



ADVOCATES for the **West**
P.O. Box 1612 | Boise, ID 83701

April 19, 2016

Via Certified Mail, Return Receipt Requested:

Wm. Ernest Simmons, Chief Operating Officer
Atlanta Gold Corporation
2417 Bank Dr. Suite 101
Boise, ID 83705

Via Email:

Michelle Points
910 W. Main, Ste. 222
Boise, ID 83702
mpoints@pointslaw.com
Attorney for Atlanta Gold Corp.

**Re: Notice of Ongoing Violations of Clean Water Act And District Court
Orders Re: Atlanta Gold Project 900 Level Adit**

Dear Mr. Simmons and Ms. Points:

I am writing on behalf of my clients, the Idaho Conservation League (ICL) and the Northwest Environmental Defense Center (NEDC), to provide you notice that Atlanta Gold Corporation is in ongoing violation of the Clean Water Act, 33 U.S.C. §§ 1311, 1342, and the District of Idaho's July 27, 2012 Injunction Order (Dkt. # 88) (as amended by the October 10, 2012 Order (Dkt. # 97)) and September 12, 2013 Final Judgment (Dkt. # 125) in the case *ICL & NEDC v. Atlanta Gold Corp.*, No. 1:11-cv-00161-MHW (D. Idaho), regarding Atlanta Gold's facility at the Atlanta Gold Project 900 Level Adit near Atlanta, Idaho.

The 900 Level Adit facility is covered by National Pollutant Discharge Elimination System (NPDES) permit number ID-G91-0006 ("Permit"). At this facility, Atlanta Gold has violated and continues to violate the express terms of the Permit by discharging arsenic and iron above the Permit limits. In addition, Atlanta Gold has violated and continues to violate the Clean Water Act and amended Injunction Order, requiring Atlanta Gold to come into compliance with the Permit by December 15, 2012. Further, Atlanta Gold has failed to make civil penalty payments in violation of the Final Judgment.

Unless Atlanta Gold promptly ceases these violations and demonstrates its compliance with the Permit, the Injunction Order, and Final Judgment, ICL and NEDC hereby provide you notice that they intend to seek relief for these violations under the Clean Water Act and for contempt, as discussed further below.

Atlanta Gold's Permit

The Permit was issued to Atlanta Gold on August 6, 2009 by the Environmental Protection Agency (EPA). It includes requirements specific to Atlanta Gold, as well general requirements from the NPDES General Permit for Groundwater Remediation Discharge Facilities in Idaho (ID-G91-0000). The Permit places effluent limitations and monitoring requirements on the 900 Level Adit's discharges of mine drainage.

Specifically, the permit applies the following five effluent limitations: total suspended solids ("TSS") (30,000 ug/l), arsenic (10 ug/l), iron (1,000 ug/l), temperature (19°C and 9°C during salmonid spawning), and pH (6.5–9.0 s.u. (at all times)). Permit at Enclosure 1, Table 1.

The Permit further requires weekly sampling of each of these parameters as long as the facility is discharging. *Id.* Discharge Monitoring Reports ("DMRs") must be submitted quarterly, postmarked by the 15th of the month. *See* Permit at Part II.F. Similarly, as part of the Permit's CWA § 401 certification, Atlanta Gold must collect surface water samples from two locations in Montezuma Creek and analyze them for arsenic and temperature. Permit at Enclosure 4. Atlanta Gold shall collect these samples monthly, submit them in accord with DMR requirements, and summarize the results in an annual monitoring report. *Id.*

Continuing Violations of the Clean Water Act And Injunction Order

Atlanta Gold has been on notice that it must improve its treatment facilities since it first started monitoring and reporting pursuant to its Permit in August 2009. In 2011, ICL and NEDC filed a lawsuit against Atlanta Gold for violations of the Permit. After entering summary judgment for ICL and NEDC regarding Atlanta Gold's violations of the Permit and the CWA, the U.S. District Court issued its Remedies Decision and Injunction Order in July 2012, modified by Order in October 2012, ordering Atlanta Gold to come into compliance with the terms of its permit by December 15, 2012, and to pay \$2,000,000.00 in civil penalties. *See* Mem. Decision, *ICL & NEDC v. Atlanta Gold Corp.*, Case No. 1:11-cv-00161-MHW, Dkt. # 87 (D. Idaho) (Jul. 19, 2012); Injunction Order, *id.*, Dkt. # 88 (Jul. 27, 2012); Order, *id.*, Dkt. # 97 (Oct. 10, 2012).

Atlanta Gold did install a zero valent iron filtering system at the facility during October, 2012. However, based on the information available in Atlanta Gold's EPA filings, Atlanta Gold has violated and continues to violate the Permit since installing the filtering system; and has violated and continues to violate the Injunction Order which requires Atlanta Gold to comply with the arsenic and iron effluent limitations of the Permit.

Specifically, Atlanta Gold has violated and continues to violate its enumerated daily effluent limitations in the Permit for arsenic (10 ug/l limit) and iron (1,000 ug/l) from December 2012 through the present. Atlanta Gold's DMRs show that it violated the arsenic effluent limit in 56 of its weekly samples during this time period. The DMRs also show that Atlanta Gold violated the iron effluent limit in 8 of its weekly samples during this time period. These violations, depicted in Table 1 below, translate into approximately 448 new violations of the Permit and the court's injunction.

Table 1.

Atlanta Gold DMR	# of Reported Exceedences (from weekly samples)	
	Arsenic	Iron
12/1/2015 - 12/31/2015	3	
11/1/2015 - 11/30/2015	3	
9/1/2015 - 9/30/2015	1	
8/1/2015 - 8/31/2015	2	
7/1/2015 - 7/31/2015	2	
6/1/2015 - 6/30/2015	2	3
5/1/2015 - 5/31/2015	1	1
3/1/2015 - 3/31/2015	1	
1/1/2015 - 1/31/2015	1	
12/1/2014 - 12/31/2014	1	
11/1/2014 - 11/30/2014	4	
7/1/2014 - 7/1/2014	2	
6/1/2014 - 6/1/2014	2	4
5/1/2014 - 5/31/2014	3	
10/1/2013 - 10/31/2013	3	
8/1/2013 - 8/31/2013	1	
7/1/2013 - 7/31/2013	4	
6/1/2013 - 6/30/2013	2	
4/1/2013 - 4/30/2013	2	
3/1/2013 - 3/31/2013	4	
2/1/2013 - 2/28/2013	4	
1/1/2013 - 1/31/2013	5	
12/1/2012 - 12/31/2012	3	1
Total	56	8

The violations are continuing. Despite the 2012 federal court orders requiring Atlanta Gold to come into compliance with the Permit by December 15, 2012, Atlanta Gold has continued to violate the Permit and Injunction Order limits repeatedly since that time—demonstrating that its treatment efforts have not succeeded, and will not succeed in the future, in meeting the Permit and Injunction Order effluent limits.

Ongoing Violations in Contempt of Final Judgment

Atlanta Gold is also in ongoing violation of the Court's Final Judgment, because it has failed to make required civil penalty payments. *See* Final Judgment, *ICL & NEDC v. Atlanta Gold Corp.*, Case No. 1:11-cv-00161-MHW, Dkt. # 125 (D. Idaho) (Sep. 12, 2012). That Final Judgment imposed a schedule of payments that, my clients are informed, have not been made by Atlanta Gold. Atlanta Gold has not sought any form of relief from the District Court to delay making these payments; and the District Court's orders are quite clear that the total \$2 million penalty imposed upon Atlanta Gold was an integral part of the relief granted based on the past Clean Water Act violations adjudicated by the Court. Plaintiffs likewise sought the imposition of the penalty as an integral part of the relief needed to redress Atlanta Gold's legal violations and deter future violations.

My clients are informed that Atlanta Gold is continuing to raise funds in capital markets and has obtained sufficient funds to make the payments required by the Final Judgment but has failed to do so. Atlanta Gold is thus in contempt of the District Court's orders and Final Judgment in its ongoing failure and refusal to make the penalty payments required by the Final Judgment.

Relief To Be Sought

The District Court expressly retained jurisdiction to enforce the terms of the Injunction Order and Final Judgment, in the event of future violations by Atlanta Gold. Based on the violations identified above—including the ongoing violations of the Permit and Injunction Order, and the ongoing violations of the Final Judgment regarding payment of penalties—ICL and NEDC intend to move to reopen the case *ICL & NEDC v. Atlanta Gold Corp.*, Case No. 1:11-cv-00161-MHW (D. Idaho), to seek appropriate relief and enforce provisions of the Clean Water Act, the Injunction Order, and the Final Judgment.

ICL and NEDC will seek appropriate relief, including requesting additional penalties and injunctive relief under the Clean Water Act and through contempt of court. Atlanta Gold is subject to imposition of further penalties for its violations of the Clean Water Act identified above pursuant to CWA Section 309, 33 U.S.C. § 1319(d), adjusted by 40 C.F.R. § 19.4, of up to \$37,500.00 per day per violation. ICL and NEDC may discover further violations, and the violations are likely to continue accruing every day. ICL and NEDC will seek penalties, injunctive relief, and contempt of court accordingly based on the scope of Atlanta Gold's ongoing violations.

ICL and NEDC are committed to avoiding unnecessary judicial proceedings, and therefore are willing to work with Atlanta Gold to ensure that it comes into compliance expeditiously with its duties under the Clean Water Act, the Injunction Order, and the Final Judgment. However, the burden is on Atlanta Gold to take action promptly to cure these violations, including by complying with the Permit and Injunction Order effluent limitations and by making all past due penalty payments forthwith. Failure to accomplish these requirements will result in further litigation as noticed above.

Persons Giving Notice

The full names, addresses, and telephone numbers of the parties providing this notice are:

Idaho Conservation League
Att'n: Justin Hayes
P.O. Box 844
Boise, ID 833701
208.345.6933

Northwest Environmental Defense Center
10015 SW Terwilliger Blvd.
Portland, OR 97219
503.768.6673

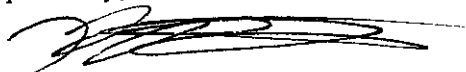
Please take note that the undersigned attorney, Bryan Hurlbutt, has replaced former staff attorney Kristin Reuther as counsel for ICL and NEDC in this matter. The attorneys now representing ICL and NEDC in this notice are:

Bryan Hurlbutt, Staff Attorney
Advocates for the West
P.O. Box 1612
Boise, ID 83701
208.342.7024 x206

Andrew Hawley, Staff Attorney
Northwest Environmental Defense Center
10015 SW Terwilliger Blvd.
Portland, OR 97219
503.768.6673

You may contact ICL and NEDC to discuss the ongoing violations identified above, or I am happy to discuss this further with your counsel, as you may choose.

Respectfully,



Bryan Hurlbutt
Advocates for the West
Attorney for ICL and NEDC

Cc via Certified Mail:

Gina McCarthy, Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dennis McLerran
Regional Administrator, Region 10
Environmental Protection Agency
Regional Administrator's Office, RA-140
1200 Sixth Avenue
Seattle, WA 98101

Jim Werntz, Director
Idaho Operations
Environmental Protection Agency
950 W Bannock Suite 900
Boise, ID 83702

John Tippets, Director
Idaho Department of Environmental Quality
1410 Hilton
Boise, ID 83706