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EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CWA-10-2014-0151
)	
U.S. SILVER – IDAHO, INC.,)	CONSENT AGREEMENT AND
Coeur and Galena Mines and Mills,)	FINAL ORDER
)	
Wallace, Idaho,)	
)	
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 Section 309(g)(1) and (2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (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 U.S. Silver –

Idaho, Inc. (“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 22.18(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 Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

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 the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” into navigable waters of the United States except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

3.2. 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.”

3.3. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, solid waste, sewage, chemical wastes, biological materials, rock, sand, and industrial waste.

3.4. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States.” EPA’s regulations define “waters of the United States” to include waters that are currently used, were used in the past, or may be susceptible to use, in interstate or foreign commerce; all interstate waters; and tributaries to those waters. 40 C.F.R. § 122.2.

3.5. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” to include any “pipe, ditch, channel, tunnel, [or] conduit...from which pollutants are or may be discharged.”

3.6. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines the term “person” to include, *inter alia*, a corporation, partnership, or association.

3.7. Respondent is a corporation, registered in the state of Idaho, and is therefore a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.8. At all times relevant to this action, Respondent was the owner and/or operator of the Coeur and Galena Mines and Mills Facility, located at 1041 Lake Gulch Road, Wallace, Idaho 83873 (“Facility”).

3.9. Wastewater from the Facility is primarily comprised of mine tailings, mine drainage, surface water associated with project disturbance, and sanitary wastes. Wastewater is discharged from the Facility through Outfall 001 from the Lake Creek settling pond to Lake Creek, a tributary of the South Fork Coeur d’Alene River, and through Outfall 002 from the Osburn tailings pond to the South Fork Coeur d’Alene River.

3.10. The Facility is 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. In the alternative, the Facility contains point sources.

3.11. On July 1, 2007, EPA issued NPDES Permit ID-0000027 (“Permit”) to U.S. Silver Corporation. In 2012, U.S. Silver Corporation merged with RX Gold & Silver to create U.S. Silver & Gold. Respondent is a wholly owned subsidiary of U.S. Silver & Gold. The permit expired on June 30, 2012, and was administratively extended.

3.12. At all times relevant to this action, Respondent was authorized to discharge pollutants from the Facility, pursuant to the Permit. The Permit authorizes discharge of pollutants resulting from Facility processes, waste streams, and operations that have been clearly identified in the permit application process, from Outfalls 001 and 002 to Lake Creek and the South Fork Coeur d’Alene River, respectively.

3.13. Lake Creek and the South Fork Coeur d’Alene River are currently used, were used in the past, or may be susceptible to use, in interstate and foreign commerce, and thus Lake Creek and the South Fork Coeur d’Alene River are “waters of the United States” as defined in 40 C.F.R. § 122.2, and “navigable water” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

Count 1: Effluent Limit Violations for Copper from Outfall 001

3.14. Part I.A., Table 1, of the Permit identifies effluent limits that the permittee is required to comply with for discharges from Outfall 001. The Upstream River Flow Tier (“Tier”) 3 maximum daily effluent limits for copper are 10 micrograms per liter (“µg/L”) and 0.14 pounds per day (“lb/d”). The Tier 3 average monthly effluent limits for copper are 3.8 µg/L

and 0.053 lb/d. The Tier 4 maximum daily effluent limits for copper are 12 µg/L and 0.17 lb/d. The Tier 4 average monthly effluent limits for copper are 4.4 µg/L and 0.061 lb/d. The Tier 5 maximum daily effluent limit for copper is 23 µg/L.

3.15. The Tier 3 maximum daily effluent values for copper for July 13, 2012, reported by Respondent, were 15.8 µg/L and 0.1547 lb/d. The Tier 3 average monthly effluent values for copper for March 2012, reported by Respondent, were 4.7 µg/L and 0.06 lb/d. The Tier 3 average monthly effluent values for copper for July 2012, reported by Respondent, were 6.5 µg/L and 0.06246 lb/d. The Tier 4 maximum daily effluent value for copper for April 5, 2013, reported by Respondent, was 0.1825 lb/d. The Tier 4 maximum daily effluent values for copper for April 10, 2013, reported by Respondent, were 16 µg/L and 0.3547 lb/d. The Tier 4 average monthly effluent value for copper for June 2012, reported by Respondent, was 5.6 µg/L. The Tier 4 average monthly effluent value for copper for April 2013, reported by Respondent, was 0.07996 lb/d. The Tier 5 maximum daily effluent value for copper for July 22, 2011, reported by Respondent, was 25 µg/L. The Tier 5 maximum daily effluent value for copper for July 28, 2011, reported by Respondent, was 25 µg/L.

3.16. The Tier 3 maximum daily effluent values for copper reported for July 13, 2012 exceeded 10 µg/L and 0.14 lb/d, in violation of the Permit. The Tier 3 average monthly effluent values for copper reported for March 2012 and July 2012 exceeded 3.8 µg/L and 0.053 lb/d, in violation of the Permit. The Tier 4 maximum daily effluent values for copper reported for April 5, 2013 and April 10, 2013 exceeded 12 µg/L and 0.17 lb/d, in violation of the Permit. The Tier 4 average monthly effluent values for copper reported for June 2012 and April 2013 exceeded 4.4 µg/L and 0.061 lb/d, in violation of the Permit. The Tier 5 maximum daily effluent values

for copper reported for July 22, 2011 and July 28, 2011 exceeded 23 µg/L, in violation of the Permit.

Count 2: Effluent Limit Violation for Mercury from Outfall 001

3.17. Part I.A., Table 1, of the Permit identifies effluent limits that the permittee is required to comply with for discharges from Outfall 001. The Tier 2 maximum daily effluent limit for mercury is 0.023 µg/L.

3.18. The Tier 2 maximum daily effluent value for mercury for January 24, 2013, reported by Respondent, was 0.027 µg/L.

3.19. The Tier 2 maximum daily effluent value for mercury reported for January 24, 2013 exceeded 0.023 µg/L, in violation of the Permit.

Count 3: Effluent Limit Violations for Copper from Outfall 002

3.20. Part I.A., Table 2, of the Permit identifies effluent limits that the permittee is required to comply with for discharges from Outfall 002. The Tier 2 maximum daily effluent limit for copper is 130 µg/L. The Tier 2 average monthly effluent limits for copper are 64 µg/L and 0.48 lb/d. The Tier 3 maximum daily effluent limit for copper is 230 µg/L.

3.21. The Tier 2 maximum daily effluent value for copper for January 24, 2013, February 7, 2013, February 14, 2013, and February 22, 2013, reported by Respondent, were 135 µg/L, 140 µg/L, 160 µg/L, and 140 µg/L, respectively. The Tier 2 average monthly effluent value for copper for January 2013, reported by Respondent, was 97 µg/L. The Tier 2 average monthly effluent values for copper for February 2013, reported by Respondent, were 130 µg/L and 0.5085 lb/d. The Tier 3 maximum daily effluent value for copper for March 20, 2013, reported by Respondent, was 260 µg/L.

3.22. The Tier 2 maximum daily effluent values for copper reported for January 24, 2013, February 7, 2013, February 14, 2013, and February 22, 2013 exceeded 130 µg/L, in violation of the Permit. The Tier 2 average monthly effluent values for copper reported for January 2013 and February 2013 exceeded 64 µg/L and 0.48 lb/d, in violation of the Permit. The Tier 3 maximum daily effluent value for copper reported for March 20, 2013 exceeded 230 µg/L, in violation of the Permit.

Count 4: Effluent Limits Violations for Lead from Outfall 002

3.23. Part I.A., Table 2, of the Permit identifies effluent limits that the permittee is required to comply with for discharges from Outfall 002. The maximum daily effluent limit for lead is 88 µg/L. The average monthly effluent limit for lead is 32 µg/L.

3.24. The maximum daily effluent value for lead for March 20, 2013, reported by Respondent, was 110 µg/L. The average monthly effluent values for lead for March 2013 and April 2013, reported by Respondent, were 38 µg/L and 34 µg/L, respectively.

3.25. The maximum daily effluent value for lead reported for March 20, 2013 exceeded 88 µg/L, in violation of the Permit. The average monthly effluent values for lead reported for March 2013 and April 2013 exceeded 32 µg/L, in violation of the Permit.

Count 5: Failure to Conduct Monitoring in Accordance with Approved Test

Procedures

3.26. Part III.C. of the Permit requires the permittee to conduct monitoring in accordance with test procedures approved under 40 C.F.R. § 136. Test procedures under 40 C.F.R. § 136 include cooling or refrigeration of composite samples.

3.27. Respondent failed to cool or refrigerate certain composite samples on or around June 28, 2013, in violation of the Permit.

Count 6: Unpermitted Discharge from Facility

3.28. Part I of the Permit authorizes the permittee to discharge from the Facility via Outfall 001 and Outfall 002 into Lake Creek and the South Fork Coeur d'Alene River, respectively, pursuant to the conditions and requirements set forth therein.

3.29. On March 14, 2014, an undetermined water source somewhere on or under the hillside above the reclaimed pond #1 migrated below reclaimed pond #1 at the contact between the alluvium and the compacted dike materials which allowed tailings slurry to discharge from the Facility into Lake Creek for a brief period of time.

3.30. Respondent's discharge of tailings slurry into Lake Creek on March 14, 2014 was not authorized under the Permit, and therefore, was in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3.31. 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...or has violated any permit condition or limitation" in a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Consequently, pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, Respondent may be liable for an administrative assessment of penalties for violations at the Facility in an amount not to exceed \$16,000 per day, up to a maximum of \$177,500, for each violation that occurred on or after January 12, 2009 through December 6, 2013, and not to exceed \$16,000 per day, up to a maximum of \$187,500, for each violation that occurred after December 6, 2013.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

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

4.3. 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 \$75,000.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO must be made by a cashier's check or certified check 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, MO 63197-9000

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

4.6. Respondent must serve photocopies of the check described in Paragraph 4.5 on 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

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

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, 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 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 V, 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.

4.7.2. 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 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 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. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III above.

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

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

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

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

DATED:

8/8/2014

FOR RESPONDENT:




ROBERT TAYLOR, Chief Operating Officer
U.S. Silver – Idaho, Inc.

DATED:

8/20/2014

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

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.

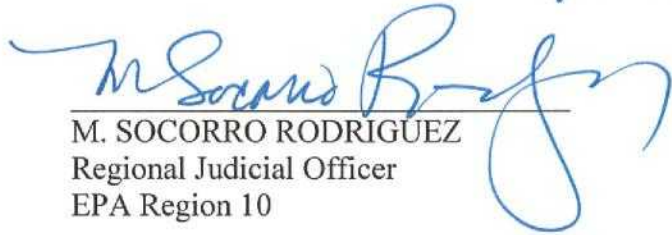
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable 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 Idaho Department of Environmental Quality 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 16th day of September, 2014.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: U.S. Silver – Idaho, Inc., DOCKET NO.: CWA-10-2014-0151** was served on the addressees in the following manner on the date specified below:

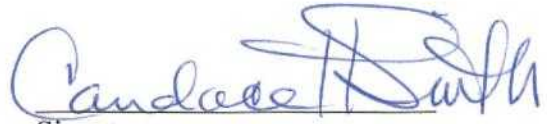
The undersigned certifies that a true and correct copy of the document was delivered to:

Kris Leefers, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, 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 to:

Robert Taylor
U.S. Silver – Idaho, Inc.
Coeur and Galena Mines and Mills
P.O. Box 440
Wallace, ID 83873

DATED this 16th day of Sept., 2014


Signature

Candace Smith
Regional Hearing Clerk
EPA Region 10