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NUNAVUT WATER BOARD
NUNAVUT IMALIRIYIN KATIMAYINGI
OFFICE DES EAUX DU NUNAVUT

File: 3AM-ARV1015

March 30, 2015

VIA EMAIL rruediger@gov.nu.ca

Government of Nunavut
Department of Community and Government Services
P.O. Bag 002,GN
Rankin Inlet, NU X0C 0G0

Attention: Mr. Ralph Ruediger,
Director of Community Development

**Subject: Water Licence No. 3AM-ARV1015 Hamlet of Arviat
Request for 2-Year Renewal of an Existing Type “A” Water Licence**

Dear Sir:

Thank you for your letter of March 13, 2015 and its enclosures. The Board confirms that, as indicated in your correspondence, an application for the renewal of the Hamlet of Arviat’s Type “A” Water Licence 3AM-ARV1015 (the Existing Licence) was received by the Nunavut Water Board (the Board or NWB) (the Renewal Application) on February 27, 2015. Following receipt and an initial preliminary assessment, the Board has since distributed the Application publicly for an initial completeness and preliminary technical assessment. As indicated in the Application distribution letter, the Board will provide feedback on the next stage of the licensing process for the Application subsequent to the deadline for comments.

The Board notes that the Applicant’s failure to file a renewal application with the Board prior to September 1, 2014 is contrary to the timing expected by the Board and is contrary to the expressed requirement of the Existing Licence set out in **PART B: GENERAL CONDITIONS, Item 20** that states:

The Licensee shall file a Water Licence Renewal Application with the Board no later than September 1, 2014.

This aspect of the Existing Licence was included by the Board to ensure that the Government of Nunavut--Community and Government Services (GN-CGS) would NOT repeat the situation of

allowing the Existing Licence to expire before the Board could complete the processing and consideration of an application for renewal. As clearly stated by the Board in the Reasons for Decision accompanying the grant of the Existing Licence in 2010:

The Hamlet of Arviat's Type "B" licence, NWB3ARV0308, expired on December 31, 2008. Since that time, the Hamlet has been operating in the absence of a water licence. In an attempt to avoid a similar situation and prevent the Hamlet from operating in the absence of a water licence upon expiry of this Licence, the Board is requiring the Hamlet to submit a water licence renewal application to the Board no later September 1, 2014, one year prior to the expiry of the Licence, consistent with the NWB guidelines for applications¹, to allow sufficient time for the NWB to process the application.²

Clearly as the NWB was aware and clearly communicated in both the Existing Licence and the accompanying Reasons for Decision, the Board typically requires 9-12 months to process a renewal application. As is obvious, with the NWB only having received the Renewal Application approximately six months prior to the expiry of the Existing Licence (August 31, 2015), it is not reasonable to expect that the Board will be able to process the Renewal Application and allow time for the Minister's review and decision-making prior to the expiry of the Existing Licence.

In your correspondence you suggested that the solution to this gap between expiry of the Existing Licence and a possible renewal, is that the NWB exercise the Board's discretion under s. 43 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (NWNSTRTA) to amend the term of the Existing Licence to extend the expiry by 2 years. Although the Board recognizes the basis for GN-CGS wishing to renew the licence for a two-year term and the interests of all participants in ensuring that Licences remain current and in good standing, when viewed in the full context of the NWNSTRTA, it is the Board's view that our jurisdiction under s. 43 does not allow the Board to grant such a request. As provided in s. 43, the Board's jurisdiction to amend a licence is set out as follows:

43. (1) Subject to this Act, the Board may
- (b) amend, for a specified term or otherwise, any condition of a licence
 - (iii) where the Board considers the amendment to be in the public interest;

[underlining added]

Specifically, the Board draws your attention to the fact that the Board's discretion to grant an amendment to a water licence in the public interest must be exercised in accordance with all the other terms of the Act, including the provisions generally requiring a Public Hearing to be conducted in association with an amendment to a Type "A" Water Licence and the provisions

¹ Guide 4 – Completing and Submitting a Water Licence Application for a New Licence, April 2010 and Guide 7 – Licensee Requirements Following The Issuance of a Water Licence, April 2010.

² Nunavut Water Board, Water Licence No. 3AM-ARV1015, Reasons for Decision Including Record of Proceedings: Application for a New Type "A" Water Licence in Renewal/Amendment of Type "B" Water Licence 3BM-ARV0308Amendment Application, August 2010, at p.19.

requiring notice of an application and a period for comment before the Board can take action to process an amendment (see the NWNSRTA ss. 50-55). When considering all the requirements of the NWNSRTA applicable to the Board's consideration of an amendment to renew a licence, the NWB does not have the jurisdiction to consider and recommend the issuance of a two-year renewal without a public hearing in all but emergency circumstances; and the failure of an applicant to submit their application materials in time clearly does not constitute such an emergency.

Consequently, although the Board recognizes that the renewal application received at the end of February cannot reasonably be expected to be processed prior to the expiry of the existing licence in August, the Board cannot grant the requested amendment to add two years to the term of the licence. In the absence of emergency circumstances (as determined by the Board and accepted by the Minister), the Board has limited jurisdiction under the relevant legislation to renew a Type "A" water licence without a Public Hearing. Under s. 9(1)(b) of the *Nunavut Waters Regulations*³ the Board may issue only short term renewals of Type "A" water licences provided that the renewal(s) do not exceed 180 days in total.

With respect to the Existing Licence, if the Board received an application for a short-term renewal from the applicant and the Board decided to grant the maximum short-term renewal period of 180 days, the expiry of the Existing Licence could become February 27, 2016. Whether this would allow sufficient time to process the full renewal application and allow for the Minister's decision-making process or not is dependent on a number of factors that are outside the Board's control, including the extent to which the applicant is able to file complete application materials and responds promptly and fully to questions and comments from interveners, the Board and the public throughout the Board's consideration of the full Renewal Application.

Further, if the GN-CGS wishes the Board to consider a request for a short-term renewal to extend the expiry of the Existing Licence by up to 180 days while the full Renewal Application is being processed, the Board urges GN-CGS to complete and submit a short-term renewal application **as soon as possible**. The GN-CGS should be aware that short-term renewal applications require the Board to issue notice and provide a minimum comment period on the application of 30 days, and as the grant of an extension is an amendment to the term of a Type "A" water licence, the legislation also prescribes that the Minister must consider the amendment as well.

Although the Board is not able to grant the extension as requested by the GN-CGS, the Board commits to ensuring the Hamlet of Arviat's Type "A" water licence, 3AM-ARV1015, renewal application will be processed in a timely manner and as efficiently as possible. However, as the Board experienced during its consideration of the Existing Licence in 2010, numerous stakeholders, including community members, actively participated in the public hearing process and raised important issues, despite very minimal engagement with the GN-CGS (no representative of GN-CGS attended the Public Hearing—only the GN-CGS's consultant was available). Consequently, the Board notes that it is expected that GN-CGS will ensure that they are prepared to respond to the comments and concerns raised by interveners and the public

³ SOR/2013-69.

during the Board's processing of the Renewal Application and if the GN-CGS wishes the Application to move forward without delay, there is an onus on the applicant to ensure that the comments received are adequately addressed in advance of, or at, the Public Hearing.

If you have questions regarding the application process for a short term renewal, please get in touch with me directly. In the interim, the Board's technical staff will continue the review of the 3AM-ARV1015 Hamlet of Arviat Type "A" water licence renewal application submitted on February 27, 2015. When the review is completed, the Board will promptly advise GN-CGS of any deficiencies or outstanding information required for the licensing process associated with the full renewal.

Yours truly,



Ben Kogvik
A/Executive Director

Cc.

Honourable Bernard Valcourt, Minister of Aboriginal Affairs and Northern Development
Catherine Conrad, AANDC
Erik Allain, AANDC
Robert Savard, AANDC
Darren Flynn, GN-CGS
Megan Lusty, GN-CGS
Steve England, Hamlet of Arviat
David Hohnstein, NWB