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ENVIR. APPEALS BOARD

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April 7, 2006

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VIA OVERNIGHT DELIVERY

U.S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board
Colorado Building
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

**Re: In the Matter of Hecla Mining Company - Lucky Friday Mine
NPDES Permit No. ID-000017-S**

Dear Clerk:

Enclosed for filing with the Board is the original and five copies of Hecla Mining Company's Motion for Leave to File Reply Brief and [Proposed] Reply Brief in Support of Petition for Review. Please return a conformed copy of the filed documents to me in the enclosed, self-addressed envelope provided.

Thank you for your assistance in this matter.

Very truly yours,


Teresa A. Hill

TAH:ww
Enclosures

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ENVIR. APPEALS BOARD

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Attorneys for Hecla Mining Company

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

_____)	
IN THE MATTER OF)	Appeal Number - NPDES 06-5
)	
HECLA MINING COMPANY –)	MOTION FOR LEAVE TO FILE REPLY
)	BRIEF
LUCKY FRIDAY MINE)	
)	
NPDES Permit No. ID-000017-5)	
_____)	

COMES NOW Hecla Mining Company, Lucky Friday Unit (“Hecla”) and petitions the Environmental Appeals Board (“EAB” or “Board”) for an order granting it leave to reply to the Environmental Protection Agency’s (“EPA”) Response to Hecla Mining Company’s Petition for Review (“Response”).

I. INTRODUCTION

A. Procedural Background

On January 26, 2006 Hecla filed a Petition for Review and supporting memorandum seeking review of conditions contained in National Pollutant Discharge Elimination System (“NPDES”) Permit No. ID-000017-5 (the “Lucky Friday Permit”). EPA’s Response was due on March 13, 2006 and was received by Hecla’s counsel on March 15, 2006.

B. Standard for Leave to File Reply

The rules governing a Petition for Review of an NPDES permit to the EAB are contained in Title 40 C.F.R. Part. 124. The rules do not specifically make provision for a reply to the permitting authority's response, however, the EAB Practice Manual allows "petitioners who believe that the permitting authority's response requires a reply" to seek leave to file a reply brief and upon "motion explaining why a reply brief is necessary" may be granted the opportunity to file a reply brief. *See* EAB Practice Manual at pt. III, D(5). According to the EAB Practice Manual, there is no specific deadline for such a motion, but the motion should be made as soon as possible upon receipt of the permitting authority's response. *Id.*

II. DISCUSSION

A. A Reply is Necessary for an Informed Review of the Petition.

A reply brief addressing arguments raised in EPA's Response is necessary to ensure informed resolution of Hecla's Petition for Review. As noted in the EAB Practice Manual, the Board "endeavors to resolve as many cases as possible during the first stage of the appeals process;" therefore, the Board sets forth a procedure that seeks to obtain sufficient information to conduct a "thorough analysis" of the issues raised by the petition. EAB Practice Manual at pt. III, D (1). EPA has raised various factual arguments in its Response, which require reply by Hecla to enable the Board to conduct a fully informed analysis of the Petition for Review.

EPA's Response ignores and unreasonably dismisses evidence in the record that supports an adjustment in the permit's upper pH level. For example, the Region asserts in its Response that Hecla has not submitted information to support an adjustment of the upper pH limit in the permit. This ignores Hecla's comments on the draft permit and arguments in its Petition for Review, which both cite to and contain specific documentation supporting an upper pH

adjustment based on 40 CFR § 440.131. Hecla should be allowed to reply to the Region's assertions on the pH issue to make sure the Board has accurate and sufficient information to conduct its analysis of the Petition for Review.

B. The Motion for Leave to File a Reply Brief is Timely.

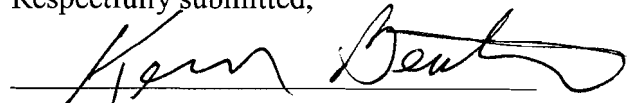
Hecla's Motion for Leave to File Reply Brief is timely and will not delay the EAB's review and decision-making on the Petition for Review. As discussed above, there is no specific deadline to request leave to file a reply brief, but such motions should be made as soon as possible upon receipt of the permitting authority's response. EAB Practice Manual at pt. III., D(5). The Practice Manual does, however, indicate that "timeliness of the motion may be a factor in the Board's consideration of whether to grant it." *Id.* EPA's Response to Hecla's Petition was received by Hecla's counsel on March 15, 2006. Hecla is filing this motion as soon as possible after receipt and review of the Response; therefore, the motion is timely. In addition, Hecla is filing a proposed reply brief concurrently herewith to eliminate any delay in the filing of the brief (if granted).

III. CONCLUSION

For the foregoing reasons, Hecla respectfully requests the EAB to grant Hecla leave to file a reply brief in support of its Petition for Review.

Dated this 7th day of April, 2006.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kevin Beaton", written over a horizontal line.

Kevin J. Beaton
Stoel Rives LLP
Attorneys for Hecla Mining Company

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of April, 2006, I served a copy of the Motion for

Leave to File Reply Brief by facsimile and regular mail on:

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