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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
HEARINGS CLERK
EPA - REGION 10

IN THE MATTER OF:)	
)	
Trident Seafoods Corporation)	Docket No. EPCRA-10-2009-0069
)	
Seattle, Washington)	Consent Agreement and Final Order
)	
Respondent.)	
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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 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA” or “the Act”), 42 U.S.C. § 11045. 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 redelegate this authority to the Regional Judicial Officer.

1.2. Pursuant to Section 325 of EPCRA, and in accordance with Section 22.13(b) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby issues and Trident Seafoods Corporation (“Respondent”) hereby agrees to issuance of the Final Order contained in Part V of this CAFO.

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U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
(206) 553-1037

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 facilities at the following locations:
111 W. Marine Way, Kodiak, Alaska; 1 Main Street, Akutan, Alaska; 301 Harbor Way, Petersburg, Alaska; and 2001 West Garfield, Pier 91, Seattle, Washington (“the Facilities”).

2.3. Respondent processes seafood at the Facilities.

2.4. A concise statement of the factual bases 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 312 of EPCRA, 42 U.S.C. § 11022, provides that the owner or operator of a facility that is required to prepare or have available a material safety data sheet (“MSDS”) for a hazardous chemical under the Occupational Safety and Health Act (“OSHA”) shall submit annually (on March 1) to the State Emergency Response Commission (“SERC”), Local Emergency Planning Committee (“LEPC”) and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form. The inventory form may either be aggregate information by hazard category (“Tier I”) or specific information by chemical (“Tier II”). Inventory forms must include information on all hazardous chemicals present at the facility during the previous calendar year in amounts that meet or exceed the threshold planning quantity (“TPQ”).

3.2. Under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), “person” means, among other things, any corporation.

3.3 Under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), “facility” means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person).

3.4 Ammonia is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. § 1910.1000, Table Z-1; therefore, the owner or operator of a facility with ammonia on-site must prepare or have available an MSDS for ammonia. Ammonia is an extremely hazardous substance under Section 302 of EPCRA, 42 U.S.C. § 11002, with a reporting threshold of 500 pounds, as provided in 40 C.F.R. Part 370, and a TPQ of 500 pounds, as provided in 40 C.F.R. Part 355, Appendix A.

3.5 Under Section 325(c) of EPCRA, 42 U.S.C. § 11045(b), the EPA Administrator may assess a civil penalty of up to \$25,000 for each day of violation of Section 312 of EPCRA, 42 U.S.C. § 11022. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 42 C.F.R. Part 19, increased these statutory maximum penalties to \$32,500 per day of violation occurring after March 15, 2004.

3.6 Respondent is a corporation incorporated in the state of Washington.

3.7 Respondent stored ammonia at the Facilities during the 2006 calendar year in the following amounts: 25,000 pounds at the Kodiak location; 80,000 pounds at the Akutan location; 1,400 pounds at the Petersburg location; and 19,500 pounds at the Seattle location.

3.8 For the calendar year 2006, Respondent failed to file a Tier I or Tier II report for the Kodiak location with the Local Emergency Planning Committee; for the Akutan location with the State Emergency Response Commission; for the Petersburg location with the Petersburg Fire Department, the Local Emergency Planning Committee and the State Emergency Response Commission; and for the Seattle location with the Local Emergency Planning Committee.

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

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

4.5. Except as provided in Paragraph 4.10, each party shall bear its own costs in bringing or defending this action.

4.6. Based on Respondent's willingness to settle this matter without litigation, the nature of the violations, Respondent's agreement to perform two Supplemental Environmental Projects ("SEPs"), and other relevant factors, and in accordance with the *Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation, and*

Liability Act, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$60,014.60.

4.7. Respondent consents to the issuance of the Final Order recited herein and to payment of the penalty cited in Paragraph 4.6 within 30 days of the effective date of the Final Order.

4.8. 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.

4.9. Respondent shall submit a photocopy of the check described above to the following individuals:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, Suite 900
Mail Stop ORC-158
Seattle, Washington 98101

Suzanne Powers
U.S. Environmental Protection Agency
Region 10
Washington Operations Office
300 Desmond Drive SE, Suite 102
Lacey, Washington 98503

4.10 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 under EPCRA § 325(f), 42 U.S.C. § 11045(f), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.11. Should Respondent fail to pay 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. 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 30 days of the effective date of the Final Order contained herein.

(b) Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

(c) Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes past due.

4.12. Respondent shall implement and complete the SEPs described below within 90 days of the effective date of this CAFO, in accordance with all provisions described in this Consent Agreement. Respondent agrees that the SEPs are intended to improve emergency management by allowing a more immediate and effective response in the event of an emergency.

4.13. Respondent shall provide a training course for emergency response personnel in Kodiak, Alaska ("Kodiak SEP") and emergency response equipment for the fire department in Akutan, Alaska ("Akutan SEP"), as described in Attachment A to this CAFO.

4.14. Respondent's deadline to perform the SEPs shall be excused or extended if such performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the reasonable control of Respondent, including its employees, agents, consultants and contractors, or which could not be overcome by due diligence and which delays or prevents the performance of the SEPs within the specified time period. A Force Majeure event does not include, *inter alia*, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state or local permits.

4.15. The cost to Respondent of implementing the Kodiak SEP shall be not less than \$26,000.00, and of implementing the Akutan SEP not less than \$28,683. Respondent shall include documentation of the expenditures made in connection with the SEPs as part of the SEP Completion Report.

4.16. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEPs by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEPs by any other agreement, under a grant, or as injunctive relief in any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for

the SEPs. Furthermore, for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEPs.

4.17. Respondent shall submit a SEP Completion Report to EPA within 90 days of the Effective Date of the CAFO. The SEP Completion Report shall contain the following information:

- (a) A description of the SEPs as implemented;
- (b) Itemized costs, documented by copies of purchase orders and receipts or cancelled checks;
- (c) Certification that the SEPs have been fully implemented pursuant to the provisions of this CAFO;
- (d) A description of any operating problems encountered and the solutions thereto; and
- (e) A description of the environmental and public health benefits resulting from implementation of the SEPs.

4.18. Respondent agrees that failure to implement either SEP and/or submit the SEP Completion Report required by 4.17, shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to this CAFO.

4.19. Unless otherwise instructed in writing by EPA, Respondent shall submit all notices and reports required by this CAFO by first class mail, overnight mail, or hand delivery to:

Suzanne Powers
U.S. Environmental Protection Agency, Region 10
Washington Operations Office
300 Desmond Drive SE, Suite 102
Lacey, WA 98503

4.20. Respondent agrees that EPA may inspect Respondent's records related to the SEPs at any reasonable time in order to confirm that the SEPs are being undertaken in conformity with the representations made herein.

4.21. Respondent shall maintain legible copies of documentation of the underlying data for documents or reports submitted to EPA pursuant to this CAFO until the SEP Completion Report is accepted pursuant to Paragraph 4.22., and Respondent shall provide the documentation of any such underlying data to EPA within 15 days of a written request for such information. In all documents or reports including, without limitation, the SEP Completion Report submitted to EPA pursuant to this CAFO, Respondent shall, by a corporate officer, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

4.22. Following receipt of the SEP Completion Report described in Paragraph 4.17, EPA will do one of the following: (i) accept the Report; (ii) reject the Report, notify Respondent, in writing, of deficiencies in the Report and provide Respondent an additional 30 days in which

to correct any deficiencies; or (iii) reject the Report and seek stipulated penalties in accordance with Paragraph 4.24.

4.23. In the event that either SEP is not completed as contemplated by this CAFO and this failure was not caused solely by events which constitute a Force Majeure as defined by Paragraph 4.14, then stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 4.24 for the SEP(s) not completed. Schedules herein may be extended based upon mutual written agreement of the parties.

4.24. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEPs described above and/or to the extent that the actual expenditures for the SEPs do not equal or exceed the cost of the SEPs described in this CAFO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) If the Kodiak SEP is not satisfactorily completed pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$26,000.00, less the amount actually expended. If the Akutan SEP is not satisfactorily completed pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$28,683.00, less the amount actually expended.

(ii) For failure to submit the SEP Completion Report as required by Paragraph 4.17, Respondent shall pay a stipulated penalty in the amount \$100.00 for each day after the report is due until the report is received by EPA, not to exceed \$2,500.00.

4.25. Stipulated penalties under Paragraph 4.24 shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of satisfactory completion of the activity, subject to the maximum set forth in Paragraph 4.24(ii).

4.26. Respondent shall pay stipulated penalties within 15 days of receipt of a written demand by EPA for such penalties. Payment shall be in accordance with the provisions of Paragraph 4.8. Interest and late charges shall be paid as specified in Paragraph 4.11.

4.27. Except as provided in Paragraph 4.31, nothing in the CAFO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

4.28. Any public statement, oral or written, in print, film, or other media made by Respondent making reference to either SEP shall include the following language: "This project was undertaken in connection with the settlement of an administrative enforcement action taken by the U.S. Environmental Protection Agency under the Emergency Planning and Community Right-to-Know Act."

4.29. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology purchased by Respondent in connection with the SEPs under the terms of this CAFO.

4.30. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO. This CAFO may be executed in multiple counterparts, each of which shall be deemed to have the same force and effect as an original. A facsimile signature shall be treated as an original.

4.31. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for penalties alleged in Section III.

STIPULATED AND AGREED:

FOR TRIDENT SEAFOODS CORPORATION

Signature: Paul C. Padgett

Print Name: PAUL C. PADGETT

Title: PRESIDENT

Dated: 3/11/2009

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10

Robert E. Hartman for
Stephanie Mairs *Stephanie Mairs*
Assistant Regional Counsel

Dated: 3/16/09

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 EPCRA for the particular 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 Act and regulations issued thereunder.

This Final Order shall become effective upon filing.

SO ORDERED this 26th day of March, 2009.



Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

ATTACHMENT A

Kodiak SEP: Trident Seafoods Corporation (Trident) will provide an OSHA-required, 40-Hour Hazardous Materials Responder training course for emergency response personnel in Kodiak, Alaska. Trident shall arrange and pay for this course, to be provided by Tetra Tech NUS, Inc., to the Kodiak Fire Department.

This course will provide emergency response personnel, primarily firefighters, police officers, and emergency medical services personnel, with the information and skills needed to recognize, evaluate, and control an incident involving the release or potential release of hazardous materials. The focus of the course will be on recognizing and evaluating a hazardous materials incident, organizing the response team, protecting response personnel, identifying and using response resources, implementing basic control measures, refining decision-making skills, and protecting the public.

Topics to be covered include safety plans and standard operating procedures, characteristics of hazardous materials, toxicology, information resources, identification of hazardous materials, incident command for hazardous materials, size-up strategy and tactics, containment and confinement of materials, levels of protection, chemical protective clothing, direct-reading instruments, and decontamination.

Akutan SEP: Trident shall purchase and arrange for delivery of the following equipment to the Akutan Volunteer Fire Department in Akutan, Alaska:

<u>Quantity</u>	<u>Description</u>
2	LION_CB2X-10 yellow turn out coats
2	LION_PB@X-10 yellow turn out pants
2	LION-LFH3910A yellow Legacy Fire Helmet
2	AME- 9550L American Fire Gloves
2	NOR_W1409 Firefighter boots size 12/13
3	Nupla-69215 Fire swatters
1	5kw Northern Lights Generator
1	Darley mounted engine drive fire pump HE34BSD Assembly 3 with 12 volt primer

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Trident Seafoods Corporation, DOCKET NO.: CWA-10-2009-0069**, was filed with the Regional Hearing Clerk on March 27, 2009.

On March 27, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

Stephanie Mairs, 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 March 27, 2009, to:

Paul C. Padgett, President
Trident Seafoods Corporation
5303 Shilshole Ave NW
Seattle, Washington 98107-4000

DATED this 27th day of March 2009.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10