

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of Kennecott Utah Copper LLC Notice of Violation and Order	STIPULATION AND CONSENT ORDER Docket No. UGW13-02
---	--

A. STATUTORY AUTHORITY

This Stipulation and Consent Order (“SCO”) is made and entered into by and among the Director of the Utah Division of Water Quality (“DIRECTOR”) and Kennecott Utah Copper LLC (“Rio Tinto Kennecott Copper or RTKC”)(collectively referred to as “the Parties”), in accordance with the Utah Water Quality Act (“ACT”) including Sections 19-5-106, 19-5-107, 19-5-111 and 19-5-115, Utah Code Annotated (“UCA”), and in accordance with the Utah Administrative Procedures Act, UCA 63G-4-101, et seq.

B. STIPULATION

1. The Parties agree that the Executive Director of the Utah Department of Environmental Quality has jurisdiction over RTKC’s Request for Agency Action contesting the Notice of Violation and Compliance Order, Docket No. UGW13-02 (NOV 13-02) issued by the DIRECTOR against RTKC on May 23, 2013. The Parties are entering into this SCO to address NOV 13-02. The Parties now desire to resolve this matter fully without further administrative proceedings except to the extent provided herein by entering into this SCO. The DIRECTOR shall administer this SCO.

2. This SCO resolves NOV 13-02. Nothing contained in this SCO shall preclude the DIRECTOR from taking actions to include additional penalties against RTKC for future violations of State or Federal law.

3. Nothing in this SCO shall constitute a waiver by RTKC to raise in defense any legal or factual contentions to future allegations of noncompliance or future actions by the DIRECTOR relating to NOV 13-02. This SCO reflects a compromise of disputed positions, and by entering into this SCO, RTKC neither admits nor denies the facts or disputed violation presented in this SCO. RTKC, nevertheless, agrees that the DIRECTOR has authority 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 RTKC, 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.

4. This SCO shall not in any way relieve RTKC 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.

5. Once signed by the Parties, this is a final administrative order subject to the civil enforcement provisions of UCA § 63G-4-501 and other applicable law including UCA § 19-5-115 and RTKC shall withdraw its Request for Agency Action consistent with the Order.

C. 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 R317-6-6.2.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.”

4. UAC R317-6-6.2B states in pertinent part: “No facility permitted by rule under R317-6-6.2A 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.”

5. UAC R317-6-6.2.C states: “The submission of an application for a ground water discharge permit may be required by the Director 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.”

D. FACTS

1. RTKC 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 RTKC operations near the Great Salt Lake where the tailings are deposited in the north tailings impoundment.

2. As part of its operations, RTKC operates two Copperton Concentrator tailings pipelines described as the “48-inch” and “60-inch” pipelines (collectively the “tailings pipelines”) in what is considered the “Copperton Concentrator Pipeline Corridor.”

3. This SCO applies to the tailings pipelines within the Copperton Concentrator Pipeline Corridor described as beginning from the RTKC Copperton Concentrator to where the tailings lines cross the RTKC North Tailings Impoundment boundary on the north side of SR-201.

4. The DIRECTOR issued NOV 13-02 for a February 4, 2013 release of an estimated 696,000 gallons of tailings slurry from the Copperton Concentrator 48-inch tailings pipeline at vent stack 335 located approximately one mile east-southeast of pump station 3B. Specifically, RTKC’s February 8, 2013 written notification to DWQ reported:

“approximately 696,000 gallons of slurry were released containing approximately 4,000 tons of tailings solids. Calculations for the release were based on a GPS mapping of the area covered by the tailings slurry and the estimated depth of the deposited solids at a number of points; water volume was calculated based upon an assumed percent solid fraction of the released slurry. From the release point, tailings flowed north along the pipeline road approximately 2,733 feet. Tailings breached a road berm and flowed east down an unused road, then into an unnamed dry wash where it pooled in a depression near a culvert on the east side of the pipeline road. Additionally, tailings flowed between the east and west pipelines into a basin. Tailings then flowed from the basin into the same unnamed dry wash and through a 48-inch culvert east under the pipeline road, across a KUC [RTKC] access road. Tailings continued to flow east approximately 1,030 feet where it left KUC [RTKC] property and flowed onto Alliant Tech Systems (ATK) property; approximately 150 feet from highway U-111.”

5. RTKC initiated a removal of tailings solids, including a portion of the spilled liquid fraction retained as moisture in the tailings, from the affected area. The removal was completed by late March 2013 and the area was reseeded in April 2013; successful vegetation has stabilized the removal area.

6. The tailings pipelines have been considered as permitted by rule under Utah Admin. Code Rule R317-6-6.2.A.20. The tailings pipelines are also addressed, in part, under the Copperton Ground Water Discharge Permit, UGW 350017. The Parties now agree that the tailings pipelines will instead be covered under a modification of the Copperton Ground Water Discharge Permit, UGW 350017, for which a permit modification and application is required pursuant to Utah Admin. Code R. 317-6-6.3 and as specifically described in paragraph 2 of the Order. RTKC and DWQ agree to cooperate in developing a mutually agreeable modification of the Copperton Ground Water Discharge Permit, UGW 350017, and to finalize that same modification. Upon issuance of the permit modification, RTKC reserves the right to contest any modification to the permit. The tailings pipelines will, pending completion of the referenced process and the issuance of a permit covering the pipeline, be operated in accordance with the appended Process Material Pipeline Spill Prevention, Minimization, and Response Plan of the current Copperton Ground Water Discharge Permit, UGW 350017.

2. The Parties agree that settlement of the claims herein is in the public interest and is made in good faith, and that entry of this Decree is an appropriate means to resolve the matters covered herein and, allows for immediate assurance in protecting the waters of the state in the affected areas.

E. VIOLATION

1. The February 4, 2013 pipeline surface release into a dry wash constituted a discharge not authorized under an existing valid discharge permit in violation of Utah Code Ann. § 19-5-107(3)(a).

F. ORDER

1. In full and complete satisfaction of the Notice of Violation and Order, Docket No. UGW13-02, RTKC shall comply with the process for permitting the Copperton Concentrator Pipeline Corridor in accordance with paragraph 2 below and upon issuance of a modification of the Copperton Ground Water Discharge Permit, UGW 350017, the tailings pipelines shall be managed consistent with and permitted under the modified permit.

2. RTKC shall within 90 days of settlement submit a renewal and modification draft of the Copperton Ground Water Discharge Permit, UGW 350017, for DWQ review and approval. The draft permit renewal and modification shall include additional Best Available Technology standards, monitoring, operating and reporting requirements for the 48-inch and 60-inch tailings pipelines and for any other mutually agreeable pipeline facilities within the Copperton Concentrator Pipeline Corridor. The Draft Copperton Concentrator Permit shall also include an agreed upon schedule and outline of reports and actions to be taken by RTKC and submitted to DWQ for review and approval regarding contaminant investigation and possible corrective action in accordance with R317-6-6.15 for pipeline releases other than UGW 13-02.

3. RTKC shall, within sixty (60) days following the date of entry of this SCO, pay to the State of Utah a penalty in the sum of ten thousand dollars (\$10,000.00) by cash or 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.

4. Within sixty (60) days following the date of entry of this SCO, RTKC shall file a notice withdrawing its Request for Agency Action.

IT IS SO AGREED.

DATED this ____ day of _____, 2015.

FOR KENNECOTT UTAH COPPER LLC

By: _____
Its _____

IT IS SO AGREED AND ORDERED.

DATED this ____ day of _____, 2015.

FOR THE UTAH DIVISION OF WATER
QUALITY

By: _____
Walter L. Baker, PE
Director

Approved as to form:

Paul M. McConkie
Assistant Attorney General

Lisa A. Kirschner
Attorney for Kennecott Utah Copper LLC