

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 Copper River Seafoods, Inc. (“Respondent”) hereby 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. Respondent owns and operates a seafood processing facility in Cordova, Alaska (“the Facility”).

2.3. On May 31, 2002, the Alaska Department of Environmental Conservation (“ADEC”) conducted a National Pollutant Discharge Elimination System (“NPDES”) inspection at the Facility.

2.4. On August 19, 2004, EPA conducted an NPDES inspection at the Facility.

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

III. ALLEGATIONS

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

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

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

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

3.5. Respondent is authorized to discharge seafood processing waste into waters of the United States under general NPDES Permit No. AKG520000 ("Permit"). The Facility operates under the unique identifier, AKG520524.

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

3.7. Respondent discharged seafood processing waste from the butchering of seafood into Orca Inlet, which constitutes "navigable waters" and "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1326(7).

Violations 1 - 3

3.8. Section VII.C. of the Permit states that the permittee shall report occurrences of noncompliance to EPA and to ADEC by telephone within 24 hours from the time a permittee becomes aware of the circumstances, such as any discharge into receiving waters not authorized for coverage under the Permit, or any noncompliance that may endanger health or the

environment. The permittee shall also provide written submission to EPA and ADEC within five days of the time that a permittee becomes aware of any event required to be reported.

3.9. On May 11, 2002, Respondent failed to report a spill from a plugged grinder to EPA and ADEC by telephone within 24 hours, or by written submission within five days of becoming aware of it.

3.10. On May 29, 2002, Respondent failed to report a spill that occurred from a break in the outfall line, to EPA and ADEC by telephone within 24 hours, or by written submission within five days of becoming aware of it.

3.11. On May 30, 2002, Respondent failed to report a spill that occurred from a grinder to EPA and ADEC by telephone within 24 hours, or by written submission within five days of becoming aware of it.

3.12. Respondent failed to report spills to EPA and ADEC by telephone or by written submission, in violation of the Permit and the Act.

Violation 4

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

3.14. Section V.C.1.f. of the Permit states that the permittee shall not discharge from a severed, failed, or leaking outfall line ten days past its severance, failure, or damage unless such damage has been repaired. Failure of the outfall system is to be reported to EPA and ADEC and summarized in the annual report.

3.15. On May 31, 2002, Respondent discharged solid seafood processing wastes through a broken outfall line to Orca Inlet. The discharge from the broken outfall line included whole fish, carcasses, fish heads, and viscera. These wastes were greater than one-half inch.

3.16. Respondent failed to grind solid seafood processing wastes to one-half inch in any dimension or smaller prior to discharge, discharged seafood processing wastewater from a broken outfall line, and failed to report the outfall failure, in violation of the Permit and the Act.

Violation 5

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

3.18. Section V.C.1.j.3. of the Permit states that 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.

3.19. Section V.C.1.j.4. of the Permit states that 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 scum, emulsion, sludge or solid to be deposited on the adjoining shorelines.

3.20. On or before May 31, 2002, Respondent discharged seafood processing waste from its broken outfall line and caused a sheen on the surface water.

3.21. On or before May 31, 2002, Respondent discharged seafood processing wastes that resulted in the deposition of a large pile of solid seafood processing wastes on the shoreline directly below the Facility. The solid seafood processing wastes exceeded one-half inch in size.

3.22. Respondent discharged solid seafood processing wastes that exceeded one-half inch in any dimension or smaller prior to discharge, caused a sheen on the surface water and deposited seafood processing waste on the shoreline, in violation of the Permit and the Act.

Violation 6

3.23. Section V.C.1.e. of the Permit states that the permittee shall conduct a daily inspection of the grinder system during the processing season to confirm that the grinders are: 1) operating, and 2) reducing the size of the seafood residues to one-half inch or smaller. Logs of the daily inspections shall be kept at the facility, and failure to grind to the one-half inch size shall be reported to EPA and ADEC and summarized in an annual report.

3.24. On May 31, 2002, Respondent failed to conduct a daily inspection of its grinder and was grinding waste that was larger than one-half inch in any dimension. Respondent did not have logs of daily inspections at the Facility.

3.25. Respondent failed to conduct a daily inspection of the grinder system, grind solids into one-half inch or smaller, or keep logs of the inspections at the Facility, in violation of the Permit and the Act.

Violation 7

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

3.27. On August 19, 2004, Respondent discharged solid seafood processing wastes that exceeded one-half inch in size into Orca Inlet.

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

Violation 8

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

3.30. Section V.C.1.c. of the Permit states that the 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.

3.31. On August 19, 2004, solid seafood processing wastes greater than one-half inch in size were discharged from a hole cut in the waste conveyance system, and contributed to a waste pile measuring 18 feet by 18 feet.

3.32. Respondent failed to route all seafood processing wastes, including incidental seafood processing waste, through a waste conveyance system and treatment system, and grind the waste to one-half inch in any dimension or smaller, in violation of the Permit and the Act.

Violations 9 and 10

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

3.34. Section VIII.F. of the Permit states that the permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation.

3.35. On August 19, 2004, Respondent discharged solid seafood processing wastes greater than one-half inch in size from a secondary sump into Orca Inlet.

3.36. Respondent failed to grind solid seafood processing wastes to one-half inch in size or smaller, and exceeded effluent limitations, in violation of the Permit and the Act.

Violations 11-12

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

3.38. Section V.C.1.c. of the Permit states that the 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.

3.39. Section V.C.1.j.4. of the Permit states that the facility shall not discharge seafood sludge, deposits, debris, scum, floating solids, oily wastes or foam which alone or in combination with other substances, cause scum, emulsion, sludge or solid to be deposited on the adjoining shorelines.

3.40. On August 19, 2004, Respondent discharged seafood processing wastes from a drain in the roe room that was not connected to the waste conveyance and treatment system, thus resulting in fish processing waste residues on the shoreline. The seafood processing wastes discharged from the roe room exceeded one-half inch in size.

3.41. Respondent failed to route all seafood processing waste, including incidental waste, into a waste conveyance and treatment system, and grind the waste into one-half inch or

smaller, thus causing fish processing residue to accumulate on the shoreline, in violation of the Permit and the Act.

Violation 13

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

3.43. Section V.C.1.c. of the Permit states that the 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.

3.44. On August 19, 2004, seafood processing waste, including incidental seafood processing waste, greater than one-half inch in size was observed being discharged from four floor drains in the fish house processing area. The drains were not connected to the waste conveyance and treatment system.

3.45. Respondent failed to route all seafood processing wastes, including incidental seafood processing waste, through a waste conveyance system and treatment system, and grind the waste to one-half inch in any dimension or smaller, in violation of the Permit and the Act.

Violation 14

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

3.47. Section V.C.1.c. of the Permit states that the 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.

3.48. On August 19, 2004, seafood processing waste, including incidental seafood processing waste, greater than one-half inch in size, was observed being discharged from four floor drains in the custom processing area. The drains were not connected to the waste conveyance and treatment system.

3.49. Respondent failed to route all seafood processing wastes, including incidental seafood processing waste, through a waste conveyance system and treatment system, and grind the waste to one-half inch in any dimension or smaller, in violation of the Permit and the Act.

Violation 15

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

3.51. Section V.C.1.c. of the Permit states that the 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.

3.52. Section V.C.1.j.4. of the Permit states that 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 scum, emulsion, sludge or solid to be deposited on the adjoining shorelines.

3.53. On August 19, 2004, seafood processing waste, including incidental seafood processing waste, greater than one-half inch in size was observed being discharged from a drain in the processing area that was not connected to the waste conveyance and treatment system.

The discharge from the drain resulted in residues on the shoreline.

3.54. Respondent failed to route all seafood processing wastes, including incidental seafood processing waste, through a waste conveyance system and treatment system, grind the waste to one-half inch in any dimension or smaller, and deposited solid seafood processing waste on the adjoining shoreline, in violation of the Permit and the Act.

Violation 16

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

3.56. On August 19, 2004, Respondent discharged solid seafood processing wastes greater than one-half in size from an unknown drain in the roe room.

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

Violation 17

3.58. Section V.C.1.e. of the Permit states that the permittee shall conduct a daily inspection of the grinder system during the processing season to confirm that the grinders are: 1) operating, and 2) reducing the size of the seafood residues to one-half inch or smaller. Logs of the daily inspections shall be kept at the facility, and failure to grind to the one-half inch size shall be reported to EPA and ADEC and summarized in an annual report.

3.59. On August 19, 2004, Respondent did not conduct a daily inspection of the Vaughn chopper pump, which was grinding waste that was larger than one-half inch in any dimension.

3.60. Respondent failed to conduct a daily inspection of the grinder system and confirm that it was grinding solids into one-half inch or smaller, in violation of the Permit and the Act.

Violation 18

3.61. Section IX.E.4. of the Permit states that all applications, reports, or information submitted to EPA and ADEC shall be signed and certified as stated in the Permit, confirming that the information submitted is true, accurate, and complete, to the best of the signer's knowledge.

3.62. On August 19, 2004, Respondent did not properly complete the monitoring log for the grinder and recorded that the seafood waste was less than one-half inch in size, rather than greater than one-half inch in size.

3.63. Respondent failed to record accurate information in the monitoring log, in violation of the Permit and the Act.

Violation 19

3.64. Section IX.E.4. of the Permit states that all applications, reports, or information submitted to EPA and ADEC shall be signed and certified as stated in the Permit, confirming that the information submitted is true, accurate, and complete, to the best of the signer's knowledge.

3.65. On August 19, 2004, Respondent did not properly complete the sea surface and shoreline monitoring logs and recorded that all conditions were normal for that day; the presence of seafood waste piles at the Facility were not indicated in the logs.

3.66. Respondent failed to record accurate information in the monitoring logs, in violation of the Permit and the Act.

Violation 20

3.67. Section VII.B. of the Permit states that the permittee shall retain records of all monitoring information, including but not limited to, all calibration and maintenance records, copies of all reports required by the Permit, a copy of the Permit, and records of all data used to complete the application for the Permit, for a period of at least five years from the date of the sample, measurement, report or application, or for the term of the Permit, whichever is longer.

3.68. On August 19, 2004, it was observed that the Respondent only maintained records for three years.

3.69. Respondent failed to maintain records under the Permit for a period of at least five years, in violation of the Permit and the Act.

Violations 21-23

3.70. Section V.C.1.a. of the Permit states that the permittee of a shore-based seafood processor shall not discharge a volume or weight of seafood processing waste residues on a daily or annual basis which exceed the amount reported in the permittee's Notice of Intent ("NOI").

3.71. Respondent signed and submitted an NOI for the Facility dated July 24, 2000. Respondent indicated in the 2000 NOI that the Facility would discharge 423,600 pounds of seafood processing waste annually.

3.72. The 2001 Annual Report from the Respondent reported that in 2001, the Facility discharged a total 1,189,193 pounds of waste, which exceeded the amount reported in its NOI by 180%.

3.73. The 2002 Annual Report from the Respondent reported that in 2002, the Facility discharged a total 1,824,517 pounds of waste, which exceeded the amount reported in its NOI by 330%.

3.74. The 2003 Annual Report from the Respondent reported that in 2003, the Facility discharged a total 2,128,563 pounds of waste, which exceeded the amount recorded in its NOI by 402%.

3.75. Respondent's discharges of seafood processing waste residues that exceeded the amount reported in the NOI violated the Permit and the Act.

3.76. Respondent's failure to comply with its Permit as described above constitutes at least 23 violations of a condition or limitation in a permit issued under Section 402 of the Act. Consequently, under Section 309(g)(2)(B) of the Act, Respondent is liable for the administrative assessment of civil penalties in an amount not to exceed \$11,000 per day for each day during which a violation continues, up to a maximum of \$157,500.

IV. CONSENT AGREEMENT

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

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

4.3. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), taking into account the nature, circumstances, extent, and gravity of the alleged violations, Respondent's economic benefit of noncompliance, and other relevant factors, including Respondent's ability to pay, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is FORTY THOUSAND DOLLARS (\$40,000).

4.4. Respondent consents to the issuance of the Final Order recited herein, and to payment of the penalty cited in Paragraph 4.3., plus all applicable interest on such penalty, in accordance with the payment schedule described in subparagraphs a through c below.

a. Within thirty (30) days of the effective date of the Final Order, Respondent shall pay a first installment of \$10,000.00.

b. Respondent shall pay a second installment of \$16,200.00 (\$15,000.00 plus \$1,200.00 interest) within one year of the due date of the first installment.

c. Respondent shall pay a third installment of \$15,600.00 (\$15,000.00 plus \$600.00 interest) within two years of the due date of the first installment.

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

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

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

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

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

Office of Compliance and Enforcement
Attn: Tara Martich
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, Mail Stop OCE-133
Seattle, Washington 98101

4.7. Should Respondent fail 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. Should such a failure to pay occur, Respondent may be subject to a civil action to collect the assessed penalty under the Clean Water Act. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

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

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

b. Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), should Respondent fail to pay on a timely basis the amount of the penalty assessed by the Final Order contained herein. Respondent shall pay (in addition to any assessed penalty and interest) attorney 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 twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

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

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

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

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

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

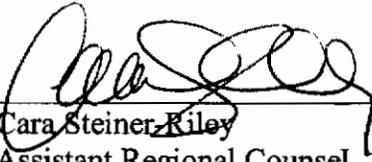
STIPULATED AND AGREED:

FOR RESPONDENT COPPER RIVER SEAFOODS, INC.

W. A. Bailey^{III}
Signature
Print Name: W. A. Bailey^{III}
Title: owner

Dated: 3/14/07

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10


Cara Steiner Riley
Assistant Regional Counsel

Dated: 3/20/07

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

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 15th day of May, 2007.



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: Copper River Seafoods, L.L.C., DOCKET NO.: CWA-10-2007-0069** was filed with the Regional Hearing Clerk on May 15, 2007.

On May 15, 2007 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
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 on May 15, 2007, to:

William A. Bailey
Copper River Seafoods, L.L.C.
P.O. Box 158
Cordova, AK 99574

DATED this 15th day of May 2007.



Carol Kennedy
Regional Hearings Clerk
EPA Region 10