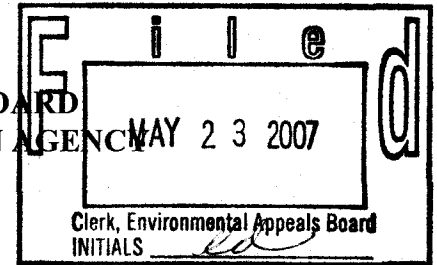


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



In re:

Teck Cominco Alaska, Inc.  
Red Dog Mine

NPDES Permit No. AK-003865-2

Appeal Nos. NPDES 07-08 & 07-09

**ORDER GRANTING ADMINISTRATIVE CONSOLIDATION,  
GRANTING AUTHORITY TO RESPOND TO PETITIONS,  
AND EXTENDING TIME FOR FILING RESPONSES**

On or about March 7, 2007, U.S. Environmental Protection Agency Region 10 (the "Region") issued National Pollutant Discharge Elimination System (NPDES) Permit No. AK-0003865-2 (the "Permit") to Teck Cominco Alaska, Inc. ("Teck Cominco"). On April 9, 2007, the following entities and individuals jointly filed<sup>1</sup> a petition (Appeal No. NPDES 07-08) seeking review of certain conditions of the Permit: the City of Kivalina; the Native Village of Kivalina IRA Council; Jerry Norton, as an individual and in his capacity as President of the Native Village of Kivalina IRA Council; Austin Swan, as an individual and in his capacity as Mayor of the City of Kivalina; Collene Swan, as an individual and in her capacity as Administrator of the Native Village of Kivalina IRA Council; Enoch Adams, Jr., as an individual and in his capacity as Vice Mayor of the City of Kivalina; Leroy Adams; Andrew Koenig; Joseph Swan, Sr.; the Alaska

<sup>1</sup> A document is "filed" on the date it is received by the Clerk of the Environmental Appeals Board.

Center for the Environment; Alaska Community Action on Toxics; and Northern Alaska Environmental Center (collectively the "Kivalina Petitioners"). On April 11, 2007, Teck Cominco filed a petition (Appeal No. NPDES 07-09) seeking review of certain conditions of the Permit.

On April 11, 2007, in accordance with the Environmental Appeals Board's practice, the Clerk of the Board sent a letter to the Region inviting the Region to file a response to the Kivalina Petitioners' petition for review, and on April 13, 2007, the Clerk sent a similar letter to the Region inviting a response to Teck Cominco's petition for review. On April 20, 2007, Teck Cominco filed a motion in Appeal No. 07-08 requesting an opportunity to respond to the Kivalina Petitioners' petition and seeking expedited review by the Board.

On May 14, 2007, the Region filed motions in both cases seeking (1) consolidation of the cases, and (2) a 60-day extension of the time for the Region to respond to the petitions. The Region states that the Kivalina Petitioners have indicated their consent to the Region's requests for consolidation and an extension of time to respond.<sup>2</sup> The Region explains that consolidation is appropriate on the grounds that the two petitions "challenge a number of the same permit limits," that the petitioners have indicated they intend to seek to intervene in each others' cases, and that consolidation would prevent the burden of duplicate or overlapping briefing requirements and inconsistent deadlines. The Region also explains that it seeks extension of the response time because the petitions "raise between 30 and 40 complex issues" that must be separately analyzed to assess, among other things, whether each issue is meritorious, was properly raised in the

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<sup>2</sup> The Region has subsequently notified the Board that Teck Cominco also consents to the motions.

public comment period, and was properly addressed by the Region in its response to comments. The Region states that performing this analysis and preparing the administrative record will be difficult to accomplish within the originally allotted time.


Upon consideration, the Board has determined to administratively consolidate the processing and consideration of the petitions for review in Appeal Nos. NPDES 07-08 and 07-09. Administrative consolidation means that the Clerk of the Board will maintain for both appeals a single case-file in which all documents filed in the two cases will be lodged. Accordingly, any document filed under either appeal number will be considered by the Board in its analysis of both petitions. The Kivalina Petitioners and Teck Cominco are also hereby granted permission as interested persons to file response briefs to each other's petitions, provided that such responses are filed within the deadline for the Region's response.

For cause shown, the Region's request for an extension of time to file its response to the petitions is hereby granted. Accordingly, the Region shall file its response (along with the certified index to the administrative record and pertinent portions of the administrative record) on or before Monday, July 30, 2007.

So ordered.

Dated: 5/23/07

ENVIRONMENTAL APPEALS BOARD

By:   
for Scott C. Fulton,  
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting Administrative Consolidation, Granting Authority to Respond to Petitions, and Extending Time for Filing Responses, in the matter of Teck Cominco Alaska, Inc., Appeal Nos. NPDES 07-08 & 07-09, were sent to the following persons in the manner indicated:

Telecopier and Pouch Mail:

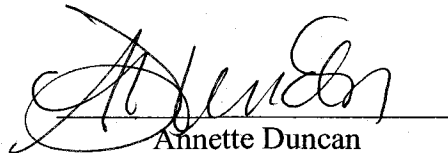
Keith E. Cohon  
U.S. EPA, Region 10  
1200 Sixth Avenue  
Seattle, WA 98101  
Fax: 206-553-0163

Telecopier and U.S. Mail:

Robert K. Reges, Jr.  
Hartig, Rhodes, Hoge & Lekisch, P.C.  
500 L Street, Suite 300  
Anchorage, AK 99501  
Fax: 907-222-7199

Luke W. Cole  
Center on Race, Poverty & the Environment  
47 Kearny Street, Suite 804  
San Francisco, CA 94108  
Fax: 415-346-8723

Dated: MAY 23 2007

  
Annette Duncan  
Secretary