

RECEIVED

12 SEP -5 AM 10: 04

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

HEARINGS CLERK
EPA--REGION 10

In the Matter of:)	
)	DOCKET NO. CWA-10-2012-0152
)	
Alaska Gold Company,)	
Nome, Alaska)	CONSENT AGREEMENT AND
)	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 U.S. 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 has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (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 issues, and Alaska Gold Company (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

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

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

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

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

3.4. Section 402(p) of the Act, 33 U.S.C. § 1342(p), specifies that an NPDES permit is required for any storm water discharge “associated with industrial activity.” Section 402(p)

also authorizes EPA to issue regulations that designate additional storm water discharge sources and establish a comprehensive program to regulate these additional sources.

3.5. 40 C.F.R. § 122.26(b)(14)(x) defines “storm water discharge associated with industrial activity” to include discharges associated with “[c]onstruction activity, including clearing, grading, and excavation” resulting in the disturbance of at least five acres of total land area. 40 C.F.R. § 122.26(b)(15) defines “storm water discharge associated with small construction activity” to include the “discharge of storm water from ... [c]onstruction activities including clearing, grading, and excavating that result in land disturbance of equal or greater than one acre and less than five acres.”

3.6. In July of 2003, EPA reissued the NPDES General Permit for Storm Water Discharges from Construction Activities (“the 2003 CGP”) pursuant to Section 402 of the Act, 33 U.S.C. § 1342. The CGP became effective on July 1, 2003 and authorized certain discharges of storm water associated with construction activities. The 2003 CGP’s coverage extended to all facilities in the State of Alaska and required permittees to comply with the conditions and requirements set forth in the 2003 CGP.

3.7. To obtain coverage for storm water discharges from a construction site under the 2003 CGP, an operator had to first “prepare and submit a complete and accurate Notice of intent.” 2003 CGP at Part 2. An “operator” is defined as both (1) “[t]he party [who] has operational control over and construction plans and specifications ...,” and (2) “[t]he party [who] has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a [storm water pollution prevention plan] for the site or other permit conditions.” 2003 CGP at Appendix A.

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

3.9. At all times relevant to this CAFO, Respondent was the owner and/or operator of the Rock Creek Mine ("Facility" or "Site"). As the owner of the Facility, Alaska Gold had operational control over the construction plans and specifications at the Facility. As such, Alaska Gold is an operator under the 2003 CGP. The Facility is a gold mine located near Nome, Alaska.

3.10. The Facility, which was under Respondent's control at all times relevant to this action, discharged storm water into Lindblom Creek, Rock Creek, and Glacier Creek (collectively, the "Creeks"). The Facility's storm water discharges contain "pollutants," including but not limited to turbidity, within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

3.11. The Creeks are "navigable water[s]" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and "water[s] of the United States" as defined in 40 C.F.R. § 122.2.

3.12. The Facility is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2. In the alternative, the Facility contains point sources.

3.13. On or about August 14, 2006, Respondent applied for coverage under the 2003 CGP to construct the Facility.

3.14. On or about August 21, 2006, Respondent was authorized to construct/operate under the 2003 CGP and assigned permit no. AK-R10-BT00.

3.15. Respondent violated the 2003 CGP numerous times between May 2009 and September 2011. Violations were discovered during an ADEC inspection of the Facility on

May 20, 2009, an EPA inspection of the Facility on June 1-3, 2009, EPA's review of the stormwater pollution prevention plan ("SWPPP") and Respondent's self inspection reports, and EPA's review of Respondent's water quality sampling. The violations are as follows:

3.15.1. Respondent failed to initiate stabilization measures as soon as practicable but in no case beyond 14 days where construction activities have temporarily or permanently ceased in violation of Part 3.13.D of the 2003 CGP;

3.15.2. Respondent failed to properly select, install, and maintain control measures in accordance with any relevant manufacturer specifications and good engineering practices in violation of Part 3.13.A of the 2003 CGP;

3.15.3. The SWPPP did not describe the intended sequence of major construction activities in violation of Part 3.3.B.2 of the 2003 CGP;

3.15.4. The SWPPP's site map did not show stabilization practices, areas of final stabilization, waste, borrow, or equipment storage areas in violation of Part 3.3.C.1-8 of the 2003 CGP;

3.15.5. The SWPPP did not describe or provide a location of industrial activities, such as the concrete or asphalt batch plants in violation of Part 3.3.D of the 2003 CGP;

3.15.6. The SWPPP did not describe the sequence for best management practices ("BMPs") implementation in violation of Part 3.4.A of the 2003 CGP;

3.15.7. The SWPPP did not describe temporary stabilization practices in violation of Part 3.4.B of the 2003 CGP;

3.15.8. The SWPPP did not describe a schedule to implement stabilization practices in violation of Part 3.4.B of the 2003 CGP;

3.15.9. The SWPPP did not record major grading activities; construction activities that had temporarily or permanently ceased; and stabilization measures initiated, violating Part 3.4.C.1-3 of the 2003 CGP;

3.15.10. The SWPPP did not include a description of construction or waste materials expected to be stored on site and failed to describe controls used to reduce pollutant discharges from these materials, violating Part 3.4.H of the 2003 CGP;

3.15.11. The SWPPP was not updated to reflect changes at the site effecting discharges, or where inspections identified BMPs as ineffective, the SWPPP was not updated within 7 days to show changes made to BMPs, violating Part 3.11.C of the 2003 CGP;

3.15.12. On 10 occasions, inspections were not performed and documented either once every seven days, or once every 14 days and within 24 hours after storm events greater than 0.5 inches, violating Parts 3.10.A and 3.10.B of the 2003 CGP;

3.15.13. Maintenance was not performed prior to anticipated storm events, violating Part 3.6.B of the 2003 CGP; and

3.15.14. Respondent failed to select, install, implement and maintain BMPs that minimize pollutants in the discharge as necessary to meet applicable Water Quality Standards in violation of Part 4.5.A of the 2003 CGP.

3.16. Under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA may assess an administrative penalty when EPA finds that “any person has violated section 1311...of [the CWA], or has violated any permit condition or limitation ... in a permit issued” pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Consequently, under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties for violations at the Facility in an amount not to

exceed \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

IV. CONSENT AGREEMENT

4.1. 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.

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 \$177,500.

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
1200 Sixth Avenue, Suite 900, ORC-158
Seattle, WA 98101

Rick Cool
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900, OCE-133
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 the purpose of this proceeding only, 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:

July 11, 2012

FOR RESPONDENT:



ELAINE SANDERS, Chief Financial Officer
Alaska Gold Company LLC

DATED:

7/19/2012

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 violations at the Facility from May 2009 through September 20, 2011, as 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 5th day of September, 2012.



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: Alaska Gold Company, DOCKET NO.: CWA-10-2012-0152**, was filed, and served as follows, on the signature date below.

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

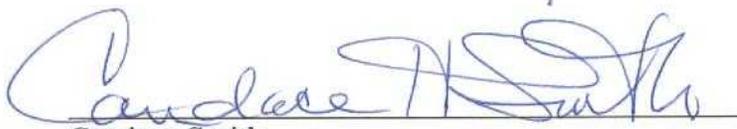
Endre M. Szalay, Esquire
Office of Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail, certified/return receipt, to:

Elaine Sanders
Alaska Gold Company, LLC
C/o NovaGold Resources Inc.
2300 - 200 Granville St.
Vancouver, BC, V6C 1S4

Eric B. Fjelstad, Esquire
Perkins Coie, LLP
1029 West Third Avenue, Suite 300
Anchorage, Alaska 99501

5 Sept 2012
Dated


Candace Smith
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10