



KIA Lands Department NIRB Response

LICENCE: **NIRB File No.: 11MN034**

DATE: **July 10, 2020**

SUBJECT: **Schedule Review – Meliadine Waterline Project**

INTRODUCTION

In its correspondence dated June 9, 2020, the Nunavut Impact Review Board (NIRB) concluded that Agnico Eagle Mines Limited's (Agnico Eagle) "Saline Effluent Discharge to Marine Environment" Project Proposal (Waterline Project Proposal) constitutes a significant modification to the previously-approved Meliadine Gold Mine Project as well as the 2018 Saline Effluent Discharge Proposal. The NIRB concluded that, as set out in s. 146(1) of the *Nunavut Planning And Project Assessment Act (NuPPAA)*, the Waterline Project Proposal must be assessed by NIRB. NIRB initiated a formal reconsideration of the terms and conditions of Project Certificate No. 006 in accordance with Article 12, Section 12.8.2 of the *Nunavut Agreement* and s. 112 of *NuPPAA*.

As confirmed in NIRB's correspondence dated June 9 and 15, 2020, the Board has not yet initiated the public technical review of the Waterline Project Proposal, nor has NIRB provided details regarding the associated assessment process and timelines. While NIRB does have considerable discretion as to the precise process for conducting a reconsideration of a Project Certificate terms and conditions, as NIRB advised in its June 9, 2020 letter, the NIRB's primary objectives apply to reconsiderations and generally dictate that the NIRB conducts an assessment of a modification proposal "*with as much rigor as a NIRB screening and sometimes even a review.*" NIRB's Proponent's Guide (p. 108) provides that the board's reconsideration "*must necessarily include an assessment of the potential for the proposed modification to result in changes to the ecosystemic and socioeconomic effects previously assessed for the original project.*"

Again, NIRB has not yet set out a precise process for the reconsideration; however, NIRB advised in its June 9, 2020 notice to Agnico Eagle that the Board will initiate a public review of the application in accordance with the NIRB's Rules of Procedure. NIRB advised in its June 15, 2020 correspondence that once it receives Agnico Eagle's Impact Statement (IS) Addendum, the NIRB will conduct an internal check to confirm the submission contains the necessary components and will *then* initiate a public technical review of the proposal and provide additional details regarding the assessment process.

In the context of engaging with interested parties to discuss the appropriate process for the assessment, by letter dated June 30, 2020, the NIRB advised that it would like to better understand how best parties may be able to participate to consider procedural fairness in the context of the COVID-19 pandemic. The NIRB invited parties to comment on the following questions:



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“a) Process and timeline considerations that will affect the party’s ability to participate in the reconsideration process, specifically in regards to the timing suggested by Agnico Eagle, and how agencies are continuing to maintain operations through the current pandemic.

b) While the Board’s assessment processes include a mix of written, verbal, and in-person communication, the NIRB would like to understand if parties have a preference for or judge their ability to participate effectively in potential alternatives to in-person public meetings, such as teleconferences or virtual hearings.

c) Any additional practicalities of the Board conducting its assessment during the current pandemic, including capacity or resource limitations that would inhibit the parties’ ability to participate to the extent they require.”

RESPONSES

a) Process and Timeline

Neither timeline proposed by Agnico Eagle in their June 19 letter to the NIRB are realistic, as the NIRB has neither announced the process for reconsideration nor initiated the technical review period. Further, Agnico Eagle’s proposed process does not include time for the NIRB to check the IS Addendum for completeness, nor does it allow for public comment on the completeness of Agnico Eagle’s submission prior to the commencement of the technical review. This process is required for NIRB to assess the Waterline Project Proposal *“with as much rigor as a NIRB screening”* and fulfil its scoping under s. 99 of the *NuPPAA*.

Even once the IS Addendum is deemed complete by the NIRB and made available for technical review, Agnico Eagle’s proposed time allowances are not sufficient for the Kivalliq Inuit Association (KIA) to review the complete Proposal, and consider and resolve technical concerns. The proposed timelines will also largely preclude both independent and KIA supported community participation in the regulatory process, particularly given the constraints of the COVID-19 pandemic on KIA and its consultants.

Agnico Eagle’s submissions to date do not justify their request to condense the NIRB process to the degree proposed (approximately 6 weeks). KIA noted in our May 8 submission that a *“condensed schedule may be appropriate to provide sufficient review and consideration”* for the Waterline Project Proposal. We stress that this statement was made considering NIRB guidance regarding timelines for reconsideration under s. 112 of *NuPPAA*, and in reference to previous reconsideration process timelines whereby a proponent may reasonably expect to receive ministerial approval approximately one year following their submission.

KIA does not support Agnico Eagle’s proposed time allowances – the limitations of the pandemic demand more, not less, time for consultation in a reconsideration process particularly where a proposal arouses significant public concern as the Waterline Project Proposal has.



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KIA further asserts that Agnico Eagle's proposed schedule and time allowances will limit the capacity of community members from fully participating in the assessment process. Full participation by the community is particularly important for this assessment as the community engagement conducted by Agnico Eagle to date on the Waterline does not constitute effective consultation on the Proposal. Agnico Eagle's March 2020 session was conducted prior to its submission of an IS Addendum in April, and in any event NIRB has yet to determine if Agnico Eagle's IS Addendum is complete. Further, NIRB has not yet announced the process for the reconsideration, and the application call for participant funding is not yet open. NIRB has important role with respect to public consultation, including NIRB's facilitation of information sessions for the public. KIA submits that it is important that NIRB facilitate information sessions for the public as part of the reconsideration.

Agnico Eagle's early and limited engagement with the community has not been, on its own, sufficient to allow for thoughtful dialogue and meaningful community participation. Additional engagement is required prior to and as part of the NIRB assessment of Agnico Eagle's application.

Scheduling of future community engagement must consider the community's traditional land use practices. Many Rankinmiut take time in August to go out onto the land, particularly those who most heavily rely on country food. These same individuals are among those most likely to be affected by potential impacts to caribou and travel routes created by the waterline. Condensing the regulatory process into the next six weeks over the summer months would significantly limit community participation in consultations and public portions of the assessment.

Community consultations must also consider limitations imposed by the ongoing pandemic. While traditional approaches to consultation may not be possible at this time, multiple smaller consultation sessions spread over several weeks should be considered to maximize community participation while still providing for their safety in light of COVID-19.

Finally, KIA is concerned that the current schedule proposed by Agnico Eagle suggests that construction may still be able to begin in 2020 while COVID-19 related restrictions are still in effect within the territory. KIA is concerned that the socioeconomic benefits presented in Agnico Eagle's application may not be feasible if construction proceeds during COVID-19 restrictions. Further, there may be additional impacts of the project related to the pandemic.

KIA proposes that, once the NIRB commences the process for reconsideration, sufficient time is provided to interveners to review the completeness of the IS Addendum and make information requests prior to the technical review in support of NIRB's screening decision. KIA proposes that any completeness review and screening process be deferred into the fall to account for the pandemic and the community's traditional land use practices.

This will allow Agnico Eagle and NIRB to develop concrete plans as to how the community can be safely and meaningfully engaged during the pandemic, in consultation with parties and the community, and with additional information about the progress and impact of COVID-19. It will also ensure that a greater



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proportion of the community is available to participate in both community consultations and in the reconsideration process.

Deferral until the fall will also allow Agnico Eagle and the NIRB to work together towards a more realistic assessment timeline. While some condensing of the normal regulatory process may be possible (e.g. one technical meeting rather than two), the schedule should not be condensed to the point where the NIRB process may be compromised.

b) Forms of Participation

KIA maintains that any public participation must include in-person meetings within the most impacted community, Rankin Inlet. We acknowledge that COVID-19 renders traditional approaches to community consultation unfeasible for the foreseeable future. However, a series of smaller in-person meetings within the community should still be possible to ensure meaningful consultation is achieved. These meetings should include information sessions facilitated by NIRB in addition to meetings hosted by local Agnico Eagle staff. These meetings should provide for translation services in both Inuktitut and English as well as include remote participation of necessary personnel to ensure a meaningful dialogue between the community, the proponent and the intervenors.

Technical and other community concerns may be resolved through a combination of written submissions, teleconferencing and virtual hearings so long as ample notice is provided to the community with appropriate telecommunication support provided so that Rankinmiut may participate if desired.

c) Additional Practicalities

KIA reasserts that the community should be provided additional opportunities to learn the details of Agnico Eagle's Project and meaningfully participate in the NIRB assessment process. The Waterline Project Proposal has the potential to directly impact local land use practices, caribou and the marine environment. Meaningful community participation and thoughtful technical review of project proposals are cornerstones of Nunavut's regulatory process. KIA asserts that every effort should be made to ensure the regulatory process is not compromised by an overly restrictive assessment timeline or the constraints imposed by the pandemic.

KIA wishes to highlight that the measures intended to keep Nunavummiut safe from COVID-19 are likely to be relatively fluid over the coming months. KIA requests that NIRB consider these unique circumstances as they develop a process map for their reconsideration and allow for additional intervenor consideration and comment on that path forward should COVID-19 restrictions change.

CLOSING

KIA appreciates this opportunity to provide input to the NIRB's consideration of the process, timeline and forms of participation for the assessment of Agnico Eagle's Waterline proposal. KIA looks forward to participating in the process once NIRB announces its form and timelines, and then commences the



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public review. Should you require any additional information, please do not hesitate to contact Luis Manzo, Director of Lands.

Regards,

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