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BEFORE THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

In the matter of:)	
)	No. CWA-10-2003-0007
Thomas Waterer, and Waterkist)	
Corporation, d/b/a Nautilus Foods)	Respondents' Motion For
Valdez, Alaska,)	Extension of Time To File
)	Opposition To EPA's Motion
)	For Accelerated Decision
Respondents.)	And Declaration
)	
)	

Motion For Extension of Time

This is filed by the Respondents, Thomas Waterer and Waterkist Corporation, pursuant to 40 C.F.R. Section 22.7(b). The Respondents respectfully request the Court to extend the time for their filing a Response To the Environmental Protection Agency's Motion For Accelerated Decision until January 7, 2004.

Factual Basis of Motion

The EPA's Motion For Accelerated Decision was filed on December 12, 2003. The Motion was faxed and mailed on that date. Respondents' Response was due on Friday January 2, 2004, which is the Friday of a long holiday weekend. 40 C.F.R. Section 22.7 (c.) and 22.16(b).

The Respondents' Response was served by facsimile on the afternoon of Tuesday January 6, 2004, and mailed by certified mail on Wednesday January 7, 2004. On Wednesday January 7, 2004 the EPA filed a Motion to Strike. On Thursday January

Respondents' Motion For Extension
of Time To File Response to EPA
Motion for Accelerated Decision

8, 2004 the Respondents requested EPA to consent to an extension of time and withdraw its Motion To Strike. On Friday, January 9, 2004 the EPA advised the Respondents' that the EPA would not consent to an extension of time nor withdraw its Motion To Strike.

The Respondents respectfully move this Court for an Extension of Time for good cause. The Respondents filing of a its Response was not intended to prejudice the EPA in any way, nor does the EPA demonstrate any actual prejudice. The slight delay in filing the Response was the result of a combination of factors, including the Respondents' intent, of making every effort to locate the documents in controversy, delay in receiving records from Valdez, Alaska, and the holiday.

As set forth in Mr. Waterer's Declaration of January 5, 2003, it was his belief that the monitoring records had been prepared in the ordinary course of business, albeit, misplaced or misfiled during the semi annual relocation of the business records, or possibility destroyed or damaged during transit in 2000. In order to prepare the Response it was necessary to review a significant number of records in an attempt to located missing or misfiled documents.

Waterkist has no office staff during the off season. As a result, Mr. Waterer had to review the relocated records (approximately 200 banker boxes of records) and achieved records in an attempt to locate records for the Response. M. Waterer also contacted seasonal employees and others trying to tract down information.

We had anticipated filing a Response on December 31, 2003 which was before the due date and the long holiday weekend. A Response and draft Declarations of Mr. Waterer and Mr. Kaayk were prepared and forwarded for final review and signature.

At that time Mr. Waterer was advised by an former employee that there may be

one or two boxes of documents left at the plant in Valdez in the building's attic area (the building is over 30,000 square feet with a commensurate attic). The employee did not know the contents of the boxes. While the building is closed for the winter and without power, Mr. Waterer made arrangements for someone to immediately obtain access to the building on January 1, 2004 and to look for additional boxes, and to air express them immediately to Seattle, Washington. This was done in hopes of getting to the bottom of the record issue, and to have an accurate response. Two boxes were found and delivered to the airport in Valdez, Alaska for next day delivery to Seattle, Washington.

Mr. Waterer desired to review the records before finalizing and signing his Declaration, and anticipated receiving the records on January 2, 2004. There was a delay in getting the records out of Valdez, Alaska, and the records did not apparently arrive in Seattle until Saturday January 3, 2004 or Sunday the 4th.

This resulted in a delay in filing the Response. The boxes contained a few documents in controversy: the original shoreline monitoring reports for the year 2000, and a few main floor inspection reports which reference observations of shoreline under grinder. These will be forwarded to EPA under separate cover.

Respectfully submitted this 9 day of January, 2004.


Edward P. Weigelt, Jr.
Attorney For Respondents

Declaration

I hereby affirm that the factual statements above are true and correct to the best of my personal knowledge and the information provided to me. Under penalty of perjury under the laws of the State of Washington and the United States, this 9th day of

January, 2004 at Lynnwood, Washington.



Edward P. Weigelt, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on this date this copy of this document was forwarded by facsimile on January 9, 2004 and mailed by certified to:

Mark Ryan
EPA, Associate Counsel
1435 N. Orchard Str
Boise, Idaho 83706

Ann L. Coyle
EPA, Associate Counsel
1200 Sixth Ave.
Seattle, Washington 98101

Honorable William Moran
Office of Administrative Law Judges
US. EPA
Mail Code 1900L
1200 Pennsylvania Ave. N.W.
Washington D.C. 20460

and that I the original and a copy of the original were forwarded by messenger for filing with:

Carol Kennedy, Regional Hearing Clerk
U.S. EPA
1200 Sixth Ave.
Seattle, Washington 98101



Edward P. Weigelt, Jr. WSBA 12003
Attorney for Respondents.

Dated: _____

1/9/04