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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

INDEPENDENT PACKERS CORP.,
Seattle, Washington,

Respondent

DOCKET NO. CWA-10-2014-0084

CONSENT AGREEMENT
AND FINAL ORDER

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 Independent Packers Corp. (“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 (“Complainant”) has been delegated the authority pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to sign consent agreements between EPA and the party against whom a Class II penalty is 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

Regulatory Authority

3.1. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. CWA § 101(a), 33 U.S.C. § 1251(a).

3.2. Section 301(a) of the CWA prohibits the "discharge of any pollutants by any person" except, inter alia, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit. CWA § 301(a), 33 U.S.C. § 1311(a); CWA § 402, 33 U.S.C. § 1342.

3.2.1. The CWA defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source” and defines “navigable waters” to include “waters of the United States.” CWA § 502(7), (12); 33 U.S.C. § 1362(7), (12).

3.2.2. The CWA defines “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding

operation, or vessel or other floating craft, from which pollutants are or may be discharged.” CWA § 502(16), 33 U.S.C. § 1362(14).

3.3 Section 307 of the CWA establishes the federal pretreatment program for regulating the introduction of wastewater from non-domestic sources into Publicly Owned Treatment Works (“POTW”). CWA § 307, 33 U.S.C. § 1317; 40 C.F.R. Part 403.

3.4 An Industrial User (“IU”) is any non-domestic source regulated under Sections 307(b), (c) or (d) of the CWA that introduces pollutants into a POTW. 40 CFR § 403.3(i), (j).

3.5 Section 307(d) of the CWA prohibits the introduction of pollutants into a POTW in violation of any pretreatment standards. CWA § 307(d), 33 U.S.C. § 1317(d).

Factual Background

3.6 Respondent is a corporation organized under the laws of the State of Washington, and a “person” within the meaning of the CWA. CWA § 502(5), 33 U.S.C. § 1362(5).

3.7 Respondent has a fish processing plant (“Facility”) at 2001 West Garfield in Seattle, Washington. Since at least 2002, Respondent’s Facility discharged process wastewater to the local sanitary sewer system. The local sanitary sewer system conveys wastewater to the West Point Treatment Plant.

3.8 King County is a “municipality” within the meaning of the CWA. King County owns the West Point Treatment Plant, which is a “POTW Treatment Plant.” CWA § 502(4), 33 U.S.C. § 1362(4); 40 C.F.R. § 403.3(r).

3.9 The West Point Treatment Plant, along with all sewers, pipes and other conveyances used to convey wastewater to that treatment plant, form a publicly owned treatment works (“POTW”). CWA § 307(b), 33 U.S.C. § 1317(b); 40 C.F.R. §§ 122.2, 403.3(q).

3.9.1 The West Point Treatment Plant is a “point source” that “discharges pollutants” to Puget Sound, which is a “navigable water” of the United States. CWA § 502, 33 U.S.C. § 1362.

3.9.2 The West Point Treatment Plant receives and treats wastewater from various domestic, commercial and industrial sources.

3.10 King County has an "Approved POTW Pretreatment Program" and is the "Control Authority" for "Industrial Users" discharging to the West Point Treatment Plant. 40 C.F.R. §§ 403.3(d), (f)(1), (i), (j), 403.12(a); King County Code 28.82.180, 28.82.350, 28.82.370.

3.10.1 Ordinances, rules, and other control measures which form part of a Control Authority's Approved POTW Pretreatment Program are Pretreatment Standards pursuant to Section 307(d) of the CWA. CWA § 307(d), 33 U.S.C. § 1317(d); 40 C.F.R. § 403.5(d).

3.10.2 King County's Pretreatment Standards require any person to apply for and receive a waste discharge permit or discharge authorization prior to discharging industrial waste to King County's POTW. King Co.Code 28.84.060.J.1.

3.10.3 Respondent is a person and an industrial user, which discharged industrial waste to the POTW for purposes of the relevant King County King County's Pretreatment Standards. King Co. Code 28.82.370, 28.82.380, 28.82.600.

3.10.4 After analyzing the biochemical oxygen demand and total suspended solids in Respondent's wastewater, King County determined that Respondent discharges wastewater with a strength greater than domestic wastewater, and required a high strength surcharge in addition to the basic discharge fee. King Co. Code 28.84.060.F.4.

3.10.5 King County issued Major Discharge Authorization #4240-01 to Respondent, which went into effect on May 16, 2013 and authorized Respondent's Facility to discharge a total of 79,200 gallons per day of wastewater to the POTW.

3.11 Respondent is an Industrial User for purposes of the Clean Water Act, as it is a non-domestic source which discharges pollutants to a POTW. CWA § 307(b)-(d); 33 U.S.C. § 1317(b)-(d); 40 C.F.R. § 403.3(i), (j).

Violation

3.12 Prior to May 16, 2013, Respondent's unauthorized discharge of pollutants to King County's POTW violated King County's Pretreatment Standards.

3.13 For the period between June 1, 2009 and May 15, 2013 Respondent's unauthorized discharge of pollutants to a POTW constitutes a violation of Sections 301(a) and 307(d) of the CWA. CWA §§ 301(a), 307(d); 33 U.S.C. §§ 1311(a), 1317(d).

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 \$77,825.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) 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 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, Compliance Officer
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 by the due date set forth in Paragraph 4.4, 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. Attorneys 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) attorneys 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 which 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. Nothing in this Order shall relieve Respondent from responsibilities, liabilities, or penalties established pursuant to any applicable federal, state, or local law or regulation.

4.10. 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.

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

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

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

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

DATED:

4-17-14

FOR INDEPENDENT PACKERS CORPORATION:



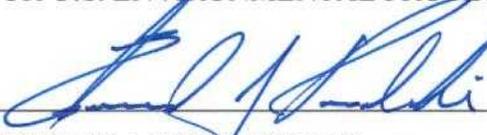
Signature
Print Name: JEFF BUSKE

Title: PRESIDENT.

DATED:

4/24/2014

FOR 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

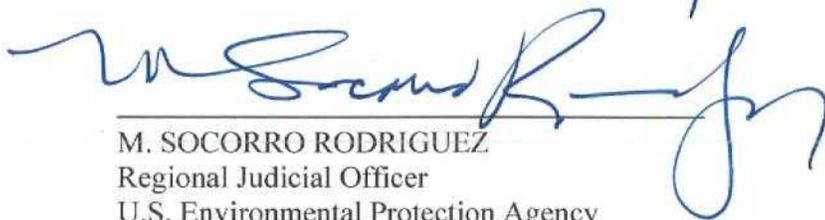
with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

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 Washington State Department of Ecology 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 22nd day of May, 2014.



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: **In the Matter of: Independent Packers Corp., Docket No. CWA-10-2014-0084**, was filed, and served as follows, on the signature date below.

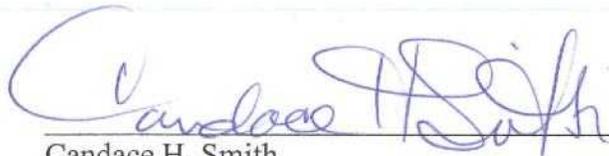
The undersigned certifies that a true and correct electronic copy of the document was delivered to:

Chris Bellovary
U.S. Environmental Protection Agency
Region 10, M/S: ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of this document was placed in the United States mail, certified/return receipt, to:

Independent Packers Corp.
Attn: Jeff Buske
Pier 91 Bldg 40 C-102
2001 W Garfield St
Seattle, WA 98119-3115

May 23, 2014
Dated


Candace H. Smith
Regional Hearing Clerk
EPA Region 10