

**AGNICO EAGLE RESPONSE TO THE NIRB DRAFT
STANDARD IMPACT STATEMENT GUIDELINES AND
THE REVISED RULES OF PROCEDURE**



BACKGROUND



- The NIRB distributed, for comment, the Draft Standard Impact Statement Guidelines and the revised Rules of Procedure.
- Agnico Eagle has been exploring and mining in Nunavut since 2007.
- Agnico Eagle has extensive, first-hand experience working through the assessment and permitting processes in Nunavut.
- Recently, Agnico Eagle and the NIRB have discussed issues and opportunities related to the assessment process.
- Agnico Eagle provided comments to the NIRB on the draft guidance documents on March 15, 2019.

AGNICO EAGLE'S COMMENTS ON THE NIRB DRAFT GUIDANCE DOCUMENTS



Agenda

- Point 1: Phased Development
- Point 2: Future Development
- Point 3: Consolidation of Information Requests
- Point 4: Technical Meetings and Public Hearings
- Point 5: Definitions
- Point 6: Environment Management Systems
- Point 7: Environmental Protection and Management Plans
- Point 8: Socio-Economic New Requirements
- Point 9: Conclusion and Recommendations

POINT 1: PHASED DEVELOPMENTS



- From the NIRB's Draft IS Guidelines
 - Only one reference, 6.1 Project Overview: "If the Project is part of a phased sequence of projects, the IS will outline the larger context."

POINT 1: PHASED DEVELOPMENT – COMMENTS AND RECOMMENDATIONS



- The NIRB has stated that these documents reflect their increasing experience with “different types of assessments (for example, phased development)” and the resulting need for greater procedural flexibility and “scalability”.
- This has not been achieved in the current draft guideline.
- Agnico Eagle initially recommends:
 - Clarification of the NPC screening tool in relation to NIRB determination of significance (ie Section 90 NuPPA)
 - Implementation of risk based tools that create triggers and thresholds
 - Clarification and guidance of phased development related to an EA and regulatory requirements.

NIRB GUIDANCE – APPROACHES TO ASSESSMENT OF PROPOSED AMENDMENTS TO APPROVED PROJECTS



- From the NIRB’s Guidance: Approaches to assessment of proposed amendments to approved projects issued on April 6, 2018
- Agnico Eagle is suggesting developing the screening tool based on previous NIRB’s guidance and include qualitative and quantitative trigger and threshold to facilitate the assessment process.

April 6, 2018

Nunavut Impact Review Board Guidance: Approaches to Assessment of Proposed Amendments to Approved Projects

Manifestly Insignificant: No submissions to NPC/NIRB Required	Proposed amendment does not meet the definition of project under the <i>Nunavut Planning and Project Assessment Act (NuPPAA)</i> and is not required to be submitted to the NPC or NIRB.	E.g. Routine maintenance or replacement of storage buildings at an approved mine site.
Non-significant Amendment: NIRB Assessment Not Required	Minor project amendment proposed and additional authorizations or amendments to authorizations are below the threshold for NIRB Screening and/or reconsideration of Project Certificate terms and conditions. Submission to NPC only required.	E.g. Archaeological field program for an approved mining development.
Non-significant Amendment: Screening Not Required; Implications for NIRB Monitoring Program	Proposed amendment not a significant modification to original project, however, changes may have implications for the NIRB’s monitoring program and required reporting. NIRB may invite comments to confirm whether reconsideration of Project Certificate terms and conditions necessary	E.g. Crown Pillar Recovery amendment to the Doris North Project (NIRB File No. 05MN047)
Significant Amendment: Screening of Independent Project Proposal Required	Proposed amendment is a significant modification to the original project <u>but</u> the proposed modification is not integrally linked to the original project as assessed by the NIRB, and should be assessed as an independent project proposal.	E.g. Whale Tail Pit Project Proposal (NIRB File No. 16MN056). Many screening files annually.
Significant Amendment: PC Reconsideration Required	Proposed project amendment is significant <u>and</u> is integrally linked to original project as assessed by the NIRB; assessment of the proposed modification as an independent project proposal is inappropriate; modification assessed via a reconsideration of the Project Certificate.	E.g. Mary River Phase 2 Proposal (NIRB File No. 08MN053)
Significant Amendment: Deemed Unacceptable by NPC	Proposed amendment is a significant modification to the original project and the NPC determines that the modification is <u>not</u> in conformity with an approved land use plan. Proposal will not be forwarded to the NIRB for further assessment until land use planning requirements are met.	E.g. amendment to Mary River Phase 2 Proposal (NIRB File No. 08MN053) proposing winter shipping and ice-breaking

Document	180406-NIRB Reference Chart Re Amendment Significance-FEDE.pdf
Date Issue / Received	2018-04-06
Sender	Nunavut Impact Review Board
Recipient	Nunavut-Wide Distribution List
Summary	Reference chart provided by the Nunavut Impact Review Board regarding approaches to the assessment of proposed amendments to approved projects.
Related Documents	No related documents

POINT 2: FUTURE DEVELOPMENTS



- Agnico Eagle has discussed with the NIRB the need for the impact assessment process to include consideration of future development.
- Mining companies continue to explore their properties throughout the permitting, construction and operational phases of their mines with the objective of identifying additional resources that would extend the life of the mine.
- Environmental and Socio-Economic Impact Assessments assess both spatial and temporal boundaries.
- The NIRB suggests and defines the following spatial boundaries: Site study area; local study area; and, regional study area.
- The draft IS Guidelines state that the “IS shall determine the temporal boundaries separately for the construction, operation, maintenance, temporary closure, final closure and post-closure periods, including planned exploration to be undertaken in conjunction with the Project.”

POINT 2: FUTURE DEVELOPMENTS - NIRB



- From the NIRB's Draft IS Guidelines
 - 7.1 Project Design: "The considerations for future development."
 - 7.4 Future Development: "The Proponent shall evaluate any foreseeable expansions of the current Project, the needs of required infrastructure, and associated ecosystemic and socio-economic impacts. The Proponent shall also evaluate the potential for development of additional ore deposits in the Project area in accordance with previous and current exploration activities."

POINT 2: FUTURE DEVELOPMENTS – HOW THIS IS ADDRESSED IN OTHER JURISDICTIONS



- The following jurisdictions were reviewed for comparison:
 - Northwest Territories, Yukon, British Columbia, Alberta, Saskatchewan, Manitoba and Ontario.
 - CEAA 2012 was also reviewed.
- Future development was only discussed/defined in the following:
 - Saskatchewan, Manitoba, and CEAA 2012.

POINT 2: FUTURE DEVELOPMENTS – SASKATCHEWAN



Saskatchewan

- A Proponent must provide a detailed description, including project plans and designs, of proposed development and schedule for all stages of the development and including ancillary facilities within an Environmental Impact Statement (Project Proposal).
- While final design details will not usually be available when the proposal is prepared, preliminary design details, including the anticipated maximum project footprint, should be presented. Foreseeable future events/phases related to the project are required to be presented, these are of particular interest with respect to the cumulative effects assessment.
- Under The Environmental Management and Protection Regulations (Section 9(1)), an amendment to an existing approval is required for any change to the activity governed by the current operating permit, any change to the construction, operation and reclamation of the plant and any significant addition or changes to the machinery, equipment or process. Certain exemptions from approval for minor changes to operation, reclamation plans, short-term tests and temporary modifications and changes not resulting in releases to the environment may be granted.
- For certain projects, the opportunity for public input, by way of a public notice, may need to be provided. In some cases, the approvals are contingent on first conducting a new or revised environmental impact assessment. The application must include detailed information such as capacities, sizes, processes, scale diagrams, inputs/outputs, exact locations, baseline data, and decommissioning with respect to the existing operation.

POINT 2: FUTURE DEVELOPMENTS – MANITOBA



Manitoba

- A Proponent must provide a detailed description of proposed development and schedule for all stages of the development and including ancillary facilities within an Environmental Impact Statement (Environment Act Proposal).
- The level of detail required for a provincial EIS is typically at 33% engineering (preliminary design) at minimum. For potential future phases, conceptual design is normally sufficient.
- A proponent may propose changes to a licensed project by means of a “Notice of Alteration”. Alterations to licensed projects may be considered as minor (insignificant environmental effects) or major (significant environmental effects).
- Minor alternations may be approved by the Director through a letter of approval. Major alterations require a new proposal (EIS) to be submitted and reviewed by a Technical Advisory Committee with a public review process. This may result in an amended or new licence.

POINT 2: FUTURE DEVELOPMENTS – CEAA 2012



CEAA

- Phased development, and consideration for future development, are an important part of the environmental assessment process - both from the proponent and regulatory perspective.
- Under CEAA 2012, proponents must provide sufficient information regarding foreseeable future development related to the project to ensure that the proponent is not “project splitting” (i.e., purposely omitting critical components of the project for ease of permitting).
- CEAA and the various provincial/territorial regulatory bodies assume that the proponent is representing the entire project – at least from a conceptual perspective.

POINT 2: FUTURE DEVELOPMENTS – COMMENTS AND RECOMMENDATIONS



- Little to no guidance is provided in the Draft NIRB Standard IS Guidelines for future development.
- Agnico Eagle recommends:
 - The NIRB define their expectations with regard to the level of detail required for future development, particularly engineering, and that the expectation reflect the nature of foreseeable developments (conceptual level design).
 - The NIRB define the process for evaluating future development and the thresholds that would determine the need for re-assessment.
 - In determining the need for re-assessment, the NIRB should consider the spatial and temporal boundaries of the original assessment.

POINT 2: TRIGGERS AND THRESHOLDS

- The draft Standardized IS Guidelines provides no guidance on alterations and/or expansions.
- Other jurisdictions were reviewed to identify what triggers and thresholds are used elsewhere to determine when an alteration, modification or expansion triggers the need for re-assessment.
- Legislation uses a variety of terms to describe what it is that must be assessed: a project, undertaking, activity, operation or development, for example.
- Some legislation, such as Saskatchewan and New Brunswick, also specifically states that an alteration, modification or expansion is included. BC does as well, but with different thresholds than if a project were a new one.

POINT 2: TRIGGERS AND THRESHOLDS – BRITISH COLUMBIA



- *Found in the Reviewable Projects Regulations:*

Criteria for proposed modifications of mine projects

- 8(1) In this Part, threshold E, (Project Category 2, Mineral Mines, Modification of an Existing Project), is met for a proposed modification of an existing facility if:
 - (a) the existing facility, or the proposed facility, were they new facilities in the same category as the existing facility as described in Column 1 of the applicable table, would meet the criteria set out opposite in Column 2, and
 - (b) the modification will result in the disturbance of
 - (i) at least 750 hectares of land that was not previously permitted for disturbance, or
 - (ii) an area of land that was not previously permitted for disturbance and that is at least 50% of the area of land that was previously permitted for disturbance at the existing facility.

POINT 2: TRIGGERS AND THRESHOLDS – BRITISH COLUMBIA



Table 6 – Mine Projects

Environmental Assessment Act

REVIEWABLE PROJECTS REGULATION

includes amendments up to B.C. Reg. 14/2006, February 10, 2006]

http://www.bclaws.ca/civix/document/id/loo73/loo73/13_370_2002

Criteria for proposed modifications of mine projects

- 8 (1) In this Part, threshold E is met for a proposed modification of an existing facility if
- (a) the existing facility, were it a new facility in the same category as the existing facility as described in Column 1 of the applicable table, would meet the criteria set out opposite in Column 2, and
 - (b) the modification will result in the disturbance of
 - (i) at least 750 hectares of land that was not previously permitted for disturbance, or
 - (ii) an area of land that was not previously permitted for disturbance and that is at least 50% of the area of land that was previously permitted for disturbance at the existing facility.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Project Category</i>	<i>New Project</i>	<i>Modification of Existing Project</i>
2 Mineral Mines	<p>Criteria:</p> <p>(1) A new mine facility that, during operations, will have a production capacity of $\geq 75\ 000$ tonnes/year of mineral ore.</p>	<p>Criteria:</p> <p>(1) Modification of an existing mine facility that meets Threshold E.</p>
4 Placer Mineral Mines	<p>Criteria:</p> <p>(1) A new mine facility that, during operations, will have a production capacity of $\geq 500\ 000$ tonnes/year of pay-dirt.</p>	<p>Criteria:</p> <p>(1) Modification of an existing pit facility that meets Threshold F.</p>
5 Construction Stone and Industrial Mineral Quarries	<p>Criteria:</p> <p>(1) A new quarry facility or other operation that</p> <ul style="list-style-type: none"> (a) involves the removal of construction stone or industrial minerals or both, (b) is regulated as a mine under the <i>Mines Act</i>, and (c) during operations, will have a production capacity of $\geq 250\ 000$ tonnes/year of quarried product. 	<p>Criteria:</p> <p>(1) Modification of an existing mine facility that meets Threshold E.</p>

POINT 2: TRIGGERS AND THRESHOLDS - SASKATCHEWAN



- The EA process is triggered by the requirement for a Proponent to receive Ministerial approval before proceeding with a development. Development is defined as:
- Any project, operation or activity or any alteration or expansion of any project, operation or activity which is likely to:
 - Have an effect on any unique, rare or endangered feature of the environment;
 - Substantially utilize any provincial resource and in so doing pre-empt the use, or potential use, of that resource for any other purpose;
 - Cause the emission of any pollutants or create by-products, residual or waste products which require handling and disposal in a manner that is not regulated by an other Act or regulation;
 - Cause widespread public concern because of potential environmental changes;
 - Involve a new technology that is concerned with resource utilization and that may induce significant environmental change; or,
 - Have a significant impact on the environment or necessitate a further development which is likely to have a significant impact on the environment.
- If a project is not a “development”, it does not require an EIA.

POINT 2: TRIGGERS AND THRESHOLDS - NWT

- A “modification” is a particular change and is defined in the *Exemption List Regulations* and within water licence conditions as “in respect of a structure, means a change, other than an expansion, that does not alter the purpose or function of the structure.”
- There are no thresholds or specific triggers.

POINT 2: TRIGGERS AND THRESHOLDS - YUKON



- There are no triggers or thresholds.
- Since Bill S-6, the Yukon Government committed to Yukon First Nations that they would consult on all amendments to Projects.
- Previously the Decision Body reviewed amendments on a case by case basis to determine if an EA re-assessment was required.

POINT 3: CONSOLIDATION OF INFORMATION REQUESTS (IRS)

No information is provided within the Rules of Procedure as to how the NIRB will treat additional IRs.

- NIRB should provide guidance on the supplementary project-specific/industry-specific requirements to generate focus on the IR's.
 - Some IRs could be responded to directly by the NIRB rather than being forwarded to the Proponent.
 - Some IRs may be minor and could be dealt with informally with no impacts to the timeline and/or schedule.
 - It does not appear, from experience, that the NIRB reviews the IRs to confirm whether or not the Proponent has adequately addressed the issue/question/concern within the documentation previously submitted, rather they are forwarded on in their entirety to the Proponent to address.
 - A number of Interested Parties submit IRs that are duplicates of other IRs. These are forwarded on in their entirety to the Proponent. The NIRB could review IRs and consolidate those IRs that are duplicates or similar in nature.

There is significant opportunity for the NIRB to provide guidance, **including a clear definition** and address how additional IRs will be managed during the proceedings within the Rules of Procedure guidance document.

POINT 4: TECHNICAL MEETINGS AND PUBLIC HEARINGS



- The IS Guidelines seek to streamline and standardize IS expectations for all participants and propose to issue only minimal project/industry-specific guidance to supplement the Standard IS Guidelines.
- After general consultation on the Standardized IS Guidelines, NIRB will conduct consultations on only the supplementary project-specific/industry-specific requirements.
- This approach could be extended to the Technical Meetings and Public Hearings.
 - Only the project-specific issues and concerns would need to be addressed at Technical Meetings and the Public Hearings.
 - Only those experts needed to address the project-specific requirements would need to be in attendance.
 - This would allow more time and more meaningful discussion around the outstanding project-specific requirements.

POINT 5: TERMINOLOGY WITHOUT DEFINITION

- The NIRB has introduced some new terms in the draft Standardized IS Guidelines without providing any definitions.
- Some examples include:
 - Determination of significance
 - Reasonably foreseeable future
 - Ecological flows and pathways
 - Indirectly affected communities
 - Technical Comments
 - Information Requests
- Not all of these terms have a standardly recognized definition which can lead to confusion, differing opinions and incorrect assumptions.

POINT 5: TERMINOLOGY WITHOUT DEFINITION

- For example:
- Determination of Significance
 - NWT – Determination of Significance in EIA practice makes judgements about what is important, desirable or acceptable. It also interprets degrees of importance. Staff, with consultant advice and public input, define, in greater detail, significance thresholds for matters of area-wide significance.
 - YK – Proponents describe the significance of project effects.
 - BC – In relation to residual effects, “the assessment should be clearly documented and explained in the assessment. In particular, the assessment should clearly define how the term ‘significance’ has been used in relation to each VC. This definition may comprise either a quantitative or qualitative threshold that describes the point beyond which a residual effect would be considered significant...consideration should be given as to how each of the criteria for characterizing residual effects would inform a determination of significance.”
 - CEAA - Determining whether a project is likely to cause significant adverse environmental effects (often referred to as determination of significance) is central to the practice of project EA. The determination of significance includes considering whether the predicted environmental effects are adverse, significant or likely.

POINT 5: TERMINOLOGY WITHOUT DEFINITION – COMMENTS AND RECOMMENDATIONS



- Agnico Eagle recommends:
 - The NIRB define all terms used within the Standardized IS Guidelines to avoid any misunderstandings and to ensure that there truly is a standardized understanding of the terms.
 - The NIRB review how these terms are defined in other jurisdictions and consult on the definitions they feel best represent Nunavut.
- Clearly defined terms and expectations will ensure that:
 - Proponents submissions are consistent;
 - Proponents and intervenors submissions are thorough and contain the required/expected information; and,
 - All Parties have the same understanding.

POINT 6: ENVIRONMENTAL MANAGEMENT SYSTEM



- The NIRB is requesting detailed information on the Proponent's Environmental Management System (EMS).
- The Environmental Management Plan (EMP) is one document required under the EMS.
- The EMP will be comprised of individual monitoring and mitigation plans.
- The Environmental Protection Plan (EPP) shall be based on the impact predictions for identified VECs and VSECs.
- The requirements for the assessment of the Closure and Reclamation Plan is also described in the EMS section of the Standardized IS Guidelines.

POINT 7: SCOPE OF ENVIRONMENTAL PROTECTION AND MANAGEMENT PLANS



- The level of detail being requested may be challenging for some of the VC's as historically this level of detail has been required at the licencing phase as supporting documents to the water licence application package following the assessment process and building on recommendations that come out of that process.
- Further discussion is required to ensure that expectations are realistic and to avoid overlap with other processes and agencies.

POINT 8: SOCIO-ECONOMIC – NEW REQUIREMENTS



- Agnico Eagle (AEM) has a signed agreement with the Nunavut Government, Government of Canada (GoC) and IIBA Socio Economic Inuit Impact Benefit Report with the Kivalliq Inuit Association that identify and address the Socio-Economic impacts, both adverse and beneficial, associated with their Kivalliq projects.
- VSECs were negotiated and finalized during the assessment phase of the permitting process. AEM Kivalliq Socio Economic Monitoring Programs comply with NuPPAA and the Nunavut Agreement.
- The NIRB is not a party to these negotiations and discussions.
- Further alignment discussion is required between the NIRB, the Regional Inuit Associations, GN, GoC and industry to ensure that the changes being proposed by the NIRB do not interfere, overlap and/or impact the commitments and terms of those agreements.

RECOMMENDATION FOR REVIEW/CONSULTATION TIMELINE



- Agnico Eagle requests that NIRB provide additional time for the review and consultation
- NWT example
 - Consultation period in the NWT for the updated EIA guidelines by the MVEIRB.
 - May 7th, 2018 – MVEIRB distributed a Draft Guidelines Concept Paper to parties to introduce the idea
 - June 20th, 2018 – MVEIRB hosted a one-day workshop to discuss the idea and concept
 - Draft guidelines were developed using both internal expertise and external input
 - Nov 19, 2018 – draft Guidelines were distributed for public review and engagement period
 - Engagement period – on-going to Spring 2019
 - Deadline for written comments on Online Review System – TBD
 - Board review of feedback and next steps in draft Guidelines development – TBD

CONCLUSIONS



- Agnico Eagle appreciates the opportunity to bring these matters forward to the NIRB.
- Agnico Eagle also appreciates the efforts of the NIRB to continuously improve the assessment process.
- After reviewing the other submissions that the NIRB received on the draft documents, along with the points raised here, Agnico Eagle is of the opinion that further discussions are warranted.



AGNICO EAGLE



THANK YOU