



## II. ALLEGATIONS

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

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

5. Respondent owns and operates the Wards Cove Packing, Co. d/b/a Ward Cove Cannery, facility located at 5961 North Tongass Highway, Ketchikan, Alaska 99901 ("Facility").

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

7. Respondent is authorized to discharge pollutants from the Facility under General NPDES Permit No. AK-G52-0060 ("Permit"). The Permit became effective on August 4, 1995, expired on August 4, 2000, and is currently administratively extended.

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

9. The Facility, which was under Respondent's control at all times relevant to this action, discharged pollutants from its seafood process waste outfall ("Outfall") and other discrete conveyances. The Outfall and these other discrete conveyances are each considered a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

10. The Facility, which was under Respondent's control at all times relevant to this action, discharged pollutants from the Outfall and other discrete conveyances to Ward Cove which is "waters of the United States," as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7).

11. Part V.C.1.f.(5) of the Permit states that Respondent shall not discharge seafood sludge, deposits, debris, scum, floating solids, oily wastes, or foam which alone or in combination with other substances cause a scum, emulsion, sludge, or solid to be deposited on the bottom.

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

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

6 14. Part V.C.1.b of the Permit also states that the waste solids discharged from the end of  
7 pipe shall not exceed one-half (0.5) inch in any dimension.

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

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

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

17 18. On July 14, 2000, EPA conducted an NPDES inspection of the Facility including the  
18 Facility, the Outfall, and the area surrounding the Outfall.

19 19. During the July 14, 2000 inspection, the EPA inspector observed that Respondent  
20 discharged wastewater that contained seafood sludge, deposits, debris, scum, floating solids, oily  
21 wastes, or foam which alone or in combination with other substances cause a scum, emulsion,  
22 sludge, or solid to be deposited on the bottom.

23 20. During the July 14, 2000 inspection, the EPA inspector observed that Respondent failed  
24 to route all seafood process wastes through a waste-handling system.

25 21. During the July 14, 2000 inspection, the EPA inspector observed that Respondent failed  
26 to properly operate and maintain all facilities and systems of treatment and control (and related  
27 appurtenances) that were installed or used by Respondent to achieve compliance.

1 22. During the July 14, 2000 inspection, the EPA inspector observed that Respondent  
2 discharged seafood process waste with dimensions greater than one-half (0.5) inch.

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

7 24. During the July 14, 2000 inspection, the EPA inspector observed that Respondent  
8 discharged wastewaters that contained foam, floating solids, grease, or oily wastes which produced a  
9 sheen on the water surface.

10 25. The violations alleged in paragraph 19 through 24 above, observed during the July 14,  
11 2000 inspection, and violation of the permit requirement in paragraph 17 above, together constitute  
12 at least seven violations in one day of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

13 26. For the violations described above, under Section 309(g)(2)(B) of the Act and the Debt  
14 Collection Improvement Act of 1996, 31 U.S.C. § 3701, Respondent is liable for the administrative  
15 assessment of civil penalties in an amount not to exceed \$11,000 per day for each day during which a  
16 violation continues, up to a maximum of \$137,500.

### 17 **III. PROPOSED PENALTY**

18 27. Based on the foregoing authorities and allegations, Complainant hereby proposes to issue  
19 a Final Order assessing administrative penalties against Respondent, for the violations cited above,  
20 in the amount not to exceed SEVENTY SEVEN THOUSAND DOLLARS (\$77,000).

21 28. In accordance with Section 22.14 of the Part 22 Rules, 40 C.F.R. § 22.14(a)(4)(ii), this  
22 Complaint does not include a specific penalty demand. Pursuant to Section 309(g)(3) of the Act, 33  
23 U.S.C. § 1319(g)(3), EPA must determine the specific penalty to be assessed in this matter by taking  
24 into account the nature, circumstances, extent, and gravity of the violation, and, with respect to  
25 Respondent, ability to pay, prior history of violations, degree of culpability, economic benefit and  
26 savings (if any) resulting from the violation, and such other matters as justice may require.

1           29. The nature, circumstances, extent, and gravity of the violations described above are  
2 significant. Respondent's failure to route all seafood process waste through the waste-handling  
3 system and its failure to properly maintain all facilities and systems of treatment and control that are  
4 installed or used to achieve compliance resulted in the deposition of seafood waste on the sea floor.  
5 Settleable materials which blanket the bottom of water bodies damage the invertebrate populations,  
6 and remove dissolved oxygen from overlying waters. The presence of foam and floating solids  
7 causing scum on the surface of a water body can increase turbidity. Turbid water caused by foam  
8 and floating solids causing scum has the potential to decrease the depth of light penetration into the  
9 water body, thereby reducing the depth of the photic zone. This reduces primary production and  
10 decreases fish food. Additionally, with the increase in turbidity, the near-surface waters are heated  
11 because of the greater heat absorbency of the particulate material which tends to stabilize the water  
12 column and prevent vertical mixing. Such mixing reductions decrease the dispersion of dissolved  
13 oxygen and nutrients to lower portions of the water body. Turbid water, caused by foam and floating  
14 solids causing scum, also interferes with recreational use and aesthetic enjoyment of water. The  
15 violation related to the discharge of seafood waste in excess of one-half (0.5) inch in any dimension  
16 is a violation of the technology-based effluent limit for processors under this Permit. The Permit  
17 requires the least stringent technology-based effluent limitations in the U.S. seafood processing  
18 industry.

19           30. Based on the information available to EPA regarding Respondent's financial condition,  
20 Respondent appears able to pay a civil penalty of up to \$77,000. Should Respondent submit  
21 information substantiating an inability to pay this amount, the specific assessed penalty will be  
22 adjusted to reflect this inability.

23           31. Respondent's degree of culpability is high. Respondent's culpability is shown by the  
24 number of violations found in just a one-day inspection.

25           32. By delaying the costs associated with properly operating and maintaining all facilities  
26 and systems of treatment and control installed or used to achieve compliance and failing to route all  
27 seafood process waste through the waste-handling system, Respondent realized an economic benefit  
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1 as a result of the violations alleged above. In addition, Respondent realized an economic benefit  
2 from failing to use de-foaming agents, proper operation and maintenance of grinders, or other  
3 methods to ensure compliance with the permit provisions listed above.

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

5 33. Respondent has the right to file an Answer requesting a hearing on any material fact  
6 contained in this Complaint or on the appropriateness of the penalty proposed herein. Upon request,  
7 the Presiding Officer may hold a hearing for the assessment of these civil penalties, conducted in  
8 accordance with the provisions of the Part 22 Rules and the Administrative Procedure Act, 5 U.S.C.  
9 § 551 *et seq.* A copy of the Part 22 Rules accompanies this Complaint.

10 34. Respondent's Answer, including any request for hearing, must be in writing and must be  
11 filed with:

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

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

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

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

1 **VI. INFORMAL SETTLEMENT CONFERENCE**

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

5 Ciannat Howett  
6 Assistant Regional Counsel  
7 U.S. Environmental Protection Agency, Region 10  
8 1200 Sixth Avenue, Mail Stop ORC-158  
9 Seattle, Washington 98101  
10 (206) 553-7359

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

14 **VII. RESERVATIONS**

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

20 **VIII. QUICK RESOLUTION AND SETTLEMENT**

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

24 EPA Region 10 Hearing Clerk  
25 P.O. Box 360903M  
26 Pittsburgh, Pennsylvania 15251-6903





1 **CERTIFICATE OF SERVICE**

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

4 Original and one copy, 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, together with a cover letter and copy of the Part 22 Rules, by certified mail, return receipt  
10 requested:

11 RMMTM Corporation, Registered Agent  
12 Wards Cove Packing Company  
13 2 Union Square Suite 4800  
14 Seattle, Washington 98101

15 Alec W. Brindle, President  
16 Wards Cove Packing Company  
17 88 East Hamlin Street  
18 Seattle, Washington 98105-0030

19 David Forbush, Jr., Facility Manager  
20 Wards Cove Packing Company  
21 5961 Tongass Highway  
22 Ward Cove, Alaska 99928

23 Dated: February 27, 2007

24 Melissa L. Whitaker  
25 Melissa Whitaker  
26 U.S. EPA Region 10  
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