

5.3.4 Ponds

5.3.4.1 Pond Design Appendix 5.3-A

Comment: Pond designs do not address wildlife protection. Add the components into design specifications.

- Fencing: mesh and height for large and small mammal exclusion.
- Bird and wildlife access: level of metals concentration in solution of contained ponds in which ponds will be covered to prevent contact with wildlife.
- Unfenced ponds- provisions to preclude wildlife entrapment

Table 5.0-2: Regulatory Primacy

Comment: Regulatory primacy of the Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act is the US Fish & Wildlife Service. The Department of Game, Fish and Parks shall enforce the South Dakota laws pertaining to the protection and propagation of all game animals, game birds, fish, and harmless birds and animals; SDCL 41-3-8 and 34A-8-6.

5.5 Monitoring

Comment: The monitoring and mitigation sections must include wildlife. Develop monitoring plans for:

- Land application: Bioaccumulation of metals in the terrestrial food chain must be evaluated if land application is use for waste disposal.
- Small mammals: Exposure and ingestion of potentially toxic land application solution, soils and vegetation represents a contaminate exposure pathway in the food chain.
- Migratory birds: Exposure risk of toxic levels of metal and metalloids from land application solution storage.
- Raptors: annual nest surveys of project area and buffer.
- Fish: Proposed collection and analysis methods for fish tissue will be consistent with the project's baseline sampling protocols.

5.5.7 Vegetation Sampling

5.5.7.1 Land Application Systems

The application states: Soil and vegetation samples will be collected annually from the land application areas.

Comment: The application needs to address concentrations of land applied metals in soil, vegetation and biota in which land application mitigation will occur.

5.6.11 Ecological Resources

Comment: This section needs to consider facilities becoming an attractive nuisance for wildlife. The species referenced in this section tend to have a high tolerance of human activity and could be attracted to food and water sources created by ponds and land application areas

5.6.11.1.2 Wildlife and Fisheries

The application states: Advanced planning of construction siting and activities in concert with continued monitoring can reduce impacts further and assist with the development of mitigation options, if necessary. Potential impacts to these species and others are discussed in greater detail in the following sections.

Comment: Advanced wildlife mitigation planning, construction siting, and monitoring should consist of approved written plans and incorporated in the mine permit application. Operations or construction activities failing to preemptively minimize wildlife impacts could result in a direct violation of federal and state wildlife laws.

5.6.11.1.5 Raptors

The application states: ISR activities in the permit area would not impact regional raptor populations, though individual birds or pairs may be affected by ISR activities causing raptors to abandon nest sites proximate to disturbance.

Comment: These activities constitute violation of State and federal laws protecting bird and raptors species and need to be acknowledged and addressed in the permit application. Specifically, activities' causing a "take" constitutes a violation of the federal Migratory Bird Treaty Act. Bald eagle abandonment of an active nest violates provisions of the Bald and Golden Eagle Protection Act. Bald eagles State threatened species protection is found in ARSD 41:10:02 and SDCL 34A-8.

5.6.11.1.5 Raptors

The application states: Powertech (USA) will develop a bald eagle mitigation plan for review and verification by SDGF&P.

Comment: Plan approval should be incorporated in to the permit application.

5.6.11.1.11 Threatened, Endangered, or Candidate Species and Species Tracked by SDNHP State-Listed Species

Comment: Only one bald eagle nest is documented within the permit area. A second, "alternative" nest is located near NE,NE,NE Section 31-T6S-R1E. Discussion of current plans regarding developments within suggested buffers need to be recognized in the permit application and mitigation coordinated with GFP.

5.6.11.2 Mitigation of Potential Ecological Resources Impacts

The application states: If direct impacts to raptors or other migratory bird species of concern occur, a Monitoring and Mitigation Plan for those species will be prepared and approved by the USFWS.

Comment: As previously stated these activities constitute violation of State and federal laws protecting bird and raptors species. Mitigation of activities and monitoring plans need to be in place prior to construction and operation.

General comments:

Barbed wire perimeter fencing should account for big game movement.

Annually wildlife monitoring and mitigation activities will be reported.

Mortalities will be reported to GFP within 24 hours.

The application permit does not address mitigation of ore zone formation leakage caused by improperly plugged exploration drilling holes.