



Department of Justice
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August 26, 1997

Our file: PK 67843

Nom a dossier:

Your file:

Votre dossier:

To: David Milburn, Northwest Territories Water Board
Tim Acton, Royal Oak
Emery Paquin, GNWT, RWED

From: Alan Regel, Justice Canada

Re: Royal Oak Water Licence

At the Arsenic workshop at the Explorer Hotel, on 14th and 15th 1997 much concern was expressed about the lack of controls over air emissions in the Northwest Territories. The task force was told that it was important to deal with the issue sooner rather than later. We may already have a mechanism for dealing with the issue. I shared some thoughts on the matter with the interested Departments of the Federal government. DOE and DFO representatives have asked me to share my thoughts in this regard with you.

I think it is safe to assume contaminants including arsenic, Sulfur Dioxide and other pollutants emitted into the air eventually settle. Contaminants settling in the water will obviously have an impact on the waters and amount to a deposit of waste under s. 9 of the *Northwest Territories Waters Act*. Some of the contaminants settling on the lands will eventually be washed into waters, thus having a further impact on the waters. Some Courts have in fact accepted that what goes up must come down.

The waters around Giant Mine are in a Water Management Area. Under s.15 of the *Northwest Territories Waters Act* the Water Board has the power to impose conditions relating to the deposit of waste into such waters. At the Workshop there was unanimous support for what is sometimes called the "single window" approach to licencing. If the Board were to exercise this power, all the release issues could be dealt with at the same time.

This approach is novel and the first reaction may be "How can it be done if it was never done in the past?". On the other hand, the tools may be there even if they were not used in the past. This would be much quicker solution than waiting for Regulations and

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everyone with an interest would have the opportunity for input. In the circumstances, I doubt there would be much, if any objection from anyone if the Water Board chose to exercise jurisdiction in this regard.

Another response may be that it is better to regulate air emissions directly and not only to the extent we assume they settle out into the water. I agree. On the other hand, we have no idea if, let alone when, the anticipated regulations will be in force. Why not work with the tools available until better tools come along, rather than do nothing.

I should note DOE and DFO, have not finally decided what position they will take on this issue. Both are merely considering the options and asked me to share my thoughts with some of the other interested parties so they also have an opportunity to consider the issues. If you would like to share your thoughts on the matter we would be pleased to consider them.

We look forward to hearing from you..

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cc DIAND - David Livingstone / David Jessiman
DFO - Ron Allen
Health Canada - Vicki Jerome
DOE - Ed Collins