



**Rob McKenna**  
**ATTORNEY GENERAL OF WASHINGTON**

Ecology Division

PO Box 40147 • Olympia WA 98504-0117 • (360) 586-6770

**MEMORANDUM**

DATE: February 1, 2006

TO: Marc Pacifico  
Ecology Southwest Regional Office  
MS 47775

FROM: Katie Erp, Legal Assistant to *KRE*  
Andrea Clausen, Assistant Attorney General  
MS 40117

SUBJECT: *I.P. Callison & Sons. v. Ecology*  
PCHB No. 05-120  
Penalty No. 2306

Attached please find the Settlement Agreement in the above-referenced matter which has been executed by I.P. Callison & Sons. Please have David Peeler sign the Settlement Agreement, and return it to our office for submittal to the Board.

If you have any questions, please feel free to contact our office.

Attachment

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**POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON**

I.P. CALLISON & SONS,

Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 05-120

SETTLEMENT AGREEMENT

Respondent, State of Washington, Department of Ecology (Ecology), represented by Assistant Attorneys General Andrea L. Clausen and Ronald L. Lavigne, and Appellant, I.P. Callison & Sons (Callison), represented by David D. Dicks, hereby submit this Settlement Agreement to the Pollution Control Hearings Board (Board) as a full and final settlement of the above-referenced appeal, and request that the Board dismiss the appeal with prejudice.

**I. PROCEDURAL STIPULATIONS**

1. On June 8, 2005, Ecology issued Notice of Penalty Incurred and Due No. 2306 in the amount of \$31,330 to Callison, for violations of Chapters 90.48 RCW.
2. On July 8, 2005, Ecology received Callison's Application for Relief from Penalty No. 2306.
3. On August 2, 2005, Ecology issued a Notice of Disposition Upon Application For Relief From Penalty No. 2306 and reduced the Penalty to \$28,197.

1 4. On September 1, 2005, Callison appealed the Notice of Disposition to the  
2 Board.

3 5. Ecology and Callison have agreed to resolve the appeal of Penalty No. 2306  
4 through the settlement outlined below.

5 **II. SETTLEMENT AGREEMENT**

6 The parties desire to resolve the dispute herein and avoid the cost and time associated  
7 with further litigation. The parties therefore stipulate and agree as follows:

8 1. SCOPE. This Agreement constitutes the entire agreement between the parties  
9 to this appeal, and settles all issues raised by Penalty No. 2306. Ecology agrees to deem  
10 Penalty No. 2306 satisfied upon Callison's satisfactory and timely completion of its  
11 obligations under this Agreement.

12 2. RESOLUTION OF PENALTY.

13 a. Cash Payment. Callison shall pay \$5,640 to Ecology within thirty (30) days  
14 from the date the Board dismisses this appeal. Callison shall make the payment by check  
15 directly payable to "Department of Ecology" and make reference to Penalty No. 2306, and  
16 shall send the payment to:

17 Department of Ecology  
18 Attn: Cashiering Section,  
19 P.O. Box 5128  
Lacey, WA 98509-5128

20 If Callison fails to pay Ecology \$5,640 within thirty (30) days of the Board's dismissal of this  
21 appeal, the full penalty amount of \$28,197 will become immediately due and payable without  
22 further right of administrative or judicial review, except as provided in paragraph II.3. of this  
23 Agreement.

24 b. Supplemental Environmental Project (SEP). In order to satisfy the remainder of  
25 the Penalty, Callison shall pay \$22,557 to the Chehalis Basin Fisheries Task Force within  
26 thirty (30) days of the Board's dismissal of this appeal. Callison shall designate by letter to the

1 Chehalis Basin Fisheries Task Force that the \$22,557 be used for the Forrest Road Fish  
2 Barrier Culvert Correction project. This project will take place in Grays Harbor County. A  
3 more complete outline of the project is included in the project description attached hereto as  
4 Attachment A. Within fifteen (15) days of payment, Callison shall send Ecology verification  
5 that Callison sent payment to the Chehalis Basin Fisheries Task Force and that the payment  
6 was designated for the Forrest Road Fish Barrier Culvert Correction project. Within one year  
7 of the date on which the Board dismisses this appeal, Callison shall obtain an accounting from  
8 the Chehalis Basin Fisheries Task Force showing how the \$22,557 was spent. Within fifteen  
9 (15) days of receiving this accounting, Callison shall provide Ecology and Ecology's  
10 undersigned attorneys with a copy of the accounting.

11 If this initial accounting demonstrates that Chehalis Basin Fisheries Task Force did not  
12 use the \$22,557 for the Forrest Road Fish Barrier Culvert Correction project, as described in  
13 Attachment A, Callison shall provide an explanation of how the Chehalis Basin Fisheries  
14 Task Force used the \$22,557. If the initial accounting demonstrates that the \$22,557 was not  
15 yet used for the Forrest Road Fish Barrier Culvert Correction project, as described in  
16 Attachment A, Callison shall provide accountings to Ecology and its undersigned attorneys  
17 every six months until an accounting of the \$22,557 demonstrates that the money has been  
18 used for the Forrest Road Fish Barrier Culvert Correction project, as described in Attachment  
19 A, or for some other purpose.

20 If Callison fails to pay the Chehalis Basin Fisheries Task Force \$22,557 and/or fails to  
21 designate the payment for the Forrest Road Fish Barrier Culvert Correction project within  
22 thirty (30) days of the Board's dismissal of this appeal, or if the accounting Callison provides  
23 does not demonstrate that the \$22,557, or a portion thereof, was used for the Forrest Road  
24 Fish Barrier Culvert Correction project, as described in Attachment A, the balance of the  
25 \$28,197 penalty not already paid to Ecology, or used by the Chehalis Basin Fisheries Task  
26 Force for the Forrest Road Fish Barrier Culvert Correction project, will become immediately

1 due and payable to Ecology without further right of administrative or judicial review, except  
2 as provided in paragraph II. 3. of this Agreement.

3 3. REMEDIES. In the event that Callison violates the terms of this Agreement,  
4 Ecology may pursue all remedies available by law. By agreeing to this Settlement Agreement,  
5 Callison shall have dismissed and thus waived its right of administrative or judicial review on  
6 the underlying merits of Penalty No. 2306. However, Callison does not waive the right to  
7 contest whether violations of this Agreement have occurred. Additionally, Callison agrees that  
8 the venue for any judicial action to enforce this Agreement and/or to collect Penalty No. 2306,  
9 or any portion thereof, may be in Thurston County Superior Court. Ecology shall be entitled to  
10 recover its costs, including attorney fees, in any action brought to enforce this Settlement  
11 Agreement.

12 4. PRESS RELEASES AND OTHER DOCUMENTS. Any document prepared  
13 by Callison related to this settlement, such as a press release, shall be identified as resulting  
14 from a settlement with Ecology. In addition, any sum paid to a third party, not a party to this  
15 Agreement, as a result of this Agreement, shall be identified as resulting from a settlement with  
16 Ecology in any public statement.

17 5. TAX CREDIT DISALLOWED. Callison shall not deduct or credit against  
18 taxes due or payable any monies paid as cash payments or utilized for implementation of  
19 supplemental environmental projects under this Agreement, nor otherwise receive any tax  
20 benefits from payment of monies as cash payments or for implementation of supplemental  
21 environment projects under this Agreement.

22 6. DISMISSAL OF APPEAL. The parties consent to the submission of this  
23 Settlement Agreement to the Board and request that, based upon a full and final settlement  
24 having been reached, the Board dismiss this appeal with prejudice. Both parties further agree  
25 to forego all costs and attorneys' fees associated with this appeal.  
26

1 7. EFFECTIVE DATE. This Settlement Agreement shall become effective upon  
2 the Board's dismissal of this appeal.

3 8. SIGNATORIES AUTHORIZED. The undersigned representatives for Ecology  
4 and Callison certify that they are fully authorized by the party whom they represent to enter  
5 into the terms and conditions of this Settlement Agreement and to legally bind such party  
6 thereto.

7 9. EXECUTION. This document may be executed in counterparts and may be  
8 executed by facsimile, and each executed counterpart shall have the same force and effect as  
9 the original instrument.

11 L.P. CALLISON & SONS

DEPARTMENT OF ECOLOGY

12 *Les D Toews, V.P.*

*David C. Peeler*

13 Les D Toews  
Vice President

David C. Peeler, Manager  
Water Quality Program  
Department of Ecology Headquarters

Deleted: [INSERT NAME]  
Deleted: [INSERT TITLE]

14 Dated: 1/31/06

14 Dated: 2/8/06

17 Presented by:

18 ROB MCKENNA  
Attorney General

20 ANDREA L. CLAUSEN, WSBA #35161  
21 RONALD L. LAVIGNE, WSBA #18550  
22 Assistant Attorneys General  
Attorneys for Respondent  
23 State of Washington  
Department of Ecology



1 the neighboring private landowner, the stream overtops the road regularly during high flows at  
2 this site. When the lower culvert is buried, the site is a total barrier for all aquatic species and  
3 life stages; when the lower pipe is exposed, it is a velocity barrier to juveniles and on occasion  
4 adults, and remains a total barrier to other aquatic life forms. It totally disrupts the stream  
5 functions such as substrate and LWD transport, creating increased velocities downstream and  
6 buildup of streambed material upstream.

7 The habitat conditions vary within the stream. Downstream from the barrier culvert the  
8 channel is incised with a 1% gradient. Upstream from the site, the stream is slow-flowing,  
9 with good floodplain connection caused by numerous beaver dams. Gradients vary from 1-  
10 2%. Above fish-bearing waters, gradients increase up to 20%. Because of the beaver dams  
11 much of the substrate above the project site is fine sediment. Spawning areas at this time are  
12 limited to the lower portion of the stream below the project site. Based on other streams in the  
13 area, and the area from the barrier to Garrard Creek, if the beaver dams were not present, the  
14 natural streambed material would most likely be 3 inches minus gravels.

15 The riparian area below the barrier is middle stage deciduous and dense native shrubs  
16 skirting a large hay field. Above the barrier the riparian is middle story, mixed conifer and  
17 deciduous forestland, with a dense under-story of native shrubs. The riparian canopy is  
18 roughly 25 years old and is commercial forestlands owned by Weyerhaeuser. As a class three  
19 fish-bearing stream it will have protection based on the current Forests and Fish Rules for  
20 logging practices. There are no other road crossings in the upper watershed.

21 As stated above, this is a fish barrier correction and the objective is to remove it and  
22 install a larger culvert that will provide fish passage for all species and life stages, and allow  
23 natural streambed functions such as substrate and LWD transport. Large woody debris and  
24 streambed gravels will be added to the stream for complexity within the regraded area of the  
25 streambed. The stream will be resloped to accommodate the new culvert. Riparian  
26 revegetation will be done in the exposed construction area both upstream and downstream of

1 the new culvert. The vegetation will consist primarily of conifer plantings (spruce) for shade  
2 and bank stabilization. Native shrubs such as willow and salmon berry will be planted, but  
3 there is a lot of dense shrub growth in the area, which will help to quickly revegetate the  
4 project site. All exposed areas will be mulched and grass seeded to control reed canary grass  
5 and prevent sedimentation from entering the stream from the project. With a properly sized  
6 culvert the stream will flow naturally, allowing natural functions to start healing the  
7 downstream area that is incised. The existing road will be widened, ditched and asphalted.  
8 Stormwater from the road ditches will be directed away from the stream.

9 The estimated cost of this project is \$62,646. Callison will donate \$22,557 toward the  
10 cost of the project and provide Ecology with financial and technical updates of this project  
11 upon Ecology's request.

12 A preliminary budget for this project is as follows:

- 13 • Culvert Improvement- \$41,600
  - 14 • Debris Removal- \$1,800
  - 15 • Mobilization- \$2,000
  - 16 • Permits- \$2,600
  - 17 • Signage- \$500
  - 18 • Utility Crossing- \$500
  - 19 • Water Management- \$500
  - 20 • Work Site Restoration- \$800
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