

WA0026841
Response to Comments
Dawn Mining Company
Midnite Mine

EPA, Region 10
November 2017

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General Information

On April 20, 2017, the United States Environmental Protection Agency Region 10 (EPA) issued a draft National Pollutant Discharge Elimination System (NPDES) permit for the Midnite Mine facility which is owned and operated by Dawn Mining Company. A public hearing was held on May 23, 2017. No attendees provided testimony during the hearing. The comment period was originally scheduled to end on June 5 but several requests were received to extend the comment period. The comment period was informally extended to July 5, 2017. The EPA received comments from:

- Dawn Mining Company (Dawn) and
- The Confederated Tribes of the Colville Reservation (Colville).

The Clean Water Act section 401(a)(2) [CWA § 401(a)(2)] requires that the EPA notify a downstream state/Tribe of the permitting activity if it is determined that the discharge may affect the quality of the waters in the downstream state/Tribe. The state/Tribe then has the opportunity to ensure that the water quality requirements of the state/Tribe will be met. Pursuant to CWA § 401(a)(2), the EPA notified both the Washington Department of Ecology (Ecology) and the Colville of this permitting activity. Neither entity provided further information on this issue. Although the Colville provided comments, none pertained to whether the permit requirements would assure their water quality standards would be met.

On May 9, 2017, the US Fish and Wildlife Service (USFWS) concurred with EPA's determination that discharges of treated site water into the Spokane Arm of Lake Roosevelt are not likely to adversely affect bull trout and that the USFWS' 2015 concurrence still applies to the project as described.

On October 9, 2017, EPA received the Spokane Tribe of Indians' final Clean Water Act section 401 (CWA § 401) Certification for this permit dated September 12, 2017.

Fact Sheet Comments

NOTE: According to 40 CFR 124.8, the Fact Sheet sets forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. Since the Fact Sheet provides the technical basis for the draft permit, it is a final document when it is released. Therefore, any errors are acknowledged but the document will not be changed.

1. **Comment (Dawn):** The title incorrectly states "Re-issue," rather than "Issue."

Response: The commentor is correct. This is not a permit reissuance; it is the issuance of a new permit for the outfall.

2. **Comment (Dawn):** The Fact Sheet mischaracterizes the status of the 1995 NPDES Permit. Discharges from the current WTP at the Midnite Mine Site are being managed as part of a remedial action that is being conducted under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Pursuant to Section 121(e)(1) of CERCLA, federal, state and local permits are not required for onsite CERCLA remedial actions. The scope of work governing the Midnite Mine remedial action incorporates certain provisions from the prior NPDES Permit; however, that permit does not directly apply. The 1995 NPDES Permit was issued and became effective prior to the Site being listed under CERCLA.

Response: The Fact Sheet accurately described the status of the 1995 NPDES Permit but did not fully explain its incorporation into the CERCLA Record of Decision (ROD). The Permit was in effect and was administratively extended prior to the issuance of the ROD. The permit was not terminated when the ROD was issued in 2006. As such, it remains administratively extended and in effect as described in the Fact Sheet. As the commentor states, the conditions of the Permit were incorporated into the ROD as interim cleanup levels for on-site discharge. When the current discharge to Blue Creek ceases and the new permit for discharge to the Spokane Arm is issued and in effect, EPA will terminate the previous permit.

3. **Comment (Dawn):** Several comments were made on Table 2 (Page 11):
 - a) Typo for Arsenic Monthly Average: 0.095 should be 0.95 (is correct in draft permit).
 - b) Iron should not be included as a required monitoring parameter. The maximum measured iron concentration in the water treatment plant effluent is 50 ug/L and the MEC was calculated at 190, while the Spokane Tribe of Indians (STI) standard is 300. There is no explanation for why iron is necessary.
 - c) Table 2 incorrectly states Mercury will be sampled weekly. Table 1 in the Draft Permit correctly provides Mercury sampling will occur monthly.
 - d) Table 2 of the Fact Sheet contains much higher limitations for thallium and zinc than Table 1 of the Draft Permit.

Response:

- a) The commentor is correct. The draft permit contains the applicable limit.

- b) The commentor is correct. Because there is no reasonable potential for iron to exceed the WQS without a mixing zone allowance, EPA has removed iron from Table 1 of the permit.
- c) The commentor is correct. The draft permit contains the applicable monitoring frequency.
- d) The limitations in Table 1 of the Draft Permit are correct.

4. **Comment (Dawn):** The Fact Sheet incorrectly states that "EPA is requiring that WQS include a fish tissue criterion for mercury () rather than a water column number." EPA's guidance document for implementing EPA's 2001 methylmercury water quality criterion explains that states and authorized tribes have options for incorporating a methylmercury criterion into their water quality standards, including incorporating EPA's criterion directly as a fish tissue concentration or by adopting a water column concentration. See EPA, Guidance for Implementing the January 2001 Methylmercury Water Quality Criterion, pp. 20, 101 (April 2010). As the Fact Sheet acknowledges, the Spokane Tribe has not yet adopted a water quality standard using either approach in response to EPA's 2001 Criterion. Consequently, it is premature to require DMC to conduct a methylmercury translator study as part of the new NPDES Permit.

Response: EPA has consulted with STI and determined that immediately instituting the methylmercury translator study may be premature. In the final CWA § 401 Certification, STI included a condition that requires the permittee to confer and coordinate with STI in developing and executing a Study Plan for the Methylmercury Translator Study once STI promulgates a methylmercury fish tissue criterion. Therefore, pursuant to Section 401(d) of the Clean Water Act, EPA has changed the permit to require a methylmercury translator study when EPA has approved a fish tissue criterion adopted by STI. Since the timing of an approved methylmercury fish tissue criterion is indeterminate, and it is unlikely that all conditions of the study will be completed during the permit cycle as proposed in the draft, EPA has set a date for completion of the Study Plan in the final permit.

5. **Comment (Dawn):** In the last sentence on page 14, the reference to "Table 1" should be changed to "Table 2."

Response: The commentor is correct. The correct reference should have been to "Table 2."

6. **Comment (Dawn):** As discussed above, current clean-up activities at the Midnite Mine site are being conducted pursuant to a remedial action under CERCLA. As part of the remedial action, DMC has prepared a series of EPA-approved plans to govern work and activities at the Site, including a Site-Wide Monitoring Plan, Storm Water Pollution Prevention Plan (*currently referred to as the Master Stormwater Management Plan*), Spill Prevention, Control and Countermeasures Plans and an Operations, Maintenance and Monitoring Plan. Those plans include detailed requirements for managing hazardous substances at the site and for controlling runoff and spillage from the site. Pursuant to Section 121(e)(1) of CERCLA and Paragraph 8 of the Consent Decree (Civil Action No. CV-05-020-JLQ) governing the ongoing remedial action, no additional permits are required for onsite activities.

Consequently, the scope of the new NPDES Permit is limited to offsite discharges to the Spokane Arm of Lake Roosevelt. The provisions in the draft NPDES Permit and Fact Sheet requiring DMC to prepare a Best Management Practices Plan for any onsite facilities at the Midnight Mine Site should be removed from the final Permit. Periodic updating of the existing plans will be performed to reflect changing site conditions as necessary.

Response: The CERCLA program considers the constructed pipeline, outfall diffuser, effluent discharge, and the mixing zone to be response actions and “on-site” actions under CERCLA. The commentor is correct that NPDES permits are not *required* for CERCLA sites but a facility is not precluded from obtaining one and in this case, an NPDES permit is a part of the remedy required by the ROD. Since the plans cited in the comment will be adequate to prevent unintended discharges to waters of the United States from this site, the BMP Plan requirements have been deleted from the final permit. However, to keep the permit files up-to-date, the permit requires that all applicable plans be reviewed at least annually and that a certification that this review has been completed along with a list of the currently applicable plans be submitted by March 1 each year.

7. **Comment (Dawn):** In Appendix B, iron is referenced twice, both as authorized for mixing zone and not authorized for mixing zone. DMC understands that iron was not included in the mixing zone evaluation since the reasonable potential analysis demonstrated that iron is not a constituent for which an effluent limitation is necessary.

Response: Appendix B contains the STI Clean Water Act (CWA) § 401 Certification. This comment will be addressed by STI.

8. **Comment (Dawn):** In Table C-3 (page 36) the Ra-226 dissolved data listed in this table are actually the results for Ra-226 total.

Response: Correction noted. In the final CWA § 401 Certification, STI confirmed that the criterion for radium is measured in the dissolved form. Therefore, no changes to effluent limitations result from this confusion.

9. **Comment (Colville):** A commentor recommends that since the effluent limits are established considering fish species currently present in the area that the permit should consider fish that may be reintroduced to the area given the many salmon restoration efforts occurring in the Upper Columbia Region.

Response: The water quality standards adopted by STI and approved by EPA are based on EPA's nationally recommended criteria which consider a wide variety of aquatic life in their development. They are not site specific to the aquatic life currently present within the boundaries of the STI Reservation and are protective of fish that may be reintroduced.

Permit Comments

10. **Comment (Dawn):** Iron should not be included as a required monitoring parameter in Table 1. The maximum measured iron concentration in the water treatment plant effluent is 50 ug/L and the MEC was calculated at 190, while the STI standard is 300.

Response: See Response to Comment #3.

11. **Comment (Dawn):** Table 1, footnote #6 should read "Part III.C."

Response: Table 1, footnote 6 references requirements for Whole Effluent Toxicity testing found in Permit Part II.C. No change has been made as a result of this comment.

12. **Comment (Dawn):** Lead, iron and manganese do not have daily maximum limits and therefore should not be included in the mandatory violation reporting in Permit Part I.B.2.

Response: The commentor is correct and these parameters have been removed from the list in Permit Part I.B.2.

13. **Comment (Dawn):** The first sentence of Permit Part I.B.3. should be redrafted to provide: "The receiving water shall be free of visible oils, scum, foam, grease and other floating and suspended materials of a persistent nature resulting from discharges at Outfall 001." The permittee should not be responsible for all conditions created in the receiving water that are from "other than natural causes." The requirement for weekly visual observations is excessive for a water body as large as Lake Roosevelt. Receiving water sample locations are accessible only by boat. Weekly monitoring in adverse or hazardous weather conditions presents potential safety concerns with no tangible benefit. The visual observations required by this Section should be made at the same time that the semi-annual ambient surface water quality samples are collected.

Response: EPA has considered this comment and has rewritten the requirement as follows: "The receiving water in the vicinity of the outfall shall be free of visible oils, scum, foam, grease and other floating and suspended materials of a persistent nature resulting from discharges at Outfall 001."

EPA does not consider visual monitoring to be onerous because the intent was not that the Permittee would visit the site by boat on a weekly basis but that observations would be made from the shoreline (preferable at some elevation above the water surface) in order to assess this requirement. To that end, the second sentence has also been rewritten: "The receiving water shall be monitored visually from shore on a weekly basis."

14. **Comment (Dawn):** Page 6 #5: Effluent sample collections should be performed following the completion of the water treatment circuit and prior to leaving exiting the water treatment facility.

Response: This comment seems to address Permit Part I.B.5. which states:

The permittee must collect effluent samples from the effluent stream after the last treatment unit prior to discharge into the receiving water.

This requires only that any effluent sample taken to comply with the permit be taken between the last treatment unit and before the effluent enters the receiving water. If this occurs prior to the effluent leaving the facility, then sampling there would be in compliance with this requirement except for temperature which is required to be monitored as close to the discharge point as possible. No change has been made as a result of this comment.

15. **Comment (Dawn):** The reference to outfall 005 in the first sentence of Permit Part I.C. should refer to outfall 001.

Response: The commentor is correct. This change has been made in the final permit.

16. **Comment (Dawn):** DMC recommends that the Permit Part I.D. specify that the ambient monitoring samples will be collected at two mid-stream monitoring stations - one located approximately 50 to 100 feet above the mixing zone boundary and the other located approximately 50 to 100 feet below the mixing zone boundary. As currently written, the draft Permit specifies that written authorization of the surface water stations is required from STI; however, the draft Permit states that a failure to obtain STI authorization does not relieve the permittee of surface water monitoring requirements. This creates an ambiguity as to where sampling should occur if STI has not approved the stations. Specifying the monitoring locations as recommended above, rather than leaving it open to future approval, will provide more certainty. In addition, surface water monitoring collections are proposed to vary between first and fourth quarter, it is not known whether Lake Roosevelt is subject to winter freezing conditions. If so, the Certification and Permit should identify these sample collections are subject to ambient monitoring conditions.

Response: EPA has consulted with STI on the response to this comment. The final permit requires DMC to determine a monitoring site along the thalweg at least 100 feet but no more than 300 feet above the outfall and a site at the approximate edge of the mixing zone according to Table 3, footnotes 3 and 4. Once these sites are established, every effort should be made to return to the same site to take future samples.

17. **Comment (Dawn):** The flow rate of the river at Lake Roosevelt, required in Permit Part I.D.7., will be difficult to measure due to the size of the water body and effects of dam control. The permit should specify that the flow rate be as flow measured by the USGS station at Long Lake Dam upstream, these flows will be recorded as the estimated flow at the time of sampling for both surface water stations. In addition, flow rate is not included on Table 3.

Response: EPA has changed this requirement to require that the reported flow be from the USGS station at Long Lake Dam.

18. **Comment (Dawn):** See Comment #4, above (FS IV.B.4.), for the reasons that requiring the permittee to conduct a methylmercury translator study is premature and inappropriate, and this requirement should be removed from the final Permit.

Response: As discussed in the Response to Comment #4, EPA agrees that requiring this study is premature. Pursuant to CWA § 401(d) of the Clean Water Act and in accordance with the final CWA § 401 Certification, Permit Part II.B.1. has been rewritten to trigger the study later:

After STI has adopted a methylmercury fish tissue criterion and it has been approved by EPA, the Permittee shall confer and coordinate with the STI Department of Natural Resources (STI-DNR) in developing and executing a Study Plan for the Methylmercury Translator Study under the Permit.

19. **Comment (Dawn):** See Comment #6, above (FS IV.D.), for the reasons that requiring the permittee to prepare a Best Management Practices Plan (Permit Part II.C.) for the "facility" is duplicative of various plans that DMC has prepared as part of the ongoing remedial action at the Midnite Mine Site, and is contrary to CERCLA directives that federal, state and tribal permits are not required for CERCLA remedial actions. Consequently, this requirement should be removed from the final Permit.

Response: See Response to Comment #6.

20. **Comment (Colville):** The commentor recommends that the final permit require notification to the Confederated Tribes of the Colville Reservation, Office of Environmental Trust, should exceedances or upsets at the treatment facility occur related to Permit Parts III.G, H. and I.

Response: EPA has added notifications for the Confederated Tribes of the Colville Reservation and STI to Permit Parts III.G. and I. Permit Part III.H. requires violations not reported under Permit Part III.G. to be reported with the monthly DMR. The permit already requires that STI receive the monthly DMRs and this information is available to the Confederated Tribes of the Colville Reservation through the internet on the Enforcement and Compliance History Online website at <https://echo.epa.gov/>