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

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 Nyrstar 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.

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



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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 pre-hearing 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.¹ 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.



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