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HEARINGS CLERK  
EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: )  
) DOCKET NO. CWA-10-2017-0113  
)  
)  
NORTON SOUND ECONOMIC )  
DEVELOPMENT CORPORATION ) **CONSENT AGREEMENT AND**  
d/b/a NORTON SOUND SEAFOOD ) **FINAL ORDER**  
PRODUCTS )  
)  
Nome, Alaska )  
)  
)  
Respondent. )

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**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(B) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. Pursuant to Sections 309(g)(1) and 309(g)(2) of the CWA, 33 U.S.C. §§ 1319(g)(1) and (g)(2), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Norton Sound Economic Development Corporation (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

**In the Matter of: Norton Sound Economic Development Corporation d/b/a Norton Sound Seafood Products  
Docket Number: CWA-10-2017-0113  
Consent Agreement and Final Order  
Page 1 of 10**

**U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900, ORC-158  
Seattle, Washington 98101  
(206) 553-1037**

## II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant") has been delegated the authority pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA together with the specific provisions of the CWA and the implementing regulations that Respondent is alleged to have violated.

## III. ALLEGATIONS

3.1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States by any person, except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

3.2. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of any pollutant into the waters of the United States upon such specific terms and conditions as the Administrator may prescribe.

3.3. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides that a State may seek authorization to administer its own program for discharges into navigable waters within its jurisdiction.

3.4 In 2008, EPA approved the State of Alaska Department of Environmental Conservation's ("ADEC's") application to administer the National Pollutant Discharge Elimination System permitting program in the State. 74 Fed. Reg. 66,243 (2008). ADEC refers to the EPA-approved state NPDES program as the Alaska Pollutant Discharge Elimination System ("APDES") program.

3.5 Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines the term "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source." The term "navigable waters" is defined as "waters of the United States." 33 U.S.C. § 1362(7). CWA Section 502(6), 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter alia*, solid waste, biological materials, and industrial waste. 40 C.F.R. § 122.2 defines "waters of the United States" to include waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters; and tributaries to those waters.

3.6 Respondent is a non-profit corporation duly organized and existing pursuant to the laws of the State of Alaska. Respondent is thus a "person" under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.7 Respondent owns and operates a seafood processing plant in Nome, Alaska, under the name "Norton Sound Seafood Products" (the "Facility"). The Facility typically operates from July through September each year, processing red king crab, halibut, and salmon.

3.8 After the Facility submitted a Notice of Intent ("NOI") to discharge wastewater associated with seafood processing, EPA issued coverage under the Seafood Processors in Alaska Permit, AKG520000 (the "Permit") on April 12, 2002. The authorization number is AKG520531. On September 1, 2006, EPA administratively extended coverage under the Permit. The Permit contains discharge limitations and other measures to protect water quality.

3.2 Part IV.A.5 of the Permit requires that permittees submit an updated and amended NOI when there is any material change in the information submitted within the original NOI.

3.3 In 2016, the Facility submitted an NOI to ADEC that listed one outfall. This 2016 NOI is the same NOI that the Facility submitted in 2015 and is dated June 30, 2015.

3.4 The Facility discharges seafood processing waste and other pollutants from the outfall listed in the 2016 NOI to the Snake River. This outfall is a "point source" as defined in 40 C.F.R. § 122.2.

3.5 The Facility also has a tote-cleaning area with a separate outfall. The totes are used, in part, to transfer seafood at the Facility. The totes are cleaned using an all-purpose cleaner and a sanitizer in the tote-cleaning area. Wastewater from the tote-cleaning area is discharged through a drain directly to the Snake River. This outfall is a "point source" as defined in 40 C.F.R. § 122.2. This outfall is not listed in the 2016 NOI.

3.6 The Snake River is subject to the ebb and flow of the tide and flows into Norton Sound. Norton Sound is within the territorial seas and is susceptible to use in interstate and foreign commerce. As such, the Snake River is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and is a "water of the United States" as defined in 40 C.F.R. § 122.2.

3.7 By discharging wastewater containing pollutants from the Facility into waters of the United States, Respondent engaged in the "discharge of pollutants" from point sources within the meaning of CWA Sections 301(a) and 502(13), 33 U.S.C. §§ 1311(a) and 1362(12).

3.8 Part VI.B of the Permit requires that permittees submit annual reports that include the dates of operation for each processing season. According to Respondent's 2012-2016 annual reports, as originally submitted, the Facility was operating on the following dates: 7/2, 7/4-7/6, 7/8, 7/10-7/13, 7/15-7/17, 7/20-7/24, 7/28, 7/30-8/6, 8/8-8/10, 8/12-13 in 2012; 7/5-9/30 in 2013; 7/1-9/30 in 2014; 7/2-9/8 in 2015; and 6/29-7/3, 7/5-7/17, 7/19-7/22, and 7/29 in 2016. The dates

identified on the 2012-2016 annual reports are hereinafter referred to as the “2012-2016 operating days.”

3.2 Authorized EPA representatives inspected the Facility on July 11, 2016, to determine compliance with Section 301(a) of the Act, 33 U.S.C. § 1311(a), and the Permit.

3.3 At the time of the inspection, the authorized EPA representatives observed or learned of the following violations of the Permit at the Facility:

3.3.1 Failure to conduct daily inspections of the grinder system on the 2012-2016 operating days to confirm that the grinder is operating and reducing the size of the seafood residues to one-half inch or smaller, in violation of Part V.C.1.e of the Permit;

3.3.2 Failure to maintain logs of the daily inspections of the grinder system on the 2012-2016 operating days, in violation of Part V.C.1.e of the Permit;

3.3.3 Failure to maintain logs of the daily monitoring of the sea surface on the 2012-2016 operating days, in violation of Part VI.D.3.a(2) of the Permit;

3.3.4 Failure to maintain logs of the daily monitoring of the shoreline on the 2012-2016 operating days, in violation of Part VI.D.3.b(2) of the Permit;

3.3.5 Failure to maintain logs of the daily visual inspection of the waste conveyance system on the 2012-2016 operating days, in violation of Part V.C.1.d of the Permit;

3.3.6 Failure to reduce the size of the solid wastes discharged from the seafood processing waste conveyance and treatment system to one-half inch or smaller in all dimensions on the date of the inspection, in violation of Part V.C.1.b of the Permit;

3.3.7 Failure to maintain a copy of the Permit at the Facility on the date of the inspection, in violation of Part VII.B of the Permit;

3.3.8 Failure to submit the 2012 Annual Report to ADEC by February 14, 2013, in violation of Part VI.B.4 of the Permit; and

3.3.9 Failure to include the tote-washing-area drain and the all-purpose cleaner and sanitizer that is discharged through it in the 2016 NOI, in violation of Part IV.C.7 of the Permit. Because the Facility did not list the tote-washing-area drain or the all-purpose cleaner and sanitizer in the 2016 NOI, the Facility engaged in an unauthorized discharge from the Facility, in violation of Part II.B.2 of the Permit.

#### IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined that an appropriate penalty to settle this action is \$51,050.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO must be made by a cashier's check or certified check payable to the order of "Treasurer, United States of America" and bearing the notation "OSLTF-311." Payment sent by the U.S. Postal Service shall be addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Teresa Young  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Brian Levo  
Compliance Officer  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-101  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. Interest. Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), if Respondent fails to pay

on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the alleged violation(s) set forth in Part III above.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations set forth in Part III above and waives any right to appeal the Final Order set forth in Part V.

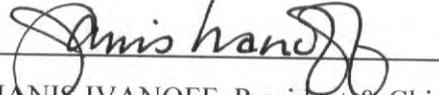
4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

May 24, 2017

FOR RESPONDENT:

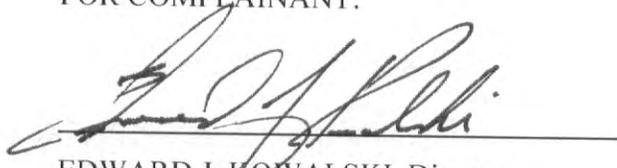


JANIS IVANOFF, President & Chief Executive Officer  
Norton Sound Economic Development Corporation

DATED:

6/5/2017

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10

V. FINAL ORDER

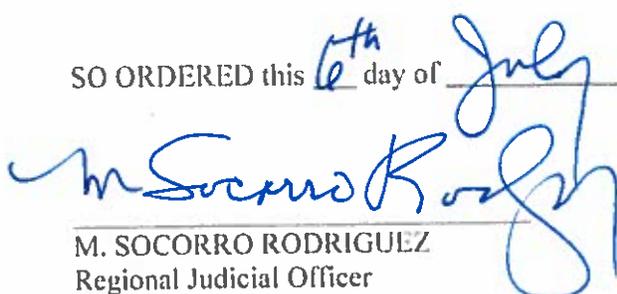
5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

5.3. Pursuant to Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i) and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.4. This Final Order shall become effective upon filing.

SO ORDERED this 6<sup>th</sup> day of July, 2017.

  
M. SOCORRO RODRIGUEZ  
Regional Judicial Officer  
EPA Region 10

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Norton Sound Economic Development Corporation, CWA-10-2017-0113** was filed with the Regional Hearing Clerk and served on the following addressees in the manner and on the date specified below:

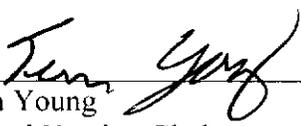
The undersigned certifies that a true and correct copy of the above-described document was delivered to:

Ashley Palomaki  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return to:

Janis Ivanoff, President & Chief Executive Officer  
Norton Sound Economic Development Corporation  
420 L Street, Suite 505  
Anchorage, Alaska 99501

DATED this 10 day of July 2017.

  
\_\_\_\_\_  
Teresa Young  
Regional Hearing Clerk  
EPA Region 10



# Public Notice: Proposed Settlement with Norton Sound Economic Development Corp. for Clean Water Act Violations

## How to Comment

**Comments accepted through:** 06/23/2017

### How to Comment

Written comments may be sent to the Regional Hearing Clerk at the address below within 30 days of the date of this notice. Be sure to include your name and address if you would like a response.

Comments should reference docket number **CWA-10-2017-0113** and be mailed to:

Teresa Young, Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10 (ORC-113)  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101-3140

**Questions?** For additional information, contact Brian Levo ([levo.brian@epa.gov](mailto:levo.brian@epa.gov)) at 206-553-1816.

Publish Date: 05/24/2017

## Summary

EPA is providing notice of a proposed administrative penalty settlement with Norton Sound Economic Development Corporation for violations of the Clean Water Act at its facility located in Nome, Alaska.

EPA alleges that the respondent failed to comply with its National Pollutant Discharge Elimination System (NPDES) Seafood Processors in Alaska general permit (# AKG520531) at its Norton Sound Seafood Products facility. The AKG520531 permit covers discharges of seafood processing waste into the Snake River.

Alleged violations include failure to adequately monitor its grinders, waste conveyance system, the sea surface, and the nearby shoreline; failure to identify the discharge location and chemicals used in their tote washing process; exceeding the dimension requirements for seafood processing waste residues; and failure to complete all reporting and record keeping required under the permit.

This action is being simultaneously commenced and concluded in a Consent Agreement and Final Order. Under the proposed Consent Agreement and Final Order, Norton Sound Economic Development Corporation will pay a civil penalty of \$51,050.

### **Legal authority**

This is a Class II administrative penalty proceeding governed by Section 309(g) (33 U.S.C. § 1319 (g)) of the Clean Water Act and the procedural rules found at 40 CFR Part 22.

The requirements that apply to public comment and participation are set forth in the Clean Water Act Section 309(g)(4) and 40 CFR § 22.45.

### **Applicant or Respondent**

Norton Sound Economic Development Corporation  
201 Belmont St.  
Nome, AK 99762

**Permit #:** NPDES Permit AKG520531

### **Related Documents**

You may need Adobe Reader to view files on this page. See EPA's [About PDF page](#) to learn more.

- [Proposed Consent Agreement and Final Order: Norton Sound Economic Development Corporation dba Norton Sound Seafood Products \(PDF\)](#) (11 pp, 235 K, May 2017)  
Docket number CWA-10-2017-0113

LAST UPDATED ON MAY 23, 2017



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101-3140

MAY 18 2017

OFFICE OF  
COMPLIANCE AND ENFORCEMENT

Reply To: OCE-101

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Ms. Michelle Hale  
Director, Division of Water  
Alaska Department of Environmental Conservation  
410 Willoughby Avenue, Suite 303  
P.O. Box 111800  
Juneau, Alaska 99811

Re: Norton Sound Economic Development Corporation  
Docket Number CWA-10-2017-0113

*Michelle*  
Dear Ms. Hale:

This is to advise you of a penalty action which Region 10 of the U.S. Environmental Protection Agency (EPA) plans to initiate in the State of Alaska. The proposed action will address alleged violations of the Clean Water Act by Norton Sound Economic Development Corporation, located in Nome, Alaska. The proposed action is due in part to an EPA inspection that was conducted at the facility in July 2016.

The EPA is providing notice of this action to the State of Alaska pursuant to Section 309(g)(2) of the Clean Water Act, 33 U.S.C. § 1319(g)(2). Please consider this an opportunity to provide EPA Region 10 with any comments the Alaska Department of Environmental Conservation may have regarding this action. You may find a copy of the public notice of this proposed action when available at:

<https://www.epa.gov/publicnotices/notices-search/location/Alaska>

Any comments or questions you may have regarding this action may be directed to Brian Levo of my staff at (206) 553-1816. Thank you for your assistance in this matter.

Sincerely

Edward I. Kowalski  
Director

cc: Mr. Mike Solter  
Alaska Department of Environmental Conservation