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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Shianne and Jason Minekime
(Minekime Walker Fork Mine Site)

North Pole, Alaska

Respondents.

DOCKET NO. CWA-10-2015-0138

CONSENT AGREEMENT

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 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B).

1.2. Pursuant to Section 309(g)(1) and (2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (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 Shianne and Jason Minekime ("Respondents") agree 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 Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

2.3. Part III of this Consent Agreement 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 the implementing regulations that Respondents are alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Background

3.1. The CWA, 33 U.S.C. § 1251, et seq., was enacted by Congress to restore and maintain the chemical, physical, and biological quality of the Nation’s waters. 33 U.S.C. § 1251(a). In addition, the CWA was enacted to prevent, reduce, and eliminate water pollution in the United States and to conserve the waters of the United States and to conserve the waters of the United States for the protection and propagation of fish and aquatic life and wildlife, recreational purposes, and the use of such waters for public drinking water, agricultural, and industrial use. 33 U.S.C. § 1252(a).

3.2. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of a pollutant” by any person into navigable waters of the United States, except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that a state with an approved NPDES program may issue permits for the discharge of pollutants into waters of the United States upon such specific terms and conditions as the state may prescribe.

3.3. 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.”

3.4. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States.” EPA’s regulations define “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. 40 C.F.R. § 122.2

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

3.6. Section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14), defines the term “point source” to include any “pipe, ditch, channel, tunnel, or conduit . . . from which pollutants are or may be discharged.”

3.7. Placer mines use large amounts of water to extract precious metals from alluvial deposits and from the tailings of previously-mined deposits. The water used in the process is directed to sediment ponds, where fine particulates separate from the water and sink to the

bottom of the pond basin. Sediment ponds fall within the definition of point source under the CWA. 33 U.S.C. § 1362(14).

3.8. The waste water produced from placer mining can include industrial waste, including sediment, toxic metals, and suspended particles, which are considered pollutants under the CWA. 33 U.S.C. 1362(6). As a result, the discharge of wastewater from placer mining operations, including sediment ponds, into waters of the United States requires a NPDES permit issued pursuant to the CWA by the EPA or an authorized state. 33 U.S.C. § 1311(a) and 1342.

3.9. On August 24, 2005, the EPA issued a General Permit pursuant to Section 402 of the CWA available to all owners and operators of mechanical placer mines, authorizing discharges in compliance with specific effluent limitations and ascribing specific monitoring and reporting requirements. The permit became effective on October 7, 2005 and was valid until October 4, 2010, but was administratively extended to remain in effect until re-issued by the EPA or the State of Alaska Department of Environmental Conservation (“ADEC”).

3.10. On October, 31, 2010, ADEC assumed the administration of the NPDES permits for mechanical placer mines in Alaska, while the EPA retained federal enforcement authority. On April 6, 2012, ADEC’s General Permit for Mechanical Placer Miners became effective.

Factual Background

3.11. Respondents are “person[s]” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.12. At all times relevant to this action, Respondents owned and/or operated the Minekime Walker Fork Mechanical Placer Mine site (“Mine”). The Mine is located in the Forty Mile Mining District, approximately three miles southeast of Boundary, Alaska, along Walker

Fork. Walker Fork is a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and a “water of the United States” within the meaning of 40 C.F.R. § 122.2.

3.13. The Mine 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 Mine contains point sources.

3.14. At all times relevant to this action, Respondents had coverage under the General Permit for Mechanical Placer Miners (permit no. AKG370870) as a “non-discharging” mechanical placer mine.

3.15. Respondents violated the General Permit and the CWA during August 2011 and July 2012. Violations were discovered during inspections conducted by the Alaska Department of Fish and Game (“ADFG”) and the United States Bureau of Land Management (“BLM”) on August 2, 2011, inventory work conducted by BLM on July 18, 2012, and a review of the administrative record for the Mine conducted by ADEC and EPA.

Count 1: Failure to Comply with Effluent Limitations

3.16. Part 2.1.1. of the General Permit states that for non-discharging facilities, the Permittee shall not discharge wastewater to receiving waters unless the permittee qualifies for a storm exemption.

3.17. Part 2.1.4. of the General Permit states that if a discharge occurs during dry weather, the facility will be considered a discharging facility covered by the requirements in Part 2.2.

3.18. Part 2.2. of the General Permit prohibits the permittee from discharging wastewater to receiving waters except in compliance with certain effluent limitations.

3.19. Part 2.2.1.1 of the General Permit prohibits effluent discharges “during periods when new water is allowed to enter the plant site. Additionally, there shall be no discharge as a result of the intake of new water.”

3.20. **Violation:** On August 2, 2011, inspectors from ADFG and BLM visited the Mine and observed process wastewater from the Mine’s washplant discharging directly into Walker Fork in violation of Part 2.2.1.1. of the General Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 2: Failure to Implement Best Management Practices (“BMP”) Plan

3.21. Part 3.2.2 of the General Permit states that berms, including any pond walls, dikes, low dams, and similar water retention structures shall be constructed in a manner such that they are reasonably expected to reject the passage of water.

3.22. **Violation:** On July 8, 2012, BLM staff observed and documented seepage from the Mine’s sediment pond. At the time of BLM staff’s observation, Respondents failed to construct the Mine’s berm and pond walls in manner reasonably expected to reject the passage of water in violation of Part 3.2.2 of the General Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3.23. 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 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)(13) 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. TERMS OF SETTLEMENT

4.1. Respondents admit the jurisdictional allegations of this Consent Agreement.

4.2. Respondents neither admit nor deny the specific factual allegations contained in this Consent Agreement.

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 Respondents' economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondents agree that an appropriate penalty to settle this action is \$1,200.

4.4. Respondents agree to pay the total civil penalty set forth in Paragraph 4.3 plus interest in the amount of \$12 in accordance with the following schedule:

4.4.1. No later than March 15, 2016, Respondents shall make an initial payment of \$606 (\$600 plus \$6 interest); and

4.4.2. No later than September 15, 2016, Respondents shall make a second and final payment of \$606 (\$600 plus \$6 interest).

4.5. Payment 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, MO 63197-9000

Respondents must note on the check the title and docket number of this action.

4.6. Concurrent 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 Compliance Officer at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Rick Cool
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondents fail to pay the penalty assessed by this Consent Agreement and the Final Order in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondents 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 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 Respondents fail to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondents 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 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 representatives of Respondents certify that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondents to this document.

4.10. The undersigned representatives of Respondents also certify that, as of the date of Respondents' signature of this Consent Agreement, Respondents have corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.12. Respondents expressly waive any right to contest the allegations in this Consent Agreement and waive any right to appeal the Final Order.

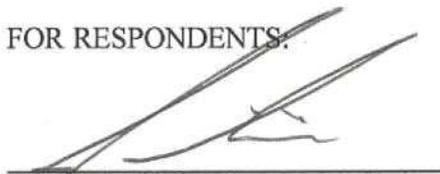
4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondents and their agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondents and EPA Region 10.

DATED:

8-26-15

FOR RESPONDENTS:



JASON MINEKIME

8-26-15



SHIANNE MINEKIME

DATED:

9/1/2015

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Shianne and Jason Minekime
(Minekime Walker Fork Mine Site)

Boundary, Alaska

Respondents.

DOCKET NO. CWA-10-2015-0138

FINAL ORDER

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has in turn 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. Respondents are ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA 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 Respondents' obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

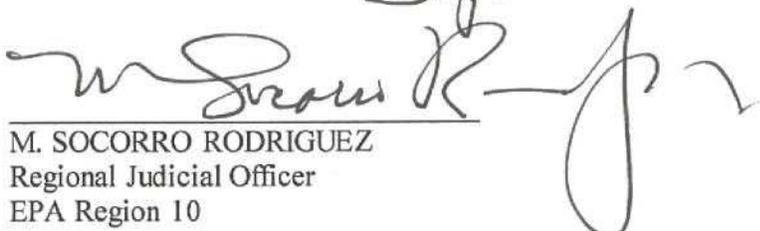
1.4. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Alaska Department of Environmental Conservation has been given the

opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondents.

1.5. 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 Respondents. 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.

1.6. This Final Order shall become effective upon filing.

SO ORDERED this 23rd day of September, 2015.


M. SOCORRO RODRIGUEZ
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: Shianne and Jason Minekime, LLC. Docket No.: CWA-10-2015-0138**, 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:

Endre Szalay
Office of Regional Council
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, 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:

Shianne and Jason Minekime
PO Box 56331
North Pole, AK 99705

DATED this 24 day of September, 2015



Signature

Teresa Luna
Regional Hearing Clerk
EPA Region 10



URL: http://yosemite.epa.gov/R10/ENFORCE.NSF/Current+Public+Notices/minekime_cwa_pn_2015
Last updated on Monday, August 24, 2015

Region 10: the Pacific Northwest

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Proposed Penalty Against Shianne And Jason Minekime For Clean Water Act Violations

Description: Pursuant to Section 309(g)(4) of the Clean Water Act (CWA), the EPA is providing public notice of the proposed penalty described below. In order to provide opportunity for public comment, the EPA will not take final action in this proceeding prior to 40 days after publication of this notice.

EPA proposes to commence an administrative penalty action and agreement against and with Shianne and Jason Minekime ("Respondents") for violations of the CWA at their Walker Fork placer mine facility located near Boundary, Alaska. EPA alleges that the Respondents' placer mine facility unlawfully discharged pollutants into waters of the United States in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

EPA has proposed the assessment of civil penalties in the total amount of \$1,200.00, and Respondents have entered into a consent agreement that will settle this matter for that amount.

This is a Class II administrative penalty proceeding, governed by Section 309(g)(2)(B) of the Clean Water Act and the procedural rules found at 40 CFR Part 22. The requirements that apply to public comment and participation are set forth in 40 CFR § 22.45.

A copy of the consent agreement final order is available for review and copying between the hours of 8:30am and 4pm, Monday through Friday, at EPA's Seattle Office (see address listed below).

Comments Accepted: Persons wishing to comment on the EPA's proposed action or to become participants in this action may do so by submitting their address and telephone number, along with written comments, to the Regional Hearing Clerk at the address below within 30 days of the date of this notice.

Regional Hearing Clerk:	Complainant:	Respondent:
Candace Smith, Regional Hearing Clerk U.S. Environmental Protection Agency Region 10 (ORC-113) 1200 Sixth Avenue, Suite 900 Seattle, Washington 98101-3140 (206) 553-6524	Edward J. Kowalski, Director Office of compliance and Enforcement U.S. Environmental Protection Agency Region 10 (OCE-101) 1200 Sixth Avenue, Suite 900 Seattle, Washington 98101-3140	Shianne and Jason Minekime P.O. Box 56331 North Pole, Alaska 99705

Location of Facility: Minekime Walker Fork Mine Site, Sections 2-4 and 11, T26N, R22E, Copper River Meridian

Applicable Permit Number: AKG370870

Business/activity of Respondent: Placer Mining

For additional information on this action or to obtain a copy of the consent agreement and final order, please contact [Rick Cool](mailto:cool.richard@epa.gov) (cool.richard@epa.gov) at 206-553-6223.

Public Notice Summary

Action: Penalty assessment of \$1,200 under the Clean Water Act

Date of Notice: August 12, 2015

Comment Period Ends: September 11, 2015

Case Name: Shianne And Jason Minekime

Complaint Docket Number: CWA-10-2015-0138

How to Submit Comments: In accordance with 40 C.F.R. § 22.45, anyone wishing to comment on or participate in this proceeding must notify the Regional Hearing Clerk within 30 days of this notice. Please provide your name, complete mailing address, and any comments you have on this action.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

AUG - 5 2015

OFFICE OF
COMPLIANCE AND ENFORCEMENT

Reply To: OCE-101

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Michelle Bonnet Hale
Director
Division of Water
Alaska Department of Environmental Conservation
555 Cordova Street
Anchorage, Alaska 99501

Re: Shianne and Jason Minekime
Minekime Walker Fork Mine Site

Dear Ms. Hale:

This letter is to advise you of a penalty action which Region 10 of the U.S. Environmental Protection Agency (EPA) plans to initiate in the state of Alaska. The proposed action is in response to alleged violations of the Clean Water Act (CWA) by Shianne and Jason Minekime at their Walker Fork placer mining facility located near Boundary, Alaska.

The proposed action is due in part to the investigation and case development that was conducted by your Division of Water's compliance and enforcement program staff, with information provided by the Alaska Department of Fish and Game and the federal Bureau of Land Management.

EPA is providing notice of this action to the State of Alaska pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1). Please consider this an opportunity to provide EPA Region 10 with any comments the Department of Environmental Conservation may have regarding this action. You may find a copy of the public notice of this proposed action when available at:
<http://yosemite.epa.gov/R10/homepage.nsf/Information/R10PN>

Any comments or questions you may have regarding this action may be directed to Rick Cool of my staff at 206-553-6223. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward J. Kowalski".

Edward J. Kowalski
Director

cc: Mr. Mike Solter
Alaska Department of Environmental Conservation