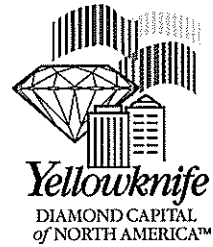


DM # 7776



OFFICE OF THE
MAYOR

P.O. BOX 580, YELLOWKNIFE, NT X1A 2N4
TELEPHONE: (867) 920-5693 • FAX: (867) 920-5649
WEBSITE: city.yellowknife.nt.ca



April 5, 2006

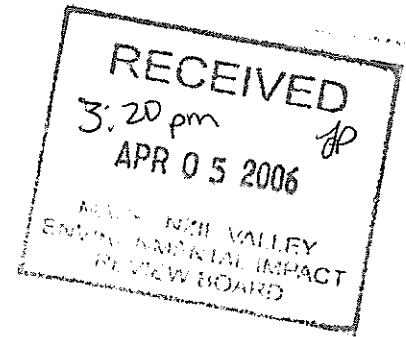
BY HAND

DM #114398

Mackenzie Valley Environmental Impact Review Board
P.O. Box 938
5102 – 50th Avenue
Yellowknife NT X1A 2M1

Attention: Gabrielle Mackenzie-Scott, Chair

Dear Ms. Mackenzie-Scott:



Re: Miramar Con Mine Ltd.'s Request for Amendment to Water Licence N1L2-0040 – Referral by City of Yellowknife pursuant to section 126 (2) (d) of the Mackenzie Valley Resource Management Act for Environmental Assessment

The Municipal Corporation of the City of Yellowknife ("City") respectfully refers Miramar Con Mine Ltd.'s ("Miramar") request for amendment to its Water Licence N1L2-0040 ("Water Licence") to you, the Mackenzie Valley Environmental Impact Review Board (the "MVEIRB"), for an environmental assessment. This referral is made pursuant to section 126 (2) (d) of the *Mackenzie Valley Resource Management Act* S.C. 1998 c. 25 ("MVRMA"). The basis for the referral is that the activity proposed to take place during the requested extended term of the Water Licence will have, in the City's opinion, an adverse impact on the environment within its municipal boundaries.

Procedural Background

Miramar was issued its current Water Licence by the Mackenzie Valley Land and Water Board ("MVLWB") on July 30th, 2000 pursuant that Board's authorities under the *Northwest Territories Waters Act* S.C. 1992 c. 39. A request to amend the term of Miramar's Water Licence from July 29, 2006 to September 30, 2008 was received by the MVLWB on July 26, 2005 ("Application"). A copy of the Application is attached as Appendix "A". The City, among other parties, was requested by the MVLWB on November 1, 2005 to provide comments on the applicability of the *Exemption List Regulations* made under paragraph 143(1) (c) of the MVRMA to Miramar's Application and whether this triggered a preliminary screening.

.../2

The deadline for submission was November 7, 2005. The City made a submission as requested and essentially argued that a preliminary screening of the Application was required. A copy of this submission is attached as Appendix "B". You will note upon review of this submission that the City also objected to the short time frame provided within which to put forward its submission. As a result of this objection, at the Public Hearing on November 9, 2005 ("Public Hearing"), the MVLWB announced that it would accept further submissions until November 17, 2005.

On November 17, 2005 the City made a further submission that it attached as "Appendix "C". Then on January 11, 2006 the MVLWB issued its Reasons for Decision with respect to the issue of whether a preliminary screening of the Application was required. A copy of the Reasons for Decision is attached as Appendix "D". Please note when reviewing this document that an error is made at page two (2) of the document wherein it is stated that "[n]o additional comments were received from any party by this deadline". It has now been confirmed by Ms. Lisa Hurley the Regulatory Officer with the MVLWB assigned to this matter that the City's submission was received but inadvertently overlooked as is evidenced by the e-mail message attached as Appendix "E".

Ultimately the MVLWB conducted a preliminary screening of the Application. However it concluded pursuant to section 125(2) (a) of the MVRMA that "[i]n its opinion there is not likely to be a significant adverse impact on air, water, or renewable resources or significant public concern if the extension to the Term of the Licence is granted".

Analysis of Subsection 126(2) (d)

The City's position is that because the MVLWB did conduct a preliminary screening of the Application, the City is now entitled to refer it for an environmental assessment pursuant to paragraph 126(2) (d) of the MVRMA. It is also respectfully the City's position that section 126(2) (d) is a mandatory provision for the MVEIRB, and as such the MVEIRB must conduct an environmental assessment following such a referral.

Paragraph 126(2) (d) provides:

(2) Notwithstanding any determination on a preliminary screening, the Review Board shall conduct an environmental assessment of a proposal for a development that is referred to it by

(d) a local government, in the case of the development to be carried out within its boundaries or a development that might have an impact on the environment within its boundaries.

Under section 2 of the MVRMA “local government” is defined as follows:

“local government” means any local government established under the laws of the Northwest Territories, including a city, town village, hamlet, charter community or settlement or government of a Tlicho community, whether incorporated or not, and includes the territorial government acting in the place of a local government pursuant to those laws.

The City of Yellowknife is a “municipal corporation” and a “city” as defined in the *Cities, Towns and Villages Act* S.N.W.T. 2003, c. 22, and a “local government” within the meaning of paragraph 126(2)(d) of the MVRMA. The geographic area of the City is set out in the *City of Yellowknife Continuation Order* R.R.N.W.T. 1990 c. C-5. The Con Mine site is situated wholly within the boundaries of the City.

The applicability of subsection 126(2) (d) is triggered, *inter alia*, by the requirement for a regulatory authority to conduct a preliminary screening under section 124 of the MVRMA. Again, the MVLWB, as a regulatory authority under the MVRMA, did conduct a preliminary screening of the Application pursuant to the *Preliminary Screening Requirement Regulations* and Section 124.

Section 124(1) of the MVRMA provides:

124. (1) Where, pursuant to any federal or territorial law specified in the regulations made under paragraph 143(1)(b), an application is made to a regulatory authority or designated regulatory agency for a licence, permit or other authorization required for the carrying out of a development, the authority or agency shall notify the Review Board in writing of the application and conduct a preliminary screening of the proposal for the development, unless the development is exempted from preliminary screening because

(a) its impact on the environment is declared to be insignificant by regulations made under paragraph 143(1) (c); or

(b) an examination of the proposal is declared to be inappropriate for reasons of national security by those regulations.

Under section 111 of Part 5 of the MVRMA “development” is defined as follows:

“development” means any undertaking or any part or extension of an undertaking that is carried out on land or water and includes an acquisition of lands pursuant to the *Historic Sites and Monuments Act* and measures carried out by a department or agency of government leading to the establishment of a park subject to the *National Parks Act* or the establishment of a park under territorial law.

Section 111(2) states:

This part applies in respect of developments to be carried out wholly or partly within the Mackenzie Valley and, except for section 142, does not apply in respect of developments wholly outside of the Mackenzie Valley.

“Mackenzie Valley” is defined in section 2 of the MVRMA as follows:

“Mackenzie Valley” means that part of the Northwest Territories bounded on the south by the 60th parallel of latitude, on the west by Yukon, on the north by the Inuvialuit settlement region, as defined in the Agreement given effect by the *Western Arctic (Inuvialuit) Claims Settlement Act*, and on the east side by the Nunavut Settlement Area as defined in the *Nunavut Land Claims Agreement, Act* but does not include Wood Buffalo National Park of Canada.

The Con Mine, which is the subject of Miramar’s Application, is therefore located in the Mackenzie Valley for the purposes of the MVRMA, and therefore subject to the MVEIRB’s jurisdiction and the MVRMA.

Contextual Analysis

The Con Mine has been in operation since the late 1930’s and the ore body that has been mined has a high concentration of arsenic. The mine was operated for a long period of time when environmental standards and protection in Canada were rudimentary or non-existent. The ore itself was treated with cyanide during that period. There are serious issues respecting arsenic and cyanide contamination and environmental remediation otherwise which are of concern to the City and the people of Yellowknife; and which may have a significant adverse impact on the environment in the City.

Of particular concern, and as is relevant to this referral, is the proposed decommissioning and removal of infrastructure on the mine site that is required for the processing of waste material. It is also important to note that this is occurring in the absence of an Abandonment and Reclamation Plan that has been approved by the MVLWB, which in the City’s respectful position is a prerequisite to progressive reclamation taking place.

New quantities of waste materials are apparently still being discovered and/or quantified as per the e-mail message attached as Appendix “F”. The information in this e-mail message was brought to the attention of the MVLWB at the Public Hearing. It represents a revised (and increased) quantification of the calcines remaining on the mine site that require processing. Given that this type of information continues to come forward at this late date, it is the City’s position that the scope of the environmental assessment should be quite broad, capturing all of the proposed activities, so as to properly address the concerns of the City and its residents.

Cumulatively, it is for these reasons that the referral for an environment assessment of the Application is being made.

Conclusion

Pursuant to subsection 126(2) (d) of the MVRMA the City may refer the Application at issue for an environmental assessment "notwithstanding any determination on a preliminary screening". As such, the MVLWB's decision to not refer the Application is not a bar to the City choosing to do so itself. We look forward to receipt of confirmation both that the MVEIRB will be proceeding with an environmental assessment of the Application, and that it will be sufficiently broad in scope to address the concerns of the City and its residents.

If you have any questions or concerns arising from this correspondence, please feel free to contact me at your convenience at 920-5693.

Yours Sincerely,



Gordon Van Tighem
Mayor

cc. Scott Stringer, General Manager Northern Operations - Miramar Con Mine Ltd.
Todd Berlingame, Chair - Mackenzie Valley Land and Water Board
The Honourable Jim Prentice - INAC
Honourable Michael McLeod - Municipal and Community Affairs

encl.