

NIRB File No.: 03MN107
NWB File No.: 2AM-MEA1525
NPC File No.: 148681

June 18, 2018

The Honourable Carolyn Bennett, P.C.
Minister of Crown-Indigenous Relations and Northern Affairs
House of Commons
Government of Canada
10 Wellington, 21st Floor
Gatineau, QC K1A 0H4

Sent via email and courier: minister@aadnc-aandc.gc.ca; carolyn.bennett@canada.ca; and infopubs@aadnc.gc.ca

Jamie Quesnel
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Meadowbank Division
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Sent via email: jamie.quesnel@agnicoeagle.com

Re: Follow Up Guidance and Notice Regarding the Nunavut Impact Review Board's Next Steps in the Processing of Agnico Eagle Mines Limited's "In-Pit Tailings Disposal Modification" Project Proposal

Dear Honourable Carolyn Bennett and Jamie Quesnel:

On March 22, 2018 the Nunavut Impact Review Board (NIRB or Board) received a referral from the Nunavut Planning Commission (NPC or Commission) to screen Agnico Eagle Mines Limited's (Agnico Eagle, or Proponent) "In-Pit Tailings Disposal Modification" project proposal (the In-Pit Tailings Disposal Proposal).¹ In summary, the application, as submitted to the NIRB on February 23, 2018, proposes to change Agnico Eagle's method of tailings disposal for its operations at the approved Meadowbank Gold Mine and Whale Tail Pit Gold Mine from the current practice of placing all tailings within the Meadowbank Tailings Storage Facility to future disposal of tailings in three mined out pits, Portage Pit A, Portage Pit E, and Goose Pit. The mined out pits are all within the footprint of the previously assessed and approved Meadowbank

Gold Mine. The change was requested by Agnico Eagle based on recommendations provided in 2016 by the Meadowbank Dike Review Board (MDRB), a Review Panel of independent geotechnical experts established under the Type “A” Water Licence for the Meadowbank Gold Mine (#2AM-MEA1525).

All documentation associated with the In-Pit Tailings Disposal Proposal, including application materials filed by the Proponent with the NIRB can be accessed online from the NIRB’s public registry using the following link: www.nirb.ca/project/125253.

The In-Pit Tailings Disposal Proposal would require the continued use of various existing project components at the Meadowbank Gold Mine, including the following:

- Pits and dikes to segregate operations from Third Portage Lake and Second Portage Lake;
- The reclaim water barge;
- The tailings deposition barge; and
- The closure reclaim water treatment plant.

The proposed modifications would also require an extension of the existing slurry and reclaim water piping.

In Agnico Eagle’s modification proposal submitted to the Commission on December 18, 2017, the Proponent analyzed the proposed changes to disposal methods and did a “self assessment” of significance in accordance with the factors for determining significance set out under s. 90 of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14, s. 2 (*NuPPAA*). Considering these factors, Agnico Eagle concluded that the In-Pit Tailings Disposal Proposal does not constitute a significant modification to the Meadowbank Project, as previously assessed by the NIRB and governed by Project Certificate No. 004 (as amended). Agnico Eagle has maintained this position throughout the NIRB’s processing of the application, and has indicated that the effects of the proposed changes can be mitigated through the implementation of management plans and updates to the existing water monitoring program.²

The Federal regulatory authorities participating in the NIRB’s consideration of the modification request to date (Indigenous and Northern Affairs Canada, Environment and Climate Change Canada, Fisheries and Oceans Canada, Natural Resources Canada and Transport Canada) do not agree with the Proponent’s view. The Federal regulators have consistently and unequivocally stated that: “...*this proposal is a significant modification of an existing project, and as a consequence...needed an assessment under Part 3 of the Act [NuPPAA]*.”³

Also, as noted above, on March 22, 2018 the Nunavut Planning Commission concluded that the In-Pit Tailings Disposal Proposal represented a significant modification to the approved Meadowbank Gold Mine Project (NIRB File No. 11MN034) because it is for a component or activity that was not part of the original or previously-amended project proposal. Accordingly, the Commission referred the In-Pit Tailings Disposal Proposal for assessment by the NIRB under the *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in*

² Public Registry ID: 315564

³ Public Registry ID: 318164

right of Canada (Nunavut Agreement) and the *NuPPAA* prior to issuance of any permits, licences or other approvals by associated Regulatory Authorities.

As indicated on June 12, 2018 during the NIRB-hosted Technical Meeting to support the NIRB's consideration of the modification proposal and as requested in correspondence received from Agnico Eagle on June 13, 2018 this correspondence is intended to provide the Board's direction regarding the Board's required process for the consideration of the In-Pit Tailings Disposal Proposal.

NIRB GUIDANCE REGARDING PROCESSING OF PROPOSAL

As with the NIRB's consideration of several other recent modification proposals associated with previously-approved projects (including in respect of modifications to the Meadowbank Gold Mine Project under the Vault Pit and Whale Tail Project Proposals), NIRB acknowledges that limited guidance exists for participants regarding the most effective processes that will allow the Board to conduct thorough, timely and appropriately scaled assessment of applications to modify components of previously assessed projects. In accordance with the NIRB's recent correspondence in respect of this modification proposal and also associated with the NIRB's other on-going assessments of project modifications, the NIRB provides the following general and project-specific guidance regarding the process, next steps and tentative timing of the NIRB's consideration of Agnico Eagle's In-Pit Tailings Disposal Proposal.

As previously observed by the NIRB, although the Board has the jurisdiction under s. 146 of the *NuPPAA* to consider, on its own, whether a modification proposal constitutes a significant modification, recognizing the "one window approach", the integrated regulatory process established under Articles 10-13 of the *Nunavut Agreement* and under the *NuPPAA*, it will only be in rare circumstances that the Board would differ from the Commission's finding that a project constitutes a significant modification. In this case, the NIRB was consulted by the Commission and asked to provide the Board's views in respect of whether the modification proposal constituted a "significant modification", and while the information before the NIRB at that time (January, 2018) was not sufficient for the NIRB to provide an opinion, the NIRB has since received additional information from the Proponent and regulatory participants and is now able to conclude with confidence that the modification proposal constitutes a significant modification. The following factors were considered by the Board to reach this conclusion:

- The proposed activities were not assessed previously as part of the original or amended Meadowbank Gold Mine Project;
- The proposed activities constitute a new approach to tailings management that has not been considered previously by the NIRB; and
- The potential for effects on surface water and groundwater as a result of the proposed changes may be different than the effects as previously assessed, and these differences may require changes to existing mitigation, monitoring and management plans.

In respect of the In-Pit Tailings Disposal Proposal, on the basis of the Commission's referral, the information provided by the Proponent, the comments received by interested parties and the Board's own review of the scope of the Meadowbank Gold Mine Project as previously assessed

(and as amended), the NIRB agrees that based on the potential for adverse ecosystemic effects, especially on surface and groundwater that could be greater than was previously considered by the NIRB during the Board's Review of the original Project, the In-Pit Tailings Disposal Proposal constitutes a **significant modification** to the previously assessed project. Consequently, as set out in s. 146(1) of the *NuPPAA*, the Board agrees with the determination of the Commission and the submission of the Federal Regulatory Authorities that the In-Pit Tailings Disposal Proposal must be assessed by the NIRB under Part 3 of *NuPPAA* before the modification proposal should be allowed to proceed to the permitting stage.

As stated by the NIRB in the Board's letter of April 13, 2018, and recognizing the limited scale and scope of the proposed modifications, the integral link between the In-Pit Tailings Disposal Proposal and the existing Meadowbank Gold Mine Project and noting that the modifications would be conducted largely within the footprint of the existing Meadowbank Gold Mine Project, the Board has determined that the most appropriate mechanism for conducting the required assessment of the modifications proposed in the In-Pit Tailings Disposal Proposal is a reconsideration of the terms and conditions of Project Certificate No. 004, under Section 12.8.2 of the *Nunavut Agreement* and s. 112 of *NuPPAA*.

NIRB NOTICE OF RECONSIDERATION

On this basis, the Board has decided that Article 12, Section 12.8.2(b) and (c) of the *Nunavut Agreement* and s. 112(b) and (c) of the *NuPPAA* (changed circumstances and technological innovations) trigger the reconsideration of the terms and conditions of Project Certificate No. 004 in light of the In-Pit Tailings Disposal Proposal. As required by s. 112(3) of *NuPPAA*, the NIRB is providing notice of the reconsideration of terms and conditions of Project Certificate No. 004.

RECONSIDERATION PROCESS AND NEXT STEPS

As noted previously in the NIRB has considerable discretion as to the precise process for conducting a reconsideration under Section 12.8.2 of the *Nunavut Agreement* and s. 112 of *NuPPAA*. In conducting a reconsideration, the NIRB remains, however mindful that the NIRB's primary objectives apply to reconsiderations and generally dictate that the NIRB conduct an assessment of the modification proposal with as much rigor at least as a NIRB screening and sometimes even a full environmental review. However, the NIRB also notes that process for the assessment of modification proposals must also reflect the scale and scope of the changes requested.

In this case, reflecting that the scale of the modifications proposed is limited, but that the shift to in-pit tailings disposal is a recent technological innovation that has not been previously considered by the Board, the NIRB has developed the following guidance regarding next steps. It should be noted that due to the limited and technical nature of the issues identified by commenting parties about the In-Pit Tailings Disposal Proposal to date and the results of public engagement undertaken by the Proponent regarding this application, the NIRB proposes to conduct the next steps in the Board's reconsideration via written submissions only. However, should significant public concern with the In-Pit Tailings Disposal Proposal be identified by the

Board during the steps outlined below, the Board may, upon notice to all parties and subject to procedural fairness requirements, supplement the process as required to ensure the Board has provided opportunities for public concerns to be noted and considered.

In setting out the process below, the Board has been mindful of the recent submissions of Agnico Eagle and the regulatory agencies in advance of, during and immediately following the June 12, 2018 Technical Meeting for this file. Agnico Eagle has indicated that due to seasonal shipping constraints, in order for the modification activities to proceed next year, the Proponent requires a decision as to whether or not the In-Pit Tailings Disposal Proposal has been approved to proceed by the beginning of September 2018. In correspondence following the technical meeting, while urging that no formal reconsideration was required as the In-Pit Tailings Disposal Proposal did not constitute a significant modification, Agnico Eagle proposed that if, however, the NIRB did choose to conduct a reconsideration, it may be possible, with a very directed process to conduct the required reconsideration and still meet the critical September timeline. While the NIRB did not adopt the timeline and process set out in Agnico Eagle's letter, the NIRB does agree that the process outlined below, which is, in the NIRB's view, appropriately scaled to the technical issues and level of assessment required for the NIRB's reconsideration of the modification proposed can be completed by the Board by early September. The NIRB wishes to stress however that ensuring this Board's assessment is completed in accordance with the timelines set out below is contingent on several factors outside the Board's control:

- Parties meeting deadlines throughout the process;
- Adequate information being provided to the parties and the Board throughout; and
- (As necessary) Agnico Eagle and intervenors working to resolve outstanding issues and ensuring that the Board is being kept informed of the outcome/resolutions achieved.

The Board recognizes that the timelines set out below are abbreviated compared to several other on-going modification applications under consideration by the Board, but the NIRB reminds parties that they have been in receipt of the substantive material in support of the In-Pit Tailings Disposal Proposal since mid-February and that a focused review of the modification and effects has already been undertaken to some extent by all participants during the initial comment periods.

Further, in developing the process and next steps the Board recognizes that during the June 12 Technical Meeting Agnico Eagle agreed to follow up immediately with some parties to provide specific information (already filed with the NIRB) to particular reviewers, but that parties felt that an additional Information Request (IR) period would be useful in advance of completing their additional technical review period. The NIRB has accommodated this request by including a short IR/IR response period, but all parties are encouraged during this period to work on their final technical review comments/submissions.

The NIRB provides the following outline of the process and timelines for the NIRB's reconsideration of the terms and conditions of Project Certificate No. 004 to reflect the assessment of effects associated with Agnico Eagle's In-Pit Tailings Disposal Proposal:

Date	Process Step
June 18, 2018	1) NIRB provides this Notice of Reconsideration under s. 112 (3) of the <i>NuPPAA</i> ; and 2) The final Information Request period commences
June 26, 2018	Parties file remaining Information Requests with the Board
July 3, 2018	Agnico Eagle provides responses to Information Requests
August 1, 2018	Intervenors file final written submissions
August 15, 2018	Agnico Eagle files a final reply to written submissions
August 31, 2018	NIRB issues a Reconsideration Report and Recommendations under s. 112(5) of the <i>NuPPAA</i>

In determining the timelines necessary to facilitate this reconsideration process, the Board gave consideration to the submissions provided by the Proponent and parties discussed above, as well as consideration for previous procedural guidance set out by the Board and scheduling challenges imposed by other competing assessment activities, including the following:

- Incoming screening level assessments;
- Scheduled site visits for ongoing NIRB monitoring programs (July/August);
- Completion of the public review for TMAC Resources Inc.'s Phase 2 Hope Bay Belt Project Proposal (NIRB File No. 12MN001);
- The Strategic Environmental Assessment in Baffin Bay/Davis Strait (NIRB File No. 17SN034);
- Reconsideration processes for the "Production Increase Proposal" and the "Phase 2 Development Proposal" associated with the Baffinland Iron Mines Corp.'s approved Mary River Iron Mine Project (NIRB File No. 08MN053); and
- Reconsideration process for the "Saline Effluent Discharge Proposal" associated with Agnico Eagle Mines Ltd.'s Meliadine Gold Mine Project (NIRB File No. 11MN034).

The Board recognizes the discretion granted to the Minister under s. 114 of the *NuPPAA* to indicate to the Board that a review or a reconsideration of terms and conditions is a priority in relation to other reviews or reconsiderations and may propose a reasonable period within which it must be completed. As the In-Pit Tailings Disposal Proposal, the Saline Effluent Discharge Proposal and the Production Increase Proposal in particular have indicated that a decision in the coming months is necessary to meet timelines associated with the limited seasonal shipping window for Nunavut, the Board invites any direction from the Minister with regards to prioritization of these files as may be deemed appropriate.

CONCLUSION

In closing, to facilitate the development of final submissions the NIRB invites interested parties to submit any requests for additional required information (Information Requests) for the assessment of the In-Pit Disposal Proposal on or before **June 26, 2018**. These requests for supplemental information should include the following:

- A clear reference to the volume, document, section, and/or page number in the application materials where relevant information may be found, if applicable
- Identification of the issue and the specific information being requested;
- The concern associated with the issue and need for information; and
- A clear rationale of the issue and information's importance to the impact assessment of the proposed project.

Information Requests can be submitted directly through the NIRB's online public registry system, or via email to info@nirb.ca.

Should any parties have questions or require additional clarification regarding the process for this assessment, please contact the NIRB's Executive Director, Ryan Barry at (867) 983-4608 or via email at rbarry@nirb.ca.

Sincerely,



Elizabeth Copland
Chairperson
Nunavut Impact Review Board

cc: Meadowbank Gold Mine Distribution List
Megan Lord-Hoyle, Baffinland Iron Mines Corporation
Lou Kamermans, Baffinland Iron Mines Corporation
Ryan Vanengen, Agnico Eagle Mines Ltd.
Karén Kharatyan, Nunavut Water Board
Luis Manzo, Kivalliq Inuit Association
Chris Spencer, Government of Nunavut
Erika Zell, Government of Nunavut
Georgina Williston, Environment and Climate Change Canada
Melissa Pinto, Environment and Climate Change Canada
Mark D'Aguiar, Fisheries and Oceans Canada
Tracey McCaie, Indigenous and Northern Affairs Canada
Rob Johnstone, Natural Resources Canada
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