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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)

Deep Creek Custom Packing, Inc.)

Ninilchik, Alaska)

Respondent.)

Docket No. CWA-10-2007-0005

Consent Agreement and 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 to the Regional Judicial Officer.

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U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101
(206) 553-1037

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 Deep Creek Custom Packing, 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 Ninilchik, Alaska (“the Facility”).

2.3. On March 18, 2005, the Alaska Department of Environmental Conservation (“ADEC”) conducted a National Pollutant Discharge Elimination System (“NPDES”) inspection at the Facility in response to a citizen complaint.

2.4. On March 30, 2005, EPA and ADEC 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. AK-G52-0000 ("Permit"). The Facility operates under the unique identifier, AK-G52-0540.

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 to the mouth of the Ninilchik River, 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).

Violation 1

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

3.9. On or before March 18, 2005, Respondent discharged solid seafood processing wastes that exceeded one-half inch in size directly into the Ninilchik River.

3.10. 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 2

3.11. Section III.A.1. of the Permit states that permittees are not authorized to discharge pollutants into protected water resources, critical habitats and special areas, such as State Critical Habitat Areas.

3.12. Section III.B.1. of the Permit states that permittees are not authorized to discharge pollutants in at-risk water resources and waterbodies in areas with water depth of less than 60 feet mean lower low water ("MLLW") that are likely to or currently have poor flushing.

3.13. Section III.B.3. of the Permit states that permittees are not authorized to discharge pollutants in at-risk water resources and waterbodies, including lakes, rivers, and streams.

3.14. On or before March 18, 2005, Respondent discharged pollutants within one mile of a State Critical Habitat Area.

3.15. On or before March 18, 2005, Respondent discharged pollutants into an at-risk waterbody with water depth of less than 60 feet MLLW and poor flushing.

3.16. On or before March 18, 2005, Respondent discharged pollutants into Ninilchik River, an at-risk waterbody.

3.17. Respondent discharged pollutants into a protected water resource, and an at-risk waterbody with water depth of less than 60 feet MLLW, in violation of the Permit and the Act.

Violation 3

3.18. 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 inspection shall be kept at the facility.

3.19. On March 30, 2005, there was no documentation that the Respondent conducted daily inspections of the grinder system.

3.20. Respondent failed to conduct daily inspections of the grinder system and did not have logs of the inspections at the Facility, in violation of the Permit and the Act.

Violation 4

3.21. Section VI.D.1. of the Permit states that the permittee shall conduct a sea surface and shoreline monitoring program.

3.22. On March 30, 2005, there was no documentation that the Respondent conducted sea surface and shoreline monitoring.

3.23. Respondent failed to conduct a sea surface and shoreline monitoring program in violation of the Permit and the Act.

Violation 5

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

3.25. On March 30, 2005, there was no documentation that the Respondent conducted visual inspections of the waste conveyance system.

3.26. Respondent failed to conduct daily visual inspections of the waste conveyance system, and kept no logs of the daily inspections at the Facility, in violation of the Permit and the Act.

Violation 6

3.27. Section VI.A.6. of the Permit states that the permittee shall amend the Best Management Practices ("BMP") Plan whenever there is a change in the facility or in the operation of the facility which materially increases the generation of pollutants and their release or potential release to the receiving waters.

3.28. On January 13, 2005, Respondent failed to amend the BMP Plan to reflect the change in waste management procedures.

3.29. Respondent failed to amend the BMP Plan, in violation of the Permit and the Act.

3.30. Respondent's failure to comply with its Permit as described above constitutes at least six violations of Section 301 of the Act, 33 U.S.C. § 1311. 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 TEN THOUSAND FIVE HUNDRED DOLLARS (\$10,500.00).

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. Respondent shall pay a first installment payment of \$3,920.00 (\$3,500.00 plus \$420.00 interest at 4%) by November 1, 2007.

b. Respondent shall pay a second installment payment of \$3,785.45 (\$3,500.00 plus \$285.45 interest at 4%) by November 1, 2008.

c. Respondent shall pay a third installment payment of \$3,645.53 (\$3,500.00 plus \$145.53 interest at 4%) by November 1, 2009.

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: Margo Young
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:

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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 the 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:

Deep Creek Custom Packing, Inc.


Signature
Print Name: Jeff Berger
Title: President

Dated: 11/21/06

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10


Cara Steiner-Riley
Assistant Regional Counsel

Dated: 12/6/06

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 25th day of January 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: Deep Creek Custom Packing, Inc., DOCKET NO.: CWA-10-2007-0005**, was filed with the Regional Hearing Clerk on January 26, 2007.


On January 26, 2007, the undersigned certifies that a true and correct copy of the document was delivered to:

David Allnutt
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 January 26 2007, to:

Jeff Berger
Deep Creek Custom Packing, Inc.
P.O. Box 39229
Ninichik, Alaska 99639

DATED this 26th day of January 2007.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10