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

In re:)	
)	
Teck Alaska Incorporated)	
Red Dog Mine)	
)	NPDES Appeal No. 10-04
)	
NPDES Permit No. AK 003865-3)	
)	
)	

TECK ALASKA INCORPORATED'S REQUEST FOR LEAVE TO RESPOND

Pursuant to 40 C.F.R. Part 124 and Section III.D of the Environmental Appeals Board Practice Manual, Teck Alaska Incorporated (“Teck”) hereby seeks leave to participate in proceedings on, and respond to, the petition for review filed in the above-captioned case. NPDES Permit No. AK 003865-3 (“permit”) has been challenged by the Native Village of Kivalina IRA, et al., which filed a petition with the Board on February 16, 2010. Teck is the permittee in this proceeding.

This permit was reissued to Teck, operator of the Red Dog Mine, by Region 10 of the Environmental Protection Agency (“EPA”) on January 8, 2010. The permit establishes terms and conditions for the discharge of pollutants from the Red Dog Mine into Middle Fork Red Dog

Creek. Red Dog Mine is one of the largest zinc mines in the world and one of the largest employers in Northwest Alaska.

The Mine is at a critical phase in its operations. The current ore body is nearly depleted, and Teck must soon undertake steps to develop an adjacent ore body, called "Aqqaluk." The current permit was issued in 1998 and has certain limits that Red Dog Mine has never been able to meet. For a variety of reasons, efforts to update the permit with limits that can be attained have not been successful. In light of its compelling interest in these issues, Teck requests that the Board allow it to participate in all aspects of these proceedings.

I. PERMITTEES ARE GENERALLY ALLOWED TO PARTICIPATE IN PERMIT APPEALS BEFORE THE BOARD.

The Board has consistently allowed permittees to participate in permit appeals. See EAB Practice Manual § III.D.1, p. 30 ("The Board will also generally allow the permit applicant to respond to a petition filed by a third party petitioner if the permit applicant has filed a request to respond"); Id. at 36 (stating "[the Board] will entertain a motion by a permittee to participate in the proceeding.").

The Board followed this policy when it allowed Teck to participate in an appeal concerning the 2003 modification of its NPDES permit and a subsequent appeal of the renewal of its permit in 2007. In re Teck Cominco Alaska, Inc., Red Dog Mine, 11 E.A.D. 457 (EAB 2004); In re Teck Cominco Alaska, Inc., Red Dog Mine, NPDES Appeal Nos. 07-08 and 07-09 (EAB, May 23, 2007) (Order Granting Administrative Consolidation, Granting Authority to Respond to Petitions, and Extending Time for Filing Responses). More recently, other permittees were granted leave to participate in various appeals pending before the Board. See, e.g., In re Shell Offshore, Inc., Kulluk Drilling Unit, OCS Appeal Nos. 08-01, 08-02, 08-03 (EAB, Aug. 6, 2008) (order allowing Shell to participate in PSD proceeding concerning an OCS

permit); In re ConocoPhillips Co., PSD Appeal No. 07-02 (EAB, Oct. 1, 2007) (order allowing ConocoPhillips to participate in PSD proceeding).

II. THE SAME REASONS THAT MERITED TECK'S PARTICIPATION IN THE 2003 AND 2007 PROCEEDINGS CONCERNING ITS NPDES PERMIT SUPPORT TECK'S PARTICIPATION IN PROCEEDINGS CONCERNING THE 2010 RENEWAL PERMIT.

The history of NPDES permitting at the Red Dog Mine is complex, and is detailed, in part, in the Board's decision in In re Teck Cominco Alaska Inc., Red Dog Mine, 11 E.A.D. 457 (EAB 2004). The current permit was last renewed in 1998. Teck has never been able to comply with the total dissolved limitations ("TDS") contained in the 1998 permit, which are many orders of magnitude below what is achievable. Efforts to modify the permit's TDS limits in 2003 were unsuccessful. See id. at 497 (remanding TDS limit for grayling spawning season). EPA addressed the 2004 remand through renewal of the permit in March 2007. However, that permit was appealed and subsequently withdrawn by EPA during September 2007. See In re Teck Cominco Alaska, Inc., Red Dog Mine, NPDES Appeal Nos. 07-08 and 07-09 (EAB, Oct. 10, 2007 (order dismissing petitions for review). Since that time, EPA, the State of Alaska, Teck, and other stakeholders have been working to renew the permit. The 2010 renewal permit will complete the remand triggered by the Board's 2004 decision and implement TDS permit limits that are attainable, protective of the environment, and which are necessary to maintain compliance with the Clean Water Act.

The permit limits are also relevant to the amount of water that Teck can discharge from its tailings impoundment. The 1998 permit's TDS limits do not allow the mine to discharge enough water to maintain a safe water balance. In order to avoid overtopping its tailings impoundment, Teck has had to, by necessity, discharge water in excess of the limits established by the 1998 permit.

Last, and most critically, the mine is nearing depletion of the ore body in the Main Pit, which is the area that has been mined since mine start-up in 1988. This appeal and the resultant stay raises significant questions about Teck's ability to transition operations into the adjacent Aqqaluk ore body.¹ The failure to commence the development of Aqqaluk during May 2010 would likely result in a decision, at that time, to shut down the mine by October 2010.

The petition for review threatens to thwart, for the third time, efforts by EPA to impose appropriate permit limits on the Red Dog Mine. Strikingly, TDS limits from the 2003 modification, which were challenged, but not overturned by the Board (e.g., TDS limits for periods outside of the grayling spawning season), have still not come into effect due to the fact that EPA has been unable to complete the remand of the grayling spawning period limit required by the Board in its 2004 decision.

The appeal places Teck's significant interests and investments in expansion of the Red Dog Mine at risk and further threatens the hundreds of jobs, taxes, and other economic benefits that are derived from the Red Dog Mine. Teck has a significant protectable interest, different from the interests of EPA, meriting its full participation in these proceedings.

For the foregoing reasons, Teck respectfully requests the Board to grant its request to fully participate in these proceedings.

¹ Details on the Aqqaluk permitting can be viewed at EPA's project webpage at: <http://www.reddogseis.com>.

DATED: February 19, 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Teck Alaska Incorporated's Request for Leave to Respond in the matter of Teck Alaska Incorporated, Red Dog Mine, NPDES Appeal No. 10-04, were served by United States First Class Mail on February 19, 2010, upon the following:

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