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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CWA-10-2014-0004
)	
The Fishing Company of Alaska, Inc.,)	CONSENT AGREEMENT AND
F/V Alaska Warrior)	FINAL ORDER
)	
Respondent)	

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 V 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 The Fishing Company of Alaska, Inc., (“Respondent”) 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. The Director of the Office of Compliance and Enforcement, EPA Region 10, has been delegated the authority to sign consent agreements between EPA and the parties against whom Class II penalties pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), are proposed to be assessed.

2.3. Part III of this CAFO 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

3.1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” except as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

3.2. 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.” “Navigable waters” are defined as “waters of the United States.” 33 U.S.C. § 1362(7).

3.3. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include any “vessel or other floating craft from which pollutants are or may be discharged.”

3.4. The seafood processing vessel F/V Alaska Warrior (Vessel) is a point source under the Clean Water Act, and thus may discharge pollutants only when authorized by an NPDES permit.

3.5. At all times relevant to this action, Respondent owned and operated the Vessel.

3.6. Respondent is a corporation, and thus, a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.7. Respondent is authorized to discharge seafood processing waste from the Vessel into specified waters of the United States under the Offshore Seafood Processors General

Permit #AKG524006 (Offshore Permit). Respondent was previously permitted under the Seafood Processors in Alaska General Permit #AKG520327 (Alaska Permit). The Alaska Permit became effective on July 27, 2001, expired on July 27, 2006, and is currently administratively extended. The Offshore Permit became effective on March 1, 2010 and expires on February 28, 2015.

3.8. Respondent discharged seafood processing waste from the butchering of seafood from the Vessel. Seafood processing waste from the butchering of seafood is a “pollutant” that is “discharged” within the meaning of Section 502(6) and (12) of the Act, 33 U.S.C. § 1362(6) and (12).

3.9. Respondent discharged seafood processing waste from the butchering of seafood from the Vessel into U.S. territorial waters in the Bering Sea and the Gulf of Alaska more than three nautical miles offshore of Alaska. The receiving waters more than three nautical miles off the coast of Alaska constitute “navigable waters” and “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1326(7).

3.10. On January 31, 2013, EPA inspected the Vessel’s records at The Fishing Company’s office to determine compliance with the CWA.

Violations of the Alaska Permit

3.11. Section V.A.1.d of the Alaska Permit requires Respondent to conduct a daily visual inspection of the waste conveyance and to maintain logs of this daily inspection onboard the Facility.

3.12. Between July 1, 2008, and March 1, 2010, Respondent failed to maintain logs of daily inspections of the Facility’s waste conveyance systems for a total of 304 days, constituting 304 violations.

Violations of the Offshore Permit

3.13. Section V.A.16 of the Offshore Permit requires Respondent to take quarterly influent and effluent samples while seafood processing is occurring, for all the parameters listed in Part VI.E of the Offshore Permit. Section VI.D of the Offshore Permit requires the monitoring to begin in the third quarter after receiving authorization to discharge and requires the monitoring data for each year to be submitted to EPA in conjunction with the required Annual Report.

3.14. For the third quarter of 2010, the third and fourth quarters of 2011, and the third and fourth quarters of 2012, Respondent failed to take required quarterly samples, as evidenced by the absence of required monitoring data in the Respondent's Annual Reports for 2010, 2011, and 2012. Each quarter's missing data constitutes one violation, for a total of five violations.

3.15. Section VI.A.3 of the Offshore Permit requires Respondent to submit to EPA an updated and amended NOI when there is any material change in the information submitted in its original NOI.

3.16. Respondent moved its offices from Seattle, Washington, to a new location in Renton, Washington. Respondent did not submit an amended NOI with its new address information in violation of Section VI.A.3.

3.17. The violations of the Permits described in Paragraphs 3.11 through 3.16 constitute 310 violations of the permits issued under Section 402 of the Act, 33 U.S.C. § 1342. Section 309(g)(1) of the CWA, 33 U.S.C § 1319(g)(1), authorizes EPA to assess administrative penalties against any person who has violated any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

3.18. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), Respondent is liable for civil penalties not to exceed \$11,000 per day for each violation that occurred through

January 12, 2009, and \$16,000 per day for each violation that occurred after January 12, 2009, up to a maximum amount of \$177,500.

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. 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 Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$44,473.00.

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

4.5. 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 via United States mail 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 deliver via United States mail a photocopy of the check described in Paragraph 4.5 to the Regional Hearing Clerk and the EPA Region 10 Compliance Officer 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

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

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full within 30 days of the effective date of the Final Order, 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.

4.7.1. 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 V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty days of the effective date of the Final Order.

4.7.2. Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 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) 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 of the aggregate

amount of Respondent's penalties and nonpayment penalties that 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 CAFO and to bind Respondent to this document.

4.10. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

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

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

DATED:


FOR THE FISHING COMPANY, INC.:

m8 12/20/13

DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

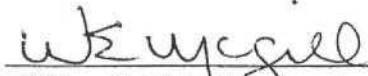
11/21/2013



EDWARD J. KOWALSKI
Director
Office of Compliance and Enforcement

DATED: November, 14, 2013

FOR THE FISHING COMPANY OF ALASKA, INC.



William E. McGill, Operations

DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

EDWARD J. KOWALSKI
Director
Office of Compliance and Enforcement

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the 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 CWA and regulations promulgated or permits issued thereunder.

5.3. 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 State of Alaska Department of Environmental Conservation has been given the 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 CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice, and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 20th day of December, 2013.


M. SOCORRO RODRIGUEZ
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: The Fishing Company of Alaska, Inc., Docket No.:CWA-10-2014-0004**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

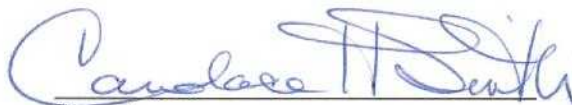
The undersigned certifies that a true and correct copy of the document was delivered to:

Jennifer Byrne
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
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:

Michael A. Barcott
Holmes Weddle & Barcott
999 Third Avenue, Suite 2600
Seattle, WA 98104

DATED this 23rd day of December, 2013


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10

