



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

Reply To: OWW-135

17 NOV 2008

John Egan, Acting General Manager
Teck Cominco Alaska, Incorporated
Red Dog Operations
3105 Lakeshore Drive, Bldg. A, Suite 101
Anchorage, Alaska 99517

Re: Teck Cominco Alaska, Incorporated, Red Dog Mine
NPDES Permit No. AK-003865-2

Dear Mr. Egan:

This letter is to notify you of the currently effective National Pollutant Discharge Elimination System (NPDES) permit conditions for the Red Dog Mine. This notification is necessary because information in the August 29, 2008, proposed Consent Decree prepared by Teck Cominco Alaska, Incorporated (TCAK), and TCAK's comments in the Red Dog Mine-Aqqaluk Supplemental Environmental Impact Statement (SEIS) process, imply that TCAK has a different understanding of the effective NPDES permit limits for total dissolved solids (TDS). The TDS conditions in the 1998 NPDES permit are the effective permit conditions, as discussed below.

1998 NPDES Permit: EPA reissued the NPDES permit for the Red Dog Mine on August 28, 1998. The 1998 permit included the following TDS limits: 196 mg/l daily maximum and 170 mg/l average monthly (1998 Permit Part I.A.1). The 1998 permit limits apply at the end of the discharge pipe.

2003 Permit Modification: On July 17, 2003, EPA issued a permit modification. Part I.A.8.a through k of the 2003 modification would have revised the 1998 permit's TDS limits as follows:

- (1) 3900 mg/l end of pipe;
- (2) during Arctic Grayling spawning: 500 mg/l at the edge of the mixing zone in Main Stem Red Dog Creek;
- (3) after Arctic Grayling spawning: 1500 mg/l at the edge of the mixing zone in Red Dog Creek, 1000 mg/l at the edge of mixing zone in Ikalukrok Creek, and 500 mg/l at station 160.

The 2003 modification also would have established some new TDS monitoring procedures.

2003 Permit Modification Appeal, Stay: Following the modification, however, a timely petition to review the 2003 modification's TDS conditions was submitted to the Environmental Appeals Board (EAB). Subsequently, EPA notified TCAK that, due to the EAB petition, Parts I.A.8.a through k of the permit modification were stayed and therefore, the 1998 permit TDS limits and monitoring requirements remained in effect (October 2, 2003 letter from Randall F. Smith, EPA, to Robert M. Jacko, TCAK).

2004 EAB Remand; 2007 Reissuance, Permit Appeal and Withdrawal: On June 15, 2004, the EAB issued an order denying part of the petition for review, granting part of the petition, and remanding the 2003 permit modification to the Region for further proceedings. EPA reissued the Red Dog Mine permit on March 7, 2007. The March 2007 permit included revised permit conditions for TDS and some other parameters, and responded to the EAB remand. Petitions to review the 2007 permit were submitted to the EAB and on September 27, 2007, EPA decided to withdraw the 2007 permit in order to revise the National Environmental Policy Act (NEPA) analysis for the NPDES permit decision. The March 2007 permit TDS limits never went into effect due to the EAB petition and our withdrawal.

Stay of 2003 Modification Still in Effect: The July 2003 modification TDS limits never went into effect either, because the limits were stayed by the 2003 appeal. Although the EAB upheld some of the contested permit conditions from the 2003 modification, those upheld conditions have not gone into effect because any permit conditions contested by the 2003 petition were stayed, and remain stayed until we respond to the remand order (which was to have occurred with the issuance of the 2007 permit, which never went into effect). This is based on 40 CFR 124.16(a)(1), which provides that "the effect of the contested permit conditions shall be stayed . . . pending final agency action." Final agency action occurs when a final NPDES permit decision is issued by EPA upon completion of remand proceedings (40 CFR 124.19(f)(1)).

Therefore, the limits and conditions of the 1998 permit including the TDS conditions remain in effect. In our September 27, 2007 permit withdrawal notification letter we stated that "The administratively extended NPDES permit conditions that were in effect prior to the March 7, 2007, permit reissuance remain in effect." These conditions are the 1998 permit limits as specified in our October 2, 2003 letter.

After the September 2007 permit withdrawal, EPA staff communicated with TCAK that the 1998 permit limits were the effective limits. However, language in the CD and comments from TCAK on the SEIS process suggest that TCAK believes that portions of the 2003 modification are in effect. This letter clarifies that the effective permit conditions remain the conditions in the 1998 permit.

We understand your concerns with the 1998 permit TDS limits. It is our intent to public notice and reissue the Red Dog Mine NPDES permit with TDS limits based on current water quality standards. We will soon public notice a draft NPDES permit concurrent with the Red Dog Mine-Aqqualuk draft Supplemental Environmental Impact Statement.

If you have questions regarding this letter contact myself at (206) 553-7151 or Patty McGrath, Regional Mining Coordinator, at (206) 553-0979.

Sincerely,



Michael F. Gearheard
Director, Office of Water and Watersheds