



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 4 2010

REPLY TO THE ATTENTION OF:
WU-16J

Eeva I. and Robert J. Miller
701 West Hampton Street
Marquette, Michigan 49855

Dear Ms. and Dr. Miller:

Thank you for your emails of May 18 and 19, 2010, to Administrator Jackson concerning the proposed Kennecott Eagle Minerals mine. I have been asked to respond to your letter.

U.S. Environmental Protection Agency staff members and management are carefully reviewing all aspects of the redesigned Treated Water Infiltration System (TWIS) to determine whether it comes under the authority of the Safe Drinking Water Act's Underground Injection Control (UIC) regulations. In addition, EPA is consulting with the Keweenaw Bay Indian Community regarding this matter. EPA policy, affirmed by President Obama's November 5, 2009, Presidential memorandum on Tribal Consultation, requires the Agency to consult with tribes when EPA's actions or decisions may affect tribal interests. We have not yet completed consultation with the Tribe regarding Agency regulation of the redesigned TWIS and will not make a final decision on regulation of that system until after further communication with the Tribe. EPA has informed state officials that no decision has been made about the applicability of the UIC regulations to the redesigned TWIS.

Rio Tinto's environmental record is not a factor in making decisions related to UIC rule-authorization or permit application review. The UIC regulations (published as Title 40 of the Code of Federal Regulations) Parts 144 and 146 state the requirements and standards that a permit applicant must meet to have a UIC permit application approved. These regulations deal primarily with the geologic siting, well engineering, operating and monitoring standards for injection wells. An applicant's previous history is not addressed by the UIC regulations. Case law has clearly demonstrated that EPA's role in issuing a UIC permit is limited solely to determining whether the permit applicant has demonstrated that it has complied with the federal regulatory standards for issuance of the permit.

Regarding the Humboldt processing plant, earlier this year, in response to a Public Notice (File No. 08-52-0104) issued by the Michigan Department of Environmental Quality, the EPA Region 5 Water Division objected to the issuance of a permit for the project. In our objection, we expressed concerns that discharges from the lake into adjacent wetlands could have adverse impacts on existing emergent and scrub-shrub

wetland communities. We will continue to work with other federal agencies to ensure that all requirements of federal environmental laws (including those of programs delegated to the State of Michigan) are met. Please keep in mind that the State of Michigan is the primary regulatory authority for wetlands potentially impacted by this proposed facility and that EPA has oversight only over state implementation of federal laws, not implementation of state laws.

In regards to potential environmental contamination on the property from former operations, according to our records, this site has not been identified for federal action. Citizens can petition EPA to perform a Preliminary Assessment in accordance with Section 105(d) of the Comprehensive Environmental Response, Compensation, and Liability Act, commonly known as Superfund. EPA funds the State of Michigan to perform such assessments on our behalf.

EPA Watershed and Wetlands Branch staff reviewed the Woodland Road, LLC Michigan Wetland and Stream Public Notice dated December 17, 2009 for consistency with the U.S. Clean Water Act Section 404. On March 17, 2010, EPA formally objected to the issuance of a permit for the Woodland Road, as proposed. Because, as you note, Woodland Road, LLC withdrew its MDNRE permit application, MDNRE would require a new application for Woodland Road, which would restart the review process including a Public Notice Period. In the event that the applicant submits a revised permit application for Woodland Road, our office will be an integral part of the road project review, and we encourage you to voice any specific concerns to the MDNRE during the public comment period.

You cited the dangers of trusting industry to regulate itself. KEMC is being regulated by both the state and the federal government, within the limits of applicable law. The state has required the company to submit detailed monitoring results of all activity at the mine site.

You voiced concerns about the impacts of the mine on tourism. EPA's authority only extends to ensuring compliance with federal environmental laws. If Kennecott (or any other company) is not in full compliance with these laws, EPA can take enforcement action.

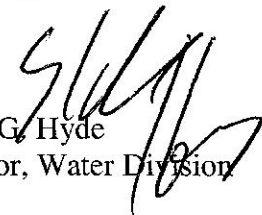
KEMC has been discussing Tribal use of Eagle Rock with KBIC but no conclusions have been reached. EPA may act if there is a federal undertaking. If it is determined that the UIC regulations apply to the redesigned TWIS, and there is a federal undertaking, the National Historic Preservation Act will apply. Prior to KEMC's withdrawal of its UIC permit application, the company prepared an NHPA Section 106 Assessment of the historic properties in the area (which is available on our website). KBIC has informed us that the tribe will submit its own Section 106 Assessment but we have not yet received it.

You ask that EPA begin overseeing how the Michigan DNRE processed the Kennecott permits. The Kennecott mine is subject to the Clean Air Act's (CAA) New

Source Review construction permit regulations as a minor source under Section 110 (a)(2)(C) of the Act. Implementation authority for these CAA requirements has been delegated to the Michigan Department of Natural Resources and Environment which issued the relevant permit. EPA evaluated the CAA decisions made by the State of Michigan and had no formal comments. The Nonferrous Metallic Mineral Mining Permit and the Groundwater Discharge Permit were issued under authority of the Michigan Natural Resources and Environmental Protection Act. EPA has no oversight over these determinations because they do not involve delegation of federal authority.

Please be assured that EPA shares your concern about the importance of protecting the environment of the people living in the area of the proposed mine. We are working to ensure that the project complies with all federal requirements.

Sincerely,


Tinka G. Hyde
Director, Water Division

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