

**Kennecott Eagle Minerals**

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March 24, 2010

Ms. Rebecca Harvey, Director  
Region 5, UIC Branch  
United States Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3507

Re: **Kennecott Eagle Minerals Company**  
**Withdrawal of Underground Injection Control (UIC) Permit Application**

Dear Ms. Harvey:

This letter addresses Kennecott Eagle Mineral Company's (Kennecott) pending application for an individual UIC permit for the Eagle Mine treated water infiltration system (TWIS). For the reasons explained further below, Kennecott respectfully withdraws its application, submitted at EPA's request on April 20, 2007. Kennecott takes this action based on a recently completed (and Michigan Department of Natural Resources and Environment (MDNRE)-approved) design modification to the TWIS. In addition to improving TWIS performance from an operational and maintenance perspective, this modification results in a discharge system that does not implicate UIC requirements, obviating the need for a UIC permit.

More specifically, the redesigned TWIS will entail discharge of water (treated to meet drinking water MCLs) through perforated pipes located above grade level. The pipes will be insulated above-grade and covered with foam and other synthetic materials that will allow for much easier access to the pipes for maintenance and troubleshooting than the original TWIS design, which had the pipes buried under several feet of earthen material. (A detailed description of the redesign previously provided to EPA is attached.) This redesigned, covered, above-ground system will operate exactly like an aboveground irrigation system, discharging water onto gravel placed on the surface of the ground.

The UIC program regulates only "underground injections." *See* 40 C.F.R. § 144.31 (2008). An underground injection is a "well injection." 40 C.F.R. § 146.3 (2008). A well injection is a "**subsurface emplacement** of fluids through a well." *Id.* (emphasis added). UIC regulations define "well" to mean one of four things: (1) "[a] bored, drilled, or driven shaft whose depth is greater than the largest surface dimension," (2) "a dug hole whose depth is greater than the largest surface dimension," (3) "an improved sinkhole," and (4) "**a subsurface fluid distribution system.**" 40 C.F.R. § 146.3 (emphasis added). A subsurface fluid distribution system is "an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids **below the surface of the ground.**" *Id.* (emphasis added). Various EPA

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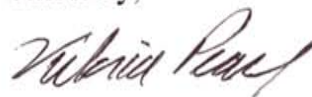
guidance documents addressing regulation of storm water infiltration systems underscore that it is the location of the discharge underground (i.e. below-grade) that is the “defining characteristic” of whether infiltration systems implicate UIC requirements. (EPA Fact Sheet, “When are Stormwater Discharges Regulated as Class V Wells?”) If the discharge point is not underground, then the discharge assemblages are not UIC regulated discharges. *See e.g.* July 2008 U.S. EPA Memorandum from Linda Boornazian, Director Water Permits Division to Steve Heare, Drinking Water Protection Division (and attachments). Underground Injection Control Stormwater Information, Portland, Oregon Department of Environmental Quality (2005) (interpreting EPA UIC requirements); EPA Website UIC Stormwater Information Page.

Kennecott's redesigned TWIS does not fit within any of the four categories of wells. It clearly is not a bored, drilled, or driven shaft; it is not a dug hole; and it is not an improved sinkhole. In addition, it is clearly not a “subsurface fluid distribution system.” None of the discharge pipes or other parts of the system are subsurface. The system does not distribute fluids below the surface of the ground. Accordingly, this discharge configuration falls outside of the UIC program, and no inventory submittal or permit is needed to construct and operate the system.

This conclusion is also fully supported by the way in which EPA treats similar discharges in Michigan that, though regulated by Michigan’s groundwater discharge permitting program, have, to Kennecott’s knowledge, never been subject to UIC requirements. Our review of the current list of active Michigan “Part 22” permits divulged literally hundreds of such surface discharge configurations, including wastewater spray irrigation systems as well as other above ground infiltration systems and storm water infiltration systems throughout the state.

For all these reasons, Kennecott has concluded that the planned TWIS discharge does not implicate UIC requirements, and as such Kennecott respectfully withdraws the application. Thank you for your attention to this matter and we look forward to continue to work cooperatively with you. Please feel free to contact me if you have any questions.

Sincerely,



Victoria Peacey