



Mackenzie Valley Land and Water Board
7th Floor - 4922 48th Street
P.O. Box 2130
YELLOWKNIFE NT X1A 2P6
Phone (867) 669-0506
FAX (867) 873-6610

Staff Report

Applicant: North American Tungsten Corporation Ltd.	
Location: Cantung Mine, NT	Application: MV2015L2-0003
Date Prepared: December 22, 2015	Meeting Date: December 29, 2015
Subject: Water Licence Application – Renewal	

1. Purpose/Report Summary

The purpose of this Report is to present to the Mackenzie Valley Land and Water Board (MVLWB/the Board) a Water Licence (Licence) Application MV2015L2-0003, submitted by North American Tungsten Corporation Ltd. (NATCL) for the Cantung Mine (Cantung) on April 21, 2015, to renew existing Licence MV2002L2-0019. Board staff are seeking a Board decision on this Application.

2. Background

- April 21, 2015 – Application received;
- April 27, 2015 – Application deemed complete and distributed for review;
- May 28, 2015 – Reviewer comments submitted;
- June 10, 2015 – NATCL responses to reviewer comments received;
- June 17, 2015 – Technical Session held to discuss technical components of the Application;
- July 7, 2015 – Pre-hearing conference held in Yellowknife, NT;
- July 14, 2015 – Written interventions submitted;
- July 16, 2015 – Preliminary screening exemption was confirmed by the Board;
- July 24, 2015 – NATCL written intervention submitted;
- August 17, 2015 – Public hearing scheduled for August 26 and 27, 2015 was cancelled based on written intervention submissions;
- August 28, 2015 – Information requests distributed;
- September 9, 2015 – Notice received of temporary shutdown of Cantung mine, and transition to care & maintenance;
- September 10, 2015 – Responses to Information requests received;
- September 22, 2015 – Draft Water Licence distributed for review;

- October 7 and 13, 2015 – Draft Water Licence comments received;
- October 12, 2015 – Care & Maintenance Plan (v.3) received;
- October 16, 2015 – NATCL submitted Draft Water Licence comments and responses to parties comments;
- October 27, 2015 – Parties submitted written closing arguments;
- November 3, 2015 – NATCL submitted a written closing argument and request to extend Water Licence MV2002L2-0019;
- November 12, 2015 – Board staff issued information requests to NATCL, the GNWT, and AANDC to clarify statements made by NATCL in their closing arguments;
- November 18, 2015 – Board received a letter from Aboriginal Affairs and Northern Development Canada (AANDC) informing the Board that the Cantung site is now considered a New Site Requiring Remediation and is now a federal area under the MVRMA;
- November 23, 2015 - updated information requests were directed to NATCL and AANDC in response to AANDC's November 18, 2015 letter;
- November 29, 2015 - NATCL and AANDC provide responses to the information requests to the Board;
- December 7, 2015 - GNWT-ENR submission relating to the November 29, 2015 information request responses received;
- **December 29, 2015 - Board meeting to make decisions regarding the Application;** and
- January 29, 2016 – Expiration of existing Water Licence MV2002L2-0019.

Section 1 of the attached draft Reasons for Decision outlines the regulatory process for this proceeding.

3. Discussion

This proceeding was initially conducted in accordance with the requirements of the *Waters Act* and *Mackenzie Valley Resource Management Act* (MVRMA) as they apply to non-federal lands. However, on November 18, 2015, the MVLWB received a letter from AANDC which notified the Board of the following:

1. The Cantung site is now considered a New Site Requiring Remediation under section 6.28 of the Northwest Territories Lands and Resources Devolution Agreement and is now a federal area under the MVRMA;
2. Canada has become responsible for the management of the Cantung site under subsection 53.1(1) of the MVRMA; and
3. Employees of North American Tungsten Corporation Ltd. will continue to manage the care and maintenance of the Cantung Mine site under the management of a court appointed monitor with authorities under the Companies' Creditors Arrangement Act (CCAA).

Due to the change in land ownership described above, the Board will need to make its decision on whether the procedural requirements and the conditions for issuance have been met in accordance with the legislative requirements that apply to federal areas prior to issuing this licence. If the Board finds that these

legislative requirements have been met, Board decisions are required on the term and conditions of the water licence.

Section 3 of the draft Reasons for Decision and the draft Water Licence highlight decisions required on the term and conditions of Water Licence MV2015L2-0003 (the Licence) (attached). Evidence provided by all of the parties involved in this proceeding is attached for the Board's consideration.

The existing Licence MV2002L2-0019 expires January 29, 2016. Under subsections 72.18(3) and (4) of the MVRMA the Minister has up to ninety (90) days to consider a Board's decision for a type A proceeding. Efforts were made by Board staff to accommodate this timeline during the development of the work plan for the renewal proceeding; the initial work plan set a Board decision for early November. The proceeding was extended due to the change in ownership described above, the resulting requests for information, and the comment periods surrounding these information requests.

The Board's decision on this Application will be made with less than the 45 days remaining in the existing Licence MV2002L2-0019. AANDC has been made aware of these time constraints.

4. Comments

The Board is well within the 9 month timeline allotted to process a type A licence application as per subsection 72.18(1) of the MVRMA.

5. Reviewer Comments

By May 26, 2015, comments and recommendations regarding the Application were submitted to the Board from the following parties: the Government of the Northwest Territories – Department of Environment and Natural Resources (GNWT-ENR), Environment Canada (EC), Department of Fisheries and Oceans Canada (DFO), Dehcho First Nations (DFN), Naha Dehe Dene Band (NDDDB), and Board staff. NATCL responded to the parties' comments and recommendations on June 10, 2015.

Written interventions, including comments and recommendations on the draft Licence, were received from:

- GNWT-ENR (October 7, 2015);
- EC (October 7, 2015);
- DFN (October 13, 2015); and
- NDDDB (October 9, 2015).

NATCL responded and provided comments of their own on October 16, 2015. The reviewer comment summary table and letters present the concerns identified through the review of the Application and draft Licence (attached).

By October 27, 2015, closing arguments were received from all four (4) intervening parties identified above (attached). NATCL submitted their closing argument on November 3, 2015 (attached).

To clarify NATCL's closing arguments, Board staff requested additional information (IRs) be provided by NATCL, the GNWT, and AANDC on November 12, 2015. These IRs were later updated by Board staff in response to AANDC's November 18, 2015 letter notifying the Board of the transfer of mineral tenures for the Cantung site to the Government of Canada.

On November 29, 2015, both NATCL and AANDC made individual responses to the IRs. These were circulated to the distribution list on November 30, 2015 for parties to review and provide comments. GNWT-ENR was the only party who responded. AANDC and NATCL were afforded to opportunity to respond to GNWT-ENR's December 7, 2015 submission; no responses were received, and the record for the proceeding was closed.

6. Security

On May 2, 2008, NATCL posted a security deposit of \$7,900,000 in an acceptable format with the Minister of Indian Affairs and Northern Development (attached) for the existing Licence MV2002L2-0019. On June 16, 2015, the Board issued a decision on the dry stack tailings facility amendment to the existing Licence MV2002L2-0019. Part C, item 1 of this amended Licence required NATCL to post additional reclamation security, totaling \$30,950,000, in 3 phased installments. Part C, item 1(a) of the current Licence MV2002L2-0019 required the posting and maintenance of an additional \$20,050,000 within ninety (90) days of the effective date of the Licence (for a subtotal of \$27,950,000 by September 13, 2015). This reclamation security has yet to be posted for the existing Licence MV2002L2-0019. As such, NATCL has an outstanding amount of security due under existing Licence MV2002L2-0019.

On July 29, 2015, NATCL applied to the Board for a reduction in their security requirement under existing Licence MV2002L2-0019. On December 29, 2015, the Board will meet to make a decision on this request. This decision may impact the amount of security the Board will require under this Licence.

7. Conclusion

A draft Licence has been prepared and is attached for the Board's consideration. It contains conditions which reflect the evidence submitted by reviewers, NATCL, and AANDC through this regulatory process, recommendations from Board staff, and other updates to be more consistent with recently issued Licences. Board staff concludes that the conditions contained within this draft Licence should mitigate the potential environmental impacts this development may have on the land and water.

8. Recommendation

If the Board determines that the procedural requirements for the Application have been met and that subsections 72.03(5) and 72.04(2) of the MVRMA have been satisfied, Board staff recommend that the Board forward the Licence with the proposed term and conditions, and associated Reasons for Decision to the Minister of AANDC, recommending approval.

9. Attachments

- [Reviewer Comment Summary Table](#)
 - Letters:
 - [GNWT-ENR](#)
 - [EC](#)
 - [DFN](#)
 - [NDDB](#)
 - [DFO](#)
 - [NATCL](#)
 - Written Interventions:
 - [GNWT-ENR](#);
 - [EC](#);
 - [DFN](#);
 - [NDDB](#); and
 - [NATCL](#)
 - Responses to August 28, 2015 IRs:
 - [GNWT-ENR](#);
 - [EC](#);
 - [DFO](#) (no comment);
 - DFN (in Reviewer Comment Summary Table, DFN items 11-13);
 - [NDDB](#); and
 - [NATCL](#)
 - Reviewer Comments on draft Licence:
 - [GNWT-ENR](#);
 - [EC](#);
 - DFN (in Reviewer Comment Summary Table, DFN items 14-17);
 - NDDB (in Reviewer Comment Summary Table, NDDB items 16); and
 - [NATCL](#)
 - Closing arguments:
 - [GNWT-ENR](#);
 - [EC](#);
 - [DFN](#);
 - [NDDB](#); and
 - [NATCL](#)
- [Information Request – November 12, 2015](#)
- [AANDC response to Information Request – November 18, 2015](#)
- [Information Request – November 23, 2015](#)
- [AANDC response to Information Request – November 29, 2015](#)
- [NATCL response to Information Request – November 29, 2015](#)

- [GNWT-ENR response to AANDC and NATCL response – December 7, 2015](#)
- [Security – acceptable to Minister – May 2, 2008](#)
- Draft Water Licence Cover Page
- Draft Water Licence Conditions
- General Procedures (Water Licence)
- Draft Reasons for Decision
- Draft Recommendation Letter to the Minister of AANDC
- Draft Notification to NATCL of Licence sent to Minister of AANDC
- Draft Post Minister Response Issuance Letter



Jen Potten
A/Regulatory and Office Manager



Rebecca Chouinard
Regulatory and Technical Director



Lindsey Cymbalisky
Technical Advisor