

ADDRESSES: Written comments should be addressed to: Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, P.O. Box 7267, Benjamin Franklin Station, Washington, D.C. 20044 or may be hand-delivered to Office of Surface Mining Reclamation and Enforcement, Room 153, U.S. Department of the Interior, South Building, Washington, D.C. 20240, where all comments will be available for public inspection. In addition, representatives of OSM will be available to meet with interested persons upon request before the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Richard Robinson, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, (202) 343-8061 or Mark Squillace, Office of the solicitor, U.S. Department of the Interior, (202) 343-4671.

Dated: August 1, 1980.

Charles F. Eddy,
Acting Assistant Secretary, Energy and Minerals.

[FR Doc. 80-23675 Filed 8-6-80; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 408

[FRL 1564-2]

Canned and Preserved Seafood Processing Point Source Category

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and request for public comment on petitions to modify regulations.

SUMMARY: This notice announces the availability of, and invites public comment on a Petition for Modification and a Supplemental Petition for Modification of the BPT effluent limitations guidelines for certain subcategories of the Canned and Preserved Seafood Processing Point Source Category. The Petitions, submitted by a portion of the Alaskan seafood industry, request that the regulations cited below be modified to delete Anchorage, Cordova, Juneau, Ketchikan, and Petersburg from the "non-remote" Alaska subcategories. The practical effect of this modification would be to change the wastewater

control technology from screening and solids handling to grinding for plants located in these areas.

DATE: Comments must be received on or before September 8, 1980.

ADDRESS: Send comments to: Mr. Gary S. Kasaoka, Effluent Guidelines Division, U.S. Environmental Protection Agency, 401 M Street, S.W., Room 925, WSME (WH-552), Washington, D.C. 20460, Attention: Seafood Effluent Guidelines Modification.

The Petition for Modification, the Supplemental Petition for Modification, and all supporting information including appendices to these Petitions will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) PM-213 (EPA Library), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460; U.S. Environmental Protection Agency, Region X, Regional Library, 1200 Sixth Avenue, Seattle, Washington, 98101; and Alaska Operations Office, U.S. Environmental Protection Agency, Room E535, 701 C Street, Box 19, Anchorage, Alaska 99501.

FOR FURTHER INFORMATION CONTACT: Gary S. Kasaoka, Effluent Guidelines Division, 401 M Street, S.W., Room 925, WSME (WH-552), Washington, D.C. 20460 (202) 426-2707.

SUPPLEMENTARY INFORMATION: On May 7, 1980, a portion of the Alaskan seafood industry submitted a Petition for Suspension and a Preliminary Petition for Modification of EPA's effluent limitations guidelines based on the Best Practicable Control Technology Currently Available (BPT) for certain subcategories of the Canned and Preserved Seafood Processing Point Source Category, 40 CFR Part 408. These had been promulgated under the Clean Water Act (33 U.S.C. 1251, *et seq.*) ("the Act). The Petition for Suspension requested that the applicability of BPT effluent limitations guidelines regulations be suspended for the 1980 salmon processing season (May 15 through October 15) for facilities located in the following cities originally classified as "non-remote" by EPA: Anchorage, Cordova, Juneau, Ketchikan, and Petersburg. The current regulations for the Alaska seafood processing subcategories divide the State of Alaska into two classifications—"remote" and "non-remote." BPT regulations for "remote" areas are based upon grinding technology. BPT regulations for "non-remote" areas are based upon screening

and solids handling technology. Thus, the practical effect of this temporary suspension is to designate grinding as BPT for facilities at these "non-remote" locations, rather than screening and solids handling technology. EPA granted the Petition to Suspend the applicability of the BPT "non-remote" regulations to facilities located in Anchorage, Cordova, Juneau, Ketchikan, and Petersburg for the 1980 salmon processing season. A notice of Suspension of the Regulations was published in the May 19, 1980 Federal Register (45 FR 32676).

The petitioners filed a Supplemental Petition for Modification dated June 16, 1980 in accordance with the schedule set forth in the May 19, 1980 Notice. The schedule requires that EPA review the Petition for Modification and the Supplemental Petition for Modification and make any request for clarification or additional data by July 16, 1980. Any additional submissions in response to such requests must be made by the petitioners by August 15, 1980. EPA will either grant or deny the petition by October 15, 1980, the date on which the temporary suspension of the regulations expires.

The petitioners maintain that "the costs of screening are wholly out of proportion to the effluent reduction benefits achieved and that other factors indicate that screening is not a practicable technology." Sections of the Petitions examine the costs of screening and barging and the lack of Alaskan waste disposal alternatives to barging, such as landfills, municipal sewage treatment facilities, and reduction (fish meal) facilities. The petitioners claim that screening in Alaska, other than in Kodiak, achieves no effluent reduction benefits. The petitioners also claim that the following factors were not properly considered by the Administrator in setting BPT and are appropriate for consideration: (1) The significant energy requirements of screening and barging; (2) the potential for violating the Sanitation Standards of the U.S. Food and Drug Administration (20 CFR Part 110) if wastes are stored near the processing plant; and (3) the fact that the increased costs of screening will frustrate the purposes of the Fisheries Conservation and Management Act of 1976 (16 U.S.C. 1801 *et seq.*). Published as an Appendix to this Federal Register Notice are the Petition for Modification

and Supplemental Petition for Modification. Appendices to these Petitions and other supporting data are available for inspection at the addresses listed above.

The Agency hereby solicits comments on the Petitions. EPA will review the Petitions for Modification and any comments received. Notice of EPA's final action will be published in the Federal Register. Anyone who wishes to comment on the Petitions and proposed modification of the regulations must do so on or before September 8, 1980.

Dated: July 31, 1980.

Eckardt C. Beck,

Assistant Administrator for Water and Waste Management.

Petition For Modification

I. Introduction

In Re Effluent Guidelines Regulations for Alaskan Subcategories of the Canned and Preserved Seafood Processing Point Source Category (40 CFR Part 408).

Petitioners Pacific Seafood Processors Association, Morpac, Inc., Nefco-Fidalgo Packing Company, North Pacific Processors, E. C. Phillips and Son, Inc., Washington Fish & Oyster Company and Whitney-Fidalgo Seafoods, hereby request reconsideration and modification by The Environmental Protection Agency ("EPA") of the 1977, effluent guidelines for certain subcategories of the Canned and Preserved Seafood Processing Point Source Category, which were promulgated under the Clean Water Act (33 U.S.C. 466, *et seq.*) ("the Act").¹

Specifically, petitioners seek to modify the following subcategory regulations:

40 CFR 408.40 (Subpart D); 40 CFR 408.60 (Subpart F); 40 CFR 408.90 (Subpart I); 40 CFR 408.162 and 408.165 (Subpart P); 40 CFR 408.172 and 408.175 (Subpart Q); 40 CFR 408.202 and 40 CFR 408.205 (Subpart T); 40 CFR 408.292 and 40 CFR 408.295 (Subpart AC); and 40 CFR 408.312 and 408.315 (Subpart AE).²

In summary, petitioners' request is that the regulations be modified to delete Anchorage, Cordova, Juneau, Ketchikan and Petersburg from the non-remote Alaska subcategories. The effect of this modification, under the current regulations, would be to designate grinding as the best practicable control technology currently available ("BPT")

¹ This petition presents preliminary material. Petitioners have advised EPA that they will complete this submission, with all the relevant supporting data, by June 16, 1980.

² The proposed modifications to each section are attached as Appendix A.

for facilities at those locations, rather than the current screening technology.

II. Background

The Administrator, pursuant to the Act, published the effluent limitations for the seafood processing category in two parts. The first, referred to as Phase I, was published on June 26, 1974. These regulations covered, in part, the Alaska crab subcategories and the Alaska shrimp subcategories. On December 1, 1975 the Phase II regulations were published covering, in part, the Alaska salmon, Alaska bottom fish, Alaska scallop and Alaska herring subcategories.

The regulations prescribe as BPT grinding of solids at most locations in Alaska (designated as remote locations) and screening at certain other locations in Alaska (designated as non-remote locations).

The discharge which is the subject of the regulations is effluent from seafood processing plants, which includes only the residuals of the seafood that are not utilized in the processing operation. Nothing is added during the processing of the seafood. The effluent enters the food chain at a high level as a food source for birds (such as gulls and terns), fish (such as flounders, sea trout and the like) and crab.

III. The Legal Basis for the Request

This petition for modification is a petition for rulemaking under the Administrative Procedure Act (5 U.S.C. 553(e)). Although EPA has not promulgated regulations specifically governing such petitions, the courts have recognized this mechanism for modifying EPA regulations. Two early cases under the Clean Air Act held that the appropriate procedure to seek a modification of EPA regulations is to petition the agency. *Union Electric Company v. EPA*, 515 F.2d 206 (8th Cir. 1975), *aff'd*, 427 U.S. 246 (1976), *reh. denied* 429 U.S. 873 (1977) and *Oljato Chapter of Navajo Tribe v. Train*, 515 F.2d 654 (D.C. Cir. 1975). The relevant judicial review section of the Clean Water Act, Section 509(b)(1), is analogous to the review provision of the Clean Air Act, Section 307(b)(1). Similarly, the Ninth Circuit Court of Appeals, in a recent opinion on certain regulations at issue in this proceeding, stated:

"The Act provides for annual revision of guidelines for effluent limitations—such as the challenged regulations—promulgated under Section 304, 33 U.S.C. Section 1314. Section 304(b), 33 U.S.C. Section 1314(b) * * * In an appropriate case, moreover, a petition for reconsideration may be filed with the EPA to consider whether evidence such

as that offered by petitioners requires the agency to review its original actions (citation). Thus, there are mechanisms for the agency to consider evidence developed after promulgation of the 1977 regulations."

Association of Pacific Fisheries v. Environmental Protection Agency, No. 75-2007, slip op. at 23 (9th Cir. February 4, 1980).

IV. The Environmental Protection Agency Should Modify the Regulations at Issue Because Screening is not BPT for Areas in Alaska, except Kodiak.

The current regulations for the Alaska seafood processing subcategories divide the State of Alaska into two classifications—remote and non-remote. BPT for remote areas is grinding. BPT for the non-remote areas is screening. This petition seeks the reclassification of a number of areas from non-remote to remote, limiting the area where screening is BPT. The petition is based on the fact that screening in Alaska locations, with exception of Kodiak, does not meet the statutory criteria for BPT.

A. The Costs of Screening in Alaska Are Wholly Out of Proportion to the Effluent Reduction Benefits Achieved. Section 304 of the Act sets forth the factors the Administrator must consider in establishing BPT. Among those factors is:

"* * * the total cost of application of technology in relation to the effluent reduction benefits to be achieved by such application."

Section 304(b)(1)(B). The Congress, in explaining the cost-benefit factor, stated:

"The balancing test between total cost and effluent reduction benefit is intended to limit the application of technology only where the additional degree of effluent reduction is wholly out of proportion to the cost of achieving such marginal level of reduction for any class or category of sources."

Congressional Research Service, A Legislative History of the Water Pollution Control Act Amendments of 1972, at 170 (1973).

1. EPA's cost determinations for screening are significantly understated. In 1975, as part of the determination of BPT, EPA determined the cost of installation of screening with the attendant of barging required for disposal.³ Recently, EPA, as part of its re-evaluation of best available technology economically achievable,

³ See: "Development Document for Effluent Guidelines and New Source Performance Standards for the Fish Meal, Salmon, Bottom Fish, Clam, Oyster, Sardine, Scallop, Herring, and Abalone Segment of the Canned & Preserved Fish & Seafood Processing Industry Point Source Category," (September, 1975). ("Development Document").

commissioned its contractor to update these cost estimates.⁴ As the chart below illustrates, EPA's costs are significantly understated.

CAPITAL COSTS⁵

| | EPA 1975 ⁶ | EPA 1979 ⁷ | Industry 1980 ⁸ |
|-------------------------------|--------------------------|--------------------------|-------------------------------|
| Screening and storage..... | \$64,000 | \$196,000 | \$186,500 |
| In plant..... | 0 | 220,000 | 220,000 |
| Barging..... | 82,000 | 25,000 | 475,000 |
| Dock construction..... | 0 | 0 | 156,000 |
| Total..... | 146,000 | 443,000 | 1,037,500 |

⁵ These represent the capital costs for the Alaska Mechanized Salmon subcategory (Subpart C).

⁶ From the Development Document.

⁷ From the 1979 Reassessment.

⁸ This data is preliminary Cordova data. The plant costs figure is adopted from the EPA figure. The barging cost is based on a self-powered, twin engine, 65' x 24' barge. The dock construction is a small platform, 1200 sq. feet with steel pilings.

The two significant items of discrepancy are the cost of a barge and the dock construction. EPA as based its recent barge estimate on the cost of a scow provided with a plastic liner being towed by an "available power boat."⁹ A plastic lined barge would not be sufficiently durable for use in Alaska. Further, plants do not have extra power boats of the size needed to tow a barge. In addition, EPA ignored the cost of dock loading facilities which is a significant capital expense in any area, but especially with the exceedingly high materials and labor costs in Alaska. The cost of the dock is based on \$130 per square foot.

Petitioner submit that a result of these understated costs, EPA's assessment of the relationship between the cost of treatment and the effluent reduction benefits achieved produced an inaccurate conclusion.

2. *Screening in Alaska, other than in Kodiak, achieves no effluent reduction benefit.* It has been settled, that the "effluent reduction benefits" referenced in Section 304(b)(1)(B) are not primarily water quality benefits. *Weyerhaeuser Company v. Costle*, 590 F.2d 1011 (D.C. Cir. 1978). Effluent reduction benefit is the reduction in the pounds of waste which are discharged into the water.

It is petitioners' position that screening in Alaska, other than in Kodiak,¹⁰ achieves no effluent reduction benefit. This position is based on the fact that the only practicable disposal method in Alaska is barging with ocean

discharge. Such a screening and barging operation does not result in the removal of waste from the receiving water. In other words, the same number of pounds of seafood waste is discharged into the water whether by grinding or by screening.¹¹

The development documents discuss other methods of disposing of screened seafood waste. These include landfill, reduction facilities for by-product recovery, and discharge into municipal sewer systems. These alternate methods, in fact, are utilized for the non-Alaska seafood processing subcategories in Washington, Oregon and California. However, these alternatives are not available in Alaska.

First, there are no available landfill sites in any of the presently designated non-remote Alaska locations. Because seafood waste is very watery after screening, any discharge in a landfill near the water could result in the leaching of the seafood material into the water.

Second, while there has been much discussion about reduction facilities as a method of disposing of screened seafood waste, this is not a practicable disposal method. Currently the City in Kodiak is the only year-round processing location in Alaska. Even with its 17 facilities, the reduction facility loses money each year and requires an annual subsidy from the processors. To construct a reduction facility in any other location would not only require a significant capital investment, but would result in unreasonably large deficits given the seasonal operations and the lack of processor concentration in any of these other locations.¹²

Finally, none of the municipalities in Alaska are equipped to receive seafood processing waste in their sewage treatment facilities. Discussions have been undertaken with each of the affected municipalities and each has refused to accept seafood processing waste.

In summary, the only practicable method of handling the waste collected on the screens is the barging method—and this method achieves no effluent reduction benefit because screening

¹¹ The NPDES permits issued direct the location of the dump site. These vary from less than one mile to 2½ miles.

¹² One of the companies in Petersburg, Icicle Seafoods, owns an existing reduction facility. There is some question as to whether that facility can handle all the waste generated by all three Petersburg plants. In addition, the logistics and costs of moving waste from the Whitney-Fidalgo plant to the reduction facility makes disposal at the facility not practicable. (This subject will be discussed in greater detail in petitioners' supplemental filing.)

with barging does not reduce the pounds of waste discharged.

3. *Summary.* Based on the above information, petitioners submit that the high cost of implementing screening and barging (in excess of \$1,000,000 per processing facility) satisfies the test of being "wholly out of proportion" to the effluent reduction benefits—one million dollars per plant does not remove one pound of waste.

B. *The Administrator did not consider other significant factors in establishing BPT.* In addition to the cost-benefit factor, required under the Act, Section 304(b)(1)(B) provides that in determining BPT consideration should be given to "such other factors as the Administrator deems appropriate." Petitioners suggest that the following factors were not considered by the Administrator, and are appropriate for consideration.

1. *The energy requirements of screening and barging are significant.* The State of Alaska is constantly operating under the threat of serious curtailments in petroleum products, especially diesel fuel. This fuel is required for the fishing vessels which operate throughout Alaskan waters and as the source of fuel for the generation of electricity and steam. It is important to point out that many of the plants generate their own electricity and steam.

The operation of a barge will require significant quantities of diesel fuel each day during the fishing season—at the time of peak demand. This is a significant drain on the diesel fuel resources in a particular area and also results in a significant additional daily operating cost.

2. *The Sanitation Standards of U.S. Food and Drug Administration and the State of Alaska may conflict with screening.* Both the U.S. Food and Drug Administration sets stringent standards for sanitation in a food processing facility. Because of the location of the processing facilities in Alaska—that is, either between the mountains and the water or at the end of a pier—the storage area for seafood waste must be directly adjacent to the processing facility. Seafood wastes attract a number of insects, vermin, birds and rodents. Because of their proximity to the processing plant the waste storage facilities may cause significant problems by attracting such animals into the processing facility itself. It is already a major job to keep such animals out of the plants and waste storage will serve to aggravate the problem.

3. *The increased costs from screening will frustrate the purposes of the Fisheries Conservation & Management Act of 1976.* One of the major purposes

⁴ "Reassessment of Effluent Limitations Guidelines and New Source Performance Standards for the Canned & Preserved Seafood Point Source Category." Prepared for EPA by E. C. Jordan & Co. (December, 1979) ("1979 Reassessment").

⁹ 1979 Reassessment at p. 232

¹⁰ In the City of Kodiak, there are enough year-round processors to support a reduction facility where the screened waste can be utilized.

of the Fisheries Conservation & Management Act of 1976 (16 U.S.C. 1801 *et seq.*) was to establish a preference for American processors.

Congressman John Murphy, Chairman of the House Merchant Marine and Fisheries Committee, stated in explaining the final language of the 1978 amendments to the Fisheries Conservation & Management Act that the language:

"* * * would give preference to U.S. fish processors of U.S. harvested fish* * *"

Congressional Record, H-8266, August 10, 1978. The House Report accompanying the 1978 amendments states:

"* * * Some of the species which would appear to be fully utilized by U.S. processors are salmon, king crab, halibut, surf clams, menhaden, lobster and shrimp. When processing capacity and intent is sufficient, the committee feels that foreign processing vessels should not be allowed to participate in such fisheries."

H. Rep. No. 95-1024, 95th Cong. 2d Sess. 6 (1978).

The imposition of the significant screening costs will adversely affect the ability of American processors to compete with foreign-owned floating processors which operate outside U.S. waters, and, therefore, are not required to install pollution control technology of any type. The result of this discrepancy will be to frustrate the Congressional intent of encouraging more American processing with its attendant employment base, material support and the resulting increase in export of processed fish which will help significantly to lessen this country's balance of payment deficit.

IV. Summary

Petitioners submit that screening is not BPT for Alaska, other than in the City of Kodiak, for the reasons stated in this petition. Petitioners submit that the information above shows that the costs of screening are wholly out of proportion to the effluent reduction benefits achieved and that other factors further indicate that screening is not a practicable technology. Petitioners urge the administrator to propose a modification of the regulations, as submitted by petitioners, which will reclassify a number of areas in the State of Alaska and establish a true BPT.

Dated: May 7, 1980.

Respectfully submitted,

Bogle & Gates.

Charles R. Blumenfeld,
Attorneys for Petitioners.

Supplemental Petition for Modification

In Re Effluent Guidelines Regulations for Alaskan Subcategories of the Canned and Preserved Seafood Processing Point Source Category (40 CFR Part 408).

I. Introduction

Petitioners Pacific Seafood Processors Association, Morpac, Inc., Nefco-Fidalgo Packing Company, North Pacific Processors, E. C. Phillips & Son, Inc., Washington Fish & Oyster Company and Whitney-Fidalgo Seafoods, submit this Supplemental Petition for Modification of the 1977 effluent guidelines for certain subcategories of the Canned and Preserved Seafood Processing Point Source Category, which were promulgated under the Clean Water Act (33 U.S.C. 466, *et seq.*).

This Supplemental Petition is filed in accordance with the schedule set forth in the May 19, 1980 Federal Register (45

FR 32676). The purpose of this Supplemental Petition and the accompanying appendices is to provide additional material and supporting documentation for petitioners' Petition for Modification ("Original Petition") filed on May 7, 1980.

As stated in the Original Petition, petitioners request that the regulations at issue¹ be modified to delete Anchorage, Cordova, Juneau, Ketchikan and Petersburg from the non-remote Alaska subcategories. The effect of this modification, under the current regulations, would be to designate grinding as the best practicable control technology currently available ("BPT") for facilities of those locations, rather than the current screening technology.

II. The Cost of Screening

Petitioners, in their Original Petition (Part IV.A.1.), set forth comparative costs for screening and barging. The information which follows supplements the material in the Original Petition. In particular, the following chart is intended to supersede the chart on page 6 of the Original Petition.

Capital Costs²

| | EPA ³ 1975 | EPA ⁴ 1979 | Cordova ⁵ | Ketchikan ⁶ | Anchorage ⁷ | Juneau ⁸ | Petersburg (barging) ⁹ | Petersburg (reduction) ¹⁰ |
|----------------------------|-----------------------|-----------------------|----------------------|------------------------|------------------------|---------------------|-----------------------------------|--------------------------------------|
| Screening and storage..... | \$64,000 | \$198,000 | \$257,000 | \$312,000 | *\$151,000 | \$277,000 | *\$75,000 | \$314,000 |
| Barging..... | 82,000 | 25,000 | 479,000 | *485,000 | *225,000 | 485,000 | *225,000 | 0 |
| Dock..... | 0 | 0 | 164,000 | 172,000 | 135,000 | 90,000 | 0 | 800,000 |
| Total..... | 146,000 | *223,000 | 900,000 | 969,000 | *511,000 | 852,000 | *300,000 | 1,114,000 |

¹Corrected as of June 20, 1980.

²These represent the capital costs for the Mechanized salmon subcategory (Subpart Q).

³Source: "Development Document for Effluent Guidelines and New Source Performance Standards for the Fish Meal, Salmon, Bottom Fish, Clam, Oyster, Sardine, Scallop, Herring, and Abalone Segment of the Canned and Preserved Fish & Seafood Processing Industry Point Source Category." (September, 1975); Table 194 at p. 429.

⁴Source: "Reassessment of Effluent Limitations Guidelines and New Source Performance Standards For the Canned and Preserved Seafood Point Source Category." Prepared for EPA by E. C. Jordan & Co. (December, 1979); Table 100 at p. 252.

⁵These costs are the average costs from the three Cordova petitioners: Morpac, Inc., North Pacific Processors, and SL Elias (Washington Fish & Oyster Co.). The individual plants costs are detailed in Appendix B.

⁶These costs are the costs for petitioner Nefco-Fidalgo's facility. The other Ketchikan Petitioner, E. C. Phillips, has only a cold storage facility. Because of the minimal waste generated by cold storage facilities, its waste disposal costs are not typical. The individual costs are detailed in Appendix C.

⁷Petitioner Whitney-Fidalgo operates the only facility in Anchorage. These costs are detailed in Appendix D.

⁸Petitioner Juneau Cold Storage (Washington Fish & Oyster Co.) operates the only facility in Juneau. These costs are detailed in Appendix E.

⁹The only petitioner operating a facility is Whitney-Fidalgo. Costs are presented for both barging and transportation to the reduction facility operated by Iclde Seafoods. (See discussion in Part III.C., below). The costs are detailed in Appendix F.

¹⁰This barging cost is based on a non-self-propelled barge and tender. Petitioner Whitney-Fidalgo selected this method because of the lesser amount of waste generated at these two facilities.

One item deserves note—the "In-Plant" category has been deleted. In petitioners' haste to file the Original Petition, EPA's in-plant costs were included; however, these costs are not appropriate for BPT considerations. Thus, this category has been deleted.

III. Waste Disposal Alternatives, Other Than Barging, Are Not Available in Alaska

As discussed in the Original Petition (Part IV.A.2.), landfill, reduction facilities for by-product recovery, and discharge into municipal sewer systems are not available alternatives in Alaska.

A. Landfill. Appendix G includes correspondence from the cities of Cordova and Ketchikan discussion the unavailability of municipal landfills for

¹The proposed modifications to each section are attached as Appendix A.

the discharge of seafood waste.¹¹ Petitioners initiated inquiries and the correspondence is the municipality's response.

B. Municipal Sewage Treatment Facilities. Appendix G includes correspondence from the cities of Cordova and Ketchikan discussion the unavailability of municipal treatment facilities for seafood processing wastes.¹¹ Petitioners initiated inquiries and the correspondence is the municipality's response.

C. Reduction Facilities. As petitioners mentioned in their Original Petition (at page 8), reduction facilities are not a feasible method of disposing of screened seafood waste. Currently, the only independent reduction facility in Alaska is operated in the City of Kodiak. All the processors located in Kodiak subsidize the reduction facility. Even though processors located in the City of Kodiak operate nearly year round, and seventeen facilities are located there, the reduction facility continues to lose money each year. The subsidy for 1980 has increased to \$20.00 per ton of wet waste handled. To construct a reduction facility at any other location would not only require a significant capital investment, but would result in an unreasonably large annual operating deficit—given the seasonal nature of processing and the limited number of processors.

Petitioner Washington Fish & Oyster Company has developed capital costs for its Cordova and Juneau processing locations.¹²

An EPA contractor evaluated the profitability of reduction facilities at certain Alaska locations.¹³ Among those locations which are relevant to this petition, were Cordova and Ketchikan. The contractor concluded that a reduction facility in Cordova would have a net profit of \$22 per ton and, in Ketchikan, a net profit of \$15 per ton. To achieve this profit figure the contractor assumed that the reduction facility would recover 25% of the raw waste material delivered.¹⁴ However, the operators of existing reduction facilities in Alaska have experienced no more

than a 20% recovery. This 20% recovery, instead of 25%, significantly decreases the profitability of a reduction facility, since the expense of operating the facility remains constant (because the

volume of waste delivered is not reduced). For example, at 20% recovery the net profit in Cordova is reduced to only \$5 per ton and a net loss of \$5 per ton is created in Ketchikan.

| Cordova | | | | |
|------------------------------------|-----------------------------------|----------------------|---------------------|----------------------|
| | 25 percent recovery ¹⁴ | | 20 percent recovery | |
| | Tons | Annual gross revenue | Tons | Annual gross revenue |
| Fish meal | 840 | \$360,000 | 752 | \$288,000 |
| Fish oil | 300 | 117,000 | 300 | 117,000 |
| Shell fish meal | 135 | 13,000 | 135 | 13,000 |
| | | 480,000 | | 418,000 |
| Less: annual cost | | (369,000) | | (369,000) |
| Net profit | | \$61,000 | | \$19,000 |
| Divided by: raw tons delivered | | 4,136 | | 4,136 |
| Net profit per ton of raw material | | \$22.00 | | \$4.59 |
| Ketchikan | | | | |
| | 25 percent recovery ¹⁴ | | 20 percent recovery | |
| | Tons | Annual gross revenue | Tons | Annual gross revenue |
| Fish meal | 850 | \$360,000 | 760 | \$288,000 |
| Fish oil | 300 | 120,000 | | |
| | | 480,000 | 300 | 120,000 |
| Less: annual cost | | (427,000) | | (427,000) |
| Net profit/(loss) | | \$53,000 | | \$(19,000) |
| Divided by: raw tons delivered | | 3,533 | | 3,533 |
| Net profit per ton of raw material | | \$15.00 | | \$(5.38) |

¹¹ *Id.* at p. 173. See Appendix I.

¹⁴ *Id.* at p. 182. See Appendix I.

In addition, it is important to point out that the contractor has undersized the Cordova facility, and as a result, it would be unable to handle all the waste material generated. In an earlier study, by another EPA contractor, it was concluded that a 50-ton per day facility in Cordova would only handle 66% of the waste generated.¹⁷ It is this 50-ton per day plant which is used by contractor E. C. Jordan Co., Inc. in its 1979 Reassessment to fix capital costs and operating expense.¹⁸ To process 100% of the waste generated in Cordova, the facility in Cordova would have to be approximately the same size as the Ketchikan facility, used in the 1979 Reassessment, and its operating expenses would be similar to that facility, also. Therefore, the actual profitability of an adequately-sized Cordova reduction facility would result in approximately the same \$5 per ton loss as at the Ketchikan facility.

There is an existing reduction facility in Petersburg, Alaska. This facility is

owned and operated by Icicle Seafoods, a processor. Petitioners question whether that facility has enough capacity to handle waste generated in Petersburg during the peak of the season. (The peak capacity is the key, because any waste disposal system, to be viable, must be able to handle waste generated at the peak of the season.)

Petitioners also are concerned about a facility having to rely on a competitor's reduction plant for waste disposal. Such dependence could be vulnerable to anti-competitive practices. For example, if the operator of the reduction facility either refused to accept waste material from another processor, or significantly increased its price for the waste at the peak of the processing season, the dependent processor could be faced

¹⁷ "Draft Report Market Feasibility Study of Seafood Waste Reduction in Alaska." Prepared by Development, Planning and Research Associates, Inc. (March 1979); Table III-1 at p. III-5).

¹⁸ 1979 Reassessment at p. 169.

¹¹ Petitioners expect to receive further correspondence on this matter. Such correspondence will be forwarded to the Agency when received. The letters in Appendix G, however, are representative of the position of each municipality involved.

¹² These costs are detailed in Appendix H.

¹³ See: "Reassessment of Effluent Limitation Guidelines and New Source Performance Standards For the Canned and Preserved Seafood Point Source Category." Prepared by E. C. Jordan Co., Inc. ("1979 Reassessment"); at pp. 164-190.

¹⁴ *Id.* at p. 169.

with a choice of shutting down or violating its NPDES permit—neither is an attractive alternative.

Finally, petitioner Whitney-Fidalgo has submitted material which indicates that its cost of transporting waste material to the existing Petersburg reduction facility is significantly more costly than barging. (See: Chart on p. 3, above). The reason for this is that Whitney-Fidalgo must increase the width of its 800 foot dock so that vehicles can move the material to the shore.¹⁹

D. *Summary.* As stated in the Original Petition, the above information indicates that the only viable method of disposing of seafood wastes collected on screens is by barging; yet, this method achieves no reduction in the volume of effluent discharged. The same number of pounds of waste are discharged with screening and barging as with direct discharge through grinding.

IV. Consideration of Other Significant Factors in Establishing BPT

As discussed in the original Petition (Part IV.B.), there are a number of other significant factors which were not considered in establishing BPT. Among those are U.S. Food & Drug Administration regulations which set forth the current good manufacturing practice in manufacturing, processing, packing or holding human food (20 CFR Part 110).²⁰ Petitioners are particularly

¹⁹The Whitney-Fidalgo plant is located at the end of a one-lane 800-foot dock. In order to get waste material to the reduction facility a transportation system would have to be established. This would include loading 2,000-pound bins, which can be handled at the end of the dock, with waste and carrying these bins on a forklift to the shore where larger waste bins would be constructed. The larger waste bins would be emptied into a truck for transport across Petersburg from the Whitney facility to the reduction plant. Given the volume of waste from Whitney's Petersburg facility, the logistics would be complicated inasmuch as a forklift would be traveling down the dock every five to ten minutes with a 2,000-pound bin and a truck would make 50 trips a day through the center of Petersburg. The major cost of the transportation system is the necessity to add an additional lane on the dock. A forklift traveling along the dock every five to ten minutes will tie up one lane on the dock and the existing one-lane-wide dock would not be sufficient to handle that volume of forklift traffic along with all the other traffic which presently uses the dock.

²⁰See: Appendix J.

concerned about the storage of seafood waste directly adjacent to the processing plant which may constitute an attractant, breeding place, or harborage for rodents, insects and other pests.

V. Summary

Petitioners submit that screening is not BPT for Alaska, other than in the City of Kodiak, for the reasons stated in petitioners' Petition for Modification and Supplemental Petition.

Petitioners further submit that the information included in the petition demonstrates that the costs of screening are wholly out of proportion to the effluent reduction benefits achieved and that other factors further indicate that screening is not BPT.

Petitioners respectfully urge the Administrator to propose a modification of the regulations, as submitted by petitioners, which will reclassify a number of areas in the State of Alaska; thus, establishing a true BPT.

Respectfully submitted,
Bogle & Gates.

Dated: June 16, 1980.
Charles R. Blumenfeld,
Attorneys for Petitioners.

[FR Doc. 80-23809 Filed 8-6-80; 8:45 am]
BILLING CODE 6560-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-5843]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Township of Commerce, Oakland County, Michigan, previously published at 45 FR 42699 on June 25, 1980.

EFFECTIVE DATE: August 7, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426-1460 or Toll Free Line (800) 424-8872 (In Alaska and Hawaii call Toll Free Line (800) 424-9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Township of Commerce, Oakland County, Michigan previously published at 45 FR 42699 on June 25, 1980, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a)). The location described as, "Just downstream of Farr Road," under the Source of Flooding of Huron River should read, "Just downstream of Farr Street."

The location described as, "Just upstream of Fox Lake Dam," under the Source of Flooding of Huron River should read, "Just upstream of Fox Lake Outlet Dam."

The Source of Flooding listed as Channel from Lake Pleasant should read Carus Lake and Lake Pleasant Channel. Also under this Source of Flooding, the location described as, "About 3,000 feet downstream of Haggerty Road," should read, "About 3,000 feet downstream of Haggerty Highway," and the location described as, "Just downstream of Haggerty Road," should read, "Just downstream of Haggerty Highway."

The Source of Flooding listed as Commerce Lake should read North Commerce Lake.

The Source of Flooding, South Commerce Lake, location—Shoreline, with a corresponding elevation of 910 feet should be added.

The Source of Flooding, Fox Lake, location—Shoreline, with a corresponding elevation of 931 feet should be added. The listing appears correctly as follows:

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|----------|---------------------------------|--------------------------------------|---|---|
| Michigan | (Twp) Commerce, Oakland County. | Huron river | Just downstream of Farr Street | *929 |
| | | | Just upstream of Fox Lake Outlet Dam | *931 |
| | | Carus Lake and Lake Pleasant Channel | About 3,000 feet downstream of Haggerty Highway | *931 |
| | | | Just downstream of Haggerty Highway | *934 |
| | | North Commerce Lake | Shoreline | *910 |
| | | South Commerce Lake | Shoreline | *910 |
| | | Fox Lake | Shoreline | *931 |