

1 3.5. At all times relevant to this CAFO, Respondent was the owner and/or operator of
2 the Lucky Friday Mine and Mill located near Mullan, Idaho ("Facility"). The Facility is a silver,
3 lead, and zinc mine located near Mullan, Idaho.

4 3.6. The Facility is authorized to discharge mine drainage, tailings process wastewater,
5 storm water, cooling water, and sanitary wastewater from Outfalls 001, 002, and 003 into the
6 South Fork Coeur d'Alene River ("River") pursuant to the conditions and limitations set forth in
7 NPDES Permit No. ID-000017-5 ("Permit").

8 3.7. The River is a "navigable water" as defined in Section 502(7) of the CWA, 33
9 U.S.C. § 1362(7), and is a "water of the United States" as defined in 40 C.F.R. §122.2.

10 3.8. Outfalls 001, 002, and 003 are "point sources" within the meaning of 40 C.F.R.
11 § 122.2.

12 3.9. Part I.A. of the Permit establishes effluent limits for discharges from Outfalls 001,
13 002, and 003. These effluent limits include, but are not limited to, lead, total suspended solids
14 ("TSS"), zinc, and cadmium.

15 3.10. When a permittee exceeds an average monthly effluent limit, the permittee is
16 deemed to be in violation of the effluent limits each of the days of the month in which the
17 violation occurred. When a permittee exceeds a daily maximum effluent limit, the exceedance is
18 counted as one violation.

19 3.11. In September 2008, Respondent discharged effluent from Outfall 002 a total of
20 eighteen (18) days. In October 2008, Respondent discharged effluent from Outfall 001 a total of
21 eight (8) days and discharged effluent from Outfall 002 a total of twenty-six (26) days. In
22 November 2008, Respondent discharged effluent from Outfall 002 a total of twenty-seven (27)
23 days. In December 2008, Respondent discharged effluent from Outfall 002 the entire month
24
25

1 (i.e., 31 days). In February 2009, Respondent discharged effluent from Outfall 002 the entire
2 month (i.e., 28 days).

3 3.12. Between September 2008 and February 2009, the Facility had 323 violations of
4 the Permit. The violations are set forth in Paragraphs 3.13-3.27, below.

5 3.13. Section I.A of the Permit contains an average monthly concentration effluent limit
6 for zinc of 71 µg/L at Outfall 001. Between September 2008 and February 2009, Respondent
7 violated the average monthly concentration effluent limit for zinc at Outfall 001 in October 2008,
8 constituting eight (8) violations.

9 3.14. Section I.A of the Permit contains an average monthly concentration effluent limit
10 for cadmium of 0.70 µg/L at Outfall 001. Between September 2008 and February 2009,
11 Respondent violated the average monthly concentration effluent limit for cadmium at Outfall 001
12 in October 2008, constituting eight (8) violations.

13 3.15. Section I.A of the Permit contains an average monthly concentration effluent limit
14 for lead of 30 µg/L at Outfall 001. Between September 2008 and February 2009, Respondent
15 violated the average monthly concentration effluent limit for lead at Outfall 001 in October 2008,
16 constituting eight (8) violations.

17 3.16. Section I.A of the Permit contains a maximum daily concentration effluent limit
18 for lead of 50 µg/L at Outfall 001. Between September 2008 and February 2009, Respondent
19 violated the maximum daily concentration effluent limit for lead at Outfall 001 on October 10,
20 2008, constituting one (1) violation.

21 3.17. Section I.A of the Permit contains an average monthly concentration effluent limit
22 for TSS of 20 mg/L at Outfall 002. Between September 2008 and February 2009, Respondent
23 violated the average monthly concentration effluent limit for TSS at Outfall 002 in October
24 2008, constituting twenty-six (26) violations.

1 3.18. Section I.A of the Permit contains a maximum daily mass effluent limit for TSS
2 of 469 lb/day at Outfall 002. Between September 2008 and February 2009, Respondent violated
3 the maximum daily mass effluent limit for TSS at Outfall 002 on October 16, 2008, constituting
4 one (1) violation.

5 3.19. Section I.A of the Permit contains a maximum daily concentration effluent limit
6 for TSS of 30 mg/L at Outfall 002. Between September 2008 and February 2009, Respondent
7 violated the maximum daily concentration effluent limit for TSS on October 16, 2008 and
8 November 5, 2008, constituting two (2) violations.

9 3.20. Section I.A of the Permit contains an average monthly concentration effluent limit
10 for lead of 30 µg/L at Outfall 002. Between September 2008 and February 2009, Respondent
11 violated the average monthly concentration effluent limit for lead a total of five (5) months,
12 constituting 130 violations. The violations are as follows:

Month of Violation	Number of Violations
September 2008	18
October 2008	26
November 2008	27
December 2008	31
February 2009	28

13
14
15
16
17
18 3.21. Section I.A of the Permit contains an average monthly mass effluent limit for lead
19 of 0.42 lb/day at Outfall 002. Between September 2008 and February 2009, Respondent violated
20 the average monthly mass effluent limit for lead a total of two (2) months, constituting fifty-three
21 (53) violations. The violations are as follows:

Month of Violation	Number of Violations
October 2008	26
November 2008	27

1 3.22. Section I.A of the Permit contains an average monthly concentration effluent limit
2 for zinc of 71 µg/L at Outfall 002. Between September 2008 and February 2009, Respondent
3 violated the average monthly concentration effluent limit for zinc a total of two (2) months,
4 constituting fifty-nine (59) violations. The violations are as follows:

Month of Violation	Number of Violations
December 2008	31
February 2009	28

5
6
7
8 3.23. Section I.A of the Permit contains a maximum daily concentration effluent limit
9 for lead of 50 µg/L at Outfall 002. Between September 2008 and February 2009, Respondent
10 violated the maximum daily concentration effluent limit for lead a total of fourteen (14) days,
11 constituting fourteen (14) violations. The violations are as follows:

Month of Violation	Number of Violations
September 17, 2008	1
September 24, 2008	1
October 2, 2008	1
October 16, 2008	1
November 5, 2008	1
November 12, 2008	1
November 18, 2008	1
November 21, 2008	1
December 5, 1008	1
December 10, 2008	1
December 24, 2008	1
January 22, 2009	1
February 13, 2009	1
February 20, 2009	1

1 3.24. Section I.A of the Permit contains a maximum daily mass effluent limit for lead
2 of 0.7 lb/day at Outfall 002. Between September 2008 and February 2009, Respondent violated
3 the maximum daily mass effluent limit for lead on October 2, 2008, October 16, 2008 and
4 November 5, 2008, constituting three (3) violations.

5 3.25. Section I.A of the Permit contains a maximum daily concentration effluent limit
6 for zinc of 190 µg/L at Outfall 002. Between September 2008 and February 2009, Respondent
7 violated the maximum daily concentration effluent limit for zinc on November 5, 2008,
8 constituting one (1) violation.

9 3.26. Section I.A of the Permit contains a maximum daily concentration effluent limit
10 for lead of 75 µg/L at Outfall 003. Between September 2008 and February 2009, Respondent
11 violated the maximum daily concentration effluent limit for lead on December 24, 2008,
12 constituting one (1) violation.

13 3.27. Section IV.E of the Permit states that “[t]he permittee must at all times properly
14 operate and maintain all facilities and systems of treatment and control ... which are installed or
15 used by the permittee to achieve compliance with the conditions of the permit.” From September
16 12, 2008 to September 19, 2008, Respondent failed to properly operate and maintain the Facility
17 by unintentionally allowing two waste streams around the 002 Wastewater Treatment Plant
18 before treatment. This constitutes eight (8) violations.

19 3.28. Under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA may assess an
20 administrative penalty when EPA finds that “any person ... has violated any permit condition or
21 limitations ... in a permit issued” pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
22 Consequently, under Section 309(g)(2)(B) of the CWA, Respondent is liable for the
23 administrative assessment of civil penalties for violations at the Facility in an amount not to
24
25

1 exceed \$16,000 per day for each day during which the violation continues, up to a maximum of
2 \$177,500.

3 **IV. CONSENT AGREEMENT**

4 4.1. Respondent stipulates that EPA has jurisdiction over the subject matter alleged
5 herein.

6 4.2. As required under Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA
7 has taken into account the nature, circumstances, extent, and gravity of the alleged violations as
8 well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant
9 factors. After considering all of these factors, EPA has determined and Respondent agrees that
10 an appropriate penalty to settle this action is in the amount of \$177,500.

11 4.3. Respondent neither admits nor denies the specific factual allegations contained in
12 Part III of this CAFO.

13 4.4. Respondent consents to issuance of the Final Order set forth in Part V, below, and
14 agrees to pay the total civil penalty set forth in Paragraph 4.2, above, within thirty (30) days of
15 the effective date of the Final Order.

16 4.5. Payment under this CAFO shall be made by cashier's check or certified check,
17 payable to the order of "Treasurer, United States of America" and delivered to the following
18 address:

19 U.S. Environmental Protection Agency
20 Region 10
21 Fines and Penalties
22 Cincinnati Finance Center
23 PO Box 979077
24 St. Louis, MO 63197-9000

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

1 4.6. Respondent shall serve photocopies of the checks described in Paragraph 4.5,
2 above, on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and
3 Enforcement at the following addresses:

4 Regional Hearing Clerk
5 U.S. Environmental Protection Agency
6 Region 10
7 1200 Sixth Avenue, Suite 900, ORC-158
8 Seattle, WA 98101

9 U.S. Environmental Protection Agency, Region 10
10 Office of Compliance and Enforcement
11 Attn: Eva DeMaria
12 1200 Sixth Avenue, Suite 900, OCE-133
13 Seattle, WA 98101

14 4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due
15 date set forth in Paragraph 4.4, above, the entire unpaid balance of penalty and accrued interest
16 shall become immediately due and owing. If Respondent fails to pay the penalty assessed,
17 Respondent may be subject to a civil action to collect the assessed penalty under the CWA,
18 together with interest, fees, costs, and additional penalties described below. In any collection
19 action, the validity, amount, and appropriateness of the penalty amount shall not be subject to
20 review.

21 4.8. If Respondent fails to pay any portion of the penalty assessed by this CAFO in
22 full by the due date set forth in Paragraph 4.4, above, Respondent shall be responsible for
23 payment of the amounts described below:

24 4.8.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. §
25 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

1 interest shall be payable on any portion of the assessed penalty that is paid within thirty
2 (30) days of the effective date of the Final Order.

3 4.8.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to
4 Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a
5 timely basis the amount of the penalty set forth in Paragraph 4.3, above, Respondent shall
6 pay (in addition to any assessed penalty and interest) attorneys fees and costs for
7 collection proceedings and a quarterly nonpayment penalty for each quarter during which
8 such failure to pay persists. Such nonpayment penalty shall be in an amount equal to
9 twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment
10 penalties which are unpaid as of the beginning of such quarter.

11 4.9. The penalty described in Paragraph 4.2, above, including any additional costs
12 incurred under Paragraph 4.8, above, represents an administrative civil penalty assessed by EPA
13 and shall not be deductible for purposes of federal taxes.

14 4.10. The undersigned representative of Respondent certifies that he or she is fully
15 authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this
16 document.

17 4.11. Except as described in Subparagraph 4.8.2, above, each party shall bear its own
18 costs in bringing or defending this action.

19 4.12. Respondent expressly waives any rights to contest the allegations and waives any
20 right to appeal the Final Order set forth in Part V, below.

21 4.13. The provisions of this CAFO shall bind Respondent and its agents, servants,
22 employees, successors, and assigns.

23 4.14. The above provisions are STIPULATED AND AGREED upon by Respondent
24 and EPA.

1 DATED:

HECLA MINING COMPANY (dba HECLA LIMITED):

2
3 April 1, 2009

Mike D. Dexter

4 Signature

5 Print Name: Mike D. Dexter

6 Title: V.P. & General Manager

7
8 DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

9
10 APRIL 6, 2009

Courtney Hamamoto

11 Courtney Hamamoto
Assistant Regional Counsel

12
13 **V. FINAL ORDER**

14 5.1. The terms of the foregoing Consent Agreement are hereby ratified and
15 incorporated by reference into this Final Order. Respondent is hereby ordered to comply with
16 the foregoing terms of the settlement.

17 5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties
18 pursuant to the CWA for the violations alleged in Part III, above. In accordance with 40 C.F.R.
19 § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue
20 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
21 This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply
22 with all applicable provisions of the CWA, applicable CWA regulations, and/or any permits
23 issued thereunder.

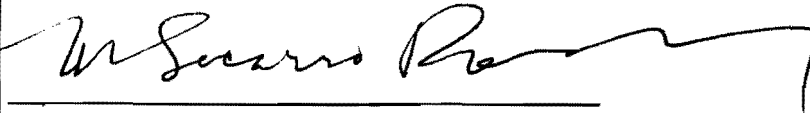
24 5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and
25 40 C.F.R. § 22.38(b), the Idaho Department of Environmental Quality has been given the

1 opportunity to consult with EPA regarding the assessment of the administrative civil penalty
2 against Respondent.

3 5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), EPA
4 has published public notice of its intent to assess an administrative penalty against Respondent
5 and to invite public comment in accordance with 40 C.F.R. § 22.45. More than forty (40) days
6 have elapsed since the issuance of this public notice, and EPA has received no petition to set
7 aside the Consent Agreement contained herein.

8
9 This Final Order shall become effective upon filing.

10
11 SO ORDERED this 20th day of Mar, 2009.

12
13 
14 M. SOCORRO RODRIGUEZ
15 Regional Judicial Officer
16 U.S. Environmental Protection Agency
17 Region 10
18
19
20
21
22
23
24
25

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Hecla Mining Company (dba Hecla Limited)**, **DOCKET NO.: CWA-10-2009-0143** was filed with the Regional Hearing Clerk on May 20, 2009.

On May 20, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

Courtney Hamamoto
U.S. EPA
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

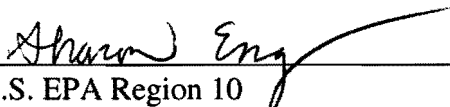
Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on May 20, 2009, to:

Kevin Beaton
Stoel Rives, LLP
101 South Capitol Blvd., Suite 1900
Boise, ID 83702

and

Mike Dexter, General Manager
Hecla Mining Company
Lucky Friday Mine
P.O. Box 31
Mullan, ID 83846

DATED this 20th day of May 2009.



U.S. EPA Region 10