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HEARINGS CLERK  
EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:

Salamatof Seafoods, Inc.  
Kenai, Alaska

Respondent.

)  
)  
) Docket No. CWA-10-2008-0063

)  
) Consent Agreement and Final Order  
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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, who in turn has redelegated this authority to the Regional Judicial Officer.

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U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900, ORC-158  
Seattle, Washington 98101  
(206) 553-1037

1.2. Pursuant to Sections 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, EPA hereby issues and Salamatof Seafoods, Inc. ("Respondent") hereby 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. Respondent owns and operates a seafood processing facility in Kenai, Alaska ("the Facility").

2.3. On July 30, 2002, EPA conducted a National Pollutant Discharge Elimination System ("NPDES") inspection at the Facility.

2.4. On August 10, 2005 and July 19, 2006, the Alaska Department of Environmental Conservation ("ADEC") conducted NPDES inspections at the Facility.

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

### III. ALLEGATIONS

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

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

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

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

3.5. Respondent is authorized to discharge seafood processing waste into waters of the United States under general NPDES Permit No. AK-G52-0000 ("Permit"). The Facility operates under the unique identifier, AK-G52-0481.

3.6. Respondent discharged seafood processing waste from the butchering of seafood from the Facility. Seafood processing waste from the butchering of seafood is a "pollutant" which is "discharged" within the meaning of Sections 502(6) and (12) of the Act, 33 U.S.C. §§ 1362(6) and (12).

3.7. Respondent discharged seafood processing waste from the butchering of seafood into the Kenai River which flows into Cook Inlet, which constitutes "navigable waters" and

"waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1326(7).

#### Violation 1

3.8. Section V.C.1.d. of the Permit states that the permittee shall conduct a daily visual inspection of the waste conveyance system, including a close observation of the sump or other places of effluent collection. Logs of the daily inspection shall be kept at the facility.

3.9. On July 30, 2002, August 10, 2005, and July 19, 2006, Respondent did not conduct a visual inspection of the waste conveyance system, nor record the results of the visual inspection in a log.

3.10. Respondent failed to conduct a daily visual inspection of the waste conveyance system, and kept no logs of the daily inspections at the Facility, in violation of the Permit and the Act.

#### Violation 2

3.11. Section V.C.1.e. of the Permit states that the permittee shall conduct a daily inspection of the grinder system during the processing season to confirm that the grinders are: 1) operating, and 2) reducing the size of the seafood residues to one-half inch or smaller. Logs of the daily inspections shall be kept at the facility.

3.12. On July 30, 2002, August 10, 2005, and July 19, 2006, Respondent did not: 1) conduct daily inspections of the grinder system; or 2) keep logs of daily inspections.

3.13. Respondent failed to conduct daily inspections of the grinder system and did not have logs of the inspections at the Facility, in violation of the Permit and the Act.

#### Violation 3

3.14. Section V.C.5. of the Permit states that the permittee shall conduct a sea surface and shoreline monitoring program.

3.15. Section VI.D.3. of the Permit states that the permittee shall provide in its sea surface monitoring program daily assessments of the presence and amounts of residues floating on the sea surface during a near-shore or shore-based facility's operation and discharge.

3.16. On July 30, 2002, August 10, 2005, and July 19, 2006, Respondent failed to properly document that a sea surface and shoreline monitoring program was conducted.

3.17. Respondent failed to conduct a sea surface and shoreline monitoring program, in violation of the Permit and the Act.

#### Violation 4

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

3.19. As of August 10, 2005, Respondent had failed to conduct a seafloor monitoring program.

3.20. Respondent failed to conduct a seafloor monitoring program, in violation of the Permit and the Act.

Violation 5

3.21. Section VI.A.5. of the Permit states that the permittee shall operate in accordance with a Best Management Practices ("BMP") Plan that is consistent with the requirements in Section VI.A.5.a-d.

3.22. On August 10, 2005 and July 19, 2006, the Respondent's BMP Plan did not address all the permit requirements specified in Section VI.A.5.

3.23. Respondent failed to incorporate the requirements in Section VI.A.5. into the BMP Plan, in violation of the Permit and the Act.

Violation 6

3.24. Section V.C.1.f. of the Permit states that the permittee shall not discharge from a severed, failed, or leaking outfall line ten days past its severance, failure, or damage unless such damage has been repaired. The permittee must report failure of the outfall system to EPA and ADEC.

3.25. On August 10, 2005 and July 19, 2006, Respondent discharged seafood processing wastewater from a damaged and leaking outfall.

3.26. Respondent discharged seafood processing wastewater from a damaged and leaking outfall and failed to report the failure of the outfall system to EPA and ADEC, in violation of the Permit and the Act.

### Violation 7

3.27. Section V.C.1.b. of the Permit states that the permittee shall route all seafood processing wastes through a waste conveyance system and waste treatment system.

3.28. On August 10, 2005 and July 19, 2006, Respondent washed totes containing seafood waste in an area that was not routed to a waste conveyance and waste treatment system prior to discharge.

3.29. Respondent failed to route seafood processing wastes through a waste conveyance and waste treatment system prior to discharge, in violation of the Permit and the Act.

### Violation 8

3.30. Section VI.B.1. of the Permit states that the permittee shall prepare and submit a complete, accurate, and timely annual report of incidents of noncompliance, production, discharges, and process changes to EPA and ADEC by February 14<sup>th</sup> of the year following each year of operation and discharge under this Permit.

3.31. Respondent failed to submit annual reports in 2003, 2004, 2005, or 2006 to EPA or ADEC.

3.32. Respondent failed to submit complete, accurate, and timely annual reports of incidents of noncompliance, production, discharges, and process changes to EPA and ADEC, in violation of the Permit and the Act.

#### 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. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), taking into account the nature, circumstances, extent, and gravity of the alleged violations, Respondent's economic benefit of noncompliance, and other relevant factors, including Respondent's ability to pay, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is THIRTY EIGHT THOUSAND DOLLARS (\$38,000).

4.4. Respondent consents to the issuance of the Final Order recited herein, and to payment of the penalty cited in Paragraph 4.3., plus all applicable interest of 5% on such penalty, in accordance with the payment schedule described in subparagraphs a through c below.

a. By August 1, 2008, Respondent shall pay a first installment of \$12,667.00.

b. By August 1, 2009, Respondent shall pay a second installment of \$12,667.00 plus \$1,266.65 interest, or a total of \$13,933.65.

c. By August 1, 2010, Respondent shall pay a third installment of \$12,666.00 plus \$633.30 interest, or a total of \$13,299.30.



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

U.S. Environmental Protection Agency  
Region 10  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

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

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

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, Suite 900, Mail Stop ORC-158  
Seattle, Washington 98101

Office of Compliance and Enforcement  
Attn: David Domingo  
U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, Suite 900, Mail Stop OCE-133  
Seattle, Washington 98101

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

b. Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), should Respondent fail to pay on a timely basis the amount of the penalty assessed by the Final Order contained herein, 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 (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

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

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


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

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

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

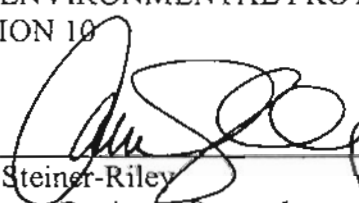
STIPULATED AND AGREED:

FOR RESPONDENT SALAMATOF SEAFOODS, INC.

  
\_\_\_\_\_  
Signature  
Print Name: Rh Scott  
Title: PRESIDENT

Dated: 5/12/08

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

  
\_\_\_\_\_  
Cara Steiner-Riley  
Assistant Regional Counsel

Dated: 5/27/08

## V. FINAL ORDER

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

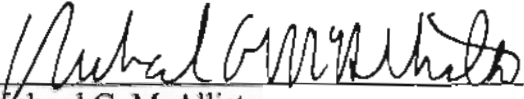
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the particular violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate 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 Act and regulations and permits issued thereunder.

5.3. In accordance with CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the State of Alaska has been given an 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 Act, 33 U.S.C. § 1319(g)(4)(A), EPA has published public notice of its intent to assess an administrative penalty against Respondent and has invited public comment in accordance with 40 C.F.R. § 22.45. More than 40 days have elapsed since the issuance of this public notice, and EPA has received no comments concerning this matter.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 11<sup>th</sup> day of July, 2008.

  
Richard G. McAllister  
Regional Judicial Officer, Region 10  
U.S. Environmental Protection Agency

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Salamatof Seafoods, DOCKET NO.: CWA-10-2008-0063** was filed with the Regional Hearing Clerk on July 15, 2008.


On July 15, 2008 the undersigned certifies that a true and correct copy of the document was delivered to:

Cara Steiner-Riley, Esquire  
US Environmental Protection Agency  
1200 Sixth Avenue, Suite 900, 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 July 15 2008, to:

R. Scott, President  
Salamatof Seafoods, Inc.  
P.O. Box 1450  
Kenai, AK 99611

DATED this 15<sup>th</sup> day of July 2008.

  
\_\_\_\_\_  
Carol Kennedy  
Regional Hearings Clerk  
EPA Region 10