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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CWA-10-2015-0113
LEADER CREEK FISHERIES, INC.,)	
)	CONSENT AGREEMENT AND
Naknek, Alaska)	FINAL ORDER
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (2)(B), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Leader Creek Fisheries, Inc. (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA together with the specific provisions of the CWA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of a pollutant” by any person into navigable waters of the United States, except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that a state with an approved NPDES program may issue permits for the discharge of pollutants into waters of the United States upon such specific terms and conditions as the state may prescribe.

3.2. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States.” EPA’s regulations define “waters of the United States” to include waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; and tributaries to those waters. 40 C.F.R. § 122.2.

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

3.4. Section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14), defines the term “point source” to include any “pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.”

3.5. On July 27, 2001, EPA issued an NPDES general permit, Seafood Processors in Alaska, AK-G52-0000 (“Alaska Permit”), for seafood processing facilities in Alaska that discharge into waters of the United States. The Alaska Permit expired on July 27, 2006.

3.6. The Alaska Permit required permittees that intended to continue an activity regulated under the Alaska Permit past July 27, 2006, to apply for and obtain a new permit. To be considered a timely application, the application needed to be submitted to EPA at least 60 days before July 27, 2006.

3.7. The Alaska Permit was administratively extended pursuant to 40 C.F.R. § 122.6. Under an administratively extended permit, permittees that have submitted complete and timely applications to maintain coverage under a new general permit maintain their authorization to

discharge under the conditions specified in the expired permit until the new permit is issued. 5 U.S.C. § 558(c); 40 C.F.R. § 122.6.

3.8. The Alaska Permit requires operators of shore-based facilities engaged in certain seafood processing activities to apply for coverage under the permit if pollutants from the facility discharge to navigable waters. Permittees are required to comply with the conditions and requirements set forth in the Alaska Permit.

3.9. Respondent is a corporation duly organized under the laws of the State of Delaware and is therefore a “person” as defined under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.10. At all times relevant to this action, Respondent was the owner and/or operator of a shore-based seafood processing and packaging facility in Naknek, Alaska (“Facility”).

3.11. The Facility, which was under Respondent’s control at all times relevant to this action, discharges wastes associated with producing headed and gutted salmon, salmon fillets, and salmon roe products into the Naknek River. At all times relevant to this action, the Facility’s discharges contained “pollutants” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

3.12. The Naknek River is currently used, was used in the past, or may be susceptible to use in interstate and foreign commerce, and thus the Naknek River is a “navigable water” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and “water of the United States” as defined in 40 C.F.R. § 122.2.

3.13. The Facility is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2. In the alternative, the Facility contains point sources.

3.14. At all times relevant to this CAFO, the Facility had coverage under the Alaska Permit (permit no. AKG520467).

3.15. Respondent violated the Alaska Permit between May 2011 and July 2014. Violations were discovered during an ADEC inspection of the Facility on July 26, 2011, an EPA inspection of the Facility on July 14, 2014, and upon EPA's review of Respondent's permit, Notice of Intent ("NOI"), annual reports, monitoring logs, Best Management Practices Plan, and noncompliance reports.

Count 1: Failure to Adequately Conduct and/or Document Daily Visual Inspections of Waste Conveyance System

3.16. Part V.C.1.d of the Alaska Permit provides, "A permittee shall conduct a daily visual inspection of the waste conveyance, including a close observation of the sump or other places of effluent collection for the removal of gloves, earplugs, rubber bands, or other equipment used during the processing of seafood that may inadvertently be entrained in the wastewater. Discharge of such items is prohibited. Logs of this daily inspection must be kept at the facility. Summaries of any items found and removed shall be submitted with the annual report."

3.17. At the time of the July 14, 2014 inspection of the Facility, representatives for Respondent informed EPA that they do not maintain logs of waste conveyance inspections. It appears that Respondent has not documented inspections of the waste conveyance since it began operations in 2003.

3.18. On multiple occasions between 2011 and 2014, Respondent failed to conduct and/or document daily visual inspections of the waste conveyance system in violation of Part V.C.1.d of the Alaska Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 2: Exceedance of Seafood Processing Waste Residue Volume or Weight

3.19. Part V.C.1.a of the Alaska Permit provides that a permittee “shall not discharge a volume or weight of seafood processing waste residues on a daily or annual basis which exceeds the amount reported in the permittee’s NOI.”

3.20. Respondent’s NOI, dated June 1, 2012, projected an annual discharge amount of 75,000 pounds of herring and 3,400,000 pounds of salmon.

3.21. In 2013 Respondent discharged a volume or weight of seafood processing waste residues from both herring and salmon that exceeded the amount reported in its NOI in violation of Part V.C.1.a of the Alaska Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 3: Failure to Meet the One-Half Inch Grind Size Discharge Requirement

3.22. Part V.C.1.b of the Alaska Permit provides that (1) “[a] permittee shall route all seafood processing wastes through a waste conveyance and treatment system,” and (2) [t]he waste solids discharged from its outfall(s) shall not exceed one-half (0.5) inch in any dimension.”

3.23. At the time of EPA’s July 14, 2014 inspection of the Facility, seafood processing waste discharges from the Facility’s outfall(s) exceeded one-half inch in dimension.

3.24. Respondent’s noncompliance reports reveal that Respondent exceeded the one-half inch grind discharge requirement on multiple occasions in 2011, 2012, 2013, and 2014.

3.25. On multiple occasions between 2011 and 2014, Respondent discharged solid waste from its outfall(s) that exceeded one-half inch in dimension in violation of Part V.C.1.b of the Alaska Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$65,000.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO must be made by a cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Tara Martich
U.S. Environmental Protection Agency
Region 10, Alaska Operations Office
222 West Seventh Avenue, #19
Anchorage, AK 99501

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists.

Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

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

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

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.


4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

June 17, 2015

FOR RESPONDENT:


GORDON LINDQUIST, Vice President
Leader Creek Fisheries, Inc.

DATED:

6/30/2015

FOR COMPLAINANT:


EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

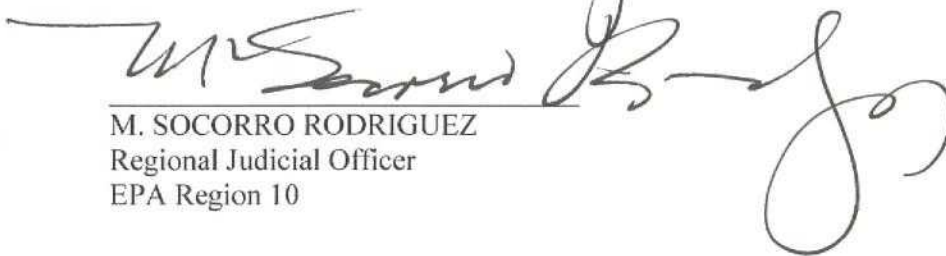
5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Alaska Department of Environmental Conservation has been given the

opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 4th day of August, 2015.



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Leader Creek Fisheries, Inc., Docket No.: CWA-10-2015-0113**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Leah Brown, Esquire
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-113, Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Gordon Lindquist
Alaska General Seafoods
6425 NE 175th Street
Kenmore, Washington 98028

DATED this 5th day of August, 2015


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10