



August 16, 2011

Mr. Vern Christensen
Executive Director
Mackenzie Valley Environmental Impact Review Board
#200 Scotia Centre
5102 – 50th Avenue
Yellowknife, NT X1A 2N7

Via email: vchristensen@reviewboard.ca

**Re: EA0809-002, Prairie Creek Mine, Canadian Zinc Corporation:
Request for Ruling**

Dear Mr. Christensen,

Please find the attached request for ruling by the Mackenzie Valley Environmental Impact Review Board under section 46 of the “Rules of Procedure for Environmental Assessment and Environmental Impact Review Proceedings” (2005). The request has been made in the required Form 2.

We thank you for consideration of this request.

Sincerely,

Eric Betsaka

Associate Superintendent, Nahanni National Park Reserve of Canada

cc Robert Kent, Field Unit Superintendent, Southwest NWT



Mackenzie Valley Environmental Impact Review Board

FORM 2

Request for Ruling

Name of Proceeding

Canadian Zinc Corporation – Prairie Creek Mine
(EA 0809-002)

TAKE NOTICE that a Request for Ruling will be made to the MVEIRB by

Parks Canada

(name of party making the Request)

at 15:00 (time) in Fort Simpson (via email) (place), in the Northwest Territories, on the 16th (day) of August (month), 2011 or as soon after that time as the Board may decide to address the Request.

The Ruling requested from the MVEIRB is as follows:

(State the relief sought as clearly as possible)

Delay the final submissions deadline and

- a) Require the proponent to provide an evaluation of the potential impacts, significance of impacts and identification of mitigative or remedial measures for water storage pond options.
- b) Require the proponent to provide a surface storage option for tailings after mine closure and an evaluation of the potential impacts, significance of impacts and identification of mitigative or remedial measures of that storage option.
- c) Provide adequate time (one month) and opportunity for all parties to review the information provided in (a) and (b) before final submissions are due.

The facts or information relevant to this Request for Ruling and which should be considered by the MVEIRB are as follow: (State the information relevant to the Request in as much detail as needed)

See attached Addendum 1

The authority or grounds for the Ruling which should be considered by the MVEIRB is as follows: (State the Rules or any law or enactment relied on and the grounds for the Ruling).

One of the stated purposes of the *Mackenzie Valley Resource Management Act* (Section 114 (b)) is:

to ensure that the impact on the environment of proposed developments receives careful consideration before actions are taken in connection with them

One of the guiding principles of the *Mackenzie Valley Resource Management Act* (Section 115 (a)) is:

The process... shall have regard to "the protection of the environment from the significant adverse impacts of proposed developments."

Section 117(2) of the *Mackenzie Valley Resource Management Act* requires an assessment of the impact of the development on the environment, the significance of any such impact and the need for mitigative or remedial measures.

There has been inadequate evaluation of the potential impacts of the potential changes to the project description. Further, there has been insufficient time for the recent proposed changes to the project to have been considered carefully by the parties.

AND FURTHER TAKE NOTICE that in support of this Request for Ruling the following documents or information have been attached (Set out all materials to be used to support the Request).

Dated at Fort Simpson, Northwest Territories, on (MM/DD/YY) __08/16/11__



(Signature of Party's Representative)

Addendum 1: Facts or Information Relevant To This Request for Ruling Which Should Be Considered By the MVEIRB

Part A

Require the proponent to provide an evaluation of the potential impacts, significance of impacts and identification of mitigative or remedial measures of the water storage pond options.

Possible Project Description Alterations

On August 3, 2011, Canadian Zinc Corporation submitted a letter to the Review Board that identified possible changes to their project description: an increase in the capacity of the existing pond or the construction of a new water storage pond. CZN indicated in that letter that it had not made any decision regarding the adoption of an additional water storage alternative. On August 9, 2011, a number of parties met with Canadian Zinc Corporation (meeting report being written) and we did not receive any commitments to any course of action with respect to these options. Parks Canada supports adding water storage capacity to mitigate impacts and risk; however, these options must be assessed to ensure they are appropriate and to ensure adequate mitigation is identified.

Assessment of Options

An assessment of these options is necessary to fulfill the requirements of the terms of reference of EA 0809-002 and the *Mackenzie Valley Resource Management Act* (MVRMA).

The “Terms of Reference for the Environmental Assessment of Canadian Zinc Corporation’s Prairie Creek Mine EA 0809-002” includes a requirement to describe all water collection, management and treatment system and all of its component parts, including...water storage facilities (3.2.5 (15)) and the impacts of the development on water (3.3.2) and fish and aquatic habitat (3.3.5) and the likelihood and consequences of accidents, malfunctions (3.3.2 (8)).

Section 117(2) of the *Mackenzie Valley Resource Management Act* requires an assessment of the impact of the development on the environment, the significance of any such impact and the need for mitigative or remedial measures. It also specifically indicates that the impacts of malfunctions or actions that may occur in connection with the development need to be assessed. An increase in the capacity of the exiting pond or the construction of a new pond would be part of the development and needs to be assessed. For the following reasons, the water storage pond options presented by CZN do not meet the EA requirements as set out in the MVRMA and therefore cannot be permitted (section 118(1) of the MVRMA).

As part of their submission on August 3, Canadian Zinc Corporation provided an assessment of the potential impacts of a new water storage pond on wildlife and vegetation, but did not provide

an assessment of the potential impacts on other aspects of the environment. For example, as the current water storage pond is immediately adjacent to Prairie Creek, increasing the capacity of this pond may include a need to build into Prairie Creek. Insufficient information has been provided to determine if building into Prairie Creek would be necessary. Insufficient information has been provided to determine if the new tailings pond could affect fish and fish habitat. Furthermore, they did not provide an assessment of the risk of accidents and malfunctions. The Canada Dam Association has provided guidance on what standards a dam should be built to in order to provide the appropriate level of risk, given the environment. While one could assume that a new water storage pond could be engineered to meet this standard, it is not clear if the existing water storage pond could be expanded so that it met this standard without impacting fish or fish habitat.

We believe the best way for Canadian Zinc Corporation to meet the requirements of the MVRMA would be for them to make clear which water storage option they will choose, if any. We do not feel it would be appropriate for Canadian Zinc to clarify this in their final submission as this has the potential to mitigate impacts to the aquatic ecosystem of Prairie Creek, the ecological integrity of Nahanni National Park Reserve of Canada and the water of the South Nahanni Watershed. The importance of water quality was highlighted by all parties and community members and the terms of reference highlighted its importance by making it the key line of inquiry. All parties should have the opportunity of responding to Canadian Zinc Corporation's decision with respect to water storage options and analysis of impacts.

Part B

Require the proponent to provide a surface storage option for tailings after mine closure and an evaluation of the potential impacts, significance of impacts and identification of mitigative or remedial measures of that storage option.

In Aboriginal Affairs and Northern Development Canada's technical report and at the technical hearing, questions were raised about Canadian Zinc Corporation's assertion that all tailings could be stored underground. It is our understanding that this issue remains unresolved. In response to our letter, on July 18, 2011 the Review Board stated "The current scope of development for the Prairie Creek Mine as presented by Canadian Zinc Corporation does not include placement of tailings in the waste rock pile". As a result, it remains unclear where the tailings that will not fit underground will be stored after closure and what the impacts of that storage option will be.

We believe the failure of parties to reach agreement demonstrates there is a level of risk in the prediction that all tailings can be placed underground. We believe when there is uncertainty on such an important matter, a precautionary approach should be used. The storage of tailings after mine life is important because it contributes to our predictions of the significance of the potential long term impacts of leachate from the mine on Prairie Creek and the ecological integrity of

Nahanni National Park Reserve. National parks are established for future generations and the impacts of this decision will be felt by those future generations because the tailings will be there forever. We believe it is important to ensure that the development's impacts on future generations are minimized.

We believe it is important that an option for storing tailings above ground be identified at this stage of the process to ensure the mine be developed in a manner that optimized mine design while minimizing impacts. For example, if the best location for additional tailings storage was the waste rock pile, it should be designed and permitted for tailings prior to use. If we wait until the end of the mine to define options for storing tailings above ground, some options may no longer be available, particularly given the limited space available in the narrow mountain valleys around the mine site.

Therefore we are asking that the proponent be required to identify an alternate storage option and the impacts assessed and mitigated. We feel it is important that parties have this information before the final submission stage because numerous parties have highlighted this issue and they should have an opportunity to comment on the proposal and the assessment of the proposal. We remind the Board of Nahanni Butte Dene Band's recommendation 2 (June 13th letter):

With respect to post-closure impacts, NDDB recommends that the public registry remain open for EA0809-002 until there is consensus between CZN, responsible authorities, and NDDB on the long-term efficacy, stability, and/or impact of the tailings disposal system

Part C

Provide adequate time (one month) and opportunity for all parties to review the information provided in (a) and (b) before final submissions are due.

As mentioned above, all of these issues affect water quality which is of interest to all parties and therefore it is appropriate that all parties have the opportunity to review and comment on the information. As a result, we do not believe final submissions should be required on September 6, 2011.