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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

JACKSON & SON DISTRIBUTORS, INC.,  
Dba JACKSON AND SON OIL,

Seaside, Oregon,

Respondent.

DOCKET NO. CWA-10-2025-0023

RESPONDENT'S ANSWER TO  
SECOND AMENDED COMPLAINT,  
AFFIRMATIVE DEFENSES, AND  
REQUEST FOR HEARING

**ANSWER TO AMENDED COMPLAINT**

Respondent, Jackson & Son Distributors, Inc., dba Jackson and Son Oil ("Jackson" or "Respondent"), through the undersigned attorneys, presents its Answer to the Second Amended Complaint ("Second Amended Complaint") issued by the United States Environmental Protection Agency Region 10 ("EPA" or "Complainant"), and respectfully states, alleges and prays as follows:

**I. STATUTORY AUTHORITY**

RESPONDENT'S ANSWER TO SECOND  
AMENDED COMPLAINT,  
AFFIRMATIVE DEFENSES AND  
REQUEST FOR HEARING - 1

BAKALIAN & ASSOCIATES P.S.  
8201 164<sup>th</sup> Ave NE, Suite 200  
Redmond, WA 98052  
T: (425) 985-6527

1.1 This paragraph sets forth statutory language and alleged delegation of authority. Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.

1.2 This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.

## **II. STATUTORY AND REGULATORY BACKGROUND**

2.1 This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.

2.2 This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.

2.3 This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph, and the allegations are therefore denied.

2.4 This paragraph sets forth legal conclusions to which no response is required. To the extent further response is required, Respondent is without knowledge or information

1 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,  
2 and the allegations are therefore denied.

3 2.5 This paragraph sets forth legal conclusions to which no response is required. To the  
4 extent further response is required, Respondent is without knowledge or information  
5 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,  
6 and the allegations are therefore denied.

7 2.6 This paragraph sets forth legal conclusions to which no response is required. To the  
8 extent further response is required, Respondent is without knowledge or information  
9 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,  
10 and the allegations are therefore denied.

11 2.7 This paragraph sets forth legal conclusions to which no response is required. To the  
12 extent further response is required, Respondent is without knowledge or information  
13 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,  
14 and the allegations are therefore denied.

15 2.8 This paragraph sets forth legal conclusions to which no response is required. To the  
16 extent further response is required, Respondent is without knowledge or information  
17 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,  
18 and the allegations are therefore denied.

19 2.9 This paragraph sets forth legal conclusions to which no response is required. To the  
20 extent further response is required, Respondent is without knowledge or information  
21 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,  
22 and the allegations are therefore denied.

1 2.10 This paragraph sets forth legal conclusions to which no response is required. To the  
2 extent further response is required, Respondent is without knowledge or information  
3 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,  
4 and the allegations are therefore denied.

5 2.11 This paragraph sets forth legal conclusions to which no response is required. To the  
6 extent further response is required, Respondent is without knowledge or information  
7 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,  
8 and the allegations are therefore denied.

9 2.12 This paragraph sets forth legal conclusions to which no response is required. To the  
10 extent further response is required, Respondent is without knowledge or information  
11 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,  
12 and the allegations are therefore denied.

13 2.13 This paragraph sets forth legal conclusions to which no response is required. To the  
14 extent further response is required, Respondent is without knowledge or information  
15 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,  
16 and the allegations are therefore denied.

17 2.14 This paragraph sets forth legal conclusions to which no response is required. To the  
18 extent further response is required, Respondent is without knowledge or information  
19 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,  
20 and the allegations are therefore denied.

21 2.15 This paragraph sets forth legal conclusions to which no response is required. To the  
22 extent further response is required, Respondent is without knowledge or information

1 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,  
2 and the allegations are therefore denied.

3 2.16 This paragraph sets forth legal conclusions to which no response is required. To the  
4 extent further response is required, Respondent is without knowledge or information  
5 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,  
6 and the allegations are therefore denied.

### 7 **III. ALLEGATIONS**

8 3.1 Respondent, upon information and belief, admits the allegations contained in this  
9 paragraph.

10 3.2 Respondent, upon information and belief, admits it owns the property located at  
11 84721 Happel Lane, Seaside, Oregon. Respondent denies the remainder of the allegations  
12 contained in this paragraph.

13 3.3 This paragraph sets forth legal conclusions to which no response is required. To the  
14 extent further response is required, Respondent is without knowledge or information  
15 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,  
16 and the allegations are therefore denied.

17 3.4 This paragraph sets forth legal conclusions to which no response is required. To the  
18 extent further response is required, Respondent denies that the entirety of its operations at  
19 84721 Happel Lane, Seaside, Oregon are “non-transportation-related” within the meaning  
20 of 40 CFR 112.2, 40 CRR Pt. 112, App A.

1 3.5 Respondent is without knowledge or information sufficient to form a belief as to  
2 the truth or falsity of the allegations stated in this paragraph, and the allegations are  
3 therefore denied.

4 3.6 Respondent, upon information and belief, admits that an inspection was performed  
5 by EPA and/or its representatives on or about September 21, 2021. Respondent lacks  
6 knowledge or information sufficient to form a belief as to whether the person that  
7 performed the inspection was, as alleged, “an authorized EPA representative” and,  
8 likewise, as to whether the purpose of the inspector was “to determine compliance with  
9 Section 311(j) of the CWA and the requirements of 40 C.F.R. part 112” and therefor denies  
10 these allegations.

11 3.7 This paragraph sets forth legal conclusions to which no response is required. To the  
12 extent further response is required, Respondent is without knowledge or information  
13 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,  
14 and the allegations are therefore denied.

15 3.8 Respondent admits that it operates a facility with an aggregate above-ground oil  
16 storage capacity greater than 1,320 gallons of oil. Respondent denies the allegations in the  
17 remainder of this paragraph.

18 3.9 Respondent admits that Powers Engineering and Inspection, Inc. conducted certain  
19 work at Respondent’s property in April 2023. Respondent denies the remainder of this  
20 paragraph as it calls for a legal conclusion.

21 3.10 Respondent denies the allegations stated in this paragraph.

22 3.11 Respondent denies the allegations stated in this paragraph.

1 3.12 This paragraph sets forth legal conclusions to which no response is required. To the  
2 extent further response is required, Respondent is without knowledge or information  
3 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,  
4 and the allegations are therefore denied.

5 3.13 This paragraph sets forth legal conclusions to which no response is required. To the  
6 extent further response is required, Respondent is without knowledge or information  
7 sufficient to form a belief as to the truth or falsity of the allegations stated in this paragraph,  
8 and the allegations are therefore denied.

9 3.14 Respondent denies the allegations stated in this paragraph.

#### 10 **Violations**

##### 11 **Count 1: Failure to Prepare and Implement SPCC Plan**

12 3.15 This paragraph describes, in general terms, regulatory requirements appearing in  
13 40 C.F.R. §112.7, to which no response is required and is therefore denied.

14 3.16 Respondent denies the allegations stated in this paragraph.

15 3.17 Respondent denies the allegations stated in this paragraph.

16 3.18 Respondent denies the allegations stated in this paragraph.

#### 17 **IV. PROPOSED PENALTY**

18 4.1 This paragraph sets forth legal conclusions to which no response is required. To the  
19 extent further response is required, Respondent denies there is any basis in law or fact for  
20 the assessment of a civil penalty and also denies the remaining allegations and conclusions  
21 in this paragraph.  
22

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

2 Paragraphs 5.1 through 5.5 contain a recitation of EPA's administrative rules and  
3 procedures. Respondent is without knowledge or information sufficient to form a belief as  
4 to the truth or falsity of the allegations stated in this paragraph, and the allegations are  
5 therefore denied - except that Respondent's Answer requesting a hearing meets the  
6 requirements of 40 C.F.R. 22.15, as described in paragraphs 5.1-5.5.

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

8 Paragraphs 6.1-6.3 contain legal conclusions and procedures. To the extent further  
9 response is required, it is contained in this Answer, Affirmative Defenses and Request for  
10 Hearing.

11 **VII. INFORMAL SETTLEMENT CONFERENCE**

12 Paragraphs 7.1-7.2 contain legal conclusions and procedures. To the extent further  
13 response is required, it is contained in this Answer, Affirmative Defenses and Request for  
Hearing.

14 **VIII. RESERVATIONS**

15 Paragraph 8.1 contains legal conclusions and procedures. To the extent further response is  
16 required, it is contained in this Answer, Affirmative Defenses and Request for Hearing.

17 **IX. PUBLIC NOTICE**

18 Paragraph 9.1 contains legal conclusions and procedures. To the extent further response is  
required, it is contained in this Answer, Affirmative Defenses and Request for Hearing.

19 **X. AFFIRMATIVE DEFENSES**

20 1. The Second Amended Complaint fails to state a claim upon which relief can be  
21 granted against Respondent.  
22



1 2. EPA lacks jurisdiction over Respondent pursuant to Section 311 of the Clean  
2 Water Act, 33 U.S.C. 311(j)(1)(C), the Spill Prevention Control and Countermeasures  
3 (SPCC) Plan requirements at 40 C.F.R. 112.(a)(1), and any and all applicable EPA  
4 administrative guidance and rulemaking under such laws and regulations.

5 3. Respondent asserts that EPA's Second Amended Complaint exceeds the scope of  
6 EPA's regulatory jurisdiction to implement the Clean Water Act, is ultra vires and an abuse  
7 of discretion, insofar as Respondent previously documented its compliance with all  
8 relevant statutory and regulatory references and requirements alleged in the Second  
9 Amended Complaint.

10 4. The Second Amended Complaint and/or the alleged penalty assessments, are barred  
11 in whole or in part by the doctrines of waiver, laches and/or estoppel based upon EPA's  
12 oral and written advice and communications with Respondent beginning in 2015, which  
13 Respondent reasonably relied upon at all times prior to issuance of the November 2024  
14 Complaint.

15 5. The Second Amended Complaint and underlying action by EPA through its  
16 administrative rules and delegations of authority violates Respondent's Constitutional right  
17 of due process, including but not limited to acting as a judge in its own proceeding and  
18 requiring different evidentiary and procedural rules.

19 6. The Second Amended Complaint and underlying action against Respondent, which  
20 seeks to restrict Respondent's business and private rights, is unconstitutional under the  
21 Appointments Clause, Article III, and the Constitution's guarantees of fair process through  
22 an Article III court, not an administrative adjudication.

RESPONDENT'S ANSWER TO SECOND  
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1 7. Complainant's alleged administrative civil penalties violates Respondent's  
2 Constitutional right to a jury trial.

3 8. The Second Amended Complaint is barred by the statute of limitations and/or  
4 doctrine of estoppel.

5 9. Respondent at all time conducted its operations in substantial compliance with the  
6 SPCC Plan regulations; it further documented its compliance to EPA in a SPCC Plan it  
7 prepared in October 2024, during ongoing and cooperative negotiations with EPA  
8 representatives for nearly two years prior to EPA's unexpected and unannounced issuance  
9 of the November 2024 Complaint. The allegations and proposed penalty set forth in the  
10 Second Amended Complaint are not supported by substantial evidence and are excessive,  
11 inappropriate and an abuse of discretion.

12 10. The Second Amended Complaint and entire administrative proceeding constitutes  
13 an unlawful delegation of authority to the EPA Region X office and personnel.

14 11. There has been an improper appointment of an Administrative Law Judge in this  
15 matter.

16 **XI. RESERVATION OF RIGHT TO AMEND ANSWER AND ADD**  
17 **AFFIRMATIVE DEFENSES**

18 12. Respondent reserves the right to amend this answer and to add further affirmative  
19 defenses, including those which may become apparent through discovery and development  
20 of this case.  
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DATED this 6<sup>th</sup> day of January 2026.

*Allan Bakalian*

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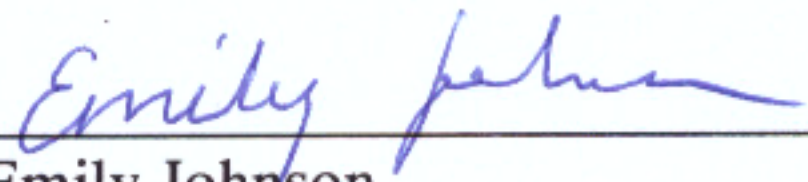
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[allan@bakalianlaw.com](mailto:allan@bakalianlaw.com)  
Attorneys for Respondent



In the Matter of *Jackson & Son Distributors, Inc., d/b/a Jackson and Son Oil*, Respondent.  
Docket No. CWA-10-2025-0023

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **RESPONDENT'S ANSWER TO SECOND AMENDED COMPLAINT, AFFIRMATIVE DEFENSES AND REQUEST FOR HEARING**, dated January 6, 2026, was sent this day to the following parties in the manner indicated below.

  
\_\_\_\_\_  
Emily Johnson  
Legal Assistant

Copy by OALJ E-Filing System to:

U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
[https://yosemite.epa.gov/OA/EAB/EAB-ALJ\\_Upload.nsf](https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf)

Copy by Electronic Mail to:

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*Co-Counsel for Complainant*

Dated: January 6, 2026