

NORTHWATCH

February 16, 2009

Mr. Chris Doiron
Chief, Mining Section
Mining and Processing Division
Environment Canada
351 St. Joseph Blvd.
Gatineau, Quebec K1A 0H3

Dear Mr. Doiron:

**Re. Proposed Amendment to the Metal Mining Effluent Regulation
Addition of Ruby Creek as a Tailings Impoundment Area to Schedule 22**

The following comments are being submitted subsequent to my attendance and participation in discussions at a consultation session held by Environment Canada on January 26th to discuss Proposed Amendment to the Metal Mining Effluent Regulation with the addition of Ruby Creek as a Tailings Impoundment Area to Schedule 2. I attended the session as one of four delegates of the Canadian Environment Network.

I previously participated, also as a delegate of the Canadian Environment Network's Mining Caucus, in a multi-year consultation by Environment Canada as part of their initiative to "modernize" what were then referred to as the Metal Mining Liquid Effluent Regulations. That initiative began in the early 1990's with the study of the Aquatic Effects of Mining (AQUAMIN) and concluded with the last in a series of multi-stakeholder working groups in 2001. One of the outstanding concerns of the Mining Caucus delegates at that time was the amended regulation would still allow the use of Transitional Authorizations, and companies like Iron Ore of Canada and Wabush Mining – who had presented to the working group on more than one occasion, pleading their case as companies who dumped mine waste into living lakes – would be allowed to continue in that practice. We were assured that the Transitional Authorizations would be issued on a very rare occasion and for only a very limited time period.

I am sure you can appreciate our disappointment and frustration at finding ourselves - almost a full decade later – now responding to a series of proposals to amend the regulation to do just what the "modernized" mine effluent regulation was to have prevented – the use of living water bodies as a dumping ground for mine waste.

Environment Canada has invited delegates of the CEN Mining Caucus to provide comments on the proposed amendment to the Metal Mining Effluent Regulation with the addition of Ruby Creek as a Tailings Impoundment Area to Schedule 2. Northwatch is a regional coalition focussed on issues of concern to northeastern Ontario – primarily related to natural resource management on public lands – and as such the Ruby Creek Project is outside our routine area of geographic concern, but the various proposals to amend the MMER to add further water bodies to Schedule 2 is central to our policy and regulatory concerns with respect to mining and mine impacts on the natural environment. Further, while the proposal to amend the MMER by adding an additional water body to Schedule 2 is what motivates our response to this project, our comments will not be strictly confined to the MMER amendment, as the project, the project review, and the proposal to amend the MMER are inextricably linked.

This discussion – and these comments – are made within the context of a broad and deep concerns about the continued and expanded use of living bodies of water as a cost-effective and expedient method of containing mine waste. Environment Canada has already held consultations on a number of proposals to designate water bodies as tailings impoundment areas, including for Carol and Scully Lakes, Duck Pond, and Sandy Pond, and the Canadian Environmental Network has been advised that consultations are expected to take place for Bucko Lake (July 2008 at last notice), and several additional projects in British Columbia. We understand that other designations are being considered for additional projects in the Northwest Territories and Nunavut.

While the details and consequences of each project will vary, one key concern will be constant – the sacrifice of fresh water bodies in order to provide cost savings and profits to mining companies. Some of these companies may be Canadian owned, others not; some may provide considerable economic benefits to the local communities, others may provide very few; some may operate for long periods of time, but most will be short-lived. This is a sacrifice we do not condone, in any single project or as standard practice.

Scope and Tracking of Project Review

The federal government has given strong signals of disarray and disorder with their review of the Ruby Creek Project. The following observations serve as examples of the federal “family” dysfunction with respect to the review of the Ruby Creek Project and the proposed designation of the Ruby Creek headwaters as a tailings impoundment area:

- ? The project was initially announced as a screening, then as a comprehensive study, then again as a screening; no sound explanation of these changes was provided (a note indicating that a court decision has been set aside does not constitute an adequate explanation)
- ? The Department of Fisheries and Oceans redefined the “project” of the Ruby Creek Mine to be the “project” of just the tailings impoundment area in the headwaters of

Ruby Creek; this redefinition is inconsistent with sound environmental assessment and does not meet the purposes or the spirit of the Canadian Environmental Assessment Act; since the “project” of the TIA would not exist without the “project” of the mine itself, they are clearly and obviously part and parcel of the same single project; to purport otherwise is simply sophistry

- ? The eight page Screening Report posted for public review was of poor quality and was incomplete (the Screening Report provided by Environment Canada was 10 pages, and included the 8 page report posted for public review and a 2 page summary table)

Acid Mine Generation

- ? The documents provided variously stated that the “overall objective of the facility is to submerge the PAG waste rock material that is deposited as a basis of minimizing acid generation and the associated potential for environmental impact”¹ and that the purpose of the TIA is for the disposal of tailings; during our review we were unable to find an estimate of how much of the waste rock is thought to be potentially acid generating, and neither the proponent nor the federal departments were able to provide an estimate when the question was posed during the January 26th consultation session
- ? While it is stated that “overall objective of the facility is to submerge the PAG waste rock material that is deposited as a basis of minimizing acid generation and the associated potential for environmental impact”² there is an examination of alternatives for the disposal of tailings, but not an equivalent examination of alternatives for the disposal of the potentially acid generating waste rock
- ? There are repeated statements that the tailings will be non-acid generating, but the presence of potentially acid-generating waste rock³ places these statements in question; while the documents generally refer to the tailings as being non-acid generating, the Environment Canada summary does in at least one instance describe them as showing a “very low potential”⁴, which is a distinctly different characterization of the risk associated with the tailings

Cumulative Effects Assessment

- ? The DFO screening report states that no cumulative effects assessment was done of surface water quality or groundwater quality because “there are no other known anthropogenic contributors of metals/contaminants to water quality in the Ruby Creek watershed”; these statements are problematic for two reasons: cumulative effects assessment are to be done of the cumulative effects to the environment, not to one taken-in-isolation component of the environment, such as groundwater or surface water, and because there are other anthropogenic sources of environmental impact in the Ruby Creek watershed, such as placer mining, mineral exploration activities, open pit mining, and a mill and access roads

Alternatives Assessment

- ? the Alternatives Assessment document⁵ leaves a strong overall impression of cost having been the primary consideration; the conclusion that the cheapest option – the use of the headwaters of the Ruby Creek – is the preferred option is predictable, given the tone and approach conveyed by the document

Habitat Compensation Plan

- ? the descriptions of the tremendous and ongoing impacts of placer mining on the Ruby Creek and adjacent water sheds contained in the provided documents⁶ are sobering; these same descriptions raise two key questions:
 - ? what is the role of the regulatory authorities – including the Department of Fisheries and Oceans – in regulating the activities of the placer miners and in preventing the continued loss of fish habitat to these activities and,
 - ? what would be the basis for belief that the fish habitat that is created as compensation for the loss at the headwaters of the Ruby Creek watershed will not be similarly destroyed by placer mining activities
- ? there are questions which have not been adequately addressed about the viability of the grayling population in the upper Ruby Creek, and about the potential adverse effects the intermingling of this population may have on other healthy populations should they be relocated; these issues are not addressed in the documents, and were raised but not adequately addressed during the January 26th consultation

Closure plan

- ? while the closure plan discussed potential consequences of soil ingestion by caribou, there was no discussion of the potential effects on other wildlife, including small mammals who may be resident in the immediate area and affected by soil ingestion or uptake of metals through the vegetation; this was raised during the January 26th consultation, but the response was dismissive rather than informative

Process issues

In addition to the larger process issues about timing and sequencing of the proposed amendments to Schedule 2 and the related consultations, there are several process issues specific to the Ruby Creek proposal that we must note and feel strongly should be addressed. In several cases, the failure to have addressed the issues itemized below has negatively affected our ability to participate in this review process. Issues include:

- ? all CEN delegates experienced delays in receiving the background documents for the consultation, and in at least one instance the documents have not yet been received;

while the explanation provided of “difficulties in the mail room” might explain the one week delay that I personally experienced, the situation requires serious attention on the part of those responsible for any future consultations, given the adverse effect the delays had on this consultation

- ? the federal government is investing public resources in processing applications for a project for which there is no viable proponent; Adanac Moly Corp. is in bankruptcy protection, metal prices have plummeted, and the project’s viability is in serious question; at some level within the two federal departments there should have been a “do not resuscitate” note pinned to the front of the project file, and it should have been set aside until it had been demonstrated that the project was going to move ahead; while the project might be more marketable with a full set of approvals, it should not be the role of the federal government to be stepping in as promoter/proponent for mine projects which find themselves without an owner
- ? there has been very poor followup from the January 26th consultation; at that meeting, there were several undertakings on the part of the part of the federal government and the consultant to Adanac Moly Corp, and to the best of our knowledge the commitments have not been met; three of note include a commitment by DFO to provide examples of “excellent” habitat compensation plans that had been put into effect, a commitment by Adanac’s consultant to respond to a question from MiningWatch Canada about strip ratios, and a commitment by Environment Canada to provide a copy of the draft Alternatives Assessment Guideline

Conclusion

In conclusion, we make the following recommendations with respect to the proposed addition of the Ruby Creek headwaters to Schedule 2, and related matters:

- ? the Department of Fisheries and Oceans commence a program or regulation and enforcement with respect to the adverse impacts of the placer mining industry on fish and fish habitat
- ? the federal departments cease and desist in their consideration of any requests for approvals and permits in the absence of a viable proponent
- ? Environment Canada and the Department of Fisheries and Oceans jointly promote and enforce DFO’s stated policy of avoiding the loss of fish habitat
- ? For numerous reasons including those cited above, Environment Canada should determine that the headwaters of Ruby Creek will not be added to Schedule 2 and designated as a tailings impoundment area

Thank you for your consideration. Should clarification of any of our comments or concerns be of assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Brennain Lloyd', enclosed in a thin black rectangular border.

Brennain Lloyd
Northwatch

cc. RCEN
DFO

ENDNOTES

- 1.Environment Canada “MMER Amendments Backgrounder: Ruby Creek Molybdenum Mine”, page 2, para. 3, undated, no author
- 2.Environment Canada “MMER Amendments Backgrounder: Ruby Creek Molybdenum Mine”, page 2, para. 3, undated, no author
- 3.Ruby Creek Molybdenum Project “Environmental Assessment Certificate Application, Appendix 12, Rehabilitation and Closure Plan”, page 9. Klohn Crippen Berger, July 2006
- 4.Environment Canada “MMER Amendments Backgrounder: Ruby Creek Molybdenum Mine”, page 4, para. 2, undated, no author
- 5.Ruby Creek Molybdenum Project “Alternatives Assessment”, Klohn Crippen Berger, MO022AO5, July 2007
- 6.Ruby Creek Molybdenum Project “Environmental Assessment Certificate Application, Appendix 11, Fish Habitat Compensation Plan”, Klohn Crippen Berger, July 2006