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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the matter of:)	DOCKET NO. CWA-10-2001-0052
)	
Trident Seafoods Corporation)	ADMINISTRATIVE COMPLAINT
Ketchikan, 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 Trident

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

3 **II. ALLEGATIONS**

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

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

9 5. Respondent owns and operates the Trident Seafoods Corporation facility located at 720
10 Stedman, Ketchikan, Alaska 99901 (“Facility”).

11 6. Respondent is a “person” within the meaning of Section 502(5) of the Act,
12 33 U.S.C. § 1362(5).

13 7. Respondent is authorized to discharge pollutants from the Facility under General NPDES
14 Permit No. AK-G52-0002 (“Permit”). The Permit became effective on August 4, 1995, expired on
15 August 4, 2000, and is currently administratively extended.

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

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

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

25 11. Section V.C.1.b of the Permit states that Respondent shall not discharge waste solids
26 from the end of the pipe that exceed one half (0.5) inch in any dimension.

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

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

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

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

12 16. On July 13 and 14, 2000, EPA conducted an NPDES inspection of the Facility including
13 the Outfall and the area surrounding the Outfall.

14 17. During the July 13 and 14, 2000 inspection, the EPA inspector observed that Respondent
15 discharged seafood process waste with dimensions greater than 0.5 inches.

16 18. During the July 13 and 14, 2000 inspection, the EPA inspector observed that Respondent
17 discharged seafood sludge, deposits, debris, scum, floating solids, oily wastes, or foam which alone
18 or in combination with other substances cause a film, sheen, emulsion, or scum on the surface of the
19 water.

20 19. During the July 13 and 14, 2000 inspection, the EPA inspector observed that Respondent
21 discharged wastewaters that contained foam, floating solids, grease, or oily wastes which produced a
22 sheen on the water surface.

23 20. On October 7, 1999, EPA sent the Facility a Clean Water Act Section 308 Information
24 Request. In response to the Information Request, the Facility submitted a May 2000 Dive Survey.
25 This Dive Survey showed that, during the discharge season of 2000 (a period of at least 51 days), the
26 Facility discharged pollutants in violation of Alaska Water Quality Standards for settleable solid
27 residues beyond a one (1) acre zone of deposit.

1 21. The violations alleged in paragraphs 17 through 19 above, arising from the July 13 and
2 14 inspection, constitute at least seven violations over two days of Section 301(a) of the Act, 33
3 U.S.C. § 1311(a).

4 22. The violations alleged in paragraph 20 above constitute at least 51 days of violation of
5 the Facility's zone of deposit, during the 2000 discharge season. These violations constitute 51
6 violations of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

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

11 **III. PROPOSED PENALTY**

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

16 25. The proposed penalty amount was determined by Complainant after taking into account
17 the nature, circumstances, extent, and gravity of the violations; Respondent's ability to pay, prior
18 history of violations, degree of culpability; economic benefit and savings resulting from the
19 violations, and other appropriate factors, to the extent the information is available for such
20 determinations.

21 26. The violations described above are significant. Depositing seafood waste in excess of a
22 one (1) acre zone of deposit increases the settleable materials on the sea floor. Settleable materials
23 which blanket the bottom of water bodies damage the invertebrate populations, and remove
24 dissolved oxygen from overlying waters. The presence of scum and foam on the surface of a water
25 body can increase turbidity. Turbid water interferes with recreational use and aesthetic enjoyment of
26 water. Turbid water also has the potential to decrease the depth of light penetration into the water
27 body, thereby reducing the depth of the photic zone. This reduces primary production and

1 decreases fish food. Additionally, with the increase in turbidity, the near surface waters are heated
2 because of the greater heat absorbency of the particulate material which tends to stabilize the water
3 column and prevent vertical mixing. Such mixing reductions decrease the dispersion of dissolved
4 oxygen and nutrients to lower portions of the water body.

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

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

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

13 29. Respondent's Answer, including any request for hearing, must be in writing and must be
14 filed with:

15 Regional Hearing Clerk
16 U.S. Environmental Protection Agency
17 1200 Sixth Avenue, Mail Stop ORC-158
18 Seattle, Washington 98101

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

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

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

1 **VI. INFORMAL SETTLEMENT CONFERENCE**

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

5 Ciannat Howett
6 Assistant Regional Counsel
7 U.S. Environmental Protection Agency, Region 10
8 1200 Sixth Avenue, Mail Stop ORC-158
9 Seattle, Washington 98101
10 (206) 553-7359

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

14 **VII. RESERVATIONS**

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

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

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

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

Dated this ___ day of _____, 2000

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:

Hartley Paul, Registered Agent
Trident Seafoods Corporation
1420 5th Avenue, Suite 4100
Seattle, Washington 98101

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