

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 02, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSEPH A. PAKOOTAS, an individual
and enrolled member of the Confederated
Tribes of the Colville Reservation; and
DONALD R. MICHEL, an individual and
enrolled member of the Confederated
Tribes of the Colville Reservation, and
THE CONFEDERATED TRIBES OF
THE COLVILLE RESERVATION,

Plaintiffs,

and

THE STATE OF WASHINGTON,
Plaintiff-Intervenor,

v.

TECK COMINCO METALS, LTD., a
Canadian corporation,
Defendant.

No. 2:04-CV-00256-SAB

**ORDER DENYING MOTIONS
FOR RECONSIDERATION**

Before the Court are Plaintiff State of Washington’s Motion for Clarification and Reconsideration, ECF No. 2622, and Defendant Teck Cominco Metals, Ltd.’s Motion for Reconsideration, ECF No. 2628, and associated Motion to Expedite Hearing, ECF No. 2630. The motions were considered without oral argument.

ORDER DENYING MOTIONS FOR RECONSIDERATION *1

1 **PLAINTIFF’S MOTION FOR CLARIFICATION, RECONSIDERATION,**
2 **AND/OR CERTIFICATION**

3 Plaintiff State of Washington moves the Court to extrapolate its Order
4 Granting Defendant’s Motion for Reconsideration, ECF No. 2617, to clarify
5 whether the Court intended to dismiss its Model Toxics Control Act (“MTCA”)
6 claims in full. The State also moves the Court to (1) reconsider its dismissal of the
7 State’s air pathway theory under MTCA, (2) certify the state law questions to the
8 Washington Supreme Court, and/or (3) enter final judgment on the MTCA claims.

9 The Court found that the State failed to state a plausible claim under MTCA,
10 and stated, “Plaintiff State of Washington’s Seventh Cause of Action under the
11 Model Toxics Control Act is DISMISSED, with prejudice.” ECF No. 2617 at 5.
12 The holding is not ambiguous, and clarification is not necessary. The State also did
13 not demonstrate reconsideration of the issue is appropriate or the Court should
14 certify the MTCA claims to the Washington Supreme Court or enter final
15 judgment.

16 **DEFENDANT’S MOTION FOR RECONSIDERATION**

17 Defendant Teck Cominco Metals, Ltd. moves the Court to reconsider its
18 Order Denying Defendant’s Motion for Summary Judgment on Ripeness,
19 ECF No. 2624. Teck argues Plaintiffs are required to satisfy two conditions of
20 42 U.S.C. § 9613(g)(1), prior to bringing their natural resource damages claims.

21 The Court held Plaintiffs provided proper notice of their natural resource
22 damages claims, and since the pre-suit conditions of § 9613(g)(1) are disjunctive,
23 the Court need not consider the parties’ secondary arguments regarding selection
24 of a remedial action. ECF No. 2624 at 6. The Court decided the issue. Teck did not
25 demonstrate that reconsideration is appropriate.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiff State of Washington's Motion for Clarification and
3 Reconsideration, ECF No. 2622, is **DENIED**.

4 2. Defendant Teck Cominco Metals, Ltd.'s Motion for Reconsideration,
5 ECF No. 2628, is **DENIED**.

6 3. Defendant's Motion to Expedite Hearing, ECF No. 2630, is
7 **DENIED, as moot**.

8 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter
9 this Order and to provide copies to counsel.

10 **DATED** this 2nd day of May 2023.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

16 Stanley A. Bastian
17 Chief United States District Judge
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