

RECEIVED

06 NOV 20 AM 10: 07

HEARINGS CLERK  
EPA--REGION 10

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

|                   |   |                             |
|-------------------|---|-----------------------------|
| In the matter of: | ) |                             |
| Kake Foods, Inc.  | ) | Docket No. CWA-10-2007-0003 |
| Kake, Alaska      | ) |                             |
|                   | ) | CONSENT AGREEMENT AND       |
| Respondent.       | ) | FINAL ORDER                 |

I. 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 ("the Act"), 33 U.S.C. § 1319(g)(2)(B). 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 in turn has redelegated this authority of the Regional Judicial Officer.

1.2. Pursuant to Section 309(g)(1) and (g)(2)(B) of the Act and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues and Kake Foods, Inc. ("Respondent") hereby agrees to issuance of the Final Order contained in Part V of this CAFO.

1 II. PRELIMINARY STATEMENT

2 2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO  
3 commences this proceeding, which will conclude when the Final Order contained in Part V of this  
4 CAFO becomes effective.

5 2.2. Respondent operates a seafood processing facility, Kake Foods, Inc. ("the  
6 Facility"), located in Kake, Alaska.

7 2.3. On July 19, 2003, the Alaska Department of Environmental Conservation  
8 ("ADEC") conducted a National Pollutant Discharge Elimination System ("NPDES") inspection  
9 at the Facility.

10 2.4. The State of Alaska was given an opportunity to consult with EPA regarding the  
11 assessment of an administrative penalty against Respondent for the violations that are the subject  
12 of this CAFO.

13 2.5. A concise statement of the factual basis for alleging violations of the Act, together  
14 with specific references to the provisions of the Act and implementing regulations Respondent is  
15 alleged to have violated, appears in Part III of this CAFO.

16 III. ALLEGATIONS

17 3.1. Section 402 of the Act, 33 U.S.C. § 1342, provides that EPA may issue NPDES  
18 permits for the discharge of any pollutant into waters of the United States upon such specific  
19 terms and conditions as EPA may prescribe.

20 3.2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any  
21 pollutant by any person except as authorized by an NPDES permit or other specified statutory  
22 sections.

23 3.3. At all times relevant to this action, Respondent operated the Facility.

24 3.4. Respondent is a corporation and is a person within the meaning of Section 502(5)  
25 of the Act, 33 U.S.C. § 1362(5).

1 3.5. Respondent is authorized to discharge seafood processing waste into waters of the  
2 United States, under general NPDES permit, AK-G52-0000, issued on July 27, 2001. Respondent  
3 received its authorization to discharge under the general NPDES permit, AK-G52-0073, on  
4 May 20, 2002 ("Permit").

5 3.6. Respondent discharged seafood processing waste from the butchering of seafood  
6 from the Facility. Seafood processing waste from the butchering of seafood is a "pollutant" which  
7 is "discharged" within the meaning of Section 502(6) and (12) of the Act, 33 U.S.C.  
8 § 1362(6) and (12).

9 3.7. Respondent discharged seafood processing wastes from the butchering of seafood  
10 to Kake Harbor, which constitutes "navigable waters" and "waters of the United States" within  
11 the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

12 Violation 1

13 3.8. The cover page of NPDES Permit No. AK-G52-0000 states: "A Copy of this  
14 Permit Must be Kept at the Facility where the Discharges Occur."

15 3.9. On July 19, 2003, a copy of the Permit was not available at the Facility.

16 3.10. Respondent failed to keep a copy of the Permit at the Facility, in violation of the  
17 Permit and the Act.

18 Violation 2

19 3.11. Section II.A.1.a. of the Permit states that the permittee shall grind solid seafood  
20 processing wastes to one-half inch in any dimension or smaller prior to discharge.

21 3.12. On July 19, 2003, Respondent discharged solid seafood processing wastes greater  
22 than one-half inch in dimension into Kake Harbor.

23 3.13. Respondent failed to grind solid seafood processing wastes to one-half inch in any  
24 dimension or smaller prior to discharge, in violation of the Permit and the Act.

25

26

27

28

1 Violation 3

2 3.14. Section V.C.1.b. of the Permit states that the permittee shall route all seafood  
3 processing wastes through a waste conveyance and treatment system.

4 3.15. On July 19, 2003, Respondent discharged solid seafood processing wastes into  
5 Kake Harbor from three outfalls that were not connected to the waste conveyance and treatment  
6 system.

7 3.16. Respondent did not route all seafood processing wastes through a waste  
8 conveyance and treatment system, in violation of the Permit and the Act.

9 Violation 4

10 3.17. Section V.C.1.e. of the Permit states that the permittee shall conduct a daily  
11 inspection of the grinder system during the processing season to confirm that the grinders are:  
12 (1) operating, and (2) reducing the size of the seafood residues to one-half inch or smaller. Logs  
13 of these daily inspections shall be kept at the facility.

14 3.18. On July 19, 2003, there was no documentation that daily inspections of the grinder  
15 had been conducted.

16 3.19. Respondent failed to conduct a daily inspection of the grinder system to confirm  
17 that the grinders were operating, and did not keep logs of the daily inspections at the Facility, in  
18 violation of the Permit and the Act.

19 Violation 5

20 3.20. Section V.C.1.d. of the Permit states that the permittee shall conduct a daily visual  
21 inspection of the waste conveyance system, including close observation of the sump or other  
22 places of effluent collection. Logs of daily inspections shall be kept at the facility.

23 3.21. On July 19, 2003, there was no documentation that daily visual inspections  
24 of the waste conveyance system had been conducted.

1 3.22. Respondent failed to conduct a daily visual inspection of the waste conveyance  
2 system, and did not keep logs of the daily inspections at the Facility, in violation of the Permit and  
3 the Act.

4 Violation 6

5 3.23. Section V.C.1.j. of the Permit states that residues, including foam and scum, shall  
6 not be discharged alone, or in combination with other substances, which (1) make the water unfit  
7 or unsafe; (2) cause a film, sheen, emulsion or scum on the surface of the water; or (3) cause a  
8 scum, emulsion, sludge or solid to be deposited on the adjoining shorelines.

9 3.24. Section V.C.1.k. of the Permit states that the State-authorized mixing zone for the  
10 discharges authorized in the Permit shall be cylindrical in shape with the horizontal extent  
11 determined by a 100-foot radius mixing zone, extending vertically up to the sea surface and  
12 extending vertically down to the seafloor. The mixing zone is a volume of water within which  
13 specific water quality criteria may be exceeded, including residues. Discharges shall not violate  
14 Alaska Water Quality Standards criteria beyond the 100-foot mixing zone.

15 3.25. On July 19, 2003, Respondent discharged foam and other residues that extended  
16 beyond the 100-foot radius mixing zone and were deposited on the adjacent shoreline.

17 3.26. Respondent discharged foam and other residues that caused a film, sheen, or scum  
18 on the water surface outside of the State-authorized 100-foot radius mixing zone, in violation of  
19 the Permit and the Act.

20 Violation 7

21 3.27. Section V.C.1.m. of the Permit states that a permittee discharging to marine and  
22 estuarine water shall discharge its wastewaters at a point at least 10 feet below the surface of the  
23 receiving water.

24 3.28. On July 19, 2003, the end of a wastewater discharge pipe at the Facility was lying  
25 on the surface of the water, and discharging directly onto the surface of the receiving water.

1 3.29. Respondent failed to discharge its wastewater at a point at least 10 feet below the  
2 surface of the receiving water, in violation of the Permit and the Act.

3 Violation 8

4 3.30. Section VI.A.5.d. of the Permit states that a new permittee shall submit to EPA  
5 written certification, signed by a principal officer or a duly appointed representative of the  
6 permittee, of the completion and implementation of its Best Management Practices ("BMP") Plan  
7 and resubmit certification that the BMP Plan has been reviewed and revised as needed with its  
8 Notice of Intent ("NOI") and in no case later than 90 days after the effective date of the Permit.  
9 The resubmittals shall describe all changes made to the BMP Plan, and the permittee shall  
10 maintain a copy of its BMP Plan at its facility and shall make the plan available to EPA or ADEC  
11 upon request.

12 3.31. On July 19, 2003, Respondent did not have a copy of the Facility's BMP Plan and  
13 did not make it available to ADEC upon request.

14 3.32. Respondent failed to maintain a copy of its BMP Plan at the Facility or to make the  
15 plan available to ADEC upon request, in violation of the Permit and the Act.

16 Violations 9 - 10

17 3.33. Section VI.B.4. of the Permit states that a Permittee shall submit its annual report  
18 to EPA by February 14<sup>th</sup> of the year following each year of operation under the Permit. A copy  
19 shall also be sent to ADEC.

20 3.34. Respondent failed to submit its 2003 and 2004 annual reports to EPA and ADEC.

21 3.35. Respondent failed to submit its 2003 and 2004 annual reports to EPA and ADEC,  
22 in violation of the Permit and the Act.

23 Violation 11

24 3.36. Section VI.C. of the Permit states that all permittees classified as near-shore and  
25 shore-based seafood processors and discharging to receiving waters of depths of less than 120 feet  
26  
27

1 mean lower low water ("MLLW") at a fixed location for more than seven (7) days shall conduct a  
2 seafloor monitoring program. Permittees are required to submit a report of the seafloor survey to  
3 EPA and ADEC no later than February 14<sup>th</sup> of the year following the survey, in conjunction with  
4 the Annual Report.

5 3.37. During the period from February 14, 2003, through February 14, 2005, Respondent  
6 failed to survey deposited seafood processing waste, failed to develop and implement a seafloor  
7 monitoring survey, and failed to submit a report.

8 3.38. Respondent failed to survey deposited seafood processing waste, develop and  
9 implement an annual seafloor monitoring survey, or submit a report on the survey, in violation of  
10 the Permit and the Act.

11 Violation 12

12 3.39. Section VI.D. of the Permit states that a permittee shall conduct a sea surface and  
13 shoreline monitoring program to determine compliance with the authorized mixing zone and  
14 Alaska water quality standards for residues in marine waters. Permittee shall conduct its sea  
15 surface monitoring program to identify and determine the numbers of species listed as threatened  
16 or endangered under the Endangered Species Act, and also submit a brief report of the monitoring  
17 survey to EPA and ADEC.

18 3.40. On July 13, 2003, there was no documentation that sea surface and shoreline  
19 monitoring had been conducted.

20 3.41. Respondent failed to conduct a sea surface and shoreline monitoring program to  
21 determine compliance with the authorized mixing zone and Alaska water quality standards for  
22 residues in marine waters, in violation of the Permit and the Act.

23 Violation 13

24 3.42. Section IX.D. of the Permit states that when a permittee becomes aware that it  
25 failed to submit any relevant facts in a permit application, or that it submitted incorrect  
26  
27

1 information in a permit application or any report to EPA or ADEC, it shall promptly submit the  
2 omitted facts or corrected information.

3 3.43. On July 13, 2003, Respondent's NOI stated that: (1) the Facility operated an auto  
4 grinder; (2) the depth of the outfall was 40 feet; and (3) the distance from the outfall to the shore  
5 was 140 feet.

6 3.44. On July 13, 2003, the EPA inspector observed that: (1) the Facility operated a  
7 Vaughan Chopper; (2) the bathymetry indicated the depth of the outfall to be 10-12 feet; and (3)  
8 the outfall distance from shore was 30 feet.

9 3.45. Respondent failed to submit accurate information in its NOI, or submit corrected  
10 information, in violation of the Permit and the Act.

#### 11 Violation 14

12 3.46. Section VIII.E. of the Permit states that a permittee shall at all times properly  
13 operate and maintain all facilities and systems of treatment and control (and related  
14 appurtenances) that are installed or used by a permittee to achieve compliance with the conditions  
15 of its Permit.

16 3.47. On July 13, 2003, Permittee failed to secure the main outfall and discharged  
17 seafood waste directly onto the surface of the water.

18 3.48. Permittee failed to properly operate and maintain all facilities and systems of  
19 treatment and control, in violation of the Permit and the Act.

20 3.49. Respondent's failure to comply with its Permit as described above constitutes at  
21 least 14 violations of the Permit and Section 301 of the Act, 33 U.S.C. § 1311. Consequently,  
22 under Section 309(g)(2)(B) of the Act, Respondent is liable for the administrative assessment of  
23 civil penalties in an amount not to exceed \$11,000 per day for each day during which a violation  
24 continues, up to a maximum of \$157,500.

#### 25 IV. CONSENT AGREEMENT

26 4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.  
27



1 4.2. Respondent neither admits nor denies the specific factual allegations contained in  
2 Part III of this CAFO.

3 4.3. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), taking into account the  
4 nature, circumstances, extent, and gravity of the alleged violations, Respondent's economic  
5 benefit of noncompliance, and other relevant factors, including Respondent's ability to pay, EPA  
6 has determined and Respondent agrees that an appropriate penalty to settle this action is TWO  
7 THOUSAND FIVE HUNDRED DOLLARS (\$2,500).

8 4.4. Respondent consents to the issuance of the Final Order recited herein, and to  
9 payment of the penalty cited in Paragraph 4.3., within thirty (30) days of the effective date of the  
10 Final Order.

11 4.5. Payment under this CAFO shall be made by cashier's check or certified check,  
12 payable to the order of "U.S. Treasury" and shall be delivered to the following address:

13 U.S. Environmental Protection Agency  
14 Region 10  
15 P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251-6903

16 Respondent shall note on the check the title and docket number of this case.

17 4.6. Respondent shall submit a photocopy of the check described above to:

18 Regional Hearing Clerk  
19 U.S. Environmental Protection Agency  
20 Region 10  
1200 Sixth Avenue, Mail Stop ORC-158  
Seattle, Washington 98101

21 Office of Compliance and Enforcement  
22 Attn: Kimberly Ogle  
23 U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, Mail Stop OCE-133  
Seattle, Washington 98101

24 4.7. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due  
25 date, the entire unpaid balance of penalty and accrued interest shall become immediately due and  
26 owing. Should such a failure to pay occur, Respondent may be subject to a civil action to collect

1 the assessed penalty under the Clean Water Act. In any collection action, the validity, amount,  
2 and appropriateness of the penalty shall not be subject to review.

3 4.8. Should Respondent fail to pay any portion of the penalty assessed by this CAFO in  
4 full by its due date, Respondent shall also be responsible for payment of the following amounts:

5 a. Interest. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), any  
6 unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of  
7 the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order  
8 contained herein, provided, however, that no interest shall be payable on any portion of the  
9 assessed penalty that is paid within thirty (30) days of the effective date of the Final Order  
10 contained herein.

11 b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to  
12 Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), should Respondent fail to pay on a timely  
13 basis the amount of the penalty assessed by the Final Order contained herein, Respondent shall  
14 pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection  
15 proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay  
16 persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the  
17 aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the  
18 beginning of such quarter.

19 4.9. The penalty described in Paragraph 4.3. of this CAFO shall represent civil  
20 penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

21 4.10. The undersigned representative of Respondent certifies that he or she is fully  
22 authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this  
23 document.

24 4.11. Except as described in Paragraph 4.8. of this CAFO, each party shall bear its own  
25 costs in bringing or defending this action.

1 4.12. Respondent expressly waives any rights to contest the allegations and to appeal the  
2 Final Order contained herein.

3 4.13. The provisions of this CAFO shall bind Respondent and its officers, directors,  
4 agents, servants, employees, successors, and assigns.

5 STIPULATED AND AGREED:

6 Kake Foods, Inc.

7  
8   
Signature

Dated: 9/01/06

9 Print Name: Henrick S. Kadala  
10 Title: Sec/Treas

11 U.S. ENVIRONMENTAL PROTECTION AGENCY  
12 REGION 10

13 

Dated: 9/27/06

14 Cara Steiner-Riley  
15 Assistant Regional Counsel

V. FINAL ORDER

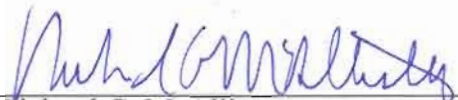
5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of settlement contained in the Consent Agreement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the particular violations alleged in Part III, above. 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 Act and regulations and permits issued thereunder.

5.3. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), EPA has published public notice of its intent to assess an administrative penalty against Respondent and has invited public comment in accordance with 40 C.F.R. § 22.45. More than 40 days have elapsed since the issuance of this public notice, and EPA has received no comments concerning this matter.

5.4. This Final Order shall become effective upon filing.

SO ORDERED this 17<sup>th</sup> day of November, 2006.

  
Richard G. McAllister  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Kake Foods, Inc., DOCKET NO.: CWA-10-2007-0003** was filed with the Regional Hearing Clerk on November 20, 2006.

On November 20, 2006 the undersigned certifies that a true and correct copy of the document was delivered to:

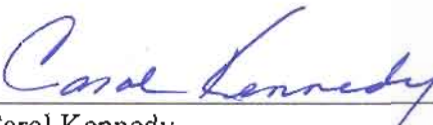
Cara Steiner-Riley, Esquire  
US Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on November 20, 2006, to:

Duff Mitchell, Registered Agent  
Kake Foods, Inc.  
3017 Clinton Dr.  
Juneau, AK 99801

Sam Jackson, President  
Kake Foods, Inc.  
P.O. Box 610  
Kake, AK 99830

DATED this 20<sup>th</sup> day of November 2006.



*Carol Kennedy*

---

Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10

NOV 20 2006  
1-12-  
10  
10  
2006