

YKDFN Information Requests – Round 2
Fortune Minerals – NICO Project
EA 0809-004

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IR Number: 1.1
Source: Yellowknives Dene First Nation
To: Fortune Minerals
Subject: Submission of Incinerator Management Plans

Preamble

Regarding Furans/Persistent pollutants YKDFN and the Company had the following exchange at the Technical Session:

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MR. TODD SLACK: Todd Slack, Yellowknives Dene. And I'd like to thank Barry for the opportunity to jump in here, because I can't be here Thursday afternoon.

7 In regards to the questions on the persistent pollutants, in Information Request 3.1 from the Yellowknives Dene, the Company commits to engineering the incinerator such that it will meet the Canadian guidelines. It commits to stack testing while burning sewage sludge. However, it doesn't commit to other stack testing, or it provides no commitments on what will be done when the emissions are detected, if they are detected, to exceed those Canada guidelines.

16 I'm wondering if the Company's in a position to provide a commitment on what they intend to do if they're exceeding guidelines, and what their testing regime will be for matters other than sewage sludge.

21 MR. RICK SCHRYER: Rick Schryer, Fortune Minerals. Our air quality isn't here. He was only scheduled to be here for Thursday, when air quality was supposed to be discussed. What I can say is that what we've tended -- what we want to do is

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1 develop an air quality management plan in -- with -- in cooperation with Dave Fox, from Environment Canada, so that we have a detailed plan that looks at those types of things. I can't say what the details are of that plan. We haven't done it yet.

6 I know that Chris Madeline, (phonetic) from Golder Associates, has already had discussions with Dave Fox, but I can't specifically answer your questions, simply because I -- you know, I'm not the one drafting the plan right now. I haven't seen it.

11 So, Todd, if you can't be here on Thursday, can I get you a written response once I've had a chance to talk to Chris Madeline about it?

14 MR. TODD SLACK: Todd Slack, YKDFN. Yeah, that would be great, if it can be for the -- whatever date we're talking about. That'd be great

On April 2nd, 2012, YKDFN sent an email with the above exchange and the following comments: “In reviewing the Day 3 transcript, I see that the plan is that you’ll meet these objectives, but there is no indication what contingencies there are if the guidelines are exceeded – obviously you intend to meet the guidelines, but what is the plan if you don’t? So what’s the monitoring and management response – is there even enough baseline information collected to be able to tell if you’ve had an impact?”

In YKDFN IR 3.1 the company indicates that it will meet the guidelines but does not respond to the request for a commitment to develop local baseline information or a plan for consideration of the Review Board.

YKDFN appreciate the companies commitment to meet the CCME guidelines and, in the future, develop appropriate management plans. However, there is no acknowledgement or commitment on how they intend to respond if exceedences occur. This is a significant issue as there is little in terms of possible regulatory response since this matter seems to fall at a crossroads of numerous governments and departments.

Secondly, there must be adequate local baseline information on the existing levels of persistence pollutants to allow the company and parties to determine if there have been impacts. Absent a suitable baseline, it will be impossible to know what effect the mine has had.

The development of a sufficiently thorough management plan with appropriate responses and baseline collection must be done at the Review Board stage, as there is no other regulatory mechanism for these commitments to be enforced. It is not acceptable to develop this at a later date with the MVLWB as neither the MVLWB nor Environment Canada have the ability to enforce the commitment to the guidelines. The MVEIRB is the only tribunal or regulator that has a sufficiently broad mandate and the ability to respond on this issue.

Request

YKDFN are again asking for the submission of an incinerator management plan which contains commitments on how the company will respond to events of non-compliance with the guidelines and how they intend to monitor the local environment for effects.

IR Number: 2.1
Source: Yellowknives Dene First Nation
To: Fortune Minerals
Subject: Caribou Cumulative Effects – Cumulative Study Extent

Preamble

YKDFN IR 2.3 sought to have the developer prepare a more realistic cumulative effects study. Within this, we sought to have a series of additional mine proposals and likely mines included as part of the study – with their accompanying Zone of Influences (as opposed to their inclusion as camps). The suggested projects all meet the criteria laid out by Golder as “Reasonably Foreseeable Developments”.

Subsequently, the developer has submitted a technical memo entitled “Disturbance to Caribou from Future Development at Multiple Scales” which considered several of these projects but did not include Sabina’s Back River project (Producer Development Report likely submitted very soon) or the Xstrata Hackett River project (Draft Environmental Impact Statement anticipated 2nd quarter 2013).

In the IR 2.3 response the company states that “limiting the study area to a boreal region allows a more precise estimation of the effects of the NICO project to caribou”. YKDFN strongly disagree with this approach – cumulative impacts to this critical resource is across the annual range of the herd, not just limited to the seasonal habitats that the mine falls within. Limiting the analysis presents an incomplete and insincere approach to effects analysis. The Terms of Reference make this clear:

***TOR 2.2.3 Other scope of assessment considerations** states: “The scope of assessment will include an examination of cumulative effects. This will involve considering impacts from other past, present and reasonably foreseeable future developments or human activities that combine with the impacts of the NICO Project to affect the same valued components. Such cumulative effects will be assessed at a spatial and temporal scale appropriate to the particular effect or valued component under consideration.” [underline added]*

The YKDFN suggested approach is the same utilized in the Talston EA (Deze Energy; pg. 12.1.3), which was completed by Golder:

Beyond the seasonal home ranges, the spatial boundary for quantifying baseline conditions and assessing Project-specific (incremental) and cumulative effects from development was defined by the annual home range of the Bathurst caribou herd (Figure 12.1.2). Using the annual home range to define the area beyond RSA is appropriate because this area includes all of the natural factors, human activities, and additional developments that can produce cumulative effects on the Bathurst caribou herd... Natural factors, such as predation, insects, traditional

and non-traditional harvesting, and habitat also can vary across the annual home ranges of the caribou herds. Thus, the annual home range provides an ecologically relevant spatial scale to assess the effects from the Project, other developments, and natural factors on caribou herds”.

The companies assertion that because the impacts from this project occur only within the winter range and the cumulative effects should be addressed on that scope is an empty statement – the only scale for cumulative effects analysis must be on the annual range of this most important of valued ecosystem components. The failure to provide this information presents an incomplete picture to the Parties and the Board, meaning that there will likely be significant concerns with the project.

Request

- 1) YKDFN request that the CE study be completed in a manner that truly reflects the full range of impacts to caribou across their range.

- 2) During Technical Session and subsequent discussions, Golder stated that the level of development would be higher within the treeline and that they had evidence to support that which wasn't ready for submission. The technical memo seems to suggest that the level of development is higher on the barrens. Can the company provide a plain language discussion which clarifies the situation?

IR Number: 2.2
Source: Yellowknives Dene First Nation
To: Fortune Minerals
Subject: Demographic Impacts

Preamble

In YKDFN Information Request 2.1 there was a request that the company consider the impacts of the mine, as well as cumulative impacts, on the herd's demographics. The company response was "Assessment of impacts to demographic projections is beyond the scope of the Terms of Reference". The company also states "The effects of the NICO Project are assessed not in the context of the current low caribou population" (YKDFN IR 2.8 Response). YKDFN disagree and point out that the terms of reference clearly state the opposite. Section 3.3 of the Terms of Reference reads:

"Long-term project effects on caribou should specifically focus impact predictions in the context of the current serious decline in caribou populations, particularly the Bathurst herd"

This specifically discusses the impacts in the context of population. The company is blatantly incorrect to evaluate the impacts of development as though they are divorced from the values that they are affecting.

YKDFN appreciate the companies increased openness to thorough cumulative effects analysis, but simply determining the impacted habitat is only a part of the story – for YKDFN the real issue is what this (and other) projects will do to the recovery of the caribou herd. The First Nation has been forced to make significant sacrifices – including the alteration and suspension of their constitutionally protected rights – to aid the herd recovery, forcing members to travel hundreds of kilometers from the normal hunting areas at great expense to secure the meat that they rely on to survive. Impacts from development that may prolong this situation are of the greatest significance and the failure to provide adequate demographic information forces the YKDFN to assume that the project will impact the herd recovery. This would represent a significant impact to the membership of the YKDFN.

Request

YKDFN request that the company complete an analysis which considers and predicts the impacts from direct and indirect development to the Bathurst Caribou herd population.

IR Number: 2.3
Source: Yellowknives Dene First Nation
To: Fortune Minerals
Subject: Roads and Caribou

Preamble

Golder staff committed to providing work that considered the likelihood of collared caribou interacting with the proposed road. Staff at the session were able to present information from the last five years, but they could not show if there would have been intersections from the collars prior to that. It's YKDFN's belief that this data had been evaluated as well, but had not been submitted as part of the DAR or subsequent information documents.

Request

- 1) YKDFN request that the company complete an analysis that examines the likelihood of road/collared caribou interactions for the entire period.
- 2) When the company discusses the likelihood of caribou and road interaction, YKDFN requests that the company also consider the results of the aerial surveys and the snow track surveys, which seem to show clear use of the NPAR corridor.

IR Number: 2.4
Source: Yellowknives Dene First Nation
To: Fortune Minerals
Subject: Study Area

Preamble

On January 23rd, 2012, the Yellowknives Dene received two virtually identical wildlife research applications. One was for Fortune Minerals Nico Project while the other was for De Beers Gahcho Kue project. Both projects had the same identical objectives:

- a) To further describe the occurrence, relative abundance, distribution and habitat use of wildlife in the study area
- b) To predict effects to the environment and wildlife from Project development
- c) To provide baseline data for testing environmental effects predictions and the effectiveness of mitigation
- d) To guide further mitigation and adaptive management for reducing unexpected effects.

While YKDFN support the collection of basedata to support these objectives, we support the collection of a thorough dataset that contains enough rigour to allow decision makers to respond to the type of issues described in the objectives. YKDFN are concerned that the vastly different study areas applied shows a significant lack of consistency in terms of study approach. Responsible development requires consistent methods and best practices of research being applied.

Roughly assuming that the projects are similar in scope, one can make the rough assumption that the basedata required to achieve these objectives would be roughly equivalent. However, it becomes quite clear upon review that the survey effort is very different for these two projects. The Fortune Project sees a survey effort of 15km from the site (700km²), while the Gaucho Kue project uses a study area of 70km x 80km (5600km²). Lastly, both projects are at the same environmental stage in terms of regulatory review so the need for environmental data should be similar.

Request

YKDFN request that the project explain how they can achieve the same objectives as the similarly sized Gahcho Kue project while having a much smaller study area. Part of this discussion should include how these respective levels of information will allow the listed objectives to be met.

IR Number: 2.5
Source: Yellowknives Dene First Nation
To: GNWT and AANDC
Subject: Cumulative Effects Monitoring and Adaptive Management Linkages

Preamble

In section 8.10 the company does not propose any cumulative effects monitoring or links for adaptive management related to surrounding events. YKDFN have observed the other mines in the territory divesting themselves of cumulative effects assessment responsibility after permitting. Thus, it is important that the responsible authorities submit a clear plan indicating their intention and commitments when it comes to any monitoring beyond what could be described as project specific.

Request

YKDFN request that the GNWT and AANDC complete a cumulative effects monitoring plan with appropriate linkages to adaptive management mitigations.

IR Number: 3.1
Source: Yellowknives Dene First Nation
To: Fortune Minerals and AANDC
Subject: Security Bond

Preamble

During the period between the technical session and this round of information requests, YKDFN sent the following email:

From: Todd Slack
Sent: February 24, 2012 11:37 AM
To: Paul.Green@aandc-aadnc.gc.ca; RSchryer@fortuneminerals.com
Cc: Chuck Hubert
Subject: Security Deposits

Hi Paul/Rick.

During the Fortune sessions, John Brodie and Ken Bocking(?Golder guy) were asked if they could provide examples of situations where a company had folded and how the security performed. There was a lot of back and forth about how there were sites that had closed with security and it was all under control – but they were, as far as I could tell, unanimously purchased by other companies which assumed the liability. The second fallback position was that a lot of these mines had started up a long time ago, where the instruments weren't available. Not that I don't understand this, but I don't see how it's relevant to the discussion. Simply because the government imposed weak closure requirements in the past isn't a great reason to not ensure that the people who rely on the land and water aren't the victims of a future government's choice between spending money to remediate the site or allowing environmental degradation. This isn't a case of the company potentially choosing to walk away from a liability because it would be profitable – it's a case of there being no ability to respond to risk after year 20.

So I am still looking for a case where the security deposit performed as expected – where the company has closed and stuck the govt with the problem, but the money was sufficient. At this point I'm not even considering if the eventual closure case was more severe and costly than predicted, just give me an example where a bond existed and covered costs.

Otherwise it makes no sense to accept John Brodie's view that the worst case scenario isn't what should be securitized against, as there will be no recourse for the taxpayers if that's what indeed happens. If this mine proceeds, obviously we all hope Mr. Schryer's prediction for the liability down the road is correct – that it turns out to be minor and thus easily addressed within the environmental bonding – but I remain to be convinced why the risk and potential costs associated with a case other than the expected should fall on the residents of the North and Canada, with the First Nations as the people primarily exposed to the environmental legacy that would need to be remediated.

Regards,

YKDFN has not received any response from the Parties or the proponent as to why the full (100% of expected costs + unforeseen contingencies) security should not be posted. This company, at present, will have little to no ability to respond to changing conditions or incorrect predictions after the end of production – and the current closure scheme sees a great deal of liability deferred far into the future. The federal government has assumed the better part of a Billion dollars of remediation costs following the Royal Oak bankruptcy – there should be absolutely zero risk that this type of event may again happen in the future.

Request

The YKDFN would like the company and AANDC to discuss why the full amount of security would not be required for this project, given the current lack of financial flexibility.

IR Number: 3.2
Source: Yellowknives Dene First Nation
To: Fortune Minerals
Subject: Closure Terminology and Structure

Preamble

In YKDFN IR 4.3, the company was asked to provide additional closure information that would be more consistent with the best practices and guidelines that have been developed for mineral projects in the NWT. This desire is consistent with the mineral industries oft-cited mantra of ‘planning for closure’. Given the level of information available, it does not feel as a significant planning effort has gone into the closure scheme.

The absence of a more thorough approach creates significant concern within the YKDFN that the potential for another inadequately closed minesite exists within the Bathurst Caribou range.

Request

The lack of collectively developed goals and objectives, a list of mine components, and a lack of recognized information gaps greatly limits the ability of the parties to approach this project in a cradle to grave manner (i.e. designing for closure). YKDFN request that the company reconsider their approach to closure planning and provide the parties with a plan that is more appropriate and useful both during the EA but also into the future. This would be consistent with the best practices and provide an opportunity for early incorporation of lessons learned in other developments.