



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2008 JUL 31 PM 3:51
REGIONAL HEARING
CLERK

CERTIFIED MAIL - RETURN RECEIPT REQUESTS
ITEM NUMBER 70053110000059323106

July 31, 2008

Barry S. Cohen, Esq.
Certilman Balin Associates
1393 Veterans Memorial Highway
Suite 301 S
Hauppauge, New York 11788

RE: In the Matter of Applied Genetics, Inc. Dermatics
Docket No. CWA-02-2008-3305

Dear Barry:

Enclosed is a copy of the Consent Agreement and Final Order (CA/FO) in the above-referenced matter. This CA/FO was fully executed on July 29, 2008.

Please note that the penalty of \$23,000.00 is required to be paid in three installments and received by EPA as set forth in paragraph 11 of the CA/FO.

Sincerely,

Diane T. Gomes, Esq.

Enclosure

cc: Karen Maples
Regional Hearing Clerk (w/enclosures)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In The Matter of

**Applied Genetics, Inc. Dermatics
205 Buffalo Avenue
Freeport, New York 11520**

Respondent.

Proceeding pursuant to Section 309(g) of
the Clean Water Act. 33 U.S.C. §1319(g)

DOCKET NO. CWA-02-2008-3505

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG II
2008 JUL 31 PM 3:51
REGIONAL HEARING
CLERK

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner.

Copy by Certified Mail
Return Receipt Requested:

Barry S. Cohen, Esq.
Certilman Balin Associates
1393 Veterans Memorial Highway
Suite 301 S
Hauppauge, New York 11788

Original and One Copy
By Internal Mail (pouch):

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, New York 10007-1866

Copy By
Internal Mail (pouch) :

Helen S. Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency – Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Date: 7-31-08



Ana Madera, Secretary

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2**

IN THE MATTER OF:

**Applied Genetics, Inc. Dermatics
205 Buffalo Avenue
Freeport, New York 11520**

Respondent.

Proceeding pursuant to Section 309(g) of
the Clean Water Act, 33 U.S.C. §1319(g)

**CONSENT AGREEMENT
AND
FINAL ORDER**

DOCKET NO. CWA-02-2008-3305

CONSENT AGREEMENT AND ORDER

Complainant, the United States Environmental Protection Agency ("EPA"), having issued the Complaint herein on December 5, 2007, against Applied Genetics, Inc., Dermatics, ("Respondent"), and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed, and ordered as follows:

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319.
2. The Complaint alleges that the Respondent has violated Sections 307(d) and 308(a) of the Act, and its implementing pretreatment regulations, found at 40 C.F.R. Parts 403 and 439, at its Facility located in Freeport, New York.

3. EPA notified the State of New York regarding this action and offered an opportunity for the State to confer with EPA on the proposed penalty assessment, pursuant to 40 C.F.R. Part 22.
4. This action was public noticed. No public comment was received.
5. Respondent filed an Answer and requested a hearing in this matter.
6. This Consent Agreement and Final Order shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
7. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained in the Complaint, consents to the terms of this Consent Agreement and Final Order.
8. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

II. TERMS OF SETTLEMENT

9. Pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. ' 1319(g), the nature of the violations, and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of TWENTY-THREE THOUSAND (\$23,000.00) DOLLARS.
10. For purposes of settlement, Respondent consents to the issuance of this Consent Agreement and consents to the payment of the civil penalty cited in the foregoing Paragraph.

II. A. Penalty

11. Respondent shall pay the penalty of TWENTY-THREE THOUSAND (\$23,000.00) DOLLARS by cashier's or certified check, payable to the "Treasurer of the United States of America", identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document, in accordance with the schedule set forth below:

| | Payment | Due Date |
|-----------------------------|--|---|
| 1 st installment | \$8,000.00 | No later than forty-five (45) calendar days after the date of the signature of the Final Order (at the end of this document). |
| 2 nd Installment | \$7,500.00 principal plus \$314.38 interest = \$7,814.38 | January 31, 2009 |
| 3 rd Installment | \$7,500.00 principal plus \$375.00 interest = \$7,875.00 | January 31 2010 |

12. Each check shall be mailed to:

U.S. Environmental Protection Agency
 Fines and Penalties
 Cincinnati Finance Center
 PO Box 979077
 St. Louis, MO 63197-9000

Respondents shall also send copies of these payments to each of the following:

Henry Mazzucca, P.E., Chief
 Compliance Section
 Water Compliance Branch
 U.S. EPA, Region 2
 290 Broadway, 20th Floor
 New York, NY 10007

Regional Hearing Clerk
 U.S. Environmental Protection Agency, Region 2
 290 Broadway, 16th Floor
 New York, New York 10007

The respective dates by which payments must be received shall hereafter be referred to as the "due date".

- a. failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection;
- b. further, if the payment is not received on or before the respective due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date;
- c. in addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. § 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter;
- d. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.

The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or state taxes.

II. B. General Provisions


13. Respondent shall submit all notices and reports required by this Consent Agreement and Final Order by first class mail to:

Henry Mazzucca, P.E., Chief
Compliance Section
Water Compliance Branch
U.S. EPA, Region 2
290 Broadway, 20th Floor
New York, NY 10007
14. The Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
15. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of

Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.



16. This Consent Agreement and Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
17. This Consent Agreement and Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in the Complaint. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
18. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
19. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this Consent Agreement and Order.

RESPONDENT:

BY: 
Daniel Yarosh
President and CEO
Applied Genetics Inc., Dermatics
205 Buffalo Avenue
Freeport, New York 11520

DATE: July 8, 2008

COMPLAINANT:

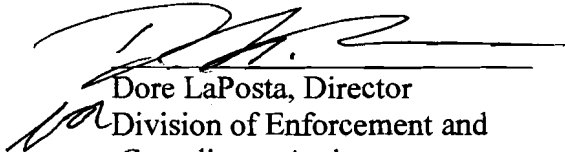
BY: 
 Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. EPA, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866

DATE: 7/29/08

III. FINAL ORDER

The Director of the Division of Enforcement and Compliance Assistance, U.S. Environmental Protection Agency Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, NY.

7/29/08
Date


Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. EPA, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866