



Date: November 14, 2014

To: Polaris Distribution List

Subject: Response to Recent Correspondence Regarding Form of Public Hearing

On the basis of the public interest as this undertaking approaches the final stage of reclamation, the length of the term requested, the significant changes to monitoring frequency and extent and a proposed reduction in the reclamation security held under the amended Type “A” Water Licence, the Panel determined that it was most appropriate for the Board to hold an in person Public Hearing for the Application. By Motion # 2014-14-P12-03, the Panel decided that an in person Public Hearing should be held in Resolute Bay, with community representatives from Grise Fiord being invited to participate (including with support for this travel for designated community representatives). By holding the in person Public Hearing in Resolute Bay, with representation from Grise Fiord, the Board will ensure that the concerns and preferences of the affected communities are provided to the Board and can be considered in the Board’s review of the Application.

In arriving at this decision, the Panel was mindful of the positions of the Applicant and some interveners that due to expense, travel restrictions and human resource limitations they would have preferred to have the Public Hearing conducted in either written form or via teleconference. However, the Board reminds applicants and interveners that in choosing the most appropriate form of Public Hearing in any given case, the Board, as with all Institutions of Public Government established under the Nunavut Land Claims Agreement (NLCA), are bound to follow the requirements established under the NLCA. As set out in Article 13, with respect to Public Hearings for the NWB specifically, the following considerations are central to the Board's choice of forum and venue for Public Hearings:

Public Hearings

- 13.3.13 In designing its by-laws and rules of procedure for the conduct of public hearings, the NWB shall:
- (a) allow and give appropriate weight to evidence to be admitted at public hearings that would not normally be admissible under the strict rules of evidence; and
 - (b) give due regard and weight to Inuit culture, customs and knowledge.
- 13.3.14 Prior to the holding of public hearings on any water application, the NWB shall take all steps necessary by way of notice, dissemination of information and scheduling and location of hearings to provide and promote public awareness in such public hearings.
- 13.3.16 In the conduct of public reviews, the NWB shall hold hearings in the communities most affected by the water application.

Clearly, in the Board's decisions regarding the choice of form and venue for a Public Hearing, the provisions of the NLCA factor prominently. Although the Board does consider the preferences of the parties and solicits this information at the Pre-Hearing Conference, these preferences are not the Board's only consideration. The parties are also reminded that it is within the Board's discretion to establish the most appropriate procedure for the NWB's public hearings to reflect the NWB's obligations under the NLCA, the requirements of procedural fairness and the principles of natural justice.

In addition, the Applicant's correspondence of October 17, 2014 references the provisions of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, S.C. 2002, c. 10, s. 52(2), to indicate that the Applicant consents to the disposition without a public hearing, as follows:

- 52(2) A public hearing need not be held
- (a) if the applicant or licensee consents in writing to the disposition of a matter without a public hearing, provided that no other person informs the Board by the tenth day before the day of the proposed hearing of the person's intention to make representations;

In the Board's view, this section is clearly inapplicable to the current situation, as the Board has confirmation that representations will be made by several interveners, community representatives from Grise Fiord and members of the public in Resolute Bay.

On this basis, it is the Board's position that there has been no significant change in circumstances in respect of the Renewal Application since the time the Panel issued the Pre-Hearing Conference Decision and the Notice of Public Hearing in respect of this file that would justify a change in form and venue for the Public Hearing. The Board regrets that Environment Canada has indicated they are unable to attend an in person Public Hearing in the community for the Renewal Application, however the convenience and resource constraints of a single intervener do not justify the Board ignoring the important considerations outlined in the Board's Pre-Hearing Conference Decision that favor an in person Public Hearing.

November 14, 2014

If you have any questions with respect to the above, please contact the undersigned, Ben Kogvik, Board Secretary and Acting Executive Director. Mr. Kogvik can be reached via e-mail at ben.kogvik@nwb-oen.ca or telephone: (867) 360-6338 or fax: (867) 360-6369. If your inquiries are of a technical nature, please contact Sonia Aredes, Technical Advisor at sonia.aredes@nwb-oen.ca or David Hohnstein, Director Technical Services at david.hohnstein@nwb-oen.ca.

Sincerely,

Original Signed by;

Ben Kogvik
Board Secretary/Acting Executive Director
Nunavut Water Board

cc: NWB Public Registry