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September 27, 2013

VIA FEDERAL EXPRESS

Administrator Gina McCarthy
U.S. Environmental Protection Agency
Ariel Rios Building
Washington, D.C.

Re: Petition For Rulemaking (40 C.F.R. Part 408)

Dear Administrator McCarthy:

Please find enclosed a Petition for Rulemaking to amend 40 C.F.R. Part 408. Petitioners At Sea Processors Association and Pacific Seafood Processors Association request in the petition that the Environmental Protection Agency initiate a rulemaking proceeding to promulgate new effluent guideline regulations applicable to discharges resulting from the processing of seafood on mobile seafood processing vessels.

We appreciate your consideration of the enclosed Petition and await your determination.

Very truly yours,

Charles R. Blumenfeld

Charles R. Blumenfeld
L. John Iani
Attorneys for the Petitioners

Enclosure

BEFORE THE ADMINISTRATOR OF THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

PETITION FOR RULEMAKING

AT SEA PROCESSORS ASSOCIATION
PACIFIC SEAFOOD PROCESSORS ASSOCIATION

Petitioners

PETITION FOR RULEMAKING SEEKING A NEW SUBPART TO THE CANNED AND PRESERVED SEAFOOD PROCESSING POINT SOURCE 40 C.F.R. PART 408 UNDER THE FEDERAL CLEAN WATER ACT

September 27, 2013

Pursuant to the Administrative Procedure Act and the Clean Water Act, petitioners file this Petition For Rulemaking with the Administrator and respectively request that the Administrator amend 40 C.F.R. Part 408, as follows:

> Promulgate new effluent limitation guidelines applicable to discharges resulting from the processing of seafood on mobile seafood processing vessels.

I. BACKGROUND

In 1975, EPA published national Effluent Limitation Guideline regulations ("ELG") for the Canned and Preserved Seafood Processing Point Source Category (40 C.F.R. Part 408). The ELGs were divided into 33 Subparts covering various processing operations including: Alaskan Hand-Butchered Salmon, Alaskan Mechanized Salmon, Alaskan Bottom Fish, Alaskan Herring Fillets, West Coast Hand-Butchered Salmon, West Coast Mechanized Salmon, West Coast Non-Alaskan Conventional Bottom Fish, Non-Alaskan Mechanized Bottom Fish and Non-Alaskan Herring Fillets.

The 1975 ELGs were promulgated based on the "Development Document for Interim Final Effluent Limitations Guidelines and Proposed New Source Performance Standards for the Fish Meal, Salmon, Bottom Fish, Sardine, Herring, Clam, Oyster, Scallop and Abalone Sedgment of the Canned and Preserved Seafood Processing Point Source Category" ("Development Document") issued in January 1975 by EPA (EPA 440/1-74/041 Group I, Phase II). Neither this document, nor any of the other EPA documents[1] prepared to support the ELGs, address mobile seafood processing vessels because the U.S. seafood processing fleet did not develop until after the implementation of the Magnuson-Stevens Act of 1976 (16 U.S.C. §1801).[2]

NPDES permits issued for facilities that fall within a designated Subpart are required to impose the Best Conventional Control Technology ("BCT") set forth in the ELGs. However, while the ELGs for each subpart purport to constitute BCT for the shore based processing facilities in that subcategory, they are not BCT for mobile seafood processing vessels because EPA never made that determination.

Because of this gap in the regulations, EPA has generally applied the ELGs, which were evaluated only for the shore based processing industry, to mobile seafood processing vessels as well.

Therefore, this petition seeks to have EPA promulgate a specific ELGs for mobile seafood processing vessels that establishes BCT for these vessels.

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[1] These documents include: "Economic Analysis of Interim Final Effluent Guidelines Seafood Processing Industry" published February, 1975 by EPA Office of Planning and Evaluation (EPA-230/1-74-047); "Evaluation of Waste Disposal Practices of Alaska Seafood Processors" published in December, 1974 by the EPA Office of Enforcement (EPA-330/2-75-001); and "Alaska Seafood Processing" published in June, 1973 by EPA Region X (Working Paper 83).

[2] For example, the Development Document states: "[Bottom] fish are delivered to the docks...." (at p. 44a,); and "Most of the solid waste from the Pacific Coast [bottom fish] plants is ground and bagged for the pet and animal food market." (at p. 110). Neither of these statements reflects the mobile seafood processing segment of the industry.

II. THE PETITIONERS

The At Sea Processors Association isa nonprofit trade association representing six companies that own and operate 16 U.S.-flag catcher/processor vessels that participate principally in the Alaska pollock fishery and west coast Pacific whiting fishery.[3]

The Pacific Seafood Processors Association is a nonprofit seafood industry trade association. Its corporate members are major seafood processing companies with operations in Alaska and Washington.[4]

III. THE CURRENT REGULATIONS

In general, the current ELGs establish the same technology-based BCT for all Subparts in the Category, except for Alaska.

Alaska is treated uniquely under the regulations; specifically Alaska is the only state with specific Subparts and the Alaska Subparts are the only ones that distinguish between seafood processing facilities operating in "remote" and "non-remote" areas. For "non-remote" areas (defined as "population and processing centers"), the BCT is screening; the same BCT that is applied to non-Alaska Subparts. However, for "remote" areas, the BCT is grinding, rather than screening.

Recently, EPA issued a General NPDES Permit for Offshore Seafood Processors in Alaska (AK-G52-4000) which covers all seafood processing vessels operating beyond 3 nautical miles from shore. Because those vessels are operating in "remote" areas of Alaska, BCT is grinding. However, since there is no specific subcategory for mobile seafood processing vessels, the BCT for all other vessels operating outside Alaska is screening -- a technology that is not feasible to implement.[5]

This Petition for Rulemaking is submitted to address this discrepancy

IV. RATIONALE SUPPORTING PROPOSED RULE

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[3] American Seafoods Co., Arctic Storm Management Group, Coastal Villages, Glacier Fish Co., LLC, Starbound LLC and Trident Seafoods Corporation.

[4] Alaska General Seafoods, Inc., Alyeska Seafoods, Inc., Golden Alaska Seafoods, LLC, North Pacific Seafoods, Inc., Peter Pan Seafoods, Inc., Phoenix Processor Limited Partnership, Trident Seafoods Corporation, Unisea, Inc., and Westward Seafoods, Inc.

[5] It is important to note that EPA has recognized this issue and attempted to address it on an ad hoc basis. Region 1 issued an NPDES Permit to the M/V Atlantic Freedom operating off the coast of New England in which it recognized that screening, although required by the ELGs, was not the appropriate control technology for the vessel. Instead, it applied the grinding requirements of the Alaska Subpart, stating in the Fact Sheet: "[The Alaskan Herring Fillet] ELGs do not apply to this facility because American Freedom does not operate...in Alaska. However, based on the operating range of American Freedom, the operations of this vessel can be considered comparable to those of remote Alaskan seafood processors."

Petitioners seek to have EPA create a new Subpart for mobile seafood processing vessels with grinding as the BCT.

First, we submit that specific ELGs for this industry segment is appropriate because this classification of mobile seafood processing vessels were not considered when the current ELGs were adopted and there are fundamental differences between mobile seafood processing vessels and shore-based seafood processing facilities -- differences that make screening impossible to implement. Additionally, the mobile seafood processing vessels' impact on the marine environment is significantly different from that of shore based facilities, which further supports the creation of a new ELG that recognizes this important difference.

Second, we submit that grinding is the appropriate BCT. To establish BCT, the Clean Water Act sets forth the factors to be considered; they include: "the reasonableness of the relationship between the costs of attaining a reduction in effluents and effluent reduction benefits derived...and shall take into account the engineering aspects of the application of various types of control techniques, process changes...." 33 U.S.C. 1314(b)(4)(B). Those factors were never evaluated for the mobile seafood processing industry sector.

A. Vessel Characteristics

The mobile seafood processing vessels covered by this petition are engaged in the business of either harvesting and processing their own catches or receiving catches from other catcher vessels and processing while operating underway at-sea at locations in federal jurisdictional waters (beyond 3 nautical miles from the baseline). These vessels are constantly moving while operating, at speeds in excess of 2 nautical miles per hour, and are discharging their processing fish waste materials only while underway. (as opposed to a shore based seafood processing plant that operates constantly at the same fixed location depositing waste materials at a specific discharge location.

These vessels must keep moving while operating and need to transfer substantial amounts of seawater through their processing operations in order to render the fish into marketable products. Unlike shore based seafood processors operating at fixed locations, these mobile seafood processing vessels do not have the space to collect the effluent flows resulting from the ingress of seawater to allow enough solids to reside and settle out to be effectively screened. These mobile seafood processing vessels accept, on average, in excess of 200 metric tons of round fish (mainly pollock or whiting) per day and require an average of 500-800 metric tons of water to move the fish through the production facility. Because they are mobile vessels with limited space and need to remain stable in ocean conditions, the processing effluent must be removed from the vessel as quickly as possible. Excess water can effect the seaworthiness of the vessel. Current practice is to pass the effluent through state of the art grinding systems prior to discharging. As discussed below, the recent Ocean Discharge Criteria Evaluations (ODCE) prepared by EPA have determined no adverse impact on the marine environment results from these discharges.

Without the relief sought in this petition, these mobile seafood processing vessels will be subjected to NPDES permits that incorporate the current and inapposite ELG's that will require screening technology on the vessels' discharge outfalls. Those screens will cause the mobile seafood processing vessels to become unstable and not seaworthy. That will result in an unsafe

operating condition that will be life threatening for those workers because the screening technology require significant holding space and resident time that the vessels cannot provide.

This petition seeks an ELG that allows these vessels to operate safely while protecting the marine environment because NPDES permits will include limits that are appropriate for mobile seafood processing vessels that operate far offshore and discharge in a manner that does not adversely impact their discharge locations because of their constant movement. ELG's need to be promulgated that recognizes this new and distinct seafood processing category.

B. Effluent Characteristics

EPA has consistently recognized that the primary water quality impact of seafood waste discharge results from the deposition of waste material on the seafloor. In EPA's "Final Biological Evaluation For the General NPDES Permit for Offshore Seafood Processors In Alaska" (August, 2009), EPA recognizes that those concerns are not relevant to mobile seafood processing vessels. That document states, in part:

> "In areas with strong currents and high tidal ranges, assimilation is high, waste materials disperse rapidly, and there is little impact on water quality." (at p.60).
>
> "The dynamic environment and mobile facilities will make it unlikely that there will be a significant deposition of seafood deposits on the seafloor.... [T]he mobile offshore processors covered in the proposed permit would be expected to be in high tidal areas with adequate dispersion and dilution where the seafood discharges are not expected to significantly accumulate and effects should be minimum." (at pp. 64-65).

In contrast to shore based processing plants, seafood processing vessels are constantly moving and do not discharge in the same location.

C. Conclusion

Based on the specific characteristics of mobile seafood processing vessels, the location of their operations and the minimal impact, if any, on water quality, we submit that grinding is BCT for mobile seafood processing vessels; therefore, the ELGs should be amended to establish grinding as BCT for this segment of the seafood processing industry

V. THE PROPOSED RULE

Based on the above information, Petitioners request that the Administrator initiate a rulemaking under the Administrative Procedures Act either to:

(1) Add a new Subpart to 40 C.F.R. Part 408 for "Non-Alaskan Mobile Processing Vessels" and to establish effluent limitation guidelines for this new Subpart designating grinding as BCT; or, in the alternative,

(2) Amend Subpart U (Non-Alaskan Conventional Bottom Fish) and Subpart V (Non-Alaskan Mechanized Bottom Fish) of 40 C.F.R. Part 408 to establish effluent limitation guidelines for mobile seafood processing vessels processing those species, designating grinding as BCT.

Respectfully submitted,

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