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ENVIR. APPEALS BOARD

Attorneys for Hecla Mining Company

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

_____ )	
IN THE MATTER OF )	NPDES Appeal 03-10
HECLA MINING COMPANY – )	STATUS REPORT
LUCKY FRIDAY MINE )	
NPDES Permit No. ID-000017-5 )	
_____ )	

**HECLA MINING COMPANY’S STATUS REPORT**

Hecla Mining Company, Lucky Friday Unit (“Hecla”) by and through its attorneys of record, Stoel Rives LLP, hereby files this Status Report pursuant to the Order Requiring Status Report/Brief issued by the Environmental Appeals Board (“EAB”) on January 11, 2006.

Hecla timely filed a Petition for Review (“2003 Petition for Review”) seeking review of certain conditions of its Clean Water Act (“CWA”) National Pollutant Discharge Elimination System (“NPDES”) permit dated August 12, 2003 (“2003 Permit”). The Environmental Protection Agency, Region 10 (“Region”) opposed this request.

Subsequent to filing the 2003 Petition for Review, the State of Idaho issued a "revised" section 401 certification.<sup>1</sup> Hecla sought modification of the Permit to incorporate the 2004 State 401 Certification and petitioned the EAB to remand five of the appealed permit conditions that could be impacted by the modification. *See* Motion to Supplement Record (July 28, 2004) and subsequent briefing. The Region opposed the request. On October 13, 2004, the EAB remanded the five issues raised in Hecla's petition. *See* Remand Order and Order Requiring Status Report ("Remand Order"). On December 28, 2005 the Region completed the modification and issued a modified permit ("2005 Permit").

On January 11, 2006 the EAB issued an order requesting Hecla to file a status report identifying any issues raised in its 2003 Petition for Review that have not been rendered moot by subsequent events and to clarify the issues Hecla desires to continue to pursue on appeal. *See* Order Requesting Status Report/Brief. In addition the order requests that Hecla identify the extent to which its arguments regarding those issues remain the same or have changed as a result of subsequent events. *Id.* Hecla timely files this Status Report pursuant to the order.

### **I. Status of Issues on Appeal**

Hecla's 2003 Petition for Review sought review of nine conditions in its 2003 Permit. *See* 2003 Petition for Review at 2-3. The following list identifies each of the contested conditions and provides a summary of the current status of the issue.

#### **1. Mercury effluent limits and mercury testing.**

This issue was remanded by the EAB. *See* Remand Order at 13. Hecla is not seeking further review of this condition.

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<sup>1</sup> Hecla contends the original state 401 certification was not final because of Hecla's timely appeal of the certification. *See* Petition for Review, filed concurrently herewith at n.7.

**2. Seepage study and hydrological analysis.**

This issue was remanded by the EAB. *See* Remand Order at 13. Hecla is not seeking further review of this condition.

The Lucky Friday Permit requires Hecla to conduct a seepage study and hydrological analysis. *See* Condition I.C. Lucky Friday Permit, NPDES No. ID-000017-5. Hecla appealed this condition in its 2003 Petition for Review. This issue was remanded to the Region and was one of the conditions changed by the subsequent 401 certification. In particular, the state of Idaho 401 certification provides that the seepage study should be required after implementation of the water recycling program in 2007 and that the state considers discharge to the South Fork Coeur d' Alene River, if any, from Hecla's tailings ponds is appropriately covered by Hecla's NPDES permit. *See Attachment C* to 2006 Petition for Review, filed concurrently herewith. The Region incorporated the state's compliance schedule for the seepage study into the modified permit. Although Hecla maintains that the seepage study is technically and legally unjustified, Hecla has determined not to seek further review of this issue.

**3. Failure to act on Hecla's variance request.**

This issue is still pending before the EAB. Hecla is seeking withdrawal and dismissal of its appeal on this issue.

In its 2003 Petition for Review Hecla sought review of the Region's failure to act on Hecla's variance request prior to issuance of the 2003 Permit. *See* 2003 Petition for Review at 16. On March 8, 2005, four years after Hecla's request, the Region issued its final decision denying the variance request. *See* Letter from Ronald A. Kreizenback, Acting Administrator, U.S. EPA to Mike Dexter, General Manager Hecla Mining Company (March 8, 2005). Although

Hecla maintains that the decision on the variance request was untimely and disagrees with the Region's decision denying the variance request, Hecla has decided not to challenge this decision and timely notified the Region of this fact. Further review of Hecla's challenge regarding Region's untimely decision on the variance request is also unnecessary. Hecla requests the withdrawal and dismissal of its request for review of the Region's failure to act on Hecla's variance request (Section IV.C. of its 2003 Petition for Review).

**4 Failure to authorize dissolved metals instead of total recoverable analyses.**

This issue is still pending before the EAB pursuant to the 2003 Petition for Review. Hecla is seeking further review of this condition.

Hecla timely challenged the Region's use of "total recoverable metals" to express the effluent levels for metals in the permits. *See* 2003 Pctition for Review, IV.D. Idaho's effluent standards are expressed in dissolved form and the Region abused its discretion by failing to similarly express the effluent limitations in the permit in dissolved form. *Id.* at 21. This issue was not remanded by the EAB and has not been rendered moot by subsequent events. The 2005 Permit effluent limitations continue to be expressed in terms of "total recoverable metals." *See* 2005 Permit, Table 1. The arguments regarding this condition have not changed based on subsequent events. Hecla continues to seek review of this condition by the EAB based on the arguments provided in the 2003 Petition for Review. As established in the 2003 Pctition for Review because the Region has failed to provide explanation and justification for its refusal to exercise its discretion to express the effluent limits in dissolved rather than total recoverable metals, this condition should be modified and/or remanded.

**5. Failure to include compliance schedule or implementation period for flow-proportioned composite sampling, continuous effluent flow monitoring and in-stream flow monitoring.**

This issue was dismissed pursuant to Order Granting Second Partial Withdrawal of Petition for Review (October 3, 2004).

**6. Method detection limit for zinc.**

This issue was dismissed pursuant to Order Granting Partial Withdrawal of Petition for Review (October 13, 2003).

**7. Interim limits for certain metals.**

This issue was remanded by the EAB based on the state's revised water quality certification. *See* Remand Order at 13. Hecla is not seeking further review of this condition as the Region included the state's 401 conditions related to interim limits.

**8. Failure to include alternative pH upper limit.**

This issue was remanded by the EAB. *See* Remand Order at 13. Hecla is filing a new Petition for Review seeking further review of this condition. *See* Petition for Review and Memorandum in Support of Petition for Review filed concurrently herewith.

**9. Whole effluent toxicity sampling.**

This issue was remanded by the EAB. *See* Remand Order at 13. Hecla is filing a new Petition for Review seeking further review of this condition. *See* Petition for Review and Memorandum in Support of Petition for Review filed concurrently herewith.

## **II. Conclusion**

Hecla continues to seek review of the Region's use of "total recoverable metals" to express the effluent levels for metals in the permits. This issue is still pending before the EAB pursuant to Hecla's 2003 Petition for Review. In addition, Hecla seeks review of the Region's

failure to adjust the upper pH limit in the Lucky Friday Permit and inclusion of Whole Effluent Toxicity Testing as a permit condition. Hecla has timely appealed these two conditions pursuant to the 2006 Petition for Review filed concurrently herewith.

Dated this 25<sup>th</sup> day of January, 2006.

Respectfully submitted,

STOEL RIVES LLP

A handwritten signature in black ink, appearing to read "Kevin Beaton", written over a horizontal line.

Kevin J. Beaton  
Attorneys for Hecla Mining Company

**CERTIFICATE OF SERVICE**

I hereby certify that the Status Report was served on this 25<sup>th</sup> day of January, 2006 as

follows:

By overnight delivery to:

United States Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board  
Colorado Building  
1341 G Street, N.W., Suite 600  
Washington, DC 20005

By fax and regular mail to:

David Allnut,  
Assistant Regional Counsel  
United States Environmental Protection Agency  
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