



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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Mr. Edward Alexander Lee
Office Director
Office of Canadian Affairs
U.S. Department of State
WHA/CAN, Room 3917
2201 C Street NW
Washington, DC 20520

Dear Mr. Lee:

The U.S. Environmental Protection Agency (EPA) has reviewed the *Lodgepole Project Draft Terms of Reference for Cline Mining Corporation's Application for an Environmental Assessment Certificate Pursuant to the BC Environmental Assessment Act, December 2006 (TOR)*. EPA previously reviewed the February 2006 draft TOR and provided comments directly to the Montana Department of Natural Resources and Conservation. Those comments were included in the State of Montana's April 14, 2006 comments submitted directly to Garry Alexander, Director of the Canadian Environmental Assessment Office. EPA's original comments were again referenced by Montana in an October 18, 2006 letter requesting that British Columbia (BC) revise the draft TOR to include U.S. state and federal comments. Given that the December 2006 draft TOR was released for broad public comment, EPA now submits the following comments through the Department of State. The comments below are an expansion on our original comments based on additional assessment of the draft TOR and are organized by topic.

Water Quality

Article IV of the Boundary Waters Treaty of 1909 states, "It is...agreed that...boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property of the other." Over many years, EPA has endeavored to consult and coordinate closely on water quality issues with the State of Montana, federal agencies on both sides of the border, the Province of British Columbia, and tribal governments.

In light of the common and longstanding commitment by both countries to protect our boundary waters, EPA believes the TOR should include the following:

- Section 6.6 Hydrology, 6.7 Hydrogeology and 6.8 Water Quality state that the assessment of the potential mine site and load-out effects will be limited to the project area. Hydrology and water quality effects should be assessed by B.C. downstream to the international border so that the U.S. can make a determination of effects on U.S., state and tribal water quality.
- Section 3.1 Project Background and Rationale notes that the permit application will include a description and rationale for mine water management. The TOR should require a description of any applicable point source and/or storm water management discharge permits and related water quality based or technology based permit limits. This information should be developed to reflect discharges associated with the water management facilities described in Sections 3.2.3 and 3.2.4.
- The haul road will extend from the proposed mine site to Elko. The haul road will cross or come in close proximity to numerous water bodies and unnamed tributaries. EPA recommends collection of baseline water quality data (chemical, physical, and biological) and surface water hydrology data at representative sites in all these waters. This information will be helpful in assessing the potential for increased sedimentation in the river systems and should be added to Section 6.8 describing mitigation of off-site water quality impacts.
- EPA appreciates the decision to collect baseline water quality data in the Flathead River, Foisey Creek, McLatchie Creek, Crabb Creek, Jack Creek, and North Lodgepole Creek as stated in Section 4.4.4. We believe, however, that the duration and frequency of the baseline water quality study is not adequately defined (see Section 4.4.3). A minimum of three years of data, ideally including wet, dry, and “normal” years, is necessary to adequately characterize water quality conditions. Additionally, it should be specified in the TOR that potential water quality effects will be assessed at the U.S./Canadian border.

Air Quality

The preamble to the 1991 *Agreement between the Government of Canada and the Government of the United States of America on Air Quality* states that both countries desire that emissions from air pollutants from sources within their borders “...not result in significant transboundary air pollution” Reaffirming Principle 21 of the Stockholm Declaration, the preamble to the Agreement also recites that States have “...the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.” Furthermore, Article V.1 of the Agreement states that each Party “shall, as appropriate and as required by its laws, regulations, and policies, assess those proposed actions, activities and projects within the area under its jurisdiction that, if carried out, would be likely to cause significant transboundary air pollution, including consideration of appropriate mitigation measures.” Finally, Annex 1, Paragraph 4 of the Agreement notes the particular importance of the prevention of significant air quality deterioration and protection of visibility for international parks, national, state and provincial parks, and designated wilderness areas.

In light of the commitment by both countries to protect air quality from significant transboundary air pollution, EPA offers the following comments:

- In Section 4.11.4, EPA appreciates that the draft TOR will require assessment of baseline wind conditions and ambient air quality conditions. We request that the assessment also include potential impacts on important sensitive receptors, such as designated wilderness and national parks, at the U.S./Canadian border.
- Glacier National Park, situated adjacent to the border, is classified as a Class I air shed. EPA requests that Cline Mining Corporation be asked to mitigate any identified impacts the U.S./Canadian border. Air impacts should cover nutrient loading, contributions of PM₁₀ and PM_{2.5}, and regional haze/visibility impacts.

Noise and Viewshed

The proposed mine is located approximately 20 air miles from Glacier National Park and will be visible from certain locations within the Park.

- EPA requests that the baseline noise data assessment described in Section 4.8.4 be expanded to the U.S./Canadian border.
- EPA recommends that an assessment of impacts to the viewshed from Glacier National Park and U.S. wilderness areas be added to the TOR.

Aquatic and Fisheries Resources

The International Joint Commission's 1988 Report on the Flathead River Basin includes information and advice about protecting the Bull Trout migratory fishery and its aquatic habitat in light of the requirements of the Boundary Waters Treaty. Consistent with the 1988 Report and many years of binational consultation on the Flathead River Basin, EPA believes the governments should consider developing an updated binational approach which can lead to improvements in water quality and migratory fishery protection in the Basin.

- More recently, bull trout were listed by the U.S. Fish & Wildlife Service as a federally threatened species. The rivers and tributaries in the U.S. Flathead Basin have been designated “core” critical bull trout streams by Montana Department of Fish, Wildlife & Parks, and “priority watersheds” under INFISH as part of bull trout recovery habitat. Bull trout in the North and Middle forks of the Flathead River, including stream reaches into BC, are considered one meta-population because Flathead Lake plays a major part in their life cycle. Most of the bull trout in this population spawn in headwater tributaries in the North and Middle forks. EPA requests that potential water quality impacts (introduction of toxic substances, increased sedimentation, reductions in dissolved oxygen, etc.) on fisheries populations be assessed at the basin scale to the U.S./Canadian border.

Surficial Geology, Terrain & Soils

- In Section 4.6.3, EPA recommends that BC Environmental Assessment Office describe any provincial mine reclamation criteria that will be applied to the proposed mine. EPA is aware of the extensive mine reclamation work occurring in the Elk River coal fields.

The Cline Mining application and mitigation plan could be strengthened by a thorough review of the success and modifications to mine reclamation techniques currently employed.

Heritage Resources/Traditional Uses

The Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Indian Reservation maintain aboriginal rights in the North Fork of the Flathead River for the Salish, Kootenai and Pend Oreille peoples. EPA has approved tribal water quality standards for the Reservation, including the southern half of Flathead Lake. As part of the adopted water quality standards, CSKT has designated use of Flathead Lake to foster conditions that support the native aquatic and terrestrial species. EPA submits the following comments related to Tribal water quality:

Potential water quality impacts (introduction of toxic substances, increased sedimentation, reductions in dissolved oxygen, etc.) need to be assessed at the basin scale to the U.S./Canadian border.

Please note that CSKT Tribal Council has submitted comments directly to BC Environmental Assessment Office which outline in detail the Tribes' interest and concerns related to the proposed Lodgepole Mine.

Cumulative Effects Assessment

As EPA reads Section 7.0, it appears that a cumulative effects assessment will only occur after the project effects assessment is complete and a determination is made that the mitigation measures will not fully address any remaining impacts. EPA, along with other U.S. government agencies and the State of Montana, believes a federal environmental assessment under the Canadian Environmental Assessment Act (CEAA) is warranted and that the assessment should examine all reasonably foreseeable activities in the BC Flathead and the combined impacts on water, air and land resources.

EPA greatly appreciates the invitation by BC to participate in reviewing and commenting on the draft TOR.

Sincerely,



CAROL RUSHIN
Assistant Regional Administrator
Office of Ecosystems Protection and
Remediation