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NUNAVUT WATER BOARD
NUNAVUT IMALIRIYIN KATIMAYINGI
OFFICE DES EAUX DU NUNAVUT

File No.: Licence 1BR-LOR0813

September 4, 2015

Brian Aglukark
Director of Planning & Implementation
Nunavut Planning Commission
P.O. Box 419
Arviat, NU X0C 0E0

Email: aglukark@nunavut.ca

Subject: Licence No's. 1BR-LOR0813 – Application for Amendment and Renewal

Dear Mr. Aglukark:

On July 18, 2014, the Nunavut Water Board (NWB or Board) received an application for the renewal and amendment of Licence No. 1BR-LOR0813 (the Application) from Aboriginal Affairs and Northern Development Canada (AANDC), to allow for water use and waste disposal associated with a long-term monitoring program at the Cape Christian Site, located approximately sixteen (16) kilometres northeast of the Hamlet of Clyde River, within the Qikiqtani Region of Nunavut. The Nunavut Planning Commission (NPC) previously issued a determination for the undertaking indicating that it conforms to the North Baffin Regional Land Use Plan¹, and the Nunavut Impact Review Board (NIRB) issued a 12.4.4(a) screening decision, allowing the project to proceed subject to project-specific recommended terms and conditions.² Importantly, the scope of activities listed under the amendment and renewal application are significantly reduced compared to the predecessor Licence No. 1BR-LOR0813, as the undertaking has progressed from active remediation to long-term monitoring activities.

Following receipt of the Application, the NWB determined that additional information was required before the Application could be considered to be complete. Consequently, the NWB withheld the distribution of the Application for external review—and thereby its notice to the NPC and the NIRB to initiate their reviews—until the Proponent responded to a request for additional information submitted by the NWB on December 4, 2014. AANDC responded to the request on July 27, 2015, and after finding the submitted information satisfactory, the NWB deemed the Application complete and distributed the Application for

¹ Nunavut Planning Commission (NPC) Conformity Determination, dated April 16, 2007.

² Nunavut Impact Review Board (NIRB) Screening Exemption Decision dated May 27, 2007.

external review on July 31, 2015. Also on this date, the NWB requested the NPC provide its conformity determination and the NIRB determine whether the project requires screening.

The NIRB informed the NWB on August 10, 2015, that under the *Nunavut Planning and Project Assessment Act* (the NuPPAA), which came into effect July 9, 2015, a proponent of a project must submit a proposal to the NPC for review before the NIRB is able to comment on screening.³ From this communication, the NWB understands that the NIRB requests the project proposal (which includes the Application) be resubmitted to the NPC, which could result in a delay for the regulatory assessment and licensing process for this undertaking as it may, in effect “restart” the entire process. Given that this undertaking has previously been reviewed by the NPC and the NIRB, and given the significant reduction of activities—and associated risks to the environment—presented in the current application, the NWB hopes, that this outcome and associated delays can be avoided by the NWB working with the NPC and the NIRB to streamline, to the extent possible, the next steps as required under NuPPAA.

As the NPC, the NIRB and the NWB acclimatize to the regulatory regime under NuPPAA, there will undoubtedly be a transitional period where projects under review fall in-between the former regulatory regime (pre-NuPPAA) and the current (Post-NuPPAA). Section 235(1)(a) of NuPPAA states that the legislation does not apply to “a project that is being assessed under the Agreement, or has been, lawfully carried out on the day on which this section comes into force.”

The NWB understands that the statement, “being assessed”, requires that all information (in the form of a complete application or a project proposal or both) be provided to the regulatory authorities so that they can begin their substantive assessment of the project. As the Board did not receive a complete application until July 2015, after NuPPAA came into effect, the NWB understands that it may be appropriate for the Application to be considered under NuPPAA. However, s. 235 (1)(a) of NuPPAA, also states that a project that is “being, or has been lawfully carried out on the day when this section comes into force” may be exempted from requiring assessment under NuPPAA. On this basis, it may be that an amendment/renewal application, (where the project has previously been assessed), in which long-term monitoring activities are planned to proceed as originally indicated in the project proposal previously reviewed by the NPC and NIRB under the Nunavut Land Claims Agreement, may be exempt from additional assessment under NuPPAA.

The NWB’s Request:

Recognizing that the determination of the extent to which NuPPAA applies to a given project remains with the NPC, the NWB requests the NPC review the project proposal as outlined in the Application and provide the Board with its determination regarding (a) whether this activity constitutes a project under NuPPAA; (b) if so, whether the project proposal is in conformity; and (c) if in conformity, whether or not the project is exempt from screening under Schedule 12-1. All information and communication related to the Application since it was received by the NWB in July 2014, can be found on the NWB’s public registry at: <http://nwb-oen.ca/public-registry>, but please let us know if we may be of assistance in providing you with any of the supporting documentation associated with this file directly.

³ Electronic Communication from Stephanie Taptuna (NIRB), to Charlotte Lamontagne (AANDC), August 10, 2015, Re: *NPC Determination and Referral for Screening Required for Aboriginal Affairs and Northern Development Canada’s “Cape Christian Long Term Monitoring – Type B Amendment Renewal” Project Proposal*.

If you have any questions arising from the NWB's request or this correspondence, please contact the NWB's Licensing Department at (867) 360-6338 or by email to licensing@nwb-oen.ca

Regards,

Brady MacCarl
Technical Advisor

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