



Canadian Nuclear
Safety Commission

Commission canadienne
de sûreté nucléaire

Record of Proceedings, Including Reasons for Decision

In the Matter of

Proponent Denison Mines Inc.

Subject

Environmental Assessment Guidelines for the
Proposed Installation of Berms at the Outlet of
the Halfmoon Wetland near Elliot Lake, Ontario

Hearing Date December 11, 2009

RECORD OF PROCEEDINGS

Proponent: Denison Mines Inc.

Address/Location: 8 Kilborn Way, Elliot Lake, Ontario, P5A 2T1

Purpose: Environmental Assessment Guidelines for the Proposed
Installation of Berms at the Outlet of the Halfmoon Wetland near
Elliot Lake, Ontario

Date of hearing: December 11, 2009

Location: Canadian Nuclear Safety Commission (CNSC) 280 Slater St.,
14th. Floor, Ottawa, Ontario

Members present: M. Binder, chair

Secretary: K. McGee

Recording Secretary: P. Reinhardt

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Introduction

1. Denison Mines Inc. (Denison) has notified the Canadian Nuclear Safety Commission¹ (CNSC) of its intention to install berms to stabilize and reinforce the existing beaver dams at the outlet of the Halfmoon Wetland, near Elliot Lake, Ontario. The proposal would require the CNSC to consider an amendment to Denison's current Decommissioning Licence (UMDL-MINEMILL STANROCK.01/indf).
2. The installation of the berms proposed by Denison would provide better and more stable containment for the treatment sludge located within the wetland and, by virtue of a more reliable water cover, would attenuate gamma radiation fields.
3. This project was originally proposed by Denison in December 2005. The Environmental Assessment (EA) Guidelines were drafted and reviewed by CNSC staff, other federal departments and the public at that time. The proponent then requested that the EA be put on hold for an indefinite period of time. In August 2009, the proponent requested that the EA be continued. The EA Guidelines now have to be approved by the Commission.
4. The project, as described in Denison's project description, includes the following components:
 - construction of two berms consisting of north and south sections; and
 - use of the berms to contain the treatment sludge present in the marsh area and to raise the level of water in the marsh area.The total duration of construction is expected to be approximately 30 days.
5. Before the Commission is able to make a licensing decision in respect of the proposed project, pursuant to the *Nuclear Safety and Control Act*² (NSCA), it must, in accordance with the requirements of the *Canadian Environmental Assessment Act*³ (CEAA), make a decision on an environmental assessment (EA) of the proposal. The Commission is the sole Responsible Authority for this EA⁴.
6. As a responsible authority under the CEAA, the Commission must first determine the *scope of the project* and the *scope of the assessment for the project*. To assist the Commission in this regard, CNSC staff prepared a draft Environmental Assessment Guidelines document (EA Guidelines) in consultation with other government departments, the public and other stakeholders.

¹ The *Canadian Nuclear Safety Commission* is referred to as the "CNSC" when referring to the organization and its staff in general, and as the "Commission" when referring to the tribunal component.

² Statutes of Canada (S.C.) 1997, c. 9.

³ Statutes of Canada (S.C.) 1992, c.37.

⁴ Responsible Authority in relation to an EA is determined in accordance with subsection 11(1) of the CEAA.

7. The draft EA Guidelines “*Proposed Environmental Assessment Guidelines (Scope of Project and Assessment): Installation of Berms at the Outlet of the Halfmoon Wetland*” contains draft statements of scope for the approval of the Commission. The draft EA Guidelines also contain recommendations for the approach to be used in completing the EA, including instructions for the conduct of further public and stakeholder consultations. The draft EA Guidelines are presented in the CNSC staff document CMD 09-H126.

Issues

8. In considering the EA Guidelines, the Commission was required to decide, pursuant to subsections 15(1) and 16(3) of the CEAA respectively on:
 - a) the *scope of the project* for which the EA is to be conducted; and
 - b) the *scope of the factors* to be taken into consideration in the conduct of the EA.
9. The Commission also considered whether it would, at this time, recommend to the federal Minister of the Environment, pursuant to section 25 of the CEAA, to refer the project to a mediator or a review panel.
10. The Commission considered whether it would, pursuant to subsection 17(1) of the CEAA, delegate the conduct of technical support studies to Denison and the writing of the technical Report to CNSC staff or the proponent.
11. Furthermore, the Commission undertook to decide whether or not it will consider the completed EA Screening Report (Screening Report) in a public hearing or in a closed session.

Hearing

12. Pursuant to section 22 of the NSCA, the President of the Commission established a Panel of the Commission to hear this matter.
13. The hearing was conducted in accordance with the Commission’s process for determining matters under the CEAA. During the hearing, the Commission received written submissions from CNSC staff (CMD 09-H126) and Denison (CMD 09-H126.1).

Decision

14. Based on its consideration of the matter, as described in more detail in the following sections of this *Record of Proceedings*,

the Canadian Nuclear Safety Commission, pursuant to sections 15 and 16 of the CEAA, approves the “*Proposed Environmental Assessment Guidelines (Scope of Project and Assessment): Installation of Berms at the Outlet of the Halfmoon Wetland*”.

15. The Commission decides that it will not, at this time, refer the project to the federal Minister of the Environment for his referral to a mediator or review panel. The Commission notes that it may make such a referral at any time during the course of the EA process if warranted.
16. The Commission decides that it:
1. will not delegate the conduct of technical support studies to the proponent, Denison Mines Inc.; and
 2. will delegate the writing of the EA Screening Report to CNSC staff.
17. Finally, the Commission decides that it will consider the completed EA Screening Report in the context of a closed session of the Commission.

Issues and Commission Findings

Type of Environmental Assessment Required

Screening vs. Comprehensive Study

18. The proposed project is not of the type identified in the *Comprehensive Study List Regulations*⁵. Therefore, pursuant to subsection 18(1) of the CEAA, the CNSC is required to ensure that a screening EA of the project is performed and a Screening Report prepared before a licensing decision to allow the project to proceed in whole or in part can be made by the Commission under the NSCA.
19. Based on information included in CNSC staff’s submission, there are not, at this point in time, potential significant environmental effects or public concern associated with the project that would warrant having the project referred to a mediator or a review panel. The Commission concludes that, pursuant to the CEAA, a screening EA of the project is satisfactory.

⁵Statutory Orders and Regulations (S.O.R.)/94-638.

Consultations on the Draft EA Guidelines

20. As part of its review of the adequacy of the draft EA Guidelines and, in particular, to assess the level of public concern about the project, the Commission took account of the views of the public and other stakeholders. In this regard, the Commission considered whether the consultations carried out thus far by CNSC staff and the proponent provided the public and other stakeholders with adequate opportunity to become informed and express their views about the EA.

Public and Aboriginal Consultation

21. With respect to public consultation on the draft EA Guidelines, CNSC staff reported that a public registry was established for this environmental assessment, as required by section 55 of the CEAA, and identified in the Canadian Environmental Assessment Registry with the following number: 06-01-17616.
22. CNSC staff solicited comments from key stakeholders during the development of the EA Guidelines, including Northwatch, the City of Elliot Lake, the Serpent River Region Environmental Committee (which includes members from the Serpent River First Nation) and individuals who had previously expressed an interest in activities conducted by Denison in the Elliot Lake region. No comments from the public were received during the review period for the draft EA Guidelines. In September, 2009, CNSC staff sent introductory letters to three Aboriginal groups (Serpent River First Nation, Sagamok Anishnawbek, and Mississauga First Nation) to introduce the project and provide a 30 day opportunity for the Aboriginal groups to review the EA Guidelines. No comments were received during this review period.
23. Upon the re-start of the EA Process in 2009, CNSC staff performed a Public Participation Determination for this EA. Based on the public participation criteria and rationale provided, Denison's proposal was determined by staff to not require public participation during the completion of the EA process. A notice will be posted on the CEA Registry and the CNSC website stating that the proposed EA Screening Report is available.
24. CNSC staff noted that they will engage with any interested Aboriginal group to share information and address concerns. CNSC staff added that interested Aboriginal groups will also be able to comment on the draft EA Screening Report during their review period which is anticipated for end of 2009 or early 2010.

Government Consultation

25. CNSC staff reported that, in accordance with the *CEAA Regulations Respecting the Coordination by Federal Authorities of Environmental Assessment Procedures and Requirements*⁶, it had identified the following federal authorities for the purpose of providing expert assistance during the environmental assessment: Fisheries and Oceans Canada, Environment Canada, and Natural Resources Canada.
26. CNSC staff noted that there were no provincial requirements for an environmental assessment of this proposal; however, CNSC staff noted that it will keep the Ontario Ministry of the Environment informed throughout the EA process.

Conclusion on the EA Guidelines Consultation

27. The Commission is satisfied that to ensure transparency of the process to the public during the EA, milestones activities will be posted on the CEAR and on CNSC Web site. The Commission also noted that as part of the public registry, the CNSC maintains a list of documents pertaining to the environmental assessment always available to interested parties on request.

Environmental Assessment Studies and EA Screening Report

28. The Commission determines the process to be followed for the EA Screening Report, including if the EA Screening studies are to be delegated to Denison and if the Screening Report will be reviewed in the context of a public hearing of the Commission.
29. CNSC staff recommended that, pursuant to Subsection 17(1) of the CEAA, the technical studies required by CEAA not be delegated to Denison. CNSC staff has reviewed the information provided in Denison's project description and found that this document, together with information that CNSC staff has regarding the Stanrock site, is sufficient for the development of a screening report and no new technical studies are required. The EIS report will undergo CNSC staff and other Federal Authorities' review before CNSC staff prepares the EA Screening Report and submits it to the Commission for consideration.

⁶ Statutory Orders and Regulations (S.O.R.)/97-181.

30. CNSC staff recommended that the EA Screening not be delegated to Denison and that the final EA Screening Report be considered by the Commission in the context of a closed session of the Commission. CNSC staff based its recommendation on the fact that:
- the proposed project does not involve new activities related to the Halfmoon Wetland in the Stanrock site, but rather activities to reinforce existing structures (the natural dams) to provide better containment for residual treatment sludges and to attenuate gamma radiation fields; and
 - the project represents low risk to the environment.
31. Based on CNSC staff's recommendation, the Commission decided (1) not to delegate the EA Screening studies to Denison and (2) to hold the Commission's review of the EA Screening Report for this project in a closed session. CNSC staff committed to advising the Commission in the event of any new information that would change their recommendation to consider the Screening Report in a closed session.

Scope of the Project

32. CNSC staff reported in section 7 of the EA Guidelines the physical works involved in the project:
- management of the water level in the marsh area prior to berm installation;
 - construction of two berms consisting of north and south sections; and
 - use of the berms to contain the treatment sludge present in the marsh area and to raise the level of water in the marsh area.
33. CNSC staff included in the draft EA Guidelines a list of factors to be considered pursuant to subsection 16(1) of the CEAA to assess effects on the environment of the project including the effects of malfunction and accidents and cumulative effects. The Guidelines also provide the proposed format of the EA Screening Report and identify specific information requirements and the methodology to be used in the assessment.
34. CNSC staff concurred with Denison's project description and with the types of effects generated by the project.
35. Based on the information received, the Commission accepts CNSC staff's recommendations concerning the *scope of the project* and approves the definition of the project scope as set out in section 7 of the draft EA Guidelines without change.

Scope of the Assessment (scope of the factors)

36. The mandatory factors in subsection 16(1) of the CEAA are: the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out; the significance of these effects; the comments from the public that are received in accordance with the CEAA and its regulations; and measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project.
37. CNSC staff recommended that the Commission approve the scope of the assessment as outlined in the EA guidelines.

Conclusion on the Scope of the Assessment

38. Based on the above information reported by CNSC staff, the Commission concludes that the *scope of the assessment*, as described in section 8.0 and 9.0 of the draft EA Guidelines, is appropriate for the purpose of the environmental assessment of the proposed project.

EA Structure and Approach

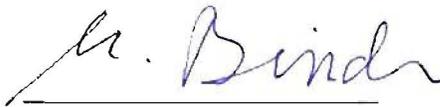
39. CNSC staff included in section 9.1 of the EA Guidelines the structure for the Screening Report. CNSC staff also stated that the Screening Report will present a conclusion as to whether the project is likely to cause significant adverse environmental effects, taking into account the appropriate mitigation measures. CNSC staff will make recommendations to the Commission related to the project when the EA report will be available, consistent with section 20 of the CEAA.
40. Based on the CNSC staff recommendation, the Commission is satisfied with the structure, approach, and other instructions for conducting the EA, as described in the EA Guidelines attached to CMD 09-H126.

Public Concern on the Project

41. No concerns from the public or Aboriginal groups were raised during the public consultation on the EA Guidelines.

Conclusion

42. The Commission has considered the submissions of CNSC staff as presented for reference on the record for the hearing.
43. The Commission, pursuant to sections 15 and 16 of the CEEA, approves the *“Proposed Environmental Assessment Guidelines (Scope of Project and Assessment): Installation of Berms at the Outlet of the Halfmoon Wetland”* presented in CMD 09-H126.
44. The Commission also concludes that, at this time, it will not refer the project to the federal Minister of the Environment for referral to a mediator or review panel in accordance with the provisions of the CEEA.
45. The Commission decides that, pursuant to subsection 17(1) of the CEEA, the conduct of technical support studies will not be delegated to Denison Mines Inc.
46. Furthermore, the Commission decides that the completed EA Screening Report will be considered by the Commission for approval in a closed session, unless circumstances warrant undertaking a public hearing.



DEC 17 2009

Michael Binder
President,
Canadian Nuclear Safety Commission

Date