

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

SILVER BAY SEAFOODS, LLC
Sitka, Alaska

Respondent

DOCKET NO. CWA-10-2019-0128

COMPLIANCE ORDER ON CONSENT

I. STATUTORY AUTHORITY

1.1. This Compliance Order on Consent is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Sections 308 and 309(a) of the Clean Water Act, 33 U.S.C. §§ 1318, 1319(a). This authority has been delegated to the Regional Administrator for EPA Region 10 and has been redelegated to the Director of the Enforcement and Compliance Assurance Division.

1.2. Respondent waives all claims of relief, otherwise available rights to judicial or administrative review, and any other remedies with respect to any issue of fact, law, or any terms and conditions set forth in this Order, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

II. FINDINGS AND CONCLUSIONS

Statutory and Regulatory Background

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

2.2. Section 301 of the Clean Water Act prohibits the “discharge of any pollutant by any person” except, among other things, as authorized by a National Pollutant Discharge

Elimination System (NPDES) permit issued pursuant to Section 402. 33 U.S.C. §§ 1311(a), 1342.

2.3. Section 502(12) of the Clean Water Act defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

2.4. Section 502(6) of the Clean Water Act defines a “pollutant” to include “industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).

2.5. Section 502(14) of the Clean Water Act defines “point source” to include, among other things, “any pipe, ditch, channel, tunnel, conduit, well, discrete fissure [or] container ... from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

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

2.7. Section 402(a) of the Clean Water Act authorizes the Administrator of EPA to issue permits under the NPDES program for the discharge of any pollutant into the waters of the United States upon such specific terms and conditions as the Administrator may prescribe. 33 U.S.C. § 1342(a).

2.8. On October 31, 2008, NPDES permitting authority for seafood processing facilities, along with certain other dischargers, was transferred from EPA to the State of Alaska’s Department of Environmental Conservation (ADEC). Notwithstanding this transfer, EPA retains continuing enforcement authority over NPDES permits under Section 309 of the Clean Water Act. 73 Fed. Reg. 66,243, 62,244 (Nov. 7, 2008).

2.9. Respondent Silver Bay Seafoods, LLC is a limited liability company that owns and operates a shore-based seafood processing facility located at Sawmill Industrial Park, 4400

Sawmill Creek Road, Sitka, Alaska and is a “person” within the meaning of the Clean Water Act. 33 U.S.C. § 1362(5).

2.10. At all times relevant to this action, Respondent was authorized to discharge seafood processing waste from the Sitka Facility into waters of the United States under the NPDES General Permit for Seafood Processors in Alaska, No. AK-G52-000, unique identifier for the Facility AK-G52-0547 (Permit), and the applicable grants of discharge authorization.

2.11. The Permit was initially issued by EPA and expired on July 27, 2006. The Permit was administratively extended in accordance with 40 C.F.R. § 122.6, remains in full force and effect at the Sitka Facility, and is now administered by ADEC.

2.12. Respondent discharges pollutants into Sawmill Cove in Silver Bay via an outfall line that is owned and maintained by the City and Borough of Sitka, identified as Outfall 001 in the Permit. Outfall 001 is a “point source” as defined in Section 502(14) of the Clean Water Act. 33 U.S.C. § 1362(14).

2.13. Outfall 001 is located approximately 1730 feet from shore, well below the ordinary low water mark and within the territorial seas as defined in Section 502(8) of the Clean Water Act. 33 U.S.C. § 1362(8).

2.14. Respondent has discharged pollutants from a point source into navigable waters within the meaning of the Clean Water Act sections identified above.

2.15. The Permit establishes effluent limitations, standard and special operating conditions, and monitoring and reporting requirements for discharges from the Facility, including the following provisions relevant to this Order.

2.16. Part V.C.1.h of the Permit prohibits discharges of wastewater that contain foam, floating solids, grease or oily waste which produce a scum or sheen on the water surface or wastes that deposit residues which accumulate on the seafloor or shoreline.

2.17. Notwithstanding Part V.C.1.h, the Permit authorizes a one-acre zone of deposit (ZOD) for seafood waste on the seafloor. Permit at Part V.C.1.i.

2.18. From at least June 16, 2017 through the present, and as shown in Respondent's reports - *Seafloor Monitoring Report - 2017 Season*, and *Seafloor Monitoring Report - 2018 Season*, the seafood waste pile at the Facility has exceeded the one-acre ZOD limit, in violation of Part V.C.1.i of the Permit and the Clean Water Act. According to these reports, the ZOD measured 2.76 acres in 2017 and 2.02 acres in 2018.

2.19. Each failure to comply with effluent limitations, monitoring, or other requirements specified in the Permit is a violation of the terms and conditions of the Permit and Section 301(a) of the Clean Water Act. 33 U.S.C. §§ 1311(a), 1342.

III. COMPLIANCE ORDER

3.1 Respondent admits the jurisdictional allegations contained in this Order. Respondent neither admits nor denies the specific factual findings and conclusions contained in this Order.

3.2 Section 309(a)(3) of the Clean Water Act provides that EPA may issue a compliance order when EPA finds that a person is in violation of Section 301 or any permit condition or limitation in an NPDES permit. 33 U.S.C. §§ 1319(a)(3), 1311.

3.3 Based upon the foregoing Findings and Conclusions, and pursuant to Sections 308 and 309(a) of the Clean Water Act, 33 U.S.C. §§ 1318 and 1319(a), it is AGREED and ORDERED as follows:

3.4 Respondent shall conduct an annual visual survey of the seafood waste pile on the seafloor at latitude 57.039361 and longitude -135. 224859, no later than 90 days following the close of the salmon processing season, which typically occurs in September. Annual visual surveys shall be accompanied by core samples in accordance with Paragraph 3.7 below.

3.5 No later than July 31st of each year, Respondent shall submit a draft Seafloor Monitoring Work Plan to EPA and ADEC for approval. EPA will provide its written response, approving the Plan or requesting modifications, within 30 days of receipt of the draft.

3.6 Respondent shall conduct each visual survey in accordance with the approved plan, including any modifications requested by EPA or ADEC. If ADEC approves a different schedule for conducting visual surveys, *i.e.*, other than annually, Respondent may submit a request to EPA to amend this Order to reflect the revised schedule.

3.7 Each visual survey shall have a scope that extends beyond the boundary of the ZOD and shall include drop camera/video surveys at points located at and outside the visible edge of the ZOD, in accordance with the Seafloor Monitoring Work Plan. The visual survey shall also be accompanied by core samples at the same survey points. The visual surveys, core sampling, and subsequent report shall include stations containing continuous, discontinuous, and trace amounts of visible seafood waste, as defined in the Seafloor Monitoring Work Plan.

3.8 Respondent shall submit a Seafloor Monitoring Report to EPA and ADEC within 90 days of completing each required survey.

3.9 Respondent shall conduct visual surveys until two consecutive surveys show a ZOD measuring less than 1.0 acre. If two consecutive surveys show a ZOD less than 1.0 acre, Respondent may submit a request to EPA, with supporting documentation, to terminate this Order. Any such request must include information on anticipated disposal methods for seafood

processing waste and source control efforts going forward to ensure that the ZOD will be consistently maintained at or below 1.0 acre.

3.10 Respondent shall conduct a benthic assessment of the seafood waste pile at latitude 57.039361 and longitude -135.224859 no later than December 31, 2022. If the ZOD measures less than 1.0 acres after the 2021 visual survey, Respondent may submit a written request to EPA, including supporting documentation, to amend this Order to postpone or eliminate the requirement to conduct a benthic assessment. EPA will evaluate the annual visual survey results and any additional supporting documentation and determine, in its sole discretion, whether an amendment to this requirement is appropriate.

3.11 Respondent shall submit a work plan to EPA for approval at least 90 days before conducting the benthic assessment that complies with the requirements set forth in Exhibit A to this Order. EPA will provide its written response, approving the Plan or requesting modifications, within 30 days of receipt of the draft.

3.12 Respondent shall conduct the benthic assessment in accordance with the EPA-approved plan, including any modifications requested by EPA, and submit a draft Benthic Assessment Report to EPA for review within 90 days of completing field work.

3.13 Respondent shall continue to operate source reduction techniques and employ best management practices at the Sitka Facility to ensure that the ZOD will be reduced to 1.0 acre by December 31, 2022, and consistently maintained at less than 1.0 acre thereafter.

3.14 EPA may require additional analysis or appropriate remediation if the ZOD has not been reduced to less than 1.0 acre by December 31, 2022.

3.15 ***Failure to Comply:*** Failure to timely and appropriately implement to EPA's satisfaction any element of the requirements of this Order will be deemed a violation of this

Order and the Clean Water Act. In the event Respondent is unable to comply with the requirements of this Order, Respondent must, within 10 days of becoming aware of such inability, provide a written notification to EPA containing the following information:

3.15.1. A summary of the specific reasons why Respondent is unable to comply with the requirement;

3.15.2. A summary of all actions taken by Respondent or others that Respondent alleges demonstrate “good faith efforts” to comply with the requirement; and

3.15.3. The expected date by which Respondent will comply with the requirement and the activities to be completed.

3.16 **Submittals:** All submittals, correspondence, and other communications required under this Order will be sent to:

Tara Martich
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
222 W. 7th Avenue #19 (Room 537)
Anchorage, Alaska 99513

3.17 **Confidential Business Information:** Pursuant to 40 C.F.R. §§ 2.201-2.311, Respondent may assert a claim of confidential business information covering any portion of the submittals that is entitled to confidential treatment and which is not effluent data. Respondent must assert a claim in the manner described in 40 C.F.R. § 2.203(b) and describe the basis for the claim under the applicable regulation. Any material for which business confidentiality is claimed should be placed in a separate envelope labeled, “Confidential Business Information.” If Respondent fails to assert a claim, EPA may release the submitted information to the public without further notice. Special rules governing information obtained under the Clean Water Act appear in 40 C.F.R. § 2.302.

3.18 *Scope of Order:*

3.18.1. This Order is not and will not be construed to be a permit under the Clean Water Act, and nothing in this Order will be construed to relieve Respondent of applicable requirements of the Permit or the Clean Water Act. Nothing in this Order will be construed to relieve Respondent of applicable requirements of other federal, state or local laws.

3.18.2. This Order will not be construed to resolve any claims for administrative or civil penalties that may be assessed or sought by EPA or the United States.

3.18.3. This Order will not be construed to preempt or preclude any future administrative order issued by EPA or judicial action brought by the United States. Nothing in this Order will be deemed to constitute a precedent by any party for any future administrative order, consent decree, or civil action relating to the Facility.

3.18.4. No contract between Respondent and a contractor and/or a consultant, or failure to perform by a contractor and/or a consultant, will affect Respondent's obligation to comply with this Order.

3.18.5. This Order will in no way affect the rights of EPA or the United States against any person not a party to this Order.

3.19 ***Records:*** Upon EPA's request, Respondent will provide EPA access to all records and documentation related to conditions at the Sitka Facility and to results or data pertaining to activities conducted under this Order. Respondent will preserve and retain, and will instruct any consultant, contractors, or other persons acting on its behalf to preserve and retain, all records and documents relating to execution of this Order until Respondent receives EPA's written notice of termination of this Order.

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

3.21 The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Order and to bind Respondent to the terms and conditions of this document.

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

IV. EFFECTIVE DATE AND TERMINATION

4.1. This Order will take effect upon signature by EPA.

4.2. This Order will terminate when a written request by Respondent for termination of this Order is granted by EPA in writing or upon EPA's provision of written notice of termination of this Order to Respondent.

V. SANCTIONS

5.1. Failure to comply with any of the provisions of this Order may subject Respondent to (1) civil penalties of up to \$53,484 per day of violation pursuant to Section 309(d) of the Clean Water Act, (2) administrative penalties of up to \$21,393 per day for each violation pursuant to Section 309(g) of the Clean Water Act, or (3) civil action in federal court for injunctive relief pursuant to Section 309(b) of the Clean Water Act. 33 U.S.C. § 1319(d), (g); 40 C.F.R. Part 19; 83 Fed. Reg. 1190. The above penalty amounts are subject to annual adjustments for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114-74).

5.2. EPA reserves the right to take enforcement action as authorized by law for any violation of this Order or any other applicable requirements.

STIPULATED and AGREED this 6th day of September, 2019:

Cora Campbell
CORA CAMPBELL, President and CEO
Silver Bay Seafoods, LLC

It is so ORDERED and AGREED this 11^m day of September, 2019:

Kath McInnes
for EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division