

**POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON**

PACIFIC SEAFOOD WESTPORT, LLC,

Appellant,

v.

WASHINGTON STATE
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 22-041

STIPULATED MOTION TO
DISMISS WITH PREJUDICE

Respondent, State of Washington, Department of Ecology, by and through its attorneys Robert W. Ferguson, Attorney General, and Alexandria Doolittle and Kelly T. Wood, Assistant Attorneys General, and Appellant, Pacific Seafood Westport, LLC, by and through its attorneys, Stoel Rives LLP and Beth S. Ginsberg, hereby submit this stipulated Motion to Dismiss.

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1 Based upon the attached Settlement Agreement, hereby incorporated by reference, the
2 parties move under WAC 371-08-440 for the Board to dismiss this appeal with prejudice.

3 RESPECTFULLY SUBMITTED this 28th day of June, 2022.
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5 ROBERT W. FERGUSON
6 Attorney General

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8 ALEXANDRIA DOOLITTLE, WSBA #36332
9 KELLY T. WOOD, WSBA #40067
10 Assistant Attorneys General
alex.doolittle@atg.wa.gov
11 kelly.wood@atg.wa.gov
360-586-6769
12 Attorneys for Respondent
State of Washington, Department of Ecology
13 PO Box 40117
Olympia WA 98504-0117
14

15 STOEL RIVES, LLP

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17 BETH S. GINSBERG, WSBA #18523
18 Attorney for Appellant
Pacific Seafood Westport, LLC
206-624-0900
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POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

PACIFIC SEAFOOD WESTPORT, LLC,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 22-041

SETTLEMENT AGREEMENT

Respondent, State of Washington, Department of Ecology (Ecology), represented by Robert W. Ferguson, Attorney General and Alex Doolittle and Kelly Wood, Assistant Attorneys General, and Appellant, Pacific Seafood Westport, LLC, represented by counsel, Beth Ginsberg, hereby submit this Settlement Agreement to the Pollution Control Hearings Board as a full and final settlement of the above-referenced appeal, and request that the Board dismiss the appeal with prejudice.

I. BACKGROUND

1. Pacific Seafood Westport, LLC (Westport) operates a seafood processing facility that discharges wastewater to a location known as Half Moon Bay in Grays Harbor, Washington.

2. The wastewater discharged is authorized subject to the effluent limitations, monitoring and reporting requirements, terms, and conditions outlined in National Pollutant Discharge Elimination System (NPDES) Permit Number WA0003352 (Permit).

1 3. On January 12, 2022, Ecology issued Notice of Violation No. 20954 outlining
2 53 violations to the Permit that occurred between the dates of November 2019 and November
3 2021. Those violations were based on Westport exceeding allowable effluent limits and not
4 complying with the monitoring requirements established in the Permit.

5 4. In a letter to Ecology dated February 11, 2022, Westport outlined challenges
6 they purport to have faced during the COVID-19 pandemic, including issues related to supply-
7 chain, staffing, and workforce safety. Westport stated that these challenges existed from
8 November 2019 through November 2021.

9 5. On April 13, 2022, Ecology issued a Notice of Penalty No. 21071 to Westport
10 in the amount of \$123,000 for 49 of the violations listed in Notice of Violation No. 20954
11 between the months of April 2020 through November 2021.

12 6. On April 28, 2022, Westport appealed Notice of Penalty No. 21071.

13 7. Ecology and Westport have agreed to resolve the appeal of Notice of Penalty
14 No. 21071 through the agreement outlined below.

15 **II. SETTLEMENT AGREEMENT**

16 The parties to this Agreement, which include Pacific Seafood Westport, LLC, and the
17 Department of Ecology, wish to avoid the time and cost of further litigation of this matter, and
18 therefore, stipulate and agree as follows:

19 **A. SCOPE**

20 This Agreement constitutes the entire agreement between the parties to this appeal, and
21 resolves all issues raised by Notice of Penalty No. 21071. Ecology agrees to deem this Penalty
22 resolved upon Westport's satisfactory and timely completion of their obligations under this
23 Agreement. This Agreement applies only to Notice of Penalty No 21071 and does not in any
24 way limit Ecology's authority to issue other penalties or enforcement actions for violations that
25 are not addressed here, nor does it affect Westport's right to appeal any other penalties or
26 enforcement actions so issued.

1 **B. RESOLUTION**

2 Ecology agrees to hold in abeyance \$30,750.00 of the \$123,000.00 penalty amount
3 pending Westport's compliance with the following conditions:

4 1. Within 30 days of the execution of this Agreement, Westport agrees to pay to
5 Ecology the remaining \$92,250.00 due under Penalty No. 21071.

6 2. Westport agrees not to commit further violations of its Permit for a period of
7 twelve (12) months, beginning on the date of the execution of this Agreement.

8 3. Westport agrees to execute a Confession of Judgment in favor of Ecology in the
9 amount of \$30,750.00 for Ecology to hold, enter, and/or return pursuant to this Agreement. A
10 copy of the original Confession of Judgment is attached to this Agreement as Attachment A.

11 Ecology shall hold and not present for entry the original executed Confession of
12 Judgment for a period of twelve (12) months following the date of execution of this Agreement.
13 After the expiration of that 12 months period, Ecology shall waive the \$30,750.000 unless
14 Westport commits a violation of any requirement of the Permit. In that event, the \$30,750
15 balance shall be due to Ecology within 30 days of the filing of the discharge monitoring report
16 documenting the violation. Should Westport fail to deliver payment within such time period,
17 Ecology shall be entitled to file the original Confession of Judgment with the Thurston County
18 Superior Court, seek to obtain a judgment, and pursue collection on the same pursuant to
19 Chapter 4.60 RCW. Upon entry, the Confession of Judgment shall bear interest at the rate of
20 eight (8) percent per annum.

21 Not less than thirty (30) days prior to presentment and entry of the Confession of
22 Judgment, Ecology shall provide written notice to Westport of Ecology's determination of
23 default and intent to present and enter said judgment. Westport shall then have the right to
24 exercise any available remedies as provided in Paragraph II.C.
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1 **C. REMEDIES**

2 By entering into this Agreement, Westport waives its right of administrative or judicial
3 review on the underlying merits of the Penalty. However, Westport does not waive its right to
4 contest whether violations of this Settlement Agreement have occurred.

5 **D. VENUE**

6 The parties agree that the venue for any judicial action to enforce this Agreement and/or
7 to collect the Penalty, or any portion thereof, shall be in Thurston County Superior Court.

8 **E. PRESS RELEASES AND OTHER DOCUMENTS**

9 Any document prepared by Westport related to this settlement, such as a press release,
10 shall be identified as resulting from a settlement with Ecology. In addition, any sum paid to a
11 third party, not a party to this Agreement, as a result of this Agreement, shall be identified as
12 resulting from a settlement with Ecology in any public statement.

13 **F. TAX CREDIT DISALLOWED**

14 Westport shall not deduct or credit against taxes due or payable any monies paid as cash
15 payments, nor otherwise receive any tax benefits from payment of monies as cash payments
16 under this Agreement.

17 **G. WAIVER OF APPEAL RIGHTS**

18 Westport understands that they have the right to contest Notice of Penalty No. 21071 by
19 presenting evidence at a Board hearing. Westport voluntarily waives their right to a hearing upon
20 signature and acceptance of this Agreement by representatives of Westport and Ecology.

21 **H. RELEASE OF LIABILITY**

22 Westport and their heirs, assigns, or other successors in interest, agree to release and
23 discharge the Department of Ecology and its officers, agents, employees, agencies and
24 departments from any damages and causes of action of any nature arising out of the incidents
25 that gave rise to this appeal.
26

1 **I. DISMISSAL OF APPEAL**

2 The parties consent to the submission of this Agreement to the Board and request that,
3 based upon a full and final settlement having been reached, the Board dismiss this appeal with
4 prejudice. Both parties further agree to bear their own costs and attorneys' fees associated with
5 this appeal.

6 **J. EFFECTIVE DATE**

7 This Agreement shall become effective upon issuance of the Board's order dismissing
8 this appeal.

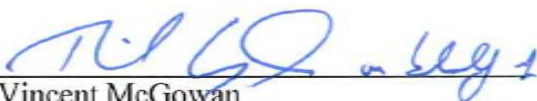
9 **K. SIGNATORIES AUTHORIZED**

10 The undersigned representatives for Ecology and Westport certify that they are fully
11 authorized by the party whom they represent to enter into the terms and conditions of this
12 Agreement and to legally bind such party thereto.

13 **L. EXECUTION**

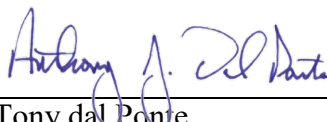
14 This document may be executed in counterparts and may be executed by facsimile and/or
15 electronically, and each executed counterpart shall have the same force and effect as the original
16 instrument.

18 STATE OF WASHINGTON
19 DEPARTMENT OF ECOLOGY

20 
21 Vincent McGowan
Water Quality Program Manager

22 Dated: 6/28/22
23

PACIFIC SEAFOOD WESTPORT, LLC

20 
21 Tony dal Ponte
General Counsel

22 Dated: June 27, 2022
23

1 ROBERT W. FERGUSON

2 

3 ALEXANDRIA DOOLITTLE, WSBA #36332
4 KELLY T. WOOD, WSBA #40067
5 Assistant Attorneys General
6 Attorneys for State of Washington,
7 Department of Ecology
8 360-586-6770

9 Dated: June 28, 2022

STOEL RIVES LLP



BETH S. GINSBERG, WSBA #18523
Attorneys for Pacific Seafood Westport, LLC
206-624-0900

Dated: June 27, 2022

ATTACHMENT A

CONFESSION OF JUDGMENT (Copy)

POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

PACIFIC SEAFOOD WESTPORT, LLC,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 22-041

CONFESSION OF JUDGEMENT

JUDGMENT SUMMARY

Pursuant to Chapter 4.64 RCW the following information is hereby provided:

1. Judgment Creditor: State of Washington, Department of Ecology
2. Judgment Debtors: Pacific Seafood Westport, LLC
PO Box 97
Clackamas, OR 97015
3. Principal Judgment Amount: \$30,750.00
4. Statutory Attorney's Fees: \$0.00
5. Costs: \$0.00
6. Principal Judgment shall bear interest at the rate of eight (8) percent per annum.
7. Attorney for Judgment Creditor: _____
Assistant Attorney General

1 **CONFESSION OF JUDGMENT**

2 Pacific Seafood Westport, LLC, does hereby agree to entry of judgment in favor of the
3 State of Washington Department of Ecology, the above-named Respondent, for the sum of
4 \$30,750.00; and does hereby authorize the above-entitled Court to enter a Judgment on said sum
5 (subject to the conditions and reservations set forth below) against us in favor of the Respondent.

6 This Confession of Judgment is for money justly due Respondent arising from
7 the Parties' Settlement Agreement executed on or about June 28, 2022, for settlement of *Pacific*
8 *Seafood Westport, LLC v. Ecology*, PCHB No. 22-041. Appellant appealed Penalty No. 21071
9 in the amount of \$123,000.00 issued to Appellant. Pursuant to the Settlement Agreement,
10 Appellant agreed to Settle and pay \$92,250.00, and Ecology agreed to Settle and hold in
11 abeyance the remaining \$30,750.00 arising from Penalty No. 21071.

12 Appellants agreed to comply with the Settlement Agreement and to execute this
13 Confession of Judgment for entry pursuant to the terms of the Settlement Agreement. By
14 presenting this Confession of Judgment, Respondent certifies that it has satisfied all notice
15 requirements to Appellants, as provided in the Settlement Agreement, prior to presentation and
16 entry.

17 Interest shall accrue on the unpaid portion of the sums due hereunder at an annual rate of
18 eight (8) percent per annum, commencing on the earliest period of default with regard to the
19 Settlement Agreement referenced above.

20 Dated this 27 day of June, 2022

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22 

23 Tony dal Ponte, General Counsel
24 Pacific Seafood Westport, LLC
25 Appellant
26

ACKNOWLEDGMENT

STATE OF WASHINGTON)
COUNTY OF Grays Harbor)

I, Tony dal Ponte, upon oath, depose and say: I have read and am authorized to execute the foregoing Confession of Judgment for Pacific Seafood Westport, LLC; and I know the contents and acknowledge that such Confession of Judgment was voluntarily made.

Anthony J. Dal Ponte

Tony dal Ponte
General Counsel
Pacific Seafood Westport, LLC
Appellants

I, Sabriyah Callis, Notary Public in and for the State of ~~Washington~~ ^{SE Texas},
residing at Harris County, do hereby certify that on this 27th day of
June, 2022, that I know or have satisfactory evidence that Tony dal Ponte, General
Counsel for Appellant in the above-entitled Confession of Judgment, personally appeared before
me, has acknowledged that he signed this instrument, and on oath stated that he is authorized to
execute the instrument and acknowledged this instrument as General Counsel for Pacific
Seafood Westport, LLC, to be the free and voluntary act of the Appellant for the uses and
purposes mentioned in the instrument, and to assent to judgment confessed in accordance with
Chapter 4.60 RCW, on behalf of Pacific Seafood Westport, LLC.

GIVEN UNDER MY HAND and official seal this 27th day of June, 2022.

Sabriyah Callis

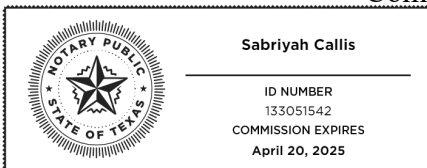
Print Name: Sabriyah Callis

NOTARY PUBLIC in and for the

~~State of Washington~~ ^{SE}, residing at

Harris County, Texas

Commission expires: 04/20/2025



Notarized online using audio-video communication

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