



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

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DENVER, COLORADO 80202-2466

December 22, 1993

Ref: 8WM-C

Dan Fraser, Chief  
Water Quality Bureau  
Montana Department of Health  
& Environmental Sciences  
Cogswell Building  
Helena, Montana 57620

Re: NPDES Permit Issues  
Hard Rock Mines

Dear Mr. Fraser:

This letter is in response to your request that EPA clarify its position on several key issues relating to the permitting of hard rock mines under Section 402 of the Clean Water Act (CWA). The following paragraphs explain EPA Region VIII's policy on the following issues: (1) point sources at hard rock mines; (1.a) historic mine adits; (1.b) ground water hydrologically connected to surface water; (2) regulation of historic mining areas; (3) storm water vs. traditional NPDES; and (4) maintaining water quality after mining.

1. Point Sources at Hard Rock Mines

1.a Historic Adits

Mine adits are quite clearly point sources as defined under Section 502(14) of the CWA, 33 U.S.C. § 1362(14). The CWA defines the term "point source" as any discernable confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. Following this definition, discharges from mine adits at historic or active mines are point sources and are required to have an NPDES permit if pollutants are being discharged to waters of the United States. However, as discussed in paragraph 2 below, abandoned or long-term inactive mines have not been a top priority for permitting.

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1.b Ground Water Hydrologically Connected to Surface Water  
(including seeps)

For the past several years EPA, Region VIII, has been more closely evaluating NPDES compliance at mines. Although we found that substantial progress has been made in controlling surface water pollution from obvious discharge points, we still found serious water quality problems at some mines. Environmental data collected around these mining sites confirmed that the CWA goals of fishable and swimmable surface water were still not being achieved. In searching for this source of surface water pollution, EPA and the States found that pollutants from some mining sites are moving into the ground water and then into nearby surface water.

Upon determining that significant pollutants were being discharged from mines via ground water or less obvious points sources, EPA and the States began reevaluating mines. We found some mines had seeps or other ground water discharges to surface water which were not authorized in the facility's NPDES permit. There were also some mines without an NPDES permit which had claimed to be "non-discharging". However, upon inspection, these facilities were found to be discharging through seeps and water control structures. These facilities are now being required to obtain NPDES permits covering all outfalls including ground water discharges determined to be hydrologically connected to surface water.

As a result of these permit and enforcement actions, EPA has been reevaluating the definition of "point source" to require NPDES discharge permits for seeps and other less obvious discharges. It is therefore, EPA's position that seeps and other ground water discharges hydrologically connected to surface water from mines, either active or abandoned, are discharges from point sources and are subject to regulation through an NPDES permit. Current EPA policy, as augmented by several lawsuits, indicates that it is more the mine or the facility itself that is subject to NPDES regulations. Therefore, any seeps coming from identifiable sources of pollution (i.e., mine workings, land application sites, ponds, pits, etc.,) would need to be regulated by discharge permits. One important case is United States v. Earth Sciences, Inc., 599 F.2d 368 (10th Cir. 1979). This case concluded that the facility from which the contamination came was itself a point source. Another important court case is McClellan Ecological Seepage Situation v. Weinberger, 707 F.Supp. 1182 (E.D. Cal. 1988) where the court found that Congress intended to limit discharges of pollutants that could affect surface water and that NPDES permits could be required, where the ground water

is hydrologically connected to the surface water. Additionally, the preamble to the November 16, 1990 Storm Water Regulations states that EPA "intends to embrace the broadest possible definition of point source consistent with the legislative intent of the CWA." (55 Federal Register 47990, 47997/1, November 16, 1990.) The preamble also states that the requirements for point source dischargers are not applicable to the discharges to ground water unless there is a hydrological connection between the ground water and a nearby surface water. (See 55 Federal Register 47990, 47997/3.)

## 2. Historic Mining

Clearly, as discussed in 1.a above, discharges from abandoned mine adits are point sources which require a traditional (rather than a storm water) NPDES permit. However, Region VIII has not made these permits a high priority because of limited EPA and State resources. EPA's current permit writing practices and priorities incorporate historic mine drainage into NPDES permits for active mines if the active mine influences the pollution discharged from the historic area. In addition, if the active mine owns or has control over an adjacent historic mining area, the active mine must also apply for an NPDES permit to control the discharge from the inactive area. Factors which increase our priority for requiring NPDES permits at abandoned mines are: active exploration, construction, plans for re-mining, viable ownership, and water quality impacts. The enclosed table outlines the Region's priorities for writing permits and the basis for effluent limitations.

In Region VIII, there are several active mines which have permits for historic discharges. One example is Cripple Creek and Victor Gold (CCVG), which maintains the permit for the Carlton Tunnel (CO-0024562) in Colorado. This historic tunnel drains most of the Cripple Creek and Victor Mining District. CCVG is currently mining only on the surface. Although the company's operations do not seem to be affecting historic mine drainage, the Company must continue to comply with NPDES requirements because CCVG and its affiliates own or control most of the historic area. Further, the potential for connections between current and historic workings also necessitate a permit.

Region VIII has several permits that exclusively regulate drainage from abandoned mines, such as the Leadville Mine Drainage Tunnel—owned by the Bureau of Reclamation (CO-0021717) and the site of the former Climax Urad Mine and Mill (CO-0041467). The Leadville Tunnel drains part of historic Leadville Mining District. The Urad site is a

previously reclaimed tailings area that Climax is remediating to collect ground water seeps and provide treatment to meet water quality based limits.

3. Storm Water v. "Traditional" NPDES

It is our position that any point source discharge of pollutants to waters of the United States, not directly associated with a precipitation or snow melt event, (i.e., dry weather flows), must be permitted under a "traditional" NPDES permit. This means that any dry weather flow from mine adits, seeps, french drains and culverts are mine drainage or process wastewater, and cannot be covered by a storm water permit. A "traditional" permit must be written for these discharges including both technology based and water quality standard based requirements where applicable. [Water diverted around the mine without contacting any disturbed area, and does not mix with mine or process water may not require an NPDES permit.] Also during wet weather flows, most of the areas at an active mine must be covered by "traditional" NPDES requirements because storm water was included in developing the effluent guidelines regulations. Only wet weather surface runoff from some ancillary areas of active mines and inactive areas would fall under the storm water program. It is also important to note that these discharges can be covered by storm water requirements only if they do not combine with "traditional" sources prior to discharge. Therefore, we recommend that the State combine both the storm water and traditional NPDES requirements into one permit at all active mines. There is too much overlap between storm water and dry weather flow, and active and inactive portions of the mine to write separate permits. We have attached the most recent version of the table (September 13, 1993) describing the applicability of storm water at mining sites.

4. Maintaining Water Quality (Financial Guarantee)

It is of increasing importance to financially guarantee compliance with environmental performance at all phases of the mining operation including post-closure. This has been mentioned by both Region VIII and EPA Headquarters' staff during discussions of environmental impact statements and NPDES permits for new mines. Clearly, the public's financial costs of Summitville is also a strong argument for financial guarantees. We think that this is an area where the State, through its mining program, has substantial regulatory ability. We will continue to look into this issue on a federal level, but we hope that the State will be able to resolve this problem through its authorities by requiring post-closure financial assurance.

If you wish to request a conference call to further discuss these issues or if you have any other comments please contact me

Sincerely,

/S/

Max H. Dodson, Director  
Water Management Division

Enclosure

cc: Kevin Keenan, MT  
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