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ENVIRONMENTAL 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)
HECLA MINING COMPANY -)
LUCKY FRIDAY MINE)
NPDES Permit No. ID-000017-5)
_____)

Appeal Number - NPDES 03-10
HECLA MINING COMPANY'S
MEMORANDUM IN SUPPORT OF
MOTION TO SUPPLEMENT
RECORD

Hecla Mining Company, Lucky Friday Unit ("Hecla") hereby submits this memorandum in support of Hecla's Motion to Supplement Record, filed on July 28, 2004.

I. PROCEDURAL BACKGROUND

On May 9, 2003 the Environmental Protection Agency ("EPA") provided the Idaho Department of Environmental Quality ("DEQ") a proposed draft of National Pollutant Discharge Elimination System ("NPDES") Permit No. ID-000017-5 (the "Lucky Friday Permit") and requested DEQ to grant or deny certification pursuant to Section 401 of the Federal Water Pollution Control Act ("Clean Water Act"). On June 17, 2003, DEQ submitted its Section 401 Certification to EPA. The Lucky Friday Permit was issued on August 12, 2004 incorporating the conditions of DEQ's Section 401 Certification letter.

HECLA MINING COMPANY'S MEMORANDUM IN SUPPORT OF MOTION TO
SUPPLEMENT RECORD - 1

ORIGINAL

On September 10, 2003 Hecla filed a Petition for Review and supporting memorandum seeking review of conditions contained in the Lucky Friday Permit. On September 16, 2003, the Clerk of the Environmental Appeals Board requested the EPA to file a certified index of the documents in the administrative record of the permit decision and copies of the portions of the record that pertain to the matters raised by the petition. EPA filed the Relevant Portions of the Administrative Record on October 30, 2004. Included in the administrative record as Exhibit No. 16 is DEQ's Section 401 Certification. *See* Exhibit No. 16, June 17, 2003 letter to Robert Robichaud at EPA from Gwen Fransen at IDEQ.

On July 31, 2003 Hecla initiated a contested case proceeding before DEQ seeking review of certain conditions and omissions in DEQ's July 17, 2003 Section 401 Certification letter. The contested case proceeding resulted in a settlement agreement, which was approved by the hearing officer appointed by the Idaho Board of Environmental Quality. Pursuant to the settlement agreement, DEQ issued a revised Section 401 Certification on July 15, 2004 ("revised Section 401 Certification"). *See* Motion to Supplement Record, Exhibit A. The revised Section 401 Certification replaces the previously submitted Section 401 Certification (Exhibit No. 16). On July 28, 2004 Hecla filed a motion requesting the EAB to supplement the record with the revised Section 401 Certification.

On August 4, 2004 the EAB issued an Order Setting Briefing Schedule requesting Hecla and the Region to "submit briefs identifying the effect (if any) of Idaho's decision to modify its Section 401 Certification on the issues before the Board and the grounds for whether the Board, should, or should not, consider the modified Section 401 Certification in this appeal." *See* Order Setting Briefing Schedule at 2. Hecla timely submits this memorandum pursuant to the EAB's order.

On August 19, 2004, pursuant to 40 C.F.R. §§ 122.62, 124.5 and 124.55, Hecla sent a written request to Ronald A. Kreizenbeck, Acting Administrator for EPA Region 10, seeking incorporation of the revised Section 401 Certification into the Lucky Friday Permit. *See* Attachment A.

II. DISCUSSION

A. The EAB Should Supplement the Record With the Revised Section 401 Certification

Because the previously submitted Section 401 Certification is obsolete and the revised Section 401 Certification is relevant to clarify the record on appeal, and impacts some of the issues on appeal, Hecla respectfully requests the EAB to supplement the record with the revised Section 401 Certification. Specifically, Hecla requests the EAB to set aside and remand the five conditions outlined below, which may be impacted by the incorporation of the revised Section 401 Certification.

Section 401 of the Clean Water Act requires that all NPDES permit applicants must obtain a certification from the appropriate state agency validating the permit's compliance with the pertinent federal and state water pollution control standards. 33 U.S.C. § 1341(a)(1). The regulatory provisions pertaining to state certification provide that EPA may not issue a permit until a certification is granted or waived by the state in which the discharge originates. 40 C.F.R. § 124.53(a).¹ The regulations further describe the process for "modification" of a permit where, as here, an appropriate State board or agency has issued a revised certification "after final agency action on the permit." 40 C.F.R. § 124.55(b). Idaho issued the revised Section 401 Certification

¹ Hecla contends that EPA's incorporation of the July 17, 2003 Certification into the Lucky Friday Permit was arbitrary and capricious since Hecla initiated a contested case proceeding regarding the certification on July 31, 2003, prior to issuance of the Lucky Friday Permit. The July 17, 2003 Certification was therefore not final and EPA's use of the Certification undermines Hecla's right to seek review of the State conditions.

on July 15, 2004; therefore, the regulations specifically authorize a "modification" of the permit upon request of the permittee. *See* 40 C.F.R. §§ 124.55(b), 124.5, 122.62(a)(3)(iii). Hecla has requested the Regional Administrator to incorporate the changes reflected in the revised Section 401 Certification into the Lucky Friday Permit. *See* Attachment A.

1. The EAB Should Remand the Five Conditions Impacted by the Revised Section 401 Certification

The EAB should remand the issues impacted by the revised Section 401 Certification and direct EPA Region 10 to consider Hecla's request for incorporation of the revised permit conditions. Once EPA incorporates the revised Section 401 Certification, some issues in this appeal, as outlined below, may be changed or resolved, therefore, remand of these conditions is appropriate.

The EAB has authority to remand a permit for further consideration by the Region pursuant to 40 CFR § 124.19. For example, the EAB has previously remanded a permit based on a revised section 401 certification. *See e.g., In re City of Port St. Joe and Florida Coast Paper Company*, 7 E.A.D. 275 (EAB 1997)(recognizing the issuance of a revised 401 Certification and directing the Region on remand to "entertain Petitioners' request for a modification of the metals monitoring conditions of the permit consistent with the revised state certification."). *See also, In the Matter of: J&L Specialty Products Corp.*, 5 E.A.D. 31 (EAB 1994)(remanding permit conditions for reconsideration in light of legal requirements that did not become final until after permit issuance).

The EAB should remand the conditions outlined below, which may be impacted by incorporation of the revised Section 401 Certification, and direct the Region to reconsider these permit conditions simultaneously with Hecla's request for incorporation of the revised Section 401 Certification. Pursuant to 40 CFR §§ 124.16(a) and 124.19(f)(1), the contested permit

conditions will remain stayed during remand of the proceedings. However, even if incorporated fully into the permit, the revised Section 401 Certification does not resolve all of the issues raised on appeal. Therefore, the EAB should continue its review of the other conditions currently on appeal before the Board, and should set aside, modify, and/or remand the other unlawful conditions in the Permit.

2. The EAB Should Not Ignore the Revised Section 401 Certification

The EAB should not simply ignore the invalidation of the July 17, 2003 Section 401 Certification since it is relevant to some of the issues on appeal. EPA filed a response to the Motion to Supplement on August 11, 2004. In its response, EPA argues the revised Section 401 Certification should not be included in the record because the regulations provide that the record on appeal is “complete on the date the final permit is issued.” *See* Region 10’s Response to Motion to Supplement Record at 3 (citing 40 C.F.R. § 124.18(c)). While the record is generally complete when the final permit is issued, the EAB procedures also leave some room for supplementation of the record. For example, the EAB allows additional information and arguments to be raised on appeal, beyond those contained in the record before the date of final permit issuance, where the issues or arguments were not “reasonably ascertainable” during the comment period. *See* 40 C.F.R. § 124.13. Therefore, the EAB has discretion to allow supplementation of the record to include the revised Section 401 Certification, which was not available prior to the final permit issuance.

The EAB should not ignore relevant developments that occur after permit issuance because processing the appeal while ignoring these developments is a waste of time and resources. For example, *In the Matter of: J&L Specialty Products Corp., supra*, the EAB did not turn a blind eye on a change in the legal standards—the deletion of the “Agricultural Water

Supply” use designation—which did not become final until after the final permit was issued. In that case, the EAB recognized that it “has the discretion to remand permit conditions for reconsideration in light of legal requirements that change before the permit becomes final agency action.” Furthermore, the EAB noted that “[i]n the interests of efficiency” the Region should reconsider the permit condition simultaneously with the permit holder’s request for modification based on the changed legal requirements. *Id.* Similarly, the EAB has discretion to consider the revised Section 401 Certification, which was revised after the permit was issued but prior to final agency action on the permit. Furthermore, in the interests of efficiency, the Region should consider the five permit conditions identified below simultaneously with Hecla’s request for incorporation of the revised Section 401 Certification.

Hecla requests that the EAB set aside, modify, and/or remand the unlawful conditions in the permit for the reasons outlined in the Petition for Review. In addition, the EAB should remand the five conditions outlined below and direct the Region to appropriately consider Hecla’s request for a modification of the permit conditions consistent with the revised state certification.

B. Issues Before the Board Potentially Impacted by the Revised 401 Certification

The Idaho Department of Environmental Quality’s revision of the Section 401 Certification potentially impacts the following issues currently before the EAB.

1. Mercury Limits

In its appeal to the EAB Hecla challenged the mercury limits and testing requirements in the Lucky Friday Permit. *See* Petition for Review at pp. 7-13. The July 17, 2003 Section 401 Certification provided a 25% mixing zone for mercury. *See* Petition for Review, Exhibit H at p.

1. The revised Section 401 Certification now provides a 75% mixing zone for mercury at

outfalls 001, 002, and 003 for all flow tiers. *See* Motion to Supplement, Exhibit A at p. 2. Hecla has sought incorporation of the revised mixing zone into the permit. *See* Attachment A. The EAB should remand this condition for consideration by the Region simultaneously with Hecla's request for incorporation of the revised Section 401 Certification. However, even if this condition is incorporated into the permit, Hecla maintains its arguments that the use of technology-based limits, rather than actual effluent monitoring data, to develop the effluent permit limits for mercury and the requirement of low level mercury monitoring in the permit are unsupported.

2. Seepage Study

Hecla has challenged the Lucky Friday Permit condition that requires Hecla to "conduct a seepage study and hydrological analysis to determine if there are unmonitored discharges of pollutants from the Lucky Friday facility Tailings Pond No. 1 and Tailings Pond No. 3 into the SFCDA River." *See* Memorandum in Support of Hecla Mining Company's Petition for Review ("Petition for Review") at 13. The July 17, 2003 Section 401 Certification was silent regarding the seepage study requirement. *See* Petition for Review, Exhibit H. The revised Section 401 Certification now provides as a condition of certification that the "seepage study should be required after implementation of the water recycling program in 2007." *See* Motion to Supplement, Exhibit A at p. 4.

Hecla has sought incorporation of the seepage study conditions into the permit. *See* Attachment A. The EAB should remand the seepage study condition for consideration by the Region in conjunction with Hecla's request for incorporation of the revised Section 401 Certification. Hecla's appeal of the seepage study is otherwise unaffected by the revised Section

401 Certification and Hecla maintains its arguments that the seepage study, even if delayed until 2007, is not justified.

3. Interim Limits

Hecla has challenged the Lucky Friday Permit interim limitations for lead, cadmium and zinc because the limits were not based on actual past performance. *See* Petition for Review at 24. In response, the EPA asserted that the EAB should decline review of the interim limits “because the interim limits are attributable to Idaho’s certification letter and therefore not reviewable in this forum” and the EAB cannot “look behind” a State certification. Response to Petition for Review at 38. The interim limits currently reflected in the Lucky Friday Permit are certainly no longer attributable to the state certification since these limits have been revised. The revised Section 401 Certification recalculates the interim limits and includes a revised “Table 1 – Interim Effluent Limitations,” which appropriately calculates the interim limits based on actual past performance. *See* Motion to Supplement, Exhibit A at p. 3.

Hecla has sought incorporation of the revised Table 1 – Interim Effluent Limitations into the Lucky Friday Permit. *See* Attachment A. The EAB should remand this condition for consideration by the Region simultaneously with Hecla’s request for incorporation of the revised interim limits. If EPA incorporates the interim limits contained in Table 1 of the revised Section 401 Certification into the Lucky Friday Permit then Hecla will withdraw its appeal of the interim limits. However, until the revised limits are incorporated into the Permit Hecla must continue with its appeal of the erroneous interim limits currently contained in the Lucky Friday Permit.

4. Upper pH Limit

Hecla seeks review of the upper pH limit of 9.0 s.u. in the Lucky Friday Permit, specifically, that an exception to the upper pH limit should be authorized because it will not

affect water quality and will result in a net improvement in water quality. *See* Petition for Review at 26. The July 17, 2003 Section 401 Certification was silent regarding a mixing zone for pH. *See* Petition for Review, Exhibit H. The revised Section 401 Certification now includes a mixing zone for pH at outfalls 001, 002, and 003 of 25% for pH above 9.0 s.u., which Hecla has requested to be included into the permit. The EAB should remand the upper pH limit for consideration by the Region along with Hecla's request for incorporation of the revised Section 401 Certification. However, until this condition is incorporated into the Permit, Hecla maintains its appeal of the upper pH limit, and continues to assert that the Permit should be remanded for inclusion of an alternative pH upper limit.

5. WET Testing

Hecla has appealed the inclusion of Whole Effluent Toxicity ("WET") testing as a condition of the permit, specifically, that the requirement of both bioassessment monitoring and WET testing is not legally or factually justified given the existing health of the receiving waters at current levels of discharge. *See* Petition for Review at 27. EPA responded that WET testing is necessary to ensure compliance with Idaho's narrative toxics criterion. *See* Response to Petition for Review at 46-47.

The July 17, 2003 Section 401 Certification was silent in regards to WET testing. *See* Petition for Review, Exhibit H. The revised Section 401 Certification provides:

As a general comment, DEQ supports any steps that can be taken to make the [sic] all of the permit monitoring requirements less expensive. Consistent with this general comment, DEQ supports the position that the whole effluent toxicity testing should only be required starting in 2007 once Hecla completes its implementation, testing and analysis of the water recycling program.

See Motion to Supplement, Exhibit A at p.4. Again, Hecla has asked the Regional Administrator to incorporate the delayed implementation of WET testing into the permit. The EAB should remand the WET testing requirement for consideration by the Region along with Hecla's request for incorporation of the revised Section 401 Certification. However, even if the delayed implementation schedule is incorporated into the permit, Hecla maintains its arguments before the EAB that WET testing is unjustified given the health of the receiving waters.

III. CONCLUSION

Hecla seeks to supplement and clarify the record on appeal with the revised Section 401 Certification for the Lucky Friday Permit. Hecla has asked the Regional Administrator to incorporate the conditions of the revised Section 401 Certification into the permit. If the Lucky Friday permit is revised based on the revised Section 401 Certification, some of the issues in this appeal may be impacted, and potentially will be withdrawn. The EAB should set aside, modify and/or remand the unlawful permit conditions for the reasons outlined in the Petition for Review. In addition, the EAB should specifically set aside and remand the five conditions outlined above, which are impacted by the revised Section 401 Certification, with a directive to the Region to appropriately consider Hecla's request for incorporation of the revised State certification.

Respectfully submitted this 19th day of August, 2004.

Stoel Rives LLP

By



Teresa A. Hill

Attorneys for Hecla Mining Company

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of August, 2004, I served a copy of the HECLA MINING COMPANY'S MEMORANDUM IN SUPPORT OF MOTION TO SUPPLEMENT RECORD by overnight mail on:

David Allnut
Assistant Regional Counsel
Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

Kelly Huynh
Acting Manager
NPDES Permits Unit
Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101



Teresa A. Hill

ATTACHMENT A

LUCKY FRIDAY MINE
"Out of the Earth, Into Our Lives"

Certified Mail-Return Receipt Requested

August 19, 2004

Ronald A. Kreizenbeck, Acting Regional Administrator
EPA - Region 10
1200 Sixth Avenue
Seattle, WA 98101

Re: NPDES Permit No. ID-000017-5 Incorporation of Revised Section 401 Certification

Dear Mr. Kreizenbeck:

Hecla Mining Company, Lucky Friday Unit ("Hecla") requests the incorporation of revised permit conditions into National Pollutant Discharge Elimination System ("NPDES") Permit No. ID-000017-5 (the "Lucky Friday Permit"). Hecla's request for incorporation of revised permit conditions is based on the issuance of a revised certification by the State of Idaho pursuant to Section 401 of the Federal Water Pollution Control Act ("Clean Water Act"), which was issued on July 15, 2004 ("revised Section 401 Certification").

The Lucky Friday Permit was issued on August 12, 2003. Prior to issuance of the permit, on June 17, 2003, the State of Idaho, pursuant to Section 401 of the Clean Water Act, provided certification validating the Lucky Friday Permit's compliance with pertinent water pollution control standards. See Attachment A. The conditions of the Section 401 Certification were incorporated into the Lucky Friday Permit.

On July 31, 2003 Hecla initiated a contested case proceeding before the Idaho Department of Environmental Quality ("DEQ") seeking review of certain conditions and omissions in DEQ's July 17, 2003 Section 401 Certification.¹ Hecla appealed certain conditions and omissions in the July 17, 2003 Section 401 Certification on the basis that they were not technically or legally justified.

On June 3, 2004, after months of discussion and analysis of data underlying the certification, DEQ and Hecla negotiated a settlement of the contested case. See Attachment B (settlement and revised draft 401 Certification). See also, Attachment C (Memorandum from DEQ Re: Revised certification for the Lucky Friday Mine). The settlement included DEQ's agreement to issue a revised Section 401 Certification. See Attachment B. The settlement agreement was approved by the hearing officer appointed by the Idaho Board of Environmental Quality and the contested case was dismissed on June 15, 2004.

¹ On September 11, 2003 Hecla also filed a Petition for Review before the Environmental Appeals Board seeking review of the conditions in the Lucky Friday Permit.

DEQ published a revised draft 401 Certification for public comment on June 3, 2004. On June 21, 2004, DEQ received comments from EPA regarding the draft certification. See Attachment D (letter from Michael F. Gearheard to Gwen Fransen). In response to EPA's comments, DEQ provided EPA additional information explaining and supporting the revised certification and provided EPA a letter from Hecla responding to the issues raised in EPA's comment letter. See Attachment E (July 20, 2004 letter to Michael Gearheard from Toni Hardesty). After considering the comments, DEQ made several changes to the revised certification. *Id.* DEQ issued a final revised Section 401 Certification for the Lucky Friday Permit on July 15, 2004. See Attachment F. The technical support for the revised Section 401 Certification is contained in DEQ's records regarding the contested case.

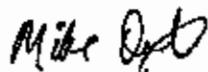
The CWA recognizes and preserves the primary responsibility and rights of the States to "prevent, reduce, and eliminate pollution" and "plan the development and use of land and water resources." 33 U.S.C. § 1251(b). In particular, Section 401 of the Clean Water Act requires that all NPDES permit applicants must obtain a certification from the appropriate state agency validating the permit's compliance with the pertinent federal and state water pollution control standards. 33 U.S.C. § 1341(a)(1). The regulatory provisions pertaining to state certification provide that EPA may not issue a permit until a certification is granted or waived by the state in which the discharge originates. 40 C.F.R. § 124.53(a). An NPDES permit may be "modified" during its term under certain circumstances, including the issuance of a "modified" state certification. 40 CFR § 122.62(a)(3)(iii). Specifically, after final agency action on a permit, the permit may be "modified" at the request of the permittee where an appropriate State board or agency has issued a "modified" certification. See 40 CFR § 124.55(b). The regulations provide that the permit should be "modified" to the extent necessary to delete the conditions invalidated by an appropriate State board or agency. *Id.*

Based on these regulations, and the July 15, 2004 issuance of a revised Section 401 Certification for the Lucky Friday Permit, Hecla seeks revision of NPDES Permit No. ID-000017-5 to delete the invalidated conditions and incorporate the revised conditions contained in the revised certification.

In particular, Hecla seeks incorporation of: (1) the revised mixing zones for copper and mercury; (2) the addition of a mixing zone of 25% for pH above 9.0 s.u.; (3) the addition of a 25% mixing zone for calculating toxicity triggers for WET testing; (4) the addition of a compliance schedule for cadmium at outfall 003; (5) the inclusion of the revised interim effluent limits contained in Table 1; (6) the delay of bioassessment monitoring until 2007; and (7) the delay of the seepage study requirement until 2007.

The revised Section 401 Certification is consistent with federal and state law and properly reflects the conditions necessary to assure compliance with federal and state water quality standards; therefore, Hecla requests the revised conditions be incorporated into the Lucky Friday Permit.

Very truly yours,



Mike Dexter
General Manager
Lucky Friday Mine

Attachments

cc: Toni Hardesty
Barry Burnell
Doug Conde
Gwen Fransen
David Allnut
Kevin Beaton

Attachment A

Jun 27



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

7110 Ironwood Parkway • Coeur d'Alene, Idaho 83814-2648 • (208) 769-1422

Dirk Kempthorne, Governor
C. Stephen Allred, Director

June 17, 2003

Mr. Robert R. Robichaud
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue
Seattle, Washington 98101

Re: §401 Certification regarding NPDES Permit No. ID-000017-5
Hecla Mining Company - Lucky Friday Mine and Mill, Mullan, Idaho

Dear Mr. Robichaud:

The State of Idaho's Department of Environmental Quality (DEQ) has reviewed the facts and information presented in the revised draft National Pollutant Discharge and Elimination System (NPDES) permit No. ID-000017-5 for the Hecla Mining Company's Lucky Friday Mine and Mill. This letter will serve as certification by the State of Idaho pursuant to the provisions of Section 401 of the Federal Water Pollution Control Act, (Clean Water Act) as amended, 33 USC Section 1341. If the Lucky Friday Mine and Mill complies with the terms and conditions imposed by this permit and the conditions set forth in this §401 Certification, there is reasonable assurance the discharge will comply with the applicable requirements of Sections 208(c), 301, 302, 303, 306, and 307 of the Clean Water Act, including Idaho Water Quality Standards and Wastewater Treatment Requirements (Water Quality Standards).

Mixing Zone

The DEQ authorizes, pursuant to the Water Quality Standards IDAPA 58.01.02.060, the use of a 25% mixing zone for copper, mercury, and silver at Outfalls 1, 2, and 3. DEQ also authorizes EPA to utilize a 25% mixing zone for calculating toxicity triggers for WET testing.

Compliance Schedule

This certification includes authorization of a five-year compliance schedule to meet metals limits set forth within the draft permit pursuant to the Water Quality Standard IDAPA 58.01.02.400.03

Mr. Robert R. Robichaud
June 17, 2003
Page 2

for cadmium (Outfall 001 only), lead, zinc, and mercury. The permittee has demonstrated that they can attain the effluent limits for copper, silver and cadmium (Outfall 3 only) therefore, a compliance schedule is not needed or authorized. In an effort to develop a water-recycling program to help reduce metals loading, engineering and design of such systems must first be developed and installed. It is impossible to know or predict with any certainty, what type of water treatment may be required until a water-recycling program is implemented. Furthermore, as part of a recycling program, discharge outfalls may be combined, complicating the chemical composition of the effluent, and thus influencing what type of water treatment system may be needed. Enough time must be allowed for proper testing and analysis of any combined effluent to ensure that a water treatment system, if needed, will enable the Lucky Friday Mine to meet permit limits. The compliance schedule for cadmium (Outfall 001 only), lead, zinc, and mercury shall be as follows:

- 1) Hecla shall design and implement a water recycling system within 24 months (2 years) from the date the permit is issued to achieve permit limits.
- 2) Hecla shall have, at the end of 24 months (2 years), an additional 12 months (1 year) for testing and analyses.
- 3) If it is determined that a water treatment system is needed to comply with the limits set forth in the permit, Hecla shall design, build, and implement a water treatment system and comply with permit limits for cadmium (outfall 001 only), lead, zinc, and mercury on or before permit expiration.
- 4) During the period that the compliance schedule is in effect, interim limits shall apply to the outfalls based on the recent discharge levels reported in the DMRs (Table 1.).

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Mr. Robert R. Robichaud
 June 17, 2003
 Page 3

Table 1. Interim Discharge limits for Cadmium, Lead, Zinc, and Mercury.

Outfall 001 and 002 when discharge is from 001	Maximum Daily Limit (MDL)		Average Monthly Limit (AML)		Data
	ug/l	lbs/day ¹	ug/l	lbs/day ¹	
Cd	2.0	0.028	1.0	0.014	Maximum of the data from May 2001 - Jan. 2002 rounded up to the next 1 ug/l. Two outliers were removed from data set.
Pb	450	6.3	300	4.2	Maximum of the data from Jan. 1997 - Jan. 2002 rounded up to the next 10ug/l. The AML is the technology-based limit. 40 CFR 125.3 requires that technology-based limits be met by March 31, 1989.
Zn	500	7.0	280	3.9	Maximum of the data from Jan. 1997 - Jan. 2002 rounded up to the 10ug/l and with 4 outliers removed.
Hg	0.2	0.0028	0.2	0.0028	All of the data has been non detect at detection limits of 0.2 ug/l. The interim limits have been set at levels the permittee has shown they can achieve.
Outfall 003 and 002 when discharge is from 003					Data
Pb	230	6.2	270	5.1	Maximum of the data from Jan. 1997 - Jan. 2002 rounded up to the next 10ug/l.
Zn	500	9.1	410	7.7	Maximum of the data from Jan. 1997 - Jan. 2002 rounded up to the 10ug/l and with 1 outlier removed.
Hg	0.2	0.0028	0.2	0.0028	All of the data has been non detect at detection limits of 0.2 ug/l. The interim limits have been set at levels the permittee has shown they can achieve.

¹ Daily load is based off of the maximum effluent flow, 2.6 cfs for 001 and 3.5 cfs for 003.

For the compliance schedule above, Hecla shall submit written progress status reports to EPA and DEQ in accordance with section I.A.4.a of the permit.

Mr. Robert R. Robichaud
June 17, 2003
Page 4

Bioassessment Monitoring

In order to ensure compliance with the Water Quality Standards, the permit shall include the requirement that Hecla conduct annual instream bioassessment monitoring directly downstream of Outfalls 001 and 003. If effluent is discharged from Outfall 002 for six (6) months or longer, monitoring shall be required directly downstream of Outfall 002. In the event that discharge effluent is combined to one outfall, annual monitoring will be required directly downstream of the combined outfall and the abandoned outfall for comparison. Bioassessment monitoring shall be consistent with the most recent DEQ Beneficial Use Reconnaissance Project workplan for wadable streams. Copies of the field forms, macroinvertebrate identification and enumeration, as well as fish taxa and abundance shall be provided to DEQ by January 31 of year the following sample collection.

Flow Tiers

The permit establishes five (5) flow tiers. Effluent limits are calculated from the minimum upstream flow of each tier. These flow tiers will allow effluent limits to be increased while maintaining Idaho Water Quality Standards.

Hardness Used to Calculate Limits

The state water quality criteria for cadmium, copper, lead, silver, and zinc are based upon hardness. Where a mixing zone has not been authorized (cadmium, lead, and zinc), EPA calculated the limits based upon the effluent hardness. Where a mixing zone was authorized (copper and silver), EPA calculated the limits based upon hardness at the edge of the mixing zone. We certify that these conditions are consistent with Idaho's water quality standards.

IDEQ Notification

Idaho DEQ requests that RPA require the permittee to notify DEQ in conjunction with EPA in all areas where notification is required. We also request that the timeline for EPA notification apply to the state as well.

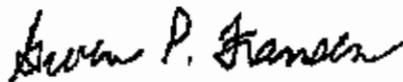
Mr. Robert R. Robichaud
June 17, 2003
Page 5

As a general comment, DEQ supports any steps that can be taken to make the all of the permits monitoring requirements less expensive.

This certification is conditioned upon the requirement that any material modification of the permit or the permitted activities, including without limitation, any modifications of the permit to reflect new or modified TMDLs, waste load allocations, site-specific criteria, variances, or other new information, shall first be provided to the DEQ for review to determine compliance with state Water Quality Standards and to provide additional certification pursuant to §401. The DEQ is willing to consider pollutant trading pursuant to IDAPA 58.01.02.054.06.

This section 401 certification and associated conditions may be appealed by submitting to DEQ a petition to initiate a contested case, pursuant to Idaho Code § 39-107(3) and the Rules of Administrative Procedure Before the DEQ Board IDAPA 58.01.23, within 35 days of the date of this letter.

Sincerely,



Gwen P. Franssen
Regional Administrator

- cc: Patty McGrath, EPA
- Doug Conde, DRQ-AG
- Don Essig, DEQ-SO
- Ed Tulloch, DEQ-CDA

Attachment B

HECLA MINING COMPANY CONTESTED CASE SETTLEMENT AGREEMENT

1. On July 31, 2003, Hecla Mining Company ("Hecla") filed a Petition initiating a contested case before the Board of Environmental Quality challenging certain conditions in the Department of Environmental Quality ("DEQ") certification of Hecla's National Pollution Discharge Elimination System ("NPDES") for Hecla's Lucky Friday Mine issued pursuant to § 401 of the Clean Water Act.
2. Hecla and DEQ hereby agree to a full and complete settlement of all claims or issues that were or could have been raised in the contested case in accordance with the following terms and conditions:
 - a. Attached to this Settlement Agreement as Exhibit A is a modified certification of the NPDES permit for the Lucky Friday Mine. DEQ agrees to issue, subject to public notice and comment, the modified certification by June 30, 2004 and agrees that the modified certification shall replace and void the original certification that was the subject of this contested case.
 - b. In consideration of DEQ's agreement to issue a modified 401 certification, Hecla agrees to sign and file the Stipulation to Dismiss attached to this Settlement Agreement as Exhibit B.
 - c. If DEQ amends Exhibit A when DEQ issues the final certification, then Hecla reserves the right to challenge the final 401 certification.
3. The Settlement Agreement contains the entire agreement between Hecla and DEQ concerning the 401 certification and this contested case. Hecla and DEQ represent and warrant that their execution of this Settlement Agreement is not based upon any representations, understandings, promises or agreements other than as set forth within this Settlement Agreement.

Hecla Mining Company

Michael D. [Signature]

Date: June 3, 2004

Idaho Department of Environmental Quality

Date: _____

EXHIBIT A

June __, 2004

Mr. Robert R. Robichaud
 U.S. Environmental Protection Agency, Region 10
 1200 Sixth Avenue
 Seattle, WA 98101

Re: §401 Certification regarding NPDES Permit No. ID-000017-5
 Hecla Mining Company - Lucky Friday Mine and Mill, Mullan, Idaho

Dear Mr. Robichaud:

The State of Idaho Department of Environmental Quality (DEQ) has reviewed the facts and information presented in the revised draft National Pollutant Discharge and Elimination System (NPDES) permit No. ID-000017-5 for the Hecla Mining Company's Lucky Friday Mine and Mill. This letter will serve as certification by the State of Idaho pursuant to the provisions of Section 401 of the Federal Water Pollution Control Act, (Clean Water Act) as amended, 33 USC Section 1341. If the Lucky Friday Mine and Mill complies with the terms and conditions imposed by this permit and the conditions set forth in this §401 Certification, there is reasonable assurance the discharge will comply with the applicable requirements of Sections 208(e), 301, 302, 303, 306, and 307 of the Clean Water Act, including Idaho Water Quality Standards and Wastewater Treatment Requirements (Water Quality Standards).

Mixing Zone

The DEQ authorizes, pursuant to the Water Quality Standards IDAPA 58.01.02.060, the use of the following mixing zones:

Parameter	Flow Tier	Mixing Zone
Copper at Outfall 001	< 14 cfs	50%
	> 14cfs to <32 cfs	50%
	>32 to <113 cfs	25%
	> 113 to <194 cfs	25%
	> 194 cfs	25%
Copper at outfall 002 when outfall 001 waste stream is discharged through outfall 002	<8.6 cfs	50%
	> 8.6 to < 20 cfs	50%

	>20 to <69 cfs	25%
	> 69 to <117 cfs	25%
	> 117 cfs	25%

Copper at outfall 002 when the outfall 003 waste stream is discharged through outfall 002	<20 cfs	50%
	> 20 to < 69 cfs	25%
	> 69 to < 117 cfs	25%
	> 117 cfs	25%

Copper at Outfall 003	<18 cfs	50%
	>18 to <63 cfs	50%
	>63 cfs	25%

Mercury at outfalls 001, 002 and 003: 75% for all flow tiers.

pH at outfalls 001, 002 and 003: 25%.

Silver at outfalls 001, 002 and 003: 25% at all flow tiers.

DEQ also authorizes EPA to utilize the approved mixing zones for calculating toxicity triggers for WET testing.

Compliance Schedule

This certification includes authorization of a five-year compliance schedule to meet metals limits set forth within the draft permit pursuant to the Water Quality Standard IDAPA 58.01.02.400.03 for cadmium, lead, zinc, and mercury. The permittee has demonstrated that they can attain the effluent limits for copper and silver therefore, a compliance schedule is not needed or authorized. In an effort to develop a water-recycling program to help reduce metals loading, engineering and design of such systems must first be developed and installed. It is impossible to know or predict with any certainty what type of water treatment may be required until a water-recycling program is implemented. Furthermore, as part of a recycling program, discharge outfalls may be combined complicating the chemical composition of the effluent and thus influencing what type of water treatment system may be needed. Enough time must be allowed for proper testing and analyses of any combined effluent to ensure that a water treatment system, if needed, will enable the Lucky Friday Mine to meet permit limits. The compliance schedule for cadmium, lead, zinc, and mercury shall be as follows:

- 1) Hecla shall design and implement a water recycling system within 24 months (2 years) from the date the permit is issued to achieve permit limits.
- 2) Hecla shall have at the end of 24 months (2 years) an additional 12 months (1 year) for testing and analyses.

- 3) If it is determined that a water treatment system is needed to comply with the limits set forth in the permit. Hecla shall design, build, and implement a water treatment system and comply with permit limits for cadmium, lead, zinc, and mercury on or before permit expiration.
- 4) During the period that the compliance schedule is in effect interim limits shall apply to the outfalls based on the discharge levels reported in the DMRs (Table 1.).

Table 1 - Interim Effluent Limitations

Outfall	Parameter	Maximum Daily Limit		Average Monthly Limit	
		ug/l	lb/day	ug/l	lb/day
Outfall 001 and Outfall 002 when the outfall 001 waste stream is discharged through outfall 002	Cadmium ¹ , total recoverable	6.0	0.046	2	0.023
	Lead ¹ , total recoverable	899	5.96	440	3.10
	Mercury ¹ , total	0.2 ²	0.0028 ²	0.2	0.0028
	Zinc ¹ , total recoverable	880	6.53	469	2.54
Outfall 003 and Outfall 002 when the outfall 003 waste stream is discharged through outfall 002	Cadmium ¹ , total recoverable	3	0.043	2	0.022
	Lead ¹ , total recoverable	321	2.76	265	1.43
	Mercury ¹ , total	0.2	0.0038	0.2	0.0038
	Zinc ¹ , total recoverable	670	6.29	480	4.28

Footnotes:
 1 - Reporting is required within 24 hours of a maximum daily violation. See Part III.G.
 2 - This interim limit applies to the first three flow tiers for outfall 001 (<14 cfs, 14-32 cfs, and 32-113 cfs) and the first four flow tiers for outfall 002 when the outfall 001 waste stream is discharged through outfall 002 (<8.6 cfs, 8.6-20 cfs, 20-69 cfs and 69-117 cfs).

For the compliance schedule above, Hecla shall, prior to implementing the water recycling system, provide the design of the system to IDEQ for comment. In addition, Hecla shall submit written progress status reports to EPA and DEQ in accordance with section I.A.4.f of the permit. The progress reports shall include the results of Hecla's testing and analysis used to determine the need for a water treatment system.

Bioassessment Monitoring

In order to ensure compliance with the Water Quality Standards, the permit shall include the requirement that Hecla conduct annual instream bioassessment using a sample design that will allow DEQ to make a determination as to the impact of the discharges to the beneficial use. This will likely involved biomonitoring immediately upstream of the discharge, within the mixing zone and just outside the mixing zones for outfalls 001 and 003, beginning in 2007. Hecla shall coordinate the sample design with the Coeur d'Alene Office of DEQ. If effluent is discharged from outfall 002 for six (6) months or longer, monitoring shall be required directly downstream of outfall 002. In the event that discharge effluent is combined to one outfall, annual monitoring

will be required directly downstream of the combined outfall and the abandoned outfall for comparison. Bioassessment monitoring shall be consistent with the most recent DEQ Beneficial Use Reconnaissance Project workplan for wadable streams. Copies of the field forms, macroinvertebrate identification and enumeration, as well as fish taxa and abundance shall be provided to DEQ by January 31 of the following year.

Flow Tiers

The permit establishes multiple flow tiers. Effluent limits are calculated from the minimum upstream flow of each tier. These flow tiers will allow effluent limits to be increased while maintaining Idaho Water Quality Standards.

Hardness Used to Calculate Limits

The state water quality criteria for cadmium, copper, lead, silver, and zinc are based upon hardness. Where a mixing zone has not been authorized (cadmium, lead, and zinc), EPA calculated the limits based upon the effluent hardness. Where a mixing zone was authorized (copper and silver), EPA calculated the limits based upon hardness at the edge of the mixing zone. We certify that these conditions are consistent with Idaho's water quality standards.

IDEQ Notification

Idaho DEQ requests that EPA require the permittee to notify DEQ in conjunction with EPA in all areas where notification is required. We also request that the timeline for EPA notification apply to the state as well.

Other Comments

As a general comment, DEQ supports any steps that can be taken to make the all of the permit monitoring requirements less expensive. Consistent with this general comment, DEQ supports the position that the whole effluent toxicity testing should only be required starting in 2007 once Hecla completes its implementation, testing and analysis of the water recycling program. Similarly, the seepage study should be required after implementation of the water recycling program in 2007. DEQ believes that the discharge to the South Fork of the CDA River, if any, resulting from seepage from Hecla's tailings ponds is appropriately covered by this NPDES permit. If, however, the seepage study required by the permit demonstrates the need to the modify the permit, DEQ reserves its right to amend this certification to determine whether the seepage is causing or contributing to a violation of Water Quality Standards.

This certification is conditioned upon the requirement that any material modification of the permit or the permitted activities, including without limitation, any modifications of the permit to reflect new or modified TMDLs, waste load allocations, site-specific criteria, variances, or other new information, shall first be provided to the DEQ for review to determine compliance with state Water Quality Standards and to provide additional certification pursuant to §401. The DEQ is willing to consider pollutant trading pursuant to IDAPA 58.01.02.054.06.

This section 401 certification and associated conditions may be appealed by submitting to DEQ a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the Rules of Administrative Procedure Before the DEQ Board IDAPA 58.01.23, within 35 days of the date of this letter.

Sincerely,

**Gwen P. Fransen
Regional Administrator**

**cc: Patty McGrath, EPA
Doug Conde, DEQ-AG
Don Essig, DEQ-SO
Ed Tulloch, DEQ-CDA**

Attachment C

Memo

To: Hecla 401 Certification File
Date: 05/19/04
Re: Revised certification for the Lucky Friday Mine

Introduction. This memorandum sets forth the basis for the revisions DEQ proposes to make to its 401 certification for the Lucky Friday Mine in order to resolve the contested case initiated by Hecla that challenged the 401 certification.

Compliance Schedule. The new permit reflects a significant reduction in the effluent limits for lead, cadmium, zinc and mercury when compared to the existing NPDES permit. In order to achieve these new permit limits it will be necessary for the Lucky Friday Mine to modify their existing treatment system. The specific modifications needed will be determined by conducting large scale water management, recycling and treatment. After the testing phase, DEQ has determined that it is reasonable to allow time to construct the treatment facility based on the result of the testing. During the testing and development time, it may not be feasible for the Lucky Friday unit to achieve the metal limits in the permit. In order to allow for operational flexibility during the water treatment testing and development phase, DEQ determined that it would be appropriate to develop a compliance schedule for the Lucky Friday unit for lead, cadmium, zinc and mercury for outfalls 001, 002, and 003. This short term flexibility will help to insure that the best treatment options for long term health of the water body is realized. To insure that the Lucky Friday unit does not increase the levels of the metals during the testing and development phase DEQ has incorporated interim limits for these pollutants in the 401 certification.

Historical records of metals discharged, however, indicate that the Lucky Friday unit could meet the permit limits for cadmium at outfall 003. For this reason, DEQ did not include in its original 401 certification a compliance schedule for cadmium at outfall 003. During the contested case, Hecla provided DEQ with further information regarding the operation of the mine during the testing of the water management or recycling program required by the permit that indicates the historical record will not reflect the operation of the mine during the permit. More specifically, during the testing phase, the composition of the wastewater will likely change and the wastewater may be moved to and discharged from different outfalls. This means that, although Hecla historically could achieve permit limits for cadmium at outfall 003, it may not be feasible for Hecla to achieve the cadmium limits at outfall 003 during the permit. For this reason, DEQ determined to include a compliance schedule and interim limits for cadmium at outfall 003 in the revised 401 certification.

DEQ also determined that it was appropriate to require Hecla provide DEQ with the design of its water recycling system prior to implementation, and to provide DEQ with the results of Hecla's testing and analysis of the water recycling system once it is implemented. Therefore, DEQ added this requirement to the revised certification.

Interim Limits. In the 401 certification, the interim limits for lead, cadmium, zinc, and mercury were based on historical data from January 1997 – January 2002. DEQ's intent was to ensure that, during the compliance schedule period, Hecla did not increase its discharge beyond its historic levels. EPA and DEQ analyzed the data and determined that there were 2 data points for cadmium and 4 data points for zinc from outfall 001 and 1 data point for zinc from outfall 003 that were sufficiently greater than the mean and therefore they were possibly an error. These data points were excluded from the initial analysis for determining interim effluent limits.

During the contested case, Hecla requested that DEQ revise the interim limits so that a violation only occurs if both the concentration and load limits are exceeded. In the alternative, Hecla requested DEQ revise the interim limits based upon data that more accurately reflects Hecla's historic operation. During the contested case, DEQ and Hecla met to discuss the interim limits. After discussing the data points excluded from the initial analysis, DEQ requested that Hecla review their records to determine if the outliers could be explained due to any operational upsets. DEQ also requested that Hecla provide supporting documentation as to why the excluded data should be included as part of the historical levels of discharge from the Lucky Friday Unit. On February 20, 2004 DEQ received a letter from Hecla clarifying their position and proposing alternative interim limits. That letter is attached. After review of the data and explanations, DEQ determined that all but two values were representative of Hecla's historic operation, and therefore were acceptable to use for calculation of the interim limits. The data points excluded were 11/25/1998 and 12/2/1998. These sampling events took place during an abnormally large precipitation event. The spreadsheets used to calculate this data is attached.

The certification has not been revised so that a violation occurs only if both the concentration and load limits are exceeded. DEQ has, however, modified the interim limits in the revised 401 certification to reflect the data discussed above and the calculations set forth in the spreadsheets. This was done because (1) it was DEQ's intent in the 401 certification that the interim limits reflect Hecla's historic operation; and (2) DEQ believes the more complete database most accurately describes the historic operation. Some of the modified interim limits are more stringent than the limits in the initial 401 certification, while the majority of the interim limits are less stringent.

Mixing Zones. Prior to issuing the 401 certification, Hecla requested a 75% mixing zone for copper, mercury and silver for all flow tiers in the NPDES permit. DEQ denied this request because DEQ believed Hecla had not provided sufficient information to show that such a mixing zone was needed and was protective of aquatic life. Instead, DEQ provided a 25% mixing zone for these pollutants in the 401 certification.

During the contested case, Hecla continued to request a 75% mixing zone. In response to DEQ's request, Hecla provided additional information regarding the health and characteristics of the aquatic community in the vicinity of the Lucky Friday Mine, and the effect of the mixing zone on aquatic life.

Hecla also provided information showing why it needs a larger than 25% mixing zone in certain circumstances. This additional information is contained in the following documents provided by Hecla: Supplemental Mixing Zone Information In Support of Lucky Friday NPDES Permit ID-000017-5, May 2004 with Addendum and a March 29, 2004 letter from Hecla with the Anchor Environmental Memorandum Re: Benthic Macroinvertebrate Characterization South Fork Coeur d'Alene River Near Mullan, Idaho. This information is in addition to the April 11, 2003 Mixing Zone Analysis submitted to DEQ by Hecla prior to the certification.

The information regarding the need for the mixing zone includes a comparison of Hecla's historic discharge levels to the average monthly effluent limits produced at different mixing zones to show that, without a certain size mixing zone for copper, Hecla will likely violate the effluent limits in the permit. Hecla also provided information showing that copper levels in its internal waste stream are high, that copper, unlike lead, zinc and cadmium, does not readily settle out, and when Hecla implements its water management system the concentration of copper in the wastewater will likely exceed historic levels. DEQ reviewed the information submitted with respect to copper and determined: (1) that a mixing zone of more than 25% volume for copper will not impair or unreasonably interfere with existing beneficial uses; and (2) that a 75% mixing zone was not warranted, but that Hecla had shown the need for a larger than 25% mixing zone for copper at certain low flows. In the revised 401 certification, DEQ has retained the 25% mixing zone for copper for the majority of flow tiers, but has increased the mixing zone to 50% for the lowest flow tiers.

DEQ also has agreed to increasing the mixing zone for mercury to 75%. Again, this decision was based upon the additional information submitted by Hecla showing that a larger than 25% mixing zone will not impair or unreasonably interfere with existing beneficial uses. In addition, DEQ relied upon the fact that there is no data showing the levels, if any, of mercury in Hecla's discharge because, given the past testing methods, mercury sampling has always shown non-detect. Data will be collected, however, during the life of the permit regarding mercury levels. In addition, ambient water quality and bioassessment monitoring will be conducted. Mercury is subject to a compliance schedule, and the limits to which the mixing zone apply must be met at the expiration of the current permit. Therefore, information will be available to determine at the end of this permit whether there is any mercury in Hecla's discharge, whether that mercury requires a water quality based effluent limitation, and whether a 75% mixing zone is appropriate.

During the contested case, Hecla requested a mixing zone for pH. Based upon information showing that Hecla had a need for a mixing zone, that there would be very little change in the receiving water pH with a 25% mixing zone, and that there will be no impairment of or unreasonable interference with existing uses, DEQ has agreed to include a 25% mixing zone for pH in the revised certification.

Bioassessment and WET testing. In its 401 certification, DEQ provided that bioassessment monitoring was needed to ensure compliance with water quality standards. EPA also included whole effluent toxicity (WET) testing as a requirement of the permit.

During the contested case, Hecla argued there was no basis for the bioassessment monitoring and that the requirement for such testing should be removed from the certification. In the alternative, Hecla requested that such monitoring be conducted only after the water recycling system has been

implemented. The bioassessment monitoring has been retained in the certification. DEQ agrees, however, that sampling once the water recycling system has been implemented will most accurately assess the future operation of the mine. Therefore, DEQ has included in the revised 401 certification a delay of the WET and bioassessment monitoring until 2007. DEQ has also included additional details regarding the required bioassessment monitoring.

Seepage Study. The NPDES permit requires Hecla to conduct a study to determine if there are unmonitored discharges from the tailings ponds to the SFCDA River. During the contested case, Hecla argued that this condition of the permit was not warranted by state or federal law, and requested that DEQ include in its certification that the seepage study requirement be removed from the permit. In the alternative, Hecla requested that the seepage study be delayed.

DEQ believes addressing the discharges from seepage, if any, in the permit in this manner is appropriate. DEQ, however, believes that, in the event the permit needs to be modified because of the results of the seepage study, it should have the right to amend its certification to determine if the seepage is causing or contributing to the violation of water quality standards. Therefore, DEQ has not included in the certification a suggestion the seepage study requirement be removed, but has included language in the revised 401 certification providing for the reservation of its right to certify any discharges from the seeps. In addition, DEQ believes that it is appropriate to delay the seepage study until after the water recycling system is implemented, and therefore, included a comment in the revised certification regarding such a delay.

Other Issues. During the contested case, Hecla argued that DEQ should affirmatively state in its 401 certification that the instream monitoring of chemical parameters and the mercury limits are not necessary. DEQ has not revised the certification in response to these arguments. Hecla also requested that DEQ grant its variance request. The variance request, however, will be determined by EPA with input from Idaho, and therefore, DEQ has not revised the certification or acted further on Hecla's variance request.

Attachment D

Reply To
Attn Of: OW-135

June 21, 2004

Gwen Fransen, Administrator
Department of Environmental Quality
Coeur d'Alene Regional Office
2110 Ironwood Parkway
Coeur d'Alene, ID 83814

Re: Comments on Revised Clean Water Act Section 401 Certification
Permit No. ID-000017, Hecla Mining Company, Lucky Friday Mine

Dear Ms. Fransen:

Enclosed are our comments on the revised draft 401 certification for the National Pollutant Discharge Elimination System (NPDES) permit for Hecla Mining Company's Lucky Friday Mine. We are concerned with your proposal to increase the size of some of the mixing zones, increase some of the interim limits and delay implementation of the seepage study and bioassessment monitoring. It is not clear from the revised certification why some of these changes are justified or how the changes would impact state water quality standards and still protect beneficial uses.

Typically, the Idaho Department of Environmental Quality (DEQ) provides EPA with preliminary draft certifications before the public comment period and draft certifications before the final certification is issued. Since we did not have an opportunity to review the revised draft certification prior to the public comment period, we felt compelled to supply these comments during the comment period. We hope that our staff can work together to resolve concerns raised in our comments prior to finalization of the revised 401 certification.

Please feel free to contact Patty McGrath at (206) 553-0979, if you have questions regarding the comments.

Sincerely,

/s/
Michael F. Gearheard
Director
Office of Water

Enclosure

**EPA Comments on Revised 401 Certification for
Hecla Mining Company - Lucky Friday Mine**

Copper mixing zones: DEQ proposes increasing the mixing zone for copper from 25% to 50% for the two lowest flow tiers for all outfalls. The basis for increasing the mixing zone is that:

- (1) Hecla will likely violate the effluent limits based on the 25% mixing zone;
- (2) when Hecla implements its water management system the concentration of copper in the wastewater will likely exceed historic levels; and,
- (3) the mixing zones will not impair or unreasonably interfere with existing beneficial uses.

In response to #1: DEQ's memo justifying the changes to the certification did not explain why IDEQ believes that Hecla is likely to violate the effluent limits based on a 25% mixing zone. To the contrary, data collected by Hecla indicates that Hecla would unlikely violate such limits.

The following table compares data collected by Hecla from January 2000 - January 2002 to the 2003 permit's copper limits, which were calculated with reference to a 25% mixing zone.

outfall	flow tier	maximum daily limit, ug/l	average monthly limit, ug/l	maximum daily reported value, ug/l	maximum average monthly reported value, ug/l
outfall 001	< 14 cfs	21	8.9	14	7.5
	14 - 32 cfs	26	11		
outfall 003	< 18 cfs	20	7.4	10	8.2
	18 - 63 cfs	21	7.7		

The table shows that, based on historical data, Hecla can meet the effluent limits for outfall 001. Hecla can meet the maximum daily limits at outfall 003. During a single month (July 2000) Hecla might have exceeded the average monthly limit at outfall 003, if the river flow was less than 63 cfs. The next highest average monthly reported value was 6.2 ug/l, which is below the average monthly limit. Based on this information, we do not believe that higher effluent limits based on increased mixing zones are needed. We believe that mixing zones should be as small as practicable (see Chapter 5 of EPA's Water Quality Standards Handbook), and that the concentrations of copper actually present in Hecla's effluent between January 2000 and January 2002 demonstrate that copper limits based on a 25% mixing zone are both achievable and practicable.

In response to #2: DEQ's memo did not provide any data demonstrating that implementation of wastewater management will increase the copper concentration above historic levels. The certification allows a compliance schedule to meet the cadmium, lead, and zinc effluent limits. Hecla will likely need to install wastewater treatment to meet these limits. Such treatment should also reduce (rather than increase) the concentrations of copper. In any case, we do not believe that it is appropriate to encourage increases in copper above current effluent levels.

In response to #3: DEQ's memo did not provide information demonstrating that the increased mixing zones would protect beneficial uses. We assume that DEQ relied on Hecla's CORMIX modeling to conclude that the larger mixing zones will not impair beneficial uses.

We have not had time to thoroughly review the modeling and were not provided with all the data (input parameters) used to run the model. However, we note that the effluent flows used in the model are not consistent with the effluent flows used to calculate the permit limits. The effluent limits were based on maximum effluent flows of 2.6 cfs (outfall 001) and 3.5 cfs (outfall 003). The CORMIX model used effluent flows of 0.93 cfs (outfall 001) and 0.63 cfs (outfall 003). These flows are even lower than the average effluent flows (based on data from 1997-2002) of 1.4 cfs (outfall 001) and 1.1 cfs (outfall 003). The use of average effluent flows may underestimate the size of the mixing zone during other than average conditions and are not representative of critical conditions. Based on the information currently available to it, EPA cannot conclude that a 50% mixing zone for copper would be protective of designated beneficial uses.

Mercury mixing zones: DEQ proposes increasing the mixing zones for mercury from 25% to 75% for all outfalls. The basis for increasing the mixing zone is that:

- (1) the mixing zones will not impair or unreasonably interfere with existing beneficial uses; and
- (2) there is no data showing the levels of mercury in the discharges, because past testing methods have resulted in non-detect.

In response to #1: See above comment regarding the copper mixing zones. The memo justifying changes to the certification did not show how the increased mixing zones were protective of designated beneficial uses.

In response to #2: We agree that the level of mercury in the discharges is unknown (except that it is typically less than 0.2 ug/l, which is the detection limit Hecla has used in past mercury monitoring). Therefore, it is unknown whether or not Hecla can meet limits based on either the 25% mixing zone or a 75% mixing zone. DEQ previously provided Hecla with a five year compliance schedule for mercury, and the 2003 permit incorporates this compliance schedule. The compliance schedule will allow Hecla time to sample its discharges and analyze these discharges using a lower detection limit for mercury. If Hecla demonstrates that it cannot meet mercury limits based upon a 25% mixing zone, then, at that time, it may be appropriate to increase the mixing zone size (assuming that a larger mixing zone is still protective of designated beneficial uses). However, we do not feel that it is appropriate to start off with a larger mixing zone, particularly for mercury, a pollutant that bioaccumulates.

pH mixing zones: The original certification did not provide a mixing zone for pH. DEQ is now proposing to allow a 25% mixing zone for pH. The basis for allowing a mixing zone is:

- (1) Hecla has a need for a mixing zone; and,
- (2) there would be very little change in the receiving water pH

In response to #1: DEQ's memo justifying a pH mixing zone does not explain why Hecla needs a mixing zone for pH. Hecla's past permit contained a pH limit of 6-9. In the current (2003) permit, the pH limit is 6.5 - 9. In comments on the permit, Hecla requested a mixing zone for the upper pH limit only. DEQ's certification is not clear in regards to whether the mixing zone applies to the upper or lower pH limit.

The upper pH limit of 9 is a technology-based limit based on the effluent limitation guidelines applicable to copper, lead, zinc, gold, silver, and molybdenum ores (40 CFR 440.102). The NPDES regulations require that permits include technology-based limits based on applicable effluent limitation guidelines (ELGs) (40 CFR 122.44(a)(1)).

The NPDES regulations and effluent limitation guidelines do not allow for dilution to be considered in implementation of the technology-based limit. Therefore, a mixing zone cannot be applied to the upper pH limit. The lower pH limit is based on the state's water quality standard of 6.5 as a minimum. Since the limit is based on a state water quality standard, dilution could be considered. However, the certification does not justify the need for a limit of less than 6.5.

In response to #2: It is not clear what model or input parameters were used to show little changes in pH with a mixing zone. It is not clear what is meant by "very little change" and whether or not such a change could impair designated beneficial uses.

WET mixing zone: The revised certification states that "DEQ authorizes EPA to utilize the approved mixing zones for calculating toxicity triggers for WET testing." It is not clear what is meant by "approved mixing zones," since the revised certification would authorize mixing zones of between 25% and 75% depending on the parameter. The original certification authorized 25% mixing zones. The revised certification needs to be clear regarding the mixing zone size for WET and document that the mixing zone will not impair designated beneficial uses.

Compliance schedule for cadmium at outfall 003: The original certification did not authorize a compliance schedule for cadmium at outfall 003 because DEQ had determined that Hecla could meet the 2003 permit's limits. The outfall 003 effluent limits for cadmium in the permit are 2.1 ug/l (maximum daily) and 1.1 ug/l (average monthly). The maximum measured value of cadmium in outfall 003 from May 2001 through Jan 2002 was 0.8 ug/l.

In the revised certification, DEQ includes a compliance schedule for cadmium in outfall 003. The justification for the new compliance schedule is that "Hecla provided DEQ with further information regarding the operation of the mine during testing of the water management or recycling program required by the permit that indicates the historical record will not reflect the operation of the mine during the permit."

It does not make sense to EPA to allow a compliance schedule when a facility has demonstrated that it can meet the permit's final effluent limitation. Implementation of wastewater management should only decrease concentrations. DEQ's memo provided no data showing that concentrations will increase. We have seen no data that supports the need for a compliance schedule for cadmium at outfall 003.

Interim Limits: The interim limits in DEQ's original certification were based on the maximum effluent concentrations in data collected by Hecla from 1997 through 2000. Outliers were identified by statistical analysis and removed from the data set. In the revised certification, the interim limits for cadmium, lead, and zinc in outfall 001 and zinc in outfall 003 are higher than those in the original certification. However, there was no data provided in the certification that supports the increased values.

Another concern is that the increased interim limits for lead in outfall 001 (899 ug/l maximum daily and 440 ug/l average monthly) are greater than the technology-based limits applicable to the Lucky Friday Mine. The technology-based limits are 600 ug/l maximum daily and 300 ug/l average monthly (see ELGs at 40 CFR 440.103). Compliance schedules are not allowed where statutory deadlines have passed (40 CFR 122.47(a)(1)). The statutory deadlines for meeting technology-based limits based on ELGs is March 31, 1989, (40 CFR 125.3(a)(2) and CWA 301(b)).

Therefore, a compliance schedule cannot be allowed to meet any limit greater than 300 ug/l average monthly or 600 ug/l maximum daily for lead. Interim limits greater than these values cannot be included in the permit.

In addition, it is not clear how the mass-based interim limits were calculated, and it is not clear where footnote 2 to Table 1 (Interim Effluent Limitations) applies.

Bioassessment Monitoring: DEQ proposes to delay bioassessment monitoring until 2007. The reason for delaying the monitoring is that sampling once the water recycling system has been implemented will most accurately assess the further operation of the mine. Does this mean that there is not concern with impacts in the meantime?

Seepage Study: The revised certification states that the seepage study "should be required after implementation of the water recycling program in 2007." The certification does not provide a basis for delaying the seepage study, and EPA interprets this language as merely a suggestion, and not as a condition of certification. If the seepage study is delayed until 2007, Hecla may not have time to complete the study prior to expiration of the permit (September 2008). EPA intends to use data collected from the seepage study to determine the need for permit conditions related to the seepage in the next permit.

The certification also states "DEQ believes that the discharge to the South Fork of the CDA River, if any, resulting from seepage from Hecla's tailings ponds is appropriately covered by this NPDES permit." The certification does not provide any basis for this statement. By its own terms, the 2003 permit authorizes discharges from only three points: outfalls 001, 002, and 003.

Rec'd 7-26-04

Attachment E



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83708-1255 • (208) 373-0502

Dirk Kempthorne, Governor
Toni Hardesty, Director

July 20, 2004

Mike Gearheard
Environmental Protection Agency
1200 6th Avenue
Seattle, Washington 98101

Dear Mr. Gearheard:

On July 15th DEQ sent EPA a revised 401 certification for the NPDES permit for the Hecla Lucky Friday Mine modified as a result of the contested case before the Idaho Board of Environmental Quality. This letter outlines the changes we made and the reasons behind them. DEQ provided the public with notice and an opportunity to comment on the modified certification. DEQ received comments supporting the modified certification from Hecla, and comments from EPA. After considering the comments, DEQ has determined to make several changes to the modified certification:

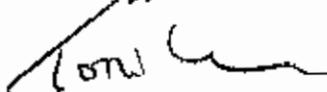
1. DEQ has changed the copper mixing zone for the >14cfs to <32cfs flow tier for outfall 001 from 50% to 25%. DEQ believes there will be no impairment or unreasonable interference with beneficial uses with effluent limits based on either a 25% or 50% mixing zone. DEQ made the change, however, because historic discharge records show that Hecla can meet the effluent limits for copper at this flow tier based on a 25% mixing zone, and therefore, does not need the 50% mixing zone.
2. DEQ has clarified the language in the certification regarding the mixing zone for WET. EPA pointed out that the certification specified the use of "approved mixing zones" for the WET testing, but did not explain what is meant by "approved mixing zones." This language presents a problem because the mixing zones range from 25% to 75%. DEQ agrees that this language needs to be clarified. Therefore, DEQ has changed the certification to specify that the WET testing should be accomplished using a 25% mixing zone. A 25% mixing zone reflects the smallest of the mixing zones for the different constituents in the effluent, and therefore ensures a conservative approach to the WET testing consistent with DEQ's analysis regarding the applicability of the mixing zones. In addition, a 25% mixing zone for WET testing reflects the language in the original certification. This term of the original certification was not challenged by Hecla in the contested case appeal.

3. DEQ has clarified that the mixing zone for pH is only for the upper limit.

On June 30, 2004, DEQ sent you additional information that explains and supports DEQ's modified certification. DEQ has also enclosed with this letter a response from Hecla to the issues raised in your comment letter. In addition, DEQ and EPA have had an opportunity to talk by phone about the modified certification. I hope that the additional written material and the conversations we have had have satisfactorily answered your questions. If you still have any questions or comments regarding the modified certification, please give me a call.

The certification dated July 15, 2004 replaces and voids the original certification dated June 17, 2003.

Sincerely,



Toni Hardesty
Director

- c: Dong Conde
- Gwen Fransen
- Darren Brandt
- Teresa Hill
- Mike Dexter
- Judy Brawer

Information Provided by Hecla**Response considerations to EPA 401 Certification comments:****Copper mixing zones****Response to #1:**

- EPA mentions "January 2000- January 2002" data – this is NOT the database they should be looking at. At a minimum, per the interim limits database, the timeline should be January 1997 – January 2002.
- EPA gives no recognition to the water management and how the moving of individual waste streams and recycling of others will change the nature of the effluent discharged prior to both implementation of water management and installation of treatment – this information was provided to DEQ.
- Mixing zones are strictly a state jurisdictional call. EPA is on record as admitting as much In the Matter of Star-Kist Caribe, Inc., where the EPA Administrator stated "whether limited forms of relief such as variances, mixing zones and compliance schedules should be granted are purely matters of state law, which EPA has no authority to override." (NPDES Appeal No. 88-5, at 15-16 (1990)). This comment is also applicable to any other mixing zone comments below.
- EPA references their Water Quality Standards Handbook, which is guidance only. Mixing zones must be judged on an individual basis and this is what DEQ has done. Besides, the compliance phase of the permit encompasses numerous activities that ultimately will decrease total load of all metals to the stream and the mixing zone can be re-evaluated during the next permit renewal cycle.

Response to #2:

- Potential increases in copper, as well as the full data set of existing monitoring results, have been provided to DEQ. EPA mentions here that treatment to reduce cadmium, lead, and zinc would also reduce copper concentrations. What EPA fails to recognize here is that copper does not have a compliance schedule and copper limits would be in effect under the new permit immediately if they had not been challenged by the Lucky Friday. Treatment installation will be several years out and it is arbitrary to subject the permittee to possible fines and penalties when an adequate mixing zone, which recognizes the temporary uncertainties, can be utilized while still protecting the instream uses. Here again, increases in concentration may occur but total load of copper, over and above what has been experienced in the recent past, should not occur.

Response to #3:

- A lot of additional information beyond CORMIX was provided to DEQ to support protection of beneficial uses.
- CORMIX tables contain a typographical error and effluent limits were calculated with the maximum effluent flows of 2.6 cfs at Outfall 001 and 3.5 cfs at Outfall 003. Corrected tables were submitted to DEQ with an explanation on July 8, 2004.

Mercury mixing zones**Response to #1**

- There is a healthy aquatic community above and below each Lucky Friday outfall without any mixing zone restrictions in the prior permit. A 75% mixing zone is more stringent than past permit conditions and therefore will continue to be protective of the designated beneficial uses.

Response to #2

- EPA suggests starting with a 25% mixing zone and then increasing it if "Hecla demonstrates that it cannot meet mercury limits based upon a 25% mixing zone". The Lucky Friday naturally has anti-backsliding concerns with this approach. Besides, given the national activities surrounding how to deal with mercury may change the entire regulatory structure by the time permit renewal occurs.
- EPA mentions it is not appropriate "to start off with a larger mixing zone, particularly for mercury, a pollutant that bioaccumulates". Throughout all the studies on the South Fork during the superfund process, EPA has no evidence that mercury is a concern, either in the water column or through bioaccumulation.

pH mixing zones**Response to #1**

- The mixing zone for pH only applies to the upper limit and Bob's mixing analysis sent to DEQ shows this.
- EPA states the regulations "require" the upper limit of 9.0 su in permits. The regulations ignored by EPA at 440.130(d) specifically allow for an increase in pH above 9.0 su for the application of neutralization and sedimentation to remove dissolved metals. EPA is allowing the tail to wag the dog with their arguments against allowing pH to be water quality-based. The Clean Water Act (CWA) is

designed to protect instream beneficial uses and the instream pH mixing analysis provided by the Lucky Friday demonstrates instream pH to protect beneficial uses, with a discharge pH of 10.0, is maintained. EPA is fully aware that a pH above 9.0 su is necessary to precipitate heavy metals, thus the addition of acid prior to discharge will be necessary to reduce the pH below this upper limit. This unnecessary acid addition, which does absolutely nothing to protect instream uses, actually adds potential pollutants to the discharge. Besides, the added transporting, storage, and use of acids adds the potential for an incident that could cause harm to human health and/or the environment. EPA's stance on this issue defies the regulations, science, the intent of the CWA, as well as both common sense and logic.

- The mixing zone analysis for pH provided to DEQ shows "very little change" to be no more than two tenths of a standard unit (su) with resultant pH instream well within the pH range to protect designated beneficial uses.

WET mixing zone

- Information supplied to DEQ for the copper and mercury mixing zones show that the protection of designated uses is maintained. WET testing, which utilizes organisms not native to site receiving waters with laboratory test conditions not exhibited in field, is not a valid indicator of the protection of instream uses. DEQ prefers to rely on actual instream bioassessments to verify protection of instream uses. Mixing zones of 50% should be used for WET testing.

Compliance schedule for cadmium at outfall 003

- Information on this topic has also been provided to DEQ. EPA is again focusing on a limited data set (May 2001 through January 2002) that does not represent a full production mode at the Lucky Friday. Also, as with the comments concerning the copper mixing zone above, EPA is ignoring the potential impacts of water management as well as the fact that although the load may stay the same or decrease (per the interim limits), concentration may increase. Again, this is a short-term transitory condition prior to implementation of both water management and additional treatment. Also, water quality similar to outfall 001 could end up being discharged out of outfall 003 – dependent entirely upon the results of optimal water management.

Interim limits

- The data set (Jan 1997-Jan 2002) was used less the monitoring days where heavy rains were identified as contributing to increased loads (11/25/98 & 12/2/98). The daily max concentration for each metal was simply the highest value in the

remaining data set. The daily max load was the highest actual load from the data set - calculated using the analysis results and the flow for that same day the sample was taken. The monthly average concentration was the highest average of monitoring results for the samples taken in the same month from the data set. The monthly average load was calculated from the data set using the individual sample results, and the corresponding flow for each sample, taken weekly in that same month. There was no mixing the highest flow on one day with the highest concentration on another.

EPA's comments concerning effluent limitation guidelines for metals are out of place. The Lucky Friday has been given a compliance schedule to transition from the old permit limits to the new water quality-based permit limits and EPA is attributing the interim limits solely to DEQ's past certification. The purpose of the interim limits, which EPA did not address in the draft permit, is to assure the discharges do not exceed recent discharge levels, thus assuring a status quo during the compliance period. Compliance periods are strictly state issues. The compliance period, building up to water quality-based limits (water management and enhanced treatment) would have been required even to meet effluent limitation guideline numbers. EPA's RESPONSE TO HECLA MINING COMPANY'S PETITION FOR REVIEW (Appeal No. NPDES 03-10) discusses the interim limits on pages 37-39. EPA states "Because neither the EAB nor the Region have the authority to look behind Idaho's claim that these interim limits are necessary to assure compliance with state water quality standards, the EAB should decline to review the Petition's challenge to these limits."

Bioassessment Monitoring

- The interim limits are intended to assure the load to the system does not increase during the implementation period for water management and necessary treatment. A sufficient baseline is established instream, due to past bioassessments, to assess impacts, if any.

Seepage Study

- It makes absolutely no sense to conduct a seepage study at the same time water management is being implemented because inputs will be changing. An integral component of any seepage study is an accurate water balance, which cannot be determined until water management is implemented and results measured. We are concerned that EPA would rather accept a flawed study to meet an uncertain deadline than to assure an accurate study is performed. The delay of the seepage study until water management is implemented should be a condition of certification.

- DEQ is correct that "discharge to the South Fork of the CDA River, if any, resulting from seepage from Hecla's tailings ponds is appropriately covered by this NPDES permit" because instream water quality is already protected and accounted for in permit limit derivation calculations. The effluent limitations and standards imposed at the outfalls are sufficient to protect water quality in the SFCDA River.
- The design and approval of the mine tailings impoundments is within the exclusive jurisdiction of the Idaho Department of Water Resources.

JUL-16-2004 FRI 03:00 PM IDEQ ADMINISTRATION

FAX NO. 208 373 0417

P. 01/05

Attachment F



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

Post-it Fax Note	7671	Date	7/16/04
To	MIK Dexter	From	Toni Hardesty
Co./Dept.		Co.	DEQ
Phone #		Phone #	
Fax #		Fax #	

1410 North Hillen • Boise, Idaho 83706-1255 • (208) 373-0502

Dirk Kempthorne, Governor
O. Stephen Alfred, Director

July 15, 2004

Mr. Robert R. Robichaud
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue
Seattle, WA 98101

Re: §401 Certification regarding NPDES Permit No. ID-000017-5
Hecla Mining Company - Lucky Friday Mine and Mill, Mullian, Idaho

Dear Mr. Robichaud:

The State of Idaho Department of Environmental Quality (DEQ) has reviewed the facts and information presented in the revised draft National Pollutant Discharge and Elimination System (NPDES) permit No. ID-000017-5 for the Hecla Mining Company's Lucky Friday Mine and Mill. This letter will serve as certification by the State of Idaho pursuant to the provisions of Section 401 of the Federal Water Pollution Control Act, (Clean Water Act) as amended, 33 USC Section 1341. If the Lucky Friday Mine and Mill complies with the terms and conditions imposed by this permit and the conditions set forth in this §401 Certification, there is reasonable assurance the discharge will comply with the applicable requirements of Sections 208(e), 301, 302, 303, 306, and 307 of the Clean Water Act, including Idaho Water Quality Standards and Wastewater Treatment Requirements (Water Quality Standards).

Mixing Zone

The DEQ authorizes, pursuant to the Water Quality Standards IDAPA 58.01.02.060, the use of the following mixing zones:

Parameter	Flow Tier	Mixing Zone
Copper at Outfall 001	< 14 cfs	50%
	> 14cfs to <32 cfs	25%
	>32 to <113 cfs	25%
	> 113 to <194 cfs	25%
	> 194 cfs	25%
Copper at outfall 002 when outfall 001 waste stream is discharged through outfall 002	<8.6 cfs	50%

	> 8.6 to < 20 cfs	50%
	> 20 to < 69 cfs	25%
	> 69 to < 117 cfs	25%
	> 117 cfs	25%

Copper at outfall 002 when the outfall 003 waste stream is discharged through outfall 002	< 20 cfs	50%
	> 20 to < 69 cfs	25%
	> 69 to < 117 cfs	25%
	> 117 cfs	25%

Copper at Outfall 003	< 18 cfs	50%
	> 18 to < 63 cfs	50%
	> 63 cfs	25%

Mercury at outfalls 001, 002 and 003: 75% for all flow tiers.

pH at outfalls 001, 002 and 003: 25% for pH above 9.0 su

Silver at outfalls 001, 002 and 003: 25% at all flow tiers.

DEQ also authorizes I&PA to utilize a 25% mixing zones for calculating toxicity triggers for WRT testing.

Compliance Schedule

This certification includes authorization of a five-year compliance schedule to meet metals limits set forth within the draft permit pursuant to the Water Quality Standard IDAPA 58.01.02.400.03 for cadmium, lead, zinc, and mercury. The permittee has demonstrated that they can attain the effluent limits for copper and silver therefore, a compliance schedule is not needed or authorized. In an effort to develop a water-recycling program to help reduce metals loading, engineering and design of such systems must first be developed and installed. It is impossible to know or predict with any certainty what type of water treatment may be required until a water-recycling program is implemented. Furthermore, as part of a recycling program, discharge outfalls may be combined complicating the chemical composition of the effluent and thus influencing what type of water treatment system may be needed. Enough time must be allowed for proper testing and analyses of any combined effluent to ensure that a water treatment system, if needed, will enable the Lucky Friday Mine to meet permit limits. The compliance schedule for cadmium, lead, zinc, and mercury shall be as follows:

- 1) Hecla shall design and implement a water recycling system within 24 months (2 years) from the date the permit is issued to achieve permit limits.
- 2) Hecla shall have at the end of 24 months (2 years) an additional 12 months (1 year) for testing and analyses.

- 3) If it is determined that a water treatment system is needed to comply with the limits set forth in the permit. Hecla shall design, build, and implement a water treatment system and comply with permit limits for cadmium, lead, zinc, and mercury on or before permit expiration.
- 4) During the period that the compliance schedule is in effect interim limits shall apply to the outfalls based on the discharge levels reported in the DMRs (Table 1.).

Outfall	Parameter	Maximum Daily Limit		Average Monthly Limit	
		ug/l	lb/day	ug/l	lb/day
Outfall 001 and Outfall 002 when the outfall 001 waste stream is discharged through outfall 002	Cadmium ¹ , total recoverable	6.0	0.046	2	0.023
	Lead ¹ , total recoverable	899	5.96	440	3.10
	Mercury ¹ , total	0.2 ²	0.0028 ²	0.2	0.0028
	Zinc ¹ , total recoverable	880	6.53	469	2.34
Outfall 003 and Outfall 002 when the outfall 003 waste stream is discharged through outfall 002	Cadmium ¹ , total recoverable	3	0.043	2	0.022
	Lead ¹ , total recoverable	321	2.76	265	1.43
	Mercury ¹ , total	0.2	0.0038	0.2	0.0038
	Zinc ¹ , total recoverable	670	6.29	480	4.28

Footnotes:
 1 -- Reporting is required within 24 hours of a maximum daily violation. See Part III.G.
 2 -- This interim limit applies to the first three flow tiers for outfall 001 (<14 cfs, 14-32 cfs, and 32-113 cfs) and the first four flow tiers for outfall 002 when the outfall 001 waste stream is discharged through outfall 002 (<8.6 cfs, 8.6-20 cfs, 20-69 cfs and 69-117 cfs).

For the compliance schedule above, Hecla shall, prior to implementing the water recycling system, provide the design of the system to IDEQ for comment. In addition, Hecla shall submit written progress status reports to EPA and DEQ in accordance with section I.A.4.f of the permit. The progress reports shall include the results of Hecla's testing and analysis used to determine the need for a water treatment system.

Bioassessment Monitoring

In order to ensure compliance with the Water Quality Standards, the permit shall include the requirement that Hecla conduct annual instream bioassessment using a sample design that will allow DEQ to make a determination as to the impact of the discharges to the beneficial use. This will likely involved biomonitoring immediately upstream of the discharge, within the mixing zone and just outside the mixing zones for outfalls 001 and 003, beginning in 2007. Hecla shall coordinate the sample design with the Coeur d'Alene Office of DEQ. If effluent is discharged from outfall 002 for six (6) months or longer, monitoring shall be required directly downstream of outfall 002. In the event that discharge effluent is combined to one outfall, annual monitoring

will be required directly downstream of the combined outfall and the abandoned outfall for comparison. Bioassessment monitoring shall be consistent with the most recent DEQ Beneficial Use Reconnaissance Project workplan for wadable streams. Copies of the field forms, macroinvertebrate identification and enumeration, as well as fish taxa and abundance shall be provided to DEQ by January 31 of the following year.

Flow Tiers

The permit establishes multiple flow tiers. Effluent limits are calculated from the minimum upstream flow of each tier. These flow tiers will allow effluent limits to be increased while maintaining Idaho Water Quality Standards.

Hardness Used to Calculate Limits

The state water quality criteria for cadmium, copper, lead, silver, and zinc are based upon hardness. Where a mixing zone has not been authorized (cadmium, lead, and zinc), EPA calculated the limits based upon the effluent hardness. Where a mixing zone was authorized (copper and silver), EPA calculated the limits based upon hardness at the edge of the mixing zone. We certify that these conditions are consistent with Idaho's water quality standards.

IDEQ Notification

Idaho DEQ requests that EPA require the permittee to notify DEQ in conjunction with EPA in all areas where notification is required. We also request that the timeline for EPA notification apply to the state as well.

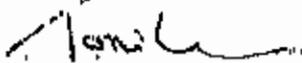
Other Comments

As a general comment, DEQ supports any steps that can be taken to make the all of the permit monitoring requirements less expensive. Consistent with this general comment, DEQ supports the position that the whole effluent toxicity testing should only be required starting in 2007 once Hecla completes its implementation, testing and analysis of the water recycling program. Similarly, the seepage study should be required after implementation of the water recycling program in 2007. DEQ believes that the discharge to the South Fork of the CDA River, if any, resulting from seepage from Hecla's tailings ponds is appropriately covered by this NPDES permit. If, however, the seepage study required by the permit demonstrates the need to the modify the permit, DEQ reserves its right to amend this certification to determine whether the seepage is causing or contributing to a violation of Water Quality Standards.

This certification is conditioned upon the requirement that any material modification of the permit or the permitted activities, including without limitation, any modifications of the permit to reflect new or modified TMDLs, waste load allocations, site-specific criteria, variances, or other new information, shall first be provided to the DEQ for review to determine compliance with state Water Quality Standards and to provide additional certification pursuant to §401. The DEQ is willing to consider pollutant trading pursuant to IDAPA 58.01.02.054.06.

This section 401 certification and associated conditions may be appealed by submitting to DEQ a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the Rules of Administrative Procedure Before the DEQ Board IDAPA 58.01.23, within 35 days of the date of this letter.

Sincerely,



Tomi Hardesty
Director

- c: Owen Fransen, DEQ-CDA
- Patty McGrath, EPA
- Doug Conde, DEQ-AG
- Don Essig, DEQ-SO
- Ed Tulloch, DEQ-CDA