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**IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN THE MATTER OF**

Idaho Cobalt Company )  
176 Yonge Street 6th Floor Suite 06-117 )  
Toronto, ON M5C 2L7, Canada )  
\_\_\_\_\_ )

**CONSENT ORDER**  
Idaho Code § 39-108

**FINDINGS AND CONCLUSIONS**

1. Pursuant to the Idaho Environmental Protection and Health Act (EPHA), Idaho Code § 39-108, the Department of Environmental Quality (Department) enters into this Consent Order with Idaho Cobalt Company located on the North Fork Iron Creek, Lemhi County, Idaho.
2. Subsequent to the issuance of the Notice of Violation (NOV) and penalty assessment in May of 2020, it was determined and verified that the owner and operator of the mine site is the Idaho Cobalt Company and not First Cobalt Corporation.

Idaho Cobalt Company is registered to do business in Idaho. Idaho Cobalt Company is a subsidiary of First Cobalt Corporation, which is an international mining business headquartered in Canada that specializes in ore extraction for the purposes of cobalt refining. Idaho Cobalt Company owns the Iron Creek Mine in Lemhi County, Idaho. The Department has determined that there is an adit discharge from Iron Creek mine. Adit discharges to surface waters are governed by IDAPA 58.01.25.102.05, which requires an Idaho Pollutant Discharge Elimination System (IPDES) permit prior to discharging into waters of the United States. Idaho Cobalt Company will be referred to as “Idaho Cobalt.”

3. On July 17, 2019, the Department conducted an IPDES reconnaissance inspection from the public right-of-way of the Idaho Cobalt site. The inspection was a result of a complaint received on July 11, 2019. The Department conducted a second reconnaissance inspection on October 1, 2019 to verify the owner and operator of the mines and to perform a more thorough on-site inspection with Idaho Cobalt personnel. Information obtained through the two IPDES reconnaissance inspections confirmed that adit #1 discharge was reaching waters of the United States and adit #2 was discharging onto the surface of the ground, upslope approximately 40 feet from the North Fork of Iron Creek.

Adit #1 discharge flows from the mine adit into and through a PVC pipe. The pipe runs in a ditch alongside a dirt road. The adit outflow then flows from the pipe into the open roadside ditch and passes through several straw bales to a culvert that runs under the road. Both the adit outflow and Little No Name Creek converge at the culvert opening and flow down the culvert and into the North Fork of Iron Creek.

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At the time of the October 2019 inspection, adit #2 discharge flowed from the mine through a PVC pipe, which ran downhill toward the North Fork of Iron Creek. The pipe ran east out of the adit, traveled approximately 70 feet, and then made a 90 degree turn, where it traveled north to discharge upslope of the North Fork of Iron Creek. The pipe stopped approximately 40 feet upslope from the North Fork of Iron Creek and discharged onto the hillside where it flowed downhill. The Department did not confirm whether the flow reached the North Fork of Iron Creek at the time of the inspection.

During a site inspection conducted by the Department on October 6, 2020, Ted Erdman, Exploration Geologist, stated that Idaho Cobalt added 50 feet of additional pipe to the existing adit #2 line. The IPDES Compliance Officer confirmed the change to adit #2's piping and noted that the pipe was running parallel to the North Fork of Iron Creek. The Compliance Officer was not able to determine whether the discharge from the end of the extended pipe was reaching the North Fork of Iron Creek.

The unpermitted discharge from adit #1 was considered for the purpose of calculating a penalty assessment in the NOV issued on February 27, 2020.

4. Due to the unpermitted facility discharging adit water into the North Fork of Iron Creek, a tributary of the Salmon River, the following violations were cited in the February 2020 NOV:

- Violation #1

**IDAPA 58.01.02.080.01.a & c**

*“No pollutant shall be discharged from a single source or in combination with pollutants discharged from other sources in concentrations or in a manner that:*  
*a. Will or can be expected to result in violation of the water quality standards applicable to the receiving water body or downstream waters...” or “c. Is not authorized by the appropriate authorizing agency for those discharges that require authorization.”*

- Violation #2

**IDAPA 58.01.25.102.01**

*“Any person who discharges or proposes to discharge a pollutant from any point source into waters of the United States ... and who does not have an IPDES or NPDES permit in effect, shall submit a complete IPDES permit application to the Department...”*

- Violation #3

**IDAPA 58.01.25.102.05**

*“A person shall not discharge pollutants from any point source into waters of the United States without first obtaining an IPDES permit from the Department... or the discharge is authorized by an NPDES or IPDES permit that continues in effect.”*

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Neither violation #1 nor #2 carries a penalty.

The Department derived the penalty from Violation #3, the unpermitted adit discharge to waters of the United States, into the North Fork of Iron Creek, which is a tributary of the Salmon River. Although the unpermitted discharge occurred since at least July 2017 and continues to discharge, the timeframe of July 17, 2019, to January 9, 2020, was used in calculating the penalty. The total days of discharge considered for the fine were 176. No economic benefit calculation was included in determining this fine. As of the October 6, 2020 inspection, adit #1 continued to discharge without a permit.

5. The Department first notified Idaho Cobalt during an in-person conference with Idaho Cobalt's Frank Santaguida, Vice President of Exploration, of these alleged violations on October 24, 2019. The Department again notified Idaho Cobalt of these alleged violations and penalty in the February 2020 NOV. The Department provided Idaho Cobalt with the opportunity to request a compliance conference to discuss the alleged violations and penalty. Due to circumstances surrounding the Coronavirus pandemic, the first NOV was not received. The Department resent the NOV to a different address, and Idaho Cobalt received it on May 20, 2020, by certified mail with return receipt. The NOV is hereby incorporated into this Consent Order by reference.
6. On July 16, 2020, a compliance conference was held via telephone between representatives of Idaho Cobalt and the Department. Idaho Cobalt presented a PowerPoint identifying the mine site ownership timeline, site description, June 2020 water quality testing and results, mass-balance equations with stream flow data, and potential treatment options with proposed timelines.
7. On December 21, 2020, a compliance conference was held via Zoom to discuss the assessed penalty and to work through the items identified in the draft Consent Order. On January 8, 2021, Idaho Cobalt provided the Department with a memo supplying additional information about the site and proposing adjustments to the Department's penalty assessment. On February 3, 2021, Idaho Cobalt sent a Drill Hole Grouting Program to the Department, and on April 7, 2021, provided the Department with an updated schedule.
8. On May 19, 2021, the Department held a compliance conference with Idaho Cobalt. The Department stated that it had considered Idaho Cobalt's comments on the Consent Order and penalty and had decided to maintain the Consent Order as proposed.
9. In June 2021, Idaho Cobalt asserted that their third-party engineers and contractors began implementing the grouting program.
10. To resolve this matter without litigation or further controversy, and without admitting to any of the violations listed in the February 2020 NOV, Idaho Cobalt agrees to the provisions of this Consent Order and the following terms and actions:

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## CONSENT ORDER REQUIREMENTS

11. IPDES Permit: Within ninety (90) calendar days of the effective date of this Consent Order, Idaho Cobalt must submit a complete an IPDES discharge permit application to the Department through the IPDES E-Permitting system:

Preliminary Engineering Report: Within ninety (90) calendar days of the effective date of this Consent Order, Idaho Cobalt must develop and submit a completed Preliminary Engineering Report (PER) prepared by a professional engineer licensed in the state of Idaho, submitted to the Department as specified in Paragraph 23 for review and approval as specified in Paragraph 25 of this Consent Order.

The PER must include sufficient detail to support design and construction to address and eliminate the violations identified in Paragraph 4 of this Consent Order, and meet the requirements of IDAPA 58.01.16.201, *Point Source Wastewater Treatment Requirements*, IDAPA 58.01.25, *Rules Regulating the IPDES Program*, and to the point of compliance with IDAPA 58.01.02.080.01.a & c, *Idaho Water Quality Standards*. The PER must also contain the following:

- Multiple treatment trains with parallel and serial capability,
- Auxiliary equipment and remote alarms,
- Equipment operations and maintenance manuals, and
- Industry-accepted best management practices.

Engineered Construction Plan: Within one hundred eighty (180) calendar days of the effective date of this Consent Order, Idaho Cobalt must submit an Engineered Construction Plan as required under IDAPA 58.01.16.401 *Idaho Wastewater Rules*, prepared by a professional engineer licensed in the state of Idaho. The Engineered Construction Plans must include a project implementation schedule with a final construction completion date no later than July 1, 2023. The Engineered Construction Plan must be submitted to the Department as specified in Paragraph 23 of this Consent Order for the Department to review and approve as specified in Paragraph 25 of this Consent Order. The Engineered Construction Plan must address the following:

- Plans and specifications for the approach to treat the discharge
- A construction quality assurance and quality control plan
- All data, analyses, and reports demonstrating the logic for plans and specifications
- Potential negative outcomes following implementation of the proposed approach to treat the discharge and the potential hazards and risks for each negative outcome
- A response plan to address any negative outcome that may endanger public safety or the environment

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Quality Assurance Project Plan: Within one hundred eighty (180) calendar days of the effective date of this Consent Order, Idaho Cobalt must develop and submit a receiving water monitoring quality assurance project plan (QAPP) for copper Biotic Ligand Model consistent with IDAPA 58.01.02.210.2v.1a and Department guidance located at the following web address:

<https://www2.deq.idaho.gov/admin/LEIA/api/document/download/4835>

The QAPP must address sampling from adit #1 discharge and receiving water monitoring for the North Fork of Iron Creek, both upstream and downstream of adit #1 discharge. This QAPP must be prepared in accordance with DEQ's Quality Management Plan for External QAPPs, in the format that is specified in the *EPA Requirements for Quality Assurance Project Plans* (EPA/QA/R-5) and *Guidance for Quality Assurance Project Plans* (EPA/QA/G-5), and include the sampling specifications identified in Table 1 of this Consent Order. The QAPP must be submitted to the Department as described in Paragraph 23 of this Consent Order. The Department will review this plan for approval as outlined in Paragraph 25 of this Consent Order.

Monitoring Plan: Within one hundred eighty (180) calendar days of the effective date of this Consent Order, Idaho Cobalt must develop and submit a Monitoring Plan to the Department as outlined in Paragraph 23 for review and approval as outlined in Paragraph 25 of this Consent Order. The Monitoring Plan, at a minimum, must include:

- Routine monthly inspections and non-routine inspections (e.g., post-seismic activity) for installed treatment system
- Schedule and location of each monitoring point to determine the effectiveness of the installed treatment system and ensure the facility will not interfere with the beneficial uses of waters, will not endanger public safety, or the environment
- Specific thresholds to initiate further action and the locations and frequency at which the thresholds will be monitored
- Proposed methods for the statistical evaluation of monitoring data to determine compliance with applicable water quality standards.
- Criteria and thresholds for the reduction or discontinuation of any monitoring

Sampling: Within thirty (30) calendar days of the Department approving Idaho Cobalt's QAPP and sampling plan, Idaho Cobalt must commence sampling for all parameters in Table 1 of this Consent Order using the *Implementation Guidance for the Idaho Copper Criteria for Aquatic Life Using the Biotic Ligand Model* (DEQ 2017). Sampling methods and analytical testing must be conducted in accordance with 40 CFR Part 136. Throughout all sample collection and analysis procedures, Idaho Cobalt must use the EPA-approved QA/QC and chain of custody procedures described in *EPA Requirements for Quality Assurance Project Plans* (EPA/QA/R-5) and *EPA Guidance for Quality Assurance Project Plans* (EPA/QA/G-5).

Once initiated, Idaho Cobalt must continue sampling for twenty-four (24) consecutive months. However, if for any reason a monthly sample cannot be collected, Idaho Cobalt must report this non-sampling event to the Department. The Department will review the circumstances of this non-sampling event and may provide Idaho Cobalt an additional month, up to thirty (30) total months, to collect the required twenty-four (24) monthly samples.

Idaho Cobalt must submit all chains of custody, analytical results, quality assurance lab data, and the following:

- Name and contact information of laboratory,
- Sample identification number,
- Sample locations,
- Date and time of sample collection,
- Water quality parameter (or characteristic being measured),
- Analytical result,
- Result unit,
- Detection limit,
- Analytical method,
- Date completed, and
- Any applicable notes.
- Idaho Cobalt must also submit the monthly sampling report to the Department as described in Paragraph 23 of this Consent Order no later than the 20<sup>th</sup> of the month for the previous month's monitoring.

**Table 1. Biotic Ligand Model required parameters.**

Parameter	Units	Monthly Average	Max Daily Average	Instantaneous Maximum	Instantaneous Minimum	Sample Frequency	Sample Type
pH	s.u.			✓	✓	1/month <sup>1</sup>	Recorded or grab <sup>2</sup>
Temperature	Degrees Celsius	✓	✓			1/month	Recorded or grab <sup>2</sup>
Dissolved Ca, Mg, Na, K	mg/L	✓				1/month	Grab
Dissolved Cu	µg/L	✓				1/month	Grab
Sulfate	mg/L	✓				1/month	Grab
Chloride	mg/L	✓				1/month	Grab
Alkalinity	mg/L as CaCO <sub>3</sub>	✓				1/month	Grab
Dissolved organic carbon	mg C/L	✓				1/month	Grab
Flow	gpm	✓				continuous	-

<sup>1</sup> Idaho Cobalt may choose to collect pH data using a recording device or grab sample. The recording device must be set to record at 60-minute or more frequent intervals for a 24-hour period, once per month. pH grab samples must be taken between 5 a.m. and 8 a.m. on the same day as sample collection of other downstream receiving water parameters.

<sup>2</sup> pH and temperature must be analyzed within 15 minutes of sample collection.

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Operations and Maintenance Plan: Within one hundred eighty (180) calendar days from the effective date of this Consent Order Idaho Cobalt must submit an Operations and Maintenance Plan to the Department as described in Paragraph 23 for review and approval as outlined in Paragraph 25 of this Consent Order. The Operations and Maintenance Plan must, at minimum, include the following:

- Maintenance plans and schedules for any adit discharge treatment system, adit, tunnel, shaft, or other underground passageway necessary to provide safe access to any component of the adit discharge treatment system requiring any maintenance, routine service procedures and long term maintenance requirements
- An overall plan that includes techniques for evaluating the integrity and performance of all systems intended to treat adit discharge
- Response plans detailing specific actions that will result in mitigation of an exceedance of any threshold or compromised or damage to adit discharge treatment systems
- Criteria and thresholds for the reduction or discontinuation of any Operation or Maintenance requirements

Record Plans and Specifications: Within thirty (30) calendar days of construction completion of the adit discharge treatment system, Idaho Cobalt must submit Record Plans and Specifications to the Department as outlined in Paragraph 23 for review as outlined in Paragraph 25 of this Consent Order. Record Plans and Specification must include but are not limited to the following.

- Confirmation by an Idaho licensed professional engineer that all record drawings and specifications are complete and accurate
- A final construction report
- If the construction does not deviate from the approved plans and specifications, a statement to the effect must be submitted by the engineer
- A description of any deviation from the approved plans and specifications
- Results of quality control and quality assurance testing

The Department will review the Record Plans and Specifications and results of quality control and quality assurance testing to verify that the facility was constructed in compliance with and does not deviate from the approved plans and specifications. If the Department determines that the facility was not constructed in compliance with or deviates from the approved plans and specifications, the Department will provide Idaho Cobalt written notice of necessary corrective actions within thirty (30) days of receipt of the Record Plans and Specifications. In the event the Department provides such written notice, operation of the facility may not begin until the Department inspects and provides written approval of the corrective actions.

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Annual Reports: Idaho Cobalt must submit annual reports to the Department as outlined in Paragraph 23 of this Consent Order, due no later than January 31 for the previous year's activities. Annual reports must include at a minimum, the following:

- An accounting of the adit #1 and #2 discharge, whether to surface water or dry land, and any changes to the circumstances of adit #2 that may alter its potential to discharge to the North Fork of Iron Creek
- Analytical results of sampling for parameters outlined in Paragraph 11 of this Consent Order
- A description of progress on the design, construction, and implementation of the wastewater treatment facility identified in Paragraph 11 of this consent order

If the Department's review of Annual Reports indicates that additional monitoring, investigations or other actions must be performed, the Department will notify Idaho Cobalt, in writing, and Idaho Cobalt shall, within thirty (30) calendar days, submit a Supplemental Plan as described in Paragraph 23 for review and approval as outlined in Paragraph 25 of this Consent Order.

OR

12. Non-IPDES Option for Ceasing Discharge to Waters of the United States: Within thirty (30) calendar days from the effective date of this Consent Order, Idaho Cobalt must submit in writing a letter indicating its intent to cease all discharge from adit #1 and adit #2 to waters of the United States. The letter of intent must be submitted to the Department as outlined in Paragraph 23 of this Consent Order. If the non-IPDES option is no longer viable or has failed prior to completion, Idaho Cobalt must notify the Department within ninety (90) calendar days and request a revision to this Consent Order or submit a complete IPDES application as outlined in Paragraph 11 of this Consent Order.

Preliminary Engineering Report: Within ninety (90) calendar days from the effective date of this Consent Order, Idaho Cobalt must submit a completed PER prepared by a professional engineer licensed in the state of Idaho. The PER must be submitted to the Department as specified in Paragraph 23 for review and approval as outlined in Paragraph 25 of this Consent Order. The PER must include sufficient detail to support design and construction to address and eliminate the violations identified in Paragraph 4 of this Consent Order. The PER must also contain the following:

- Method to prevent adit #1 and adit #2 discharges from discharging or reaching surface waters of the United States in perpetuity
- A project implementation schedule for ceasing both discharges and a construction completion date
- General framework and design criteria for the proposed approach

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- Identify how the design criteria were identified or the approach that will be used to determine design criteria for which insufficient data is available at the time the PER is submitted
  - Expected results of the proposed adits discharge prevention system
  - Identify any potential negative outcomes and potential hazards and risks

Engineered Construction Plan: Within one hundred eighty (180) calendar days of the effective date of this Consent Order, Idaho Cobalt must submit an Engineered Construction Plan prepared by a professional engineer licensed in the state of Idaho. The Engineered Construction Plan must be submitted to the Department as specified in Paragraph 23 to review and approve as specified in Paragraph 25 of this Consent Order. The Engineered Construction Plan must include a project implementation schedule with a final construction completion date no later than July 1, 2023. The Engineered Construction Plan must address the following:

- Plans and specifications for the approach to prevent discharge
- A construction quality assurance and quality control plan
- All data, analyses, and reports demonstrating the logic for plans and specifications
- A summary of pre-construction conditions and areas potentially affected by changing hydrologic conditions resulting from implementation of the proposed approach to address adit discharges
- A summary of all site monitoring to be performed in the potentially affected areas and methods of data collection
- The location of existing seeps and springs and a summary of flow measurements and water quality associated with each seep and spring in the potentially affected areas
- Potential locations where new discharges may form as a result of the implementation of the proposed approach to address adit discharge
- Potential negative outcomes (e.g., slope instability, impacts to beneficial uses, new discharges, seeps, or springs, and impacts to surface water quality) following implementation of the proposed approach to prevent discharge and the potential hazards and relative risks for each negative outcome
- A response plan to address any negative outcome that may endanger public safety or the environment

Monitoring Plan: Within one hundred eighty (180) calendar days of the effective date of this Consent Order, Idaho Cobalt must develop and submit a Monitoring Plan to the Department as outlined in Paragraph 23 for review and approval as outlined in Paragraph 25 of this Consent Order. The Monitoring Plan must include, but is not limited to the following:

- **Quality Assurance Project Plan:** Idaho Cobalt shall use quality assurance, quality control, and chain of custody procedures for all compliance and monitoring samples in accordance with *EPA Requirements for Quality*

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*Assurance Project Plans* (EPA 2001 [QA/R-5]) and *Guidance for Quality Assurance Project Plans* (EPA 2002a [QA/G-5]). The QAPP must provide sufficient detail to demonstrate that the project technical and data quality objectives are identified and agreed upon; that the intended measurements, data generation, or data acquisition methods are appropriate for achieving project objectives; that assessment procedures are sufficient for confirming that data of the type and quality needed and expected are obtained; and any limitations on the use of the data can be identified and documented.

- Routine monthly inspections and non-routine inspections (e.g., post-seismic activity) for all adits on the property and any potential new discharge points.
- Monthly surface water monitoring immediately upstream and downstream of the project area, including any baseline data and continuing for at least one year beyond completion of construction activities to determine the effectiveness of the adits discharge prevention system and ensure the facility will not interfere with the beneficial uses of waters, will not endanger public safety or the environment and will not discharge to waters of the United States. Monitoring shall include:
  1. All parameters in Table 1 of this Consent Order using the *Implementation Guidance for the Idaho Copper Criteria for Aquatic Life Using the Biotic Ligand Model* (DEQ 2017).
  2. Antimony, arsenic, barium, beryllium, cadmium, chromium, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, zinc and total dissolved solids.
  3. Field parameters including pH, temperature, turbidity, dissolved oxygen, oxidation reduction potential, and conductivity shall also be provided for each sample location.
- A minimum of twelve (12) monthly samples from each adit, seep, and spring included as part of the monitoring plan to determine the effectiveness of the adit discharge prevention system and ensure the facility will not interfere with the beneficial uses of waters, will not endanger public safety or the environment and will not discharge to waters of the United States. Results shall include the following:
  1. Antimony, arsenic, barium, beryllium, cadmium, chromium, copper, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, zinc, and total dissolved solids.
  2. Field parameters including pH, temperature, turbidity, dissolved oxygen, oxidation reduction potential, and conductivity shall also be provided for each sample location.
- A minimum of four (4) samples, one sample for each quarter of the year, from each adit, seep, and spring included as part of the monitoring plan to determine the effectiveness of the adit discharge prevention system and ensure the facility will not interfere with the beneficial uses of waters, will not endanger public safety or the environment and will not discharge to waters of the United States. Results shall include the following common ions:

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1. Calcium, magnesium, potassium, sodium, sulfate, as SO<sub>4</sub>, chloride, total alkalinity, bicarbonate, carbonate, and hydroxide.
  2. Results shall be provided in Piper and Stiff diagrams.
- Specific thresholds to initiate further action and the locations and frequency at which the thresholds will be monitored.
  - Proposed methods for the statistical evaluation of monitoring data to determine compliance with applicable water quality standards.
  - Criteria and thresholds for the reduction or discontinuation of any monitoring or inspections.

Operations and Maintenance Plan: Within one hundred eighty (180) calendar days from the effective date of this Consent Order Idaho Cobalt must submit an Operations and Maintenance Plan to the Department as described in Paragraph 23 for review and approval as outlined in Paragraph 25 of this Consent Order. The Operations and Maintenance Plan must, at minimum, include the following:

- Maintenance plans and schedules for any adit discharge prevention systems, adit, tunnel, shaft or other underground passageway necessary to provide safe access to any component of the adit discharge prevention system requiring any maintenance, routine service procedures and long term maintenance requirements
- An overall plan that includes techniques for evaluating the integrity and performance of all systems intended to prevent adit discharge
- Response plans detailing specific actions that will result in mitigation of an exceedance of any threshold or compromised or damage to adit discharge prevention systems
- Criteria and thresholds for the reduction or discontinuation of any Operation or Maintenance requirements

Record Plans and Specifications: Within thirty (30) calendar days of construction completion of the adit discharge prevention system, Idaho Cobalt must submit Record Plans and Specifications to the Department as outlined in Paragraph 23 for review and approval as outlined in Paragraph 25 of this Consent Order. Record Plans and Specification must include but are not limited to the following.

- Confirmation by an Idaho licensed professional engineer that all record drawings and specifications are complete and accurate
- A final construction report
- If the construction does not deviate from the approved plans and specifications, a statement to the effect must be submitted by the engineer
- A description of any deviation from the approved plans and specifications
- Results of quality control and quality assurance testing

If the Department determines that the facility was not constructed in compliance with or deviates from the approved plans and specifications, the Department will provide Idaho

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Cobalt written notice of necessary corrective actions within thirty (30) days of receipt of the Record Plans and Specifications.

Upon completion of construction, there should be no discharge from the mine adit #1 and #2 into waters of the United States, such that the mine adit discharges do not meet jurisdiction under the Clean Water Act and IPDES system.

Annual Reports: Idaho Cobalt must submit annual reports to the Department as described in Paragraph 23 for review as outlined in Paragraph 25 of this Consent Order. All annual reports are due no later than January 31 for the previous year's activities. Annual reports must include at a minimum, the following:

- An accounting of the adit #1 and adit #2 discharge, whether to surface water or dry land, and any changes to the circumstances of adit #2 that may alter its potential to discharge to the North Fork of Iron Creek
- A summary of the inspections, operations and maintenance, and analytical results of sampling that occurred during the year under an approved QAPP
- A description of progress on the design and construction of the systems being implemented to manage adit #1 and adit #2 wastewater
- A signed and dated statement verifying neither adit #1 or adit #2 discharge has been found to be seeping out of the mine adits, shaft or ventilation shaft or discharging from any subterranean point into surface waters of the United States
- A summary of any threshold exceedance and the corrective actions taken
- A summary of all monitoring performed to determine the effectiveness of the adit discharge prevention systems
- An evaluation of significant trends in water quality and compliance with water quality standards

If the Department's review of Annual Reports indicates that additional monitoring, investigations or other actions must be conducted, the Department will notify Idaho Cobalt, in writing, and Idaho Cobalt shall, within thirty (30) calendar days, submit a Supplemental Plan as described in Paragraph 23 for review and approval as outlined in Paragraph 25 of this Consent Order.

As of May 19, 2021, Idaho Cobalt has sent the Department a Water Discharge and a Grouting proposal and represented that it plans to cease discharges from adits #1 and #2 by grouting the sources of the discharges. Idaho Cobalt has represented that grouting work is scheduled to begin in early June 2021 and will be completed in approximately one week.

Grouting work completed prior to the effective date of this consent order is not a violation of the Consent Order. Idaho Cobalt assumes the risk that the Department may, after review of all information required under this Consent Order, approve different or additional requirements than those specified in the Water Discharge and Grouting

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proposals. This paragraph does not constitute a waiver of rights of any party under this Consent Order.

## **INSPECTIONS**

13. Pursuant to Idaho Code § 39-108 and this Consent Order, the Department may conduct inspections or site visits that the Department determines necessary to verify compliance with all applicable requirements in this Consent Order. Idaho Cobalt shall notify the Department at least ten (10) calendar days prior to any field activities, including sampling events, and, if requested, the Department shall be allowed to observe any such field work.

## **PENALTIES**

14. The February 27, 2021 Notice of Violation assessed a total civil penalty of \$169,840. As a result of Idaho Cobalt's unique factors and good faith efforts to resolve the aforementioned violations and to prevent future occurrences, the Department has determined to allow a 20% reduction in assessed penalties.

15. Idaho Cobalt will pay the Department a civil penalty of \$95,110.40 (ninety-five thousand one hundred ten dollars and forty cents) for the unpermitted discharge violations. The check should state that this payment is on behalf of Idaho Cobalt Company for the IPDES program.

16. Idaho Cobalt must pay the Department within fifteen (15) calendar days of the effective date of this Consent Order.

17. Penalty payment must be made by check to the Idaho Department of Environmental Quality at the following address:

Accounts Receivable – Finance Office  
IPDES Penalty Payment  
Idaho Department of Environmental Quality  
1410 North Hilton  
Boise, Idaho 83706-1255

## **STIPULATED PENALTIES**

18. In the event that Idaho Cobalt fails to comply with any of the requirements appearing in this Consent Order, Idaho Cobalt will be in violation of this Consent Order and may be subject to stipulated penalties, at the Department's discretion, in the amount of forty thousand, seven hundred sixty-one dollars, sixty cents (\$40,761.60). The \$40,761.60 stipulated penalty is representative of a forfeiture of good faith effort and is commensurate to the penalty reduction referenced under Paragraph 14 of this Consent Order.

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19. Idaho Cobalt must provide the stipulated penalty payment to the Department within thirty (30) days of receiving written notice from the Department.
  20. Stipulated penalty payments will be made in accordance with Paragraph 18-19 above.
  21. Payment of the stipulated penalty under this Section does not relieve Idaho Cobalt of any of its obligations under this Consent Order, and does not preclude the Department from seeking any other relief available under law and equity.

## **REIMBURSEMENT OF AGENCY COSTS**

22. Should Idaho Cobalt select the option under Paragraph 11, Non-IPDES Option Including Ceasing Discharge to Waters of the United States, Idaho Cobalt agrees to the terms of the Reimbursement of Agency Costs as follows:

As a result of the matters addressed herein, the Department has and will incur costs and expenses above and beyond the ordinary agency costs associated with implementation of its statutory authorities. In accordance with Idaho Code § 39-108(6) Idaho Cobalt agrees to reimbursement of the State's reasonable costs, including indirect costs associated therewith, as follows:

- a. All costs incurred by the Department to provide management, oversight, and document review by qualified personnel to ensure the obligations of Idaho Cobalt are being met under the terms of this Consent Order.
- b. Costs that are properly payable include, but are not limited to:
  - i. Reasonable time and travel costs associated with oversight of the work performed under this Consent Order;
  - ii. Costs incurred by the Department's contractor;
  - iii. Compliance monitoring, including the collection and analysis of split samples;
  - iv. Site visits or IPDES inspections;
  - v. Review and approval or disapproval of plans and reports; and
  - vi. Reasonable overhead charges and any other costs incurred by the Department to include the hiring of qualified personnel to provide the services referenced above.

For purposes of funding Department costs under the terms of this Consent Order, the Department and Idaho Cobalt agree the effective date of the Consent Order is the date on which the Department Director has signed this Consent Order. This start date applies solely to the Reimbursement of Agency Cost segment of the Consent Order and does not apply to any other timetable or deadline in the Consent Order.

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As an initial deposit, Idaho Cobalt will pay the sum of Ten Thousand Dollars (\$10,000.00) to be deposited to a State account established for this Consent Order. The Department shall draw upon this account for reimbursement of its reasonable expenses.

- a. On or about the end of each state fiscal quarter, the Department shall submit invoices to Idaho Cobalt for all work performed by the Department consistent with this Consent Order to maintain \$10,000.00 in the account at the end of each quarter. Upon request by Idaho Cobalt, the Department will provide Idaho Cobalt supporting documentation itemizing the time and materials expended by the Department and the purpose of such expenditures.
- b. Idaho Cobalt shall, within ten (10) business days of receipt of the Department's invoice documentation, undertake to deposit the requested funds to the State account by electronic fund transfer to the State Treasurer's Office consistent with procedures established by the State Treasurer's Office. Remittance shall be made by not later than forty five (45) calendar days following receipt by Idaho Cobalt of the Department's valid invoice. Idaho Cobalt shall identify any disputed charges within forty five (45) calendar days following receipt of the Department's valid invoice and Parties hereto shall make good faith efforts to promptly resolve such disputes.

If the Department's quarterly charges do not exceed \$10,000, Idaho Cobalt may negotiate with the Department a lesser amount in reserve sufficient to cover foreseeable quarterly expenses. Any unused balance in the account will be returned to Idaho Cobalt within sixty (60) calendar days of the termination of the Consent Order.

Questions concerning payment should be directed to:

DEQ Finance Office  
1410 N Hilton St.  
Boise, Id 83706  
(208) 373-0100

## **CORRESPONDENCE**

23. All correspondence sent by Idaho Cobalt to the Department regarding this Consent Order must be addressed to unless specified otherwise within this Consent Order:

Greg Eager, PE  
Water Quality Engineering Manager  
Department of Environmental Quality  
900 N Skyline  
Idaho Falls, Idaho 83402

24. All correspondence sent by the Department to Idaho Cobalt regarding this Consent Order should be addressed to:

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Frank Santaguida  
Idaho Cobalt Company  
90 Point Hope Place  
Whitby, Ontario, Canada L1N 9P8

25. Unless cited specifically herein or in rule or statute, the following document submittal and review process (Submittal Review Process) will be followed regarding submittals required of this Consent Order. This process must be followed until the Department approves the document or the document review time frame expires, whichever comes first.
- A. After receipt of a submittal from Idaho Cobalt, the Department will 1) notify Idaho Cobalt in writing that the document is approved or 2) notify Idaho Cobalt in writing of any deficiencies in the document. If the Department notifies Idaho Cobalt of deficiencies in the document, Idaho Cobalt will submit a revised document to resolve those deficiencies within thirty (30) calendar days of receipt of the Department's notice.
  - B. The Submittal Review Process may be repeated until the Department notifies Idaho Cobalt the document is approved. However, the submittal must receive the Department's approval within one hundred eighty (180) calendar days from the due date for the first submittal of the document, unless the Department provides Idaho Cobalt with a written extension of the one hundred eighty (180) calendar day time frame. The failure of Idaho Cobalt to obtain the Department approval of a submittal within such time frames will constitute a violation of this Consent Order.
  - C. If the date on which a submittal or other communication is due falls on a Saturday, Sunday, or federal holiday, the submission deadline shall be the next business day.
  - D. Each document approved by the Department under the Submittal Review Process is incorporated into and enforceable as a part of this Consent Order.

## **STANDARD PROVISIONS**

26. Idaho Cobalt shall be responsible for obtaining all required permits licenses, certifications, access rights and agreements necessary to implement any action required by this Consent Order including any permits or agreements necessary to complete the terms of and implement any action required by this Consent Order including for the disposal or treatment of any contaminated wastewater or material.
27. This Consent Order does not relieve Idaho Cobalt from its obligation to comply with any of the provisions of EPHA, IDAPA 58.01.25 (Rules Regulating the IPDES Program), IDAPA 58.01.16 (Wastewater Rules), any rule or provision of an IPDES permit issued by the Department to Idaho Cobalt, or other applicable local, state, or

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- federal laws and regulations or other applicable local, state, or federal laws and regulations.
28. This Consent Order binds Idaho Cobalt, its successors, and assignees until the terms of the Consent Order are met to the Department's satisfaction, and the Department terminates the Consent Order in writing.
  29. If Idaho Cobalt fails to comply with the terms of this Consent Order, the Department may seek and obtain, in any appropriate district court, specific performance of the Consent Order and other relief as authorized in the EPHA.
  30. If any event occurs that causes or may cause delay in the achievement of any requirement of this Consent Order, Idaho Cobalt must notify the Department in writing within ten (10) calendar days of the date Idaho Cobalt knew, or should have known, of the delay.
    - A. Any notice under this Paragraph will describe in detail the cause of the delay, the anticipated length of the delay, all anticipated consequences of the delay, the start date of the event or date of discovery, and measures taken by Idaho Cobalt to prevent or minimize the delay, and a timetable by which those measures will be implemented.
    - B. Idaho Cobalt must use all reasonable measures to avoid or minimize any such delay. If the Department determines that the delay or anticipated delay in achieving any requirements of this Consent Order has been or will be caused by circumstances beyond the reasonable control of Idaho Cobalt, the Department may grant an extension for a period equal to the length of the delay.
    - C. The burden of proving that any delay is caused by circumstances beyond the reasonable control of Idaho Cobalt rests wholly with Idaho Cobalt.
  31. If Idaho Cobalt wishes to seek an extension of any deadline contained in this Consent Order, it must make a written request to the Department. The written extension request must explain the reasoning for the request and state the length of extension requested. Any extension provided by the Department will be in writing, in response to the request.
  32. If Idaho Cobalt violates the terms of this Consent Order, the Department will provide written notice to Idaho Cobalt describing the violation. No later than ten (10) calendar days after receiving the notification, Idaho Cobalt must reply to the Department in writing to explain the violation and provide a date which the violation will be cured, to the Department's satisfaction.
  33. If any activity and use limitations are proposed for the Facility Property, Idaho Cobalt must describe the activity and use limitations in an environmental covenant executed

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- pursuant to the Uniform Environmental Covenants Act, Chapter 30, Title 55, Idaho Code, before closing the Consent Order.
34. A waiver or decision by the Department to not enforce any provision, term, condition, or requirement of this Consent Order does not constitute a waiver of any other provision, term, condition, or requirement.
  35. Each person signing this Consent Order certifies that they have the authority to sign for the party represented and to bind that party to its terms.
  36. In case any provision or authority of this Consent Order or the application of this Consent Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Consent Order will remain in force and will not be affected.
  37. If Idaho Cobalt sells, offers the Facility Property (or any portion thereof) for sale, or otherwise transfers ownership before completion of the requirements of the Consent Order and termination thereof, Idaho Cobalt must notify any prospective purchaser of the terms and conditions of this Consent Order and the current status of completion of the requirements of this Consent Order. Idaho Cobalt must also provide notice to the Department of the offer for sale and identify new owners at least ten (10) calendar days before closing any sale or transfer of the Facility Property or any portion thereof.
  38. Sale or transfer of the Facility Property or any portion thereof by Idaho Cobalt does not relieve Idaho Cobalt of its obligation to complete the terms and conditions of this Consent Order unless appropriate arrangements are made with the purchaser or receiver of the Facility Property for assignment of the obligations of this Consent Order and the Department consents in writing to the assignment of the obligations of this Consent Order to the new owner.
  39. This Consent Order sets forth the entire agreement related to the subject matter of this Consent Order and may not be modified without written consent of all parties.
  40. This Consent Order resolves Idaho Cobalt liability for civil penalties for only the violations and facts alleged in this Consent Order.
  41. This Consent Order does not affect the right of the Department or the State of Idaho to pursue appropriate relief for any other violation of law, including civil penalties, injunctive or other equitable relief, or criminal sanctions.
  42. Idaho Cobalt agrees that this Consent Order will be admissible as evidence in any proceeding to enforce this Consent Order.

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43. If this Consent Order is signed and agreed to with an electronic signature by either party, the electronic signature will have the same legal and evidentiary effect as a handwritten signature.

## **EFFECTIVE DATE AND TERMINATION**

44. The effective date of this Consent Order is the date of the signature by the Department Director.

45. Upon request by Idaho Cobalt, this Consent Order may be terminated if the Department determines that all Consent Order requirements and payment of all penalties are complete.

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2021

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**FRANK SANTAGUIDA**  
**Vice President, Exploration, Idaho Cobalt Company**

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2021

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**JESS BYRNE**  
**Director, Idaho Department of Environmental Quality**