



## KIA Executive Cover Letter

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**LICENCE:** Water Licence 2AM-MEL1631

**DATE:** April 2, 2020

**SUBJECT:** Agnico Eagle's Application to Authorize the Release of Water from Containment Pond 1 (CP1) to Meliadine Lake

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The Kivalliq Inuit Association ("KIA") makes these comments in response to the Nunavut Water Board's request for submissions on March 25, 2020 related to Agnico Eagle Mines Ltd.'s ("Agnico Eagle") request for an emergency amendment of the Meliadine Water License 2AM-MEL1631. Agnico Eagle seeks approval of this amendment *on or before May 1<sup>st</sup>* – giving the Nunavut Water Board ("NWB") a month to consider the application and even less time for intervenors such as the KIA to consider and make comments on the application.

The KIA does not support Agnico Eagle's request for an amendment to its Water License on an emergency basis for the following reasons:

1. Agnico Eagle has not shown any sudden environmental emergency to justify an amendment on an emergency basis;
2. Agnico Eagle's proposed discharge of water with high total dissolved solids ("TDS") into Meliadine Lake, even on a temporary basis, will cause significant public concern given the importance of Meliadine Lake and the river system to Rankinmuit; and
3. KIA and the Kivalliq community are facing an unprecedented challenge responding to the daily developments in the global COVID-19 pandemic and its impact on Nunavummiut. This is not a time to abridge NWB's public consultation protocols.

KIA's consultants and legal counsel are available for a Board-hosted teleconference to discuss technical and procedural issues on April 8 or 9, 2020. KIA leadership, however, may not be available given the current COVID-19 demands.

We elaborate on our concerns with Agnico Eagle's request below:

- 1. Agnico Eagle has not provided sufficient rationale or technical information to support that emergency circumstances exist and that the NWB should process the amendment application without a public hearing***

Intervenors and the public, including KIA, HTOs, and Rankin Inlet, have a right to notice and a transparent public hearing process. Article 13 of the Nunavut Act and sections 52 and 53 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* ("NWNSTRA") require the NWB to hold public hearings in an affected community before making decisions regarding applications like Agnico Eagle's. Guided by Aajiqatigiinni, decision making through discussion and consensus, the NWB recognizes that the right to be heard is a principle of natural justice which requires that an interested party or member of the public have sufficient notice of any process being carried out that may affect their interests.



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The NWNSRTA allows the NWB to act on an application for an amendment of a license without notice and without a public hearing where the Board, with the consent of the Minister, declares the amendment to be required on an “emergency basis”. NWB Guide 5 provides guidance on what an “emergency basis” means:

- (1) it is the responsibility of the applicant to undertake proper planning and submit applications with sufficient time for the NWB process – delayed filing is not an emergency situation; and
- (2) for an application to be deemed urgent, the applicant must demonstrate that, unless the application is expedited, there will be an adverse environmental consequence.

KIA understands that Agnico Eagle was aware as early as October 2019 that the TDS in CP1 was higher than predicted and the volume of saline water that could be discharged within the TDS limit in the water license was reduced. Agnico Eagle has not provided information to explain why it did not either implement management and mitigation measures or submit its application in sufficient time for the NWB process.

Further, Agnico Eagle has not demonstrated that, unless the application is expedited, there will be any adverse environmental consequences. The KIA Lands Department has technical concerns with the Agnico Eagle application summarized in the attached Technical Review document. We highlight for the NWB that Agnico Eagle has not indicated the source of the saline water that they seek to discharge from CP1, or whether they could take any alternate measures to manage the saline water.

Our Vice President, Tagak Curley, wrote to Agnico Eagle on March 24, 2020, and respectfully asked them to reconsider their request to forego public consultation before asking for amendments to their Water License. KIA has not received a response to our request.

It is KIA’s position that processing of applications on an emergency basis should be reserved for serious circumstances of sudden and urgent public concern that outweigh the public’s right to notice and a hearing. The only example we are aware of is the emergency water takings by the City of Iqaluit in 2018 and 2019. KIA is not aware of any precedent for processing this kind of water license amendment application on an emergency basis.

### ***2. Discharge of saline water with TDS over the permitted concentration into Meliadine Lake, even on a temporary basis, raises significant public concerns***

Agnico Eagle’s proposed discharges into Meliadine Lake, even on a temporary basis, raises significant public concerns and requires a public hearing.

Meliadine Lake and its river system is important to the community. Rankinmuit rely on Meliadine Lake as one of many high-quality fishing locations around the community. The lake and river system provide habitat for arctic charr and lake trout, key sources of country food for the community. Increasing permitted concentrations in the project’s effluent is likely to degrade the community’s perception of the water and fish in the lake, potentially diverting fishing behavior to other waterbodies.

Meliadine Lake and the river system it feeds are also important sources of drinking water for many Rankinmuit, in particular for Elders.



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Finally, KIA is concerned that this request for temporary discharges is part of a long-term intention to regularly discharge saline water with higher concentrations of TDS into Meliadine Lake. This conclusion has been reached as Agnico Eagle's Water Quality Management Optimization Plan states that Agnico Eagle will be applying to continue the discharges.

### **3. Challenges related to COVID-19**

The importance of the NWB process and timelines is particularly important now during a global pandemic. KIA and Kivalliq beneficiaries are currently facing the unprecedented challenge of COVID-19. This crisis has both limited and stretched KIA's resources. KIA leadership and staff are occupied with COVID-related emergencies.

KIA Lands Department staff are working from home. They do not have access to their files at the office, database, mapping software, and other resources to support KIA's review of Agnico Eagle's application. Our Lands Inspector is unable to perform his normal duties by visiting the site if needed. Their hands are tied.

## **CONCLUSION**

KIA is in the unenviable position of being asked to comment on an emergency application without being properly advised about the nature and cause of the apparent emergency.

That being the case, KIA is not in a position to support such an application. KIA is concerned that the process is not in keeping with the NWB's normal process and rules that have the dual purposes of protecting the environment while maintaining the integrity of the regulatory regime for the protection of water in Nunavut.

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