



Box 32, Wekweètì, NT X0E 1W0
 Tel: 867-713-2500 Fax: 867-713-2502

#1-4905 48th Street, Yellowknife, NT X1A 3S3
 Tel: 867-765-4592 Fax: 867-765-4593
 www.wlwb.ca

Preliminary Screening Decision and Reasons for Decision

Issued pursuant to section 121 of the Mackenzie Valley Resource Management Act

Land Use Permit Application	
Preliminary Screener	Wek'èezhìi Land and Water Board
Reference/File Number	W2014Q0005
Applicant	Husky Oil Operations Limited
Project	Chedabucto Mineral Exploration Development, Whitebeach Point area, southwestern shore of the North Arm of Great Slave Lake

Decision

Under subsection 124(1) of the *Mackenzie Valley Resource Management Act* (MVRMA), the Wek'èezhìi Land and Water Board (the Board) has conducted a preliminary screening of the Chedabucto Mineral Exploration Development proposed by Husky Oil Operations Limited (the Applicant). The Applicant proposes to conduct exploration for silica (sand) in the Whitebeach Point area of Wek'èezhìi, Northwest Territories (NT), as described in land use permit (LUP) application W2014Q0005.

Notice of the LUP application was given in accordance with sections 63 and 64 of the MVRMA. The Board is satisfied that a reasonable period of notice was given to communities, first nations, and the Tłı̄chq Government. The requirements set out in sections 61 and 61.1 of the Act have been met: the land use area is in a part of Wek'èezhìi for which there is no land use plan and is outside of Tłı̄chq lands, therefore, there are no Tłı̄chq Laws that apply.

Having reviewed all relevant evidence on the Public Registry, including the submissions of the Applicant and the written submissions received by the Board, the Board has decided under subsection 125(1) of the MVRMA that in its opinion: the proposed development might be a cause of public concern.

As a result, the Board has referred the development proposal to the Mackenzie Valley Environmental Impact Review Board (the Review Board) for an environmental assessment (EA). Further information regarding the Board's reasons for decision is set out below.

Background

Husky's land use permit application W2014Q0005 describes proposed exploration work on mineral claims and leases held by the company in order to evaluate a high quality silica deposit, located on the southwestern shore of the North Arm of Great Slave Lake. The proposed activities consist of the following: use of equipment, storage of fuel, exploration drilling, maintenance and operation of a temporary camp, geophysical surveys and geochemical sampling, trenching for bulk sampling of sand, and clearing of trails for tracked vehicle access (for logistical support).

Husky requires a Type 'A' Land Use Permit for the use of motorized earth-drilling machinery the operating weight of which exceeds the threshold of 2.5 tonnes. The company also requires a permit for the off-road use of vehicles and machines that exceed the threshold of 5 tonnes, the establishment of a petroleum fuel storage facility that exceeds the threshold of 4000 liters, and a camp exceeding 200 person-days, as outlined in sections 4 and 5 of the *Mackenzie Valley Land Use Regulations*.

Husky's land use permit application was received by the Board on December 22, 2014. Supporting documents submitted with the application include: Waste Management Plan, Spill Contingency Plan, Engagement Plan and Engagement Record, Wildlife Management Plan, Emergency Procedures and General Field Camp Safety Plan, Closure and Reclamation Plan, and Archaeological Impact Assessment Report.

A request for review was distributed on December 31, 2014, requesting comments by January 21, 2015. Comments were received from Aboriginal Affairs and Northern Development Canada (AANDC), Alternatives North, Environment Canada (EC), Fisheries and Oceans Canada (DFO), the Government of the Northwest Territories – Department of Lands (GNWT-Lands), the North Slave Metis Alliance (NSMA), Northwest Territories Chapter Council of Canadians (CoC NWT), the Tłı̨chǫ Department of Lands and Culture (Tłı̨chǫ Government), Wek'èezhìi Renewable Resources Board (WRRB), and the Yellowknives Dene First Nation (YKDFN). The Review comments and attachments¹ document posted to the WLWB Online Registry shows the comments and recommendations that were submitted to the Board and the responses submitted by Husky.

Summary of Reasons for Decision

The test to determine whether a project should be referred to the Review Board for an EA is set out under subsection 125(1) of the MVRMA. Subsection 125(1) states that if a proposed development "might have a significant adverse impact on the environment or might be a cause of public concern," the preliminary screener shall "...refer the proposal to the Review Board for an environmental assessment." "Impact on the environment" is defined in s.111 of the MVRMA as: "any effect on land, water, air or any other component of the environment, as well as on wildlife harvesting, and includes any effect on the social and cultural environment or on heritage resources." This definition is broad and the threshold for when an EA is required is not a high threshold.

¹ "Husky - Chedabucto Mineral Exploration Program – LUP Application – Review Summary and Attachments – Feb 13_15", on the WLWB Online Registry page for application W2014Q0005.

With regard to the development proposal described in Husky's land use permit application W2014Q0005, the Board found that there is public concern about the proposed development that needs to be addressed through an EA. The public concern is widespread, having been voiced by the Tłjchq Government, YKDFN, and NSMA, as well as non-governmental organizations and individuals from the general public. Therefore, the Board has referred Husky's proposal to the Review Board for an EA.

Mitigation of the direct environmental impacts of Husky's proposed activities could, in the Board's opinion, likely occur, but substantial concern exists due to both the potential for impacts and the cultural, traditional, spiritual, and recreational value of the Whitebeach Point area in and of itself. The Board acknowledges that the direct environmental impacts of the proposed development appear to be relatively straightforward and, therefore, suggests that the focus of the EA should be on concerns related to traditional knowledge and the cultural value of the Whitebeach Point area. Cultural impacts are not as straightforward to address as environmental matters and an evaluation of the trade-offs that might be necessary to address cultural impacts and public concern related to Husky's proposed development is beyond the scope of the preliminary screening. The engagement and consultation activities provided by a focused EA should enable these impacts and concerns to be better understood and addressed. It is up to the Review Board to determine whether there are mitigation and/or accommodation measures that can eliminate the impacts and address the basis for public concern.

Traditional knowledge and the views of communities, first nations, and the Tłjchq Government

Our elders tell us to love the land and take care of the land, and to be cautious. The Board understands that, through the development, income might be generated for next generations, but we must consider the environment for next generations too. The Tłjchq Government, YKDFN, and NSMA have clearly communicated to the Board that the proposed land use area is of significant importance to them:

- The Tłjchq Government² refers to the area as "important to the Tłjchq for cultural, recreational and spiritual reasons;"
- The YKDFN³ hold this area (referred to as Èdaalà) "in high regard for its cultural and spiritual values;" and
- The NSMA (ID#3)⁴ highlights the importance of the aesthetic and cultural integrity of the site.

Quoting Elder Harry Apples, the Tłjchq Government⁵ describes Tłjchq sentiment about the area: "The land it represents is important to the Tłjchq; Elders before this time went there to hunt, trap, and fish. The Tłjchq still use the area today. The Tłjchq want to protect this land. Other people should ask for permission to explore and use the area, out of respect for the Tłjchq and the history of the place."

² Tłjchq Government letter to the Board, "Husky – Chedabucto Project – LUP Application – Review Summary and Attachments – Feb 13_15" on the WLWB Online Registry

³ YKDFN letter to the Board, "Husky – Chedabucto Project – LUP Application – Review Summary and Attachments – Feb 13_15" on the WLWB Online Registry

⁴ All ID numbers refer to the Review Comment Table accessible under "Husky – Chedabucto Project – LUP Application – Review Summary and Attachments – Feb 13_15" on the WLWB Online Registry

⁵ Tłjchq Government letter to the Board, "Husky – Chedabucto Project – LUP Application – Review Summary and Attachments – Feb 13_15" on the WLWB Online Registry

Scope of the proposed development

The YKDFN and the Tłıchq Government request that the Board reject the bulk-sampling portion of the application. The YKDFN (ID#1) believes that the bulk sampling program in particular would pose a “significant threat to cultural and environmental assets” of the Whitebeach Point area. The YKDFN (ID#1) clearly states that:

YKDFN is not prepared to support an expanded drill program, the bulk sampling or the winter road. YKDFN asks the Board to reject the portions of the project which have not been part of meaningful engagements. If the Board is not able to do this, YKDFN requests that the project be referred to Environmental Assessment.

The Tłıchq Government (ID#6) recommends to the Board “that this element [bulk sampling] be the subject of further examination, and removed from the application.”

The Tłıchq Government and YKDFN also voice concerns about the need for further engagement, information, and examination of the proposed bulk sampling. The Tłıchq Government states (ID#6) “we are not in favour of mini bulk sampling, given lack of information.” The YKDFN refers to insufficient engagement, saying “there has been no meaningful discussion or engagement [on the second phase of the project].”

Dinàgà Wek’èhodì proposed protected area

The Tłıchq Government (ID#2) requests “the Board to consider a measure requiring no drilling in areas considered for the [Dinàgà Wek’èhodì proposed protected area]. The mineral leases held by Husky are in Wek’èezhii Lands, where the NWT Protected Area Strategy is currently proposing and considering the protected area, Dinàgà Wek’èhodì.” In response, Husky (ID#6) provides evidence that its mineral leases are excluded from the interim land withdrawal for the Dinàgà Wek’èhodì candidate protected area and argues that⁶:

One of the primary objectives of the [protected area strategy] process is to [assess] the resource potential of areas being considered for protection. The purpose of Husky's LUP application is to explore the mineral claims area and evaluate the silica deposit to determine if there is the potential for commercial development. Husky's exploration program is of short duration, and designed to minimize the impact to the environment.

Board's conclusion

In Husky's responses to comments⁷, the company did not modify the development (e.g. did not adopt YKDFN and the Tłıchq Government's recommendations to eliminate the bulk sampling component of the project). It is not within the Board's discretion to limit the scope of the development applied for; the Board must screen the development applied for. Given the positions of the Tłıchq Government and YKDFN, this leads the Board to conclude that there is public concern that needs to be addressed through an EA process and through further engagement.

⁶ Tłıchq Government ID#2

⁷ Tłıchq Government ID#7 and YKDFN ID#1

Evidence that Husky's mineral claims are adjacent to and do not overlap the interim land withdrawal for the candidate protected area is not sufficient to dispense with the Tłı̨chq̓ Government's concerns about the cultural, recreational, and spiritual value of the area. Traditional knowledge is not constrained by the lines drawn on modern maps, and must be given full consideration. Given the size, type, and duration of the proposed exploration project, the Board believes that further engagement, both bilateral and through the EA process, could enable Husky to find common ground with the Tłı̨chq̓ Government, YKDFN, and other affected parties. Regardless, the Board is of the view that further investigation of the effects of the proposed land use operation will likely lead to more effective mitigation of impacts.

Husky committed⁸ to "consult on the details of any proposed post-2015 activity (e.g. bulk sampling) well in advance of conducting field operations." Although the Board supports and requires ongoing engagement throughout the life of permitted and licenced developments⁹, up-front consultation and engagement, and an attempt to find accommodation, is essential for informed decision making. The Board believes further engagement with affected parties is needed to better understand and, potentially, address public concern. Husky has developed a good foundation for engagement¹⁰, which can be built upon going forward. An EA should facilitate further engagement, broad participation in the process, more thorough consideration of traditional knowledge, and evaluation of and response to the comprehensive array of factors that may be contributing to public concern.

Views of NGOs and the general public

In addition to concerns raised by the Tłı̨chq̓ Government, YKDFN, and NSMA, numerous concerns were raised by NGOs and the general public. Alternatives North (ID #1), CoC NWT (ID #1), Bob Bromley (ID #1) and Wendy Stephenson (ID #1) do not support the issuance of a land use permit to carry out the proposed activities in the Whitebeach Point area. In general, they recommend the area be kept pristine for wildlife habitat, recreation, and tourism potential. Their specific concerns about environmental impacts are of two broad types: (1) potential impacts of silica mining and the larger economy and associated impacts, including climate change, that silica mining might contribute to and (2) potential impacts from the exploration activities described in the land use permit application submitted to the Board.

Although concerns about impacts of the first type may be valid, the potential impacts are related to future silica mining whereas the proposed project under consideration would not involve silica mining, it would involve exploration only. These particular concerns are not relevant to Board's preliminary screening decision. If fracking, silica mining, or any other development is to be undertaken by Husky in the Mackenzie Valley, those proposals will be subject to preliminary screening and regulation under the MVRMA. Potential impacts of the second type are related to the project at hand and, therefore, must be addressed. It is up to the Review Board to determine whether there are mitigation measures that can address and hopefully eliminate the impacts and address the basis for public concern.

⁸ YKDFN ID#1

⁹ MVLWB Engagement and Consultation Policy; MVLWB Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits (available at wlvb.ca)

¹⁰ For example: YKDFN ID#1

In response to reviewers' comments about the importance of the area and their desire to keep the area pristine, Husky¹¹ reiterates that the current application is for exploration only and is intended to evaluate the resource so that informed decisions can be made regarding the potential for any future commercial development on the Chedabucto mineral claims. While this response may be accurate in relation to Husky's plans, it fails to adequately address public concern about the current proposal.

Conclusion

Having reviewed all relevant evidence on the Public Registry, including the submissions of the Applicant and the written submissions received by the Board, the Board has determined under section 125(1) of the MVRMA that in its opinion: the proposed development described in Husky's land use permit application W2014Q0005 is a cause of public concern. Therefore, in accordance with paragraph 125(1)(b), the Board has referred Husky's proposal to the Review Board for an EA.

In the Board's view, the public concern it identified in relation to this proposed land use operation is substantial and widespread. It should be addressed before operations are initiated. The Board decided that an EA should be undertaken to facilitate further engagement, broad participation in the process, more thorough consideration of traditional knowledge and cultural impacts, and evaluation of a comprehensive array of factors that may be contributing to public concern.

Wek'èezhìi Land and Water Board



Chair

February 13, 2015

Date

¹¹ For example: Alternatives North ID#1