



P.O. BOX 119
GJOA HAVEN, NU X0B 1J0
TEL: (867) 360-6338
FAX: (867) 360-6369

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NUNAVUT WATER BOARD
NUNAVUT IMALIRIYIN KATIMAYINGI
OFFICE DES EAUX DU NUNAVUT

By Email

File No. Nunavut Waters Regulations

Date: June 29, 2011

To: Nunavut Waters Regulations Distribution List

Subject: ***Draft Nunavut Waters Regulations Pre-Hearing Conference Decision***

On June 6, 2011, the Board approved this Pre-Hearing Conference Decision along with the procedural direction for the Public Hearing for the above noted file and asked that I convey the following information in that regard.

In order to facilitate the hearing process for the Draft Nunavut Waters Regulations (Draft Regulations), on December 20, 2009, the Nunavut Water Board (NWB or Board) directed that in accordance with Rule 14 of the *NWB Rules of Practice and Procedure* (the Rules), the staff of the NWB hold a Pre-Hearing Conference (PHC) for the Draft *Nunavut Waters Regulations* (Draft Regulations).

Following a Technical Meeting (TM), the PHC was held on May 31, 2011, in Iqaluit, NU and on June 2, 2011 in Yellowknife, NT.

As set out in Rule 14.1 of the Rules, the PHC dealt with the following matters relevant to the Application:

- Identification of interested parties;
- Presentations from interested parties;
- List of issues to be dealt with at the Hearing;
- Desirability of amending the Draft Regulations for the purpose of clarification;
- Timetable for the pre-Hearing exchange of information;
- Procedures for the Hearing;
- Identification of any other matters that may assist in the simplification and disposition of the Hearing.

The TM/PHC agenda is provided as Appendix A.

Introduction and Registration

In total 47 people from 21 organizations representing Inuit, departments of the governments of Canada and Nunavut, and industry attended the PHC.

A list of participants is provided in Appendix B.

1.0 Draft Nunavut Waters Regulations

Subsection 51(2) of the Act permits the Board, where satisfied that it would be in the public interest to do so, to hold a public hearing in connection with any matter relating to its objects. The objects of the Board are set out in section 35 of the Act:

35. The objects of the Board are to provide for the conservation and utilization of waters in Nunavut, except in a national park, in a manner that will provide the optimum benefit from those waters for the residents of Nunavut in particular and Canadians in general.

On December 20, 2009, the Board determined it was satisfied that it is in the interests of the public to hold a public hearing to determine if Draft Nunavut Waters Regulations provide for the conservation and utilization of waters in Nunavut, in a manner that will provide the optimum benefit from those waters for the residents of Nunavut in particular and Canadians in general. The decision to hold a public hearing is also consistent with giving due regard and weight to Inuit culture, customs and knowledge pursuant to section 33 of the Act.

On March 4, 2011, the Board received a letter dated February 22, 2011, from Indian and Northern Affairs Canada (INAC) referring Draft Nunavut Waters Regulations (Draft Regulations) to the Board for review pursuant to subsections 82(1)¹ and 82(2)² of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (NWNSRTA or Act). The Board also received the Nunavut Watershed Descriptions pursuant to section 17 of the Draft Regulations.

The Draft Regulations and Nunavut Watershed Descriptions have been placed in the Board's Public Registry.

On April 20, 2011, the Board acknowledged receipt of the Draft Regulations and provided notice that the Technical Meeting and Pre-hearing Conference (TM/PHC) would take place at 9:00 a.m. local time on Tuesday, May 31, 2011, at Nova Inn, in Iqaluit, NU and on Thursday, June 2, 2011 at Chateau Nova, in Yellowknife, NT.

¹ **82.** (1) The Governor in Council may, on the recommendation of the Minister, make regulations:

...

(f) on the advice of the Board or after consultation with the Board, exempting any class of applications in relation to licences from the requirement of a public hearing;

² **82.** (1) The Governor in Council may, on the recommendation of the Minister, make regulations

(a) establishing water management areas in Nunavut consisting of river basins or other geographical areas;

...

(c) authorizing the use without a licence of waters in Nunavut, except in a national park, for the purpose, in the quantity, at the rate, during the period and subject to the conditions specified in the regulations;

(d) authorizing the deposit of waste without a licence in Nunavut, except in a national park, and specifying the conditions of the deposit, including the quantities, concentration and types of waste that may be deposited;

...

(2) For the purposes of paragraphs (1)(a), (c) and (d), the recommendation of the Minister is subject to the concurrence of the Board.

To further facilitate the hearing process, the Board also invited interested persons to make written technical comments on the Draft Regulations to the Board to be received no later than May 20, 2011. Written submissions were received on or before May 20, 2011, from the following:

- Kitikmeot Inuit Association (KitIA)
- Nunavut Planning Commission (NPC)
- NWT and Nunavut Chamber of Mines
- Agnico Eagle Mines Ltd.
- Newmont/ Hope Bay Mining Ltd.
- Peregrine Diamond Ltd.
- Sabina Gold and Silver
- Nassituq Corp.
- Environment Canada
- Transport Canada
- Department of National Defence

On May 26, 2011, correspondence was received from Nunavut Tunngavik Incorporated (NTI) advising that in association with the Regional Inuit Associations (RIA), NTI is in the process of bilateral (Crown/Inuit) consultation with INAC regarding the design and wording of the Draft Regulations pursuant to consultation guarantees in section 2.6.1 of the *Nunavut Land Claims Agreement* (NLCA). Due to the bilateral nature of this consultation process, NTI advised the Board that it intends to attend at least some of the NWB's technical meetings and hearing, but not to participate actively or make submissions. NTI representatives attended the TM/PHC at both locations.

On May 30, 2011, the NWB received a written submission from the Kivalliq Inuit Association (KivIA). The Board provided copies of the KivIA submission to the parties at the TM.

All submissions have been placed on the Board's public registry and are available from the NWB's ftp site using the access username of "public" and the password of "registry" (without the quotes) at the following link:

<ftp://nunavutwaterboard.org/WATER%20REGULATIONS/>

2.0 Technical Meeting

The Technical Meeting provided an informal meeting with all parties, to discuss issues raised during the technical review of the Draft Regulations. Aboriginal Affairs and Northern Development's (AAND, formerly INAC) presentation of the Draft Regulations has been placed on the Board's public registry at the link set out above.

At the conclusion of the TM, AAND agreed to provide by June 23, 2011, a written response to the issues raised in the written submissions and the TM relating to the following sections of the Draft Regulations:

- Section 1: For clarity, consider including a definition of "unlicensed";
- Subsection 6(1): Review whether the location of the deposit of waste should be included in the reporting required under subsection 6(1);
- Subsection 9(2): Confirm agreement with the Board's preliminary interpretation that this subsection does not preclude the Board from requiring a public hearing in respect of an

application for an unlicensed use of waters or deposit of wastes should the Board determine that it is in the public interest to do so;

- Subsection 10: Consideration of the Board's request to file correspondence with Nunavut Tunngavik Incorporated regarding the approach AAND is taking with regard to resolving issues related to reclamation security;
- Subsection 10(2): Replacing "must" with "may" in 10(2) of the new regulations to retain consistency with existing reclamation security language in subsection 12(2) of NWT regulations;
- Subsection 12(6): Respond to the interpretation and administration issues raised by the NWB regarding the implementation of subsection 12(6);
- Subsection 13(b): Review of requirement to keep books and records on site in circumstances where a site is not manned for periods of time, and consider the option of the licensee notifying the NWB where the records are being held if not on site; and
- Subsection 13(c): Confirmation that the requirement to retain books and records for 5 years is consistent with section 27 of the *Metal Mining Effluent Regulations*.

3.0 Pre-Hearing Conference

As outlined above, the purpose of the PHC was to discuss the various matters as set out in Rule 14, in preparation for the Hearing.

a. Identification of Interested Parties

A complete list of interested parties that attended the TM/PHC is set out in Appendix B. Parties providing written submissions during the technical review are set out above.

Additional parties identified as potentially having an interest in the Hearing included:

- Department of Fisheries and Oceans
- Government of Nunavut – Department of Environment
- Nunavut Research Institute
- McGill University
- Royal Military College
- Canadian Mining Association
- Prospectors and Developers Association of Canada
- Nunavut Association of Municipalities
- Nunavut Association of Municipal Administrators
- Canadian Association of Petroleum Producers
- Quilliq Energy

The NWB will issue formal notice of the Hearing to a broad distribution list including the parties identified above and the general public.

b. Presentations from Interested Parties

In addition to AAND presenting the Draft Regulations, the following parties expressed interest in making a presentation at the final public hearing:

- KitIA (potentially in conjunction with NTI)
- NWT and Nunavut Chamber of Mines (Iqaluit)
- Nasittuq Corp.
- NPC (Cambridge Bay)

c. List of Issues

All parties confirmed that there are no technical issues or related information requirements that would prevent the Board from proceeding with the Hearing.

Based on the Board's role in making regulations pursuant to the NLCA and the Act, the prior written submissions of the parties and the information exchanged at the TM/PHC, the Board directs that parties address issues in written submissions and presentations to the Board in the following categories and order:

- Issues related to sections of the Draft Regulations requiring the concurrence of the Board pursuant to section 82(2) of the Act:
 - Authorizing the use of waters and the deposit of wastes without a licence (Draft Regulations sections 1 through 6; schedules 1, 2 and 3, with emphasis on thresholds in column 3)
 - Establishing water management areas (Draft Regulations section 17 and schedule 4)
- Issues related to sections of the Draft Regulations requiring advice of and/or consultation with the Board pursuant to section 82(3) and 174(2) of the Act:
 - Exempting classes of applications from the requirement for a public hearing (Draft Regulations section 9, in conjunction with sections 7 and 8; schedules 1, 2 and 3 with emphasis on thresholds in columns 4 and 5)
 - Regulations to Inform the definition of waste in section 4 of the Act (None are proposed pursuant to section 82(1)(b) of the Act)
- Other issues arising from the Technical Meetings:
 - Reclamation security (Draft Regulations section 10)
 - Licensing fees (Draft Regulations sections 11 and 12)
 - Reporting and maintenance of records issues (Draft Regulations sections 13 through 16)
 - Coming into force (Draft Regulations section 18)
- Other issues identified by the Parties

d. Desirability of amending Draft Regulations prior to the Hearing

Parties at the TM/PHC agreed that it would increase confusion if a revised draft of the Draft Regulation was distributed prior to the Hearing. AAND agreed to set out any proposed changes to the regulations resulting from pre-hearing discussions in a written submission to be filed with the Board in advance of the Hearing.

Accordingly, the Board directs AAND to file any proposed changes to the Draft Regulations by the date set out in e. below.

e. Timetable for pre-Hearing Exchange of Information

Parties agreed that the staff would recommend final dates for the Hearing and requested that dates be set for pre-Hearing exchange of written submission in accordance with Rule 12.4 to allow a minimum of fifteen (15) days for review of pre-Hearing written submission.

As such, the Board requests **that written statements, complete with an executive summary in English be filed with the Board no later than 3:00 p.m. Mountain Time Friday, August 26, 2011.** In order to facilitate the NWB's review of interventions, the Board requests that submissions be generally classified in accordance with the list of issues provided by the Board in the previous section.

At the request of the parties, to facilitate translation of the executive summary as required by Rule 12.5, the Board agrees to vary Rule 12.5 to provide an additional five days for all parties to provide Inuktitut and Inuinnaqtun translations of the executive summaries. As such, the Board requests **that all parties file with the Board translated executive summaries in Inuktitut and Inuinnaqtun no later than 3:00 p.m. Mountain Time Wednesday, September 1, 2011.**

The Board understands that AAND will provide a French translation of their executive summary by the date for translated executive summaries set out above. Other executive summaries will be translated into French by the NWB upon request. **Requests for French language translation of an executive summary from any other party must be filed with the Board no later than 3:00 p.m. Mountain Time Wednesday, September 1, 2011.**

All submissions will be posted on the NWB's ftp-site (<ftp://nunavutwaterboard.org/>) and in the public register upon receipt. A copy of the public registry as it relates to the Draft Regulations will be available at the Hearing.

f. Procedures for the Hearing

In order to facilitate public participation and to accommodate language requirements of Board members and the community, the Hearing will be simultaneously translated in Inuktitut at all hearing locations. In addition the Hearing will be simultaneously translated into Inuinnaqtun at the Cambridge Bay location, and French at the Iqaluit location.

The Board accepts and thanks the parties for their agreement to provide sufficient photocopies of materials to be presented at the Public Hearing for the Board, staff, parties and a reasonable number of photocopies for the general public that may be in attendance. The Board further understands and extends its thanks to AAND for agreeing to provide translated copies of AAND presentation deck for the Hearing in Inuktitut, Inuinnaqtun and French.

The NWB will also provide for a stenographer to record the Hearing.

Should parties require additional language services please advise the NWB no later than August 12, 2011.

4.0 Hearing

The Board has decided the following matters in respect of the Hearing:

a. Date, Time and Location

In accordance with the provisions of the Act and based on the feedback regarding suitable dates provided by the parties at the TM/PHC, **NWB shall hold a Hearing on the Draft Regulations starting September 13, 2011, and ending September 16, 2011, at the following locations:**

- **Tuesday, September 13, 2011, at 9:00 a.m. local time – Iqaluit, Navigator Inn**
- **Thursday, September 15, 2011, at 9:00 a.m. local time – Rankin Inlet, Siniktarvik Hotel**
- **Friday, September 16, 2011, at 9:00 a.m. local time – Cambridge Bay, Community Hall**

b. Order of events

The Board hereby confirms that the Hearing will proceed by party intervener as opposed to by issue. The Board will follow the order of events as outlined in section 20.1 of the Rules.

c. Equipment

Parties who need special audio-visual equipment at the Hearing are requested to inform the NWB of their specific needs within their written submissions to the Board due August 26, 2011, so that arrangements can be made in advance.

If you require additional information, please do not hesitate to contact Dionne Filiatrault at dionne@nunavutwaterboard.org for technical issues or Phyllis Beaulieu at licensing@nunavutwaterboard.org for any other matter related to the Hearing.

Regards,



Dionne Filiatrault
Executive Director

Attachments: Appendix A: Technical Meeting and Pre-Hearing Conference Agenda
Appendix B: List of Participants at the Technical Meeting and Pre-Hearing Conference

APPENDIX A

AGENDA
TECHNICAL MEETING/PRE-HEARING CONFERENCE
DRAFT NUNAVUT WATERS REGULATIONS

Location: Nova Inn, Iqaluit, NU

Date: May 31, 2011

Time: 9:00 AM

Location: Chateau Nova, Yellowknife, NT

Date: June 2, 2011

Time: 9:00 AM

1. Introduction and Registration
2. Purpose of the Technical Meeting/Pre-Hearing Conference
3. Overview of Board's Role in Regulation Making
4. INAC presentation of the Draft Regulations
5. Facilitation of the Hearing Process
 - a. Identification of Interested Parties
 - b. Presentations from Interested Parties
 - c. List of issues to be dealt with at the Hearing
 - d. Desirability of amending the Draft Regulations for the purpose of clarification
 - e. Timetable for pre-Hearing exchange of information
 - f. Procedures for the Hearing - translation and the Record (language, transcripts)
 - g. Identification of any other matters that may assist in the simplification and disposition of the Hearing
6. Hearing
 - a. Date, Time and Location
 - b. Order of Events
 - c. Equipment
7. Other Issues
8. Closing of the Meeting

APPENDIX B

LIST OF REGISTERED PARTICIPANTS DRAFT NUNAVUT WATERS REGULATIONS – IQALUIT – MAY 31, 2011

Department of National Defence – Rachel McDonald
News North – Emily Ridlington
Nasittuq Corp. – Barb Thomson
Nunavut Tunngavik Incorporated – George Hakongak
Nunavut Tunngavik Incorporated – Jeannie Ehloak
Nunavut Tunngavik Incorporated – Robert Esser
Qikiqtani Inuit Association – Nisel Qaumariaq
Department of Indian Affairs and Northern Development – Pierre-Luc Lavoie
Department of Indian Affairs and Northern Development – Gilles Binda
Department of Indian Affairs and Northern Development – Glen Stephens
Department of Indian Affairs and Northern Development – Ryan Connan
Kivalliq Inuit Association – Luigi Torretti
Environment Canada – Allison Dunn
Nunavut Planning Commission – Christopher Tickner
Nunavut Water Board – Ben Kogvik
Nunavut Water Board – Phyllis Beaulieu
Department of Indian Affairs and Northern Development – Robin Aitken
Department of Indian Affairs and Northern Development – Leslie Payette
NWT & Nunavut Chamber of Mines – Elizabeth Kingston
Sabina Gold & Silver Corp. – Elizabeth Sherlock
Department of Indian Affairs and Northern Development – Jim Rogers
Department of Indian Affairs and Northern Development – Tanya Trenholm
Department of Indian Affairs and Northern Development – Eva Paul
Department of Indian Affairs and Northern Development – Allison Fleischer
Canadian Forces – Joint Task Force North – David Walcott

LIST OF REGISTERED PARTICIPANTS
DRAFT NUNAVUT WATERS REGULATIONS – YELLOWKNIFE – JUNE 2, 2011

Agnico Eagle Mines Ltd. - Larry Connell
Sabina Gold & Silver Corp - Elizabeth Sherlock
Sabina Gold & Silver Corp - John Laitin
Department of Indian Affairs and Northern Development - Glen Stephens
Department of Indian Affairs and Northern Development - Gilles Binda
Department of Indian Affairs and Northern Development - Pierre-Luc Lavoie
Department of National Defence - Douglas Craig
Shear Diamonds Ltd. - Pamela Strand
Department of Indian Affairs and Northern Development - Ryan Connan
Nunavut Tunngavik Incorporated – Jeannie Ehloak
Nunavut Water Board - Phyllis Beaulieu
Geotarget Consulting - Saz Yaqzan
Government of Nunavut CGS - Robert Chapple
Environment Canada - Mary Kelly
Department of Indian Affairs and Northern Development - Tanya Trenholm
NWT & Nunavut Chamber of Mines - Tom Hoefer
NWT & Nunavut Chamber of Mines - Adam Vivian
Newmont Hope Bay Mining Ltd. - Wendy Randall
Nunavut Impact Review Board - Stephanie Autut
Cannor (NPMO) - Manik Duggar
Dillon Consulting – Jennifer Spencer
Department of Indian Affairs and Northern Development – David Jessiman