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

In the matter of:	)	DOCKET NO.CWA-10-2001-0087
Wards Cove Packing, Co.	)	
d/b/a Ward Cove Cannery	)	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 \$77,000.00.

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 FIFTY FIVE THOUSAND  
26 DOLLARS (\$55,000.00).

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

1 STIPULATED AND AGREED this \_\_\_\_ day of May, 2001

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

4 

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

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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 16<sup>th</sup> 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  
8 Seattle, Washington 98101

9 Copy, by certified mail, return receipt requested:

10 David Forbush, Jr., Facility Manager  
11 Wards Cove Packing Company  
12 5961 Tongass Highway  
13 Ward Cove, Alaska 99928

14 Charles R. Blumenfeld  
15 Perkins Coie, LLP  
16 1201 Third Avenue  
17 Suite 4800  
18 Seattle, Washington 98101-3099.

19 Copy, by first class mail:

20 Dated: July 16, 2001

21 Melissa H. Whitaker  
22 Melissa Whitaker  
23 U.S. EPA Region 10  
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