

Note: document Withdrawn by DIAND confirmed by D. Filiatrault July 25, 2001

Nunavut Water Board
Public Hearing
for the
Amendment of Licence Number NWB1LUP0008
Security Deposit Amount
Echo Bays Mines. Ltd. - Lupin Mine

Indian and Northern Affairs Canada
Public Intervention
August 9, 2001

1. Introduction

This intervention to the Nunavut Water Board (the Board) is made on behalf of Indian and Northern Affairs Canada (the Department) on the request for an amendment of Licence NWB1LUP0008 issued to Echo Bay Mines Ltd. (Echo Bay) for the amount of security required for their mining and milling processes located at Contwoyto Lake, Nunavut.

The Department is responsible for the administration and enforcement of the *Northwest Territories Waters Act* (Act). As described in Section 12 of the Act, the objects of the Board are to provide for the “conservation, development and utilization of waters in a manner that will provide the optimum benefit therefrom for all Canadians and for the residents of the NWT in particular”, and consequently Nunavut residents as well. The Department’s comments and recommendations, therefore, are made, with these objects in mind.

From a Water Resources standpoint, our primary concern is for the long term stability of the tailings disposal area.

2. DIAND’s Considerations

Section 17 of the Act authorizes the Board to require a Licensee to furnish and maintain security with the Minister in accordance with the NWT Waters Regulations, and in a form satisfactory to the Minister. In addition to the Act and regulations, the Department’s Mine Reclamation Policy for Nunavut provides further guidance on the need for a licensed mining company to provide the Crown with financial assurance adequate to ensure that the site is reclaimed at the expense of the mining company. The Department’s position on mine site reclamation is that mining companies must have sufficient financial assurances in place so that costs for mine site clean-up do not become the responsibility of the Crown. With respect to older mining operations, a case-by-case assessment must be made.

If the Board rules that the lack of ministerial approval of the Lupin licence does not prevent the Board from entertaining an application for amendment, then DIAND submits that the Board should admit and consider, in support of the application, only evidence and arguments which the applicant could not have brought forward in the March 2000 proceedings by exercising reasonable diligence. An application to amend a licence must not be used as a substitute for an appeal or a judicial review application. It must not be used as a means of presenting evidence or arguments which the licensee put forward in the March 2000 proceedings, or could have put forward had it exercised reasonable diligence.

3. Amount of Security Deposit

The Department has used RECLAIM assessments in the past and has achieved a high level of acceptance. The basis of the costs estimates is sound and has been established over an extended period of time. From past experiences of DIAND in the NWT, costs estimates are based upon

the assumptions that the Licensee has abandoned the property without adequate reclamation, that 3rd party rates must be used and that the property and equipment may not be in optimal condition. As such, we recommend that the Board use the Brodie report to set the quantum.

The Echo Bay submission presents some ideas which, if borne out by further research, practical testing, and data, might in the future justify a reduction in the prescribed amount of security, but at this time no substantive evidence has been presented that would support the Echo Bay position to allow for a reduction in the thickness in the final tailings cover and therefore a corresponding reduction in security.

DIAND recommends that the Board may wish to have a third party with expertise review the data which Echo Bay has presented.

4. Schedule of Security

If the Board rules that the lack of ministerial approval does not prevent the Board from entertaining an application for an amendment to the quantum of security, it is DIAND's submission that the Board must at the same time determine the date by which the quantum decided upon by the Board is to be posted. As part of determining the date by which the quantum is to be posted, the Board must determine whether posting is to be made in installments and, if so, the schedule (amounts and due dates) for the installments.