



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

May 17, 2017

*Via Certified Mail, Return Receipt Requested*

Cheri Bayer  
Registered Agent, U.S. Silver – Idaho, Inc.  
1041 Lake Gulch Road  
Wallace, ID 83873

Registered Agent Solutions, Inc.  
Agent, Americas Silver Corporation  
99 Washington Ave., Suite 1008  
Albany, NY 12260

Darren Blasutti  
-President & CEO  
Americas Silver Corporation  
Suite 2870  
145 King Street West  
Toronto, ON M5H 1j8  
-President & Director  
U.S. Silver – Idaho, Inc.  
P.O. Box 440  
Wallace, ID 83873

**Re: Notice Of Intent To Sue U.S. Silver – Idaho, Inc. and Americas Silver Corporation Over Violations of the Clean Water Act at the Galena Complex in Shoshone County, Idaho**

Dear Ms. Bayer, Mr. Blasutti, and Registered Agent Solutions:

I write on behalf of my client, the Idaho Conservation League (“ICL”), to provide you with notice, pursuant to Section 505 of the Federal Water Pollution Control Act (“Clean Water Act” or “CWA”), 33 U.S.C. § 1365, of ICL’s intent to initiate a federal court lawsuit against Americas Silver Corporation and its subsidiary U.S. Silver – Idaho, Inc. (collectively hereinafter “U.S. Silver”) to enforce provisions of the CWA, 33 U.S.C. §§ 1311 & 1342.

U.S. Silver holds National Pollutant Discharge Elimination System (“NPDES”) permit number ID-000002-7 (the “Permit”). Compliance with the Permit provides U.S. Silver with CWA authorization to discharge pollutants from two outfalls at its Galena Complex silver-copper-lead mining and milling operation to Lake Creek and to the South Fork of the Coeur d’Alene River near Wallace, Idaho. However, as set forth below, U.S. Silver has failed and continues to fail to comply with the Permit’s lead pollution limits and other Permit limits, conditions, and requirements, in violation of the CWA.

Unless U.S. Silver takes the steps necessary to remedy its ongoing CWA violations, ICL intends to file suit in U.S. District Court following the expiration of the 60-day statutory notice period, seeking injunctive relief, civil penalties, and other relief for your past and ongoing CWA violations, and for any additional similar violations ICL identifies subsequently.

## Party Giving Notice

The full name, address, and telephone number of the party giving notice is:

Idaho Conservation League  
Att'n: Matt Nykiel  
P.O. Box 2308  
Sandpoint, ID 83864  
208.265.9565

### ICL's Commitment to Protecting Water Quality

Since 1973, the Idaho Conservation League has been Idaho's voice for clean water, clean air, and wilderness—values that are the foundation of Idaho's extraordinary quality of life. ICL works to protect these values through public education, outreach, advocacy, and policy development. As Idaho's largest state-based conservation organization, it represents around 25,000 supporters, many of whom have a deep personal interest in protecting and restoring water quality throughout the rivers and streams of Idaho, including the Coeur d'Alene River watershed, through Clean Water Act enforcement and other means.

ICL has staff, members, and supporters who live, recreate, and/or work in and around the the Coeur d'Alene River watershed, including near and downstream of the pollution discharges from the Galena Complex. ICL staff, members, and supporters frequently visit, recreate, and engage in activities in this area and in areas downstream which are impacted by these pollution discharges.

### U.S. Silver's NPDES Permit ID-000002-7

The Permit (attached) was issued by the U.S. Environmental Protection Agency ("EPA") to U.S. Silver on May 24, 2007, and became effective July 1, 2007. The Permit expired June 30, 2012; however, ICL is informed that the Permit was administratively extended by EPA and remains in effect.

The Permit authorizes U.S. Silver to discharge pollutants at two outfalls within the limits and subject to the conditions of the Permit. *See Permit*, p. 5. The outfalls discharge pollutants from U.S. Silver's Coeur and Galena facilities and the Calahan and Rainbow Mine adits near Wallace, Idaho. Outfall 1 discharges to Lake Creek, a tributary to the South Fork Coeur d'Alene River. Outfall 2 discharges to the South Fork Coeur d'Alene River.

The Permit requires U.S. Silver to submit items to EPA, including: (1) Discharge Monitoring Reports (DMRs) due monthly; (2) a compliance schedule annual progress report due by January 31 every year; (3) WET testing results; (4) a seepage study and hydrological analysis report due six months prior to the Permit's expiration date; (5) annual ambient monitoring results reports due by January 31 each year; (6) a Quality Assurance Plan (QAP) due within 60 days of the effective date of the Permit; (7) Best Management Practices (BMPs) due within 120 days of the effective date of the Permit; (8) BMP Annual certifications due by January 31 of each year;

and (9) NPDES Permit application renewal due 180 days before the expiration of the Permit. *See Permit*, p. 4 (Summary of Submittals).

The Permit requires U.S. Silver to limit and monitor discharges from Outfall 1 and Outfall 2. *Permit*, Part I.A.1. Permit Table 1 includes the effluent limitations and monitoring requirements for Outfall 1. Permit Table 2 includes the effluent limitations and monitoring requirements for Outfall 2. Both tables include effluent limitations and/or monitoring requirements for the following parameters: cadmium; lead; zinc; copper; mercury; total suspended solids; pH; Chromium VI; *E.coli*; outfall flow; hardness, as CaCO<sub>3</sub>; temperature; whole effluent toxicity (WET); and flow upstream of the outfall.

### **Effluent Limit Violations**

Table 1, below, lists all dates currently known to ICL from October 2016 through February 2017 (the most recent date for which ICL has information) on which U.S. Silver exceeded the effluent limits in the Permit. ICL prepared Table 1 by compiling the effluent limit exceedances reported by U.S. Silver in its DMRs submitted to EPA for the months of October 2016 through February 2017. ICL received the DMRs from EPA through a Freedom of Information Act request.

Each exceedance constitutes a violation of the Permit and of Clean Water Act Sections 301(a) and 402(a). At a minimum, ICL intends to include the 20 separate exceedances identified in Table 1 in the lawsuit. Additionally, ICL expects the lawsuit to include violations that occurred on days in between those required weekly sampling events. Because all required samples for the parameters in Table 1 are to be taken weekly, ICL intends to include 7 days of violations for each reported exceedance—or 140 CWA violations—in the lawsuit. Furthermore, because U.S. Silver failed to fill out the “NO. EX” (number of exceedances) column in its DMRs, the DMRs do not indicate whether just one of the weekly samples or more than one of the weekly samples exceeded the effluent limit in a given month. ICL expects information and documents currently in U.S. Silver’s possession may reveal whether additional exceedances occurred during the same month for each exceedance identified in Table 1, and ICL intends to include such exceedances—or 601 total CWA violations—in the lawsuit.

ICL may discover additional exceedances that occurred prior to October 2016. ICL intends to include any such additional exceedances within the last 5 years. Furthermore, based on the information available to ICL, the Permit violations reported on Table 1 are ongoing and likely to continue into the foreseeable future. ICL also intends to include in the lawsuit all ongoing and future exceedances.

**Table 1.** *U.S. Silver Reported Effluent Limit Exceedances, Oct. 2016 – Feb. 2017*

<b>DMR Reporting Period</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Limit Type</b>	<b>Limit</b>	<b>Reported Value</b>	<b>Unit</b>	<b>Sample Frequency</b>	<b>% Exceedance</b>
Feb. 2017	002-A	Solids, total suspended	Daily Max	30	39	mg/L	Weekly	130%
Feb. 2017	002-A	Lead, total recoverable	Monthly Average	32	78	ug/L	Weekly	244%
Feb. 2017	002-A	Lead, total recoverable	Daily Max	88	237	ug/L	Weekly	269%
Feb. 2017	001-A	Lead, total recoverable	Monthly Average	27	34	ug/L	Weekly	126%
Feb. 2017	001-A	Lead, total recoverable	Daily Max	58	79.2	ug/L	Weekly	137%
Jan. 2017	002-A	Lead, total recoverable	Monthly Average	32	43	ug/L	Weekly	134%
Jan. 2017	002-A	Lead, total recoverable	Daily Max	88	115	ug/L	Weekly	131%
Jan. 2017	001-A	Cadmium, total recoverable	Daily Max	0.027	0.0345	lb/d	Weekly	128%
Jan. 2017	001-A	Cadmium, total recoverable	Daily Max	1.9	4.2	ug/L	Weekly	221%
Jan. 2017	001-A	Lead, total recoverable	Monthly Average	0.39	0.5828	lb/d	Weekly	149%
Jan. 2017	001-A	Lead, total recoverable	Daily Max	0.81	2.1347	lb/d	Weekly	264%
Jan. 2017	001-A	Lead, total recoverable	Monthly Average	27	66	ug/L	Weekly	244%
Jan. 2017	001-A	Lead, total recoverable	Daily Max	58	218	ug/L	Weekly	376%
Nov. 2016	001-A	Lead, total recoverable	Monthly Average	0.39	0.5264	lb/d	Weekly	135%
Nov. 2016	001-A	Lead, total recoverable	Daily Max	0.81	0.8558	lb/d	Weekly	106%
Nov. 2016	001-A	Lead, total recoverable	Monthly Average	27	39	ug/L	Weekly	144%
Nov. 2016	001-A	Lead, total recoverable	Daily Max	58	87.4	ug/L	Weekly	151%
Oct. 2016	002-A	Lead, total recoverable	Monthly Average	32	55	ug/L	Weekly	172%
Oct. 2016	001-A	Lead, total recoverable	Monthly Average	27	39	ug/L	Weekly	144%
Oct. 2016	001-A	Lead, total recoverable	Daily Max	58	60.3	ug/L	Weekly	104%

## **DMR Monitoring and Reporting Violations**

ICL intends to include in the lawsuit all of U.S. Silver's violations of the Permit's DMR monitoring and reporting requirements found in Part III of the Permit. These Permit violations constitute ongoing Clean Water Act violations. *See Permit*, Part IV.A (Duty to Comply).

In its DMRs submitted to EPA from October 2016 through February 2017, U.S. Silver failed to fill in the "NO. EX" column. During a monthly reporting period, if an effluent exceedance is reported for any parameters, U.S. Silver is required to report the number of such exceedances for each parameter. However, for each self-reported exceedance identified in Table 1 above, U.S. Silver failed to report how many exceedances occurred in the given month.

From October 2016 through February 2017, U.S. Silver also failed to submit to EPA required written noncompliance reports. When an effluent limit is exceeded, the Permit requires U.S. Silver to submit a written report to EPA including: a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times; the estimated time noncompliance is expected to continue if it has not been corrected; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. *See Permit*, Part III.G.2. If U.S. Silver reported noncompliance by telephone within 24 hours, then this written report is due within 5 days of the time U.S. Silver became aware of the event required to be reported by telephone. *See id.* For other instances of noncompliance not required to be reported within 24 hours, the written noncompliance report is due at the time the DMR is submitted. *Permit*, Part III.H. However U.S. failed to submit written noncompliance reports for each self-reported exceedance identified in Table 1 above.

Additionally, from October 2016 through February 2017, U.S. Silver failed to include values it is required to report in the DMRs, including by reporting "NODI codes" instead of reporting values. Most commonly, U.S. Silver reported "NODI 1" (which represents "wrong flow") instead of reporting a numeric value. U.S. Silver provided no written explanation to EPA with its DMRs explaining its use of NODI 1 and other NODI codes reported in the DMRs.

Other publicly available information indicates that U.S. Silver has similarly violated the DMR monitoring and reporting requirements by failing to fill in the "NO. EX" column, failing to provide noncompliance reports, and/or failing to report required parameter values in its DMRs every month over of the last 5 years. ICL intends to include in the lawsuit these violations and any similar future violations it may discover.

## **Other Permit Violations**

Based on information available to ICL, U.S. Silver violated the express terms of the Permit by failing to timely submit the BMP Annual Certification due to EPA by January 31, 2017. *See Permit*, Part II.E.2. ICL may identify additional similar Permit violations by U.S. Silver for failing to make timely submittals to EPA of items required by the Permit during the last 5 years. ICL intends to include in the lawsuit these violations and any similar future violations it may discover.

## Conclusion

Discharges of lead and other pollutants from U.S. Silver's Galena Mine have consistently violated and continue to violate the Clean Water Act and present a direct threat to Lake Creek and the South Fork Coeur d'Alene River. Further, U.S. Silver has failed and continues to fail to comply with monitoring, reporting, and other requirements of the Permit, in violation of the Clean Water Act. Due to the persistent nature of these violations, there is more than a reasonable likelihood of ongoing violations in the future.

As owners and/or operators of the Galena Mine, these violations subject U.S. Silver – Idaho, Inc. and Americas Silver Corporation to the imposition of statutory penalties as well as other liability. Section 309 of the CWA, 33 U.S.C. § 1319(d), adjusted by 40 C.F.R. § 19.4 and 81 Fed. Reg. 43091 (Jul. 1, 2016), provides for imposition of civil penalties of up to \$37,500.00 per violation per day that occurred prior to August 1, 2016, and up to \$51,570 for per violation per day that occurred on August 1, 2016 and after.

As provided under the CWA's citizen suit enforcement provision, 33 U.S.C. § 1365, ICL is authorized to file federal court litigation against you for these Clean Water Act violations, and any similar violations ICL later discovers, following expiration of the 60-day notice period. 33 U.S.C. § 1365(b). The court may award injunctive relief as well as the statutory penalties noted above. In addition, ICL may recover its reasonable attorney fees and litigation costs incurred in prosecuting the action against you. *See* 33 U.S.C. §§ 1319(d) & 1365(a), (b) & (d).

All pollutant permit limits and monitoring and reporting requirements described herein are set forth in U.S. Silver's NPDES permit. Data regarding violations came from U.S. Silver's DMRs. If you believe any information in this notice is inaccurate, we encourage you to bring this to our attention as soon as possible.

If, during the 60-day notice period, you would like to discuss any aspect of this notice or explore options for resolving the issues described herein, please contact me (contact info below) or Matt Nykiel at the Idaho Conservation League (contact info above). Moreover, the 60-day notice period would be the appropriate time for U.S. Silver to inform ICL of any steps it has already taken to remedy the violations discussed in this notice. Because ICL does not presently intend to delay the filing of a lawsuit past the end of the 60-day notice period—even if settlement negotiations are in progress at that time—any interest in such discussions should be communicated at your earliest possible convenience.

Respectfully,



Bryan Hurlbutt, Staff Attorney

ADVOCATES FOR THE WEST

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*Attorney for Idaho Conservation League*

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