

**TR'ONDĒK HWĒCH'IN COMMENTS**

<b>Water License #:</b>	<b>PM08-616 (Amendment to PM00-173)</b>		
<b>Proponent:</b>	<b>Ralph Troberg</b>		
<b>Date:</b>	January 11, 2010		
<b>Contact:</b>	Bill Kendrick		
<b>Department:</b>	Natural Resources	<b>Branch:</b>	Land and Resources
<b>Submitted to:</b>	Assessment Officer YESAB Dawson Designated Office Box 5060 Dawson City, Yukon Y0B 1G0		

**Settlement Land*****Tr'ondĕk Hwĕch'in Land and Resources Act***

As you are already aware, the Tr'ondĕk Hwĕch'in (TH) Land and Resources Act provides authority for the application of reasonable terms and conditions while Tr'ondĕk Hwĕch'in Settlement Land is being utilized for development activity involving pre-existing mineral claims in good standing. To this end, a TH Land Use Permit will be issued for this project.

The ability for TH Lands enforcement staff to freely access Settlement Land must be respected so that the First Nation can, for example, inspect for unnecessary damage or confirm conditions of access to its land. The Tr'ondĕk Hwĕch'in must continue to have the ability to use and peacefully enjoy Settlement Land R-20A.

As a Decision Body, TH approved the joint Decision Document (GY and TH) issued for this project but does not agree with many of the Government of Yukon's NOTES pertaining to sections of the Decision Document.

**Heritage Resources**

In the event of a heritage resource discovery, TH must be immediately notified. Please note that we ask for notification if any "heritage resource" is discovered. This term "heritage resource" is more broadly defined than "archaeological sites and burial grounds," the working definition that has been contained in previous water licenses and land use approvals. Please note that the definition of Heritage Resources in the TH Final Agreement is broader than the comparable definition used by the Yukon Government. TH is asking to be notified if any evidence of "heritage resources" is found, not simply if an "archaeological site or burial ground" is found.

In the Decision Document for this project, YG notes that it is "not clear" to them why the Yukon Historic Resources Act and Regulations are not adequate to eliminate significant adverse effects. Perhaps they have not read numerous YESAB Evaluation Reports that detail how heritage resources

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## TR'ONDĒK HWĒCH'IN COMMENTS



are more broadly defined than "archaeological sites and burial grounds." In other words, something reported to YG Heritage may not end up being considered a resource that falls under the Yukon Historic Resources Act, even though it may be a "heritage resource" according to the TH Final Agreement; therefore the situation could occur that there is no determination that a "heritage resource" has been located. For this reason, YESAB simply recommends that all reporting be made to the First Nation, as it too is obligated to contact YG (broader definition includes everything that would fall under the YG Heritage mandate).

Failure to report a heritage resources find to the TH could lead to a significant socio-economic adverse effect as well as a breach of TH's treaty rights. Please abide by the Decision Document and YESAB's recommendation by writing into the water license and land use approval the requirement that TH is to be immediately contacted in the event of an accidental heritage resource discovery.

Please look at section 13.8.7.1 and section 13.8.7.3 of the TH Final Agreement. It is through a joint process, with consent of both the Chief of Placer Land Use and TH, that such areas can be further disturbed. Please note the language of 13.8.7.3: "A Person shall not further disturb... unless permitted by Laws of General Application, *and* that person obtains:... the consent of the Tr'ondëk Hwëch'in." [emphasis added]

Again, note that TH must report any accidental discovery to YG (13.8.7.6). By indicating in the YWB-issued license that the proponent must contact TH, all reporting requirements are covered and the recognition is also made that TH has a broader definition of heritage resources.

### Terms and Conditions for inclusion in Water License:

- Any heritage resources located by the proponent while working in TH Traditional Territory shall be reported to the Tr'ondëk Hwëch'in Heritage Department at (867) 993-7100. Information regarding the location of these resources is appreciated (for example, GPS coordinates and descriptive location, photographs, etc).
- Any heritage resources, including but not limited to archaeological, palaeontological, historic resources and burial sites, that are located or discovered by the applicant on Settlement Land must be reported to the Tr'ondëk Hwëch'in Heritage Department at 993-7100.
- Any heritage resource sites must be immediately marked and protected from further disturbance, and as soon as practicable the discovery reported to the Tr'ondëk Hwëch'in. No further activities may be carried out within 30m of the site until the Tr'ondëk Hwëch'in indicate, in writing, that the activities may be resumed.

### Fuel Spill Management

Tr'ondëk Hwëch'in land parcel R-20A is both within and downstream from the project location, clearly making the Tr'ondëk Hwëch'in a potentially affected party and responsible authority. In the event of a fuel or oil spill, TH Settlement Land will be affected. In order to best mitigate the significant adverse effects of such an unforeseen circumstance, it is most desirable to have broad reporting requirements **so that the regulatory authority most able to respond at the time is immediately informed and therefore able to respond.**

The joint decision document for this project states that TH shall be notified of reportable fuel spills on

## TR'ONDEK HWĒCH'IN COMMENTS



Settlement Land. We ask that the applicable sections of the Water License include a clause that requires the licensee to contact TH.

It appears that including this clause in the Mining Land Use Approval is not adequate. Please refer to the YWB's "Reasons" document for the Water License PM08-600: In the second paragraph of the TH comment section, the YWB writes "the board has included in the Placer Mining Land Use Approval as a standard clause if the operation is on TH Settlement Lands, that the operator contact TH in the event of [a] fuel spill". However, further down in this same document, 2nd paragraph of pg. 3, "the Board noted that the Placer Mining Land Use Approval would not apply on TH Settlement Land R-20A, but the water license will apply on settlement land R-20A." So, if something doesn't apply to settlement land, it is unclear how a clause to contact TH if something occurs on settlement land can be valid. To conclude, the proper place for such a simple request is in the Water License.

### Terms and Conditions for inclusion in Water License:

- The proponent shall clearly mark with stakes or flags the location of any reportable petroleum spill, oil spill, or hazardous material spill, as defined under the Yukon Spill Regulations pursuant to the Environment Act, and forthwith report the time, manner, location, amount and type of spill to the Tr'ondëk Hwëch'in at (867) 993-7100, to the Yukon Government Protection Service by phone at (867) 667-7244 or fax; 667-7962, and to Dawson Mining Inspections at (867) 993-7300. The Yukon Government's Chief of Placer Land Use must also be notified in writing, no later than 10 days after any emergency measures have been taken to prevent harm to the environment.

### A note on Regulatory Response Time

Concerning the above requirements that TH are to be notified in the event of an accidental heritage resource discovery or fuel spill, there is also the additional benefit that must not be underestimated, namely response time. As with all government regulatory authorities, there can be times when key staff is absent, when staff have unexpectedly quit their positions, or when staff turnover sees new staff come on without adequate training, etc. Any such scenario makes timely government response a challenge. Broadening the reporting requirements in the water license to the two applicable governments can allow for significant adverse effects to be dealt with more expediently.

For example, if a fuel spill is reported to multiple authorities when it occurs, there is a good chance that one entity may be better suited at the particular time to respond. In the event of a heritage discovery, the identification/mitigation process needs to be started as soon as possible. By quickly dealing with any such challenges, the point is to deal with them quickly and efficiently so that the mining operation can resume and valuable time is not lost in what is a short operating season.

To conclude, what TH is requesting here with this water license is very reasonable; simply broaden a couple of key notification processes to include the Tr'ondëk Hwëch'in.

### For Further Information

Please contact Bill Kendrick at (867) 993-7105 or at [bill.kendrick@gov.trondek.com](mailto:bill.kendrick@gov.trondek.com) if you have any questions, concerns, or require additional information about this Yukon Water Board comment submission ("intervention").

Signed:

Jan. 11, 2010