

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. RCRA-10-2023-0043
)	
HECLA GREENS CREEK MINING)	CONSENT AGREEMENT
COMPANY,)	
)	
Juneau, 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 Hecla Greens Creek Mining Company (“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 Waste 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 Pursuant to 40 C.F.R. § 261.24 a solid waste exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 of 40 C.F.R. § 261.24 at the concentration equal to or greater than the respective value in Table 1.

3.8 Pursuant to 40 C.F.R. § 261.3(a)(2)(i) a solid waste is a hazardous waste if it exhibits any of the characteristics of hazardous waste identified in 40 C.F.R. part 261, subpart C. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under 40 C.F.R. § 261.4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under 40 C.F.R. part 261, subpart C is a characteristic

hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture.

3.9 “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.

3.10 40 C.F.R. § 260.10 defines a “person” 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.

3.11 Pursuant to 40 C.F.R. § 262.11, a person who generates a solid waste must determine if that waste is hazardous waste using the method provided therein.

3.12 Pursuant to 40 C.F.R. § 262.11(f), a small or large quantity generator must maintain records supporting its hazardous waste determinations, including records that identify whether a solid waste is a hazardous waste, as defined by 40 C.F.R. § 261.3. Records must be maintained for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. These records must comprise the generator's knowledge of the waste and support the generator's determination, as described at 40 C.F.R. § 262.11(c)-(d). The records must include, but are not limited to, the following types of information: the results of any tests, sampling, waste analyses, or other determinations made in accordance with this section; records documenting the tests, sampling, and analytical methods used to demonstrate the validity and relevance of such tests; records consulted in order to determine the process by which the waste was generated, the composition of the waste, and the properties of the waste; and records

which explain the knowledge basis for the generator's determination, as described at 40 C.F.R. § 262.11(d)(1).

3.13 “Facility” is defined at 40 C.F.R. § 260.10 to mean all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

3.14 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.

General Allegations

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

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

3.17 At all times relevant to the allegations set forth herein, Respondent has been the “operator” of the Hecla Greens Creek Mine (the “Facility”), which is a “facility,” as those terms are defined at 40 C.F.R. § 260.10.

3.18 The Facility is located on Admiralty Island, Alaska and consists of a lead, zinc, gold, and silver mine with associated Assay Laboratory and support operations.

3.19 Respondent has not filed a Part A or Part B RCRA Permit Application and does not have a permit to treat 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).

3.20 Respondent submitted to EPA a Notification of Hazardous Waste Activity (“Notification”), pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, for its operations at the Facility, which identified Respondent as a large quantity generator of hazardous waste.

3.21 EPA staff inspected the Facility on August 20-21, 2019.

3.22 EPA issued information requests under RCRA Section 3007(a), 42 U.S.C. § 6927(a), on October 13, 2020 and January 14, 2022, to which Respondent provided records and information in response.

Count 1: Disposal of Hazardous Waste without a Permit

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

3.24 During the August 20-21, 2019 inspection, EPA inspectors observed what appeared to be lead concentrate materials on the soil outside the Concentrate Storage Building at the Facility. Upon further investigation, Respondent determined that the lead concentrate had been released through a gap between the foundation and walls of the building and had been depositing outside the building for an indeterminate amount of time.

3.25 The lead concentrate material met or exceeded the regulatory toxicity level for lead under 40 C.F.R. § 261.24 and was, therefore, a hazardous waste.

3.26 By disposing of a 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).

Count 2: Disposal of Hazardous Waste without a Permit

3.27 Paragraphs 3.1 through 3.26 are incorporated herein by reference as if they were set forth here in their entirety.

3.28 During the August 20-21, 2019 inspection, EPA inspectors identified cupels and crucibles generated by Respondent at the Facility as part of a fire assay laboratory process. According to Respondent, after completion of the assay process, the cupels and crucibles are introduced into the mine beneficiation process for lead recovery. Any non-recovered materials (e.g., the recycling residuals) are subsequently disposed in Respondent's Tailings Disposal Facility (TDF).

3.29 According to information provided by Respondent, the cupels and crucibles contain high quantities of lead prior to introduction into the beneficiation process.

3.30 According to information provided by Respondent, the residuals from the beneficiation process continue to exhibit the toxicity characteristic for lead, as defined at 40 C.F.R. § 261.24. The residuals thus meet the definition of a hazardous waste.

3.31 By disposing of the residuals in the TDF without a permit or interim status, Respondent violated RCRA Section 3005, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c).

Count 3: Failure to Conduct Weekly Inspections

3.32 Paragraphs 3.1 through 3.31 are incorporated herein by reference as if they were set forth here in their entirety.

3.33 Pursuant to 40 C.F.R. § 262.17, a large quantity generator of hazardous waste may store hazardous waste onsite without a RCRA permit, provided the generator complies with all applicable conditions for the exemption from the permit requirement.

3.34 Pursuant to 40 C.F.R. § 262.17(a)(1)(v), one of the conditions for exemption requires Respondent to conduct weekly inspections of central accumulation areas where hazardous waste is accumulated.

3.35 According to Respondent's inspection records, Respondent failed to conduct a weekly inspection of the central accumulation area at the Facility during the week of January 27 to February 2, 2019.

3.36 By failing to comply with all applicable conditions for exemption from the permit requirement, Respondent violated RCRA Section 3005, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c).

Count 4: Failure to Make a Hazardous Waste Determination

3.37 Paragraphs 3.1 through 3.36 are incorporated herein by reference as if they were set forth here in their entirety.

3.38 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 in order to ensure wastes are properly managed according to applicable RCRA regulations.

3.39 Pursuant to 40 C.F.R. § 262.11(d), a generator may make a hazardous waste determination using either generator knowledge or a test method set forth in 40 C.F.R. Part 261, Subpart C.

3.40 During the August 20-21, 2019 inspection, EPA inspectors noted that Respondent utilizes a baghouse filtration system to capture air emission from the Facility's laboratory process. The baghouse filters capture lead and other particulates from laboratory grinding processes.

3.41 According to information provided by Respondent during the August 20-21, 2019 inspection, Respondent did not make a determination as to whether the baghouse filters are a hazardous waste, in violation of 40 C.F.R. § 262.11.

Count 5: Failure to Properly Label Used Oil

3.42 Paragraphs 3.1 through 3.41 are incorporated herein by reference as if they were set forth here in their entirety.

3.43 Pursuant to 40 C.F.R. § 279.22(c)(1), Respondent must label all containers used to store used oil at the Facility with the words “Used Oil.”

3.44 At the time of the August 20-21, 2019 inspection, EPA observed a 300-gallon plastic tote containing used oil labeled with the words “Waste Oil.”

3.45 By failing to properly label the plastic tote container with the words “Used Oil,” Respondent violated 40 C.F.R. § 279.22(c)(1).

Enforcement Authority

3.46 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 \$117,468 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 factual allegations and 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 \$143,124 (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: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

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:

a. 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.

b. 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.

c. 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. 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).

a. Whereas EPA recognizes that the cleanup process overseen by the Alaska Department of Environmental Conservation (ADEC or the Department) has thus far been

protective of human health and the environment to a degree at least equivalent to that required under RCRA cleanup requirements, Respondent must continue to remediate lead released outside the Concentrate Storage Building in compliance with ADEC's applicable requirements and orders. EPA reserves the right to impose further cleanup conditions in the event that Respondent fails to conduct the cleanup consistent with ADEC's applicable requirements and orders. Upon the Department's issuance of a "Cleanup Complete" letter commemorating completion of the cleanup, Respondent shall have no further obligation under this Paragraph 4.10.a.

b. Within 30 days of the effective date of the Final Order, Respondent must provide EPA with copies of all available manifests showing the disposal of cupels, crucibles, and baghouse filters generated at the Facility since August 26, 2022 in a manner consistent with RCRA requirements. Following the submittal of the manifests as required above, Respondent shall have no further obligation under this Paragraph 4.10.b.

4.11. Respondent shall provide compliance documentation required to the following address:

Xiangyu Chu
U.S. Environmental Protection Agency
Region 10
Chu.xiangyu@epa.gov

4.12. 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 4.10, above, is restitution, remediation, or required to come into compliance with the law.

4.13. 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.

4.14. 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.

4.15. Each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.16. Solely for the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in and resolved by this Consent Agreement and to appeal the Final Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

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


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

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

DATED:

5/23/23

FOR RESPONDENT:


Digitally signed by Brian Erickson
DN: cn=Brian Erickson, o. ou,
email=berickson@hecla-
mining.com, c=US
Date: 2023.05.23 11:37:21 -08'00'

BRIAN ERICKSON, General Manager
Hecla Greens Creek Mining Company

DATED:

FOR COMPLAINANT:

STACY
MURPHY
Digitally signed by STACY
MURPHY
Date: 2023.05.24
14:31:30 -07'00'

STACY A. MURPHY, Acting Director
Enforcement & Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. RCRA-Docket # RCRA-10-
)	2023-0043
HECLA GREENS CREEK MINING)	
COMPANY,)	FINAL ORDER
)	
Juneau, 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 re delegated 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 final settlement by EPA and resolves 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.

SO ORDERED this _____ day of _____, 2023.

**RICHARD
MEDNICK**

Digitally signed by
RICHARD MEDNICK
Date: 2023.05.24
19:55:53 -07'00'

RICHARD MEDNICK
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: Hecla Greens Creek Mining Company, Docket No.: RCRA-10-2023-0043**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Brandon Cobb
U.S. Environmental Protection Agency
Region 10
Cobb.brandon@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was e-mailed to:

Brian Erickson
General Manager
Hecla Greens Creek Mining Company
P.O. Box 32199
Juneau, Alaska 99803
BErickson@hecla-mining.com

DATED this _____ day of _____, 2023.

DANIEL
MAUL

Digitally signed by
DANIEL MAUL
Date: 2023.05.25
11:13:54 -07'00'

DANIEL MAUL
Regional Hearing Clerk
EPA Region 10