



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

ᓄᓇᓂᓪ ᐃᓕᓂᓪᓴᓪ ᑲᓂᓴᓪᓴᓪ
NUNAVUT WATER BOARD
NUNAVUT IMALIRIYIN KATIMAYIT
OFFICE DES EAUX DU NUNAVUT

By Email

File No. 2AM-JER0410

Date: September 21, 2011

To: Distribution List

Subject: **2AM-JER0410 Water Licence Renewal Addendum to July 4, 2011 Pre-Hearing Conference Decision Regarding Postponement of Hearing**

On September 20, 2011 the Nunavut Water Board (NWB or Board) met to consider two requests associated with the Hearing originally set for October 12-13, 2011 in respect of the renewal of the Type A Water Licence 2AM-JER0410 by Shear Diamonds (Nunavut) Corp. (Shear) (the Application). The Kitikmeot Inuit Association requested an extension of the deadline for written submissions by one week from September 23 to September 30 and the applicant, Shear requested to postpone the Hearing to a date no later than December 15, 2011. After consideration of these requests and the comments received to date, the Board has decided to postpone the Hearing until **November 30 and December 1, 2011** and has asked that I convey the following information in relation to the Board's decision in this Addendum to the Board's original Technical Meeting and Pre-Hearing Conference Decision, dated July 4, 2011 (the TM/PHC Decision).

All submissions received with respect to these issues and referenced in this Addendum have been placed on the Board's public registry and are available from the NWB's ftp site using the access username of "public" and the password of "registry" (without the quotes) at the following link:

<ftp://nunavutwaterboard.org/1%20PRUC/2%20MINING%20MILLING/2A/2AM%20-%20Mining/2AM-JER0410/2%20ADMIN/4%20HEARINGS/2%20HEARING/>

Introduction

As noted in the TM/PHC Decision, based on a Technical Meeting (TM) and Pre-Hearing Conference (PHC) held on June 20 and 21, 2011 by the Board staff pursuant to Rule 14 of the *NWB Rules of Practice and Procedure* (the Rules) in Cambridge Bay, Nunavut, the Board determined that it was appropriate for the NWB to hold a Hearing on the Application on October 12-13, 2011, at the Community Hall in the Community of Kugluktuk, Nunavut. Based on the date of the Hearing, the Board further requested that the written submissions of interested parties, complete with an executive summary in English, Inuktitut and Inuinnaqtun, be filed with the Board no later than 3:00 p.m. Mountain Time, Friday, September 23, 2011.

1.0 Extension Request to the Board Relating to Written Submissions

On September 14, the Kitikmeot Inuit Association (KIA) sent a request to the NWB¹ to extend, by one week, the deadline for receipt of written submissions from September 23 to September 30. The basis for KIA's request was that despite their efforts to complete their written submissions to meet the deadline, KIA would be unable to finalize their submission by the deadline, because discussions with Shear necessary for KIA to complete their submissions had been delayed by the unforeseen and sudden medical leave of key KIA personnel.

On September 14, the NWB circulated KIA's extension request and solicited comments from the parties to be received by Friday, September 16.

On September 16, Aboriginal Affairs and Northern Development Canada (AANDC) provided a letter² to the NWB indicating that AANDC is not opposed to the extension, but recognizing the sensitive timelines associated with the renewal of the Licence. Also on September 16, Environment Canada provided the NWB with their comments in the form of an e-mail confirming that they had no objection to KIA's extension request.

2.0 Request to Reschedule the Hearing

On September 15, Shear sent a letter to the Board³ requesting that the Hearing be adjourned to a future date, no later than December 15, 2011. The basis for the rescheduling request was to allow Shear and KIA to have the opportunity to meet before the Hearing in order to address concerns that KIA had raised with respect to "unexpected airborne dispersal of fine processed kimberlite from the processed kimberlite containment area" and also to discuss other matters that are relevant to the renewal of the Licence. In response, on September 19, KIA sent a reply⁴ indicating their support for Shear's request to postpone the Hearing and stating that:

Shear has identified important issues which must be resolved between the KIA as the land owner and Shear in order to assist the NWB to have an effective hearing

Given the concern expressed by AANDC in their letter of September 16 regarding the sensitive timelines applicable to the renewal of the Licence, the NWB contacted AANDC directly by telephone on September 19 to discuss the implications of a rescheduled Hearing on the timelines for the Minister's review and consideration of the Board's decision to renew or cancel the Licence to be issued after the Hearing. In response, on September 20, AANDC sent an e-mail to

¹ Letter from Luigi Torretti, Acting Director, Senior Environment Officer, Kitikmeot Inuit Association, Department of Lands & Environment to Dionne Filiatrault, Executive Director, NWB dated September 14, 2011.

² Letter from David Abernethy, Acting Manager of Water Resources, Operations Directorate, Nunavut Regional Office, Aboriginal Affairs and Northern Development Canada to Phyllis Beaulieu, Manager of Licensing dated September 16, 2011.

³ Letter from Julie Lassonde, Executive Chairman and Chief Executive Officer, Shear Diamonds to Dionne Filiatrault, Executive Director, NWB dated September 16, 2011.

⁴ Letter from John Donihee, Legal Counsel, Kitikmeot Inuit Association to Dionne Filiatrault, Executive Director, NWB dated September 19, 2011.



the Board⁵ that indicated they would support either postponement of the Hearing to December 6 or proceeding with the Hearing as scheduled and allowing for submission of supporting written materials. With respect to the sensitivity of timelines, AANDC also noted that regardless of the date of the Hearing, a renewal decision issued by the NWB must be approved by the Minister of AANDC before the Water Licence expires on March 1, 2012 to avoid Shear being required to cease project activities until the Minister's decision with respect to the renewal has been issued. Pursuant to the timelines provided under ss. 56(2), (2.1) and (2.2) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (NWNSTRA)⁶, the Minister has 45 days from the date on which he receives the water licence renewal or cancellation from the Board to approve the renewal or cancellation, but may extend the initial 45 day period by an additional 45 days upon notifying the Board of the extension. Consequently, under the NWNSTRA the Minister could have up to 90 days to approve the renewal or cancellation of a Type A Water Licence after he receives it from the Board.

3.0 The Board's Decision and Further Direction

As the Board's decision with respect to Shear's request to reschedule the Hearing has significant implications for the written submission extension request by KIA, the Board's P5 Jericho Diamond Project Panel considered both requests together in a teleconference meeting held on September 20, 2011.

At the outset, the Board recognizes that providing an opportunity for members of the public and the parties to meaningfully participate in the licensing process is an important aspect of our mandate and central to meeting our requirements to consider applications in accordance with the dictates of procedural fairness. However, the Board is also mindful of ensuring that the licensing process proceeds in a timely manner that respects the applicable timelines in the NWNSTRA and that ensures parties and members of the public have reasonable notice of the opportunities they have to participate in the process.

Further, with respect to KIA particularly, the Board recognizes that the full and effective participation of Designated Inuit Organizations such as KIA is essential to ensuring meaningful engagement with Nunavut's communities and this importance is underscored in the Nunavut

⁵ E-mail from David Abernathy to Dionne Filiatrault, dated September 20, 2011, Subject: 2AM-JER0410 Shear Requests Reschedule Hearing.

⁶ The relevant provisions of the NWNSTRA are as follows:

56. (1) The issuance, amendment, renewal and cancellation of a type A licence and, if a public hearing is held, a type B licence are subject to the approval of the Minister.

(2) Within 45 days after the Minister receives a licence that has been issued, amended or renewed or a notice of cancellation of a licence, the Minister shall make a decision on whether to approve the issuance, amendment, renewal or cancellation of the licence and, if the decision is not to approve, give written reasons for the decision.

(2.1) The Minister may extend the 45 days referred to in subsection (2) for a further consecutive forty five days, for a total of 90 days, by notifying the Board of the extension within the first 45 days.

(2.2) If the Minister does not make a decision within the forty five or ninety days referred to in subsection (2) or (2.1) respectively, whichever is applicable, the Minister is deemed to have approved the issuance, amendment, renewal or cancellation, as the case may be.



Land Claims Agreement and s. 50 of the NWNSRTA. The Board is concerned that if KIA has not had sufficient time to finalize their comments and has not had the opportunity to meet with Shear to work on the resolution of substantive concerns prior to the Hearing, this may hamper the Board's ability to conduct an effective and efficient Hearing that addresses the concerns of all participants.

Consequently, although the Board is mindful of the potential impacts of the postponement on the Minister's approval timelines under s. 56 of the NWNSRTA, given the stated importance of the issues that remain to be resolved between KIA and Shear, the Board finds Shear's request to postpone the Hearing and reschedule the Hearing to be reasonable and grants the request. As the postponement also extends the timelines for the parties' submissions of written materials, KIA's request has not been dealt with separately, but the deadline for receipt of written submissions has been revised as described below. It should also be noted that in selecting the dates for the rescheduled Hearing, the Board recognized the requirements of s. 55(2) of the NWNSRTA⁷ that require the Board to provide at least 60 days public notice of a hearing.

Accordingly the parties are all advised that by Board Motion # 2011-11-P5-05, dated September 20, 2011, the Board has granted Shear's request to reschedule the Hearing set for October 12-13 and has rescheduled the Hearing to November 30 and December 1. Further, the Board directed that the timelines set out in the TM/PHC Decision be revised by this Addendum to reflect the new dates for the Hearing as set out below.

a. Rescheduled Date for the Hearing

The NWB is postponing the Hearing regarding the Application from the original date of October 12-13 to the new dates of November 30 and December 1. The location of the Hearing remains the Community Hall in the Community of Kugluktuk, Nunavut.

b. Revised Timetable for the Exchange of Information

The Board recognizes that reflecting commitments made at the TM/PHC, some materials have already been exchanged amongst the parties, but with respect to written materials that have not yet been provided, the Board notes that as required by Rule 12.4 and Rule 12.5 all written submissions provided by interested parties must be provided at least fifteen (15) days prior to the Hearing, including executive summaries in English and translated into Inuktitut and Inuinnaqtun.

On this basis, the Board requests that the written submissions of interested parties, complete with an executive summary in English, Inuktitut and Inuinnaqtun, be filed with the Board no later than 3:00 p.m. Mountain Time, Tuesday, November 15, 2011.

⁷ Section 55(2) states: Where the Board decides or is required under this Part to hold a public hearing, it shall give notice, in the manner described in subsection (1), at least sixty days before the commencement of the hearing, of the place, date and time of the hearing. The place, date and time of the hearing shall be chosen and the notice published by the Board in a manner that promotes public awareness and participation in that hearing.



All submissions will be posted on the NWB's ftp-site (<ftp://nunavutwaterboard.org/>) and in the public registry upon receipt. A copy of the public registry as it relates to the Application will be available at the Hearing.

c. Procedures for the Hearing

As indicated in the TM/PHC decision, in order to facilitate public participation and to accommodate language requirements of Board members and the community, the Hearing will be simultaneously translated in Inuktitut and Inuinnaqtun. Should the parties require additional language services please advise the NWB no later than **November 15, 2011**.

d. Equipment

Parties who need special audio-visual equipment at the Hearing are requested to inform the NWB of their specific needs within their written submissions to the Board due no later than November 15, 2011 so that arrangements can be made in advance of the Hearing.

e. Public Notice of the Postponement and Dates for the Rescheduled Hearing

As required by s. 55(2) of the NWNSRTA, cited above, the Board will provide formal public notice of the postponement and dates of the rescheduled Hearing at least 60 days prior to November 30 and will also provide specific notice of this Addendum to a broad distribution list including the parties who received notice of the TM/PHC Decision.

4.0 Closing

As indicated by the Board in the TM/PHC Decision, the Board encourages the parties and technical experts to work together to resolve as many issues as possible prior to the Hearing. The Board reminds the parties that when further meetings take place, the Board does ask that it be advised by joint submission of the parties involved regarding any agreements that have been reached on the outstanding issues.

If you require additional information, please do not hesitate to contact Dionne Filiatrault at dionne@nunavutwaterboard.org for technical issues, or Phyllis Beaulieu at licensing@nunavutwaterboard.org for any other matter related to the Hearing.

Regards,

Original signed by:

Dionne Filiatrault, P.Eng., FEC
Executive Director

Attachments: Letter from KIA requesting Extension to Deadline, dated Sept 14
Letter from Shear Diamonds Ltd. requesting Postponement, dated Sept. 15

