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EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CWA-10-2010-0239
)	
ARK FISHERIES, INC.)	
)	CONSENT AGREEMENT AND
and)	FINAL ORDER
)	
LYNN BABINGTON)	
)	
Respondents.)	

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 IV 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 Ark Fisheries, Inc. and Lynn Babington (“Respondents”) agree to issuance of, the Final Order contained in Part IV of this CAFO.

II. PRELIMINARY STATEMENT

2.1 On September 22, 2010, EPA initiated this proceeding against Respondents pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), by issuing an Administrative Complaint (“Complaint”).

2.2 The Complaint alleged that Respondents’ violations of the CWA had subjected Respondents to civil penalties.

2.3 The complete factual and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the Complaint and is incorporated herein by reference.

III. CONSENT AGREEMENT

3.1 Respondents admit the jurisdictional allegations in the Complaint.

3.2 Respondents neither admit nor deny the specific factual allegations in the Complaint.

3.3 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 Respondents’ economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondents agree that an appropriate penalty to settle this action is FIFTY FIVE THOUSAND DOLLARS (\$55,000).

3.4 Respondents agree to pay the total civil penalty set forth in Paragraph 3.3 within thirty (30) days of the effective date of the Final Order.

3.5 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 to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondents must note on the check the title and docket number of this action.

3.6. Respondents must serve photocopies of the check described in Paragraph 3.5 on the Regional Hearing Clerk and EPA Region 10 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

Derek Schruhl
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-133
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

3.7. If Respondents fail to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 3.4, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondents 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.

3.7.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. 1319(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 IV, 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.

3.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondents fail to pay on a timely basis the penalty set forth in Paragraph 3.3, 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 twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

3.8. The penalty described in Paragraph 3.3, including any additional costs incurred under Paragraph 3.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

3.9. The undersigned representative of Respondents certifies that he is authorized to enter into the terms and conditions of this CAFO and to bind Respondents to this document.

3.10. Except as described in Subparagraph 3.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

3.11. Respondents expressly waive any right to contest the allegations and waive any right to appeal the Final Order set forth in Part IV.

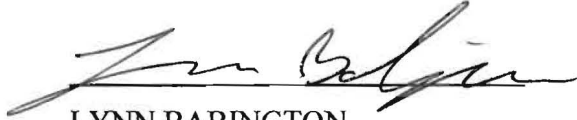
3.12. The provisions of this CAFO shall bind Respondents and their agents, servants, employees, successors, and assigns.

3.13. The above provisions are STIPULATED AND AGREED upon by Respondents and EPA Region 10.

DATED:

FOR RESPONDENTS:

4-10-11



LYNN BABINGTON
Ark Fisheries, Inc.

DATED:

FOR COMPLAINANT:

4/15/2011



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

IV. FINAL ORDER

4.1. The terms of the foregoing Parts I-III are ratified and incorporated by reference into this Final Order. Respondents are ordered to comply with the terms of settlement.

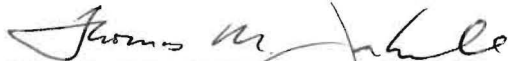
4.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in the Complaint. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondents' obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

4.3. 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 Idaho Department of Environmental Conservation has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondents.

4.4. 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 issued public notice of the Complaint within 30 days following proof of service and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondents. EPA received no comments on the Complaint.

4.5. This Final Order shall become effective upon filing.

SO ORDERED this 18th day of April, 2011.



THOMAS M. JAHNKE
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: Ark Fisheries, Inc. and Lynn Babington**, **DOCKET NO.: CWA-10-2010-0239** was filed with the Regional Hearing Clerk on April 19, 2011.


On April 19, 2011 the undersigned certifies that a true and correct copy of the document was delivered to:

Mark Ryan, Esquire
US Environmental Protection Agency
1435 North Orchard Street
Boise, ID 83706

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 April 19, 2011, to:

Mr. Lynn Babington
Ark Fisheries, Inc.
2825 S. 1050 East
Hagerman, Idaho 83332

DATED this 19th day of April 2011.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10