

May 15, 2012

**Baffinland Iron Mines Corporation
Mary River Project**

Distribution

Those present +

1) NIRB:

- rbarry@nirb.ca,

- info@nirb.ca,

- ahanson@nirb.ca,

- lwan@nirb.ca,

2) AANDC

- Amy.Shen@aandc-aadnc.gc.ca

- Margaux.brisco@aandc-aadnc.gc.ca

**Meeting with Staff of the Canadian Transportation Agency and
Transport Canada**

MEETING DATE: May 15, 2012

LOCATION: 15 Eddy, Gatineau, QC

PRESENT: Erik Madsen – Baffinland
Michael Anderson – Baffinland
Fernand Beaulac – Baffinland
John Binns – Hatch
Michael Sheahan – Hatch
John Cowan, TC (teleconference)
Kamran Khanzada, TC
Jessica Ryan, TC

Luc Fortin, CTA
Jason Tsang, CTA
John Corey, CTA
Andre Paquette, CTA
Melanie Nera, CTA
Carole Girard, CTA
Jennifer Moore, CTA
Kate Fillmore, CTA

PURPOSE: 1) Baffinland to provide clarification for CTA's information requests
2) Obtain clarification regards application required for certificate of Fitness and authorization under article 98 of the Canada Transportation Act

The agenda was circulated by Mr. Fortin and covered discussion on four topic:

1. Certificate of Fitness,
2. Environmental Issues,
3. Section 98 authorization,

4. Other items, and,
5. Responses to questions submitted by Baffinland

Discussion

1. Certificate of Fitness

- CTA staff provided documentation on requirements for Certificate of Fitness (s. 92 of the *Canada Transportation Act*);
- Certificate of Fitness required for construction and operation of a railway;
- CTA staff referred to Canadian Transportation Agency letter decision (LET-R-173-2008) dated November 28, 2012, which determines that Agency is satisfied that the preliminary requirement for an application under section 92 of the CTA (for a certificate of fitness) has been met as the proposed operation is “in respect of a railway within the legislative authority of Parliament”.
- Must meet test of third party liability insurance (must satisfy *Railway Third Party Liability Insurance Coverage Regulations*); need to obtain insurance for both construction and operation of Baffinland’s operations;
- Filing application for Certificate of Fitness:
 - o Attach insurance certificate to satisfy Agency that Baffinland has adequate third party liability insurance coverage for third party bodily injury or death, third party property damage, excluding cargo, and named perils pollution.
 - o Include narrative/rationale explaining why proposed third party liability insurance coverage will be adequate, including addressing the specific risks assessed for each of construction and operation, the adequacy of the amounts of the liability insurance offered in terms of the per occurrence and the aggregate limits, and any other relevant information used to support the position regarding adequacy of coverage to cover construction and operating risks
 - o If proposing to have self insurance, need to submit three most recent years of audited financial statements for the railway company
 - o If another company will be responsible for the payment of any self insurance amount, application must include a hold harmless and indemnification agreement between the company and Baffinland and three most recent years of audited financial statements for this company
 - o Onus on Baffinland to satisfy Agency that insurance it obtains to construct and operate covers all of its specific risks and that those risks have been divulged to the insurance company. The *Railway Third Party Liability Insurance Coverage Regulations* also require that the railway disclose these risks to the Agency.
- CTA has a performance measurement of issuing a certificate of fitness within 120 days, assuming a complete application;
- CTA suggested that Baffinland submit application for Certificate of Fitness as soon as possible;
- The CEA Act does not apply within the Nunavut Settlement Area. The Nunavut Land Claims Act (NLCA) sets out the requirement that licenses or approvals to allow a project to proceed shall not be issued until a screening has been completed by the NIRB (See art. 12 of the NLCA for the specific wording.)

- Information presented in the FEIS could be repackaged to focus on construction and operation risks associated with the railway

2. Environmental Issues

- Issues related to Caribou:
 - o CTA staff noted that QIA had concerns regarding proposed monitoring and mitigation plan related to caribou;
 - o Baffinland explained how Inuit Knowledge was used to establish locations of caribou crossings;
 - o Baffinland established a “working group” with QIA, EC and GN wildlife biologists to review mitigation measures proposed in Baffinland’s Terrestrial Wildlife Management Plan and to advise on monitoring and adaptive management;
 - o Baffinland stated that it intends to have this working group for a number of years post start-up;
 - o CTA staff requested information on how the working group would operate
 - o Baffinland commitment in IIBA to ensure on-going Inuit involvement (creation of joint QIA-Baffinland management committee with specific environmental oversight responsibilities;
 - o Baffinland commitment to seek Inuit input (via QIA) in design of caribou crossing and other mitigation measures implemented along the railway line

- Tunnel ventilation
 - o CTA staff concerned over air quality in tunnel for train crews or passengers and the need for ventilation
 - o Baffinland response:
 - Current operation plan is for all employees to be transported by air from either Steensby or the Mine site – therefore, passenger cars no longer in the scope of the Project – CTA staff noted that this is a change from the FEIS submission and Baffinland should inform the NIRB of this decision.
 - Forced ventilation not required due to the difference in elevation of the tunnel portal and the piston action of the train movement
 - Only personnel on the train are the locomotive engineers – they will be equipped with air packs
 - Air quality will be tested prior to undertaking repair work on tracks in the tunnel – workers will be equipped with air packs as required.

TC saw no significant issue with the ventilation of the tunnel, noting the piston effect that would be created (with the train pushing air through the tunnel to remove stagnant air). TC cited s. 11 of the RSA, noting that all engineering work relating to railway works must be done in accordance with sound engineering principles and that a professional engineer must take responsibility for the engineering work. The engineer would ultimately be responsible for analyzing the ventilation issue.

- Emergency Response
 - o Due to the isolation of the site and severe winter weather that can prevent travel to the site, CTA staff requested clarification on availability of trained and experienced personnel to deal with derailment (Note: the equipment specified to be dispatched at the spill site does not pose any particular challenge once it is available in Steensby and at the mine site); CTA staff noted that the FEIS was short on tangible details for emergency

response. The experience of the Arcelor-Mittal railway was not made referenced as had been said would be done in the FEIS.

- Baffinland response:
 - Railway management plan and emergency response plan are mainly conceptual at this stage;
 - Focus is on prevention – several strategies were outlined in the Draft Railway Maintenance Management Plan.
 - Bulk dangerous goods transported are mainly diesel fuel, jet fuel and ammonium nitrate;
 - As noted in the Draft Railway Maintenance Management Plan (Vol 10, Appendix 10D9.1, section 4.3), fuel cars

“ Tank cars will exceed the requirements of Specification 112 and 114 Tank Cars Regulations; their performance specifications will require the tank cars to have special features to greatly reduce the possibility of spillage in the event of a derailment, these features include:

- *Double walls (to reduce the possibility of leakage due to a puncture);*
 - *Shielded bulkhead (this is in addition to the double walls), as the bulkheads, or ends of the tank car have the greatest possibility of being hit by the coupler of an adjacent freight car in the event of a derailment;*
 - *Top loading and unloading valves only. Not having a bottom valve eliminates the chance of fuel dripping out of a leaking valve;*
 - *Shielded valves (reduces the risk of valves located on the top of the tank being sheared off in the case of a roll-over); and,*
 - *Double shelf couplers (reduces the risk of uncoupling during a derailment, and if uncoupling does occur, double shelf spreads out the impact force if it hits an adjacent tank car).”*
- Baffinland will have specialized rail mounted equipment at Steensby or the Mine site that will enable the Company to respond to derailment – type of equipment expected to be available on site is presented in the Draft Railway Emergency Response Plan (Vol 10, Appendix 10D9.2);
 - A trained Emergency Response Team will be present on site. The ERT will undertake annual field training exercises. Special training sessions will be provided for dealing with derailment scenarios.
 - CTA staff observed that that Baffinland would face challenges in quickly calling on external specialised emergency responders to assist in the event of serious/severe derailment;
 - Baffinland noted that:
 - the first response will be to ensure safety of personnel followed by containment of spill, should there be a spill;
 - once situation has been assessed and Baffinland is satisfied that no harm to the environment will occur, recovery of equipment/material can be delayed until weather conditions permit safe and effective recovery effort.

3. Authorization under article 98

- A railway company shall not construct a railway line without the approval of the Agency. The Agency may grant approval if it considers the location of the line reasonable.
- No approval is needed if the construction is in an existing right of way, within 100m of the centerline of an existing track and no longer than 3km;
- Applies for the construction of the railway line, including main lines, spurs or other track auxiliary to the railway line;
- This authorization requires a separate application as detailed in CTA letter to Baffinland (Nov 25, 2008);
- Must include drawings of railway at the port and mine terminals;
- TC noted that the requirements of Transport Canada's Notice of Railway Works Regulations and the requirements for notice under the Canadian Transportation Agency regime are separate processes. The Notice of Railway Works Regulations fall under the *Railway Safety Act*. If it is determined that the work falls into any of the categories of "prescribed works" listed in the regulations then Baffinland would be required to follow the notice requirements. This typically means notifying municipalities, abutting landowners, other railways, etc. (as it applies to the situation). Should the work qualify, it would have to be determined to whom notice would need to be given. TC is seeking clarification on this point (i.e. who would possibly receive notice in the Mary River case). Notice must be given at least 60 days before commencing the work. The Section 98 application includes a requirement for notice to be given to interested parties. Generally notice is given by way of posting the project details in local newspapers in the affected area. This allows interested or affected parties an opportunity to a submission to the Agency regarding the proposed line.

4. Other Items

- Coasting Trade

- o Relates to the transport of goods between two points in Canada;
- o Coasting trade license may be required if foreign flag vessels deliver goods to the site
- o CTA staff advises Baffinland to review its proposed shipping activities for construction and operation – if coasting trade applies;
- o CTA staff advised that Baffinland contact Transport Canada to determine if the use of a foreign ship falls within the definition of coasting trade found in the Coasting Trade Act. If so, Baffinland will need to file an application with CTA and CBSA.
- o CTA also provided a copy of its Guidelines for coasting trade applications.

- CTA Presentation at NIRB Final Hearing

- o J. Cowan recommends that CTA staff provide in their FEIS response to NIRB by May 30th the roles and responsibilities of the CTA - will be required at the Final Hearing in July.

5. Responses to Baffinland Questions

- 5.1 **Can we confirm that the current Environmental Impact Study that BIM has submitted is sufficient for the CTA requirements for the Notice of Railway Works and the Application to Construct a Railway Line, including community and stakeholder consultation?**

Response:

- CTA staff will accept the NIRB determination and stakeholder consultation on the environmental assessment. For the section 98 application, public notice to be made and a sample of the notice to be included in application as described in the Agency's Guide to Rail Line Construction.

5.2 When does the Application to construct a railway line, and the Notice of Railway Works need to be submitted?

Response:

- Approval under section 98 and Certificate of Fitness are both required before the start of construction of the railway. Application should be filed well in advance. (CTA)
- Notice of Railway Work is required at least 60 days prior to commencement of the construction activities. (TC)

5.3 Will CTA require any additional and specific drawings or details in addition to those submitted in the FEIS?

Response:

- Yes – drawings at both the Steensby and Mine site terminals will be required; must include drawings of loading and unloading facilities, rail yards, spurs or any sidelines.

5.4 Is a Safety Management Plan required for the construction program, or just for rail operations?

Response:

A Safety management Plan is required under the *Railway Safety Act*. The Plan must be submitted to Transport Canada at least 60 days prior to movement of material on the railway line.

5.5 Will rail equipment be able to operate on the line under test before the line is fully commissioned and or the certificate of Fitness is granted?

Response:

The Certificate of Fitness and section 98 authorization are required prior to commencing construction and operation on the railway line. (Notice of Railway works to TC as well)