

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of Kennecott Utah Copper LLC Notice of Violation and Order	STIPULATION AND CONSENT ORDER Docket No. UGW11-09
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A. STATUTORY AUTHORITY

This STIPULATION AND CONSENT ORDER (SCO) is issued to Kennecott Utah Copper LLC (hereinafter KUC), by the Director of the Utah Division of Water Quality (DIRECTOR) under the Utah Water Quality Act, Utah Code Ann. §§ 19-5-101 to 19-5-123 (the ACT) including sections 19-5-104, 19-5-106, 19-5-111 and 19-5-115. This SCO is also issued in accordance with Utah Administrative Procedures Act, Utah Code Ann. §§ 63G-4-101 to 63G-4-601.

B. STIPULATION

The parties agree that the Executive Director of the Utah Department of Environmental Quality has jurisdiction over this matter and the DIRECTOR shall administer this SCO.

The parties are entering into this SCO to address the Notice of Violation and Compliance Order (NOV/CO) issued by the Executive Secretary of the Utah Water Quality Board against KUC on October 12, 2011. The parties now desire to resolve this matter fully without further administrative proceedings except to the extent provided herein by entering into this SCO.

This SCO resolves the NOV. It does not in any way relieve KUC from any other obligation imposed under the Act or any other State or Federal laws. Nothing contained in this SCO shall preclude the DIRECTOR from taking actions to include additional penalties against KUC for future violations of State or Federal law.

Nothing in this SCO shall constitute a waiver by KUC to raise in defense any legal or factual contention to future allegations of noncompliance. This SCO reflects a compromise of disputed positions, and by entering into this SCO KUC neither admits nor denies the facts or violation presented in this SCO. KUC, nevertheless, agrees that the DIRECTOR has authority to issue the NOV giving rise to this SCO and jurisdiction to enforce the terms of this SCO. Nothing in this SCO shall constitute or be considered as a release from any claims, to include natural resource damage claims, cause of action, or demand in law or equity which the STATE may have against KUC, or any other person, firm, partnership or corporation for any liability arising out of or relating in any way to any future release of pollutants to waters of the State.

This SCO shall not in any way relieve KUC of any obligation to comply with any applicable municipal, county, state, or federal laws and regulations. This SCO is effective once signed by authorized agents from both parties.

This SCO is in effect until all the requirements of this SCO are met to the satisfaction of the DIRECTOR.

Once signed by the parties, this is a final administrative order subject to the civil enforcement provisions of UCA § 63G-4-501.

B.1. APPLICABLE STATUTORY AND REGULATORY PROVISIONS

1. UCA § 19-5-102(23)(a) defines waters of the State as “all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state.”

2. UCA § 19-5-107(3)(a) states: “It is unlawful for any person, without first securing a permit from the director to: make any discharge [] not authorized under an existing valid discharge permit.”

3. UAC R317-1-2.1 states: “No person shall discharge wastewater or deposit wastes or other substances in violation of the requirements of these regulations.”

4. UAC R317-6-6.2.A. states in pertinent part: “Except as provided in R317-6-6.2.C, the following facilities are considered to be permitted by rule and are not required to obtain a discharge permit under R317-6-6.1 . . . 20. pipelines and above-ground storage tanks;”

5. UAC R317-6-6.2.B states in pertinent part: “No facility permitted by rule under R317-6-6.2.A may cause ground water to exceed ground water quality standards or the applicable class TDS limits in R317-6-3.1 to R317-6-3.7.”

6. UAC R317-6-6.2.C. states: “The submission of an application for a ground water discharge permit may be required by the Executive Secretary for any discharge permitted by rule under R317-6-6.2 if it is determined that the discharge may be causing or is likely to cause increases above the ground water quality standards or applicable class TDS limits under R317-6-3 or otherwise is interfering or may interfere with probable future beneficial use of the ground water.

B.2. FACTS

1. KUC operates a copper ore concentrating facility (Copperton Concentrator) north of the town of Copperton in southwest Salt Lake County. The Copperton Concentrator uses a grinding and flotation process to concentrate copper ore. Waste material from this process, known as tailings, is conveyed in slurry form via a pipeline from the Copperton Concentrator north to KUC operations near the Great Salt Lake where the tailings are deposited in the north tailings impoundment.

2. The Executive Secretary of the Utah Water Quality Board issued KUC Ground Water Discharge Permit UGW350017 (KUC Permit) for the Copperton Concentrator on February 19, 2004, which was renewed on February 26, 2009.

3. The KUC tailings pipeline is referenced in the KUC Permit as permitted by rule [as per UAC R317-6-6.2.A.(20)].

4. Part I.C.(3) of KUC Permit requires: "Implementation of the Best Management Practices Plan (Appendix A) to ensure prompt clean-up of any spills and proper handling of process waters as well as an ongoing inspection and maintenance program for facilities included in this permit."

5. Three discharges of tailings occurred in three consecutive months from KUC's tailings pipeline. The discharges occurred on July 25, 2011, August 30, 2011, and September 19, 2011, respectively. All three releases occurred at or near Drop Box A.25 and impacted an unnamed dry wash which is interrupted downgradient by a gravel operation, dryland farming, and residential development. The subject tailings spills were retained entirely on KUC property.

6. The DIRECTOR is satisfied that the subject tailings spills did not threaten or cause pollution to ground water. However, permit by rule status is subject to revocation and these spill events may cause the DIRECTOR to further evaluate the pipeline's permit by rule status or whether a permit should be required. The permit by rule status may be revisited, pursuant to and in conformance with UAC R317-6-6.2.C., when the KUC Permit is up for renewal in 2014.

7. Pursuant to the Best Management Practices Plan and the Reporting Requirements in the KUC Permit, KUC environmental personnel notified the Division of Water Quality of the releases after each occurred.

8. KUC employed Best Management Practices in responding to the three events as generally contemplated by the Best Management Practices Plan in the KUC Permit. KUC's response actions included: taking immediate action upon learning of overflow from the tailings line to correct the upset condition in order to minimize and curtail the release; collecting water samples of the water and solid fractions to the released slurry; promptly recovering water where possible; and removing accumulated tailings and solids from non-native areas. KUC also verbally notified DWQ within 24 hours of each event and followed up with a written report to DWQ detailing the event within 5 days of each event's occurrence.

9. The three pipeline releases resulted in the issuance on October 12, 2011, by the Executive Secretary of the Utah Water Quality Board, of the referenced NOV/CO to KUC.

10. The NOV/CO addressed the three tailings pipeline upset events and KUC was ordered to "provide a detailed written submission, for each occurrence, within sixty days of receipt of the Order describing:

- (a) The root cause of the unauthorized discharges;
- (b) An assessment of the nature and extent of the unauthorized discharges;
- (c) Corrective actions that have been or will be taken for the unauthorized discharges;

(d) Steps that will be taken to prevent reoccurrence of the unauthorized discharges; and

(e) Modifications to Appendix A of the KUC Permit to ensure prompt and complete reporting of spills and corrective actions which KUC must undertake in the event of any future spills.”

11. KUC filed its response to the NOV on November 11, 2011 and requested an extension of time to comply with the Order.

12. The extension request was granted giving KUC until February 9, 2012 to submit the information required by the Order.

13. On February 9, 2012, KUC submitted information identifying: the “root causes” of the pipeline spills; an assessment of the nature and extent of the spills; a report on associated corrective actions; steps taken to prevent reoccurrence of pipeline spills; and specific modifications to Appendix A, the Best Management Practices (“BMP”) Plan, identified in the KUC Permit.

14. KUC’s analysis demonstrates that the pipeline spills resulted from a series of mechanical malfunctions and operational upsets.

15. According to the root cause analysis, the pipeline spills resulted from multiple technical failures combined with obstruction in the tailings pipelines. In particular, the spills stemmed from: a hydraulic hose leak and valve malfunction (associated with the July spill); a subsequent valve malfunction (associated with the August spill and related, at least in part, to the fact that effort to fix the valve malfunction in July were ongoing at the time of the August spill); and the accumulation of debris in the tailings line (potentially associated with all three spills.)

16. KUC has addressed the spills and has implemented a number of corrective action measures and determined that the obstruction cleared and that the reduced capacity of the pipeline was not the result of scaling.

Modifications to Appendix A of the Ground Water Permit

17. As required by the terms of the NOV/CO, KUC has modified its BMP Plan currently identified as Appendix A in the KUC Permit.

18. The modified BMP Plan addresses reporting requirements and spill response procedures for the section of tailings line between the Copperton Concentrator fence line and the northern terminus of the tailings pipeline bridge over Highway SR 201.

19. The revised BMP Plan is attached hereto as Attachment A.

B.3. VIOLATION

1. The July, August and September 2011 pipeline releases into the dry wash constituted a discharge not authorized under an existing valid discharge permit in violation of Utah Code Ann. § 19-5-107(3)(a).

B.4. ORDER

1. Within sixty days of the effective date of this SCO:

(a) The existing BMP Plan at Appendix A of the KUC Permit shall be replaced with the revised BMP Plan as set forth hereto as Attachment A.

(b) The references in the KUC Permit to an SPCC Plan shall be replaced with references to Appendix A, to correctly indicate where pertinent spill response procedures are documented.

(c) The Permitted Facilities language in KUC Permit Part I.D. shall be revised to be consistent with UAC R317-6-6.2.B reflecting: “The facilities on Table 3 under the “Permit By Rule” heading are for unit processes not specifically addressed by this permit. No such facilities identified on Table 3 may cause ground water to exceed ground water quality standards or the applicable class TDS limits. If the background concentration for affected ground water exceeds the ground water quality standard, the facility may not cause an increase over background.”

2. In resolution of the NOV/CO referenced in paragraph 10 of Part B.2. above, KUC shall pay a total penalty amount of \$13,375.00 within 30 days of the effective date of this SCO by check made payable to the State of Utah delivered or mailed to the Division of Water Quality, Department of Environmental Quality, 195 North 1950 West, P.O. Box 144870, Salt Lake City, UT 84114-4870. The penalty has been negotiated using the Penalty Criteria for Civil Settlement Negotiations, Utah Admin. Code R317-1-9.

IT IS SO ORDERED.

DATED this ____ day of _____, 2012.

FOR KENNECOTT UTAH COPPER LLC

By: _____

Its _____

DATED this ____ day of _____, 2012.

FOR THE UTAH DIVISION OF WATER
QUALITY

By: _____
Walter L. Baker, PE
Director

Approved as to form and substance:

Paul M. McConkie
Assistant Attorney General

Lisa A. Kirschner
Attorney for Kennecott Utah Copper LLC