

**Licence #2AM-MRY1325 Amendment Application
NWB Hearing – Pond Inlet, Nunavut – May 4, 2015 to May 7, 2015**

Date: May 15, 2015

To: Nunavut Water Board (NWB)
And to: Baffinland Iron Mines Corporation (BIMC)
And to: Aboriginal Affairs and Northern Development Canada (AANDC)

From: Qikiqtani Inuit Association

Re: QIA Reply Submissions to AANDC “New” Evidence Submissions

Background

At the NWB hearing in Pond Inlet for the Licensee’s application to amend Licence #2AM-MRY1325, the Department of Aboriginal Affairs and Northern Development Canada (AANDC), as a party before the Panel of the Board made a motion to introduce new evidence and submissions in support of AANDC’s final submissions to the hearing previously filed April 22, 2015. The basis of the request was alleged by AANDC to be central to the amendment application.

NWB consented to the motion and AANDC made further verbal representations on May 6, 2015, and on May 7, 2015 filed written submissions, as to “new” evidence relating to the amount of 2015 security held by the Crown (and implicitly questioning the appropriateness of the NWB approach to the discounting of security as set out in the Licence and Licence conditions).

At the close of hearings by the Panel of the Board on May 7, 2015, the Board Panel moved to keep the Hearing Record open until May 25, 2015, solely for the purposes of receiving the reply submissions of the Applicant, BIMC and the Qikiqtani Inuit Association (QIA).

QIA Submissions

QIA submits the foregoing in addition to comments already provided to the NWB during hearings held in Pond Inlet. Therefore, QIA requests that these comments are understood as an extension of QIA submissions to the NWB.

2015 Security has been fixed and ordered by NWB pursuant to the 2015 Annual Security Review (ASR). The ASR process under Licence conditions provides an opportunity for all parties to extensively review and consider all materials filed with NWB, and to participate in accepted procedures to determine annual Security. AANDC participated extensively in the process and had ample opportunity to raise any concerns during the ASR before 2015 Security was ordered.

QIA respectfully submits that the NWB decision for 2015 Security, pursuant to procedures determined and ordered by NWB under the current Licence, is a final determination for 2015. The Board having fulfilled its function in respect of 2015 security may not re-open that decision. Ignoring the ASR process and the 2015 Security determination participated in by all parties would offend basic principles of procedural fairness to the parties participating in the process.

Licence #2AM-MRY1325 Amendment Application
QIA Response Submissions – AANDC “New” Evidence

In the alternative, QIA submits that AANDC’s motion should be denied since it has provided no evidence in support of its motion to modify 2015 Security. AANDC’s motion lacks clarity and AANDC has not provided evidence to support or even clarify the general statement that the:

“...situation should be rectified at the earliest possible opportunity; that means it should be addressed as much as possible within this licensing process.”

[AANDC May 7, 2015 written submissions to Board Panel, page 2, para. 5].

QIA is not clear what “situation” AANDC is referring to and reads the AANDC “new” submissions to be merely illustrative of a different policy and approach adopted by AANDC internally. The new AANDC approach has not been fully formulated or expressed to the parties.

“Aboriginal Affairs is undertaking a review of our approach to water licence security and in particular discounting to ensure that we are appropriately safeguarding the public interest, and we will be continuing to work on these issues in the coming months.”

[AANDC May 7, 2015 written submissions to Board Panel, page 2, para. 4].

In furtherance of its newly adopted approach, which requires clearer explanation, the AANDC motion does not provide any “new” evidence that is material to the BIMC amendment application, or that would justify demands by AANDC to modify 2015 Security ordered by NWB or the ASR process currently in place within the approved licence.

AANDC has filed 2 pages of written submissions that merely introduce a “change in position” to positions and submissions previously adopted and made by AANDC during the ASR process.

“...strictly speaking, we’re not presenting any – any new evidence but it is a change in the position based on the – based on having reviewed all the submissions and the – the circumstances.”

[S. Muscati, Transcript Excerpt from Pond Inlet Hearing, May 6, 2015, page 6, lines 19 and 20].

With respect AANDC had a full and complete opportunity to review all the submissions relative to both 2014 Work Plan (and therefore the 2014 ASR process) and the 2015 Work Plan (and therefore the 2015 ASR process) to determine its position following examination of, and opportunities to question, the evidence of the parties (or to enter its own evidence) as entered in the record for the 2014 and 2015 ASR. In the context of the Amendment application, AANDC has submitted no new evidence in support of its motion and seeks to merely “change its mind” long after adjudication of the issue.

Upon receipt of these reply submissions (and those of BIMC), QIA submits that the Hearing Record for the Amendment application by BIMC should be fully closed without delay.

QIA further submits that the AANDC motion with specific reference to the re-opening of 2015 Security should be dismissed. QIA further submits that in the context of this Application NWB should not at this time entertain any modifications to the terms of the Licence or the Licence conditions with respect to the terms and procedures established by NWB for discounting Security.

Licence #2AM-MRY1325 Amendment Application
QIA Response Submissions – AANDC “New” Evidence

In QIA’s view AANDC’s motion is inappropriate in the context of the Amendment application, seeks to re-open a fully adjudicated issue, and further lacks both detail and evidentiary support.

Finally, QIA believes the ASR process is the venue for where the items raised by AANDC should be further discussed. Understanding that AANDC will continue to work on these topics, QIA looks forward to participating in the 2016 ASR process.

All of which is respectfully submitted.