



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Certified Mail No. 7002 3150 0004 3519 4208
Return Receipt Requested

April 5, 2013

James Marshall
Senior WRCE
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Re: Tentative Order/Draft NPDES Permit for the Meridian Beartrack Company, Royal Mountain King Mine (NPDES Permit No. CA0085243)

Dear Mr. Marshall,

Thank you for the opportunity to review and comment on the tentative order/draft permit (NPDES Permit No. CA0085243) for the discharge from the Royal Mountain King Mine to Littlejohns Creek, which was public noticed on March 7, 2013. As discussed on our April 2, 2013 call, we have concerns about the draft permit that need to be addressed to ensure the permit effectively protects water quality and complies with NPDES requirements. Specifically, we are concerned about the effluent limits for selenium. Pursuant to 40 CFR 123.44, we reserve the right to object to issuance of this permit if our concerns are not addressed.

The proposed permit includes a maximum daily water quality-based effluent limit for selenium that is less stringent than the previous permit. The previous permit included a maximum daily effluent limit based on best professional judgment that was more stringent than the calculated water quality-based effluent limits. This limit was included as a maximum daily effluent limit (MDEL) of 14 $\mu\text{g/l}$. The water quality-based effluent limits included in the proposed permit are an average monthly effluent limit (AMEL) of 14 $\mu\text{g/l}$ and a MDEL of 20 $\mu\text{g/l}$. The MDEL of 20 $\mu\text{g/l}$ is less stringent than the MDEL of 14 $\mu\text{g/l}$ included in the previous permit. In order to include a less stringent effluent limit, antibacksliding requirements pursuant to section 402(o) or 303(d)(4) must be met.

Based on the information in the fact sheet, the requirements of section 402(o) or 303(d)(4) have not been met. The discharger's maximum effluent concentration during the previous permit term was 7.7 $\mu\text{g/l}$. The fact sheet states that since the previous permit, the discharger has provided a new dilution study and additional monitoring that justifies the new limits. Section 402(o) provides an exception that allows a less stringent effluent

limit when new information (other than revised regulations, guidance, or test methods) is available that was not available at the time of permit issuance and that would have justified a less stringent effluent limitation. The proposed MDEL is the same as what would have been included in the previous permit had the Regional Board decided not to include a more stringent effluent limit based on best professional judgment. Therefore, new information is not available that would have justified a less stringent permit limit during the previous permit term.

Additionally, the Regional Board has not demonstrated that increasing the MDEL meets State and federal antidegradation requirements. The fact sheet states that the combination of an AMEL of 14 $\mu\text{g/l}$ and the requirement to only monitor once/month is equivalently treating the AMEL as an MDEL. The discharger always has the discretion to perform more frequent monitoring. If more frequent monitoring was conducted, reporting of this additional data is required by the permit. Allowing an increase in the MDEL essentially allows the discharger to increase their concentration on a daily basis up to 20 $\mu\text{g/l}$, as long as it averages out to a monthly average of 14 $\mu\text{g/l}$. In order to allow the increase in the MDEL, which could potentially degrade the receiving water, the Regional Board would need to make a finding that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. Since the discharger's effluent concentration of selenium has been consistently well below the previous MDEL of 14 $\mu\text{g/l}$, increasing the limit is not necessary. Therefore, as agreed to on our April 2, 2013 call, the previous permit MDEL of 14 $\mu\text{g/l}$ will be retained in the proposed permit.

We appreciate the opportunity to provide input on the draft permit. Please contact me at (415) 972-3464 or Elizabeth Sablad of my staff at (415) 972-3044 if you have any questions regarding our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "David Smith". The signature is fluid and cursive, with the first name "David" and last name "Smith" clearly distinguishable.

David Smith, Manager
NPDES Permits Office (WTR-5)