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OFFICE DES EAUX DU NUNAVUT

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**NWB File No: 2AM-LUP0008**

October 1, 2008

Email and Regular Mail

Honorable Chuck Strahl P.C., M.P.  
Minister of Indian Affairs & Northern Development  
And Federal Interlocutor for Metis and Non-Status Indians  
21<sup>st</sup> Floor, 10 Wellington  
Gatineau, PQ K1A 0H9

Email: [minister@inac.gc.ca](mailto:minister@inac.gc.ca)

**Re: Nuavut Water Board Authorization on an Emergency Basis for Licence No. 2AM-LUP0008 Lupin Mines Incorporated**

Dear Minister:

Pursuant to paragraph 52(2)(c) and subsection 55(5) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (NWNSRTA), this letter is to request your consent to a declaration by the Nunavut Water Board (NWB or Board) that an amendment to extend the term of Licence 2AM-LUP0008 to March 31, 2009, is required on an emergency basis.<sup>1</sup> With your consent, the effect of the Board's declaration is to waive the requirement of public notice of the application and a public hearing on the amendment.

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<sup>1</sup> Paragraph 52(2)(c) states:

2) A public hearing need not be held

...

(c) in the case of an application for the amendment of a licence where the Board, with the consent of the Minister, declares the amendment to be required on an emergency basis.

Subsection 55(5) of the NWNSRTA states:

Subsections (1) [notice of application] and (4) do not apply in respect of an application for the amendment of a licence where the Board, with the consent of the Minister, declares the amendment to be required on an emergency basis.

Subject to your consent that the amendment is required on an emergency basis, the Board further requests your approval pursuant to subsection 56(1) of the NWNSRTA of the Board's decision pursuant to section 43(1)(a) of the NWNSRTA to extend the term of Licence 2AM-LUP0008 to March 31, 2009 without changes to the conditions of the licence.<sup>2</sup>

#### Regulatory History:

The NWB issued renewal Licence 2AM-LUP0008 (Licence) on July 1, 2000, to Lupin Mines Incorporated (Licensee). The "Type A" Licence is for a mining and milling undertaking at the Lupin gold mine site. The mine began operating in 1982, ceased operating in 2003, and is now in care and maintenance.

Separate from the emergency request, the Licensee applied for a renewal of the Licence on February 21, 2008. The renewal application is for a five year extension of the Licence term, with no changes to the terms or conditions of the Licence. The renewal application is currently being processed by the NWB. A public hearing, as required by the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (NWNSRTA), is scheduled to take place in writing commencing on November 25, 2008 to process the full application for a five year term on a separate non emergency basis.

During the course of the renewal process, the Licence expired on June 30, 2008. While section 46 of the NWNSRTA states that the expiry of a licence does not relieve the Licensee from the obligation imposed by the licence;<sup>3</sup> sections 11 and 12 of the Act and licence prohibit the use of waters and the disposal of wastes dispose of waste except in accordance with a valid licence.

On September 25, 2008, the Licensee requested that the Board amend the term of the Licence to October 31, 2008, on the basis of emergency circumstances to permit the Licensee to proceed with the emergency discharge of effluent from two sewage lagoons at the Lupin mine.

#### Application:

The Licensee's emergency request and the NWB's related correspondence with the Licensee are attached to this letter. The February 21, 2008, full application for the five year renewal and related correspondence is available from the NWB public registry at:

<ftp://nunavutwaterboard.org/PRUC/2%20MINING%20AND%20MILLING/2A/2AM%20-%20Mining/2AM-LUP0008/1%20APPLICATION/>

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<sup>2</sup> Paragraph 43(1)(a) of the NWNSRTA states:

43(1) Subject to this Act, the Board may

(a) on application by the licensee, renew a licence, with or without changes to the conditions of the licence;

Subsection 56(1) of the NWNSRTA states:

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.

<sup>3</sup> Section 46 of the NWNSRTA states "The expiry or cancellation of a licence does not relieve the holder from any obligations imposed by the licence."

In summary, during operations the Lupin Mine Site maintained a two cell sewage lagoon disposal system (Sewage Lagoons) which received wastewater from the 400 man camp and annual surface runoff. Since operations shut down in August of 2003, occupancy of the site has been infrequent and the Sewage Lagoons have received minimal wastewater input. Considerable collection of surface waters from the surrounding watershed has continued to occur resulting in a system that is now at maximum capacity and is in danger of overtopping the crest of the dams with a resulting uncontrolled release of water to the environment. In a sudden breach, a significant volume of soil in the dam and accumulated sludge within the treatment system would move downstream into the natural environment. To mitigate the risk of overtopping and/or dam failure, the Licensee has requested an emergency amendment of the Water Licence, extending the licence expiry date to October 31, 2008 in order to allow the safe controlled release of an estimated 100,000 cubic meters of effluent.

Analytical testing has been completed on the effluent proposed for release. The effluent is within the current authorized effluent quality limits of the Licence, and the quality is very similar to the water quality of the surrounding natural water bodies. Overall, the release of the effluent is not expected to have a measurable impact on the downstream water quality. Monitoring requirements for the discharge are also contained within the conditions of the Licence.

Alternative measures to the release of the Sewage Lagoons to the environment have been considered, including allowing the Sewage Lagoons to remain in the current state, raising the containment dams, and pumping discharge from the Sewage Lagoons to the mine's tailings containment area. The Licensee submitted that these alternatives are either not viable or create a higher risk to the environment.

The Board requested comments from Indian and Northern Affairs Canada, Nunavut Regional Office and was advised that the Licensee's emergency request is supported by the Regional Office.

#### Reasons for Decision:

The Board accepts that without an emergency discharge of effluent there is a significant risk that the dam will fail and there will be an uncontrolled release of effluent into the environment. On the basis that the effluent meets the discharge standards established in the expired Licence, the Board further accepts the submission of the Licensee that the alternatives to the proposed discharge of effluent are either not viable or pose a higher risk to the environment. Overall, the Board has determined that a controlled discharge of the effluent to the environment represents the most secure solution, removing the risk associated to the infrastructure now and in the future.

The Board recognizes the time required to complete the regulatory process for the February 21, 2008, renewal application will likely extend until March 2009. Therefore, the Board is of the view that the most prudent decision is to extend the term of the licence to March 31, 2009.

Accordingly, pursuant to paragraph 52(2)(c) and subsection 55(5) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (NWNSTRA), the Board has determined that the circumstances are sufficient to constitute an emergency and seeks the consent of the Minister to

declare that an amendment to extend the term of Licence 2AM-LUP0008 to March 31, 2009, is required on an emergency basis.

Commensurate with the emergency situation and subject to the decision of the Minister to consent to the declaration set out in the preceding paragraph, the Board declares that an amendment is required on an emergency basis and pursuant to section 43(1)(a) of the NWNSRTA the Board approves amending the term of Licence 2AM-LUP0008 to March 31, 2009, without changes to the conditions. Should the Minister decide to consent to the declaration that the amendment is required on an emergency basis, the Board further seeks pursuant to subsection 56(1) of the NWNSRTA the Minister's approval of the Board's decision to amend the term of the Licence to March 31, 2009.

The Board further requests the Minister to advise the Board of any further conditions to be incorporated into this emergency amendment.

The Board looks forward to a reply at your earliest convenience. If you require further information please contact Dionne Filiatrault, Executive Director, at 867-360-6338.

Sincerely,



Thomas Kabloona  
Chairman

Cc: INAC Manager Water Resources  
INAC Water Resources Officer  
Andrew Mitchell, Lupin Mines Inc.

Attachments:

1. Letter dated September 5, 2008 to Melissa Joy, Water Resources Officer, INAC, from Aaron MacDonell, OZ Minerals. Reference: Zinifex Canada Inc. (Lupin Gold Mines Ltd.) Lupin Water Licence NWB1LUP0008 2008 Discharge Notice.
2. Email dated September 5, 2008 from Melissa Joy, Water Resources Officer, INAC. Reference Attachment: FINAL report – 0809 – 280453\_Lupin.xls; Lupin Discharge.
3. Email dated September 23, 2008 from Andrew Mitchell, OZ Minerals. Reference: Lupin
4. Letter dated September 24, 2008 from NWB to Lupin Mines Inc. Reference: Lupin Mines Incorporated inquiry for emergency amendment (discharge) of the Lupin Mine Sewage Lagoon; Licence 2AM-LUP0008.
5. Letter dated September 25, 2008 to Ms. Dionne Filiatrault, from Andrew Mitchell, OZ Minerals. Reference: Emergency Discharge of Water from Sewage Lakes 1 and 2 at the Lupin Mine, Contwoyto Lake Area, Nunavut.