



Reply To  
Attn of: WD-135

MAR 6 1992

Re: Proposed Assessment of Administrative Penalty against  
Westward Seafoods, Inc., Dutch Harbor Facility

Dear Sir or Madame:

The Environmental Protection Agency, Region 10, has commenced a Clean Water Act Section 309(g) administrative penalty action against Westward Seafoods, Inc., for violation of Section 301(a) of the Clean Water Act. The complaint alleges that the Westward's Dutch Harbor facility, which discharges to Captains Bay, violated permit conditions since the permit was issued in April 1991.

EPA is proposing to issue a Final Order which will assess an administrative penalty in the amount of \$125,000.

Persons wishing to comment on EPA's proposed action may do so by submitting written comments to:

Regional Hearing Clerk (SO-125)  
U.S. Environmental Protection Agency  
1200 Sixth Avenue  
Seattle, Washington 98101

All comments will become part of the administrative record of this case. Comments must be submitted within thirty days from the date of this notice.

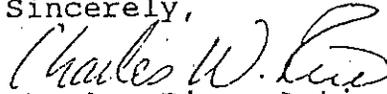
A copy of the proposed assessment and complaint will be available for review and copying between the hours of 8:30 a.m. and 4:00 p.m. Monday through Friday at the regional office (see address listed above). The proposed assessment and complaint may also be reviewed in either of the Region 10 Alaska offices at the following locations:

Environmental Protection Agency  
Alaska Operations Office  
Room E551, Federal Building  
Anchorage, Alaska 99513

Environmental Protection Agency  
Alaska Operations Office  
3200 Hospital Drive, Suite 101  
Juneau, Alaska 99801

For additional information on this action, please contact  
Florence Carroll at our Seattle Office or call (206) 553-1760.

Sincerely,



Charles Rice, Acting Chief  
Water Compliance Section

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

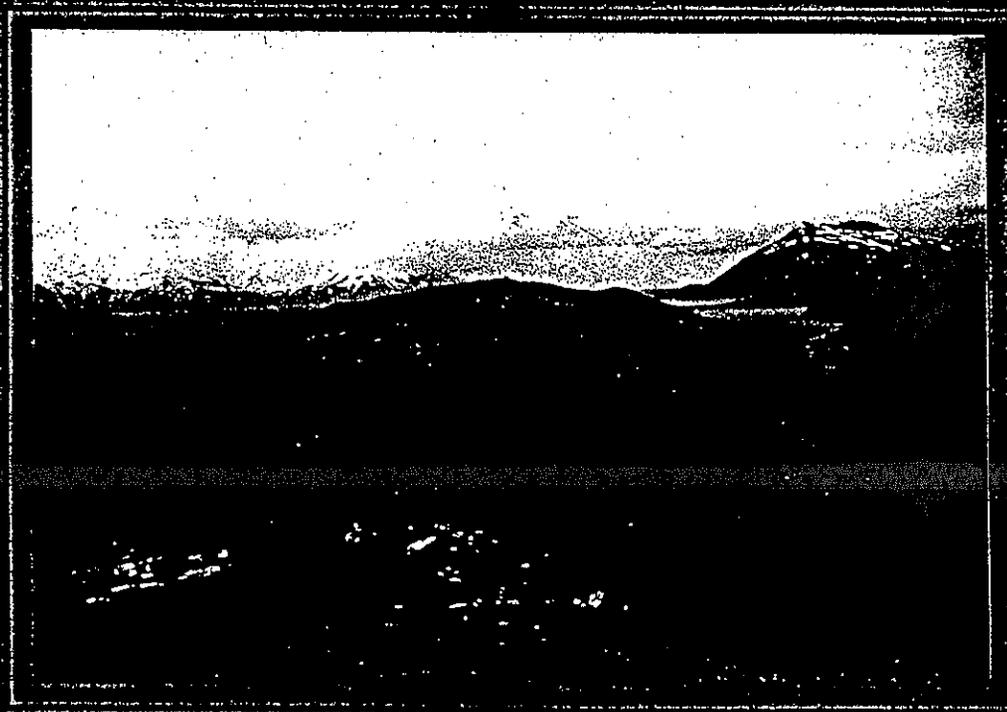
EPA Office of the Inspector General

# SPECIAL REPORT

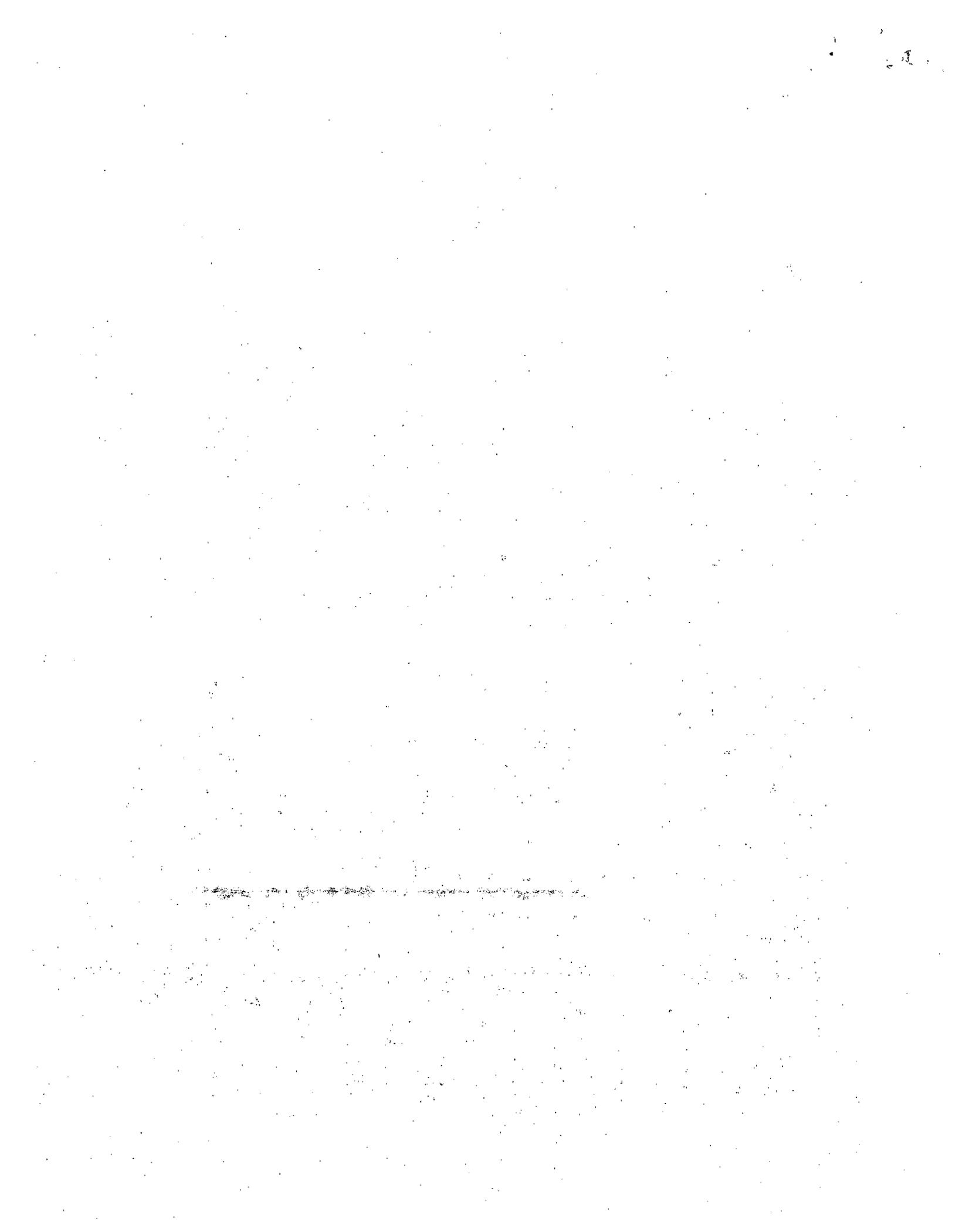
SPECIAL REVIEW OF THE INSURANCE  
OF NANTUCKET, MASSACHUSETTS  
BY THE NANTUCKET FIRE INSURANCE COMPANY  
OF NANTUCKET, MASSACHUSETTS  
ON BEHALF OF THE STATE OF MASSACHUSETTS  
IN CONNECTION WITH THE  
ALASKA NATURAL GAS PROJECT

ALASKA NATURAL GAS PROJECT - 1974-1975

WASH. D.C. 20460



Cape Sabine, Alaska





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF THE INSPECTOR GENERAL FOR AUDITS  
WESTERN DIVISION  
75 HAWTHORNE STREET  
19TH FLOOR, MAIL CODE 1-1  
SAN FRANCISCO, CA 94105-3901

March 12, 1992

SUBJECT: Special Review of Region 10's Issuance of  
National Pollutant Discharge Elimination System (NPDES)  
Permit No. AK-004978-6  
Westward Seafoods, Inc.  
Captains Bay, Alaska  
Report No. E2AWP2-10-0002-2400024

FROM: Truman Beeler *Deary H. Pena for*  
Divisional Inspector General For Audit  
Western Division

TO: Dana Rasmussen  
Regional Administrator  
EPA, Region 10  
Seattle, Washington

PURPOSE AND SCOPE

We conducted a special review of Region 10's (the Region) issuance of National Pollutant Discharge Elimination System (NPDES) Permit No. AK-004978-6 to Westward Seafoods, Inc. (Westward), Captains Bay, Alaska. The review was made under the Office of Inspector General (OIG) Early Warning Program. Under this program, special reviews are performed to identify potential problems early in their life cycle so EPA management can take appropriate action. We are providing this report directly to you because the implementation of the recommendations contained in this report may require your personal authorization.

The review was initiated as a result of concerns brought to our attention by the National Marine Fisheries Service of the U.S. Department of Commerce. These concerns related to the Region's procedures for issuing the NPDES permit and enforcing the permit conditions. We were also interested in the Region's adherence to previous commitments to our office to properly document its major decision actions. This commitment was made in the Region's response to our May 3, 1990, special report on the Region's handling of air and water issues. This report, no. EGAWG0-10-0022-0400015, found that the basis and justification for final decisions were not documented. As a result, the then Acting Regional Administrator established specific procedures requiring the Region to document all major decisions.

The overall objective of the review was to evaluate the adequacy of the Region's actions in approving the subject NPDES permit, which would allow a new source discharge into Captains Bay, Alaska. Specifically, the review evaluated the Region's procedures for issuing the permit, as well as the adequacy of the documentation maintained to support the Region's decisions in the following areas: (i) the environmental assessment and environmental impact statement processes; (ii) the NPDES permit process; and (iii) the permit enforcement process.

Our conclusions on these matters are based on interviews with regional and various other governmental agency personnel and reviews of their files. These agencies included: (i) National Marine Fisheries Service, U.S. Department of Commerce; (ii) Fish and Wildlife Service, U.S. Department of Interior; (iii) Department of Environmental Conservation, State of Alaska; (iv) Aleutians West Coastal Resource Service Area, State of Alaska.

We also reviewed applicable EPA regulations, policies and procedures. Our field work was performed between October 17, 1991, and December 18, 1991.

In accomplishing this review, we obtained technical assistance from the OIG engineering staff. Due to its limited scope, the review did not represent an audit in accordance with the Standards for Audit of Governmental Organizations, Programs, Activities and Functions issued by the Comptroller General of the United States.

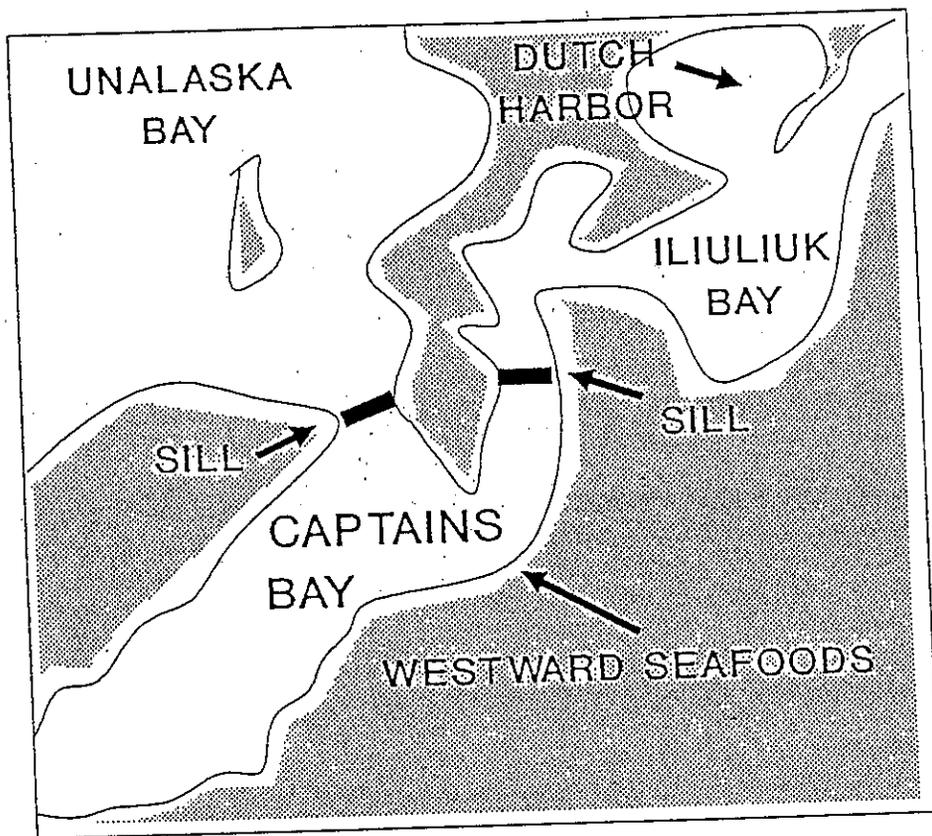
#### BACKGROUND

In May 1991, the National Marine Fisheries Service provided our office with a copy of an April 16, 1991, letter that it had previously submitted to the Region. The letter questioned the Region's basis for issuing an NPDES permit to Westward for its discharge of seafood wastes into Captains Bay, Alaska. The letter was provided because the Marine Fisheries Service had significant concerns relating to the Region's response to its comments on Westward's draft NPDES permit. The comments pertained to the planned discharge of seafood wastes from Westward's newly constructed seafood processing plant at Captains Bay. According to the letter, several state and Federal agencies objected to the permit because of:

- Inadequacies in the Region's environmental studies;
- Existing dissolved oxygen problems in Captains Bay; and
- Concerns that the Region would not require Westward to comply with the terms of the NPDES permit.

According to the Marine Fisheries Service, Captains Bay is a relatively pristine bay bounded by Unalaska Island in the Aleutian Island chain. As shown in the following map, the bay is much like a fjord, bordered by two sills that provide shallow outlets to two other bays, Iliuliuk Bay and Unalaska Bay.

#### CAPTAINS BAY, ALASKA



Because of the presence of the sills which provide horizontal barriers, Captains Bay is susceptible to pollution problems due to limited exchange with fresh seawater from larger Unalaska Bay and the Bering Sea.

The bays are critical because they supply a productive aquatic habitat. These areas also provide protection and food for the juvenile life stages of many fish and invertebrate species, including economically important species such as king crab, cod, and salmon. The discharge of seafood waste can be detrimental since it smothers the food sources used by the fish and invertebrates. Further, discharged organic matter suspended in the water can consume all of the dissolved oxygen, thereby eliminating life in that location.

Westward applied for an NPDES permit for its seafood processing facility in Captains Bay in June 1989. The Westward facility would be the only point source discharging into Captains Bay. Because Westward was a new source, 40 CFR 6.604 required the preparation of an environmental assessment (EA). After completion of the EA, the Region issued a finding of no significant impact (FNSI). The Region then issued a draft NPDES permit for public comment in January 1991.

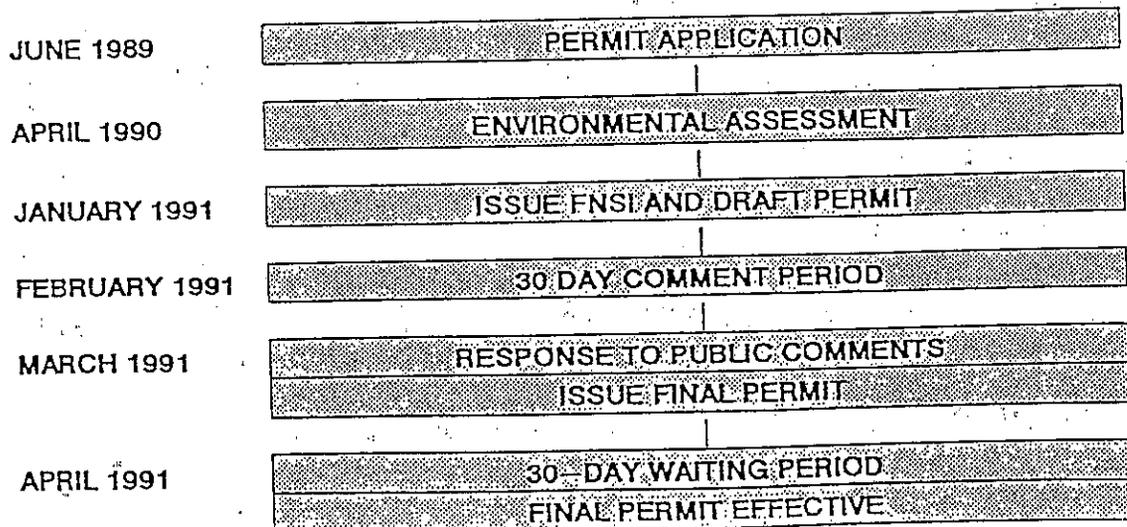
The Region's final NPDES permit (no. AK-004978-6) was issued in March 1991. The permit included several specific conditions including:

- A prohibition against the discharge of finfish waste;
- A prohibition against the discharge of floating solids, foam, or oily wastes (known as surface plumes);
- The submission of monthly discharge monitoring reports;
- A requirement that the discharge comply with Alaska water quality standards. These standards include a dissolved oxygen requirement of 6 milligrams per liter.

According to the permit, noncompliance with any of the permit terms constitutes a violation of the Clean Water Act. Such violations are grounds for enforcement actions, permit termination, or permit revocation and reissuance.

The following chart details the sequence of events that led to the Region issuing the final NPDES permit to Westward.

### PERMIT PROCESS



## SUMMARY OF REVIEW RESULTS

We concluded that the Region improperly issued the NPDES permit to Westward. Specifically, the Region's determination that the seafood discharge would not have a significant environmental impact on Captains Bay was not supported or documented. Subsequent information showed that, as a result of Westward's discharge, the water quality of the relatively pristine waters of Captains Bay was damaged. Further, the Region's files did not adequately document the basis for its decision to issue the permit. Thus, the Region did not adhere to its commitment made in response to a prior EPA OIG review relating to the need to document the basis for all major environmental decisions.

In our opinion, the Region should initiate action to modify and reissue Westward's NPDES permit for seafood discharge into Captains Bay, Alaska to incorporate more stringent effluent limitations and monitoring requirements. We believe such action is warranted in view of: (i) deficiencies in the Region's review of Westward's permit application; (ii) the adverse water quality which has occurred by allowing the Westward discharge; and (iii) Westward's failure to comply with permit conditions (page 7).

We also found that the Region had not taken enforcement actions on numerous violations of the water quality standards and permit conditions, although fines in excess of \$425,000 could have been levied. These violations included Westward: (i) discharging seafood wastes before the permit was effective; (ii) failing to submit required discharge monitoring reports; (iii) violating other administrative permit requirements; (iv) discharging prohibited finfish wastes; and (v) exceeding waste discharge limits on at least 17 different instances. Although violations were identified as early as March 1991, the Region had not taken appropriate enforcement actions as of December 18, 1991. The Region's files did not document any reason for its inaction. We are recommending that the Region take enforcement action on all Westward violations (page 26).

The details of our review are included in the referenced pages of the "Findings and Recommendations" section of this report, along with our recommendations for corrective action.

## MANAGEMENT COMMENTS

We provided the Region with copies of our draft report on January 21, 1992, and the Region responded to the draft report on February 21, 1992. An exit conference was held with Region officials on March 5, 1992. The Region disagreed with many aspects of our findings, but generally agreed with our recommendations. The Region stated that it followed proper procedures in issuing the permit, and that it had documented and supported its decision to issue a FNSI. The Region agreed that

the FNSIs should better disclose why actions would not have a significant environmental impact. The Region agreed to fully document future environmental decisions, and that it would consider enhancing procedures to more fully consider the public comments.

The Region's response to the draft also stated that it was in the process of preparing an administrative penalty action that addressed the violations identified by the OIG. The Region noted that most of the information necessary to pursue the violations was not received until November 1991, and that it planned to issue an enforcement action by mid-March 1992. At the exit conference, the Region advised that an administrative penalty in the amount of \$125,000 had been issued against Westward on February 28, 1992. The penalty covered a total of 170 violations which occurred during 1991. The Region also commented that continuing violations would be addressed and that further penalties would be levied. In addition, the Region advised that its permit monitoring would be increased, as appropriate.

After evaluating the above regional comments, it remains our position that the Region's conclusion to issue the FNSI and the NPDES permit, was not adequately documented by the EA, the FNSI, or by any other environmental analyses.

While the Region's enforcement action against Westward is a positive action, we believe that the Region should have initiated individual penalty actions at the time the violations occurred as a means of deterring future permit violations. In view of Westward's continuing permit violations, which have accumulated to over 200 violations as of January 31, 1992, we believe that more substantial penalty amounts could have been assessed on an ongoing basis. Further, the Region's penalty calculations did not include any penalty for Westward's illegal discharge without an NPDES permit. We consider this to be a serious violation, since it was contrary to the requirements of the Clean Water Act.

The Region's specific comments on the review findings are included in the "Findings and Recommendations" section of this report, along with additional auditor comments as necessary.

#### ACTION REQUIRED

In accordance with EPA Directive 2750, the Regional Administrator (the Action Official) is required to provide this office with a final written response to all the audit recommendations included in this report within 90 days of the report date.

Please refer to the special report number on all related correspondence. If you have any questions regarding this special review, please call me at FTS 484-2445.

## FINDINGS AND RECOMMENDATIONS

### 1 - ISSUANCE OF NPDES PERMIT NOT JUSTIFIED

The Region issued an NPDES permit to Westward for discharge of seafood wastes into Captains Bay, Alaska, although available documentation did not support the permit issuance. As a result of the discharge, the water quality of the relatively pristine waters of Captains Bay was damaged.

The issuance of the discharge permit was made on the basis of the Region's determination that the seafood discharge would not have a significant environmental impact on Captains Bay. However, this determination was not supported by the environmental assessment (EA) or other environmental studies. In addition, the Region's files did not document what alternative information or consideration may have been used by the Region to justify the issuance of the permit. Further, the Region did not adequately respond to comments from other Federal and state agencies and concerned citizens which questioned the basis for the Region's issuance of a FNSI on the proposed discharge. Subsequent information showed that Westward's discharge did not meet the conditions of the NPDES permit, and adversely affected the water quality of Captains Bay.

Because of the lack of documentation in the Region's file explaining the basis for its actions, we discussed the issuance of the permit with regional staff. It became apparent that the staff believed that this was just another seafood processor, and the issuance of the NPDES permit was a foregone conclusion. Further, the Region was under pressure from Westward to issue the permit so that the facility could begin operations in time for the crab season. As a result, the Region did not take the appropriate steps to determine the environmental effects of the seafood discharges into Captains Bay. We believe the Region's actions, in regard to this permit, adversely impacted the integrity of the permit process. The Region's actions were also contrary to commitments it made in response to a prior EPA OIG review relating to the need to document the basis for all major environmental decisions.

#### Background

Based on Westward's application for an NPDES permit, a regional contractor, Jones and Stokes Associates, completed an EA in April 1990. An EA normally leads to either a FNSI or an in-depth environmental impact statement (EIS). Per 40 CFR 1508.13, a FNSI must present the reasons why the actions would not have a significant impact on the environment. The FNSI and resulting draft permit, must then be issued for public comment. In January

1991, the Region issued a FNSI and a draft permit. A 30-day public comment period for the finding and draft permit started on January 18, 1991.

On March 22, 1991, the Region issued a final NPDES permit, and it became effective on April 22, 1991. The permit established waste discharge limitations and placed numerous conditions on Westward's operation. For example, Westward was not allowed to discharge finfish waste. According to the permit, noncompliance with any of the permit terms was a violation of the Clean Water Act and grounds for enforcement actions, permit termination, or revocation and reissuance.

#### Finding of No Significant Impact Not Supported

The Region's finding that Westward's discharge into Captains Bay would not have a significant environmental impact was not adequately documented or supported. According to the FNSI, this conclusion was supported by the EA, and the proposed NPDES permit conditions. However, as detailed in the following subparagraphs, the EA concluded that there was not sufficient information to evaluate environmental impacts. Further, many of the permit conditions represented studies and other actions which should have been considered before the permit was issued. In addition, other available data indicated the discharge could cause significant environmental problems in Captains Bay.

#### Environmental Assessment Not Conclusive

Although the EA indicated that insufficient information was available to evaluate the environmental impacts of the seafood waste discharge, the Region issued a FNSI. The Region's FNSI determination was not documented and appeared to be flawed.

As indicated above, the EA did not draw a conclusion, but instead found there was insufficient information to assess the environmental impacts as shown in the following excerpt:

"Settleable fish wastes pose similar difficulty to the crab waste problem. There is not enough information available to assess environmental impacts or the potential for effluent dispersion violations with Captains Bay."

Further, the Region commented that the assessment was based, in part, on a model of expected discharges at another seafood processing plant in a different bay. This model included certain critical assumptions. According to the EA "the extent to which these assumptions can actually be applied to Westward Seafoods' proposed facility in Captains Bay is unknown."

There was nothing in the Region's files to explain how it reconciled the issuance of the FNSI with the inconclusive EA results. The question and answers section of the March 23, 1981, Federal Register (Volume 46, No. 55) noted that a FNSI must succinctly state the reasons for deciding that the action will have no significant environmental effects. It further explains that the FNSI must show which factors were weighted most heavily in the determination. This type of analysis was not documented in the Region's files.

As previously indicated, the lack of adequate documentation of major regional decisions was identified in our prior special review of the Region. In response to our review, the Acting Regional Administrator stated, in a June 10, 1990, memorandum that:

"Good environmental decisions are built on solid staff work that includes an examination of alternative courses of action, together with the implications or consequences of those alternatives. Our decisions should emerge from a frank discussion of the alternatives, and our files should clearly reflect this process."

This memorandum required all major decisions to be justified in a separate memorandum. The Region did not follow this procedure, although all NPDES permits are considered major decisions according to the provisions of 40 CFR 1508.18.

#### Inadequate Permit Conditions

In our discussions with regional staff, we were advised that the Region included additional permit conditions in its final NPDES permit to address potential environmental concerns. However, the conditions added to the final NPDES permit were nothing more than proposed studies of the existing environment and requirements for the collection of additional data. To illustrate, the final permit required Westward to:

- Complete a one-year study of the circulation within Captains Bay;
- Perform an effluent characterization study;
- Assist in a harbor management study being completed by the City of Dutch Harbor;
- Make semi-annual dives of the outfall to determine the distribution and accumulation of shellfish waste; and

- Prepare a final report on the first year's sampling of dissolved oxygen.

While such conditions are often included in permits, they should not be used to avoid the requirement for an EIS. In our opinion, the proposed studies and the data collection requirements should have been completed before the permit was issued.

#### Other Available Data Indicated Problems

The Region had access to other data that should have alerted it to the potential water quality problems in Captains Bay. We found that a regional baseline survey and a dissolved oxygen study were completed before the permit was issued. Both studies identified problems with discharges into Captains Bay. However, there was no documentation in the Region's files indicating that these studies were considered in the decision to issue the FNSI.

- **1990 Baseline Survey.** The Region made a baseline survey in October 1990 to evaluate the suitability of Westward's proposed discharge site. The study concluded that seafood wastes should not be discharged at the location selected by Westward. The baseline survey found that:

"The proposed location for seafood waste disposal was poor for the following reasons: 1) the general area where waste would accumulate is a low-energy depositional environment, 2) the sloped bottom would cause wastes to move and accumulate in deeper areas having even less dispersive energy, 3) the water in the bottom of Captains Bay is poorly flushed because there is a sill at the northern entrance, and 4) there is a possibility for surface plumes to be carried to Iliuliuk Harbor under some tide and wind conditions."

With respect to the concern about surface plumes, we noted that a compliance inspection by the Region's Alaska Operations Office, in August 1991, reported that surface plume of seafood waste did occur. Such plumes are undesirable and adversely affect water quality.

The baseline survey concluded that "If Westward Seafoods constructs an outfall in Captains Bay, it is recommended that the amount of seafood wastes discharged be held to an absolute minimum." Regional staff told us this meant that no crab or other seafood wastes should be discharged. However, the Region allowed Westward to discharge crab and other seafood wastes.

- **1977 Dissolved Oxygen Study.** The Region previously investigated water quality in Captains Bay in 1977. The study reported that natural dissolved oxygen levels near the bottom of

the bay did not meet water quality standards of 6 milligrams per liter. The study concluded that:

"The dissolved oxygen declined with increasing depth. Dissolved oxygen that declines with depth is indicative of a basin in which limited mixing with aerated surface water occurs."

Because of the limited mixing and resultant low dissolved oxygen levels, aquatic life can be eliminated, including economically important species such as salmon and king crab. Although 12 years have passed from the date of the 1977 study until the permit application was received in 1989, we found no evidence showing that the Region tried to further evaluate the dissolved oxygen concern. In our opinion, this concern should have been addressed before a draft or final permit was issued.

#### Region's Response to Public Comments on FNSI Were Inadequate

The Region did not adequately respond to requests for more data from interested Federal and state agencies, and concerned citizens, before issuance of the permit. According to the Region, a model of the discharge characteristics was used to address the need for additional data on potential environmental impacts. However, the basis for the model and the results were not made available to the outside groups, and additional public hearings were not held. A subsequent study performed in November 1991, as a condition to the NPDES permit, showed that water quality was adversely impacted by Westward's discharge.

Need For More Data. All six outside parties commenting on the FNSI and the draft permit stated that the EA did not support the issuance of a FNSI. These parties included the National Marine Fisheries Service, the Fish and Wildlife Service, and the Aleutians West Coastal Resource Service Area. It was their opinion that the Region lacked sufficient baseline information about water quality and water circulation in Captains Bay. For example, in its February 11, 1991, public comments, the National Marine Fisheries Service stated that:

"This assessment does not consider other pollutants entering Captains Bay...We believe any assessment of cumulative effects would require knowledge of existing currents, water chemistry, and quality within the receiving waters. Because this data is lacking, this assessment is premature."

Also, in a February 12, 1991, letter to the Region, the Fish and Wildlife Service stated that:

"The assessment does not appear to provide adequate documentation to support a FNSI or enable a decision to

prepare an environmental impact statement, as the assessment identifies many data gaps and contains deficiencies which should be addressed in a revised assessment."

The Aleutians West Coastal Resource Service Area (AWCRSA) had similar concerns and, in a February 15, 1991, letter to the Region, stated that:

"The AWCRSA has grave concerns about the EPA's FNSI and the proposed issuance of an NPDES permit. We contend that the environmental assessment clearly does not support such a finding and does, in fact, acknowledge serious data deficiencies and raises critical questions about the advisability of discharging seafood processing effluent into the marine waters of Captains Bay. In accordance with the requirements of the Clean Water Act, the burden of proof is upon the applicant to show that the proposed discharge will comply with all standards of the Act..."

AWCRSA also stated that there was inadequate data concerning effluent dispersion and the zone of deposition. The zone of deposition was a two-acre area in which Westward was allowed to discharge its wastes. AWCRSA said it was "incomprehensible that EPA would even consider issuing an NPDES permit in Captains Bay" due to the "profound" lack of data available to determine the dispersion of the crab waste pile or liquid wastes.

In its response to the public comments, the Region acknowledged that more data was needed to obtain a more complete understanding of circulation within the bay. However, instead of collecting more data, the Region made data collection part of Westward's permit conditions.

In our opinion, most of the data necessary to address the above concerns could have been obtained before the permit was issued. For example, the Region could have observed the remnants of an earlier abandoned seafood processor's crab waste pile in Captains Bay to help predict the impact of Westward's operation. However, the Region did not make a dive survey of the abandoned waste pile.

Use of Model. The commenters expressed concern over the detrimental effects of the waste discharge on dissolved oxygen levels in Captains Bay. These discharges could reduce the dissolved oxygen levels and ultimately eliminate aquatic life. As previously stated, the dissolved oxygen problem at the lower depths of Captains Bay was identified in a 1977 regional study.

The Region used modeling to address public comments regarding the need for more data on water quality impacts. The Region reported that the model predicted that "under worst case conditions,

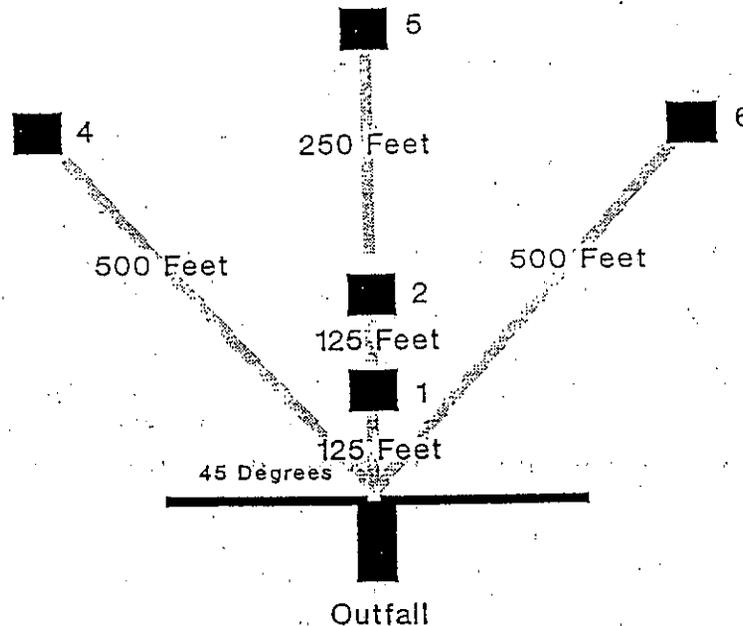
dissolved oxygen levels will meet the state standard (6 milligrams per liter) outside the initial dilution area." However, we believe that the model was inappropriately used because:

- No significant new data was collected for the model even though existing data was insufficient; and
- The model and related assumptions were not issued for public comment, and thus it was not subject to outside scrutiny.

### Problems With Water Quality Standards

A subsequent study performed by Westward under its permit conditions showed that the commenters' concerns over adverse water quality impacts were well founded. A dissolved oxygen study completed by Westward in November 1991, showed that water quality standards were not being met. The study included water quality readings taken at five stations between August 10 and August 22, 1991. These five stations (nos. 1, 2, 4, 5, and 6) and their distance from the outfall (the plant's discharge point) are shown in the following diagram:

STATION LOCATIONS FOR DISSOLVED OXYGEN READINGS



In its August 10, 1991 readings, Westward found that the state water quality dissolved oxygen standard was not met at a depth of 7 meters at station no. 2, 250 feet away from the outfall. The

state requirement also was not met at a depth of 9 meters at station no. 4, 500 feet from the outfall.

In its August 22, 1991 readings, Westward found that the dissolved oxygen levels were below state water quality standards at the surface at all five of the stations. Thus, the dissolved oxygen problems were no longer limited to the lower depths of the bay, but were also at the surface. This meant that there may not be enough oxygen to sustain life in the area of the discharge.

#### Permit Process Lacks Integrity

In our opinion, the Region did not properly document its decisions or respond to outside concerns because it had predetermined that the permit would be issued. According to regional personnel, at the time of Westward's application for an NPDES permit, the facility was seen as just another seafood processor. No problems were anticipated with the EA. Therefore, the issuance of the FNSI was a foregone conclusion. When problems were identified, the Region was reluctant to acknowledge these problems, and undertake the appropriate environmental studies. Further, the Region was under pressure from Westward to issue a permit in time for the facility to begin operations for the crab season in early 1991. It appears that the Region was motivated, in part, to issue the permit because of pressure from Westward.

#### Region's Comments and OIG Evaluation

The Region's comments on the above finding and our evaluation of these comments, are summarized below by the topic area presented in the finding.

#### Other Issues Surrounding the Permit

Region's Comments. The Region pointed out there were other issues that surrounded the issuance of the proposed permit. For example, the Region stated that it had to address significant impacts to any environmental resource, not just water quality. In fact, the public notice for the draft NPDES permit was suspended by the Region until a clear demonstration could be provided that the project would comply with the Clean Air Act.

Further, the Region commented that it was negotiating with six seafood processors in the area to prohibit the discharge of finfish waste. Despite the fact that EPA lacked the authority to require discharge reductions, the Region obtained agreement by the dischargers to reduce finfish waste to fish meal. This agreement was forged before the draft permit was issued. Also, during this time, the Region proposed to the State of Alaska to allow a zone of deposit for crab wastes.

OIG Evaluation. We recognize that there were other issues that surrounded the permit issuance, including concern with compliance with the Clean Air Act. We also recognize the Region's efforts to control finfish waste disposal. However, these facts do not obviate the need to document decisions made to issue EAs, FNSIs, draft and final NPDES permits, and other major actions.

Finding of No Significant Impact Not Supported

Region's Comment. The Region stated that the procedures used to implement the permit review process were consistent with all governing Federal regulations. Regional officials also said that the FNSI addressed only the reasons why an EIS would not be prepared. The basis for the FNSI was documented in the FNSI, to which the EA was attached. The FNSI was also based on the draft permit, which included effluent limits. The draft permit, the fact sheet, and the Response to Comments also documented the basis for the permit action. Supporting information was in the Region's files, including the administrative record.

The Region added that it could not assume, when it performed its environmental analysis, that Westward would not comply with the terms of the permit.

The Region acknowledged that the Westward FNSI may not sufficiently describe the reasons why the proposed action "will not have a significant effect on the human environment." An expanded FNSI format which will enable the Region to further elaborate on the rationale for the determination would have been helpful in this case, and will be implemented on future new source NPDES reviews.

OIG Evaluation. We recognize that the Region followed the required procedures and agree that more details are needed in the FNSI. However, its conclusion of "no significant impact" remains inadequately supported. Further, after consideration of all available regional files, we continue to conclude that the Region did not document in the FNSI, or in any other document, the basis for using the inconclusive EA. Also, the Region did not document why it did not obtain sufficient baseline information for its analyses and models.

Further, the Region did not document why it did not require Westward to prove that its discharge would meet water quality standards as provided for by 40 CFR 124.85. Existing studies showed there was a dissolved oxygen problem at the lower depths of Captains Bay.

Although Westward proposed to discharge effluent contaminants that could depress the dissolved oxygen levels, the Region did not ascertain the affect of the contaminants on the water quality at Captains Bay.

The Region's files did not document or otherwise explain how the draft permit was considered in the Region's determination of a FNSI. Also, there was no explanation as to how the Region's 1990 baseline survey or other studies, that documented dissolved oxygen problems, were taken into account. It remains our position that the available documentation was insufficient to justify the issuance of an NPDES permit to Westward.

We agree that the Region cannot assume non-compliance with permit conditions when performing environmental analyses. However, it can require conditional items, such as fish waste screens, to be in place before a permit is issued. It can also ensure the availability of sufficient baseline information before issuance of the NPDES permit.

#### Environmental Assessment Not Conclusive

Region's Comments. The Region did not agree that the EA was inconclusive in the area of environmental impacts from a seafood discharge. Further, it explained that the passage from the EA quoted by the auditors referred only to one component of the discharge, settleable finfish solids. The difficulty in predicting this component was acknowledged in the EA. However, Westward proposed to screen finfish in their permit application. This action was taken into account in the review of the EA and the FNSI.

Further, the Region explained that the ability to accurately model the settleable finfish solids passing through the screens was not a significant factor in the determination of the water quality impacts of the discharge. The EA concluded "that removing solids and processing them through the meal plant will significantly reduce settleable material. This material is unlikely to have a direct physical impact on the benthos."

The Region further commented that the EA was conclusive in that it used a model to describe the areal extent and biological impacts of the crab waste pile. Further, the State of Alaska established a 2-acre zone of deposit for crab waste pile.

The Region commented that it identified the potential dissolved oxygen problem before the FNSI was issued. However, the Region's 1977 survey showed that the upper layer of water in Captains Bay (where Westward planned to discharge) was well oxygenated. The Region concluded that the permit should include dissolved oxygen monitoring to assess the potential problem.

OIG Evaluation. It remains our position that the EA was largely inconclusive. It identified numerous significant areas where adverse or unknown environmental impacts would likely occur. For example, the EA reported:

"The fate of liquid wastes from the surimi plant discharge and stickwater from the meal plant is heavily dependent on water column characteristics, circulation patterns within the receiving waters, and the method of discharge. Without an understanding of these water quality dynamics in Captains Bay, it is difficult to make definitive statements concerning the potential impacts of surimi plant and stickwater liquid waste discharges on the overall water quality."

The EA also relied on a study of smaller plant in another bay to predict dissolved oxygen concentrations in Captains Bay. The model showed that violations of water quality would not be expected. However, regarding the assumptions used in the model, the EA cautioned that:

"The extent to which these assumptions can actually be applied to Westward Seafoods' proposed facility in Captains Bay is unknown. More detailed information of water quality and circulation patterns within Captains Bay would be needed to verify the assumptions."

Regarding seafood waste deposits, the EA commented on existing information about water quality problems in Captains Bay. The EA advised that:

"This information is not sufficient to formulate a realistic statement of potential dangers should additional BOD<sub>5</sub> demands be placed upon Captains Bay. There is a need for clarification on the mechanisms, timing, and biological cycles linked to renewals of deep waters within Captains Bay."

The EA also was inconclusive with regard to the crab waste pile. As the Region pointed out, the EA included an estimate of the size of the crab waste pile. However, the EA cautioned that definitive statements could not be made unless an abandoned processor's outfall in Captains Bay was examined and a comparison made between the abandoned processor's production and Westward's. We found no evidence that the Region examined the old waste pile or compared the production records.

The EA also lacked sufficient information to evaluate the adverse effects on the discharge on marine biota. The EA stated that, "There is no information on marine biota within the project area."

There was no documentation in the file to explain how the Region addressed the issues raised in the EA. Further, there was no documentation explaining how finfish screening and meal plant processing were taken into account in the review of the EA and

FNSI. Contrary to the Region's comments, finfish screening was not part of Westward's permit application.

In addition, the EA did not conclude that the 1977 dissolved oxygen study showed there was no water quality problem at Westward's proposed discharge site. In fact, the EA warned that:

"The study concluded that the disposal of processing waste added to natural organic loading within Captains Bay, extended the duration of near anoxic conditions that occur in deeper water on an annual cycle, and possible expanded the anoxic zone into the sediments."

Further, the EA noted concern about the age of the available data. It said, "There has been virtually no water sampling in the area of Captains Bay since that time (1977), making generalizations about annual water cycles in Captains Bay difficult." As detailed in other sections of the EA, information about these water cycles was needed to properly evaluate the effects of the proposed discharge.

In summary, although the EA concluded there was a lack of critical data to evaluate water quality impacts, the Region did not document how it concluded otherwise.

#### Inadequate Permit Conditions

Region's Comments. The Region stated that the FNSI relied upon the effluent limits or conditions imposed by the permit such as finfish waste screening, grinding of crab prior to discharge, and pollutant limits. The FNSI is based on the draft permit. The conditions added to the final permit were not germane to the FNSI.

OIG Evaluation. We were advised by regional staff that they relied on the final permit conditions to offset environmental concerns. However, it was our position that these conditions should have been accomplished before the permit was issued. For example, the final permit required that Westward complete a one-year study of the circulation in Captains Bay. However, as described in the EA, the information on circulation patterns was needed to determine if there was dissolved oxygen problem in Captains Bay.

The final permit also included a bimonthly requirement for Westward to collect samples so that the dissolved oxygen content could be analyzed. In this respect, the draft permit called for only biannual samples. In our opinion, adding the bimonthly requirement was an after-the-fact method of assessing whether the discharge would cause a dissolved oxygen problem. Based on 40 CFR 124.85, Westward had the burden of proving its discharge would not pollute Captains Bay before a permit was issued.

Additionally, the Region said it relied on the finfish waste screening proposed in Westward's permit application. However, the finfish waste screening was not required and not part of the permit application.

#### Other Available Data Indicated Problems

##### 1990 Baseline Survey

Region's Comments. The Region did not agree that its 1990 baseline survey contradicted the decision to issue the permit. The Region commented that the baseline survey provided that, "Fish wastes should be processed through a reduction facility. If crab wastes are to be discharged, to accelerate decomposition, they should be ground to at least 1/2 inch. The zone of deposit for any accumulating wastes should also be held to a minimum."

OIG Evaluation. The Region's comments are acknowledged. However, in an effort to clarify the baseline survey comment that "wastes should be held to a minimum", we contacted the author of the survey to provide a clarification on this statement. The author advised us that it was his intent to say that seafood waste should not be discharged. It appears that his recommendations had to be modified in the survey in view of the Region's commitment to issue the permit.

##### 1977 Dissolved Oxygen Study

Region Comments. The Region said that, since there were no facilities discharging to Captains Bay between 1977 and 1989, there was no reason to conduct a water quality study during this time. In addition, it commented that the seasonal variability of dissolved oxygen necessitated a year-long study. The Region concluded that the "financial and logistical burden of such monitoring should be placed on the permittee as part of the permit."

OIG Evaluation. We agree that there may not have been good cause to conduct a water quality study between the 1977 study and 1989. However, the 1977 dissolved oxygen study indicated there were serious dissolved oxygen problems in Captains Bay. Thus, it was incumbent upon the Region to determine (or require Westward to determine) the extent to which this problem continued to exist before the permit was issued.

The Region indicated it took care of this problem by putting the "financial and logistical burden of such monitoring" on Westward. However, in the draft permit, the Region also required Westward to obtain dissolved oxygen samples on a semi-annual basis. Further, Westward could not effectively monitor the dissolved oxygen because there was no current baseline data of the

predischARGE dissolved oxygen levels. It was this same lack of baseline data that the Region argued prevented it from conclusively showing that Westward caused the water quality problem with dissolved oxygen. We believe that the Region should have determined the existing dissolved oxygen levels before Westward was allowed to discharge. Because the dissolved oxygen levels were not determined, the Region did not have a sufficient basis for determining if the permit should be issued.

#### Region's Response to Public Comments on FNSI Were Inadequate

Region's Comments. The Region stated it took the public comments seriously. In response to concerns raised about the impacts of the proposed discharge in Captains Bay, the Region performed hydrodynamic modeling of dissolved oxygen concentrations resulting from the Westward discharge. The modeling was performed under the direction of the Region's water quality monitoring expert.

The Region did not agree that existing data for the model was insufficient. It commented that conservative assumptions were typically used to develop a credible "worst-case" scenario. Under worst-case conditions in Captains Bay, the model indicated that the discharge would not result in a violation of state standards. As a result, the Region stated that the FNSI remained valid.

According to the Region, its determination that the FNSI remained valid were disclosed in the "Response to Comments" document which was provided to the public. The Region also stated that the results of the model were also made available to the public in the "Response to Comments". The Region maintained that the model was not inappropriately used just because it was not subject to public review.

The Region also reiterated that the existing modeling data were sufficient. The Region concluded that the available information would neither support long delays in permit issuance, nor restrictions on biochemical oxygen demand of the discharge. Further, the Region commented that the State of Alaska certified that there were reasonable assurances that the discharge, subject to permit conditions, would meet state standards.

According to the Region, the public commenters were informed of their right to challenge EPA's decision in an evidentiary hearing. However, no challenges were received.

In addition, the Region stated that it informed Westward of the public concerns over the permit. This ultimately resulted in an agreement to expand the permit monitoring programs.

OIG Evaluation. The public comments, from the other Federal and state agencies, questioned the use of the inconclusive EA and the lack of adequate baseline information. They also commented on the evidence of an existing dissolved oxygen problem. In response to these comments, the Region developed a hydrodynamic model to evaluate the potential dissolved oxygen problem. However, it did not obtain baseline data for use in the model. Instead the Region made data gathering part of the conditions of Westward's permit. In our opinion, this did not adequately address the public comments which called for more baseline data in order to make the determination of environmental impacts.

In our opinion, the lack of baseline data affected the reliability of the hydrodynamic model. The model went to great lengths to point out that there was very little data concerning the receiving waters and wastewater discharge in Captains Bay. The critical missing information for seafood wastes included: (i) the deoxygenation rate; (ii) the immediate dissolved oxygen demand; and (iii) settling rates.

In fact, other than temperature and salinity, the model contained virtually no other data specific to Captains Bay. This situation was also pointed out in the EA, which commented that there was a lack of baseline data for Captains Bay. Specifically, the hydrodynamic model stated that it was:

"Possible to evaluate the impacts of the discharge upon dissolved oxygen of the receiving waters only in terms of sensitivity of the model to hypothetical changes in unknown parameters."

Nonetheless, the Region used to model results to predict that the state water quality standard for dissolved oxygen would be met outside the initial dilution area. However, in August 1991, the waters near Westward's discharge outfall did not meet state water quality standards. Obviously, either the model or the input data were inadequate. The fact that the Region did not have enough information to determine what caused the water quality violation confirmed the inadequacy of its modeling and analysis. Further, the model was not subject to scientific scrutiny by interested public commenters in the "Response to Comments".

We do not agree that available information did not support a delay in the permit issuance. The lack of baseline data for the EA and the hydrodynamic model made it virtually impossible for the Region to draw a reasonable conclusion about environmental impacts of the seafood discharges. As previously noted, the CFR requires the permittee to persuade EPA that a permit should be issued. In other words, Westward should have borne the burden of showing that the discharge would comply with all standards. The opponents did not have to prove that Westward would violate standards. right!

In addition, the State of Alaska's assurance should not have been used as a basis for issuing the permit. There was no evidence in the files that Alaska's assurances were based on any additional scientific or technical information. In this respect, we met with numerous state officials and found that the certificate of reasonable assurance was not supported. According to a proposed consistency finding made by the state staff and dated March 7, 1991:

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"The proposed stipulations are inadequate to find the project consistent with the State water quality standards and our draft policies...The profound lack of baseline information about the current status of the water quality in Captains Bay and the circulation characteristics make it impossible to predict potential impacts of the proposed discharge with any reasonable degree of confidence."

However, the conclusive consistency determination, made four days later, found the project consistent with the Alaska Coastal Management Plan subject to the conditions of the permit.

Further, the Alaska Department of Fish and Game advised the Region in its February 27, 1991 letter:

"The environmental assessment identified several significant unanswered questions that are essential for formulation of a realistic statement concerning the dangers of mass loading of BOD<sub>5</sub> in the deep waters of Captains Bay...In addition, serious concerns are raised regarding the likely potential for the development of a persistent waste pile in the area surrounding the outfall...However, the justification for the zone of deposit does not adequately address...the potential impacts on other uses of the waterbody...(and) the expected duration of the deposit and any adverse effects."

The Region should not routinely accept a state certificate of reasonable assurance unless it has assurance that the certificates are supported, and that all conflicting information has been resolved.

At least two public commenters planned to request an evidentiary hearing. However, they did not have the legal resources necessary to pursue the matter. In addition, the Region did not have an effective procedure for resolving environmental issues raised in the comments from other state and Federal agencies.

We found no evidence that the Region responded to additional comments raised by the U.S. Fish and Wildlife Service in a letter dated April 1991. In these comments, the Fish and Wildlife

Service again voiced its objections to the permit, "in spite of the permit being revised to require more comprehensive monitoring". The letter also explained that it had video taped that Westward was discharging before the effective date of the permit, a violation of the Clean Water Act.

### Problems With Water Quality Standards

Region's Comments. The Region said that the OIG assumed that ambient water quality in the bay was a direct result of Westward's discharge. It indicated that natural processes, such as plankton blooms, also affect dissolved oxygen concentrations. The Region confirmed that Captains Bay did not meet standards for dissolved oxygen in August 1991. However, according to the Region, it had not been established to what extent this problem was from a natural occurrence or the result of the Westward discharge.

OIG Evaluation. Contrary to the Region's comments, we believe that existing information indicated that Westward was responsible for the water quality standard violations. According to the Region's 1977 study, the area where Westward planned to discharge was "well oxygenated" (although deep waters were poorly oxygenated). In July and August 1991, Westward improperly discharged finfish waste and exceeded limits for total suspended solids in waste. Thus, it was reasonable to conclude that Westward was responsible for the dissolved oxygen problem in August 1991. Further, according to the Region's own staff evaluation:

"The aquatic environment in Captains Bay has probably been seriously impacted because of the presswater, finfish, and stickwater discharge. The depressed dissolved oxygen readings in August may have been related to the presswater discharge (nutrients) that increased the usual algae bloom."

Again, we believe that the Region prematurely approved Westward's permit before adequately establishing whether its discharge would affect the water quality of Captains Bay. This situation became even more pronounced when the Region virtually ignored the public commenters' objections to the permit issuance.

### Permit Process Lacks Integrity

Region's Comments. The Region advised that Westward applied for the permit in June 1989 and the EA, FNSI, and permit were delayed because of growing concerns over "grind and discharge" permits for Unalaska Island. The Region stated that it negotiated with six processors to obtain agreement on a permit condition prohibiting the discharge of finfish waste. As a result, it was agreed that the finfish waste would be reduced to fish meal, and

that only crab wastes could be ground and discharged. By the time this agreement was forged, the Region agreed it was under pressure from Westward to issue the permit in time for crab season. However, the Region insisted that Westward's schedule had no bearing on the EA, FNSI, and permit.

OIG Evaluation. The Region's response contradicted itself. In one statement the Region indicated that it was not under pressure to approve the NPDES permit. However, another portion of the response admitted that it was under pressure to issue the permit in time for the crab season. As indicated previously, regional staff believed that it was a foregone conclusion that the Region would issue Westward an NPDES permit. We feel this was a driving factor in the decision to not properly resolve the inconclusive water quality issues raised in the EA before the permit was issued. Because these issues were not adequately resolved, the FNSI and decision to issue the permit could not be properly documented.

### Recommendations

We recommend that the Regional Administrator:

1. Modify and reissue Westward's NPDES permit to incorporate more stringent effluent limitations and monitoring requirements.
2. Require that a new EA for Westward's discharge into Captains Bay be completed in accordance with the requirements of 40 CFR 1508.13.
3. Upon completion of the EA, the Region should:
  - a. Assure that all of the data necessary to support a FNSI and draft NPDES permit or the need for an environmental impact statement are obtained and properly considered.
  - b. Ensure that all regional environmental decisions are adequately documented in the Region's administrative files.
4. Improve existing procedures to assure proper consideration of all public comments in response to a FNSI, an environmental impact report, a draft permit, and a final permit. These procedures should assure that all objections, questions, and other information included in the public comments are appropriately addressed and documented in the Region's files.

### Region's Comments and OIG Evaluation

Region's Response to Recommendation 1. During the exit conference, the Region agreed to "review the water quality data collected since the issuance of the permit to determine the adequacy of the current permit, as well as the need for total

maximum daily loads for Captains Bay. If the data indicates that the permit is not adequately protective of water quality would modify the permit, based on total maximum daily loads, to include revised effluent limitations and/or monitoring requirements. The modification action should be completed before August 1992."

OIG Evaluation. It remains our position that the permit should be modified and reissued in view of the: inconclusive EA, unsupported FNSI, unreliable hydrodynamic model; water quality problems experienced in Captains Bay; and continuing permit violations. We believe that the Region should expedite the permit modifications in order to improve upon the August 1992 completion date. In the meantime, Westward should continue to be held accountable for all permit and water quality violations.

Region's Comments to Recommendation 2. The Region stated that a new EA may be required to evaluate proposed NPDES permit modifications or reissuance of the NPDES permit.

OIG Evaluation. As detailed in our previous comments, we consider the existing EA inadequate because of insufficient baseline data. This data should be obtained so that the impacts on the environment can be reasonably evaluated.

Region's Comments to Recommendation 3a. The Region agreed that additional disclosures in FNSIs of the reasons why an action will not have a significant environmental impact is warranted and will be provided in future FNSIs.

Region's Comments to Recommendation 3b. While the Region concluded that the procedures used were consistent with all governing laws and regulations, it agreed that its decisions could be better documented.

Region's Comments to Recommendation 4. During the exit conference, the Region agreed that it needed to establish better informal procedures to share information with the other public agencies.

## 2 - INADEQUATE ENFORCEMENT OF NPDES PERMIT VIOLATIONS

The Region had not taken appropriate enforcement actions against Westward for continuing NPDES permit violations. In accordance with the permit conditions, we estimate that penalties in excess of \$425,000 could have been levied for these violations.

According to various regional inspections and other reports, Westward: (i) discharged wastewater before the NPDES permit was effective; (ii) failed to submit discharge monitoring reports within the time frames required by the conditions of the permit; (iii) violated the administrative permit requirements, including a failure to use flow measuring devices; (iv) discharged finfish waste, although prohibited by the permit; and (v) exceeded the effluent discharge limitations for seafood processing. The lack of enforcement actions for the above violations is contrary to EPA policy, which requires an enforcement approach that provides a deterrent effect and a swift resolution of environmental problems. Further, the Region did not document, or otherwise explain the reasons why enforcement actions were not taken. In the one identified instance where the Region did initiate an enforcement action, we found that it was inadequate.

### Background

On March 22, 1991, the Region issued a final permit to Westward to discharge seafood wastes into Captains Bay, Alaska. This permit was effective on April 22, 1991, and imposed several restrictions on Westward, including a condition prohibiting the discharge of finfish waste.

Enforcement of permit conditions is a key role of EPA. According to the Training Manual for NPDES Permit Writers, dated March 1986, "It is essential that the limitations and conditions contained in an NPDES permit be met by the permittee, otherwise the permit becomes a meaningless document." Further, as detailed in Finding and Recommendation No. 1 of this report, the permit conditions were a primary factor in the Region's decision to issue a permit to allow Westward's discharge.

One of the most essential elements of an enforcement program is the effective use of penalties to deter future violations and punish violators. EPA General Enforcement Policy, GM-21, dated February 1984, was issued to establish a consistent agency-wide approach to penalty assessment in EPA.

### Discharging Before Permit Was Effective

Westward was discharging crab waste as early as March 29, 1991, or 24 days before the April 22, 1991, effective date of the NPDES permit. A discharge before the effective date of a permit is a

violation of Section 301(a) of the Clean Water Act, and 40 CFR 122.41.

The Region was aware that Westward would discharge before the permit was effective, but took no enforcement action. On March 29, 1991, the National Marine Fisheries Service advised the Region of the possibility that Westward would discharge prior to the permit's effective date. According to a record of the conversation made on that date by the Marine Fisheries Service, the Region stated that:

"Westward had in fact begun discharging into Captains Bay...Westward had requested this waiver, which EPA rejected. However...EPA told Westward they would not enforce this violation."

In addition, in April 1991, the Marine Fisheries Service mailed the Region a copy of a video taken during a dive survey showing the illegal discharge.

Regional staff advised us that they felt obligated to allow the illegal discharge because the Region had not processed the permit in time for crab season. The Region's lack of enforcement action was contrary to the Clean Water Act, which does not allow a processor to discharge without a permit.

#### Submission of Late Discharge Monitoring Reports

We found that Westward's discharge monitoring reports either were not submitted, were late, or were incomplete. The submission of timely and accurate discharge monitoring reports is the key to EPA's self-monitoring program. The NPDES permit conditions established the self-monitoring requirements, and discussed the type of sampling required, as well as the flow monitoring, analytical, and data reporting requirements. According to the permit, reports are required to be submitted monthly and are to be postmarked no later than the 10th day of the following month.

On August 3, 1991, the Region's Alaska Operations Office made a compliance inspection of Westward's adherence to its NPDES permit requirements. The inspection verified that discharge monitoring reports had not been prepared as required. The inspection also found that flow measuring devices were not being used as required by the permit conditions. The Operations Office submitted its inspection report to the Region in August 1991. However, the Region did not take any enforcement actions as a result of the violations found in the inspection. Further, the Region's files did not document the basis for this lack of enforcement action.

Westward's first discharge monitoring reports were not received until November 1991, over six months after the permit went into effect. The initial report covered the period June 1991 through

October 1991. The April and May 1991 reports were not submitted, and the June 1991 report omitted the required sample analysis information.

Because of Westward's delayed submission of the required monitoring reports, the Region did not receive timely information on waste discharge violations which occurred during Westward's operating season. The following table shows the results of the monthly discharge monitoring reports.

<u>Month</u>	<u>Report Results</u>
April	No report.
May	No report.
June	Report did not include required sample analyses.
July, August	Violation of total suspended solid limits for fish meal and finfish. Violation of biochemical oxygen demand limits for fish meal.
September	Violation of total suspended solid limits for finfish processing.
October	No discharge.

One effect of the delay in submitting timely discharge monitoring reports was that it prevented the Region from taking action against Westward during a principal part of its operating season.

#### Violation of Other Administrative Permit Requirements

Westward also violated other administrative requirements included in its NPDES permit during the period May 1991 through at least October 1991, since it had not:

- Conducted flow measurements;
- Performed composite sampling when required;
- Obtained samples from individual wastewater effluent streams;
- Taken the appropriate number of samples for specific parameters; and

- Conducted most of the required studies and plans.

These requirements were critical for determining whether Westward's discharges were in accordance with water quality standards. To illustrate, because Westward did not have the required flow measurement devices, it had to estimate flow based on the parameters provided by the equipment manufacturer. The use of such estimates could distort the validity and usefulness of the information reported.

Some of the violations of the above administrative requirements were subsequently identified during the Operations Office's aforementioned August 3, 1991, regional inspection. However, at the time of our field work, actions had not been taken to require Westward to comply with the administrative requirements, and penalties had not been assessed for their noncompliance with the permit conditions.

#### Prohibited Finfish Waste Discharges

Westward discharged finfish waste in direct violation of its NPDES permit. The permit requires that Westward inform EPA of any noncompliance with permit conditions within 24 hours. We found that Westward did not promptly report the discharge of finfish wastes which were recorded in its July 1, 1991 dive survey. The survey reported that:

"Finfish waste consisting of a light, fluffy floc is distributed over most of the outfall area and is likely to extend beyond the 200 foot limit of the survey radius."

The dive survey was received by the Region on August 23, 1991, or approximately seven weeks after the violation occurred. The Region's files did not explain why enforcement actions were not taken on the illegal finfish discharges or the failure to report the permit violations timely.

#### Violation of Effluent Discharge Limits

According to the self-monitoring reports submitted by Westward, there were 17 separate violations of the seafood effluent discharge limits. For example, Westward exceeded the limits for total suspended solids by 2 to 3 times the legal limit. These violations occurred in the months of July, August, and September 1991. As previously discussed, sample information was not available for April, May, and June 1991.

#### Regional Actions Were Inadequate

According to the Clean Water Act, EPA can assess a penalty of \$25,000 for each effluent discharge violation. At this level, a total of \$425,000 could have been assessed for the 17 effluent

discharge limit violations discussed in the preceding section. Further, the Region could have assessed penalties for other violations such as discharging without a permit; discharging prohibited finfish waste; violating permit administrative requirements; and not submitting the required discharge monitoring reports. However, as of December 18, 1991, no penalties had been assessed by the Region.

In the one instance where the Region did initiate an enforcement action, we found that the action was inadequate. In this case, the Region determined that Westward was planning to discharge without using fine mesh screens. The NPDES permit required that the screens be used to filter out the large pieces of seafood waste. In a May 1991, compliance order, the Region gave Westward eight months to install the screens. In our opinion, the Region should have required Westward to install the screens before any discharge was allowed.

#### Region's Comments and OIG Evaluation

The Region's comments and our evaluation of these comments are summarized below; keyed to the appropriate areas of the finding.

#### Discharging Before Permit Was Effective

Region's Comments. "EPA did not authorize Westward to begin discharging prior to the effective date of the permit. This was a decision made by the facility. We did advise Westward that if they chose to begin discharging, they should avoid violating Alaska state water quality standards. EPA's earlier decision not to pursue enforcement for the period of time when Westward was discharging without a permit will be reconsidered if additional information indicates that state standards were violated."

OIG Evaluation. The Region acknowledged that it was aware of Westward's illegal discharges as early as March 29, 1991, or 24 days before the NPDES permit was effective. However, the Region made no attempt to stop the discharge, or to initiate appropriate enforcement actions. The Region did not adequately explain why it did not pursue this illegal discharge which violated the provisions of the Clean Water Act. We do not agree with the Region's statement that it would reconsider its decision on the illegal discharge only if the water quality standards were violated. The penalty should be assessed based on the fact that the illegal discharge occurred. In addition, the Region has not collected the samples necessary to determine whether Westward caused any water quality standard violations.

It should be noted that the Region's February 28, 1992 administrative penalty did not address this illegal discharge. In our opinion, the Region needs to initiate an additional penalty action to cover this illegal discharge.

## Submission of Late Discharge Monitoring Reports

Region's Comments. The Region made a number of comments related to this section of our finding.

1. "Prior to the IG's visit, the Region had begun to investigate the violations identified by the IG as well as others found by the EPA inspection and acknowledged in letters from Westward. An enforcement action was recommended and approved by the Water Permits and Compliance Branch management. However, issuance of enforcement actions is an on-going activity and as information and evidence are received by the compliance officer, case development begins. Much of the information about Westward's violations was not received until November 1991. Only the first dive survey, the inspection report, and some of the water quality monitoring had been received prior to November. The Westward enforcement action was put into the pipeline to be issued within the first three months of 1992."

2. "Penalty determination is not equal since assessing penalties depends on the type of enforcement action. Civil referral actions are based on statutory maximums of \$25,000 per violation per day. Administrative penalties are \$10,000 per violation per day. The IG's estimate of fines was based on the statutory maximums allowed under the Clean Water Act..."

3. "The discharge monitoring reports (DMRs) were received on November 7, 1991...It is EPA's practice to provide preprinted DMRs to permittees. Because of the complexity of the permit and the length of time it takes for the Permits Compliance System (the national computer system) to update and print, the preprinted DMRs were not sent to the permittee until August 1991. We acknowledge that DMRs were not received (nor have been to date) for May and that the June report was incomplete. In fact, Westward did not sample in accordance with permit requirements in July and August as well as the one monitoring period in September. The missing, late, and incomplete DMRs are being addressed in a pending enforcement action."

4. The Region subsequently issued an administrative penalty in the amount of \$125,000 against Westward on February 28, 1992. The penalty covered a total of 170 violations which occurred during 1991.

OIG Evaluation. The Region's comments are acknowledged. However, in accordance with EPA's enforcement policy, the Region should have taken swift, aggressive enforcement action on each violation as it occurred, starting with the illegal discharge in March 1991. Prompt, aggressive enforcement actions on a violation-by-violation basis would have shown Westward that the Region was serious about enforcing the conditions of the permit, and may have deterred future violations. Instead, the Region

allowed Westward to commit over 200 violations before enforcement action was initiated.

In our opinion, the Region had considerable evidence before November that Westward was not complying with its permit and the Clean Water Act. For example, both the National Marine Fisheries Service and the U.S. Fish and Wildlife Service submitted letters to the Region, dated April 16, 1991 and April 25, 1991, respectively, explaining that they had videotaped Westward's illegal discharge. The letters also stated that Westward's outfall diffuser was not operating properly and waste had "adversely impacted several invertebrate species."

These letters should have increased the Region's oversight of Westward's activities, including assurances that Discharge Monitoring Reports (DMR) were received timely. To the contrary, Westward's first DMR, due by April 11, 1991, was not received until November 1991. The Region did not take any action on this issue. In fact, none of the monthly monitoring reports due between May and October 1991 were received until November 1991.

The Region also asserted that its enforcement actions were initiated before our audit and approved in November 1991. However, the Region's files show that:

- No penalties had been assessed as of February 26, 1992; although violations occurred as early as March 1991;
- The Region's staff evaluation of the enforcement action was not completed until February 21, 1992, or one month after our draft report was submitted to the Region; and
- There was no record of regional management approval of an enforcement action at any time in 1991.

With respect to the DMRs, we do not believe that the lack of preprinted forms alleviates Westward from its responsibility to submit the required reports. The DMRs are a key permit requirement, and a cornerstone to EPA's compliance and enforcement strategies.

As explained by the Region, it issued an administrative penalty to Westward for \$125,000 on February 28, 1992. The penalty was based on 170 violations which occurred in 1991. Because the Region grouped all penalties into one administrative action, the maximum penalty was \$125,000. It should be noted that the Region's penalty amount did not include violations for illegal early discharge or those instances when Westward exceeded its effluent limits.

In our opinion, the penalty amount was only a fraction of the penalty which could have been assessed against Westward. In

light of Westward's violation of the Clean Water Act, and its continuing permit violations, we believe that the Region should have assessed separate maximum penalties for each violation, rather than waiting almost one year to issue one administrative penalty covering 170 violations. In our opinion, the Region has not fulfilled the intent of EPA's enforcement policy, which provides for a deterrent effect and a swift resolution of environmental problems. LPA

#### Violation of Other Administrative Permit Requirements

Region's Comments. "The Region is aware of the permit requirements that have not been fully complied with. However, in the case of failing to conduct flow measurements, using the design flows may have been more detrimental to Westward rather than having actual flow measurements since design flows usually exceed the amount of flow that is actually used. The flow amounts are used to convert the results of measurements done in milligrams per liter...Westward may have reported more pounds than were actually discharged by using the design flows. The delay in installing flow measurement devices as well as failure to do composite sampling and sampling individual effluent streams are being addressed in the pending enforcement action. The required studies have all been conducted to date."

OIG Evaluation. The Region did not have adequate information available to establish whether Westward's actual flows exceeded the design flows. Without this information, the Region could not determine if Westward was in violation of water quality standards. The Region commented that all required studies have been conducted to date. However, it should be noted, while the studies are in process, only the monthly dissolved oxygen reports have been completed. In addition, Westward was required to submit a "Best Management Practices Plan" before it processed finfish waste. Although finfish wastes were processed as early as April 1991, the Region acknowledged that the required plan had not been submitted as of February 21, 1992.

#### Prohibited Finfish Waste Discharges

Region's Comments. "Regional files did not address this because case review and enforcement action were under development. Westward reported in a December 30, 1991, letter that the trench drain screening system that was temporarily put in place (until the screens were installed) resulted in the discharge of finfish wastes and that Westward was out of compliance with permit requirements from June through September 1991. The pending enforcement action is addressing the discharge of finfish wastes as well as the failure to report the noncompliance as required in the permit."

OIG Evaluation. The Region's comments do not recognize that the finfish discharge was first identified in a July 1, 1991 dive survey. The fact that Westward did not report the violations until December 1991, or five months after their occurrence, was in itself a violation. The permit required that the Region be notified within 24 hours after a finfish discharge. In our opinion, the Region had sufficient documentation after the dive survey to initiate an enforcement action.

#### Violation of Effluent Discharge Limits

Region's Comments. With respect to the seafood effluent discharge limits, specifically, the finfish processing, the Region stated that "Under the existing administrative order, since the screens were to not be installed until December 1, 1991, the limitations...were not in effect until that date. The administrative order was issued in May 1991 to give Westward a schedule for installing the screens, or equivalent technology. It was necessary to issue an administrative compliance order because schedules extending beyond March 31, 1989 cannot be incorporated into a technology-based permit...The control of pollutants from Westward's discharge (and the initiation of the water quality studies) was exercised through negotiated permit conditions which were much more stringent than the applicable effluent guidelines would have provided (i.e., grind and discharge).

"When Westward received the preprinted DMRs, EPA was informed that there was a problem with monitoring the individual streams from the fish meal plant and the stickwater discharge (as well as the finfish processing and surimi production). Consequently, Westward reported the results from the combined discharges and exceeded the limitations that were for the fish meal discharge of evaporator condensate and scrubber wastewater. The failure to monitor the stickwater separately is being addressed by the pending enforcement action."

OIG Evaluation. We do not believe that the Region should have allowed Westward to violate water quality standards and permit conditions because it had not installed the required fish screens or monitored its waste streams. We do not believe that the compliance order for finfish screens should relieve Westward of its requirement to comply with finfish effluent limits. Until the fish screens were installed, all finfish wastes were to be collected and transported to the fish meal plant. However, this apparently was not done since records indicate Westward discharged finfish into the bay from April to August 1991. *Mike*

The failure of Westward to separately monitor its waste streams did not relieve it of the requirement to comply with effluent

limits. However, the Region's February 28, 1992 enforcement action did not identify the 17 violations of effluent limits, and no penalties were proposed for these violations.

As indicated in our report, the Region's administrative compliance order was the only enforcement action taken as of February 21, 1992. We recognize that the order established an eight month deadline for installing finfish waste screens. However, considering that the permit prohibited any finfish waste discharges, the order should not have been issued. It should also be noted that Westward did not install the screens by December 1, 1991, as required by the compliance order.

### Recommendations

We recommend that the Regional Administrator:

1. Initiate appropriate enforcement actions, including the assessment of penalties, against Westward for all prior NPDES permit violations. As a minimum, this should include enforcement actions for discharging without a permit; failing to submit required discharge monitoring reports; violating other administrative permit conditions; illegally discharging finfish wastes; and exceeding effluent discharge limitations.
2. In the event that Westward's NPDES permit is not terminated, the Region should increase its monitoring of Westward's operations to help ensure that additional violations are promptly detected, and that appropriate enforcement actions are initiated.

### Region's Comments and OIG Evaluation

Region's Comments on Recommendation 1. The Region agreed with the recommendation and issued a \$125,000 administrative penalty action on February 28, 1992. The Region explained that most of the information on the violations did not come to light until November 1991, and that the development of the enforcement case required time. The Region further commented that additional violations will be addressed with further penalties, either administrative or civil.

OIG Evaluation. The Region's administrative penalty is a positive action. However, we believe that the penalty amount could have been substantially higher, if individual penalties were assessed as the violations occurred. To illustrate, the maximum \$25,000 penalty for 170 violations would calculate to \$4.2 million. In addition, we found that the Region's administrative action did not include penalties for Westward's illegal discharges before the permit was approved, nor for the 17 instances where the effluent limits were exceeded. We believe

that these violations should also be addressed in an additional enforcement action.

Region's Comments on Recommendation 2. The Region commented that it "intends to undertake the appropriate action to ensure that Westward complies with the permit. Additional monitoring is under consideration and may be imposed through program authorities such as § 308 and 309(a) of the CWA. However, current monitoring has provided adequate basis for enforcement. A decision regarding the need for additional monitoring will be based, in part, on the results produced by the initial Class II administrative penalty action. If escalation of the enforcement process proves to be appropriate, the Region will have no reluctance to do so."

OIG Evaluation. The Region's comments are acknowledged. However, it remains our position that regardless of the outcome of the administrative penalty, the Region needs to increase its monitoring to ensure that Westward is in compliance with its permit conditions. As a minimum, the monitoring should include periodic compliance inspections and dive surveys. All future violations should be aggressively enforced to deter further violations.