

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

South Bend Products, LLC

South Bend, Washington

Respondent.

DOCKET NO. CWA-10-2021-0009

**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 \$22,320 per day for each day during which the violation continues, up to a maximum

penalty of \$278,995. *See also* 85 Fed. Reg. 1751 (January 13, 2020) (2020 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 South Bend Products, 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), 33 U.S.C. § 1362(12) defines the “discharge of a pollutant” to mean the addition of any pollutant to navigable waters from any point source.

3.4. CWA Section 502(6), 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, dredged spoil, solid waste, chemical wastes, biological materials, heat, rock, sand, cellar dirt and industrial, municipal and agricultural waste.

3.5. CWA Section 502(14), 33 U.S.C. § 1362(14), defines “point source” to mean any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel or conduit from which pollutants are or may be discharged.

3.6. CWA Section 502(7), 33 U.S.C. § 1362(7), defines the term “navigable waters” to mean “waters of the United States.” The term “waters of the United States” is defined at 40 C.F.R. § 122.2 (2014).

3.7. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines navigable waters as “waters of the United States.” At the time of the violations, Waters of the United States included, but were not limited to, waters that are currently used, were used in the past, or may be

susceptible to use in interstate or foreign commerce; all interstate waters; tributaries of those waters; and wetlands adjacent to those waters. 40 C.F.R. § 230.3(s) (2014).

3.8. The state of Washington, through the Washington Department of Ecology (hereinafter “Ecology”), is authorized pursuant to CWA Section 402(b), 33 U.S.C. § 1342(b), to administer the NPDES permitting program by performing permitting, compliance and enforcement activities in waters under Washington’s jurisdiction.

3.9. The Washington Department of Ecology issued NPDES waste discharge permit number WA0040941 to Respondent on June 27, 2011, and the permit became effective on July 1, 2011 (hereinafter “SBP Permit”). The SBP Permit has been administratively extended since the permit expiration date of June 30, 2016.

### **General Allegations**

3.10. Respondent is corporation organized under the laws of the state of Washington and a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.11. At all times relevant to this action, Respondent operated a seafood processing and packaging facility on property located at 237 Robert Bush Drive in South Bend, Washington (hereinafter, “Facility”).

3.12. The Facility is a riparian property located adjacent to the Willapa River. The Willapa River flows to Willapa Bay which is an estuary to the Pacific Ocean. The Willapa River is a traditionally navigable water that may be susceptible to use in interstate commerce and is a “water of the United States” as defined at 40 C.F.R. § 122.2, and therefore a “navigable water” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

3.13. Respondent’s operations at the Facility include processing, cooking and packaging of seafood categorized under Standard Industrial Classification code 2092 (Prepared Fish or Frozen Fish and Seafood) and North American Industry Classification System code

311710 (Seafood Product Preparation and Packaging). Respondent primarily processes salmon and Dungeness crab and periodically processes razor clams and conventional bottomfish such as black cod, rockfish and halibut. Respondent also conducts activities associated with seafood processing operations including seafood cooking, seafood packaging, and washing and sanitizing seafood processing areas.

3.14. Respondent's seafood processing operations and activities associated with seafood processing generate pollutants, as defined in CWA § 502(6), 33 U.S.C. § 1362(6), including process wastewater that contains solid wastes, biological materials, and heat.

3.15. The Facility extends from the shore over the tidal boundary of the Willapa River and contains approximately 30 floor drains, including two large trench drains. The floor drains and trench drains are discernible, confined and discrete conveyances and are point sources as defined by CWA § 502(14), 33 U.S.C. § 1362(14).

3.16. The floor drains and trench drains collect process wastewater and pollutants generated by Respondent's seafood processing operations and associated activities and discharge the process wastewater and pollutants directly to the Willapa River and/or tidally influenced mud flats.

3.17. At all times relevant to this action, the Facility was under Respondent's operational control. Respondent's operations resulted in the discharge of pollutants from a point source into waters of the United States at the Site, within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.18. At all times relevant to this action, Respondent was authorized, subject to the terms and conditions set forth in the SBP Permit, to discharge process wastewater generated from the processing of seafood including Dungeness crab, tuna, hand-butchered salmon, conventional bottomfish and Pacific coast oyster.

3.19. Sections of the Willapa River were listed by Ecology as impaired for bacteria, dissolved oxygen and temperature pursuant to CWA § 303(d), 33 U.S.C. § 1313(d). Ecology completed total maximum daily loads (“TMDL”) for bacteria, dissolved oxygen and temperature both impairments which were approved by the EPA pursuant to CWA § 303(d), 33 U.S.C. § 1313(d). The Willapa River TMDLs for bacteria and dissolved oxygen assigned Respondent specific waste load allocations associated with these pollutants which were incorporated into the SBP Permit.

3.20. On or around November 16, 2016, Ecology staff conducted an inspection of the Facility to provide Respondent technical assistance and to review general permit requirements, and sampling and monthly reporting procedures. In a letter dated January 4, 2017, Ecology provided a summary of the inspection to Respondent. The summary noted that “the holding times for pH and total residual chlorine are probably exceeded.” The summary also reminded Respondent “...TSS, BOD, eBOD, and ammonia samples must be collected as composite samples, defined by the permit as at least four grab samples collected at least an hour apart.”

3.21. On or around September 12, 2017, Complainant conducted an unannounced compliance inspection of the Facility to assess Respondent’s compliance with the SBP Permit and the CWA. The inspection was documented in an inspection report completed by the inspector on September 15, 2017 (hereinafter “Water Compliance Inspection Report”).

3.22. Following the inspection, Complainant reviewed the final Water Compliance Inspection Report and conducted an additional review of the SBP Permit, discharge monitoring reports that Respondent had submitted to Ecology, and other compliance-related documents available on Ecology’s PARIS system.

3.23. In a letter dated March 27, 2019, Complainant provided Respondent with notice that it had identified specific violations of the SBP permit and CWA and other areas of concern

based on the Water Compliance Inspection Report and review of documents following the inspection. Complainant provided as enclosures with the March 27, 2019 letter, a copy of the final Water Compliance Inspection Report and a list of effluent limitation violations Complainant identified during its review of the discharge monitoring reports that Respondent had submitted to Ecology. The March 27, 2019 letter requested, pursuant to Complainant's authority under CWA § 308, 33 U.S.C. § 1318, that Respondent provide a response to the enumerated alleged violations and areas of concern, and to identify the causes of the violations and measures taken to address the current violations and prevent future violations.

3.24. In a letter dated August 7, 2019, Respondent provided a written response to Complainant's March 27, 2019 letter. Respondent's written response was accompanied by thirteen exhibits included as enclosures to the letter. One exhibit included a revised sampling protocol dated May 24, 2019.

3.25. On March 20, 2020, Complainant sent Respondent a Notice of Intent to File Administrative Complaint for Violation of the Clean Water Act and Opportunity to Confer Prior to Filing ("Notice of Intent"). The Notice of Intent abandoned certain allegations set forth in Complainant's March 27, 2019 letter and included new allegations not previously identified.

3.26. Complainant and Respondent promptly engaged in settlement negotiations resulting in this Consent Agreement. Both Complainant and Respondent agree that this Consent Agreement was mutually negotiated at arm's length in order to avoid the time, expense and uncertainty associated with litigation.

## **Violations**

3.27. As described below, between August 2015 and May 2019, Complainant alleges that Respondent violated CWA Section 301, 33 U.S.C. § 1311, and the conditions and/or limitations of the SBP Permit.

### Count 1 – Failure to Comply with Permit Effluent Limitations

3.28. Paragraphs 3.1 to 3.26 are realleged and incorporated herein by reference.

3.29. Condition S1.A authorizes Respondent to discharge pollutants subject to compliance with effluent limitations established for pollutants including total residual chlorine (“TRC”), oil and grease, biochemical oxygen demand (“BOD”), equivalent oxygen demand (“EOD”), pH, and total suspended solids (“TSS”). Effluent limitations for TRC, oil and grease, BOD, and TSS are expressed as average monthly and maximum daily limits. Effluent limitations for EOD are expressed as average weekly and total average weekly limits. Effluent limitations for pH are established as daily minimum and daily maximum limits. Condition S1.A also establishes a limit on the maximum daily flow of process wastewater.

3.30. Based on Complainant’s review of discharge monitoring reports submitted by Respondent to Ecology, Respondent violated the average monthly effluent limitation for TRC in August 2015, October 2015, July 2016, August 2016, June 2017, September 2017, October 2017, November 2017, December 2017, February 2018, April 2018, May 2018, July 2018, August 2018, September 2018 and November 2018.

3.31. Based on Complainant’s review of discharge monitoring reports submitted by Respondent to Ecology, Respondent violated the average monthly effluent limitations for oil and grease in February 2016, May 2016, April 2017, and May 2017.

3.32. Based on Complainant’s review of discharge monitoring reports submitted by Respondent to Ecology, Respondent violated the maximum daily effluent limitations for oil and



grease on May 4, 2017, April 13, 2017, and May 11, 2016.

3.33. Based on Complainant's review of discharge monitoring reports submitted by Respondent to Ecology, Respondent violated the average monthly effluent limitation for BOD in May 2016, April 2017 and May 2017.

3.34. Based on Complainant's review of discharge monitoring reports submitted by Respondent to Ecology, Respondent violated the maximum daily effluent limitation for process wastewater flow on December 27, 2018, July 15, 2018, and April 24, 2018.

3.35. Based on Complainant's review of discharge monitoring reports submitted by Respondent to Ecology, Respondent violated the daily minimum effluent limitation of pH on April 14, 2016.

3.36. Based on Complainant's review of discharge monitoring reports submitted by Respondent to Ecology, Respondent violated the average monthly effluent limitation for TSS in April 2017.

3.37. Respondent violated condition S1.A of the SBP Permit and section 301 of the Clean Water Act, 33 U.S.C. § 1311, by exceeding effluent limitations as set forth in Paragraphs 3.29 to 3.36 above. Violations of the SBP permit and section 301 of the CWA, 33 U.S.C. § 1311, are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 2 – Failure to Calibrate Flow Meter

3.38. Paragraphs 3.1 to 3.26 are realleged and incorporated herein by reference.

3.39. Condition S2.C of the SBP Permit requires that flow measurement devices be calibrated at a minimum frequency of at least once per year to ensure the accuracy of the measurements.

3.40. During Complainant's compliance inspection, Complainant requested that Respondent provide records of flow meter calibration. Respondent was unable to provide records

of calibration and Respondent's employee informed the inspector that the flow meter had not been calibrated since 2011. In response to Complainant's March 27, 2019 notice of violation and request for information, Respondent provided as an enclosure a letter to the City of South Bend, dated July 12, 2019, requesting that the flow meter be calibrated.

3.41. Respondent violated condition S2.C of the SBP permit by failing to calibrate the flow meter in 2015, 2016, 2017 and 2018. Violations of the SBP permit are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 3 – Failure to Collect Representative Samples

3.42. Paragraphs 3.1 to 3.26 are realleged and incorporated herein by reference.

3.43. Condition S2.B of the SBP Permit requires that samples and measurements taken to meet the requirements of the permit shall be representative of the volume and nature of the monitored parameters, including representative sampling of any unusual discharge. Condition S2.A of the permit establishes sampling types for each pollutant as either a single grab sample or a composite sample which is defined in condition S2.A as a minimum of four grab samples collected at least one hour apart over the course of the processing day.

3.44. During Complainant's inspection of the Facility Respondent's employees demonstrated how samples are collected from floor and trench drains in the packing, cooking, butchering and crab shake rooms. Respondent's employees took two samples, two hours apart for compositing. Respondent also informed Complainant's inspector that it discharges approximately 100 gallons of crab cook water with an approximate temperature of 180 degrees Fahrenheit. Complainant's review of the discharge monitoring reports submitted by Respondent to Ecology determined that discharge of heated cook water was not accounted for in the discharge monitoring reports.

3.45. In response to Complainant's March 27, 2019 notice of violation and request for

information, Respondent provided as an enclosure an updated Sampling Plan dated May 24, 2019. The purpose of the updated Sampling Plan was to identify the procedures and practices necessary to collect representative samples.

3.46. Respondent violated condition S2.B of the SBP Permit each month from August 2015 until May 2019 by failing to take grab and composite samples consistent with the requirements of the permit, failing to take samples that are representative of the volume and nature of monitored parameters, and failing to take representative sampling of discharged heated crab cook water. Violations of the SBP permit are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 4 – Failure to Comply with Hold Times for pH and Temperature

3.47. Paragraphs 3.1 to 3.26 are realleged and incorporated herein by reference.

3.48. Condition S2.B of the Permit requires that sampling and analytical methods used to meet the monitoring requirements specified in the permit shall conform to the *Guidelines Establishing Test Procedures for the Analysis of Pollutants* set forth in 40 C.F.R. Part 136 which requires that pH and temperature be analyzed within 15 minutes of sample collection.

3.49. During Complainant's inspection, Respondent explained that all collected samples are analyzed for all parameters at the Dragon Analytic Laboratory in Olympia, Washington which is over an hour from the Facility. Complainant's review of the sample reports from Dragon Analytic Laboratory noted that results for pH were identified as estimated values because the samples were received and analyzed outside of the regulatory hold time of 15 minutes.

3.50. Respondent violated condition S2.B of the SBP Permit each month from August 2015 until May 2019 by failing to sample pH and temperature within 15 minutes of sample collection as required by 40 C.F.R. Part 136. Violations of the SBP permit are enforceable under

section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 5 – Failure to Collect Oil and Grease Samples Using Approved Methods

3.51. Paragraphs 3.1 to 3.26 are realleged and incorporated herein by reference.

3.52. Condition S2.B of the Permit requires that sampling and analytical methods used to meet the monitoring requirements specified in the permit shall conform to the *Guidelines Establishing Test Procedures for the Analysis of Pollutants* set forth in 40 C.F.R. Part 136 which requires that samples of oil and grease be collected in a glass bottle.

3.53. During the inspection Complainant observed Respondent’s employee collect a sample for oil and grease using a plastic bottle. In response to Complainant’s notice of violation and information request Respondent acknowledged that it had collected oil and grease samples in a plastic bottle and explained that the new Sampling Plan corrected this violation.

3.54. Respondent violated condition S2.B of the SBP Permit each month from August 2015 until May 2019 by failing to collect oil and grease samples in a glass bottle as required by 40 C.F.R. Part 136. Violations of the SBP permit are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 6 – Failure to Record Sampling Information (18 violations)

3.55. Paragraphs 3.1 to 3.26 are realleged and incorporated herein by reference.

3.56. Condition S3.C of the SBP Permit requires that for each measurement or sample taken, Respondent shall record information including (1) the date, place, method and time of sampling or measurement, (2) the individual who performed the sampling or measurement, (3) the dates the analyses were performed, (4) the individual who performed the analyses, (5) the analytical technique or methods used, and (6) the results of the analyses.

3.57. During the inspection of the Facility Complainant asked to review the records associated with samples collected for permit compliance. Respondent’s employee explained that

Respondent had started preparing the required records two months earlier. In response to Complainant's notice of violation and request for information, Respondent confirmed that it had started preparing the required records two months before the inspection.

3.58. Respondent violated condition S3.C of the SBP Permit each month from August 2015 until June 2017 by failing to record the information required for each measurement or sample taken. Violations of the SBP permit are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 7 – Failure to Maintain Operations and Maintenance Manual

3.59. Paragraphs 3.1 to 3.26 are realleged and incorporated herein by reference.

3.60. Condition S4.A of the SBP Permit requires that an operation and maintenance manual shall be prepared by Respondent and kept available at the Facility.

3.61. During the inspection of the Facility Complainant asked to review Respondent's operation and maintenance manual. Respondent was unable to produce the requested manual. In response to Complainant's notice of violation and request for information, Respondent confirmed that it was unable to locate a copy of the operation and maintenance manual during the inspection.

3.62. Respondent violated condition S4.A of the SBP Permit in September 2017 by failing to keep the operation and maintenance manual available at the Facility. Violations of the SBP permit are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 8 – Failure to Conduct Noncompliance Reporting

3.63. Paragraphs 3.1 to 3.26 are realleged and incorporated herein by reference.

3.64. Condition S3.E.2.d of the SBP Permit requires that any violation of a maximum daily or instantaneous maximum discharge limitation for any pollutant identified in condition S1.A be reported to Ecology within 24 hours of the noncompliance event.

3.65. Complainant's review of the discharge monitoring reports submitted by Respondent to Ecology identified three exceedances of the maximum daily effluent limitation for oil and grease on May 4, 2017, April 13, 2017, and May 11, 2016. Complainant contacted Ecology to obtain noncompliance reports for these exceedances and Ecology informed Complainant that it was unable to find any noncompliance reports submitted by Respondent.

3.66. Respondent violated condition S4.A of the SBP Permit by failing to submit noncompliance reports for exceedances of oil and grease maximum daily effluent limitation on May 4, 2017, April 13, 2017, and May 11, 2016. Violations of the SBP permit are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

#### **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 \$101,630.

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. Pursuant to 40 C.F.R. § 22.18(c), full payment of the civil penalty set forth in Paragraph 4.3 shall resolve Respondent's liability for civil penalties for the violations and facts alleged in this Settlement Agreement. Any violation identified in this Consent Agreement and Final Order, not subject to further judicial review and upon payment of the penalty assessed, shall not be the subject of a civil penalty action as provided by 33 USC § 1319(g)(6)(A)(iii).

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  
R10\_RHC@epa.gov

Charissa Bujak  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 20-C04  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101  
Bujak.charissa@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. Attorneys 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) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

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

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

FOR RESPONDENT:

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DEAN ANTICH  
Vice President  
South Bend Products, LLC

DATED:

FOR COMPLAINANT:

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EDWARD J. KOWALSKI  
Director  
Enforcement and Compliance Assurance Division

