

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of Article 11 of the Environmental
Conservation Law ("ECL") of the State of New York

-by-

ORDER ON CONSENT
File No. R4-2009-0819-137

Guenther Management, Inc.
381 Broadway
Building 7A
Menands, NY 12204

Respondent

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is authorized pursuant to Article 11, Title 5, of the Environmental Conservation Law ("ECL") to regulate the sale of certain wild animals or wild animal products in New York State. This Order is issued pursuant to the Department's enforcement authority under Article 71 of the ECL.
2. Respondent, Guenther Management, Inc., operates ADVENTURE IN FOOD TRADING, a wholesale food supplier, located at 381 Broadway, Building 7A, Menands, New York ("facility").
3. On August 19, 2009, Department staff determined that Respondent had supplied kangaroo meat to a wholesale buyer.
4. Regulations at ECL §11-0536 (1) provide that *"Except as provided in subdivision three hereof, no part of the skin or body, whether raw or manufactured, of the following species of wild animals or the animal itself may be sold or offered for sale by any individual, firm, corporation, association or partnership within the state of New York :--Leopard (Panthera pardus), Snow Leopard (Uncia), Clouded Leopard (Neofelis nebulosa), Tiger (Panthera tigris), Asiatic Lion (Panthera leo persica), Cheetah (Acinoyx jubatus), Alligators, Caiman or Crocodile of the Order Crocodylia (except as provided in subdivision two of this section), tortoises of the genus Gopherus, marine turtles of the family Cheloniidae and the family Dermochelidae, Vicuna (Vicugna vicugna), Wolf (Canis lupus), Red Wolf (Canis niger), or Kangaroo (Macropodidae) or Polar Bear (Thalarctos maritimus), Mountain Lion, sometimes called Cougar (Felis Concolor), Jaguar (Panthera onca), Ocelot (Felis pardalis), or Margay (Felis wiedii), Sumatran Rhinoceros (Dicerorhinus sumatrensis), or Black Rhinoceros (Dicero bicornis)."*
5. By having supplied kangaroo meat to its buyers, Respondent violated regulations at ECL §11-0536.

6. Regulations at ECL §71-0825(13) provides that *“If the violation was an act prohibited by subdivision two of section 11-0535 or by section 11-0536 of this chapter, or by any lawful rule or regulation of the department promulgated pursuant thereto, not more than two thousand dollars, and an additional penalty of not more than three hundred fifty dollars for each fish, shellfish, crustacea, wildlife or part thereof involved in the violation. If the violation was an act prohibited by any regulation of the department promulgated pursuant to subdivision three of section 11-0535 of this chapter, then such penalty shall be not more than one thousand dollars, and an additional penalty of not more than two hundred dollars for each fish, shellfish, crustacea, wildlife or part thereof involved in the violation.”*

7. Respondent affirmatively waives its right to notice and hearing in the manner provided by law, consents to the issuance of this Order, agrees to be bound by the terms, provisions and conditions contained in this Order, and agrees not to appeal this Order.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. With respect to the aforesaid violations, a civil penalty in the amount of ONE THOUSAND DOLLARS(\$1,000) is hereby assessed against the Respondent. Payment of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

II. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for it.

III. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

IV. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

V. No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner’s designee.

VI. Respondent shall allow duly authorized representatives of the DEC access to the site without proper notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent’s compliance with this Order, the ECL and regulations promulgated thereunder.

VII. This Order is deemed effective on the date signed by the Department.

VIII. Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, its agents, its servants, its employees, its successors and its assigns; and

C. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

IX. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations alleged in this Order.

DATED: _____, 2009
Rotterdam, New York

Alexander B. Grannis
Commissioner
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. Upon receipt of this Order, Respondent shall immediately cease the sale of any and all parts of wild animals prohibited within the State of New York.

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Guenther Management, Inc.

SIGNED: _____

TITLE: _____

DATE: _____

STATE OF NEW YORK)

) ss.:

COUNTY OF _____)

On the ____ day of _____ in the year _____, before me, the undersigned,
personally appeared _____,
(Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at

(Full mailing address)

and that he/she/they is (are) the _____
(President or other officer or director or attorney in fact duly appointed)

of the _____,
(Full legal name of corporation)

the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

Notary Public, State of New York