UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8, MONTANA OFFICE
FEDERAL BUILDING, 10 W. 15th STREET, SUITE 3200
HELENA, MONTANA 59626

January 6, 2003

Ref: 8EPR-EP

Mr. Art Compton, Director
Planning, Prevention and Assistance Division
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Re: TMDL Approvals
Cooke City TMDL Planning Area

Dear Mr. Compton:

We have completed our review of the total maximum daily loads (TMDLs) as submitted by your office for the Cooke City TMDL Planning Area. The TMDLs are included in the document entitled Water Quality Restoration Plan for the Cooke City TMDL Planning Area (Montana Department of Environmental Quality) transmitted to us for review and approval in correspondence dated November 27, 2002 and signed by you. In accordance with the Clean Water Act (33 U.S.C. 1251 *et. seq.*), we approve all aspects of the TMDLs as developed for the Cooke City TMDL Planning Area. Enclosure 1 to this letter provides a summary of the elements of the TMDLs and Enclosure 2 provides details of our review of the TMDLs.

Based on our review, we feel the separate TMDL elements listed in Enclosure 2 adequately address the pollutants of concern, taking into consideration seasonal variation and a margin of safety. In approving these TMDLs, EPA affirms that the TMDLs have been established at a level necessary to attain and maintain the applicable water quality standards and has the necessary components of an approvable TMDL.

The Cooke City TMDL Planning Area includes water bodies both within the jurisdictional boundaries of the State of Montana and Wyoming. As such, the TMDL implements the water quality standards established by both States.

Finally, we wish to inform you that our office has received concurrence from the U.S. Fish and Wildlife Service regarding our biological evaluations of the approval of the Cooke City TMDL Planning Area. Our biological evaluations were submitted to the Service in accordance with Section 7 of the Endangered Species Act. In our evaluations, we assessed the effects for our approval on the threatened, endangered, proposed, and candidate species in the

area of the TMDLs. Our conclusion was that the TMDL approval would either have no effect or would not likely have an adverse impact on the species of concern. Any effect of the TMDL approvals was seen as either insignificant or beneficial to the species.

Thank you for your submittal. If you have any questions concerning this approval, feel free to contact Ron Steg of my staff at (406) 457-5024.

Sincerely,

Max H. Dodson
Assistant Regional Administrator
Ecosystems Protection and Remediation

Enclosures

cc:

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ENCLOSURE 1

Table 1. TMDL Summary Information

Water Bodies & Pollutants of Concern	40 individual water body/pollutant combinations addressed as follows: - Daisy Creek (pollutants: Cu, Cd, Pb, Zn, Fe, Mn, Al, pH, sediment) - Stillwater River (pollutants: Cu, Fe, Mn, sediment) - Fisher Creek (pollutants: Cu, Fe, Mn, Al, Zn, Cd, Pb, Ag, pH, sediment) - Clarks Fork of the Yellowstone River (pollutants: Cu, Zn, Cd, Ag, Fe, pH) - Miller Creek (pollutants: Cu, Fe, Cd, Pb, Mn, Zn) - Soda Butte Creek (pollutants: Cu, Fe, Mn, Pb, Al)
Section 303(d)(1) or 303(d)(3) TMDL	- 303(d)(1)
Impaired Beneficial Uses	- Daisy Creek (impaired uses: aquatic life; cold water fish; drinking water; recreation/aesthetics; agriculture; industry) - Stillwater River (impaired uses: aquatic life; cold water fish; drinking water; recreation/aesthetics) - Fisher Creek (impaired uses: aquatic life; cold water fish; drinking water; recreation/aesthetics; agriculture; industry) - Clarks Fork of the Yellowstone River (impaired uses: aquatic life; cold water fish; drinking water) - Miller Creek (impaired uses: aquatic life; cold water fish; drinking water) - Soda Butte Creek (impaired uses: aquatic life; cold water fish; drinking water; recreation/aesthetics)
Pollutant Sources	- Metals: Mine disturbances, natural background - pH: Mine disturbances, natural background - Sediment: Mine disturbances, roads and trails, natural background
Target Development Strategies	- Numeric values for aquatic life support (metals, pH) - Numeric values for drinking water/domestic use support (metals) - Elimination of objectionable deposits and turbidity from metal precipitates (metals/pH) - Non-toxic levels in stream sediments (metals) - Biota at greater than or equal to 75% of reference conditions (all pollutants) - Stream habitat conditions within 25% of reference stream (sediment)
TMDL's	- Based on numeric concentration targets multiplied by stream flow (all metals) - Metals TMDLs used as surrogates for pH - Based on yearly loads and percent reductions in loading (sediment)
Allocation	- Performance-based for mine disturbances (applies to metals and pH in all drainages except Soda Butte) - Allocated to loading sources by category with focus on mining and natural background sources (applies to metals in Soda Butte Creek) - Allocated to loading sources by category with focus on mine disturbances, roads and trails, and natural background sources (applies to sediment TMDLs)
Restoration Strategies	- New World Mining District restoration efforts currently underway for mine disturbances and related erosion control practices (benefits all major water bodies with initial focus on sources within the Daisy, Fisher, and Miller Creek drainages) - Additional National Forest Service erosion control practices and mine restoration efforts where needed (all water bodies) - Further characterization and possible restoration of mine disturbances on private lands (for some water bodies; key strategy component for Soda Butte Creek drainage) - Significant water quality and related monitoring including additional source characterization (all water bodies) - Adaptive management approach to identify any necessary changes to targets, TMDLs or load allocations (all water bodies)

Table 1. Continued.

Margin of Safety	- Addition of biota targets in addition to metals concentration targets - Application of chronic aquatic life numeric standards - Built in margins of safety within existing numeric water quality standards - Significant monitoring efforts associated with metals related watershed characterization and restoration efforts - Metals and pH targets apply during high and low flow conditions with considerations for changing hardness conditions - Phased approach for sediment TMDLs and allocations - Use of relatively undisturbed stream(s) for sediment target reference condition
Seasonal Considerations	- Metals and pH targets apply during high and low flow conditions with considerations for changing hardness conditions - Metals and pH impairment and loading conditions evaluated at high and low flow conditions - Existing and future monitoring addresses high and low flow conditions for metals and pH - Sediment targets, source assessment and controls are based on modeling and monitoring efforts intended to capture impacts from seasonal and event-driven loading conditions

ENCLOSURE 2

EPA REGION VIII MONTANA OFFICE TMDL REVIEW FORM

Document Name:	**Water Quality Restoration Plan for the Cooke City TMDL Planning Area (September 23, 2002)**
Submitted by:	**MTDEQ**
Date Received:	**December 3, 2002**
Review Date:	**December 18, 2002**
Reviewer:	**Ron Steg**
Formal or Informal Review?	**FORMAL**

This document provides a standard format for the EPA Montana Office to provide comments to the Montana Department of Environmental Quality on TMDL documents provided to the EPA for either official formal, or informal review. All TMDL documents are measured against the following 12 review criteria:

1. Water Quality Impairment Status
2. Water Quality Standards
3. Water Quality Targets
4. Significant Sources
5. Total Maximum Daily Load
6. Allocation
7. Margin of Safety and Seasonality
8. Monitoring Strategy
9. Restoration Strategy
10. Public Participation
11. Endangered Species Act Compliance
12. Technical Analysis

Each of the 12 review criteria are described below to provide the rational for the review, followed by EPA's comments. This review is intended to ensure compliance with the Clean Water Act and also to ensure that the reviewed documents are technically sound and the conclusions are technically defensible. This document review form incorporates, by reference, the summary of TMDL elements presented in Enclosure 1.

1. **Water Quality Impairment Status**

Criterion Description – Water Quality Impairment Status
TMDL documents must include a description of the listed water quality impairments. While the 303(d) list identifies probable causes and sources of water quality impairments, the information contained in the 303(d) list is generally not sufficiently detailed to provide the reader with an adequate understanding of the impairments. TMDL documents should include a thorough description/summary of all available water quality data such that the water quality impairments are clearly defined and linked to the impaired beneficial uses and/or appropriate water quality standards.

- ☑ Satisfies Criterion
- ☐ Satisfies Criterion. Questions or comments provided below should be considered.
- ☐ Partially satisfies criterion. Questions or comments provided below need to be addressed.
- ☐ Criterion not satisfied. Questions or comments provided below need to be addressed.
- ☐ Not a required element in this case. Comments or questions provided for informational purposes.

Water Quality Impairment conditions are clearly described and summarized for each of the listed pollutant/water body combinations (Sections 2.1, 3.1, 4.1 and Appendices B, C, and D).

2. **Water Quality Standards**

Criterion Description – Water Quality Standards
The TMDL document must include a description of all applicable water quality standards for all affected jurisdictions. TMDLs result in maintaining and attaining water quality standards. Water quality standards are the basis from which TMDL's are established and the TMDL targets are derived, including the numeric, narrative, use classification, and antidegradation components of the standards.

- ☑ Satisfies Criterion
- ☐ Satisfies Criterion. Questions or comments provided below should be considered.
- ☐ Partially satisfies criterion. Questions or comments provided below need to be addressed.
- ☐ Criterion not satisfied. Questions or comments provided below need to be addressed.
- ☐ Not a required element in this case. Comments or questions provided for informational purposes.

While the Cooke City TPA is located entirely within the State of Montana, two of the water bodies within the planning area flow into the State of Wyoming (i.e., Clarks Fork of the Yellowstone and Soda Butte Creek). As a result, the water quality standards applicable to both states must be addressed in this TMDL document. It is important to note, that temporary water quality standards are also in place for Daisy Creek, Stillwater River, and Fisher Creek within the New World Mining District.

3. Water Quality Targets

Criterion Description – Water Quality Targets

Quantified targets or endpoints must be provided to address each listed pollutant/water body combination. Target values must represent achievement of applicable water quality standards and support of associated beneficial uses. For pollutants with numeric water quality standards, the numeric criteria are generally used as the TMDL target. For pollutants with narrative standards, the narrative standard must be translated into a measurable value. At a minimum, one target is required for each pollutant/water body combination. It is generally desirable, however, to include several targets that represent achievement of the standard and support of beneficial uses (e.g., for a sediment impairment issue it may be appropriate to include targets representing water column sediment such as TSS, embeddeness, stream morphology, up-slope conditions, and a measure of biota).

- ☐ Satisfies Criterion
- ☑ Satisfies Criterion. Questions or comments provided below should be considered.
- ☐ Partially satisfies criterion. Questions or comments provided below need to be addressed.
- ☐ Criterion not satisfied. Questions or comments provided below need to be addressed.
- ☐ Not a required element in this case. Comments or questions provided for informational purposes.

Water quality targets were established as follows:

- Numeric values for aquatic life support (metals, pH)
- Numeric values for drinking water/domestic use support (metals)
- Elimination of objectionable deposits and turbidity from metal precipitates (metals/pH)
- Non-toxic levels in stream sediments (metals)
- Biota at greater than or equal to 75% of reference conditions (all pollutants)
- Stream habitat conditions within 25% of reference stream (sediment)

To address uncertainties about the natural background concentrations of some of the metals and pH, an adaptive management approach has been proposed for these targets. The targets appear to be appropriate and in all cases, multiple targets have been proposed for all pollutant water body combinations.

A phased or adaptive management approach is proposed for locating/defining the reference condition relative to Fisher Creek, the Clarks Fork of the Yellowstone, Miller Creek, and Soda Butte Creek. So long as plans are put in place to locate/define reference water bodies/conditions, this approach appears to be appropriate.

4. Significant Sources

Criterion Description – Significant Sources

TMDLs must consider all significant sources of the stressor of concern. All sources or causes of the stressor must be identified or accounted for in some manner. The detail provided in the source assessment step drives the rigor of the allocation step. In other words, it is only possible to specifically allocate quantifiable loads or load reductions to each significant source when the relative load contribution from each source has been estimated. Ideally, therefore, the pollutant load from each significant source should be quantified. This can be accomplished using site-specific monitoring data, modeling, or application of other assessment techniques. If insufficient time or resources are available to accomplish this step, a phased/adaptive management approach can be employed so long as the approach is clearly defined in the document.

- ☑ Satisfies Criterion
- ☐ Satisfies Criterion. Questions or comments provided below should be considered.
- ☐ Partially satisfies criterion. Questions or comments provided below need to be addressed.
- ☐ Criterion not satisfied. Questions or comments provided below need to be addressed.
- ☐ Not a required element in this case. Comments or questions provided for informational purposes.

All of the water bodies addressed in this document either fall within or are in close proximity to the boundaries of the New World Mining District. Mining disturbances primarily associated with historical adits, waste rock and tailings represent the primary sources of increased metals loading from human activities. Problems associated with low pH are likely related to many of the same sources. Many of these same mining disturbances along with significant road and trail networks represent the primary source for increased sediment loading.

Considerable work has been completed to date to quantify the metals loading from these sources based on surface and ground water monitoring data and work is continuing as described in the *Final Overall Project Work Plan for the New World Mining District Response and Restoration Project* (Maxim, 1999).

Sediment source loadings have been estimated using the R1R4 sediment model.

In addition, natural background conditions also contribute to both metals and sediment loads, in some cases at elevated levels that alone could negatively impact beneficial uses. Absolute quantification of the amount of loading attributable to pre-mining (natural background) sources is a difficult task. Continued evaluation regarding the contribution from natural sources is also ongoing as per the "Final Work Plan".

5. **TMDL**

Criterion Description – Total Maximum Daily Load
TMDLs include a quantified pollutant reduction target. According to EPA reg (see 40 C.F.R. 130.2(i)) TMDLs can be expressed as mass per unit of time, toxicity, % load reduction, or other measure. TMDLs must address, either singly or in combination, each listed pollutant/water body combination.

- ☑ Satisfies Criterion
- ☐ Satisfies Criterion. Questions or comments provided below should be considered.
- ☐ Partially satisfies criterion. Questions or comments provided below need to be addressed.
- ☐ Criterion not satisfied. Questions or comments provided below need to be addressed.
- ☐ Not a required element in this case. Comments or questions provided for informational purposes.

For metals, the TMDL's are expressed as mass per unit time or a percent reduction based on the application of an equation in which flow is multiplied by the applicable target value. The metals TMDL's are used as a surrogate for pH since it is anticipated that achieving the metals TMDL's will address pH issues.

Sediment TMDL's are based on modeled quantification of the sediment loads from all sources. These are expressed as a total yearly load (tons/yr) and as a percent load reduction.

6. Allocation

Criterion Description – Allocation

TMDLs apportion responsibility for taking actions or allocate the available assimilative capacity among the various point, nonpoint, and natural pollutant sources. Allocations may be expressed in a variety of ways such as by individual discharger, by tributary watershed, by source or land use category, by land parcel, or other appropriate scale or dividing of responsibility. A performance based allocation approach, where a detailed strategy is articulated for the application of BMPs, may also be appropriate for non point sources.

In cases where there is substantial uncertainty regarding the linkage between the proposed allocations and achievement of water quality standards, it may be necessary to employ a phased or adaptive management approach (e.g., establish a monitoring plan to determine if the proposed allocations are, in fact, leading to the desired water quality improvements).

Allocating load reductions to specific sources is generally the most contentious and politically sensitive component of the TMDL process. It is also the step in the process where management direction is provided to actually achieve the desired load reductions. In many ways, it is a prioritization of restoration activities that need to occur to restore water quality. For these reasons, every effort should be made to be as detailed as possible and also, to base all conclusions on the best available scientific principles.

- ☑ Satisfies Criterion
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- ☐ Partially satisfies criterion. Questions or comments provided below need to be addressed.
- ☐ Criterion not satisfied. Questions or comments provided below need to be addressed.
- ☐ Not a required element in this case. Comments or questions provided for informational purposes.

Since all of the significant sources have been identified and plans are in place to specifically address the majority of these sources, a performance based allocation approach is proposed for metals and pH in all drainages except Soda Butte. This approach relies on detailed plans and practices that will be developed and applied to all significant mining sources on District Property. Potential pollutant sources (e.g. mine dumps, adits, etc.) will be evaluated and restoration approaches analyzed in detail and undergo stakeholder review and comment prior to selection of a final restoration approach for each location of concern. This will occur on an annual basis with the goal of achieving cleanup by 2014 as required by the Temporary Water Quality Standards.

Specific, quantified load allocations and reduction targets are proposed for all significant sources of metals and pH in Soda Creek.

Specific, quantified load allocations (i.e., maximum tons/yr) and load reductions (i.e., % from existing levels) are proposed for the sediment allocations.

7. Margin of Safety and Seasonality

Criterion Description – Margin of Safety/Seasonality

A margin of safety (MOS) is a required component of the TMDL that accounts for the uncertainty about the relationship between the pollutant loads and the quality of the receiving water body (303(d)(1)(c)). The MOS can be implicitly expressed by incorporating a margin of safety into conservative assumptions used to develop the TMDL. In other cases, the MOS can be built in as a separate component of the TMDL (in this case, quantitatively, a TMDL = WLA + LA + MOS). In all cases, specific documentation describing the rational for the MOS is required.

Seasonal considerations, such as critical flow periods (high flow, low flow), also need to be considered when establishing TMDLs , targets, and allocations.

- ☑ Satisfies Criterion
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- ☐ Criterion not satisfied. Questions or comments provided below need to be addressed.
- ☐ Not a required element in this case. Comments or questions provided for informational purposes.

Margin of Safety and Seasonality are adequately described in Table 1 (attached) and adequately applied in the subject TMDL document.

8. Monitoring Strategy

Criterion Description – Monitoring Strategy

Many TMDL's are likely to have significant uncertainty associated with selection of appropriate numeric targets and estimates of source loadings and assimilative capacity. In these cases, a phased TMDL approach may be necessary. For Phased TMDLs, it is EPA's expectation that a monitoring plan will be included as a component of the TMDL documents to articulate the means by which the TMDL will be evaluated in the field, and to provide supplemental data in the future to address any uncertainties that may exist when the document is prepared.

At a minimum, the monitoring strategy should:

- *Articulate the monitoring hypothesis and explain how the monitoring plan will test it.*
- *Address the relationships between the monitoring plan and the various components of the TMDL (targets, sources, allocations, etc.).*
- *Explain any assumptions used.*
- *Describe monitoring methods.*
- *Define monitoring locations and frequencies, and list the responsible parties.*

- ☑ Satisfies Criterion
- ☐ Satisfies Criterion. Questions or comments provided below should be considered.
- ☐ Partially satisfies criterion. Questions or comments provided below need to be addressed.
- ☐ Criterion not satisfied. Questions or comments provided below need to be addressed.
- ☐ Not a required element in this case. Comments or questions provided for informational purposes.

The monitoring strategy includes three components: 1) a long-term monitoring plan as described in the Final Work Plan (Maxim, 1999) focusing on metals within all of the impaired reaches; 2) future source assessment monitoring; and 3) supplemental monitoring to refine numeric targets and evaluate trends.

Given the performance-based allocation approach, implementation of the monitoring strategy will be important in determining if the proposed restoration measures are, in fact, adequate to attain and maintain water quality standards.

9. Restoration Strategy

Criterion Description – Restoration Strategy

At a minimum, sufficient information should be provided in the TMDL document to demonstrate that if the TMDL were implemented, water quality standards would be attained or maintained. Adding additional detail regarding the proposed approach for the restoration of water quality is not currently a regulatory requirement, but is considered a value added component of a TMDL document.

- ☑ Satisfies Criterion
- ☐ Satisfies Criterion. Questions or comments provided below should be considered.
- ☐ Partially satisfies criterion. Questions or comments provided below need to be addressed.
- ☐ Criterion not satisfied. Questions or comments provided below need to be addressed.
- ☐ Not a required element in this case. Comments or questions provided for informational purposes.

The restoration strategies for Daisy Creek, the Stillwater River, Fisher Creek, the Clarks Fork of the Yellowstone River and Miller Creek are primarily addressed by activities associated with the New World Mining District Response and Restoration Project. Additional, supplemental restoration activities above and beyond those associated with the New World Mining District Response and Restoration Project are also discussed in the subject document (this includes Miller and Soda Butte Creeks).

The question asked by this criterion is: Would water quality standards be attained and maintained if the targets, TMDL, and allocations were implemented? Based on this review, it appears that implementation of the Water Quality Restoration Plan for the Cooke City TMDL Planning Area would likely result in attaining and maintaining water quality standards.

10. Public Participation

Criterion Description – Public Participation

The fundamental requirement for public participation is that all stakeholders have an opportunity to be part of the process. Public participation should fit the needs of the particular TMDL.

- ☑ Satisfies Criterion
- ☐ Satisfies Criterion. Questions or comments provided below should be considered.
- ☐ Partially satisfies criterion. Questions or comments provided below need to be addressed.
- ☐ Criterion not satisfied. Questions or comments provided below need to be addressed.
- ☐ Not a required element in this case. Comments or questions provided for informational purposes.

A draft of this document was made available to the public for a 30-day period in January, 2002. Public meetings were held in Cooke City and Livingston during the public comment period. MDEQ has reviewed and responded to the comments and attempted to incorporate them where possible. MDEQ's responses to the comments are presented in Appendix I of the subject document.

11. Technical Analysis

Criterion Description – Technical Analysis

TMDLs must be supported by an appropriate level of technical analysis. It applies to all of the components of a TMDL document. It is vitally important that the technical basis for all conclusions be articulated in a manner that is easily understandable and readily apparent to the reader. Of particular importance, the cause and effect relationship between the pollutant and impairment and between the selected targets, sources, TMDLs, and allocations needs to be supported by an appropriate level of technical analysis.

- ☑ Satisfies Criterion
- ☐ Satisfies Criterion. Questions or comments provided below should be considered.
- ☐ Partially satisfies criterion. Questions or comments provided below need to be addressed.
- ☐ Criterion not satisfied. Questions or comments provided below need to be addressed.
- ☐ Not a required element in this case. Comments or questions provided for informational purposes.

The level of technical analysis surrounding water quality impairment status, the targets, TMDLs, and allocations is adequate. The conclusions are sufficiently supported by the available data, supplemental studies, and supporting literature.

The Water Quality Restoration Plan for the Cooke City TMDL Planning Area, in large part, is based on work conducted to date regarding clean up of historic mining activities associated with the New World Mining District. The technical basis for the conclusions presented in this document, therefore, are grounded in numerous site specific studies including: Boughton, 2001; Kimbal, et al., 1999; Maxim Technologies, Inc. 2000; Maxim Technologies, Inc. 2001a; Nimick and Cleasby, 2001; Nimmo, et al., 1999; Peterson and Boughton, 2000; and URS Operation Services, Inc., 1998 (see references section of the Water Quality Restoration Plan for the Cooke City TMDL Planning Area for detailed citations).

12. Endangered Species Act Compliance

Criterion Description – Endangered Species Act Compliance

EPA's approval of a TMDL may constitute an action subject to the provisions of Section 7 of the Endangered Species Act ("ESA"). EPA will consult, as appropriate, with the US Fish and Wildlife Service (USFWS) to determine if there is an effect on listed endangered and threatened species pertaining to EPA's approval of the TMDL. The responsibility to consult with the USFWS lies with EPA and is not a requirement under the Clean Water Act for approving TMDLs. States are encouraged, however, to participate with FWS and EPA in the consultation process and, most importantly, to document in its TMDLs the potential effects (adverse or beneficial) the TMDL may have on listed as well as candidate and proposed species under the ESA.

☐ Satisfies Criterion
☐ Satisfies Criterion. Questions or comments provided below should be considered.
☐ Partially satisfies criterion. Questions or comments provided below need to be addressed.
☐ Criterion not satisfied. Questions or comments provided below need to be addressed.
☑ Not a required element in this case. Comments or questions provided for informational purposes.

The EPA submitted a Biological Evaluation of the Water Quality Restoration Plan for the Cooke City TMDL Planning Area to the U.S. Fish and Wildlife Service on December 20, 2002. The only aquatic or aquatic-dependent species in the TMDL Planning Area are the bald eagle (threatened) and the grizzly bear (threatened). Other species that may occur in the area include the black-footed ferret (endangered), the black tailed prairie dog (candidate), mountain plover (proposed threatened), the grey wolf (endangered), and the Canada lynx (threatened).

EPA concludes that its approval of these TMDLs will not likely adversely affect the bald eagle or grizzly bear. Further, EPA concludes that is approval will have no effect on the black-footed ferret, black tailed prairie dog, mountain plover, grey wolf, and Canada lynx. EPA received concurrence from the U.S. Fish and Wildlife Service regarding these biological evaluations on December 27, 2002.