



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 WYNKOOP STREET  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

2011 NOV 17 PM 2: 25  
FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: CAA-08-2012-0001

|   |   |                    |
|---|---|--------------------|
| IN THE MATTER OF:                       | ) |                    |
|   | ) |                    |
| <b>DENISON MINES (USA) CORP.</b>        | ) | <b>FINAL ORDER</b> |
| 1050 17 <sup>th</sup> Street, Suite 950 | ) |                    |
| Denver, CO 80265                        | ) |                    |
|   | ) |                    |
| <b>RESPONDENT</b>                       | ) |                    |

Pursuant to 40 C.F.R. §22.13(b) and 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Settlement Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 17<sup>th</sup> DAY OF November, 2011.

Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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In the Matter of: )  
)  
DENISON MINES (USA) CORP. ) CONSOLIDATED COMPLAINT  
1050 17<sup>th</sup> Street, Suite 950 ) AND CONSENT AGREEMENT  
Denver, CO 80265 )  
)  
Respondent ) Docket No. **CAA-08-2012-0001**

AUTHORITY

Pursuant to authority under 40 C.F.R. § 22.13(b), Complainant, the United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Denison Mines (USA) Corp., by their undersigned representatives, hereby settle the civil cause of action arising out of violations of Section 112 of the CAA, 42 U.S.C. § 7412 and implementing regulations, and agree as follows:

STATUTORY AND REGULATORY BACKGROUND

1. Congress has enacted Section 112 of the CAA to require the EPA to regulate sources of hazardous air pollutants (HAPs) and to establish National Emission Standards for Hazardous Air Pollutants (NESHAPs). 42 U.S.C. § 7412.
2. Pursuant to Section 112(c)(1), 42 U.S.C. § 7412(c)(1), the EPA is required to publish a list of all categories and subcategories of major sources and area sources of HAPs.
3. The EPA has designated underground uranium mines as a category subject to the requirements of Section 112 of the CAA.

4. Section 112(d) of the CAA, 42 U.S.C. § 7412(d), requires the EPA to establish NESHAPs for each category or subcategory of major sources and area sources of HAPs.
5. On December 15, 1989, the EPA promulgated 40 C.F.R. Part 61, Subpart B, “National Emission Standards for Radon Emissions from Underground Uranium Mines.” 54 Fed. Reg. 51654, 51694.
6. Subpart B applies to owners and/or operators of active underground uranium mines that are designed to mine over 100,000 tons of ore during the life of the mine or 10,000 tons of ore annually. 40 C.F.R. § 61.20.
7. Section 61.21(a) of Subpart B defines an “active” underground uranium mine as one that is “being ventilated to allow workers to enter the mine for any purpose.” 40 C.F.R. § 61.21(a).
8. Section 61.22 of Subpart B provides that “emissions of radon-222 to the ambient air from an underground uranium mine shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 10 millirem per year.”
9. Section 61.23(a) of Subpart B provides that compliance with the standard in 40 C.F.R. § 61.22 “shall be determined and the effective dose equivalent calculated by the EPA computer code COMPLY-R.” Section 61.23 further provides that “an underground uranium mine owner or operator shall calculate the source terms to be used for input into COMPLY-R by conducting testing in accordance with the procedures described in appendix B, Method 115.”

10. Section 1.1.1(a) to Method 115, found in Appendix B to 40 C.F.R. Part 61, provides that “the radon-222 concentration shall be continuously measured at each mine vent whenever the mine ventilation system is operational.”
11. Section 113(a)(3) of the CAA provides that when any person has violated any requirement or prohibition of Subchapter I of the CAA, including Section 112, the Administrator of the EPA may, *inter alia*, issue an administrative penalty order in accordance with Section 113(d).

#### RESPONDENT

12. Respondent is a Delaware corporation that operates and through its affiliate owns the underground La Sal Mines located near La Sal, San Juan County, Utah.
13. Respondent is a “person” as defined in Section 302(3) of the Clean Air Act, 42 U.S.C. § 7602(e), and the federal and state regulations promulgated pursuant to the CAA.
14. Underground uranium mining by the Respondent results in emissions of radon-222 to the outside air. The primary sources of these emissions are vents from the underground mine to the surface.
15. The La Sal Mines operation is an “active underground uranium mine” subject to the requirements of the NESHAPs for Radon Emissions for Underground Uranium Mines found at 40 C.F.R. Part 61, Subpart B.

#### FINDINGS OF FACT

16. On April 27, 2010, the EPA staff inspected the La Sal mines. The EPA has also reviewed records received from Denison regarding the La Sal mines operations.

17. During the inspection, Vent 1350 was observed to be venting to the atmosphere without monitoring. Records show that the vent was venting from April 18 - 27, 2010 without monitoring. Records show that Vent 1350 was also venting to the atmosphere without a monitor on January 12 through February 15, 2010; and March 31 through April 8, 2010.
18. The vents named Pandora 3, Pandora 7, and Pandora 12 are naturally venting shafts that vent in or out based on atmospheric and mine conditions. Records show that the vents did not have monitors from January through April, 2010.
19. A Notice of Violation, Docket No. CAA-08-2010-0016, was issued to Respondent on August 17, 2010.

#### FINDING OF VIOLATIONS

20. Emissions of radon-222 from Vent 1350 have not been continuously measured, in violation of 40 C.F.R. § 61.23(a) and Method 115, and Section 112 of the CAA, 42 U.S.C. § 7412, from on or about April 18 through April 27, 2010; January 12 through February 15, 2010; and March 31 through April 8, 2010 .
21. Emissions of radon-222 from the vents named Pandora 3, Pandora 7, and Pandora 12 have not been continuously measured, in violation of 40 C.F.R. § 61.23(a) and Method 115, and Section 112 of the CAA, 42 U.S.C. § 7412, from on or about January through April 2010.

#### FINAL SETTLEMENT

22. Respondent admits the jurisdictional allegations and neither admits nor denies the factual allegations stated above.

23. Respondent waives its rights to a hearing before any tribunal, and to contest any issue of law or fact set forth in this Consolidated Complaint and Consent Agreement.
24. The EPA and Respondent (Parties) agree that this Consolidated Complaint and Consent Agreement resolves all violations described in paragraphs 20 and 21 above.
25. This Consolidated Complaint and Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Consolidated Complaint and Consent Agreement contains all terms of the settlement agreed to by the Parties.
26. Section 113(d)(1)(B) of the CAA and 40 C.F.R. Part 19 authorize the assessment of a civil penalty of up to \$32,500 per day for each violation of the regulations associated with the NESHAPs program. For purposes of determining the amount of any civil penalty to be assessed, Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), requires that the EPA  

. . . as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.
27. Based on the factors listed in paragraph 26, and Respondent's acknowledgment that it has corrected the violations described in paragraphs 20 and 21 above, the EPA has

determined that an appropriate civil penalty to settle this action is Forty Thousand Dollars (\$40,000).

28. Respondent consents, for the purpose of settlement, to the issuance of a final order in this matter and agrees to pay the civil penalty cited in the foregoing paragraph as follows:

- a. Payment is to be made of Forty Thousand Dollars (\$40,000) due within 30 calendar days from the effective date of the final order, issued by the Regional Judicial Officer, which incorporates the terms of this Consolidated Complaint and Consent Agreement. If the due date falls on a weekend or legal Federal holiday, the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
- b. Payment of the penalty shall: (1) be made by certified or cashier's check payable to "Treasurer, United States of America;" (or be paid by one of the other methods listed below) (2) identify the case title and docket number of this action (either on the check or in a transmittal letter accompanying the check); and (3) remitted to:

Regular Mail:

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

Overnight Mail:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Natalie Pearson  
314-418-4087

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:  
Federal Reserve Bank of New York  
ABA: 021030004  
Account: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

On Line Payment:

This payment option can be accessed from the information below:  
[www.pay.gov](http://www.pay.gov)  
Enter sfo1.1 in the search field  
Open form and complete required fields

- c. A copy of the check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made shall be sent to both:

Tina Artemis  
Regional Hearing Clerk (8RC)  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

and to:

Joshua Rickard  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202




46. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received.
47. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61<sup>st</sup> day from the date of the final order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.
48. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
49. Nothing in this Consolidated Complaint and Consent Agreement shall relieve Respondent of the duty to comply with the CAA and its implementing regulations.
50. Failure by Respondent to comply with any term of this Consolidated Complaint and Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and such other relief as may be appropriate.
51. Nothing in this Consolidated Complaint and Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.

52. The undersigned representative of the Respondent certifies that he is fully authorized to enter into the terms and conditions of this Consolidated Complaint and Consent Agreement and to bind Respondent to the terms and conditions of this Agreement.
53. The parties agree to submit this Consolidated Complaint and Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.
54. Each Party shall bear its own costs and attorney fees in connection with this matter.
55. This Consolidated Complaint and Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the Parties, shall be a complete and full civil settlement of the specific violations alleged in the complaint portion of this Consolidated Complaint and Consent Agreement.


UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

Date: 11/15/11

By:   
Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance, and  
Environmental Justice

DENISON MINES (USA) CORP.

Date: October 31, 2011

By:   
Harold R. Roberts  
Executive Vice President  
U.S. Operations

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSOLIDATED COMPLAINT CONSENT AGREEMENT/FINAL ORDER** in the matter of **DENISON MINES (USA) CORP.; DOCKET NO.: CAA-08-2012-0001**. The documents were filed with the Regional Hearing Clerk on November 17, 2011.

Further, the undersigned certifies that a true and correct copy of the documents were delivered Linda Kato, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on November 17, 2011.

David C. Frydenlund, Vice President  
Regulatory Affairs and Counsel  
Denison Mines (USA) Corp.  
1050 17<sup>th</sup> Street, Suite 950  
Denver, CO 80265

E-mailed to:

Elizabeth Whitsel  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

November 17, 2011



Tina Artemis  
Paralegal/Regional Hearing Clerk

