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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

GS CLERK  
EPA - REGION 10

In the Matter of:

DOCKET NO. CWA-10-2018-011

SILVER BAY SEAFOODS-  
METLAKATLA, LLC

**CONSENT AGREEMENT**

Metlakatla, Alaska

Proceedings Under Section 309( ) of the Clean  
Water Act, 33 U.S.C. § 1319(g)

Respondent.

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), the EPA is authorized to assess a civil penalty against a person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation implementing any of such sections in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$12,000. Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$21,393 per day for each day during which the violation continues, up to a maximum penalty of \$267,415. See also 83 Fed. Reg. 1190 (January 10, 2018) (“2018 Civil Monetary Penalty Inflation Adjustment Rule”).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A) and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice

Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Silver Bay Seafoods-Metlakatla, LLC (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement.

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

2.3. Part III of this Consent Agreement 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**

### **Statutory and Regulatory Framework**

3.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3.2. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of a pollutant” by any person into navigable waters of the United States, except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

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

3.4. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

3.5. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States.” EPA’s regulations define “waters of the United States” to include waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; and tributaries to those waters. 40 C.F.R. § 122.2.

3.6. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, dredged spoil, solid waste, sewage, garbage, biological materials, rock, sand, chemical wastes and industrial, municipal, and agricultural waste.

3.7. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include any “pipe, ditch, channel, tunnel, or conduit . . . from which pollutants are or may be discharged.”

3.8. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines the term “person” to include, *inter alia*, an individual, corporation, partnership, or association.

3.9. 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.

3.10. The Alaska Permit required permittees that intended to continue an activity regulated under the Alaska Permit after July 27, 2006, to apply for and obtain a new permit.

3.11. The Alaska Permit was administratively extended pursuant to 40 C.F.R. § 122.6. Under an administratively extended permit, a permittee that submitted a complete and timely

application to maintain coverage under a new general permit maintains its 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.

3.12. The Alaska Permit requires operators of shore-based facilities engaged in certain seafood processing activities to apply for coverage under the permit if pollutants from the facility discharge to navigable waters. Permittees are required to comply with the conditions and requirements set forth in the Alaska Permit.

### **General Allegations**

3.13. Respondent is a corporation duly organized under the laws of the State of Alaska and is therefore a “person” as defined under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.14. At all times relevant to this action, Respondent was the owner and/or operator of a shore-based seafood processing and packaging facility in Metlakatla, Alaska (“Facility”).

3.15. Respondent’s specialization in seafood processing places the company within Standard Industrial Classification 2092 (prepared fresh or frozen fish and seafoods).

3.16. The Facility, which was under Respondent’s control at all times relevant to this action, discharges wastes associated with processing herring, salmon, halibut, rockfish, sea cucumber, geoduck, and other shellfish into Port Chester Bay. At all times relevant to this action, the Facility’s discharges contained “pollutants” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

3.17. Port Chester Bay flows into the Pacific Ocean. The Pacific Ocean is currently used, was used in the past, or may be susceptible to use in interstate and foreign commerce, and thus the Pacific Ocean is a “navigable water” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and “water of the United States” as defined in 40 C.F.R. § 122.2.

3.18. The Facility is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2. In the alternative, the Facility contains point

sources.

3.19. At all times relevant to this CAFO, the Facility was authorized to discharge under the Alaska Permit (unique permit identifier no. AK-G5-20067).

### **Violations**

3.20. As described below, from June 2014 to September 2015, Respondent violated CWA Section 301, 33 U.S.C. § 1311, and the Alaska Permit. Violations were discovered during an inspection of the Facility on September 16, 2015, and upon EPA's review of documents, including Respondent's Permit, annual reports, monitoring logs, and Best Management Practices ("BMP") Plan.

#### **Count 1: Failure to Route Sanitary Waste Through a Sanitary Waste Treatment System**

3.21. Part V.C.1.g. of the Alaska Permit provides, "A permittee shall route all sanitary wastes through a sanitary waste treatment system."

3.22. At the time of the September 2015 inspection of the Facility, EPA observed multiple improperly connected, duct-taped, and disconnected pipes, resulting in a voluminous discharge of sanitary waste in at least three separate locations onto the beach under the Facility's dock.

3.23. On at least one occasion in September 2015, Respondent failed to route all sanitary waste through a sanitary waste treatment system in violation of Part V.C.1.g. of the Alaska Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Count 2: Failure to Route Seafood Processing Waste Through a Waste Conveyance and Treatment System**

3.24. Part V.C.1.c. of the Alaska Permit provides, “A 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.”

3.25. At the time of the September 2015 inspection of the Facility, EPA observed several areas where seafood processing waste was not properly routed prior to discharge, including on the wooden dock outside of the Facility, and in and around floor drain grates and openings that discharge directly to the water below the Facility’s dock.

3.26. On at least one occasion in September 2015, Respondent failed to properly route incidental seafood processing waste prior to discharge in violation of Part V.C.1.c. of the Alaska Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Count 3: Failure to Properly Inspect the Grinder and/or Waste Conveyance Systems**

3.27. Part V.C.1.d. of the Alaska Permit provides, “A permittee shall conduct a daily visual inspection of the waste conveyance, including a close observation of the sump or other places of effluent collection for the removal of gloves, earplugs, rubber bands, or other equipment used during the processing of seafood that may inadvertently be entrained in the wastewater. Discharge of such items is prohibited. Logs of this daily inspection must be kept at the facility. Summaries of any items found and removed shall be submitted with the annual report.”

3.28. Part V.C.1.e. of the Alaska Permit provides, “A permittee shall conduct a daily inspection of the grinder system during the processing season . . . .”

3.29. Respondent's grinder and waste conveyance inspection logs indicate that the grinder and/or waste conveyance systems were not inspected for five days of the 2014 processing season.

3.30. On at least five occasions between June 2014 and September 2014, Respondent failed to properly inspect the grinder and/or waste conveyance systems in violation of Parts V.C.1.d. and V.C.1.e. of the Alaska Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### **Count 4: Failure to Meet Grind Size Requirement**

3.31. Part V.C.1.b. of the Alaska Permit provides, "A permittee shall route all seafood processing wastes through a waste conveyance and treatment system. The waste solids discharged from its outfall(s) shall not exceed one-half (0.5) inch in any dimension."

3.32. At the time of EPA's September 2015 inspection of the Facility, Respondent was processing and routing fish through the Facility's waste conveyance system but not through the grinder, resulting in oversized waste solid discharge. Additionally, the Facility's grinder and waste conveyance inspection logs indicate that the Facility processed seafood without operating the grinder on two days in June 2015.

3.33. On at least three occasions in June and September 2015, Respondent discharged seafood processing wastes from outfall(s) that was not routed through the grinder and that exceeded one-half inch in dimension in violation of Part V.C.1.b. of the Alaska Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### **Count 5: Failure to Report Noncompliance**

3.34. Part VII.C.1.b. of the Alaska Permit requires the permittee to report by telephone to EPA and ADEC within 24 hours from the time the permittee becomes aware of any noncompliance that may endanger health or the environment." Part VII.C.2. of the Alaska Permit

further requires the permittee to “provide a written submission within five days of the time that a permittee becomes aware of any event required to be reported . . . .”

3.35. Respondent never reported its illegal sanitary waste discharges to EPA or ADEC.

3.36. On at least one occasion in September 2015, Respondent failed to report noncompliance in violation of Parts VII.C.1.b. and VII.C.2. of the Alaska Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### **Count 6: Unauthorized Discharges**

3.37. Part V.C.1.j. of the Alaska Permit provides, “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.”

3.38. Respondent’s daily shoreline monitoring logs reported foam around the Facility dock every day of operations from July 16, 2014, through October 24, 2014, and foam around the Facility outfall every day of operations from August 2, 2014, through October 24, 2014.

3.39. For at least four months between July 2014 and October 2014, Respondent’s discharges violated Part V.C.1.j. of the Alaska Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### **Count 7: Failure to Properly Operate and Maintain All Treatment and Control Systems**

3.40. Part VIII.E. of the Alaska Permit provides, “A permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by a permittee to achieve compliance with the conditions of this Permit.”



3.41. At the time of the September 2015 inspection of the Facility, Respondent's sanitary waste lift-station was not operating.

3.42. On at least one occasion in September 2015, Respondent failed to properly operate and maintain all treatment and control systems in violation of Part VIII.E. of the Alaska Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### **Count 8: Illegal Bypass**

3.43. Part VIII.F.1. of the Alaska Permit provides, "A 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."

3.44. At the time of the September 2015 inspection, the Facility's Vaughn chopper sump pump was not operating even though the Facility was processing. Because the Vaughn pump was turned off, seafood processing waste filled up in the pump, overflowed, and discharged below the Facility's dock, thereby bypassing the outfall.

3.45. On at least one occasion in September 2015, Respondent allowed an illegal bypass to occur in violation of Part VIII.F.1. of the Alaska Permit and Section 301( ) of the CWA, 33 U.S.C. § 1311(a).

#### **IV. TERMS OF SETTLEMENT**

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), the PA has taken into account "the nature, circumstances, extent and gravity of the violation, or violations,

and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.” After considering all of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$73,000.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be 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

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

4.6. Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on 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-113  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101  
young.teresa@epa.gov

Tara Martich  
U.S. Environmental Protection Agency  
Region 10, Alaska Operations Office  
222 West Seventh Avenue, #19  
Anchorage, AK 99501  
martich.tara@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement in full

by its due date, 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.

a. Interest. Pursuant to CWA Section 309(g)(9), 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 V, 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.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, 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 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, 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 Consent Agreement and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.b., above, each party shall bear its own costs in bringing or defending this action.

4.12. For purposes of this proceeding, Respondent expressly waives any right to contest the allegations and waives any right to appeal this Consent Agreement and the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

6/7/18

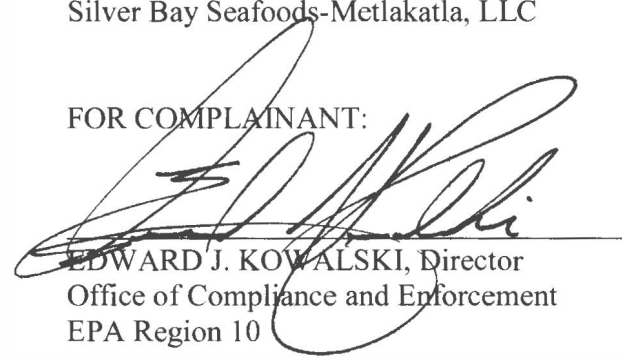
FOR RESPONDENT:

  
LARSEN METTLER, Chief Financial  
Officer  
Silver Bay Seafoods-Metlakatla, LLC

DATED:

6/21/2018

FOR COMPLAINANT:

  
EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

SILVER BAY SEAFOODS-  
METLAKATLA, LLC

Metlakatla, Alaska

Respondent.

DOCKET NO. CWA-10-2018-0311

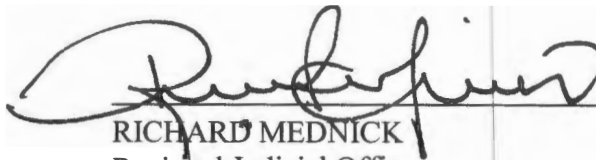
**FINAL ORDER**

Proceedings Under Section 309( ) of the Clean  
Water Act, 33 U.S.C. § 1319(g)

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.
2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.
3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violation alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order 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.

4. This Final Order shall become effective upon filing.

SO ORDERED this 10<sup>th</sup> day of July, 2018.



RICHARD MEDNICK  
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 the Matter of: Silver Bay Seafoods-Metlakatla, LLC** Docket No.: **CWA-10-2018-0311**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

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

Leah Brown  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-113  
Suite 155  
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 to:

Larsen Mettler  
Silver Bay Seafoods-Metlakatla, LLC  
c/o Silver Bay Seafoods, LLC  
4039 21st Ave., Suite 201  
Seattle, WA 98199

DATED this 11 day of July, 2018, Teresa Young  
Signature

Teresa Young  
Regional Hearing Clerk  
EPA Region 10