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NUNAVUT IMALIRIYIN KATIMAYINGI
NUNAVUT WATER BOARD
OFFICE DES EAUX DU NUNAVUT

By Email

File No. 1AR-NAN0208
Date: December 15, 2008
To: Nanisivik Distribution List
Subject: Pre-Hearing Conference for the Renewal and Amendment Application of Type A Water Licence for the Nanisivik Mine, CanZinco Limited

A Panel appointed by the Board has made a decision on the above noted file and asked that I communicate with the parties the following information.

On October 1, 2008, the Nunavut Water Board (NWB or Board) directed that in accordance with Rule 14 of the NWB Rules of Practice and Procedure, the staff of the NWB hold a Pre-Hearing Conference (PHC) for the CanZinco Limited (Licensee or Applicant) application to renew and amend Type A water licence 1AR-NAN0208 (Licence) for the Nanisivik Mine (Project).¹

The PHC was held by teleconference on November 28, 2008.

The PHC dealt with the following matters relevant to the Application:

- a) To set a timetable for the pre-hearing exchange of information;
- b) To finalize the list of issues to be dealt with at the hearing;
- c) To identify interested parties;
- d) To consider the desirability of amending an application for the purposes of clarification;
- e) To finalize procedures to be followed in a hearing; and
- f) To consider any other matters that may aid in the simplification and disposition of the application at the Hearing.

The PHC Agenda is provided as Appendix A.

The following Parties were present at the PHC: CanZinco Limited (a wholly owned subsidiary of Breakwater Resources), BGC Engineering (BGC) and Jacques Whitford Limited (JWL) on behalf of the Applicant; Environment Canada (EC); Indian and Northern Affairs Canada (INAC); and the Government of Nunavut Department of the Environment (GN-DOE).

¹ Preceding water licences issued by the NWB for the Nanisivik Mine are NWB1NAN0208 and NWB1NAN9702. Prior licences issued to Nanisivik by the NWT Water Board include N5L3-0159 in 1976, renewed in 1978, 1983, 1988 and 1991.

Application to the Board

Regulatory History

The Nanisivik Mine first began operations in 1976. The NWB assumed regulatory authority on July 9, 1996, and assumed authority for the Licence issued by the Northwest Territories Water Board (NWT Board) at that time.

The NWB issued its first renewal for the Nanisivik Mine on July 1, 1997, with an expiry date of June 30, 2002. Two amendments were issued during the Licence period: the first to allow an open pit at Oceanview, effective December 9, 1999; and the second, to permit exploratory drilling effective March 20, 2000.

On January 31, 2001, an application for renewal was received by the NWB for the continuation of operations. On February 20, 2001, the Licence was assigned from Nanisivik Mines Limited to Nanisivik Mine, a division of CanZinco Limited. On November 13, 2001, the application for renewal was withdrawn and on November 15, 2001, a request was received by the NWB for an extension to the term of the Licence.

Following the extension request, on December 7, 2001, the term of the Licence was extended for three months to September 30, 2002. This provided the additional time needed by the Licensee to reach the end of the mining and milling operations phase. The Licensee decided to enter into closure phase of the mine in 2002 due to depressed metal prices.

On January 28, 2002, an application for renewal of the Licence was received by the NWB. A renewal was issued October 10, 2002, for closure and reclamation and an expiry date of May 1, 2008. On July 6, 2004, the NWB issue a letter of approval to the Nanisivik Mine 2004 Reclamation Plan and Closure Plan.

During the most recent term of the Licence, two amendment requests were received by the NWB. Following these requests, a single formal amendment application was submitted on September 26, 2006, including a request to modify the sampling frequency of the Licence based on an assessment of results obtained to date. As discussed below, the amendment application was ultimately incorporated into the renewal application.

Application

The Licensee applied for a renewal and amendment of the Licence on February 21, 2008. The application proposes a five year term and changes to the terms and conditions to reflect the two amendments applied for during the term of the previous licence. The Applicant advised the NWB at the PHC that 2009 represents the first year of the post-closure monitoring phase. The Applicant agreed to confirm this in writing to the Board.

The NWB gave public notice of the amendment renewal application on September 29, 2008. By copy of the notice to the distribution list, the NWB requested that all interested parties complete a thorough technical assessment of the Application and provide their submissions, in writing no later than November 3, 2008.

Following the notice of September 29, 2008, the NWB provided notice on October 13, 2008, of a Pre-Hearing Conference/Technical Meeting (PHC), to be held on November 28, 2008, by teleconference, beginning at 9:00 a.m.

The Board received comments from the Senior Administrative Officer (SAO) of Arctic Bay, the Community Liason Officer (CLO) for Arctic Bay, Indian and Northern Affairs Canada (INAC), Environment Canada (EC), the Government of Nunavut-Department of Environment (GN-DoE), and the Government of Nunavut-Department of Culture, Language, Elders and Youth (CLEY). No party objected to the application proceeding through the regulatory process.

During the course of the review process, the Licence expired on May 1, 2008. The Board notes that section 46 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (Act) states that the expiry of a licence does not relieve the Licensee from the obligation imposed by the licence; and sections 11 and 12 of the Act and the Licence prohibit the use of waters and the disposal of wastes dispose of waste, except in accordance with a valid licence.

Pre-hearing Review of the Application

The following parties participated in the PHC teleconference: the Applicant, INAC, GN-DOE, and EC (Parties).

a) **CanZinco Limited Presentation on Current Status of the Project**

The Applicant provided Parties with an update to the current status of the Project including: A history of the mine life; the cover placed on the tailings; landfill, portal and open pit areas; the demolition of the town; the remediation of soils; and the deconstruction of the processing facilities. The Applicant advised the Parties that discussions with the Department of National Defence regarding the takeover of remaining infrastructure, including bulk fuel storage facilities, are ongoing.

b) **Identification of Interested Parties**

Interested Parties that attended the PHC and/or provided written submissions to the Board throughout the review process are the GN-DoE, INAC, EC and the SAO and CLO for Arctic Bay.

All written submissions are available for consideration on the NWB ftp site, **Username: public, Password: registry** at:

<ftp://nunavutwaterboard.org/PRUC/1%20INDUSTRIAL/1A/1AR%20-%20Remediation/1AR-NAN0208/2%20ADMIN/3%20SUBMISSIONS/2008%20Renewal/>

Parties that identified themselves as having a role in the Final Hearing include:

- Indian and Northern Affairs Canada;
- Environmental Canada; and
- Government of Nunavut Department of Environment.

Other parties identified who have in interest in the Final Hearing include:

- Community (SAO and CLO) of Arctic Bay;
- Government of Nunavut Department of Community, Language, Elders and Youth; and
- Qikiqtani Inuit Association

c) Presentations from Interested Parties

No Party expressed an interest in making a presentation at the technical meeting or PHC.

d) Formulation of Issues

At the PHC, clarification was requested from the Applicant on several issues including: the decommissioning of the bulk fuel storage facilities, roads, port facilities and garage, the weathering of the final cover for the tailings facilities, the soil quality beneath and around the bulk fuel storage facilities and historic monitoring results. The Applicant undertook to provide the Board with the following supplemental information:

1. Written confirmation that the Project is moving into post-closure monitoring phase;
2. A report on the extent of the Abandonment and Restoration (A&R) activities that have been completed to date and outstanding activities;
3. A revised security estimate based on the A&R activities completed to date;
4. The monitoring results gathered during the 2008 season;
5. A summary of the proposed revised monitoring stations and frequency;
6. Clarification of the results of past toxicity tests; and
7. A list of annual reporting requirements applicable to the current project status.

In summary the detailed technical issues identified through written submissions and the PHC, and the associated timelines are set out in Appendix B: Summary of Technical Issues.

Issues to be presented to the Board at the Final Hearing are to be generally classified under the following categories:

1. Term of Licence;
2. Annual Reporting;
3. Work plan Requirements;
4. Care and Maintenance Plan;
5. Type and Amount of Security;
6. Geotechnical;
7. Water Management and Water Quality;
8. Waste Management;
9. Tailings Storage Facility;
10. Contingency Planning;
11. Mitigation, Treatment and Management of Contaminated Soils;
12. Monitoring;
13. Closure and Reclamation; and

14. Other Issues

e) Identification and Service of Documents to Parties (deadline, public registry, form)

The NWB Rules of Practice and Procedures for Public Hearings (Rules) require that parties are to submit their written interventions no later than thirty (30) days prior to the commencement of the Hearing. However, in consideration of the comments received to date and the procedures established for the Hearing to take place in writing as set out below, the Board has decided to vary the Rules to be in accordance with the submission dates set out below.

In order to facilitate the review of interventions, the Board requests that written submissions be made in accordance with the categories set out in the preceding section.

All submissions will be posted on the NWB's ftp-site (www.nunavutwaterboard.org) and within the public registry upon receipt.

f) Translation and the Record (language, transcripts)

In order to facilitate public participation and to accommodate the language requirements of Board members, executive summaries of all submissions are to be provided by the parties, in accordance with the procedure for the Hearing set out below, translated into Inuktitut, and French upon request.

Hearing Procedures

The Parties at the PHC confirmed that the issues identified by way of previous written submissions and the clarifications of issues requested at the PHC can be addressed through a written hearing. In a written submission, the CLO of Arctic Bay requested the Board seriously considering a hearing in Arctic Bay to ease the minds of local residents.

With the mine site moving from the closure and reclamation phase to post closure monitoring, the Board accepts that it is important to provide the community, and in particular elders, with the opportunity to participate in the Hearing. Giving due regard to Inuit oral communication and decision-making and respecting section 12.2.27 of the Nunavut Land Claims Agreement (NLCA) to take all necessary steps to provide and promote public participation at hearings, the Board has decided the Hearing will be held in Arctic Bay commencing on Monday February 23, 2009, at 9:00 am, and the location is the Inuujaq School Gymnasium.

The deadline for interventions from the Parties is set at February 13, 2009, at 5:00 p.m. MST. The Board further advises that the Hearing date is subject to change if the Applicant does not provide all supplemental information by January 31, 2009. A change in the Hearing date will require 60 days notice be given of the new date.

All submissions shall be made to:

Thomas Kabloona
Chair
Nunavut Water Board
P. O. Box 119
Gjoa Haven, NU X0B 1J0
Fax: 867-360-6369
Email: licensing@nunavutwaterboard.org

Upon receipt of submissions, Phyllis Beaulieu, Manager of Licensing will acknowledge its receipt, post the information to the NWB ftp site and provide immediate notification to all parties that submissions are available for review.

Other Issues

The Board confirms that the Application is for the renewal of a Type A Water Licence and that the Licence is to remain a Type A Licence on the basis that the Application is in relation to the closure, reclamation and post-closure monitoring of an undertaking requiring a Type A water licence pursuant to the *Northwest Territories Water Regulations*.

For additional information, please contact David Hohnstein, A/Director Technical Services (dts@nunavutwaterboard.org) for technical issues and Phyllis Beaulieu, Manager of Licensing (licensing@nunavutwaterboard.org) for any other matter related to the Hearing.

Regards,

Original signed by :

David Hohnstein, C.E.T
Director Technical Services

Appendix A Agenda
Appendix B Summary of Technical Issues
Appendix C Exhibits

APPENDIX A – AGENDA



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PRE-HEARING TECHNICAL MEETING
NANISIVIK MINE PROJECT
TELECONFERENCE
NOVEMBER 28, 2008 9:00 am MST; 11:00 am EST

Dial-in Number Toll Tree 877-579-4178
Participant Passcode 807543#

1. Introduction and Registration
2. Application to the Board
3. Purpose of the Pre-Hearing/Technical Meeting
4. Pre-Hearing Review of the Application
 - a) Presentation on current status of Project
 - b) Identification of Interested Parties
 - c) Presentations from Interested Parties
 - d) Formulation of Issues
 - e) Identification and Service of Documents to Parties (deadline, public registry, form)
 - f) Translation and the Record (language, transcripts)
5. Hearing
 - a) Date and location to be set
 - b) Directions to the issued following the Pre-Hearing Conference
6. Other Issues
7. Closing of the Meeting

APPENDIX B – SUMMARY OF TECHNICAL ISSUES

No.	Issue Reference	Pre-hearing Commitment	Timeline for Submission or Response*	Additional Comment
1.		Term of Licence	See note below*	
	NWB	Clarification on the term of the Licence requested		Five years was requested verbally
2.		Annual Reporting		
	NWB INAC	Any requested changes to the requirements of the annual report should be made in writing by the proponent ; proposed list of annual reporting requirements for the post closure monitoring phase		CanZinco Limited will make a written request for changes to the annual reporting requirements
3.		Work Plan Requirements		
4.		Care and Maintenance Plan		
5.		Security		
	NWB INAC	A revised security estimate should be established based on A&R activities already completed to date		CanZinco Limited will provide an updated security estimate
6.		Inspection and Compliance		
	EC	Clarification on Toxicity Tests taken in 2007		CanZinco Limited will provide a summary of toxicity tests performed in 2007
7.		Toxicity Monitoring		
	EC	Clarification on Toxicity Tests taken in 2007		CanZinco Limited will provide a summary of toxicity tests performed in 2007
	INAC EC	Summary of 2008 monitoring results		CanZinco Limited will provide a summary of the inspection and monitoring results of the 2008 season
8.		Tailings and Geotechnical		
	INAC	Discussion on the weathering of the shale covers for the tailings facility		
	INAC	Large vehicles should not be permitted onto the armour materials as they cause rutting and water ponding		

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Type A Water Licence Application

	SAO AB	The citizens of Arctic Bay (AB) are concerned that climate change will cause leaching of the tailings to the sea		
9.		Mitigation/Treatment of Contaminated Soils		
10.		Monitoring Plan		
	INAC EC NWB	Written confirmation that the project is moving into the post closure monitoring phase		
	INAC EC GN	The proponent's consultants have assembled a comprehensive monitoring plan that should be clarified and amalgamated into one document		CanZinco Limited will produce a document that summarizes the monitoring locations and frequency
	INAC NWB EC	A summary of the proposed revised monitoring stations along with frequency		
	INAC NWB EC	The monitoring results that have been collected during the 2008 season		
11.		Closure and Reclamation		
	INAC GN	The proponent should provide an update to the Nanisivik Mine 2004 Reclamation Plan and Closure Plan, that clearly states which activities have been completed to date and any outstanding activities and outstanding activities		CanZinco Limited will produce a document that summarize the final A&R activities completed to date as well as those that are yet to be completed
	INAC GN EC	The proponent should clearly state which year of post-closure monitoring they are in; to confirm that 2009 is the first year of post-closure monitoring		
	INAC GN	The port facilities are now owned by the Department of National Defence. The Tank Farm may be transferred to a new owner or demolished. CanZinco Limited has not received a firm answer from either the DND or the GN as to whether they will seek the transfer of ownership for the facilities.		Provide a timeline as to the final closure of the Fuel Tank Farm in absence of closure with DND on the transfer of the facility
	INAC	The soils beneath the tank farm are likely contaminated with		As Above

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Type A Water Licence Application

		some degree of hydrocarbons		
12.		Archeology		
	DoCLEY	Known archeology sites should be avoided by the proponent		
13.		GN Roads and Garage		
	GN	The roads and garage should be remediated		NWB to check with GN in Gjoa Haven for documentation
	Proponent NWB	Those facilities belong to the GN, not CanZinco Ltd.		

*All information requests to be submitted to the NWB by January 31, 2009.

FOR COMPLETE DETAILS OF THE TECHNICAL ISSUES REFER TO PARTIES OFFICIAL SUBMISSIONS.

APPENDIX C – EXHIBITS



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EXHIBIT LIST

1. Breakwater Resources Ltd. – Presentation, *Nanisivik Reclamation Update*, November 28, 2008.
2. Gartner Lee Ltd. (Doing business as AECOM on behalf of the Breakwater Resources Ltd.) – Report, *Nanisivik Mine Summary of Contaminated Soil Remediation Progress*, December 31, 2007.
3. Breakwater Resources Ltd. – Response to comments and recommendations submitted by INAC including a report by BGC Engineering Inc. titled *RE:IAR-NAN0208, Nanisivik Mine – INAC Site Inspection, July 2008*, November 4, 2008.
4. Government of Nunavut, Department of Environment – Comment submission, *RE: NWB File# IAR-NAN0208 – CanZinco Ltd./Breakwater Resources Ltd. – Nanisivik Mine Reclamation Renewal & Amendment Water Licence Application*, November 4, 2008.
5. Indian and Northern Affairs Canada – Comment submission, *Water License #IAR-NAN0208, CanZinco Ltd., Nanisivik Project, Licence Amendment and Renewal Application*, November 7, 2008.
6. Environment Canada – Electronic submission by Carrie Spavor, *CanZinco – Nanisivik Project – Amendment/Renewal – Type A*, November 6, 2008.
7. Environment Canada – Document, *Recognized Closed Mine Status*, November 28, 2008.