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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF)	
AMERICA,)	
)	
Plaintiff,)	
)	COUNT 1: Clean Air Act
vs.)	False Statements, 42 U.S.C. §
)	7413(c)(2)(C)
JAMES HAMPTON,)	
)	
Defendant.)	

INFORMATION

The United States Attorney charges that:

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Factual Allegations

At all times relevant to this Information:

1. Westward Seafoods, Inc. (Westward) was incorporated in Alaska in 1989 and began operations in Dutch Harbor, Alaska in 1991. Westward, a wholly owned subsidiary of Maruha-Nichiro Holdings, Inc., a Japanese-based company, maintains its headquarters in Seattle, Washington.

2. Westward's Dutch Harbor facility (the Facility) processes approximately 254,000,000 pounds of seafood each year. The Facility also has a powerhouse where it produces its own electricity through three diesel-fueled electric generators, as well as steam for fish production using two diesel-fired steam generators. Emissions for these five units are vented to a single combined smokestack. Westward operates these sources pursuant to Title V Permit No. AQ0433TVP01 and 02 (the Permit) under the Clean Air Act. The Permit was issued by the Alaska Department of Environmental Conservation (ADEC), under delegated authority from the U.S. Environmental Protection Agency (EPA), on November 28, 2003 and expired on December 31, 2008. However, the permit was extended until the current permit was issued on September 20, 2010; it expires on September 19, 2015.

3. Among other things, pursuant to Condition 16.1(b) of the Permit, Westward was required to operate emissions units (EUs) one through three (the diesel generators) with a “low-NOx retrofit package with water injection” to decrease the amount of nitrogen dioxide (NOx) being emitted from the units. To meet this requirement, Westward installed a Wartsilla Combustion Air Saturation System (CASS) for each unit, which uses water to saturate the air and reduce emissions. Pursuant to Condition 16.1(c) of the Permit, Westward was also required to operate each engine with “a dedicated fuel and water flow meter, accurate to within 5 percent error” and to record the fuel and water consumption “at a consistent time once per day.” Pursuant to Condition 60 of the Permit, those records are required to be kept for at least five years after the date of collection.

4. In addition, Westward was operating under the terms of a 2010 Consent Decree in *United States v. Westward Seafoods, Inc.*, No. 3:10-cv-00073-JWS (District of Alaska) that required it to develop and implement a Preventative Maintenance and Operations Plan (“PMO”) for its three generators, including the CASS system, and corresponding training for its staff. The Consent Decree and corresponding civil penalty were result of allegations that Westward had violated emissions

limits, recordkeeping requirements and reporting requirements under the Clean Air Act.

5. Defendant James Hampton was the Assistant Chief Engineer and supervised the fishmeal process, refrigeration, and the powerhouse at Westward. When the Chief Engineer was away from the facility, Hampton handled the Chief Engineers' responsibilities as well. Hampton was aware of the Consent Decree under which Westward was operating. In his position as Assistant Chief Engineer, Hampton supervised several individuals, including the powerhouse supervisor.

6. The powerhouse supervisor was responsible for the engine room, which included the generators. As part of the monitoring of the generators and other areas of the engine room, powerhouse workers were required to fill out forms known as "Engine Rounds" each day. The form required that various parts of the engines, including each CASS, be monitored every two hours. This included writing down the water usage for each CASS on the "Engine Rounds" form and indicating the number of nozzles on each CASS that were in operation.

7. Beginning in at least 2009, rather than write actual numbers for any of the CASS information, the powerhouse supervisor instructed his staff to simply leave the CASS section of the form blank

or write “OK.” The powerhouse supervisors informed Hampton that the CASS system was not being operated and Hampton was aware that the Engine Round forms were false in regards to the CASS. The “Engine Round” forms were given to the powerhouse supervisor and he created an electronic End of Day (EOD) report and Environmental Report Sheet (ERS), which were maintained on a network drive that was accessible by the environmental compliance manager at Westward. The environmental compliance manager used the information on these forms to submit regular reports to ADEC and EPA

8. Pursuant to Condition 64, deviations from the Permit requirements were required to be reported to ADEC. Additionally, Westward was required to submit semi-annual operating reports to ADEC and an annual compliance certification to ADEC and EPA, pursuant to Conditions 65 and 66, respectively. Those annual and semi-annual reports were also required to disclose any excess emissions or permit deviations, as well as the compliance status of the Facility. Information and reports supplied by the powerhouse supervisor and placed on the network drive at the Facility were used by the environmental compliance manager to determine if there were any

deviations from the requirements of the Permit, as well as the Facility's compliance status.

9. Although the EOD report and ERS contained numbers which purported to be from the water meters on each of the three CASS systems, the numbers were wholly fabricated, as the systems were scarcely operated from August 2009 to August 2011. Defendant Hampton knew that the CASS system was not operating, but aided in providing this false information to the environmental compliance manager, which was subsequently provided to EPA and ADEC. On several occasions, the environmental compliance manager noticed a discrepancy or had questions about the information for the water usage for the CASS, and contacted Defendant Hampton. Defendant Hampton then changed the numbers, or requested that the powerhouse supervisor provide new numbers – knowing both the previous numbers and those he provided to be false – and submitted them to the environmental compliance manager. Defendant Hampton never informed the environmental compliance manager that the CASS was not operating or that the water usage numbers were false.

10. This falsified information regarding water usage for the CASS, which Defendant Hampton aided in creating and allowed to be

presented to federal and state regulators, was used in Westward's semi-annual operating reports and annual compliance certifications to state and federal authorities. These reports, filed in 2010 and 2011, all indicated that the CASS was operating and that there were no deviations from the Permit conditions, when, in fact, Hampton knew that Westward was not complying with the Permit. Additionally, because of the falsification, deviation reports, indicating that the CASS was not being operated, were never submitted to ADEC, as required by the Permit.

11. Additionally, in April 2011, Defendant Hampton, along with the environmental compliance manager, escorted an EPA inspector through the powerhouse at Westward during an inspection. Westward had advance notice of the inspection and the powerhouse supervisor and operators began operating the CASS in preparation for the inspection to make it appear that they were in fact operating the CASS as required. During the inspection, Defendant Hampton guided the inspector to the CASS system and to view the daily logs which indicated that the CASS had been regularly operating, when Hampton knew that it was not being operated as reflected in the logs. In fact during the tour, Defendant Hampton omitted any information about the CASS not being

operated on a regular basis or that the water usage numbers being provided to EPA and ADEC were false. Rather, Defendant Hampton misled the inspector into believing that the CASS system was being run at all times and that the information and data provided was accurate.

Statutory and Regulatory Framework

12. The Clean Air Act (CAA), 42 U.S.C. § 7401, *et seq.*, was enacted by Congress to protect and enhance the quality of the nation's air resources. 42 U.S.C. § 7401(b)(1). Title V of the 1990 amendments to the CAA, 42 U.S.C. § 7661 *et seq.*, created an operating permit program intended to strengthen enforcement by putting affected sources on notice, via the permit, of the emissions limits and compliance methods they are required to follow. The Title V permit further requires facilities to monitor and report whether they are operating in compliance with their permits.

13. Title V mandates that the operating permits program be run largely by states and local air districts, following EPA approval. 42 U.S.C. § 7661a(d). However, the federal government retains the authority to enforce the provisions of the CAA and such permits, both civilly and criminally. 42 U.S.C. § 7413.

14. EPA granted Interim Approval to the ADEC effective December 5, 1996 and approved the State's Title V program (Full Approval), effective on November 30, 2001. 66 Fed. Reg. Vol., No. 234, p. 63184 (Dec. 5, 2001).

COUNT 1 – CLEAN AIR ACT FALSE STATEMENTS

15. The allegations of Paragraphs 1 through 14 above are incorporated herein.

16. Pursuant to 42 U.S.C. § 7413(c)(2)(A), it is unlawful for any person to knowingly make any false material statement, representation, or certification in, or omit material information from, or knowingly alter, conceal, or fail to file or maintain any notice, application, record, report, plan, or other document required pursuant to Chapter 42 of the Clean Air Act to be either filed or maintained (whether with respect to the requirements imposed by the Administrator of the EPA or by a State).

17. Between on or about August 2009 and on or about April 2011, Defendant James Hampton created or caused to be created and maintained records indicating daily water consumption for the “low-NOx retrofit package with water injection,” aka the CASS system, that contained material false statements, to wit: the records purported to

contain numbers from the water meters for the CASS system indicating daily use, when, in truth, no water was being used because the system was not operating. These records were required to be maintained under the Permit and the Clean Air Act.

In violation of 42 U.S.C § 7413(c), 42 U.S.C § 7661a(a),
18 U.S.C. § 2.

RESPECTFULLY SUBMITTED this 11th day of August 2014, in
Anchorage, Alaska.

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