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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DOCKET NO. CWA-10-2009-0197

STERLING MINING COMPANY

CONSENT AGREEMENT AND  
FINAL ORDER

near Kellogg, 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 United States 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 in turn has redelegated this authority to the Regional Judicial Officer.

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 hereby issues, and Sterling Mining Company (hereinafter referred to as "Respondent") hereby agrees to issuance of, the Final Order contained in Part V of this CAFO.

CONSENT AGREEMENT AND FINAL ORDER - 1  
DOCKET NO. CWA-10-2009-0197

U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
(206) 553-1037



1 3.5. Sterling Mining Company is a "person" as defined under Section 502(5) of the  
2 CWA, 33 U.S.C. § 1362(5).

3 3.6. At all times relevant to this CAFO, Respondent was the owner and/or operator of  
4 the Sunshine Mine and Mill ("Facility"). The Facility is a silver mine located near Kellogg,  
5 Idaho.

6 3.7. The receiving waters for discharges of pollutants from the Facility are the South  
7 Fork Coeur d'Alene River ("River") and Big Creek. The River and Big Creek are "navigable  
8 waters" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and are "waters of the  
9 United States" as defined in 40 C.F.R. § 122.2.

10 **A. Discharge Without an NPDES Permit**

11 3.8. On or about October 9, 2008, Respondent discharged process waste water and  
12 backfill sand from a decant line near two sand storage tanks into Big Creek.

13 3.9. The decant line that conveyed the discharge to Big Creek constitutes a "point  
14 source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40  
15 C.F.R. § 122.2.

16 3.10. By discharging the process wastewater into waters of the United States,  
17 Respondent engaged in the "discharge of pollutants" from a point source within the meaning of  
18 Sections 301(a) and 502(12) of the CWA, 33 U.S.C. §§ 1311(a) and 1362(12).

19 3.11. The discharge of process wastewater was not authorized by an NPDES permit  
20 issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Therefore, Respondent violated  
21 Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

22 3.12. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. Part  
23 19, Respondent is liable for civil penalties not to exceed \$11,000 per day for each day during  
24 which the violation continues, up to a maximum amount of \$177,500.

1 **B. NPDES Permit Violations**

2 3.13. The Facility is authorized to discharge mine drainage, tailings process wastewater,  
3 storm water, cooling water, and sanitary wastewater from Outfall 001 into the South Fork Coeur  
4 d'Alene River ("River") pursuant to the conditions and limitations set forth in NPDES Permit  
5 No. ID-000006-0.

6 3.14. Outfall 001 is a "point source" within the meaning of 40 C.F.R. § 122.2.

7 3.15. Part I.A.1 of the Permit establishes effluent limits for discharges from Outfall  
8 001. These effluent limits include, but are not limited to, manganese, total suspended solids  
9 ("TSS"), and iron.

10 3.16. When a permittee exceeds a monthly average effluent limit, the permittee is  
11 deemed to be in violation of the effluent limits each of the days of the month in which the  
12 violation occurred. When a permittee exceeds a maximum daily effluent limit, the exceedance is  
13 counted as one violation.

14 3.17. In April 2007, Respondent discharged effluent from Outfall 001 a total of six  
15 days. In November 2007, Respondent discharged effluent from Outfall 001 a total of sixteen  
16 days. In December 2007, Respondent discharged effluent from Outfall 001 a total of sixteen  
17 days. In January 2008, Respondent discharged effluent from Outfall 001 a total of six days.

18 3.18. Between April 2007 and September 2008, the Facility had 82 violations of the  
19 Permit. The violations are set forth in Paragraphs 3.19-3.23, below.

20 3.19. Section I.A.1 of the Permit contains a monthly average concentration effluent  
21 limit for manganese of 0.503 mg/l at Outfall 001. Between April 2007 and September 2008,  
22 Respondent violated the monthly average concentration effluent limit for manganese at Outfall  
23 001 for a total of four months. The violations are as follows:  
24  
25

Month of Violation	Number of Violations
April 2007	6
November 2007	16
December 2007	16
January 2008	6

3.20. Section I.A.1 of the Permit contains a monthly average mass effluent limit for manganese of 11.7 lb/day at Outfall 001. Between April 2007 and September 2008, Respondent violated the monthly average mass effluent limit for manganese at Outfall 001 in April 2007, constituting six violations.

3.21. Section I.A of the Permit contains a daily maximum concentration effluent limit for manganese of 0.866 mg/L at Outfall 001. Between April 2007 and September 2008, Respondent violated the daily maximum concentration effluent limit for manganese at Outfall 001 for a total of 27 days, constituting 27 violations. The violations are as follows:

Month of Violation	Number of Violations
November 3, 2007	1
November 4, 2007	1
November 5, 2007	1
November 6, 2007	1
November 8, 2007	1
November 9, 2007	1
November 19, 2007	1
November 21, 2007	1
November 27, 2007	1
November 28, 2007	1
December 4, 2007	1
December 6, 2007	1
December 10, 2007	1

Month of Violation	Number of Violations
December 11, 2007	1
December 17, 2007	1
December 18, 2007	1
December 19, 2007	1
December 20, 2007	1
December 26, 2007	1
December 27, 2007	1
December 28, 2007	1
January 4, 2008	1
January 5, 2008	1
January 6, 2008	1
January 7, 2008	1
January 8, 2008	1
January 9, 2008	1

3.22. Section I.A.1 of the Permit contains a daily maximum concentration effluent limit for TSS of 31.6 mg/L at Outfall 001. Between April 2007 and September 2008, Respondent violated the daily maximum concentration effluent limit for TSS at Outfall 001 for a total of four days, constituting four violations. The violations are as follows:

Month of Violation	Number of Violations
November 19, 2007	1
December 11, 2007	1
January 5, 2008	1
September 9, 2008	1

3.23. Section I.A.1 of the Permit contains a daily maximum concentration effluent limit for iron of 2 mg/l at Outfall 001. Between April 2007 and September 2008, Respondent violated the daily maximum concentration effluent limit for iron at Outfall 001 on November 19, 2007, constituting one violation.

1 3.24. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319 (g)(2)(B) and 40  
2 C.F.R. Part 19, Respondent is liable for civil penalties not to exceed \$11,000 per day for each  
3 day during which the violations alleged above continued, up to a maximum of \$177,500.

4 **IV. CONSENT AGREEMENT**

5 4.1. Respondent stipulates that EPA has jurisdiction over the subject matter alleged  
6 herein.

7 4.2. As required under Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA  
8 has taken into account the nature, circumstances, extent, and gravity of the alleged violations as  
9 well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant  
10 factors. After considering all of these factors, EPA has determined and Respondent agrees that  
11 an appropriate penalty to settle this action is in the amount of \$50,000.

12 4.3. Respondent neither admits nor denies the specific factual allegations contained in  
13 Part III of this CAFO.

14 4.4. Respondent consents to issuance of the Final Order set forth in Part V, below, and  
15 agrees to pay the total civil penalty set forth in Paragraph 4.2, above, within 30 days of the  
16 effective date of the Final Order.

17 4.5. EPA acknowledges that Respondent is presently a debtor-in-possession in a  
18 Chapter 11 bankruptcy case at 09-20178-TLM, United States Bankruptcy Court, District of  
19 Idaho. Payment of the agreed civil penalty in Paragraph 4.2 above pursuant to the terms of this  
20 Consent Agreement is expressly conditioned on U.S. Bankruptcy Court approval. Approval of  
21 such payment, among other matters, is presently before the Court through Sterling's Motion for  
22 Sterling to Assume Sunshine Lease Pursuant to 11 U.S.C. §365(a) and to Cure Defaults [Docket  
23 #31] and Final Motion for Approval of Post-Petition Financing Agreement [Docket #143]. By  
24 entering into this CAFO, Respondent is obligated to use its best efforts to seek U.S. Bankruptcy  
25

1 Court approval for payment of the agreed civil penalty in Paragraph 4.2. The Parties' agreement  
2 in this CAFO notwithstanding, EPA may submit a proof of claim based on the allegations in Part  
3 III of this CAFO in the above-referenced bankruptcy case for an amount in excess of the amount  
4 specified in Paragraph 4.2. The Court's approval of this CAFO and EPA's receipt of the  
5 payment specified in Paragraph 4.4 shall extinguish any other claims made by EPA based on the  
6 allegations in Part III of this CAFO.

7 4.6. Payment under this CAFO shall be made by cashier's check or certified check,  
8 payable to the order of "Treasurer, United States of America" and delivered to the following  
9 address:

10 U.S. Environmental Protection Agency  
11 Region 10  
12 Fines and Penalties  
13 Cincinnati Finance Center  
14 PO Box 979077  
15 St. Louis, MO 63197-9000

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

17 4.7. Respondent shall serve photocopies of the checks described in Paragraph 4.6,  
18 above, on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and  
19 Enforcement at the following addresses:

20 Regional Hearing Clerk  
21 U.S. Environmental Protection Agency  
22 Region 10  
23 1200 Sixth Avenue, Suite 900, ORC-158  
24 Seattle, WA 98101

25 U.S. Environmental Protection Agency, Region 10  
Office of Compliance and Enforcement  
Attn: Eva DeMaria  
1200 Sixth Avenue, Suite 900, OCE-133  
Seattle, WA 98101

1 4.8. If Respondent fails to pay the penalty assessed by this CAFO in full by the due  
2 date set forth in Paragraph 4.4, above, the entire unpaid balance of penalty and accrued interest  
3 shall become immediately due and owing. If Respondent fails to pay the penalty assessed,  
4 Respondent may be subject to a civil action to collect the assessed penalty under the CWA,  
5 together with interest, fees, costs, and additional penalties described below. In any collection  
6 action, the validity, amount, and appropriateness of the penalty amount shall not be subject to  
7 review.

8 4.9. If Respondent fails to pay any portion of the penalty assessed by this CAFO in  
9 full by the due date set forth in Paragraph 4.4, above, Respondent shall be responsible for  
10 payment of the amounts described below:

11 4.9.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C.  
12 § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate  
13 established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the  
14 effective date of the Final Order set forth in Part V below, provided, however, that no  
15 interest shall be payable on any portion of the assessed penalty that is paid within thirty  
16 days of the effective date of the Final Order.

17 4.9.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to  
18 Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a  
19 timely basis the amount of the penalty set forth in Paragraph 4.2, above, Respondent shall  
20 pay (in addition to any assessed penalty and interest) attorneys fees and costs for  
21 collection proceedings and a quarterly nonpayment penalty for each quarter during which  
22 such failure to pay persists. Such nonpayment penalty shall be in an amount equal to  
23 twenty percent of the aggregate amount of Respondent's penalties and nonpayment  
24 penalties that are unpaid as of the beginning of such quarter.  
25

1 4.10. The penalty described in Paragraph 4.2, above, including any additional costs  
2 incurred under Paragraph 4.9, above, represents an administrative civil penalty assessed by EPA  
3 and shall not be deductible for purposes of federal taxes.

4 4.11. The undersigned representative of Respondent certifies that he or she is fully  
5 authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this  
6 document.

7 4.12. Except as described in Subparagraph 4.9.2, above, each party shall bear its own  
8 costs in bringing or defending this action.

9 4.13. Respondent expressly waives any rights to contest the allegations and waives any  
10 right to appeal the Final Order set forth in Part V, below.

11 4.14. The provisions of this CAFO shall bind Respondent and its agents, servants,  
12 employees, successors, and assigns.

13 4.15. The above provisions are STIPULATED AND AGREED upon by Respondent  
14 and EPA.

15  
16 DATED:

17 July 28, 2009

STERLING MINING COMPANY:

Roger A. Van Voorhees

Signature

Print Name: Roger A. Van Voorhees

Title: President, Sterling Mining

18  
19  
20  
21 DATED:

22 August 25, 2009

U.S. ENVIRONMENTAL PROTECTION AGENCY:

Edward J. Kowalski

Edward J. Kowalski, Director  
Office of Compliance and Enforcement

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V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of the 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, above. 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, applicable CWA regulations, and/or any 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.

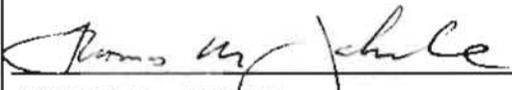
5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), EPA has published public notice of its intent to assess an administrative penalty against Respondent and has invited public comment in accordance with 40 C.F.R. § 22.45. More than forty days have elapsed since the issuance of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

1 This Final Order shall become effective upon filing.

2

3 SO ORDERED this 16<sup>th</sup> day of September, 2009.

4

5 

6 THOMAS M. JAHNKE  
7 Regional Judicial Officer  
8 U.S. Environmental Protection Agency  
9 Region 10

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CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Sterling Mining Company, DOCKET NO.: CWA-10-2009-0197** was filed with the Regional Hearing Clerk on September 16, 2009.

On September 16, 2009 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, 2009, to:

Sterling Mining Company  
Sunshine Mine and Mill  
P.O. Box 117  
Kellogg, ID 83837

DATED this 16<sup>th</sup> day of September 2009.

  
\_\_\_\_\_  
Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10