

1 **II. ALLEGATIONS**

2 3. Section 402 of the Act, 33 U.S.C. § 1342, provides that EPA may issue National Pollutant
3 Discharge Elimination System (“NPDES”) permits for the discharge of any pollutant into waters of
4 the United States upon such specific terms and conditions as EPA may prescribe.

5 4. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by
6 any person except as authorized by an NPDES permit or other specified statutory sections.

7 5. Respondent owns and operates the Wards Cove Packing, Co. d/b/a E.C. Phillips & Son
8 facility located at 1775 Tongass Avenue, Ketchikan, Alaska 99901 (“Facility”).

9 6. Respondent is a “person” within the meaning of Section 502(5) of the Act,
10 33 U.S.C. § 1362(5).

11 7. Respondent is authorized to discharge pollutants from the Facility under General NPDES
12 Permit No. AK-G52-0001 (“Permit”). The Permit became effective on August 4, 1995, expired on
13 August 4, 2000, and is currently administratively extended.

14 8. The Facility, which was under Respondent’s control at all times relevant to this action,
15 discharged seafood process waste. Seafood process wastes are “pollutants” within the meaning of
16 Section 502(6) and (12) of the Act, 33 U.S.C. § 1362(6) and (12).

17 9. The Facility, which was under Respondent’s control at all times relevant to this action,
18 discharged pollutants through floor drains and from other confined and discrete conveyances which
19 are each considered a “point source” within the meaning of Section 502(14) of the Act, 33 U.S.C. §
20 1362(14).

21 10. The Facility, which was under Respondent’s control at all times relevant to this action,
22 discharged pollutants through a point source to Tongass Narrows which is “waters of the United
23 States,” as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7).

24 11. Part V.C.1.b. of the Permit states that Respondent shall route all seafood process wastes
25 through a waste-handling system.

1 12. Part VIII.E of the Permit states that Respondent shall at all times properly operate and
2 maintain all facilities and systems of treatment and control (and related appurtenances) that are
3 installed or used by a permittee to achieve compliance.

4 13. Part V.C.1.f.(3) of the Permit specifies that Respondent shall not discharge seafood
5 sludge, deposits, debris, scum, floating solids, oily wastes, or foam which alone or in combination
6 with other substances cause a film, sheen, emulsion, or scum on the surface of the water.

7 14. Part V.C.1.e of the Permit specifies that Respondent shall not discharge any other such
8 wastewaters that contain foam, floating solids, grease, or oily wastes which produce a sheen on the
9 water surface.

10 15. Part V.C.1.g of the Permit states that discharges shall not violate Alaska Water Quality
11 Standards for floating or suspended residues, dissolved oxygen, oil and grease, fecal coliform, pH,
12 temperature, color, turbidity, and total residual chlorine beyond the mixing zone.

13 16. On July 13, 2000, EPA conducted an NPDES inspection of the Facility.

14 17. During the July 13, 2000 inspection, the EPA inspector observed that Respondent
15 discharged seafood sludge, deposits, debris, scum, floating solids, oily wastes, or foam which alone
16 or in combination with other substances cause a film, sheen, emulsion, or scum on the surface of the
17 water.

18 18. During the July 13, 2000 inspection, the EPA inspector observed that Respondent
19 discharged wastewaters that contained foam, floating solids, grease, or oily wastes which produced a
20 sheen on the water surface.

21 19. Upon information and belief, Respondent has failed to route all seafood process wastes
22 through a waste-handling system each day for the past five (5) years.

23 20. Upon information and belief, Respondent has discharged pollutants through a point
24 source not authorized by Respondent's NPDES permit to waters of the United States.

25 21. Upon information and belief, Respondent has failed to properly operate and maintain all
26 facilities and systems of treatment and control (and related appurtenances) that were installed or used
27 by Respondent to achieve compliance.

1 and floating solids causing scum has the potential to decrease the depth of light penetration into the
2 water body, thereby reducing the depth of the photic zone. This reduces primary production and
3 decreases fish food. Additionally, with the increase in turbidity, the near-surface waters are heated
4 because of the greater heat absorbency of the particulate material which tends to stabilize the water
5 column and prevent vertical mixing. Such mixing reductions decrease the dispersion of dissolved
6 oxygen and nutrients to lower portions of the water body. Turbid water, caused by foam and floating
7 solids causing scum, also interferes with recreational use and aesthetic enjoyment of water.

8 28. Based on the information available to EPA regarding Respondent's financial condition,
9 Respondent appears able to pay a civil penalty of up to \$137,500. Should Respondent submit
10 information substantiating an inability to pay this amount, the specific assessed penalty will be
11 adjusted to reflect this inability.

12 29. Respondent's degree of culpability is high. Respondent has knowingly failed to properly
13 operate or maintain all facilities and systems of treatment and control, such as pipes or other
14 conveyances, installed or used to achieve compliance and failed to route all seafood waste to the
15 treatment system. Based on information and belief, this failure has resulted in unpermitted
16 discharges over many years, and Respondent has taken no action to discontinue these discharges.

17 30. By delaying the costs associated with properly operating and maintaining all facilities
18 and systems of treatment and control installed or used to achieve compliance and failing to route all
19 seafood process waste through the waste-handling system, Respondent realized an economic benefit
20 as a result of the violations alleged above. In addition, Respondent realized an economic benefit
21 from failing to use de-foaming agents, or to use other methods to ensure compliance with the permit
22 provisions listed above.

23 **IV. OPPORTUNITY TO REQUEST A HEARING**

24 31. Respondent has the right to file an Answer requesting a hearing on any material fact
25 contained in this Complaint or on the appropriateness of the penalty proposed herein. Upon request,
26 the Presiding Officer may hold a hearing for the assessment of these civil penalties, conducted in
27

1 accordance with the provisions of the Part 22 Rules and the Administrative Procedure Act, 5 U.S.C.
2 § 551 *et seq.* A copy of the Part 22 Rules accompanies this Complaint.

3 32. Respondent's Answer, including any request for hearing, must be in writing and must be
4 filed with:

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

8 **V. FAILURE TO FILE AN ANSWER**

9 33. To avoid a default order being entered pursuant to 40 C.F.R. § 22.17, Respondent must
10 file a written Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days after
11 service of this Complaint.

12 34. In accordance with 40 C.F.R. § 22.15, Respondent's Answer must clearly and directly
13 admit, deny, or explain each of the factual allegations contained in this Complaint with regard to
14 which Respondent has any knowledge. Respondent's Answer must also state: (1) the circumstances
15 or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent
16 intends to place at issue; and (3) whether a hearing is requested. Failure to admit, deny, or explain
17 any material factual allegation contained herein constitutes an admission of the allegation.

18 **VI. INFORMAL SETTLEMENT CONFERENCE**

19 35. Whether or not Respondent requests a hearing, Respondent may request an informal
20 settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of
21 settling this matter. To request such a settlement conference, Respondent should contact:

22 Ciannat Howett
23 Assistant Regional Counsel
24 U.S. Environmental Protection Agency, Region 10
25 1200 Sixth Avenue, Mail Stop ORC-158
26 Seattle, Washington 98101
27 (206) 553-7359

1 Note that a request for an informal settlement conference does not extend the thirty (30) day period
2 for filing a written Answer to this Complaint, nor does it waive Respondent's right to request a
3 hearing.

4 **VII. RESERVATIONS**

5 36. Neither assessment nor payment of an administrative civil penalty pursuant to this
6 Complaint shall affect Respondent's continuing obligations to comply with: (1) the Clean Water Act
7 and all other environmental statutes; (2) the terms and conditions of all applicable Clean Water Act
8 permits; and (3) any Compliance Order issued to Respondent under Section 309(a) of the Act, 33
9 U.S.C. § 1319(a), concerning the violations alleged herein.

10 **VIII. QUICK RESOLUTION AND SETTLEMENT**

11 37. In accordance with Section 22.18 of the Consolidated Rules of Practice, Respondent may
12 resolve this action at any time after ten (10) days following the close of public comment on this
13 Complaint by mailing the proposed penalty in full to:

14 EPA Region 10 Hearing Clerk
15 P.O. Box 360903M
Pittsburgh, Pennsylvania 15251-6903

16 38. Respondent is advised that, after the Complaint is issued, the Consolidated Rules of
17 Practice prohibit any *ex parte* (unilateral) discussion of the merits of these or any other factually
18 related proceedings with the Administrator, the Environmental Appeals Board or its members, the
19 Regional Administrator, the Regional Judicial Officer, the Presiding Officer, or any other person
20 who is likely to advise these officials in the decision on the case.

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22 Dated this 7th day of March, 2001

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24 Randall F. Smith
25 Director
26 Office of Water

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CERTIFICATE OF SERVICE

I certify that the foregoing "Complaint" was sent to the following persons, in the manner specified, on the date below:

Original and one copy, hand-delivered:

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

~~Copy, together with a cover letter and copy of the Part 22 Rules, by certified mail, return receipt requested:~~

RMMTM Corporation, Registered Agent
Wards Cove Packing Company
2 Union Square Suite 4800
Seattle, Washington 98101

Alec W. Brindle, President
Wards Cove Packing Company
88 East Hamlin Street
Seattle, Washington 98105-0030

Larry G. Elliot, Superintendent
Wards Cove Packing Company d.b.a. E.C. Phillips and Son
1775 Tongass Avenue
Ketchikan, Alaska 99901

Dated: March 7, 2001

Melissa L. Whitaker
Melissa Whitaker
U.S. EPA Region 10