

NUNAVUT WATER BOARD
Public Hearing
Iqaluit Municipal Water License Renewal
November 23, 2000

Chairperson: Thomas Kudloo

[TK = Thomas Kudloo
MM = Marcel Mason
LW = Lee Webber
AW = Anne Wilson

WM = William Mackenzie
RE = Robert Eno
JT = John Tidball
SP = Unidentified Speaker]

BT = Bill Tilleman
DS = Doug Sitland
PS = Paul Smith

[Start of Tape 7 - Side A]

WM: The shareholders the municipal corporation, the taxpayers, have not been consulting. I think it would be wrong for you people to grant the municipality of Iqaluit a license until you can be sure that the citizens of this community are not going to be stuck with a white elephant. And that's what we're getting right now. I think, before a license is given that they can draw more water from Lake Geraldine there should be steps taken to ensure that that dam and the berms on each side of it are safe. The municipality of Iqaluit has totally disregarded the citizens, and wishes of the citizens.

We did have a back-up supply of water in this town. In 1970, when we became a hamlet, Lake Catherine was designated as our back-up water supply. Lake Catherine is a small lake on the road to nowhere, known sometimes as (Terry ____ Trail?), where there's now a new development. The municipality of Iqaluit has cut a channel to force run-off water into this body of water, and they're now draining the drainage system from this new development on the road to nowhere into that lake. So, I would doubt if that water is any good, now, for human consumption.

It has been used by the town of Iqaluit. In the early 70s we had trouble with the pipeline coming down from the plant, there, the water treatment centre, and that water was used. The tanker trucks went up there and were able to load their trucks. Now we have no back-up water supply.

The municipality of Iqaluit also contaminates the Apex Creek. They have a program of procuring sand from the end of the road to nowhere. They're working far too close to the Apex River, so every spring, during run-off, this... large volumes of sand comes down that river, and the whole end of Kochesy(?) Inlet, which is next... adjacent to Apex, is now silted up. And in the 36 years I've been here, there's been a tremendous change in that.

The municipality of Iqaluit has also changed the waterway on the north 40. Now, originally, the north 40 area, the river, those two creeks, they split. One went along the north side of the hill, and was diverted around the sack building base, along the front of the building and down into the bay. The other part of that creek went along the back of the community, down through the town, and into the bay. When the Americans built the sack building, they put a dam across the top end of that valley, and diverted the water away from running across the runway. In the mid-60s, unfortunately, somebody cut that dam, realised they had made a mistake, and deepened that river that the water would run through the back of the community. In the last couple of years the municipality of Iqaluit has allowed for the excavation of fill to such a degree that the river now no longer runs along the back of the community at certain times of the year, not all the time, but at certain times of the year this river does not run along the back of the community it used to. It now comes through that north 40 dump. And that north 40 dump, let me assure you, is very highly contaminated. There's asbestos, there's DDT, and all sorts of other chemicals. For years the effluent from the dry cleaning plant was dumped there willy-nilly, and now, because they've deepened the... and trenched out so much at the back end of that dump, the creek runs through that, picks up whatever contaminates is there, and runs through into the bay. But when it runs into the bay, it runs through the community, so if any children or anybody else is playing around it... and it is a matter for the Water Board.

I urge you, gentlemen, not to grant this license until the municipality of Iqaluit can show that they are responsible to the citizens of this community. This whole affair with the sewage system is a farce. But it's not too late. It could be changed.

Thank-you very much.

TK: Thank-you, Mr. Mackenzie. Are there any questions? Are there any questions from the joint interveners, DIAND, DFO and Environment Canada for Mr. Mackenzie? Thank-you. Are there any questions from the Community Government and Transportation to be addressed to Mr. Mackenzie? Thank-you. Are there any questions from the Department of Sustainable Development? Thank-you. Any questions from Baffin Health and Social Services? Thank-you. Mr. Marcel?

MM: Marcel Mason, Mr. Chairman. Thank-you. Not necessarily questions, just clarifications for information that is fairly new to me, or is new to me. I would just like to confirm that the dump site last used prior to the facility we have now was used for honey bags from the community?

WM: The site across from the community, yes. That last site was used for honey buckets first, and then it was, after... in fact, we did have one more dump that nobody ever mentions, because it was actually cleaned up - it was quite a miracle - and it was across from the tank number whatever it is, the Shell Oil... Imperial Oil tank near the causeway. All the sand was removed from that site, it was used as a dump, the community rose up in alarm and demanded, and the council at that time did clean it up. And after that they started dumping the domestic garbage in the site across from the community, which we used to know as Honey Bucket Hill.

MM: Thank-you.

WM: You're welcome.

TK: Thank-you. Are there any further questions for Mr. Mackenzie from the floor? Are there any questions to be addressed to Mr. Mackenzie from the Nunavut Water Board staff? Thank-you. Okay, thank-you, Mr. Mackenzie.

WM: Thank-you kindly, sir.

TK: Okay, we will now adjourn this hearing until tomorrow morning at 9 o'clock.
Mr. Tilleman?

BT: That's a good idea, and I'm just assuming that there would be no one else in the audience that wanted to make a presentation, though as I look around it looks like everyone who's here right now has already presented, so that would mean, then, sir, that it brings us to the point, tomorrow morning, where we begin, that we are in the closing arguments portion of this hearing.

TK: Thank-you. And for everyone's information, here, we decided that Mr. Lootie Toomasie will not participate in the decision-making on issuance of a license because he has missed the evidence, verbal evidence, written evidence, because of his illness. That's for everyone's information.

Okay, there's some fresh coffee there if you want to stick around, but we'll start again... we will reconvene tomorrow morning at 9 o'clock, and we will have our final closing statements, final closing statement by the town of Iqaluit, closing remarks from the Chairman of the Nunavut Water Board, termination of the hearing by the Chairperson, and closing prayer. We'll do that tomorrow morning at 9 o'clock.

Thank-you, and we'll see you in the morning.

[End of Tape 7 - Side A]

[Start of Tape 7 - Side B]

TK: We shall reconvene.

Before we get into final closing statements of the interveners and other parties, are there any final comments to be made? Mr. Mason.

MM: Marcel Mason. Thank-you, Mr. Chairman. I've just been asked by Mr. Webber to clarify one thing about some of the images that were shown last night. A couple of them don't have dates. To my recollection, Mr. Chairman, all the images were taken within the last year, possibly 18 months.

TK: Thank-you, Mr. Mason. Mr. Robert Eno?

RE: Robert Eno, Department of Sustainable Development. There was a point I forgot to make yesterday. I believe Mr. Tidball was asking about permits and licenses. Our department currently does not have any mechanism in place for the issuance of permits or licenses with regard to incinerators, or anything else, for that matter. We do have provisions under our Environmental Protection Act to set up such a system, but we haven't set one up yet. That's one of the luxury items.

The other point I wanted to make was to reiterate that, in terms of permitting and licensing, our department is operating under the premise that the Nunavut Water Board has jurisdiction over solid waste management, so I just want to reiterate that. And I don't know, is this the proper forum to ask questions of the town, or...?

TK: No.

RE: No? Okay. Thank-you.

TK: Thank-you. Any other comments? Mr. Sitland.

DS: Thank-you, Mr. Chairman. I was just going to say - Doug Sitland - my colleague from Justice isn't here, but I'll talk to her and perhaps she can make the comment. Thank-you.

TK: Thank-you. Mr. Webber?

LW: Lee Webber, Justice Canada. Mr. Chairman, one of the points that came up yesterday afternoon was a report - I believe it was a report, and I believe it was referred to as the Trault Report - which, while I'm not quite sure what it involves, and what its state of preparation is, I understand that it's a report that the town has had prepared, and that it relates to the condition of the dykes. We left hanging the issue of whether that would be submitted.

JT: Thank-you. It's John Tidball. Thank-you, Mr. Webber, for raising that. Perhaps it would help to clarify. If you'll recall what Mr. Hough told the Board yesterday, OMM Trault is a consulting engineering company that was responsible for supervising the raising of the dam in 1997, and since that time they have inspected the dam on several occasions. After each of those inspections, as I understand it, a very brief report was filed, really just... almost in a cryptic form, just advising the town that the dam was fine.

What Mr. Hough has asked OMM Trault to do with is to come up with a report that sort of covers what they've done over the last two or three years, and speaks in a more complete sense to what the condition of the dam is. At the moment we don't have that from OMM Trault, and I think it would be wrong to say that a report exists and we could give it a number at the moment.

What I was going to do in my final remarks was to suggest the wording of a condition that might deal with that, and give us reasonable time to make sure that OMM Trault can get that done. At the moment Mr. Hough has sort of asked them to do it as a favour. They haven't really even been retained to do it in the sense that they have a budget or anything, they were just going to fire off a quick letter. We think it would be better if they took a little time and prepared something that was more complete, so I'm going to suggest a condition for that when it comes to my turn this morning.

TK: Thank-you.

LW: Lee Webber. Thank-you for that clarification, Mr. Tidball. We would be in support of the idea of having a condition requiring the town to submit that report. It is... it sounds as though it will be very relevant material, and I believe that the federal departments, together probably with all the other interested parties here today, would like the opportunity to review and comment on the report. Thank-you.

TK: Thank-you. Mr. Tilleman?

BT: Thank-you, Mr. Chairman. Just talking about exhibits, we have a couple of exhibits we hadn't filed but did discuss yesterday. One was the municipal by-law #200, we think, and we propose that it be marked as Exhibit #15. And also, in the event that there might have been something that was referred to but not specifically marked, as long as it was in the public registry, we should mark down the public registry as Exhibit #16, which are those written documents that have been filed with the Board in the course of the hearing, so we propose to mark the registry as #16, and that will be the catch-all for anything else.

And those are my comments. I take it just from the last exchange, Mr. Chairman, that probably the audience would all be in favour of having the condition imposed that required the submission of that Trault Report through the Board to the parties as soon as it's available, but perhaps we could just ask any other parties if they object to that or not. We're assuming they agree because they didn't say anything, but maybe you should just ask them. Thank-you, sir.

TK: Thank-you, Mr. Tilleman. Mr. Sitland.

DS: Thank-you, Mr. Chairman. Doug Sitland. Yesterday, during questioning, Mr. Webber had asked me whether the five-year capital plan becomes a public document after

Standing Committee. The answer to that I did say was yes, but I've since found out the answer is no, it does not become a public document until around February, when the Legislature discusses the main estimates. So, I apologise for that, and just wanted to set the record straight. Thank-you.

TK: Thank-you, Mr. Sitland. Mr. Webber?

LW: Lee Webber. I'd just like to ask Mr. Tilleman for a point of clarification. In making the public record an exhibit, will that public record include not just the material submitted in the run up to this hearing, but also material from last year and from the run up to and the period following last year's hearing?

BT: Thank-you, Mr. Chairman. It's Bill Tilleman, and the answer is yes, the public registry includes, as I understand it, all of the written materials filed with this Board regarding the application for the town of Iqaluit's water license _____ facilities.

LW: Thank-you.

TK: Thank-you. Thank-you. Are there any other questions? It appears not. We are now at final closing statements of the interveners and other parties. If I can call the joint interveners, DIAND, DFO and Environment Canada to make their final closing statements, please.

PS: Thank-you, Mr. Chairman. My name is Paul Smith. I'm the Manager of Water Resources for the Department of Indian Affairs and Northern Development in the Nunavut Office. I will be making the closing statement on behalf of the federal interveners.

As a re-cap to our presentation made at the outset of this public hearing, the federal departments recommend a five-year license which will allow the time of Iqaluit sufficient time to accomplish the following objectives. To have addressed the potable water supply, future demand, and the integrity of the existing Lake Geraldine Dam. Number two, to have in place a properly decommissioned lagoon, and a functioning sewage treatment plant. Number three, to have in place a long-term waste management facility with a hazardous waste management plan, and land farming area for contaminated soil, and to have abandoned and reclaimed the existing municipal waste disposal site. Number four, to have initiated reclamation work at the old west 40 and Apex dump sites, which will be accomplished by the re-submission of updated abandonment and reclamation plans.

Shortly after the issuance of a license, the town will have to prepare an updated operation and maintenance plan, or plans, for the current waste disposal facilities, and to

submit a spill contingency plan. We also would suggest that an S&P similar to that proposed in the 1999 license.

The federal departments stand ready to participate in a timely and thorough review of all proposed submissions with the view that during the term of this license the town of Iqaluit will have made the most significant advances to waste disposal techniques in the history of this community.

I would also like to take a moment to speak on behalf of DIAND. Over the last few days, several well thought out written and oral submissions have been given to the Board in regards to this meeting. These submissions, as a collection of evidence, we feel will allow the Board to make a fair and balanced license for the town of Iqaluit.

Having listened to the presenters and the town, one overriding issue emerges from the discussion, namely trust and confidence in the town, whether it be the town assuring the Board that it has a strategy, or individual citizens noting to the Board that they have heard this position before. DIAND does have confidence in the town to achieve their desired results. We, however, believe that this trust can only truly be measured in the town's ability to meet guidelines, targets and/or goals as set out by a Water Board license. This is not an easy task, as the Board must take a fair and balanced approach while still recognising that key targets need to be set. I might add that there are processes in place which would allow for amendments to the license should the town recognise that they might not meet a deadline.

Overall, the next five years is a key time for the town of Iqaluit. We recognise, as several interveners pointed out, that Iqaluit will be transitioning from an old - perhaps even antiquated - infrastructure to a more modern system to keep up with the growth of the town. Clear plans and strategies need to be in place during this transition period to make and communicate to everyone - and regulators - how events and activities will unfold and be managed.

In addition, a year or two of operation in the modern system will allow the Water Board to have a better understanding of the town's management of the systems.

With the transition of responsibilities from the NWT to Nunavut, we, in the Nunavut Regional Office, look forward to working with the Board on issues such as the Iqaluit water license. With respect to the inspection and enforcement of licenses issued by the Nunavut Water Board, DIAND will want to work very closely with the Board and the licensee on a day to day basis.

With this recognition, it is our hope that the Board will choose to involve our office and any other agency in the final stages of license development, or to review any

proposed draft licenses, to ensure that our role, which is to enforce the work of the Board, can be fulfilled. [Inuktitut] Thank-you.

TK: Thank-you, Mr. Smith.

LW: Lee Webber. I would reiterate at this point that in making this submissions I'm speaking purely on behalf of the Department of Indian Affairs and Northern Development.

I'd like to touch on three themes. First of all, balance. Second of all, validity of the license. And thirdly, enforceability of the license.

Balance to begin with. The tow has apparently made honest efforts to move ahead in the areas of water management, water and waste management. It appears that they may be on the right track, and it appears that they may have the will to stay on the right track to put the necessary systems and practices in place. That is one side of the story, and it should be given its due.

There is another side, though, and attention must be paid to that side of the story, as well. There is not a proven record of positive achievement on the part of the town. We have not yet seen accomplishments. We have not yet seen the intentions converted into solid, accomplished performance. So, on the one hand, let's welcome the movement in the right direction, the movement that the town has shown. Let's welcome the indications that they've given in the last day or two, indications of intention and of planning. On the other hand, let's make sure that he license contains conditions which enable us to keep tabs on the town's performance from this point forward. Let's make sure that we have conditions which will ensure that the town is accountable throughout the term of the license.

Now, the town has said - with a certain amount of repetition - first of all that they have plans, they are doing planning, secondly that they are short of cash. Here, too, we'd like to argue for balance. It's good to see that the town has plans, has ideas for water and waste management, and certainly there is reason to believe - there is good reason to believe - that there are limits an the funding that's available to the town. In no way should these matters be disregarded. But again, it is necessary to strike a balance. Plans to complete a water treatment plant are not the same thing as an actual commissioned water treatment plant. Cash is certainly not available in endless supply, but the lack of funds cannot be an answer to every concern.

The idea of balance also has a bearing on how for the Board should go in the conditions that it sets. If it's true that the Board should not simply back away from imposing conditions, it is also true that it should not go too far in imposing conditions. Yes, certainly the Board should set conditions that will ensure the town keeps moving,

and that will allow everybody concerned to hold the town accountable, but at the same time I would urge the Board to shy away from overloading the license with conditions, and I would urge the Board to make sure that the performance expectations built into the license are expectations that can reasonably be met.

Now, we - that is to say, DIAND - believe that the conditions which we have proposed are consistent with this idea of striking a balance, and would serve to achieve the proper balance.

The second theme that I wanted to touch on was the issue of validity of the license, and the validity of any and all portions of the license. Under this heading, what I have in mind is, at least primarily, the question of jurisdiction, or perhaps I should say the questions of jurisdiction that we've spoken to in the last day or two. In considering whether the Board does or does not have jurisdiction with respect to some particular matter, my starting point is the test which I set out in my submissions of October 25th, 1999, and which I read into the record. Both of two things must be present in order for the Board to regulate a particular activity or phenomenon. First, there must be a substantial link, and a reasonably direct link between the activity or phenomenon and the deposit of waste into inland waters. Deposit of waste or the use of water, but I think that when we talk about these issues of jurisdiction, generally we're addressing the waste deposit side of the equation.

So, first there must be this substantial, reasonably direct link. Secondly, the Board's true objective, what the Board is actually aiming at, has to be a controlling of waste deposit into waters. If what the Board would be really trying to control is the smell from burning, or the inhalation of noxious substances or fumes from the burning, or the substances in the air landing on skin, or the unsightliness of the dump burning, if what the Board is really after is the controlling of any of these things, then the Board should not rely on some incidental effect on waters, some merely incidental effect on waters. The Board shouldn't rely on the idea that there might be some incidental effect on waters as a rationale for stepping in and posing conditions.

Now let me clarify my position here. I do not take the categorical position that the Board cannot regulate burning. What I say is that in order for the Board to have a legal basis for regulating burning, the test that I've set out, this two-part test, has to be met. There has to be a link, there has to be a genuine objective of regulating the deposit of waste into water. Also, there has to be good solid evidence to support a finding that this link exists.

There have been references, both orally, in the last couple of days, and before that in one or two of the written interventions, to the environment. And it has been noted in these comments, in these interventions, and for that matter, elsewhere, that water is only one part of the environment. The water includes water, it includes other components, the various components are inter-related. No doubt at all that that is the case. The various components of the environment are inter-related. However, this Board has jurisdiction with respect to only one component of the environment. The parties to the Land Claim Agreement, and Parliament, decided, for better or for worse, that they would parcel out jurisdiction over the environment, and that no single body would deal with all components of the environment or with all matters relating to the environment. I say for better or for worse, but I think that there is a certain wisdom in that approach.

The parties to the Land Claim Agreement and Parliament gave this Board jurisdiction with respect of inland waters only. No matter what other statutes might say about the environment as a totality, and no matter how other statutes might define environment, the statutes that govern the Nunavut Water Board speak in narrower terms.

I think it's fair to say that everybody in the room had a lot of sympathy for the comments of Mr. Mason and Mr. Mackenzie. However, at the end of the day, we all have to recognise the fact that this Board is the only one of these organisations with authority in respect of the environment, and that this Board has authority with respect to certain environmental matters only.

The Land Claim Agreement and the *Waters Act* don't give the Board some sort of residual power with respect to the environment. In other words, it doesn't have the power to step in and fill gaps in environmental regulation where gaps exist, or where they're simply perceived to exist. Nor does the Board have the power to back-stop other regulatory authorities, in other words, to step in and do the jobs of others where somebody feels those others are not doing their jobs.

The fact that the town is in front of the Board, or the town is in front of the Board on an environmental matter, doesn't mean that the Board can assume jurisdiction on all of the town's activities in relation to all components of the environment. I want to reiterate something I said a moment ago in discussing the link and the objective. That is that there has to be good, solid evidence to support a finding that the link exists. It cannot simply be presumed, that is to say, the link between whatever act or phenomenon the Board is contemplating regulating and the deposit of waste into waters.

Also, even if it might be possible to argue that the Board can regulate burning, that it's legally possible for the Board to regulate burning, I would urge the Board to turn

its mind to a further question, which is whether the Board should do so. A lot will depend on just what particular conditions concerning burning the Board might be thinking of. There will be questions as to whether anything that the Board might impose would be the best use of the town's funds, especially if an incinerator is in... the building of an incinerator is expected to occur in the near future. Perhaps it would be best to focus on getting an alternative to burning up and running.

It's also worth pointing out, since DIAND is the enforcement authority, that, certainly if it's a matter of monitoring air emissions, DIAND currently has no experience in that area.

The issue of jurisdiction isn't just an intellectual matter. It's not just a question of wanting things in nice, little, legalistic, lawyerly boxes. And here I come to my final theme, which is enforceability.

It's fine to urge that the Board should do something, that somebody should do something, and the Board is here in Iqaluit today, it's the one that's in front of the people, and therefore the Board should do something, about one environmental problem or another in the town. However, if the Board take the plunge and does something where it has no authority to do so, then when the Board does something, it will really be engaging in an empty exercise. It will be an empty exercise because the license condition which the Board imposes but lacks the authority to impose is a license condition that will not be enforceable, and which will therefore create difficulty and uncertainty for all concerned. It won't advance anything.

Finally, apart from the legality of enforcement, I'd urge the Board to consider practical aspects of enforcement, the fact that there is only so much manpower available for enforcement, that that manpower has to cover off several licenses in several parts of the territory, and that in other ways there is a limit to what any enforcement authority can be expected to do.

So, having touched on that last point of enforcement, I'll bring us back to the question of balance. We want conditions in the license that will enable the Board, and will enable DIAND as the enforcement authority, to keep the Board accountable. At the same time, we think that the conditions should be reasonable and should be reasonably enforceable. Thank-you.

TK: Thank-you, Mr. Webber. Mr. Smith. For the record, does the Department of Fisheries and Oceans wish to make a final comment?

AW: Anne Wilson, Environment Canada. Our comments were included in Mr. Smith's presentation. Thank-you.

TK: Thank-you. I spotted an Elder here, and I wish to recognise him. Celestine Ekejut(?) is present, resident of Iqaluit. Final closing statements from the Community Government and Transportation?

DS: Thank-you, Mr. Chairman. Doug Sitland. I just wanted to make some very brief closing comments to the Board, and I think they've been echoed by my colleagues from DIAND and the federal government. I believe the town is on the right track, but again, I think the town - and indeed our department - need time to respond to the changes, and the requirements of the town. A recent focus of the department is in the development of environmentally-sustainable infrastructure, and with the recent announcement by the federal government of Canada, the Nunavut Infrastructure Program - which has not been signed yet - we look forward to working with our colleagues in DIAND and indeed the Treasury Board to implement more environmentally-sustainable infrastructure across all of Nunavut, but again, this will take time.

We want to work with communities and our federal partners, and the institutes of public government, in improving the situation for water treatment, solid waste management and sewage disposal. And I think it's important to remember that it will take time to implement these improvements, not only for Iqaluit but for all of Nunavut.

So, I'd urge you to take that into consideration, and again, echoing possibly the comments from Mr. Webber, there's a need for balance. Thank-you.

TK: Thank-you, Mr. Sitland. Final closing remarks from Department of Sustainable Development?

RE: Robert Eno, Sustainable Development. I'm going to try to be brief, which is difficult for me sometimes. My closing one-two punch was in my general comments of my written submission. I'm not going to go over that again.

There was an issue that was brought up by...

[End of Tape 7]