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November 17, 2003

**US MAIL**

U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board (MC 1103B)  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington D.C. 20460-0001

**Re: In the Matter of Hecla Mining Company - Lucky Friday Mine  
NPDES Permit No. ID-000017-S**

Dear Clerk:

Enclosed is the follow up original of the Motion for Leave to File Reply Brief, which was fax filed with the Environmental Appeals Board on November 17, 2003.

Thank you for your assistance in this matter.

Very truly yours,

Teresa A. Hill

Oregon  
Washington  
California  
Utah  
Idaho

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ENVIR. APPEALS BOARD

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Attorneys for Hecla Mining Company

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

\_\_\_\_\_  
IN THE MATTER OF )  
HECLA MINING COMPANY – )  
LUCKY FRIDAY MINE )  
NPDES Permit No. ID-000017-5 )  
\_\_\_\_\_ )

Appeal Number - NPDES 03-10  
MOTION FOR LEAVE TO FILE REPLY  
BRIEF

COMES NOW Hecla Mining Company, Lucky Friday Unit (“Hecla”) and petitions the Environmental Appeals Board (“EAB” or “Board”) for an order granting it leave to reply to the Environmental Protection Agency’s (“EPA”) Response to Hecla Mining Company’s Petition for Review (“Response”).

**I. INTRODUCTION**

**A. Procedural Background**

On September 10, 2003 Hecla filed a Petition for Review and supporting memorandum seeking review of conditions contained in National Pollutant Discharge Elimination System (“NPDES”) Permit No. ID-000017-5 (the “Lucky Friday Permit”). EPA’s Response to the

Petition for Review was due on October 31, 2003 and was received by Hecla's counsel via email on November 6, 2003 and by certified mail on November 7, 2003.

**B. Standard for Leave to File Reply**

The rules governing a Petition for Review of an NPDES permit to the EAB are contained in Title 40 C.F.R. pt. 124. Although the rules do not specifically make provision for a reply to the permitting authority's response, the EAB Practice Manual allows "petitioners who believe that the permitting authority's response requires a reply" to seek leave to file a reply brief and upon "motion explaining why a reply brief is necessary" may be granted the opportunity to file a reply brief. See EAB Practice Manual at pt. III, D(5). According to the EAB Practice Manual, there is no specific deadline for such a motion, but the motion should be made as soon as possible upon receipt of the permitting authority's response. *Id.*

**II. DISCUSSION**

**A. A Reply is Necessary for an Informed Review of the Petition.**

A reply brief addressing arguments raised in EPA's Response is necessary to ensure informed resolution of Hecla's Petition for Review. As noted in the EAB Practice Manual, the Board "endeavors to resolve as many cases as possible during the first stage of the appeals process;" therefore, the Board sets forth a procedure that seeks to obtain sufficient information to conduct a "thorough analysis" of the issues raised by the petition. EAB Practice Manual at pt. III, D (1). EPA has raised various arguments in its Response, both factual and legal, which require reply by Hecla to make sure the Board has complete and sufficient information to conduct a fully informed analysis of the Petition for Review.

First, EPA's Response mischaracterizes several of Hecla's arguments. For example, EPA's response mischaracterizes Hecla's arguments regarding EPA's failure to act on the

variance request, stating that Hecla is not contesting the permit conditions regarding the effluent limitations for cadmium, lead, zinc and mercury. EPA also mischaracterizes Hecla's arguments regarding its challenge to the Permit's effluent limitations for mercury. Hecla should be allowed to reply to address these, and other, mischaracterizations in the Response.

In addition, EPA's Response contains legal arguments that require further briefing by Hecla. For example, EPA presents legal arguments supporting the inclusion of the seepage study as a permit condition and legal arguments challenging the Board's authority to review items raised in the Petition, including the variance request. EPA's legal arguments are understandably one-sided, therefore, they do not fully and sufficiently frame the legal issues presented in the Petition. These arguments are not adequately addressed in Hecla's opening brief and Hecla should be allowed to reply to these legal arguments to assist the Board in conducting a meaningful review of the Petition for Review.

Finally, EPA challenges Hecla's Petition for failure to demonstrate that various permit conditions warrant review by the Board. Again, these arguments mischaracterize the arguments in Hecla's Petition, and Hecla should be allowed a chance to reply.

Because there are numerous factual and legal issues raised in EPA's Response that have not been adequately briefed, mischaracterize the arguments, and do not represent a full analysis of the issues, Hecla should be granted leave to reply to EPA's Response in order for the Board to conduct a thorough analysis of the Petition for Review.

**B. The Motion for Leave to File a Reply Brief is Timely.**

Hecla's Motion for Leave to File Reply Brief is timely and will not delay the EAB's review and decision-making on the Petition for Review. As discussed above, there is no specific deadline to request leave to file a reply brief, but such motions should be made as soon as

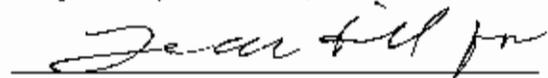
possible upon receipt of the permitting authorities response. EAB Practice Manual at pt. III., D(5). The Practice Manual does, however, indicate that "timeliness of the motion may be a factor in the Board's consideration of whether to grant it." *Id.* EPA's Response to Hecla's Petition was received on by Hecla's counsel on November 7, 2003. Hecla is filing this motion as soon as possible after receipt and review of the Petition; therefore, the motion is timely. In addition, Hecla is prepared to file the reply within fourteen days of the order granting the motion to facilitate timely processing of the Petition for Review.

### III. CONCLUSION

For the foregoing reasons, Hecla respectfully requests the EAB to grant Hecla leave to file a reply brief in support of its Petition for Review.

Dated this 17<sup>th</sup> day of November, 2003.

Respectfully submitted,



Kevin J. Beaton  
Stoel Rives LLP  
Attorneys for Hecla Mining Company

CERTIFICATE OF SERVICE

I hereby certify that on this 17<sup>th</sup> day of November, 2003, I served a copy of the Motion for Leave to File Reply Brief by facsimile and regular mail on:

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