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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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HEARINGS CLERK
EPA -- REGION 10

In the Matter of:)	
)	DOCKET NO. CWA-10-2011-0023
)	
Samuel Turner Placer Mine,)	
Petersville, Alaska)	CONSENT AGREEMENT AND
)	FINAL ORDER
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B).

1.2. 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, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Sections 309(g)(1) and 309(g)(2)(B) of the CWA, 33 U.S.C. §§ 1319(g)(1) and 1319(g)(2)(B), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Samuel Turner (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 309(g) of the CWA,

33 U.S.C. § 1319(g), to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” except as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, dredged spoil, rock, sand, biological materials, and industrial waste. “Navigable waters” are defined as “waters of the United States.” 33 U.S.C. § 1362(7).

3.2. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.3. At all times relevant to this action, Respondent was the owner and/or operator of a mechanical placer mine (“Facility”) located near the confluence of Spruce and Cache Creeks, ten miles southwest of Petersville, Alaska, in the Yenta Mining District.

3.4. Since June 6, 2008, Respondent has been authorized to discharge process wastewater from the Facility to Cache Creek, pursuant to the Alaska Mechanical Placer Mine General Permit, NPDES Permit No. AKG-37-0772 (“Permit”).

3.5. On or about July 30, 2010, process wastewater from the Facility washplant entered a trench and flowed into Spruce Creek.

3.6. Spruce Creek flows into Cache Creek, which flows into the Kahiltna River. The Kahiltna River flows into the Yentna River. The Yentna River is a tributary of the Susitna River, which empties into the Cook Inlet. The Cook Inlet is susceptible to use in interstate and foreign commerce and is subject to the ebb and flow of the tides. Accordingly, the Cook Inlet is “waters of the United States” as defined in 40 C.F.R. § 122.2 and is “navigable waters” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7). Tributaries of “waters of the United States” are also “waters of the United States,” according to 40 C.F.R. § 122.2. The Susitna River, the Yentna River, the Kahiltna River, Cache Creek, and Spruce Creek are tributaries to the Cook Inlet. Therefore, Spruce Creek is also “waters of the United States” and is “navigable waters” under the CWA.

3.7. Process wastewater from mechanical placer mines contains “pollutant[s],” including, but not limited to, settleable solids, turbidity, and arsenic, within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

3.8. The trench that conveys the Facility’s process wastewater to Spruce Creek constitutes a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.

3.9. By discharging the process wastewater into waters of the United States, Respondent engaged in the “discharge of pollutants” from a point source within the meaning of Sections 301(a) and 502(12) of the CWA, 33 U.S.C. §§ 1311(a) and 1362(12).

3.10. The discharge of process wastewater from the Facility to Spruce Creek was not authorized by the Permit, or any other NPDES permit issued to Respondent pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. This discharge without an NPDES permit constitutes a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), for each day of discharge.

Under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA may assess an administrative penalty when EPA finds that “any person has violated section 1311 . . . of this title.”

Consequently, under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties for violations at the Facility in an amount not to exceed \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent’s economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$8,000.00.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order.

4.5. Payment under this CAFO must be made by cashier’s check or certified check payable to the order of “Treasurer, United States of America” and delivered via United States mail to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must submit a photocopy of the check described in Paragraph 4.5 to the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900, ORC-158
Seattle, WA 98101

Eva DeMaria
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900, OCE-133
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. Interest. Pursuant CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, 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.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and 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 Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

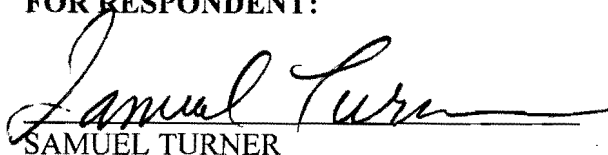
4.12. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.13. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

12-17-10

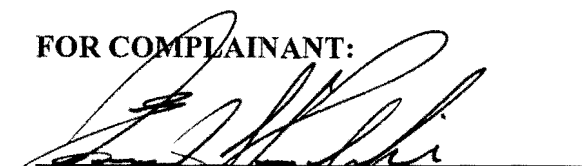
FOR RESPONDENT:


SAMUEL TURNER

DATED:

1/04/2011

FOR COMPLAINANT:


EDWARD J. ROWALSKI, Director
Office of Compliance and Enforcement

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

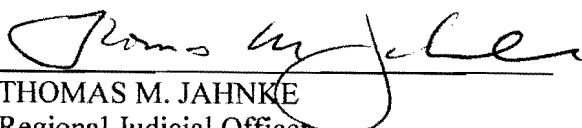
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable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

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

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 24th day of February, 2011.


THOMAS M. JAHNKE
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: Samuel Turner Placer Mine, Docket No.: CWA-10-2011-0023**, was filed with the Regional Hearing Clerk on February 25, 2011.

On February 25, 2011 the undersigned certifies that a true and correct copy of the document was served by placing it in the mailbox of:

R. David Allnutt, Esquire
U.S. EPA
Region 10, Suite 900
1200 Sixth Avenue, ORC-158
Seattle, Washington 98101

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 February 25, 2011, to:

Samuel Turner
P.O. Box 13125
Trapper Creek, AK 99683

DATED this 25th day of February 2011.

Shawn Eng
Signature
Print Name: Shawn Eng
Regional Hearing Clerk
EPA Region 10