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Western Environmental Law Center

November 29, 2017

Via certified mail return receipt requested

Phillips S. Baker, Jr.,
Chief Executive Officer Hecla Mining Company
6500 North Mineral Drive
Suite 200
Coeur d'Alene, ID 83815-9408

Re: Notice of Intent to Sue for Violations of the Clean Water Act

This letter is to notify you of ongoing violations of the Clean Water Act (CWA) at the Troy Mine and tailings impoundment, in northwestern Montana, owned and operated by Hecla Mining Company (Hecla). The Montana Environmental Information Center (MEIC) is concerned about the continuing violations of the CWA at the Troy Mine, which are causing and contributing to serious environmental problems in Lake Creek. The substances that the mine and tailings impoundment are discharging include, but are not limited to, nitrite plus nitrate, copper, zinc, antimony, arsenic, lead, cadmium, uranium, iron, manganese, and dissolved solids. These pollutants are regulated by the CWA. Hecla is discharging pollutants from the facility in violation of the CWA. Pursuant to section 505(b) of the CWA, MEIC hereby gives notice of its intent to sue Hecla in federal district court for its ongoing violations of the CWA upon expiration of the 60-day statutory waiting period, unless Hecla brings itself into full compliance. 33 U.S.C. § 1365(b)

Factual Background

All violations have occurred, are occurring, and will continue to occur at the Troy Mine and tailings impoundment located in Lincoln County, Montana. The Troy Mine is a copper and silver mine that was initially permitted in 1978. The mine then operated from 1982 to 1993. The mine re-opened in 2005. It subsequently closed for good in 2015. The Troy Mine permit area covers approximately 2,782 acres. During mining operations several tons of slurried tailings were dumped daily into a 430 acre tailings impoundment located adjacent to Lake Creek. The impoundment is unlined.

Water from the mine is conveyed by pipeline to a pond in the tailings impoundment, where it is allowed to infiltrate into the impoundment. Water from the mine workings contains numerous pollutants, including copper, zinc, antimony, arsenic, lead, cadmium, uranium, iron, manganese, nitrate, and other dissolved solids. Water from the mine workings is conveyed to the tailings impoundment at a rate of 300 to 3,000 gallons per minute. The tailings impoundment itself contains mill tailings from decades of mining operations, including the pollutants mentioned above among others. These metals and other pollutants are present in the groundwater below and downgradient of the tailings impoundment.

The U.S. Forest Service (USFS) and the Montana Department of Environmental Quality (MDEQ) have concluded that "[g]roundwater beneath the tailings moves in a westerly direction and eventually discharges to Lake Creek." USFS, MDEQ, Final Environmental Impact Statement, Troy Mine Revised Reclamation Plan (2012). Groundwater from the tailings impoundment discharges into Lake Creek at a rate of hundreds of gallons per minute. Pollutants from the tailings impoundment are being discharged via groundwater into Lake Creek.

The MDEQ has determined that Lake Creek is impaired and not meeting water quality standards due to pollution from nitrite plus nitrate, copper, lead, and sediment. MDEQ has determined that the Troy Mine tailings impoundment is a likely source of metal pollution in Lake Creek. MDEQ further concluded that "the major source identified for nitrite plus nitrate in this waterbody segment appears to be due to the Troy Mine." Water quality sampling between 2005 and 2011 identified exceedances of water quality standards for copper and lead in Lake Creek below the tailings impoundment. Sampling upstream of the mine did not find concentrations of lead or copper above non-detect levels.

Polluted water has discharged from the unlined tailings impoundment into Lake Creek every day for the last five years, and every day for many years before that.

Violations of Federal Law

Section 301 of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source by any person except in compliance with, among other conditions, a discharge permit issued pursuant to section 402 of the CWA, 33 U.S.C. § 1342. *Id.* § 1311(a). The CWA defines point source as "any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, [or] container . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14). Under this broad definition, the discharge of pollutants from mining pits, slurry ponds, sediment basins, waste impoundments, and mining leachate collection systems have been held to be point sources. "[T]he touchstone for finding a point source is the ability to identify a discrete facility from

which pollutants have escaped." *Wash. Wilderness Coal. v. Hecla Mining Co.,* 870 F. Supp. 983, 987 (E.D. Wash. 1994).

On information and belief, we allege that Hecla is discharging nitrite plus nitrate, copper, zinc, antimony, arsenic, lead, cadmium, uranium, iron, manganese, and dissolved solids to Lake Creek. On information and belief, we allege that Hecla is discharging each of these pollutants every day from the mine to Lake Creek. These discharges are occurring through the Troy Mine tailings impoundment, where water from the mine is discharged and allowed to infiltrate to the groundwater which has a direct hydrologic connection to Lake Creek. In addition, on information and belief, we allege that these pollutants are being discharged to Lake Creek directly from the tailing impoundment or as the result of direct discharges from other point sources at the facility. These discharges from the unlined tailings impoundment and other point sources to navigable waters of the United States are continuous and ongoing.

Persons Responsible for Violations

The Troy Mine is owned by Hecla. Hecla is a corporation headquartered in Coeur d'Alene, Idaho. Hecla is responsible for all CWA violations at the Troy Mine.

Actions to Be Taken and Civil Penalties

Absent cessation of the unlawful discharges, MEIC intends, at the close of the sixty (60) day notice period, to file a citizen suit under section 505 of the Clean Water Act, 33 U.S.C. §1365, against Hecla, seeking injunctive relief, remedial relief, declaratory relief, and civil penalties for each permit violation over the past five (5) years and sixty (60) days from the date of this notice relating to the illegal discharges through the date of this letter and all violations that occur subsequent to the date of this letter, plus costs, attorney and expert witness fees, and such other relief as may be appropriate. The civil penalties sought will be for the applicable statutory maximum for each violation, presently $51,570.00 per day for each violation. 33 U.S.C. §1319(d) and 40 C.F.R. §19 and §19.4 Table 1 (or as otherwise provided by federal regulations). Civil penalties are mandatory once violations are found. 33 U.S.C. §1319(c); *Leslie Salt Co. v. United States*, 55 F.3d 1388, 1396 (9th Cir. 1995) (civil penalties under Clean Water Act are mandatory, not discretionary).

Persons Giving Notice

The name, address, and phone number of the persons giving notice of intent to file a citizen lawsuit under the CWA are:

Montana Environmental Information Center
P.O. Box 1184

Helena, MT 59624
(406) 443-2520

MEIC is represented by:

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206.487.7250
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MEIC believes that a negotiated settlement of these numerous violations, codified through a court-approved consent decree, would be preferable to protracted litigation. For that reason, during the sixty (60) day notice period, we will be available to discuss effective remedies and actions which will assure Hecla's future compliance with its permit, the CWA, and all applicable state water pollution control laws. If, however, we are unable to resolve the issues raised herein, the MEIC is prepared to file suit in the United States District Court for the District of Montana pursuant to section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), after sixty days from the date of this letter. As discussed above, this lawsuit will seek injunctive relief, appropriate civil penalties, fees and costs of litigation, and such other relief as the Court deems appropriate.

If you have any questions concerning this letter or the described violations, or if you believe that this notice is incorrect in any respect, please contact the undersigned counsel, the Western Environmental Law Center, at 206-487-7250.

Thank you for your prompt attention to this matter.

Andrew Hawley
Staff Attorney

C:

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