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

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

TECK ALASKA INCORPORATED'S MOTION FOR EXPEDITED REVIEW

Teck Alaska Incorporated ("Teck") is the operator of the Red Dog Mine ("Mine") and the permittee in Appeal No. 10-04 of NPDES Permit No. AK 003865-3 ("permit"). The Mine is at a critical phase in its operations. The present ore body (the "Main Deposit") is nearly depleted, and Teck must soon transition mining from the Main Deposit into an adjacent ore body called "Aqqaluk." Preparatory actions to develop the Aqqaluk ore body must commence by May 2010 to allow for uninterrupted mining and production of Aqqaluk ore by first quarter 2011. If Aqqaluk development does not commence by May 2010, Teck would likely make a decision at that time to shut down the Mine in October 2010. The stay from this appeal results in the

imposition of permit limitations that are unattainable. In light of these exigencies, Teck respectfully asks the Board to hear the proceeding on an accelerated timeframe.

I. PERMITTING BACKGROUND

A. NPDES Permitting

The Red Dog Mine commenced operations in 1988. The original NPDES permit was issued in 1985, administratively extended upon expiration in 1990, and renewed in 1998. The 1998 permit imposed water quality-based effluent limitations and established end-of-the pipe limits for total dissolved solids ("TDS"). These TDS limitations were based on a water quality standard for TDS, in effect at that time, which established the standard as "1/3 above background levels." The measured TDS in the Mine's receiving water, Red Dog Creek, was 132 mg/l. Consequently, EPA determined in the 1998 renewal permit that it was required to impose TDS limits of 170 mg/l (monthly average) and 196 mg/l (daily maximum). At permit issuance, it was recognized that the TDS limitations were not achievable. A Clean Water Act citizens suit filed against Teck in 2002 heightened the sense of urgency to develop a solution to the Mine's TDS compliance issues.

The State of Alaska, the U.S. Environmental Protection Agency ("EPA"), and Teck worked to evaluate the underlying water quality standards for TDS through studies on the receiving waterbody and its uses and subsequently developed new TDS limits. The permit was modified in 2003 shortly before it expired. The new TDS limits were appealed by third parties. The Board remanded the TDS limit for the so-called "grayling spawning period," a three to four week period in the May-June timeframe. In re Teck Cominco Alaska, Inc., Red Dog Mine, 11 E.A.D. 457 (EAB 2004).

EPA addressed the 2004 remand through renewal of the permit in March 2007. In support of the renewal activities, the State, EPA, and Teck undertook additional work to better understand the effects of TDS on spawning grayling. That work led to a new site-specific water quality criterion for the grayling spawning period (1,500 mg/l), which was approved by EPA in April 2006. The 2007 renewal permit was appealed by third parties, and was subsequently withdrawn by EPA during September 2007 due to NEPA considerations. See In re Teck Cominco Alaska, Inc. Red Dog Mine, NPDES Appeal Nos. 07-08 and 07-09 (EAB, Oct. 10, 2007) (order dismissing petitions for review). Today, the site-specific TDS water quality standard for Red Dog Creek is 1,500 mg/l for both the grayling spawning period and non-grayling spawning timeframes. Resolution of the pending appeal is necessary to allow effluent limitations based on these standards to come into effect.

B. Aqqaluk Permitting

Teck has nearly exhausted the Main Deposit, which is the area it has been mining since 1988. There is another ore body – Aqqaluk – directly adjacent to the Main Deposit. Aqqaluk and another smaller deposit, Qanaiyaq, will provide enough ore to continue operations at Red Dog until 2031. The Aqqaluk ore body would be mined using existing infrastructure and processing facilities.

Teck has been working with EPA (lead agency) and other State and federal agencies to permit Aqqaluk. Teck's original plan was to complete the permitting of Aqqaluk by early 2008. It was recognized that the original Environmental Impact Statement ("EIS") for Red Dog, prepared in 1984, needed to be updated to reflect new information, and that Aqqaluk should be evaluated under a supplemental EIS ("SEIS"). The timing of Aqqaluk permitting had to be coordinated with the development of a reclamation and closure plan for Aqqaluk overseen by the

State. The closure plan preceded the development of the Aqqaluk SEIS and later formed the basis for a number of the alternatives evaluated in the SEIS.

The focus by EPA and Teck in 2003 (modification proceeding) and in the 2006-2007 timeframe (renewal proceeding) was to address the most critical compliance issue at the Mine, which was the TDS limits from the 1998 permit. Ultimately, the timeframe for renewal of the permit (2006-2007) merged into the timeframe for commencing Aqqaluk permitting. When the 2007 renewal permit was challenged, this led to a decision by EPA to withdraw the 2007 renewal permit and address the renewal in the context of the Aqqaluk SEIS. This merger had the effect of (i) continuing Teck's noncompliance under the 1998 permit; and (ii) extending the timeline for Aqqaluk permitting such that there is now extreme urgency in order to achieve uninterrupted operations.

II. THE APPEAL SHOULD BE EXPEDITED

A. Board Standards for Expediting Appeals

The Board has acted on motions for expedited consideration in similar cases involving exigent circumstances. See In re Hawaii Electric Light Co., Inc., PSD Appeal Nos. 01-24 through 01-29 (EAB Nov. 27, 2001) (Order Denying Review). Before denying review in Hawaii Electric Light, the Board issued, on October 18, 2001, its Order Granting Motion to Intervene and to Expedite. Paragraph II of that Order (at 2) stated:

It is the Board's practice to assign permit appeals under 40 CFR 124 involving new source construction the highest priority. Of course, any such priority consideration must be consistent with the Board's obligation to give appropriate consideration to the issues presented to it for resolution. Accordingly, the petitions for review in this matter will be considered on an expedited basis and a decision on review will be issued upon completion of the Board's deliberations.

In a recent case involving exigent circumstances relating to Shell's planned drilling in the Alaskan Outer Continental Shelf, the Board stated:

It is the Board's general practice to assign petitions for review concerning issues under the Prevention of Significant Deterioration regulations high priority in its docket (relative to other petitions for review where resolution is not a bar to operation or construction).

In re Shell Offshore, Inc., Kulluk Drilling Unit, OCS Appeal Nos. 08-01 through 08-03, at 2 n.3 (EAB, Aug. 6, 2008) ("Shell II") (acknowledging request for expedited review in OCS/PSD case involving time-sensitive Arctic drilling activities); see also In re ConocoPhillips Co., PSD Appeal No. 07-02, at 2 (EAB, Oct. 1, 2007) ("ConocoPhillips") (expediting briefing schedule and acknowledging that PSD appeals receive the highest priority in the docket "relative to other appeals where resolution of the appeal is not a prerequisite to a facility's construction or operation"); In re Shell Offshore, Inc., Kulluk Drilling Unit and Frontier Discoverer Drilling Unit, OCS Appeal Nos. 07-01 and 07-02 (EAB, July 20, 2007) ("Shell I") (recognizing time critical nature of the underlying activities and establishing an expedited briefing schedule after a teleconference with the parties on "day 3" after the appeals were filed).

B. Mining Operations and Reserves

Teck operates the Red Dog Mine on a year-round basis.¹ Concentrated ore ("concentrate") is trucked to an ocean port facility for storage until it can be shipped to smelters during the shipping season, which lasts from July through October. Freeze-up occurs at the Mine during September. During the October - June period, concentrate is stored in concentrate storage buildings at the Port facility.

Teck has been mining ore from the Main Deposit since mine start-up in 1988. That resource is nearly depleted, and Teck must soon transition mining into the adjacent Aqqaluk ore body. Teck's mine plan indicates that ore from Aqqaluk will be needed during the first quarter of 2011 to maintain uninterrupted operations. The necessity for, and the timing of, a potential

¹ Teck only discharges treated water from approximately late May through late September.

shutdown hinges on two factors: (i) the ore remaining in the Main Deposit and the ability of the Mine to produce the required daily tonnage at a consistent rate; and (ii) the timeframe required to develop the Aqqaluk ore body and realize a state of consistent ore production that can be blended with remaining ore from the Main Deposit.

Teck is already experiencing significant challenges mining the remaining ore in the Main Deposit. First, the model used to predict the location and quality of the remaining ore is based on a drill hole spacing that introduces inherent uncertainty near the margins due to geologic interpretation. As Teck reaches the final stages of the Main Deposit, it is increasingly finding locations where the modeled ore is absent or subeconomic (low grade). Second, as the Main Deposit is mined towards the ultimate limits, the pit becomes wetter, deeper, and narrower, leading to constraints on the size of the working area available at the bottom. Last, the steepness of the pit walls creates safety and operating concerns that must be managed, thereby further limiting the production from the Main Deposit. The operational challenges outlined above will have an increasingly significant impact on mining efficiency and production, likely rendering continuing production from the Main Deposit alone beyond October 2010 uneconomic.

Under the original mine plan, Teck would already – at this point in time – be mining Aqqaluk and blending ore from that location with the remaining ore from the Main Deposit. However, accessing the Aqqaluk ore body requires development time. Organic cover material needs to be removed and stockpiled, stormwater controls need to be constructed, access roads need to be built, and waste rock and overburden need to be removed. Under the original mine plan, these preparatory activities were scheduled to take eleven months. Based on the exigent circumstances now at hand, Teck developed a compressed schedule, and has concluded that if development activities can get underway by May 2010, overburden and waste rock stripping

activities can be completed by the end of 2010, leading to production of Aqqaluk ore during first quarter 2011.

May 2010 is a critical month. It is the last opportunity to complete weather-dependent development activities before spring break-up. Certain tasks, such as construction of ditches and environmental controls, must be constructed before the snow melts. Otherwise, development at Aqqaluk, even if authorized, would need to be deferred until after break-up (generally July).

These factors have led Teck to conclude that if it is not in a position to commence the development of the Aqqaluk deposit during May, a shutdown of the Mine would likely occur after the cessation of fall shipping activities in October.

C. Economic and Social Impacts of Red Dog Mine

A shutdown of the Red Dog Mine would be devastating to the local economy and regional communities. The Mine is situated in Northwest Alaska within the Northwest Arctic Borough ("NAB"). The NAB encompasses 36,000 square miles, about the same size as the State of Indiana. The region is very rural, with approximately 7,300 residents living in a total of 11 communities. There are no roads connecting any of the villages to each other or to other parts of Alaska. The Mine is one of the few private sector employers in the region. In its efforts to employ people from the region, the Mine flies personnel to the Mine on a shift rotation schedule from each of these eleven communities. Family wage jobs in this region are irreplaceable, as there are few alternatives for year-round employment. If Red Dog were to shut down, there would be a very adverse destabilizing effect on the families and communities of the region.

The economic and social consequences associated with the Red Dog Mine have been extensively discussed in the SEIS completed during October 2009.² Some of the highlights include:

- **Employment.** With a total 2007 payroll of \$45.8 million, the Mine provides 465 full-time jobs and approximately 78 part-time jobs annually, for a total of 543 jobs.³ A temporary mine shutdown would result in the loss of employment for upwards of 500 people. A shutdown would trigger immediate economic problems and social ills, which are exacerbated by the fact that the Mine is located in an area with few, if any, other private sector employment opportunities.
- **NWAB Taxes.** The NWAB stands to lose more than two-thirds of its operating budget from a prolonged shutdown.⁴ As the sole taxpayer in the NWAB, the Mine provided the NWAB approximately \$8.6 million in payments in lieu of taxes ("PILT") in 2007.⁵ Since 2003, almost 70% of NWAB revenues have come from Red Dog Mine. Without this annual payment, the NWAB would likely have difficulty repaying its school district bonds, and would need to drastically cut back on services if it could not replace the revenue with another source.⁶

² The SEIS can be viewed at: <http://www.reddogseis.com>. The discussion on socioeconomic issues is found at Chapter 3-17. This section of the SEIS is attached as Exhibit 1.

³ SEIS at 3-309.

⁴ Since 2003, almost 70% of the Borough's revenues have come from the Red Dog Mine "payment in lieu of taxes" agreement between Teck and the NWAB. SEIS at 3-316. The Teck-NWAB agreement would remain in effect for a period of twelve months following suspension or closure. *Id.* at 3-315. All payments would be required to continue during this period. At the end of the twelve-month period, the agreement can be terminated without penalty.

⁵ SEIS at 3-316.

⁶ SEIS at 3-325.

- **Payments to Alaska Native Corporations.** Alaska Native Corporations, particularly NANA Regional Corporation ("NANA"), owner of the Red Dog Mine, would lose a significant amount of income if the shutdown continues for any length of time. In 2007, royalty payments to NANA totaled \$72.3 million, 70% of which was shared with other Alaska Native Corporations throughout the State of Alaska under Section 7(i) of the Alaska Natives Claims Settlement Act ("ANCSA").⁷ In 2008, the payment to NANA was \$212 million, with 70% of that amount distributed to other Alaska Native Corporations.
- **Impact on Overall State Economy.** Closure of the Mine would adversely impact the overall State and local economies. In 2007 alone, Teck spent \$321 million in Alaska supporting the Mine's operations, including purchases of goods and services from 350 businesses and organizations, royalty and tax payments, and its own payroll.⁸ The Mine's closure will also translate to a loss of support to regional non-profit programs. In 2007, the Mine contributed nearly \$1 million to non-profit organizations. Of this total amount, nearly \$600,000 was donated to organizations in the NWAB.⁹
- **Impact on Teck.** The Red Dog Mine is one of Teck Resources Limited's core assets and contributes in significant ways to the organization's success. Teck Resources Limited also owns a smelter in Trail, British Columbia. Fifty percent

⁷ SEIS 3-314. Under Section 7(i) of ANCSA, Congress dictated that 70% of revenues received by "regional" Alaska Native Corporations, such as NANA, from natural resources development be divided annually among the State's twelve regional Alaska Native Corporations. The regional corporations, in turn, are obligated to further distribute these moneys to the 200+ "village" Alaska Native Corporations. This program carries out Congress' intent that the benefits of resource development on Alaska Native Corporation lands flow to Natives throughout the State.

⁸ SEIS at 3-317.

⁹ SEIS at 3-325.

of Trail's zinc concentrate is supplied by the Red Dog Mine. Losing half of its incoming concentrate stream will pose a significant commercial challenge to the Trail facility.

III. CONCLUSION

In Shell I, Shell II, and ConocoPhillips, the Board expedited permit appeals where resolution was necessary to allow operations to move forward. In this appeal, petitioners have challenged the TDS limitations of the 2010 permit. The TDS limitations from the prior (1998) permit are unattainable, and should the present, highly uncertain regulatory environment preclude the development of Aqqaluk by May 2010, Teck would likely shut down operations after the Fall 2010 shipping season.

This appeal is a direct threat to Teck's ability to develop Aqqaluk and, consequently, threatens the economic and social benefits that flow from the Mine's uninterrupted, continuing operations. Teck recognizes that this case does not involve a PSD permit, but maintains that the exigencies in this case are no less compelling than those found by the Board in Shell I, Shell II, and ConocoPhillips warranting expedited consideration. In light of these exigencies and the compelling need for regulatory clarity, Teck respectfully asks the Board to hear this appeal on an accelerated timeframe through the establishment of an expedited briefing schedule and means for prompt electronic dissemination of the administrative record to the parties.

DATED: February 23, 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Teck Alaska Incorporated's Motion for Expedited Review in the matter of Teck Alaska Incorporated, Red Dog Mine, NPDES Appeal No. 10-04, was served by United States First Class Mail, on February 23, 2010, upon the following:

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