

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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EPA--REGION 10

In the Matter of:

GOLDEN FLEECE, INC.,

Respondent.

F/V Golden Fleece

DOCKET NO. CWA-10-2013-0128

**CONSENT AGREEMENT AND
FINAL ORDER**

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 (g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (g)(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 Golden Fleece, 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 22.45(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 Director of the Office of Compliance and Enforcement, EPA Region 10 has

been delegated the authority to sign consent agreements between EPA and the parties against whom Class II penalties pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), are proposed to be assessed.

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 implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Section 301(a) of the CWA prohibits the “discharge of any pollutants by any person” except, inter alia, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit. CWA § 301(a), 33 U.S.C. § 1311(a); CWA § 402, 33 U.S.C. § 1342.

3.1.1. The CWA defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source” and defines “navigable waters” to include “waters of the United States.” CWA § 502(7),(12), 33 U.S.C. § 1362(7),(12).

3.1.2. The CWA defines “point source” as “any discernible, confined and discrete conveyance, including but not limited to 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.” CWA § 502(14), 33 U.S.C. § 1362(14).

3.2. Respondent is a corporation organized under the laws of the State of Washington, and therefore a “person” within the meaning of the CWA. CWA § 502(5), 33 U.S.C. § 1362(5). At all times relevant to this action, Respondent owned and operated the seafood longline processing vessel, the F/V Golden Fleece (Vessel), which discharged seafood processing waste from the butchering of seafood into the Gulf of Alaska.

3.3.1. The Vessel is a “point source.” CWA § 502(14), 33 U.S.C. § 1362(14).

3.3.2. The seafood processing waste “discharged” from the Vessel is a

“pollutant.” CWA § 502(6), (12), (16); 33 U.S.C. § 1362(6), (12), (16).

3.3.3. The Gulf of Alaska is among the “navigable waters” and “waters of the United States.” CWA § 502(7), 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.

3.3.4. All discharges relevant to this CAFO occurred within the territorial waters of the United States, and at distances greater than three nautical miles from the Alaskan coast (Alaskan Federal Waters).

3.3. Seafood processing vessels operating in Alaskan Federal Waters can apply to be authorized to discharge into waters of the United States through either an NPDES individual permit or, when applicable, an NPDES general permit. 40 C.F.R. § 122.28.

3.4. 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.

3.4.1. The Alaska Permit required permittees which 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.

3.4.2. The Vessel was authorized to discharge under the conditions listed in the Alaska Permit. Respondent submitted an application to continue coverage under the Alaska Permit, which was received by EPA on May 18, 2006.

3.4.3. The Alaska Permit was administratively extended, pursuant to 40 C.F.R. § 122.6. Under an administratively extended permit, permittees which 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.

3.4.4. On December 8, 2009, EPA published notice in the Federal Register and

issued individual letters to Respondent and other permittees covered under the administratively extended Alaska Permit that the Alaska Permit would not be renewed. The notice and letter stated that authorization to discharge under the administrative extension to the Alaska Permit for seafood processing vessels operating in Alaskan Federal Waters would terminate on March 1, 2010.

3.4.5. EPA's December 8, 2009 public notice and individual letters informed Respondent and other permittees covered under the administratively extended Alaska Permit that if they wanted authorization to discharge into Alaskan Federal Waters after February 28, 2010, they would need to submit an application for coverage under the new NPDES general permit and that an applicant would not have authorization to discharge under the new NPDES general permit until that applicant received a written authorization letter from EPA.

3.5. EPA issued a NPDES general permit, *Offshore Seafood Processors in Alaska, AK-G52-4000* (Offshore Permit), for seafood processing vessels operating in Alaskan Federal Waters, which went into effect on March 1, 2010.

3.5.1. On March 18, 2013, Respondent applied for coverage for the Vessel under the Offshore Permit. Respondent did not apply for coverage under the Offshore Permit at any point before March 18, 2013.

3.5.2. On April 17, 2013, EPA authorized Respondent's Vessel to discharge into Alaskan Federal Waters, under the conditions listed in the Offshore Permit, between April 17, 2013 and February 28, 2015.

3.6. Section VI.B of the Alaska Permit required Respondent to submit an annual report to EPA on or before February 14 of the year following each year of operation and discharge under the Alaska Permit. Respondent did not submit an annual report to EPA for the 2007 operating year, or any operating year after 2007, until March 2013.

3.7. **Violation:** Respondent violated Part VI.B of the Alaska Permit during operating years 2007, 2008, 2009, and 2010, by failing to submit annual reports in a timely manner.

3.8. Section V.A.1.d of the Alaska Permit required Respondent to conduct and keep logs of daily visual inspections of the Vessel's waste conveyance system.

3.9. **Violation:** Respondent violated Section V.A.1.d of the Alaska Permit, by failing to conduct and keep logs of daily visual inspections of the waste conveyance during operating years 2008, 2009, and February 2010.

3.10. Section V.A.1.e of the Alaska Permit required Respondent to conduct and keep logs of daily visual inspections of the grinder system on a daily basis.

3.11. **Violation:** Respondent violated Section V.A.1.e of the Alaska Permit, by failing to conduct and keep logs of daily visual inspections of the waste conveyance during operating years 2008, 2009, and February 2010.

3.12. Section V.A.1.f of the Alaska Permit required Respondent to conduct and keep logs of the pre-operational check of the outfall system, which must be performed at the beginning of each processing season.

3.13. **Violation:** Respondent violated Section V.A.1.f of the Alaska Permit, by failing to conduct and keep logs of the pre-operational check of the outfall system for the 2008, 2009, or 2010 processing season.

3.14. Between March 1, 2010 and April 16, 2013, Respondent violated Section 301(a) of the CWA, by discharging pollutants from the Vessel into waters of the United States without authorization from either an individual NPDES permit or the Offshore Permit. CWA § 301(a), 33 U.S.C. § 1311(a).

3.15. **Violation:** Respondent violated Section 301(a) of the CWA during 30 of the 38 months between March 3, 2010 and April 16, 2013.

3.16. Respondent is liable for the administrative assessment of civil penalties up to

\$11,000 per day for each violation that occurred on or before January 12, 2009, up to \$16,000 per day for each violation that occurred after January 12, 2009, up to a maximum of \$177,500. CWA § 309(g), 33 U.S.C. § 1319(g); 40 C.F.R. Part 19.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in this CAFO, and consents to issuance of the Final Order set forth in Part V.

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 \$136,072.

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.

4.5. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered via United States mail 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 deliver via United States mail a photocopy of the check described in Paragraph 4.5 to 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 ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Chris Gebhardt, Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-133
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. Nonpayment. If Respondent fails to pay the penalty assessed by this CAFO in full within 30 days of the effective date of the Final Order, 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. For any portion of the civil penalty or any nonpayment penalty and associated costs which remains unpaid 30 days after the effective date of the Final Order, Respondent shall pay interest. The interest rate applied is the annual rate established by the Secretary of Treasury, pursuant to 31 U.S.C. § 3717(a)(1), in effect on the day the Final Order becomes effective.

4.7.2. Nonpayment Penalties and Associated Costs. If Respondent fails to pay the penalty per the payment schedule below, 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 occurs or persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter. CWA § 309(g)(9), 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 and its subparagraphs, 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. Except as described in Subparagraph 4.7.2, each party shall bear its own fees and costs in bringing or defending this action.

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

4.12. The provisions of this CAFO 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:

FOR GOLDEN FLEECE, INC.:

8-22-13

William M Bisbee

Name:

Title:

Pres. of Golden Fleece

DATED:

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

8-27-13

Edward J. Kowalski

EDWARD J. KOWALSKI

Director

Office of Compliance and Enforcement

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 ^{23rd} day of September, 2013.


M. SOCORRO RODRIGUEZ

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: F/V Golden Fleece; Docket No. CWA-10-2013-0128**, was filed, and served as follows, on the signature date below.

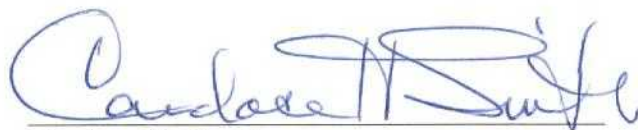
The undersigned certifies that a true and correct electronic copy of the document was delivered to:

Chris Bellovary
U.S. Environmental Protection Agency
Region 10, M/S: ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

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

William Brisbee, Owner
Golden Fleece, Inc.
P.O. Box 226
South Bend, Washington 98586

23rd Sept 2013
Dated



Candace H. Smith
Regional Hearing Clerk
EPA Region 10

