

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

TECK ALASKA, INC.

82 miles northeast of Kotzebue, AK

Respondent.

DOCKET NO. CWA-10-2026-0215

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)(A), 33 U.S.C. § 1319(g)(2)(A), authorizes the administrative assessment of Class I civil penalties in an amount not to exceed \$10,000 per violation, except that the maximum amount of any Class I civil penalty under this subparagraph shall not exceed \$25,000. Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class I civil penalties may not exceed \$27,378 per violation, up to a maximum penalty of \$68,445. *See also* 90 Fed. Reg. 1375 (January 8, 2025) (2025 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, the EPA issues, and Teck Alaska, Inc. (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 the 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), 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

3.4. CWA Section 502(6), 33 U.S.C. § 1362(6), defines a “pollutant” to include, *inter alia*, dredged spoil, rock, sand, chemical wastes, and industrial wastes.

3.5. CWA Section 502(14), 33 U.S.C. § 1362(14), defines “point source” to mean any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, or conduit from which pollutants are or may be discharged.

3.6. CWA Section 502(5), 33 U.S.C. § 1365(5), defines “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State or any interstate body.”

3.7. CWA Section 502(7), 33 U.S.C. § 1362(7) defines navigable waters as “waters of the United States.”

3.8. CWA Section 402(a), 33 U.S.C. § 1342(a), provides that the Administrator of the EPA may issue permits under the NPDES program for the discharge of any pollutant into the waters of the United States upon such specific terms and conditions as the Administrator may prescribe.

General Allegations

3.9. Respondent is corporation, and a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.10. At all times relevant to this action, Respondent owned and/or operated the Red Dog Mine, a zinc and lead mine and metal processing facility located approximately 82 miles northeast of Kotzebue, Alaska at 68.071389, -162.868056 (“Facility”). The Facility consists of a main mining complex (“Mine Facility”) and a port located on the Chukchi Sea (“Port Facility”).

3.11. On September 1, 2017, the Alaska Department of Environmental Conservation (ADEC) issued NPDES Permit No. AK0038652 (“Mine Facility Permit”) which authorizes

discharges of treated wastewater from the Mine Facility to Middle Fork Red Dog Creek. The Mine Facility Permit became effective on September 1, 2017 and expired on August 31, 2022. Pursuant to 40 C.F.R. § 122.6, the Mine Facility Permit was administratively extended following expiration pending issuance of a new permit.

3.12. At all times relevant to this action, Respondent was authorized to discharge wastewater containing pollutants from the Facility only in accordance with the terms and conditions specified in the Mine Facility Permit.

3.13. At all times relevant to this action, the Mine Facility was authorized to discharge pollutants from Outfall 001 into the Middle Fork of Red Dog Creek. Outfall 001 is a “point source” under CWA section 502(14), 33 U.S.C. § 1362(14).

3.14. The Middle Fork of Red Dog Creek is a relatively permanent tributary of Red Dog Creek and flows into the Main Stem of Red Dog Creek. The Main Stem of Red Dog Creek is relatively permanent and flows into Ikalukrok Creek. Ikalukrok Creek flows into the Wulik River before reaching the Chukchi Sea, a marginal sea of the Arctic Ocean. The Chukchi Sea is subject to the ebb and flow of the tides, is and was used in interstate and foreign commerce, and is a navigable water. Accordingly, the Middle Fork of Red Dog Creek, Main Stem of Red Dog Creek, Ikalukrok Creek, and Wulik River are navigable waters within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.15. On May 14, 2025 at approximately 1:15 AM, a slurry pump overflowed causing the discharge of approximately 1,000 gallons of process water to reach the Middle Fork of Red Dog Creek.

3.16. Accordingly, Respondent has discharged pollutants from a point source into navigable waters within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

Violations

3.17. The Mine Facility Permit establishes, *inter alia*, discharge limits, as well as planning, reporting and compliance requirements for the Facility.

3.18. As described below, the EPA alleges that Respondent violated CWA Section 301, 33 U.S.C. § 1311, and the conditions and/or limitations of its Mine Facility Permit.

Violation 1 – Discharge Not in Compliance with Permit Terms

3.19. Part 1.3.7 of the Mine Facility Permit states that the “permittee shall not discharge water from the tailings impoundment into Red Dog Creek except in compliance with this permit through authorized outfalls.”

3.20. On May 14, 2025, a Mine Facility slurry pump overflowed, resulting in the discharge of approximately 1,000 gallons of process water to the Middle Fork of Red Dog Creek.

3.21. The EPA alleges that, on May 14, 2025, the Facility discharged process water from the tailings impoundment into Red Dog Creek not in compliance with the Permit terms or through an authorized outfall, in violation of Part 1.3.7 of the Mine Facility Permit and CWA Section 301, 33 U.S.C. § 1311.

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 this Consent Agreement.

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,

the EPA has determined that an appropriate penalty to settle this action is \$21,618 (“Assessed Penalty”).

4.4. Respondent consents to the assessment of the Assessed Penalty set forth in Paragraph 4.3 and agrees to pay the total Assessed Penalty within 30 days after the date of the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk (“Filing Date”).

4.5. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA How to Make a Payment website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

4.6. When making a payment, Respondent shall:

4.6.1. Identify every payment with Respondent’s name and the docket number of this Agreement, CWA-10-2026-0215,

4.6.2. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of payment electronically to the following person(s):

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
R10_RHC@epa.gov

Steven Potokar
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Potokar.Steven@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

4.7. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1319(g)(9), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and the EPA is authorized to recover the following amounts.

4.7.1. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1319(g)(9). The rate of interest is the IRS standard underpayment rate.

4.7.2. Handling Charges. The United States’ enforcement expenses including, but not limited to, attorneys’ fees and costs of collection proceedings.

4.7.3. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

4.8. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.

4.8.1. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

4.8.2. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

4.8.3. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, per 40 C.F.R. § 13.17.

4.8.4. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.9. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

4.10. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement 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 Consent Agreement 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 Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above.

4.13. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.14. 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. By signing this Consent Agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the Consent Agreement.

4.15. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

FOR RESPONDENT:

Les Yesnik, General Manager
Teck Alaska, Inc.

FOR COMPLAINANT:

Edward J. Kowalski
Director
Enforcement and Compliance Assurance Division
EPA Region 10