

Water Use Licence QZ03-059
Deloitte and Touche Inc.
(in its capacity as Interim Receiver of Anvil Range Mining Corporation)

Water use application QZ03-059 is an application for a Type A water use licence for a Quartz Mining Undertaking at the Anvil Range minesite at Faro. In May, 2003, Deloitte and Touche Inc., in its capacity as Interim Receiver of Anvil Range Mining Corporation, submitted an application to “consolidate, amend and renew” two water use licences for the Anvil Range mining site (QZ95-003 and IN89-002). Both licences would expire on December 31, 2003.

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

Selkirk First Nation (“Selkirk”)
Indian Affairs and Northern Development jointly with Government of Yukon (“DIAND”)
Town of Faro (“Faro”)
Ross River Dena Council and Kaska Nation (“RRDC”)
Government of Yukon, Environment, (“GY”)
Environment Canada jointly with Fisheries and Oceans Canada (“EC”)

A public hearing into the application was held in Faro in October, 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.

Environmental Assessment Act

Government of Yukon, Executive Council Office, conducted an environmental assessment of the application, and the screening report was included in the water use register as exhibit 9.1.

Financial Responsibility

The Waters Act requires that the Board must be satisfied that the financial responsibility of the Applicant will be adequate for the completion of the appurtenant undertaking, and the mitigative measures that may be required. In this case, the appurtenant undertaking is the care and maintenance of the site.

In their intervention, RRDC were concerned that the Applicant had not provided evidence of financial responsibility. At the hearing, the Applicant, together with DIAND, provided information that the Interim Receiver is funded by DIAND and, if the Interim Receiver no longer was on-site, the Government of Canada would assume responsibility. RRDC advised that this satisfied their concern. The Board concludes that the Applicant has satisfactorily addressed the issue of financial responsibility.

Security

Considering the information provided at the hearing regarding the financial responsibility of the Applicant, together with the fact that the Government of Canada will be responsible for the site, as well as the amount of security that is already held by the Government of Canada, the Board has determined that security will not be a requirement of this licence.

Economic Benefits

RRDC recommended that the License should include requirements for the Licensee to provide economic and training opportunities to the Kaska. The Licensee advised that they would, to the extent possible, provide employment and training opportunities to the communities of both Ross River and Faro.

The Board does not have jurisdiction regarding the hiring or contracting policies of a Licensee, and therefore has not included any requirement of this nature in the water use licence.

Term of Licence

There was general agreement among the parties that the term of the licence should be five-years; although EC was concerned that the term should be tied to a requirement for progressive reclamation of the site and that there should be no delays in reaching final reclamation. Somewhat similarly, Faro was in agreement with a five-year term, but considered that a discussion of the long term goals was needed now. The Board was clear that the scope of the application and the public hearing would address only the care and maintenance of the site and not its final closure. Nevertheless, the Board considers that in requiring various studies and plans to be carried out and submitted over the five-year period, including the final closure plan, the apparent objectives of EC and Faro have largely been met.

Separate or Combined Licences

The overall mine site was previously covered under two licences; IN89-002 covering the Vangorda portion of the project, and QZ95-003 covering the Faro portion. The Applicant requested that the two sites be covered under one licence. All parties were in agreement with this, except for Faro who explained that it was more concerned with the Vangorda portion of the project in relation to its potential impact on the municipal water supply. It also noted that it was concerned about the potential for diminishing the requirements for one watershed with those of the other.

The Board was not convinced that the concerns of Faro were well founded, and could see no clear reason why the two licences should not be combined. The previous requirements for the two mine site areas have been brought forward into the new licence, and specific requirements relating to the municipal water supply have been included.

In combining many of the requirements of the previous two licences, the Board has made a number of changes in structure and wording to meet its current standards and practices.

Studies and Plans

RRDC recommended that the licence should include a requirement for the Licensee to integrate traditional knowledge with modern science and technical methodologies in the design and implementation of required studies. The Applicant confirmed that they intend to integrate traditional knowledge in some studies. Both parties recognized that the Licensee's ability to comply with a requirement to integrate traditional knowledge would be dependant on the availability of that traditional knowledge, and the solution proposed by RRDC was to require integration of traditional knowledge "where appropriate", but this proposed language is not sufficiently clear to capture what appears to be the intent of both parties.

Recent Board decisions have reflected a philosophy that a water use licence should set out objectives for studies and plans, and should not be overly prescriptive about details. In this case, this is a short term licence and the Licensee will rely on many of the studies to support its next application, and it would be in the Licensee's interest to develop those studies in cooperation with the other parties, and to take advantage of all available sources of information and methodologies, particularly traditional knowledge. Moreover, the unique circumstances of this Licensee being a court appointed receiver who is funded by Indian Affairs and Northern Development Canada does give comfort that traditional knowledge will be incorporated when that information is forthcoming. Therefore, the Board has not included a specific requirement in the water use licence.

Similarly, the licence does not include specific instructions about the details of studies and plans, and Board approval will not be required for the studies and plans to be implemented. However, when proposed studies and plans are submitted to the Board, these will be made available to the Parties, and the Board will give serious consideration to any requests to convene a public hearing to review the proposed studies and/or plans.

Several studies were required as mitigation in the environmental screening report and were recommended by the interveners. Consensus on the scope of these studies was largely reached during the course of the hearing and requirements for them have been included in the licence.

Town of Faro Water Supply Study

No substantive information was presented to the Board to suggest that there is any likely potential impact to the municipal water supply wells from the project. In fact, to the contrary, Faro advised at the hearing that no water quality problems had been encountered during the many years of use of the wells and operation of the mine. Nevertheless, the Applicant agreed to carry out a study of the supply and the Board has included it in the licence. The Board encourages the Licensee to collaborate with Faro in carrying out the study.

Terrestrial Effects Study

As required by the environmental screening and as recommended by various interveners, a requirement for a terrestrial effects study has been included in the licence. RRDC initially recommended that the emergency tailings area should be fenced to prevent wildlife from entering. At the hearing, agreement was apparently reached between the Applicant and RRDC that, pending the results of the study, any fencing activities should be postponed and that, as an interim measure, a salt lick should be established to attract wildlife away from the tailings area. Such a requirement has been included in the licence. During the technical edit of the licence a concern was raised by two parties that the establishment of a salt lick might contravene the *Wildlife Act*. No such concern was raised at the hearing, and therefore the Board did not have that information before them during deliberations. However, as noted in Clause 5 of the licence, no provision of the licence is intended to supercede the requirements of any other legislation. Therefore, if the establishment of a salt lick is not legally possible, then of course the Licensee is not expected to comply with that requirement.

Sludge Management Plan

The screening report requires a plan to be developed for the long term management of sludge from the water treatment plant. The screening also requires that the sludge be stored in a secure location on an interim basis pending the results of the study. Currently, sludge is placed in the tailings facility. The Board considers that this practice meets the security objective in the short term and that it should be continued pending the outcome of the long term plan that is required to be submitted by June 30, 2004.

Comprehensive Risk Assessment

The Applicant's Comprehensive Risk Assessment was submitted at the hearing and the Applicant committed to providing annual updates to it. That requirement has been included in the licence.

Plan for the Management of Oxide Fines

A plan for the management of oxide fines was previously submitted by the Applicant; however, it was seen by some of the parties as deficient. The screening report requires that a new plan be submitted. The Applicant agreed to the preparation and submission of a new plan and indicated at the hearing that it could be submitted by May 2004. After deliberation, the Board determined that the submission should be either July 30, 2004, or no later than 90 days before the proposed implementation date, whichever comes first. The Board intends to allow the parties a reasonable time to review the plan, likely 30 days, and make any submissions regarding the need to hold a hearing to examine the plan. The Board anticipates that the Chairperson will notify the Licensee within the next 60 days if a hearing will be held, in which case the Licensee may not implement the plan until the hearing is concluded. Otherwise, the Licensee will be required to implement the plan as proposed.

Reference Condition

There was considerable discussion at the hearing regarding a screening requirement, echoed by GY and agreed by the Applicant, that the baseline for the various plans and studies should be the period of 1999-2000 for areas downstream of the tailings facility and 1998-2000 elsewhere. The Board was uncomfortable in using the word “baseline”, because of the word’s suggestion that it in some way represents an un-impacted condition. Accordingly, the Board has referred to it as a “reference condition”.

Compliance Points

GY recommended that effluent quality compliance requirements should apply to groundwater as well as discharges to surface water. The Board determined that this should not be included as a licence requirement. The Board considers that in this case, the compliance should be at last point of control; that is, the so-called “end of pipe”. This indirectly provides control on discharges to groundwater, where such discharges eventually reach groundwater. The Board is unclear on how discharges that might reach groundwater could otherwise be controlled from a compliance perspective.

Monitoring Points

The monitoring points contained in the previous licences for the two sites have been brought forward into the new licence, with some updates of their descriptions from those previously used. To further define the points, the Licensee is required to submit UTM geographic coordinates for the points as a part of the first annual report. Three new points have been added to the monitoring schedule in response to requests from RRDC; two (K8 and Grum Corner) in the

vicinity of the former freshwater supply reservoir, and one (Anvil Cr) on Anvil Creek near its confluence with the Pelly River.

The Licensee is also required to submit details of the reference point (datum) used for the measurements relative to ground level required by clause 24.

Bioremediation Cells

The Applicant requested approval to construct bioremediation cells at the site and submitted conceptual designs as part of the application. The cells have not be authorized in the licence because the information provided does not meet the Board's current requirements for that type of project.

Technical Advisory Committee

DIAND, GY and Faro requested that a requirement for a technical advisory committee ("TAC") that was contained in a previous licence should be included in the new licence, and the Applicant concurred.

The requirement for a TAC was included in licence IN89-002, which was issued in 1990. In more recent decisions, the Board recognized that inclusion of such a requirement is problematic, since the Board does not have jurisdiction to require a third party to participate in a committee. Additionally, there is a potential that committees similar to TAC could, if formally entrenched in a water use licence, give the mistaken impression that the TAC has some authority, or a level of influence, that is beyond the level afforded other interested parties. The Board's position has been that all Applicants, including Licensees who intend to apply for either amendments or renewals, should seek the advise of potentially interested parties. While the Board strongly encourages the Licensee to continue its dialogue and consultation with all affected or potentially effected parties, and it was clear at the hearing that the Licensee intends to continue a form of TAC, this will not be a licence requirement.

Abeyance Clauses

The Applicant proposed that a number of clauses from the old licences regarding decommissioning and abandonment should be included in the new licence, but held "in abeyance" pending the submission of the new closure and reclamation plan. The Board has not included the clauses because it does not wish to fetter the development of the new closure and reclamation plan, and because there does not appear to be any useful purpose in including licence conditions that are held "in abeyance" during the life of the licence.

Minor Modifications

The licence authorizes minor modifications to existing facilities and structures subject to the advance submission of plans, specifications and construction schedules. In doing so, the Board is not authorizing any modifications that would require either a licence or a licence amendment.

The Board has concluded deliberations on this application, and has agreed to issue water use licence QZ03-059, subject to the approval fo the Minister of Executive Council Office.

March 26, 2004

Vice- chairperson
YUKON WATER BOARD