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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

In the matter of:

ALEXANDER KOZNE D and AURORA  
COMMUNICATIONS INTERNATIONAL,  
INC.,  
Ninilchik, Alaska,

Respondents.

Docket No. CWA-10-03-0035

COMPLAINT

**I. STATUTORY AUTHORITY**

1.1. This Administrative Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g). The Complainant in this action is the Region 10 Director of the Office of Ecosystems and Communities, who has been delegated authority to institute this action.

1.2. Pursuant to Section 309(g)(2)(B) of the Act, and in accordance with 40 C.F.R. Part 22, the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("Part 22 Rules"), Complainant hereby proposes the assessment of a civil penalty against Alexander Kozned and Aurora Communications International, Inc. for the unlawful discharge of dredged or fill material into waters of the United States without authorization by an U.S. Army Corps of Engineers ("Corps") permit as required by Section 404 of the Act, 33 U.S.C. § 1344, in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

1 1.3. In accordance with Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and 40  
2 C.F.R. § 22.38(b), EPA will consult with the State of Alaska before issuing a final order assessing  
3 a penalty in this matter. EPA has also consulted with the Corps about the violations alleged  
4 herein.

## 5 6 II. ALLEGATIONS

7 2.1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants  
8 into waters of the United States by any person, except as authorized by a permit issued pursuant  
9 to Section 402 or 404 of the Act, 33 U.S.C. § 1342 or 1344. Each discharge of pollutants from a  
10 point source that is not authorized by such a permit constitutes a violation of Section 301(a) of  
11 the Act, 33 U.S.C. § 1311(a).

12 2.2. Respondent Aurora Communications International, Inc., is a corporation duly  
13 organized under the laws of the State of California and doing business in and around Ninilchik,  
14 Alaska.

15 2.3. Respondent Alexander Kozned is an individual and is the chief executive officer and  
16 president of Aurora Communications International, Inc.

17 2.4. Each respondent is a "person" within the meaning of Section 502(5) of the Act, 33  
18 U.S.C. § 1362(5). Aurora Communications International, Inc., and Alexander Kozned are  
19 hereinafter collectively referred to as "Respondents."

20 2.5. Respondents own, possess, and/or control approximately 150 acres of real property  
21 north of Ninilchik, Alaska. This property is located at Lots 1, 2 and SW Quarter, NE Quarter,  
22 Section 7, Township 1 South, Range 13 West, Seward Meridian, Ninilchik, Alaska.

23 Respondents' Ninilchik property is hereinafter referred to as "the Site."

24 2.6. The Site contains approximately 46 acres of wetland habitat meeting the criteria for  
25 jurisdictional wetlands in the 1987 "Federal Manual for Identifying and Delineating Jurisdictional  
26 Wetlands."

1 2.7. The wetland areas of the Site are adjacent and hydrologically connected to an  
2 unnamed creek or ravine, which is itself a tributary of Cook Inlet.

3 2.8. Cook Inlet is subject to the ebb and flow of the tide.

4 2.9. The wetland areas, the unnamed creek/ravine, and the intertidal portions of the Site  
5 are "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C.  
6 § 1362(7), and 40 C.F.R. § 122.2.

7 **Count 1**

8 2.10. On or about July 2, 1998, at times more fully known to Respondents, Respondents  
9 operated or directed the operation of certain earthmoving and landclearing equipment for the  
10 purpose of constructing various roads and radio antenna pads at the Site.

11 2.11. The earthmoving and landclearing equipment referenced in the preceding paragraph  
12 was used to discharge gravel obtained on-site and other materials into approximately two acres of  
13 the the Site's wetlands.

14 2.12. The gravel and other materials referenced in Paragraph 2.11 above constitutes  
15 "dredged material" and/or "fill material" within the meaning of 40 C.F.R. § 232.2 and  
16 "pollutant[s]" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

17 2.13. The earthmoving and landclearing equipment referenced in Paragraph 2.10 above is  
18 a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

19 2.14. By causing such dredged or fill material to enter waters of the United States,  
20 Respondents have engaged in the "discharge of pollutants" from a point source within the  
21 meaning of Sections 301 and 502(12) of the Act, 33 U.S.C. §§ 1311 and 1362(12).

22 2.15. The discharge of dredged or fill material described above was not authorized by any  
23 permit issued pursuant to Section 402 or 404 of the Act, 33 U.S.C. § 1312 or 1314.

24 2.16. The discharge of dredged or fill material described above constituted a discharge of  
25 pollutants into waters of the United States without a permit under the Act and has placed  
26 Respondents in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

1 2.17. On July 13, 1999, EPA issued an administrative compliance order (the "July 1999  
2 Order") to Respondents pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a).

3 2.18. In relevant part, the July 1999 Order required Respondents to conduct various  
4 restoration and revegetation activities relating to the discharges described above, to conduct two  
5 seasons of monitoring, and to report to EPA on the success of these restoration and revegetation  
6 activities.

7 2.19. By April 15, 2002, Respondents had successfully completed the restoration,  
8 revegetation, monitoring, and reporting requirements of the July 1999 Order. However, the vast  
9 majority of the two acres of dredged or fill material originally placed in waters of the United  
10 States remained in place and remains in place to this date.

11 2.20. The dredged or fill material remaining place has never received authorization by the  
12 Corps pursuant to Section 404 of the Act, 33 U.S.C. § 1344.

13 2.21. Each day the dredged or fill material remains in place without the required permit  
14 constitutes an additional day of violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

15 **Count 2**

16 2.22. Between September 2000 and May 14, 2001, at times more fully known to  
17 Respondents, Respondents operated or directed the operation of certain earthmoving and  
18 landclearing equipment for the purpose of constructing additional roads and radio antenna pads at  
19 the Site.

20 2.23. The earthmoving and landclearing equipment referenced in the preceding paragraph  
21 was used to discharge gravel obtained on-site and other materials into approximately 0.51 acres  
22 of the Site's wetlands, unnamed creek/ravine, and intertidal area.

23 2.24. The gravel and other materials referenced in Paragraph 2.23 above constitute  
24 "dredged material" and/or "fill material" within the meaning of 40 C.F.R. § 232.2 and  
25 "pollutant[s]" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

26 2.25. The earthmoving and landclearing equipment referenced in Paragraph 2.22 above is  
27 a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

1 2.26. By causing such dredged or fill material to enter waters of the United States,  
2 Respondents have engaged in the “discharge of pollutants” from a point source within the  
3 meaning of Sections 301 and 502(12) of the Act, 33 U.S.C. §§ 1311 and 1362(12).

4 2.27. The discharge of dredged or fill material described in Paragraph 2.22 above was not  
5 authorized by any permit issued pursuant to Section 402 or 404 of the Act, 33 U.S.C. § 1312 or  
6 1314.

7 2.28. The discharge of dredged or fill material described in Paragraph 2.22 above  
8 constituted a discharge of pollutants into waters of the United States without a permit under the  
9 Act and has placed Respondents in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

10 2.29. On October 2, 2002, EPA issued an administrative compliance order (the “October  
11 2002 Order”) to Respondents pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a). In  
12 relevant part, the October 2002 Order required Respondents to submit a removal and restoration  
13 work plan and to conduct various removal and restoration activities related to the 0.51 acres of  
14 dredged or fill material described above.

15 2.30. Respondents have failed to comply with the requirements of the October 2002  
16 Order, and the 0.51 acres of dredged or fill material described above remain in place.

17 2.31. Each day the dredged or fill material remains in place without the required permit  
18 constitutes an additional day of violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

19 **Count 3**

20 2.32. Between May 14, 2001 and September 19, 2002, at times more fully known to  
21 Respondents, Respondents operated or directed the operation of certain mechanized equipment to  
22 conduct landclearing operations in approximately two acres of the Site’s wetlands.

23 2.33. The landclearing operations referenced in the previous paragraph resulted in the  
24 “discharge of dredged material” within the meaning of 40 C.F.R. § 232.2 and of “pollutant[s]”  
25 within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

26 2.34. The mechanized equipment referenced in Paragraph 2.32 above is a “point source”  
27 within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

1 2.35. By causing such dredged material to enter waters of the United States, Respondents  
2 have engaged in the “discharge of pollutants” from a point source within the meaning of Sections  
3 301 and 502(12) of the Act, 33 U.S.C. §§ 1311 and 1362(12).

4 2.36. The discharge of dredged material described in Paragraph 2.32 above was not  
5 authorized by any permit issued pursuant to Section 402 or 404 of the Act, 33 U.S.C. § 1312 or  
6 1314.

7 2.37. The discharge of dredged or fill material described in Paragraph 2.32 above  
8 constituted a discharge of pollutants into waters of the United States without a permit under the  
9 Act and has placed Respondents in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

10 2.38. In relevant part, the October 2002 Order required Respondents to submit a removal  
11 and restoration work plan and to conduct various removal and restoration activities related to the  
12 two acres of dredged material described above.

13 2.39. Respondents have failed to comply with the requirements of the October 2002  
14 Order, and the two acres of dredged material described above remain in place.

15 2.40. Each day the dredged or fill material remains in place without the required permit  
16 constitutes an additional day of violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

17 **Count 4**

18 2.41. On or about July 5, 2002, at times more fully known to Respondents, Respondents  
19 operated or directed the operation of certain earthmoving equipment for the purpose of  
20 constructing a road at the Site.

21 2.42. The earthmoving equipment referenced in the preceding paragraph was used to  
22 discharge gravel obtained on-site and other materials into approximately 0.15 acres of the the  
23 Site’s wetlands, including a portion of the Site that Respondents had previously restored pursuant  
24 to the July 1999 Order.

25 2.43. The gravel and other materials referenced in the preceding paragraph constitute  
26 “dredged material” and/or “fill material” within the meaning of 40 C.F.R. § 232.2 and  
27 “pollutant[s]” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

1 2.44. The earthmoving equipment referenced in Paragraph 2.41 above is a “point source”  
2 within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

3 2.45. By causing such dredged or fill material to enter waters of the United States,  
4 Respondents have engaged in the “discharge of pollutants” from a point source within the  
5 meaning of Sections 301 and 502(12) of the Act, 33 U.S.C. §§ 1311 and 1362(12).

6 2.46. The discharge of dredged or fill material described in Paragraph 2.41 above was not  
7 authorized by any permit issued pursuant to Section 402 or 404 of the Act, 33 U.S.C. § 1312 or  
8 1314.

9 2.47. The discharge of dredged or fill material described in Paragraph 2.41 above  
10 constituted a discharge of pollutants into waters of the United States without a permit under the  
11 Act and has placed Respondents in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

12 2.48. In relevant part, the October 2002 Order required Respondents to submit a removal  
13 and restoration work plan and to conduct various removal and restoration activities related to the  
14 0.15 acres of dredged or fill material described above.

15 2.49. Respondents have failed to comply with the requirements of the October 2002  
16 Order, and the 0.15 acres of dredged or fill material described above remain in place.

17 2.50. Each day the dredged or fill material remains in place without the required permit  
18 constitutes an additional day of violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

19  
20 **III. PENALTY**

21 3.1. The discharges of pollutants described in Paragraphs 2.10 – 2.50 above were  
22 unauthorized discharges of pollutants to waters of the United States and have resulted in more  
23 than 1,700 days of violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). Consequently,  
24 pursuant to Section 309(g)(2)(B) of the Act, and 40 C.F.R. Part 19, the Respondent is liable for  
25 the administrative assessment of civil penalties in an amount not to exceed \$11,000 per violation  
26 for each day during which the violation continues, up to a maximum of \$137,500.

1           3.2. In accordance with Section 22.14 of the Part 22 Rules, 40 C.F.R. § 22.14(a)(4)(ii),  
2 this Complaint does not include a specific penalty demand. Pursuant to Section 309(g)(3) of the  
3 Act, 33 U.S.C. § 1319(g)(3), EPA must, in determining the specific penalty to be assessed in this  
4 matter, take into account the nature, circumstances, extent, and gravity of the violation, and, with  
5 respect to Respondent, ability to pay, prior history of violations, degree of culpability, economic  
6 benefit and savings (if any) resulting from the violation, and such other matters as justice may  
7 require. The following five paragraphs of this complaint briefly address each of these statutory  
8 penalty factors.

9           3.3. The nature, circumstances, extent, and gravity of the violations described above are  
10 significant. Respondents' earthmoving and landclearing activities at the Site have resulted in the  
11 discharge of dredged or fill material to approximately five acres of wetland, riparian, and intertidal  
12 areas of the Site. These discharges have occurred in an area subject to historic cumulative loss of  
13 waters of the United States and have dramatically altered the Site's hydrology. In their unaltered  
14 state, the dredged and filled wetlands adjacent to the unnamed creek/ravine provide connectivity  
15 with other wetland and aquatic areas. These wetlands also provide water quality and aquatic  
16 ecosystem benefits through nutrient cycling, removal of imported elements and compounds,  
17 processing of pollutants from the nearby highway and developed areas, particulate retention, and  
18 organic carbon export. Respondents' violations threaten to destroy this wetlands community.  
19 Furthermore, by failing to promptly implement the October 2002 Order, Respondents have  
20 decreased the probability that any restoration efforts will be successful.

21           3.4. Based on the information available to EPA regarding Respondents' financial  
22 condition, Respondents appear able to pay a civil penalty of up to \$137,500. Should Respondents  
23 submit information substantiating an inability to pay this amount, the specific proposed penalty  
24 will be adjusted to reflect this inability.

25           3.5. Respondents have a prior history of violations, including violations of Section 404  
26 permitting requirements at the Site at issue in this case. Respondents have been issued two Cease  
27  
28



1 and Desist Orders by the Corps of Engineers and two administrative compliance orders by EPA  
2 pertaining to these violations. Respondents are currently in violation of the October 2002 Order.

3 3.6. Respondents' degree of culpability is high. Both EPA and the Corps have  
4 repeatedly notified Respondents that the Site contained wetlands and that alteration of such  
5 wetlands would require authorization from the Corps under a Section 404 permit. The proposed  
6 penalty reflects that a portion of wetland that was restored as a result of the July 1999 Order was  
7 found to be filled again on July 5, 2002. It also reflects Respondent's failure to comply with the  
8 October 2002 Order.

9 3.7. Respondents have realized an economic benefit as a result of the violations described  
10 above. This economic benefit includes: increase in property value; avoided costs associated with  
11 obtaining a proper Section 404 permit from the Corps; and other delayed or avoided compliance  
12 costs such as those that would have been associated with obtaining an after-the-fact Section 404  
13 permit.

#### 14 15 **IV. OPPORTUNITY TO REQUEST A HEARING**

16 4.1. Respondents have the right to file an Answer requesting a hearing on any material  
17 fact contained in this Complaint or on the appropriateness of the penalty proposed herein. Upon  
18 request, the Presiding Officer may hold a hearing for the assessment of these civil penalties,  
19 conducted in accordance with the provisions of Part 22 and the Administrative Procedures Act, 5  
20 U.S.C. § 551 *et seq.* A copy of the Part 22 rules accompanies this Complaint.

21 4.2. Respondents' Answer, including any request for hearing, must be in writing and  
22 must be filed with:

23 Regional Hearing Clerk  
24 U.S. Environmental Protection Agency, Region 10  
25 1200 Sixth Avenue, Mail Stop ORC-158  
26 Seattle, Washington 98101  
27  
28

1 **V. FAILURE TO FILE AN ANSWER**

2 5.1. To avoid a default order being entered pursuant to 40 C.F.R. § 22.17, Respondents  
3 must file a written Answer to this Complaint with the Regional Hearing Clerk within thirty (30)  
4 days after service of this Complaint.

5 5.2. In accordance with 40 C.F.R. § 22.15, Respondents' Answer must clearly and  
6 directly admit, deny, or explain each of the factual allegations contained in this Complaint with  
7 regard to which Respondent has any knowledge. Respondents' Answer must also state: (1) the  
8 circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts  
9 which Respondents intend to place at issue; and (3) whether a hearing is requested. Failure to  
10 admit, deny, or explain any material factual allegation contained herein constitutes an admission of  
11 the allegation.

12  
13 **VI. INFORMAL SETTLEMENT CONFERENCE**

14 6.1. Whether or not Respondents request a hearing, Respondents may request an informal  
15 settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of  
16 settling this matter. To request such a settlement conference, Respondents should contact:

17 R. David Allnutt, Assistant Regional Counsel  
18 U.S. Environmental Protection Agency, Region 10  
19 1200 Sixth Avenue, Mail Stop ORC-158  
20 Seattle, WA 98101-1128

21 Tel. (206) 553-2581  
22 Fax. (206) 553-0163

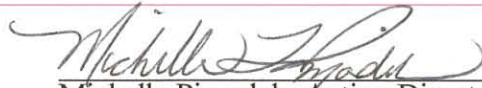
23 6.2. Note that a request for an informal settlement conference does not extend the thirty  
24 (30) day period for filing a written Answer to this Complaint, nor does it waive Respondents'  
25 right to request a hearing.

26 **VII. RESERVATIONS**

27 7.1. Neither assessment nor payment of an administrative civil penalty pursuant to this  
28 Complaint shall affect Respondents' continuing obligations to comply with: (1) the Clean Water

1 Act and all other environmental statutes; (2) the terms and conditions of all applicable Clean  
2 Water Act permits; (3) and any Compliance Order issued to Respondents under Section 309(a) of  
3 the Act, 33 U.S.C. § 1319(a), concerning the violations alleged herein.

4  
5 Dated this 6 day of March, 2003.

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8 Michelle Pirzadeh, Acting Director  
9 Office of Ecosystems and Communities  
10 U.S. EPA Region 10

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CERTIFICATE OF SERVICE

I hereby certify that I have, on the date stated hereunder, filed with the EPA Region 10 Hearing Clerk the original and one copy of the foregoing Complaint, Docket Number CWA-10-2003-0035 and that I have on the same date served a true and correct copy thereof (with an accompanying copy each of the Consolidated Rules of Practice, by Certified Mail, Return Receipt Requested, to:

Alexander Kozned, President  
Aurora Communications International, Inc.  
2629 Lincoln Avenue  
Belmont, California 94002

Certified Mail and Return Receipt

and the original and one copy was hand delivered to:

Carol Kennedy  
Regional Hearing Clerk  
U.S. EPA, Region 10  
1200 Sixth Avenue  
Seattle, WA 98101

Dated: March 7, 2003

Melissa L. Whitaker  
Melissa Whitaker  
EPA REGION 10