

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. Respondent owns and operates the Kensington Mine (“the Mine”) located north of Juneau, Alaska.

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

3.3. Between approximately 2006 and 2010, Respondent was constructing a dam at Lower Slate Lake to serve as a tailings impoundment. During the construction of that dam, Respondent discharged acid rock drainage (“ARD”) from a construction area on a hillside above Lower Slate Lake. Respondent’s construction efforts exposed acid-generating rock, which resulted in the ARD. The discharges of ARD have entered the lake at times from a collection pond next to the lake known as the “Big Hole.” Respondent also discharged sediment into the Lake during the construction. The construction site, the Big Hole and other discrete conveyances of ARD and sediment to the lake are each considered a “point source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

3.4. Respondent, during construction of the Lower Slate dam, discharged acid rock drainage and sediment into Lower Slate Lake. Acid rock drainage and sediment are “pollutants” within the meaning of Section 502(6) and (12) of the Act, 33 U.S.C. § 1362(6) and (12).

3.5. Lower Slate Lake flows into East Fork Slate Creek, which flows to the Lynn Canal, which is an inlet from the Pacific Ocean. The lake, the creek and the Lynn Canal are all “navigable waters” as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), “waters of the United States” as defined in 40 C.F.R. § 122.2.

3.6. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except as authorized by an NPDES permit or other specified statutory sections. The discharges described in paragraphs 3.3 – 3.4 above were not authorized by a CWA permit issued to Respondent.

3.7. By discharging the ARD and sediment into Lower Slate Lake, 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).

3.8. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19, Respondent is liable for civil penalties not to exceed \$16,000 per day for each day during which the violation continues, up to a maximum amount of \$177,500.

IV. CONSENT AGREEMENT

4.1. For purposes of this CAFO, 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. Nothing in this CAFO shall be construed as an admission of liability by Respondent.

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 ONE HUNDRED SEVENTY THOUSAND DOLLARS (\$170,000).

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 deliver via United States mail 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, 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 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 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 thirty (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 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. For purposes of this CAFO, Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

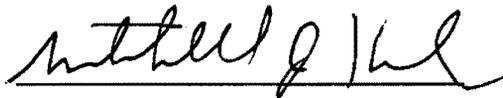
4.12. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

October 26, 2010

FOR RESPONDENT:



Signature

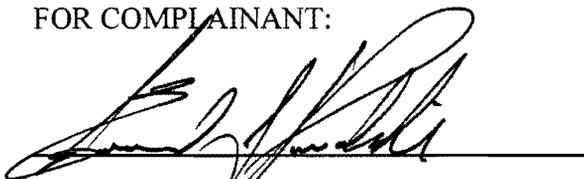
Print Name: Mitchell J. Krebs

Title: SVP and Chief Financial Officer

DATED:

11/02/2010

FOR COMPLAINANT:



EDWARD J. KOWALSKI, 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.

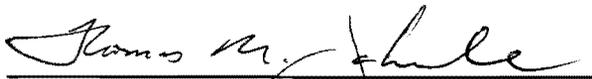
§ 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligations to comply with all applicable 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 13th day of December, 2010.



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: Coeur Alaska, Inc., DOCKET NO.: CWA-10-2011-0018** was filed with the Regional Hearing Clerk on December 13, 2010.

On December 13, 2010, the undersigned certifies that a true and correct copy of the document was delivered to:

Mark Ryan
Idaho Operations Office
U.S. Environmental Protection Agency
1435 N. Orchard St.
Boise, ID 83706

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 December 13, 2010, to:

Bill Boyd
Ramsden & Lyons, LLP
700 Northwest Boulevard
P.O. Box 1336
Coeur d'Alene, ID 83816

DATED this 13th day of December 2010.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10