

II. PRELIMINARY STATEMENT

2.1. On March 7, 2003, EPA commenced this proceeding against Respondents pursuant to Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), by filing an administrative Complaint.

2.2. The Complaint alleged that Respondents' violations of the CWA had subjected Respondents to penalties and proposed that Respondents be assessed an administrative civil penalty.

2.3. The complete factual and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the Complaint and is incorporated herein by reference.

2.4. 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 state of Alaska has been given an opportunity to consult with EPA regarding the assessment of an administrative civil penalty against Respondents.

2.5. In accordance with Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45, EPA has issued a public notice to inform the public of its intent to assess administrative penalties against Respondents and to invite public comment. EPA has received no public comments on this proceeding.

III. CONSENT AGREEMENT

The parties to this action hereby stipulate as follows:

- 3.1. Respondents admit the jurisdictional allegations of the Complaint.
- 3.2. Respondents admit that the construction activities described in the Complaint resulted in the unauthorized discharge of dredged or fill material to waters of the United States

in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and that both Respondents are liable for these violations.

3.3. Respondents expressly waive any rights to contest the allegations and to appeal the Final Order contained herein.

3.4. The provisions of this CAFO shall bind Respondents and their agents, servants, employees, successors, and assigns. Respondents are jointly and severally liable for a failure to comply with the terms of this CAFO.

3.5. Except as provided in Paragraph 3.11 below, each party shall bear its own costs in bringing or defending this action.

3.6. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA has determined and Respondents agree that an appropriate penalty to settle this action is in the amount of SEVENTEEN THOUSAND DOLLARS (\$17,000.00). This penalty amount has been agreed upon in consideration of the statutory penalty factors identified in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).

3.7. Respondents consent to the issuance of the Final Order recited herein and to payment of the civil penalty cited in the foregoing paragraph within thirty (30) days of the effective date of the Final Order.

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

Mellon Client Services Center
EPA Region 10
P.O. Box 360903M
Pittsburgh, Pennsylvania 15251-6903

Respondents shall note on the check the title and docket number of this case.

3.9. Respondents shall serve photocopies of the check described above on the

Regional Hearing Clerk and EPA at the following two addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

Aquatic Resources Unit
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, Mail Stop ECO-083
Seattle, Washington 98101
attn: Steve Roy

3.10. Should Respondents fail 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. Should such a failure to pay occur, Respondents may be subject to a civil action to collect the assessed penalty under the CWA. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

3.11. Should Respondents fail to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondents shall also be responsible for payment of the following amounts:

a. 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 the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, 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 contained herein.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), should Respondents fail to pay on a timely basis the amount of the penalty assessed by the Final Order contained herein, Respondents shall pay (in addition to any assessed penalty and interest) attorneys fees, 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 Respondents' penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

3.12. The undersigned representative of Respondents certifies that he is fully authorized to enter into the terms and conditions of this CAFO and to bind Respondents to this document.

3.13. The penalty described above represents a civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

STIPULATED AND AGREED this 16TH day of APRIL, 2004:



JOHN R. SPENCER
Spencer & Loescher, PLLC
For Respondents Alexander Kozned and
Aurora Communications International, Inc.

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10



R. DAVID ALLNUTT
Assistant Regional Counsel
For Complainant

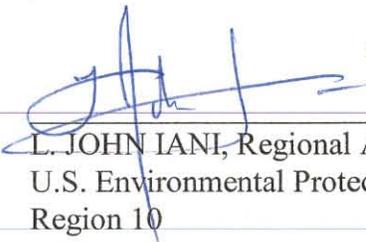
IV. FINAL ORDER

4.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondents are hereby ordered to comply with the foregoing terms of settlement.

4.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the particular violations alleged in the Complaint. 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 Respondents' obligations to comply with all applicable provisions of the CWA and regulations, orders, and permits issued thereunder.

4.3. This Final Order shall become effective upon filing.

SO ORDERED this 20th day of April, 2004.



L. JOHN IANI, Regional Administrator
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: Alexander Kozned and Aurora Communications International, Inc., DOCKET NO.: CWA-10-2003-0035** was filed with the Regional Hearing Clerk on April 20, 2004.

On April 20, 2004 the undersigned certifies that a true and correct copy of the document was delivered to:

R. David Allnut, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

On April 20, 2004 the undersigned certifies that a true and correct copy of the document was delivered by Pouch Mail **and by facsimile** to:

The Honorable William B. Moran
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

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 April 20, 2004, to:

John R. Spencer
Spencer & Loescher, PLLC
1326 Tacoma Avenue, South
Suite 101
Tacoma, Washington 98402-1983

Alexander Kozned, President
Aurora Communications International, Inc.
2629 Lincoln Avenue
Belmont, California 94002

DATED this 20th day of April 2004.

A handwritten signature in blue ink that reads "Carol Kennedy". The signature is written in a cursive style with a large, sweeping initial "C".

Carol Kennedy
Regional Hearings Clerk
EPA Region 10