



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue
Seattle, Washington 98101

December 11, 2002

Reply To
Attn Of: OW-133

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

M. Thomas Waterer ¹
c/o Nautilus Foods
1753 N.W. 57th St. #205
Seattle, WA 98107

Waterkist Corporation ²
1753 N.W. 57th St. #205
Seattle, WA 98107

Waterkist Corporation ³
P.O. Box 727
Valdez, AK 99686

Re: Clean Water Act Administrative Complaint,
EPA Docket No. CWA-10-2003 - 0007

Dear Mr. Waterer:

Enclosed is a copy of the administrative complaint which the U.S. Environmental Protection Agency ("EPA") has filed against Thomas Waterer and Waterkist Corporation dba Nautilus Foods ("Waterkist"), regarding the facility known as Nautilus Foods, located in Valdez, Alaska. The complaint alleges that Waterer and Waterkist ("Respondents") have violated Section 301(a) of the Clean Water Act ("Act"), 33 U.S.C. § 1311. Specifically, Respondents have discharged pollutants into the Port of Valdez in violation of the National Pollutant Discharge Elimination System ("NPDES") permit issued to Nautilus Foods on the dates noted in the complaint. The complaint proposes a penalty of \$137,500 for these violations.

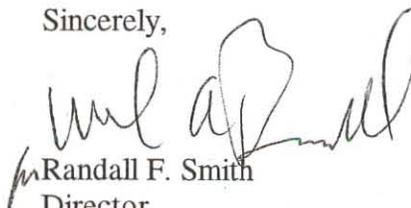
Respondents have the right to a hearing to challenge the factual allegations in the complaint. If Respondents admit the allegations or they are found to be true at an administrative hearing, Respondents still have the right to contest the penalty proposed in the complaint. I have enclosed a copy of the procedures EPA follows in cases of this kind. Section 22.15 of these procedures provides that if Respondents choose to contest the allegations or the penalty EPA is proposing, they must send a response within 30 days after receipt of the complaint to:

Carol Kennedy, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, M/S ORC-158
Seattle, WA 98101.

If Respondents do not file a response by the deadline, each allegation in the complaint will be considered as true. Respondents will have waived their right to appear in this action for any purpose, including its right to be notified of any proceedings that occur before a penalty is imposed.

Respondents may be represented by an attorney in this matter, including any settlement discussions with EPA. If you have questions, wish to discuss a settlement, or would like to extend the 30-day deadline for responding to the complaint, please contact Mark Ryan, Assistant Regional Counsel at (208) 378-5768.

Sincerely,

A handwritten signature in black ink, appearing to read "Randall F. Smith". The signature is written in a cursive style with a large initial "R".

for Randall F. Smith
Director
Office of Water

Enclosures

Part 22 Rules
SEC Disclosure Sheet

cc: Tom Chapple, Director of Air and Water Division, ADEC
Edward P. Weigelt, Jr. ESQ

RECEIVED

02 DEC 11 AM 8:55

HEARINGS CLERK
EPA -- REGION 10

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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the matter of:)	DOCKET NO. CWA-10-2003-0007
Thomas Waterer)	
and)	COMPLAINT
Waterkist Corp. dba Nautilus Foods)	
Valdez, Alaska)	
Respondents.)	
)	
)	
)	

I. AUTHORITIES

1. This Complaint for civil penalties ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA" or "Complainant") by Section 309(g)(2)(B) of the Clean Water Act ("Act" or "CWA"), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 10, who in turn has re delegated it to the Director, Office of Water.

2. Pursuant to Section 309(g)(2)(B) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22 ("Part 22 Rules"), Complainant hereby proposes the assessment of a civil penalty against Thomas Waterer and Waterkist Corporation ("Waterkist"), dba Nautilus Foods ("Respondents") for the

1 unlawful discharge of pollutants into navigable waters in violation of Section 301(a) of the Act, 33
2 U.S.C. § 1311(a).

3 **II. ALLEGATIONS**

4 **A. General Allegations**

5 3. Section 402 of the Act, 33 U.S.C. § 1342, provides that EPA may issue National Pollutant
6 Discharge Elimination System (“NPDES”) permits for the discharge of any pollutant into waters of
7 the United States upon such specific terms and conditions as EPA may prescribe.

8 4. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by
9 any person except as authorized by an NPDES permit or other specified statutory sections

10 5. Respondent Thomas Waterer is the President, General Manager and founder of Waterkist
11 Corporation (“Waterkist”). Respondent Waterer owns 100 percent of the stock of Waterkist.

12 6. Upon information and belief, Respondent Waterkist owns and operates the Nautilus Foods
13 facility located in Valdez, Alaska (“the Facility”).

14 7. Neither “Nautilus Foods,” “Nautilus Foods Corp.” nor “Nautilus Foods, Inc.” is registered
15 as a corporation or licensed to do business in the State of Alaska or Washington.

16 8. At all times relevant to this Complaint, Respondents either owned or controlled the real
17 property that is the subject of this Complaint and/or otherwise directed, controlled or performed the
18 activities that occurred on the real property that is the subject of this Complaint.

19 9. Each Respondent is a “person” within the meaning of Section 502(5) of the Act,
20 33 U.S.C. § 1362(5).

21 10. The Facility, which was under Respondents’ control at all times relevant to this action,
22 discharged seafood process waste. Seafood process wastes are “pollutants” within the meaning of
23 Section 502(6) and (12) of the Act, 33 U.S.C. § 1362(6) and (12).

24 11. The Facility, which was under Respondents’ control at all times relevant to this action,
25 discharged pollutants from its seafood process waste outfall (“the Outfall”) and other discrete
26 conveyances. The Facility, the Outfall and these other discrete conveyances are each considered a
27 “point source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

1 12. At all times relative to this action, the Facility discharged to the Port of Valdez which is
2 "navigable waters," as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), "waters of the
3 United States" as defined in 40 C.F.R. section 122.2 and "waters of the State of Alaska" as defined
4 in Alaska Code 44.03.0900.

5 **B. Permit Requirements**

6 13. On April 12, 1996, "Nautilus Foods, Inc." was authorized to discharge under General
7 NPDES Permit No. AK-G52-0170 ("the 1996 permit"). On September 14, 2001, "Nautilus Foods,
8 A Corporation" was authorized to discharge under the reissued General NPDES Permit No. AK-
9 G52-0170 ("the 2001 permit").

10 14. Both the 1996 permit and the 2001 permit require the permittee to keep the Permit at the
11 facility at all times.

12 15. Part V.C.1.b. of the 1996 permit states that seafood process wastes shall be routed
13 through a waste handling system and discharged through the Outfall.

14 16. Part V.C.1.e. of the 1996 permit specifies that the permittee shall not discharge any other
15 wastewaters that contain foam, floating solids, grease or oily wastes which produce a sheen on the
16 water surface.

17 17. Part V.C.1.f.(3) of the 1996 permit specifies that the permittee shall not discharge
18 seafood sludge, deposits, debris, scum, floating solids, oily wastes or foam which alone or in
19 combination with other substances cause a film, sheen, emulsion or scum on the surface of the water.

20 18. Part V.C.1.f.(5) of the 1996 permit states that the permittee shall not discharge seafood
21 sludge, deposits, debris, scum, floating solids, oily wastes or foam which alone or in combination
22 with other substances cause a scum, emulsion, sludge or solid to be deposited on the bottom.

23 19. Part V.C.1.g. of the 1996 permit states that discharges shall not violate Alaska Water
24 Quality Standards for floating or suspended residues, dissolved oxygen, oil and grease, fecal
25 coliform, pH, temperature, color, turbidity and total residual chlorine beyond the mixing zone.

1 20. Part V.C.1.g. of the 1996 permit and Part V.C.1.l. of the 2001 permit state that settleable
2 solid discharges shall not violate Alaska Water Quality Standards beyond a one-acre Zone of
3 Deposit.

4 21. Part VI.A.6. of the 1996 permit and Part VI.A.5.d of the 2001 permit state that the
5 permittee shall maintain a copy of its best management practices (“BMP”) plan at its facility and
6 make a copy of it available to inspectors upon request.

7 22. Part VI.B.4. of the 1996 permit states that a permittee shall submit its annual report by
8 January 31st of the year following each year of operation.

9 23. Part VI.D. of the 1996 permit and the 2001 permit states that the permittee shall monitor
10 the sea surface and that shoreline monitoring shall be conducted during discharge, and that the
11 monitoring reports shall be submitted annually by January 31st and February 14th of the year
12 following the monitoring, respectively.

13 24. Part VIII.E. of the 1996 permit and the 2001 permit states that a permittee shall at all
14 times properly operate and maintain all facilities and systems of treatment and control that are
15 installed or used by a permittee to achieve compliance.

16 25. Part IV.C.3. of the 2001 permit states that the Notice of Intent shall contain the name of
17 the owner of the facility.

18 26. Part V.C.1.d. of the 2001 permit requires the permittee to daily monitor the sump and
19 Part V.C.1.e. requires the permittee to conduct daily monitoring of the grinder to ensure that it is
20 functioning properly.

21 27. Part V.C.1.f. of the 2001 permit requires that all breaks in the outfall line shall be
22 repaired within 10 days of the failure.

23 **C. Alleged Permit Violations**

24 28. Respondents violated the 1996 permit and the 2001 permit by failing to have a copy of
25 the permit available on-site during the 1998, 1999 and 2000 inspections. This constitutes at least
26 three violations of Section 301(a) of the CWA.

1 29. The Notice of Intent submitted for the Facility names "Nautilus Foods, A Corporation"
2 as the owner of the Facility. The State of Alaska has no record of such a corporation. Respondents
3 violated Part IV.C.3. of the 2001 permit by failing to name the proper owner of the Facility. This
4 constitutes at least one violation of Section 301(a) of the CWA.

5 30. A 1998 Seafloor Survey conducted by Enviro-Tech Diving, Inc. for the Facility
6 documented a Zone of Deposit of 1.48 acres. Sometime after this dive survey, Respondents moved
7 their outfall to deeper water, and have not since surveyed the pile or any new pile created at the new
8 location. Respondents violated Part V.C.1.g. of the 1996 permit and Part V.C.1.1. of the 2001 permit
9 by discharging to the pile(s) in excess of one acre. Each day that the pile(s) exceeds one acre in size
10 constitutes an additional day of violation of the Act. Upon information and belief, the pile continues
11 to exceed one acre in size, thus constituting thus constituting a continuing violation of Section 301(a)
12 of the CWA.

13 31. Respondents violated Part VI.B.4. of the 1996 permit and the 2001 permit by failing to
14 submit Annual Reports for 1998, 1999, 2000 and 2001 to EPA. This constitutes at least four
15 violations of Section 301(a) of the CWA.

16 32. Respondents violated Part VI.D. of the 1996 permit and the 2001 permit by failing to
17 conduct shoreline monitoring in 1999, 2000 and at least parts of 2001 and 2002. Each day
18 Respondents failed to monitor the shoreline as required by the permits constitutes a day of violation
19 of Section 301 of the CWA.

20 33. Respondents violated Part VI.A.6. of the 1996 permit and Part VI.A.5.d. of the 2001
21 permit by failing to have a copy of the BMP plan available on-site during the 1998, 1999, 2000 and
22 2002 inspections. This constitutes at least four violations of Section 301(a) of the CWA.

23 34. Respondents violated Part V.C.1.f.(3) of the 1996 permit, when they discharged seafood
24 sludge, deposits, debris, scum, floating solids, oily wastes or foam which alone or in combination
25 with other substances cause a film, sheen, emulsion or scum on the surface of the water, beyond the
26 authorized mixing zone, on September 21, 2000. This constitutes one violation of Section 301(a) of
27 the CWA.

1 35. Respondents violated Parts V.C.1.b. and V.C.1.h. of the 1996 permit by discharging food
2 processing waste through a conveyance (through a door to a ramp and into the receiving water) other
3 than the waste handling system, and violated Alaska Water Quality Standards on September 21,
4 2000. This constitutes at least one violation of Section 301(a) of the CWA.

5 36. During the September 21, 2000 inspection, an ADEC inspector was notified that an
6 outfall pipe that had broken on August 3, 2000 had not been repaired. On July 22, 2002, the pipe
7 was still leaking below the dock. Upon information and belief, Respondents had not repaired the
8 outfall pipe, and it continues to discharge to the Port of Valdez from the break in the line. Each day
9 that the outfall pipe leaks constitutes an additional day of violation of Section 301(a) of the CWA.

10 37. Respondents violated Part VIII.E. of the 1996 permit and the 2001 permit by failing to
11 properly operate and maintain the Facility in a manner to avoid the violations alleged herein.

12 38. Respondents violated Part V.C.1.e. of the 2001 permit when they failed to monitor the
13 grinder on July 22, 2002. Upon information and belief, Respondents have failed to monitor their
14 grinder during each day of operation during 2002 and at times more fully known to Respondents.

15 39. For the violations described above, under Section 309(g)(2)(B) of the CWA and the Debt
16 Collection Improvement Act of 1996, 31 U.S.C. § 3701, Respondents are liable for the
17 administrative assessment of civil penalties in an amount not to exceed \$11,000 per day for each day
18 during which a violation continues, up to a maximum of \$137,500.

19 **III. PROPOSED PENALTY**

20 40. Based on the foregoing authorities and allegations, Complainant hereby proposes to issue
21 a Final Order assessing administrative penalties against Respondents, for the violations cited above,
22 in the amount of ONE HUNDRED THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS
23 (\$137,500).

24 41. Pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), EPA must determine
25 the specific penalty to be assessed in this matter by taking into account the nature, circumstances,
26 extent and gravity of the violation, and, with respect to Respondents, ability to pay, prior history of
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1 violations, degree of culpability, economic benefit and savings (if any) resulting from the violations,
2 and such other matters as justice may require.

3 42. The nature, circumstances, extent and gravity of the violations described above are
4 significant. Respondents' failure to route all seafood process waste through the waste-handling
5 system and to properly operate and maintain all facilities and systems of treatment and control that
6 are installed or used to achieve compliance resulted in the deposition of excessive seafood process
7 waste on the sea floor and in the water column. This has caused significant environmental harm to
8 the water and sea bottom near the Outfall. In addition, Respondents have repeatedly failed to
9 monitor discharges from the Facility and the surrounding environment as required by the 1996
10 permit and the 2001 permit. Unless a permittee monitors as required by the permit, it will be
11 difficult if not impossible for state and federal officials charged with enforcement of the Clean Water
12 Act to know whether or not the permittee is discharging effluent in excess of the permit's maximum
13 levels.

14 43. Based on the information available to EPA regarding Respondents' financial condition,
15 Respondent appears able to pay a civil penalty of up to \$137,500. Should Respondents submit
16 information substantiating an inability to pay this amount, the specific assessed penalty will be
17 adjusted to reflect this inability.

18 44. Respondents have an extensive prior history of violations. In 1992, EPA filed complaint
19 against Nautilus Marine, Inc., a seafood processor owned by one or more of the Respondents in the
20 present case, that operated the same facility that is at issue in the instant action, alleging violations of
21 the CWA. Prior to 1992, Respondents or predecessor companies owned by the same owner of
22 Respondents received notices of violation from the Alaska Department of Environmental
23 Conservation ("ADEC"). Inspectors from ADEC have also documented other violations of the
24 CWA in the past at this facility.

25 45. Respondents' degree of culpability is high. Despite a prior history of violations, and
26 prior knowledge of current and on-going violations, Respondents continue to violate the Clean Water
27 Act. Each inspection of Respondents' Facility has uncovered a large number of violations, and
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1 Respondents have been notified during these inspections of on-going noncompliance issues; yet
2 these violations have continued largely unabated.

3 46. By delaying the costs associated with properly operating and maintaining all facilities
4 and systems of treatment and control installed or used to achieve compliance and failing to route all
5 seafood process waste through the waste-handling system, Respondents realized an economic benefit
6 as a result of the violations alleged above. In addition, Respondents realized an economic benefit
7 from failing to route all seafood process wastes; and failing to conduct seafloor, shoreline and
8 surface water monitoring, or use other methods to ensure compliance with the permit provisions
9 listed above.

10 **IV. OPPORTUNITY TO REQUEST A HEARING**

11 47. Respondents each have the right to file an Answer requesting a hearing on any material
12 fact contained in this Complaint or on the appropriateness of the penalty proposed herein. Upon
13 request, the Presiding Officer may hold a hearing for the assessment of these civil penalties,
14 conducted in accordance with the provisions of the Part 22 Rules and the Administrative Procedure
15 Act, 5 U.S.C. § 551 *et seq.* A copy of the Part 22 Rules accompanies this Complaint.

16 48. Respondents' Answer(s), including any request for hearing, must be in writing and must
17 be filed with:

18 Regional Hearing Clerk
19 U.S. Environmental Protection Agency
1200 Sixth Avenue, Mail Stop ORC-158
20 Seattle, Washington 98101.

21 **V. FAILURE TO FILE AN ANSWER**

22 49. To avoid a default order being entered pursuant to 40 C.F.R. § 22.17, Respondents must
23 file a written Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days after
24 service of this Complaint.

25 50. In accordance with 40 C.F.R. § 22.15, Respondents' Answer(s) must clearly and directly
26 admit, deny, or explain each of the factual allegations contained in this Complaint with regard to
27 which Respondents have any knowledge. Respondents' Answer(s) must also state: (1) the
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1 circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts
2 which Respondents intends to place at issue; and (3) whether a hearing is requested. Failure to
3 admit, deny or explain any material factual allegation contained herein constitutes an admission of
4 the allegation.

5 **VI. INFORMAL SETTLEMENT CONFERENCE**

6 51. Whether or not Respondents request a hearing, Respondents may request an informal
7 settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of
8 settling this matter. To request such a settlement conference, Respondents should contact:

9 Mark A. Ryan
10 Assistant Regional Counsel
11 U.S. Environmental Protection Agency, Idaho Office
12 1435 N. Orchard St.
Boise, ID 83706
(208) 378-5768.

13 Note that a request for an informal settlement conference does not extend the thirty (30) day period
14 for filing a written Answer to this Complaint, nor does it waive Respondents' right to request a
15 hearing.

16 **VII. RESERVATIONS**

17 52. Neither assessment nor payment of an administrative civil penalty pursuant to this
18 Complaint shall affect Respondents' continuing obligations to comply with: (1) the Clean Water Act
19 and all other environmental statutes; (2) the terms and conditions of all applicable Clean Water Act
20 permits; and (3) any Compliance Order issued to Respondents under Section 309(a) of the Act, 33
21 U.S.C. § 1319(a), concerning the violations alleged herein.

22 **VIII. QUICK RESOLUTION AND SETTLEMENT**

23 53. In accordance with Section 22.18 of the Consolidated Rules of Practice, Respondents
24 may resolve this action at any time after ten (10) days following the close of public comment on this
25 Complaint by mailing the proposed penalty in full to:

26 EPA Region 10 Hearing Clerk
27 P.O. Box 360903M
Pittsburgh, Pennsylvania 15251-6903.

1 Respondents are advised that, after the Complaint is issued, the Consolidated Rules of Practice
2 prohibit any *ex parte* (unilateral) discussion of the merits of these or any other factually related
3 proceedings with the Administrator, the Environmental Appeals Board or its members, the
4 Regional Administrator, the Regional Judicial Officer, the Presiding Officer or any other person
5 who is likely to advise these officials in the decision on the case.

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7 Dated this 10th day of December, 2002.

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10 _____
11 Randall F. Smith
12 Director
13 Office of Water
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CERTIFICATE OF SERVICE

I certify that the foregoing "Complaint" was sent to the following persons, in the manner specified, on the date below:

Original and one copy, hand-delivered:

Carol Kennedy, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101.

Copy, together with a cover letter, by certified mail, return receipt requested:

M. Thomas Waterer
1753 N.W. 57th St. #205
Seattle, Washington 98107

Waterkist Corporation
P.O. Box 727
Valdez, AK 99686

Waterkist Corp. 3
P.O. Box 727
Valdez, Alaska 99686

Edward P. Weigelt, Jr. 4
4300 198th St. N.W.
Lynwood, WA 98036

Dated: December 11, 2022 Melissa L. Whitaker
Melissa Whitaker
U.S. EPA Region 10