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Comité consultatif de l'environnement Kativik
Kativik Environmental Advisory Committee

April 26, 2010

Pierre Paradis, President
Committee on Agriculture, Fisheries, Energy and Natural Resources
Committee Secretariat Branch
Pamphile Le May Building
1035 Des Parlementaires St., 3rd Floor
Quebec City QC G1A 1A3

Subject: Bill 79, *An Act to amend the Mining Act*

Dear Sir:

The Kativik Environmental Advisory Committee (KEAC) was created pursuant to Section 23 of the *James Bay and Northern Québec Agreement* (JBNQA). The KEAC is a consultative body to responsible governments on matters related to environmental and social protection in Nunavik. As such, it is the preferential and official forum for the governments of Canada and Québec, the Kativik Regional Government (KRG) and the Northern villages.

Further to its review of Bill 79, *An Act to amend the Mining Act*, the KEAC would like to share with you some feedback and concerns.

General comments

The KEAC noted that the current *Mining Act* “applies subject to the *Act respecting the Land Regime in the James Bay and New Québec Territories* (chapter R-13.1), the *Act approving the Agreement concerning James Bay and Northern Québec* (chapter C-67) and the *Act approving the Northeastern Québec Agreement* (chapter C-67.1)” (section 341) and that Bill 79 does not modify this provision. This obligation is reinforced by the fact that the JBNQA is guaranteed and protected by section 35 of the *Constitution Act, 1982*.

The KEAC would like to take advantage of the current review of Québec mining legislation to recall that specific rules apply to mineral exploration and mining activities in Nunavik pursuant to the JBNQA. The KEAC would also like to reiterate certain recommendations concerning these activities in Nunavik.

In September 2009, the KEAC transmitted to the *ministère des Ressources naturelles et de la Faune* (natural resources and wildlife, MRNF) feedback on the Québec Mineral Strategy¹. In particular, the KEAC recommended to reinforce the good practices of mining companies operating in the North, to eliminate mining activities near protected areas, to put a stop to the growing number of mining-company road, marine and airport infrastructure, and to include local establishments in natural resource exploitation projects in the region.

In 2007, the KEAC prepared the *Position Paper concerning Current and Future Transportation Infrastructure Development in Nunavik*², to follow up on concerns raised by the KRG. For the KEAC, section 23 of the JBNQA clearly indicates that all mining development and roads necessary for mineral exploration and mining are subject to the environmental and social impact assessment and review procedure. These activities represent development or a development project as defined under the JBNQA and are automatically subject to the procedure. The JBNQA only provides an exception for “air and ground reconnaissance, survey, mapping and core sampling by drilling” (Schedule 1, Section 23, JBNQA). No exception exists for the construction of eventual access roads for either mineral exploration or mining.

Moreover, in another paper³ prepared in 2005, the KEAC made a recommendation regarding the adoption of regulatory standards to govern, on the tundra, the use of heavy equipment notably by mining companies.

Finally, it should be pointed out that the *Partnership Agreement on Economic and Community Development in Nunavik*, signed on April 9, 2002, by the Québec Premier, the KRG and the Makivik Corporation, reiterates under section 2.3 that “[a]s contemplated in Schedule 1 of Section 23 of the JBNQA, mining development on the Nunavik territory will be subject to the applicable environmental and social protection regimes”. This section reaffirms existing applicable legislation.

Specific comments

Objective and principles of sustainable development

Current mining-sector legislation in Québec, amended under Bill 79, does not appear to comply with the commitment made by Québec legislators regarding sustainable development in 2006 with the passage of the *Sustainable Development Act* and its 16 principles. Among these principles are social equity and solidarity, subsidiarity, public participation, protection of cultural heritage, biodiversity preservation, etc. The KEAC is surprised by the absence of any reference in Bill 79 to the objective of sustainable development and its principles because the bill represents an opportunity to adapt Québec mining legislation to new government objectives with regards to sustainable development.

¹ Recommendations of the KEAC regarding the Québec Mineral Strategy addressed to Nathalie Normandeau, Minister of Natural Resources and Wildlife, September 6, 2009.

² KEAC, *Position Paper concerning Current and Future Transportation Infrastructure Development in Nunavik*, October 2007.

³ KEAC, *Position Paper on the Québec Sustainable Development Plan*, February 2005, p. 11.

Public participation

Regarding public participation, section 33 of Bill 79 amends section 101 of the *Mining Act* so as to require the mining lease applicant, prior to its application, to “hold a public consultation in the region concerned, in the manner prescribed by regulation”. The Minister is responsible for judging whether or not the consultation is adequate and for indicating in the mining lease the conditions aimed at preventing conflicts with other land usages and at taking into account public feedback. The amendments also provide for the establishment, by the mining lease holder, of a committee to monitor its commitments made further to the public’s observations. These amendments must be highlighted because they are in line with sustainable development, in which public participation is a cardinal principle. The KEAC would also like to point out that this specific new public participation regime must not replace the environmental and social impact assessment and review procedure provided for under Section 23 of the JBNQA, which provides “a special status and involvement for the Native people and the other inhabitants of the Region over and above that provided for in procedures involving the general public” (23.2.2. c), JBNQA). Only an amendment made pursuant to the JBNQA can modify this assessment and public participation regime.

Protected areas and parks

The KEAC feels it is necessary to underline the importance of protecting the land and natural resources, as well as Inuit culture and traditions. In a perspective of sustainable development, priority land use no longer seems to be automatically granted to mineral exploration and mining activities, since sustainable development requires a management approach that is equitable for current and future generations as well as balanced between the environment, society and the economy.

The KEAC noted that Bill 79 demonstrates more concern for plant and wildlife conservation. Indeed, Bill 79 adds to the powers of the Minister of Natural Resources and Wildlife the possibility to withdraw land, by order, from mining activities. The Minister already held this power for the purpose of creating parks and protected areas (section 304, *Mining Act*). The KEAC wonders if a review of the exercise of ministerial powers was carried out to determine if the addition of this power is of further interest to the environment and sustainable development. Has this power been used by the Minister in the past to protect land and, in contrast, how many times has priority land use been given to mining activities?

The KEAC believes that special attention must be granted to land protection and usage conflicts by clearly stipulating in legislation rules that would allow the land to be managed in an equitable and balanced manner. Restrictions in priority mining usage (mineral exploration and mining) must be recognized and applied to ensure the sustainable development of the region.

Mining site restoration and financial guarantees

The KEAC welcomes the amendments proposed under Bill 79 regarding the guarantees required for estimated restoration costs, which are to be raised from 70% to 100% of estimated costs. In Nunavik, there are several mining sites for which the guarantee remains fixed at 70% of estimated costs. The report of the Québec auditor general on April 1, 2009, criticized past Québec government interventions in the mining sector, in particular regarding the management of obligations tied to mining site restoration. The auditor general noted that the MRNF neglects to monitor uncompleted due payments, thereby increasing the financial risks for the government

and local communities. As well, the auditor general noted that closing costs are not based on all the components of a mining site.

The KEAC considers that the restoration of mining sites must include all aspects of related activities, without any distinction between mineral exploration and mining stages and without omitting camps, buildings, roads, treatment facilities and other equipment. Financial guarantees must be monitored to ensure that they are paid in accordance with legislation, and enforcement measures must be implemented to ensure the compliance of offenders, both through criminal prosecutions and the suspension of mineral-resource rights. In this manner, the Québec government will send a clear message to Québec society, specifically that it does not want to assume any of the financial risks related to mining restoration activities.

Sincerely,

[signature]
Claude Abel
Chairperson

c.c. Serge Simard, Minister for Natural Resources and Wildlife