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HEARINGS CLERK
EPA--REGION 10

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

NorQuest Seafoods, Inc.
Ketchikan, Alaska,

Respondent.

DOCKET NO. CWA-10-2001-0089

ADMINISTRATIVE COMPLAINT

I. AUTHORITIES

1. This administrative 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"), 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 redelegated 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 NorQuest Seafoods, Inc ("Respondent") for the unlawful discharge of pollutants into navigable waters in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

II. ALLEGATIONS

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

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

5. Respondent owns and operates the NorQuest Seafoods, Inc facility located at 1705 Tongass Avenue, Ketchikan, Alaska 99901 ("Facility").

6. Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

7. Respondent is authorized to discharge pollutants from the Facility under General NPDES Permit No. AK-G52-0132 ("Permit"). The Permit became effective on August 4, 1995, expired on August 4, 2000, and is currently administratively extended.

8. The Facility, which was under Respondent's control at all times relevant to this action, discharged seafood process waste. Seafood process wastes are "pollutants" within the meaning of Section 502(6) and (12) of the Act, 33 U.S.C. § 1362(6) and (12).

9. The Facility, which was under Respondent's control at all times relevant to this action, discharged pollutants through floor drains and from other confined and discrete conveyances each which is considered a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

10. The Facility, which was under Respondent's control at all times relevant to this action, discharged pollutants through a point source to Tongass Narrows which is "waters of the United States," as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7).

11. Part V.C.1.b. of the Permit states that Respondent shall route all seafood process wastes through a waste-handling system.

1 12. Part V.III.E of the Permit states that Respondent shall at all times properly operate and
2 maintain all facilities and systems of treatment and control (and related appurtenances) that are
3 installed or used by a permittee to achieve compliance.

4 13. Part V.C.1.f.(3) of the Permit specifies that Respondent shall not discharge seafood
5 sludge, deposits, debris, scum, floating solids, oily wastes, or foam which alone or in combination
6 with other substances cause a film, sheen, emulsion, or scum on the surface of the water.

7 14. Part V.C.1.e of the Permit specifies that Respondent shall not discharge any other such
8 wastewaters that contain foam, floating solids, grease, or oily wastes which produce a sheen on the
9 water surface.

10 15. Part V.C.1.g of the Permit states that discharges shall not violate Alaska Water Quality
11 Standards for floating or suspended residues, dissolved oxygen, oil and grease, fecal coliform, pH,
12 temperature, color, turbidity, and total residual chlorine beyond the mixing zone.

13 16. On July 12, 2000, EPA conducted an NPDES inspection of the Facility.

14 17. During the July 12, 2000 inspection, the EPA inspector observed that Respondent failed
15 to route all seafood process wastes through a waste-handling system.

16 18. During the July 12, 2000 inspection, the EPA inspector observed that Respondent failed
17 to properly operate and maintain all facilities and systems of treatment and control (and related
18 appurtenances) that were installed or used by Respondent to achieve compliance.

19 19. During the July 12, 2000 inspection, the EPA inspector observed that Respondent
20 discharged seafood sludge, deposits, debris, scum, floating solids, oily wastes, or foam which alone
21 or in combination with other substances cause a film, sheen, emulsion, or scum on the surface of the
22 water.

23 20. During the July 12, 2000 inspection, the EPA inspector observed that Respondent
24 discharged wastewaters that contained foam, floating solids, grease, or oily wastes which produced a
25 sheen on the water surface.

1 21. The violations alleged in paragraph 17 through 20 above, observed during the July 12,
2 2000 inspection, and violation of the permit requirement in paragraph 15 above, together constitute
3 at least five violations in one day of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

4 22. For the violations described above, under Section 309(g)(2)(B) of the Act and the Debt
5 Collection Improvement Act of 1996, 31 U.S.C. § 3701, Respondent is liable for the administrative
6 assessment of civil penalties in an amount not to exceed \$11,000 per day for each day during which a
7 violation continues, up to a maximum of \$137,500.

8 **III. PROPOSED PENALTY**

9 23. Based on the foregoing authorities and allegations, Complainant hereby proposes to issue
10 a Final Order assessing administrative penalties against Respondent, for the violations cited above,
11 in the amount not to exceed FIFTY FIVE THOUSAND DOLLARS (\$55,000).

12 24. In accordance with Section 22.14 of the Part 22 Rules, 40 C.F.R. § 22.14(a)(4)(ii), this
13 Complaint does not include a specific penalty demand. Pursuant to Section 309(g)(3) of the Act, 33
14 U.S.C. § 1319(g)(3), EPA must determine the specific penalty to be assessed in this matter by taking
15 into account the nature, circumstances, extent, and gravity of the violation, and, with respect to
16 Respondent, ability to pay, prior history of violations, degree of culpability, economic benefit and
17 savings (if any) resulting from the violation, and such other matters as justice may require.

18 25. The nature, circumstances, extent, and gravity of the violations described above are
19 significant. Respondent's failure to route all seafood process waste through the waste-handling
20 system and its failure to properly maintain all facilities and systems of treatment and control installed
21 or used to achieve compliance has the potential to increase seafood waste deposition on the sea floor.
22 Settleable materials which blanket the bottom of water bodies damage the invertebrate populations,
23 and remove dissolved oxygen from overlying waters. The presence of foam and floating solids
24 causing scum on the surface of a water body can increase turbidity. Turbid water caused by foam
25 and floating solids causing scum has the potential to decrease the depth of light penetration into the
26 water body, thereby reducing the depth of the photic zone. This reduces primary production and
27 decreases fish food. Additionally, with the increase in turbidity, the near-surface waters are heated

1 because of the greater heat absorbency of the particulate material which tends to stabilize the water
2 column and prevent vertical mixing. Such mixing reductions decrease the dispersion of dissolved
3 oxygen and nutrients to lower portions of the water body. Turbid water, caused by foam and floating
4 solids causing scum, also interferes with recreational use and aesthetic enjoyment of water.

5 26. Based on the information available to EPA regarding Respondent's financial condition,
6 Respondent appears able to pay a civil penalty of up to \$55,000. Should Respondent submit
7 information substantiating an inability to pay this amount, the specific assessed penalty will be
8 adjusted to reflect this inability.

9 27. Respondent's degree of culpability is high. Respondent's culpability is shown by the
10 number of violations found in just a one-day inspection.

11 28. By delaying the costs associated with properly operating and maintaining all facilities
12 and systems of treatment and control installed or used to achieve compliance and failing to route all
13 seafood process waste through the waste-handling system, Respondent realized an economic benefit
14 as a result of the violations alleged above. In addition, Respondent realized an economic benefit
15 from failing to use de-foaming agents, properly operate and maintain treatment systems, or use other
16 methods to ensure compliance with the permit provisions listed above.

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

18 29. Respondent has the right to file an Answer requesting a hearing on any material fact
19 contained in this Complaint or on the appropriateness of the penalty proposed herein. Upon request,
20 the Presiding Officer may hold a hearing for the assessment of these civil penalties, conducted in
21 accordance with the provisions of the Part 22 Rules and the Administrative Procedure Act, 5 U.S.C.
22 § 551 *et seq.* A copy of the Part 22 Rules accompanies this Complaint.

23 30. Respondent's Answer, including any request for hearing, must be in writing and must be
24 filed with:

25 Regional Hearing Clerk
26 U.S. Environmental Protection Agency
27 1200 Sixth Avenue, Mail Stop ORC-158
28 Seattle, Washington 98101

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

2 31. To avoid a default order being entered pursuant to 40 C.F.R. § 22.17, Respondent must
3 file a written Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days after
4 service of this Complaint.

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

11 **VI. INFORMAL SETTLEMENT CONFERENCE**

12 33. Whether or not Respondent requests a hearing, Respondent may request an informal
13 settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of
14 settling this matter. To request such a settlement conference, Respondent should contact:

15 Ciannat Howett
16 Assistant Regional Counsel
17 U.S. Environmental Protection Agency, Region 10
18 1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101
(206) 553-7359

19 Note that a request for an informal settlement conference does not extend the thirty (30) day period
20 for filing a written Answer to this Complaint, nor does it waive Respondent's right to request a
21 hearing.

22 **VII. RESERVATIONS**

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


1 **VIII. QUICK RESOLUTION AND SETTLEMENT**

2 35. In accordance with Section 22.18 of the Consolidated Rules of Practice, Respondent may
3 resolve this action at any time after ten (10) days following the close of public comment on this
4 Complaint by mailing the proposed penalty in full to:

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

7 36. Respondent is advised that, after the Complaint is issued, the Consolidated Rules of
8 Practice prohibit any *ex parte* (unilateral) discussion of the merits of these or any other factually
9 related proceedings with the Administrator, the Environmental Appeals Board or its members, the
10 Regional Administrator, the Regional Judicial Officer, the Presiding Officer, or any other person
11 who is likely to advise these officials in the decision on the case.

12
13 Dated this 26th day of February, 2001

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15 
16 in Randall F. Smith
Director
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:

Mary Shillcutt, 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 and copy of the Part 22 Rules, by certified mail, return receipt requested:

MENHV, Inc., Registered Agent
NorQuest Seafoods, Inc.
600 University Street Suite 2700
Seattle, Washington 98101

John Garner, Representative
NorQuest Seafoods, Inc.
4225 23rd Avenue West
Seattle, Washington 98199

Leigh Gerber, Plant Manager
NorQuest Seafoods, Inc
1705 Tongass Avenue
Ketchikan, Alaska 99901

Dated: February 27, 2001

Melissa L. Whitaker
Melissa Whitaker
U.S. EPA Region 10