

RECEIVED
U.S. E.P.A.

2004 SEP -7 PM 4:29

ENVIR. APPEALS BOARD

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

In the Matter of:)	
)	
)	Appeal No. NPDES 03-10
HECLA MINING COMPANY,)	
LUCKY FRIDAY MINE)	REGION 10's BRIEF ON EFFECT
NPDES Permit No. ID-000017-5)	OF MODIFIED SECTION 401
)	CERTIFICATION
)	
)	

I. INTRODUCTION

In accordance with the Environmental Appeals Board's ("EAB's" or "Board's") August 4, 2004 Order Setting Briefing Schedule, Region 10 of the U.S. Environmental Protection Agency ("Region") respectfully submits this brief "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 2.¹

¹ Although not discussed further in today's brief, the Region continues to oppose the Motion to Supplement Record for the reasons set forth in the Region's August 11, 2004 brief responding to this motion.

II. FACTUAL AND PROCEDURAL BACKGROUND

Thirty-one years ago, the Region issued Hecla an NPDES permit authorizing discharges from the Lucky Friday mine and mill. Because this permit predated the establishment of national effluent limitations guidelines for mining operations and the promulgation of applicable water quality standards, the permit's limits were established based on the best professional judgment of the permit writer. In the intervening 31 years, Hecla has discharged to the South Fork Coeur d'Alene ("SFCdA") River millions of gallons per day of process wastewater from its mining and milling operations² while challenging virtually every effort by the Region to impose effluent limitations that ensure compliance with subsequently adopted and applicable technology-based effluent guidelines and water quality standards.

In 1977, Hecla challenged the Region's reissuance of the Lucky Friday NPDES permit, resulting in an indefinite stay of that permit's final effluent limitations. A subsequent reissuance proposed in 1990 was never finalized in part to fulfill a September 1993 agreement among the Region, Hecla, and the Idaho Department of Environmental Quality ("DEQ") to develop less stringent site-specific criteria ("SSC") for certain metals discharged from the Lucky Friday facility. *See* Letter from Burr to White and McKee (September 3, 1993), Ex. 21.³ As contemplated by the September 1993 agreement, DEQ revised its water quality standards by adopting less stringent SSC for metals discharged from the Lucky Friday facility. *See* 2003 Fact

² Information submitted by Hecla indicates that, between 1995 and 2000, discharges from Outfall 001 were as high as 2.88 million gallons per day ("mgd") and as high as 2.28 mgd from Outfall 003. *See* 2001 Fact Sheet, Ex. 3, at pp. 6-7.

³ This September 3, 1993 letter was included in the certified Index to the Administrative Record as document AR No. 12. For ease of identification, it has been assigned an exhibit number that maintains the sequence established in the Region's October 30, 2003 Response to Hecla's Petition for Review. A copy of this letter is attached to today's brief.

Sheet, Ex. 4, at p. 9. In 2003, after DEQ had promulgated and EPA had approved these SSC, Hecla sought a variance from the revised standards that it had requested. *See* Letter from Dexter to Office of Water Director, Ex. 11, at pp. 5-6.⁴ Meanwhile, in 1997, EPA published the final rule establishing cold water biota designated uses for several Idaho waterways, including the SFCdA River. *See* 40 C.F.R. §§ 131.33(b). The following year, an association of Idaho mining companies including Hecla sued EPA seeking to vacate this rule as applied to the SFCdA River. A federal district court ultimately dismissed this claim in 2000. *See generally Idaho Mining Ass'n v. Browner*, 90 F. Supp. 2d 1078 (D. Idaho 2000). Also in 2000, Hecla and other mining companies challenged DEQ's establishment of a TMDL for metals in the SFCdA River, resulting in the invalidation of this TMDL on procedural grounds. *See Asarco Inc., et al. v. Idaho*, 69 P.3d 139 (Idaho 2003).

On May 9, 2003, the Region provided DEQ with a draft of the proposed final Permit and requested that DEQ grant or deny final Clean Water Act ("CWA") Section 401 certification of the Permit. Certification Request Letter, Ex. 20. On June 17, 2003, DEQ responded to the Region's request by submitting a CWA Section 401 certification letter ("2003 Certification"). 2003 Certification Letter, Ex. 16. The Region issued the final Permit on August 12, 2003, incorporating a number of provisions recommended by the 2003 Certification. *See* Permit, Ex. 1. Hecla responded to these actions by initiating a contested case proceeding before DEQ to challenge the 2003 Certification and by filing the Petition for Review under consideration in this proceeding. The effect of Hecla's Petition for Review was to stay all of the Permit's interim

⁴ Still pending in federal district court are Hecla's claims that EPA unreasonably delayed and failed to act on Hecla's request for a variance from the SSC. On August 16, 2004, the Region notified Hecla of its proposed decision to deny Hecla's request for a variance from these criteria.

limits and virtually all of the Permit's final effluent limits, monitoring requirements, and study requirements. On July 15, 2004, DEQ settled Hecla's contested case proceeding on the 2003 Certification by issuing a modified certification letter ("2004 Certification") to EPA. Most recently, on August 19, 2004, Hecla formally requested that the Region modify the Permit to reflect certain aspects of this modified certification letter and separately requested that the EAB remand various conditions of the Permit affected by the modified certification and the permit modification request.

Throughout this entire extended period of judicial and administrative challenges, Hecla has resisted installing any systems to treat or recycle its waste streams and has avoided any legal requirement to do so. While not necessary to understand the substance of Hecla's claims in this appeal, the foregoing procedural history is important in understanding the Region's desire to move forward expeditiously in finalizing the Lucky Friday Permit.

III. DISCUSSION

In its August 19, 2004 response to the Board's briefing order, Hecla asks the EAB to remand five specified conditions of the Permit that it claims are affected by the 2004 Certification. The Region believes that such a remand, if ordered prior to a decision on the merits of Hecla's appeal, would frustrate the purposes of the CWA, lead to administrative inefficiency, and compound the delay in finalizing the reissuance of this long-overdue permit. As an alternative, the Region urges the Board to issue a decision on the merits of Hecla's Petition for Review and allow the Region to issue a final permit decision after consideration of the issues raised by Idaho's modification of its certification (including the issues raised by Hecla's permit modification request). This final permit decision by the Region would be subject to all of the

procedural safeguards (including administrative record development, public comment, and appeal) normally available during the permit modification process. Before outlining the specifics of the Region's proposal, this brief will summarize the material differences between the 2003 and 2004 Certifications and provide an overview of the procedural regulations implicated by the Region's receipt of the modified 2004 Certification and Hecla's permit modification request.

A. Overview of the Contents of Idaho's Modified Section 401 Certification

Idaho's 2004 Certification differs from the 2003 Certification in the following material respects:

- (1) It authorizes a mixing zone of 50 percent (rather than 25 percent) for copper discharged during certain of the Permit's lower flow tiers;
- (2) It authorizes a mixing zone of 75 percent (rather than 25 percent) for mercury discharged during all flow tiers;
- (3) It authorizes a mixing zone of 25 percent (rather than no mixing zone) for the upper effluent limitation for pH discharged from all three outfalls;
- (4) It authorizes a five-year compliance schedule for cadmium discharged from all three outfalls (rather than only from Outfall 001 and Outfall 002 when the Outfall 001 waste stream is discharged through Outfall 002);
- (5) It establishes interim limits for cadmium, lead, and zinc that are in some respects more stringent and in other respects less stringent than those authorized by the 2003 Certification Letter;
- (6) In relation to the compliance schedule, it contains a new requirement that "Hecla shall, prior to implementing the water recycling system, provide the design of the system to IDEQ for comment";
- (7) It relaxes, in certain respects, the requirements for bioassessment monitoring outlined in the 2003 Certification Letter;
- (8) It contains a paragraph headed "Other Comments" which expresses DEQ's "support" for delaying the Permit's whole effluent toxicity ("WET") testing and seepage study requirements until 2007.

Thus the 2004 Certification contains some provisions (item (6) and portions of item (5), above) that would lead to conditions more stringent than those found in the 2003 Certification and the final Permit and other provisions (items (1), (2), (3), (4), (7), (8), and portions of (5)) that would support less stringent conditions in the Permit. Attached to this Brief for demonstrative purposes is a color-coded copy of the final Permit that identifies those conditions that have been stayed as a result of Hecla's appeal, as well as those that are implicated by Idaho's modified Section 401 Certification.⁵

B. Overview of the Procedural Provisions Implicated by Idaho's Modified Section 401 Certification

1. Legal Effect of a Modified Section 401 Certification

In relevant part, EPA's permitting regulations provide that the state agency that initially issued the Section 401 certification for an NPDES permit may "stay, vacate, or remand" the certification and forward a modified certification to EPA. 40 C.F.R. § 124.55(b). These regulations go on to state that, if

the modified certification is received before final agency action on the permit, the permit shall be consistent with the more stringent conditions which are based upon State law identified in such certification.

Id. (emphasis added). The regulations do not address the effect of a modified certification received before final agency action that recommends conditions less stringent than those

⁵ The Region arrived at this summary of the material differences between the 2003 and 2004 Certifications by reviewing both documents side-by-side and identifying differences between them. The Region has no explanation for why its summary of the affected provisions differs in some respects from the affected conditions identified in Hecla's August 19, 2004 brief and the slightly different list of affected conditions enumerated in Hecla's permit modification request.

contained in the previous certification, leaving EPA with discretion to proceed to final agency action without first incorporating these less stringent conditions.

2. Procedures for Modifying a Permit to Reflect Modified 401 Certification

EPA's permitting regulations provide that, when a modified Section 401 Certification is received after final agency action on a permit, the Region "may modify the permit on request of the permittee only to the extent necessary to delete any conditions based on a condition in a certification invalidated . . . by an appropriate State board or agency." 40 C.F.R. § 124.55(b). Such a request by the permittee to modify the permit would be processed in accordance with the procedures set forth in 40 C.F.R. §§ 124.5 and 124.6. While the regulations do not specifically address a Region's discretion to relax a permit to reflect a modified Section 401 Certification received before final agency action, there is nothing in the regulations to suggest that such a modification could not be considered and processed in this same fashion. In at least one previous case, the Board has remanded a permit with instructions to the Region to entertain a permittee's request to revise the permit consistent with a revised Section 401 certification received during the pendency of the permit appeal. *In re City of Port St. Joe*, 7 E.A.D. 275, 314 and 317 (EAB 1997).

3. "Final Agency Action"

Under EPA's permitting regulations, "final agency action" on an appealed permit occurs upon issuance of a final permit decision by the Regional Administrator:

- (i) When the Environmental Appeals Board issues notice to the parties that review has been denied;

(ii) When the Environmental Appeals Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Environmental Appeals Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

40 C.F.R. § 124.19(f)(1). In this matter, "final agency action" on the Permit has not yet occurred because the EAB has not yet ruled on Hecla's Petition for Review. Once the EAB rules and the Region completes any remand proceedings ordered by the Board, however, the Permit would be final and ripe for judicial review (unless the EAB specifically provides that further administrative appeals are necessary to exhaust administrative remedies).

C. The Region's Proposal for Bringing this Matter to Conclusion

1. The EAB Should Not Stay the Proceedings or Remand the Conditions of the Permit Affected by the Modified 2004 Certification Prior to Issuing its Decision on Hecla's Petition

In its July 19, 2004 brief, Hecla asks the Board to remand five conditions of the Permit, to direct the Region to act on Hecla's permit modification request, and then to conduct further proceedings on Hecla's underlying challenges to the Permit. This approach would only further delay final agency action on the Permit and would more than likely result in the Board having to consider multiple appeals on different versions of the same conditions of the Permit. An examination of just one of the conditions Hecla seeks to remand – the upper pH limit – illustrates the problems inherent in Hecla's proposed approach. As described more fully in the Region's Response Brief, the Permit contains a condition limiting the pH of the effluent from all three outfalls to "not . . . greater than 9.0 s.u." Permit, Ex. 1, at I.A.3. This upper pH limit is dictated by the technology-based effluent limitation guideline applicable to the facility. 2001 Fact Sheet,

Ex. 3, at p. B-19. Hecla now seeks a less stringent upper pH limit to reflect a new, 25 percent mixing zone urged by the 2004 Certification. If the Region was to conclude during remand proceedings that the technology-based upper pH limit could not be made less stringent to reflect the 2004 Certification, this decision would presumably be subject to a new administrative appeal by Hecla. Thus the Board would have pending before it two appeals of the same condition in the same permit – one claiming that the limit was too stringent for the reasons set forth in Hecla’s Petition for Review and one challenging the Region’s failure to grant Hecla’s permit modification request. Resolving these overlapping yet distinct claims would require additional briefing and proceedings before the Board, further delaying final agency action on the August 2003 permit. The approach advanced below in Part III.C.3. of this brief would enable the Region to consider Hecla’s modification request in light of a final decision from the Board on the appropriateness of the technology-based pH effluent limitation included in the August 2003 final Permit. This approach thus avoids a procedural quagmire while fully preserving Hecla’s rights to administrative and judicial review of the permit conditions it has contested.

The parties are in agreement that, “even if incorporated fully into the permit, the revised Section 401 Certification does not resolve all of the issues raised on appeal” and that the Board should issue a decision on the challenges not related to Idaho’s decision to modify its Section 401 certification. See Hecla’s Brief at 5. The only apparent disagreement is as to whether a remand to the Region to consider the effect of the 2004 Certification should occur before or after the Board issues a decision on the remainder of Hecla’s challenges. All of the conditions that Hecla seeks to have remanded to the Region are currently stayed and subject to a variety of challenges unrelated to Idaho’s Section 401 Certification of the Permit. It would make little

sense for the Region to process a modification request without knowing the answers to the questions posed by Hecla's pending Petition for Review. For all of these reasons, the Board should not remand the permit conditions potentially affected by the 2004 Certification prior to issuing a final decision on the substance of the Hecla's challenges to the Permit.

2. The EAB Must Consider the Modified 2004 Certification to the Extent Necessary to Ensure that More Stringent Conditions are Incorporated into the Final Permit

Because the 2004 Certification was received by EPA "before final agency action on the permit" and contains certification conditions that are "more stringent" than those contained in the 2003 Certification and the Permit, the Permit must, under 40 C.F.R. § 124.55(b), be revised to be made consistent with these more stringent conditions. In light of this regulatory requirement, the EAB should remand Table 5 and Section I.A.4.f. of the Permit with instructions to the Region to incorporate the more stringent interim limits and water recycling system design submission requirements.⁶ The Region will then incorporate these more stringent requirements into the Permit when it issues the "final permit decision" contemplated by 40 C.F.R. § 124.19(f)(1). To facilitate administrative efficiency, the Region urges the Board to issue this remand order in conjunction with its final decision on the merits of Hecla's appeal (or, as the case may be, in conjunction with notice to the parties that review has been denied) so that the Region may consolidate its incorporation of these more stringent conditions with any other remand proceedings ordered by the Board. To avoid further delay in the issuance of a final permit

⁶ These more stringent requirements are: (1) the mass-based interim limits for lead and zinc discharged from all outfalls; (2) the concentration-based limits for lead discharged from Outfall 003 and 002 when the Outfall 003 waste stream is discharged through Outfall 002; and (3) the requirement to provide the design of the water recycling system to DEQ for comment prior to implementing this system. Each of the Permit conditions affected by these more stringent requirements is highlighted in blue in the attached demonstrative exhibit.

decision in this matter, the Board's remand order should not "specifically provide[] that [administrative] appeal of the remand decision will be required to exhaust administrative remedies," thus allowing the revised permit to constitute "final agency action." See 40 C.F.R. § 124.19(f)(1)(iii). Further EAB review of permit conditions that are dictated by more stringent certification conditions would serve no purpose (other than delay) because review of "conditions attributable to State certification shall be made through the applicable procedures of the State and may not be made through the [Part 124] procedures." 40 C.F.R. § 124.55(e); see also *Roosevelt Campobello Int'l. v. U.S. EPA*, 684 F.2d 1041, 1056 (1st Cir. 1982).

3. The EAB Should Remand the Remaining Conditions of the Permit Potentially Affected by the Modified 2004 Certification With Instructions to Act Upon Hecla's Permit Modification Request

The remaining conditions affected by Idaho's decision to modify its Section 401 certification may be properly addressed through a remand order that directs the Region to consider and process Hecla's August 19, 2004 permit modification request. By issuing this remand order at the same time it renders a decision on the challenges contained in Hecla's Petition for Review, the Board will ensure that: (1) Regional resources are not wasted in modifying permit conditions that the Board believes must be invalidated or remanded for reasons unrelated to Idaho's Section 401 Certifications; (2) the Region will not have to conduct multiple, sequential remand and modification proceedings on this Permit; (3) the Board will not have challenges to both the August 2003 permit and a modified permit pending before it at the same time; and (4) the Permit may proceed to final agency action expeditiously.

The Region has assigned a permit writer to process Hecla's modification request and this permit writer has already begun compiling the administrative record and drafting the fact sheet

necessary to propose revisions to the permit. As a result, the Region believes it would be ready to propose revisions to the Permit in response to Hecla's modification request soon after the Board issued its final decision in the underlying permit appeal and to finalize the Permit within a matter of weeks from proposal.⁷ As with the remand of the more stringent conditions, the Board's remand of the less stringent conditions should not specifically provide for further EAB review because further administrative review would only serve to delay final agency action on the Permit. Rather, the Board should allow the Permit to become final agency action upon completion of the Region's remand proceedings. 40 C.F.R. § 124.19(f)(1)(iii).

IV. CONCLUSION

Final agency action on this permit is long overdue. For all of the foregoing reasons, EPA Region 10 respectfully requests that the EAB's final order in this matter instruct the Region to: (1) revise the Permit to reflect the more stringent conditions identified in the modified Section 401 Certification; and (2) consider and process as appropriate Hecla's Permit modification request to address any Permit conditions that were based on conditions in the 2003 Certification subsequently invalidated by DEQ. In all other respects, the EAB should review and expeditiously rule on the challenged conditions of the Permit in light of the certified administrative record and the arguments set forth by Hecla and the Region in their petition and response briefs, respectively. The EAB's final decision should not specify that further administrative appeals on the remand decision will be required to exhaust administrative remedies.

⁷ The precise schedule would depend, of course, on whether or not the Board remands any permit conditions in addition to those affected by the 2004 Certification, and, if so, the complexity of the issues raised by these additional remand proceedings.

Dated this 7th day of September, 2004.

Respectfully submitted,

 for

R. DAVID ALLNUTT
Assistant Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101
Tel: (206) 553-2581
Fax: (206) 553-0163
Email: allnutt.david@epa.gov

Of Counsel:

Susmita Dubey
Attorney Advisor
Water Law Office
Office of General Counsel
(202) 564-5577

CERTIFICATE OF SERVICE

I certify that the foregoing "Region 10's Brief on Effect of Modified Section 401 Certification" was sent to the following persons, in the manner specified, on the date below:

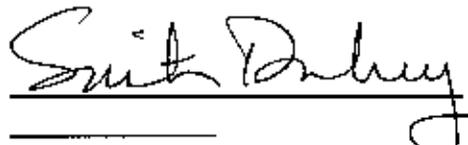
Original and five copies, hand delivered, to:

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

One copy, by first class U.S. mail, to:

Kevin J. Beaton
Teresa A. Hill
STOEL RIVES LLP
101 S. Capitol Blvd. Suite 1900
Boise, Idaho 83702-5958
Fax: (208) 389-9040

Dated: 9-7-04



U.S. EPA

Key to this Color-Coded Version of Permit No.: ID-000017-5:

- xx = stayed conditions not affected by the 2004 modification to 401 Certification
- ☐ = stayed conditions that the 2004 modification to 401 Certification recommends relaxing
- ☐ = other conditions that the 2004 modification to 401 Certification recommends relaxing
- ☐ = more stringent and new conditions urged by the 2004 modification to 401 Certification

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

**AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act",

Hecla Mining Company, Lucky Friday Mine
P.O. Box 31
Mullan, Idaho 83846

is authorized to discharge from the Lucky Friday Mine and Mill facility located near Mullan, Idaho, to the South Fork Coeur d'Alene River at the following locations:

<u>Outfall</u>	<u>Latitude</u>	<u>Longitude</u>
001	47° 27' 49" N	115° 48' 21" W
002	44° 28' 06" N	115° 47' 09" W
003	47° 28' 13" N	115° 45' 50" W

in accordance with discharge point(s), effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective

This permit and the authorization to discharge shall expire at midnight,

Signed this day of

Randall F. Smith
Director
Office of Water, Region 10
U.S. Environmental Protection Agency

TABLE OF CONTENTS

I.	LIMITATIONS AND MONITORING REQUIREMENTS	4
A.	Effluent Limitations and Monitoring	4
B.	Whole Effluent Toxicity Testing Requirements.	12
C.	Seepage Study and Hydrological Analysis.	16
D.	Ambient Water Monitoring	17
E.	Quality Assurance Plan	19
II.	BEST MANAGEMENT PRACTICES PLAN	19
A.	Purpose	19
B.	Development and Implementation Schedule	19
C.	Objectives	20
D.	Elements of the BMP Plan	20
E.	Annual Review and Certification	22
F.	Documentation	22
G.	BMP Plan Modification	22
III.	MONITORING, RECORDING AND REPORTING REQUIREMENTS	23
A.	Representative Sampling (Routine and Non-Routine Discharges)	23
B.	Reporting of Monitoring Results	23
C.	Monitoring Procedures	23
D.	Additional Monitoring by Permittee	24
E.	Records Contents	24
F.	Retention of Records	24
G.	Twenty-four Hour Notice of Noncompliance Reporting	24
H.	Other Noncompliance Reporting	25
I.	Changes in Discharge of Toxic Substances	25
J.	Compliance Schedules	26
IV.	COMPLIANCE RESPONSIBILITIES	26
A.	Duty to Comply	26
B.	Penalties for Violations of Permit Conditions	26
C.	Need to Halt or Reduce Activity not a Defense	28
D.	Duty to Mitigate	28
E.	Proper Operation and Maintenance	29
F.	Bypass of Treatment Facilities	29
G.	Upset Conditions	30
H.	Toxic Pollutants	30
I.	Planned Changes	30
J.	Anticipated Noncompliance	31

V. GENERAL PROVISIONS 31

- A. Permit Actions 31
- B. Duty to Reapply 31
- C. Duty to Provide Information 31
- D. Other Information 31
- E. Signatory Requirements 32
- F. Availability of Reports 33
- G. Inspection and Entry 33
- H. Property Rights 33
- I. Transfers 34
- J. State Laws 34

VI. DEFINITIONS 34

I. LIMITATIONS AND MONITORING REQUIREMENTS

During the effective period of this permit, the permittee is authorized to discharge pollutants from outfalls 001, 002, and 003 to the South Fork Coeur d'Alene (SFCdA) River, within the limits and subject to the conditions set forth herein. This permit authorizes the discharge of only those pollutants resulting from facility processes, waste streams, and operations that have been clearly identified in the permit application process.

A. Effluent Limitations and Monitoring

- The permittee must limit and monitor discharges from outfalls 001, 002, and 003, as specified in Tables 1, 2, 3, and 4, below. All figures represent maximum effluent limits unless otherwise indicated. The permittee must comply with the effluent limits in the tables at all times unless otherwise indicated, regardless of the frequency of monitoring or reporting required by other provisions of this permit.

Parameter	Upstream River Flow Tier ¹	Effluent Limitations				Monitoring Requirements	
		Maximum Daily		Average Monthly		Sample Frequency	Sample Type
		ug/l	lb/day	ug/l	lb/day		
Cadmium ² , total recoverable	not dependent upon river flow	1.8 ⁴	0.025 ⁴	0.70 ⁴	0.0098 ⁴	weekly	24-hour composite
Lead ² , total recoverable	not dependent upon river flow	50 ⁴	0.70 ⁴	30 ⁴	0.42 ⁴	weekly	24-hour composite
Zinc ² , total recoverable	not dependent upon river flow	190 ⁴	2.66 ⁴	71 ⁴	0.99 ⁴	weekly	24-hour composite
Copper ² , total recoverable	< 14 cfs	21	0.28	8.9	0.12	weekly	24-hour composite
	≥ 14 to < 32 cfs	28	0.36	11	0.15		
	≥ 32 to < 113 cfs	38	0.53	17	0.24		
	≥ 113 to < 194 cfs	73	1.0	32	0.45		
	> 194 cfs	83	0.88	28	0.39		
Mercury ² , total	< 14 cfs	0.0002 ⁴	0.0002 ⁴	0.0002 ⁴	0.0002 ⁴	2/month ⁵	grab
	≥ 14 to < 32 cfs	0.0002 ⁴	0.0002 ⁴	0.0002 ⁴	0.0002 ⁴		
	≥ 32 to < 113 cfs	0.0002 ⁴	0.0002 ⁴	0.0002 ⁴	0.0002 ⁴		
	> 113 to < 194 cfs	0.0002 ⁴	0.0002 ⁴	0.0002 ⁴	0.0002 ⁴		
	≥ 194 cfs	0.0002 ⁴	0.0002 ⁴	0.0002 ⁴	0.0002 ⁴		

Table 1 - Effluent Limitations and Monitoring Requirements for Outfall 001

Parameter	Upstream River Flow Tier ¹	Effluent Limitations				Monitoring Requirements	
		Maximum Daily		Average Monthly		Sample Frequency	Sample Type
		ug/l	lb/day	ug/l	lb/day		
Silver ² , total recoverable	< 14 cfs	3.7	0.052	2.2	0.031	weekly	24-hour composite
	≥ 14 cfs	--	--	--	--	monthly	24-hour composite
Total Suspended Solids (TSS)	not dependent upon river flow	30 mg/l	--	20 mg/l	--	weekly	24-hour composite
pH, s.u.	not dependent upon river flow	see Part I.A.3.		see Part 1.A.3.		weekly	grab
Outfall Flow, cfs	--	--	--	--	--	continuous	recording
Temperature, °C	--	--	--	--	--	weekly	grab
E. coli, #/100 ml.	--	--	--	--	--	monthly	grab
Hardness, as CaCO ₃ , mg/l	--	--	--	--	--	monthly	24-hour composite
Whole Effluent Toxicity (WET) ³ , TU _c	--	--	--	--	--	quarterly	24-hour composite
SFCdA River flow directly upstream of the outfall, cfs	--	--	--	--	--	daily	recording

Footnotes:

1 - The effluent limits for copper, silver, and mercury will be determined by the monthly average of the daily flows measured in the SFCdA River directly upstream of outfall 001. The permittee must report the average monthly flow on the DMR.

2 - Reporting is required within 24 hours of a maximum daily violation. See Part III.G.

3 - See Part I.B. for whole effluent toxicity testing requirements.

4 - See Part I.A.4. for the cadmium, lead, mercury, and zinc compliance schedule.

5 - Monitoring for mercury is required twice per month. The monitoring must not occur on consecutive days or weeks.

Table 2 - Effluent Limitations and Monitoring Requirements for Outfall 002 When the Outfall 001 Waste Stream is Discharged Through Outfall 002							
Parameter	Upstream River Flow Tier ¹	Effluent Limitations				Monitoring Requirements	
		Maximum Daily		Average Monthly		Sample Frequency	Sample Type
		ug/l	lb/day	ug/l	lb/day		
Cadmium ² , total recoverable	not dependent upon river flow	1.8 ⁴	0.025 ⁴	0.70 ⁴	0.0098 ⁴	weekly	24-hour composite
Lead ² , total recoverable	not dependent upon river flow	50 ⁴	0.70 ⁴	30 ⁴	0.42 ⁴	weekly	24-hour composite
Zinc ² , total recoverable	not dependent upon river flow	190 ⁴	2.66 ⁴	71 ⁴	0.99 ⁴	weekly	24-hour composite
Copper ² , total recoverable	< 8.6 cfs	85	0.22	26	0.028	weekly	24-hour composite
	≥ 8.6 to < 20 cfs	12	0.22	33	0.16		
	≥ 20 to < 69 cfs	28	0.39	12	0.17		
	≥ 69 to < 117 cfs	49	0.68	22	0.31		
	> 117 cfs	46	0.64	20	0.28		
Mercury ² , total	< 8.6 cfs	0.002 ⁴	0.0002 ⁴	0.01 ⁴	0.0002 ⁴	2/month ⁴	grab
	≥ 8.6 to < 20 cfs	0.002 ⁴	0.0001 ⁴	0.01 ⁴	0.0002 ⁴		
	≥ 20 to < 69 cfs	0.002 ⁴	0.0001 ⁴	0.02 ⁴	0.0004 ⁴		
	≥ 69 to < 117 cfs	0.01 ⁴	0.0002 ⁴	0.02 ⁴	0.001 ⁴		
	≥ 117 cfs	0.02 ⁴	0.0004 ⁴	0.02 ⁴	0.001 ⁴		
Silver ² , total recoverable	< 8.6 cfs	2.7	0.038	1.6	0.022	weekly	24-hour composite
	≥ 8.6 to < 20 cfs	3.2	0.045	1.9	0.027	monthly	24-hour composite
	≥ 20 cfs	--	--	--	--		
Total Suspended Solids (TSS)	not dependent upon river flow	30 mg/l	--	20 mg/l	--	weekly	24-hour composite
pH, s.u.	not dependent upon river flow	see Part 1.A.3		see Part 1.A.3.		weekly	grab
Outfall Flow, cfs	--	--	--	--	--	continuous	recording
Temperature, °C	--	--	--	--	--	weekly	grab
E. coli, #/100 ml.	--	--	--	--	--	monthly	grab
Hardness, as CaCO ₃ , mg/l	--	--	--	--	--	monthly	24-hour composite

Table 2 - Effluent Limitations and Monitoring Requirements for Outfall 002 When the Outfall 001 Waste Stream is Discharged Through Outfall 002							
Parameter	Upstream River Flow Tier ¹	Effluent Limitations				Monitoring Requirements	
		Maximum Daily		Average Monthly			
		ug/l	lb/day	ug/l	lb/day	Sample Frequency	Sample Type
Whole Effluent Toxicity (WET) ³ , TU _c	--	--	--	--	--	quarterly	24-hour composite
SFCdA River flow directly upstream of the outfall, cfs	--	--	--	--	--	daily	recording

Footnotes:

- 1 - The effluent limits for copper, silver, and mercury will be determined by the monthly average of the daily flows measured in the SFCdA River directly upstream of outfall 002. The permittee must report the average monthly flow on the DMR.
- 2 - Reporting is required within 24 hours of a maximum daily violation. See Part III.G.
- 3 - See Part I.B. for whole effluent toxicity testing requirements
- 4 - See Part I.A.4. for the cadmium, lead, mercury, and zinc compliance schedule.
- 5 - Monitoring for mercury is required twice per month. The monitoring must not occur on consecutive days or weeks.

Table 3 - Effluent Limitations and Monitoring Requirements for Outfall 002 When the Outfall 003 Waste Stream is Discharged Through Outfall 002							
Parameter	Upstream River Flow Tier ¹	Effluent Limitations				Monitoring Requirements	
		Maximum Daily		Average Monthly			
		ug/l	lb/day	ug/l	lb/day	Sample Frequency	Sample Type
Cadmium ² , total recoverable	not dependent upon river flow	2.1	0.040	1.1	0.021	weekly	24-hour composite
Lead ² , total recoverable	not dependent upon river flow	75 ⁴	1.4 ⁴	45 ⁴	0.85 ⁴	weekly	24-hour composite
Zinc ² , total recoverable	not dependent upon river flow	260 ⁴	4.9 ⁴	150 ⁴	2.8 ⁴	weekly	24-hour composite
Copper ² , total recoverable	< 20 cfs	20	0.38	22	0.22	weekly	24-hour composite
	≥ 20 to < 69 cfs	25	0.47	9.3	0.18		
	≥ 69 to < 117 cfs	39	0.73	15	0.28		
	≥ 117 cfs	35	0.66	13	0.24		

Table 3 - Effluent Limitations and Monitoring Requirements for Outfall 002 When the Outfall 003 Waste Stream Is Discharged Through Outfall 002							
Parameter	Upstream River Flow Tier ¹	Effluent Limitations				Monitoring Requirements	
		Maximum Daily		Average Monthly		Sample Frequency	Sample Type
		ug/l	lb/day	ug/l	lb/day		
Mercury ² , total	< 8.6 cfs	0.02 ⁴	0.0033 ⁴	0.02 ⁴	0.0017 ⁴	2/month ⁵	grab
	≥ 8.6 to < 20 cfs	0.02 ⁴	0.0033 ⁴	0.02 ⁴	0.0033 ⁴		
	≥ 20 to < 69 cfs	0.02 ⁴	0.0033 ⁴	0.02 ⁴	0.0033 ⁴		
	≥ 69 to < 117 cfs	0.02 ⁴	0.0033 ⁴	0.02 ⁴	0.0033 ⁴		
	≥ 117 cfs	0.02 ⁴	0.0033 ⁴	0.02 ⁴	0.0017 ⁴		
Silver ² , total recoverable	< 8.6 cfs	3.2	0.060	1.9	0.036	weekly	24-hour composite
	≥ 8.6 to < 20 cfs	3.4	0.064	2.0	0.038		
	≥ 20 to < 69 cfs	4.3	0.081	2.6	0.049		
	≥ 69 to < 117 cfs	5.6	0.11	3.3	0.062		
	≥ 117 cfs	4.0	0.075	2.4	0.045		
Total Suspended Solids (TSS)	not dependent upon river flow	30 mg/l	--	20 mg/l	--	weekly	24-hour composite
pH, s.u.	not dependent upon river flow	see Part I.A.3		see Part I.A.3.		weekly	grab
Outfall Flow, cfs	--	--	--	--	--	continuous	recording
Temperature, °C	--	--	--	--	--	weekly	grab
E. coli, #/100 ml.	--	--	--	--	--	monthly	grab
Hardness, as CaCO ₃ , mg/l	--	--	--	--	--	monthly	24-hour composite
Whole Effluent Toxicity (WET) ³ , TU _c	--	--	--	--	--	quarterly	24-hour composite
SFCdA River flow directly upstream of the outfall, cfs	--	--	--	--	--	daily	recording

Footnotes:

- 1 - The effluent limits for copper, silver, and mercury will be determined by the monthly average of the daily flows measured in the SFCdA River directly upstream of outfall 002. The permittee must report the average monthly flow on the DMR.
- 2 - Reporting is required within 24 hours of a maximum daily violation. See Part III.G.
- 3 - See Part I.B. for whole effluent toxicity testing requirements.
- 4 - See Part I.A.4 for the lead, mercury, and zinc compliance schedule.
- 5 - Monitoring for mercury is required twice per month. The monitoring must not occur on consecutive days or weeks.

Table 4 - Effluent Limitations and Monitoring Requirements for Outfall 003							
Parameter	Upstream River Flow Tier ¹	Effluent Limitations				Monitoring Requirements	
		Maximum Daily		Average Monthly		Sample Frequency	Sample Type
		ug/l	lb/day	ug/l	lb/day		
Cadmium ² , total recoverable	not dependent upon river flow	2.1	0.040	1.1	0.021	weekly	24-hour composite
Lead ² , total recoverable	not dependent upon river flow	75 ^d	1.4 ^d	45 ^d	0.85 ^d	weekly	24-hour composite
Zinc ² , total recoverable	not dependent upon river flow	260 ^d	4.9 ^d	150 ^d	2.8 ^d	weekly	24-hour composite
Copper ² , total recoverable	< 18 cfs	30	0.56	11	0.21	weekly	24-hour composite
	≥ 18 to < 63 cfs	30	0.56	11	0.21		
	≥ 63 cfs	30	0.56	11	0.21		
Mercury ² , total	< 8.0 cfs	0.0027 ^d	0.00005 ^d	0.0014 ^d	0.000025 ^d	2/month ^d	grab
	≥ 8.0 to < 18 cfs	0.0037 ^d	0.00007 ^d	0.0021 ^d	0.00004 ^d		
	≥ 18 to < 63 cfs	0.0047 ^d	0.00009 ^d	0.0028 ^d	0.00005 ^d		
	≥ 63 to < 108 cfs	0.0057 ^d	0.00011 ^d	0.0035 ^d	0.00006 ^d		
	≥ 108 cfs	0.0067 ^d	0.00013 ^d	0.0042 ^d	0.00007 ^d		
Silver ² , total recoverable	< 8.0 cfs	3.2	0.060	1.9	0.036	weekly	24-hour composite
	≥ 8.0 to < 18 cfs	3.3	0.062	2.0	0.038		
	≥ 18 to < 63 cfs	3.2	0.060	1.9	0.036		
	≥ 63 to < 108 cfs	3.9	0.073	2.3	0.043		
	≥ 108 cfs	3.3	0.062	2.0	0.038		
Total Suspended Solids (TSS)	not dependent upon river flow	30 mg/l	--	20 mg/l	--	weekly	24-hour composite
pH, s.u	not dependent upon river flow	see Part 1.A.3.		see Part 1.A.3.		weekly	grab
Outfall Flow, cfs	--	--	--	--	--	continuous	recording
Temperature, °C	--	--	--	--	--	weekly	grab
E. coli, #/100 ml.	--	--	--	--	--	monthly	grab
Hardness, as CaCO ₃ , mg/l	--	--	--	--	--	monthly	24-hour composite
Whole Effluent Toxicity (WET) ³ , TU _c	--	--	--	--	--	quarterly	24-hour composite

Table 4 - Effluent Limitations and Monitoring Requirements for Outfall 003							
Parameter	Upstream River Flow Tier ¹	Effluent Limitations				Monitoring Requirements	
		Maximum Daily		Average Monthly			
		ug/l	lb/day	ug/l	lb/day	Sample Frequency	Sample Type
SFCdA River flow directly upstream of the outfall, cfs	--	--	--	--	--	daily	recording

Footnotes:

1 - The effluent limits for copper, silver, and mercury will be determined by the monthly average of the daily flows measured in the SFCdA River directly upstream of outfall 003. The permittee must report the average monthly flow on the DMR.

2 - Reporting is required within 24 hours of a maximum daily violation. See Part III.G.

3 - See Part I.B. for whole effluent toxicity testing requirements.

4 - See Part I.A.4. for the lead, mercury, and zinc compliance schedule.

5 - Monitoring for mercury is required twice per month. The monitoring must not occur on consecutive days or weeks.

2. The permittee must not discharge any floating, suspended, or submerged matter of any kind in concentrations causing a nuisance or objectionable condition or that may impair the designated beneficial uses of the receiving water.
3. The pH must not be less than 6.5 standard units (s.u.) [REDACTED]
4. Cadmium [REDACTED], Lead, Mercury, and Zinc Compliance Schedule.
 - a. The permittee must comply with the cadmium [REDACTED], lead, mercury, and zinc effluent limitations in Tables 1, 2, 3, and 4 on or before September 13, 2008.
 - b. The permittee shall design and implement a water recycling system on or before August 12, 2005.
 - c. The permittee shall have at the end of August 12, 2005, an additional 12 months for testing and analysis.

- d. If it is determined that a water treatment system is needed to comply with the effluent limits, the permittee shall design, build, and implement a water treatment system and comply with the effluent limits on or before September 13, 2008.
- e. During the period that the compliance schedule is in effect, the permittee shall comply with the interim limits in Table 5.

Table 5 - 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	50	0.028	15	0.012
	Lead ¹ , total recoverable	50	5.3	50	5.3
	Mercury ¹ , total	0.2 ²	0.0028 ²	0.2	0.0028
	Zinc ¹ , total recoverable	500	70	280	3.9
Outfall 003 and Outfall 002 when the outfall 003 waste stream is discharged through outfall 002	██████████	█	█	█	█
	Lead ¹ , total recoverable	50	5.2	270	5.7
	Mercury ¹ , total	0.2	0.0038	0.2	0.0038
	Zinc ¹ , total recoverable	500	9.4	410	7.7

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).

- f. ~~The permittee shall provide and implement the water recycling systems provide the design of the systems to IDEQ for comment.~~
 Until compliance with the effluent limits is achieved, the permittee must submit an annual Report of Progress to EPA and IDEQ which outlines the progress made towards achieving compliance. The report must be submitted by January 31st of each year. At a minimum the annual report must include:
 - i) An assessment of the previous years cadmium (outfall 001 and outfall 002 when the outfall 001 waste stream is discharged through outfall 002), lead, mercury, and zinc data and comparison to the final effluent limitations.
 - ii) A report on progress made toward meeting the final effluent limitations.

- iii) Further actions and milestones targeted for the upcoming year.
5. The permittee must collect effluent samples from the effluent stream after the last treatment unit prior to discharge into the receiving waters.
 6. Method Detection Limits. For all effluent monitoring, the permittee must use methods that can achieve a method detection limit (MDL) less than the effluent limitation.

For purposes of reporting on the DMR, if a value is greater than the MDL, the permittee must report the actual value. If a value is less than the MDL, the permittee must report "less than {numeric MDL}" on the DMR. For purposes of calculating monthly averages, zero may be used for values less than the MDL.

B. Whole Effluent Toxicity Testing Requirements. The permittee ~~must conduct~~ chronic toxicity tests on effluent samples from outfalls 001, 002, and 003. Testing must be conducted in accordance with subsections 1 through 6, below.

1. Test Species and Methods

- a. Tests must be run four times per year, during the months of February, May, August, and November.
- b. Toxicity testing must be conducted on 24-hour composite samples of effluent. In addition, a split of each sample collected must be analyzed for the chemical and physical parameters required in Part I.A above. When the timing of sample collection coincides with that of the sampling required in Part I.A, analysis of the split sample will fulfill the requirements of Part I.A. as well.
- c. The permittee must conduct tests with the water flea, *Ceriodaphnia dubia* (survival and reproduction test) and the fathead minnow, *Pimephales promelas* (larval survival and growth test) for the first three suites of tests. After this screening period, monitoring shall be conducted using the most sensitive species.
- d. The presence of chronic toxicity must be determined as specified in *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms*, Fourth Edition, EPA-821-R-02-213, October 2002.

e. Results must be reported in TU_c (chronic toxic units), where $TU_c = 100/IC_{25}$. See Part VI. for a definition of IC_{25} .

2. Toxicity Triggers. For the purposes of determining compliance with paragraphs I.B.4. and I.B.5., the chronic toxicity trigger is defined as toxicity exceeding the trigger values in Table 6.

Table 6: Chronic Toxicity Triggers and Receiving Water Concentrations			
Outfall	Flow Tier ¹	Chronic Toxicity Trigger, TU_c	Receiving Water Concentration (RWC), % effluent
001	< 14 cfs	1.9	53
	≥ 14 to < 32 cfs	2.3	43
	≥ 32 to < 113 cfs	4.1	24
	≥ 113 to < 194 cfs	12	8.3
	≥ 194 cfs	20	5
002 - when the outfall 001 waste stream is discharged through outfall 002	< 8.6 cfs	1.5	68
	≥ 8.6 to < 20 cfs	1.8	56
	≥ 20 to < 69 cfs	2.9	34
	≥ 69 to < 117 cfs	7.6	13
	≥ 117 cfs	12	8.3
002 - when the outfall 003 waste stream is discharged through outfall 002	< 8.6 cfs	1.4	71
	≥ 8.6 to < 20 cfs	1.6	63
	≥ 20 to < 69 cfs	2.4	42
	≥ 69 to < 117 cfs	5.9	17
	≥ 117 cfs	9.4	11
003	< 8.0 cfs	1.4	71
	≥ 8.0 to < 18 cfs	1.8	63
	≥ 18 to < 63 cfs	2.3	43
	≥ 63 to < 108 cfs	5.5	18
	≥ 108 cfs	8.7	11

footnote 1: The trigger values shall be determined by the average monthly flow directly upstream of the outfall for the testing month.

3. Quality Assurance

- a. The toxicity testing on each organism must include a series of five test dilutions and a control. The series must include the receiving water concentration (RWC), which is the dilution associated with the chronic toxicity trigger, and test dilutions which bracket the RWC. The RWCs for each outfall are provided in Table 6, above.
- b. All quality assurance criteria and statistical analyses used for chronic tests and reference toxicant tests must be in accordance with *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms*, Fourth Edition, EPA-821-R-02-213, October 2002, and individual test protocols.
- c. In addition to those quality assurance measures specified in the methodology, the following quality assurance procedures must be followed:
 - i) If organisms are not cultured in-house, concurrent testing with reference toxicants must be conducted. If organisms are cultured in-house, monthly reference toxicant testing is sufficient. Reference toxicant tests must be conducted using the same test conditions as the effluent toxicity tests.
 - ii) If either of the reference toxicant tests or the effluent tests do not meet all test acceptability criteria as specified in the test methods manual, the permittee must re-sample and re-test within 14 days of receipt of the test results.
 - iii) Control and dilution water must be receiving water or lab water, as appropriate, as described in the manual. If the dilution water used is different from the culture water, a second control, using culture water must also be used. Receiving water may be used as control and dilution water upon notification of EPA. In no case shall water that has not met test acceptability criteria be used for either dilution or control.

4. Accelerated Testing.

- a. If chronic toxicity is detected above a trigger specified in paragraph B.2., the permittee must conduct six more tests, bi-weekly, over a twelve week period. This accelerated testing must be initiated within two weeks of

receipt of the test results that indicate an exceedence. Part I.B.4.d., below, allows for the permittee to conduct only one accelerated test if the conditions under that part are met.

- b. If none of the six accelerated tests exceed the trigger, then the permittee may return to the normal testing frequency.
 - c. If any of the six tests exceed the trigger, then the permittee shall initiate a Toxicity Reduction Evaluation (TRE) in accordance with Part I.B.5.
 - d. **Initial Investigation.** If the permittee demonstrates through an evaluation of facility operations that the cause of the exceedence is known and corrective actions have been implemented, only one accelerated test is necessary. If toxicity exceeding the trigger is detected in this test, then the TRE requirements in Part I.B.5. shall apply. If toxicity does not exceed the trigger, then the permittee may return to the normal quarterly testing frequency.
5. **Toxicity Reduction Evaluation and Toxicity Identification Evaluation:**
- a. If a toxicity trigger is exceeded during accelerated testing under Part I.B.4.c. or d., the permittee must initiate a TRE in accordance with *Generalized Methodology for Conducting Industrial Toxicity Reduction Evaluations* (EPA/600/2-88/070) within fifteen (15) days of the exceedence. At a minimum, the TRE must include:
 - i) further actions to investigate and identify the cause of toxicity;
 - ii) actions the permittee will take to mitigate the impact of the discharge and to prevent the recurrence of toxicity; and
 - iii) a schedule for these actions.
 - b. If a TRE is initiated prior to completion of the accelerated testing, the accelerated testing schedule may be terminated, or used as necessary in performing the TRE.
 - c. The permittee may initiate a TIE as part of the TRE process. Any TIE must be performed in accordance with EPA guidance manuals, *Toxicity Identification Evaluation; Characterization of Chronically Toxic Effluents, Phase I* (EPA/600/6-91/005F), *Methods for Aquatic Toxicity Identification Evaluations, Phase II: Toxicity Identification Procedures for*

Samples Exhibiting Acute and Chronic Toxicity (EPA/600/R-92/080), and Methods for Aquatic Toxicity Identification Evaluations, Phase III: Toxicity Confirmation Procedures for Samples Exhibiting Acute and Chronic Toxicity (EPA-600/R-92/081).

6. Reporting

- a. The permittee must submit a full report of the results of the toxicity tests with the DMR for the month following sample collection.
- b. The permittee must submit the results of any accelerated testing, under Part I.B.4., within two weeks of receipt of the results from the lab. The full report must be submitted within four weeks of receipt of the results from the lab. If an initial investigation, under Part I.B.4.d. indicates the source of toxicity and accelerated testing is unnecessary, the result of the investigation must be submitted with the full report.
- c. The report of toxicity test results must include all relevant information outlined in Section 10.1, Report Preparation, of *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms*, Fourth Edition, EPA-821-R-02-213, October 2002. The full report must include: toxicity test results, dates of sample collection and initiation of each test, the toxicity triggers as defined in paragraph B.2., flow rate at the time of sample collection, and the results of the monitoring required in Part I.A.

C. Seepage Study and Hydrological Analysis. The permittee must 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. If there is a discharge from outfall 002 for more than 6 months, then a seepage study must also be conducted for tailings pond no. 2.

1. The permittee must quantify seepage by performing a water balance analysis for each tailings pond based on monitoring and evaluation of inflows, outflows, and estimated losses (e.g., evaporation). Seasonal variation must be addressed in each water balance analysis.
2. The permittee must perform a hydrological analysis to determine if seepage from the ponds enters the SFCdA River and to estimate the amount of this seepage. Seasonal variation must be addressed in the hydrological analysis.

3. Results of the seepage study and hydrological analysis must be submitted to EPA and IDEQ in a Seepage Study and Hydrological Analysis Report. The report must include a description of the methodology and data used to determine if seepage is occurring and the extent that seepage enters the SFCdA River and the results of the study.
 - a. The Seepage Study and Hydrological Analysis Report for tailings pond no. 1 and tailings pond no. 3 must be submitted to EPA and IDEQ within ~~3~~ years of the effective date of this permit.
 - b. If a discharge occurs through outfall 002 for more than 6 months, then a seepage study and hydrological analysis must be performed for tailings pond no. 2. The Seepage Study and Hydrological Analysis Report for tailings pond no. 2 must be submitted to EPA and IDEQ within 3 years following the initial six month period of discharge from outfall 002.

D. Ambient Water Monitoring. The permittee must perform the following receiving water monitoring program.

1. River Flow Monitoring. River flow of the South Fork Coeur d'Alene (SFCdA) River directly upstream of each outfall must be determined daily according to requirements in Section I.A. (Tables 1, 2, 3, and 4).
2. Water Quality Monitoring
 - a. The permittee must monitor the SFCdA River directly upstream of outfall 001 and directly upstream of outfall 003. If outfall 002 is being utilized, then the permittee must monitor directly upstream of outfall 002.
 - b. All locations must be monitored four times per year during February, May, August, and November.
 - c. All ambient samples must be grab samples.
 - d. Samples must be analyzed for the parameters listed in Table 7 to achieve method detection limits (MDLs) that are equivalent to or less than those listed in Table 7. The permittee may request different MDLs. Such a request must be in writing and must be approved by EPA.

Parameter	Units	Method Detection Limit (MDL)
Cadmium, dissolved	ug/l	0.1
Copper, dissolved	ug/l	1
Lead, dissolved	ug/l	5
Mercury, total	ug/l	0.001
Silver, dissolved	ug/l	0.1
Zinc, dissolved	ug/l	5
Total Suspended Solids (TSS)	mg/l	—
pH	standard units	--
Temperature	°C	—
Hardness ¹	mg/l CaCO ₃	—

footnote 1: Hardness shall be monitored upstream and downstream of the outfall.

3. Bioassessment Monitoring. The permittee must [REDACTED] conduct instream bioassessment monitoring to ensure compliance with the Idaho Water Quality Standards.

[REDACTED]

[REDACTED]

- c. Bioassessment monitoring shall be consistent with the most recent IDEQ Beneficial Use Reconnaissance Project workplan for wadeable streams.
4. Quality assurance/quality control plans for all the monitoring must be documented in the Quality Assurance Plan required under Part I.E.
5. The permittee must submit an annual report summarizing the results of the ambient water monitoring to EPA and IDEQ by January 31st of the next year. At a minimum, the report must include: the sample locations; dates of sample collection and analyses; analytical and bioassessment results; a discussion of field sampling and laboratory methods, including quality assurance/quality

control; data handling; and, in addition for the bioassessment monitoring, copies of the field forms, macroinvertebrate identification and enumeration, fish taxa and abundance.

- E. Quality Assurance Plan.** The permittee must develop a quality assurance plan (QAP) for all monitoring required by this permit. The plan must be submitted to EPA for review within 60 days of the effective date of this permit and implemented within 120 days of the effective date of this permit. Any existing QAPs may be modified for submittal under this section.
1. The QAP must be designed to assist in planning for the collection and analysis of effluent and receiving water samples in support of the permit and in explaining data anomalies when they occur.
 2. Throughout all sample collection and analysis activities, the permittee must use the EPA-approved QA/QC and chain-of-custody procedures described in the most recent editions of *Requirements for Quality Assurance Project Plans (EPA/QA/R-5)* and *Guidance for Quality Assurance Project Plans (EPA/QA/G-5)*. The QAP must be prepared in the format which is specified in these documents. These documents can be found at the following EPA websites: www.epa.gov/Region10/offices/oea/epaqar5.pdf and www.epa.gov/swrust1/cat/epaqag5.pdf.
 3. The permittee must amend the QAP whenever there is a modification in sample collection, sample analysis, or other procedure addressed by the QAP
 4. Copies of the QAP must be kept on site and made available to EPA and/or IDEQ upon request.

II. BEST MANAGEMENT PRACTICES PLAN

- A. Purpose.** Through implementation of the best management practices (BMP) plan the permittee must prevent or minimize the generation and the potential for the release of pollutants from the facility to the waters of the United States.
- B. Development and Implementation Schedule.** The permittee must develop and implement a BMP Plan which achieves the objectives and the specific requirements listed below. A copy of the BMP Plan must be submitted to EPA within 120 days of the effective date of the permit. Any existing BMP plans may be modified for submittal and approval under this section. The permittee must implement the

provisions of the plan as conditions of this permit within 180 days of the effective date of this permit.

- C. Objectives.** The permittee must develop and amend the BMP Plan consistent with the following objectives for the control of pollutants.
1. The number and quantity of pollutants and the toxicity of effluent generated, discharged or potentially discharges at the facility must be minimized by the permittee to the extent feasible by managing each waste stream in the most appropriate manner.
 2. Under the BMP Plan and any Standard Operating Procedures included in the BMP Plan, the permittee must ensure proper operation and maintenance of water management and wastewater treatment systems. BMP Plan elements must be developed in accordance with good engineering practices.
 3. Each facility component or system must be examined for its waste minimization opportunities and its potential for causing a release of significant amounts of pollutants to waters of the United States due to equipment failure, improper operation, natural phenomena such as rain or snowfall, etc. The examination must include all normal operations and ancillary activities including material storage areas, storm water, in-plant transfer, material handling and process handling areas, loading or unloading operations, spillage or leaks, sludge and waste disposal, or drainage from raw material storage.
- D. Elements of the BMP Plan.** The BMP Plan must be consistent with the objectives above. The BMP Plan should be consistent with the general guidance contained in *Guidance Manual for Developing Best Management Practices* (EPA 833-B-93-004, October 1993) or any subsequent revisions to this guidance document. The BMP Plan must include, at a minimum, the following items:
1. Statement of BMP policy. The BMP Plan must include a statement of management commitment to provide the necessary financial, staff, equipment, and training resources to develop and implement the BMP Plan on a continuing basis.
 2. Structure, functions, and procedures of the BMP Committee. The BMP Plan must establish a BMP Committee responsible for developing, implementing, and maintaining the BMP Plan.
 3. Release Identification and Assessment. A release identification is the systematic cataloging of areas at a facility with ongoing or potential releases to

the environment. A release assessment is used to determine the impact on human health and the environment of any on-going or potential release identified. The identification and assessment process involves the evaluation of both current discharges and potential discharges.

4. **Measures and Controls.** The permittee must develop a description of pollution prevention controls, BMPs, and other measures appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in the BMP Plan must reflect identified potential sources of pollutants at the facility. The description of management controls must address the following minimum components:
 - a. **Good Housekeeping.** A program by which the facility is kept in a clean and orderly fashion to prevent releases to the environment.
 - b. **Preventative Maintenance.** A program focused on preventing releases caused by equipment problems, rather than repair of equipment after problems occur.
 - c. **Inspections.** A program established to oversee facility operations and identify actual or potential environmental releases and to ensure that BMPs are being implemented.
 - d. **Security.** A program designed to avoid releases due to accidental or intentional entry.
 - e. **Employee Training.** A program developed to instill in employees an understanding of the BMP Plan.
 - f. **Recordkeeping and Reporting.** A program designed to maintain relevant information and foster communication.
5. **Specific Best Management Practices.** The BMP Plan must establish specific BMPs or other measures which ensure that the following specific requirements are met:
 - a. **Solids, sludges, or other pollutants removed in the course of treatment or control of water and wastewaters must be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.**

- b. Ensure proper management of solid and hazardous waste in accordance with regulations promulgated under the Resource Conservation and Recovery Act (RCRA). Management practices required under RCRA regulations must be referenced in the BMP Plan.
- c. Ensure proper management of materials in accordance with Spill Prevention, Control, and Countermeasure (SPCC) plans under Section 311 of the Act and 40 CFR Part 112. The BMP Plan may incorporate any part of such plans into the BMP Plan by reference.

E. Annual Review and Certification.

- 1. **Annual Review.** An annual review of the BMP Plan must be conducted by the responsible manager and BMP committee.
- 2. **Annual Certification.** The permittee must prepare a certified statement that the above reviews have been completed and that the BMP Plan fulfills the requirements set forth in the permit. This statement must be signed in accordance with Part V.E. (Signatory Requirements) of this permit. This statement must be submitted to EPA on or before January 31st of each year of operation under this permit.

F. Documentation. The permittee must maintain a copy of the BMP Plan at the facility and make it available to EPA or an authorized representative upon request.

G. BMP Plan Modification.

- 1. The permittee must amend the BMP Plan whenever there is a change in the facility or in the operation of the facility which materially increases the generation of pollutants or their release or potential release to surface waters.
- 2. The permittee must amend the BMP Plan whenever it is found to be ineffective in achieving the general objective of preventing and minimizing the generation and the potential for the release of pollutants from the facility to the waters of the United States and/or the specific requirements above.
- 3. Any changes to the BMP Plan must be consistent with the objectives and specific requirements listed above. All changes in the BMP Plan must be reported to EPA in writing.

III. MONITORING, RECORDING AND REPORTING REQUIREMENTS

- A. Representative Sampling (Routine and Non-Routine Discharges).** Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

In order to ensure that the effluent limits set forth in this permit are not violated at times other than when routine samples are taken, the permittee must collect additional samples at the appropriate outfall whenever any discharge occurs that may reasonably be expected to cause or contribute to a violation that is unlikely to be detected by a routine sample. The permittee must analyze the additional samples for those parameters limited in Part I.A. of this permit that are likely to be affected by the discharge.

The permittee must collect such additional samples as soon as the spill, discharge, or bypassed effluent reaches the outfall. The samples must be analyzed in accordance with paragraph III.C ("Monitoring Procedures"). The permittee must report all additional monitoring in accordance with paragraph III.D ("Additional Monitoring by Permittee").

- B. Reporting of Monitoring Results.** The permittee must summarize monitoring results each month on the Discharge Monitoring Report (DMR) form (EPA No. 3320-1) or equivalent. The permittee must submit reports monthly, postmarked by the 20th day of the following month. The permittee must sign and certify all DMRs, and all other reports, in accordance with the requirements of Part V.E. of this permit ("Signatory Requirements"). The permittee must submit the legible originals of these documents to the Director, Office of Water, with copies to IDEQ at the following addresses:

United States Environmental Protection Agency, Region 10
1200 Sixth Avenue, OW-133
Seattle, Washington 98101

Idaho Department of Environmental Quality
Coeur d'Alene Regional Office
2110 Ironwood Parkway
Coeur d'Alene, Idaho 83814

- C. Monitoring Procedures.** Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedures have been specified in this permit.

- D. Additional Monitoring by Permittee.** If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the permittee must include the results of this monitoring in the calculation and reporting of the data submitted in the DMR.

Upon request by the Director, the permittee must submit results of any other sampling, regardless of the test method used.

- E. Records Contents.** Records of monitoring information must include:

1. the date, exact place, and time of sampling or measurements;
2. the name(s) of the individual(s) who performed the sampling or measurements;
3. the date(s) analyses were performed;
4. the name(s) of the individual(s) who performed the analyses;
5. the analytical techniques or methods used; and
6. the results of such analyses.

- F. Retention of Records.** The permittee must retain records of all monitoring information, including, all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of DMRs, a copy of the NPDES permit, and records of all data used to complete the application for this permit, for a period of at least five years from the date of the sample, measurement, report or application. This period may be extended by request of the Director or IDEQ at any time.

- G. Twenty-four Hour Notice of Noncompliance Reporting**

1. The permittee must report the following occurrences of noncompliance by telephone within 24 hours from the time the permittee becomes aware of the circumstances:
 - a. any noncompliance that may endanger health or the environment;
 - b. any unanticipated bypass that exceeds any effluent limitation in the permit (See Part IV.F., "Bypass of Treatment Facilities");
 - c. any upset that exceeds any effluent limitation in the permit (See Part IV.G., "Upset Conditions"); or
 - d. any violation of a maximum daily discharge limitation for any of the pollutants listed in Tables 1, 2, 3, 4, and 5 of Part I.A. of the permit requiring 24-hour reporting.

2. The permittee must also provide a written submission within five days of the time that the permittee becomes aware of any event required to be reported under subpart 1 above. The written submission must contain:
 - a. a description of the noncompliance and its cause;
 - b. the period of noncompliance, including exact dates and times;
 - c. the estimated time noncompliance is expected to continue if it has not been corrected; and
 - d. steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
 3. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the NPDES Compliance Hotline in Seattle, Washington, by telephone, (206) 553-1846.
 4. Reports must be submitted to the addresses in Part III.B ("Reporting of Monitoring Results").
- H. Other Noncompliance Reporting.** The permittee must report all instances of noncompliance, not required to be reported within 24 hours, at the time that monitoring reports for Part III.B ("Reporting of Monitoring Results") are submitted. The reports must contain the information listed in Part III.G.2 of this permit ("Twenty-four Hour Notice of Noncompliance Reporting").
- I. Changes in Discharge of Toxic Substances.** The permittee must notify the Director and IDEQ as soon as it knows, or has reason to believe:
1. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - a. One hundred micrograms per liter (100 ug/l);
 - b. Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

- c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
 - d. The level established by the Director in accordance with 40 CFR 122.44(f).
2. That any activity has occurred or will occur that would result in any discharge, on a non-routine or infrequent basis, of any toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
- a. Five hundred micrograms per liter (500 ug/l);
 - b. One milligram per liter (1 mg/l) for antimony;
 - c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
 - d. The level established by the Director in accordance with 40 CFR 122.44(f).

J. Compliance Schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date.

IV. COMPLIANCE RESPONSIBILITIES

A. Duty to Comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application.

B. Penalties for Violations of Permit Conditions

1. **Civil Penalties.** Pursuant to 40 CFR 19 and the Act, any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under

sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently \$27,500 per day for each violation).

2. **Administrative Penalties.** Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Pursuant to 40 CFR 19 and the Act, administrative penalties for Class I violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently \$11,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$27,500). Pursuant to 40 CFR 19 and the Act, penalties for Class II violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently \$11,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$137,500).
3. **Criminal Penalties:**
 - a. **Negligent Violations.** The Act provides that any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both.
 - b. **Knowing Violations.** Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not

more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both.

- c. **Knowing Endangerment.** Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the Act, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.
 - d. **False Statements.** The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
- C. Need to Halt or Reduce Activity not a Defense.** It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
- D. Duty to Mitigate.** The permittee must take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

- E. Proper Operation and Maintenance.** The permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of the permit.
- F. Bypass of Treatment Facilities**
1. Bypass not exceeding limitations. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this Part.
 2. Notice.
 - a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it must submit prior notice to the Director and IDEQ, if possible, at least 10 days before the date of the bypass.
 - b. Unanticipated bypass. The permittee must submit notice of an unanticipated bypass as required under Part III.G ("Twenty-four Hour Notice of Noncompliance Reporting").
 3. Prohibition of bypass.
 - a. Bypass is prohibited, and the Director may take enforcement action against the permittee for a bypass, unless:
 - i) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

iii) The permittee submitted notices as required under paragraph 2 of this Part.

- b. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 3.a. of this Part.

G. Upset Conditions

1. **Effect of an upset.** An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the permittee meets the requirements of paragraph 2 of this Part. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
2. **Conditions necessary for a demonstration of upset.** To establish the affirmative defense of upset, the permittee must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - a. An upset occurred and that the permittee can identify the cause(s) of the upset;
 - b. The permitted facility was at the time being properly operated;
 - c. The permittee submitted notice of the upset as required under Part III.G, "Twenty-four Hour Notice of Noncompliance Reporting;" and
 - d. The permittee complied with any remedial measures required under Part IV.D, "Duty to Mitigate."
3. **Burden of proof.** In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

H. Toxic Pollutants. The permittee must comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

I. Planned Changes. The permittee must give notice to the Director and IDEQ as soon as possible of any planned physical alterations or additions to the permitted facility whenever:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or
 2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements under Part III.I ("Changes in Discharge of Toxic Substances").
- J. Anticipated Noncompliance.** The permittee must give advance notice to the Director and IDEQ of any planned changes in the permitted facility or activity that may result in noncompliance with this permit.

V. GENERAL PROVISIONS

- A. Permit Actions.** This permit may be modified, revoked and reissued, or terminated for cause as specified in 40 CFR 122.62, 122.64, or 124.5. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- B. Duty to Reapply.** If the permittee intends to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. In accordance with 40 CFR 122.21(d), and unless permission for the application to be submitted at a later date has been granted by the Regional Administrator, the permittee must submit a new application at least 180 days before the expiration date of this permit.
- C. Duty to Provide Information.** The permittee must furnish to the Director and IDEQ, within a reasonable time, any information that the Director or IDEQ may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee must also furnish to the Director or IDEQ, upon request, copies of records required to be kept by this permit.
- D. Other Information.** When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or that it submitted incorrect information in a permit application or any report to the Director or IDEQ, it must promptly submit the omitted facts or corrected information.

E. Signatory Requirements. All applications, reports or information submitted to the Director and IDEQ must be signed and certified as follows.

1. All permit applications must be signed as follows:
 - a. For a corporation: by a responsible corporate officer.
 - b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.
 - c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.
2. All reports required by the permit and other information requested by the Director or IDEQ must be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - a. The authorization is made in writing by a person described above;
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company; and
 - c. The written authorization is submitted to the Director and IDEQ.
3. Changes to authorization. If an authorization under Part V.E.2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part V.E.2. must be submitted to the Director and IDEQ prior to or together with any reports, information, or applications to be signed by an authorized representative.
4. Certification. Any person signing a document under this Part must make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate

the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- F. Availability of Reports.** In accordance with 40 CFR 2, information submitted to EPA pursuant to this permit may be claimed as confidential by the permittee. In accordance with the Act, permit applications, permits and effluent data are not considered confidential. Any confidentiality claim must be asserted at the time of submission by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice to the permittee. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR 2, Subpart B (Public Information) and 41 Fed. Reg. 36902 through 36924 (September 1, 1976), as amended.
- G. Inspection and Entry.** The permittee must allow the Director, IDEQ, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:
1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
 2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
 4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.
- H. Property Rights.** The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, nor any infringement of state or local laws or regulations.

- I. **Transfers.** This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act. (See 40 CFR 122.61; in some cases, modification or revocation and reissuance is mandatory).
- J. **State Laws.** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.

VI. DEFINITIONS

1. "Act" means the Clean Water Act.
2. "Administrator" means the Administrator of the EPA, or an authorized representative.
3. "Average monthly discharge limitation" means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.
4. "Best Management Practices" (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
5. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.
6. "CWA" means the Clean Water Act.
7. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

8. "Director" means the Director of the Office of Water, EPA, or an authorized representative.
9. "DMR" means discharge monitoring report.
10. "EPA" means the United States Environmental Protection Agency.
11. "Grab" sample is an individual sample collected over a period of time not exceeding 15 minutes.
12. "IC₂₅" means inhibition concentration 25. The IC₂₅ is a point estimate of the toxicant concentration that would cause a 25% reduction in a nonlethal biological measurement of the test organisms, such as reproduction or growth.
13. "IDEQ" means Idaho Department of Environmental Quality.
14. "Maximum daily discharge limitation" means the highest allowable "daily discharge."
15. "Method Detection Limit (MDL)" means the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.
16. "QA/QC" means quality assurance/quality control.
17. "Regional Administrator" means the Regional Administrator of Region 10 of the EPA, or the authorized representative of the Regional Administrator.
18. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
19. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

20. "24-hour composite" sample means a combination of at least 8 sample aliquots of at least 100 milliliters, collected at periodic intervals during the operating hours of the facility over a 24 hour period. The composite must be flow proportional; either the time interval between each aliquot or the volume of each aliquot must be proportional to either the effluent flow at the time of sampling or the total effluent flow since the collection of the previous aliquot. The sample aliquots must be collected and stored in accordance with procedures prescribed in the most recent edition of *Standard Methods for the Examination of Water and Wastewater*.

21



IDAHO DEPARTMENT
OF HEALTH AND WELFARE
DIVISION OF
ENVIRONMENTAL QUALITY

2110 Northway Parkway Coeur d'Alene, ID 83814-2672 (208) 887-2224

September 3, 1993

Mr. Michael White
Vice President - General Counsel
Hecla Mining Company
6500 Mineral Drive
Coeur d'Alene, ID 83814

Mr. Lynn McKee, Director
U.S. Environmental Protection Agency,
Idaho Operations Office
422 W Washington Street
Boise, ID 83702

Dear Mike and Lynn:

Two meetings between representatives of the Idaho Division of Environmental Quality (DEQ), the U.S. Environmental Protection Agency (EPA), and Hecla have resulted in an understanding in principle of the need to develop site-specific water quality criteria for the South Fork Coeur d'Alene River. Despite the differences concerning interpretation of water quality standards for the South Fork, the agencies and Hecla will proceed with a program designed to identify site-specific criteria upon which permit limitations will be based. This effort is based on the recognition of mutual dilemmas shared by the agencies and Hecla in the water quality management of the South Fork and the need for a mechanism to move forward with a solution. The details of the solution mutually developed by DEQ, EPA and Hecla are set out in the following paragraphs.

Hecla, EPA and DEQ share a common goal of maintaining levels of water quality which are supportive of cold water biota in the South Fork Coeur d'Alene River above Canyon Creek. They further accept the interim goal of the Clean Water Act of making waters "fishable and swimmable", and recognize this goal pertains to impaired reaches of the river below Canyon Creek.

The agencies and Hecla share dilemmas which have a common root cause, and affect respective efforts to manage resources and do business along the South Fork. Recovery efforts for the South Fork below Canyon Creek will cause these dilemmas to persist unless the agencies and industry work together creatively to seek solutions.

The set of dilemmas facing the agencies and Hecla are as follows:

DEQ Freshwater biota water quality criteria for the trace (heavy) metals zinc, cadmium and lead are often exceeded in the reach above Canyon Creek, even though

White/McKee

September 3, 1993

Page 2

bio-monitoring results (macroinvertebrate analysis and fish population and age class distribution) provide evidence that cold water biota use is in full support. DEQ prefers to manage with water quality criteria that are reflective of supported uses.

- : DEQ is spending time and resources on this segment of the river due to recurring disagreements over use designations and water quality standards interpretations. This segment meets the Interim water quality goal for recovery of other impaired segments of the drainage (Interim South Fork Coeur d'Alene River Water Quality Improvement Plan).
- Hecla: In view of promulgation of the National Toxics Rule (NTR), the proposed Idaho toxics regulations and changes in beneficial use designations and interpretations, Hecla requires discharge limits which will not curtail or block expansion of its mineral extraction business while supporting the uses of the waters.
- : Certainty about its permit requirements would minimize some risks in Hecla's business activities.
- EPA : EPA is spending time and resources on this segment of the river due to recurring disagreements over use designations and water quality standards interpretations. This segment meets the interim water quality goal for recovery of other impaired segments of the drainage (Interim South Fork Coeur d'Alene River Water Quality Improvement Plan).
- : EPA is spending staff and legal resources on the Lucky Friday permit issues.

Since the river reach above Canyon Creek is apparently supporting its uses with the current operation of the Lucky Friday Mine and discharge permit, it is proposed the agencies and Hecla work cooperatively to develop a solution which will protect the full support of the uses of the river under site-specific trace metals criteria. The approach assumes that Idaho has approved toxics standards and is not constrained in the development of site-specific criteria by the National Toxics Rule, recognizing that the NTR has been challenged at the Federal level. A broad outline of the solution is as follows:

- : The agencies and Hecla will work cooperatively to develop the funding necessary to complete the site-specific science required to set site-specific criteria.
- : The agencies and Hecla will commit to a reasonable time line to complete the site-specific science, develop criteria and issue a new permit to Hecla. A work group of DEQ, EPA and Hecla staff will develop the schedule.

White/McKee

September 3, 1993

Page 3

- : Site-specific science will determine site-specific trace metals criteria for the South Fork.
- : The site-specific science and resulting criteria will determine the effluent limits.
- : The work outline to guide the site-specific science will be agreed upon by a consensus of the technical staffs of DEQ, EPA and Hecla. The Coeur d'Alene Tribe will be invited to provide an *ad hoc* representative to this work group.
- : DEQ, EPA and Hecla will help collect information necessary for permit reissuance.
- : While the agencies and Hecla pursue development of the site-specific science necessary to set trace metals criteria and for development of permit limitations, the existing Lucky Friday permit provisions will remain.

I believe the above plan will provide the agencies and Hecla a mechanism through which the water quality of the South Fork can be managed on sound scientific information. I appreciate your support in the development of this course of action.

Sincerely,

Gwen P. Burr

Gwen P. Burr, Regional Administrator
Division of Environmental Quality

Concurrence:

Michael White
Michael White, Vice President - General Counsel
Hecla Mining Company

9/24/93
Date

Lynn McKee
Lynn McKee, Director
Idaho Operations Office
U. S. Environmental Protection Agency

9/15/93
Date

c: Joe Nagel