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NUNAVUT WATER BOARD
NUNAVUT IMALIRIYIN KATIMAYINGI

January 14, 2003

To: Distribution List

Subject: January 9, 2003 Pre-Hearing Conference
October 4, 2002 Application for Renewal of Licence N4L2-0262
Decommissioning and Reclamation – Polaris Mine, Nunavut

Dear Parties:

The Nunavut Water Board (“NWB”) held a pre-hearing conference (“PHC”) on the Application for Renewal of Licence N4L2-0262 (“Application”) on January 9, 2003 in Resolute Bay, Nunavut. In attendance were Resolute Bay residents, as well as representatives of Teck Cominco Limited (“Applicant”), the Department of Indian Affairs and Northern Development (“DIAND”), Justice Canada (“DOJ”) representing DIAND, the Department of Fisheries and Oceans Canada (“DFO”) and the Government of Nunavut’s Department of Sustainable Development (“DSD”).

Below is a summary of the issues discussed at the PHC and the NWB’s decision regarding those issues:

The Proposed Hearing

At the PHC, NWB officials informed the public that in accordance with the provisions of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (“Act”), the NWB shall hold a public hearing in the community or communities most affected before it can dispose of the application. NWB officials stated that the NWB *may* waive this requirement if the Applicant consents in writing to the disposition of the application without a public hearing, provided that no other person informs the NWB by the tenth day before the day of the proposed hearing of the intention to make a presentation.

The NWB asked community members to state any interest or concern with the Application. Several persons asked questions about the proposed closure and decommissioning activities and expressed concern about the possible long-term effects of global warming on the reclaimed mine. Residents affirmed their interest in being more informed and involved in the process. For example, Ms. Saroomie Manik, a woman from Resolute Bay, told the NWB that she wanted the Board to return to Resolute Bay for the public hearing. Also, Mr. Gary Johnson, the director of the local Co-op, told the NWB that his board members expressed an interest in the upcoming hearing returning to Resolute Bay.

Considering (a) comments made by residents of Resolute Bay at the PHC, including as described above; (b) the significance of the closure of the mine on the immediate and long-term health of the environment in general and on water in particular; and (c) Inuit culture, customs and knowledge, the NWB concludes that the public interest would be best served if an oral hearing was held in the community of Resolute Bay and, for the reasons listed above, decides to hold a Public Hearing before approving the Application.

To promote public awareness and meaningful community participation at the Hearing, the NWB will organize community workshops with interested residents and local organizations in Resolute Bay. Patrick Duxbury, the NWB's Mine Reclamation Coordinator based currently in Arctic Bay, will be the contact person and will visit Resolute Bay on a regular basis until the Hearing. Patrick Duxbury may be contacted by email (nunavutwaterboard@nt.sympatico.ca) or telephone in Arctic Bay at (867) 439-8195 (collect calls accepted).

Scope of the Hearing

The scope of the Hearing will include all matters **under the NWB's jurisdiction** in relation with this Application, pursuant to the Nunavut Land Claims Agreement ("NLCA") and the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* ("Act").

As per section 70 of the Act, the NWB may include in a licence *any* conditions that it considers appropriate, including conditions relating to the manner in which waters may be used; the quantity, concentration and type of waste that may be deposited and the manner of depositing waste; the studies to be undertaken, works to be constructed, plans, including contingency plans, to be submitted, and monitoring programs to be undertaken; and any closing or abandonment of the undertaking. Additionally, the NWB may, in accordance with section 76 of the Act, include in the licence the requirement for the Applicant to furnish and maintain security.

At the PHC, it was proposed and agreed that the Hearing would deal at least with (a) the quantity and use of water; (b) the deposit of waste into water in relation to closure and decommissioning activities; (c) closure and decommissioning activities; (d) surveillance and monitoring program; and (d) financial assurance to be provided by the Applicant. It was also proposed that the closure and decommissioning activities to be specifically addressed at the hearing would focus on those components of the mine that were not previously approved by the NWB in the joint NWB-DIAND approval dated April 15, 2002. These components not previously approved and that shall be reviewed are Garrow Lake and dam, the dock and marine foreshore areas, and the Frustration Lake jetty. The term of licence will be decided at the Hearing.

With respect to the mine closure and decommissioning in relation to marine areas, NWB representatives confirmed at the PHC that those matters were outside of the scope of its regulatory jurisdiction. NWB representatives stated that the NWB intends to hear comments and accept evidence regarding these matters at the Hearing and that it will make appropriate recommendations to responsible governments where required.

Dates of the Hearing and Site Visit

The NWB previously proposed to hold the Hearing in Resolute Bay on February 14, 2003. However, after considering several factors, including the deadline to submit written interventions before the proposed date of the Hearing and the necessity to schedule the Hearing at a time that would encourage public participation and not pose a conflict with Inuit traditional activities, the parties proposed and the Board agrees that the Hearing should be postponed to a later date. After discussion, all parties in attendance agreed with the NWB to hold the Hearing on **Monday March 10, 2003 starting at 7 p.m.**, and the following day if required.

The PHC participants also agreed with the NWB that a site visit would not be helpful at that time of the year. The Applicant instead proposed to present a visual overview of the site using photos and video material at the Hearing.

Deadline for Filing Interventions

Parties who intend to rely on a document at the Hearing must submit their written interventions, **in both Inuktitut and English, no later than fifteen days before the commencement of the Hearing.** Technical and scientific reports, studies and research may be submitted to the NWB in English, but they shall be accompanied by a detailed executive summary in English and Inuktitut, containing sufficient information, maps, figures, photos and other visual data to allow the public to be adequately informed. These language requirements are obligatory for the Applicant, as well as any corporate or governmental parties, to ensure that the NWB and the public in the interested communities have access to adequate documentation in Inuktitut. If requested, the NWB will supply a list of Inuktitut translators. To accelerate the distribution of submissions to the Applicant and interested parties, the NWB would appreciate all interventions to be file in electronic format (via email, preferably in MS-Word or compatible word processing software), as well as in paper format.

At the PHC the NWB confirmed that members of the public who wish to make oral statements or present oral evidence at the Hearing are not required to submit a written intervention before the Hearing.

Identification of Interested Parties

The following parties were identified at the PHC: DIAND, DFO, and DSD. In addition, the NWB confirmed that any members of the public, and in particular residents of Resolute Bay, would be given this status if desired.

The NWB notes that no person from the community of Grise Fjord has responded to the NWB's invitation to make representations with respect to the Application. The NWB undertakes to verify the interests of Grise Fjord residents with regard to the Application within two weeks.

Finally, the NWB also takes note that Environment Canada ("EC") did not attend the PHC, and we hereby notify the department that the presence of EC representatives familiar with the Application will be required at the Hearing.

Language and Equipment Requirements

The Hearing will be conducted in **Inuktitut and English**, with simultaneous translation. The NWB is also required by law to conduct public hearings in both official languages of Canada in accordance with the *Official Languages Act*. Please notify the NWB at least fifteen days before the Hearing should you require simultaneous interpretation in French. Additionally, parties who will need special audio-visual equipment at the Hearing are requested to inform the NWB of their specific needs at least fifteen days before the Hearing so that arrangements can be made in advance.

The NWB also confirmed at the PHC that transcripts of the Hearing would be made available in English and Inuktitut, as well as in French upon request, within reasonable time after the Hearing. However, due to possible long delays to prepare, proof-read, complete and translate transcripts in several languages, the NWB formally asks parties not to rely on these transcripts to prepare any post-hearing submission.

Notice of Hearing and Agenda

Enclosed is the new Notice of Hearing, which will be posted in public locations in Resolute Bay and Grise Fjord to inform the public of these communities about the Hearing and to solicit their attendance. The NWB requests interested parties to circulate the Notice of Hearing and any information related to this Application to persons who may have interest in the Hearing. The NWB will make available the proposed Hearing Agenda and all written submissions as soon as is feasibly possible after the interventions deadline.

Licence Extension

Licence N4L2-0262 expired December 31, 2002. Through no fault of its own, the Applicant finds itself without a valid licence, in apparent contravention of the Act. To cure this default, the NWB decides to renew the term of Licence N4L2-0262 for a total of sixty days, effective January 1, 2003. The NWB acknowledges that it will not be able to issue a new licence before the end of the sixty-day renewal and that, as a result, the undertaking may be unlicensed for a short period of time. In the circumstances, the NWB strongly recommends to the Minister of DIAND to exercise discretion against possible enforcement action.

Among other things, there is presently no disposal of waste into water nor will there be. Additionally, and equally important, the license that expired on December 31, 2002 included a General Condition (Part B, N0.2) that stated "This [security deposit] clause shall survive the expiry of this License or renewals thereof." The current water license application deals with this critical issue (maintenance of security), which is still active and for which the Applicant is not out of compliance. The only way that the security could be released would be for the Licensee to comply with "... all provisions of the final Abandonment and Restoration Plan." This 'Plan' is related to security; the clause is in the old License but related to the new License; the underpinnings of issues related to Security (proper abandonment and restoration) are thus carried over into the March 2003 NWB hearing; this convinces the NWB that any violation of the 60 day rule, if it does exist, is a technicality that carries little weight.

Additionally, knowing that NIRB's impact assessment screening was only recently completed, the 60 day deadline would have forced the NWB through statutory law into a rushed hearing. In the NWB's opinion, this would violate more important rules of procedural fairness. These rules include: notice to all parties, providing technical information to all parties, allowing adequate preparation time for local citizens to organize for the hearing, etc. These natural justice rules are legally required of us by the Courts--especially in Nunavut (see, e.g. *QIA v. Canada* T-2019-97; decided Oct. 9, 1998 Reed J.; Fed. T.D.) and these rules in the NWB's opinion significantly outweigh the 60 extension rule in this case. In other words, the NWB finds that the hearing could not have been scheduled any earlier than March 2003.

In any event, the Board has set the Hearing for March 10, 2003, which is only 9 days beyond the 60-day rule. In the NWB's opinion, for reasons described above, the rule either does not apply to this licence renewal, or if it does, any violation is either *de minimus*, or it is offset by more important administrative law rules required of the NWB by Federal Courts.

Public Register

All documents listed in our December 5, 2002 letter have been filed in the NWB public registry and are available for download at <ftp://ftp.nwb.yk.com> (in folder "NWB1 MINING or BULK SAMPLING", "NWB1POL", subfolder "Licence Renewal 2002", or by contacting the NWB office.

Finally, we ask any parties identified in the attached distribution list who have not participated in the PHC to formally notify the NWB in writing, **before January 20, 2003** if they wish to be removed from the distribution list.

If you have any further comment or concern, please do not hesitate to contact Patrick Duxbury (nunavutwaterboard@nt.sympatico.ca), Phyllis Beaulieu, Acting Licensing Administrator (nwblic@polarnet.ca) or the undersigned by email or telephone.

Sincerely,

Original signed by:

Philippe di Pizzo
Executive Director
nwbexec@polarnet.ca

Encl. Revised Notice of Hearing