

YUKON WATER BOARD  
REASONS FOR DECISION - WATER USE APPLICATION MN05-058  
TOWN OF FARO

The Yukon Water Board (“the board”) has concluded deliberations regarding water use application MN05-058, which is an application for a type A licence for municipal undertaking, submitted by the Town of Faro (“the Town”).

An assessment of this project was conducted by the Yukon Environmental and Socio Economic Assessment Board. A Decision Document was issued by Government of Yukon and included in the water use register.

Notice of application and public hearing was provided in accordance with the requirements of the *Waters Act*. In response, the board received interventions from Government of Yukon, Environment Department (“GY”) and from Ross River Dena Council (“RRDC”).

A public hearing into this application took place, in Whitehorse, on June 6, 2006.

The Application

Initially, the Town applied to renew water use licence MN00-030. That licence expired prior to the public hearing.

The Town did not propose any changes to the water distribution or sewage collection and disposal systems. The sewage lagoon facility consists of four cells, totalling more than 7 hectares in area. The previous licence authorized a discharge from the final treatment lagoon to the Pelly River, subject to specific effluent standards. At the hearing, the board heard that the lagoon system was designed for a much larger population than currently exists and that, in fact, there has never been a discharge.

During the hearing, the Town made several references to the “Stantec Report”. This report, dated December 1999, was submitted as part of Application MN00-030. For that reason, and in order to have a more complete understanding of the water and sewer systems, the board determined that the register for MN00-030 should be added to the current water use register, as exhibit 8.2.

Memorandum of Understanding

At the hearing, the board accepted, as exhibit 5.2.2, a copy of a Memorandum of Understanding, between RRDC, Town of Faro and the Yukon River Inter-Tribal Watershed Council (who were not a party to this application). The board has incorporated some components of the MOU into the water use licence.

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Discharge Period

In exhibit 5.2.2, and at the public hearing, the Town agreed that there will be no discharge from the final lagoon to the Pelly River during the months of July and August. The board is satisfied that a prohibition against discharge in July or August is a reasonable and achievable licence condition, particularly since there has never been any discharge.

Exhibit 5.2.2 provides for an emergency discharge during July and August, subject to notice. The board has not included this in the licence, as it was not presented with any evidence to support that provision. No discharge is authorized during the months of July and August.

Notice of Discharge

In exhibit 5.2.2, the Town agreed to notify RRDC and the Yukon River Inter-Tribal Watershed Council ten days prior to discharge. The MOU specified the notice author and recipients by title, but the board has not made this a licence condition, since titles may change, and because notice to the appropriate organizations is sufficient.

In their intervention, GY recommended that the licence include a requirement to notify GY ten days' prior to discharge. GY also advised that they had made a slightly different recommendation to YESAA, and that this recommendation was included in the Decision Document, as follows:

“Notice shall be given to the local population, the Ross River Dena Council, and the Water Inspections Unit prior to the period of effluent discharge into the Pelly River and any potential risks that may be associated with the discharge”.

The board has not included this requirement in the water use licence. The language is unclear, and it would be unreasonable to require the Town to notify the “local population” without some precision as to who that would include, or how that could be accomplished. The licence also does not require that the notice describe “.. any potential risks that may arise...” because the Town can only discharge according to the licence, and the licence includes appropriate terms and conditions to mitigate potential risks. Section 86 of the *Yukon Environmental and Socio Economic Assessment Act* requires that the board cannot set terms of a licence that conflict with a decision document; but it does not remove the board’s responsibility to determine appropriate water licence terms.

In summary, the board has determined that, prior to discharge, the Town must notify the board, Government of Yukon Environment, and the Ross River Dena Council. Any other notices that the Town may chose or agree to provide are not requirements of the water use licence.

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Monitoring

In exhibit 5.2.2, the Town agreed to conduct annual testing for specified parameters at the effluent transfer point from Cell 3 into Cell 4 “in conjunction with other annual testing required”. With the exception of a bioassay during discharge from Cell 4, the previous licence did not require any annual testing.

The board understands that the rationale for annual testing between Cell 3 and Cell 4 is to ensure that the contents of Cell 4 will not be harmful to wildlife, since that cell will not be fenced.

The board has added the effluent transfer point from Cell 3 to Cell 4 as a monitoring site. The analysis requirements are similar to those at the discharge from Cell 4, except for a bioassay and flow measurements, which are not required. The analysis will be required annually, but only if there is a flow from Cell 3 to Cell 4.

Multi Year Maintenance and Upgrading Plan

In 2000, the board considered, as part of the water use register MN00-030, a report referred to as the 1999 Stantec Report. When that licence was issued, the board considered, and rejected, a recommendation that the Town should comply with the recommendations of the Stantec Report.

Instead, clause 23 of licence MN00-030 required the Town to prepare a more comprehensive report which would identify the components of the sewage collection system that required repairs in order to avoid an uncontrolled release of sewage. The Town was also required to explain how and when such repairs would be undertaken, and to address that matter in each annual report.

The board is concerned that, at the hearing for this application, it became evident that the Town did not comply with the requirements of the previous licence. The Town has apparently relied on an ad-hoc and as-needed approach to maintaining the sewage collection system, with some reliance on the 1999 Stantec Report. This is not satisfactory.

The board remains concerned about the overall integrity of the Town’s water distribution and sewage collection system. Information provided at the hearing confirmed that this is an old system, designed for a larger community, and that it is in need of repairs, of which there does not appear to be a comprehensive understanding. The efforts of the Town’s representatives to maintain the system, as described at the hearing, are commendable but insufficient.

The Town must take a pro active approach, and it must embark on a comprehensive, multi-year project to examine the systems, and to develop, implement, and report on, a formal plan for maintenance and upgrading.

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The licence requirement for submission of a report by September 2008 recognizes that preparation and implementation of the plan will require significant time and resources as well as specialized professional assistance.

The requirement for progress reports beginning in March of 2007 emphasizes that the board intends for the Town to embark on this project immediately.

The board acknowledges that this will be a large project for a small community that may not have the resources immediately available. However, the Town must meet this challenge.

Term of Licence

The Town requested a 25 year licence. In light of the Town's failure to comply with the requirements of the previous licence, and particularly since it appears that this failure was not identified until that licence expired, the board decided that the term of this licence should be significantly shorter, to ensure that the requirement for the multi year maintenance and upgrading plan is not disregarded.

The board expects the Town to submit the application for a new licence concurrent with the submission of that plan, in September of 2008. The licence expiry date of 2009 allows an additional year for completion of the environmental assessment and licensing processes related to that new application.

Conclusion

The Yukon Water Board has agreed to issue water use licence MN05-058, subject to the approval of the Minister of Executive Council Office.

September 8, 2006

Bruce Willis, Chairperson