

## **Addendum to Compilation of All Comments Received May 15, 2006**

### **Comments from Aboriginal Organizations:**

#### **4) *First Nations Leadership Council, British Columbia***

The First Nations Leadership Council has recently become aware of proposed amendments to the Metal Mining Effluent Regulations (MMER) after being notified of the Canada Gazette, Part I, Vol. 140, No. 14, April 8, 2006.

The Gazette explains that Environment Canada established a multi-stakeholder advisory group to provide advice during the development of possible amendments to the MMER, which included representatives from the federal, provincial, and territorial governments, a few Aboriginal organizations, industry, and environmental non-governmental organizations. However, First Nations and First Nations organizations in British Columbia received little to no information on this matter, nor has the Government of Canada consulted with First Nations on the proposed amendments. The Supreme Court of Canada has confirmed that the Crown has a legal duty to meaningfully consult specifically with First Nations, beyond usual public processes, with regard to Crown decisions, including proposed upstream legislative or regulatory changes that may impact First Nations' Aboriginal rights. The Government of Canada has not fulfilled this duty with respect to the proposed amendments to the MMER and their potential impacts on the Aboriginal title and rights of First Nations in British Columbia.

While the First Nations Leadership Council has not had sufficient time to thoroughly review the proposed amendments, or to engage on the matter with our constituents, there is one matter of particular concern with respect to Schedule 2. In 2002, Schedule 2, which makes possible the redefinition and destruction of a natural water body as a tailings impoundment area (TIA), was added to the MMER. This Schedule was intended to address existing mines that had used lakes as TIAs, as those mines would otherwise find themselves out of compliance with the 2002 regulations. The proposed amendments to the MMER, however, add a new mine to Schedule 2, allowing it to use a lake as a TIA. This is contrary to the original intent of Schedule 2 and is inconsistent with assurances provided by the Government of Canada that the Schedule would not be used as a means for proponents to use lakes for waste disposal. It also sets a potentially serious precedent in that other new mines may be added to the Schedule, which will have significant impacts on Aboriginal title and rights. This is of particular concern in British Columbia, where most of the land is subject to treaty and other negotiations between First Nations and the Crown to reconcile pre-existing Aboriginal title and the inherent right of self-government with the assertion of Crown sovereignty. Further, it is unclear what effect the proposed amendments would have with respect to the legislative mandate of the Department of Fisheries and Oceans. This is a matter that First Nations in British Columbia require further information and clarity on.

Many of the traditional territories of First Nations in British Columbia have been negatively affected by historic mines and the wastes they have produced. Serious consideration must be given to adding any new fresh water bodies to Schedule 2 for use as TIAs, informed by meaningful consultation with First Nations. We understand there are other mines in BC that may want to avail themselves of this potential precedent, including Huckleberry, Red Chris, and Kemess North. In particular, we have received extensive information from affected First Nations on the application by Northgate Minerals Corporation to develop the Kemess North property, which includes a proposal for tailings disposal that would severely affect aquatic life, and effectively eliminate the Duncan Lake ecosystem. The First Nations affected by those developments have been active in trying to stop the mining proponents from using the lakes as tailings

ponds for mine waste for years, with the support of the provincial First Nations leadership, as illustrated by the attached First Nations Summit and Assembly of First Nations resolutions.

Meaningful consultation, at the earliest opportunity, with First Nations is required before any amendments are enacted by the Government of Canada. The honour of the Crown requires the Government of Canada to fulfill this duty. We do not believe that this duty has been met with respect to the proposed amendments to the MMER. The First Nations Leadership Council specifically requests a suspension of the amendment process to allow for the Government of Canada to meaningfully consult with First Nations in British Columbia, including providing all relevant information and discussing the implications and potential impacts.

The First Nations Leadership Council is comprised of the political executives of the First Nations Summit, Union of BC Indian Chiefs and the BC Assembly of First Nations. The Council works together to politically represent the interests of First Nations in British Columbia and develop strategies and actions to bring about significant and substantive changes to government policy that will benefit all First Nations in British Columbia.

We look forward to your positive response to this matter.

## **Comments from the Public**

### ***47) Jack Harris, Leader of the New Democratic Party, Newfoundland and Labrador***

I am writing to protest the approval of a precedent-setting decision your department is about to make concerning amendments to the Metal Mining Effluent Regulations requested by Aur Resources, to add two ponds in Central Newfoundland to Schedule 2 of the Regulations (viz., Canada Gazette 1, Vol. 140, No. 14, April 8, 2006) which will allow them to use these ponds as toxic waste dumps for their proposed mine at Duck Pond.

The current Metal Mining Effluent Regulations of the Fisheries Act prohibit mining companies from dumping toxic waste into living water bodies, and compel them to provide artificial containment for toxic wastes created in the mining process. When these regulations were made, certain existing mines were exempted through a “grandfathering” clause and schedule to permit them to continue their operations.

My understanding is that the exemption process was never intended to apply to new mines and concern is being raised not only for these two bodies of water but for the precedent which would be set for water bodies across the country for future proposals. The only excuse being provided is related to the additional cost of complying with the regulations, without any detailed justification. It would obviously be cheaper to dump toxic waste into an existing body of water than it would be to build an artificial containment system, and no doubt every proposal to come forward in the future would be able to make such an argument.

The proposal is for Aur Resources to dump mine waste tailings laced with cyanide and acids into Trout Pond and the smaller unnamed pond nearby. These two ponds feed into Noel Paul’s Brook (site of salmonid enhancement project) and from there into the Exploits River. This is the largest river system on the island part of the province and a major tourism resource.

Federal and provincial assessments of the Duck Pond project have not even considered artificial containment as an alternative, perhaps because of an underlying assumption that this is not economically

feasible. You should be aware that Aur Resources is 30% owner of Louvicourt Mine in Quebec, which is using an innovative form of artificial containment quite successfully.

The life of the mine is expected to be six years, but the containment of the tailings will require costly monitoring and maintenance “in perpetuity.”

We have had situations in the past, such as with the Hope Brook Gold Mine on the southwest coast, where the province was left on the hook for environmental cleanup after the company went into receivership at a cost of \$16 million to the taxpayers.

The mine can create an economic benefit to the area for six years, but both the provincial and federal governments must live up to their responsibilities for protecting the Exploits River and its watershed. Mining companies should be expected to protect and respect the environment when carrying out their operations.

The amendment to the Regulations to exempt the two ponds will take effect after May 7, unless there is opposition registered. I understand there are more mining companies waiting for this amendment to pass so that they too can apply for these exemptions. I am therefore very concerned that your Department is setting a dangerous precedent by allowing these two ponds to be added to Schedule 2 of the Mining Metal Effluent Regulations.

I understand that a number of national and provincial groups registering opposed to this plan including the Canadian Environmental Network, Mining Watch Canada, Trout Pond Action Group and residents of the Buchans area.

I ask that you request a full review of this proposed exemption and require that full environmental protection measures be applied to this project.