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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the matter of:)	DOCKET NO. CWA-10-2001-0053
Icicle Seafoods, Inc.)	ADMINISTRATIVE COMPLAINT
Seward, Alaska)	
)	
Respondent.)	
)	
)	
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)	

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 Icicle 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).

1 **II. ALLEGATIONS**

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

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

7 5. Respondent owns and operates the Icicle Seafoods, Inc. facility located at 601 Port
8 Avenue, Seward, Alaska 99664 (“Facility”).

9 6. Respondent is a “person” within the meaning of Section 502(5) of the Act,
10 33 U.S.C. § 1362(5).

11 7. Respondent is authorized to discharge pollutants from the Facility under General NPDES
12 Permit No. AK-G52-0488 (“Permit”). The Permit became effective on August 4, 1995, expired on
13 August 4, 2000, and is currently administratively extended.

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

17 9. The Facility, which was under Respondent’s control at all times relevant to this action,
18 discharged pollutants from its seafood process waste outfall (“Outfall”). The Outfall is a point
19 source, within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

20 10. The Facility, which was under Respondent’s control at all times relevant to this action,
21 discharged pollutants from the Outfall to the Resurrection Bay which is waters of the United States,
22 as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7).

23 11. Part V.C.1.f.(3) of the Permit specifies that Respondent shall not discharge 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.

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

4 13. Part V.C.1.g of the Permit specifies that Respondent shall not discharge in violation of
5 Alaska Water Quality Standards for settleable solid residues beyond a one (1) acre zone of deposit.

6 14. On July 20, 2000, EPA conducted an NPDES inspection of the Facility including the
7 Outfall and the area surrounding the Outfall.

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

12 16. On May 1, 2000, EPA sent the Facility a Clean Water Act Section 308 Information
13 Request. In a letter dated June 1, 2000, the Facility responded by submitting Dive Surveys for the
14 years 1998 through 2000. These Dive Surveys showed that, from at least October 1, 1999 to the
15 present (a period of at least 365 days), the Facility has been discharging pollutants in violation of
16 Alaska Water Quality Standards for settleable solid residues beyond a one (1) acre zone of deposit.

17 17. The violations alleged in paragraph 15 above, arising from the July 20, 2000 inspection,
18 constitute at least two violations over one day of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

19 18. The violations alleged in paragraph 16 above constitute at least 365 days of violation of
20 the Facility's zone of deposit, during the 2000 discharge season. These violations constitute 365
21 violations of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

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

1 **III. PROPOSED PENALTY**

2 20. Based on the foregoing authorities and allegations, Complainant hereby proposes to issue
3 a Final Order assessing administrative penalties against Respondent, for the violations cited above,
4 in the amount not to exceed ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED
5 DOLLARS (\$137,500).

6 21. The proposed penalty amount was determined by Complainant after taking into account
7 the nature, circumstances, extent, and gravity of the violations; Respondent's ability to pay, prior
8 history of violations, degree of culpability; economic benefit and savings resulting from the
9 violations, and other appropriate factors, to the extent the information is available for such
10 determinations.

11 22. The violations described above are significant. Depositing seafood waste in excess of a
12 one (1) acre zone of deposit increases the settleable materials on the sea floor. Settleable materials
13 which blanket the bottom of water bodies damage the invertebrate populations, and remove
14 dissolved oxygen from overlying waters. The presence of scum and foam on the surface of a water
15 body can increase turbidity. Turbid water interferes with recreational use and aesthetic enjoyment of
16 water. Turbid water also has the potential to decrease the depth of light penetration into the water
17 body, thereby reducing the depth of the photic zone. This reduces primary production and
18 decreases fish food. Additionally, with the increase in turbidity, the near surface waters are heated
19 because of the greater heat absorbency of the particulate material which tends to stabilize the water
20 column and prevent vertical mixing. Such mixing reductions decrease the dispersion of dissolved
21 oxygen and nutrients to lower portions of the water body.

22 23. Based on the information available to EPA regarding Respondent's financial condition,
23 Respondent appears able to pay the proposed penalty.

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

25 24. Respondent has the right to file an Answer requesting a hearing on any material fact
26 contained in this Complaint or on the appropriateness of the penalty proposed herein. Upon request,
27 the Presiding Officer may hold a hearing for the assessment of these civil penalties, conducted in

1 accordance with the provisions of the Part 22 Rules and the Administrative Procedure Act, 5 U.S.C.
2 § 551 *et seq.* A copy of the Part 22 Rules accompanies this Complaint.

3 25. Respondent's Answer, including any request for hearing, must be in writing and must be
4 filed with:

5 Regional Hearing Clerk
6 U.S. Environmental Protection Agency
7 1200 Sixth Avenue, Mail Stop ORC-158
8 Seattle, Washington 98101

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

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

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

18 **VI. INFORMAL SETTLEMENT CONFERENCE**

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

22 Ciannat Howett
23 Assistant Regional Counsel
24 U.S. Environmental Protection Agency, Region 10
25 1200 Sixth Avenue, Mail Stop ORC-158
26 Seattle, Washington 98101
27 (206) 553-7359

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

4 **VII. RESERVATIONS**

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

10 **VIII. QUICK RESOLUTION AND SETTLEMENT**

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

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

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

21
22 Dated this ___ day of _____, 2000

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24 _____
25 Randall F. Smith
26 Director
27 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:

Don Giles, Registered Agent
Icicle Seafoods, Inc.
4019 21st Avenue West
Seattle, Washington 98119

Dated: _____
Cindy Phung
U.S. EPA Region 10