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EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CWA 10-2010-0132
)	
DAVID D'AMATO,)	
Anchorage, 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 IV 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 Section 309(g)(1) and (g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (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 David D'Amato ("Respondent") agrees to issuance of, the Final Order contained in Part IV of this CAFO.

II. PRELIMINARY STATEMENT

2.1 On July 6, 2010, EPA initiated this proceeding against Respondent pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), by issuing an Administrative Complaint (“Complaint”).

2.2 The Complaint alleged that Respondent’s violations of the CWA had subjected Respondent to civil penalties.

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

III. CONSENT AGREEMENT

3.1 Respondent admits the jurisdictional allegations in the Complaint.

3.2 Respondent neither admits nor denies the specific factual allegations in the Complaint.

3.3 As required by Section 309(g)(3) of the CWA, 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 \$2,500.00.

3.4 Respondent agrees to pay the total civil penalty set forth in Paragraph 3.3 within thirty days of the effective date of the Final Order.

3.5 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 to the following:

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.

3.6. Respondent must send photocopies of the check described in Paragraph 3.5 to the Regional Hearing Clerk and EPA Region 10 at the following addresses:

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

Rebecca Chu
U.S. Environmental Protection Agency
Region 10, Mail Stop ETPA-083
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

3.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 3.4, 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.

3.7.1. 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 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 IV, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty days of the effective date of the Final Order.

3.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 3.3, 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 of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

3.8. The penalty described in Paragraph 3.3, including any additional costs incurred under Paragraph 3.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

3.9. 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.

3.10. Except as described in Subparagraph 3.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

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

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

3.13. The provisions of this CAFO do not in any way relieve Respondent of the obligations imposed by the Compliance Order, Docket No. CWA-10-2007-0136, issued by EPA on May 24, 2007. Nor does this CAFO relieve Respondent of liability for any noncompliance with said Compliance Order.

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

DATED:

10-31-2011

FOR RESPONDENT:

DL

Signature

Print Name:

DAN DATA

Title:

DATED:

9-16-11

FOR COMPLAINANT:

K Kelly

KATE KELLY, Director

Office of Ecosystems, Tribal, and Public Affairs

IV. FINAL ORDER

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

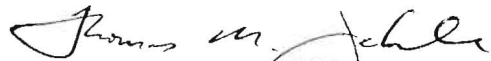
4.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in the Complaint, which describes Respondent's activities at the Site (as defined in the Complaint) during the time period of 2005 to 2008. In accordance with 40 C.F.R. § 22.31(a), 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.

4.3. 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.

4.4. 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 issued public notice of the Complaint within 30 days following proof of service and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. EPA received no comments on the Complaint.

4.5. This Final Order shall become effective upon filing.

SO ORDERED this 16th day of September, 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: David D'Amato, DOCKET NO.: CWA-10-2010-0132** was filed with the Regional Hearing Clerk on September 16, 2011.

On September 16, 2011 the undersigned certifies that a true and correct copy of the document was delivered to:

Jennifer Byrne, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 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 September 16, 2011, to:

David D'Amato
17211 Kings Way Drive
Anchorage, AK 99516

A true and correct copy of the aforementioned document was placed in pouch mail on September 16, 2011 to:

Judge Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave. NW
Washington DC 20460-2001

DATED this 16th day of September 2011.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10