BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. RCRA-10-2022-0244
	)	
NORTHERN STAR (POGO) L.L.C., POGO MINE,	)	**CONSENT AGREEMENT**
	)	
Delta Junction, Alaska	)	
	)	
Respondent.	)	

STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 3008 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928.

1.2. The State of Alaska has not been authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, to carry out a hazardous waste program in lieu of the Federal program. Pursuant to Section 3008(a) of RCRA, EPA may enforce the federal hazardous waste program in the State of Alaska.

1.3. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, 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 Northern Star (Pogo) LLC ("Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement ("Final Order").

PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 ("Complainant") has been delegated the authority pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of RCRA is proposed to be assessed.

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

ALLEGATIONS

Statutory and Regulatory Background

3.1. In 1976, Congress enacted RCRA, amending the Solid Waste Disposal Act, to regulate hazardous waste management. The Hazardous Waste and Solid Waste Amendments of 1984 (HSWA) provide additional authority under RCRA to regulate hazardous wastes. Under Subtitle C of RCRA, RCRA Section 3001 et seq., 42 U.S.C. § 6921 et seq., EPA has the authority to identify and list hazardous wastes. RCRA Subtitle C also authorizes EPA to regulate hazardous waste generators, transporters, exporters, and the owners and operators of hazardous waste treatment, storage, and disposal facilities. EPA has promulgated federal regulations to implement RCRA Subtitle C, which are set forth at 40 C.F.R. Parts 260-271, 273, and 279.

3.2. 40 C.F.R. § 260.10 defines a "person" as an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a state, or any interstate body.

3.3. Pursuant to Section 3001 of RCRA, 42 U.S.C. § 6921, EPA promulgated regulations to define what materials are "solid wastes," and of these solid wastes, what wastes are "hazardous wastes." These regulations are set forth in 40 C.F.R. Part 261.

3.4. "Solid waste" is defined at 40 C.F.R. § 261.2 to mean any discarded material that is not otherwise excluded by regulation.

3.5. "Discarded material" is defined at 40 C.F.R. § 261.2(a)(2)(i) to mean any material which is abandoned.

3.6. Pursuant to 40 C.F.R. § 261.2(b) materials are solid waste if they are abandoned by being disposed of; or burned or incinerated; or accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

3.7. Pursuant to 40 C.F.R. § 261.3 a solid waste is a "hazardous waste" if it is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b); and it exhibits any of the characteristics of hazardous waste in 40 C.F.R. Part 261, Subpart C or is listed in 40 C.F.R. Part 261, Subpart D.

3.8. Pursuant to 40 C.F.R. 261.23(a)(5) a solid waste exhibits the characteristic of reactivity if, among other things, a representative sample of the waste has any of the following properties: It is a cyanide or sulfide bearing waste which, when exposed to pH conditions

between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

3.9. Pursuant to 40 C.F.R. § 261.24 a solid waste exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 of 40 C.F.R. § 261.24 at the concentration equal to or greater than the respective value in Table 1.

3.10. Pursuant to 40 C.F.R. § 261.3(a)(2)(i) a solid waste is a hazardous waste if it exhibits any of the characteristics of hazardous waste identified in 40 C.F.R. part 261, subpart C. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under 40 C.F.R. § 261.4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under 40 C.F.R. part 261, subpart C is a characteristic hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in Table 1 to 40 C.F.R. § 261.24 that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

3.11. "Generator" is defined at 40 C.F.R. § 260.10 to mean any person, by site, whose act or process produces hazardous waste identified or listed in 40 C.F.R. Part 261 or whose act first causes a hazardous waste to become subject to regulation.

3.12. Pursuant to 40 C.F.R. § 262.11, a person who generates a solid waste must determine if that waste is hazardous waste using the method provided therein.

3.13. Pursuant to 40 C.F.R. § 262.11(f), a small or large quantity generator must maintain records supporting its hazardous waste determinations, including records that identify whether a solid waste is a hazardous waste, as defined by 40 C.F.R. § 261.3. Records must be maintained for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. These records must comprise the generator's knowledge of the waste and support the generator's determination, as described at 40 C.F.R. § 262.11(c)-(d). The records must include, but are not limited to, the following types of information: The results of any tests, sampling, waste analyses, or other determinations made in accordance with this section; records documenting the tests, sampling, and analytical methods used to demonstrate the validity and relevance of such tests; records consulted in order to determine the process by which the waste was generated, the composition of the waste, and the properties of the waste; and records which explain the knowledge basis for the generator's determination, as described at 40 C.F.R. § 262.11(d)(1).

3.14. "Facility" is defined at 40 C.F.R. § 260.10 to mean all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

3.15. Section 3005 of RCRA, 42 U.S.C. § 6925, prohibits the treatment, storage or disposal of hazardous waste without a permit or interim status, and the regulation at 40 C.F.R. § 270.1 requires a RCRA permit for the treatment, storage, or disposal of any hazardous waste identified or listed in 40 C.F.R. Part 261.

3.16. The owner and operator of a facility which treats, stores, or disposes of hazardous waste must meet the applicable standards in 40 C.F.R. Part 264.

3.17. A large quantity generator of hazardous waste may accumulate hazardous waste on-site for 90 days without obtaining a permit under 40 C.F.R. § 270.1 only if the generator complies with all of the conditions in 40 C.F.R. § 262.17.

3.18. The conditions in 40 C.F.R. § 262.17 include, inter alia:

3.18.1. The date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container.

3.18.2. While being accumulated on-site, each container or tank must be labeled or marked clearly with the words, "Hazardous Waste."

3.18.3. If hazardous waste is placed in tanks, the large quantity generator must comply with the applicable requirements for tanks of 40 C.F.R. part 265 Subpart J, except 40 C.F.R. § 265.197(c) of closure and post-closure care and §265.200—waste analysis and trial tests, and must comply with the applicable requirements of AA, BB, and CC of 40 C.F.R. part 265

3.18.4. The large quantity generator must comply with all applicable requirements under 40 C.F.R. part 268.

3.18.5. While being accumulated on-site, each container or tank must be labeled or marked clearly with an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 C.F.R. part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or

pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 C.F.R. § 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704).

3.18.6. At least weekly, the large quantity generator must inspect central accumulation areas. The large quantity generator must look for leaking containers and for deterioration of containers caused by corrosion and other factors.

3.19. In accordance with 40 C.F.R. § 262.15, a generator may accumulate as much as 55 gallons of non-acute hazardous waste in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with the requirements of 40 C.F.R. parts 124, 264 through 267, and 270 and in lieu of the conditions in 40 C.F.R. §§ 262.16(b) or 262.17(a), provide the meets the conditions in 40 C.F.R. § 262.15(a), including:

3.19.1. The generator must mark or label its container with the following: the words "Hazardous Waste" and an indication of the hazards of the contents.

3.19.2. The container holding hazardous waste must be closed at all times during accumulation, except when adding, removing, or consolidating waste or when temporary venting of a container is necessary.

3.20. Pursuant to 40 C.F.R. § §268.7(a)(1) a generator of hazardous waste must determine if the waste must be treated before it can be land disposed, which is done by determining if the hazardous waste meets the applicable treatment standards in 40 C.F.R. Part 268, Subpart D.

3.21. Pursuant to 40 C.F.R. § 268.7(a)(5) if a generator is managing and treating prohibited waste in tanks regulated under 40 C.F.R. § 262.17 to meet applicable land disposal restriction treatment standards found at 40 C.F.R. § 268.40, the generator must develop and follow a written waste analysis plan which describes the procedures they will carry out to comply with the treatment standards.

3.22. Pursuant to 40 C.F.R. § 268.9(a) the initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under subpart D of 40 C.F.R. Part 268.

3.23. Pursuant to 40 C.F.R. § 268.9(c), in addition to any applicable standards determined from the initial point of generation, no prohibited waste which exhibits a characteristic under 40 C.F.R. part 261, subpart C may be land disposed unless the waste complies with the applicable treatment standards under subpart D of 40 C.F.R. Part 268.

3.24. Pursuant to 40 C.F.R. § 268.3(a), no generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment to achieve compliance with 40 C.F.R. part 268, subpart D, to circumvent the effective date of a prohibition in 40 C.F.R. part 268, subpart C, to otherwise avoid a prohibition in 40 C.F.R. part 268, subpart C, or to circumvent a land disposal prohibition imposed by RCRA section 3004.

General Allegations

3.25. Northern Star (Pogo) LLC (Respondent) is a limited liability corporation doing business in and organized under the laws of the State of Alaska.

3.26. Respondent is a "person" as that term is defined by RCRA Section 1004(15), 42 U.S.C. § 6903(15).

3.27. At all times relevant to the allegations set forth herein, Respondent has been the "owner" and "operator" of the Pogo Mine (the "Facility"), as those terms are defined at 40 C.F.R. § 260.10.

3.28. The Facility is located near Delta Junction, Alaska and consists of a gold mine with associated Assay Laboratory and support operations.

3.29. For the purposes of this Consent Agreement, the term "Acid Sump" shall mean the approximately 762-gallon polyethylene tank located in the crawl space below the Assay Laboratory in which Respondent, prior to May 29, 2021, accumulated and treated Fire Assay testing wastes and waste indicators and solutions associated with the Fire Assay test.

3.30. For the purposes of this Consent Agreement, the term "Cyanide Sump" shall mean the approximately 762-gallon polyethylene tank located in the crawl space below the Assay Laboratory in which Respondent, prior to May 29, 2021, accumulated Atomic Absorption (AA) test wastes, Weak Acid Dissociable (WAD) test wastes, Titration test wastes, and Waste indicators and standard solutions associated with the AA, WAD, and Titration tests.

Generation and Accumulation of Solid Wastes

3.31. On or around June 3-4, 2019, Respondent generated the following individual or groups of solid wastes at the Facility:

3.31.1. Fire Assay testing wastes

3.31.2. Waste indicators and solutions associated with the Fire Assay test

3.31.3. Acid Sump contents

3.31.4. AA test wastes

3.31.5. WAD test wastes

3.31.6. Titration test wastes

3.31.7. Waste indicators and standard solutions associated with the AA, WAD and Titration tests

3.31.8. Cyanide Sump contents

3.31.9. Cyanide Destruct Process influent

3.31.10. Cyanide Destruct Process effluent

3.31.11. Backfill Paste

3.31.12. Chemical oxygen demand TNTPlus HR, accumulated inside the Non-Flammable Central Accumulation Area

3.31.13. Two containers in the Assay Lab containing crucibles, cupels and slag.

3.31.14. One 5-gallon container in Shop #1600 containing aerosol cans

3.31.15. One 55-gallon container in Shop #1422 containing aerosol cans

3.31.16. Ten aerosol cans in a flammable storage locker in #1875 Light Vehicle Shop.

3.32. The groups of wastes listed in paragraphs 3.31.1 through 3.31.7 were comprised of at least 80 discrete volumes of solid wastes in connection with testing in the Assay Laboratory within the Facility.

3.33. At all times relevant to this Consent Agreement, some of the wastes listed in paragraphs 3.31.1 through 3.31.16 constituted hazardous waste at the point of generation because

they exhibited one or more hazardous characteristics under 40 C.F.R. part 261, subpart C. Specifically, prior to treatment through neutralization the contents of the Acid Sump listed in Paragraph 3.31.3 exhibited the corrosivity hazardous characteristic pursuant to 40 C.F.R. § 261.22, and the contents of the Cyanide Sump listed in Paragraph 3.31.8 exhibited the reactivity and toxicity hazardous characteristics pursuant to 40 C.F.R. § 261.23(a)(5) and 40 C.F.R. § 261.24. At no time relevant to this Consent Agreement were these hazardous wastes excluded from regulation pursuant to 40 C.F.R. § 261.4(b)(7).

3.34. Between at least June 3, 2019, and May 29, 2021, Respondent accumulated the wastes listed in Paragraphs 3.31.3 (Acid Sump contents) and 3.31.8 (Cyanide Sump contents) in tanks as that term is defined in 40 C.F.R. § 260.10. At all times relevant to the allegations set forth herein, both tanks met the definition of new tank systems as that term is defined in 40 C.F.R. § 260.10.

Cyanide Destruct and Backfill Paste Processes

3.35. Between at least June 3, 2019, and May 29, 2021, Respondent stored and treated the Acid Sump contents and Cyanide Sump contents, along with certain waste generated from the extraction and beneficiation of ores, in the on-site cyanide destruct process and backfill paste process comprised of the following steps:

3.35.1. Waste mill tailings from the carbon-in-pulp (CIP) carousel were placed in the CN Recovery Thickener.

3.35.2. The underflow from the CN Recovery Thickener was pumped into the CN Destruction Tanks.

3.35.3. The Acid Sump contents and Cyanide Sump contents were pumped into the CN Destruction Tanks Respondent added various chemicals to the CN Destruction Tanks to help destroy cyanide.

3.35.4. The treated waste was then pumped to the CIP Tailing Thickener.

3.35.5. The effluent from the post-CN destruct CIP Tailing Thickener was pumped to the Backfill Paste Process, where effluent was mixed together with cement, backfill dilution water and flotation tailings to produce Backfill Paste.

3.36. The Cyanide Sump contents and the CN Recovery Thickener Underflow as well as the mixture of these two wastes, exhibited the reactivity hazardous waste characteristic pursuant to 40 C.F.R. § 261.23(a)(5). Therefore, pursuant to 40 C.F.R. § 261.3(a)(2)(i), the mixture of the Cyanide Sump contents and the CN Recovery Thickener Underflow in the CN Destruction Tanks was a reactive hazardous waste and not excluded pursuant to 40 C.F.R. § 261.4(b)(7).

3.37. The resulting hazardous waste mixture discussed in Paragraph 3.36, above, continued to exhibit one or more hazardous characteristics under 40 C.F.R. part 261, subpart C through all subsequent treatment and storage steps through the Backfill Paste Process.

3.38. Between at least June 3, 2019, and May 29, 2021, Respondent disposed of approximately 197 batches of the Backfill Paste, each batch comprising a mass of approximately 1,850 tons, in the gold mine.

Counts 1 through 80: Failure to Make a Hazardous Waste Determinations

3.39. Respondent failed to make hazardous waste determinations at the points of generation for the wastes listed in Paragraphs 3.31.1 through 3.31.11 in accordance with the methods specified at 40 C.F.R. § 262.11(a)-(d).

3.40. Therefore, prior to or on June 3, 2019, Respondent violated 40 C.F.R. § 262.11 on at least 80 occasions.

Count 81: Treatment, Storage, and Disposal of Hazardous Waste Without a Permit or Interim Status

Storage of Hazardous Waste

3.41. Between at least June 3, 2019, and May 29, 2021, the tanks containing the hazardous wastes listed in Paragraphs 3.31.3 (Acid Sump contents), 3.31.8 (Cyanide Sump contents), as well as the tanks and piping associated with all subsequent treatment and storage steps from the cyanide destruct process through the Backfill Paste Process failed to meet the following conditions in 40 C.F.R. § 262.17:

3.41.1. Neither tank was marked or labeled with the words "Hazardous Waste," or an indication of the hazardous of the tank contents. The Acid Sump and Cyanide Sump tanks were so marked or labeled on or about June 4, 2019.

3.41.2. These tanks did not meet the design and installation requirements for new tank systems or components under 40 C.F.R. § 265.192.

3.41.3. These tanks were not provided with secondary containment, including leak detection system, that met the requirements of 40 C.F.R. § 265.193.

3.41.4. Respondent did not inspect at least once each operating day the tank systems in accordance with 40 C.F.R. § 265.195.

3.42. On at least June 3-4, 2019, the container of hazardous waste Chemical Oxygen demand TNTPlus HR inside the Non-Flammable Central Accumulation Area described in Paragraph 3.31.12, above, was not labeled with the accumulation start date.

3.43. On at least June 3-4, 2019, the two containers in the Assay Lab containing crucibles, cupels and slag described in Paragraph 3.31.13, above were not closed or marked or labelled with the words "Hazardous Waste," nor marked or labeled with an indication of the hazards of the contents. On at least June 3-4, 2019, personnel at the Facility were not adding, removing, or consolidating waste or temporarily venting the containers.

3.44. On at least June 3-4, 2019, the 5-gallon container in Shop #1600 containing aerosol cans described in Paragraph 3.31.14, above was not marked or labeled with the words "Hazardous Waste," or an indication of the hazardous of the contents.

3.45. On at least June 3-4, 2019, 55-gallon container in Shop #1422 containing aerosol cans described in Paragraph 3.31.15, above, was not closed and personnel at the Facility were not adding, removing, or consolidating waste or temporarily venting the containers.

3.46. On at least June 3-4, 2019, the ten aerosol cans in a flammable storage locker in #1875 Light Vehicle Shop described in Paragraph 3.31.16, above, were not marked or labeled with the words "Hazardous Waste," or an indication of the hazardous of the contents.

Treatment of Hazardous Waste

3.47. Between at least June 3, 2019, and May 29, 2021, Respondent added chemicals to the Acid Sump contents to adjust the pH, which constitutes treatment as that term is defined in 40 C.F.R. § 260.10.

3.48. Between at least June 3, 2019 and May 29, 2021, Respondent's mixing of the Cyanide Sump contents with other solid wastes and subsequent processes associated with the Cyanide Destruct and Backfill Paste processes described in Paragraphs 3.35.3 through 3.35.5, constituted treatment as that term is defined in 40 C.F.R. § 260.10.

3.49. Therefore, between at least June 3, 2019, and May 29, 2021, Respondent treated hazardous waste.

Disposal of Hazardous Waste

3.50. As alleged in Paragraph 3.37, above, between at least June 3, 2019, and May 29, 2021, the Backfill Paste constituted hazardous waste because it exhibited one or more hazardous characteristics under 40 C.F.R. part 261, subpart C.

3.51. As alleged in Paragraph 3.38, above, between at least June 3, 2019, and May 29, 2021, Respondent disposed of the Backfill Paste in the mine. Therefore, between at least June 3, 2019, and May 29, 2021, Respondent disposed of hazardous waste.

Land Disposal Restrictions

3.52. Pursuant to 40 C.F.R. § 262.17(a)(9), compliance with the land disposal restriction requirements in 40 C.F.R. Part 268 is a condition for the exemption from the requirement to obtain a permit pursuant to 40 C.F.R. § 270.1.

3.53. Between at least June 3, 2019, and May 29, 2021, wastes listed in Paragraphs 3.31.1 through 3.31.11 were disposed via land disposal at the Facility as the term land disposal is defined in 40 C.F.R. § 268.2(c).

3.54. At no time relevant to the allegations set forth herein were certain wastes listed in Paragraphs 3.31.1 through 3.31.11, above, exempt from the requirements of 40 C.F.R. part 268 pursuant to 40 C.F.R. § 268.1(b).

3.55. In accordance with 40 C.F.R. §§ 268.7 and 268.9, Respondent was required to comply with the following land disposal restriction requirements with respect to certain wastes listed in Paragraphs 3.31.1 through 3.31.11:

3.55.1. A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in 40 C.F.R. Part 268, Subpart D, including 40 C.F.R. §§ 268.40, 268.45, or 268.49.

3.55.2. If a generator is managing and treating prohibited waste in tanks regulated under 40 C.F.R. § 262.17 to meet applicable land disposal restriction treatment standards found at 40 C.F.R. § 268.40, the generator must develop and follow a written waste analysis plan which describes the procedures they will carry out to comply with the treatment standards.

3.55.3. The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under subpart D of 40 C.F.R. Part 268.

3.56. Respondent failed to comply with the conditions listed in Paragraph 3.55, above.

3.57. In accordance with 40 C.F.R. § 268.9(c), in addition to any applicable requirements which apply from the initial point of generation, no prohibited waste which exhibits a characteristic under 40 C.F.R. part 261, subpart C may be land disposed unless the waste complies with the treatment standards under subpart D of 40 C.F.R. Part 268. The regulation at 40 C.F.R. § 268.40(a) states that a prohibited waste identified in the table "Treatment Standards for Hazardous Wastes" therein may be land disposed only if it meets the requirements found in the table.

3.58. In accordance with 40 C.F.R. § 268.40(e), for characteristic wastes (D001-D043) that are subject to treatment standards in the table "Treatment Standards for Hazardous Wastes" therein, all underlying hazardous constituents (as defined in § 268.2(i)) must meet Universal Treatment Standards, found in § 268.48, Table Universal Treatment Standards, prior to land disposal as defined in 40 C.F.R § 268.2(c).

3.59. In accordance with 40 C.F.R. § 268.3 dilution of either a waste restricted from land disposal or the residual from treatment of a restricted waste may not substitute for adequate treatment to achieve compliance with subpart D of 40 C.F.R. part 268.

3.60. Pursuant to 40 C.F.R. §§ 268.9, 268.40, and 268.48, certain wastes listed in Paragraphs 3.31.1 through 3.31.11, were subject to the following treatment standards:

3.60.1. Cyanide Sump contents: wastewaters treatment standard for lead and silver

3.60.2. Fire Assay parting solution: wastewaters treatment standard for lead and silver

3.60.3. AA Waste composite: wastewaters treatment standard for total cyanide

3.60.4. Titration Composition: wastewaters treatment standard for silver and total cyanide

3.60.5. WAD Composite: wastewaters treatment standard for total cyanide

3.60.6. Post CN destruct Composite: wastewaters treatment standard for arsenic and total cyanide

3.60.7. Backfill Dilution tank contents: wastewaters treatment standard for arsenic.

3.60.8. Acid Sump contents: nonwastewater treatment standard for silver.

3.60.9. Cyanide destruct process influent and effluent: nonwastewater treatment standard for arsenic.

3.60.10. Cyanide destruct process influent: nonwastewater treatment standard for total cyanides and amenable cyanides.

3.60.11. Backfill Paste: nonwastewater treatment standard for amenable cyanide and sulfide.

3.61. On at least one occasion between June 3, 2019, and May 29, 2021, Respondent achieved one or more of the treatment standards for the associated wastes listed in Paragraphs 3.60.1 through 3.60.10 via mixing of wastes, mill tailings, and Portland cement, which constituted impermissible dilution prohibited by 40 C.F.R. § 268.3.

3.62. On at least one occasion between June 3, 2019, and May 29, 2021, the Backfill Paste did not meet the treatments standards in 40 C.F.R. § 268.40(a) for cyanide and sulfide.

Conclusion

3.63. At no time relevant to this Consent Agreement has Respondent had a permit or interim status to store, treat, or dispose of hazardous waste at the Facility.

3.64. Therefore, between at least June 3, 2019, and May 29, 2021, Respondent stored, treated, and disposed of hazardous waste at the Facility without a permit or interim status in violation of 40 C.F.R. § 270.1.

Enforcement Authority

3.65. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than $109,024 per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, issue an order requiring compliance, or both.

TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations or legal conclusions contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is $600,000 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order, and to undertake the actions specified in Paragraph 4.10 of this Consent Agreement.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: https://www.epa.gov/financial/makepayment. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

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

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 by electronic mail at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
R10_RHC@epa.gov

Kevin Schanilec
U.S. Environmental Protection Agency
Region 10
Schanilec.Kevin@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty by this Consent Agreement and the Final Order in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order attached hereto, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order attached hereto.

4.8.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of $15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

4.8.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. Under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), failure to take corrective action within the time specified in this Consent Agreement may subject Respondent to additional civil penalties for each day of continued noncompliance.

4.10. Based on the findings contained in this Consent Agreement, Respondent is also ordered to comply with the following requirement pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a):

4.10.1. As expeditiously as practicable, but in no event later than 365 days of the effective date of the Consent Agreement and Final Order, or such other date that the parties agree

to in writing, Respondent must satisfy the closure performance standards of 40 C.F.R. § 262.17(a)(8)(iii) for the Acid Sump and Cyanide Sump.

4.10.2. In accordance with 40 C.F.R. § 262.17(a)(8)(ii), Respondent must submit the following notifications to EPA:

4.10.2.1. Notify EPA using form 8700-12 no later than 30 days prior to closing the Acid Sump and Cyanide Sump;

4.10.2.2. Notify EPA using form 8700-12 within 90 days after closing the Acid Sump and Cyanide Sump that it has complied with the closure performance standards in 40 C.F.R. § 262.17(a)(8)(iii).

4.10.3. In accordance with 40 C.F.R. § 262.17(a)(8)(ii)(C), Respondent may request additional time to clean close the Acid Sump and Cyanide Sump, but it must notify EPA using form 8700-12 within 75 days after notifying EPA under Paragraph 4.10.2.1 (in accordance with 40 C.F.R. § 262.17(a)(8)(ii)) to request an extension and provide an explanation as to why the additional time is required.

4.10.4. Respondent must provide the notifications required to the following address:

Kevin Schanilec
U.S. Environmental Protection Agency
Region 10
schanilec.kevin@epa.gov

4.11. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2),

performance of the compliance actions in Paragraph 4.10, above, is restitution, remediation, or required to come into compliance with the law.

4.12. The Assessed Penalty, including any additional costs incurred under Paragraphs 4.8 and 4.9, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.13. The undersigned representatives of Respondent certify that the representatives are authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.14. Except as described in Paragraphs 4.8 and 4.9, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.15. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.16. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Agreement and the Final Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

4.17. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.18. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

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

DATED:

9.26.2022

FOR RESPONDENT:

Stuart Tonkin,
Authorized Representative,
Northern Star (Pogo) L.L.C.
Managing Director and Chief Executive Officer,
Northern Star Resources Limited

9.26.2022

Hilary Macdonald,
Authorized Representative,
Northern Star (Pogo) L.L.C.
Chief Legal Officer & Company Secretary,
Northern Star Resources Limited

DATED:

FOR COMPLAINANT:

EDWARD KOWALSKI Digitally signed by EDWARD KOWALSKI Date: 2022.09.27 08:13:19 -07'00'

EDWARD J. KOWALSKI, Director
Enforcement & Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. RCRA-10-2022-0244
	)	
NORTHERN STAR (POGO) L.L.C., POGO MINE,	)	**FINAL ORDER**
	)	
Delta Junction, Alaska,	)	
	)	
Respondent.	)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under RCRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of RCRA and regulations promulgated or permits issued thereunder.

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, 11-C07
Seattle, Washington 98101
(206) 553-1037

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED

RICHARD MEDNICK

Digitally signed by RICHARD MEDNICK
Date: 2022.09.27 15:03:57 -07'00'

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Northern Star (Pogo) L.L.C., Docket No.: RCRA-10-2022-0244**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered via electronic mail to:

Brett S. Dugan
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Dugan.brett@epa.gov

Laura Kerr, Esq.
Attorney for Northern Star (Pogo) L.L.C.
760 SW Ninth Avenue, Suite 3000
Portland, Oregon 97205
Laura.kerr@stoel.com

_____
Regional Hearing Clerk
EPA Region 10