

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

AMERICAN SEAFOODS COMPANY LLC
AND AMERICAN DYNASTY LLC

Federal Waters Off the Washington
Coast and Oregon Coast

Respondents.

DOCKET NO. CWA-10-2023-0141

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), 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 \$25,847 per day for each day during which the violation continues, up to a maximum penalty of \$323,081. *See also* 88 Fed. Reg. 986 (January 6, 2023) (2023 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 American Seafoods Company LLC and American Dynasty LLC (Respondents) agree 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 redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, 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 Respondents are 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 “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

3.4. CWA Section 502(6), 33 U.S.C. § 1362(6), defines a “pollutant” to include, *inter alia*, dredged spoil, rock, sand, chemical wastes, and industrial wastes.

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

3.6. CWA Section 502(7) defines “navigable waters” as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

3.7. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to navigable waters.

3.8. EPA directly administers the NPDES permitting program authorizing the discharge of seafood processing wastes and other designated wastewaters in federal waters off the State of Washington coast and State of Oregon coast.

3.9. On March 1, 2019, EPA issued the Authorization to Discharge Under the National Pollutant Discharge Elimination System for Offshore Seafood Processors Discharging in Federal Waters Off the Washington and Oregon Coast (Permit) pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The Permit became effective on May 1, 2019. The Permit authorized, subject to the terms and conditions of the Permit, the discharge of seafood processing wastes and other designated wastewaters.

General Allegations

3.10. Respondents are each a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.11. At all times relevant to this action, Respondent American Seafoods Company LLC operated, and Respondent American Dynasty LLC owned, a vessel named American Dynasty, U.S. Coast Guard Number 951307 (“the Facility”), which operated within federal waters off the State of Washington coast and State of Oregon coast.

3.12. The Facility is a vessel or floating craft that discharges seafood processing waste and other wastewater into federal waters off the State of Washington coast and State of Oregon coast.

3.13. The Facility’s discharges, including seafood processing waste and other wastewater, contain “pollutants” within the meaning of meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

3.14. The Facility is a vessel or other floating craft and is therefore a “point source” as defined at CWA Section 502(14), 33 U.S.C. § 1362(14).

3.15. The federal waters off the State of Washington coast and State of Oregon coast are part of the “territorial seas” and subject to the ebb and flow of the tide and are therefore “navigable waters” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.16. Respondents have discharged pollutants from a point source into waters of the United States, within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.17. At all times relevant to this action, Respondents were authorized to discharge seafood processing wastes and other designated wastewaters from the Facility in accordance with the Permit conditions. Respondents submitted a Notice of Intent (NOI) for coverage under the Permit on July 29, 2019.

Violations

3.18. As described below, EPA alleges that, after obtaining coverage under the Permit, Respondents violated certain terms and conditions of the Permit and therefore violated CWA

Section 301, 33 U.S.C. § 1311. Violations of the Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 1: Unauthorized Discharges in Prohibited Zone

3.19. Section III.B.5 of the Permit identifies areas excluded from authorization under the Permit, which includes, *inter alia*, the “Heceta/Stonewall Banks complex.”

3.20. EPA alleges that Respondents violated Section III.B.5 of the Permit by discharging from the Facility within the Heceta/Stonewall Banks complex on October 9, 2021 and October 27, 2021.

Count 2: Failure to Submit Quarterly Processing Photos

3.21. Section V.B.5 of the Permit requires the Respondents to take at least four pictures quarterly while processing is occurring.

3.22. EPA alleges that Respondents violated Section V.B.5 of the Permit by failing to take photographs in Quarter 4 of 2020 and Quarter 2 of 2022 while processing was occurring at the Facility.

Count 3: Failure to Sample

3.23. Section V.B.7.a.1 of the Permit requires that “[d]uring each calendar year during which the [Respondents] discharge[] under this [] Permit, the [Respondents] must collect representative effluent samples.” Section V.B.7.a.2 of the Permit requires that “[s]amples must be analyzed for the parameters listed in Table 1” of the Permit.

3.24. EPA alleges that Respondents violated Section V.B.7.a of the Permit by failing to analyze for pH in Quarter 2 and Quarter 4 of 2020 and Quarter 2, Quarter 3, and Quarter 4 of 2022.

Count 4: Failure to Submit Discharge Monitoring Reports

3.25. Section V.B.7.c of the Permit states that all “[e]ffluent monitoring results must be reported via NetDMR according to the requirements as described in Part VIII.B.2” of the Permit.

3.26. EPA alleges that Respondent violated Section V.B.7.c of the Permit by failing to submit Discharge Monitoring Reports for Quarter 2 and Quarter 4 of 2019, Quarter 2 and Quarter 4 of 2020, Quarter 2 and Quarter 4 of 2021 and Quarter 3 and Quarter 4 of 2022 while discharging was occurring.

Count 5: Sample Holding Times Exceedances

3.27. Section V.B.7.e of the Permit states that samples for “BOD₅ and Carbonaceous BOD have a 48-hour holding time” and that if the Respondents are “unable to meet the holding time, the [Respondents] must include a note on the DMR which explains the circumstances contributing to the delay.”

3.28. EPA alleges that Respondents violated Section V.B.7.e of the Permit by exceeding a 48-hour holding time for BOD₅ and Carbonaceous BOD for Quarter 2 and Quarter 4 of 2020 and Quarter 3 and Quarter 4 of 2022 without a note on the Discharge Monitoring Report explaining the circumstances contributing to the delay.

Count 6: Failure to Submit No Discharge Report

3.29. Section V.B.7.f of the Permit requires Respondents to submit a Discharge Monitoring Report and note that no discharge occurred if there was no discharge in a quarter.

3.30. EPA alleges that Respondents violated Section V.B.7.f of the Permit by failing to submit a Discharge Monitoring Report noting that no discharge occurred in Quarter 1 and Quarter 3 of 2020, Quarter 3 of 2021, and Quarter 1 of 2022.

Count 7: Failure to Submit Noncompliance Report

3.31. Section VI.B.2.b of the Permit requires Respondents to submit an annual report containing a summary of noncompliance that occurred between January 1 and December 31 of the previous year, and must “[i]nclude the reasons for such noncompliance, corrective actions, and steps taken to prevent future noncompliance events.”

3.32. EPA alleges that Respondents violated Section VI.B.2.b of the Permit by failing to submit a noncompliance report for the Facility in 2020, 2021, and 2022.

Count 8: Failure to Include Production and Discharge Information in Annual Report

3.33. Section VI.B.2.c of the Permit requires a summary of production and discharge information from the previous year to be included in the Facility's annual report, including, *inter alia*, type of seafood processing waste, total percentage of byproduct recovered, an estimate or measurement of the volume lost to the atmosphere through water vapor, the type of finished products, and total volume of stickwater seafood processing waste.

3.34. EPA alleges that Respondents violated Section VI.B.2.c of the Permit by failing to include the required information in the Facility's 2020 annual report, 2021 annual report, and 2022 annual report.

Count 9: Failure to Provide Discharge Location Map in Annual Report

3.35. Section VI.B.2.d of the Permit requires Respondents to “[p]rovide area map(s) that show at least one daily location of the vessel while discharging” in the Facility's annual report and requires that Respondents “[p]rovide a table with the discharge dates and location coordinates with the Annual Report in degrees, minutes, and seconds.”

3.36. EPA alleges that Respondents violated Section VI.B.2.d of the Permit by failing to provide discharge location maps for the Facility's 2019 annual report, 2020 annual report, 2021 annual report, and 2022 annual report.

Count 10: Failure to Provide Vessel Speed and Distance Traveled in Annual Report

3.37. Section VI.B.2.e of the Permit requires Respondents to “[p]rovide the minimum and average distance traveled by the vessel per day during discharge during each month” and “[r]eport the minimum and average daily vessel speed for each month during discharge” in the Facility's annual report.

3.38. EPA alleges that Respondents violated Section VI.B.2.e of the Permit by failing to include minimum and average vessel speed and distance traveled during discharge days in the Facility's 2019 annual report.

Count 11: Failure to Provide Refrigerant Use Information in Annual Report

3.39. Section VI.B.2.h of the Permit requires Respondents to “[r]eport total pounds of ammonia or Freon used and summarize any occurrences of leaks or breaks in the refrigerator condenser system” in the Facility's annual report.

3.40. EPA alleges that Respondents violated Section VI.B.2.h of the Permit by failing to report total pounds of ammonia or Freon used and summarize any occurrences of leaks or breaks in the refrigerator condenser system in the Facility's 2019 annual report and 2022 annual report.

Count 12: Failure to Include Proper Contents of Monitoring Information Records

3.41. Section VIII.E of the Permit requires records of monitoring information to include, *inter alia*, the results of sampling analyses.

3.42. EPA alleges that Respondents violated Section VIII.E of the Permit by failing to include the information necessary to understand the results of the sampling analyses in the Facility's 2019 annual report.

Count 13: Failure to Submit Accurate and Complete Annual Reports

3.43. Sections V.C and VI.B of the Permit requires the Respondents to “prepare and submit a complete, accurate, and timely” annual report to EPA.

3.44. EPA alleges that Respondents violated Sections V.C and VI.B of the Permit by failing to submit complete and accurate production and discharge information in the Facility's 2019 annual report, 2020 annual report, 2021 annual report, and 2022 annual report.

IV. TERMS OF SETTLEMENT

4.1. Respondents admit the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondents neither admit nor deny 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), 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 \$193,000.

4.4. Respondents consent to the assessment of the civil penalty set forth in Paragraph 4.3 and agree 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://www.epa.gov/financial/makepayment>. Payments made by check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

Address format for standard delivery (no delivery confirmation requested):

U.S. Environmental Protection Agency
P.O. Box 979078
St. Louis, Missouri 63197-9000

Address format for signed receipt confirmation (FedEx, DHL, UPS, USPS certified, registered, etc):

U.S. Environmental Protection Agency
Government Lockbox 979078
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101

Respondents must note on the check the title and docket number of this action.

4.6. Respondents 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
R10_RHC@epa.gov

Vanessa Oquendo
U.S. Environmental Protection Agency
Region 10
oquendo.vanessa@epa.gov

4.7. If Respondents fail 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 Respondents 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 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 contained herein, 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.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondents fail to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondents 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

Respondents' 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 expenses 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 Respondents certifies that they are authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondents to this document.

4.10. The undersigned representatives of Respondents also certify that, as of the date of Respondents' signature of this Consent Agreement, Respondents have corrected the violation(s) alleged in Part III above other than those alleged violations that will be corrected in accordance with Administrative Order on Consent, Docket No. CWA-10-2023-0125.

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. For the purposes of this proceeding, Respondents expressly waive any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

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

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

DATED:

FOR RESPONDENTS:

INGE ANDREASSEN
President
American Seafoods Company LLC

FOR COMPLAINANT:

EDWARD J. KOWALSKI
Director
Enforcement and Compliance Assurance Division
EPA Region 10