



Department of Justice
Canada

Ministère de la Justice
Canada

Northwest Territories Regional Office
3rd Floor, Joe Tobie Building
5020 – 48th Street
P.O. Box 8, Yellowknife
Northwest Territories
X1A 2N1

Bureau régional de Territoires du Nord-Ouest
3^{ème} étage, Édifice Joe-Tobie
5020, 48^e rue
C.P. 8, Yellowknife
Territoires du Nord-Ouest
X1A 2N1

Phone/Téléphone: (867) 669-6900
Fax/élécopieur: (867) 920-4022

Our File: 2-73864
Your File: NWB1LUP0008

November 21, 2001

Nunavut Water Board
P.O. Box 119
Gjoa Haven, Nunavut
X0E 1J0

Attention: Mr. Philippe di Pizzo,
Executive Director

BY FAX to 867-360-6369

and

BY E-MAIL to
nunavutwaterboard@nt.sympatico.ca
and
rbecker@polarnet.ca

Dear Mr. di Pizzo:

**Re: Application by Echo Bay Mines Ltd. (“Echo Bay”) for adjustment of security requirement in water licence NWB1LUP0008;
Draft document entitled “Toward a Mine Site Reclamation Policy for the Northwest Territories”**

Echo Bay has duly provided me with a copy of the above-noted document, and I ask that the Board consider the following comments in relation to it.

* * *

The document is a draft only, and I am informed by DIAND that it is expected to undergo further revisions before it is finalized.

This having been said, the positions set forth in the document are entirely consistent with those advanced by DIAND in the current proceedings, and vice versa. This is true of the positions on several relevant issues, including:

- Costs of reclamation are to be borne by industry, not government and not the taxpayer.
(page 1; page 3, paragraph beginning “It should also be noted ...”; page 8, second paragraph; page 11, second paragraph)
- Security should always be commensurate with outstanding reclamation costs.
(page 6, second-to-last bullet; page 13, second bullet)

- The security requirement is to be reduced on account of progressive reclamation after the progressive reclamation has been accomplished.
(page 7, fourth bullet; page 10, third-to-last paragraph; page 14, first bullet; page 14, last sentence)
- The security requirement is to be reduced on account of progressive reclamation if the cost of remaining reclamation has been reduced.
(page 13, last bullet; page 14, second bullet; page 14, last sentence)
- RECLAIM is an appropriate tool for calculating reclamation costs.
(page 6, last bullet)
- In the estimating of security, a highest-cost model – which is a model that includes use of third-party rates – should be employed.
(page 13, first bullet)
- The posting of security may be facilitated by accepting alternative forms of security.
(page 7, second bullet; pages 11-12, “Forms of Security”)

On the particular issue of security requirements for existing mines, the views expressed in the “Towards” document are again consistent with the position adopted by DIAND in the current Echo Bay proceedings; and the views expressed in the document are consistent with the Board’s fixing and maintaining the security requirement at \$29.2 million.

As DIAND has asserted (Written Intervention, page 3), the starting-point in the determination of a security requirement must be the importance of having the mining company provide enough security to ensure that the site is reclaimed at the expense of the company. At the same time, one should recognize that, for older mining operations, a case-by-case assessment must be made (Written Intervention, page 3). The figure of \$29.2 million was arrived at by the Board through exactly this sort of case-by-case evaluation. After determining the projected costs of reclamation, the Board subtracted from those costs a full 20%, in order to take account of the specific circumstances of Echo Bay and the Lupin Mine. The principle of having security commensurate with outstanding reclamation costs may have implied a fairly quick posting of most or even all of the \$29.2 million; however, the Board instead proposed a gradual ramping-up of the amount posted, and this will have the effect of further easing the requirements on Echo Bay. DIAND continues to support an accommodation of this kind. Also, maintaining the security requirement at \$29.2 million will not prevent the Minister from considering yet another possible cushioning measure: namely, acceptance of security forms which will be less burdensome for Echo Bay.

All of this is in line with the draft document.

For existing mines just as for new mines, the document’s touchstone is the idea that reclamation liability must be shouldered by the mining company, and the fact that it is unacceptable to shift the liability to the Crown:

Every new mining operation should be able to support the cost of reclamation.
Existing mining operations will also be held accountable for their reclamation liabilities ... [page 5]

(The underlining in this quote and those that follow is mine.)

The section devoted specifically to “Transition Rules for Existing Mines” (pages 15-16) begins with the assertion that:

This Policy is also intended to cover existing mining operations. [page 15]

Key elements of the policy are the principle that costs of reclamation are to be borne by industry, not government, and the related principle that security should always be commensurate with outstanding reclamation costs.

In the same section, the document goes on to observe that “... the application of this Policy will have to take account of the specific situation and issues on a case by case basis” (top of page 16). But, as indicated above, a case-by-case assessment is exactly what the Board performed when it generated the figure of \$29.2 million, and it is exactly what DIAND is currently advocating. Furthermore, the document immediately attaches the following qualification:

It must be recognized that the long-term goal is to move all existing mines towards complete financial security for outstanding environmental liability.
[page 16]

The Lupin Mine is to be moved toward this goal by means of the gradual ramping-up referred to above, perhaps combined with the acceptance of less onerous forms of security.

In the next paragraph of the section, the document reiterates that the aim should be to have security which is commensurate with the anticipated reclamation costs:

As noted above, this Policy is not intended to diminish the current authorities under existing legislation and regulations. It is intended, however, to work with the regulatory authorities to ensure that the financial securities imposed reflect 100 percent of the outstanding environmental liability, whether they need to be adjusted up or down as the case may be. [page 16]

It is against this backdrop that the sentence quoted by Mr. Danyluk (letter to P. di Pizzo, May 25, 2001, at page 7) should be read. And indeed, on balance that sentence itself supports the idea of keeping the Lupin security requirement at \$29.2 million:

While DIAND does not intend to force existing mines into financial insolvency through the imposition of the Policy, it is not acceptable to allow outstanding liabilities to continue or grow. [page 16]

The sentence lays primary emphasis on the underlined passage – that is, on the idea that the Crown must not be saddled with a liability which properly belongs to the mining company.

Furthermore, although DIAND recognizes that Echo Bay has encountered financial difficulties, especially given the accommodations referred to above (20% in reductions, gradual ramping-up, consideration of less onerous forms of security) it is inappropriate to assert that declining to reduce the security requirement for Lupin would amount to forcing Echo Bay into insolvency. And here it may be noted that, if Echo Bay has encountered financial difficulties, those difficulties were not produced by the security requirement for Lupin and are not a justification for burdening the taxpayer with the Lupin reclamation liability.

Thank you for your consideration of these comments.

Yours very truly

“Lee F. Webber”

Lee F. Webber

Legal Counsel to DIAND

cc.: Paul Smith, DIAND

Bill Danyluk, Echo Bay Mines Ltd., at bdanyluk@lupin.echobay.com

Martin Ignasiak, Legal Counsel to Echo Bay Mines Ltd.,
at martin.ignasiak@fmc-law.com