

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. RCRA-10-2025-0040
)	
FAIRBANKS GOLD MINING, INC.,)	CONSENT AGREEMENT
FORT KNOX MINE,)	
)	
Fairbanks, Alaska,)	
)	
Respondent.)	

I. 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 Fairbanks Gold Mining, Inc. (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. 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.

III. 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 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 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.

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

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

3.5 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.

3.6 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.

3.7 “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.

3.8 “Person” is defined at 40 C.F.R. § 260.10 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.

General Allegations

3.9 Paragraphs 3.1 through 3.8 are incorporated herein by reference as if they were set forth here in their entirety.

3.10 Respondent is a corporation organized under the laws of the State of Delaware and authorized to do business in Alaska.

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

3.12 At all times relevant to the allegations set forth herein, Respondent has been the “owner” or “operator” of the Fort Knox Mine facility (“Facility”) as those terms are defined at 40 C.F.R. § 260.10.

3.13 The Facility is located in Fairbanks, Alaska and consists of a gold mine with associated Assay Laboratory, Metallurgical Laboratory, and support operations.

3.14 At no time relevant to the allegations in this Consent Agreement has Respondent filed a Part A or Part B RCRA Permit Application or obtained a permit to treat or store hazardous waste under 40 C.F.R. § 270.1 or interim status as identified in RCRA Section 3005(e), 42 U.S.C. § 6925(e).

3.15 Respondent last submitted its re-notification to EPA pursuant to 40 C.F.R. § 262.18 in August 2021, where it self-classified as a small quantity generator.

3.16 EPA staff inspected the Facility on May 10, 2022 (“EPA Inspection”).

3.17 EPA issued an information request under RCRA Section 3007(a), 42 U.S.C. § 6927(a), on February 21, 2023, to which Respondent provided records and information in response (“EPA Information Request”).

Counts 1 through 8: Failure to Make Hazardous Waste Determinations

3.18 Pursuant to 40 C.F.R. § 262.11, a generator of solid waste must make an accurate determination as to whether that waste is a hazardous waste using either generator knowledge or a test method set forth in 40 C.F.R. Part 261, Subpart C.

3.19 On or before February 21, 2023, Respondent generated the following individual or groups of solid wastes at the Facility:

3.19.1. Weak Acid Dissociable Cyanide (WAD CN) solution and associated rinsates;

3.19.2. Cyanide Matrix Drain from Atomic Absorption (AA) and associated rinsates;

3.19.3. Acid Drain (Parting Solution) from AA testing;

3.19.4. Bottle Roll Test ICP/MS solution and associated rinsates;

3.19.5. Digital CN Titration wastes and associated rinsates;

3.19.6. Metallurgical Lab (“Met Lab”) Bucket containing WAD cyanide, soda ash and pH buffer residuals;

3.19.7. Met Lab Trench and Sump containing CN Matrix Solution and Assay Lab Bucket residuals; and

3.19.8. Met Lab Sump and tailings slurry residuals mixed in the Detox Circuit.

3.20 At all times relevant to this Consent Agreement, the wastes listed in paragraph 3.19 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.

3.21 By failing to make an accurate determination as to whether the wastes listed in paragraph 3.18 are hazardous wastes, Respondent violated 40 C.F.R. § 262.11 at least eight times.

Count 9: Failure to Meet Independent LQG Requirements

3.22 Paragraphs 3.1 through 3.21 are incorporated herein by reference as if they were set forth here in their entirety.

3.23 Pursuant to 40 C.F.R. § 262.13, a generator is required to determine its generator category based on standards set forth therein. As set forth in 40 C.F.R. § 262.13, Table 1, where a generator generates more than one kilogram of acute hazardous waste or more than 1,000 kilograms of non-acute hazardous waste in a calendar month, it is categorized as an LQG.

3.24 Pursuant to 40 C.F.R. § 262.10(a)(1)(iii), an LQG must comply with independent LQG requirements including, among other things, the requirements under 40 C.F.R. § 262.18 and 40 C.F.R. Part 62, Subpart D, which includes 40 C.F.R. § 262.41.

3.25 Pursuant to 40 C.F.R. §§ 262.18(d)(2) and 262.41, an LQG must biennially re-notify EPA as to its generator category, and submit to EPA a hazardous waste report, by March 1 of each even-numbered year covering hazardous wastes generated at the Facility.

3.26 Between at least January 31, 2020, and June 1, 2023, Respondent was an LQG because it generated more than 1,000 kilograms of non-acute hazardous waste in each calendar month during that period.

3.27 Respondent failed to determine its generator category based on standards set forth in 40 C.F.R. § 262.13.

3.28 Respondent failed to re-notify to EPA as to its generator category and failed to submit a biennial hazardous waste report to EPA by March 1 of 2021 and 2023 in violation of 40 C.F.R. §§ 262.18(d)(2) and 262.41.

Count 10: Storage and Treatment of Hazardous Wastes without a Permit

3.29 Paragraphs 3.1 through 3.28 are incorporated herein by reference as if they were set forth here in their entirety.

3.30 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.

3.31 The term “storage” is defined at Section 1004(33) of RCRA, 42 U.S.C. § 6903(33) to mean “the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.”

3.32 The term “storage” is defined at 40 C.F.R. § 260.10 to mean “the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.”

3.33 The term “treatment” is defined at Section 1004(34) of RCRA, 42 U.S.C. § 6903(34), and 40 C.F.R. § 260.10 to mean “any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume.”

Storage of Hazardous Waste

3.34 Between at least January 31, 2020, and June 1, 2023, Respondent stored hazardous wastes in the Met Lab Bucket, Met Lab Trench and Sump tank system, and Detox Circuit.

3.35 Respondent thus stored hazardous waste within the meaning of Section 1004(33) of RCRA, 42 U.S.C. § 6903(33), and 40 C.F.R. § 260.10.

3.36 Respondent did not meet the conditions for exemption from the permit requirement under 40 C.F.R. §§ 262.15 and/or 262.17.

3.37 By storing hazardous waste at the Facility without a permit, interim status, or complying with all applicable conditions for exemption, Respondent violated RCRA Section 3005, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c) between at least January 31, 2020, and June 1, 2023.

Treatment of Hazardous Waste

3.38 Between at least January 31, 2020, and June 1, 2023, Respondent treated hazardous waste generated at the Facility as follows:

3.38.1. Respondent mixed Digital CN Titration wastes and associated rinsates with WAD Cyanide wastes and associated rinsates, soda ash, and pH buffer residuals in the Met Lab Bucket

3.38.2. Respondent mixed the contents of the Met Lab Bucket with Cyanide Matrix Drain from AA and associated rinsates and Mill Processing ICP/MS solutions and associated rinsates in the Met Lab Trench and Sump tank system; and

3.38.3. Respondent mixed the Met Lab Trench and Sump tank system contents with chemicals in the Detox Circuit.

3.39 The activities listed in paragraph 3.38 meet the definition of “treatment” in 40 C.F.R. § 260.10 and Section 1004(34) of RCRA, 42 U.S.C. § 6903(34). Thus, between at least January 31, 2020, and June 1, 2023, Respondent “treat[ed]” hazardous waste as that term is defined at 40 C.F.R. § 260.10 and Section 1004(34) of RCRA, 42 U.S.C. § 6903(34).

3.40 By treating hazardous waste without a permit or interim status, Respondent violated RCRA Section 3005, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c) between at least January 31, 2020, and June 1, 2023.

Enforcement Authority

3.41 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 \$90,702 per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, issue an order requiring compliance, or both.

IV. 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 \$275,000 (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 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: www.epa.gov/financial/makepayment. Payments made by check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

*Address format for standard delivery
(no delivery confirmation requested):*

U.S. Environmental Protection Agency
P.O. Box 979078
St. Louis, MO 63197-9000

*Address format for signed receipt confirmation
(FedEx, DHL, UPS, USPS certified, registered,
etc):*

U.S. Environmental Protection Agency
Government Lockbox 979078
3180 Rider Trail S.
Earth City, MO 63045

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 at the following addresses:

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

Xiangyu Chu
U.S. Environmental Protection Agency
Region 10
Chu.xiangyu@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. The undersigned representative of Respondent certifies that as of the effective date of the Final Order, Respondent has completed hazardous waste determinations in accordance with 40 C.F.R. § 262.11 for the solid wastes listed in Paragraphs 3.19.1 (WAD CN

solution and associated rinsates); 3.19.6 (Met Lab Bucket); and 3.19.8 (Lab Sump and tailings slurry residuals mixed in the Detox Circuit) and generated records regarding the hazardous waste determinations in accordance with 40 C.F.R. § 262.11(f).

4.11. 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).

4.11.1. Within 60 days of the effective date, Respondent must conduct accurate hazardous waste determinations for the solid wastes listed in Paragraphs 3.19.2 through 3.19.5, and 3.19.7 in accordance with 40 C.F.R. § 262.11(a)-(d), generate records of the determinations in accordance with 40 C.F.R. § 262.11(f), and submit the records to EPA at the following recipient and identify the docket number for this action:

Xiangyu Chu
U.S. Environmental Protection Agency
Region 10, ECAD Land Enforcement Section
Chu.xiangyu@epa.gov

4.11.2. 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 Met Lab Trench and Sump tank system, including the Met Lab Sink and associated piping.

4.11.3. In accordance with 40 C.F.R. § 262.17(a)(8)(i)(B), Respondent must notify EPA using form 8700-12 within 90 days after closing the Met Lab Trench and Sump tank system that it has complied with the closure performance standards in

40 C.F.R. § 262.17(a)(8)(iii). Respondent must provide the notification required to the following recipient and identify the docket number associated with this action:

Xiangyu Chu
U.S. Environmental Protection Agency
Region 10, ECAD Land Enforcement Section
Chu.xiangyu@epa.gov

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. 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 4.11, above, is restitution, remediation, or required to come into compliance with the law.

4.14. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order

to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

4.14.1. Respondent shall complete (or shall have completed) an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;

4.14.2. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

4.14.3. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at Henderson.Jessica@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

4.14.4. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s receipt of a TIN issued by the IRS.

4.15. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.16. 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.

4.17. Solely 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.

4.18. Solely for the purposes of this proceeding, 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.

4.19. By signing this Consent Agreement, respondent waives any rights or defenses that respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order.

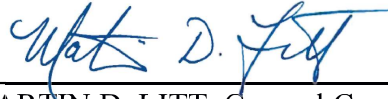
4.20. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.21. Respondent consents to the issuance of any specified compliance or corrective action order and to any conditions specified in this Consent Agreement.

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

DATED:

FOR RESPONDENT:



MARTIN D. LITT, General Counsel
Fairbanks Gold Mining, Inc.

FOR COMPLAINANT:

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-10-2025-0040
)	
FAIRBANKS GOLD MINING, INC.,)	FINAL ORDER
FORT KNOX MINE,)	
)	
)	
Fairbanks, 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.

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

IT IS SO ORDERED.

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: Fairbanks Gold Mining, Inc., Docket No.: RCRA-10-2025-0040**, was filed with the Regional Hearing Clerk and that a true and correct copy was served on the date specified below to the following addressees via electronic mail:

Brett 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

Steven Barringer
Attorney for Fairbanks Gold Mining, Inc.
Greenberg Traurig, LLP
2101 L Street NW, Suite 1000
Washington, D.C. 20037
barringers@gtlaw.com

Regional Hearing Clerk
EPA Region 10