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DOCKET NO. CWA-10-2025-0023

RESPONDENT'S RESPONSE IN  
OPPOSITION TO COMPLAINANT'S  
MOTION TO AMEND COMPLAINT

Respondent.

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1 nearly completed when EPA unexpectedly, and without any notice to Jackson, filed its  
2 December 18, 2024 complaint.<sup>1</sup>

3 Respondent filed an Answer on January 17, 2025. On January 28, 2025, the Court  
4 issued its first prehearing order. A second prehearing order was issued on June 3, 2025.  
5 Complainant filed a motion for stay of the prehearing exchange schedule and the Presiding  
6 Officer granted Complainant's motion on August 28, 2025. A hearing on this matter has  
7 not yet been scheduled.

8 Complainant's motion is the culmination of the agency's extraordinary efforts to assert  
9 jurisdiction over Jackson, a third-generation family owned and operated petroleum storage  
10 and commercial cardlock serving the lumber, fishery, and other commercial businesses on  
11 the Oregon coast. As alleged in the complaint and January 20, 2022 Inspection Report EPA  
12 shared with Jackson, it alleged a spill of oil would reasonably be expected to discharge to  
13 waters of the United States, through the wetlands west and adjacent to the Jackson facility.

## 14 15 **II. STANDARD OF REVIEW**

16 Rule 15 of the Federal Rules of Civil Procedure governs when a party can file an  
17 amended complaint. As a matter of course, a party can file an amended pleading without  
18 leave of the court if the amended pleading is filed within 21 days of service or within 21  
19 days after a responsive pleading is required and has been filed. Fed. R. Civ. P. 15(a)(1).  
20 Otherwise, a party may file an amended pleading only with either written consent from  
21 the opposing party or leave by the court to file the amended pleading. Fed. R. Civ. P.

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22 <sup>1</sup> The Compliance Plan and Schedule was and still is part of the ongoing confidential settlement negotiations.

1 15(a)(2). In the case at hand, the Respondents object and do not consent to EPA filing an  
2 amended complaint for the reasons set forth below.

### 3 4 **III. ARGUMENT**

5 As Complainant notes, the amended complaint first seeks to address information  
6 provided by Respondent to EPA about its compliance efforts, including preparation of an  
7 SPCC plan in November 2024 that EPA alleged in its complaint had not been prepared but  
8 was completed, as in *In re Adamas Constr. and Dev. Serv., PLLC*.<sup>2</sup> While Jackson  
9 appreciates that EPA acknowledges its receipt of the SPCC Plan, as noted, had the EPA  
10 representatives inquired or provided Jackson notice of its intent to file a complaint, Jackson  
11 could have shared the completed SPCC Plan with EPA as part its regular status updates to  
12 EPA with its updated Compliance Plan.

13 That argument by itself is not compelling, and should instead have been the basis for  
14 resolving this case before issuance of the Complaint as Jackson believed was ongoing.  
15 This prejudices Jackson by having to file an amended answer and, more importantly,  
16 change its defense to address EPA's new alleged basis for jurisdiction, which is the crux  
17 of its motion.

18 This is EPA's third attempt to assert jurisdiction over Jackson. The Complaint itself  
19 was based on an inspection of the facility in 2021 that alleged a sill would flow south and  
20 west to the wetlands. In May 2024, EPA performed a wetlands inspection of the properties  
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<sup>2</sup> *In re Adamas Constr. & Dev. Serv., PLLC*, 2020 EPA ALJ LEXIS 10, \*7 (Jan. 2, 2020).

1 surrounding the Jackson facility, and asserted a different flow pathway (such evaluation  
2 has not been shared with Jackson or counsel). Now, EPA seeks to erase all references to  
3 the wetlands surrounding the Jackson facility in the Amended Complaint, including the  
4 definition of “Wetlands” itself. This is because EPA has announced that it will be  
5 promulgating new regulations , as referenced in Complainant’s unopposed June 2, 2025  
6 Motion for Additional Extension for Time. The *March 2025 Guidance post Sackett memo*,  
7 referenced in Complainant’s motion for extension of time, makes it clear that EPA will no  
8 longer consider situations where a “discreet feature” establishes a “continuous surface  
9 connection” to a wetland.

10 Presumably, EPA no longer believes there is a continuous surface connection in the  
11 wetland between the Jackson facility and a navigable water body sufficient for jurisdiction.  
12 Rather, it now asserts that there is a reasonable expectation that a discharge of oil from the  
13 facility could reasonably be expected to discharge a quantity of oil that may be harmful  
14 into or upon the navigable waters of the US. “surrounding area’s topography and drainage  
15 patterns and the physical properties of oil infiltration and flow, as well as the quantity of  
16 oil stored at the Facility.”<sup>3</sup>

17 This is significant in and of itself, but Complainant now claims it “has also modeled  
18 a discharge using 20,000 gallons as the spill volume,...”<sup>4</sup> These changes to Complainant’s  
19 basis for jurisdiction 40 CFR 112, along with EPA’s third argument – that an oil spill from  
20 Respondent’s Facility would “flow north via multiple pathways” to waters of the United  
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22 <sup>3</sup> Complainant’s Motion, pg. 4.

<sup>4</sup> Complainant’s Motion, pg. 5.

1 States, is prejudicial as Jackson must now switch its defense to meet EPA's allegations.  
2 The motion itself is also circular in that regard – it seeks to file an amended complaint that  
3 asserts jurisdiction without reference to any continuous surface connection between a  
4 wetland and navigable waterbody, but the motion alleges there are multiple pathways to  
5 field-verified and National Wetlands Inventory-mapped wetlands (“wetlands”).<sup>5</sup>

6 Jackson is prejudiced by EPA's 180 degree change in jurisdictional claim over Jackson  
7 because first, Jackson has expended considerable time and effort, including retaining two  
8 wetlands consultant to evaluate the wetlands and potential continuous surface water  
9 connection, and second because, it has no idea where or how EPA believes a discharge will  
10 actually flow and where the “multiple pathways” it now asserts exist are. Indeed, the  
11 motion was filed on the eve of the prehearing exchange where EPA was required to share  
12 its prior wetlands evaluation that it asserted supported its claims against Respondent  
13 because there was a continuous surface water connection. Finally, as also noted in its  
14 motion, EPA is in the process of issuing a new proposed rule defining waters of the United  
15 States in the coming months.<sup>6</sup> Even if EPA does issue a new proposed rule, the  
16 administrative rulemaking procedures, including public comments and potential legal  
17 challenges, it will likely be at least six months if not longer before the new rule is  
18 promulgated.

19 Respondent believes the motion to amend the Complaint should be denied. Jackson  
20 has yet to learn the factual and legal basis for EPA's newly asserted grounds for jurisdiction  
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22 <sup>5</sup> Complainant's Motion, pg. 6.

<sup>6</sup> Complainant's Motion, pg. 6.

1 in this case, which may as easily be modified as thwarted during the administrative  
2 rulemaking process, at additional costs that Jackson will have to incur. It is extremely  
3 prejudicial for Jackson to have to expend more time, effort and money to address EPA's  
4 amended complaint in the coming months, as well as the possibility it may then be faced  
5 with either another motion to amend the complaint or motion to amend the case schedule  
6 to address any new rule. *Foman v. Davis*, 371 U.S. 178 (1962).

7 Rather, in the interests of justice, the motion should be denied and the complaint  
8 dismissed without prejudice pending either settlement of this matter or filing a new  
9 complaint when EPA figures out the basis for its alleged jurisdiction over Respondent.

10 For the reasons cited above, Respondent respectfully requests the Court deny the  
11 Complainants' motion to amend the complaint and the underlying complaint dismissed.

12  
13 DATED this 2<sup>nd</sup> day of September 2025.

14  
15 BAKALIAN & ASSOCIATES P.S.


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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 RESPONSE IN OPPOSITION TO COMPLAINANT'S MOTION TO AMEND COMPLAINT**, dated September 2<sup>nd</sup>, 2025, 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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*Counsel for Complainant*

Dated: September 2<sup>nd</sup>, 2025