

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

NORTHERN ALASKA CONTRACTORS,  
LLC, UGADAGA QUARRY,

Unalaska, Alaska

Respondent.

DOCKET NO. CWA-10-2020-0098

**CONSENT AGREEMENT**

Proceedings Under Section 309(g) of the Clean  
Water Act, 33 U.S.C. § 1319(g)

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), the EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$21,933 per day for each day during which the violation continues, up to a maximum

penalty of \$278,995. *See* 85 Fed. Reg. 1751 (January 13, 2020) (2020 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A) and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Northern Alaska Contractors, LLC (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement.

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), execution 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 penalty is proposed to be assessed pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, 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 implementing regulations that Respondent is alleged to have violated.

### **III. ALLEGATIONS**

#### **Statutory and Regulatory Framework**

3.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3.2. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from any point source into waters of the United States except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

3.3. CWA Section 502(12) defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

3.4. CWA Section 502(6) defines “pollutant” to include, *inter alia*, “solid waste,” “biological materials,” “heat,” and industrial waste discharged into water. 33 U.S.C. § 1362(6).

3.5. CWA Section 502(5) defines “person” to include “an individual, corporation, partnership, [or] association . . . .” 33 U.S.C. § 1362(5).

3.6. CWA Section 502(14) defines “point source” to include, *inter alia*, “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, [or] container . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

3.7. CWA Section 502(7) defines “navigable waters” as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). In turn, “waters of the United States” is and has been defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are

subject to the ebb and flow of the tide; and tributaries to such waters. *See* 40 C.F.R. §§ 122.2 (1993).

3.8. CWA Section 402(b) authorizes EPA to delegate NPDES permitting authority to authorized states. 33 U.S.C. § 1342(b); 40 C.F.R. Part 123.

### **General Allegations**

3.9. Respondent is a Limited Liability Company licensed to do business in the State of Alaska and is a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.10. Respondent operates Ugadaga Quarry (Facility) a rock quarry located in Unalaska, Alaska. The Facility covers approximately 19 acres and includes an upper, middle, and lower quarry. The upper quarry has been inactive since 2008 and the middle quarry is primarily used as for maintenance and storage. The lower quarry actively produces large stone and crushed aggregate limestone beginning in May or June and ceasing operations in October annually.

3.11. At all times relevant to this action, Respondent was authorized to discharge stormwater associated with industrial activity from the Facility into Waters of the United States pursuant to APDES Permit AKR06AA26 (Permit). The Alaska Department of Environmental Conservation (ADEC) issued the Facility an Alaska Pollutant Discharge Eliminations System (APDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity—NPDES Permit AKR06AA26—on May 5, 2015. The Permit expired on March 21, 2020. Respondent timely applied for and received authorization for coverage under the 2020 APDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity.

3.12. On the west side of the lower quarry, a rock-line drainage channel directs some

of the Facility's stormwater runoff to a vegetated area that flows to one of two unnamed creeks. The Facility does not monitor this discharge point. Most of the Facility's stormwater runoff from the lower quarry flows through a series of settling ponds then through a vegetated area to a culvert that serves as the Facility's main discharge point to one of the two unnamed creeks. The culvert is a "point source" as defined in CWA Section 502(14), 33 U.S.C. § 1362(14).

3.13. Both unnamed creeks, which flow at least seasonally, flow to Unalaska Creek. Unalaska Creek, also known as the Iliuliuk River, flows through Unalaska Lake to Iliuliuk Harbor. Iliuliuk Harbor is part of Iliuliuk Bay and exchanges water with the Pacific Ocean. Unalaska Creek is a tidally influenced perennial stream and Iliuliuk Harbor currently supports interstate commerce. Accordingly, the waterbodies are "waters of the United States" and are "navigable waters" under Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and applicable regulations that were in effect at all times relevant to the violations alleged herein.

3.14. Respondent has discharged pollutants from a point source into waters of the United States at the Facility, within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

### **Violations**

3.15. As described below, from January 2015 through to June 28, 2018, Respondent violated CWA Section 301, 33 U.S.C. § 1311, and the conditions and/or limitations of its Permit.

3.16. The Permit establishes, *inter alia*, conditions that require industrial facilities to develop site-specific stormwater pollution prevention plans (SWPPP) and implement control measures, as well as monitoring and reporting requirements.

3.17. On June 28, 2018, EPA conducted an inspection of the Facility to determine compliance with its NPDES Permit and the CWA.

3.18. The United States, on behalf of Complainant entered a tolling agreement with Respondent to facilitate settlement negotiations without altering the claims or defenses available to any party. Pursuant to the tolling agreement, the period commencing on January 21, 2020 and ending on September 30, 2020 shall not be included in computing the running of any statute of limitations potentially applicable.

**Count 1 – Stormwater Pollution Prevention Plan Violations**

3.19. Part 5 of the Permit requires the facility to prepare a Storm Water Pollution Prevention Plan (SWPPP). Part 5.1 of the Permit requires that the facility’s SWPPP contain, among other elements, a SWPPP team, as described in Part 5.2.2 of the Permit. Part 5.2.2 of the Permit states that the facility must identify the staff members (by name or title) that comprise the facility’s storm water pollution prevention team as well as their individual responsibilities.

3.20. Respondent failed to identify in the Facility’s SWPPP names or titles of SWPPP team members and thus also failed to identify SWPPP team member individual responsibilities. Respondent identified an individual as “SWPPP Preparer/Person Conducting Inspections/SWPPP Manager/SWPPP Lead” but failed to update the Facility’s SWPPP when that individual’s employment ended in 2017. Respondent’s failure to identify SWPPP team staff and describe SWPPP team members individual responsibilities constitutes one violation of Part 5.2.2 of the Permit.

3.21. Part 4.2.9 of the Permit requires the facility to train all employees who work in areas where industrial materials or activities are exposed to storm water, or who are responsible for implementing activities necessary to meet the conditions of the permit (e.g., inspectors, maintenance personnel), including all members of the SWPPP team. Training must cover specific control measures used to achieve the effluent limits in the Permit, as well as monitoring,

inspection, planning, reporting, and documentation requirements in the Permit. Training must be conducted at least annually (or more often if employee turnover is high) and documented in the facility's SWPPP. Part 11.J.5.1 of the Permit, which specifies sector J-specific employee training requirements, requires facilities to conduct employee training at least annually at active and temporarily inactive sites.

3.22. Respondent failed to document any training in the Facility's SWPPP and provided no evidence that it conducted employee training. Respondent's failure to conduct training at least annually constitutes four violations of Parts 4.2.9 and 11.J.5.1 of the Permit.

3.23. Part 5.2.3.3 of the Permit requires that the facility's SWPPP include a Site Map. The SWPPP Site Map must include, among other elements, arrows to indicate the directions of storm water flow; locations of potential pollutant sources identified in the Permit; locations of all storm water monitoring points; locations of storm water inlets and outfalls with a unique identification code for each outfall (e.g., Outfall No. 1, No. 2, etc.); and an approximate outline of the areas draining to each outfall.

3.24. Respondent failed to clearly identify in the SWPPP Site Map the direction of stormwater flow; the location of potential pollutant sources; the location of monitoring points; the location of outfalls; and approximate areas draining to each outfall. Respondent's failure to include the above listed elements in the SWPPP Site Map constitutes one violation of Part 5.2.3.3 of the Permit.

3.25. Part 5.2.4 of the Permit requires the facility to document areas where industrial materials or activities are exposed to stormwater and from which allowable non-stormwater discharges are released. Part 5.2.4.2 of the Permit specifies that for each area identified the description of the area must include a list of all pollutant(s) or pollutant constituents (e.g.,

crankcase oil, zinc, sulfuric acid, and cleaning solvents) associated with each identified activity. The pollutant list must include all significant materials that have been handled, treated, stored, or disposed, and that have been exposed to stormwater in the three years prior to the date the permittee prepared or amended the facility's SWPPP.

3.26. Respondent did not include in the Facility's SWPPP a complete list of all potential pollutant sources and pollutants at the Facility. Specifically, the list of potential pollutant sources and pollutants did not include batteries, a burn pit, or used oil observed during the inspection. Respondent's failure to include a complete list of potential pollutant sources and pollutants constitutes one violation of Part 5.2.4 of the Permit.

3.27. Part 7 of the Permit specifies stormwater monitoring requirements, including quarterly general and sector-specific benchmark monitoring described in Part 7.2.1.1 of the Permit. Table 11.J.8-1 of Part 11.J.8 of the Permit applies benchmarks to subsector J1 (sand and gravel) that apply to the Facility. Part 5.4.1 of the Permit requires, in relevant part, that the facility document in its SWPPP procedures for performing facility monitoring specified in Part 7 of the Permit, including, at a minimum, the person(s) responsible for conducting facility monitoring; schedules to be followed for conducting monitoring; any monitoring checklists or forms that will be used; and how conditions that require corrective action will be addressed.

3.28. Respondent failed to document procedures for performing stormwater monitoring required by Part 7 of the Permit. Respondent's failure to document in the Facility's SWPPP the person(s) responsible for stormwater monitoring; the schedule to be followed for conducting stormwater monitoring; and how conditions that require corrective action will be addressed and its failure to include monitoring checklists or forms that will be used constitutes one violation of Part 5.4.1 of the Permit.



## Count 2 – Monitoring and Inspection Violations

3.29. Part 7.2.1.1 of the Permit requires, in relevant part, that the facility monitor for any benchmark parameters specified for the industrial sector(s), both primary industrial activity and any co-located industrial activities, applicable to the discharge. Part 7.2.1.2 of the Permit indicates that benchmark monitoring must be conducted quarterly. Table 11.J.8-1 of Part 11.J.8 of the Permit identifies additional sector specific benchmarks for Sector J, which apply to the Facility.

3.30. Respondent failed to conduct any benchmark monitoring as required by the Permit. Respondent's failure to conduct benchmark monitoring constitutes four violations of Part 7.2.1.1 of the Permit.

3.31. Part 6.2.1 of the Permit requires, in relevant part, that the facility conduct quarterly visual assessments of stormwater samples to inspect for color, odor, clarity, floating solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution. Part 6.2.2 requires, in relevant part, that the facility document the results of its visual assessments and maintain such documentation onsite with its SWPPP.

3.32. Respondent provided no evidence that it conducted quarterly visual assessments of stormwater to inspect the above referenced water quality characteristics. Respondent's failure to conduct and document quarterly visual assessments for 16 quarters constitutes 16 violations of Parts 6.2.1 and 6.2.2 of the Permit.

3.33. Part 6.3.1 of the Permit requires, in relevant part, that qualified personnel, with at least one member of the SWPPP team, conduct annual comprehensive site inspections at the facility. Part 6.3.2 of the Permit requires, in relevant part, that the facility document the findings of each comprehensive site inspection and maintain this documentation onsite with the SWPPP.

3.34. Respondent provided no evidence that it conducted annual comprehensive site inspections at the Facility. Respondent's failure to conduct and/or document 4 comprehensive annual site inspections constitutes 4 violations Parts 6.3.1 and 6.3.2 of the Permit.

### **Count 3 – Reporting Violations**

3.35. Part 9.1 of the Permit requires the facility to submit all monitoring data collected pursuant to Part 7.2 to ADEC no later than 30 days after the facility receives the complete laboratory results for all monitored outfalls for the reporting period. For benchmark monitoring, Part 9.1 requires the facility to submit sampling results to ADEC no later than 30 days after the facility receives laboratory results for each quarter that it is required to collect samples.

3.36. Respondent failed to submit any DMRs to ADEC. Respondent's failure to submit DMRs for 16 quarters constitutes 16 violations of Part 9.1 of the Permit.

3.37. Part 9.2 of the Permit requires the facility to submit an annual report to ADEC that includes, *inter alia*, the findings from the Part 6.3 comprehensive site inspection by February 15th of the year following the reporting year.

3.38. Respondent failed to submit any annual reports to ADEC. Respondent's failure to submit 4 annual reports constitutes 4 violations of Part 9.3 of the Permit.

### **Count 4 – Miscellaneous Violation**

3.39. Part 4.2.1 of the Permit requires the facility to minimize exposure of pollutants to stormwater. Specifically, the facility must evaluate whether manufacturing, processing, and material storage areas, including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations, are exposed to rain, snow, snowmelt, and runoff and must minimize such exposure by either locating these industrial materials and activities inside or protecting them with storm resistant coverings. Part 4.2.4 of the Permit requires, in relevant part,

that the facility minimize the potential for leaks, spills, and other releases that may be exposed to stormwater and to develop plans for effective response to such spills if or when they occur. At a minimum, the facility must implement, *inter alia*, procedures for plainly labeling containers that could be susceptible to spillage or leakage to encourage proper handling and facilitate rapid response if spills or leaks occur, and procedures for material storage and handling, including the use of secondary containment and barriers between material storage and traffic areas, or a similarly effective means designed to prevent the discharge of pollutants from these areas. Further, Part 11.J.4.7.2 of the Permit provides that the facility must minimize exposure to precipitation and stormwater or use secondary containment structures designed to eliminate the potential for spills or leaked chemicals if fueling and/or maintenance activities for equipment and vehicles at the site.

3.40. The EPA inspector observed numerous containers in the middle quarry maintenance area, many of which lacked clear labeling, that were exposed to stormwater and with potential for leaks and spills without secondary containment or similar means to prevent the discharge of pollutants. The inspector also observed stains on the ground that indicated previous spills and leaks in the area. The inspector observed a diesel tank and smaller used fuel generators in the lower quarry, uncovered and with no secondary containment structures. Respondent's failure to minimize exposure of pollutants to stormwater and its failure to provide secondary containment in the lower quarry constitutes two violations of Parts 4.2.1 and 4.2.4 and Parts 4.2.4.2 and 11.J.4.7.2, respectively.

3.41. Part 11.J.4.11 of the Permit provides that if the facility stores, handles, and/or disposes of construction waste at the site, the facility must store hazardous or toxic waste in appropriate sealed containers and dispose of these wastes in accordance with manufactures

recommended method of disposal or federal, state or local requirements.

3.42. The EPA inspector observed a smoldering burn pit at the Facility that contained waste not handled in accordance with Part 11.J.4.11 of the Permit. The inspector also observed potentially hazardous or toxic materials that were not in sealed containers or covered storage areas. Respondent's failure to properly store, handle, and dispose of waste constitutes one violation of Part 11.J.4.11 of the Permit.

#### **IV. TERMS OF SETTLEMENT**

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Paragraphs 3.19 through 3.42.

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), the EPA has taken into account "the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require." After considering all of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$62,500.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within 30 days of the effective date of the Final Order.

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

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

4.6. 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

Compliance Officer at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101  
young.teresa@epa.gov

Raymond Andrews  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 20-C04  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101  
andrews.raymond@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement 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 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.

a. Interest. Pursuant to CWA Section 309(g)(9), 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.

b. **Attorneys Fees, Collection Costs, Nonpayment Penalty.** Pursuant to CWA Section 309(g)(9), 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 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 Consent Agreement and to bind Respondent to this document.

4.10. Except as described in Subparagraph 4.7.b., above, each party shall bear its own costs in bringing or defending this action.

4.11. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.12. The provisions of this Consent Agreement and the Final Order 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:

7/1/2020

FOR RESPONDENT:



\_\_\_\_\_  
GLENN OLSON, Owner  
Northern Alaska Contractors, LLC

DATED:

FOR COMPLAINANT:

\_\_\_\_\_  
EDWARD J. KOWALSKI, Director  
Enforcement and Compliance Assurance Division  
EPA Region 10

BEFORE THE  
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In the Matter of:

NORTHERN ALASKA CONTRACTORS,  
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Unalaska, Alaska

Respondent.

DOCKET NO. CWA-10-2020-0098

**FINAL ORDER**

Proceedings Under Section 309(g) of the Clean  
Water Act, 33 U.S.C. § 1319(g)

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.
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.
3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (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 Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.
4. This Final Order shall become effective upon filing.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**In the Matter of: Northern Alaska Contractors, LLC**  
**Docket Number: CWA-10-2020-0098**  
**Final Order**  
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**U.S. Environmental Protection Agency**  
**1200 Sixth Avenue, Suite 155**  
**Seattle, Washington 98101**  
**(206) 553-1037**



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RICHARD MEDNICK  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

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