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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
HEARINGS CLERK  
EPA -- REGION 10



|                                    |   |                             |
|------------------------------------|---|-----------------------------|
| In the matter of:                  | ) |                             |
|                                    | ) | DOCKET NO. CWA-10-2003-0007 |
| Thomas Waterer                     | ) |                             |
| and                                | ) | CONSENT AGREEMENT           |
| Waterkist Corp. dba Nautilus Foods | ) | AND FINAL ORDER             |
| Valdez, Alaska                     | ) |                             |
|                                    | ) |                             |
| Respondents.                       | ) |                             |
| _____                              | ) |                             |

**I. AUTHORITY**

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(g). The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA, Region 10.

1.2. Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Respondents Thomas Waterer and Waterkist Corp. hereby agree to, the issuance of the Final Order contained in Part V of this CAFO.

**II. PRELIMINARY STATEMENT**

2.1. On December 11, 2002, EPA initiated this proceeding against Respondents

pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), by issuing an Administrative Complaint ("Complaint").

2.2 The Complaint alleged that Respondents' violations of the Act subjected Respondents to civil penalties.

2.3 The complete factual and jurisdictional basis for proposing the assessment of a civil penalty in this amount is set forth in the Complaint and is incorporated herein by reference.

2.4 The State of Alaska was given an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondents.

2.5 Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), EPA issued a public notice to inform the public of its intent to assess an administrative penalty against Respondents and to invite public comment. EPA received no public comments regarding this proposal to assess a civil penalty.

#### **IV. CONSENT AGREEMENT**

The parties to this action hereby stipulate as follows:

3.1. Respondents admit all of the allegations the Complaint.

3.2. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and based primarily on documents provided to EPA by Respondents demonstrating an inability to pay the proposed penalty, EPA has determined and Respondents agree that an appropriate penalty to settle this action is in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000.00). Payment shall be made as follows: \$5,000 within 30 days of the entry of the CAFO, and \$10,000 plus interest no later than July 30, 2004.

3.3. Respondents consent to the issuance of the Final Order recited herein, and to payment of the civil penalty cited in the foregoing paragraph within thirty (30) days of the effective date of the Final Order.

3.4. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "U.S. Treasurer" and shall be delivered to the following address:

Mellon Bank  
EPA Region 10  
P.O. Box 360903M  
Pittsburgh, Pennsylvania 15251.

Respondents shall note on the check the title and docket number of this case.

3.5. Respondents shall serve photocopies of the check described above on the Regional Hearing Clerk and EPA at the following two addresses:

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

U.S. Environmental Protection Agency  
1200 Sixth Avenue  
Seattle, Washington 98101  
Attn: Chris Cora.

3.6. Should Respondents fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondents may be subject to a civil action to collect the assessed penalty under the Clean Water Act. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

3.7. Should Respondents fail to pay the penalty assessed by this CAFO in full by its

due date, Respondents shall also be responsible for payment of the following amounts:

a. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order contained herein.

b. Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), should Respondents fail to pay on a timely basis the amount of the penalty assessed by the Final Order contained herein, Respondents shall pay (in addition to any assessed penalty and interest) attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondents' penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

3.8. The penalties described in paragraph 4.3 of this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

3.9. Except as described in paragraph 3.7 of this CAFO, each party shall bear its own costs in bringing or defending this action.

3.11. Respondents expressly waive any right to contest the allegations and to appeal the Final Order contained herein.

3.12. The provisions of this CAFO shall bind Respondents and their agents, servants, employees, successors, and assigns.

STIPULATED AND AGREED:

THOMAS WATERER

  
Thomas Waterer

Dated: 02/09/04

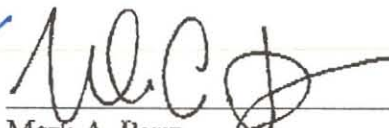
WATERKIST CORP.

  
Thomas Waterer


Dated: 02/09/04

U.S. ENVIRONMENTAL PROTECTION AGENCY

*3/1/04*  
*WAC*

  
Mark A. Ryan  
Assistant Regional Counsel  
For Complainant

Dated: 2/6/04

  
Edward P. WEIDELT (2003)  
ATTORNEY FOR RESPONDENTS

CONSENT AGREEMENT  
AND FINAL ORDER - PAGE 5

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## V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondents are hereby ordered to comply with the foregoing terms of settlement.

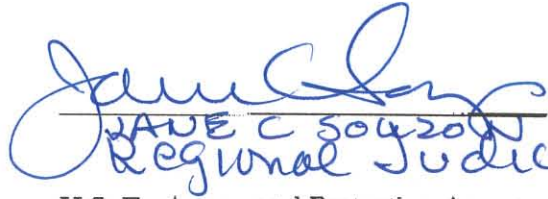
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the particular violations alleged in the Consent Agreement above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondents' obligations to comply with all applicable provisions of the CWA and regulations and permits issued thereunder.

5.3. In accordance with Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Alaska Department of Environmental Conservation has been given an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondents.

5.4. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), EPA has published public notice to inform the public of its intent to assess an administrative penalty against Respondents and to invite public comment in accordance with 40 C.F.R. § 22.45. More than 40 days have elapsed since the issuance of this public notice, and EPA has received no petitions to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 5 day of March, 2003.

  
~~JAMES C SOGARD~~  
Regional Judicial Officer

U.S. Environmental Protection Agency  
Region 10



CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Thomas Waterer and Waterkist Corp., dba Nautilus Foods, DOCKET NO.: CWA-10-2003-0007** was filed with the Regional Hearing Clerk on March 8, 2004.

On March 8, 2004 the undersigned certifies that a true and correct copy of the document was delivered to:

Mark Ryan  
US Environmental Protection Agency  
1435 North Orchard Street  
Boise, ID 83706

Judge William B. Moran  
1900L  
USEPA Headquarters  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on January 20, 2004, to:

Edward P. Weigelt, Jr., Esquire  
4300 198<sup>TH</sup> St. N.W.  
Lynwood, WA 98036

DATED this 8<sup>th</sup> day of March 2004.

  
\_\_\_\_\_  
Carol Kennedy  
Regional Hearings Clerk  
EPA Region 10