UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:	**)**	
	)	
Norco Corporation,	**)**	**Docket No. CAA-09-2024-0025**
	)	
Respondent.	**)**	

COMPLAINANT'S OPPOSITION TO RESPONDENT'S MOTION TO DISMISS AND COMPLAINANT'S MOTION FOR PARTIAL ACCELERATED DECISION ON LIABILITY

Pursuant to Section 22.16(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Consolidated Rules of Practice" or the "CROP"), 40 C.F.R. § 22.16(a), and the Presiding Officer's Prehearing Order, the Director of the Enforcement and Compliance Assurance Division of the U.S. Environmental Protection Agency, Region 9 ("Complainant") hereby opposes the Motion to Dismiss that Norco Corporation ("Respondent" or "Norco") filed on May 7, 2024. Complainant also hereby moves for partial accelerated decision on liability in this matter pursuant to 40 C.F.R. § 22.20(a). As required by the Prehearing Order, Complainant contacted Respondent on May 16, 2024, to determine whether Respondent has any objection to Complainant's Motion for Partial Accelerated Decision on Liability but Respondent did not indicate whether it would oppose the motion.

Complainant provides the following points and authorities in opposition to Respondent's Motion to Dismiss and in support of its Motion for Partial Accelerated Decision on Liability.

I. Statutory and Regulatory Background

Section 113(a)(1) of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 7413(a)(1), authorizes the United States Environmental Protection Agency ("EPA") to enforce provisions of a State Implementation Plan ("SIP"). The California Truck and Bus Regulation ("TBR"), codified in California law at 17 C.C.R. § 2025, is part of the California SIP. EPA incorporated the TBR, as submitted by the California Air Resources Board ("CARB") on September 21, 2011, and December 5, 2011, into the California SIP effective May 4, 2012. *See* 77 Fed. Reg. 20308 (April 4, 2012). CX 9-11. EPA and CARB both enforce the TBR.

Section 2025(x)(2) of the TBR states: "Any in-state or out-of-state motor carrier, California broker, or any California resident who operates or directs the operation of any vehicle subject to this regulation shall verify that each hired or dispatched vehicle is in compliance with the regulation and comply with the record keeping requirements of section 2025(s)(4)." Section 2025(x)(2) requires hiring or dispatching entities to verify that each vehicle they hire or dispatch is in compliance with the TBR. Section 2025(x)(3) of the TBR provides that "[c]ompliance may be accomplished by keeping at the business location, a copy of the Certificate of Reported Compliance with the In-Use On-Road Diesel Vehicle Regulation for each fleet, or in the vehicle." Sections 2025(s)(1) and 2025(s)(4) of the TBR state: "The owner of a fleet shall maintain the following records . . . [b]ills of lading and other documentation identifying the motor carrier or broker who hired or dispatched the vehicle and the vehicle dispatched."

Under TBR Section 2025(x)(2), verification of compliance must be performed for each vehicle. Therefore, missing documentation regarding whether a vehicle was in compliance with the regulation constitutes a violation of the TBR. CARB compliance certificates demonstrate compliance with the TBR, although they are not the only means of showing it. *See* CARB

guidance on "How to Verify if Hired Fleets Comply," CX 12-15. However, failure to provide any documentation that the hired or dispatched vehicle complied with the engine model year standards is a violation of TBR Section 2025(x)(2).

Section 113(d) of the CAA authorizes EPA to issue an administrative penalty order for each violation of an applicable SIP. Section 113(d)(1) of the CAA authorizes civil penalties of not more than $55,808 per day for each violation of Section 113(a)(1)(B) of the CAA, 42 U.S.C. § 7413(a)(1)(A), that occurred after November 2, 2015, where penalties were assessed on or after January 6, 2023, pursuant to the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. part 19, which implements the Federal Civil Penalties Inflation Adjustment Acts of 1990 and 2015, Pub. L. 101-410.[1]

II. Procedural Background

On December 21, 2023, Complainant filed a civil administrative complaint ("Complaint") against Respondent alleging that Respondent violated TBR Section 2025(x)(2) when it hired or dispatched 77 fleets into California without verifying that the trucks from those fleets satisfied the TBR compliance schedule. Compl. ¶¶ 32-34. On January 18, 2024, Respondent filed its Answer, in which it denied Complainant's allegations contained in Count 1 of the Complaint and asserted that it "submitted enough evidence to show that [it] w[as] complying with the spirit and the letter of the law" and that Complainant used the wrong data in finding that it violated the TBR. On May 7, Respondent filed a Motion to Dismiss the Complaint, reiterating that Complainant relied upon an incorrect document as the basis for its

[1] The statutory maximum penalty has since increased to $57,617 per day for violations that occurred after November 2, 2015, and were assessed on or after December 27, 2023. 88 Fed. Reg. 89309 (December 27, 2023). CX 34.

Complaint and asserting that the attachments to its Motion to Dismiss show that Respondent did not violate the TBR.

III. Complainant's Opposition to Respondent's Motion to Dismiss

A. Standard of Review

The CROP at 40 C.F.R. § 22.20(a) provides:

> The Presiding Officer, upon motion of the respondent, may at any time dismiss a proceeding without further hearing or upon such limited additional evidence as [s]he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the complainant.

40 C.F.R. § 22.20(a).

Motions to dismiss pursuant to Section 22.20(a) are analogous to motions to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure ("Federal Rules"). *In the matter of Asbestos Specialists, Inc.*, 4 E.A.D. 819, 827 (EAB, Oct. 6, 1993); Fed. R. Civ. P. 12(b)(6). Although not binding in administrative proceedings, the Presiding Officer may look to the Federal Rules of Civil Procedure for useful and instructive guidance in applying the Consolidated Rules of Practice. *See Oak Tree Farm Dairy, Inc. v. Block*, 544 F. Supp. 1351, 1356 n.3 (E.D.N.Y. 1982); *In the matter of Wego Chemical & Mineral Corporation*, 4 E.A.D. 513, 524 n.10 (EAB 1993); *In re Pyramid Chemical Co.*, 11 E.A.D. 657 n.34 (EAB 2004).

The Federal Rules provide for dismissal when the complaint fails "to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570). In evaluating a motion to dismiss, courts must take all allegations in the complaint as true and draw all inferences in favor of the Complainant. *See Twombly*, 550 U.S. at 555; *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). The court may grant dismissal for

failure to state a claim when the complaint does not set forth "direct or inferential allegations respecting all the material elements necessary to sustain recovery under *some* viable legal theory." *Twombly*, 550 U.S. at 562 (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984)); *see also McCulloch v. PNC Bank, Inc.*, 298 F.3d 1217, 1220 (11th Cir. 2002) (Emphasis in original). Accordingly, to prevail on a motion to dismiss, Respondent must demonstrate that Complainant has not pleaded in the Complaint a prima facie case for a claim upon which relief can be granted.

B. Respondent's Motion to Dismiss cannot prevail because the Complaint sufficiently states a claim upon which relief can be granted and Respondent has failed to identify any deficiency with EPA's prima facie case

To state a prima facie violation of Section 2025(x)(2) of the TBR in the Complaint, Complainant must demonstrate that: (a) Respondent is an in-state or out-of-state motor carrier, California broker, or any California resident; (b) Respondent operated or directed the operation of a vehicle subject to the TBR; and (c) Respondent did not verify that each hired or dispatched vehicle is in compliance with the TBR. *See* TBR §2025(x)(2).

In this matter, Complainant has alleged in the Complaint that: (a) Respondent is an out-of-state motor carrier (Compl. ¶ 22); (b) Respondent operated or directed the operation of at least one (1) vehicle in California that was subject to the TBR on various date(s) between January 1, 2018, and May 20, 2021, inclusive (Compl. ¶ 32); and (c) Respondent hired or dispatched at least seventy-seven (77) vehicles and failed to verify the TBR compliance of those seventy-seven (77) vehicles (Compl. ¶ 33). If every allegation contained in the Complaint is taken as true and all inferences drawn in Complainant's favor, Complainant has pleaded a prima facie case to establish violation of Section 2025(x)(2) of the TBR for which relief can be granted under Section 113(d)(1) of the CAA. In addition, given that these allegations must be taken as true and

all inferences must be drawn in favor of Complainant, Respondent's arguments in this case do not negate any of the prima facie elements that establish violation of TBR Section 2025(x)(2). Consequently, Complainant respectfully requests that Respondent's Motion to Dismiss be denied.

IV. Complainant's Motion for Partial Accelerated Decision on Liability

A. Standard of Review

Pursuant to Section 22.20(a) of the Rules of Practice, the Presiding Officer may render an accelerated decision as to all or any part of the proceeding at any time "if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law." 40 C.F.R. § 22.20(a). As described in this Tribunal's Order dated September 1, 2023, *In the Matter of: Professional Contract Sterilization, Inc.*, Docket No. CAA-01-2022-0059, this standard is analogous to the standard governing motions for summary judgment prescribed by Rule 56 in the Federal Rules. As with the Motion to Dismiss under these Rules of Practice, the Federal Rules are not binding in administrative proceedings, however the Environmental Appeals Board ("EAB") has consistently looked to Rule 56 of the Federal Rules and its jurisprudence for guidance in adjudicating motions for accelerated decision filed under Section 22.20(a) of the Rules of Practice. *See, e.g., Consumers Scrap Recycling, Inc.*, 11 E.A.D. 269, 285 (EAB 2004); *BWX Techs., Inc.*, 9 E.A.D. 61, 74-75 (EAB 2000); *Clarksburg Casket Co.*, 8 E.A.D. 496, 501-02 (EAB 1999).

Rule 56 provides for summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is material where, under the governing substantive law, it might affect the outcome of the proceeding. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986), *see*

also Celotex Corp. v. Catrett, 477 U.S. 317 (1986). In turn, a factual dispute is genuine if a fact finder could reasonably resolve the dispute in favor of the non-moving party under the evidentiary standards applicable to the particular proceeding. *Anderson* at 248, 250-52.

The party moving for summary judgment bears the burden of showing an absence of a genuine dispute as to any material fact. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). To establish that a dispute over a material fact does not exist, the movant must cite to "particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purpose of the motion only), admissions, interrogatory answers, or other materials" or show "that the materials cited do not establish the presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1).

In determining whether a genuine issue of material fact exists for trial, a federal court is required to construe the evidentiary material and reasonable inferences drawn therefrom in a light most favorable to the non-moving party. *See Anderson*, 477 U.S. at 255 ("The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor."); *United Staes v. Diebold, Inc.*, 369 U.S. 654, 655 (1962) ("On summary judgment the inferences to be drawn from the underlying facts contained in [evidentiary] materials must be viewed in the light most favorable to the party opposing the motion.").

The EAB has held that the moving party "assumes the initial burden of production on a claim and must make out a case for presumptive entitlement to summary judgment in his favor." *BWX Techs.*, 9 E.A.D. at 76. The movant must meet its burden in the context of the applicable evidentiary standard. *Id.* at 75. As prescribed by Section 22.24(b) of the Rules of Practice, 40 C.F.R. § 22.24(b), the evidentiary standard that applies here is proof by the preponderance of the

evidence. Section 22.24(a) provides that a complainant bears the burdens of presentation and persuasion that a violation occurred as set forth in the complaint and that the relief sought is appropriate.

B. Argument: Complainant's Motion for Partial Accelerated Decision on Liability should be granted because there is no genuine issue of material fact and Complainant is entitled to judgment as a matter of law

Complainant alleges that Respondent violated the TBR because it failed to verify compliance of 77 fleets it hired or dispatched between January 1, 2018, and May 20, 2021, inclusive. Compl. ¶¶ 32-34. Complainant argues that (1) it has proven by a preponderance of the evidence that there is no genuine issue of material fact that Respondent failed to verify the compliance of the trucks it hired or dispatched, and that (2) Respondent's defenses fail to show that there is any genuine issue of material fact.

1. Complainant proves by a preponderance of the evidence that there is no genuine issue of material fact that Respondent violated TBR Section 2025(x)(2)

As to the violations alleged in its Complaint, Complainant must show that the following undisputed facts and evidence are already in the record: (a) Respondent is an in-state or out-of-state motor carrier, California broker, or any California resident; (b) Respondent operated or directed the operation of a vehicle subject to the TBR; and (c) Respondent did not verify that each hired or dispatched vehicle is in compliance with the TBR. *See* TBR § 2025(x)(2).

a) Respondent is a "motor carrier"

Respondent is a "Motor Carrier," as that term is defined under Section 2025(d)(42) of the TBR. Compl. ¶ 22. Section 2025(d)(42) of the TBR defines "Motor Carrier" to mean "the same as defined in California Vehicle Code Section 408 for fleets other than those that are comprised

entirely of school buses…" Compl. ¶ 15. Section 408 of the California Vehicle Code defines "Motor Carrier" to mean:

> [T]he registered owner, lessee, licensee, or bailee of any vehicle set forth in Section 34500 [of the Vehicle Code], who operates or directs the operation of any such vehicle on either a for-hire or not-for-hire basis. "Motor carrier" also includes a motor carrier's agents, officers, and representatives, as well as employees responsible for the hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment or accessories.

Section 34500 of the California Vehicle Code sets forth the following vehicle types:

> (a) Motortrucks of three or more axles that are more than 10,000 pounds gross vehicle weight rating.
> (b) Truck tractors.
> …
> (d) Trailers and semitrailers designed or used for the transportation of more than 10 persons, and the towing motor vehicle.
> (e) Trailers and semitrailers, pole or pipe dollies, auxiliary dollies, and logging dollies used in combination with vehicles listed in subdivision (a), (b) … (d), or (j). This subdivision does not include camp trailers, trailer coaches, and utility trailers.
> (f) A combination of a motortruck and a vehicle or vehicles set forth in subdivision (e) that exceeds 40 feet in length when coupled together.
> (g) A vehicle, or a combination of vehicles, transporting hazardous materials.
> …
> (j) Any other motortruck not specified in subdivisions (a) to (h), inclusive, or subdivision (k), that is regulated by the Department of Motor Vehicles, the Department of Consumer Affairs, or the United States Secretary of Transportation.
> (k) A commercial motor vehicle with a gross vehicle weight rating of 26,001 or more pounds or a commercial motor vehicle of any gross vehicle weight rating towing a vehicle described in subdivision (e) with a gross vehicle weight rating of more than 10,000 pounds, except combinations including camp trailers, trailer coaches, or utility trailers. For the purposes of this subdivision, the term "commercial motor vehicle" has the same meaning as defined in subdivision (b) of Section 15210.

According to each of its revised responses to EPA's Information Request, Respondent hired or dispatched into California the trucks it leased during that time period.[2] Respondent's response to

[2] Although the TBR applies to Respondent on the basis that Respondent is a motor carrier that operated or directed the operation of vehicles in California that it leased that were subject to the TBR, Respondent is also subject to the TBR on the basis that Respondent is a person that leased vehicles that operated in California. Respondent is a corporation. Compl. ¶¶ 4, 19; CX 40. Pursuant to TBR Section 2025(d)(47), which defines "person" to mean a corporation,

the Information Request identifies the fleets of "diesel-fueled non-drayage vehicle[s] over 14,000 pounds [gross vehicle weight rating]" that Respondent hired or dispatched "to drive in California at any time from January 1, 2017, to [May 20, 2021]." CX 2, 3, 4, 5, 6, 7, 7a, 7b, 7c, 7d, 7e, 7f, 7g. Respondent stated in its July 1, 2022 email to EPA staff that its response to EPA's Information Request included "a list of fleet owners, owner operators that traveled in California during the time frame…" CX 42 page 33.

In response to EPA staff's request to provide a lease agreement that Norco uses for the trucks it hires for its business, Respondent provided an example lease agreement that provides lease terms between Respondent and the truck owner-operators it hires. CX 21. In the lease agreement, Respondent describes itself as "a motor carrier engaged in the hauling of freight, in interstate and intrastate commerce." *Id.* at page 3. The lease agreement refers to the owner-operator "as 'Independent Contractor,' owner or lessee of certain motor vehicles and/or trailers…" *Id.* The "Become an Owner Operator" page of Respondent's website explained that "Norco is a 100 % owner operator fleet where you don't have to compete against company trucks." CX 38, page 2.[3] Based on the information Respondent provided EPA, Respondent's hiring and dispatching of leased trucks into California shows that Respondent is a "Motor Carrier" as the TBR defines the term.

Finally, in its Answer, Respondent made a general denial as to all of the allegations in Count 1 of the Complaint but did not specifically deny or explain whether it is a "Motor Carrier."

Respondent is a person. TBR Section 2025(b) states that the TBR applies to any person that leases affected vehicles that operate in California. Respondent leased vehicles that operated in California, therefore the TBR applies to Respondent on the basis of TBR Section 2025(b). CX 7-7f, CX 21, CX 42 pages 34-35.

[3] Respondent's website is no longer accessible. EPA captured statements from Respondent's website as of May 9, 2021, using the Internet Archive's Wayback Machine.

Therefore, under 40 C.F.R. § 22.15(d), Respondent admitted that it is a "Motor Carrier." Based on the material Respondent provided and its admission, there is no genuine issue of material fact with respect to this element of proof for Count 1 alleged in the Complaint. *See* 40 C.F.R. § 22.20(a).

b) Respondent operated or directed the operation of a vehicle subject to the TBR

Respondent operated or directed the operation of at least one (1) vehicle in California that was subject to the TBR on various date(s) between January 1, 2018, and May 20, 2021, inclusive. Compl. ¶ 32. Section I.D of the Information Request that EPA issued to Respondent requests information "[f]or each fleet from which Norco hired or dispatched any diesel-fueled non-drayage vehicle over 14,000 pounds GVWR to drive in California from January 1, 2017, to the date of this letter…" CX 2 page 11. Footnote 10 of the Information Request clarifies that the term "hired or dispatched" refers to Section 2025(x)(2) of the TBR, which states that the specified entities that "operate or direct the operation of any vehicles subject to this regulation shall verify that each hired or dispatched vehicle is in compliance with the regulation and comply with the record keeping requirements of section 2025(s)(4)." Thus, by submitting its Response, Respondent identified that it "operat[ed] or direct[ed] the operation of" vehicles subject to the TBR. CX 7. Furthermore, section III.A.1 of Respondent's example lease agreement contemplates that the Independent Contract operates "under dispatch of [Respondent]." CX 21 page 5.

Based on the information Respondent submitted, there is no genuine issue of material fact with respect to this element of proof as well. *See* 40 C.F.R. § 22.20(a).

c) Respondent did not verify that each hired or dispatched vehicle is in compliance with the TBR

On various dates between January 1, 2018, and May 20, 2021, inclusive, Respondent hired or dispatched at least seventy-seven (77) vehicles and failed to verify the TBR compliance of those seventy-seven (77) vehicles. Compl. ¶ 33. Respondent's August 10, 2023 final response to EPA's Information Request, as well as its previous responses, shows that Respondent hired or dispatched at least seventy-seven (77) vehicles but did not provide any documentation to demonstrate that it followed the work practice requirement in TBR Section 2025(x)(2) to verify the hired or dispatched vehicles satisfied the requirements of the TBR. CX 7, 7a, 7b, 7c, 7d, 7e, 7f, 7g, 12, 13, 14; CX 42 page 35. In fact, the documents Respondent submitted to EPA as part of its August 10, 2023 Response show that Respondent hired or dispatched vehicles that did not comply with the model year emissions equivalent engine or emissions control requirements in the TBR. CX 7-7f; CX 20 page 7; CX 43 pages 5-31; CX 46.

Respondent clarified in one of its prior submittals in response to the Information Request that it "does not have CARB certificates for the owner operators."[4] CX 5. If the truck owner does not have a CARB certificate of compliance, CARB has stated that for each year that a truck is hired, hiring or dispatching entities should obtain a dated, written statement from the owner of the hired or dispatched vehicle that verifies that the owner is aware of the TBR and provides the engine model year and PM filter information about their trucks to demonstrate compliance with the TBR engine model year schedules. CX 12-15. The attachments to Respondent's Motion to Dismiss (the same documents as CX 7a-7f) that Respondent submitted to demonstrate compliance do not satisfy this requirement.

[4] CARB certificates are documents produced by CARB that, under TBR Section 2025(x)(3), can be used to demonstrate compliance with TBR Section 2025(x)(2).

The TBR describes the type of documentation that the hiring entity must show to demonstrate compliance with the verification requirement. Sections 2025(s)(1) and 2025(s)(4) of the TBR state: "The owner of a fleet shall maintain the following records . . . [b]ills of lading and other documentation identifying the motor carrier or broker who hired or dispatched the vehicle and the vehicle dispatched." CARB's 2008 Initial Statement of Reasons ("2008 ISOR") provides context on the required documentation under Section 2025(s)(4) of the TBR: "The . . . regulation would require these motor carriers and brokers to retain records documenting that the drivers they hire or dispatch are in compliance with the proposed regulation, but would have an affirmative defense for violations by a vehicle operator they dispatched if they can demonstrate that they verified the compliance status of the operator *at the time they were hired or dispatched*." 2008 CARB Initial Statement of Reasons, page 33 (CX 17 page 4). (Emphasis added.)

Other TBR rulemaking documents reiterate or expand upon the language used in the 2008 ISOR. The Technical Support Document from the 2008 rulemaking states on page 134 that the TBR requires these entities to "retain records documenting that all of the drivers they hire or dispatch are in compliance with the proposed regulation."[5] CX 18 page 4. In its 2014 Rulemaking Final Statement of Reasons document, page 55, Agency Response #175, CARB reiterated the language of the 2008 ISOR and stated that "[m]otor carriers/brokers or other entities must obtain copies of the certificate or other proof of compliance annually."[6]

[5] Also available at: https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2008/truckbus08/tsd.pdf.

[6] Also available at: https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2014/truckbus14/tb14fsor.pdf. The 2014 rulemaking, which CARB set aside by court order, did not make any changes to TBR Section 2025(x)(2), but CARB reiterated in its staff report its explanation of how the section works in response to public comment.

Respondent failed to demonstrate that it verified compliance of its hired or dispatched fleets at the time of hire and it did not obtain a dated, written statement from the owner of each hired or dispatched vehicle that verifies that the owner is aware of the TBR and provides the engine model year and PM filter information about their trucks to demonstrate compliance with the TBR engine model year schedules. This fact is underscored by the large number of noncompliant vehicles or vehicles with missing information that drove into California under Respondent's hire or dispatch, as Complainant's analysis of Respondent's August 10, 2023 response to the Information Request shows. CX 46. Thus, Complainant has shown by a preponderance of the evidence that there is not a genuine issue of material fact as to Respondent's failure to verify the TBR compliance of the vehicles it hired that drove in California during the period specified in the Information Request. *See* 40 C.F.R. § 22.20(a).

2. Respondent's defenses fail to show any genuine issue of material fact

The preceding allegations establish by a preponderance of the evidence that Complainant properly pleaded its claim that Respondent violated Section 2025(x)(2) of the TBR and that there is no genuine issue of material fact as to any of the elements necessary to prove that Respondent violated that provision. Respondent does not identify any deficiencies in Complainant's prima facie case. As a defense, Respondent states that "[t]here is nothing in [the documents Respondent filed as attachments to its Motion to Dismiss] to indicate a violation" of TBR Section 2025(x)(2).

Complainant understands Respondent's argument in its Motion to Dismiss to be the same argument it made in its Answer and in its Prehearing Exchange, where it asserted that information it previously submitted to EPA was "inaccurate," "flawed," and "incorrect," but that nevertheless Complainant relied on that incorrect information as the basis for alleging that Respondent violated TBR Section 2025(x)(2). Complainant disagrees with Respondent's

assertion. The attachments that Respondent included to its Motion to Dismiss, which are the same documents included in CX 7-7f, show that Respondent violated TBR Section 2025(x)(2). First, Respondent provided no evidence that it verified the compliance of the fleets it hired or dispatched into California. The documents included as attachments to Respondent's Motion to Dismiss show the model years of the trucks it hired; they are not substitutes for documentation to demonstrate that Respondent verified the compliance of the trucks it hired or dispatched into California.[7] Furthermore, the documents show that many of the trucks that Respondent hired or dispatched would be violative of the TBR without exhaust controls or engine retrofits, but Respondent did not provide any information that those trucks were retrofitted to meet the compliance schedules in the TBR.

On page 2 of its Motion to Dismiss, Respondent states that Complainant used an old worksheet that Respondent submitted in error, and that the correct submission, which shows that Respondent complied with TBR Section 2025(x)(2), consists of the Texas International Registration Plan ("IRP") fleet supplements and the cab card issued by the State of Texas (the same documents that are contained in CX 7a-7f).[8] As mentioned in the preceding paragraph and in section IV.B.1.c of this document, the materials Respondent provided do not show that Respondent verified the compliance of the trucks at issue when it hired them.

[7] As Complainant describes above in section IV.B.1.c of this document, Respondent should have obtained on an annual basis a dated, written statement from each owner of the hired or dispatched vehicle that verifies that the owner is aware of the TBR and provides the engine model year and PM filter information about their trucks to demonstrate compliance with the TBR engine model year schedules. CX 12-15. The attachments to Respondent's Motion to Dismiss (the same documents as CX 7a-7f) that Respondent submitted to demonstrate compliance do not satisfy this requirement.

[8] The Texas Department of Motor Vehicles oversees the Texas IRP, which is a program for licensing commercial vehicles engaged in interstate operations. *See* https://prod-origin.txdmv.gov/motor-carriers/commercial-fleet-registration/apportioned-registration.

Furthermore, the worksheet that Respondent asserts to be incorrect is merely a spreadsheet from Respondent's earlier submissions that Respondent annotated to corroborate the information contained in the Texas IRP information and cab cards that Respondent asserts absolves it from liability.[9] CX 7. Respondent submitted the information from the Texas IRP after phone conversations with EPA staff in 2023 in which EPA reiterated to Respondent that it had not verified the compliance of those trucks. Complainant reviewed all of the materials Respondent submitted as part of its most recent response to the Information Request, which it certified on August 10, 2023, and communicated with Respondent to ensure the correct understanding of the contents of Respondent's submission. CX 7-7g; CX 43 pages 5-31. Respondent reproduced the documents from its August 10, 2023 response in its Motion to Dismiss. The documents show that Respondent violated Section 2025(x)(2) of the TBR. Complainant is not relying upon incorrect information as the basis for the Complaint.

Complainant has shown by a preponderance of the evidence that Respondent failed to verify the 77 fleets it hired or dispatched complied with TBR Section 2025(x)(2) and therefore it is liable for 77 violations of that provision. Respondent's Motion to Dismiss, its Prehearing Exchange, and its Answer fail to show that Complainant's allegations are based on incorrect information and that Respondent did not violate TBR Section 2025(x)(2).

In sum, in the light most favorable to Respondent, there is no genuine issue of material fact as to any of the elements necessary to prove that a violation of the TBR occurred as to the violations Complainant alleges. Given all the information in the record, Complainant respectfully

[9] For example, during Complainant's review of the Texas IRP documentation and cab cards, Respondent verified that "[t]he numbers immediately to the right of the fleet owners' names in the [worksheet] are the truck tractor model years." CX 43, pages 21 and 30. The handwritten truck tractor model years match the model years that are listed in the Texas IRP information that Respondent provided.

requests that the Presiding Officer grant this Motion for Partial Accelerated Decision on Liability. *See* 40 C.F.R. § 22.20(a).

V. Conclusion

For the reasons stated above, Complainant hereby respectfully requests that the Presiding Officer (A) deny Respondent's Motion to Dismiss and (B) grant Complainant's Motion for Partial Accelerated Decision on Liability for Count 1 as alleged in the Complaint. In the alternative, should such relief not be granted regarding Complainant's request for partial accelerated decision as to Respondent's liability, Complainant requests an accelerated decision resolving any of the issues in this case to aid in narrowing the scope of the hearing.

Respectfully Submitted,

JACOB FINKLE Digitally signed by JACOB FINKLE Date: 2024.05.22 12:48:54 -07'00'

May 22, 2024
Date

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CERTIFICATE OF SERVICE

I certify that an electronic copy of the foregoing "Complainant's Opposition to Respondent's Motion to Dismiss and Complainant's Motion for Partial Accelerated Decision on Liability" *In the Matter of Norco Corporation*, Docket No. CAA-09-2024-0025, was filed and served on the Presiding Officer this day through the Office of Administrative Law Judges' E-Filing System. I certify that an electronic copy of this "Complainant's Opposition to Respondent's Motion to Dismiss and Complainant's Motion for Partial Accelerated Decision on Liability" was sent this day by e-mail to the following e-mail address for service on Respondent: A.G. Hollenstein at ag@norcocorp.com.

May 22, 2024
Date

JACOB FINKLE Digitally signed by JACOB FINKLE Date: 2024.05.22 12:50:06 -07'00'

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