

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

PACIFIC SEAFOOD – WESTPORT, LLC,  
WASHINGTON CRAB PRODUCERS, INC.

Westport, Washington

Respondent.

DOCKET NO. CWA-10-2020-0033

**CONSENT AGREEMENT**

Proceedings Under Section 309(g) of the Clean  
Water Act, 33 U.S.C. § 1319(g)

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), the EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$21,933 per day for each day during which the violation continues, up to a maximum

penalty of \$274,159. *See* 84 Fed. Reg. 2056 (February 6, 2019) (2019 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A) and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Pacific Seafood – Westport, LLC (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement.

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), execution of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (Complainant).

2.3. Part III of this Consent Agreement 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 implementing regulations that Respondent is alleged to have violated.

### III. ALLEGATIONS

#### Statutory and Regulatory Framework

3.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

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

3.3. CWA Section 502(12) defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

3.4. CWA Section 502(6) defines “pollutant” to include, *inter alia*, “solid waste,” “biological materials,” “heat,” and industrial waste discharged into water. 33 U.S.C. § 1362(6).

3.5. CWA Section 502(5) defines “person” to include “an individual, corporation, partnership, [or] association . . . .” 33 U.S.C. § 1362(5).

3.6. CWA Section 502(14) defines “point source” to include, *inter alia*, “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, [or] container . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

3.7. CWA Section 502(7) defines “navigable waters” as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). In turn, “waters of the United States” is and has been defined to include, *inter alia*, all waters which 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; tributaries to such waters; and wetlands

adjacent to the foregoing waters. *See* 40 C.F.R. §§ 122.2 & 110.1 (1993).

3.8. CWA Section 402(b) authorizes EPA to delegate NPDES permitting authority to authorized states. 33 U.S.C. § 1342(b); 40 C.F.R. Part 123.

3.9. EPA transferred NPDES permitting authority for non-federal facilities to the State of Washington in November 1973. Notwithstanding this transfer, EPA retains continuing enforcement authority over NPDES permits under Section 309 of the Clean Water Act.

### **General Allegations**

3.10. Respondent is a limited liability company registered to conduct business in the State of Washington and is a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.11. Respondent owns and operates Washington Crab Producers, a shore-based seafood processing facility that consists of two locations—the Nyhus Street location, which processes shrimp, and the Dock Street location, which processes crab and shrimp. After passing through a rotary screen, process wastewater from both locations comingles with stormwater and flows to an equalization tank at the Dock Street location. The comingled wastewater is treated with dissolved air flotation (DAF), is monitored and sampled at what the Permit (defined below at Paragraph 3.12) identifies as Outfall 001, and is then discharged from the Dock Street location to a municipal sewer manhole where it mixes with the City of Westport’s wastewater discharge. The combined effluent is discharged to Half Moon Bay at the City of Westport’s marine outfall. The Permit’s effluent limits apply to the comingled wastewater that is sampled at Outfall 001 after DAF treatment and before the treated effluent mixes with the City’s wastewater.

3.12. At all times relevant to this action, Respondent was authorized to discharge seafood processing waste from the Facility into Waters of the United States pursuant to NPDES Permit WA0003352 (Permit).

3.13. The Permit was issued by the State of Washington Department of Ecology on

March 10, 2010. The Permit was modified on December 17, 2012 and on September 5, 2014, and expired June 30, 2015. Because Respondent timely applied for a new Permit, its Permit was administratively extended in accordance with 40 C.F.R. § 122.6, and was ultimately reissued on August 27, 2018, effective October 1, 2018.

3.14. Respondent discharges into Half Moon Bay via an outfall identified by the Permit as Outfall 001. Outfall 001 is a “point source” as defined in CWA Section 502(14), 33 U.S.C. § 1362(14).

3.15. Half Moon Bay empties into Grays Harbor, which exchanges water with the Pacific Ocean. Half Moon Bay and Grays Harbor are subject to the ebb and flow of the tide, and Grays Harbor is currently used in interstate or foreign commerce. Accordingly, both waterbodies are “waters of the United States” and are “navigable waters” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.16. Respondent discharged pollutants from a point source into waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

### **Violations**

3.17. The Permit establishes, *inter alia*, discharge limits, as well as monitoring, sampling, and reporting requirements for the Facility.

3.18. On September 14, 2017, EPA conducted an inspection of the Facility to determine compliance with its NPDES Permit and the CWA.

3.19. As described below, a review of the records indicates that from July 2014 through June 2019 Respondent violated CWA Section 301, 33 U.S.C. § 1311, and the conditions and/or limitations of its Permit.

3.20. The United States, on behalf of Complainant entered a tolling agreement with Pacific Seafood – Westport, LLC and Washington Crab Producers to facilitate settlement

negotiations without altering the claims or defenses available to any party. Pursuant to the tolling agreement, the period commencing on April 30, 2019 and ending on June 30, 2020 shall not be included in computing the running of any statute of limitations potentially applicable.

**Count 1 – Effluent Exceedance Violations**

3.21. Part S1.A of the Permit specifies that the daily maximum limit of pH in the effluent shall not be greater than 9.0 standard units (SU). From July 2014 through June 2019, Respondent exceeded the daily maximum limit for pH 9 times, constituting 9 violations of Part S1.A of the Permit. The violations are as follows:

<b>Month of Violation</b>	<b>Pollutant</b>	<b>Permit Limit</b>	<b>Value Reported</b>	<b>Unit</b>
December 2015	pH	9.0	10.1	SU
January 2016	pH	9.0	9.3	SU
February 2016	pH	9.0	9.5	SU
April 2016	pH	9.0	9.3	SU
May 2016	pH	9.0	10.1	SU
June 2016	pH	9.0	10.5	SU
July 2016	pH	9.0	11.7	SU
December 2016	pH	9.0	9.2	SU
October 2018	pH	9.0	11.55	SU

3.22. Part S1.A of the Permit specifies that the daily maximum limit for temperature of the effluent shall not be greater than 16.0°C. From July 2014 through June 2019, Respondent exceeded the daily maximum limit for temperature 4 times, constituting 4 violations of Part S1.A of the Permit. The violations are as follows:

<b>Month of Violation</b>	<b>Pollutant</b>	<b>Permit Limit</b>	<b>Value Reported</b>	<b>Unit</b>
August 2017	Temperature	16.0	17.2	°C
September 2017	Temperature	16.0	18.5	°C
July 2018	Temperature	16.0	16.90	°C
September 2018	Temperature	16.0	16.10	°C

3.23. Part S1.A of the Permit specifies that the daily maximum limit for fecal coliform

in the effluent shall not be greater than 400 Colonies/100mL. From July 2014 through June 2019, Respondent exceeded the daily maximum limit for fecal coliform 13 times, constituting 13 violations of Part S1.A of the Permit. The violations are as follows:

<b>Month of Violation</b>	<b>Pollutant</b>	<b>Permit Limit</b>	<b>Value Reported</b>	<b>Unit</b>
July 2014	Fecal coliform	400	42000	Colonies/100mL
August 2014	Fecal coliform	400	30000	Colonies/100mL
November 2014	Fecal coliform	400	20000	Colonies/100mL
October 2015	Fecal coliform	400	1600	Colonies/100mL
January 2016	Fecal coliform	400	1400	Colonies/100mL
May 2016	Fecal coliform	400	480	Colonies/100mL
July 2016	Fecal coliform	400	6600	Colonies/100mL
August 2016	Fecal coliform	400	600	Colonies/100mL
January 2017	Fecal coliform	400	5500	Colonies/100mL
September 2017	Fecal coliform	400	800	Colonies/100mL
February 2018	Fecal coliform	400	3800	Colonies/100mL
May 2018	Fecal coliform	400	550	Colonies/100mL
February 2019	Fecal Coliform	400	420	Colonies/100mL

3.24. Part S1.A of the Permit specifies that the monthly average limit for fecal coliform in the effluent shall not be greater than 200 Colonies/100mL. From July 2014 through June 2019, Respondent exceeded the monthly average limit for fecal coliform 12 times, constituting 367 violations of the Part S1.A of the Permit.<sup>1</sup> The violations are as follows:

<b>Month of Violation</b>	<b>Pollutant</b>	<b>Permit Limit</b>	<b>Value Reported</b>	<b>Unit</b>
May 2014	Fecal coliform	200	35650	Colonies/100mL
July 2014	Fecal coliform	200	42000	Colonies/100mL
August 2014	Fecal coliform	200	30000	Colonies/100mL
November 2014	Fecal coliform	200	20000	Colonies/100mL
October 2015	Fecal coliform	200	706.7	Colonies/100mL
January 2016	Fecal coliform	200	750	Colonies/100mL
May 2016	Fecal coliform	200	290	Colonies/100mL

<sup>1</sup> Each monthly average limit violation is counted as one violation for every day of the month in which the violation occurred. See U.S. EPA, *Interim Clean Water Act Settlement Penalty Policy* (March 1, 1995).

<b>Month of Violation</b>	<b>Pollutant</b>	<b>Permit Limit</b>	<b>Value Reported</b>	<b>Unit</b>
July 2016	Fecal coliform	200	3349.62	Colonies/100mL
August 2016	Fecal coliform	200	424.26	Colonies/100mL
January 2017	Fecal coliform	200	234.5	Colonies/100mL
September 2017	Fecal coliform	200	282.84	Colonies/100mL
February 2018	Fecal coliform	200	2541.65	Colonies/100mL

3.25. Part S1.A of the Permit specifies variable daily maximum limits for BOD<sub>5</sub> based on daily production. BOD<sub>5</sub> in the effluent shall not be greater than 10 pounds per 1000 pounds of crab processing product and shall not be greater than 155 pounds per 1000 pounds of shrimp processing product daily. From July 2014 through June 2019, Respondent exceeded the daily maximum limit for BOD<sub>5</sub> 9 times, constituting 9 violations of Part S1.A of the Permit. The violations are as follows:

<b>Month of Violation</b>	<b>Pollutant</b>	<b>Permit Limit</b>	<b>Value Reported</b>	<b>Unit</b>
July 2014	BOD <sub>5</sub>	10029	12985	lbs/day
December 2014	BOD <sub>5</sub>	1932	2641	lbs/day
October 2016	BOD <sub>5</sub>	49	120	lbs/day
April 2017	BOD <sub>5</sub>	40	94	lbs/day
October 2017	BOD <sub>5</sub>	41	114	lbs/day
November 2017	BOD <sub>5</sub>	41	136	lbs/day
January 2018	BOD <sub>5</sub>	8	53	lbs/day
October 2018	BOD <sub>5</sub>	75	483	lbs/day
November 2018	BOD <sub>5</sub>	61	130	lbs/day

3.26. Part S1.A of the Permit specifies variable monthly average limits for BOD<sub>5</sub> based on monthly production. BOD<sub>5</sub> in the effluent shall not be greater than 4.1 pounds per 1000 pounds of crab processing product and shall not be greater than 62 pounds per 1000 pounds of shrimp processing product monthly. From July 2014 through June 2019, Respondent exceeded the monthly average limit for BOD<sub>5</sub> 18 times, constituting 549 violations of Part S1.A of the Permit. The violations are as follows:



Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
July 2014	BOD <sub>5</sub>	4013	12985	lbs/day
August 2014	BOD <sub>5</sub>	3468	8177	lbs/day
September 2014	BOD <sub>5</sub>	3298	5728	lbs/day
October 2014	BOD <sub>5</sub>	3259	5013	lbs/day
November 2014	BOD <sub>5</sub>	3651	4593	lbs/day
December 2014	BOD <sub>5</sub>	744	1264	lbs/day
October 2016	BOD <sub>5</sub>	116	114	lbs/day
November 2016	BOD <sub>5</sub>	266	480	lbs/day
February 2017	BOD <sub>5</sub>	736	876	lbs/day
March 2017	BOD <sub>5</sub>	41	95	lbs/day
April 2017	BOD <sub>5</sub>	33	81	lbs/day
October 2017	BOD <sub>5</sub>	23	87	lbs/day
November 2017	BOD <sub>5</sub>	15	137	lbs/day
December 2017	BOD <sub>5</sub>	17	29	lbs/day
January 2018	BOD <sub>5</sub>	19	37	lbs/day
March 2018	BOD <sub>5</sub>	121	147	lbs/day
October 2018	BOD <sub>5</sub>	25	224	lbs/day
November 2018	BOD <sub>5</sub>	32	102	lbs/day

3.27. Part S1.A of the Permit specifies variable daily maximum limits for Total Suspended Solids (TSS) based on daily production. TSS in the effluent shall not be greater than 1.7 pounds per 1000 pounds of crab processing product and shall not be greater than 38 pounds per 1000 pounds of shrimp processing product daily. From July 2014 through June 2019, Respondent exceeded the daily maximum limit for TSS 13 times, constituting 13 violations of Part S1.A of the Permit. The violations are as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
July 2014	TSS	2449	3736	lbs/day
April 2016	TSS	9	59	lbs/day
October 2016	TSS	8	112	lbs/day
November 2016	TSS	209	226	lbs/day
March 2017	TSS	17	65	lbs/day
April 2017	TSS	7	37	lbs/day
October 2017	TSS	12	22	lbs/day
November 2017	TSS	5	116	lbs/day

<b>Month of Violation</b>	<b>Pollutant</b>	<b>Permit Limit</b>	<b>Value Reported</b>	<b>Unit</b>
December 2017	TSS	5	14	lbs/day
January 2018	TSS	7	76	lbs/day
October 2018	TSS	13	36	lbs/day
March 2018	TSS	31	37	lbs/day
November 2018	TSS	16	21	lbs/day

3.28. Part S1.A of the Permit specifies variable monthly average limits for TSS based on monthly production. TSS in the effluent shall not be greater than 0.69 pounds per 1000 pounds of crab processing product and shall not be greater than 15 pounds per 1000 pounds of shrimp processing product monthly. From July 2014 through June 2019, Respondent exceeded the monthly average limit for TSS 22 times, constituting 670 violations of Part S1.A of the Permit. The violations are as follows:

<b>Month of Violation</b>	<b>Pollutant</b>	<b>Permit Limit</b>	<b>Value Reported</b>	<b>Unit</b>
July 2014	TSS	966	3736	lbs/day
August 2014	TSS	834	1896	lbs/day
September 2014	TSS	792	1824	lbs/day
October 2014	TSS	768	2412	lbs/day
November 2014	TSS	881	2109	lbs/day
December 2015	TSS	1298	1580	lbs/day
April 2016	TSS	4	34	lbs/day
October 2016	TSS	20	106	lbs/day
November 2016	TSS	45	99	lbs/day
December 2016	TSS	4	5	lbs/day
March 2017	TSS	7	65	lbs/day
April 2017	TSS	5	25	lbs/day
October 2017	TSS	4	18	lbs/day
November 2017	TSS	2	124	lbs/day
December 2017	TSS	3	13	lbs/day
January 2018	TSS	3	39	lbs/day
March 2018	TSS	20	34	lbs/day
July 2018	TSS	873	1094	lbs/day
October 2018	TSS	4	22	lbs/day
November 2018	TSS	5	19	lbs/day
December 2018	TSS	33	40	lbs/day

<b>Month of Violation</b>	<b>Pollutant</b>	<b>Permit Limit</b>	<b>Value Reported</b>	<b>Unit</b>
February 2019	TSS	19	31	lbs/day

3.29. Part S1.A of the Permit specifies variable daily maximum limits for oil and grease (O & G) based on daily production. O & G in the effluent shall not be greater than 0.25 pounds per 1000 pounds of crab processing product and shall not be greater than 14 pounds per 1000 pounds of shrimp processing product daily. From July 2014 through June 2019, Respondent exceeded the daily maximum limit for O & G 13 times, constituting 13 violations of Part S1.A of the Permit. The violations are as follows:

<b>Month of Violation</b>	<b>Pollutant</b>	<b>Permit Limit</b>	<b>Value Reported</b>	<b>Unit</b>
July 2014	O & G	897	2751	lbs/day
April 2016	O & G	2	3	lbs/day
October 2016	O & G	1	14	lbs/day
December 2016	O & G	1	3	lbs/day
January 2017	O & G	1	11	lbs/day
March 2017	O & G	2	18	lbs/day
April 2017	O & G	1	19	lbs/day
October 2017	O & G	1	2	lbs/day
November 2017	O & G	1	16	lbs/day
December 2017	O & G	1	4	lbs/day
January 2018	O & G	1	4	lbs/day
October 2018	O & G	2	5	lbs/day
November 2018	O & G	2	4	lbs/day

3.30. Part S1.A of the Permit specifies variable monthly average limits for oil and grease based on monthly production. Oil and grease in the effluent shall not be greater than 0.1 pounds per 1000 pounds of crab processing product and shall not be greater than 5.7 pounds per 1000 pounds of shrimp processing product monthly. From July 2014 through June 2019, Respondent exceeded the monthly average limit for oil and grease 18 times, constituting 552 violations of Part S1.A of the Permit. The violations are as follows:

<b>Month of Violation</b>	<b>Pollutant</b>	<b>Permit Limit</b>	<b>Value Reported</b>	<b>Unit</b>
July 2014	O & G	365	2751	lbs/day
August 2014	O & G	315	1535	lbs/day
September 2014	O & G	297	350	lbs/day
October 2014	O & G	281	912	lbs/day
April 2016	O & G	1	2	lbs/day
July 2016	O & G	451	780	lbs/day
August 2016	O & G	538	579	lbs/day
October 2016	O & G	3	9	lbs/day
November 2016	O & G	6	13	lbs/day
December 2016	O & G	1	4	lbs/day
March 2017	O & G	1	18	lbs/day
April 2017	O & G	1	11	lbs/day
October 2017	O & G	1	2	lbs/day
November 2017	O & G	0	15	lbs/day
December 2017	O & G	0	4	lbs/day
January 2018	O & G	0	3	lbs/day
October 2018	O & G	1	4	lbs/day
November 2018	O & G	1	4	lbs/day

### **Count 2 – Monitoring Violations**

3.31. Part S2.A of the Permit specifies that the minimum sampling frequency for final wastewater effluent samples at Outfall 001 is twice monthly for all contaminant parameters. Discharge Monitoring Reports (DMRs) from July 2016 through June 2017 indicate that in February, May, and June 2017, Respondent sampled all parameters only once, constituting 3 violations of Part S2.A of the Permit.

3.32. Part S2.A of the Permit specifies that the minimum sampling frequency for “flow” at Outfall 001 is “continuous.” Footnote a to Part S2.A provides, in relevant part, that continuous means “uninterrupted except for brief lengths of time for calibration, power failure, or unanticipated equipment repair or maintenance. The Permittee must sample weekly when continuous monitoring is not possible.” The inspector reviewed 12 DMRs. DMRs indicate that Respondent frequently omitted flow measurements on weekends and holidays and failed to

record flow measurement on 176 days between July 2016 and July 2017. Respondent's failure to record flow data daily for each of the 12 months reviewed constitutes 12 violations of Part S2.A of the Permit.

### **Count 3 – Sampling Violations**

3.33. Part S2.B of the Permit specifies that sampling and analytical methods “used to meet the water and wastewater monitoring requirements specified in [the] permit shall conform to the latest revision of the *Guidelines Establishing Test Procedures for the Analysis of Pollutants*” contained in 40 C.F.R. Part 136 or to the latest revision of *Standard Methods for the Examination of Water and Wastewater* (APHA), unless otherwise specified in this permit or approved in writing by the Department of Ecology.” 40 C.F.R. Part 136, Table II specifies that the preservation temperature for samples of BOD<sub>5</sub> and TSS is  $\leq 6^{\circ}\text{C}$ . 40 C.F.R. Part 136, Table II specifies that the maximum holding time for fecal coliform is 8 hours.

3.34. Records indicate that because Respondent failed to use a temperature-controlled composite sampler, the sample temperature was not maintained at  $\leq 6^{\circ}\text{C}$  as required by 40 C.F.R. Part 136, Table II in violation of Part S2.B of the Permit. Records indicate that because Respondent shipped the samples to a laboratory via an overnight service, samples were not analyzed within the 8-hour maximum holding time in violation of Part S2.B of the Permit. Respondent's failure to control sample temperature and analyze samples within the maximum holding time constitutes one violation of Part S2.B of the Permit.

3.35. Part S2.B of the Permit specifies that samples and measurements “taken to meet the requirements of this permit shall be representative of the volume and nature of the monitored parameters, including representative sampling of any unusual discharge or discharge condition, including bypasses, upsets and maintenance-related conditions affecting effluent quality.” Part S2.B of the Permit additionally specifies that sampling and analytical methods “used to meet the

water and wastewater monitoring requirements specified in [the] permit shall conform to the latest revision of the *Guidelines Establishing Test Procedures for the Analysis of Pollutants*” contained in 40 C.F.R. Part 136 or to the latest revision of *Standard Methods for the Examination of Water and Wastewater* (APHA), unless otherwise specified in this permit or approved in writing by the Department of Ecology.”

3.36. Section 8.1 of EPA Standard Method 1664, Revision B specifies that the individual collecting the sample must “collect approximately one liter of representative sample in a glass bottle following conventional sampling practices.” Section 3 of EPA Standard Method 5520, specifies that the individual collecting the sample must “collect a representative sample in a wide-mouth glass bottle.” Standard Method 9060A for the Examination of Water and Wastewater, an approved method under 40 C.F.R. 136, specifies that samples for microbiological examinations shall be collected in sterile containers.

3.37. Respondent collected oil and grease samples through the hose of the effluent sampler, not through an approved sampling method in violation of Part S2.B of the Permit. Respondent collected fecal samples through the hose of the effluent sampler. Because the effluent sampler tube is not sterile, sampling through the hose of the effluent sampler is not an approved sampling method and violates Part S2.B of the Permit. Respondent’s failure to collect samples through approved sampling methods constitutes one violation of Part S2.B of the Permit.

#### **Count 4 – Reporting Violations**

3.38. Part S3.A of the Permit specifies that monitoring results “shall be submitted monthly” and that monitoring data summarized and reported must “be received or postmarked no later than the 15th day of the month following the completed monitoring period, unless otherwise specified in this permit.” DMR forms “must be submitted monthly whether or not the facility

was discharging.” During any monitoring period that the facility was not operating or discharging, a DMR form must be submitted as required with the words “no discharge” entered in place of the monitoring results. DMRs from July 2014 through June 2019 indicate that Respondent submitted 18 incomplete DMRs and 6 late DMRs, constituting 24 violations of the Part S3.A of the Permit.

#### **IV. TERMS OF SETTLEMENT**

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement.

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

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), the EPA has taken into account “the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.” After considering all of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$190,000.

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 within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check

or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

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, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10

Compliance Officer at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101  
[young.teresa@epa.gov](mailto:young.teresa@epa.gov)

Raymond Andrews  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 20-C04  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101  
[andrews.raymond@epa.gov](mailto:andrews.raymond@epa.gov)

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement 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.

a. Interest. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), 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.

b. Attorney's Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), 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) attorney's 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 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 Consent Agreement 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 Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.b., above, each party shall bear its own costs in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

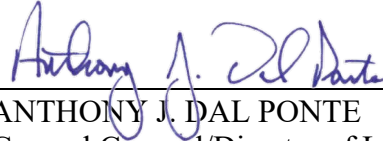
4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

May 4, 2020

FOR RESPONDENT:



ANTHONY J. DAL PONTE  
General Counsel/Director of Legal &  
Government Affairs  
Pacific Seafood – Westport, LLC

DATED:

\_\_\_\_\_

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director  
Enforcement and Compliance Assurance Division  
EPA Region 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

PACIFIC SEAFOOD – WESTPORT, LLC,  
WASHINGTON CRAB PRODUCERS

Westport, Washington

Respondent.

DOCKET NO. CWA-10-2020-0033

**FINAL ORDER**

Proceedings Under Section 309(g) of the Clean  
Water Act, 33 U.S.C. § 1319(g)

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.
2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.
3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order 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.

4. This Final Order shall become effective upon filing.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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RICHARD MEDNICK  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10