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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)

Leader Creek Fisheries LLC.)


Respondent.)

) Docket No. CWA-10-2008-0043

) 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, who in turn has redelegated this authority to the Regional Judicial Officer.



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 Leader Creek Fisheries LLC ("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 Naknek, Alaska ("the Facility").

2.3. On June 24, 2003, EPA conducted a National Pollutant Discharge Elimination System ("NPDES") inspection at the Facility.

2.4. On July 8, 2006, EPA and the Alaska Department of Environmental Conservation ("ADEC") conducted an NPDES inspection 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-G52-0467.

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 Naknek River, which constitutes "navigable waters" and "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

Violation 1

3.8. Section II.A.1.a. of the Permit states that the permittee shall grind solid seafood processing wastes to one-half inch in any dimension or smaller prior to discharge.



3.9. On July 4, 2006 through July 28, 2006, Respondent discharged solid seafood processing wastes through a broken Vaughn grinder. The wastes were greater than one-half inch.

3.10. On July 2, 2007 through July 10, 2007, Respondent discharged solid seafood processing wastes through a broken outdoor Vaughn grinder. The wastes were greater than one-half inch.

3.11. Respondent failed to grind solid seafood processing wastes to one-half inch in any dimension or smaller prior to discharge, in violation of the Permit and the Act.

Violation 2

3.12. Section VIII.E. of the Permit states that the 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 its Permit.

3.13. On July 4, 2006 through July 28, 2006, Respondent failed to properly repair the outdoor Vaughn grinder with an appropriately-sized sump pump and discharged seafood waste directly onto the surface water.

3.14. Respondent failed to properly operate and maintain all facilities and systems of treatment and control, in violation of the Permit and the Act.

Violation 3

3.15. Section VII.C. of the Permit states that the permittee shall report occurrences of noncompliance to EPA and ADEC by telephone within 24 hours from the time the permittee

becomes aware of the circumstances, and by written submission within five days of the time the permittee becomes aware of any event required to be reported.

3.16. On July 4, 2006, Respondent discharged solid seafood processing wastes that exceeded one-half inch in size into the Naknek River from a broken outdoor Vaughn grinder that had not been properly repaired. Respondent failed to report to EPA and ADEC by telephone within 24 hours, and by written submission within five days, of becoming aware of the incident of noncompliance.

3.17. On July 2, 2007 through July 10, 2007, Respondent discharged solid seafood processing wastes that exceeded one-half inch in size into Naknek River from a broken outdoor Vaughn grinder that had not been properly repaired. Respondent failed to report to EPA and ADEC by telephone within 24 hours, and written submission within five days, of becoming aware of the incident of noncompliance.

3.18. Respondent failed to report to EPA and ADEC by telephone within 24 hours, and by written submission within five days, of becoming aware of the incident of noncompliance, in violation of the Permit and the Act.

Violation 4

3.19. 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, and failure to grind to the one-half inch size shall be reported to EPA and ADEC and summarized in an annual report.



3.20. On June 24, 2003, Respondent failed to conduct a daily inspection of its grinder and was grinding waste that was larger than one-half inch in any dimension. Respondent did not have logs of daily inspections at the Facility.

3.21. On July 8, 2006 through July 28, 2006, Respondent failed to conduct a daily inspection of its grinder and was grinding waste that was larger than one-half inch in any dimension. Respondent did not have logs of daily inspections at the Facility.

3.22. Respondent failed to conduct a daily inspection of the grinder system, grind solids into one-half inch or smaller, and keep logs of the inspections at the Facility, in violation of the Permit and the Act.

Violation 5

3.23. Section VI.D.1. of the Permit states that the permittee shall conduct a sea surface and shoreline monitoring program when classified as nearshore or shore-based and discharging within one nautical mile of shore at mean lower low water ("MLLW").

3.24. On June 24, 2003, there was no documentation that the Respondent conducted sea surface and shoreline monitoring.

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

Violations 6 - 9

3.26. Section V.C.1.a. of the Permit states that the permittee of a shore-based seafood processor shall not discharge a volume or weight of seafood processing waste residues on a daily or annual basis which exceeds the amount reported in the permittee's Notice of Intent ("NOI").

3.27. Respondent signed and submitted an NOI for the Facility dated August 23, 2002. Respondent indicated in the 2002 NOI that the Facility would discharge 25,000 pounds per day of seafood processing waste residues.

3.28. The 2005 Annual Report reported that from June 24, 2005 through June 30, 2005, the Facility discharged seafood processing waste residues in excess of the 25,000 pounds per day amount reported in its NOI.

3.29. The 2005 Annual Report reported that from July 13, 2005 through July 23, 2005, the Facility discharged seafood processing waste residues in excess of the 25,000 pounds per day amount reported in its NOI.

3.30. The 2004 Annual Report reported that from June 18, 2004 through June 30, 2004, the Facility discharged seafood processing waste residues in excess of the 25,000 pounds per day amount reported in its NOI.

3.31. The 2004 Annual Report reported that from July 15, 2004 through July 23, 2004, the Facility discharged seafood processing waste residues in excess of the 25,000 pounds per day amount reported in its NOI.

3.32. Respondent discharged seafood processing waste residues on a daily basis which exceeded the amount reported in Respondent's NOI, in violation of the Permit and the Act.

Violation 10

3.33. Section VI.B. of the Permit states that the permittee shall prepare and submit a complete, accurate and timely annual report of incidents of noncompliance, production,

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discharges and process changes to EPA and ADEC by February 14th of the year following each year of operation and discharge under this Permit.

3.34. Respondent failed to submit in 2003 a complete, accurate, and timely annual report of incidents of noncompliance, production, discharges and process changes to EPA and/or ADEC.

3.35. Respondent failed to submit a complete, accurate, and timely annual report of incidents of noncompliance, production, discharges and process changes to EPA and/or ADEC, in violation of the Permit and the Act.

Violation 11

3.36. Section V.C.1.m. of the Permit states that a permittee discharging to marine and estuarine water shall discharge its wastewaters at a point at least 10 feet below the surface of the receiving water.

3.37. On July 8, 2006, the outfall terminus was lying on the surface of the water and freely swinging and discharging at the water's surface amongst bloody seafood processing waste.

3.38. Respondent failed to discharge its wastewater at a point at least 10 feet below the surface of the receiving water, in violation of the Permit and the Act.

Violation 12

3.39. Section VI.A.5.c. states that a permittee shall operate in accordance with a Best Management Practices ("BMP") Plan that shall be reviewed by the facility manager and appropriate staff and include a statement that the review has been completed and that the BMP

Plan fulfills the requirements set forth in the Permit. The statement shall be certified by the dated signature of the facility manager.

3.40. Section VI.A.5.d. of the Permit states that a new permittee shall submit to EPA written certification, signed by a principal officer or a duly appointed representative of the permittee, of the completion and implementation of its BMP Plan within 30 days of its completion, and resubmit certification that the BMP Plan has been reviewed and revised-as-needed with its NOI in no case later than 90 days after the effective date of the Permit. The resubmittals shall describe all changes made to the BMP Plan, and the permittee shall maintain a copy of its BMP Plan at its facility and shall make the plan available to EPA or ADEC upon request.

3.41. Section VI.A.6. of the Permit states that a permittee shall amend the BMP Plan whenever there is a change in the facility or in the operation of the facility which materially increases the generation of pollutants and their release or potential release to the receiving waters. A permittee shall also amend the Plan, as appropriate, when facility operations covered by the BMP Plan change. Any such changes to the BMP Plan shall be consistent with the objectives and specific requirements listed. All changes in the BMP Plan shall be reviewed by the facility manager.

3.42. Section IX.E. of the Permit states that all permit applications, reports or information submitted to EPA and ADEC shall be signed and certified.

3.43. On July 8, 2006, the BMP Plan failed to include certification language or the signature of the facility manager.

3.44. Respondent failed to submit to EPA written certification, signed by a principal corporate officer or a duly appointed representative of the permittee, of the completion and implementation of its BMP Plan and resubmit certification that the BMP Plan had been reviewed and revised as needed with its NOI. The permittee failed to maintain a copy of its BMP Plan at its facility and did not have the plan available to EPA or ADEC.

3.45. Respondent failed to amend the BMP Plan when there was a change in the facility or in the operation of the facility which materially increased the generation of pollutants and their release or potential release to the receiving waters. Changes in the BMP Plan were not reviewed by the facility manager.

3.46. Respondent failed to submit to EPA and ADEC signed and certified permit applications, reports or information.

3.47. Respondent failed to obtain the proper signatures and certifications of its initial and amended BMP Plan; the Plan was revised without the proper review of its facility manager; and the BMP Plan was not submitted to EPA and ADEC, in violation of the Permit and the Act.

3.48. Respondent's failure to comply with its Permit as described above constitutes at least 12 violations of a condition or limitation in a permit issued under Section 402 of the Act. Consequently, under Section 309(g)(2)(B) of the Act, Respondent is liable for the administrative assessment of civil penalties in an amount not to exceed \$11,000 per day for each day during which a violation continues, up to a maximum of \$157,500.

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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 FIFTY-FOUR THOUSAND SIXTY-ONE DOLLARS (\$54,061).
- 4.4. Respondent consents to the issuance of the Final Order recited herein, and to payment of the penalty cited in Paragraph 4.3., within thirty (30) days of the effective date of the Final Order.
- 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:

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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: Chris Gebhardt
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 proceeding 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 the 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.

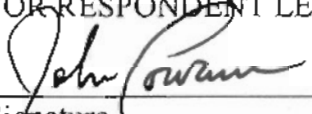
4.12. Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.

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

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STIPULATED AND AGREED:

FOR RESPONDENT LEADER CREEK FISHERIES, LLC

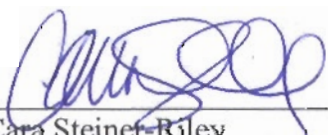

Signature

Dated: 2/10/08

Print Name: John Lowrance

Title: Managing member

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10


Cara Steiner-Riley
Assistant Regional Counsel

Dated: 2/13/08

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.

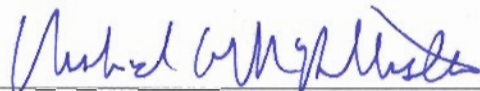
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5.3. In accordance with CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the State of Alaska has been given an opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

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 4th day of April, 2008.



Richard G. McAllister
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 **In the Matter of: Leader Creek Fisheries, LLC, DOCKET NO.: CWA-10-2008-0043**, was filed with the Regional Hearing Clerk on April 4, 2008.

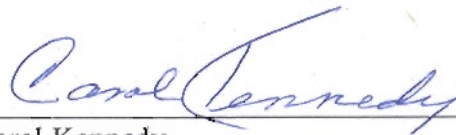
On April 8, 2008 the undersigned certifies that a true and correct copy of the document was delivered to:

Cara Steiner-Riley
US Environmental Protection Agency
1200 Sixth Avenue, M/S ORC-158
Suite 900
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 April 4, 2008, to:

John M. Lowrance, President
Leader Creek Fisheries, LLC
122 N. 84th Street
Seattle, WA 98103

DATED this 4th day of April 2008



Carol Kennedy
Regional Hearing Clerk
EPA Region 10