

Submission to the Nunavut Water Board in Relation to the Proposed Nunavut Waters Regulations

Overview

The mineral exploration and mining sector in Nunavut (referred to below as “the industry”) supports the establishment of the long-awaited Nunavut Waters Regulations, and is particularly encouraged by the proposal to allow the use of water in Nunavut without a licence in clearly defined and appropriate circumstances. However, we wish to highlight two issues that significantly concern a number of our members, some of whom may also make further submissions in response to the proposed regulations on their own behalf.

1. Duplicate or Overlapping Requirements for Reclamation Security

Double bonding occurs where a licensee must provide financial security to more than one payee to address the same or related reclamation requirements. Given the significant amounts of security that may be required for a large-scale mining operation, double bonding has the potential to act as a significant deterrent to the investment necessary for the development of the mineral resources of Nunavut. It could therefore put the territory at a competitive disadvantage in relation to other jurisdictions.

The industry fully agrees with the need to ensure that adequate financial security will be available in order to restore and rehabilitate lands and waters affected by mineral exploration or mining operations, if the operator fails to do so. However, the divided jurisdiction over surface lands (Inuit Owned Lands (IOLs) versus Crown lands), and the concurrent jurisdiction of the Nunavut Water Board over water resources, present a complicated picture. As a result, developers are potentially liable for security pursuant to both the surface lease, whether administered by the Designated Inuit Organization or AANDC, and the Water Board. Moreover, if a project were to be located partly on IOLs and partly on Crown lands, it would potentially be obligated to provide three different kinds of security.

Industry participants were therefore hopeful that the long-standing concern with double bonding could be addressed, at least in part, by incorporating the appropriate provisions in the proposed Nunavut Waters Regulations. However, during the Technical/Pre-Conference meetings held in May 2011, Aboriginal Affairs and Northern Development Canada (AANDC) indicated that the department does not intend to address the matter of overlapping requirements for reclamation security in Nunavut through the draft regulations. AANDC reiterated this position in its June 20, 2011 response to the questions raised during the Pre-Hearing Conference, where it stated that the department “...is committed to addressing the perceived over-bonding issue via a pan-northern focus and does not intend to amend the Regulations at this time.”

Given the important differences that exist between the regulatory regimes now established in Yukon, the Northwest Territories and Nunavut, the industry questions whether the “pan-northern focus” that AANDC has proposed is feasible. Moreover, if this approach is adopted, it will leave this long-standing

and potentially damaging issue unresolved in Nunavut for a prolonged period of time, thereby adversely affecting the exploration for and development of the territory's unrealized mineral potential.

On behalf of the industry, we respectfully request that the Nunavut Water Board endorse the need to revise the draft regulations in order to resolve the issue of duplicate reclamation security to the greatest extent possible. To that end, we propose that section 10 of the regulations be amended by the incorporating the additional wording shown in bold below:

10. (1) For the purposes of subsection 76(1) of the Act, the Board may fix the amount of security required to be furnished by an applicant for a licence, a licensee or a prospective assignee in an amount not exceeding the aggregate of the costs of

- (a) the abandonment of the undertaking;
- (b) the restoration of the site of the undertaking; and
- (c) any ongoing measures that may remain to be taken after the abandonment of the undertaking.

(2) In fixing an amount of security, the Board must have regard to

- (a) the ability of the applicant, licensee or prospective assignee to pay the costs referred to in subsection (1);
- (b) the past performance by the applicant, licensee or prospective assignee in respect of any other licence; **and**
- (c) **the amount and terms of any security to pay the costs referred to in subsection (1) that the Minister requires the applicant, licensee or prospective assignee to furnish pursuant to a lease or other disposition of any federal land that is necessary to carry out the undertaking.**

(3) **Where an undertaking is located wholly or partly on Inuit-owned land, in fixing an amount of security the Board may also have regard to**

- (a) **the amount and terms of any security the designated Inuit organization requires the applicant, licensee or prospective assignee to furnish in order to pay the costs referred to in subsection (1) in relation to the Inuit-owned land on which the undertaking is located; and**
- (b) **any agreement between the Minister and the designated Inuit organization respecting the amount, terms, form, and application of security that the applicant is required to furnish in relation to the undertaking.**

The issue of double bonding has been raised a number of times by various parties. They include Neil McCrank, Q.C., the Special Representative of the Minister of Indian Affairs and Northern Development, whose 2008 report to the Minister under the Northern Regulatory Improvement Initiative recommended that double bonding be addressed.

In conclusion, successfully resolving the double bonding issue will help to maintain Nunavut's growing reputation as an attractive destination for investment. Doing so now, rather than later, will strengthen the confidence needed to make the significant investments that are required to advance the many mineral development projects that are situated on both Crown and Inuit-owned lands throughout the territory. With the appropriate amendments, the regulations will enhance the clarity and efficiency of the regulatory process and thereby help to ensure that Nunavummiut will enjoy the full potential of Nunavut's mineral endowment.

2. Threshold for Use of Water without a License

As outlined above, the industry is encouraged by the provisions included the draft regulations that would allow low-level use of water without a licence. However, we remain concerned that the maximum permissible limit for unlicensed use is unduly restrictive.

The corresponding regulations in both Yukon and Northwest Territories allow the use of water without a licence at a rate of up to 100 cubic metres per day. If adopted, Schedule 2 of the proposed regulations would establish an upper limit of only 50 cubic metres per day, therefore one-half of the limit that has long been in place in the other two northern territories.

If implemented in its present form, the proposed limit will not resolve the current situation in Nunavut where the use of water at comparatively minor rates requires operators to fulfill regulatory requirements that are much more extensive than those that prevail in Yukon and the Northwest Territories. As a result, if the draft regulations are intended to streamline Nunavut's application and approval processes, the proposed structure will fall short of that goal.

While the industry welcomes the adoption of provisions to permit the use of water in Nunavut without a licence, we believe that the threshold that requires a Type B license can be increased to the same level as the limit in effect in Yukon and the Northwest Territories, i.e., 100 cubic metres per day. In our view, the higher threshold would better reflect the size and significance of the operation being considered without the risk of adverse impacts on the water resources of the territory.

We therefore recommend that item 2(4) of Schedule 2 be amended to read as follows:

Column 2	Column 3	Column 4	Column 5
4) Any other Use of waters	Use of less than 100 m ³ per day	Use of 100m ³ per day but less than 300m ³ per day	Use of 300m ³ or more per day

Conclusion

The NWT & Nunavut Chamber of Mines, The Mining Association of Canada, and the Prospectors and Developers Association of Canada are grateful for the opportunity to comment on the draft regulations. We commend the Nunavut Water Board and AANDC for their efforts to date, and look forward to contributing to the further enhancement and improvement of the regulatory and administrative processes that govern the management of water resources in Nunavut and the other northern territories.