive relief.

ANSWER: DOT&PF admits that it entered into a consent decree with EPA in 2010 but denies the rest of this paragraph. This consent decree is inadmissible in litigation under FRE 408 and 40 CFR 22.22(a) as well as under by the plain language of the decree itself. EPA's improper weaponization of settlements removes the incentive for any party to voluntarily make improvements to its permitting programs and environmental protections by way of a consent decree.

4.18. **COMPLAINT:** Lastly, Respondent has a large number of staff state-wide, with almost 100 personnel employed alone by the Southcoast Region, the area covered by the locations identified within this Complaint.

ANSWER: This paragraph contains a factual statement about DOT&PF's organizational structure to which no response is required. To the extent that such a response is required, DOT&PF denies.

4.19. **COMPLAINT:** Respondent's acknowledgment of its error in failing to obtain the necessary CWA authorizations for the work, internal communication failures, past violations of a similar nature that resulted in a Consent Decree, and significant staffing

capable of appropriately identifying and applying for the necessary federal permits, illustrate a high degree of culpability for Respondent's failure to obtain authorization pursuant to CWA Section 404, 33 U.S.C. § 1344, prior to performing the work. This high degree of culpability warrants a substantial penalty to serve as deterrence.

ANSWER: Denied. Prior inadmissible consent decrees and statements from agency personnel are irrelevant and do not alter EPA's lack of federal jurisdiction or the absence of liability due to statutory exemption and nationwide permits.

4.20. **COMPLAINT:** *Respondents' Economic Benefit:* The discharge activities very likely resulted in avoided costs associated with obtaining a CWA Section 404 permit from the Corps. This should be considered an unlawful economic benefit that should be recovered through this penalty action.

ANSWER: Denied. DOT&PF obtained no benefit from not acquiring a permit which it never needed to begin with. DOT&PF is not a private for-profit business, it spends taxpayer money to maintain safe and efficient infrastructure.

4.21. **COMPLAINT:** *Other Matters as Justice May Require:* There are no facts justifying the use of this factor to adjust the penalty amount.

ANSWER: Denied. In addition to the lack of federal jurisdiction and the absence of liability due to statutory exemptions and nationwide permits, DOT&PF's work was performed as part of an response to landslides from severe storms in the winter of 2020 that caused millions of dollars of damage and the loss of life (*see*, FEMA # 4585-DR-

AK). Public policy should strongly disfavor penalizing a State for public safety responses and infrastructure maintenance.

V. OPPORTUNITY TO REQUEST A HEARING

5.1. **COMPLAINT:** 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 for the assessment of these civil penalties, conducted in accordance with the provisions of the Part 22 Rules and the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* A copy of the Part 22 Rules accompanies this Complaint.

ANSWER: DOT&PF's Answer is filed in accordance with this paragraph. DOT&PF requests a hearing to demonstrate that EPA lacks jurisdiction over DOT&PF's work sites as a consequence of *Sackett* and to further demonstrate that DOT&PF's maintenance of its transportation facilities is exempt under Section 404(f) of the CWA or preauthorized by one or more nationwide permits.

5.2. **COMPLAINT:** 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 within thirty (30) days after service of the Complaint, as determined by reference to 40 C.F.R. § 22.7(c).

ANSWER: DOT&PF's Answer complies with the application regulations.

5.3. **COMPLAINT:** The Part 22 rules provide that “[t]he Presiding Officer . . . may by order authorize or require filing by facsimile or an electronic filing system subject to any appropriate conditions and limitations.” 40 C.F.R. § 22.5(a)(1).

ANSWER: This paragraph consists of a legal citation to which no response is required.

5.4. **COMPLAINT:** Pursuant to their authority as Presiding Officers, the Regional Judicial Officers of EPA Region 10 have issued a Standing Order to designate the EPA’s Outlook-based email system to serve as EPA Region 10’s Electronic Filing System (“EFS”). The Standing Order does not require that documents be filed using the email EFS. Rather, it authorizes the use of the email EFS as an option, in addition to those methods already authorized by the Part 22 Rules for the filing of documents with the Regional Hearing Clerk. A copy of the Standing Order accompanies this Complaint.

ANSWER: This paragraph consists of a summary of EPA’s administrative process to which no response is required.

5.5. **COMPLAINT:** 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:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 6th Avenue, Suite 155
Seattle, Washington 98101

or if Respondent elects to use the email EFS, Respondent's Answer may be emailed to the Regional Hearing Clerk at R10_RHC@epa.gov.

ANSWER: This paragraph consists of a summary of EPA's administrative process to which no response is required.

VI. FAILURE TO FILE AN ANSWER

6.1. **COMPLAINT:** 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 allegation contained herein constitutes an admission of the allegation.

ANSWER: DOT&PF's Answer complies with the application regulations. DOT&PF requests a hearing to develop an administrative record showing that EPA lacks jurisdiction over DOT&PF's work sites as a consequence of *Sackett* and to further demonstrate that DOT&PF's maintenance of its transportation facilities is exempt under Section 404(f) of the CWA or preauthorized by one or more nationwide permits.

6.2. **COMPLAINT:** 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.

ANSWER: DOT&PF's Answer is timely filed.

6.3. **COMPLAINT:** 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.

ANSWER: DOT&PF's Answer is timely filed.

VII. INFORMAL SETTLEMENT CONFERENCE

7.1. **COMPLAINT:** 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:

Patrick B. Johnson
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
Alaska Operations Office
222 West 7th Avenue, #19
Anchorage, Alaska 99513-7588
(907) 271-3914
Johnson.patrick@epa.gov

ANSWER: This paragraph consists of a summary of EPA's administrative process to which no response is required.

7.2. **COMPLAINT:** Note that a request for an informal settlement conference does not extend the thirty (30) day period of filing a written Answer to this Complaint, nor does it waive Respondent's right to request a hearing.

ANSWER: This paragraph consists of a summary of EPA’s administrative process to which no response is required.

7.3. **COMPLAINT:** 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.

ANSWER: This paragraph consists of a summary of EPA’s administrative process to which no response is required.

VIII. RESERVATIONS

8.1. **COMPLAINT:** 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 (2) the terms and conditions of all applicable CWA permits.

ANSWER: This paragraph contains a statement of law to which no response is necessary. To the extent that any response is required, DOT&PF denies.

GENERAL DENIAL

DOT&PF denies any allegations of the Complaint, whether express or implied, including any allegations reflected in the Complaint’s section headings that are not specifically admitted, denied, or qualified herein.

RIGHT TO REQUEST DOCUMENTS

DOT&PF reserves the right to request any and all documentation, communications, or other information pertaining to this Complaint and its causes of action pursuant to, but not limited to, the regulations found at 40 CFR 22.19(a).

AFFIRMATIVE DEFENSES

- A. EPA fail to state a claim upon which relief may be granted.
- B. EPA lack standing to assert some or all of their claims.
- C. EPA lacks jurisdiction to bring this Complaint and the causes of action asserted therein consistent with *Sackett*.
- D. DOT&PF moves for an accelerated decision regarding EPA's lack of jurisdiction pursuant to 40 CFR 22.20.
- E. DOT&PF reserves the right to assert any other claims or defenses as may be available or may become available during the course of these proceedings.

DATED: October 4, 2024.

TREG TAYLOR
ATTORNEY GENERAL

By: /s/ Brian E. Gregg
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Attorney for State of Alaska

*ITMO: State of Alaska Dept. of
Transportation & Public Facilities*
State of Alaska's Answer

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