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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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HEARINGS CLERK
EPA REGION 10

In the Matter of:

SILVER BAY SEAFOODS, LLC
Sitka, Alaska

Respondent.

DOCKET NO. CWA-10-2019-0129

CONSENT AGREEMENT

Proceedings Under Section 309(g) of the Clean
Water Act, 33 U.S.C. § 1319(g)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA). 33 U.S.C. § 1319(g).

1.2. Pursuant to Clean Water Act Section 309(g)(1)(A), the EPA is authorized to assess a civil penalty against any person that has violated Section 301, and/or any permit condition or limitation in a permit issued under Section 402. 33 U.S.C. §§ 1319(g)(1)(A), 1311, 1342.

1.3. Clean Water Act Section 309(g)(2)(B) authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. 33 U.S.C. § 1319(g)(2)(B). Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$21,933 per day for each day during which the violation continues, up to a maximum penalty of \$274,159. See also 84 Fed. Reg. 2056 (February 6, 2019) (2019 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to Clean Water Act Section 309(g)(1)(A) and (g)(2)(B), and in

accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” EPA issues, and Silver Bay Seafoods, LLC, (Respondent) agrees to issuance of the Final Order attached to this Consent Agreement. 33 U.S.C. § 1319(g)(1)(A) and (g)(2)(B); 40 C.F.R. § 22.18.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), execution of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign such consent agreements to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 10.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged Clean Water Act violations, together with the specific provisions of the Clean Water Act and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Framework

3.1. The objective of the Clean Water Act is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

3.2. Section 301(a) of the Clean Water Act prohibits the discharge of pollutants by any person from any point source into waters of the United States except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Clean Water Act Section 402. 33 U.S.C. §§ 1311(a), 1342.

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

3.4. Section 502(6) of the Clean Water Act defines a “pollutant” to include “industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).

3.5. Section 502(14) of the Clean Water Act defines “point source” to include, among other things, “any pipe, ditch, channel, tunnel, conduit, well, discrete fissure [or] container ... from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

3.6. Section 502(7) of the Clean Water Act defines “navigable waters” as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

3.7. Section 402(a) of the Clean Water Act authorizes the Administrator of EPA to issue permits under the NPDES program for the discharge of any pollutant into the waters of the United States upon such specific terms and conditions as the Administrator may prescribe. 33 U.S.C. § 1342(a).

3.8. On October 31, 2008, NPDES permitting authority for seafood processing facilities, along with certain other dischargers, was transferred from EPA to the State of Alaska’s Department of Environmental Conservation (ADEC). Notwithstanding this transfer, EPA retains continuing enforcement authority over NPDES permits under Section 309 of the Clean Water Act. 73 Fed. Reg. 66,243, 62,244 (Nov. 7, 2008).

General Allegations

3.9. Respondent is a limited liability company that owns and operates a shore-based seafood processing facility located at Sawmill Industrial Park, 4400 Sawmill Creek Road, Sitka, Alaska and is a “person” within the meaning of the Clean Water Act. 33 U.S.C. § 1362(5).

3.10. At all times relevant to this action, Respondent was authorized to discharge

seafood processing waste from the Sitka Facility into waters of the United States under the NPDES General Permit for Seafood Processors in Alaska, No. AK-G52-000, unique identifier for the Facility AK-G52-0547 (Permit), and the applicable grants of discharge authorization.

3.11. The Permit was initially issued by EPA and expired on July 27, 2006. The Permit was administratively extended in accordance with 40 C.F.R. § 122.6, remains in full force and effect at the Sitka Facility, and is now administered by ADEC.

3.12. Respondent discharges pollutants into Sawmill Cove in Silver Bay via an outfall line that is owned and maintained by the City and Borough of Sitka, identified as Outfall 001 in the Permit. Outfall 001 is a "point source" as defined in Section 502(14) of the Clean Water Act. 33 U.S.C. § 1362(14).

3.13. Outfall 001 is located approximately 1730 feet from shore, well below the ordinary low water mark and within the territorial seas as defined in Section 502(8) of the Clean Water Act. 33 U.S.C. § 1362(8).

3.14. Respondent has discharged pollutants from a point source into navigable waters within the meaning of the Clean Water Act sections identified above.

Violations

3.15. The Permit establishes effluent limitations, standard and special operating conditions, and monitoring and reporting requirements for discharges from the Facility.

3.16. As described below, from at least June 2015 to November 2018, Respondent violated the following Permit provisions and Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

Count 1: Failure to Route Seafood Processing Waste Through a Waste Conveyance and Treatment System

3.17. Part V.C.1.c. of the Permit provides, “A permittee shall route all incidental seafood processing waste in scuppers and floor drains through a waste conveyance system to the waste treatment system prior to discharge.”

3.18. At the time of the August 2015 inspection of the Facility, EPA observed several areas where seafood processing waste was not properly routed prior to discharge, including on a catwalk below the Facility and on the floor in a warehouse/maintenance area.

3.19. On at least one occasion in August 2015, Respondent failed to properly route incidental seafood processing waste prior to discharge in violation of Part V.C.1.c. of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 2: Failure to Properly Inspect the Grinder and/or Waste Conveyance Systems

3.20. Part V.C.1.d. of the 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.”

3.21. Part V.C.1.e. of the Permit provides, “A permittee shall conduct a daily inspection of the grinder system during the processing season . . .”

3.22. Respondent’s grinder and waste conveyance inspection logs indicate that the grinder and waste conveyance systems were not inspected for 21 days of the 2015 processing season.

3.23. On at least 21 occasions between June 2015 and September 2015, Respondent failed to properly inspect the grinder and waste conveyance systems in violation of Parts V.C.1.d. and V.C.1.e. of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 3: Failure to Monitor the Sea Surface and Shoreline

3.24. Part VI.D.2 of the Permit provides, “A permittee shall conduct a sea surface and shoreline monitoring program to determine compliance with the authorized mixing zone and Alaska water quality standards for residues in marine waters. Alaska Administrative Code Part 18 § 70.020 states that ‘(floating solids, debris, foam and scum) shall not...cause a film, sheen or discoloration on the surface of the water ... or cause a sludge, solid or emulsion to be deposited...upon adjoining shorelines.’”

3.25. Part VI.D.3.a of the Permit provides, “Monitoring the sea surface will provide daily assessments of the presence and amounts of residues floating on the sea surface during a near-shore or shore-based facility’s operation and discharge.”

3.26. Part VI.D.3.b of the Permit provides, “Monitoring the shoreline will provide periodic assessments of the presence and amounts of residues deposited upon the shore during a facility’s operation and discharge.”

3.27. Respondent’s sea surface and shoreline monitoring logs indicate that the sea surface and shoreline were not monitored for 21 days of the 2015 processing season.

3.28. On at least 21 occasions between June 2015 and September 2015, Respondent failed to monitor the sea surface and shoreline in violation of Parts VI.D.3.a and VI.D.3.b of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 4: Unauthorized Discharges

3.29. Part V.C.1.h. of the Permit provides, “A permittee shall not discharge any other wastewaters that contain foam, floating solids, grease or oily wastes which produce a scum or sheen on the water surface...” Part V.C.1.j. of the Permit provides, “A permittee shall not discharge seafood sludge, deposits, debris, scum, floating solids, oily wastes or foam which alone or in combination with other substances . . . cause a film, sheen, emulsion or scum on the surface of the water.”

3.30. At the time of the August 2015 inspection, EPA observed the Facility discharging seafood catch transfer water from the processing plant into Silver Bay, which was described as bloody, contained solids, and created an abundance of foam on the surface of the water beneath the dock.

3.31. Respondent’s sea surface and shoreline monitoring logs revealed an oily sheen on the sea surface, within 100-feet of the Facility, on four occasions in 2015.

3.32. For at least five days between July 2015 and September 2015, Respondent’s discharges violated Parts V.C.1.h. and V.C.1.j. of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 5: Failure to Develop and Implement a Best Management Practices Plan

3.33. Part VI.A.1. of the Permit provides, “During the term of this Permit all permittees shall operate in accordance with a Best Management Practices (BMP) Plan.” Part VI.A.3. of the Permit provides, “Through implementation of a BMP Plan a permittee shall prevent or minimize the generation and discharge of wastes and pollutants from the facility to the waters of the United States.”

3.34. Part VI.A.5.b. of the Permit provides, “The BMP Plan shall be documented in

narrative form, shall include any necessary plot plans, drawings or maps, and shall be developed in accordance with good engineering practices. The BMP Plan shall be organized and written with the following structure: ... (4) Risk identification and assessment of pollutant discharges; (5) Specific management practices and standard operating procedures to achieve the above objectives, including but not limited to, (a) the modification of equipment, facilities, technology, processes and procedures; (b) the improvement in management, inventory control, materials handling or general operational phases of the facility... (8) inspections and records...”

3.35. Respondent’s BMP Plan failed to identify and assess wastewater discharges and failed to include the type of grinder used at the Facility, procedures for collecting an effluent sample, a facility map, example inspection/monitoring logs, and procedures to monitor the sea surface and shoreline.

3.36. Respondent’s BMP Plan contained at least six deficiencies in violation of Part VI.A. of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 6: Failure to Meet Grind Size Requirement

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

3.38. At the time of EPA’s August 2015 inspection of the Facility, EPA collected an effluent sample. The sample contained pieces of seafood processing wastes greater than one-half inch.

3.39. On at least one occasion in August 2015, Respondent discharged seafood processing wastes from an outfall that exceeded one-half inch in dimension in violation of Part V.C.1.b. of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 7: Zone of Deposit Greater than One Acre

3.40. Part VI.C.2 of the Permit provides, “ADEC has authorized a zone of deposit of one (1) acre for each near-shore and shore-based facility permitted under this Permit in accordance with 18 AAC 70.”

3.41. Respondent’s seafloor monitoring surveys, conducted in June 2017 and November 2018, documented 2.76 acres and 2.02 acres of continuous seafood waste coverage, respectively.

3.42. From at least June 2017 through the present, Respondent’s zone of deposit has measured greater than one acre, in violation of Part VI.C.2. of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations in this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations in this Consent Agreement.

4.3. As required by Clean Water Act Section 309(g)(3), EPA has taken into account “the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.” 33 U.S.C. § 1319(g)(3). After considering these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$82,500.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be made by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be 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, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10

Compliance Officer at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, WA 98101
Young.teresa@epa.gov

Tara Martich
U.S. Environmental Protection Agency
Enforcement and Compliance Assurance
222 W. 7th Avenue #19 (Room 537)
Anchorage, Alaska
Martich.tara@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement 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 Clean Water Act, 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.

a. Interest. Pursuant to Clean Water Act Section 309(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. 33 U.S.C. § 1319(g)(9).

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Clean Water Act Section 309(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. 33 U.S.C. § 1319(g)(9).

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 is authorized to enter into and to bind Respondent to the terms and conditions of this Consent Agreement.

4.10. Except as described in Subparagraph 4.7.b. above, each party shall bear its own costs in bringing or defending this action.

4.11. Respondent waives all remedies, claims for relief, affirmative defenses and otherwise available rights to judicial or administrative review that Respondent may have with respect to this Consent Agreement, including its right to request a hearing under 40 C.F.R. § 22.15(c) and Sections 309(g)(2) and (4) of the Clean Water Act, its right to appellate review under Section 309(g)(8) of the Clean Water Act, and its right to seek federal judicial review of

the Consent Agreement and Final Order pursuant to Chapter 7 of the Administrative Procedure Act. See 33 U.S.C. §§ 1319(g)(2)(B), (4)(C), & (8)(B); 5 U.S.C. §§ 701-06. Respondent also consents to the issuance of this Consent Agreement without further adjudication.

4.12. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

9/16/2019

FOR RESPONDENT:

Cora Campbell

CORA CAMPBELL, President and CEO
Silver Bay Seafoods, LLC

DATED:

9/11/19

FOR COMPLAINANT:

Kate McLean
for EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

SILVER BAY SEAFOODS, LLC

Respondent.

DOCKET NO. CWA-10-2019-0129

FINAL ORDER

Proceedings Under Section 309(g) of the Clean
Water Act, 33 U.S.C. § 1319(g)

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.
2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.
3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the Clean Water Act and regulations promulgated or permits issued thereunder.

4. This Final Order shall become effective upon filing.

SO ORDERED this 14th day of September, 2019.



RICHARD MEDNICK
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 the Matter of: Silver Bay Seafoods LLC, Docket No.: CWA-10-2019-0129**, 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:

Kim Owens
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
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:

Cora Campbell
President and CEO
Silver Bay Seafoods, LLC
4039 21st Ave. W Suite 201
Seattle, Washington 98199

DATED this 16 day of September, 2019.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10