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NUNAVUT WATER BOARD  
NUNAVUT IMALIRIYIN KATIMAYINGI  
OFFICE DES EAUX DU NUNAVUT

**File No: 2AM-LUP0914**

August 21, 2014

By Courier, Email and Regular Mail

Honourable Bernard Valcourt, PC, QC, MP  
Minister of Aboriginal Affairs and Northern Development Canada  
21<sup>st</sup> Floor, 10 Wellington  
Gatineau, Quebec K1A 0H4  
Email: [Bernard.Valcourt@parl.gc.ca](mailto:Bernard.Valcourt@parl.gc.ca)

**Subject: Amendments to Type “A” Water Licence 2AM-LUP0914, Lupin Mines  
Incorporated on an Emergency Basis**

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Dear Honourable Minister Valcourt:

This letter is a request by the Nunavut Water Board (NWB or the Board), seeking your consent to the NWB’s issuance of amendments to specified provisions of the recently expired Water Licence 2AM-LUP0914 (the Water Licence), on an emergency basis, under s. 55(5) and s. 174(1)(a)(ii) of the *Nunavut Waters and Nunavut Surface Right Tribunal Act* (NWNSTRA).<sup>1</sup>

The amendments proposed would allow the Licensee, Lupin Mines Incorporated (LMI or Applicant) to discharge contact water meeting specified discharge criteria from the Lupin Mine Sewage Lakes Disposal Facilities (the Facilities) as necessary to preserve the required freeboard space in the Facilities and to maintain the integrity of the Facilities. The amendment would be for a limited term of one (1) year, and would allow the discharge from the Facilities to commence immediately and to occur if required during the 2015 freshet period. LMI would be required to comply with the existing terms and conditions of Part E, Items 8 and 10 of the expired Water Licence and LMI would also be required to comply with all associated monitoring and reporting obligations of the Water Licence in relation to discharges under the proposed amendment, as well as the recent directions applicable to the monitoring, management and reporting of the status of the Facilities issued in July by E. Paul, the Aboriginal Affairs and Northern Development Canada (AANDC) Inspector responsible for the file.<sup>2</sup>

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<sup>1</sup> Section 55(5) of the Act allows the Board to waive the requirements for notice of applications, notice of hearings, and communication of information “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”. Section 174(1)(a)(ii) states that the following class of application in respect of a Type A licence is exempted from the requirement of a public hearing: any amendment that affects the use, flow or quality of waters or alters the term of the licence, where the Nunavut Water Board, with the consent of the Minister, is of the opinion that an emergency exists that requires the amendment.

<sup>2</sup> Water Licence Inspection Form for Licence 2AM-LUP0914 (Expired), from E. Paul, Aboriginal and Northern Development Canada, August 5, 2014.



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## Procedural History of the Emergency Amendment Request

On July 3, 2014, the Board received, from LMI, an emergency amendment request for Licence 2AM-LUP0914, pursuant to s. 52(2)(c) of the NWNSRTA.<sup>3</sup> The NWB reviewed the request and determined, as indicated in the Board's correspondence of July 4, 2014<sup>4</sup> to LMI, that while the Board was concerned about the potential risk to the receiving environment posed by a lack of freeboard in the Facilities, additional information, including water quality information for the water proposed to be discharged was required in order for the Board to more fully assess the potential risks. The Board also asked LMI to provide further information to establish the basis for LMI's request to process the proposed amendment on an emergency basis, given that the normal Type "A" water licence renewal process in relation to the expired Water Licence in its entirety was progressing to the technical review stage.

On July 17, 2014, the NWB received from LMI, a copy of a memo<sup>5</sup> that included photographic records generated from a site visit conducted jointly by SRK Consulting and LMI on June 17, 2014. The memo also included relevant details requested by the NWB in addition to the information on inspections conducted on behalf of LMI on the tailings containment areas, sewage lakes and fuel tank containment areas. Laboratory results related to the quality of the water accumulated within the Facilities associated with the emergency amendment request were also included with the memo and these results indicated that the water in the Facilities met the criteria for discharge from the Facilities that had been in place under the expired Water Licence.

The NWB noted in the email accompanying the memo that the scope of the emergency amendment request by LMI had been narrowed from the original request of July 3, 2014 to now exclude the potential discharge of accumulated contact water from the fuel containment facility, with LMI noting that discharge from the fuel containment facility was no longer required as most of the water from that facility seemed to have evaporated. However, LMI reiterated the request to the NWB to authorize, on an emergency basis, the discharge of approximately 150,000 cubic metres of contact water that had accumulated within the Sewage Lakes Disposal Facilities. The memo suggested that the freeboard on the upper and lower sewage lakes was less than the recommended minimum requirement in the Licence and that failing to discharge contact water from the Facilities could adversely affect the integrity of the Facilities. The report indicated that in terms of timing, the discharge of water from the Facilities would be required in advance of the 2015 freshet period to prevent a potentially uncontrolled release(s) from the Facilities and/or to preserve the integrity of the Facilities.

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<sup>3</sup> Letter from P. Downey, Lupin Mines Incorporated, to P. Beaulieu, NWB, Re: Request for Emergency Amendment to Discharge Contact Water at Lupin Mine, July 3, 2014.

<sup>4</sup> Letter from D. Cote, Executive Director, NWB, to P. Downey, Lupin Mines Incorporated, Re: Request for Emergency Amendment to Discharge Contact Water at the Lupin Mine, July 4, 2014.

<sup>5</sup> Memo from A. Laudrum, srk consulting, to P. Downey, Lupin Mines Incorporated, Re: Results of Lupin Mine Site Visit Conducted June 17, 2014, dated July 2014.



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Following the receipt of the memo and while the NWB was considering this request, the Board received an inspection report from E. Paul, the AAND Inspector responsible for enforcing the terms and conditions of the Water Licence. In that report, Ms. Paul expressed concern regarding the lack of freeboard in the Facilities and providing direction to LMI regarding monitoring requirements in relation to the water levels in the Facilities. Subsequently, on August 18, 2014 LMI contacted the Board to advise that due to significant and recent rainfall in the area that the water levels in the Facilities had risen considerably. On August 19, in an email to LMI,<sup>6</sup> the AANDC inspector indicated that when she attended at the site again on August 17 she observed that the water levels in the lower and upper cells of the Facilities have significantly increased since her site visit in July 2014 due to increases in rainfall. AANDC indicated that steps will have to be taken to prevent accidental and uncontrolled discharge of effluent from the facilities. A copy of AANDC's email correspondence is attached for your information.

### **Board's Decision in Respect of the Emergency Amendment Request**

On August 19, the NWB convened a teleconference meeting of the Board Panel (P11 Lupin Panel) designated by the full Board to exercise decision-making authority in respect of the Water Licence to consider LMI's request. After considering the Board's jurisdiction under ss. 43, 55 and 174 of the NWNSRTA, LMI's request, the observations of AANDC's Inspector in July and August and the water quality information provided by LMI, indicating that the contact water accumulating in the Facilities meets the discharge criteria specified in the expired Water Licence for the Facilities, the Panel, by motion 2014-P11-12-03 moved to approve, on an emergency basis, the following:

“[T]he grant of the amendment request submitted by Lupin Mines Incorporated to authorize the release of water meeting specified discharge criteria from the Lupin Mine Sewage Lakes Disposal Facilities to preserve the necessary freeboard space and maintain the integrity of the Facilities, before and/or during 2015 freshet period, in accordance with the terms and conditions of Part E, Items 8 and 10 in Licence 2AM-LUP0914 and all associated monitoring and reporting obligations.”

In granting the Applicant's request, the NWB reminds LMI that this amendment is limited to only allowing the Licensee to discharge water from the Facilities and does not extend to grant LMI any of the other rights to use water or deposit waste provided for under the expired licence 2AM-LUP0914, nor does this amendment relieve LMI from compliance with their ongoing obligations under s. 46 of the NWNSRTA, which states that: “the expiry of a licence does not relieve the holder from any obligation imposed by the licence.”

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<sup>6</sup> Email from E. Paul, AANDC, Re: URGENT: 140704 2AM-LUP0914 NWB's Response to Amendment Request for Lupin Mine.



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## Board Request to the Minister

As you are aware, under s. 43(1)(b)(iii) of the NWNSRTA the Board may “amend, for a specified term or otherwise, any condition of a licence where the Board considers the amendment to be in the public interest” and when the Board declares that an emergency exists under s. 55(5) of the NWNSRT, subject to the Minister’s consent, the Board may waive the requirements for notice of applications, notice of hearings, and communication of information, including where public hearings are not held.

Accordingly, the Board now requests the consent of the Minister pursuant to ss. 55(5) and 174(1)(a)(ii) of the NWNSRTA to waive the requirements for notice and a public hearing associated with the proposed emergency amendment and requests the approval of the Minister to the amendments to the Water Licence. The Board also requests the Minister to advise the Board of any additional conditions recommended by Aboriginal Affairs and Northern Development Canada to be incorporated under this emergency amendment.

Recognizing the emergency situation, the Board looks forward to a reply at your earliest convenience. If you require further information please contact Damien Côté, Executive Director at 867-360-6338.

Sincerely,

Thomas Kabloona  
Chair, Nunavut Water Board

Attachments;

1. Part E, Items 8 and 10 in Water Licence 2AM-LUP0914 and signature page for the amendment to extend the term of Part E, Items 8 and 10 for one year, expiring August 19, 2015.
2. Email dated August 19, 2014 from E. Paul, AANDC, Re: URGENT: 140704 2AM-LUP0914 NWB's Response to Amendment Request for Lupin Mine.
3. Water Licence Inspection Form for Licence 2AM-LUP0914 (Expired), from E. Paul, Aboriginal and Northern Development Canada, August 5, 2014.

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