



NIRB File No.: 11MN034

NWB File No.: 2AM-MEL1631

NPC File No.: 148672

April 6, 2018

To: The Honourable Carolyn Bennett, P.C.
Minister of Crown-Indigenous Relations and Northern Affairs
Government of Canada
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Sent via regular post and email

Re: Response to Recent Submissions, Guidance and Notice Regarding the Nunavut Impact Review Board's Processing of Agnico Eagle Mines Limited's "Saline Effluent Discharge to Marine Environment, Rankin Inlet, Meliadine Gold Mine" Project Proposal

Dear Minister Bennett and Jamie Quesnel:

This correspondence is intended to provide notice as required by s. 112(3) of the *Nunavut Planning and Project Assessment Act (NuPPAA)* that the Nunavut Impact Review Board (NIRB or Board) is initiating a formal reconsideration of the terms and conditions of Project Certificate No. 006 in light of Agnico Eagle Mines Limited's "Saline Effluent Discharge to Marine Environment, Rankin Inlet, Meliadine Gold Mine" project proposal (the Saline Effluent Discharge Proposal), a proposed amendment to the approved Meliadine Gold Mine Project (NIRB File No. 11MN034).

PROCEDURAL HISTORY

On January 5, 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) "Saline Effluent Discharge to Marine Environment, Rankin Inlet, Meliadine Gold Mine" project proposal (the Saline Effluent Discharge Proposal). In summary, the Modification Proposal proposes a change from discharging treated saline groundwater collected during the development of the underground mine into Meliadine Lake (the preferred alternative presented to the Nunavut Water Board during the Type "A" water licensing process) to also allow for the discharge of saline effluent into Melvin Bay at Itivia Harbour.

Following its review of the Saline Effluent Discharge Proposal, the Commission concluded that the Saline Effluent Discharge Proposal represents a significant modification to the approved Meliadine 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. On this basis, the Commission referred the Saline Effluent Discharge Proposal for assessment by the NIRB under the *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada (Nunavut Agreement)* prior to issuance of any permits, licences or other approvals by associated Regulatory Authorities.

In response, the Board requested additional information from the Proponent regarding the full scope and nature of the Saline Effluent Discharge Proposal on January 26, 2018, and the Proponent provided the requested information to the NIRB on February 15, 2018. Subsequently, on February 20, 2018, the NIRB circulated public notice regarding the Saline Effluent Discharge Proposal, soliciting comments on Agnico Eagle's request for reconsideration from interested parties and regulatory authorities for the Meliadine Gold Mine Project. Specifically, the Board requested comment on whether or not the Saline Effluent Discharge Proposal warranted reconsideration of the existing Project Certificate for the Meliadine Gold Mine Project (Project Certificate No. 006) in accordance with Article 12, Section 12.8.2 of the *Nunavut Agreement* alone or in conjunction with s. 112(1) of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14 (*NuPPAA*).

COMMENT SUBMISSIONS REGARDING NIRB PROCESSING OF PROPOSAL

Joint Submission of the Federal Departments

On March 13, 2018 the NIRB received a joint response from the Northern Projects Management Office on behalf of the federal departments of Indigenous and Northern Affairs Canada, Fisheries and Oceans Canada, Environment and Climate Change Canada, Health Canada, Natural Resources Canada and Transport Canada (the Federal Response). In summary, the Federal Response concluded that as the Saline Effluent Discharge Proposal was a significant modification to the Meliadine Gold Mine Project as previously assessed by the NIRB, the proposal requires an assessment under Part 3 of the *NuPPAA*. The Federal Response also indicated that the appropriate assessment process for the proposal was not a reconsideration of the existing terms and conditions of Project Certificate No. 006 under Article 12, Section 12.8.2 of the *Nunavut Agreement* and s. 112 of the *NuPPAA*, but rather should proceed with its "own assessment process", which would consist of a separate screening of the Saline Effluent Discharge Proposal as required under s. 146 and Part 3 of the *NuPPAA*. The Federal Response notes that the outcome of this process would be a Screening Decision Report under s. 92 of the *NuPPAA*.

Submission of the Proponent

Following receipt of the Federal Response, the NIRB provided the Proponent with an opportunity to respond to comments received. On March 28, 2018, the Proponent provided a comment submission that responded to the recommended process for assessment of the Saline Effluent Discharge Proposal (separate screening) set out in the Federal Response. In summary, Agnico Eagle indicated that the NIRB is the appropriate authority to determine whether the Saline Effluent Discharge Proposal constitutes a “significant modification” to the Meliadine Gold Mine Project as previously assessed under s. 145 of the *NuPPAA*. Agnico Eagle indicated that based on the information provided to the NIRB by the Proponent to date, the NIRB could conclude that the Saline Effluent Discharge Proposal is not a significant modification and would not require an assessment under the *NuPPAA*, but may be considered solely as a reconsideration of the terms and conditions of Project Certificate No. 006 under Article 12, Section 12.8.2(c) of the *Nunavut Agreement*. Agnico Eagle acknowledged, however, that if the NIRB does consider the Saline Effluent Discharge Proposal to constitute a significant modification to the previously approved Meliadine Gold Mine Project, the NIRB should conduct the assessment of the modification as a reconsideration of the terms and conditions of Project Certificate No. 006 under Article 12, Section 12.8.2(c) of the *Nunavut Agreement* and s. 112 of the *NuPPAA* (all provisions, but noting that s. 112(c) is particularly applicable).

In rejecting the assessment process (separate screening) as proposed in the Federal Response, the Proponent expressed the view that the Federal Response takes an unnecessarily limited view of the NIRB’s jurisdiction when conducting a reconsideration of Project Certificate terms and conditions under s. 112 of *NuPPAA* and highlighted that flexibility in relation to existing Project Certificates is expressly recognized in the *Nunavut Agreement* as underlying the reconsideration process. The Proponent also noted that a NIRB reconsideration of an existing project certificate’s terms and conditions would constitute an assessment under Part 3 of the *NuPPAA* as required under s. 146(1).

In closing, the Proponent noted:

*The Proposed Modification is a very specific modification, is not expected to have any significant impacts, is a preferred method for management of groundwater, and will be strictly regulated by federal legislation. Regardless of the process that the NIRB determines is appropriate to review the Proposed Modification, it is appropriate for the selected process to be focused in scope and move forward on a timely basis.*¹

NIRB GUIDANCE REGARDING PROCESSING OF PROPOSAL

The NIRB thanks all parties for providing the Board with thorough and responsive submissions in accordance with very tight timelines. The NIRB also acknowledges that limited guidance exists regarding the various issues arising as a result of applications to modify components of

¹ J. Quesnel, Agnico Eagle Mines to K. Gillard, NIRB Re: NIRB File No. 11MN034: Agnico Eagle Mines Limited's Proposed Saline Effluent Discharge to Marine Environment, Rankin Inlet, Meliadine Gold Mine and Modification to the Meliadine Gold Mine Project dated March 28, 2018 at p. 6.

previously assessed projects, including determining whether modifications are significant, what the triggers are for reconsiderations of project certificate terms and conditions and the applicability of the *NuPPAA* to existing projects previously assessed by the NIRB under the *Nunavut Agreement* alone. As participants in the NIRB processes may have noticed, the NIRB, the Nunavut Planning Commission (NPC or the Commission) and the Nunavut Water Board, supported by the Government of Canada, Government of Nunavut and Nunavut Tunngavik Inc. have all been working, both together, and individually, to provide greater guidance and clarity about some of these issues on a project-specific basis.

In accordance with the NIRB's recent correspondence in respect of this proposal and also associated with the Board's other ongoing assessments of proposed amendments to previously-approved projects, the NIRB provides the following general and project-specific guidance regarding the process, next steps and tentative timing of the NIRB's consideration of the Saline Effluent Discharge Proposal.

As illustrated in the enclosed general guidance document *Approaches to Assessment of Proposed Amendments to Approved Projects*, when the NIRB receives notification of proposed amendments to a previously-assessed project, there are a number of factors considered by the Board to determine whether the requested modification constitutes a significant modification that requires a NIRB assessment. If the NIRB decides an assessment is required, it also determines the scope and process of the subsequent assessment. The NIRB notes that in most cases, (and as is the case with the Saline Effluent Discharge Proposal) by the time a modification proposal is reviewed by the NIRB, the Commission will have already made the determination that the modification proposal constitutes a "significant modification" and will have referred the modification proposal to the NIRB for assessment on that basis. In some cases, the NIRB may also have been consulted by the Commission leading up to the Commission's significance determination.

In general, although the NIRB 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" and the integrated regulatory process established under Articles 10-13 of the *Nunavut Agreement* and under the *NuPPAA*, the Board expects that generally the NIRB will rely on the Commission's finding that a modification proposal constitutes a significant modification. The Board expects it will only be in very rare instances when the NIRB, upon consideration of the potential impacts of a modification proposal would differ from the Commission's view that the modification proposal constitutes a significant modification.

In respect of the Saline Effluent Discharge 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 Meliadine Gold Mine Project as previously assessed, the NIRB agrees that based on the potential for public concerns and for adverse ecosystemic effects that could be greater than those previously considered by the NIRB during the Board's Review of the original Meliadine Project, the Saline Effluent Discharge 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 Saline Effluent Discharge Proposal must be assessed by the NIRB.

Before turning to the Board's discussion of the scope, nature and process of assessment of the Saline Effluent Discharge Proposal required to fulfill the *Nunavut Agreement* and the *NuPPAA*, the NIRB wishes to directly address a central point raised in the Federal Response. Although not expressly stated, the Federal Response appears to suggest that the only mechanism for the NIRB to assess the potential ecosystemic and socio-economic impacts of a modification proposal is to undertake a separate screening of the modification proposal. The NIRB does not agree with that premise.

In the Board's view, conducting the assessment of a proposed modification as a separate screening may be appropriate in circumstances where the modification proposal is sufficiently separate and distinct from the original previously-assessed project and may be considered as a separate but related project. Examples of this approach include the NIRB's assessment of the mining of a new deposit proposed in Agnico Eagle's Whale Tail Pit Project (NIRB File No.: 16MN056) and also the proposed mining of a new deposit proposed in TMAC's Phase 2 Hope Bay Belt Project (NIRB File No.: 12MN001).

In contrast, where a modification proposal is considered to be within the scope of the assessment of the original project, is integrally-linked to the original project and is not sufficient in scope to be assessed as a stand alone project, the NIRB has clearly rejected the notion that the only mechanism for assessing such modification proposals is for the Board to conduct a separate screening.² As illustrated in several reconsiderations of Project Certificate terms and conditions conducted by the NIRB to date under Article 12, Section 12.8.2 of the *Nunavut Agreement*,³ the Board's reconsideration must necessarily include an assessment of the potential for the proposed modification to result in changes to the ecosystemic and socioeconomic effects previously assessed for the original project, and the assessment required by the NIRB during a reconsideration is no less rigorous than a screening (and in some cases, even a full environmental review).

² See for example the NIRB's correspondence to the Nunavut Planning Commission issued February 12, 2013 in relation to the NIRB's reconsideration of the Baffinland Iron Mines Corp.'s Mary River Project triggered by the submission of a modification request described as the Mary River Early Revenue Phase Project, NIRB File: 08MN053.

³ See for example the NIRB's February 11, 2013 correspondence to the Minister outlining this approach to Section 12.8.2 in advance of the Board's reconsideration of the Mary River Project Certificate No. 005, NIRB File: 08MN053, which stated:

The changes in the initial stages of project development to the project schedule and to specific activities under the Early Revenue Phase are integrally linked to the Mary River Project as approved under Project Certificate No. 005. Reflecting this linkage, the Board has determined that any potential ecosystemic and socioeconomic effects associated with the changes to the project as proposed in the Early Revenue Phase are best addressed under the existing Project Certificate No. 005. In making this determination, the Board has decided that the Early Revenue Phase does not constitute a distinct, stand alone project that should be subject to a screening and review process separately from the Project as approved under Project Certificate No. 005.

While the NIRB does have considerable discretion as to the precise process for conducting a reconsideration of Project Certificate terms and conditions under Section 12.8.2 of the *Nunavut Agreement* and s. 112 of *NuPPAA*, 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 as a NIRB screening and sometimes even a review. The flexibility and discretion granted to the NIRB to determine the appropriate process for the assessment of modification proposals through reconsideration of Project Certificate terms and conditions reflects that the scale and scope of the changes requested may vary considerably as previously approved projects are developed, operated, decommissioned, and reclaimed. Requiring an independent screening assessment of all significant modifications to existing projects would be unnecessarily restrictive and does not adequately reflect the considerable variation in the scope of modification proposals that may be received by the NIRB. The Board also notes that, as conceded in the Federal Response, the outcome of a screening process of a modification proposal may well be to recommend that the NIRB conduct a reconsideration of existing terms and conditions in the project certificate for the original project. For such modification proposals, it is unclear how adding the process, timing and decision-making associated with conducting a NIRB screening would enhance the NIRB's assessment or decision-making about the modification proposal. In an era where "phased development" has become the norm, the flexibility built into the reconsideration process is essential to delivering timely but thorough assessments that are appropriate in scope.

On this basis, the Board has considered the following to determine whether the Saline Effluent Discharge Proposal should be assessed via a NIRB screening or a reconsideration of the terms and conditions of Project Certificate No. 006 under s. 112 of the *NuPPAA*:

1. Was the Saline Effluent Discharge Proposal included within the scope of the assessment of the Meliadine Gold Mine Project (as an alternative means of carrying out the project or even preferred alternative)?
2. Is the Saline Effluent Discharge Proposal integrally linked to the Meliadine Gold Mine Project or could it be characterized as constituting a stand alone project proposal?
3. If the Saline Effluent Discharge Proposal is integrally linked to the Meliadine Gold Mine Project, do the modifications proposed warrant reconsideration of the terms and conditions in Project Certificate No. 006?

As identified by the Proponent, and confirmed by the NIRB the Saline Effluent Discharge Proposal was originally included as an alternative means of carrying out the original Meliadine Project. Although this alternative was not fully assessed during the NIRB's assessment of the original project, it was within the original scope. The NIRB has determined that the Saline Effluent Discharge Proposal is clearly integrally-linked to the Meliadine Gold Mine Project; were it not for the original project, the Saline Effluent Discharge Proposal would not exist and would not proceed.

Recognizing this integral link to the original project, the Board has considered whether a reconsideration of the terms and conditions of Project Certificate No. 006 is warranted. The NIRB has identified the following existing term and condition that warrants reconsideration in light of the Saline Effluent Discharge Proposal:

Term and Condition No.	25
Category:	Hydrogeology and Groundwater – Saline Water Management Plan
Responsible Parties:	The Proponent
Project Phase:	Pre-construction, construction, Operations, temporary closure/care and maintenance, closure, post closure monitoring.
Objective:	To manage saline groundwater and minimize the impacts to permafrost, soil, surface water, vegetation and wildlife.
Term or Condition:	The Proponent shall provide to the NIRB, a saline water management plan which includes, but is not limited to, mitigation measures designed to address the potential for higher-than-predicted volumes of saline water inflows into the underground mine, treatment and disposal methods, and details of its plan to monitor saline water at site.
Reporting Requirements:	To be determined following approval of the Project by the Minister

The Board further recognizes that a comprehensive reconsideration process could also identify additional terms and conditions that would be warranted for inclusion in an updated Project Certificate, should the Saline Effluent Discharge Proposal be approved to proceed.

RECONSIDERATION PROCESS: NEXT STEPS

Having determined that a reconsideration of the Terms and Conditions of Project Certificate No. 006 is now necessary, the Board would like to provide the Proponent and all parties with direction regarding the anticipated next steps in the reconsideration process. Where the NIRB has established that terms and conditions within a Project Certificate require reconsideration, the Board initiates a public review of the application, including written or oral hearings as deemed necessary in accordance with the NIRB's Rules of Procedures. The project proponent is required to provide any information determined to be necessary to facilitate the reconsideration process. At the conclusion of the assessment the Board is required to provide a report of its reconsideration of the Project Certificate terms and conditions to the Responsible Minister(s) for consideration, and the NIRB would amend the Project Certificate as necessary based on the Ministers' acceptance or variance of this report.

To facilitate the NIRB's assessment of the potential ecosystemic and socio-economic impacts associated with the Saline Effluent Discharge Proposal, the Proponent will be required to update its January 4, 2018 application and February 15, 2018 Information Request Response into a comprehensive addendum to the Final Environmental Impact Statement for the Meliadine Project (FEIS Addendum) describing all aspects of the Saline Effluent Discharge Proposal, including updates to relevant baseline data, impact predictions and proposed mitigation measures and monitoring plans. The FEIS Addendum should consist of a stand alone document that meets the relevant information requirements set out in the NIRB's EIS Guidelines as issued to Agnico Eagle Mines Limited for the Meliadine Project on February 20, 2012. The NIRB intends to provide further guidance to Agnico Eagle in the coming days regarding the specific information requirements expected to be addressed in additional detail to satisfy the requirements of a comprehensive FEIS Addendum.

Following receipt of the FEIS Addendum Submission, the NIRB will conduct an internal cursory review to confirm the submission has provided the requested information in a format and level of detail which meets with the direction provided by the Board. Following acceptance of the Proponent's FEIS Addendum, the Board will initiate a public technical review that includes a 60 day comment period, an opportunity for the Proponent to respond to comments, and a Public Hearing. Following the completion of these steps, the Board will prepare a report detailing its reconsideration and recommendations for the Responsible Minister(s).

CLOSING

As noted above, in the coming days the NIRB will provide further direction to Agnico Eagle regarding the specific information requirements to be addressed by its forthcoming FEIS Addendum. The Board is also prepared to engage directly with interested parties to facilitate additional discussion of the approaches to assessments of proposed amendments to approved projects described in the enclosed guidance material.

The NIRB sincerely appreciates the efforts of the Proponent and all parties towards ensuring the requirements of the *Nunavut Agreement* and the *NuPPAA* are respected and the assessment of proposed development projects undertaken by the most efficient and effective means possible.

Should you have any questions regarding the preceding, 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

Enclosure: NIRB Guidance: Approaches to Assessment of Proposed Amendments to Approved Projects

cc: Meliadine Gold Mine Distribution List
Brian Aglukark, Nunavut Planning Commission
Karén Kharatyan, Nunavut Water Board
James T. Arreak, Nunavut Tunngavik Inc.
David Ningeongan, Kivalliq Inuit Association
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