

RECEIVED

12 APR 26 AM 8:59

HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Ocean Peace, Inc.,

Respondent

)
) DOCKET NO. CWA-10-2012-0070
)
)

)
) 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 Ocean Peace, Inc., (“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 to sign consent agreements assessing a civil penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

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

3.1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” except as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

3.2. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” “Navigable waters” are defined as “waters of the United States.” 33 U.S.C. § 1362(7).

3.3. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” to include any “vessel or other floating craft from which pollutants are or may be discharged.”

3.4. The factory trawler seafood processing vessel F/T Ocean Peace (“the Facility”) is a point source under the Clean Water Act, and thus may discharge pollutants only when authorized by an NPDES permit.

3.5. At all times relevant to this action, Respondent owned and operated the seafood processing vessel, the F/T Ocean Peace.

3.6. Respondent is a corporation, and thus, a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.7. Respondent is authorized to discharge seafood processing waste from the Facility into specified waters of the United States under both the Seafood Processors in Alaska General Permit #AKG520396 (“Permit A”) and the Offshore Seafood Processors General Permit #AKG524059 (“Permit B”). Permit A became effective on July 27, 2001, expired on July 27, 2006, and is currently administratively extended. Permit B became effective on March 1, 2010, and expires on February 28, 2015.

3.8. 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 Section 502(6) and (12) of the Act, 33 U.S.C. § 1362(6) and (12).

3.9. Respondent discharged seafood processing waste from the butchering of seafood from the Facility into the Bering Sea and the Gulf of Alaska more than three nautical miles offshore of Alaska. The receiving waters more than three nautical miles off the coast of Alaska constitute “navigable waters” and “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1326(7).

3.10. On December 28, 2010, EPA conducted an inspection of the Facility to determine compliance with the Permits and the CWA.

Permit A Violations

3.11. Section V.A.1.b of Permit A requires Respondent to ensure waste solids discharged from its outfall(s) shall not exceed one-half inch in any dimension.

3.12. In February 2010, for a period of twenty days, Respondent failed to grind solid seafood processing waste to one-half inch in each dimension, constituting twenty violations.

3.13. Section V.A.1.d of Permit A requires Respondent to conduct a daily visual inspection of the waste conveyance and to maintain logs of this daily inspection onboard the Facility.

3.14. In January 2007 through September 2007, January 2008 through December 2008, and January 2009 through October 2009, Respondent failed to maintain logs of daily inspections of the Facility's waste conveyance systems for a total of 659 days, constituting 659 violations.

3.15. Section V.A.1.e of Permit A requires Respondent to conduct a daily inspection of the grinder system during the processing season and maintain logs of these daily inspections at the Facility.

3.16. In January 2007 through September 2007, January 2008 through December 2008, and January 2009 through October 2009, Respondent failed to maintain logs of daily inspections of the Facility's grinder system for a total of 659 days, constituting 659 violations.

3.17. Section V.A.1.j of Permit A requires Respondent to submit a timely, complete, and accurate Annual Report.

3.18. Respondent failed to submit timely, complete, and/or accurate Annual Reports for 2006, 2007, 2008, and 2009, constituting four violations.

3.19. Section VI.B.2.a of Permit A requires Respondent to include its NPDES permit number in each Annual Report submission.

3.20. Respondent failed to include its NPDES permit number in its Annual Report submissions for 2008 and 2009, constituting two violations.

3.21. Section VI.B.2.c.6 of Permit A requires Respondent to states the location(s) of discharge, including both the name of the receiving water and the latitude and longitude with a precision of at least 15 seconds of a degree in each Annual Report submission.

3.22. Respondent failed to submit required location data in its Annual Report submissions for 2006, 2007, 2008, and 2009, constituting four violations.

3.23. Section VII.B of Permit A requires Respondent to retain records of all monitoring information, including but not limited to, all calibration and maintenance records, copies of all reports required by this Permit, for a period of at least five years from the date of the sample, measurement, report, or application, or for the term of this Permit, whichever is longer.

3.24. In January 2007 through September 2007, January 2008 through December 2008, January 2009 through October 2009, and February 2010, Respondent failed to maintain records for a total of 659 days, and these records were unavailable for review by EPA inspectors at the Facility on December 28, 2010, constituting 659 violations.

Permit B Violations

3.25. Section II.A.1.a of Permit B requires Respondent to grind solid seafood processing wastes to one-half inch or smaller in any dimension prior to discharge.

3.26. In March 2010 through November 2010, Respondent failed to grind solid seafood processing wastes to one-half inch or smaller for a total of 210 days, constituting 210 violations.

3.27. Section V.A.2 of Permit B requires Respondent to route all seafood processing wastes through a waste conveyance and treatment system and to ensure waste solids discharged from the Facility's outfall(s) do not exceed one-half inch in any dimension.

3.28. In March 2010 through November 2010, Respondent failed to ensure waste solids discharged from the Facility's outfall(s) did not exceed one-half inch in any dimension for a total of 210 days, constituting 210 violations.

3.29. Section V.A.5 of Permit B requires Respondent to conduct a daily inspection of the grinder system during the processing season by taking a representative sample of the ground discharge and ensuring the pieces are less than one-half inch in any dimension.

3.30. In March 2010 through November 2010, Respondent failed to obtain representative samples of ground discharge for a total of 210 days, constituting 210 violations.

3.31. Section V.A.16 of Permit B requires Respondent to take quarterly influent and effluent samples while seafood processing is occurring, for all the parameters listed in Part VI.E of Permit B beginning in the third quarter after receiving authorization to discharge.

3.32. For the quarters of July 2010 to September 2010 and October 2010 to December 2010, Respondent failed to take required quarterly samples, constituting two violations.

3.33. Section VI.B.2.d of Permit B requires Respondent to provide area map(s) and at least one daily location of the vessel, while processing, in degrees, minutes, and seconds.

3.34. In the 2010 Annual Report, Respondent failed to provide area map(s) and only provided daily location of the vessel, while processing, in degrees and minutes, constituting one violation.

3.35. Section VI.B.2.h of Permit B requires Respondent to provide at least four representative pictures, including photographs of the grinder system while in operation, of the sampling port while taking the daily sample, of the effluent (showing residue size), and of the outfall system while in operation.

3.36. Respondent failed to include these photographs in its 2010 Annual Report submission, constituting one violation.

3.37. Section VI.B.2.j of Permit B requires Respondent to provide influent and effluent quarterly monitoring results in its 2010 Annual Report submission.

3.38. Respondent failed to include effluent quarterly monitoring results in its 2010 Annual Report submission, constituting one violation.

3.39. The violations of the Permits described in Paragraphs 3.11 through 3.38 constitute 2642 violations of the permits issued under Section 402 of the Act, 33 U.S.C. § 1342.

Section 309(g)(1) of the CWA, 33 U.S.C § 1319(g)(1), authorizes EPA to assess administrative penalties against any person who has violated any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

3.40. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), Respondent is liable for civil penalties not to exceed \$11,000 per day for each violation that occurred through January 12, 2009, and \$16,000 per day for each violation that occurred after January 12, 2009, up to a maximum amount of \$177,500.

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 \$98,000.

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

4.5. Payment under this CAFO shall be made by wire transfer Wire transfers should be directed to the Federal Reserve Bank of New York, as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency, Docket CWA-10-2012-0070"

4.6. Respondent must deliver via United States mail pertinent information from the wire transfer to the Regional Hearing Clerk and EPA Region 10 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

Derek Schruhl
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. Attorney 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) 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 of the aggregate amount of Respondent's penalties and nonpayment penalties that 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 CAFO and to bind Respondent to this document.

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

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

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

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

DATED:

3/5/12

FOR OCEAN PEACE, INC.:

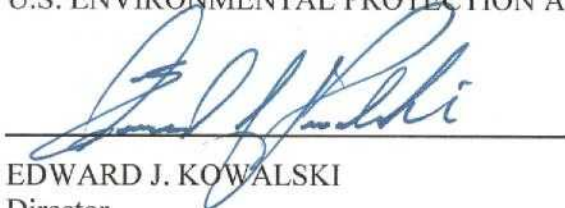


MICHAEL FARIS
President and CEO

DATED:

4/5/2012

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 State of Alaska Department of Environmental Conservation 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 25th day of April, 2012.



THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 10

CERTIFICATE OF SERVICE

RECEIVED

12 APR 26 AM 8:59

HEARINGS CLERK
EPA -- REGION 10

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in: **In the Matter of: Ocean Peace, Inc., Docket No. CWA-10-20120-0070**, was filed, and served as follows, on April, 26, 2012.

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

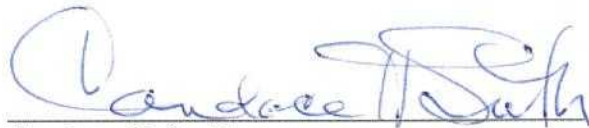
Jennifer Byrne
U.S. Environmental Protection Agency
Region 10, M/S: ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

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

Michael Faris
President and CEO
Ocean Peace, Inc.
4201 - 21st Avenue West
Seattle, WA 98199

April 26, 2012

Dated



Candace H. Smith
Regional Hearing Clerk
EPA Region 10