



Fwd: Diamond Mine Legal info

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Thank you Sergey,

For the benefit of anyone who was having technical difficulties or not able to attend part of the NWB Technical Meeting on Nov. 30, 2020, what follows are speaking notes for my follow up comments and questions relating to ECCC's email circulated below. Agnico Eagle looks forward to continued bilateral discussions with ECCC on this topic and hopes to report to the NWB any resulting updates. I request this follow up email be provided to the Distribution List and placed on the NWB public registry.

Agnico Eagle thanks ECCC providing the additional clarification before the break and for the follow up email below providing further information.

The materials ECCC provided refer participants to some summary documentation filed during the environmental assessment of a diamond project in Saskatchewan that took place in 2013. At that time, the *Metal Mining Effluent Regulation* did not apply to diamond mines and so it appears based on our summary review of the ECCC email that on that file ECCC considered the proposed discharges in relation to section 36(3) of the *Fisheries Act*.

Since 2013, the MMER have been replaced by the *Metal and Diamond Mining Effluent Regulations* (MDMER). The MDMER now apply to both diamond mines and metal mines. Through MDMER, per section 4 mines are permitted to discharge effluent in compliance with section 36(3) of the *Fisheries Act* if:

- (a) the concentration of the deleterious substance in the effluent does not exceed the maximum authorized concentrations that are set out in columns 2, 3 and 4 of Schedule 4;
- (b) the pH of the effluent is equal to or greater than 6.0 but is not greater than 9.5; and
- (c) the effluent is not acutely lethal.

"Acutely lethal" is currently defined under the MDMER as follows:

acutely lethal, in respect of an effluent, means that the effluent at 100% concentration kills

- (a) more than 50% of the rainbow trout subjected to it for a period of 96 hours, when tested in accordance with the acute lethality test set out in section 14.1; or

(b) more than 50% of the threespine stickleback subjected to it for a period of 96 hours, when tested in accordance with the acute lethality test set out in section 14.2

Those are the legal criteria applicable to discharge of effluent from mines at this time and they are quite different for diamond mines in particular from what they were in 2013.

For further clarity, an effluent from a mine is not deleterious and is not in violation of the section 36(3) of the *Fisheries Act* if it meets the criteria of Section 4 of the MDMER.

Agnico Eagle also acknowledges that the MDMER has been recently amended and includes a *Daphnia magna* mortality component within an updated definition of “acutely lethal” which comes into force on June 1, 2021. The *Regulations Amending the Metal Mining Effluent Regulations* (SOR/2018-99) of May 16, 2018 (link), contained the following provisions:

2 (1) The definitions *acutely lethal effluent*, *acute lethality test*, *authorization officer*, *Daphnia magna* *monitoring test*, ... in subsection 1(1) of the Regulations are repealed.

...

(4) The definition *acutely lethal* in subsection 1(1) of the Regulations is amended by striking out “or” at the end of paragraph (a), by adding “or” at the end of paragraph (b) and by adding the following after paragraph (b):

(c) more than 50% of the *Daphnia magna* subjected to it for a period of 48 hours, when tested in accordance with the acute lethality test set out in section 14.3.

With respect to coming into force on June 1 2021, the relevant provision of the *Regulations* is as follows:

Coming into Force

40 (1) Subject to subsection (2), these Regulations come into force on June 1, 2018, but if they are registered after that day, they come into force on the day on which they are registered.

(2) **Subsections 2(4) and (6) and 3(2) and (3), section 4, subsections 9(2) to (4) and 10(2) and (3), section 11, subsection 12(2), section 13 and subsections 15(2), 16(2), 18(2), 19(2), 27(2), 32(2), 33(2) and (3) and 34(1) and (3) come into force on June 1, 2021.**

This further increases our confidence that crustacean toxicity has been fully considered in the MDMER moving forward, and that Parliament chose not to expand the definition of “acutely lethal” to refer to new species such as *Ceriodaphnia dubia*. The legislation was only recently amended. Had it been the desire of Parliament to invoke the addition of new species (other than trout or *Daphnia magna*) that would have been clearly specified.

Agnico Eagle is very confident that its effluent (including the proposed revised TDS limits) will continue to comply with the MDMER and the *Fisheries Act*.

With respect to the legal opinion referenced by ECCC, we note that the statements respecting a purported legal opinion were made in error and were withdrawn and are to be removed from any record of the Technical Meeting. Further to this, the NWB confirmed that there will be no reference to any legal opinion in the Board report on this meeting.

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