

IN THE ALASKA PUBLIC OFFICES COMMISSION

PEBBLE LIMITED PARTNERSHIP,)	
PEBBLE MINES CORP., and)	
RESOURCES DEVELOPMENT)	
COUNCIL,)	
Complainants,)	
vs.)	
)	OAH No.: 09-0231-APO
RENEWABLE RESOURCES)	
COALITION, INC., AMERICANS FOR)	APOC Case Nos.: 09-01-CD
JOB SECURITY. ALASKANS FOR)	09-04-CD
CLEAN WATER, INC and ROBERT B.)	09-05-CD
GILLAM,)	09-06-CD
Respondents.)	

**BRIEF OF AFCW AND ROBERT B. GILLAM ADDRESSING
COMMISSION QUESTIONS ON CONSENT DECREE**

I. Introduction

Pursuant to the Alaska Public Offices Commission's ("the Commission") request, Respondents, AFCW and Robert B. Gillam ("Respondents") hereby file this brief addressing certain specific questions regarding the consent decree under consideration, which would resolve the remaining issues in this proceeding between Respondents, fellow respondent RRC and the APOC Staff.

A. Discussion

A. Do Respondents agree that a copy of the consent decree should be placed in the file for each party?

The Commission has asked whether the Parties will stipulate that the terms of paragraph 4 on page 12 of the consent decree be modified to allow that a copy of the consent decree be placed in the file of all respondents signing the document.

The APOC's primary missions are to provide public disclosure of information regarding campaign finances and to provide guidance to regulated parties regarding the Commission's position on reporting requirements. Respondents agree that, in service of those two missions, it is appropriate to place a copy of the consent decree in the file of all remaining respondents in this proceeding. The undisputed facts included in the consent decree certainly provide the public with any and all relevant information regarding the disputed transactions. Furthermore, the Staff's position regarding its interpretation of the law (regardless of Respondents' strong disagreement with that interpretation) is made clear in the consent decree.

B. What is the potential maximum fine for each allegation still pending against respondents?

The Commission has requested that the Parties calculate the potential maximum fine for the remaining allegations against each respondent, and that the method of calculating these figures be provided. Respondents hereby provide the requested information. However, in doing so, Respondents strongly dispute the factual and legal basis of all of the allegations, and they do not concede that a maximum fine would be appropriate even if any violations were found.

Respondents do not believe the Staff Report provides adequate notice regarding the nature of the allegations, nor when they purportedly occurred. This makes it difficult to answer the Commission's question. However, the Staff previously conveyed its intent, if this matter were to proceed through a hearing, to seek fines for the

remaining allegations stated below. The following calculations are also based on the Staff's position (shared by Respondents) that penalties in this proceeding cannot be calculated past May 18, 2009,¹ and APOC's penalty statute, AS 15.13.390(a) which allows for a maximum \$50 per day penalty.²

1. RRC failed to register "as a group".

Respondents understand the Staff's theory to be that RRC was required to register "as a group" on the day it allegedly began to collect and solicit money regarding Ballot Measure 4. The Staff has identified the date of that action as April 4, 2008—the date that RRC signed a joint fundraising contract with Fundraising, Inc. Based on the disputed assumption that this allegation has legal and factual support, the maximum penalty allowed by law would be as follows:

a. \$50 per day x 409 days = \$20,450.

2. RRC acted as a "pass-through".

¹ Under AS 15.13.380, the Commission is normally required to hold the hearing on a proceeding within 60 days of a complaint's filing. The Complaint in this matter was filed on March 19, 2009. The Staff has conceded that this timeframe was extended at their request, and so any additional time beyond May 18, 2009 cannot be charged against Respondents.

² However, Respondents specifically note that APOC's current regulations, at 2 AAC 50.399(d), actually cap the maximum fine at \$10 per day. The Respondents have not waived the argument that it would be inequitable for the Commission to impose fines beyond those described in its own regulations.

Respondents understand the Staff's theory to be that RRC's contribution to AFCW was a prohibited contribution in the name of another. The Staff has identified the date of that transaction as June 2, 2009. Based on the disputed assumption that this allegation has legal and factual support, the maximum penalty allowed by law would be as follows:

a. \$50 per day x 350 days = \$17,500.

3. RRC failed report various expenditures in support of Ballot Measure 4.

Respondents understand the Staff's theory to be that RRC failed to report certain expenditures that the Staff believes were in support of Ballot Measure 4. Respondents assumption is that this allegation flows from the Staff's allegation that RRC failed to register "as a group." Under such a theory, RRC allegedly should have filed a 30-day report containing all of these disputed expenditures. Such reports were due on July 28, 2008. Based on the disputed assumption that this allegation has legal and factual support, the maximum penalty allowed by law would be as follows:

a. \$50 per day x 294 days = \$14,700.

4. AFCW received and retained contributions from RRC and AJS, which were made in violation of the law.

Respondents understand the Staff's theory to be that AFCW violated the law by accepting and retaining contributions from RRC and AJS, because such contributions were prohibited contributions in the name of another. The Staff has identified the dates

of these transactions as June 2, June 20, July 15 and August 1, 2009. Based on the disputed assumption that these allegations have legal and factual support, the maximum penalties allowed by law would be as follows:

- a. June 2 transaction: \$50 per day x 350 days = \$17,500.
- b. June 20 transaction: \$50 per day x 332 days = \$16,600.
- c. July 15 transaction: \$50 per day x 307 days = \$15,350.
- d. August 1 transaction: \$50 per day x 290 days = \$14,500.

5. Gillam used RRC and AJS as pass-throughs to make contributions to AFCW.

Respondents understand the Staff's theory to be that Mr. Gillam violated the law in relation to contributions he made to RRC and AJS, because those entities eventually made contributions to AFCW. The Staff has repeatedly conceded that there would have been no limits on what Mr. Gillam could have donated directly to AFCW.³ The Staff has only contended that the contributions from RRC and AJS to AFCW were improperly reported and should have been reported as having been made by Mr. Gillam. The Staff has identified the dates of the RRC's and AJS' contributions to AFCW as June 2, June 20, July 15 and August 1, 2009. Therefore, the Staff's allegation is that Mr. Gillam improperly failed to file Forms 15-5 accounting for these transactions.

³ It is beyond dispute that Alaska Campaign Finance Law places no restrictions on the frequency or amount of contributions made regarding a ballot measure election.

Based on the disputed assumption that this allegation has legal and factual support, the maximum penalties allowed by law would be as follows:

- a. Failure to file Form 15-5 on July 2, 2008 (encompassing June 2 and June 20 transactions):

\$50 per day x 320 days = \$16,000.

- b. Failure to file Form 15-5 on August 15, 2008 (encompassing July 15 and August 1 transactions):

\$50 per day x 276 days = \$13,800.

6. **The “maximum” total in this proceeding would be reduced for a number of reasons.**

Respondents have provided the potential maximum fine for the remaining allegations against each respondent. Those amounts, combined, add up to \$146,400. (If APOC’s current regulations were followed in this proceeding, the maximum fine would be only \$29,280. See 2 AAC 50.399(d)). However, as will be detailed in a subsequent filing requested by the Commission, Respondents continue to believe that the allegations are lacking in legal and factual support and that a number of factors would justify a reduction or elimination of the above amounts.

Additionally, it is beyond dispute that, even without weighing the merits of the Staff’s allegations, APOC’s Civil Penalty Assessment Appeal Mitigation Criteria (“the Criteria”) would justify a large reduction of any penalty.

First, the Criteria provide that “inexperienced filers” are eligible for a 50% reduction from the maximum civil penalty. All three remaining respondents qualify as “inexperienced filers” under the Criteria’s definition in that it is beyond dispute that they are all “in their first year of filing disclosures.”

Second, the Criteria provide that a filer suffering a “personal emergency or incapacitating illness” which prevented a filing, is eligible for up to a 100% reduction from the maximum civil penalty. In this case, the evidence demonstrates, and the Staff does not dispute, that Mr. Gillam suffered an event that would qualify under this category during the relevant time period. This event would justify a total or partial reduction of the potential penalties discussed at Section II.B.5., above which could lead to a reduction of \$29,800.

The Criteria specifically allow that these reductions may be used in conjunction with one another. Therefore, applying *both* of these mitigating factors would result in a total penalty amount of \$58,300.⁴ (If APOC’s penalty regulation, 2 AAC 50.399(d), were followed in this case, this amount would be only \$11,660.)

C. What is the Parties’ intent regarding the amount of discretion the Commission has to set a binding amount in the consent decree?

As discussed in the Joint Motion regarding the consent decree, the Parties—following a mediation conducted by retired Judge John Reese—were able to reach an

⁴ \$146,400 – 29,800 (excused due to medical emergency) = \$116,600 (reduced by 50% due to first time filer status) = \$58,300

agreement on the language and terms of the consent decree. However, the Parties were unable to resolve the payment amount necessary to resolve this proceeding. Respondents believe that \$60,000 is the appropriate payment amount, while the Staff contends that this matter cannot be resolved for less than \$100,000.

In agreeing to the terms of the consent decree, it was Respondents' intent to allow the Commission to make a binding determination of the payment amount by selecting a number of \$100,000 or less (with an assumption that it would be no less than \$60,000—although Respondents would certainly be amenable to a number less than \$60,000). Respondents strongly believe, for a number of reasons,⁵ that a payment of no more than \$60,000 is appropriate to resolve this matter. However, through signing the consent decree and filing the Joint Motion, Respondents have agreed to conclude this matter for payment of a maximum amount of \$100,000, leaving the Commission the discretion to select any amount beneath that maximum.

D. What is the amount of the Commission's costs to date in this matter? (Staff Only)

The Commission has requested that the Staff provide the total costs that the Commission has incurred in this matter to date. In considering such costs, Respondents believe the Commission should take note of a number of factors.

⁵ These reasons will be detailed in the Respondents' February 2, 2010 filing.

First, much, if not most of the investigation and litigation costs were incurred in relation to parties and allegations that have been dismissed by the Commission. Following resolution of dispositive motions, the number of remaining respondents in this case has been reduced from six to three, and the timeframe of the allegations against the remaining respondents has been reduced from a period of four years down to four or five months. Therefore, Respondents believe that the majority of the costs incurred are not directly attributable to any of the remaining allegations or parties.

Second, in calculating these costs, Respondents do not believe it is appropriate to include the cost of time that salaried staff spent on this matter, as it did not result in additional cost to the Commission.

Finally, the Parties attempted to resolve this matter on October 15, 2009, but the Commission rejected that resolution and requested that the Parties pursue pending dispositive motions through conclusion, and only present a new settlement agreement once that process was complete. Therefore, Respondents do not believe it is appropriate to include costs incurred after October 15, nor costs attributable to the dispositive motion practice, in the Staff's calculation.

B. Conclusion

As discussed herein, Respondents make this filing in order to provide the Commission with information that the Commission has indicated will assist in its consideration of the Parties' consent decree. Unless otherwise specified, Respondents

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do not concede the validity of any of the remaining allegations against them, nor do they waive any of their factual and legal arguments.

DATED this 28th day of January, 2010, at Anchorage, Alaska.

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CERTIFICATE OF SERVICE

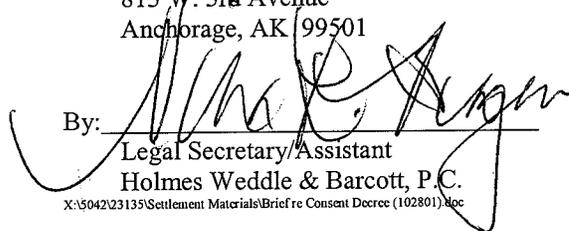
The undersigned certifies that on this 28th day of January, 2010, a true and correct copy of the foregoing document was served on the following via:

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