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**TRANSPORT CANADA
TECHNICAL REVIEW SUBMISSION TO THE
NUNAVUT IMPACT REVIEW BOARD
RESPECTING:**

**AGNICO EAGLE MINES LIMITED
WHALE TAIL PIT EXPANSION PROJECT
FINAL ENVIRONMENTAL IMPACT STATEMENT (FEIS) ADDENDUM**

NIRB File # 16MN056

May 14, 2019



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EXECUTIVE SUMMARY

Transport Canada is responsible for federal transportation policies and programs. The Department promotes an integrated transportation system that is safe, secure, efficient and environmentally responsible. Transport Canada provides expert advice and administers regulations, conducts reviews and issues approvals for works that may affect transportation. Transport Canada is providing specialist and expert information to the Nunavut Impact Review Board (NIRB) as required under Article 12 of the Nunavut Agreement and Section 197 of the Nunavut Planning and Project Assessment Act.

Transport Canada's Technical Review Submission summarizes the Department's mandate, and roles and responsibilities that are applicable to the Whale Tail Pit Expansion project. This information provides important context for the consideration of potential socio-economic impacts of the proposed project, as well as comments on the Department's mandate as it applies to information presented in the FEIS Addendum.

We will continue to work with the Board, Agnico Eagle and other interested parties throughout the environmental assessment review to provide guidance and advice related to our departmental mandate.

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SOMMAIRE

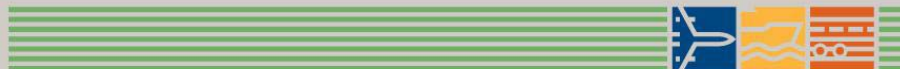
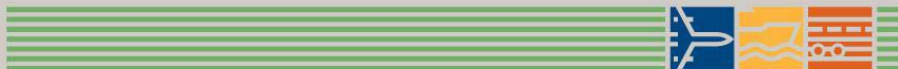


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DEFINITION OF ACRONYMS

FEIS	Final Environmental Impact Statement
MDMER	<i>Metal and Diamond Mining Effluent Regulations</i>
NIRB	Nunavut Impact Review Board
NPA	<i>Navigation Protection Act</i>
NPP	Navigation Protection Program



1. TRANSPORT CANADA'S MANDATE, ROLES AND RESPONSIBILITIES

Transport Canada is responsible for transportation policies and programs that promote an integrated transportation system that is safe, secure, efficient and environmentally responsible. The Department also has a responsibility to regulate associated transportation infrastructure, equipment and personnel in accordance with the legislation and regulations within its mandate. The following describes the specific relevant legislation, regulations and programs administered and enforced by the Department that influenced the content of this submission.

1.1 *Navigation Protection Act*

The *Navigation Protection Act* (NPA) is an Act of Parliament that authorizes and regulates interferences with the public right of navigation. A primary purpose of the NPA is to regulate works and obstructions that risk interfering with navigation in the navigable waters listed on the Schedule to the Act. The NPA also prohibits the depositing or throwing of materials that risk impacting navigation in navigable waters and the dewatering of navigable waters.

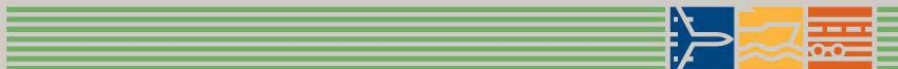
Transport Canada administers the NPA through the Navigation Protection Program (NPP). Only those waters that are specifically listed on the Schedule of the NPA will be actively regulated for the placement/construction of new works. The NPA enables proponents of works on waterways not listed in the Schedule to the NPA, to request to opt into the regime and seek Transport Canada approval of their proposed work.

Sections 21 to 23 of the NPA apply to all navigable waterways irrespective of whether they are listed in the Schedule of the NPA. These sections prohibit the depositing of certain materials in navigable waters or in non-navigable waters that flow into navigable waters as well as the dewatering of navigable waters. Under Section 24 of the NPA, the Governor in Council may provide an Order exempting specific waterways from the applicability of Sections 21 to 23 of the NPA.



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2. TRANSPORT CANADA TECHNICAL REVIEW COMMENTS FOR AGNICO EAGLE MINES LTD.'S WHALE TAIL PIT EXPANSION PROJECT FEIS ADDENDUM

Transport Canada has structured its technical review comments to meet the submission requirements specified by NIRB on March 14, 2019. For the following comment listed in tabular format, Transport Canada has provided references or justifications for the specific issues noted, and recommendations with respect to the Whale Tail Pit Expansion project FEIS Addendum.

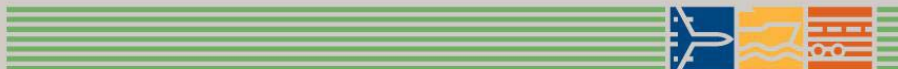
2.1 Navigation Protection Program

Comment Number	01
Subject / Topic	Dewatering
FEIS Addendum Reference (Volume, Section, Page)	1.2.6.3 Dewatering, P.24, Paragraph 1
Issue	Dewatering of Lake A53
Proponent's Statement or Conclusion (if available / relevant to the issue)	<p>The proposed expansion of the Whale Tail Pit Project has not changed the dewatering of the Whale Tail Lake (North Basin); however, small waterbodies and ponds within the footprint of the IVR Pit and Lake A53 (IVR Attenuation Pond) will require Fisheries and Oceans (DFO) approved fishouts and dewatering during the open water season of 2020 to 2022.</p> <p>A Schedule II amendment is considered by Environment and Climate Change Canada after a project has conducted an assessment of alternatives to use a natural water body to store mine waste, completed an EA, considered the prepared fish habitat compensation plan that will offset the loss of fish habitat for consideration as part of the EA, and participated in public and Inuit Qaujimajatuqangit consultations on the EA, including on possible amendments to the Metal and Diamond Mining Effluent Regulations (MDMER).</p>



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<p>Transport Canada Detailed Review Comment</p> <ul style="list-style-type: none">• Issue or Gap• Disagreement with FEIS Addendum Conclusion• Reasons for Disagreement with FEIS Addendum conclusion	<p>Agnico Eagle has indicated that following a detailed water management multiple account analysis (MAA), the preference is to dispose of mine impacted water containing suspended solids and arsenic into Lake A53.</p> <p>The <i>Fisheries Act</i> prohibits the deposit of deleterious substances in waters frequented by fish, unless it is authorized by regulations. Under the MDMER, an amendment to Schedule II of the Regulation is required to list the natural waterbody and authorize the disposition.</p> <p>If Lake A53 is added to Schedule II of the MDMER, the lake would be considered not navigable and Section 23 of the NPA will not apply. If Lake A53 is <u>not</u> added to Schedule II of the MDMER, then a Section 24 exemption by the Governor in Council under the NPA may be required. In order to determine whether an exemption is required Agnico Eagle would be required to submit a completed application to Transport Canada by way of a Notice of Works.</p>
<p>Comment on issue's importance to Impact Assessment</p>	<p>Compliance with regulatory requirements of the NPA. Potential project impacts on navigation.</p>
<p>Recommendation</p>	<p>Transport Canada recommends that Agnico Eagle consider assessing the project's impacts to navigation on all waterbodies impacted by the project including works that may impact Lake A53 and any associated tributaries. This assessment would ensure impacts to navigational safety and access have been identified, considered and mitigated if necessary during the environmental review process.</p>



3. SUMMARY OF TRANSPORT CANADA'S RECOMMENDATIONS

Transport Canada recommends that Agnico Eagle consider assessing the project's impacts to navigation on all waterbodies impacted by the project and their associated tributaries. This information would ensure impacts to navigational safety and access have been identified, considered and mitigated if necessary during the environmental process.

4. CONCLUSION

The scope of comments and recommendations provided by Transport Canada in this submission to the NIRB reflects our mandate as defined by the relevant legislation administered and enforced by the Department.

The proposed dewatering of Lake A53 may result in the project being subject to the requirements of the NPA; however, as the Proponent is requesting Lake A53 be added to Schedule II of the MDMER the applicability of the NPA is unknown at this time.

Transport Canada has recommended that Agnico Eagle consider providing further information related to the project impacts to navigation on all waterbodies in order to assist the NIRB in its review of the socio-economic impacts from the project. This information could also be used during the regulatory phase, should Lake A53 not be added to Schedule II of the MDMER, and the NPA would apply to the project.

Transport Canada looks forward to continued dialogue and cooperation with Agnico Eagle and all stakeholders during the environmental assessment process.