

- 5 -

No.

5-0001-CU 2004000028

IN THE SUPREME COURT OF THE  
NORTHWEST TERRITORIES

BETWEEN:

THE MUNICIPAL CORPORATION OF THE CITY  
OF YELLOWKNIFE

Applicant

AND:

THE MACKENZIE VALLEY ENVIRONMENTAL  
IMPACT REVIEW BOARD

Respondent

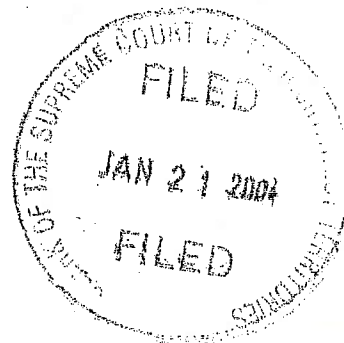
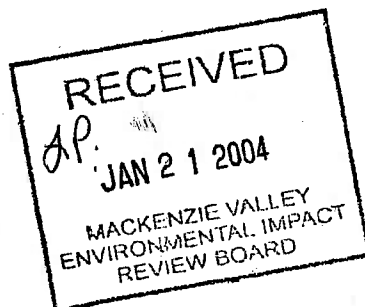
NOTICE TO THE RESPONDENTS

You are hereby notified that the Applicant may enter judgment in accordance with this Notice, or such judgement as the Applicant may be entitled to in accordance with the practice of the Supreme Court of the Northwest Territories, without any further notice to you unless you or your agent or solicitor appear at the place and on the date and time specified.

ORIGINATING NOTICE

FASKEN MARTINEAU DuMOULIN LLP  
Barristers and Solicitors  
Suite 702, 5201 Franklin (50th) Ave.  
Yellowknife, Northwest Territories, X1A 3S9

Counsel: Ian Blackstock  
Matter No: YEL00060



No. \_\_\_\_\_

Yellowknife Registry

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

THE MUNICIPAL CORPORATION OF THE CITY OF YELLOWKNIFE

Applicant

AND

THE MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD

Respondent

**ORIGINATING NOTICE**

TAKE NOTICE that a motion will be made on behalf of the Municipal Corporation of the City of Yellowknife, 4807 – 52<sup>nd</sup> St., Yellowknife, Northwest Territories for the following:

- (a) An Order in the nature of *certiorari* quashing the decision of the Respondent, the Mackenzie Valley Environmental Impact Review Board (the "Board") dated December 23, 2003 refusing to conduct an environmental assessment of an abandonment and restoration plan (the "Abandonment and Restoration Plan") submitted to the Mackenzie Valley Land and Water Board ("MVLWB") by Miramar Con Mine Ltd. pursuant to Part H of Water Licence #N1L2-0040 dated July 30<sup>th</sup>, 2003 (the "Water Licence") which was referred to it by the Applicant pursuant to Section 126 of the *Mackenzie Valley Resource Management Act*, S.C. 1998, c.25 ("MVRMA").
- (b) A Declaration that the approval of the Abandonment and Restoration Plan pursuant to Part H of the Water Licence is an authorization pursuant to subsection 124(1) of the MVRMA;
- (c) Alternatively, a Declaration that the approval of the Abandonment and Restoration Plan pursuant to Part H of the Water Licence is an authorization pursuant to paragraph 126(4)(a) of the MVRMA;
- (d) An Order in the nature of *mandamus* referring the matter back to the Board with a direction to conduct an environmental assessment of the Abandonment and Restoration Plan in accordance with the Applicant's referral pursuant to Section 126 of the MVRMA;
- (e) Costs;

- (f) Such further and other relief as this Honourable Court may deem just.

AND FURTHER TAKE NOTICE that in support of this application the Applicant intends to rely on the following:

1. Part 44 of the Rules of the Supreme Court of the Northwest Territories;
2. Sections 60(1), 124(1), 126(2)(c) and 126(4)(a) of the *Mackenzie Valley Resource Management Act*, S.C. 1998 c.25;
3. Section 15(1)(e) of the *Northwest Territories Waters Act*, S.C. 1992 c.39;
4. Section 1 and Item 7 of Part 1 of Schedule 1 of the Preliminary Screening Requirement Regulations S.O.R. 99-12;
5. Such further and other material as counsel may advise and this Honourable Court permits.

AND FURTHER TAKE NOTICE that in support of the application will be read the affidavit of Loretta M. Bouwmeester, a copy of which is served with this Originating Notice.

AND FURTHER TAKE NOTICE that the Applicant relies upon the following grounds in support of this application;

1. The Board erred in law, acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction in failing to rule that an approval of the Abandonment and Restoration Plan submitted to the MVLWB by Miramar pursuant to Part H of the Water Licence is an authorization pursuant to subsection 124(1) of the MVRMA.
2. Alternatively, the Board erred in law, acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction in failing to rule that the approval of the Abandonment and Restoration Plan submitted to the MVLWB by Miramar pursuant to Part H of the Water Licence is an authorization pursuant to paragraph 126(4)(a) of the MVRMA;
3. The Board erred in law, acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction in refusing to conduct an environmental assessment of the Abandonment and Restoration Plan when the Abandonment and Restoration Plan was referred to it by the City pursuant to Section 126 of the MVRMA;
4. The Board acted without jurisdiction and in breach of the rules of natural justice in refusing to afford the Applicant an opportunity to respond to the written submissions of Miramar Con Mine Ltd. to the Board in this matter.

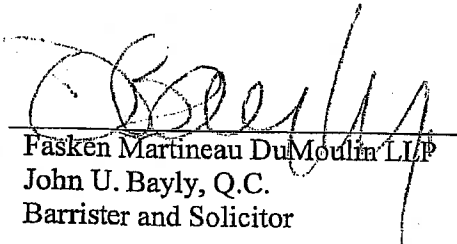
AND FURTHER TAKE NOTICE that the motion will be heard before the presiding judge in Chambers at the Courthouse in Yellowknife in the Northwest Territories on

the 6<sup>th</sup> day of February, 2004 at 10:00 a.m. in the forenoon or so soon thereafter as counsel may be heard.

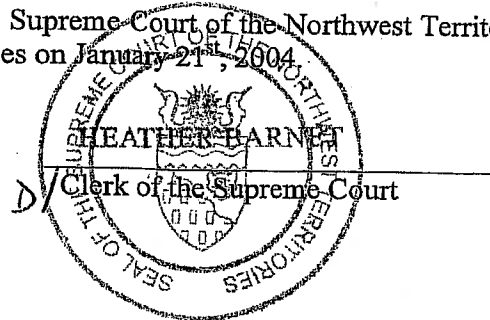
DATED at the City of Yellowknife in the Northwest Territories on January 21<sup>st</sup>, 2004.

AND taken out by Fasken Martineau DuMoulin LLP solicitors for the Applicant whose address for service is:

Suite 702  
5201-50<sup>th</sup> Avenue  
Yellowknife NT  
X1A 2N8

  
Fasken Martineau DuMoulin LLP  
John U. Bayly, Q.C.  
Barrister and Solicitor

ISSUED out of the office of the Clerk of the Supreme Court of the Northwest Territories at the City of Yellowknife in the Northwest Territories on January 21<sup>st</sup>, 2004.



TO: Clerk of the Court

AND TO: Mackenzie Valley Environmental  
Impact Review Board

Miramar Con Mine Ltd.

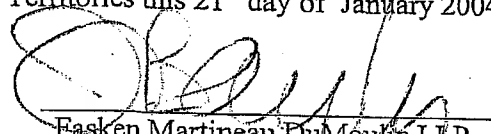
Attorney General of the Northwest Territories

Attorney General of Canada

## NOTICE TO THE MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD

You are required forthwith after service of this notice to return to the Clerk of the Supreme Court at Yellowknife the decision to which this notice refers and reasons, if any, together with the process commencing the proceeding, the evidence and all exhibits filed, if any, and all things touching the matter as fully and entirely as they remain in your custody and power together with this notice.

DATED at the City of Yellowknife in the Northwest Territories this 21<sup>st</sup> day of January 2004.

  
Fasken Martineau DuMoulin LLP  
John U. Bayly, Q.C.  
Barrister and Solicitor  
Solicitors for the Applicant

AND FURTHER TAKE NOTICE that the *Rules of the Supreme Court of the Northwest Territories* contains the following rule:

Provision of  
record of  
tribunal

598. (1) On receiving an originating notice endorsed in accordance with rule 595, the person in respect of whose decision or act relief is claimed shall return forthwith to the Clerk

- (a) the judgment, order or decision, as the case may be;
- (b) the process commencing the proceeding;
- (c) the evidence and all exhibits filed, if any;
- (d) all things touching the matter;
- (e) the originating notice served on the person; and
- (f) a certificate in the following form:

"Pursuant to the accompanying originating notice, I hereby return to the Honourable Supreme Court the following papers and documents:

- (a) the judgment, order or decision, as the case may be, and the reasons for it;
- (b) the process commencing the proceeding;
- (c) the evidence taken at the hearing and all exhibits filed;
- (d) all other papers or documents touching the matter.

And I hereby certify to the Honourable Supreme Court that I have enclosed in

this return all the papers and documents in my custody relating to the matter set forth in the originating notice."

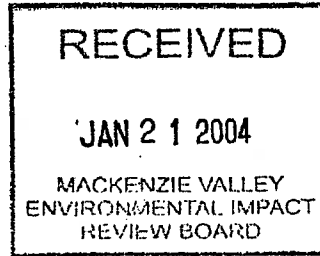
(2) The certificate required by subrule (1) has the same effect as a return to a writ of *certiorari*.

(3) Where the proceedings are not in the possession of the person required to transmit them, that person shall, in lieu of the certificate required by subrule (1), so state and explain the circumstances.

(4) Where the proceedings have not been received by the Clerk before the application for judicial review is heard, the Clerk shall return a certificate stating that fact.

(5) The Court may dispense with the return of the evidence or exhibits or part of the evidence or exhibits.

(6) Notwithstanding the requirements of this rule, the parties may agree on what constitutes the record for the purpose of the application for judicial review.



No. \_\_\_\_\_

Yellowknife Registry

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

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AND

THE MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD

Respondent

**AFFIDAVIT**

I, Loretta M. Bouwmeester, Civil Servant, of the City of Yellowknife in the Northwest Territories MAKE OATH AND SAY AS FOLLOWS:

1. I am the Manager of Legal Services and Corporate Policy for the Municipal Corporation of the City of Yellowknife (the "City") and as such I have personal knowledge of the facts and matters hereinafter deposed to save and except where the same are stated to be based upon information and belief and whereso stated I verily believe them to be true.
2. The City is a municipal corporation incorporated as a city pursuant to the provisions of the *Cities, Towns & Villages Act* R.S.N.W.T. 1988, c. C-8.
3. The Con Mine is a gold mine which is located wholly within the municipal boundaries of the City of Yellowknife as set out in the City of Yellowknife Continuation Order R.R.N.W.T. 1990 c.C-5.
4. Con Mine has been in operation since the 1930's and is currently operated by Miramar Con Mine Ltd. ("Miramar"). Miramar holds a water licence issued pursuant to the *Northwest Territories Waters Act* S.C. 1992 c.39 effective as of July 30<sup>th</sup>, 2000, and issued as NIL2-0040 (the "Water Licence") in respect to its operations at Con Mine. Annexed hereto as Exhibit "A" to this my affidavit is a copy of the Water Licence.
5. I have reviewed a number of expert reports that address the issue of arsenic contamination in Yellowknife including a 2002 report entitled "Assessment of Human Health Risks Posted by Arsenic Contamination in Yellowknife" prepared by Risklogic Scientific Services Inc. and a 2001 reported entitled "Arsenic Levels in the Yellowknife Area: Distinguishing Between Natural and Anthropogenic Inputs" prepared by the Environmental

Science Group at the Royal Military College. Both reports were submitted to the Yellowknife Arsenic Soils Remediation Committee, which is established by Environment Canada. I verily believe arsenic levels at the Con Mine site are far higher than arsenic levels in the City of Yellowknife generally. Annexed hereto as Exhibit "B" is a map from the Royal Military College report showing environmental contamination levels in and about Con Mine. Annexed hereto as Exhibit "C" is the Executive Summary from the Royal Military College report which identifies typical background arsenic levels in the City of Yellowknife as in being of the range of 3-150 parts per million. I verily believe that the ore body mined at the Con Mine has a high concentration of arsenic and issues of arsenic contamination at the Con Mine site and in the surrounding area resulting from Con Mine operations are a serious concern. I have reviewed map 4-5 annexed hereto as Exhibit "B", which shows arsenic concentrations of up to 25,000 parts per million in the tailings ponds.

6. Miramar plans to close the Con Mine, and in furtherance of that plan submitted an abandonment and restoration plan to the Mackenzie Valley Land & Water Board (the "MVLWB") on March 14<sup>th</sup>, 2003 pursuant to the provisions of Part H of the Water Licence (the "Abandonment and Restoration Plan"). Attached hereto as Exhibit "D" to this my affidavit is the Executive Summary for the Abandonment and Restoration Plan. Under Terms of Reference dated July 14<sup>th</sup>, 2003, the MVLWB established a working group ("the Working Group") to consider the terms of the Abandonment and Restoration Plan, consisting of representatives of federal and territorial government departments, the City, the Metis Nation and the Yellowknife Dene. The Working Group is chaired by a representative of the MVLWB and its mandate is to provide a "forum for the discussion of technical matters related to the final Abandonment and Restoration Plan" and to provide recommendations to the MVLWB. Annexed hereto as Exhibit "E" to this my affidavit is a copy of the said Terms of Reference of July 14<sup>th</sup>, 2003.
7. Significant concerns about the abandonment and decommissioning of the Con Mine and related arsenic contamination have been expressed to the City by members of the public in Yellowknife.
8. The City has serious concerns with regard to the terms of the Abandonment and Restoration Plan and the process surrounding its evaluation. Among other matters, the Abandonment and Restoration Plan is conceptual in nature, has not been approved by a professional engineer, does not appear to provide for adequate remediation of contaminated sites and does not provide for long term monitoring and inspection. Annexed hereto as Exhibit "F" to this my affidavit is a letter from the City to the MVLWB dated December 12, 2003 outlining some of the City's concerns.
9. Other parties have also expressed concerns to the MVLWB with regard to the Abandonment and Restoration Plan. Annexed hereto as Exhibit "G" is a letter from the Yellowknives Dene First Nation to the MVLWB dated October 20<sup>th</sup>, 2003 expressing such concerns. Annexed hereto as Exhibit "H" is an e-mail from Lisa Hurley a regulatory officer at the MVLWB referring to concerns that were expressed to the Working Group about hydrocarbon contamination in the underground workings.
10. Miramar is proceeding with the final abandonment and decommissioning of the Con Mine prior to obtaining the approval of the MVLWB. This is contrary to the provisions



contained in Part H of the Water Licence. This concerns the City and other interested parties who wish to have the Abandonment and Restoration Plan fully vetted before Miramar proceeds further with abandonment and decommissioning. As a part of the abandonment process, Miramar has shut off the water pumps at the mine and the underground works are beginning to flood as a result. Annexed hereto as Exhibit "T" is a letter from Miramar to the MVLWB dated October 15<sup>th</sup>, 2003 advising the MVLWB of the flooding. Annexed hereto as Exhibit "J" is a letter from the MVLWB to Miramar dated November 17<sup>th</sup>, 2003 expressing concern about the early closure of the mine and the difficulties this represents for proper environmental inspection.

11. As a result of the City's own concerns, and concerns expressed to it by members of the public, City Council passed a resolution to refer the Abandonment and Restoration Plan to the Mackenzie Valley Environmental Impact Review Board (the "MVEIRB") pursuant to, Section 126 of the *Mackenzie Valley Resource Management Act* S.C. 1998, c.25 (the "MVRMA") on October 27<sup>th</sup>, 2003. In a letter dated November 7<sup>th</sup>, 2003, the Mayor of Yellowknife, Gordon Van Tighem gave notice to the MVEIRB that the City was referring the Abandonment and Restoration Plan to the MVEIRB pursuant to Section 126 of the MVRMA. Annexed hereto as Exhibits "K" and "L" to this my affidavit are copies of the letter of November 7<sup>th</sup>, 2003 and the resolution of October 27<sup>th</sup>, 2003.

12. The MVEIRB gave public notice that it had received a referral from the City for an environmental assessment of the Abandonment and Restoration Plan pursuant to Section 126 of the MVRMA and that it would hold a hearing pursuant to Section 24 of MVRMA to address the following questions:

"1. Does the Miramar Con Mine abandonment and restoration process constitute a "development" under the MVRMA; and

2. Do any of the conditions set out paragraph (a) - (c) of subsection 126(4) of the MVRMA apply to the City of Yellowknife's referral?"

Annexed hereto as Exhibit "M" is a copy of the said public notice, published in an issue of a local newspaper in Yellowknife. No notice of the said hearing was served directly on the City.

13. I am advised by Ian Blackstock, counsel for the City, and do verily believe, that on or about December 9, 2003 he spoke by telephone with Robert Wooley, the Executive Director of the MVLWB, about the Abandonment and Restoration Plan. At that time Mr. Wooley advised Mr. Blackstock that it was the view of the MVLWB that the MVLWB was not required to conduct a preliminary screening under Part 5 of the MVRMA in respect of any approval of the Abandonment and Restoration Plan by it pursuant to Part H of the Water Licence.

14. In response to the public notice, the City provided submissions to the MVEIRB on December 12<sup>th</sup>, 2003. Miramar provided a reply to the City's submissions on December 19<sup>th</sup>, 2003. I am informed by the City's counsel Ian W. Blackstock, and do verily believe, that on the morning of December 19<sup>th</sup>, 2003 he requested that the MVEIRB provide the City with an opportunity to respond to the reply submissions of Miramar which the City received later that



day. Annexed hereto as Exhibits "N", "O" and "P" are copies of the submissions of the City and Miramar and a copy of a letter from Ian Blackstock to the MVEIRB dated December 18th, 2003 (but delivered on December 19<sup>th</sup>, 2003) requesting that the City be allowed to respond to Miramar's submissions.

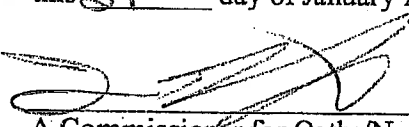
15. No opportunity was given to the City to reply to Miramar's submissions. Instead, on December 23<sup>rd</sup>, 2003 the City was advised of the MVEIRB's decision not to conduct an environmental assessment. On January 2<sup>nd</sup>, 2004 the MVEIRB issued their Reasons for Decision in this matter. Annexed hereto as Exhibits "Q" and "R" are the MVEIRB's decision dated December 23<sup>rd</sup>, 2003 and the MVEIRB's Reasons for Decision dated January 2<sup>nd</sup>, 2004.

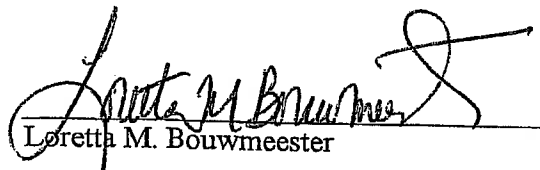
16. As set out in City Council's resolution of October 27<sup>th</sup>, 2003, annexed hereto as Exhibit "L", the City is of the view that the Abandonment and Restoration Plan in its present form may have an adverse impact on the environment within the boundaries of the City of Yellowknife.

17. I verily believe that an environmental assessment will ensure that issues of arsenic contamination and environmental remediation at the Con Mine site are properly considered and the concerns of the City, members of the public, and other interested parties are properly addressed.

18. I make this affidavit in support of an application for judicial review of the MVEIRB's decision of December 23<sup>rd</sup>, 2003 and for no improper purpose.

SWORN BEFORE ME at City of  
Yellowknife, in the Northwest Territories,  
this 21<sup>st</sup> day of January A.D. 2004.

  
A Commissioner for Oaths/Notary Public in  
and for the Northwest Territories.  
My Commission expires:

  
Loretta M. Bouwmeester

IAN W. BLACKSTOCK  
A NOTARY PUBLIC IN AND FOR THE  
NORTHWEST TERRITORIES  
CANADIAN (YOLP) ISM PRINTED TO  
OFFICIALS IN THE NORTHWEST TERRITORIES.

# NORTHWEST TERRITORIES WATER BOARD

Pursuant to the *Northwest Territories Waters Act* and Regulations the Northwest Territories Water Board, hereinafter referred to as the Board, hereby grants to

MIRAMAR CON MINE LTD.

(Licensee)

P.O. Box 2000

of YELLOWKNIFE, NORTHWEST TERRITORIES X1A 2M1

(Mailing Address)

hereinafter called the Licensee, the right to alter, divert or otherwise use water subject to the restrictions and conditions contained in the *Northwest Territories Waters Act* and Regulations made thereunder and subject to and in accordance with the conditions specified in this Licence.

Licence Number

N1L2-0040 (Renewal)

Licence Type

"A"

Water Management Area

NORTHWEST TERRITORIES 01

Location

CON MINE WITHIN THE CITY OF  
YELLOWKNIFE, NORTHWEST TERRITORIES

Purpose

WATER USE AND WASTE DISPOSAL

Description

FOR A MINING AND MILLING UNDERTAKING

Quantity of Water Not  
To Be Exceeded

2,100,000 CUBIC METRES PER YEAR

Effective Date of Licence

July 30, 2000

Expiry Date of Licence

July 29, 2006

This Licence issued and recorded at Yellowknife includes and is subject to the annexed conditions.

A. Chudergay  
Witness

NORTHWEST TERRITORIES WATER BOARD

[Signature]  
Chairman

APPROVED BY

[Signature]  
Minister of Indian Affairs and Northern Development

THIS IS SUBMITTED  
TO THE AFFIDAVIT OF Lorella M. Brummeester  
SWORN BEFORE ME THIS 21 OF January 2004

[Signature]  
A COMMISSIONER FOR OATHS IN OR NOTARY PUBLIC  
IN OR FOR THE NORTHWEST TERRITORIES.

**"Average Concentration"** means the moving average of any four consecutive analytical results submitted to the Board in accordance with the sampling and analysis requirements specified in the "Surveillance Network Program"; the following is an example to illustrate the procedures for calculating the average:

Day 1	Sample #1	0.15
Day 2	Sample #2	0.12
Day 3	Sample #3	0.10
Day 4	Sample #4	0.18
<i>Moving Average = (0.15+0.12+0.10+0.18)/4 = 0.137</i>		
Day 5	Sample #5	0.20
<i>Moving Average = (0.12+0.10+0.18+0.20)/4 = 0.150</i>		
Day 6	Sample #6	0.16
<i>Moving Average = (0.10+0.18+0.20+0.16)/4 = 0.160;</i>		

**"Backfill"** means tailings combined with a mixture of sand, cement or Water that is pumped underground and used to strengthen/support mined out areas;

**"Board"** means the Northwest Territories Water Board established under Section 10 of the *Northwest Territories Waters Act*, or any authority succeeding the Northwest Territories Water Board with respect to jurisdiction in regard to this Licence;

**"Freeboard"** means the vertical distance between the water line and the lowest elevation of the effective water containment crest on a dam or dyke's an upstream slope;

**"Geotechnical Engineer"** means a professional engineer registered with the Association of Professional Engineers, Geologists, and Geophysicists of the Northwest Territories and whose principal field of specialization is the design and construction of earthworks in a permafrost environment;

**"Inspector"** means an Inspector designated by the Minister under Section 35(1) of the *Northwest Territories Waters Act*;

**"Licensee"** means the holder of this Licence;

**"Minewater"** means groundwater or any water used in mining which is pumped or flows out of any underground workings or open pit;

**"Minister"** means the Minister of Indian Affairs and Northern Development;

**"Water Use Fee"** means a fee for the use of Water as defined by Section 33 of the *Northwest Territories Waters Act*.

**PART B: GENERAL CONDITIONS**

1. The Water Use Fee shall be paid by the Licensee annually in advance of any Water use.
2. Pursuant to Section 17(1) of the Act and Section 12 of the Regulations, the Licensee shall have posted and shall maintain a security deposit according to the following schedule:
  - a) within thirty (30) days of issuance of this Licence, an amount of \$1,500,000; (One million, five hundred thousand dollars)
  - b) on each subsequent anniversary of this Licence, an additional amount of \$1,500,000 until \$9,000,000 is available; and
  - c) such further or other amounts, may be required by the Board based on annual estimates of current mine liability in accordance with Part H, Item 2 of this Licence.
  - d) reductions to the security deposit may be granted by the Board based on annual estimates of current mine liability in accordance with Part H, Item 2 of this Licence.
3. The security deposit, which may include a Trust Fund, shall be maintained until such time as it is fully or in part refunded by the Minister pursuant to Section 17 of the Act. This clause shall survive the expiry of this Licence or renewals thereof and until full and final restoration has been completed to the satisfaction of the Minister. This security deposit shall be in a form acceptable to the Minister.
4. The Licensee shall file an annual report with the Board not later than March 31st of the year following the calendar year reported which shall contain the following information:

- o) an annual summary of actions completed to date that are outlined in the Operations Manual for the Tailings Containment Area, as approved by the Board;
  - p) revisions to the Solid and Hazardous Waste Management Plan, as approved by the Board;
  - q) revisions to the Acid and Alkaline Rock Drainage and Geochemical Characterization Plan, as approved by the Board;
  - r) a summary of any abandonment and restoration work completed during the year and an outline of any work anticipated for the next year; and
  - s) any other details on Water Use or Waste disposal requested by the Board by November 1<sup>st</sup> of the year being reported.
- 5. The Licensee shall comply with the "Surveillance Network Program" annexed to this Licence, and any amendment to the said "Surveillance Network Program" as may be made from time to time, pursuant to the conditions of this Licence.
- 6. The "Surveillance Network Program" and compliance dates specified in the Licence may be modified at the discretion of the Board.
- 7. Meters, devices or other such methods used for measuring the volumes of Water used and Waste discharged shall be installed, operated, maintained and calibrated by the Licensee to the satisfaction of an Inspector.
- 8. The Licensee shall, within sixty (60) days of the issuance of this Licence, post and maintain the necessary signs identifying the stations of the "Surveillance Network Program". All postings shall be located and maintained to the satisfaction of an Inspector.
- 9. The Licensee shall ensure a copy of this Licence is maintained at the site of operation at all times.

3. The Tailings Containment Area shall be constructed, operated, and maintained to engineering standards such that:
  - a) a Freeboard limit of 1.0 metre shall be maintained at all times, or as recommended by a Geotechnical Engineer and as approved by the Board;
  - b) seepage from the Tailings Containment Area is minimized;
  - c) any seepage that occurs is collected and immediately returned to the Tailings Containment Area;
  - d) erosion of the constructed facilities is addressed immediately;
  - e) the solids fraction of the mill Tailings shall be permanently contained within the Tailings Containment Area;
  - f) weekly inspections of the dam(s), Tailings line(s), and Sumps shall be carried out and records of these inspections shall be kept for review upon the request of an Inspector. More frequent inspections shall be performed at the request of an Inspector; and
  - g) an inspection of the Tailings Containment Area shall be carried out annually in July by a Geotechnical Engineer. The engineer's report shall be submitted to the Board within sixty (60) days of the inspection, including a covering letter from the Licensee outlining an implementation plan to respond to the engineer's recommendations. The Licensee shall provide documentation and rationale of any decisions that deviate from the engineer's recommendations.
4. All Wastes discharged from the Tailings Containment area shall be directed to the water treatment facility and subsequently to the Meg-Kég-Peg Lakes system, as illustrated in Drawing Number 2796, dated June 1986, or as otherwise approved by the Board.
5. No Waste discharge, seepage or other flow from the Tailings Containment Area shall be permitted at any time to enter Kam Lake.
6. The Licensee shall provide at least five (5) days notice to an Inspector prior to the first proposed discharge of Waste from the Tailings Containment Area during each calendar year.



- j) monitoring;
  - k) regular visual inspections;
  - l) photographic records;
  - m) instrumentation; and
  - n) data evaluation.
9. If not approved by the Board, the manual referenced in Part D, Item 8 shall be revised and resubmitted within six (6) months of receiving notification of the Board's decision.
10. The Licensee shall implement the operations manual for the Tailings Containment Area, listed in Part D, Item 8, within six (6) months after the manual is approved by the Board.
11. An annual review, including a summary of actions completed to date, for the operations manual of the Tailings Containment Area shall be undertaken and included in the annual report submitted to the Board.
12. The Licensee shall process all arsenic sludges and calcine sludges by December 31, 2003. An annual update including the amount of arsenic and calcine sludges processed-to-date is to be included in the annual report submitted to the Board.
13. The Licensee shall, by April 30, 2001, submit to the Board for approval a Solid and Hazardous Waste Management Plan. A review of this plan shall be undertaken annually and any updates shall be included in the annual report submitted to the Board.
14. If not approved by the Board, the plan referenced in Part D, Item 13 shall be revised and resubmitted within six (6) months of receiving notification of the Board's decision.

**PART F: CONDITIONS APPLYING TO MODIFICATIONS**

1. The Licensee may without written approval from the Board, carry out modifications to the Water Supply and Waste Disposal Facilities provided that such modifications are consistent with the terms of this Licence and the following requirements are met:
  - a) the Licensee has notified the Board in writing of such proposed modifications at least sixty (60) days prior to beginning the modifications;
  - b) such modifications do not place the Licensee in contravention of either the Licence or the Act;
  - c) the Board has not, during the sixty (60) days following notification of the proposed modifications, informed the Licensee that review of the proposal will require more than sixty (60) days; and
  - d) the Board has not rejected the proposed modifications.
2. Modifications, for which all of the conditions referred to in Part F, Item 1 have not been met, may be carried out only with written approval from the Board.
3. The Licensee shall provide to the Board as-built plans and drawings of the modifications referred to in Part F, Item 1 within ninety (90) days of completion of the modifications.

**PART G: CONDITIONS APPLYING TO CONTINGENCY PLANNING**

1. The Licensee shall review the approved Contingency Plan annually and modify the Plan as necessary to reflect changes in operation and technology. Any proposed modifications shall be submitted to the Board for approval.
2. If, during the period of this Licence, an unauthorized discharge of waste occurs, or if such a discharge is foreseeable, the Licensee shall:
  - a) employ the appropriate contingency plan;

2. The Licensee shall provide the Board annually with an updated estimate of the anticipated mine restoration liability using RECLAIM, or some other method acceptable to the Board that incorporates site-specific activities and appropriate unit costs used to estimate mine reclamation costs. This shall include the expected liability at the end of the forthcoming year.
3. The Licensee shall revise the Plan referred to in Part H, Item 1, if not approved. The revised Plan shall be submitted to the Board for approval within six (6) months of receiving notification of the Board's decision.
4. Notwithstanding the time schedule referred to in the Abandonment and Restoration Plan, the Licensee shall carry out Progressive Reclamation of areas which are abandoned prior to closure of operations.
5. The Licensee shall submit to the Board for approval by April 30, 2002, a proposed Plan to investigate the cover options for the tailings including options other than revegetation, to ensure physical and chemical long-term stability. The plan should state the research questions to be answered, the methodology to be adopted, the duration of any studies, and provide a discussion as to how the results of the study might be utilized for on-going environmental management of the project. The proposed study shall include an implementation schedule.
6. The Licensee shall revise the Plan referred to in Part H, Item 5, if not approved. The revised Plan shall be submitted to the Board for approval within six (6) months of receiving notification of the Board's decision.
7. When the Plan, specified in Part H, Item 5, is approved, the Licensee shall complete the restoration work within the time schedule specified in the Plan, or as subsequently revised when approved by the Board.
8. The Licensee shall review the Abandonment and Restoration Plan annually and shall modify the Plan as necessary to reflect changes in operation, technology, and results of reclamation and/or other studies. The proposed modifications shall be submitted to the Board for approval.

# NORTHWEST TERRITORIES WATER BOARD

LICENSEE: MIRAMAR CON MINE LTD.

LICENCE NUMBER: N1L2-0040

EFFECTIVE DATE OF LICENCE: July 30, 2000  
EFFECTIVE DATE OF

SURVEILLANCE NETWORK PROGRAM: July 30, 2000

## SURVEILLANCE NETWORK PROGRAM

### A. Location of Surveillance Stations

<u>Station Number</u>	<u>Description</u>
40-1	Treated effluent from the Tailings Containment Area.
40-2	Freshwater intake at the Yellowknife Bay Pump house. This station is an amalgamation of Station Numbers 40-2 and 1187-1.
40-3	Arsenic Reclamation Plant cooling water discharge at end of pipe (formerly Station Number 1187-2).
40-3A	Point of discharge, where the Arsenic Reclamation Plant cooling water enters Great Slave Lake.
40-4	Waste from the Arsenic Reclamation Plant directed to the mill, Tailings Containment Area or Con pond (formerly Station Number 1187-3).
40-5	Outflow of the Meg-Keg-Peg Lakes System to Great Slave Lake.
40-6	Taylor Road Dam pumping station.

Arsenic (Total and Dissolved)  
Conductivity  
Turbidity  
Total Kjeldahl Nitrogen

Total Dissolved Solids  
Alkalinity  
Oil and Grease  
Nitrite and Nitrate

ICP Metals Scan including but not limited to the following Total and Dissolved elements:

Cadmium  
Manganese  
Iron

Chromium  
Nickel  
Zinc

Copper  
Lead

Major Ions including but not limited to the following:

Chloride  
Hardness  
Magnesium

Sodium  
Sulfate  
Sulfide

Calcium  
Potassium

4. During periods of open Water, a sample shall be collected once per month at Station Number 40-5 and 40-10 and analyzed for the following parameters:

Total Coliform  
Total Ammonia  
Mercury  
Arsenic (Total and Dissolved)  
Conductivity  
Turbidity  
Total Kjeldahl Nitrogen

Faecal Coliform  
Total Phosphorous  
Cyanide  
Total Dissolved Solids  
Alkalinity  
Oil and Grease  
Nitrite and Nitrate

ICP Metals Scan including but not limited to the following Total and Dissolved elements:

Cadmium  
Manganese  
Iron

Chromium  
Nickel  
Zinc

Copper  
Lead

Major Ions including but not limited to the following:

Chloride  
Hardness  
Magnesium

Sodium  
Sulfate  
Sulfide

Calcium  
Potassium

5. During periods of open Water, a visible inspection for any oil sheen shall be

12. All sampling, sampling preservation, and analysis shall be conducted in accordance with methods prescribed in the current edition of "Standard Methods for the Examination of Water and Wastewater," or by such other methods approved by an Analyst.
13. All analyses shall be performed in a laboratory approved by an Analyst.
14. The Licensee shall annually review the approved quality assurance/quality control plan and modify the plan as necessary. Proposed modifications shall be submitted to an Analyst for approval.

**C. Flow Measurement Requirements**

1. The monthly quantity of Water pumped from Great Slave Lake shall be measured and recorded in cubic metres.
2. The monthly quantity of Water obtained from the City of Yellowknife for domestic purposes shall be measured and recorded in cubic metres.
3. The monthly quantity of Minewater pumped from the mine shall be measured and recorded in cubic metres.
4. The daily quantity of treated effluent discharged from the Tailings Containment Area shall be measured and recorded in cubic metres.

**D. Other Requirements**

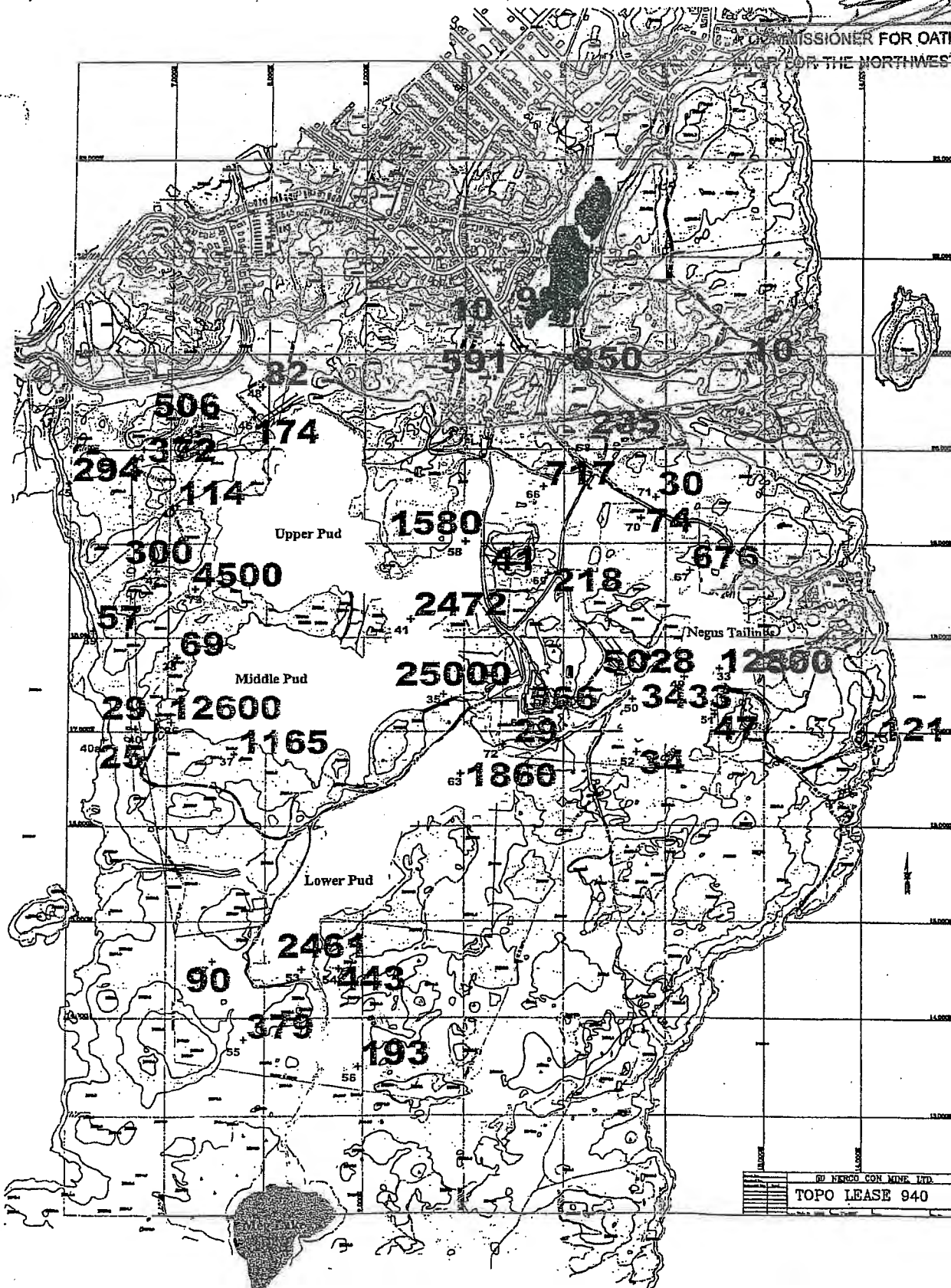
1. The periods when effluent from the Water Treatment Plant is re-circulated to the Tailings Containment Area shall be recorded.
2. The following items shall be measured in tonnes and recorded monthly:

a) refractory ore milled:



THIS IS EXHIBIT "B"  
 TO THE AFFIDAVIT OF Loella M. Baumgartner  
 SWORN BEFORE ME THIS 21 OF January 2002

COMMISSIONER FOR OATHS IN OR NOTARY PUBLIC  
 OF THE NORTHWEST TERRITORIES.



Map 4.5 Soil and tailings sample locations from the Miramar Con Mine property and surrounding area.

## EXECUTIVE SUMMARY

For over ten years, the Environmental Sciences Group (ESG) has been studying arsenic in the terrestrial and freshwater environment in Yellowknife, NWT. An intensive effort in the last four years has been focused on elucidating the background concentration range of arsenic in soils not impacted by mining operations.

Estimates of the background concentration of arsenic in the Yellowknife area were previously presented in three ESG studies and ranged from 5 to 100 ppm. The estimates were not based on samples from all geographical areas in Yellowknife and thus it was determined that additional samples should be collected to strengthen this conclusion.

In September of 2000 ESG collected additional soil samples to ensure coverage of all geographical locations in the Yellowknife area. Of particular interest were parks and playgrounds in the City of Yellowknife, Ndilo and Dettah. Samples were analyzed for a suite of elements by both neutron activation analysis (As, Sb, Au, Fe, Na, K) and inductively coupled plasma – optical emission spectrometry (Cu, Ni, Zn, Mn). All soil and surficial sediment samples in the ESG database of the Yellowknife area were subjected to statistical analysis.

In most residential areas arsenic concentrations are below 150 ppm. Three exceptions are the Rat Lake area, some locations in Ndilo, and on the Giant Mine Townsite. Elevated concentrations of arsenic in themselves are not necessarily cause for immediate concern.

After completing an extensive soil sampling program and rigorous statistical analysis (including principal components analysis, t-tests, and regression analysis), ESG is confident in reporting that the typical background concentration range of arsenic in the Yellowknife area is 3 to 150 ppm.

ESG is of the view that, particularly given the local prevalence of naturally occurring arsenic, there is not enough information at present to reach a decisive plan of action for the elevated levels of arsenic in soils in the Yellowknife area. Currently, we are developing risk assessment models that will incorporate arsenic speciation and measurements of its bioavailability.

THIS IS EXHIBIT C  
TO THE AFFIDAVIT OF Loretta M. Brownmaster  
SWORN BEFORE ME THIS 21 OF January 2004

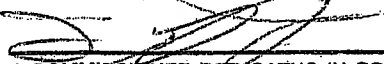
[Signature]  
A COMMISSIONER FOR OATHS IN OR NOTARY PUBLIC  
IN OR FOR THE NORTHWEST TERRITORIES.

## EXECUTIVE SUMMARY

This Final Abandonment and Restoration (A&R) Plan identifies the specific issues that must be addressed to remediate, close and then monitor the Miramar Con mine site. It identifies the measures to be taken to remediate specific areas or problems and provides a schedule for execution of the remediation and abandonment and restoration projects. Cost estimates for the planned work are included.

The plan is presented in eight parts, as follows:

- General site information;
- Site history, current operation and facilities;
- A&R issues;
- A&R plan;
- Post-closure property;
- A&R schedule;
- A&R cost estimate; and
- Post-closure monitoring

THIS IS EXHIBIT "D"  
TO THE AFFIDAVIT OF Lorella M. Rauwmeester  
SWORN BEFORE ME THIS 21 OF January 2004  
  
A COMMISSIONER FOR OATHS IN OR NOTARY PUBLIC  
IN OR FOR THE NORTHWEST TERRITORIES.

The objectives of the Final Abandonment and Restoration Plan are to:

- Present a site characterization of the minesite, including the natural setting, history, a description of the site's facilities, and identification of environmentally impacted areas, both recent and historical;
- Provide a human health risk assessment for arsenic-impacted soil contamination;
- Describe the environmentally disturbed areas;
- Present reclamation and restoration measures to address the disturbed areas;
- Provide a schedule of the activities required for reclamation and closure of the site;
- Provide a budget of the estimated costs for the abandonment and reclamation of the property.

The Con Mine was started in 1938 by Consolidated Mining and Smelting, Limited (Cominco). Nerco Minerals Limited purchased the operation in 1986, and owned and operated the mine until 1993 at which time Kennecott Limited, purchased Nerco and sold the Con Mine to Miramar Mining Corporation. Since October 1993, Miramar Con Mine Limited has owned and operated the mine. The minesite surface leases encompass a total



At the Con Mine, gold ore is classified as one of two types: "refractory" or "free milling". Tailings are the byproduct of both processes and consists of a slurried mixture of finely ground rock, water and chemical residues that remain after the extraction of the valuable minerals. Early in the mine's history, prior to the development of the pressure oxidation (autoclave) technology, high temperature roasting was used to oxidize refractory ore and produced residual by-products of high arsenic sludges and calcines. These later by-products are presently being processed on-site and will be disposed of with the tailings in the mine disposal facility.

The primary issues which are dealt with for operation are listed below, along with a description of the applicable work for each.

#### Underground Mining Operations

The underground workings will be closed as part of this effort. Hazardous materials will be removed, large equipment will be cleaned and left underground, surface openings will be closed, and the mine will be allowed to flood. It is estimated that 4 years will be required to flood the mine.

#### Arsenic Contaminated Soils

The mine site has been divided up into nine sectors, according to the degree of arsenic contamination. The nine sectors are the following;

- Mill and autoclave site;
- Crank Lake and area to the south;
- Con Pond area;
- Blend Plant and Negus Pond;
- Robertson complex;
- Con Dock and area north of (old) Negus Mill complex;
- Upper and Middle Pud Tailings Area;
- Lower Pud Tailings area;
- Negus Tailings and Neil Lake areas; and
- Undisturbed or background areas

In these areas, approximately 10,000 to 12,000 m<sup>3</sup> of arsenic-impacted soil will be excavated at the Mill and Autoclave site, and will be disposed of on site. The areas around the Blend Plant and Negus Pond; part of the Middle Pud tailings area, and the Con Pond area will be closed as hazardous sites.

### Tailings Containment Areas

There are six areas on the mine property. Of these six, four are no longer used for tailings deposition: Crank Lake, Lower Pud Lake, Negus Tailings Area, and Neil Lake. Reclamation of these areas is underway, and is expected to be complete in 2006. The two tailings containment areas still in use are Upper Pud Lake and Middle Pud Lake. Upper Pud Lake will reach full tailings capacity in 2003, and reclamation will begin in 2004. Middle Pud Lake will reach full tailings capacity in late 2004 and, similarly, reclamation will begin at that time. It is anticipated that the reclamation should be complete in 2008. Reclamation of the tailings areas consists mainly of capping the tailings, and revegetating the area.

### Surface Waters

Surface water catchment areas and associated restorative work are listed below.

- Taylor Road: A storm sewer system will be built to divert the surface water to Kam Lake. It is proposed that the City of Yellowknife will ultimately take possession of the system.
- Crank Lake, Upper Pud and Middle Pud: Runoff from these three areas will be directed to Middle Pud containment area, where it will subsequently be treated at the Water Treatment Plant and, ultimately, released. Current data indicates that the water will be treated for at least 10 years.
- Negus Pond and Neil Lake: Surface water will be directed to Lower Pud Lake, where the water quality will be tested. If the water is within discharge limits, it will be discharged to Meg Lake; if it is not within discharge limits, it will be pumped to Middle Pud Pond.

### Groundwater

It is expected that, once the mine is allowed to flood, the regional groundwater pattern will return approximately to the pre-mine pattern. The Final A&R Plan allows for installing water quality monitoring points on the east side of the Crank Lake area. The groundwater in this area would be pumped to Middle Pud, depending on the results of the monitoring.

### Surface Structures

Surface structures will be demolished and the debris placed in on site landfills. Building areas will be scarified, contoured, and revegetated as required.

February 2003

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### Water Treatment

It is anticipated that 925,000 m<sup>3</sup> of water left over from operations will be treated in the Water Treatment Plant during the summer following closure. Subsequently, the Water Treatment Plant will treat surface water runoff for at least 10 years.

### Public Access

During closure and post-closure periods, public access will be allowed only to areas that are deemed to be safe.

Costs for Final A&R have been estimated using the Reclaim spreadsheet model. The estimated cost for closure is approximately \$8M.

The post-closure monitoring plan will be finalized once the Final A&R Plan has been accepted. It is proposed that, for purposes of post-closure environmental monitoring, the existing Surveillance Network Program be extended after closure.



THIS IS EXHIBIT "E"  
TO THE AFFIDAVIT OF Lorella M. Brumma  
SWORN BEFORE ME THIS 21 OF January 2004

  
A COMMISSIONER FOR OATHS IN OR NOTARY PUBLIC  
IN OR FOR THE NORTHWEST TERRITORIES.

## **Miramar Con Abandonment and Restoration Working Group TO THE MACKENZIE VALLEY LAND AND WATER BOARD**

### **TERMS OF REFERENCE**

July 14, 2003

#### **1. Introduction and Mandate**

The Miramar Con Abandonment and Restoration Working Group (MCARWG) is established to provide a forum for the discussion of technical matters related to Miramar Con Mine Ltd. (MCML) Final Abandonment and Restoration Plan.

The MCARWG members will provide expert technical opinions and recommendations to the MVLWB with respect to elements of the Final Abandonment and Restoration Plan (A&R Plan) pertaining to Water License N1L2-0040.

The A&R Plan will be addressed in 8 sections. Each meeting held with the MCARWG is meant to deal with one section at a time. If the MCARWG indicates specific concerns, then MCML will be given a timeline in which to address these concerns.

#### **2. Membership**

- (a) The MCARWG will be chaired by the MVLWB Regulatory Officer assigned to the Miramar Con Mine license. The Secretariat will be provided by the MVLWB.
- (b) The MCARWG will be provided with a Coordinator who will be the MVLWB Regulatory Officer assigned to the Miramar Con Mine license. The Coordinator will provide direct support to the MCARWG members by coordinating the distribution and review of all submissions, reports and plans coming before the MCARWG.
- (c) The membership of the MCARWG shall be established by invitation and shall include one staff member or their alternate from the following agencies or associations:

- Environment Canada – Environmental Protection (EPB)
- Fisheries and Oceans (DFO)
- DIAND Inspection Services
- DIAND – Water Resources
- GNWT RWED
- GNWT Health
- MACA
- City of Yellowknife
- Dene Nation

- North Slave Métis Alliance
  - Dogrib Treaty 11 Council
  - NWT Chamber of Mines
  - WCB Mine Inspection
  - Any other citizens or interested parties the MVLWB may wish to invite to facilitate the mandate of the MCARWG. A list of the Initial MCARWG membership is attached and will be updated frequently to reflect the current mp.
- (d) The members of the MCARWG will attempt to maintain the same representatives at each meeting to provide consistency to the technical discussions. The active MCARWG member should keep alternates informed of MCARWG proceedings.
- (e) Meetings between MCARWG members and MCML representatives and their consultants is encouraged to discuss review comments as a means to reduce the number of technical uncertainties that might arise at scheduled MCARWG meeting.
- (f) The DIAND Water Resources Officer (WRO) assigned to the Miramar Con Mine will be invited to attend the MCARWG meetings to provide updated field information respecting the developments and environmental issues observed at the project site and to render his/her opinion regarding any matter arising at the MCARWG meetings.
- (g) Subcommittees of the MCARWG may be established at the discretion of the Chair to review and provide advice on specialized technical issues.
- (h) Members of the MCARWG are appointed to the MCARWG and their expert advisors are invited to MCARWG meetings with the expectation that they will use their professional expertise and opinions to the benefit of the MCARWG and the MVLWB.

### **3. Responsibilities**

The primary responsibilities of the MCARWG are to:

- review & provide technical opinions and recommendations regarding the A & R projects
- determine the accuracy and soundness of materials submitted to the Board,
- offer opinions and recommendations to the MVLWB respecting the technical elements of the Abandonment and Restoration projects, and
- provide a forum to discuss the A&R plan section approvals. The MCARWG members may also be requested to provide MVLWB staff administering the MCARWG files with information regarding any new significant environmental issue that may arise during the term of the project. These will be recorded and brought to the attention of the MVLWB.

The Chair of the MCARWG will ensure that all opinions and recommendations and related criteria and rationales will be recorded in the minutes of the MCARWG meetings and will become part of the MVLWB Public Registry.

The MCARWG will provide recommendations and opinions to the MVLWB which are derived from discussions of the evidence before it and, wherever possible, by consensus of the members of the MCARWG.

#### 4. Meetings

Eight formal meetings will be organized to deal with each section of the A&R Plan. The objective of each meeting is to attain a group consensus on technical elements of the section under review. If the MCARWG does not agree, then MCML will be given a timeline in which to address MCARWG's concerns. Once MCML addresses the concerns, group consensus will be attained through another meeting or through correspondence.

The MCARWG will meet as required to conduct the business put forward by the MVLWB. MCARWG meetings will be called at the discretion of the MCARWG Chair in order to comply with the MVLWB's scheduled meetings. The Coordinator will make every effort to provide sufficient notice to all members of the MCARWG Meeting Schedule.

The location of meetings will normally be at the Boardroom of the MVLWB in Yellowknife (7<sup>th</sup> Floor, 4910-50<sup>th</sup> Avenue), but there may be occasions and opportunities for the MCARWG or its subcommittees to meet in other locations in Yellowknife. Occasional on-site visits and meetings by the MCARWG at project sites will be encouraged to provide first-hand knowledge of the activities that are occurring on site as restoration proceeds.

#### Meeting Schedule

<u>Priority</u>	<u>Reclamation / Restoration Project</u>	<u>Scheduled Work Commencement</u>	<u>Estimated Completion Date</u>
1.	<u>Con Pond and Negus Arsenic Sludge Ponds and the Internal Cell between Upper Pud and Middle Pud Tailings Containment Areas (see Fig. 4.4 in the A &amp; R Plan)</u> Concept of designating the cleaned out Con and Negus arsenic sludge ponds and the Internal Cell in the Tailings Containment Area as hazardous sites for the placement of contaminated soils and oversize boulders (from the cleanup of the sludge from the Con and Negus ponds). MCML states that upon receipt of approval of the concept of designating these areas as hazardous sites, conceptual designs and/or defining a risk-assessment approach to possible operations will be prepared and submitted to the MVLWB for consideration and approval.	Summer 2003	Fall 2004



- |   |                      |                                   |
|---|----------------------|-----------------------------------|
| <p>2. <u>Crank Lake, Negus, Neil Lake, and Lower Pad Historical Tailings Areas</u><br/>         This is part of the site's progressive reclamation plan, Miramar started the work last year.<br/>         The Program consists of draining, grading/contouring, and reseeding, using three different revegetation techniques: fertilizing and seeding, fertilizing and seeding with peat, and fertilizing and hydroseeding.</p>     | Ongoing              | Fall 2006                         |
| <p>3. <u>Demolition and/or Removal of Surface Structures</u><br/>         This is part of the site's progressive reclamation plan, Miramar started the work last year the commencement of asbestos removal and will continue this summer with the demolition of vacant structures (primarily in the Con Dock area). The closure and disassembly of the Robertson Shaft and Office Complex may begin in the winter of 2003/2004.</p> | Ongoing              | Fall / Winter 2006                |
| <p>4. <u>Rat Lake</u><br/>         Approval of the proposed Rat Lake restoration will permit Miramar to initiate public input to the proposed work. Scheduling of the physical excavation work will be predicated on public acceptance of the proposed restoration.</p>   | Summer 2003          | Fall 2004                         |
| <p>5. <u>Underground Workings</u><br/>         Miramar capped unused surface openings last year, and propose abandonment and flooding of the lower workings of the mine this fall. The capping of surface openings and flooding will progress as specific areas of the workings area abandoned over the remaining life of the operation.</p>  | Fall 2003            | Fall 2006                         |
| <p>6. <u>Contaminated Soil</u><br/>         The soils will be excavated and sequestered in the designated hazardous sites.</p>  | Summer 2004          | Fall 2004                         |
| <p>7. <u>Upper and Middle Pad Tailings Containment Areas</u><br/>         Following the cessation of tailings discharge and the surfaces are drained/dry enough such that equipment can operate safely operate on the surfaces test plots will be established, in part based on the experience gained from work with the historical tailings areas.</p>   | Spring / Summer 2004 | Fall/Winter 2008                  |
| <p>8. <u>Site Monitoring and Water Management</u><br/>         Installation of Crank Lake monitoring wells, re-identification of SNP stations, and the establishment monitoring schedules.</p>  | Summer / Fall 2004   | Dependant Upon Monitoring Results |

## 5. Opinions and Recommendations to the MVLWB

Following review and discussion of each section of the A&R Plan, the MCARWG will endeavour to develop opinions and recommendations by consensus. The MCARWG Chair will call for motions to be put forward to formulate opinions and recommendations to be provided to the MVLWB.

Where consensus cannot be reached in a timely manner, or where time constraints limit the ability of the members of the MCARWG to meet and to formulate opinions or recommendations, the MCARWG Chair and Coordinator

and their consultants may utilize the available technical information and review comments to decide whether approval of the A&R Plan section being dealt with is warranted. This would then be provided to MCARWG members, the MVLWB, and its Public Registry. This is considered necessary to ensure that no unreasonable delays occur with respect to the Abandonment and Restoration projects.

Draft

City of  
**Yellowknife**



December 12, 2003

Mackenzie Valley Land and Water Board  
P.O. Box 2130  
Yellowknife, NT X1A 2P6

Attention: Latisha Heilman

Dear Ms. Heilman,

**RE: Con Mine Restoration and Abandonment Plan**

As a member of the Con Mine Abandonment and Restoration Working Group, the City of Yellowknife has been requested to comment on various aspects of the Restoration and Abandonment Plan ("plan") put forward by Miramar Con Mine Limited ("Miramar"). In one of the early working group meetings, members were specifically asked to address the issue of the reclamation of the historic (non-active) tailing ponds, which include Negus Pond, Neil Lake and Lower Pud Lake ("area"). It is Miramar's plan to grade, fertilize and seed this area. Miramar has proceeded to implement this plan both in the absence of consensus from the working group and the authorization of the Mackenzie Valley Land and Water Board ("MVLWB"). The following excerpt is from a letter sent to the MVLWB on November 20, 2003 and is illustrative of their intent:

The closure and reclamation of the site's historical tailings areas involve three objectives: protecting the tailings from erosion, developing an infiltration barrier against the movement of surface water through the tailings, and establishing a barrier against physical contact between the body of tailings and possible animal and human contact.

Erosion control (including dust abatement) can be accomplished with the establishment of vegetation, using a rock capping, or through the use of "cementing" agents such as magnesium chloride and calcium chloride. With its progressive reclamation of the historic tailings area, Miramar Con Mine, Limited is using vegetation in preference to rock capping or cementing agents. Cementing agents function only as a short-term (seasonal) obstacle to erosion and infiltration and do virtually nothing as a barrier to physical contact. On sites with little or no topographic relief in arid and semi-arid environments, vegetation is preferable to rock capping for erosion control in that it is equally effective against wind erosion (excepting immature/incomplete vegetation in arid areas in the presence of strong and chronic or gusty winds), aesthetically more pleasing, and less expensive.

...

As a barrier against surface water infiltration and the movement of water through the tailings mass,

THIS IS EXHIBIT "F"  
TO THE AFFIDAVIT OF Lorella M. Bannister  
SWORN BEFORE ME THIS 21 OF JANUARY 2004

[Signature]  
A COMMISSIONER FOR OATHS IN OR NOTARY PUBLIC  
IN OR FOR THE NORTHWEST TERRITORIES.



vegetation is more effective than rock capping in that water is removed from both the surface and immediate subsurface of the tailings by evapotranspiration (surface evaporation plus the uptake and use of water by vegetation for photosynthesis) and the promotion of near-surface heat flow and vapor flux by exposure to sunlight and air). Thus the use of vegetation in lieu of rock cover has the benefit of impacting both the water balance and the flux rate into the tailings mass.

While we agree that seeding and fertilizing the area at issue could be considered a viable means of preventing water infiltration, we cannot agree that seeding and fertilizing the area alone is an acceptable means of preventing animal and human contact with contaminated material. We cannot agree with this because it is highly likely that the vegetative layer will be disturbed by either authorized or unauthorized recreational (or perhaps other) use of the area as will now be discussed.

The Environmental Protection Service of the Government of the Northwest Territories Department of Resources, Wildlife, and Economic Development recently endorsed environmental guidelines for contaminated site remediation. The document that contains the guidelines is titled *Environmental Guideline for Contaminated Site Remediation*. The document also discusses future land uses for the area, and has identified the area as falling within the category of Residential/Parkland. While the City does not contemplate using the land for residential purposes, it does contemplate making it available to the general public for recreational purposes (i.e. hiking, dog walking, 4x4 off-roading, etc.). Specifically the City envisions developing some of the large areas as formal parks.

In addition to discussing future land uses for the area at issue, the document identifies several approaches for determining the application of remediation criteria at contaminated sites. Given the large area at issue and the costs associated with remediating it, the City's position is that it would be best to use the 'Risk-Based Approach'. The application of this approach would result in the development of site-specific objectives derived from the results of a risk assessment, which would in turn indicate a concentration of arsenic that is acceptable to human or ecological receptors. With arsenic the acceptable soil concentrations vary from 160 ppm for residential use to 340 ppm for industrial use.

For the area at issue, remediation must result in either an industrial or residential standard being achieved. The City would prefer that the standard be a residential one, though it concedes that this may not be a practical option given the size of the area. One way of achieving whichever standard is adopted would be to remove the contaminated material to a specified off-site location for treatment. Another means of achieving the standard would be to cap the site in such a manner so as to allow for recreational use while at the same time ensuring that there is no human contact with the contaminated material on a long-term basis.

Currently the proposed plan for reclamation of the area only contemplates vegetating the surface through hydro seeding. This may be successful in terms of eventually preventing water infiltration as the vegetative layer builds up. However this method will not ensure protection against animal and human contact as it may easily be disturbed. A breach of the vegetative cap is a very real likelihood; as for instance, a single all-terrain vehicle either

December 12, 2003

Page 3

trespassing or legitimately accessing the area could cause considerable damage and thereby compromise the integrity of it.

It should also be noted that Miramar is not following the recommendations of the consultant it originally retained to provide advice on the use of soil amendments prior to seeding. What Miramar has done instead is consult with Artic Farmer Landscaping, and cites that local firm as providing expert advice that vegetation will grow without the previously recommended soil amendments. This course of action, among others, causes the City great concern.

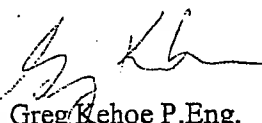
Our position is that the final capping should consist of the following:

- 300 – 600 mm of rock cover ranging in size from 150 mm minus;
- 100 – 150 mm of soil amendments; **and**
- hydro seeding.

We have taken this position because it is the course of action most likely to achieve the goal of both ensuring that both animal and human contact with the contaminated material is minimized and water infiltration does not occur. Again, the protective rock cover would act as a barrier against human contact if the vegetative cover layer were to be disturbed as a result of use of the area, which is a very real likelihood.

Should you require additional information or wish to discuss this matter in greater detail please feel free to contact me at your convenience.

Sincerely,



Greg Kehoe P.Eng.  
Director, Public Works & Engineering  
DK/LB

cc. Max Hall - City Administrator  
Robert Charpentier - Director, Corporate Services  
Dave Nicklen - Director, Public Safety  
Monte Christensen - Manager, Planning and Lands  
Dennis Kefalas P. Eng. - Manager, Public Works & Engineering

THIS IS EXHIBIT "G"  
TO THE AFFIDAVIT OF Loella M. Brownmaster  
SWORN BEFORE ME THIS 21 OF January 2004

[Signature]  
A COMMISSIONER FOR OATHS IN OR NOTARY PUBLIC

Yellowknives Dene First Nation  
Box 2514, Yellowknife, N.W.T. X1A 2P8

Dettah Ph: (867) 873-4307  
(867) 873-8951  
Fax: (867) 873-5969

NIL 2 - 0040



October 20, 2003

Mr. Bob Wooley  
Executive Director  
Mackenzie Valley Land and Water Board (MVLWB)  
7th Floor - 4910 50th Avenue  
Box 2130, Yellowknife, NT X1A 2P6  
Fax: (867) 873-6610

Mackenzie Valley Land  
& Water Board

File

OCT 21 2003

Application # NIL 2 - 0040

Copied To PMILH/Reg

Attention: Mr. Wooley,

**RE: YKDFN Comments on the Final Abandonment, Restoration, Management and Monitoring of the Miramar Con Mine, Ltd (Miramar)**

The YKDFN Land and Environment Committee is responsible for the management of YKDFN land and water interests. The Miramar Con Mine is located on the west side of Yellowknife Bay on the Great Slave Lake, right across from Dettah on our traditionally used lands.

The YKDFN want to ensure that the land and water is not impacted by the mine reclamation process and the mine site once it is reclaimed. The YKDFN also want to ensure appropriate environmental management and monitoring of the reclaimed mine site with enough financial bonding to encourage Miramar to undertake on-going proactive site monitoring and impact mitigation as needed.

Miramar Con Mine prepared a draft A&R plan for the MVLWB. The Final Abandonment and Restoration (A&R) Plan identifies the specific issues that must be addressed to remediate, close and then monitor the Miramar Con mine site. It identifies the measures to be taken to remediate specific areas or problems and provides a schedule for execution of the remediation and A&R projects.

The YKDFN wants to make it clear that when the A&R licensing process started with the MVLWB there was at least one year before the scheduled shut down of the mine within which to complete the A&R plan. That has changed. There is now a rush to complete the A&R plan as the mine has ceased underground operations and is quickly moving to full closure. Therefore, these comments are provided without prejudice and do not preclude alternative action to ensure appropriate protection of the environment and human health.

## **Primary Issues**

The primary issues which are dealt with in the A&R plan are listed below, along with YKDFN issues work for each.

### **1.1 Underground Mining Operations**

Miramar proposes to close the underground workings. Hazardous materials will be removed, large equipment will be cleaned and left underground, surface openings will be closed, and the mine will be allowed to flood. It is estimated that 4 years will be required to flood the mine.

#### **Issues**

The closure of the underground workings is scheduled to occur in November 2003. The workings will flood with water in about four years. The YKDFN remain unconvinced that Miramar has provided sufficient assessment and evaluation of the following potential impacts that could result with the flooding of the underground workings such as:

- Mine workings could overflow and result in surface runoff;
- water could leak from openings in the mine that nobody knows about;
- pollutants in the old parts of the mine that nobody knows about could get into the water;
- Long-term water management issue with water moving from the underground workings to the surface and then flowing into Great Slave Lake.

### **1.2 Arsenic Contaminated Soils**

Miramar acknowledges there is considerable arsenic associated with gold mining on the existing mine site. Over the years much arsenic has accumulated on the mine site in different places. The A&R plan must try to show how the arsenic is contained and/or treated.

Miramar has divided up into nine sectors, according to the degree of arsenic contamination. The nine sectors are the following:

- Mill and autoclave site;
- Crank Lake and area to the south;
- Con Pond area;
- Blend Plant and Negus Pond;
- Robertson complex;
- Con Dock and area north of (old) Negus Mill complex;
- Upper and Middle Pud Tailings Area;
- Lower Pud Tailings area;
- Negus Tailings and Neil Lake areas; and
- Undisturbed or background areas

In these areas, approximately 10,000 to 12,000 m<sup>3</sup> of arsenic-impacted soil will be excavated at the Mill and Autoclave site, and will be disposed of on site. The areas around the Blend Plant and Negus Pond; part of the Middle Pud tailings area, and the Con Pond area will be closed as hazardous sites.

### Issue

Miramar Con Mine has not prepared a quantitative risk assessment of the site. Therefore, nobody knows what the environmental and health risk of the mine site currently is, and what it should be. Also, there are several "hot-spots" throughout the site that Miramar knows about, and others that it admits it does not know of. These will require on-going management and monitoring. In addition the YKDFN want clarity regarding:

- The role of the YKDFN in on-going monitoring.
- The role of the YKDFN in future planning and development of the reclaimed Miramar Con Mine site.
- What to do with the soils that cannot be treated after closure has occurred?
- How to find the arsenic contaminated hotspots on the mine-site before they become problems?
- The role if the YKDFN in any clean-up of contaminated soils in the future?
- The potential impact of "hot-spots" on YKDFN 25, 50, and more years from now?
- The lack of a risk based approach for the assessment, evaluation, and management of on-site hazards, including arsenic.

### 1.3 Tailings Containment Areas

Miramar states there are six tailings containment areas on the mine property. Of these six, four are no longer used for tailings deposition. They are: Crank Lake, Lower Pud Lake, Negus Tailings Area, and Neil Lake. Reclamation of these areas is underway.

Miramar states the two tailings containment areas still in use are Upper Pud Lake and Middle Pud Lake. Upper Pud Lake is near capacity. Middle Pud Lake is approaching full capacity. It was anticipated that their reclamation would be complete in 2008. That is now much sooner, but new dates have not been provided. Reclamation of the tailings areas consists mainly of capping the tailings, and revegetating the area.

### Issue

The Miramar Con Mine has been in operation for over 50 years and nobody really has any idea what is at the bottom of the old tailings ponds. For example 50 years ago tailings areas were not lined with impermeable materials, so there could be long-term leaching issues that no-body knows about. This will require long-term monitoring consideration and associated costs to undertake. Once the tailings ponds areas are capped, they will forever remain dangerous because of the arsenic. They will also forever pose a risk to human and environmental health.

The YKDFN wants assurance from Miramar that it is willing to financially commit to ongoing management and mitigation of the mine site to make sure the land and people are protected. To that end, the YKDFN want a statement of undertaking from Miramar outlining its environmental monitoring and environmental management commitments. The YKDFN also requests assurance in the form of a significant corporate bond that is refundable to Miramar on a straight line basis over 30 years.

The YKDFN want a full management planning schedule for site A&R as part of the water licence approval for the mine closure.

#### **1.4 Surface Waters**

Miramar provides the following water catchment areas and associated restorative works are listed below.

- Taylor Road: A storm sewer system will be built to divert the surface water to Kam Lake. It is proposed that the City of Yellowknife will ultimately take possession of the system.
- Crank Lake, Upper Pud and Middle Pud: Runoff from these three areas will be directed to Middle Pud containment area, where it will subsequently be treated at the Water Treatment Plant and, ultimately, released. Current data indicates that the water will be treated for at least 10 years.
- Negus Pond and Neil Lake: Surface water will be directed to Lower Pud Lake, where the water quality will be tested. If the water is within discharge limits, it will be discharged to Meg Lake; if it is not within discharge limits, it will be pumped to Middle Pud Pond.

Miramar anticipates that 925,000 m<sup>3</sup> of water left over from operations will be treated in the Water Treatment Plant during the summer following closure. Subsequently, the Water Treatment Plant will treat surface water runoff for at least 10 years.

Miramar's current site surface water management plan is based on currently known soil and surface conditions. If contaminated soil hotspots and/or mine flooding results in surface water flow there could be other significant issues to deal with. The YKDFN want Miramar Con Mine to address the following concerns:

- How is Miramar prepared to address any surface flooding resulting from mine workings flooding? What contingency is in place, should this happen?
- Who will manage and pay for the long-term water management needed for the mine site?
- What happens if the water treatment plant is needed for 20 plus years, who will pay to operate it and improve it if necessary?
- What happens if the surface water picks up soil contaminants that cannot be treated in the water plant, what happens then?
- Is there sufficient assurance surface water will not drain into Great Slave Lake?



### **1.5 Groundwater**

Miramar expects that once the mine is allowed to flood, the regional groundwater pattern will return approximately to the pre-mine pattern. The Final A&R Plan allows for installing water quality monitoring points on only the east side of the Crank Lake area. The groundwater in this area would be pumped to Middle Pad, depending on the results of the monitoring.

#### **Issue**

Miramar does not know what the pre-mine underground water pattern was. In addition given all the blasting and rock fracturing that has occurred there is likely significant uncertainty about what the future groundwater flow patterns will really be. The real concern is that there are groundwater connections between the mine workings, the tailings ponds and other contaminated sites with Great Slave Lake.

The YKDFN want a better more risk adverse monitoring plan from the company to ensure that any possible ground water issues are caught and managed as soon as possible.

The YKDFN would like to know what medium and long term environmental and human health monitoring commitments the federal government is prepared to endorse.

### **1.6 Surface Structures**

Surface structures will be demolished and the debris placed in on site landfills. Building areas will be scarified, contoured, and revegetated as required.

#### **Issue**

There are several structures on the mine-site that may be of value to the YKDFN. Currently all structures will be torn down and buried. Perhaps there is a chance to reclaim some of the materials or buildings for the YKDFN use. Is Miramar prepared to allow reuse of some of the buildings or building components?

### **1.7 Costs for Final A&R**

Miramar states that its Final A&R costs have been estimated using the Reclaim spreadsheet model. The estimated cost for closure is approximately \$8M. The post-closure monitoring plan will be finalized once the Final A&R Plan has been accepted. Miramar proposes to use the existing Surveillance Network Program after closure.

#### **Issue**

There is uncertainty about what it could really cost to monitor and possibly restore the mine site if problems occur in the future that were not expected. Also, little thought has been put into what monitoring is needed to make sure the environment and people are safe after the mine is shut down. The YKDFN want assurance and security from the company for long-term water management, monitoring and a bond in case additional restoration work has to be done on-site.



The YKDFN appreciate receiving answers and information regarding the issues raised before finalizing any A&R licence. We also recommend Miramar provide Dettah and Ndilo regular updates regarding its closure and reclamation activities.

Sincerely,

  
Chief Peter Liske - Dettah

  
Chief Darrell Beaulieu - Ndilo

c.c. Latisha Heilman, Mackenzie Valley Land and Water Board, Yellowknife, NT  
Fax: (867)873-6610

Yellowknives Dene First Nations Legal Counsel, Edmonton, Alberta  
Fax: (780) 424-5852

**Brenda Backen**

---

**From:** Latisha Heilman [latisha@mvlwb.com]  
**Sent:** Friday, October 24, 2003 1:50 PM  
**To:** 'Brenda Backen'  
**Subject:** FW: Comments for upcoming meeting, N1L2-0040

-----Original Message-----

**From:** Lisa Hurley [mailto:lhurley@mvlwb.com]  
**Sent:** Monday, September 29, 2003 4:46 PM  
**To:** Bob Hauser; Jim McKay  
**Cc:** 'Latisha Heilman'; 'Brenda Backen'; Larry Connell  
**Subject:** Comments for upcoming meeting

Good Afternoon,


The following comments were received from reviewers regarding the Underground Workings section to be discussed at the upcoming MCARWG meeting on Oct. 7:

- There is no mention of plans for dealing with any hydrocarbon contamination underground, ie. from oil spills.
- The plan says equipment will be drained of all fluids and flushed. Does this include transformers that are proposed to be left underground?
- "Post closure mine water will be monitored..." How long will this be done and what is the contingency in the event the water quality is unacceptable?

I was also wondering if you had prepared the response to the questions that resulted from the first meeting.

Lisa Hurley

*Regulatory Officer  
Mackenzie Valley Land & Water Board  
7th Floor - 4910-50th Ave.  
PO Box 2130  
Yellowknife, NT X1A 2P6  
Ph: (867) 669-0506  
Fax: (867) 873-6610*

THIS IS EXHIBIT "H"  
TO THE AFFIDAVIT OF Lorella M. Bouwmeester  
SWORN BEFORE ME THIS 21 OF January, 2004  
  
A COMMISSIONER FOR OATHS IN OR NOTARY PUBLIC  
IN OR FOR THE NORTHWEST TERRITORIES.

THIS IS EXHIBIT "I"  
TO THE AFFIDAVIT OF Lorella M. Roumneest  
SWORN BEFORE ME THIS 21 OF January 2004  
[Signature]  
A COMMISSIONER FOR OATHS IN OR NOTARY PUBLIC  
IN OR FOR THE NORTHWEST TERRITORIES.

Ms. Latisha Heilman, Regulatory Officer  
Mackenzie Valley Land and Water Board  
P.O. Box 2130  
Yellowknife, NT X1A 2P6

15 October 2003

Subject: Mackenzie Valley Land and Water Board Working Group  
Miramar Con Mine Abandonment and Restoration Plan  
Closure of Underground Workings

Dear Ms. Heilman:

With the cessation of underground operations, the subsurface workings will be allowed to begin to flood as detailed in Miramar Con Mine, Limited's Abandonment and Restoration Plan.

Based on the average daily volume of water removed from the mine's operational pumping, it is estimated that it will take between four and five years for the mine to flood to an elevation of approximately 1,675 meters, or the same elevation as Yellowknife Bay. As shown on the attached map, the water will be monitored at three points: at the capped collar of the Robertson Shaft, at the capped collar of the C-1 Shaft, and at the capped 204Q Stope. While there is no definitive hydrological study, the water level is not expected to rise above the elevation of the area's adjacent water body, Rat Lake (with an elevation of approximately 1696), which is below the elevation of the lowest surface opening, the 204Q Stope, at an elevation of approximately 1701 meters.

The attached map also locates the property's surface openings and traces the area's near-surface, underground workings. With the exception of the 204Q Stope, underground mining levels do not branch off the shaft until at least 100 feet or 31 meters below the surface and these areas are geotechnically stable. The one possible exception is the 204Q Stope, adjacent to the old main gate northeast of the mill where historical underground mining activity broke through to the surface. The geotechnical stability of the 204Q area is presently being evaluated by Golder Associates and will be reported on prior to the end of the year.

Questions or comments on this material before or after the Working Group meeting should be directed to Jim McKay, Environmental Superintendent at the Con Mine at 766-5300, extension 5606 or by email at [jmckay@miramaryk.com](mailto:jmckay@miramaryk.com).

Sincerely,

John Stard  
General Mine Manager

CC: Bob Hauser, Miramar Con Mine  
Jim McKay, Miramar Con Mine

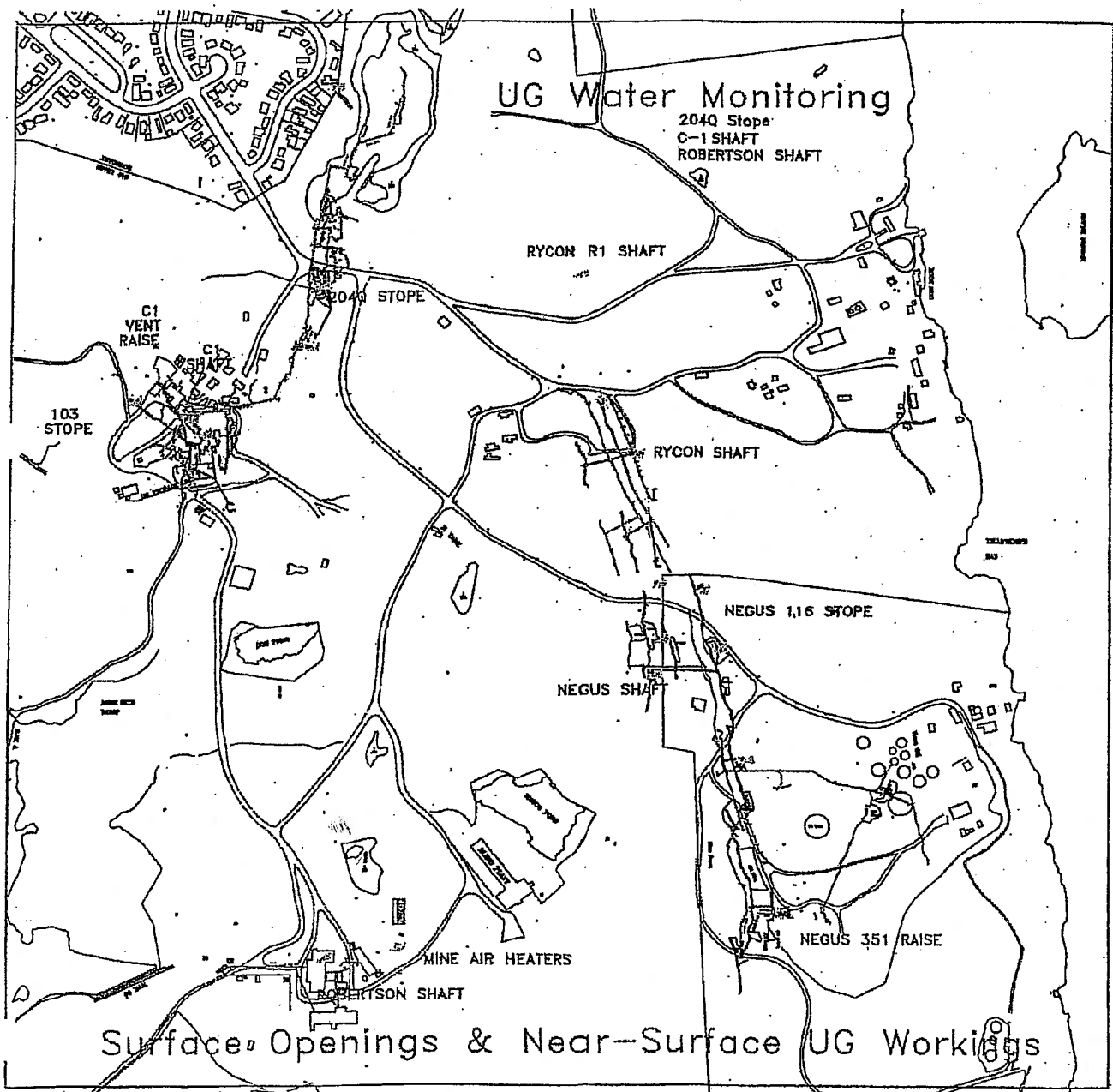
Atchafalaya Valley Land  
& Water Board

File

OCT 17 2003

Application # NIL2-0040

Copied To





Mackenzie Valley Land and Water Board  
7th Floor - 4910 50th Avenue • P.O. Box 2130  
YELLOWKNIFE, NT X1A 2P6  
Phone (867) 669-0506 • FAX (867) 873-6610

November 17, 2003

File: N1L2-0040

THIS IS EXHIBIT J  
TO THE AFFIDAVIT OF Loella M. Bouwmeester  
SWORN BEFORE ME THIS 21 OF January 2004

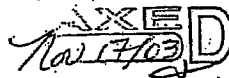
Mr. John Stard  
General Mine Manager  
Miramar Con Mine Ltd.  
P.O. Box 2000  
YELLOWKNIFE, NT X1A 2M1

  
A COMMISSIONER FOR OATHS IN OR NOTARY PUBLIC  
IN OR FOR THE NORTHWEST TERRITORIES.

Fax: 920-7068

Dear Mr. Stard:

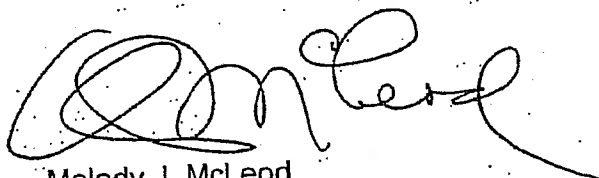
Underground Closure Water License N1L2-0040



The Mackenzie Valley Land and Water Board (MVLWB) met on October 27, 2003 and considered some of the issues arising from the company's proposal for early closure of the underground workings at the Miramar Con Mine. The MVLWB has a number of concerns with this proposal and is of the view that the closing of your underground works in the absence of an approved A&R plan is not appropriate. Ensuring access to the underground until the underground section of the A&R plan is approved and implemented would allow inspectors access to the site so that the environmental implications are given due consideration.

If you have any questions, contact Latisha Heilman Regulatory Officer, at (867) 669-0506 or email [mvlwbpermit@mvlwb.com](mailto:mvlwbpermit@mvlwb.com).

Yours sincerely,



Melody J. McLeod  
Chair

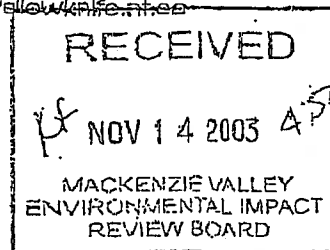
Copied to: Ed Hornby, South Mackenzie District, DIAND, Yellowknife  
David Milburn, Water Resources Division, DIAND  
Latisha Heilman, Regulatory Officer, MVLWB



OFFICE OF THE  
MAYOR

November 7, 2003

P.O. BOX 580, YELLOWKNIFE, NT X1A 2N4  
TELEPHONE: (867) 920-5693 • FAX: (867) 920-5649  
WEBSITE: city.yellowknife.nt.ca



Mackenzie Valley Environmental Impact Review Board  
Box 935  
Yellowknife NT X1A 2N7

Attn: Mr. Vern Christensen, Executive Director

Dear Mr. Christensen:

Re: Miramar Con Abandonment and Restoration Plan

At the City Council meeting held on October 27, 2003 a resolution regarding the Miramar Con Abandonment and Restoration Plan was passed. It is a lengthy resolution and I have attached a copy for your perusal.

The crux of the resolution is that the City of Yellowknife is exercising its authority Section 126(2)(c) and Section 126(4) of the Mackenzie Valley Resource Management Act. In accordance with these sections, the City is requesting the Mackenzie Valley Impact Review Board to conduct an environmental assessment of the Miramar Con Abandonment and Restoration Plan.

Yours sincerely,

Gordon Van Tighem  
Mayor

c. Distribution List

THIS IS EXHIBIT "K"  
TO THE AFFIDAVIT OF Lorella M. Rowwemer  
SWORN BEFORE ME THIS 21 OF January 2004

A COMMISSIONER FOR OATHS IN OR NOTARY PUBLIC  
IN OR FOR THE NORTHWEST TERRITORIES.

THE CITY OF YELLOWKNIFE

OFFICE OF THE MAYOR

Distribution List

Mackenzie Valley Land & Water Board  
Box 2130  
Yellowknife NT X1A 2P6  
Attn: Mr. Bob Wooley, Executive Director

Miramar Con Mine Ltd  
Box 2000  
Yellowknife NT X1A 2M1  
Attn: Mr. Brian Labodie

Yellowknives Dene First Nation  
Box 2514  
Yellowknife NT X1A 2P8  
Attn: Curtis Coleman

Hon. Jake Ootes  
MLA, YK Centre  
PO Box 1320  
Yellowknife NT X1A 2L9

Hon. Joe Handley  
MLA, Weledeh  
PO Box 1320  
Yellowknife NT X1A 2L9

Bill Braden  
MLA, Great Slave  
PO Box 1320  
Yellowknife NT X1A 2L9

Brendan Bell  
MLA, Yellowknife South  
PO Box 1320  
Yellowknife NT X1A 2L9

Sandy Lee  
MLA, Range Lake  
PO Box 1320  
Yellowknife NT X1A 2L9



OFFICE OF THE MAYOR

Hon. Tony Whitford  
MLA, Kam Lake  
PO Box 1320  
Yellowknife NT X1A 2L9

Charles Dent  
MLA, Frame Lake  
PO Box 1320  
Yellowknife NT X1A 2L9

Hon. Ethel Blondin-Andrew  
Member of Parliament, Western Arctic  
Suite 102, 5102 50<sup>th</sup> Avenue  
Yellowknife NT X1A 3S8

Hon. Vince Steen  
Minister of Municipal and Community Affairs  
Government of the NWT  
PO Box 1320  
Yellowknife NT X1A 2L9

Indian Affairs and Northern Development  
Box 1500  
Yellowknife NT X1A 2R3  
Attn: Bob Overvold, Regional Director

Hon. Robert Nault  
Minister of Indian Affairs and Northern Development  
Terrassee de la Chaudiere  
10 Wellington Street, North Tower  
Ottawa ON K1A 0H4

That the following resolution be presented for consideration:

WHEREAS significant public concerns have been expressed to the City by mine workers, residents of Con and Rycon trailer parks, Yellowknife Members of the Legislative Assembly, the City of Yellowknife Heritage Committee and others over the closure of Miramar Con Mine;

WHEREAS Miramar Con submitted an Abandonment and Restoration Plan to the Mackenzie Valley Land and Water Board in April 2003;

WHEREAS there is considerable uncertainty and urgency over the Abandonment and Restoration Plan due to the following factors;

- the Plan is conceptual in nature,
- the Plan has not been approved by a professional engineer,
- there is the potential that the Yellowknife landfill could be used for the disposal of buildings, infrastructure, and hydrocarbon contaminated soils,
- there could be up to three "designated hazardous waste sites" remaining on the surface lease within the boundaries of the City of Yellowknife,
- there has been no systematic assessment of the heritage potential of the buildings on site,
- the Plan calls for the demolition of structures in the immediate future that may hinder access to underground workings and eliminate the possibility of heritage sites,
- there are no plans outlined for long-term monitoring and inspection, and
- the site is to be remediated to an "industrial" or "recreational" standard, at best;


WHEREAS the City of Yellowknife is currently engaged in a review of its General Plan that will cover the Con Mine site and indicate preferred land uses ( slated for completion in early 2004) including possible residential and heritage related potential;

WHEREAS the City of Yellowknife is of the opinion that the closure of Con Mine and the proposed Abandonment and Restoration Plan dated March 2003 might have the potential for significant adverse environmental and socio-economic effects on the City of Yellowknife and its residents;

THIS IS EXHIBIT

TO THE AFFIDAVIT OF Lorella M. Bouwmeester

SWORN BEFORE ME THIS 21 OF January 2004

  
A COMMISSIONER FOR OATHS IN OR NOTARY PUBLIC  
IN OR FOR THE NORTHWEST TERRITORIES.

THEREFORE BE IT RESOLVED THAT the City of Yellowknife is of the view that the following principles be applied to the closure of Con Mine and its abandonment and restoration:

- that there be a rigorous, transparent and publicly accessible process for the review and approval of the Abandonment and Restoration Plan dated March 2003,
- that no materials from the mine site be deposited in the Yellowknife landfill without prior approval of the City of Yellowknife,
- that the mine site be remediated to a standard consistent with proposed land uses to be outlined and mapped in the City of Yellowknife General Plan review (to be completed in early 2004) which will take into consideration the current condition of the site,
- that local employment and contracting be maximized during abandonment and restoration, and that the current workforce be relied upon to the fullest possible extent,
- that the heritage value of the site, including any buildings, be systematically assessed and protected for the future benefit of the community, and
- that the City not assume any environmental liability or direct costs associated with abandonment, closure or long-term monitoring;

BE IT FURTHER RESOLVED THAT the City Council of Yellowknife chooses to exercise its authority as a local government under s. 126(2)(c) and 126(4) of the Mackenzie Valley Resource Management Act and refers the Abandonment and Restoration Plan for the Miramar Con mine to the Mackenzie Valley Environmental Impact Review Board for an environmental assessment to ensure a rigorous, timely, transparent and publicly accessible process; and

BE IT FURTHER RESOLVED THAT the Mayor of Yellowknife send a copy of this motion in a timely fashion to the Mackenzie Valley Land and Water Board, the Mackenzie Valley Environmental Impact Review Board, Miramar Mining Corporation, the Yellowknives Dene First Nation, Yellowknife MLA's, the MP for the Western Arctic, the Minister of Municipal and Community Affairs, and the Minister of Indian Affairs and Northern Development, to ensure that there is the appropriate follow-up action taken on this referral of the Abandonment and Restoration Plan for the Con mine to an environmental assessment.

owknife, NW1

! northern

ecember 5, 2003

lowknife, NWT

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December 5, 2003

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December 5, 2003  
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Phone: (867) 920-

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When referring to this proposal, please use reference #490072.

Proposals must be received at the above address not later than:

4:00 p.m., local time, December 15, 2003.

Lowest or any proposal not necessarily accepted.

## Notice of Hearing for the City of Yellowknife Referral

The Mackenzie Valley Environmental Impact Review Board (MVEIRB) has received a referral to environmental assessment from the City of Yellowknife under subsection 126 (4) of the Mackenzie Valley Resource Management Act (MVRMA). The activity referred to the MVEIRB is the Miramar Con Mine abandonment and reclamation process.

TAKE NOTICE that the MVEIRB has decided to hold a hearing, to be conducted by way of written submissions, pursuant to section 24 of the MVRMA, to address two questions related to the City of Yellowknife's referral. The questions are:

1. Does the Miramar Con Mine abandonment and restoration process constitute a "development" under the MVRMA? and
2. Do any of the conditions set out in paragraphs (a) to (c) of subsection 126 (4) of the MVRMA apply to the City of Yellowknife's referral?

Parties interested in participating in this written hearing should give notice of their intention to the MVEIRB by 5:00 PM, December 8, 2003.

Written submissions from interested parties are due to the MVEIRB offices by 5:00 PM, December 12, 2003.

A reply by Miramar Con Mine Ltd. will be due in the offices of the MVEIRB by 5:00 PM, December 19, 2003.

The MVEIRB decisions and reasons for those decisions will follow.

For more information please contact:

Roland Semjanovs, Communications Officer  
Mackenzie Valley Environmental Impact Review Board  
200-5102 50th Ave (2nd Floor, Scotia Centre)  
Box 938 Yellowknife, NT X1A 2N7  
Tel: 867-766-7051 Fax: 867-766-7074  
Email: rsemjanovs@mveirb.nt.ca

www.mveirb.nt.ca



Sarah A.E. Kay  
Solicitor for the Administrator  
whose address for service is:

LAWSON LUNDELL  
Barristers & Solicitors  
4908 - 49th Street, P.O. Box 818  
Yellowknife, NT X1A 2N6  
(867) 669-5523

File No. 020427-082236



Village of Fort Simpson

## NOTICE TO CONTRACTORS

"As and When" Registration  
Equipment, Material and Services

The Village of Fort Simpson may wish to rent equipment, purchase material or obtain services, during 2004 on an "as and when" required basis, and is presently compiling equipment, material and services registration list. The following equipment, material and services may be required:

Dump trucks, water trucks, backhoes, excavators, loaders, dozers, packers, graders, sand, pit run granular, crush granular, 318 and under granular, electrical services, plumbing services, painting, carpentry, and other miscellaneous equipment or services.

Equipment, Material and Service lists and rates must be registered in accordance with and on the documentation available at the office of the Village of Fort Simpson, P.O. Box 438, Fort Simpson, NT, X0E 0N0.

Registration will NOT be considered if provided on any other form than the document provided by the Village of Fort Simpson.

Registration of equipment, material and services, together with rates, will be received up to 5:00 pm local time, Friday, December 19, 2003.

THIS IS EXHIBIT

TO THE AFFIDAVIT OF

SWORN BEFORE ME THIS

"M"

Lorella M. Rowmester

21 OF January 2004

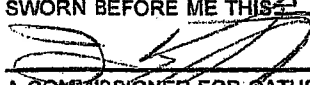
A COMMISSIONER FOR OATHS IN OR NOTARY PUBLIC  
IN OR FOR THE NORTHWEST TERRITORIES.



OFFICE OF THE  
MAYOR

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THIS IS EXHIBIT "N"  
TO THE AFFIDAVIT OF Lorela M. Bouwmeester  
SWORN BEFORE ME THIS 21 OF January, 2004  
  
A COMMISSIONER FOR OATHS IN OR NOTARY PUBLIC  
IN OR FOR THE NORTHWEST TERRITORIES.

December 11, 2003

BY HAND AND FAX

Mackenzie Valley Environmental Impact Review Board  
P.O. Box 938  
5102 – 50<sup>th</sup> Ave.  
Yellowknife NT  
X1A 2M1

Dear Sirs/Mesdames:

**Re: Miramar Con Mine Abandonment and Restoration Plan – Referral by City of Yellowknife pursuant to section 126 of the *Mackenzie Valley Resource Management Act***

The City of Yellowknife makes the following submissions respecting the two questions you have raised in regard to the City's referral of the Miramar Con Mine Abandonment and Restoration Plan to the Mackenzie Valley Environmental Impact Review Board (the "MVEIRB") for environmental assessment pursuant to section 126 of the *Mackenzie Valley Resource Management Act* S.C. 1998 c. 25 (the "MVRMA").

**Question #1: Does the Miramar Con Mine Abandonment and Restoration Plan constitute a "development" under the MVRMA?**

The Abandonment and Restoration Plan (the "Restoration Plan") was submitted by Miramar Con Mine Ltd. ("Miramar") to the Mackenzie Valley Land and Water Board ("MVLWB") on March 14, 2003 as its final abandonment and restoration plan under the terms of licence no. N1L2-0040, a licence issued to Miramar pursuant to the provisions of the *Northwest Territories Waters Act* S.C. 1992 c. 39 and dated July 30<sup>th</sup>, 2000 (the "Water Licence").

Miramar submitted the Restoration Plan to the MVLWB pursuant to the provisions of Part H of the Water Licence which provides that any abandonment and restoration plan must be approved by the MVLWB. The purpose of the Restoration Plan is to provide for the decommissioning and abandonment of the Con Gold Mine and the reclamation of the mine site.

Under section 111 of Part 5 of the MVRMA "development" is defined as follows:

"development" means any undertaking or any part of an undertaking that is carried out on land or water and, except where the context otherwise indicates, wholly within the Mackenzie Valley, and includes measures carried out by a department or agency of government leading to the establishment of a national park subject to the *National Parks Act* and an acquisition of lands pursuant to the *Historic Sites and Monuments Act*

"Mackenzie Valley" is defined in section 2 of the MVRMA as follows:

"Mackenzie Valley" means that part of the Northwest Territories bounded on the South by the 60<sup>th</sup> parallel of latitude, on the West by the Yukon Territory, on the North by the Inuvialuit settlement region, as defined in the agreement given effect by the *Western Arctic (Inuvialuit) Claims Settlement Act* and on the East side by the Nunavut settlement area as defined in the *Nunavut Land Claims Agreement Act* but does not include Wood Buffalo National Park.

The Con Mine is therefore located in the Mackenzie Valley for the purposes of the MVRMA. The issue then becomes whether the Restoration Plan is an "undertaking" for the purposes of section 111 of the MVRMA.

The Mackenzie Valley Environmental Impact Review Board Guidelines state (at page 27) in relation to the definition of "development":

The meaning of an "undertaking" is very broad in the context of the MVRMA, and includes any "physical work", such as the construction of a building or some other permanent structure, and an "activity", such as a camp, a sampling program, putting in a winter road, or cleaning up an abandoned mine site.

(Our emphasis)

The Guidelines also state (at page 26) that "a development proposal is an undertaking on land or water".

These Guidelines were made by the MVEIRB pursuant to section 120 of the MVRMA which empowers the MVEIRB to establish guidelines for, *inter alia* "the determination of the scope of developments by the Review Board".

It is submitted that the work to be carried out on the Con Mine site as a part of the Restoration Plan is clearly an "undertaking" that is carried out on land and water in the Mackenzie Valley. Even if the Con mining project *in toto* is regarded as the "undertaking" the Restoration Plan would clearly be a "part of the undertaking" for the purposes of the definition of "development" in section 111.

This interpretation of "development" is reinforced by the terms of section 157.1 of the MVRMA which provide:

157.1 Part 5 does not apply in respect of any licence, permit or other authorization related to an undertaking that is the subject of a licence or permit issued before June 22, 1984, except a licence, permit or other authorization for



Section 157.1 clearly implies that an abandonment or decommissioning of a project such as a mine is an "undertaking" since any licence, permit or other authorization in respect of such an abandonment is excepted from the provisions of section 157.1, which applies to "any licence, permit or other authorization related to an undertaking..." (our emphasis).

This interpretation of "development" is also consistent with the definition of "project" in the *Canadian Environmental Assessment Act* S.C. 1992 c. 37. Under section 2(1) of that Act "project" is defined to mean *inter alia*, "in relation to a physical work, any proposed construction, operation, modification, decommissioning, abandonment or other undertaking in relation to that physical work" (our emphasis).

In our view the Restoration Plan is clearly a proposal for a development under the terms of the MVRMA and the reclamation work to be carried out pursuant to it is a "development".

**Question #2: Do any of the conditions set out in paragraphs (a) to (c) of subsection 126(4) of the MVRMA apply to the City of Yellowknife's referral?**

The City submits that this question is too narrowly focused. The City's position is that it is entitled to refer the Restoration Plan to the MVEIRB for an environmental assessment pursuant to paragraph 126(2)(c) without reference to the provisions of subsection 126(4).

The City will first address the applicability of subsection 126(2) alone, and then the applicability of subsection 126(4).

**(a) Subsection 126(2)**

The City's position is that the MVLWB is obliged to conduct a preliminary screening of the Restoration Plan under s. 124. Therefore the City is entitled to refer the Restoration Plan for an environmental assessment pursuant to paragraph 126(2)(c). Paragraph 126(2)(c) is a mandatory provision for the MVEIRB, and as such the MVEIRB must conduct an environmental assessment following such a referral.

Paragraph 126(2)(c) provides:

(2) Notwithstanding any determination on a preliminary screening, the Review Board shall conduct an environmental assessment of a proposal for a development that is referred to it by:

(c) a local government, in the case of the development to be carried out within its boundaries or a development that might, in its opinion, have an adverse impact on the environment within its boundaries.

Under section 2 of the MVRMA "local government" is defined as follows:

"local government" means any local government established under the laws of the Northwest Territories, including a city, town village, hamlet, charter community or settlement, whether incorporated or not, and includes the

territorial government acting in the place of a local government pursuant to those laws.

The City of Yellowknife is a "municipal corporation" and a "city" as defined in section 1 of the *Cities, Towns and Villages Act* R.S.N.W.T. 1988 c. C-8, and a "local government" within the meaning of paragraph 126(2)(c) of the MVRMA. The geographic area of the City is set out in the *City of Yellowknife Continuation Order* R.R.N.W.T. 1990 c. C-5. The Con Mine site is located wholly within the boundaries of the City of Yellowknife.

The applicability of subsection 126(2) is triggered, *inter alia*, by the requirement for a regulatory authority to conduct a preliminary screening under section 124 of the MVRMA. The MVLWB, as a regulatory authority under the MVRMA, is required to conduct a preliminary screening of the Restoration Plan pursuant to the *Preliminary Screening Requirement Regulations* and Section 124.

Section 124(1) of the MVRMA provides:

124. (1) Where, pursuant to any federal or territorial law specified in the regulations made under paragraph 143(1)(b), an application is made to a regulatory authority or designated regulatory agency for a licence, permit or other authorization required for the carrying out of a development, the authority or agency shall notify the Review Board in writing of the application and conduct a preliminary screening of the proposal for the development, unless the development is exempted from preliminary screening because

(a) its impact on the environment is declared to be insignificant by regulations made under paragraph 143(1)(c); or

(b) an examination of the proposal is declared to be inappropriate for reasons of national security by those regulations.

Under section 111 "regulatory authority" is defined as follows:

"regulatory authority", in relation to a development, means a body or person responsible for issuing a licence, permit or other authorization required for the development under any federal or territorial law, but does not include a designated regulatory agency or a local government.

The *Preliminary Screening Requirement Regulations* are established pursuant to paragraph 143(1)(b) of the MVRMA. Item 7 of Part 1 of Schedule 1 of the *Preliminary Screening Requirement Regulations* lists subsection 60(1) of the MVRMA as a provision of a federal statute that is subject to the Regulations.

Subsection 60(1) of Part 3 of the MVRMA provides in respect of the Gwich'in and Sahtu Land and Water Boards (which are now panels of the MVLWB):

(1) A board established for a settlement area has jurisdiction in respect of all uses of waters and deposits of waste in the settlement area for which a licence is required under the *Northwest Territories Waters Act* and may

(a) issue, amend, renew and cancel licences and approve the assignment of licences, in accordance with that Act, and

(b) exercise any other power of the Northwest Territories Water Board under that Act,

and, for those purposes, references in that Act to that Board shall be read as references to the board established for the settlement area.

Subsection 102(1) of Part IV of the MVRMA provides in regard to the MVLWB:

(1) The Board has jurisdiction in respect of all uses of land or waters or deposits of waste in the Mackenzie Valley for which a permit is required under Part 3 or a licence is required under the Northwest Territories Waters Act, and for that purpose the Board has the powers and duties of a board established under Part 3, other than powers under sections 78 and 79, as if a reference in that Part to a settlement area were a reference to the Mackenzie Valley.

Section 1 of the *Preliminary Screening Requirement Regulations* provides as follows:

For the purpose of subsection 124(1) of the *Mackenzie Valley Resource Management Act*, a regulatory authority or a designated regulatory agency that receives an application for a licence, permit or other authorization required to carry out a proposed development, under a provision of a federal Act set out in Part 1 of Schedule 1 or a provision of federal regulations set out in Part 2 of that Schedule, shall conduct a preliminary screening of the proposed development before the issuance of the licence, permit or authorization.

Column 4 of Part 1 of Schedule 1 of the Regulations lists various limitations in respect of the various federal statutes listed in Part 1. Such limitations are excluded from the effect of being listed in Schedule 1 and therefore are not subject to the requirement for a preliminary screening under Section 1 of the Regulations and section 124 of the MVRMA. Among the limitations listed in Column 4 are a variety of approvals or authorizations under various statutes. The limitations listed against subsection 60(1) of the MVRMA exclude only the "cancellation, and approval of an assignment, of a water licence". No reference is made to the exclusion of an approval of an abandonment and restoration plan under the terms of a water licence.

The power of approval under the Water Licence flows from the power to issue a licence under the *Northwest Territories Waters Act* and therefore is the exercise of "any other power" for the purposes of section 60 of the MVRMA.

Paragraph 15(1)(e) of the *Northwest Territories Waters Act* provides:

15(1) Subject to this Act and the regulations, the Board may include in a licence any conditions that it considers appropriate, including, without limiting the generality of the foregoing,

(e) conditions relating to any future closing or abandonment of the appurtenant undertaking.

The MVLWB has both the power and duty to either approve or reject an abandonment and restoration plan submitted under Part H of the Water Licence. An "approval" under the Water Licence clearly connotes an "authorization" as that term is used in the MVRMA. In the *Concise Oxford English Dictionary (Thumb Index Edition)* to "authorize" is defined as to "give official permission for or approval to". In *Black's Law Dictionary (Seventh Edition)* "authorize" is defined as follows:

1. To give legal authority; to empower ...
2. To formally approve; to sanction...

An authorization under the MVRMA can also be said to be a "decision making responsibility" as that term was used in *Friends of the Old Man River Society v. Canada (Minister of Transport)* [1992] 1 S.C.R. 3 (S.C.C.). In that case, the Supreme Court considered whether the requirement for a ministerial approval for a "work" across a "navigable water" under section 5 of the *Navigable Waters Protection Act* R.S.C. 1985 c. N-22 was a "decision making responsibility" under the *Environmental Assessment and Review Process Guidelines Order* SOR/84-467 which were then in force. A "decision making responsibility" was a triggering mechanism under the Guidelines as the application for a "licence, permit or authorization" is under section 124 of the MVRMA. The Court held that the exercise of such a power of approval was a "decision making responsibility"

The exercise of a power of approval under the Water Licence by the MVLWB, as a discretionary regulatory authority, is similar in principle to the exercise of a power of approval by the Minister under section 5 of the *Navigable Waters Protection Act*.

The MVLWB is clearly a regulatory authority under the terms of section 111 of the MVRMA. The approval required from the MVLWB in respect of the Restoration Plan under the terms of the Water Licence is an "authorization," which falls under the *Preliminary Screening Requirement Regulations* and the Restoration Plan is a proposal for a development, under the provisions of subsection 124(1).

The request to approve the Restoration Plan is an application for an "authorization" made pursuant to a federal law (section 60 of the MVRMA) "specified in the regulations made under paragraph 143(1)(b)" (the *Preliminary Screening Requirement Regulations*) under the terms of section 124 of the MVRMA.

The Restoration Plan is not exempted from preliminary screening pursuant to terms of the *Preliminary Screening Requirement Regulations* themselves, or pursuant to the *Exemption List Regulations* made under paragraph 143(1)(c). Nor is it exempted as a matter of national security. Therefore the MVLWB is obliged to conduct a preliminary screening under subsection 124(1) of the MVRMA.

Since the MVLWB is obliged to conduct a preliminary screening of the Restoration Plan, the City has the power to refer the Restoration Plan to the MVEIRB for an environmental assessment. Subsection 126(2) clearly contemplates that a local government such as the City of Yellowknife can refer developments that require a preliminary screening to the MVEIRB for an environmental assessment given that subsection 126(2) applies "notwithstanding any determination on a preliminary screening".

Under paragraph 126(2)(c) there are two grounds upon which the City may refer a development for an environmental assessment. The first ground is that the development is within the boundaries of the City. As the Con Mine is within the City's boundaries the City has the right to refer the Restoration Plan to the MVEIRB. The second ground is that the development "might, in its opinion, have an adverse impact on the environment within its boundaries". This ground is also satisfied as the City has serious concerns with regard to the significant adverse impact of the development on the environment in the City. The referral could therefore proceed on either of the two grounds.

The Con Mine has been in operation since the late 1930's and that the ore body has a high concentration of arsenic. The mine was operated for a long period when environmental standards and protection in Canada were rudimentary or non-existent. The ore itself was treated with cyanide during that period. There are serious issues respecting arsenic and cyanide contamination and environmental remediation which are of concern to the City and the people of Yellowknife and which may have a significant adverse impact on the environment in the City.

The City's counsel in this matter has been advised by a representative of the MVLWB that in their view they are not required to conduct a preliminary screening of the Restoration Plan under the provisions of section 124 of the MVRMA prior to approving an abandonment and restoration plan for the Con Mine under the Water Licence, and it is not their intention to do so. Despite this, the MVLWB has established a working group called the Miramar Con Mine Abandonment & Restoration Working Group under terms of reference dated July 14<sup>th</sup>, 2003 consisting of representatives of federal and territorial government departments, the City, the Metis Nation and the Yellowknives Dene among others. The Working Group is chaired by a representative of MVLWB and its mandate is to provide a "forum for the discussion of technical matters related to the Final Abandonment and Restoration Plan" and to provide recommendations to the MVLWB.

Notwithstanding the stated position of the MVLWB that they have not and will not conduct a preliminary screening in this matter, it is the City's position that the MVLWB is already effectively conducting a preliminary screening, of which the review by the Working Group is an element. However, from the MVLWB's position it appears clear that they do not intend to report to the MVEIRB as they are required to do under subsection 125(2) of the MVRMA upon the conclusion of their review of the Restoration



Restoration Plan (or some variant of it) without following the provisions of sections 124 and 125.

Under subsection 126(2) the City may refer a development for an environmental assessment "notwithstanding any determination on a preliminary screening". In the City's view, it may refer a development for which a preliminary screening must be conducted to the MVEIRB for an environmental assessment at any time, whether or not a preliminary screening has been concluded. However, even if, generally, a preliminary screening must be concluded under paragraph 125(2)(a) before the City may refer a matter under subsection 126(2) for an environmental assessment, such a requirement does not apply in this case, where the MVLWB have indicated they are not conducting and will not conclude a preliminary screening under the terms of the MVRMA.

The intent of subsection 126(2) is to give regulatory authorities, the Gwich'in and Sahtu First Nations and local governments the opportunity to refer certain developments to MVEIRB for environmental assessment to provide an avenue for them to raise environmental concerns relating to such developments. This policy would be frustrated if the MVLWB could prevent such a referral simply by refusing to conduct or complete a preliminary screening.

**(b) Subsection 126(4)**

Subsection 126(4) provides that:

(4) Subsections (2) and (3) apply in respect of a development for which no preliminary screening is conducted by reason that:

(a) a licence, permit or other authorization is required for the carrying out of a development under a federal or territorial law other than one specified in regulations made under paragraph 143(1)(b),

(b) the development is exempted under regulations made under paragraph 143(1)(c), or

(c) the impact of the development is found to be manifestly insignificant pursuant to paragraph 124(2)(a),

but, in the cases referred to in paragraphs (b) and (c) the Review Board may only conduct an environmental assessment on its own motion if, in its opinion, the development involves issues of special environmental concern.

Under paragraph 126(4)(a) a local government such as the City of Yellowknife may require an environmental assessment to be conducted by the MVEIRB for developments for which no preliminary screening is required because licences, permits or authorizations are required under federal or territorial laws which are not listed in the *Preliminary Screening Requirement Regulations*. The City may also refer a development for environmental assessment if it is listed in the *Exemption List Regulations*.

The Restoration Plan does not appear to represent a development which is listed in the

Paragraph 126(4)(c) is also not applicable as the development is not being carried out by the federal or territorial government or by the Gwich'in or Sahtu First Nations. In any event, as we have set out above, the impact of the Restoration Plan is clearly not "manifestly insignificant".

As we stated above, our view is that the approval of the Restoration Plan under the terms of the Water Licence is an authorization under a federal statute (s.60 of the MVRMA) which is listed in the *Preliminary Screening Requirement Regulations*, and therefore paragraph 126(4)(a) has no application. Instead the Restoration Plan may be referred by the City pursuant to subsection 126(2) alone.

However, even if it were determined that the approval does not fall under the *Preliminary Screening Requirement Regulations* (and therefore subsection 126(2) does not apply of itself) our view is that the approval remains an authorization under a federal law, even if it is not included in the *Preliminary Screening Requirement Regulations*, and therefore paragraph 126(4)(a) applies.

The approval of the Restoration Plan is clearly an authorization under the terms of the *Northwest Territories Waters Act* or Part IV of the MVRMA, or both, even if these statutes (or relevant provisions of them) are not listed in the *Preliminary Screening Requirement Regulations*.

#### SUMMARY

It is the City's position that:

- (a) The reclamation work which is proposed under the Restoration Plan is a "development" under the terms of the MVRMA and the Restoration Plan is a proposal for a development.
- (b) The City has the power to refer the Restoration Plan to the MVEIRB for an environmental assessment. The approval of the Restoration Plan is an "authorization" which falls under the *Preliminary Screening Requirement Regulations* and is therefore subject to a referral under subsection 126(2) by the City. However, in the event the approval is not an authorization which falls under a federal law listed in the *Preliminary Screening Requirement Regulations*, it is still an "authorization" under a federal law for the purposes of the MVRMA and therefore the City may refer the matter to the MVEIRB for environmental assessment under paragraph 126(4)(a) of the MVRMA.
- (c) The MVLWB is obliged to conduct a preliminary screening of the Restoration Plan as a proposal for a development under subsection 124(1) of the MVRMA and to report to the MVEIRB whether in its opinion the reclamation to be done pursuant to the Restoration Plan, as a development

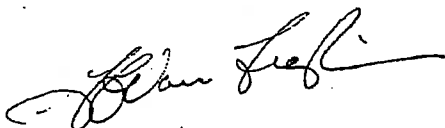
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significant adverse impact on air, water or renewable resources or might be a case of public concern" pursuant to subsection 125(2) of the MVRMA.

As we have set out above, the City has the power to refer the Restoration Plan to the MVEIRB for environmental assessment. We are confident that an environmental assessment based on the City's referral will proceed. However, in the event it does not, the City respectfully requests that the MVEIRB exercise its power under subsection 126(3) of the MVRMA to conduct an environmental assessment on its own motion. This will ensure that the concerns of the City and its citizens are addressed with regard to the Restoration Plan.

Yours Sincerely,

A handwritten signature in black ink, appearing to read "Gordon Van Tighem", with a stylized flourish at the end.

Gordon Van Tighem  
Mayor




**Bull,  
Housser  
& Tupper**

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Our File:	97-3141
Date:	December 19, 2003

**BY EMAIL**

Mackenzie Valley Environmental Impact Review Board  
P.O. Box 938  
200 - 5102 - 50<sup>th</sup> Avenue (2<sup>nd</sup> Floor, Scotia Centre)  
Yellowknife NT  
X1A 2N7

THIS IS EXHIBIT "O"  
TO THE AFFIDAVIT OF Loella M. Rowles  
SWORN BEFORE ME THIS 21 OF January, 2004  
  
A COMMISSIONER FOR OATHS IN OR NOTARY PUBLIC  
IN OR FOR THE NORTHWEST TERRITORIES.

**Attention:** Kimberley Cliffe-Phillips

Dear Sirs/Mesdames:

**Re: Miramar Con Mine Abandonment and Restoration Plan - Referral by the City of  
Yellowknife pursuant to section 126 of the Mackenzie Valley Resource  
Management Act**

We are the legal counsel for Miramar Con Mine Ltd. ("Miramar") and are making this reply on Miramar's behalf in response to the Notice of Hearing issued by the Mackenzie Valley Environmental Impact Review Board ("MVEIRB"). We have reviewed the response made by the City of Yellowknife dated December 11, 2003 respecting the two questions raised by the MVEIRB. Our reply is outlined below.

**BACKGROUND**

Miramar submitted its Abandonment and Restoration Plan ("A&R Plan") to the Mackenzie Valley Land and Water Board ("MVLWB") on March 14, 2003 pursuant to Part H of Water Licence No. N1L2-0040 dated July 30, 2000 ("Water Licence"). Part H section 1 of the Water Licence states that:

"The Licensee shall submit an Abandonment and Restoration Plan that is satisfactory to the Board..."

The requirement to submit the A&R Plan is a condition of the Water Licence and is not a separate statutory requirement under the *Mackenzie Valley Resource Management Act* ("MVRMA") or the *Northwest Territories Waters Act* ("NTWA").



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& Tupper**

The City of Yellowknife has made a referral to the MVEIRB pursuant to subsection 126 (2) and 126 (4) of the MVRMA requesting an environmental assessment of the A&R Plan.

#### **CONDITIONS NECESSARY TO TRIGGER AN ENVIRONMENTAL ASSESSMENT**

Having received a referral from the City of Yellowknife under subsections 126 (2) and (4) of the MVRMA, the MVEIRB must conduct an environmental assessment of the A&R Plan only if all of the following three conditions are met:

1. The A&R Plan must be a "proposal" for a "development" within the Mackenzie Valley;
2. The submittal of the A&R Plan to the MVLWB must be an "application for a licence, permit or other authorization" to carry out the development; and
3. Either of the following:
  - (a) The submittal of the A&R Plan must be pursuant to a federal or territorial law specified in the Preliminary Screening Requirement Regulations and the MVLWB must have conducted a preliminary screening and made its determination; or
  - (b) No preliminary screening is conducted by reason that a licence, permit or other authorization is required for the carrying out of the A&R Plan under a federal or territorial law other than one specified in the Preliminary Screening Requirement Regulations.

#### **MIRAMAR'S POSITION**

The necessary conditions to trigger an environmental assessment are not met. The MVEIRB is not required to conduct an environmental assessment under the MVRMA in response to the City of Yellowknife's referral.

**Question #1: Does the Miramar Con Mine Abandonment and Restoration Plan constitute a "development" under the MVRMA?**

Development is defined in section 111 of the MVRMA:

"development" means any undertaking, or any part of an undertaking, that is carried out on land or water and, except where the context otherwise indicates, wholly within the Mackenzie Valley..."

When considering whether the A&R Plan is an "undertaking" that is carried out on land or water within the Mackenzie Valley, it is important to distinguish between the act of submitting the A&R



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& Tupper

Plan for Board review and the activities of abandonment and reclamation. Miramar has authority pursuant to the Water Licence already to undertake abandonment and reclamation activities. To construe the fulfillment of Licence Condition H1 as a proposal for a development is to take that condition out of proper context in relation to the Water Licence and the MVRMA.

In the context of the MVRMA, the purpose of environmental impact assessment is to ensure that the environmental impact of any proposed development is undertaken before the development proceeds. This purpose is confirmed by the Northwest Territories Court of Appeal in *North American Tungsten Corp. Ltd. v. Mackenzie Valley Land and Water Board*:

"The MVRMA explicitly recognizes the need to undertake and complete environmental assessments early in the development process"<sup>1</sup>

The Federal Court of Appeal had similar comments in the Tsawwassen Indian Band (Council) case when considering the application of the *Canadian Environmental Assessment Act* to a subsequent phase of an existing project:

"Once a project is approved and construction is legally begun, that approval cannot be legally reopened. This does not mean that responsible authorities are not allowed to supervise projects after construction begins and even after the work is completed. They do. They must ensure that any conditions of approval are met and that mitigating measures are instituted. The definition of "project" in the Act, however, makes it clear that environmental assessments must be done only of proposed construction which is still in the planning stages."<sup>2</sup>

The abandonment and restoration of the Con Mine is an integral part of an ongoing mining operation and not a new "proposed" undertaking. The operation of the Con Mine, including its abandonment and restoration, was approved at the time the Water Licence was issued and should not now be subject to further full scale environmental review. The grandfathering of existing licences is upheld in the *North American Tungsten* case as follows:

"However, both the Comprehensive Agreements and the MVRMA also clearly recognise that a full scale environmental review will not be appropriate in respect of certain existing permits, projects and licences"<sup>3</sup>

<sup>1</sup> *North American Tungsten Corp. Ltd. v. Mackenzie Valley Land and Water Board*, [2003] 2 F.C. 288, (N.T.C.A.) at para. 35.

<sup>2</sup> *Tsawwassen Indian Band (Council) v. Canada (Minister of Finance)* (2001), 37 C.E.L.R. (N.S.) 182. (F.C.A.), at para. 11.

<sup>3</sup> *North American Tungsten Corp. Ltd. v. Mackenzie Valley Land and Water Board*, [2003] 2 F.C. 288, (N.T.C.A.) at para.24





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& Tupper**

The definition of "project" under the Canadian Environmental Assessment Act ("CEAA") provides a useful comparison. Abandonment falls within the scope of a project requiring environmental assessment under the CEAA. The definition of "project" under the CEAA includes, in relation to a physical work such as a mine, any abandonment in relation to that physical work. Abandonment and restoration would be considered part of the mine project and the environmental impact of the abandonment and restoration would be assessed as part of the overall assessment of the mine in the first instance. Abandonment and restoration would not be considered a new project and would not be subject to review at a later time when abandonment and restoration was to be implemented.

Under the NTWA, abandonment and restoration of a mine is clearly a consideration at the initial issuance of the water licence. As part of that consideration, the security required is tied to the likely cost of abandonment and restoration of the mine. In the case of the Con Mine, Miramar is required to post and maintain a security deposit in the amount of \$9 Million pursuant to Part B section 2 of the Water Licence. The amount of the security required reflects the annual estimates of current mine liability that Miramar is required to provide to the MVLWB annually pursuant to Part H section 2 of the Water Licence.

Further, the A&R Plan does not constitute a proposal for a development within the context of sections 124 or 126 of the MVRMA.

**(a) Is the submittal of the A&R Plan an application for a licence, permit or other authorization under the MVRMA?**

The submittal of the A&R Plan to the MVLWB is not an application for a licence, permit or other authorization to carry out the development. The Water Licence requires that a plan satisfactory to the Water Board be filed and that, if not approved, a revised plan be filed.

Although the MVLWB must approve the plan, Miramar is not required to obtain a "permit, licence or other authorization" before any abandonment and restoration activities can proceed. In fact, condition 4 of Part H of the Water Licence requires Miramar to carry out progressive reclamation of areas that are abandoned prior to closure of operations. Abandonment and restoration are an ongoing activity and many such activities have been undertaken at the Con Mine even though the MVLWB has not yet approved the final A&R Plan.

Examples of progressive reclamation activities that have been undertaken at the Con Mine include: asbestos removal and disposal, building demolition, scrap disposal, assorted contouring and reseedling.

According to E. A. Driedger, a basic rule of statutory interpretation is that the meaning of a word is influenced by the words with which it is associated.



Bull,  
Housser  
& Tupper

"One ordinary principle of language is that the meaning of a word is influenced by the words with which it is associated"<sup>4</sup>

This principle was followed in *R. v. Twoyoungmen*:

"When general and specific words are associated together, and where they are capable of analogous meaning, the general words should be restricted to their more specific analogous meaning, *noscitur a sociis*, except where doing so would be contrary to the clear intention of the statute as a whole"<sup>5</sup>

The further rule, *ejusdem generis*, states that if a list of specific words is followed by a more general word, the meaning of the general word is narrowed to correspond to the meaning of the more specific words. This principle is explained by Driedger:

"The rule, as stated by Lord Halsbury in *Thames & Mersey Marine Insurance Co. v. Hamilton, Fraser & Co.* is 'that general words may be restricted to the same genus as the specific words that precede them'"<sup>6</sup>

The use of the word "or other" in front of the more general word, has been held by the courts to narrow the meaning of the more general word to reflect the meaning of the words that immediately precede it.<sup>7</sup>

In this case, the more specific words, "permit" and "licence" are followed by the more general word "authorization". Authorization, then, will be read to mean an authorization similar in nature to a licence or permit.

Black's Law Dictionary, 5<sup>th</sup> Edition, defines "permit" to be:

"any document which grants a person the right to do something. A license or grant of authority to do a thing."

Black's Law Dictionary, 5<sup>th</sup> Edition, defines "licence" to be:

"the permission by a competent authority to do an act which, without such permission, would be illegal."

Both of these terms denote a document granting permission by a regulatory authority as required under statutory authority before a person can proceed with a certain activity. The

<sup>4</sup> Construction of Statutes, Elmer A. Driedger, Q.C., B.A., LL.B., LL.D., 2<sup>nd</sup> Edition, 1983 at page 106

<sup>5</sup> (1979), 1010 D.L.R. (3d) 598, at p. 608

<sup>6</sup> Construction of Statutes, Elmer A. Driedger, Q.C., B.A., LL.B., LL.D., 2<sup>nd</sup> Edition, 1983 at page 111

<sup>7</sup> *Jerome v. Swift Current*, (1960), 22 D.L.R. (2<sup>nd</sup>) 190



Bull,  
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& Tupper

NTWA does not require Miramar to obtain a further authorization beyond its Water Licence to conduct abandonment and restoration activities. As noted earlier, Miramar is obliged to carry out progressive reclamation.

The requirement of Condition H1 of the Water Licence that Miramar submit the A&R Plan to the MVLWB for approval does not put in question the approval of the activity. The question is not one of authorization (i.e. whether to allow abandonment and restoration), but one of implementation (i.e. how to implement abandonment and restoration).

For these reasons, the submittal of the A&R Plan to the MVLWB is not an application for a licence, permit or other authorization to carry out the abandonment and restoration activities at the Con Mine.

**(b) Is the submittal of the A&R Plan pursuant to a federal or territorial law specified in the Preliminary Screening Requirement Regulation?**

The submittal of the A&R Plan must be pursuant to a federal or territorial law specified in the Preliminary Screening Requirement Regulations and the MVLWB must have conducted a preliminary screening and made its determination. The Preliminary Screening Requirement Regulations identifies which permits, licences and other authorizations will trigger the requirement for a preliminary screening by the regulatory authority. Under the NTWA, only the *issuance*, the *renewal* or the *amendment* of a licence triggers a preliminary assessment. None of these apply to this situation.

Section 15 of the NTWA which provides the MVLWB with the jurisdiction to include conditions in a licence, is not listed in the Preliminary Screening Requirement Regulations. Under MVRMA, Section 60(1) is listed in the Preliminary Screening Requirement Regulations.

Section 60 (1) of the MVRMA reads:

"A board established for a settlement area has jurisdiction in respect of all uses of waters and deposits of waste in the settlement area for which a licence is required under the Northwest Territories Waters Act, and may

(a) issue, amend, renew and cancel licences and approve the assignment of licences, in accordance with that Act, and

(b) exercise any other power of the Northwest Territories Water Board under that Act,

and, for those purposes, references in that Act to that Board shall be read as references to the board established for the settlement area."



Bull,  
Housser  
& Tupper

The exercise of any power by the MVLWB (ie in this case, the discretion to approve the A&R Plan) is not a "permit, licence or other authorization" that triggers the requirement for a preliminary screening under the MVRMA.

**Question #2: Do any of the conditions set out in paragraphs (a) to (c) of subsection 126(4) of the MVRMA apply to the City of Yellowknife's referral?**

None of the conditions set out in paragraphs (a) to (c) of subsection 126(4) of the MVRMA apply to the City of Yellowknife's referral.

Since the City of Yellowknife has also discussed subsection 126 (2) of the MVRMA, we have responded briefly below.

**(a) Subsection 126(2)**

The City is not entitled to refer the A&R Plan to the MVEIRB for an environmental assessment pursuant to subsection 126(2) of the MVRMA for the following reasons, discussed in detail above:

1. The A&R Plan is not a proposal for a development.
2. The submittal of the A&R Plan to the MVLWB is not an application for a permit, licence or other authorization required for the carrying out of the A&R Plan and therefore, the MVLWB is not required to conduct a preliminary screening.
3. A preliminary screening has not been completed for the A&R Plan and there has been no determination on a preliminary screening.

**(b) Subsection 126(4)**

The City is not entitled to refer the A&R Plan to the MVEIRB for an environmental assessment pursuant to subsection 126(4) of the MVRMA.

The City may refer a proposal for a development to the MVEIRB under subsection 126(4) if the reason that a preliminary screening was not conducted for the proposal is any of the following:

- (a) A licence, permit or other authorization is required for the carrying out of the development under a federal or territorial law other than one listed in the Preliminary Screening Requirement Regulations;
- (b) the development is exempted under the Exemption List Regulations; or
- (c) the impact of the development is found to be manifestly insignificant pursuant to paragraph 124 (2) (a) of the MVRMA.



Bull,  
Housser  
& Tupper

None of these reasons apply in this case. No licence, permit or other authorization is required for the carrying out of the A&R Plan under either the Preliminary Screening Requirement Regulations or any other federal or territorial law. An abandonment and restoration plan is not listed in the Exemption List Regulations. Paragraph 124 (2) (a) only applies where the development is being proposed by a government authority which is not applicable in this case.

#### Summary

1. The A&R Plan is not a "proposal" for a "development" under the terms of the MVRMA.
2. The submittal of the A&R Plan to the MVLWB is not an "application for a licence, permit or other authorization" to carry out the A&R Plan and, therefore, the MVLWB is not required to conduct a preliminary screening for the A&R Plan.
3. The submittal of the A&R Plan to the MVLWB is not an application for a licence, permit or other authorization which is listed in the Preliminary Screening Requirements Regulation and, therefore, the MVLWB is not required to conduct a preliminary screening for the A&R Plan.
4. No licence, permit or other authorization is required for the carrying out of the A&R Plan under either the Preliminary Screening Requirement Regulations or any other federal or territorial law.

In conclusion, it is Miramar's position that the City does not have the power to refer the A&R Plan to the MVEIRB for an environmental assessment under either subsection 126 (2) or 126 (4) of the MVRMA as the A&R Plan is not a matter that is properly subject to assessment under the MVRMA.

Yours truly,

Bull, Housser & Tupper

Shelley O'Callaghan

soc/lkn/1165189.02

Copy to John Stard  
Brian Labadie  
David Long

Fasken Martineau DuMoulin LLP \*  
Barristers and Solicitors  
Patent and Trade-mark Agents

Suite 702  
5201 Franklin (50<sup>th</sup>) Ave  
Yellowknife, Northwest Territories, Canada X1A 3S9

867 766 6400 Telephone  
867 766 3535 Facsimile

THIS IS EXHIBIT "P"  
TO THE AFFIDAVIT OF Lorella M. Bouwmeester  
SWORN BEFORE ME THIS 21 OF January 2004

www.fasken.com

A COMMISSIONER FOR OATHS IN OR NOTARY PUBLIC  
IN OR FOR THE NORTHWEST TERRITORIES.

**FASKEN  
MARTINEAU** 

Ian W. Blackstock  
Direct 867 766 6402  
iblackstock@nwt.fasken.com

December 18, 2003  
File No.: YEL00060

**BY HAND**

Mackenzie Valley Environmental Impact Review Board  
P.O. Box 938  
5102 – 50<sup>th</sup> Ave.  
Yellowknife, NT  
X1A 2M1

Dear Sirs/Mesdames:

**Re: Miramar Con Mine Abandonment and Restoration Plan – Referral by City  
of Yellowknife pursuant to section 126 of the *Mackenzie Valley Resources  
Management Act***

We are counsel for the City of Yellowknife in respect of the above-noted matter.

Would you kindly provide us with copies of any written submissions which you may have received from other interested parties in this matter, together with a copy of the reply to our client's submissions by Miramar Con Mine Ltd. which must be delivered to your office by 5:00 p.m. tomorrow, December 19<sup>th</sup>, 2003.

In addition, prior to rendering a decision in this matter, we request that you afford our client the opportunity to respond to any new issues which Miramar Con Mine Ltd., or other interested parties, may have raised in their submissions.

Would you also kindly confirm that you are prepared to receive and consider such a response from the City of Yellowknife, and the deadline for receiving it.

I look forward to your reply.

Yours truly,

**FASKEN MARTINEAU DuMOULIN LLP**







## Mackenzie Valley Environmental Impact Review Board

Box 938, 5102-50th Avenue, Yellowknife, NT X1A 2N7  
[www.mvelrb.nt.ca](http://www.mvelrb.nt.ca)

THIS IS EXHIBIT 1  
TO THE AFFIDAVIT OF Lorella M. Bonwmester  
SWORN BEFORE ME THIS 21 OF January 2004  
[Signature]  
A COMMISSIONER FOR OATHS IN OR NOTARY PUBLIC  
IN OR FOR THE NORTHWEST TERRITORIES.

From: Kimberley Cliffe-Phillips Fax: 867-766-7074  
EAO Phone: 867-766-7062  
Date: December 23, 2003 Pages: 1 including this page  
To: Distribution – Miramar CON Fax:  
CC:  
Subject: Reasons for Decision  
Forthcoming

### NOTES:

Good Day,

Please be advised the Mackenzie Valley Environmental Impact Review Board has completed its legal analysis of the referral of the Miramar Con Abandonment and Restoration Plan, under Section 126 of the MVRMA.

The Review Board has decided it will not conduct an Environmental Assessment.

Reasons for Decision outlining the Board's analysis will be issued in the near future.

Regards,

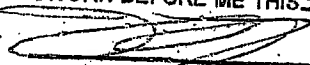
K. Cliffe-Phillips

Kimberley Cliffe-Phillips



**Mackenzie Valley**  
Environmental Impact  
Review Board

THIS IS EXHIBIT "R"  
TO THE AFFIDAVIT OF Lorella M. Bouwmeester  
SWORN BEFORE ME THIS 21 OF January 2004

  
A COMMISSIONER FOR OATHS IN OR NOTARY PUBLIC  
IN OR FOR THE NORTHWEST TERRITORIES.

## **MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD**

**In the Matter of:**

**The referral of the Miramar Con Mine  
Abandonment and Restoration Plan for  
Environmental Assessment by the City  
of Yellowknife**

**And In the Matter of:**

**A hearing held under section 24 of the  
*Mackenzie Valley Resource Management  
Act* to inquire into the Mackenzie Valley  
Environmental Impact Review Board's  
authority to conduct the Environmental  
Assessment of the Con Miramar  
Abandonment and Restoration Plan**

## **REASONS FOR DECISION**

### **BACKGROUND:**

On November 14<sup>th</sup>, 2003, the Mackenzie Valley Environmental Impact Review Board (MVEIRB or Review Board) received correspondence from the City of Yellowknife (the City) attached to which was a resolution of City Council referring the Miramar Con Mine Ltd. (Miramar) Abandonment and Restoration (A&R) Plan to the MVEIRB for purposes of an environmental assessment. The City indicated that it was exercising its authority under subsections 126(2)(c) or 126(4) of the *Mackenzie Valley Resource Management Act* (MVRMA) in making this referral.

On December 1, 2003 the Review Board published notice of its decision to hold a hearing pursuant to section 24 of the MVRMA to address the question of its authority to proceed with the Environmental Assessment (EA) of the Miramar A&R Plan. This hearing was to be conducted by exchange of written briefs since the issues related to the Review Board's authority were almost exclusively legal.

Only two parties indicated interest in participating in this hearing, the City and Miramár. The Review Board posed two questions to the parties:

1. Does the Miramár Con Mine abandonment and restoration process constitute a "development" under the MVRMA?
2. Do any of the conditions set out in paragraphs (a) to (c) of subsection 126(4) of the MVRMA apply to the City of Yellowknife's referral?

In its argument filed December 11<sup>th</sup>, 2003, the City indicated that its initial referral had also relied on subsection 126(2)(c) of the MVRMA and the City presented its position on its authority to refer the A&R plan on that basis as well.

Miramár's counsel replied to the City's argument on December 19<sup>th</sup> as required by the MVEIRB's notice of hearing. Miramár also addressed the subsection 126(2)(c) issue.

The questions set out by the Review Board in its notice of December 1<sup>st</sup> do not have to be treated as exhaustive. Since both parties in the hearing have addressed the application of subsection 126(2)(c) to the referral, the Board will consider that issue in these reasons as well.

#### **THE ISSUES:**

The issues in this hearing relate to the Review Board's authority to conduct an EA of the Miramár A&R Plan as referred by the City in its letter of November 7<sup>th</sup>, 2003 (the letter was not received by the Board until November 14<sup>th</sup>). It must be noted that the conduct of an EA on a proper referral under either subsection 126(2)(c) or 126(4) is mandatory. If all the conditions are met for such a referral, the Review Board must conduct the EA.

The issues to be resolved are:

1. Is the Con Miramár A&R process a "development" under the MVRMA?
2. Can the City make a referral to EA under subsection 126(4) of the MVRMA?
3. Can the City make a referral to EA under subsection 126(2)(c) of the MVRMA?

#### **THE RELEVANT STATUTORY PROVISIONS:**

The following provisions of the MVRMA are relevant to the issues set out above:

### Definitions:

"development" means any undertaking, or any part of an undertaking, that is carried out on land or water and, except where the context otherwise indicates, wholly within the Mackenzie Valley, and includes measures carried out by a department or agency of government leading to the establishment of a park subject to the *Canada National Parks Act* and an acquisition of lands pursuant to the *Historic Sites and Monuments Act*.

"local government" means any local government established under the laws of the Northwest Territories, including a city, town, village, hamlet, charter community or settlement, whether incorporated or not, and includes the territorial government acting in the place of a local government pursuant to those laws.

### Other MVRMA Provisions:

60. (1) A board established for a settlement area has jurisdiction in respect of all uses of waters and deposits of waste in the settlement area for which a licence is required under the *Northwest Territories Waters Act* and may

(a) issue, amend, renew and cancel licences and approve the assignment of licences, in accordance with that Act, and

(b) exercise any other power of the Northwest Territories Water Board under that Act,

and, for those purposes, references in that Act to that Board shall be read as references to the board established for the settlement area.

126. (2) Notwithstanding any determination on a preliminary screening, the Review Board shall conduct an environmental assessment of a proposal for a development that is referred to it by

.....  
(c) a local government, in the case of a development to be carried out within its boundaries or a development that might, in its opinion, have an adverse impact on the environment within its boundaries.  
.....

(4) Subsections (2) and (3) apply in respect of a development for which no preliminary screening is conducted by reason that

(a) a licence, permit or other authorization is required for the carrying out of the development under a federal or territorial law other than one specified in regulations made under paragraph 143(1)(b),

(b) the development is exempted by regulations made under paragraph 143(1)(c), or

(c) the impact of the development is found to be manifestly insignificant pursuant to paragraph 124(2)(a),

but, in the cases referred to in paragraphs (b) and (c), the Review Board may only conduct an environmental assessment on its own motion if, in its opinion, the development involves issues of special environmental concern.

157.1 Part 5 does not apply in respect of any licence, permit or other authorization related to an undertaking that is the subject of a licence or permit issued before June 22, 1984, except a licence, permit or other authorization for an abandonment, decommissioning or other significant alteration of the project.

# **1. Is the A&R Process a Development Under the MVRMA?**

What is planned at the Miramar mine site and the activities which are the subject of the A&R Plan in issue in this proceeding must be approved by the Mackenzie Valley Land and Water Board (MVLWB) as part of Water Licence N1L2-0040 (the Licence). This includes the final abandonment and decommissioning of the Miramar Con Mine. The timing of the submission of the final A&R Plan has been extended by the MVLWB because of difficulties experienced by Miramar in completing the plan. The Review Board understands nonetheless that this A&R Plan will address abandonment and decommissioning of the site and not progressive reclamation of an ongoing mining operation.

The definition of "development" in the MVRMA includes any undertaking or part of an undertaking conducted on land or water in the Mackenzie Valley. The mine is in the Mackenzie Valley and the A&R Plan activities will be conducted on land and water. The term "undertaking or part of an undertaking" used in the definition of development is very broad. It has been interpreted in a number of cases to include not just a physical work but also the arrangements under which physical things are used.<sup>1</sup> The Review Board's Guidelines<sup>2</sup> cited by counsel for the City reflect this broad scope of this word and are consistent with the law.

The argument submitted by counsel for Miramar does not address the question of whether the A&R activities constitute a development *per se*. Rather it addresses the question of whether the A&R process is part of a new development or a new "proposed" undertaking which attracts EA. Miramar's argument is that the A&R process is part of ongoing licensed activity which is not a new "proposed" undertaking. Miramar further argues that the existing water licence was subject to environmental impact assessment at the time the licence was issued.

There is nothing in the definition of development in section 111 of the MVRMA which limits the definition to new or proposed undertakings. Other provisions of the Act and regulations address the question of which developments or parts of developments must be subjected to the environmental impact assessment process found in part 5 of the MVRMA.

<sup>1</sup> The meaning of the word undertaking has been considered frequently in cases addressing ss. 92(10) of the *Constitution Act, 1867*. See the discussion in Peter Hogg's *Constitutional Law of Canada*, Looseleaf Edition (Carswell: Scarborough, ON), 1992 (updated 1997, release 2).

<sup>2</sup> Mackenzie Valley Environmental Impact Review Board, *Guidelines for Environmental Assessment and Environmental Impact Review*, at page 27.

**3. Can the City Refer the Miramar A&R Plan Under Subsection 126(2)(c) of the MVRMA?**

Subsection 126(2) begins with the phrase "Notwithstanding any determination on a preliminary screening..." Read as a whole, section 126 includes subsections (1) which makes it mandatory for the Review Board to conduct an EA of a development referred to is after a preliminary screening; subsections (2) and (3) begin with the phrase quoted above. Subsection (4) begins with an indication that it applies where no preliminary screening has been done. Subsection (5) is not relevant to this issue. The structure of section 126 strongly implies that the only circumstances in which a development not subjected to preliminary screening may be referred to the MVEIRB is when one of the cases set out in paragraphs (a) to (c) of that subsection apply. The City has admitted that none of them do. The City nonetheless makes an argument that it can refer the Miramar A&R Plan to EA even though no preliminary screening was done by the MVLWB.

In order to make a referral under paragraph 126(2)(c), the City must be a "local government" as that term is defined in the MVRMA; the development must be carried out within the City's boundaries and the City must have formed an opinion that the development will have an adverse effect on the environment within its boundaries.

There is no doubt, in the Review Board's view, that the City is a local government as that term is defined in the MVRMA and that the activities associated with the A&R Plan will be carried out within the boundaries of the municipality. The resolution of Yellowknife City Council attached to the November 7<sup>th</sup> letter from the Mayor clearly indicates that in the opinion of the City there will be an adverse impact on the environment within the City's boundaries.

There are, however, other requirements set out in the MVRMA which determine whether an EA can be done. For example, does a preliminary screening have to be completed before a referral can be made? The Review Board has ruled in the past that the term "Notwithstanding any determination on a preliminary screening" found in subsection 126(2) of the MVRMA meant that when a preliminary screening was underway that no EA referral should take place by a party not doing the screening until the preliminary screening was completed. In this case, the City advises that the MVLWB has indicated that it does not intend to conduct a preliminary screening on the A&R Plan approval process.

A reading of the plain language of subsection 126(2), "Notwithstanding any determination..." could lead the Review Board to conclude that if no preliminary screening is done even a referral by a party like the City, which otherwise meets all the qualifications necessary in paragraph 126(2)(c), is blocked. This in the MVEIRB's view would be a reasonable reading of this phrase in the context of section 126 as a whole.

In the circumstances and having been advised that the MVLWB does not intend to screen the A&R Plan approval, the City has chosen to advance its position to the



MVEIRB on the basis that a section 126(2)(c) referral can be made even if no preliminary screening is conducted. The Review Board is not of the view given the structure of section 126 that this position can be sustained. We will, however, give further consideration to the City's argument because in our opinion it can be dismissed for other reasons as well.

To continue with the analysis, there is one more critical issue upon which the success of the City's argument depends. The City must also convince the Review Board that the approval of the A&R Plan is the approval of a "licence, permit or other authorization as that term is used in subsection 124(1) of the MVRMA. Having abandoned its argument on subsection 126(4) that the A&R Plan approval is an authorization under a federal or territorial law not listed in the PSRR, the City now needs to convince the Review Board that the A&R Plan "authorization" is one for which screening is required.

Counsel for the City argues that the MVLWB's authority to approve the A&R plan under the existing water licence is tantamount to an "authorization" as that word is used in subsection 124(1) and in numerous other places in the MVRMA. The argument is also made that such an authorization is analogous to the "decision-making responsibility" which triggered federal EARP review in the *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3 (S.C.C.).

Counsel for Miramar takes the opposite view arguing rules of statutory interpretation which hold that the term "other authorization" must be interpreted in the context in which it is set out in the MVRMA that is as part of a list .... "licences, permits or other authorizations".<sup>5</sup>

The Review Board is of the opinion that this is a key issue in the City's subsection 126(2)(c) argument. What did Parliament intend to include under the term "other authorizations" in subsection 124(1) (and elsewhere) of the MVRMA?

There are no cases to help in this determination. The Review Board has reviewed that statutory scheme in detail and had further recourse to the PSRR and the argument of counsel in order to interpret these words.

Preliminary screening under the MVRMA is application driven. That is, the great majority of screenings are done because of the PSRR. Certainly subsection 124(2) sets out instances where screenings must be done even though no licence permit or application is required (as does ss.126(4) as discussed above) but it is fair to say that the primary triggers for preliminary screenings are set out in the PSRR.

Review of those regulations indicates a series of schedules setting out the provisions of federal and territorial acts and regulations, an application for which will require a preliminary screening. Some of these provisions refer to statutory requirements for licences or permits before certain activity can be undertaken. The best examples are

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<sup>5</sup> Miramar cites E. A. Drieger's work on the Construction of Statutes and the *ejusdem generis* rule.

the water licences required by the *Northwest Territories Waters Act* and the land use permits required by the *Mackenzie Valley Land Use Regulations*. Not all of these instruments listed in the PSRR are labelled "licence" or "permit" in the statutes that create them. For example, Schedule 1 Part 1 Item 2 Column 3 (b) refers to subsection 5.1(4) of the *Canada Oil and Gas Operations Act* under which a development plan approval made by the National Energy Board can be subjected to preliminary screening. In the same part, Item 6 Column 3 (a) refers to subsection 18(2) of the *Indian Act* under which a Ministerial authorization for the use of land on a reserve may be given. Another example is found in Schedule 2 Part 1 Item 1 Column 3, which refers to the need for preliminary screening of forest management agreements under the *NWT Forest Management Act*. Our point is that Canada, the Government of the Northwest Territories and the Gwich'in and Sahtu First Nations developed these regulations in concert with the drafting of the MVRMA and it appears to the Review Board that the list of "triggers" set out in the PSRR was intended to be exhaustive.

In the Review Board's view, the "or other authorizations" term in subsection 124(1) is not intended to refer to a set of approval requirements not set out in the regulations. Such a list could not be identified with certainty. This would leave companies like Miramar at constant risk that the need for ongoing regulatory approval of some element or activity under an existing licence or permit could be reinterpreted to require a preliminary screening or an EA.

Further practical consideration of the subsection 126(2)(c) argument advanced by the City can identify the problems faced by Miramar and other regulated entities if the City is correct in their interpretation. All water licences require the filing of annual monitoring reports, of "as built" engineering drawings and of other studies and analyses, most often for approval by the MVLWB. These, are in addition to the A&R Plan in issue in this proceeding. If the City is right, any time the MVLWB has an approval to give in the context of its ongoing regulatory oversight of a licensee, the activity would constitute an "authorization" under the MVRMA and could trigger a preliminary screening.

The Review Board cannot accept an interpretation which could lead to this result. While the part 5 process in the MVRMA is an important contributor to sustainable development, that process must also give some certainty to companies doing business in the Mackenzie Valley. An open ended environmental impact assessment process would fail to provide that certainty.

Consequently, the Review Board accepts the narrower interpretation of the term "or other authorizations" urged upon it by counsel for Miramar. The Review Board is of the view that the licences, permits or other authorizations set out in the PSRR are the only ones that attract preliminary screening and that the term "authorizations" is a reference to those instruments set out in the PSRR which are not licences or permits.

As a result, the MVEIRB holds that Miramar's need to secure approval of its A&R Plan from the MVLWB is not an application for a licence permit or other authorization

and consequently that no preliminary screening of the Plan is required under the MVRMA. In these circumstances, subsection 126(2)(c) cannot be used by the City to make a referral of the Miramar A&R Plan.

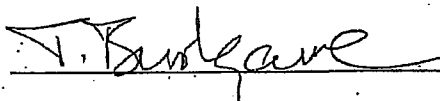
**CONCLUSION:**

Considering the analysis and reasoning set out above, the MVEIRB holds that the City cannot refer the Miramar A&R Plan for EA under either subsections 126(2)(c) or (4) of the MVRMA.

The Review Board therefore dismisses the City of Yellowknife referral.

Signed on the 2nd of January 2004 for the

**MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD:**

A handwritten signature in black ink, appearing to read "T. Burlingame", is written over a horizontal line.

**Todd Burlingame, Chair**

