



Environmental Appeal Board

Citation: *Thompson Creek Metals Company Inc. v. Director, Environmental Management Act*, 2024 BCEAB 20

Decision No.: EAB-EMA-22-A019(a)

Decision Date: 2024-06-12

Decision Type: Consent Order

Appealed Under: *Environmental Management Act*, SBC 2003, c. 53

Between:

Thompson Creek Metals Company Inc.

Appellant

And:

Director, *Environmental Management Act*

Respondent

And:

Nadleh Whut'en Nation and Stelat'en First Nation

Third Parties

CONSENT ORDER

Background

[1] Permit 1307 (the "Permit") is issued under Section 14 of the *Environmental Management Act*, S.B.C., c. 53, and authorizes Thompson Creek Mining Corporation (the Appellant), to, among other things, discharge effluent arising from the Endako Mine.

[2] The Permit requires the Appellant to implement the most recent Director-approved version of the Continuous Improvement Framework, which is one aspect of the regulation of the discharge of effluent from the Endako Mine (the "CIF").

[3] Section 4.3 of the Permit sets out a process for updating the CIF.

[4] In accordance with Section 4.3 of the Permit, the Appellant engaged with the Endako Water Quality Working Group, obtained and developed the information required by Sections 4.3.1, 4.3.2 and 4.3.3 of the Permit, and developed an updated CIF (the "Updated CIF").

[5] In August 2022, the Appellant submitted for approval to the Director:

(a) the information required by Sections 4.3.1, 4.3.2 and 4.3.3 of the Permit;
and

(b) the Updated CIF.

[6] The Appellant filed the above noted appeal of a November 15, 2022 Decision of the Director (the "Decision") with the Environmental Appeal Board (the "Board") under section 100 of the *Environmental Management Act*, S.B.C. 2003, c. 53 ("EMA"). On November 15, 2022, the Director issued a decision pursuant to Section 4.3 of the Permit (the "Decision").

[7] The Director:

- (a) approved the Updated CIF; and
- (b) imposed two additional permit requirements on the Appellant (the "Additional Permit Requirements").

[8] By consent of the parties, the Nadleh Whut'en Nation and Stellat'en First Nation were granted Third Party status to the appeal.

[9] The Parties agree that if certain revisions are made to the Updated CIF, this Appeal will be rendered unnecessary. The revisions made to the Updated CIF in this regard, which:

- (a) have been developed collaboratively by the Parties; and
- (b) modify only page 20 of the body of the Updated CIF, as identified via underlining on that page, are shown in the attached Schedule "A" to this Order (the "Revisions").

[10] In May 2024, TCMC delivered to the Parties a revised Updated CIF, identified as "Version 6.0", which incorporates the Revisions and makes no other substantive changes to the Updated CIF (the "Revised Updated CIF").

On the application of the parties, without a hearing and by consent;

THIS BOARD ORDERS that:

1. Pursuant to section 16 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45, and section 103 of the *EMA*:
 - a. The Decision is reversed.
 - b. The Revised Updated CIF is approved for the purposes of Section 4.3 of the Permit.
 - c. The Revised Updated CIF is the "most recent Director approved version" for the purposes of Sections 4.1 and 4.2 of the Permit.
2. Nothing in this order shall be interpreted as precluding future updates to the CIF under Section 4 of the Permit.

3. This order may be signed by the Parties in counterpart.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

"K Kaukinen"

K. Kaukinen

Lawyer for the Appellant

"M. Weintraub"

M. Weintraub

Lawyer for the Respondent

"K. Brown"

K. Brown

Lawyer for the Third Parties, Nadleh Whut'en Nation and Stellat'en First Nation

"David Bird"

David Bird

Vice Chair and Registrar, Environmental Appeal Board

Development of potential mitigative options, where required, will focus on the source of the constituent determined to exceed the relevant SPO or water quality target. In certain situations, this could involve a simple operational solution that could be implemented to reduce or mitigate loadings to the aquatic receiving environment. As outlined in Table 1 of the TRP (Appendix D), these operational solutions should be implemented within a maximum of 1 year of the original notification. If the identified mitigation measures are complex and not possible to implement within a year, a temporary amendment to this timeline can be requested for approval from the Director.

2.4 BEST ACHIEVABLE TECHNOLOGY ASSESSMENTS

The proposed Adaptive Management/Continuous Improvement process for the Endako mine includes periodic BAT assessments, completed following the current BC ENV BAT assessment guidance, strategically timed to occur at least two years in advance of the onset of the short-term, medium-term and long-term water quality targets and objectives described above and in Appendix A. The intent of these periodic BAT assessments are to:

- If necessary, identify best approaches to achieve more stringent narrative CIF water management objectives and numerical targets in the next target time period;
- Review monitoring results and any required investigation of cause studies to identify water quality issues that may require additional consideration during the short-, medium- or long-term BAT;
- Ensure best management practices and appropriate technologies are being used at the Mine; and
- Encourage innovation and an overall focus on pollution prevention.

The planned cycles for these periodic BAT assessments align with the five-year frequency for required updates to the Mine's closure plan. Where possible, these BAT assessments – focused on the next mitigation management period or focused on closure – should be coordinated and inform each other, so that mine planning for the immediate future considers and informs eventual closure scenarios and vice-versa, leading to greater predictability, efficiency, and cost-effectiveness in long-term mine water management. Each BAT will consider the information available at the time of its commissioning, including available closure planning considerations and the Nadleh Whut'en First Nation's, Stelat'en First Nation's, Nee-Tahi-Buhn Band's and Skin Tyee Nation's expectation that there will be reductions or, at a minimum, no increases in loadings of COPCs to Francois Lake.

The results of the BAT assessment undertaken for each time period would be used by the mine to develop a specific mitigation plan that would support water quality management in mine receiving environments, with the overall goal of achieving water management objectives and targets outlined in the CIF for that time period. If more information is required on First Nations water uses to support the CIF, then studies should be conducted.

Although effects-based SPOs have been developed for sulphate and TDS, there is a desire from the WQWG to reduce concentrations further in the future and, therefore, the medium-term and long-term BAT assessment will consider achievable BATs that could be implemented to further reduce concentrations of these constituents in Class III streams.