

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

Inre:)	
)	
Teck Alaska, Inc.)	NPDES Appeal No. 10-04
Red Dog Mine)	
)	
NPDES Permit AK-003865-2)	
)	
_____)	

**NANA REGIONAL CORPORATION’S NOTICE
REGARDING THE TIMING OF THE BOARD’S DECISION**

I. INTRODUCTION

The timing of the Board’s pending decision in this appeal will either directly resolve or significantly cloud agency jurisdiction over the Red Dog Mine NPDES permit. For the reasons explained below, a decision in this appeal by October 31, 2010 would clarify agency jurisdiction, whereas a later decision would have the opposite effect in the long-standing regulatory saga of the Red Dog Mine NPDES permit. NANA Regional Corporation (“NANA”), on behalf of itself and Teck Alaska Incorporated, submits this Notice to inform the Board of these circumstances and to request that the Board, in its discretion, decide this appeal by October 31, 2010.

II. CONTEXT

A. The Red Dog Mine NPDES Permit

As described in numerous pleadings in this matter, the Red Dog Mine, and the world class zinc resources that are extracted and processed there, are located in remote northwestern Alaska. *See, e.g.*, Docket 8. NANA owns the land and resources

underlying the Red Dog Mine, which is vital and irreplaceable in terms of employment, local and state government taxes, revenue for NANA and its shareholders, and revenue for other Alaska native corporations pursuant to Section 7(i) of Alaska Native Claims Settlement Act. *Id.* NPDES Permit AK-003865-3, issued by EPA Region 10, regulates the discharge of effluent from the Mine's wastewater treatment system. *Id.* The original NPDES permit was issued in 1985. *Id.* As a result of a complicated series of permit amendments, administrative extensions, permit withdrawals, and permit appeals, Red Dog effluent today remains subject to certain effluent limits imposed in a 1998 NPDES permit. *Id.*

B. 2010 NPDES Permit and this EAB Appeal

The current permit was issued by EPA Region 10 on January 8, 2010. Following a longstanding pattern, the permit was quickly appealed to the Board. Region 10 then withdrew several conditions in the 2010 permit that established effluent limits for Total Dissolved Solids and four other parameters, and the Board dismissed most elements of the pending appeals as moot in light of the withdrawal of the disputed effluent limits. The Board retained jurisdiction over a narrow set of issues relating to the monitoring conditions in the permit. Accordingly, at present, conditions in the Red Dog Mine's 2010 NPDES permit fall into three general categories: (i) some provisions of the 2010 permit were not challenged and are in effect; (ii) EPA Region 10 withdrew some permit conditions pursuant to 40 C.F.R. § 124.19(d), and the regulatory process to address these conditions is underway; and (iii) a narrow subset of monitoring requirements remain subject to this appeal.¹

¹ The merits briefing associated with these issues was completed in April, 2010.

C. NPDES Permitting in Alaska

On October 31, 2008 EPA approved Alaska's application to administer an Alaska version of the NPDES permit program.² Under the terms of a Memorandum of Agreement ("MOA") between EPA and the Alaska Department of Environmental Conservation ("ADEC"), the State will assume administration of Alaska's NPDES permits for mining facilities on October 31, 2010. The Red Dog Mine NPDES permit is subject to transfer to ADEC on that date.

III. THE TIMING OF THE BOARD'S DECISION WILL CLARIFY OR SUBSTANTIALLY COMPLICATE AGENCY JURISDICTION OVER THE RED DOG MINE NPDES PERMIT

The Red Dog Mine NPDES permit has followed a tortuous regulatory path involving determined opposition, and there is no end in sight. However, at least agency jurisdiction has been certain. Unless the Board issues a decision by October 31, 2010, agency jurisdiction will be added as another twist to the Gordian Knot of complexities and disputes that cloud issuance of a final and fully functional NPDES permit for the Red Dog Mine.

Simply put, if this appeal is pending as of the date the transfer of the NPDES program for mines in Alaska is effectuated (*i.e.*, as of October 31, 2010), the jurisdictional status of the Red Dog Mine NPDES permit will be fragmented, with portions of the permit implemented, portions of the permit subject to ongoing agency review and process that should transfer to ADEC, and portions of the permit under federal jurisdiction awaiting this Board's decision. These circumstances will invite thorny jurisdictional disputes among parties to this appeal, including whether the Board

² 73 Fed.Reg. 66243 (November 7, 2008).

retains jurisdiction over this appeal. Only the interests of delay and obfuscation will be served by such a circumstance.

NANA appreciates that many parties to permit appeals are anxious to see Board proceedings resolved as quickly as possible. Moreover, NANA respects the Board's considerable discretion in managing its docket based upon common-sense considerations of work load, fair process and exigency. Under the present circumstances, and subject to competing claims on the Board's resources, issuance of a decision on or before October 31, 2010 would enable the parties and the Board to avoid a set of challenging jurisdictional issues affecting EPA's authority to complete work on the 2010 Red Dog NPDES permit, and the Board's jurisdiction to entertain appeals related to that permit. For these reasons, NANA respectfully asks that the Board issue its decision by October 31, 2010.

DATED this 9th day of September, 2010.

/s/Jeffrey W. Leppo

~~Jeffrey W. Leppo, AK Bar No. 0001003~~

STOEL RIVES LLP

600 University Street, Suite 3600

Seattle, WA 98101-3 197

Telephone: (206) 386-7641

Facsimile: (206) 386-7500

jwleppo@stoel.com

Attorneys for NANA Regional Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *NANA Regional Corporation's Notice Regarding Timing of the Board's Decision* in the matter of Teck Alaska Incorporated, Red Dog Mine, NPDES Appeal No. 10-04, was served by United States First Class Mail on September 9, 2010 upon the following:

Kim Owens, Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue
Seattle, WA 98101

Michael A. Bussell, Director
Office of Water
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue
Seattle, WA 98101

Eric B. Fjelstad
Perkins Coie LLP
1029 W. Third Avenue, Suite 300
Anchorage, AK 99501

Victoria Clark, Attorney
Carl Johnson, Attorney
Trustees for Alaska
1026 W. Fourth Ave., Suite 201
Anchorage, AK 99501

Brent J. Newell, Attorney
Center on Race, Poverty & the
Environment
47 Kearny Street, Suite 804
San Francisco, CA 94108

/s/Jeffrey W. Leppo

Jeffrey W. Leppo, AK Bar No. 0001003
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101-3 197
Telephone: (206) 386-7641
Facsimile: (206) 386-7500
jwleppo@stoel.com

Attorneys for NANA Regional Corporation