

July 15, 2013

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

Sent via email: Johan Skogland <johan.skoglund@nyrstar.com>

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

Dear Mr. Skoglund:

This letter is in response to the query you posed in your correspondence of May 30, 2013 to the Nunavut Water Board (NWB or Board) regarding whether there are any obstacles that would prevent Nrystar from applying for a Type "B" Water Licence to authorize the reclamation and post-closure monitoring of the Nanisivik Mine Site rather than an application to renew the existing Type "A" Water Licence 1AR-NANA0914. My apologies for the delay in providing the Board's response, but as your question raises a very important question with implications for many licensees beyond this licence, the Board has had to take some time to consider the question, review our past practices and prepare this reply.

As you may be aware from a review of the NWB's previous decisions in this case – notably in the case of the Lupin Mine and the Polaris Mine – when the Board issues a licence, it applies not just to license an individual activity or group of activities that result in the use of water or deposit of wastes, but rather the Board's licences apply to license an "undertaking" throughout its life cycle. In the case of Type "A" Water Licences such as 1AR-NANA0914, the undertaking that is licensed is the closure, reclamation activities and post-closure monitoring associated with the Industrial Undertakings at the Nanisivik Mine. As the industrial undertaking (mine) triggered the requirement for a Type "A" Water Licence, until such time as the reclamation of the Industrial Undertaking is complete, the Board requires the undertaking to be licensed under a Type "A" Water Licence.

The Board notes that the situation of reclamation of major mines differs in some significant respects from the situation of the DEW Line sites referenced in your letter. In the case of the DEW Line sites, the actual operation of the DEW Line sites were never the undertakings



triggering the requirement for licensing by the Board; the trigger for licensing by the Board was only in respect of the actual clean up of the sites, and given the size and scope of the reclamation undertaking at these sites, the licensing requirement was only for a Type "B" Licence. This situation is in contrast to the case of major mine reclamation where the licensed undertaking is not the reclamation only, but in fact was the industrial undertaking or mining undertaking that initially triggered the requirement for a water licence. In a situation, such as Nanisivik, Polaris and Lupin, where the major industrial or mining undertaking triggered the requirement for a Type "A" Water Licence, until that undertaking is finally reclaimed, the type of licence required to licence that undertaking remains a Type "A" Water Licence, regardless of whether the life cycle phase of that undertaking is construction, operation or abandonment and reclamation.

However, the Board wishes to emphasize that although the Board's position is that a Type "A" Water Licence is required regardless of the life cycle stage of the undertaking until final reclamation is achieved and the licensee no longer requires a water licence, the Board recognizes that the application, process and terms and conditions of a Type "A" Water Licence that may be issued by the Board to govern the abandonment and reclamation stage of a licensed undertaking may differ significantly from the Board's approach to renewal of a licence for an active operating site. For example, for these types of renewals, depending on submissions from community members, the public and the comments of interested parties and the level of public concern with the renewal, the Board may be willing to conduct technical meetings and the prehearing conference associated with the application via teleconference rather than in person. Similarly, although the renewal of a Type "A" Water Licence typically requires a form of Public Hearing, when a renewal application has involved an undertaking that is not in active operation, the Board has been willing to consider, upon the request of the applicant and with the agreement of interested parties, to conduct a written Public Hearing rather than the typical in-person Public Hearing.

Further, it should be remembered that although it is not mandatory to conduct a Public Hearing for the Board to dispose of an application for a Type "B" Water Licence, if there is public concern associated with a Type "B" Water Licence, the Board may determine that it is in the public interest to conduct a public hearing in respect of a Type "B" Water Licence analogous to the public hearing required for a Type "A" Water Licence. Clearly, regardless of whether an application is for a Type "A" or a Type "B" Water Licence, the goal for the Board is always to ensure that the Board's process for considering an application affords an opportunity for the Proponent to provide the information required for the Board to render a decision and that all interested parties have an opportunity to participate in the licensing process, including identifying their comments and concerns with the application.

I also want to point out that as the Board's approach to these issues is becoming important to several licensees, the Board intends to pursue more detailed discussions with other responsible

¹ See s. 51(2) of the Nunavut Waters and Nunavut Surface Rights Tribunal Act, S.C. 2002, c. 10.



authorities and landowners with an interest in ensuring the appropriate reclamation and final closure of major mining operations in Nunavut to discuss, in general terms, the type of information requirements that should be associated with these types of renewals, as well as to discuss any mechanisms to streamline and focus the licensing process for these types of renewals. The Board is hopeful that these general discussions will support improvements to our processes on an on-going basis and will of course, to the extent possible, incorporate any such improvements into the Board's handling of the Nanisivik renewal application going forward.

I trust this provides you with the direction you require, but if you have any further questions, please follow up with me directly.

Yours sincerely,

Damien Côté Executive Director

Nunavut Water Board

cc: Patrick Duxbury, RT Associates Ltd.
Arlene Laudrum, SRK Consulting