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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington

In the matter of:)	DOCKET NO.CWA-10-2001-0088
Wards Cove Packing, Co.)	
d/b/a E.C. Phillips & Son)	CONSENT AGREEMENT AND
Ketchikan, Alaska,)	CONSENT ORDER
Respondent.)	

I. AUTHORITY

1.1. This Consent Agreement and Consent Order (“CACO”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (“Act”), 33 U.S.C. § 1319(g). The Administrator has delegated the authority for the Consent Agreement to the Regional Administrator of EPA, Region 10, which has be redelegated to the Manager of the Region 10 NPDES Compliance Unit. The Administrator has delegated the authority for the Consent Order to the Regional Administrator of EPA, Region 10.

1.2. Pursuant to Sections 309(g)(1) and (g)(2)(A) of the Act and in accordance with the proposed “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 63 Fed. Reg. 9464-94 (February 25, 1998) (“CROP rules”), EPA hereby issues, and Wards Cove Packing Company (“Respondent”) hereby agrees to issuance of the Consent Order contained in Part IV of this CACO.

1 **II. PRELIMINARY STATEMENT**

2 2.1. On February 26, 2001, EPA initiated this proceeding against Respondent pursuant to
3 Section 309(g) of the Act, 33 U.S.C. § 1319(g), by issuing an Administrative Complaint
4 (“Complaint”).

5 2.2. The Complaint alleged that Respondent’s violations of the Act had subjected
6 Respondent to civil penalties. The Complaint proposed that Respondent be assessed an administra-
7 tive civil penalty in an amount not to exceed \$137,500.00.

8 2.3. The complete factual and jurisdictional basis for proposing the assessment of a civil
9 penalty in this amount is set forth in the Complaint and is incorporated herein by reference.

10 2.4. The State of Alaska was given an opportunity to consult with EPA regarding the
11 assessment of an administrative penalty against Respondent.

12 2.5. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), EPA issued
13 a public notice to inform the public of its intent to assess an administrative penalty against
14 Respondent and to invite public comment. EPA received one public comment regarding this
15 proposal to assess a civil penalty.

16 **III. CONSENT AGREEMENT**

17 Complainant and Respondent hereby stipulate as follows:

18 3.1. Respondent admits the jurisdictional allegations contained in the Complaint.

19 3.2. Respondent enters this Consent Agreement without admitting liability or the facts
20 alleged by EPA to establish violations of the Act, and further does so to compromise and settle the
21 Complaint without further proceedings in this matter.

22 3.3. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), the nature, circumstances,
23 extent, and gravity of the alleged violations, Respondent’s economic benefit of noncompliance and
24 ability to pay the proposed penalty, and other relevant factors, EPA has determined and Respondent
25 agrees that an appropriate penalty to settle this action is in the amount of SIXTY THOUSAND
26 DOLLARS (\$60,000.00).

1 3.4. Respondent consents to the issuance of the Consent Order recited herein and to
2 payment of the penalty cited in the foregoing paragraph within thirty (30) days of the effective date
3 of the Final Order.

4 3.5. Payments under this CACO shall be made by cashier's check or certified check,
5 payable to the order of "Treasurer, United States of America" and shall be delivered to the following
6 address:

7 Mellon Bank
8 EPA Region 10
9 P.O. Box 360903M
 Pittsburgh, Pennsylvania 15251.

10 Respondent shall note on the check the title and docket number of this case.

11 3.6. Respondent shall submit a photocopy of the checks described above to:

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

15 3.7. Should Respondent fail to pay the penalty assessed by Paragraph 3.3 of this CACO
16 (the "assessed penalty") in full by its due date, the entire unpaid balance of assessed penalty and
17 accrued interest shall become immediately due and owing. Should such a failure to pay occur,
18 Respondent may be subject to an administrative action to collect payment under the federal Debt
19 Collection Act of 1982, as amended, or to a civil action to collect the assessed penalty under the
20 Clean Water Act. In any collection action, the validity, amount and appropriateness of the assessed
21 penalty shall not be subject to review.

22 3.8. Should Respondent fail to pay the assessed penalty in full by its due date, Respondent
23 shall also be responsible for payment of the following amounts:

24 a. Interest. Any unpaid portion of the assessed penalty shall bear interest at the
25 rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the
26 effective date of the Consent Order contained herein, provided, however, that no interest shall
27

1 be payable on any portion of the assessed penalty that is paid within thirty (30) days of the
2 effective date of the Consent Order contained herein.

3 b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling
4 charge of \$15 shall be paid if any portion of the assessed penalty is more than thirty (30) days
5 past due.

6 c. Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section
7 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), should fail to pay on a timely basis the amount
8 of the assessed penalty, shall pay (in addition to the assessed penalty, interest, and monthly
9 handling charges) attorney fees, costs for collection proceedings, and a quarterly nonpayment
10 penalty for each quarter during which such failure to pay persists. Such nonpayment penalty
11 shall be in an amount equal to twenty percent (20%) of the aggregate amount of the assessed
12 penalty and nonpayment penalties which are unpaid as of the beginning of such quarter.

13 3.9. The penalty described above represents a civil penalty assessed by EPA and shall not
14 be deductible for purposes of federal taxes.

15 3.10. Except as described in Paragraph 3.8 above, each party shall bear its own costs and
16 attorneys fees in bringing or defending this action.

17 3.11. Respondent expressly waives its right under applicable law to a hearing on the civil
18 penalty assessed herein and to an further administrative or judicial review of the Consent Order
19 contained herein.

20 STIPULATED AND AGREED this 29 day of May, 2001:

21
22 *David W. Forbush*
23 David W. Forbush
24 *vice president*
Ward Cove Packing Company

1 STIPULATED AND AGREED this ____ day of May, 2001

2 U.S. ENVTL. PROTECTION AGENCY
3 REGION 10

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5 _____
6 LeRoy S. Loiselle
7 Manager, NPDES Compliance Unit
8 U.S. Environmental Protection Agency
9 Region 10
10 1200 6th Avenue
11 Seattle, Washington 98101

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CONSENT AGREEMENT AND
CONSENT ORDER -5-

U.S. ENVIRONMENTAL PROTECTION
AGENCY
1200 Sixth Avenue
Seattle, Washington 98101
(206) 553-1037


1 **IV. ORDER**

2 4.1. The terms of the foregoing Consent Agreement are hereby approved and incorporated
3 by reference into this Consent Order. Respondent is hereby ordered to comply with the foregoing
4 terms of settlement.

5 4.2. This CACO constitutes a settlement by EPA of all claims for civil penalties pursuant
6 to the Clean Water Act for the particular violations alleged in the Complaint. In accordance with
7 Section 22.31(a) of the CROP rules, nothing in this CACO shall affect the right of EPA or the
8 United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any
9 violations of law. This CACO does not waive, extinguish or otherwise affect Respondent's
10 obligations to comply with all applicable provisions of the Act and regulations and permits issued
11 thereunder.

12 4.3. This Consent Order shall become effective upon filing.

13
14 SO ORDERED this 16th day of July, 2001:

15
16 
17 CHARLES FINDLEY
18 Acting Regional Administrator
19 U.S. Environmental Protection Agency
20 Region 10
21 1200 Sixth Avenue
22 Seattle, Washington 98101

1 **CERTIFICATE OF SERVICE**

2 I certify that the foregoing "Consent Agreement and Consent Order" was sent to the
3 following persons, in the manner specified, on the date below:

4 Original, hand-delivered:

5 Mary Shillcutt, Regional Hearing Clerk
6 U.S. Environmental Protection Agency, Region 10
7 1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

8 Copy, by certified mail, return receipt requested:

9 David Forbush, Jr., Facility Manager
10 Wards Cove Packing Company
5961 Tongass Highway
Ward Cove, Alaska 99928

11 Charles R. Blumenfeld
12 Perkins Coie, LLP
1201 Third Avenue
Suite 4800
13 Seattle, Washington 98101-3099.

14 Copy, by first class mail:

15
16
17 Dated: July 16, 2001

Melissa Whitaker
Melissa Whitaker
U.S. EPA Region 10

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