

Appendix F

Correspondence related to Nunavut Impact Review Board screening requirements



NIRB File No.: 02MC117
NWB File No. 1AR-NANA0914

June 10, 2013

Johan Skoglund
Group Environment Manager, Americas
Nyrstar
2840 – 650 West Georgia Street
P.O. Box #11552
Vancouver, BC V6B 4N8

Sent via email: johan.skoglund@nyrstar.com

Re: Queries Regarding Nunavut Impact Review Board (NIRB) Screening Requirements Associated with Renewal of Water Licence 1AR-NANA0914

Dear Johan Skoglund:

On May 30, 2013 the Nunavut Impact Review Board (NIRB or Board) received correspondence from Nyrstar Canada (Holdings) Ltd., the parent company of the current Type “A” Water Licensee, CanZinco (the Proponent or Applicant) under Water Licence 1AR-NANA0914 issued by the Nunavut Water Board (NWB). In your correspondence you indicated that the Proponent is working on the renewal application for the Water Licence and posed the following specific questions regarding the timing and requirements that may be associated with the NIRB’s screening of the renewal application:

- Whether all activities for Nyrstar’s proposed undertaking are subject to screening or just those which may vary from those previously screened in 2008;
- Must the NIRB wait until a water licence application is forwarded to it from the NWB before commencing the screening;
- If Nyrstar is able to work within the pre-application stage, will a draft water licence application be required? Can NIRB’s information requirements for project screening be satisfied through means other than a water licence application; and
- Recognizing the timelines for consideration of a water licence renewal and that the current licence will expire on March 31, 2014, what is the NIRB’s estimate of time that it would likely take to conduct the project screening, and any suggestions for expediting the screening process.

At the outset, please note that the NIRB's activities in respect of previously screened activities are guided by Article 12, Section 12.4.3 of the Nunavut Land Claims Agreement (NLCA), which states as follows:

12.4.3 Any application for a component or activity of a project proposal that has been permitted to proceed in accordance with these provisions shall be exempt from the requirement for screening by NIRB unless:

- (a) such component or activity was not part of the original proposal,; or*
- (b) its inclusion would significantly modify the project.*

Further, as described by the NIRB in the current Draft Technical Guide for Project Proponents, (NIRB April 2013)¹:

For activities and components included in project proposals that have previously been screened by the NIRB if the application involves the following, the application is exempt from screening and should not be referred by the Authorizing Agency to the NIRB for screening:

- a. the same project activities as proposed in the original project proposal previously screened by the NIRB;*
- b. the activities will be taking place in the same area as specified in the original project proposal previously screened by the NIRB;*
- c. there have been no substantial changes to the environment or cumulative effects in the area of the project activities since the project proposal was screened by the NIRB;*
- d. no new or updated approved Land Use Plans have become applicable to the area of the project activities since the original project proposal was screened by the NIRB; and*
- e. there are no significant changes to the components, activities or project proposed in the application from those included in the original project proposal previously screened by the NIRB.*

Please be advised that the original CanZinco Limited "Closure and Reclamation Plan for the Nanisivik Mine" project proposal (NIRB File No.: 02MC117) was received by the NIRB from the NWB on March 1, 2002 and was screened by the Board in accordance with Part 4, Article 12 of the Nunavut Land Claims Agreement (NLCA). On October 7, 2002 the NIRB issued a 12.4.4(a) screening decision to the Minister of Indian Affairs and Northern Development and the NWB which indicated that the proposed project could proceed subject to the NIRB's recommended project-specific terms and conditions. Further, following a review of a water licence renewal application with the NWB associated with this project, on September 3, 2008 the

¹ Available online from the NIRB public registry at the following location:
<http://ftp.nirb.ca/04-GUIDES/03-NEW%20GUIDES/04-DRAFT%20TECHNICAL%20GUIDES/>

NIRB confirmed that the application was exempt from the requirement for further screening pursuant to Section 12.4.3 of the NLCA and the activities therein remained subject to the terms and conditions recommended in the original October 7, 2002 Screening Decision Report.

The original NIRB Screening Decision Report (File No. 02MC117) and all related file information are available from the NIRB's online public registry at the following location:

<http://ftp.nirb.ca/01-SCREENINGS/COMPLETED%20SCREENINGS/2002-TO%20BE%20COMPLETED/02MC117-CanZinco%20Limited-Nanisivik/>.

With this background, the NIRB has responded to your specific questions in the text below. Firstly, as noted under Article 12 section 12.4.3 of the NLCA only those components or activities of the renewal application that were not previously part of the project proposal screened in 2002 or that significantly modify the project from the project proposal that was previously screened in 2002 would be subject to screening by the NIRB. Therefore, components or activities included in the renewal application that were included in the scope of the project proposal screened in 2002 would not be rescreened by the NIRB.

With respect to your queries regarding whether the NIRB can conduct a type of "pre-application" determination of whether the project proposal as put forward in the renewal application is exempt from screening or whether the NIRB must wait to have the renewal application referred for screening from the NWB, the NIRB points out that as part of the integrated environmental assessment and licensing process established under the NLCA, the NIRB does not have jurisdiction to make "pre-application" determinations. In the absence of the full description of components and activities included in the renewal application, including items such as proposed amendments to the components and activities under the existing licence proposed to be included under the renewed licence, the NWB and the NIRB cannot make an assessment as to whether the conditions of Article 12, section 12.4.3 of the NLCA are met and the scope of components and activities proposed in the renewal application is within the scope of what was screened in 2002.

Consequently, until such time as the Applicant submits the fully developed renewal application to the NWB and the NWB refers the renewal application to the NIRB, the NIRB cannot predetermine the extent to which the exemption in Article 12, section 12.4.3 of the NLCA may apply. The NIRB wishes to highlight that at the time the NWB receives the renewal application, the NWB could determine that the conditions in section 12.4.3 of the NLCA are satisfied with respect to all activities in the renewal application, and would then not be required to forward the renewal application to the NIRB for screening. Alternatively upon receipt of the renewal application the NWB may wish to consult with the NIRB regarding the extent to which the components and activities proposed in the renewal application are exempt from screening, in which case the NWB would refer the application to the NIRB for its determination.

With respect to your question regarding timing if a NIRB screening is required, as set out in Article 12, section 12.4.5 of the NLCA, the NIRB screening process typically takes up to 45 days from the receipt of the project proposal for screening to the time when the NIRB issues a screening decision to the Minister. In terms of the NIRB process and timing after a screening decision is issued in respect of a project proposal, this is dependent on the outcome of the Board's screening decision to the Minister and which of the four options under Article 12, section 12.4.4 of the NLCA that is recommended by the NIRB.

Although the NIRB encourages potential Proponents to seek the direction and advice of the NIRB and the NWB throughout the process, for the reasons outlined above, until such time as the water licence renewal application is complete and submitted to the NWB, the NIRB cannot provide further guidance regarding the extent to which the proposed project components and activities would be exempt from the requirement for further screening. However, in the interim please feel free to contact Amanda Hanson, NIRB's Director of Technical Services at (867) 983-4615 or via email at ahanson@nirb.ca with any general questions you may have about the NIRB's screening process.

Sincerely,

A handwritten signature in black ink that reads "Ryan Barry". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Ryan Barry
Executive Director
Nunavut Impact Review Board

cc: Damien Côté, Nunavut Water Board
Phyllis Beaulieu, Nunavut Water Board
Patrick Duxbury, RT Associates Ltd.
Arlene Laudrum, SRK Consulting



May 30th, 2013

Mr. Ryan Barry
Executive Director
Nunavut Impact Review Board
P.O. Box 1360
Cambridge Bay, NU
X0B 0C0

By email: rbarry@nirb.ca

Dear Mr. Barry,

**Re: NIRB Screening Requirements for Renewal of Water Licence 1AR-NANA0914
(Reclamation and Post-Closure Monitoring of the Nanisivik Mine Site)**

Background

On March 31st, 2014, CanZinco Limited's "Type A" water licence (1AR-NANA0914) for reclamation and post-closure monitoring activities at the former Nanisivik Mine will expire. A water licence renewal is required in order to complete the remaining reclamation work and to continue monitoring the site. CanZinco's parent company, Nyrstar Canada (Holdings) Ltd., has begun preliminary work in advance of its application to the Nunavut Water Board (NWB). Nyrstar anticipates submitting an application to the NWB in early August, 2013. The proposed scope and requirements of the new licence are likely to be similar to that of the existing licence. Specifically, a renewed licence would authorize Nyrstar to continue to:

- Discharge effluent from the West Twin Disposal Area;
- Conduct geotechnical and water quality monitoring; and
- Complete remediation of petroleum hydrocarbon (PHC) contaminated soil in the former fuel tank farm area.

Nyrstar is of the opinion that a "Type B" water licence with a three-year term would be an appropriate regulatory authorization to facilitate the remaining reclamation work, while also permitting the monitoring necessary for confirming stable hydrological and geotechnical conditions. Under the new licence, Nyrstar expects to replicate the water quality monitoring program such as has been implemented since 2009. With respect to geotechnical monitoring, there may be an opportunity to focus future geotechnical monitoring on the crucial active period of July to September as the winter and spring monitoring currently carried out has established stable geothermal trends.

NIRB Involvement in the Water Licensing Process

Nyrstar is requesting clarification from the Nunavut Impact Review Board regarding the NIRB's possible role in the water licence renewal process. Because Nyrstar's Nanisivik operations are carried out under the requirements of a Type A Water Licence, licence renewal necessarily triggers a NWB public hearing. Consequently, the project proposal exemption list, as set out in Schedule 12-1 of the *Nunavut Land Claims Agreement*, will not apply in Nyrstar's case. However, despite the foregoing, Nyrstar is unsure whether its water licence application will be subject to NIRB screening. The reason for this uncertainty stems from the fact that Nyrstar will be seeking authorization from the NWB to conduct activities that are effectively the same as those

previously screened by the NIRB in September 3, 2008¹. Clarification on this important matter is requested. If, based on the foregoing information, you believe that a NIRB screening is not required as part of Nyrstar's upcoming water licence renewal application, then Nyrstar will seek confirmation of this opinion by way of an official letter from the NIRB which would be appended to Nyrstar's application to the NWB.

However, if you are of the opinion that a NIRB screening is required before Nyrstar can complete its water licence application, then we respectfully request that the NIRB clarify the following:

1. Whether all activities for Nyrstar's proposed undertaking are subject to screening, or just those which may vary from those previously screened in 2008.
2. The NWB's guidelines² direct proponents to deal directly with the NIRB to secure a development impact review determination as part of the pre-application process. Do you agree with this direction, or must the NIRB wait until a water licence application is forwarded to it from the NWB before commencing with screening?
3. If Nyrstar is able to work with the NIRB within the *pre-application stage*, will a draft water licence application be required? Can NIRB's information requirements for project screening be satisfied through means other than a water licence application? If so, could you please forward any relevant guidelines and forms.
4. Recognizing that the current water licence expires on March 31, 2014 and the time typically required to process a water licence application, Nyrstar would appreciate if NIRB could offer an estimate of the time that it would likely take to conduct the project screening. Any suggestions on how to expedite the NIRB screening process would also be of considerable value to Nyrstar.

I thank you for your consideration of these aforementioned matters and I look forward to your response.

Sincerely,



Johan Skoglund
Group Environment Manager, Americas

Copied:

Arlene Laudrum, SRK Consulting
Patrick Duxbury, RT Associates

¹ This determination was a verbatim replication of NIRB's previous October 7, 2002 Screening Decision (NIRB file No.: 02MC117)

² Guide #5 - Processing Water Licence Applications