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NUNAVUT WATER BOARD
NUNAVUT IMALIRIYIN KATIMAYINGI
OFFICE DES EAUX DU NUNAVUT

NIRB File: 03MN107
NWB File No: 2AM-MEA1526
By Email

February 8, 2019

TO: Meadowbank Distribution List

Re: Nunavut Water Board (NWB) Regarding Waiving Public Hearing and Request for Final Submissions in Respect of Agnico Eagle Mines Limited's Amendment to Type "A" Water Licence No: 2AM-MEA1526 for the Meadowbank Gold Mine Project to Allow In-Pit Tailings Deposition

The correspondence that follows is the Nunavut Water Board's (NWB or the Board) guidance regarding proposed next steps in the NWB's processing of an amendment to Type "A" Water Licence No: 2AM-MEA1526 (the Water Licence) received by the NWB from Agnico Eagle Mines Limited (Agnico Eagle or the Licensee) on February 23, 2018 (the Amendment Application) and acknowledged by the Board on February 26, 2018. Although initially processed by the NWB as a modification that did not require a formal amendment to the Water Licence, opportunities for technical review and comment of the proposed changes to allow in-pit tailings disposal were provided by the Board while the changes were being assessed by the Nunavut Impact Review Board (NIRB) under a reconsideration of the existing Project Certificate Meadowbank Gold Mine Project Certificate [No. 004], under Article 2, Section 12.8.2 of the *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada (Nunavut Agreement)* and s. 112 of *NuPPAA*.

As Agnico Eagle had requested that the NIRB's assessment and the NWB's consideration of the In-Pit Tailings Disposal Modification Proposal be undertaken in a coordinated fashion, while the NIRB's assessment was on-going (February – August, 2018), the NWB invited interested parties to conduct a review of the modification request and to submit relevant comments to the NWB at the close of the comment period in August 2018. Subsequently, additional information was received from Agnico Eagle in response to parties' concerns, and several meetings were held amongst the parties to resolve technical issues as the NWB's processing of the In-Pit Tailings Disposal Modification Proposal continued. To date, comments have been provided to the NWB about the In-Pit Tailings Disposal Modification Proposal from the following parties:

- The Kivalliq Inuit Association (KIA);
- Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC);
- Environment and Climate Change Canada (ECCC);
- Fisheries and Oceans Canada (DFO); and
- Natural Resources Canada (NRCan).

Subsequently, based on the direction of the Minister of Intergovernmental Affairs, Northern Affairs and Internal Trade (the Minister) provided in his decision on November 26, 2018 in response to the Nunavut Impact Review Board's Reconsideration Report and Recommendations¹ associated with the requested modification, expressing the Minister's view that the Water Licence would not authorize this undertaking without an amendment, the NWB revised the Board's approach to consideration of the modification and brought forward Agnico Eagle's modification request as an amendment to the Water Licence. Additional procedural guidance regarding this approach was provided in the NWB's correspondence issued on November 30, 2018.

On December 7, 2018, in order to discuss an expedited licence amendment process, the NWB hosted a teleconference attended by:

- Agnico Eagle Mines Limited (Agnico Eagle or the Licensee);
- Kivalliq Inuit Association (KIA);
- Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC);
- Environment and Climate Change Canada (ECCC); and
- Natural Resources Canada (NRCan).

During the December call, the NWB and all parties noted that considerable technical review, submissions of supplemental information and resolution of technical issues has taken place during the Board's consideration of the In-Pit Tailings Disposal Modification Proposal since its receipt in February 2018. On this basis, the NWB discussed with all parties that upon the Board's receipt of Agnico Eagle's request to bring all the materials associated with the In-Pit Tailings Disposal Modification Proposal forward as the Amendment Application, the Board could forego the completeness check stage and immediately initiate a technical review period. The parties also expressed their preference for waiving the requirement for a technical meeting. On December 17, 2018, Agnico Eagle submitted a formal water licence amendment application (the Amendment Application) to the NWB. The NWB distributed the materials for technical review, and comments from the interveners were received in the period between January 16 and 31, 2019.

As discussed in the December call, on January 25, 2019, the NWB requested that the parties should also provide the NWB with their views regarding whether NWB should consider waiving the requirement for a Public Hearing to consider the Amendment Application as provided for under s. 9(1) of the *Nunavut Waters Regulations*, SOR/2013-69, which states as follows:

9 (1) For the purposes of section 13.7.3 of the Agreement and subsection 52(1) of the Act, no public hearing is required in respect of an application for (a) an amendment to a type A licence that does not affect the use, flow or quality of waters or alter the term of the licence.

¹ NIRB, Reconsideration Report and Recommendations, In-Pit Tailings Disposal Modification, Agnico Eagle Mines Ltd., NIRB File No.: 03MN107, August 31, 2018.

Agnico Eagle has, throughout the Board's consideration of the In-Pit Tailings Disposal Modification Proposal maintained that an amendment is not required, and alternatively if an amendment process is to be undertaken that the changes proposed will not result in any changes to water quality, quantity or flow².

Fisheries and Oceans Canada (DFO) did not respond to the Board's specific request; however, in its earlier January 16, 2019 submission, DFO indicated that it had no further comments in respect of the Amendment Application.

On January 31, 2019 CIRNAC responded with the following statement:

CIRNAC sees this amendment as a new 'use' of water as it will now serve as a tailings cover. The amendment also risks affecting the quality of water as it involves a new deposition of waste into waters that are meant to be reconnected with the natural environment.

In ECCC's January 31, 2019 submission, ECCC stated:

If the NWB determines a Public Hearing is not necessary and the requirements of the Nunavut Waters and Nunavut Surface Rights Tribunal Act Section 52 (2) are adhered to, ECCC would be comfortable with the cancellation of the Public Hearing. This process ensures that all interested parties and local communities are given an opportunity to be heard before a decision is made to forgo the Public Hearing requirement.

KIA's response received on January 31, 2019 stated: "*the public needs the opportunity to be heard by the NWB*".

All submissions in respect of the Amendment Application received to date have been placed on the NWB's FTP site at the following link:

<ftp://ftp.nwb-oen.ca/registry/2%20MINING%20MILLING/2A/2AM%20-%20Mining/2AM-MEA1526%20Agnico/1%20APPLICATION/2018%20Amendment%20In-Pit/>

On February 8, 2018, the NWB's duly appointed panel delegated to consider the Amendment Application convened by teleconference to consider whether to waive the requirement to conduct a Public Hearing in respect of the Amendment Application as permitted under s. 9 of the *Nunavut Waters Regulations* set out above. By way of Motion No. 2018-19-P9-03, the Panel decided that the Amendment Application does fit within the exemption of s. 9 and hereby waives the requirement to hold some form of Public Hearing to decide in respect of the Amendment Application. The Panel based its decision on the following:

² Agnico Eagle's correspondence to NWB of December 13, 2018, January 31, 2019 and February 4, 2019.

- As the existing Water Licence already authorizes the deposit of waste rock into the mined-out pits, the deposit of waste into the pits is not a new activity as proposed under the Amendment Application;
- The technical information received to date has indicated that the mitigation and monitoring associated with the deposit of tailings into the mined-out pits has been designed to prevent any changes to the water quality, quantity or flow associated with the authorized undertaking; and
- The existing Water Licence already authorizes the use of water to fill the mined-out pits at closure, there is no additional and separate water use sought under the Amendment Application to cover the tailings deposited in the mined-out pits, and as such, the NWB does not see the Amendment Application as requiring authorization for additional water use that would affect the already authorized quantity of water use.

In addition, the NWB notes that the subject matter of this Amendment Application, the In-Pit Tailings Disposal Modification Proposal, has undergone extensive technical review and comment since February 2018. As parties have now largely concluded that outstanding technical issues have been resolved, the NWB does not view the conduct of a Public Hearing to be warranted with few technical issues remaining unresolved. The NWB also notes that due to the limited scope of the In-Pit Tailings Disposal Modification Proposal the NIRB also determined that it was not necessary for the NIRB to hold a public hearing associated with the Board's reconsideration.³

Consequently, the NWB gives notice that the NWB has, as per s. 9 of the *Nunavut Water Regulations*, **the NWB waives the requirement to hold a Public Hearing in respect of the Amendment Application.** Further, with the recognition that the Amendment Application has undergone extensive technical review and parties have indicated in their most recent submissions that most technical issues have been resolved via various commitments from Agnico Eagle, the NWB requests that **Agnico Eagle, all interveners and any other interested parties, provide the NWB with any final written submissions they wish the NWB to consider in respect of the Amendment by 3:00 pm MT, February 15, 2019.**

The Board recognizes that the proposed timelines are very short, but notes that the NWB and parties have been actively engaged in the review of the Amendment Application for almost one year. The Board greatly appreciates parties taking all reasonable steps to meet the final submission timeline set out above. Once final submissions have been received, the NWB will determine if sufficient information is before the Panel to remit the Amendment Application to the Panel for decision-making.

³ NIRB, Reconsideration Report and Recommendations, In-Pit Tailings Disposal Modification, Agnico Eagle Mines Ltd., NIRB File No.: 03MN107, August 31, 2018, at p. 6.

If you have any questions or require further direction with respect to this matter, please contact Assol Kubeisnova, Technical Advisor, at (867) 360-6338 or via e-mail at assol.kubeisnova@nwb-oen.ca or Karén Kharatyan, Director of Technical Services, at (867) 360-6338 or via e-mail at karen.kharatyan@nwb-oen.ca.

Regards,

Richard Dwyer
Manager of Licensing
Nunavut Water Board

cc. Meadowbank Distribution List