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BEFORE THE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of :
:
CHILKOOT FISH AND CAVIAR, :
INC. [CF&C] Haines, Alaska : Docket No. CWA-10-2009-0232 :
:
Respondent. :
:
: _____

RESPONDENT'S ANSWER

Chilkoot Fish and Caviar, Inc. [CF&C], respondent in the above captioned administrative action, by and through its attorney, Fred W. Triem of Petersburg, Alaska, answers the agency's Complaint, filed on 25 September 2009, by averring as follows:

(1) Respondent Chilkoot Fish and Caviar, Inc. [CF&C] admits that the Clean Water Act grants enforcement powers to government agencies, but otherwise lacks sufficient information to admit or to deny the allegations contained in paragraph 1.1 of the Environmental Protection Agency [EPA] Complaint, and therefore denies the allegations contained in paragraph 1.1 of the EPA's Complaint.

(2) CF&C lacks sufficient knowledge to admit or deny the allegations in paragraph 1.2 of the EPA's complaint and therefore generally denies the allegations

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contained in paragraph 1.2 of the EPA's Complaint, and specifically denies that any civil penalty should be imposed or assessed against CF&C.

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(3) CF&C lacks sufficient knowledge to admit or deny the allegations in paragraph 1.3 of the EPA's complaint and therefore generally denies the allegations contained in paragraph 1.3 of the EPA's Complaint, but CF&C does admit that the EPA can consult with the State of Alaska and with its agencies.

(1) The allegations in paragraph 2.1 are a legal conclusion to which no responsive answer is required. To the extent a responsive answer is required, CF&C denies the allegations contained in paragraph 2.1 of the EPA's Complaint, and otherwise answers that federal enforcement power can be delegated to an agency of the State of Alaska, which in turn can grant permits to CF&C and can exercise regulatory authority and enforcement powers regarding environmental issues.

(2) The allegations in paragraph 2.2 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CF&C denies the allegations contained in paragraph 2.2 of the EPA's Complaint.

(3) The allegations in paragraph 2.3 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CF&C denies the allegations contained in paragraph 2.3 of the EPA's Complaint.

FRED W. TRIEM

(4) The allegations in paragraph 2.4 are a legal conclusion to which no responsive



answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CF&C denies the allegations contained in paragraph 2.4 of the EPA's Complaint.

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(5) The allegations in paragraph 2.5 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CF&C denies the allegations contained in paragraph 2.5 of the EPA's Complaint.

(6) The allegations in paragraph 2.6 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CF&C denies the allegations contained in paragraph 2.6 of the EPA's Complaint.

(7) The allegations in paragraph 2.7 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CF&C denies the allegations contained in paragraph 2.7 of the EPA's Complaint.

(8) The allegations in paragraph 2.8 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CF&C denies the allegations contained in paragraph 2.8 of the EPA's Complaint.

(9) The allegations in paragraph 2.9 are a legal conclusion to which no responsive



answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CF&C denies the allegations contained in paragraph 2.9 of the EPA's Complaint, and specifically denies that any administrative penalty should be assessed against CF&C.

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(1) CF&C admits that it has operated the "the Chilkoot seafood processing facility ("Facility"), located at Mile 5 Lutak Road, Haines, Alaska 99827" for the past few years but otherwise denies the allegations contained in paragraph 3.1 of the EPA's complaint.

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(2) The allegations in paragraph 3.2 are a legal conclusion to which no responsive answer is required. To the extent that a factual allegation is contained in these allegations by implication and that a responsive answer is required, CF&C denies the allegations contained in paragraph 3.2 of the EPA's Complaint.

(3) With regard to the allegations in paragraph 3.3 of the EPA's Complaint, CF&C admits that the Facility was under its control and that it discharged seafood processing waste; however, the remaining allegations in paragraph 3.3 are a legal conclusion to which no responsive answer is required. To the extent that additional factual allegations are contained in this paragraph by implication and that a responsive answer is required, CF&C denies the remaining allegations contained in paragraph 3.3 of the EPA's Complaint. CF&C specifically denies that it has committed forbidden acts of pollution or has illegally discharged processing wastes.

(4) With regard to the allegations in paragraph 3.4 of the EPA's Complaint, CF&C



admits that the Facility was under its control and that it discharged seafood processing waste. The remaining allegations in paragraph 3.4 are legal conclusions to which no responsive answer is required. To the extent that additional factual allegations are contained in this paragraph by implication and that a responsive answer is required, CF&C denies the remaining allegations contained in paragraph 3.4 of the EPA's Complaint. CF&C specifically denies that it has committed forbidden acts of pollution or has illegally discharged pollutants, as the term is defined in federal law, 33 U.S.C. § 1362(6).

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(5) With regard to the allegations in paragraph 3.5 of the EPA's Complaint, CF&C admits that the Facility was under its control and that it discharged seafood processing waste from the waste pump to Lutak Inlet. CF&C further admits that Lutak Inlet is subject to the ebb and flow of the tides. The remaining allegations in paragraph 3.5 are legal conclusions to which no responsive answer is required. To the extent that additional factual allegations are contained in this paragraph by implication and that a responsive answer is required, CF&C denies the remaining allegations contained in paragraph 3.5 of the EPA's Complaint.

(6) With regard to the allegations in paragraph 3.6 of the EPA's Complaint, CF&C admits that it occasionally discharged seafood processing waste into Lutak Inlet during the months of July, August and September for five consecutive years and that it may have discharged seafood processing waste in June and/or October in some year(s) between 2004 and 2008. CF&C denies that it discharged seafood waste without a permit. At all times CF&C operated under NPDES permits that were issued by the responsible government agency.



CF&C denies that it continuously discharged anything into Lutak Inlet from June through October in any year or that it did so every day. CF&C denies that it discharged “other wastewaters” to Lutak Inlet without an NPDES permit from June through October for five consecutive years, between 2004 and 2008. The remaining allegations in paragraph 3.6 are legal conclusions to which no responsive answer is required. To the extent that additional factual allegations are contained in this paragraph by implication and that a responsive answer is required, CF&C denies the remaining allegations contained in paragraph 3.6 of the EPA’s Complaint.

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(1) CF&C denies the allegations contained in paragraph 4.1 of the EPA’s Complaint.

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(2) CF&C admits that the EPA Complaint does not include a specific penalty demand. The remaining allegations in paragraph 4.2 of the EPA’s Complaint are legal conclusions to which no responsive answer is required. To the extent that additional factual allegations are contained in this paragraph by implication and that a responsive answer is required, CF&C denies the remaining allegations contained in paragraph 4.2 of the Complaint.

(3) CF&C denies the allegation contained in paragraph 4.3 of the EPA’s Complaint.

(4) CF&C lacks sufficient knowledge to admit or deny the allegations in paragraph 4.4 of the EPA’s complaint and therefore denies the allegations contained in paragraph 4.4 of the



EPA's Complaint. CF&C is submitting "additional information . . . related to its ability to pay the proposed penalty."

(5) CF&C admits that it has no history or prior violations of the CWA, and therefore admits the allegations contained in paragraph 4.5 of the EPA's Complaint.

(6) CF&C denies the allegations contained in paragraph 4.6 of the EPA's Complaint. At all relevant times, CF&C was compliant because it operated under permits that were issued by a responsible government agency, including agencies of the State of Alaska.

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(7) CF&C denies the allegations contained in paragraph 4.7 of the EPA's Complaint. CF&C specifically denies (a) that it avoided the labor costs for performing sampling and monitoring, preparing annual reports, and performing dive surveys, because it accomplished these tasks pursuant to the terms of its permit and (b) that it improperly gained any economic benefit. CF&C performed each of the tasks mentioned in ¶ 4.7.

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(8) The allegations in paragraph 4.8 of the EPA's Complaint are legal conclusions to which no responsive answer is required. To the extent that additional factual allegations are contained in this paragraph by implication and that a responsive answer is required, CF&C denies the allegations contained in paragraph 4.8. Furthermore, CF&C specifically denies that it has committed forbidden acts of pollution, has illegally discharged processing



wastes, or otherwise has been “violating the law.”

(1) The allegations in paragraph 5.1 are a legal conclusion to which no responsive answer is required. To the extent that additional factual allegations are contained in this paragraph by implication and that a responsive answer is required, CF&C denies the allegations contained in paragraph 5.1 of the EPA’s Complaint. By this Respondent’s Answer, CF&C does request a hearing pursuant to 40 C.F.R. § 22.15(c) and the Administrative Procedure Act, 5 U.S.C. § 551 et seq.

(2) CF&C agrees that its answer to the EPA’s Complaint should be filed with the Regional Hearing Clerk at the address provided in ¶ 5.2 of the Complaint pursuant to 40 C.F.R. § 22.15(a); and CF&C certifies that it is mailing its Answer to the Clerk and also is sending a copy to Cara Steiner-Riley, Esq., Assistant Regional Counsel – addressed to her office in Seattle.

(1) CF&C agrees that its answer to the EPA’s Complaint should be filed in a timely manner with the Regional Hearing Clerk, and CF&C states that its written answer is timely and therefore no default can be entered against it. 40 C.F.R. § 22.15.

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(2) The allegations in paragraph 6.2 are a legal conclusion to which no responsive answer is required. To the extent a responsive answer is required, CF&C denies the allegations contained in paragraph 6.2 of the EPA’s Complaint. Furthermore, CF&C alleges and avers



that indeed, it is complying with the pleading requirements of 40 C.F.R. § 22.15(b) — and if the administrative law judge later determines that CF&C has not satisfied the pleading requirements then CF&C requests leave to amend its answer pursuant to 40 C.F.R. § 22.15(e).

(1) The allegations in paragraph 7.1 are a legal conclusion to which no responsive answer is required. To the extent a responsive answer is required, CF&C denies the allegations contained in paragraph 7.1 of the EPA's Complaint. By filing this Answer, CF&C does request an informal settlement conference with EPA pursuant to 40 C.F.R. § 22.18(b(1)).

(2) The allegations in paragraph 7.2 are a legal conclusion to which no responsive answer is required. To the extent a responsive answer is required, CF&C denies the allegations contained in paragraph 7.2 of the EPA's Complaint. Furthermore, CF&C requests both (a) a hearing pursuant to 40 C.F.R. § 22.15(c) and (b) an informal settlement conference with EPA pursuant to 40 C.F.R. § 22.18(b(1)).

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(3) The allegations in paragraph 7.3 are a legal conclusion to which no responsive



answer is required. To the extent a responsive answer is required, CF&C denies the allegations contained in paragraph 7.3 of the EPA's Complaint. Furthermore, CF&C notes the inconsistency between the prohibition against *ex parte* contact stated in ¶ 7.3 of the Complaint and the suggestion or permission that is granted by implication in 40 C.F.R. § 22.18(b)(1) to the parties that purports to allow "settlement discussions" between the respondent and the agency. Because the Assistant Regional Counsel has requested CF&C's attorney to submit financial data to EPA, the respondent will honor her specific request (and implied permission to do so) despite the general prohibition in ¶ 7.3 of the Complaint

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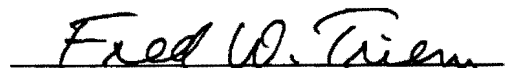
(1) The allegations in paragraph 8.1 are a legal conclusion to which no responsive answer is required. To the extent a responsive answer is required, CF&C denies generally the allegations contained directly or by implication in paragraph 8.1 of the EPA's Complaint, and furthermore, CF&C specifically denies that it has committed forbidden acts of pollution or has illegally discharged processing wastes or otherwise has violated the CWA and the regulations in 40 C.F.R.

Respectfully submitted this 3rd day of November 2009 at Petersburg, Alaska.



Fred W. Triem, No. 7912140

CERTIFICATE OF SERVICE



I, Fred W. Triem, certify that on the 3rd day of November in 2009 I sent a copy of the foregoing Respondent's Answer to the Regional Hearing Clerk at U.S. Environmental Protection Agency, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, by sending it to the Carol Kennedy, the Regional Hearing Clerk, and also Ms. Steiner-Riley by E-mail.

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