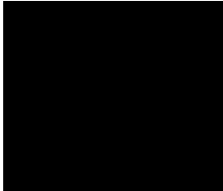


April 16, 2019



Dear 

**Re: Your request for access to information under Part II of the *Access to Information and Protection of Privacy Act* (File # NR-55-2019)**

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On April 4, 2019, the Department of Natural Resources received your request for access to the following records/information:

**February 2019 decision/direction note titled Voisey's Bay Mine Expansion Underground Mine Progress Milestone.**

I am pleased to inform you that a decision has been made by the Department of Natural Resources, confirmed by the Deputy Minister, to provide access to the requested records. The records are attached.

We are providing access to the most information possible but have made redactions in accordance with Sections 29(1)(a), 35(1)(d), 35(1)(f) and 35(1)(g) of *ATIPPA, 2015* as follows:

29. (1)(a) The head of a public body may refuse to disclose to an applicant information that would reveal advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister;

35. (1)(d) The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose information, the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in significant loss or gain to a third party;

35. (1)(f) The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on

behalf of the government of the province or a public body, or considerations which relate to those negotiations;

35. (1)(g) The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose information, the disclosure of which could reasonably be expected to prejudice the financial or economic interest of the government of the province or a public body.

Please be advised that you may ask the Information and Privacy Commissioner to review the processing of your access request, as set out in section 42 of the *Access to Information and Protection of Privacy Act* (the *Act*). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner.

The address and contact information of the Information and Privacy Commissioner is as follows:

Office of the Information and Privacy Commissioner  
2 Canada Drive  
P. O. Box 13004, Stn. A  
St. John's, NL. A1B 3V8  
Telephone: (709) 729-6309  
Toll-Free: 1-877-729-6309  
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the *Act*.

Please be advised that this letter will be published following a 72 hour period after it is sent electronically to you or five business days in the case where records are mailed to you. It is the goal to have the letter posted to the Office of Public Engagement's website within one business day following the applicable period of time.

If you have any questions, please feel free to contact me at 709-729-0463 or [rhynes@gov.nl.ca](mailto:rhynes@gov.nl.ca).

Sincerely,



Rod Hynes  
ATIPP Coordinator

**Decision/Direction Note**  
**Department of Natural Resources**

**Title:** Voisey's Bay Mine Expansion Underground Mine Progress Milestone

**Decision/Direction Required:**

- Whether to reduce the amount of the Contingent Unprocessed Nickel Charge (CUNC) in accordance with article 4.3A.2 of the Development Agreement.

- It is recommended that Minister sign the attached letters directing [REDACTED]

[REDACTED] to cancel Letter of Credit [REDACTED]

s.29.1.a

and

s.35.1.d

[REDACTED] to cancel Letter of Credit [REDACTED]

s.35.1.f

s.35.1.g

**Background and Current Status:**

- Vale Newfoundland and Labrador (VNL) operates the Voisey's Bay mine and Long Harbour nickel processing plant subject to conditions of the Voisey's Bay Development Agreement (DA).

- The Fifth Amendment to the DA included a commitment to develop the post-ovoid underground mine such that continuous operation at Voisey's Bay is maintained. The amendment included milestones, based on the schedule in the FEL-2 (prefeasibility) study. Each milestone has a cure period attached, and government has the option of applying remedies including [REDACTED] monetary liquidated damages.

s.29.1.a s.35.1.f s.35.1.g

- The commitment to construction of the underground mine was secured through [REDACTED] security that was built up as nickel-in-concentrate was exported and is known as the Contingent Unprocessed Nickel Charge (CUNC).

s.35.1.d

s.35.1.g

- On sanction of the project in July 2015, the CUNC was reduced [REDACTED] and now includes [REDACTED] as letters of credit and [REDACTED] as a General Security Agreement and Collateral Realty Mortgage.

s.35.1.d

s.35.1.g

- Article 4.3A.2 of the DA (attached) states that "where the Proponent believes that Overall Progress has reached a percentage completion that would trigger the reduction of the amount of the Contingent Unprocessed Nickel Charge, the Proponent shall so indicate in its monthly progress report delivered to the Government under Section 15.3 and the Contingent Unprocessed Nickel Charge shall be reduced in accordance with this Section 4.3A.2 only following confirmation of such assessment by the Engineer in the applicable Engineer's Assessment."

- Article 16.3 of the DA (attached) indicates that any reduction in the CUNC shall first be applied to reduce the amounts of letters of credit in place.

- A contract is in place with HKA Global (Canada), Inc. (formerly Knowles Consultancy Services), dated June 2015, as independent engineer for the underground mine project. The cost of the independent assessments done under this contract is shared equally by VNL and NR.

**Analysis:**

- Reaching 15% project completion triggers an [REDACTED] provided that:
  - VNL has indicated in its monthly progress report that this percent completion has been reached, and
  - This has been confirmed by an assessment of the Independent Engineer.
- Vale's December 2019 progress report indicates that the project is [REDACTED] complete and had achieved [REDACTED] completion during the month of December.
- In a letter dated February 15, 2019, VNL stated that they have reached 15% completion of the VBME and requesting that the CUNC be reduced to [REDACTED]. They specifically requested that the department take immediate steps to cancel the following letters of credit:
  - [REDACTED] Letter of Credit [REDACTED] in the amount of [REDACTED]
  - and
  - [REDACTED] Letter of Credit [REDACTED] in the amount of [REDACTED]
- The total value of the two LOCs is [REDACTED]
- Each of the above referenced Letters of Credit were provided by Vale as CUNC and each include a term indicating that the LOC can be cancelled by returning the original to the bank along with a dated letter requesting its cancellation.
- HKA's independent engineers report dated February 28, 2019 assessing the progress of the project has confirmed that the 15% threshold has been met, stating: "HKA is of the opinion that the overall percent complete has met the 15% threshold in the VBDA, and per our mandate (see Report Section 1.1), we certify that 15% overall Project completion was met on or before 31-Dec-18."
- The Department's solicitor from Justice and Public Safety has reviewed this note and the attached letters.

**Alternatives:**

- Cancel the Letters of Credit as requested by VNL.
  - Meets the terms of the DA;
  - Indicates to Vale that the DA will be adhered to; and
  - Rewards VNL for meeting its responsibilities in the DA.
- Do not authorize the reduction in CUNC
  - This would contravene the Development Agreement.

**Prepared/Approved by:** A. Smith /  
**Ministerial Approval:**

March 7, 2019

Attachment:

Article 4.3A.2 of the Development Agreement  
 Article 16.3 of the Development Agreement

**4.3A.2 Reduction.**

The amount of the Contingent Unprocessed Nickel Charge and the corresponding security granted under Section 16.1 shall each be reduced according to the Overall Progress of the Underground Mine, on a schedule determined as follows:

Overall Progress	Reduced Amount of Contingent Unprocessed Nickel Charge
Achievement of the Sanction of the Underground Mine Milestone set forth in Section 4.6A(d) (being 0% Completion)	[REDACTED]
15% Completion	[REDACTED]
30% Completion	[REDACTED]
45% Completion	[REDACTED]
60% Completion	[REDACTED]
Achievement of the "Start of Mining" Milestone set forth in Section 4.6A(h) (being -70% Completion)	[REDACTED]

s.35.1.d  
s.35.1.g

[REDACTED]

s.35.1.d  
s.35.1.g

Where the Proponent believes that Overall Progress has reached a percentage completion that would trigger the reduction of the amount of the Contingent Unprocessed Nickel Charge, the Proponent shall so indicate in its monthly progress report delivered to the Government under Section 15.3 and the Contingent Unprocessed Nickel Charge shall be reduced in accordance with this Section 4.3A.2 only following confirmation of such assessment by the Engineer in the applicable Engineer's Assessment.

**16.3 Reduction of Security.**

Any reductions in the amount of the Contingent Unprocessed Nickel Charge under Section 4.3A.2 shall be applied first to reduce the aggregate outstanding amount under the Letters of Credit and then to reduce the Secured Amount under the GSA and the Collateral Realty Mortgage.