

Reasons For Decision
Water Use Licence QZ03-058
Deloitte and Touche Inc.
Freshwater Dam - Anvil Range Mine Site

Water use application QZ03-058 is an application for a Type A water use licence for a Quartz Mining Undertaking at the Anvil Range minesite at Faro. The applicant is Deloitte and Touche Inc., in its capacity as Interim Receiver for Anvil Range Mining.

Notice of public hearing was provided in accordance with the requirements of the *Yukon Waters Act*. In response, the Board received interventions from:

Town of Faro (“Faro”)
Government of Yukon, Environment (“GY”) and
Indian Affairs and Northern Development Canada (“DIAND”)

A public hearing into the application was held in Whitehorse on September 16, 2003.

These reasons address only those areas where the licence differs significantly from the application and/or the recommendations of the interveners, or where the Board has determined that further elaboration will be helpful.

Prior to making the licencing decisions, a review of the application pursuant to the requirements of the *Canadian Environmental Assessment Act* (“CEAA”) was undertaken by Fisheries and Oceans Canada and DIAND prior to devolution. After devolution, Government of Yukon became a Responsible Authority. In exhibit 9.2, Government of Yukon advised that all three RA's determined that the project is not likely to cause significant adverse environmental effects provided that the specified mitigation measures are implemented.

The Board encountered considerable difficulty in determining, from the “CEAA Screening Environmental Assessment Report” that was submitted as exhibit 9.2, precisely what mitigation measures were specified in the report.

A preliminary draft licence was prepared for discussion purposes prior to the hearing, and was distributed to all parties as exhibit 8.1. At the hearing, GY confirmed that the draft licence (exhibit 8.1) addressed all of the mitigation that was specified in the CEAA screening, particularly because the draft licence included a requirement to comply with the application and the application included an environmental management plan which appears to be the specific mitigation in the CEAA screening. Similarly, but in the interests of certainty, the Board also sought and received, from GY, an assurance that the screening did not require any mitigation that was not included in the draft licence.

At the public hearing, the Applicant submitted a revised draft licence (exhibit 6.1), which, in this instance, was not helpful to the Board. The draft was submitted late in the proceedings and the Applicant could not respond to many Board questions about specific clauses, explaining, instead, that this was a consensus document by several of the parties. The Board's Rules of Procedure, which were made available to all parties well in advance of a hearing, do not accommodate the notion of a group submission by some of the parties, where no party is willing to claim ownership. It is possible that some of the parties may have misunderstood the Board's responsibilities under the Act and thought that, if all or most of the parties were in agreement, then the Board should adopt their recommendations without further examination. However, the Act clearly requires that the Board must determine appropriate licence conditions. To assist the Board in making this determination, parties must be prepared to provide a rationale for their recommendations, to defend their recommendations to the other parties, and to respond to questions from the Board and from any other party to the hearing.

In issuing the licence, the Board accepted the Applicant's contention that the freshwater dam and related facilities were no longer required for the purposes of mining, and that the safety of those facilities is of sufficient concern that the dam should be breached.

There was considerable discussion at the public hearing regarding the measurement of Total Suspended Solids at the work site and the establishment of appropriate monitoring locations. In its deliberations, the Board carefully considered the issue of sediment releases not only from the breach excavation site, but also from the exposed reservoir bottom. Reluctantly, the Board accepted the Applicant's contention that providing a facility to settle sediments that might be eroded from the drained reservoir would not be feasible due to its very large size.

Accordingly, the Board determined that the appropriate location for measuring upstream Total Suspended Solids for compliance purposes should be immediately upstream of the dam. In addition to this point, the Board established four other monitoring locations, including one at the Gun Club access road that the Board considered to represent the true background conditions in the reach of the South Fork of Rose Creek under consideration.

The Board determined that measurements of Total Suspended Solids for compliance purposes should be made daily during construction of the breach, as compared to the Applicant's suggestion of weekly. Following the completion of construction, the Board determined that measurements of Total Suspended Solids in the South Fork of Rose Creek should continue to be made annually for the term of the licence, as compared to the Applicant's suggestion of only in 2004. This information will permit an assessment of the magnitude of sediment erosion from the base of the drained reservoir. The Board concurred with the Applicant's suggestion of twice monthly measurements in the months of April to August, inclusive.

In addition to Total Suspended Solids, the Board determined that flow measurements should also be made in the South Fork of Rose Creek during the remainder of the term of the licence following the completion of construction. The Board considered that flow measurements would permit the development of a correlation between the erosion of sediments from the reservoir floor and creek flows.

Similarly, the Board determined that the inspection and assessment of the performance of the breach following construction should be carried out annually for the term of the licence rather than only in 2004 as proposed by the Applicant.

With regard to the management of potentially acid generating materials resulting from the work, the Board saw no value in requiring that it be tied to a future overall closure plan. It is clear to the Board that the management of such materials, in various locations, will be a key consideration in that plan.

Regarding runoff from potentially acid generating materials, the Board set the same compliance requirements as those contained in the existing licence QZ95-003, except that it removed the standards for ammonia and cyanide as it considered that there was no likelihood that those substances would be contained in the material. The Board included a requirement to monitor the temperature of runoff, as it is a field-measured parameter that is typically collected with other parameters such as conductivity.

In the draft licence that the Applicant submitted at the public hearing, various alternative wordings to those contained in the Board's draft licence were presented. The Board reviewed the Applicant's suggestions, accepting some and not others. In some cases, the Board agreed that the Applicant's wording was better. In others it could identify no real improvement. Without addressing all of the differences, the Board has the following comments:

- ▶ The Board considers that everything that is contained in the Application forms part of the licence, and that it is unnecessary to list all of the constituent parts of the Application.
- ▶ Similarly, with regard to the submission of reports to the Board, the Board considers that all information that the Applicant has stated in its Application that it will submit is thereby deemed to be required, as the Application forms a part of the licence. Consequently, the licence does not specify a list of submissions, although additional submissions established by the Board are identified in licence clauses.
- ▶ The Board considers that all design parameters that are specified in the Application form part of the licence and therefore do not need to be repeated in the licence.

- ▶ The Board's practice is to direct correspondence to the Licensee and not to other parties, although the Board notes that all such correspondence is in the public domain and is available for viewing at the Board's office. The Board considers that it is up to the Licensee to distribute such correspondence as it sees fit.

The Board has concluded its deliberations on this matter and has agreed to issue Water Use Licence QZ03-058, subject to the approval of the Minister of Executive Council Office.

Vice Chairperson
YUKON WATER BOARD

October 24, 2003