



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

ᓄᓇᓂᓪ ᐃᐭᓕᓴᓂᓪ ᑲᑎᐭᓪᓴᓯ
NUNAVUT WATER BOARD
NUNAVUT IMALIRIYIN KATIMAYINGI

January 23, 2003

Mr. Robert Carreau
Manager, Environmental Affairs
Breakwater Resources Ltd.
PO Box 26,
Bathurst NB E2A 3Z1

Via Telecopier (506) 548-1100 and Email

Subject: Licence NWB1NAN0208 - Part G, Item 2
Detailed Timetable of Submissions

Dear Mr. Carreau:

Thank you for your letter of December 18, 2002, which contained a detailed timetable of required submissions pursuant to Item G, Part 2 of licence NWB1NAN0208 ("Licence") that was issued to CanZinco Limited ("CanZinco"), a wholly-owned subsidiary of Breakwater Resources Ltd.

Before approving this proposed timetable, the Nunavut Water Board ("Board" or "NWB") invited interested persons to review CanZinco's submission and present comments or concerns to the Board. The Board received submissions from Environment Canada, The Government of Nunavut ("GN"), Nunavut Tunngavik Inc., and the Department of Indian and Northern Affairs ("DIAND"). These submissions are available upon request and will soon be made available on the NWB's FTP site.

The Board, at its January 23, 2003 meeting, met to consider these submissions. Since no party stated any substantial concerns with the proposed dates, the Board has approved the timetable as was submitted. CanZinco's full compliance with the deadlines is expected. As DIAND pointed out in its submission to the Board, CanZinco's timetable does not address Licence requirements for which a submission date is already specified in the Licence. It is the Board's opinion that these submission dates are firm and it expects to receive these submissions accordingly.

With the approval of CanZinco's timetable of submissions, the Board expects several critical reports to be filed over the next several months. Specifically CanZinco will file for Board approval the *Phase II Environmental Site Assessment* (Part G, Item 13) and the *Human Health and Ecological Risk Assessment* (Part G, Item 14) by January 30, 2003; the *Underground Mine Solid Waste Disposal Plan* (Part G, Item 16) by March 30, 2003; the Annual Report (Part B, Item

6); and an updated estimate of the total mine closure restoration liability (Part G, Item 21) by March 31, 2003.

Before approving these submissions, the Board will give interested parties the opportunity to review them and submit comments. Given the complexity and importance of these above-cited reports for the approval of the final closure and reclamation plan, the Board proposes to return to Arctic Bay towards the end of May 2003 for a Public Hearing. This date should allow interested parties ample time to prepare their interventions.

Additionally, the Board must take this opportunity to address a critical issue that was brought up by some parties in their submissions; that is the lack of compliance by the company with certain licence conditions that require explicit Board approval, as well as the *apparent* lack of compliance with other items for which the Board is not privy. In the first instance, we know that CanZinco has not submitted, for Board approval, the *Emergency Response Plan* required pursuant to Part E, Item 1 of the Licence. The second instance refers to the requirement to furnish and maintain security in the amount of \$17.6 million with the Minister of DIAND within the time limit set in the Licence and subsequent 30-day extension, as well as the failure of the company to make a \$1-million payment in July 2002 as required in its previous water licence. On this matter, the Board notes that the GN, in its January 20, 2003 submission, has agreed to CanZinco's proposed timetable of submissions, *on the condition that* "...Breakwater provides or has provided the Security required by NWB in Licence NWB1NAN0208, in a form that is effective and certain for the duration of the licence..."

The Board has also learned that the community of Arctic Bay has raised similar concerns regarding the security deposit, which were expressed verbally to the Board's Mine Reclamation Coordinator, Mr. Patrick Duxbury.

Given the likelihood that these concerns regarding compliance are valid (and the Board has not heard to the contrary, especially regarding CanZinco's failure to post security), we are notifying the Minister of DIAND through this letter that the Board requests, as soon as possible, a full and detailed compliance report, with the exception of confidential or prosecutorial briefings. This report to the Board should be current and should be filed before the aforementioned hearing in Arctic Bay in accordance with the Board's standard practice governing the filing of written documents before a hearing.

Among other things, the Board last year took into account the "financial responsibility of the applicant" [see section 57 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* ("Act")] as it was entitled to by law in setting the terms of the License. Thus, and unless the applicant proves its financial assurance to us otherwise, and/or unless there is a public record of enforcement action, which the Board believes to not exist, the Board may be forced at the next proposed hearing to consider its terms of reference to be an application under section 43(1)(c)(iii) of the Act, which is to cancel the licence in the public interest.

The implication from the company's repeatedly failing to post security, and DIAND's *apparent* lack of action to address non-compliance in a timely fashion, is that the reclamation responsibilities might fall upon the public purse, which is not acceptable to the Board.

If you have any questions or comments about the timetable decision, the proposed hearing, or non-compliance matters in relation to the Board's powers, please write to the undersigned before February 7, 2003.

Yours truly,

Philippe di Pizzo
Chief Administrative Officer

cc. Honorable Robert D. Nault, P.C., M.P.
Distribution List