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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)
)
Chilkoot Fish & Caviar, Inc.)
) Docket No. CWA-10-2009-0232
)
)
Haines, Alaska) Consent Agreement and Final Order
)
)
Respondent.)
_____)

I. AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the United States 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 enter into the Final Order contained in Part IV of this CAFO to the Regional Administrator of EPA Region 10 who, in turn, 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 hereby issues, and Chilkoot Fish & Caviar, Inc. (“Respondent”) hereby agrees to issuance of, the Final Order contained in Part IV of this CAFO.

II. PRELIMINARY STATEMENT

2.1. On September 25, 2009, EPA commenced this proceeding against Respondent pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), by filing an administrative complaint.

2.2 The Complaint alleges Respondent’s violations of the CWA subjects Respondent to penalties and proposes that Respondent be assessed an administrative civil penalty.

2.3. The complete jurisdictional basis for proposing the assessment of a civil penalty is set forth in the Complaint and is incorporated herein by reference.

2.4. 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 State of Alaska has been given an opportunity to consult with EPA regarding the assessment of an administrative civil penalty against Respondent.

2.5. In accordance with Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45, EPA has issued a public notice to inform the public of its intent to assess administrative penalties against Respondent and to invite public comment. EPA received no public comments on its proposal to assess administrative penalties.

III. CONSENT AGREEMENT

The parties to this action hereby stipulate as follows:

3.1. Respondent enters this Consent Agreement to compromise and settle the disputed claims alleged in the Complaint without further proceedings in this matter.

3.2. Respondent admits the jurisdictional allegations in the Complaint.

3.3. Respondent neither admits nor denies the factual allegations contained in the Complaint.

3.4. Respondent expressly waives the right to contest the allegations contained in the Complaint and to appeal the Final Order contained herein.

3.5. As required under 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 in the amount of FIFTY THOUSAND DOLLARS (\$50,000.00).

3.6. Respondent consents to issuance of the Final Order set forth in Part IV, and agrees to pay the total civil penalty set forth in Paragraph 3.5, above, plus all applicable interest in such penalty, in accordance with the payment schedule described in subparagraphs 3.6.1 through 3.6.4, below.

3.6.1. Within thirty (30) days of the effective date of this Final Order, Respondent shall pay a first installment of \$5,000.00.

3.6.2. Within one (1) year of the effective date of this Final Order, Respondent shall pay a second installment of \$11,350.00 (\$10,000.00 plus \$1,350.00 interest).

3.6.3. Within two (2) years of the effective date of this Final Order, Respondent shall pay a third installment of \$16,050.00 (\$15,000.00 plus \$1,050.00 interest).

3.6.4. Within three (3) years of the effective date of this Final Order, Respondent shall pay a final installment of \$20,600 (\$20,000.00 plus \$600.00 interest).

3.7. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "Treasurer, United State of America" and delivered to the following address:

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

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

3.8. Respondent shall serve photocopies of the check described in Paragraph 3.7, above, on the Regional Hearing Clerk and EPA at the following addresses:

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

Office of Compliance and Enforcement
Attn: Chris Gebhardt
U.S. Environmental Protection Agency
Region 10, MS OCE-133
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

3.9. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 3.6, above, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject 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.

3.10. If Respondent fails to pay any portion of the penalty assessed by this CAFO in full by the due date set forth in Paragraph 3.6, above, Respondent shall be responsible for payment of the amounts described below:

3.10.1. 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 IV, below, 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.

3.10.2. 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 amount of the penalty set forth in Paragraph 3.5, above, 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 (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

3.11. The penalty described in Paragraph 3.5, above, including any additional costs incurred under Paragraph 3.10, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

3.12. 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.

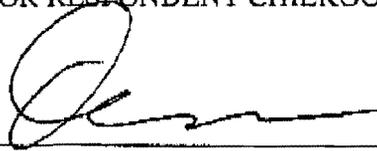
3.13. Except as described in Subparagraph 3.10.2, above, each party shall bear its own costs in bringing or defending this action.

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

3.15. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA.

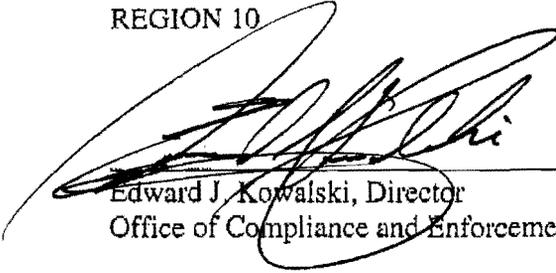
STIPULATED AND AGREED:

FOR RESPONDENT CHILKOOT FISH & CAVIAR, INC.


Signature
Print Name: Ed Lapeyri
Title: President

Dated: 1-5-10

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10


Edward J. Kowalski, Director
Office of Compliance and Enforcement

Dated: 1/06/10

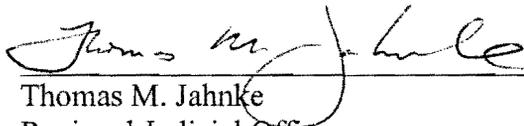
IV. FINAL ORDER

4.1. 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 foregoing terms of the settlement.

4.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties pursuant to the CWA for the particular violations alleged in the Complaint. 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, the CWA regulations, and/or any permits issued thereunder.

4.3. This Final Order shall become effective upon filing.

SO ORDERED this 8th day of January, 2010.



Thomas M. Jahnke
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: Chilkoot Fish & Caviar, Inc., DOCKET NO.: CWA-10-2009-0232** was filed with the Regional Hearing Clerk on January 8, 2010.

On January 8, 2010 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, 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 January 8, 2010, to:

L. Edward Lapeyri
President and Director
Chilkoot Fish & Caviar, Inc.
P.O. Box 1469
Haines, Alaska 99827

DATED this 8th day of January 2010.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10