

RECEIVED

11 MAY 12 AM 11:25

HEARINGS CLERK
EPA REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA-10-2011-0013
)	
)	
U.S. Silver Corporation,)	CONSENT AGREEMENT AND
Wallace, Idaho)	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 redelegated 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 U.S. Silver Corporation (“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 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes EPA to assess administrative penalties against any person who has violated Section 301 of the CWA, 33 U.S.C. § 1311, or a condition of an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

3.5. U.S. Silver Corporation is a “person” as defined under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.6. At all times relevant to this CAFO, Respondent was the owner and/or operator of the Coeur and Galena Mines and Mills (“Facility”). The Facility is a silver mine located near Wallace, Idaho.

3.7. The receiving waters for discharges of pollutants from the Facility are Lake Creek, Argentine Creek and the South Fork Coeur d’Alene River. These receiving waters are “navigable waters” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and are “waters of the United States” as defined in 40 C.F.R. § 122.2.

A. Discharge Without an NPDES Permit

3.8. On March 11, 2008, Respondent had an unpermitted discharge of mine tailings into Argentine Creek, a water of the U.S. The discharge was caused by an air lock forming in an open drop box. Additionally, on December 20, 2010, Respondent reported an unpermitted spill of tailings into Lake Creek, a water of the U.S., as the result of miscommunication during the commissioning of a tailings line.

3.9. The drop box and the tailings line that conveyed the mine tailings to the receiving waters each constitute 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.

3.10. By discharging the mine tailings into waters of the United States, Respondent engaged in the “discharge of pollutants” from a point source within the meaning of Sections 301(a) and 502(12) of the CWA, 33 U.S.C. §§ 1311(a) and 1362(12).

3.11. The discharge of mine tailings was not authorized by an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Therefore, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3.12. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19, Respondent is liable for civil penalties not to exceed \$11,000 per day for each day during which the violation continues, up to a maximum amount of \$157,500 for violations on or before January 12, 2009.

B. NPDES Permit Violations

3.13. The Facility is authorized to discharge storm water and mine drainage through Outfalls 001 and 002 into Lake Creek and the South Fork Coeur d'Alene River, respectively, pursuant to the conditions and limitations set forth in NPDES Permit No. ID-000002-7 (Permit), that became fully effective July 1, 2007. The Permit expires on June 30, 2012.

3.14. The outfalls into Lake Creek and the South Fork Coeur d'Alene are "point sources" within the meaning of 40 C.F.R. § 122.2.

3.15. Part I.A.1 of the Permit establishes effluent limits for discharges from the permitted outfalls. These effluent limits include, but are not limited to, total recoverable copper, lead, cadmium, total mercury, and total suspended solids ("TSS").

3.16. When a permittee exceeds a monthly average effluent limit, the permittee is deemed to be in violation of the effluent limits each of the days of the month in which the violation occurred. When a permittee exceeds a maximum daily effluent limit, the exceedance is counted as one violation.

3.17. The Permit contains an average monthly effluent loading limit for Outfall 001 for copper of 0.053 lb/day when upstream river flow rates are greater than or equal to 3.8 cfs and less than 13.4 cfs. Respondent exceeded the average monthly loading limit for copper in March 2009. This constitutes thirty-one (31) violations.

3.18. The Permit contains an interim average monthly effluent concentration limit for Outfall 001 for copper of 15 ug/l. Respondent exceeded the interim average monthly effluent concentration limit for copper in May 2009. This constitutes thirty-one (31) violations.

3.19. The Permit contains an average monthly effluent loading limit for Outfall 001 for copper of 0.11 lb/day when upstream river flow rates are greater than or equal to 23 cfs. Respondent exceeded the average monthly effluent loading limit for copper in May 2009. This constitutes thirty-one (31) violations.

3.20. The Permit contains an average monthly effluent concentration limit for Outfall 001 for lead of 27 ug/l. Respondent exceeded the average concentration limit for lead in April 2009 and May 2009. This constitutes sixty-one (61) violations.

3.21. The Permit contains an average monthly effluent loading limit for Outfall 001 for lead of 0.39 lb/day. Respondent exceeded the average monthly loading limit for lead in May 2009. This constitutes thirty-one (31) violations.

3.22. The Permit contains an interim average monthly effluent concentration limit for Outfall 001 for mercury of 0.1 ug/l when upstream river flow rates are less than 23 cfs. Respondent exceeded the interim average monthly effluent concentration limit for mercury in May 2009. This constitutes thirty-one (31) violations.

3.23. The Permit contains an average monthly effluent loading limit for Outfall 001 for mercury of 0.00075 lb/day when upstream river flow rates are greater than or equal to 23 cfs. Respondent exceeded the interim average monthly effluent loading limit for mercury in May 2009. This constitutes thirty-one (31) violations.

3.24. The Permit contains a maximum daily effluent concentration limit for Outfall 001 for copper of 23 ug/l when upstream river flow rates are greater than or equal to 23 cfs. Respondent exceeded the maximum daily effluent concentration limit on May 18, 2009. This constitutes one (1) violation.

3.25. The Permit contains a maximum daily effluent loading limit for Outfall 001 for copper of 0.32 lb/day when upstream river flow rates are greater than or equal to 23 cfs.

Respondent exceeded the maximum daily effluent loading limit on May 18, 2009. This constitutes one (1) violation.

3.26. The Permit contains a maximum daily effluent concentration limit for Outfall 001 for lead of 58 ug/l. Between January 2008 and May 2009, Respondent violated the maximum daily effluent concentration limit for lead a total of three (3) days, constituting three (3) violations. The violations are as follows:

Date of Violation	Number of Violations
May 8, 2009	1
May 15, 2009	1
May 28, 2009	1

3.27. The Permit contains a maximum daily effluent loading limit for Outfall 001 for lead of 0.81 lb/day. Respondent exceeded the maximum daily effluent loading limit for lead on May 15, 2009. This constitutes one (1) violation.

3.28. The Permit contains a maximum daily effluent concentration limit for Outfall 001 for mercury of 0.11 ug/l when upstream river flow rates are greater than or equal to 23 cfs. Respondent exceeded the maximum daily effluent concentration limit for mercury on May 15, 2009. This constitutes one (1) violation.

3.29. The Permit contains a maximum daily effluent loading limit for Outfall 001 for mercury of 0.00015 lb/day when upstream river flow rates are greater than or equal to 23 cfs. Between January 2008 through May 2009, Respondent violated the maximum daily effluent loading limit for mercury a total of two (2) days, constituting two (2) violations. The violations are as follows:

Date of Violation	Number of Violations
May 15, 2009	1
May 18, 2009	1

3.30. The Permit contains a maximum daily effluent concentration limit for Outfall 001 for cadmium of 1.9 ug/l. Respondent exceeded the maximum daily concentration effluent limit for cadmium on December 30, 2008. This constitutes one (1) violation.

3.31. The Permit contains a maximum daily effluent concentration limit for Outfall 001 for total suspended solids of 30 mg/l. Respondent exceeded the maximum daily effluent concentration limit for total suspended solids on May 18, 2009. This constitutes one (1) violation.

3.32. The Permit contains an interim average monthly effluent concentration limit for Outfall 002 for copper of 142 ug/l when upstream flow rates are less than 379 cfs. Respondent exceeded the interim average monthly concentration limit for copper in March 2009. This constitutes thirty-one (31) violations.

3.33. The Permit contains an average monthly effluent concentration limit for Outfall 002 for lead of 32 ug/l. Respondent exceeded the average monthly loading limit for lead in December 2009. This constitutes thirty-one (31) violations.

3.34. The Permit contains an interim maximum daily effluent concentration limit for Outfall 002 for copper of 142 ug/l when upstream flow rates are less than 109 cfs. Between January 2008 through May 2009, Respondent violated the interim maximum daily effluent concentration limit for copper a total of seven (7) days, constituting seven (7) violations. The violations are as follows:

Date of Violation	Number of Violations
January 16, 2008	1
January 24, 2008	1
November 18, 2008	1
November 25, 2008	1
December 2, 2008	1
February 3, 2009	1
February 10, 2009	1

3.35. The Permit contains maximum daily effluent concentration limit for Outfall 002 for copper of 230 ug/l when upstream flow rates are greater than or equal to 109 cfs and less than 379 cfs. Between January 2008 through May 2009, Respondent violated the interim maximum daily effluent concentration limit for copper a total of three (3) days, constituting three (3) violations. The violations are as follows:

Date of Violation	Number of Violations
March 3, 2009	1
March 11, 2009	1
March 23, 2009	1

3.36. The Permit contains a maximum daily effluent concentration limit for Outfall 002 for lead of 88 ug/l. Respondent exceeded the maximum daily concentration effluent limit for lead on December 16, 2008. This constitutes one (1) violation.

3.37. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19, Respondent is liable for civil penalties not to exceed \$11,000 per day for each day during which the violation continues, up to a maximum amount of \$157,500 for violations on or before January 12, 2009, and not to exceed \$16,000 per day for each day during which the

violation continues, up to a maximum amount of \$177,500 for violations on or after January 13, 2009.

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 \$87,000.

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

Eva DeMaria
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-133
1200 Sixth Avenue, Suite 900
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. 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:

28 FEB 2011

FOR RESPONDENT:

Thomas H Parker

Signature

Print Name: THOMAS H. PARKER

Title: PRES. & CEO

DATED:

3/14/2011

FOR COMPLAINANT:

Edward J. Kowalski

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 the violations 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

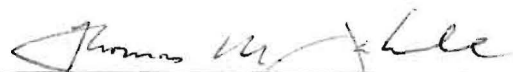
with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

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 Idaho Department of Environmental Quality 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 11th day of May, 2011.



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: U.S. Silver Corporation, DOCKET NO.: CWA-10-2011-0013** was filed with the Regional Hearing Clerk on May 12, 2011.

On May 12, 2011 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 May 12, 2011, to:

U.S. Silver Corporation
Thomas H. Parker
President and CEO
Coeur and Galena Mines and Mills
P.O. Box 440
Wallace, Idaho 83873

DATED this 12th day of May 2011.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10