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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. RCRA-10-2014-0083
ALASKA GOLD COMPANY, LLC)	
)	CONSENT AGREEMENT AND
)	FINAL ORDER
Nome, Alaska)	
)	
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 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a) and (g).

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 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), 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 Alaska Gold Company, LLC (“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 22.18(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 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of RCRA 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 RCRA together with the specific provisions of RCRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. 40 C.F.R. § 260.10 defines a “person” as an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a state, or any interstate body.

3.2. 40 C.F.R. § 261.2(a)(1), defines “solid waste” as any discarded material that is not excluded under 40 C.F.R. § 261.4(a) or that is not excluded by a variance granted under 40 C.F.R. §§ 260.30 and 260.31 or that is not excluded by a non-waste determination under 40 C.F.R. §§ 260.30 and 260.34.

3.3. 40 C.F.R. § 261.3 defines “hazardous waste” as a “solid waste” as defined in 40 C.F.R. § 261.2 that has not been excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b) and which meets any of the criteria identified in 40 C.F.R. § 261.3(a)(2).

3.4. 40 C.F.R. § 260.10 defines “generator” as any person, by site, whose act or process produces hazardous waste identified or listed in 40 C.F.R. Part 261 or whose act first causes a hazardous waste to become subject to regulation.

3.5. Respondent is a Delaware corporation doing business in the state of Alaska.

3.6. Respondent is a “person” as that term is defined by RCRA Section 1004(15), 42 U.S.C. § 6903(15).

3.7. At all times relevant to the allegations set forth herein, Respondent has been the “owner” and “operator,” as those terms are defined at 40 C.F.R. § 260.10, of the facility located at 115 6th Avenue West, Nome, Alaska (the “6th Avenue Facility”).

3.8. The 6th Avenue Facility is a facility which generated and stored various types of waste generated by gold dredging and gold processing operations.

3.9. On June 2 and 3, 2010, EPA inspected Respondent’s 6th Avenue Facility. At the time of the inspection, the 6th Avenue Facility had not been in use for more than one year.

3.10. Respondent’s 6th Avenue Facility is a “generator” as defined by 40 C.F.R. § 260.10.

3.11. At all times relevant to the allegations set forth herein, Respondent has been the “owner” and “operator,” as those terms are defined at 40 C.F.R. § 260.10 of the facility located at Mile 3, Glacier Creek Road, Nome Alaska (the “Rock Creek Mine Facility”).

3.12. In June 2010, Respondent conducted activities related to gold mining, including the service and maintenance of vehicles and heavy equipment used in mining operations, at the Rock Creek Mine Facility.

3.13. On June 2 and 3, 2010, EPA inspected Respondent's Rock Creek Mine Facility.

HAZARDOUS WASTE VIOLATIONS

COUNT 1: Failure to Make a Hazardous Waste Determination.

3.14. 40 C.F.R. § 262.11 requires a person who generates solid waste to determine if that waste is a hazardous waste using the methods provided in 40 C.F.R. § 262.11(a)-(d)

3.15. On June 2 and 3, 2010, the following solid wastes had been generated, and were still present on-site, at the 6th Avenue Facility:

3.15.1. A total of 99 containers of assorted waste types were located in a storage area outside the 6th Avenue Facility's power plant building in containers. At the time of the inspection, Respondent did not know the contents of at least 60 of these containers. Respondent subsequently determined that two of these containers held a hazardous waste meeting the criteria for classification under the "F002" hazardous waste code (spent halogenated solvents), as defined at 40 C.F.R. § 261.31. Respondent subsequently determined that 15 of the containers held a solid waste exhibiting the characteristics of an ignitable hazardous waste and the criteria for classification under the "D001" hazardous waste code, as defined at 40 C.F.R. § 261.21.

3.15.2. Two open 55-gallon drums of discarded methanol-containing waste were located in the 6th Avenue Facility's power plant building. Respondent subsequently determined that these drums held a solid waste exhibiting the characteristics of an

ignitable hazardous waste and meeting the criteria for classification under the "D001" and "U154" hazardous waste codes.

3.15.3 At least 25 aerosol cans, and seven gallons of paint and other discarded chemical products had been abandoned at the 6th Avenue Facility. Respondent subsequently determined that these solid wastes met the criteria for classification under the D001, D002, D003, D004, D007, D008, D009, D011, D019, D021, D035, D040, U075, U151, U154, U160, U228, and U328 hazardous waste codes.

3.16. At the time of the inspection, Respondent had failed to make a hazardous waste determination for any of the hazardous wastes identified in paragraph 3.15 above, in accordance with the methods specified at 40 C.F.R. § 262.11(a)-(d).

3.17. Respondent's failure to determine that the solid wastes generated at the 6th Avenue Facility identified in paragraph 3.15 were hazardous waste is a violation of 40 C.F.R. § 262.11.

COUNT 2: Storage of Hazardous Waste without a Permit or Interim Status

3.18. Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c) require that any person who treats, stores, or disposes of hazardous waste must have a permit or interim status.

3.19. 40 C.F.R. 262.34(a) provides that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or interim status, provided that the generator complies with the requirements of 40 C.F.R. § 262.34(a)(1)-(4).

3.20. On June 2 and June 3, 2010, the following hazardous wastes were being stored at the 6th Avenue Facility for more than 90 days since their date of generation:

3.20.1 Two containers of F002 spent halogenated solvent, as defined at 40 C.F.R. § 261.31;

3.20.2. Two open 55-gallon drums of methanol-containing wastes meeting the criteria for classification as D001 and U154 hazardous waste, as defined at 40 C.F.R. §§ 261.21 and 261.33;

3.20.3. Twenty aerosol cans and five one-gallon containers of an assortment of paint and other chemical products that had been abandoned on-site meeting the criteria for classification as D001, D002, D003, D004, D007, D008, D009, D011, D019, D021, D035, D040, U075, U151, U154, U160, U228, U328 hazardous waste, as defined at 40 C.F.R. §§ 261.21-.24 and 261.33.

3.21. Respondent stored the hazardous wastes identified in Paragraph 3.20 at the 6th Avenue Facility for more than 90 days since the date of their generation.

3.22. Respondent did not have a RCRA permit or interim status authorizing it to store, treat, or dispose of hazardous waste at the 6th Avenue Facility.

3.23. Respondent operated the 6th Avenue Facility as a treatment, storage, or disposal facility without a permit or interim status, in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c).

USED OIL VIOLATIONS

3.24. “Used Oil” is defined at 40 C.F.R. § 279.1 as “any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.”

3.25. Respondent generated used oil at the 6th Avenue Facility and the Rock Creek Mine Facility.

3.26. Respondent stored used oil at the 6th Avenue Facility and the Rock Creek Mine Facility.

3.27. A used oil generator's activities are subject to the requirements related to used oil storage at 40 C.F.R. § 279.22.

COUNT 3: Failure to Clearly Label Used Oil Storage Units with the Words "Used Oil"

3.28. 40 C.F.R. § 279.22(c)(1) requires containers and above-ground tanks used to store used oil at generator facilities to be labeled or marked clearly with the words "Used Oil."

3.29. On June 2 and 3, 2010, two 44-gallon containers that stored used oil located at the east end of the 6th Avenue Facility's machine shop were not labeled with the words "Used Oil."

3.30. On June 2 and 3, 2010, one five-gallon container that stored used oil located in the 6th Avenue Facility's power plant building was not labeled with the words "Used Oil."

3.31. On June 2 and 3, 2010, 15 containers that stored used oil located outside the 6th Avenue Facility's power plant building were not labeled with the words "Used Oil."

3.32. Respondent's failure to label containers used to store used oil with the words "Used Oil" is a violation of 40 C.F.R. § 279.22(c)(1).

COUNT 4: Failure to Store Used Oil in a Container that is in Good Condition

3.33. 40 C.F.R. § 279.22(b)(1) and (2) requires that containers and above-ground tanks used to store used oil at generator facilities must be (1) in good condition (no severe rusting, apparent structural defects, or deterioration), and (2) not leaking (no visible leaks).

3.34. On June 2 and 3, 2010, two 55-gallon containers and one five gallon container used to store used oil in the machine shop at the 6th Avenue facility had oil stains around their bottom perimeter indicating that the containers were not in good condition.

3.35. Respondent's failure to store used oil in an above-ground tank that was in good condition and not leaking is a violation of 40 C.F.R. § 279.22(b)(1) and (2).

COUNT 5: Failure to Clearly Label Used Oil Storage Units with the Words "Used Oil"

3.36. 40 C.F.R. § 279.22(c)(1) requires containers and above-ground tanks used to store used oil at generator facilities to be labeled or marked clearly with the words "Used Oil."

3.37. On June 2, 2010, three 55-gallon containers that stored used oil in the southeastern portion of the Rock Creek Mine Facility near the crushing area were not labeled with the words "Used Oil."

3.38. On June 2, 2010, six 55-gallon containers that stored used oil in Drum Area #1 at the Rock Creek Mine Facility were not labeled with the words "Used Oil."

3.39. On June 2, 2010, eleven 55-gallon containers that stored used oil in Drum Area #2 at the Rock Creek Mine Facility were not labeled with the words "Used Oil."

3.40. Respondent's failure to label containers used to store used oil with the words "Used Oil" is a violation of 40 C.F.R. § 279.22(c)(1).

COUNT 6: Initiation of Shipments of Off-Specification Used Oil to Prohibited Used Oil Burners

3.41. 40 C.F.R. § 279.70 provides that any person who directs a shipment of off-specification used oil from a facility to a used oil burner is subject to the requirements of 40 C.F.R. Part 279, Subpart H - Standards for Used Oil Fuel Marketers.

3.42. 40 C.F.R. § 279.11 identifies “off-specification used oil” as used oil burned for energy recovery unless it has been shown not to exceed any of the allowable levels of the constituents and properties shown in Table 1 of that provision.

3.43. 40 C.F.R. § 279.1 defines a “used oil burner” as a facility where off-specification used oil is burned for energy recovery in devices identified in 40 C.F.R. § 279.61(a).

3.44. 40 C.F.R. § 279.61(a) defines “used oil burners” to include industrial furnaces, industrial or utility boilers, hazardous waste incinerators, and used oil-fired space heaters that burn only used oil generated by the owner or operator of the space heater or by household “do-it-yourselfer” generators of used oil.

3.45. 40 C.F.R. § 279.1 defines a “used oil fuel marketer” as any person who conducts either of the following activities: (1) directs a shipment of off-specification used oil from their facility to a used oil burner; or (2) first claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in § 279.11.

3.46. 40 C.F.R. § 279.71 prohibits a used oil fuel marketer from initiating a shipment of off-specification used oil to a used oil burner unless the used oil burner (a) has an EPA identification number, and (b) burns the used oil in an industrial furnace or boiler identified in 40 C.F.R. § 279.61(a).

3.47. Respondent routinely initiated shipments of used oil generated at its Rock Creek Mine Facility to businesses operating in the Nome, Alaska, area, for use as a fuel in oil-fired space heaters. Oil-fired space heaters are not industrial furnaces or boilers identified in 40 C.F.R. § 279.61(a).

3.48. Respondent did not determine that the used oil generated at its Rock Creek Mine Facility did not exceed any of the allowable levels of the constituents and properties shown in Table 1 of 40 C.F.R. § 279.11.

3.49. Respondent is a person that directed shipments of off-specification used oil from the Rock Creek Mine Facility to used oil burners, and was subject to the requirements of 40 C.F.R. Part 279, Subpart H.

3.50. Respondent's initiation of shipments of off-specification used oil from the Rock Creek Mine Facility to entities not owned and operated by Respondent that burned the used oil in their used oil-fired space heaters is a violation of 40 C.F.R. § 279.71.

COUNT 7: Failure to Properly Respond to a Release of Used Oil

3.51. 40 C.F.R. § 279.22(d) requires that, upon detection of a release of used oil to the environment that is not subject to the underground storage tank requirements at 40 C.F.R. Part 280, Subpart F, and which has occurred after the effective date of the recycled used oil management program in the state of Alaska, a generator must stop a release of used oil, contain the released used oil, and clean up and manage properly the released used oil and other materials and, if necessary, repair or replace any leaking used oil storage containers prior to returning them to service.

3.52. On June 2, 2010, there was stained soil located next to a containment pallet outside of the truck maintenance shop and warehouse area at the Rock Creek Mine Facility, indicating there had been a recent release of used oil to the environment. No steps had been taken to stop the release of used oil, contain the released used oil, or to clean it up.

3.53. The release of used oil to the environment at the Rock Creek Mine Facility was not from an underground storage tank, and occurred after the effective date of the recycled used oil management program in the state of Alaska.

3.54. Failure to properly stop the release of used oil, contain the released oil, and to clean up the release of used oil at the Rock Creek Mine Facility upon detection is a violation of 40 C.F.R. § 279.22(d).

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. As required by Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), EPA has taken into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

4.4. EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$72,000.

4.5. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.4 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.6. Payment under this CAFO may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: http://www.epa.gov/ocfo/finservices/payment_instructions.htm. 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, Missouri 63197-9000

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

4.7. Respondent must serve photocopies of the check described in Paragraph 4.6 on 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, Washington 98101

Xiangyu Chu, Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-127
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

4.8. If Respondent fails to pay the penalty assessed by this CAFO 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 Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), 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.

4.9. If Respondent fails to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.9.1. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, 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 contained herein.

4.9.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

4.9.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on portion of the assessed penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.10. The penalty described in Paragraph 4.4, including any additional costs incurred under Paragraph 4.9 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.11. 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.

4.12. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III above.

4.13. Each party shall bear its own costs and attorneys fees in bringing or defending this action.

4.14. Respondent agrees that this settlement will be considered prior history of noncompliance for purposes of assessing penalties in any future enforcement action brought by EPA against Respondent.

4.15. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

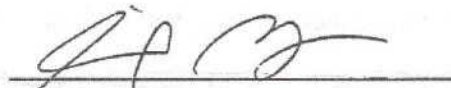
4.16. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.17. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

4/4/14

FOR RESPONDENT:



GAIL R. SCHUBERT, President
Alaska Gold Company, LLC

DATED:

4/14/2014

FOR COMPLAINANT:



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

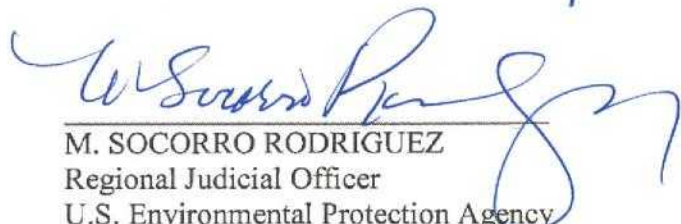
V. FINAL ORDER

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 under RCRA 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 RCRA and regulations promulgated or permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 17th day of April, 2014


M. SOCORRO RODRIGUEZ
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 the Matter of: Alaska Gold Company, LLC, Docket No.: RCRA-10-2014-0083**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

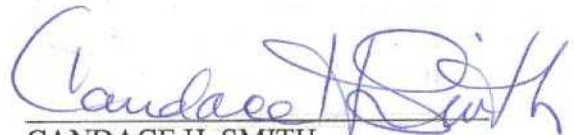
The undersigned certifies that a true and correct copy of the document was delivered to:

Shirin Gallagher, Esquire
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 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:

Gail Schubert
President
Alaska Gold Company, LLC
110 Front St.
Nome, Alaska 99762

DATED this 17th day of April, 2014.



CANDACE H. SMITH
Regional Hearing Clerk
EPA Region 10