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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the matter of:)	
Trident Seafoods Corporation)	Docket No. CWA-10-2005-0001
Naknek, Alaska)	
Respondent.)	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 (“Complainant”).

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, as revised, EPA hereby issues and Trident Seafoods Corporation (“Respondent”) hereby agrees to issuance of the Final Order contained in Part V of this CAFO.

1 II. PRELIMINARY STATEMENT

2 2.1. In accordance with 40 C.F.R. §22.13(b) and 22.45(b), issuance of this CAFO
3 commences this proceeding, which will conclude when the Final Order contained in Part V of this
4 CAFO becomes effective.

5 2.2. Respondent owns and operates a fish processing facility, the Trident Seafoods
6 Corporation North Naknek facility (“the Facility”), located in Naknek, Alaska, along the Naknek
7 River.

8 2.3. On June 24, 2003, EPA conducted an NPDES inspection of the Facility.

9 2.4. The State of Alaska was given an opportunity to consult with EPA regarding the
10 assessment of an administrative penalty against the Respondent for the violations observed during
11 the June 24, 2003 inspection.

12 2.5. A concise statement of the factual basis for alleging violations of the Act, together
13 with specific references to the provisions of the Act and implementing regulations Respondent is
14 alleged to have violated, appears in Part III of this CAFO.

15
16 III. ALLEGATIONS

17 3.1 Section 402 of the Act, 33 U.S.C. §1342, provides that EPA may issue NPDES
18 permits for the discharge of any pollutant into waters of the United States upon such specific
19 terms and conditions as EPA may prescribe.

20 3.2. Section 301(a) of the Act, 33 U.S.C. §1311(a), prohibits the discharge of any
21 pollutant by any person except as authorized by an NPDES permit or other specified statutory
22 sections.

23 3.3. At all times relevant to this action, Respondent owned and operated the Facility.

24 3.4. Respondent is a corporation and is a person within the meaning of Section 502(5)
25 of the Act, 33 U.S.C. §1362(5).

26 3.5. Respondent is authorized to discharge pollutants from the Facility to the Naknek
27 River, Alaska, under NPDES Permit No. AKG520003 (“the Permit”). The Permit became

1 effective on July 27, 2001. Respondent was authorized to discharge under the Permit on April 12,
2 2002.

3 3.6. The Facility, which was under Respondent's control at all times relevant to this
4 action, discharged fish processing wastewater. Fish processing wastewater is a "pollutant" which
5 is "discharged" within the meaning of Section 502(6) and (12) of the Act, 33 U.S.C. §1362(6) and
6 (12).

7 3.7. The Facility, which was under Respondent's control at all times relevant to this
8 action, discharged fish processing wastewater from a discharge line ("Outfall") from the facility.
9 The Outfall is a point source within the meaning of Section 502(14) of the Act, 33 U.S.C.
10 §1362(14).

11 3.8. The Facility, which was under Respondent's control at all times relevant to this
12 action, discharged fish processing wastewater from the Outfall to Naknek River, which constitutes
13 "navigable waters" and waters of the United States as defined in Section 502(7) of the Act, 33
14 U.S.C. §1362(7).

15 3.9. Part II.A.1.a. of the Permit states that permittees shall grind solid seafood
16 processing wastes to one-half inch in any dimension or smaller prior to discharge.

17 3.10. Part V.C.1.b. of the Permit states that all seafood processing wastes shall be routed
18 through a waste handling system and discharged through the Outfall.

19 3.11. Part V.C.1.d. of the Permit states that a permittee shall conduct a daily visual
20 inspection of the waste conveyance, including a close observation of the sump or other places of
21 effluent collection for the removal of gloves, earplugs, rubber bands, or other equipment used
22 during the processing of seafood that may inadvertently be entrained in the wastewater. Logs of
23 this daily inspection must be kept at the facility.

24 3.12. Part V.C.1.e. of the Permit states that a permittee shall conduct a daily inspection
25 of the grinder system during the processing season to confirm that the grinders are (1) operating
26 and (2) reducing the size of the seafood residues to one-half inch or smaller. Logs of these daily
27 inspections shall be kept at the facility.

1 3.13. Part VI.C.1. of the Permit states that all permittees classified as near-shore and
2 shore-based seafood processors and discharging to receiving waters of depths less than 120 feet
3 mean lower low water (“MLLW”) at a fixed location for more than seven days shall conduct a
4 seafloor monitoring program.

5 3.14. Part VI.D.1 of the Permit states that all permittees classified as near-shore and
6 shore-based seafood processors shall conduct a sea surface and shoreline monitoring program, and
7 that a summary of the monitoring shall be submitted annually by February 14th of the year
8 following the monitoring.

9 3.15. Part VIII.E. of the Permit states that a permittee shall at all times properly operate
10 and maintain all facilities and systems of treatment and control that are installed or used by a
11 permittee to achieve compliance with the conditions of the Permit.

12 3.16. During the NPDES inspection at the Facility on June 24, 2003, the EPA inspector
13 found that the Facility was discharging solid seafood processing wastes greater than one-half inch.

14 3.17. During the NPDES inspection the EPA inspector also found that some seafood
15 processing wastes were not being properly routed through a waste handling system and discharged
16 through the Outfall.

17 3.18. During the NPDES inspection the EPA inspector found that the Respondent had not
18 conducted a daily visual inspection of the waste conveyance, including a close observation of the
19 sump or other places of effluent collection for the removal of gloves, earplugs, rubber bands, or
20 other equipment used during the processing of seafood that may inadvertently be entrained in the
21 wastewater.

22 3.19. The EPA inspector also found that logs of daily inspection reports of the waste
23 conveyance system were not kept at the Facility.

24 3.20. During the NPDES inspection the EPA inspector found that the Respondent had not
25 conducted a daily inspection of the grinder system to confirm that the grinders were (1) operating
26 and (2) reducing the size of the seafood residues to one-half inch or smaller.

1 3.21. The EPA inspector also found that logs of the daily inspections of the grinder
2 system were not kept at the Facility.

3 3.22. During the NPDES inspection the EPA inspector found that Respondent failed to
4 conduct a seafloor monitoring program.

5 3.23. During the NPDES inspection the EPA inspector found that Respondent failed to
6 conduct seasurface and shoreline monitoring, and that Respondent had not submitted annual
7 reports of the monitoring by February 14th of each year.

8 3.24. During the NPDES inspection the EPA inspector found that Respondent failed to
9 properly operate and maintain all facilities and systems of treatment and control that are installed
10 or used by Respondent to achieve compliance with the conditions of the Permit.

11 3.25. Respondent's failure to comply with its Permit as described above constitutes at
12 least seven violations of Section 301 of the Act, 33 U.S.C. §1311. Consequently, under
13 Section 309(g)(2)(B) of the Act, Respondent is liable for the administrative assessment of civil
14 penalties in an amount not to exceed \$11,000 per day for each day during which a violation
15 continues, up to a maximum of \$137,500.

16
17 IV. CONSENT AGREEMENT

18 4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

19 4.2. Respondent neither admits nor denies the specific factual allegations contained in
20 Part III of this CAFO.

21 4.3. Pursuant to Section 309(g) of the Act, 33 U.S.C. §1319(g), taking into account the
22 nature, circumstances, extent, and gravity of the alleged violations, Respondent's economic
23 benefit of noncompliance, and other relevant factors, EPA has determined and Respondent agrees
24 that an appropriate penalty to settle this action is EIGHTEEN THOUSAND DOLLARS
25 (\$18,000.00).

1 4.4. Respondent consents to the issuance of the Final Order recited herein, and to
2 payment of the civil penalty cited in the foregoing paragraph within thirty (30) days of the
3 effective date of the Final Order.

4 4.5. Payment under this CAFO shall be made by cashier's check or certified check,
5 payable to the order of "U.S. Treasurer" and shall be delivered to the following address:

6 Mellon Client Services Center
7 EPA Region 10
8 500 Ross Street
9 P.O. Box 360903
10 Pittsburgh, Pennsylvania 15251-6903

11 Respondent shall note on the check the title and docket number of this case.

12 4.6. Respondent shall submit a photocopy of the check described above to:

13 Regional Hearing Clerk
14 U.S. Environmental Protection Agency
15 Region 10
16 1200 Sixth Avenue, Mail Stop ORC-158
17 Seattle, Washington 98101

18 Office of Water
19 Attn: Chris Cora
20 U.S. Environmental Protection Agency
21 Region 10
22 1200 Sixth Avenue, Mail Stop OCE-133
23 Seattle, Washington 98101

24 4.7. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due
25 date, the entire unpaid balance of penalty and accrued interest shall become immediately due and
26 owing. Should such a failure to pay occur, Respondent may be subject to a civil action to collect
27 the assessed penalty under the Clean Water Act. In any collection action, the validity, amount,
28 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:

- 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

1 date of the Final Order contained herein, provided, however, that no interest shall
2 be payable on any portion of the assessed penalty that is paid within thirty (30)
3 days of the effective date of the Final Order contained herein.

4 b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to
5 Section 309(g)(9) of the Act, 33 U.S.C. §1319(g)(9), should Respondent fail to pay
6 on a timely basis the amount of the penalty assessed by the Final Order contained
7 herein, Respondent shall pay (in addition to any assessed penalty and interest)
8 attorneys fees and costs for collection proceedings and a quarterly nonpayment
9 penalty for each quarter during which such failure to pay persists. Such
10 nonpayment penalty shall be in an amount equal to twenty percent (20%) of the
11 aggregate amount of Respondent's penalties and nonpayment penalties which are
12 unpaid as of the beginning of such quarter.

13 4.9. The penalty described in Paragraph 4.3 of this CAFO shall represent civil penalties
14 assessed by EPA and shall not be deductible for purposes of federal taxes.

15 4.10. The undersigned representative of Respondent certifies that he or she is fully
16 authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this
17 document.

18 4.11. Except as described in Paragraph 4.8 of this CAFO, each party shall bear its own
19 costs in bringing or defending this action.

20 4.12. Respondent expressly waives any rights to contest the allegations and to appeal the
21 Final Order contained herein.

1 4.13. The provisions of this CAFO shall bind Respondent and its officers, directors,
2 agents, servants, employees, successors, and assigns.

3
4 STIPULATED AND AGREED this 29th day of Sept., 2004.

5
6 TRIDENT SEAFOODS CORPORATION

7
8 

9 Signature
10 Print Name: Earl R. Hubbard
11 Title: Vice President, Regulatory Affairs

12 U.S. ENVIRONMENTAL PROTECTION AGENCY
13 REGION 10

14 

15 Cara Steiner Riley
16 Assistant Regional Counsel
17 EPA, Region 10

1 V. FINAL ORDER

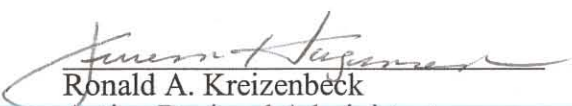
2 5.1. The terms of the foregoing Consent Agreement are hereby ratified and
3 incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the
4 terms of settlement contained in the Consent Agreement.

5 5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties
6 pursuant to the Clean Water Act for the particular violations alleged in Part III, above. In
7 accordance with 40 C.F.R. §22.31(a), nothing in this CAFO shall affect the right of EPA or the
8 United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for
9 any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's
10 obligations to comply with all applicable provisions of the Act and regulations and permits issued
11 thereunder.

12 5.3. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. §1319(g)(4)(A), EPA has
13 published public notice of its intent to enter into this CAFO with Respondent and has invited
14 public comment in accordance with 40 C.F.R. § 22.45. More than 40 days have elapsed since the
15 issuance of this public notice, and EPA has received no petitions to set aside the Consent
16 Agreement contained herein.

17 5.4. This Final Order shall become effective upon filing.

18 SO ORDERED this 22, day of November, 2004.

19
20
21 
22 Ronald A. Kreizenbeck
23 Acting Regional Administrator
24 U.S. Environmental Protection Agency
25 Region 10
26 1200 Sixth Avenue
27 Seattle, Washington 98101

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-10-2005-0001** was filed with the Regional Hearing Clerk on December 9, 2004.

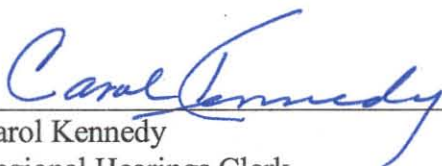
On December 9, 2004 certifies that a true and correct copy of the document was delivered to:

Cara Steiner-Riley, Assistant Regional Counsel
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 December 9, 2004 to:

Earl Hubbard
V.P. Regulatory Affairs
Trident Seafoods Corporation
5303 Shilshole Avenue NW
Seattle, WA 98107-4000

DATED this 9th day of December 2004.



Carol Kennedy
Regional Hearings Clerk
EPA Region 10