



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
WU-16J

MAR 5 2009

Warren C. Swartz, Jr.
Tribal President
Keweenaw Bay Indian Community
16429 Beartown Road
Baraga, Michigan 49908

Re: Government-to-Government Consultation
Kennecott Eagle Minerals Company; Eagle Mine Project; Marquette County, Michigan;
EPA Permit Application Number MI-103-5W20-0002

Dear President Swartz:

I appreciate that you and your staff traveled to Chicago to meet with the U.S. Environmental Protection Agency on January 29, 2009, on issues related to the proposed Kennecott Eagle mine project. The material that Keweenaw Bay Indian Community (Community) presented during the meeting was very helpful to our understanding of your perspective of the permit review process and the proposed mine. The purpose of this letter is to outline the issues and concerns that we heard during our discussion.

Permit Application Review Process

We were glad to hear that the Community views government-to-government consultation as two partners working to resolve an issue. We are aware that you have some concerns with the permit application review process. As we understand, these concerns include:

- ensuring that the Community receives information related to the permit application in a timely manner;
- deficiencies in the permit application require that the permit be denied; and
- the permit review process appears to be "open-ended", with continuing EPA requests for additional information from the permit applicant.

EPA has determined that the permit application is administratively complete, and we are continuing our technical review of the application. Our policy has been to seek additional information from the permit applicant as needed to clarify and supplement the application, including situations where concerns have been brought to our attention. As we receive any new information from the applicant, my staff will continue to share this information with the Community.

Technical Issues Related to the Application

A significant portion of our meeting in January was dedicated to technical issues and concerns regarding the Kennecott Eagle application. Your staff provided a very detailed presentation on the Community's concerns related to potential impacts to underground sources of drinking water. As we indicated at the meeting, the corresponding written technical report that the Community submitted earlier in January has been sent to the EPA contractor on this project for review. Once my staff has completed their review of your technical report and the comments from the contractor review, we will provide a follow-up response to you.

National Historic Preservation Act Review Process

As we acknowledged during the meeting, EPA is aware that it has an obligation to comply with the National Historic Preservation Act (NHPA) and is committed to working closely with all the consulting parties in the review process. We understand that the Community intends to develop a response to the NHPA Report submitted in 2008 by Kennecott Eagle Minerals Company, and will submit further information of its own on the cultural/historical importance of the proposed mine site. We urge the Community to submit this information to EPA as soon as possible.

We also understand that the Community has concerns about the process that EPA is using to ensure compliance with the NHPA, including:

- completing the NHPA review process prior to issuing a draft permit decision for public comment;
- ensuring that EPA actions comply with the Part 800 Rules for the NHPA; and
- a desire for EPA to conduct its own field research at the proposed project site.

We will evaluate the positions presented by the Community during our January meeting and in previous written correspondence.

Other Discussion Issues

The Community raised the following three additional issues related to the proposed Kennecott Eagle mine project:

- an additional underground injection control permit to regulate the disposal of utility water and backfill injection into the mine itself;
- action by EPA to conduct a "voluntary" environmental analysis of the proposed project; and
- delaying actions related to compliance with the Endangered Species Act until the Fish and Wildlife Service has ruled on petitions to list additional species.

Again, I want to assure you that EPA heard the positions presented by the Community, and we will also evaluate the information you have previously submitted in writing on these issues.

We look forward to continuing our dialogue with the Community as EPA completes its review of the Kennecott Eagle permit application. If you have any questions or concerns about the permit review process, please feel free to contact me at (312) 353-2147.

Sincerely,



Tinka G. Hyde
Director, Water Division

cc: John Baker (via email)
Chuck Brumleve (via email)