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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA-10-2009-0203
)	
TECK ALASKA, INC.)	CONSENT AGREEMENT AND
(Red Dog Mine and Port Site))	FINAL ORDER
)	
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 re delegated 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 Teck Alaska, Inc. (hereinafter referred to as "Respondent") hereby agrees to issuance of, the Final Order contained in Part V of this CAFO.

1 **II. PRELIMINARY STATEMENT**

2 2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO
3 constitutes commencement of this proceeding which will conclude when the Final Order
4 contained in Part V of this CAFO becomes effective.

5 2.2. Part III of this CAFO contains a concise statement of the statutory and factual
6 basis for the alleged violations of the CWA.

7 **III. ALLEGATIONS**

8 3.1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of
9 pollutants into waters of the United States by any person, except as authorized by a National
10 Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the
11 CWA, 33 U.S.C. § 1342. Each discharge of pollutants from a point source that is not authorized
12 by such a permit constitutes a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

13 3.2. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines "discharge of a
14 pollutant" to include "any addition of any pollutant to navigable waters from any point source."
15 Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as "waters of the
16 United States." 40 C.F.R. § 122.2 defines "waters of the United States" to include waters that
17 are currently used, were used in the past, or may be susceptible to use in interstate or foreign
18 commerce; all interstate waters; and tributaries to those waters.

19 3.3. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include,
20 *inter alia*, dredged spoil, rock, sand, biological materials, and industrial waste.

21 3.4. Respondent is a corporation duly organized under the laws of the State of Alaska
22 and is therefore a "person" as defined under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

23 Respondent is qualified to do business under the laws of the State of Alaska.

1 3.5. At all times relevant to this CAFO, Respondent was the owner and/or operator of
2 the Red Dog Mine and Port Site, a zinc and lead mine, on the western edge of the Brooks Range
3 near Kotzebue, Alaska ("Facility").

4 3.6. Respondent is authorized to discharge treated mine drainage and storm water
5 from the Facility through Outfall 001 into the Middle Fork of Red Dog Creek ("Red Dog
6 Creek") and Outfall 002 into the tundra pursuant to the conditions and limitations set forth in
7 NPDES Permit No. AK-003865-2 ("Mine Permit"). Respondent is also authorized to discharge
8 mine drainage, secondary treated domestic sewage, wastewater and backwash from the Facility
9 through Outfalls 001 and 005 into the Chukchi Sea pursuant to the conditions and limitations set
10 forth in NPDES Permit No. AK-004064-9 ("Port Permit").

11 3.7. Red Dog Creek, the tundra, and the Chukchi Sea are "navigable water[s]" as
12 defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and "water[s] of the United States"
13 as defined in 40 C.F.R. §122.2.

14 3.8. Outfalls 001 and 002 of the Mine Permit, and Outfalls 001 and 005 of the Port
15 Permit are "point sources" within the meaning of 40 C.F.R. § 122.2.

16 3.9. Parts I.A. and I.B. of the Mine Permit establishes effluent limits for discharges
17 from Outfalls 001 and 002. Parts I.A. and I.B. of the Port Permit establish effluent limits for
18 discharges from Outfalls 001 and 005. These effluent limits include, but are not limited to, total
19 suspended solids ("TSS"), lead, and zinc.

20 3.10. When a permittee exceeds an average monthly effluent limit, the permittee is
21 deemed to be in violation of the effluent limits each of the days of the month in which the
22 discharge occurred. When a permittee exceeds a daily maximum effluent limit, the exceedance
23 is counted as one violation.

1 **Mine Permit—Sampling Violations**

2 3.11. On August 24-30, 2006, EPA's National Enforcement and Investigations Center
3 ("NEIC") inspected Respondent's Facility to determine its compliance with the requirements of
4 the CWA and the Mine and Port NPDES Permits. At the time of the NEIC inspection, the
5 Respondent was adding fresh water from Bons Creek reservoir to Water Treatment Plant 2 prior
6 to discharge through Outfall 001. Respondent's Mine Permit did not provide for the addition of
7 water from Bons Creek reservoir at this point in Water Treatment Plant 2.

8 3.12. Part I.A.1. of the Mine Permit states: "Effluent samples collected shall be
9 representative of the effluent discharged without dilution from or contact with any outside
10 sources."

11 3.13. In 2004, the Respondent collected effluent samples at Outfall 001 that included
12 fresh water from Bons Creek reservoir, and therefore were not representative of the effluent that
13 would be discharged without dilution through Outfall 001. In August, 2004, Respondent
14 violated the Mine Permit requirements by collecting non-representative effluent samples for nine
15 days in 2004, constituting nine (9) violations.

16 3.14. In 2005, the Respondent collected effluent samples at Outfall 001 that included
17 fresh water from Bons Creek reservoir, and therefore were not representative of the effluent that
18 would be discharged without dilution through Outfall 001. Between August and October, 2005,
19 Respondent violated the Mine Permit requirements by collecting non-representative effluent
20 samples for thirty six days in 2005, constituting thirty six (36) violations.

21 3.15. In 2006, the Respondent collected effluent samples at Outfall 001 that included
22 fresh water from Bons Creek reservoir, and therefore were not representative of the effluent that
23 would be discharged without dilution through Outfall 001. Between July and September, 2006,
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25

1 the Respondent violated the Mine Permit requirements by collecting non-representative effluent
2 samples for sixty-six (66) days in 2006, constituting sixty-six (66) violations.

3 **Port Permit—Effluent Limit Exceedences**

4 3.16. In May 2005, Respondent discharged effluent from Outfall 005 the entire month
5 for a total of 31 days. During that month, the Facility had 65 violations of the Port Permit. The
6 violations are set forth in Paragraphs 3.17-3.21, below.

7 3.17. Section I.A of the Permit contains a maximum daily concentration effluent limit
8 for zinc of 1500 µg/L at Outfall 005. On May 12, 2005, Respondent violated the maximum daily
9 concentration effluent limit for zinc, constituting one (1) violation.

10 3.18. Section I.A of the Permit contains an average monthly concentration effluent limit
11 for zinc of 750 µg/L at Outfall 005. Respondent violated the average monthly concentration
12 effluent limit for zinc at Outfall 005 in May 2005, constituting thirty-one (31) violations.

13 3.19. Section I.A of the Permit contains an maximum daily concentration effluent limit
14 for lead of 600 µg/L at Outfall 005. On May 12, 2005, Respondent violated the maximum daily
15 concentration effluent limit for lead, constituting one (1) violation.

16 3.20. Section I.A of the Permit contains a maximum daily concentration effluent limit
17 for total suspended solids ("TSS") of 30 mg/L at Outfall 005. On May 12, 2005, Respondent
18 violated the maximum daily concentration effluent limit for TSS, constituting one (1) violation.

19 3.21. Section I.A of the Permit contains an average monthly concentration effluent limit
20 for TSS of 20 mg/L at Outfall 005. Respondent violated the average monthly concentration
21 effluent limit for TSS at Outfall 005 in May 2005, constituting thirty-one (31) violations.

1 **Port Permit—Unpermitted Discharges**

2 3.22. On July 9, 2004, Respondent had an unpermitted discharge of approximately 500
3 gallons of treated effluent from the Ion Exchange plant to the tundra near the Port. Respondent's
4 unpermitted discharge in July 2004 constitutes one (1) violation.

5 3.23. On September 25, 2006, Respondent had an unpermitted discharge of
6 approximately 46,000 gallons of treated effluent from the Ion Exchange plant to the tundra near
7 the Port. Respondent's unpermitted discharge in September 2006 constitutes one (1) violation.

8 On April 16, 2007, Respondent had an unpermitted ten-gallon spill of hydraulic oil into Little
9 Creek along the Haul Road at the Port Site. Respondent's unpermitted discharge in April 2007
10 constitutes one (1) violation.

11 **Liability for Penalties**

12 3.24. Under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA may assess an
13 administrative penalty when EPA finds that "any person has violated section 1311...of [the
14 CWA], or has violated any permit condition or limitation ... in a permit issued" pursuant to
15 Section 402 of the CWA, 33 U.S.C. § 1342. Consequently, under Section 309(g)(2)(B) of the
16 CWA, Respondent is liable for the administrative assessment of civil penalties for violations at
17 the Facility in an amount not to exceed \$11,000 per day for each day during which the violation
18 continues, up to a maximum of \$157,500.

19 **IV. CONSENT AGREEMENT**

20 4.1. Respondent stipulates that EPA has jurisdiction over the subject matter alleged
21 herein.

22 4.2. As required under Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA
23 has taken into account the nature, circumstances, extent, and gravity of the alleged violations as
24 well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant
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1 factors. After considering all of these factors, EPA has determined and Respondent agrees that
2 an appropriate penalty to settle this action is in the amount of \$120,000.

3 4.3. Respondent neither admits nor denies the specific factual allegations contained in
4 Part III of this CAFO.

5 4.4. Respondent consents to issuance of the Final Order set forth in Part V, below, and
6 agrees to pay the total civil penalty set forth in Paragraph 4.2, above, within thirty (30) days of
7 the effective date of the Final Order.

8 4.5. Payment under this CAFO shall be made by cashier's check or certified check,
9 payable to the order of "Treasurer, United States of America" and delivered to the following
10 address:

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

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

18 4.6. Respondent shall serve photocopies of the checks described in Paragraph 4.5,
19 above, on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and
20 Enforcement at the following addresses:

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

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

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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, above, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If Respondent fails to pay the penalty assessed, Respondent may be subject 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 amount shall not be subject to review.

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

4.8.1. 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, below, 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.

4.8.2. 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 amount of the penalty set forth in Paragraph 4.3, above, 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.

1 4.9. The penalty described in Paragraph 4.2, above, including any additional costs
2 incurred under Paragraph 4.8, above, represents an administrative civil penalty assessed by EPA
3 and shall not be deductible for purposes of federal taxes.

4 4.10. 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 4.11. Except as described in Subparagraph 4.8.2, above, each party shall bear its own
8 costs in bringing or defending this action.

9 4.12. 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.

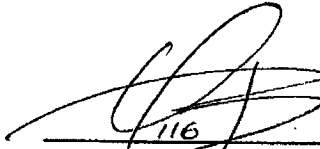
11 4.13. The provisions of this CAFO shall bind Respondent and its agents, servants,
12 employees, successors, and assigns.

13 4.14. The above provisions are STIPULATED AND AGREED upon by Respondent
14 and EPA.

15 DATED:

TECK ALASKA, INC.:

16
17 July 19/2009


116

Signature


Print Name: MIKE BONNEAU

Title: GENERAL MANAGER

20
21 DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

22
23 July 20, 2009



Cara Steiner-Riley

Assistant Regional Counsel

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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 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), EPA has published public notice of its intent to assess an administrative penalty against Respondent and to invite public comment in accordance with 40 C.F.R. § 22.45. More than forty (40) days have elapsed since the issuance of this public notice, and EPA has received no petition to set aside the Consent Agreement contained herein.

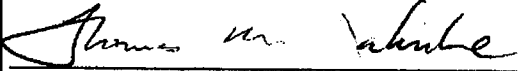
1 This Final Order shall become effective upon filing.

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3 SO ORDERED this 4th day of September, 2009.

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THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency
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: Teck Alaska, Inc., DOCKET NO.: CWA-10-2009-0203** was filed with the Regional Hearing Clerk on September 4, 2009.

On September 4, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

Cara Steiner-Riley, 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 4, 2009, to:

Teck Alaska, Inc.
Red Dog Operations
Building A, Suite 101
3105 Lakeshore Drive
Anchorage, AK 99517

Brent Newell
Legal Director
Center on Race, Poverty & the Environment
47 Kearny Street, Suite 804
San Francisco, CA 94108

DATED this 4th day of September 2009.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10