



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

May 18, 2004

Reply To
Attn Of: ORC-158

Via Certified Mail
Return Receipt Requested

Arthur S. Robinson
Robinson & Associates
35401 Kenai Spur Highway
Soldotna, AK 99669

Re: In the matter of: Doug Blossom
Docket No. CWA-10-2002-0131

Dear Mr. Robinson:

Enclosed is a fully executed copy of the Consent Agreement and Final Order ("Order") that resolves the matter referenced above. Please ensure that the payment procedures described in paragraphs 3.5 and 3.6 of the Order are followed. The payment of \$1,000 is due within 30 days of the effective date of the Order. The effective date of the Order was the day it was filed, which is May 18, 2004.

Please call me at 617-918-1796 if you have any further questions about this Order or the Supplemental Environmental Project ("SEP") to be performed by Mr. Blossom. Please keep in mind that under paragraph 3.11 of the Order, Mr. Blossom must notify EPA that he has completed the project within 30 days of project completion.

Sincerely,

Jeffrey Kopf (MBS)

Jeffrey Kopf
Assistant Regional Counsel

Enclosure

RECEIVED

04 MAY 18 PM 2:31

HEARINGS CLERK
EPA--REGION 10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

DOUG BLOSSOM,
Clam Gulch, Alaska,

Respondent.

CONSENT AGREEMENT AND
FINAL ORDER

Docket No. CWA-10-2002-0131

I. AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(g). The Administrator has delegated the authority to issue the Final Order contained in Part IV of this CAFO to the Regional Administrator of EPA, Region 10.

1.2. Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Doug Blossom hereby agrees to, the issuance of the Final Order contained in Part IV of this CAFO.

1 **II. PRELIMINARY STATEMENT**

2 2.1. On July 26, 2002, EPA initiated this proceeding against Respondent pursuant to
3 Section 309(g) of the Act, 33 U.S.C. § 1319(g), by issuing an Administrative Complaint
4 (“Complaint”).

5 2.2. The Complaint alleged that Respondent’s violations of the Act had subjected
6 Respondent to civil penalties. The Complaint proposed that Respondent be assessed an
7 administrative civil penalty in an amount not to exceed \$35,000.00.

8 2.3. The complete factual and jurisdictional basis for proposing the assessment of a civil
9 penalty in this amount is set forth in the Complaint and is incorporated herein by reference.

10 2.4. Pursuant to Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and 40 C.F.R.
11 § 22.38(b), the State of Alaska was given an opportunity to consult with EPA regarding the
12 assessment of an administrative penalty against Respondent.

13 2.5. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), EPA issued a
14 public notice to inform the public of its intent to assess an administrative penalty against Respondent
15 and to invite public comment. EPA received one petition signed by numerous individuals regarding
16 this proposal to assess a civil penalty.

17 **III. CONSENT AGREEMENT**

18 The parties to this action hereby stipulate as follows:

19 3.1. Respondent admits the jurisdictional allegations contained in the Complaint.

20 3.2. Respondent neither admits nor denies the specific factual allegations contained in the
21 Complaint.

22 3.3. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), the nature, circumstances,
23 extent, and gravity of the alleged violations, Respondent’s economic benefit of noncompliance and
24 ability to pay the proposed penalty, Respondent’s agreement to perform a Supplemental
25 Environmental Project (“SEP”), and other relevant factors, EPA has determined and Respondent
26
27

1 agrees that an appropriate penalty to settle this action is in the amount of ONE THOUSAND
2 DOLLARS (\$1,000).

3 3.4. Respondent consents to the issuance of the Final Order recited herein, to payment of
4 the civil penalty cited in the foregoing paragraph within thirty (30) days of the effective date of the
5 Final Order, and to performance of the SEP described herein.

6 3.5. Payment under this CAFO shall be made by cashier's check or certified check,
7 payable to the order of "Treasurer, United States of America" and shall be delivered to the following
8 address:

Mellon Bank
EPA Region 10
P.O. Box 360903M
Pittsburgh, Pennsylvania 15251

9 Respondent shall note on the check the title and docket number of this case.

10 3.6. Respondent shall serve photocopies of the check described above on the Regional
11 Hearing Clerk and EPA at the following two addresses:

12 Regional Hearing Clerk
13 U.S. Environmental Protection Agency
14 1200 Sixth Avenue, Mail Stop ORC-158
15 Seattle, Washington 98101

16 Office of Ecosystems and Communities
17 U.S. Environmental Protection Agency
18 1200 Sixth Avenue, Mail Stop ECO-083
19 Seattle, Washington 98101
Attn: Steve Roy

20 3.7. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due
21 date, the entire unpaid balance of penalty and accrued interest shall become immediately due and
22 owing. Should such a failure to pay occur, Respondent may be subject to a civil action to collect the
23 assessed penalty under the Clean Water Act. In any collection action, the validity, amount, and
24 appropriateness of the penalty shall not be subject to review.

25 3.8. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due
26 date, Respondent shall also be responsible for payment of the following amounts:

1 a. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), any
2 unpaid portion of the assessed penalty shall bear interest at the rate established by the
3 Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the
4 Final Order contained herein, provided, however, that no interest shall be payable on any
5 portion of the assessed penalty that is paid within thirty (30) days of the effective date of the
6 Final Order contained herein.

7 b. Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section
8 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), should Respondent fail to pay on a timely basis
9 the amount of the penalty assessed by the Final Order contained herein, Respondent shall pay
10 (in addition to any assessed penalty and interest) attorney fees, costs for collection
11 proceedings, and a quarterly nonpayment penalty for each quarter during which such failure
12 to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent
13 (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties which
14 are unpaid as of the beginning of such quarter.

15 3.9. Respondent shall complete a SEP, consisting of a wetland restoration project located
16 on Respondent's property, which the parties agree is intended to secure significant environmental
17 benefits. Respondent shall construct a pond on his "horse pasture," which is an approximately five-
18 acre area located in approximately the south center of his property, northwest of his house. This area
19 is identified as the area bounded by the red lines in Complainant's Exhibit 21. The area is
20 approximately five acres in size. Respondent will forever fence off at least three-fourths of this area
21 from grazing, and allow it to revert to its natural vegetative state. Working with the U.S.D.A.
22 Natural Resources Conservation Service ("NRCS"), he will design and construct a pond within that
23 area of the field that is restricted from grazing. The size and depth of the pond will be at the
24 discretion of the NRCS. This SEP shall be completed within one-year of the entry of this CAFO. If,
25 owing to circumstances beyond the control of Respondent, he is unable to complete the SEP within
26
27

1 one year, he shall notify EPA as soon as he becomes aware of any delays, and this CAFO may be
2 modified at a later date to reflect a new deadline for completion.

3 3.10. Respondent hereby certifies that, as of the date of this Consent Agreement, he is not
4 required by any federal, state, or local law or regulation to perform the activities required by this
5 SEP.

6 3.11. Respondent shall notify EPA no later than thirty (30) days following completion of
7 the SEP.

8 3.12. In the event that Respondent fails to comply with any of the terms or provisions of
9 this CAFO relating to the performance of the SEP, Respondent shall be liable for stipulated penalties
10 in the amount of \$100 per month, for each month after the deadline to complete the SEP, up to a
11 maximum of \$6,000.

12 3.13. The determination of whether the SEP has been satisfactorily completed and whether
13 Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion
14 of EPA.

15 3.14. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a
16 written demand by EPA for payment of such penalties. Stipulated penalties shall be paid in
17 accordance with the provisions of Paragraphs 3.5 and 3.6 of this CAFO. Interest and late charges
18 shall accrue as described in Paragraph 3.8 of this CAFO.

19 3.15. All reports and submissions required by this CAFO shall be made to:

20 Office of Ecosystems and Communities
21 U.S. Environmental Protection Agency
22 1200 Sixth Avenue, Mail Stop ECO-081
Seattle, Washington 98101
Attn: Steve Roy

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3.16. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP, shall include the following language: "This project was undertaken in connection with settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violation of the Clean Water Act."

3.17. The penalties described in paragraphs 3.3 and 3.12 of this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

3.18. Except as described in paragraph 3.8 of this CAFO, each party shall bear its own costs in bringing or defending this action.

3.19. Respondent expressly waives any right to contest the allegations and to appeal the Final Order contained herein.

3.20. The provisions of this CAFO shall bind Respondent and his agents, servants, employees, successors, and assigns.

STIPULATED AND AGREED:

Arthur S. Robinson
For Respondent Doug Blossom

Dated: 5/6/04

U.S. ENVIRONMENTAL PROTECTION AGENCY

Jeffrey Kopp
JEFFREY KOPP
MARK A. RYAN
Assistant Regional Counsels
For Complainant

Dated: 5/6/04

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. FINAL ORDER

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

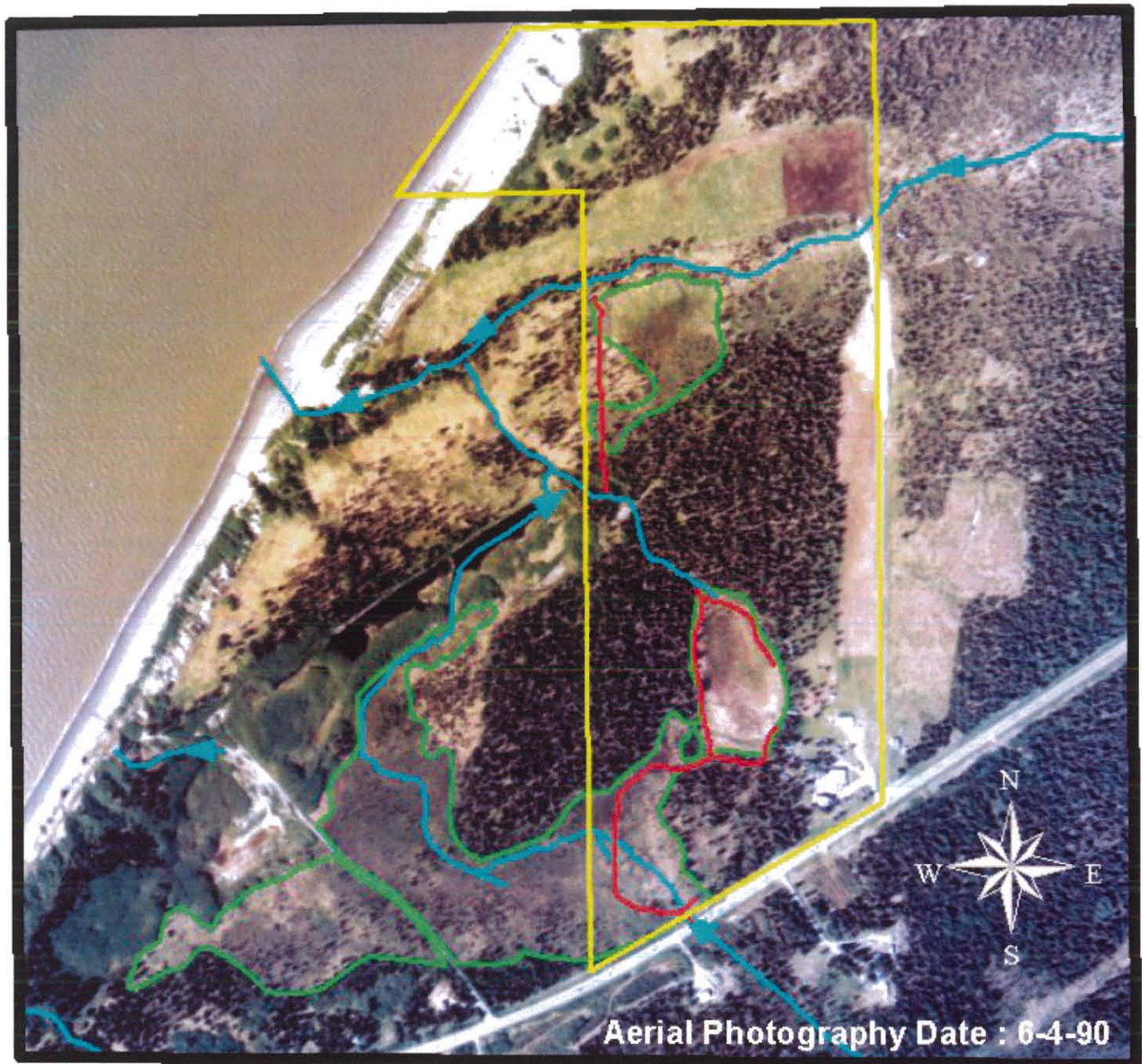
4.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the particular violations alleged in the Consent Agreement above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue 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 and permits issued thereunder.

4.3. This Final Order shall become effective upon filing.

SO ORDERED this 18th day of May, 2004

For Randall F. Smith
L. JOHN IANI
Regional Administrator
U.S. Environmental Protection Agency
Region 10

Blossom Property : Clam Gulch, Alaska



2000

0

2000 Feet

-  Approximate Property Boundary
-  2001 New Ditches
-  1990 Photo Interpreted Drainage
-  1990 Photo Interpreted Wetlands

Wetlands and drianage interpreted from the 1990 aerial photography
New ditches observed on the 2001 aerial photography

Souces Reviewed:

Aerial photography: 6-4-90, 5-14-2001

Kenai-Kasilof Area Soil Survey

NRCS Final Technical Wetland Determination

National Wetland Inventory (NWI)

USGS Topographic Map: Kenai (A-4) NW, Alaska

Map Prepared by Peter Stokely EPA/EPIC 703-648-4292

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Doug Blossom, Clam Gulch, Alaska, DOCKET NO.: CWA-10-2002-0131**, was filed with the Regional Hearing Clerk on May 18, 2004.

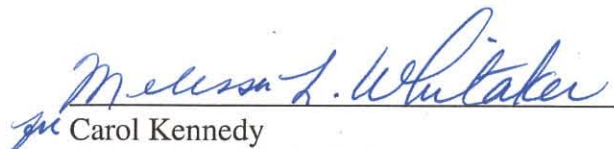
On May 18, 2004 the undersigned certifies that a true and correct copy of the document was delivered to:

Jeff Kopf
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
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 18, 2004, to:

Arthur S. Robinson, Attorney at Law
Robinson & Associates
35401 Kenai Spur Highway
Soldotna, AK 99669

DATED this 18th day of May 2004



Carol Kennedy
Regional Hearings Clerk
EPA Region 10