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HEARINGS CLERK  
EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Bornstein Seafoods, Inc.

Bellingham, Washington

Respondent.

DOCKET NO. CWA-10-2019-0002

**CONSENT AGREEMENT**

Proceedings Under Section 309(g) of the Clean  
Water Act, 33 U.S.C. § 1319(g)

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), the EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000.

Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$21,393 per day for each day during which the violation continues, up to a maximum

penalty of \$267,415. See also 83 Fed. Reg. 1190 (January 10, 2018) (2018 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A) and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Bornstein Seafood, Inc. (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement.

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), execution of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegate this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

2.3. Part III of this Consent Agreement 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

#### Statutory and Regulatory Framework

3.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3.2. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from any point source into waters of the United States except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

3.3. CWA Section 502(12), 33 U.S.C. § 1362(12) defines the “discharge of a pollutant” to mean the addition of any pollutant to navigable waters from any point source.

3.4. CWA Section 502(6), 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, dredged spoil, solid waste, chemical wastes, biological materials, heat, rock, sand, cellar dirt and industrial, municipal and agricultural waste.

3.5. CWA Section 502(14), 33 U.S.C. § 1362(14), defines “point source” to mean any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel or conduit from which pollutants are or may be discharged.

3.6. CWA Section 502(7), 33 U.S.C. § 1362(7), defines the term “navigable waters” to mean “waters of the United States.” The term “waters of the United States” is defined at 40 C.F.R. § 122.2 (2014).

3.7. CWA Section 402(p), 33 U.S.C. § 1342(p), requires a NPDES permit for the discharge of stormwater associated with industrial activity.

3.8. “Stormwater discharge associated with industrial activity” is defined as the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing or processing and includes, *inter alia*, facilities classified under

Standard Industrial Classification code 2092 (Prepared Fresh or Frozen Fish and Seafoods).  
40 C.F.R. § 122.26(b)(14)(xi).

3.9. The state of Washington, through the Washington Department of Ecology, is authorized pursuant to CWA Section 402(b), 33 U.S.C. § 1342(b), to administer the NPDES permitting program for stormwater discharges associated with industrial activity.

3.10. The Washington Department of Ecology issued the Industrial Stormwater General Permit for discharges of stormwater associated with industrial activity on December 3, 2014 and the permit became effective on January 2, 2015 (hereinafter "ISGP").

3.11. Section S1.A.1 of the ISGP requires facilities engaged in certain industrial activities, including activities covered under Standard Industrial Classification code 2092, to apply for permit coverage if the facility discharges stormwater to surface waters.

#### **General Allegations**

3.12. Respondent is a corporation licensed to do business in the state of Washington and is a "person" as defined in CWA Section 502(5), 33 U.S.C. § 1362(5).

3.13. At all times relevant to this action, Respondent leased and operated property located at 1001 Hilton Avenue in Bellingham, Washington (hereinafter, "Facility"), owned by the Port of Bellingham.

3.14. The primary operations conducted by Respondent at the Facility include the loading and unloading, processing, and storage of fresh and frozen seafood delivered to the Facility by marine vessel or truck. Respondent's primary operations are categorized under Standard Industrial Classification code 2092 and North American Industry Classification System code 311712. Additional operations conducted at the Facility include vehicle cleaning and maintenance.

3.15. The Facility is situated on approximately 2 acres of riparian property located on

the I and J Street Waterway of Bellingham Bay. The Facility includes a marine dock, seafood processing plant, cold storage building, icehouse, loading bay, vehicle and equipment maintenance shop and an unpaved parking area. The Facility is bisected by Hilton Avenue which separates the marine dock, seafood processing plant, cold storage building, icehouse, and loading bay from the vehicle and equipment maintenance building and unpaved parking lot.

3.16. Stormwater and runoff generated at the Facility is mainly directed to two primary outfalls that discharge directly to the I and J Street Waterway of Bellingham Bay. Stormwater and runoff from the southern portion of the Facility is collected in a catch basin located to the south of the processing plant and is directed to an oil-water separator and then to Outfall 1 which discharges directly to the I and J Street Waterway of Bellingham Bay from the southwestern part of the Facility. Stormwater and runoff from the northern portion of the Facility is collected in two catch basins and is routed to an oil-water separator and then to Outfall 2 which discharges directly to the I and J Street Waterway of Bellingham Bay from the northwestern part of the Facility. In addition to stormwater and runoff, uncontaminated condensate from the cold storage and ice house buildings are routed to the oil-water separator and discharged through Outfall 2. The process wastewater generated by the seafood processing operations, as well as a portion of stormwater generated at the Facility around the processing plant, is routed to the sanitary sewer and discharged pursuant to a pre-treatment permit.

3.17. The Facility, which was under Respondent's control at all times relevant to this action, discharges stormwater off-site via Outfalls 1 and 2, which are "point sources" as defined at CWA Section 502(14), 33 U.S.C. § 1362(14). The Facility's stormwater discharges contain "pollutants" within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

3.18. The I and J Street Waterway of Bellingham Bay and Bellingham Bay itself are

traditionally navigable waters that may be susceptible to use in interstate commerce and are “waters of the United States” as defined at 40 C.F.R. § 122.2 (2014), and therefore “navigable waters” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

3.19. At all times relevant to this action, Respondent was authorized to discharge stormwater associated with industrial activity from the Facility by ISGP permit number WAR000679, which became effective on January 2, 2015 and expires on December 31, 2019.

3.20. On August 3, 2017, Complainant conducted an unannounced compliance evaluation inspection at the Facility to determine Respondent’s compliance with the ISGP and Sections 301 and 402 the CWA, 33 U.S.C. §§ 1311 and 1342.

3.21. During the compliance evaluation inspection, Complainant inspected areas of the Facility subject to the ISGP requirements, including outdoor operational areas, catch basins and outfalls. Complainant also requested records concerning Respondent’s compliance with the ISGP including the Stormwater Pollution Prevention Plan (SWPPP) for the Facility, and records for the past five years documenting monthly visual inspections and employee stormwater training. Respondent provided a copy of the SWPPP dated August 2015 but did not provide documentation related to monthly visual inspections or employee stormwater training.

#### **Violations**

3.22. As described below, starting on or around August 2016 up to the date of Complainant’s compliance inspection on August 3, 2017, Respondent violated CWA Section 301, 33 U.S.C. § 1311, and the conditions and/or limitations of its ISGP.

#### **Count 1 – Process Wastewater Discharge**

3.23. Paragraphs 3.1 to 3.22 are realleged and incorporated herein by reference.

3.24. Section S5.E.1 of the ISGP provides that the permit does not authorize the discharge of process wastewater including the discharge of process wastewater comingled with

stormwater.

3.25. On August 3, 2017, Complainant observed fish processing wastewater pooled around a catch basin that discharges from the Facility through Outfall 2 to the I and J Street Waterway and Bellingham Bay.

3.26. Respondent violated section S5.E.1 of the ISGP and section 301 of the Clean Water Act, 33 U.S.C. § 1311, by discharging seafood processing waste in violation of the ISGP and without permit authorization. Violations of the ISGP and section 301 of the CWA, 33 U.S.C. § 1311, are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 2 – Failure to Document Visual Inspections

3.27. Paragraphs 3.1 to 3.22 are realleged and incorporated herein by reference.

3.28. Section S7.A.1 of the ISGP requires that permittees conduct and document visual inspections each of the site each month. Section S7.C.1 of the ISGP requires that permittees record the results of each inspection in an inspection report or checklist and keep the inspection records onsite as part of the SWPPP and available for review.

3.29. On August 3, 2017, Complainant requested that Respondent provide records of monthly visual inspections. Respondent's employee, Mr. Lubetich, was unable to provide the requested records and informed Complainant that he had conducted the required inspection but had not recorded the results of the monthly inspections over at least the past year.

3.30. Respondent violations section S7.C.1 of the ISGP by failing to record the results of required monthly inspections. Violations of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 3 – Deficient Site Map

3.31. Paragraphs 3.1 to 3.22 are realleged and incorporated herein by reference.

3.32. Section S3.B.1 of the ISGP requires that permittees include in the SWPPP a site

map that identifies, *inter alia*, stormwater drainage and discharge structures, stormwater drainage areas for each discharge point, paved areas and buildings, and vehicle maintenance areas.

3.33. On August 3, 2017, Complainant requested that Respondent provide a copy of the Facility SWPPP. The site map in the SWPPP provided did not identify a portion of the Facility on the southeast side of Hilton Avenue that included unpaved parking areas and a maintenance building where Respondent services forklifts and other equipment.

3.34. Respondent violated section S3.B.1 of the ISGP by failing to identify all required areas on the site map included with the SWPPP. Violations of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

#### Count 4 – Employee Training

3.35. Paragraphs 3.1 to 3.22 are realleged and incorporated herein by reference.

3.36. Section S3.B.4.b.i.5 of the ISGP requires that permittees include in the SWPPP best management practices for training employees who have duties in areas of industrial activities subject to the ISGP. At a minimum, the training plan shall include the content of training, an overview of the SWPPP, how employees can prevent stormwater contamination, spill response procedures, and good housekeeping, maintenance and management practices. The SWPPP must also document how the permittee will train employees, a schedule for training and a record of the dates that training occurred.

3.37. On August 3, 2017, Complainant requested that Respondent provide a copy of the Facility SWPPP. Section 3.8 of the provided SWPPP described the need to train employees in the SWPPP and to document such training. However, the documentation of training that Respondent provided to Complainant failed to identify any of the SWPPP-specific training required by the ISGP.

3.38. Respondent violated section S3.B.4.b.i.5 of the ISGP by failing to train employees



or to document such training occurred. Violations of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

#### Count 5 – Good Housekeeping

3.39. Paragraphs 3.1 to 3.22 are realleged and incorporated herein by reference.

3.40. Section S3.B.4.b.i of the ISGP requires that permittees implement good housekeeping practices to maintain and cleanup of areas which may contribute pollutants to stormwater discharges including keeping all dumpsters under cover or fit with a lid that must be closed when not in use.

3.41. On August 3, 2017, Complainant observed the outdoor storage of batteries and an uncovered garbage container next to the maintenance shop without any cover from precipitation and in an area which may contribute pollutants to stormwater discharges.

3.42. Respondent violated section S3.B.4.b.i of the ISGP by not implementing good housekeeping best management practices to properly maintain areas of the Facility which may contribute pollutants to stormwater discharges. Violations of the ISGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

#### **IV. TERMS OF SETTLEMENT**

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), the EPA has taken into account “the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of

culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.” After considering all of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$22,500.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be payable to the order of “Treasurer, United States of America” and delivered 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 serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on 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-113  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101  
[Young.teresa@epa.gov](mailto:Young.teresa@epa.gov)

Chae Park, Compliance Officer  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-101  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101  
[park.chae@epa.gov](mailto:park.chae@epa.gov)

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement in full

by its due date, 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.

a. Interest. Pursuant to CWA Section 309(g)(9), 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 30 days of the effective date of the Final Order.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 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 20% 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. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.b., above, each party shall bear its own costs in bringing or defending this action.

4.12. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to this Consent Agreement, including its right to request a hearing under 40 C.F.R. § 22.15( c) and Section 309(g)(2)(B) and (4)(C) of the Act, 33 U.S.C. § 1319(g)(2)(B), and (4)(C), its right to appellate review under Section 309(g)(8)(B) of the Act, 33 U.S.C. § 1319(g)(8)(B), its right to seek federal judicial review of the Consent Agreement and Final Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06, and its right to appeal this Consent Agreement. Respondent also consents to the issuance of this Consent Agreement without further adjudication.

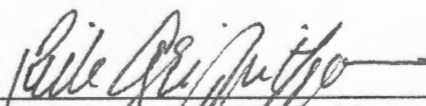
4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

8.27.2018


FOR RESPONDENT:

  
Rich Griffith, Senior Vice President  
Bornstein Seafoods, Inc.

DATED:

11/1/2018

FOR COMPLAINANT:

  
EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10

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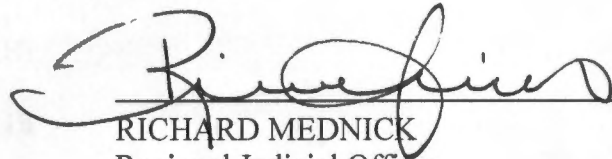
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4. This Final Order shall become effective upon filing.

SO ORDERED this 8<sup>th</sup> day of November, 2018.



RICHARD MEDNICK  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Bornstein Seafoods, Inc.

Bellingham, Washington

Respondent.

DOCKET NO. CWA-10-2019-0002

**FINAL ORDER**

Proceedings Under Section 309(g) of the Clean  
Water Act, 33 U.S.C. § 1319(g)

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.
2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.
3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order 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.



**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Bornstein Seafoods, Inc., DOCKET NO.: CWA-10-2019-0002** was served on the addressees in the following manner on the date specified below:

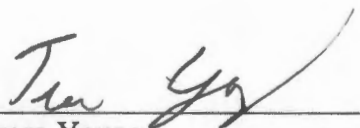
The undersigned certifies that a true and correct copy of the document was delivered to:

Alex Fidis  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-158  
1200 Sixth Avenue, Suite 155  
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 to:

Mr. Rich Griffith  
Bornstein Seafoods, Inc.  
1001 Hilton Avenue  
Bellingham, Washington 98225

DATED this 13 day of November, 2018

  
\_\_\_\_\_  
Teresa Young  
Regional Hearing Clerk  
EPA Region 10

CERTIFICATE OF ADOPTION

Resolved, That the Board of Directors of the Corporation do hereby adopt the following resolution:

That the Board of Directors of the Corporation do hereby adopt the following resolution:

Resolved, That the Board of Directors of the Corporation do hereby adopt the following resolution:

That the Board of Directors of the Corporation do hereby adopt the following resolution:

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

*[Handwritten signature]*